

# International Encyclopedia of Rehabilitation

Copyright © 2010 by the Center for International Rehabilitation Research Information and Exchange (CIRRIE).

All rights reserved. No part of this publication may be reproduced or distributed in any form or by any means, or stored in a database or retrieval system without the prior written permission of the publisher, except as permitted under the United States Copyright Act of 1976.

Center for International Rehabilitation Research Information and Exchange (CIRRIE)  
515 Kimball Tower  
University at Buffalo, The State University of New York  
Buffalo, NY 14214  
E-mail: [ub-cirrie@buffalo.edu](mailto:ub-cirrie@buffalo.edu)  
Web: <http://cirrie.buffalo.edu>

*This publication of the Center for International Rehabilitation Research Information and Exchange is supported by funds received from the National Institute on Disability and Rehabilitation Research of the U.S. Department of Education under grant number H133A050008. The opinions contained in this publication are those of the authors and do not necessarily reflect those of CIRRIE or the Department of Education.*

# **Legal Services for Disabled People in New Zealand**

**Kate Diesfeld, J.D.**

**Associate Professor**

**Co-Chair, Steering Committee of Auckland Disability Law**

**Director, National Centre for health Law and Ethics**

**AUT University**

## **Introduction**

In May 2008, New Zealand launched its first legal service dedicated to disabled people. This is remarkable for two reasons: the country is relatively small (with 4.1 million people) and the concept of the specialty of “disability law” is relatively novel in New Zealand. Auckland Disability Law’s history, aims and services may interest others who are embarking on the development of disability-specific legal services.

### **The legal context of disability legal services**

Like many countries, New Zealand is reviewing its legal aid scheme and community legal services. In 2005, the government’s commitment to reform was partially addressed when research was undertaken to determine the unmet legal needs of people with disabilities in Auckland (Diesfeld K, Patston P, McLean M, Miller-Burgering W, Vickery R, Phelan T 2006a). The perspectives of people with disabilities and their advocates were canvassed during focus groups and interviews (Diesfeld K, Patston P, McLean M, Miller-Burgering W, Vickery R 2006b). Based on those priorities, Auckland Disability Law (ADL) was launched in May 2008. Like YouthLaw, ADL serves a “community of interest” (disability) rather than merely a geographic region (ADL’s wide catchment area comprises four cities and three districts, which had a population of approximately 1.3 million in 2005. Nationally, a total of approximately 20% of the population (743,800) reported some level of disability in 2001 (Statistics New Zealand, 2002)) (ADL covers a large region that encompasses 4 existing community law centre regions.).

In the 1990s, New Zealand in some respects was an international frontrunner in disability rights protection and had disability recognised in the human rights legislation. The protected ground of “disability” in the Human Rights Act 1993 is defined as:

physical disability or impairment; physical illness; psychiatric illness; intellectual or psychological disability or impairment; any other loss or abnormality of psychological, physiological or anatomical structure or function; reliance on a guide dog, wheelchair or other remedial means; presence in the body of organisms capable of causing illness (Section 21(1)(h)).

Also in the 1990s, legal safeguards for people who use disability services were established under the Health and Disability Commissioner Act 1994. The Commissioner undertakes investigations when there are breaches of the Code of

Health and Disability Services Consumers' Rights (Health and Disability Commissioner, 2009).

New Zealand passed legislation directed at three discrete categories of impairment. In 1992, legislative reform addressed compulsion of people with mental disorders under the Mental Health (Compulsory Assessment and Treatment) Act. More recently, disposition of people within the criminal justice system was addressed by the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003. Also, sign language is now recognised as one of New Zealand's three official languages with the enactment of the New Zealand Sign Language Act 2006.

Therefore, in theory New Zealand was an early leader in establishing legislation that protects people with disabilities. However, New Zealand's Code of Rights has a significant limitation. The 10 rights apply to people who *are receiving* disability services, but it does not establish the right *to obtain* services. Also, New Zealand does not have a "Disability Rights Act" per se. Instead, protection for disabled persons is embedded as one of 13 prohibited grounds within the wider Human Rights Act 1993. In contrast, some countries have disability-specific legislation to guard against discrimination such as the Americans with Disabilities Act 1990 in the United States and the Disability Discrimination Act 1995 in the United Kingdom.

Despite the recognised discrimination that exists in New Zealand, substantial restrictions apply to the protections offered by the human rights legislation. The Human Rights Commission reported that people with disabilities are among the most disadvantaged in New Zealand. Approximately, one quarter (24%) of complaints to the Commission involve *disability* discrimination. Pressing issues include employment, security, justice and education (Human Rights Commission, 2004). However, the Act has been criticised because it offers a lower than desirable level of protection for people with disabilities. Non-compliance may be justified by the Act's "reasonable accommodation" provision. Consequently, there was a call for review of this limitation within the Act (Human Rights Commission 2004b).

The foundational research on unmet legal needs in 2006 generated unexpected debate regarding the concept of "disability law" (but not by people with disabilities themselves). One community law centre reported that all people with disabilities are served adequately by the existing legal services, although relevant statistics and strategies on how this was achieved were not available (Diesfeld et al 2006b).

Surprisingly, a legal advocate observed that all legal needs of people with disabilities were currently addressed within New Zealand's legal services and legal aid scheme (Diesfeld 2006b). In the lawyer's estimation, although people with disabilities portrayed diverse complaints as legal issues, the complaints represented dissatisfaction with broader matters that could not be addressed by the legal system. Also, a few lawyers debated whether disability law qualifies as a discrete field and one worthy of a specialist community law centre (Diesfeld et al 2008).

Despite these debates, the government's existing disability policy was the philosophical platform for the establishment of ADL. In 2001, the government expressed its commitment to people with disabilities through the *New Zealand*

*Disability Strategy*. This policy guides government action and promotes an inclusive society by embracing the social model of disability. The *Strategy* asserts:

Disability is the process which happens when one group of people creates barriers by designing a world only for their way of living; taking no account of the impairments other people have (Minister for Disability Issues, 2001: 1).

Similarly, ADL acknowledges that while people have impairments, the wider social, economic and political environment erects barriers that have disabling effects. ADL aims to reduce these barriers and bridge the gaps in legal services for people with disabilities through a range of activities.

### **Auckland Disability Law in action**

ADL has adopted the Human Rights Act 1993 definition of disability as the criteria for client eligibility (Section 21(1)(h)). Eligibility criteria include: physical and sensory impairments; experience of mental illness; and intellectual disability (in other countries, other terms are used such as developmental disability, mental retardation, learning disability and learning difficulty.). ADL's clients are people with impairments. Clients are sometimes referred by social services, families and friends. For example, recent referrals were made by forensic psychiatric services, providers of supported living services and non-governmental associations representing people who have experienced mental illness, brain injury and stroke.

Currently, the service shares office space and resources with Mangere Community Law Centre, 25 km from the Auckland's centre. ADL employs 3 part-time lawyers, a development manager and a community worker. To increase its accessibility, ADL provides outreach clinics at three locations as either drop-in centres or by appointment. Two lawyers offer pro bono services on a weekly basis and ADL aims to develop this network.

Funded by the Legal Services Agency (LSA), ADL's activities are determined by the existing funding categories for community law centres: representation; legal assistance; legal advice; legal information; law-related education; and law reform.

One of ADL's central functions is disability-awareness training. ADL aims to educate the public and the legal community about the experience of disablement and how to create more accessible services. For example, in September 2009 ADL organised a Mental Health Foundation workshop entitled "Legal issues and the mental health consumer perspective" (Auckland Disability Law 2009). The inter-disciplinary workshop attracted advocates, health providers, lawyers and community law centre staff.

A survey of recent cases indicates the legal teams' diverse caseload. In August and September 2009 substantial legal assistance and support was provided by the lawyers on 38 new inquiries including: employment (8); family and relationship property (5); breach of rights under the Code of Health and Disability Services Consumers' Rights (3); welfare guardianship and enduring powers of attorney (6); accident compensation (3); and miscellaneous legal issues (13).

ADL has become aware of a spectrum of professional misconduct by health and disability providers. Complaints range from fraud and theft to physical abuse and neglect. Health complaints include misdiagnosis and inappropriate care programmes. While the most common issues are complaints about caregivers and service providers, the recent economic downturn has resulted in an increase in employment issues (Communications from ADL staff are on file with the author, 29/9/09).

Many clients report that historically they have been “bounced” among services when seeking a resolution. Clients’ often encounter complex, inter-related legal issues that are compounded by the impairment. An ADL lawyer reported:

Any actual legal issues are usually buried under a mass of other ‘low-level’ matters ordinarily dealt with in an average life but which in many of our clients’ lives have piled up and become unmanageable (ibid).

Common barriers faced by clients include lack of: financial and community resources; energy to pursue their legal complaints, and knowledge about the law and the legal system. Often people face difficulties in communicating with their lawyers or advocates. Also, participants for the 2006 research reported a scarcity of lawyers with knowledge of the relevant law or appreciation of the impact of disability on clients’ lives (Diesfeld 2006b). Even when expertise is available, often legal aid inadequately finances the hours required for representation.

To maximise ADL’s impact and build the capacity of existing services, ADL operates as a clearinghouse for referrals to specialist services. An ADL lawyer reported:

We give all of our enquiries the benefit of a patient and sympathetic hearing. We conduct thorough preliminary investigations of their cases and, in appropriate cases, link clients with relevant experts in their local region (ibid).

For example, matters relating to custody disputes, accident compensation or the mental health legislation are referred to private lawyers. Inquiries by parents regarding protection of their adult offsprings’ benefits and welfare guardianship under the Protection of Personal Property Rights Act 1988 are referred to family lawyers. In return, ADL offers resources for private lawyers and law centres by providing legal education courses on housing, employment and human rights law.

Using simple English, the service produces information in Braille and sign language. This information is broadly disseminated across the country. ADL is dedicated to delivering information directly to people with disabilities and also to their wider support networks.

In collaboration with ADL, people with disabilities engage in the political process. For example, in 2009 ADL organised consultation on the review of the Health and Disability Commissioner Act. Based on this activity, the Commissioner proposed changes to the current contractual model for advocacy services so that the advocates may become employees of HDC, while retaining their independent functions (Health and Disability Commissioner 2009b). The creation of the role of the Deputy

Commissioner (Disability) in 2009 was also influenced by ADL's consultation process.

Likewise, ADL developed a workshop on international human rights protections. In September 2008, New Zealand was one of the first signatories to the United Convention on the Rights of Persons with Disabilities. Aiming to apply the Convention in a concrete and meaningful way, ADL's workshop with the Human Rights Commission attracted more than 100 people on International Disability Day, 3 December 2008. ADL has organised a range of similar events with people with disabilities to communicate their priorities to decision-makers. These events demonstrate the service's strong community-based focus, independence and collective activism with people with diverse disabilities.

## **Future challenges**

Funding is a perpetual concern for community law centres but recently has been exacerbated by the global economic climate. The impact has already been felt in New Zealand community legal services (On 1 October 2009, Te Ratonga Ture Ki Te Upoko O Ika /Maori Legal Service in Wellington was closed down.). The government has released a discussion paper "Improving the Legal Aid System" for public comment as part of an extensive review of the legal aid system (Ministry of Justice 2009). A fundamental government's aim is to consider how the legal aid system can deliver effective services to those that need them the most, in a way that is both cost-effective and sustainable. The paper addresses funding and wider systemic challenges:

...(T)he report does consider issues other than cost by, for example, suggesting that problems cannot just be resolved by increasing the legal aid budget, and that governments may need to provide the right mix of social services to address underlying causes (New Zealand Federation of Voluntary Welfare Associations 2009:2).

From the perspective of ADL and YouthLaw appropriate special education services and establishment of an education review tribunal remain national concerns. To maximise ADL's impact on these and similar initiatives, ADL aims to engage more fully with community law centres and stakeholders.

ADL's vision is that in less than five years, the service will have adequate resources to represent the majority of its clients, rather than making referrals. After establishing trust and investing time with ADL staff, many clients are disheartened by being referred to another service. And while pro bono representation complements existing services, it is not the preferred long term solution. To establish a larger community of expert legal advocates, ADL supports post-graduate studies and research on disability law.

## **Conclusion**

The Legal Services Agency expressed its commitment to people with disabilities when it funded New Zealand's first, free disability law service. With its small but dynamic staff, dedicated community members and strong collaborations, ADL has

achieved remarkable results. Across boundaries, ADL welcomes the opportunity to work with people with disabilities on their legal priorities.

## **Acknowledgements**

The author thanks the staff of Auckland Disability Law and particularly Susan Martell, Dr. Huhanah Hickey, Nicola Owen and David Hagar. Consultation with staff of YouthLaw aided the analysis. Associate Professor John F. Smith's comment was greatly appreciated. The author is responsible for the resulting analysis.

## **Legislation**

### **New Zealand**

(Available from: <http://nzlii.org.nz>)

- Health and Disability Commissioner Act 1994
- Code of Health and Disability Services Consumers' Rights 1996
- Human Rights Act 1993
- New Zealand Sign Language Act 2006
- Protection of Personal and Property Rights Act 1988

### **United States**

(Available from: <http://www.ada.gov>)

- Americans with Disabilities Act 1990

### **United Kingdom**

(Available from <http://bailii.org/databases>)

- Disability Discrimination Act 1995

## **Contact**

To contact Auckland Disability Law:

Auckland Disability Law  
PO Box 43-201  
Mangere, Auckland, New Zealand 09 257-5140.  
Email: [info@adl.org.nz](mailto:info@adl.org.nz)  
Web: <http://www.aucklanddisabilitylaw.org.nz>

## **References**

- Auckland Disability Law. 2009. "Legal issues and the mental health consumer perspective". Delivered by Mental Health Foundation on 30 September 2009. Available from: <http://www.aucklanddisabilitylaw.org.nz>
- Diesfeld K, McLean M, Patston P, Miller-Burgering W, Vickery R. 2008. The challenge of designing optimum legal services for disabled people: The New Zealand experience. *Disability and Society* 23(5):431-443.

- Diesfeld K, Patston P, McLean M, Miller-Burgering W, Vickery R, Phelan T. 2006a. Report to the Legal Services Agency. Literature review of the unmet legal needs of people with disabilities in the Auckland region. Report 1. Wellington: Legal Services Agency. p. 32.
- Diesfeld K, Patston P, McLean M, Miller-Burgering W, Vickery R, Phelan T. 2006b. Proposed service delivery model: Meeting the legal needs of people with disabilities in the Auckland region. Report 2. Wellington: Legal Services Agency. p.46.
- Health and Disability Commissioner. 2009a. The Code of Health and Disability Services Consumers' Rights. Available from: <http://www.hdc.org.nz/theact/theact-the-code>
- Health and Disability Commissioner. 2009b. Review of the Health and Disability Commissioner Act 1994 and the Code of Health and Disability Services Consumers' Rights. Available from: <http://hdc.org.nz/files/hdc/Review-of-the-Act-and-Code-2009-website>
- Human Rights Commission. 2004a. New Zealand Action Plan for Human Rights: Priorities for Action 2005-2010 Mana te ki tangata. Auckland, New Zealand: Human Rights Commission. Available from: <http://www.hrc.co.nz/report/actionplan/0foreword.html>
- Human Rights Commission. 2004b. Human Rights in New Zealand Today: New Zealand Action Plan for Human Rights. Nga tika tangata o te Motu: Mana ke te tangata. Auckland, New Zealand: Human Rights Commission.
- Minister for Disability Issues. 2001. New Zealand Disability Strategy: Making a World of Difference. Whakanui Oranga. Office for Disability Issues. Available from: [http://www.mhc.govt.nz/publications/1998/Blueprint 1998](http://www.mhc.govt.nz/publications/1998/Blueprint%201998)
- Ministry of Justice. 2009. Improving the Legal Aid System: A Public Discussion Paper. Wellington: Ministry of Justice. Available from: <http://www.justice.govt.nz/policy-and-consultation/legal-aid-review>.
- New Zealand Federation of Voluntary Welfare Associations. 2009. LawScene: Updating the community and voluntary sector about the law. September. Wellington: Law Scene NZFVWO.
- Statistics New Zealand. 2002. Disability Counts 2001. Wellington: Statistics New Zealand. Available from: <http://www.stats.govt.nz.domino/external/pasfull.nsf/web/Reference+Reports+Disability+Counts+2001>