

WORKSHOP 4A: BEYOND CASEWORK: PRO BONO STRENGTHENING COMMUNITIES

HOLISTIC ADVOCACY FOR THE HOMELESS: BUILDING STRONGER COMMUNITIES

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Abstract: *Many clients of the PILCH Homeless Persons' Legal Clinic seek assistance in relation to significant unpaid fines, particularly for public space and public transport offences. Very few clients ask for help regarding the underlying causes of these fines, such as mental illness or homelessness. Even fewer clients come in and say, "the regulation of public space requires reform", or "there is inadequate affordable housing" or "public transport should be free".*

No client has ever stated that his or her aim is to build, or become a part of, a stronger community (nor, to my knowledge, has any lawyer ever asked). Yet, it is only within a framework of addressing individual causes of dysfunction, alleviating structural causes of poverty, and building stronger communities that homeless people will stop getting fined for public space and public transport infractions.

This paper will consider the role of lawyers in identifying and addressing underlying causes of homelessness. Within a paradigm of holistic advocacy, it will examine strategies to ensure the promotion and protection of homeless people's rights, the elimination of discrimination, and meaningful client participation in decision-making processes and public policy formulation. The paper will aim to inform a movement of lawyers using their resources, skills and expertise to contribute to community empowerment and, by extension, the amelioration of homelessness.

What is the PILCH Homeless Persons' Legal Clinic

The PILCH Homeless Persons' Legal Clinic ('Clinic'), a project of the Public Interest Law Clearing House (Vic) Inc ('PILCH'), provides free advice and advocacy in the areas of civil, administrative and summary criminal law to people who are homeless or at risk of homelessness. The Clinic was established in October 2001 and was originally funded as an 18 month pilot by the Victorian Department of Human Services through the Supported Accommodation Assistance Program. It is now funded on a recurrent basis by the

Victorian Department of Justice through the Community Legal Sector Program Fund administered by Victoria Legal Aid. This funding is supplemented by fundraising efforts and by donations from Arnold Bloch Leibler and the National Australia Bank Legal Department. The Clinic does not receive any monies from the Commonwealth.¹

Legal services are provided by volunteer lawyers from Allens Arthur Robinson, Blake Dawson Waldron, Clayton Utz, Hunt & Hunt, Mallesons Stephen Jaques, Minter Ellison, the National Australia Bank Legal Department and Phillips Fox. The services are offered on a weekly basis at eight outreach locations that are already accessed by homeless people for more basic subsistence needs, such as soup kitchens and crisis accommodations facilities. The service delivery model adopted by the lawyers is, so far as possible, integrated with the service delivery model of the host homelessness agency. So, for example, Clayton Utz lawyers provide free legal advice each Tuesday to clients at Credo Café, an open lunch program for Melbourne's homeless which operates in the basement of Collins Street Baptist Church, over a bowl of spaghetti. At Flagstaff Crisis Accommodation, an emergency shelter operated by the Salvation Army in West Melbourne, lawyers from Minter Ellison and Hunt & Hunt offer free legal advice on a drop-in basis each Tuesday night after clients have finished their evening meals.

Since the inception of the Clinic in October 2001, over 200 lawyers have contributed more than 10,000 hours of assistance, at a commercial value exceeding \$2.5 million, to over 700 clients in matters ranging from fines, to debt, to social security, to housing, to personal injury, to mental health, to guardianship and administration.

¹ In 2002, in response to an application for funding to the Howard Government's Attorney-General's Department, the Clinic was advised that it would not receive a grant because 'all the money has been spent on Afghanistan and those asylum-seekers'.

In addition to delivering direct legal services, the Clinic also aims to use the law to promote, protect and realise the human rights of people experiencing homelessness, to redress unfair and unjust treatment of people experiencing homelessness, and to reduce the degree and extent to which homeless people are disadvantaged and marginalised by the law. Since I was approached to write this paper, these objectives have expanded to include the aim of building stronger communities for the homeless.

What is a ‘Strong Community’? or ‘How Our Community Fails the Homeless’

What do I mean by the term ‘strong community’?

By ‘community’, I mean a group of people who are associated by some commonality of interest. Thus, for example, members of the Boy Scouts Association form a community in so far as they have a common interest in practicing and pursuing the objectives of the Association. Similarly, the residents of St Kilda form a community in so far as they have a common interest in improving the amenity of St Kilda. Homeless people have the *potential* to form a community in so far as they have a common interest in the alleviation of poverty.²

For, while I acknowledge (and politicians and the media focus on) indicators of homelessness such as mental illness, drug addiction, problem gambling and domestic violence, the common thread connecting these demographic categories is extreme

² I say ‘potential to form’ because, in my view, belonging to a community also requires some cognitive association of common interests. Faced with difficulties such as illiteracy, lack of education, mental illness or intellectual disability and the need always to focus on securing the essentials of life, such as adequate accommodation and nutrition, many homeless people do not cognitively associate as part of a ‘homeless community’.

poverty.³ People suffering mental illness are unlikely to become homeless unless they confront the dual problem of poverty. The wealthy mentally ill are likely to be treated in the private hospital system; it is only the impoverished mentally ill who hit the streets.

Similarly, women and children who are survivors of domestic violence are unlikely to turn to crisis accommodation if they have sufficient funds to stay in a hotel or to rent or buy alternative accommodation, or if they have adequate support networks to stay with friends or relatives temporarily. Thus, while poverty does not always cause people to become homeless, it certainly renders them more vulnerable to homelessness when faced by other crises or setbacks.⁴ Having regard to this, the provision of legal assistance to, and advocacy on behalf of, people experiencing homelessness, must always be informed by the close connection between homelessness and poverty. In particular, homelessness advocacy should be linked to fundamental grassroots anti-poverty advocacy regarding access to adequate affordable housing and the accessibility and level of social security.

I take the following to be the indicators of a 'strong' community.

First, a strong community is one in which all members' fundamental human rights and freedoms are respected, protected and fulfilled.⁵ For homeless people, our community is not strong in this respect. By definition, homeless people are denied the right to adequate housing. The denial of this fundamental right has far reaching implications for the enjoyment of other human rights. As Cassandra Austin writes:

³ Jonathan L Hafetz, 'Homeless Legal Advocacy: New Challenges and Directions for the Future' (2003) 30 *Fordham Urban Law Journal* 1215, 1222-3.

⁴ Jonathan L Hafetz, 'Homeless Legal Advocacy: New Challenges and Directions for the Future' (2003) 30 *Fordham Urban Law Journal* 1215, 1223.

⁵ See generally *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, 22-26 January 1997.

Housing can be seen to help safeguard the rights to privacy, self-determination and the right to development. It facilitates a range of freedoms including freedom of speech, to religious practice and other cultural expression ... [it] allows us security from cruel, inhumane or degrading treatment ... [it] is a primary means of protecting health and well-being, offering a space to prepare and cook foods hygienically, to shelter from weather, and to store clothing and other substantive possessions connected with our satisfactory functioning ... [it] is an essential adjunct to the rights of education and work, and it supports a range of other activities necessary for survival – providing a place to eliminate bodily wastes, to sleep and to relax ... The right to adequate housing is a right with far reaching implications for the fulfilment of other rights and therefore our quality of life.⁶

Second, a strong community is one in which all members are free from unwarranted discrimination. The right to be free from discrimination and to be treated equally before and under the law is entrenched in both the *International Covenant on Civil and Political Rights*⁷ and the *International Covenant on Economic, Social and Cultural Rights*.⁸ It may well constitute a non-derogable principle of customary international law.⁹ Despite this, a recent report produced by the Clinic, in broad consultation with the Victorian homelessness sector, found that discrimination against people who are homeless, unemployed or social security recipients is widespread in Victoria, particularly in relation to the provision of goods and services or accommodation.¹⁰ The report contends that the failure of equal opportunity and anti-discrimination legislation in Australia to prohibit

⁶ Cassandra Austin, 'Rights for the Homeless' (Working Paper No 5, Australian Housing and Urban Research Institute, 1996) 16.

⁷ Opened for signature 19 December 1966, 999 UNTS 171, art 26 (entered into force generally 23 March 1976 and for Australia 13 August 1980).

⁸ Opened for signature 16 December 1966, 999 UNTS 3, art 2(2) (entered into force generally 3 January 1976 and for Australia 10 March 1976).

⁹ See generally, Peter Bailey and Annemarie Devereux, 'The Operation of Anti-Discrimination Laws in Australia' in David Kinley (ed), *Human Rights in Australian Law: Principles, Practice and Potential* (The Federation Press: Sydney, 1998) 292-318.

¹⁰ Philip Lynch and Bella Stagoll (Public Interest Law Clearing House), *Promoting Equality: Homeless Persons and Discrimination – Submission Regarding Discrimination on the Ground of Social Status* (September 2002). See also Philip Lynch and Bella Stagoll, 'Promoting Equality: Homelessness and Discrimination' (2002) 7 *Deakin Law Review* 295.

discrimination on the basis of social or socio-economic status not only violates international human rights standards, but results in the perpetuation of social exclusion and the entrenchment of poverty. As St Mary's House of Welcome, a homeless drop-in centre in Brunswick, reports:

Our service users include homeless people, people in financial crisis, people who are suffering hardship, people with alcohol, drug and gambling addictions, mentally ill people and others of low social status. They experience discrimination because of their social status, their appearance, and the results of their lack of access to amenities and services. The effect of this discrimination can be detrimental to health and well-being, result in further financial hardship, and impact negatively on ability to cope.¹¹

Third, a strong community is one in which all members have the means and capacity to participate and reap the benefits of community membership. Again, for homeless people, our community is not strong in this respect. Between October 2001 and June 2003, approximately 92 per cent of the Clinic's clients relied on social security payments as their primary source of income. Over 53 per cent listed the Disability Support Pension as their sole income. At present, social security payments are pegged at a level well below the poverty line: a single, unemployed adult aged 21 years is entitled to income support amounting to only 79 per cent of the poverty line, while a person under the age of 21 is only entitled to income support amounting to 67 per cent of the poverty line.¹² For many people, social security payments are inadequate to access the basic necessities of life, including adequate food, housing, clothing and health care. In a recent study conducted by Hanover Welfare Services in conjunction with Victoria Police and the City of Melbourne,

¹¹ Letter from St Mary's House of Welcome to the Homeless Persons' Legal Clinic dated 20 August 2002.

¹² Tamara Walsh and Carla Klease, 'Down and Out? Homelessness and Citizenship' (2004) *Australian Journal of Human Rights* (forthcoming) citing Australian Council of Social Service, *Submission to the Reference Group on Review of the Welfare System* (1999).

it was found that over 90 per cent of persons observed to be begging in the Melbourne CBD were social security recipients.¹³ In 2002, the Australian Institute of Health and Welfare reported that 83 per cent of people accessing SAAP-funded homelessness services listed social security as their primary income source.¹⁴ This indicates that, at current levels, social security payments are insufficient to enable people to access an adequate standard of living, resulting in social exclusion and sometimes homelessness. As Arbour J of the Supreme Court of Canada recently recognised in relation to a young woman who was denied access to the level of social security necessary to ensure an adequate standard of living:

The psychological and social consequences of being excluded from the full benefits of the social assistance regime were ... devastating. The hardships and marginalisation of poverty propel the individual into a spiral of isolation, depression, humiliation, low self-esteem, anxiety, stress and drug addiction.¹⁵

Fourth, a strong community is one in which all members are able to have a say in decision-making processes and the formulation of policies that affect them. As Cait Clarke, a US public defender, recognises:

It is easier to listen to those people who 'count' and who feel comfortable speaking out in a community. Communities have many voices, and those voices that are often discounted can present a valuable warning sign about deeper problems in the community.¹⁶

¹³ Michael Horn and Michelle Cook, *A Question of Begging: A Study of the Extent and Nature of Begging in the City of Melbourne* (Research Paper, Hanover Welfare Services, 2001) 14-15.

¹⁴ Australian Institute of Health and Welfare, *Homeless People in SAAP: Data Collection Annual Report* (2002).

¹⁵ *Gosselin v Quebec (Attorney-General)* (2002) 221 DLR (4th) 257, [376] (Arbour J dissenting); see also [141] (L'Heureux-Dubé J dissenting).

¹⁶ Cait Clarke, 'Problem-Solving Defenders in the Community: Expanding the Conceptual and Institutional Boundaries of Providing Counsel to the Poor' (2001) 14 *Georgetown Journal of Legal Ethics* 401, 414.

Yet again, our community fails homeless people in this respect. Of the approximately 88,000 homeless people who are eligible voters in Australia,¹⁷ it is estimated that between 33 and 90 per cent are not registered to vote.¹⁸ This suggests that between 29,000 and 80,000 homeless people did not have their say in the 2001 Federal Election. The franchise of the homeless population could be significantly improved through a targeted voter education and enrolment campaign, the location of mobile polling stations at crisis accommodation facilities and welfare agencies, and the amendment of the itinerant voter provisions of the *Commonwealth Electoral Act 1918* (Cth) to ensure that homeless people are able to obtain and maintain enrolment.¹⁹ However, it is not only through formal 'democratic' processes that homeless people are excluded. A July 2003 survey of homeless people in Brisbane, conducted by the QPILCH Homeless Persons' Legal Clinic in conjunction with Tamara Walsh of the Queensland University of Technology, found that 58 per cent of respondents thought that they enjoyed fewer rights than other members of the community. Perhaps even more alarming is the finding that, notwithstanding that 96 per cent of respondents were, at law, Australian citizens, only 52 per cent stated that they felt like Australian citizens.²⁰ These findings indicate a deep sense of alienation among the homeless population from the socio-political process.

¹⁷ Michael Horn, *Social and Democratic Exclusion: Giving Voice to the Homeless* (Hanover Welfare Services: Melbourne, 2001) 2.

¹⁸ Hanover Welfare Services estimates that approximately one-third of homeless people are not registered to vote: Hanover Welfare Services, *Stats and Facts: Homelessness and the Federal Election* (2001) 3. The Australian Federation of Homelessness Organisations estimates that more than 90 per cent of homeless people are not registered to vote: Australian Federation of Homelessness Organisations, 'Proposals Threaten Voting Opportunities for Homeless and Young Australians' (Press Release, 27 June 2001) 1. A recent survey in Brisbane found that 50 per cent of homeless people had never voted in a State or Federal election: Tamara Walsh and Carla Klease, 'Down and Out? Homelessness and Citizenship' (2004) *Australian Journal of Human Rights* (forthcoming).

¹⁹ Brianna Harrison and Philip Lynch (PILCH Homeless Persons' Legal Clinic), 'Giving Voice to the Voiceless' (Submission No 145, Joint Standing Committee on Electoral Matters Inquiry into the 2001 Federal Election, Parliament of Australia, 2002) 5 <<http://www.aph.gov.au/house/committee/em/elect01/subs/sub145.pdf>> at 1 May 2003.

²⁰ Tamara Walsh and Carla Klease, 'Down and Out? Homelessness and Citizenship' (2004) *Australian Journal of Human Rights* (forthcoming).

The Role of Lawyers in Building Stronger Communities for the Homeless

So what role can lawyers play, and how can the law be used, to empower people experiencing homelessness to engage with the community and, perhaps even more crucially, to strengthen our community in such a way as to engage with and eradicate homelessness?

Before answering this question I think that it is important to recognise the limits of law. Even the most zealous legal advocacy can not operate as a panacea to homelessness; legal advocacy does not create jobs, cannot build homes, and fails to provide the care and support needed to address such crucial community issues as mental illness, domestic violence and problem gambling. That does not, however, mean that the law should be rejected as an emancipatory tool; for it can both contribute to, and in some cases resolve, a person's homelessness.²¹ As Jonathan Hafetz, former Staff Attorney at The Partnership for the Homeless in New York City, recognises:

Most people do not become homeless without at least some interaction with legal-bureaucratic institutions, and generally do not escape homelessness without successfully navigating those institutions, whether it be by obtaining housing assistance, public benefits, medical treatment, or counselling.²²

In addition to such direct individual impacts, the law can shape the discourse of the polity, influence public policy and, importantly, transform societal norms and values. This is particularly the case when zealous legal advocacy is combined with a holistic approach

²¹ Margaret Davies, 'Legal Theory and Law Reform: Some Mainstream and Critical Approaches' (2003) 28 *Alternative Law Journal* 168, 171.

²² Jonathan L Hafetz, 'Homeless Legal Advocacy: New Challenges and Directions for the Future' (2003) 30 *Fordham Urban Law Journal* 1215, 1245.

that affirms clients' dignity, addresses clients' needs, involves clients in decision-making processes, and educates the public about causes of and solutions to homelessness.²³

I will deal with these issues in turn.

Treat your Clients with Dignity and Respect

I was recently completing a client intake when I was interrupted by the client, an elderly homeless woman, who asked whether she could offer me some feedback. 'When I came into this room you looked me in the eye, shook my hand and introduced yourself with a smile,' she said. 'That was good. But then you started talking and you didn't ask me my name until you began completing the client intake sheet. That made me feel like you saw me as a legal problem rather than a person.' Valuable feedback.

The point is simple. We must treat our clients with dignity and respect. We must see them as a whole person. We must welcome them to our communities and recognise that we can be an integral part of theirs. Research in the United States and Australia demonstrates that being treated with dignity and respect by lawyers and legal officers is more important than the legal outcome to clients' perceptions of fairness and satisfaction.²⁴ Indeed, there is an emerging consensus that legal processes can have a significant impact

²³ Jonathan L Hafetz, 'Homeless Legal Advocacy: New Challenges and Directions for the Future' (2003) 30 *Fordham Urban Law Journal* 1215, 1216, 1230.

²⁴ Tom Tyler, 'The Psychological Consequences of Judicial Procedures: Implications for Civil Commitment Hearings' in David Wexler and Bruce Winnick (eds), *Law in a Therapeutic Key* (1995) 3-15; Rosemary Hunter, 'Through the Looking Glass: Clients' Perceptions and Experiences of Family Law Litigation' (2002) 16 *Australian Journal of Family Law* 7; Michael King, 'Applying Therapeutic Jurisprudence from the Bench' (2003) 28 *Alternative Law Journal* 172, 173.

on the physical and psychological wellbeing of participants;²⁵ it is our duty as lawyers to ensure that this impact is positive.

Find Out What your Clients Really Want

As discussed earlier, many clients of the Clinic come to us for help with significant unpaid fines, particularly for public space offences (such as drinking intoxicating liquor in public) and public transport infringements (such as travelling without a valid ticket). If, as lawyers, we focus only on that immediate and pressing issue, we may not identify and address underlying or interrelated issues which may cause or contribute to a client's so-called offending behaviour.

Identifying and addressing such issues requires a proactive approach to public interest lawyering. Precisely because clients come to us in a state of crisis and are likely to be occupied by the single urgent legal issue in respect of which they seek assistance, we must ask the client about their other needs and what, in the broadest sense, they want to achieve.²⁶ This is 'holistic advocacy', an approach which, in the words of Tanya Neiman, Director of the Volunteer Legal Services Program of the Bar Association of San Francisco, 'focuses upon, analyses and addresses the needs and situations of the client as a whole person with complex interrelated issues and problems'.²⁷ It is an approach that adopts both an individual and broader structural view as to what it means to act in a client's 'best interests'. This is not to say that, when a client presents with a fine for begging, our first

²⁵ Michael King, 'Applying Therapeutic Jurisprudence from the Bench' (2003) 28 *Alternative Law Journal* 172. See also International Network on Therapeutic Jurisprudence <<http://www.therapeuticjurisprudence.org>>.

²⁶ Tanya Neiman, 'Creating Community by Implementing Holistic Approaches to Solving Clients' Problems' (1999) *Journal of Poverty Law Clearinghouse Review* 19; Jonathan L Hafetz, 'Homeless Legal Advocacy: New Challenges and Directions for the Future' (2003) 30 *Fordham Urban Law Journal* 1215, 1245.

²⁷ Tanya Neiman, 'Creating Community by Implementing Holistic Approaches to Solving Clients' Problems' (1999) *Journal of Poverty Law Clearinghouse Review* 19.

priority should not be to challenge the fine vigorously. That is an integral part of homeless legal advocacy. It is to say, however, that such a response does nothing to address the underlying causes of the client's begging or of homelessness more broadly. That is why, as homelessness legal service providers, we must look beyond a client's immediate legal issues and integrate our advice and advocacy with part of a broader anti-homelessness and anti-poverty strategy.²⁸

One of the most significant challenges for lawyers seeking to provide legal services in a paradigm of holistic advocacy is to always give primacy to what the client wants. As Anne Gosely, a formerly homeless woman and founder of the Homeless People's Association, implores:

We understand that you think you are doing your best but until such time as you stop and ask the people themselves what their needs are you will keep going around in circles and wasting money that could be put to good use.²⁹

It is all too easy for us to disregard what the client is saying and to impose our own conceptualisations of the client's best interests, particularly when we are dealing with one of society's most disempowered and stigmatised groups. It is important that, as lawyers, we attempt to deconstruct our clients' instructions to their most basal level so as to deal with their issues in the most comprehensive and sustainable way possible; however, it is equally important that we are faithful to what the client says and wants.³⁰ Let me explain with two examples.

²⁸ Jonathan L Hafetz, 'Homeless Legal Advocacy: New Challenges and Directions for the Future' (2003) 30 *Fordham Urban Law Journal* 1215, 1239-40.

²⁹ Anne Gosely et al, 'Stop and Listen ... Don't Assume: Why the Homeless People's Association was Formed' (Paper presented at Beyond the Divide: The 3rd National Homelessness Conference, Brisbane, 6-8 April 2003) 1.

³⁰ Jonathan L Hafetz, 'Homeless Legal Advocacy: New Challenges and Directions for the Future' (2003) 30 *Fordham Urban Law Journal* 1215, 1246-7.

Leonie, a client of the Clinic at Melbourne Citymission, sought assistance to deal with an unpaid phone bill in relation to which she was being harassed by a debt collector. Leonie was provided with comprehensive advice regarding possible grounds for challenging the mobile phone contract, causes of action against the debt collection agency under the *Trade Practices Act 1974* (Cth), and the feasibility of negotiating either a waiver of, or instalment arrangement for, the debt. Notwithstanding this advice, Leonie instructed the Clinic that she was prepared to pay the debt. All she wanted was an opportunity to tell her story – to explain to the debt collector why payment was late and to demand that, when he called her on the phone, he spoke politely and treated her with dignity and respect. The Clinic honoured these instructions and Leonie was empowered as a result.

John, on the other hand, approached the Clinic because, in his words, he was being ‘continually hassled and fined for drinking in the street’. Clinic lawyers assisted to ensure that all outstanding enforcement orders and warrants for John were revoked. They were then successful in having all of John’s matters listed together for hearing and determination on the Special Circumstances List of Melbourne Magistrates’ Court. At this hearing, over \$10,000 of fines were dismissed and John was given a clean slate. The Clinic lawyers did not stop there, however. They consulted with him about how he wanted to improve his life. John was an alcoholic, so they arranged for him to attend a residential rehabilitative program. John had also lost contact with his children, so they made an appointment for him to meet with the Salvation Army Family Tracing Service. Finally, John remained concerned about the regulation of public space and policing practices which appeared to target the homeless for arbitrary or selective law enforcement. So, they nominated John to the Victorian Government’s recently established Homeless Persons’ Rights Reference Group. John is now paid to provide expert advice and guidance to the

Victorian Department of Human Services in relation to the development of a Charter of Rights and a strengthened complaints mechanism for people who are homeless or at risk of homelessness.

As the cases of Leonie and John attest, our ultimate duty as lawyers is to provide our clients with a full range of choices and explain their consequences so that the clients are empowered to make educated decisions.³¹

Identify and Address your Clients' Non-Legal Needs

Another aspect of holistic advocacy is identifying and addressing our clients non-legal needs. While some may argue that this is beyond our brief as lawyers, my view is that a person's non-legal 'welfare' can impact very squarely on their current and prospective legal needs and health. This is to adopt an expansive view of what it means to provide legal 'counsel'. Broadly interpreting the role of 'counsel' requires that we recognise that acting in a client's best interests means that we adopt a 'whole client condition' approach and that our duties to the client do not cease with the resolution of the case at hand.³² As Tanya Nieman implores, 'we must move from a "crisis only" to a more proactive, preventative approach.'³³ That is not to say that lawyers should become social workers. It is to say, however, that we need to get to know our clients and their non-legal needs better, get to know the social service providers that can assist our clients with their needs,

³¹ Robert A Solomon, 'Representing the Poor and Homeless: A Community-Based Approach' (2000) 19 *St Louis University Public Law Review* 475, 476.

³² Cait Clarke, 'Problem-Solving Defenders in the Community: Expanding the Conceptual and Institutional Boundaries of Providing Counsel to the Poor' (2001) 14 *Georgetown Journal of Legal Ethics* 401, 428-9. The Supreme Court of Victoria has recognised that acting in a client's best interests includes having regard to that client's 'mental health': *Murray & Anor v Director General, Health & Community Services Vic & Ors*, Supreme Court of Victoria, unreported, Eames J, 23 June 1995.

³³ Tanya Nieman, 'Creating Community by Implementing Holistic Approaches to Solving Clients' Problems' (1999) *Journal of Poverty Law Clearinghouse Review* 19, 20.

develop strong collaborative relationships with those providers, and develop effective and integrated intake and referral procedures to ensure that our clients' needs are met in a real and positive way. It is worth quoting Nieman in full on this:

A holistic approach requires us to focus on achieving results that have lasting impact and truly change lives. This does not require a sea change overnight; in fact, better results may be achieved by simply asking the right questions and linking arms with other providers and agencies dedicated to the same clientele. ... We must realise that this one contact with the client may be the only reaching out that a client undertakes. This is especially true for extremely vulnerable clients such as battered women. There is a distinct tendency for people to move from crisis to crisis – and that is how we in the legal services community have tended to organise our work. Thus, if we can do no more than accurately analyse client needs and give some guidance on where to get help, at least we have not blinded them to other possible remedies that may help them change their circumstances. What would be best for all is if, once a client sits down to tell his or her story, advocates try to deal comprehensively with what is really going on.³⁴

As Neiman concludes, 'our job as legal service lawyers is to recognise that clients have a myriad of needs and to create efficient ways to utilise the willing talent available.'³⁵

Increasingly, the Clinic is seeking to undertake a multidisciplinary approach to advocacy for the homeless. We have recently developed a comprehensive non-legal referrals manual. More importantly, we are working alongside a range of social service providers to improve outcomes for clients. By referring clients to a location such as Hanover Welfare Services, we can ensure that they are able to access crisis accommodation, case management, public housing assistance, vocational training, drug and alcohol counselling,

³⁴ Tanya Neiman, 'Creating Community by Implementing Holistic Approaches to Solving Clients' Problems' (1999) *Journal of Poverty Law Clearinghouse Review* 19, 21-3.

³⁵ Tanya Neiman, 'Creating Community by Implementing Holistic Approaches to Solving Clients' Problems' (1999) *Journal of Poverty Law Clearinghouse Review* 19, 24.

and medical, dental and psychiatric treatment. By outreaching to a location such as Hanover, we can help clients with issues involving fines, debt, social security breaches, evictions and rental arrears that are best addressed and resolved by legal advice or representation. This collaborative model improves the existing social service by incorporating a legal clinic to provide a more comprehensive overall service to clients, and improves the quality of the legal clinic by addressing the client issues that are often causative of or underlie legal problems.

Identify and Address Structural Problems and Needs

I mentioned earlier that it is rare for Clinic clients come in and say, 'the regulation of public space requires reform', 'or 'there is inadequate affordable housing' or 'public transport should be free'. Yet these issues are at the root of many clients' legal problems. As lawyers we are conditioned to deal with the immediate legal issue and, on resolution of that issue, our retainer ends. Thus, for a client with fines for begging, we may apply for revocation or conversion.³⁶ If we are really creative and audacious, we may challenge the constitutionality of anti-begging provisions on the basis that they unconstitutionally violate the implied freedom of political communication. Both of these strategies may result in positive outcomes for the client. The latter approach may even result in the decriminalisation of begging, a great result for all homeless clients. Neither approach, however, does anything to address underlying causes of homelessness, such as the lack of affordable housing, the inadequacy of social security, or the limited availability of continuum of care support services.³⁷

³⁶ See Clauses 10 and 10A of Schedule 7 of the *Magistrates' Court Act 1989* (Vic).

³⁷ Jonathan L Hafetz, 'Homeless Legal Advocacy: New Challenges and Directions for the Future' (2003) 30 *Fordham Urban Law Journal* 1215, 1216.

Recognising this, the Clinic has, from the outset, sought to identify and engage with the structural and systemic issues that cause legal problems for homeless people or that cause homelessness itself. In this respect we have made law reform submissions in relation to the *Vagrancy Act 1966* (Vic), homeless persons' voting rights, homeless women's access to adequate housing, the inadequacy of anti-discrimination legislation, homeless people's access to legal aid, welfare reform, and the regulation of public space. Again, we consider this part of our duty to act in our clients' best interests in the most holistic sense. What we did not recognise from the outset, but consider crucial now, is that client empowerment and community change requires that homeless people themselves be a primary voice in public policy advocacy and decision-making processes that affect them. Cassandra Goldie, Director of the Homeless Persons' Legal Rights Project, calls attention to this when she says:

Homeless people must be supported to speak and be listened to, to organise locally, to come together to articulate their needs, concerns and problems and to be involved in the delivery of solutions.³⁸

Honouring this, we have now formed a strong relationship with the Council to Homeless Persons, a peak advocacy body for homelessness service providers. We consulted broadly with clients regarding their experiences of unfair and unjust treatment in the formulation of a submission to the Victorian Government recommending that the *Equal Opportunity Act 1995* (Vic) be amended to prohibit discrimination on the ground of social status. We recently published the inaugural edition of a bi-monthly newsletter, *Street Rights*, which is distributed to clients and contains information about law reform activities and opportunities for participation in public policy advocacy and formulation. We are

³⁸ Cassandra Goldie, 'Rights versus Welfare' (2003) 28 *Alternative Law Journal* 132, 133.

assisting the Homeless People's Association, a group of homeless or formerly homeless people from St Mary's House of Welcome in Brunswick, to incorporate and obtain funding to operate. The Homeless People's Association aims to enable people who are homeless or formerly homeless to have a say and to participate in decision-making processes and projects that affect them. And the relationship with the Homeless People's Association is not one way. Recently, representatives of the Association provided extensive training to over 150 lawyers who volunteer with the Clinic in relation to their experiences of homelessness and how to communicate effectively with people experiencing homelessness. This included conducting mock client interviews and providing critical feedback to lawyers regarding their use of plain English, their communication and interpersonal skills, and the extent to which they ascertained what the client really wanted to achieve.

Forming strong, symbiotic relationships with organisations such as the Homeless People's Association is central to effective homelessness legal advocacy and community building.

As their founder, Anne Gosely, states:

From our experience with housing we have been there and done that. We in the community are the key to help you solve these housing matters if we teach and you listen.³⁹

Institutions such as the Homeless People's Association are critical in helping to inform us of community needs and the most appropriate way to respond to those needs.⁴⁰ Robert Solomon, Clinical Professor of Law at Yale Law School, captures it like this:

³⁹ Anne Gosely et al, 'Stop and Listen ... Don't Assume: Why the Homeless People's Association was Formed' (Paper presented at Beyond the Divide: The 3rd National Homelessness Conference, Brisbane, 6-8 April 2003) 1.

⁴⁰ Robert A Solomon, 'Representing the Poor and Homeless: A Community-Based Approach' (2000) 19 *St Louis University Public Law Review* 475, 483.

Ultimately, a community-based process requires identifying the community and setting priorities. If those priorities are set in a law office by lawyers, informed predominantly by those who manage to get to the law office, the priorities are unlikely to be representative of or strengthen the community at large. Real priority setting must involve a client base and must occur on the clients' turf.⁴¹

Public Education

I mentioned earlier that legal advocacy has the potential to shape public discourse, influence public policy and, importantly, transform societal norms and values. Public education about causes of and solutions to homelessness is central to building a stronger community both for the homeless and against homelessness. In my view, this project is best undertaken in a human rights framework.

The language of human rights is universal and responding to homelessness in a human rights framework can be a powerful strategy.⁴² Human rights enable marginalised and disadvantaged people to make claims against governments *as of right*. Human rights norms impose obligations on governments to respect, protect and fulfil fundamental rights, including the right to adequate housing, the right to health, the right to education, the right to social security, the right to be free from discrimination, and the right to life, liberty and security of person. Crucially, they also impose an obligation on governments to take steps, to the maximum of their available resources, to progressively realise all homeless persons' human rights and to remedy violations. That is what appeals to me most. A human rights approach to public policy advocacy enables debates about, and responses

⁴¹ Robert A Solomon, 'Representing the Poor and Homeless: A Community-Based Approach' (2000) 19 *St Louis University Public Law Review* 475, 483.

⁴² Philip Lynch and Jacqueline Cole, 'Homelessness and Human Rights: Regarding and Responding to Homelessness as a Human Rights Violation' (2003) 4 *Melbourne Journal of International Law* 139.

to, homelessness to be framed in the context of state responsibilities. By framing homelessness in human rights terms and, by extension, structural terms, we can shift the 'blame' for homelessness to governments and away from individuals. The notion that homelessness is an individual's concern (generally deriving from some weakness or depravity of spirit) is not sustainable in a human rights framework. A human rights framework challenges us to recognise, and our politicians to confront, the fact that all is not well – our community could be stronger – and that we must do better.

Talking about homelessness as a human rights issue appeals to me in another way too. It gives primacy to the client's voice. It empowers clients to participate in decision-making processes and to determine their own interests and how best to pursue them. The paramountcy of the right to self-determination – that is, the right of clients to 'freely determine their political status and freely pursue their economic, social and cultural development' – is reflected in the fact that it forms common article 1 to both the *International Covenant on Civil and Political Rights*⁴³ and the *International Covenant on Economic, Social and Cultural Rights*.⁴⁴ African-American lawyer, activist and academic, Patricia Williams, expresses this notion even more powerfully than common article 1. To a group of young white males who afforded her no room to pass on the footpath she exhorts, 'Don't I exist for you? See me! And deflect, godammit! ... I have my rights!'⁴⁵

Conclusion

⁴³ Opened for signature 19 December 1966, 999 UNTS 171, art 1 (entered into force generally 23 March 1976 and for Australia 13 August 1980).

⁴⁴ Opened for signature 16 December 1966, 999 UNTS 3, art 1 (entered into force generally 3 January 1976 and for Australia 10 March 1976).

⁴⁵ Patricia Williams, *The Alchemy of Race and Rights* (1991) 235-6.

Homelessness is perhaps the most serious socio-economic issue confronting Australia. On any given night it is enumerated that there are over 105,000 people experiencing homelessness across the country.⁴⁶ Many of these people have legal problems that have either caused or contributed to their homelessness. By appropriately targeting and delivering legal services we can start to address some of these problems and assist to navigate some people out of homelessness.

But we can also do more. By treating our clients with dignity and respect, we can enhance their physical and psychological wellbeing. By asking our clients to tell us what they really want to achieve, we can generate a sense of client empowerment. By identifying and addressing our clients non-legal needs, we can improve our clients' lives. By working and consulting closely with clients, we can start to identify and address structural causes of homelessness. By educating the public about human rights and homelessness, we can transform societal values and pressure politicians. And all of this results in stronger communities.

⁴⁶ Chris Chamberlain, 'Counting the Homeless: Implications for Policy Development' (Occasional Paper, Australian Bureau of Statistics, 1999) 3-4.