REPORT ON THE LIABILITY OF THE CROWN pdf

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Crown liability and judicial immunity: a response to Baigent's case and Harvey v Derrick / Law Commission. KF N47 Damages in administrative law: fourteenth report of the Public and Administrative Law Reform Committee presented to the Minister of Justice, May

Enter your keywords You are here Immunity from Civil Liability A common law principle In Commonwealth v Mewett, which includes a discussion of the history and rationale of Crown immunity, Dawson J said: The immunities which the Crown enjoys from suit in contract and tort rest, however imperfectly and in different ways, upon the propositions that the sovereign cannot be sued in its own courts and that the sovereign can do no wrong. This principle applies not only to ordinary citizens, but to the government, its officers and instrumentalities: The distance of the tyranny of English ways of thinking together with the need, in a frontier society, for new systems and roles of government combined to make Australia the pioneer of Crown proceedings legislation. Under ss 56 and 64 of the Judiciary Act the executive is, so far as possible, subject to the same legal liabilities as citizens. Western Australia was the only jurisdiction to adopt a version of this recommendation. Although this government immunity from statutory obligations is not the subject of this chapter, [27] there have been calls for reform to limit and clarify these immunities. There is a general presumption of statutory interpretation that statutes are not intended to bind the Crown, [28] in the absence of clear words or necessary implication. To remove such uncertainty, the ALRC in recommended that the Judiciary Act be amended to provide that the Commonwealth is bound by every Commonwealth Act enacted after the amendment unless the relevant Act expressly states otherwise. A tort is a legal wrong which one person or entity the tortfeasor commits against another person or entity and for which the usual remedy is an award of damages. Many torts protect fundamental liberties, such as personal liberty, and fundamental rights, such as property rights, and provide protection from interferences by other people or entities and by the Crown. In short, torts protect people from wrongful conduct by others and give claimants a right to sue for compensation or possibly an injunction to restrain the conduct. Like criminal laws, laws creating torts also have a normative or regulatory effect on conduct in society: When the legislature or courts make conduct a tort they mean, by stamping it as wrongful, to forbid or discourage it or, at a minimum, to warn those who indulge in it of the liability they may incur. Torts may be committed by individuals, corporate entities or public authorities, including government departments or agencies. Tort liability includes both personal liability and vicarious liability for torts committed by employees or agents. Negligence occurs in many different social contexts, including on the roads, in the workplace, or through negligent medical care or professional services. The common law tort of defamation has long protected personal reputation from untruthful attacks. In some cases, the affected person may seek an injunction from the courts to prevent the tort happening or continuing. In contrast to the government, separate public authorities did not come within crown immunity: Aronson and Whitmore, Others have suggested that, at least in theory, the Crown and thus the executive has always been regarded in law as able to commit a tort, but there have been procedural rules that prevent civil action: However, for the purposes of this chapter, it does not matter greatly whether the historical position of the executive government is characterised as a substantive principle of immunity or a procedural one. Federal, State and Local Federation Press, 4th ed, See further Aronson and Whitmore, above n 10, 7. Sappideen and Vines, above n 10, But the laws abrogating Crown immunity reverse that position. For example, the Commonwealth was held to have a non-delegable duty in negligence as a school authority to its pupils: Commonwealth v Introvigne CLR But laws that provide for an immunity from statute would be consistent with a traditional Crown immunity, rather than an encroachment upon it. This is not to suggest that such immunities are therefore justified, but only that they are outside the scope of this chapter. Law Council of Australia, Submission See also equivalent acts in other states and territories that extend tort liability to fatal accidents. Despite their common law origins, most tort actions are subject to some statutory variation of the common law principles by state and territory legislation. Numerous statutes limit actions or defences, provide limitation periods, cap or exclude awards of damages, and provide for survival of actions. The Uniform

Defamation Acts in all states and territories modify the common law action of defamation. Sappideen and Vines, above n 10, 58; â€”3.

2: Criminal Liability of the Crown: Recommendations | Victorian Law Reform Commission

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But, in England the position of old Common law maxim has been changed by the Crown Proceedings Act, Earlier, the King could not be sued in tort either for wrong actually authorised by it or committed by its servants, in the course of their employment. With the increasing functions of State, the Crown Proceedings Act had been passed, now the Crown is liable for a tort committed by its servants just like a private individual. Similarly, in America, the Federal Torts Claims Act, provides the principles, which substantially decides the question of liability of State. The question of tortuous liability of State has raised many interesting debates in juridical arena. In India, there is no legislation, which governs the liability of the State for the torts committed by its servants. It is article of the Constitution of India, , which enumerates the liability of the Union or State in tortious act of the Government. This could be traced back from the Section 32 of the Government of India Act, , the genesis of which can be found in section 65 of the Government of India Act, Section 65 of the Government of India Act, provided "All persons and bodies politic shall and may have and take the same suits, for India as they could have done against the said Company. In other words, the liability of the Government is the same as that of the East India Company before, Article reads as: An overview of Article provides that first part of the Article relates to the way in which suits and proceedings by or against Government may be instituted. It enacts that a State may sue and be sued by the name of the Union of India, a State may sue and be sued by the name of the State. The Second part provides, inter alia, that the Union of India or a State may sue or be sued if relation to its affairs in cases on the same line as that of Dominion of India or a corresponding Indian State as the case may be, might have sued or been sued of the Constitution had not been enacted. The Third part provides that it would be competent to the Parliament or the legislature of State to make appropriate provisions in regard to the topic covered by Article 1. Secretary of State for India, in this case a piece of iron funnel carried by some workmen for conducting repairs of Government steamer hit the plaintiff horse-driven carriage and got injured. The Plaintiffs sued for damage. The plaintiff filed a suit against the Secretary of State for India- in council for the negligence of the servants employed by the Government of India. He stated the case to the Supreme Court. The Supreme Court delivered a very learned judgement through the Chief Justice. Similarly in Nobin Chunder Dey V. Since then, the distinction between the sovereign and non-sovereign functions of the State has been the basis of a number of judicial pronouncements. On the other hand, in Secretary of State V. Hari Bhanji, the court has denied any distinction between sovereign and non-sovereign functions and held that where an act is done under the sanction of municipal law and in the exercise of powers conferred by that law, the fact that it is done in the exercise of sovereign function and is not an act which could possibly be done by a private individual does not oust its justifiability. Keeping in view of uncertainty of State liability and different judicial pronouncements, the Law Commission in its First Report, highlighted the need for a comprehensive legislation in the pattern of the Crown Proceedings Act, to fix up tortious liability of the Government. The bill seeks to define the liability of the Government towards third parties for the wrongs of its servants, agents and independent contractors employed by it. In this case, a Government Jeep knocked down a pedestrian who died in consequence of accident. Rejecting the appeal by the State of Rajasthan on the ground of Sovereign Immunity, the Court ruled that the State is liable for the tort or wrongs committed by its officials. Petitioner Vidyawati was awarded a compensation of Rs. The Supreme Court, in this case, added that in modern times, the State has welfare and socialistic functions and the defence of State immunity based on the old feudalistic notions of justice cannot be sustained. Again, in Kasturi Lal V. In this case the Police seized some suspected stolen gold from Plaintiff. The Supreme Court held that the State is not liable as impugned act is a sovereign activity. The Court expressed its displeasure with this legal position in a welfare state where the activities of the State had enormously increased and asked the State to take necessary legislative steps to remedy the situation on some such lines as the Crown Proceedings Act, in England. The court also expressed its destress over the plight of the appellant who could not know his position and get any relief. Thus, the court not only reversed what appeared to be the legal position after Vidyawati case but also reinforced an additional

qualification to the State liability by referring to the statutory powers; in a way holding that State is not liable for any torts committed by its servants in the exercise of statutory powers. Though Kasturi Lal has not been overruled or reconsidered by a constitutional bench of the Supreme Court, great dissatisfaction has been expressed about it in several writings and judicial decisions. Consequently, the court has found escape routes, either by restricting its ratio or by innovating new remedies. An important decision restricting its ratio is N. The court observed that no civilised system could permit an executive to play with the people of a country and claim to be sovereign. To place the State above the law is unjust and unfair to the citizen. In the modern sense the distinction between sovereign and non-sovereign functions does no exist. The ratio of Kasturi Lal is available to those rare and limited cases where the statutory authority acts as a delegate of such functions for which it cannot be sued in a court of law. Devaki Nandan was the real break through landmark case, through which the Supreme Court laid the cornerstone for the novel concept of the Constitutional Tort and Compensatory Jurisprudence. In this case, the petitioner was dragged for twelve years before allowing his pension. Without much discussion in the judgement, the Apex Court awarded Rs. The court felt that harassment is intentional, deliberate and motivated. In Rudal Shah V. State of Bihar - the petitioner Rudal Shah was detained illegally in prison for more than fourteen years. He filed Habeas Corpus before the court for his immediate release and inter alia prayed for his rehabilitation cost, medical charges and compensation for illegal detention. After his release, the question before the court was "whether in exercise of jurisdiction under Article 32, the court can pass an order for payment of money? Whether such order is in the nature of compensation consequential upon the deprivation of fundamental right? The court answered this query in the affirmative, this affirmation was a real acceleration and giant leap in the compensatory-cum-constitutional tort jurisprudence in our legal history. The decision of Rudal Shah was important in two respects. Firstly, it held that violation of a constitutional right can give rise to a civil liability enforceable in a civil court and; Secondly, it formulates the bases for a theory of liability under which a violation of the right to personal liberty can give rise to a civil liability. The decision focussed extreme concern to protect and presence the fundamental right of a citizen than sovereign and non-sovereign dichotomy. Commissioner of Police was another milestone in the evaluation of compensation jurisprudence in writ courts. The masterpiece judgement in Vidyawati, which was freezed by Kasturi Lal was rightly quoted in this case. The State was held liable for the death of nine year old child by Police assault and beating. Delhi Administration was ordered to pay compensation of Rs. The significance of this case is that firstly, the revival of Vidyawati ratio and Secondly, the Delhi Administration was allowed to recover money from those officers who are held responsible for this incident. Another landmark judgement was Nilabati Behra V. State of Orissa awarding compensation to the petitioner for the death of her son in police custody, the court held that a claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection remedy for enforcement and protection of such rights and such a claim based on strict liability made by resorting to constitutional remedy provided for the enforcement of fundamental right is distinct from and in addition to the remedy in private law damages for tort. The court expressly held that principle of sovereign immunity does not apply to the public law remedies under Article 32 and Article for the enforcement of fundamental rights. Kasturi Lal is confined to private law remedies only. The distinction between public and private law and the remedies under the two has been emphasised in Common Cause, A Registered Society V. It was held "where public functionaries are involved and the matter relates to the violation of fundamental rights or the enforcement of public duties, the remedy would still be available under the public law notwithstanding that a suit could be filed for damages under private law. In the light of above, it would be worth to mention the observation of Apex court in N. Nagendra Rao Company V. It therefore, held that the doctrine of sovereign immunity has no relevance in the present day. It is unfortunate that the recommendation of the Law Commission made long back in and the suggestions made by the Supreme Court, have not yet been given effect to. The unsatisfactory state of affairs in this regard is against social justice in a welfare state. In absence of State Liability Legislation, it will be in consonance with social justice demanded by the changed conditions and the concept of welfare state that the courts will follow the recent decision of the Supreme Court rather than Kasturi Lal. How To Submit Your Article: For Further Details Contact:

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Introduction Although there are number of relatively obscure torts for which the Crown may be held liable such as interference with economic relations and malicious prosecution, this paper will be limited to a discussion of the torts of abuse of public office and negligence. Since the jurisprudence on the distinction between policy decisions and operational decisions as set out in Just v. British Columbia, [] 2 S. On the other hand, actions against the Crown for abuse of public office can apply to policy decisions as well. Langelier 2 D. First is the proposition that the Crown itself could not be sued in tort. Second is the proposition that Crown assets could not reached, indirectly, by suing in tort, a Department of Government, or an official of the Crown. As to a Government Department, there was the added barrier that, not being a legal entity, it could not be sued. Third is the proposition that a servant of the crown cannot be made liable vicariously for a tort committed by a subordinate. The subordinate is not his servant but is, like himself, a servant of the Crown which, itself, cannot be made liable. Fourth is the proposition that a servant of the Crown, who commits a wrong, is personally liable to the person injuredâ€¦ To summarize, absent legislation, the Crown could not be held liable for torts of its servants. However, the servant could be sued in his or her individual capacity, but not as a servant of the Crown. Hence, the judgement could only be enforced against the individual. Apart from tort, at common law, claims for equitable relief could be pursued against the Attorney General: Attorney-General [] 1 K. See generally, the Exchequer Court Act, R. In , substantive reform of Federal Crown liability occurred. On May 14, the Crown Liability Act was proclaimed in force. That legislation was significant in that it imposed liability on the Crown in respect of all torts committed by Crown servants. Hence, for the first time the Crown could be liable for the intentional torts as well as the negligence of its officers and servants. However, section 24 1 of the Crown Liability Act essentially specified that the Crown was not liable for torts committed prior to passage of that statue. Section 3 is the provision that creates the liability in tort. The foregoing background is more than just of historical interest. For example, in the Indian residential school context, issues about pre May 14, liability still arise. In some Indian Residential School cases actions involving events alleged to have occurred prior to May 14, are filed. The case law has generally been uniform that a plaintiff cannot pursue a claim against the Federal Crown in a provincial superior Court for intentional torts that occurred prior to May 14, However, a claim in negligence pre likely could still be pursued in Federal Court based on the provisions of the Exchequer Court Act which of course allowed claims based on the negligence of Crown servants while acting within the scope of duty or employment. Section 3, imposes vicarious liability on the Crown for the acts of its servants. That conclusion is clear when section 10 is considered: Since Crown liability is vicarious, not direct, in order for the Crown to be liable, the plaintiff must establish that the servant would be personally liable, i. Canada Minister of Transport [] F. That said, in Swinamer v. Canada , 11 O. However, if the Crown relies on a defence provided by statute, it must take the burdens of the statute. The Queen [] 2 F. Section 25 of the CLPA prohibits obtaining default judgment against the Crown without leave of the Court being obtained on an application with 14 days clear notice being given to the A. However, execution against the Crown is unnecessary as the Crown is bound pursuant to s. Statutory Authority Defence The defence of statutory authority essentially provides that absent negligence, no cause of action is available for actions that would otherwise be a nuisance, if the body so acting is acting within its statutory authority. Some noteworthy aspects of this defence include: The key is whether the activity is statutorily authorized. Victoria [] 1 S. The requirements of the tort are as follows: However, I do want to deal with one aspect of this tort, which is currently being considered by the Supreme Court of Canada. In the Odhavji Estate v. Metropolitan Police Force , D. The shooting engaged the Special Investigation Unit S. The action alleged inter alia, that the police officers who shot the deceased committed the tort of misfeasance of public office because of their failure to properly cooperate with the S. The defendants applied to strike out that part of the claim. The case raises the issue as to whether breach of statutory duty can ever be a basis for the tort of abuse of public office. The

traditional view was that the public official must have exercised a power. In the case at bar, what was involved was a statutory duty. However, the dissent concluded that the distinction between improper exercise of a power and a failure to carry out a duty was one merely of semantics. The Supreme Court of Canada heard the appeal on February 17, It should be noted that this is the first occasion since Roncarelli v. Negligence The test set out in Anns v. Hobart, [] 3 S. In this case the court said as follows: In brief compass, we suggest that at this stage in the evolution of the law, both in Canada and abroad, the Anns analysis is best understood as follows. At the first stage of the Anns test, two questions arise: The proximity analysis involved at the first stage of the Anns test focuses on factors arising from the relationship between the plaintiff and the defendant. These factors include questions of policy, in the broad sense of that word. If foreseeability and proximity are established at the first stage, a prima facie duty of care arises. At the second stage of the Anns test, the question still remains whether there are residual policy considerations outside the relationship of the parties that may negative the imposition of a duty of care. This is the stage where the exclusion of liability for government policy as opposed to operational decisions arises para. Canada Minister of Fisheries and Oceans , Supra, note 1. This is consistent with the pragmatic approach adopted by the Federal Court of appeal in Zarzour v. Canada N. In this case, Letourneau J. The trial judge said he was concerned by a serious procedural problem that the parties had not addressed. Or should he instead have filed an application for judicial review under section He concluded that the respondent should have proceeded by way of an application for judicial review and consequently that a large part of his action was inadmissible. The question is not a new one in litigation emanating from the prison environment and has given rise judicially to some differences of opinion: Canada 71 F. Canada F. Canada Solicitor General [] F. It is necessary, I think, to adopt an utilitarian approach to this, and favour the proceeding that can be used to eliminate or repair the harm resulting from the decision that was rendered. For example, there is no use in requiring that an inmate who has already served his day segregation period seek to have the decision that forced this on him set aside by way of judicial review. However, when a decision is still operative, as is the Board decision in this case imposing a prohibition on contact as a condition of release, it is not only useful but necessary to proceed by judicial review in order to have it quashed. Otherwise, both the decision and its effects will drag on, with possible aggravation of the harm during the period in which the action in damages follows its course. It was this pragmatic approach that was rightly adopted by Prothonotary Hargrave in Shaw v. Canada , F. At paragraph 23 of his decision, he writes: All the more so when a declaration would serve no current purpose. Further, this is not a situation in which the procedures the plaintiff employs are alternatives leading to one end: Finally, where there are several approaches or procedures a court should impose the least intrusive remedy capable of providing a cure. In summary, I can see no utility in forcing the plaintiff to try to obtain declaratory relief, concerning something that happened over a year ago, in order to then begin a second piece of litigation by which to claim damages. Unfortunately, there is no magic formula applicable to all situations to which there is more than one remedy. Each case is sui generis, and must be assessed on its merits in order to determine the appropriate procedure. Her Majesty the Queen et al. A varying F. Hall FC at pargraphs Liability of the Crown in Contract At common law, the Crown has the power of a natural person to enter into contracts. Generally, a contract will be valid so long as it is within the power of the particular government and it was made by a servant or agent within the scope of his or her authority. Man [] 3 W. Canada [] 3 F. Province of New Brunswick , 6 N. Newfoundland, [] 3 S. Canada 28 May , No. However, there does exist a line of cases that say that statutory powers may not be fettered by contract.

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4: Criminal Liability of the Crown | Victorian Law Reform Commission

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Criminal Liability of the Crown: The Crimes Workplace Deaths and Serious Injuries Bill hereafter, the Bill should provide that for the avoidance of doubt the Crown is a body corporate. It is intended that the Bill should bind the Crown in all its capacities as far as is constitutionally possible and it is intended to make the Crown criminally liable and subject to criminal sanctions. The Bill should provide that the Crown should be the defendant in cases involving negligent conduct occurring within agencies and section 16 offices. The Bill should provide that, in determining whether the Crown is negligent, the conduct of the Crown as a while can be considered. Proposed section 14B 5 , which permits the aggregation of the conduct of any number of employees, agents or senior offices of a body corporate should apply to the conduct of employees, agents, or senior officers of the Crown, even if they are working in different agencies or offices. Corporations Sole Representing the Crown 7. Where an employee of the Crown is a corporation sole, the Crown, rather than the corporation sole, should be the defendant in prosecutions under the legislation. In determining whether the conduct of the Crown as a whole is negligent, the conduct of a corporation sole which represents the Crown should be capable of being aggregated with the conduct of any number of employees, agents or senior officers of the Crown. In determining whether the conduct of the Crown as a whole is negligent, the provisions of the Bill allowing the conduct of an agent providing services to be aggregated with the conduct of employees or senior officers, should apply to agents providing services to a corporation sole representing the Crown. The conduct of such agents should be capable of being aggregated with the conduct of any number of employees, agents or senior offers of the Crown. The fact that a person works in or provides services to a unit headed by a corporation sole should not prevent the aggregation of his or her conduct with the conduct of employees, agents or senior officers working outside that unit. For the avoidance of doubt, it should be made clear that a person acting in the capacity of a corporation sole representing the Crown is to be treated as an employee of the Crown, so that the Crown may be criminally liable if that person is killed or seriously injured as the result of negligence. The Crown, rather than a body corporate representing the Crown, should be the defendant in criminal proceedings involving the conduct of a body corporate. When the conduct of a body corporate representing the Crown is relied upon in a prosecution against the Crown, the body corporate should not be separately prosecuted. Employees, agents or senior officers of a body corporate representing the Crown should be treated as employees, agents, or senior officers of the Crown for the purposes of proposed section 14B 5 of the Bill. The aggregation principle should permit the aggregation of the conduct of employees, agents or senior officers of a body corporate representing the Crown with the conduct of employees, agents or senior officers of the Crown working outside the incorporated body. The Bill should list specified bodies corporate to which Recommendation 11 does not apply. In such cases, the body corporate rather than the Crown would be the defendant in criminal proceedings. Where a body corporate is specified as the appropriate defendant, the conduct of employees, agents or senior officers of the Crown would not be capable of aggregation with the conduct of employees, agents or senior officers of the body corporate. Unincorporated private sector bodies which receive public funds or perform services under contract with government should not, solely by reason of this, be deemed to be part of the Crown. The aggregation principle should permit aggregation of the conduct of a member, employee, agent or senior officer of such a body, with the conduct of other employees, agents or senior officers of the Crown. Recommendation 17 should not apply to the conduct of members of unincorporated bodies exercising quasi-judicial functions. Particular Employment Relationships Delegates, who are carrying out functions delegated to them by a Minister, agency head or of any public sector employee who has the statutory power of delegation should be deemed to be employees of the Crown. The behaviour of any delegate who is carrying out functions delegated to him or her by a Minister, agency head or any public sector employee should be capable of being aggregated with the behaviour of other Crown employees.

Volunteers who are under the direction of an entity that is part of, or represents, the Crown should be deemed to be employees of the Crown for the purposes of the Bill. Employees who are on secondment to an entity should be deemed to be employees of that entity. Parliamentary officers should be deemed to be employees for the purposes of the Bill. For the avoidance of doubt, Victoria Parliament is to be regarded as part of the Crown for the purposes of the Bill. The principle of aggregation does not apply to the conduct of judges or members in the exercise of their judicial functions. Administrative arrangements should be made to ensure that fines for corporate offences under the Bill are borne by the appropriate agency. These should be formal arrangements. Senior Officer Offences The agency head may be a senior officer, even if the agency head is, in that capacity, a corporation sole. A senior officer of the Crown should be defined to include: A senior officer of an incorporated statutory authority should be defined to include: A senior officer of an unincorporated statutory body should be defined to include a statutory appointee or an employee who makes or participates in making decisions that affect the whole or a substantial part of the activities or functions of the unincorporated statutory body.

5: Executive immunities from civil liability | ALRC

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Criminal Liability of the Crown: Final Report. The Criminal Liability for Workplace Death and Serious Injury in the Public Sector: Final Report was tabled in Parliament on 9 May

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The authors' view is that the executive branch of government (the Crown) ought to be governed 'as far as possible' by the same rules of legal liability for harm caused to private persons as is a private person.

8: A common law principle | ALRC

For the avoidance of doubt, it should be made clear that a person acting in the capacity of a corporation sole representing the Crown is to be treated as an employee of the Crown, so that the Crown may be criminally liable if that person is killed or seriously injured as the result of negligence.

9: Crown Liability

Act4 sets out when an individual may sue the Crown,5 the liability of the Crown in tort,6 and certain rules and enactments that bind the Crown. 7 This Act does not, however, eliminate the presumption of Crown immunity, which is the topic of this Consultation.

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