

CSI 2253f – Childhood and the Law
Fall 2018 – Thursdays 8:30-11:30
<http://pryan2.kingsfaculty.ca/course-sites/csi-2253f-g/>
BH 103

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COURSE DESCRIPTION:

This course will provide a foundation for the study of childhood and the law. By examining specific cases, statutes, treaties, and practices, students will have an opportunity to increase their understanding of the most relevant doctrines, principles, and debates about childhood in Canadian legal and political culture.

READINGS:

Jeffery Wilson, *The Law's Treatment of Youth and Children* (Markham, ON: LexisNexis, 2011).

10-15 additional documents and articles in the public domain will be available through the course calendar.

MARKING SYSTEM:

Reading Exercises	10 % (every week)
<u>Paper 1 (3-pages)</u>	25 % (Oct. 4)
<u>Paper 2 (3-4-pages)</u>	30 % (Nov. 15)
<u>Final Exam</u>	35 % (Dec. TBA)

PAPER INSTRUCTIONS:

Paper 1 (3 pages or approximately 900 words) - Due October 4

Read one of the following case reports and write a paper with four parts:

- a. A very brief summary of the facts of the case
- b. A statement of the legal issue(s) or question(s) before the court.
- c. A summary of the ruling and an assessment of the significance of the ruling for the Best Interest of the Child test or doctrine.
- d. A comment on the what the ruling reveals about the position of childhood and generational relations in Canadian law.

- [Gordon v. Goertz \[SCC 1996\]](#)

- [Libbus v. Libbus \[OSCJ 2008\]](#)

- [Hazelwood v. Hazelwood \[OSCJ 2013\]](#)

Paper 2 (3-4 pages or [900-1200](#) words) - Due November 15

You have two options for this paper. The first option is an opinion piece regarding the current class-action suit on youth player compensation in the CHL; the second option is an analysis (much like paper 1) of the landmark 1969 U.S. Supreme Court ruling *Tinker vs. Des Moines Independent Community School District*.

Option A - Read through the material on [CHL Class Action Law Suit](#) and write an opinion on the pending case; should the players or the league prevail? Justify your opinion as a matter of law based on previous cases, statutes, and the facts of the case.

Option B - Read and listen to the material on [Tinker v. Des Moines \[1969\]](#), and write a paper with four parts:

- a. A heading that gives the citation, the names of the parties, the court, and the date of the ruling.
- b. A very brief summary of the facts of the case and the legal issue or question before the court.
- c. A summary of the arguments, and the court's ruling.
- d. An assessment of what *Tinker* was to tell us about generational politics and the citizenship of young people.

PRELIMINARY COURSE SCHEDULE:

Week 1 - Sept. 6 - COURSE INTRODUCTION

Week 2 - Sept. 13 - Common Law Doctrines

<p>READING: Wilson, pages iii-vii and chapter 1, and pages 1-9 of E. v. Eve SCC [1986]</p> <p>Discussion Preparation - Submit through OWL</p> <p>LECTURE RESOURCES:</p> <p>Common Law Jurisdictions Globally</p> <p>How to Read a Case (support for Paper 1)</p> <p>What Should be Part of a Case Brief (support for Paper 1)</p>	<p>KEY CONCEPTS</p> <p>Statutory Law</p> <p>Constitutional Law</p> <p>Administrative Law</p> <p>International Law</p> <p>Common Law</p> <p><i>stare decisis</i></p> <p>leading cases</p> <p>case law</p> <p>Fiduciary obligation</p> <p>Procedural fairness</p> <p><i>parens patriae</i></p> <p>Best Interest of the Child</p> <p>Components of a Law Report</p> <p>E. v. Eve [1986] SCC</p>
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Week 3 - Sept. 20 - International Agreements

<p>READING: Wilson, chapter 2 & The Hague Convention</p> <p>Discussion Preparation - Submit through OWL</p> <p>RESOURCES: UNCRC</p>	<p>KEY CONCEPTS</p> <p>Hague Conv. on Civil Asp. of International Child Abduction</p> <p>Ellis v. Wenzell-Ellis [2010] OCA</p> <p>CC. v. KC OSCJ [2009]</p> <p>2 approaches to habitual residence</p> <p>competing interpretations of 'grave risk'</p>
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Week 4 - Sept 27 - The Best Interest of the Child

<p>READING: Wilson, chapter 3</p> <p>Discussion Preparation - Submit through OWL</p> <p>RESOURCES:</p> <p>The Divorce Act - Canada</p> <p>The Family Law Act - Ontario</p>	<p>KEY CONCEPTS</p> <p>Problems with BIC</p> <p>Van de Perre v. Edwards [2001] SCC</p> <p>Young v. Young [1993] SCC</p> <p>Custody/Access Frameworks</p> <p>Section 16 Canada Divorce Act</p> <p>Open and Closed Mediation</p> <p>Arbitration</p> <p>Child's Independent Legal Counsel Framework</p> <p>4 Approaches of the Bench to Custody/Access disputes</p> <p>Furlong v. Furlong (Nfld, 2009)</p> <p>Sloboda v. Sloboda (Sask, 2007)</p> <p>SGB. v. SJL (ON, 2010)</p> <p>Khan Test or Khan Doctrine</p> <p>R. v. Khan [1990] SCC</p> <p>Parental Alienation Syndrome</p>
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Week 5 - Oct. 4 - Child Support Litigation

<p>READING: Wilson, chapter 4</p> <p>Discussion Preparation - Submit through OWL</p> <p>RESOURCES:</p> <p>Justice Canada, "Putting Children's Interests First"</p> <p>Family Law Act of Ontario</p> <p>Federal Child Support Tables</p> <p>Paper 1 Due (via OWL) Oct 4</p>	<p style="text-align: right;">KEY CONCEPTS</p> <p>S. 30-32 of the Family Law Act of Ontario child of the marriage A.C. v. M.Z. [2010] ONSC Farden v. Farden [1993] SCBC S.(J.M.) v. M. (F.J.) [2004] OSCJ</p>
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Week 7 - Oct. 18 - Participatory Rights - Privacy, Information, and Consent

<p>READING: Wilson, chapter 5 (pages 167-195) and CRIN on "article 8" of the CRC (PDF)</p> <p>Discussion Preparation - Submit through OWL</p> <p>RESOURCES:</p> <p>Adoption Rights Summary</p> <p>UNICEF short on Article 8</p> <p>Health Care Consent Act, Ontario</p>	<p style="text-align: right;">KEY CONCEPTS</p> <p>Historical Perspective on Child Placement Access to Information Rights Art. 8 UN CRC <i>Lyttle v. Children's Aid Society of Metro. Toronto</i> [1976] <i>Kennete v. Munro</i> [1973] <i>Gelman v. Uruguay</i> [2011] Adoption Information Disclosure Act (ON, 2005) Ontario v. Marchland [2006] ONCA Cheskes v. Ontario [2007] OSCJ Mature Minor Doctrine Gillick v. West Norfolk and Wisbech AHA [1985] UK A.C. v. Manitoba [2009] SCC Health Care Consent Act, ON</p>
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Week 8 - Oct. 25 - Participatory Rights - Contractual Rights and Responsibilities

<p>READING: Wilson, chapter 5 (pages 195-207), CBC, "... Violate Minimum Wage Laws," Oct 2014 and CBC, "Junior Hockey's Biggest Fight..." Jun 2017.</p> <p>Discussion Preparation - Submit through OWL</p> <p>RESOURCES:</p> <p>CHL Class Action Law Suit (for Option A of Paper 2)</p>	<p style="text-align: right;">KEY CONCEPTS</p> <p>service providers harbouring and enticing away history of parental custody right to contract contractual validity for minors doctrine of benefit and necessity Pyett v. Lampman [1922] ONSC Salah v. Cruickshank and Bowen [1987] NSDC Bank of Nova Scotia v. Passero [1990] ONDC Rights to Participation/Rights to Care Ongoing Junior Hockey Class-Action Suit <i>Toronto Marlboro v. Tonelli</i> [1979] OCJ</p>
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Week 9 - Nov. 1 - Youth as Actors in Courts

<p>READING: Wilson, chapter 6</p> <p>Discussion Preparation - Submit through OWL</p> <p>RESOURCES:</p> <p>Lovinsky and Gagne "Legal Representation of Children in Canada," Justice Canada 2015</p>	<p>KEY CONCEPTS</p> <p>Susannah Brown's Case R. v. Brasier (1779) R. v. Kendall [1962] SCC R. v. W (R.) [1992] SCC Ontario Law Reform Commission (1991) Party Status Amicus Curiae Litigation Guardian Child Advocate CAS Toronto v. D.(S.) (1993)</p>
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Week 10 - Nov. 8 - Student Rights and Responsibilities

<p>READING: Wilson, chapter 7 & Toronto Star, "Bullying: How a school..." (June 2, 2013)</p> <p>Discussion Preparation - Submit through OWL</p> <p>RESOURCES:</p> <p>Ontario Ministry of Education, Policy Memo 144</p> <p>Sources on Tinker v. Des Moines (For Option B Paper 2)</p> <p>Excerpted Tinker Case Report (For Option B - P2)</p>	<p>KEY CONCEPTS</p> <p>Suspendable Actions Case law on suspension Evidentiary Standard <i>Haines v. Neudorf</i> [1995] Sask Ruman v. Lethbridge SD [1944] ABSC <i>Troyer v. State</i> [1918] OH <i>Tinker v. Des Moines</i> [1969] US SC Multani v. Comm. scolaire Marguerite-Bourgeois [2006] SCC Oakes Test Hopkins v. Mission SD [1998] BC Policy Memo 144 <i>Peel Board v. BW</i> [1987] Procedural Fairness</p>
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Week 11 - Nov. 15 - Migration

<p>READING: Wilson, chapter 8</p> <p>Discussion Preparation - Submit through OWL</p> <p>RESOURCES:</p> <p>Immigration and Refugee Protection Act</p> <p>UN Convention on the Status of Refugees</p> <p>Paper 2 Due (via OWL)</p>	<p>KEY CONCEPTS</p> <p>Calvin's Case [1608] <i>Jus Soli</i> Baker v. Canada [1999] SCC Syria & the Refugee Crisis Immigration and Refugee Protection Act UN Convention on the Status of Refugees Canadian Resettlement System Pre-Removal Risk Assessment 'Irreparable Harm' Case Law Langner v. Canada [1995] FCA <i>Baron v. Canada</i> (2009)</p>
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Week 12 - Nov. 22 - Child Protection Agencies and Law

<p>READING: Wilson, chapter 9</p> <p>Discussion Preparation - Submit through OWL</p> <p>RESOURCES: Child, Youth, and Family Services Act (replacing the CFSA, 2017) Summary of Changes from the CFSA to the CYFSA</p>	<p><u>KEY CONCEPTS</u> <i>R.B. v. CAS Meto. Toronto</i> [1994] SCC <i>R v. Kaija</i> [2006] OJ duty to report crown wardship society wardship 'preponderance of evidence' 'reasonable grounds to believe'</p>
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Week 13 - Nov 29 - Youth and Criminal Law

<p>READING: Wilson, chapter 10</p> <p>Discussion Preparation - Submit through OWL</p> <p>RESOURCES: Youth Criminal Justice Act extrajudicial measures sheet</p>	<p><u>KEY CONCEPTS</u> The Case of Peter Moore benefit of clergy age and culpability at law Dorcas Good juvenile reformatories R. v. D.B. [2008] SCC presumptive offence direct indictment R. v. S.J.L. [2009] SCC extrajudicial measures <i>R. v. A.B.</i> [1986] admissibility for youth confessions age of consent law</p>
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Week 14 - Dec. 6 - Review

<p>READING: No additional Reading</p> <p>RESOURCES:</p>	<p><u>KEY CONCEPTS</u> NA</p>
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Reading Exercises

Weekly preparation and participation within class can not happen after the fact or outside the physical space of the classroom. That would nullify the whole point of this part of the assessment. Submit Answers via OWL each week before class.

Ten percent of your mark will be awarded based on my evaluation of your preparation and participation for the discussion of the following reading question. You are asked to submit answers to these questions on OWL prior to our weekly meetings. We will utilize them in our discussions, and they will serve as a basis for the final exam.

Sept. 13 - Wilson, Chapter 1 & [E. \(Mrs.\) v. Eve, SCC \[1986\]](#)

submit on owl

1. While reading, note concepts or passages you find confusing -- obviously these notes should be made after you've done some work on your own (dictionaries, google, wiki). Not them with your submission; bring your submission to class. Do this every week.
 2. What is *parens patriae* and what is its relationship to the "best interests" of the child doctrine?
 3. Review the summaries Wilson provides of cases when Canadian courts have invoked or refused to invoke *parens patriae*; which ones do you find particularly telling or significant and why?
 4. Read pages 1-9 of *E. v. Eve* SCC 1986; what do you think is most important about this ruling for the application of *parens patriae* and the best interests doctrine to children and youth?
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Sept. 20 - Wilson, Chapter 2 & [The Hague Convention](#)

1. List the situations (defenses) when the Hague Convention allows a state to refuse to return a child wrongfully removed or retained.
 2. Name the 2 approaches to the concept of "habitual residence" in the Hague Convention, and focus your attention on how these were handled in **either** *Ellis v. Wenzell-Ellis* [OCA. 2010] (see Wilson, pgs. 18-19), **or** *CC v. KC* [OSCI., 2009] (Wilson, pgs. 19-20). How did the courts position the rights of the children involved in one of these cases?
 3. How have Canadian courts handled the specific defense of grave risk (Hague, art 13b) differently than countries like Germany, Israel, and Switzerland (Wilson, pgs. 37-39), and do you agree (say why or why not) with the 4 implicit rationales for the Canadian position?
 4. Locate the page and lines where Wilson delivers his general assessment of the Hague Convention and briefly state his suggested solution. Note any other passages where you might need clarification in group discussion.
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Sept. 27 - Wilson, Chapter 3

1. As you read chapter 3, construct a list (with corresponding page #) of at least five problems Wilson finds with the Best Interest of the Child doctrine. note: he offers more than five between pages 71-78.
 2. Commit the terms defined on pages 79-81 to memory. This doesn't require any writing here - it's just a cue for exam preparation.
 3. Consider the "child's independent legal counsel" framework, and resistance to it in *Bazinet and Reynolds v. Reynolds* (Wilson, pgs. 98-99, note 89). What does this suggest about the implications of *BIC* doctrine for generational power relations?
 4. Carefully read the notes and summaries on PAS's used in the *SGB v. SJL* (ON, 2010), Wilson pgs. 138-140. Answer 2 questions: What consequence might naming JB's alienation from his mother a "syndrome" have had on how his words and actions would be interpreted by the court in light of the fact that family break-down logically implies some level of estrangement? What assumptions might divide those who accept from those who reject the use of PAS in custody/access disputes?
*note a typo on page 138, JB "is ordered to live with his mother" - not father.
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Oct. 4 - Wilson, Chapter 4

1. Which children's support payments are covered by the federal Divorce Act, and which rely on the provincial Family Law Act? Compare the events (or terms) that frame a young person's right to child support under these two statutes (pg 152), what significance might there be in the differences?
 2. Examine the framework for determining if a person maintains the status "child of the marriage" under the Divorce Act descending from *Farden v. Farden* (1993), what do you think of these criteria?
 3. What did the Ontario Superior Court of Justice rule in *S. (J.M.) v M. (F.J.)* 2004, and what do you think about this case? (pg. 157)
 4. Wilson doubts the wisdom of having courts apply standards of conduct to young adults (and youths) seeking continued parental support payments. What are your thoughts on this question and the variety of cases he sites?
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Oct. 18 - Wilson, first two-thirds of Chapter 5 (pages 167-195) & [CRIN on "article 8" of the CRC](#) (PDF)

1. Briefly characterize the positions taken by the bench on the rights of adopted children in *Lyttle v. Children's Aid Society of Metropolitan Toronto* (1976) and the one taken in *Kennette v. Munro* (1973).
2. View the following [UNICEF short on Article 8](#) of the CRC in contrast to the CRIN [\(PDF\)](#) background article on it. Why might these be so vastly different in what they communicate about the meaning of the right to identity?
3. How did the court apply the 'principle of fundamental justice' to the rights of adoptees seeking information in *Ontario v. Marchand* (2006) in contrast to the privacy rights of those opposing Ontario's AIDA in *Cheskes v. Ontario* (2007)?
4. Do you think children and their biological parents should have a right to privacy from each other, and if so does this right extend to a right to anonymity? Briefly explain. The current Ontario policy is summarized in Wilson and [here](#).
5. In your own words, briefly summarize the "mature minor doctrine" (pg 178-179).

Oct. 25 - Wilson, last third of Chapter 5 (pages 195-207) & [CBC, "... Violate Minimum Wage Laws,"](#) Oct 2014 and [CBC, "Junior Hockey's Biggest Fight..."](#) Jun 2017.

1. What is the legally advisable immediate action of a counsellor who possesses evidence that a child is being beaten or sexually abused by his/her legal guardians? A) shelter the child B) call 911 C) notify CAS
2. Children may enter into contracts, but they can void the agreement through an act of repudiation (voidability), and the courts are not able to remedy contractual disputes involving children with 'specific performance' (ordering the parties to fulfill promises). In fact, courts can set aside contracts (even without a child's act of repudiation) using the BIC doctrine; pgs. 199-202. What consequences might these protective rules have had upon children and youths participation in the economy during the past century? Explain.
3. Summarize the kinds and features of contracts that are binding on a child.
4. Canadian Junior Hockey is in the midst of a \$180,000,000 class-action law suit with former players over inadequate compensation in violation of minimum wage laws. The case is yet unsettled. Having read the two CBC articles, briefly note your thoughts about the practices reported, and the arguments launched against and in defense of them.

Nov. 1 - Wilson, Chapter 6

1. How have rulings such as *R. v. W. (R.)* [1992] and *A.C. v Manitoba (Dir. of CFS)* [2009], altered older common law assumptions about the testimony and consent of minors?
2. On pages 212-217 Wilson explains that although it is legally possible for a minor to become a "party" to a case, it is rare. "Party" status comes with the right to call witnesses, cross-examine them, present or refute arguments, enter pleas (etc.), as opposed to "witness" status which comes with only the right to respond to questions and introduce evidence in response. What assumptions seem to support the denial of party status to children and youth?
3. What legal doctrine (emphasized in Chapter 1) supports the court's prerogative for a judge to interview children in a custody dispute in private chambers? What advantages do you see and/or concerns do you have about this practice? (218-234; cases from the 1980s to 2010).
4. Try to write a single sentence that identifies the distinction between an "amicus curiae," a litigation guardian, and a child advocate. Which of the three forms of children's legal representation is established in Ontario?
5. On pages 241-242, Wilson provides a long excerpt from *CAS Toronto v. D. (S.)* dispelling two misconceptions about the consequences of attorney's representing children as they would adults. What are his two points, and what do you think of them?

Nov. 8 - Wilson, Chapter 7 & Toronto Star, ["Bullying: How a school..."](#) (June 2, 2013)

1. On page 253, Wilson lists the suspendable actions by a pupil at school, on a school activity, "other circumstances where engaging in the activity will have an impact on the school climate." Which of these actions (given the scope of the phrase "school climate") do you believe are reasonable or unreasonable grounds for suspension?
2. Write down a couple of the most negative consequences for students which may accompany a 20-day suspension. In light of

those consequences, what is your responses to the case law as summarized on page 259-260.

3. Read the Toronto Star story on Mark and Daniel. What difference might it have made if school officials were required to follow standard (due) processes of investigation and adjudication in the case of Mark and Daniel?
4. What is the problem with 'structural bias' in the expulsion hearing process named by Wilson (pgs. 265-66), and what alternative processes could you imagine might mitigate against it?
5. Read closely the excerpt from *Peel Board of Education v. BW (1987)* on pages 266-67. In this case, how did the school authorities handle the presumption of innocence, and do you think this is justifiable (why or why not)?

Nov. 15 - Wilson, Chapter 8

1. Recall my presentation of *Baker v. Canada* (1999) from week 1, see Wilson 277-281; what principle does this insert into applications for humanitarian exemption from deportation?
2. What three stipulations regarding children are part of the *Immigration and Refugee Protection Act* (see Wilson, page 279) instruction to immigration officials when weighing cases of permanent residents status or exempting persons from the ordinary statutory requirements for obtaining entry to or remaining within Canada.
3. On pages 283-85, Wilson reviews the case law around Pre-Removal Risk Assessment. PRRA is the final step taken by Immigration Canada prior to deportation. A stay on the removal order can be given if children will suffer irreparable harm; according to this summary what has been found to meet the irreparable harm standard, and what has not?
4. On 281-282 Wilson tell us that the case law and statutes that govern migrants and refugees has made the best interests of the child an factor that must be considered, but it is not paramount (as it is in matters of family law - such as custody and access or adoption). He further explains (*Langner v. Canada* 1995) a double-standard between BIC's application in migration cases and international humanitarian conventions that we claim to accept. Do you agree with his criticisms? Explain. Wilson 286-288.

Nov. 22 - Wilson, Chapter 9

1. On pages 292-293, Wilson provides an excerpt of *R.B. V. CAS Meto. Toronto* (1994) that establishes parental rights as protected by s. 7 of the Charter. From this right, he names two obligations that fall upon the state (in the subsequent paragraphs). What are they?
2. Under the section on the duty to report pay attention to *R v. Kaija* (2006). What do you see as the benefits and costs of releasing a volunteer coach from liability for failing to report? (Pg. 296)
3. (W, 308-09) Under what circumstances is there a legally sound reason for a child protection proceeding to be open to the news media? What might be the general cultural effects of greater secrecy around child protection, as opposed to cases of crime suffered by adults?
4. On pages 313-314, Wilson takes up the standard of proof in child protection cases; it is the "balance of probabilities" (also known as "the preponderance of evidence"), which can be defined as the evidence demonstrating a greater likelihood (51% or more) that the transgression took place. Consider the higher standard of "beyond a reasonable doubt" (the criminal law

standard), and the lower standard of “reasonable grounds to believe” (the immediate police intervention standard). Given that these cases involve taking children away from their families, which standard of proof do you think is best, and why?

Nov. 29 - Wilson, Chapter 10

1. What principle about the law's treatment of youths offenders (those found guilty of a crime) was established in the SCC ruling *R. v. D.B.* (2008)? (Wilson, 330)
2. What ages are covered by the Youth Criminal Justice Act (YCJA), and how are children who commit crimes under this age framework handled? (Wilson, 331)
3. Under what 4 conditions are inculpatory statements (confessions) made by minors to authorities (e.g. police) admissible as evidence at trial? Do these conditions apply to an 18 year old confessing to something they did at age 17? What if they deceive the police about their age - pretending to be older? What if they are offered spontaneously before authorities can meet the four criteria?
4. In general - confessions offered outside of police investigations (to friends, for example) are admissible in courts of law; freely offered private confessions are an exception to the [hearsay rule](#). In Canada, a youths' confession offered to police is only admissible, if it was given under certain conditions (see qu. 4). These conditions are designed to protect youths from unfair interrogations and false confessions under police intimidation. In some cases involving youths, protections against confession can be extended from police to other adults. **List who has been held to be a "person in authority" in the case law, and following the excerpt of *R. v. A.B.* (1986) briefly state the conditions under which someone who is not a police officer can be held to be "in authority" for the purposes of the admissibility of a minor's confession. (Wilson, 355-357)**
5. Wilson (pgs. 361-363) provides an excerpt of key passages of the criminal code that established age boundaries for consensual sexual activity in Canada. The age of consent is 16, but there is an exemption that for 14 and 15 year olds to consent to sex (under certain conditions) when the consensual partner is no more than five years older than they. The same exemption applies to 12 and 13 year olds when the consensual partner is within two years of their age. **According to Wilson, what is the intention this somewhat complicated rules around the age of consent?**

LATE PENALTIES, ABSENCES, AND ACCOMMODATION:

Students are expected to schedule appointments and other responsibilities around class time. To be excused from discussion participation due to temporary illness, contact me directly via email.

If health issues are prolonged, or to request more extensive academic accommodation, you must meet with me in person and provide documentation to the Dean's Office.

I attempt to take a generous approach toward accommodating students, but I ask that you deal directly with me as is appropriate. I am available almost every working day on campus and will make an appointment to meet with you.

Please do not use email to engage me in substantive conversation, to review course material, or to pose open-ended questions. I am happy to speak with students face-to-face or immediately after class.

Penalties for late papers may be avoided if extensions are requested in advance. Otherwise, a two-mark deduction will be taken for each of the first three days late, and a 5-mark deduction for each day thereafter. One-month after the due date a zero will be assigned for the paper.