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DOLORES UMBRIDGE AND POLICY AS LEGAL MAGIC

Justice R S French

Policy in the law is said to be an unruly horse. The concept requires definition. It may refer to normative principles informing the development and application of the common law. In the context of statute law it usually refers to the purpose said to be served by a statute in justification of constructional choices and the application of broadly stated legal rules and standards. Not all statutes are informed by coherent policy. Some reflect conflicting policies arising out of political compromises. Nevertheless, consideration of the question whether a statute is informed by a policy and if so what that policy is, is an inescapable part of its construction and application. In this sense policy is a helpful guardian of the rule of law. 322

IN-HOUSE COUNSEL AND CLIENT LEGAL PRIVILEGE: THE ISSUE OF INDEPENDENCE

Stuart Westgarth

In assessing whether a confidential communication between an in-house lawyer and a client is properly the subject of a privilege claim, the courts have been concerned to establish, among other things, that the in-house lawyer was “independent” and that the giving of independent advice was not subverted by the employment relationship. Some cases have revealed a presumption against the independence of in-house lawyers. The Australian Law Reform Commission has recently commented on the issue. It is timely for in-house counsel to review how they would go about establishing their independence if required. This article examines the relevant cases and principles. 333

EVOLUTION OF THE COMMON LAW PRINCIPLE OF “ISSUE WAIVER”

Andrew Corkhill and Madeleine Selwyn

The term “issue waiver” is an established part of the Australian legal lexicon. And yet, considerable confusion remains over precisely what issue waiver is, and when it will arise to defeat a claim of legal professional privilege. This article seeks to redress this confusion by examining the development of the common law principle of issue waiver in

Australia. The article charts the evolution of issue waiver in Australian case law, from its origins as a distinct ground of waiver to its eventual subsumption under the general principle of implied waiver. In so doing, it pays particular attention to the impact this evolutionary process has had on the scope of the issue waiver exception to legal professional privilege.	338
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CORRECTION

Re: Crennan S M, "Scepticism and Judicial method" (2008)
82 ALJ 169 at 176.

The author would like to make a correction in paragraph 5, line 4:
Replace "80 years" with "60 years".

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HIGH COURT REPORTS – Staff of Lawbook Co

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