

## CONTENTS

Introduction .....	ix
--------------------	----

### CHAPTER ONE

#### 'Difference' or Discrimination? Exploring the Concepts Underpinning Children's Rights, Discrimination and the Need to Acknowledge Difference

1. Introduction .....	1
2. Children's Rights: Liberation, Protection or (Il)legitimate Differentiation? .....	2
2.1. <i>Child Protectionism</i> .....	3
2.2. <i>Child Liberation</i> .....	5
3. Children's Rights, Interests, and the Law .....	8
4. Equality and Non-Discrimination in International and National Human Rights Law .....	12
4.1. <i>Equality and Non-Discrimination in International         Human Rights Law</i> .....	12
4.2. <i>Limits to Non-Discrimination</i> .....	16
5. Equality and Age-Based Differentiation .....	20
6. Assessing Age-Based Distinctions .....	27
6.1. <i>Assessing Age-Based Distinctions – the Case of New Zealand</i> .....	33
6.2. <i>Some Legislative and Judicial Responses</i> .....	38
7. Conclusion .....	41

### CHAPTER TWO

#### Children's Rights and Medical Treatment: Issues of Capacity, Choice and Consent

1. Introduction .....	45
2. Difference or Discrimination? Paternalism and Autonomy in the Context of Medical Treatment .....	46

3. The Child's Right to Medical Treatment . . . . .	48
3.1. <i>International Human Rights Law and the Child's Right to Medical Treatment</i> . . . . .	48
3.2. <i>New Zealand Domestic Legislation and the Child's Right to Medical Treatment</i> . . . . .	49
4. Judicial Interpretation of the Child's Right to Medical Treatment. . . . .	53
4.1. <i>New Zealand Jurisprudence – Medical Treatment of the Young Child</i> . . . . .	54
4.2. <i>The Medical Treatment of Adolescents.</i> . . . .	65
4.3. <i>Limiting the Child's Right to Medical Treatment and the Child's Right to Refuse Medical Treatment: Differential or Discriminatory Treatment?</i> . . . . .	69
5. Conclusion . . . . .	70

### CHAPTER THREE

## Human-Assisted Reproduction and the Child's Right to Identity

1. Introduction . . . . .	73
2. International Human Rights Law and Human-Assisted Reproduction . . . . .	75
2.1. <i>Substantive Human Rights and AHR.</i> . . . .	77
3. Children's Rights and the Law Regarding AHR in the United Kingdom and Australia: A Comparison of Approaches . . . . .	88
3.1. <i>The Right to Identity of Donor-Conceived Children in the United Kingdom.</i> . . . .	88
3.2. <i>The Right to Identity of Donor-Conceived Children in Australia</i> . . . . .	92
4. International Obligations and Overseas Jurisdictions: the Impact for New Zealand Legislation . . . . .	94
4.1. <i>The Rights of New Zealand Children born of Assisted Human Reproduction</i> . . . . .	95
5. AHR and the Right to Identity in New Zealand – Advancing Openness or Discrimination. . . . .	99
5.1. <i>The Potential for Discrimination Remaining in Current Legislation.</i> . . . .	100
5.2. <i>Advancing Children's Rights with Increased Openness</i> . . . . .	105
6. Conclusion . . . . .	106

## CHAPTER FOUR

The Corporal Punishment of Children  
in New Zealand: The Power of Parental Rights  
in New Zealand

1. Introduction . . . . .	107
2. The Corporal Punishment of Children: A Historical and Philosophical Framework . . . . .	108
3. Corporal Punishment of Children: Recent Academic Debate in New Zealand . . . . .	111
4. Corporal Punishment as a Violation of the Child's Human Rights . . . . .	114
5. Discrimination or Differentiation? Section 59 within the Framework of New Zealand Domestic Legislation . . . . .	129
6. Conclusion . . . . .	141

## CHAPTER FIVE

Taking Liberties: The Detention of the At-Risk  
Child in Ireland

1. Introduction . . . . .	143
2. Constitutional and Legislative Protection of the Rights of the At-Risk Child in Ireland. . . . .	144
2.1. <i>Constitutional Protection</i> . . . . .	144
2.2. <i>Legislative Protection</i> . . . . .	145
3. Judicial Interpretation of the Constitutional and Legislative Protection Afforded to the At-Risk Child . . . . .	147
3.1. <i>F.N. v Minister for Education</i> . . . . .	147
3.2. <i>T.D. v Minister of Education and Others</i> . . . . .	149
3.3. <i>D.G. v The Eastern Health Board and Others</i> . . . . .	153
4. The Rights of the At-Risk Child in International Human Rights Law . . . . .	157
4.1. <i>D.G. v Ireland</i> . . . . .	157
4.2. <i>The Rights of the At-Risk Child under International Human Rights Standards</i> . . . . .	160
5. Discriminatory Detention of the At-Risk Child . . . . .	163
6. Conclusion . . . . .	165

## CHAPTER SIX

Age Discrimination and the Rights  
of Irish-Born Children of Asylum Seekers

1. Introduction . . . . .	167
2. International Human Rights Protection for Children Born of Asylum Seekers. . . . .	168
2.1. <i>The Right of the Child to Respect for Family and Private Life</i> . . . . .	168
3. The Rights of Children Born of Asylum Seekers under the European Convention of Human Rights. . . . .	170
4. The Rights of Irish-Born Children of Asylum Seekers . . . . .	179
4.1. <i>Constitutional Protection</i> . . . . .	179
4.2. <i>Legislative Protection</i> . . . . .	184
5. Judicial Interpretation of the Rights of Irish-Born Children of Asylum Seekers: <i>Lobe, Osayande and Others v Minister for Justice, Equality and Law Reform</i> . . . . .	186
5.1. <i>Lobe: Disregarding the Rights of the Child-Citizen, Discriminating against the Rights of the Child</i> . . . . .	199
6. Conclusion . . . . .	202
Conclusion . . . . .	205
Bibliography . . . . .	211
Index . . . . .	221