

LACKING IN SUBSTANCE

Practical Problems for the DDA

Presentation to the Productivity Commission

Thursday 19 February 2004

Brief Outline

Introduction

I am a tertiary qualified social worker, specialising in the field of mental health. My presentation will focus on some of the problems associated with making a complaint of disability discrimination to the Human Rights and Equal Opportunity Commission (HREOC), where the person so aggrieved is mentally unwell. It will be my contention that this process of complaint handling can of itself be discriminatory. Further, I would suggest, HREOC workers generally lack the competence to adequately respond to mentally unwell consumers. To illustrate my point, I will refer to an actual case in which I was involved in 2003. This case, of alleged disability discrimination, was by a mentally unwell consumer against a university here in Sydney. Some of the key points that emerged from that consumer's complaint were that:

1. There was a huge power imbalance between the consumer and the university;
2. There were no advocacy services to which the consumer could turn for assistance;
3. HREOC workers made unreasonable demands upon the consumer to prove his disability;
4. HREOC workers failed to grasp the complexity of the consumer's lived experience;
5. The complaint took an inordinate amount of time to be finalised; and

6. The university eschewed the concept of the inclusive learning environment.

Please Note:

In detailing the relevant circumstances of the consumer's background, I will do so with regard to his intrinsic right to privacy. As such, I will alter several non-material facts and other potential identifiers. I am not so much interested in 'Billy's' story, as I will call this consumer, as I am in the systemic failings that his plight starkly underscores. There is, I believe, a marked distinction between the ideals of the Disability Discrimination Act (DDA) and the application of that Act to real-life situations.

Starting with Billy's Story...

*Billy was subjected to profound physical, sexual and emotional abuse as a child and adolescent.

*In clinical terms, Billy would be diagnosed as suffering from attachment disorder and post-traumatic stress disorder.

*However, in common with many survivors, Billy has been extremely resilient and highly adaptive.

*In almost aspect, Billy leads a successful life:

- *he is tertiary qualified;

- *he is professionally employed; and

- *he is in a stable, long-term relationship.

*And yet, there are shadows from Billy's past, deep intrapsychic scars, which sometimes impact on his daily existence.

*For example...

*Billy had been physically and emotionally abused by a teacher in primary school and sexually, physically and emotionally abused by a teacher in high school. He was effectively 'shamed' by those two teachers on almost a daily basis for six years in total.

...The concept of shaming is of the utmost significance here.

*In 2003, having just commenced study at a University here in Sydney, Billy was routinely shamed by one of his teachers, who insisted on 'barrelling him' in front of his peers.

*By 'barrelling' Billy, I mean that the teacher yelled at him to answer questions with statements such as 'hey you in the purple shirt'.

*This teacher also took, for assessment purposes, a photo of all the students and then without their permission, sent a poster board of those photos around the room for all the students to sign.

*Billy described the photo of him as 'grotesque', and having seen it myself, I agree. It was dark and grainy, his eyes were shut and he was in fact unrecognisable from the handsome young man that he is.

*This incident, along with the pointed questions, was causing Billy increasing distress. It was as if he was back in primary school or high school, being abused by those teachers again.

*Despite the seriousness of the situation, when Billy asked the University's Disability Adviser for assistance, she was of the opinion that unless Billy provided current medical evidence of his disability, no assistance would be forthcoming.

*The problem therein is that Billy had no current medical evidence. Like many survivors of child abuse, he has learnt to cope with adversity in his own unique way.

*That way was to get on with his life and distance himself from his early trauma.

*This approach is supported by evidence on how best to recover from such trauma.

*Billy has much documentary evidence from health professionals about the details and impact of the profound abuse he suffered as a child and adolescent.

*Billy can also call upon health professionals with whom he has had contact to explain the nature of his disability.

*Neither the University nor HREOC would even consider that this 'alternative' evidence be offered up.

*When Billy made a complaint of disability discrimination against the University to HREOC in May 2003, it took them until January 2004 before they finally decided that Billy's complaint 'lacked substance'.

*HREOC made no comment on the behaviour of the teacher in Billy's class in general or on the 'unauthorised photo' incident in particular.

*HREOC agreed with the University that it was not unreasonable for them to request that Billy provide current medical evidence of his disability before any assistance would be rendered.

*My analysis of this matter is as follows:

*In my professional opinion, if Billy had sought out current medical evidence, it would have caused him harm. This is because 'proving' his disability in a clinical sense would have required him to undergo intensive counselling over a prolonged period of time. What HREOC workers failed to grasp was that this was not like going to the doctor for a simple blood test. For Billy, it would have

‘opened’ up a number of deeply disturbing issues that he then would have to be work through.

*Billy is on a limited income. There are no free services in Sydney that can respond to the sort of complex presentation from which he suffers. Those services that do exist are costly and inaccessible to most people. There was never any suggestion from HREOC or the University that they would pay the bills for Billy’s counselling.

*In dismissing Billy’s complaint as ‘lacking substance’, the HREOC worker was making a professional judgment without the standing to so make. This worker had not referred this matter to a suitably qualified professional for consultation, which seems odd. As a mental health social worker, I can fully appreciate the intricacies of Billy’s disability. That he appears, in most circumstances, to be a highly intelligent and articulate person worked against his benefit in the eyes of HREOC. Their bias is towards equivocating disability with disease.

*Billy was relatively unsupported in making his complaint. It is a great shame that there is no general, mental health advocacy service in New South Wales to protect consumers from abuse and exploitation. Billy found himself up against a huge bureaucracy with its own legal team, a partisan Disability Adviser (as employees, Disability Advisers are obliged to put the interests of their employers first) and a hostile HREOC.

*That this matter was, due to the University dragging its feet, allowed to go on for so long effectively wore Billy down. Moreover, the University adopted an adversarial stance from the outset, fearing the possibility of litigation over the unauthorised photo incident. This makes a mockery of the DDA, somewhat, which aims for a more collaborative approach to complaints resolution.

*Billy's distress both in terms of the harassment he experienced in class and the complaints process that ensued could have been avoided altogether if the University had provided him with an inclusive learning environment. In such environments, students are treated with courtesy and respect and there exists multiple methods of assessment. In relying on class participation as one of only two parts to assessment, the University was pro-actively discriminating against many students living with a disability as well as those for whom speaking up is not their forte.

In conclusion, Billy's university studies came to an end and the University itself learnt nothing about how to change to meet the needs of all its students. People living with mental health problems in New South Wales continue to be subject to gross discrimination and harassment in all aspects of their lives with little recourse to justice. In this regard, the DDA has indeed been a pale instrument for good.

Sincerely,

Stephen Kilkeary
Specialist Counsellor