

# CRIMINAL LAW JOURNAL

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## EDITORIAL

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## ARTICLES

**The use of restorative justice for environmental crime** – *Hon Justice Brian J Preston*

Restorative justice is a way of responding to criminal behaviour by balancing the needs of the community, the victims and the offenders, who are brought together to resolve collectively how to deal with matters arising from the crime, including the harm caused, and the implications for the future. To date, restorative justice has been used only occasionally by the courts in dealing with environmental crime. This article explores the potential for the use of restorative processes in dealing with environmental crime that yields benefits for the victim, offender, community and environment. .... 136

**Twelve angry peers or one angry judge: An analysis of judge alone trials in Australia** – *Jodie O'Leary*

Recently, New South Wales amended its legislation to provide for judicial discretion when determining (upon request) whether an accused will face a trial by judge alone for indictable criminal matters. This article examines the application of those provisions and comparable legislation in Queensland and Western Australia, revealing an overarching tension as to the correct legal approach. Broadly, there is a dispute over the weight that should be afforded to the accused's right to choose or whether a presumption of a jury trial exists. Such a conflict arises from the different justifications for jury trials. On the one hand, the jury trial was envisaged to protect the rights of accused. On the other, jury trials involve the community in the administration of justice. The acceptable reasons for granting judge alone trials and the grounds for excluding matters from their ambit are applied inconsistently, depending on whether the protection theory or the community participation theory is preferred. .... 154

**Recent developments in Canadian criminal law** – *Gerry Ferguson and Benjamin L Berger*

This year's review canvasses and analyses a number of substantive, procedural and evidentiary developments in Canadian criminal law. The substantive law topics include recent jurisprudence concerning whether transferred intent applies to attempts; causal liability for the death of innocent victims in gang shoot-outs; the extent to which acts of aiding and abetting must be causally connected to the commission of the principal offence; whether consent to sexual practices involving bodily harm is null and void; whether failure to disclose HIV-positive status before engaging in protected sex constitutes fraud vitiating consent; whether a person can give advance consent to sexual acts performed on them while unconscious; and re-examination of the elements of the defence of provocation. Procedural and evidentiary topics considered in this article include the new

Canadian approach to the exclusion of illegally obtained evidence; developments in journalist-source privilege; the ongoing (r)evolution in the protection of a detainee's silence rights; and whether a court can refuse to allow defence counsel to withdraw for non-payment of fees. ....	170
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