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Rethinking police use of force: Linking law reform with policy and practice 71

ARTICLES

Homosexual law reform in the Commonwealth of nations: An impossible dream?
– *Hon Michael Kirby AC CMG*

In this article, delivered as the Paul Byrne Memorial Lecture 2011, the author describes the history of the English criminal law of sodomy. He explains that similar offences were abolished in Europe and were never part of the modern criminal codes of European empires, other than the British empire. However, the four British criminal codes exported the offence to every British colony where it mostly survives today. In Britain itself, Australia and other settler societies, the law was repealed in the 20th century. In the United States, South Africa and India, important constitutional decisions have invalidated the offence. However, in most new Commonwealth countries, efforts of repeal have apparently ground to a halt. The difficulties this presents for responses to HIV/AIDS and universal human rights is explained, as is the urgency of securing repeal of this “unlovely criminal law export”. 76

Empathy, experience and the rule against bias in criminal trials – *Matthew Groves*

The rule against bias requires that judges, jurors and other decision-makers approach their task impartially. The rule will be breached if decision-makers say or do something that gives reason to doubt their impartiality, or if there is an association between decision-makers and a party to the case before them. These principles do not translate easily to case of personal experience and empathy. What happens when decision-makers have an experience similar to an issue before them? Does a similar experience inform or disqualify a decision-maker? The Court of Appeal of Victoria has delivered conflicting decisions about this issue. This article will examine these cases within the context of apprehended bias. 84

Protecting the right to a fair trial in the 21st century – has trial by jury been caught in the world wide web? – *Roxanne Burd and Jacqueline Horan*

The growing availability of information is challenging the right to a fair trial in the 21st century. For decades courts have maintained the integrity and impartiality of the jury by shielding jurors from pre-trial publicity. However, as the traditional forms of media have expanded into the world wide web, it has become increasingly difficult to control both the dissemination of information and the conduct of jurors. This article explores the level of prejudicial impact of publicity on high profile trials. Remedies to alleviate such an impact are discussed. 103

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