

FACULTY  
OF LAW

## A YEAR IN REVIEW 2012



# v.alum

## From the Dean

### Welcome to another edition of V.Alum

**E**ACH YEAR FOR THE PAST FIVE YEARS it has been my privilege to introduce you to our year's work and the many achievements of our staff and students. I am always compelled to state how proud I am of those achievements and you, as readers, are within your rights to think 'He would say that, wouldn't he?' (as Mandy Rice Davies said of a witness to the judge of her trial).

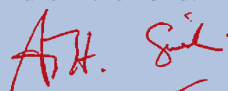
This year is a little different. The work and talent of this Faculty has been judged in the QS World University Rankings by Subject, a global ranking that compares universities across 29 individual disciplines. The ranking features over 600 universities from 27 countries in the world, using more than 50,000 responses from academics and employers, and is the largest survey of its kind to date.

The Faculty of Law at Victoria ranked highest in law for a New Zealand university, in the top five of law faculties in Australasia and 23rd in the world. It is wonderfully satisfying to have all the hard work, persistence and sheer talent of my colleagues recognised.

On a more domestic note, our students feel the same way. In a survey of "Student Experience" conducted by Victoria University, we scored 89% in terms of satisfaction with their experience of this Faculty. This result is also rewarding in a different way. Our students are our ambassadors and a reflection of our core values and abilities. James G. Stewart, who graduated in 2000, this year had an article cited by the majority in the International Criminal Court's first judgment. He says: "It was started in the lonely halls of Victoria's Law Library all those years ago."

Internationalism is an inherent part of this Faculty and its place in the capital. No-one illustrated this unique combination of local and global thinking better than Jeremy Pope, whose obituary we publish, along with other distinguished alumni. Jeremy's funeral was extraordinary. It was held in beautiful Old St Paul's and this country's legal community gathered to mourn his passing. We heard messages from all over the world, including ones from George Soros, Sonny Ramphal, Mr Justice Kirby and several African Chief Justices.

We can all be proud of the contribution this Faculty and its alumni make in the world.



Professor ATH Smith  
Dean, VUW Law Faculty





## A YEAR IN REVIEW



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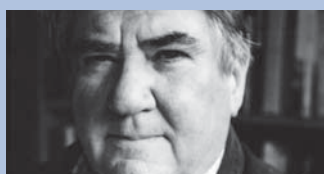
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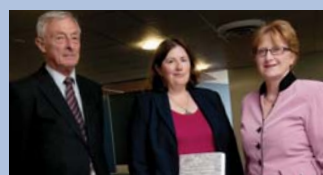
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### COVER: Old Government Buildings by Grant Tilly

Grant Tilly (1937-2012) was a Wellington-based stage, movie and television actor and artist. He produced several books of his drawings of Wellington buildings. This drawing of Government Buildings is from *cityscapes* (Methuen, New Zealand, 1977). It is reproduced with the kind permission of Ruth Jeffery.

For the full drawing, see page 27.



Throughout Government Buildings there are motifs from the natural world. These are representative of the boundless optimism and growth of the Victorian era and are used throughout this issue of V.Alum.

# Bright waters: Re-launching the waka

Clockwise, from top left:  
From left: Carwyn Jones,  
Professor Tony Smith, Judge  
Caren Fox, Hon Justice Joe  
Williams, Craig Linkhorn  
Judge Caren Fox  
From left: Carwyn Jones,  
Professor Tony Smith,  
Judge Caren Fox  
Laura Lincoln, Craig Linkhorn



In October the Faculty of Law, in association with the Office of the Pro Vice-Chancellor Māori, celebrated the re-launch of *The Māori Law Review*.

ORIGINALLY ESTABLISHED IN 1993 by lawyer Tom Bennion, *The Māori Law Review* is a monthly review of law affecting Māori. The Review had not been published regularly since mid-2010, but with the support of the Faculty of Law and the Pro Vice-Chancellor Māori, the Review was able to be re-launched under the editorship of Victoria University Lecturer Carwyn Jones and Crown Counsel Craig Linkhorn.

Tom Bennion continues his association with the Review as a contributing author and a member of its editorial board, which includes Victoria University Senior Lecturer Māmari Stephens, Māori Land Court Judge Craig Coxhead, and Otago University Associate Professor Dr Jacinta Ruru.

Mr Jones says the idea was to build the new version around more of a team: "The association with the Faculty provides institutional support that means it is less dependent on any one individual and so will hopefully ensure that it is more sustainable."

Justice Joe Williams and Māori Land Court Deputy Chief Judge Caren Fox spoke at the launch function and noted the important role of

the Review in providing reliable and informed analyses of current developments in law and policy in this area. Both referred to the importance of ensuring that decisions of the Māori Land Court and Waitangi Tribunal, and information about other relevant legal developments, are as accessible as possible, and observed that the impact of Māori legal issues on the law is growing.

Professor Tony Smith, Victoria University's Pro Vice-Chancellor and Dean of Law, said: "We are delighted to help *The Māori Law Review* find a home and a new energy. It will become an essential online tool not only for practitioners in this area, but also for policy-makers, academics and the many organisations, Māori and Pakeha, which grapple with the bicultural aspects of our legal system."

The co-editors have embraced the new opportunities that arise from the developing online environment, using the new *Māori Law Review* website to be able to provide a more complete record of legal developments than is possible in the print edition, and also to make reports on those developments more readily available to readers.

This year, *The Māori Law Review* sponsored a student essay competition, named in honour of Sir Edward Taihakurei Durie. The competition was open to undergraduate law students at the Faculty of Law at Victoria University of Wellington, and competitors submitted an essay on the most significant legal development affecting Māori in 2011. The standard of entries was very high, and the essays were judged by the Māori Law Review's editorial board.

The winning entry was submitted by Laura Lincoln and will be published in the December 2012 issue of the Review.

Since its re-launch, *The Māori Law Review* has published reports on a range of significant developments, including an update on the major Legal Māori Project led by Māmari Stephens that will soon publish a Māori legal dictionary, and analyses of high-profile Waitangi Tribunal reports on freshwater and kohanga reo. The Review has already received very positive feedback from practitioners, legal academics, and members of the judiciary. The editors hope to further strengthen the Review's relationship with the Faculty over the coming year and are committed to continuing to publish reports that contribute to research and practice in this important area of law.

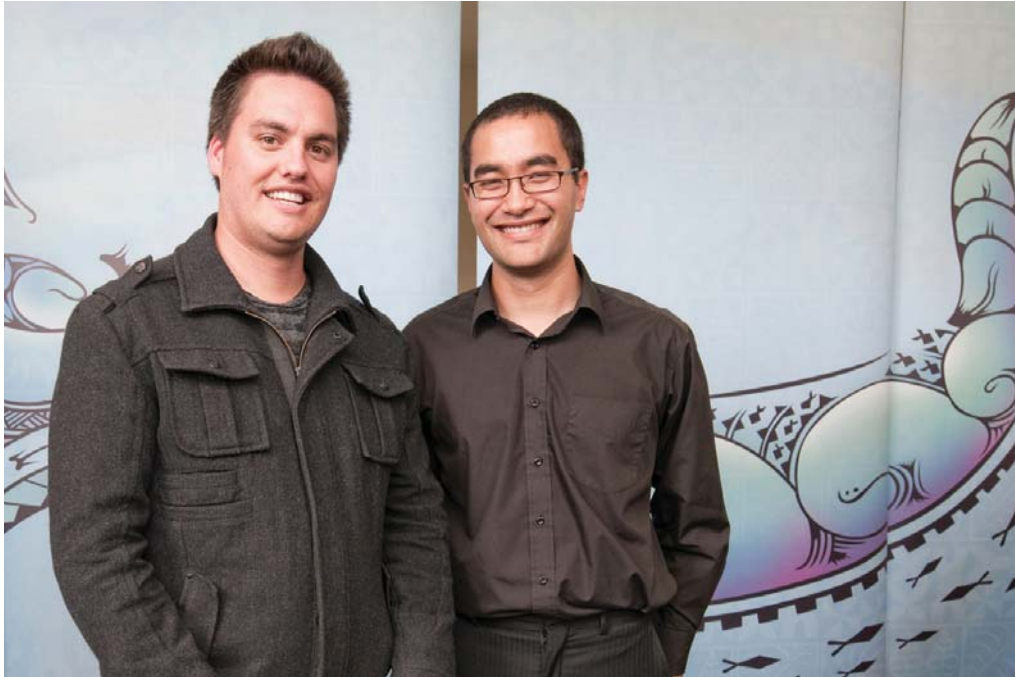
Visit the Review's website:  
[maorilawreview.co.nz](http://maorilawreview.co.nz)



# Kia mau ki te kauwae: Te Kauwae Parāoa

David Jones (left), Tai Ahu

Dance Pasifika  
The panel



At 5am on March 12, a small contingent of staff and students were led by Tutawhiorangi Temara from Te Herenga Waka Marae for the formal opening service for Te Kauwae Parāoa, a Law Library space designed to be welcoming for Māori and Pasifika law students.

THE DAWN SERVICE was followed by an opening breakfast and other celebrations started at noon, with more than 100 staff and students in attendance. Official speeches were given by: Piri Sciascia, Pro Vice-Chancellor Māori; Professor Tony Smith, Dean of Law School; Winnie Laban, Pro Vice-Chancellor Pacific and Sue Roberts, the Victoria University Librarian.

The day was about connection: strengthening bonds between the Law Faculty and Māori and Pasifika students, between Pasifika and Māori students, and between the Library and students. A highlight was the Pacific dances, which illustrated the diversity of cultures encapsulated in the meaning of *Te Kauwae Parāoa*.

*Te Kauwae Parāoa* is a reference to the jawbone of the whale. The whale journeys thousands of miles every year throughout the Pacific and the world. This symbolises the journey that Māori and Pasifika students embark on at Law School, and the personal, mental and spiritual development that results from their determination and hard work.

'He Kauwae Parāoa' also references the Māori proverb: 'He rei ngā niho, he paraoa ngā kauae', which translates as 'To have a whale's tooth, one must also have the whale's jaw'. This encapsulates the desire that Māori and Pasifika students have to excel at their studies, and the benefits of working towards the fulfilment of goals.

The room has a dividing screen so that individual study can continue on one side while tutorials are conducted on the other. This panel is also an artwork, created by the collaborative effort of artists including: Tyson Tuala, Mose Viliamu and Johnny Andrews, with direction from David Jones and Tai Ahu. It illustrates the idea behind the name of the room. It is both Māori and Pacific in look and feel, which can be seen in the merger of kowhaiwhai and Pacific patterns. The whale has three koru designs on its back symbolising 100-, 200- and 300-level laws papers, which lead to the jawbone of the whale.

The whale's jawbone is a prized possession for Māori and also a metaphor for knowledge. To attain knowledge is to take and hold the

jawbone- *kia mau ki te kauwae*. Knowledge is power, and knowledge, such as law, is prized.

The koru pattern from the head of the whale symbolises the whanau nature of Māori and Pasifika students who come to study law at Victoria. They find that through learning and travelling the path of knowledge together, a strong bond is created. The top of the design is the head of another whale-like creature. If the image is turned upside down, another is created of the whale which symbolises not just Māori but also Pacific culture coming together.

The image has been split into four panels, symbolic of tukutuku panels and the waters of time, illustrating the amount of time and energy it takes to get through a law degree. The panels also represent working together. One person cannot create a tukutuku, it comes from working with others where one person will "tuku" or send the aho or thread from one side through the structure and across to another person who will push it back through. The camaraderie at Law School is captured in this idea of tukutuku.

The room is in constant use by all students, not just Māori and Pacific students. Māori and Pacific Island tutorials are also conducted in the room. Māori and Pacific use of the Law Library has increased and it is hoped that more students use the room as a safe study environment.

David Jones, Kaitakawaenga Ture

# Constitution as catalyst: Robin Cooke Lecture 2011

Professor  
Cheryl Saunders AO



Melbourne Law School Laureate Professor Cheryl Saunders AO delivered the 2011 Robin Cooke Lecture: “Constitution as Catalyst: Different Paths within Australasian Administrative Law”

PROFESSOR SAUNDERS’ LECTURE charted the growing differences in doctrine between Australian and New Zealand administrative law, diagnosed the key reasons for that divergence and evaluated the Australian position.

A central figure in the life of Australian public law for decades, Professor Saunders’ commitment to the study of comparative constitutional law, the subject of her Robin Cooke Lecture, is of long standing. In the last decade her work has been increasingly global in scope. She has lent her expertise to assist constitutional processes in Fiji, Sri Lanka, South Africa, Iraq and elsewhere.

President of the International Association of Constitutional Law from 2004 to 2007, her international work was most recently recognised by France honouring her with the prestigious Legion d’honneur.

For the purposes of the annual Robin Cooke lecture, Professor Saunders stayed within the common law family of the Commonwealth. Her theme was that even within this family

grouping, and more closely between us and our neighbours on either side of the Tasman, it is no longer appropriate to treat doctrinal diversity between jurisdictions as an aberration. Allowing for the relative commonalities of legal culture, and culture more generally (Kiwi protestations to the contrary!), there were growing divergences between the administrative law of Australia and New Zealand.

The divergences of Australian administrative law doctrine from Commonwealth norms were itemised, with the suggestion that they formed part of a package: “an ostensibly narrow, although flexible, field for judicial review within most of which, however, the courts have the final word.”

By way of contrast, New Zealand administrative law doctrine was characterised as readier to allow for new grounds of review, and otherwise broader – in such matters as its rules of standing, openness to international law and acceptance of the review of inherent executive power.

It was not the difference in result that was

emphasised. For a variety of reasons the end result might well be the same between the two jurisdictions, for example by reason of the cautious use of more expansive grounds by the New Zealand courts. But a difference in the means matters. “The means, in the sense of the principles applied and remedies granted, are the tools that lawyers use.”

The phrase “constitution as catalyst” in the title spoke to the nature of the Constitution’s influence on Australian administrative law. The Constitution did not pre-determine the shape of Australian administrative law doctrine.

Things could have developed differently. But the Constitution has been the spark that has caused Australian administrative law to develop as it has. In the result, the peculiarities of contemporary administrative law doctrine in Australia are “plausible enough understandings of the text and context of this Constitution, in the light of previous authority”.

Turning to an evaluation of the current Australian position, recent Australian immigration decisions were described in which the High Court of Australia has effected a robust defence of the rights of unauthorised non-citizens. These decisions illustrated how a highly legalistic style of analysis, centred on the constructed intention of the legislature, can deliver such results. (*continues on page 5*)



# A finger on Wellington's pulse: The new Chair in Public Law

Claudia Geiringer was appointed to the new Chair of Public Law at Victoria University of Wellington and as Director of the New Zealand Centre for Public Law in the second half of 2012.

THE NEWLY-CREATED CHAIR is recognition of the importance of public law and its significance in the country's capital, the city where law is made. Claudia is a quintessential Wellingtonian: "I am Wellington born and bred and proud of it. I wouldn't live anywhere else. The Law Faculty is in this beautiful, historic building and we are surrounded by the law in action."

Professor Geiringer did an Honours degree in history and worked as an historical researcher at the Waitangi Tribunal before studying law at Victoria. After finishing, she worked at Crown Law in the Bill of Rights team, starting as Assistant Crown Counsel and eventually becoming a Crown Counsel.

Studying law "felt like coming home. I found it fascinating right from the start. Law is both immensely practical but also intellectually satisfying. It combines broad social perspectives with close analytical reasoning. But in the end it is, essentially, about problem-solving."

Her postgraduate legal study was at Columbia University in New York, supported by a Fulbright Scholarship, the NZ Law Foundation's Ethel Benjamin Scholarship and a Human Rights Fellowship from Columbia. She arrived in late

August 2001 and was there for a fortnight before the attack on the World Trade Centre.

Looking back on it, she says: "It was a challenging time but a very interesting one to be studying human rights in the United States."

On her return to this country she returned to the Law Faculty as a lecturer. One of the things that she enjoys most about teaching is "the satisfaction that comes when you see a student really grow and blossom. Sometimes students come back and tell you how much you've helped them and that's special, too."

Professor Geiringer's recent research includes the book *What's the Hurry?: Urgency in the NZ Legislative Process 1987 – 2010* (Victoria University Press) with Professor Elizabeth McLeay and Polly Higbee, published late last year. It is an examination of the use of "urgency" in the New Zealand House of Representatives over a 24-year period. Its conclusions have already resulted in changes to Parliament's Standing Orders.

She is one of New Zealand's leading experts on the New Zealand Bill of Rights and continues to appear before the courts occasionally in Bill of Rights cases. She has also served a term as the



Professor  
Claudia Geiringer

Special Counsel for Human Rights for the Victorian government in Australia.

"Claudia Geiringer will be an outstanding Professor of Public Law," says Dean of Law, Professor Tony Smth. "She is committed to legal research which scrutinises the very heart of our law-making institutions and their adherence to democratic principles and she leads the next wave of public law talent at the Faculty."

The presentation of this Australian approach was attended by cautions, amongst them the point that "The techniques and doctrine of judicial review in Australia are geared almost exclusively to decision-making under statute, which is decreasingly the norm." Australian judicial review will need to address the rise of administrative schemes relying on broad parliamentary appropriation and pervasive use of soft law.

Professor Saunders closed her talk with reference to general questions for comparative public law. The divergence described between Australia and New Zealand makes easy reference between these countries (and others) in the common law family of the Commonwealth more fraught than it once was. Does this mean

that a fully-fledged comparative methodology is needed to use each other's law? Evidently, such an approach would carry real costs, significantly raising the barriers to use of the legal reasoning of comparable countries.

Professor Saunders identified the solution in "reflection on the purposes for which the legal experience of others may be useful". Methodological issues are most pressing in the case of the straight adoption of a foreign principle. They are much less so where comparison is "to assist to frame the legal problem; to expand understanding of the options..." and like purposes.

Professor Saunders noted that the move from easy reference within the Commonwealth to a more comparative approach carried the danger

that "the opportunities for insight and self-reflection offered by judicial interaction" could be lost, with the "contributions from the various jurisdictions" valued by Lord Cooke endangered. As suggested above, attention to the purposes for which foreign legal experience is relied on will often lessen the need for the full rigor of comparative methodology.

But we will have to rethink past assumptions of easy reference to Commonwealth jurisdictions, continuing to adapt to their growing divergence.

Dr Rayner Thwaites

# A year of international commercial law



Front row, from left to right:  
Professors Alejandro Garro,  
John Gotanda, Ingeborg  
Schwenzer (Chair),  
Pilar Perales Viscallis,  
Sieg Eisele  
Second row, from left to right:  
Professors Shiyuan Han,  
Lisa Spagnolo, Pascal Hachem,  
Hiroo Sono  
Third row, from left to right:  
Martin Davies, Yesim Atamer  
Back row: Professors Claude Witz,  
Michael Bridge, Ulrich Schroeter

## Two events brought leading world authorities to New Zealand and highlighted the importance of international commercial law.

**I**N AUGUST, the Law School was the primary host for the annual meeting of the CISG (Convention on the International Sale of Goods) Advisory Council. The visit was funded by the Law Foundation and the University. The CISG Advisory Council is a private initiative, which aims at promoting a uniform interpretation of the CISG. It is a private initiative in the sense that its members do not represent countries or legal cultures, but are world-renowned scholars who look outside their national legal systems for ideas which contribute to a more profound understanding of issues relating to the CISG.

The Council was hosted by Russell McVeagh, Chapman Tripp and the Law School. Generally the deliberations of the CISG Advisory Council are not open to the public, but on this occasion it opened its doors to interested parties, allowing them to gain an insight into both its workings and the operation of the CISG.

The CISG has been applicable to cross-border sales in New Zealand since 1995. Most of New Zealand's trading partners are member states including Australia and China. However, its importance to New Zealand businesses is generally overlooked. An estimated 70-80% of all world trade is conducted under the CISG, but

anecdotal evidence suggests that the CISG is generally excluded in New Zealand standard form contracts. Since the CISG does offer a finely tuned set of contract rules that balances common law and civil law contract principles, it seems unfortunate that New Zealand businesses do not take advantage of the available legal regime.

During their visit, members of the CISG Advisory Council took part in the Arbitrators' and Mediators' Institute of New Zealand ("AMINZ") conference, which provided a unique opportunity to learn and to discuss the advantages of the CISG with the world's leading experts. Professor Ingeborg Schwenzer, CISG Advisory Council Chairperson, was a keynote speaker. The conference's first session gave an introduction to the CISG and was followed with a more in-depth discussion of issues of interest to New Zealand lawyers. A workshop on (international) contract drafting followed as well as a mock arbitration. This was chaired by Justice Susan Glazebrook, who heard arguments on the CISG modelled on a real fact situation, with New Zealand parties having to grapple with the CISG. Podcasts of the AMINZ conference are available at [www.victoria.ac.nz/law/about/staff/petra-butler/cisg-advisory-council-meeting](http://www.victoria.ac.nz/law/about/staff/petra-butler/cisg-advisory-council-meeting).

Professor Schwenzer (University of Basel) and Professor Bridge (LSE) also gave a seminar at the Court of Appeal to judges and judges' clerks. Professor Schwenzer and Luca Castellani (UNCITRAL) met with officials from the Ministry of Business, Innovation and Employment.

However, it was not only law for the CISG Advisory Council. They were treated, inter alia, to an introduction to Māori culture with a Māori feast at the Karaka Café.

**T**HREE MONTHS LATER, the CISG Advisory Council visit was followed by the New Zealand Law Foundation inaugural Lecture on International Dispute Resolution, given by Lucy Reed, co-head of Freshfields international arbitration group, at Victoria.

Lucy spoke on: "Zealand Old and New International Arbitration and Trade". The lecture was preceded by an hour of discussion on two hot topics in international arbitration: expert witnesses and bribery, presented by Dr Nils Schmidt-Ahrendts (Hahnefeldt Rechtsanwälte) and Professor Vladimir Pavic (University of Belgrade). Podcasts of all three presentations are at [www.victoria.ac.nz/law/about/staff/petra-butler](http://www.victoria.ac.nz/law/about/staff/petra-butler). The visitors were co-hosted by Victoria University, the AMINZ, and Auckland University and funded by the New Zealand Law Foundation.

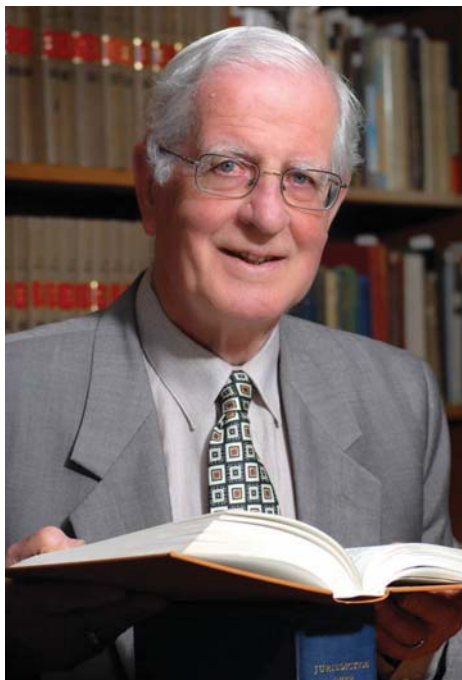
Lucy's schedule was gruelling. She not only gave the inaugural lecture but also addressed friends and guests of the New Zealand Holocaust Research Centre on the Holocaust Tribunal, which she helped set up. She was invited by the Bar Association and AMINZ and hosted by Chapman Tripp to speak about her experience as Commissioner of the Eritrea/Ethiopia Commission. At a very well attended AMINZ breakfast meeting, she talked about small claims tribunals. Lucy's visit was rounded off by a lunch at the Northern Club hosted by Bankside Chambers, where she summarised the key points of her inaugural lecture. Vladimir and Nils commented by drawing attention to the situations in Germany and Serbia.

Both events highlighted the importance of international commercial law for New Zealand. Both events were also marked by the willingness of the visitors to engage and the enthusiasm with which they wanted to learn about New Zealand, its culture and its legal landscape.

*Dr Petra Butler*



# Truly Georgeous



## Dr George Paterson Barton QC 1925–2011 inspired a Special Issue of the VUW Law Review

**G**EORGE BARTON was a member of the Faculty of Law, Victoria University of Wellington from 1953 to 1977. He was appointed Professor of Jurisprudence and Constitutional Law in 1968 and served as Dean of Law from 1970 to 1973. The passing of George Paterson Barton was a sad and unexpected event. He was with us one day very much active in the community, and gone the next.

The Dean of the Law School and the Editorial Committee of the Victoria University of Wellington Law Review responded immediately to support the initiative of Dr Don Mathieson for a Special Issue of the *Victoria University of Wellington Law Review*. The Special Issue was an opportunity for a wide selection of colleagues and friends to celebrate the life and law of George Barton – the international lawyer, the barrister, the teacher, the legal historian, the administrative and constitutional lawyer.

The Special Issue is introduced by the tributes given at the special sitting of the High Court of New Zealand presided over by Dame Sian Elias, Chief Justice of New Zealand. These included



Clockwise from far left:  
George Barton QC  
From left: Peter McKenzie QC, Sir Ivor Richardson, Mrs Ailsa Barton, Sir Geoffrey Palmer, Don Mathieson QC, Professor Campbell McLachlan QC, Sir Kenneth Keith  
Sir Ivor Richardson, Lady Richardson, Sir Geoffrey Palmer  
Professor Tony Smith, Sir Anand Satyand

tributes from Sir Ivor Richardson (former President of the Court of Appeal and colleague of George Barton when they were both members of the Law Faculty), the Hon Christopher Finlayson (Attorney-General), Christine Grice (on behalf of the Law Society) and Peter McKenzie QC (also a close colleague from days when they were both members of the Faculty). The Special Issue contains a range of articles commemorating the multi-faceted interests of George Barton, ending with a previously unpublished piece by George Barton himself.

The Special Issue was launched in August at a function at the Law School. We were honoured

to have members of the Barton family present, along with the Vice-Chancellor, Faculty, members of the government, representatives of the judiciary and practitioners.

George Barton, as many editors of the VUWLR and other publications know, had an eye for detail. Barely had there had been time for a publication to be read than there would be a note on the editor's desk pointing out an error of detail, whether typographical or of substance. We have, sadly, been spared similar scrutiny with this Special Issue.

*VUWLR Editorial Committee*



# Orchards, cider and crime

Largely retired Hong Kong barrister Peter Graham talks to Craig Sisterson about a life filled with orchards, cider, and delving into history through the door of true crime writing

WRITING WAS SOMETHING that long-time barrister Peter Graham had always seen, “in the back of my mind or further forward”, as something he’d wanted to do.

“I’ve always been a great book lover and reader, and yes I think it’s been an ambition of mine for a very long time,” says Graham, whose second ‘true crime’ book, *So Brilliantly Clever* (Awa Press, 2011) was released last month, to great reviews and a spot on the local non-fiction bestseller list.

Now largely retired from a long life in the law, including three decades as a Crown Counsel then barrister in Hong Kong, Graham spent the past three and a half years extensively

researching one of New Zealand’s most notorious crimes and trials – the 1954 Parker-Hulme murder. It’s a case that has fascinated Graham since, as a young lawyer, he worked in the 1970s as an assistant to Brian McClelland, who had been junior counsel for Juliet Hulme.

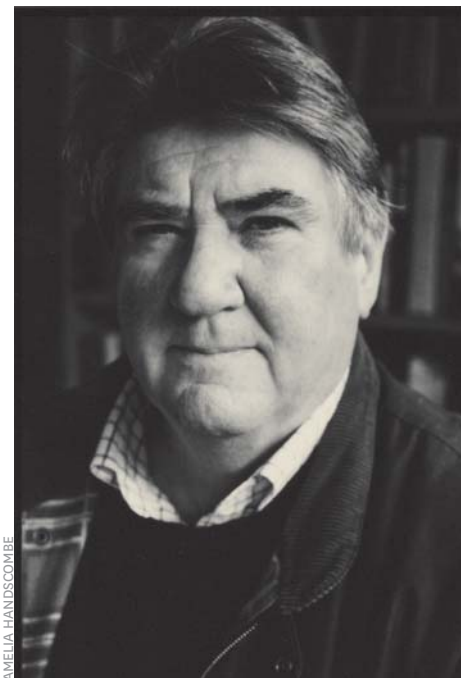
“Before I went to Hong Kong, I had the idea that I wanted to write a book about the Parker-Hulme case, because I’d become so interested in it,” recalls Graham. “In fact, I tried to get hold of the Wynn Williams file on the case, with the help of Brian McClelland, but the file had gone missing. I went on to Hong Kong, and the need to earn a living intervened.”

Graham, who completed his law degree at Victoria University and worked at Chapman Tripp before moving to Christchurch, spent five years as a prosecutor in Hong Kong – for the Crown then the Independent Commission Against Corruption, which “mainly prosecuted policemen who’d amassed mega fortunes in some cases... pretty fascinating stuff” – before going to the bar.

It was while working as a barrister there that he came across the story that would become his first true crime book, *Vile Crimes: The Timaru Poisonings* (CUP, 2007).

*Vile Crimes* centres on one of the most sensational court cases of the nineteenth century: in 1886, charming Timaru businessman Tom Hall Jr, the nephew of former New Zealand premier Sir John Hall, was tried first for the attempted murder of his wife, then the murder of his father-in-law, Captain Henry Cain, one of the founding fathers of Timaru, whose body had to be exhumed for evidence. “It was the most terrific scandal in its

*“It was an interesting window into the period – it wasn’t just about the crime, it seemed to provide quite a bit of insight and a lot of detail into what life was like in this small, rather snobbish community in the 1880s.”*



AMELIA HANDSCOMB

day, absolutely earth-shattering stuff,” says Graham, who stumbled across a contemporary account of the trial in a rare book catalogue.

“I thought it was a great story, and it was also very fully reported, because it caused a scandal.

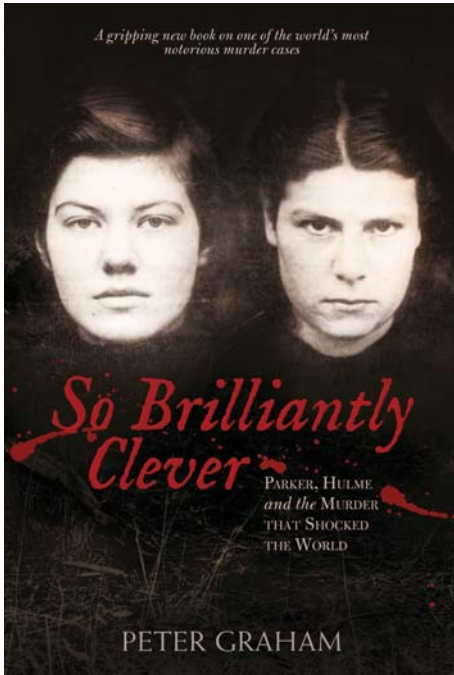
And for me, it was an interesting window into the period as well – it wasn’t just about the crime itself, it seemed to me to provide quite a bit of insight and a lot of detail into what life was like in this small, rather snobbish community in the 1880s.”

Graham, who at the time still had the idea of a book about the Parker-Hulme murder bubbling away in the back of his mind,

thought the Timaru poisonings would be an easier story to tell – “which it proved to be” – due to the fact there was less material, and it was all documentary in nature, rather than involving interviews and other sources. “I thought I could teach myself to write a book by starting with this,” he says. He found time to







write amongst his legal schedule, and started leading “this kind of dual life” as a lawyer and writer.

By the time he later began working on what became *So Brilliantly Clever*, Graham had largely retired from legal practice, to a small farm he and his wife had bought near Dunsandel. Apart from supervising a few pigs, pottering around with a small farm “and rather big garden”, writing, and a little bit of law and travelling, they grow apples, says Graham.

“We have a business making apple juice and cider, so in a way that’s my day job. We make single variety apple juice called Camla Farm, and it’s my job to do the labelling, bottling, dispatching, and deliveries, and that sort of thing. That occupies me some of the time.”

A hint of pride creeps into his voice as Graham notes their cider has won gold medals, and they are “probably the only people in New Zealand making cider commercially with cider apples”.

Despite the fact that Graham’s first two books, and the one he has now started researching – on the case of Francis Sheehy Skeffington, an Irish pacifist and suffragist arrested without reason and executed by British Army soldiers during the 1916 Easter Rebellion – all involve historic true crime, the former barrister doesn’t think he’s “more interested in crime than anyone else”. In fact, he’s primarily interested in the past. “I can’t imagine myself writing a book about a murder that’s happened last week in Wellington, or something,” he says.

For Graham, finding such fascinating incidents merely provides an interesting doorway to explore the world as it was in a particular place during a particular time – whether it’s 1880s South Canterbury, 1950s Christchurch, or Dublin during the First World War. “I think the starting point would have to be that I’d like to think I know a good story when I see one,” he says. “You’re not just writing about a crime, you’re writing about it very much in the round. It’s a way to look at the world. You’re seeing people in extreme situations, aren’t you.”

Graham also likes to comprehensively explore untold stories – whether stories that most people have heard very little about, such as the Timaru poisonings, or stories that are very famous and people think they know about, but don’t really, such as the Parker-Hulme murder. While the incident at the core of *So Brilliantly Clever* had been touched upon in plays, film, and some fiction and non-fiction works, Graham felt that there was still a gap, a lack of “a full account”. He also felt that if left any longer, it would become harder to gather facts, as more people involved would have passed away. “I thought it had to be done now.”

The reaction of one of the first people to read the finished book, TV journalist Janet McIntyre, probably sums up the perceptions many New Zealanders have about how much they know about the Parker-Hulme case.

“She said, ‘You know, I thought I knew all about this case, but then I realised after I read about five pages, that I didn’t know about it at all,’” recalls Graham, who applied to the Court to get access to the transcript of Pauline Parker’s diary, amongst other research. “It is so much a part of history and culture in New Zealand, that everybody thinks they knew about it, but actually [we don’t], and I had to work quite hard to put together some of the most basic facts about it.”

Graham is grateful for his long and interesting career as a lawyer, but says writing non-fiction books is “the most fascinating thing” he’s ever done. “I just love it. My heart is really in this, and I really try my very, very hardest to do my very, very best. It’s something I want to do, and feel I can do. So it’s something I will keep doing as long as I’m sound of mind and limb.”

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# Copyright in the 21st century

From left,  
Professor Jane Ginsburg,  
Professor Susy Frankel,  
Professor Daniel Gervais



The New Zealand Centre of International Economic Law (NZCIEL), at the Faculty of Law, hosted a conference in Wellington in November that explored the role and function of copyright, and how it may evolve and find a state of equilibrium in the 21st century.

VICE-CHANCELLOR, Professor Pat Walsh, opened the conference and noted: “It is entirely appropriate for Victoria University to be hosting this conference, given our strength in intellectual property research. International intellectual property is a key area of research in the NZCIEL.

“The centre has hosted many conferences and seminars on the subject, covering topics such as: trade intellectual property and the knowledge assets of indigenous people; the future of copyright; and how to ensure patent law supports and drives innovation.”

The conference – entitled *Evolution and Equilibrium: Copyright this Century* – got off to a flying start, with a keynote address by Professor Jane Ginsburg, Professor of Literary and Artistic Property Law at Columbia Law School in New York, who spoke about ‘Exceptional Authorship: The Role of Copyright Exceptions in Promoting Creativity’.

Professor Ginsburg explained: “A lawyer for an immense copyright-antagonistic corporation, casting himself as a defender of authors’ rights, challenged his interlocutor’s incredulity by asserting that, given today’s diversity of authors, ‘more of them depend on limitations and exceptions than on exclusive rights.’”

“I’d like to take seriously the proposition that today’s authors need copyright exceptions and limitations more than they need exclusive rights.” She tested and disagreed with the proposition by discussing the exception in early English and United States cases. She concluded that: “both today’s assemblers of ‘remixes’ and yesterday’s traditional creators of works of entertainment or scholarship have needed the flexibility with which these kinds of exceptions temper exclusive rights.”

Professor Ginsburg challenged that claim that “today’s authors do not (or should not) seek to make a living from or control the exploitation of their creations” and noted that “the internet did

not inaugurate the celebration of altruistic or amateur authorship”.

“Genteel contempt for professional (money-grubbing) authors predates the Statute of Anne. But today’s variation on the theme betrays more than social snobbery. Behind the belittling of exclusive rights there loom significant business interests built on the expansion of copyright exceptions. The exceptions in question do not foster creativity, they redistribute the fruits of creativity. They are authorship-undermining exceptions because their justification increasingly relies on the denigration of proprietary authorship.”

National and international copyright experts from Switzerland, France, Israel, Singapore, the United States and Australia, as well as New Zealand, also spoke on a range of topics including access to copyright works and new technologies, enforcement of copyright by civil and criminal means, the role of internet intermediaries and collective management of copyrights in the global world.

Many of the speakers challenged aspects of the keynote address and spoke in favour of greater exceptions. This led to lively discussion and a detailed and thoughtful exchange of views.

In addition to academic experts, the conference included presentations from those non-lawyers



# 20/20 vision: International Law's past and future

In July, the Centre for Public Law hosted the 20th annual conference of the Australian and New Zealand Society of International Law.

**T**HIS CONFERENCE was an opportunity for the almost 100 attendees to not only reflect on the last 20 years in the development of international law, but also to look ahead to the emerging issues and the shape of international law for the next 20 years.

As well as presentations by leading New Zealand and Australian lawyers, the conference featured keynotes by four preminent speakers. It was opened by an address by Jan Klabbers, Professor of International Law at the University of Helsinki.

Professor Klabbers is well known for his work on international organisations and presented a challenge to consider ethics as part of global governance. Professor Klabber's presentation can be viewed at <http://mdsweb.vuw.ac.nz/Mediasite/Viewer/?peid=bc63ac8348ba45e1837712f9759f403c>

Professor Richard Fentiman, Professor at the University of Cambridge, spoke about transnational injunctions, an important topic for private international law – see [mdsweb.vuw.ac.nz/Mediasite/Viewer/?peid=d0e6f2fbf56041688f3de8918ec4cbda](http://mdsweb.vuw.ac.nz/Mediasite/Viewer/?peid=d0e6f2fbf56041688f3de8918ec4cbda)

Professor Ivan Shearer, who has had a long and illustrious career in international law, gave a



personal account of his involvement in international law during his keynote – see [mdsweb.vuw.ac.nz/Mediasite/Viewer/?peid=12f50e59373947629e4b6e340c916a4f](http://mdsweb.vuw.ac.nz/Mediasite/Viewer/?peid=12f50e59373947629e4b6e340c916a4f)

Finally, Valerie Hughes, Director of the Legal Affairs Division of the World Trade Organisation Secretariat, spoke about the development of dispute settlement in the WTO – see [mdsweb.vuw.ac.nz/Mediasite/Viewer/?peid=375b3db30b6d4d8eb3b07d45a9d2d904](http://mdsweb.vuw.ac.nz/Mediasite/Viewer/?peid=375b3db30b6d4d8eb3b07d45a9d2d904)

In addition to these stimulating keynotes, 45 other academics presented papers on a range of



topics including private international law, the use of force, the law of the sea, international trade and investment, climate change and arms control. The conference is the largest general international law gathering in Australasia and the 2012 conference was extremely successful.

Thanks are due to the New Zealand Law Foundation for sponsoring Professor Klabbers and Ms Valerie Hughes. Other supporters included the New Zealand Ministry of Foreign Affairs and Trade, the Australian Attorney-General's Department and the Australian Department of Foreign Affairs and Trade.

at the coal face of book publishing, collecting licence fees and song writing. Eddie Schwarz, President of the Songwriters Association of Canada and writer of *Hit Me With Your Best Shot* (famously performed by Pat Benatar) spoke of the difficulties that songwriters face in making a living and suggested models for collecting royalties in the digital world.

Conference co-hosts, Professor Susy Frankel from Victoria University and Professor Daniel Gervais from Vanderbilt Law School in the United States, concluded the conference with an overview and further analysis of the issues discussed. By the end of the conference most participants agreed that the author/creator

should be the centre of the copyright system, but on how to achieve that, views differed.

This conference was possible with the generous support of InternetNZ, an organisation dedicated to protecting and promoting the Internet in New Zealand, and fostering its ongoing development.

InternetNZ and Victoria University first established a partnership in 2003, with the signing of an agreement to establish a Research Fellowship in Cyber Law at Victoria's School of Law. Since then, four Cyber Law Fellows have contributed to research and teaching at the Honours and Master's levels, and undertaken outreach programmes for the wider public.

Last year, InternetNZ and Victoria's New Zealand Centre of International Economic Law extended this partnership by signing a new agreement to deliver quality conferences and publications, exploring how existing laws are adapted and new laws are made to address internet issues. The 2102 copyright conference was the first of three conferences which will address laws and the Internet.

The organisers were very pleased with the quality of the papers presented, and the detailed and thoughtful discussion from presenters and audience participants. "We planned the event so there was a lot of quality discussion time and that really paid off," said Susy Frankel.

Clockwise from top left:  
Professor Ivan Shearer  
Professor Richard Fentiman  
Professor Jan Klabbers,  
Joanna Mossop,  
Professor Andrew Byrnes  
President of ANZSIL  
Penelope Ridings  
(Ministry of Foreign Affairs & Trade)  
Ms Valerie Hughes

# New Zealand Law Foundation Regulatory Reform Project 2012

From left:  
Professor John Burrows,  
Professor Susy Frankel,  
Lyndia Hagen (Executive Director,  
NZ Law Foundation)



For the last two years, researchers led by Professor Susy Frankel have been analysing ways in which regulation in New Zealand can be improved.

**T**HIS UNDERTAKING, the second-largest-ever research project funded by the New Zealand Law Foundation, is known as the Regulatory Reform Project and is due to conclude part-way through 2013.

This current year has been a hive of activity starting with a well-attended book launch for the publication of *Learning from the Past, Adapting for the Future: Regulatory Reform in New Zealand*. Minister of Regulatory Reform, Hon John Banks, launched the book and it was pleasing to see the support from Government towards the project and its expected outcomes.

The book is a culmination of 17 papers written by the research team including authors from Victoria Law Faculty, the New Zealand Institute of Economic Research (NZIER) and Chapman Tripp. The topics covered in the book discussed a variety of issues that arise in the process of regulatory reform including certainty, legitimacy and the Rule of Law, property rights, the policy and processes of regulation, sector-specific regulation, trade and investment and the trans-Tasman relationship.

Since the launch of the book, researchers have been focussed on delving deeper into each topic

addressing issues that the papers in the first book revealed. This second set of papers, of which there are 14, develops and analyses the issues and highlights important aspects that regulators, and those subject to regulation, should take note of. They have all been subject to workshops held during the year and all have undergone extensive multi-disciplinary input to ensure the robustness of the research, including economic analysis and practitioner feedback.

This set of papers will be published in February 2013 in the book *Recalibrating Behaviour: Smarter Regulation in a Global World*. This publication focuses the papers into analysis of regulation in relation to Global Connectedness, the Public Voice and Consumer Behaviour, the Careful Art of Reducing Uncertain Outcomes and the Institutions of the Regulatory Regime.

Running concurrently with the development of this new set of papers has been four sub-groups of researchers from the team who have been developing the cross-cutting themes that have emerged throughout the project. This research has developed what the project framework calls the New Zealand questions and has homed in on four main themes: “Features of the Uniqueness of New Zealand and their Role in Regulation”,

“Certainty and Discretion”, “Experimentation and Regulation”, and “Learning the way forward: Monitoring and Evaluation”. These cross-cutting theme papers will be published later in 2013 and discussed further at the Project Conference held on 27 and 28 February.

The Conference is designed to showcase the outputs from the Regulatory Reform Project and to advance the dialogue on regulatory reform in New Zealand. It will highlight some of the papers from the second phase of the research and present the cross-cutting theme papers. The highlights include a keynote address from Professor Michael Trebilcock, Professor of Law and Economics from the University of Toronto.

Another key feature of the Conference will be to introduce the Toolkit – a resource about regulation that will be the project’s final output. It is designed to provide all involved in regulation with a resource when dealing with the issues of regulatory design and effectiveness or when looking for assistance with a regulatory problem.

The toolkit includes a reference function by outlining, for example, modes of regulation, who regulates, and the effects of our international commitments and obligations in relation to regulation. The toolkit will also provide links to all research undertaken in the project and other external sources that are relevant.



## Alumni Achievements 2012

**Peter Boshier** LLB(Hons) 1975 is to become President of the Association of Family and Conciliation Courts (AFCC) in 2015.

**Roger Clark** BA LLB 1964; LLM 1967; LLD 1997 celebrated 50 years of service at Rutgers Law School, New Jersey

**David Collins** LLB(Hons) 1975, LLM 1976, LLD 1993 recently Solicitor General, was appointed to the High Court in Wellington.

**Peter Dengate Thrush** LLB 1982 was appointed Executive Chairman of Top Level Domain Holdings Ltd, a publicly traded holding company on the London stock exchange.

**Peter Graham** LLB(Hons) 1971 had his book *So Brilliantly Clever* shortlisted for the NZ Post Book Awards 2012. See pages 8 and 9.



**Catherine Harwood** BA LLB(Hons) 2009 graduated LLM *cum laude* from Leiden University and was co-winner of the New Zealand Law Foundation Cleary Memorial Prize for 2012.



**Amelia Keene** LLB(Hons) 2010 was awarded the NZ Law Foundation Ethel Benjamin Scholarship for outstanding women scholars holding a New Zealand university law degree. She is using the

scholarship to pursue postgraduate study at Colombia University in New York.

**Jessica Lai** LLB(Hons) 2007 was awarded a PhD *summa cum laude* from the University of Lucerne, Switzerland.

**Bevan Marten** LLB(Hons) 2006 was appointed a Lecturer at Victoria's Faculty of Law.

**Dr Paul McHugh** was awarded a personal chair at the University of Cambridge.

**James G. Stewart** BA LLB(Hons) 2000, now at the University of British Columbia, had an article cited by the majority in the International Criminal Court's first judgement and which he says: "was started in the lonely halls of Victoria's Law Library".



**Jason Varuhas** LLB(Hons) 2004 was awarded the Yorke Prize, which is awarded annually by the Faculty of Law at the University of Cambridge for an essay on a legal subject, including the history, analysis, administration and

reform of law. Jason's topic was: "Damages for Breaches of Human Rights: A Tort-Based Approach", which is his PhD thesis. He joins three other New Zealanders with connections to Victoria who have earned the coveted prize: Richard Maclaurin (the first Dean of Law); Robin Cooke and Paul McHugh.



**Hon Justice Douglas White** LLM 1972 was appointed to the Court of Appeal.

## Staff appointments and awards

**Tony Angelo** was made an Officer of the New Zealand Order of Merit in the New Year's Honours for services to legal education.

**Bill Atkin** was appointed Chair of the Pipitea Human Ethics Committee.

**Graeme Austin** was appointed as a member of the Copyright Tribunal.

**Richard Boast** was awarded the Rex Mason Prize for excellence in legal writing for the year 2009.

**Susy Frankel** received a Fulbright New Zealand Scholar Award to research the application of international treaty interpretation rules and methods to intellectual property law, at New York University.

**Claudia Geiringer** was appointed a Professor of Public Law and Director of the New Zealand Centre for Public Law (see page 5).

**Catherine Iorns** was made a member of the Governance Team for Amnesty International Aotearoa New Zealand.

**David McLauchlan** was appointed a Professorial Fellow at the University of Melbourne until 2017.

**Bevan Marten**, A Victoria law alumnus was appointed a Lecturer. Before this appointment, he was working on his PhD at the Max Planck Institute of Comparative and International Private Law in Germany.

**Nicole Moreham** was appointed a member of the Humanities panel for the Marsden Fund until 2015.

**Sir Geoffrey Palmer** was appointed Chair of an independent panel to review the case for local government change in Wellington.

# Obituaries 2012

## JOHN BENTLEY MORRISON 1930-2012

JOHN MORRISON (“JBM” to many) died on 10 July, 2012. He was 82, and he was playing tennis. It was an apt ending to a life lived to the full. He was a highly regarded lawyer, a dedicated churchman, a competitive sportsman, a strong supporter of the arts and a devoted family man. He threw himself wholeheartedly into all that he did.

John came to Wellington with his family after completing his schooling at King’s College in Auckland. At Victoria, he graduated BA in English and LLB; for his final years working part-time as a law clerk with Young, Courtney, Bennett and Virtue, where I was similarly employed. We became lifetime friends. Later he joined me in my father’s firm, which became Scott, Hardie Boys and Morrison, and in latter years Morrison Kent. He quickly built up a strong conveyancing and commercial practice.

A man of utter integrity, he was passionate in the interests of his clients, greatly valuing the personal associations he established from one generation to another. He served the profession too, and for four years was chairman of the Costs and Conveyancing Committee of the New Zealand Law Society. He was a Director of National Mutual Life for 13 years, Chairman of its Superannuation Fund, Deputy Chairman of NZ Permanent Trustees, a Director and Trustee of Bowen Hospital and a Director of his nephew Lloyd’s Morrison & Co.

He finally retired from the partnership in 1996, after 40 years, but remained as a consultant until 2003. Yet even then he could not forsake those offices in what is now Morrison Kent House, where he had spent so many full and fruitful years. Nor did the old firm want him to. They kept him an office and he continued to go there, usually early in the morning. He was there at his office not long before he died.

John’s Christian commitment led him to serve the Church and the wider community in many ways. He was a parishioner of the Wellington Cathedral of St Paul and was created Canon Emeritus. He served a long term as Chancellor of the Diocese, and as a member of the Diocesan Board of Trustees. It was a measure of the man that after a powerful game of tennis on a Saturday, still in his white shorts, he would stop off at the Cathedral and clean up the front steps.



And for 20 years he regularly spent Sunday nights on duty at the City Mission’s Night Shelter; as well, he became involved in the work of the Tapu te Ranga Marae at Island Bay.

Once retired from the firm, he took out a practising certificate as a barrister and began to accept appointments from the Family Court under the Protection of Personal and Property Rights Act 1988. This was time-consuming and sometimes difficult work, but John enjoyed it, bringing to it the same concern and empathy for the less fortunate that he showed in so many other ways.

One of John’s greatest loves was the music of Richard Wagner. His enthusiasm was infectious. He was a driving force in the Wellington branch of the Wagner Society. He saw the Ring Cycle performed eight times, four of them in Bayreuth. But his love of music was not confined to the Ring or even to Wagner. He was a regular subscriber to the New Zealand Symphony Orchestra. He couldn’t sing to save himself, but was closely involved with opera, and was on the Board of Wellington Opera and then its successor New Zealand Opera. He was a Trustee of Lloyd Morrison’s Music Trust, a member of an advisory committee of the University’s School of Music, Chairman of the Wellington Sinfonia, a friend and supporter of many an

artist. He was also a trustee of the National Museum and Art Gallery.

His oldest brother was a distinguished soldier and two other brothers were killed in WW2. Doubtless as a result, he developed an interest in military history, and took an active role in the National Army Museum at Waiouru of which he was a Trustee for many years. He was one of the initiators of a project to produce a history of the 2nd Division of the NZEF in WW2.

For all this quite extraordinary service John sought no recognition. But when he received it, it came first not from New Zealand but from Denmark. He had been the Danish Honorary Consul for a great many years and he was awarded that country’s Knighthood of the Dannebrog. And his friends were all delighted when in the New Year Honours 2001 he was created an Officer of the New Zealand Order of Merit. The citation was “for services to the arts” but it could equally have been “for services to the people.”

*Sir Michael Hardie Boys, BA (VUW) 1954, LLB (VUW) 1954, Hon LLD (VUW) 1997.*



## HELEN MARY AIKMAN QC 1955–2012

**H**ELEN AIKMAN, daughter of Dr Colin Campbell Aikman and Betty Alicia James, and sister of Celia and Hilary, was born in Wellington in December, 1955. She died in February, 2012. Helen's friends and colleagues from the Pacific have mourned her death as representing "the loss of an extremely talented barrister whose affection and advocacy for things Pacific and in particular all things Samoan was very much woven into her life as it was for her family. A gentle woman of humanity and grace she was passionate about equity, fairness and justice and represented her clients with skill, commitment and an extraordinary application".

Helen's affinity with the countries of the Pacific and her knowledge of their law had its origins in her childhood years in Fiji. Professor Aikman was Vice-Chancellor of the University of the South Pacific and a distinguished constitutional lawyer who, during his career, worked extensively on the constitutional arrangements of several Pacific countries. During Helen's final year of college, which she completed in New Zealand, she stayed in another constitutional household environment with her god-parents, the Quentin-Baxters. Thus, Helen was imbued with an awareness of legal and governmental issues in the Pacific from an early age. In 1974 she graduated, aged 19, with a BA in history and politics from the University of the South Pacific.

In the early 1980s she married Jone Dakuvula. Jone and Helen had a daughter, Alisi Varani and a son, Atunaisa Varani.

Helen graduated LLB (Hons) from Victoria University of Wellington in 1982 and worked with Wellington firms Findlay Hoggard Richmond (later Buddle Findlay) and Tripe Matthews and Feist. She practised as a barrister after a while and in the late eighties, worked as a researcher at the Law Commission.

Jone and Helen separated in the early nineties. In 1992 Helen was admitted to the Samoan bar and travelled with her two children to take up the position of Principal State Solicitor in Samoa and head the small Crown Law Office there. In his eulogy at Helen's service, Hon Justice McGrath recalled that the experience was arduous. In her prosecution of serious crime and criminal and civil work in the Court of Appeal Helen had to deal with the added



complexity of customary norms which were at times in conflict with the human rights protection provisions in the Constitution. Although Helen's background and New Zealand court experience had given her a valuable start, Helen was very much on her own in Samoa with the responsibility for helping its courts get to grips with the principles to be applied.

In 1994, Helen returned to Wellington and became Crown Counsel in the Crown Law Office's team responsible for Treaty of Waitangi and International Law headed then by Ellen France, now Justice Ellen France. In 1998 she became the Team Leader of the Regulatory Law Team. Tragedy struck the family around this time when Alisi contracted a rare illness. A letter recently published in the Dominion Post wrote of Helen personifying "grace under pressure": Hemingway's characterisation of courage. The correspondent had been involved in litigation in which Helen appeared for the Crown. He learned during the court proceedings that Helen's daughter had become ill. After the case he called Helen, to congratulate her and to ask after her daughter. Helen told him that Alisi had died.

Helen was appointed Deputy Solicitor-General (Constitutional) in 2002. She left Crown Law in 2004 to return to the bar. During her ten years

at Crown Law Helen represented government interests before the Waitangi Tribunal, the Maori Land and Appellate Courts, the High Court, Court of Appeal and Privy Council. Much of the litigation Helen was involved with related to sales of government assets and restructuring of government businesses. International law issues included immigration and refugee cases at both trial and appellate level. She was counsel for the Government throughout the Foreshore and Seabed case.

She was appointed a Queen's Counsel and Law Commissioner in 2005. Her collaborator in the Commission's work on the convergence of custom and human rights in the Pacific, Justice Edward Durie, said there were very few people who could cross cultural boundaries in the way Helen did. Helen also led the reform of the law relating to public inquiries, which resulted in a new Inquiries Bill being introduced in the House.

The ten years that followed Alisi's devastating death coincided with Helen's own illness from the cancer that was to take her life. Yet during this time Helen continued to reach out to others and to practise and exemplify the highest traditions of the bar. In his eulogy, Hon Justice McGrath commented on the sizeable part of Helen's work that was for people who needed

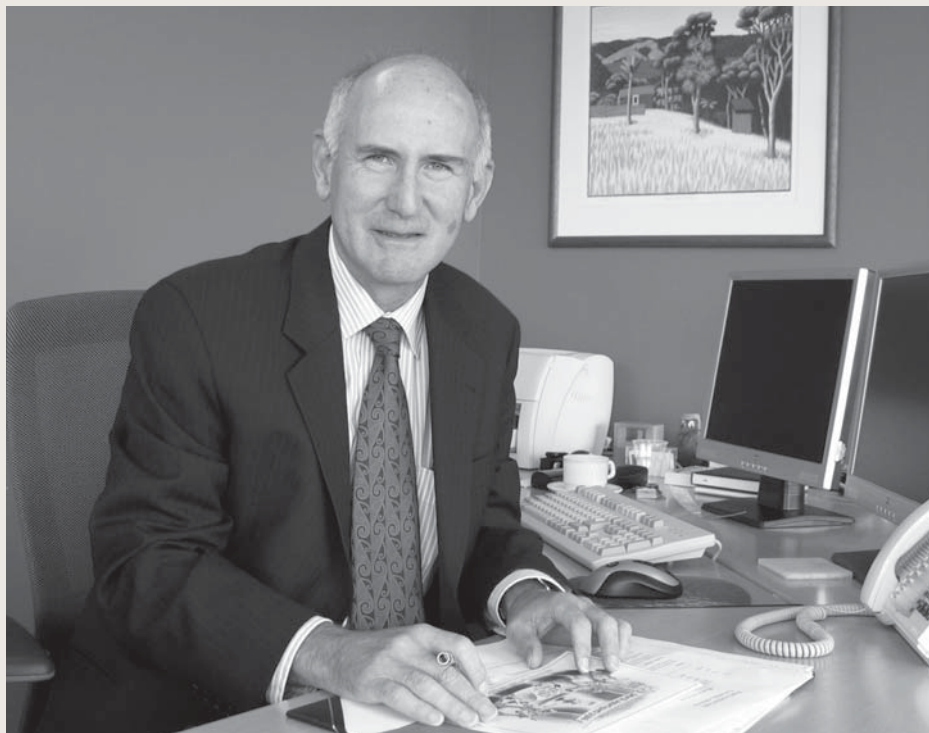
services, regardless of payment. "In her wider legal work Helen also sought to refashion the law so it would better serve the people who depend on it and she applied her extraordinary legal and person skills to this end." She appeared in the Supreme Court as amicus because the Court recognised her "special ability as an advocate to identify and articulate the real principles underlying a case and to put them to the Supreme Court in a way that would help us decide it."

Her commitment to those in need took Helen to India in 2009 to help Shabnam Ramaswamy, a woman who had abandoned her successful business life to establish a school for Delhi street children. The school was closed by the Delhi government and Shabnam, and her husband, Jugnu, decided to set up a similar school for rural youth in Katna, West Bengal. But in 2005, just before the school was to open, Jugnu died of a heart attack leaving Shabnam to run it single-handedly. In earlier years, Helen's family had donated to Shabnam's charity but they had since lost contact. Helen learned of Shabnam's situation through a feature radio programme. She made contact with Shabnam through the programme-maker, raised funds for her in New Zealand, then travelled the long way to Katna where she stayed to support and assist Shabnam for two months before returning to the orthodoxy of legal practice.

Helen's final project was unable to be completed before she died. In 2010 she spent five months at Cambridge University on a Herbert Smith fellowship researching and writing what was to be her historical study of the Fijian constitution. Hopefully it will be continued by others.

Last Christmas, Helen travelled with Atu to Fiji. She returned less than three days before she passed away. That she managed to make the trip with Atu, and return home, was characteristic of her determination and resilience and a testament to her son, who shouldered the responsibility for his mother's care. While we mourn the death of this peerless woman of light and grace we celebrate the contribution she made to the law in New Zealand and the Pacific, and the difference she made to those in need.

*Karen Clark QC, LLB (VUW) 1986*



## GEORGE TANNER QC 1946-2012

**G**EORGE TANNER was a lawyer beyond compare. For more than ten years, he was New Zealand's Chief Parliamentary Counsel, following in the footsteps of the legendary Walter Isles QC. There is no legal position in New Zealand of greater importance than the office of Chief Parliamentary Counsel. The impact of the Parliamentary Counsel Office upon the shape and content of our statute law can hardly be overestimated.

George became a Parliamentary Counsel in 1981. Many statutes that he drafted are still on the books, including the Commerce Act 1986, the Reserve Bank Act 1989 and the Companies Act 1993.

He loved drafting and he was exceedingly good at it. He was painstaking and thorough.

One of George's signal accomplishments was the project that led to all New Zealand statutes and bills being available online. This was a large and difficult project upon which he and Geoff Lawn worked for years. It was brought to a successful conclusion and the result is much more accessible law. George was always centrally concerned with the law being available and capable of being understood.

George's grounding in the law before he came to Parliament was wide ranging. He had been a Crown Counsel, during which he was heavily involved in the energy projects of that day. He had been in a law firm, Martin, Evans-Scott and Hurley. He had been a Junior Lecturer at

Victoria University of Wellington, where he received his legal education, culminating with an LL.M.

George's broad legal experience made his views and opinions on many fields of law valuable. He was thoughtful, analytical and very careful with the use of words, as one would expect. His vast experience with drafting bills and dealing with ministers gave him a sound sense of tactics and strategy when it came to deciding how to deal with reform projects.

When I was President of the Law Commission, I recruited him assiduously and he was keen to work with Professor John Burrows QC on a large project to improve New Zealand statute law. The fruits of this work can be found in the Legislation Bill, which is in the final stages of parliamentary passage at the time of writing. The bill covers such important topics as the printing, publication and reprinting of legislation; the process for revision bills and a three-yearly programme for this new concept so far as New Zealand is concerned; and reconstituting the law concerning Parliamentary Counsel.

George was a perfect Law Commissioner. He was generous with advice and his time. He was a great legal mentor for younger staff and spent a lot of time with them. He was a great transmitter of the values of the law and illustrated his points from examples drawn from his vast experience.

George did wonderful work as a Law Commissioner. His project to review and revise



the Land Transfer Act, dealt with one of the most fundamentally important statutes in New Zealand. It had to be revised because of the advent of electronic technology. George had the happy knack of inspiring feelings of confidence from both the legal profession and the public servants who administer the act.

George also led the massively important project on the law of trusts; it is tragedy for the law in New Zealand that he did not live to complete it. His draft of a bill embodying the recommendations would have been extremely valuable. He organised a group of leading practitioners in the field to assist the Commission.

Another area where I worked closely with George was at the Legislation Advisory Committee, which I chaired from 2004 until 2012. He was a member of that Committee as Chief Parliamentary Counsel and remained a member when he became a Law Commissioner. This little-known committee has government lawyers, academic lawyers and practising lawyers on it. It acts as sort of watchdog on the quality of legislation. It has produced over the years an extensive set of Guidelines and comments on government bills, to Select Committees where necessary.

George worked hard on that committee. And it is detailed and painstaking work. His knowledge of the legislative programme and of drafting made his comments pertinent and penetrating. George was indeed a prodigious worker. He worked very long hours in all his years in the Parliamentary Counsel office. It must have been very hard for his wife Alison and his family. But such are the demands of the offices he held.

George was an amusing companion, devoted to his family and wise. Few have contributed more to the law than he did. He will be greatly missed. He wrote significant and helpful articles in legal periodicals and books. His work was always accurate and full of insight. Much can be learned from reading it.

*Sir Geoffrey Palmer, BA (VUW) 1965, LLB (VUW) 1966, JD (Chicago) 1967, Hon LLD (VUW) 2002*



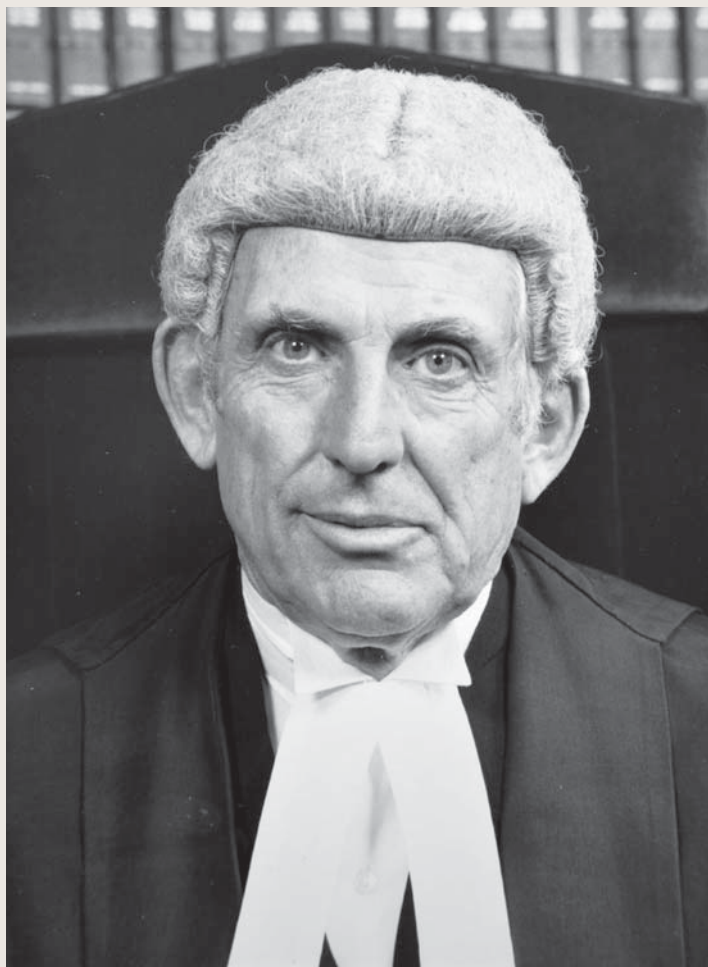
## RIGHT HONOURABLE SIR MAURICE CASEY 1923-2012

AS COUNSEL, when you learned which Judge would hear your case, sometimes you were delighted because you knew there would be a fair and attentive hearing and a prompt judgment which was unlikely to attract an appeal. Sir Maurice Casey was firmly in that category. During the period of his long judicial service, he was one of the quiet achievers.

Maurice enrolled at Victoria in 1940 but his studies were interrupted by war service. After graduating in 1946 he practised briefly in Blenheim and Lower Hutt before settling in Auckland where he became a litigation partner in one of the leading firms, Buddle Weir & Co. His appointment as a Judge in 1974 caused no surprise, nor his subsequent elevation to the Court of Appeal. In 1986 he became a Privy Counsellor.

Sir Maurice had all the gifts of an outstanding Judge. He knew his law, and was expert in procedure, but especially, he had judgment; an unerring instinct for the right result, based on life experience and sound common sense. Possessing an equable temperament, on the Bench he was not loquacious, but when intervening was direct and to the point. Unpretentious by nature, he sat on many prominent cases, but never sought prominence for himself, letting his judgments do the talking. They were clear and succinct, and their concision may have owed not a little to the fact that in the dictaphone age, he crafted them by hand, using a fountain pen to write a neat script. Conservative by nature, Casey J in his judgments focussed on achieving a just result by the application of settled principles to the facts.

He was rightly described as a courageous Judge. In 1985, sitting under great pressure (the three-day hearing concluded on a Saturday and the



judgment was delivered that afternoon) he famously granted an interim injunction which brought about the cancellation of the proposed All Black tour of South Africa. In Fiji, he presided in an appeal upholding a finding that the ruling military had unlawfully abrogated the country's constitution. As other Judges of that era will recall, hearings of such cases of constitutional significance were stressful events, with armed military visible and the Judges accompanied by minders against the possibility of trouble.

On retirement after more than 20 years on the New Zealand judiciary, Sir Maurice served extensively as an appellate Judge in the Pacific. His services to Fiji were recognised by the award of the country's highest civilian honour, Commander of Fiji.

Maurice Casey's blunt exterior masked a twinkling sense of humour. As a colleague he was ever companionable. Outside the law his private life was much focussed on his family, his wife Dame Stella Casey (distinguished in her own right) and their 9 children; and his strong Catholic faith.

*Thomas Eichelbaum LLB Hons (VUW) 1952, Hon LLD 1998*

## JEREMY POPE, ONZM 1933-2012

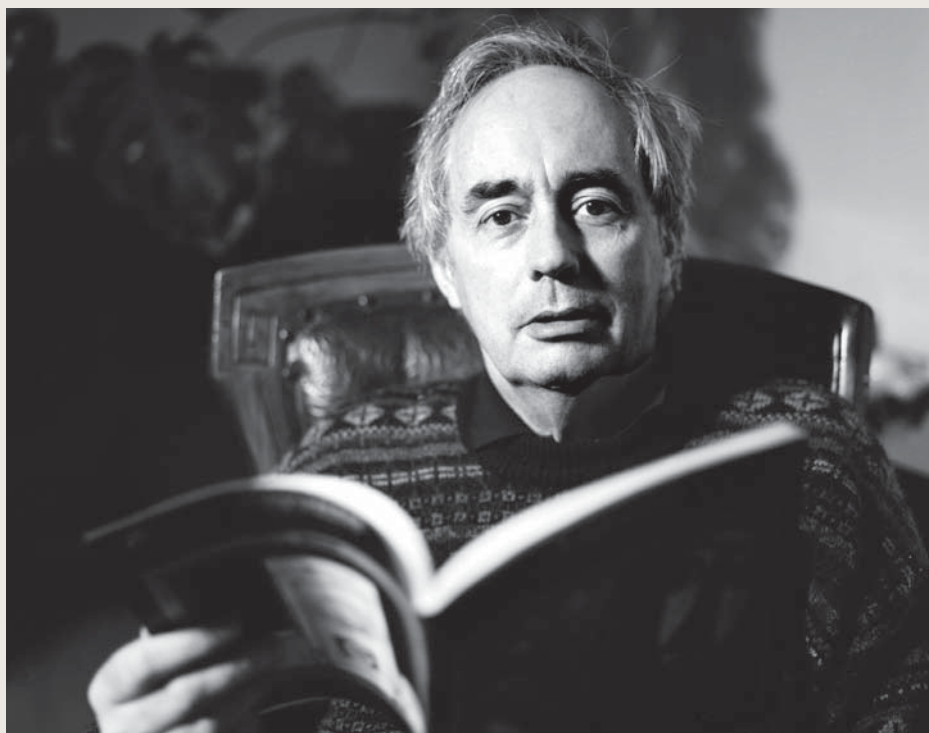
JEREMY POPE was a remarkable man. He was born in Wellington on 9 October, 1938, one of three children born to Quentin Pope and Isabel McLennan. His father was a journalist and a poet, writing for the New York Times and the Chicago Herald Tribune as their New Zealand correspondent. After WW2, Quentin Pope became a roving international correspondent and one can't help but think this may have been a significant influence on a son whose innate sense of internationalism was lifelong and prescient.

Jeremy attended St Peter's prep school in Cambridge, Waikato, and Wanganui Collegiate. After secondary school, he studied law at Victoria and in 1963 married Diana Miller and was admitted to the bar. Following a few years in legal practice, Diana and Jeremy travelled overseas. When they returned to New Zealand, they produced the Mobil Guides to the North and South Islands, based on the Michelin Guides that had helped them in their travels abroad. The Mobil Guides were a huge success, with over 200,000 copies sold over 30 years and the Papes receiving an award for an outstanding contribution to travel in New Zealand.

Jeremy was appointed Editor of the *New Zealand Law Journal* in the 1970s and in 1978 resigned to take up a place as the Assistant Director of the legal division of the Commonwealth Secretariat and Editor of the *Commonwealth Law Bulletin*. A three-year appointment became a 17-year stay and Jeremy became Director of the division in 1980. It is here that my path crossed with his.

I first met Jeremy when, as a final-year law student, I attended the New Zealand Law Conference in Rotorua over Easter 1984. As the Legal Director of the Commonwealth Secretariat, he had brought to New Zealand the then Secretary-General, Sir Sridath ('Sonny') Ramphal – an ebullient and outspoken character. Sonny's speech on the pressing needs for the legal profession to contribute to a wider world inspired me so much that, when, later that year, I went to London (following my wife-to-be Rhona), I phoned Jeremy and, with all the innocent enthusiasm of youth, asked him for a job.

In a move I subsequently saw was characteristic of Jeremy, he immediately offered me one. I spent nine fascinating months at Marlborough House (the royal palace on the Mall that is the Secretariat's home), fielding all manner of projects that came into Jeremy's fertile mind. The experience was formative and inspiring. Jeremy had an amazing *modus operandi*. In those days before the internet and email, he conducted a huge daily correspondence on the Secretariat's distinctive blue airmail paper with lawyers and politicians all around the Commonwealth. He



initiated all manner of law reform projects and made Marlborough House a hive of optimism for what law could achieve to improve the lives of ordinary people in Commonwealth countries.

Jeremy's contribution was not purely legal. He was at the centre of the political work of the Secretariat – something I saw at first-hand during the first Fiji coup in 1985. He could be outspoken when necessary. But most of the time he astutely recognised that more could be achieved by getting alongside Commonwealth Governments, acting as a positive agent for change.

His greatest contribution in this period was in helping engineer the visit of the Commonwealth Eminent Persons Group to South Africa and in writing the Group's report. This was a watershed moment in bringing about the end of apartheid – a cause for which Jeremy had long fought. Although his work was conducted behind the scenes, it was fundamental to the international recognition and credibility accorded to that initiative, which exposed the apartheid system to international view as never before.

After that first year, I moved on first to writing my PhD and then into legal practice. But Jeremy and I continued to have many adventures in the law together – at meetings of Commonwealth Law Ministers at Jamaica in 1986 and in New Zealand in 1990. He sent me my first case – an exotic claim of postage stamp fraud brought on behalf of the Government of Tuvalu – which fortunately had a successful outcome! But Jeremy was also a great mentor to me, in the many difficult decisions as to my path to life in the law that I had to make in those days.

So it was a special privilege to be able to assist him in a small way, when his time at the Secretariat came to an end, to discuss his own possible future direction with Transparency International. At the time, Transparency was a small and little-known NGO based in Berlin with a remit to tackle the problem of corruption, but with very little international traction. Jeremy and Diana moved to Berlin, and he threw himself into the task of transforming Transparency into the major force for good that it is today. Jeremy was the ideal person to do this. His time at the Secretariat had given him a unique insight and access to government ministers and officials in Commonwealth countries. Still it was characteristic of him not to take the route to an easy life that he might have done as an international civil servant and diplomat, but instead to take on a whole new fight – with some of the most powerful vested interests both in governments and in industry. He did so both by reporting fearlessly on what he found, but also by getting alongside governments and corporations for direct dialogue and training.

When Jeremy and Diana finally returned to live in New Zealand, it was an honour for me to be able to support Jeremy's appointment as a member of the New Zealand Human Rights Commission.

Jeremy always took the road less travelled in life. He remained true to his moral compass. He saw law as a positive force for good in human society. His was a life well lived. He will long be remembered with affection and respect far beyond these islands.

*Campbell McLachlan QC, LLB(Hons) (VUW) 1984*



# Visitors to the Faculty 2012

## JANUARY

**Yee Wah Chin**, an antitrust lawyer and commercial litigator from the United States, has been at the Law Faculty for all of 2012. She has been working on a research project: “Intellectual property rights & remedies after eBay and Google Books”, published several articles, presented papers at various events as well as participating in the life of the Faculty.

**Li Luo**, Professor at Ranmin University, is the Dan Chan Fellow 2012. She gave a public lecture entitled “Legal Protection of Typeface” and taught LAWS 345 Comparative Law in the second trimester.

**Eva Hendriks**, a PhD student from the University of Amsterdam, visited for a few months whilst working on her thesis.

**Nancy Kim**, Professor from California Weston School of Law in San Diego, came on an exchange to teach LAWS 303 Advanced Contract in trimester one.

## FEBRUARY

**Mario Patrono**, Sapienza University of Rome is a regular visitor to the Faculty. Professor Patrono teaches in Community and European Union Law. He is scheduled to visit again and teach Law in 2013.

**Monique Costi**, former Head of International Affairs, NZ Securities Commission/FMA, visited in late 2011 and continued during 2012.

Monique is researching for a monograph on the International Organisation of Securities Commissions (IOSCO). In August she participated in the NZCIEL symposium on “Investment Issues for New Zealand and Beyond” as a panellist talking about “Foreign direct investments in global context – some trends and policy considerations”. She also presented a paper on IOSCO’s strategic direction post-crisis at the ANZSIL annual conference in July.

**Makoto Sano**, a Professor from Fukuoka University in Japan, was here for a month to research our accident compensation system.

**Andrew Ashworth**, the Vinerian Professor of English Law at the University of Oxford, was the 2012 Law Foundation Distinguished Visiting Fellow. Professor Ashworth gave a public lecture: “Guilty of Doing Nothing: Omissions, Duties and Crimes”.

## JUNE

**Jasper Krommendijk**, a PhD student from Maastricht University, visited for a few months whilst working on his thesis in the area of UN human rights treaties.

**Mary Boyce**, University of Hawai’i at Mānoa, returned to the Faculty to work on the Maori Legal Project with Mamari Stephens.

**Andrew Byrnes**, ANZSIL President, visited with the Faculty in the lead-up to the ANZSIL Conference held at Victoria in July.

## AUGUST

**Justice Tipping**, former Supreme Court Judge, has an office in the Law Faculty while he works on a project for the Council of Legal Education.

**Kayla Kingdon-Bebb**, a PhD student from the University of Cambridge, will be with the Faculty until early 2013 while working on her thesis, which is a diachronic study of changes made to the land tenure systems of self-governing First Nations in British Columbia.

## SEPTEMBER

**Nur Ezan Rahmat**, a PhD student from the International Islamic University of Malaysia, worked on her thesis chapter which required her to study the practice of Family Mediation in other jurisdictions. She was under the supervision of Professor Bill Atkin.

## OCTOBER

**Shaunnagh Dorsett**, Associate Professor, Faculty of Law, University of Technology, Sydney, gave a staff seminar: “Pre-‘fusion’ ‘fusion’? New Zealand 1843-1856 and the Influence of Civil Law”.

**Nina Bergmann**, a PhD student from Universität Passau, is working on her thesis “Disappearing States – Impact of Climate Change on Small Island States and their peoples”.



## Faculty events 2012

### JANUARY

#### BOOK LAUNCH

*What's the Hurry? Urgency in the New Zealand Legislative Process 1987-2012* (VUP 2011)  
by Claudia Geiringer, Professor Elizabeth McLeay and Polly Higbee

### FEBRUARY

#### BOOK LAUNCH

*Learning from the Past, Adapting for the Future: Regulatory Reform in New Zealand* (Lexis Nexis, 2012) edited by Professor Susy Frankel

Guest speaker: The Hon John Banks  
*In association with the New Zealand Law Foundation*

### MARCH

#### PUBLIC LECTURE

**Negotiating the Fundamental Right to Personal Liberty: Four Problem Cases**  
Professor Andrew Ashworth, New Zealand Law Foundation Distinguished Visiting Fellow

#### OPENING

**Te Kauwae Parāoa** – see page 3.

### MAY

#### PUBLIC LECTURE

**The Copyright Law of China and recent developments**  
Professor Li Luo  
*In association with the New Zealand Association for Comparative Law*

### JUNE

#### PUBLIC LECTURE

**Consuetudo ex facto oritur: Custom, Practice and the Law**  
Professor Gerald Postema, Cary C. Boshamer  
Professor of Philosophy and Law (University of North Carolina)

### AUGUST

#### DEAN'S RECEPTION

To honour competitions and prize winners – see page 28.

#### PUBLIC LECTURE

**Making International Law**  
Sir Kenneth Keith  
*In association with the International Law Association (New Zealand)*

#### LAUNCH

Special Issue of the *Victoria University of Wellington Law Review* (VUWLR) to commemorate the life and work of Dr George Barton QC – see page 7.

### OCTOBER

#### LAUNCH

Re-launch of the *Māori Law Review* and the Review's new association with the Faculty of Law – see page 2.

#### PUBLIC LECTURE

**Legal Protection of Typeface**  
Associate Professor Luo Li, Dan Chan Fellow 2012

### NOVEMBER

#### PUBLIC LECTURES

**Zealand Old & New: International Arbitration and Trade**  
*New Zealand Law Foundation Inaugural International Dispute Resolution Lecture*  
Lucy Reed

**The expert witness in the arbitral process**  
Nils Schmidt-Ahrendts

**Bribery in arbitration**  
Vladimir Pavic

### BEEBY COLLOQUIUM ON INTERNATIONAL LAW

**“It is within the proper nature of the judicial process and well-established judicial functions for national courts to have regard to international obligations which a country undertakes – whether or not they have been incorporated into domestic law – for the purpose of removing ambiguity or uncertainty from, national constitutions, legislation or common law.”**

(Principle 7 of the Conclusions of Judicial Colloquia & other meetings on the Domestic Application of International Human Rights Norms and on Government under the Law ('Bangalore Principles'), 1988-92).

Speakers; Professor Campbell McLachlan (Victoria University of Wellington) Mark Gobbi (Parliamentary Counsel Office), Associate Professor Treasa Dunworth (University of Auckland)  
*In association with the Ministry of Foreign Affairs and the International Law Association (New Zealand)*

#### SEMINARS

**The Outcome of the US Presidential Election and the Issues it raises about International Law**

Professor Michael J Matheson  
*In association with the International Law Association (New Zealand)*

**Self-Determination in Puerto Rico: Recent Developments**

Dr Joel Colón-Ríos  
*In association with the New Zealand Association for Comparative Law*





## NEW ZEALAND CENTRE FOR PUBLIC LAW

### JANUARY/FEBRUARY

#### THE TREATY DEBATE SERIES: PATHWAYS TO THE FUTURE

##### Pathway to Partnership; The WAI 262 Report

Speakers: Hon Justice Joe Williams and lawyer Mai Chen

#### A Long Conversation:

##### The Constitutional Review

Speakers: Professor John Burrows, Associate Professor Nin Tomas and Claudia Geiringer

### MAY

#### PUBLIC LECTURE

##### The Christchurch Earthquakes:

##### Insurance and Reinsurance Issues

Professor Robert Merkin, Research Professor of Commercial Law, Southampton University

#### PRESENTATION &

#### SMALL GROUP DISCUSSION

##### Law for Change

Presenters: Matthew Smith (barrister, Thorndon Chambers); Jess Kerr (Crown Law); Louis Chambers (law student); Max Harris (clerk to Chief Justice, Dame Sian Elias)

### JUNE

#### PANEL DISCUSSION

##### Why the World needs a Bulletproof Arms Trade Treaty

Speakers: Monica Silverwood (Humanitarian Law Legal Adviser, International Committee of the Red Cross); Widney Brown (Director of Law and Policy, Amnesty International); Ema Tagicakibau (International Advisory Council for the International Action Network on Small Arms); Luke Roughton (Control Arms Coordinator, Oxfam NZ)  
Spokesperson (Ministry of Foreign Affairs and Trade)

### JULY

#### CONFERENCE

20th annual conference of ANZSIL, Australian and New Zealand Society of International Law  
**International Law in the next two decades: Form or Substance?**

Speakers: Professor Jan Klabbers (University of Helsinki); Ms Valerie Hughes (Director, Legal Division, WTO); Professor Richard Fentiman (University of Cambridge); Professor Ivan

Shearer (University of Sydney)

*With generous assistance from the New Zealand Law Foundation – see page 11*

#### PUBLIC LECTURE

##### Substitute Justice?: Indirect Challenges to Guantanamo in Non-American Courts

Professor Kent Roach, Professor of Law & Prichard Wilson Chair in Law and Public Policy, University of Toronto

### AUGUST

#### PANEL DEBATE

##### Circumcision in the Spotlight: A Rights Debate

Speakers: Professor Paul Morris (Professor of Religious Studies, VUW); Hugh Young (The Intactivism Pages); Associate Professor Elisabeth McDonald (Faculty of Law, VUW); Associate Professor Petra Butler (Faculty of Law, VUW)

### OCTOBER

#### PUBLIC OFFICE HOLDER'S LECTURE

##### The Judicial Conduct Commissioner: current challenges

Sir David Gascoigne KNZM CBE LL.M

## NEW ZEALAND CENTRE OF INTERNATIONAL ECONOMIC LAW

### MARCH

#### PUBLIC LECTURE

##### Do Bad Things Happen when Works Fall into the Public Domain?

Professor Paul Heald, Professor of Law, University of Illinois

### APRIL

#### PUBLIC LECTURE

Intellectual Property, Innovation and Creativity: Current International Developments  
Francis Gurry, Director General WIPO

#### SEMINAR

A Pragmatic Approach to International Financial Regulation -- IOSCO's Role in Promoting Effective Securities Regulation  
Presented by Monique Egli Costi

### JULY

#### CISG DELIBERATIONS

##### One law to rule them all

The UN-appointed Advisory Council for the UN

Convention on Contracts for the International Sale of Goods (CISG) met at the Faculty, presented to the AMINZ conference and had meetings at Chapman Tripp

*With generous assistance from the NZ Law Foundation – see page 6*

### AUGUST

#### SYMPOSIUM

##### Investment Issues for New Zealand and Beyond

Keynote Address: 'Tiger Parents? The Politics of Chinese Foreign Direct Investment in the European Union' – Sophie Meunier, Woodrow Wilson School of Public and International Affairs

#### SEMINAR

##### The proposed collaborative activity exemption and collaborative activity clearance regime

Speakers: Professor Bill Kovacic, Professor of Law, George Washington University, Chair of the Federal Trade Commission and Dr Mark Berry, Chair of the Commerce Commission NZ  
*In association with the New Zealand Commerce Commission*

### SEPTEMBER

#### PUBLIC LECTURE

##### Public Health, the Cost of Medicines and the Trans-Pacific Partnership Negotiations

Deborah Gleeson (Lecturer, School of Public Health and Human Biosciences, La Trobe University) With comments by Susy Frankel, Professor of Law, Victoria University of Wellington

### NOVEMBER

#### CONFERENCE

##### Evolution and Equilibrium: Copyright this Century

Keynote speaker: Jane Ginsburg, Morton L. Janklow Professor of Literary and Artistic Property Law, Columbia Law School, New York  
– see page 10

#### SYMPOSIUM

##### The Trans-Pacific Partnership

Chairs: Rod Alley (Centre for Strategic Studies, VUW); Bill Rosenberg (CTU Economist and Director of Policy); Professor Margaret Wilson (University of Waikato)

# Faculty publications 2012

## VUW LAW REVIEW



### VOLUME 43, NUMBER 1: JUNE 2012 Special Issue in Honour of George Paterson Barton QC

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- 7 Memories of George Barton *Hon Christopher Finlayson*
- 11 In Memory of Dr George Barton QC *Christine Grice*
- 13 George Barton and the Art of Friendship *Peter McKenzie*
- 17 A Tribute to Dr George Barton *Sir Ivor Richardson*
- 21 International Law 1960 to 2010: Now and Then *Sir Kenneth Keith*
- 39 Perspectives on International Dispute Settlement from a Participant *Sir Geoffrey Palmer*
- 77 Peacekeeping Forces, Jurisdiction and Immunity: A Tribute to George Barton *Roger S Clark*
- 103 The Privy Council as the Final Court for the British Empire *Sir Ivor Richardson*
- 127 Reforming Civil Procedure *Don Mathieson*
- 147 The Later Privy Council and a Distinctive New Zealand Jurisprudence: Curbor Spur? *Sir David Baragwanath*
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- 173 The State of Judicial Scrutiny of Public Contracting in New Zealand and Canada *David Mullan*
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- 207 New Zealand's First Chief Justice: The Rule of Law and the Treaty *Peter McKenzie*

### VOLUME 43, NUMBER 2: JULY 2012

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- 263 Multi-textualism, 'Treaty Hegemony' and the Waitangi Tribunal: Making Sense of 19th Century Crown-Māori Negotiations in Te Urewera *Hannah Blumhardt*
- 289 Authorisation of Abortion for a "Serious Danger to Mental Health": Would the Practice Stand up to the Judicial Test? *Amy Dixon*
- 321 Prior Complaint Evidence under the Evidence Act 2006: The Supreme Court Jurisprudence *Holly Hill*
- 345 The Treaty of Waitangi as an Exercise of Māori Constituent Power *Jessica Orsman*
- 373 Multi-Link Leisure Developments Ltd v North Lanarkshire Council: Commercial Interpretation or Relief From a Bad Bargain? *Adèle Taylor*

### VOLUME 43, NUMBER 3 SEPTEMBER 2012

- 403 Charitable Trusts and Advancement of Religion: On a Whim and a Prayer? *Juliet Chevalier-Watts*
- 423 Humanitarian Concerns and Deportation Orders Under the Immigration Act 2009: Are International Obligations Enough Protection for the Immigrant with Mental Illness? *Timothy P Fadgen & Guy Charlton*
- 447 Third Party Consent Searches Following the Search and Surveillance Act *Sam McMullan*
- 471 A Case for Including Economic, Social and Cultural Rights in the New Zealand Bill of Rights Act 1990 *Joss Opie*
- 517 Simplicity in Legislative Drafting and Rewriting Tax Legislation *Sir Ivor Richardson*

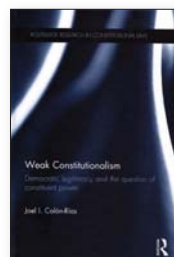
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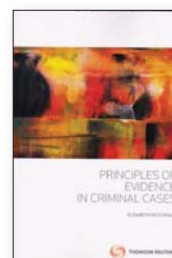
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**Jones, Carwyn** "Whakaeke i ngā ngaru – riding the waves: Māori legal traditions in New Zealand public life" in Lisa Ford and Tim Rowse (eds) *Between Indigenous and Settler Governance* (Routledge, New York, 2012)

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**McLay, Geoff** "Equitable Damages" in Rt Hon Peter Blanchard (consulting ed) *Civil Remedies in New Zealand* (2 ed, Wellington, Brookers, 2011) pp 145-201

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# Student achievements 2012

## LAW SCHOOL TEAM WINS PRIZE IN HONG KONG

On 8-10 March 2012, the Victoria University Law School team – Marin Van Hove and Ella Watt (oralists) and Zoe Halliday (researcher) – competed in the 10th Annual Red Cross International Humanitarian Law Moot (an Inter-University Competition for the Asia-Pacific Region) in Hong Kong.

For the second time in three years, the Law School team won the prize for Best Memorial. The judges scored the memorial 92 and 94 out of 100, praising the quality and depth of the legal arguments.

The team reached the semi-finals of the Moot, losing to the eventual winners, the University of Hong Kong.

Alberto Costi and Joanna Mossop, who shared coaching duties and helped prepare the team for the competition, accompanied the students to Hong Kong.

The competition featured 20 teams from the Asia-Pacific region representing either the Prosecutor of the International Criminal Court or the Defendant, each arguing twice in a preliminary round, with three teams representing the Prosecutor and three teams acting for the Defence for the semi-finals.

The University of Hong Kong won the final against the University of Melbourne. The final was judged by Mr Chris Harland, Regional Legal Adviser, International Committee of the Red Cross (New Delhi), the Hon Mr Justice Patrick Chan, Permanent Judge, Court of Final Appeal, HKSAR, and Mr Michael Crowley, Senior Lecturer, Edith Cowan University (the author of the problem).

As opposed to the other teams, the Law School team had been invited by the organisers of the competition and did not have to take part in a national round before going on to compete in Hong Kong.

This disadvantage in terms of mooting experience was minimised by the assistance of a number of colleagues (Tony Angelo, Petra Butler, Kevin Riordan and Rayner Thwaites), the winning team of last year (Sam Humphrey and Sarah Wilson) and Monica Silverwood (Legal Adviser, Office in Australia - International Committee of the Red Cross Regional Delegation in the Pacific). They offered invaluable advice to the students in a number of meetings and rehearsals before the team's departure for Hong Kong.

The team would like to thank the Hong Kong Red Cross, the International Committee of the Red Cross Regional Delegation in the Pacific and the Law School for their great support.

For more details of this year's competition, see [www.redcross.org.hk/en/press\\_room/press\\_release\\_detail.html?year=2012&id=1183](http://www.redcross.org.hk/en/press_room/press_release_detail.html?year=2012&id=1183).

## COMPETITIONS AND AWARDS

VUWLSS had its most successful year ever in external competitions in 2012.

Our Senior Mooting team of Alexandra Sinclair and Campbell Herbert won both the Australian Law Students Association Mooting Competition and NZ Law Students Association Senior Mooting Competition. Accordingly, Alexandra and Campbell will compete at the prestigious Jessup International Law Moot Court Competition.

The Client Interviewing team of Adele Taylor and Elisabeth Perham also completed this double – winning both the ALSA and NZLSA competitions comfortably. Adele and Elisabeth will travel to Glasgow in 2013 to compete in the World Client Interviewing Competition.

At the NZLSA Conference, Duncan McLachlan and Aric Shakur won the Junior Mooting Competition – a feat especially impressive as both can compete in the competition again next year. William Findlay was runner-up in the Client Interviewing Competition, narrowly defeated in a split decision by the judging panel.

In addition to these individual successes, at the NZLSA Conference VUWLSS was, for the first time, awarded the NZLSA President's Prize for Best Overall Law Student's Society.

### **“To err is human.**

### **To er, um, ah is unacceptable”**

*A personal view of the year's achievements by debator Duncan McLachlan.*

Debating, like any illustrious sport, hinges on tournaments. There is a round-robin competition once a week, but that is only training for tournaments. And tournaments are the thing the Vic debating team seems to excel at year after year. This year has been no exception.

Our first victory was at Easter, at the New Zealand University Impromptu Debating Competition, in which teams of two have five minutes to prepare, and then speak for six minutes. This was the 14th time Vic has won this competition.

The winners were Asher Emanuel and Udayan Mukherjee. Udayan is a philosopher, the President of Debsoc, and, broadly speaking, someone worth listening to. Asher is a third-





year law student, has edited *Salient* this year and may be often seen brooding outside lecture theatres. In that debate, they tore apart (there are no other words for it) the older Auckland University team by negating the motion that indigenous groups should have perpetual and exclusive intellectual property rights in traditional art (think of the koru on Air NZ, the tiki in art).

Then came Australs – the Australasian Intervarsity Debating Competition, which is the second largest debating competition in the world. This year, our top team included Asher, Richard D'Ath (a veteran of both debating and Law School) and Paul Smith (philosopher). They eventually lost in the semi-final to the winners of the competition, Monash University 1.

Victoria 2 – Jodie O'Neill, Nick Cross (both third-year law) and I – lost in the Octofinals to the illustrious Victoria 1. The motion was that

US Supreme Court Judges should have term limits. Vic 1 was supporting the motion. The debate hinged on (a) the extent to which politicisation occurred under a system where judges could choose their retirement; and (b) whether politicisation of the judiciary was in any way undesirable.

The audience was probably on our side as underdogs. The debate swung back and forth with careful argumentation and examples thrown around as if we knew the judiciary personally. It was thrilling stuff for such a seemingly soporific motion.

Back to the tournaments. We won Joynt Scroll for the seventh time, thanks to Jodie, Asher and Udayan. This time they had to defend abortion to win the debate. A tough ask, but they succeeded.

Recently, Sebastian Templeton (a now graduated member of the competition law team at

Chapman Tripp) and Richard D'Ath held off Monash and Sydney debaters to win the New Zealand British Parliamentary Style Debating Competition. A big deal, and they are soon off to represent Victoria (apparently Seb has not yet graduated) at the Worlds in Berlin. At the last Worlds they were both considered members of the top 20 speakers there, so they will probably do all right.

Law students continue to thrive in debating. Both law and debating require an intellectual dexterity that is engrossing as a participant but also allows each to enhance the other (although perhaps my law results will refute this hypothesis). Under the stewardship of Udayan, this year's law students young and old have cohesively melded into the debating arena.

As *The Economist* put it so aptly in its advertising campaign: "To err is human. To er, um, ah is unacceptable."



## Student prizewinners 2011-12

Each year outstanding students receive prizes to reward their talent and celebrate their achievements.

### FACULTY OF LAW PRIZEWINNERS 2011

#### A H Johnstone Scholarships in Law

Best result in top three 200-level courses

Lauren Brazier & Matthew McMenamin

#### AJ Park Prize in Intellectual Property

Top result in Intellectual Property

Frances Kerslake

#### Alumni Association Undergraduate Achiever Award

Anna Peacey

#### Archibald Francis McCallum Scholarship in Law

Best result in LAWS 301 Property Law

Premilla Singh

#### Bernard Randall Prize in Family Law

Top student in LAWS 370 Introduction to Family Law

Alison Hamilton

#### Chapman Tripp Prize

Top graduating law student

David Bullock

#### Chris Highfield Memorial Prize in Judicial Law

Best result in LAWS 322 Judicial Review

David Bullock

#### Chris Highfield Memorial Prize in Public Law

Best result in LAWS 213 Public Law

Lauren Brazier

#### Coleman-Brown Memorial Award

Top female student in the field of Legal Theory

Premilla Singh

#### Cullen Employment Law Prizes

Top students in LAWS 355 Employment Law

Richard Chiu, Phillip Claridge & Natalie Johnson

#### Faculty of Law Prize in Legal System

Best result in LAWS 121 Legal System

Rose Goss

#### LEADR Prize in Dispute Resolution

Best work in Dispute Resolution

Kate Neilson

#### Lord Cooke of Thorndon Prize

Best student entering the Honours programme

Lauren Brazier

#### Mario Patrono Prize in Legal System

Highest average grades in LAWS 121, 122 & 123

Rose Goss



From left:  
Professor Tony Smith,  
Campbell Herbert,  
Alexandra Sinclair,  
David Hills

#### Medal of Excellence

Top graduating law student

David Bullock

#### NZ Law Review Prize

Top students over four 200-level Law courses

Lauren Brazier, Matthew McMenamin & Ruth Upperton

#### Quentin-Baxter Prize in International Law

Best work in LAWS 340 International Law

Anna Ker

#### Quentin-Baxter Prize in Public and International Law LLM

Kathy Scott-Dowell

#### Robert Orr McGechan Memorial Prize

Best work for VUWLR

Ella Watt

#### Thomson Reuters Prize in Jurisprudence

Best work in Jurisprudence class

Lucy Revill, Premilla Singh & Jack Steiner

#### Thomson Reuters Prize in the Law of Contract

Best work in Law of Contract class

Alice Chote

#### Val Gormly Memorial Prize

Top student in LAWS 301 Property Law

Premilla Singh

#### VicBooks Award – Laws 211

Top tutor in LAWS 211

Alison Hamilton

#### VicBooks Award – Laws 212

Top tutor in LAWS 212

Kathy Scott-Dowell

#### VicBooks Award – Laws 213

Top tutor in LAWS 213

David Bullock

#### VicBooks Award – Laws 214

Top tutor in LAWS 214

Sam Humphrey

#### VicBooks Award – Laws 301

Top tutor in LAWS 310

Sebastian Templeton

### COMPETITION WINNERS 2012

#### Bell Gully Mooting

Alexandra Sinclair & Campbell Herbert

#### Minter Ellison Rudd Watts Witness Examination

William Findlay

#### Russell McVeagh Client Interviewing

Adele Taylor & Elisabeth Perham

#### Buddle Findlay Negotiation

Molly Woods & Lauren Brazier

#### Buddle Findlay Junior Mooting

Duncan McLachlan & Aric Shakur

#### Chapman Tripp Junior Negotiation

Georgia Cameron & Reweti Kohere



# Student activities 2012



## FROM THE LAW STUDENTS' SOCIETY PRESIDENT

THE YEAR OF 2012 was marked by one concept – change. VUWLSS looks, behaves and operates very differently than it did in the immediately previous years.

The catalyst for this change was necessity. The introduction of voluntary student membership meant that VUWLSS would need significant operational reconstruction and reconfiguration if it was to continue playing an important role in the education of law students at Victoria. There is no denying that this was a large and intimidating challenge.

The 2012 Executive fully embraced the enormity of the task. They were incredibly dedicated, positive, hard working, and passionate. The satisfaction of watching new ideas materialise, and of watching VUWLSS add value in areas that were previously uncharted, has made for an incredibly rewarding experience.

Improving and widening the opportunities offered under the education portfolio was a deliberate focus of the Executive. We introduced a regular series of Study Groups for 200-Level Students, partnered with VicCareers to organise a careers seminar series, launched a mentoring programme for senior students in association with the Young Lawyers Committee Wellington,

and acted as a channel towards other opportunities made available by Wellington's strong civil society sector.

Socially, we expanded the amount of events in our calendar year. Stein evenings showed great promise as a revenue-generator for VUWLSS in the future, and established events such as the Law Ball, Cocktail Night and T-Shirt Night continued to blossom. We ran the biggest ever Law Camp – giving second-year students a collegial welcome to the Pipitea campus. I believe the importance of running a successful Law Camp cannot be understated. It was bittersweet to witness the incredible experience that was available to these students, when that was nonexistent when I was at the same stage.

In addition to our own internal activities, we had the most successful year of competitions in VUWLSS history. Our competitors won the Senior Mooting, Junior Mooting and Client Interviewing at the annual NZLSA Conference. VUWLSS also won the NZLSA President's Prize for the Best Overall Law Students Society – the first time that we have claimed this prize.

None of this would have been possible without the committed and exceptionally capable group of people that comprised the 2012 Executive. I thank them first and foremost.

Thanks must also go to our sponsors, including the Law Faculty at Victoria University of

Wellington. We worked hard to put together valuable products for sponsors – ones that produce tangible benefits for both parties. VUWLSS would be a much less effective society without their support.

Finally, thanks are owed to the members of VUWLSS, law students of Victoria University of Wellington, and the wider collection of people that have attended our events this year. We were consciously ambitious this year. Fundamentally the success of every event and initiative has depended crucially on buy-in from all associated with it. It's incredibly humbling when people appreciate and respect what you are doing. Thank you to everyone who supported what we did this year.

*Ben Land-Maycock*





## LAW REVUE REVIEW

Wellington Law Revue took a deadly turn in 2012. Its theme of murder mystery – with a dash of legal thriller and a plethora of Cluedo references – proved a hit with packed audiences at the Memorial Theatre across four nights in August.

*Murder at CULT House: A LawDunnit*, directed by David Turner and produced by Jamie Young-Drew and Sophie Gommans, focused on the adventures of plucky Victoria law student Charlie (Andrew Brown), his hipster brother Trevor (William Griffith) and pan-European girlfriend Helga (Rachel Ward).

Invited to the mansion of reclusive Wellington legal scholar Sir Mortimer Jurist Esq to celebrate the 85th anniversary of *Donoghue v Stevenson*, our intrepid heroes were soon drawn into a murderous power struggle within the CULT (the Caring and Understanding Lawyers' Trust) over a secret with world-shaking implications for the common law.

The CULT secret (the show's over now, so we can spoil it): *Donoghue v Stevenson* wasn't a case of negligence at all, but rather a nefarious case of deliberate poisoning arising out of a sordid love triangle between May Donoghue, her husband, and her paisley-wearing, tea-

drinking companion, Dorothy Plum. With the help of the seductive temptress Miss Scarlett (Charlotte Christmas) and renowned bush warrior Tame Iti (David Jones), our heroes were called upon to save the day and defeat the machinations of sinister CULT torts lawyer (and Dorothy Plum's own grandson) Professor Plum (Duran Moy).

As well as this gripping thriller of a plot, audiences were treated to a veritable smorgasbord of boundary-pushing sketches on contemporary political, cultural and legal topics.

Some of this year's standout skits included depictions of the London Olympics' newest sport ("Wrestling with your Sexuality"), the New Zealand sequel to the year's raciest novel ("50 Shades of Greymouth") and Celia Wade-Brown's pitch to put Wellington back on the world map ("Wellington's Next Top Hobo"). Memorable cameos were made by Kim Dotcom, Judith Collins (we're still waiting for the defamation suit), Don Brash, Ewan MacDonald and even the Beast of Blenheim.

Favourite musical numbers from the show included a rendition of *Chicago's* "Cell Block Tango", featuring five of New Zealand's most infamous criminals (the inclusion of David Bain in no way reflects Law Revue's official view of Mr Bain's culpability), a *Beauty and the Beast-*

inspired celebration of the National Party's asset-sales policy: "Just Invest", and a full-cast attempt to shuffle along to LMFAO's "Party Rock Anthem".

As always, cast and crew – a fruitful mixture of Victoria law students and young lawyers of Wellington (with the odd non-lawyer thrown in for good measure) – spent a fantastic six weeks rehearsing, polishing and occasionally letting their hair down to bring the show to the stage. And as usual the show owed a great debt of gratitude to our wonderful sponsors – Bell Gully, Chapman Tripp, Minter Ellison, Simply Legal, Russell McVeagh and CJ Pask winery.

And if you missed this year's show – or this sounds like something you simply *have* to be involved with – watch this space, because next year's show is already in the works.

David Turner







## LAW BALL 2012

The Law Ball is the highlight of the social calendar and the largest event VUWLSS organises. Russell McVeagh were the named sponsors of the event again this year. The event was also generously supported by Lion Nathan, Crane Brothers and Ruby. It was held on July 28.

This year, due to overwhelming demand, the Law Ball increased total attendance to 550 – a 150 person increase on past years. This increase gave the 2012 Law Ball the distinction of being the single largest event in VUWLSS history.

It's always tough to draw a line on event capacity, and whilst the Law Ball certainly reached the limits of that boundary (taking into account the size of venues in Wellington), the size of the event was matched accordingly by its success.

Shed Five once again hosted the Law Ball. We are very lucky to have access to such a large but beautiful venue, on a prime waterfront location. It really does make for a spectacular ambience.

The VUWLSS Executive decided to go themeless this year. Red Pebble were hired to do the creative design for the event. It was kept very classic and classy – mainly with crystals and flowers. Guests entered down a long red carpet lined with candles and flame towers.

Entertainment for the night was provided by Murray Giblin, known colloquially as 'The Pianoman'. Mr Giblin was the standout of the night, with his energetic renditions of classics heartily enjoyed by many amateur dancers and, in the case of most, more amateur vocalists on the dance floor.

The Crane Brothers Best Dressed Man went to William Findlay, and the Ruby Most Best Dressed Woman went to Jessica Warn.

A fantastic night was had by all – an achievement that rightly is magnified by the sheer scale of the event. Thanks must go to Jesse Strafford and Sam Martin, the Social Officers, for their work in leading the organisation and planning of the event.



## FOURTH ANNUAL PATRON'S LECTURE

VUWLSS Patron Sir Geoffrey Palmer was unavailable for the annual VUWLSS Patron's Lecture this year and Professor Tony Smith, Dean of the Faculty, stood in for him.

The keynote address at the Patron's Lecture this year was delivered by the President of the New Zealand Court of Appeal, the Honourable Justice Mark O'Regan. Justice O'Regan is himself a graduate of Victoria University of Wellington.

Justice O'Regan spoke about the realities of becoming and being an appellate judge in New Zealand. His speech focused on the tangible challenges that confront the judiciary and reflections on his own experiences. It was well received by the audience.

Professor Smith echoed Justice O'Regan's comments and provided his own remarks on the unique nature of the judicial profession and the difficult in that nature being accurately represented in popular and public perceptions.

VUWLSS put on drinks and canapés following the speech where the attendees could mingle with Justice O'Regan and Professor Smith.

# Law graduates 2012

Qualifications granted by the Victoria University of Wellington Council  
for the Law Faculty in 2012 at the time of publication:

## DOCTOR OF PHILOSOPHY (PhD) IN LAWS

Hutchison, Andrew  
Limenta, Michelle

## MASTER OF LAWS

Austin, Madeline [M]  
Bourne, Stephen [M]  
Dibley, Thomas [M]  
Fesefeldt, Eike  
Gerasimovich, Viktor [M]  
Gunasekara, Maharambage [D]  
Huser, Daniel [M]  
Jonas, Martin [M]  
Klauser, Veronika [M]  
Knierim, Merle [M]  
Krimowa, Symone [M]  
Leerkamp, Felix  
Neild, David [D]  
Neill, Catherine [D]  
Nijman, Catherine [D]  
Reinhardt, Holger [M]  
Rogge, Nico [M]  
Schymura, Franz [M]  
Skellern, Anna-Marie [D]  
Templer, Leeanne [M]  
Thomson, Vivien [D]  
Waddington, Doris  
Wetzlaugk, Anja [M]

## BACHELOR OF LAWS WITH HONOURS

Allan, Ashleigh [1]  
Avery, Joelle [2/1]  
Bain, Hannah [1]  
Bell, Michael [2/1]  
Bruce-Smith, Nikolas [2/1]  
Budge, Theresa [2/1]  
Buist-Catherwood, Emily [1]  
Bullock, David [1]  
Bunting, Kristina [1]  
Caldwell, Julia [1]  
Chan, Nicholas [2/1]  
Gao, Wenqi [2/1]  
Hagyard, Marion [2/1]  
Hamilton, Alison [1]  
Hickey, Chantal [2/1]  
Humphrey, Samuel [1]  
Hutchison, Richard [1]  
King, Andrew [1]  
Kirwan-Jones, Redmond [1]  
Kovacevic, Sladjana [1]  
Kusel, Natasha [2/1]  
McKay, Patricia [2/1]  
Neilson, Kate [1]

Neris, Armando [1]  
Orsman, Jessica [2/1]  
Savanthrapadian, Ashvini [2/1]  
Scott Dowell, Kathryn [1]  
Slankard, Jesse [2/1]  
Tapper, Oliver [2/1]  
Tattersall, Clare [2/1]  
Taylor, Genevieve [1]  
Wilson, Hannah [2/1]  
Wilson, Sarah [1]  
Wright, Stephanie [1]  
Zhang, Dian [2/1]

## BACHELOR OF LAWS

Adams, Dorothy  
Aitchison, Abby  
Akari, Shayne  
Ansell, Jeremy  
Bamber, Sarah  
Batchelor, Peter  
Bate, Joanna  
Batt, Jemma  
Beckett, Aidan  
Bergseng, Jessica  
Blackbeard, Kate  
Boshier, Edwin  
Boshier, Marcus  
Bowles, Ashlee  
Boyd, Rhys  
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