

To: Australian Departments and Agencies responsible for Indigenous Affairs, Local Government, the Arts Law Centre of Australia funding bodies, media representatives and other stakeholders (this complaint/request was lodged with the Office of the President of Croatia in Zagreb, and the Australian Embassy in Zagreb, Croatia, in mid October 2011)

From: Vesna Tenodi, Wanjina Watchers in the Whispering Stone sculpture owner, ModroGorje Gallery, Blue Mountains – Sydney, Australia

Sydney, 02 November 2011

To Whom It May Concern

Re: Complaint against discrimination, harassment and vilification of Croatian artists and other ModroGorje project participants and supporters in Australia

with a request for the Australian Government to enquire into the conduct of the Arts Law Centre of Australia and Blue Mountains City Council, in relation to censorship of the Wanjina Watchers in the Whispering Stone sculpture by artist Benedikt Osváth and attacks on the “Dreamtime Set in Stone” book by Vesna Tenodi and “Wanjina Watchers” paintings by Gina Sinozich

Dear all,

my name is Vesna Tenodi and I am the owner of the ModroGorje Gallery in the Blue Mountains in NSW, Australia. I am also the owner of the Wanjina Watchers in the Whispering Stone sculpture.

I have a Master of Arts Degree in Archaeology (Prehistory) from the University of Zagreb, Croatia.

I am also an artist, writer, translator, community worker and have been working for Australian Government departments and agencies since 1985.

Since late 2009 I and my artists have been targeted by a group of angry Aborigines, harassed, vilified, falsely accused and intimidated by various groups and the local Blue Mountains City Council staff and councillors. In addition, we have been treated unfairly by the Arts Law Centre.

My husband Damir and I migrated from Zagreb and have been living in Sydney since 1983, maintaining close relationships with Croatia, through working with the Croatian community in Australia. We have dual citizenship and we feel equally at home in our hometown of Zagreb and in Sydney.

For almost 30 years in Australia, we have contributed to Australian society, and built a good reputation. Our contribution to Australia has been recognised and we are well respected. I have been working for Australian Government departments and agencies, both Federal and State. I have also been working on a number of highly confidential and classified Government programs, which means that my good character is beyond reproach. My integrity and my reputation are the basis of my employment. Over the last two years, false accusations, slanderous attacks and offensive comments caused me enormous damage, endangering my career.

The harassment started at the end of 2009 when my book “Dreamtime Set in Stone – the Truth about Australian Aborigines, as requested by the Those-Who-Know” was published and some angry Aborigines started a campaign of hate and intimidation, including threats of legal action in an attempt to ban the book. In my opinion, over the last few decades, Aborigines – after having suffered injustice in the past – have become the most privileged segment of Australian society. They are using the current sentiment, all the goodwill we are all showing them, and the Australian Government’s enormous efforts to right the wrongs of the past, as an opportunity for revenge – which the Aborigines call the “Payback time”. Within that Payback mentality, I and my artists have become a convenient target.

Because of what an Aboriginal elder – who collaborated with me on my book – said in our conversations, these Aborigines wanted the book banned. Their anger soon extended to our art. We have become a target of an Aboriginal campaign of hate. Our ModroGorje house was repeatedly damaged, our sculpture repeatedly vandalised, our privacy invaded and our civil liberties ignored. A few local Aborigines kept making threats, including death threats, claiming that they are acting on orders from an Aboriginal person in the Kimberly region of Western Australia and that they have the full support of Blue Mountains council officer Brad Moore and other individuals and groups.

After a number of incidents when the local police were unable to act as they were committed by “unknown persons”, the police on 7 August 2011 finally caught one of them in the act of vandalising the Wanjina Watchers in the Whispering Stone sculpture and charged him with malicious damage.

Our ordeal has received nationwide attention in the Australian media – starting with an article in the Sydney Morning Herald, and including the ABC Law Report and a number of articles, TV and radio segments as well as the Bolt Report. In some of these I tried my best to make it clear that my book is a tribute to Aboriginal culture, that we have been promoting Aboriginal forgotten spirituality, aiming to revive it. We are using prehistoric cave paintings and ancient iconography, which are in the public domain and can be freely used by any artist. Clearly, these irrational objections should stop.

But instead of stopping, the matter keeps escalating, with our objectors’ attempts to turn it into a political issue and to bully us with threats of legal action.

However, the issue is not a political matter, nor is it a legal matter. It is about our art and spirituality, our right to artistic freedom, our right to express our own beliefs, and our right to free speech. It is also about our right to privacy and to have a peaceful life free of harassment by local authorities. [full transcript of the councillors’ 30-minute debate on 12 October 2010 is available upon request].

One of the artists who explored and created her own interpretation of ancient Australian mythological beings is Gina Sinozich, a highly regarded artist of Croatian origin. The objectors also widened their campaign of hate with repeated references to our Croatian origin and Croatian community in general, and with insulting, offensive, and intimidating comments.

Instead of protecting our democratic rights and our fundamental right to artistic freedom, the local Blue Mountains City Council decided to censor our art, manipulated the planning law and ordered us to remove our sculpture from our own front yard. All this because some Aborigines claimed they are “offended” by it.

The council staff and councillors believed the lies told by their Aboriginal liaison officer Brad Moore, who claimed that we are in breach of the Copyright Act and Intellectual Property law. Even though those claims were proven to be untrue, the staff – such as Brian Crane and Rodney Bles, councillors Terri Hamilton, Mark Greenhill and Mayor Daniel Myles – just accepted them. They included those false claims in official council documents (published on their website) with Daniel Myles also making false accusations on national ABC radio.

All this has been causing me extreme distress. I am deeply offended by comments I have had to suffer, and by irresponsible behaviour by public servants and Government-funded professionals. These people should have protected our rights, but instead seem to condone this unacceptable behaviour against us.

The local council was able to enforce censorship with help and support from the Arts Law Centre of Australia. The role of that highly regarded government-funded organisation is to protect the rights of **all** artists in Australia. But, in our case, the Arts Law Centre ignored the rights of our painter Gina Sinozich and sculptor Benedikt Osváth, and supported council lies instead. Their submissions to the council and their published articles clearly show they have no interest in protecting our artists’ rights, but want to enforce some “Aboriginal traditional law”. They are openly encouraging others to use

other laws, as was done by the council. It manipulated the planning law and used the heritage listing of our house, as an excuse to censor our art.

Legally, local councils have no jurisdiction whatsoever over art, and planning law should not be applied to censor a work of art. But the council found its way around that by calling our sculpture a “structure” and a “development”. This is entirely specious.

Clearly showing their intention to keep harassing us, the council approved our gallery and sculpture garden, but with a condition to show them the design first and to lodge a separate development application for every sculpture before displaying it. This would in effect make the local bureaucrats curators of our private gallery, with power to dictate what we can create and display.

The Arts Law Centre, in their submissions to the council and the evidence their lawyer Delwyn Everard gave at the Land Court hearing kept repeating that we are not Aborigines and that we are engaging non-indigenous artists – as if any of that were illegal. They also accused us of painting and sculpting “without permission from traditional owners”. This is a misleading statement, implying that permission is a legal requirement. In my opinion, this is reverse racism.

According to Australian law, an artist does not have to seek permission from anyone and is free to create and can freely use any image or symbol which is in the public domain. This includes motifs from prehistoric Australian cave art. However, we know of a number of other instances when artists were forced to abandon their projects, yielding to Aboriginal bullying and threats of violence.

As an archaeologist, research indicates that Aborigines never created the original cave paintings that my artists explore – these being the Wanjina and Bradshaw figures – that they were created by an earlier, pre-aboriginal race and Aborigines found them when they arrived. I also know that artists all over the world have been exploring that imagery, for both private and commercial purposes. In my opinion, it is ludicrous to try to claim ownership of prehistoric art. Cave painting from Palaeolithic and Neolithic time belongs to the world and forms part of world heritage. Also, any sacred image and symbol such as an image of Christ or Buddha or Zeus or Wanjina is in the public domain and every artist can use it. There is no copyright on any of those. The copyright period expires 70 years after the artist’s death.

I received legal advice to take action against the Blue Mountains City Council and the Arts Law Centre for a number of breaches. But our appeal to the Land Court, against the council order for removal of our sculpture, brought us to the brink of bankruptcy and we simply have no resources to take action against these participants.

Even if we could, that might prove to be a pointless exercise for a non-indigenous person in the current political climate, as evidenced by the current ruling against journalist Andrew Bolt.

Instead, in the form of this open letter, I request that an inquiry be held into the conduct of the Arts Law Centre of Australia and the Blue Mountains City Council. I am calling for an investigation and explanation of their conduct, and an apology to me and my artists for their derogatory, offensive, unfair and misleading comments.

I need to know:

- Why would any artist need to be Aboriginal to create anything fashioned after the ancient Australian cave art?
- Why would any artist need anyone’s “permission” to paint and to sculpt any image or symbol that is in the public domain?
- Why is Aboriginal bad behaviour constantly being excused by past injustice?
- Why is Aboriginal harassment of non-Aboriginal artists tolerated by bodies such as the Arts Law Centre of Australia and local Blue Mountains council?

- Why can migrants be discriminated against and slandered, while our society was built by migrants?

This open letter is also forwarded to:

- The Arts Law Centre of Australia's funding bodies, to examine whether a group of people with such an attitude as shown in our case are deserving of public funding, with a request for the Arts Law Centre to publish a retraction of their misleading statements;
- Departments and ministers responsible for local government, with a request for the council to publish a retraction of their false statements and offensive accusations;
- Media representatives and other stakeholders

Attachments:

- Sydney Morning Herald article, March 2010
- Letter by Spruson & Ferguson law firm (for which the Arts Law Centre lawyer Delwyn Everard used to work), seeking to confiscate my book and ban our art, November 2010
- Follow up letter by the same legal firm with further threats of legal action against us, December 2010
- Letter by Simpsons Solicitors, acting for the Arts Law Centre of Australia, with threats of legal action based on "malice" because we reminded them what they are funded for.
- Arts Law Centre submission to Blue Mountains City Council
- 2 Arts Law Centre articles
- Arts Law Centre media release bragging about their contribution in censoring our sculpture
- 3 ModroGorje Media Releases
- TLALC letter to Blue Mountains City Council
- Transcript of the Blue Mountains Mayor Daniel Myles interview broadcast on ABC radio, showing that Aborigines can make up any lie, and people like him keep embroidering on that lie
- Info-leaflet about the Wanjina Watchers in the Whispering Stone sculpture

The statement of the Arts Law Centre representative Delwyn Everard at our Land Court hearing on 20 June 2011 is available upon request

Full transcript of the Blue Mountains City Council councillors 30-minute debate on 12 October 2010, when they made an unanimous decision to censor our art, available upon request

All submissions to Blue Mountains City Council available upon request

As an Australian citizen, I have lodged this complaint with the Australian Embassy in Zagreb, to be looked at and the outcome forwarded to the Department of Foreign Affairs in Canberra and relevant ministers.

As a Croatian citizen, I have lodged this complaint with the Office of the President of Croatia in Zagreb. I had the pleasure to meet the President of Croatia Ivo Josipovic, and also met with Josip Paro, Foreign Policy adviser to the President, and presented them with my book "Dreamtime Set in Stone" – that started this witch-hunt. They are now informed of the fact that a group of Croatian artists in Australia is being terrorised by an over-privileged minority, and that in Australia today there is no political will to protect the rights of non-indigenous artists.

I request that the Australian authorities take appropriate steps to stop Aboriginal harassment of artists in Australia and I urge the Departments responsible for the Arts Law Centre of Australia and local councils to apply some common sense and fairness and deal with our problem as a matter of urgency.

Kind regards,

Vesna Tenodi

Email: ves@theplanet.net.au

P.S.

Here is one of the comments as published on the ABC Law Report page, which illustrates how reasonable people in Australia react to our matter. More can be found at:

<http://www.abc.net.au/rn/lawreport/stories/2010/2939168.htm?site=brisbane>

Daremo:

05 Jul 2010 5:40:30pm

Well, I just love the comments and vitriol against one person.

A couple of questions:

Why is equality and equal opportunity always not?

Why can't she build one of these statues/idols? Where is the empirical evidence that this 'idol' actually belongs to anyone?

How do we know it is not just made up like the Welcome to Country ceremonies?

Why is this not racism?

Why can we not accept that this image is a homage as suggested by the gallery owner?

I know why, because she is white, a Croatian (as if this is a crime) and this politically correct anti-white society – her existence appears to be an offence. Grow up people and get over yourselves.

For more information please visit:

www.modrogorje.com

and for an overview of our art performances to promote Aboriginal forgotten spirituality and to protest against art censorship please visit:

<http://www.facebook.com/TAI.CHI.and.CHI.KUNG>



Wanjina Watchers in the Whispering Stone before and after the vandalism

Further enquiries: Donald Richardson, ModroGorje artists' consultant

donaldar@ozemail.com.au

Art battle turns ugly as Aborigines condemn sculpture's sacred image

Tim Elliott

March 20, 2010

IT WAS meant to be the Dreamtime set in stone, a celebration of reconciliation and a "revival of Aboriginal spirituality". But *Wanjina Watchers in the Whispering Stone*, an 8.5-tonne sculpture in Katoomba, has sparked vandalism and death threats.

"This is the most beautiful thing that has been done for Aboriginal people," a Blue Mountains gallery owner, Vesna Tenodi, says. "They should be thanking me, but instead I get yelled at wherever I go."

Tenodi is the owner, together with her husband Damir, of the ModroGorje Wellness and Art Centre. Originally from Croatia, Tenodi ruffled feathers late last year when she published her book *Dreamtime Set in Stone: The Truth about Australian Aborigines*, an exploration of indigenous culture that was dedicated to "the Aboriginal people and to the Aborigine in each of us". But the book offended many local Aborigines, not least for its illustrations of wanjina, a sacred creation ancestor of the Kimberley people in Western Australia.

"It's totally inappropriate for a non-indigenous person to be doing wanjinis, especially without permission," said Chris Tobin, a member of the local Darug people who works as a guide with the National Parks and Wildlife Service.

"Aboriginal law is very specific on what you can and can't do with wanjinis."

The owner of Coo-ee Aboriginal Art Gallery in Bondi, Adrian Newstead, says local Aborigines have every right to be disgusted. "Only a few Aboriginal artists ever win the right to depict wanjina, and only then after years of initiations and ceremonies. And then this artist rocks up and says, 'Bugger all that; I'll just do whatever I like'."

Tobin says he warned Tenodi not to go ahead, but that she ignored him. Matters escalated when she commissioned the Sydney artist Ben Osvath to sculpt the sandstone mural of wanjina. She describes the work as a "magic stone" with "special healing powers". The night before its unveiling on March 6 it was attacked with an axe.

"Some of the locals are going on with the whole 'you are stealing our culture' routine," Osvath says. "But I am an art teacher, and in art it's anything goes."

Osvath, who teaches at Matraville Sports High School, says there is now a "vigilante thing" going on in Katoomba. The sculpture's opponents have set up a website, which criticises Tenodi for holding in contempt "important spiritual beliefs".

Tenodi, who has since moved temporarily to Sydney, also claims her Katoomba house has been vandalised. "The police advice was to cut my losses and move away while we can," she says.

Asked if she had sought permission to use the image, Tenodi says she did not need to. "It was actually the other way around - the spirits asked me to do this. They asked me to revive the tradition which has turned into dead knowledge, and I agreed."

She calls the spirits "Those-Who-Know" or the "DreamTimeKeepers", "teachers from other realms" with whom she has taken an "oath of secrecy". She says she has been selected to "revive the spirituality from which the so-called Aboriginal elders have become so disconnected".

Emotions spilled over during a meeting with Aborigines last Saturday, at which Osvath was called "a dog". One man told Tenodi: "You are going to die. You'll die soon; you'll die a terrible, terrible death."

Tobin concedes that such threats may have been made "in the heat of the moment" but "we do believe there will be spiritual repercussions for Vesna for doing these things".

Misappropriation of Aboriginal culture is hardly new. In 1997 the Aboriginal artist Eddie Burrup was unmasked as being a non-indigenous painter, Elizabeth Durack; a year later, one of the brightest stars in Aboriginal art, Sakshi Anmatyerre - whose buyers included the Sultan of Brunei, the Brisbane Broncos, Paul Hogan and the Packer family - turned out to be an Indian artist named Farley French.

More recently, Mayvic, a wholesaler of household goods, was forced to withdraw "authentic" Aboriginal rock art magnets after the Australian Competition and Consumer Commission raised concerns.

But Tenodi is unmoved. "And we'll keep on doing it no matter what the local community might say. Besides, the stone has become a landmark. Soon it will be better known around the world than the Three Sisters."

8 November 2010

BY REGISTERED MAIL

Damir Tenodi & Vesna Tenodi trading as Modrogorje
Registered Business No. BN98329500
5 Stanley Street
Arncliffe NSW 2205

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31 Market Street
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Telephone: +61 2 9393 0300
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CONFIDENTIAL COMMUNICATION

Dear Sir & Madam

Unauthorised Use and Reproduction of Wandjina Imagery

We act on behalf of the Worrorra, Wunumbal and Ngarinyin Aboriginal people, who are together the custodians of the Wandjina law and sites of the Western Kimberley.

For many thousands of years, the above Aboriginal people have been painting images of the "Wandjina", recognised by those people as the supreme creator and maker of the earth and all upon it, at sacred rock sites and in caves, on dance totems and bark, and now on canvas and paper ("**Wandjina Imagery**"). The Wandjina is of utmost importance to the Worrorra, Wunumbal and Ngarinyin Aboriginal people and the Wandjina Imagery is sacred. The Wandjina is one of the oldest, most powerful and well-known subjects depicted in Aboriginal art and is well known amongst the wider community of artists and collectors of art.

In traditional Aboriginal belief, our clients are the only Aboriginal people entitled to depict the Wandjina. This right is well-known and observed by all other Aboriginal people and groups.

It is in light of the above that our clients are extremely concerned by the following:

1. the unauthorised use and reproduction at the Modrogorje Wellness and Art Centre located at 71 Lurline Street, Katoomba, New South Wales of Wandjina Imagery including in respect of the "Wanjinas [sic] by Gina" exhibition at the above Katoomba premises and the sculpture depicting Wandjina at the entry of the above Katoomba premises. Attached and marked "A" are photographs of the latter;
2. the publication entitled "Dreamtime Set in Stone: The Truth about Australian Aborigines" (of which Ms Tenodi is the author), which publication includes images of the abovementioned exhibition and is promoted and sold on your website www.modrogorje.com ("**Modrogorje Website**");
3. the references to Ms Tenodi as the "Wanjina [sic] CEO" on the Modrogorje Website;

4. the promotion of the "Wanjina [sic] Rising – DreamArt Competition in Australia" and the "Wanjina [sic] Rising – DreamArt Competition in Europe" on the Modrogorje Website, by which competition entrants are invited to depict and submit Wandjina Imagery.

("Offending Conduct")

Our clients find the above conduct, and in particular, the unauthorised use of Wandjina Imagery, offensive for the following reasons:

- You are not from our clients' language or cultural groups;
- You did not obtain permission from our clients to use the Wandjina Imagery;
- The depiction of the Wandjina Imagery incorporates mouths. The Wandjina is **never** depicted in this way. This depiction is particularly offensive to our clients. The Wandjina are too powerful to be depicted with mouths – their power descends to Earth through the line seen as a nose; and
- You are using Wandjina Imagery and inviting others to depict Wandjina Imagery for commercial purposes and are thereby abusing our clients' indigenous culture.

The above unauthorised use of Wandjina Imagery appears to have been acknowledged in approximately October 2009 when Ms Tenodi contacted the Mowanjum Artists Spirit of the Wandjina Aboriginal Corporation to seek permission in respect of the use of Wandjina Imagery at the above Katoomba premises. We understand that Ms Tenodi's request for such permission was refused.

Further, the Modrogorje Website (and the exhibition at the above Katoomba premises) suggests, contrary to fact, that the drawings/paintings at the abovementioned exhibition are "Wanjina [sic] paintings" and that the sculptures at that exhibition include "Wandjina drawings in stone". We further note that, the exhibition itself is entitled "Wanjinass [sic] by Gina".

The Offending Conduct constitutes a breach of Section 42 of the New South Wales *Fair Trading Act 1987* in that it is conduct, in trade or commerce, that is misleading or deceptively or is likely to mislead or deceive members of the public into believing that the goods and/or services provided by you are provided by our clients, or with the licence, sponsorship or approval of our clients. The Offending Conduct is also in breach of Section 44 of the *Fair Trading Act 1987* in that it falsely represents to members of the public that you have the sponsorship or approval of our clients or are otherwise affiliated with our clients.

Accordingly, our clients are entitled to commence proceedings against you and seek remedies including an injunction, damages and costs.

We have therefore been instructed to require the following written undertakings from you:

1. that you will immediately and permanently remove from the Modrogorje Website all uses of Wandjina Imagery including in respect of images of paintings, sculptures, drawings or otherwise;
2. that you will immediately and permanently remove from the premises located at 71 Lurline Street, Katoomba NSW all uses of Wandjina Imagery including in respect of

drawings, paintings, sculptures (including, without limitation, the sculpture depicting Wandjina at the entry to those premises) or any other form of representation;

3. that you will immediately and permanently cease the promotion and sale of the publication entitled "Dreamtime Set in Stone: The Truth about Australian Aborigines" by Vesna Tenodi and take all steps necessary to prevent any further publication of that title and any other publication which includes Wandjina Imagery;
4. that **by 5.00pm on 26 November 2010** you will deliver up to our offices all copies of the publication referred to in paragraph 3 above which are in your possession, custody or control;
5. that you will permanently refrain from all further use of Wandjina Imagery, including in respect of drawings, paintings, sculptures or any other form of representation, without the prior written approval or authorisation of our clients; and
6. that you will immediately and permanently refrain from representing to members of the public that you are associated with or connected to any or all of our clients.

Our clients require the above undertakings to be furnished to us by no later than close of business on **22 November 2010**.

The above undertakings may be given by signing, dating and returning to us the **enclosed** copy of this letter.

In the event that you fail to provide the undertakings or fail to honour them once given, our clients will take such action that may be necessary against you without further notice, which may include the commencement of court proceedings for injunctive relief, damages and costs.

Our clients reserves all their rights.

Yours faithfully

SPRUSON & FERGUSON LAWYERS

Simon D Williams
BA LLB(Syd) LLM(Lond)
Principal
simon.williams@sprusons.com.au
Encl.

Signed by
Damir Tenodi & Vesna Tenodi trading as
Modrogorje (Business Registration No.
BN98329500):

Damir Tenodi

Vesna Tenodi

Date

29 November 2010

Damir Tenodi & Vesna Tenodi trading as Modrogorje
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CONFIDENTIAL COMMUNICATION

Dear Sir & Madam

Unauthorised Use and Reproduction of Wandjina Imagery

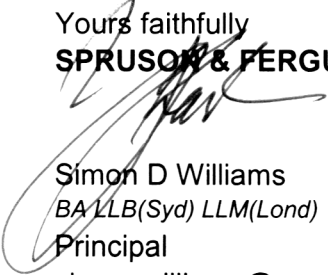
We refer to our letter dated 8 November 2010.

Despite our request that you provide the requisite undertakings by close of business on 22 November 2010, we have not received any response from you.

In the event that we do not receive your response to the above letter within 14 days, we will assume that you have no intention of providing the required undertakings and reserve all our clients' rights to take such further action without further notice to you.

Yours faithfully

SPRUSON & FERGUSON LAWYERS



Simon D Williams
BA LLB(Syd) LLM(Lond)
Principal

simon.williams@sprusons.com.au

5 August 2011

Our Ref: VC 8888
Your Ref:

Ms Vesna Tenodi
t/a ModroGorje
5 Stanley St
Arncliffe NSW 2205

BY REGISTERED MAIL and BY EMAIL

Dear Ms Tenodi,

Arts Law Centre of Australia and its employees – Concerns notice under *Defamation Act 2005 (NSW)*

We act for the Arts Law Centre of Australia ("**Arts Law**"), a not-for-profit company limited by guarantee, and each of its employees individually. This letter constitutes a Concerns Notice under section 14(2) of the *Defamation Act 2005 (NSW)*.

1. Background

- 1.1 We are instructed as follows.
- 1.2 On or about 2 August 2011, a media release was distributed to an unknown number of recipients, which was entitled "Invitation to relocation of the "controversial" *Wanjina Watchers in the Whispering stone* sculpture in Katoomba, the City of Art Censorship" ("**the Media Release**").
- 1.3 Our clients obtained a copy of the Media Release from several people who received it following its public distribution. Our clients have reason to believe that the Media Release was distributed either by you or on your behalf. If this is not the case, please let us know immediately. If we do not hear from you in this regard, we have no option other than to assume that you are the publisher of the Media Release.
- 1.4 Our clients are deeply distressed about the untrue and defamatory content of the Media Release insofar as it refers to, and denigrates, Arts Law and its employees. As you might be aware, Arts Law is a not-for-profit organisation committed to assisting and furthering the legal interests of all Australian artists, including but, of course, not limited to, Australia's Indigenous artists. Solicitors who work for Arts Law are highly qualified and respected lawyers in their fields. Arts Law and its employees are committed to the work undertaken by the Centre and to assisting with the important legal issues facing artists, musicians and all other individuals involved in Australia's creative industries. Arts Law and each of its employees adopt the highest legal and ethical standards. All of our clients have exceptional reputations in the artistic and legal communities and within the public at large. Understandably, they take any threat to their good reputations extremely seriously.
- 1.5 With this background in mind, our clients are extremely concerned about the following statements contained in the Media Release:

- (a) "*Arts Law Centre of Australia keeps making false claims, even though they had to admit there is no copyright on any image in the public domain and that Benedikt Osváth created original, unique artwork*"; and
- (b) "*Aborigines can talk about their "customary lore" ... but should not be allowed to enforce it on the rest of society through constant intimidation, violence and death threats*";

(together, "**the Statements**").

2. The Statements

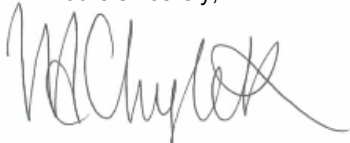
- 2.1 The Statements convey a number of highly defamatory imputations concerning Arts Law and each of its individual employees, including but not limited to, the following:
- (a) Arts Law and its employees make false legal claims;
 - (b) Arts Law keeps making false claims despite having been put on notice that the claims are false;
 - (c) Arts Law and its employees are negligent in their knowledge of Australian copyright law;
 - (d) Arts Law and its employees have and continue to wilfully mislead the Australian public as to legal matters concerning copyright in artistic works;
 - (e) Arts Law and its employees, on behalf of Indigenous artists, engage in conduct that is intimidating, violent and threatening;
 - (f) Arts Law and its employees have, on behalf of Indigenous artists, sent, or have participated in the sending of, death threats to people in respect of Australian artistic issues;
 - (g) Arts Law and its employees are biased in their treatment of Australian artists;
 - (h) Australian artists should be wary of legal advice received from Arts Law and its employees.
- 2.2 We are instructed that none of the defamatory imputations set out above ("**the Imputations**") are true or substantially true.
- 2.3 Indeed, it appears that you are well aware that none of the Imputations are true. We are instructed that you own or control the website operating at <http://modrogorje.com>. In an article entitled "*Among the Hostiles*", which is published on the website at <http://modrogorje.com/hostiles.html#>, the following information is stated concerning Arts Law and its employees:
- "the Arts Law Centre [of Sydney] submission, signed by [a] senior solicitor ... also sent a list of what they would like the law to be. But, at least, they were fair enough to acknowledge the reality, ending the letter with "Unfortunately, until the Federal government legislates to enact such protection, there is at present no obvious legal avenue for complaint about such misappropriation."*
- 2.4 In the circumstances, the content of the Media Release is, to your knowledge, untrue. It has and continues to cause our clients considerable damage to their good reputations within the artistic community, the legal profession and the public at large.
- 2.5 Our clients are unaware of the extent to which the Media Release has been distributed, or the extent to which it may be further redistributed. As you might be aware, a publisher of defamatory content is also liable for any subsequent redistribution of that material which is reasonably contemplated at the time of original publication. A press release is, by its nature, intended to be republished. Accordingly, our clients are justifiably concerned to halt any further damage that might arise through this defamatory publication and to rectify the damage that has already been caused to their good standings in the community.

3. Apology and retraction

- 3.1 For present purposes, our clients are prepared to give you the benefit of the doubt on the basis that you were unaware, or ill-advised, as to the work undertaken by Arts Law and its employees and to the significant damage that has and will continue to be caused by publication of the Statements. You are now so advised. Any further defamatory publications undertaken by you, or at your request, will be relied upon on the question of malice.

- 3.2 Accordingly, our clients demand that you now immediately and unreservedly:
- (a) cease publishing defamatory statements concerning Arts Law and its employees; and
 - (b) issue the attached Apology and Retraction to all recipients of the Press Release.
- 3.3 Our clients are, of course, entitled to escalate the matter, including by initiating court proceedings seeking damages, legal costs and other remedies for defamation and other causes of action. They reserve their rights to do so in the event that their concerns are not immediately and wholly addressed.
- 3.4 Lastly, we are instructed to draw your attention to the wider impact and damage that may flow from the defamatory Media Release. Regrettably, our clients have had no option other than to allocate significant time and valuable resources to responding to the Media Release and attempting to remedy its potential effect on the reputations of all involved. The reputational hurt is more than merely personal. It has the potential to affect the level of funding and resourcing available to a not-for-profit organisation. Lack of funding directly impacts Arts Law's ability to assist genuine and needy Australian artists deal with important legal issues. Denigrating Arts Law and its employees also denigrates the exceptional work they regularly undertake. You, or an artist who you know, may have benefited from the important work undertaken by Arts Law and its employees. The statements in the Media Release are not only defamatory, they are also highly insulting both to the individuals who give the advice, and the Australian artistic community who benefit from it on a day to day basis.
- 3.5 We therefore look forward to resolving this as a matter of urgency.

Yours sincerely,



Victoria Chylek
Senior Lawyer
SIMPSONS SOLICITORS
vchylek@simpsons.com.au

Blue Mountains City Council
Locked Bag 1005
KATOOMBA NSW 2780

council@bmcc.nsw.gov.au

Dear Sir/Madam

Re: Proposal: Art Gallery

Property: 71 Lurline Street, KATOOMBA NSW 2780

Submission in opposition to development application reference: X/525/2010

X/525/2010.

Trim No.	
Rec'd Records	- 9 JUL 2010 BMCC
REFER	Rego
REMITTANCE	

We are writing to object to the above development proposal.

The Arts Law Centre of Australia (**Arts Law**) through the Artists in the Black (**AITB**) service has provided targeted legal services to Indigenous artists and their organisations and communities for the last six years. Much of that advice has focussed on ways of securing effective protection of Indigenous cultural heritage as expressed through Indigenous art, music and performance. It is in the context of that experience that the Arts Law Centre is positioned to speak on behalf of Indigenous communities about the misuse and misappropriation of Indigenous culture.

Our objection is first, a general objection to the operation of a business which appears to be consciously and deliberately engaged in practices which are culturally offensive both to the local Aboriginal Darug community and to the Worrora, Wunumbal and Ngarinyin Aboriginal people, who are the custodians of the Wandjina law and sites of the Western Kimberley.

Second, and for the same reasons, we object in particular to the sculpture on the property frontage which is specifically identified in your letter inviting submissions.

The Worrora, Wunumbal and Ngarinyin Aboriginal people have been painting the Wandjina images for many thousands of years, at sacred rock sites and in caves, on dance totems and bark, and now on canvas and paper.

To those people, the Wandjina is a supreme creator, the maker of the earth and all upon it. Accordingly, the Wandjina is of utmost importance to those people and the Wandjina imagery is sacred – it cannot be used for unapproved purposes.

In traditional Aboriginal belief, the three Kimberley language groups identified above are the only Aboriginal people entitled to depict the Wandjina. This right is respected by all other Aboriginal people and groups – they do not transgress the law of another group.

The distinctive visual representations of the Wandjina by those three language groups are well known amongst many other Aboriginal language groups including the Darug people of the Blue Mountains area.

The Modrogorje Wellness and Art Centre which has been operated by the applicant for approval and which she presumably seeks approval to continue to operate at 71 Lurline Street, Katoomba, New South Wales has made extensive unauthorised use of Wandjina imagery in respect of both paintings and sculptures exhibited at the gallery in the past and the ongoing presence of the large sculpture on the verge of the property. That is offensive to the Kimberley custodians because:

- the applicant is not a member of one of the three Kimberley language groups who are the custodians of the Wandjina imagery and did not obtain permission from them to use the imagery;
- the applicant's depiction of the Wandjina imagery incorporates mouths which is particularly offensive. The Kimberley custodians believe the Wandjina are too powerful to be depicted with mouths; and
- the applicant is using Wandjina imagery for commercial purposes and is thereby abusing Indigenous culture.

It is also deeply offensive to the local Darug people who respect the cultural totems and laws of the Kimberley groups and are themselves shamed by this blatant disregard of Indigenous culture occurring on their traditional lands.

It is also offensive to any non-Aboriginal people who understand and respect Aboriginal culture.

The protection of Indigenous heritage and culture is a matter currently before the Federal government. Recent developments relevant to making progress on this important issue include:

- The Government's commitment to the implementation of the *Declaration on the Rights of Indigenous People*;
- The proposal to establish a National Indigenous Cultural Authority as that envisioned in Terri Janke's *Beyond Guarding Ground*;
- The introduction of the Indigenous Australian Art Commercial Code of Conduct;
- The announcement by the Cultural Ministers Council to appoint Arts Law to implement the Indigenous Intellectual Property Toolkit project;
- The forthcoming WIPO meeting of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) which is looking at the development of an international instrument to protect Indigenous Culture and Intellectual Property.


Australia's obligations under Article 31 of the *Declaration on the Rights of Indigenous People* are to "take effective measures to recognise and protect the exercise of ... rights" to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures.

Unfortunately, until the Federal government legislates to enact such protection, there is at present no obvious legal avenue for complaint about such misappropriation which is why responsibility in this particular instance now rests with the Council when considering this development application.

In our view, it would be a retrograde step were the Council to approve a development application for the operation of a business and the maintenance of a publicly situated sculpture which so plainly misappropriated Indigenous cultural heritage.

Please do not hesitate to contact the writer if you require any further information.

Yours faithfully



Signature

**Delwyn Everard
Senior Solicitor**

The Wandjina case demonstrates the lack of protection for Indigenous culture

By Robyn Ayres on 30th September 2010

The Law Report on ABC's Radio National recently ran a story⁽ⁱ⁾ about a gallery in the Blue Mountains which has erected a large outside sculpture featuring Wandjinas, the creation spirit sacred to three Aboriginal tribes in the Kimberley in Western Australia⁽ⁱⁱ⁾. The gallery, in a separate initiative is also encouraging artists to create their own Wandjinas through the Wandjina Rising Dream Art Competition. In the face of criticism gallery owner, Vesna Tenodi, is unapologetic believing she has been chosen to revive the Wandjinas in the Blue Mountains and does not accept the cultural concerns raised by the traditional owners of the Kimberley region⁽ⁱⁱⁱ⁾.

This case highlights the current gaps in protection provided to Indigenous cultural and intellectual property (ICIP) under Australian laws.

To date, in relation the Wandjina case, the Australian Competition and Consumer Commission (ACCC) has stated it is unable to take the matter any further on behalf of the Kimberley Aboriginal elders, there being insufficient grounds under section 52 of the Trade Practices Act which prohibits misleading and deceptive conduct.

The Copyright Act also does not provide any assistance. First, the works created by the gallery are likely to be considered sufficiently "original" only taking their inspiration from the Wandjinas rather than being copied. Secondly, as many of the Wandjinas found in rock art are ancient, the copyright period of life plus 70 years has long expired so they are therefore considered to be in the public domain.

Given the offence the Katoomba sculpture and gallery has caused not only to the Kimberley traditional owners, but also many of the local Aboriginal community in the Blue Mountains, the gallery's development applications (DAs) to the local shire council under the planning laws for its sculpture park and gallery, have been opposed. The outcome of the DA process is yet to be finalised.

[image]

Katoomba sculpture by Benedikt Osvath (top), photographs by Reinier de Ruit.

This case highlights the pressing need for better protection of Indigenous cultural and intellectual property in Australia. Whilst Arts Law understands that the Australian Government has been examining the current legislative and other measures in place in order to identify the gaps in protection available^(iv), another initiative of the Government to improve understanding and awareness of Indigenous intellectual property (IIP) issues is the development of an IIP toolkit.

Cultural heritage: using council planning laws for protection against unauthorised reproduction

By Arts Law Centre of Australia on 18th April 2011

In 2010, a gallery in the Blue Mountains in NSW erected a large sculpture featuring Wandjinas, the creation spirit sacred to the Worrorra, Wunumbal and Ngarinyin Aboriginal tribes in Western Australia. Artists in the Black was contacted by both the people of the Katoomba area and Mowanjum Arts which represents artists from the three language groups who are the traditional custodians of the Wandjina law and sites of the Western Kimberley. The Dharug and Gundungurra Aboriginal people of the Blue Mountains area were mortified that this conduct was occurring on their traditional lands and felt embarrassed and responsible. All five groups were upset by the unauthorized and disrespectful appropriation of important cultural imagery. They contacted Artists in the Black.

[image]

Kimberley elder DW, Katoomba local CT and unauthorised Wandjina sculpture - photo by Reinier van de Ruit

Although the sculpture was clearly a Wandjina, it did not appear to be a copy of any particular artwork by a known artist and therefore no complaint about infringement of copyright could be made. Copyright protects individual creators of artwork – this situation concerned rights regarded as traditional or communal rights to an aspect of Indigenous culture (also called Indigenous cultural intellectual property or ICIP). Artists in the Black has long been advocating for protection of ICIP but legislative reform is yet to occur. We looked for another solution.

The sculpture was positioned outside the gallery visible from the street and therefore required planning approval from the Blue Mountains Council. Together with the Environmental Defenders Office, Artists in the Black drafted submissions to Council in opposition to the application for development approval which had been lodged by the gallery. In October 2010, the Council rejected that part of the application which related to the sculpture stating: *"the sculpture contains an interpretation of sacred Aboriginal images that is offensive, disturbing or distressful to some members of Aboriginal and non-Aboriginal communities, including local representatives of those communities, as evidenced in public submissions, and consequently has an adverse social impact and is not in the public interest..."*

[image]

3Wandjina by Donny Woolagoodja photo from Mowanjum arts

This case highlights the current gaps in protection provided to Indigenous cultural and intellectual property (ICIP) under Australian laws. It also illustrates how sometimes other laws can be used to protect cultural heritage. Artists in the Black hopes that this case can be used to demonstrate the need for stronger legislation to protect ICIP.

22 JUNE 2011



ARTS LAW CENTRE OF AUSTRALIA

www.artslaw.com.au

ACN 002 706 256 / ABN 002 706 256

Offensive sculpture to be removed

Commissioner Tuor of the New South Wales Land and Environment Court has upheld the decision of the Blue Mountains City Council to remove a controversial stone sculpture depicting Wandjina spirits from the grounds of a Katoomba gallery.

The sculpture was commissioned and is owned by gallery owners Vesna and Damir Tenodi. It has attracted deep criticism from Indigenous Australians for its use of Wandjinas, creation spirits sacred to the Worrorra, Wunumbal and Ngarinyin peoples of the Western Australia Kimberley region who are the traditional custodians. The creation and public display of such a sculpture, by a non-Aboriginal without any consultation, was deeply distressing and offensive to both the traditional custodians and the local Indigenous groups of the Blue Mountains.

The Blue Mountains City Council refused a development application by the Tenodis to situate the sculpture on the verge of their Katoomba premises. The Tenodis appealed this decision to the Land and Environment Court. The matter was heard in Katoomba on 20 June 2011.

The Arts Law Centre of Australia filed a submission opposing the sculpture on the grounds that it had been created and displayed in breach of the traditional laws of the Wandjina custodians and in defiance of the wishes of the local traditional owners. Arts Law argued that its ongoing public display in Katoomba was a public expression of racial, cultural and religious intolerance and, as such, had a substantial adverse social impact.

The Commissioner issued her oral judgment this afternoon upholding the Blue Mountains City Council decision for the removal of the sculpture.

In his submission to the Court, Worrorra elder and senior lawman Donny Woolagoodja said, "The sculpture is a caricature of the Wandjina spirit and its presence mocks and denigrates the spiritual beliefs of the Worrorra people. It exemplifies the racial and religious intolerance of those responsible for the sculpture and their contempt for our religious and spiritual beliefs."

Robyn Ayres, Executive Director of the Arts Law Centre of Australia, welcomed the decision. "This matter has highlighted the current gaps in legal protection afforded by intellectual property laws to Indigenous culture. Given this inadequacy, it is important that planning processes by developers and council take into consideration the impact of disrespectful use of Indigenous culture, particularly around public art," she said.

For further information please contact:

Robyn Ayres, Executive Director, Arts Law Centre of Australia 02 9356 2566; 0404 054 639

Media release – Invitation to censorship protest event

BOXING IN THE WANJINA SPIRITS - PROTEST AGAINST LOCAL COUNCIL AND LAND AND ENVIRONMENT COURT ART CENSORSHIP

On Friday 15 July, from 12 noon to 3 pm, the DreamRaiser Art-in-the-Box protest against censorship continues with placing a huge box over the **Wanjina Watchers in the Whispering Stone** sculpture in front of ModroGorje Gallery at 71 Lurline Street, Katoomba, Blue Mountains.

You are invited to join us and sign our feedback book with your comments about this shameful act by the local bureaucrats, who sprang into action because the image on the stone upsets some Aborigines.

This is a follow up event after five Sydney artists painted the **SAY YES TO WANJINA... AND NO TO CENSORSHIP** mural in Sydney last month, in response to the LEC decision to uphold the local council order for the sculpture created by artist Benedikt Osvath to be removed from the front lawn of the ModroGorje gallery.

Vesna Tenodi, the ModroGorje gallery owner, said: "The DreamRaiser project events are our artistic protest against the decision by the local council to dictate what artists can create. The bureaucrats manipulated planning laws and used the heritage listing of the house and the "stone's visual prominence" as an excuse to enforce censorship. This is a worrying outcome for every artist and free thinker in Australia.

"We saw even more shameful conduct by the Arts Law Centre that is supposed to protect the rights of **all** artists in Australia, but seems to represent only Aborigines. In utter contempt for Australian law, they advocate for censorship and are now actively encouraging people to manipulate other laws, such as planning laws, to enforce some non-existent law. In an article of 18 April 2011 they showed their intention to do whatever it takes to censor artists:

Although the sculpture was clearly a Wandjina, it did not appear to be a copy of any particular artwork by a known artist and therefore no complaint about infringement of copyright could be made... We looked for another solution... It also illustrates how sometimes other laws can be used to protect cultural heritage.

"As far back as September 2010, the Arts Law Centre conceded the ancient imagery is in the public domain:

The Copyright Act also does not provide any assistance. First, the works created by the gallery are likely to be considered sufficiently "original" only taking their inspiration from the Wandjinas rather than being copied. Secondly, as many of the Wandjinas found in rock art are ancient, the copyright period of life plus 70 years has long expired so they are therefore considered to be in the public domain.

"In our opinion, the Arts Law Centre has no capacity to comprehend that rock art belongs to world heritage, and keeps making these pitiful and embarrassing attempts to "protect" Aborigines. Even more ridiculous is that they are helping Aborigines in attempts to claim ownership of the cave paintings which Aborigines never created in the first place, but found when they arrived.

"To top it all off, on 22 June 2011 the Arts Law Centre sent a media release full of false claims and slanderous accusations, in breach of Australian legal practitioners' ethics and in contempt of Australian law. They are fully aware that there is no ownership of ideas, and that there is no requirement for any artist to engage in any consultation or seek "permission" from anyone. Australian artists are still free to paint, and under no obligation to follow any "traditional lore" nor to show respect for the communist-like propaganda as constantly pushed by this Arts Law crowd.

"The Arts Law Centre keeps making racist, derogatory comments about any artist or artwork that Aborigines find "offensive", which shows that they know little about art and the democratic rights of the other 98 percent of the Australian population. Their bigoted approach to art makes the Australian art-scene an object of ridicule in the eyes of the developed world, showing how backwards and archaic their thinking really is."

Media release

Invitation to relocation of the “controversial” *Wanjina Watchers in the Whispering Stone* sculpture in Katoomba, the City of Art Censorship

On Friday 5 August 2011, from 12 to 2 pm, the *Wanjina Watchers in the Whispering Stone* sculpture by Benedikt Osváth will be moved from the front lawn of the ModroGorje Gallery at 71 Lurline Street, Katoomba, Blue Mountains.

The sculpture will be relocated to a spot a couple of minutes away, where it can still be viewed by locals and tourists, so that art lovers will still be able to enjoy it.

The DreamRaiser project artists are now staging a number of events, with planting of Wanjina Watcher sticks and mural painting of Wanjina Watchers in various places, in protest of the local council misuse of power, and to reclaim their right to art without censorship.

ModroGorje owner Vesna Tenodi said, “The protest box we created around the sculpture on 15 July was vandalised within days, showing the local thugs were again trespassing and vandalising, having no respect for other people’s rights.

In response to this mountains council farce, a group of intellectuals are now compiling a research paper under the working title of: **“The social impact of Aboriginal hate in contemporary Australian society – a social, political, and archaeological study, examining art censorship”**. This document analyses the impact of stone-age mentality on the white-guilt-ridden social mindset, and examines the new phenomenon of reverse racism and violence, condoned and encouraged by the local bureaucrats.

“We’ll be running a number of events, to raise awareness that Aboriginal harassment of artists, which has been going on ever since Margaret Preston, is not acceptable and should no longer be tolerated.

“We explore the Wanjina and Bradshaw groups of cave paintings. Both groups belong to pre-Aboriginal prehistoric Australian cave art, are in the public domain, and every artist is free to explore them. The Aborigines lost contact with their own spiritual tradition and can no longer understand nor explain the ancient cave paintings which they never created but found when they arrived.

“A positive outcome of our ordeal is that we succeeded in getting the truth out. Now everybody knows that the Aboriginal harassment and accusations of “copyright breach” and “ownership” are legally unfounded. There is no copyright on prehistoric art. There is no ownership of ideas. Most people did not know that, and were unaware that Aborigines never created the original cave paintings. Australian artists do not need to consult anyone, nor to seek anyone’s “permission” or “authorisation” to paint or sculpt any image in the public domain.

Arts Law Centre of Australia keeps making false claims, even though they had to admit there is no copyright on any image in the public domain and that Benedikt Osváth created original, unique artwork. Aborigines can talk about their “customary lore” and enforce it on each other **within** their own communities, but should not be allowed to enforce it on the rest of society through constant intimidation, violence and death threats.

We lost our case because the local bureaucrats manipulated planning laws. But we raised awareness of important issues – artistic freedom, freedom of speech and the civil rights of non-indigenous artists.

“We are very passionate about our freedom of expression. We feel contempt for these totalitarian tactics of anyone trying to dictate what we should think or write or say or paint.”



Media release

Blue Mountains police caught a man in the act of vandalising and desecrating the *Wanjina Watchers in the Whispering Stone* sculpture by Benedikt Osváth



The *Wanjina Watchers in the Whispering Stone*, 8.5 ton sandstone sculpture by Benedikt Osváth, in front of ModroGorje Gallery at 71 Lurline street in Katoomba, was again vandalised last Sunday 7 August 2011 about 5pm.

People from the RSL club across the road saw the perpetrator throwing paint over the artwork and called the police. The police caught him and took him away. The eyewitnesses have seen the same man repeatedly raving and ranting in front of the gallery and abusing the owners last year.

The owners Vesna and Damir Tenodi have been terrorised since December 2009, with a number of incidents of harassment, threats, malicious damage and vandalism reported to the local police. But this was the first time the police was able to catch one of the perpetrators in the act, covered in paint and with his fingerprints all over the sculpture.

Vesna said:

“We are now looking into the Arts Law Centre of Australia’s role in this shameful protracted saga.

“It was reported that on 24 November 2010, the Arts Law Centre representatives conducted a workshop in Katoomba. The workshop was to advise Aboriginal artists of their rights, but it seems it failed to clarify that non-indigenous artists have rights too.

“The Arts Law Centre of Australia is a highly respected Government funded organisation. Its role is to advocate for rights of **all** Australian artists. In the *Wanjina Watchers in the Whispering Stone* case, their duty would logically be to offer support to the artist Benedikt Osváth and protect his right to artistic freedom. But they chose to side with the Blue Mountains Council and support the Council’s intention to enforce censorship.

“We are now looking into the Arts Law Centre submissions to the council, and oral evidence provided by their representative at our onsite Land and Environment Court hearing on 20 June 2011. In our view, what was said represented an overly emotional personal opinion, rather than a legal argument or legal justification for their condemnation of our art.

“Our artists now expect a public clarification of the role played by the Arts Law Centre in our case. They need to hear why the Arts Law Centre has failed in its duty to protect their rights. They also need a clear statement that the Arts Law Centre does not, directly or indirectly, or simply by doing nothing, condone or encourage violence and vandalism against non-indigenous artists.

“In the eyes of some non-indigenous artists, support for the removal of the Wanjina Watchers sculpture has made the Arts Law Centre a joke, and their over-reaction to our art might appear as encouragement to reverse discrimination.

“Another major concern is the practice of encouraging threats of legal action against any artist who upsets Aborigines. Australia is still a democracy and we should be free to express our opinion and paint and sculpt without fear. We should not have to consult a defamation lawyer every time we open our mouth. We should not have to consult an expert lawyer every time we create a piece of art.

“Our art is not a legal matter. It is an artistic matter, and a spiritual matter, but the Arts Law Centre seems eager to make a case where a case cannot be made. It seems silly to keep pushing for the “protection” of ethnographic material and prehistoric imagery to be incorporated into Australian law. It is not a matter of Australian law being inadequate, it is a matter of common sense. There is no such “protection” or “ownership” of ancient imagery, or even recent imagery, in any other country on earth.

“The absurdity of some demands can be illustrated with examples that were brought to our attention – such as when an artist in his studio in Sydney, painting semi-abstract interpretations of Uluru, was requested to pay an annual fee of \$250 for a “permit” to do so. This is a preposterous demand, for “permission” and a fee to paint a landscape feature. Do we have to pay a fee to the Egyptians for painting a pyramid? Or to the Greeks to paint the Parthenon? To the Chinese to paint the Great Wall or terracotta warriors? Or to the French to paint the Eiffel Tower?

“To any objective person, it is clear that our DreamRaiser project is a tribute to ancient spirituality – our spiritual art clearly shows that. But the lawyers, so keen to be seen as “protectors”, keep fuelling the fire and encourage anti-social behaviour, that ends up in confrontation instead of co-operation.

“We hope the Arts Law Centre will act promptly. We and our artists Benedikt Osváth and Gina Sinozich have suffered enormous damage to our reputation, constant slanderous attacks, ongoing distress, as well as considerable losses in terms of money, time and effort, with our plans for having a peaceful, harassment-free and creative life in the Blue Mountains ruined.”

00144

Sharon Roberts

From: Anita O'Connor CEO TLALC [tlalc@bigpond.com]**Sent:** Monday, 25 October 2010 11:45 AM**To:** Blue Mountains Corporate E-Mail**Subject:** Wanjina

Dear Blue Mountains City Council councilors,

Please take immediate action to remove the Katoomba Wanjina so called 'sculpture'.

This could be a positive public relations move for bmcc, and demonstrate respect for Aboriginal people; I note your website photo of customer service staff.

Fail to remove this insulting travesty and bmcc will stand permanently condemned by Aboriginal people across Australia.

Don Stephens
Administrative Officer
Tibooburra LALC
Ph-0880913435
Fax-0880913446

ABC Kimberley 20 October 2010 – Daniel Myles

The development application has to be assessed against our planning guidelines, many of which are objective, but there is also room for subjectivity. If there is a community concern about the matter, sometimes we are able to act on that, and sometimes we are not. On this occasion there was a significant community concern, we could find minimal community benefit about the display of this artwork, and hence, with the submissions we received, which were overwhelmingly against, I think 15 to 1 against, we decided that the best decision given the cultural sensitivities was not to approve that sculpture and... although we did approve Ms Tenodi's art gallery, she has an art gallery on the same site, she's got approval for that, but the sculpture itself was not approved and will have to be removed.

Vanessa Mills: Could it be viewed though as censorship of the arts?

DM: I would not do that, no, I think that art has to be sympathetic, it has to be understanding, especially of cultural sensitivities, and freedom of expression is certainly committed, I don't know that it has to be committed on the front yard of a fairly busy street in a very busy tourist town.

VM: Does she gave grounds for appeal though, you know, it's on her land, it's her sculpture, could you see some legal difficulties up ahead of you, Daniel Myles?

DM: We are extremely confident of our legal position, but of course the right of appeal applies to any applicant and she could take that to a further court, Land and Environment Court if she so chooses, she has that right, however, given the cultural sensitivity I would think we are on a very solid ground.

VM: Tell me a bit more about the things that council's received from the public, the reactions to the sculpture.

DM: Well, Aboriginal people are very spiritual, and mystic if I can use that term, they feel an enormous connection not just to the imagery but also to the rock in which it's carved, and people from the Darug and Gundungurra here and also from the Kimberley said that it's Kimberley's stone and they had a problem with the fact that stone was taken from another country, and put into a country here, and then of course there is the image itself, which is of their creator, and they felt that the handling of that, ahem, by someone who wasn't Aboriginal, was done without any reference to the local people, or to people elsewhere, I understand, ahem, was, frankly, a little bit sharp and ought to have been done with a little bit more consideration. One way or the other, they felt that ... wasn't something they want to see every day as they went along the street and they are very much against its positioning there.

VM: Did the council get such submissions formally, did you get formal submissions from Aboriginal groups?

DM: That's correct. And from private individuals as well.

VM: And has this controversy been bad publicity for Katoomba?

DM: No, not at all, no. We, we, welcome all people, various faiths, opinions, religions, it's a fairly mellow, easygoing area and, you know, I don't think that taking a stand on behalf of one section of the community would be viewed as negative in any way.

VM: So then are the days numbered for the eight-point-five ton Wanjina sculpture on the main street?

DM: Well, the legalities are that the approval hasn't been given, therefore it will have to be removed, subject to whether or not Ms Tenodi decides to appeal... ahem, so I would say if she does not appeal, then yes, of course, she will receive the notice at the appropriate time, which is a certain number of days after the council meeting, should be arriving this week, I would think, ahem, and yes, it will have to be removed from the site that it's on.



WANJINA WATCHERS IN THE WHISPERING STONE

ARTIST: BEN OSVÁTH



ModroGorje House

71 Lurline Street, Katoomba, NSW 2780

www.modrogorje.com

WANJINA WATCHERS

IN THE WHISPERING STONE

as envisioned by the DreamTimeKeepers
carved by Ben Osvath
supervised by Vesna Tenodi,
the DreamRaisers Project manager,
on behalf of the Those-Who-Know



Between 21/12/09 and 21/02/10 a Sydney artist and educator Ben Osvath carved an 8.5 ton sandstone block at ModroGorje House in Katoomba. This is now the biggest stone sculpture ever carved by a sole artist in Australia.

This is part of Stage 2 of the DreamRaisers project. Stage 1 was completed with the launch of the book *"Dreamtime Set in Stone – the Truth about Australian Aborigines, as requested by the Those-Who-Know"* by Vesna Tenodi and the *Wanjinas* exhibition by Gina Sinozich.

The book, the first in the DreamRaisers Trilogy, is illustrated with Gina's Wanjina paintings. The second book will chronicle the carving of the stone, explain the dynamics between its participants, the artwork's meaning, the stone's purpose and the Watchers' significance.

The Those-Who-Know (DreamTimeKeepers) named this sandstone the **Whispering Stone** and explained its special purpose. While overseeing Ben's work within the DreamRaisers Project, Vesna Tenodi has been guided by the Those-Who-Know, passing their instructions on to Ben and providing the input, adjusting and tweaking the imagery to ensure the final design fits well and is fully compatible with the project's purpose. Once the sculpture was carved it was named **Wanjina Watchers**.

This mesmerising artwork is yet another result of such multi-level collaboration, and with this stone carving Ben has contributed to the DreamRaisers project in the same way as the other participating artists, Gina Sinozich and Goomblar Wylo.

In this kind of collaboration, the artist is initially inspired by the most obvious – by the given medium, be it a stone, a canvas or a didgeridoo – but much more important than that, every artist participating in the DreamRaisers project receives guidance from other levels, surpassing rational reasoning.

The Wanjina Watchers in the Whispering Stone artwork tells a multi-layered story. Each of its four sides carries its own message, contributing to the stone's purpose. All those layers of meaning are to be explained in the second part of the DreamRaisers trilogy, but for now remain a mystery even to the artist.

But then, the artist's primary task is to create, not to explain. And in order to create truly great art, the artist needs to be open to other, higher influences – only in such moments, when the mind is opened by trust, can the artist create a true masterpiece. While carving the Watchers, Ben's disposition enabled him to become a participant in a true miracle. The Watchers sculpture now belongs to the same category as Gina's Wanjina paintings and Goomblar's didgeridoo performance at ModroGorje – as those two artists were guided by the same influences as Ben, while completing their tasks.

Once the project is completed, the artists themselves are left puzzled as to what force has been guiding them, and amazed with the power of their masterpiece. Once the task is accomplished, as if snapping out of an altered state, the artist starts looking for some logical explanation. At this point, reason interferes and overrides the heart; the artist shuts down, the guidance is gone, leaving a bittersweet memory of those inexplicable moments of divine influence – until the next brush with Kairos.