



A Panel Discussion on the Non-Financial Barriers to Justice

Tuesday 27 November 2018

The Academy of Law was very pleased to have held its final Access to Justice Sydney event for 2018, with a panel discussion on the non-financial barriers to justice.

Professor Simon Rice of the University of Sydney chaired the session. As he explained, that there are barriers to justice is implicit in the concern for 'access to justice', in the sense of equal access to lawyers, and to the procedures of law.

Most commonly the barrier is seen as financial, and the diversity of other reasons why a person's access to justice is limited is under-appreciated.

Four of the non-financial barriers

The panel of experts – all experienced practitioners and advocates in their fields – represented just four of the many non-financial reasons people do not actually enjoy equal access to justice:

- age,
- culture and language,
- intellectual disability,
and
- regional location.

The panellists described in confronting detail the ways in which these factors persistently obstruct access to justice. As the panel discussion unfolded, it became apparent the high degree to which people are thwarted not simply by one but by a multiple of barriers – the 'intersectionality' of factors – such as an older person whose first language is not English, or a person with an intellectual disability living in a regional town.

The panellists told of policy initiatives that are making some difference, emphasising the very high cost society pays for not ensuring equal access to lawyers, and to the procedures of law.

Age as a barrier

As to the four panellists, Charlotte Steer represented the Seniors Rights Service, a community legal centre that provides a range of services - free and confidential legal advice to all older persons in NSW, advocacy for residents in aged care, retirement villages and strata buildings, and community legal education.

Consultations by Senior Rights Service with 70 high level stakeholders in the field of elder abuse at the 5th National Elder Abuse Conference, held in February 2018, culminated in the development of a major report - *Abuse of Older People: An Australian Community Response*.

As result, Charlotte was pleased to announce at the session that Seniors Rights Service is proud to be a finalist in the Australian Human Rights Commission awards in 2018, being announced on Friday 14 December 2018. Also, Seniors Rights Service was invited to present at the United Nations on its report and did so on 26 July 2018 in Geneva.

Both the Commonwealth Attorney-General's Department and the Commonwealth Department of Health have increased funding and support for elder abuse services in the wake of that Conference.

Barriers of language and culture

Professor Sandra Hale presented on another barrier to justice - language and culture. According to the 2016 census, 3.5% of the Australian population (819,922 people) do not speak English well or at all. The inability to communicate is a major barrier to accessing justice.

To overcome that barrier, competent interpreters are needed. However, out of more than 175 migrant and Indigenous languages, interpreting credentials issued by NAATI (National Accreditation Authority for Translators and Interpreters) are only available in 60 languages and training in only a dozen (Stern & Liu, *in press*). There are also attitudinal barriers among English speakers as well as non-English speakers. Some include the following misconceptions: that a limited command of English that may be sufficient for simple transactions, will be good enough for legal proceedings; that any bilingual can interpret, without any interpreting training or credentials; that interpreters are solely responsible for the success of the communication; that interpreters just translate word for word and require no preparation, briefing or debriefing.

Such misconceptions can lead to appeals, when errors are detected, but worse still, to unjust legal outcomes.

Awareness of these issues can go a long way to breaking down the barriers. The new Recommended Standards on Working with Interpreters in Courts and Tribunals, offers useful guidance for judicial officers, lawyers and interpreters: <https://jccd.org.au/publications/>

The barrier of intellectual disability

For people with intellectual disability, barriers to justice start with a limited capacity to recognise a legal problem and to seek assistance. These problems are multiplied by barriers in the legal system itself, including police officers and lawyers lacking skills and time to maximise the evidence and instructions that they can obtain from people with intellectual disability. The architecture, formal clothing and language of the court room commonly are also intimidating and confusing to people with intellectual disability.

Reform needs to include maximum education of people with intellectual disability about their rights, ready availability of skilled lay and legal advocacy and making courtrooms less formal and more inclusive environments. The practice of the Guardianship Division of the NSW Civil and Administrative Tribunal demonstrates some practices in maximising the participation of people with disability.

Jenny Lovric represented Just Reinvest NSW and the Aboriginal Legal Service NSW/ACT. She spoke to the intersectionality of barriers to just outcomes for people living in regional, rural and remote NSW, and in particular, Aboriginal people.

These include the challenges around the availability of lawyers, the absence of appropriate organisations and services to support people through all parts of the justice system and the cultural competency of players in the justice systems, including Police, Courts and Tribunals.

Justice Reinvestment is an approach to access to justice that focuses on data driven, community led, place-based early intervention approaches to justice. It works on the basis that putting focus and resources into work that addresses the underlying drivers of crime will stop crime occurring in the first place, and in doing so, save costs.

The kinds of issues addressed include drug and alcohol services, family violence support, driver licensing programs, disability support and appropriate health services for children.

In the case of regional, rural and remote services, this necessarily means re-figuring how agencies do work, where they work and making those services directly responsive to community-identified need, based on data.

This is case in the Justice Reinvestment pilot in Bourke in remote NSW, which has seen significant drops in crime and millions of dollars saved in the process. For more information, go to www.justreinvest.org.au

Conclusion

The Academy is pleased to have been able to host this significant and informative debate.