

In Canada, Mr. Justice Kirby had discussions with the Chairman and Commissioners of the Canada L.R.C. He also saw officers of the Ministry of Justice who are preparing privacy and freedom of information legislation. Several references before the A.L.R.C. overlap with work being done in Ottawa. Lamer J., Chairman of the Canadian national Commission, laid stress upon the possible role of law commissions to fill the void left by retreating judicial activism. The Canadians see their role as leading debate on reform. Mere "cut and paste" patching of the law is not good enough to earn the name "reform".

The new Australian interest in international and comparative law reform developments is reflected in the A.L.R.C.'s latest Report *"Alcohol, Drugs and Driving"* (A.L.R.C.4) tabled in the Federal Parliament on 23 September. A full chapter is devoted to international experience and ideas in breathalyzer legislation. A number of useful reform suggestions emerge from this study. The Sri Lanka Secretary of Justice, Mr. Jayawickrama, told the Canberra Conference earlier this year that Sri Lanka was in the process of implementing certain proposals of the Canada L.R.C. on Evidence and the A.L.R.C. on Criminal Investigation. The sixth Annual Report of the British Columbia L.R.C. notes the use made of their Report on Landlord and Tenant by the U.A.L.R.C. The N.S.W.L.R.C. has completed research on court procedures overseas, including in Eastern Europe and Japan : an imaginative search for new models. Gradually, the old blinkers and bridles are being abandoned. Law reform is alive in the Podes.

Defamation Reform : A Uniform Act?

"Slander-mongers and those who listen to slander,
if I had my way, would all be strung up, the
talkers by the tongue, the listeners by the ears".
Plautus, circa 189 B.C.

Federal Attorney-General Ellicott has given the A.L.P.C. a wide-ranging Reference to reform defamation laws. The Reference was signed immediately following a meeting of the Standing Committee of Commonwealth and State Attorneys-General at which Mr. Ellicott raised the possibility of a Uniform Defamation Act.

Explaining the Reference, Mr. Ellicott told the Women Lawyers' Association of New South Wales:

"The development of the media and of other means of communication on a national basis has made urgent the task of tackling the reform of defamation law on a basis that will produce uniformity throughout Australia. Newspapers are published for circulation on a national basis or at least for circulation in several States. Television and radio programmes are broadcast simultaneously in all or a number of States. Yet there are great differences in the laws of defamation. These differences are so great as to produce the result that in adjoining States, plaintiffs may succeed in an action for defamation in one State and fail in an adjoining State in respect of the publication of the same material".

Speaking in Melbourne on 5 August 1976, the A.L.R.C. Chairman, Mr. Justice Kirby, suggested that the major problem for defamation law reform lay in the procedural area. "The technicalities and delay which presently beset this area of the law often require of litigants patience of almost Biblical proportions and speculation of costs which sometimes borders on the foolhardy". His Honour said that although the purpose of defamation law was supposed to be protection of the reputation of the plaintiff, often the plaintiff's reputation was not restored even by success. On this basis, the law was failing to promote its ostensible object:

"Instead of restoring the reputation, the law does no more than offer a lottery ticket. The prize may be high, even very high. Chances of success are diminished by Bleak House delays and technicalities".

It is clear that uncertainty in this area of the law has placed de facto restrictions on freedom of speech in Australia. The Commissioner in charge of the Reference, Mr. Murray Wilcox of the Sydney Bar, has already seen a large number of media representatives who have stressed the difficulty of operating on a national level with eight differing defamation laws.

The Commission's task under this Reference will be to reconcile the rights of freedom of speech and expression with the right to privacy. Accordingly, the new Reference on Defamation is being considered in conjunction with the general Privacy Reference and its implications for the media. The Commissioners have discussed the role of the new Press Council with its Chairman, Sir Frank Kitto. A heartening development is the statement of the Attorney-General for Western Australia that his government will fully co-operate in the inquiry. Several State law reform bodies have already examined various aspects of defamation law reform. The A.L.R.C. proposes to work closely with them in this project.

Already suggestions are being received by the Commission concerning radical new remedies to redress defamation in an apt manner. Should courts be empowered to order immediate correction or apology? To reduce damage, even without determining truth, should the "victim" be permitted equal space to put his point of view? Should we adopt the Scandinavian Press Ombudsman model in lieu of protracted Defamation trials? How do we encourage in this country the vigorous press that exposed the abuses of Watergate? Readers with views on any of these matters should get in touch with Mr. Wilcox at the A.L.R.C.

Organ Transplants : Can the law catch up?

"To Professor Stone's question 'Are the judges past the age of childbearing?' ... one may reply that they may not be past the age of childbearing, but they are swallowing an unnecessary amount of the pill. They are stifling their reproductive capacity".

-Mr. Justice Brennan, "Australian Lawyers & Social Change" p.147

Not surprisingly, the common law is pretty inadequate in dealing with the problems thrown up by modern techniques of surgery and medicine that allow the transplantation of human tissues and organs. The first successful bone transplant occurred in 1899. The first kidney transplant was in 1954. Dr. Barnard's heart transplant took place, as we all know, in 1967. Are we at the dawn of a new era of human reconstitution? A breakthrough in immunology (which may be just around the corner) will revolutionise the already dramatic developments. These raise complex ethical and legal questions which require law reform.

The Federal Attorney-General, Mr. R.J. Ellicott, has now given the Law Reform Commission an important Reference on Human Tissue Transplants. The Reference requires the Commission to balance:

- * The dignity, wishes and beliefs of donors, the family, the public and potential recipients of transplants.
- * The wishes of a person concerning use of his body in his life and after his death.