



# Tireless advocacy an appeal to justice

*Dr Bob Moles with Ms Bibi Sangha*

*Photo: Ashton Claridge*

'Activism' is a loaded word, conjuring images of noisy protesters, angry placards and street demonstrations.

But Ms Bibi Sangha, a Flinders law academic, and her colleague Dr Bob Moles have proved how fighting for a cause through quiet, persistent and rigorous effort – using our democratic processes and institutions – can have far-reaching consequences.

South Australia's Attorney-General John Rau has recently instructed his department to draft a new statutory right of appeal that will enable prisoners with evidence of a wrongful conviction to directly approach the courts.

It is the culmination of years of advocacy and research by Ms Sangha and Dr Moles, who have argued in books, international journals and a variety of public forums that legal limitations that restrict the right to fair trial put South Australia – and Australia – at odds with international rights and obligations.

Ms Sangha said that the self-imposed limitations potentially leave unfairly convicted people unable to contest miscarriages of justice.

"For instance, the Court of Appeal says that even in the face of compelling new evidence, it cannot hear a further appeal once an initial appeal has been rejected," Ms Sangha said.

Similarly, the High Court says that constitutionally it is unable to receive fresh evidence indicating a possible miscarriage of justice.

And in South Australia, the remaining option of a statutory petition falls to the discretion of the Attorney-General, meaning that the petition may never achieve a judicial review.

This is even when there is new evidence, or clear evidence of errors by the prosecution's expert witnesses, Ms Sangha said.

"In effect, unfair convictions are being excluded from the judicial review process, which is clearly inconsistent with the United Nations International Covenant on Civil and Political Rights," she said.

Ms Sangha said that the deficiencies fly in the face of international legal principles and also of the rule of law.

"I see it as a very serious and fundamental failure of the legal system, and it has been going on for some 30 years," she said.

Earlier this year, Ms Sangha appeared before the South Australian Legislative Review Committee in support of a 76-page submission written by her and Dr Moles that outlines the failure of judicial processes to allow for post-conviction reviews of alleged miscarriages of justice.

It is estimated, for example, that more than a dozen existing South Australian convictions for serious crimes have grounds for a judicial appeal.

It was their 2010 book on unjust convictions stemming from flawed forensic evidence that first prompted Ann Bressington MLC to propose the establishment of a Criminal Cases Review Commission (CCRC), along UK lines, which was then referred to the Committee.

While the Committee did not back the setting up of a broadly based CCRC, it recommended the formation of a Forensic Review Panel that will have the capacity to recommend appeals in the light of doubt over forensic issues.

The committee also recommended a review of expert evidence and the way it is received in courts in criminal matters.

"We highlighted in our book and in our submission to the inquiry that a common cause of wrongful convictions is the admission of unreliable forensic evidence," Ms Sangha said.

"It can have a seriously prejudicial effect on the minds of jurors – and is frequently not sufficiently scrutinised by judges or probed or tested by defence lawyers," she said.

Ms Sangha's position was supported the Australian Human Rights Commission, which has also made a submission to the Legislative Review Committee.

"Essentially they agree with what we have been saying – that the criminal appeals system across Australia does not protect the right to fair trial, and does not provide a proper opportunity for appeal for someone who is the subject of a miscarriage of justice."

If passed, the Bill is likely to have profound ramifications in South Australia and possibly in other States which may modify their own legislation to retain a common national approach.

**Charles Gent and Vincent Ciccarello**