

## Consensus for Change: a Report on a Major Conference to Consider the Need for a Fundamental Review of the Mental Health (Scotland) Act 1984

The Law Society of Scotland, The Royal Association of Psychiatrists (Scottish Division), and The Scottish Association for Mental Health, Edinburgh, The Law Society of Scotland, 1996, 82 pages, £12 sc.

Subscribers to the *Journal of Medical Ethics* might not ordinarily consider reading the proceedings of a conference on mental health law. However, *Consensus for Change* provides a succinct overview of current thinking on the ethical dimensions of Scottish legislation on mental disorders. Not only does the report explain the historical underpinnings of the act, it also demonstrates why the Scottish perspective on mental health law is in many respects considered proactive.

This conference report relates the proceedings of a joint conference held on 6 December 1996 by three organisations involved in mental health provision. The conference examined the limitations of the Mental Health (Scotland) Act of 1984 in light of the shift from hospital admission to community care. The commentators considered mental health law as it now exists, 35 years after the last fundamental reform.

The principles asserted in the introduction by Adrian Ward, MBE, distinguish this conference from others, such as The Mental Health Act 1983: Time for Change, which was a joint conference of the Law Society, the Institute of Psychiatry and the Mental Health Act Commission in London in November 1993. Ward firmly establishes the agenda in a dynamic context, applying those principles asserted by disability activists which have influenced disability legislation such as the Disability Discrimination Act 1995 and the Americans with Disabilities Act 1990. The current disability ethos acknowledges that handicaps are not merely a product of the individual's condition, but a function of additional social, economic, and political factors. "The disadvantages and handicaps which a person

suffers as a result of disability are thus a product of the interaction between disability and – in the widest sense – environment" (page 1). Accordingly, Ward gives specific examples of how lawyers for people with mental disabilities aim to minimise the handicaps created by the interaction of their disabilities with their environment.

Ward summarises fundamental principles, which may be neglected in conferences of lawyers and psychiatrists. Thus, he considers the ethical tension between a right to autonomy, a right to a treatment, and the limits of "compulsory health". This ethical dilemma is further complicated by increasingly obsolete legislation: "Much of the 1984 act takes as a starting point the presumed need to put a person in a building, called a hospital, rather than the person's need for medical and other services, still reflected in the detention philosophy of the 1960 Act" (page 5).

Ward analyses the need for legal reform on two levels. First, he reports that there has been a significant re-orientation in services since the 1984 act because the "front line" of service is no longer hospital admission. Specific demographic data demonstrate variations in implementation of the act in 1960, 1984, and 1995 for people in Scotland who were detained or on leave of absence, with an increase in community mental health teams, day hospitals, and in-patient sites. Secondly, he locates the ethical issues in a broader context. As an international authority and consultant in this field, his introduction incorporates the effect of international trends and provides a summary of the relevant international conventions and declarations.

The report also serves as a valuable resource because many of the authors expanded their presentations for publication, contributing footnotes and references for further reading. Within the report, Derek Chiswick examines how changes in the law can benefit mentally disordered offenders. David Nichols both outlines existing guardianship provisions for incapable adults and contrasts them with the recommendations of the Scottish Law Commission, thereby anticipating potential developments in care and protection. And although the objective of the conference was consensus, it fostered debate. James Dyer and Tony Maden provide two distinct analyses of care, compulsion and control in meeting the needs of people with a serious mental illness.

Colin McKay explains why the ethico-legal issues are significantly different for people with learning disabilities and those with mental health problems. "If the Mental Health Act had people with learning disabilities as its primary focus, it might recognise that a far bigger problem than self-harm or dangerousness is abuse" (page 52). The legislative focus on detention avoids the actual issues encountered by people with learning disabilities and means that the legal framework adequately to deal with issues such as guardianship and financial management is lacking. But as Legal and Policy Adviser to ENABLE, McKay is particularly sensitive to the additional, routine matters encountered by his clients: namely, sexuality and access to services. He concludes that the medical focus of the act is too limited, given that learning disabilities cannot be cured by medical treatment, and that the Scottish Law Commission's proposals are beneficial as a starting point for reform.

Three presentations should perhaps be read first, to establish the primacy of users in all levels of legislative consultation and policy development. Hilary Patrick identifies the central ethical principles which promote self-determination, thereby assuring users' autonomy. Nikki Martin utilises a case study to recommend methods to provide "seamless" service for both carers and users. E Margaret Thomas explains the broader, non-legal obstacles to mental health such as stigma and discrimination. Although many commentators identify the necessity of legal advocacy, Thomas makes a compelling argument for access to *lay* advocates.

As with any conference, success depends on whether the recommendations, drawn from the experience of users, carers, and those who serve them, influence legislative reform. The compilation of inter-disciplinary reports, and the self-criticism among medical and legal professions, is itself a significant measure of success. If these recommendations inform good practice for those who are concerned with applied medical ethics, then the conference and its report will have been successful indeed.

KATE DIESFELD, *JD*  
Kent Law School,  
Eliot College,  
University of Kent,  
Canterbury CT2 7NS