

actlawsociety

12 June 2009

Mr Shane Rattenbury MLA
Chair
Standing Committee on Administration & Procedure
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601

Dear Mr Rattenbury

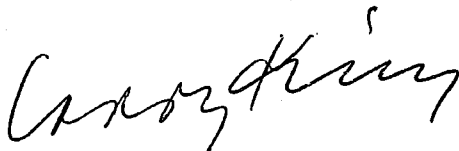
 A.C.T. LEGISLATIVE ASSEMBLY COMMITTEE OFFICE	
SUBMISSION NUMBER	9
DATE AUTH'D FOR PUBLICATION	3/7/09

Please find enclosed a submission by the ACT Law Society to the Standing Committee on Administration and Procedure of the Legislative Assembly of the ACT on the implementation of the Latimer House Principles – June 2009.

The Law Society's Access to Justice & Law Reform Committee is willing to assist in any further process of consultation in relation to these matters. Should you have any queries please do not hesitate to contact the Chair, Greg Walker or Larry King at the Society.

A copy of this letter is also being forwarded to Mr Tom Duncan, Secretary of the Standing Committee on Administration and Procedure, ACT Legislative Assembly.

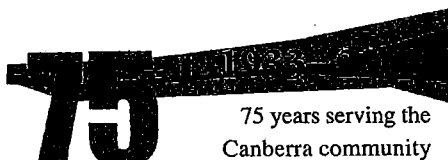
Yours sincerely,



L. A. KING
Executive Director

CC
Mr Tom Duncan
Secretary
Standing Committee on Administration & Procedure

Email – tom.duncan@parliament.act.gov.au



the law society of the australian capital territory a member of the law council of australia
third floor 11 london circuit canberra act 2601
gpo box 1562 canberra act 2601
dx 5623 canberra
telephone 02 6247 5700 facsimile 02 6247 3754
mail@actlawsociety.asn.au www.actlawsociety.asn.au



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IMPLEMENTATION OF THE LATIMER HOUSE PRINCIPLES

A Submission by the Law Society of the Australian Capital Territory to the Standing Committee on Administration and Procedure of the Legislative Assembly of the ACT

This is a brief response to the request by the Committee of 29 March 2009 for submissions. References are to the paragraph numbers of the Assembly Motion in respect of the Latimer House Principles, in Hansard 11 December 2008, pp311-314.

Need for regular review

There is real value in ensuring regular public reports are issued by each Commonwealth country comparing that country's governance with the Latimer House Principles, which describe best practice for the relationship between parliament, the executive and the judiciary.

The Law Society believes that the Executive of the ACT should produce such a report annually, in respect of the Territory. But in addition, because it can scarcely be expected that such a report would always point up areas in which there are shortcomings, every three years an independent report should be commissioned from a senior academic or retired eminent person, which should be tabled in the Assembly. So that this report can inform democratic debate, perhaps it should be provided in the year before the elections. Such a review need not be expensive, since it is not expected that the independent reporter would have any special powers, though it would be advisable to ensure she or he had immunity from action for libel etc.

Particular Issues in respect of the Latimer House Principles

The Latimer House Principles are well understood in the Territory, and throughout the short history of self-government have underpinned our constitutional arrangements. There has been a strong commitment here to the

rule of law, which we trust will continue. The Law Society is encouraged by the ACT government's decision not to follow NSW's "bikie laws", and sees that as a sign of a proper caution about preserving the rule of law in the Territory. The restriction of rights of association without proof of an offence is a serious step. There would need to be substantial evidence arising in the ACT, to justify any such measure.

The Law Society believes that preservation of the Latimer House Principles requires vigilance and therefore agrees that regular review is appropriate, and notes the following areas for particular attention.

2 (c)(ii) Laws restricting legitimate criticism

The Law Society sees no particular reason to believe that the libel or contempt laws restrict legitimate criticism of government. But the Freedom of Information laws are far too restrictive and the current review of them at the Commonwealth level justifies a change in the ACT.

2 (d)(i) Judicial Appointments

The Latimer House Principles require that judicial appointments be made "on the basis of clearly defined criteria and by a publicly declared process." In recent years the ACT government has made considerable progress in developing such criteria. The Law Society is strongly of the view that experience in practice in the Courts is an important, though not determinative, factor in assessing suitability for judicial office. On-the-job training for judges is not really satisfactory, as individual litigants can suffer severely whilst the judge learns, for example, how the rules of evidence work in practice, and how the ethical rules apply in an adversarial system.

Merit must be assessed on the basis of likely performance in the office.

The general nature of the Latimer House Principles makes them relevant to appointment to all statutory offices. Appointments to Tribunals and Commissions should be made "on the basis of clearly defined criteria and by a publicly declared process."

2 (f) Guidelines for ethical conduct

The Law Society believes that the ACT has not fully complied with the requirement to develop and review guidelines for ethical conduct of all branches of government. Scrutiny by the Assembly as to this issue is appropriate.

Former High Court Justice Kirby has been involved in developing such principles for judges. These are set out in a speech "Tackling Judicial Corruption- Globally" which is online at http://www.hcourt.gov.au/speeches/kirbyj/kirbyj_stjames.htm

2 (g) Accountability mechanisms

Generally in a jurisdiction where national security is not an issue, the commonly encountered resistance by ACT government agencies to requests under the Freedom of Information Act 1989 is a concern with regard to transparency of decision making. The Law Society believes that the ACT could improve its performance in this regard to meet the Latimer House principle requiring high standards of transparency in the conduct of public business.

2 (i) Oversight of Government

The effective oversight of government depends on properly working review mechanisms. The Law Society believes that the ACT has not sufficiently funded the Courts. The courts themselves are not in a position to publicly campaign for better funding. But the Assembly should arrange for regular independent review of the funding issue.

The Law Society believes it would be appropriate to consider requiring a regular triennial report by a former judge from another jurisdiction into the resources, overall caseload and performance of the ACT Courts and Tribunals. The judge should have assistance from persons with recognised expertise in courts management and participatory evaluation including user satisfaction.

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The Law Society's Access to Justice and Law Reform Committee is willing to assist in any further process of consultation in relation to these matters. Please contact the Chairman, Greg Walker.

June 2009