

**PROPERTY CRIME — COURT ORDERS**

*Grievance*

**MR A.P. O'GORMAN (Joondalup)** [9.14 am]: My grievance this morning is to the Attorney General, whom I thank for accepting the grievance. The grievance is about a home invasion and compensation to the victims of that home invasion. I will go through the facts provided by one of the victims, who states —

On the early hours of 4/4/2010 (Easter Sunday), the 4 offenders came to our house looking for a friend of our daughter. This young woman had been at our house earlier that night; ...

This woman had previously dated one of the offenders. It continues —

Unknown to my husband or me, there had been a disagreement between her and ... —

Her ex-boyfriend —

via mobile phone calls and text messages and threats of harm had been made. This girl left our house shortly before the offenders arrived without warning us of what had happened.

I had met ... —

The ex-boyfriend —

once previously; my husband did not know any of the 4 men. Even though we told these men that the girl they were looking for was not at our house and my husband asked them to leave they went on a violent rampage, damaging our house and 4 vehicles parked in our front yard.

3 of the 4 vehicles belonged to our adult children and were only covered by Third Party Insurance. As both our children were on apprentice wages at the time neither could afford to pay for the repairs to their vehicles and my husband and I assisted them with these costs. Total repair costs for the 3 vehicles were **\$14,920.01**. The fourth car belonged to our daughter's boyfriend at the time, damage to his vehicle totaled over \$10,000, ...

The offenders appeared before the Joondalup Magistrates Court on 24 & 25/8/2011 and were all found guilty of the charges of Willfully and Unlawfully Destroy or Damage Property.

The first offender was sentenced to six months jail and the second was sentenced to 10 months' jail. Both the other offenders were placed on suspended sentences. The first offender was released on parole on 6 January this year and the second is to be reviewed for parole with a possible release date of 6 March. The information continues —

Each offender was ordered to pay \$7028 recompense "to the victims".

**Mr C.C. Porter:** Sorry, how much was that member?

**Mr A.P. O'GORMAN:** It was \$7 028. It continues —

None of the offenders have paid any monies to any of the victims to date. As the Magistrate did not individually name each victim and how much each offender was ordered to pay them this has caused a lot of confusion and misinformation in our dealings with the Court over this matter. We have also spoken to the Bailiff ... The information we have been given to proceed with this matter in the Civil Court is:

- Submit Forms 1, 2 & 6 to Joondalup Court ...

I will provide the cost breakdowns in a minute. It continues —

- Apply to Police Freedom of Information for individual cost breakdown
- Advise Bailiff of address to serve summons ...

...

We have been given information that at least one of the three brothers no longer lives at home, however we have no way of obtaining his current address. The Bailiff can only act on the information supplied by us, they are not able to obtain address information from the Court. If they attend the address supplied by us and the debtors are not there, they will stay in the vicinity for a period of time to see if the debtors return to the address. If the Bailiff is unable to serve the summons on that day we have been told it would need to go before the Court again.

We know that the debtors own vehicles, but if there is any higher purchase on these vehicles the Bailiff is unable to seize them. However, we have to pay out money to both the Court and Bailiff to find out this information.

I will provide a breakdown of the bailiff's fees at the end. It continues —

This amounts to the fact that whilst the offenders appear to have the capacity to pay the costs ordered by the Magistrate, we are virtually powerless to enforce it.

My husband and I are both very disillusioned over this entire matter. We were the innocent victims of a very violent incident which has seen us out of pocket a great deal of money. To attempt to pursue this matter further and chase what the Court has ordered these men pay us would certainly put financial strain on our family, especially our son and daughter. The way the law works at the moment is wrong and should be changed to assist, not hinder the victims. It is obvious that these men have only contempt for our legal system and have no intention of ever paying us any money and they know they will not face any consequences.

We feel that as it stands at the moment the law favours the offenders at the expense of the victims.

Costs have been quoted to this couple for damages. I have deliberately not named the offenders because I do not want to glorify them in this place, and I have deliberately not mentioned the names of the victims for fear of reprisals, even though I have permission to mention their names. I will outline the court costs. There is no charge for either form 1, request to obtain a copy of the court record, or form 2, general form of affidavit. Form 6, application or request to a court, costs \$150 to \$200. For the 12 applications, the cost would amount to between \$1 800 and \$2 400. The cost of a police freedom of information application to obtain the recompense breakdown is \$30. Bailiff fees include a means inquiry at \$50.05 plus travel, a property order for seizure and sale at \$114.40 plus travel, and vehicle removal at \$1 200 per vehicle, with additional costs for impounding and auctioning the vehicles. The example they have been given by the bailiff is that to recoup approximately \$12 000, they would need to sell vehicles or goods for approximately \$20 000, plus meet any other costs that are incurred. Attorney General, the costs to this family are extensive. On top of that, because of the home invasion, they have added security fittings to their house. Security cameras at the front of the house cost \$1 500, security lights cost an extra \$200, and the electrician's fee to install them amounts to another \$2 275 on top of the nearly \$15 000 worth of damage to their property. It seems to me and it seems to this family that they are being re-victimised time and again. They are victims of not only a home invasion, but also a court system in which they cannot get proper recompense, even though the magistrate issued the order on the day.

The request the Grahams made of me was to ascertain whether there is any possible way they can get recompense of some sort from the proceeds of crime fund. Alternatively, could a fund be set up for future reference so that victims of these sorts of crimes do not have to be re-victimised by having to pay substantial sums to our courts and then to bailiffs, and then have to go through the whole process again if they still cannot get recompense? I gave the Attorney General some information on this last night. I hope he has some good news for me this morning.

**MR C.C. PORTER (Bateman — Attorney General)** [9.20 am]: I thank the member for his grievance. It is a difficult situation and one which we have encountered a couple of times before and which reveals some problems that are not simple to solve. I will go through the problems it reveals, but before doing that, firstly, as I am sure the member will agree, this type of situation in which relatively young people—but they are adults—get into some sort of argument and determine that the way to resolve it is to turn up to the house of the parents of the person with whom they have argued and damage property. It boggles the mind that this happens over something as trivial as an argument by text message. I am sure the member will agree that this type of activity is unbelievably distressing for those involved and reflects incredibly poorly on the people who undertake the criminal activities. In this case they received a sentence that, based on the very limited information that the member for Joondalup has necessarily provided here, appears to be an appropriate sentence.

This is a situation in which one person or more has committed a property damage-type offence against the people who have come into the member's office. Damage has been caused to their property and they have suffered an economic loss as well as all the distress and grief attached to that sort of criminal activity. I recall a partner of a law firm saying to me when I was first articled as a lawyer, "If you could find some way of recovering debts cheaply and quickly, you would have the best business in the world." Recovering debts is very, very difficult to do. But the point the member makes is a fair and sound one in that in this situation the victims of crime are essentially left to recover the debt themselves. That happens because the order given in court in this instance was made pursuant to section 117 of the Sentencing Act, which states in part —

- (1) A court sentencing an offender may make a compensation order in favour of a victim of the offence.
- (2) Such a compensation order is an order that the offender must pay an amount of money set by the court to the victim as compensation for —
  - (a) the loss of, or damage to, the victim's property; and

- (b) any expense reasonably incurred by the victim, as a direct or indirect result of the commission of the offence.

Section 117 has been in force for quite a while and is an appropriate section. Courts should be able to order that offenders pay moneys to victims. The sting in the tail is set out in section 119, which states in part —

- (1) If the amount payable under a compensation order is not paid within 28 days after the date of the order, the person in whose favour the order is made may enforce it by lodging a certified copy of it, and an affidavit stating to what extent it has not been complied with, with a court of competent jurisdiction.
- (2) When lodged, the order is to be taken to be a judgment of the court and may be enforced accordingly.

If the offenders do not pay the person who is the subject of the order and in whose favour it is, they lodge that with the court, with an affidavit, and it becomes an order of the court just as a civil judgement is an order of the court, and the bailiff services will then be engaged at some cost, which itself can be recoverable, to get the money back. It is a fair description to say that to a large extent, just as though it were in a civil proceeding, the person who gets the order in their favour is on their own in enlisting the assistance of the court and the bailiff to recover the money. That is a very difficult process. I absolutely accept that. There is not a great deal of choice in that process. One we are considering as a matter of reform is something along these lines. When someone gets a fine for a criminal activity, such as smoking marijuana, driving under the influence, an assault or any number of criminal activities, which is part of the penalty—not part of an order under section 117—they will be written their first letter, asking them to pay it; and, if they do not pay it and other hurdles arise, it will be registered with the Fines Enforcement Registry. Once it is registered with the Fines Enforcement Registry, the sheriff and the mechanisms of the state will be sparked into life to recover the debt. One possible area of reform we are considering as part of a broad range of reforms to the Sentencing Act is whether, when people in court get an order pursuant to section 117, rather than their being responsible for lodging the order with the court and enforced as though it were a civil order of the court, it could be registered at the Fines Enforcement Registry, so that the sheriff can start pursuing that debt. That is not without its complications, but I am moderately in favour of that kind of law reform. It has administrative complications because it basically involves the organs of the state to recover what is effectively a civil order, but we think we can probably overcome those problems. The overarching problem is that there is no particular reason to believe that the Fines Enforcement Registry system and the sheriff will have terribly much more luck in recovering debts than if it were done by the bailiff through the lodging of the order of the court, because debts are notoriously difficult to recover.

We are releasing, today I think, some new statistics about the amount of fines outstanding. The information I am about to give the member now is slightly out of date; it is good to about 17 February 2011. As at the very beginning of that year there was \$239 million worth of unpaid fines. That represented 719 000 individual unpaid fines, totalling \$239 million. Two hundred and eighty thousand individuals were referred to the Fines Enforcement Registry. That is almost a fifth of the Western Australian population. The best evidence we have is that about 46 000 people have had their licences suspended for failure to pay fines and are presumably still driving. In fact, we are about to bring in some legislation to try to improve that situation.

None of that helps the member for Joondalup's constituents terribly practically. The member mentioned the confiscations account; that will not be of help. It does not appear that the member's constituents have applied for criminal injuries compensation, which they may be able to do and which might circumvent them in this process. If the member comes to speak with me in my office, we will have a talk about it and see what we can do.