

Apologies, apology legislation and civil disputes: the practical implications of apology legislation for dispute resolution practitioners and their clients.

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Introduction

An apology is arguably the most effective way for a defendant, or other alleged violator of an accepted legal standard, duty or obligation, to demonstrate their assumed responsibility for a wrong committed.¹ Whether an apology is heartfelt, or more calculated and *pro forma*, there is little question that when an apology is delivered, its maker has assumed at least moral responsibility for the act or omission in question.² Societies tend to respect individuals that 'own up' to their faults, admit mistakes, take responsibility for their conduct, and offer an appropriate apology to any affected innocent persons.³ Radzik and Murphy explain that apologising is likely the most explicit manner through which human errors of any kind are acknowledged; 'well-formed' apologies implicitly acknowledge wrongdoing, responsibility, and an expression of regret or remorse.⁴

However, as the following critical discussions tend to confirm, apologies can also create a legal liability minefield for dispute resolution (DR) practitioners and their clients alike. Made too early in a legal dispute, i.e. before all relevant facts have been ascertained, an apology may encourage a claimant to exploit an apology to its legal advantage.⁵ Withheld for fear that an apology might increase ultimate liability exposure, a potential defendant or arbitration respondent may inadvertently reduce the prospects of securing an early and more satisfactory DR outcome.⁶

¹ Massimo N. Nardo and Ronald D. Francis, 'Morality and the prevention of corruption: action or intent - a new look at an old problem' (2012) 19(2) *J.F.C.* 128, 131.

² Elizabeth A. Cole, 'Apology, Forgiveness, and Moral Repair' (2008) 22.4 *Ethics & International Affairs* 1, 4.

³ Linda Radzik and Colleen Murphy, 'Reconciliation', *The Stanford Encyclopedia of Philosophy* (Summer 2015 Edition), Edward N. Zalta (ed.), [Online] Available: <<http://plato.stanford.edu/archives/sum2015/entries/reconciliation/>> [24 October 2016].

⁴ *Ibid*, [3.1].

⁵ Prue Vines, 'Apologising to Avoid Liability: Cynical Civility or Practical Morality?' (2005) 27(3) *Sydney Law Review* 483, 485.

⁶ Robyn Carroll, 'When 'Sorry' is the Hardest Word to Say, How Might Apology Legislation Assist?' (2014) 44(2) *Hong Kong Law Journal* 491, 499.

Drawing on various high-level international sources, the reported research and related discussion points developed below focuses on the development of apology legislation across different jurisdictions. The key proposition advanced is that to fairly encourage individual responsibility, whilst ensuring a morally correct position is not improperly exploited by the receiving party, clear legislation governing how an apology may be treated for DR and related civil litigation purposes is an essential DR system requirement.⁷

Three common law civil jurisdictions are given particular attention in this discussion: (i) the UK, with attention directed to apology approaches in both Scotland and England-Wales (EW); (ii) British Columbia (BC), Canada; and (iii) Massachusetts, USA. These civil justice systems' shared legal heritage assists in giving the comparative discussions appropriate focus, particularly with respect to how apology legislation has influenced tort law evolution within each jurisdiction.⁸

Apologies – key benefits

The key benefits most often attributable to an apology forming part of a larger DR strategy have various dimensions. It is acknowledged that 'strategy', as used here with its calculating and dispassionate DR-driven connotations, and the warmer human associations often associated with 'apology', may seem antithetical on initial consideration.⁹ Fiske reinforces this impression with her stark advice that in any business DR setting, a reputation 'blow' requires '... a clear, strategic message, explaining two things: (1) what went wrong, and (2) what you are doing to rectify the situation.'¹⁰

From a combined moral-legal DR perspective, an apology will often contribute to better relations between parties estranged by a wrongful act or a prolonged course of conduct. An apology is akin to an act of contrition, where the offending party acknowledges that a precipitating event was morally

⁷ A position collectively inspired by the sources assembled in the Bibliography; see e.g. Val Corbett, 'Why It's Better to Be Sorry than Safe: The Case for Apology Protection Legislation' (2013) 36 *Dublin University Law Journal* 127, 130-134.

⁸ Prue Vines, 'The protected apology as the modern response to the moral question at the heart of *Donoghue v Stevenson*: what if *Stevenson* had apologised? (Case Comment)' (2013) 3 *Jur. Rev.* 438, 497-498.

⁹ Rosanna M. Fiske, 'Smart Apologies Should Be Strategic' (2011) *Harvard Business Review* [Online] Available: <<https://hbr.org/2011/10/admitting-a-mistake-isnt-enoug>> [24 October 2016].

¹⁰ *Ibid.*

wrong.¹¹ Goldberg et al. observe that ‘... the first lesson of DR many of us learn as children is the importance of apologising.’¹²

In conflict or tort claim circumstances, such as insulting, demeaning, or other anti-social behaviour causing emotional upset to the offended person, an apology will often signal a potential new beginning in the parties’ relationship.¹³ From an admission of wrongful behaviour, the parties may be able to establish a foundation from which they can move forward; alternatively, if the relationship cannot be restored to its former strength, then an apology is an effective clean break. Each person can move forward with a better sense that the problem giving rise to the apology is no longer problematic.¹⁴ These moral attributes create an effective bridge to more fully appreciating the legal issues generated by apology concepts and related apology legislation. Vines observes that apologies play a dual social and legal role,¹⁵ noting that the collective psychological, sociological, philosophical and anthropological literature illustrates that apologies can often satisfy a ‘... healing and re-balancing function for both victim and relationship, and often for an offender as well.’¹⁶

Interpersonal DR procedures confirm the central position apologies occupy within all modern mediation mechanisms.¹⁷ Criminal law apologies have long occupied a primary place in the ‘re-integrative shaming’ processes widely accepted as essential to criminal rehabilitation.¹⁸ Similarly, defamation law has long given express recognition to apologies (and the failure to apologise) in determining an appropriate remedy.¹⁹ Distilled to its essential qualities, apologies are well-entrenched justice system elements, both in traditional litigation and other DR settings. They reduce barriers to resolution, whilst encouraging emotional healing and relationship reconstruction in many cases.²⁰ The more recent role assumed by apology legislation in DR procedures is now considered.

¹¹ Cayce Myers, ‘Knowing When It’s Legally Safe to Say “I’m Sorry”’: The Legal Effects of Mortification Strategy’ (2015) Institute for Public Relations [Online] Available: <<http://www.instituteforpr.org/knowing-legally-safe-say-im-sorry-legal-effects-mortification-strategy/>> [24 October 2016].

¹² Stephen B Goldberg et al, *Dispute Resolution: Negotiation, Mediation and Other Processes* (6th edn, Aspen, 2012), 12.

¹³Pieter Lavens, ‘Negotiation and Apologies: The Role of an Apology, the Role of the Law and the Role of the Lawyer’ (2013) *Bond University* [Online] Available: <<http://dx.doi.org/10.2139/ssrn.2473234>> [24 October 2016], 9, 10.

¹⁴ *Ibid*, 4-5, re apology outcomes.

¹⁵ Prue Vines, ‘Apologies and civil liability in the UK: a view from elsewhere’ (2008) 12(2) *Edin. L.R.* 200, 203.

¹⁶ *Ibid*, 208.

¹⁷ Jennifer Brown, ‘The Role of Apology in Negotiation’ (2003–2004) 87 *Marq LR* 665, 668.

¹⁸ Vines (2008), 205.

¹⁹ *Cooke and Midland Heart Ltd v MGN Ltd and Trinity Mirror Midlands Ltd* [2014] EWHC 2831 (QB), [21], [22].

²⁰ Lavins, 6.

Apology legislation – aims, scope and operation

The common law jurisdictions' movement to embrace various forms of apology legislation has its roots in the much-debated and often hotly disputed late 20th century tort liability 'crisis'.²¹ A combined force of insurance industry experts, policy-makers, and some academic commentators advanced the proposition that often-exorbitant tort liability claims were encouraging a 'compensation culture',²² where lawyers, tame expert witnesses, and overly sympathetic judges were contributing to excessive civil liability awards.²³ In turn, these were regarded as contributing to 'out of control' insurance premiums, amongst other negative social and economic consequences.²⁴ For many commentators apology concepts were crucial contributors to the growth of a 'compensation culture'.²⁵ This schematic succinctly summarises the linear relationship blamed by compensation culture theorists: (i) tortfeasors that apologise in a timely way for their 'at fault' actions reduce the emotional tensions created by wrongful acts; but (ii), lawyers (and insurers) frequently advise these parties *not* to apologise, in order to protect against future liability claims; (iii) those claims likely to have been more readily settled if a timely apology had been made now have barriers, making efficient DR more difficult; and finally, (iv) the total, and partially preventable total DR costs (damages, legal, related expert witnesses, and systemic expense) correspondingly increase.²⁶

Spencer describes how the claimed international compensation culture expansion was symbolised by 'ambulance-chasing' US tort lawyers. This persuasive, if highly distorted, image of unethical, cynical civil justice system manipulation summarises a problem that appeared to demand legislative response.²⁷ In contrast, the 2006 House of Commons Committee studying tort law trends concluded that '...the evidence does not support the view that increased litigation has created a [UK] "compensation culture"'.²⁸ Consequently, apology legislation must be considered with these conflicting views in mind.

²¹See: (i) Frank Furedi, *Courting Mistrust: The Hidden Growth of a Culture of Litigation in Britain* (OUP, 1999); (ii) J.J. Spigelman, 'Negligence: the last outpost of the welfare state' (2002) ALJ 432.

²² James Goudkamp, 'The Young Report: An Australian perspective on the latest response to Britain's "compensation culture' (2012) 28(1) *P.N.* 4, 7.

²³ John Spencer, 'An unethical personal injury sector' (2014) 4 *J.P.I.* 226.

²⁴ Jennifer K. Robbennolt, 'Apologies and settlement levers' (2006) 3(2) *J.E.L.S.* 333, 335-338.

²⁵ Zahra Awaiz-Bilal, 'The duty of candour and apologies as a legal remedy' (2015) 1 *J.P.I. Law* 7, 10.

²⁶ Prue Vines, 2013, 488.

²⁷ Spencer, 228.

²⁸ House of Commons Constitutional Affairs Committee, *Compensation Culture: Third Report of Session 2005-2006*, Vol 1, HC 754-I (Stationery Office, 2006), [13.1].

It is noted that whilst the positive effects apologies often have in promoting settlement are widely accepted; however, a significant concern has been highlighted that ‘crafted’ apologies do not generate the same benefits as ones provided without legal prompting. Taft describes apologies made in connection with legal proceedings as having their ‘fundamental moral character ... dramatically, if not irrevocably, altered.’²⁹ This is a powerful comment, as it calls into question whether an apology delivered in the course of legal proceedings actually meets the definition set out above.

If, as Taft describes this particular apology process, an apology is simply ‘commodified’,³⁰ and is given to reduce the compensation payable to the innocent party, then there is merit in the proposition that such apologies are a triumph of form over substance. It becomes difficult to determine from some apologies drafted or heavily influenced by lawyers whether the party is actually apologising at all.³¹ The selected comparative legislative examples are now examined with these apology features, effects, and limitations understood.

Comparative jurisdiction examples

1. Scotland

The *Apologies (Scotland) Act 2016* represents a concerted Scottish effort to encourage a ‘culture of apologising’.³² The Scottish government endorsed this private members bill as legislation that will contribute to the pursuit of fair redress for wrongs, and greater victim closure.³³ The 2016 Act succinctly defines the legal effect an apology must be given in any legal proceedings.³⁴ As a general rule, an apology made outside of the proceedings in any context: (i) is not admissible evidence with respect to determining liability; and (ii), the apology cannot be used ‘... in any other way to the prejudice of the person by or on behalf of whom the apology was made.’³⁵ The main civil proceedings excepted from the Act are public inquiries, children’s hearings, and defamation proceedings, thus giving the Act wide-ranging, but not retrospective effect.³⁶

²⁹ Lee Taft, ‘Apology subverted: the commodification of apology’ (2000) 109 *Yale LJ* 1135, 1136.

³⁰ *Ibid.*

³¹ Justice Sean Ryan, ‘Child Commission’ (13 February 2012) *Irish Times* [Online] Available: <<http://www.irishtimes.com/news/clerical-child-abuse-an-irish-timeline-1.880042>> [24 October 2016].

³² Core ‘Success for the Apologies (Scotland) Act 2016’ (2016) [Online] Available: <<http://www.core-solutions.com/blog/success-for-the-apologies-scotland-act-2016/>> [24 October 2016].

³³ *Ibid.*

³⁴ *Apologies (Scotland) Act 2016*, s. 1(a).

³⁵ *Ibid.*, s.1(b).

³⁶ *Ibid.*, s.2(1), s.4.

The Act also defines ‘apologies’ in precise terms; these are any statements made by or on behalf of a person indicating that ‘... the person is sorry about, or regrets, an act, omission or outcome.’³⁷ Apologies also include any part of such statements containing an undertaking ‘to look at the circumstances’ giving rise to the apology-triggering event, with a view to preventing its recurrence.³⁸ From a literal meaning perspective, the Scottish approach appears to satisfy two important DR apology criteria, as the Act encourages apologies to be made without additional liability risk. As importantly, the s. 3 definition ensures that a prospective defendant (‘defender’)³⁹ can remedy a dangerous circumstance without their remedial efforts being relied upon as an admission of liability.⁴⁰

Its relative newness (the Act was given Royal Assent on 23 February 2016) means that the apology provisions have not yet been extensively considered in contested legal proceedings. However, Scots and international commentators have generally praised how the Act provides straightforward, unequivocal direction regarding apologies, and how their conversion into a tactical DR weapon is prohibited.⁴¹ Irvine, a practising mediator, suggests that care must be taken with respect to how the Act is applied in practice. He endorses apologies as powerful and positive when ‘delivered at the right moment and in the right manner.’⁴² Irvine, consistent with the commentaries cited above, recognises the practical and emotional impact a proper apology can deliver, consequently unlocking longstanding conflicts.⁴³ Irvine’s qualification regarding apologies’ actual effect is applicable to each of the legislative examples cited here, and is echoed by other scholars. Apologies are ineffective, and potentially counter-productive to effective DR where they are only ‘partial’.⁴⁴

The rejected apology will also potentially raise, and not reduce DR barriers to settlement. Where a sincere and unreserved apology is not accepted by the recipient, the climate for further resolution is

³⁷ Ibid, s.3.

³⁸ Ibid; Lucy Harrington, ‘Is it too late now to say sorry? - the Apologies (Scotland) Act 2016’ [Online] Available: <<http://www.tltsolicitors.com/news-and-insights/insight/is-it-too-late-now-to-say-sorry---the-apologies-scotland-act-2016/>> [24 October 2016].

³⁹ The term employed in Scottish civil procedure.

⁴⁰ Society of Solicitor Advocates, ‘Apologies (Scotland) Bill passed’ (2016) [Online] Available: <http://www.solicitoradvocates.org/news_article/385.aspx> [24 October 2016].

⁴¹ See: (i) Douglas Maxwell, ‘The Apologies (Scotland) Act 2016: an innovative opportunity in the twenty first century or an unnecessary development?’ (2016) 2 *J.P.I. Law* 79; (ii) Charlie Irvine, ‘The Proposed Apologies Act for Scotland: Good Intentions with Unforeseeable Consequences (Legislative Comment)’ (2013) 17(1) *Edin. L.R.* 84, 90.

⁴² Irvine, 85.

⁴³ Ibid.

⁴⁴ Ibid; see also L. E. Jesson and P.B. Knapp, ‘My lawyer told me to say I’m sorry: lawyers, doctors and medical apologies’ (2009) 35 *William Mitchell Law Review* 33, 36.

often substantially chilled.⁴⁵ In this important sense the Act has a single direction character. Section 1 of the apology provisions clearly set out the legal consequences flowing when an apology is made, but it is equally apparent that this Act (nor any legislation) can compel forgiveness, the apology's mirror image.⁴⁶

2. *England and Wales*

The EW *Compensation Act 2006* provides an even more succinct treatment of an apology's legal effect than the Scottish legislation described above. The EW Act states: 'An apology, an offer of treatment or other redress, *shall not of itself* amount to an admission of negligence or breach of statutory duty.'⁴⁷ The term 'apology' is not defined, and this fact has attracted significant commentary suggesting that the Act encourages the various partial apology forms that are often regarded as damaging, and not conducive to DR success.⁴⁸ Adopting the same literal meaning approach to the EW provision as taken by the Scottish Act, one might readily conclude that the phrase 'shall not in itself' constitute a liability admission is ambiguous. For example, if an apology was made concurrently with a commitment to investigate the possible causes of an event leading to the other party's injuries, s.2 might permit the commitment and apology to be given combined, liability admission effect.⁴⁹

EW law has made other strides regarding apologies and their legal meaning that are more focused, and thus strongly contribute to DR effectiveness. A prominent example is the emerging 'duty of candour' now promoted under the *Care Act 2014*.⁵⁰ This Act imposes a specific duty on the Government to provide for a 'duty of candour' applicable in any case where specified incidents (such as substandard healthcare quality) affecting a person's safety occur in the course of the person being provided with a service.⁵¹ Awaiz-Bilal notes that the EW duty objective is to ensure that health and social care providers are 'open when things go wrong', and an explanation is accordingly provided to the victim and any affected family members.⁵² A duty of candour does not necessarily have the same meaning as an apology, as 'candour' may reasonably include the responsible party offering justifications for their

⁴⁵ Irvine, 86; Maxwell, 81, 82.

⁴⁶ Irvine, 87.

⁴⁷ *Compensation Act 2006*, s.2.

⁴⁸ Lord David Young, *Common Sense, Common Safety* (HM Government, 2010) [Online] Available: <http://www.number10.gov.uk/wp-content/uploads/402906_CommonSense_acc> [24 October 2016]

⁴⁹ A point taken from Jon Robins, 'Saying sorry' (July 2008) *Law Society Gazette*, [Online] Available: <<http://www.lawgazette.co.uk/analysis/saying-sorry/47101.fullarticle>> [24 October 2016].

⁵⁰ *Care Act 2014*, s.

⁵¹ *Ibid*, s. 81.

⁵² Awaiz-Bilal, 9.

actions that encourage resistance, resentment, or outright hostility in the recipient. On balance, the duty of candour and express *Compensation Act* s. 2 language suggests that in the EW health and social care spheres, an apology culture appears to be taking root.

3. *British Columbia*

The 2006 BC apology legislation has received international scholarly praise for its breadth, detail and generally comprehensive nature.⁵³ The Act defines an apology as ‘...an expression of sympathy or regret, a statement that one is sorry or any other words or actions indicating contrition or commiseration.’⁵⁴ This definition expressly excludes any apologies from being later relied upon as a liability admission in any manner.⁵⁵ Unlike the other apology enactments examined here, the BC provisions include the following additional features: (i) the apology does not constitute a confirmation of a cause of action in relation to the relevant matter Limitation Act purposes; and (ii), notwithstanding any language to the contrary as included in an insurance contract, the apology made does not ‘... void, impair or otherwise affect’ any available insurance coverage that would, but for the apology, be available to the apologising person.⁵⁶

The clear BC legislative language removes all legal ambiguity surrounding the apology process; consequently, it removes a major obstacle to the delivery of apologies.⁵⁷ The BC definition thus strikes directly at the heart of the policy concerns expressed above, namely apologies as potentially undermining a later legal defence advanced by an insurer (most often in motor vehicle accident claims).⁵⁸ It also strikes a useful balance between the respective parties’ rights in the event of subsequent litigation. By ensuring that an apology does not constitute confirmation of a cause of action for limitation period purposes, the apology is given an appropriate boundary. The innocent party must still comply with applicable limitation period rules, and such persons are precluded from saying, in the event of a missed limitation, ‘But the other side apologised!’⁵⁹

⁵³ Apology Act 2006 (BC).

⁵⁴ *Ibid*, s.1.

⁵⁵ *Ibid*, s.2.

⁵⁶ *Ibid*.

⁵⁷ Corbett, 148.

⁵⁸ *Ibid*.

⁵⁹ See e.g. *Vance v. Cartwright*, 2013 BCSC 2120, *aff’d* 2014 BCCA 362 (BCCA).

4. *Massachusetts*

This US state apology legislation is selected for this comparative discussion because it was the first (1986) apology enactment designed to deal with the growth of the ‘compensation culture’.⁶⁰ The Massachusetts law provides that any:

‘...statements, writings or benevolent gestures expressing sympathy or a general sense of benevolence relating to the pain, suffering or death of a person *involved in an accident* and made to such *person* or to the *family* of such person shall be inadmissible as evidence of an admission of liability in a civil action...’ (emphasis added)⁶¹

The highlighted portions of this legislation attract specific attention within this discussion. Unlike the fulsome BC legislative effect outlined above, the Massachusetts version constitutes what Corbett describes as an unsatisfactory, ‘halfway house’ approach.⁶² This criticism is valid, as this law only excludes the defendant’s ‘expressions of sympathy’ as inadmissible evidence. There is power in the contention that Massachusetts’ partial apology protection does not advance the objective of encouraging the greater use of apologies, and thus reducing DR barriers.⁶³

This legislation carries the clear danger that through limiting apology protecting to expressions of sympathy, a claimant will be angered and not placated where the potential defendant’s sympathy does not include an admission of wrongdoing.⁶⁴ The Massachusetts law is also likely to make determining the boundary between expressing concern or sympathy and liability admissions very difficult.

Summary

When the four selected apology legislation examples are collectively evaluated, the BC provisions are better aligned with DR efficiency and effectiveness objectives, and its well-crafted apology definition, combined with express insurance contract and limitation period references supports this conclusion. Conversely, the older Massachusetts law shows its age, and corresponding lesser apology legal effects than any of the other three examples. Laws such as this do not promote highly prized legal certainty and predictability, a point that contributes to apology’s practical DR implications.

⁶⁰ Vines, 2008, 201, 202.

⁶¹ *Massachusetts General Laws* (1986) Title II, Chapter 233, s 23D

⁶² Corbett, 147.

⁶³ Insurance Journal, ‘Mass. Embraces ‘Disclosure, Apology, Offer’ Approach for Med Mal Cases’ (2014) Insurance Journal, [Online] Available: < <http://www.insurancejournal.com/news/east/2012/08/07/258509.htm> > [24 October 2016].

⁶⁴ Corbett, 148.

Practical implications for DR practitioners and clients

When taken together, general apology principles, specific academic commentaries, and the legislative examples, confirm that significant practical implications inevitably flow when an apology is made. These are often highly positive, so long as the apology content and its delivery are sincere. The authorities confirm that a weak, partial, or otherwise qualified apology may do more harm than good in a DR setting. This observation is linked to the earlier comments regarding DR *strategy*, the cold word that implies apologies offered during any DR proceeding (spanning negotiation, mediation, arbitration and litigation) may not be sincere. DR practitioners and clients must recognise that proper apologies have tremendous potential value from moral and legal perspectives. As the UK commentators particularly have noted, an apology ‘culture’ is acceptance that making an apology in appropriate circumstances is simply the ‘right thing to do’.⁶⁵

Tactical decision-making is unavoidable in any DR setting, and the parties are participating to achieve an outcome, either litigated, adjudicated, or one resolved through settlement. The legislation, cases, and commentaries discussed throughout the preceding sections strongly support the proposition that where DR practitioners and their clients are not fully alive to an apology’s importance in the overall DR process, their position risks being badly compromised. Alternatively, such inattention to how an apology can contribute to effective DR will possibly make the entire process more costly, stressful and ineffective.⁶⁶

Future research directions

The wealth of high level academic research conducted to date with respect to apologies and related legislative initiatives in many international jurisdictions suggests the following likely future research directions will be taken. Scholars will continue to explore how apologies impact DR from both legal and sociological perspectives, as by their nature, apologies are proven to exert influence over both legal and non-legal aspects of many disputes. Further research will almost certainly examine important cause and effect issues related to apology timing and content, for example settlement rates observed in disputes as measures against when or if an apology was offered.

Conclusions

The various discussion threads developed in this paper support these vital conclusions, and the first is driven by the weight of the various cited authorities. Apologies are an important DR element, but how

⁶⁵ Vines, 2013, 499; Corbett, 150; Irvine, 190.

⁶⁶ Vines, 2013, 500-501.

an apology affects DR progress and outcomes is largely dependent upon its quality, full, partial or qualified, and its apparent sincerity; the four apology legislation examples confirm this proposition. The BC enactments are a comprehensive apology code, one that brings obvious clarity and certainty to circumstances where an apology is offered to an innocent party, while the Massachusetts example illustrates how ambiguous, opaque language that fails to accurately define both apologies and their actual legal effect may not meaningfully contribute to better DR outcomes.

No matter how a particular jurisdiction defines an apology's legal effect, there is a powerful practical obligation imposed on all DR stakeholders to carefully study the apology implications discussed above. Employed correctly, there is little doubt that an apology's strengths with respect to contributing to DR effectiveness far outweigh the weaknesses. An apology, even ones tendered because its maker seeks to gain a tactical advantage over an opposing party, is almost always preferred to not taking this step. It seems certain that an expanding 'apology culture', as explicitly encouraged by the Scottish legislation, will ultimately contribute to better DR outcomes. There is now seemingly universal recognition that when provided appropriately, DR settlement barriers are reduced, and societal harmony is the biggest beneficiary.

Bibliography

1. Cases

Cooke and Midland Heart Ltd v MGN Ltd and Trinity Mirror Midlands Ltd [2014] EWHC 2831 (QB)

Vance v. Cartwright, 2013 BCSC 2120, aff'd 2014 BCCA 362 (BCCA)

2. Legislation

Apologies (Scotland) Act 2016

Apology Act 2006 (BC)Care Act 2014

Compensation Act 2006

Massachusetts General Laws (1986) Title II

3. Texts and journals

Awaiz-Bilal, Z 'The duty of candour and apologies as a legal remedy' (2015) 1 *J.P.I. Law* 7

Brown, J 'The Role of Apology in Negotiation' (2003–2004) 87 *Marq LR* 665

Carroll, R 'When 'Sorry' Is the Hardest Word to Say, How Might Apology Legislation Assist?' (2014) 44(2) *Hong Kong Law Journal* 491

Cole, E 'Apology, Forgiveness, and Moral Repair' (2008) 22.4 *Ethics & International Affairs* 1

Corbett, V 'Why It's Better to Be Sorry than Safe: The Case for Apology Protection Legislation' (2013) 36 *Dublin University Law Journal* 127

Fiske, R 'Smart Apologies Should Be Strategic' (2011) *Harvard Business Review* [Online] Available: <<https://hbr.org/2011/10/admitting-a-mistake-isnt-enough>> [24 October 2016]

Furedi, F *Courting Mistrust: The Hidden Growth of a Culture of Litigation in Britain* (OUP, 1999)

Goldberg, S et al *Dispute Resolution: Negotiation, Mediation and Other Processes* (6th edn, Aspen, 2012)

Goudkamp, J 'The Young Report: An Australian perspective on the latest response to Britain's "compensation culture' (2012) 28(1) *P.N.* 4

Irvine, C 'The Proposed Apologies Act for Scotland: Good Intentions with Unforeseeable Consequences (Legislative Comment)' (2013) 17(1) *Edin. L.R.* 84

Jesson, L and Knapp, P 'My lawyer told me to say I'm sorry: lawyers, doctors and medical apologies' (2009) 35 *William Mitchell Law Review* 33

Lavens, P 'Negotiation and Apologies: The Role of an Apology, the Role of the Law and the Role of the Lawyer' (2013) *Bond University* [Online] Available: <<http://dx.doi.org/10.2139/ssrn.2473234>> [24 October 2016]

Maxwell, D 'The Apologies (Scotland) Act 2016: an innovative opportunity in the twenty first century or an unnecessary development?' (2016) 2 *J.P.I. Law* 79

Myers, C 'Knowing When It's Legally Safe to Say "I'm Sorry": The Legal Effects of Mortification Strategy' (2015) Institute for Public Relations [Online] Available: <<http://www.instituteforpr.org/knowing-legally-safe-say-im-sorry-legal-effects-mortification-strategy/>> [24 October 2016]

Nardo, M and Francis, R 'Morality and the prevention of corruption: action or intent - a new look at an old problem' (2012) 19(2) *J.F.C.* 128

Radzik, L and Murphy, C 'Reconciliation', *The Stanford Encyclopedia of Philosophy* (Summer 2015 Edition), Edward N. Zalta (ed.), [Online] Available: <<http://plato.stanford.edu/archives/sum2015/entries/reconciliation/>> [24 October 2016]

Robbennolt, J 'Apologies and settlement levers' (2006) 3(2) *J.E.L.S.* 333

Spencer, J 'An unethical personal injury sector' (2014) 4 *J.P.I.* 226

Spigelman, J 'Negligence: the last outpost of the welfare state' (2002) *ALJ* 432

Taft, L 'Apology subverted: the commodification of apology' (2000) 109 *Yale LJ* 1135

Vines, P 'Apologising to Avoid Liability: Cynical Civility or Practical Morality?' (2005) 27(3) *Sydney Law Review* 483

Vines, P 'The protected apology as the modern response to the moral question at the heart of *Donoghue v Stevenson*: what if *Stevenson* had apologised? (Case Comment)' (2013) 3 *Jur. Rev.* 438

Vines, P 'Apologies and civil liability in the UK: a view from elsewhere' (2008) 12(2) *Edin. L.R.* 200

4. Other sources

Core 'Success for the Apologies (Scotland) Act 2016' (2016) [Online] Available: <<http://www.core-solutions.com/blog/success-for-the-apologies-scotland-act-2016/>> [24 October 2016].

Harrington, L 'Is it too late now to say sorry? - the Apologies (Scotland) Act 2016' [Online] Available: <<http://www.tltsolicitors.com/news-and-insights/insight/is-it-too-late-now-to-say-sorry---the-apologies-scotland-act-2016/>> [24 October 2016].

House of Commons Constitutional Affairs Committee, *Compensation Culture: Third Report of Session 2005-2006*, Vol 1, HC 754-I (Stationery Office, 2006)

Insurance Journal, 'Mass. Embraces 'Disclosure, Apology, Offer' Approach for Med Mal Cases' (2014) Insurance Journal, [Online] Available: <<http://www.insurancejournal.com/news/east/2012/08/07/258509.htm>> [24 October 2016]

Ryan, S 'Child Commission' (13 February 2012) *Irish Times* [Online] Available: <<http://www.irishtimes.com/news/clerical-child-abuse-an-irish-timeline-1.880042>> [24 October 2016]

Robins, J 'Saying sorry' (July 2008) *Law Society Gazette*, [Online] Available: <<http://www.lawgazette.co.uk/analysis/saying-sorry/47101.fullarticle>> [24 October 2016]

Society of Solicitor Advocats, 'Apologies (Scotland) Bill passed' (2016) [Online] Available: <http://www.solicitoradvocates.org/news_article/385.aspx> [24 October 2016]

Young, D *Common Sense, Common Safety* (HM Government, 2010) [Online] Available: <http://www.number10.gov.uk/wp-content/uploads/402906_CommonSense_acc> [24 October 2016]