JULY / AUGUST 2014, Vol 8 No 13

ILB

INDIGENOUS LAW BULLETIN

WHY THE CAGED BIRD SINGS: ISSUES WITH THE ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE

REFLECTING ON THE STOLEN GENERATIONS

THE ROYAL COMMISSION AND INTERNATIONAL CHILD RIGHTS LAW

KNOW YOUR RIGHTS, CHANGE YOUR FUTURE: THE POWER OF COMMUNITY LEGAL EDUCATION

by Tanya Pass

INTRODUCTION

When I first undertook the role of Community Legal Education Lawyer at the Central Australian Aboriginal Legal Aid Service ('CAALAS') I was entering an emerging field. There was little to no expertise or experience in the area and I had to develop the program as I went. For a long time I felt like I was on a never ending dirt track. However, by embracing the role I soon found that educating our clients was perhaps the most important service we were offering.

CAALAS covers approximately 90 000sq km of the Northern Territory ('NT'). Aboriginal people in the NT have very dynamic and culturally diverse lives, with a lot residing in remote communities or outstations. This means that many Aboriginal people need to travel to a town for a variety of reasons, including shopping, sports, meetings, gatherings, connecting with family and attending personal appointments. While not all trouble occurs when Aboriginal people are in town, more often than not being in town is the beginning step for people's engagement with the justice system. When this happens, clients are often hundreds of kilometres away from their families, culture and language. They have limited financial, emotional and social support. In this context, being a lawyer becomes more than just providing legal advice; it encompasses financial counselling, social work, case work, emotional support and much more. Legal aid lawyers are required to provide a full rounded service which goes beyond traditional legal advice. One core aspect of this is the constant drive to try and prevent people from needing a lawyer or coming into contact with the justice system. I would argue that this preventative work is best addressed through community legal education ('CLE'). The following paper explores the ways in which the development of education materials for the community on a variety of legal topics is pivotal to the role that Indigenous people have with the justice system.

WHAT IS COMMUNITY LEGAL EDUCATION?

In Central Australia the CLE Lawyer is responsible for:

- legal education on a range of legal topics adapted to suit local communities
- developing resources to improve remote communities understanding of Australian law
- providing education to allow remote communities to understand how customary law can coexist with Australian law and cannot override legal and human rights
- educating and mentoring community members on their legal rights and responsibilities through community development activities
- improving community understanding of legal rights and responsibilities through engagement with local media.

CLE Lawyers should always be looking for new ways to educate Aboriginal people on their rights, as well as promoting these values throughout the community. You must be able to quickly understand and explain new concepts to Aboriginal people, utilising engaging and culturally appropriate methods of communication. In addition, a CLE Lawyer should be a regular face at community events, meetings and gatherings, as a large part of the work involves community development.

ACCESS TO JUSTICE

One key issue I have found in my work is that Aboriginal people are not meaningfully engaged in the justice system. By this I wish to emphasise what British lawyer Alexander McLean was recently quoted as saying in an interview with Karen Eng:

> When people think about human rights and access to justice, it's usually about making sure everyone has access to a lawyer. But justice is something we should all be able to engage with. It shouldn't be the preserve of a particular class or something that is just done to people.[1]

In this interview McLean was speaking about offering prisoners in Uganda a chance to study for a legal qualification with a university while incarcerated. To me, McLean's statement is strikingly applicable to Aboriginal people in Central Australia. Justice is something that is just done to people in Central Australia. Aboriginal people often end up in court and then in prison, with no real concept of the process they have been through or why they are there. Imagine yourself in court, the only person of your race,

language or cultural background in the room. How well engaged do you think you would be with the process?

PRE-RELEASE PROGRAMS

As part of my role with CAALAS I would attend the Alice Springs Correctional Centre once a month to take part in the Pre-Release Program. This is a program directed at prisoners being released in the next month. Over one or two hour sessions, prisoners are provided with information on the types of services and assistance available to them once they leave prison. This was one of my favourite CLE sessions to run as I always found the prisoners insightful, engaging and willing to learn.

In my sessions I focused on the things the prisoners needed to know to avoid coming back to prison. I gave prisoners a checklist of things they needed to ask themselves before they left. This included: Am I on a partly suspended sentence? Do I have a Domestic Violence Order ('DVO') against me? What are the rules when I leave? Do I have fines to pay? To warm up into the session I would often run an activity where the prisoners would be given a picture of the court room and they would need to put the people who belong in the court room in their respective places. We would go through the poster and talk about what each of the person's jobs were. When we would get to the accused person, everyone in the class would usually say 'that's us' or something similar. Then I would ask: 'When you are in the dock, does anyone ever use your name?' The response would usually be 'no' or 'sometimes', so I would say: 'well what do they call you?' Silence. Every now and then someone would say 'defendant' or 'accused', but for the most part prisoners didn't even know when they were being spoken to in court.

On one occasion a prisoner said to me: 'I always just sit there with my head down cause I dunno what they talking about…I didn't even know they was talking to me.' After I explained that the words 'accused', 'defendant', 'perpetrator' were all words referring to you as the person in the dock, the prisoner responded: 'Now I can know when they saying about me. I can listen more better now.'

I would often have conversations with prisoners about why they are in prison. On countless occasions prisoners would not know the reason why they were locked up. Often they would say they remember doing a number of things wrong, but they weren't sure what thing they were in prison for. Sometimes the prisoners didn't understand why what they did deserved a gaol sentence, rather than a fine or some other type of order which someone else had gotten.

ENGAGING WITH THE JUSTICE SYSTEM

How do we expect people to engage in the justice system if they don't know when they are being spoken to in court and don't know what they are being punished for? It is interesting to note in Eng's interview with McLean that, since being provided with the opportunity to undertake legal studies, three of the Ugandan prisoners have been instrumental in getting their own death sentences overturned, and a number of them have been released from prison.[2] It cannot be underestimated how important understanding rights and obligations are in empowering people to actively contribute to the protection of those rights.

Another example of the importance of CLE comes from a workshop in which I presented on domestic violence and DVOs to a group of men and women in a family violence offenders program at Tennant Creek. During the session I showed the group a poster CAALAS had designed which used pictures to describe what a DVO might contain. On seeing a DVO displayed and explained in this way, one of the men in the group asked us: 'Why can't the DVO look like that when we get it in court?' He explained to us that now having seen what the DVO means in pictures, he understood. Without this type of education, the DVO is just a piece of paper with writing that no-one understands. He further told us we should: 'Get the Judge to have pictures like this for the DVO, and then we would know what it means.'

It was so inspiring to see a person who had just learnt something new immediately engage with the process to make things better for everyone. This really emphasised not only the value in engaging Aboriginal people in justice processes, but the effect that education can have on a person's ability to assist in the improvement of the justice system.

It cannot be underestimated how important understanding rights and obligations are in empowering people to actively contribute to the protection of those rights.

YOUNG PEOPLE

An important aspect of engaging people with the justice system is the role that young people play. Educating young Aboriginal people on their legal rights is one way we can help to ensure their future does not revolve around interactions with the justice system. This is why CAALAS runs a large number of programs aimed at young people. In these programs, we generally allow the students to decide for themselves what it is they would like to do, encouraging activities such as designing posters, creating videos, or writing songs etc. Through this method of education we have

more success in engaging young people. We found that sometimes forcing young people to complete a particular task created a barrier to their participation. Often the quiet or high-risk students would exclude themselves from the activity. However, by allowing them to choose what they would like to do they immediately became more open to the process.

During a period of high youth crime rates and incarceration in Alice Springs, we commenced a program aimed at educating young people on the pit falls of being 'accomplices' to crime. We found that sometimes young people were justifying their involvement in criminal activity based on merely being present when the crime occurred. Through the use of television advertisements played during the AFL season we were able to better educate young people on this issue. We measured the success of this campaign when we attended schools and youth groups, finding that a lot of young people had seen our advertisements and were beginning to understand that they could receive the same punishment as the main offenders. It is hoped that young people will start to use this knowledge to "think before they act" and take an active involvement in their own decision-making.

By educating the wider community we create a mutual understanding and respect for the injustices faced by Aboriginal people, and importantly we empower everyone to pursue justice.

EDUCATING THE NON-INDIGENOUS COMMUNITY

Although the role of CLE Lawyers is to focus on the education of Aboriginal people, it is just as important to educate the wider community on the injustice suffered by Aboriginal people. In general, Aboriginal people feel there is little that can be done to break discriminatory barriers. Governments constantly ignore the advice of Aboriginal people living in Community and insist on a top-heavy approach to Aboriginal policy. These laws have no real reflection on the hopes and aspirations of the community, and as a result, policy is constantly failing. When those policies fail it is perceived by the rest of the nation—and the world—as failures of Aboriginal people, giving a misguided and poor representation of an ancient and complex culture. These false representations are absorbed by people living in ignorance of Aboriginal culture and society, creating a cycle of disregard and contempt for Aboriginal people. It's these people being fed misguided and false information who then become the voters for whom further discriminatory and useless policy is created to appease.

This is the cycle which Aboriginal people are stuck in. They are being subjected to law after law which never goes straight to the heart of the issue, but rather skirts around the edge in order to appease the majority who are often not ignorant by choice; but ignorant because Australia has never stood up and said it is important for Aboriginal people and their cultures to be recognised. By educating the wider community we create a mutual understanding and respect for the injustices faced by Aboriginal people, and importantly we empower everyone to pursue justice. An example of this is when a group of students from James Ruse Agricultural High School in Sydney visited our workplace and spent the day with us learning about Aboriginal justice issues. Afterwards I received this touching note from one of the students aged about 15:

> It was an intense but an inspiring experience. While some of it was rather confronting, you also inspired hope in us that someone was out there working hard for a better future for Indigenous peoples. You made me realise how little I knew about Aboriginal cultures. You also made me realise how different my life is, how protected I really am and how in our "just" society, there were such distinct inequalities. I feel that awareness about these inequalities needs to be my first step when I get to Sydney. I really hope to take action and make a difference just like you.

Educating a non-Aboriginal person has a powerful effect on the cycle of injustice. Even if this student went home and only told one person about what he had learnt, we are one person closer to closing the racial divide and building a nation of respect and understanding.

HUMAN RIGHTS

International human rights such as the United Nations Declaration on the Rights of Indigenous People[3] ('UNDRIP') are important for Aboriginal people, but they can have a limited effect if many of the people affected by discrimination and discriminatory laws are not aware of their rights in an international context. I distinctly remember one day talking to an older Aboriginal woman about the UN and international human rights. When I finished talking about rights as a human and particularly an Indigenous person, the lady turned to me and without blinking stated: 'That's (meaning human rights) is for rich people.' She followed this by asking me when I thought the autopsy would be finished on her family member who had, in her words: 'been killed in lock-up' (meaning in custody) so that she could organise the funeral.

While it is wonderful to discuss human rights and declarations, it has little impact on those Indigenous people who feel so far removed from them that they believe they are unattainable. These are people

living highly complex lives between two cultures in some of the most remote areas in Australia, sometimes 800km or more from the nearest town. If we want Aboriginal people to have rights, we need to make sure they know they exist and can access them. A huge part of ensuring this can be achieved by education.

CONCLUSION

Empowering people to have control and meaningful engagement with the justice system begins with strong CLE programs. It is important that the rights of Aboriginal people are accurately explained to them. Aboriginal people must be reassured that they are not lost in a vacuum of prejudiced laws, but have rights just like everyone else. Empowering people to stand up for themselves and what is right for their community can only begin by allowing people to know what the law says, how they can avoid breaking it, and understanding the consequences of doing so. Through education we *all* gain confidence; Aboriginal people need this confidence to help break the cycle of government failure and society's disrespect and misguidance. There is no point to a justice system if the people involved with it are completely oblivious—all we are doing is setting people up to fail. By keeping people ignorant we are also preventing them from having the opportunity to challenge governments and stand up for what is right for themselves and for their community.

As a lawyer, I believe it is my duty to provide my people with the education they need to realise their rights as human beings living in one of the richest economies in the world.

Nelson Mandela once said: 'Education is the most powerful weapon which you can use to change the world.'[4] Every person has the right to education; it allows people to understand the process of justice and, importantly, allows people to have meaningful engagements with the justice system. By empowering one person with your knowledge of legal rights, you could in fact be empowering an entire community.

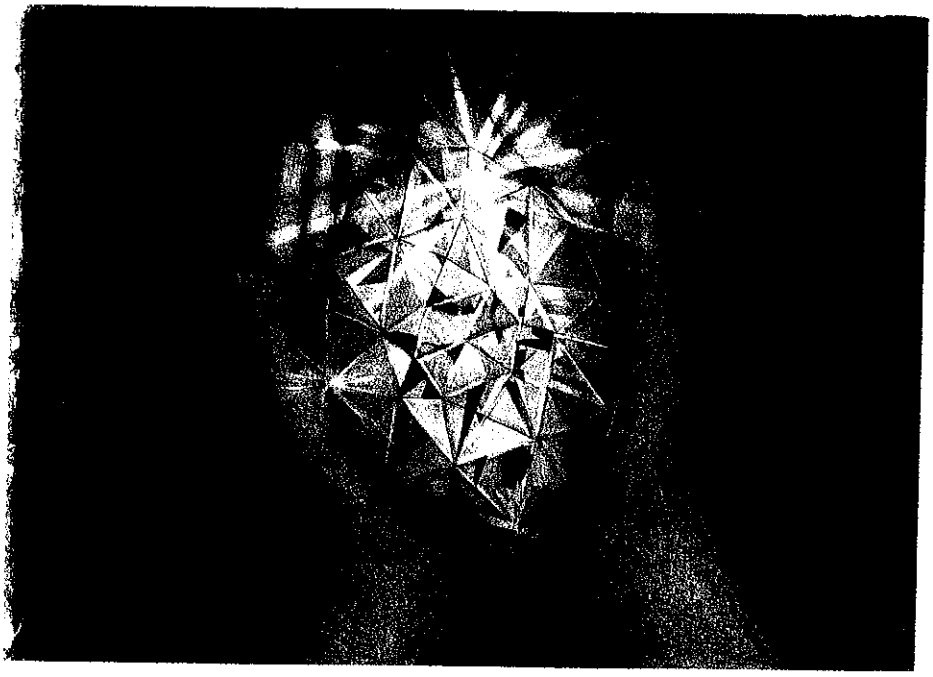
Tanya Pass is an Eastern Arrente Aboriginal woman and former CLE lawyer for CAALAS, a not-for-profit Aboriginal organisation providing free, high quality and culturally appropriate legal advice and representation to Aboriginal people in Central Australia. She is now training to be a Family Dispute Resolution Practitioner (specialising in Aboriginal families) at the Family Relationship Centre in Port Augusta, South Australia. This article is based on a paper presented at the World Indigenous Legal Conference in Brisbane, Queensland 24-27 June 2014.

If you or someone you know in Central Australia needs appropriate legal advice from an Aboriginal organisation contact CAALAS on 1800 636 079.

1 Karen Eng, Interview with Alexander McLean (Online Interview, 6 March 2014) <http://ideas.ted.com/2014/06/03/how-african-prisoners-are-learning-to-fight-for-their-own-rights/>.

2 Ibid.

3 *Declaration on the Rights of Indigenous Peoples,* GA Res 61/295, UN GAOR, 61st sess, 107th plen mtg, Supp No 49, UN Doc A/RES/61/295 (13 September 2007) ('*UNDRIP*').

4 Nelson Mandela, 'Lighting your way to a better future' (Speech delivered at the Launch of Mindset Network, Planetarium, University of the Witwatersrand Johannesburg South Africa, 16 July 2003).

Hidden Treasure Matthew 13:44
Fern Martins
Elegance velvet 310gsm cotton rag