Diarmuid Hannigan

Sunday 05th of May 2011

“Lawyers in private practice are not bound by The Victorian Charter of Human Rights”

To Mr Edward Odonohue

Scrutiny of Acts and Regulation (Chair)

Inquiry into The Victorian Charter of Human Rights

Dear Mr Odonohue

I am forwarding you correspondence I have received from the Federal Attorney General and the previous Victorian Attorney General regarding the fact that lawyers who are in private practice are not bound by the Victorian Charter of Human Rights.

I would ask your committee of review to consider this matter when reviewing The Victorian Charter of Human Rights and its impact on human rights jurisprudence within the state of Victoria.

I draw your attention to the following articles contained within the Universal Declaration of Human Rights.

Article 16 (3) The family is the natural and fundamental group/unit of our society and is entitled to protection by the society and the state.

Article 17 (2) No one shall be arbitrarily deprived of their property.
Article 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it is independent, trust, non-self-governing or under any other limitation of sovereignty.

The State Attorney General and the Federal Attorney General are avoiding the main points of my two letters which deals with:

- The power relationship between family and a lawyer.
- The human rights ramifications of the current power imbalance on everyday Australians who have to consume the services of the legal profession.
- The legal industries human rights obligations to the clients and the community it should serve.

They fail to address and answer my concerns, concerns that identify a serious fault within our legal system, a fault that goes to the core and foundation of our civilised society. A fault that if not addressed and addressed immediately, will internally and externally rot our nation.

The principals by which we create our laws result in real outcomes, if we do not acknowledge the importance of the power dichotomy between lawyer and a family as inherent to right and wrong. (The family being disempowered being wrong and the lawyer being empowered within their relationship being wrong. Then one would presume the family being empowered and the lawyer being disempowered would be right.)

If this principal does not exist how can we hope to heal the internal wrongs within our society? We have said sorry to our indigenous population for the stolen generation tragedy and yet the very lack of principal that allowed us to create such pain by the rule of law is not addressed.

We are viewed externally as a party to the invasion of Iraq and Afghanistan under the auspices of "the rule of law" but if we allow plunder of our own families by a privileged lawyer elite under "the rule of law" how can we not be surprised at the cynicism of the invaded and their claims of plunder. Hypocrisy is a very dangerous road to hoe; eventually it is always defeated by the truth.

The future of human rights jurisprudence for Australians must not be controlled by the privileged legal elite who remain outside of any Human Rights Charters, as they have always shown they act for their own financial gain rather than for the nation as a whole when forming, practicing and administering our legal system.

In Victoria the Attorney General has made a determination that lawyers in private practice are not bound by The Victoria Charter of Human Rights. I
assume that the clients of lawyers who are in private practice are human. I assume that lawyers who are in private practice devote a large proportion of their activities to matters involving families although lawyers do not have to take family law as a subject to gain a law degree. I assume, that considering the important function lawyers who are in private practice perform, it would be an imperative of a responsible government, to ensure they recognise the importance of their role in making sure families remain healthy, financially viable and together, because this permits our society to develop in a healthy manner. Since families are composed of human beings both adults and children I would assume they would be protected from human rights abuses by lawyers under The Victorian Charter of Human Rights.

If it is as our former attorney general Robert Hulls infers, one realises that during the years a lawyer works in private practice he is not indoctrinated into the development of human rights jurisprudence as he is not bound by this ethos. Since many become members of the judiciary, parliament or hold influential positions in government, for the benefit of the development of human rights jurisprudence, an ethos of human rights within the profession is fundamental.

Bringing lawyers into the Victorian Charter of Human Rights will ensure our laws are created, practiced and administered by people who are considerate of the human rights consequences of their actions and other members of their legal fraternity.

I would hope that the outcomes would:

- Prevent a lawyer from empowering themselves over a family when dealing with a deceased estate or any other family matter, by utilisation techniques of legal thuggery to advantage his and his firms finances.
- Guarantee that any lawyer performing functions that involve family’s (where all parties are of the one family) in a paid capacity, would respect the inheritance rights of individuals, and the long term health of relationships between family members as basic human rights.
- Ensure that any lawyer acting in these family matters was trained in mediation and alternative dispute resolution and utilised these mechanisms to resolve any issues within the family and not use combative tactics to feather their own nests.
- Ensure that any lawyer acts in accordance with any quality systems and mandatory training programs legislated so as to ensure the Victorian Charter of Human rights is adhered to and that human rights and financial abuse by a lawyer can be easily identifiable.
- Ensure that there is a cheaper more efficient way of dealing with deceased dispute disagreements in order to protect the inheritance rights thus human rights of every day Australians from the abuse of self-serving unaccountable lawyers. I am sure that the majority of issues pertaining to deceased estates could be resolved by well-trained commissioners without expense and the trappings of our supreme courts.
- Ensure that the government acknowledges that paid lawyers are performing an essential public duty under statutory regulation when
probating a deceased estate. Even though they are paid out of the estate they are performing a role that would otherwise have to be performed by the government in order for our society to function.

Thus, if as we all do, we recognise that common sense will always prevail in the end. Then lawyers who are in private practice when dealing with internal family matters must be bound by the Victorian Charter of Human Rights.

The Victorian Charter of Human Rights is failing us at an even higher level. From the public’s perspective The Office of the Victoria Ombudsman and the Office of The Legal Services Commissioner perform an important role in determining the direction of human rights jurisprudence for Victorian citizens.

After receiving 92 complaints from the public on the operation of the Victorian Legal Services Commissioner in 2009 the Victorian Ombudsman carried out a report on this office. The Victorian Ombudsman can neither confirm nor deny it exists, despite the fact that the Victorian Ombudsman mentions the report in his 2009 annual report and the Victorian Legal Services Commissioner refers to the same report which contains 28 recommendations in his 2010 annual report. The report has not been tabled in parliament which prevents it from becoming public knowledge. I can only assume this has occurred because of pressure from the legal industry as its release would lead to greater accountability of the profession. This type of pressure is undemocratic and impedes human rights jurisprudence.

Considering the importance of the role the Legal Services Commissioner plays in determining how our legal profession formulates, practices and administers our laws having in mind the development of a human rights ethos within the profession to its customer base I am perplexed as to the reasons the Attorney General had for failing to table this report in parliament and allowing the citizens of Victoria to contribute to the jurisprudence of our human rights.

The failure by the previous Victorian Attorney General [Robert Hulls] to table the report of The Victorian Ombudsman on the Office of The Legal Services Commissioner to parliament has effectively hidden its contents from the public and prevented the report from becoming public property; by doing so it can be perceived as a mechanism for aiding and abetting lawyers who are currently abusing human rights in Victoria. It appears as if the Law Institute of Victoria has pressured the Victorian Attorney General into withholding the report.

Does one therefore assume that the Attorney Generals Department, the agency that proposed the Victorian Charter of Human Rights is so dominated by the influence of the legal industry that it is prepared to sacrifice its human rights principals and make a mockery of its own creation and is this democratic?

I ask you to ponder this question.

What would happen if there were no probate laws in our society?

Answer: Anarchy!
The state has formed its rule of law through the cohesion of families via organised law pertaining to inheritance. The probate laws enacted by the state ensure the estate bears the cost of probate. Instead of taxing or using the common purse the legislature has by the rule of law made the estate pay because it is the most efficient way and it does not charge for small estates. Probate is thus a public function funded through private means under government statute because it is the most sensible way to go about it. Common sense emanates from family cohesion over the long term as a means for survival of the family gene.

The access to Justice Report does not contain any mention of.

- Practicing lawyer’s human rights obligations to their customer base and to the wider community.
- Accountability for lawyers to consumers regarding the quality of their workmanship or in justifying the paths they have taken during their relationship with a particular dispute and their fees.

Its frame work does not identify the fundamental power relationships that exist within our construct of a human civilised society that are governed by the rule of law. It does not state that the family unit is the construct from which the law arose and by which our society continues to exist. Thus it does not restrict self-interested unaccountable lawyers from exploiting vulnerable families, abusing their human rights and stripping them of their assets to feed their never ending lust for material wealth.

The failure to define the very principals by which we live in order to protect a legal elite prevents us from identifying the basis and purpose for the term “the rule of law”.

The task force of the access to Justice reform body is dominated by the legal industry not the bodies that consume its services. In developing a policy to enhance access to justice and the jurisprudence of human rights within Australia you may as well appoint Genghis Kahn to further the cause as a replacement for a Lawyer dominated strategic task force. The problem is not the person it is how they have been programmed through their educational and social experience that is the issue. Lawyers are taught partisan tactics due to the adversarial system that they have to operate in. This skill is not one that would assist in improving access to justice for the majority of Australians.

“Access to justice is central to “the rule of law” and integral to the enjoyment of basic human rights. It is an essential precondition to social inclusion and a critical element of a well-functioning democracy”
(Robert McClelland ATTORNEY- GENERAL)

This said the question is how to achieve the outcome.
We must define the objective.

To define the objective we must ask what are the founding principles upon which our legal system is formed, does it currently serve its purpose and if not,
how do we restructure it or rebuild it so as it can serve the purpose demanded from it by a contemporary democratic society?

We want a legal system that;

- is affordable,
- respects the values and frame works that make us a human civilised society i.e. respects our human rights, observes that legal professionals are also human and therefore are equal to their clients and are not permitted to empower themselves over clients.
- Provides consumers of its services with predictable outcomes where the professionals are accountable for the work they do and the decisions they make to the wider society and to the consumers of their services.
- Ensures that quality standards are incorporated into the day to day running of the industry.
- Ensures that the wider community has a majority representation on any law reform task forces in order that the communities’ interests are protected from exploitation by the legal elite.

I trust you appreciate the importance to our development in having a synergy between our human rights and how laws are practiced by lawyers and you will ensure that those who form our legal industry are bound by the Victorian Charter of Human Rights, even lawyers who are in private practice when performing duties relating to deceased estates.

Yours Sincerely

Diarmuid Hannigan.

PS

I have forwarded you a copy of:

Working Families denied Natural Justice

The response from the Victorian Attorney General’s Office.

An open Letter

The response from The Federal Attorney General

A copy of Lawyers or Grave Robbers?