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## **EVOLVING MECHANISMS FOR ENGAGING VICTIMS IN THE SENTENCING PROCESS: SHOULD VICTIMS HAVE A STRONGER VOICE IN COURT?**

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## **Evolving mechanisms for engaging victims in the sentencing process: Should victims have a stronger voice in court?**

### **Abstract**

Should crime victims have a voice in court? Two decades ago, this question would have provoked strong emotions on both sides of the debate. Today the question is more likely to be: should victims have a stronger voice in court?

The first part of this paper reports on the results of a survey (which was conducted in 2005) to obtain the views of South Australia's judges and magistrates on victim impact statements. Their views are significant because many victims expect their impact statements to have an effect on sentence, and those who believe that that effect has not materialised are more likely to be dissatisfied with the sentences judges and magistrates impose.

The second part of this paper reports on other ways that are said to give victims an even stronger voice, including post-conviction / pre-sentence victim-offender conferences, such as those piloted in the South Australia Magistrates Court last year. Giving victims a stronger voice through participation is part of the mantra of advocates for restorative justice. Reflecting on this and the steady growth of alternatives to criminal courts, this paper warns that restoration has different meanings for victims, offenders and the public, which should not be ignored.

This paper concludes that giving victims' voices in sentencing is intrinsically and inherently valuable. Victim impact statements do assist victims, but have not necessarily altered the structural position of the victim in the criminal justice system. Victim impact conferences, on the other hand, help victims to regain a sense of control over their lives and have the potential to directly engage victims the criminal justice system. Offering victims opportunities to participate, and then allowing them to choose whether they accept that opportunity or not, is important. As to victim satisfaction, while the South Australian pilot produced some limited indications that the right to be heard improves victims' satisfaction; research results from elsewhere are inconclusive.

Should victims of crime have a voice in court? Two decades ago, this question would have provoked strong emotions on both sides of the debate. Today, the question is more likely to be should victims have a stronger voice?

In South Australia, as in other Australian state and territory jurisdictions, victims of crime have the right to participate in the sentencing process by submitting, and for some offences reading, a victim impact statement. The introduction of impact statements aroused considerable discussion, even heated debate in some places.

In 1981 the South Australian Committee of Inquiry into Victims of Crime acknowledged the importance of information on the impact and effects of crime to sentencing courts but the committee did not recommend victim impact statements. In 1985, however, victims were given the right to have "the full effects of the crime on him or her" presented (by a prosecutor or in a pre-sentence report) to a sentencing court before it passes sentence. This right was enshrined in the *Criminal Law (Sentencing) Act 1988*, which came into operation in 1989. Since then, in 1998 victims of indictable offences have been given the right to read, or have read, their impact statements during the sentencing process. Both the right to submit a written victim impact statement and

the right to read a personal impact statement have been reinforced in the Declaration of Principles Governing Treatment of Victims in the Criminal Justice System that forms Part II of the *Victims of Crime Act 2001*.

The research on victim impact statements in South Australia has produced mixed results. Whether these statements have proven ‘successful’ or ‘unsuccessful’ depends on what one sees as their purpose or function. Most of the research has concentrated on victims’ views. Judges and magistrates views on impact statements are also important. If they do not support the use of impact statements, or do not use the information on the effects of crime and personal circumstances of victims, then victims are likely to be more dissatisfied with sentences and lose confidence in the criminal justice system. Last year, I surveyed the judiciary and the magistracy in South Australia. This paper reports on the survey findings.

It then reports on another way that is said to give victims an even stronger voice. Post-conviction / pre-sentence victim-offender conferences, such as those piloted in the South Australia Magistrates Court last year, have become part of the mantra of advocates for restitutive, or restorative, justice.

Prominent British legal theorist, Andrew Ashworth is one of the strongest critics of the victims’ rights to participate in the criminal process. He identifies two justice paradigms. The restitutive paradigm “emphasises satisfaction for the victim” and the impact and effects of the crime. It would, for instance, “allow the victim to forgive the offender and forget the sentence”. The conventional paradigm “gives priority to a conception of the wider public interest” and places the crime in “the public context”. It emphasises “culpability [as] the primary determinant of ‘seriousness’” and the “consistent and ‘proportionate’ treatment of offenders”. He contends that these paradigms could lead to “completely different outcomes”. Three Adelaide University legal experts, however, state that Ashworth’s view is “partisan”.

It seems to me that the debate is not necessarily either / or; that is, one or the other. Rather, there is a growing body of knowledge that shows victims’ participation – initially by impact statement and more recently victim-offender conferences- is both an integral component of the restitutive paradigm and a positive way to augment the existing criminal justice process thereby enhancing the conventional paradigm. I warn, however, that restoration can have different meanings for victims, offenders and the public, which should not be ignored.

## **Background**

About one third of victims who participated in a study over two years—1987-1989—(Gardner 1990) stated that they would have liked to tell the court about the effects of crime on them. The evaluation of victim impact statements in South Australia in 1994 (Erez, Roeger & Morgan 1994) showed that the majority of victims wanted to make impact statements and many saw these statements as a way to “ensure that justice was done” or to “communicate the impact of the crime to the offender”. A much smaller number stated they prepared their statement to “influence the sentence given to the offender”. Simply providing victim impact statements, however, was not found to be

associated with increase in satisfaction with the sentence, nor with satisfaction with justice.

Another survey in 1999 (JSU 2000) asked victims for, among other things, their views on the rationale for victim impact statements. It also showed that more victims made their impact statements to “ensure that justice was done”, than to “influence the sentence given to the offender”. When asked to elaborate on their answers, only one victim wanted to “see that [the offender] was properly dealt with” and another wanted “to try and get [the offender] away ... so that he [the victim-respondent] could walk the streets safely”.

Both surveys show that many victims have unfulfilled expectations on sentencing. Many who knew the sentence their offender received felt that it was too lenient. Some victims wanted more use of imprisonment. Some victims wanted greater emphasis on compensation. Victims also believed that community service could be an appropriate sentence. Notably, an analysis of victim impact statements and sentencing patterns conducted in 1994 (Erez, et al 1994) found that these statements had not had a discernable impact on over all patterns of sentencing; in other words, victim impact statements had not lead to harsher sentences.

The evaluators also explored criminal justice practitioners’ attitudes to victim impact statements. They attributed a reluctance of prosecutors, defence counsel and judges to accept direct victim input as indicative of their socialisation in the law and their propensity to focus on formal criminal procedure rules. Nevertheless, all but two of the judges surveyed said they felt victim impact statements “are worth the trouble and expense involved”. One judge commented, “Victim impact statements ought to be what it is advertised, that is a statement by the victim ... The important thing is that the victims know they had a fair go and this is only when they know the judge heard their story”. A comment attributed to a judge who stated he did not read victim impact statements, correctly (in my view) drew condemnation and as recent as 2000 was still being cited internationally.

The 1999 survey, unlike the one done in 1994, did not solicit judges’ or magistrates’ views on victim impact statements. During the course of the Review on Victims of Crime, however, several cases were identified in submissions where sentencing had been delayed pending the preparation of victim impact statements. These cases were mainly in the District Court and were seen as ‘indicative’ of greater recognition of the victims’ participatory right. Furthermore, several members of the judiciary who I interviewed stated that they generally found victim impact statements useful. One judge went so far as to say, “I can’t conceive being able to sentence properly and take proper account of the effect of the crime without (a victim impact statement).”

## **Methodology**

A survey was developed and given to the Chief Justice, the Chief Judge and the Chief Magistrate for comment. Once amendments had been made, I sent the survey (with their support) to all Supreme Court justices, District Court judges and magistrates. They were invited to voluntarily complete the survey and return it to me. The Chief Justice, Chief

Judge and Chief Magistrate let others know that they endorsed the survey. A cut-off date of three months was imposed, although not communicated to those asked to complete the survey.

The questions addressed general issues pertaining to the use of impact statements. As well, several questions related to the 1998 amendment to the *Criminal Law (Sentencing) Act 1998* that gave victims of indictable offences a right of allocution. Some questions related to the purpose and usefulness of victim impact statements.

## Survey Results

Supreme Court justices said they received victim impact statements in 80% of the cases they hear. District Court judges said they received victim impact statements in between 60 and 90% of the sentencing hearings they conduct, whereas magistrates had victim impact statements available to them in less than 3% of the hearings. The percentages identified with the Supreme and District Courts are consistent with the 1994 findings. The appallingly low percentage of statements available in Magistrates Court is also consistent with the preliminary, although unreported, finding of the 1994 evaluation. This suggests that despite the shift from police preparing victim impact statements to victims writing their own statements, which happened after the 1994 evaluation, as well as the 1998 amendment giving victims of indictable offence the right to read their impact statements, very few victims get an opportunity to have the full effects of the crime made known to their offenders and to magistrates. The survey findings do not show whether this is due to victims electing not to make impact statements in summary cases or the attitudes of public officials such as the police who are charged with telling victims that they can submit impact statements.

It might also be explained in part by a flaw in the survey instrument. Respondents were presented with a preamble explanation of the purpose of the survey. They were then asked to estimate the number of hearings that they conduct in a month followed by a question that asked them to estimate the number of victim impact statements presented at those hearings. Given the range of the magistrates' answers, it is possible that some magistrates' estimates were the total number of hearings whereas others were the number of hearings for offences with at least one victim.

Mindful of this<sup>1</sup>, the magistrates' answers were reviewed in comparison to 2004 Magistrates Court statistics. In that year about 38% (i.e. 10,302 offences) of case outcomes by major offence type were likely to have had at least one victim, which equates to about 860 case outcomes per month. In sum, 38% of the total of the estimated number of hearings conducted by magistrates was about 730. Using either of these figures, the estimate that victim impact statements were only available on average in 3% of hearings, remains very low. It still indicates that only a small percentage of victim impact information is presented to magistrates.

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<sup>1</sup> I am thankful for the feedback from Judge Gordon Barrett, South Australia, for his feedback on this point.

Justices were sometimes told that victims had been apprised of the right to make an impact statement but judges and magistrates were rarely, if ever told. South Australian law does not require the court to inquire of the prosecutor, the victim, or a person representing the victim, if the victim is aware of his or her right to make an impact statement. Some people have suggested such a law to strengthen this victim right. Canadian law does impose this responsibility on courts, but it does not appear to have led to more impact statements being made available to sentencing courts. Roberts and Edgar (2003) point out that the overwhelming majority of cases are settled by a negotiated plea, which restricts the time courts have to inquire whether victims have been told they can make an impact statement. This explanation would certainly apply to many cases that magistrates deal with in South Australia.

Some critics of victim participatory rights have claimed that impact statements may lead to further delays and add yet another burden on sentencing courts. A study of impact statements in New York in the mid-90s did find that the introduction of victim impact statements had caused court delays, put undue pressure on judges and added to court costs (Davis & Smith 1994). Conversely, the evaluation of victim impact statements in South Australia showed that “any concerns about negative effects of [these statements] on the criminal justice system were unwarranted” (Erez et al 1994, p70)

Although, in the current survey, one District Court judge had never passed a sentence without a victim impact statement, most justices and judges sometimes had to pass sentence without an impact statement; but over half of magistrates often had to sentence without an impact statement. Notably, no one stated that victim impact statements had significantly delayed the sentencing process although some judges and magistrates noted at least a slight increase in time spent on sentencing since victims of indictable offences were given the right to read, or have read, their impact statements.

Respondents’ views on the right for victims of indictable offences to read their impact statements were sort. One Supreme Court justice recalled a case where a victim asked to read his or her victim impact statement. Only one District Court judge stated he or she had never had a victim ask to read his or her impact statement. All others had had this happen on many occasions. While half of the magistrates who answered the survey had occasionally been asked to allow victims to read their impact statements, one third said they had never been asked.

Fears have been expressed that victims will be cross-examined on the content of their impact statements. Advocates for victims of sex offences who made a submission to the Review on Victims of Crime were particularly worried that unrepresented defendants would exploit the chance to further victimise their victims. No justice and no judge, however, identified a case where a victim had been cross-examined on his or her impact statement. Only two magistrates could recall a victim being cross-examined.

Some opponents to impact statements warn that victims who make such statements might expect courts to place greater weight on retribution, which could fuel calls for harsher penalties. An American commentator, Elayne Rapping (2000, p679), for example, asserts “Beneath the compelling emotion that informs the demands of victims,

there is all too often an ugly and irrational cry for blood that smacks of mob violence and vigilante justice". Research, however, shows that victims are no more retributive than the public at large (cf Ministry of Justice (NZ) 1995; Hough & Roberts 1998; Holder 2005; Erez 1990). Indeed, this year an English survey of almost 1000 crime victims showed that 61% did not believe that prison reduced re-offending by non-violent offenders; rather, 54% stated that making these offenders work in the community would be more effective (Victim Support UK 2006; see also Travis 2006). Like the earlier surveys in South Australia, many victims wanted courts to order offenders to pay compensation.

Just over half of the magistrates said victim impact statements sometimes contain victims' comments on the sentence they desired. One of these was among the two magistrates who recalled a victim being cross-examined on his or her impact statement, but the survey results do not show whether the answers related to the same case. Two magistrates had never seen a victim impact statement with comment on the sentence that ought to be imposed. All judges said this had rarely happened and two justices could recall it happening, but almost never.

One magistrate said that impact statements almost always included a request for compensation. This magistrate saw a higher percentage of impact statements than nearly all other magistrates who answered the question on this matter. The majority of magistrates said victims sometimes asked for compensation in their impact statements. Two third of judges reported victims sometimes or often asked for compensation, whereas the justices said they almost never or never received victims' requests for compensation via their impact statements. There is nothing in these results that confirms opponents' assertions that victims would use their right to participate irresponsibly and try to exert undue pressure on courts for harsher penalties.

Some objectors to impact statements argue that these statements contain no useful information that has not emerged during the trial or is evident from the charges. The views of the judiciary and magistracy are determinative on this issue (Roberts & Edgar 2003). Whether information is useful, or not, in sentencing is certainly a matter for justices, judges and magistrates. In South Australia, section 10 of the Criminal Law (Sentencing) Act only requires courts to consider the effects of crime and the personal circumstances of victims that are relevant in each case.

Most justices, judges and magistrates felt that impact statements sometimes or often contained useful information that would not otherwise be available to them. No justice, judge or magistrate found impact statements "never useful" when sentencing offenders. Three quarters of justices said impact statements were useful in most cases, and about two thirds of judges said impact statements were useful in all cases where they are submitted. All justices and judges felt that impact statements were most useful when sentencing offenders for violent crimes, with some justices and judges specifically noting sexual assaults and domestic violence.

One magistrate felt impact statements were useful in all cases that he or she had received them. This magistrate passed about 100 sentences a month but estimated

victim impact information was available in only 1 percent of these cases. A third of magistrates felt impact statements were useful in some cases and one sixth felt they were useful in most cases. Like their judicial counterparts, all magistrates said impact statements, when available, were most useful when sentencing for violent crimes.

The purpose of victim impact statements is usually touted in terms of the functions they serve, which include:

- Meeting the victim's right to have the full effects of the crime on him or her made known to the sentencing court;
- Giving sentencing courts information on those effects and the personal circumstances of the victim before sentences are passed;
- Extracting remorse from offenders by telling them about the consequential harms of their crimes; and,
- Helping victims to exercise their right to apply for offender-paid compensation and alerting courts that victims want this sentencing option considered.

When presented with a list of reasons for victim impact statements and asked to rank them, justices, judges and magistrates gave diverse views but giving victims an opportunity to participate in sentencing and giving courts information on the effects of crime were most often ranked as important or most important. Giving victims an opportunity to tell offenders about the impact and effects of crime was also ranked as important. Only one justice felt that it was inappropriate to answer this question.

According to Professor Erez (1999, p553), "A major source of satisfaction for victims is when judges pay attention to their input by citing victim's own phrases from impact statements in judicial sentencing comments. Victims feel gratified when their sense of harm is validated in judge's remarks." All justices, judges and magistrates who answered the survey said that whenever they are given information on the impact and effects of crime, they 'often' or 'almost always' referred to it in their sentencing remarks. No one 'never' referred to it. Whereas almost all judges addressed the victim in their sentencing remarks, only one magistrate sometimes did this, with most 'almost never' or 'never' doing so.

The survey results provide a valuable insight into the perceptions of justices, judges and magistrates. Over all the results suggest widespread support among these officials for victims' impact statements (thus, they at least to this extent appear to support victims' right to participate in the sentencing process). This should alleviate the apprehensions expressed by some victims and their advocates, including fears that the judiciary and magistracy are not sensitive to victims' desire for acknowledgment of the harm done to them by offenders. The results should also allay some of the criticisms expressed by opponents of victims' participatory rights as, in South Australia at least, impact statements have not undermined the fundamental tenets of the prevailing conventional justice paradigm.

Evidently, impact statements are available in most cases dealt with in the Supreme and District Courts. Justice and judges, in the main, not only find impact statements useful but also refer to the impact and effects when sentencing offenders.

However, victims and their advocates will be disheartened by the very small percentage of cases with victim impact statements in the Magistrates Court. Conversely, they should find some comfort that when impact information is available magistrates generally find it useful, even if they do not specifically refer to it in their sentencing remarks. Despite the fact that victim impact statements have been a feature of South Australia's criminal justice system since the mid-1980s, more needs to be done before the full potential of these statements is realised. A priority must be finding ways to place a far greater volume of victim impact information before magistrates. Post-conviction / pre-sentence victim-offender conferences appear to be one such way.

### **Restitutive justice**

Critics of the current criminal justice system claim that despite the raft of improvements, including victim impact statements, victims' structural position has not really changed. For example, a decade after provision for victim impact statements was made in the Canadian Criminal Code, the Law Commission of Canada (1999, p18) reported, "Victims remain on the outside looking in, rather than being engaged as direct and active decision makers." Sanders (1999) reviewed the literature from common law countries on taking account of victims' views in the criminal justice system. He concluded that victim impact statement schemes appear to be less successful than restorative schemes because the former "simply do not provide for genuine participation"

Several submissions to the South Australian Review on Victims of Crime pointed out that, despite the introduction of victim impact statements, the emphasis on 'legality' and procedural rights in a courtroom did not provide much scope for justice to actually be done. A few of the people that I consulted argued that enduring solutions to our crime problem are more likely to be found in non-adversarial settings. Those who advocated non-adversarial settings tended to favour restorative justice, which has some similar tenets to those espoused by Ashworth in his outline of a restitutive paradigm. Like me, some of these people maintained that this did not necessarily require a complete overhaul of the criminal justice system. It was also pointed out that restorative justice means many things to different people – a point I will take up later. A common view, however, was that restorative justice was "a way of thinking" about responding to crime. It emphasises the importance of elevating the role of victims of crime and paying greater attention to their needs. It focuses on holding offenders directly accountable to their victims, significant others and the community. The process promoted as more conducive to restoring the emotional and material losses of victims, while not stigmatising offenders. Family conferences, which have become an integral component of South Australia's youth justice system, are a prime example.

A preliminary study a couple of years after family conferences began in South Australia, revealed that in 75-80 percent of those conferences dealing with a victim-based crime at least one victim was present (Wundersitz & Hetzel 1996). The same

study found 86 percent of offenders complied with the undertakings agreed at the family conference. Most later studies have found fewer victims participate but those who do find conferences procedurally fair. Moreover, both victims and offenders find conferences to be fairer than courts.

The Adult Restorative Justice Conferencing programme that was piloted in the Adelaide Magistrates Court from mid-2004 for about 12 months was based, in general terms, on the family conferencing practiced in the youth justice system. The adult conferences took place only after the offender had pleaded guilty. Conferences were not organised until victims and offenders both agreed to participate. These conferences were never intended as an alternative to the conventional sentencing process. Rather, the conferences were a “pre-sentencing step and one that is germane to the sentencing decision”.

Twelve conferences were completed. These involved a range of offences: common assault, indecent assault, criminal damage, illegal use of a motor vehicle, and break and enter a dwelling. The evaluators who assessed “the adequacy of the process and the satisfaction it provided to victims” observed nine of these. They also interviewed victims and offenders, as well as facilitators, police officers, referring magistrates and other interested parties.

Over all the evaluators (Goldsmith, Halsey & Bamford, 2005) concluded that the conferences were highly successful. They noted that the pre-conference phase during which victims and offenders are separately prepared for their meeting seemed “to play an important role in setting the conditions for a successful conference”. Some victims, however, felt that during the pre-conference phase pressure had been exerted on them to participate. Nevertheless, the majority of victims and offenders indicated that they “appreciated the relative informality” of the conference setting and process. Victims generally stated that “they were comforted by the police presence” at conferences. The police, although not opposed to the conferences, pointed out that the process created extra work for them.

Although only a few victims were involved, their views showed a high to very high level of satisfaction. Only one of the nine victims said they would not participate if the opportunity arose again. The majority said they would recommend participating in conferences to other victims of crime. Most victims did not attend the formal sentencing process. Some did not know when the offender was being sentenced. Some victims felt that the conference process had afforded them adequate opportunity to gather the information they wanted, including answers to key questions such as ‘why me?’ and to tell offenders about the impact and effects of their crime. They therefore did not feel a need to be present at sentencing.

Interestingly, one victim who witnessed sentencing stated that the “discount given for participation in the conference ... was too generous”. The victim conceded, however, that the sentence was about what he or she had anticipated and was “reasonable”. The presiding magistrate in this and the other cases explicitly discounted the sentence by 25 percent for offenders who participated in the conference. Offenders were not told about the discount before they participated; rather, it was a surprise disclosed only during

formal sentence. As few victims attended sentencing hearings, I suspect that they were unaware of the discount. It is, however, not extraordinary and is encouraged in decisions of superior courts.

The evaluators interpreted victims' positive assessment of the conferences as suggestive of a "personal benefit" to victims' well-being, including contributing to a sense of 'closure'. Certainly, for victims of personal crimes the conferences tended to put victims' minds to rest about a number of troubling questions that had been triggered by the crime.

When considered in its entirety, the programme acted as a conduit for victims to gather a variety of information on a range of matters that were important to them. The evaluators contend that this finding contrasts with the ordinary experiences of victims whose cases are dealt with in the conventional court setting.

These findings are not unique to South Australia. Evaluations of court-based victim-offender mediation programmes in Canada have found that victims and offenders were very satisfied with the process and the outcomes. These programmes, however, dealt with relatively minor offences involving minor or no injury and small material losses. The recent English victim survey that I mentioned above, showed that about one half of victims favoured meetings between victims and offenders as a way of reducing re-offending by non-violent offenders (Travis 2005).

The success of the pilot, albeit limited to so few cases, rested largely on the preparedness of one magistrate to give victims a more effective voice in the sentencing process. He explained that he always found the conference reports contained useful information, such as more extensive details of the impact and effects of crime than he might otherwise have available before passing sentence.

Sometimes these reports included advice on an appropriate sentence. The magistrate said that he had no objection to receiving a view from a conference as to an appropriate sentence, as long as the victim and the offender understood that he was obliged to take many factors into account in sentencing (Cannon 2005). He felt that it was important that they knew that sometimes his sentence would be harsher, or sometimes more lenient, than that expressed by the victim and / or the offender. He observed that sometimes his sentence would correspond with that expressed by the victim and the offender.

He was not always aware if the victim was present or not when he imposed a sentence, but he drew from the conference report when making his sentencing remarks. He took account of sentencing principles and acknowledged that sentencing happened in a sphere that incorporates offenders' rights and interests; victims' rights and interests; and public interest considerations.

Although disappointed with the low number of conferences – he had anticipate at least 20 conferences during the 12 months – he remains optimistic that given adequate resources, victim-offender conferences could become entrenched in the criminal justice

system. He reflected on the scepticism shown when reconciliation conferences were introduced in the civil justice system. These conferences are now widely accepted and commonly practiced today.

*By way of a warning*

Mindful of the steady growth of restorative justice programmes as either adjuncts to or alternatives to conventional criminal justice and the research findings, I hasten to point out that the notion of restoration can have different meanings for victims, offenders and the public. Moreover, these differences should not be ignored.

Restoration for victims might be about helping them to regain a sense of control over their lives (which was identified by the evaluators of victim-offender conferences as important to victims' well-being). Victim-advocates who support restorative justice programmes often say that restoration is about healing. A restorative conference, therefore, needs to be a forum in which victims can express their anger and frustration, tell their story and get answers to their questions. They might also want an active role in determining outcomes that assist them to recover from the effects of crime, including compensation. Some victims will maintain their retributive desires, which ought to be accommodated (Daly 2002). Other victims will want to forgive and forget, as Ashworth said, which ought also to be accommodated.

Restoration for offenders involves admission of responsibility, usually by a guilty plea, and acceptance of their accountability. It is also about them finding ways to actively repair the harm they have done. Alas, some offenders profess to be contrite and empathetic, when they are not. Victims and offenders opinions on how to resolve their conflict and what the offender could do to restore the victims can differ. Offenders' failure to complete their undertakings can re-ignite victims' frustration.

Restoration for the public can be a synonym for collective retribution—in particular, denunciation of morally reprehensible behaviours—and affirmation of 'community values'. Public debate on re-integration and reformation of offenders versus community safety by exile, even death, demonstrates how highly volatile the prevailing environment can be.

## **Conclusion**

Clearly, giving victims participatory rights has aroused considerable debate. It seems to me that giving victims' voices in sentencing is intrinsically and inherently valuable.

Victim impact statements do assist victims, but have not necessarily altered the structural position of the victim in the criminal justice. Victim impact conferences, on the other hand, help victims to regain a sense of control over their lives and have the potential to directly engage victims the criminal justice system. Wherever these conferences are trialled, they appear to yield more positive results than impact statement schemes.

Offering victims opportunities to participate, and then allowing them to choose whether they accept that opportunity or not, is important to victims' well-being. Research shows

that many victims have an innate need to ‘tell their stories’, including describing the harm done to them. Some studies on victim impact statements and on victim-offender mediation point to the beneficial effects of giving victims the right to tell how crime has affected them and impacted on their lives. Importantly, victims want offenders as well as justices, judges and magistrates to listen to their stories. Many derive personal benefits, even a sense of closure, when the harm done to them is formally acknowledged in sentencing remarks.

Individual justices, judges and magistrates can tailor (and I strongly suspect they do daily) the role of the victim in the sentencing process to make sure that victims do not unduly interfere with offenders’ due process rights. Victim impact statements and victim-offender conferences are ways to give victims a voice—they do not give victims decision-making power, nor do they curtail offenders’ rights (including the right to a fair and just sentence). Courts continue to determine sentences, but do so better informed of the consequential harms resulting from offenders’ crimes.

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