SSRN tomorrow's research today

LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES
VICTORIA UNIVERSITY OF WELLINGTON LEGAL RESEARCH PAPERS

Vol. 7, No. 39: Dec 12, 2017

FAYE MCINTOSH, ASSISTANT EDITOR
University of Otago
faye.mcintosh@hotmail.com

NINA OPACIC, ASSISTANT EDITOR
Victoria University of Wellington - Faculty of Law
nina.opacic@live.com

JOHN PREBBLE QC, EDITOR
Professor of Law, Victoria University of Wellington - Faculty of Law, Gastprofessor, Institut für Österreichisches und Internationales Steuerrecht, Wirtschaftsuniversität Wien, Adjunct Professor of Law, University of Notre Dame Australia - School of Law
john.prebble@vuw.ac.nz

Browse ALL abstracts for this journal

Links: **Subscribe ~ Unsubscribe** | **Distribution** | **Network Directors** | **Submit ~ Revise Your Papers**

Announcements

VUWLRPS Special Issue: Selected Papers by Dr. Edward Clark

Table of Contents

^top

LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES
VICTORIA UNIVERSITY OF WELLINGTON LEGAL RESEARCH PAPERS

"Reasonably Unified: The Hidden Convergence of Standards of Review in the Wake of Baker"

(2018) Canadian Journal of Administrative Law and Practice 1
Victoria University of Wellington Legal Research Paper No. 160/2017

EDWARD CLARK, Victoria University of Wellington - Faculty of Law
Email: eddie.clark@vuw.ac.nz

In the aftermath of Baker v Canada (Minister of Citizenship and Immigration) in 1999, many scholars saw the potential for the fusion of process and substance in Canadian judicial review. As it transpired, Canadian administrative law doctrine hardened into a bifurcated approach, with procedural matters being reviewed on a correctness standard, and substantive review typically attracting reasonableness.

This article argues that the formal standard of review (correctness) does not match the actual practice of procedural review, which in fact is extremely similar to the judicial method employed in conducting substantive review. The potential fusion signalled by Baker has thus not been as comprehensively abandoned as the standard of review jurisprudence might suggest. This article argues that such a fusion would be beneficial in terms of clarity for potential litigants and in terms of enhancing judicial fidelity to the rule of law.

"Review of 'The Scope and Intensity of Substantive Review: Traversing Taggart's Rainbow' by Hanna Wilberg and Mark Elliott"

(2018) Public Law 1
Victoria University of Wellington Legal Research Paper No. 161/2017

EDWARD CLARK, Victoria University of Wellington - Faculty of Law
Email: eddie.clark@vuw.ac.nz

This is a review of an important book which collects work from around the common law world reflecting on the work of the late professor Mike Taggart. Engaging with the generally very high quality contributions in the volume, the review also makes an argument about the difficulty inherent in applying broad administrative law principles to different constitutional contexts: they typically crystallise into quite different expressions of said principles, making comparison and transplant risky. Given the frequency with which such attempts at transplant are undertaken, caution is important.

"The Construction of Homosexuality in New Zealand Judicial Writing"

(2006) 37 Victoria University of Wellington Law Review 199
Victoria University of Wellington Legal Research Paper No. 162/2017

EDWARD CLARK, Victoria University of Wellington - Faculty of Law
Email: eddie.clark@vuw.ac.nz

This article examines the language used by New Zealand judges to describe homosexuality. It analyses the use of such language in judgments delivered after the decriminalisation of homosexual intercourse in 1986, examining the effect that judicial language has on rights claims made by homosexuals.

The article argues that a significant number of judges are careless or ill-informed in the language they use to refer to homosexuality and that the language used reinforces and repeats a number of negative stereotypes about homosexuality, constructing it as inferior to a heterosexual norm. This article criticises such careless or prejudiced language as incompatible with New Zealand's human rights commitments and argues that this language constitutes a barrier to the full enjoyment of citizenship by homosexual New Zealanders.

"The Needs of the Many Outweigh the Needs of the Few: A New System of Public Interest Intervention for New Zealand"

(2005) 36 VUWLR 71
Victoria University of Wellington Legal Research Paper No. 163/2017

EDWARD CLARK, Victoria University of Wellington - Faculty of Law
Email: eddie.clark@vuw.ac.nz

The traditional adversarial system sees the courts as simply a means of resolving disputes between private parties. The dispute is thus no one else's concern but the parties'. This view of the courts' role, however, fails to take into account judicial lawmaking. If a person is affected by an act of lawmaking, it is only just that they should have a chance to be heard. Further, before they make a decision the courts should understand the perspectives of those who will be affected by the rule laid down.

This article argues that allowing affected nonparties to make submissions as public interest intervenors will assist both the affected persons and the courts. In order to balance the interests of the parties, the intervenors, and the public at large effectively, a comprehensive system of rules that both welcome and regulate public interest intervention is needed. This article recommends the adoption of such a system of rules, substantially based on the effective and well-established rules on intervention contained in the Rules of the Supreme Court of Canada.

"Ex Parte Orders in the Family Court and the New Zealand Bill of Rights Act 1990"

(2003) 4 Butterworths Family Law Journal 205.
Victoria University of Wellington Legal Research Paper No. 164

EDWARD CLARK, Victoria University of Wellington - Faculty of Law

Email: eddie.clark@vuw.ac.nz

The Family Court is frequently in the public eye. Perhaps surprisingly, there is a paucity of cases involving the New Zealand Bill of Rights Act 1990 (NZBORA), and a lack of consideration of its public impact.

This paper examines one aspect of the Family Court's operation that raises serious Bill of Rights concerns. The author considers extent to which the practice of granting ex parte orders is consistent with the right to natural justice guaranteed by s 27(1) of NZBORA. The particular focus is on the practice of granting ex parte protection orders under the Domestic Violence Act 1995, with reference to the recent High Court judgements, D v D and Y v X, which touched on these issues.

^top

About this eJournal

Victoria University of Wellington Legal Research Papers Series primarily contains scholarly papers by members of the **Faculty of Law at Victoria University of Wellington**. Some issues collect a number of papers on a similar theme to form a suite of papers on a single topic. Others issues are general or distribute mainly recent work.

The Student/Alumni Series is a subseries of the Victoria University of Wellington Legal Research Paper Series. The subseries started in 2015 and publishes papers by students and alumni of Victoria University of Wellington, comprising primarily work for honours and postgraduate courses. Papers are collected into thematic or general issues.

The Victoria University of Wellington was founded in 1899 to mark the Diamond Jubilee of the reign of Queen Victoria of Great Britain and of the then British Empire. Law teaching started in 1900. The Law Faculty was formally constituted in 1907. The first dean was Richard Maclaurin (1870-1920), an eminent scholar of both law and mathematics. Maclaurin went on to lead the Massachussetts Institute of Technology as President in its formative years. Early professors included Sir John Salmond (1862-1924), still one of the Common Law's leading scholars. His texts on jurisprudence and torts have gone through many editions and remain in print.

Alumni include Sir Robin Cooke (1926-2006), one of the leading judges of the British Commonwealth. As Baron Cooke of Thorndon, he sat on over 100 appeals to the Appellate Committee of the House of Lords, one of very few Commonwealth judges ever appointed to do so.

Since 1996 the Law School has occupied the Old Government Building in central Wellington. Designed by William Clayton and opened in 1876 to house New Zealand's then civil service, the building is a particularly fine example of Italianate neo-Renaissance style. Unusually among large colonial official buildings of the time it is constructed of wood, apart from chimneys and vaults.

The School is close to New Zealand's Parliament, courts, and the headquarters of government departments. Throughout Victoria's history, our law teachers have contributed actively to policy formation and to law reform. As a result, in addition to many scholarly articles and books, the Victoria SSRN pages include a number of official reports.

Victoria graduates approximately 230 LLB and LLB(Hons) students each year, and about 60 LLM students. The faculty has an increasing number of doctoral students. Ordinarily there are ten to twelve students engaged in PhD research.

Victoria University observes the British system of academic ranks. In North American terms, lecturers and senior lecturers are tenured doctrinal scholars, not legal writing teachers. A senior lecturer corresponds approximately to a North American associate professor in rank.

Submissions

To submit your research to SSRN, sign in to the **SSRN User HeadQuarters**, click the My Papers link on left menu and then the Start New Submission button at top of page.

Distribution Services

If your organization is interested in increasing readership for its research by starting a Research Paper

Series, or sponsoring a Subject Matter eJournal, please email: **sales@ssrn.com**

Distributed by

Legal Scholarship Network (LSN), a division of Social Science Electronic Publishing (SSEP) and Social Science Research Network (SSRN)

Directors

LAW SCHOOL RESEARCH PAPERS - LEGAL STUDIES

BERNARD S. BLACK
Northwestern University - Pritzker School of Law, Northwestern University - Kellogg School of Management, European Corporate Governance Institute (ECGI)
Email: **bblack@northwestern.edu**

RONALD J. GILSON
Stanford Law School, Columbia Law School, European Corporate Governance Institute (ECGI)
Email: **rgilson@leland.stanford.edu**

Please contact us at the above addresses with your comments, questions or suggestions for LSN-LEG.

^top

Links: **Subscribe to Journal** | **Unsubscribe from Journal** | **Join Site Subscription** | **Financial Hardship**

Subscription Management

You can change your journal subscriptions by logging into **SSRN User HQ**. If you have questions or problems with this process, please email **Support@SSRN.com** or call 877-SSRNHelp (877.777.6435 or 212.448.2500). Outside of the United States, call 00+1+212+4482500.

Site Subscription Membership

Many university departments and other institutions have purchased site subscriptions covering all of the eJournals in a particular network. If you want to subscribe to any of the SSRN eJournals, you may be able to do so without charge by first checking to see if your institution currently has a site subscription.

To do this please click on any of the following URLs. Instructions for joining the site are included on these pages.

- **Accounting Research Network**
- **Cognitive Science Network**
- **Corporate Governance Network**
- **Economics Research Network**
- **Entrepreneurship Research & Policy Network**
- **Financial Economics Network**
- **Health Economics Network**
- **Information Systems & eBusiness Network**
- **Legal Scholarship Network**
- **Management Research Network**
- **Political Science Network**
- **Social Insurance Research Network**
- **Classics Research Network**
- **English & American Literature Research Network**
- **Philosophy Research Network**

If your institution or department is not listed as a site, we would be happy to work with you to set one up. Please contact **site@ssrn.com** for more information.

Individual Membership (for those not covered by a site subscription)

Join a site subscription, request a trial subscription, or purchase a subscription within the SSRN User HeadQuarters: **https://hq.ssrn.com/Subscriptions.cfm**

Financial Hardship

If you are undergoing financial hardship and believe you cannot pay for an eJournal, please send a detailed explanation to **Subscribe@SSRN.com**

^top

To ensure delivery of this eJournal, please add **LSN@publish.ssrn.com (McIntosh/Opacic/Prebble)** to your email contact list. If you are missing an issue or are having any problems with your subscription, please Email Support@ssrn.com or call 877-SSRNHELP (877.777.6435 or 585.442.8170).

FORWARDING & REDISTRIBUTION

Subscriptions to the journal are for single users. You may forward a particular eJournal issue, or an excerpt from an issue, to an individual or individuals who might be interested in it. It is a violation of copyright to redistribute this eJournal on a recurring basis to another person or persons, without the permission of Social Science Electronic Publishing, Inc. For information about individual subscriptions and site subscriptions, please contact us at **Site@SSRN.com**

^top