

Contempt of Court

In September 1994, the Commission published a [*Report on Contempt of Court \(LRC 47-1994\)*](#), building on its 1991 [*Consultation Paper on Contempt of Court \(LRC CP 4-1991\)*](#) and following on from a request by the Attorney General in January 1989 to undertake an examination of, and conduct research and formulate and submit to him proposals for reform of, the law of defamation and contempt of court.

Contempt of court can be either criminal or civil and, in the case of each, the Commission was concerned to investigate whether a new statutory regime might be appropriate. In recognizing the importance of the law of contempt in protecting the constitutional position of the courts in the administration of justice, the Commission was also concerned to preserve the integrity of the constitutional acknowledgement of the right of freedom of expression and of communication of information.

The essential questions considered were whether it was (a) possible and (b) necessary to replace the existing common law structure of contempt of court with a new statutory scheme which would abolish the concepts of criminal and civil contempt and replace them with a number of specific statutory offences. The report first considers the important questions of jurisdiction, including the respective roles of judge and jury in dealing with contempt. Secondly it considers the various types of criminal contempt under the headings of contempt in the face of the court, scandalizing, the sub judice rule and other acts which interfere with the course of justice. Thirdly it considers the law relating to civil contempt and finally, it considers the extension by analogy of the law of contempt of court to the proceedings of persons and bodies other than courts, in particular to the proceedings of tribunals of inquiry.

This report makes a total of 72 recommendations in the following areas:

- (i) Jurisdiction (4 recommendations)
- (ii) Mode of trial (2 recommendations)
- (iii) Contempt in the face of the court (5 recommendations)
- (iv) Scandalising the court (7 recommendations)
- (v) The Sub Judice rule (20 recommendations)
- (vi) Other acts interfering with the administration of justice (12 recommendations)
- (vii) Civil contempt (10 recommendations)
- (viii) Contempt in relation to tribunals (12 recommendations)

and included the following:

- (1) The law in respect of contempt in the face of the court should remain unchanged;
- (2) The law relating to confidentiality of sources should remain unchanged;
- (3) An advisory committee should be established to review the arrangements for, and legal provisions relating to, the recording and broadcasting of court proceedings by the media;
- (4) A statutory definition of “scandalizing the court” should be created consisting of:
 - a. Imputing corrupt conduct to a judge or court; or
 - b. Publishing to the public a false account of legal proceedings;

- (5) Abuse of the judiciary, even if scurrilous, should not constitute an offence;
- (6) There should be a new statutory definition of “publication” for the purposes of the sub judice rule;
- (7) The statutory sub judice rule should apply to any publication which creates a substantial risk that the course of justice in proceedings would be seriously impeded or prejudiced;
- (8) There should be a defence of sub judice contempt of reasonable necessity to publish;
- (9) It should not be a defence of sub judice contempt that the offending material was published incidentally to a discussion of public affairs;
- (10) The proprietors of newspapers should be vicariously liable for sub judice contempts published in their newspapers;
- (11) Legislation should provide that it is an offence to make or offer payment to any person who is, or who is likely to be, a party, a witness or a juror in legal proceedings;
- (12) There should be a new statutory offence of taking or threatening reprisals against a party in civil proceedings;
- (13) Imprisonment should be retained as a sanction in civil contempt;
- (14) There ought to be a general statutory defence of reasonable excuse in civil contempt;
- (15) “Deemed contempt” provisions in legislation dealing with tribunals should be abolished;
- (16) It should be an offence to disrupt a tribunal of inquiry in the holding of its proceedings; and
- (17) Legislation should provide that a person may only be required to disclose the source of information contained in a publication for which he or she is responsible if it is established to the satisfaction of a tribunal of inquiry that disclosure is absolutely necessary for the purpose of the inquiry or to protect the constitutional rights of any other person.

Draft Legislation in Report

Draft legislative provisions are included in the Report.

Information on Implementation

Recommendations of the Commission were further considered in the Fourth Programme of Law Reform (Project 4: Issues Paper on [*Contempt of Court and Other Offences and Torts Involving the Administration of Justice \(LRC IP 10-2016\)*](#))