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Submission 48

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BY: *S. K. Gordon*

Committee Secretary
House of Representatives
Standing Committee on Legal & Constitutional Affairs
Parliament House
CANBERRA ACT 2600

Dear Members

SUBMISSION ON JUDICIARY, SENTENCING, VICTIM IMPACT

I have recently been aware of a call for submissions on judiciary, sentencing and impact of being a victim. I appreciate the opportunity for your committee to be made aware of our case and my recommendations for change. While my observations are based on my own experience, I am also reporting information and responses from a broad range of members of the public, of all professions, right across the community. A supportive media in our case, gave members of the general public the opportunity to find me, and I took, and still receive phone calls and correspondence which provide a good measure of how distressed people are feeling about law and order issues, particularly regarding victims of crime. I have also organised and/or spoken at several public meetings. Because of the overwhelming and continuing response from the public, I trust the Committee will recognise the somewhat unique experience I have had and accordingly, use my information.

I would be willing to address the committee/parliament on the aspects submitted.

HISTORY

My son Dr Andrew Lojszczyk (25 years) and his friend Maryann Cameron (24 years) were killed in June 1998 when a 14 year old juvenile with an extensive history of criminal activity (in company with another 14 and two 12 year olds), driving a stolen vehicle, being chased by Police, ran a red light and slammed into their vehicle.

At a previous appearance in court of this young repeat offender, the Police had asked the magistrate to do something, expressing their fear that he would eventually cause a catastrophe. Despite their concern, the magistrate again released the offender to 'be of good behaviour'. He was charged with committing another crime, failed to appear in court and in fact there was a warrant for his arrest at the time he caused the fatal accident that took the lives of two talented young professionals who would have continued all their lives to be members of society of whom all could be proud.

institution, that he was involved in a rather sordid case against his counsellor which he lost. Only our actions, supported by a perplexed media and public, prevented what we all felt really constituted a reward for criminal misbehaviour whilst institutionalised.

At the boy's sentencing I observed that the Magistrate paid more attention to the offered excuses from his past for his behaviour, as mentioned in the attachment, rather than his history of repeated crimes over a number of years, including the sequence of crimes that resulted in the deaths of two young people.

Balanced public opinion and the real needs of victims must be taken into account. Too often I have been informed that I do not really understand the Law. I have requested clarification on points, but this was never satisfactorily received. What we received were vague generalisations that often fell far short of what really happened. My point is that if the law has become too complex for people like me to comprehend, then I cannot imagine how others in the community manage, especially as we are not entitled to legal counsel.

The term 'guidelines' is used by the NSW DPP and the NSW Judiciary. This seems to be just a vague reference point with a lot of scope for variance. The public wants realistic sentences, based on the gravity of the whole of the crime and especially in light of an offender's previous history.

In our case, I sought and read sentencing guidelines for juvenile offenders and there was a more substantial sentence for a crime such as ours. Once again I wrote to the Chief Justice, with no response.

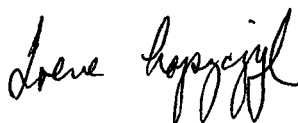
Charge bargaining must also be addressed by clear discussion and concurrence with all parties including those most affected by the crime – the victims. Police had informed us that the original plea of Manslaughter was well supported with the evidence to hand. Yet at trial this was changed without consultation.

As a teaching professional in the community, I fully understand and accept that the rehabilitation of offenders can have potential to stop another family suffering what mine has done. What I fail to understand is why the system seems determined to disregard my right to be rehabilitated, and in fact repeatedly retraumatizes me by its processes, including the gradual unfolding of issues I should have been told about as part of the sentencing process.

While there are still too many other things I could discuss, I regret that I have been unable to shorten my submission and can only hope and believe that the Committee will take the time to study the few points I have raised, and especially have regard to the impact of the systemic processes on people who are not supported, not legally represented and already emotionally traumatised in ways they would not want another person to ever endure.

The only compassionate guidance and mentoring I received came from VOCAL who provided ongoing support, advice and contact names and phone numbers in our quest for knowledge. Please look to the mass of statistics and information they have gathered over the years.

Yours faithfully



REVIEW OF THE VICTIMS SUPPORT AND REHABILITATION ACT 1996 AND THE VICTIMS RIGHTS ACT 1996

I note the purpose of the review is to determine whether the policy objectives of the Acts remain valid and whether the terms of the Acts remain appropriate for securing those objectives.

My first comment must bring to the fore the following: Who oversees that the objectives are being put into practice? Who is responsible for this, how is it supposed to be carried out, are there standard operating procedures in place or a step by step outline of action to be taken. What mechanism is in place to see that this happens, who checks to ensure the objectives of the Acts are being put into practice? Objectives are only valuable when they are actively exercised.

The following comments are based on my experience as a victim.

My son Andrew Lojszczyk and his friend were killed in June 1998 when a 14 year old driving a stolen vehicle, in company with another 14 year old and two 12 year olds ran a red light at a major intersection whilst being pursued by Police. The offenders all survived, the two primary victims did not and left behind a trail of innocent victims.

I wish to address part of the Charter of Victims Rights

Courtesy, compassion and respect

We had limited contact with any authority after the accident. The Police Officers who came to inform us of the accident, were certainly the above. However our contact with the DPP was not. Then there was the magistrate at the first hearing who asked us to leave the Court as the matter involved a juvenile offender who was to be allowed privacy. We had applied for permission through the right channels and received no answer, hence we had finally received approval from the Attorney General, only to be evicted initially. After intervention by the Police and DPP we were allowed to return. The Magistrate also admonished us, in the court room, for the furore we had caused by talking to the media. Do these actions constitute courtesy, compassion and respect.

During final court appearances, Andrew and Maryann were constantly referred to as the 'deceased'. This effectively dehumanised them, to us it was disrespectful, but seemed to make it easier on the offender.

On the night of the accident, after being informed that my son's body was on the tarmac, I wanted to go to the scene and was denied the opportunity. Please understand that a parent needs to be there, to cover the body, to hold a hand. This should be addressed.

Information about services and remedies

This was never done voluntarily, we certainly had no knowledge of who to talk to about our rights and future expectations and had to make many enquiries to ascertain what was going to happen. Who is responsible for this, should this be defined in the Act. Vocal was the only organisation who helped in an extremely considerate manner.

At the morgue I was told not to touch my son as there had to be an autopsy and that his body could not be released till this was done. Why, for what purpose, his cause of death was obvious. No explanation was given and this needs to be addressed.

Access to services

I required counselling for which I paid. I did not know I was entitled to this. Later I heard I was not eligible as I was not considered a victim of crime but of road trauma. I was able to pay for this help, but what about single income families, single parent families and the unemployed. In our case the question was: Is stealing a motor vehicle a crime? Is speeding a crime? Is failing to stop for Police a crime? Is running through a red light a crime? If I am a victim of road trauma and do not qualify, does this mean Police, health workers, the legal experts etc have no obligation to include me in the Charter of Victim Rights. How do I access help?

The offender, who had been under the auspices of DOCS and the juvenile justice system for some time, was given medical assistance and was able to elect his legal representatives. We had no say as to who could represent our son or us.

Information about investigation of the crime

Again this was not offered to us as a matter of course and how does one request this when one has no knowledge of the processes and the people to source. We were in deep trauma and shock and were eventually informed we had no say in the matter, that the DPP would be prosecuting.

Information about Prosecution of accused

At the initial hearing we were informed of the charges, the night before the main Court appearance we were told the charges had changed and we had no right to object, have input, make a comment. We were informed that the charges were as serious which we had to believe, yet later in Court the Magistrate said "because these charges are not as serious", sentencing would take this into account. The media and Vocal were the voices which kept us informed of events. We had been led to believe this was a serious crime and the outcome was not at all what we had been led to believe.

None of this information was automatically supplied by authorities. We had to persevere and make our own enquiries. A difficult task whilst in trauma and shock.

Victims should have the opportunity to speak in Court. My son and his companion were consistently referred to as the 'deceased' and this was very distressing. I believe this is done to dehumanise them and make it easier on the offender. Time and again it seemed that the opinion was that the primary victims are dead, nothing can be done for them. I believe their rights should have been protected in Court, their contribution to society should have been voiced. Why could not their character references have been tabled, the loss to society surely is important evidence.

The offender was able to bring up things from the past as an excuse for his behaviour. No evidence or convictions were ever made that I am aware of and there was no opportunity to verify or check the validity of such information. Certainly there was no warning of this

information so that without the opportunity to investigate, it is impossible to contradict. Yet it was taken into account when sentencing.

Protection from accused

At the initial hearing the Magistrate warned us not to look at the offender, not to approach him, not to glare at him and not to touch him, this said in front of the courtroom. Yet the offender was not cautioned similarly. When he did stand and glare at me, the Magistrate did nothing.

Victim impact statement

This was a total sham in our case. This document was supposedly our opportunity to have a say in Court. The Magistrate did not read it to the Court and it appeared that it would have no effect on sentencing, that of course we were upset and traumatised. It is important that the legal system realises the desolation and trauma of having to lay bare your soul to a stranger and then read about yourself, to be told the psychological mess you are. These statements were requested by the Crown Prosecution and must be an integral part of court proceedings and carry weight in the evidence. Otherwise why bother with the expense and trauma.

Post court and trial

There was no debriefing or explanation given to us about the result. Just devastation, disbelief and total loss of faith in a system of what we believed to be justice. To try and understand what we had just been through, we sought transcripts of the case and this again was difficult and costs can be involved. These should be automatically supplied. Letters were written and the community supported us in an appeal, yet no reply was received, we read about the rejection of the appeal in the papers.

Other points which should be taken into consideration are:

The costs involved in settling my son's affairs and the time and effort required at a painful time of my life. A 25 year old does not usually have a will. Costs for probate, legal costs for someone to handle the matter. Mortgage, insurance, my son's accounts for services which had to be met. This aspect should be considered for some victims, perhaps means testing might be appropriate.

CONCLUSION

The definition of victim of 'crime' needs to be addressed. Is the wording victim of 'act of violence' more appropriate. Perhaps the definition of 'victim' also needs to be addressed. Simple road accidents are 'road trauma', but an incident such as the above is 'crime'.

I would welcome the opportunity to address a committee on review of victims rights, to be able to answer questions on the effects of the legal processes, with a view to future improvements

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SUBMISSION ON REVIEW OF VICTIMS RIGHTS - PUBLIC USE

The following recommendations are made, based on our knowledge of past cases and the effect on victims. We believe victims are entitled to:

Courtesy, compassion and respect – in action, not just in words on paper.

More compassionate consideration at immediate time of incident.

Immediate contact by a designated person in authority and receipt of an outline of future processes. This should include contact names and details of help available.

Follow-up contact to keep them informed.

An outline of court processes.

More respectful consideration by Magistrates and Judges.

Immediate notification and consultation about changes in sentencing and the reasons for this.

Speak and give evidence in Court – their loss or pain and Society's loss is relevant and should be taken into consideration.

Make Victim Impact Statements that are acknowledged, not thrown out, in Court and are part of the evidence.

Counselling (if necessary) with the associated costs absorbed by the Bureau. Many victims are single income, single parent, unemployed and do not have the resources to afford this benefit.

Court and trial debriefing and copies of transcripts to try and absorb the result.

GENERAL

The definition of victim of 'crime' needs to be addressed. Is the wording victim of 'act of violence' more appropriate. People hurt in the process of crime but because a vehicle is involved are classified victims of 'road trauma'.

A network of personnel must be put in place to render assistance and information to Victims. These must be effective and trained formally in dealing with grief and trauma.

The effectiveness of these personnel must be checked to ensure quality control as is the normal procedure in an organisation.

A set of standard operating procedures should be designed so that all staff are aware of action to be taken and the timelines for such action.

Responsibility for ensuring the Charter is put into effect must be accepted by Supervisors and those in higher authority.

Action must be the outcome of the Charter, words on paper are useless.

URGENT

NOTICE OF IMPENDING PUBLIC OPEN MEETING/FORUM ON THE LAW, JUSTICE AND COMMUNITY EXPECTATIONS IN SENTENCING

**TUESDAY 30 OCTOBER 2001, 7 PM, NEWCASTLE TOWN
HALL**



You will be aware of community horror and response to the death of my son Dr Andrew Lojszczyk and his Accountant friend Miss Maryann Cameron in June 1998 when a juvenile in a stolen car ran a red light on a highway during a Police chase. This was further reinforced at sentencing, at his continued misbehaviour in prison and at his release.

Both VOCAL (Victims of Crime Assistance League) and I have been inundated with requests by the community to facilitate an opportunity for the community to:

- publicly give their opinion on our current system
- give victims of a variety of crimes, the opportunity to briefly discuss their cases and the effect on their lives
- be informed by our law makers (if they attend) on the guidelines for justice.
- reiterate the lack of faith in the current system.
- convince the Judiciary of the need for change with involvement from the Government, Members of Parliament, lawyers and barristers and our law students (our future law makers).

We have invited members of government, both state and federal, representatives of the judiciary, lawyers and barristers, law students (our law makers of the future) and all facets of the media so that we can be heard and hopefully our opinions and needs taken into account.

Geoff Jay has agreed to comper the meeting and Newcastle City Council have allowed us the use of their premises.

WE NOW NEED YOUR SUPPORT BY MASS ATTENDANCE

Should you wish to have the opportunity to talk about your case, please contact one of the following so that we can program your response

VOCAL, Robyn Cotterell-Jones
Tele 49 265 826, Fax 49 265 866
Email vocalhunter@cn-newc.com.au

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