

nuisance. The Canadian courts had extended standing in some constitutional and administrative law cases, though in ways that are somewhat uncertain, but the rules relating to public nuisance cases prevent the courts from determining important issues, especially in environmental law cases. Like the ALRC, it recommends abolition of the existing rules. It proposes their replacement by an Access to Justice Act. This would give any person a prima facie right to bring an action. The defendant would be able to challenge the plaintiff's standing. In that case the court, in deciding the question of standing, would have to consider the nature of the plaintiff's interest in the outcome of the proceedings, whether other proceedings have been commenced, the fairness to persons affected, whether or not the proceedings are trivial, and the number of persons affected. These proposals would not affect rules on standing in other areas, so they may be regarded as somewhat narrower than the changes proposed by the ALRC.

*intervention.* The OLRC also considered the rights of persons who were not party to the action to intervene. (See [1989] *Reform* 80) [standing in the hot seat]) It considered that the liberalised standing rules would encourage an 'innovative and flexible use of the present intervention rule', and did not recommend any change in the law at present.

*costs.* Plaintiffs faced with the possibility of paying heavy costs would be unlikely to take advantage of the liberalised standing rules, so the OLRC made extensive recommendations for changes to the law relating to costs. These are more far-reaching than those of the ALRC.

- In some circumstances it should not be possible for the courts to order plaintiffs to pay defendants' costs, except where there is frivolous, vexatious or abusive conduct.

- The courts should have power to declare that a person is immune from having to pay costs.
- A person who is immune from costs should be enabled to enter into a contingency fee arrangement with his or her lawyer.
- In general, persons who are permitted to intervene should be immune from the payment of other parties' costs. □

victims of crime

The rain raineth on the just  
And also on the unjust fella:  
But chiefly on the just, because  
The unjust steals the just's umbrella.

Charles Bowen, Thad Stem, Jr and  
Alan Butler, *Sam Ervin's Best Short  
Stories*, 1973

Victims of crime will have the right to be informed of the details of legal action against the offender, including the outcome of the case and impending release from custody, under the Charter of Rights for Victims of Crime announced recently by the New South Wales Government.

*united nations' declaration.* The charter, is based on the Declaration of Principles of Justice Relating to Victims of Crime adopted by the United Nations in 1985 and will be applied by all government departments in NSW.

*who is a victim?* The definition of a victim of crime for the purpose of the charter will be anyone who, because of a criminal offence (whether or not anyone is convicted of the offence) suffers physical or emotional harm, loss of or damage to property, and where an offence results in death, the members of the immediate family of the deceased.

*what rights are provided?* The charter lists 19 rights for victims of crime:

- *courtesy and respect.* To be treated by all persons with courtesy and compassion and with due respect for their personal rights, their dignity, and their physical and mental well-being.
- *availability of services.* To be informed, at the earliest practicable opportunity by members of the police or other prosecuting authority, officers of the court and health and social services personnel, of the services and remedies available to them.
- To have ready access where necessary to available medical and counselling services, welfare and health services, and legal services that have wherever possible, personnel appropriately experienced in dealing with victims.
- *progress of investigations.* To be informed, upon request, of the progress of investigations being conducted (except where disclosure will jeopardise the investigation).
- *charges laid.* To be advised, upon request, of the charges laid against the accused or, wherever practical and appropriate, of the reasons for charges not being laid.
- To be advised, upon request and where disclosure would not prejudice the Crown case, of any modification to the charges laid or of the justification for acceptance of a plea of guilty to a lesser charge, or of the justification for accepting a guilty plea in return for recommending leniency on sentencing.
- To be advised of the withdrawal of a charge or of the filing of a nolle prosequi (the ending of a case because the prosecutor decides or agrees to stop prosecuting).
- *hearing details.* To be provided, upon request, with details of the venue and date of hearing of a matter, and the outcome of proceedings (including proceedings on appeal) by the prosecuting authority or officers of the court.
- *the trial.* To be informed about the trial process and of their role, rights and responsibilities as a witness.
- To be protected from unnecessary contact with the accused and defence witnesses during the course of proceedings.
- *safety precautions.* To have residential addresses and telephone numbers withheld unless disclosure is deemed material to the defence or prosecution, or non-disclosure is otherwise contrary to the interests of justice.
- *committal proceedings.* Not to be required to attend preliminary hearings or committal proceedings unless their appearance is deemed material to the defence or prosecution.
- *return of property.* To have property held by the Crown for purposes of investigation or evidence returned within 21 days or to be advised of the reason for retention.
- *protection.* To have their need, or perceived need, for protection put before a bail authority by the prosecutor in any bail application by the accused.
- *bail conditions.* To be advised of any special bail conditions imposed on the accused which are designed to protect them or their family from the accused.

- *bail applications*. In matters relating to charges of sexual assault or other serious personal violence, to be advised of the outcome of all bail applications.
- *effects of crime*. In matters relating to charges of sexual assault or other serious personal violence, to have the prosecutor make known to the court the full effect of the crime upon them.
- *outcome of trial*. To be advised, on request, of the final outcome of criminal proceedings and of the sentence imposed.
- *notification of release or escape*. To be given the opportunity to request notification of the offender's impending release, or escape, from custody. □

## contingency fees

Law's costly: tak' a pint and 'gree.

Scottish proverb

*contingency fees recommended in victoria and new south wales*. The legal fees committee ('the committee') of the Law Institute of Victoria has recommended the introduction of a system of contingency fees for Victoria to provide greater accessibility to legal service for members of the public. A Working Party in New South Wales comprising representatives of the Legal Aid Commission, the Law Society, the Attorney-General's Department and the Combined Community Legal Centres Group, has proposed that a Contingent Legal Aid Fund (CLAF) be established in New South Wales. The essence of a contingent fee is that it allows a lawyer to agree with his or her client, or, in the case of the New South Wales' proposals, with a Contingent Legal Aid Fund, that no fees

will be charged if the case is lost but that a higher than normal fee based on a percentage of the verdict is payable if the case is successful. This method of charging for legal work is currently illegal in all Australian jurisdictions.

*arguments for and against contingency fees*. In its Report entitled, 'Funding Litigation The Contingency Fee Option', the Victorian committee deals with the most common arguments made out for and against contingency fees. The arguments in favour are summarised as

- increased access to justice
- simplicity
- more effective recognition and allocation of risk
- greater public satisfaction
- freedom of contract
- encouragement of legal innovation and solicitor effort
- deregulation of the legal profession.

The arguments against are summarised as

- conflict of interests
- increased court awards
- increased and vexatious litigation
- excessive fees
- additional burden for the court system
- negative effect on the image of the legal profession
- problems with implementation, including the treatment of disbursements.

While recognising that there was potential for abuse of a contingency fee system by both the legal profession and litigants, the committee concluded that the potential benefits of such a system outweighed the disadvantages.

*contracts to be in writing*. The committee recommended that all contingency