

BETWEEN:



DEMETRIOS VAKRAS  
LEE-ANNE RAYMOND

Applicants

and

ROBERT RAYMOND CRIPPS

REDLEG MUSEUM SERVICES PTY LTD (ACN 105 956 829)

Respondents

APPLICATION FOR LEAVE / SPECIAL LEAVE TO APPEAL

The applicant applies for [*leave/special leave*] to appeal from [*whole*] of the judgments, rulings, orders:

S APCI 2014 0098 Vakras & Anor v Cripps & Anor [2015] VSCA 234 (4 September 2015)

S APCI 2014 0098 Vakras & Anor v Cripps & Anor [2015] VSCA 193 (24 July 2015)

Part I:

ORDER SOUGHT TO DISPENSE WITH TIME LIMIT

(1) We seek an order that compliance with that time limit be dispensed with, per High Court Rules 2004, Rule 41.02.2. An affidavit explaining failure to comply with Rule 41.02.1 is attached.

(2) Leave sought to appeal from two matters heard as one in the Supreme Court of Victoria and appealed from in the Victorian Supreme Court of Appeal.

Defamation Matter: **S APCI 2014 0098** > S CI 2011 1484

30 Breach of Contract Matter: **S APCI 2014 0099** > S CI 2012 4407 > (VCAT) C5251/2011

(3) The matters were heard as one in the Supreme Court of Victoria after orders by Bowman J (VCAT) on 18 May 2012 (Reason [31]), to "avoid duplication of proceedings" because of "their interwoven factual basis" [30]. The orders were made despite our submitting that this would prejudice the outcome.

(4) The court constructed for a Defamation and Breach-of-Contract to be heard as one; heard it as one; ruled on it as one; and it was appealed from as one, and cannot be deconstructed or disentangled without prejudicing our application. Leave to Appeal is sought for the matters to be heard together. And that, in addition, these matters should be heard along with the related ***Application to show cause (Mandamus), M3 2017***.

(5) Leave Sought to Appeal, additionally seeks to invoke the Original Jurisdiction of the Court under the Constitution, **s 75 (i)** concerning the interpretation of international instruments – Moral Rights – and their application in laws constructed by Parliament  
10 under s 51 xxix, and xviii of the Constitution. Whether the protection of reputation under Moral Rights is defeated by Common-Law defamation, in which objecting to reputational damage done according to its definition under Moral Rights ("destruction" and "sullied") should be allowed to give rise to "imputations" said to defame the doer of the acts that "destroyed" and "sullied" our reputation?

(6) In the 20/6/2014 judgment the Primary judge constructed a "defamation" not disturbed by the Appeal Court, with regard to the Contract matter based on the conclusion that "the Hiring Agreement did not contain implied terms to act in good faith or to cooperate in the performance of the Hiring Agreement" (Reasons [240] & footnote 66) in how our  
20 Surrealist Art was exhibited and presented in 2009. And in the absence of "implied terms to act in good faith", within the contract there existed no prohibition to the doing of actions proscribed by Human Rights laws. The Supreme Court permitted discrimination based on race (Reason [146 h]); sexual harassment (Footnote 67, Reasons [683], [334]) based on testimony that was perjured; a breaching of Moral Rights (Reason [335]); and breaches of Moral Rights on account of the political opinions of the first Respondent regarding Palestine (Reasons [146 i], [146 j]) – irrelevant to the exhibition – where all Victorian Court judges permitted the construction of the "Hitler Imputation", with regard to the "Palestine issue" which was the reason the Respondents presented our art in a manner prejudicial to our honour and reputation (Moral Rights).

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(7) The finding of the Supreme Court of Victoria, parts of which were left undisturbed on Appeal, was procured by fraud - three acts of perjury, without which the adverse judgment could not have been made. Judgment in both matters rests on the fraud. And

on these grounds a Constitutional writ of Certiorari is sought from this court, as "fraud should vitiate all" and the Respondents have gained and retained their advantage.

(8) The Supreme Court exceeded the limits of Civil jurisdiction, and dispensed with rights and obligations found in Federal statutes (based on International Covenants) to permit construction of a defamation claim that could not have run but for that disregard, resulting in a miscarriage of justice.

10     **LEAVE SOUGHT FOR APPEAL** – *not limited to the following grounds, (left undisturbed by the Appeal court)*

(9) While hearing a Civil matter the Primary judge made a Criminal finding and imposed ruinous pecuniary damages; the SURVEILLANCE DEVICES ACT 1999, under s 30E(1) (a), (b), (2) (a), (b)(i), though not cited, was relied on in the 20/6/2014 judgment at **[714 (e)]**, "The Artists are keeping Mr Cripps 'under constant electronic surveillance', which has increased the harm to him", repeated at **[740], [743], & 762 (d)**.

20     (10) The Primary judge relied on statutes irrelevant to the matter. The 2009 Surrealist Art exhibition was of paintings, drawings and prints. With regard to disclaimers posted throughout our exhibition, breaching the contract (and Moral Rights), Kyrou J, considered it to not breach the contract because, "I mean if you look at any DVD of any movie that's the first thing that you see." (T, 26/3/2014, p. 657, ll 11-22 ). This might be required under s 6 of CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) (ENFORCEMENT) ACT 1995, if our *exhibition* was a film. It was not.

30     (11) The Primary judge dispensed with the *Moral Interest*, protected by Federal statute (the **Moral Rights Amendment to the Copyright Act 1968**) to permit "malice", **[415]** "I reject Mr Gilbertson's submission... Mr Cripps has established malice...Mr Vakras was not actuated by the purposes set out at [398] above but by the dominant purpose of smearing Mr Cripps and maximising the damage to his reputation and business [199] interests. That purpose was improper in the sense that it was foreign to any privileged occasion that might otherwise have existed" (20/6/2014 judgment).

(12) The Primary judge disregarded the **Race Discrimination Act 1975**, ss 9, 13, & 18, and the corollary obligations the court has under the **CERD**. At **[146 (h)]** "Mr Cripps said that Mr Vakras' essays are difficult to understand because they are very long and complex and use[d] foreign words". The Primary judge permitted the posting of disclaimers, prejudicial to our honour and reputation (Moral Rights), due to Greek words written in Greek script on grounds that there was no implied duty beyond what was written in the contract.

10 (13) (a) The Primary judge Ordered we pay damages to Redleg Museum Services P/L, for "damage" done not to it, but to a party not involved in the suit. The Primary judge identifies this party as the transport company, the "Redleg Group P/L" (Reason [19]).

(b) The "defamation" damage was clearly identified as being done to the separate transport company, the "Redleg Group". <sup>1</sup>

(c) The Primary judge proclaims that company had a standing interest capable of suffering injury, notwithstanding that it was not a party to the suit (Reasons [563], [426]).

(d) This was left undisturbed by the Appeal judges at Reason [10].

An ASIC search (conducted 27/9/2015) showed that the "Redleg Group" was deregistered by ASIC under a SECTION 601AB in April 2005 (under Supreme Court order: 8682 of 2001). Cripps' testimony was that it was still in operation.

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(14) The Primary judge is contradicted by the incontrovertible evidence on which judgement is claimed to rely. Cripps repeatedly testified to being ignorant of art <sup>2</sup>. The

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<sup>1</sup> The relevant Transcript pages, (to be presented on Leave for Appeal being granted) are: Dibb (Cripps' counsel), trial summary, T, ll. 16-21, p.575, 25/3/2014; Vakras, T, ll. 21-31, p. 270, 19/3/2014; lines 1-31, p.271; lines 1-5, p.272; Dr Piscioneri, T, ll. 1-14, p. 519, 24/3/2014; Cripps, T, ll 2-24 p. 394, 21/3/2014.

<sup>2</sup> "I don't profess to be an art critic. I'm primarily a business person that's involved in the arts. I don't have any art training." (T, p. 388, ll. 10-14), "I'm not an art historian. I have no ability to analyse actually what's been written"(T, p. 441, ll.6-10), "---I admitted I had no art background, I had no art training and I didn't understand, I didn't understand his essays, nor did I understand the paintings." (T, p. 388, ll.19-23). The Primary judge finds at **[491]** "The whole tenor of the Raymond Article is that Mr Cripps is not a fit and proper person to be a gallerist. Although the article does not expressly state that Mr Cripps is ignorant of art, that message permeates the article, as it conveys that Mr Cripps' criticisms of the Exhibition and the installation of the Disclaimer arose out of such ignorance..."

Primary judge ruled Cripps was defamed, [491], and that [513] “ ... The evidence did not provide a sufficient basis for a conclusion on the balance of probabilities either that Mr Cripps was ignorant of art or that he was not a fit and proper person to be a gallerist [on the basis of that ignorance].” (our emphasis) The Appeal Court judges at Reason [304] agreed with the Primary judge.

10 (15) Regarding the “WARNING!” It was never denied at trial. It was admitted to at VCAT on 8 May 2012. The Primary judge ruled at [175] “The first factual issue that I must resolve is whether there was a warning sign...”, [176] “The Artists gave evidence that they saw such a sign whereas Mr Cripps denied that such a sign had been placed on the landing”, [177] “I find that a warning sign was not placed on the landing.” and [179] “... The Raymond Article refers to a ‘huge “WARNING” sign’... for the reasons I have already set out, that part of the Raymond Article is deliberately untrue.”

20 (16) The Initial trial judge (Beach J) ordered at [43 (1)] “file and serve particulars identifying the hyperlinks referred to in paragraph 5 of the further amended defence of the first defendant and the precise words and images on the hyperlinked pages upon which the defendants will rely at trial” (7 September 2012). Compliance with those orders gave cause for the Primary judge to make an adverse finding, [26] “it is inappropriate for Mr Vakras to select a small part of only one of the hyperlinked items and to purport to include it in the matter complained of. In my opinion, the fact that Mr Vakras proposes to rely on only a small portion of the Hyperlinked Article supports my view that the two articles are separate...” **Cripps & Anor v Vakras & Anor [2014] VSC 110 (25 March 2014)**

30 (17) Both courts *interpreted* reputational injury according to a Common Law understanding to the exclusion of reputational damage as defined by Moral Rights, as such actions complained of would not be “defamatory” under the Defamation Act. Instead, the actions and conduct prejudicial to our honour and reputation were dismissed by the Appeal judges as a complaint about “the general milieu” (Reason [338]), that could cause no injury, as it “told against the gallery, rather than the artist” [263] (24/7/2015), (and was not prohibited by the terms of the contract).

(18) Though privilege is associated, even to “defamatory statements made voluntarily and in protection of a personal interest” (**Papaconstuntinos v Holmes a Court [2012] HCA 53 (5 December 2012)**, Heydon J, at [64], citing Parke B in Toogood v Spyring, “in the conduct of his own affairs, in matters where his interest is concerned.”) privilege was removed by the Supreme Court. (Our interest is availed statutory protection under the Moral Rights amendment to the Copyright Act 1968, ss 195AI (1), (2); 195AK (a), (b), (c)).

10 (19) The Primary judge abused the office of the court to make, in the adverse judgment, a political proclamation in support of “Palestine”.<sup>3</sup> Reasons **[146 (i) (j)]**, & **[227]** pertain to a political cause, protected by **Lange** (per **Monis**) which was with regard to the adversely affected “interest”, being the art on exhibition. Parliament has legislated no law in support of “Palestine”, notwithstanding Labor MP Vamvakinou’s repeated attempts to make mandatory support for Palestine (House of Representatives Hansard 24/2/2014 & 1/12/2014).

## ORDERS

1. The judgments and orders of the Supreme Court of Victoria and the Supreme Court of Appeal Victoria be quashed.
- 20 2. That re-agitation of the defamation matter to not be permitted.
3. The High Court allow for the applicants' submissions for costs (on an indemnity basis) and damages against the Supreme Court of Victoria for its failures to afford due process and failures to accord procedural fairness according to law; as well as

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<sup>3</sup> 146 Based on the facts that are not in dispute ... I find... broadly as follows:

(i) Mr Cripps said that he was concerned that Mr Vakras’ essays could be interpreted as being anti-Palestinian and racist. He mentioned that the situation in Palestine was delicate and that he was against what the Jewish State was doing in Palestine. He said that the essays could be interpreted as laying the blame for the violence in Palestine solely on the Palestinians and that such an interpretation would ignore that the Palestinians are oppressed people who resort to violence out of desperation and who were reacting to what the Jews do to them. (our emphasis)

(j) Mr Cripps’ criticism of Mr Vakras’ essays upset Mr Vakras.... Mr Cripps said that Palestinians resort to violence out of desperation and were reacting to what the Jews do to them. ... Mr Vakras loudly accused Mr Cripps of being a racist. He said that Mr Cripps’ views were similar to Hitler’s views in Mein Kampf and that Hitler and the Nazis had supported the cause of the Muslims in Palestine.” (our emphasis)

227 Mr Cripps... disagrees with what is happening in Palestine and believes that unequal force is being used by the Jewish state, or Israel, against the Palestinian people. He does not like what the ‘Jewish state is doing in Palestine.’ (our emphasis)

against Robert Raymond Cripps and Redleg Museum Services P/L for abuse of process.

4. That the public personal and professional reputational damage suffered by the applicants, which is ongoing, be remedied. Online Media reports of the 20/6/2014 findings remain available online. That these intuitions be directed to either:
  - a) remove the original online articles Or;
  - b) insert an update within the articles advising of the High Court findings
5. Make orders Google remove the "defamation" blocks that limit access to our art websites (instigated by the respondents in 2011).
- 10 6. Other orders this courts deems fit to make

## Part II:

(1) Where the Supreme Court's construction of contract law can be permitted to stand and be used to countervail statutory protections and obligations (Moral Rights protections, and Race Discrimination). Whether the absence to reference of Race Discrimination or Moral Rights in a contract should permit for forfeiture of statutory obligations to respect those rights and claims for relief for damages due to infringement of those rights?

- 20 (2) Where, on the basis of the construction of contract law (that causes the countervailing of rights and obligations because they are not mentioned in the contract), whether the Supreme Court's failure should be visited on a litigant seeking redress for infringement of those rights protected by statute in a court of competent jurisdiction to hear the matters arising under the relevant statutes (Moral Rights & RDA)? The question is posed because the courts of competent jurisdiction, (the Federal And Federal Circuit Courts) ran an estoppel against the Supreme Court finding - over which a writ of Mandamus has been Applied for in this Court (M3 2017).

- 30 (3) In past decisions the HCA has found, (MASON CJ AND DEANE J), ie "Teoh's case" (***Minister of State for Immigration & Ethnic Affairs v Ah Hin Teoh ("Teoh's case") [1995] HCA 20***), expressed, at [34],  
"Moreover, ratification by Australia of an international convention is not to be dismissed as a merely platitudinous or ineffectual act(17), particularly when the instrument

evidences internationally accepted standards to be applied by courts and administrative authorities in dealing with basic human rights ... Rather, ratification of a convention is a positive statement by the executive government of this country to the world and to the Australian people that the executive government and its agencies will act in accordance with the Convention”.

Does the HCA now find reason to reverse or withdraw from courts any duty or obligation under International Covenants even in instances where Parliament has written them into domestic law? In spite of the Constitution (Clause 5) that binds the court?

- 10 (4) Whether the Constitution permits courts to be adjudicators of empirically demonstrable facts – such as historic, photographic, mathematical, or scientific facts? Alternately, is it that without a court's determination an “ordinary or reasonable reader” might believe some defamatory imputation arises on seeing reference to a fact they were previously unaware of and form an opinion on its meaning? <sup>4</sup> And why is this not censorship?

*The Supreme Court constructed a “defamation” over empirically verifiable material regarding the history of “Palestine”. That material is the German Bundesarchiv photographs, and the U.S.A. National Archives of de-classified CIA documents and what Hitler wrote in Mein Kampf. The court permitted the following construction: (1) an*  
20 *ordinary or reasonable reader does not know the history, and (2) because they do not know the history, the word “Hitler” raises the spectre of the Holocaust, which (3) means they understood, on seeing “Hitler”, an imputation of support of genocide based on Aryan Supremacy. And this was achieved by the Primary judge striking out the page “New-Left Nazis” on the 25/3/2014 Ruling.*

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<sup>4</sup> The Primary judge at [309] “The hypothetical referees described in Radio 2UE and Lamb, upon reading the phrases, ‘the new-left Nazis’ and ‘the sentiments of Hitler expressed in his Mein Kampf’ would immediately call to mind the policies of genocide perpetrated by Hitler and the Nazis, including the Holocaust... the reader would immediately form the view that Mr Cripps is a person to be loathed and detested for his inhumanity.”  
[307] “The Hitler Imputation inarguably defames Mr Cripps. ...To associate anyone with the views of Hitler is to profoundly damage their reputation because the message that is immediately conveyed is that the person condones the atrocities that Hitler committed based on his views that the Aryan race is superior to all other races and that Jews (among others) should be exterminated...”  
[308] “... the Holocaust and the commission of atrocities on innocent civilians ... are conveyed by the mere mention of Hitler’s name ...”



(5) Whether **Lange**, last confirmed in **Monis**, still stands or whether a general exception to **Lange** has been brought into existence by the Supreme court of Victoria or whether the exception is to be limited to the political views regarding "Palestine", or views held by one individual, Robert Cripps or the views of one judge, notwithstanding that the Constitutional ~~✓~~ appears to not permit this?

(6) With regard to s 109 of the Constitution, whether Human Rights such as, Moral Rights and Race Discrimination, derived from International Covenants and legislated into Federal Law under s 51 xxix of the Constitution, are voided by Common Law?

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(7) If Moral Rights are legitimately written into law by Parliament according to the constitution (s 51 xxix & xviii) to give statutory protections to artists, does an artist's right to that protection extend against a judge, or a State court who re-characterise the art, or acts in such a way prejudicial to the art without cogent reason?

### **Part III:**

(1) That the matters over which Leave to Appeal is sought are between parties where the "controversy" – a 2009 Surrealist Art Exhibition – has given rise to separate causes of action in State and Federal jurisdictions.

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(2) An Application to Show Cause for a writ of Mandamus and an ancillary Certiorari against the Federal and Federal Circuit Courts to quash the orders of those courts has been made with the HCA, filed on 4 January 2017, **M3 of 2017**, regarding the same controversy dealt with in the Supreme Court of Victoria for which we now seek leave to appeal in the High Court.

(3) If Leave to Appeal the State Court's decision is dismissed and the writ of Mandamus and certiorari proceeds it would leave unfulfilled the obligations of the HCA under ss 31 and 32 of the Judiciary Act 1903 (Cth) ("the Judiciary Act") and would not grant remedies "apt to 'completely and finally' determine, so far as possible, all matters in controversy between the parties" (Edwards v Santos Ltd [2011] HCA 8 (30 March 2011)); and, might create the prospect of the "scandal of conflict" between the findings.

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### **(OBLIGATIONS WITH REFERENCE TO INTERNATIONAL INSTRUMENTS)**

(4) With regard to (a) International Instruments, (b) the "COMMONWEALTH OF AUSTRALIA CONSTITUTION ACT" (Constitution), (c) "HIGH COURT RULES 2004"

(High Court Rules), (d) "Judiciary Act 1903" (Judiciary Act) and (e) "High Court of Australia" (HCA) decisions, the HCA would fail its duties under law if it does not grant leave sought:

(i) The HCA and Parliament are both created by the same Constitution and the Constitution binds this court to laws made by Parliament, Clause 5 ("This Act, and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the courts, judges,").

10 (ii) The HCA has in multiple instances affirmed the VIENNA CONVENTION ON THE LAW OF TREATIES, Interpretation of Treaties, Articles 31 & 32 (Vienna Convention). <sup>5</sup>

(iii) With specific reference to the Vienna Convention, Article 31, 3 (b) & (c) ("subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation" & "any relevant rules of international law applicable in the relations between the parties", respectively) the Court has a duty under Clause 5 of Constitution which should not be limited by privative clauses (JUDICIARY ACT 1903 - SECT 35A, Criteria for granting special leave to appeal; HIGH COURT RULES 2004 - RULE 41.02, Time for filing application); without otherwise failing the laws which Parliament has made. Specific to this matter are the obligations under Moral Rights, legislated into statute by Parliament under s 51 xxix & xviii of the Constitution by  
20 Australia being signatory to the ICESCR, and, per Article 31 3 (b) & (c) of the Vienna Convention which imposes the requirement to consider "extrinsic" United Nations "Comments" on the interpretation and application of Moral Rights protections.

(iv) The International Convention which Parliament has made into law binds the Court (via the Constitution, Clause 5) with regard to:

(UN) ***"COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, Thirty-fifth session Geneva, 7-25 November 2005 General Comment No. 17 (2005)"***,

Emphasis is placed on points 13, 14, 31, 41, 44, 52, in which "Violations of the obligation to respect [Moral Rights] include State actions, policies or laws which have the effect of infringing the right of authors".

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<sup>5</sup> Povey v Qantas Airways Limited [2005] HCA 33; (2005) 216 ALR 427; (2005) 79 ALJR 1215 (23 June 2005), [4] ;

Minister for Home Affairs of the Commonwealth v Zentai [2012] HCA 28 (15 August 2012), [17], [18], [19].

(5) The Supreme Court of Victoria re-characterised a surrealist exhibition adverse to our moral rights to permit for the subject criticised in the exhibition – the religious basis for genocide – to constitute a defamation of the gallery owner.

#### **Part IV:**

The matter to date has been a gross miscarriage of justice by the Supreme Court of Victoria acting in ways contrary to the Constitution. The Respondents, by order of the Supreme Court of Victoria, on a finding procured by fraud, were given all the money we have ever earned. And, subsequent to orders they return it on Appeal, Cripps, who has  
10 sole and total control of Redleg, instead defied court orders, put "Redleg" in "stasis", placed its assets which are sufficient to pay the costs ordered by the Supreme Court into storage, and declared personal bankruptcy.  
We have no "spare" money. The courts gave all we had to Cripps/Redleg.

#### **Part V:**

**Papaconstuntinos v Holmes a Court [2012] HCA 53 (5 December 2012)**,  
FRENCH CJ, CRENNAN, KIEFEL AND BELL JJ, [15], [16], [17], [28], [31], [32], [33],  
[38], [39], [46], [47],[48], [50], [51]; HEYDON J, [64];

**Minister of State for Immigration & Ethnic Affairs v Ah Hin Teoh ("Teoh's  
20 case") [1995] HCA 20**, [25], [26], [34];  
**Povey v Qantas Airways Limited [2005] HCA 33**, [24];

**Minister for Home Affairs of the Commonwealth v Zentai [2012] HCA 28 (15  
August 2012)**, [17], [18], [19]

**Minister for Immigration and Citizenship v Li [2013] HCA 18 (8 May 2013)**, [23],  
[24], [25],[26], [27], [28]

**Monis v The Queen [2013] HCA 4 (27 February 2013)**, FRENCH CJ. [2], [3], [18],  
[19], [60],[61], [62]; HAYNE J. [84], [87], [100], [101], [102], [103], [104], [105], [106],  
[107], [108], [109],[110], [122], [126], [127], [128], [142], [143], [220]; CRENNAN,  
30 KIEFEL AND BELL JJ. [267],[268], [269], [270], [271], [272], [273], [274], [284], [285],  
[287], [340], [341], [342], [343], [344],[345], [346], [347], [352]

**Sugar Australia Pty Ltd v Southern Ocean Pty Ltd & Anor [2013] VSC 535**  
(15 October 2013) [116], [117], [118]

**Toubia v Schwenke [2002] NSWCA 34**, Handley JA at 1; Heydon JA at 60; Hodgson

JA: [15], [41]

**Takhar v Gracefield Developments Ltd & Ors [2015] EWHC 1276 (Ch) (06 May 2015), [66],[69], [72], [74]**

**CAFFEY -v- LEATT-HAYTER [No 3] [2013] WASC 348 (18 October 2013) [254], [255], [256], [257]**

**Part VI: LEGISLATION & INTERNATIONAL INSTRUMENTS - Attached as an**  
10 *annexure*

Dated - 20 January 2017

  
.....  
DEMETRIOS VAKRAS

  
.....  
LEE-ANNE RAYMOND

Applicants

To: Respondents

20 ROBERT RAYMOND CRIPPS

REDLEG MUSEUM SERVICES PTY LTD



**TAKE NOTICE:** Before taking any step in the proceedings you must, within **14 DAYS** after service of this application, enter an appearance in the office of the Registry in which the application is filed, and serve a copy on the applicant.

Applicants

DEMETRIOS VAKRAS & LEE-ANNE RAYMOND

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Ph: 

Email: 

BETWEEN:

DEMETRIOS VAKRAS

LEE-ANNE RAYMOND  
Applicants

and

ROBERT RAYMOND CRIPPS

REDLEG MUSEUM SERVICES PTY LTD (ACN 105 956 829)  
Respondents

**Part IV: LEGISLATION & INTERNATIONAL INSTRUMENTS**

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**12. International Covenant on Economic, Social and Cultural Rights  
Australian Treaty Series 1976 No 5 (p. 14)**

**13. (UNITED NATIONS) COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS Thirty-fifth session Geneva, 7-25 November 2005  
General Comment No. 17 (2005)**

10

**The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author (article 15, paragraph 1 (c), of the Covenant)  
GE.06 -40060 (E) 020206 (p. 14)**

**14. (UNITED NATIONS) Committee on Economic, Social and Cultural Rights  
Forty-third session  
2–20 November 2009  
General comment No. 21**

20

**Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights) (p. 16)**

**15. (UNITED NATIONS) International Covenant on Civil and Political Rights  
Human Rights Committee 102nd session Geneva, 11-29 July 2011  
General comment No. 34  
Article 19: Freedoms of opinion and expression  
General remarks (p. 18)**

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## **LEGISLATION & INSTRUMENTS**

### **(1) COMMONWEALTH OF AUSTRALIA CONSTITUTION ACT CLAUSE 5**

#### **Operation of the Constitution and laws [see Note 3]**

10 This Act, and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the courts, judges, and people of every State and of every part of the Commonwealth, notwithstanding anything in the laws of any State; and the laws of the Commonwealth shall be in force on all British ships, the Queen's ships of war excepted, whose first port of clearance and whose port of destination are in the Commonwealth.

#### **SECT 51**

#### **Legislative powers of the Parliament [see Notes 10 and 11]**

20 (xviii) copyrights, patents of inventions and designs, and trade marks;

(xxix) external affairs;

(xxiv) the service and execution throughout the Commonwealth of the civil and criminal process and the judgments of the courts of the States;

#### **SECT 52**

#### **Exclusive powers of the Parliament**

The Parliament shall, subject to this Constitution, have exclusive power to make laws for the peace, order, and good government of the Commonwealth with respect to:

30 ...  
(iii) other matters declared by this Constitution to be within the exclusive power of the Parliament.

#### **SECT 73**

#### **Appellate jurisdiction of High Court**

The High Court shall have jurisdiction, with such exceptions and subject to such regulations as the Parliament prescribes, to hear and determine appeals from all judgments, decrees, orders, and sentences

#### **SECT 75**

#### **Original jurisdiction of High Court**

40 In all matters:  
(i) arising under any treaty

#### **SECT 109**

#### **Inconsistency of laws**

When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.

.....  
.....

**(2) JUDICIARY ACT 1903**  
**SECT 30**

**10   Original jurisdiction conferred**

In addition to the matters in which original jurisdiction is conferred on the High Court by the Constitution, the High Court shall have original jurisdiction:

- (a) in all matters arising under the Constitution or involving its interpretation;
- and
- (c) in trials of indictable offences against the laws of the Commonwealth.

**SECT 31**

**Judgment and execution**

- 20**       The High Court in the exercise of its original jurisdiction may make and pronounce all such judgments as are necessary for doing complete justice in any cause or matter pending before it, and may for the execution of any such judgment in any part of the Commonwealth direct the issue of such process, whether in use in the Commonwealth before the commencement of this Act or not, as is permitted or prescribed by this or any Act or by Rules of Court.

**SECT 32**

**Complete relief to be granted**

- 30**       The High Court in the exercise of its original jurisdiction in any cause or matter pending before it, whether originated in the High Court or removed into it from another Court, shall have power to grant, and shall grant, either absolutely or on such terms and conditions as are just, all such remedies whatsoever as any of the parties thereto are entitled to in respect of any legal or equitable claim properly brought forward by them respectively in the cause or matter; so that as far as possible all matters in controversy between the parties regarding the cause of action, or arising out of or connected with the cause of action, may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters may be avoided.

**SECT 35**

**Appeal from courts of States**

- 40**       (1) The jurisdiction of the High Court to hear and determine appeals from:  
          (a) judgments of the Supreme Court of a State, whether given or pronounced in the exercise of federal jurisdiction or otherwise; or  
          (b) judgments of any other court of a State given or pronounced in the exercise of federal jurisdiction;



whether in civil or criminal matters, is subject to the exceptions and regulations prescribed by this section.

(2) An appeal shall not be brought from a judgment, whether final or interlocutory, referred to in subsection (1) unless the High Court gives special leave to appeal.

(5) The foregoing provisions of this section have effect subject to any special provision made by an Act other than this Act, whether passed before or after the commencement of this section, preventing or permitting appeals from the Supreme Courts of the States in particular matters.

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## **SECT 35A**

### **Criteria for granting special leave to appeal**

In considering whether to grant an application for special leave to appeal to the High Court under this Act or under any other Act, the High Court may have regard to any matters that it considers relevant but shall have regard to:

(a) whether the proceedings in which the judgment to which the application relates was pronounced involve a question of law:

(i) that is of public importance, whether because of its general application or otherwise; or

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(ii) in respect of which a decision of the High Court, as the final appellate court, is required to resolve differences of opinion between different courts, or within the one court, as to the state of the law; and

(b) whether the interests of the administration of justice, either generally or in the particular case, require consideration by the High Court of the judgment to which the application relates.

## **SECT 36**

### **New Trials**

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The High Court in the exercise of its appellate jurisdiction shall have power to grant a new trial in any cause in which there has been a trial whether with or without a jury.

## **SECT 37**

### **Form of judgment on appeal**

The High Court in the exercise of its appellate jurisdiction may affirm reverse or modify the judgment appealed from, and may give such judgment as ought to have been given in the first instance, and if the cause is not pending in the High Court may in its discretion award execution from the High Court or remit the cause to the Court from which the appeal was brought for the execution of the judgment of the High Court; and in the latter case it shall be the duty of that Court to execute the judgment of the High Court in the same manner as if it were its own judgment.

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**(3) COPYRIGHT ACT 1968 (COPYRIGHT AMENDMENT (MORAL RIGHTS)  
ACT 2000 NO. 159, 2000)  
COPYRIGHT ACT 1968**

**SECT 190**

**Moral rights conferred on individuals**

Only individuals have moral rights.

**10     COPYRIGHT ACT 1968 - SECT 192**

**Rights to be additional to other rights**

(1) The moral rights of the author of a work are in addition to any other rights in relation to the work that the author or anyone else has under this Act.

**SECT 195AI**

**Author's right of integrity of authorship**

(1) The author of a work has a right of integrity of authorship in respect of the work.

20     (2) The author's right is the right not to have the work subjected to derogatory treatment.

**SECT 195AK**

**Derogatory treatment of artistic work**

In this Part:

"*derogatory treatment* " , in relation to an artistic work, means:

(a) the doing, in relation to the work, of anything that results in a material distortion of, the destruction or mutilation of, or a material alteration to, the work that is prejudicial to the author's honour or reputation; or

30     (b) an exhibition in public of the work that is prejudicial to the author's honour or reputation because of the manner or place in which the exhibition occurs; or

(c) the doing of anything else in relation to the work that is prejudicial to the author's honour or reputation.

**195AS**

**No infringement of right of integrity of authorship if derogatory treatment or other action was reasonable**

(1) A person does not, by subjecting a work, or authorising a work to be subjected, to derogatory treatment, infringe the author's right of integrity of authorship in respect of the work if the person establishes that it was reasonable in all the circumstances to subject

the work to the treatment.

(2) The matters to be taken into account in determining for the purposes of subsection (1) whether it was reasonable in particular circumstances to subject a literary, dramatic, musical or artistic work to derogatory treatment include the following:

- (a) the nature of the work;
- (b) the purpose for which the work is used;
- (c) the manner in which the work is used;
- (d) the context in which the work is used;
- (e) any practice, in the industry in which the work is used, that is relevant to the work or the use of the work;
- (f) any practice contained in a voluntary code of practice, in the industry in which the work is used, that is relevant to the work or the use of the work;
- (g) whether the work was made:
  - (i) in the course of the author's employment; or
  - (ii) under a contract for the [performance](#) by the author of services for another person;
- (h) whether the treatment was required by law or was otherwise necessary to avoid a breach of any law;
- (i) if the work has 2 or more authors--their views about the treatment.

## SECT 195AWA

### Author's consent to act or omission--work that is not a film or included in a film

(1) This section applies to a literary, dramatic, musical or artistic work other than such a work as included in a cinematograph film.

(2) It is not an infringement of a moral right of an author in respect of a work to do, or omit to do, something if the act or omission is within the scope of a written consent genuinely given by the author or a person representing the author.

(3) Subject to subsection (4), a consent does not have any effect unless it is given:

- (a) in relation to specified acts or omissions, or specified classes or types of acts or omissions, whether occurring before or after the consent is given; and
- (b) in relation to either of the following:
  - (i) a specified work or specified works existing when the consent is given; or
  - (ii) a specified work, or works of a particular description, the making of which has not begun or that is or are in the course of being made.

## SECT 195AWB

### Consent invalidated by duress or false or misleading statements

- (1) If a person applies duress to an author, or to a person representing an author, in connection with the giving of a consent for the purposes of [section 195AW](#) or [195AWA](#), the consent does not have any effect.

## SECT 195AVA

### Matters to be taken into account

In determining whether a person has authorised the doing of an act that is an infringement of moral rights in respect of a work, the matters that must be taken into

account include the following:

- (a) the extent (if any) of the person's power to prevent the doing of the act concerned;
- (b) the nature of any relationship existing between the person and the person who did the act concerned;
- (c) whether the person took any reasonable steps to prevent or avoid the doing of the act, including whether the person complied with any relevant industry codes of practice.

## 10 SECT 195AZA

### **Remedies for infringements of author's moral rights**

(1) Subject to [section 203](#), the relief that a court may grant in an action for an infringement of any of an author's moral rights in respect of a work includes any one or more of the following:

- (a) an injunction (subject to any terms that the court thinks fit);
- (b) damages for loss resulting from the infringement;
- (c) a declaration that a moral right of the author has been infringed;
- (d) an order that the defendant make a public apology for the infringement;
- (e) an order that any ... derogatory treatment, of the work be ... reversed.

20 (2) In exercising its discretion as to the appropriate relief to be granted, the court may take into account any of the following:

- (a) whether the defendant was aware, or ought reasonably to have been aware, of the author's moral rights;
- (b) the effect on the author's honour or reputation resulting from any damage to the work;
- (c) the number, and categories, of people who have seen or heard the work;
- (d) anything done by the defendant to mitigate the effects of the infringement;

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## **(4) RACIAL DISCRIMINATION ACT 1975**

### **SECT 9**

#### **Racial discrimination to be unlawful**

40 (1) It is unlawful for a [person](#) to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life.

(1A) Where:

- (a) a [person](#) requires another [person](#) to comply with a term, condition or requirement which is not reasonable having regard to the circumstances of the case; and
- (b) the other [person](#) does not or cannot comply with the term, condition or requirement; and
- (c) the requirement to comply has the purpose or effect of nullifying or

impairing the recognition, enjoyment or exercise, on an equal footing, by **persons** of the same race, colour, descent or national or ethnic origin as the other **person**, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life;

the act of requiring such compliance is to be treated, for the purposes of this Part, as an act involving a distinction based on, or an act done by reason of, the other **person's** race, colour, descent or national or ethnic origin.

10 (2) A reference in this section to a human right or fundamental freedom in the political, economic, social, cultural or any other field of public life includes any right of a kind referred to in Article 5 of the **Convention**.

## SECT 13

### Provision of goods and services

It is unlawful for a **person** who supplies goods or **services** to the public or to any section of the public:

(a) to refuse or fail on demand to supply those goods or **services** to another **person**; or

20 (b) to refuse or fail on demand to supply those goods or **services** to another **person** except on less favourable terms or conditions than those upon or subject to which he or she would otherwise supply those goods or **services**;

by reason of the race, colour or national or ethnic origin of that other **person** or of any **relative** or associate of that other **person**.

## SECT 18

### Acts done for 2 or more reasons

Where:

(a) an act is done for 2 or more reasons; and

30 (b) one of the reasons is the race, colour, descent or national or ethnic origin of a **person** (whether or not it is the dominant reason or a substantial reason for doing the act);  
then, for the purposes of this Part, the act is taken to be done for that reason.

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## (5) SEX DISCRIMINATION ACT 1984

### SECT 28A

#### Meaning of sexual harassment

40 (1) For the purposes of this Division, a person sexually harasses another person (the **person harassed**) if:

(a) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or

(b) engages in other unwelcome conduct of a sexual nature in relation to the person harassed;

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.

(1A) For the purposes of subsection (1), the circumstances to be taken into account include, but are not limited to, the following:

(a) the sex, age, sexual orientation, gender identity, intersex status, marital or relationship status, religious belief, race, colour, or national or ethnic origin, of the person harassed;

10 (b) the relationship between the person harassed and the person who made the advance or request or who engaged in the conduct;

(c) any disability of the person harassed;

(d) any other relevant circumstance.

(2) In this section:

"*conduct of a sexual nature*" includes making a statement of a sexual nature to a person, or in the presence of a person, whether the statement is made orally or in writing.

## SECT 28G

### Goods, services and facilities

(1) It is unlawful for a person to sexually harass another person in the course of providing, or offering to provide, goods, services or facilities to that other person.

20 (2) It is unlawful for a person to sexually harass another person in the course of seeking, or receiving, goods, services or facilities from that other person.

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## (6) CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) (ENFORCEMENT) ACT 1995 (Vic)

### SECT 4

#### 30 **Exhibition of film**

For the purposes of this Act, a person is taken to exhibit a film in a public place if the person—

(a) arranges or conducts the exhibition of the film in the public place; or

(b) has the superintendence or management of the public place in which the film is exhibited.

## SECT 6

### Exhibition of film in public place

(1) A person must not exhibit a film in a public place unless the film—

40 (a) is classified; and

(b) is exhibited with the same title as that under which it is classified; and

(c) is exhibited in the form, without alteration or addition, in which it is classified.

Penalty: 240 penalty units or imprisonment for 2 years.

**S. 6(2) inserted by No. 5/2008 s. 6.**

(2) Subsection (1) is not contravened by reason only of the exhibition of a classified film—

(a) under a title different from that under which it is classified if it is contained on one device that consists only of 2 or more classified films; or

**S. 6(2)(b) amended by No. 36/2015 s. 14(1).**

(b) with a modification referred to in section 20A, 21(2) or 21(3) of the Commonwealth Act.

**SECT 7**

**10 Display of notice about classifications**

A person who exhibits a film in a public place must keep a notice in the approved form about classifications for films on display in a prominent place in that public place so that the notice is clearly visible to the public.

Penalty: 5 penalty units.

**SECT 17**

**Display of notice about classifications**

20 A person who sells films on any premises must keep a notice in the approved form about classifications for films on display in a prominent place on the premises so that the notice is clearly visible to the public.

Penalty: 5 penalty units.

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**(7) SURVEILLANCE DEVICES ACT 1999 (Vic)**

**30 PART 2--REGULATION OF INSTALLATION, USE AND MAINTENANCE OF SURVEILLANCE DEVICES**

6. Regulation of installation, use and maintenance of listening devices

7. Regulation of installation, use and maintenance of optical surveillance devices

8. Regulation of installation, use and maintenance of tracking devices

9. Regulation of installation, use and maintenance of data surveillance devices

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**SECT 30E**

**Prohibition on use, communication or publication of protected information**

(1) A person is guilty of an **offence** if—

(a) the person intentionally, knowingly or recklessly uses, communicates or publishes any information; and

(b) the person knows that, or is reckless as to whether, the information is protected information...

(2) A person is guilty of an **offence** against this subsection if the person commits an **offence** against subsection (1) in circumstances in which the person—

(a) intends to endanger the health or safety of any person...

10 (b) knows that, or is reckless as to whether, the disclosure of the information—

(i) endangers or will endanger the health or safety of any person...

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**(8) RESALE ROYALTY RIGHT FOR VISUAL ARTISTS ACT 2009 (NO. 125, 2009)**

(Droit de Suit, 14ter Berne Convention)

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**(9) VIENNA CONVENTION ON THE LAW OF TREATIES**

**Australian Treaty Series 1974 No 2**

**SECTION 3: INTERPRETATION OF TREATIES**

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**Article 31 General rule of interpretation**

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

3. There shall be taken into account, together with the context:

(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

40 (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) any relevant rules of international law applicable in the relations between the parties.

**Article 32 Supplementary means of interpretation**

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

(a) leaves the meaning ambiguous or obscure; or



(b) leads to a result which is manifestly absurd or unreasonable.

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**(10) RACIAL DISCRIMINATION ACT 1975 - SCHEDULE International  
Convention on the elimination of all forms of racial discrimination (CERD)**

10 *Article 1*

1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

*Article 5*

20 In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(d) Other civil rights, in particular:

(vii) The right to freedom of thought, conscience and religion;

(viii) The right to freedom of opinion and expression;

(e) Economic, social and cultural rights

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**(11) Berne Convention for the Protection of Literary and Artistic Works of 9  
September 1886, as revised**

**Australian Treaty Series 1978 No 5**

*Article 6bis*

40 (1) Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.

(2) The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the country where

protection is claimed. However, those countries whose legislation, at the moment of their ratification of or accession to this Act, does not provide for the protection after the death of the author of all the rights set out in the preceding paragraph may provide that some of these rights may, after his death, cease to be maintained.

Article 14<sup>ter</sup>

- 10 (1) The author, or after his death the persons or institutions authorized by national legislation, shall, with respect to original works of art and original manuscripts of writers and composers, enjoy the inalienable right to an interest in any sale of the work subsequent to the first transfer by the author of the work.

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**(12) International Covenant on Economic, Social and Cultural Rights  
Australian Treaty Series 1976 No 5**

20 Article 15

1. The States Parties to the present Covenant recognize the right of everyone:

(a) To take part in cultural life;

(b) To enjoy the benefits of scientific progress and its applications;

(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

- 30 3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity

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40 **(13) (UNITED NATIONS) COMMITTEE ON ECONOMIC, SOCIAL AND  
CULTURAL RIGHTS**Thirty-fifth sessionGeneva, 7-25 November 2005 General  
Comment No. 17 (2005)

**The right of everyone to benefit from the protection of the moral and material  
interests resulting from any scientific, literary or artistic production of which he or  
she is the author (article 15, paragraph 1 (c), of the Covenant)**

**GE.06 -40060 (E) 020206**

- 50 1.The right of everyone to benefit from the protection of the moral...interests resulting  
from... literary or artistic production of which he or she is the author is a human right...  
Human rights are fundamental, inalienable and universal entitlements belonging to  
individuals ... Human rights are fundamental as they are inherent to the human person as

such, [unlike] intellectual property rights ...

2. ... the human right to benefit from the protection of the moral and material interests resulting from one's scientific, literary and artistic productions safeguards the personal link between authors and their creations ... Moreover, the scope of protection of the moral and material interests of the author provided for by article 15, paragraph 1 (c), does not necessarily coincide with what is referred to as intellectual property rights ...

10 3. The human right to benefit from the protection of the moral and material interests of the author is recognized in a number of international instruments. In identical language, article 27, paragraph 2, of the Universal Declaration of Human Rights provides: "Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."

#### **"Moral interests"**

20 12. The protection of the "moral interests" of authors was one of the main concerns of the drafters of article 27, paragraph 2, of the Universal Declaration of Human Rights: Their intention was to proclaim the intrinsically personal character of every creation of the human mind and the ensuing durable link between creators and their creations.

13. In line with the drafting history of article 27, paragraph 2, of the Universal Declaration of Human Rights and article 15, paragraph 1 (c), of the Covenant, the Committee considers that "moral interests" in article 15, paragraph 1 (c), include the right of authors ... to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, such productions, which would be prejudicial to their honour and reputation.

14. The Committee stresses the importance of recognizing the value of scientific, literary and artistic productions as expressions of the personality of their creator...

30 31. Obligations to *protect* include the duty of States parties to ensure the effective protection of the moral and material interests of authors against infringement by third parties. In particular, States parties must prevent third parties from infringing the right of authors ... from distorting, mutilating or otherwise modifying, or taking any derogatory action in relation to such productions in a manner that would be prejudicial to the author's honour or reputation.

#### **IV. VIOLATIONS**

40 41. A State which is unwilling to use the maximum of its available resources for the realization of the right of authors to benefit from the protection of the moral and material interests resulting from their scientific, literary and artistic productions is in violation of its obligations under article 15, paragraph 1 (c).

#### **Violations of the obligation to respect**

50 44. Violations of the obligation to *respect* include State actions, policies or laws which have the effect of infringing the right of authors ... to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, their productions that would be prejudicial to their honour or reputation ... denying authors access to administrative, judicial or other appropriate remedies to seek redress in case their moral and material interests have been violated; and discriminating against individual authors in relation to the protection of their moral and material interests.

52. All authors who are victims of a violation of the protected moral and material interests resulting from their scientific, literary or artistic productions should, consequently, have access to effective administrative, judicial or other appropriate remedies at the national level. Such remedies should not be unreasonably complicated or costly, or entail unreasonable time limits or unwarranted delays. Parties to legal proceedings should have the right to have these proceedings reviewed by a judicial or other competent authority.

53. All victims of violations of the rights protected under article 15, paragraph 1 (c), should be entitled to adequate compensation or satisfaction.

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**(14) (UNITED NATIONS) Committee on Economic, Social and Cultural Rights**  
**Forty-third session**  
**2–20 November 2009**

**General comment No. 21**

**Right of everyone to take part in cultural life (art. 15, para. 1  
(a), of the International Covenant on Economic, Social and  
Cultural Rights)**

20 3. ...the right to participate in all aspects of social and cultural life;<sup>1</sup> the right to participate fully in cultural

and artistic life; the right of access to and participation in cultural life; and the right to take part on an equal basis with others in cultural life. Instruments on civil and political rights,<sup>2</sup> on the rights of persons belonging to minorities to enjoy their own culture... and to use their own language, in private and in public..

**B. Elements of the right to take part in cultural life**

30 16. The following are necessary conditions for the full realization of the right of everyone to take part in cultural life on the basis of equality and non-discrimination.

(a) *Availability* ...intangible cultural goods, such as languages, customs, traditions, beliefs, knowledge and history..

**C. Limitations to the right to take part in cultural life**

40 18. The Committee wishes to recall that, while account must be taken of national and regional particularities and various historical, cultural and religious backgrounds, it is the duty of States, regardless of their political, economic or cultural systems, to promote and protect all human rights and fundamental freedoms. Thus, no one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope. ... The Committee also wishes to stress the need to take into consideration existing

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<sup>1</sup> Convention on the Elimination of All Forms of Discrimination against Women, art. 13 (c).

<sup>2</sup> In particular the International Covenant on Civil and Political Rights, arts. 17, 18, 19, 21 and 22.

international human rights standards on limitations that can or cannot be legitimately imposed on rights that are intrinsically linked to the right to take part in cultural life, such as the rights to privacy, to freedom of thought, conscience and religion, to freedom of opinion and expression...

**D. Special topics of broad application**

**Nondiscrimination and equal treatment**

- 10 21. Article 2, paragraph 2, and article 3 of the Covenant prohibit any discrimination in the exercise of the right of everyone to take part in cultural life on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
22. In particular, no one shall be discriminated against because he or she chooses to belong, or not to belong, to a given cultural community or group, or to practise or not to practise a particular cultural activity. Likewise, no one shall be excluded from access to cultural practices, goods and services.

20 **B. Specific legal obligations**

48. The right of everyone to take part in cultural life, like the other rights enshrined in the Covenant, imposes three types or levels of obligations on States parties: (a) the obligation to respect; (b) the obligation to protect; and (c) the obligation to fulfil. The obligation to respect requires States parties to refrain from interfering, directly or indirectly, with the enjoyment of the right to take part in cultural life...

- 30 49. The obligation to respect includes the adoption of specific measures aimed at achieving respect for the right of everyone, individually or in association with others or within a community or group:

(a) To freely choose their own cultural identity, to belong or not to belong to a community, and have their choice respected;

This includes the right not to be subjected to any form of discrimination based on cultural identity, exclusion or forced assimilation...

54. The obligation to fulfil requires that States ...obligation includes, for example:

- 40 (a) The enactment of appropriate legislation and the establishment of effective mechanisms allowing persons, individually, in association with others, or within a community or group, to participate effectively in decision-making processes, to claim protection of their right to take part in cultural life, and to claim and receive compensation if their rights have been violated;

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**(15) (UNITED NATIONS) International Covenant on Civil and Political Rights  
Human Rights Committee 102nd session Geneva, 11-29 July 2011**

**General comment No. 34**

**Article 19: Freedoms of opinion and expression**

**General remarks**

**Freedom of opinion**

10 9. Paragraph 1 of article 19 requires protection of the right to hold opinions without interference. This is a right to which the Covenant permits no exception or restriction. Freedom of opinion extends to the right to change an opinion whenever and for whatever reason a person so freely chooses. No person may be subject to the impairment of any rights under the Covenant on the basis of his or her actual, perceived or supposed opinions. All forms of opinion are protected, including opinions of a political, scientific, historic, moral or religious nature. It is incompatible with paragraph 1 to criminalize the holding of an opinion. The harassment, intimidation or stigmatization of a person, including arrest, detention, trial or imprisonment for reasons of the opinions they may hold, constitutes a violation of article 19, paragraph 1.

20 10. Any form of effort to coerce the holding or not holding of any opinion is prohibited. Freedom to express one's opinion necessarily includes freedom not to express one's opinion.

**Freedom of expression**

30 11. Paragraph 2 requires States parties to guarantee the right to freedom of expression, including the right to seek, receive and impart information and ideas of all kinds regardless of frontiers. This right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others, subject to the provisions in article 19, paragraph 3, and article 20. It includes political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression...

12. Paragraph 2 protects all forms of expression and the means of their dissemination. Such forms include spoken, written and sign language and such non-verbal expression as images and objects of art.

25. For the purposes of paragraph 3, a norm, to be characterized as a "law", must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution. Laws must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not.

40 47. Defamation laws must be crafted with care to ensure that they comply with paragraph 3, and that they do not serve, in practice, to stifle freedom of expression. All such laws, in particular penal defamation laws, should include such defences as the defence of truth and they should not be applied with regard to those forms of expression that are not, of their nature, subject to verification.

50 48. Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant... Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.

49. Laws that penalize the expression of opinions about historical facts are incompatible with the obligations that the Covenant imposes on States parties in relation to the respect for freedom of opinion and expression. The Covenant does not permit general prohibition of expressions of an erroneous opinion or an incorrect interpretation of past events. Restrictions on the right of freedom of opinion should never be imposed and, with regard to freedom of expression, they should not go beyond what is permitted in paragraph 3 or required under article 20.