

PRISONERS RIGHT TO POSSESSION

1. PRISONER'S RIGHT TO POSSESSION WHILE IN PRISON

PREAMBLE

The dictionary defines possession as the "act of ownership", ownership meaning; "the relation of an owner to the thing possessed; possession with the right to transfer possession to others". (*Random House Unabridged Dictionary*)

When prisoners are arrested any money they have on them is gathered by the Department of Corrective Services (DCS) and held into a single account. This money is held into this "trust" account with any money earned whilst in prison such as; money from family members, money earned from labour, welfare benefits and any other money that they receive. The DCS then returns the money upon release but does not allow any of the money to accumulate interest.

If the dictionary defines ownership as entitling "possession with the right to transfer possession", does the DCS have the right to hold prisoners possession without allowing prisoners the right to choose who assumes control over their possessions? And if so why does that right not extend to a particular part of society, namely prisoners?

The main issue of possession is that it represents people's liberty and freedom. To assume ownership of someone's possession without their permission is an attack on the morals that modern day societies aspire to.

Possession is **exclusive**; therefore the right of possession excludes others from obtaining use or possession of a particular item. This rule of possession is comparable to *exclusive laws* that protect people from theft. (*Random House Unabridged Dictionary*)

By definition the DCS assuming overall control of prisoners personal possessions and keeping interest earned on that money is defined as theft in the rule of the law.

Assuming overall control of prisoner's rights to possession shows total disrespect for the concept and right to property. Prohibiting people just because they belong to a particular section of society from fundamental human rights is discrimination.

This paper aims to examine the amended Crimes (administration of sentences) Act 2007 bill, the issues discussed in parliament as well as examining the wider ramifications of the prison authorities assumed control over prisoners right to possession. It then goes on to raise the issue of business ownership in reference to the right of possession, analysing the case of Rodney Adler. Lastly, the paper will look at the proceeds of crime act in reference to prisoners right to expression of ideas and experience, looking at the case study of Schapelle Corby.

BACKGROUND

In the month of December 2007 the NSW state Government proposed an amendment of the *Crimes (Administration of Sentences) Act 199* which involved the handling of prisoners personal income and overall possessions.

The Minister for justice Hon. John Hatzistergos proposed an amendment of the bill that would enable the Department of Corrective services (DCC) to extend their powers to hold all prisoners personal earnings. This includes; money earned in prison, money held before commencing their sentence, money given to them by relatives and friends whilst in prison and any other entitlements that the prisoner receives while incarcerated.

The DCS pools this money into a general account and have sought extra powers to gain overall control of interest accumulated on this money **without trust**. The DCS have tried to justify having these powers by saying that they would spend the money on facilities for visitors such as playgrounds for children and other infrastructure (Crimes Act 2007).

This bill raises a range of ethical and moral issues concerning prisoners and their right to private possession and ownership, which in effect has a range of potential consequences and effects towards prisoner's chances of successfully re-entering the community after release.

The estimated amount of prisoner's money in the annual prisoner's pool account is estimated at \$2.4 million dollars a year. (MP Smith (Epping), Parliament debate quoting the Attorney General)

Therefore, this bill raises questions such as; should prisoners have the right to control their economic future while in prison? If not do they have the right to choose who does? Does the state have the right to claim ownership of all prisoners' accumulated interest? How will taking away prisoner's right to learn methods of saving and controlling income effect their chance of successfully re-integrating back into society and reduce the chance of prisoner's re-offending?

ISSUES RAISED IN PARLIMENT

The legislative committee raised two main issues in review of the bill that was directly associated with prisoner's and their right to personal possession. Firstly, the committee raised the issue of the DCC's right to hold prisoner's money. If they had not entered into custody any earnings would have lawfully belonged to the prisoner's. Therefore they are entitled to that money and any interest gained on that money.

The committee stated that the above proposal infringes the rule of law and that the crown solicitor has advised that the proposal is not totally free from doubt. The committee stated that; "this amendment unduly trespasses individual rights to property". The DCS's refusal of

trust; "conflicts with the laws of trust and also undermines the rule of law and trespasses unduly on personal rights and liberties" (Legislature review 2007).

Greg Smith the Hon. member for Epping and the opposition minister for Justice, formally debated the Bill in the House of representatives and raised various issues including reading out a formal media statement from Justice Action.

Justice Action has raised concerns involving prisoner's rights to possession stating that the bill: "attacks fundamental rights of ownership, trust and encouragement to prepare for release and to become financially responsible for self and family" (Smith, debate 04/12/07).

The effects of this bill could be "detrimental to prisoner rehabilitation as not allowing interest on prisoner accounts encourages them to spend it or send it out to their family or friends, losing control of their savings". (justice Action)

"Although corrective services has control over inmates accounts this does not legitimate the department doing with it what it pleases". "Prisoner's should be encouraged to save and be aware of the proper management of funds and the stability it can bring". "This will go much further to ensure successful re-integration of prisoner's into the community upon release and to lower levels of recidivism". (Justice Action)

The current rate of recidivism in NSW is 43.7% representing a huge problem with the penal system thus highlighting the need for new reforms that show potential benefits towards reducing recidivism.

The department has continually tried to defend it's position by repeating their justification that, the only reason the money attracts interest is because it is a part of a bulk sum. They argue if accounts were to be set up individually they would gain little if not no interest because accounts are usually small in monetary terms.

It seems that the State Government has put the issue of prisoner's financial issue into the "too hard" basket because of the large "book-keeping" task it would create. However, there are a large number of possible solutions that haven't even been raised or considered. What about allowing a small financial institution such as a credit union to manage and track prisoner's financial dealings? This idea can lead to a range of possible benefits to the prisoner's, their family, the State Government, the DCS and even the associated financial institution. Benefits include the saving and financial responsibility for prisoner's already discussed, financial support for prisoners families, decreased administration cost for the Government and extra financial benefits for the financial institution handling the accounts.

Their justification fails to fully answer the growing concerns of the right to personal possessions, matters of liberty and the potential benefits towards successful re-integration into the community and decreases in recidivism rates.

Mr Smith raised the idea of allowing control of personal accounts to relatives and family members in trust, however this proposal still fails to address the problem of prisoner's rights

to manage their own economic circumstances and the benefits of learning the stability benefits of saving.

Smith stated that it seems "anomalous that prisoner's don't get any interest for their money". Smith then went on to state that the community could be sceptical of prisoner's being allowed to gain benefits on money earned while in prison. He stated that the community expects prisoner's to be punished as well as rehabilitated for their crimes.

The hon. Member Barry Collier (parliamentary secretary) stated that it was "important to acknowledge the concerns of JA". However, he went on to try and justify the bill stating there was no change to the original arrangements and that the money used was of "benefit to prisoner's, their visitors and especially children".

However, Mr Collier's justification still fails to acknowledge the right of prisoner's to have any right to manage their own income or gain extra skills in financial responsibility. **The proposed bill was eventually passed through parliament without any amendments and un-opposed by the opposition.**

Statistics continue to consistently indicate that people who are incarcerated tend to come increasingly from people of disadvantaged socio-economic considerations.

A recent case study conducted by Eileen Baldry and Peter Maplestone from the Australasian Legal Information Institute sampled 350 people being released from jail and then re-communicated after 3 months, 6 months and 9 months. The study found that only 35% of the prisoner's sampled were employed before being incarcerated and 75% of the sample did not complete secondary school.

This shows that the majority of the prison population would generally lack the skills and knowledge on how to operate their economic futures. Compounding this problem is the fact that the study found that 20% of the sample came out of prison and were homeless. 35% of prisoners returned to public or assisted housing.

Allowing prisoner's to have the chance to accumulate their own interest and controlling their own economic futures will give prisoners more of a chance for successful re-integration and reduce the risk of these statistics getting worse.

CONCLUSIONS

The recently changed Crimes (administration of sentences) Bill 2007 raises various ethical and moral considerations towards the right of prisoner's to have responsibility for their own money and savings. Allowing prisoner's to control their own economic circumstances creates a range of potential benefits towards prisoner's families and prisoner's general life chances.

If prisoners were allowed the opportunity to manage their own economic future, they would benefit from learning financial responsibility and significantly increase their chances of

successfully re-integrating back into the community and reduce the overall rate of recidivism in Australia.

The NSW state Government seems to ignore these potential benefits to the prisoners and the community and instead seems to focus on measures of punishment assuming that they have the right to collect and use all prisoners cumulated interest without trust.

It seems amazing that even when the crown prosecutor is quoted as portraying some doubts about these issues, the bill seems to pass through parliament almost unrecognised.

The benefits of prisoner's to having control over their financial circumstances whilst entitling interest, that belongs to prisoner's, to be rightfully returned to them raises an important issue which could lead to reduced rates of recidivism in Australia, which would benefit society as a whole.

2. PRISONERS RIGHT TO POSSESSION OUTSIDE THE PRISON SYSTEM

BACKGROUND

The right for a prisoner to run or operate their own personal business operations while in prison presents various ethical questions and has attracted a wide range of media interest.

Although prisoner's are not allowed to sit on a board or make decisions in reference to publicly listed companies, there is still little detail on the laws that govern prisoner's right to run their own personal finances outside the DCS control.

The most interesting case involved in this subject is the case of the company's 'HHH' director Rodney Adler, who was sentenced to prison for illegal business operations, and the attention placed on him from accusations of illegal business operations while in prison.

Prison officials in Kirkconnell, members of the DCS and the media claimed that Adler was breaking the law by giving personal business advice to his wife while in prison.

However, the Australian Securities and Investments Commission (ASIC) checked the documents and found that they were not illegal under the Corporations Act 2001. Section 206A of the act prohibits "a person who is disqualified from managing a corporation or making decisions that effect parts or the whole of a business". However, they stated that it would not offend the act for a disqualified person to "sell or acquire a personal asset, call up a personal loan or commence legal processes in his or her own name". (SMH 22/06/05)

ASIC said; "whether it breached prison rules and regulations was up to the relevant NSW prison authorities". However, this statement clearly shows that there are no laws against the right to run personal business operations while in prison. Therefore, prisoners should not be unlawfully stopped from controlling their own personal finances.

Adler was still punished and sent to a more stricter regime prison in Bathurst. Prison officials denied it was because of the alleged "illegal" documents.

This issue raises the main questions; should prisoners be allowed to run or help with personal business dealings and decisions while in prison? If not, will this affect the prospects of the prisoner's family and their well being, possibly acting to aim punishment towards the family as well? What are the legal statutes that prevent these operations? And what are the possible issues that arise with these potential changes?

CASE STUDY - RODNEY ADLER

Rodney Adler was jailed for 4 and a half years, with a non-parole period of 2 and a half years, for illegal business activities and his role in the collapse of the insurance company HIH. The media continually focused on Adler's financial situation in prison and his role in suspected business dealings whilst in prison.

Adler's case proves a perfect case study into the issue of prisoner's right of personal income and possession and the right for prisoner's to business ownership and private business responsibility.

His case clearly provides a perfect example into analysing the questions raised earlier and addressing another question raised; should prisoner's who are charged in reference to illegal financial dealings or other crimes be able to control their own economic circumstances and business dealings while in prison?

Adler faced allegations from a continuing media attack of secret business dealings while in prison, allegedly sneaking out confidential business information stapled to legal documents and his children's homework.

The Sunday Age claimed that they had come into possession of the confiscated documents and published conversations between Adler and his wife supposedly intended for business partners. These claims were never confirmed by any prison authorities and have been repeatedly denied by Adler.

Adler was moved to medium security jail in Bathurst, claimed as a consequence of business dealings, but not confirmed by prison authorities.

The Governor of Kirkconnell prison Janet Ruecroft sought advice from Don Rodgers at the DCS as to what she should do about these dealings, to which he replied that "the inmate has no right to make or receive phone calls and facsimiles, to receive visits or to receive and keep property". He also stated "inmates have no statutory or common law rights to carry on a business while in custody", "please interview inmate Adler and advice him in no uncertain terms to that he is to immediately cease all dealings that would constitute him operating a business while in the departments custody". (Mitchell, SMH, 19/06/05)

This statement seems to target all prisoner's rights to personal property and significantly undermines prisoner's rights to manage their own economic futures and the chance to continue providing for their family, thus gaining invaluable skills that is entrenched in modern day society and can significantly improve prisoner's chances of re-integrating into society upon release.

This accusation raises the direct issue of prisoner's rights to manage their own personal business operations and the right to look after their family's well being while in prison. Why is writing instructions to your family on how you would like your family accounts managed illegal?

Although there is legislation that prohibits prisoners from being directors or participating on a board of a business, the legislation that prohibits private or family business operations seems to be a cloudy area and particular legislation seems hard to find.

Subsequently, Adler was punished for these personal business dealings by being sent to a higher security prison in Bathurst, even though he was cleared of any wrongdoings and was declared innocent by ASIC, having acted totally within the law.

However, should Adler, who was charged guilty of illegal corporate business dealings, which lead to a huge number of people loosing substantial amounts of money, be able to conduct personal business activities whilst in jail? Why shouldn't he and other "white collar criminals" be banned or excluded from the overall right for all humans to have control over their personal possessions?

Rodney Adler's case seems to attract a wide range of attention from the public mainly through a spiteful sense. Victims of the HIH scandal generally tend to represent the main population's characteristic representing "working class Australians" whilst Adler tends to represent the 'greedy rich' intent on exploiting the vulnerable.

However, it is important to analyse the facts in the case of Adler whilst looking at the wider ramifications to the general prison population and their families. Being able to learn how to operate personal business dealings will have significant benefits to prisoners and significantly act to reduce the chance of prisoner's re-offending.

Having possession and control over your own personal financial circumstances outside the prison authorities control is a **right**. Prisoners are not supposed to loose all of the personal liberties because they are in prison. Taking away someone's right to have exclusive control over his or her own possessions is totally unlawful.

Prisoners will be able to successfully have a chance to re-integrate back into the community creating a financial backing to support themselves and the family thus reducing the need to commit criminal acts.

Poverty and socio economic status is a significant factor towards incarceration, thus allowing prisoner's to learn business skills and have the chance to have a financial support system when they are released is crucial

CONCLUSION

The right for prisoner's to operate or provide advice on business operations represents a wider range of issues for prisoners in Australia. There can be various benefits of allowing prisoner's to learn and engage in the business world while in prison for themselves and their family as well as contributing to the overall aim of reducing recidivism.

A large majority of prisoner's in Australia are from disadvantaged socio-economic circumstances, thus any opportunities towards increasing the economic prospects of prisoner's once they leave correctional facilities are of huge importance.

The case of Rodney Adler provides an interesting case study to look at the various ethical issues that arise with this issue, but also represents a suitable case towards the need for personal business dealings for prisoners as well as analysing the impact of the media and the public's reaction.

However, whether 'white collar crime' prisoners are exempt from business dealings and personal family business dealings or not the potential benefits of economic independence and reduced levels of recidivism for the general population far outweighs the potential costs of any illegal business operations.

It is imperative that all state Governments look at these potential benefits and allow prisoner's to have more freedom over their economic future to enable a better chance to life for all prisoner's and a safer community for all.

3. PRISONER'S RIGHT TO POSSESSION OF FREE EXPRESSION OF IDEAS AND EXPERIENCE "THE LITERARY PROCEEDS OF CRIME ACT"

PREAMBLE

The laws on confiscating proceeds of crime originated federally in Australia in 1989, used in conjunction with the Customs Act 1901. Proceeds of crime orders were originally defined as: any property that is derived or realised, directly or indirectly, by any person from the commission of the offence.

However, This original proceeds of crime act did not include; literary proceeds made from interviews, media releases or literature pieces that detailed stories on crime. This issue became an internationally contentious issue as people began to debate whether people should profit through expression of the crimes.

The first International law regarding literary proceeds of crime was in New York state law (U.S), given the name 'Son of Sam'. This law was derived from a case in New York where a man was convicted of 6 counts of murder over 13 months. He claimed the owner of his

neighbour's dog ('Sam') was transmitting orders through his dog's barking for him to kill people.

There were huge amounts of media attention at the time as journalists attempted to get their hands on his famous letters. The New York state subsequently ordered new legislation that would act to seize all money earned from publishing or movie deals from a criminal for five years. The majority of states in the U.S followed suit and extended the laws indefinitely. Canada and the U.K quickly followed afterwards.

In America and worldwide, debates varied between people who did not want people from profiting from their crimes and people who said the laws unfairly restricted free speech.

In Australia the first literary proceeds of crime act was enacted in Commonwealth law through literary proceed orders in the *Proceeds of Crime act 2002*. Literary proceeds orders are defined as: any property gained from; material in written or electronic form, any use of media from visual images, words or sounds and any live entertainment, representation or interview.

The states subsequently enacted quite similar literary proceed acts. States in Australia generally apply "freezing orders", which hold money earned from proceeds of crime, to literary proceeds of crime until the court grants confiscation. The defendant can appeal to the high court under federal law. Most cases of literary proceeds are applied for under federal law because they have international jurisdiction. States can apply 'freezing orders' if the money is judged to be generated within that state.

In Australia the legislation of proceeds of crime is founded on the premise that profits from criminal activity should be returned to the society who's laws were infringed and that property lawfully obtained but used in the commission of the offence or offences could also be forfeited (Caslon Analytics 2006). The Attorney General's department distributes the money accumulated through proceeds of crime to community organisations each year. These proceeds normally come from earnings on drug trafficking and illegal money laundering.

However, literary proceeds present a different dilemma. To express or publish an idea through a story about a crime is not an illegal. Since literary proceed orders have been enacted worldwide, earning money through expression of experiences has become an illegal act.

Effectively people are discouraged from putting the immense time and effort it takes to produce literary material. If these laws were present in the past we might not have benefited from such masterpieces, from authors such as; Malcolm X, Nelson Mandela, Gandhi, Roger Rogerson, Andrew Fraser and many others who were considered criminals but expressed their stories that inspired the public and provided various social, cultural and educational learning experiences.

People's stories about experiences are unique because nobody else has experienced them. Gaining literary proceeds represent an opportunity for people who are convicted of a crime to tell their side of the story. Allowing people the right to portray their own right to possession

of free expression stops the media and various Government arms from damaging people's presumption of innocence.

Recent examples of prisoner's who have been subject to literary proceed orders include: Schapelle Corby in Indonesia and David Hicks in Guantanamo Bay. This paper will closely look at Corby's experience and her right to be paid for interviews and an autobiography, rightly portraying her side of the story.

BACKGROUND

People who argue for restrictions on literary proceeds of crime argue that money earned from stories of their crime gives them a benefit for their illegal act. Secondly, the public feel guilty for the families and victim and believe it an be hurtful in a time of grieving.

However, these literary proceed acts imply punishment beyond sentence. Imposing restrictions on someone based on past offences, in which they have already served their sentences or paid fines, is a restriction on basic human rights.

There are also various other reasons why literary proceeds on experiences of crime should rightfully be possessed by the author of the material.

A large number of people who have been convicted of a crime are impoverished. Therefore, any potential profit that can be accumulated from expressing their ideas can potentially be an important kick-start to a new life.

Expression of experiences within the criminal justice system can also help society understand the system. It can help professional criminologists explain the act, law enforcement reduce the acts incidence and can also be a part of rehabilitation for the person who has been through prison.

Restricting people the right to express their experiences can also be a form of censorship. Prohibiting people who want to make a statement for change restricts public scrutiny on our criminal justice system. People who have been mistreated or claim to be innocent have the right to express their side of the story for the public to judge. Expressing experience can also prevent injustices from ever happening again. (Shearer, 1999)

PUBLIC'S RIGHT TO KNOW

The public has a huge interest in 'real crime' stories shown by the immense amount of programming of crime on television and in the media. On television you can observe prime-time viewing and see that the majority of shows are on crime both fiction and non-fiction.

However, shows like 'Law and Order', CSI and others seem to only portray the police's view of the criminal justice system. There seems to be a lack of media attention in broadcasting true stories of people who have been on the other side of the criminal justice system. The public have an interest in the entertainment value, but also have the right to be provided with

balance view on the criminal justice system. The public is interested in this balanced view, for example: Schapelle Corby's book 'My Story' sold 17,000 copies in its first 8 days making it the weeks best-seller.

Right to free expression of ideas and experience can serve also the larger community as a whole. Society can benefit immensely from the social, cultural and educational aspects that can be learnt from people who have been through harsh experiences and want to share their experiences.

They can provide educational benefits to law enforcement officials to reduce the incidence of the act and develop codes of conduct. Students and academics can also benefit from primary research on issues such as David Hicks and Guantanamo Bay and Schapelle Corby and the Indonesian drug laws.

The Indonesian drug laws are important to gain educational information from because it is so close to home for Australians. Understanding different cultures and why certain laws are put in place provides immense cultural benefits.

Producing literary accounts on experience can also have various social benefits. David Hick's story is a perfect example of this. He's personal account on Guantanamo Bay has the potential to shut down the dreadful torture institution that violates human rights on a daily basis.

The U.S has attempted to block this social information by placing a 'gagging order' on Hicks for 12 months. However, it is important to the community as a whole that this vital information is shared with the public so these places can never be created again.

Hick's has been told if he even expresses he's ideas on Guantanamo Bay and he's treatment he can be charged. Hicks' expression of ideas and experience are now a criminal act. It is not only illegal for him to profit off such expression, he is even stripped of the right to free speech!

In an open democratic society the public deserves freedom of information. The public has the right to obtain both sides of a story and form an opinion based on that information. This system creates balance and transparency for the public to judge on the truth. Discouraging people to express their experiences and opinion by denying them proceeds from their work suppresses the public's right to establish an informed opinion.

When people express their ideas they have the potential to gain public support from the community. Restricting people from this potential support base is isolating prisoners and restricting the public's right to transparency. The public has a right to gain educational, social and cultural benefits when they like.

OWNERSHIP OF EXPERIENCE

Ownership of experience is important within the criminal justice system because the incidents are generally unique. Stories of experience within the criminal justice system are unique because those experiences belong to the person who has experienced them. When experiences are unique it is within the public interest these stories are told. Unique experiences create interesting stories for the public thus entitling people the right to express their interpretations of their own experiences.

The harshest form of punishment available is taking away someone's ownership. Taking away someone's right to possession of their experiences punishes them twice. They are punished for their crime and subsequently punished for trying to benefit for their expression & ideas on that crime.

One of the most important aspects of our criminal justice system that allows it to be fair and just is the presumption of innocence. People who have been arrested of a crime are not guilty until proven guilty.

If people can be stopped from having monetary incentives to publish material on their experiences even if they have been acquitted, the presumption of innocence is lost. Discouraging people from publishing their ideas and experiences is forever placing a presumption of guilt upon them.

Prisoner's and people who have been convicted of a crime have as much right as anybody else to own their experiences and express their ideas on that experience.

WHAT ARE LITERARY PROCEED ORDERS?

The commonwealth *Proceeds of Crime Act 2002* defines literary proceed orders as; "if certain crimes have been committed, literary proceeds orders can be made, ordering payments to the commonwealth, on amounts based on the literary proceeds that a person has derived in relation to such an offence" (comlaw.gov.au).

The act states that the proceeds must have been derived after the commencement of the act, however notes that section 14 states that the crimes could be committed at anytime. (Section 152) This offence can be committed inside or outside Australia and includes any other people benefiting from the person the first mentioned person. (Sect.153)

In reference to freedom of experience, that act states that, matters taken into account include; the public interest the social, cultural or educational value of the activity, how long ago and other matters seen fit by the court.

The Department of Public Prosecutions (DPP) must give written notice of the proposed literary order, which will take the form of civil debt recovering proceedings. The orders can also cover all future proceedings towards the property related to in the literary order.

SCHAPELLE CORBY - A RECENT EXAMPLE

Schappelle Corby was sentenced to 20 years in prison for allegedly trying to smuggle more than 4 kilograms of marijuana in a bodyboard bag into Bali in 2004. She was subsequently sent to Kerobokan prison for the duration of her sentence.

Corby's case presents a unique case for all Australian's as it involves various potential educational, social and cultural observations that can be observed and analysed. It provides opportunities to learn more about Indonesia's culture and their drug trafficking laws and social opportunities to learn about the criminal justice system and prisons in Indonesia.

Schappelle Corby has been the victim of repeated media scrutiny and a barrage of accusations through the media. New idea has claimed that she has a 'secret love affair' with one of the 'Bali nine' ringleaders and was a prostitute in Queensland.

In an interview with the bulletin she stated that she was extremely hurt by these lies and they were affecting her badly. She stated; " I have a 20-year sentence. I've been hurt beyond belief. Why do these people keep attacking me, insulting me? I won't be quiet and stand for it any longer. This is why I've written a book." (www.usp.com.au)

She subsequently wrote a book, entitled "My Story", co-written by former TV producer Kathryn Bonella and is based on a series of secret interviews Bonella conducted with Corby inside the jail.

However, in March 2007 the DPP in Queensland seized all money proceeds from the book to be paid to Corby or any of her family members under the *Proceeds of crime Act*. Her publisher Pan MacMillan said Corby originally wanted the proceeds to go towards her expensive legal battles but was denied the opportunity. Her sister Mercedes also had \$15,000 frozen from her interview on 60 minutes.

The DPP were able to 'freeze' Corby's money from going to her or any other family member because it was argued the money was generated in Queensland. Corby had the opportunity to appeal within 14 days but chose not to do so.

These court proceedings were held without Schappelle or her family knowing, because the DPP feared it would be spent. However, the Commonwealth *proceeds of crime act 2002* (Section 163) state that the DPP must give written notice of any literary proceeds order application.

Corby maintains her innocence and wrote the book to express her experiences and the injustices leveled against her. The book sold 17,000 copies in the first 8 days of its release making it the week's top-seller.

She stated: "It is really great that so many people are reading my book," she said. "I have been betrayed by so many people and for two years so much rubbish has been written about me. This is the truth. This is my voice. I put my heart and soul into it.

"I often cried writing it. It was hard to do but I wanted people to know the truth, know the hell, know the lies and betrayals." (www.usp.com.au)

The Commonwealth *Proceeds of Crime Act 2002* states that the court should consider; social, educational value of the material and the public interest (Section 154). Clearly, the public was very interested as it was a weekly top seller. The book also has a range of social and educational benefits stated earlier.

This literary work entitled Corby to have possession over her experiences and freely express her ideas. Restricting her the right to make profit from her hard labor and unique story is a violation of these rights.

The QLD Government will now possess any money, which should otherwise have been designated to Corby. The QLD Government now effectively owns Corby's hard labor and her experiences.

Corby has been denied the right to spend money, which is rightfully hers, on her legal proceedings. This is effectively placing barriers in front of Corby in her pursuit of freedom.

EFFECTS

Restricting proceeds of literary work expressing crimes, stops people from writing their stories because they can be highly labour intensive and thus would produce no benefits. Therefore, the literary proceeds of crime legislation acts to conceal truth. People are punished twice and don't have the chance to tell the truth through their own eyes.

In the cases of Corby, media scrutiny focuses on their guilt and presumption of innocence is hard to maintain. The prisoner's are denied the opportunity to rebuke the media allegations that are against them.

Personal accounts can create a more balanced view and create public outrage. Therefore, discouraging prisoner's to write personal accounts acts to suppress public outrage and public opinion, which could be used as an important support structure for the prisoners.

Stereotypes play a significant role in today's society. Discouraging people from writing first hand accounts of their experience creates an unfair advantage for the media to perpetuate stereotypes. This goes against the values of modern day democracy acting to destroy a fair and just balance.

CONCLUSION

Discouraging people from editing personal experiences of crime by restricting their literary proceeds discourages balance. Balance is an important component in a modern day open democratic society. Denying the public the right to transparency and balance goes against the very ideals of an open democratic society.

Governments play a huge role in suppressing expression of ideas by enacting legislation like literary orders. Effectively this law acts to suppress information that might implicate their criminal justice institutions from scrutiny. Governments of all level are effectively trying to escape responsibility.

As mentioned above, transparency is implied in an open democratic society and acts to build trust throughout the community. Suppressing information only decreases the community's level of trust in their Governments and creates deceit.

There are arguments for both sides but the right to possession of ideas and experiences is an important human rights principle. I'll finish with a quote from Shearer in *Making Crime Pay 1999*: "Truly and just communities may generally be better off accepting some ugly spectacles than policing too vigorously the boundaries of human storytelling".