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

Vol. 9, No. 21: Sep 20, 2019

TASNEEM HARADASA, ASSISTANT EDITOR
Victoria University of Wellington, Faculty of Law, Student
tazharadasa@gmail.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

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Announcements

Victoria University of Wellington Student and Alumni Sub-Series Part 3: Human Rights Law

Human Rights Law is the third in 2019 of several issues of the Student/Alumni Sub-Series of the Victoria University of Wellington Legal Research Paper Series.

The Student/Alumni Sub-Series was launched in 2015. It distributes a selection of Honours and Postgraduate papers from Victoria University of Wellington Law School. The Sub-Series includes both general and thematic issues.

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"A Misuse of Emergency Powers? An Analysis of the Legality of Fiji's 2006 and 2009 States of Emergency and Public Emergency Regulations"
Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 7/2019

CAREY BENTLEY-BECKHAM, Victoria University of Wellington, Faculty of Law, Student/Alumni
Email: careybentley@hotmail.co.uk

States of emergency have long been linked with human rights abuses, in particular where the state of emergency is not legitimate under international law. Despite extensive research and reports clarifying the legal framework that states must follow, there has been limited analysis focusing on a particular state. This paper aims to provide a valuable case study by analysing the states of emergency declared in Fiji in 2006 and 2009 against existing legal frameworks to ascertain their legitimacy under international law. The 2009 Public Emergency Regulations, which allowed for a number of derogations from human rights, are also critically evaluated to assess their conformity with international law. As the emergency situations used as justification for invoking the states of emergency did not reach the required threshold, the imposed states of emergency were illegitimate. Furthermore, the Public Emergency Regulations permitted wide human rights derogations that were completely disproportionate to the situation. By providing a case study of a state that has misused a state of emergency and emergency powers, and showing how this misuse can result in ongoing human rights abuses, this paper affirms the value of ongoing international oversight and the importance of enforcing the international requirements.

"Reconciliation and Self-Determination: Incorporating Indigenous Worldviews on the Environment into Non-Indigenous Legal Systems"
Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 8/2019

NOPERA DENNIS-MCCARTHY, Victoria University of Wellington, Faculty of Law, Student/Alumni
Email: dennisnope@myvuw.ac.nz

Reconciliation and self-determination are two fundamental claims of Indigenous peoples in their relationship with the state. The recent enactment of the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, and the inclusion of the “Rights of Nature” in the Ecuadorian Constitution nearly a decade earlier, provide two key case studies of how incorporation of Indigenous worldviews into non-Indigenous legal systems have the potential to give rise to both reconciliation and self-determination. This paper provides a comparative analysis of the process of incorporation for both Te Awa Tupua and the Rights of Nature, which infer two tentative conclusions. Firstly, the incorporation of an Indigenous perspective into a non-Indigenous legal system has the potential to foster reconciliation between a people and a system who have often been at odds, but this potential will not be realised if the process is not enacted in a conciliatory and mutually respectful manner. Secondly, while effective incorporation may allow for reconciliation, it does not necessarily provide Indigenous peoples with the legal self-determination to fully realise and enforce their worldview.

"Not Remotely Fair: An Examination of Audio-Visual Links in Civil Proceedings"
Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 9/2019

MITCHELL FRASER, Victoria University of Wellington, Faculty of Law, Student/Alumni
Email: mitchell.ij.fraser@gmail.com

Audio-visual links (“AVL”) allow parties to appear remotely in court proceedings. The Courts (Revictomote Participation) Act 2010 (“CRPA”) is the enabling legislative scheme for AVL use in New Zealand. While the scheme strictly regulates AVL deployment in criminal matters, s 7 of the CRPA adopts an intentionally more permissive approach to civil proceedings. This paper addresses the concern that s 7 poses a unique risk to prisoners in civil litigation against the Department of Corrections (“Corrections”). There, Corrections bears the costs and risks of facilitating their counter-party’s presence in court. These burdens are markedly reduced when the litigant appears remotely from prison. Corrections accordingly has an unusual incentive to apply for an order compelling their counter-party to participate remotely. The New Zealand High Court has been divided on the permissibility of granting such an order. This paper contends compelling participants to appear via AVL in substantive civil proceedings is a breach of those affected participants’ natural justice rights guaranteed at common law and by s 27(1) of the New Zealand Bill of Rights Act 1990. This paper concludes that reform to the CRPA is necessary to fully address these rights concerns and protect all participants under the scheme, as intended.

"Mr Big Little Lies: Targeted Undercover Investigations and the Presumption of Innocence"
Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 10/2019

ANNA SINGLETON, Victoria University of Wellington, Faculty of Law, Student/Alumni
Email: anna.singleton8@gmail.com

The use of the Crime Scenario Undercover Technique (Mr Big Operations) in New Zealand has not been regarded as a breach of the New Zealand Bill of Rights Act 1990. The criminal procedure rights offended by Mr Big Operations are prima facie limited to circumstances following arrest, detention, or charge, and are not engaged. The Supreme Court in R v Wichman held that the rights were not material to the admissibility of confession evidence obtained by Mr Big Operations. The author argues that a purposive interpretation of the right to be presumed innocent until proved guilty in s 25(c) of the New Zealand Bill of Rights Act 1990 would extend the scope of the right to encompass Mr Big Operations. Should such an interpretation be permitted Mr Big Operations would constitute a limit on the right in s 25(c). Under the approach in Moonen v Film and Literature Board of Review, the limitation on the right in s 25(c) would not constitute a justified limitation in a free and democratic society. The author recommends that Mr Big Operations are regulated to constitute a lesser limitation on the right in s 25(c) and reduce the risk of eliciting false confessions.

"Insurance and Mental Illness: Prospects for Change"
Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 11/2019

NATHAN TSE, Victoria University of Wellington, Faculty of Law, Student/Alumni
Email: nathan.j.tse@gmail.com

An insurer's discretion to both freely allocate different premiums to consumers and deny cover to overly risk consumers is essential for the insurance sector's sustainability. This discretion conflicts with a consumer's right to be free from

discrimination, protected by the Human Rights Act 1993. Both a dearth of judicial decisions favouring the consumer and an archaic legal position around pre-contractual non-disclosure obligations have tipped this conflict in favour of the insurer. This paper considers two distinct forms of discrimination towards sufferers of mental illness and analyses two prospects for change. Firstly, this paper considers how the unjustifiable reliance on blanket exclusion clauses to avoid indemnifying sufferers of mental illness may be challenged by Ingram v QBE Insurance (Australia) Limited (Human Rights) [2015] VCAT 1936. Secondly, this paper considers how legislative reform can remedy New Zealand's common law position around pre-contractual non-disclosure, a position currently resulting in indirect discrimination towards mental illness sufferers. Ultimately, this paper concludes that the implications of Ingram v QBE Insurance are more symbolic than practical. However, if drafted effectively, legislative reform is a viable prospect for overcoming forms of discrimination.

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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.

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

Email: bblack@northwestern.edu

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

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