

**COMMONWEALTH ASSOCIATION OF LAW REFORM
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**PROMOTING INTERNATIONAL COOPERATION ON LAW
REFORM**

LAW REFORM: CHALLENGES AND OPPORTUNITIES TODAY

Law Reform and Communication

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I have been asked to focus on how law reform bodies communicate with the public, non-governmental organisations, professional associations, consultees, the media, government and politicians; in other words, the world at large. I shall do that by raising two distinct but related topics: the question of involving the community in the selection of areas for law reform and the use of interactive technology to facilitate that and other community involvement. But first a cautionary note about the barriers to community involvement in the selection of topics for law reform and why such involvement is nevertheless desirable.

We live in an information-rich age but information does not necessarily translate into engagement or that sense of civic involvement so necessary to a deliberative democracy in which people feel able to involve themselves with law, justice or the law reform process. The inaccessibility of legal processes has been a staple of both fiction and non-fiction throughout the modern era.

Franz Kafka used the image of doorways to symbolise the law's inaccessibility and incomprehensibility to the protagonist in his novel *The Trial*.¹ There is a doorway to the law – and the law shines out radiantly from behind that doorway. The doorway is always open but there is a guard before the doorway who will not admit the man seeking entrance.

Roscoe Pound, used the image of a queue, to highlight the difficulties relating to community access to the law.² When a popular film, such as the latest prequel in the Star Wars saga opened, many more people than cinemas could easily accommodate sought admission.

In both these metaphors for access to the law, the goal of ultimate justice is alluring and has the appearance of accessibility but something – guard or queue – restricts public access. One of the ways in which democratic institutions have been attempting to overcome the resulting alienation is through the use of interactive technology.

The use of technology

We must acknowledge that few law reform bodies have been at the forefront of the rush to use the technological revolution of the last decade as a tool for engagement, consultation, feedback, and review. We must

¹ Kafka, Franz (Scott, Douglas and Waller, Chris trans.) *The Trial* London, Picador Classics, 1977 (reprint) at 239 – 240.

² Pound, Roscoe *Social Control Through Law* New Jersey, Transaction Publishers: 1997 (reprint, first published Yale University Press: 1942) at 63.

be prepared to introduce innovative solutions to consultation processes, especially in this time in which radical new means of communication are being introduced in all areas of public life.

There have been some such initiatives by executive governments in Commonwealth countries. For example, in England, an 'eDemocracy' programme has been inspired by the work of Professor Stephen Coleman of the Oxford Internet Institute at Oxford University.

“The Hansard Society's E-Democracy programme seeks to develop innovative ways of using new interactive technologies to reconnect Parliament with citizens and encourage participation in the democratic process.”³

In Australia, the Queensland government, for example, has created a website called ConsultQld where members of the community are invited to take part in consultations in many areas where the government is seeking views from the public.⁴ This site has hot-links to other websites relevant to the areas where views are sought. The Queensland Law Reform Commission is using this site to seek public input into its current reviews of the *Peace and Good Behaviour Act* and for the latest publication in a reference given to a number of law reform commissions in Australia about uniform national succession law in which the Queensland Law Reform Commission is the lead agency.

Another initiative of the executive government in Queensland is “GENERATE”, designed for people aged 15-25, to offer an alternative voice for young people to let the government know about issues that matter to them.⁵ It is an opportunity for young people to engage with government, and vice versa and includes on-line chats, email newsletters and web forums for discussion and debate.

Law Reform Commissions also use a number of methods to ensure that the public are aware of law reform references and have an opportunity to participate in the process. These include public consultations, the media and websites. The extent to which such tools are used varies, depending on the nature of the reference and budget and staff constraints.

³ www.hansardsociety.org.uk/programmes/e-democracy visited 09/08/05.

⁴ www.getinvolved.qld.gov.au visited 09/08/05

⁵ www.generate.qld.gov.au visited 09/08/05

Selection of areas for law reform

These electronic initiatives can open the door to the involvement of the wider public in the debate about law reform itself. The home page of the Law Commission of Canada urges the public to get involved in identifying topics that might require law reform. Like other law reform bodies, the LCC found a marked degree of alienation both about law and about the process of law reform. Speaking of the LCC's consultation with the community about what was wrong with the law, its then President, Professor Nathalie des Rosiers said:

“The most revealing element of this consultation was a sense of disengagement of Canadians towards law and institutions. It almost seemed that life, real life, was outside the scope of law and certainly, that law was not considered as contributing to the achievement of an improved quality of life, but rather as an impediment to fulfilment.”⁶

The LCC proposed greater community involvement in the initial research about the scope of the problem by looking at the ‘reality of the law as it is lived’—namely, the impact of the law on the lives of people—by engaging members of the community in proposing as well as implementing changes.

As a result it has identified four complementary themes for law reform: personal relationships; social relationships; economic relationships; and governance relationships. These strategic themes were distilled from ideas suggested by the broad spectrum of groups and individuals initially consulted by the Commission. The LCC website also engages people with rotating questions about issues the Commission is currently working on, and asks for the reader's thoughts via email. The questions posed currently are:⁷

Are the criminal justice system and alternative responses to unwanted behaviour sufficiently transparent and accountable?

What are the merits of using minimum wage as a tool for ensuring workers are able to meet their basic needs through work?

⁶ “Engaging Canadians in Law Reform” www.lcc.gc.ca/en/pc/speeches/20010403.asp visited 31/03/04.

⁷ http://www.lcc.gc.ca/default-en.asp?lang_update=1 visited 09/08/05

Did you know? The Law Commission of Canada recommends that Canada adopt a mixed member proportional electoral system.

In Australia, Victoria and New South Wales have community law reform programs; an initiative of their law reform commissions in which members of the community and community organisations are invited to make suggestions to the commissions about laws that create difficulties or need to be simplified or modernised. However the formal source of references is the traditional source – the Attorney-General.

In his doctoral thesis, ‘Consultations, Commissions and Context: A Comparative Study of the Law Commission and the Australian Law Reform Commission’ Dr Ben White looked at the area of project selection by the Australian Law Reform Commission.⁸ He found that when deciding on projects to suggest to the Attorney-General, the ALRC undertakes informal, although not systematic, consultation with ‘opinion leaders’ such as community groups, professional and legal groups and judges.

When the Honourable Justice Kirby was the President of the ALRC, appeals were made to the wider public for suggestions for areas in need of reform. In 1994, the ALRC proposed in its submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs that a permanent Law Reform Advisory Committee be set up to recommend areas in need of law reform for the Attorney-General to refer to the ALRC. That suggestion was not taken up by government.

The Law Commission of England and Wales writes its own program of law reform, and conducts consultations before deciding what the program should be. This assists the Commission to identify “the burning issues” that are really in need of reform. The Commission says that in choosing the projects on which to work, it is guided by “the views of judges, lawyers, Government departments and the general public who tell us of the difficulties they have experienced in applying the law or in seeking legal remedies.”⁹ I have not however been able to identify any systematic way in which the community has input into the selection and direction of inquiries.

⁸ White, B. 2004, *Consultation, Commissions and Context: A Comparative Study of the Law Commission and the Australian Law Reform Commission*, Unpublished doctoral thesis, University College, Oxford

⁹ www.lawcom.gov.uk/77.htm visited 11/04/05.

The Law Commission was, however, given access to the almost 10,000 emails received by the BBC when a member of parliament asked radio listeners to write in their suggestions for a private members' bill. By May 2004, the Commission had analysed 1,000 emails in detail and found that most of the suggested areas of law reform concerned the vicissitudes of everyday life – road traffic, planning and environment and anti-social behaviour. One message which the Law Commission observed came out of the exercise is that people lack information about the law. They noted that one listener recommended that there should be a Law Commission to improve laws that are badly drafted, incomprehensible and contradictory. The Commission observed wryly “Perhaps we ought to do more to tell people we exist.” I think that takes us back to where I started.

Conclusion

Community input into the selection of areas for law reform is not a topic which has received adequate attention from law reform commissions. We must keep ourselves and our processes under the same kind of rigorous review that we apply to our references.

We are living at a time in which radical new means of communication are being introduced in all areas of public life, and we must remain open to any initiatives that can improve access to the process of law reform. For example, Professor Ralph Simmonds, then head of the Western Australian Law Reform Commission, now Justice Simmonds of the Western Australian Supreme Court, is an advocate of the imaginative use of information technologies to aid law reform on a global level. He has noted that although many law reform bodies publish consultation papers on the web, this is only scratching the surface of possibilities. Importantly, international participation is readily accommodated by the internet which is potentially very useful given that law reform projects have significance across national boundaries.¹⁰

We must be prepared to introduce the innovative solutions to our consultation practices and to the source of our references that we apply to all areas of law reform so that the community feels included, rather than excluded, from that part of the process.

¹⁰ Simmonds, Ralph “Globalisation & law reform: a preliminary view of cooperation through technology” (2000) 76 *Issue* 25 at 27 - 28