

of Laws) Bill 1989 (Cth) attempts to resolve these doubts. It provides that the Commonwealth and its instrumentalities — that is, agencies and corporations created by Commonwealth law for a public purpose — will not be subject to any Act or subordinate legislation of the Commonwealth, a State or a Territory, except as provided by the Bill.

*commonwealth laws.* The Bill makes the Commonwealth government subject to a Commonwealth law which:

- expressly binds the Commonwealth or the Crown in right of the Commonwealth either expressly or by necessary implication
- concerns procedures in civil litigation
- is a 'codified tort law' or
- is declared by the Regulations to bind the Commonwealth.

A codified tort law is a law dealing with

- contributory negligence
- contribution between tortfeasors or
- survival of courses of action.

*commonwealth subject to state laws.* The Commonwealth will also be subject to certain State laws, to the same extent as the State or Crown in right of that State is subject to those laws. They are:

- codified tort laws
- laws with respect to procedure in civil litigation or
- a law specified in the regulations.

The regulations may also provide that the application of a Commonwealth or State law to the Commonwealth or a Commonwealth instrumentality may be modified.

*commonwealth corporation.* A Commonwealth corporation — a body incorporated for a public purpose by Commonwealth legislation — is to be treated in

the same way as other bodies corporate except where the Regulations make an exception. However, State legislation may not discriminate against Commonwealth corporations.

*challenge likely.* Although the Bill would clarify the law, some reservations have been expressed by States. Whether or not one or more States decide to challenge the legislation on constitutional grounds, the question could easily arise in private litigation involving a Commonwealth instrumentality, for example, whether or not Australia Post is required to comply with State laws regarding the disposal of hazardous waste material. The question of whether the Commonwealth may be bound by State legislation will not be determined finally by this legislation.

The Bill has been before the Commonwealth Parliament since May. If enacted, it will not come into effect until at least 3 months after the Bill receives the Royal Assent. □

## ontario lrc proposes reforms of rules on standing

*Standing:* A person's right to bring a lawsuit because he or she is directly affected by the issues raised.

Daniel Oran, *Law Dictionary for Non-Lawyers*, West Publishing Co, 1975

The OLRC's *Report on the Law of Standing* (1989) reaches some conclusions similar to those reached by the ALRC in its 1985 report ALRC 27 *Standing in public interest litigation*. The OLRC found

That fundamental change is required because the existing law of standing is seriously deficient . . .

*public nuisance.* According to the OLRC, the rule governing standing in 'public nuisance' cases is itself a public

nuisance. The Canadian courts had extended standing in some constitutional and administrative law cases, though in ways that are somewhat uncertain, but the rules relating to public nuisance cases prevent the courts from determining important issues, especially in environmental law cases. Like the ALRC, it recommends abolition of the existing rules. It proposes their replacement by an Access to Justice Act. This would give any person a prima facie right to bring an action. The defendant would be able to challenge the plaintiff's standing. In that case the court, in deciding the question of standing, would have to consider the nature of the plaintiff's interest in the outcome of the proceedings, whether other proceedings have been commenced, the fairness to persons affected, whether or not the proceedings are trivial, and the number of persons affected. These proposals would not affect rules on standing in other areas, so they may be regarded as somewhat narrower than the changes proposed by the ALRC.

*intervention.* The OLRC also considered the rights of persons who were not party to the action to intervene. (See [1989] *Reform* 80) [standing in the hot seat]) It considered that the liberalised standing rules would encourage an 'innovative and flexible use of the present intervention rule', and did not recommend any change in the law at present.

*costs.* Plaintiffs faced with the possibility of paying heavy costs would be unlikely to take advantage of the liberalised standing rules, so the OLRC made extensive recommendations for changes to the law relating to costs. These are more far-reaching than those of the ALRC.

- In some circumstances it should not be possible for the courts to order plaintiffs to pay defendants' costs, except where there is frivolous, vexatious or abusive conduct.

- The courts should have power to declare that a person is immune from having to pay costs.
- A person who is immune from costs should be enabled to enter into a contingency fee arrangement with his or her lawyer.
- In general, persons who are permitted to intervene should be immune from the payment of other parties' costs. □

victims of crime

The rain raineth on the just  
And also on the unjust fella:  
But chiefly on the just, because  
The unjust steals the just's umbrella.

Charles Bowen, Thad Stem, Jr and  
Alan Butler, *Sam Ervin's Best Short  
Stories*, 1973

Victims of crime will have the right to be informed of the details of legal action against the offender, including the outcome of the case and impending release from custody, under the Charter of Rights for Victims of Crime announced recently by the New South Wales Government.

*united nations' declaration.* The charter, is based on the Declaration of Principles of Justice Relating to Victims of Crime adopted by the United Nations in 1985 and will be applied by all government departments in NSW.

*who is a victim?* The definition of a victim of crime for the purpose of the charter will be anyone who, because of a criminal offence (whether or not anyone is convicted of the offence) suffers physical or emotional harm, loss of or damage to property, and where an offence results in death, the members of the immediate family of the deceased.