

CORPORATE LAW TEACHERS ASSOCIATION

REPORT OF THE PRESIDENT FOR THE YEAR ENDING 31 DECEMBER 2000

Professor Ian Ramsay

I was elected President of the Corporate Law Teachers Association (CLTA) at the Annual General Meeting of the Association held on 13 February 2000. The AGM was held at the conclusion of the annual CLTA conference.

This Report outlines the activities of the CLTA for the year ending 31 December 2000 and also identifies new initiatives for 2001.

Executive Committee of the CLTA in 2000

Clause 4(b) of the CLTA Constitution provides that the members of the Executive Committee shall be a President, Secretary, Treasurer, the immediately preceding past President and four other members. In addition, clause 6(d) provides that the Executive Committee may co-opt up to three additional members to form part of the Executive Committee.

Based upon these provisions of the Constitution, the Executive Committee of the CLTA for 2000 comprised:

- Ian Ramsay (President)
- Michael Adams (immediate past President)
- Christopher Symes (Secretary and Treasurer)
- Elizabeth Boros
- Abe Herzberg
- Dimity Kingsford-Smith
- Philip Lipton
- Vanessa Mitchell
- Vij Nagarajan
- Roman Tomasic

2000 CLTA Conference

The 2000 conference was held at the University of Wollongong and there was a diverse and interesting range of papers presented during the two days of the conference. The keynote speakers were:

- Alan Cameron, Chairman of the Australian Securities and Investments Commission
- Justice Kim Santow, Supreme Court of New South Wales
- Justice Robert Austin, Supreme Court of New South Wales
- John Kluver, Executive Director, Companies and Securities Advisory Committee.

The 2000 conference was the third occasion on which the Institute of Chartered Secretaries awarded a prize for the best paper presented at the annual conference. The prize was presented by Dr John Nelson, Director, Education and Membership of the Institute, to Larelle Law and Janine Pascoe who jointly presented a paper titled “Financiers and Corporate Borrowers: Protection Versus Liability”.

At the 2000 conference, Emeritus Professor Harold Ford was made the first life member of the CLTA, as an acknowledgment of his outstanding contribution to corporate law scholarship and teaching over 35 years.

CLTA conference on The Future of Corporate Regulation: Hughes & Wakim and the Referral of Powers

A major initiative during the year was the co-hosting of a conference which examined the important decisions of the High Court in *The Queen v Hughes* and *Re Wakim* and the proposed referral of their powers to regulate companies by the State Parliaments to the Commonwealth Parliament. The conference was a major success for the CLTA. It was co-hosted with the Australian Association of Constitutional Law, the Centre for Corporate Law and Securities Regulation at The University of Melbourne and The University of Sydney Faculty of Law. The speakers were:

- The Honourable Joe Hockey, Minister for Financial Services & Regulation
- Ian Govey, General Manager, Civil Justice and Legal Services, Attorney-General’s Department
- Alan Cameron, Chairman, Australian Securities and Investments Commission
- Joseph Longo, National Director, Enforcement, Australian Securities and Investments Commission
- Professor Geoffrey Lindell, Faculty of Law, The University of Melbourne
- Mr Dennis Rose, QC, Special Counsel, Blake Dawson Waldron and formerly Chief General Counsel, Attorney-General’s Department
- Professor Cheryl Saunders, Director of the Centre for Comparative Constitutional Studies, Faculty of Law, The University of Melbourne
- The Honourable Justice R P Austin, Supreme Court of New South Wales
- The Honourable Justice G F K Santow, Supreme Court of New South Wales
- Associate Professor Michael Whincop, Faculty of Law, Griffith University.

The conference proved to be a particularly successful initiative for the CLTA in a number of ways. First, 144 people registered for the conference. Secondly, a new initiative for the CLTA was to co-host a conference with several other organisations.

A third way in which the conference was successful is that it achieved the CLTA’s objective of having a broad range of people attend. In addition to academics from a number of universities, the majority of those attending came from government organisations (such as Federal and State Attorney-General Departments, ASIC, Federal and State courts, the Australian Government Solicitor, the Reserve Bank of Australia, the Australian Law Reform Commission, Commonwealth and State DPPs, the Parliamentary Joint Committee on Corporations and Securities, the Companies and Securities Advisory Committee, the Takeovers Panel and the Crown Solicitor’s

Office), private organisations (including the ASX, the Australian Institute of Company Directors, banks, and several publishers), as well as a number of law firms. A fourth way in which the conference was successful was in terms of the quality of the speakers who made themselves available to speak at the conference. Finally, the conference was successful in terms of generating interest in the media. There were articles about the conference in *The Australian Financial Review* and also *Butterworths Corporation Law Bulletin* and *Australian Corporate News*.

Most of the papers delivered at the conference are available on the website of the Centre for Corporate Law and Securities Regulation at “<http://cclsr.law.unimelb.edu.au/research-papers/conf-papers.html>”.

CLTA media release on the decisions of the High Court in *Re Wakim* and *The Queen v Hughes*

Members of the Executive Committee of the CLTA were concerned about the effects of the decisions of the High Court in *Re Wakim* and *The Queen v Hughes*. In particular, members were concerned about the considerable uncertainty for corporate regulation that might ensue. These fears ultimately proved to be well founded. For the first time in its history, the CLTA, at the instigation of members of the Executive Committee, issued a media release dealing with these matters. A copy of the media release is attached to this Report.

The media release was the subject of a major article in *The Australian Financial Review* on Friday 14 April. I had several conversations with the *Financial Review*'s Legal Editor and the *Hughes* case was also featured in the 7 April issue of the *Financial Review* and in subsequent issues. My article on the *Hughes* case in *Corporate Law Electronic Bulletin* No 31 titled “The Unravelling of Australia’s Federal Corporate Law” was also the subject of a speech in Federal Parliament. I believe we can conclude that the CLTA and its members have made a positive contribution to the public debate on *Hughes*.

Corporate and Business Law Journal

On 19 July 2000, in my capacity as President of the CLTA, I wrote to approximately 25 corporate law academics about the continued publication of the *Corporate and Business Law Journal*. Keith Bennetts of the University of Adelaide Law School had recently brought to my attention the fact that the *Corporate and Business Law Journal* would shortly publish its last edition. The reason was that the University of Adelaide Law School believed that it no longer was in a position to support several law journals and must give priority to the *Adelaide Law Review*. However, the Adelaide Law School was happy to see the *Corporate and Business Law Journal* move to another institution rather than cease publication.

The purpose of my email of 19 July 2000 was to see whether there were any expressions of interest in taking over the running of the *Corporate and Business Law Journal*.

I am pleased to report that the *Journal* will now continue publication. As a result of my email, two firm expressions of interest were received. The University of Adelaide

Law School has decided that the Journal will now be jointly published by two organisations – the ANU (represented by Professor Stephen Bottomley) and the University of Canberra (represented by Professor Bryan Horrigan who has recently been appointed to that University). It is very good news the Journal will continue publication and I know that all members of the CLTA join with me in wishing the new Editors all possible success with the Journal.

CLTA website

In 2000 the CLTA launched a basic website. The website contains information about the CLTA including events, the CLTA Constitution, and useful links.

Members of the Executive Committee were hoping that by the end of 2000 the website would be upgraded to include more than the basic information that it currently contains. It is disappointing that this was unable to occur. However, this will be a priority for 2001. Information on the upgraded website may include:

- the titles of theses currently being researched by graduate students in the area of corporate law (this information can be provided by CLTA members);
- research topics currently being investigated by members of the CLTA; and
- teaching materials.

The current website is hosted by AustLII and the address is “<http://users.austlii.edu.au/clta/>”.

Award for Michael Adams

Michael Adams is a previous President of the CLTA and a current member of the Executive Committee. I am pleased to report that Michael won the 2000 Australian Award for University Teaching in the category of Law and Legal Studies. Michael teaches business law, company law and securities regulation. Michael is a highly committed teacher who is very innovative in the teaching methods he employs. He has run a teaching workshop for CLTA members in the past and we hope to draw upon his expertise in this respect in the future. On behalf of all members of the CLTA, I congratulate Michael on this fine achievement.

2001 CLTA Conference

The 2001 CLTA conference is being held at Victoria University in Melbourne on 11-13 February 2001. The theme for the conference is Comparative, Historical and Economic Perspectives on Corporate Law. It is being organised by Vanessa Mitchell, a member of the Executive Committee. We are grateful to Vanessa for all of the hard work she has devoted to organising the conference.

Initiatives for 2001

Each year, the CLTA hosts the successful annual conference. There are few organisations which represent law teachers of particular subjects which can claim to host such conferences on a regular basis. However, it is clear that the CLTA has the

potential to do more for corporate law teachers not only in Australia but also in our region of the world.

In 2000, the Executive Committee set the objective of the CLTA undertaking at least one further major initiative each year. In 2000, this was the very successful conference on *Hughes & Wakim* and the proposed referral of powers. For 2001, the Executive Committee will focus upon an upgraded website but also consider hosting a conference/workshop for members of the CLTA that would be dedicated to either teaching or research methodology.

Membership of the Executive Committee for 2001

It became apparent in 2000 that more could be done to ensure a geographic spread of membership of the Executive Committee. This is important in terms of considering where the annual conference may be held in the future. In addition, as part of endeavouring to strengthen our links with New Zealand, an objective was to identify a prominent New Zealand corporate law academic who would be willing to join the Executive Committee.

I am pleased to advise that the following corporate law academics have agreed to stand for election/co-option to the Executive Committee in 2001:

- Stephen Bottomley (ANU)
- Ross Grantham (University of Auckland)
- Jenny Hill (University of Sydney)
- Ralph Simmonds (Murdoch University)
- Michael Whincop (Griffith University).

The following are the current members of the Executive Committee who have advised me that they would like to continue next year:

- Michael Adams (University of Technology, Sydney)
- Dimity Kingsford-Smith (Monash University)
- Philip Lipton (RMIT)
- Vanessa Mitchell (Victoria University)
- Christopher Symes (Flinders University).

This means that for 2001, major States as well as New Zealand will be represented on the Executive Committee.

Expressions of appreciation

Several individuals and organisations have played a significant role in relation to CLTA matters during the course of 2000. First, a particular expression of thanks is due to Dr John Nelson of the Institute of Chartered Secretaries. John participates in all meetings of the CLTA Executive Committee and provides the tele-conference facilities for the meetings. In addition, he manages the financial affairs of the CLTA. John also represents the major sponsor of the annual conference and, as always, we are grateful to the Institute of Chartered Secretaries for not only its sponsorship of the

annual conference but also its sponsorship of the prize for the best paper presented at the annual conference.

I would also like to express my thanks to the other three sponsors of the annual conference: Butterworths, CCH, and LBC Information Services. Finally, I would like to express my thanks to two individuals who were each instrumental in ensuring the success of our conference on the High Court decisions in *Hughes & Wakim* and the proposed referral of powers. They are Dimity Kingsford-Smith, a member of the Executive Committee and my colleague at the Centre for Corporate Law and Securities Regulation, Hellen Blue.

MEDIA RELEASE

3 April 2000

CORPORATE LAW TEACHERS CALL FOR STATE AND FEDERAL GOVERNMENTS TO SOLVE CORPORATE LAW PROBLEMS

The Corporate Law Teachers Association, which represents university academics across Australia who teach and research corporate law, has called for the State governments to refer their power to regulate companies to the Commonwealth Government in order to solve the current problems in corporate regulation.

The Association's President, Professor Ian Ramsay states "As a result of recent court judgments, Australia's existing structure of corporate law is under substantial challenge". The Association is extremely concerned that, after almost a century of evolution, the national structure of our corporate law may soon be destroyed. This will be done at the expense of an increasingly effective system of corporate regulation.

In *Re Wakim* the High Court struck down the cross-vesting legislation under which the Commonwealth Government and all of the State governments had agreed that the Federal Court was to have the power to hear matters arising under the State Corporations Acts. In *Bond v The Queen* (judgment delivered 9 March 2000) the High Court held that the Commonwealth Director of Public Prosecutions does not have the power to appeal against a sentence imposed for a breach of a State Corporations Act.

On the 1st and 2nd of March 2000, the High Court heard argument in *The Queen v Hughes*. This case will decide the validity of a section of the Corporations (Western Australia) Act which gives the Commonwealth Director of Public Prosecutions the power to prosecute offences arising under the State Corporations Acts. Should the section be declared invalid by the High Court, not only will the Commonwealth Director of Public Prosecutions no longer have a role to play in prosecuting breaches of State Corporations Acts under the current regime, but the role and authority of the Australian Securities and Investments Commission in terms of its powers to investigate breaches of the State Corporations Acts is also thrown into doubt.

The Corporate Law Teachers Association calls for each of the State governments to refer to the Commonwealth Government their power to regulate companies. The Association believes that it is in the interests of Australian companies and their investors for there to be a national system of corporate regulation. This will preserve Australia's position as a predictable and stable corporate regulatory environment.

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