

CORRECTED VERSION

LAW REFORM COMMITTEE

Inquiry into access to and interaction with the justice system by people with an intellectual disability and their families and carers

Geelong — 20 March 2012

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Ms G. Laby, Advocacy Coordinator, Assert 4 All, Barwon Disability Resource Council.

The CHAIR — Glenda, were you in the room when I did my introduction?

Ms LABY — Yes, I have been here.

The CHAIR — So you do not need me to go through all that again. I invite you to talk us through your report. We do not want you to read it through, but just to highlight the particular issue which we are looking at, which is the access to justice for intellectually disabled people.

Ms LABY — Yes, sure. I am happy to answer any questions about the report, but what I had planned to do today was just to maybe tell a good story. I am sure you have heard a lot about what is going wrong in the system.

The CHAIR — All right, tell us a good story.

Ms LABY — I thought you might like to hear something that is good. Certainly anecdotally there seems to be a bit of an issue with legal aid funding, especially around intervention orders. Again anecdotally, intervention orders seem to be exploding and it seems to be an intractable issue. I could not begin to understand why it is a problem or what the solutions might be, but certainly legal aid funding is running out, so recently it has been necessary for me to represent clients in court in regard to intervention orders because there is no legal representation available. The Barwon Community Legal Service now only helps applicants for intervention orders in family situations. That means if friends or neighbours fall out with each other, those people cannot get any legal representation when they take out an intervention order against someone or if they have an intervention order taken out against them. Also they have reduced the days that they are available in court. They used to have a bit of a walk-up service, and it still operates, but the Barwon Community Legal Service is only in the Geelong court now on Tuesdays, Wednesdays and Fridays, and Victoria Legal Aid, which acts for respondents, is not available at court on Thursdays any more.

But moving onto the good story, I believed I was going to be representing one of my clients who has an intellectual disability who was an applicant against an ex-friend in an intervention order matter. Having no legal training, I was very nervous, but when I actually got to court on that Monday morning, Paul McFadden, the court liaison officer, had everything completely in hand. Paul McFadden has actually worked at the court as a liaison officer for many years, but I was not exactly clear on what his role was. It is very broad. I know he will intervene when a magistrate is concerned that someone has been charged with a criminal matter and suspects that they might have an intellectual disability but they have never been assessed, and I know Paul would be involved with that sort of thing.

Anyway, on this particular day my client had made an application against another person with not only an intellectual disability but also a psychiatric disability who was acutely unwell on the day of the court matter and would not be involved in court. Paul, having lived and worked in Geelong for a very long time, knows all the very well-known individuals in Geelong and he knew both the applicant and the respondent. Before the session started at court he was able to talk to my client about his application, explain that the respondent was unwell and just talk to him about the evidence that the court needs. Anyway he was able to talk to my client and not convince him or persuade him but just to explain what was required of my client on that day. My client decided to withdraw the application on that day and Paul made an undertaking to talk to the respondent when he knew the respondent was going to be better to see if some sort of informal mediation might be able to sort things out. So that court case was quite some time ago.

I talked to Paul McFadden yesterday. I have his permission to talk to you today. He has given me some information about the work he does and similar work that is done around the state. I might just talk a little bit about what Paul told me yesterday. If you could excuse me, I do not like reading off notes but these are Paul's words. Paul McFadden's role is court liaison officer at Geelong Magistrates Court. He is employed by the local psychiatric provider, which is Barwon Health, and he also receives some DHS funding. His work is based on past experience. I worked with Paul more than 10 years ago. He was working at disability services at DHS when I first met him. I think he has psychology credentials.

In other areas of Victoria, psychiatric nurses are available at the court, but they do not tackle intellectual disabilities. There are some disability workers in other areas, but I am not sure what their specialties are. The service offered in other court jurisdictions depends on the skill set of each clinician in that area, according to Paul.

The court regards Paul as an officer of the court. He is independent of Barwon Health and DHS and will argue against them if necessary. He must always uphold the values and best interests of the court, judiciary and governance. He is allowed to talk from the bar. Certainly the day that my client was in court and I believed that I was going to be the one representing him, Paul got up and explained to the magistrate that negotiations were at hand, what conversations he had had with my client and what he was planning to do with the respondent. He did a beautiful job, much better than I could have done. It was a fabulous relief to have him up there doing that.

He is allowed to talk from the bar and has access to court documents. Going back to the case study, I spoke to Paul yesterday. The case is between Shaun and Keith, as I will call them. Shaun is my client and he made an application some time ago against Keith, who was unwell at the time. Since that time Paul has been able to meet with Keith and read him the riot act, in Paul's words, and that was resolved. Unfortunately Shaun, my client, now feels that Keith has been getting a 16-year-old to bother Shaun and so Shaun was making another application against this 16-year-old. This is the intractable kind of nature of intervention order applications, I think, at the moment. Paul calls it people on the street gobbing at each other and then trying to formalise that through the courts.

What Paul did was explain to Shaun the evidence needed for court. So he would need evidence that Keith had got the 16-year-old to bother Shaun. He also explained, which Shaun would have heard a million times, the repercussions for breaching orders. Paul felt that with just a very short session in Paul's office, which is based at the court, Shaun got it and decided not to take any further action. Paul feels that Shaun sees Paul as an ally who will stick up for Shaun if there is substance to Shaun's issues. Paul says that during his recent meeting with Shaun he was able to critique Shaun's thinking and support it into some logical order. Paul does not take sides and he felt that both Shaun and Keith felt they had been heard in this process. That is the case study.

Going back to the broader benefits of Paul's role, Paul is someone people can come to. His is a door that is open. Paul keeps an eye on respect for all applicants and all legal rights of respondents in the court. He is very busy. When people come to the court to make an intervention order application they go to the registrar. The registrar cannot refuse a person their day in court, but they cannot just give a person their day in court lightly. Registrars can, though, divert people to Paul, who provides checks and balances. It is not about denying or depriving anybody a day in court but about providing insight into what the court needs. Paul of course needs to be careful not to be judge and jury and if Paul thinks there is anything to the allegations he identifies, he will act on them. That is what I wanted to say today, but I am happy to answer any questions about my previous report or any questions.

Ms GARRETT — Thank you for that; that was really helpful. You have noted in your work an exponential increase in the use of intervention orders, have you?

Ms LABY — Yes, but I could not say that that was actual evidence. It might be just that we are getting contacted by a lot of people — —

Ms GARRETT — With intellectual disabilities?

Ms LABY — With intellectual disabilities who are making intervention orders. There has been a person at Victoria Legal Aid here in Geelong who has been off on extended sick leave who, again, knows a lot of those sort of well-known individuals in Geelong and who has been very available to help in VCAT administration and guardianship issues, and since he has been off sick there has been a shortfall in legal representation for people at VCAT. I cannot say for sure whether or not it is because he is sick or because legal aid funding has run out as it is towards the end of the financial year. I am not sure exactly what is going on there. I think given that mediation services have been introduced in court — people like Paul and initiatives like that — it also suggests to me that there is a problem with the growth of intervention order applications. Does that answer your question?

Ms GARRETT — Yes, it does. It is just that we have not touched on that to date as an issue, so it has been interesting.

Mr NORTHE — Glenda, just in regard to the mediation centre, dispute settlement centre, you are suggesting there that maybe further training or education of those mediators might be worthwhile. Could you maybe just expand on that a little bit?

Ms LABY — Yes, absolutely. What I base that on is that the mediation centre had only just begun and it was an intervention order application again that was diverted to the mediation centre, dispute settlement centre, and the mediators then — I do not know if things have changed — were volunteers. They were fairly new, and it was really unprofessional and there was even giggling between them. It was quite embarrassing. It was not helpful and it did not solve the problem. That would have been several years ago. I have not been personally involved in mediation since then. Certainly most recently when I did represent three people in court for an intervention matter the mediation centre had worked with those people to try to find them some free legal aid legal representation and every avenue was exhausted, and they recommended us. The mediation centre was able to find some form of representation for those people on that day, so I would suggest that they have improved in their professionalism. They would have had to; they have had three or four more years experience.

Mr NORTHE — But the initiative is a good one.

Ms LABY — The initiative is a good one; it is just my first experience was not very positive, but I am sure it has improved since then.

The CHAIR — Your idea about the 24-hour call service, how would you see that operating?

Ms LABY — That was not so much my idea as one of the people interviewed. That was probably the longest case study that was mentioned in my report by a mum who was clearly at the end of her tether with a volatile son with autism. I think I have explained it in her words in her report. I think she described an SES, maybe a volunteer-style service that she could call or a DHS service that could be called. I think even some professionals would appreciate a service that could be called. I work three days a week in Geelong and I work two days a week in Bacchus March. When I am in Bacchus March I get a free desk at the local shire. They had an incident recently on a weekend. The shire is not a weekend service but they do run a respite service. There was an abusive situation that came to hand, very concerning, and there is no DHS to call on the weekend.

Child protection is a 24-hour service, but DHS does not have a 24-hour service and I think that it is very worrying. I was a child protection worker many years ago. I came across a young woman who was incredibly abused and neglected, and I rang and rang. I would know now what I could do to help that person, but at that time I could not find the information. If she had been a turtle, I could have got help for her, but no-one could give me information on how to help an adult with a disability who was being abused. In saying that I would know what to do to help that person now, it would be a very long process. It would be going to VCAT; it would be requesting an investigation by the Office of the Public Advocate, which has about a three to four-month waiting list for those investigations at the moment. That would also protect an elderly person who might be abused, but compared to a child protection system which is ‘24 hours: ring them now’, there is nothing for adults who are vulnerable. I know that is a huge thing that I am suggesting, but it is a concern and it has been since I began my career.

Mr NORTHE — That is what you are here to do: offer suggestions.

Ms LABY — Yes.

Mr NORTHE — I am just thinking about your answer.

The CHAIR — Jane, do you have anything else?

Ms GARRETT — No. It has been very helpful; thank you.

Mr NORTHE — Yes, and it was a very good submission.

Ms LABY — Thank you very much, and hats off to the people who attended our forum and who met with us and were very frank.

Ms GARRETT — Yes, because it is hard thing to do.

Ms LABY — Yes, they all did a brilliant job — and they are their words. I was very impressed with all of them. Thank you very much for the invitation to present today.

Witness withdrew.