



Victims Of Crime Co-ordinator

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SUBMISSION TO THE PUBLIC ACCOUNTS COMMITTEE INQUIRY ON THE ACT AUDITOR-GENERAL'S REPORT (NO.4/2005) ON COURTS ADMINISTRATION.

1. INTRODUCTION

1.1 In September 2005, the ACT Auditor-General issued a performance audit report into Courts Administration. The Public Accounts Committee is considering the findings and recommendations of that report.

1.2 This submission reflects the statutory functions of the Victims of Crime Coordinator under the *Victims of Crime Act 1994* to promote reforms to meet the needs of victims of crime in the administration of justice.

2. VICTIMS OF CRIME AND THE ADMINISTRATION OF JUSTICE

2.1 Victims of crime have a keen interest in the effective and efficient operation of the courts in the ACT. The experience of victims of crime with the administration of justice is as varied as are the individuals themselves. Adult and child members of the ACT community, of all races and cultural backgrounds, experience offences as broad as criminal damage and car theft, to armed robbery and homicide. Particular types of offences impact disproportionately on certain communities. For example, the sexual abuse of women and children.

2.2 Society has very high expectations of the responsibilities of victims of crime as responsible members of the community. These are that victims will:

- Report a crime promptly and fully to the appropriate investigation body,
- Make their home and belongings, and – on occasion- their bodies, available for the gathering of evidence,
- Provide a full, truthful and accurate account of their experience to investigators no matter how traumatic and painful,
- Cooperate fully with an investigation process,

- Be prepared to act as a witness for the prosecution when required,
- Be prepared to appear at and wait for court hearings whenever required – including those occasions when a matter may be adjourned regardless of the personal or financial inconvenience,
- Offer themselves for cross-examination often with minimal preparation and support, and
- Provide witness evidence that may draw on memory that can be months or years old.

2.3 In giving effect to these responsibilities imposed upon them, the experience of crime victims reveals remarkable commonalities despite the different offences that brought them into the system. These revolve around and flows from the their lack of standing in criminal proceedings other than as a complainant to police, and as a witness for the Crown (Cook, David & Grant, 1999). Throughout the process, it is assumed that victims of crime must disregard innumerable indignities and invasions of privacy in the overriding interests of the administration of justice.

2.4 In brief, victims express concerns at the lack of:

- General information about the process of investigation, protection, prosecution and adjudication so that, as citizens, their views about what may happen were likely to be drawn from TV shows.
- Feedback about the progress of investigation and prosecution of their particular case so that victims felt 'left in the dark' and were often called to attend court with very little notice.
- Their alienation from key decision-making about charging, bail and the decision to prosecute (and on what charges) and feeling that their views did not count.
- The lack of opportunities for input into proceedings including the consideration of sentencing options and in offender management meaning that victims felt they had no real 'say'.
- Regard for victim interests where prosecution and court processes clearly revolve around the interests of defendants making the length and apparent unpredictability of proceedings exhausting and traumatic.
- The dismissive and sometimes disrespectful attitude of criminal justice practitioners and the absence of even common courtesies which made the whole process even more unpleasant – and unnecessarily so.
- The lack of practical, reliable and consistent advocacy for their interests throughout their passage through the criminal justice process (from police to parole) so that people did not feel like an unwanted parcel.
- The lack of access to and availability of support and rehabilitation services, and prevention advice and assistance that understood the criminal process.

2.5 Many commentators (see for example Shapland 2000, van Dijk 1999, and Ziegenhagen 1989) have pointed out the dangers that flow from the dissatisfaction of crime victims . That, for example:

- Citizens may chose not to report crime to authorities;

- This patchy crime reporting means reduced opportunities for detection and ineffective prevention strategies;
- Citizens provide less information and extend little cooperation to prosecution authorities;
- There is an erosion of confidence in the very concept of justice as well as in justice agencies;
- There is increased potential for social division and disharmony; and
- Faith in the concepts of integrity and accountability that are so crucial to both victims and offenders (as well as to justice practitioners) is deeply undermined.

2.6 In no other area of government would citizens be expected to perform such a function critical to the maintenance of our society but without support and assistance given as normal and routine. Yet, *“the degree of confidence people have in the court system will influence their belief in the rule of law”* NZ Law Commission (2004:3).

3. VICTIM FEEDBACK ON COURT CLIENT SERVICE IN THE ACT

3.1 The Auditor General's report reflects on service charters for and feedback of court users as an essential aspect of modern courts administration (pp60-65). The report suggests that there may be benefit in “consulting court users who are not traditionally thought of as users of the court” for example victims of crime (p.61).

3.2 It is patently obvious from the client service documentation that exists in both Supreme and Magistrates Courts that non-professional users, in particular, the victim of crime, is not thought of as a distinct category of user of the court. In my view, the surveys are designed for and accessed by professional court users such as solicitors.¹ This is reflected in the satisfaction rates described in paras 5.10 to 5.14.

3.3 In 1997-1998, the VoCC worked in partnership with the Magistrates Court over a considerable period of time in the development of a Client Service Strategy. Some issues put forward as being in the interests of crime victims (as civil litigants and as witnesses in criminal proceedings) included:

- *Security* – inadequate (and badly publicised) space for secure waiting, and inadequate measures to provide for secure entry and exit to court.
- *Transparent Processes* – some areas of jurisdiction lacked written procedure thereby creating a sense of confusion and unpredictability for users (for example in applications for financial assistance and in applications for protection orders).
- *Inadequate service information* – information about where to go once in the building was not easy to find or understand; and information about

¹ The Auditor General notes the evaluation of the Ngambra Circle Sentencing Court conducted by Courts Administration and that there were no victims or victim representatives responding to the survey (2004:29). The VoCC Office offered surveys to all victims after proceedings during the period of the pilot. This was an inappropriate time to expect individuals to complete a feedback form. Nonetheless, feedback forms were provided by 1 victim, 1 victim support person and the VoCC staff. A very detailed report from the VoCC on victim participation was provided to the review of the pilot in 2004.

services that may offer support and assistance to victims was not readily apparent and was not kept up-to-date.

- *Court Support* – some jurisdiction supported models of court support that were integrated with courts administration and worked with all non-professional users.
- *Environmental* – adequate and clear signage.
- *Plain English information* – much court documentation (including application forms) would have benefited from a plain English review.
- *Web Based Information* – could be more effectively developed.
- *Public User Information Sessions* – more effective use of time and resources may be achieved in collaborative sessions for members of the public (and support services) as introductions to particular jurisdictions (for example financial assistance).

3.4 As part of the development of a Client Service Strategy the VoCC developed a survey. As with later client surveys, the respondent sample was not reflective of all types of court users, the majority of completed surveys being from defendants or legal practitioners. Only 2 crime victims responded. Results² showed that in the main the 'quality of service indicators' such as signage, approachable and polite staff, cleanliness and tidiness of waiting areas, safety and security of waiting areas, and facilities provided at Court were all rated as either very good or fairly good. Far less certainty was expressed on knowing what to do inside a courtroom, the range of leaflets and information available, and how well things were explained.

3.5 It is submitted that the implications of this survey remain current. These are that:

- More direct methods of securing feedback from victims of crime need to be identified.
- Things such good signage, cleanliness, safety and security, and information availability should be regarded as a central but basic element of service delivery.
- People value highly contact with other people. Contact that is respectful, courteous, polite, accurate and empathetic.
- Attention needs to be given to possible methods to inform and prepare people, especially non-professional users, for appearing before a Court or Tribunal.
- Adjournments are a relatively common occurrence for court users.

3.6 Unfortunately a significant proportion of the Client Service Strategy initiative did not come to fruition. It is apparent that the demands of day-to-day operations will necessarily mean that client service enhancements are ad hoc and inadequately supported. Although the Magistrates Court was able to support a Client Service Liaison Officer for a brief period of time to support the strategy, the position lapsed due to other priorities.

3.7 In addition to this strategy, my Office has worked with the Magistrates Court to: provide briefings for counter staff, to clarify the provision of

² Report on file with the VoCC (1998).

information to victims, to provide an Information Pack and update application forms for victims of crime financial assistance, draft a user-friendly guide to the application process for protection orders, organise information sessions for staff in support services following law reform, and to respond to distressed and unrepresented individuals at court when requested to do so by Magistrates and court staff.

3.8 Subsequent to the earlier client initiative, my Office raised the need to find more effective communication strategies with victims of crime with the Courts Administrator. Neither the Court nor my Office has the resources or capacity to address the problems that we both see. The Committee should note that, following the NZ Law Commission report, *Delivering Justice for All* (2004) and the NZ *Victims of Crime Act 2004*, Victim Advisor positions were created within courts administration and distributed amongst all NZ courts.

3.9 It is **recommended** that a fully resourced client service initiative (integrated for all Courts) be developed that ensures all jurisdictions especially those involving applications for protection orders and for victims of crime financial assistance have written procedures that are publicly available, and reviews all court documentation such as applications, information leaflets and the like so as to produce them in Plain English. An initiative could schedule a series of improvements to client service to be delivered over time. It is critical, however, that clear management leadership and accountability for the initiative is essential. It is further **recommended** that specific Practice Guide be developed for all Courts (including Children's Court) that outline the court or case information that victims of crime are entitled to. Finally, it is **recommended** that the website for courts specifically develop information for victims of crime.

3.10 It is sometimes said of defendants who are more frequently before the courts, that they are "well versed in the processes, know their rights and how to assert them" (NZ Law Commission 2004:29). No such claim could be made for victims of crime in general. It is extraordinarily hit and miss for an individual to even know that they have 'rights' let alone know how to access them or how to receive support (including legal advice) to give effect to them.

3.11 The independent statutory position of the Victims of Crime Coordinator established under the *Victims of Crime Act 2004* is required (s7g):

to ensure, as far as practicable, that victims receive the information and assistance they need in connection with their involvement in the administration of justice;

3.12 However, as outlined in the Annual Report for 2004-2005, the Office is severely under-resourced to fulfil this and other of its statutory functions. While the Office is able to access certain of the Magistrates Court criminal case database, it does not have a database of its own. An integrated victim database that is built upon case data from other justice agencies is easily achievable. An integrated database would create significant functional efficiencies for the criminal justice system as a whole.

3.13 It is **recommended** that the Office of the Victims of Crime Coordinator be resourced to perform as a centralised information, notification, support and advocacy service for victims engaged in justice processes.³

4. PARTICIPATORY JUSTICE IN THE ACT

4.1 The Auditor General's Report into Courts Administration reflects some underlying tensions and contradictions within the community and within government about the function and purpose of courts. The most fundamental of these is whether to deliver quality justice outcomes that adequately reflect the circumstances of any given case whilst protecting due process, as opposed to pushing cases through on measures of quantity and timeliness.

4.2 Of course, it is important for ACT Courts to capture performance measures that enable a degree of comparability across jurisdictions. Measures of 'time taken to finalise', of 'clearance', of complaints, and of judicial resources per head of population are important and useful. However, they tell us very little, if anything, about "delivering justice" in a manner that is comprehensible to many in the community (and indeed, in the justice system itself).

4.3 However, it is the view of this submission that the traditionally remote and the newer and more engaged ways of 'doing justice' are not mutually exclusive. The ACT has attempted to do both in a number of different ways. For example,

- the practice of conferencing civil matters as a means of 'settling' without recourse to a judicial officer.
- creating case management procedures for different types of matters,
- developing 'problem-solving' processes especially for offences involving drug and alcohol addictions.
- implementing specialist jurisdictions such as for Children's Court, the Family Violence Criminal List and the Ngambra Circle Sentencing Court.
- participating in more participatory justice processes such as restorative justice.

4.4 The report of the Law Commission of Canada, *Transforming Relationships Through Participatory Justice* (Nov 2003) suggests that these types of processes fall under the overarching term "participatory justice". In essence, the term is applicable to any justice process that depends upon or requires citizen participation or engagement. The question of how much participation and on what basis is, of course, critical. It is axiomatic that the extent of citizen participation in their justice system will depend on how well a system is resourced to do this. Performance and evaluative measures need also to evolve (and be realistic) to capture these ways of doing justice.

³ Note, for example, the "No Witness No Justice" Initiative commenced in the UK in 2004 following piloting of a number of 'one-stop shops' in different parts of the country.

4.5 Also central to the overarching notion of participatory justice is requirement to acknowledge citizens who have become victims of crime as having an essential role.

4.6 There are a number of ways in which these innovations can be supported to deliver quality justice outcomes within established performance benchmarks. The following are put forwards as **recommendations** for the Committee's consideration.

(a) *Conferencing* – this aspect of the Magistrates Court service is where a very large number of ACT residents experience 'justice'. Conferencing can be gruelling and very stressful for staff. The ACT approach could benefit from a clearer articulation of the parameters of the model. As the Auditor General points out, it combines elements of conciliation, arbitration and mediation. Whilst flexibility can be helpful, it is essential for participants and their supporters that the purpose, criteria and the process are transparent. This means that procedures need to be written, competencies established, training and professional development instituted, and plain English information provided to parties at each stage of the process

The ACT Criminal Justice Strategy 2002-2005 acknowledged the need for a better framework for neighbourhood dispute resolution. This target could not be advanced by this Office due to resource constraints. Nonetheless it remains an option for protection order applicants (not domestic violence) to be referred for alternative dispute resolution. A specific pathway linking the magistrates Court to appropriate services would need to be developed to enable this to happen.

(b) *Research and Evaluation* – the Courts generate huge amounts of data about aspects of the cases and their management. However, the capacity of Courts Administration to collate, analyse and interpret the information is extremely limited indeed. The Family Violence Intervention Program (FVIP) provides useful illustration of the importance of data. In Phase I of the FVIP rather than construct wholly new evaluative measures, the consultants instead consulted with administrators to identify all data that is routinely captured. In Phase II of the program, this and survey data became the basis of an evaluation process that continues to this day. For Phase III, the Magistrates Court received a specific small amount in a New Budget Bid to enable more efficient IT programming and hence analysis. The FVIP is today a flagship for the ACT justice system and an international benchmark in part because it can actually show data on performance over 7 years of development. In essence, however, the argument is that it needs to be a specific goal to achieve evaluation of justice outcomes (as opposed to outputs) and resources to enable this to happen.

(c) *Centralised Victim Advocacy* – as recommended in 3.13 above, a participatory justice system must properly recognise and resource the engagement of those citizens who carry an enormous set of responsibilities to actually initiate the justice process. That is, victims of crime. A centralised

model could also create functional efficiencies by integrating with certain restorative initiatives.

(d) *Extending Specialised Jurisdictions* – this submission argues that specialised jurisdictions can deliver quality outcomes for justice and meet output indicators. The section discussing the Family Violence Criminal List explores this in more detail. Experience in other small jurisdictions, for example, Manitoba (Canada) do show that the volume of offences affecting vulnerable victims such as child victims of sexual assault can and do act fairly to the accused, expedite matters far more quickly than is currently the case in the Supreme Court, and deliver better quality evidence upon which the court may deliberate. The specialised jurisdiction for criminal FV matters could include any personal offences against children (it currently only includes child victims of family violence), and – as a case management system - should be extended to the Supreme Court. That is, matters involving sexual and/or family violence should be given a listing priority. Consideration could also be given to a judicial officer being assigned responsibility for ‘managing’ that specialised criminal list.

(e) *Legislate for Case Management* – The Auditor General’s report notes that some early benefits arose from the application of case management processes in the Courts. From victims of crime point of view, case management allows for a higher degree of predictability and transparency. It appears that with the passage of time, however, bad habits slip back into play despite the best efforts of all concerned. Legislation for case management may be necessary to consolidate the best aspects of the processes, and to iron out the worst. Any new legislation would need to take into account certain provisions enacted with the *Crimes (Sentencing) Act 2005*. In particular, those that relate to ‘discounting’ in exchange for certain cooperation.

It must be stated that the issue of providing the incentive of a sentence ‘discount’ for an early plea of guilt has advantages and disadvantages for victims of crime. On the one hand, an early plea of guilt can obviate the necessity of a person appearing as a witness. On the other hand, it can lead to a perception from victims and the community of hidden ‘deals’ being done. The issue links strongly to the role of the prosecution in negotiating with defence over whether to accept a plea and on what charge, and on an ‘agreed statement of facts’. These issues have been subject to much controversy in other jurisdictions. A way forward identified in NSW has been to amend the victims of crime legislation to require prosecution to consult with victims of crime prior to accepting a plea. Similar protections would need to be made in the ACT.

Consideration should be given to victim interests in the application of case management in the Supreme Court. At present if an accused person is in custody, these matters are given priority. In particular, consideration should be given to identifying ways of reducing delay and adjournment, and giving greater certainty in dates for matters involving the sexual or physical assault

of children, sexual offences generally, homicide and matters involving family violence.

(f) *Improved Use of IT* – the Bushfire Coronial saw the Court utilise new technology to a high degree. In the 21st century with crime crossing borders, and parties appearing from both interstate and overseas jurisdictions, it is imperative that courts engage more fully with the advantages that IT can bring. Technological advances have significant potential for vulnerable victims and witnesses. For example, the use of CCTV is relatively well established. Other jurisdictions have commenced a form of remote witnessing that enables vulnerable victims to give their evidence from a location outside of the court precincts. However, in a recent case involving a foreign visitor who was severely assaulted during his time in Canberra, advice was received that a video link to enable him to give evidence could not be established. Similarly, a video link to the Belconnen Remand Centre was established some time ago. However, it remains the case that defendants are transported to the court for appearances that might be less than a minute.

(g) *Magistrates Court Jurisdiction* – There is strong argument for encouraging the resolution of more matters in the Magistrates Court jurisdiction. Currently the jurisdiction of the Magistrates Court and the Children's Court is limited to a maximum two year custodial sentence. At the same time, there is a degree of perception that, in order to increase pressure on a vulnerable victim/witness, the first thing a defence lawyer will do is seek to have a matter referred to the Supreme Court. Whilst on paper it may appear as though cases are processed faster within the Supreme Court, for victims it is a matter of yet a further delay.

5 THE FAMILY VIOLENCE INTERVENTION PROGRAM

5.1 The FVIP is an initiative in sustained system change. There are a number of important points to be made about the program including that:

- It has expressly acknowledged and works with the interconnectedness of the different agencies in the criminal justice system.
- It has worked in a number of specific ways to improve information flow across the system, and to certain key decision-makers.
- It created a specialised jurisdiction with the express purpose of improving the justice system's response to family violence offences.
- The specialised case management process has reinforced due process, protected the rights of the accused and created pathways for victim assistance that support their engagement in the process.

5.2 The FVIP works from the basic premise that a court does not stand alone from the rest of the system, and that, for the citizen accused or victim, there is an expectation that there is a noticeable degree of cohesion and purpose in the different parts working together.

5.3 The FVIP sought to address a number of specific failings in criminal justice responses to family violence. What is relevant to this submission, is the critique that family violence was kept private because of the failure of

agencies to effect a positive intervention, there was a lack of cohesion in the functioning of the system, and there was little regard for victim safety or victim interests. Since 1998, a number of specific indicators reveal the benefits of a specialised FV jurisdiction. That is (over a 7 year period):

- The total number of defendants charged before the court for FV offences has increased 122%.
- The total number of charges per annum has increased 54%.
- Two thirds of matters are finalised in under 5 months.
- The early plea rate has increased from 24% of matters to 53% of matters.
- In 2002 483 hours of court time and 942 witnesses (especially police witnesses) were saved through the operation of the specialised jurisdiction.

5.4 Victims were surveyed twice in the early stages of the FVIP and are now surveyed annually by the justice partner, the Domestic Violence Crisis Service. These surveys show that:

- 74% said they had never indicated to police, prosecution or courts that they wanted charges dropped (2001)
- 58% felt safe at case finalisation (2001)
- 18 months after finalisation, 75% said that they felt safe (2002)
- In 2004-05, 69% felt that the prosecution of their case was beneficial to them, and
- 74% felt that their views were taken into account.

5.5 Further benefits of a specialised jurisdiction (where there are a number of specialised justice personnel with a higher level of skill, knowledge and understanding with regard to this category of offences) are that:

- Witness issues are identified much earlier on (at weekly case tracking meetings) than is usual in criminal proceedings.
- Better evidence is secured through more thorough investigation and a greater degree of cooperation with victim agencies.
- Any issue that may potentially lead to an adjournment is identified early.
- Charges that more accurately reflect the circumstances of the incident and the criminality of the behaviour are brought to court.
- The Court itself is able to function more efficiently because of the higher degree of specialist knowledge and experience, and the greater degree of preparation especially from prosecution.
- The proportion of matters discontinued with no evidence to offer is significantly reduced.

5.6 These benefits have been replicated in studies of specialised jurisdictions in other countries, notably Canada and the UK. It is **recommended** that legislation to consolidate the family violence jurisdiction be developed, and that the scope of the specialisation be extended to include all offences against children and to include case management within the Supreme Court.

6. CONCLUSION

6.1 Community debate about the effectiveness of Courts Administration is influenced about perception of how fair are justice processes and how just are the outcomes. Central to these perceptions is the experience that victims of crime have in their engagement with the justice system.

6.2 The *ACT Victims of Crime Act 1994* reflects the responsibilities imposed upon citizens who have become victims of crime. The Act translates these as a series of what some call 'rights' but are actually a set of basic principles. Whilst justice agencies have been slow to acknowledge victims of crime as a stakeholder constituency or indeed as clients or consumers of justice services, including of court services, the *Victims of Crime Act 1994* provides a measure (albeit a flawed one) to enable a procedurally fair system to apply equally to the accused and to victims.

6.3 Central to the legislation is the principle that:

a victim should be dealt with at all times in a sympathetic, constructive and reassuring way and with appropriate regard to his or her personal situation, rights and dignity;

6.4 This submission invites the Public Accounts Committee to consider the recommendations as a real opportunity to give concrete effect to that central principle.

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