

HOLISTIC COMMUNITY JUSTICE: A PROPOSED RESPONSE TO FAMILY VIOLENCE IN ABORIGINAL COMMUNITIES

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I INTRODUCTION

The discussion paper released by the Aboriginal Justice Advisory Council ('AJAC'), entitled *Holistic Community Justice: A Proposed Response to Aboriginal Family Violence*,¹ explores the current criminal justice response to Aboriginal family violence, including the sentencing of offenders and the rights of victims. The purpose of this article is to generate debate about the issues it examines and the ideas it proposes.

Concern over Aboriginal family violence has risen over the last decade. While many communities have attempted to lift the veil of secrecy surrounding family violence, there have been just as many attempts to keep it covered. There has been a great deal of debate about the best way forward, and what is considered to be the best approach in practice. One message however, has been consistent – 'We Want Family Violence in Our Lives No More'. Issues of prevention and healing need immediate attention. A holistic community justice response suggests that it is important to address the needs of victims, and that perpetrators of family violence must be dealt within a framework of justice that involves the Aboriginal community.

The details of such a program are currently being workshopped and negotiated by AJAC. Ultimately, the design of healing programs will need guidance from Aboriginal communities.

II IDENTIFYING THE PROBLEM

A recent study by the NSW Bureau of Crime Statistics and Research ('Bureau of Crime Statistics') revealed that Aboriginal offending and victimisation rates for offences including domestic violence, sexual assault and child sexual assault

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¹ Rowena Lawrie, *Holistic Community Justice: A Proposed Response to Aboriginal Family Violence* (2001), Lawlink NSW <<http://www.lawlink.nsw.gov.au/ajac.nsf/pages/publications>> at 6 April 2002.

are overwhelmingly higher than those for the general population.² It also found that Aboriginal women are reporting becoming victims of violent crimes (including sexual assault, domestic violence and child sexual assault) at rates far higher than would be expected given their numbers in the New South Wales population. The figures suggest, for example, that the incidence of sexual assault where the offender is Aboriginal is 133.8 per 100 000, whereas it is only 45.1 per 100 000 for the general population.³ The rate of Aboriginal victimisation for sexual assaults was 159.3 per 100 000, compared with 57.3 per 100 000 for the general population.⁴

These figures tell us that we need to address the current situation of very high victimisation rates of Aboriginal people, as well as the high Aboriginal offending and incarceration rates. Consideration must be given to how we can practically reduce these rates to ensure the safety of Aboriginal women and children. AJAC has a general interest in improving the operation of justice for Aboriginal people, as well as reducing Aboriginal offending and victimisation rates. To see a real reduction in family violence, we need to address these issues. This understanding is based on an examination of the current criminal justice response to family violence.

In examining the criminal justice system, AJAC has found that the needs of offenders and victims are often complex and conflicting. Current approaches either address one or the other but rarely both. Often, initiatives designed to address the needs of one party in the offence affect the other. An example of this is encouraging victims to pursue criminal proceedings. This directly increases the number of Aboriginal people in custody. Alternatively, initiatives to divert offenders from prison may make Aboriginal communities less safe for Aboriginal victims of violence.

While the figures revealed by the Bureau of Crime Statistics are alarming, it is suggested that, given the inherent problems associated with reporting family violence, they are fairly conservative. Anecdotal evidence indicates that the problem of Aboriginal family violence has not diminished and in fact may be getting worse. Under-reporting to criminal justice agencies occurs for a number of reasons, including poor relations with the police, lack of confidence and trust in the justice system, a lack of faith that the needs of victims will be met, a general concern about the over-representation of Aboriginal people in prison, and fears about further Aboriginal deaths in custody. This is compounded by the belief that victims and their families may not be supported by their local community, as well as a fear that the processes of the criminal justice system promote 'revictimisation'. The New South Wales Department for Women's *Heroines of Fortitude* report found that Aboriginal women who reported sexual

2 Jacqueline Fitzgerald and Don Weatherburn, *Aboriginal Victimisation and Offending: The Picture from Police Records*, Crime and Justice Statistics: Bureau Brief, NSW Bureau of Crime Statistics and Research (2001), Lawlink NSW <[http://www.lawlink.nsw.gov.au/bocsar1.nsf/files/bb17.pdf/\\$file/bb17.pdf](http://www.lawlink.nsw.gov.au/bocsar1.nsf/files/bb17.pdf/$file/bb17.pdf)> at 23 June 2002.

3 Ibid 3.

4 This is calculated by expressing the number of victims and offenders 'as a proportion of the residential population of the group': *ibid* 1, 3.

assault regularly had their credibility challenged by questions about alcohol consumption, victim's compensation, promiscuity and myths about whether sexual assault was part of Aboriginal culture.⁵ It tells us quite clearly that a more meaningful justice process and outcome is needed for Aboriginal victims of family violence.

A major failing of the current criminal justice process is that the immediate and longer-term needs of the victims of family violence are not addressed. Traditionally, a safety net for victims of violence (such as incest) was provided within an Aboriginal community setting and offenders were dealt with by the community. That system has been disturbed by colonisation. Existing mechanisms do not provide a realistic resolution for Aboriginal victims of family violence and their families. Further, there is often little real opportunity to address the rehabilitative needs of the offender, and the broader healing of the community, when a family violence offence occurs or when it is not addressed over a period of time.

To have a real impact on family violence in Aboriginal communities, we need to adopt an approach that:

- is completely controlled by Aboriginal communities;
- deals with victims' needs in a holistic manner; and
- takes a restorative and rehabilitative approach towards offenders.

This is based on the premise that family violence affects not just the immediate victim(s) but damages whole communities. In order to assist in the healing of Aboriginal families and communities, we need to develop a holistic mechanism that can meet the needs of victims while dealing with the causes of offending and making offenders accountable for their crimes.

III MEETING THE NEEDS OF VICTIMS

The needs of victims in Aboriginal communities are much broader and often more complex than can be met through criminal prosecution alone. These needs can include emergency accommodation, financial assistance, health care, living skills, counselling or healing, and a meaningful justice outcome. Currently, some services may meet some of these needs. However, services are often dispersed, and difficult to access, especially for a person in crisis. The point of disclosure provides an ideal opportunity to address these needs.

What is required is a localised, community-controlled justice and healing centre that can act as a single point of contact for victims. The centre would provide assessment and assistance: assessing the needs of the victim, as well as negotiating with the appropriate service providers on the victim's behalf. This may include meeting their immediate needs, such as finding emergency accommodation and providing financial assistance, as well as obtaining legal advice and helping them to liaise with police. The centre could act as a pathway

5 New South Wales Department for Women, *Heroines of Fortitude: The Experiences of Women in Court as Victims of Sexual Assault, Summary Report* (1996) 7-8.

should the victim want to pursue the matter through the criminal justice system. Additionally, the centre should provide longer-term therapeutic and healing programs.

Healing for victims can involve their family, community or general support system. The focus of healing is to help them to rebuild their lives and recognise their strengths. Yet, as the extended family and/or community may become involved, it is expected that the process will assist the broader community to recover from the damage that family violence inflicts. The detail and design of healing programs should be reflective of the practices and healing skills of the local Aboriginal community. This service may also build upon existing living and parenting skills.

IV DEALING WITH OFFENDERS

We propose that the local Aboriginal community (where the offence occurred or where the offender and victim are residing) control and actively engage the justice and healing centres. By engaging the local Aboriginal community in the provision of services and assistance to the victim, that community then becomes actively involved in the individual's healing process. The centre also has a role to play in dealing with offenders.

The development of local community-controlled healing and justice centres must be coupled with the implementation of an alternative sentencing process for Aboriginal family violence offenders. This should be done in a rehabilitative and restorative manner, which establishes formal links with the Aboriginal community. The sentencing options must actively address the causes of offending and encourage offenders to take responsibility for their actions. Offenders should be involved in an intensive healing program aimed at providing reparation for the victim, the local community and themselves. It is envisioned that this will also assist offenders with their re-entry into the community, including those re-entering their community from prison.

By having local community justice and healing centres provide a service to victims and become involved in sentencing options for offenders, such centres can ensure that the causes and consequences of the offence are dealt with holistically. The community should control this process and focus on providing long-term pathways of healing.

The possibility of more effective and appropriate healing would increase with direct and broad community involvement. Community involvement in dealing with offenders will impose a community sanction on the offender's behaviour and demonstrate the community's intolerance of family violence. It is argued that this demonstration of community intolerance will have a greater and more meaningful impact on Aboriginal offenders than the existing criminal justice processes.

V COMMUNITY INVOLVEMENT IN HEALING PROGRAMS

Healing programs are essential to the restorative and rehabilitative process that needs to occur. The content of the therapeutic and healing programs should depend on the nature of the offence (eg, common assault or sexual assault). Furthermore, the design of such programs should reflect the community's strengths in dealing with family violence, utilising their own healing skills. It is recognised that different communities may be at different stages of addressing violence locally. Should communities need assistance to deal with family violence, specific, yet flexible, approaches and specialists may be called upon.

This proposed process of directly involving Aboriginal communities in assisting victims and dealing with offenders allows Aboriginal communities to take responsibility for their current problems and to set the tone and direction that their solutions to those problems can take. This approach may also help to resolve the inter-familial tensions that often result in family violence, thus assisting in the overall wellbeing of Aboriginal communities.

VI CONCLUSION

This proposal offers an alternative model for addressing the serious matter of family violence in Aboriginal communities. It is argued that long-term effects will include an overall reduction in family violence. Making an impact 'on the ground' where communities can actually be directly involved in programs would ensure a level of community re-empowerment. This approach also exposes family violence as an unacceptable crime in Aboriginal communities. It actively ensures a service for victims whilst encouraging offenders to openly take responsibility and deal with the underlying causes of their behaviour. The approach recognises the importance of Aboriginal solutions. Aboriginal communities are in best position to know the way forward, and to actively heal the wounds of family violence according to their unique and local needs.