

book reviews

Representing children and young people: A lawyers practice guide

Lani Blackman

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Despite the lukewarm response of Federal and State governments to the UN Convention on the Rights of the Child, and the total neglect of the report, 'Seen and heard: Priority for children in the legal process' (Australian Law Reform Commission & Human Rights and Equal Opportunity Commission 1997), the legal profession has in a quiet way begun to take children's rights seriously. The central article of the Convention is Article 12. It grants every child the right to express a viewpoint, on any issue of direct or indirect importance, in any judicial or non-judicial setting. A child who is too young or immature to express his or her view articulately is entitled to skilled representation of it. Manifestly, that article places on this profession a duty to provide specialist children's lawyers. And this is occurring albeit in a spasmodic and haphazard way.

As clients, what distinguishes children from adults? Certainly, different interviewing techniques and approaches are needed. Long ago, Aries demonstrated that children are not 'little adults'. But should they be accorded the same professional treatment? Should, for instance, they be interviewed in their home environment, rather than in an office? Should children's lawyers be dressed in suits or in jeans?

The response of Lani Blackman, in this most thoughtful guide, is beautifully summed up thus: 'In all cases, the lawyers must balance the need to develop a relationship of trust and understanding with the need to maintain their professional client relationship.'

Practical advice on how to fulfil this imperative is given in Part 1 (The lawyer/client relationship). In order to build a rapport, the lawyer should be familiar with the child's language patterns, likes and dislikes, and perhaps even his or her nickname. A rudimentary explanation of the legal system should be given. But avoidance of legal jargon is essential. A literate narrative cannot be expected from a child – the lawyer must get used to short and pithy answers. Above all, the lawyer should not underestimate the child's ability to understand the seriousness of issues.

Properly to represent a child, the lawyer should be familiar with the various ages of cognitive child development as propounded by Piaget and accepted by his successors (see page 39). Familiarity with behavioural scientists' insights is highly desirable. But the lawyer should not presume to be a social worker or child psychologist. Rather, he or she must be able to identify the cause of the non-legal problem that usually underlies the legal one and then suggest an appropriate service to which the child should be referred (p106). A constant theme of this book is the need for inter-disciplinary cooperation. To that end, as an Appendix, there is a comprehensive Directory

of Services for each state, with addresses and telephone numbers.

Part 2 deals with the mechanics of representing children in court proceedings. It points to other experts who might be called upon to give evidence. Examples are youth workers, departmental officers, and Police Youth Liaison Officers. The potential value and scope of each professional service, as well as its limitations, are considered.

As to court appearances, the author very properly refers to the 'culture' of some courts dealing with children. Sometimes this seems to prevail over applicable statutory provisions. In the light of her appreciation of the UN Convention, she might have come down more heavily on the practice of the Victorian Children's Court not to hear direct evidence from children. This is manifestly contrary to the said Article 12. She is entirely correct to applaud 'creative argument' to counter established practices that militate against the Convention's precepts. She does not make the fatuous error of arguing that the Convention is merely a persuasive document and not part of Australian domestic law.

The final part 3 deals with the representation of children in specific courts. It demonstrates that there is hardly a branch of law that is inapplicable to children. Some child lawyers erroneously seem to think that 'Juvenile Justice', 'care and protection' and child representation in the Family Court are the sum total of their required expertise.

In the course of this profoundly sensible book, Ms Blackman also illuminates several areas of substantive law, and makes cogent argument for reform.

In conjunction with William Keogh's (2000) 'Child Representation in Family Law', to which the author pays tribute, this work promises to be an indispensable guide to all lawyers who are drawn to a most challenging – but perhaps the most rewarding – branch of legal practice. May one hope that it will prove the inspiration to current and embryonic lawyers to devote more attention to representing the most vulnerable class in society!

Reviewed by:

J. Neville Turner

REFERENCES

- Australian Law Reform Commission & Human Rights and Equal Opportunity Commission (1997) *Seen and heard: Priority for children in the legal process*, Canberra: Australian Government Publishing Service.
- Keogh, W.J. (2000) *Child representation in family law*, North Ryde, NSW: LBC Information Services.