

CIVIL JUSTICE FORUM

**Graduate School of Business and Law, RMIT
University**

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Thanks Kathy, and before I start I'd like to acknowledge the traditional custodians of the land on which we meet, the Wurundjeri people of the Kulin Nations, and to pay my respect to their elders past and present.

Well welcome everyone, and it's terrific to see such a group of leading civil law experts coming together to share their research and ideas.

Anyone familiar with the Centre for Innovative Justice – or CIJ – might assume that the bulk of our work to date has been primarily focussed on criminal law. Certainly, some of our more high profile research projects – including one on how the criminal justice system is experienced by people with Acquired Brain Injury, and another on Innovative Responses to sexual offending – are obviously concerned with the criminal justice system.

But just as much of our work has looked at the civil side of the legal system, or has straddled both.

This includes :

- Several evaluations of Fair Work Commission programs designed to increase access to justice;
- Our Affordable Justice report of 2013, which was concerned with increasing access to private legal services and which is still attracting international interest;
- And our ongoing work around family violence, which of course crosses the civil and criminal spheres.

The CIJ's approach and philosophy can be just as readily applied to matters of civil or criminal law, or anywhere in between.

That's because the CIJ is all about putting the user – in whatever context they encounter the justice system - at centre of that system, so that it's a positive intervention in people's lives.

What do I mean by this? Too often our legal system is adversarial in nature, leaving those at its centre feeling disenfranchised and often retraumatized. The work we do at the CIJ shows that there are better ways to repair the harm caused by crimes, disputes, injuries or unlawful behaviour, and to give those seeking "justice" better outcomes than the current processes.

One way to do this is by using a range of therapeutic and reparative justice practices. This includes a strong focus on expanding the use of Restorative Justice across more aspects of the legal system.

And two CIJ projects I want to tell you about today are looking at the use of Restorative Justice in the civil space, in partnership with Worksafe Victoria and the Transport Accident Commission.

As you all well know, many people encounter the justice system not as criminals or victims of crime, but as parties to a personal injury. These moments can be life-changing for an individual, but how well does the system work for these people? While they can and are supported by compensation schemes administered by regulatory bodies, the evidence indicates that many people want and need more than just money to move on with their lives.

Imagine this: you're hit by a car and injured while riding your bike on a busy city street. Before you get the chance to properly talk to the driver at the scene, he's being interviewed by police, and you're being treated by paramedics and whisked away to hospital. Your foot is broken in three places, and needs an operation to have metal pins inserted. After the operation, you need time off work to recover. You are paid by The Transport Accident Commission to cover your medical costs and loss of income, but it's not the end of the matter.

You're still in pain, but there's also the mental scars, inflamed by multiple unanswered questions – How does the driver feel about the accident? Have they changed their behaviour since they crashed into you? Do they know the pain, suffering and inconvenience they have caused you? The questions plague you, but there's no real avenue to get any answers.

Another scenario – you work on a processing machine in a small, family run pasta factory. There's no guard rail on the machine, and your hand and arm get caught, and are badly injured. You're off work for months, and eventually your employment is terminated. You receive a payout from Workcover, but have no contact with your former employer. As you recover from your physical injuries, you wonder why they haven't been in touch. You receive no apology, or even acknowledgement of the harm done to you. You worry that the same thing will happen to someone else, and long for assurances that the company has fixed the machine. Your mental health starts to decline, as you develop PTSD, anxiety and depression.

Our analysis suggests that while injured workers and victims do value the existence of Victoria's occupational health and safety and accident compensation systems, they have a range of 'justice needs' that too often remain unmet through current enforcement and claims processes.

In both the workplace injury and road trauma contexts those justice needs are for:

- Voice
- Validation
- Information
- Accountability
- Relationships
- Prevention and
- Resolution.

Critically, existing processes don't provide people with the opportunity to explain to the other parties involved in personal injury matters the impact that the incident has had on their lives; to receive apologies; or to have input into prevention measures and behavioural change that might ensure that no one else has to go through what they have endured.

In the context of enforcement proceedings, victims of the alleged offence can also feel excluded from the investigation and prosecution process - frustrated when investigators and lawyers appear focussed on gathering narrow and technical evidence rather than information about the full impact on those directly affected.

In the Worksafe context, they may also feel disappointed with the penalties that are imposed. These often come in the form of fines which victims regard as being readily absorbed by a business and not necessarily useful in generating any genuine insight on the part of the employer about the importance of workplace safety.

Such experiences can have a range of consequences that compound and exacerbate the primary harm experienced by victims. They may result in disrupted recovery from the physical and mental effects of the incident; feelings of anger, frustration, depression; and even suicidal ideation.

They may also lead people to develop adversarial positions; litigiousness; hostile behaviour towards other parties and players and ultimately lack of faith in the regulatory and legal system itself.

This can have ramifications not just for users, but for the regulators themselves. Figures from Worksafe Victoria alone show that, although roughly 80 per cent of claims are dealt with swiftly and to the satisfaction of the claimants, the other 20 per cent remain in the system and involve claimants with

protracted physical and mental injuries from which they simply cannot move on through the existing compensation process.

We believe that Restorative Justice practices can address these unmet justice needs and offer a more human response to life changing events. That's why we are working with both Worksafe Victoria and the Transport Accident Commission to develop a pilot model of Restorative Justice practices. This will include Restorative Justice conferencing, bringing together those involved in personal injury matters to acknowledge the harm done; to facilitate apologies or expressions of remorse; and to create a voluntary, safe and structured environment where affected parties discuss what happened and why.

Beyond this, we are also looking at ways in which the Restorative Justice approach can be embedded in staff practices, so that those going through Worksafe or TAC claims can feel that their experience has been acknowledged at every step of the process.

These practices would not replace any existing system, but would rather add to the suite of options available within the current schemes.

We believe these projects may be the first of their kind in the world, but we are confident that they won't be the last.

If we truly want to reform our civil justice system, we can't just tinker around the edges, while more and more matters clog the courts. If we truly wanted the courts to be the last option, we could consider Restorative Justice, not as an alternative to the mainstream, but as a default option for all matters.

This isn't as radical as it sounds – in New Zealand, Restorative Justice is embedded as an option in all criminal matters, with striking results, not just on court users, but on the pressure it's taken off the court system.

I challenge you in your research to think about how Restorative Justice could be used in civil justice - from building disputes to car accidents, in medical negligence cases, in consumer actions – the list goes on.

Imagine a system in which all matters, criminal and civil, included Restorative Justice as an integral option for those at the centre of a holistic approach to justice.

After all, what is the purpose of a justice system, whether civil, inquisitorial or criminal? To right wrongs to the greatest extent possible – to resolve disputes; to punish wrongdoing; to prevent further harm and, hopefully, repair existing harm. At the CIJ, we think that the possibilities are numerous, with multiple opportunities to give life to this purpose.

Thankyou.