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Announcements

Victoria University of Wellington Student and Alumni Sub-Series Issue 10: Sports Law

Sports Law is the tenth 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

"Stepping Out of Bounds: The Over-Prosecution of Recreational Athletes in the Light of DFSNZ v XYZ"

Victoria University of Wellington Legal Research Paper No. 28/2020

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DFSNZ v XYZ presents a worrying precedent for anti-doping law. That case arose after New Zealand's anti-doping enforcement body, Drug Free Sport New Zealand (DFSNZ), expanded its jurisdiction over recreational athletes. It did so by internal administrative decision and without notice. This action was upheld in DFSNZ v XYZ by a majority of the Sports Tribunal resulting in an unsuspecting recreational golfer being banned for one year. The decision upheld DFSNZ's extension of onerous obligations and invasive testing powers designed for elite athletes to the large proportion of ordinary New Zealanders who partake in recreational sport. This article critiques the XYZ decision on two bases: (a) DFSNZ's illegitimate expansion of its jurisdiction to recreational athletes by mere administrative policy change; and (b) the pitfalls of extending a regime designed for elite athletes to recreational athletes. The World

Anti-Doping Agency (WADA) has developed a new World Anti-Doping Code which will come into force in January 2021. The 2021 Code creates a new two-tiered system which treats "athletes" and "recreational athletes" differently. This article analyses the new Code and critiques its shortcomings with regards to defining the Code's jurisdiction and ensuring a proportionate response to doping in recreational sport. WADA's new Code is a step in the right direction but fails to go far enough to align with the participation, health and education objectives of recreational sport.

"New Zealand Sport's Year of Reckoning: Should Mediation Be Used More in Sport-Related Disputes?"

Victoria University of Wellington Legal Research Paper No. 29/2020

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The rapid commercialisation of sport in New Zealand and internationally has led to an increase in the sources of potential sport-related disputes. Previously, sporting organisations have preferred to resolve disputes through arbitration or internal mechanisms. This paper assesses the current landscape of dispute resolution in sport and focuses on two specific case studies (Cycling New Zealand and New Zealand Football) that dominated New Zealand sports media in 2018. It outlines and analyses how the disputes were handled. This paper assesses the role that mediation could have played in the early resolution of the disputes. It argues that the organisations should have explored the use of mediation instead of sweeping the issues aside. Further, this paper explores ways to break the institutional barriers that mediation faces in the sporting sector and the role an independent Sports Mediation Service could play in the future. The current approach taken by sporting organisations needs to change. Institutionalisation and mandatory mediation may be viable solutions to the current issues faced.

"Transgender Rights in Sport: Redrafting Section 49 of the Human Rights Act"

Victoria University of Wellington Legal Research Paper No. 30/2020

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This paper addresses the Human Rights Act and the sports exception contained in s 49. After a discussion of the current judicial and legislative climate surrounding the definition of sex, this paper concludes that it is unclear whether sex includes gender for the purposes of the Human Rights Act. This creates the potential for transgender and transsexual individuals to face legal discrimination when attempting to compete in sport. Thus, this paper addresses some of the current issues in sport (namely, safety and fair competition) to determine the scope of the proposed provision. Models from foreign jurisdictions and sporting bodies are discussed and discarded due to a lack of scientific evidence and high levels of subjectivity. This paper concludes that the optimal solution when redrafting s 49 is to focus on a combined objective and subjective model. A provision, loosely based on multiple of the previously discarded models, is drafted, which attempts to limit subjectivity through the creation of an objective baseline. To ensure inclusivity, this paper proposes that gender identity be added as a prohibited ground of discrimination in the Human Rights Act. In doing so, a provision which focuses on safety, fair competition and inclusivity is drafted.

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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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