

Caxton Legal Centre Inc.

SUBMISSION TO HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON LEGAL AND
CONSTITUTIONAL AFFAIRS'
INQUIRY INTO CRIME IN THE COMMUNITY:
VICTIMS, OFFENDERS AND FEAR OF CRIME

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Introduction

The Caxton Legal Centre is a non-profit community legal service located in inner city Brisbane. The Centre has operated since 1976 and now receives funding from a variety of sources including the Commonwealth Department of Attorney-General, Legal Aid Queensland and the Queensland Department of Family Services. The Centre undertakes a variety of activities such as community legal education and the publication of the Queensland Law Handbook and other materials aimed at demystifying the law. The Centre's primary activity is the provision of legal and social work services to over 8000 people each year. Advice and assistance is offered to members of the community in relation to a wide variety of legal problems. Many of these services are provided at free evening advice sessions, staffed by volunteer lawyers.

Ten per cent (10%) of the advice services which the Centre provides relate to criminal law matters. This means that the Centre assists approximately 870 individuals each year who are either charged with a criminal offence, or who are victims of a criminal offence. As a result, the Caxton Legal Centre is afforded considerable insight into the impacts of crime on the community and is well placed to offer comment on the effectiveness or otherwise of criminal justice system responses to offenders and victims alike. Caxton Legal Centre's contact with victims and offenders and is primarily at the "beginning" point of the legal response. We are often the first point of contact for people charged with criminal offences and for victims – at a point where they are arguably most traumatised by the experience of entering the criminal justice system. Victims who contact us may be seeking social work support and legal advice about their options – including what to expect from the police if they decide to make a complaint, and, at a later point, about their right to seek compensation following conviction of the offender.

Caxton Legal Centre also has considerable direct experience of custodial responses to crime through outreach work we have done with prisoners in southeast Queensland Correctional Centres.

Largely arising from this direct contact with people involved in the criminal justice system, Caxton has developed a long-standing interest in promoting the use of restorative justice alternatives in State and Commonwealth jurisdictions. Our primary intention in this submission is to encourage further consideration of restorative and therapeutic alternatives to traditional sentencing in order to manage crime in our community in a more holistic, humane and cost effective manner than has been the case to date.

This submission will largely be drawn from Caxton Legal Centre's direct experience in providing legal and social support services to victims and offenders. We are aware that there has been extensive and high quality research work in the area undertaken by bodies such as the Australian Institute of Criminology, Criminal Justice Commissions and the like. Accordingly we don't propose to offer comment on quantitative aspects of the Inquiry's terms of reference – and will instead focus on reflections based on our direct experience. We will comment on only some of the Inquiry's terms of reference.

(a) Types of crimes committed against Australians

Evidence on reported crime is readily available from police statistics and research papers. The type of crime that we advise on at Caxton Legal Centre is primarily minor crimes in the areas of public disorder offences (failure to follow lawful direction, drunk and disorderly, resist arrest etc.), assault, traffic

offences, and victimless crimes such as minor drug offences (possession of marijuana being most notable amongst these) and prostitution offences. At times we have offered advice and Social Work support to offenders and victims in relation to more serious violent crime – including sexual assault, manslaughter, and murder.

(b) Perpetrators of crime and motives

Consistent with commentary in the Inquiry Information paper, the Caxton Legal Centre has found that, overwhelmingly, offenders experience considerable socio-economic disadvantage – i.e. they tend to be unemployed/low income, and to live in more tenuous accommodation tenures such as private rental and boarding houses. During our contact with them it often becomes apparent that offenders were experiencing a period of particularly high social stress at the time of the offence/s. In relation to offences involving some degree of personal violence, our experience is that victim and offender are rarely unknown to each other, and are often in a close, intimate relationship or are cohabitating.

(c) Fear of Crime in the community

Caxton Legal Centre considers that the community's fear of particular crimes (perceived risk) does not accord with actual risk. There appears to be widespread misconceptions about the nature of risk to the person from crime. There is considerable profile given to risk from strangers – either through, for example, violent attack, or through inadvertent injury from the by-product of criminal behaviour (such as needle-stick injuries). While it is beyond our resources to directly refer to such studies for the purposes of this submission, Caxton is aware that there is extensive research material available that establishes that the risk of violent assault by a stranger is statistically much less significant than the risk of injury to the person from family members. In the case of needle stick injury, there is no evidence that there is no statistically significant risk.

There would appear to be fairly widespread disillusionment with the Court system, and a fear that offenders are not being sufficiently punished. The community concern for greater punishment is arguably based on a mistaken belief that increased reliance on sentences of imprisonment will serve as a deterrent to crime and will lead to a lower incidence of crime and recidivism. Caxton Legal Centre is aware that there is a wealth of research material, which would suggest that incarceration achieves poor outcomes in terms of recidivism – and that restorative and therapeutic approaches to sentencing achieve greatly improved outcomes. (Refer to our response to the term of reference “strategies to support victims and reduce crime” for further detail).

The media would seem to play a significant role in distorting perception of crime in the community. Caxton Legal Centre considers that it is incumbent upon government to provide some counterbalance to the debate through funding educational responses to community fear. If the objective is to reduce crime and fear of crime in the community then governments would do better to respond with educational initiatives and alternative sentencing programs than with an escalation of the incarceration rate.

At the individual level of the victim, fear of crime from the perpetrator can be reduced by using restorative justice techniques which allow the victim to see the offence in its social context and assist in addressing potential issues of self-blame. This will be further addressed below.

(d) The impact of being a victim of crime and fear of crime

Our response to this term of reference is based, primarily, on the experience gained by our social work service in providing initial counselling to victims of violent offences. Clients who have recently experienced a violent assault report a marked decrease in their social functioning – including a withdrawal from partners, family and work peers, an inability to concentrate and perform at work, and heightened fear of public places. They struggle with issues of self-blame.

At the time that they access our services victims are often faced with a decision about whether to make a complaint to the police about the offence. Many victims express concern about entering the criminal justice system. They are concerned about the level of support or otherwise they may receive from the police, and about the potential process of providing evidence in Court – which they perceive as being a hostile and potentially traumatising environment.

(e) Strategies to support victims and reduce crime

Supporting Victims

As a result of our contact with both the victims of crimes and offenders over the course of our 25-year history, Caxton Legal Centre has developed a significant interest in promoting the use of restorative justice strategies and therapeutic jurisprudence. The Centre considers that implementation of such alternatives to traditional sentencing models for crime at a State and Commonwealth level would lead to significantly improved outcomes for victims and to a reduction in recidivism.

Restorative justice can be defined as “a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of an offence and its implications for the future” (1). Restorative justice is based on the premise that crime “is a violation of people and relationships rather than merely a violation of law. The most appropriate responses to criminal behaviours therefore are to repair the harm caused by the wrongful act”. (2)

Restorative justice programs have been adopted (at least partially) in a number of Australian jurisdictions and, more extensively, overseas. Restorative justice includes the use of victim-offender mediation (at a number of stages in the criminal justice process) and group or community conferencing. In Australia, restorative justice programs have been primarily focused on juvenile offenders and their victims – such as those introduced under the Youth Offenders Act 1997 (NSW) and the Juvenile Justice Act 1992 (Qld). Pilot programs, which extend restorative justice approaches to responses to adult offenders, have also been introduced in Queensland and the Australian Capital Territory. The Caxton Legal Centre understands that many of these programs have been the subject of extensive evaluation – the results of which may be of great interest to the Committee. While we cannot claim to have undertaken extensive research of the results of the various pilot programs we are aware of the following outcomes from evaluation of Queensland programs -

- In 1998 a Queensland Department of Family Services evaluation of outcomes of victim-offender mediations under the Juvenile Justice Act was undertaken. Victims were surveyed 2 months after their participation in a community justice conference (with the offender). The evaluation found that 88.2% of victims agreed that the conference was fair and that they were satisfied with the outcome. 76.5% of the surveyed victims agreed that the conference helped the offender to “make up” for their offence. 82.4% of victims agreed that the conference helped the offender to understand the impact of the offence. (3)

- A more recent evaluation (2001) of the same program demonstrated further improvement in victim's satisfaction with the program - with 97.7% of victims indicating that they were satisfied with the agreement reached through the conference process. (4)

This would suggest a satisfaction rate that is vastly superior to those achieved through traditional sentencing options. While Caxton Legal Centre does not have ready access to research on satisfaction rates for traditional sentencing in the Queensland context, there is evidence of improved satisfaction available from evaluation of restorative justice programs overseas. Such programs have been extensively trialed and evaluated in overseas jurisdictions resulting in a growing body of research into their effectiveness. In 2001 the Department of Justice in Canada requested a meta-analysis of research in the area – which resulted in an analysis of the outcomes revealed by 22 separate studies of the effectiveness of specific restorative justice programs (5). This meta-analysis focused on a number of core indicators – one of which was victim satisfaction. The study found that when “compared to victims who participated in the traditional justice system, victims who participated in restorative processes were significantly more satisfied”(6).

Reducing Crime

Research also indicates that both restorative and therapeutic approaches are effective in reducing recidivism. Therapeutic approaches are discussed more specifically below in our response to the term of reference “effectiveness of sentencing”. The Canadian Department of Justice meta-analysis of various restorative justice program evaluations, referred to above found that “...restorative justice programs, on average, yielded reductions in recidivism compared to non-restorative approaches to criminal behaviour.” (7) This study recommended that restorative justice programs be complemented by therapeutic approaches in order to further improve outcomes in terms of reduction of recidivism. (8)

In the Information Paper provided by the Committee, it is acknowledged that there are a number of indicators of socio-economic disadvantage in the risk factors for offending (i.e. poverty and unemployment, poor school performance). This would suggest that, if the Government is committed to reducing crime in the community, a number of wider targeted responses to socio-economic disadvantage are necessary, alongside restorative and therapeutic responses to individual incidents of crime. This would commit governments to programs aimed at poverty alleviation. It is our contention that unless such broader determinants of crime are addressed the effectiveness of any judicial response will be undermined.

(f) Effectiveness of sentencing

Our response to this term of reference is already covered to a significant degree in our response to the term of reference “Strategies to support victims and reduce crime” in which we indicated that restorative and therapeutic responses to crime produced improved sentencing outcomes compared to more traditional (i.e. custodial) responses. Restorative justice responses were examined in detail.

One of the most recent approaches to come out of the USA is the development of the concept of Therapeutic Justice. According to William Schma, Therapeutic Jurisprudence "is the study of the role of law as a healing agent. As such it is an interdisciplinary science, offering fresh insights into the role of law in society to those who practice law."

Therapeutic Justice refers to court interventions that focus on chronic behaviours of criminal defendants in conjunction with some sort of treatment. This involves the court using pending or impending

sanctions to compel compliance with treatment over a long period of time. The concept involves using judges and the judicial system as therapeutic agents. While a traditional criminal proceeding focuses on past behavior and its consequences, a therapeutic justice proceeding is directed at immediate and future behaviour.

Therapeutic justice provides strong motivational interventions to drug and alcohol users and requires perpetrators of violence to acknowledge the seriousness of their actions. It also recognises the value of a genuine apology - as a therapeutic outcome for a victim so that their feelings of anger, resentment or rejection can give way to healing. It also provides for the possibility of victims gaining an understanding of the ways in which the perpetrator's drug and alcohol dependency contributed to the crime. Outcomes and not just process and precedents matter in a therapeutic justice court.

Therapeutic Justice frequently manifests itself in the development of specialist courts or tribunals designed to address a particular problem which has resulted in them being referred to in the USA as "problem solving courts". Examples here are the drug courts, the domestic violence courts and the Family Court. Civil Tribunal examples are the Queensland Building Tribunal and the Retirement Villages Tribunal, both of which deal with situations where the parties need to continue a relationship so that the dispute resolution process must be designed to restore or maintain that relationship, wherever possible. However, this submission only deals with the criminal aspects of therapeutic justice.

Most perpetrators of crime return to their communities after incarceration. Incarceration usually results in them simply having time out of the community with an erosion of family and social support networks and no increase in skills (practical or social) or job prospects. If they also return to their community with a drug dependency or some other problem requiring treatment then recidivism will be the most probable outcome. Incarceration may also result in them having a greater propensity for crime having learned from other criminals or from having newly acquired a drug dependency.

Therapeutic justice defines success as ending the criminal behaviour and therapeutic justice efforts frequently do.

There are sound practical and policy reasons for courts to utilise the principles of therapeutic justice. Treatment courts result in tangible savings for the system as a whole e.g. the processes save money as compared to the costs of incarceration, they free jail beds, and the processes result in long term successes for individuals. This will require governments to adopt a holistic coordinated and collaborative approach to crime and to abandon the departmentalized approach to funding. A direct benefit of therapeutic justice is that defendants are held accountable. It is not a "soft option" as the treatment and its monitoring program may require the defendant to take greater responsibility for his/her future than a period of incarceration. The treatment may or may not ultimately be successful, but the participant knows that, unless they comply with the court orders with regard to the treatment regime they will face the consequences. Frequently they will only be eligible for the therapeutic justice program if they have already entered a guilty plea, which leaves them exposed to the sentencing options available to the court.

It is clear that the advantages of supporting therapeutic justice initiatives are greater than the disadvantages. The human and political success of therapeutic justice programs is too great to ignore.

Therapeutic justice uses such strategies as restorative justice and community justice to achieve a therapeutic outcome. These processes involve both the victims and the community in different ways but can have the benefits of closure for victims and the community after crimes have occurred as well as

reduction in the level of fear arising from a greater understanding of the motivations of the specific perpetrator and of perpetrators in general.

Conclusion

The Caxton Legal Centre respectfully submits that the House of Representatives Standing Committee on Legal and Constitutional Affairs could make a significant contribution to reducing crime by:

1. Recognising that poverty, large inequities in income distribution, poor housing tenure, and other such social disadvantages contribute significantly to the incidence of crime in our community;
2. Recognising that fear of crime in the community is often based on misconceptions which are fed by the media and that there is a need for an educational response;
3. Recognising that therapeutic and restorative justice responses are more effective than traditional (punitive) responses to crime in addressing both recidivism and the needs of victims;
4. Recommending the funding of therapeutic and restorative justice programs in relation to Commonwealth offences;
5. Recommending that the Commonwealth Attorney-General play an active role in encouraging the States to implement restorative and therapeutic responses to crime in their own jurisdictions;
6. Recommending the funding of educational initiatives aimed at promoting a realistic assessment of risk of crime in the community and a greater understanding of the relative effectiveness of traditional and alternative responses to crime;
7. Recommending that the Commonwealth government identify that poverty alleviation measures are part of an effective response to crime and that portfolios concerned with Social Security and Housing play an important role in a co-coordinated response to crime in the community.

The Committee will no doubt be aware that the implementation of therapeutic and restorative justice programs, and accompanying educational initiatives may initially make intensive demands on resources and will require supporting judicial infrastructure. However, the Caxton Legal Centre considers that a reduction in reliance on resource-intensive custodial responses to crime will inevitably result in overall savings to the community. This will require government to adjust funding across departments and perhaps even across levels of government in the longer term.

A shift away from punitive sentencing models will no doubt require a commitment of financial resources and a political determination to resist knee-jerk reactions which may attempt to construct such moves as being "soft on crime". It is our contention, however, that until government is committed to taking an approach to crime that is both humane and informed by relevant research, the community will continue to be plagued by the "revolving door" syndrome resulting in ever increasing court lists and prisons filled beyond capacity.

- (1) Braithwaite, J., "Restorative Justice: Assessing Optimistic and Pessimistic Accounts" in M. Tonry (ed.) *Crime and Justice: A review of research* 25, 1999, p5
- (2) Latimer, J., Dowden, C., and Muise, D., "The Effectiveness of Restorative Justice Practise: A Meta-Analysis" *Research and Statistics Division Methodological Series*, Department of Justice, Canada 2001, p1
- (3) "Restorative Justice", unpublished paper, Griffith University Legal Clinic Community Education Program paper 2000, p
- (4) Kidd, J and Jenkins, C "Youth Justice and Community Conferencing", *Australian Association of Social Workers Queensland Branch Newsletter*, June 2002, p35

- (5) Latimer, J., Dowden, C., and Muise, D., "The Effectiveness of Restorative Justice Practise: A Meta-Analysis" *Research and Statistics Division Methodological Series*, Department of Justice, Canada2001
- (6) Ibid, p5
- (7) Ibid, p14
- (8) Ibid, p18