

## From Paternalism to (Partial) Autonomy

### THE EVOLUTION OF CHILDREN'S RIGHTS IN NEW ZEALAND



IN THE NINETEENTH CENTURY the social and legal construction of Pakeha families reflected the Western ideal of the patriarchal nuclear family where the father was head of the household and state intervention was strongly resisted. Such a model is far removed from the diversity of family patterns in the twenty-first century. The place of children within New Zealand families and society in general has changed quite considerably since the first pieces of legislation were passed in an attempt to protect children from the worst excesses of familiar and societal abuse.<sup>1</sup> Recent legislation and social policy has sought to increase the visibility and recognition accorded to Pakeha and Maori children, their welfare and their rights. Consequently, in legal terms if not always in practice, childhood in New Zealand and elsewhere is becoming increasingly defined in terms of 'rights'. This movement is reflective of a world that has become increasingly 'rights literate' since the establishment of the United Nations and its commitment to the promotion and protection of human rights and fundamental freedoms.

The accordance of the status of rights-holder to children was a gradual process both in New Zealand and overseas. In New Zealand, the shift away from the predominant (though not universal) patriarchal power dynamics of the nineteenth and early twentieth centuries was stimulated by legislation, war and social change.<sup>2</sup> From the 1930s and 1940s onwards children benefited from sweeping changes in education and related welfare systems which, with their acceptance of the (new) values of spontaneity, self-expression and self-fulfilment and the belief that learning should be interesting and relevant to the child's experience, became increasingly child-centred. The reforms in education reflected the greater autonomy and freedom accorded to children in the home.<sup>3</sup> Increased focus on children and their rights continued in the 1960s and throughout the 1970s. This focus was prompted by a number of factors, including emerging principles of human rights law, new theories of children's rights and, within the domestic arena (both social and legal), the changing structure of New Zealand families.

Arguably, changing attitudes towards children reached their zenith in the 1970s with the emergence of the children's rights movement and its associated theories of children's rights. The children's rights movement is another facet of the long history of the relationship between children and the law, a relationship that had evolved from (dis)regarding children as being nothing more than the property of their parents to recognizing the need for decision makers to take the best interests of the child into account.<sup>4</sup> Advocates of child liberation sought to emancipate children in much the same way that minorities and

women had previously been emancipated.<sup>5</sup> Liberationist writers such as Henry Foster and Doris Freed argued that the law failed to recognize that children were persons and that '[t]he status of minority is the last relic of feudalism'.<sup>6</sup> The 'segregation' of children from the adult world was said to be a form of oppressive and unwarranted discrimination based upon a false ideology of childhood that had only recently been invented by Western society. According to John Holt, there was little reason to exclude children from the freedoms granted by the state to adults.<sup>7</sup> Rather, children were to be entitled to all the rights and privileges possessed by adults.<sup>8</sup> The segregation of children and the denial from them of adult rights, such as the rights to travel, work, own property, vote and take control of their own sexual lives, inhibited the child's right to self-determination or to make choices as to how to live his or her own life.

It was this interference with the child's right to self-determination that most concerned the children's liberationists: 'the issue of self-determination is at the heart of children's liberation. It is, in fact, the only issue, a definition of the entire concept. The acceptance of the child's right to self-determination is fundamental to all the rights to which children are entitled.'<sup>9</sup> The basis for such radical views lay in Richard Farson and John Holt's criticisms of age as an arbitrary criterion for the possession or otherwise of rights. Then, as now, such views are in contrast to the age-based law and policy that ultimately forms the basis by which rights are accorded to children. Thus, for example, the United Nations' Convention on the Rights of the Child defines the child as anyone under the age of 18 years on the basis that such individuals are in need of special care and protection. In New Zealand, the Age of Majority Act 1970 defines a child or minor as anyone under the age of 20 years.

Child liberationists were also strongly critical of paternalistic views that advanced the notion that children's lack of competence disqualified them from being rights-holders. These criticisms continue to inform much of the discussion on children's rights. Later advocates of child liberation asserted that lack of competency on the part of a child should not constitute a sufficient reason to deny the child rights. They maintained that children display a competence for rational thought and that they can make informed choices.<sup>10</sup> They further argued that children should be allowed to make decisions, even incorrect ones, because they would never gain experience in such matters otherwise.<sup>11</sup> Any lack of competency was not a sufficient reason to exclude children from participation in decision-making, on the grounds that adults may also be lacking in such competency to a similar degree: child exclusion on this basis could amount to a double standard.

The right to self-determination, or freedom to choose, is certainly a fundamental tenet to the concept of rights. In politico-philosophical terms, David Archard describes modern liberal theory as being based on the contention that 'all adult human beings are capable of making rational autonomous decisions. In view of this they should be left to lead their own lives as they see fit. The one constraint on this freedom is that its exercise should not interfere with a similar freedom of others.'<sup>12</sup>

More recently, the debate between child protection and child liberation

has been recast in the mould of rights wherein a distinction has been drawn between welfare rights — rights to protection — and liberty rights — rights to participation.<sup>13</sup> Welfare rights have been considered to be concerned with the protection of children, whereas liberty rights have been described as being geared towards a child's self-determination.<sup>14</sup> Farson described this distinction as being one where welfare rights protected children whilst liberty rights protected children's rights.<sup>15</sup> According to Michael Freeman, welfare rights or protection rights merely required that the individual possessed interests which could be protected and promoted, as in the doctrine of the best interests of the child. In contrast, the hypothesis that lay behind participation rights was based on the requirement that, in order for the individual to be recognized as a right-holder, he or she was to be capable of making and exercising choices. Freeman asserted that those persons who sought to accord protection rights to children also sought to deny children their participation rights. These individuals argued, first, that children were neither rational nor capable of making reasonable and informed decisions, and that lack of maturity was sufficient reason to deny autonomy to children. Second, they maintained that children were prone to make mistakes because they lacked the wisdom that came with the experience of life. Children should therefore be protected from their own incompetence.<sup>16</sup> At the level of international law, at least, the conflict between paternalism and autonomy has been resolved somewhat by the approach adopted in the United Nations' Convention on the Rights of the Child 1989 to which New Zealand is a signatory.<sup>17</sup>

Any discussion or analysis of children's rights ought to recognize that such rights are part of the broader framework of human rights. Such recognition also allows for correlations to be drawn between the balance to be struck between child protection and child liberation and the question of balance that is inherent in any discussion of broader human rights. Not all rights are absolute and the majority of human rights are subject to some form of limitation.<sup>18</sup>

Increased recognition of the concept of children as rights-holders also emerged at a time when the framework of international human rights was being further developed. The United Nations (UN) adopted the Convention on the Elimination of All Forms of Racial Discrimination in 1965. Both the International Covenant on Civil and Political Rights (ICCPR) 1966 and the International Covenant on Economic, Social and Cultural Rights 1966, finally came into force in 1976. In 1979 the UN also adopted the Convention on the Elimination of All Forms of Discrimination Against Women. A common theme that runs from 1948's Universal Declaration on Human Rights and which flows through these treaties is the statement contained in Article 1 of the Declaration that 'All human beings are born . . . equal in dignity and rights'. The Preambles to both Covenants state that their rights are to be extended to 'everyone' as well as recognizing 'the inherent dignity' and 'the equal and inalienable rights of all members of the human family' where such rights 'derive from the inherent dignity of the human person'. New Zealand has ratified all of these human rights treaties and, consequently, in the sphere of international law at least, has undertaken to extend all the rights contained in these treaties to all individuals in New Zealand, including children.<sup>19</sup>

In 1979 the UN began serious consideration of a Convention on the Rights of the Child. International recognition of the notion of children's rights can be traced back to 1925 when the Assembly of the League of Nations passed a resolution endorsing the Declaration of the Rights of the Child which had been proclaimed the previous year by the Save the Children International Union.<sup>20</sup> The next major international document of significance was the United Nations' Declaration on the Rights of the Child 1959, which was unanimously adopted by the General Assembly. The roots of the Declaration can be found in 1946 when the International Union for Child Welfare began to lobby the members of the Economic and Social Council of the United Nations (ECOSOC) and its Temporary Social Commission to have the 1924 Declaration of Geneva confirmed by the United Nations. It was felt at the time that the 1924 Declaration needed updating due to the numerous changes and advances that had occurred in the areas of child health and child welfare. In addition, a number of other declarations had emerged that drew attention to issues such as the role of the state in child welfare, the positive role of the family, juvenile delinquency and discrimination. In 1978, a motion was put at the UN calling for the drafting of a Convention on the Rights of the Child to commemorate the twentieth anniversary of the Declaration on the Rights of the Child and to mark the International Year of the Child 1979. In response, the UN Commission on Human Rights set up a special open-ended working group to review the proposal and develop a convention. On 20 November 1989, after ten years of drafting and negotiation, the General Assembly unanimously adopted the Convention on the Rights of the Child. New Zealand ratified the Convention in 1993, thereby undertaking the obligations in the sphere of international law to protect and promote the rights of the child.

Thus the more recent history of childhood in New Zealand is subject to, influenced and to some extent shaped by external legal forces. In strict legal terms international human rights treaties, such as the ICCPR and the Convention on the Rights of the Child, are instruments of international law and therefore they do not bind New Zealand courts. Nevertheless, such treaties provide a context in which current social and legal standards may be set, thereby establishing a standard according to which ambiguous domestic legislation may be interpreted.<sup>21</sup> One way in which these external forces may have an impact arises from the requirement placed upon New Zealand to subject itself to a process of reporting, examination, review and recommendations on the part of treaty monitoring bodies (committees) set up under the various treaties referred to above. But do such requirements have any influence on children and concepts of childhood in twenty-first century New Zealand?

New Zealand's international human rights treaty obligations are not binding on domestic law. The views of the treaty monitoring bodies, such as the UN Committee on the Rights of the Child, are also not legally binding on New Zealand courts. Nevertheless, New Zealand cannot ignore its international human rights obligations and reject committees' views as being inconsequential. The significance of New Zealand's obligations under international law is reflected in the jurisprudence of the New Zealand courts. Although the ability of the judiciary to incorporate international principles is governed

by the primacy of New Zealand domestic law over international law,<sup>22</sup> the judiciary consider international norms when interpreting ambiguous statutes or when filling gaps in the common law.<sup>23</sup> It is to this aspect of New Zealand's international obligations that the judiciary have made explicit reference. For example, in *Wellington District Legal Services Committee v. Tangiora*, Justice Keith referred to 'the presumption of statutory interpretation that so far as its wording allows legislation should be read in a way which is consistent with New Zealand's international obligations, e.g. *Rajan v. Minister of Immigration* [1996] 3 NZLR 543 at p.551. That presumption may apply whether or not the legislation was enacted with the purpose of implementing the relevant text'.<sup>24</sup>

This relationship between international law and domestic obligations was considered more recently by Justice Thomas in his minority judgment in *Attorney-General v E*:<sup>25</sup> 'It cannot be thought that these obligations were undertaken half-heartedly or tongue-in-cheek. They are to be given effect. When, therefore, the actions of the state . . . conflict with this country's international obligations it is the clear duty of the Court to ensure that those obligations are observed.'<sup>26</sup>

Such observations may not amount to an explicit statement that New Zealand must *defer* either to its international human rights treaty commitments, or to the views of the respective treaty monitoring bodies as interpreter of these obligations. For example, the Human Rights Committee, the monitoring body of the ICCPR, has been described as being the pre-eminent interpreter of that treaty.<sup>27</sup> Although not a judicial body, the Committee's views are strong indicators of the legal obligations incurred by states upon ratification of the Covenant. Nevertheless, the legal obligations are indicative of the necessary relationship between a state and a human rights treaty monitoring body that results from ratification. Rejection of the views of the Committee on the Rights of the Child would, therefore, be an indication of bad faith on the part of New Zealand towards its obligations under the latter Convention.<sup>28</sup>

The New Zealand judiciary has increasingly paid attention to international treaty norms, and has made specific reference to the provisions in the Convention on the Rights of the Child, with varying degrees of success in protecting the rights of the child.<sup>29</sup> However, the potential for external influence upon the protection afforded to the rights of New Zealand children is not confined to New Zealand's obligations under the Children's Rights Convention. Broader human rights concerns may also be influential. For example, New Zealand has ratified the United Nations Convention Against Torture (1989), the Preamble of which indicates that it is meant to protect 'all members of the human family'. As its title suggests, the Convention prohibits torture and cruel, inhuman or degrading treatment or punishment. In 2004, in its consideration of New Zealand's report, the Committee Against Torture considered the issue of whether the corporal punishment of children by their parents amounted to cruel, inhuman or degrading punishment.<sup>30</sup> It recommended that New Zealand implement the recommendations made by the Committee on the Rights of the Child in 2003. That latter body had recommended that New Zealand should not only amend legislation to prohibit corporal punishment in the home but that it should strengthen public education campaigns and activities aimed at

promoting positive, non-violent forms of discipline and respect for children's rights to human dignity and physical integrity, while raising awareness about the negative consequences of corporal punishment.<sup>31</sup> Thus, the Committee Against Torture appears to be advocating a stricter interpretation of the right to be free from cruel, inhuman or degrading punishment that incorporates all corporal punishment, rather than the interpretation adopted by the Human Rights Committee (the monitoring body of the International Covenant on Civil and Political Rights), with its focus on excessive corporal punishment.

Alongside these international influences, domestic child legislation has also sought to deal with the tension between child protection and child liberation. In the 1960s and 1970s divorce rates increased, as did the numbers of children born outside of marriage. Such trends were reflected in legislation which was becoming increasingly child-focused. Thus, the Guardianship Act 1968, which set the legal rules for guardianship, custody and access, focused on the rights and welfare of the child. Section 23(1) of the Act stated that the welfare of the child was to be the first and paramount consideration.

Much of the legislation that was passed to deal with changing societal norms in the 1960s and 1970s has been updated more recently and has sought to incorporate more fully notions of children's rights, although with varying degrees of success. For example, the Guardianship Act has recently been succeeded by the Care of Children Act 2004. According to section 4 of this Act the welfare and best interests of the child must be the first and paramount consideration; the welfare and best interests of the particular child in his or her particular circumstances must be considered; and a parent's conduct may be considered only to the extent (if any) that it is relevant to the child's welfare and best interests.

Section 5 of the Care of Children Act outlines the principles relevant to the child's welfare and best interests and recognizes that the child's parents and guardians should have the primary responsibility for the child's care, development and upbringing. However, this section does not prevent the court or other persons from taking into account other matters relevant to the child's welfare and best interests. Section 5 also recognizes the importance of broader input from extended family and whanau. Accordingly, the rights of parents to make decisions that may compromise the best interests of the child may in turn be subject to 'justifiable limitations', as section 27 of the legislation permits the court to intervene and deprive a parent of guardianship where, consistent with the provisions of further section, 'the Court is satisfied that the parent is for some grave reason unfit to be a guardian of the child or is unwilling to exercise the responsibilities of a guardian' and 'that the order will serve the welfare and best interests of the child'.<sup>32</sup>

In terms of juvenile offenders the Children and Young Persons Act 1974 substantially changed arrest and arraignment procedures. This was updated by the Children, Young Persons and Their Families Act 1989, which describes itself as an Act to reform the law relating to children and young persons who are in need of care or protection or who offend against the law. The child-orientated nature of the legislation is apparent from section 6, which provides that, 'in all matters relating to the administration or application of this Act . .

. the welfare and interests of the child or young persons shall be the first and paramount consideration, having regard to the principles set out in sections 5 and 13 of this Act'.<sup>33</sup>

The Status of Children Act 1969 removed all legal disabilities suffered by non-marital children and conferred equal status on all children born in New Zealand. This piece of legislation has been the subject of a number of revisions, the most recent and significant of which relates to the legal status rights of children born of Assisted Human Reproduction (AHR). The Status of Children Amendment Act 2004 (SCAA) governs the legal relationship between parents, donors and, to a more limited extent, donor offspring. Section 13 describes the purpose of the Act as follows: to remove uncertainty about the status of children conceived as a result of AHR procedures; and replace the Status of Children Amendment Act 1987 with provisions that continue the effects of that legislation (except for the status of a father without the rights and liabilities of a father), but also extend the status of parent to a woman living as a *de facto* partner of a birth mother.

A related piece of legislation is the Human Assisted Reproductive Technology Act 2004, the purposes of which include securing 'the benefits of assisted reproductive procedures, established procedures, and human reproductive research for individuals and for society in general by taking appropriate measures for the protection and promotion of the health, safety, dignity, and rights of all individuals, but particularly those of women and children, in the use of these procedures and research'.<sup>34</sup> In terms of the rights of the child, this legislation governs the right to identity of the child born of AHR. A further purpose, that gives general recognition to the child's right to identity, is the provision for the establishment of a comprehensive information-keeping regime to ensure that people born from donated embryos or donated cells can find out about their genetic origins.<sup>35</sup>

The recasting of the debate between child protection and child liberation into the language of rights draws on the recognition that not all rights are absolute and that, in the implementation and protection of human rights, a balance needs to be found. The underlying theme of all international human rights treaties is that the rights that they seek to protect apply to everyone without distinction, whether the rights are contained in the more 'historical', 'bedrock' instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, or are to be found in more specialized treaties such as the United Nations Convention on the Rights of the Child.

Effective protection against discrimination ultimately relies upon the recognition of difference. This acknowledgment of difference extends equally to children, and there are a number of reasons why children are treated differently when it comes to the extent to which they can exercise their rights. The legitimacy of limits on the rights of the child have traditionally been measured by the standard of the best interests or welfare of the child and have been justified by reference to the argument that decisions that are made in the best interests of the child best protect the rights of the child. However, anti-

discrimination legislation may constitute an effective mechanism to respond to potentially illegitimate limits on rights, irrespective of whether they are held by children or by adults. The appropriate response is a question of balance.

New Zealand has a statutory framework that has rendered age discrimination unlawful in both the public and private spheres since the early 1990s.<sup>36</sup> Specifically, section 19(1) of the New Zealand Bill of Rights Act 1990 (BORA) provides that '[e]veryone has the right to freedom from discrimination on the grounds of discrimination in the Human Rights Act 1993'. Section 21(1) of the Human Rights Act sets out the prohibited grounds of discrimination; age is included as one of these grounds. However, section 21(1)(i) provides that age discrimination only commences 'with the age of 16 years'. In 2004, there were 497 provisions in New Zealand legislation that contained an age-based distinction. These distinctions ranged from such issues as the ability to gamble and purchase alcohol, access to education and social assistance benefits, contractual maturity, criminal responsibility, electoral rights, marital rights, parental obligations and responsibilities, and participation in certain professional activities.

In terms of children's rights in particular, the consequences of the inclusion of age-based discrimination in the Human Rights Act are twofold. First, it makes it possible for a young person to mount a legal challenge to any government policy, programme or practice that contains an age-based distinction. Second, the introduction of a bill containing an age-based distinction before parliament activates section 7 of the BORA, which requires the Attorney-General to report to parliament where a bill appears to be inconsistent with Bill of Rights. Recent examples of this include Attorney-General Reports into the compatibility of the provisions of the BORA with bills such as the Care of Children Bill, the Civil Union Bill and the Identity (Citizenship and Travel Documents) Bill.<sup>37</sup>

In its report, *Consistency 2000*, the New Zealand Human Rights Commission, acknowledged 'that some minimum age restrictions are necessary to take into account the evolving capacity of children and young people'.<sup>38</sup> The Commission further noted that a draft document had been prepared by the Ministry of Youth Affairs — 'Legal Ages and Young People' — which stated the legal ages can be 'an administratively convenient tool. However, they also stereotype young people, are inconsistent and lack a common rationale'.<sup>39</sup> The Ministry's draft suggested that, while it is often justifiable to treat young people differently, this is seldom because of their age alone. There should be careful analysis of an issue before using age as a proxy to determine capability, entitlement or need for protection.<sup>40</sup> In the subsequent pamphlet, the Ministry of Youth Affairs recognized that 'sometimes it makes good sense' to use youth ages in New Zealand law and policy. It acknowledged the young person's vulnerability due to their age and the need to protect and empower them while also determining their entitlements and defining their responsibilities.<sup>41</sup>

The Ministry's policy seems to recognize that strict reliance upon age-distinctions could result in inappropriate provision for, and protection of, children. However, the policy could recognize more explicitly the need to ensure that the age-based distinction serves an important and significant objective given that greater or lesser degrees of autonomy or protection

might be necessary. Such an approach could be tied in with the final question regarding whether the youth age policy complies with New Zealand's human rights obligations both nationally and internationally. Having greater regard for the capacity of the individual may be a more reliable tool by which the Ministry may avoid stereotypes that may be demeaning and thus discriminatory.

In many respects the issues facing children in New Zealand have not changed dramatically since the nineteenth century: the tensions between children, their parents and society at large remain. What has changed to a large degree is the nature of New Zealand families, which have become increasingly diversified. Greater attention is now accorded to the individual members of the family unit and to children in particular. From a philosophical and legal perspective, the most significant change to the history of New Zealand childhood has been the emancipation of children. This emancipation has not been complete, of course; age-based distinctions remain in place that serve to limit the rights of children. Nevertheless, any history of New Zealand children in the twenty-first century can include the premise that such children are rights-holders, a status that has improved their position in New Zealand society.

CLAIRE BREEN

*University of Waikato*

## NOTES

1 Ian Shirley, Peggy Koopman-Boyden, Ian Pool, Susan St. John, 'New Zealand', in S.B. Kamerman and A.J. Kahn, *Family Change and Family Policies in Great Britain, Canada, New Zealand, and the United States*, Clarendon, 1997, pp.209–35. See also Bronwyn Dalley, *Family Matters: Child Welfare in Twentieth-Century New Zealand*, Auckland, 1998. A new history of the New Zealand family, by Ian Pool, Dharma Dharmalingham and Janet Sceats, will be published by Auckland University Press in 2006.

2 Dugald McDonald, 'Children and Young Persons in New Zealand Society', in P. Koopman-Boyden, ed., *Families in New Zealand Society*, Wellington, 1978, pp.44–56.

3 Shirley, et al., pp.15–16.

4 Claire Breen, *The Standard of the Best Interests of the Child: A Western Tradition in International and Comparative Law*, Dordrecht, 2002, pp.22–42.

5 See David Archard, *Children: Rights and Childhood*, London, 1993, pp.45–46. The substantially revised second edition (2004) incorporates reference to the UN Convention on the Rights of the Child and includes a new chapter on children under the law.

6 Henry Foster and Doris Freed, 'A Bill of Rights for Children', *Family Law Quarterly*, 6 (1972), p.345.

7 See John Holt, *Escape from Childhood: The Needs and Rights of Children*, Harmondsworth, 1975.

8 *ibid.*, p.18.

9 Richard Farson, *Birthrights*, London and New York, 1974, p.27.

10 Michael Freeman, *Rights and Wrongs of Children*, London, 1983.

11 J. Harris, 'The Political Status of Children', in K. Graham, ed., *Contemporary Political Philosophy*, Cambridge, 1982; R. Franklin, 'The Case For Children's Rights: A Progress Report', in R. Franklin, ed., *The Handbook of Children's Rights: Comparative Policy and Practice*, London, 1995, pp.3–25.

12 Archard, p.52.

13 Freeman, pp.40–43.

14 *ibid.*, pp.43–45.

15 Farson, p.9.

16 Freeman, pp.40–60.

17 See Paula Fass, ed., *Encyclopedia of Children and Childhood in History and Society*, vol.3, New York, 2003, pp.990–1000 for the full text of the United Nations' Convention on the Rights of the Child, 1989; and pp.987–90 for the ten principles of the 1959 United Nations Declaration of the Rights of the Child.

18 For example, the New Zealand Bill of Rights Act 1990 allows for such limitations to the rights contained in the Act that are necessary in a democratic society.

19 See, in general, New Zealand Law Commission, *A New Zealand Guide to International Law and its Sources*, Wellington, 1996.

20 Declaration of the Rights of the Child, as reprinted in P.E. Veerman, *The Rights of The Child and The Changing Image of Childhood*, Dordrecht, 1992, p.444.

21 G. Austin, 'The UN Convention on the Rights of the Child — and Domestic Law', *Butterworths Family Law Journal*, 1, 4 (1994), p.63; J. Burrows, *Statute Law in New Zealand*, Wellington, 1992, p.238.

22 Austin, p.63. In other words, 'if a statute touches on the subject-matter of the treaty, its interpretation can be influenced by the principle that the legislature is unlikely to have legislated in a manner contrary to its international obligations' (Burrows, p.230). Nevertheless, there have been several cases where this has been explicitly recognized. For example, in *Auckland Healthcare Services v. T* [1996] NZFLR 670–71, Patterson referred to Article 6 of the United Nations' Convention on the Rights of the Child, which placed New Zealand, as a state party to the convention, under an obligation to recognize that every child has an inherent right to life and stated that parties shall ensure to the maximum extent the survival and development of the child. Similarly, in *Auckland Healthcare Services v. L* [1998] NZFLR 998, 1003, the court took into account the provisions of Article 3(1) of the United Nations' Convention on the Rights of the Child in conjunction with the provisions pertaining to the right to life in Article 6(1) of the International Covenant on Civil and Political Rights.

23 S. Joseph, J. Schulz and M. Castan, *The International Covenant on Civil and Political Rights: Cases, Material and Commentary*, Oxford, 2000, p.9.

24 [1998] 1 NZLR, 1, at 137, quoting from *New Zealand Air Line Pilots' Association Inc v. Attorney-General* [1997] 3 NZLR 289 (CA).

25 [2000] 3 NZLR 257.

26 *ibid.*, 273.

27 Joseph, Schultz and Castan, pp.14–15; M. Nowak, 'The Covenant on Civil and Political Rights' in R. Hanski and M. Suksi, eds, *An Introduction to the International Protection of Human Rights: A Textbook*, 2<sup>nd</sup> ed., Turku and Abo, 1999, pp.96–97.

28 By virtue of Article 44 of the Convention on the Rights of the Child, New Zealand is required: (1) . . . to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights: (a) Within two years of the entry into force of the Convention for the State Party concerned; (b) Thereafter every five years. (2) Reports made under the present Article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

29 *Tavita v. Minister of Immigration* [1994] 2 NZLR 257; *Auckland Healthcare Services v. L* [1998] NZFLR 998, at 1001; *Auckland Healthcare Services v T* [1996] NZFLR 671.

30 Committee Against Torture, Third periodic reports of States parties due in 1999: New Zealand. 09/08/2002. CAT/C/49/Add.3. (State Party Report).

31 Committee on the Rights of the Child, CRC/C/15/Add.216, para. 30.

32 Section 27 of the Act allows for an application to be made to the Family Court or to the High Court for guardianship orders to be made in favour of the court. This section may come into force when a health practitioner applies for a court-appointed guardian for the purposes of consenting to treatment.

33 Children, Young Persons and Their Families Act 1989.

34 Section 3(a).

35 Section 3(f).

36 The Human Rights Commission Amendment Act 1992 outlawed age discrimination in relation to private activities such as employment and the provision of goods and services. Age discrimination has been prohibited on the part of government under the New Zealand Bill of Rights Act with the enactment of the Human Rights Act 1993.

37 Ministry of Justice website, <http://www.justice.govt.nz/bill-of-rights>, as viewed on 22 February 2005; *Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Care of Children Bill*, 5 September 2005; Crown Law Office, *Consistency with the New Zealand Bill Of Rights Act 1990: Civil Union Bill*, 29 April 2004; Ministry of Justice, *Consistency with the New Zealand Bill of Rights Act 1990: Identity (Citizenship and Travel Documents) Bill*, 11 March 2003.

38 Human Rights Commission, 'Generic Issues', in *Consistency 2000*, Wellington, 1998.

39 *ibid.*

40 *ibid.*

41 Ministry of Youth Affairs, *Does Your Policy Need An Age Limit? A Guide to Youth Ages from the Ministry of Youth Affairs*, Wellington, 2000, p.3.