

MAKING THE LEGAL SYSTEM MORE ACCESSIBLE

I am a solicitor with the Public Interest Advocacy Centre (PIAC). Since June 2009, I have been working at STARTTS as part of PIAC's Mental Health Legal Services Project (MHLSP). My job is to provide a legal support service to clients of STARTTS. By **ANNE MAINSBRIDGE**.

Working in a clinical practice is different to the traditional model of legal service delivery. My position at STARTTS is one of four pilot projects that have been developed by the MHLSP, in an attempt to improve access to justice for people in NSW who are mentally unwell. Each of the pilot projects is based around the idea that people with mental illness are more likely to have their legal needs met if there is a close connection between their legal and non-legal service providers.

Thus, at STARTTS, I work closely with its counsellors. In the other pilot project set up by the MHLSP, a PIAC social worker works with lawyers at the Shopfront Youth Legal Centre, a PIAC lawyer works with non-legal advocates at the Multicultural Disability Advocacy Association of NSW and an Aboriginal mental health worker is based at the Gamarada Indigenous Men's Healing Program.

For refugee survivors of torture and trauma the legal system in Australia can be completely bewildering. Language and communication barriers can make it very difficult for them to get information about the law or find legal help when needed. Many refugees have limited formal education due to the collapse of institutional infrastructure in their countries of origin, or the years spent in refugee camps, so the necessary steps to commence or defend legal action (such as filling out forms, drafting statements or interpreting legal information) can be a daunting task.

Many refugees are struggling with conditions such as depression and posttraumatic stress that can affect memory, concentration and motivation, which can make them less inclined to seek legal advice in the first

place, and less able to retain and act appropriately on legal advice.

Often refugees may not even be aware that they have a legal problem, or that their rights have been breached. For example, a young man from Iraq, who had suffered a serious permanent injury at work, was not aware that he might have a right to claim workers compensation.

One of the biggest barriers is trust. Many refugees come from countries where the legal system was used to promote corruption and organized violence. Courts and police may be viewed with intense fear. For example one refugee mother-of-six, recently had to attend the local court for a routine matter. While she was inside some of her children stood outside the courthouse crying because in the family's country of origin, if a person went to court that could be the last time that anyone ever saw them.

Legal advice and representation can be very expensive, with private lawyers sometimes charging around \$500 for initial advice and thousands of dollars for representing a client in court. This is obviously beyond the reach of refugees, many of whom will be on social security benefits. While there are pro-bono and reduced-fee legal services available, clients may not be aware of these and may have difficulty accessing them due to communication difficulties. All these factors limit their capacity to protect their legal rights, making them more vulnerable to being victims of crime or more likely to commit crime.



Anne Mainsbridge

PROVIDING A BRIDGE TO THE LEGAL WORLD

My job involves breaking down these barriers for STARTTS clients. I do this by working with STARTTS counsellors to identify clients with pressing legal needs to link them with appropriate legal support.

Typically, a client will present a legal issue to their counsellor. The counsellor, with the client's consent, will notify me and I will then set up a meeting with both, the client and the counsellor to get more information. Before the meeting, the counsellor will brief me on the client's mental health needs, their torture and trauma background and any relevant family, cultural and religious issues.

After meeting, I will then try to determine the best way to help with his or her legal problem. The type of assistance will depend on the type of legal issue involved. Sometimes a client will simply seek information about a legal matter, for example, how to apply for Australian citizenship. In these cases, I will refer them to relevant websites or fact sheets, preferably in their language. More often, however, they will need actual legal advice about an issue (for example, whether they have a good case for claiming compensation for an accident) or they may need someone to represent them in court. In these cases, I will usually try to refer them to a lawyer or legal service that specializes in the relevant area of law and who is able to provide their services for free or at a reduced cost.

Sometimes a legal issue can be resolved with a simple phone call or a letter from the MHLSP. For example, in the case of a young man from Iraq who had incurred a \$300 fine for videos that had allegedly not been returned, I phoned the video company's lawyer and outlined the client's refugee background, his lack of understanding of English and his inability to pay the fine. The video company agreed to reduce the debt to \$30.

Other legal issues, such as personal injury cases, can be much more complex, requiring in-depth negotiations and the filing of applications in courts and tribunals. In every case, the goal is to help the client navigate the legal system so that they ultimately find an effective solution for their legal problem.

As counsellor John O'Connor says: "Having a lawyer present at STARTTS creates a bridge to the legal world for my clients. Most clients, as new arrivals, are unaware of what services are available to them and having a solicitor with knowledge of this area can be a great help for them."

The issues presented by clients have to do with migration issues, usually to do with family reunion; advice on housing or tenancy, family law problems such as seeking a divorce, compensation for car or work accidents, domestic violence, or crime related problems. It is not uncommon for a client to have a number of legal issues at the same time.

So far, clients have been referred to Legal Aid, community

legal centres, specialist legal centres (such as the Refugee Advice and Casework Service and the Immigration Advice and Rights Centre) and private lawyers who are prepared to act pro-bono.

"WARM" REFERRALS

From very early on, it became clear to me that referrals to legal service needed to be hands on, this is known as "warm" referrals. Simply giving a client the phone number of a legal service and sending them on their way is usually not going to work. The client may phone the number but may not be able to arrange an appointment because of language difficulties. Or they might arrange one with a lawyer in the city, but not actually get there in time because they are not familiar with public transport. Even if they do manage to get to the appointment, symptoms of PTSD such as memory loss and concentration difficulties may interfere with their ability to understand and retain the information and advice they are given.

Quite often, with the client's consent, I will contact the legal service before the appointment and brief them on the client's legal problem, their refugee background and any mental health issues that they experience. For example, one client whose children had been kidnapped in Iraq, suffered from frequent anxiety attacks and became very distressed when talking about particular events in her past. The first lawyer she was referred to was not aware of this and upset the client, by using an intrusive and insensitive interviewing style and giving negative advice in an abrupt manner. The MHLSP made a fresh appointment for the client with another lawyer and this time fully briefed the lawyer on the client's mental health background. This interview proceeded much more smoothly, with the lawyer adopting a more empathic interviewing style and allowing the client to take breaks when she became distressed.

I also try to ensure the legal service I have referred the client to will help the client with his or her legal problem. There is nothing more frustrating than to be sent to a legal service only to be told that they should have gone elsewhere because there is a conflict of interest or they don't meet certain criteria. Clients can get stuck on the "referral roundabout" for weeks, sometimes months, and this can harm their case and erode their confidence. Effective referrals enable the client to resolve their legal issues faster. They also increase the client's self-confidence and trust in the Australian legal system. This then sets them up for a more effective resettlement experience.

Where appropriate, I will accompany the client to the first meeting with the lawyer and follow up afterwards. This can make a difference in cases where PTSD symptoms may interfere with the client's ability to retain information or understand the advice given. As counselor Larissa Zilenkov says: "One of my clients who

has memory issues and sometimes dissociates during our sessions was worried that she would not be able to focus on the appointment and the information given. She was accompanied to the appointment with the MHLSP lawyer who assisted with the gathering and recording of the information. The client later reported: “Anne helped me a lot. I did not feel well during the appointment and it was good that she was there to help me.”

Sometimes, a referral may appear to be successful, but then it becomes clear that the client does not really understand what is going on, or the communication between the client and the lawyer may break down for some reason. In these situations, it is important to stay involved and act as a conduit between the lawyer and the client to ensure that the client gets a good outcome.

THE BENEFITS

A holistic service: Working directly with STARTTS counsellors, I get a better understanding of the client’s whole situation, including their mental health symptoms, their family, cultural, religious and socio-political background. Having this bigger picture helps me to tailor the legal intervention to their needs, resulting in a more positive interaction for the client with the legal system. It’s also consistent with the holistic approach that STARTTS uses in dealing with its clients.

Working with skilled counsellors: Sometimes clients can become distressed during a legal interview, or may have trouble communicating. If I had to see the client on my own, I would struggle to deal with this effectively. However, STARTTS’ counsellors are very skilled at dealing with these situations. Having the support of a counsellor during the legal interview makes a huge difference to the relationship that I develop with the client. It also enables me to get the information that I need to deal with their case.

An accessible legal service: STARTTS counsellors have commented positively on the benefits of having a lawyer physically located at STARTTS. As counsellor Nooria Meharby says: “Refugee clients are often highly traumatized and find it difficult to disclose personal information unless they trust someone. This can disadvantage them in getting effective legal service. Having a lawyer at STARTTS is a blessing. Clients are able to discuss their matter in an environment where they feel safe, and are more likely to develop trust.”

John O’Connor says that legal issues can cause an immense amount of stress for our clients and this can prevent them from concentrating on other settlement stressors or any past torture and trauma history they may have. For example, a client was so anxious about having her Centrelink payments stopped that she was unable to work on her feelings related to her daughter’s disappearance. This lasted for several months until the PIAC solicitor contacted Centrelink to clarify the issue. This allowed the client to deal with her feelings about her daughter.

THE CHALLENGES

There are still many gaps in legal services for refugee survivors of torture and trauma. Some cases can be very difficult to refer because legal aid is not available or because the type of case does not fall within the legal service provider’s criteria or its terms of funding. If a client lives in a remote or regional area, it can also be very difficult to link the client to specialist legal assistance.

There is a need to make legal service providers more aware of the needs of refugee survivors of torture and trauma. Recently, I contacted a court to confirm that a Farsi interpreter would be available for a client who had a court hearing the following day. I was advised that an Arabic interpreter had been ordered “and that should be okay”. Culturally inappropriate assumptions like this can seriously impede access to justice.

Perhaps the biggest challenge is to help clients learn to trust the legal system and see it as something that can help them. The MHLSP is conducting culturally appropriate legal education programs for STARTTS clients and communities to try and demystify the legal system and show it can be used as a vehicle for protecting and enforcing rights, rather than an instrument of oppression.

STARTTS thanks firms Blake Dawson, Norton Rose and George Lombard Consultancy for supporting this project through their pro-bono work.

Building on the research findings contained in the Law and Justice Foundation of NSW report, *On the Edge of Justice* [1] (2006), the Mental Health Legal Services project aims to develop and implement sustainable legal solutions for people with mental illness. To that end, four pilot projects and two training modules have been devised. The emphasis in these pilot projects and training modules is on prevention, early intervention, working holistically and collaboratively within a social inclusion framework. PIAC has received funding from Legal Aid NSW, the NSW Public Purpose Fund (PPF) and the Federal Attorney-General.

People with mental illness so often occupy an invisible or diminished role in our community. As such, three important outcomes of the pilot projects will be:

- providing tangible access to justice for people with mental illness who are in need of legal and other support services;
- identifying the systemic barriers that people with mental illness face when trying to access justice; and
- devising strategies to overcome those systemic barriers and thereby achieve positive systemic change.

STARTTS is one of the pilot projects.