EDITORIAL

JAK YASUDA*

It feels very fitting to be writing this in the midst of the 2024 Paris Olympic Games as I feel like, in some way, I am representing my country. In fact, the *University of New South Wales Law Journal* ('*Journal*') has not had a Canadian Issue Editor since Issue 30(2) in 2007. So while I am perhaps not quite at the level of Summer McIntosh,[1] and the country will not be tuned in to watch the release of this Issue, its gravity is certainly not lost on me. Like an athlete making it to the Olympics, the release of Issue 47(3) is the result of many dedicated hours of work, and in many ways, it encapsulates my entire law school experience. From the decision to study at the University of New South Wales ('UNSW') because of its emphasis on justice, to the angst caused by the COVID-19 pandemic that put my move to Sydney in question,[2] to the social issues we have debated and discussed in every lecture since, this Issue truly captures not only the past 13 months as its Editor, but the past three years as a student. Contained within these pages is a decathlon, albeit an unconventional one. It is one which forces us to question medical, legal and political institutions and ask how we can make it easier for people to engage with them. In light of all this, it is apt that this Issue addresses the theme, 'Access to Health, Law and Justice: Opening Doors and Overcoming Barriers'.

The selection of this theme was not made lightly, as it departs from the *Journal*'s unofficial tradition of tripartite naming conventions for General Issues, which I imagine will be much to the chagrin of Issue Editors past, present and future. However, a simple three-pronged theme did not seem to do enough to capture the importance of the topics being discussed in this Issue's 10 articles. Health, law and justice not only describe the threads running through the Issue, but they are three of the most important elements of a person's life. This was perhaps no more apparent than during the COVID-19 pandemic, where all three themes were brought into question for many people. Legislators had to determine how best to balance public

---

* Editor, Issue 47(3).

1 See Janie McCauley, 'Canadian Teen Summer McIntosh Is Bringing Home an Impressive Haul of Olympic Medals', *Associated Press* (online, 3 August 2024) <https://apnews.com/article/mcintosh-canada-gold-medals-olympics-f611c9f9fabb5f3d9e907c47900e7059>; Alan Baldwin, 'McIntosh Makes Canadian History with Third Gold', *The Japan Times* (online, 4 August 2024) <https://www.japantimes.co.jp/olympics/2024/08/04/summer-mcintosh-third-gold>.

2 'International Students Cleared to Enter Australia Beginning 15 December', *ICEF Monitor* (Web Page, 15 December 2021) <https://monitor.icef.com/2021/12/international-students-cleared-to-enter-australia-beginning-15-december>.

health with peoples' individual freedoms,[3] and many legal challenges were brought on the basis that this balance was not adequately struck.[4] However, it is crucial to recognise that not all members of society can, or do, access health, law or justice equally. For example, the pandemic brought to light many inequalities that exist in terms of accessing health and legal services for vulnerable communities.[5] Moreover, many disadvantaged groups – such as Aboriginal and Torres Strait Islander peoples, the LGBTQIA+ community, children and victim-survivors of domestic and family violence, to name but a few – must often overcome larger, more systemic barriers in accessing justice.[6] UNSW Law & Justice was founded on the principle that law schools should 'have and communicate to its students a keen concern for those on whom the law bears most harshly'.[7] This is an important agenda both within and outside of the law school classroom, and one which articles of this Issue truly embody.

Kicking the Issue off, Ruthie Jeanneret, Eliana Close, Lindy Willmott and Ben P White consider how patients and their caregivers have been able to advocate for patients' rights and help influence lawmakers to make it easier to access voluntary assisted dying ('VAD'). The authors conducted interviews with patients and caregivers and extracted four predominant themes therefrom. These themes characterised those parties' ability to 'regulate' the VAD system, effectively removing (or at least mitigating) barriers that they or their loved ones faced. Following on from this, Gabrielle Wolf analyses the diversity of legal responses to gender-affirming medical treatment for transgender and gender diverse minors. Wolf unpacks the legal issues with regulating an area that is subject to an increased amount of political and legislative controversy, but which holds such critical importance for those whom it directly affects, arguing that regulating gender-affirming medical treatment cannot, and should not, be treated with a one-size-fits-all solution. Moving from physical health to mental health, Aesha Ziad and Kelley Burton advocate for the implementation of trauma-informed practice in legal pedagogy to promote law student wellbeing. They argue that trauma-informed practice will help students mitigate the harmful mental health effects of sensitive course content – content which pervades all elements of the law school curriculum – which not only promotes wellbeing in the short-term, but also makes students more employable and destigmatises conversations around mental health in the legal profession.

---

3 See Harry Hobbs and George Williams, 'Australian Parliaments and the Pandemic' (2023) 46(4) *University of New South Wales Law Journal* 1314 <https://doi.org/10.2139/ssrn.4362855>.

4 See, eg, *Palmer v Western Australia* (2021) 272 CLR 505; *Kassam v Hazzard* (2021) 106 NSWLR 520; *Harding v Sutton* [2021] VSC 741.

5 Australian Institute of Health and Welfare, *The First Year of COVID-19 in Australia: Direct and Indirect Health Effects* (Report, 2021) 52–4; Law Council of Australia, *Inquiry into the Australian Government's Response to the COVID-19 Pandemic* (Report, 15 June 2020) 19–20 [65]–[70].

6 See, eg, Louis Schetzer, Joanna Mullins and Roberto Buanamano, 'Access to Justice and Legal Needs: A Project to Identify Legal Needs, Pathways and Barriers for Disadvantaged People in NSW' (Background Paper, August 2002) 28–34, 41–5.

7 See 'Welcome from the Dean', *UNSW Sydney: Law & Justice* (Web Page) <https://www.unsw.edu.au/law-justice/about-us/welcome-from-dean>.

Transitioning now into the 'access to law' part of the Issue's theme (though not completely divorced from health), Jane Wangmann critically analyses the newly in-force amendments to the *Crimes Act 1900* (NSW), which criminalise coercive control in New South Wales. Wangmann opines that, while the law is intended to better respond to the diversity of conduct and experiences that victim-survivors of domestic and family violence face, it is underpinned by certain misconceptions about coercive control which may threaten its effectiveness. Moving from the legislature to the judiciary, David Hamer assesses how Australian judges should approach assessments of relevance and probative value in criminal trials. Specifically, Hamer argues that the High Court of Australia's approach with respect to these assessments has been inconsistent – sometimes looking at evidence atomistically, and other times looking at it holistically – which may encroach on the jury's role as finder of fact and could compromise institutional certainty. Kylie Lingard then examines part 7 division 3 of the *Crimes (Appeal and Review) Act 2001* (NSW), which provides a direct pathway for convicted persons to appeal to the Supreme Court for a conviction or sentence review. Lingard critically analyses part 7 decisions from 2014 to 2023 to provide an understanding of the challenges faced under this avenue of review, which has been subject to far less academic attention and research than other executive remedies available to convicted persons.

I take this opportunity to pause and recognise that accessing justice is not solely a concern for humans. It is equally important that justice is accessible for those who cannot advocate for themselves. To illustrate this point, Morgan Stonebridge, Di Evans, Jane Kotzmann and Andrew McLean look at the case of rodeo horses, who are not as well protected under laws in certain Australian states as racehorses. In particular, the authors consider legislative exceptions in certain states which permit the possession and use of electric prodders on rodeo horses, but not racehorses. They query how and whether these exceptions can be justified, ultimately arguing that use of electric prodders on rodeo horses should be an offence in all states and territories.

Sticking with this comparative agenda (but moving back into the human side of things), Michael Duffy and Sulette Lombard compare third party litigation funding ('TPLF') in the seemingly disparate contexts of insolvency and class actions. Despite both falling under the umbrella of TPLF, the authors outline many important differences between these contexts, making it inappropriate to paint them with the same brush, so to speak. Brandon D Stewart then puts theory into practice and uses the Canadian Freedom Convoy class action as a case study for assessing whether intentional noise interference can, and should, be classified as a battery under tort law. Stewart argues that the principles of battery are apt for intentional noise exposure and argues that it may be a more appropriate pathway to achieve justice for those who cannot rely on adjacent torts, such as nuisance.

Running in the anchor position of this 10-article relay, Ashwini Ravindran takes the High Court's decision in *Alexander v Minister for Home Affairs*,[8] and uses it to consider whether section 51(xix) of the *Constitution* (the 'aliens power')

8 (2022) 276 CLR 336.

can be used as a ground to involuntarily deprive a natural-born Australian of their citizenship. Ravindran posits that conduct alone cannot repudiate citizenship or bring natural-born citizens within the scope of the aliens power, ultimately endorsing a more enduring concept of Australian citizenship.

As we are now at the finish line of this scholarly decathlon, it fills me with pride to have been able to play a part in the publication of these 10 articles. However, like any good Olympian, I am not under any impression that I have gotten here alone. I first extend an immense thank you to the 18 authors whose work fills the pages of this Issue, and without whom there would be no Issue at all. Academia and policy go hand-in-hand and without your willingness to question the legal, social and political status quo, there would be no progress. It has been a privilege to work with you all to bring your articles to publication. I thank you for your grace, patience and generosity throughout the publication process and hope we have done right by your work.

I also extend my sincere thanks to the *Journal*'s premier sponsors: Allens, Corrs Chambers Westgarth, Herbert Smith Freehills and King & Wood Mallesons. Without your support, the *Journal* would not be able to tackle such interesting and timely legal issues and build the reputation it has today. I am particularly grateful to Allens for hosting the launch of Issue 47(3).

It would be remiss of me not to also recognise the efforts of our typesetter, Kerry Cooke, and cover designer, John Hewitt. Thank you for gracing this Issue with your magic touch and making it look as beautiful as I could have ever hoped.

I am also indebted to the *Journal*'s Faculty Advisors, Professors Rosalind Dixon and Gary Edmond, whose constant wisdom and expertise are invaluable in assisting us navigate the complex world of legal scholarship. I likewise extend my sincere thanks to Professor Andrew Lynch, Dean of UNSW Law & Justice, for his steadfast support of the *Journal* and, simply put, for being our biggest fan.

This Issue, and this *Journal*, would certainly not be where it is today without the dedication of its voluntary student Editorial Board, the likes of which cannot be found in many other universities in Australia. The reputation of the *Journal* is built on the back of the Board, who dedicate countless hours mulling over every comma, hyphenated word and full stop to ensure that every *Australian Guide to Legal Citation* ('*AGLC*') rule is followed to a T. Without your meticulousness, commitment and pedantism, this *Journal* would quickly fall into disrepair. Whether it is debating *AGLC* rules, arguing over the best flavour of Red Rock Deli chips or bonding over South Dowling Sandwiches, I have thoroughly enjoyed my time on this Board with you all. Wherever life takes us after law school, we will always be connected by our time as Boardies.

I would like to especially recognise a subset of the Board, with whom I have had the privilege of working for the past 13 months: the Executive Committee. To the 2023 Executive Committee of Matilda Grimm, Ella Davidson, Anna Ho, Jack Zhou and Zhong Guan, thank you for welcoming me to the Executive Committee in September 2023 with open arms and showing me the ropes of how to run an academic journal. To the 2024 Executive Committee of Sharanya Murthy, Jessie Liu, Brad Marzol, Rowan Gray, Rachel Luo, Marcella De Torres, Fiona Shah and Cordella O'Loughlin, thank you for your making it bearable to come to campus on

a Saturday morning and for your support and friendship during my not infrequent *Journal* spirals. I am in constant awe of your dedication, intelligence and wit and will dearly miss working alongside you all.

I hear the metaphorical music playing telling me it is time to wrap this up, so I owe my penultimate thanks to my friends. Thank you for your constant patience during this past year and allowing me to vent about *Journal* stresses when you really did not know what I was talking about. I am eternally grateful to have met you and I am a better person for having known you. I truly could not have done this without you.

And last but certainly not least, my family. You are the reason I do everything I do, and while you may be across the world, your love and support has made me feel like you have been next to me this entire journey. Thank you for indulging my nonsensical discussions about grammar and citation rules – I am pleased to tell you that you will not be subjected to them anymore. I hope I have made you proud.

After 13 months and countless hours of work, the release of this Issue marks the closing ceremony for this chapter of my life and academic career. But while my time may be over, the *Journal*'s flame continues to burn bright, and I have no doubt that future editors will help bring the *Journal* to new heights. As far as this Issue goes, one thing is for sure: whether it is exploring a topic you have never considered before, or rethinking an issue you thought was well-settled, there is an article in this Issue for everyone. I hope you love them as much as I do.