

CRIMINAL LAW JOURNAL

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EDITORIAL

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ARTICLES

Facilitating children to give best evidence: Are there better ways to challenge children's testimony? – *Emma Davies, Emily Henderson and Kirsten Hanna*

The purpose of this article is to contribute to debate about how to strengthen the New Zealand adversarial criminal justice system's capacity to facilitate children's best evidence. It reports on the implications of the findings from a two-year research project on child witnesses in the New Zealand criminal courts and alternative practices in Western Australia, South Africa, England and Wales and Norway. Two intractable problems in New Zealand were identified: long average delays before trial; and the use of age-inappropriate and potentially confusing vocabulary, grammar and question sequencing, particularly during cross-examination. The authors contend that improving when and how children's evidence is challenged is in the interests of both children and obtaining best evidence. Other processes, particularly pre-recording cross-examination and the use of specialist child examiners to put the defendant's challenges to the child, offer better hope of ensuring best evidence. 347

Sentencing by videolink: Up in the air? – *Emma Rowden, Anne Wallace and Jane Goodman-Delahunty*

A United Kingdom pilot scheme – where defendants pleading guilty to certain offences remotely from a police station are sentenced via videolink – has sparked considerable controversy. Although attracting less attention, sentencing by videolink also occurs in Australia. The enabling legislation contains few guidelines for the exercise of judicial discretion and little is known about the nature and scope of remote – or videolinked – sentencing, or its impact on the sentencing process and participants. This article presents unique findings from an Australian empirical study about uses of videoconferencing in the justice system. Semi-structured interviews were conducted with 56 judicial officers, court administrators, court staff, justice department officials, prosecutors, witnesses and lawyers. Responses pertinent to sentencing reflected both the rationale for implementing remote sentencing as well as concerns about remote sentencing procedures. Results indicated that the use of videolinks can alter the nature of sentencing proceedings, but views that technology necessarily degrades the sentencing process or renders it less effective are overly simplistic. Attention to the configuration of the technology and participants, as well as protocols and procedures for videolink use can potentially preserve the essential functions of sentencing conducted remotely. Recommendations on ways to address stakeholders' concerns without compromising the critical features of sentencing proceedings are proposed. 363

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Corrigendum

Please note an error in the Case and Comment published in Volume 34, Issue 5, “R v Gouros: Interpreting motivation under Victoria’s new hate crime laws”, where the author’s name was inadvertently omitted. The author is Ms Gail Mason. The production editor apologises for any inconvenience caused.

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 - ¹ Hayton D, “Unique Rules for the Unique Institution, The Trust” in Degeling S and Edelman J (eds), *Equity in Commercial Law* (Lawbook Co, Sydney, 2005) p 284.
 - ² Hayton, n 1, p 286.
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 - ⁴ Trindade and Smith, n 3 at 358-359.
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