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In this issue of the Law Reform Committee's regular bulletin, we highlight ongoing efforts by the Committee and several of its counterpart overseas law reform bodies to address the legal challenges created by new disruptive technologies. Plus, after a year of unprecedented change, we look at the enduring and wide-ranging positive impact that ambitious, proactive law reform can have.

SAL Law Reform Committee – Our Recent Highlights and Ongoing Work

Law Reform Committee analyses liability issues in accidents involving autonomous cars



On 23 September, the Law Reform Committee published the third report in its *Impact of Robotics and Artificial Intelligence on the Law* series, looking at how liability should be attributed following accidents involving self-driving cars.

The report is intended to assist policymakers in designing the future legal scheme for autonomous cars, taking into account the desire to both encourage adoption of such vehicles, and also ensure high safety standards and effective redress for accident victims.

The report analyses the challenges in determining liability that flow from the fact that a self-driving car's behaviour is determined by an automated driving system, rather than a human driver. In particular, the report highlights the difficulties likely to arise in trying to apply established liability frameworks – namely, negligence, product liability and 'no fault' liability – to accidents involving such autonomous cars, and compares the differing approaches taken to these issues internationally.

You can read the report [here](#), and – if you’re short on time – there’s a one-minute quick guide to its findings [here](#). The report’s authors also discussed how Singapore is preparing for the arrival of driverless cars with [Allen & Overy’s Propel podcast](#).

Since the Law Reform Committee’s report was published, the Law Commission of England & Wales and the Scottish Law Commission have published a [further consultation paper](#) in their ongoing joint inquiry into Automated Vehicles. While focused on broader areas than the civil liability issues considered by the Law Reform Committee, the Commissions’ consultation does consider various issues central to the challenges highlighted in the Law Reform Committee’s report, including in particular the question – when it comes to self-driving cars – of ‘*how safe is safe enough?*’.

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Laws to better remedy misuses of private information proposed by Law Reform Committee

A new statutory tort to better protect those whose private information is misused is the main recommendation of the Law Reform Committee’s report on *Civil Liability for Misuse of Private Information*, published earlier this month.



In light of the ever-increasing speed and scale at which information can be shared, the Committee considered whether Singapore’s existing privacy and related laws provide effective redress for individuals against serious misuse and disclosure of their private information by others.

Having identified potential shortcomings in the various statutory and common law avenues currently open to victims of such misuse, including actions for breach of confidence or claims under the Protection from Harassment Act, the Committee has recommended the introduction of a new statutory tort to target serious misuses of private information directly.

The proposed law would set out what victims have to show to prove their case, and provide for a full suite of remedies for the physical or psychiatric harm, economic loss or emotional distress they may suffer. In determining whether an actionable tort had been committed, courts would be required to weigh the public interest in protecting privacy against any public interests in favour of disclosure. This will ensure the law remains proportionate and does not, for example, operate to stifle free speech, undermine important investigative journalism or deter the reporting of crimes.

Read the report, or get the one-minute quick guide to its key recommendations [here](#).

This is not the first time the Committee has considered issues relating to invasions of privacy. In 2001, [it advocated for the criminalisation of stalking](#) – recommendations that have since been incorporated into the Protection from Harassment Act.

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Law Reform Committee recommends reforms to aid enforcement of court awards

In its final report of 2020, the Law Reform Committee has proposed amendments to assist judgment creditors in recovering court-awarded monies due and owing to them.

At present, judgment creditors can face difficulties in trying to enforce such court-awarded debts against judgment debtors in Singapore. For example, it may be hard for them to identify what assets the judgment debtor has, or where they are held. Or those assets may be held jointly with a spouse, family member or other third party, in a joint bank account or jointly-owned property.



The Committee's report analyses the available enforcement mechanisms in comparable jurisdictions, such as Australia, Canada, England and Wales, and Hong Kong. Based on that review, the report recommends legislative changes to, for example, better enable courts to order that a judgment debtor's jointly-owned property or joint bank account is used to settle debts, while still safeguarding the rights of judgment debtors and innocent third parties who may be affected.

Further details of the Committee's proposals and a quick guide to the key issues are available [here](#).

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What to expect from the Law Reform Commission in 2021

After nine new reports in 2020, the Law Reform Committee expects to complete several further projects in 2021.

Among these are a further report in the *Impact of Robotics and AI on the Law* series – focused on criminal liability issues – and an analysis of how Singapore's contract laws apply to smart contracts, complementing equivalent work currently being undertaken by the Law Commission of England and Wales (as to which, see below).



New reports will be published on the Committee's [webpages](#) and announced via SAL's [social media channels](#).

With several projects coming to completion, the Committee also welcomes suggestions for areas of Singapore law that would benefit from its review. Ideas can be sent to lawreform@sal.org.sg.

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International Perspectives

Spotlight on: The impact of law reform (in a time of coronavirus)



In this 'Spotlight', we consider the benefits that flow from law reform work, and how COVID-19 has reiterated the value of a holistic, proactive analysis of where adaptation and evolution of the law is required.

In seeking to measure the benefit or impact of law reform, an obvious – and perhaps the most direct – metric is whether recommended reforms have been implemented by legislators or considered by the courts. For example, past Law Reform Committee proposals on matters ranging from **evidence admissibility** to the **enforcement of foreign judgments** and (as mentioned above) the **criminalisation of stalking** have subsequently been mirrored in Singapore legislation.

Yet, implementation is not the only metric of success. Indeed, to quote a **former President of the Australian Law Reform Commission**, “a lack of implementation, of itself, does not mean failure. It is not even a very good guide to performance.” Law reform proposals can equally play a broader role in, for example, providing thought leadership or promoting debate among policymakers, industry participants and the public. For example, while the Law Reform Committee’s **recent reports** on the impact of robotics and AI on the law do not make firm recommendations for changes to the law, it is nonetheless hoped that they will stimulate discussion and provide a guide for policy makers to the issues and challenges they may need to navigate.

In September, the Law Commission of England and Wales took the analysis of such potential benefits further, with the publication of **an independent economic analysis** of the value of its work. The report concluded that, if implemented, the recommendations from just five of the Law Commission’s projects would generate benefits of over £3 billion over ten years. Combined, the eleven projects analysed in the report were estimated to have the potential to benefit over 27 million people.

In addition to direct benefits in making existing laws more efficient and saving individuals, companies and governments money, the report highlights the ability of law reforms to help improve welfare, modernise the economy, protect the vulnerable, and provide a platform for personal and social development.

Crises and disruptions such as those witnessed in 2020 arguably bring that potential into even sharper focus.

The pandemic has disrupted vast areas of our lives, and exposed many tensions or shortcomings in all countries’ laws. Many of these have required urgent legislative and regulatory intervention by governments. Where law reform agencies can play a key role, however, is in providing an independent analysis of those disruptions, distinguishing those which represent temporary fissures from those where the pandemic has precipitated lasting change, accelerated ongoing trends, or exposed more fundamental shortcomings in the status quo.

This is illustrated by the Manitoba Law Reform Commission’s **recent recommendation** that statutory requirements that oaths and other declarations be taken with an authorised person physically present (which had been temporarily suspended during the pandemic), be permanently abolished. While the pandemic had undoubtedly highlighted and exacerbated the problems created by those laws, the Commission’s broader-based review was able to demonstrate that, even beyond the current crisis, the requirements had a sustained detrimental impact on access to justice for those in remote communities and failed to reflect advances in communications technology, necessitating permanent reform.

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Canada: Use of AI in criminal justice comes under Ontario commission’s lens

In October, the Law Commission of Ontario (LCO) issued the first of three issues papers focused on the potential use and regulation of AI and algorithms in the Canadian justice system.

The paper, titled *The Rise and Fall of AI and Algorithms in American Criminal Justice: Lessons for Canada*, sets out the LCO’s view of the legal, policy and practical issues that the country’s policy-makers should consider before adopting AI technologies widely in criminal proceedings.



Based on an analysis of the recent use of AI and algorithmic tools in pretrial custody or bail assessments in the United States, the LCO identifies various questions regarding fairness, reliability, transparency and access to justice that such use raises. In particular, it highlights concerns around racism and data discrimination – issues that the Law Reform Committee also discussed in its recent report on *Applying Ethical Principles for AI in Regulatory Reform*.

The LCO expects shortly to publish two further issues papers, focused on the use of AI and algorithms in government decision making and international efforts to regulate such use.

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Ireland: Law Reform Commission reports on constitutionality of personal injury claim caps



Ireland’s Law Reform Commission has **concluded its review** of whether legislative caps or tariffs on general damages in claims for personal injury would be desirable or consistent with the country’s constitution.

The Commission’s report assesses various capping models, and whether each would in principle comply with the constitutional rights to bodily integrity, property and equality before the law.

More broadly, the report notes that laws imposing a presumptive cap on damages are, all else being equal, more likely to be compliant than those imposing a mandatory cap, and that the amounts

chosen in a cap will have a significant bearing on questions of a measure's proportionality.

The Commission's work followed "considerable public discussion and debate" in Ireland on the cost of motor vehicle, employer and public liability insurance, the availability of insurance cover in certain service sectors, and the role personal injury claims have played in either regard.

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UK: Proposals to better protect victims of hate speech and online abuse published

The Law Commission of England & Wales has put forward recommendations to enhance the legal protections available to victims of online abuse, and to make hate speech laws fairer.



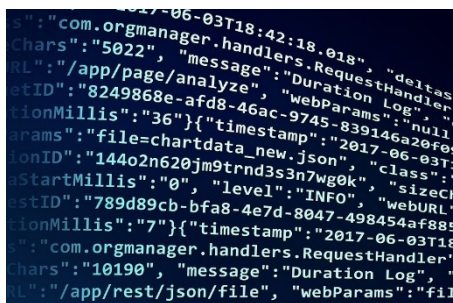
In a **September consultation**, the Law Commission recommended the removal of existing disparities in the way different protected characteristics (race, religion, sexual orientation, disability and transgender identity) are treated under hate crime laws. It also proposed that sex or gender be added to the list of protected characteristics.

Those proposals followed shortly after **further recommendations** aimed at improving the criminal law protections available to victims of online abuse (abusive messages, cyber-flashing, pile-on harassment, the malicious sharing of information known to be false, and so on), while at the same time ensuring better safeguards for freedom of expression. The proposals seek to address concerns that existing laws over-criminalise conduct in some situations, and under-criminalise it in others.

In what has been a busy period, the Law Commission also recently recommended reforms to various laws related to **intermediated securities**, the **recovery of proceeds of crime**, the **protection of official secrets**, **search warrants**, **misconduct in public office**, and **how and where couples may get married**.

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UK: Law Commission to consider reforms to accommodate digital assets and smart contracts



The Law Commission has also **launched two new projects** aimed at ensuring that the law supports the emergence of new digital asset and smart contract technologies.

The Commission's **digital assets** review will consider how the law applies to electronic documents, cryptoassets and other digital assets, and whether it currently risks impeding the beneficial digitisation of trade and transactions or related

innovations. Its initial focus will be on issues of possession, particularly with regard to documents of title, documentary intangibles and negotiable instruments, with a consultation paper planned to be published in the first half of 2021.

The **smart contracts** work, meanwhile, is focused on identifying possible gaps in the law and any

necessary reforms to ensure those laws – in particular contract laws – can accommodate the use of ‘smart contracts’ (that is, contracts that are performed automatically by computer code without the need for human intervention).

Key questions in this regard include when contracts written in code will be considered legally binding, how they should be interpreted by courts, and what the legal consequences and available remedies are if they fail to execute as intended. To inform its scoping of the study, the Law Commission recently published a call for evidence seeking views (and detailing its initial thinking) on these questions, as well as related matters such as the possible use cases for smart contracts and their potential benefits and costs.

The Law Commission’s inquiry mirrors and complements work in progress by the SAL Law Reform Committee to consider the application of Singapore’s contract laws to smart contracts, which it expects to complete in the new year.

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We wish you all a prosperous new year!