

LAW Matters

NEWS FROM THE MONASH LAW SCHOOL COMMUNITY

ISSUE 2/06

THE CHANGING WORLD OF WORK



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DEAN'S MESSAGE

WELCOME TO THE SEPTEMBER EDITION OF *LAW MATTERS*, IN WHICH PROFESSOR MARILYN PITTARD LOOKS AT THE IMPLICATIONS FOR BOTH EMPLOYERS AND EMPLOYEES OF THE NEW INDUSTRIAL RELATIONS LAWS SIX MONTHS AFTER 'WORK CHOICES' TOOK EFFECT. ALSO, DR JULIE DEBELJAK PROVIDES AN INSIGHT INTO THE VICTORIAN CHARTER OF HUMAN RIGHTS AND RESPONSIBILITIES LAUNCHED EARLIER THIS YEAR.

A recent report in *The Age* of a proposed move of the Monash Law School to another Monash campus was an interesting case of premature speculation. The article made reference to the possibility of our faculty moving to the Caulfield campus and I wanted to bring you up to date with the current situation in case you have gained the impression that this was a *fait accompli*.

It is true that the faculty is currently undertaking a planning process which involves consideration of a number of options with regard to future teaching and research requirements. Our building at Clayton, now over 40 years old, needs renovation and refurbishment in order to meet the expectations of future students and staff. We are considering two major options – refurbishment of the current building at the Clayton campus and a redevelopment at Caulfield. However, discussions are at a very early stage and the faculty is some way from making a decision. Before any decisions are made, an extensive process of consultation with current and ex-students and staff will take place.

There has also been some speculation about what differentiates a Monash law degree from those of our sister law schools. At the University of Melbourne, from 2008 it will not be possible to study law straight after leaving school; students will have to do a general degree first and then do law as a postgraduate degree. We will not be following this path for a number of reasons.

First, I believe that doing a combined degree, which the majority of students do, provides them with a broad education which is challenging and intellectually stimulating. Each degree should enrich the other.

Secondly, I believe that giving students the opportunity to study law from first year harnesses the enthusiasm and energy of incoming school leavers who have dreamed of doing law and want to do something 'lawyer-like' as soon as they can.

Thirdly, for those who wish to study law after completing another degree, we already provide them with the opportunity to do this via the LLB, the JD or the LLM(LP). Our offerings are thus comprehensive and accessible, particularly as we offer Commonwealth supported places for our undergraduate degrees.

Fourthly, I think that it is important not to price legal study out of the market. Law should not only be the province of the rich, though under present funding arrangements to universities, I fear that it is becoming more so.

Finally, the legal experience we offer our undergraduate students at our community legal centres at Oakleigh and Springvale allows them to work with clients on real cases. This, for many students, has provided a life changing experience and an early insight into the complex social worlds in which law operates.

This edition of *Law Matters* contains information on our upcoming Annual Alumni Soirée to be held on Thursday, 16 November as well as our Postgraduate Information Evening to be held at the Monash Law Chambers on Thursday, 18 October, where you can find out more details on our extensive range of postgraduate specialisations and courses, including our new Graduate Diploma in Local Government.

Professor Arie Freiberg
Dean, Monash Law School

DIARY DATES:

17 October

Lucinda Lecture: 'Concerning Judicial Method' – *Fifty Years On*
audrey.paisley@law.monash.edu.au

18 October

Postgraduate Information Evening
graduate@law.monash.edu.au

24 October

The Reform of Australia's Superannuation Tax Laws
Associate Professor Stephen Barkoczy
marketing@law.monash.edu.au

16 November

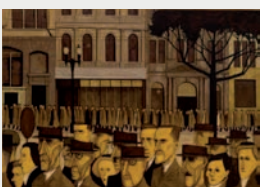
2006 Annual Alumni Soirée
alumni@law.monash.edu.au

2007

13-19 May
Law Week

16 May

Great Law Week Debate 2007
marketing@law.monash.edu.au



Cover image:
John BRACK
Australia 1920–1999
Collins St., 5p.m. 1955
Oil on canvas
114.8 x 162.8 cm
Purchased, 1956
National Gallery of Victoria, Melbourne

THE VICTORIAN CHARTER OF HUMAN RIGHTS AND RESPONSIBILITIES 2006



DR JULIE DEBELJAK

IN AN HISTORIC MOMENT FOR VICTORIA AND VICTORIANS, THE STATE GOVERNMENT ENACTED THE *CHARTER OF HUMAN RIGHTS AND RESPONSIBILITIES 2006*. AS WAS NOTED AT THE LAUNCH OF THE CHARTER, THIS LEGISLATION IS UNIQUE BECAUSE IT ACTUALLY GIVES CITIZENS SOMETHING RATHER THAN REGULATING AN ASPECT OF THEIR LIVES OR TAKING SOMETHING AWAY.

The charter preserves parliamentary sovereignty and promotes a dialogue about human rights between the executive, the parliament and the judiciary, without any one institution having the final say on human rights.

The charter confers statutory protection of civil and political rights such as the right to life, liberty, fair trial, equality and freedom of expression and association. However, it recognises that rights are not absolute, and it also adopts two limitation mechanisms in its specifications.

Firstly, section 7 contains a general limitation power, which states that the human rights in the charter may be subject to 'such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom'. Secondly, throughout the charter, some individual rights contain limitation powers. For example, the right to freedom of expression incorporates restrictions necessary for the protection of the reputation of others, national security, public order, public health or public morality. These limitations recognise that rights are not conferred without recognition of individual responsibilities to the broader community and allow for the protection and promotion of the rights of others.

There are two major ways in which the charter impacts on the Victorian government. The first relates to legislation. Section 32 of the charter requires the judiciary to interpret all statutory provisions in a way that is compatible with human rights, so far as it is possible to do so. Such interpretation can only be avoided by clear legislative words or intention to the contrary.

Where legislation cannot be read as compatible, the judiciary is not empowered to invalidate it; rather, it may issue a declaration of inconsistency under section 36 of the charter. This declaration does not invalidate the legislation, nor does it affect the outcome of the case in which it is issued. Rather it is an alarm bell of sorts, allowing the judiciary to warn the executive and parliament that a law is inconsistent with their understanding of the protected rights. Executive and parliament can then decide whether the law should be amended or repealed.

In limiting judicial power to declarations of incompatibility rather than judicial invalidity, the sovereignty of parliament is preserved. However, the power

of interpretation under section 32 may prove to be more potent than the section 36 power to issue declarations. This is because the judiciary can achieve particular legislative outcomes with interpretation which it cannot achieve through declaration, or for that matter, judicial invalidation. The challenge for the judiciary is to find a balance between achieving compatibility through section 32 interpretations and resorting to section 36 declarations. Failure to achieve this balance may result in allegations of illegitimate judicial activism and law-making.

Two additional elements are relevant here. Firstly, section 28 states that each new bill must be accompanied by a statement of compatibility or incompatibility with the charter and section 31 allows an act of parliament to override the charter; that is, an act may still have effect even if it is incompatible with one or more of the protected rights. The overrides are subject to a five year sunset clause, at which time they may be re-enacted. The interaction of these provisions has been designed to create an institutional dialogue about human rights in Victoria.

Secondly, the charter provides that it is unlawful for a public authority to act incompatibly with, or fail to give proper consideration to, human rights. An exception to this duty is where the public authority could not reasonably have acted differently, for example, where the public authority is simply giving effect to incompatible legislation. The legal consequences of unlawfulness are outlined in the charter, but no new cause of action is created. This differs markedly from similar legislation in the United Kingdom, where an action for breach of statutory duty is available and where the unlawfulness can be relied upon in any legal proceedings. Victoria's charter only allows a person to seek redress if they have pre-existing relief or remedy relating to the public authority's actions, in which case that relief or remedy may also be granted for charter unlawfulness.

However, the most significant shortfall of Victoria's charter is the absence of economic, social and cultural rights, despite the common acceptance that they are indivisible from civil and political rights. It can only be hoped that this omission will be reviewed in 2011, when parliament is obligated to review this groundbreaking legislation.

JUDICIAL APPOINTMENTS

Federal Court of Australia

The Honourable Justice Dr Christopher Jessup (BEd (Hons) 1969, LLB (Hons) 1971)

County Court of Victoria

Her Honour Judge Susan Pullen (BA 1977, DipEd 1978, LLB 1985)

Magistrates Court of Victoria

Ms Fiona Stewart (BJuris 1981, LLB 1981)

ALUMNI ACHIEVEMENTS

CONGRATULATIONS TO THE FOLLOWING ALUMNI ON THEIR RECENT IMPRESSIVE ACHIEVEMENTS:

Mr Jeffrey Browne (LLB 1979) recently left behind a remarkable career in the law and was appointed Executive Director at Channel Nine, a position which involves taking responsibility for strategic development and business affairs. Prior to his appointment at Channel Nine, Mr Browne held the position of legal adviser for the Australian Football League (AFL) for 21 years, where he drafted all AFL rules and regulations and negotiated over a billion dollars in media rights deals.

Property developer **Mr Adam Garrisson** (BA/LLB 1985), director of Wetherby Capital, is a co-founder and principal backer of the Melbourne Fifteen, the newest restaurant in Jamie Oliver's Fifteen 'family'. Mr Garrisson also redeveloped Melbourne's GPO and recently purchased the Windsor Hotel with a business partner.

Mr Bill Shorten (BA 1989, LLB 1992), won preselection in March this year as the Labor candidate for the federal seat of Maribyrnong at the next federal election. Mr Shorten is the National Secretary of the Australian Workers' Union and he also serves on the ACTU Executive, as a director of Australian Super and a director of the Victorian Funds Management Corporation.

MONASH TEAM PREPARES TRAINING MANUAL FOR TRIBUNAL MEMBERS

PROFESSOR BERNADETTE McSHERRY AND A TEAM OF ACADEMICS FROM MONASH LAW SCHOOL HAVE PRODUCED A 'BEST PRACTICE' MANUAL FOR ALL AUSTRALIAN AND NEW ZEALAND TRIBUNALS ON BEHALF OF THE COUNCIL OF AUSTRALASIAN TRIBUNALS.

Dr Pam O'Connor, an associate professor with Monash Law School, said it was extremely valuable and rewarding for Monash Law to be involved in this project, which provides training and support for all tribunals including those that are under-resourced.

"The manual has received high praise from tribunals, many of which have ordered copies for their members," she said.

"It is expected the manual will assist in promoting a common standard of competence among members of a wide range of state, Commonwealth and New Zealand tribunals such as medical boards, the Victorian Civil and Administrative Tribunal and a host of other tribunals that make decisions and hear appeals in such diverse areas as guardianship, discrimination, planning, migration and social security."

The manual is the first major project the Council of Australasian Tribunals (COAT) has completed since its foundation in 2002. The team of Monash academics were selected to work on this project following a national competitive tendering process.

COAT has a broad range of objectives, with a strong emphasis on providing training for tribunal members; the development of conduct standards, performance standards and best practice procedures; and the exchange of information and opinions on tribunal practices and procedures.

The project was financially supported by the Standing Committee of Attorneys-General and the Australian Institute of Judicial Administration. The Commonwealth Administrative Appeals Tribunal also contributed considerable administrative resources and support.

QUEEN'S BIRTHDAY HONOURS

We are pleased to congratulate **Professor Ronald Clive McCallum AO**, who was made an Officer in the Order of Australia in the Queen's Birthday Honours 2006.

Professor McCallum (BJuris 1970, LLB(Hons) 1972) received the honour for his service to the law, particularly as a tertiary educator and industrial relations policy adviser to government, and to the community for support to people with visual impairments and in the areas of social justice and human rights.

VALE

Judge Bill Morgan-Payler, who was part of Monash University's first intake of law students, passed away in June. Judge Morgan-Payler made a huge contribution to the legal system in Victoria during his outstanding career as a defence lawyer, prosecutor and finally as a judge of the County Court of Victoria. A devoted family man, he will be sadly missed.

Professor Mal Smith, who passed away in June, contributed greatly to the development of the graduate program at Monash Law School. His former colleagues remember him as both a scholar and a delightful man with a quiet sense of humour. He will be dearly missed.

TRADE TO LIVE OR LIVE TO TRADE: THE WORLD TRADE ORGANIZATION AND HUMAN RIGHTS

PROFESSOR SARAH JOSEPH, DIRECTOR OF MONASH LAW SCHOOL'S CASTAN CENTRE FOR HUMAN RIGHTS LAW, GAVE AN INSIGHTFUL LECTURE ABOUT HUMAN RIGHTS AND THE WTO IN AUGUST THIS YEAR.

An audience made up of eminent members of the legal profession, human rights campaigners and interested members of the public heard Professor Joseph examine why the WTO is under such extensive pressure from the human rights lobby. She explored the validity of human rights arguments against the organization, and discussed how the organization should respond to these demands. She focused on three main issues, discussing whether the WTO is biased against developing states, possible undesirable side effects for human rights enjoyment from freer trade and the debate over the possible inclusion of labour rights protection within the WTO regime. She concluded that there is a need for greater coordination between international developments on free trade, and on non-trade areas such as human rights, poverty alleviation, development, and environmental protection, stating that to do otherwise, is probably "politically, economically, ecologically, and socially unsustainable".



Photos courtesy of Dave Steele

ZIMBABWEAN ARTS/LAW GRADUATE SETS HER SIGHTS HIGH

INSPIRATIONAL MONASH ARTS/LAW GRADUATE MS FARAYI CHIPUNGU NOW WORKS AS PART OF THE MERGERS AND ACQUISITIONS TEAM AT MALLESONS STEPHEN JAQUES, AFTER COMPLETING HER ARTICLES THERE LAST YEAR.

Zimbabwe-born Farayi came to Monash on a scholarship in 1998 and finished her degree in 2003.

At a function for Monash University's international students, Farayi crossed paths with then Pro-Vice Chancellor of the South Africa campus Professor John Anderson, who invited her to work as his executive assistant while completing her studies at the Monash campus in Johannesburg.

Farayi said it was a great experience, which saw her liaising with lawyers and South African government bodies as part of the running of the campus.

A year later she returned to Australia to complete her articles and was admitted to practise in March of this year.

Farayi said she would ultimately like to return to Zimbabwe to help rebuild the troubled nation, but is gaining invaluable experience in her current role and feels she still has plenty to learn before going home.

"I'm really enjoying my job and it's a great place to work, so I'm not in a rush to move on," she said.

"Eventually I would like to get into politics, whether that's here or in Zimbabwe, I'll wait and see. I think I can contribute whichever side I'm on.

"A lot of young people have left Zimbabwe to study overseas, and I'm not sure how many will go back.

"It's important for some of us to return and I want to be involved in rebuilding the country, when that time comes."



FARAYI CHIPUNGU

THE CHANGING WORLD OF WORK: NEW UNFAIR DISMISSAL LAWS

PROFESSOR MARILYN PITTARD

IN OUR PAID WORKING LIVES, THE VAST MAJORITY OF US ARE EMPLOYEES, WHILE SOME ARE EMPLOYERS. THE NEW NATIONAL SYSTEM OF INDUSTRIAL RELATIONS REGULATION, INTRODUCED IN MARCH 2006 BY THE WORK CHOICES ACT, WILL AFFECT ALL CORPORATE EMPLOYERS AND THEIR EMPLOYEES IN AUSTRALIA.

This new legislation has radically overhauled industrial relations in Australia, leaving only 'non-corporate' employers and their employees to come under separate systems in all states except Victoria. The new laws promote workplace agreements – either collective or individual – as the main means of determining conditions of work, but without the previous back-up of the Australian Industrial Relations Commission arbitrating awards and settling disputes. Now, awards are essentially a thing of the past, with the Commission generally not empowered to make new awards. A new body, the Australian Fair Pay Commission, will set minimum rates of pay for employees of corporate employers; and other basic safety net conditions are now enshrined in the legislation.

Changes to unfair dismissal laws

The laws of dismissal have also undergone major change, largely dismantling the system of protecting employees from unfair dismissal introduced in 1993. Employers who engage 100 or fewer employees have regained the right to fire employees, without going through fair processes and without the need to justify that decision or provide a reason. The right to fire is not absolute however, as it is circumscribed by 'prohibited reasons' for dismissal. These include discriminatory reasons – that is, reasons based on characteristics such as age, sex, marital status, race – as well as reasons relating to participating, or not, in union activities or action, filing complaints against the employer, and absence for temporary sickness. If dismissal takes place for these reasons by an employer of 100 or less employees the employee would have claim in unlawful termination of employment.

'Larger' corporate employers and 'fair go all round'

Larger employers – employers which engage 101 or more employees – remain bound by the unfair dismissal laws under the Workplace Relations Act 1996 (Cth) requiring them not to dismiss harshly, unreasonably or unjustly. Essentially, this means that employers must have a valid reason for dismissal which is sound or justifiable, and the employee must be given an opportunity to present his or her case and meet any allegations of misconduct.

“THE CHANGES PLACE EMPLOYEES OF SMALLER EMPLOYERS AT A DISADVANTAGE IN TERMS OF THEIR LIVELIHOOD AND ACCESS TO ONGOING WORK BY GIVING THEM NO REDRESS FOR UNFAIR DISMISSAL.”

In a recent case, an employer was ordered to reinstate a dismissed employee because the termination of employment was held to be harsh, unjust and unreasonable. The employee had been unable to attend work due to genuine illness of a reasonably severe kind and she had not been given a 'fair go all round' as required under the legislation (*Morley v Qantas Holidays Limited*). If the Commission considers that reinstatement is not an appropriate remedy – for example, the relationship may have irretrievably broken down between employer and the employee – then compensation to a maximum of six months wages may be awarded instead of reinstatement. The new laws make it clear that there is no compensation for mental distress or humiliation suffered as a result of the termination of employment.

No claim can be made against an employer which is dismissing an employee for operational reasons. What are 'operational reasons'? They are defined as reasons of an economic or technological kind. The precise scope of operational reasons remains to be determined, probably by the Australian Industrial Relations Commission and possibly ultimately by the Federal Court. However, the operational reasons must be genuine operational reasons – and there is a procedure before the Commission to determine the genuineness of these reasons.

Determining who is covered by unfair dismissal laws

The size of the employer, based on employee numbers, is important. The legislation simply provides that it is employee numbers which determine the cut-off between obligations to dismiss fairly or not – there is no distinction between full-time, part-time, casual or fixed-term employees in tallying up the total employee numbers. In the count are employees, not independent contractors or volunteer labour. In a recent case before the Commission it was decided that the employer engaged fewer than 100 employees because the numbers of volunteer staff, who were not true employees, could not be included in the count and so the application could not be made for unfair dismissal (*Laing v Drug Arm Australia*).

In another case, it was questioned whether a company was the single entity employer, or the corporate body which was the franchisor of the company's business. If it were the latter, an unfair dismissal claim could be brought because the employer would engage more than 101 employees. The Commission held that the actual employer was the company which directly engaged the employee, not the franchisor, and it employed only about a dozen employees.

The legislation also incorporates the concept of 'related body', which aims to make sure that employers do not avoid the operation of the unfair dismissal laws by breaking down their business into smaller related entities which engage small numbers of employees. In the franchising case, the franchisor and franchisee were not regarded by the Commission as related bodies under the corporations law (*Fares v Ray White Dhillon Doncaster*).

The employee must be an employee of a corporate employer. This means that employees of partnerships, unincorporated associations, charities and governments are not covered by the federal laws. They may be able to access state unfair dismissal laws.

Qualifying periods and probationary employees

Probationary employees are still excluded from making claims for unfair dismissal regardless of employer size. However there is a new provision which has extended the qualifying period of employment to one year before an unfair dismissal claim can be brought.

The impact

The effect of the changes is to advantage employees of larger corporate employers which are still required to comply with proper reason and process for termination of employment, and to place employees of smaller employers at a disadvantage in terms of their livelihood and access to ongoing work by giving them no redress for unfair dismissal. Whilst stated government policy indicates that employment would be encouraged if employers were not subject to unfair dismissal laws, this remains to be seen. It should also be questioned whether this should be achieved at the expense of fairness and by workers who are vulnerable in their employment.



MENTOR PROGRAM PROVIDES INVALUABLE ADVICE

WHEN MONASH LAW STUDENT GUILLAUME BAILIN SIGNED UP WITH THE FACULTY'S MENTOR PROGRAM HE NEVER EXPECTED TO HAVE MR PAUL WILLEE QC ASSIGNED AS HIS MENTOR.

Guillaume, currently in the third year of his Bachelor of Laws, said the opportunity to meet with Mr Willee – who took silk in 1991 and serves in the Naval Reserve as Head of the Military Bar – was something he was very grateful for and gained a lot from.

"We met for a long lunch in Mr Willee's chambers and I asked him as many questions as I could think of," Guillaume said.

"I was able to learn about Mr Willee's career and the different areas of law he's practised in. He gave me a very balanced and frank opinion and didn't try to sway me in any one direction.

"Of particular interest to me was Mr Willee's experience as a prosecutor for the Queen because this is an area I would love to work in."

All Monash Law students and alumni are able to participate in the Mentor Program and are matched according to their academic and professional interests. Students and mentors have full autonomy over how often they wish to meet and the format in which their meetings take place.

Mr Willee said he has received terrific satisfaction from being involved in the program since its inception five years ago.

"I think there's a duty to put back into the profession what you've got out of it, and this is one way to do that," he said.

"I tend to give students more information than they need, but then they can go away and pick and choose from it what they like and come back to me if they have further questions.

"Each student needs a different arrangement, but generally they just need some advice and someone with hands-on experience to answer their multitude of questions."

Monash Law is currently looking for mentors for 2007. To get involved, visit www.law.monash.edu.au/alumni/mentor-program.html or contact Sarah Wall on + 61 3 9905 8680.



PEACE EDUCATION AWARD FOR LAW SCHOOL EMERITUS PROFESSOR

SRI LANKAN JUDGE AND EMERITUS PROFESSOR AT MONASH LAW SCHOOL HAS BEEN AWARDED THE 2006 UNESCO PRIZE FOR PEACE EDUCATION.

UNESCO Director-General Koichiro Matsuura announced Emeritus Professor Christopher Weeramantry as the winner of the prestigious prize in recognition of his ongoing support of the concept and culture of peace through his long and productive career.

Emeritus Professor Weeramantry was the Sir Hayden Starke Professor of Law at Monash from 1972 to 1991 and acted as dean several times before being appointed an Emeritus Professor in 1992.

He has been a judge and vice president of the International Court of Justice. He founded and currently chairs the Weeramantry International Centre for Peace Education and Research and has contributed to the promotion of peace education, human rights, intercultural education, social integration, interfaith understanding, environmental protection, international law, disarmament and sustainable development.

Emeritus Professor Weeramantry is the author of numerous books and articles and his judgements at the International Court of Justice have become a reference in international law.

The award ceremony for the 2006 UNESCO Prize for Peace Education took place on International Peace Day, 21 September at the UNESCO Headquarters in France.

14th LUCINDA LECTURE: 'CONCERNING JUDICIAL METHOD' – FIFTY YEARS ON

The Hon. Justice Ken Hayne AC, High Court of Australia

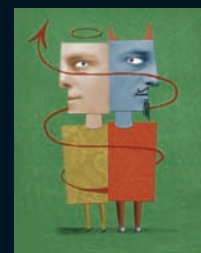
You are invited to attend this free public lecture, which is part of Monash Law School's Lucinda Lecture series, examining some of the most fundamental issues in Australian constitutional law.

Date Tuesday, 17 October 2006
6 – 7 pm

Venue Monash University
Law Chambers
472 Bourke Street Melbourne

For more information or to RSVP
Please contact Audrey Paisley on
+ 61 3 9905 3312 or email
audrey.paisley@law.monash.edu.au

TERRORISM LOSES LAW WEEK DEBATE



WE HAVE MORE TO FEAR FROM THE STATE THAN WE DO FROM TERRORISTS, A TEAM OF MONASH ALUMNI SUCCESSFULLY ARGUED AT THE 2006 GREAT LAW WEEK DEBATE HELD AT THE WINDSOR HOTEL IN MAY.

The affirmative team, comprising human rights advocate and barrister Mr Julian Burnside QC, World Vision Australia Chief Executive Officer Mr Tim Costello AO and former world debating champion Ms Meg O'Sullivan, was declared the winner at this entertaining and topical debate.

Mr Burnside said the state was infinitely more powerful than terrorists and that the federal government's counter-terrorism laws did not protect Australians and debased democracy.

"The average worldwide death toll from terrorism each year is 600 to 700 people – which makes it one of the least likely ways to die," he argued.

"Westerners are 100,000 times more likely to die in a car accident than in a terrorist attack."

The negative team, comprising ABC radio broadcaster Mr Jon Faine, co-convenor of Monash's Global Terrorism Research Unit Dr David Wright-Neville and former world debating champion Ms Kylie Lane, argued that terrorism was a real and dangerous threat.

Dr Wright-Neville said in some parts of the world, notably Southeast Asia, Australians were potentially at greater risk of terrorist attack than Americans.

"Recent data shows the number of terrorist incidents around the world has increased substantially since 2001. Who is going to protect us from these maniacal fanatics if not the state?" he said.

But the negative team was unable to convince the judges, who were from the Law Institute of Victoria, Monash University and the Monash Association of Debaters, or the audience.

Monash Law graduate Mr Will Fowels – who recently became the youngest-ever member of the Melbourne Cricket Club committee – put on an entertaining show in his role as moderator.

The Monash Great Law Week Debate was hosted by the Monash Law School as part of Victorian Law Week 2006.



ACCESS TO JUSTICE: HOW MUCH IS TOO MUCH?

EMINENT PROFESSIONALS FROM THE LEGAL AND MEDICAL INDUSTRIES CAME TOGETHER TO DISCUSS AND DEVELOP PRACTICAL SOLUTIONS TO THE GROWING MULTI-JURISDICTIONAL PROBLEM OF VEXATIOUS LITIGANTS AT A CONFERENCE HOSTED BY MONASH LAW SCHOOL AT MONASH UNIVERSITY'S PRATO CENTRE IN ITALY.

Delegates at the conference included judges, ombudsmen, academics, psychologists and lawyers from around the world. Using their combined experience and expertise, they examined the legal and medical issues raised by querulous litigants who pursue grievances beyond reasonable bounds.

Keynote speakers included Master of the Rolls Sir Anthony Clarke from the Court of Appeal of England, The Honourable Chief Justice Diana Bryant from the Family Court of Australia, Chief Financial Services Ombudsman for the UK Mr Walter Merrick, psychiatrist Dr Grant Lester from Forensicare Victoria and former German Prosecutor-General Mr Jürgen Dehn.

Conference co-convenor Dr Matthew Groves said that in recent times, the courts have seen a great rise in the number of unrepresented parties, and with this modern trend they face continued pressure to become 'user-friendly' and open to the public.

"Most vexatious litigants are difficult, even persistent beyond all reason, but there is no widely accepted definition on the point at which they become vexatious," Dr Groves said.

Justice Bryant revealed that one of her judges had declared he would rather resign than repeat the experience of having a litigant scream abuse at him in court.

Australia's Chief Federal Magistrate John Pascoe told delegates this aggression was seen in all courts, including the Federal Magistrates Court, which deals with some of the most distressing court cases including divorce, property disputes, unlawful dismissal claims, bankruptcy, child support and migration.

Mr Pascoe commented that some judges have removed glass from courtrooms to prevent litigants attacking each other with broken shards.

Dr Groves said devising appropriate responses to unreasonably persistent complainers was a complex challenge around the world.

"This conference has provided an opportunity to exchange knowledge and ideas and develop international research and solutions with global significance," he said.



EU WINE LAW SYMPOSIUM

MONASH LAW SCHOOL HOSTED THE EU WINE LAW SYMPOSIUM IN JUNE, BRINGING TOGETHER INTELLECTUAL PROPERTY EXPERTS FROM AROUND AUSTRALIA FOR AN EVENING OF LEGAL DISCUSSION AND WINE TASTING.

Guest speakers included Monash Law School intellectual property expert Professor Mark Davison and Corrs Chambers Westgarth intellectual property lawyer Mr Steve Stern, past president of the International Wine Law Association and a Monash Law alumnus.

Professor Davison and Mr Stern addressed issues raised by the EC-Australia wine treaty, geographical indications and intellectual property cases.

Local and imported wines were on show with winemakers and suppliers offering guests wine tasting on the night.



INTERNATIONAL EXPERIENCE PROVIDES BROAD OUTLOOK



A STRONG INTEREST IN INTERNATIONAL TRAVEL AND A PASSION FOR AFRICA SAW MONASH SCIENCE/LAW GRADUATE ALEX DANNE WORK AS A LEGAL CONSULTANT FOR THE SUDAN PEACE FUND IN AFRICA WHILE RESEARCHING HIS THESIS FOR HIS MASTER OF LAWS (INTERNATIONAL AND COMPARATIVE LAW) AT MONASH.

Alex, who is now working in commercial law with Arthur Allens Robinson, believes the international experience he obtained while studying at Monash has been invaluable to his professional development.

Alex's interest in Africa started early in his legal career. After completing his Science/Law degree at Monash, he secured an internship with the United Nations' Environment Program, headquartered in Nairobi, Kenya. He was based in the Department of Policy Development and Law, working on and researching corporate environmental regulation in developing states.

He received Monash Abroad funding and support from the Law School, but the experience was something he largely organised himself.

Alex's belief that international travel complements any university degree also saw him complete a unit at the University of Victoria in British Columbia, Canada.

"Monash does a great job of encouraging students to get a broad experience by providing opportunities to study and work overseas," he said.



Alex returned to Africa in 2003 to research his thesis for a Master of Laws (International and Comparative Law) while working as a legal consultant to the Sudan Peace Fund, a program administered by the international NGO Pact, focusing on grass-roots governance development in civil war ravaged Southern Sudan.

"Initiatives we worked on included the development of a South Sudanese judicial precedent encyclopaedia and training for court clerks in administrative functions," he said.

"The Pact Sudan Peace Fund continues to run, and the North-South peace agreement that was signed after I left has altered the governance development environment significantly, providing even more hope of achieving good judicial development outcomes."

Alex admits to developing a lifelong love affair with Africa following his experiences and a strong interest in the more tangible aspects (including financial and commercial) of third world development.

"Synergies are required between strong, transparent commercial development and social development to achieve lasting economic growth in the third world," he said.



THE MONASH LAW POSTGRADUATE ADVANTAGE



Monash Law School provides a range of postgraduate courses for graduates of both law and non-law disciplines. Give your career a professional advantage with our wide selection of internationally recognised programs, legal specialisations and coursework units.

- Diverse study areas to suit your career direction
- Modern postgraduate teaching centre in Melbourne
- Flexible study options
- Masters, graduate diplomas and single unit enrolments
- Programs may fulfill Continuing Legal Education requirements

Information Evening

Wednesday, 18 October 2006

6 – 7.30 pm

Monash Law Chambers
472 Bourke St Melbourne

Register at

www.law.monash.edu.au/postgraduate
or call +61 3 9641 6206

MONASH LAW SCHOOL ANNUAL ALUMNI SOIRÉE



Professor Arie Freiberg, Dean of Monash Law School, invites you and your guest/s to the annual 'End of Year Cheer' Alumni Soirée. See old friends, make some new ones, have a drink and hear some music.

You will be entertained by one of the Law School's most gregarious graduates, Mr Will Fowels.

Date: Thursday, 16 November 2006
Time: 6.30 – 8.30 pm
Venue: Kelvin Club, Melbourne Place Melbourne
Cost: \$25 per person (including GST)
RSVP: Essential by Thursday, 9 November 2006

For more information please contact Sarah Wall on + 61 3 9905 8680 or email alumni@law.monash.edu.au.

Your invitation will be mailed to you so make sure you keep the date free. We hope to see you there for some end of year cheer!

Proudly supported by the Monash Law Alumni Committee.

LAW Matters

Law Matters is published bi-annually in May and September and is the official newsletter for the Monash University Law School.

Want to include something in the next edition of *Law Matters*?

If you have an interesting story of something you wish to say, please contact Jamie McDonald on +61 3 9905 5308 or email jamie.mcdonald@law.monash.edu.au.

Every effort will be made to include contributions however space is limited. Please understand that items may be edited or not included.

For additional copies

Contact Jamie McDonald on +61 3 9905 5308 or email jamie.mcdonald@law.monash.edu.au

Update your contact details

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