HADDON STOREY: VICTORIAN ATTORNEY-GENERAL 1976-1982

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INTRODUCTION

Victoria's first Labor government for 27 years came to office in 1982. Law reform was a significant plank in the ALP platform and it will doubtless form a focus for the Cain government.

The change of administration to a government with a well developed law reform program would seem to make a review of the out-going administration's reform achievements particularly timely.

In 1976 the Hamer government was comfortably returned at the polls and following the retirement from politics of the Hon. Vernon Wilcox, the Hon. Haddon Storey Q.C. was appointed by the Premier as Attorney-General. He was also appointed Minister for Federal Affairs. It is from this time that the Liberal government could be considered to have actively involved itself in a recognisable reform program. Critics would doubtless be reluctant to concede that measures initiated by the last administration could be construed as a reform program but an examination of law reform initiatives, particularly over the last six years, reveals that steady, sometimes controversial, progress has been made in a number of areas.

Primary responsibility for managing the majority of reforms herein discussed, lay with the Attorney-General. Before we turn to the matters to be reviewed, Haddon Storey's background is deserving of brief examination. He was educated at Scotch College and graduated from Melbourne University LL.B., and LL.M. in 1952. After graduation, articles and a short period as a solicitor, Mr Storey went to the bar. In 1971 he took silk. In 1971 he also entered Parliament as MLC for the blue ribbon province of East Yarra. From 1971 until 1976 he was a member of the Statute Law Revision Committee and a member, then Chairman of the Liberal Party Law Committee. From its inception in 1969, he was a member of the Molomby Committee on Consumer Credit. The report of this committee, tabled in the Victorian Parliament in 1971 formed the basis of one of the out-going government's major enactments, the consumer credit legislation package.

ADMINISTRATIVE INITIATIVES

Included in the program which the Attorney-General oversaw were a number of what can best be termed administrative reforms.

An early step was to set in train the establishment of the Law Department's first policy and research division. Another step taken was to actively support as well as help fund from 1981, the program established by the Melbourne University Law Faculty in 1979 to study intergovernmental financial relations. 1981 also saw funding made available to undertake computerization of the Titles Office Register. This is a long term project (expected to cost around $10m) of little vote catching but great practical importance. That the exercise has already been delayed too long is evidenced by the fact that in the near past up to 100,000 lodged but unregistered instruments have accumulated at the Titles Office. The first stage of computerization is designed to deal with this processing backlog.

A number of measures were instituted to tackle the chronic legal administrative problem of delays in court hearings. The most significant was the introduction of the concept of regionalization of Magistrates Courts. The view was taken that whilst delays in the higher courts were bad and received considerable publicity, the vast bulk

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of litigation occurred in the courts of summary jurisdiction and it was their administration which most needed attention.[1] The Prahran Magistrates Court complex is the clearest embodiment of this reform. It provides comfortable centralized facilities which allow the concentration of support resources in an efficient manner. Unfortunately owing to lack of funds it remains the only example in the metropolis but it is a pointer in the right direction. Regionalization without relocation has been introduced to other districts.

Another management initiative of very recent history has been the appointment of a 'Listing Officer' to deal with arrangement of the criminal lists of the superior courts. This officer is independent of the Crown Solicitor. The aim here is to cut down wasted court time by allowing for a listing program flexible enough to meet changing circumstances.

Although not a strictly administrative initiative, establishment of the Victorian Legal Aid Commission[2] has had a marked effect on legal administration. Whilst the difficulty of maintaining adequate funding is as great as ever, it is generally recognised that the structure and operation of the Commission has been successful.

Other measures taken included the establishment of an Estate Agents Board,[3] increasing of the maximum amount that could be awarded by the Crimes Compensation Tribunal and the production of a series of information pamphlets entitled 'The Law and You'.

LEGISLATIVE INITIATIVES

Mention was made earlier of the Molomby Committee. Its report was a matter of acute concern to the new Attorney-General of 1976. By that stage he had had 7 years involvement in the issue of consumer credit reform. He was to wait until late 1981, by which time he was also Minister for Consumer Affairs, to see the legislative package receive the Governor's assent. The Molomby Committee had been constituted as a Committee of the Law Council of Australia at the request of the Standing Committee of Attorneys-General. Attempts were made after the tabling of the report to achieve agreement on uniform legislation, at meetings of the Standing Committee. In the final event, Victoria and N.S.W. agreed to legislate in tandem. Substantially uniform legislation has now been passed though at the time of writing, it had not all been proclaimed. In essence, there are three Acts which will stipulate for all consumer transactions to have similar effects.[4] Part of the package ensures the supply of accurate information to consumers. Another element is the establishment of a Credit Tribunal to ensure achievement of the objects. A computerised register of security interests associated with motor vehicles, trailers and caravans and motor boats will also be established.

Possibly the most controversial reform of the period under review was the Residential Tenancies Act 1980. In December of 1976 a Community Committee on Tenancy Law Reform was established to review the existing landlord and tenant law and liaise with the Attorney-General. This worthy initiative gave rise to a torrid debate lasting right through until the proclamation of the eventual final Act in November of 1981. A recent comment on the legislation in this journal is worth repeating.

[1] The Magistrates' Courts (Civil Jurisdiction) Act 1979 was a legislative component of this reform measure designed to bring the jurisdictional competency of Victoria's summary courts up to date.

[2] The Commission was established pursuant to the Legal Aid Commission Act 1978.

[3] The former Attorney-General's interest in the law relating to real estate agencies is also evidenced by his co-authorship of a standard text on the subject: Storey and Goldberg *Real Estate Agency in Victoria* 1974.

[4] Credit Act 1981, Goods (Sales and Leases) Act 1981, Chattel Securities Act 1981.

> The background to the development of the Residential Tenancies Act shows that landlord and tenant law reform is an extremely divisive issue both socially and politically, and that consensus amongst politicians and the public at large is almost impossible to obtain. In this context the Victorian Legislature should be commended for producing such a comprehensive revision of the landlord and tenant laws. However, on the whole the Act falls short of the claim made by the Attorney-General that it is 'highly polished' and 'carefully balanced'.[5]

This reform promises to remain the subject of intense scrutiny for some time.

Less controversial were the measures designed to rationalise the effects of imperial statutes still casting their spell over the State in 1980.[6] The doctrine of repugnancy[7] placed limits on how much could be achieved unilaterally but with a view to tidying up that particular anachronism and by way of complementing the above initiative, the Constitutional Powers (Request) Act was also passed in the same year. This Act relies for its effect on a scheme based on Section 51(38) of the Australian Constitution. Since the passage of this legislation the scheme in its original form, has failed to attract the unanimous support of the other States. Prior to the passing of complementary Federal legislation (and the scheme has no effect without such legislation) achievement of unanimity is considered desirable.[8]

Criminal law reform achieved during the period under discussion included two much discussed and related statutory changes. In 1976 proceedings in rape cases were reformed[9] and in 1980, the law relating to sexual offences generally was substantially rewritten. The 1980 measure sought to protect people from sexual assault or sexual exploitation whilst otherwise not interfering in sexual activities between consenting adults.[10] In 1981 the matter of penalties received attention with the rationalization of monetary penalties in over 100 Acts. This measure implemented the use of penalty units, repealed whipping and introduced Community Service Orders.[11]

A measure which was hotly debated when introduced, probably more so than any other criminal law reform, was the abolition of capital punishment.[12]

The Bail Act 1977 and four other Acts which made substantial amendments to the Crimes Act[13] largely complete the picture of legislative criminal law reform.

Some legislation related to the profession has already been discussed. Three other measures significant to the profession were taken in 1978. In that year it became the

[5] Bradbrook A. J., 'The Rights and Duties of Landlords and Tenants under the Victorian Residential Tenancies Act' (1981) 13 *M.U.L.R.* 159, 194.

[6] Imperial Acts Application Act 1980, Imperial Law Re-enactment Act 1980.

[7] This doctrine holds that British legislation which has been expressed to extend to the states (or colonies as they were when much of the legislation in question was passed) or extends by 'necessary intendment' has paramount force in the Australian States. Accordingly the States cannot legislate 'repugnantly' where-ever such legislation intrudes. The Commonwealth freed itself of this fetter by the adoption of the Statute of Westminster 1931 in 1942. The same course does not lie open to the States as they declined to be parties to this Statute of Westminster option when it was first mooted.

[8] For further discussion of the operation of the scheme see Lumb R. D., 'Fundamental Law and Constitutional Change' (1978) 9 *Federal Law Review* 148 and Saunders C. S., 'Maritime Crime' (1979) 12 *M.U.L.R.* 158, 175. The Premiers Conference of June 1982 did achieve unanimity on the need to solve the problems arising out of the doctrine of repugnancy. A modification of the original s. 51(38) scheme was mooted, however.

[9] The Rape Offences (Proceedings) Act 1976.

[10] The Crimes (Sexual Offences) Act 1980.

[11] Penalties and Sentences Act 1981.

[12] This reform was achieved via a private member's Bill introduced by the then Premier, Dick Hamer, shortly before the period principally under discussion here.

[13] Crimes (Married Persons' Liability) Act 1977, Crimes (Criminal Damage) Act 1978, Crimes (Competence and Compellability of Spouse Witnesses) Act 1978. Crimes (Classification of Offences) Act 1981.

law that Stipendiary Magistrates should hold law degrees and legal disciplinary tribunals were introduced.[14]

In 1981 the Associations Incorporation Act was passed. This piece of legislation brought Victoria into line with the smaller Australian jurisdictions.[15] Another commercial law change of major interest stems from Victoria's participation in the National Companies' Scheme.

Finally, it should be observed that although the Freedom of Information Bill did not achieve enactment before the Thompson Government lost office, the Bill introduced in November 1981 was the subject of favourable comment.[16]

CONCLUSION

The discussion of reform measures above does not purport to be exhaustive or particularly evaluative .The purpose of this note has been to record some of the law reform measures of the previous Victorian Government.

During the long period of Liberal rule in Victoria, none of the various governments would have been likely to describe themselves as 'primarily reform administrations'. The policies of Liberal and National party governments are largely supported for their essential conservatism. Nevertheless, particularly in its latter phase, the Victorian Liberal government carried through a significant law reform program. Certainly in the context of Australian conservative governments it stands out as a law reform innovator.

Haddon Storey has remarked that he developed over the years a deep underlying concern to improve the access of the man in the street to the means to exercise his rights. Baldly stated that sentiment could appear trite and facile. Tested against the law reform measures of his period of Attorney-Generalship, the remark takes on a ring of accuracy.

[14] Magistrates' Courts (Stipendiary Magistrates) Act 1978. Legal Profession Practice (Discipline) Act 1978. Legal Profession Practice (Solicitors' Disciplinary Tribunal) Act 1978.

[15] This legislation arose from a report of the Chief Justice's Law Reform Committee (C.J.L.R.C.). Haddon Storey took action on a number of reports from the same source which had received no legislative attention. Examples of implemented reforms include: Wills Act 1981, discussed in 1980 C.J.L.R.C. Report. Trustee (Authorised Investments) Act 1978, discussed in 1972 C.J.L.R.C. Report. Wills (Interested Witnesses) Act 1977, discussed in 1971 C.J.L.R.C. Report. Administrative Law Act 1978, discussed in 1968 C.J.L.R.C. Report. Charities Act 1978, discussed in 1966 C.J.L.R.C. Report.

[16] See *Newsletter 54 of Victorian Council for Civil Liberties* January 1982, 3, where the Freedom of Information Bill was described (to the delight of freedom of information advocates) as largely conforming to the model Bill proposed for the Commonwealth by the Senate Standing Committee on Constitutional and Legal Affairs. Victoria was described as having stolen the spotlight in the freedom of information area. This bill was introduced after John Cain (then shadow Attorney-General) had listed a Private Member's Freedom of Information Bill on the notice paper for the spring session of Parliament.