

TRANSCRIPT

LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into Victoria's Criminal Justice System

Melbourne—Monday, 6 September 2021

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Ms Sheena Watt

WITNESS (*via videoconference*)

Ms Tracie Oldham.

The CHAIR: Welcome back, everyone. I am very pleased that we are joined by Tracie Oldham, who is someone with lived experience of our criminal justice, or the problems with it, but also a terrific advocate for change.

Tracie, I introduced us to you, but let me do it formally. I am Fiona Patten, the Chair. We have Kaushaliya Vaghela, Sheena Watt and Tania Maxwell joining us from the Legal and Social Issues Committee.

If I could just let you know, all evidence is protected by parliamentary privilege under our *Constitution Act* but also the standing orders of the Legislative Council. This means that any information that you provide during this hearing is protected by law. You are protected against any action for what you say when you say it here; of course if you were to repeat those comments outside this hearing, you would not have the same protection. Any deliberately false evidence or misleading of the committee could be considered a contempt of Parliament.

As you may be aware, this is all being listened to by Hansard, who are transcribing this hearing. They will provide you with a transcript. I encourage you to have a look at it and make sure that we have not misheard you or misrepresented you in any way. Ultimately that transcript will become public on our website and also, gratefully, it will form part of our report.

Tracie, if you would like to make some opening remarks, then I will open it up for committee discussion. And just to let you know, we have got your submission as well.

Ms OLDHAM: Good. Thank you. I thought you would. As a rule, I could talk underwater with marbles. I know Tania knows that, but today I was stumped as to where do you start? It is like trying to fill in the cracks in the Grand Canyon. There are so many cracks, where do you start? And I think with all the best intentions in the world some things are, you know—it is like the Japanese bowl; once broken, some things cannot be fixed. The only way they can be fixed is to literally throw them away and start again, and I think you are in such a conundrum that, really, how do you fix something that broken without restarting it? I think you are trying to patch. You remind me of the old asphalt road that used to be cheaply done. You would get your potholes, they would come and they would fill them up, and the next summer they would be back again, and that is what it seems to be with the law reform. With all the best intentions, you keep filling in the potholes. Someone needs to get a big broom, just sweep it all away and start from scratch. Of course that is only my opinion, you know, for what it is worth, but I have been in the system too long.

The CHAIR: Yes, it is a really good analogy, Tracie. I am surprised we have not actually heard that one before, but I love that idea of a broken road. We keep trying to fix the broken road, but you are constantly putting layers on layers, and you are just patching something that really needs to be maybe even rebuilt. On that, Tracie, with some of the information that you have provided in your submission—you know, I apologise for just the constant miscarriage that has occurred to you—you talk about changing how SOCIT manages its cases, and I think you have got some really good personal experience in this. I wonder if you could articulate what those improvements could be or should be?

Ms OLDHAM: Now, when I speak, I am only speaking from my experience, and of course—

The CHAIR: Yes, and that is why you are here.

Ms OLDHAM: Yes, but bear in mind, the scariest part of my experience is I am echoing thousands of other people that have gone through similar experiences, which I find very disturbing. If something is wrong once or twice, you think, ‘Well, maybe it was just that person’, but when you are hearing that same story over and over and over again, even after the royal commission had made suggestions to SOCIT about where their flaws were, you have got to start thinking, ‘Well, we need to get rid of SOCIT, and we need to just’—like victims of crime—‘have an independent area solely for historical charges’. Because these people are inept, not through lack of interest, just through lack of training.

The CHAIR: Yes, and they have got so much on their plate of current cases to then have the space to deal with those historical cases.

Ms OLDHAM: Well, in my case, the first senior sergeant I had, he was just that tad older, more experienced, but he had tenacity. He was so diligent. He was like a pit bull. He knew a little bit more about the law, because he had a vested interest. And he got changed to another department, and oh, my God, did it speak volumes when the more junior officer came in! Well, the case was doomed from that moment. He openly admitted he did not have much knowledge of the law, hence the fact my case was such an abysmal failure. And what I wrote to you I wrote to them, outlining the fact that they should be taught law. Why are they in charge of such a crucial—you know, you are revictimising people by not knowing the outcome. I got told all the way through I had a tremendously strong case, and it just—poof!—died. There were a lot of grey areas, but it all came down to lack of training, lack of education in the area that they are working in. I mean, I would not go and get a job as a butcher if I had never cut a bit of meat. It is fine to say, ‘Well, here’s a book. Go and do a six-week course. Right, now you’re in charge of people that have been broken for 50 years. I want you to pick their wounds until they bleed, and then when you do not know what to do, just say, “All right. The case is dropped, sorry” and leave that person to pick up the pieces’. That is what is happening, and that is what happened to me.

The CHAIR: Yes. Tracie, you also mentioned the idea that victims should have an advocate there with them when doing the statements.

Ms OLDHAM: Absolutely.

The CHAIR: And why do you say that?

Ms OLDHAM: Well, when I first went in, I had no idea. I mean, I had been in denial my whole life and it took the Cardinal Pell—as it did with many other people—to trigger. It actually was not the Cardinal Pell; it was something one of my family put on Facebook. I thought, ‘How dare you. Knowing what I had gone through, how dare you sit there and pass judgement’, so I approached all my family about becoming witnesses—‘This is what I’m going to do’—and I got ostracised. Now, knowing that I had already ostracised myself from my family, feeling bad, I then went into the police station—they were lovely—not knowing what the hell the outcome was going to be.

I had been in denial my whole life to the point that I did not even know what I knew, if that makes sense. It was not until they questioned and questioned and a lot of repressed memories came back. Now, had an advocate been there, they would have seen the fact that not everyone cries. I am one of those people. I will tend to laugh. I will crack jokes. I will be as strong as a mountain. I will not crack. What do they call it? A high-functioning depression. But, you know, I was sitting there just reading off as in the third person, talking about it as if I was talking about somebody else, and it was not until I went and sat in the car that it just flooded me. Like, it was: ‘Oh, my God’. Suddenly I heard myself speaking. But while I was in there, had an advocate been there, they would have slowed it down. They would have paused it. They would have said, ‘Can we take a break now?’—because they are taught to read the signs; they would have seen—‘I think she was just triggered. Maybe now is a good time to take a break for 5 minutes’. But no, they just keep hammering at you and hammering at you, and you are just trying to digest what you have just heard yourself say that you have never openly admitted. And before you have had a chance to digest that, they have asked you another question—‘Hang on, hang on, hang on, I’m still trying to get over the fact’—so you are about 10 questions behind by that time. And I am not going to tell you anything you have not heard before.

The CHAIR: Thanks, Tracie. Look, I think that is very well put. Kaushaliya.

Ms VAGHELA: Thank you, Chair. Thanks, Tracie, for your submission and for your time today. You are very brave woman, and it is really sad to hear your story in the submission that you have provided. Nobody should have go through what you have been through, and it is sad that you feel that you have been let down by many, many people, not once but multiple times. I understand you are also running the not-for-profit organisation Just4Causes. How often do you hear stories like yours from people approaching you and your organisation? Is it very common?

Ms OLDHAM: I run four different groups.

Ms VAGHELA: Okay, all right.

Ms OLDHAM: Speak Up: All Survivors Matter is the one that I advocate for. Just4Causes is my charity event that I do for worthy causes, so that is a different thing again.

Ms VAGHELA: That is a different one. So under this one—

Ms OLDHAM: Speak Up: All Survivors Matter, for that exact reason—we need to speak up because all survivors do matter. People today still do not know my life—they are about to—and that is why I decided to do the statement. That is why I decided what happened to me should not have happened to anyone—from birth. I am 59, and no-one could have suffered. When I said at the start that if there are flaws in the system, it is me; I am the poster child for flaws in the system. And I have been doing this since 1986, which shows me I am getting old. What is even older is the fact that I keep hearing the same stories after 30-odd years. These are not new.

I do not mean to be cynical, but these law reforms, you know, they are great—‘We’ll put a bandaid on the problem. We’ll put on a bit of whitewash and put it in the cupboard and hope it goes away. We’ll tell everyone we’re going to fix it’. It is unfixable. It needs, as I said, a big broom to sweep it into the rubbish and get a whole individual organisation to take over that is trained, that has got the manpower and the knowledge. Victims of crime do it. Even they have got their flaws. Do not even get me going there. I do not understand why it is put in the hands of police. Maybe they do the police side of it, I understand, but the legality should not be left up to police. And you cannot combine the two and ask an untrained officer to suddenly become a lawyer. It is unfair on them, but it is even more unfair on the victim, because we go in there with certain expectations. You are not stupid; you know whether or not you have got a reasonable case. And the longer the case goes on, you do talk to these people and they do give you an indication whether or not it is a strong case or a weak case. I just think it is too broken. With all your best intentions, I think you really do need to set up an organisation solely for historical charges. My case fell down purely because they did not understand the historical charge aspect.

I do a lot of reading. Because I have got a disability, I spend most of my time on the computer, and I read and I read and I read. And because I am lobbying for voluntary placement to be unrecognised, I read a lot on government issues. I cannot believe how far back these law reforms have been going and all the recommendations and all the so-called amendments that have been done. I have not seen any of them actually take place. The royal commission said in 2012 that they submitted about SOCIT’s flaws, yet they were not rectified. Here we are in 2021, still talking about the same thing.

The CHAIR: Yes. Tania.

Ms MAXWELL: Thank you, Chair. Tracie, thank you for being here. Look, you know that I know your story, and just for the point of *Hansard* because people watching may not have seen the submission, I am actually going to take it back to the terms of reference if that is okay. Given your experience and through the court process, would you say that victims need to have much more and improved representation accompanying them through that process? And should that be the same person, or someone within the same organisation, that can walk you through what is about to happen, what is going to happen once you get into court and someone to still be there once those court proceedings have finished? Tell me how you would envisage this would work going through the court process.

Ms OLDHAM: Okay. Well, I will talk about myself, and I know that any survivor is going to have the same problem. Trust is our biggest issue. Opening up to a stranger is another issue. So once you have made that first step and you have built up the rapport with one person, you do not want to be chopping and changing and continually having to go over the same story that you just told the last person. This is what always happens. It takes a lot to trust someone, but once you do trust someone, you want that person to stay there. There is nothing more soul-destroying than finally—finally, for once in your life—building up some faith that somebody is actually going to be there for you and then have them pull the rug out from under you at the last minute.

Unfortunately the court system—and I do not care what anyone says—comes down to money, the haves and the have-nots. We cannot afford solicitors. We cannot afford advocates. The advocates, even though they are free, they are in such high demand and there are so few of them, and you really do need a solicitor. You need someone that knows law, not someone that has done a short course; you need a fully-fledged bona fide lawyer that specialises in historical law. You should also have trained people on a jury, not everyday Joes. Half of them—and I have spoken to a few people, including my own partner, who has been on a jury—did not even know what they were talking about. They were just doubletalking, talking in the lingo, trying to make it sound more distressing than it was—on the perp side, that is. It goes over their head because a lot of it is medical talk. You are asking the common Joe to make a psychiatric assessment based on what? Half of it is not even true.

The mental health system is just as broken as the legal system, and the two go together unfortunately. So when you have got someone that is trained in law, you also need someone on the other side of it who is trained in mental health. I know that sounds a bit windy, but you cannot have one without the other, and that is where it is going to get a bit tricky.

Ms MAXWELL: Tracie, would you say we need a specific victims legal system, and what would be your thoughts around having magistrates specifically trained in those cases they are presiding over? So whether it is sexual assault cases, family violence, we have got our Koori Courts—what would be your thought process?

Ms OLDHAM: I actually agree. When you employ somebody you employ them because they have got a knowledge of the industry. Is that true? You do not go and employ someone when they have got no idea what job they are going for. You want them to have some type of experience. Just because you are a magistrate does not make you an authority on sexual assault. It makes you an authority on law, but even that is very grey. We all know that a lawyer could make the devil look like an angel. Let us be honest, most magistrates are so overwhelmed, by the time the end of the day comes they just do not care.

The CHAIR: Thank you. Sheena.

Ms WATT: Thanks, Fiona. And thanks, Ms Oldham, for being with us. Part of my question was just nicked by Tania, so I might just go a little bit further around what we need to do to improve our court system. As you know, part of our terms of reference today is the consideration of judicial appointment processes in other jurisdictions and noting the skill sets of judges and magistrates. I wonder if you could talk to me about lawyers. What do they need to know? You have made some commentary around SOCIT judges, but I wonder about the lawyers that are working with victims like yourself, victims of crime. Do you have anything on lawyer training, professional development for lawyers and other bits that we could consider?

Ms OLDHAM: I got rejected by two of the highest profile lawyers in Victoria because nobody wants to take on incest cases. So had it been clergy abuse, I would have had them banging the front door down. Unfortunately there is a bias, and lawyers, again, are not taught properly. Yes, they know the law, they are like magistrates, but they do not know what is going on psychologically with a person that is suffering. You can have a little bit of empathy, but let us be honest, most lawyers are narcissistic. They may start off idealistic, but by the time they have reached their goal, they are narcissists. And they lack empathy; they are very cold fish. I have sat there with lawyers that have just had dead eyes, just writing, no eye contact, and I might as well have been talking to the wall. It is a specialised thing, these historical charges, and you need lawyers that are specialised in, well, not only historical charges but they need to have some empathy training. I know that is the new common word; apparently government uses it all the time—‘empathy training’. You have got to be taught to be nice now. But it would be good if you did have an empathetic lawyer. Good luck finding one. I am sure there are a few out there, but not for the big bucks juries. They do not want to know the small cases. This is the problem, and that is why it very rarely goes to court—because there is not enough money in it for them. I got told that straight out, and I think when money comes before justice we have got another real problem.

The CHAIR: Indeed. Tracie, sort of taking off from Tania’s question around the idea of a specialist court, you said that it should be a specialist court probably that deals with historical sex offences. And we have got the redress scheme for institutional offences, but you do not fit in that scheme.

Ms OLDHAM: No.

The CHAIR: I just want to make sure I am not putting words in your mouth, but were you suggesting that, yes, some sort of specialist court that dealt with historical offences is worthy of consideration?

Ms OLDHAM: Absolutely, because, well, if you are employing someone and you are reading their résumé, do you want someone that has got no experience?

The CHAIR: No. That is right.

Ms OLDHAM: End of story—that is it in a nutshell. You are paying a lawyer big bucks. That is providing you have not got legal aid. But you are paying; you want to know that when you are going in there you are going to get value for money, that you are going to go in there and you are going to have experienced people in that room and that every person in that room has got at least some knowledge of what you are talking about—

even if it is only basic. I am not saying they have to be absolute professors but they need to at least have some basic idea so that when you mention something, they automatically think, 'Right, I know what they're talking about', and that is all you need. You do not want someone sitting there going, 'Oh God, I've never heard that word before. And I've got to look like I know what they're talking about, because the rest of the jury is sitting here'. I think a jury is just one of the most important things in a case, and when you are a victim in front of a jury that has got no idea—they have not been through it, do not have a clue—and they have all got their own issues going on. A lot of them get triggered as well, remember, but people forget that. And they could go either of two ways: they could either get triggered because they were a victim themselves but they have never admitted it—suddenly they are sitting in the jury and they have just been triggered, 'Oh, Christ, I just remembered: that happened to me at five years old', and they are not even listening to the case, because they are reliving their life. But nobody ever stops to think about the human side of what goes on in a court. That is why you need professionals.

The CHAIR: I hear you loud and clear, Tracie. I think we all do. Thank you so much. Does anyone have anything pressing? Tania.

Ms MAXWELL: Tracie, look, we know that, given all the information you provided in your submission, unfortunately we also are very aware that there was no paperwork kept, no evidence, that could be provided to support your voluntary placement. Let us hope that we can learn from that how important it is that we reiterate in our committee deliberations that there must be paper trails, there must be evidence. So I am extremely sorry for that. I think what we can take on board now from your experience is probably the main thing that I have heard you say—and please correct me if I am wrong—that is, there does need to be a specific victims legal service so that they can have that person who is made available to them over a consistent period of time, someone that they can build trust and rapport with and have there as their go-to person, so they are not having to explore that court journey on their own.

Ms OLDHAM: The journey from that police station, that is the most concerning. You have just divulged a whole lifetime of information, and then you are left on your own to walk out of that police station and go home—if you even make it. How many people do not even make it home? How many people are treated as beyond belief and have setbacks? And then when their case is dropped it is doubly amplified. I mean, it is just a very, very soul-destroying system. It really is.

The CHAIR: Well, hopefully we can do more than fill the potholes with this inquiry. Thank you so much, Tracie, for giving your time today.

Ms OLDHAM: Can I say one more thing?

The CHAIR: Yes.

Ms OLDHAM: There was one thing I just wanted to say in regard to the mental health card, about making it mandatory that they have to assess people using mental health—they have to do assessments. I think that is crucial. I mean, just taking someone's word for the fact that they may have dementia—it should be a mandatory assessment. What do they call it? Criminal malingering, isn't it?

The CHAIR: Yes, I think the more information we can have the better in all of these cases. Tracie, thank you. Thank you for your submission, thank you for the advocacy that you are providing to the whole community and, again, thank you for telling your story to us here today and on paper.

Ms OLDHAM: Thank you for listening.

The CHAIR: As I mentioned, you will get a transcript of today. Please have a look at it. Make sure that we have not misrepresented you or misheard you. Again, on behalf of all of us and on behalf of the community, thank you for coming today and thank you for the work that you do.

Ms OLDHAM: Thank you for giving me the opportunity to speak.

Witness withdrew.