

International Comparison of Litigation Cases Related to SIDS: Comparison among Japan, USA, Britain and Canada

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In most of the litigation cases in Japan involving sudden infant death syndrome (SIDS), the plaintiffs are the biological parents of the victim; the accused, a hospital or nursery; and the gravamen of the argument is whether the cause of death was SIDS or suffocation due to sleeping in a prone position. When compared with court cases involving SIDS in the United States where the key issue is whether the victim suffered from SIDS or child abuse, it has been noted that the aforementioned trend is unique in Japan. For English and Canadian cases resembling the SIDS cases recorded in Japan, those with biological parents as the plaintiff and hospitals or health service facilities as the accused, one civil case was found in Canada and one each of criminal and civil cases in England. However, the key issue in these foreign cases was not whether the victim succumbed to SIDS or suffocation; neither were three cases involving the parents as the plaintiff and infant care facilities as the accused. Cases brought to court with the contention that SIDS or suffocation was the cause of infant death numbered three in Canadian criminal cases and one each in criminal and civil cases in England.

Key words: sudden infant death syndrome (SIDS), litigation, Japan, England, Canada

Litigation cases related to sudden infant death syndrome (SIDS) in Japan

It has been pointed out that the process by which legal cases involving SIDS come to court is unique in Japan when compared against similar cases observed in Europe or the United States. In the majority of Japanese cases, the families of SIDS victims accuse the nurseries or hospitals, contending that the latter are responsible for allowing the victims to sleep in a prone position, which resulted in suffocation; and the argument centers around the similarity or dissimilarity between suffocation and SIDS. Such a trend is considered to be unique in Japan¹⁾. Furthermore, there is a report that in Japan, the assertion in court that the death was due to SIDS evidently works in favor of the nursery or hospital that is being accused²⁾.

Most of these Japanese court cases have been civil cases. Recently, however, similar cases began

to appear in the criminal courts²⁾. It has been said that there has recently been a trend for the judgment to favor the plaintiff in SIDS cases at the criminal court, approximating the "theory of violation of the right of anticipation" that has been upheld recently²⁾. The theory is defined as follows: the mental suffering of the plaintiff should be legally compensated as a violation of the "right of anticipation" if he has expected that the victim would receive adequate care or be cared for in a suitable manner but such expectation was not fully met, thus forcing the plaintiff to undergo mental anguish. This applies even to the circumstances where the exact cause of death is unknown or the cause-effect relationship between negligence and death has been negated²⁾.

Litigation cases related to SIDS in the USA

In view of this situation, a Japanese national study on infant mortality of the 1999 Health Science

Table 1-A Canadian criminal cases related to SIDS

Case	Prosecutor	Accused	Name of offense	Judgement	Name of the court (year)
I	Her Majesty the Queen	Biological father	Manslaughter	Appeal allowed	Ontario Court of Appeal (2001)
	Issue: Whether the victim succumbed to SIDS or sexual abuse. Fact: It was found that the father caused the child to suffocate by inserting his penis into her mouth.				
II	Her Majesty the Queen	Biological father	Manslaughter	Appeal allowed	Newfoundland Court of Appeal (2000)
	Issue: The nursing supervisor judged the cause of death to be SIDS but a skull fracture was noted and a question of whether the victim suffered from SIDS or child abuse surfaced.				
III	Her Majesty the Queen	Biological father	Manslaughter	Appeal allowed	Manitoba Court of Appeal (2000)
	Issue: The question whether the victim suffered from SIDS, suffocation, or abuse (shaken baby syndrome) was raised.				
IV	Her Majesty the Queen	Biological father	Manslaughter	Application dismissed	Saskatchewan Queen's Bench (1998)
	Issue: The parents of the deceased child, who presumably succumbed to SIDS, underwent polygraph tests but the results were inconclusive.				
V	Her Majesty the Queen	Biological father	Criminal negligence	Application dismissed	Ontario Court General Division (1997)
	Issue: A question was raised on the cause of the child's of death being suffocation or SIDS. Fact: The father was good and the home environment was not one normally associated with child abuse. An autopsy study detected brain edema, which is known to indicate the elapse of time after death (by Prof. Ferris).				
VI	Her Majesty the Queen	Biological mother	Murder	Application allowed	Ontario Court General Division (1997)
	Issue: A question was raised about the cause of death: Was it SIDS or asphyxia? Fact: The pathologist gave a diagnosis of SIDS but it was found that a soft pillow had been pressed against the child's face and there was evidence of a fractured rib and extremities.				
VII	Her Majesty the Queen	Biological father	Manslaughter	Appeal allowed	Ontario Court of Appeal (1989)
	Issue: SIDS or manslaughter. A physician testified that SIDS occurs frequently among premature infants.				

Research (a project on the Comprehensive Study of Children and Families) was conducted to compare the Japanese and United States judiciary cases related to SIDS by extracting likely cases from court case databases so-called Lexis^{3,4}. Consequently, it was found that there is an obvious difference between the trends observed in the judiciary cases from these two countries^{3,4}. Specifically, among the majority of Japanese cases, the families of the young victims act as the plaintiffs, bringing suit against nurseries or hospitals. In the United States, on the other hand, in an overwhelming majority of cases, the state acted as the plaintiff; and the accused were the families of the deceased children or their baby sitters, with the gravamen of the argument being the distinction between child abuse at home and SIDS^{3,4}.

Questionnaire study related to SIDS litigation

The subjects of this study, which focused on Japan and the United States, was expanded by investigating the focal point of the issue in SIDS cases elsewhere by conducting a survey among the SIDS specialists in several countries (representatives to

the Global Strategy Task Force at a meeting of the International Association of SIDS). Subsequently, it was found that the point at issue in the SIDS cases in Japan is also the focal point in the suits relevant to SIDS brought to court in Canada; and similar arguments were also heard in civil cases in the United States⁵.

Survey of litigation cases related SIDS in Canada and Britain using court case database "Lexis"

Following up with the series of investigations described above, the trends observed in the cases related to SIDS in Canada and England were analyzed by using the cases extracted from the foreign case databases. Because the previous surveys established that the argument that is raised in SIDS-related cases in Japan frequently forms the basis of litigation in Canada, the study focused on Canadian cases in the first part of the investigation. The thrust of this part of the study was to compare the litigable process of SIDS-related cases in Japan with the manner in which the argument whether the victim suffered from suffocation or SIDS has been handled in Canada. Because the Infanticide Act exists

Table 1-B Canadian civil cases related to SIDS

Case	Plaintiff	Defendant	Compensation for damages	Decision	Name of the court (year)
I	Her Majesty the Queen	Biological father	Payment for nursing expenses at home for a child with congenital anomalies	Appeal dismissed	Federal Court of Appeal (2000)
II	Biological parents	University-Alberta Hospital	Negligence of standard care	Application dismissed	Alberta Court of Queen's Bench (1997)
III	Biological father	Employer of father (airline company)	Cancellation of demotion	Mediation	Ontario Court Provincial Division (1996)
IV	Father	Insurance company	Insurance reimbursement	Appeal dismissed	British Columbia Supreme Court (1988)
V	Biological father	Insurance company	Reimbursement	Application dismissed	New Brunswick County Court (1977)

Issue: The involvement of either SIDS or abuse could be suspected. The child was found to have suffered from a subarachnoid hemorrhage, suggesting shaken baby syndrome. However, abuse by the father was unsubstantiated.

Issue: Grieving over the death of one of his twin children due to SIDS, his biological father took leave from an airline company. Being unhappy over a demotion he suffered when he returned to work, he brought suit against his employer.

Issue: Unhappy over not getting an insurance reimbursement because he had failed to state that his child (since deceased from SIDS) had suffered from the consequences of prematurity as a risk for SIDS.

Issue: The biological father of a child who had succumbed to SIDS brought suit against his insurance company for refusing reimbursement.

in England, the aforementioned survey indicated that the argument often focuses on whether the child had suffered from SIDS or was the victim of infanticide. It has been proposed that the legal environment concerning autopsy be re-evaluated to provide a more precise diagnosis of SIDS in Japan²⁾⁶⁾. England was selected for the second part of the study to evaluate the effect of the existence of a law called the Infanticide Act on the process of SIDS litigation in England.

The foreign court case database, "Lexis", was used. By using "sudden infant death syndrome (SIDS)" as the keyword, cases were retrieved from the Canadian and British cases contained in the database. These cases were analyzed mainly for the following: distinction between criminal and civil cases; specific court where the case was tried; identity of the plaintiff and accused; details of the suit; gravamen of the argument; verdict and details; and the year when the verdict was rendered.

The following cases were retrieved from Canada: 7 criminal cases, 5 civil cases, and 13 cases requesting protection of the children in question in accordance with the provisions of Family Law. From the British cases, the following were retrieved: 4 criminal cases, 5 civil cases, and one tried at the Family

Division. These cases are summarized in Table 1 and 2 with special references to the following: distinction between criminal or civil case; type of court where the case was tried; identity of the plaintiff and the defendant; details of the suit; major issue; verdict and details; and the year when the verdict was rendered.

Canadian criminal cases (Table 1-A)

Among the 7 criminal cases retrieved from the Canadian records, appeals were made in 4 cases: the plaintiff was Her Majesty the Queen for all cases, while defendants were the biological fathers in 6, biological mother in 1, biological fathers in 5 for manslaughter and 1 for criminal negligence, and biological mother for murder in 1. The major issues in these cases were: distinction between SIDS and child abuse in 2 cases (involvement of sexual abuse in 1); SIDS and suffocation in 2; SIDS, suffocation, and abuse in 1; and SIDS and manslaughter in 1.

Of the 2 cases with a question of SIDS or abuse, 1 with a question of SIDS, abuse, or suffocation, and another with a suspicion of SIDS or suffocation, their home environment were clearly suggestive of child abuse. Findings, such as the presence of fractures of the ribs, skull, and extremities, led to a conclusion of child abuse. The appeals were approved

Table 1-C Court cases based on Canadian Family Law (a law requiring the protection of children)

Case	Plaintiff	Defendant	Request	Decision	Name of the court (year)
I	Biological father	Biological mother	Protection of the child from the mother	Application granted	Saskatchewan Court of Queen's Bench Family Law Division (2001)
	Outline: A case in which the biological father requested that he be allowed to protect his child from his drug-abusing and abusive biological mother. The father referred to the relationship between the toxic level of the abusive drugs in the mother and the development of SIDS.				
II	Children's Aid Society	Biological parents	Isolation & protection of the child	Application granted	Nova Scotia Family Court (2000)
	Outline: The Children's Aid Society demanded that a child be isolated and protected from his abusive biological parents. The first child by these parents had already succumbed to SIDS. Permanent protection of the remaining children by the society was granted.				
III	Child and Family Service	Biological parents	Isolation of child from parents	Request upheld	Manitoba Court of Queen's Bench Family Division (1998)
	Outline: The Child and Family Service requested that a child be isolated from his biological parents who had subjected him to abusive treatment, such as giving him drugs; and to protect him at a child care facility. His siblings had not succumbed to SIDS and their causes of deaths were undetermined.				
IV	Children's Aid Society	Biological parents	Protection of children from parents	Application allowed	Ontario Court General Division (1996)
	Outline: The Children's Aid Society requested protection of children cared for by their biological parents in a family where one of the twins had succumbed to SIDS and the other suffered from child abuse. The surviving child was returned to his parents under the supervision of the society.				
V	Children's Aid Society	Biological parents	Protection of children from parents	Application allowed	Ontario Court Provincial Division (1996)
	Outline: The Children's Aid Society applied for the protection of children from their biological parents whose first child was found to have succumbed to SIDS at the first autopsy but of a non-accidental cause at a second autopsy (because of the presence of fractures).				
VI	Biological father	Biological mother	Protection of the child from the mother	Application allowed	Ontario Court Provincial Division (1995)
	Outline: The biological father requested that his child be protected from his biological mother who was addicted to cocaine and that a paternal right (for free access to the child) be recognized. The court approved the protection of the child by his great uncle and great aunt and the father was allowed to have free access to him. A half-brother belonging to his biological mother had suffered from SIDS.				
VII	Biological mother	Biological father & his new partner	Protection of the child from the father & partner	Application allowed	Ontario Court General Division (1994)
	Outline: The biological mother requested that her child be protected from his biological father and his new partner, who were in charge of the child. The child's siblings had succumbed to SIDS.				
VIII	Biological mother	Biological father	Protection of the child from the biological father	Application dismissed	British Columbia Supreme Court (1991)
	Outline: The biological mother requested that her child be protected from the child's biological father, who was in charge of the said child under the supervision of the Office of Public Trustee. A problem surfaced when it was doubtful if the child's grandmother had any knowledge about SIDS.				
IX	Biological mother	Biological father	Protection of the child from the biological father	Application dismissed	Ontario Provincial Court Family Division (1986)
	Outline: The biological mother demanded that her child be protected from his biological father. The child's stepbrother had already succumbed to SIDS. It was suggested that the father assume responsibility by paying 25 dollars a week.				
X	Children's Aid Society	Biological mother & common law husband	Protection of the child of the mother & husband	Application allowed	Manitoba Court of Queen's Bench Family Division (1985)
	Outline: The Children's Aid Society requested that a child be protected from his biological mother and her common law husband. Signs of neglect were recognized but there was no evidence of physical abuse. The risk of SIDS was considered to be high. A permanent order of guardianship by the Children's Aid Society was acknowledged.				
XI	Superintendent of Family & Child Service	Biological mother	Temporary protection of the child from the mother	Application later dismissed	British Columbia County Court (1985)
	Outline: The Superintendent of Family and Child Service requested temporary protection of a child from his biological mother who was involved in a criminal case related to drug addiction. The child had suffered from neonatal drug withdrawal syndrome and appeared to be at a high risk for succumbing to SIDS. Temporary protection of the child by Family & Child Service was recognized but the application was later dismissed.				
XII	Biological father	Biological mother	Protection of children from the mother	Application granted	Ontario Provincial Court Family Division (1983)
	Outline: The biological father requested that his 4 children be removed from a religious community and be protected from their biological mother. One of the children succumbed to SIDS and the two others agreed to live with their father.				
XIII	Children's Aid Society	Biological parents	Protection of children from parents	Temporary protection granted	Ontario Court General Family Court Division (1997)
	Outline: After the death of the first child, the biological parents received an offer from the Children's Aid Society to act as guardian for the remaining children. The question whether the first child succumbed to SIDS or child abuse (shaken baby syndrome) was deemed significant in this case.				

for all 4 cases. Among the 2 cases with a question of SIDS or child abuse, 1 with suspected SIDS, abuse, or suffocation, and another with a question of SIDS or suffocation, bone fracture was found in 1, because of which the charge was approved. In 1 case in which the cause of death was questionable (SIDS or suffocation), the father appeared to be good and the home environment was not indicative of child abuse. At autopsy, brain edema was found. A forensic pathologist stated that the presence of brain edema indicates a prolonged dying process and cannot prove a sudden death. However, the suit (alleged criminal negligence by the biological father) was rejected.

These summarize the 7 court cases (all except one) that led to verdicts in the past 10 years—one in 1989, 2 in 1997, 2 in 2000, and 1 in 2001.

Canadian civil cases (Table 1-B)

Among the 5 civil cases from Canada, 2 were appeals. The plaintiffs were all the biological fathers or parents and the defendants included Her Majesty the Queen in 1, University Alberta Hospital in another, an airline company, the employer of the father, in yet another, and insurance companies in 2. The major issues in these cases included a demand for payment for expenses for care, with the claimant insisting that the child suffered from SIDS in 1; and a demand for insurance reimbursement, with the parent maintaining that the child succumbed to SIDS in 2. The court rejected all these claims.

In the II case in which the grieving biological father of a child who had succumbed to SIDS took leave from work but found that he had been demoted when he returned to his work, arbitration with his employer was successful. In a case in which the biological parents brought suit against the hospital for negligence of standard care, a subarachnoid hemorrhage was detected in the child, suggestive of shaken baby syndrome; but there was no evidence to incriminate the father for child abuse. The major issue of this case was the distinction between SIDS or child abuse as a cause of the child's death. No evidence was found to substantiate abuse by the father and the suit was rejected in spite of a heated discussion about the cause of death being

SIDS or child abuse.

Verdicts were given in all 5 cases in 1977, 1988, 1996, 1997, and 2000.

Canadian court cases on the Family Law (Table 1-C)

Among the 13 Canadian court cases requesting the protection of children based on the Family Law, 7 came before the Family Law Division; 2, the General Division; 1, the County Court; 2, the Provincial Division; and 1, the Supreme Court. These 13 cases break down as follows: 7 cases in which organizations, such as the Children's Aid Society or Child and Family Service, demanded that the children be removed and protected from their biological parents or natural mothers and their common-law husbands; 3 cases in which the biological fathers demanded the children be separated and protected from their biological mothers; and 3 cases in which the biological mothers demanded that their children be protected from their biological fathers or other custodians.

These 13 cases included 3 in which the biological mothers were addicted to drugs, 7 in which the siblings or someone in the family had already succumbed to SIDS, 3 in which the effect of SIDS was suspected, and 6 in which child abuse was suspected. Among the same 13, protection of the children was the issue in 11, for which the plea was rejected in 2 (these 2 suits were raised by the biological mothers who demanded that their children be protected from their fathers).

For these 13 cases, verdicts were handed down in 1983 (1 case), 1985 (2), 1986 (1), 1991 (1), 1994 (1), 1995 (1), 1996 (2), 1997 (1), 1998 (1), 2000 (1), and 2001 (1).

British criminal cases (Table 2-A)

The 4 British criminal cases that were retrieved included one on appeal and one of Coroner's inquest. The former involved Sally Clerk, an attorney and the biological mother of the victims, who as the defendant, was accused of committing an act of murder and was arrested and imprisoned. However, she was later released for insufficient evidence. This was a SIDS-related case that was widely reported in England, its main issue being the

Table 2-A British criminal cases

Case	Prosecutor	Accused	Name of offense	Judgement	Name of the court (year)
I		Biological mother	Murder	She was released	Court of Appeal (2000)
	Summary: Due to the death of her two children, their biological mother was arrested and indicted for murder. Because of inadequate evidence, she was later released.				
II				Another inquest was requested	Coroner's court (1991)
	Summary: A child succumbed to pneumonia and bronchial pneumonia subsequent to asphyxia, which attracted the court's attention.				
III					Queen's Bench Division Crown Office List (1988)
	Summary: One of the five children succumbed to SIDS associated with bronchial pneumonia. The child had been hospitalized since birth under the local authority's care and his biological mother had not been allowed to see him. She requested access to her children, which was not granted.				
IV	Biological parents	London Hospital Medical College	Professional negligence	Appeal dismissed	Queen's Bench Division (1980)
	Summary: While it was being argued whether the cause of a child's death was SIDS or murder, his biological parents brought suit against London Hospital Medical College, stating that the autopsy specimen belonging to their child had been mixed with those belonging to other patients.				

distinction between SIDS and infanticide. The case was tried between 2000 and 2003. For the Coroner's inquest case, the key issue was whether the infant succumbed to SIDS or pneumonia caused by asphyxia, which resulted in a request for another inquest. Of the other 2 cases, one involved a biological mother who requested but was not allowed access to her child, who was then under the care of a local authority (1980). In the other case, the biological parents brought suit against London Hospital Medical College (1980). The primary issue at the court was the distinction between SIDS and infanticide as the cause of the child's death. The plaintiffs accused the medical facility in question of mixing the autopsy specimen of the victim with those of other patients. Their suit was rejected.

British civil cases (Table 2-B)

The 5 civil cases from England included 3 usual appeals (dated 1992, 1995, and 1998). The other 2 were dated 1986 and 1988, respectively, with the former being heard before the Queen's Bench Division through the Coroner's inquest. In all 5 cases, the plaintiffs were the biological parents of the victims and the defendant was the National Hospital Society (NHS) in one and DHSS in another. The gravamen of the argument in these 5 civil cases was: the cause of the child's death is SIDS or abuse inflicted by his biological mother in one; a request by the parents for parenting rights in two; a dispute over a cause-effect relationship between a DTP vac-

cine and the development of SIDS in one; and a disagreement among pathologists about the distinction between SIDS and suffocation in the other. Subsequently, 2 cases were won, 2 were rejected, and a new inquest was requested for the other.

SIDS realted court cases in the British Family Division (Table 2-C)

The case related to SIDS that was tried in the British Family Division involved a biological mother who demanded and was allowed to have the medical records of her child disclosed to her. The verdict was given in 1991.

Comparison between Japanese cases and British or Canadian cases

In an effort to extract SIDS-related cases recorded in Canada and England—those that are similar to the SIDS cases retrieved from the Japanese databases (“Hanrei Taikei” and “Hanrei Master”)—from foreign case databases, the following 4 aspects were prepared for selection criteria: ① suits brought by biological parents acting as plaintiffs against medical facilities (such as hospitals) as defendants; ② suits also brought by biological parents as plaintiffs against child-care facilities as defendants; ③ suits in which the primary issue was whether the victim succumbed to SIDS or suffocation; and ④ suits with verdicts suggestive of the effect of the “theory of violation of the right of expectation”.

1) The suits in which the biological parents acting

Table 2-B British civil cases

Case	Plaintiff	Defendant	Compensation for damages	Decision	Name of the court (year)
I	Biological mother	NHS	Medical negligence	Appeal allowed	Court of Appeal (1998)
	Issue: A case in which a question was raised whether a child succumbed to SIDS or abusive actions inflicted by his biological mother. The mother insisted that the cause of death was due to medical negligence by the NHS.				
II	Biological parents		Returning their child	Appeal dismissed	Court of Appeal (1995)
	Issue: The biological parents insisted that their child be returned to them. The sisters of the child in question had succumbed to SIDS.				
III	Biological parents		Non-accidental injury	Appeal allowed	Court of Appeal (1992)
	Issue: The biological parents were arrested on suspicion of non-accidental injury of their child (a rib fracture). Later, the father requested that he be allowed a right for parenting. Whether the child was a victim of SIDS or non-accidental injury was the issue in the procedure.				
IV	Parents	DHSS	Claiming of vaccine	DHSS was protected	Queen's Bench Division (1988)
	Issue: The parents brought suit against DHSS claiming that a vaccine caused their child's brain damage. The relationship between the DTP vaccine and SIDS was argued.				
V	Parents		Request another inquest	Request allowed	Queen's Bench Division (1986)
	Issue: Parents requested another inquest. Their first three children had all succumbed within 8 weeks of birth. Their fourth child was hospitalized up to 6 months after birth and was healthy but expired on the 14th day after discharge. A pathologist maintained that the cause of death was SIDS while another insisted that it was due to suffocation. There was no evidence of abuse. The coroner declared an open verdict.				

Table 2-C Court case from the British Family Division

Case	Plaintiff	Defendant	Request	Decision	Name of the court (year)
I	Biological mother		Disclosure of medical record	Request allowed	Family Division (1991)
	Summary: It was determined that one of the children had succumbed to SIDS and another to suffocation caused by their biological mother, who demanded and was allowed to have their medical records disclosed.				

as the plaintiffs accusing medical facilities such as hospitals are illustrated by civil case II from Canada, criminal case IV from England, and civil cases I and IV, also from England. Of these 4 cases, the issue of contention was whether the victim suffered from SIDS or child abuse in Canadian civil case II and British civil case I. In British criminal case IV, the distinction between SIDS and infanticide was argued, the focal point being whether the specimen from the victim was switched with those of other patients. The major issue in British civil case III was the cause-effect relationship between SIDS and a DTP vaccine. In these SIDS-related cases, the plaintiffs, the biological parents of the victims, brought the suits against medical facilities, such as hospitals. Those court cases—such as seen in Japan where the major issue is the distinction between SIDS and suffocation—were not found in the Canadian or British court cases retrieved from the current databases.

2) Cases in which the plaintiffs, the biological par-

ents of the victims, brought up suits against child-care facilities were not found in Canada or England.

3) For the cases in which the main issue of contention was whether SIDS or suffocation was the cause of death, Canadian criminal cases III, V, and VI, British criminal case II, and also British civil case V were retrieved. Initially, it was suspected that although the identities of plaintiffs or defendants may differ, the cases are partly comparable to the court procedure seen in Japanese cases related to SIDS; and the differences may shed some light on future SIDS-related cases in Japan. In Canadian criminal cases III and VI, the major issue was the distinction between SIDS and suffocation but there was also clear evidence (fractures) indicating child abuse. Therefore what appeared to be meaningful for comparison with the Japanese SIDS-related cases were the remaining 3 cases, viz., Canadian criminal case V, British criminal case II, and British civil case V. For the two British cases, the court procedures were initiated by a coroner's inquest;

and a description found in the database ended with a request for another or new inquest; thus a detailed comparison of the court procedure was not possible. For Canadian criminal case V, the only case left for a possible comparison, what was significant was the manner by which brain edema (detected at autopsy) was interpreted. The forensic pathologist in charge stated that the presence of brain edema indicates a prolonged dying process and not the sign of sudden death (such as SIDS). However, his opinion was not reflected in the verdict. Even now, the presence of brain edema is reported in some cases of SIDS⁷⁾⁸⁾.

4) SIDS-related cases suggestive of the influence of the "theory of infringement of the right of expectation" on the verdict were not found in either the Canadian or British cases that had any bearing on SIDS and that were retrieved from databases used herein.

Among the cases retrieved from databases containing foreign court cases, there are those Canadian SIDS-related civil cases—totally unlike their Japanese counterparts—that demand monetary compensation for care or insurance reimbursement when SIDS was recognized as the cause of death. Thus details of the SIDS-related civil cases were diverse in Canada and England. Among the Canadian cases where child protection is demanded in accordance with the provisions of the Family Law, the incidence of SIDS among the victims' siblings is often cited as information suggestive of child abuse, which is another outstanding difference from the Japanese cases. As established by earlier studies, there are some instances of SIDS-related suits, the major issue being the distinction between SIDS and child abuse in Canada and England. In most of these cases, the home environment of the victims is suggestive of abusive acts and there is evidence of abuse (such as fractures and intracranial hemorrhage). When child abuse can not be readily ascertained, the general trend is that parents are spared of accusation. On the other hand, an allegation of SIDS and its acceptance by the court results in a favorable verdict for the defendants—not only in Ja-

pan but also in Canada and England.

The effect of the Infanticide Act on the litigation process was examined in those English cases that were related to SIDS. It was expected initially that because it is associated with lighter punishment in comparison with homicide, a judgment of infanticide might be frequently handed down but the current study was not able to ascertain such a tendency. In Japan, defendants who committed an act equivalent to infanticide are often sentenced with due consideration given to extenuating circumstances. It is believed that effects similar to having a law may be achieved without the presence of the law.

In the previous study, it became evident that there are cases in which the question of SIDS or child abuse is the major issue; but they are few and far apart in Canada. In most cases related to SIDS, the question centers around the manner of child care, namely whether the infant was allowed to sleep in a prone position, although such a position is considered to be different from the accepted standard for a sleeping position⁵⁾. According to Lexis, a database containing foreign court cases, no single SIDS-related court case was discovered. Whether domestic or overseas, the criteria for the descriptive format for databases showing legal cases have not been well defined and there is a tendency to place a higher priority on unique cases. It is suspected that those cases that are commonly encountered in court may not be included, which may be a limitation on studies that rely entirely on databases.

Conceptualizing the future development of SIDS-related court cases

In British criminal case I that was tried recently an attorney and the defendant in the case, was incarcerated for killing of two of her infant children⁵⁾. According to the Home Office pathologist, the first child succumbed to SIDS: and 2 years later when the second child died, the same pathologist suspected child abuse and declared both were victims of suffocation (thus reversing his judgment for the first child). A certain forensic professor stated his opinion that retinal hemorrhage found in these cases was highly suggestive of child abuse; but he

later retracted his statement by saying that retinal hemorrhage was located in a tissue sample belonging to another person. Another pediatric professor reported that the probability of two children in a single family falling prey to SIDS is very small, thus supporting the homicide theory. Later, the husband of the defendant, who was also an attorney, discovered that the first pathologist had hidden the microbiological report describing the presence of *Staphylococcus aureus* in the cerebrospinal fluid and some tissues belonging to the second child. Thus the defendant was cleared of the accusation and released⁵⁾. Still later, it was found that there were multiple incidences of sudden deaths in her family, the defendant. A subsequent genetic study revealed that long QT syndrome had been genetically transmitted in her family⁹⁾¹⁰⁾. Such genetic tests may supplement the shortcomings of pathological findings in SIDS-related suits in future.

The recent verdicts given to SIDS-related cases in Japan suggest a tendency to approach the theory of infringement of the right of expectation²⁾. One aspect of this theory may be related to no fault compensation, which signifies that patients will be reimbursed for damage regardless of on which side the responsibility lies. It may be expected that SIDS-related suits in Japan will assume this form in the future.

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乳幼児突然死症候群に関連する裁判事例の国際比較
—日本・アメリカ・イギリス・カナダの比較—

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日本の SIDS 訴訟は、児の実父母を原告とし、病院や保育関係施設を被告とし、乳幼児突然死症候群(SIDS)かうつぶせ寝による窒息かを争点とする事例が多く、SIDS か虐待かを争点とするアメリカの SIDS 訴訟と比較して、このような傾向は日本に特異的なのではないかと指摘されてきた。外国判例データベースから、カナダ・イギリスの判例について、SIDS をキーワードとして SIDS 関連訴訟判例を抽出して検討したところ、日本の SIDS 訴訟と類似の事例としては、実父母を原告として病院や医療機関を被告とした裁判例がカナダにおける民事裁判例として 1 例、イギリスにおける刑事および民事裁判例として各 1 例ずつあったが、この中で訴訟の争点が SIDS か窒息かにあるものはみあたらず、実父母を原告として保育関係施設を被告とする裁判例はなかった。SIDS か窒息かを訴訟の争点とする裁判例はカナダの刑事裁判例で 3 例、イギリスにおける刑事および民事裁判例で各 1 例ずつあった。イギリスおよびカナダにおいては、SIDS 関連の民事訴訟例の訴訟内容は多彩で日本にみられないものが多く、SIDS か虐待かを争点とする裁判例の多くでは骨折や頭蓋内出血等明らかな虐待所見を有するものが多かった。SIDS の主張が裁判においてなされると、被告側に有利に働く点では日本と同様な傾向が認められた。