

## Overseas Reform

"I will talk of things past, or things to come;  
things foreign, or things at home."

John Bunyan,  
*Pilgrim's Progress, Apology*, 1678.

Because the source is the same, it is hardly surprising that common law countries find great similarity in the defects that are being discovered in the common law itself and in its procedures. It is therefore desirable that there should be co-operation and the exchange of information among law reform bodies throughout the English-speaking world, and indeed beyond.

The Commonwealth Secretariat in London has just released its report on the 1977 meeting of Commonwealth Law Reform Agencies. Titled *Law Reform in the Commonwealth* it reviews the tremendous growth of permanent law reform agencies now working on the systematic development of the legal system in all parts of the Commonwealth of Nations. To it are appended a series of papers that review law reform methods and concerns in countries as far apart as Canada and Zambia, Jamaica and New Zealand. Common themes emerge, not least the concern to make law reform practical and to avoid the departmental "pigeon holes". At the same time, especially in controversial references, law reform bodies must work compatibly with the responsible form of Parliamentary government, operating in many parts of the Commonwealth. The Law Commission of England and Wales in its *Twelfth Annual Report* puts it thus:

"Though the institutions differ widely according to the requirements of the system of which they form part, the problems of method and procedure which they have encountered show many striking similarities. . . . The *Commonwealth Law Bulletin* . . . meets a large variety of needs; but we still urgently require a means by which any country in the Commonwealth can inform itself quickly and in detail of law reform recommendations made in other member countries and of the extent to which those recommendations have been implemented. We should like to pay tribute to the pioneering work of the Australian Law Commission in this field."

The reference by the English Law Commission was to the *Interim Law Reform Digest*. This index of law reform reports from all over the world has been prepared by the A.L.R.C. for research purposes. It is in most Australian

Law Libraries and is brought up to date by regular supplements.

The Law Reform Commission of Uganda has published reports on *The Venereal Diseases Decree, 1978* and *Foreign Investment in Uganda*. In a Foreword, a statement is attributed to Field Marshal Amin, Life President of Uganda, that "one elder had informed him that venereal diseases were brought into Uganda by Englishmen". However that may be, the Uganda L.R.C. acknowledges that "a behavioural change approach" is necessary to control the epidemic. "The basic change must come from the man, the 'individual'." Legislation is proposed to provide medical education, medical facilities and "contact-tracing". It is interesting to observe that specific mention of privacy of treatment is included.

The Canadian Bar Association's *National* has lately carried a series of articles on *Law Reform—Who Needs It?* Emphasis is laid upon the need for the legal profession to:

- Allocate more resources to monitor legislation
- Devise new procedures to argue and consider law reform proposals

It is acknowledged that "change is generally difficult to accept, particularly when it involves traditions that affect many people". "Perhaps," the Canadian writers say, "this is why the reform of the law is difficult and unpopular." But "unpopular" to whom? The comfortable lawyer and well-organised administrator must not have the sole claim on convenience.

One interesting development in recent days is the distribution of a "consultative document" by the English Law Reform Committee. This body, established in 1952, is made up of part-time judges and other lawyers. The Committee's work supplements the work of the Law Commission. The consultative document deals with *The power and duties of Trustees*.

## Odds & Ends

"I walked a mile with Pleasure  
She chattered all the way,  
But left me none the wiser,  
For all she had to say."

R. B. Hamilton, *Along the Road*.

■ Changed attitudes of the legal profession in Australia were referred to by Mr. Justice

Demack when he was sworn in as a Judge of the Supreme Court of Queensland. His Honour was formerly a Senior Judge of the Family Court. "I fear that often in the Press and in areas outside the law, the awareness in the Law Society of change, and of the need to adapt to it, is not recognised." He discerned "a repudiation of the idea that the adversary system is what creates tension in family breakup". Rather, it is the only way of "allowing people to present their cases fully to the court. [Otherwise] they must leave the court with the feeling that they have not been properly heard."

■ Two cases argued before the U.S. Supreme Court in January 1978 seek relaxation of the recent ban on disciplinary rules prohibiting lawyers soliciting clients. One Ohio attorney was suspended from practice indefinitely for contacting two accident victims, one in hospital, to obtain their agreement to be represented by him. Another was reprimanded for sending a letter offering services of the American Civil Liberties Union. The conduct of the lawyers was defended on the basis that their activity was "designed to ensure meaningful access to the courts". The opposition asserted "people ought to be able to decide whether they want to bring a lawsuit or hire a lawyer without pressure". 46 *U.S.L.W.* 1109 (1978). Decisions are reserved.

■ In England, Mr. Justice Donaldson in the Commercial Court announced on 15 February the establishment of a working party to improve procedures of the court with the object of providing "a speedy, efficient, and therefore economical service". Suggestions were sought by the Lord Chancellor's Office. One suggestion was the handing down (instead of reading out) of reserved judgments. In most parts of Australia, reserved judgments are not read.

■ The A.L.R.C. report, *Human Tissue Transplants* (A.L.R.C.7), continues to receive bouquets. The *New Law Journal* refers to the similarity in basic legal requirements and the defects in the English law. The timidity of Parliament in dealing with reform attempts is recorded. "Perhaps the Australian Law Reform Commission's example will help to end this impasse." Outside the law, the *British Medical Journal* (28 Jan.) described the

report as "the latest of an outstanding series". The *Lancet* (5 Nov.) contains a detailed summary of the report and lays emphasis upon the utility of uniform laws. The *B.M.J.* declares that "the striking aspect of this important report is its broadminded approach". The publicity during the preparation of it "did a lot in Australia to remedy the ignorance of the public and apathy of the medical profession".

■ It is not often that judges of the Supreme Court of Canada make suggestions to politicians about changing the law. However, in *Andrews v. Grand and Toy Ltd.* Dickson J. declared "The subject of damages for personal injury is an area of the law which cries out for legislative reform." (Feb. 1978.) Damages were assessed at more than \$800,000. It is one of four recent decisions all dealing with serious personal injury suits. Professor Allen Linden (Osgoode Hall) in January 1978 proposed a Federal-Provincial study of personal injury compensation condemning the "hodge-podge of public and private insurance schemes". Meanwhile, action on Australia's national compensation scheme proposals (the Woodhouse Report) is not known.

■ A report tabled in the N.S.W. Parliament on 9 March recommends sweeping changes in compulsory land resumption practices. The report was prepared by a N.S.W. Committee which had close discussions with the A.L.R.C. The latter has a discussion paper on *Lands Acquisition* circulating currently. A.L.R.C. public hearings and seminars were held in Hobart on 13 March. They will be held in Adelaide (18 April), Perth (20 April), and elsewhere in Australia during May. Institutes of Valuers, lawyers, and "victims" of compulsory acquisition will take part. A critical proposal in the N.S.W. Committee report, also contained in the A.L.R.C. discussion paper No. 5, is that compensation should be assessed on "value to owner" rather than (as now) "market value". See p. 36.

■ Since *Reform* went "public" with issue No. 9, it has picked up hundreds of subscriptions. Leaflets were included in the Law Council's *Law News* and in the Monash Law School's *Legal Service Bulletin*. *Reform* now goes to the four corners of the country. The aim is to enlist the interest of the community,

particularly the legal community, in participating in the responsibilities of legal renewal.

■ The Senate Standing Committee on Constitutional and Legal Affairs has begun its inquiry into the processing of law reform proposals. Under Chairman Senator Alan Missen (Vic.) a public session was held at Parliament House on 9 March. The A.L.R.C. Commissioners gave evidence on means of improving law reform machinery in Australia. One suggestion drew attention: the establishment of a national "bank" to collect law reform proposals made by judges, commissions, and citizens. Principal proposals could be brought to parliamentary attention in the A.L.R.C. *Annual Report*. The Committee's inquiries are continuing. Persons with submissions should contact Committee Secretary Malcolm Starr, c/- Parliament House, Canberra, A.C.T., 2600.

■ The Law Council of Australia has arranged a visit of United States Attorney-General Griffin Bell to Australia. He will arrive in late July for a visit of 10 days, calling on Sydney, Melbourne, Adelaide, and Canberra. Attorney-General Bell was Chairman of an A.B.A. Committee which proposed reform of federal court procedures. As Attorney-General he set up a Department of Justice Committee which has just reported on reforms in federal class action procedures. These proposals are of special interest to the A.L.R.C. which has a reference on class actions in Australia. The S.A.L.R.C. has just come out with an important report proposing the introduction of class actions in South Australia.

■ The A.L.R.C. supplementary report on *Complaints Against Police 2* is about to be sent to the printer. In advance of legislation, the A.C.T. Police in January 1978 set up an "Internal Affairs Branch" as proposed in the initial A.L.R.C. report. The Northern Territory *Ombudsman Bill* also follows A.L.R.C. suggestions to widen the Ombudsman's power to investigate complaints against individual policemen. The former Commissioner of A.C.T. Police, Mr. R. A. Wilson, declared in [1977] 1 *Crim.L.J.* 283 that the A.L.R.C. 1975 recommendations "were mostly accepted by the police forces concerned as being an impartial and effective way of handling com-

plaints against police". The supplementary report should bring the threads together.

■ On 9 February 1978 Professor R. L. Mathews visited the A.L.R.C. He is the Chairman of the Advisory Council for Intergovernment Relations in Australia. Attention was called to the lack of effective, professional machinery for developing uniform law reform in Australia. The successful operation of the United States and Canadian Uniform Law Conferences was pointed to as a model. We are still waiting for the long-promised uniform credit laws. Even agreement in principle on a new uniform companies and securities law seems to elude us. Perhaps the Advisory Council can suggest new machinery that cuts through the political and public service impediments.

■ The Canadian Human Rights Commission has commenced operation from 1 March 1978. The Chief Commissioner is Mr. Gordon Fairweather. Miss Inger Hansen Q.C. is a Commissioner with a special designated responsibility for Privacy. The A.L.R.C. has made contact with the Canadian H.R.C. and will follow the privacy machinery closely. It may have lessons for Australia's protections for privacy.

■ Essential reading for all law reformers is the new *Lawyers' Law Book* just put out by Professional Books Limited, London. The authors are Donald Raistrick and John Rees. Mr. Raistrick is the librarian of the Law Commission (Eng.). As well as collecting essential monographs, the book catalogues in the normal legal index form, all of the reports of the English Law Commission. It will be a happy complement to the Australian *Law Reform Digest* when this is completed later in 1978. It would also be useful in a professional library as a "first port of call".

## New Reports

### Australia

A.L.R.C.: W.P.8: Lands Acquisition Law, 1977.

N.S.W.L.R.C.: Annual Report, 1977.

: 28: Report on the Testator's Family Maintenance & Guardianship of Infants Act 1916.

Q.L.R.C.: W.P.19: Proposals to amend the practice of criminal courts.