

Law Reform Commission
Consultation Paper on
Bioethics: Advance Care Directives
LRC CP 51 - 2008

Patricia T Rickard-Clarke
Commissioner
Law Reform Commission

Overview

- Previous work of the Commission on vulnerable adults
- Absence of legal and ethical framework for advance care directives
- Scope of the Commission's project
- General approach and key principles
- Detailed provisional recommendations
- Consultation process leading to final Report

Previous work of the Commission

- *Report on Vulnerable Adults and the Law (2006)*
 - Mental capacity law and replacement of wards of court system based on 1871 Act
 - Reform of *Powers of Attorney Act 1996* to allow attorney make some health care decisions
- Government's *Scheme of Mental Capacity Bill 2008*
- Remaining issues concerning advance care directives

Legal and ethical framework for advance care directives

- Ethical framework: *Is it time for Advance Directives?* (Irish Council for Bioethics, 2007)
- Need for legal framework, assuming changes to *Powers of Attorney Act 1996*
 - Urgent situations
 - Verbal directives
- Facilitating maker and health care professionals

Scope of the Commission's project

- Planning for one's future treatment, to the greatest extent practicable
- Providing clarity for health care professionals
- Focus is on treatment refusal
- Does not deal with euthanasia or assisted suicide: law of homicide not affected
- Does not deal with mental health care

Terminology

- Living Wills/Advance Directive
- Advance Health Directive
- Advance Medical Directive
- Advance Care Directive

Key principles

Mr Justice Costello article (1986): dignity and autonomy of the human person

Ward of Court case (1995): right of competent person to refuse treatment

Tony Bland case (England, 1993): clear instructions in advance

Commission Consultation Paper: need for clear statutory framework

Detailed provisional recommendations: scope

- Advance care directives cannot involve euthanasia or assisted suicide
- Proposed legislation would cover advance care directives involving refusal of treatment
- Advance care directive cannot involve refusal of basic care

Detailed provisional recommendations: general format

- Advance care directive may, in general, be written or verbal
- Advance care directive that refuses life-sustaining treatment must be in writing
- Person may, in general, refuse treatment on religious grounds

Detailed provisional recommendations: process

- Person may nominate a healthcare proxy to carry out their wishes
- Person should be encouraged to seek medical advice, but only mandatory where advance care directive involves refusal of life-sustaining treatment
- Advance care directive only effective where the person becomes incapacitated and it deals with the condition mentioned in it

Detailed provisional recommendations: liability and guidance

- Healthcare professional would not have liability where they follow an advance care directive they believe to be valid and applicable to the condition being treated
- Need for guidelines for health professions to complement proposed legislation

Complexity of legal and ethical issues

- Commission recognises complexity of issues in general
- Some specific issues:
 - Status of “Do Not Resuscitate” Orders
 - Age of consent
 - Definition of “life-sustaining treatment”
 - Clarity of verbal advance care directive
 - Review and time limits

Concluding comments

- Consultation Paper contains provisional recommendations
- Commission invites submissions
- Preparations for final Report and recommendations

Thank you

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