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## Children's Rights and the Developing Law

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JANE FORTIN



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## Preface

Many of those who work with legal principles affecting children are fully committed to the notion that children have rights. Nevertheless, they may be unclear how to promote such a notion in a way that enhances children's lives at a practical level, rather than allowing it to remain a theoretical ideal. The law does not stand still and the purpose of this book is to consider the extent to which the emerging legal principles can be harnessed to achieve such a goal.

Interest in the concept of children's rights has grown significantly since the first edition of this work was published in 1998. By the time the second edition was published in 2003, there was already an increasing appreciation, amongst lay people and lawyers, of the UK's obligations under the United Nations Convention on the Rights of the Child (CRC). But the delayed implementation of the Human Rights Act (HRA) 1998 meant that it was then still difficult to gauge the extent to which the principles of law governing children's lives would change under the impact of a rights-based approach. Since then we have seen the courts gradually accommodating the fact that the rights guaranteed by the European Convention on Human Rights and Fundamental Freedoms (ECHR) are also available to children. These two international conventions are undoubtedly having a dramatic impact on adults' perceptions of children's status. Meanwhile, during the last ten years, we have had a government in power with a real interest in children's lives, reflected by the huge body of child-related legislation it has introduced. Nevertheless, New Labour is not committed to the concept of children having rights, and its legislation reflects this. Indeed, at times the developing law and policy in England and Wales are simultaneously promoting and undermining the rights of children.

This work considers the developing law in England and Wales within a traditional range of legal topics, which reflect children's own activities and the principles used by lawyers to assist them. The first part considers the theoretical sources of ideas about children's rights and the extent to which international activity in the field of human rights can inform the domestic law. The next and largest part of the book contains chapters all broadly considering the extent to which the law acknowledges the growing maturity of adolescents and their capacity for independent thought and action. These chapters review the extent to which the law encourages adults to consult adolescents and older



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children over decisions regarding their future and the scope they are given to reach legally binding decisions of their own. The work's third part assesses the way in which the law balances the rights of younger children who are incapable of making decisions for themselves, against parents' powers and responsibilities regarding their upbringing. It considers how the law's support for parental autonomy, at times, hampers the legal fulfilment of children's own rights in various contexts. The fourth part of the work contains chapters considering the manner in which the state fulfils children's rights to protection against parental abuse and the extent to which children are protected from abuse whilst in state care. It also considers the rights of young offenders to be protected against a society which continues to maintain savagely punitive attitudes towards those who offend against its rules. The last chapter assesses the dilemmas that the law poses and the ways in which children's rights could be enforced more effectively and coherently.

Placing the legal principles affecting children in a rights-based framework can achieve little when they lack practical relevance. This lack of relevance often occurs quite simply because adult assumptions about children's interests are entirely unrealistic. To redress this weakness, readers of this work will find that there are numerous references to the steadily growing body of research on children's real needs. This is used throughout the work to test and inform the legal principles under discussion. It should also be noted that a work of this nature cannot cover all the topics at a sufficient depth to do justice to the wealth of research and academic comment underpinning them. It is hoped that the many footnoted references to much of this material will provide signposts for those tempted to delve more deeply into some of the subject areas. The work will have fulfilled its task if it provokes further thought and speculation over the way in which the law is developing and how it should develop to promote children's rights effectively.

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