

RECENT PUBLICATIONS BY LAW REFORM BODIES WORLDWIDE

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ALBERTA

- **Costs and Sanctions**

Consultation Memorandum No. 12.17:

February 2005

http://www.law.ualberta.ca/alri/pdfs/cnslt_memo/cm12-17.pdf

This Consultation Memorandum is issued as part of the ongoing Alberta Rules of Court Project. Under the rubric of “Costs,” this consultation memorandum deals with a wide range of subjects, including party and party costs, solicitor-client accounts, taxation, costs as penalties, and several specific topics. It also deals with the rules relating to contempt of court.

AUSTRALIA

- **Sentencing of Federal Offenders**

Issues Paper 29

<http://www.austlii.edu.au/au/other/alrc/publications/issues/29/>

This comprehensive issues paper details the results of years of work on a review of Part 1B of the *Crimes Act 1914* with respect to the sentencing, imprisonment, administration and release of federal offenders. It is felt that Part 1B is unclear about whether it intends to achieve greater equality of treatment between federal offenders serving sentences in different states and territories; that it is complex and ambiguous; and that it omits any detailed reference to the aims and purposes of sentencing. Specific provisions have been criticised for their complexity, poor drafting, inflexibility, lack of sufficient scope or because they lead to an undesirable practical outcome. An overview is given of some of the key changes in the Australian states and territories in recent years with respect to the principles, procedures, institutions and context of sentencing. It looks at judicial discretion in sentencing, “truth” in sentencing, rise in prison

populations, alternatives to imprisonment, victims, special categories of offenders, and the role of prosecutors in sentencing, among other topics related to sentencing.

- **Review of the Evidence Act 1995**

Issues Paper 28

<http://www.austlii.edu.au/au/other/alrc/publications/issues/28/>

This Issues Paper is the first document produced in the course of an Inquiry into the Evidence Act 1995 and is intended to identify the main issues relevant to the Inquiry, provide some background information, and encourage informed public participation. It is published by the ALRC in consultation with the New South Wales Law Reform Commission. The aim is to produce a joint report. The ALRC is also liaising closely with the Tasmania Law Reform Institute and the Victorian Law Reform Commission. In reviewing the Evidence Act the ALRC pays particular regard to the examination and re-examination of witnesses, before and during proceedings; the hearsay rule and its exceptions; the opinion rule and its exceptions; the coincidence rule; the credibility rule and its exceptions; and privileges, including client legal privilege. The relationship between the Evidence Act and other legislation regulating the laws of evidence is considered, with emphasis given to issues including, rape shield laws, children as witnesses and family law proceedings. In considering the operation of the Act, the ALRC focuses on relevant decisions of the Australian Federal Courts and decisions in New South Wales, Tasmanian or Norfolk Island courts in relation to evidence legislation in these jurisdictions.

Note: For information on the review of the Evidence Act 1958 which is currently underway in Victoria, see [http://www.lawreform.vic.gov.au/CA256902000FE154/Lookup/Evidence Information Paper/\\$file/Evidence%20Information%20paper.pdf](http://www.lawreform.vic.gov.au/CA256902000FE154/Lookup/Evidence%20Information%20paper.pdf)

Link to New South Wales Law Reform Commission's page on its review of the Evidence Act 1995:

http://www.agd.nsw.gov.au/lawlink/lrc/ll_lrc.nsf/pages/LRC_cref109

- **Genes and Ingenuity: Gene Patenting and Human Health**

(ALRC Report No. 99, 2004)

<http://www.austlii.edu.au/au/other/alrc/publications/reports/99/>

This Report considers the impact of current patenting laws and practices related to genes and genetic and related technologies on research and its subsequent application and commercialisation, on the Australian biotechnology sector and on the cost-effective provision of healthcare in Australia.

The Report makes important recommendations for reform but it does not suggest any radical overhaul of the patents system. Specific reforms are directed to:

improving patent law and practice concerning the *patenting* of genetic materials and technologies; improving patent law and practice concerning the *exploitation* of gene patents; ensuring that publicly funded research, where commercialised, results in appropriate public benefit; encouraging universities and other research organisations to raise the awareness of researchers about patenting issues and the commercialisation of research; ensuring that Australian research organisations and biotechnology companies are adequately skilled to deal with issues concerning commercialisation and the licensing of patented inventions; establishing mechanisms for monitoring the implications of gene patents for research and healthcare; clarifying the application of competition law to the exploitation of intellectual property rights; clarifying the scope and practical application of exceptions to copyright infringement in relation to research.

BRITISH COLUMBIA

- **Report on Spoliation of Evidence**

BCLI Report No. 34

November 2004

http://www.bcli.org/pages/projects/evidence/spoliation/Spoliation_of_Evidence_Rep.pdf

When evidence is destroyed, mutilated, altered or concealed, both litigants and the civil justice system suffer. The common law has long recognised the seriousness of spoliation of evidence and the

problems it causes. In order to address these problems, the courts have developed evidentiary and procedural rules to restore accuracy to the trial process, to sanction litigants who damage, mutilate, alter, or conceal evidence, and to provide limited compensation to litigants who are harmed by spoliation of evidence. This Report examines those evidentiary and procedural rules and discusses proposals for the further development of the law. The proposals for reform seek to refine the existing rules and to promote the development of a tort of spoliation of evidence, which would provide a substantive remedy in those cases that are currently beyond the reach of the existing rules.

- **Unfair Contract Terms: An Interim Report**

BCLI Report No. 35

February 2005

http://www.bcli.org/pages/projects/unfairterms/Unfair_Contract_Terms_Interim_Rep.pdf

There is no limit to the types of contracts that may be reviewed for their fairness. This Report focuses on two specific and largely overlooked matters, namely, the review of specific contract terms and the application of principles of contractual fairness in areas other than consumer protection. Review of contracts for their fairness has involved the scrutiny of two aspects of a contract – its “procedural unfairness” and its “substantive unfairness.” It is more common to find this distinction drawn outside British Columbia. This Report concerns itself primarily with substantive unfairness. It seeks to stimulate discussion on whether specific contract terms may be described as being unfair. The second central topic of this Report relates to the entities to be granted protection under any legislation restricting the use of unfair contract terms. This discussion focuses on specific entities, and on whether any common elements unite those entities that may require protection.

- **Report on the Recognition of Adult Guardianship Orders from Outside the Province**

BCLI Report No. 36

March 2005

http://www.bcli.org/pages/projects/guardian/AGO_Outside_Province_Rep.pdf

The increasing mobility of persons and wealth makes it inevitable that from time to time issues will arise concerning adult guardianship orders made outside the province, the extent to which they should be given effect and the machinery for doing so. The current law provides only a limited response to these issues. Legislation that is not yet in force would provide a more comprehensive answer but there is a need to integrate these developments and identify clearly the procedures available.

This report describes the current and pending procedures and sets out recommendations concerning what the Institute considers to be the most appropriate approach. The general thrust of the recommendations is that the *Enforcement of Canadian Judgments and Decrees Act* should be the principal vehicle for giving effect to adult guardianship orders emanating from other Canadian provinces and territories. Special provisions would make the *Enforcement of Canadian Judgments and Decrees Act* procedure available to government officials of other provinces who assume guardianship responsibilities by operation of law. So far as non-Canadian orders are concerned, the report recommends a confirmation procedure analogous to the one that exists for the “resealing” of foreign probate orders.

- **Report on the Uniform Civil Enforcement of Money Judgments Act**

BCLI Report No. 37

March 2005

http://www.bcli.org/pages/projects/UCEMJA/Unif_Civil_Enf_Money_Judgments_Act_Rep.pdf

An effective system of enforcing money judgments is one of the cornerstones of the legal system. In British Columbia, the civil enforcement system has been largely ignored by legislators. As a result, it is archaic, fragmentary and inefficient. Fundamental reform is needed if the system is to achieve its goals. This Report presents a specific proposal for fundamental reform of the civil enforcement system. The *Uniform Civil Enforcement of Money Judgments Act* is

a model statute prepared by the Uniform Law Conference of Canada. The proposals embodied in the Uniform Act will realign British Columbia's civil enforcement system on a foundation that is coherent, streamlined, and unified. This Report also makes recommendations on the effective implementation of the Uniform Act in British Columbia.

CANADA

- **Is Work Working? Work Laws that Do a Better Job**

Discussion Paper

December 2004

<http://www.lcc.gc.ca/pdf/work.pdf>

The Law Commission of Canada undertook its examination of Canada's labour and employment laws in response to concerns raised by the Commission's Advisory Council. It was felt that Canada's labour and employment laws and social policy may not be keeping pace with the changes taking place in the world of work and that the law provides inadequate protection and relief for Canadian workers. Concerns were voiced that although over a third of the Canadian workforce engages in non-standard work, eligibility for most labour- and employment-related rights, benefits and protections is still based almost exclusively on the standard employment relationship. The existing regulatory framework may not adequately ensure that workers have a voice in their workplaces. Unionisation is declining and alternative forms of employee representation have not expanded to improve workplace democracy. Existing laws and policies dealing with work do not acknowledge the increasing demands of work and family/home obligations and workers in this situation have few resources and supports to assist them.

With these, among other concerns and issues in mind, the Law Commission has undertaken a project to answer two questions: What gaps and weaknesses in the regulatory framework make some groups of workers particularly vulnerable? What innovative options for the reform of Canada's labour and employment laws and policies would reduce worker vulnerability, enhance productivity and more

equitably distribute the rewards and costs of participation in the labour force?

The Commission welcomes feedback on the paper.

HONG KONG

- **Child Custody and Access**

Report

March 2005

<http://www.hkreform.gov.hk/reports/raccess-e.pdf>

In recent years, Hong Kong, like many other jurisdictions, has seen a dramatic rise in its rate of divorce. The serious impact that the legal process itself is recognised to have on families undergoing divorce, particularly where arrangements for the children must be made, has led jurisdictions like the United Kingdom, Australia and New Zealand to comprehensively recast their laws in this area. The Law Reform Commission was requested to conduct a review of the law in the following broad terms: "*to consider the law relating to guardianship and custody of children, and to recommend such changes as may be thought appropriate.*" This report considers child custody law in its wider social and legal contexts. Hong Kong's existing law and procedure on custody and access is examined in Chapters 2 to 4. Chapters 5 to 8 look at newer legislative models for child custody and access that have been adopted in other jurisdictions. Conclusions and recommendations for reform in this area are set out in Chapters 9 to 14.

- **Civil Liability for the Invasion of Privacy**

Report

December 2004

<http://www.hkreform.gov.hk/reports/rprivacy-e.pdf>

This report explains the elements and functions of privacy and introduces the jurisprudence on what the right of privacy comprises. It examines the extent to which privacy is currently protected and regards such protection as patchy and inadequate. It also questions whether the protection of privacy is inconsistent with the values of

free speech in light of the International Covenant on Civil and Political Rights and the European Convention on Human Rights. After discussing the law of privacy in other jurisdictions, the Report recommends the creation of two new torts of invasion of privacy, namely, unwarranted intrusion upon the solitude or seclusion of another and unwarranted publicity concerning an individual's private life. The report also makes recommendations affecting the privacy of ex-offenders and victims of crime. Whether appropriation of a person's name or likeness should be actionable as a privacy tort or a distinct tort is also discussed. The Report proposes a civil remedy for "arbitrary or unlawful" interference with an individual's privacy without unduly infringing other legitimate rights and freedoms, in particular, the freedom of speech and of the press.

- **Rules for Determining Domicile**

Report

April 2005

<http://www.hkreform.gov.hk/reports/rdomicile-e.pdf>

The rules for determining a person's domicile have repeatedly been criticised by law reform bodies in the common law world as unnecessarily complicated and technical, and as sometimes leading to absurd results. Various law reform bodies in the common law world have critically examined the traditional concept of domicile and recommended, in particular, amending the rules for its determination. In a number of countries, including Australia, Canada, Ireland, New Zealand and South Africa, those criticisms have been answered by legislation which amends the rules for determining domicile. The Commission has been asked to review the way in which the law determines a person's domicile and to make recommendations for such reform as may be necessary.

This report discusses the existing rules for determining a person's domicile, and the major areas of law in which the concept of domicile is used as a connecting factor. It highlights the problems of the existing law, examines the law in other jurisdictions and looks at the opinions of academics and practitioners, as well as the responses received to the Consultation Paper. Finally it lays down recommendations and sets out their practical effects.

- **Privacy and Media Intrusion**

Report

December 2004

<http://www.hkreform.gov.hk/reports/rmedia-e.pdf>

This Report summarises the results of various opinion polls, conducted after the publication of a prior Consultation Paper on Media Intrusion, and explains how press freedom can be reconciled with the right to privacy under the Basic Law, the International Covenant on Civil and Political Rights and the European Convention on Human Rights. As regards intrusion by the print media, the Report also examines the effectiveness of the self-regulatory measures adopted by the professional bodies. Following on the suggestion of self-regulation by a voluntary press council or a non-governmental statutory press council, the experience of the press councils and similar bodies in other jurisdictions is also studied, and the experience of the UK Press Complaints Commission is singled out. A trend for complementing media self-regulation with co-regulation exists in Europe and so the concept of co-regulation is introduced and its relationship with self-regulation in the media context is explained. The Report discusses the desirability of creating a statutory but self-regulating press complaints body to achieve effective self-regulation.

INDIA

- **191st Report on Regulation of Funds collected for Calamity Relief**

December 2004

<http://lawcommissionofindia.nic.in/191st%20Report.pdf>

This Report is issued in response to the High Court's observation (in *Anand Narain Poharkar v. Lokmat Newspaper Charitable Trust*) that legislation was necessary to regulate contributions collected from the public by charitable trusts in order to prevent funds being misused or misappropriated. After discussing the concept of legal trusteeship, the report explains the need to enact a separate law. It details the extent, commencement and scope of the proposed law and concludes by highlighting the salient features of the proposed

enactment. The report recommends the establishment of a Contribution Regulatory Authority (CRA) comprising a Chairperson and other part-time Members. The main task of the CRA would be to oversee the collection and distribution of contributions and donations for calamity relief and to ensure that proper accounts are maintained by the persons and agencies collecting funds for calamity relief.

IRELAND

- **Trust Law General Proposals**

LRC Consultation Paper 35

February 2005

<http://www.lawreform.ie/CP%20on%20Trust%20Law.pdf>

The Law Reform Commission's Second Programme for examination of certain branches of the law with a view to their reform: 2000-2007 identified the law of trusts, including the law of charities, for examination.

Given the considerable interaction between general trust law and the law relating to charitable trusts, the Commission decided to cover both of these topics in one Consultation Paper. Each chapter begins by setting out the general trust law position and then addresses any particular issues relating to charitable trusts. A separate paper, *Charitable Trust Law – General Proposals* (LRC CP 36-2005), is being published at the same time containing a summary of the recommendations made in this paper in relation to charitable trusts. The Consultation Papers examine some specific areas of the Law of Trusts and the Law of Charities and do not purport to represent a comprehensive review of either topic. This main paper contains a detailed discussion of the issues involved, including comparisons between Irish law and the law pertaining in other jurisdictions. The proposals put forward are designed to clarify the law and bring it up to date rather than to effect fundamental changes to the existing law. Further issues in relation to trust law and charity law will be addressed by the Commission in the future.

- **Charitable Trust Law – General Proposals**

LRC Consultation Paper 36

February 2005

<http://www.lawreform.ie/CP%20on%20Charitable%20Trust%20Law.pdf>

The main Consultation paper, *Trust Law – General Proposals* (LRC CP 35-2005) (see above), sets out the general trust law position and then examines any particular issues relating to charitable trusts. This present paper is being published at the same time and contains a summary of the recommendations made in the main paper in relation to charitable trusts. If further detail is required in relation to any particular topic, it is recommended that the reader refer to the main paper for a fuller discussion of the issues involved together with the reasoning behind the Commission's recommendations in relation to each of the issues.

- **Vulnerable Adults and the Law: Capacity**

LRC Consultation Paper 37

May 2005

http://www.lawreform.ie/Consultation%20Paper%20on%20Capacity%20final%20version_.pdf

This *Consultation Paper on Vulnerable Adults and the Law: Capacity* is the second in a series of two consultation papers published by the Law Reform Commission which address the subject of vulnerable groups and the law. The first, the *Consultation Paper on Law and the Elderly*, was published in June 2003. Following the publication of that Consultation Paper, the Commission held a public seminar and on the basis of views expressed at the seminar and submissions received by the Commission on the Consultation Paper, the Commission decided to prepare and publish a second consultation paper which would focus on legal capacity issues relevant to all adults with limited decision-making, not just older adults.

Legal rules concerning capacity have traditionally functioned as a means of protecting those persons who are deemed unable to make decisions with legal consequences. The focus of this Consultation Paper is on reviewing how legal capacity of persons aged 18 and

above is defined in a number of key areas of decision-making – capacity to enter into a contract, capacity to enter into relationships and capacity to make healthcare decisions, and also the existing substitute decision mechanisms of wardship and enduring powers of attorney.

- **Report on a Fiscal Prosecutor and a Revenue Court**

LRC Report 72

December 2004

<http://www.lawreform.ie/Revenue%20Report%20New.pdf>

The background to this Report is the issue of whether the establishment of either a Fiscal Prosecutor or a Revenue Court would assist in dealing with tax evasion, which has become a major problem in Ireland. The scandal of tax evasion, exposed in recent years, whether by a limited so-called “golden circle” or a wider circle of citizens using bogus offshore accounts, has resulted in calls for reform of revenue law and of the powers conferred on the Revenue Commissioners. This reflects recent changes in the perception of ‘white-collar’ crime both nationally and internationally. The Report focuses on the appropriate balance that the Revenue Commissioners might strike in the future between their use of civil enforcement powers (audit and civil penalties) and criminal enforcement powers (prosecution and conviction).

The recommendations in this Report have been made on the basis that the newly restructured Revenue Commissioners would be more effective in ensuring tax compliance and prosecuting offenders where appropriate. The Report also makes recommendations on the further reform of the Revenue Commissioners.

- **Public Inquiries Including Tribunals of Inquiry**

LRC Report 73

May 2005

<http://www.lawreform.ie/Public%20Inquiries%20Report%2030.05.05.pdf>

The Report examines the law relating to public inquiries including tribunals of inquiry and makes recommendations for reform where

appropriate. The Consultation Paper examined the law relating to public inquiries, focusing on the tribunal of inquiry. The essential elements of the Consultation Paper's recommendations were implemented in the form of the commissions of investigation model of public inquiry introduced into Irish law by the *Commissions of Investigation Act 2004*. This Report focuses primarily on tribunals of inquiry, and to a limited extent on commissions of investigation. This is because the *Commissions of Investigation Act 2004* now provides a framework within which low-key preliminary investigations can take place, allowing the Commission to concentrate in this Report on the extent to which the law relating to tribunals of inquiry may be reformed. The Commission makes some limited recommendations for reform of the 2004 Act.

The Report also makes recommendations for the reform of the tribunals of inquiry legislation which is currently contained in 7 Acts beginning with the *Tribunals of Inquiry (Evidence) Act 1921* and ending most recently with the *Tribunals of Inquiry (Evidence) (Amendment) Act 2004*. The Commission's recommendations for reform are not intended in any way to detract from the value of such tribunals. Rather, they are intended to ensure that tribunals continue to be available as a means of investigating urgent matters of public importance, while at the same time attempting to ensure that they are focused and provide adequate procedural protections without incurring excessive public costs.

NEW SOUTH WALES

- **Community Justice Centres**

Report 106 (2005)

<http://www.agd.nsw.gov.au/lrc.nsf/pages/r106pdf>

Community Justice Centres ("CJCs") were first established as a pilot program in 1980 to provide a means of settling the sort of disputes that conventional court-based procedures are unable to resolve satisfactorily such as those between family members, partners, friends, workmates, members of social groups and other community organisations, neighbours, landlords and tenants, flatmates etc. The

scheme was made permanent in 1983 with the passing of the *Community Justice Centres Act 1983* (NSW). The CJC's Act provides for the administration of the CJC's Council, makes provision for the staff of CJC's and for the establishment and operation of CJC's. It also sets out a framework for the provision of mediation services and provides for other related miscellaneous matters. The Act has also provided a model for the establishment of similar community mediation schemes in other Australian jurisdictions.

This Report contains a review of the *Community Justice Centres Act 1983* (NSW) and looks at the role of Community Justice Centres as a statewide conflict management and mediation service, at whether the current structure of Community Justice Centres sufficiently meets the needs of the indigenous community of New South Wales, at the role and entitlements of mediators and at related matters.

- **Expert Witnesses**

Issues Paper 25 (2004)

[http://www.agd.nsw.gov.au/lrc.nsf/b302b703a1328b7e4a2565e8002658dc/372ee6db9cc00ebdca256f4f00045f40/\\$FILE/IP25.pdf](http://www.agd.nsw.gov.au/lrc.nsf/b302b703a1328b7e4a2565e8002658dc/372ee6db9cc00ebdca256f4f00045f40/$FILE/IP25.pdf)

On the Attorney General's request, the Commission has commenced an inquiry into and report on the operation and effectiveness of the rules and procedures governing expert witnesses in New South Wales. The Terms of Reference instruct the Commission to have regard to recent developments in New South Wales and other Australian and international jurisdictions in relation to the use of expert witnesses; current mechanisms for the accreditation and accountability of expert witnesses for the purposes of court proceedings; the desirability of sanctions for inappropriate or unethical conduct by expert witnesses; and any other related matter. This Issues Paper considers measures to enhance the objectivity and accountability of experts; measures to increase transparency; measures for the efficient use of experts; measures to limit the number of experts; and alternatives to experts.

The Commission welcomes submissions on this Issues Paper until 11th February 2005.

NEW ZEALAND

- **Evaluation of the Criminal List Pilot – Wellington District Court**

April 2005

<http://www.justice.govt.nz/pubs/reports/2005/criminal-list-pilot/criminal-list-pilot.pdf>

The Department for Courts, now the Ministry of Justice, agreed to pilot a new approach to the operation of the criminal list at the Wellington District Court. The pilot began on 9 February 2004 and is scheduled to run for a year. The aims of the alternative approach are to improve defendants' understanding of what is happening in the list court process; reduce the amount of waiting time and visits to court for defendants and others; ensure that administrative matters are dealt with prior to the defendant appearing before a judge. Administrative matters include determining whether the defendant has had legal advice, is ready to plead, has a pre-sentence report where appropriate, has an interpreter if required and that any mental health issues have been addressed.

This evaluation of the pilot scheme describes how the project has been implemented; assesses whether the pilot is meeting its objectives; identifies any issues arising during the pilot; suggests improvements to the process. The evaluation found that the objectives of the new system were substantially achieved.

- **Life Insurance**

Report 87

November 2004

<http://www.lawcom.govt.nz/>

While the principles underlying parts of the Life Insurance Act 1908 are sound, many of its provisions are outdated, and the Act is well overdue for review. In the ensuing period, financial markets in general and the role of life insurance in particular have changed dramatically. The Commission feels it would be appropriate to integrate life insurance regulation further with the regulation of other financial products. Improved disclosures and actuarial checks,

to respond to the unique aspects of the life insurance business are recommended. As detailed in the report, it favours the appointment of an agent to assist policyholders to monitor insurer solvency, while recognising that a government monitor could be an alternative option. The Commission suggests that the Life Insurance Act 1908 be repealed and proposals for a new Insurance Contracts Act, which would replace Part 2 of the 1908 Act, are also contained in the Report. Taking into account the close relationship between New Zealand and Australia, the Commission has sought solutions that are primarily suited to New Zealand conditions but that are also compatible with the Australian approach to regulation of life insurance. The general aim is to ensure that internationally recognised principles are included within a regulatory framework appropriate for the relatively small size of the New Zealand industry.

- **The Nature and Extent of the Sex Industry in New Zealand:
An Estimation**

Final Report

April 2005

<http://www.justice.govt.nz/pubs/reports/2005/nature-extent-sex-industry-in-nz-estimation/nature-extent-sex-industry.pdf>

This report presents a research effort by the Ministry of Justice to assess the size of the sex industry in New Zealand. It does so, acknowledging that any attempt to establish the size of the sex industry must be viewed with caution. It is an industry where much of its activity has been “hidden” and the non-regulated and fluid nature of the industry means that any estimate will simply be an indication of actual numbers. In addition, limitations in the accuracy of data also mean that the findings in this report cannot be taken to be an accurate assessment of the size of the sex industry in New Zealand. However they do provide an indication of the approximate numbers of those in the industry. This report details a survey which involved the canvassing of specific police staff in a position to offer information and insight on the sex industry in their area. The second section of the report is based upon an audit of the numbers of advertisements for commercial sexual services in Wellington and Auckland.

- **Process Evaluation of the Christchurch Youth Drug Pilot**

November 2004

<http://www.justice.govt.nz/pubs/reports/2004/process-evaluation-chch-youth-drug-court-pilot/process-evaluation-yth-drug-crt-pilot.pdf>

The Christchurch Youth Drug Court pilot (YDC) is based on an initiative developed by Judge Walker, who identified a need for addressing the linkage between alcohol and other drug use and offending. The aim of the YDC was to facilitate better service delivery to young people, including treatment for their alcohol and other drug dependency, thereby helping to reduce their offending. The pilot was designed to improve on process issues in order to facilitate better service delivery and help achieve the overall objectives. These process issues include early identification of young offenders with alcohol and other drug dependencies that contribute to their offending; reduction of time delays in service delivery; more effective interagency co-ordination; and closer monitoring of young people to facilitate their treatment process.

To examine both the processes and effectiveness of the YDC pilot, the evaluation is divided into two phases. The first phase, the subject of this report, is a process evaluation and examines operations for the first 18 months. This report includes aggregated information on all the 30 young people who entered the YDC during the first year of the pilot, 14 March 2002 – 13 March 2003. The second phase follows up the same sample of 30 young people approximately twelve months after they have left the pilot.

NORTHERN IRELAND

- **Draft Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2005**

Explanatory Memorandum

http://www.olrni.gov.uk/doc_Uploads/Draft_Misc_Provisions_Memorandum.pdf

This Memorandum, published by the Department of Finance and Personnel, explains the Draft Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2005. The Order identifies a

number of areas considered to be in need of reform.

The Law Reform Advisory Committee for Northern Ireland (LRAC) issued a report entitled “Deeds and Escrows” in 2002. Included in the Report are recommendations for the abolition of the Common Law requirement for sealing a deed executed by an individual, of the rule in *Pigot’s Case* and of the rule in *Bain v. Fothergill*. These recommendations are included in the Draft Order.

The Order also deals with reforms to the Family Homes and Domestic Violence (Northern Ireland) Order 1998, including some of the civil law issues that were raised in the consultation – human rights issues, anomalies in relation to in-law relationships, same-sex relationships, exclusion zone and molestation order issues, and the penalty for the breach of an order.

Several repeals and amendments are also dealt with in this Order. The Colonial Solicitors Act 1900 is considered to be an anomalous piece of legislation and this Order makes provision for its repeal. Following similar steps in England and Wales, the Order provides for the repeal of Trading Stamps legislation. Other amendments to the Census Act (Northern Ireland) 1969 and the Damages Act 1996 are provided for in the Order.

Parts II and III of the Order, together with the provisions relating to repeals of the Trading Stamps Act (NI) 1965 and the Colonial Solicitors Act 1900 will come into force on an appointed day laid down by order of the Department of Finance and Personnel. The other substantive parts of the Order will come into force one month after the Order is made at Privy Council.

The full text of the Draft Order can be found at http://www.olrni.gov.uk/doc_Uploads/Draft_Law_Reform_Misc_Provisions_Order_2005.pdf

QUEENSLAND

- **A Review of the Peace and Good Behaviour Act**

Discussion Paper WP no. 59

March 2005

http://www.qlrc.qld.gov.au/publications/WP_59.pdf

The Attorney-General has asked the Queensland Law Reform Commission to review the *Peace and Good Behaviour Act 1982* (Qld). Under the terms of reference the Commission is to consider whether the Act provides an appropriate, easily accessible and effective mechanism for protecting the community from breaches of the peace. The Act permits a magistrate to grant to a person (the complainant) an order requiring another person (the defendant) to “keep the peace and be of good behaviour” for a period of time specified in the order, and to comply with any other conditions imposed by the order. In the event that the Commission is of the view that the Act fails to provide the community with appropriate, easily accessible and effective protection from “breaches of the peace,” it is also to consider whether such a goal can be achieved by changes to the existing mechanism, or whether an entirely new mechanism should be established.

The Commission is to report to the Attorney-General by 31 December 2005.

Closing Date for Submissions on this Discussion Paper is 17th June 2005

SASKATCHEWAN

- **The Consolidation of Certain Rules and Statutory Provisions in *The Administration of Estates Act***

Discussion Paper

March 2005

<http://www.lawreformcommission.sk.ca/Administration%20of%20Estates.pdf>

This report is part of the Saskatchewan Law Reform Commission’s on-going review of the law of wills, trusts, and administration of

estates. A number of statutory provisions, many of which are based on nineteenth-century English legislation, have been identified as virtually obsolete, or so obscure that their significance is now uncertain. The Commission has also identified some common law and equitable rules that should be clarified and modernized by revising and codifying them.

This report discusses provisions in legislation relating to personal representatives and administration of estates, and some rules of equity and law that should be codified but do not belong in revised trusts legislation. The Commission also identifies the equitable marshalling rules that govern the order of payment of debts by personal representatives as a candidate for codification and clarification. It is suggested that all the provisions and rules that remain useful be consolidated in *The Administration of Estates Act*.

The Commission welcomes comment on this Discussion Paper

TASMANIA

- **The Forfeiture Rule**

Final Report

December 2004

<http://www.law.utas.edu.au/reform/Publications/Forfeiture/ForfeitureRuleFinalRep.pdf>

The forfeiture rule, which is part of the Common Law, is based on the principle that a person should not benefit from their wrongful conduct. The effect of the rule is that a killer cannot inherit from their victim, either by will or intestacy. The inheritance is forfeited and passes to the next beneficiary. Much academic and judicial debate surrounds the inflexible application of the rule to all unlawful killings. It is argued that in some cases, for example those where the killing is in response to severe domestic violence by the deceased, public policy does not necessarily require that the killer be disinherited.

The United Kingdom, Australian Capital Territory and New South Wales have introduced Forfeiture Acts, granting courts the discretion to modify the effects of the forfeiture rule in cases of unlawful

killings. Courts have made exceptions to the rule or modified its effect in cases including those concerning suicide pacts or where the offender suffers from diminished responsibility, and cases where the offender has been subjected to ongoing domestic violence and the killing forms part of and is in response to that violence.

This report recommends the introduction of a Forfeiture Act in Tasmania to assist executors and administrators in distributing estates to which the forfeiture rule applies or may apply, and to allow interested persons to apply to court for an order modifying the effect of the rule.

- **The Abrogation of the Privilege against Self-Incrimination**

Report No. 59

December 2004

[http://www.qlrc.qld.gov.au/publications/r59.pdf](http://www qlrc.qld.gov.au/publications/r59.pdf)

The significance of the privilege against self-incrimination has received widespread judicial recognition. However, sometimes the privilege as an individual right must be weighed against the need to ensure that an investigating authority is able to obtain information about the facts of a particular situation. Therefore the privilege can be abrogated by legislation. During the course of the Commission's review, the relationship between the privilege against self-exposure to a penalty, referred to as the penalty privilege, and the privilege against self-incrimination was highlighted. The Commission came to the view that there was a need to address the confusion and uncertainty surrounding the penalty privilege. The Commission also found that the interrelated nature of the two privileges made it difficult to formulate recommendations about one and not the other so with the approval of the Attorney-General the Commission has included in its review the availability of the penalty privilege and its abrogation.

In this Final Report, the Commission has focused on general principles relating to abrogation of the privilege against self-incrimination and the closely related penalty privilege, and the development of a framework for rationalising legislative provisions that abrogate either or both of the privileges.

- **Intoxication and Criminal Responsibility**

Issues Paper No. 7

March 2005

<http://www.law.utas.edu.au/reform/Publications/Intoxication/IntoxicationIssuesPaper16Mar05.pdf>

Australian studies suggest that many offenders commit crime while under the influence of alcohol and/or drugs. Moreover, criminal assaults are common in and around licensed premises. Together with increased scientific knowledge about the effects of alcohol and drugs on behaviour and mental state, this indicates that intoxication has the potential to be a relevant consideration in criminal trials. This paper is not concerned with alcohol and drugs as a cause of crime, but with the question of the extent to which an accused person should be able to rely upon intoxication caused by alcohol or drugs as a defence to a criminal charge. Historically, the criminal law did not provide a drunken offender with any exemption from criminal responsibility and while no common law jurisdiction provides a separate defence for self induced or voluntary intoxication, if intoxication causes a condition inconsistent with criminal responsibility, the prosecution may not be able to prove all the elements of the crime. The extent to which an accused is permitted to rely upon intoxication in this way differs between jurisdictions. It is a controversial question which requires the balancing of competing factors, primarily, the extent to which principle and logic should give way to policy considerations.

This issues paper discusses reforming the law in relation to the law of intoxication and criminal responsibility in Tasmania.

The Commission welcomes submissions until 2nd May 2005.

- **Criminal Liability of Organisations**

Issues Paper No 9

June 2005

http://www.law.utas.edu.au/reform/Publications/Criminal%20Liability%20of%20Organizations/CrimLiabOrgIssuesPaper_9June05.pdf

This Issues Paper considers the current criminal law relating to organizations (such as corporations or government bodies) that

cause death or serious injury of a natural person. Different types of reform are discussed, including the introduction of a specific “industrial manslaughter” offence. Reform of existing health and safety in the workplace legislation is also considered as is the introduction of specialised principles of criminal responsibility for organisations. Another important aspect of the project is a consideration of the sentencing options available when dealing with organizations. The paper considers recent legislative proposals and developments in Victoria, the ACT and Queensland as well as significant developments in the United Kingdom and Canada.

UNITED KINGDOM

- **Unfair Terms in Contracts**

(LC Report No. 298; SLC Report No. 199)

February 2005

<http://www.lawcom.gov.uk/docs/lc292.pdf>

Two major pieces of legislation deal with unfair contract terms in the UK – *The Unfair Contract Terms Act 1977* and *The Unfair Terms in Consumer Contracts Regulations 1999*. However, the two laws contain inconsistent and overlapping provisions, the text is difficult to follow and the 1999 Regulations use European concepts that are unfamiliar to UK lawyers. In 2001, the Department of Trade and Industry asked the Law Commission and Scottish Law Commission to rewrite the law of unfair contract terms as a single regime, in a clearer and more accessible style. This final report sets out detailed recommendations, together with a draft Bill. The draft Unfair Contract Terms Bill proposes to rewrite both laws for the whole of the UK in a way that is clearer and easier to follow. The Office of Fair Trading and other bodies will gain some additional powers to take action against notices.

The report also recommends improved protection for vulnerable small businesses. The 1977 Act includes several other types of contract and the draft Bill mostly preserves the effect of the current law, but sets it out in a way that is clearer and easier to understand.

The draft Bill also rewrites the provisions 1997 Act which deal with business contracts involving the cross-border sale of goods.

- **Towards a Compulsory Purchase Code**

Final Report No 291

December 2004

<http://www.lawcom.gov.uk/docs/lc291.pdf>

This Final Report makes recommendations for the reform of the law of compulsory purchase in the UK. The current law is considered out-dated, parts of it being obsolete, and the statutory language is seen as archaic and obscure.

The report is in favour of the retention, with certain modifications, of the two-stage authorisation process by which a compulsory purchase order is made. An extension of the statutory powers to survey land to all acquiring authorities, subject to appropriate judicial controls, is recommended. An amendment to the manner in which compulsory purchase orders are challenged is needed and the modernisation of statutory provisions dealing with the persons entitled to receive notice to treat is also recommended. Reforms are suggested concerning vesting declarations. Clarification of the requirements for exercising powers conferred by a compulsory purchase order, together with a reduction of the time period in which powers should be exercised is proposed. Similarly, the report suggests the standardisation of the time period within which a claimant can claim compensation for compulsory purchase.

In terms of transfer of title, proposals include the abolition of the concept of the vendor's lien, and the replacement of the "deed poll" procedure with a modern statutory form. The Report recommends simplicity and clarity in the provisions which deal with conveyancing costs. Further recommendations take account of the service of notices, abortive orders, procedures dealing with divided land and interference with rights.

VICTORIA

- **Inquiry into the Review of the Coroner's Act 1985**

Discussion Paper

April 2005

<http://www.parliament.vic.gov.au/lawreform/Coroner/coroners%20act%20discussion%20paperFINAL.pdf>

The purpose of this Discussion Paper is to review the functions of the Coroner's Office and consider whether the current Coroners Act 1985 needs to be amended or modernised to better meet the needs of the community in 2005.

It will consider the effectiveness of the system in which notifiable deaths are brought to the attention of the Coroner. It evaluates the Act, case law and procedures which currently govern a coroner's investigations and inquiries and the existing mechanisms which allow a coroner to make recommendations to prevent future death and injury. It also assesses the way in which the present Act responds to and supports the families and friends of the person who has died. By way of comparison, the paper also examines equivalent laws and alternative systems in other jurisdictions, along with various law reform recommendations.

The Committee is to make its final report to Parliament no later than 31 December 2005 and welcomes submissions on foot of this discussion paper until Friday 15th July 2005.