

## NOTE ON LEGISLATIVE PROVISIONS RELATING TO DISABLED PERSONS

During 1981, the International Year of Disabled Persons, one of the most important things we have learned is that one in ten New Zealanders has a disability. No longer when we speak of disabled persons will we be thinking of an abstract group who live their lives in isolation from the rest of society. Instead, we will be speaking of relations, friends and neighbours.

As a contribution to IYDP a group of second year law students was given the opportunity to write a note for the Otago Law Review on the operation and effect of New Zealand legislative provisions relating to disabled persons. This note does not purport to be a complete summary of legislation applying to the disabled but concentrates on three different aspects of legislation concerning disabled persons: first, legislation providing benefits; then, those legislative provisions which promote the aims of groups specialising in helping the disabled, or which refer to specific categories of disabled persons; finally, the general rights of disabled persons.

### I LEGISLATION PROVIDING BENEFITS

Everybody desires to be accepted in the community, choose their own lifestyle, to work, to have a social life and the opportunity for education. The disabled are no exception. However, for them these aspirations may easily be frustrated in the absence of outside assistance.

#### 1 *Monetary Benefits to Disabled Persons*

In the following sections the various forms of financial benefits available to the disabled are outlined: medical and living costs, the expense of house and car alterations and provision for dependants.

##### (a) Medical Benefits

Many disabled persons rely heavily on professional medical assistance in the form of hospital, specialist or paramedical services. Provision is also made to compensate for permanent loss of limbs through the provision of artificial limbs and aids to encourage mobility and normal living.

##### Accident Compensation Act 1972

This is a general compensatory Act dealing with all classes of "personal injury by accident" and covers many types of disability. However, one disadvantage of this Act is its provision for "accident" only and not for sickness. This excludes a large proportion of the disabled.

Section 110 provides for reasonable cost, replacement and repairing of teeth, artificial limbs and aids etc damaged in an accident.

Section 111 provides for payment for treatment (as outlined in subsection (2) ), provision of hospital, doctor, drugs or treatment by radiological, physiotherapy or other paramedical services; payment will be made if it is necessary for the patient to travel overseas.

#### Social Security Act 1964

This Act is designed to provide payment of benefits to safeguard the people of New Zealand from disabilities arising from age, sickness, widowhood, orphanhood, unemployment and other exceptional conditions, and to provide a system whereby medical and hospital treatment will be made available to persons who require it.

Sections 93-96 provide for fees for general medical services; section 97 for fees for specialist medical services; sections 99-100 for pharmaceutical benefits; sections 101-105 for hospital benefits; and section 116 establishes the power to prescribe supplementary benefits as necessary for the effective operation of the benefits outlined or the maintenance of public health.

#### (b) Living Costs

Benefits under this heading include compensation for loss of wages; transport costs incurred during medical treatment; lump sum payments for permanent physical disability, pain, disfigurement and loss of life.

#### (i) Lump sum payments

##### Accident Compensation Act 1972

Under section 119, in addition to all other compensation and rehabilitation assistance provided by the Act, lump sums are payable for non-economic loss related to permanent loss or impairment of bodily function. Payment may be revised if further loss or impairment from the same injury is proved.

Under section 120 compensation is provided for loss of amenities or capacity for enjoyment of life. Compensation for pain and mental suffering including nervous shock and neurosis will be made after two years or if the injury has stabilized previously.

Section 121 provides for additional compensation for actual and reasonable expenses and proved losses necessarily and directly resulting from injury or death; for the care of a patient in any place of abode or institution, if the injury is of such a nature that he must have constant personal attention.

#### (ii) Periodical payments

##### Accident Compensation Act 1972

(As it relates to the payment of periodic benefits)

Section 113 provides for earnings related compensation after the first week. Compensation is set at eighty per cent of the amount of loss of earning capacity until a permanent figure can be established.

Section 114 provides for the assessment of permanent incapacity once

the medical condition has stabilised. If, after assessment, the condition deteriorates as a result of the same injury the weekly amount of compensation may be increased.

### Social Security Act 1964

In trying to achieve the aim of safeguarding the people of New Zealand from disabilities and providing such benefits as may be necessary to maintain and promote the health and general welfare of the community this Act provides for the granting of the following benefits:

#### Invalid's benefit

Section 40 (as amended by section 7 of the Social Security Amendment Act 1976) entitles anyone, subject to the provisions of this part of the Act, upon reaching the age of fifteen years to an invalid's benefit if he is totally blind [section 40(a)] or permanently and severely restricted in his capacity for work as the result of an accident or by reason of illness, or of any congenital defects [section 40(b)] provided that his disability was not self-induced or brought about with a view to qualifying for this benefit.

#### Miner's benefit

Sections 47 to 53 provide that anyone who has been employed in New Zealand as a miner for not less than a total of two and a half years [section 48(a)] and who has resided continuously in New Zealand for not less than five years immediately preceding the date of his application for this benefit [section 48(b)], shall be entitled to receive a miner's benefit if he has contracted miner's phthisis (pneumoconiosis or tuberculosis of the lungs) or any other occupational or heart disease while engaged as a miner in New Zealand, and is thereby permanently and seriously incapacitated for work [section 47].

Section 67(7) of the Accident Compensation Act 1972 prevents recovery of compensation under both Acts.

#### Sickness benefit

Section 54 provides for the granting of a sickness benefit to every person attaining the age of fifteen years who has resided continuously in New Zealand for not less than twelve months, if that person is temporarily incapacitated, or will for an indefinite period be incapacitated, through sickness or accident, thereby suffering a loss of salary, wages or other earnings.

#### Emergency benefit

Section 61 gives the Social Security Commission power to grant an emergency benefit, subject to such conditions as it thinks fit to impose, in cases of hardship to any person who, by reason of age, or of physical or mental disability, or of domestic circumstances, or for any other reason, is unable to earn a sufficient livelihood for himself and

dependants, if any [section 61(1)(a)] and who does not qualify for any benefit other than the family benefit [section 61(1)(b)].

### Disability allowance

Section 69C gives the Commission power to grant a disability allowance, if it thinks it is warranted having regard to the nature and extent of the disability of that person [section 69C(2)(a)] and any additional expenses arising from the disability of that person [section 69C(2)(b)]. Those people who may be entitled to such an allowance are defined in section 69C(1).

### Disabled Persons Community Welfare Act 1975

The aim of this Act is to make better provision for financial and other assistance in respect of the disabled and for the support of voluntary and private organisations concerned with providing for community welfare, sheltered employment, training and day care facilities for the disabled.

For the purposes of this Act, a "Disabled Person" is defined in section 2 as "any person who suffers from physical or mental disablement to such a degree that he is seriously limited in the extent to which he can engage in the activities, pursuits and processes of everyday life."

The Disabled Persons Employment Promotion Act 1960 (*infra*) provides an alternative definition which concentrates on the person's capacity to work. "Disabled person means a person who, by reason of injury or disease or congenital deformity or old age or other physical or mental incapacity, is substantially handicapped in obtaining nor keeping employment of a kind which, apart from that injury or disease or congenital deformity or old age or incapacity, would be suited to his experience and qualifications." [section 2]

A disabled person, then, suffers from physical or mental disability in such a way that he is limited in his capacity within the context in which the particular Act seeks to aid him.

Periodical payments are provided by this Act under section 13(1): where treatment or assessment is necessary payment will be made for the cost of fares, meals and lodgings necessarily incurred; section 26(3)(a): financial assistance will be available for undergoing assessments, work experience, training or education; (b): travelling and accommodation expenses will be available where it is necessary to reside away from the ordinary place of residence; (c): assistance will be made available towards the cost of training, education or clothing, or the obtaining of practical experience or equipment necessary to enable engagement in any suitable occupation; section 27(1)(d): financial assistance is available to enable the disabled person to become self employed; section 28: a rehabilitation allowance may be granted where a disabled person is undertaking assessment, work experience, education or training for employment in an organisation carrying out an approved training programme.

### (iii) House and car alterations

While much of the legislation relating to benefits for disabled persons appears almost "clinical" in its form, it is important to remember the

object of the legislation, namely to assist the living of a full and active life. In this section therefore we discuss the assistance available for alterations to houses and cars to allow the disabled to lead as normal a life as possible.

### Accident Compensation Act 1972

Section 49(2)(3) provides for house adaptation to enable a disabled person to be discharged from institutional care.

Section 49(2)(g) provides for the adaptation of motor vehicles where such adaptation will assist rehabilitation, or improve earning capacity.

### Disabled Persons Community Welfare Act 1975

Under section 14 suspensory loans are available for essential alterations to homes in order to accommodate wheelchairs and other appliances for the general welfare of disabled persons, to provide handrails and similar aids and alterations to plumbing, electrical fittings and kitchen facilities.

Section 15 makes provision for the supplying of walking aids and other similar appliances.

Under section 16(A) (as inserted by section 2 of the Disabled Persons Community Welfare Amendment Act 1979) loans and grants are available for buying or altering motor vehicles, where a necessary form of transport for a disabled person to undergo training for or to obtain or retain employment which will enable him to achieve a substantial measure of financial independence.

#### (iv) Dependants

The effect on dependants of loss of earnings and the financial cost of care and rehabilitation of a disabled breadwinner are important considerations.

### Social Security Act 1964

Under section 61 Emergency Benefits may be granted to any person who by reason of, inter alia, physical or mental disability is unable to earn sufficient livelihood for himself *and his dependants*.

Section 61A (as amended by section 7 of the Social Security Amendment Act 1979) provides for a "child supplement" to increase the benefit of any person who is caring for a child and is unable because of age, disablement, domestic circumstances or any other reason to adequately support or maintain himself and his dependants.

One of the factors taken into account in the granting of a disability allowance under section 69(C) is any additional expenses arising from the disablement of the beneficiary; section 69(C)(1)(f) provides for the granting of a disability allowance direct to dependants of a beneficiary.

#### 2 Grants to Others to Assist Disabled Person

This section examines the grants available to groups other than the dis-

abled person or his family, in particular those groups involved in the care, education and employment of disabled persons.

(a) Care

Social Security Act 1964

Section 27G provides a domestic purpose benefit to an applicant who is required to give full time care and attention at home to a person who would otherwise be hospitalised.

Sections 39A-39F (as inserted by section 9 of the Social Security Amendment Act 1978) make provision for a handicapped child's allowance to be paid to the mother of a "seriously handicapped child" who has a physical or mental disability and because of that disability needs constant care and attention permanently or for a period exceeding twelve months.

Disabled Persons Community Welfare Act 1975

Section 12 provides relief for parents and guardians for a period of up to four weeks per annum from the responsibility of looking after a disabled child.

Section 13(2) allows for the expenses of an attendant where a disabled person is required to travel for medical purposes etc.

Under section 14(2) a grant may be made to an owner, tenant or lessee of house in which a disabled person resides in order to make alterations to a home (as outlined in section 14(1)(a), (b), (c) ).

Sections 17-22 provide for assistance to voluntary and charitable organisations involved in the care of disabled persons.

(b) Education

Disabled Persons Community Welfare Act 1975

Section 13(2) allows for the expenses of an attendant for a disabled person involved in a training course.

Section 26(3)(e) and (g) provide for financial assistance for training staff involved in the education of disabled persons and section 27 for financial assistance to approved agencies engaged in the training, sheltered employment and day care of disabled persons.

Education Act 1964

Section 201B provides an allowance for transport assistance.

(c) Employment

Disabled Persons Community Welfare Act 1975

Section 26 establishes a programme for vocational training, sheltered employment, day care, etc, and provides for financial assistance where necessary; and section 27 provides financial assistance to operators of sheltered workshops or occupational centres for the disabled.

## Disabled Persons Employment Promotion Act 1960

This Act gives the Minister of Labour the power to "approve" organisations that operate to encourage the care, treatment and rehabilitation of disabled persons in any form of employment.

Organisations so approved, and recognised as "sheltered workshops", are subject to a power conferred upon the Governor-General by section 4 of the Act to grant exemptions from any award or agreement or any provision of any enactment affecting or regulating that field of employment, subject to the requirement of section 5 as to consultation with interested unions and employers.

## II OTHER LEGISLATION PROMOTING PARTICULAR AIMS OR APPLYING TO PARTICULAR GROUPS

In this section we examine legislation the object of which is to promote a particular aim, such as rehabilitating the disabled in the community, or which applies to a particular group of the disabled, for example the mentally ill.

### 1 *Education*

Legislation in this area has two general aims: the education of those disabled persons who have a learning problem, and the imparting of practical work skills to enable the gainful employment of the disabled.

## Accident Compensation Act 1972

Section 49 of this Act confers on the Accident Compensation Corporation some "educational" functions. As these are closely related to the rehabilitation of the disabled, they will be discussed under the heading of Rehabilitation.

## Disabled Persons Community Welfare Act 1975

In trying to achieve the aim of making the disabled as socially and financially independent as possible, this Act provides for the practical education of the disabled with work skills and work experience.

Section 26 establishes a programme providing vocational training and day care for the disabled. Under this programme arrangements are made for the disabled to: undergo assessment, and undertake work experience or training for employment [section 26(2)(a)(i)]; receive education or technical training with a view to employment [section 26(2)(a)(ii)]; obtain practical experience necessary in each case to qualify that person to undertake suitable employment [section 26(2)(a)(iii)]; undertake employment in a sheltered workshop [section 26(2)(9a)(iv)]; attend an occupational centre for day care [section 26(2)(b)].

Section 16 allows for the assessment and training, under section 26 of the Act, of persons aged between thirteen and fifteen years, who without this training would be likely to receive a benefit under Part I of the Social Security Act 1964 upon reaching the age of fifteen.

Under section 27 financial assistance in the manner prescribed may be

given to approved voluntary or charitable organisations engaged in the programme outlined in section 26. Financial assistance may also be given to approved co-operatives, or to enable a disabled person to become self employed.

By section 28 a disabled person, undertaking vocational training provided for in Part III (sections 26-28) of this Act, may be entitled to a rehabilitation allowance.

### Education Act 1964

Although its main emphasis is on providing education for persons of school age, this Act recognises that some persons may need "special education" and accordingly makes provision for this.

By "special education" the Act means "education for children who, because of physical or mental handicap or of some educational difficulty, require educational treatment beyond that normally obtained in an ordinary class in a school providing primary, secondary or continuing education". [section 2(1)]

Sections 98-100 give the Minister of Education power to establish any special school, class, clinic or service, and make provision for any correspondence school to provide special educational facilities. He can also give financial assistance to those classes or services, which, though not established under section 98, provide or supplement special education.

Section 105 provides that the Minister may establish any school or class to provide instruction by correspondence for the education of children who cannot conveniently attend any other suitable school.

Sections 108-115 prescribe that a child may be exempt from attending a conventional school if that child is unable to attend such a school regularly or does not derive any benefit from the education given because of a mental or physical handicap. Once a child has been exempted from attending a conventional school, through a need for "special education", the State casts the duty of providing such education upon the parents. If the parents are unable to do this, or the Director-General considers them unable to do so, the child may be sent to a special school or institution and the school or institution's principal thereupon becomes entitled to the exclusive custody and control over that child. The child's parents are required to pay the full cost of his education, or at least an agreed sum. These provisions relating to "special education" are not limited to children of school age, but can apply to pre-school age children if the Director-General considers them in need of such education.

## 2 Rehabilitation

Probably the worst effect of disability is to isolate the disabled person from the general community. The purpose of the legislation we look at next is to bring the disabled back into the community through making them independent of institutional care, training them for gainful employment and providing counselling services for the disabled and their families so that they can overcome any psychological problems arising from their disability.



### Accident Compensation Act 1972

This Act provides some of the most comprehensive legislation relating to the disabled in the spheres of education and rehabilitation. However it must be emphasised that this Act applies only to those persons suffering a 'personal injury by accident' and who have 'cover' under this Act in respect of that injury.

Section 48 requires that the Accident Compensation Corporation shall take all practical steps to promote a well co-ordinated and vigorous programme for the medical and vocational rehabilitation of these persons. This programme has as its objects:

Their speedy restoration to the fullest physical, mental and social fitness of which they are capable [section 48(2)(a)]; and where applicable, their restoration to the fullest vocational and economic usefulness of which they are capable [section 48(2)(b)]; and where applicable, their reinstatement or placement in employment [section 48(2)(c)].

Subject to section 69 of this Act, the Accident Compensation Corporation may, at its discretion, make provision for their rehabilitation outside New Zealand [section 48(3)].

Section 49 places upon the Accident Compensation Corporation the following functions: ensuring the re-establishment in their previous employment where possible of incapacitated earners [section 49(2)(a)]; ensuring the training or retraining of those incapacitated earners who cannot be so re-instated [section 49(2)(b)]; assisting, where it considers appropriate, the development of the skills and talents of disabled non-earners so they may secure employment [section 49(2)(c)]; adapting or assisting with the adaptation of the home or residence of any incapacitated person where the adaptation will enable his discharge from institutional care [section 49(2)(e)]; ensuring the provision, where needed, of a wheelchair or other aid for the daily living of any incapacitated person [section 49(2)(f)]; adapting or assisting with the adaptation of a motor vehicle where in the Accident Compensation Corporation's opinion this adaptation will assist the rehabilitation [section 49(2)(g)]; and providing for the dissemination of information for the purpose of advice and education in connection with rehabilitation [section 49(2)(h)]. Section 49(2)(d) gives the Accident Compensation Corporation extra resources and responsibilities to achieve the functions given to it in subsections 2(a), (b) and (c).

Section 114(4) gives an incentive to disabled persons to improve their financial position by providing that the earnings related compensation being paid to a person under this section shall not be reduced by reason of any increase in his earning capacity.

### Disabled Persons Community Welfare Act 1975

In attempting to achieve the rehabilitation of the disabled this Act provides for counselling and attempts to lessen the degree to which the disabled are dependent upon others (see section 4).

Section 11 seeks to promote the disabled person's welfare in the community by giving the Director-General power to provide and promote supportive care and counselling services to the families and members of

families of disabled persons in assisting them to overcome problems associated with caring for the disabled [section 11(a)]; and to provide for the counselling and guidance of disabled persons so as to enable them to realise and enjoy their full potential [section 11(b)].

Section 15 gives authority to the Director-General to supply, free of charge, to a disabled person, a walking frame or similar prosthetic appliance or aid which is not supplied free from a Hospital Board or other institution, if in the opinion of a medical practitioner it is needed.

Section 16A (as inserted by section 2 of the Disabled Persons Community Welfare Amendment Act 1979) provides for financial assistance at the Director-General's discretion, in the form of grants or suspensory loans for or towards the purchase or alteration of a motor vehicle or other mechanical means of transport, where it is necessary to enable the disabled person to undergo training for, or to obtain or retain, employment, which would enable him to achieve a substantial measure of financial independence.

#### Labour Department Act 1954

Although this Act is not specifically concerned with disabled persons or their special problems, the fact that disabled persons are a part of the community means that their problems are considered under such a provision as section 9(a) which includes among the general duties of the Department of Labour the provision of a complete employment service for the purpose of placing workers in employment, the assisting of persons in all sections of the community to find better or more suitable employment, and the assisting of those persons who require occupational readjustment, training or other assistance to enable them to continue or resume full-time employment.

#### Rehabilitation Act 1941

One of the aims of this Act (see below p 353) is to re-establish in civilian life those persons who served with His Majesty's Armed Forces.

Section 12, in addition to giving power to the Rehabilitation Board to help rehabilitate non-disabled discharged servicemen, empowers the Board to establish schemes and institutions for the care and maintenance of those discharged servicemen who by reason of their wounds or disease incurred during their service are wholly or partially disabled.

### 3 *Work*

Work, whether it be part-time or full-time, is an essential element in our daily lives, both in terms of earning wages and because of the satisfaction gained from engaging in a regular productive occupation. The need to work and benefits derived from it are particularly important where disabled persons are concerned, because of the importance of their rehabilitation in the community as well as the mental and physical satisfaction gained from being in a useful occupation.

This section examines the legislation that recognizes the need for work and provides assistance for it.

### Disabled Persons Community Welfare Act 1975

Section 26(2) (see above under Education). Further subsections provide for the instruction and training of staff, provision of equipment etc and for the placement of disabled persons in offices and factories for work experience [see section 26(2) and (3)].

Section 16 provides for training and assessment of young persons (thirteen to fifteen years) under section 26.

Section 27 provides assistance for those employing disabled persons and financial assistance for disabled persons who want to become self employed.

### Industrial Relations Act 1973

This Act, in section 113, recognises the harmful effect which minimum wage rates may have on the employment prospects of disabled persons. The legislature and the unions allow the disabled to be employed at an agreed wage rate below that established in the pertinent industrial award or agreement.

### Disabled Persons Employment Promotion Act 1960

As already discussed, this Act makes it possible for organisations recognized as sheltered workshops to be exempted from potentially onerous awards, agreements or the provisions of any enactment which may affect or regulate the employment or payment for employment or place of employment of any disabled person.

## 4 Access

Recently, and particularly during IYDP, public attention has been focused on the importance for the disabled of physical access to community facilities. We list here the legislative provisions covering this important aspect.

### Disabled Persons Community Welfare Act 1975

Section 25 requires that access to and facilities at premises open to the public be provided for the disabled. Subsection 3 lists types of buildings to which the section applies. Reference should also be made to the code of practice for design for access by handicapped persons (N.Z. standard specification No. 4121).

### Local Government Act 1974

An important provision as regards access (previously the Disabled Persons Community Welfare Act 1975 section 24) is the Local Government Act 1974 section 331(2).

This section creates the requirement that, where any council forms or reforms any road, it shall make provision so as to allow "safe and easy passage from kerb to kerb of any mechanical conveyance normally and lawfully used by a disabled person", subject to a general discretion vested in the Director-General of Social Welfare.

The Town and Country Planning Act 1977 section 36 deals with the contents of district schemes and refers to the Second Schedule to the Act, clause 7 of which includes the requirements of the two sections discussed above.

### *5 Provisions Relating to Particular Groups*

There are a number of statutes which are concerned with the needs of particular groups of the disabled. We include here a sample of three such Acts.

#### **(a) Mental Health Act 1969**

This Act provides for the treatment, assistance and management of the mentally disordered including the mentally ill.

The Act is an attempt to provide for the best interests of those within its sphere, and adopts the policy that, for the efficient administration of treatment, some rights and freedoms of the individual may be restricted. Provision is made in the Act for treatment both voluntary and involuntary. A wide discretion is given to those charged with the administration of treatment to ensure the most effective methods are employed. Protection is provided for those administering treatment including the authorisation of treatment for certain patients against their will. Patients under care are classified according to their need and their status is reflected in their rights regarding treatment, decision-making, leave, visits and communications. Once a certain status is acquired a patient becomes legally subject to the relevant provisions. Thus, informal patients are deemed capable of rational decisions (sections 14-18); committed patients are deemed incapable of rational decisions (sections 19-41); special patients are generally the criminally insane (sections 42-50). Further sections provide for the administration and protection of the estates of the mentally disordered, ensuring protection against abuse (sections 82-108).

#### **(b) Rehabilitation Act 1941**

The basic aims of the Act are to re-establish returned servicemen in every day civil life; to re-constitute wartime industry on a peacetime basis (now obviously defunct).

A Board is established to assist servicemen both financially and occupationally. Reference is made to assistance for dependants, training for civil occupations, financial support during training, financial assistance in, for example, acquiring a home, starting a business. The Act is naturally limited in its scope today, being concerned with a group now largely integrated into society.

#### **(c) The Aged and Infirm Persons Protection Act 1912**

This Act applies to persons unable to manage their affairs, either wholly or in part, including those suffering from physical or mental illness or infirmity or mental subnormality or drug/alcohol dependance. Protection can be conferred on them regarding their property through a Court order

obtained by a petition. This protection order may be varied or rescinded by the court which has a power also to impose conditions or review the exercise of any power. The Act extends the category of persons eligible for protection of property under Part VII of the Mental Health Act 1969 to include those unable to manage their own affairs.

### III RIGHTS OF THE DISABLED?

#### *Representation?*

The legislative provisions so far examined either confer benefits or promote particular aims in relation to the disabled. As the effective operation of these provisions is of great importance to the disabled, the disabled themselves might be assumed to play an important role in their implementation. The people most qualified to give an opinion as to whether a piece of legislation is fulfilling its desired role, the rehabilitation of the disabled back into the general community, would seem to be the disabled themselves.

An example of such representation working in practice is the statutory requirement, in subsection 6(2)(f) of the Disabled Persons Community Welfare Act 1975, that at least one member of the Advisory Council shall be disabled. Although cynics can view this as establishing 'token' disabled person participation, we submit that it is an advance in this area. It is to be hoped that in the future it will not be necessary to legislate in order to ensure that disabled persons participate in the operation of such provisions. Unfortunately, this example is the exception to the rule, for on the whole the views of disabled persons do not carry much weight as regards the general application of the Act. An example of complete disregard of the views of the disabled can be found in those sections of the Education Act 1964 dealing with 'special education'. Section 115 of this Act gives the Director-General power to direct that a disabled child may be sent to a special school, vesting the custody and control of that child in the school's principal. Neither the disabled child nor his parents has a say in this matter and once such a decision has been made the only remedy open to a parent is to appeal to a District Court Judge. There are other less obvious situations where the representation of disabled persons would be an advantage, such as the Vocational Training Council (sections 3 and 4 Vocational Training Council Act 1968).

The further one looks into the question of representation of disabled persons and the lack of control they have over their own destiny, the more one wonders whether through having a disability a person automatically loses some of those 'rights' which the non-disabled person takes for granted.

#### *A Right to Enjoyment of Life*

As a group, disabled persons, possibly more than any other group in the community, are frequently subjected to an alarming array of conflicting opinions by professional experts including the administrative decisions of Government Departments, quasi government agencies, local bodies and major organisations. It is in this context that practitioners

may be approached by disabled persons who are not themselves in a position to speak out against these decisions.

At first sight there appears to be a remedy against discrimination and mal-administration aiming at "justice" or a "right to the enjoyment of life" for disabled persons without qualification. In New Zealand two bodies have been established by statute specifically to protect the rights of individuals and groups, and to investigate alleged unlawful discrimination and injustice. One is the Human Rights Commission, established by the Human Rights Commission Act 1977. Under Part I of this Act, the general functions of the Commission include the promotion, by education and publicity, of respect for and observance of human rights and the encouragement and co-ordination of programmes and activities in the field of human rights. In addition to establishing the Commission (part I), the Act provides against unlawful discrimination (part II), specifies remedies against such discrimination (part III), establishes the Equal Opportunities Tribunal (part IV), and provides the Commission with certain functions relating to the conduct of industrial unions and professional and trade associations (part VI).

The function most pertinent to this discussion is the provision of remedies against unlawful discrimination. Under part III of the Act, the functions of the Commission are to investigate any act or omission, or any practice, which is or appears to be a breach of any of the provisions of part II relating to unlawful discrimination, to act as conciliator in relation to any such act or omission or practice, and to take such further action as is contemplated by part III. Part II is concerned with unlawful discrimination on grounds of sex, marital status, or religious and ethical belief in matters relating to employment, housing, land, public access to places and provision of goods and services, victimisation, advertisements and agency. It contains no specific reference to discrimination on grounds of disability.

Admittedly, it is difficult to legislate for an enjoyment of life and it may not be possible to provide for a normal life for the disabled. Undoubtedly there has been, and will continue to be, discrimination against disabled persons; indeed decisions are often made without taking into account the needs, aspirations and capabilities of those disabled persons immediately affected. Obviously "discrimination by silence" — unawareness or ignorance of the needs of disabled persons — would be difficult to legislate against. However, some of us were of the opinion that an amendment to the Act to include disability would assist in improving the status of disabled persons and would provide a definite statutory avenue of investigation. It would bring disabled persons within the protection of the Act and accord with the object of the Act "to promote the advancement of human rights in New Zealand".

Others of our group were of a different opinion: they considered that the Act relates to human rights, that is the rights of any person disabled, coloured, or of any particular faith or of any minority or majority.

Thus, an amendment would be unnecessary for every minority would deserve a specific mention. Moreover, the problem is not legislative but administrative; it is up to the Commission as it now stands to deal with breaches of human rights, whether they concern the disabled or not.

Secondly, there is the office of Ombudsman, established under the Ombudsman Act 1975. Under section 13 of the Act it is a function of the Ombudsman "to investigate any decision or recommendation made, or any act done or omitted, relating to a matter of administration and affecting any person or body of persons in his or its personal capacity in or by any committee or subcommittee of certain local organisations, or by any officer, employee or member of any such organisation or department in his capacity as such officer, employee or member." In contrast to the Human Rights Commission Act, this Act does not specify particular persons who may seek the Ombudsman's services but generally states "any person or body of persons". Naturally this includes disabled persons whatever their disability.

It is important to realise that disabled persons by virtue of their disabilities are often placed in a position of physical dependence, so that they are discouraged or prevented from making their own decisions or speaking for themselves. Hence if full participation and equal opportunities are to be available for the less advantaged disabled person, it is submitted that a public advocate for the disabled should be appointed. The Ombudsman himself could fill this office, taking a general oversight in the establishment and implementation of private advocacy for the disabled. It is further submitted that an amendment could be made to the Ombudsman Act in which disabled persons would be mentioned specifically as a group entitled to take advantage of the services of the Ombudsman's office.

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