



## NEWSLETTER

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## Corporate Social Responsibility

*Sune Skadegaard Thorsen, is founding partner of the Skadegaard Thorsen law firm in Denmark, which takes a leading role in assisting Danish and European companies to meet their corporate social responsibilities. This is an edited version of the talk he gave to Holding Redlich on 9 July 2004.*

I want to focus on the latest developments within the CSR movement, including the concept of corporate social opportunity (CSO). Human rights, as defined in the UN Bill of human rights, provide business with an effective and simple approach to devising a CSR strategy.

Not only do human rights provide an encompassing framework for risk management, the UN Bill of human rights can also form the basis of a proactive approach, providing companies with a competitive edge.

### Corporate responsibilities

Over the past thirty years the responsibilities of companies have been intensely debated. During the 1970's and 1980's, attention was primarily focused on the impact on the external environment. However, since the 1990's the focus has been expanded to embrace social responsibility and a widened economic responsibility.



*Julie Debeljak, Andrea Tsalimandris, Peter Redlich, Sune Thorsen*

Despite small nuances concerning the way various terms conform to the discourse, the following concepts appear to have gained consensus as corporate responsibilities amongst leading actors in the field.

The main concept is Sustainable Development. Sustainable Development for business is defined by the Triple Bottom Line, popularly described by the three Ps - *People, Planet, Profit* - describing how business can assist contributing to sustainable development. As a common appellation the concept can be framed as Corporate Responsibilities, consisting of social, environmental and economic responsibilities.

The content in relation to the triple bottom line has developed over time. As suggested in the CCBE publication “A Guide For European Lawyers Advising On Corporate Social Responsibility Issues, September 2003” the issues to be covered under sustainability considerations are multifarious. This paper supports the proposed delineation of the ‘social bottom line’ in accordance with the International Bill of Human Rights. The areas that companies can expect to be held accountable against in relation to Corporate Responsibilities may be described as follows.

*Social responsibility* encompasses rights such as: labour rights (e.g. no child or slave labour, freedom of association, collective bargaining, non-discrimination, equal opportunities, minimum wages, health and safety); the right to work (e.g. protection against unjustified dismissals and technical/vocational guidance and training); the right to life; freedom of expression; development rights such as the rights to education, health, adequate food, clothing, housing, and social security; the right to a family life and the right to privacy; minority rights to culture, religious practise and language; the right to peaceful assembly and the right to take part in political life; informed consent to medical / biological trials; intellectual property rights and the right to enjoy technological development.

*Environmental responsibility* requires corporations taking account of factors such as: the UN Convention on Bio-Diversity (including in-situ and ex-situ conservation, impact on diversity, use of genetic material, technology transfer); the Precautionary Principle (i.e. when in doubt about negative environmental impact of a given action, abstain); the use and handling of Genetically Modified Organisms; greenhouse gases; the impact of activities on the ozone layer (Montreal Protocol Annexes); the prohibition on the use of certain materials and substances; the distance of residential neighbourhoods from production sites; soil, ground water and surface water contamination and the treatment and reduction of waste water; ‘Eco-efficiency’ in the consumption of raw materials energy; the export of waste and re-use of material; animal welfare.

*Economic responsibility* imposes on corporations the need to pay heed to factors such as: financial profit, economic growth and asset creation; business ethics,

corruption and bribery; direct and indirect economic impact on communities through spending power (suppliers, consumers, investors, tax payments and investments), and geographic economic impact; economic impact through business process; monetary support for political parties, lobbying, and other ‘political’ activities; external economic impact from pollution, as well as internalisation of economic ‘externalities’; stock exchange behaviour, including insider trading; economic regulation through tax incentives and redistribution; state contracts and state subsidies; intellectual property rights; anti-trust requirements; board and executive remuneration and the role of accountants; donations, and taxes, including ‘transfer pricing’.

Companies are compelled to find sustainable solutions for their relation to *human beings* (through CSR), the *external environment* (including biodiversity and animal welfare), and to the *economy* (including the economy of the community). In practice, however, these pillars are not entirely separate. For example, corruption and bribery have, at a first glance, an immediate impact on the economy of the community, notwithstanding that the practice has human rights implications (in the form of economic discrimination and denying equal access to the law) as well. Consequently, reporting strives towards a holistic approach embracing all three pillars in one report. Such reports are often referred to as ‘Sustainability Reports’.

### **Corporate risks and opportunities**

Companies involve themselves in CSR from many motivations — personal, moral, economic and legal. — and in so doing expose themselves to both risks and opportunities. Companies that choose to ignore CSR may encounter consequences along the lines of increased civil and criminal litigation, loss of talented managers, exposure to NGO campaigns, loss of investors, increased cost of capital, a decline in stock value and the loss of customers and business partners. In some cases they may also be cutting off their access to public contracts and public procurement procedures such as those run by the World Bank, the European Union, and the European Bank for Reconstruction and Development.

Conversely, there are many opportunities available to companies that implement CSR strategies and policies. They may be able to enhance their corporate image and add brand value, and also enhance the job satisfaction, loyalty and identification of current and future employees. Other opportunities include increasing access to quality business partners, obtaining the status of a ‘preferred partner’, improving customer satisfaction and loyalty, and improving risk management and lowering insurance fees. Favourable access to capital markets can be opened up, as can access to Socially Responsible Investment (SRI) and public contracts. Last, but not least, there are also clear public relations benefits to be gained from CSR.

## Why are human rights relevant to business?

To give a clear picture on why and how the various human rights are relevant to business, I want to go into detail on the implications of a few specific rights.

The *right to non-discrimination and equal opportunities* (ICESCR Art. 2) has in recent years increasingly become an issue for companies worldwide. Discrimination can be defined as any distinction, exclusion or preference made on basis of race, colour, sex, sexual orientation, marital status, medical condition, pregnancy, family planning, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. Companies that have not provided equal opportunities have experienced huge costs due to penalties, compensation and loss of reputation. Legislation relating to this right has been strengthened in Europe following the example from the US. Moreover, globalisation, prospective skills shortages and demographic development have led to a focus on the needs and advantages of a diverse workforce. Finally, as a sustainability issue, discrimination appears to be the main root cause for conflicts and hindrance to sustainable social development worldwide. In short, companies have to pay attention to non-discrimination in recruitment, promotion, training, sanctions, and lay-offs.

The *right to moral & material interests from inventions and to participate in the technological development* (CESCR Art 15) has an enormous potential for development in societies. Since material progress is often the result of scientific progress, it implies that everybody has access to these results. The internet, new technologies, new foods etcetera must not be restricted to the few. Access must be kept as cheap, easy and non-discriminatory as possible. It shall, on the other hand, not be understood as a duty to reveal scientific inventions. Issues relevant to business in general are: the moral and material rights of employees as authors; the rights of the inventor to participate in the material gain from the invention should be protected by the employer; the Patents/TRIPS agreement is generally seen by NGOs as an obstacle to the development of Third World countries hindering access to the benefit from scientific and technological discovery, and claiming intellectual property rights for existing genetic combinations is an issue for companies, Basmati rice being a case in point.

Corporations also have to take the *right to life* into consideration and refrain from activities that lead to the loss of life, be it from polluting the environment or through the use of armed security personnel. Further, companies will have to ensure that other actors, which the company influences, do not violate this basic right. Corporate history is littered with tragic incidences where corporations did not respond adequately to their responsibilities in relation to this right. From the Bhopal disaster, to the Ogoni people in Nigeria, to the lives of

HIV/AIDS victims in South Africa, the corporate world has a responsibility for ensuring the right to life.

## A competitive edge — a proactive approach

Most rights have a compliance side and a proactive/opportunity side. Compliance is related to risk management, while a more proactive attitude may give a company a competitive edge. The above discussion of rights and business mainly deals with the compliance side by describing the minimum responsibilities of the companies. Proactive companies go beyond simple compliance and use their CSR strategy to brand themselves and so establish a competitive advantage in the marketplace.

Taking a proactive approach means choosing some rights that the company actively promote beyond what they are obliged to do. Experience from companies, adopting this approach has shown that it can be valuable to formulate the proactive strategies in line with the International Bill of Human Rights.

When choosing a proactive strategy it is important that the values are relevant to the corporation. It will be expected of a food industry corporation to have a strategy regarding the right to food, or for the pharmaceutical industry to pay specific attention on the right to health. An illustrative example was McDonalds' first CSR report that described at length its HIV/Aids program in Africa. Notwithstanding the positive aspects of the initiative, McDonalds was criticised for not addressing the problem of scarcity of food in some of the African countries or the issue of quality of its products as defined under the right to food.

Finally, many Companies provide funds or give subsidies to various purposes locally or abroad without a specific purpose beyond the creation of an improved image. It becomes important that sponsorships and donations are streamlined into supporting the proactive goals defined in the sustainability strategy of the company. This will further enhance synergies between the more traditional corporate giving and the contemporary approach of enhancing sustainability issues in the core business strategies.



Sune Skadegaard Thorsen

# A Fair Place in Our Own Country



On 2 June 2004, **Noel Pearson**, Team Leader of Cape York Partnerships presented a public lecture for the Castan Centre entitled 'A Fair Place in Our Own Country: Indigenous Australians, Land Rights and the Australian Economy'. This is an edited version of that speech.

It was late in the long campaign against the 10 Point Plan and many indigenous leaders who had been involved in the politics of the *Native Title Act* in 1993 were absent from Canberra in the crucial weeks and days before the passage of the Howard Government's legislation in response to the Wik decision. I arrived in Canberra with ominous indications that Brian Harradine would make a deal with the government to pass the legislation. Earlier we thought we had won the day when the delegation of Wik People led by Richard Ahmat, the Chair of the Cape York Land Council, together with other indigenous leaders working the corridors of Federal Parliament, had persuaded the Senator to oppose the government's Bill. When I heard the news back in Cape York Peninsula and saw the images of the Senator dancing with the Wik People on the lawns of Parliament House, I was ecstatic. I had no problem with the failure of the Bill leading to the much-feared double dissolution 'race election'. But then Harradine recommenced negotiations with the government.

The afternoon I arrived in Parliament House I was walking down the corridors with Ahmat and Terry O'Shane from the North Queensland Land Council, when we bumped into the Senator. He was to inform us, no doubt thinking that it was the very news we wanted to hear, that he had made a deal or was very close to concluding a deal with the government for the passage of the Bill. We were non-plussed. The game was over and the 10 Point Plan was heading for the statute books with some ameliorations extracted by Harradine. The concessions secured by Harradine did not make an unjust Bill just, and the Senator was responsible for allowing a fundamental tilt of the pendulum away from the native title rights of indigenous people, which continues to this day.

Faced with the inevitability of the passage of the Bill that evening in the Senate, I decided on a last desperate strategy. Invited to appear on the 7.30 Report I decided to endorse the passage of the Bill and to give the impression that Harradine had won huge gains for indigenous people. My hope was to incite the lunatics from the far right of the Coalition - Senators O'Chee, Lightfoot et al - so that they would reject the

Bill, in much the same way as they had done to our advantage, in 1993. The metaphor that was in my mind was like trying to push some livestock into a pen. I thought a sudden scare just as the stock were at the mouth of the pen would have two possible consequences: there was a chance they would take fright and run off down the paddock, or they would run straight through the gate and into the pen. I was prepared to take the risk in the hope that we could snatch victory from the jaws of the defeat which Harradine had sprung for our own good to supposedly save us from a race election. Barry Cassidy knew what I was trying to do, Kerry O'Brien did not, and when I did the interview with Kerry he was bewildered by my support for the passage of the Bill later that night.

Alas, my gamble did not work. The coalition senators knew they had secured victory for the Australians they felt they represented and they dutifully voted in unison. All I had achieved was that I had defused the whole debate following the passage of the 10 Point Plan. Federal politics moved on to the next issue on the very next day.

Let me now turn to another story going back to 1997-1998 when the 10 Point Plan and commitments by government leaders to secure 'bucketloads of extinguishment' consumed the nation.

Ron Castan QC had long spoken to me about the need to move the momentum from *Mabo* from the plane of litigation and the courts to the plane of a larger political and economic settlement. Ron had warned that reliance upon the law alone was not sufficient. The furore that arose in the wake of the High Court's *Wik* decision in December 1996 underlined Ron's view, and the bitter debates that raged during 1997 underlined the need for an alternative solution.

At the same time the former, notorious leader of the CLP in the Northern Territory, Ian Tuxworth, and his colleague who had become a good friend to us in far northern Queensland, Jim Petrich, commenced a discussion on the far right of rural Australian politics questioning whether the 10 Point Plan would deliver the kind of resolutions that were needed, particularly in the relationship between traditional owners, pastoralists and resource developers. It was the workability of any imposed legislative regime which they doubted.

Ron, Ian and Jim decided to bring together the parties that were furthest apart from each other in the raging national debates about Wik and the 10 Point Plan. Ron

brought together key indigenous leaders from the Land Councils, and Tuxworth and Petrich brought together key leaders from the National Party and farmers representatives. They secured Michael Costello, former diplomat and then CEO of the ASX, as the facilitator who would help the two sides see if they could find common ground.

We did. And this common ground was set out in a number of principles which were set out in a draft Heads of Agreement. The preamble to these Heads of Agreement began as follows:

“For tens of thousands of years the Aboriginal people settled and owned this land. They were part of it in a unique and primary way. For the Aboriginal people, the land was the essence of their culture, and their culture was the essence of their being. To deny their ownership of the land is therefore, to deny their very existence. It is for this reason that of all the wrongs done to the Aboriginal people over the centuries since European settlement, none has been more profound than the assertion of the doctrine that this land had been owned by no-one before 1788.”

The document went on to set out the following points underpinning a workable framework:

- The prior settlement and ownership by Aboriginal people to be recognised.
- Valid Crown titles to be recognised and a fair procedure devised to ensure any necessary validation of post-1993 grants of title.
- Existing Aboriginal land including Aboriginal Reserves to be recognised and placed under appropriate title as soon as practicable.
- Aboriginal interests in national parks and their involvement in park management and development to be acknowledged.
- Native title to have no effect where a valid freehold or exclusive leasehold title exists, but to have full effect over unalienated Crown land.
- Native title can co-exist with a pastoral lease, but only to the extent that it does not interfere with the rights of the leaseholder under that lease.
- There are separate economic rights on pastoral leases from non-economic (or cultural) rights held or claimed by Aboriginal people.
- There is a difference between the provision of compensation for the relinquishment of economic rights and the provision of resources to address the ‘citizenship’ entitlements of Aboriginal people in health, education, housing and welfare.

It was therefore agreed:

- a) That in compensation for the relinquishment of economic rights an annual payment will be made to Aboriginal people for [x] years. The amount of this annual payment will be [either (\$x) or a figure calculated according to an

agreed formula, for example annual mineral production or GDP]

The payment will be made in such a way that it provides a long term capital base for all Aboriginal Australians through which they can participate more fully in the economic development and prosperity of the broader economy, and can sustain their culture.

- (b) That ‘citizenship’ entitlements will be properly funded and administered through arrangements to be agreed.

The next challenge was to see if the same principles could gain the support of the miners. Ron and I met with the then Chair of the Minerals Council in Brisbane, but the miners were banking on the 10 Point Plan to deliver certainty and workability for them. Similarly, representatives from the teams that had developed these Heads of Agreement briefed members of the government and the opposition in Canberra, but without the miners there was little prospect of the Federal Government changing course. So what was at the time called the Bennelong process was put aside, and the parliamentary process of the 10 Point Plan continued.



*Noel Pearson*

Ron Castan taught me a critical lesson in 1998. He illuminated for me what I have since called the “80-90% strategy” of indigenous advocacy, as opposed to the “51% strategy” with which I was familiar. It was Ron who would get me to see that there is more common ground between indigenous people and people from the right of Australian politics and society than conventional politics would have it. People from the rural and regional right of Australia have many interests in common with indigenous people. They have an understanding of the issues and problems. They have many genuine friendships and relationships with indigenous people - and they may be unsentimental or inelegant in their demeanour, but

many of the ones to whom I am referring are fundamentally decent and have goodwill. What I understood is that much of the Right's objections to Aboriginal aspirations were rooted in their objection to these aspirations being identified as Leftist moralizing. I came to see how much the form in which indigenous issues were presented disproportionately determined the responses of the two sides of Australian politics and society, rather than necessarily the *substance*.

Many take from the legacy of Ron Castan QC AM true succour for the cause of human rights, because there was no more deft an advocate nor one who had achieved so much for the cause of human dignity and equality than he. But let me speak testament to another side of this man: he was an unreserved believer in the need for and entitlement of indigenous Australians to share in the wealth of their own country. There was not a skerrick of equivocation about this in him whatsoever.

Ron Castan was unusual; he was a great champion and fighter for Aboriginal people's rights, but he was completely free of romantic foolishness about Aboriginal people. Unfortunately, the vast majority of those who have seen themselves as allies in the political struggle have had utopian tendencies in their thinking about indigenous people.

One such romantic idea is the idea about the Aboriginal struggle being just one aspect of an environmentalist agenda. It is of course excellent if Aboriginal advancement can go hand in hand with good environmental and conservation policies, but the problem is the idea that Aboriginal people desire to take themselves and their lands anywhere else than to the forefront of economic development in the global economic marketplace.

A second romantic idea is one that has most clearly been expressed by Frank Brennan: the notion that about Aboriginal people must find a way other than "secularism, materialism and individualism".

In our work in Cape York Peninsula we have many strategies that superficially resemble the romantic environmental and spiritual notions about the development of Aboriginal society. We are working for environmental goals and we seek a spiritual and cultural revival of our communities. But our fundamental goal is complete and equal social and economic inclusion in the Australian mainstream and in the global economy. We do not see it as our main mission to be an environmental conscience or a custodian of spiritual values in a materialistic world.

What plan does Frank Brennan have for the secularists, materialists and individualists who occupy the long and depressing rows of Aboriginal people who have their own land, languages and their cultures considerably intact, playing poker machines in the Alice Springs casino, and in RSL clubs from Cooktown to Broome?

The liberal consensus during the social justice era was that Aboriginal disadvantage was caused by the denial of self-determination and denial of rights and services, and by discrimination. Many reforms that have had deleterious consequences (such as the right to drink and equal pay in the cattle industry which led to unemployment) were unavoidable consequences of equality, but there was no discourse about Aboriginal responsibility in this new situation. Nor was there any awareness that many elements in the positive advancement programme were flawed. Policies for recognition of culture and language - correct in principle - marginalised indigenous people instead of making them fully integrated citizens with a strong cultural identity. Legal aid policies and criminological theory did nothing to reduce crime or help the victims of crime.

Today, the real story of indigenous affairs is no longer containable. The liberal/progressive interpretation of indigenous affairs is not standing up to scrutiny: it is half right, but also half wrong.

*For further information on the work of Cape York Partnerships go to [www.capeyorkpartnerships.com](http://www.capeyorkpartnerships.com).*



*Julie Debeljak, Noel Pearson, Nellie Castan, Sarah Joseph, Melissa Castan*

# Human Rights and Institutional Dialogue: Lessons for Australia from Canada and the UK

*Associate Director of the Castan Centre, Julie Debeljak, had her PhD thesis accepted in July. Here is the edited abstract of that thesis.*

This thesis examines the role of the judiciary in interpreting, refining and enforcing human rights norms within domestic legal systems. It focusses on the current situation in Australia compared with the Canadian and British approaches. The current Australian model of human rights promotion and protection relies heavily on the representative arms of government, the executive and the legislature. Indeed, these have an effective monopoly over human rights in Australia. The exclusion of any significant judicial contribution to the promotion and protection of human rights is based on concerns about democracy: in particular, concerns that empowering the judiciary to review and invalidate executive and legislative action against open-textured human rights guarantees is undemocratic.

The thesis demonstrates that, theoretically, human rights and democracy co-exist in a healthy and beneficial state of tension, and that giving the judiciary *some* role in the interpretation, refinement and enforcement of human rights standards is not undemocratic. The theoretical justification of judicial involvement in the promotion and protection of human rights relies on modern notions of democracy and modern human rights instruments which ensure that all arms of government – the legislature, executive and judiciary – share the responsibility for human rights, which is operationalised through an inter-institutional dialogue about democracy and human rights, a dialogue that no single arm can once and finally determine. Most importantly, judicial perspectives on the contours of human rights and democracy do not necessarily prevail over the representatives' perspectives. The different arms of government have distinct, yet complementary, roles.

The theoretical inter-institutional dialogic model is then assessed in the light of two modern human rights instruments, the entrenched *Canadian Charter of Rights and Freedoms 1982* and the statutory *Human Rights Act 1998* (UK). Both models exemplify inter-institutional dialogic approaches to the promotion and protection of human rights. Both models achieve this through the use of three specific mechanisms – the open-textured nature of the human rights guarantees, the non-absoluteness of the human rights guarantees, and the judicial remedial and representative response mechanisms. This thesis concludes by recommending that Australia adopt a modern human rights instrument which establishes a constructive and educative inter-institutional dialogue about human rights and democracy.

## The Anti-terrorism Bill

*In April, Castan Centre member, Patrick Emerton, made a submission on behalf of the Centre to the Senate Legal and Constitutional Legislation Committee regarding the Anti-terrorism Bill 2004. This is an edited extract.*

In December 2003, the *Australian Security Intelligence Organisation Act 1979* (Cth) was amended to require an individual against whom a warrant has been issued pursuant to section 34D of that Act to surrender their passport and to make it an offence for such a person to leave Australia during the life of the warrant without the permission of the Director-General of Security. The penalty for contravening these provisions is imprisonment for up to 5 years.

The new Bill introduces two provisions which would have the effect of requiring an individual to surrender their passport, and to not leave Australia, upon the Director-General of Security seeking the Minister's consent to a request for the issues of a warrant under s 34D (an 'ASIO warrant').

Currently, the issuing of an ASIO warrant takes a number of steps: the Director-General of Security must seek the Minister's consent; that request must detail any previous ASIO warrants issued in respect of the same person; the Minister must be satisfied that there are reasonable grounds for believing that issuing the warrant will substantially assist the collection of intelligence that is important in relation to a terrorism offence and that other methods would be ineffective. In the case of a request for a detention warrant, the Minister must take account of any previous detention pursuant to an ASIO warrant and that the issue of another warrant must be justified by information that is additional to or materially different from that known to the Director-General at the time of the last of the earlier warrants. If the Minister has consented, the Director-General of Security must then make a request to an issuing authority, and they may issue the warrant only if they are satisfied that there are reasonable grounds for believing that the warrant will substantially assist the collection of intelligence that is important in relation to a terrorism offence.

If the new Bill were passed, it would be possible for the Director-General of Security, acting unilaterally, to compel an individual to surrender any passport in his or her possession or under his or her control, and to prohibit that individual from leaving Australia. This is not a power that should be vested in the head of a covert intelligence agency. It subjects individuals to the risk of arbitrary interference with their right to freedom of movement. Furthermore, it is open to significant abuse, including the issuing by the Director-General of serial requests to the Minister where there is no reasonable basis for supposing that the request will be consented to, or that an issuing authority will issue the warrant requested, simply for the purposes of invoking these provisions.

# Events

## Recent events

**2 April 2004**

### **Children in Immigration Detention Conference**

Speakers included: Susan Kneebone, Adiva Sifris, Tania Penovic, Julian Burnside QC, Sev Ozdowski.

**3 May 2004**

### **Business and Human Rights Public Lecture**

**Professor David Weisbrodt**, Fredrikson & Byron  
Professor of Law, University of Minnesota.

**27 May 2004**

### **Development of International Indigenous Rights Public Lecture**

**Professor Erica-Irene Daes**, Former Chair and Special Rapporteur of the United Nations Working Group on Indigenous Populations.

**2 June 2004**

### **A Fair Place in Our Own Country: Indigenous Australians, Land Rights and the Australian Economy Public Lecture**

**Noel Pearson**, Team Leader, Cape York Partnerships

**24 June 2004**

### **Human Rights and Decentralisation in Indonesia Staff Seminar**

**Nukthoh Kurde**, Faculty of Law, Universitas Islam Indonesia

**7 July 2004**

### **Corporate Social Responsibility Public Lecture**

**Sune Skadegard Thorsen**, Senior Partner, Skadegard Thorsen Law Firm, Copenhagen, Denmark.

**3 August 2004**

### **Visit by officials from the National Judges' College of China, under the China-Australia Human Rights Technical Cooperation Program**

## Upcoming events

### **Castan Centre Annual Lecture**

**Dr Jose Ramos-Horta**

**East Timor: A UN Success Story in Nation-Building?**

**Friday, 13 August 2004**

**1pm-2pm**

**Queen's Hall**

**Victorian State Parliament**

**Spring St, Melbourne**

**Public Lecture**

**Castan.Centre@law.monash.edu.au**

**This event is presented with the assistance of  
Mallesons Stephen Jaques**

**2 September 2004**

### **The UN Commission on Human Rights Public Lecture**

6pm, Federal Court Ceremonial Court, Commonwealth Law Courts, William St

**Mike Smith**, Australian Ambassador to the UN Commission on Human Rights, Geneva.

### **Castan Centre Annual Conference**

**Human Rights 2004:  
The Year in Review**

**Friday, 3 December 2004**

**CUB Malthouse**

**See newsletter back page for further details**

# Human Rights Law Courses

Online at:

[www.law.monash.edu.au/castancentre/units.html](http://www.law.monash.edu.au/castancentre/units.html)

## Undergraduate:

Citizenship and Migration Law

Comparative Constitutions and Rights

Human Rights and Australian Law

International Law

Indigenous Peoples and the Law

International Human Rights

International Organisations

International Refugee Law and Practice

Law and Discrimination

Law, Gender and Feminism

## Graduate:

Current Issues in International Human Rights law

Human Rights in the Global Economy

Human Rights Litigation

Indigenous Rights and International Law

International Humanitarian Law

Law, Gender and Feminism

Migration Law

Native Title and Land Rights

Practising in the Public Interest

*\* Not all courses are offered by the Law Faculty each year.*

# Student Placements

Assoc Prof Beth Gaze in her **Law and Discrimination** course and Dr Sarah Joseph in her **International Human Rights Law** course both offer undergraduate students the opportunity to take part in a Student Placement scheme. Further information can be found in the Law Faculty handbook at:

[www.monash.edu.au/pubs/handbooks](http://www.monash.edu.au/pubs/handbooks)

# Advanced Professional Practice Unit

A Human Rights Unit will be run in 2004 in the Advanced Professional Practice subject coordinated by Assoc Prof Adrian Evans. This will involve students working with Melbourne law firm Holding Redlich on pro bono cases of interest. For further details contact: **Assoc Prof Adrian Evans on 03 9905 5501.**

# Student Internships

The Castan Centre helps to facilitate human rights related international internships for Monash Law students.

Key schemes with which the Centre is involved include:

- **Reprieve Australia** – provides Monash law students with the opportunity to work with Reprieve lawyers in the USA on death-row cases. These are three month internships that usually take place over the main University break.
- **Australian Delegation to the UN Commission on Human Rights** – A six-week internship program with the Australian delegation in Geneva (usually over March-April).
- **Australian Red Cross International Humanitarian Law Summer Internships** – Two-week, project-oriented voluntary internships run out of the ARC HQ in Melbourne.

More information on these and other human rights internships is available online at:

[law.monash.edu.au/castancentre/internships](http://law.monash.edu.au/castancentre/internships)

Coming out in August 2004

## Corporations and Transnational Human Rights Litigation

Sarah Joseph  
Hart Publishing

Available through [www.hartpub.co.uk](http://www.hartpub.co.uk)

# Publications, Papers & Members

## Publications

Castan, M. "The High Court, Human Rights and the New Jurisprudence of Denial" in T.Davis (ed), *Human Rights 2003: The Year in Review*, Castan Centre 2004.

Davis, T. "Introduction: The Year in Review" in T.Davis (ed), *Human Rights 2003: The Year in Review*, Castan Centre 2004.

Emerton, P. "ASIO powers: a veil of secrecy", *Alternative Law Journal*, 29 (1), February 2004.

Joseph, S. "Human Rights Committee: Recent Cases", (2004) 4 *Human Rights Law Review* 109-124.

Kinley, D. "Corporate Social Responsibility and International Human Rights Law" in R Mullerat (ed) *Corporate Social Responsibility*, Kluwer/International Bar Association, 2004.

Kinley, D. 2004: "Corporate Social Responsibility, International Human Rights Law and Economic Development: A New Architecture for Human Rights Responsibilities" in Marika Vicziany (ed) *Cultures and Technologies in Asia - The Paradigm Shifts*, Monash Asia Institute Press, 2004.

Kneebone, S. "Bouncing the Ball between the Courts and the Legislature: What is the Score on Refugee Issues?" in T.Davis (ed), *Human Rights 2003: The Year in Review*, Castan Centre 2004.

Kneebone, S. 'Refugees, Citizenship and Nationality: What is the Basis of Protection?' (2004) 10 (1) *Australian Journal for Human Rights* 33.

McSherry, B. "Third Party Access to Shared Electronic Mental Health Records: Ethical Issues" (2004) 11(1) *Psychiatry, Psychology and Law* 53-62.

McSherry, B. & Naylor, B. *Australian Criminal Laws: Critical Perspectives*, Sydney: Oxford University Press, 2004.

## Papers

Castan, M. "NTRB Lawyers Professional Development Project", *AIATSIS/ATSIC Native Title Conference*, 4 June 2004.

Debeljak, J. Submission to the Commonwealth Senate Legal and Constitutional Legislation Committee Inquiry into Amendments to the Marriage Act 1961 and the Family Law Act 1975', July 2004.

Emerton, P. Submission to Senate Legal and Constitutional Legislation Committee Inquiry into the Provisions of the Anti-Terrorism Bill (No 2) 2004.

Emerton, P. Submission to Senate Legal and Constitutional Legislation Committee Inquiry into the Provisions of the Anti-Terrorism Bill 2004.

Emerton, P. Submission to Senate Legal and Constitutional Legislation Committee Inquiry into the Provisions of the Surveillance Devices Bill 2004

Emerton, P. Submission to Senate Legal and Constitutional Legislation Committee Inquiry into the provisions of the National Security Information (Criminal Proceedings) Bill 2004 and the National Security Information (Criminal Proceedings) (Consequential Amendments) Bill 2004.

Joseph, S. "Freedom of Expression", *Australia's First Bill of Rights: A Forum on the National Implications of the ACT Human Rights Act 2004*, Canberra, 1 July 2004.

Joseph, S. "Australia's Anti-Terrorism Legislation: Compliance with the Constitution and International Human Rights Law", Mallesons Stephen Jacques, Human Rights Law Group, 28 April 2004.

Joseph, S. "The Battle for the Alien Tort Claims Act: *Sosa v Alvarez-Machain* in the US Supreme Court", *Australia and New Zealand Society of International Law (ANZSIL) Annual Conference*, Canberra, 19 June 2004.

Kinley, D. & Davis, T. *Human Rights Implications of Privatization and Private Sector Development Activities for World Bank Operations*. World Bank discussion Paper, February 2004.

Kinley, D. "Law, Lawyers and Corporate Social Responsibility", *Monash Institute for the Study of Global Movements Conference on Business and CSR*, Melbourne, May 2004.

Kinley, D. "The Global Economy and Human Rights: Institutions, Intersections and Inconsistencies", *International Society of Business, Economics and Ethics Third World Congress*, University of Melbourne, 14-17 July 2004.

Kneebone, S. "Australia's treatment of refugees post-Tampa", Insitutute for the Study of International Migration, Georgetown University, Washington, 9 June 2004.

McSherry, B. "Risk Assessment by Mental Health Professionals and the Prevention of Future Violent Behaviour", Trends and Issues Paper, Australian Institute of Criminology July 2004, pp 1-6.

McSherry, B. "HealthConnect: Ethical Issues", Seminar, Faculty of Law, University of Tasmania, 15th March 2004.

McSherry, B. "Ethical Issues in the HealthConnect System", Presentation, Symposium on Shared Electronic Health Records, Deakin University, Toorak Campus, 23 April 2004.

McSherry, B. "Electronic Mental Health Records: Ethical, Legal and Administrative Issues Concerning Consent to Disclosure", Paper delivered at the 4th Annual International Association of Forensic Mental Health Services Conference, Stockholm, 7 June 2004.

McSherry, B. "Indefinite and Preventive Detention Legislation: The High Court's Cautious Approach" Plenary Address, 24th Annual Congress, Australian and New Zealand Association of Psychiatry, Psychology and Law, Port Douglas, 17th July 2004.

Penovic, T. "The separation of powers, Lim and Australia's 'voluntary' detention of children", *Children in Immigration Detention: The Policy, The Practice and the Prognosis Conference*, Melbourne, 2 April 2004.



## Centre Directors & Staff

**Prof David Kinley (Director):** Will be taking up a Professorial Chair at the University of Sydney Law School as of March 2005. Is currently on a Fulbright Senior Scholar Award at the Washington College of Law.

**Dr Sarah Joseph (Associate Director):** Recently authored the forthcoming *Corporations and Transnational Human Rights Litigation* (Hart Publishing).

**Julie Debeljak (Associate Director):** Was awarded her PhD in Law in July 2004. Is Team Leader on the Centre's upcoming human rights training of Indonesian public officials under AusAID's IASTP III program. completed teaching of the graduate International Humanitarian

Law course; teaching AusAID officials on Human Rights reform in 2004.

**Melissa Castan (Centre Associate):** Has coordinated Monash University's involvement with the newly established Native Title professional lawyer training program, run in conjunction with UNSW.

**Dr Tom Davis (Project Manager):** Co-teaching *Law & Good Governance Reform* module for AusAID staff, and teaching *Politics of Development* undergraduate course for the Monash Politics Department.

## Law Faculty Centre Members

**Yet Bryant:** Teaches and researches in International Law and International Environmental Law. Also teaches Legal Process and Civil Procedure.

**Jonathon Clough:** Teaches and researches in Criminal Law, especially as it relates to electronic crime.

**Associate Prof Beth Gaze:** Recently interviewed on Radio National Law Report regarding discrimination and heroin addiction, Member of Selection Panel for human rights medal, St Michaels Uniting Church, Collins St.

**John Howe:** Recently awarded his PhD in Law; researches and teaches in Labour Law, Corporate Governance, Regulation and Public Accountability.

**Associate Prof Susan Kneebone:** Researching refugee law and human rights.

**Oyiela Litaba:** Coordinating the Monash Postgraduate Diploma in Legal Practice.

**Associate Prof Bernadette McSherry:** Researching legal issues relating to bioethics, psychiatry & psychology, with a focus on Criminal Law.

**Kwame Mfodwo:** Teaches Contracts, Legal Process and Environmental Law.

**Dr Bronwyn Naylor** Researches and teaches in Criminal & Administrative Law, gender issues and privatisation.

**Dr Pam O'Connor:** Teaches and researches in Native Title and Administrative Law.

**Tania Penovic:** Convened 'Children in Immigration Detention' conference in April; recently been on sabbatical at Oxford University.

**Jenny Schultz:** Research interests in Property, International Trade Law and International Organisations.

**Dr Eric Wilson:** Researching and teaching in Public International and Environmental Law.

## Advisory Board

**Professor Philip Alston,** New York University School of Law.

**Professor Virginia Dandan,** Chair United Nations Committee on Economic, Social and Cultural Rights.

**The Hon Elizabeth Evatt AC,** Member; World Bank Administrative Tribunal.

**Professor Claudio Grossman,** Dean of Law School, Washington College of Law, The American University.

**Ms Felicity Hampel QC,** Commissioner, Victorian Law Reform Commission.

**Professor Christof Heyns,** Professor of Human Rights Law, University of Pretoria, South Africa.

**The Hon Justice Michael Kirby,** AC CMG, High Court of Australia.

**Senator Aden Ridgeway,** Deputy Leader, Australian Democrats.

**Professor Ivan Shearer,** Member, UN Human Rights Committee.

**His Excellency Judge C.G. Weeramantry,** Judge ad hoc of the International Court of Justice.

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## Human Rights 2003: The Year in Review

Edited by Tom Davis



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## Human Rights 2004: The Year in Review (20 Years of the Sex Discrimination Act)

**Castan Centre for Human Rights Law  
Annual Conference**

**3 December 2004**

**CUB Malthouse  
Sturt St  
Southbank**

**Registration queries:  
[Castan.Centre@law.monash.edu.au](mailto:Castan.Centre@law.monash.edu.au)**

### **Program**

#### **Session 1: A retrospective on the Sex Discrimination Act**

- **Pru Goward**, Sex Discrimination Commissioner, HREOC
- **Margaret Thornton**, La Trobe University

#### **Session 2: International aspects of discrimination against women and mis-matches between international and domestic law**

- UN representative (TBC)
- **Elizabeth Evatt AC**

#### **Session 3: Current threats to the realisation of human rights for women**

- **Alison Anderson**, ATSIAC Commissioner - "Indigenous Women and human rights"
- **Annie Gallagher** - "Trafficking in Women"

#### **Session 4: Hot topics of the Year**

- **Debbie Mortimer SC** - Racial vilification
- **Richard Bourke**, Reprieve Australia - "Guantanamo Bay and human rights"

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