

finally recognized that Australia had not, in fact, been *terra nullius* and that Aboriginal peoples had rights to the land that continue to exist today.

In the Northern Territory, construction of roads and water tanks destroyed “dreaming sites”, paths that are spiritually significant to the Ngaliwurru and Nungali peoples and also paths of trade.

Jacob Saulwick of the *Sydney Morning Herald* opined, “If \$1.3 million could be awarded for pain and suffering at Timber Creek, which was a small claim area, much larger figures are now likely to be awarded elsewhere.” According to Bill Code at *Al Jazeera*, lawyers from both sides said this decision paved the way for billions of dollars in compensation.

A group called Reconciliation Australia, which “promotes and facilitates respect, trust and positive relationships between the wider Australian community and Aboriginal and Torres Strait Islander peoples”, released their biennial Reconciliation Barometer⁴ which showed that 90 percent of Australians value the relationship between the settler community and the Aboriginal and Torres Strait Islander people, and 66 percent believe the government should do more to close economic and other gaps between First Peoples and white Australians.

Many lawyers, activists, and other commentators said they expected this decision to be the first of many to award reparations to Aboriginal peoples. Megan Braine, a native title lawyer, said, “This is a very important case because it is the first time the High Court has set out the principles for compensation.”

It remains to be seen whether Canadian lawyers who are involved in treaty negotiations will be aware of this decision and whether Canadian courts will recognize the new “head” of compensation.

⁴ <https://antar.org.au/news/reconciliation-barometer-demonstrates-we%E2%80%99re-ready-change>.

Letter to the Editor

Dear Arthur:

In an August 14, 2018 press release, the Ombudsman announced that she is “opening a systemic examination into the Canada Revenue Agency (the ‘CRA’) commitment

to integrating the rights outlined in the Taxpayer Bill of Rights (the ‘TBR’) in its daily activities”.

On September 18, 2018, I sent the following email to the Ombudsman:

David Moffat, Director of the CRA Tax Relief Program, is in possession of comprehensive documentation evidencing a systemic disregard for the Taxpayer Bill of Rights at every level of the tax hierarchy, including Head Office, ATIP, and the Department of Justice. The acts complained of include perjury, obstruction and gross negligence. I suggest that you request Mr. Moffat to provide you with the submissions and documentation in his possession. It is unlikely that more convincing evidence of systemic issues exist.

On March 6, 2019, the Ombudsman released the 12th systemic examination report published by her office. What caught my eye was the section entitled “The Role of the Taxpayers’ Ombudsman”, and in particular the following statement:

The Ombudsman also examines systemic service issues that may negatively affect a large number of taxpayers or a segment of the population.

This confirmed what a representative of the Ombudsman had previously told me, namely that the test used to determine if an issue is systemic is the number of complaints. Although not said so expressly, the implication was that there have not been a sufficient number of complaints about perjury, obstruction and gross negligence to constitute them as systemic issues.

All of this brought me back to a book review which appeared in the February 23, 2019 issue of *The Economist*. The book is “The Metric Society” by Steffen Mau and the following is an excerpt from the review:

Measurements pervade life and society. . . . When these technologies become embedded in society, he argues, life is reduced to checkboxes.

The Ombudsman should not allow the Taxpayer Bill of Rights to become infected with what the reviewer referred to as “the tyranny of metrics”.

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