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Issue 40, July 2008

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The Case for Parallel Justice by Heather Verry



In election year, there has been much political activity around advancing victims' rights. The Labour government announced a number of proposed measures, including developing a Victims' Charter, an information website for victims and boosting funding to Victim Support. The National Party released a summary of policies, including upgrading the Victim Notification Register, establishing a Victims' Services Centre within the Ministry of Justice and reviewing the Victims Rights Act 2002. Two current Bills– the Injury Prevention, Rehabilitation and Compensation Amendment Bill (No 2) and the Children, Young Persons, and Their Families Amendment Bill (No 6) – go some way in advancing victims' rights.

Alongside this activity, Victim Support has been advocating for a system of Parallel Justice precipitated by the release of Victim Support's position document "Commitment to Parallel Justice" in February this year. [Download it here](#)

Parallel Justice is a framework that would require both a governmental and a community response to ensure victims are given a separate path to justice alongside the criminal justice system. It involves victims having the opportunity to speak their truth and having their needs distinguished

from society's treatment of the offender. This concept has been strongly promoted by the National Centre for Victims of Crime in the United States.

Part of Victim Support's push for Parallel Justice has been a call for improvements to restorative justice, including:

raising awareness among victims (and others) about restorative justice opportunities and benefits;

improving information about the process for victims;

offering victim-offender meetings throughout the entire criminal justice process, not just before sentencing as is the case with the court-referred pilot (a victim may not be ready to meet with the offender at that stage, but may want to do so later);

providing a support plan for the victim alongside the rehabilitation plan for the offender ensuring that victims receive funding for travel, accommodation and childcare when attending restorative justice conferences; and

having case managers to coordinate the necessary resources and support for the victim.

Victim Support recognises the place restorative justice holds in providing a voice for victims and an avenue for a community response to "repairing" harm. Our aim is for restorative justice to be enhanced and expanded.

However, restorative justice is not a substitute for our adversarial system. Restorative justice requires admitted wrongdoing while our trial system deals with disputed criminal liability. Furthermore, some victims may have no interest in meeting with their offender and may prefer to see them dealt with through a punitive trial.

In contrast to the restorative justice model, opportunities for victims to speak their truth within our mainstream trial system are seriously curtailed. This system focuses on the rights of the accused contained within the New Zealand Bill of Rights Act. It pits the state against the defendant with the victim excluded, unless called as a witness. As a witness the victim's only right to speak in court is through responding to questions from the defence and prosecution or through presenting his or her Victim Impact Statement. As the Victim Impact Statement is a form of evidence the judge is likely to consider when imposing a sentence, the general rules of evidence constrain victims in what they can and cannot say.

Victim Support is aware that the criminal justice sector is heavily burdened. The courts are bogged down as a result of the inevitable load partly caused by the need to strictly adhere to elaborate process. This exacerbates the vulnerability of victims of crime, and must be part of the overview of Victim Support in its crucial role in advocacy of victims' rights.

The adversarial system must be held up to scrutiny alongside the benefits that could be achieved by a quantum shift in emphasis to an inquisitorial system where there is an inquiry into the "truth" as opposed to a contest. There has been some movement in this area with Government recently announcing that for sexual violence cases, the Ministry of Justice will review alternative models to an adversarial approach.

To improve the situation for victims within the mainstream justice system that see us move towards Parallel Justice, Victim Support has identified some priority areas, namely ensuring that:

victims have greater standing in the criminal justice system through strengthening the application of the Victims' Rights Act 2002;

victims of crime receive timely reparation from the state and that the state then recovers this from the offender; and

state-funded support is available to both primary and secondary crime victims for counselling and treatment, lost earnings and childcare costs if required to take time off work to attend court, and lost earnings associated with physical and mental trauma.

Application of Victims' Rights Act 2002

Agencies and agents are careful to uphold the rights of the accused as outlined in the NZ Bill Of Rights, often treating the Victims' Rights Act 2002 with less seriousness. Victim Support recently made a submission on the Policing Bill, recommending the inclusion of a key principle that policing services are provided in a manner that respects victims' rights. The rationale for the Labour government's Victims' Charter is to ensure that victims of crime are aware of their rights under the Victims' Rights Act 2002.

Youth Justice is an arena where the standing of the victim is particularly weak. The Children, Young Persons, and Their Families Amendment Bill (No 6) continues to skew the youth justice process in favour of the child or young person. It does little to shift the balance of the 1989 Act (all 374 pages of it) that provides a comprehensive set of laws to ensure the rights of a child or young person are upheld. Rights accorded to the victim, on the other hand, continue to be given minimal and subservient consideration.

Victim Support recently made a submission on this Bill, arguing that the youth justice system must properly recognise the interests of victims at all times throughout proceedings. The submission included the recommendation that any decisions and actions should give equal consideration to the welfare, interests and views of both parties, and that a further youth justice principle should be included that all duties should be carried out in accordance with Victims' Rights Act 2002. The Act includes provisions to ensure victims are informed of and about proceedings, have access to programmes, remedies and services, such as Victim Support, and are treated with courtesy, compassion and respect.

Reparation

Currently, victim reparation in New Zealand depends on an offender being apprehended then being ordered by the court. Once ordered, it is not uncommon for offenders to renege or to drip feed payments to the victim over many years. Such practice can cause more harm to victims than good and increase the risk of revictimisation.

Victim Support has been advocating for victims of crime to receive timely reparation from the state, which would then recover the funds from the offender, if apprehended. Victim Support has spoken out in support of the Government's recent announcement that the Law Commission will undertake a review of our reparation practices. This announcement was part of the Government's Response to the Report of the Victims Rights Inquiry, released in December, which raised concerns about our system of compensation and reparation for victims.

State-funded support

Financial support to victims is limited and there are many gaps at present. For example, Victim Support administers a state-funded counselling scheme for families and friends of homicide victims. Other victims who seek counselling, often of very serious crimes, are excluded. Victim Support believes the state should take responsibility for ensuring that victims of crime are reimbursed for compensable costs, including lost earnings, childcare and for counselling and medical treatment that relate to the crime.

Victim Support recently made a submission to the Injury Prevention Rehabilitation and Compensation Amendment Bill (No 2), recommending that ACC should be extended to cover mental injury caused by any accidental traumatic event, wherever it occurs. Under the proposed Bill, ACC would only compensate for mental trauma if it occurred as a result of sexual assault, physical injury or a single traumatic event during the course of work. A victim who suffered mental trauma after being robbed at knifepoint while walking home would not be covered.

Victim Support continues its research and work into victims' rights generally, including the development of a media training package that is currently underway. Strong interest has come from media companies and journalism training agencies in seeing this package applied in journalism training, to journalists covering events where victims' rights must be recognised, and the

protection of the journalists themselves from the vicarious impact of victim trauma.

It was recently announced that our Board Chairperson, Margaret Eames, (also a member of the Nelson Restorative Justice Trust) has been appointed a member of the new Criminal Justice Advisory Board. The Board has been tasked with bringing a range of perspectives on further improvements to the criminal justice system. This will be a great opportunity and bolsters our hope that the current political interest in victims' issues will see results. Results that see Parallel Justice become a reality.

Heather Verry