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Announcements

Victoria University of Wellington Student and Alumni Sub-Series Part 4: Human Rights Law

Human Rights Law is the fourth in 2020 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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VICTORIA UNIVERSITY OF WELLINGTON LEGAL RESEARCH PAPERS

"The Majestic Equality of Disenfranchisement: Assessing the Right to Freedom from Discrimination in the Light of the Ngaronoa Litigation"

Victoria University of Wellington Legal Research Paper No. 12/2020

CHARLIE COX, Victoria University of Wellington, Faculty of Law, Student/Alumni
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The right to freedom from discrimination in New Zealand is underpinned by equality, one of the most influential, yet amorphous principles in political theory. This paper argues that the failure of New Zealand courts to unpack the normative backing of the anti-discrimination guarantee leaves discrimination law normatively impoverished, enabling arbitrary and inconsistent reasoning. The decisions of the High Court in *Taylor v Attorney-General* and the Court of Appeal in *Ngaronoa v Attorney-General* thus reflect a wrong turn in New Zealand discrimination law, taken in the case of *Ministry of Health v Atkinson*. Because discrimination law necessitates moral judgment, this paper argues that the courts have been

wrong to treat discrimination law as a largely amoral enterprise. Seen in this context, it should be unsurprising that the decisions of *Taylor v Attorney-General* and *Ngaronoa v Attorney-General* appear to mask moral judgments behind a façade of empiricism and common sense, and reveal differing conceptions of the principle of equality.

"Depriving Right-Holders of Fundamental Rights and Freedoms Too Easily? A Critique of the Treatment of Waiver Under the New Zealand Bill of Rights Act 1990 in *Low Volume Vehicle*

Technical Association Inc v Brett

Victoria University of Wellington Legal Research Paper No. 13/2020

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In *Low Volume Vehicle Technical Association Inc v Brett*, the New Zealand Court of Appeal recently grappled with the rare issue of whether one can waive their right to freedom of expression under the New Zealand Bill of Rights Act 1990 (NZBORA). The Court, responding in the affirmative, concluded that Mr Brett had waived this right. This paper critiques that decision. While the Court was right to find that Mr Brett could waive his right to freedom of expression, it failed to scrutinise closely the alleged waiver to ensure that this relinquishment of a protected right in fact reflected Mr Brett's free choice. Had the Court considered a different approach to analysing Mr Brett's waiver – at the prima facie breach stage, instead of under s 5 of NZBORA – proper scrutiny would have been achieved, ensuring that Mr Brett was not so easily deprived of his right to freedom of expression.

"Drug Testing at Music Festivals: a Right or a Crime? Taking a Harm Reduction Approach to Protect the Right Not to Be Deprived of Life"

Victoria University of Wellington Legal Research Paper No. 14/2020

MACKENZIE MORRISON, Victoria University of Wellington, Faculty of Law, Student/Alumni
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Drug consumption is a commonplace practice at music festivals. It can result in a risk of adverse consequences to individual drug users in attendance, and in some cases fatality. The implementation of on-site drug testing at such events through harm reduction focused law reform could significantly reduce these risks. Section 12 of the Misuse of Drugs Act 1975 prevents music festival organisers and management from allowing drug testing to take place for fear of prosecution. Not allowing drug testing to occur at music festivals threatens the right not to be deprived of life enshrined in s 8 of the New Zealand Bill of Rights Act 1990. Protection of this right should compel government to legislate accordingly so that festival organisers and management can allow drug testing to occur at their events. Such harm reduction focused law reform to allow testing would act as the least limiting measure on the right not to be deprived of life. This paper argues that it is possible to balance this right with the drug free values and protection of youth promoted in our society while still permitting drug testing at music festivals.

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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 Massachusetts 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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