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Announcements

Victoria University of Wellington Student and Alumni Sub-Series Part 3: Technological Progress and the Law

Technological Progress and the Law is the third 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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"Encoding Inequality: The Case for Greater Regulation of Artificial Intelligence and Automated Decision Making in New Zealand"

Victoria University of Wellington Legal Research Paper No. 8/2020

ELLA BROWNLIE, Victoria University of Wellington, Faculty of Law, Student/Alumni

Automated decision making systems, developed using artificial intelligence and machine learning processes, are being used by companies, organisations and governments with increasing frequency. The purpose of this article is to outline the urgent case for regulating automated decision making and examine the possible options for regulation. This article will argue that New Zealand's current approach to regulating decision making is inadequate. It will then turn to an analysis of Article 22 of the European Union's General Data Protection Regulation, concluding that this regulation does not provide sufficient

Union's General Data Protection Regulation, concluding that this regime also has some significant flaws. Finally, this paper will propose an alternative regulatory solution to address the novel challenge posed by automated decision making. This solution aims to strike a balance between the interests of organisations in capitalising on the benefits of automatic decision making technology, and the interests of individuals in ensuring that their right to freedom from discrimination is upheld.

"Bartering with Big Tech: A Theoretical Application of GST to the Digital Economy"

Victoria University of Wellington Legal Research Paper No. 9/2020

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The world in which taxation takes place is a far cry from what it was 50 years ago. However, the digital economy has changed the way businesses operate faster than domestic and international tax laws have been able to account for these changes. Consequentially, there is significant international concern about how the taxation problems brought about by the digital economy should be addressed. One method of taxation that has not seen much discussion in this context is New Zealand's Goods and Services Tax system. Internet users are arguably bartering their data and attention for remote services. If data and attention are consideration for GST purposes, and the value of that consideration can be calculated, in theory, GST may apply. The practical problems this kind of tax treatment may face are not insignificant; for example, developing an appropriate and practical valuation method for data and attention. However, with problems as complicated as those posed by the digital economy, it seems prudent to explore all potential solutions.

"If a Picture is Worth a Thousand Words – How Many in An Emoji? Emojis in Common Law Criminal Courts"

Victoria University of Wellington Legal Research Paper No. 10/2020

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Emojis are now recognised as standard additions to technology-mediated communications and are beginning to be viewed as a language in themselves. Necessarily, these peculiar icons have found their way into courtrooms across the globe, raising questions as to how they are best dealt with, particularly when a finding of criminal guilt turns on their interpretation. This paper analyses the approaches of criminal courts in three common law jurisdictions: the United States, Australia, and New Zealand – concluding that the current approach is characterised by a worrying lack of consistency and coherence. Additionally, the unique legal challenges presented by emojis are explained and analysed. These amusing characters are marred by practically limitless potential for misinterpretation, a gulf in understanding between their typical users and legal decision-makers, lack of an authoritative reference source, and unclear procedural rules. Finally, recommendations are put to the New Zealand judiciary as to how they can 'look forward' and establish legal principles for dealing with emojis, to avoid frustrating fair outcomes.

"An Overly Generous Trust? A Review of Police Powers under the Criminal Investigations (Bodily Samples) Act 1995"

Victoria University of Wellington Legal Research Paper No. 11/2020

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This paper reviews the Criminal Investigations (Bodily Samples) Act 1995, focusing on the powers this Act confers onto the New Zealand Police and the way these powers are not used neutrally. The drafting of this legislation, specifically the 2009 amendment, has allowed the police to have significant discretion in deciding whom they can collect samples from. This lack of regulation on collection practices has the potential to facilitate the increasing overrepresentation of Māori peoples on the databank. Because of the loose definitions within the empowering provisions, the database samples are susceptible to being used by privacy impeding techniques, such as familial searching. Internationally the regulation on the use of DNA technologies has been much stricter than in New Zealand. This paper seeks to remedy this through implementing greater controls over the collection process and thus reducing the number of samples on the databank susceptible to being used by these techniques. Greater regulation on collection practices could also help reduce the overrepresentation of Māori people on the databank, with explicit reference to this problem in a public interest test around collection.

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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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