

## Editorial in *The Commonwealth Lawyer* April 2012

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For full version of abbreviations click 'Abbreviations' on FB's website.

This issue goes to press as the CLA's regional conference in Sydney draws to a close. The conference has attracted a number of high-profile speakers from around the Commonwealth. We hope to be able to bring you a selection of the papers presented at this event in the next issue of this journal.

Meanwhile, there is a rich fare on offer in the current issue. Arguably the most noteworthy of these is a hard-hitting article on the topic of how successive governments in England have shown a cavalier attitude to the ultra vires doctrine and have often assumed powers to which they are not entitled. The author of the article, Francis Bennion, whose name should be familiar to our regular readers, takes up the example of the use of the prosecutive power in a particularly controversial area, that of assisted suicide, and he argues that this power has been stretched well beyond the limits within which Parliament had intended it to be confined. Bennion is particularly critical of the way the House of Lords and the Director of Public Prosecutions (DPP) for England reacted to the Purdy case which had raised some difficult and troubling questions.

In that case, a victim of progressive multiple sclerosis had, in effect, sought judicial intervention to ascertain in advance the possible legal consequences for her husband if he decided to help her to end her life at, say, the Dignitas clinic in Switzerland (a country where the law does not penalise suicide). The response of the Law Lords was to ask the DPP to publish a policy outlining the factors that he would take into account in exercising his power to prosecute. This decision, which was enthusiastically received by pro-euthanasia campaigners, was roundly criticised by others, not least as another example of judicial over-reach. Sample this verdict from one commentator:

In 1973, in America, the judges were pro-abortion, and decided to make the law fit their view. In 2009, in Britain, they are pro-euthanasia, and euthanasia has been blocked by previous court judgments and by Parliament. So the judges decide that rights which concern life are actually rights to promote death. It is a morally arguable point of view, but it does not have much to do with upholding justice. As was always predicted by opponents of European "human rights" legislation, the courts have become a tool for reflecting the elite views of the age, rather than carefully interpreting laws made by elected legislators.

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