

ADVOCACY FOR CHILDREN: A RIGHTS PERSPECTIVE

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The following is a transcript of an address delivered at the University of Canterbury in July 1997 by the then Commissioner for Children, Mr Laurie O'Reilly. It was delivered a few weeks after he had been diagnosed with terminal cancer, and at a time when he had been informed he had only a few more weeks to live. Laurie O'Reilly was determined to continue his passionate crusade for children's rights until the last moment possible, and this address was one of a number delivered throughout the country following the diagnosis of his illness.

Laurie O'Reilly was born on February 1st, 1942, studied law at the University of Canterbury, and graduated in 1963. In practice, he specialised in Family Law and co-authored *Ludbrook's Family Law Practice*. In 1986-87 he lectured in Family Law at the University, and in 1994 he was appointed Commissioner for Children.

Mr O'Reilly died on January 15, 1998 and this address is published in tribute to his memory and work.

I. INTRODUCTION

In this address I comment on the broad issue of advocacy and deal specifically with my statutory role as an advocate for children. I will outline the development of children's rights and will explain the United Nations Convention on the Right of the Child 1989 and I will conclude by making some general comments particularly in respect of care and protection.

I have taken a liberal approach to my jurisdiction and functions — I am responsible for approximately one million children and young persons, of whom 950 thousand are under 17 years of age and 350 thousand are five years or younger.

Major factors in the recent patterns of family change in New Zealand include a high level of family breakdown, significant changes of parent figures for many children, inter-generational dependency on the State and poverty¹:

"Factors common amongst the multi-problem families coming to the notice of government agencies including CYPFS are: low health status, psychiatric disorders, severe marital stress and conflict, poor or non-existent child rearing skills, no pre-school education and a strong likelihood of family violence. Born of this group are some of the most seriously dysfunctional children (and families) in New Zealand.

As many as 95,000 children and young people live in such families and are seriously at risk as a result. Reported violent crimes against children more than doubled between 1991 and 1994."

In 1995 my Office undertook a study of young offenders in the age group 10-13 years (ie under 14 years of age).² Thirty eight percent of these serious or recidivous offenders came from families with substantiated

* Commissioner for Children 1994 - 1998.

1 NZ Children & Young Persons & Their Families Service Post Election Briefing paper p.21.

2 Gabrielle Maxwell and Jeremy Robertson, 'Child Offenders: A Report to the Minister of Justice, Police and Social Welfare'. Office of the Commissioner for Children, October 1995.

involvement in crime. Thirty four percent came from families with serious alcohol or drug problems and 60% were victims of neglect or physical or sexual abuse. Twenty five percent had experienced physical violence and 18% had witnessed family violence. Eleven percent had experienced sexual violence and 27% had suffered neglect. Eighty percent had at least three adverse family background factors. So the majority had suffered more than one adverse experience. Seventy six percent of the parents were said not to have coped. Eighty per cent of the young offenders had failed in the school system.

Children are vulnerable and powerless and increasingly they are voiceless.

Children have their place, but whose place? I am Commissioner for Children — a creature of statute, but whose statute?

It was a wise person who said "*Choose your parents carefully*" — Life is more complex these days. Not only do you need to choose your parents carefully, but you need to choose carefully your social welfare district, your regional health district, your school, your doctor, your lawyer and your caregiver's partners.

II. ADVOCACY

Advocacy has been defined as an act of pleading for, supporting or recommending ; active espousal; of a cause.

Each of us will see advocacy in a particular context often influenced by one's own professional role. Commentators tend to identify three main forms of advocacy, namely, self advocacy, citizen advocacy, and legal advocacy.³

In the welfare state professionals are increasingly articulating and advocating the rights of their patients/clients usually from a rights perspective. In the new fiscal environment with sector funding and tight criteria for the provision of services, gaps occur, forcing professionals to advocate for resources as well as for standards of practice.

The New South Wales Parliamentary Standing Committee on Social Issues (Inquiry Into Children's Advocacy) classified advocacy as follows:⁴

- systemic advocacy;
- individual/representative advocacy;
- parental advocacy;
- self/peer advocacy; and
- citizen/voluntary advocacy

The inquiry into Children's Advocacy Report noted:⁵

Advocacy for children is about systems and individuals recognising the rights and needs of all children and young people and responding to those rights and needs. It also involves allowing children and young people to have a say in decisions that are likely to affect them.

Children's advocacy is **not** about undermining the role of parents and families, nor is it about denying children the fact of childhood and their need for protection. It is about taking a proactive approach to ensure that all children have the opportunity to reach their full potential as human beings. As the Committee found during the Inquiry, parents can often be a child's most powerful advocate. Improving advocacy for children then, allows both children and parents greater access to the processes of government which directly affect children's daily lives.

3 Advocacy Skills: A Handbook for Human Service Professionals: Neil Bateman, 1995; Who Speaks for the Children? The Handbook of Individual and Class Child Advocacy, Jack C Westman MD (ed), 1991.

4 Inquiry Into Children's Advocacy Report, September 1996, page 17.

5 Ibid, p vii.

In the more narrow sense advocacy is also about providing children with quality individual advocates to ensure that they have the right of equal access to the law and the processes of government, which is demanded by adults.

The “Inquiry into Children’s Advocacy” Report states further:⁶

Children and young people are a distinct sector of society by virtue of their age. It is an age group which, however, brings with it limited skills and experience, different rates of maturity and levels of dependence. Children may at times find it hard to express themselves and may respond with anger and frustration. Complaints may not be sufficiently articulated to receive appropriate adult attention, and when children do assert their opinion they may be dismissed as being ungrateful or insolent.

Added to these characteristics of childhood is the general agreement of child development experts, educationalists and psychologists that the transition through the developmental stage of “growing-up” is, for many children, a complex and difficult process.

The problems experienced by children in general are accentuated for those children and young people who experience significant social changes, such as different patterns of familial arrangements; and economic changes resulting in falling living standards; and high levels of youth employment and under-employment (Hogan, 1989:)

The New South Wales Committee of Inquiry concluded:⁷

In summary, the Committee supports the view that advocacy is not simply about providing representatives to speak on a child’s behalf, or about providing opportunities to incorporate a child’s view. It also involves ensuring appropriate systems exist to recognise the rights and needs of all children and young people, and respond to them appropriately. It is the Committee’s view that these various forms of advocacy are not an either/or proposition, and that children and young people need access to advocacy at many different levels.

III. THE NEEDS OF CHILDREN

It is important to remember that legal rights are not abstract rights, but exist to meet the needs of children.

The needs of children have been classified in different ways. In 1975 Dr Mia Kellmer Pringle identified the basic needs of children as:

- the need for love
- the need for security
- the need for new experiences
- the need for praise and recognition
- the need for responsibility.⁸

Two decades later, 1995, Parker et al, as a result of their research into care and protection outcomes, emphasised the importance of focusing on seven key areas of need:

- emotional and behavioural development
- identity
- education
- self care skills
- social presentations
- social and family relationships and;
- health⁹

We are urged to take a broad perspective of needs, to extend our focus so we do not concentrate on an isolated act or pattern of behaviour, but rather see behaviour in the broader context of the child’s total environment.

6 Ibid page 13.

7 Ibid page 20.

8 *The Needs of Children*, Dr Mia Kellmer Pringle (Hutchinson, 1975).

9 *Looking After Children: Assessing Outcomes in Child Care* (Ed) Roy Parker et al, HMSO, 1991; *Looking After Children: Research Into Practice* (Ed) Harriet Ward, HMSO, 1995; *Child Protection: Messages from Research*, HMSO, 1995.

This ecological orientation promoted by Bronfenbrenner and Garbarino emphasises that we must see the child in the context of the family and the family in the context of its wider surroundings.

The impact of environmental trauma has more recently been emphasised by Professor Bruce Perry in respect of children suffering from Post-Traumatic Stress Disorder Syndrome. Professor Perry demonstrates that prolonged abuse not only scars a young child's mind but literally alters the structure of the child's brain. Abuse can keep the child in a constant state of alarm. Tenderness and touch, nurturance and love are necessary physical stimulants for the appropriate growth of the brain. But if a child's earliest experiences are of violence then his or her brain becomes abnormally attuned to danger. The world for this child is chaotic and threatening and terrorising. The child becomes hyper vigilant, attuned to threat and over time develops a permanent state of anxiety.

Dr Perry has demonstrated that the experiences of childhood act as primary architects of the brain's capabilities throughout the rest of life.¹⁰

These organising childhood experiences can be consistent, nurturing, structured and enriched — resulting in flexible, responsible, emphatic and intelligent contributors to society. Or, all too often, childhood experiences can be neglectful, chaotic, violent and abusive — resulting in impulsive, aggressive, remorseless, and intellectually-impooverished members of society.

Bronfenbrenner and Garbarino have done much to assist us in the understanding of the ecology of human development. That approach is also consistent with the concept of an ideology of safety promoted by Mātai McCudden — being safe spiritually, being safe in thought and mind, being safe physically, being safe emotionally.¹¹

"The ideology of safety comes in the gifts passed down by our ancestors: love, compassion, security, self confidence (both inner confidence and outer confidence), self esteem, support..."

We need positive role models, clear goals, communication skills, adequate resources to transfer these gifts.

IV. THE COMMISSIONER FOR CHILDREN, NEW ZEALAND

The Office of the Commissioner for Children was established by s410 of the Children, Young Persons and Their Families Act, 1989 and the functions are specified in s411 of that Act.

To understand the role and functions of the Commissioner for Children in New Zealand it is helpful to understand a little of the history that led to the creation of the Office. I will outline the historical and political context.

During the late 1960s support emerged for the concept of a Bill of Rights for Children. By 1979, the International Year of the Child, there was strong support for the establishment of a permanent agency to act as a "Voice for Children".

The New Zealand Committee for Children (IYC) Inc. presented a report to Government in 1982 on the need for a "Voice for Children". There was a strong belief at that time that childhood services could be improved through:

- (i) the development and articulation of social policy;

10 Adapted from "How Nurture Becomes Nature: The Influence of Social Structures on Brain Development" by G D Perry.

11 Mātai McCudden, Director of Māori Policy for the Royal New Zealand Plunket Society. Children's Issues Centre Conference — *Investing in Children*. July 1996.

- (ii) the development of support networks;
- (iii) the recognition of the contribution of existing childhood groups, and services; and
- (iv) the formation of an organisation acting as a voice for children to co-ordinate efforts and disseminate information.

The present CYPF Act was not the model promoted and supported by the Government's own National Advisory Committee on the Prevention of Child Abuse and Neglect (established in 1981 and abolished in 1991). I was a member of that Committee and was involved in the consultative process and drafting of various legislative models.

At the time there was a strong "anti-interventionist" mood in Parliament, influenced significantly by cultural issues. The mood was also anti-professional.

Some further insight may be gained by considering a Draft Bill prepared by the National Advisory Committee presented to Government in October 1985. The Committee had placed great emphasis on accountability, particularly in respect of the statutory social workers. A multi-disciplinary approach was emphasised at every level and in every process. Proposals included decision-making Child Protection Teams, at the lowest level of accountability, and Independent Review Panels at the next level of accountability (these were to operate in each social welfare district). The Independent Review Panels were to review plans of the Child Protection Teams. They were to visit institutions, both state and community agencies. They were to report on standards of service provided by the Department or other agencies and also on programmes and performance.

A National Committee for Child Protection was to be established to promote effective policies and practices with an emphasis on the prevention, identification and treatment of child abuse. It was to have a co-ordinating role to ensure the co-operation and collaboration of services. It was to formulate guidelines for Child Protection Teams. It was to receive reports from Child Protection Teams and other bodies. It was to promote research and to promote public awareness. It was to consider the adequacy of legislative provisions and policy guidelines in endeavouring to combat child abuse. It was to make public statements on relevant issues, including statutory compliance.

There was a very negative reaction to these proposals from the Department of Social Welfare, particularly from statutory social workers, which ran alongside criticism from Maori.

Departmental pressure effectively transferred the advisory function from the National Advisory Committee to a Departmental Advisory Group. The main objection seemed to be the level of accountability but there was a wider political issue — the cost of resourcing the proposed mechanisms.

Those who favoured the multi-disciplinary focus and accountability structures and processes, were concerned that the Family Group Conference process and the prospect of more out-of-Court resolutions, might put some children at risk. Generally, the same people favoured mandatory reporting. There was considerable anger amongst the professionals, shared by many child and family service agencies and shared by the majority of the members of the National Advisory Committee when the three-level structure of accountability (i.e. Child Protection Teams, Independent Review Panels, and National Committee for Child Protection), was rejected along with mandatory reporting.

It is my opinion, that against that background of criticism and adverse reaction, from both sides, the Government seized upon the concept of a Commissioner for Children as the solution. Hence, a primary function of the Commissioner for Children was to monitor the New Zealand Children and Young Persons Service and the operation of the Act and to respond to complaints and inquiries about the Service and the Act. Thus four of the nine functions specified in the Act relate specifically to the Act or the New Zealand Children and Young Persons Service.

Although there was a focus on the decision-making role of the family, there was also a "rights perspective" for children. Dr Cullen stated:

"The Bill reflects a belief that more attention should be paid to the rights of children and young persons — the right to safety, the right to protection from abuse and neglect, the right to a say in decisions that affect them, and the right to a fair hearing and to appropriate sanctions when they offend against the law."¹²

Dr Cullen concluded:

"Finally, I emphasise that the Bill sets up the Office of the Commissioner for Children. The functions are set out in clause 410. They include investigating decisions made or actions taken under the legislation, and monitoring policy and practices relating to the exercise of powers under the Act. I think it will be a widely welcome breakthrough in terms of the Bill."¹³

The broad functions ultimately entrusted to the Commissioner, resulted from the need to carry out the functions that were envisaged as a responsibility of the proposed National Committee for Child Protection.

These could be described as:

- (i) advisory — on policy, legislative reform and practice (all to be informed by research)
- (ii) monitoring — of processes and standards of practice (to ensure accountability)
- (iii) educative — public awareness through public statements, dissemination of information and programmes
- (iv) co-ordination — to enhance the provision and quality of services and to address systemic abuse.

I suggest that the key roles for the Commissioner are:

- (a) the traditional Ombudsman's role; and
- (b) the advocate role — a promoter and protector of children's rights.

Government perceived that the Commissioner for Children, through his monitoring and advisory function, could ensure the safety of children, the promotion of their welfare and the enhancement of their rights.

Section 411 specifies the function of the Commissioner:

"The function of the Commissioner shall be:

- (a) To investigate any decision or recommendation made or any Act done or omitted under this Act in respect of any child or young person in that child's or young person's personal capacity:
- (b) To monitor and assess the policies and practices of the Department and of any other person, body or organisation exercising or performing any function, duty or power, conferred or imposed by or under this Act, in relation to the exercise or performance of any function, duty, or power conferred or imposed by or under this Act:

12 New Zealand Parliamentary Debates 1989 vol 47 - 27/4/89. p 10247.

13 New Zealand Parliamentary Debates 1989, vol 47 p.10249.

- (c) To encourage the development, within the Department, of policies and services designed to promote the welfare of children and young persons:
- (d) To undertake and promote research into any matter relating to the welfare of children and young persons;
- (e) To inquire generally into, and report on, any matter, including any enactment or law, or any practice or procedure, relating to the welfare of children and young persons:
- (f) To receive and invite representations from members of the public on any matter relating to the welfare of children and young persons:
- (g) To increase public awareness of matters relating to the welfare of children and young persons:
- (h) On the Commissioner's own initiative or at the request of the Minister, to advise the Minister on any matter relating to the administration of this Act:
- (i) To keep under review, and make recommendations on, the working of this Act.
- (j) The Commissioner shall also have such other functions as are conferred on the Commissioner by this Act or by any other enactment.
- (k) Nothing in subsection (1)(a) of this section authorises the Commissioner to investigate any decision or recommendation made by, or any act or omission of, any Court.¹⁴

Although the Office of Commissioner is established under the Children Persons and their Families Act 1989 the Commissioner is a Crown entity within the meaning of the Public Finance Act 1989. Under that Act the Minister of Social Welfare is responsible to the Parliament of New Zealand for the Commissioner's financial management and reporting responsibilities.

I have been obliged to enter into a performance agreement with the Minister of Social Welfare which is negotiated for each fiscal year. I am required to agree with the Minister on outputs and performance standards. Although the agreement contains a specific acknowledgment that nothing in the agreement shall interfere with the independence of the Commissioner's functions under the Act, there is a danger that the consultative process I am obliged to undertake with the Minister and his officials and the quarterly reporting and service performance data might be used to influence the focus of my work.

The issue of prioritising functions is quite pertinent in the present economic climate because I have been obliged to reduce expenditure by about 25% at a time when my work has doubled in respect of most outputs, particularly inquiries and complaints, and has trebled in respect of liaison and collaboration with state and community agencies.

It should be noted that the Report of the Ministerial Review Team to the Minister of Social Welfare on the review of the Children Young Persons and Their Families Act 1989 (Mason Report 1992), recommended that the Office of the Commissioner for Children be established under a separate statute so that it was clear that:¹⁵

- (a) The Office stands in its own right and is expected to consider matters affecting children in other areas in the administration of the Department of Social Welfare and in the administration of other Departments
- (b) The Office is independent from the Department of Social Welfare, a necessary condition for the monitoring functions expected by the Legislature
- (c) The Commissioner be made an Officer of Parliament.

¹⁴ Section 411 Children Young Persons and Their Families Act 1989.

¹⁵ Mason et al. Report of the Ministerial Review Team to the Minister of Social Welfare on the review of the Children Young Persons and Their Families Act 1989, 1992 p.180.

V. UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD 1989

The United Nations General Assembly adopted the Convention on the Rights of the Child in 1989 and New Zealand ratified it in March 1993. It is the most widely supported International Human Rights Convention having been adopted by 188 countries.

Recognition of the Rights of the Child in international instruments was a slow process, reflecting the evolution of attitudes towards and perceptions of children and childhood.¹⁶

The first key instrument is the five point document which became known as the Declaration of Geneva 1924. It was followed by the Declaration of the Rights of Child 1948 and in 1959 the United Nations Declaration of the Rights of the Child.

There was no recognition of a child's autonomy, no understanding of the importance of a child's views and no appreciation of the concept of empowerment.

There were attempts to recognise a Convention in 1979, the International Year of the Child. Over the next decade there was wide consultation at the United Nations level and input from NGO's said to be without parallel in the history of drafting international instruments.¹⁷

By its genesis, scope, content and very existence, this Convention ranks as a landmark in efforts on behalf of children'.

The very fact that the initiative to draft this Convention was proposed to, and undertaken under the auspices of, the UN Commission on Human Rights, is in itself of great importance. It means that the Convention is an international human rights treaty and that children are therefore finally acknowledged as being fully- fledged beneficiaries of human rights. It implicitly recognises that human rights methodology is as pertinent to improving the situation of children as it is to that of other population groups and it mobilises new forces to work on behalf of children ... There is no doubt whatsoever that the content of the Convention constitutes a major leap forward in standard setting on children's issues. On a general level, we can note the introduction of participation rights which had never before been incorporated in a child-focused international instrument.

Children are rights holders. That is not to say that a child is totally autonomous.

Freeman says:¹⁸

To respect a child's autonomy is to treat that child as a person, and as a rights-holder. It is clear that we can do so to a much greater extent than we have assumed hitherto. But it is also clear that the exercise of autonomy by a child can have a deleterious impact on that child's life chances...

If we are to make progress we have to recognise the moral integrity of children. We have to treat them as persons entitled to equal concern and respect, and entitled to have both their present autonomy recognised insofar as it exists and the capacity for future autonomy safeguarded....

In looking for a children's rights programme we must thus recognise the integrity of the child and his or her decision-making capacities but at the same time note the dangers of complete liberation. Too often writers of children's rights see rights in either/or terms. There is either salvation or liberation, nurturance or self determination. But to take children's rights more seriously requires us to take more seriously both the protection of children and recognition of the autonomy both actual and potential. Inevitably this imposes limitations of a child's autonomy".

16 For the history of the Convention see "The United Nations Convention on the Rights of the Child", compiled and edited by Sharon Detrick. Defence for Children International (1992). (See particularly Chapter 1 pp 19-30.).

17 *Ibid.* p 27-28.

18 Freeman, M "Whither Children: Protection, Participation, Autonomy?" *Manitoba Law Journal* Vol 22 1993, 319.

Woodhouse recognises the paradox of children's rights. On the one hand the term "*children's rights*" refers to a collective social claim to protection based on children's essential dependence. On the other hand "*children's rights*" can represent the individual child's claim to autonomy. She says:¹⁹

The tension between the two is inevitable since children must be dependent to grow into independence and children must become independent to function as autonomous citizens.

But as Nigel Cantwell has stressed, the United Nations Convention on the Rights of the Child 1989:²⁰

Is an international Human Rights Treaty which recognises and finally acknowledges children as being fully fledged beneficiaries of human rights.

The rights under the Convention can be classified or divided into different groups of rights. For example: Economic Rights, Civil Rights, Social Rights, and Cultural Rights.

The Children's Interest Bureau in South Australia groups the rights as follows:

- (i) Affirmative rights.
- (ii) Entitlements.
- (iii) Protections.

1. *Affirmative freedoms*

These articles recognise the child's right to think, decide and act with the same freedom as an adult. Some examples are freedom to express an opinion and have that opinion taken into account, a right to leisure, recreation cultural and artistic activities, freedom of information, privacy, freedom of association and freedom of conscience and religion.

These rights should be read in conjunction with article 5 which requires States Parties to respect the responsibilities, rights and duties of parents or members of the extended family or community to provide the child with appropriate direction and guidance.

2. *Entitlements*

These articles set out what care children can expect from society, including their parents. They include rights in relation to survival, food, shelter, clothing, education and health. In general parents have the primary responsibility for providing their child with care. However the entitlements that parents cannot provide become the responsibility of government who also have additional responsibilities in relation to education, social security health services and rehabilitation. There are special entitlements accorded to children without families, disabled children, those accused of breaking the law and those who are members of ethnic minorities.

3. *Protections*

Under these articles States have a responsibility to protect children from such things as child labour, narcotics, child abuse and neglect, sexual exploitation and harmful media. There are also responsibilities in relation to children with special needs such as children in placement, those involved in adoption, refugees and those deprived of liberty.

19 Bennett Woodhouse B, "Out of Children's Needs, Children's Rights": The Child's Voice in Defining the Family" *BYU Journal of Public Law*, Vol 8 1994, p 331.

20 Nigel Cantwell, "The Origins, Development and Significance of the United Nations Convention on the Rights of the Child", in Sharon Detrick (ed) *The United Nations Convention on the Rights of the Child: A Guide to the "Travaux Preparations"*, p 27.

Freeman provides a five group classification as follows:

- (i) General rights, such as the right to life, the prohibition against torture, freedom of expression, through, conscience and religion the right to information and to privacy;
- (ii) Rights requiring protective measures, including measures to protect children from economic and sexual exploitation, to prevent drug abuse and other forms of neglect and abuse;
- (iii) Rights concerning the civil status of children, including the right to acquire nationality, the right to preserve one's identity, the right to remain with parents unless the best interests of the child dictate otherwise, and the right to be reunited with the family;
- (iv) Rights concerned with development and welfare, including the child's right to a reasonable standard of living, the right to health and basic services, the right to social security, the right to education and the right to leisure; and
- (v) Rights concerning children in special circumstances or "in especially difficult circumstances." These extend to such children as handicapped children, refugee children and orphaned children. Included are special regulations on adoption, the cultural concerns of minority and indigenous children, and rehabilitative care for children suffering from deprivation, as well as a prohibition on the recruitment of soldiers under 15 years of age.

VI. KEY ISSUES AND FUNDAMENTAL RIGHTS

It is not possible to enter into a comprehensive review of the Articles of the Convention. Accordingly, I will identify some key issues and fundamental rights. Before doing so, it is pertinent to identify examples of negative reactions to rights recognised in the Convention.

The policy opposing physical punishment has provoked vehement criticism from some quarters. It has been described as anti-parent and the negation of biblical imperatives. The criticisms overlook the work of the Office in promoting other alternatives for discipline. The issue of parental power and authority dominates.

My challenge to the processes and policies of automatic and blanket suspensions has polarised opinion. Clearly the editor of the *Independent Business Weekly* is unaware of the provisions of the Education Act, 1989. The editorial notes:

It is hard to see how O'Reilly can justify this position either ethically or logically. Somehow out of somewhere he has conjured up a right to be educated. That means someone out there must have a corresponding duty to educate these kids no matter what...

If the United Nations Convention on the Rights of the Child is to have real meaning for children and young persons then we must first reconcile the perceived conflict between children's rights and parental rights.

Philip Alston commenting on the significance of children's rights says:²¹

The concept of children's rights brings together two of the most important twentieth century developments in the history of ideas. The first is the widespread, if not universal,

21 "The UN Children's Convention and Australia" - edited by Philip Alston and Glen Brennan. (Human Rights and EO Commission 1991) p 1.

acceptance of the idea that every individual, solely by virtue of being human, is entitled to enjoy a full range of human rights. The second is recognition of the idea that children should be treated as people in their own right and not as mere appendages of, or chattels belonging to, the adults under whose responsibility they fall. By combining these two ideas it becomes clear that children are entitled to be treated as holders of human rights and that any qualification to the range of rights that they are accorded by society has to be fully justified by reference to other human rights principles rather than to the predilections, prejudices or narrowly conceived self-interest of adults.

Brian Burdekin was able to assert, in response to the claim that children were not entitled to human rights in their own right, but could only claim through their families that:²²

Such a view would, of course, mean that the child would be a mere chattel, lacking the rights to liberty and security of person, or to life itself, against his or her parents. Similarly, the child without a family would lack any rights at all.

I suggest that there is no fundamental conflict between children's rights and perceived parental rights.

On analysis, perceived parental rights are in fact parental responsibilities. Whatever the terminology the Convention is supportive of the parental or guardianship role.

The Convention recognises the right of the child to a family environment without explicitly defining family environment.

The starting point is the Preamble of the Convention.

The Preamble refers specifically to the Charter of the United Nations and asserts that:

Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

Specific reference is made to the Universal Declaration of Human Rights and the International Covenants on Human Rights. Specifically, the Preamble declares:

that everyone is entitled to all the rights and freedoms set forth therein without distinction of any kind.

The Preamble recalls that in the Universal Declaration of Human Rights, the United Nations has proclaimed that:

Childhood is entitled to special care and assistance.

Support of the family is quite explicit because the Preamble asserts that State parties have agreed to the Articles of the Convention

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.

It recognises

that the child for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.

Article 20 supports this notion of the child's right to a family environment by providing

that a child temporarily or permanently deprived of his or her family environment, shall be entitled to special protection and assistance.

22 Brian Burdekin in *Transforming the Convention into Australian Law and Practice* - published in the UN Children's Convention and Australia, *Ibid*, p 6.

Further

when considering solutions to alternative care due regard should be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 9 provides that governments shall ensure that a child shall not be separated from his or her parents against their will unless separation is necessary for the best interest of the child.

Article 9 (3) provides that State parties

shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis except, if it is contrary to the child's best interests.

In the context of immigration family reunification is supported under Article 10.

Consider also Articles 7 and 8.

Article 7 recognises as far as possible the right to know and be cared for by his or her parents; Article 8 underlines the State's obligation to protect and if necessary re-establish the basic aspects of a child's identity (name, nationality and family ties).

Some critics point to Article 3 of the Convention arguing that it elevates children's rights above parental rights. Article 3 incorporates the "best interests" standard or what is sometimes described as the "paramountcy principle".

Article 3 provides that in all actions concerning children, the best interests of the child shall be a primary consideration.

It should be noted that the 1959 Declaration provided, in Principle 2, that the best interests of the child shall be the paramount consideration.

But I suggest that the paramountcy principle is enshrined in custody and care legislation in most countries of the western world. It is the cornerstone of such legislation.

Criticism of Article 3 fails to acknowledge Article 3.2 which provides:

State parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures'

It is significant that there is this specific reference to the "*rights and duties of parents*" in this paramountcy Article.

The importance of parental guidance is even more explicit in Article 5, which recognises the State's duty to respect the rights and responsibilities of parents and the wider family, to provide guidance appropriate to the child's evolving capacities.

Article 5 provides:

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention.

Article 12 — The child's right to express an opinion and to have that opinion taken into account is not absolute as it is subject to an age and sufficiency proviso.

It provides that the child's opinion or views shall be given:

due weight in accordance with the age and maturity of the child.

Article 14 recognises the child's right to freedom of thought, conscience and religion but subject to appropriate parental guidance.

Article 14.2 provides:

State parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

In a number of other Articles there is explicit or implicit support for the position of parents. Article 18 recognises that both parents have joint primary responsibility for bringing up their children and that the State should support them in that task.

Article 18 provides:

- (i) States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
- (ii) For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
- (iii) States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Consider Article 19.2, in the context of protection from abuse. There is an obligation on the Government to provide social programmes to support the child "and for those who have the care of the child".

Consider Article 29 which specifies, as one of the aims of education the development of respect for the child's parents, his or her own cultural identity, language and values.

In summary, it can be argued that the Convention is pro-family and pro-parent. It also needs to be remembered that for the majority of children it is the parents themselves who ensure that children's rights are met and their needs fulfilled.

VII. CHILDREN AND SAFETY

Article 19 of the Convention deals with safety and protection from abuse.

It provides:

- (i) States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
- (ii) Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Note the obligation under Article 19 in respect of children who have been abused that Government shall take protective measures which should include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention.

Article 20 casts upon Government an obligation to provide special protection and assistance for a child temporarily or permanently deprived of his or her environment. It provides:

- (i) A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
- (ii) States Parties shall in accordance with their national laws ensure alternative care for such a child.
- (iii) Such care could include, *inter alia*, foster placement, *kafalah* of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 6 provides:

- (i) States Parties recognize that every child has the inherent right to life.
- (ii) States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 33 imposes an obligation on Government to take all appropriate measures, including social and educational measures to protect children from the illicit use of drugs.

Article 34 provides similarly in respect of children who have endured sexual exploitation.

Article 39 provides:

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

VIII. THE RIGHT TO EDUCATION

Section 3 of the Education Act, 1989 states that every New Zealander is entitled to free education at any state school from the age of 5 to the end of the year in which she or he turns 19. This is subject to any enrolment schemes as well as to the enrolment provisions that apply to integrated schools.

Section 77(a) says that state school principals must take reasonable steps to ensure that students receive good guidance and counselling.

Section 77(b) says that state school principals must take all reasonable steps to ensure that parents are told of matters that in the principal's opinion are preventing or slowing the student's progress through the school or are harming the student's relationship with teachers and other students.

These requirements imply that school boards and principals will take all reasonable steps to ensure that all students have assistance to remain at school and progress with their learning.

It is important that schools continue to identify barriers to learning and that schools respond to the pastoral care needs of their pupils. That response is imperative if educational goals are to be achieved. But that requires adequate support and resources for schools.

Article 28 — the right of the child to education on the basis of equal opportunity.

Article 29 — the right to receive an education that shall be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential. Article 29 provides:

1. States Parties agree that the education of the child shall be directed to:
 - (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
 - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
 - (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilisations different from his or her own;
 - (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
 - (e) The development of respect for the natural environment.
2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Other Articles have some relevance. Article 23 — the right of the mentally or physically disabled children to enjoy a full and decent life, the right of the disabled child to special care.

Article 24 — the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.

Article 27 — the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

Article 31 — the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

IX. A CHILD'S PERSPECTIVE ON POVERTY

Consider the extent to which special services are under-resourced and consider how poverty impacts upon the ability of families to access education and services.

I suggest that we have, as a nation, been prepared to tolerate negative environments and policies in respect of children, especially in respect of poverty. I do not wish to get into the debate of definition but I make the point that we ought not see poverty only in financial terms. Consider also issues of parental absence, for example, fatherless families, lack of parenting skills, lack of family cohesiveness, lack of support from the wider family or whanau.

Consider a child's right to benefit from social security recognised in Article 26 of the Convention and the right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development recognised in Article 27. Consider the material conditions of living in poverty — over crowding, inadequate diet, poor housing and ill health. Consider the consequences of homelessness or disruptive schooling arising from frequent moves. Consider the close relationship between multiple deprivation and educational attainment.

Poverty should not be defined purely in terms of a lack of income, but also as an inability to access resources, a lack of access to basic social services and education and alienation from civil, social and cultural life.

There is a body of evidence that suggests that the major impact and variation of social conditions on childhood is to influence the child's level of vulnerability to a wide range of what might be otherwise unrelated problems. Low income is not automatically going to lead to poor health or poor education attainment, but we cannot ignore the longitudinal child development research which indicates very strongly the potential negative impact of adverse family social background.

X. A VOICE FOR CHILDREN

The Convention can be classified in various ways but it is helpful to consider rights as those relating to "*protection, provision and participation*".

Article 12 of the Convention has been described as "the lynch pin" of the Convention.

In the perspective of history, it will surely prove the most significant. It is, of course, a development from the child liberation philosophy of the 1970's. It is in line with the Gillick decision in the English House of Lords on 1985... and is one strand in the English Children Act of 1989...

The right enunciated here is significant, not only for what it says, but because it recognises the child as a full human being with integrity and personality and with the ability to participate fully in society. Article 12 emphasises the centrality of a child's views...²³

Article 12 of the Convention states:

1. State Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 12 is often included in the general principles of the Convention along with Article 2, (Non-Discrimination), and Article 3, (The Best Interests of the Child).

I suggest that Veerman correctly characterises the Convention:

as an important and easily understood advocacy tool — one that promotes children's welfare as an issue of justice rather than one of charity.²⁴

Putting all this in simple terms, it means we need to take account of the child's views.

Children have the right to say what they think about anything which affects them. What they say must be listened to carefully.

Advocates appointed to represent children must be faithful to the advocacy responsibility they have undertaken. In practical terms it means they should meet and listen to the clients they represent. This applies in the Court process, particularly in the role of counsel for the child.

Increasingly, local Government is called upon to provide social services for children. The Christchurch City Council provides a positive model. I

23 Free, M "Wither Children: Protection, Participation, Autonomy?" Manitoba Law Journal Vol 22 1993, 319.

24 The Rights of Child and the Changing Image of Childhood, Veerman, P. Martinus Nijhoff Publishers, 1992, p 184.

refer to its Children's Strategy based on a large scale research project, undertaken in 1995. The City Council has appointed a Children's Advocate and is about to appoint a Youth Advocate.

This is an excellent example of how the United Nations Convention on the Right's of the Child can be implemented by local bodies.

XI. PRIVACY

The child's right to privacy is specifically recognised in Article 16 which provides:-

No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation. The child has the right to the protection of law against such interference or attacks.

The Privacy Act 1993 does not treat children differently from anyone else, apart from the exception in Section 29(1)d which allows "*with-holding personal information from a children under 16 years if it is in the child's interest to do so*". (see page 19 of the 1994 Health Information code), see section 45 of Act

The critical issue is:-

Who controls the child's privacy: the child or the guardian?

Our domestic legislation and the Convention apply "an age and sufficiency" test which has regard to the evolving capacities of the child.

Put another way, decision-makers should take account of the child's wishes having regard to the age and maturity of the child.²⁵

When a child is not able to make his or her own decision then the concept of guardianship applies and it would seem clear that guardians can then make decisions on privacy issues on behalf of the child. The guardian has control over the gathering and use of the child's information subject to statutory exceptions and the Courts' power to override decisions that are not in the child's best interest.

Question: Do you have the right to know that one of your neighbours has been a child molester?

That was the issue posed by the Sunday Star Times on 23 February 1997. The report poses the question "Is it protection or persecution?" The article related to disclosures about an 83 year old man and the delivery of 700 bulletins which included his photograph and a request of parents to warn their children about him. The man's daughter-in-law publicly supported the alert because she asserted "there was no guarantee children in the area were safe".

A similar issue arose with a 17 year old young person in Christchurch whose photograph was shown in schools.

A collateral issue arises with the publication of books identifying paedophiles.

Ms Coddington defends her publications by arguing that "that paedophiles are manipulative, cunning criminals without conscience who deserve to be exposed. They put young people at risk".

Question: Should the New Zealand Children and Young Persons Service place adolescent sexual abusers in minimum security, residential facilities?

25 Section 23(2) of the Guardianship Act 1968 and Section 5(d) of the Children, Young Persons and Their Families Act, 1989.

A number of subsidiary questions need to be asked.

Should care-givers be fully informed of the history of the young offender and the risks?

Should the local school attended by the young offender be fully informed?

Should neighbours in the immediate environment be alerted to the risk?

In these circumstances, there is conflict between the rights of young children to be safe and the right of perpetrators to be reintegrated into society, to be supported and educated.

I have a clear view that the interests of victims or potential victims are paramount, requiring disclosure. But it has to be controlled disclosure.

I am also of the opinion that information can be shared with schools in a way that does not further stigmatise the young perpetrator.

This may require profession education and support for the school community to understand risk factors and to ensure profession services can be accessed promptly. There is a danger that publicity will lower self esteem or trigger anxiety and further offending and will thus worsen the situation. It is a complex issue of balancing competing interests.

Principle 11 of the Privacy Act 1993 is all important. An agency that holds personal information should not disclose the information to a person or body or agency unless the agency believes on reasonable grounds that the disclosure of the information is necessary to prevent or lessen a serious or imminent threat to public health or public safety, or the life or health of the individual concerned or another individual (para (f)).

Note Rule 11 of the Health Information Privacy Code 1994 which is similarly worded.

As I understand the decision in *Duncan v The Medical Disciplinary Committee* (1986) the doctor was in breach of privacy by disclosing the medical history of the school bus driver to a recipient other than a responsible authority

In Case No 2049 (the health nurse case), the Privacy Commissioner considered two issues:

- (i) whether or not there was reasonable grounds to believe that the patient posed a serious and imminent threat to public safety; and
- (ii) whether or not there was reasonable grounds to believe that disclosure of health information about the patient was necessary to prevent or lessen this threat.

In essence, the Privacy Commissioner held that the Opposition MP was not the appropriate recipient of the information, and further, the nurse disclosed more health information than was necessary for the purpose.

XII. CONCLUSION

Veerman characterises the Convention as “an important and easily understood advocacy tool — one that promotes children’s welfare as an issue of justice rather than one of charity”.

The Convention provides a coherent special focus on children which will form the basis of reviewing justice for children in terms of their:

- survival;
- protection;
- development.

As professionals we need to keep asking the questions:

Are children and young persons safe in their environment?

Do they enjoy an acceptable quality of life?

I suggest that we should take a rights perspective in our work, that we should test our policies, our planning, our services and our professional practice within the framework of the United Nations Convention on the Rights of Child 1989.

When family and parental support is being offered, family members are more likely to cooperate with professionals. In the context of care and protection five features of effective practice have been identified for professionals in their quest to best protect children:

- Sensitive and informed professional/client relationship
- An appropriate balance of power between the key parties
- A wide perspective on child abuse
- Effective supervision and training of workers
- A determination to enhance the quality of children's lives

We need to address a range of issues, violence in society, youth suicide, poverty, relationship skills, parent craft skills, drug and alcohol abuse, fatherless families.

Health and physical education programmes and policies need to be planned in a systematic way in consultation with parents and the community. We need to see the child in the context of the family and the family in the context of its surroundings. The ultimate aim of all intervention in the lives of people, say by educators, social workers, health workers, community workers is to ensure those clients gain the confidence to become actors in their own lives rather than spectators in a game where others almost completely control every aspect of their being. An empowerment agenda focuses on people discovering the power within themselves as individuals, their families, their neighbourhoods and as members of other groups. I favour an approach that identifies the strengths of people and builds on those strengths. It is essential therefore to promote a whole school approach and a positive learning environment and to support a curriculum that is developed on the concept of total wellbeing.

XIII. INTERNATIONAL AGREEMENTS

Government has encouraged the Office to take initiatives to ensure compliance by Government of its obligations under International Agreements or Conventions. Accordingly the Office has strongly promoted the principle of a First Call for Children.

The Office urges policy makers and service providers to recognise the principle of a First Call for Children.

That principle of First Call was enunciated or asserted at the 1990 World Summit for Children. Included in the plan of action was the statement:²⁶

“Effective implementation of this plan ... will require concerted national action ... such action and co-operation must be guided by the principle of a First Call for children — a principle that the essential needs of children should be given high priority in the allocation of resources, in bad times as well as in good times, at national and international levels as well as at family levels.”

James Grant, the Director of UNICEF, argued for the wide acceptance of this new ethic. He suggested that:²⁷

26 UNICEF, *The State of the World's Children* 1991.

27 UNICEF, *The State of the World's Children* 1991. (James Grant).

“The need for the new ethic arises from practical as well as moral roots. The special vulnerability and the special responsiveness of the early years demand that the child’s one chance for normal growth should be given a First Call on your concerns and capacities ... children should be able to count on the commitment in good times and in bad ... the mental and physical growth of a child cannot be asked to wait until ... the economy returns to growth or until after a general election or until a war is over ... children should be the first to benefit from our successes and the last to suffer from our mistakes.”

The Office of the Commissioner for Children undertakes a variety of different roles, but its primary purpose is to advance the welfare of children in New Zealand.

The Office’s effectiveness is tied into the profile and credibility it can achieve with media and other organisations. This credibility is based around the Office being able to provide timely and quality information and to be able to bring in and utilise third parties on issues to “lever the investment” of the Office.

Not surprisingly, however, the very nature of success in this area, attracts more demands on time, both in terms of involvement with third parties and increased calls over a range of topics.

The demands continue to grow at a tremendous rate and is now beyond the resources of the Office.

I suggest that four key factors may explain the increased demands:

- (a) The ratification of the Convention on the Rights of the Child 1989 by the New Zealand Government in March 1993 and greater awareness of those rights;
- (b) Impetus given to the recognition of the needs of vulnerable family members, especially women and children, during the International Year of the Family, and through public education and awareness of domestic violence issues
- (c) Impact of the fiscal regime resulting in other agencies failing to take up issues on behalf of adults and children; and
- (d) The development in the profile of the Office through greater involvement with grassroots groups, constructive use of the media and the recognition of the credibility of the work of the Office over a period of 6 years.

The Commissioner for Children is an integral part of a system of checks and balances that keeps the system honest. At one level, the Commissioner is part of the moral conscience for departments of State. At another level, the Commissioner helps shape societal attitudes and acts as a champion for children in the wider community.

The Office is in a strategic position to facilitate networking to develop and sustain inter-disciplinary collaboration and inter-agency co-operation.

It can be the vehicle for developing effective strategies, for developing links and partnerships between community agencies and between community and State agencies.

In an environment where Treasury objectives tend to dominate social goals, a Commissioner for Children can advocate free of sector bias for an integrated social and economic policy. I suggest that a Commissioner for Children offers the best opportunity to promote a holistic approach to the needs of children.

I suggest that it offers the best chance to Government to demonstrate its commitment to the Convention on the Rights of the Child 1989 and to ensure that the Government’s responsibilities under the Convention are recognised and discharged.

It is critically important that the independence of the Office is guaranteed and a component of independence is adequate resourcing of the service. It is in that area I am presently vulnerable.

I suggest that an analysis of the activities and achievements of the New Zealand Office would indicate that it is also cost-effective. I suggest that its ability to “lever the investment” is a significant characteristic of the New Zealand experience. The “cost effective” element is one that should interest politicians and particularly Treasury officials.

The role of the Commission in its broadest sense is advocacy and it has a responsibility to promote advocacy at all levels — the individual child level, agency level both regionally and nationally and at government policy level.

I suggest that rather than allow other organisations and services to renege on their responsibilities – a perceived danger – the work of the Office has motivated such agencies to better action on behalf of children.

I suggest that rather than threaten parental authorities the work of the Office has promoted an awareness of parental responsibilities. It has underlined the right of a child to a family environment and to parental guidance, the interdependence of family members and the need to support the family; the Office has promoted the concept of positive parenting.

I suggest the Office has played a part in making New Zealand a safer place for children and through the promotion of children’s rights has enhanced the lives of many.

Recent industrial action by CYPS Social Workers raises the issue as to whether the Service is as dysfunctional as the families it serves. One could argue that the culture of the Service does not allow its social workers to practise social work. It is timely to address some fundamental questions. We need to debate the issue of the State’s responsibility to provide care and protection for children whose families have failed them and will continue to fail them. The multi-problem families so clearly identified in the reports. It is unrealistic for the State to abdicate its care and protection responsibilities to these families.

New Zealand Children and Young Person’s Service has the potential to be a world leader in protecting children and enhancing their lives. Social work has to be appropriately resourced. Contracting out services is not the long term solution, We have an outstanding piece of legislation, a culture of commitment within the ranks of the Services Social Workers and a judiciary philosophically in tune with the legislation. The present system does not work- social workers are angry and frustrated because economic objectives have been put first. Children and families have not been valued.

Politicians need to move from a *siege mentality* and a *damage control mode of operation*. The frankness of the Associate Minister of Health, Neil Kirton, in arguing for a Minister for Children is encouraging. However, an under-resourced bureaucracy that fails to impact on Senior Cabinet Ministers the Treasurer and the Treasury is not the answer. The solution for our children and our future lies in strong advocacy for children at all levels in a society that truly puts the interest of children first.

Guidelines for Contributors

Contributions to the Canterbury Law Review are welcome.

Manuscripts should be submitted to:

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Authors may email submissions to: e.toomey @laws.canterbury.ac.nz

In preparing manuscripts, contributors should note the following:

- (1) Manuscripts should be double spaced on one side only of A4 paper.
If the article is accepted for publication, a computer disc containing the manuscript must be provided. The preferred software programme is Microsoft Word 7.
- (2) Generally, manuscript should not exceed 7,500 words, inclusive of footnotes.
- (3) The author should supply a precis of the submission (no more than 150 words)
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- The *Canterbury Law Review* is committed to the use of gender-neutral language.
- Levels of headings should be clearly indicated
- Italics are used for case names, Acts, Codes, regulations, book titles, the full name of a report or journal and for emphasis.
- A citation must accompany every reference and quotation.
References should be cited in the following manner:

- Cases:** *Gillies v Keogh* [1989] 2 NZLR 327
Daly v Gilbert (1993) 10 FRNZ 370
Leary v Patterson, High Court, Auckland, 29.11.1994, CP 81/83
- Journals:** Langevoort, “Information Technology and the Structure of Securities Regulation” (1985) 98 Harvard Law Review 747
- Books:** S Ross, *Principles of Antitrust Law* (NY: FP, 1993), p 134
- Statutes:** *Land Transfer Act* 1952, s 72(1)(b)

Citations of cases are repeated when further reference is made to them.

Ibid is used to refer to the same reference as that cited in the immediately preceding reference. Any variation must be indicated, eg: Ibid, 213

Op cit is used to refer to a book or article when there is an intervening reference to another authority.

Full stops should be omitted: eg, v, NZLR 59, 62

