

***COMMONWEALTH  
LEGAL  
EDUCATION***

***Newsletter of the Commonwealth Legal Education  
Association***

***Number 92***

***February 2003***

# **CLEA PUBLICATIONS NOW AVAILABLE**

## ***Journal of Commonwealth Law and Legal Education*** the official journal of the **Commonwealth Legal Education Association**

Now in its second year, this fully refereed Journal contains a variety of articles, comment and debate. *Published twice a year, the journal is free of charge to CLEA institutional members.*

**In Vol 2(1):** "*Electronic Legal Education*" Alan Davidson, Law School, University of Queensland, Australia; "*The Discipline of Law - Legal Education at the Intersection of the Juridical and the Disciplinary*" Vanessa E Munro, Law Department, University of Reading, UK; "*Towards an Efficacious Framework for Debt Recovery in Developing Countries*" Olayiwola O. Oladele, Department of Business Law, Obafemi Awolowo University, Nigeria; "*Childrens' Rights in the 21<sup>st</sup> Century*" Cherie Booth QC; "*Barefoot Lawyers*" an article about voluntary legal workers in rural Uganda by Frances Gibb, Legal Editor of The Times, London.

## ***Directory of Commonwealth Law Schools 2003-2004***

The Directory contains an individual entry for over 500 Commonwealth law schools, including full contact details, courses offered, law journals published and research centres. The Directory also contains full details of the activities of the CLEA together with a major section devoted to law in the Commonwealth. This includes copies of the major Commonwealth instruments and Commonwealth activities of particular interest to law teachers and practitioners. The final section lists research centres and law journals by area of interest.

*289 pages, December 2002, £45 paperback from the CLEA (free to CLEA institutional members)*

## ***Law and Development: Facing Complexity in the 21<sup>st</sup> Century: Essays in honour of Peter Slinn***

***Edited by John Hatchard and Amanda Perry***

Compiled in honour of Peter Slinn, this book of essays focuses on tackling the complexities inherent in the area of law and development. The essays are contributed by leading academics world-wide.

*288 pages, March 2003, £45 paperback from the CLEA (free to CLEA institutional members)*

*Don't forget*

*The 2003 Commonwealth Legal  
Education Association Conference*

***REPARATIONS - THEORY, PRACTICE  
& LEGAL EDUCATION***

***12-14 JUNE 2003***

***UNIVERSITY OF WINDSOR***

***ONTARIO, CANADA***

*For full details contact:*

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**The Lighter Side**

## **FROM JOHN HATCHARD GENERAL SECRETARY**

I am pleased to announce that the Commonwealth Foundation has again generously agreed to provide some funding for the Association. We are indebted to the Foundation for its continued support. However our main goal remains to stabilise our finances by increasing our sources of income and, in particular, attracting new members.

We have had a very encouraging response to our membership drive with law schools around the Commonwealth signing up. We would encourage many more to do so. As you will see from the membership information at the back of the Newsletter, we have put together an extremely attractive membership package. Our activities, listed below, I think speak for themselves.

News of CLEA Conferences and Publications dominate this issue.

- I am delighted to announce the publication of the new edition of *Directory of Commonwealth Law Schools 2003-4*. Bigger and better than ever (I hope you will agree) this is now available from the Association at a cost of £45. The book is also available as part of the CLEA membership package.
- Another major CLEA publication is *Law and Development: Facing Complexity in the 21<sup>st</sup> Century. Essays in Honour of Peter Slinn* edited by John Hatchard and Amanda Perry. This will be available from 18 March 2003 at a cost of £45. However, it is free of charge to CLEA institutional members.
- Our second e-book *Curriculum Development for the 21<sup>st</sup> Century* is now available on CD-Rom. This costs £5 but is available free of charge to all CLEA members.

The next issue of our own *Journal of Commonwealth Law and Legal Education* will be published in early March. Contributions and subscriptions have increased markedly over the past few months but we always welcome more. Again I would remind you that a subscription to the Journal is also part of the CLEA membership package.

Turning to conferences. This issue contains a report of the CLEA South Asia regional conference in Kerala. As you will see, this was a landmark event in that it led to the re-launch of the CLEA South Asia (India) Chapter under the guidance of Dr S Sivakumar. The Association is indebted to him for organising such an excellent event. We are also delighted to have Professor Madhava Menon, our immediate Past President, once again closely involved in CLEA activities. One other notable feature of the regional conference was the parallel law students' conference and the holding of the regional students moot competition.

You will also see below that the Association is an actively involved in the 13<sup>th</sup> Commonwealth Law Conference in April 2003. This will include organising the Commonwealth Law Students' Mooting Competition, a Commonwealth Law Lecture and a special CLEA session entitled "Developing the Law Curriculum to Meet the Needs of the 21<sup>st</sup> Century Legal Practitioner".

### **DON'T FORGET THE NEXT CLEA CONFERENCE**

Our next conference REPARATIONS – THEORY, PRACTICE & LEGAL EDUCATION takes place at the University of Windsor, Canada between 12-14 June 2003. I hope to see many of our readers there.

### *CLEA Executive Committee*

The CLEA Executive Committee will meet at the CLEA conference in June. Several EC positions will become vacant. These are as follows: 1. East and Central Africa; 2. Southern Africa; 3. West Africa; 4. The Caribbean. In addition, the term of office of our two ad hoc members expires.

The relevant provisions of the CLEA Constitution relating to elections to the EC are as follows:

#### 5. Executive Committee

- (1) The affairs of the Association shall be managed by an Executive Committee. Subject to the general directions of a General Meeting, the Executive Committee may take any action on behalf of the Association which, in its opinion, will further the objects of the Association.
- (2) The members of the Executive Committee shall be elected at the General Meeting of the Association.... The Committee shall, so far as is practicable, be broadly representative of the Commonwealth as a whole and shall consist of not less than six and not more than ten persons.
- (3) Election to the Executive Committee shall be for four years but members shall be eligible for re-election.
- (4) In addition to the members so elected, the Executive Committee may co-opt up to three further members being full members of the Association whether individuals or representative or a combination of both who shall serve until the conclusion of the next General Meeting after individual co-option PROVIDED THAT the number of the co-opted members shall not exceed one-third of the total membership of the Executive Committee at the time of co-option. Co-opted members shall be entitled to vote at meetings of the Executive Committee....

For those contemplating standing for election, the duties of EC members are as follows:

- i Represent the CLEA at relevant conferences in their region.
- ii Provide information to the General Secretary on developments in legal education and related matters in their region three times a year for inclusion in the CLEA Newsletter.
- iii Seek to recruit individual and institutional members in their region.
- iv Seek to maintain links with existing members and encourage their involvement in the work of the Association.
- v Disseminate information about the CLEA through national associations of law teachers and other relevant bodies in their region.
- vi Hold regular CLEA activities in their region which seek to further the Plan of Action.
- vii Cooperate with the organisers of the Commonwealth Law Students' Mooting Competition (and any other such CLEA competitions) in identifying suitable teams.
- viii Send a report annually to the General Secretary on CLEA activities in their region for inclusion in the Annual Report of the Association.
- ix Provide a written or oral report to each EC committee meeting on CLEA activities in their region.
- x When so requested, provide timeously to the officers of the Association relevant information relating to ongoing CLEA projects in their region.

**Those interested in standing for election are invited to contact the General Secretary as soon as possible.**

*John Hatchard*  
*General Secretary, CLEA*  
*Marlborough House*

*February 2003*

*Journal of Commonwealth Law and Legal Education*  
the Official Journal of the  
Commonwealth Legal Education Association

*Editorial to Vol 2(1)*

**THE COALESCENCE OF CONTROLS**

***Gary Slapper and Matthew Weait***

Across the world, more and more people now live in towns and cities than live in rural areas. As human activity of all sorts - political, educational, commercial, industrial, and sporting - becomes more globally integrated and interrelated, so law is driven to adapt in order to govern such frontierless enterprises. A patchwork planet governed by 200 separate and heterogeneous legal systems is yielding, progressively, to rule systems that transcend national boundaries.

Two recent developments can serve to illustrate this point. The first is a step towards a global environmental law, and the second is a step towards international law protecting the reputation of individuals and organisations. Both of these legal changes are the results of developments in the application of science and technology.

In respect of the environment, when there are disasters today that poison or pollute or despoil, then the scale of such damage can be enormous. Acid rain is not cognisant of national boundaries, and neither are nuclear fallout or oceanic oil tanker spillages. A relatively low-level and confined human error one hundred years ago might cause a train to derail or a mill to disappear in a terrible conflagration. Today, the same level of error might trigger pollution or harm affecting millions of people. Modern technology is such that any major catastrophe can run across and affect many parts of the planet. There is now, therefore, an impetus for an environmental law that is as pervasive as the malignant phenomena requiring to be controlled.

In respect of defamation law, it is no longer possible to rely on governments and legal systems being able to control the publication of books and magazines (with court orders forbidding printing, or recalling published matter for pulping), and nor is it possible to rely on the control of radio or television broadcasts. The internet is a technology that enables a statement to be universally accessed by millions of people far away from the point where it was put on to the World Wide Web. Information becomes instantly "available to all and sundry without any geographic restriction" (per Gleeson CJ, McHugh, Gummow, and Hayne JJ. in *Dow Jones & Company Inc v Gutnick* [2002] HCA 56, 10 December, 2002 (full text available from [www.austlii.edu.au/cases/cth/high-ct/2002/56.html](http://www.austlii.edu.au/cases/cth/high-ct/2002/56.html) at 9, para. 39).

Consider a recent development concerning the environmental problem. In August 2002, at the Earth Summit in Johannesburg, South Africa, the first worldwide meeting of senior judges was convened. More than 120 chief justices and supreme court justices were brought together by the United Nations' Environment Programme. One of the matters on which they resolved an opinion was the relationship between law and the environment. Earlier, at the summit, in an extraordinarily bold moment, a small group of 10-year-old children addressed the conference with the following message. They said that the planet was not the property of world leaders but rather was held on trust by leaders for future generations. Ten years earlier, when they, the children, were born, world leaders had met in Rio de Janeiro and had resolved to reduce world pollution. The children then noted with regret that now, ten

years later, no significant improvements had been made. By the pervasive and expansive nature of environmental problems, solutions to them need to be implemented across the world. As Ball and Bell have observed (1994: 3)

"...global warming, the destruction of the ozone layer, acid rain, deforestation, overpopulation and toxic waste are all global issues which require an appropriately global response."

At Johannesburg, the judges noted that although there were over 500 relevant international legal instruments, they often remained as "paper tigers" because they were unenforced. The judges agreed "to boldly and fearlessly implement and enforce the law" (*The Independent* 28 August, 2002). Some believe that this will be the first step towards the creation of an International Court of Environmental Rights.

Turning to defamation law, the problem of protecting reputations in the world of the Internet has been recently dealt with by the Australian courts in a way that presages the same sort of global jurisprudence as that upon which an international environmental court would have to be predicated. The High Court in Australia has ruled *Dow Jones & Company Inc v Gutnick* (above) that the financial publishers Dow Jones can be sued in the Australian state of Victoria over an article that was posted on a Dow Jones' web site by a company member in New Jersey, USA. The defamation case was brought by a mining magnate from Melbourne, Australia. He argued that the article would be read on the Internet by people in Melbourne who know him. Dow Jones had argued that publication took place in the USA so that the Australian courts had no jurisdiction. The company is aware that litigation law is less protective in the US than it is in Australia, and in the US it is easier than it is in Australia to plead 'freedom of speech' as a defence. In fact, several international companies, like Amazon.com and Guardian Newspapers Ltd also made representations to the court in this case. The result of the court's decision is that Dow Jones will have to defend the proceedings in a country which is far away from the country in which the contentious article was prepared and from where the majority of the website's readers reside. The ruling will permit anyone who has a reputation in Australia, wheresoever he or she lives, to sue for internet defamation in the Australian courts.

In giving his judgement in this case, Kirby J. touched very pertinently upon the relationship between social change and legal change. He said (p.21, para. 13, references within the para. have been removed):

"...the Internet is global. As such, it knows no geographic boundaries. Its basic lack of locality suggests the need for a formulation of new legal rules to address the absence of congruence between cyberspace and the boundaries and laws of any given jurisdiction. There are precedents for development of such new legal rules. The Law Merchant (*lex mercatoria*) arose in medieval times out of the general custom of the merchants of many nations in Europe. It emerged to respond to the growth of transnational trade. The rules of the common law of England adapted to the Law Merchant. They did so out of necessity and common sense."

For understandable historical reasons, the rules born from the tumultuous times referred to by Justice Kirby were not shaped after any meaningful social or legal debate. It is probable and desirable that the new rules generated by the rapidly developing technologies of the 21<sup>st</sup> century will be the product of more open debate and disputation by jurists, technologists, and, importantly, people who are, progressively, coming to see themselves as citizens of the world.

#### REFERENCE

Ball, S. and Bell, S. (1994) *Environmental Law* London: Blackstone Press

# **CLEA ACTIVITIES**

## **NOTICE OF GENERAL MEETING**

**The Commonwealth Legal Education will hold its next General Meeting on 13<sup>th</sup> June 2003 at the University of Windsor**

### **AGENDA**

1. Apologies for absence
  2. Approval of the Minutes of the last General Meeting held on 19<sup>th</sup> December 2001
  3. Matters arising
  4. Membership of the Executive Committee
  5. Accounts, subscriptions and membership
  6. Consideration of the Annual Report of the Association
  7. Appointment of auditor
  8. Any other business
- Any member wishing to place additional items on the agenda should contact the General Secretary as soon as possible

## **CLEA CONFERENCES**

### **REPARATIONS – THEORY, PRACTICE & LEGAL EDUCATION**

**12<sup>th</sup> - 14<sup>th</sup> June 2003  
University of Windsor  
Windsor, Ontario, Canada**

#### *Introduction and Conference Themes*

Throughout the world attention has been focussed on the issue of reparations for past injustices and the role that such reparations play in reconciling various minority groups within a nation, or between nation states, towards a greater state of harmony and justice. However, the issue of reparations presents fundamental challenges for the law. What harms warrant reparations? How far back in history should one go? Do reparations require a known victim and perpetrator, or can the present economic and social conditions of a recognized group be causally linked to the activities of earlier dominant group or colonial government? Even where a past injustice has been recognized, how should reparations be effected? Should loss be compensated in money, or some other form of making restitution? Even assuming a substantive claim arises, a reparation claim may entail complex issues of proof and the taking of evidence. How can oral history be presented?

The presentation of issues surrounding reparations require properly trained individuals skilled in a variety of areas. Apart from a sound legal training in areas such as constitutional law and human rights, an advocate must possess process skills covering the gamut of alternative dispute resolution through to an understanding of commissions and international tribunals. In addition an advocate must also be comfortable with historical material, familiar with psychology to understand how past wrongs becomes

part of the sociology of a society, and be an effective communicator so as to keep the myriad of people involved in a multidimensional dispute focussed.

The conference aims to address the issues outlined above. In particular, the conference will identify ways for legal education institutions to build competency to train advocates to actively participate in the area of reparations for past wrongs. An important focus will be on the creation of links and support networks between legal educators throughout the Commonwealth and to provide concrete ways to exchange and share curricula between law schools.

### **Organizers**

The conference is being organized under the auspices of the Faculty of Law, University of Windsor in conjunction with the Commonwealth Legal Education Association (CLEA).

The Faculty of Law, University of Windsor is at the forefront of research into access to justice, legal education, and third world legal studies. It is the home of the Centre for Law in Aid of Development (CLAD), a centre devoted to studies to third world legal issues. The Faculty publishes the *Windsor Yearbook of Access to Justice*, an international externally refereed thematic journal that is now in its 23<sup>rd</sup> year of publication. The Yearbook has agreed to publish the papers presented at the conference subject to its usual editorial policies. The other members of the organizing committee are Professor Jeff Berryman, the current North American CLEA Executive Committee member, Lakshman Marasinghe and Dean Bruce Elman, Dean of the Faculty.

### **Conference Format**

The conference format will follow the 'roundtable' concept for which this Faculty has had notable success. Speakers will be asked to write a 10 to 20-page paper on a theme identified in the programme. Speakers will be selected to provide a particular focus to the topic. Papers will be circulated to participants before attending the roundtable. Speakers will then be asked to lead discussions. A chair will also be appointed to manage time and ensure a focus is maintained. The roundtable format is designed to maximize discussion and to facilitate active rather than passive participation.

### **Draft Programme**

The programme is structured over two and half days and follows a logical progression from an initial focus on theory, to practice and through to curricula development and education.

#### *Day One – Theory*

Day One will focus upon the legitimacy, including political legitimacy and moral responsibility, of claims for reparation, and capacity for a legal response.

#### **Issues:**

- *Are states liable for the sins of their predecessors?*
- *Should a distinction be drawn between claims where both victim and oppressor are still personally amenable to some form of jurisdiction, and where the wrong is as result of some historic transgression where neither victim or oppressor are personally available?*
- *Should a distinction be made where the alleged oppressor is an individual as against a state?*
- *How are reparations to be determined (past wrong or current effects), against whom, and what form should they take?*
- *What international legal obligations lie upon states towards reparations?*
- *What is the responsibility of past colonial powers?*

- *Should the record of contemporary state practices in human rights be taken into account as possible mitigation?*
- *The use of existing legal doctrine and impediments.*

Evening: Commonwealth Law Lecture

#### *Day Two – Practice*

Day Two will focus upon specific examples or case studies drawn from around the Commonwealth that have attempted to provide a form of reparations for a specific wrong. The aim will be to evaluate the success of these attempts measured against the goals identified for the specific scheme and how that scheme fits with the theoretical underpinnings discussed in day one.

#### **Case Studies**

<i>Canada</i>	-	<i>Aboriginal Healing Foundation – (residential schools)</i>
<i>New Zealand</i>	-	<i>Waitangi Tribunal – (Maori treaty claims)</i>
<i>Australia</i>	-	<i>Stolen Generation – (Aboriginal forced removal)</i>
<i>South Africa</i>	-	<i>Truth and Reconciliation Commission – (apartheid)</i>
<i>United States</i>	-	<i>Litigation</i>
<i>Asia/Pacific</i>	-	<i>Nauru Phosphate negotiations.</i>

#### *Day Three – Legal Education*

Day Three will deal with pedagogical issues. The study of reparations transcends many facets of law and requires an appreciation of other disciplines (e.g. political science, history, philosophy) to properly situate a legal entitlement. In addition, the advocacy of a reparations claim presents unique challenges, and may take place outside traditional legal fora. It is thus, an excellent vehicle to discuss how a law school curriculum can provide sufficient breadth and depth to enable graduates to participate meaningfully in this enterprise.

#### **Topics**

- *Teaching human rights in an hostile environment*
- *Internet courses – collaborative distance education*
- *Advocacy skills for multiparty complex litigation – Class actions – “Bernardo Children”*
- *Communicating with victims – telling their stories*
- *Creating support and resource networks between faculties (inter and intra the university)*
- *Developing a model curriculum to handle reparation issues – Participation between institutions.*

The Conference will also include the General Meeting of the Commonwealth Legal Education Association.

*Further details about the conference can be obtained from Jeff Berryman, Faculty of Law, University of Windsor Fax: 1 519 973 7064; e-mail: [jberrym@uwindsor.ca](mailto:jberrym@uwindsor.ca)*

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# THE CLEA AT THE 13<sup>th</sup> COMMONWEALTH LAW CONFERENCE

Melbourne, Australia  
13-17 April 2003

The CLEA is involved in the following activities:

- Organising a conference session on “Developing the Law Curriculum to Meet the Needs of the 21st Century Legal Practitioner”. This scheduled for Wednesday 16th April 2003 at 14-15.30
- Organising the Commonwealth Law Lecture
- Organising and running the 2003 Commonwealth Law Students’ Mooting Competition (see below)

Full details about the conference are available from CLC Conference Secretariat, P O Box 7404, St Kilda’s Road, Melbourne 3004, Australia. Fax: 6139820 3581; e-mail: [comlaw@mcigroup.com](mailto:comlaw@mcigroup.com). The conference website is: [www.mcigroup.com/commonwealthlaw2003.htm](http://www.mcigroup.com/commonwealthlaw2003.htm)

## *Commonwealth Law Students’ Mooting Competition*

This will take place during the Commonwealth Law Conference in Melbourne, Australia between 13-17 April 2003. We are expecting up to 12 teams from around the Commonwealth to participate.

Full details of the moot, including the moot problem are available from the following web site: [www.law.qut.edu.au/about/moots/common/index.jsp](http://www.law.qut.edu.au/about/moots/common/index.jsp)

## THE CLEA AT THE 2002 COMMONWEALTH LAW MINISTERS' MEETING

Commonwealth Law Ministers held their Meeting in November 2002 in Kingstown, St Vincent and the Grenadines. The CLEA, Commonwealth Lawyers' Association and Commonwealth Magistrates' and Judges' Association were invited to send observers. The major item of interest for the three associations concerned the Latimer House Guidelines. The notes of the Observers on the discussion on this topic are set out below.

### **The Commonwealth Law Ministers’ Meeting and the Latimer House Guidelines: Notes of the CLA/CLEA/CMJA Observers**

1. Commonwealth Law Ministers met in Kingstown, St Vincent and the Grenadines from 18-21 November 2003. 34 countries were represented with delegations headed mainly by Ministers of Justice/Legal Affairs or A-Gs.
2. The Commonwealth Lawyers’ Association (CLA), Commonwealth Legal Education Association (CLEA) and Commonwealth Magistrates’ and Judges’ Association (CMJA) were invited to send observers and were represented by Colin Nicholls, John Hatchard and Kipling Douglas respectively.
3. The Latimer House Guidelines (LHG) were on the agenda under the general heading of “Good Governance and Human Rights”. Ministers had before them a short paper (LMM(02)5) which

provided a background to the Latimer House project, including details of the previous discussions of Law Ministers and Senior Officials on the LHG. A copy of the “final” version of the Guidelines was attached to the paper. “Taking account of the consideration of the Guidelines by Senior Officials, and noting the revisions made by the sponsoring organisations”, Ministers were invited to “signify their agreement” with the Guidelines.

4. That problems still remained with the LHG was made clear at the Meeting of Senior Officials that took place prior to the Meeting of Law Ministers. As a result, additional time was allocated for discussion by Ministers.
5. The observers did a considerable amount of lobbying amongst delegates prior to the LHG session.

### **Discussion on the Guidelines**

The considerable interest in the Guidelines was indicated by the significant number of contributions to the discussions. A few delegations fully support to the LHG. However whilst welcoming their general thrust, the vast majority raised concerns about certain aspects of the Guidelines.

In general, the specific points of concern were:

- The monitoring process
- Judicial salaries
- Membership of judicial service commissions
- Anti-floor crossing/recall provisions

There was also concern expressed as to whether some of the issues in the Guidelines were entirely appropriate for consideration by Law Ministers.

In essence, the fundamental difficulty was in the detail rather than with the basic underlying principles themselves. Following the exercise of his “good offices” function by the Commonwealth Secretary-General, the Meeting finally resolved to ask the Secretary-General to convene a small group of ministers to “distil the essence” of the LHG taking into account the concerns expressed at the meeting with the intention that the Principles be ultimately submitted to the 2003 Commonwealth Heads of Government Meeting.

### **Communiqué**

Paragraph 8 of the Meeting of Commonwealth Law Ministers reads as follows:

#### *Latimer House Guidelines on Parliamentary Supremacy and Judicial Independence*

*8. Law Ministers gave detailed consideration to a set of Guidelines on good practice governing relations between the Executive, Parliament and the Judiciary in the promotion of good governance, the rule of law and human rights, drawn up by a conference sponsored by the Commonwealth Parliamentary Association, the Commonwealth Legal Education Association, the Commonwealth Magistrates and Judges Association and the Commonwealth Lawyers Association which was held at Latimer House, London, in June 1998 and revised by those Associations after their initial consideration by Law Ministers in Port of Spain in 1999 and further work by Senior Officials. Ministers fully endorsed the importance of the issues addressed in this document. They hoped that it would be possible for Commonwealth Heads of Government to agree a statement of principles which could assist reflection on those issues. They judged, however, that the text before them required further work before it could be submitted to Heads of Government. The Meeting invited the Commonwealth Secretary-General to convene a small group of Law Ministers to work*

*with the Commonwealth Secretariat to review and develop principles based on the Latimer House Guidelines that take into account all the points made in the discussion at the Meeting. The resulting text received from the Secretary-General's group is to be circulated to Law Ministers for approval before being submitted, through appropriate channels to Heads of Government.*

## **Conclusions**

- The LHG will stay in their final form and still “belong” to the sponsoring organisations
- We must recognise that the LHG are too detailed for Law Ministers ever to adopt or approve
- The establishment of the S-G's ministerial group is a significant breakthrough and provides a mechanism for moving the process forward.

*Kipling Douglas (CMJA); John Hatchard (CLEA); and Colin Nicholls, (CLA)  
2 December 2002*

*[Note: The meeting of the Secretary-General's Group will take place in March 2003 in London]*

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Law Ministers also considered a range of other issues. Of particular note was that on law, land and development. Ministerial views were encapsulated in the following Declaration.

### *Kingstown Declaration on Land and Development*

Commonwealth Law Ministers, meeting in Kingstown, St Vincent and the Grenadines, welcomed the opportunity, in this their first meeting in the 21<sup>st</sup> Century, to debate the strong link between the use, access to, and ownership of land and development and poverty reduction.

Ministers recognised that land sustains both the souls and the bodies of all peoples of the Commonwealth. As a finite resource, land must be able to be used productively for the current generation and at the same time preserved and protected for future generations and accordingly they resolved to keep this subject on future meeting agendas so that they could continue to contribute to the development of positive national strategies involving the law governing land.

Law Ministers stressed the need for the law, where appropriate, to deal with the issues arising from corporate development of land resources and the ensuing need to ensure that corporate governance principles recognised the responsibility of companies to adhere to national standards for the preservation and protection of land and its natural resources.

They conclude that the law must ensure that lawful access to land is promoted and protected and at the same time recognised the very important role played in many Commonwealth countries by systems of customary and community land use and ownership laws. Law Ministers recognise the need in some countries to address appropriately, and within the framework of the law, the concerns of those communities and groups who have been and remain dispossessed of their land and they acknowledged the need in various member countries to reconcile common law concepts of land ownership with the customary law concepts of the sharing of the collective benefits of land.

Law Ministers recognise that there may be tension between developed country concepts of land tenure that are expected by major corporations based in those countries and the needs of

developing countries to address their special land development needs and agree to work on this issue at future meetings.

# COMMONWEALTH LEGAL EDUCATION ASSOCIATION LEGAL EDUCATION REFORMS FOR TRANSNATIONAL PRACTICE

*Regional Conference, Thiruvananthapuram, India, December 28-30, 2002*

## **CONFERENCE REPORT**

The Commonwealth Legal Education Association [CLEA] South Asia Regional Conference 2002 was organised in Thiruvananthapuram, Kerala, India. The Chairman was Prof. (Dr.) N.R. Madhava Menon and the Organising Secretary was Dr S Sivakumar. The theme of the Conference was ***Legal Education Reforms for Transnational Practice***. There were participants from Sri Lanka, Bangladesh, Pakistan and India.

The CLEA Conference was inaugurated by Hon Justice M. Jagannadha Rao, Chairman, Law Commission of India. Mr. D. V. Subba Rao, Chairman, Bar Council of India, presided over the function. Other speakers were Prof. (Dr) N. R. Madhava Menon, Vice Chancellor, The West Bengal National University of Juridical Sciences [NUJS] Kolkata, Prof. (Dr) H. J. F. Silva, Vice President, CLEA and Principal, Sri Lanka Law College, Colombo, Prof. Oliver Mendelson, Dean, Faculty of Law, La Trobe University, Australia, Mr. C. P. John, Member, Kerala State Planning Board, and Dr. S. Sivakumar, Secretary, Conference Organising Committee and Faculty Member, Kerala Law Academy, Thiruvananthapuram.

Hon Justice M. Jagannadha Rao launched the *Directory of Commonwealth Law Schools 2003-04* by presenting a copy to Mr. C. P. John. Prof. Silva read out the messages of Prof. David Mcquoid-Mason, President, CLEA, and Prof. John Hatchard, CLEA General Secretary.

Dr. Silva presented the theme of the Conference, after the inaugural session. This session was chaired by Dr. K. Parameswaran, Professor, National Law School of India University, Bangalore.

The Conference had two other features, viz. Students' Conference and the Selections Round Mooting Competition. The preliminary Mooting Rounds were held on 27 and 28 December 2002, in which twelve teams participated. The qualifying rounds for the Indian and Sri Lankan rounds were conducted on December 30, 2002. (Details given in Report of Mooting Competition, below)

This year's Conference provided a unique opportunity for the law student community of South Asia to interact. The Students' Conference was formally inaugurated by Prof. (Dr) N. R. Madhava Menon. Mr. Saleem Marsoof, Additional Solicitor General of Sri Lanka, Prof. (Dr) H. J. F. Silva, Mr. T. K. Subramoni, Chief Librarian, The British Library, and Ms. S Geetha, Convenor, CLEA Conference, were the other speakers.

There were 160 participants at the Main and Students' Conferences representing four nations of Commonwealth South Asian region. A printed bound volume of Conference papers were circulated along with the Conference bag and stationery, at the time of registration. A Conference Souvenir was also released.

On the evening of December 29, 2002, the delegates enjoyed the cultural extravaganza of Kerala in the *Koothambalam* of Vylloppilly Samskriti Bhavan. The programme was named '*Unity in Diversity through Culture*'.

The winners of the Commonwealth Mooting Competition – India & Sri Lanka National Rounds were announced at the Valedictory function held on December 30, 2002. Mr. Ajantha Atukorale, President, Bar Council of Sri Lanka, delivered the presidential address. Dr. Alice Jacob, former Director, Indian Law Institute, presented a report of the Conference. Prof. V. Vijayabalan, Prof. (Dr) Silva and Dr. S. Sivakumar spoke on the occasion.

### **CONFERENCE COMMENT**

We had three days of serious intellectual debates and discussions on the main theme of the Conference, viz. **Legal Education Reforms for Transnational Practice**, with participants from Sri Lanka, Bangladesh, Pakistan and India. The Conference commenced with the Inaugural session. Prof. (Dr) N. R. Madhava Menon, Vice Chancellor, West Bengal National University of Juridical Sciences [NUJS] Kolkata, delivered the welcome address. Mr. D. V. Subba Rao, Chairman, Bar Council of India, presided over the function. In his address, he referred to the steps taken by Bar Council of India in the revision of curricula for LL.B. degree course by adding four papers for improvement of lawyering skills and reinforcing the component of value education by teaching professional ethics. Hon'ble Justice M. Jagannadha Rao, Chairman, Law Commission of India inaugurated the Conference. He said that legal education curriculum in the country is in need of overhauling in the context of global economic changes.

“Our aim should be to produce lawyers who will be much sought after professionals in foreign countries. Likewise, when multinational firms are established in India, the service of competent lawyers on par with the best anywhere else, will be in demand”.

He expressed the opinion that, “the Bar Council of India, the University Grants Commission, and the Central and State Governments should take upon themselves the immense responsibility of upgrading the quality of law schools in the country.”

Prof. (Dr) H. J. F. Silva, Vice President, CLEA, explained the objective of the Conference to generate knowledge for reforms in legal education in South Asian law schools as a first step. In his keynote address, Prof. Oliver Mendelson, Dean, Faculty of Law, La Trobe University, Australia, shared the Australian experience in promoting lawyering skills, alternate dispute resolution skills, and furthering skills in legal research in students. Mr. C. P. John, Member, Kerala State Planning Board greeted the audience, and referred to the role of law in the WTO regime.

There were two sections for the Conference, viz. Main and the Students' Conferences.

A unique feature of this Regional Conference was the exclusive Students' Conference on **Global Legal Education: Issues and Challenges**. Students from various Law schools in India, Sri Lanka, Bangladesh and Pakistan had responded to the invitation of the Organising Committee, and presented papers on the substantive themes listed for the Main Conference. The enthusiastic participation of students is to be highly commended. They are the future lawyers, judges, law teachers, legal policy makers and bureaucrats. The manner in which they envisioned and formulated the agenda for reforms in legal education in the context of globalisation would constitute a significant contribution to all members of the legal fraternity as well as to the budding scholars.

The Main Conference devoted itself to various thematic sessions such as Global Legal Education, Clinical Legal Education, Information Technology, Intellectual Property Rights, Commercial Law, Environmental Law, Human Rights, Women's Rights, and Alternate Dispute Resolution. The participants included law teachers, lawyers and judges from India, Sri Lanka and Bangladesh. Scientists, doctors and information technology experts also actively took part in discussions.

### **Session I: Global Legal Education & Practice**

The strength of the common law tradition in legal education, the status of legal education in Bangladesh, and the role of law as a tool for resource management were discussed. In addition, the importance of

clinical legal education in the legal curriculum, the relevance of issues of justice in legal education and the steps for training of law teachers in clinical legal education were also stressed.

### **Session II Human Rights**

The session covered the human rights issues of refugees, plantation workers of Kerala, and those affected by food insecurity. It was pointed out that in the revamping of the curriculum in human rights, the issues discussed in the session have to be interwoven and taught to the students to sensitise them. The concept of human rights under Islamic perspective was also highlighted.

### **Session III Information Technology**

The session was highly instructive. Legal Informatics should be introduced to the legal fraternity. Information Technology is an essential tool. Various facets of IT benefits to the legal fraternity were graphically outlined and discussed. The establishment of an education and knowledge grid using the state of the art information and network system across the legal educational institutions and the judiciary and the departments of law in the different states and the Centre, and links with relevant international legal institutions was explained in detail.

Intellectual Property Rights in Information technology were also analysed. It was pointed out that copyrighted software violates human rights of people. Indian Copyright and Information Technology laws are very stringent.

### **Session IV Interdisciplinary Approaches to Legal Education**

The session centred on biotechnology, incorporation of relevant areas of medical education such as forensic medicine and medical negligence in legal education, protection of biological diversity and genetic resources in the context of Intellectual Property Rights, and broad outlines of international commercial law in the context of e-commerce.

### **Session V Intellectual Property Rights**

This session was devoted to an analytical discussion of patent and copyright laws in India, various aspects of patenting of life forms, and legal aspects of Intellectual Property Rights in outer space.

### **Session VI Environmental Law**

Here papers focused on the analysis of various Indian statutes and an imaginative presentation of curriculum for environmental law for transnational practice.

### **Session VII Women's Rights**

The session on Women's Rights discussed, in general, issues of gender justice and the trend of increasing incidence of violence against women. Law teachers were exhorted to include gender perspective while preparing curricula and teaching in all areas of law.

### **Session VIII Clinical Legal Education & Alternate Dispute Resolution**

The session examined the existing state of legal education in India with special reference to the various authorities such as the Bar Council of India, University Grants Commission. Also discussed were reforms in clinical legal education, and the functioning of ADR.

The intensive analysis of the themes contributed to the generation of legal knowledge which should benefit in the re-conceptualisation of legal curricula. The frontier areas of legal knowledge as information technology, intellectual property rights, and environmental law need to find a place in the curriculum.

## *Report on the Commonwealth Mooting Competition – Regional Selection Rounds*

The Commonwealth Legal Education Association [CLEA] South Asia Regional Conference 2002 was organised in Thiruvananthapuram, Kerala, India, from December 28–30, 2002. The selections round competitions of the Commonwealth Mooting Competition were conducted as part of the CLEA Conference 2002.

The preliminary qualifying rounds were held on December 27 & 28, 2002, at the premises of the International Institute of Interdisciplinary Studies [IIS], the facilitator of the Conference.

Twelve institutions had registered for the competition. The distinguishing feature of the selections round was that the same panels of judges heard all the teams represent both sides of applicant and respondent. There were two panels, the members whereof were:

1. Mr. Kazhakkootam Narayanan Nair, Advocate, Thiruvananthapuram
2. Mr. Babu Ajayakumar, Lecturer, Government Law College, Thiruvananthapuram
3. Mr. Shanthakumar S., Government Law College, Madurai
4. Mr. Pushpakumar L., Research Scholar in Law, & Officer-in-Charge, Centre for Environmental Law Education, Chennai
5. Ms. Preeta A. K., Advocate, High Court of Kerala
6. Mr. Sreejith S. G., Research Scholar, Jawaharlal Nehru University, New Delhi

Each moot team had two speakers, i. e., Senior and Junior Counsels, and a Reserve/ Researcher. Four teams qualified in the preliminary rounds wherein the overall team performance was evaluated. They were:

1. Government Law College, Mumbai
2. Government Law College, Thiruvananthapuram
3. National Law Institute University, Bhopal
4. The West Bengal National University of Juridical Sciences, Kolkata

The formal inauguration of the Regional Selection rounds of the Moot was held at the British Library, Thiruvananthapuram. Hon'ble Justice M. M. Pareed Pillay, Chairman, Kerala Human Rights Commission, inaugurated, and Hon'ble Justice Dr. K. Narayana Kurup, former Acting Chief Justice, High Court of Madras, presided over the function. Dr. K. Parameswaran, Professor, National Law School of India University, Bangalore, and Chairman, Mooting Committee, Mr. A. Suhruth Kumar, Secretary, Mooting Committee, and Lecturer, Government Law College, Thiruvananthapuram, Mr. T. K. Subramoni, Chief Librarian, The British Library, and Ms. Tina Kuriakose, Moot Co-ordinator, India National Rounds, spoke on the occasion. In the final round, there were three panels of judges; 2 for the Indian rounds, and 1 for the Sri Lankan rounds. There were 3 teams from Sri Lanka.

The following persons qualified for the Commonwealth Mooting Competition.

### **Indian team**

Mr. Mohit P. Abraham, The West Bengal National University of Juridical Sciences, Kolkata  
Ms. Shravya K. Reddy, The West Bengal National University of Juridical Sciences, Kolkata

### **Sri Lankan team**

Mr. Hejaaz Hizbullah, Sri Lanka Law College  
Mr. Pubudu Srikantha Sachchithanathan, Sri Lanka Law College

## **NEWS FROM COMMONWEALTH LAW SCHOOLS**

### **NEW LLM/MA INTERNATIONAL SPORTS LAW DEGREE AT ANGLIA POLYTECHNIC UNIVERSITY**

The Course provides an increased understanding of the legal framework of contemporary sport and the way in which law interacts with sport. Students will be provided with an insight and expertise in sports law practice and provide a valuable grounding for those wishing to work in this area.

- A one year full-time or two year part-time flexible study programme.
- Teaching consists of two intensive study weeks and tuition via our Internet web site.
- Students are able to manage the degree to suit their academic and business interests by specialising from a wide range of sports law topics including sport society and the law; liability for sports injuries; sports marketing and sponsorship, intellectual property; employment issues; and dispute resolution.
- Presentations by leading sports academics and practitioners.

*For further information please contact:*

*John O'Leary, Course Leader, Anglia Law School, Anglia Polytechnic University, Chelmsford CM1 1SQ, England*

*Tel: 01245 493131 ext. 3305; Fax: 01245 493134; E-mail: j.o'leary@apu.ac.uk*

### **INTERNATIONAL TRADE AT ABERDEEN BUSINESS SCHOOL**

“International Trade”, the multidisciplinary postgraduate programme in international trade at Aberdeen Business School, is fast becoming internationally renown. Housed within the Department of Law of the Robert Gordon University in Aberdeen Scotland and led by Dr Paul Arnell the programme attracts students from countries from all corners of the Commonwealth and beyond. The present cohort has students from Scotland, Malaysia, Nigeria, Indian and Bangladesh as well as China, Spain and Germany. Now in its seventh year the Course has recently undergone several changes which make it even more relevant to students today. The syllabus has been updated to contain subjects that provide up-to-date tuition on law, economics, trade organisations and aspects of European studies. Amongst the eight subjects students study are International Trade Organisations, International Contract Law and Doing Business Overseas. A new Course award has also been added, students may be awarded a Master of Law degree or a Master of Science degree dependent upon the topic of their dissertation.

The course in international trade does not stand alone in Aberdeen Business School but rather is supported by a number of trade-related developments that enhance the experience of students as well as staff. These include the International Trade Law Forum and the Journal of International Trade and Policy. The International Trade Law Forum is a coming together of academics, business people and lawyers who meet on a regular basis to discuss topical issues in the field of international trade. The Journal of International Trade and Policy has recently been launched by the Aberdeen Business School, and is edited by Dr Sarah Christie a lecturer in the Department of Law. It is a refereed journal that publishes relevant and topical articles on subjects broadly related to trade and policy.

For further information on International Trade, Aberdeen Business School or The Robert Gordon University please contact the Course Leader, Dr Paul Arnell, at the address below or visit the website at [www.abs.ac.uk/internationaltrade](http://www.abs.ac.uk/internationaltrade)

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Tel. 44 (0) 1224 263400; Fax. 44 (0) 1224 263434 Email. [p.arnell@rgu.ac.uk](mailto:p.arnell@rgu.ac.uk)

## **NEW LAW JOURNALS**

### *Nottingham Law Journal*

This is a refereed journal. Contributions of articles, case notes and book reviews are welcome on any subject.

Submissions and enquiries should be addressed to: The Editor, Nottingham Law Journal, Nottingham Trent University, Burton Street, Nottingham NG1 4BU, UK. E-mail: [adrian.walters@ntu.ac.uk](mailto:adrian.walters@ntu.ac.uk). Further details are available on [www.clr.ntu.ac.uk](http://www.clr.ntu.ac.uk)

### *Pakistan Law Review*

The *Pakistan Law Review* aims to begin a new chapter in the history of the legal community in Pakistan, whether from the point of view of the bench, the bar or the academia. For most of the 53-year history of Pakistan, there has been no journal of legal comment which has been substantial, comprehensive, consistent and critical. The only law commentaries available are those that are found in the journal sections of law reports such as the *All Pakistan Legal Decisions* and the *Pakistan Law Journal* - but these are limited in their scope, variety and criticism.

What is the *Pakistan Law Review* about? Well, if you were to open an issue of the *Harvard Law Review* or the *Yale Law Journal*, you would seldom come across an article on the 'Rule of Law' or the 'Independence of the Judiciary'. The reason being that the legal systems of most Western countries have so advanced and have so matured that they are past the stage of discussing such basic issues as these. Whereas we, in the developing or rather the undeveloped part of the world have still yet to reach the level of debate which was in vogue when the likes of Albert Venn Dicey, John Austin and Jeremy Bentham were teaching over a century ago. Dicey is obsolete and redundant for Western legal systems where the rule of law is recognized beyond a shadow of a doubt but he is extremely relevant to us here in Pakistan where the rule of law is yet to be recognized by our own rulers.

The *Pakistan Law Review* is looking for contributions on all types of law matters and legal issues dealing with the law, the legal profession and the judiciary in Pakistan, in addition to universally applicable law subjects such as Jurisprudence & Legal Theory, International Law, Maritime Law and Islamic Law. We invite contributions from all - whether they be members of the legal profession, the judiciary, the academia or law students.

The *Pakistan Law Review* aims to become a landmark in the legal landscape of Pakistan in the times to come. However, the success of this venture will depend upon the assistance, participation and cooperation of the legal community - lawyers, judges, jurists and academicians. If you have any comments, queries or you wish to have your article(s) published on PLR please send them to the e-mail address provided below. Before you do that, however, we would kindly request you to follow the very simple but important PLR Guidelines & Procedure for Submission of Articles.

**R.M.S. Azam** Editor

Web-site: [www.geocities.com/paklawreview](http://www.geocities.com/paklawreview) E-mail: [paklawreview@yahoo.com](mailto:paklawreview@yahoo.com)

### *Student Law Electronic Journal*

The first issue of this new electronic journal is available at [www.law.gla.uk/Students/Webjourn](http://www.law.gla.uk/Students/Webjourn). It includes a themed section looking at issues arising from *HMA v Kelly* and the criminalisation of HIV transmission. In the unthemed section the topics include battered women who kill their husbands, gender equality in the EU, cybercrime, restitution and employees as stakeholders. Contributions to such debates are welcomed from academics and students alike.

### *Human Rights Update*

The Human Rights Unit of the Commonwealth Secretariat has revived its publication *Human Rights Update*. Intended to be published three times per year, it includes reports on projects of the HRU, conference and workshop reports, developments in international human rights fora, human rights news from Commonwealth member states as well as book reviews. Short articles on human rights are welcome.

For comments, contributions to and copies of *Update* please contact: Human Rights Unit, Commonwealth Secretariat, Marlborough House, London SW1Y 5HX; e-mail: [b.morgan@Commonwealth.int](mailto:b.morgan@Commonwealth.int)

### **FORTHCOMING CONFERENCE**

*Remaking Law in Africa: Transnationalism, Persons and Rights* (21-22 May 2003) organised by the Centre of African Studies, University of Edinburgh. This interdisciplinary conference will examine the ways law is embedded in and shaped by processes that has can impact upon political, economic, and social development in Africa. It will aim to explore the ways in which law operates in different places at different levels and at different moments in the historical record, in order to gain a more informed less of the processes that underpin continuity, transformation and change.

For further information contact Anne Griffiths at e-mail: [eus118@srv0.law.ed.ac.uk](mailto:eus118@srv0.law.ed.ac.uk) or write to her at Law/Social and Political Studies, Old College, University of Edinburgh, South Bridge, Edinburgh EH8 9YL, Scotland

# ARTICLE

## Preparing Advocates for the Courtroom of the Future

*Deborah Richards and Joanne Stagg-Taylor*

*“There’s no question that technology is fast-becoming an important part of the legal process and can help improve access to justice for many in the community. The courtroom of the future will rely heavily upon electronic research, communication and multi-media technology. It’s essential our young legal professionals are trained in this technology if they’re going to operate effectively in the legal arena of the 21<sup>st</sup> century.”* Rod Welford, Queensland Attorney-General

### Technology in the Courtroom of the Future

Advances in computer and multi-media technology are changing the face of advocacy in courtrooms in Australia and overseas. It is increasingly likely that future lawyers will use sophisticated electronic, computer and multi-media technology to present cases. The Chief Justice of Queensland, The Hon. Paul de Jersey AC has indicated his intention to include such technology in Queensland Courts. He recently stated,

“I am personally intractably committed to the optimal use of technology within the Queensland court system. It is undoubtedly the way forward. We must all become comfortable with it. It is part of the key to increasing accessibility to justice according to law, which is, after all, our fundamental aim.”<sup>1</sup>

In cases where documentary evidence, is voluminous, electronic documents are already being used in preference to paper copies. This allows for rapid searching and display of documents. Electronic documents may also be bundled in an electronic jury book, which replaces expensive and cumbersome paper exhibits.

Developments in audio-visual technology are also changing courtrooms. Videoconferencing allows for people to interact with a court proceeding without being in court. This has obvious cost and security benefits. It may also be used where busy experts or remote witnesses must give evidence. It avoids witnesses and parties incurring travel expenses. It has been suggested that in future short applications may be heard by a judge video linked to a lawyer who has not left her or his own office.<sup>2</sup> In future a video transcript of cases may replace or support traditional written transcripts.

Already, electronic courts are being used in Australia. At the moment, most electronic courtrooms are set up on an *ad hoc* basis for specific large or complex matters. The supporting hardware is set up for one trial only and then removed. It is a “user pays” system with the parties funding the hardware and software used for the trial.

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<sup>1</sup>Speech at <e.law> QUT Moot Court Official Opening 4 July 2001

<sup>2</sup>F.I. Lederer, “Revolution in courtroom technology presents opportunity and risk.” (Nov 1994) 11 *Trial* 1 where he states “Courts in the United States and Canada are already experimenting in this area” (at 4). He adds that this is currently happening in Kansas in the USA.

## Meeting the Challenges of the Courtroom of the Future

Advocates in the courtroom of the future will need to be highly computer literate. It will no longer be acceptable to assume that support staff will take care of all computing requirements.

Fortunately, many lawyers are already adapting to the changes in technology. Most are aware of and use the comprehensive, up to date legal resources on the Internet. Many firms provide computers to each solicitor and expect them to be computer literate. The judiciary is also increasingly aware of technology. Greater access to computers in the courtroom also means greater access to Internet connections, allowing judges and advocates to instantaneously search for legal resources on the net.

Today's law graduates often have an advantage in the information technology stakes. Many legal education providers supply extensive computer facilities to their students. Some publish teaching information straight to the Internet. They give students assistance and tutoring in on-line research and regularly communicate with students via email.

Preparing and presenting cases in electronic format raises a host of issues that need to be addressed by legal education providers. Lawyers will need to be made aware of differences in presenting a case in the traditional method to presenting a case electronically. Differences are not limited to presentation, but flow into case preparation as well.

Lawyers may need to develop a new approach to document handling. After all, "much of litigation is basically information management."<sup>3</sup> Cases with very large document numbers are already being tried in electronic courts allowing for much greater ease of document handling. It avoids repeated movement of thousands of documents at the preparation, disclosure and trial stages. It also saves considerable costs for parties and the court in photocopying and staff document management. For the practiced advocate, it should make court presentation smoother, faster and easier. However, it assumes that all participants are computer literate. Where one participant is not computer literate, he or she will be severely disadvantaged. Access to training at a professional level is particularly important to avoid these problems.

When creating electronic images, the advocate must consider how they will be used and who the audience will be. If used correctly, visual aids are very powerful persuasive tools. Research has shown that juries remember 85% of what they see and only 15% of what they hear.<sup>4</sup> However, visual materials must be prepared and managed carefully. The advocate must ensure that her or his electronic documents can be easily identified and navigated by judges, jurors and others.

Many programmes offer visual effects that would not be used in traditional court room presentations. Advocates must take great care if using them. Clumsy use of emotive images and themes may alienate the audience.<sup>5</sup> Advocates should be careful not to let gimmicks get in the way of their message.<sup>6</sup>

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<sup>3</sup>Lederer, above

<sup>4</sup>L.G. Baer and C.A. Riley, "Technology in the Courtroom: Computerized Exhibits and How to Present Them" (April 1999) *Defence Counsel Journal* 176

<sup>5</sup>At the William and Mary Law School in Williamsburg, Virginia, the faculty trialed the use of emotive slide presentations. For a wrongful death moot involving arson, they used slides loosely resembling tombstones with an angry crimson background. The judge quickly ruled them inadmissible. The jurors "told us later that they recognised that using these slides was an intentional effort to bias them and they were angry about it." Reported in "Is technology changing civil justice?" 1998 *Trial* 40 at 42-44

<sup>6</sup>A recent survey of QUT students found that the factor that they disliked most about PowerPoint was that it distracted them from the content delivered in lectures, particularly where visual or sound effects were used. Anne Matthew, "The Impact of Powerpoint Presentations on Student Learning" and "Effective Teaching and Learning:

Planning persuasive legal presentations is a growing specialist field in the USA, with firms devoted purely to the creation of forensic computer presentations. Legal education providers need to be careful not to overreach themselves in the teaching of presentation skills. They should reject gimmickry in favour of clear presentation.

Where computer graphics and animation are used to illustrate a point, the advocate must take care that they are admissible. Some Australian Courts have accepted computer generated video evidence where it is merely demonstrative, and is used merely to illustrate a witness's oral testimony.<sup>7</sup>

Another issue to consider in electronic cases is the emergence of real-time transcripts. Real-time transcripts allow for written transcript to be available almost immediately to advocates. Anecdotal evidence suggests that advocates quickly become dependant on the real-time transcript. Where the facility is available, advocates may use computers to annotate or bookmark the transcript during the trial. This has a very real benefit in preparing for cross-examination or argument. The drawback is that while a witness is giving live testimony, advocates, judges and juries may watch the transcript rather than the witness and may miss nuances of the witness's expression or body language. Where the legal assumption is that the tribunal of fact has had the chance to observe the witness and assess their credit, this could cause difficulty. Advocacy trainers need to underscore the importance of watching the witness. Advocates may also have to develop strategies to direct the judge's attention to the witness.

In tandem with real-time transcript comes the potential for video recording of trials. Where an appeal court may witness first-hand the behaviour of trial participants, this may lead to a shift in presumptions about the ability of tribunals at first instance to judge witness demeanour correctly. The advocates of the future may need to prepare themselves and their client for video recording of their performance.

Another increasingly common use of video technology is videoconferencing. The use of videoconferencing in criminal matters, may decrease cost and security burdens for the State. However, it places the burden of appearance on an advocate whose client is not physically present. This may also make the taking of additional instructions and giving advice more difficult. The client may mistrust the confidentiality of the communication technology.

Lederer (above n.2) has suggested that a witness at a remote location should, if possible, be placed in another court facility or similar formal environment. This has the psychological effect of emphasising the importance of the proceedings to the witness. However, the designated facilities may not be an ideal audio-visual environment. Camera coverage should ideally show most of the room, so that it is clear that the witness is not being prompted or coerced. Lighting and colours in such a room may not be flattering to a witness in the same way that television coverage would be. Advocates may be self conscious and unnatural. Trainee advocates should be aware of the challenges involved in the use of video technology. They must learn to overcome the pitfalls of seeing two-dimensional witnesses, who suffer when compared to the standards familiar on television.

Video training also has numerous benefits for legal trainees. The use of videotaping has long been documented as a valuable aid to microteaching (the teaching of one skill or set of skills in isolation).<sup>8</sup> It

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How Powerful is Powerpoint? Extract of Results, Student Survey Conducted by Ann Matthew 2001" presentation to QUT Teaching Interest Group on 23 October 2001.

<sup>7</sup>See e.g. *Toomey v Scolaro's Concrete Constructions Pty Ltd (in liq) & Ors* [2001] VSC 279; *R v Challoner* [1998] 1 VICSC 128; *Designlink International v Baulkham Hills Shire Council* [1999] NSWLEC 243

<sup>8</sup>See e.g. D.S. McCurry, "Technology for Critical Pedagogy: Beyond Self-Reflection with Video" *Society for Information Technology & Teacher Education International Conference: Proceedings of SITE 2000*; L Ratcliff et al, "The Impact of Videotaping on the Communication Apprehension and Self-Perceived Competency of Low

provides a valuable tool for self-reflection. Trainees are able to view their own performance as others see it. They see mannerisms of which they may otherwise be unaware. They are able to assess their performance separate from the anxiety of performance. For all these reasons, videotaping has a long history of use in advocacy training. However, legal education providers need to ensure that video feedback is coupled with specific and constructive feedback. Assessors and forms of assessment must be very carefully chosen and the assessors themselves trained in giving constructive feedback.

Technologically trained lawyers should have the edge over their less techno-capable counterparts. They should certainly give a greater impression of competence or special ability.<sup>9</sup>

### **<e.law>QUT Moot Court**

The <e.law> QUT Moot Court was the first court in Australia to integrate specialist software, audio-visual technology, state-of-the-art hardware and purpose-built furnishings into an architecturally designed courtroom. The Moot Court is a prototype that is assisting the real courts in making decisions about the design of new courts and upgrades of existing courtrooms. QUT's electronic moot courtroom is both functional and aesthetic. The moot court was designed primarily as a training and teaching facility. The Moot Court working party was particularly concerned that the court be set up in such a way as to function both as a training facility and a normal courtroom.

In designing the QUT Moot Court the working party considered communication between the bench, the bar table, the witness and the jury. There must at all times be a clear line of sight between all the parties. For this reason the computers were placed inside the benches rather than on top of them.

Video facilities were set up to allow student performances to be taped and replayed within a short period of time. This makes feedback on student performances much more effective. One of the options when videotaping is the QUAD display, which allows the Bench, the Bar and the witness to be viewed together on a split screen. This allows assessors to give very detailed feedback to the students on their performance. When they are speaking, participants can see the reaction of the Judge, their opposition and also the witness to any questions or line of questioning that they are following. Access to the web was another important consideration. The barristers, solicitors and judges all have access to the web enabling them to access current legislation and cases throughout any hearings.

QUT also considered "distance learning." Videoconferencing facilities can be utilised to allow students in remote areas to participate in mooting programs without coming onto campus. The courtroom also has the capability of proceedings being transcribed in real-time. Documents not in electronic format are displayed by a document camera.

In the future, QUT envisages that undergraduate students interested in mooting, advocacy and litigation, QUT Legal Practice Course and Bar Practice Course students will graduate with up-to-date skills in electronic courtroom procedure.

When the Moot Court was built it was expected that it would be used to train practicing solicitors, barristers, the judiciary and magistracy in presenting cases electronically. Members of the legal

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Apprehensive Students." *Paper presented at the Annual Meeting of the Speech Communication Association* 1996; J.J. Justman, "Feedback: Breakfast of Champions" *Paper presented at the Annual Meeting of the Central States Communication Association* 1998 and the bibliographies annexed thereto.

<sup>9</sup>E.g. "Is technology changing civil justice?" above at 45. Lederer comments that "whenever one lawyer arrives with a laptop computer or other technology, the opponent immediately raises the question of whether this disadvantages the other side."

profession and associated areas would be given the opportunity to update their courtroom skills to electronic standards through short training courses and workshops. Currently, QUT has developed a mooting subject for its undergraduates. The documents involved in these moots will be managed and presented electronically. We will shortly be offering a course to lawyers introducing them to electronic media in court-room presentations. A similar course will be offered to legal support staff in the preparation of electronic cases.

The facilities are already being used extensively to train pre-admission graduates and practicing members of the legal profession in advocacy. The video facilities and readily available access to legislation and cases, in particular, have proven to be a great asset in that training.

However, when training lawyers for the courtroom of the future, legal education providers must be strategic in their use of technology in teaching. Technology used simply for the sake of using technology does not equate with “good teaching.”<sup>10</sup> Advocacy training should always keep in mind the fact that the technology now available is simply a tool, to be used only when it will make for more effective litigation practice. This was a major consideration in the design of QUT’s training programmes.

## **Conclusion**

The trend towards electronic presentation presents new challenges and opens new avenues of training for legal educators at an undergraduate, pre-admission and continuing legal education level. The <e.law> QUT moot court is an example of the training tools that legal educators can use to train their students for the courtroom of the future, in which advocates will need to be highly computer literate, flexible and inventive.

By providing training in the technology and software of electronic courtrooms, legal educators can equip the legal profession with the necessary skills for the advocates of the future.

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<sup>10</sup>B. Carpenter and G. Tait “The rhetoric and reality of good teaching: A case study across three faculties at the Queensland University of Technology” (2001) 42 *Higher Education* 191

## ON LINE

### *Access to Pakistani Law*

Free legal resources with particular reference to Pakistani law is available from [www.lawfirm.org.pk](http://www.lawfirm.org.pk)  
The site contains full text of the Constitution of Pakistan, Constitutional Orders, major statutes and full text judgments of several major decisions of the Pakistan Supreme Court.

### *New Zealand Institute of Judicial Studies Annual Report 2001-2002*

This is available from [www.courts.govt.nz/annual\\_report/ijsannualreport02.pdf](http://www.courts.govt.nz/annual_report/ijsannualreport02.pdf)

An e-mail copy of the report is available from [lyn.smith@courts.govt.nz](mailto:lyn.smith@courts.govt.nz)

### *World Trade Organization: Documents Online*

Access to the official documentation of the WTO, including the legal texts of the WTO agreements from 1995 onwards is available from: <http://docsonline.wto.org/>

### *African Union*

[www.africa-union.org/en/home.asp](http://www.africa-union.org/en/home.asp) is the web-site of the AU (formed in 2002 to replace the Organisation of African Unity) The site contains the full text of the AU Constitution, recent issues of its newsletter and some full text reports.

### *Researching South African Law*

[www.llrx.com/features/southafrica.htm](http://www.llrx.com/features/southafrica.htm) provides an online guide to researching South African law.

### *Lawyerment: Malaysia Online Legal Resources [www.lawyerment.com.my/](http://www.lawyerment.com.my/)*

This is a searchable database of online resources relating to Malaysian law

### *World Legal Information Institute (WorldLII) ([www.worldlii.org](http://www.worldlii.org))*

This is a free, independent and non-profit legal research facility developed collaboratively by the: Australasian LII (AustLII); British and Irish LII (BAILII); Canadian LII (CanLII); Hong Kong LII (HKLII); Legal Information Institute (Cornell); Pacific Islands LII (PacLII); Wits University Law School. Following a meeting of LIIs and law schools at the 4<sup>th</sup> Law via Internet Conference in Montreal in October 2002, the *Montreal Declaration on Public Access to Law* was adopted. This is available on [www.worldlii.org/worldlii/declaration/](http://www.worldlii.org/worldlii/declaration/). The full text is as follows:

#### **Montreal Declaration on Public Access to Law**

Legal information institutes of the world, meeting in Montreal, declare that:

- Public legal information from all countries and international institutions is part of the common heritage of humanity. Maximising access to this information promotes justice and the rule of law;
- Public legal information is digital common property and should be accessible to all on a non-profit basis and, where possible, free of charge;
- Independent non-profit organisations have the right to publish public legal information and the government bodies that create or control that information should provide access to it so that it can be published.

*Public legal information* means legal information produced by public bodies that have a duty to produce law and make it public. It includes primary sources of law, such as legislation, case law and treaties, as well as various secondary (interpretative) public sources, such as reports on preparatory work and law reform, and resulting from boards of inquiry.

Therefore, the legal information institutes agree:

- To promote and support free access to public legal information throughout the world, principally via the Internet;

- To cooperate in order to achieve these goals and, in particular, to assist organisations in developing countries to achieve these goals, recognising the reciprocal advantages that all obtain from access to each other's law;
- To help each other and to support, within their means, other organisations that share these goals with respect to:
  - Promotion, to governments and other organisations, of public policy conducive to the accessibility of public legal information;
  - Technical assistance, advice and training;
  - Development of open technical standards;
  - Academic exchange of research results.

Made at the 4th Law via the Internet Conference in Montreal on 3 October 2002

Australasian Legal Information Institute; British and Irish Legal Information Institute; LexUM/Canadian Legal Information Institute; Hong Kong Legal Information Institute; Legal Information Institute (Cornell); Pacific Islands Legal Information Institute; University of the West Indies Faculty of Law Library; Wits University School of Law

## ***THE LIGHTER SIDE***

### ***LAW SCHOOL HEALTH WARNING:***

Some practical advice provided for law students at the Kenya School of Law

### ***Kenya School of Law Survival Guide***

**The following should help ease your entry, stay and examination period at the School**

- Meet new people and have fun.
- Get to know some of the administrative staff at the School, they can be very helpful especially with information regarding procedure.
- Try not to cross the Principal's path. He is also the acting Secretary of the Council of Legal Education.
- Skipping classes is ill-advised not so much because you miss writing notes, notes you can always copy later, but because you risk getting out of touch with your peers when past papers, notes and hints go around.
- Many of the subjects should be fair for first time students, however, **If you have no experience in Commercial Accounts get some before you attend the School.** The Commercial Accounts course at the School of Law is taught at lightning pace! Many prospective students take tuition courses beginning in February of the year in which they are expected to attend the School. Accounts is legendary for its high failure rate at the School.
- Evidence? Come with a voice recorder if you can't write fast. Dr. Odek fairly rattles through the course. You will have five pages of notes in half an hour.
- The toilets are in bad shape, however there is a fairly clean facility on the first floor.
- The canteen food is edible. The chapos are great, especially in the morning while still hot.
- If you are left handed, good luck. The desk is connected to the right hand of your chair. It did not occur to anyone that left handed students would ever make it to the School.
- There is no really decent eatery in the area save for the Hostel next to the School.
- Cross Valley Road with care, not a week goes by without the sound of screeching brakes.