

Community Input into Selection and Direction of Inquiries

The chapter which I have contributed to the *Promise of Law Reform* concerns community participation in law reform. Today, I have been asked to focus on community input into selection and direction of inquiries. 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 it 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*. 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. When a popular film, such as the latest prequel in the Star Wars saga opened, many more people than cinemas can 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 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 Australia and abroad. For example, in Britain, 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.”

The Queensland government 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. This site has hot-links to other websites relevant to the areas where views are sought. The QLRC 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 the national succession reference.

Another initiative of the executive government 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. 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.

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, currently under reconstruction so not shown, 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.

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.

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’ Ben White looked at the area of project selection by the Australian Law Reform Commission. 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 Kirby J 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, they are 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.” I have not however been able to identify any systematic way in which the community has input into the selection and direction of inquiries.

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.

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. In particular, 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.