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Abstracts from the Evidence and Procedure Interest Group

Evidence Reform - A Proposal for Substantive Justice

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Abstract

In New Zealand, the Evidence Bill proposes to codify most of the existing law on the admissibility and use of evidence, and form a comprehensive scheme relating to such. The Bill establishes the general principles that evidence must be relevant to be admissible, and evidence will be excluded if its probative value is outweighed by any unfairly prejudicial effect or it would needlessly prolong the proceeding. The Bill also sets out a number of specific admissibility rules.

This paper will question whether such specific admissibility rules achieve substantive justice in litigation, and therefore will discuss the need for any supplement to the general principle of relevance. It will assert, in order to promote substantive justice, that existing rules can be condensed into the following single test for admissibility: Evidence that is relevant is admissible unless its probative value is outweighed by illegitimate prejudice or there is some policy reason to exclude it. It is contended that any evidence could validly be considered under the above test, without reference to existing exclusionary rules or their exceptions. Such a test will enable courts to make decisions based upon all available cogent evidence, and tend towards outcomes that are substantively just.

Practical Procedure – Dancing with Documents

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Abstract

This presentation will address the incorporation of practical drafting exercises into Litigation Procedure courses. Participants will be asked to consider the various reasons one may teach drafting, and in light of different reasons to consider how different drafting components might be incorporated to add value to a procedure course. The presentation will further address the fair assessment of drafting exercises to ensure constructive alignment with the objects of the course and the instruction provided.