

SA Law

A specialist legal service in Adelaide. PAUL LEADBETER reports.

Environmental Law Community Advisory Service (SA) Incorporated (ELCAS) is a non-profit community legal centre which was established three years ago to serve a need in the community for legal assistance with environmental problems and queries. The service is jointly sponsored by the National Environmental Law Association (SA) Division and the Australian Centre for Environmental Law (The University of Adelaide). It is a member of the South Australian Council of Community Legal Services and is located in the Bowden/Brompton Community Centre which is situated at Brompton in the inner western suburbs of Adelaide.

ELCAS provides members of the community with free preliminary legal advice on environmental law problems or enquiries. Issues dealt with may involve questions of air, noise, land or water pollution, heritage, land use planning or public health. The advisers, who are voluntary, are qualified lawyers with particular skills in environmental law. They are assisted by senior law students and experts in areas such as health and land use planning.

ELCAS is managed by a Committee which has appointed from its membership, an advisory service co-ordinator to ensure the effective running of the service.

At present ELCAS operates a weekly advisory service on Thursday evenings. People interested in using the service make an appointment and attend the centre for the purposes of obtaining preliminary legal advice free of charge. The preliminary advice is designed to establish whether this is an environmental law problem and, if so, what steps need to be taken to proceed further.

In exceptional circumstances, the ELCAS Management Committee may refer a client with a matter of particular public interest to a law firm for detailed advice. ELCAS is supported by a panel of Adelaide law firms which have agreed to provide this service on either a free or fee reduced basis. Fee arrangements are discussed between the client and the law firm. A number of barristers from the independent bar in South Australia have also offered their services on the same basis.

The objectives of ELCAS include the assistance of disadvantaged people and classes of people for whose needs the services of lawyers in private practice are inadequate to gain access to legal services on environmental law matters, to increase awareness within the community concerning legal remedies in relation to environmental problems and to promote forms of alternative environmental dispute resolution. A further objective is the promotion of the establishment within South Australia of an Environmental Defenders Office modelled on that in New South Wales.

Funding is a perennial problem for ELCAS. At present the service relies on voluntary contributions and as such will always remain a part-time service until there is sufficient funding to employ a lawyer on a permanent basis. ELCAS was given a major boost at the beginning of the 1994-95 financial year when it received advice from Mr David Wotton, the South Australian Minister for Environment and Natural Resources that he would provide funding of \$10,000 a year

for three years to enable the service to better establish itself. There have been a number of changes to environmental legislation within South Australia in the past couple of years and it is clear from requests received by ELCAS and the Minister's grant that there is a strong need for a service such as this in the South Australian community.

The establishment of an EDO in South Australia is being actively pursued at the present time with strong support and guidance from the New South Wales EDO. In fact support is being sought from the Federal Government for funding to enable the creation of Environmental Defender Offices in every State and Territory. The proposal for national funding of EDOs is being prepared as part of the process dealing with the access to justice submission. The argument will be put that public interest environmental law and litigation and access to justice in relation to the same is just as important as social justice issues, and that, in any event, those issues often overlap.

Anyone wishing to contact ELCAS should write to the Secretary, Environmental Law Community Advisory Service Incorporated, GPO Box 1767, Adelaide SA 5001, or contact the Chairperson Paul Leadbeter on (08) 210 1227.

Paul Leadbeter is an Adelaide Lawyer.

INTELLECTUAL DISABILITY

Police interrogation

Protecting rights or facilitating confessions? KIRSTEN DEANE examines the role of independent third persons.

A 15-year-old boy who admitted stabbing a 40-year-old woman in her Melbourne home had his confession ruled inadmissible after the judge questioned the behaviour of the independent third person involved in the case.

Supreme Court Justice Hampel ruled that the boy's confession was not voluntary, and that he had probably been induced to answer questions by the independent third person (ITP) called to assist him. The ITP told the boy, then only 14 years old and with a borderline IQ, that he should tell the truth because 'if he didn't tell the truth to me, he couldn't tell the truth to anybody and that I couldn't go in to bat for him if he hadn't told the truth'.

Justice Hampel acknowledged that the ITP had acted in good faith and with the best of intentions. However, he said, while the boy realised he retained the right to remain silent, he probably concluded more help would be available to him if he co-operated. The boy later pleaded guilty.

Justice Hampel's comments come only one month after another judge criticised the actions of an ITP during the questioning of a man with an intellectual disability charged with the indecent assault of two young girls in a Melbourne

primary school. Dominic Simm was acquitted after Justice McNab ruled that his videotaped 'confession' was neither fair nor voluntary. He found that Dominic had not understood his rights, and that the ITP had done little to assist him.

Despite the fact that Dominic often offered contradictory and inconsistent responses to questions, and readily changed answers in response to police prompts, the ITP did not interrupt during the two-hour, 741 question interview. The defence told the court Dominic would have been 'better represented by a poodle'.

Both cases highlight continuing concerns about the competency of ITPs called to assist young people and people with a disability during police interviews.

The ITP scheme was introduced into legislation after anecdotal evidence and research suggested young people were particularly vulnerable during police questioning. Recognition of similar problems experienced by people with a disability led to the creation of a separate program in 1988, run by the Office of the Public Advocate. Police standing orders directed members to conduct interviews with individuals suspected of having an intellectual disability in the presence of an ITP. The program was widened in 1991 to include people with a head injury, psychiatric disability, or senile dementia.

The programs appeared to offer a pragmatic solution to the difficulties experienced by young people and people with a disability in police interviews. The environment of the police interview is bewildering for most, but the formal language and structure present particular difficulties for young people and people with a disability.¹ Individuals with a limited social world are more likely to modify their responses on the basis of cues provided by others; both groups are often anxious to please those in authority, responding in ways they perceive as expected.² Both groups may find it difficult to grasp the future consequences of their statements and may be solely influenced by present circumstances.³

To counter some of these difficulties, ITPs are expected to facilitate communication between the two parties, provide emotional support to interviewees and work to ensure they understand their rights.

The programs have failed to live up to expectations. Little attention has been paid to the critical issues of recruitment, training and on-going support – issues the Review Committee believed should be given a 'high priority lest the third party system turn into mere tokenism'.⁴ Despite the warnings, an evaluation of the ITP program for people with a disability found that lack of funds, poor recruiting procedures and the limited training of volunteers had hindered the effectiveness of the program.⁵

The majority of ITPs are drawn from groups which carry out other volunteer roles in the criminal justice system – bail justices, honorary probation officers. While familiar with the workings of the system, their experience with disability is usually limited. ITPs are provided with only four hours of training. The chance to develop on-the-job expertise is rare – almost 50% of ITPs contacted for the evaluation had not attended an interview since completion of training. For some, more than two years had passed.

In the absence of comprehensive training and detailed guidelines, ITPs are left to carry out the job in accordance with their own personal preferences and their own understanding of 'best interests'. One ITP interviewed for the

evaluation recounted the case of a young girl with an intellectual disability who alleged she had been raped. During the course of the interview, the ITP told police she believed the girl was lying and that 'she had the morals of a cat'. After a few more cursory questions the police terminated the investigation.

The evaluation and two recent cases demonstrate that the philosophy of independence underpinning the program is itself problematic. ITPs are called on to balance often competing demands, fulfilling both advocacy and investigatory functions. On one hand, they are expected to win the interviewee's trust and provide emotional support. At the same time, they are expected to assist police with their investigation by facilitating communication.

Most police interviewed for the evaluation, for example, believed the presence of the ITP calmed the interviewee, enabling freer communication. Liberating an interviewee from anxiety may not be an advantage, particularly if this means a greater willingness to confess to criminal activities.

The role of ITPs is inherently contradictory – they are present to facilitate communication even though it is the right of one of the parties to remain silent.

ITPs may well be useful in some circumstances, but they cannot address all the difficulties experienced by young people and people with a disability in police interviews. The irony is that while intended to compensate young people and people with a disability, the program further disadvantages them by creating the false illusion of fairness. The program legitimates the existing system by providing a 'solution' which allows current practices to continue unchallenged and heads off calls for more fundamental reform.⁶

Kirsten Deane is a postgraduate student, School of Law and Legal Studies, La Trobe University.

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