Date: January 28, 2014

Civil Rights Now Proposal

What’s the problem?

Disabled residents of British Columbia are vulnerable to a provision of community or institutional care that falls below a generally acceptable standard, a situation that does not allow them to live with confidence in safety, with freedom and dignity. The main reason for this is the excessive amount of discretion available to government and contractors respecting the services provided to disabled people.

Our proposed remedy:

Two statutes – the Community Care (Direct Payments) Act, and the Civil Rights of Persons in Community Care Act.

The Community Care (Direct Payments) Act will provide access to portable, individualized funding for all disabled people, at their discretion, to use for their own personal care. Once eligibility is confirmed, payments will be made directly to the disabled person or their representative from the Ministry of Finance.

The Civil Rights of Persons in Community Care Act, which is to be administered by the Ministry of Attorney General, is designed to enable investigations and possible civil action resulting from a breach of Charter rights of disabled persons by government or contractors.

Rationale:

In British Columbia, people with disabilities living in community or institutional care are one of the most over-regulated and poorly serviced groups. The main reason for this situation is a long history of over-bearing bureaucracy which operates arbitrarily and without effective control and direction from our elected representatives.

Ultimately this trend will only be reversed by “root and branch” reform of the administrative delivery model respecting the provision of services to persons with disabilities central to this issue is the determination of eligibility and entitlement. It’s here that excessive bureaucratic discretion can lead to arbitrary and undesired outcomes.

Our proposed Community Care (Direct Payments) Act is a necessary first step in that it introduces an element of market discipline to the provision of these services. Our intent is that the person with a disability or their representative will be able to exercise effective control and direction over service providers through the power of consumer choice.

The original concept of the Ministry of Health’s CSIL (Choices in Supported Independent Living) points in the right direction. However, since delivery was made the responsibility of unaccountable regional health authorities this program appears to have been undermined. (sic)

Another example of bureaucratic over-reach can be seen in the decision, made in November, 2009, by the Ministry of Children and Families to cancel direct payments to parents of autistic children respecting the provision of treatment funding.

Community Care (Direct Payments) Act implementation:

One of the major hurdles to implementing any individualized funding in British Columbia has been bureaucratic resistance. Therefore the success of implementing the Community Care (Direct Payments) Act will be in the details. In order to encourage up-take we recommend the following:

• The program must be promoted, made understandable and easy to use

• The application process must be straight-forward

• There must be financial incentives to encourage use

Our proposed Civil Rights of Persons in Community Care Act is intended to meet the challenge of there being “no right without a remedy”. We believe it will provide the provincial government with a citizen-initiated legal tool to enforce and uphold an appropriate standard of care for all people with disabilities living in British Columbia.

We believe these complementary statues will provide an effective legal foundation for persons with disabilities to gain access to some of the same rights as currently enjoyed by other British Columbians.

Paul Caune, Executive Director

Civil Rights Now!