

ADMITTANCE RESTRICTED: THE CHILD AS CITIZEN IN CANADA

INTERDIT AUX MINEURS: LA PLACE DE L'ENFANT DANS
LA SOCIÉTÉ CANADIENNE,

by a Task Force of the Canadian Council on Children and Youth,
1978, pp. 172 and 195.

CHILDREN AND THE LAW,

by Jeffrey Wilson, Butterworth, Toronto, 1978, pp. xxxii and 367.

The fact that at the time of going to press, two books of completely different natures should have appeared concerned exclusively with the law relating to children, speaks volumes for the change in social and legal attitudes in the last decade. *Admittance Restricted* is concerned with an overview of children in Canadian society with recommendations for amendment (incidentally, the French sub-title seems preferable to the attempt in English to stretch citizenship to cover children). Mr. Jeffrey Wilson's book, on the other hand, is intended for the practising lawyer primarily in Ontario, but also includes many criticisms of the law and suggestions for amendment. The lawyers of Canada have seized with relish the opportunity offered by the International Year of the Child to mark and celebrate their joy in and concern for Canadian children.

Admittance Restricted would be a better book if the English version started at the present p. 45; some irritation may be discarded with the earlier pages. A sign of the constructive approach adopted is the replacement of the 'Children's Rights' cliché, in the chapter headings, by 'The Child's Need for . . .'. Where 'Rights' appear, from p. 81 onwards (and particularly in the context of Quebec's *Loi sur la protection de la jeunesse*, No. 20 of 1977), they are reasonably expressed. Photographs distributed profusely throughout, without obvious reference to the accompanying text, are outstandingly attractive and in themselves a celebration of childhood.

Chapter 2, on "The Child's Need for Economic Support," is of course right in drawing attention at p. 38 to the present disorderly and confused state of the federal and provincial statutes concerning children and the continued legal discrimination against those children born outside a marriage. (Why do we still talk about wedlock, when more than a quarter of Canadian marriages are now dissolved by divorce?). Attention is also drawn, though with less force than might be expected, to the deliberate fostering, until very recently, of parental irresponsibility by refusal to enforce even the present inadequate legal obligations to maintain one's minor children. This attitude has undoubtedly contributed to the spread of separation and divorce. To fail to enforce prior obligations because additional obligations are undertaken at a later stage is comparable to providing in property law that a mortgagor will be forgiven all remaining repayment installments on his first mortgage once he is able to raise a second mortgage on the same property.

Chapter 3, on "The Child's Need for Health Care," is a balanced and readable account of the present situation in Canada; here the historical background at pp. 46-47 is accurate as well as interesting, and the criticisms of the present position justified and moderately stated. The writers examine but do not declare themselves on some of the sensitive

questions arising, as for example at p. 52: ". . . Given the evidence of the importance of maternal lifestyle on foetal development, we contend that a pregnant woman has no right to risk damage to the foetus by smoking during her pregnancy. But we must recognize that such a contention represents for many, an unacceptable intrusion into the private lives of individuals". This absolves them from going into detail about methods of enforcement, if any, and what, if anything, should be done about those who refuse to conform to acceptable norms. They are more forthright about providing contraceptive information to sexually active minors and medical treatment for sexually-transmitted diseases, but (perhaps wisely in view of current frenzied attitudes) are silent about abortion. This chapter is generally so attractively written that it is a pity that p. 55 should inform us that an infant mortality rate of 15.0 is a fraction of the rate of 71.7. Nobody reading this book surely needs to be told that 15.0 is less than 71.7 and therefore a fraction of it, and the use of 'a fraction of' to mean 'a tiny fraction of' is a tiresome affectation. The only other bad stylistic lapse I noticed is on p. 91, where we are told "the media is prohibited". In view of the widespread inability (which apparently affects every member of the C.B.C.) to distinguish the Latin neuter plural from the feminine singular, it might have been better to insist upon the 'mediums' rather than 'media' of communication, in the hope of slightly greater verbal agreement.

The Chapter on "The Child's Need for Protection" is also helpful and constructive. The concept of children's rights, represented as important in the recognition of the child's separate personality and needs, is developed into an argument for treating a child needing protection as far as possible in the home that is failing to respond to its needs, rather than uprooting the child as we now do and trying to treat it alone in an alien environment, from which after a while it is again uprooted. We need far more detailed suggestions for the implementation of such schemes. Most of the criticisms of existing welfare practices are sound and moderately put. Even the attack on undue secrecy of government records recognizes that, if information is to be made available, many public servants will quickly react by failing to record it, with results possibly even more disastrous than those now all too often appearing. The existing financial awards for failing to release a child from public care as quickly as might be desirable are also considered. This is undoubtedly a strong argument, well and reasonably put. Reference is made to experiments in having the child separately represented in cases of public care, such as have occurred in British Columbia, and the need for evidence from those outside the immediate family, sometimes referred to as the child's confidants. The difficulty here is in sorting the reliable from the unreliable witness, especially on matters subject to such a wide range of possible viewpoints as the upbringing of a child.

"The Child's Need for Education" roundly declares its viewpoint: "Contrary to what the critics and reformers of the last two decades would have us believe, schools are not only doing what they were established to do but they are doing it very well"; but this does not mean that the writers ignore the criticisms and controversies: about streaming and testing, and racist, sexist and class stereotyping in the schools. The plea for students to be involved in the process of making decisions of primary concern to themselves (pp. 108 and 110) might have been stronger if the writers had been more precise about the age of the students they think could take part. At pp. 110-111 they quote a letter from a 15-year-old, who plainly should be involved in decisions about

himself, although the cynical may detect the widowed mother's hand and turn of phrase in his letter, and perhaps wonder if this teenager was not involved in one of the major teenage problems: that of adjusting to world in which he is not the apple of every eye, as he has long been of his mother's. The plea for the abolition of corporal punishment in the schools (p. 112) again reasonably recognises the difficulty when a teacher discovers one student inflicting violence on another (although there is no direct reference to bullying of little children, which is one of the intractable problems in the schools).

Chapter 6, on "The Needs of the Native Child", is in some ways the most important in the book. The writers have tried here to deal frankly, courageously and fairly with one of the most difficult and sensitive issues in Canada, and one about which many Canadians are clearly deeply concerned. This is indeed a most difficult question, but it can, I think, fairly be said that Canada has made as successful an attempt as any country, and better than most, in dealing with minority cultures under siege by the broader society. This is an area that tests assumptions about universal human rights. Was the decision in *Reg. v. Drybones* (1967) 60 W.W.R. 321 really beneficial to the majority of status Indians? The same kind of question may be asked concerning the Australian aborigines. Your reviewer is thankful that it does not fall to her to give a definitive answer, but doubts persist that some of the recent talk about 'human rights' may be superficial and in the long run unhelpful.

Mr. Jeffrey Wilson, in an attractive preface, concludes that despite his aspirations, what has emerged in his book, *Children and the Law*, is a text about certain laws as they relate to children, and that it is only the grammar of an investigation into the law of children. He has undoubtedly performed a service to practitioners in Ontario and to a lesser extent elsewhere in Canada in producing a text that integrates the Family Law Reform Act 1978 as well as the Children's Law Reform and the Succession Law Reform Acts 1977 of Ontario with the previous statutes and case-law. A new and imaginative approach is shown by the integration of the law concerning support for children during the lifetime of parents and under the law of succession (for so long treated as water-tight compartments) and a chapter on Crime and the Child is divided between Crimes against the Child and Crimes by the Child, which is likely to produce new perspectives. Differences of detail of course arise, and unfortunately the legal history is not much more reliable than in many other works. It was, for example, not the rule at common law at any time that the child's natural guardian was considered to be first the father and then the mother (p. 14). Also, when the common law was profoundly affected by an early statute, as in this case, by the Tenures Abolition Act 1660, it is desirable to clarify the date of the common law described. There are some omissions. For example, the Table at p. 15 on Children and Custody omits entirely the federal divorce jurisdiction, which is first mentioned four pages later. Insufficient attention seems to be paid to the derivation of some cases cited. Thus it is not made clear that *In re D¹ (A minor) (Wardship: Sterilization)* is a decision from England, where the prerogative jurisdiction over minors may vary somewhat from its position in the Canadian federation. So also the decision of a New Brunswick court in *Pollard v. Pollard*², that other

1. [1976] Fam. 185 at 3.

2. (1973) 14 R.F.L. 49 at 57.

things being equal the court will apply the common law presumption that a father is entitled to the custody of all his children, even a girl aged two years, would not necessarily be followed in other provinces. Again, what a pity that *In re L (Infants)*³ should still be cited as authoritative, when the English courts have been told by the Court of Appeal that the decision should no longer be followed, and it has on at least three occasions not been followed by later courts: *W. v. W.*,⁴ *S. (B.D.) v. S. (D.J.) (Children: Care and Control)*⁵ and *In re K. (Minors) (Children: Care and Control)*⁶.

The publishers have done well by Mr. Wilson; the book is a joy to read and to handle.

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3. [1962] 3 All E.R. 1.
4. *The Times* 26. 11. 76.
5. [1977] Fam. 109.
6. [1977] Fam. 179. (C.A.)