

# From the Profession

## Customary Marriage Issues in RSA

Republic of South Africa

The South African Law Commission (SALC) has released a discussion paper which recommends that the law grants full recognition of customary marriages, reports *De Rebus* (October 1997).

This discussion paper offers a number of recommendations which are aimed at recognising traditional marriage, and in doing so, improving the lot of women and children within these marriages.

Reform in matters of spousal relations is seen as a necessary move to give effect to the principle of equal treatment found in the South African Constitution and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Issues such as bridewealth, registration of the marriages, consent of both spouses, minimum ages of consent to marriage and polygyny are raised for discussion. Of particular importance in the formulation of legislation is the status of women and children, and the paper raises many issues with regard to the legal standing of a woman within customary marriage. Proposed legislation in this area will necessitate change to laws in KwaZulu-Natal and Transkei which declare that wives are under the

marital power of their husbands.

The matter of divorce in customary marriage is also addressed as the paper recommends that there be but one ground for divorce - irretrievable breakdown of the marriage. "In exercising their discretion under this principle, the courts should take into account pre-divorce conciliation procedures available in customary law and appropriate cultural norms governing marital behaviour. They should not, however, favour husbands at the expense of wives," suggests one recommendation.

Adherence to s 28(3) of the (South African) Constitution and United Nations Convention on the Rights of the Child requires that the basic principle of best interests of the child in all aspects of custody, guardianship and access be the guiding principle. This would necessitate recognition of the equal rights of mothers to children.

The SALC has called for thorough debate on the issues raised. In welcoming the release of the paper, the Deputy Minister of Justice, Dr Manto Tshabala-Msimang said that she viewed its completion as a significant step towards the finalisation of long-awaited legislation in this area.

## NZ Lawyers Pay Up

New Zealand

NZ lawyers have paid \$28 million in a special Fidelity Fund levy, following the Renshaw Edwards defalcation.

The 1992 New Zealand Law Society Council imposed a \$10,000 (plus GST) levy on 2814 solicitors in practice on their own account, with most practitioners opting to pay the levy in 5 annual instalments of \$2000.

The NZLS President, Mr Ian Haynes was fulsome in his praise of the profession in its record of payment, as by October this year, all but \$137,500 had been collected. Of this \$64,000 has been written off as unrecoverable.

"The practitioners who had to pay the special levy were in no way associated with the problems caused by Renshaw and Edwards, yet they had to put their hand in their pockets to solve them," said Mr Haynes. He characterised the payment

record as remarkable, and one the profession could be proud of. Mr Haynes also paid tribute to contributors to the "barristers fund" - a special assistance fund which made loans and grants to practitioners who were hardest hit by the levy.

## Australasian Mutual Recognition

The *Trans-Tasman Mutual Recognition Act 1997* was passed by the NZ Parliament and received Royal Assent in August 1997.

Following enactment of counterpart legislation in Australia (expected to occur early in 1998), barristers and solicitors from both countries will be able to apply for automatic admission in each others' countries, according to *Law Talk* (December 1997).

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