



LAW REFORM NOTES

These Notes are intended to keep the public updated on the work of the Law Reform Commission. They provide a summary of some of the law reform projects currently under way within the Law Reform Commission and some projects which were recently concluded. We welcome comments from any person on the ongoing projects.

FAMILY LAW REFORM

1. In response to the family law review conducted by the LRC, the Ministry of Education, Employment and Gender Affairs recommended, among other things, that any reform of the maintenance legislation should ensure progressive enforcement alternatives for violations of the law, e.g. the suspension of driver's licenses or notes on credit reports.
2. The LRC is finalising the Maintenance Bill and has agreed to recommend the suspension of drivers' licences in some cases where maintenance is in arrears. The final report, the Matrimonial Causes Bill and the Family Property (Rights of Spouses) Bill together with the Maintenance Bill will be finalised by 31st March, 2015.

CONTINGENCY/CONDITIONAL FEES

3. The Commission is seeking to finalise its research on the regulation of conditional/ contingency fees in the Cayman Islands. The Attorney General had referred this matter to the Law Reform Commission pursuant to the case of *Latoya Barrett v the Attorney General*¹ in which the Honourable Justices called for an examination of the law relating to conditional fee agreements in the Cayman Islands.
4. The Court of Appeal urged a review of the law of maintenance, champerty and conditional fees agreements before the making of any relevant legislation. The court noted that complex issues of public policy were involved and that full account must be taken of all interests involved and most importantly of "the need to provide access to justice for those who cannot afford it".²
5. In this review the Commission will be considering the status of the law in the Cayman Islands and the disadvantages and benefits of conditional or contingency fee agreements. The development in this area of the law in the UK and other jurisdictions will be covered although, ultimately, the determining factor will be what is right and applicable for our developing society.

¹ CICA 19 of 2012, unreported

² Justice Campell, para 37, CICA 19 of 2012

INTERPRETATION LAW

6. The Interpretation Law contains the principles and rules prescribing how legislation in the Cayman Islands should be interpreted. It seeks to facilitate the removal of uncertainties with respect to the meaning of particular legislative provisions by defining common expressions. It also provides for a range of procedural and legislative matters. Certainty, applicability, tautology and prolixity are some of the main words that tend to feature when seeking to determine whether an Interpretation Law requires amendment or repeal and replacement.

7. We will be examining our Interpretation Law and assessing whether there is a need for its reform, whether by way of amendment or repeal and replacement, in order to make it more consistent with modern legislative trends.

8. Our examination will include the following-

- a statement as to the importance of statutory interpretation;
- the rules and extrinsic aids involved in statutory interpretation;
- the historical background/emergence of interpretation laws and their importance;
- a discussion of a few cases which reflects the use of the Interpretation Law to resolve issues before the court either in Cayman or the UK or both;
- the perceived deficiencies (if any) in our Interpretation Law and by way of illustration, any cases which highlights those deficiencies;
- a comparative study of the Cayman Interpretation Law and the Interpretation Laws in Bermuda, Australia, the UK and other Commonwealth jurisdictions; and
- recommendations for reform (if any).

CONSUMER PROTECTION

9. The LRC continues its work on consumer protection. Our aim has been and continues to be the determination of whether a consumer protection regime is needed to promote and advance the social and economic welfare of consumers. Ultimately, a legal framework is being considered for the achievement and maintenance of a consumer market that is accessible, fair, efficient, responsible and sustainable for the benefit of consumers generally, and which provides adequate safeguards to vulnerable consumers. The issues that form part of our discussion include-

- consumer rights;
- standards of consumer information;
- consumer guarantees in respect of the supply of goods and services;
- the protection of consumers from hazards to their well-being and safety;
- product liability;
- the prohibition of unfair terms in consumer contracts and unfair business practices;
- the regulation of distance selling, doorstep selling and unsolicited consumer transactions;
- the regulation of consumer credit;
- an effective enforcement framework relating to consumer transactions and agreements; and
- an effective system of redress for consumers.

REFORM OF DEFAMATION LAW

10. There have been several defamation cases in recent times in the Cayman Islands, of recent note the action brought by the Chairman of the Judicial and Legal Services Commission against former politician Joey Ebanks. In light of such cases and of the use of the internet as an outlet for the anonymous delivery of opinions which can greatly affect a person's reputation, the Commission believes that it is timely to review the defamation laws in the Cayman Islands. Areas of reform which we will consider³ include the following-

- the abolition of the distinction between libel and slander and the institution of a single action for defamation;
- the defence of justification to be replaced by the defence of truth;
- the introduction of the defence of triviality;
- a 'defence' of offer of amends for unintentional defamation;
- publication of an apology not to be construed as an admission of liability;
- new remedies of declaratory and correction orders;
- abolition of criminal libel;
- the institution of a "wire-service defence"; and
- the capping of non-economic losses in an award of damages for defamation.

REFORM OF THE SUCCESSION LAW AND WILLS LAW

11. The Commission continues its work on this review and is considering recommendations which include the following-

- drafting a new clause which declares that a person's estate vests in a judge of the Grand Court until the grant of administration is made by the court, whenever the deceased died without appointing willing executors;
- drafting a new clause which declares that even though the letters of administration take effect from the time of grant, it occurs without affecting the common law principle of relating back;
- explicitly implementing in Cayman Islands domestic law the Hague Convention on the Conflict of Laws Relating to the Form of Testamentary Dispositions;
- explicitly legislating for the acceptance or rejection of the chain of representation in Cayman Islands law;
- providing a sanction that should be applied when a person takes possession of or administers a deceased person's estate without having obtained a grant of representation;
- permitting the issue of a grant of representation despite the absence of any Cayman Islands property; and
- enacting a rule that an executor's renunciation operates, subject to the court permitting its retraction, for all time.

REVIEW OF LEGISLATIVE PROTECTION FOR WHISTLEBLOWERS IN THE CAYMAN ISLANDS

12. The Protected Disclosures Bill, 2014 and final report relating to legislative protection for whistle-blowers was submitted to the Attorney General on 5th December 2014. That Bill provides inter alia for the following-

- (a) the persons to whom the legislation should apply and who should be eligible for protection under the legislation;

³ See presentation of Jeff Cumberbatch on Jamaican reforms at the Media Association of Jamaica Seminar, Terra Nova, Jamaica, reported in Gleaner October 2009

- (b) the definition of disclosures which qualify for protection; definition of improper conduct on which a disclosure can be made;
- (c) the persons to whom disclosures may be made including employers, the Anti-Corruption Commission and the Cayman Islands Monetary Authority;
- (d) the procedures to be followed when making disclosures;
- (e) the procedures to be followed for the investigation of disclosures;
- (f) protection against reprisals in the form of court action, criminal complaint and resolution by labour tribunals;
- (g) penalties for reprisals against whistle-blowers;
- (h) confidentiality relating to disclosures;
- (i) the provision of a supervisory body to oversee the operation of the legislation; and
- (j) the periodic review of the legislation by a committee of the Legislative Assembly.

REVIEW OF THE LAW OF CONTEMPT

13. The Commission continues its review of the law of contempt in light of the feedback provided by the Cayman Islands Law Society submitted in 2014. A Contempt of Court Bill which would provide for partial codification of the Law is currently being considered by the Commission.

CODIFICATION OF DIRECTORS' DUTIES

14. On 16th January, 2014 the LRC published its Issues Paper entitled "Directors' Duties – Is Statutory Codification Needed?". This paper sought to examine the issue of whether the common law fiduciary duties and the duty of care, skill and diligence of company directors in the Cayman Islands should be codified in order to facilitate good corporate governance. The consultation period came to an end 24th March, 2014 by which time responses were received from several stakeholders. While a majority of the respondents were against any form of codification, there was minority support for partial codification. In addition, there was support for other reforms such as the establishment of a regime for the disqualification of directors, introduction of civil remedies for director breaches and the introduction of a business judgment rule.

15. After considering stakeholder comments, the LRC intends to produce another consultative paper which-

- incorporates the various stakeholder responses and formulates recommendations for consideration;
- includes a discussion on the related issues of the disqualification and indemnification of directors;
- discusses the legal developments in the disqualification regime and in particular, the circumstances in which directors may be disqualified for matters such as unfitness, incompetence, fraud, conviction of an indictable or summary offence, persistent breaches of the Companies Law, being an undischarged bankrupt and engaging in wrongful trading;
- examines the extent to which a company can indemnify a director for negligence, default, breach of duty or breach of trust; and
- examines the exceptions to the general prohibition that company articles cannot absolve a director from liability and the limitations in seeking to rely on those exceptions.

ANTI-BULLYING LEGISLATION

16. The LRC continues its research into the subject of bullying in schools and the workplace. This research will culminate in an Issues Paper which will examine the public policy response to bullying and determine the benefits and limitations of anti-bullying legislation.

17. Bullying is a relational problem that impacts the social climate of a school community and the workplace environment. It has been linked to depression, violent behaviour and suicide. The United Nations Committee on the Rights of the Child has recognised bullying, including cyber bullying as a form of mental violence. This type of mental violence can lead to children feeling unsafe at school, which can affect their right to an education. Further, cyber bullying can infringe a person's right to privacy. The Committee emphasized that those rights can only be realized if States parties take all necessary measures to protect children from such acts.

18. In our examination of this issue we continue to bear in mind that while legislation may provide a supporting context to deal with bullying, it cannot regulate and repair school or workplace relationships. The complex nature of bullying also requires direct intervention from parents, students, educators and employers.

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