

Since the Act was proclaimed in November 1970 two applications under it have failed. One of the cases<sup>8</sup> was dismissed because the applicant was considered to have brought on the attack himself by his own provocation. Although the provocation was not sufficient to thwart a conviction of the offender it was sufficient to deny him compensation for the commission of that offence.

It will be some time before a case law on the subject evolves, but some indication of the sums awarded by the English tribunal are reported in various journals.<sup>9</sup>

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#### CRIMINAL DAMAGE ACT 1971 (UNITED KINGDOM)

The English bequeathed a large quantity of unnecessarily complex legislation to their colonies. In one form or another the Malicious Damage Act 1861 was adopted.<sup>1</sup> As part of a general overhaul of their criminal legislation, the English law has been simplified. Section 1, Criminal Damage Act 1971 creates two comprehensive offences of destroying or damaging property.<sup>2</sup>

- S. 1(1) A person who without lawful excuse destroys or damages any property belonging to another intending to destroy or damage any such property or being reckless as to whether any such property would be destroyed or damaged shall be guilty of an offence.
- (2) A person who without lawful excuse destroys or damages any property, whether belonging to himself or another—
- (a) intending to destroy or damage any property or reckless as to whether any property would be destroyed or damaged; and
  - (b) intending by the destruction or damage to endanger the life of another or being reckless as to whether the life of another would be thereby endangered;
- shall be guilty of an offence.

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<sup>8</sup> Unreported, No. 2208 of 1972.

<sup>9</sup> Particularly Current Law and the Criminal Law Review; see Criminal Injuries Compensation Board 7th Report 1971 Cmnd. 481; a third application under the Act was reported in The West Australian on October 25, 1972.

<sup>1</sup> Cf. ss. 441-464, Criminal Code (W.A.).

<sup>2</sup> See Samuels, *Criminal Damage Act 1971* [1971] Crim. L. Rev. 559; and Davies, *Criminal Damage Act 1971* (1971) 115 S.J. 696 for fuller summaries of the Act.

The common law offence of arson has been abolished (s. 11(1)) and been replaced by an offence of destroying or damaging property by fire (statutory arson) (s. 1(3)). A Law Commission proposal to abolish the offence was not adopted.<sup>3</sup>

The Act creates two additional offences: threatening to destroy or damage property (s. 2); and possessing anything with intent to destroy or damage property (s. 3).

The maximum punishment for arson is life imprisonment (s. 4(1)) and for any other offence is ten years' imprisonment (s. 4(2)). Section 5 retains all existing defences but also provides for certain special lawful excuses: where the owner consented to the destruction or damage, and where the accused had an honest belief that it was reasonable to destroy or damage the property. For the purpose of these defences it is immaterial whether a belief is justified or not, if it is honestly held.

Section 8 permits the court to award compensation in respect of the whole or part of the loss or damage to the property. The only limit to the amount that may be awarded is that it cannot exceed £400.

For the purposes of the Act, an offence may be committed against both real and personal property (s. 10).

#### CRIMINAL CODE AMENDMENT ACT 1969-70 (CANADA)

The Canadian Criminal Code has been amended by the addition of three new sections relating to Hate Propaganda. Section 267A makes it an offence to advocate or promote genocide. Section 267B makes it an offence to incite hatred against any identifiable group where such incitement is likely to lead to a breach of the peace. It is also an offence to promote hatred by communicating statements, other than in private conversation, against any identifiable group. The section provides for certain defences to such a charge which include good faith and the public interest. Section 267C enables a judge to authorize seizure of publications containing hate propaganda.

It is a sign of the times that apparently the traditional offences of sedition<sup>1</sup> and criminal libel<sup>2</sup> have been found inadequate.

<sup>3</sup> Law Commission Report no. 29.

<sup>1</sup> Sections 60-62, Criminal Code (Canada); cf. ss. 44-53, Criminal Code (W.A.).

<sup>2</sup> Sections 260-281, *idem*; cf. ss. 345-369, Criminal Code (W.A.).