



Sarah Joseph at the wall

shadow other topics. The tour did not take in the West Bank or Gaza: such a tour cannot be organised because of current warnings from the Australian Department of Foreign Affairs and Trade. Some members of the group did however cross into Bethlehem for an afternoon, while others visited various sites in the West Bank (including Birzeit University in Ramallah and Al Haq, a human rights organisation based in Ramallah) after the tour, including the controversial settlements. The group heard numerous presentations from pro-Israel and anti-Israel perspectives (though such characterisations are often simplistic), including challenging presentations on unique issues such as targeted killing and the infamous Wall.

Regardless of the view each participant arrived with and the view each left with, all participants are now better informed of the dimensions and intricacies of so many of the issues under debate in the Middle East, having been briefed by high quality speakers with 'on the ground' experience. All presentations incorporated considerable question time, and the views of presenters were frequently challenged. Furthermore, all participants are more familiar with important background facets of Israel, such as its history, culture and politics, which add crucial context to the situation in Israel today. Most of all, the tour was a unique and invaluable opportunity to reinforce what it is to be an academic – that is listening to different views, sifting through them, debating them (even amongst each other), and questioning one's own assumptions. If only we always had the time and space to do that.

Canadian Expert Speaks on Indigenous Rights

By Michael Kalenderian

Poor weather did not stop more than 100 people from attending Professor Brad Morse's public lecture at the Monash University Law Chambers in October entitled "Is the Common Law still relevant for Indigenous Australia? A Canadian perspective".

Professor Morse (pictured below, with Deputy Director Melissa Castan), from the University of Ottawa, began by noting the similarities between Canada and Australia, both being of "the common law realm", having similarly sized populations and economies and having been "settled despite an Indigenous population that were the owners of the land and again, and in large part, settled through ignoring their presence". Professor Morse then outlined why the common law was still relevant in Australia despite the existence of the *Native Title Act*. Such an issue, Professor Morse said, arose in particular circumstances.

The first issue is compensation claims in relation to events that occurred before the creation of the *Racial Discrimination Act* in 1975. In such a case, the Professor noted, governmental actions that occurred before 1975 would not enable a compensation claim to be pursued under the *Native Title Act*, so "the only avenue available would be pursuing them in the context of the common law".

The second circumstance is where the tests from the *Native Title Act* could not be fulfilled, be it due to governmental actions or from the transformation of a traditional society, making it "impossible to prove that traditional laws and customs are still functional".

A third circumstance mentioned was where non-Australians "may wish to assert interests in relation to Australian territory", such as where Papuans have sought to "assert their interests as traditional owners as a result of the Torres Strait Island regional claim".

Professor Morse's talk was a useful reminder to lawyers that developments in native title law over the last 15 years have not completely overridden the common law.

Professor Morse's paper is available on our website.

