

Day Three of Public Hearings

Session: Developing a culture of Human Rights: education, public awareness and active citizenship

Presentation from Phil Lynch, Director, Human Rights Legal Resource Centre

Thank you for opportunity to participate in Public Hearings.

Deal briefly with threshold question: “What is a ‘culture of human rights’ and why may it be desirable to develop such a culture?”

The British Equality and Human Rights Commission defines a human rights culture in the following way in their recent major Human Rights Inquiry Report: “A framework which recognizes that everyone has the right to be treated with fairness, dignity and respect and which balances competing rights and duties and in so doing encourages social responsibility.” (p. 29)

For me, this captures two important insights:

First, a culture of rights is deeply communitarian – it seeks to ensure that all people enjoy the conditions that are necessary to live with human dignity, and have equal access to the capabilities that are necessary to fully participate in a democratic and inclusive society. Second, a culture of rights is not a culture of individualism. Far from promoting individualism, human rights instruments such as the Victorian Charter of Human Rights and Responsibilities and the ACT HRA explicitly recognise that:

- human rights come with responsibilities and must be exercised in a way that respects the human rights of others; and
- human rights must be balanced with other considerations, such as national security, public health and public order.

Being a specialist human rights community legal centre, we work on a daily basis with a diverse range of marginalized and disadvantaged individuals and groups, service providers, bureaucrats and politicians.

Being a national but Melbourne-based legal centre, we also work across jurisdictions with differing levels and frameworks of human rights protection.

We are, I think, therefore uniquely placed to offer a practice and evidence-based assessment of the difference that a culture of human rights can make, and the role of a range of measures, including particularly a Human Rights Act, in developing such a culture.

From this perspective, I want to outline and briefly discuss 4 fundamental observations. First, a Human Rights Act can have a powerful normative and educational impact. In Victoria, we have used the Charter to protect dignity, address disadvantage, challenge

unfairness, promote flexibility and responsiveness, and enhance policy-making and service delivery – sometimes through litigation but much more often through dialogue, advocacy and negotiation. I will give a brief summary of five cases in which our Centre has been directly involved to illustrate these benefits:

In the case of Ms D, the Charter was used to protect dignity, the right to respect for children and families being invoked to stay the eviction of a single pregnant mother and her children from public housing into homelessness

In the case of JR, the Charter was used to address disadvantage. The human rights principles of participation and context were central to securing access to disability support services for children with Asperger's Syndrome

In the case of Ms Murphy, the Charter was used to challenge arbitrary and unfair policies and treatment. In this case, the principles of equality and non-discrimination ensured access to therapeutic treatments for severe hand contractures in a middle-aged woman, in the absence of which her hand would have required amputation

In the case of a number of young people with acquired brain injury, the Charter was used to promote flexibility and responsiveness. The Charter was relied on to prompt a review of a policy pursuant to which, as a matter of practice rather than after any individualized needs assessment, young people with acquired brain injury were removed from a tailored rehabilitation facility after two years and placed in inappropriate aged care homes

In the development of Victoria's new Corrections Regulations (which govern matters such as strip searching, visitation rights and access to education and rehabilitation in prisons), the Charter required a more transparent and participatory approach to policy-development than would have otherwise been the case, and was used as a framework to audit and enact not only more rights-compliant, but more effective laws

My second point is that, in order for a Human Rights act to have (or at least maximize) the positive impacts I've referred to, it must be comprehensive, judicially enforceable and afford effective remedies.

By comprehensive, I mean that the Act should enshrine the full range of civil, political, economic, social and cultural rights. Such rights are inter-dependent and mutually reinforcing. In my experience, it makes little sense to talk to the homeless person of their right to privacy, for example, when we do not recognize their right to adequate housing. By judicially enforceable, I mean that all rights in an Act should be justiciable and that effective judicial remedies must be available as an ultimate sanction and vindication. None of the cases I have referred to were determined by litigation – they were all resolved through negotiation, advocacy and common sense. This was made possible, however, by first, having in place a normative framework in the form of the Victorian Charter and second, that framework being judicially enforceable. While codes of conduct and soft power options may work well for the well-intentioned, sometimes something more is needed to achieve cultural change, particularly among the recalcitrants. More

often that not, one of the first questions I am asked by public authorities when providing them with Charter training is whether the Charter is ‘just’ a code of conduct or something which needs to be taken seriously, like anti-discrimination or occupational health and safety legislation.

It is worth asking, rhetorically, “How well would normative legislation, whether anti-discrimination laws or the Trade Practices Act, operate if they were merely aspirational, or parliamentary guides?”

The UK Equality and Human Rights Commission’s recent report, to which I have already referred, draws the following conclusion after reviewing a significant number and diversity of cases in which the Human Rights Act has been called in aid:

“The case studies were mostly settled without recourse to litigation. By talking to each other, individuals, advocates and public authorities were able to reach an understanding of the appropriate approach to be used in a specific case. Although these case studies amount to justified appeals to common sense and common decency, it was the human rights arguments that made the difference by providing a framework and a set of standards to guide the decision-making.”

My third point is that, in order for a Human Rights Act to have the positive impacts I’ve alluded to, it must be accompanied by targeted, well-resourced, ongoing education and training.

For legislators, policy-makers, the judiciary and the public sector, inadequate education and training runs the risk of rendering any human rights instrument – no matter how eloquent and comprehensive – little more than a tick-the-box exercise.

In their recent Concluding Observations on Australia, the UN Human Rights Committee noted that Australia lacks a framework and programme to promote knowledge of human rights and recommended “a comprehensive plan of action for human rights education including training programmes for public officials, teachers, judges, lawyers and police officers”.

For human rights to be relevant, living, breathing, dynamic and effective, the community, particularly the marginalized and disadvantaged, must be able to understand and exercise their rights, whether independently or, more often, through community sector advocates. This requires ongoing education and training for the community, and adequate resourcing for community sector advocates.

My fourth and final point is that there are a range of other initiatives that could assist in developing a culture of human rights. In our first submission to the Consultation, entitled Engage, Educate, Empower, we set out eight key areas in which reform would assist in this process. Briefly, these areas relate to:

- expanding the role, functions and resources of the Australian Human Rights Commission;

- developing, mainstreaming and integrating human rights education at all levels of the curricula;
- expanding access to justice, including through additional funding for the legal aid and community legal sectors and through government procurement practices;
- building human rights capacity in Australian civil society, including through additional resources, taxation reform, and dialogue with government;
- enhancing Australian engagement with the international human rights system and mainstreaming and integrating human rights in Australian foreign policy, including with respect to aid, development, trade, investment and security;
- establishing a Joint Parliamentary Committee on Human Rights to lead parliamentary engagement with and understanding of human rights issues at both the domestic and international levels;
- holding a national, public inquiry into the merits of a single, comprehensive Equality Act; and
- developing and deploying a range of soft and hard power options for promoting the human rights responsibilities of business.

I will conclude by re-iterating that these initiatives would be most effective as complements to human rights legislation and that the effective development of a culture of human rights requires a robust enabling framework; namely a comprehensive, national, judicially enforceable Human Rights Act.