Legal Challenges in Advocating with Disabled People

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7 forms of overcoming legal barriers faced by disabled people

• Independent monitoring of deprivation of liberty
• Direct/systemic representation
• Law school clinics
• Training next generation: diverse degrees
• Community law centres
• Research with people with disabilities
• Awareness training for the legal profession

1 Independent monitoring

• Court Visitor: Alaska OPA: Probate Code
• Appointed for adult guardianship/conservatorship cases
• Investigates circumstances re: involved person
• Recommends appropriate resolution
• Reappointed every 3 yrs: report to court re: existing cases
• Psychotropic med. proceedings in psych. facilities (now)
  – Opinion re: patient’s capacity to give/withhold consent to medication
Camarillo State Hospital Development Centre

- Developmental Disability Ethics Committee
  - Restraint, seclusion, aversive techniques
  - Lanterman Developmental Disability Services Act
- In 1968, 13,400 people lived in institutions
  By 1989, approximately 6000
- Camarillo closed 1997

2 Direct/systemic representation

- Lanterman Act: protection of civil, political and human rights of people with developmental disabilities
- Clients’ Rights Advocate
- North Los Angeles County Regional Centre
- 21 Regional Centres
- Represent at SE Tribunals, legislative reform

Developmental Disabilities Assistance and Bill of Rights Act (PL 94-103)

- Mandated a bill of rights for persons with developmental disabilities and required each state to establish a protection and advocacy system.

Lanterman Developmental Disability Services Act 1969

- Welfare and Institutions Code, s 4500
- Created the state-funded, privately-operated system of community care for people with developmental disabilities to receive critical services in their communities through regional centers.

- Lanterman Act remains unique in USA
- 1985 California State Supreme Court decision affirmed the Lanterman guarantee of services.
- No other state made similar promise of community-based services and supports for people with developmental disabilities
3. Law School Clinic
- Kent Law Clinic (Mental Health and Learning Disability) Clinic
- University of Kent at Canterbury, England
- Direct advocacy
- Outreach and education
- Observation and critique of Mental Health Review Tribunals

New Zealand

4. Law training
- Across professions
  - 7 degrees
  - Non-lawyers

5. Community law centres
- Auckland Disability Law 2007
- Only such specialist centre in Aotearoa
- Free education, advocacy and representation

6. Research with disabled people
- Unmet legal needs of people with disabilities
- Legal Services Agency funded 2005
- Across impairment groups
- Universal issues
  - Knowledge of rights
  - Fear of retaliation
• “We don’t need lawyers who memorised the law and got good grades in law school. We need lawyers who understand disability. Understand us. What the law means for us. And does to us”.

7. Awareness training for the legal profession

• Benchmark website
• Funded by Law Foundation
• B Mirfin-Veith, Donald Beasley Institute
• Best practice guidance
• Legal repository: cases, research, advocacy initiatives.
• Best practice guidance
• Disability awareness

Experience of legal system by disabled people

• Oh you just feel like your whole body, your knees shake, your hands sweat, you just don’t feel like it’s...you know you’re nervous, nah, it’s not really a place that you feel safe in (Mirfin-Veitch, 2014)

Is the law the solution?

• Alaska: Probate Code
• California: Lanterman Act 1977
  – Americans with Disabilities Act 1990 (USA)

• United Kingdom
  – Human Rights Act 1998
  – Mental Capacity Act 2005

• New Zealand
  – Health and Disability Commissioner Act 1994
  – Code of Health and Disability Services Consumers’ Rights 1994 (NZ)
  – Human Rights Act 1993 (NZ)
• United Nations Convention on the Rights of Persons with Disabilities
  – NZ ratified September 2008
Are lawyers the solution?

• ID (17) and MI (18)
• We are afraid to complain
• Lawyers do not have enough time to listen to us and explain to us
• We need the same lawyer, over time
• We need lawyers with the rights skills
• Some lawyers do not understand the challenges that disability poses
• Mirfin-Veitch, 2014

References

• Reaffirming the Commitment, Realizing the Vision: History of the Regional Centers of California.

Thank you
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