CRIMINAL LAWYERS ASSOCIATION OF THE NORTHERN TERRITORY

Territory Trials in Alternative Sentencing Methods – Credit Court and Community Courts

by

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TERRITORY TRIALS IN ALTERNATIVE SENTENCING MODELS, THE CREDIT COURT (NT) AND COMMUNITY COURTS

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***With thanks to Paul Rysavy and Jason Finlay (on CREDIT NT) and Barnabi Wunungmurra and Raymattja Marika (on Community Courts).**

Introduction

1. As most practitioners in the Summary Courts in the Northern Territory would be aware, the last two years has seen the development of different processes aimed at more meaningful and effective sentencing outcomes in particular areas of offending or offenders.

   Neither of the processes discussed here are conducted under any particular statute, although the Courts are operating in a sense permissively under the *Bail Act* and concerning final outcomes pursuant to principles under the *Sentencing Act*.

2. This paper discusses the development and legitimacy of these processes and advocates a case for the expansion of the role of the summary Courts in problem sentencing areas. The maintenance of, and any expansion of, existing programs does rely on the provision of expertise and resources. Acceptance of alternative sentencing

modes also relies on acceptance of changing roles for legal practitioners and judicial officers in the process.

Court Referral and Evaluation for Drug Intervention and Treatment, ('CREDIT') NT

3. The CREDIT (NT) program represents the first semi-structured example in the Northern Territory of *therapeutic jurisprudence*. Essentially CREDIT (NT) commenced by agreement of the Chief Magistrate with the government, predicated on the availability of financial resources from the Commonwealth for treatment places in existing agencies. The Northern Territory provided two court clinicians, one in Darwin and one in Alice Springs. The positions are crucial to the operation of CREDIT.

   CREDIT (NT) is modelled on the Victorian CREDIT program and similar programs operate in other states (eg MERIT (NSW) and the Drug Diversion Court in SA). The aim of these Courts is to divert dependent illicit drug users into a form of treatment appropriate to their level of dependency. By controlling the bail and sentencing outcomes, the Court provides incentive or exerts pressure on participants to complete their treatment. Ultimately the goal is that through proper treatment and going through the court process participants will be less likely to re-offend. Other objectives are to reduce generally illicit drug use by program participants; reduce the likelihood of a sentence of incarceration; reduce the cost to the justice and health system and improve the health and social functioning of the program participants.

Eligibility

4. Essentially the eligibility requirements are :

   (i) must not be ineligible for the Illicit Drug Pre-Court Diversion Program administered by police,

   (ii) maximum of two admissions per year,

   (iii) the person must not have a criminal history relating to violent behaviour or be charged with a violent offence – the Magistrate still has a discretion to admit the person,

   (iv) must be a user of illicit substances,

   (v) must not be subject to a current Court Order with a drug treatment condition,

   (vi) must not have a major mental disorder,

   (vii) must be bailed to a Court where CREDIT operates (currently Darwin or Alice Springs),

   (viii) may be an adult or a juvenile,

   (ix) must volunteer for the program.

5. In relation to (iii), certainly one prosecutor has raised in open court the need for more consistency in the application of this criteria. It

must be remembered that the treatment providers are not corrections institutions and may not have the facility to cope with persons likely to resort to violence when under pressure. Balanced against this is a person who may have a history of occasional, less serious violent offending, who may benefit from the program without disturbing others in a therapeutic environment. The application of this criteria requires some balancing of the various objectives.

6. Concerning criteria (vi), although a person suffering a major mental disorder may be excluded because the program is inappropriate to their needs, it is common that persons be admitted who have mental illnesses of a less severe nature. Overall, the criteria recognises that not all offenders are suitable for the types of treatments available in the program.

7. Underscoring the eligibility is that being a program conducted while the person is on bail, the person must of course be eligible for bail. A number of persons who have been in custody have been admitted to the program after the report of the Court Clinician recommending a suitable placement in treatment. The placement in treatment (particularly residential) in many cases reduces the risks that may have initially operated against a decision to grant bail.

8. Although the program is primarily for persons who can be dealt with summarily, defendants likely to be committed to the Supreme Court have been admitted., the rationale being that it is useful that they be in treatment while awaiting the committal process. The Chief Justice has at least in one case : (*The Queen v Tyrone Shields*, SC(NT), 23 February 2004, unreported), placed significant reliance

on Credit reports prior to sentencing. In cases headed for the Supreme Court (as with all cases) participants are told by Magistrates they will receive credit in sentencing if they complete the treatment. That approach may need to be refined given that in one matter : (*The Queen v Magoulias* SC(NT), unreported, 8 June 2005), the Supreme Court rejected the submission that the defendant was a drug addicted person. That defendant had gone through a residential treatment program under the auspices of CREDIT (NT).

The Jurisprudential Place of CREDIT (NT) Matters

9. As noted at the outset, CREDIT (NT) operates under no particular statute, but participants are managed through the process under the *Bail Act*. At each "review", (that occurs monthly, approximately three times prior to sentencing), Magistrates remind participants that their progress throughout the program will be reflected in the sentence. Although not provided for specifically in the *Sentencing Act*, the Court is likely to be able to justify a sentence emphasizing rehabilitation : (S5(1)(b) *Sentencing Act*); participation being recognised as a "mitigating factor concerning the offender". S5(2)(f) *Sentencing Act* when considering whether a particular sentence is just in the circumstances.

10. This approach to sentencing has received valuable precedent support by the Supreme Court in *Miller v Burgoyne* [2004] NTSC 47, (Olsson AJ), where His Honour examined the scheme and made the following points :

- In many cases such as this one where there had been successful completion of CREDIT, general deterrence may be achieved through imposing a custodial head sentence of appropriate length and then mitigating factors recognised by suspension.

- Resort to the imposition of a short sharp custodial sentence to reflect the demands of general deterrence constitutes an error in these circumstances.

- An approach emphasizing a custodial sentence had a strong potential to negate the potential long-term efficacy of the CREDIT (NT) program as if it appears to potential candidates that they may well be required to serve an actual custodial sentence, or some portion of it, there will be greatly reduced incentive for them to approach participation in such a scheme in a meaningful fashion.

- It is not suggested that total suspension of a custodial sentence ought to automatically follow participation in the CREDIT (NT) program, however, normally general deterrence will have ceased to be a predominant factor.

11. Justice Olssen expressly adopted the Chief Justice's approach in *The Queen v Shields* (cited above), where His Honour took into account the Court Clinician's reports and his oral evidence. The participation and effort in the 12 week residential program with FORWAARD justified the suspension of the majority of a 19 month sentence.

12. It is common place now to find that sentences in the Magistrates Court do reflect these considerations, additionally it is reasonably common for CREDIT court completion to lend itself to a successful submission (usually in consideration with other factors) that "particular circumstances" have been made out under S37 *Misuse of Drugs Act*. Further matters concern whether successful completion (usually with other factors) might or might not justify the non-restoration of a suspended sentence; (S43(7) *Sentencing Act – restoration unless it would be unjust to do so*); a further factor is whether time spent in restrictive residential treatment programs ought to be regarded as having a punitive element similar to "time served".

Changes in the Role of Lawyers and Judicial Officers and New Players (Court Clinicians)

13. The Court Clinicians play a pivotal role in the Credit Program. They are a most valuable resource. It is an interesting and, in my view, progressive development to have the clinicians located within the Court and answerable to the Court. The great advantage of the clinicians is the level of detail provided about the participant at the outset and the ongoing reports on their progress. I know of no other Court process where so much information is gathered so quickly and recommendations are made. The progress reports are also useful and usually all reports are utilised in the final sentencing process. The Court is in a much better position than in most cases to assess what the defendant's likely compliance to future orders is and therefore is in a much better position to assess the risks involved in a proposed

sentencing disposition. The encouragement of transparency at the outset of proceedings is most useful.

14. After initial bail issues are dealt with and the person is accepted into the program, at each review the Credit Court Magistrates attempt to discuss directly with the participant their progress. Words of encouragement are generally given, alternatively warnings if there has not been compliance. This is a new function for most of us. Recently I addressed treatment providers at a Drug Diversion Forum (24 May 2005). The feed back was that these review discussions between the Bench and the participant were extremely worthwhile contributing positively to the persons progress. I was told if for some reason the talks by the Magistrates are neglected, the participant feels quite let down.

15. During this process (prior to sentencing submissions) the usual role of prosecutors and defence lawyers is diminished significantly. Most have risen to the challenge and held their tongues. What is important is that all parties concentrate on the therapeutic goals. One observation often made by Magistrates is how much better the person looks in terms of their health and well being as they progress through of the program. Sometimes the Court Clinician, treatment providers and family members will be asked for their observations in the progress of the defendant. This is a progressive step.

Statistics and Client Profiles

16. The Darwin Court Clinician (Paul Rysavy) has provided the following statistics that may be of interest to Court users :

Of 136 participants, 138 (85%) were male; 25 (15%) were female. Non Aboriginals or Torres Strait Islander clients accounted for 66% and Aboriginal or Torres Straight Islander accounted for 34%.

Of 106 Participants, the Age Breakdown is as Follows :

17 – 19 years	13 clients = 12%
20 – 25 years	30 clients = 28%
26 - 30 years	23 clients = 22%
31 – 35 years	16 clients = 15%
36 – 39 years	11 clients = 10%
40 – 45 years	7 clients = 6%
45 – 50 years	3 clients = 3%
51 years	3 clients = 3%

Of 119 Participants – The main Substance Used is as Follows :

Cannabis	45 clients = 38%
Opiates	23 clients = 19%
Ecstasy	4 clients = 3%
Amphetamines	46 clients = 39%
Alcohol	1 client = 1%

(It must be noted also that many participants have a mixture of alcohol and other substance abuse).

Client Profile – Education of 119 Participants :

Primary only	14 clients = 12%
Year 10 or less	63 clients = 53%
Year 11 or 12	28 clients = 23%
Tertiary/TAFE	5 clients = 4%
Trade	9 clients = 8%

Client Profile – Employment of 123 Participants :

Unemployed	71 clients = 58%
Pensioner	7 clients = 6%
P/time or casual	9 clients = 7%
Full time	22 clients = 18%
CDEP	4 clients = 3%
Home Duties	7 clients = 6%
Other	3 clients = 2%

Client Profile – Custody of Children of 116 Participants :

No Children	96 clients = 83%
1 Child	11 clients = 9%
2 Children	5 clients = 4%
3 Children	1 client = 1%
4 or more Children	3 clients = 2%

Client Profile – Past Treatment of 119 Participants :

Past treatment	63 clients = 53%
No treatment	56 clients = 47%

Client Profile – Psychiatric Treatment of 119 Participants :

Never	89 clients = 75%
Past	26 clients = 22%
Current	4 clients = 3%

Summary Totals – Darwin :

Assessments	138
Ineligible/Declined	20
Completed	70
Failed	23
Current	25

Summary Totals – Alice Springs :

Assessments	23
Ineligible/Declined	7
Completed	5
Failed	5
Current	6

Darwin agency involvement of 130 participants :

Amity	46 clients = 35%
Bridge	21 clients = 16%
ADS	20 clients = 15%
AAFR	19 clients = 15%
Banyan	13 clients = 10%
FORWAARD	7 clients = 5%
CAAPS	4 clients = 3%

Alice Springs agency involvement of 15 participants :

CAAPU	6 clients = 40%
ADSCA	4 clients = 27%
DASA	4 clients = 27%
Holyoake	1 client = 6%

17. The Acting Principal Registrar, Mr Jason Finlay, has compiled further statistics of 76 participants who have completed the requirements of the program in terms of sentencing dispositions

Sentencing :

Of the 76 participants who have completed the requirements of the program the sentencing breakdown is summarised in the table below:

	Alice Springs	Darwin	TOTAL
Suspended Sentence	5	38	43
Imprisonment		1	1
Fine		6	6
Good Behaviour Bond		6	6
Partial Suspended Sentence		2	2
Community Work Order		1	1
Home Detention Order		1	1
Without Proceeding to Conviction		1	1
Ongoing	1	14	15

Re-offending after 12 months :

Of the 76 participants who have successfully completed program 19 completed the program over 12 months ago.[1] Of these 19 there have

[1] Only the participants who completed the program more than 12 months ago are considered in relation to re-offending.

been 6 that have re-offended. The offences committed are as follows:

- Property offences
- Drug related offences
- Breach order
- Driving offence
- Violence
- Federal offences (Aircraft)

Conclusions

18. At this stage limited conclusions can be made on the question of re-offending, partly because it would be difficult to isolate a group with whom to compare the current program participants with and partly because of the short time-frame involved. As a process for dealing with chaotic and difficult lives, the process overall must be considered quite a positive one. Further work needs to be done on ways to perhaps include people from more regional areas and consequentially more Aboriginal participants. There are further challenges concerning non illicit substances (alcohol and inhalants) that currently do not come within the funding guidelines. Interestingly, at the time of writing (during the NT election campaign), both parties have committed to do more concerning alcohol treatment, one party is supporting the establishment of an alcohol court as part of that policy. Currently that proposal appears to be linked with forcing people into treatment which is quite different to the CREDIT (NT) voluntary program. I would argue that if treatment centres can be properly funded, alcohol related

crime could be dealt with under a similar philosophy as CREDIT (NT).

Community Courts

19. Although not as institutionally entrenched as the CREDIT program, a development of some interest is the trialling of Community Courts. Although involved with the discussions on setting up the Community Court in Darwin, my own involvement has been more with a trial at Nhulunbuy.

Darwin Community Court

20. The Chief Magistrate agreed with Yilli Rreung to trial a process that would involve similar elements to the restorative justice programs such as Circle Sentencing. The Community Court came about in Darwin by the ability to access funds for the program, on this occasion via the Yilli Rreung Regional Council, one of the regional councils under the (former) ATSIC. Those funds were utilized by the Department of Justice to provide an Aboriginal Community Court Liaison Officer to the Magistrates Court in Darwin. The Chief Magistrate, Mr Hugh Bradley, agreed to develop the Community Court in consultation with relevant stake holders in Darwin. Mr Bruce McCormack, a former Magistrate, was engaged to assist in bringing the project together and there has been numerous meetings and consultations through him, the Chief Magistrate and representatives of Yilli Rreung, Witness Assistance, ODPP, Corrections and NAALAS. The current director of NAALAS, Ms Sharon Payne has encouraged and developed the trial. The current

guidelines acknowledge that a Community Court "is intended to recognise that in some cases community, cultural or other factors play a significant role in reacting a sentence outcome which is more beneficial to community." At the time of writing, the guidelines are being refined but the most recent copy of the Guidelines is attached to this paper. As you will see, the Darwin Community Court seeks to involve all relevant participants in the sentencing process in an effort to emotionally engage the defendant. Many Darwin Aboriginal persons have come forward to participate as respected persons and have received training in the process. The process mirrors, in many respects, Circle Sentencing that has been successful in other states in engaging the relevant community towards dispositions that reduce re-offending.

21. Thus far, two Community Courts have been held in Darwin and those participating have reported being involved in a profound experience. In particular, the powerful engagement of the Aboriginal respected persons with the defendant has been noted. The first Community Court was reported on at length by ABC Radio, the reporter, Mr Matt Henger, being clearly moved by finding himself involved in the experience. He said in his report :

> "Well, it is a Community Court and everyone's part if the process there. Chief Magistrate Hugh Bradley gave a welcoming this morning and then, yes, he asked everyone to stand up and sort of introduce themselves and say who they were and why they were there. And it came to my turn and I sort of got a look and a nod to stand up, so I told everyone who I was there, for the ABC, and was thanked for being a part of it,

> and it was quite good. Even the guard who led the offender in actually gave his name as well."
>
> "Yes, the offender was charged with aggravated assault after he hit a gentleman with a stick. I'd just like to say that I've been in the media for nearly a decade and over seven years with the ABC covering Courts all over the place. I never saw as much impact as I saw today. I just really was amazed, astounded , felt privileged actually to be there at the first one of these ….."

Each sittings of the Community Court has been reviewed by participating organisations in a bid to discuss logistical problems that may have been experienced.

Nhulunbuy

22. The situation in Nhulunbuy is different again. Only a small amount of the overall funds were available to assist in the infrastructure, but there is a great deal of goodwill from the Yolngu exhibited in ensuring a proper process, consistent with culture to deal with problems of offending behaviour. The local Community Corrections Office (Ms Sharon Briston) has operated as an honest broker between various parties with a meeting each Court sittings (once per month) of all persons interested in the process. The Committee is currently chaired by Mr Barnabi Wunungmurra who, for many years, has been involved in aspects of the justice system.

23. The primary difference with engagement with the Yolngu in the process is that, on the positive side, it involves engagement with

communities who have distinct laws and customs and distinct languages (some 30 in all, see : Yolngu, "Languages and Culture : Gupapuynu". Michael Christie, CDU, Study Notes). The challenge is to engage in a way that will be cognizant of those factors and not to act in a way that would harm that culture. The process must involve respecting the *rom* (law or culture) through its many dimensions : *wäna* (home, land); *dhäwu* (stories/history); *miy'tji* (art, totemic designs, colours); *gurrutu* (kinship); *manikay* (clan songs). (See Michael Christie, Study Notes, @ 4). Of these dimensions, certainly the *gurrutu* (kinship system) is the most significant recurring issue on the question of involvement of the appropriate people in dispute resolution.

24. Nhulunbuy and the major communities in North East Arnemland have a significant history of assertion of their own culture in engagement with the general legal system (eg. the running of the first land rights case – *Millirippum v Nabalco* and subsequent land rights cases; earlier involvement of JP's in the Court of Summary Jurisdiction in previous attempts to engage the community). Prior to my involvement in the circuit, David Loadman SM, after extensive consultation, accepted the idea of establishing cultural panels for advising on customary law, the idea would be that one of four persons selected would advise the Court or select the appropriate person to advise on issues of customary law. The process involved the appropriate person giving a report to the Court. One of those four persons is now deceased but the cultural panel remains and could be utilized in the appropriate case. Although not specifying the model, the recommendation of the NT Law Reform Committee in its "Report on Aboriginal Customary Law" recommended a

community sentencing model to allow for community input into sentencing offenders.

25. As soon as I became involved as the Circuit Magistrate in Nhulunbuy and Elcho Island, I was approached by Ms Raymattja Marika to set up a "Yolngu Court". At that stage I was not confident that I could, within the general legal system, generate what was proposed but through further discussion what appeared to be needed was a process that could better involve the community and appropriate persons in the sentencing process. What occurs now is that defendants may nominate to be dealt with in the "Community Court" and the parties determine who they want to be involved, usually with the assistance of corrections. Holding a "Community Court" has been quite a regular feature for the last 18 months at Nhulunbuy, although for three sittings earlier this year, no defendants requested the process. Running parallel with the actual Court sittings are the regular steering committee meetings.

26. The usual process is after the plea is taken, and thus agreed to, is to allow families to tell the Court directly what they think about a matter and what they would like done. Usually the Court is able to tailor a disposition that suits the suggestions made by family members. The family generally take the opportunity to encourage or persuade the defendant to change their behaviour and to interpret and emphasize aspects of the discussion. Much of the discussion at the Bar Table between relatives takes place in Yolngu Matha of some sort – this may present a challenge for court recording should there ever be an appeal. Usually I request family members to attempt to persuade the defendant of the advantages of changing behaviour.

Examples

27. The case of *NM* (3 August 2004) provides an example of a case that if the families (both of the victim and defendants) had not been present and involved in the discussion it would have been difficult to justify a suspended sentence on certain conditions. It was a case of a (late) plea to aggravated assault, a group attack and the victim unconscious for a time. There were some six members of the combined families at the Bar Table explaining that there was a need for the victim and defendant to go through a process, something approximating an apology that would involve the two families; there was also an acknowledgement that the defendant may need to reside for a time at an outstation because of alcohol issues and "so he can be close with the family". As well as conditions concerning residence and reporting, the suspended sentence included a condition that NM would participate in the apology process to take place between the two families. Both the prosecutor and defence lawyer made submissions at the end of the discussion and the corrections officer gave immediate advice on what she could manage from a supervision point of view.

28. In the matter of *MM,* 5 May 2004, the victim attended the Community Court, who was coincidentally also the defendant's uncle in the *Gurutu* system – the case involved the defendant illegally using (with another relative) uncle's car and the car was seriously damaged. It was an interesting situation that uncle, who would have traditional authority was also the victim (YM), was very fair in his discussion explaining MM's background, including his circumstances of neglect by his biological parents; it affected YM

greatly but (he) didn't want to "jump into conclusion of barring of his life between my brother and myself. That would separate his family and me". Although he was quite sympathetic, he also explained – "so as I said before, his convictions that he's done recently made me pretty upset and I caused him probably a pain in the head by saying 'Well you boys have to do this for me'! He stole my car, which cost me six and a half grand, all right ..." It's a secondhand one. It was a good car anyway. But I really loved it..." "I told him 'Look you've broken into my heart, you stole my car, you drove off to Yirrkala without licence and I couldn't do anything about it, just had to report it to the police". He was also adamant that MM be supervised, both at an outstation and for specific ceremonies at Yirrkala. This supervision involved not only corrections but family members as well.

29. Some of the Community Courts at Nhulunbuy have involved family conveying and discussing options with defendants in the face of potential gaol. For example, JY, who was initially dealt with for indecent assault (not in the Community Court) was on a partially suspended sentence. He has a significant alcohol problem but family have been keen to keep him involved culturally by having him stay on homelands. He's been dealt with now twice in the Community Court for breaches of his conditions (not re-offending), but it has allowed, on each occasion , a review by the Court and the family of his residence, supervision and general progress. Although clearly it would be more expedient to simply order he serve the restored term, the long term interest of the community appears to be to keep him in a situation where he can be monitored and be subject to cultural constraints in a dry community. Here the court is involved with

managing a problem alcoholic defendant. The police prosecutor, on these occasions, has engaged directly with the defendant and his family.

30. In the June sittings of this year the Community Court sat in a case where the victim was not Aboriginal and is in fact the licensee of the main hotel in Nhulunbuy. He participated fully in the process and also used the opportunity to explain how he perceived his relationship with the Yolngu. All members of the defendants family and the defendant apologised to the victim. They explained the defendant's precarious mental state and background. A member of the non Aboriginal community from Nhulunbuy also attended and gave suggestions on community work and incentives for the defendant.

Final Observations

31. A number of observations have been made to me by Yolngu (in particular Barnabi Wurungmurra and Raymattja Marika) that indicate how further developments might be made in the Community Court. First, there is an acknowledgement that the most serious cases will be dealt with in the Supreme Court. Some Yolngu who attend the regular meetings of the Community Court have said that those are the cases they would like to be able to advise the Court on what should happen. It needs to be acknowledged here that fortunately there are few cases from North East Arnhemland that are destined for the Supreme Court. Suggestions have included writing to the Court or sitting with the Court or being on juries (in all cases). Raymattja Marika would like all of the judiciary to go and learn the law at an outstation. Due to a case that arose in Elcho Island (where

there was much community concern and many members of the community came to court) but clearly they would be unable to attend the Supreme Court in Darwin, it struck me that some thought should be given to inviting relevant persons to make statements to the Committing Court after the committal that could be transcribed and transmitted to the Supreme Court. That would need a legislative amendment but particularly for remote communities, it would provide a mechanism to allow access to the Supreme Court.

32. Some members of the Yolngu Community Court Committee have continually raised the fact that they want to be appointed JP's. That process is now under way. Although not at all necessary for participation on the Community Court, it is important to some senior Yolngu and I hope it will progress.

33. Involvement of the Community at a broader level has allowed input on such things as the content of Community Work projects. Community Work is a very popular option recommended by families regularly in the Community Court. The projects now involve cleaning up areas, building the bough sheds and preparing areas for important ceremonies such as funerals. These projects, with a cultural base, have been well received.

34. Unlike Darwin Community Court there is not a full panel of respected persons, however slowly that is being built up. At this stage three clan groups are represented but there are numerous others. It will be some time before there is the full clan representation from all clan groups. Although each session at a Community Court is far more time consuming than the usual plea process, if it is more meaningful to all concerned, it is worthwhile

proceedings. If it reduces re-offending, all the better. The Community Corrections Officer has noted that, although time consuming for her, the information given to the Community Court saves her from writing pre-sentence reports.

35. Initially I assumed the legality of receiving information in this manner could be based in S104 *Sentencing Act* : (a sentencing court may receive such information as it thinks fit to enable it to improve the proper sentence). That section has now been amended to provide (S104A) for special procedures whenever "Aboriginal customary law (including any punishment or restitution under that law that may be relevant to the offender or the offence concerned) and views expressed by members of an Aboriginal community about the offender or the offence concerned". Notice must be given and the information must be provided on oath or statutory declaration. Thus far, I have assumed that the type of information being received does not breach that section as it is not "community views" as such being discussed, nor has there yet been views on "Aboriginal customary law", however that issue may yet need to be agitated. Personally I would like to see Community Courts exempted from the section. It is not really in the court's expertise to determine when a cultural matter may be regarded as "law". There is significant anthropological writing on the meaning of "*Rom*". The dividing line (if it exists) between law and culture is not clear.

36. There is a clear role emerging for the Summary Courts in problem sentencing cases. As mentioned above there is a case for an alcohol court. A different style of court may be useful to manage a range of offenders (mental health, domestic violence) through programs that

improve their own lives, their families lives and the well being of the community at large.