

# Criminal Law News

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- Chief Editor: Sally Ramage, Member of the Chartered Institute of Journalists; Society of Editors and Society of Legal Scholars, UK.
- Consultant Editors: Anand Doobay, Partner, Peters & Peters Solicitors, London, UK.  
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Edward S. A. Wheeler, IT Manager, Medway Council, UK.
- Design: David. E. Tonkinson, Designer and Online Editor, Poole, UK.

# Extradition sought by Canada for drug offence suspect who absconded 30 years ago

Sally Ramage, Editor, *Criminal Law News*, Westlaw

## Canadian extradition order

The federal Minister of Foreign Affairs with the federal Minister of Justice manages Canadian participation in extradition treaties and conventions. Friendly countries enter into treaties with each other and common partners to these extradition treaties have standard terms in an international multilateral agreement or convention. In a recent extradition case, the passage of 30 years did not deter Canadian officials from seeking the extradition of an accused man found in Florida. A Winnipeg man, Ian Jackson MacDonald, had hidden himself from United States law enforcement officers for 30 years.

**The full article can be bought from Westlaw.**

## *Forde and McHugh Ltd v Revenue and Customs Commissioners*

Sally Ramage

### Case comment on a loophole

In *Forde and McHugh Ltd v Revenue and Customs Commissioners* [2011] UKUT 78 (TCC) the Upper Tribunal (Tax and Chancery Chamber) allowed the taxpayer company's appeal against the decision of the Revenue and Customs Commissioners that the taxpayer was liable to pay Class 1 national insurance contributions in respect of contributions it had made into a funded unapproved retirements benefit scheme. The taxpayer company invited M to join a funded *unapproved* retirements benefit scheme. By a trust deed dated 11 April 2002; the scheme was set up between the taxpayer as one party and M and BWCT Ltd as the other. Any property vested in the trustees for the purposes of the scheme was to be applied towards the provision of relevant benefits in accordance with the deed and rules contained in the schedule to the deed. M accepted the invitation and agreed to be bound by the scheme's Rules. He had also stated that in the event of his death, he wished the trustees to exercise their discretion in favour of his wife. M had always been the only member of the scheme.

**The full article can be bought from Westlaw.**

## **Case comment: R (on the application of O) v East Riding of Yorkshire County Council**

**Sally Ramage**

### **Case comment**

In the case of *R (on the application of O) v East Riding of Yorkshire County Council* [2011] EWCA Civ 196, the local authority had erred in coming to the view that the claimant's looked after child status had come to an end when his respite care had ended in order for him to attend a residential school. The claimant displayed extremely challenging and disruptive behaviour.

**The full article can be bought from Westlaw.**

## ***Gray v News Group Newspapers Ltd and another* [2011] EWHC 249 (Ch)**

**Sally Ramage**

### **Case comment**

The case of *Gray v News Group Newspapers Ltd and another* [2011] EWHC 249 (Ch) concerned confidentiality of information and its disclosure, i.e. hacking for news reporting purposes. The court decided that Confidential commercial information was not any form of statutorily created intellectual property akin to a patent, copyright, trade mark, design right or registered design. Technical or commercial information could not naturally be regarded as of the same genus as patents, copyrights or trademarks. The Chancery Division held that the claimants were entitled to the interim declaration sought that the second defendant be prevented from relying upon the privilege against self-incrimination due by virtue of s 72 of the Senior Courts Act 1981; and that they were also entitled to amend their particulars of claim accordingly.

**The full article can be bought from Westlaw.**

## **Re T (a child) (murdered parent) [2011] All ER (D) 151 (Mar)**

**Sally Ramage**

### **Case comment**

In circumstances where the father had murdered the child's mother, and, in the light of s 1 of the Children Act 1989, whilst murder could not constitute a bar to contact, the father was not capable of meeting the child's needs through indirect contact. The court decided that there would be no contact of any kind between the father and the child. The mother and father had a violent relationship.

**The full article can be bought from Westlaw.**

## **ASBO**

**Sally Ramage**

Those with serious conditions and needs are not going to stop being anti-social because the government has changed the names of ASBOs and made them more onerous. The current toolkit to tackle anti-social behaviour is not working according to the Home Secretary.

**The full article can be bought from Westlaw.**

## ***Marley v Rawlings* [2011]**

**Sally Ramage**

### **Case comment**

The case of *Marley v Rawlings* [2011] EWHC 161 (Ch), [2011] All ER (D) 43 concerned a couple who executed each other's wills but were held to be intestate because, although they signed each other's wills, they had not signed their own wills, despite being in front of their solicitors at the time of signing.

**The full article can be bought from Westlaw.**

## **Shared aircraft passenger data proposal**

**Sally Ramage**

A proposal requiring air carriers to provide data on passengers entering or departing from the EU has been presented by the European Commission. The European Commission presented a proposal for an EU Passenger Name Record (PNR) Directive.

**The full article can be bought from Westlaw.**

## ***Abdul v DPP* [2011] EWHC 247 (Admin)**

### **Case comment**

The court dismissed the appellants' appeals against the district judge's decisions that their prosecution for a public order offence, namely, shouting abusive and insulting words at soldiers participating in a parade to celebrate the return of their regiment from Afghanistan and Iraq. The celebratory return of the Royal Anglian Regiment from its duties in Afghanistan and Iraq was a public event, organised with the police. The police anticipated some 50 protesters.

**The full article can be bought from Westlaw.**

## ***AT&T Mobility v Concepcion* [2011]**

**Sally Ramage**

### **Case comment**

The U.S. Supreme Court decided *AT&T Mobility v Concepcion* in April 2011 to allow *AT & T* to use the fine print of contracts to eliminate class actions, a practice that flouts the laws of 20 states. This decision means that companies can prevent consumers and small business owners from exercising what is often their only real option for challenging companies that defraud them by millions or even billions of dollars.

**The full article can be bought from Westlaw.**

## **Dodd-Frank Wall Street Reform and Consumer Protection Act**

**Sally Ramage**

The Dodd–Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203, H.R. 4173) is a federal statute in the United States, passed on July 21, 2010. The Act is a product of the financial regulatory reform agenda, proposed on December 2, 2009, in the House by Barney Frank, and in the Senate Banking Committee by Chairman Chris Dodd

**The full article can be bought from Westlaw.**

## **Cartels**

**Sally Ramage**

What are cartels? Are there many types? How can there be cartels when the companies concerned are usually incorporated and with shareholders and watchdogs around? If we assume that directors and other officers are around year after year and that Professor Bebchuk's survey (2002) is correct, ie that anything the directors do to keep their positions must be harmful to shareholders, then cartels must be run by entrenched directors in companies whose shareholders are, or have had their stamina weakened to allow directors to empire-build and allocate fringe benefits to themselves (Manne ,1965).

**The full article can be bought from Westlaw.**

## **Child trafficking in Scotland**

**Sally Ramage**

Over the last 20 years, anti-trafficking organizations and individuals in all corners of the world have clarified issues, conducted research, developed strategies and carried out interventions. The Sexual Offences Act 2003, sections 57 to 59 deal with trafficking of persons for sexual exploitation.

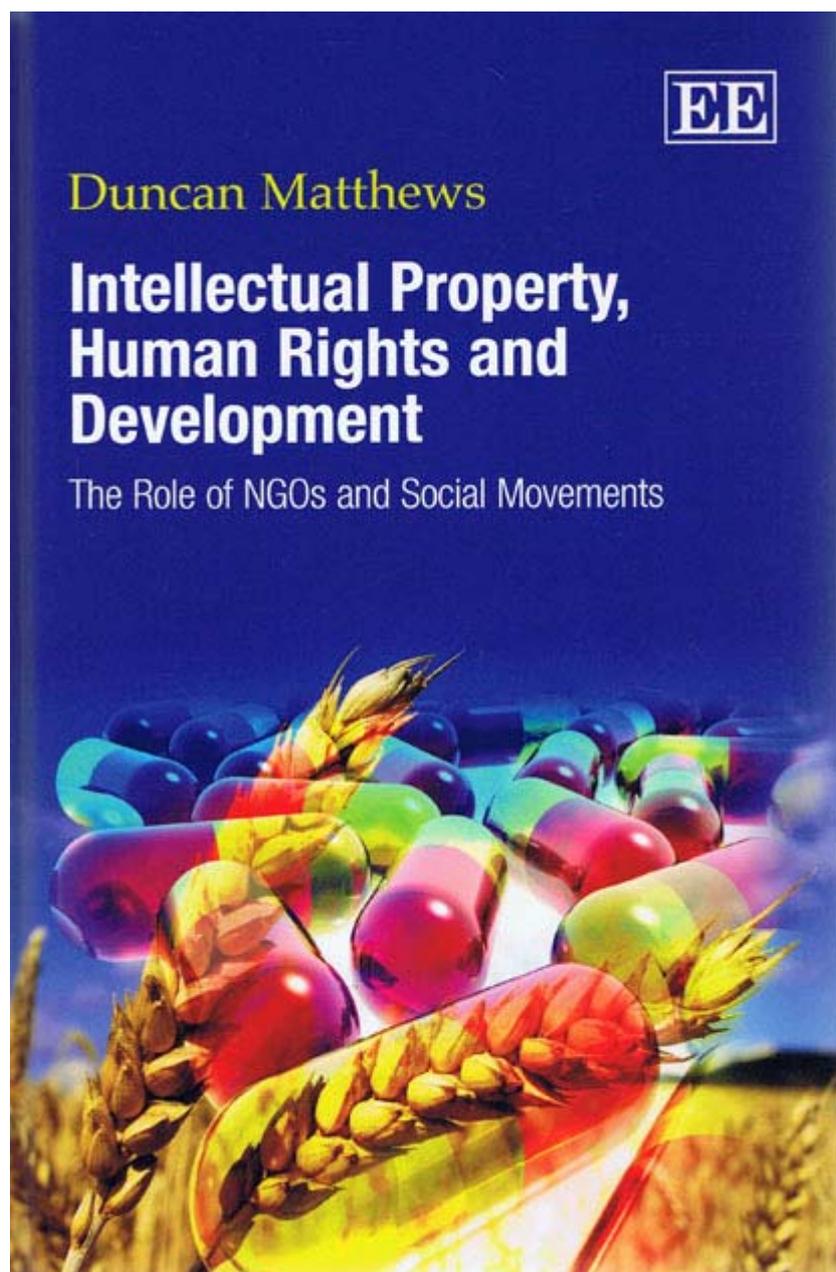
**The full article can be bought from Westlaw.**

## **Financial Disclosure and the UK Bribery Act 2010**

**Sally Ramage**

The Bribery Act 2010 due to come into force in April 2011, has been delayed in order for the legislation to be reviewed and guidance to be finalised. The provisions within the Bribery Act 2010 are drafted broadly and so clarification of the provisions is not required

**The full article can be bought from Westlaw.**



## **Intellectual Property, Human Rights and Development**

**By Duncan Matthews**  
Edward Elgar Publishing Ltd (2011)

**ISBN 978 1 84720 785 2**

**Book review by Sally Ramage, Editor, *The Criminal Lawyer*, Bloomsbury, United Kingdom;**

**Editor, *Criminal Law News*, Westlaw.**

### Too poor to engage IP experts

I have always said that intellectual property law is one topic that simply cannot be learnt by gleaning tidbits from here and there but by serious application and study of the law. In this book, Duncan Matthews brings to our knowledge the impact of non-governmental organisations (NGOs) on international intellectual property law and raises awareness of the fact that law is not as pat as it seems in theory, and the disturbing concerns that, during the TRIPS<sup>1</sup> negotiations, there was no information freely shared that intellectual property rights as there were being drafted then, would adversely affect the rights of developing countries which themselves were too poor to afford to engage technical experts and analysts on their behalf. Current international property law is potentially damaging for developing countries and to put it bluntly, the developed countries saw fit to protect their own industries to the detriment of developing countries.

It is apt that this book has been published just before the United Kingdom hosts the *2011 Annual Serious and Organised Crime Forum* (to be held on Monday 23<sup>rd</sup> May 2011 at Westminster Studios, London, SW1P 1SB), for the outright disadvantage created by IP laws against developing countries has been viewed as theft and piracy of poor countries' IP rights by rich countries. At the same time the UK's Health and Social Care Bill, a hot topic because Social Care Bill<sup>2</sup> commissioners must deliver a sustainable health care system in the most challenging environment in decades.

It is inspiring to observe the fight-back of the global IP situation by Asia, especially Malaysia, known now as the global bio-tech hub, having only, in 2005, established a National Biotechnology Policy and the subsequent formation of the Malaysian Biotechnology<sup>3</sup> Corporation. Its Bionexus 'Bill of Guarantees' assures investors assured of freedom of ownership,<sup>4</sup> thus complying with Article 3 of the TRIPS Agreement<sup>5</sup> and covered in chapter two of this book. Yet it is ironic that the TRIPS Agreement itself sought to stem the flaws of the WIPO, which administered the Berne and Paris Conventions, i.e. the absence of detailed rules on the enforcement of rights before national, judicial, administrative authorities and the absence of a binding and effective dispute settlement mechanism for disputes between states.

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<sup>1</sup> Trade Related Aspects of Intellectual Property Rights.

<sup>2</sup> The draft UK Health and Social Care Bill proposed the introduction of GP commissioning consortia who, by 2013, would hold the majority of the NHS budget, more than £60 billion of public money. Their task, or the task of any wider clinical commissioning group that emerges from the current listening exercise, is to deliver a sustainable health care system in the face of the most challenging financial and organisational environment since the introduction of the purchaser/provider split within the NHS in 1991. The task is especially daunting in the context of a population in which the burden of disease is growing and medical advances offer increasing opportunities to treat disease, but at a cost. The result, if nothing else changes in the NHS, will be significant unmet need and threats to the quality of care. (The King's Fund summary, 'Transforming our health care system: ten priorities by commissioners' by Candace Imison, Chris Naylor, Nick Goodwin, David Buck, Natasha Curry, Rachael Addicott and Paul Zollinger-Read).

<sup>3</sup> Biotechnology is a field of applied biology that involves the use of living organisms and bioprocesses in engineering, technology, medicine and other fields requiring bioproducts. Biotechnology also utilizes these products for manufacturing purpose.

<sup>4</sup> Article 3, TRIPS, states that each Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection of intellectual property, subject to the exceptions already provided in, respectively, the Paris Convention (1967), the Berne Convention (1971), the Rome Convention or the Treaty on Intellectual Property in Respect of Integrated Circuit. (The Rome Convention refers to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, adopted at Rome on 26 October 1961.)

<sup>5</sup> Editor, "Biotechnology: a brewing business in Malaysia", *Scientific American*, Page 3, Volume 304, Number 5, May 2011.

### **The TRIPs Agreement**

A few words about TRIPs. The United States was central in concluding the TRIPs Agreement. TRIPs persuades countries to comply voluntarily with the letter and spirit of TRIPs norms. TRIPs establishes minimum protection standards for copyright, rights in sound recordings and broadcasts, trade marks, industrial designs, patents, semi-conductor chip designs and trade secrets by incorporating provisions of the Berne and Paris Conventions, but it does so selectively. TRIPs establishes some norms not found in the major conventions. TRIPs requires WTO members to regulate rental sound recordings, computer programs and motion pictures.

### **The TRIPs dispute resolution procedure**

TRIPs obliges countries to respect national treatment principles and there is a dispute resolution in place by which any state can file a complaint with the World Trade Organisation ('WTO') about inadequate IP protection by another state. If efforts at conciliation and mediation are not successful, TRIPs will convene a panel of experts to examine the validity of the complaint. If this expert panel upholds the complaint, the offending state has to adjust its laws or face trade sanctions by the complaining state but these trade sanctions may be levied against products unrelated to the alleged violation. The TRIPs Council oversees national policymaking and judicial enforcement.

Article 2.1 of TRIPs states:

*'In respect of Parts 2,3 and 4 of this Agreement, Members shall comply with articles 1 through 12 and article 19 of the Paris Convention (1967).'*

Articles 3 and 4 guarantee national treatment and the most-favoured-nation treatment, where benefits accorded nationals of a specific country must be extended to nationals of other contracting states. Article 6 excludes the issues of 'exhaustion of rights' and 'parallel imports'. Article 10 of TRIPs is the first provision in any multilateral instrument to confirm the protection of computer programs by copyright. Article 10.2 covers copyright to databases. Article 11 established a rental right on computer programs and films. Article 14.4 established a rental right on sound recordings and Article 15.1 defines the term 'trade mark'. Article 42 provided for the existence of civil judicial proceedings to cover all the rights protected under the TRIPs Agreement. Article 44 provides for 'injunctions' to desist from an infringement. Article 46 provides that judicial authorities must have been the authority to order that counterfeit goods be disposed of outside the channels of commerce. Article 50 provides for *inaudita altera parte* (*ex parte*) action to combat piracy and counterfeiting. Article 51 adds border measures. Article 61 provides for criminal measures against infringement.

### **Omissions by TRIPs**

*It is to be noted that the moral rights provisions of the Berne Convention is omitted in TRIPs. Also,*

*The Unfair Competition provisions of the Paris Convention is however incorporated in TRIPs, but only in so far as it provides a framework for protection of undisclosed information such as trade secrets.*

### **Article 66.1**

Article 66.1 of the TRIPs Agreement granted longer transitional periods to the least developed countries, which were members of WTO. Nevertheless, legal scholars are well aware that the TRIPs Agreement was finalised without full and fair consultation.

### **Medicines for poor people with HIV**

There is a growing gap between developing and developed countries in the field of biotechnology. Yet all are aware that biotechnology, when coupled with other technologies, offers considerable potential and opportunity for new solutions to some of the old problems hindering sustainable rural development and achievement of food security. Many feel that with the increase in the progress and elevation of sciences and technologies in societies, the need for ethical norms is crucial and underlying this need is the knowledge that mankind throughout time, has displayed greed, a lack of ethics and lack of moral integrity. When the HIV virus struck millions in developing countries, lack of funds meant many go untreated whilst the relatively few who contract the HIV virus in rich countries usually have all the medicines at their disposal.<sup>6</sup> Developing countries face huge power disparities, which, with the help of Non-governmental Organisations raise awareness to their plight, notwithstanding criminal gangs who steal and/or substitute the much-needed medicines in these poor countries, as published in the newspapers in 2002 and despite Article 6 of the TRIPs Agreement (which excludes from the dispute settlement the question of 'exhaustion of rights', otherwise known as parallel importation or, the importation of goods lawfully manufactured in another country and generally intended for distribution in that country. (See Editor, "The lowest of thieves", 10 October 2002, googlenews archive News broke that hijackers stole \$18 million worth of reduced-price HIV drugs destined for impoverished Africans and then resold them in Europe at marked up prices. It has been published in May 2011 that over 9 % of prostitutes in Vietnam will have contracted the HIV virus in the next

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<sup>6</sup> John S Odell, (2006) *Negotiating Trade: Developing Countries in the WTO and NAFTA*, New York: Cambridge University Press.

year. They cannot afford medicines. It is situations like this that forced India to manufacture generic medicines, at the alarm and disgust of the United States, which filed a complaint against India over a decade ago.

### **US v India: generic medicines**

The first complaint, which TRIPs was forced to deal with, was in 1997 against India's approach to pharmaceutical patents. The WTO asked India to amend its Patents Act 1970 in order to bring it in line with TRIPs patent standards and resulted in the Indian Patents Act making obligatory product patents in the fields of agriculture, chemicals and pharmaceuticals.<sup>7</sup> The United States put pressure on the WTO to make India comply with Articles 70.8 and 70.9 of the TRIPs Agreement and grant exclusive marketing rights on fulfillment of certain conditions. There followed 2,200 applications filed by United States companies. One can see why the US fought against India: after all, there are billions of Indian citizens and any drug would bring vast profits, which the US was deprived of in India.

### **Important work of the NGOs**

The work of NGO's for example, is that they negotiate to reach agreements linking the patent, the traditional knowledge and the rights of indigenous people in the public consciousness. The author

Examined the concept of 'bio-piracy' which refers to the appropriation and monopolisation of the knowledge owned by the population there of biological resources, local flora and fauna and their uses.

TRIPs enable patents and trademarks to be registered by the exploiters. There is serious food for thought in this book.

### **Conclusion that concurs**

TRIPs resulted in much legislation in many jurisdictions. However there is great difficulty in enforcing the legislation in some cases and in others, the legislation itself has been used to overcome the spirit of TRIPs. NGOs have brought to light the fact that the intellectual property rights created have mostly impacted adversely on the marginalised, poor, disadvantaged and vulnerable sectors of society in developing countries.

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<sup>7</sup> Derek Byerlee and Ken Fischer (2002) 'Assessing Modern Science: Policy and Institutional Options for Agricultural Biotechnology in Developing Countries', The World Bank, Washington DC, USA. The private sector dominates biotechnology research in industrialized countries, but there are major market failures in developing countries in accessing the new tools and technologies.

