

HUMAN RIGHTS LAW AND PRACTICE

SECOND EDITION

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Human Rights Law and Practice

Second Edition

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Argentina	LexisNexis Argentina, BUENOS AIRES
Australia	LexisNexis Butterworths, CHATSWOOD, New South Wales
Austria	LexisNexis Verlag ARD Orac GmbH & Co KG, VIENNA
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Switzerland	Stämpfli Verlag AG, BERNE
USA	LexisNexis, DAYTON, Ohio

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Published by LexisNexis UK

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A CIP Catalogue record for this book is available from the British Library.

ISBN 0 406 96971 X

First edition 1999

Typeset by Columns Design Ltd, Reading, England

Printed and bound in Great Britain by The Cromwell Press Limited, Trowbridge, Wiltshire

Visit LexisNexis UK at www.lexisnexis.co.uk

Foreword

This is now accepted as being one of the most authoritative works on human rights in the context of United Kingdom law. Since the first edition was published, human rights in this jurisdiction have come of age. Our courts are no longer onlookers, as the jurisprudence relating to human rights develops in Strasbourg and in the other jurisdictions that precede us in making a code of human rights part of their domestic law. Our courts have now become familiar with the techniques that have to be deployed in tackling human rights issues. We have learnt how to use effectively the international jurisprudence including, in particular, the decisions of the Court at Strasbourg that we are required to take into account by the Human Rights Act 1998. We are now familiar with the carefully crafted provisions of that Act. We have learnt how to balance the conflicting rights that can be in play and how to apply qualified rights. We are aware that rights which are expressed in a negative or prohibitive manner can have a positive or mandatory dimension. We can fairly and, I hope, not unrealistically, claim that on the whole we have been at least moderately successful in ensuring that human rights are now firmly rooted into all areas of our law.

If a claim that I have just made (as a judge) is justified, then the judiciary cannot take all the credit for this. Without the help of our legal practitioners the judges could not have achieved what they have. We are indeed fortunate in this jurisdiction in having among our lawyers the most highly skilled and experienced human rights practitioners of any jurisdiction. They have identified the issues that have been so challenging and argued them in a manner which has enabled the courts to give the judgments that are becoming so important in our own developing jurisprudence. These practitioners have been generous with their time. They helped with the training of our judges. They wrote articles and lectured extensively on human rights issues. Most significantly, for present purpose, they have written authoritative text books of which this work is a prime example and so ensured that the courts have had the tools they have needed for their task of resolving disputes as to human rights.

If a list of the practitioners to whom I refer were to be compiled, then the contributors to this work and, in particular, Lord Lester QC and David Pannick QC, who provided the necessary leadership for them, would unquestionably feature prominently. It is their undoubted practical experience coupled with the clarity of exposition that makes this book so authoritative and such a joy to consult.

It is my belief that this new edition is admirably timed to coincide with our courts embarking on the next stage of their responsibilities in relation to human rights. That responsibility being to develop our own domestic code of human rights jurisprudence. A code that will play a proper regard to the jurisprudence being developed at Strasbourg and elsewhere. A code that will be in tune with that jurisprudence, but which at the same time will recognise that our code should also fully reflect where it is appropriate to do so our own cultural traditions and, perhaps unique historic perspective of the importance of individual freedom within society. If we take on this task, as I believe we will, then we will ensure, especially in the area of criminal law, that we do not routinely and uncritically apply decisions that do not sufficiently make allowance for the special qualities of our own domestic jurisdiction. The international jurisprudence on human rights correctly applied will enhance the quality of our domestic justice. Incorrectly applied it could detract from the quality of our justice by making our law undesirably complex and imprecise.

Whether my fears are justified, whether I am right to desire a distinctive and more principled code of human rights with a distinctive British flavour than is yet able to be found in a jurisprudence developed to apply to many jurisdictions at the same time, I am sure that this new edition will be equally popular with practitioners and judges generally. The editors deserve our congratulations and approval.

The Rt Hon Lord Woolf of Barnes
Royal Courts of Justice, London

Preface

During the Parliamentary debates on the Human Rights Bill, Michael Fabricant MP told the House of Commons that he did ‘not believe that the Bill will have any impact on the United Kingdom’¹.

This second edition records the substantial influence which the Human Rights Act 1998 has had by giving effect in domestic law to the rights guaranteed by the Convention on Human Rights. The Human Rights Act has subjected the legal systems of the United Kingdom to ‘a fundamental process of review and, where necessary, reform by the judiciary’². It has meant that ‘long or well entrenched ideas may have to be put aside, sacred cows culled’³. And, a particular problem for anyone who writes a book on the impact of the legislation, ‘the development of our jurisprudence on the 1998 Act has only just begun. New problems are being revealed every week, if not every day’⁴.

As Lord Bingham of Cornhill explained, quoting *Hamlet*, the HRA 1998:

‘does not, as is sometimes mistakenly thought, offer relief from “the heart-ache and the thousand natural shocks that flesh is heir to”’⁵.

But it has substantially improved the quality of public administration – by Parliament, the executive, public bodies and judges – by creating a legally enforceable entitlement to the basic freedoms which we can all claim as an aspect of our common humanity.

This second edition seeks to explain the background, content and application of the Human Rights Act and the European Convention on Human Rights. This aims to be more than a casebook. It analyses the basic principles and puts the legislation into its historical and political context, covering devolution and Parliamentary scrutiny and the wider body of international human rights law. We have tried to state the law as at 1 August 2003, though some later developments are also covered.

We thank our distinguished contributors for finding time to assist. We are very grateful to Lord Woolf of Barnes for writing a Foreword, and to Butterworths for their assistance.

We also wish to thank Kay Taylor and Lydia Clapinska for their great assistance in the final preparation of the text.

Anthony Lester QC and David Pannick QC

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February 2004

- 1 Committee Stage 313 Official Report (6th series), col 474 (3 June 1998).
- 2 *R v Director of Public Prosecutions ex parte Kebilene* [2000] 2 AC 326, HL, at 375 (Lord Hope of Craighead).
- 3 *R v Lambert* [2002] 2 AC 545, HL, at 561 (para 6) (Lord Slynn of Hadley).
- 4 *R v Kansal (No 2)* [2002] 2 AC 69, HL, at 101–102, para 51 (Lord Hope of Craighead).
- 5 *Brown v Stott* [2003] 1 AC 681, PC, at 703. See *Hamlet*, Act 3, Scene 1, Line 56.

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