

"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.

Some of the questions raised by the Reference include:

- * Should we all be potential donors unless we opt out or should only those who volunteer be available?
- * What is "death" and who should determine it?
- * What procedures for consent for use of organs and tissues should be used?
- * What limitations should exist, if any, on experiments?
- * Should a national register of donors be established?

This is a classic case where international comparative law can suggest solutions. The Commissioner in charge of the project, Mr. Russell Scott, has already accumulated legislation from overseas. This includes not only our traditional sources in England and North America. Legal systems as different as those in Hungary, Brazil, Finland and South Africa all have legislation to cope with these problems. Some States in Europe seem to have taken the plunge to permit the State to override the wishes of relatives. Is Australia ready for this?

This Reference also illustrates another important development of law reform. Interdisciplinary work between lawyers and other professions has been sadly rare in Australia. The A.L.R.C. Report *Alcohol, Drugs and Driving* demonstrates that it can be done. In that case, the Attorney-General appointed eleven consultants from all over Australia. Their disciplines ranged from social work to traffic safety and from instrument technology to inorganic chemistry. As well, experts in community medicine sat down with forensic scientists and policemen. Similar interdisciplinary contacts are being forged in the Human Tissue Transplants Reference. Public debate of the sensitive issues involved will be encouraged in the media and by public sittings of the Commission. Mr. Justice Kirby and Mr. Scott have already seen the A.C.T. Legislative Assembly and discussed the Reference with Members. Because of the urgency of securing legislation in this area, the Attorney-General has fixed a deadline for report of 30 June 1977. He has also asked the Commission to consider proposals for uniformity between laws of the Territories and laws of the States in this area.

Insurance Contracts : Reform the jumble?

"If the law relating to Consumer Credit can be rationalised, it is difficult to see why the law of insurance should continue to rest mainly on a jumble of unjust precedents".

- (1975) 38 Mod.L.Rev. 89

Although the Australian Constitution, s.51(xiv), confers on the Commonwealth a wide power in respect of insurance, Commonwealth legislation in Australia has been fairly specialised. There is the Marine Insurance Act 1909 and the Life Insurance Act 1945. Recent legislation dealing with insolvency of insurers and registration of probate only scratches the surface of the private law of insurance. Generally speaking, we all go back to Macgillivray or Ivamy or other English texts. Perhaps this is about to change.

On 9 September 1976 the Commonwealth Attorney-General, Mr. Ellicott, gave the A.L.R.C. a wide Reference on Insurance Law. The Reference followed discussions with the Treasurer, Mr. Lynch, who has ministerial responsibility in Australia for insurance legislation.

Announcing the assignment to the Law Reform Commission, Mr. Ellicott said that present insurance laws were developed when the theory of "freedom of contract" was predominant. Unequal bargaining power has tended to mean in fact that the insurer is in a favourable position, compared with the insured. In such a situation,