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978-1-107-15825-2 — Implementing Article 3 of the United Nations Convention on the Rights of the Child

Edited by Elaine E. Sutherland, Lesley-Anne Barnes Macfarlane

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IMPLEMENTING ARTICLE 3 OF THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

Best Interests, Welfare and Well-being

The UN Convention on the Rights of the Child is acknowledged as a landmark in the development of children's rights. Article 3 makes the child's best interests a primary consideration in all actions concerning children and requires States Parties to ensure their care and protection. This volume, written by experts in children's rights from a range of jurisdictions, explores the implementation of Article 3 around the world. It opens with a contextual analysis of Article 3, before offering a critique of its implementation in various settings, including parenting, religion, domestic violence and baby switching. Amongst the themes that emerge are the challenges posed by the content of 'best interests', 'welfare' and 'well-being'; the priority to be accorded them; and the legal, socio-economic and other obstacles to legislating for children's rights. This book is essential for all readers who interact with one of the Convention's most fundamental principles.

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Edited by

ELAINE E. SUTHERLAND

University of Stirling and Lewis & Clark Law School

LESLEY-ANNE BARNES MACFARLANE

Edinburgh Napier University



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currently working on a project funded by the Norwegian Directorate for Children, Youth and Family Affairs exploring legal challenges for adolescents in institutions in need of both child protection services and health care. Sovig is a member of the regional committee of medical ethics and vice-chair of the European Association of Health Law (EAHL). He has acted as opponent for PhD theses in all Scandinavian countries and is also supervising PhD students writing dissertations in child law. He is a member of the editorial board of a Norwegian journal on family, heritage and child care law, where he writes comments on new recent decisions by the European Court of Human Rights.

ELAINE E. SUTHERLAND Elaine E. Sutherland is Professor of Child and Family Law at the Law School, University of Stirling, Scotland, and Distinguished Professor of Law at Lewis & Clark Law School, Portland, Oregon, spending six months of the year researching, writing and teaching at each. She has lectured on child and family law around the world and, in addition to her work in the Scottish and US domestic contexts, has long pursued her interest in the comparative dimensions of child and family law. One aspect of that was establishing the United Nations Convention on the Rights of the Child Implementation Project (CRC-IP), which brings together an invited group of respected child law scholars from around the world on a regular basis to offer critical analysis of the implementation of the Convention, one article at a time. The author of some 100 articles and book chapters, she contributes the chapter on Scotland to the *International Survey of Family Law*. Her books reflect the spectrum of her child and family law interests, as well as concern for wider legal developments in her native Scotland, and include *Child and Family Law*, 2nd ed. (2008); *Children's Rights in Scotland*, 3rd ed. (2009) (with Alison Cleland); *Scots Law Tales* (2010) (with John P. Grant); *Law Making and the Scottish Parliament: The Early Years* (2011) (with Kay E. Goodall, Gavin F. M. Little and Fraser P. Davidson); *The Future of Child and Family Law: International Predictions* (2012); *Pronounced for Doom: Early Scots Law Tales* (2013) (with John P. Grant) and *Family Law Basics*, 3rd ed. (2014).

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Bhutan, Nepal and West Bengal. His principal research interests are on legal anthropology, legal consciousness and human rights policy. Richard was ESRC Postdoctoral Fellowship at the University of Edinburgh in 2003 and then a lecturer in anthropology. In 2005, he was appointed ESRC Research Fellow in socio-legal studies. Prior to joining Edinburgh Napier in 2012, Richard was a senior analyst in Justice Analytical Services where he led research to inform civil law development, notably in the area of child and family law. Based on his fieldwork in South Asia, Richard was an expert witness for asylum appeal cases in the UK. Richard is an honorary fellow of the School of Social and Political Science, University of Edinburgh. Richard is a fellow of the Royal Anthropological Institute and the Royal Asiatic Society. In addition, he is an associate member of the Centre National de la Recherche Scientifique, Paris and an alumnus of the Rockefeller Foundation.

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978-1-107-15825-2 — Implementing Article 3 of the United Nations Convention on the Rights of the Child

Edited by Elaine E. Sutherland , Lesley-Anne Barnes Macfarlane

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PREFACE

There is no shortage of literature on the United Nations Convention on the Rights of the Child or aspects thereof. That is hardly surprising, given its critical importance in recognising children as rights-holders and its rapid and almost universal ratification by countries around the world. While ratification is vital, the real test of the impact of a treaty lies in the extent to which its provisions are being implemented at regional and local level. This volume addresses that issue in respect of one of the fundamental principles of this Convention, Article 3, which makes the child's best interest a primary consideration in all actions concerning children and requires States Parties to ensure their care and protection.

The origins of this volume lie in the *Convention on the Rights of the Child: Implementation Project* (CRC-IP) and its third, annual colloquium, which took place in Edinburgh, Scotland in June 2015. The CRC-IP was established by Elaine E. Sutherland in 2012 in the belief that, while large, multi-stream conferences have much to offer, there is a distinct value in bringing a smaller group of experts from around the world together to discuss the progress that had been made in implementing the Convention and to focus on one article at a time.

That validity of that belief was confirmed by the hugely successful colloquia that have taken place to date. The first, examining Article 12 (the child's right to be heard), was organised by Alison Cleland in 2013 at the University of Auckland, New Zealand, and the second, addressing article 6 (the child's right to life, survival and development), was arranged by Lize Mills at the University of Stellenbosch, South Africa in 2014. Articles expanding on papers from these colloquia can be found in the *New Zealand Law Review*¹ and the *Stellenbosch Law Review*,² respectively.

¹ [2013] *New Zealand Law Review* 333–504.

² (2015) 26 *Stellenbosch Law Review* 254–442.

The participants in the third colloquium gathered at the Mackenzie Building, Old Assembly Close, just off the High Street in Edinburgh, and we are immensely grateful to the Faculty of Advocates for donating the use of its superb conference facility and for providing refreshments throughout each day. The Clark Foundation for Legal Education kindly funded a reception each evening and met administrative and other essential expenses.

Following a welcome from James Wolffe, QC, Dean of the Faculty of Advocates, the Right Honourable Lord Gill, recently retired Lord President of the Court of Session, opened the colloquium. After two days of papers followed by lively discussion, both during the colloquium and in even more relaxed settings later in the day, the participants were charged to reflect on their papers and to write the chapters that follow.

Further hospitality, in the form of a closing dinner, was generously provided by the Law Society of Scotland and its President, Christine McIntock, gave a gracious farewell address to the participants. The enthusiasm with which all parts of the legal profession in Scotland embraced the colloquium is a tribute to the support for children's rights in the country.

We were most gratified when Cambridge University Press accepted our proposal for publication and we appreciate the work done by Finola O'Sullivan and her team.

A special word of thanks goes to our spouses, John P. Grant and Ross Macfarlane, for their unflagging support before, during and after the colloquium and throughout the preparation of this manuscript.

Finally, our deepest gratitude goes to the contributors to this volume. Not only were they a source of tremendous intellectual stimulation, but their enthusiasm, commitment and consummate professionalism made the task of editing the book a pleasure.

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Lesley-Anne Barnes Macfarlane
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