

A new approach to sentencing

Chris O'Donnell reviews an address given by The Rt Hon the Lord Woolf, the Lord Chief Justice of England and Wales, on his visit to Sydney in April 2003.

In a recent address to an Australian legal conference Lord Woolf cited statistics which 'demonstrate that the criminal justice system in England and Wales is doing even worse than our cricket team in achieving its objectives.'

Many of the problems in the United Kingdom identified by Lord Woolf have parallels in New South Wales. In particular, his complaint about the developing UK trend towards an unhealthy level of political interference in and control of sentencing has echoes here. To further torture his metaphor, it is doubtful whether the Australian criminal justice system could live up to the standards set by our all-conquering cricket team.

Lord Woolf quoted Sir Leon Radzinowicz, 'the father of criminology' who, with the accumulated wisdom of 92 years, encapsulated the problem thus:

no meaningful advance in penal matters can be achieved in contemporary democratic society so long as it remains a topic of political controversy instead of a matter of national concern.

In recent times the politics of sentencing have, according to a number of reports cited by Lord Woolf, led to an overemphasis on punishment at the expense of deterrence and rehabilitation. As a result, UK prisons are overcrowded (there are 139 people in custody per 100,000, more than any other EU country – the Australian figure is 116), expensive (the annual cost per prisoner is \$100,000 on average) and fail to rehabilitate (60 per cent of UK prisoners re-offend within two years of release; 75 per cent leave prison without a job; 30 per cent leave prison homeless; 50 per cent have poor literacy skills and 70 per cent poor numeracy skills).

Lord Woolf noted that:

The effectiveness of a criminal justice system has to be judged by the extent to which it can deter crime and reduce the pattern of further re-offending. These questions should be at the centre of the system.

Whilst not ignoring the importance of condign punishment, particularly as it has a bearing on the sense of grievance felt by victims and their families, Lord Woolf noted that prison overcrowding is 'a cancer eating at the ability of the prison service to deliver' rehabilitation, especially for lesser offenders. 'It is now accepted on all sides that prisons can do nothing for prisoners who are sentenced to less than 12 months', he said.

Lord Woolf did not pull his punches in sheeting home the blame for prison overcrowding to politicians anxious to secure votes in the law and order auctions that are now so prevalent:

There is now a continuous upward pressure, and very rarely any downward pressure, on the level of sentences. The upward pressure comes from public opinion, and the media, the

government of the day and parliament.

One initiative singled out by Lord Woolf for particular criticism in this regard as a 'politician's knee-jerk reaction' is mandatory sentencing. The criticism should, but may not, cause sober reflection upon the New South Wales Government's *Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act 2002*, which commenced earlier this year. This requires a sentencing court to fix a 'standard non-parole period' nominated in a schedule for an array of serious offences unless the court determines that there are reasons for setting a longer or shorter period. Despite the assertion that the legislation does not enact a mandatory sentencing scheme, the legislation may have the effect of doubling the average non-parole period for some of these offences.

Lord Woolf called for greater use of holistic, problem solving approaches, such as that exemplified by the community court at Red Hook Community Justice Centre in New York:

At Red Hook, they seek to solve the neighbourhood problems like drugs, crime, domestic violence and landlord and tenant disputes by using a single judge who has an array of sanctions and services at his disposal, including community restitution projects, on-site training, drug treatment and mental health counselling. But the court's reach goes beyond what happens in the court. It reaches out into the community and engages the community in achieving justice.

He also provided an interesting insight into a proposed UK system of setting sentencing guidelines, which may, instead of being another form of mandatory sentencing, form part of a new approach to sentencing that takes 'questions as to the level of sentencing out of the political arena'. *The Criminal Justice Bill 2002* will establish a new Sentencing Guidelines Council, chaired by the Lord Chief Justice, and otherwise comprising members independent of the government. A sentencing judge will be expected to take the guidance of the council into account. The council, when setting guidelines, must take into account:

- the need to promote consistency in sentencing;
- sentences to which guidelines relate;
- the cost of different sentences and their relative effectiveness in preventing re-offending;
- the need to promote public confidence in the criminal justice system; and
- the views communicated to them by the Sentencing Advisory Panel.

This proposal seems to have advantages over the present system in New South Wales, which allows for the Court of Criminal Appeal to hand down guideline judgments on its own volition or on the application of the attorney general. Because such an approach is not consultative and must await the arrival of a 'suitable vehicle', it is left open to criticism from political and community elements to a greater extent than the proposed UK system. A further defect is the inability of the New South Wales Court of Criminal Appeal to issue a guideline judgment in respect of a Commonwealth offence. A coordinated Australia-wide approach that de-politicises sentencing is called for.

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