

## RECENT PUBLICATIONS BY LAW REFORM BODIES WORLDWIDE

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This section of the *Journal* provides summaries of recent publications by law reform bodies worldwide, with the aim of assisting Irish Judges in their work. The issues that arise in the Irish courts are not generally unique to Ireland and it is always useful to see how cognate jurisdictions view problems. The analysis provided and the solutions suggested hold their own intrinsic interest and may often shed light on similar matters that come before our courts. This Update will henceforth become a regular feature of the *Journal* and will be compiled by research staff dedicated to this end. Web site links are provided to the relevant publications to enable ease of access as are the contact details of the law reform bodies in question. The Irish entries were submitted by Mr. Ray Byrne, Director of Research at the Law Reform Commission of Ireland to whom we are most grateful.

### I. CRIMINAL LAW

#### *A. Ireland*

- ***Consultation Paper on Homicide: The Plea of Provocation.***

The Law Reform Commission of Ireland. (LRC CP 27-2003) (October 2003).

This Consultation Paper, which is part of a series on aspects of the law of homicide, examines the plea of provocation, which operates as a partial defence to murder, reducing the offence to manslaughter. The Paper reviews the existing law in Ireland, which currently applies a subjective test for establishing the plea of provocation, thus largely reducing the issue to one of whether the accused lost control. The Paper provisionally recommends that a version of the objective

test, which focuses on standards of conduct which could fairly be expected of accused persons in response to untoward provocative behaviour – and which is applied in almost every other common law jurisdiction - should be introduced. The Paper accepts that the objective test should take account of the accused's personal characteristics, but should not feature in assessing the power of self-control of the ordinary person. The Paper also recommends a more flexible approach to the traditional requirement of provocation followed almost immediately by killing, which would have a particular relevance to a violent domestic relationship.

Website Address:

[http://www.lawreform.ie/Provocation%20Consultation%20Paper\\_final%20printer%20version\\_%5B20.pdf](http://www.lawreform.ie/Provocation%20Consultation%20Paper_final%20printer%20version_%5B20.pdf)

• *Consultation Paper on Corporate Killing.*

The Law Reform Commission of Ireland. (LRC CP 26-2003) (October 2003).

This Consultation Paper deals with the liability of corporations for the death of human persons arising from gross recklessness. The Commission accepts that it is widely perceived that the current law does not deal adequately with corporations and the persons who control them in circumstances where corporate wrongs result in death. The Paper reviews the current law and provisionally recommends that a new offence of corporate killing should be introduced, to be prosecuted on indictment only, where gross recklessness of a 'high managerial agent' involving a substantial risk of causing serious personal injury is a cause of death. The offence would apply to 'undertakings, which would include public sector and private sector corporate entities and also unincorporated entities. It would provide for unlimited fines on corporations and other ancillary penalties such as community service orders. A separate offence for high managerial agents would carry a penalty of imprisonment for up to 5 years and disqualification from holding high management office.

Website Address:

<http://www.lawreform.ie/6%20Oct%20Final%20CP.pdf>

- ***Report on Penalties for Minor Offences.***

The Law Reform Commission of Ireland. (LRC 69-2003) (February 2003).

This Report, which follows from a Consultation Paper of March 2002 (LRC CP 18-2002), recommends that, ideally, a term of imprisonment of more than six months should only apply following a jury trial, with a minority recommending that this be implemented in legislation. The Report recommends that the current maximum permissible fines for minor offences conventionally included in legislation could be increased, having regard to the changes in the value of money. The Report also recommends that, where fines are imposed, the means of a defendant, whether an individual or a corporate body, should be taken into account. For corporate offenders, the Report recommends that the maximum fine possible should be increased by a factor of three times that applicable to an individual.

Website Address:

<http://www.lawreform.ie/REPORT%20ON%20MIN%20OFFS.pdf>

### *B. England and Wales*

- ***Consultation Paper on Partial Defences to Murder.***

The Law Commission for England and Wales. (CP No 173) (October 2003).

In this Consultation Paper the Law Commission considers the law and practice of the partial defences to murder provided for by sections 2 (diminished responsibility) and 3 (provocation) of the Homicide Act, 1957, with particular regard to the impact of the partial defences in the context of domestic violence. The Paper also considers whether there should be a partial defence to murder in circumstances in which the defendant, though entitled to use force in self-defence, killed in circumstances in which the defence of self-defence is not available because the force used was excessive. The Commission has invited the Royal College of Psychiatrists to submit a paper reflecting its views on: the merits of the current test of diminished responsibility; the inter-relationship between insanity, diminished responsibility and fitness to plead. The Commission has

also commissioned a public opinion research survey which is being carried out by Professor Barry Mitchell of Coventry University. In addition, Professor Ronald Mackay of De Montfort Law School, De Mont University, Leicester is currently undertaking a research project on behalf of the Nuffield Foundation in relation to the defences of diminished responsibility and provocation, which involves extracting data from a sample of cases over a five year period. The Commission are planning to participate in a number of meetings arranged under the auspices of professional, academic and other interested bodies. It is envisaged that these meetings will provide the opportunity to digest the contents of this Consultation paper.

Website Address:

<http://www.lawcom.gov.uk/files/cp173.pdf>

### *C. South Africa*

• *Report on the Use of Electronic Equipment in Court Proceedings (Postponement of Criminal Cases via Audiovisual Link).*

South African Law Commission. (Project 113) (July 2003).

This Report considered the introduction of new rules of evidence in criminal cases, principally as a result of technological developments in court proceedings. In particular, the office of the National Director of Public Prosecutions identified the transportation of accused persons awaiting trial to the courts for the purpose of postponements as a problem area in that substantial expenses are incurred in the process and it also provided opportunities for prisoners to escape. It also considered whether or not the proposed procedure should also be made available to appeal hearings. The Report concluded that a person over the age of 18 years who has been remanded in custody for the alleged commission of an offence pending trial, should not be required to physically appear before the Court for the purpose of a further remand of the case; an application to be released on bail; an application for leave to appeal; or an appeal or a review. In these circumstances, the detainee may appear before the court by audiovisual link, unless the court directs otherwise due to exigent circumstances.

Website Address:

<http://wwwserver.law.wits.ac.za/salc/report/pr113report.pdf>

#### *D. New South Wales*

- ***Report on Questioning of Complainants by Unrepresented Accused in Sexual Offence Trials.***

New South Wales Law Reform Commission. (Report 101) (June 2003).

This Report considered whether an un-represented accused person charged with a sexual offence, should be permitted to cross-examine a complainant. In particular it considered whether the courts should have the authority to appoint a person other than an unrepresented accused to cross-examine complainants in sexual offence cases whether or not the accused consents. The Report recommends that unrepresented accused persons should be prohibited from personally cross-examining a complainant in a sexual offence proceeding.

Legislative Action: Criminal Procedure Amendment (Sexual Offence Evidence) Bill, 2003.

Website Address:

<http://www.agd.nsw.gov.au/lrc.nsf/pages/r101toc>

#### *E. New Zealand*

- ***Report on Court-Imposed Fines: A Survey of Judges.***

New Zealand Ministry of Justice. (Compiled by Wendy Searle) (July 2003).

In 2001 a postal survey was sent to all New Zealand District Court Judges, the purpose being to examine how court-imposed fines are being implemented. In particular, the research was designed to identify judicial perceptions of fines and to assess perceptions of people's ability to pay fines. The survey also sought to identify factors involved in determining the amount of fines imposed for offences, and practices and policies which were limiting the imposition of fines and the ability to adjust the amount of fines imposed. The results of the survey shows that Judges consider court-imposed fines to be a crucial sentencing tool; they are a useful

punishment for first time and minor offenders especially road traffic offences.

Website Address:

<http://www.justice.govt.nz/pubs/reports/2003/court-fines/court-imposed-fines-report.pdf>

• *Report on Talking About Sentences and Crime: The Views of People on Periodic Detention.*

New Zealand Ministry of Justice. (Compiled by Wendy Searle et al) (July 2003)

This survey was conducted in 2000 and examined the views of a cross section of offenders who were serving sentences of periodic detention. It presents the views of the criminal justice system from the perspectives of those subject to the system and experiencing first hand one of its sentencing options. The importance of understanding offenders' attitudes to and experiences of sentences is that it tests assumptions criminal justice policies makes about the punitive nature of those sentences and their potential deterrent effect and rehabilitative affects. The Report of this survey found that a significant minority of offenders surveyed indicated a preference to serve a short custodial sentence rather than a fine or a sentence of periodic detention. Needless to say, sentences of longer terms of imprisonment were rated by the prisoners as being the most difficult to endure.

Website Address:

[http://www.justice.govt.nz/pubs/reports/2003/offender-attitudes/Offender\\_Attitudes\\_To\\_Periodic\\_Detention.pdf](http://www.justice.govt.nz/pubs/reports/2003/offender-attitudes/Offender_Attitudes_To_Periodic_Detention.pdf)

• *Discussion Paper on Draft Principles of Best Practice for Restorative Justice Processes in the Criminal Court.*

New Zealand Ministry of Justice. (May 2003).

The objective of this Discussion Paper is to identify overall levels of support for draft principles of best practice for restorative justice processes in the New Zealand criminal courts. It also aims to generate some discussion on issues particular to individual principles, as well as on more general areas of debate. Comments and submissions to be received by 9th June 2003).

Website Address:

[http://www.justice.govt.nz/pubs/reports/2003/restorative-justice/RJ\\_Discussion\\_Paper.pdf](http://www.justice.govt.nz/pubs/reports/2003/restorative-justice/RJ_Discussion_Paper.pdf)

• *Commissioned Research on the Needs of Pacific Peoples when they are Victims of Crime.*

New Zealand Ministry of Justice. (Compiled by Dr 'Ana Hau'alofa'ia Koloto) (May 2003).

The principal objectives of this Commissioned Research were to gather comprehensive information relating to victims of crime amongst the six main Pacific ethnic groups, and to ascertain the use and appropriateness of informal and formal support services for Pacific victims. More specifically, the research was designed to identify health-related needs and appropriate measures to meet those needs; to identify appropriate support mechanisms provided by criminal justice agencies; and to establish where additional support might be required. The research found that Pacific males were more likely to be the victims of violence, which occurred at night in public places such as bars, or nightclubs, involved alcohol, and were unlikely to be reported to the police. Females surveyed were more likely to be the victims of family violence, which in many cases was 'on-going', the offences being committed by their male partners who tended to be of the same ethnicity. Victims of family violence were lives likely to seek medical attention. The research suggested that the needs of Pacific victims of crime may be categorised as: physical and safety; financial; cultural and social; emotional and spiritual; and information and feedback from police.

Website Address:

<http://www.justice.govt.nz/pubs/reports/2003/pacific-victims/pacific%20people%20victims%20of%20crime.pdf>

• *New Zealand National Survey of Crime Victims 2001.*

New Zealand Ministry of Justice. (Compiled by Allison Morris et al) (May 2003).

The New Zealand National Survey of Crime Victims (NZNSCV) is a comprehensive survey that explores the experience of crime victimisation of approximately 5000 randomly selected New

Zealanders aged 15 years or more. The survey has become a significant source of information for the New Zealand criminal justice system with regard to levels of victimisation (including family violence), risks of victimisation, levels of worry about crime, reporting victimisation to the Police, satisfaction with victims' services, and levels of security. The survey found that assaults and threats made up almost half of all victimisations reported in 2001; approximately 4% of the people surveyed had been victimised on five or more occasions, and almost two-fifths of these victimisations were reported to the police. However, there was a considerable variation in reporting rates between different types of victimisation.

Website Address:

[http://www.justice.govt.nz/pubs/reports/2003/victims-survey/National\\_NZ\\_Survey\\_Crime-Victims.pdf](http://www.justice.govt.nz/pubs/reports/2003/victims-survey/National_NZ_Survey_Crime-Victims.pdf)

#### *E. Tasmania*

- ***Report on Custody, Arrest and Police Bail.***

Tasmania Law Reform Institute. (Final Report No. 1) (March 2003). This Report was published following consultation with the public and other interested participants in the Tasmanian criminal justice system. The Report focused on: the definition of being in custody; the effect of failing to give reasons for arrest; and the granting of police bail. The Report's principal recommendation is that the term 'in custody' should be extended to include suspects in the company or control of the police who are being, or are to be questioned, or are otherwise being investigated; and, who would be arrested if they attempted to leave, or in respect of whom there is sufficient evidence to justify a lawful arrest.

Website Address:

<http://www.law.utas.edu.au/reform/CustodyFinalReport.pdf>

#### *G. Queensland*

- ***Discussion Paper on the Abrogation of the Privilege against Self-Incrimination.***

Queensland Law Reform Commission. (WP No. 57) (August 2003).



The privilege against self-incrimination (which applies to both documents and oral testimony) is sometimes abrogated by statute. The Queensland Law Reform Commission was requested *inter alia* to: examine the basis for abrogating the privilege; whether there is ever a justification for the abrogation of the privilege, and if so, in what circumstances and before what forum. Comments and submissions to be received by November 7, 2003.

Website Address:

<http://www qlrc.qld.gov.au/publications/wp57.pdf>

#### *H. Victoria*

- ***Inquiry into Administration of Justice Offences.***

Victorian Parliament Law Reform Committee. (ISBN 0731353951) (August 2003)

The purpose of this inquiry is to consider the current state of law in Victoria in relation to administration of justice offences (such as perjury, perverting the course of justice, falsifying evidence and threatening witnesses) and whether these laws should be amended, and in what way, having particular regard to interstate laws and the recommendations of the Model Criminal Code Officers Committee Discussion Paper on Administration of Justice Offences (July 1997). The Committee is required to report to Parliament by 31st December 2003.

Website Address:

<http://www.parliament.vic.gov.au/lawreform/>

## II. ADMINISTRATIVE LAW

### *A. Ireland*

- ***Consultation Paper on Public Inquiries Including Tribunals of Inquiry.***

The Law Reform Commission of Ireland. (LRC CP 22-2003) (March 2003).

This Consultation Paper comes against the background of the

establishment in Ireland in recent years of numerous inquiries into various matters of public concern, ranging from major disasters involving loss of life to allegations of wrongdoing in the land development and planning process. Most of these have been conducted under the Tribunals of Inquiry (Evidence) Act, 1921, as amended, which is perceived to produce inquiries that are excessively costly. The Paper provisionally recommends the enactment of legislation providing for a private, low-key inquiry, which would focus on the wrong, or malfunction that occurred in a system rather than on individual wrongdoing. It also recommends procedural changes concerning the selection of an appropriate form of inquiry, drafting terms of reference, the rights of individuals and organisations to be heard and represented and the awarding of legal costs. It also makes provisional recommendations on the effect of public inquiries on downstream civil and criminal proceedings.

Website Address:

<http://www.lawreform.ie/PUBLIC%20INQUIRIES%20A.pdf>

• *Consultation Paper on Judicial Review Procedure.*

The Law Reform Commission of Ireland. (LRC CP 20-2003) (January 2003)

This Consultation Paper examines the judicial review procedure, which is a way of securing administrative justice in individual cases and also, more widely, of calling ministers, local authorities and other public bodies to account. The Paper examines the long-established conventional judicial review procedure as well as numerous special statutory regimes in such fields as planning and refugees. In conventional judicial review, the Paper provisionally recommends retention of the leave stage and the ‘arguable case’ test. It also recommends that, in relation to the availability of alternative remedies, a middle ground approach be applied. In the context of statutory schemes for judicial review, the Paper provisionally recommends the retention of the leave stage and of the higher standard of ‘substantial grounds,’ which it considers is justifiable. A number of recommendations concern time limits in judicial review procedure, greater use of case management and the awarding of costs. The Paper does not recommend the introduction of an

‘Administrative Court’ or of a ‘single order’ in judicial review cases.

Website Address:

<http://www.lawreform.ie/Consultation%20Paper%20on%20Judicial%20Review%20Procedure.pdf>

### *B. England and Wales*

• ***Report on Land, Valuation and Housing Tribunals: The Future.***

The Law Commission for England and Wales. (Law Com No. 281 / Cm 5948) (September 2003).

The Leggatt Report (2001) on the review of tribunals, noted that in the context of land, property and housing tribunals ‘there are confusing overlaps of jurisdiction between courts and tribunals, as well as between tribunals’ and that ‘an expert decision-making forum, without overlapping jurisdictions, is a precondition of executive procedural reform’. The Law Commission was asked to work out a ‘comprehensive solution’ for land, property and housing tribunals, with a view in particular to removing any jurisdictional overlaps and any scope for forum shopping. The Report recommends that the present land, valuation and housing tribunals should be consolidated into a common Property and Valuation Tribunal (PVT) and a reformed Lands Tribunal.

Website Address:

<http://www.lawcom.gov.uk/files/lc281.pdf>

• ***Final Report: Towards a Compulsory Purchase Code: (1) Compensation.***

The Law Commission for England and Wales. (Law Com No. 286) (December 2003).

The current law of compulsory purchase is a patchwork of diverse rules, derived from a variety of statutes and cases over more than 100 years, which are neither accessible to those affected, more readily capable of interpretation save by specialists. This Report carries forward issues by the first of two Consultative Reports, in 2002, for the reform of the law relating to compensation for compulsory purchase, and to set out the basis for a Compensation Code. (A second Report will be published in 2004 on compulsory

purchase procedure, dealing with the issues contained in the second Consultative Report 2002). This Report presents a Compensation Code as an indicative framework for possible future legislation, designed to maintain, and build on, the main features of the existing law with a simpler and more logical structure. Its essential objective is clarification of principle.

Website Address:

<http://www.lawcom.gov.uk/files/lc286.pdf>

### *C. Tasmania*

• ***Report on the Commissions of Inquiry Act, 1995.***

Tasmania Law Reform Institute. (Final Report No. 3) (August 2003).

The purpose of this Report was to examine and report on the operation of the Tasmanian Commissions of Inquiry Act, 1995 and to examine the need for any extension of the powers of a Commission of Inquiry and to make recommendations for any necessary change. A Commission of Inquiry is a body established to inquire into and report upon particular affairs of a State, which are of public concern by conducting a public inquiry. Commissions of inquiry are established to provide independent investigation of matters of public concern and to provide impartial advice on a wide range of technical and scientific matters. Typically they arise out of some kind of scandal or disaster. Commissions of Inquiry are a recognized part of the process of executive government. Despite their critics, commissions of inquiry are considered to be independent of the Executive even though the Executive establishes them. A Commission of Inquiry is not a court of law, even though it has many similar powers and may often be presided over by a member or former member of the judiciary. An important difference between a Commission of Inquiry and a court is that Commissions of Inquiry are not bound by the normal rules of evidence. A Commission, for example, may receive hearsay evidence and inform itself on any matter as it considers appropriate. This Report *inter alia*, recommends that the Commissions of Inquiry Act, 1995, be amended so that on the application of a Commissioner of Inquiry, a

Magistrate may be granted the power to issue a warrant for the use of listening devices to a Commissioner where the Magistrate is satisfied that the Commissioner holds a reasonable belief that the use of such devices is necessary and appropriate to obtain evidence in relation to a matter relevant to the inquiry.

Website Address:

<http://www.law.utas.edu.au/reform/ComInquiryFinalRepA4.doc>

### III. COMMERCIAL LAW

#### *A. England and Wales*

##### • *Joint Report on Partnership Law.*

The Law Commission for England and Wales & The Scottish Law Commission.

(Law Com No. 283 & Scot Law Com No. 192) (November 2003). Partnership is the simplest form of combination to carry on a business, requiring no formalities and no registration. A Partnership is a very flexible arrangement and is presently governed by the Partnership Act, 1890. However, the Law Commission considers that it is now due for replacement. Under English law, although the partners are agents of each other, the partnership does not exist as a legal entity. Under Scots law a partnership is a legal entity, but the partners have the same unlimited liability towards those who deal with it. The Law Commission considers that it would be much more satisfactory in today's world that a partnership should be a legal entity, and propose that there should be a new Partnership Act under which partnerships in England and Wales would become legal entities. This Joint Report also makes proposals for recommendations with regard to: the need for flexibility, reflecting the difference in size and nature of partnerships; a list of things which will cause the break up of a partnership; reform of the Limited Partnership Act, 1907. The Joint Report also includes a Draft Partnership Bill in Appendix A.

Website Address:

<http://www.lawcom.gov.uk/files/lc283-2.pdf>

*B. British Columbia*

• ***Report on the Uniform Liens Act.***

British Columbia Law Institute. (BCLI Report No. 23) (January 2003).

The law of liens provides a right to retain the property of another to secure payment of a debt or performance of an obligation. British Columbia law governing the commercial liens of repairers, storers and common carriers no longer provides appropriate security as it is out of date, inflexible and inefficient. This Report considers the revision of the law governing repairers', storers' and commercial carriers' liens. The Report concludes that a new legislative framework is required to address the legal difficulties, which exist in relation to the liens of repairers, storers and common carriers, and that existing legislation and common law should be replaced by a single comprehensive statute in the form of the Uniform Liens Act.

Website Address:

[http://www.bcli.org/pages/projects/liens/Uniform\\_Liens\\_Act.pdf](http://www.bcli.org/pages/projects/liens/Uniform_Liens_Act.pdf)

• ***Consultation Paper on Builders Liens After the Shimco Case.***

British Columbia Law Institute. (September 2003).

In *Shimco Metal Erectors Ltd. v. Design Steel Constructors Ltd.* [2002] B.C.S.C. 238, the British Columbia Supreme Court dismissed an application to extinguish the lien rights of a lien claimant that failed to comply with certain provisions of the Builders Lien Act 1997. The court concluded that a separate lien exists with respect to the holdbacks that must be maintained by owners and contractors under the Act. This separate lien against the holdback survives the extinction of the lien against the land and improvements. Moreover the lien against the holdback escapes the registration that is required to perfect a lien against other assets related to the improvement. In this Consultation Paper the British Columbia Law Institute concluded that legislative action is required and encouraged comments and submissions to be submitted to the Institute by 21 November 2003.

Website Address:

<http://www.bcli.org/pages/projects/builderslien/Shimco/ShimcoCP.pdf>

## IV. INSURANCE LAW

A. *New Zealand*• *Discussion Paper on Life Insurance.*

New Zealand Law Reform Commission. (Preliminary Paper 53) (December 2003).

The New Zealand Law Commission was requested to prepare a Report responding to the following Terms of Reference: ‘The Law Commission will consider and report on the framework for regulation and supervision of life insurers and life insurance products in New Zealand and the most appropriate way to regulate the provision of life insurance in New Zealand.’ Submissions should be forwarded to the Law Commission by 17th March 2004. The Law Commission will publish a report by 31st October 2004.

Website Address:

<http://www.lawcom.govt.nz> (click on publications).

B. *India*• *Consultation Paper on Revision of the Insurance Act, 1938 & the Insurance Regulatory & Development Act, 1999.*

Law Commission of India. (June 2003).

The Insurance Regulatory and Development Authority (IRDA) made a reference to the Law Commission of India to make recommendations for revision of the Insurance Act, 1938 and for consequential amendments thereto. Comments and suggestions to be received by 10th July 2003. This Paper has been divided into three parts by the Commission for easy downloading.

Website Addresses:

Part I:

[http://lawcommissionofindia.nic.in/consult\\_papers/insurance%201-27.pdf](http://lawcommissionofindia.nic.in/consult_papers/insurance%201-27.pdf)

Part II:

[http://lawcommissionofindia.nic.in/consult\\_papers/insurance%2028-43.pdf](http://lawcommissionofindia.nic.in/consult_papers/insurance%2028-43.pdf)

Part III:

[http://lawcommissionofindia.nic.in/consult\\_papers/insurance%2044-69.pdf](http://lawcommissionofindia.nic.in/consult_papers/insurance%2044-69.pdf)

V. LAND LAW / CONVEYANCING / SUCCESSION LAW

*A. Ireland*

• ***Report on Land Law and Conveyancing: (7) Positive Covenants over Freehold Land and other Proposals.***

The Law Reform Commission of Ireland. (LRC 70-2003) (March 2003)

This Report deals with six distinct areas of land law and conveyancing in Ireland, namely: the enforceability of freehold covenants; the definition of ‘purchaser’ under succession law; the situation where two or more joint tenants to a property die simultaneously; recommended legislation to deal with the problems associated with compulsory registration of certain property arising from the disestablishment of the Irish church in the 19th Century; the issue of a joint tenant unilaterally severing its portion of a joint tenancy; and time limits governing claims to a deceased’s estate. The Report’s recommendations are consolidated into a draft Land Law and Conveyancing Bill.

Website Address:

<http://www.lawreform.ie/Covenants.pdf>

• ***Consultation Paper on General Law of Landlord and Tenant.***

The Law Reform Commission of Ireland. (LRC CP 28-2003) (December 2003).

In this Consultation Paper the Commission has reviewed both the common law and statutes governing the general law of landlord and tenant. In doing so it has been guided by the principles adopted by the Commission and set out in the Consultation Paper on Business Tenancies (LRC CP 21-2003). The Paper deals with: the relationship of landlord and tenant; the formalities for the creation of the relationship of landlord and tenant; the position of successors in title to the original landlord and tenant; obligations in general, in particular with the issue of how far legislation should impose some obligations on the parties or provide ‘default’ provisions to operate where the parties fail to make express provision in the lease or tenancy agreement; the landlord’s obligations; the tenant’s



obligations, including such matters as rent, service charges, repairs and insurance, and enforcement of obligations; methods of determining the relationship and remedies for enforcing the relationship. The Commission welcomes submissions on the recommendations contained in this Consultation Paper, and those who wish to make submissions are requested to do so in writing by 31st May 2004.

Website Address:

<http://www.lawreform.ie/Formatted%20CP%20-%2024%20Nov%2003.pdf>

• *Consultation Paper on Business Tenancies.*

The Law Reform Commission of Ireland. (LRC CP 21-2003) (March 2003).

This Consultation Paper is part of a major research project on Landlord and Tenant Law which aims to consolidate existing landlord and tenant legislation, including publication of a draft consolidated Landlord and Tenant Bill. The Paper provisionally recommends that while a repeal of the current statutory scheme for business tenancies would not be justified, provision should be made for contracting-out where independent legal advice has been obtained in advance. The Paper also provisionally recommends: that a statutory definition of tenancy be put in place to distinguish it from other relationships, such as licences; that the State should be bound by landlord and tenant legislation; that the current arrangements on restrictions on the rights to a new tenancy be recast; that the maximum term of a new tenancy be fixed at 15 years; that new arrangements be put in place governing compensation for disturbance; that, on the issue of compensation for improvements, the law be amended so that tenants should be expected to take a more commercial view of improvements; and that new provisions concerning a landlord's arbitrary and unreasonable conduct be enacted.

Website Address:

<http://www.lawreform.ie/Business%20Tenancies.pdf>

*B. England and Wales*

• ***Report on Renting Homes.***

The Law Commission for England and Wales. (Law Com No. 284) (November 2003).

Nearly a third of the population in the United Kingdom rent their homes. However, the law regulating the relationship between landlords and occupiers has over the last 100 years become exceptionally complex, and is to be found in a tangled web of statute law and judicial decision. In 2001 the Law Commission was asked to review the law with a view to providing a simple and flexible statutory regime for both the social and private housing sectors. This Report on Renting Homes is the outcome of two consultation papers, and sets out the Law Commission's principal recommendations. The Law Commission will publish a draft Bill, which will translate these recommendations into legislative form, together with a final report, in 2004.

Website Address:

<http://www.lawcom.gov.uk/files/lc284.pdf>

• ***Consultation Paper on The Forfeiture Rule and the Law of Succession.***

The Law Commission for England and Wales. (CP No. 172) (October 2003).

The well-established common law rule, often referred to as the 'forfeiture rule' states that a person cannot inherit property from someone whom he or she has unlawfully killed. When a person dies without making a will, leaving no spouse but only a child, the law normally provides that that child should inherit. If, however, the child has unlawfully killed the dead person, the forfeiture rule overrides the normal law and the child is excluded. This Consultation Paper considers what should happen to the inheritance in these circumstances. There are three possibilities, namely: it should go to the killer's children; to other relatives; or to the State. The Law Commission welcomes comments and submissions on this Consultation Paper before 3rd January 2004.

Website Address:

<http://www.lawcom.gov.uk/files/cp172.pdf>

*C. Alberta*

- *Report on Limitations Act: Adverse Possession and Lasting Improvements.*

Alberta Law Reform Institute. (Final Report No. 89) (May 2003).

This Report considers the effect of the Alberta Limitations Act on the areas of adverse possession and lasting improvements under the Alberta Law of Property Act. In particular, it considers three closely related claims that may arise between an owner of land and certain persons found in possession of the land, namely, the owner's right to recover possession; where the owner fails to bring a claim to recover possession within the prescribed limitation period; where the owner is still within the time to recover possession but to allow the owner to do so may itself cause injustice. The Report recommends that to avoid the effect of claims being postponed by a continuing course of conduct, claims to recover possession of land should be subject to a ten year limitation period that runs from the time the owner is dispossessed. The Report also recommends that to avoid reviving stale claims after the limitation period has expired: where an owner transfers land to a donee, the donee should become the successor owner of any claim to recover possession; that re-entry to recover possession should only be effective within the limitation period; and the principle of acknowledgment should only be effective within the limitation period.

Website Address:

[http://www.law.ualberta.ca/alri/pdfs/final\\_rprts/fr89.pdf](http://www.law.ualberta.ca/alri/pdfs/final_rprts/fr89.pdf)

*D. New Zealand*

• ***Public Discussion Paper on Renovating the Real Estate Agents Act: Reasonable Offers Considered.***

New Zealand Ministry of Justice. (ISBN 0478201834) (August 2003).

The New Zealand Ministry of Justice sought views on reforming the Real Estate Agents Act 1976. While occupation licences seemed to be the most appropriate form of regulation for real estate agents, the Ministry welcomed submissions from those who thought that a case could be made for regulating real estate agents in a different way. Comments and submissions to be received by 15th September 2003.

Website Address:

<http://www.reinz.org.nz/files/Renovating-the-real-estate-agents-act.pdf>

*E. Nova Scotia*

• ***Discussion Paper on Reform of the Nova Scotia Wills Act.***

Law Reform Commission of Nova Scotia. (July 2003).

The Commission sought public commentary to assist in developing recommendations for reforming the Nova Scotia Wills Act. In particular, reference was made, inter alia, to the minimum age requirement for creating a valid will; whether the Wills Act should be amended to eliminate the possibility that it could be used to challenge the appointment of an executor who had witnessed a will; whether current provisions which, subject to certain exceptions, revokes a will upon marriage should be retained. Comments and submissions to be received by 6th October 2003.

Website Address:

[http://www.lawreform.ns.ca/Downloads/Wills\\_Act\\_DIS.pdf](http://www.lawreform.ns.ca/Downloads/Wills_Act_DIS.pdf)

## VI. TRUSTS

A. *British Columbia***• *Report on Creditor Access to the Assets of a Purpose Trust.***

British Columbia Law Institute. (BCLI Report No. 24). (March 2003).

This Report is aimed at introducing reforms in the law so as to meet contemporary requirements of trusteeship. Indeed some provisions are deemed to be so outdated as to amount to obstacles to the effective administration of trusts. The Report recommends a legislative restatement of the law, inter alia, in the following terms: "Property held on trust by a charitable corporation or a trustee for one or more specific purposes, as opposed to property held generally for the purposes of the corporation or trust, may not be seized or attached under any process at law or in equity with the object of satisfying a judgement against that corporation or trustee except to the extent that the judgement is based on a liability incurred by the corporation or the trustee in carrying out or otherwise furthering that purpose or those purposes."

Website Address:

<http://www.bcli.org/pages/projects/trustee/CreditorPurpose.pdf>

**• *Consultation Paper on A Legal Framework for Informal Public Appeal Funds.***

British Columbia Law Institute. (May 2003).

Appeals to the public for donations are a feature of everyday life. Sometimes the amount donated may well go beyond what is required to meet the original need with the result that fundraisers are left with money on their hands. This does not cause any difficulty if the terms of the appeal indicate clearly how any surplus or unused funds will be handled, assuming that donations are made with that understanding. With regard to the un-returnable portion in a case where the donors are entitled to get their donations back the courts have ruled that 'nothing can be done with it except to let it accumulate interest indefinitely or else pay it into court.' This was confirmed by the English Court of Appeal in *Re Gillingham Bus*

Disaster Fund [1958] Ch. 300; aff'd [1959] Ch. 62 (C.A.). The British Columbia Law Institute has considered the law to be clearly unsatisfactory with regard to surpluses or unusable balances in informally created public appeal funds. Comments and suggestions to be received by 31st October 2003.

Website Address:

<http://www.bcli.org/pages/projects/appealfunds/public-appeal-funds.pdf>

### *B. Alberta*

• ***Report on Enduring Powers of Attorney: Safeguards Against Abuse.***

Alberta Law Reform Institute. (Final Report No. 88) (February 2003).

The Alberta Powers of Attorney Act allows a donor of a power of attorney to provide either that the power of attorney will come into effect on the donor's mental incapacity or infirmity or that the power of attorney will continue in force despite the donor's supervening mental incapacity or infirmity. Both are classified as 'enduring powers of attorney' (EPA's) thus providing the attorney with control over some or all of the donor's property at the time when the donor is unable to supervise the attorney's activities. While the great majority of attorneys will exercise their control for the donor's benefit, a small number may abuse their powers by misapplying or misappropriating property of the donor. The purpose of this Report is to recommend amendments to the Powers of Attorney Act so as to provide safeguards against possible abuse. The Report recommends that when a donor becomes mentally incapable or infirm and the attorney intends to act under an EPA, the attorney must give notice of intention to act to specified family members; the attorney must prepare and keep a list of property and other rights over which the attorney takes control and a list of transactions involving the donor's property and rights; the attorney must also allow qualified persons to inspect the EPA and property and transaction lists at reasonable intervals and to make copies.

Website Address:

[http://www.law.ualberta.ca/alri/pdfs/final\\_rprts/fr88.pdf](http://www.law.ualberta.ca/alri/pdfs/final_rprts/fr88.pdf)

## VII. FAMILY LAW

A. *Tasmania*• *Report on Adoption by Same Sex Couples.*

Tasmania Law Reform Institute. (Final Report No. 4) (May 2003). In 2002 the Attorney-General requested the Law Reform Institute to undertake a law reform project on same sex adoptions. The terms of reference were whether the adoption legislation should be amended: firstly, to remove the requirement that an order for the adoption of a child may only be made in favour of a man and woman who are married to each other; and secondly, to permit an order for adoption to be made in favour of any couple regardless of the gender of the partners making up the couple. The Institute recommends that the Adoption Act be amended to permit a couple to apply for adoption regardless of the gender or marital status of the partners making up the couple.

Website Address:

<http://www.law.utas.edu.au/reform/AdoptionFinRepEasyPrint.pdf>

B. *New Zealand*• *Report on Dispute Resolution in the Family Court.*

New Zealand Law Commission. (Law Commission Report 82/E 3182) (March 2003).

This Report was prompted by widespread criticism of the Family Court in New Zealand. Allegations include that: the system is biased against men; without notice applications are granted too easily; where orders are made without notice it takes too long for the other party to be heard; matters generally take too long to resolve; children suffer because of these delays; and not all Family Court professionals are properly trained and skilled. The Report recommends the provision of extra efficiencies in and resources for the existing system. This will necessitate up-skilling staff which will improve efficiencies and allow staff to cope with extra workloads.

Website Address:

<http://www.lawcom.govt.nz/> (click on Publications).

*C. Hong Kong***• *Report on The Family Dispute Resolution Process.***

The Law Reform Commission of Hong Kong. (March 2003).

This Report considers the various approaches employed in resolving family disputes, in particular, the use of mediation. It recommends the strengthening of family mediation services and the enhancement of the family litigation process. The Commission's focus in reviewing this area of law was to minimise the adversarial nature of family law proceedings so as to promote the best interests of children. It is also believed that emotional distress experienced by the parties to family law proceedings can be greatly reduced if mediation as opposed to the courts is used. The Report recommends that access to mediation services should be an integral part of the Family Court system. It also recommends providing support for mediation, by allocating more resources to promoting mediation, providing information sessions and parent education, which will complement the court process.

Website Address:

<http://www.info.gov.hk/hkreform/reports/rdispute-e.doc>

## VIII. EVIDENCE / PRACTICE AND PROCEDURE

*A. Ireland***• *Consultation Paper on Multi-Party Litigation (Class Actions).***

The Law Reform Commission of Ireland. (LRC CP 25-2003) (July 2003)

This Consultation Paper concerns the procedure to be followed when numerous persons are pursuing the same cause of action against the same defendant (in Ireland, a recent example being the 'Army deafness claims'). In principle, subject to one exception, these are all separate actions to be pursued independently of each other. The exception is the 'representative action', which the Commission considers involves a number of practical drawbacks in a case involving several plaintiffs. The Commission provisionally recommends that a 'class action' procedure, as currently exists in



many other jurisdictions, ought to be established.

Website Address:

[http://www.lawreform.ie/Consultation%20Paper%20Multi%20Party%20Litigation%20\\_Class%20Actions\\_.pdf](http://www.lawreform.ie/Consultation%20Paper%20Multi%20Party%20Litigation%20_Class%20Actions_.pdf)

### *B. England and Wales*

• ***Final Report: Children: Their Non-Accidental Death or Serious Injury (Criminal Trials).***

The Law Commission for England and Wales. (Law Com No. 282) (September 2003).

The Consultative Report set out the Commission's approach to addressing this issue. The Commission in this Final Report proposes changes to the rules of evidence and procedure which are applicable to trials of this type, in the form of a statutory statement of responsibility, applicable to those responsible for the child at the time when he or she sustained the injury or was killed. The Commission also recommends changes in the substantive law, such as the creation of a new and aggravated form of the existing offence of child cruelty under the Children and Young Persons Act, 1933. The Commission also recommends the creation of a new offence of 'failure to protect a child', which would be committed where three cumulative conditions are satisfied, namely: a person who is responsible for and has a specified connection with a child, is aware, or ought to have been aware, that there is a real risk that one of a listed specified offences might be committed against the child; the person responsible fails to take such steps as it would be reasonable to expect him or her to take to prevent the commission of the offence; and an offence in that listed is committed in circumstances of the kind that the person responsible for the child anticipated or ought to have anticipated.

Website Address:

<http://www.lawcom.gov.uk/files/lc282.pdf>

• ***Consultative Report: Children: Their Non-Accidental Death or Serious Injury (Criminal Trials).***

The Law Commission for England and Wales. (Law Com No. 279)

(April 2003).

This Consultative Report considers recommendations to deal with cases in which children under the age of 16 years have been non-accidentally killed, or seriously injured, by one or other or all of a small group of people, at least one of whom has responsibility for the child's welfare. Research has shown that this is a relatively common occurrence, however, in approximately 75% of known cases the person who has inflicted the death or serious injury is not prosecuted. The Report recommends changes in the rules of procedure and evidence, in cases where a child under the age of 16 years has suffered death or serious injury, caused by one of a defined group of people, at least one of whom had responsibility for the child's welfare at the time of death or serious injury. The recommended changes to the rules of procedure and evidence would apply to the offences of: murder, manslaughter, assault, rape, indecent assault, and child cruelty. The Report also recommends the creation of a new offence of failing, so far as is reasonably practicable, to prevent serious harm through ill treatment to a child

Website Address:

<http://www.lawcom.gov.uk/files/lc279.pdf>

### *C. New South Wales*

#### **• *Report on Contempt by Publication.***

New South Wales Law Reform Commission. (Report 101) (June 2003).

The terms of reference for this Report were: to inquire into, and report on, whether the law and procedures relating to contempt by publication are adequate and appropriate, including whether and in what circumstances, a person against whom a charge of contempt is found should be liable to pay, in addition to any criminal penalty, the costs (of the government and of the parties) of a criminal trial aborted as a result of the contempt. The Report makes a wide range of recommendations for reform of the law on contempt by publication, including a Draft Contempt of Court by Publication Bill, 2003 in Appendix A, and a Draft Legal Proceedings (Access to Documents and Reporting) Bill, 2003 in Appendix B.

Website Address:

<http://www.lawlink.nsw.gov.au/lrc.nsf/pages/r100toc>

#### *D. Western Australia*

• ***Report on Review of the Law of Contempt***

Law Reform Commission of Western Australia. (Project No. 93) (June 2003).

The terms of reference for this Review of the law of contempt in Western Australia address: contempt by publication; contempt in the face of court; and contempt by disobedience to court orders. Throughout this Report the Commission makes a number of recommendations for reform which it believes will greatly enhance the administration of justice in Western Australia and provide certainty and clarity to the law of contempt.

Website Address:

<http://www.lrc.justice.wa.gov.au/Reports/R93-Report%20on%20Contempt.pdf>

#### *E. British Columbia*

• ***Consultation Paper on Post-Accident Remedial Measures.***

British Columbia Law Institute. (April 2003).

An issue with the law of evidence under British Columbia law has come to light. After an accident occurs on or with a person's property, that person will usually take steps to ensure that a similar accident will not occur in the future. A question has arisen whether that person may leave a dangerous condition unaltered in order to avoid having post-accident remedial or precautionary measures used as evidence against them for the incident which has already occurred. This would create the possibility of future accidents and expose members of the public to unnecessary risk. The Consultation paper concluded that the issues raised need to be re-considered in the light of social policy concerns. Comments and submissions were to be received by 26th September 2003.

Website Address:

[http://www.bcli.org/pages/projects/accidents/CP\\_Rem\\_Meas.html](http://www.bcli.org/pages/projects/accidents/CP_Rem_Meas.html)

## IX. MEDICAL LAW

*A. Australia***• *Report on Essentially Yours: The Protection of Human Genetic Information in Australia.***

The Australian Law Reform Commission. (ALRC 96) (March 2003).

Having regard to the rapid advances in human genetic technology this report considered whether a regulatory framework is required: to protect the privacy of human genetic samples and information; to provide protection from inappropriate discriminatory use of human genetic samples and information; and to reflect the balance of ethical considerations relevant to the collection and use of human genetic samples and information in Australia. The Report recommends, inter alia, that a standing Human Genetics Commission of Australia (HGCA) should be established to provide high-level, technical and strategic advice to Australian governments, industry and the community about current and emerging issues in human genetics, as well as providing a consultative mechanism for the development of policy statements and national guidelines in this area. Additionally, discrimination laws should be amended to clearly prohibit unlawful discrimination based on a person's real or perceived genetic status; privacy laws should be harmonised and tailored to address the particular challenges of human genetic information; a new criminal offence should be created to prohibit an individual or a corporation from submitting another person's sample for genetic testing;

Website Address:

<http://www.austlii.edu.au/au/other/alrc/publications/reports/96/>

## X. PRIVACY/CONFIDENTIALITY

*A. England and Wales***• *Report on Privacy and Media Intrusion.***

House of Commons Culture, Media and Sport Committee: Fifth

Report of Session 2002-2003: Volume 1. (HC 458-I) (June 2003). This Report considers ways to reconcile freedom of expression by the media, which is essential in a free and democratic society, with respect for the private lives of individuals. The Report makes a number of recommendations for the improvement of the self-regulation of the press, and firmly recommends that the Government reconsiders its position and brings forward legislative proposals to clarify the protections that individuals can expect from unwarranted intrusion by anyone (not the press alone) into their personal lives.

Website Address:

<http://www.parliament.the-stationery-office.co.uk/pa/cm200203/cmselect/cmcomeds/458/458.pdf>

## XI. OFFICIAL SECRECY

### *A. Australia*

#### • *Inquiry into Classified and Security Sensitive Information.*

The Australian Law Reform Commission. (April 2003).

This Inquiry began in April 2003 to examine the measures necessary to safeguard classified and security sensitive information during the course of court or tribunal proceedings or other investigations. In particular, the Commission shall consider the operation of existing mechanisms designed to prevent the unnecessary disclosure of classified material or security sensitive material; international practice with regard to the protection of classified or security sensitive information; training, functions, duties and role of judges, judicial officers and lawyers in relation to the protection of classified and security sensitive information that is or may be presented in court. Comments and submission on the Background Paper to be received by 29th August 2003. A Discussion Paper is due for release in early 2004. All submissions will be considered ahead of the final report, which will be delivered to the federal Attorney-General by 29th February 2004.

Website Address:

<http://www.alrc.gov.au/inquiries/current/Security/about.htm>

XII. REVENUE LAW

*A. Ireland*

- ***Consultation Paper on a Fiscal Prosecutor and a Revenue Court.*** The Law Reform Commission of Ireland. (LRC CP 24-2003) (July 2003).

This Consultation Paper follows from an Oireachtas (Parliamentary) Inquiry into Revenue Matters, which recommended consideration of the establishment of a specialist Fiscal Prosecutor and Revenue Court, and consequent request to the Commission from the Attorney General to examine this area. The Paper provisionally recommends that neither a Fiscal Prosecutor or Revenue Court be established. But it recommends that a number of changes to existing law and practice be made, including changes to the appeals procedure in revenue matters and for increased transparency in the selection of the current Appeals Commissioners, the independent body for dealing with appeals in revenue matters. The Paper does not recommend the establishment of the equivalent of a Serious Fraud Office but does recommend that criminal fraud trials heard by a jury should be conducted before judges with experience in commercial law.

Website Address:

<http://www.lawreform.ie/CP%20July%202003.pdf>

## XIII. VULNERABLE GROUPS: LAW AND THE ELDERLY

*A. Ireland***• *Consultation Paper on Law and the Elderly.***

The Law Reform Commission of Ireland. (LRC CP 23-2003) (June 2003).

This Consultation Paper, part of a series reflecting an increasing social awareness of the needs of vulnerable groups in society, focuses on the needs of vulnerable or mentally incapable older people. The Paper deals with a number of diverse topics. It recommends that there should be a statutory presumption of capacity and a detailed statutory definition of general legal incapacity. It discusses current judicial and administrative arrangements for decision-making on behalf of incapacitated older persons, and makes substantial provisional recommendations for replacement of the law of wardship by a new Office of the Public Guardian. It makes provisional recommendations concerning the legal protection of vulnerable older people with respect to financial and property transactions; the law governing wills and testamentary capacity. It also recommends changes concerning the law on enduring powers of attorney.

Website Address:

<http://www.lawreform.ie/Consultation%20Paper%20on%20Law%20and%20the%20Elderly%203-06-03.pdf>

## XIV. MAJOR LAW REFORM BODIES WORLDWIDE

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*C. Northern Ireland*

• *The Office of Law Reform: Modern Law Reform for Northern Ireland.*

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• *The British Columbia Law Institute.*

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*G. United States*

• *Uniform Law Commissioners: The National Conference of Commissioners on Uniform State Laws (NCCUSL).*

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