

# Profile: Ed Santow, Human Rights Commissioner, Australian Human Rights Commission



CAMLA Young Lawyers Committee Chair, Sophie Ciufo, caught up with Ed Santow, Human Rights Commissioner at the Australian Human Rights Commission, to discuss his views on key human rights issues such as freedom of speech and communication.

## **SOPHIE CIUFO: Where do you work, and can you tell us a little bit about your role in the organisation?**

**ED SANTOW:** I work at the Australian Human Rights Commission where I am the Human Rights Commissioner. The Commission has a President and seven Commissioners. Together, we work alongside an incredibly expert and diligent group of staff to advance human rights in Australia. Where the other Commissioners are responsible for very specific areas, for example, race, age, disability, my role is more general. I work with the President across areas that aren't specifically covered by the other Commissioners, such as human rights issues affecting LGBTI Australians, freedom of speech and expression (amongst other issues).

## **CIUFO: Where have you worked previously, and what led you to your current role?**

**SANTOW:** Immediately prior to the Commission, I was chief executive of the Public Interest Advocacy Centre (PIAC). PIAC is a non-profit, social justice organisation focused on the basic rights of people. PIAC works at a systemic level to promote human rights, and in my role at PIAC I engaged in strategic or public interest litigation that would have a wider public impact beyond the individual client. At PIAC I also collaborated with the Government and Australian civil society to improve how our laws and policies protect people and their rights.

Prior to PIAC I was an academic at UNSW Law School; prior to that, a solicitor at what is now King & Wood Mallesons and prior to that, an Associate to Justice Heydon when he was a Justice of the High Court of Australia.

I never had a really clear career trajectory in mind that ultimately led me to my current position. Rather, I had a really clear sense that I was interested in making our laws and policies operate as fairly as possible, as well as protecting the basic rights of Australians.

My past experience includes both helping individuals and also working at a systemic level, identifying ways in which I can make a broader impact, such as changing laws and policies. In my current role, these experiences intersect and I interact with individuals and hear their issues, but then I also have direct access to the Australian government to try and implement more far-reaching change.

## **CIUFO: What do you consider to be some of the most interesting and challenging aspects of your role?**

**SANTOW:** One of the most challenging and interesting aspects is engaging individuals to get involved. Individuals are integral to bringing human rights issues to the forefront in order to bring about change. As lawyers we have the easy part, we are able to call on our professional skills and apply those to an issue at hand to bring about an outcome. For individuals, there is often much more at stake and if it is a human rights issue at hand, it is often very personal to them and it is therefore a big ask for an individual to be the face of a larger issue or problem.

In my current role, I am now working with a much broader canvas than I have previously. As a conventional lawyer, you're there to help your client as an individual. You have a well-understood set of tools you have to deploy to help – litigation, negotiation, mediation etc. and you often know when you have achieved a good outcome. However the broader canvas of the Commission means I need to have greater imagination to see how I am really able to impact a broader group of people and I no longer have a well understood set of tools to help, rather I really only have one tool and that is the power of persuasion. Whilst this is a challenging aspect of my role at the Commission, it is also fundamental to what we're trying to achieve and goes to the heart of human rights, as what you really want to do is persuade people to agree to change and agree to do the right thing by their own accord,

rather than being forced to, as they're more likely to internalise new behaviours as the norm.

**CIUFO: You have achieved some remarkable results in the course of your career. What do you consider to be the most satisfying so far?**

**SANTOW:** A big focus of my work over a number of years has been the basic rights of people who are detained, including in prisons, mental health facilities and detention centres (there are a broad range of detainment settings in any country in which people are detained). A real challenge in this area is championing the basic rights of people in detention, as they are often people that are not always well respected in a community and they don't always garner sympathy. During my career, I ran test cases in this area that led to some really good improvements, which was a satisfying achievement.

More recently, and something that has been a big focus of mine that came to fruition only recently, is the announcement by the Australian Government that it intends to ratify and implement the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (**OPCAT**). OPCAT has the potential to be the most positive human rights protection initiative of this Australian Government over the past four years. Under OPCAT, Australia will have a better regime of independent inspection of all places of detention with the hope of identifying and addressing human rights issues before they've been violated.

My role in this process was working closely with the Government and Attorney-General George Brandis (who played an integral role in the process) to work through the practical issues of what ratifying the treaty would look like and how to make the treaty as effective as possible.

**CIUFO: Was working across such a variety of sectors – private practice, academia, non-profit and now Government – always an ambition? Do you have any advice for young lawyers wanting to follow a similar path?**

**SANTOW:** It was not a direct ambition to work across a variety of sectors, rather I was pragmatic in my approach more than anything else. I followed a path that was more likely to have the most positive impact. The benefit of gaining experience in various sectors, is that I was able to see how a variety of different people in different organisations approached problems, which led me to understand what levers need to be pulled to get something positive done.

If you are looking to follow a similar path, the key is to have 'intellectual ballast'. Find something you're going to be really strong at, develop an area of expertise. For me that was law. In the earlier part of my career, I worked really hard to build my skills in public law, which was really important and ultimately stood me in a good stead when moving between sectors. It is easier to come at a new sector with core, specialised skills as your foundation. Whilst generic skills are good, intellectual ballast and an area of expertise is what will set you apart and help you move through a path of varied positions and sectors.

**CIUFO: Freedom of speech and privacy seem to be the most obvious intersections of human rights law and media and communications law. Do you expect those rights to be a major focus of your role at the Commission?**

**SANTOW:** Whilst I am very interested in privacy, I am conscious that we have the Office of the Australian Information Commissioner, which is separate to the Commission and the central agency responsible for privacy in Australia.

Freedom of speech, on the other hand, is very important and will certainly be part of my role at the Commission. Together with the President, I am looking at a range of areas where freedom of speech is under threat and looking at what the Commission can do to ensure freedom of speech is properly protected.

**CIUFO: Do you consider that some people place more importance on freedom of speech than on other human rights? Do you consider there to be a hierarchy of human rights, where, when different rights conflict, some are simply and always more important than others?**

**SANTOW:** All human rights are important, so it is dangerous to speak of a 'hierarchy'. However, there are some rights that are central, the right to life for example. Other human rights are meaningless without the ability to protect someone's life. Rather than a hierarchy, think of human rights as intersecting spokes of a wheel.

Working out how different rights interact and what to do if they come into conflict is a crucial part of my role and the role of the Commission in general. We need to be clear-eyed and principled in how we deal with those conflicts. International law provides what is known as a 'proportionality approach', which sets out how to deal with rights that come into conflict.

Freedom of speech, specifically, is a fundamentally important right for a couple of reasons. Firstly,

freedom of speech is central to our existence as humans. We are social animals, we need to be able to communicate with each other and where people are detained, that freedom of speech or an inhibition on one's ability to communicate freely can be one of the things that is most punishing (even more so in instances of isolation and seclusion). So, central to our life as humans is that we are able to communicate freely.

Secondly, a liberal democracy would not function properly without freedom of speech. People would not be able to make considered decisions about our society, including about voting, politics and policy decisions.

**CIUFO: As you say, the right of the press to communicate freely is profoundly connected to enabling citizens to meaningfully engage with politics & policies. However, the rise of algorithms used by online platforms to influence the communication of information and ideas to the public has added significant complexity to such engagement. In your opinion, is the unencumbered and unregulated freedom of communication by these platforms having an adverse effect on a citizen's ability to profoundly engage in this discourse?**

**SANTOW:** Well, there is no easy answer to that, but in short, yes, to an extent.

One of the great things about the Internet age is that people can communicate, in a sense, more freely. They can speak more and they can listen more and they can do so with and to people from all over the globe. However, this also leads to a great cacophony of noise and it becomes hard to discern what messages people will find most useful and what messages are truthful, enriching to a person and valuable to us as humans.

So the issue, partly, is one of curation. Take news, for example. We were previously able to identify news leaders – often leading newspapers or media organisations – that would curate a smaller cacophony of noise down to key truths. Now, those leaders are dissipating and whilst this can have a democratising effect in that we are relying less on fewer authoritative voices, it also makes it much harder for individuals to know what to listen to.

Alongside the dissipation of news leaders, social media is also replacing the human curation of material with machine-led algorithmic curation. Whilst this means that there is less subjectivity, selectivity and prejudice being brought by a select few leaders and individuals to issues, algorithms are still set by individuals, or companies, in

some capacity. So prejudice can still exist and the algorithms can reflect pre-existing power structures and give additional weight to people not based on the value, truth or beauty of what they're saying but on the strength of their microphone. These algorithms can divide a broader community into lots of subsets and you can have an entirely internal conversation with a subset of your own immediate community and as a result find it difficult to understand people from different subsets.

**CIUFO: Lastly, what advice do you have to the young lawyer who wants to promote human rights?**

**SANTOW:** This is some advice I was once given myself. If you're interested in human rights, there is no question that you already have a good heart. However, coming at something with just a good heart is not always helpful. The challenge is determining how you think you're going to have the most impact. And you're only going to be able to help if you have well-developed skills. Which comes back to what I was saying before about having 'intellectual ballast', having an area of expertise. So, work really really hard to develop skills that you know can add value. There are various skills that can and do add value to human rights – public and administrative law, the intersection of law and social work, political skills, are just a few examples.

It is always such a missed opportunity when someone has all of the energy, bright eyes and desire to get into human rights work but hasn't yet worked out what their value will be. So, my advice in short, is to work out what your value can and will be, and then work hard to hone the expertise and skills you need to be able to add that value.

**CIUFO: Thank you for taking the time to speak with us, Ed. You have provided such an interesting insight into your role as Human Rights Commissioner at the Australian Human Rights Commission and we look forward to following your achievements over the next few years.**



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