LEGAL CENTRES

Community development and individual casework

Darwin Community Legal Service Inc. (DCLS) has a specific program in the area of disability discrimination and in the past year has put a particular emphasis on access issues for people with disabilities in the Darwin area. The process used in this campaign linked the use of individual cases to a community development approach.

Community development and a community legal service should work hand in hand to achieve the most effective outcome for the most people. Many legal services work to achieve this by employing non-legal workers. The disability discrimination team employs a part-time solicitor and a part-time community development worker. The team is also supported by an advisory committee which comprises people with disabilities and other interested community members. Much of the feedback they were providing us involved the problems that people were having with disability access to buildings.

In 1998, two community members lodged a complaint with the Northern Territory Anti-Discrimination Commission. The complaint was against a hotel that was about to reopen after being extensively renovated. However, it still did not have disability access into and around the hotel and did not have an accessible toilet.

DCLS organised a protest by people with disabilities and other interested people to go ahead outside the hotel at the time of their opening. The proposed protest received overwhelming support from members of the public especially from people with disabilities. A common reaction we received was that it was about time people with disabilities made a public statement alerting the developers and building community that people would no longer tolerate being excluded.

On the day of the opening, however, the complainants came to an interim agreement with the hotel and as part of that agreement, called off the protest. As the protest had created a lot of interest, however, an access campaign began.

DCLS began to receive many more calls from people wanting information about making a complaint with the Anti-Discrimination Commission and we attended many meetings of groups such as the Integrated Disability Action group to provide more information. Soon after, a complaint was lodged about another hotel in the Darwin city area. The complainant lodged the complaint independently of DCLS using the previous hotel complainants as support. However, once the complaint progressed, we then provided support.

As these complaints were being lodged with the Commission, several things began to happen. The Anti-Discrimination Commission began to be more public on the issue of access and targeted several key areas including architects, engineers and builders. This all coincided with the new draft building code being developed. Several workshops were held for the building profession on the changes and their responsibilities. The Anti-Discrimination Commission and DCLS's Disability Discrimination Solicitor were invited to address several of these workshops. At the same time, the Commissioner wrote to architects outlining their responsibilities under the *Anti-Discrimination Act*. And DCLS did several media interviews on the issue.

All of this led to a far greater awareness among people with disabilities of their rights, and people seemed to feel more confident about lodging a complaint. It must be remembered that to lodge a complaint can be a very intimidating and overwhelming process especially as the respondent is often very well known in a small community and often able to afford expensive legal advice and in some cases representation. Complainants, on the other hand, often rely on the support of others who have been through the process and on the support of the two part-time workers in the disability discrimination team.

The respondents in the second complaint were not prepared to conciliate on the issue at all, and the matter was referred to a hearing before the Commissioner. A hearing before the commissioner is usually open to the public whereas settlement and conciliation conferences are closed and any details are normally kept confidential. The fact that the hearing would be open to the public meant that we were able to talk to people about it and many people intended to be present at the hearing.

As a poorly funded community legal service, we had to rely on the support of some professionals for the case. We spoke to many architects in our endeavour to find one who would work for us for no charge. It was interesting that most of them commented on the case and how interested they were in the outcome. Only one, however, was prepared to provide us with pro bono support.

At this time we also received our first call from a developer who wanted our advice on his proposed plans. Although we would not assist due to potential conflict of interest problems, several people with disabilities did assist. The word had clearly spread among developers and architects that people with disabilities were not to be ignored.

A few days before the hearing was due to go ahead, the respondents called for a conciliation. We had felt that our case was very strong and it now seemed that the respondents may have been given the same information. Our client agreed to conciliate and a settlement seems to have been reached.

Soon after, DCLS launched a 'Watchdog Campaign'. This campaign had the support of our advisory committee and the Integrated Disability Action group. The campaign encouraged people to contact us when they saw a new development and we would then write to the Minister for Lands, Planning and Environment to ask for details on the proposal and their plans for access. The Minister was invited to launch the campaign but declined, but the Opposition leader and the Anti-Discrimination Commissioner attended. The idea of the campaign grew from the ideas and issues of people with disabilities and they have been very active in promoting it so far.

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Letters

Dear Editor

I currently work in a voluntary capacity in disability advocacy, and it is my intention to commence law studies next year. I must say that I read the article by Simone Brookes (Immunity From Suit, (1999) 24(4) *Alt.LJ* 175) with something close to horror. It was shocking to learn that, if I undertake law studies, I will be establishing myself in a career that is not duty bound to avoid negligence.

Indeed, why should lawyers remain exempt from laws that are established to remind us all that we are responsible for our actions? As an advocate, my first loyalty must be to my clients — above all else, I must value his/her rights, hopes and needs. If I am negligent in the pursuance of my duty, should I too be immune from suit?

Although we 'lesser' advocates do not undertake some of the 'high pressure' courtroom duties of lawyers, barristers and judges, we are often faced with decisions that are equally as equivocal.

Insurance is not the complete answer, and even unfounded allegations of negligence are costly to defend. However, this will not deter us from our duty. Nor will making lawyers take responsibility for their actions deter me from study.

Gay M. Green

Mackay, Queensland

Dear Editor,

In his letter dated 22 July 1999, David Buchanan argued that the Commonwealth's marriage power (s.51(xxi) of the Constitution) would be construed to mean 'a union between opposite sex partners' and thus to exclude same-sex marriage (see (1999) 24 *Alt.LJ* 206). I beg to differ.

There have been recent indications that the High Court would take a more enlightened and expansive view of same-sex marriage. In particular, I refer to the comments of McHugh J in *Re Wakim; Ex parte McNally* [1999] HCA 27 (17 June 1999), para 45:

> [I]n 1901 'marriage' was seen as meaning a voluntary union for life between one man and one woman to the exclusion of all others. If that level of abstraction were now accepted, it would deny the Parliament of the Commonwealth the power to legislate for same sex marriages, although arguably 'marriage' now means, or in the near future may mean, a voluntary union for life between two people to the exclusion of others.

Kirby J is likely to support such an approach to same-sex marriage, given his history of support for gay rights, and Gaudron J might also be expected to take an expansive view. Of the remaining Justices, several are more conservative — Gleeson J would probably take a restrictive view, and Callinan J certainly would. Gummow J, however, has proved to be a more progressive justice than might have been expected at the time of his appointment, and might support an expansive reading. Hayne J is difficult to assess because he is so recently appointed. The approach the court would take if it were confronted by the question of federal legislation recognising same-sex marriage is by no means clear, but I suggest that we should not rule out an expansive approach to marriage by the High Court.

The greater limitation on seeking same-sex marriage is the sheer unlikelihood that the federal government will ever pass such legislation — at least in the foreseeable future. The Howard government — or any future Liberal government — would clearly not put forward such legislation; and the previous Labour government showed no interest in championing same-sex marriage. It is far easier to pursue same-sex relationship recognition at the local level than at the federal level, as the New South Wales and ACT experiences demonstrate. However, the States probably cannot provide for same-sex marriage because marriage is regulated by the Commonwealth *Marriage Act* 1961, which would probably be interpreted to 'cover the field' on the topic of marriage, thus rendering any State legislation in that area invalid under s.109 of the Constitution.

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Over the next two weeks, people with disabilities and DCLS were interviewed for the main Territory newspaper, ABC radio and ABC's *Stateline*. This publicity was more than we could have anticipated and is an example of the interest that is present at the moment. We have also received calls from all over the Territory about the campaign. Our challenge is now to maintain the level of interest. Although DCLS is still actively involved in the campaign, much of the work is being done by community members.

The whole focus on access has highlighted for us the need to be creative in how we approach our community development. Using individual cases to create an atmosphere of change is a very powerful tool. The typical community legal centre is so overworked with individual cases and needs, that it is difficult to take a step back to look at how cases can be woven into the community development strategy.

For a campaign such as this to be successful, there needs to be support from the community to see the campaign as 'theirs' rather than DCLS's. A result of the campaign has been that people with disabilities are more aware of their rights and more willing to make complaints. In each step of the campaign people with disabilities were leading us in the direction they wanted us to follow.

Wendy Morton

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