



# Setting the parameters of a human rights informed practice

+ New Zealand Insights

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# Precis of the research

- + Focused on New Zealand's Intellectual Disability Compulsory Care and Rehabilitation Act 2003 (IDCCR) and the role of Specialist Assessor.
- + The IDCCR provides an alternative to prison for people with intellectual disability who enter the criminal justice system – these people are called care recipients.
- + Specialist Assessors are Clinical Psychologists and Consultant Psychiatrists who prepare reports for Court.
- + Considered how Specialist Assessors integrated human rights perspectives, if at all in their practice.

# The IDCCR not a preventive detention regime but....

- + Has been characterised as coercive care regime.
- + Has an extension provision.
- + Recent statistics on extensions and long-term care recipients illustrate the potential for indefinite detention.
- + Why I focused on a human rights perspective.

# Forensic practice brings unique challenges

- + Clients are vulnerable and rehabilitation regimes have coercive elements (McSherry & Freckelton, 2013).
- + An individual's liberty rights are restricted by society's need for safety and justice (Allan, 2013b, p. 47).
- + Clinicians may feel the burden of community protection (McSherry et al., 2007).

# Tensions within the IDCCR

- + Specialist assessors must navigate multiple obligations (Court, care recipients, social) and manage relationship with several Ministries.
- + Specialist assessors might use therapeutic skills to enhance care recipient engagement.
- + Specialist assessors may see the same care recipient multiple times.
- + Limited guidance about how to safely incorporate an opinion on the care recipient's liberty interest.

# Dual role dilemma

- + Role conflicts like this referred to as dual role dilemma.
- + Leads to flashpoints because of competing obligations (Ward et 2014) or the presence of a powerful third party (Robertson & Walter, 2008).
- + Solutions aim to reduce the risk of ethical or human rights violations and practitioner burnout (e.g., Barnao et al, 2012).

# Lifting the gaze

- + Criticisms leveled at forensic psychology for its failure to pay due attention to issues of justice (Adshead, 2014), risk aversion (McSherry, 2013), fairness (Allan, 2018), and offender welfare (Perlin, 2018; Ward et al., 2009).
- + Power and influence of forensic psychologists can foster mistrust (Shingler et al., 2020, p. 14).
- + Guantanamo Bay galvanised public attention on psychologist's role in coercive environment Candilis & Neal, 2014b; McSherry, 2013; Nowak & Zenz, 2020; Perlin, 2010).
- + Perlin (2018) openly critical of the silence and disconnection of forensic psychology from human rights.

# Barriers to a human rights informed approach

- + Fear of violating the boundaries of practice (McSherry, 2013).
- + A lack of training in ethics and philosophy.
- + Are UN human rights obligations born by individuals or governments ? (Allan, 2013)
- + Most ethical codes contain generic statements about human rights.
- + In the absence of clearly legal obligations do moral obligations remain?

# Nurturing Human Rights Focused Psychologists and Psychiatrists

Growing interest in operationalising human rights by taking a human rights perspective (Bhugra et al., 2017; Gauthier, 2009; Hagenaaars, 2016; Plavsic et al., 2020; Sveaass & Wessells, 2020).

A spectrum of practices identified in the literature review aim to bridge the gap between legal frameworks and everyday practice

# The Spectrum of Practices



# Barriers to an activist stance

- + Nadal (2017) identified several barriers of relevance to this study
- a desire to retain political neutrality,
- anxiety about crossing ethical boundaries,
- the belief that social justice advocacy was not necessary to psychology, and
- limited advocacy training.



# New Zealand insights

- + Human rights knowledge derived from ethical codes and personal values NOT human rights law.
- + A reliance on ethical principles and the values of freedom, respect, equality, dignity, and autonomy (Curtice & Exworthy, 2010) to guide their practice.
- + Human rights implicit in practice NOT explicit.
- + An absence of formal training.

# Three distinctive perspectives revealed

Comfortable  
Acceptance

"We Should!"

Uncomfortable  
Engagement

"Should We?"

Aware but Not  
Engaged

"We Shouldn't"

# Uncertainty and unease prevailed

- + A lack of clarity about human rights obligations.
- + No one thought their level of knowledge was ideal.
- + Consensus more training needed to progress the issue.
- + Training loaded towards risk assessment not rights.
- + Differing perspectives about responsibility for training.
- + Concerns about how variations in practice impact outcomes for care recipients.

# Unease...

- + Unease about overstepping boundaries.
- + Negative consequences for those who have raised human rights issues.
- + Acute awareness about influence and autonomy.
- + Unofficial decision-makers.
- + Introducing an explicit human rights informed approach likened to a paradigm shift.

# Lifting the gaze

- + Do ethical codes have sufficient power to address the unique human rights implications of assessor practice?
- + Are there sufficient rights protections in the IDCCR?
- + Compulsory care not flexible enough to meet a diverse range of care recipient needs.
- + Study adds weight for call for review (Brookbanks, 2019; Committee on the Rights of Persons with Disabilities, 2022).
- + Service and cultural responsiveness linked to the human rights.

# The low visibility of the CRPD

- + The literature review highlighted the low visibility of CRPD in the IDCCR compared to other parts of the disability system in NZ.
- + A lack of knowledge about the CRPD did not prevent the specialist assessors from critically examining the implications of their role.
- + But the assessors were not attuned to various concerns raised by the Committee about the extension provisions within the IDCCR or the call for disability neutral legal systems.

# Parting notes

- + *“Psychology has always mattered in human rights and human rights have always mattered in psychology, at least implicitly. Lately, however, the intersection of psychology and human rights has become more explicitly articulated”* (Wainwright et al, 2022, p. 120)
- + Resources there to be utilised for forensic practitioners interested in taking a human rights-focused stance.

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