

LABOUR LAW SEMINAR

Looking for the Hook: The Problem in Proving Race Discrimination

Anti-discrimination laws are said to serve the ‘high object of correcting centuries of neglect ... discrimination and prejudice’ in the public domain against ‘minority’ and ‘disadvantaged’ groups (*Purvis v New South Wales (Department of Education and Training)* [2003] HCA 62, [18] (Kirby and McHugh JJ). Yet, commentators have long lamented the seemingly ‘insuperable’ difficulties involved in proving race discrimination complaints (Thornton, 1995; Gaze, 1989, 2002 & 2005; de Plevitz, 2003). In this seminar, Jennifer Nielsen discusses some of these difficulties.

An initial difficulty is that tribunals tend to rely upon a ‘hook’ – like the word “black” being used – to found the causal connection between an ‘act’ of less favourable treatment and a complainant’s race. Invariably, this makes proof of race discrimination by inference almost impossible, even though complaints are more likely to be made on this basis. While this tendency can be sourced in the tribunals’ approach to the *Briginshaw* test, Jennifer argues that the more significant difficulty is that discrimination jurisprudence is informed by ‘white’ ways of thinking about how and why race discrimination occurs. Consequently, this body of legal thought sustains the privilege of whites, with the effect that the laws tend to reproduce Aboriginal inequality rather than reduce it.

Dr Jennifer Nielsen is a Senior Lecturer with the School of Law & Justice at Southern Cross University (Northern New South Wales). She is a co-editor of *Majah - Indigenous Peoples and the Law* (1996), a contributing author to *Human Rights in Australian Law* (1998), *Introducing the Law* (2008), and *Employment Law in Principle* (2008), and teaches and researches in the areas of employment rights, equal employment opportunity, and workplace safety. In 2008, she obtained her PhD from the Law School, University of Melbourne, for a thesis entitled: *An Intractable Problem: the endurance of whiteness in the mainstream workplace*.

DATE: Wednesday, 15 October 2008
TIME: 1:00 pm
PLACE: Room 920 (Level Nine)
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A light lunch will be served