The Court must be satisfied by general information or through the assistance of experts before the presumption will apply. The presumption forestalls difficult questions as to whether hearsay applies.

In *R. v. Pettigrew*, evidence was given to show the nature of the operations of the computer. Evidence may have been given by someone who could swear as to the correctness of the programme and the reliability of the computer. Hearsay in the form just discussed may not have arisen. Smith argued that there was no hearsay and so the print-out should have been admitted. It is submitted that if the legislation that modifies the rule against documentary hearsay adverts expressly to machine information then it would be applicable to machine information even if machine information was not hearsay.

The Chairman of the Australian Law Reform Commission has considered the question of computers and evidence. His Honour said:

> The advent of computing, photocopying and electronic communication and their widespread use throughout the community render the maintenance of the hearsay rule in its present form unreasonable and indeed impossible.[41]

These words are based on a conclusion that machine information is hearsay.

It has been submitted that machine information is hearsay. Hearsay would appear to arise also when there is no testimony as to the accuracy of a scientific instrument or the correctness of a programme and a statement from one of these is tendered for the truth of its contents.

THE USE OF COMPUTERS BY EXPERTS

Computer analysis has been used by expert witnesses for a number of years. In general, the courts do not reject the testimony of experts on the grounds that he has used computers or some scientific instrument. The expert is considered to have taken into account issues such as accuracy or the correctness of a programme. This is part of his expertise.[42] However, the case of *English Exporter (London) Ltd v. Eldonwall Ltd*[43] has been cited[44] as expressing a contrary view. Megarry J. ruled that when an expert valuer gives evidence as to comparable values he must confine his examples to those which can be proved by admissible evidence.[45] The judgment contains a discussion of experts and the way in which they develop their facts. It was acknowledged that they would learn much from text books, journals and the like.[46] This attitude to experts is an anomaly. The case highlights the inconsistency of the law in this area.

[41] Kirby M. D., 'The Computer, the Individual and the Law' 1981 (55) *Australian Law Journal* 433, 451.
[42] Law Reform Commission of N.S.W., *op. cit.* 43 para. 29.
[43] (1973) 2 W.L.R. 435.
[44] Law Reform Commission of N.S.W., *op. cit.* 43 para. 29.
[45] (1973) 2 W.L.R. 435, 440.
[46] *Ibid.* 439.

CONCLUSION

An analysis has been made of the question as to whether or not machine information is hearsay. If it is not, it will be necessary to decide whether or not machine information ought to be removed from the ambit of legislation directed toward modifying the rule against documentary hearsay.

It has been suggested that questions of hearsay do arise in the context of machine information, scientific instruments and indeed in questions of computers and computer programmes generally. These questions have been unrecognized or tacitly ignored. They must be considered before any attempt can be made to develop a doctrine of law relating to all aspects of evidence arising from computer technology. An assessment of the rule against hearsay must be made in light of new technology.

Commonwealth sphere. Through the reports of its standing committees it has augmented the general body of learning on current constitutional issues. The fact nevertheless remains that the process has not yet led to much by way of constitutional amendment.

At least one necessary change can be identified. The Commonwealth Government should make a commitment to submit to referendum resolutions passed by the Convention with specified and suitably representative majorities. The quality of the deliberations of the Convention would be improved if the likelihood that any resolutions passed would be submitted to referendum was increased. In addition, a change of this nature would fill a serious gap in the existing Convention procedures.

The practical effect of section 128 of the Constitution is that only the Commonwealth Government can initiate referendum proposals. Until now, governments of both political persuasions have stressed that they do not regard themselves as bound to act on Convention resolution. The result has been that, although many resolutions have been passed, only four have been put to referendum,[3] two of them in a form significantly different from the original resolution. There was no consultation with representatives of the Convention on the decision to put these, or not to put others, to the people. In effect, once the Convention has made a recommendation, no procedure whatsoever exists to guide it through the remaining stages to formal constitutional change.

It has sometimes been suggested that the Convention should be popularly elected, rather than appointed by the Parliaments. A parallel is drawn with the Conventions of the 1890s: the draft bill prepared by the popularly elected Convention of 1897-98 eventually was enacted whereas the draft of 1891, the product of an appointed Convention, was not. The parallel is not helpful. Another, most important, factor in the success of the 1897 Convention was the Enabling Acts passed by four of the participating colonies which required the draft bill to be submitted to referendum. It has been argued earlier that the lack of a follow-up procedure of this kind is one of the major problems of the current constitutional Convention.

It may be questioned whether a popularly elected Convention would be more broadly representative than the Convention at presently constituted. The major political parties inevitably would sponsor teams of candidates which would be likely to monopolise the vote. For the most part these candidates would be practising politicians, albeit not necessarily current members of a Parliament. If the aim is to improve the quality of the delegations it could be achieved under the present system with greater selectivity in the choice of delegates. If the aim is to introduce persons outside the Parliaments and local government into the Convention to give it a broader base, this also could be achieved without undue disturbance to the existing framework. For example, each delegation might be permitted to nominate two or three additional members from outside the Parliament who could contribute to the work of the Convention through their particular knowledge and experience. The existing tendency to involve non-parliamentarians in the work of the standing committees also could be encouraged and increased.

It has been announced that another plenary session of the Convention will be held in 1983. Its first priority should be to revise and clarify its own procedures to ensure that its deliberations on the many substantive items that will appear on the agenda are not wasted.

[3] Constitution Alteration (Retirement of Judges) 1977; Constitution Alteration (Referendums) 1977; Constitution Alteration (Senate Casual Vacancies) 1977; Constitution Alteration (Simultaneous Elections) 1977. The last proposal failed. It obtained an overall majority of 62 per cent, but received majorities in only 3 States.

HADDON STOREY: VICTORIAN ATTORNEY-GENERAL 1976-1982

BY RICHARD CULLEN*

INTRODUCTION

Victoria's first Labor government for 27 years came to office in 1982. Law reform was a significant plank in the ALP platform and it will doubtless form a focus for the Cain government.

The change of administration to a government with a well developed law reform program would seem to make a review of the out-going administration's reform achievements particularly timely.

In 1976 the Hamer government was comfortably returned at the polls and following the retirement from politics of the Hon. Vernon Wilcox, the Hon. Haddon Storey Q.C. was appointed by the Premier as Attorney-General. He was also appointed Minister for Federal Affairs. It is from this time that the Liberal government could be considered to have actively involved itself in a recognisable reform program. Critics would doubtless be reluctant to concede that measures initiated by the last administration could be construed as a reform program but an examination of law reform initiatives, particularly over the last six years, reveals that steady, sometimes controversial, progress has been made in a number of areas.

Primary responsibility for managing the majority of reforms herein discussed, lay with the Attorney-General. Before we turn to the matters to be reviewed, Haddon Storey's background is deserving of brief examination. He was educated at Scotch College and graduated from Melbourne University LL.B., and LL.M. in 1952. After graduation, articles and a short period as a solicitor, Mr Storey went to the bar. In 1971 he took silk. In 1971 he also entered Parliament as MLC for the blue ribbon province of East Yarra. From 1971 until 1976 he was a member of the Statute Law Revision Committee and a member, then Chairman of the Liberal Party Law Committee. From its inception in 1969, he was a member of the Molomby Committee on Consumer Credit. The report of this committee, tabled in the Victorian Parliament in 1971 formed the basis of one of the out-going government's major enactments, the consumer credit legislation package.

ADMINISTRATIVE INITIATIVES

Included in the program which the Attorney-General oversaw were a number of what can best be termed administrative reforms.

An early step was to set in train the establishment of the Law Department's first policy and research division. Another step taken was to actively support as well as help fund from 1981, the program established by the Melbourne University Law Faculty in 1979 to study intergovernmental financial relations. 1981 also saw funding made available to undertake computerization of the Titles Office Register. This is a long term project (expected to cost around $10m) of little vote catching but great practical importance. That the exercise has already been delayed too long is evidenced by the fact that in the near past up to 100,000 lodged but unregistered instruments have accumulated at the Titles Office. The first stage of computerization is designed to deal with this processing backlog.

A number of measures were instituted to tackle the chronic legal administrative problem of delays in court hearings. The most significant was the introduction of the concept of regionalization of Magistrates Courts. The view was taken that whilst delays in the higher courts were bad and received considerable publicity, the vast bulk

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