



Your ref: NP/HV

1 May 2020

Ms Nathalie Prouvez  
Chief, Rule of Law and Democracy Section  
Office of the High Commissioner for Human Rights  
Palais des Nations  
1211 Geneva 10  
SWITZERLAND

Via email to: [democracyforum@ohchr.org](mailto:democracyforum@ohchr.org)

Dear Ms Prouvez,

**Re: Call for suggested topics for discussion at the third session of the Forum on Human Rights, Democracy and the Rule of Law**

1. I write in response to your letter dated 3 March 2020, calling for suggested topics for discussion at the third session of the Forum on Human Rights, Democracy and the Rule of Law. I appreciate this opportunity for input and engagement.

**Submission background**

2. The [Castan Centre for Human Rights Law](#) is a leading academic research centre within the Faculty of Law at Monash University, Australia. We promote human rights in Australia and overseas through a combination of research, policy work and education. The theme of the Forum's third session, "Equal access to justice for all: a necessary element for democracy, rule of law and human rights protection", is an issue which lies at the centre of our work.
3. Eminent barrister, the late Ron Castan AM QC, after whom the Castan Centre is named, worked tirelessly to promote access to justice for marginalised groups. One example among many is his role as Senior Counsel in the famous *Mabo* litigation that resulted in the recognition of land rights for Indigenous people in Australian law.
4. Since the Centre's establishment two decades ago and inspired by the work of human rights defenders like Ron Castan, we have been promoting access to justice for marginalised groups in Australia and overseas. For example, we have conducted research and made policy submissions in relation to the treatment of persons in closed environments, such as mental health facilities and youth detention centres.
5. Equal access to justice for all is also a topic of personal importance and commitment. Before taking up the Castan Centre Directorship in April 2020, I served as a Justice of the Supreme Court of Victoria. In this role, I interpreted and applied the *Charter of Human Rights and Responsibilities Act*

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2006 (Vic), including (for example) the right to a fair hearing and the right to equal and effective protection against discrimination.

6. The Castan Centre proposes one or both of the following topics for discussion at the third session of the Forum:
  - a. Substantive procedural equality and its centrality to equal access to justice for all.
  - b. Impacts of COVID-19 and government measures on access to justice for marginalised groups.

### **Suggested topic 1: Substantive procedural equality**

7. The Castan Centre proposes as a topic for discussion the concept of substantive procedural equality and its centrality to equal access to justice for all.
8. Discussions of substantive procedural equality might include issues such as:
  - a. The role of the courts in guaranteeing equal access to justice for all through the application of substantive procedural equality;
  - b. The role of legal practitioners in recognising and promoting substantive procedural equality in legal arguments;
  - c. The impact of the presence/lack of a domestic human rights and equality law framework on substantive procedural equality<sup>1</sup>; and
  - d. The impacts of COVID-19 and governments' responses to the pandemic on substantive procedural equality and the ability for marginalised groups to access justice.
9. Substantive procedural equality is a topic which the Castan Centre is exploring and one that I considered and applied on a number of occasions during my time on the Bench, resulting in judgments that trace the scope and nature of this concept to international human rights law.
10. In addition to being of conceptual importance, the case law from Victoria might be viewed as examples of best practice in the guarantee of equal access to justice for all through the application of substantive procedural equality by the courts.
11. One example of the application of substantive procedural equality is the case of [Matsoukatidou v Yarra Ranges Council \[2017\] VSC 61](#).
12. In summary, two self-represented applicants (mother and daughter) applied for an order to have a civil appeal reinstated after it was struck out at the County Court following failure to comply with civil procedure. The daughter had a disability and the mother was her carer. One of the questions for the Supreme Court was whether the County Court judge had made the necessary adjustments and accommodations to ensure the right to equal and effective protection against discrimination on the basis of disability.

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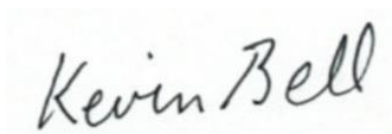
<sup>1</sup> This links back to the theme of the second session of the Forum, "Parliaments as promoters of human rights", recognising the multiple layers of effective human rights protection.

13. In finding a violation of the relevant provisions of the Victorian Charter, I recognised that equal protection of the law without discrimination, and equal and effective protection against discrimination, in procedural respects have a substantive operation and apply to courts and tribunals (see paragraph 50 of the judgment onwards). In doing so, I found that the County Court had been positively obliged to make reasonable adjustments and accommodations as the daughter's disability prevented her from effectively participating in the judicial process.

## **Suggested topic 2: Impacts of COVID-19**

14. The impacts of COVID-19 and governments' responses to the pandemic on access to justice more broadly is an issue which would also be valuable as a standalone topic given the vast changes to justice legislation in many jurisdictions.
15. The Victorian government has, for example, introduced **multiple changes** to a plethora of legislation, the majority of which concern the justice system, in response to the pandemic.
16. This topic may include discussions of concrete measures taken in different jurisdictions, such as a shift to online hearings, hearings on paper, judge-only trials and increased use of audio-video links, and the impacts of such measures on marginalised groups.
17. Thank you very much in advance for your consideration of this submission. Please do not hesitate to contact me should you have any questions.

Yours sincerely,

A handwritten signature in black ink that reads "Kevin Bell". The signature is written in a cursive style and is positioned above the typed name and title.

**Professor the Hon Kevin Bell AM QC**  
Director, Castan Centre for Human Rights Law