



# From the Dean

## Welcome to another edition of V.Alum

The theme throughout this year's review is one of illumination, both with its design and the significance of its content.

The glorious cover photo is of Old Government Buildings in 1907, lit up in celebration of New Zealand's becoming a Dominion.

What a contrast of perspective to that nascent nationalism is contained within the following pages. The research and scholarship displayed reflect the work of a mature Faculty of Law which is engaged with its wider community and contributing to the development of New Zealand's legal and intellectual framework.

These activities range from conferences on responses to the global financial crisis and the intellectual property assets of indigenous peoples to another celebrating and analysing 21 years of the Bill of Rights; research into the trial and pre-trial processes of sexual offence cases and the use of urgency in parliament, not to mention the \$1.75 million New Zealand Law Foundation Regulatory Reform Project, which aims to help get regulation right for this country.

Our students also shine: the Community Justice Project is entirely student-driven and community focused; our student debaters and mooters are the very best, both here and internationally and many are involved with the Faculty's research projects.

One of these is the Legal Māori Project. "I've got almost every Māori-speaking senior student I can find working on the project," says Senior Lecturer Māmari Stephens.

What an extraordinary experience and opportunity for those students, and what a powerful endorsement of a policy put in place by this Faculty 21 years ago – the Māori Admissions Process. We are a fortunate Faculty to have had such wisdom and prescience amongst us in the past and for those of us in the present to experience its fruition.

I trust you will find this year's V.Alum illuminating, but not a light read.



**Professor ATH Smith**  
Dean, VUW Law Faculty



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#### ILLUMINATING THE SHADOWS

Light is a universal symbol of knowledge and understanding. Images of light from the Old Government Building, the Law School's celebrated home, are featured throughout this issue of V.Alum.

*"That light we see burning in my hall.*

*How far that little candle throws his beams!*

*So shines a good deed in a naughty world."*

Portia, *The Merchant of Venice* – William Shakespeare 1564–1616



# The rights stuff



## In August Victoria University hosted The New Zealand Bill of Rights 21st Birthday Celebrations Conference.

**B**ILL OF RIGHTS ACADEMICS from New Zealand and overseas attended this event to discuss, for two days, the future of the Bill of Rights in New Zealand.

These sessions were followed each day by public lectures, one by Rabinder Singh QC and the other by Professor Janet McLean. A primary theme of the conference was the mainstreaming of the Bill of Rights Act into all spheres of legal reasoning and the uptake of recognition of rights by the community. The conference was flavoured with realism and pragmatism about the state and the future of the Bill of Rights in New Zealand.

In the first public lecture, Rabinder Singh spoke about the moral force of the United Kingdom Human Rights Act. He began by situating the United Kingdom Human Rights Act, and more generally human rights, within the broader context of society. His first point was that the Human Rights Act starts with the statement that all human beings are born into rights. This does not mean all men are born free, or that people

earn rights, rather that they exist in sheer humanity and can be neither gained nor lost.

He also noted that they are drafted as secular values. They are not founded on appeals to religion as a basis. Instead, they are grounded in empathy and common compassion. They are ultimately Kantian in nature, considering people as ends, not means. They are the ultimate consideration of others as our self, a concept of moral philosophy as old as humanity.

To support this, Singh cited *Roma Rights* where Lord Steyn noted fundamental human rights are not only legal rights, but also ethical values of far wider application than the law of any jurisdiction.

A common criticism of human rights is that they are fundamentally undemocratic. However, Singh suggested that human rights and democracy are two concepts that both stand for everyone counting, but no one counting more than anyone else. That, as Baroness Hale said in *Ghaidan v Mendoza*, “democracy values everyone equally even if the majority does not”, and that to not value people equally is a scourge on society and a waste of talent.

Further, that the Courts are not taking powers, but applying democratically enacted primary legislation. Therefore, he concluded, it is wrong to consider democracy and human rights as

conflicting, but rather they are often mutually supportive ideals.

He concluded that human rights legislation has a humanising effect and needs to be mainstreamed into all areas of the law.

A core theme of the conference was how this mainstreaming can be achieved. This issue was the topic of a paper delivered by Andrew Butler on the first day of the conference. In it, he considered how mainstreaming has been adopted overseas more than it has in New Zealand, where there is a perceived split between policy and human rights. One of his comments was that for mainstreaming to be achieved there needs to be a public culture of human rights.

Janet McLean continued the topic of cultural uptake the day after with her public lecture on the Bill of Rights and Constitutional Conventions. Her thesis is that New Zealand has become too concerned with written constitutional arrangements and, in doing so, has lost the power of convention and moral politics. This, she suggested, is due to the peer pressure of a world in which the norm is to have the law contained in formal documents.

A victim of this culture of constitutionalism is the understanding of what convention is. These days it is taught to be like positive law. It is treated as the positive creation of Dicey, as if it



did not exist before his day. Her concern was that human rights law has become the same, something in the grasp of a culture of constitutionalism and is seen as protected within the sole territory of the Bill of Rights Act rather than in convention, regulation and the culture of the society.

She explored conventions surrounding the Human Rights Act in the United Kingdom and compared them to New Zealand's conventions. Section 19 of the United Kingdom Human Rights Act is comparable to section 7 of the Bill of Rights, in that it provides for reporting to Parliament of potential Human Rights Act violations. She noted that a negative section 19 report is considered a very serious matter to the British legislature. She noted that Bills that have been returned with negative section 19 reports have also been returned to the Human Rights Review Committee as many as three times. In every case so far, a negative section 19 report has resulted in the Bill being changed.

Respect for human rights has been at issue with the recent events surrounding prisoner voting rights. David Cameron stated that he was physically sickened by Strasbourg's ruling that a blanket ban on prisoners voting was a violation of human rights. A motion was passed that the United Kingdom would not follow the Strasbourg ruling. However, even with all of this rhetoric,

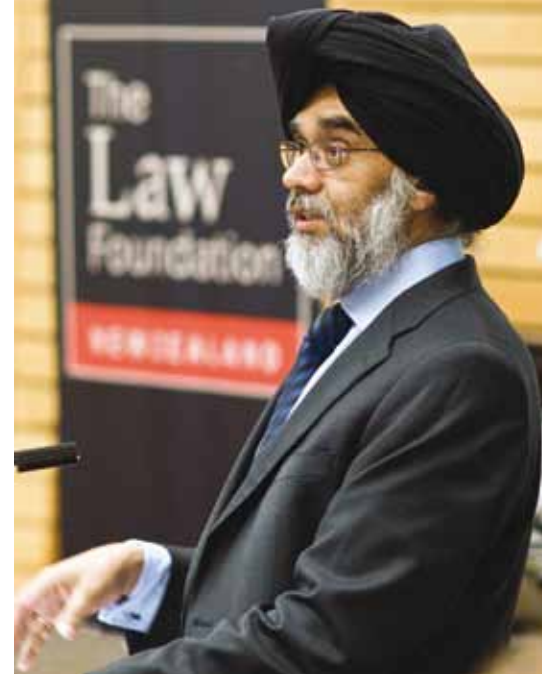


there have been changes to remove the blanket ban on prisoners' voting.

Comparably, in New Zealand, 27 of the 57 section 7 reports have been negative. Janet McLean argued that they are not treated seriously enough. There has been both under and over reporting and the discussion is too much focused on the merits of the report rather than the fundamental human rights at issue. There is also a rising concern that a negative section 7 report has become a badge of honour for the Government; it is seen as a sign that the Government is being tough.

These conventions and cultural norms are fundamental to human rights worldwide, possibly even more so than the primary legislation. Seventy percent of the cases to the European Court of Human Rights involve repeat applications and 800 of these cases were for failed remedy. A large proportion of these cases come from the old Soviet bloc, from nations that accept the positive law supporting human rights, but lack the culture of respect for human rights. Rights without remedies are meaningless, and it is convention within the sovereign state that protects remedies.

One of the core themes of Janet McLean's lecture was the extent to which human rights law should be contained within primary legislation. Sir Geoffrey Palmer delivered a



paper on the history of the Bill of Rights and the culture of constitutional interest by the public. While he too emphasised the importance of cultural uptake by society, he warned against relying on convention and strongly considered constitutional legislation better at protecting people from the excesses of power. He warned that convention is only as strong as it is regarded, and people in power often have little regard for any restriction on what they want.

This theme continued into whether there should be more rights added to the Bill of Rights. Two discussed were property rights and privacy rights. This merged back into the theme of mainstreaming by looking at how adding these would aid development of these fields of law in light of human rights. Even as a backstop that is utilised rarely, rights provide assurance for the courts and for the development of new common law and convention.

The conference covered a lot of ground in two days. There was consensus about how far New Zealand has come in the past 21 years and agreement that there is still a way to go, particularly concerning the need for mainstreaming human rights into all areas of law and society.

*Kent Newman*



# NZCIEL conferences

'Trade, intellectual property and the knowledge assets of indigenous peoples: the developmental frontier'

Bottom left: Professor David A Wirth  
Bottom right: Sean Hughes

'Enhancing Stability in the International Economic Order'

Top, left to right: Virginia Falks, Meredith Lewis, Houlton Fassau  
Bottom, left to right: Professors Peter Drahos, Susy Frankel, Ruth Okediji, Daphne Zografos



During the past 12 months, the New Zealand Centre of International Economic Law (NZCIEL) hosted two conferences – one on indigenous peoples and the other in response to the ongoing global financial crisis.

**T**RADE, INTELLECTUAL PROPERTY and the knowledge assets of indigenous peoples: the developmental frontier' was held in December 2010 and discussed the links between trade, intellectual property, traditional knowledge assets and the development aspirations of indigenous people.

The conference included speakers from indigenous communities, including Māori, Australian Aboriginal peoples and Pacific Islanders. All spoke about how they used traditional knowledge for development.

Highlights included Houlton Fassau, who talked about traditional knowledge in Samoa. Houlton studied international trade law as part of his LL.M at Victoria and is now at the Samoa Law Reform Commission. On his first trip outside Australia, David Claudie, the Chairman of the Chuulangun Aboriginal Corporation, spoke

about developing locally-driven enterprises based on traditional medicines in "Kuuku I'yu'.

Following on from the presentation of the indigenous peoples' experiences in developing their communities' knowledge, several legal scholars then discussed international and national law and policy about the protection of traditional knowledge. These included Professors Peter Drahos (ANU), Ruth Okediji (Minnesota), Daniel Gervais (Vanderbilt) (Michael Blakeney (Western Australia), Susy Frankel (VUW), Silke von Lewinski (Max Planck, Institute) Daphne Zografos, (Reading University), Meredith Lewis (VUW), Miranda Forsyth (ANU), Christoph Graber (University of Lucerne) and Luigi Palombi (ANU).

An important feature of the conference was its interdisciplinary nature, including papers from academics from non-legal backgrounds such as Daniel Robinson (Environmental Studies UNSW) and Susan Semple and Bradley Simpson (Sansom Institute, School of Pharmacy and Medical Sciences).

Keynote speaker Antony Taubman, currently Director of the Intellectual Property Division of WTO, outlined how the traditional knowledge debate has sparked important discussion about the appropriate boundaries of intellectual property.

Essays developed from the conference will be published by ANU E Press in early 2012 in a volume edited by Peter Drahos and Susy Frankel entitled *Indigenous Peoples' Innovation: IP pathways to development*.

**I**N RESPONSE TO THE TROUBLED financial times, NZCIEL hosted a multidisciplinary conference in July 2011 – 'Enhancing Stability in the International Economic Order'.

The conference brought together scholars, businesspeople, policy makers and researchers, and included cutting-edge discussion about how the economic crisis has led to a new and genuine scrutiny of the international economic system.

Papers presented discussed responses in the international economic order to crises, including the financial crisis and climate change.

Keynote speakers were Professor David A. Wirth of the faculty of Boston College Law School and Sean Hughes, Chair of the Financial Markets Authority, New Zealand.

Essays from the conference will be published in a special issue of the *New Zealand Journal of Public and International Law* in 2012, which will be edited by Albert Costi and Susy Frankel.

# A lesson in lawcraft: Sir Anthony Mason

Sir Anthony Mason



## The speaker of the 2010 Robin Cooke Lecture was Sir Anthony Mason, former Chief Justice of the High Court of Australia.

SIR ANTHONY'S influence over the High Court of Australia is significant. Initially a conservative judge, his tenure as Chief Justice can be seen as the high-water mark of the movement away from the "strict legalism" which had characterised it. He was more flexible in his attitude to precedent than many other judges, viewing it rather as a policy for consistency than something which would strictly coerce and constrain his decisions. During the years of the "Mason Court", there were a variety of important cases decided, including *Mabo v Queensland (No 2)* and *Australian Capital Television Pty Ltd v Commonwealth*.

From 1994 to 1999 Sir Anthony served as the Chancellor of the University of New South Wales. From 1996 to 1997, Mason was a Professor of legal science at the University of Cambridge, in the United Kingdom. In 1997, Mason was made a non-permanent judge of the Hong Kong Court of Final Appeal. He still holds that position, and flew in to Wellington from Hong Kong to deliver his lecture.

"Human Rights: Interpretation, Declarations of Inconsistency and the Limits of Judicial Power" addressed two areas of current interest (and certain contentiousness) in the approaches to the interpretation of Bills of Rights in Australia, New Zealand, Canada and the UK.

The first concerned the way in which the courts should approach the interpretative provisions in these instruments, which typically encourage the courts to interpret the language of statutes in ways that are compatible with the rights instruments. In the English decision of *Ghaidan v Mendoza*, the House of Lords found an interpretation that appeared to many to go well beyond the apparent language of the statute (and probably beyond the intentions of the framers of the Act too). To its critics, this looks suspiciously like judicial legislating under the guise of interpretation, and the approach has been rejected in other jurisdictions for that reason.

In the UK and Australia, the Bill of Rights legislation explicitly gives the courts a power to declare that legislation is in some way inconsistent with the Bill of Rights itself. The New Zealand legislation does not contain such a power, and there has been intermittent discussion of the possibility that, notwithstanding this legislative silence, New Zealand courts could make such a declaration or indication. There have been *dicta* by the highest

New Zealand courts to the effect that they would not rule out such a course in appropriate circumstances, and Sir Anthony concluded that there is no support for the proposition that the courts have no power to make such a declaration. He also canvassed the arguments in favour of the courts having such a power, including the "high importance of compliance with the recognised human rights and freedoms".

However, he pointed to a number of differences between the situations in New Zealand and the other jurisdictions; not just the absence of an explicit legislative authorisation, but the lack here of a formal mechanism for addressing the declaration should the court make one. New Zealand's Executive (and Parliament) are generally free to ignore a judicial proclamation in a way that is not possible in the UK and Australia. At most, the courts give an indication of inconsistency in situations where, in the language of McGrath J, "it is a reasonable constitutional expectation that there will be a reappraisal of the objectives of the particular measure" under interpretation.

Both of these areas of interest place the courts in positions of potential conflict with the Executive and the legislature. It is implicit that, if these situations call for the exercise of "judicial power", they must be handled with the utmost care.



# The conscience of contract law

Professor David McLauchlan,  
INSET: Professor David  
McLauchlan, Sir Peter Blanchard,  
Hon Simon Power, Vice-  
Chancellor Pat Walsh



In 1971, email was invented, New Zealand announced its withdrawal of troops from Vietnam, women were given the right to vote in Switzerland – and Professor David McLauchlan joined Victoria's Faculty of Law.

**F**ORTY YEARS ON, David, who became a professor at age 33, is still going strong. "I am still thoroughly enjoying my writing and teaching, and hope to reach half a century," he says.

A function was held in June to launch a special edition of the *VUW Law Review*, dedicated to David's substantial contribution to the law. Among the 100-plus attendees were the Chief Justice and several Justices of the Supreme Court and Court of Appeal.

The publication contains articles by recent students (Amelia Keene and Sarah Leslie) a former student (Hon Justice Stephen Kós) a current colleague (Professor Susy Frankel) and overseas colleagues (Professors Tolhurst, Carter and Peden from the University of Sydney).

Professor McLauchlan is the author of two books and has published well over 100 book chapters or journal articles, mainly in the areas of the law of contract and commercial law. He

has received University awards for excellence in teaching and in research. The students at Victoria have voted him best lecturer in the Law Faculty several times in recent years.

His writings have been frequently cited in the judgments of leading Commonwealth courts, including the House of Lords; several have been influential in changing or developing the law.

Professor McLauchlan has been a Professor of Law since 1981. He is also Honorary Professor at the University of Queensland, Senior Fellow at the University of Melbourne and in 2008 was the McWilliam Professor in Commercial Law at the University of Sydney.

In earlier years he was also involved in law reform. This included several submissions to parliamentary select committees, membership of the New Zealand Law Commission's advisory committees on Personal Property Security Law reform (1988-91) and Contract Law Reform (1991-93) and membership of the New Zealand Law Society's Advisory Committee on the Personal Property Securities Bill (1999-2001).

"The influence legal academic writing can have on the development of law is not widely appreciated," says Professor McLauchlan: "By subjecting important decisions in the courts to critical analysis, legal writing provides one of the very few ways in which judges can be held accountable for their decisions."

"The legal writing of many academics is also used widely as a resource by practitioners when preparing cases," he says.

Former student, Hon Simon Power, Minister of Justice, spoke at the launch, fondly recalling David's classes and their lasting impact.

"I remember him focusing for weeks on one point – a habit I also now employ with officials, driving them crazy with questions about a clause, a word or a description."

The Right Honourable Justice Peter Blanchard, who has been on the receiving end of some of David's critiques of judgments, commented: "Anyone researching David's writings would be struck by both the quantity and quality of them and would realise just what an influence he has had both in New Zealand and elsewhere on the development of the law in his specialist subject, contract law."

As well as more than 100 legal articles, David has written two books that have been widely cited – *The Parol Evidence Rule* published in 1976 and *The Contractual Remedies Act 1979*, written with Francis Dawson.

Still an active researcher, he says, "I live by this guiding principle from Harold J Berman: 'If a scholar is not a teacher his scholarship will be sterile. If a teacher is not a scholar his teaching will be superficial!'"



# Celebrating 21 years of success of Māori in law

Left top: Hon Justice Joe Williams  
Left middle: Sir Eddie Durie  
Left bottom: Faculty attendees, including Dean Tony Smith (front)  
Below: Reweti Kohere, Nehe Turei, Julia Whaipooti, Hollie Ryan



Victoria University's Faculty of Law celebrated 21 years of its Māori Admissions process and the success of Māori in law at a hui in October this year.

**I**N 1989, the Māori Admissions process was initiated in response to calls from various Māori legal practitioners and academics at the Faculty. Each year, 10 percent of available places in second year law courses are reserved for Māori students applying under the Māori Admissions process.

The process recognises that, at heart, universities are not Māori institutions, nor are they governed by tikanga Māori. Māori students are required to succeed in an institution that embodies and reflects foreign values. It is difficult to meet the need of Māori within the "foreign" university paradigm.

Selection is based primarily on an ability to complete the nominated workload, commitment to attend the support tutorial programme and a commitment to kaupapa Māori. Other areas considered include how the applicant will use their law degree to help their

whānau, hapū and iwi. Applicants are interviewed by a panel normally comprising members of the Māori community, the Law Faculty and Māori legal practitioners.

"The process recognises that many Māori are working in a system that is foreign to them," says organiser David Jones, the Faculty of Law's Māori Law Students' Co-ordinator.

The celebratory event at Te Herenga Waka marae on Victoria's Kelburn campus attracted many illustrious legal alumni, including the Hon Georgina Te Heuheu (the first Māori



Te Ripowai Higgins, Hon. Georgina Te Heuheu, Simon Wi Rutene

The Dean of Victoria's Faculty of Law, Professor Tony Smith, attended the celebration. "The gathering together of alumni, students and staff was an inspired thought," he says.

"For alumni, they saw a strong future in the students. For students, they were seated with Māori law heroes and heroines. For staff, it is immensely satisfying to see a policy be so successful and recognised.

Our Faculty has a strong tradition of supporting Māori in law. We are the only Faculty with a Māori Law Students' Co-ordinator. We are home to the nationally significant Legal Māori Project and we consistently produce top Māori law students who go on to become practitioners, politicians, academics and judges."

**He aha te mea o te ao?  
He tangata; he tangata, he tangata!**

*What is the most important thing in the world?  
It is people, it is people, it is people!*

Māori proverb

woman with a law degree); Sir Eddie Durie, the Hon Justice Joe Williams and Judge Hemi Taimaunau.

"Not all the alumni who attended were part of the Māori Admissions process," says Mr Jones, "but they are all integral to the programme succeeding. They are our link to the world of law."

# Young, gifted and back: Community Justice Project



Front row from left: Amy Dixon, Katharine Pfeffer, Adèle Taylor, Chantal Hickey, Emily Bruce, Stephanie Lambert, Anna Whaley. Back row from left: Andy Grieve, Michael Zhang, Nessa Lynch, Matthew Hitchman, Rayner Thwaites.

Now in its second year, the Wellington Community Justice Project is involved in a wide range of important initiatives.

THE WELLINGTON COMMUNITY JUSTICE Project (WCJP) is a student-driven organisation that aims to improve access to legal services in the wider community. It engages over 100 law students, who can volunteer to work in one of four areas: advocacy, education, human rights and law reform. This year they have adopted a dynamic range of work with a public law focus.

The WCJP Law Reform team has been working closely with Adoption Action Inc in its goal to have the outdated Adoption Act 1995 reformed. Adoption Action Inc is committed to enhancing the rights and wellbeing of children affected by adoption and to eliminating discriminatory provisions in current adoption laws. Its members include persons who have had personal experience of adoption and professionals with specialist knowledge and experience of adoption law and practice.

The WCJP Law Reform team produced a memorandum for the members of Adoption Action about the process for obtaining a

declaration of inconsistency from the Human Rights Review Tribunal (HRRT).

The Law Reform team also helped to draft the Statement of Claim filed at the HRRT in July this year. The essence of the claim is that the Adoption Act and other adoption laws are inconsistent, in 15 different respects, with the anti-discrimination provisions of the Human Rights Act 1993 and the New Zealand Bill of Rights Act 1990.

Adoption Action and the WCJP are continuing communication with the Crown about the claim and are engaged in other activities seeking to raise awareness and generate reform in this important area.

The Human Rights team have thrown themselves into multiple projects with human rights and law reform focuses. One of the key partner organisations is the Human Rights Commission, which has provided the students with the opportunity to engage in several projects concerning New Zealand's international treaty compliance.

The students have also developed their own human rights blog ([wcjphumanrightsblog.wordpress.com](http://wcjphumanrightsblog.wordpress.com)) which has provided critical commentary on several issues throughout the year.

Finally, the team has assisted Justice Acts New Zealand, a charity dedicated to combating human trafficking and modern day slavery in New Zealand. The team has researched New Zealand's compliance with international anti-human trafficking provisions, and is now undertaking a more intensive review of New Zealand legislation to assess how it applies practically. This research will inform a report and recommendations being made to the Government in November of this year, and Justice Acts aims to use this research in its submission for amendments to s 98 of the Crimes Act 1961 which will be submitted in early 2012.

The Community Justice Project is also interested in engaging with young people about politics and constitutional development. This year, with the help of a Wellington City Council grant, the Law Reform and Education teams prepared and presented modules on voting in the election and the referendum to young people around the Wellington region. The team recognised the low representation of youth in voting statistics and aimed to present modules that were fun, informal and neutral and empowered young people to take part in the election.

The presentations began with a brief focus on voting in the election (explaining concepts like electorates, Māori seats and informing young people how to enrol to vote). The core of the module was then centred around the referendum. It explained the different forms of representation (with the help of useful resources such as the Electoral Commission's videos) and then examined some tools they could use for evaluating each form (by looking, for example, at effective representation and accountability).

On the whole, this proved to be a success, and our students presented at Porirua College, Hutt Valley High School, Wellington Girls' College, Wellington High and the Evolve Youth Centre.

If you would like any more information on the Project, please do not hesitate to contact its student directors, Adèle Taylor and Emily Bruce, at [studentdirector@wellingtoncjp.org](mailto:studentdirector@wellingtoncjp.org)



# With all due respect to the judiciary

In 2011, the Faculty welcomed the first Ian Borrin Visiting Fellow – Lord Collins of Mapesbury.

IN 2010, ALUMNUS JUDGE IAN BORRIN established a Visiting Fellowship in Law. Its aim is to bring scholars, academics and members of the judiciary from overseas to the Law School for short-term periods. Judge Borrin has been a long-standing and generous supporter of the *VUW Law Review* and other Faculty publications.

The first Ian Borrin Visiting Fellow, Lord Collins of Mapesbury, is one of the most eminent scholar jurists in the Common Law world and a recently retired judge of the UK Supreme Court, of which he was an inaugural judge.

He is also general editor of *Dicey, Morris and Collins on the Conflict of Laws* and numerous other books and articles and has taken a very active interest in the legal academy. Since 1975 he has been a Fellow of Wolfson College, Cambridge, and since 1982 a visiting professor at Queen Mary, University of London.

In 1994 Lord Collins was awarded the degree of Doctor of Laws by Cambridge University and was elected a Fellow of the British Academy. Since 1989 he has been an elected member of the Institut de droit international. He is an honorary fellow of Downing College, Cambridge. He is a member of the editorial



boards of the *Law Quarterly Review* and the *British Yearbook of International Law*, amongst others.

Lord Collins' primary areas of research interest are Private International Law, Public International Law and Arbitration.

During his busy time with the Faculty, Lord Collins delivered a public lecture "With all due respect to the Judiciary?", chaired an International Litigation Symposium, gave seminars to Faculty staff and engaged with staff



informally, gave classes to students and met with senior members of the New Zealand judiciary.

Lord Collins also found time to continue his own research – including working on the forthcoming 15th edition of *Dicey, Morris and Collins on the Conflict of Laws* – the leading treatise on private international law in the Common Law world.

## Staff appointments and awards

**Richard Boast** gave his inaugural lecture "Treaties on the Frontier: Crown-Māori Treaties other than the Treaty of Waitangi, and their significance".

**Brian Brooks**, Honorary Fellow at the Faculty and a former Dean, has been appointed to assist Judicial Conduct Commissioner Sir David Gascoigne.

**Maria Hook** joined the Faculty as a Junior Research Fellow.

**Nicole Moreham** was the first legal recipient of a Rutherford Discovery Fellowship (see page 11).

**Geoff McLay**, currently on secondment to the Law Commission, gave his inaugural lecture "A Capital Custom: Victoria and the New Zealand legal tradition".

**Sir Geoffrey Palmer** was given a Professional Achievement Award by the University of Chicago, in recognition of his international diplomacy and leadership. Sir

Geoffrey was also appointed to head a United Nations panel investigating the blockade of Gaza.

**John Prebble** was a visiting scholar at the Constitutional Court in Rome as a guest of the President of the Court.

**Kate Stone** was appointed as an Assistant Lecturer.

**Tai Ahu** was appointed as an Assistant Lecturer.



# The Urgency Project: *What's the Hurry?*



A major research project at the Faculty of Law on the use of urgency by the New Zealand House of Representatives has resulted in a book, *What's the Hurry?: Urgency in the NZ Legislative Process 1987-2010*.

WRITTEN BY THE URGENCY PROJECT researchers Claudia Geiringer, Polly Higbee and Professor Elizabeth McLeay and published by Victoria University Press (Wellington, 2011), the book examines the use of urgency in the New Zealand House of Representatives over a 24-year period – from 1987-2010.

In addition to collating comprehensive databases that detail every use of urgency over that period, the researchers also interviewed a number of current and former politicians and senior parliamentary officials.

Questions the Project addressed included: What exactly is urgency and why do politicians use it? How much is it used? What factors constrain its use? In particular: To what extent has MMP had an effect on the use of urgency?

Why, if at all, should we be worried about urgency, and in what circumstances? How robust is the regulatory framework that governs the use of urgency? Should it be amended and, if so, how?

In essence, urgency enables the government to extend the sitting hours of the House and to prioritise certain items of business to be conducted within those hours. As such, it is an extremely important tool for governments seeking to progress their legislative agendas.

On the other hand, urgency also enables governments to dispense with the various stand-down periods (or breathing spaces) between the different stages of the legislative process and, indeed, to dispense with the select committee stage in its entirety.

The use of urgency, therefore, raises issues of considerable significance for the quality and integrity of New Zealand's lawmaking processes. Urgency motions can be a means to foreshorten democratic deliberation – both amongst parliamentarians and with the wider community.

The Urgency Project found that, during the 24-year period of the study, urgency was relied on with regularity by governments of all stripes. For example, more than 1,600 bills had urgency accorded to them at some stage during that period.

Since the introduction of MMP, the major parties in Parliament have had to negotiate with minor parties in order to win majority support for urgency motions. For that reason, the introduction of MMP had a profound impact on the amount that urgency was used and the way it was used. Even so, the pattern of use of urgency following the introduction of MMP has not been even. In particular, during the years of the study, two post-MMP parliaments stood out for their comparatively high use of urgency motions: the forty-fifth Parliament (1996-1999) and the forty-ninth Parliament (2008-2011). Both these parliaments also had comparatively frequent recourse to what is generally regarded as the most democratically troubling way of using of urgency: to by-pass select committee scrutiny of legislation.

The Urgency Project reached the conclusion that the current constraints on the use of urgency were inadequate and that amendments to Parliament's Standing Orders (its self-imposed rules of procedure) were desirable in order to better regulate the use of urgency. Earlier this year, the Project made a submission to Parliament's Standing Orders Committee, which was conducting its tri-annual review of the Standing Orders.

The Committee issued its report in September and made recommendations in line with some

# Nicole Moreham: A legal first

Nicole Moreham is the first legal academic to be the recipient of a Rutherford Discovery Fellowship.

**R**UTHERFORD DISCOVERY FELLOWSHIPS support New Zealand's most talented early-to-mid-career researchers by providing financial support of up to \$200,000 per year over a five-year period to investigate a particular research topic, and help them to further their career in New Zealand.

Dr Nicole Moreham is putting the scholarship money towards the writing of a book setting out the protection of privacy in English private law. The book addresses four central questions: what is privacy, why is it worthy of protection, how is it currently protected in the law, and what further developments are needed to create a comprehensive, coherent legal privacy right which sits appropriately with competing interests?

"The past two decades have seen an explosion in technology making it easier than ever before to obtain, store, and disseminate private material about a person against his or her wishes," says Dr Moreham. "The perennial tension between individual privacy rights and the media's need to obtain and publish the news also continues to be negotiated."

Dr Moreham's book will question how the law should respond to these, and other, privacy issues both in England, New Zealand and other jurisdictions.

of the Project's suggestions. These recommendations have now been adopted by the House. In particular, the Standing Orders Committee recommended that the House be able to sit for extended time to pass bills through a single stage, without having to resort to urgency to achieve this. The Urgency Project had suggested that an "extended time" provision of this kind would enable urgency itself to be reserved for situations of genuine urgency in relation to a particular bill. The Project anticipated that this would promote better public and media scrutiny of the use of urgency and, therefore, stronger disincentives against its misuse.

*What's the Hurry?* concludes with an extended analysis of the Standing Orders Committee's recommendations. The authors welcome the amendments to the Standing Orders but express the view that the changes do not go far enough. In particular, the authors express concern that the regulatory framework fails to constrain effectively the most democratically troubling use of urgency: to bypass the select committee stage of legislative scrutiny.

*The Urgency Project was conducted under the auspices of the New Zealand Centre for Public Law at the Faculty of Law, as well as the Rule of Law Committee of the New Zealand Law Society. The Project was generously funded by the New Zealand Law Foundation.*



Nicole Moreham returned to New Zealand in 2006 having spent seven years at Gonville and Caius College, University of Cambridge, first as a Masters and PhD student and latterly as a Fellow and Lecturer in Law.

Before leaving for Cambridge in 1998, she completed her undergraduate Honours degree in Law at the University of Canterbury and worked as a judges' clerk at the New Zealand Court of Appeal. As an undergraduate, Dr Moreham was the recipient of several significant awards, including the New Zealand Law Society Cleary Memorial Award (a national award for newly admitted barrister/solicitor showing leadership potential in the legal profession) in 1998.

She was awarded the Commonwealth Scholarship for her LLM studies in 1998 and, in 1999, the Tapp Studentship, which provides full PhD funding, to Gonville and Caius College at Cambridge. At the university she earned a First class Masters and the Emlyn Wade Prize for the top LLM mark at the college in 1999.

Her doctoral thesis is entitled 'Privacy and the Common Law' and she continues to research and publish on privacy law. She has published several articles on privacy in the leading law journals and is co-author/co-editor of the latest edition of England's most important privacy work, *Tugendhat and Christie's Law of Privacy and the Media* (2ed, Oxford University Press, 2011, 872 pp).





## A notoriously difficult area of law

Associate Professors  
Yvette Tinsley (left) and  
Elisabeth McDonald



Sexual offending is a notoriously difficult area of law. Despite reforms over many decades, the evidence continues to show stubbornly unchanged prosecution rates for sexual offences and victim dissatisfaction with the system.

**T**HAT'S WHY the New Zealand Law Foundation funded a major study over a two-year period: "Modification of the Pre-Trial and Trial Processes for Sexual Offences", conducted by Faculty of Law Associate Professors Elisabeth McDonald and Yvette Tinsley, with Professor Jeremy Finn from the University of Canterbury.

The project examined overseas and local experience in order to propose alternatives to the current system. However, the researchers stress: "There is no 'one-size-fits-all' solution. There is no perfect panacea that we can transport to New Zealand."

The study will be drawn on by the Law Commission in its work, sought by recent Minister of Justice, Simon Power, on whether inquisitorial procedures should be applied in New Zealand.

"Intimidation under cross-examination is the biggest challenge because it is fundamental to the current process, but that's not to say that civil law jurisdictions don't have adversarial elements," says Dr Yvette Tinsley.

The study was prompted by the Law Commission's 2007 review of the issues publicised by Louise Nicholas around the rape of young women by police in the 1980s. The review asked whether the adversarial court system should be modified or replaced by an alternative model in sex offence cases.

The authors travelled to Europe and studied the inquisitorial system in five countries. They found that greater involvement by professional judges in the fact-finding process, rather than two competing parties with the judge as umpire, could allow for less undermining of witnesses and more focus on establishing the facts.

On the other hand, witnesses could still face distressing questioning in the inquisitorial system. In some ways New Zealand's system was superior. For example, by allowing support people for victims and remote courtroom participation.

Elisabeth McDonald says: "Changing to an inquisitorial system would not necessarily lead to a better experience for victims, nor to higher conviction rates. There would also be practical problems in changing the system for sexual offending but not for other offences. The things

that make a difference are around the dynamic of how a judge comes to a decision – how much control a judge has over a case."

The alternatives to juries might include judges sitting alone or assisted by lay assessors, as used in European jurisdictions.

Sexual offence reporting and conviction rates in New Zealand remain very low. A Ministry of Women's Affairs study in 2010 found that only 13% of sexual violence cases reported to the police resulted in conviction.

The authors held a workshop in April 2011 with 60 experts including prosecutors, academics, police, officials and defence lawyers. The workshop group's view was that the 20-year maximum sentence for rape may in fact be deterring victims from seeking justice through the courts, because victims don't always want the perpetrators to be dealt with so severely. It may also prevent offenders from admitting guilt because the stakes are so high.

As a result, the study recommends changes to allow for a range of responses to allegations of sexual offending. Culturally responsive solutions need to be considered among the options for dealing with these cases.

The study's conclusions have been published by Victoria University Press: Elisabeth McDonald and Yvette Tinsley (eds) *From "Real Rape" to Real Justice: Prosecuting Rape in New Zealand* (VUP, Wellington, 2011).



# Among the dreaming spires

Even to the students and Dons of other Oxford colleges, All Souls College enjoys a particular mystique.

COMPOSED ENTIRELY OF FELLOWS, with no students, it holds what it reputed to be the hardest examination in the world for admission to the Prize Fellowship. It has numbered Christopher Wren, Lawrence of Arabia and Isaiah Berlin amongst the fellowship, along with many of the foundational figures of the common law. The spirits of Blackstone and Dicey haunt its halls.

It was therefore with more than a little apprehension that I took up the College's invitation to join them as a Visiting Fellow for Trinity Term (April to July) 2011.

Visiting fellowships are open to scholars from around the world in any discipline. Because they come with a study in college, college accommodation and rights to participate fully in the life of this remarkable institution, they are highly prized.

In the term of my visit, all but one of the other 12 visiting fellows were engaged in a joint project on the evolution of human cognition, addressing the question: How did the human race get to be so wise? Quite intimidating for a mere lawyer, but at least they seemed to accept that an ability to undertake normative reasoning was an indication of developed cognition!

I had chosen to apply to All Souls because I thought that its unique combination of strength in English law and international law would prove fruitful ground for me to develop research for my new book on *Foreign Relations Law* –the treatment in the Anglo-Commonwealth legal systems both of the foreign relations of the home state and of foreign states.

I argue that, despite its great practical importance, this field has been unjustly neglected and shrouded in obscurity. It needs a new structure, suitable for the many contemporary challenges facing our domestic legal systems in dealing with the interactions of states—and in dealing with the claims of individuals caught in the cross-fire.



I had been fortunate indeed to have the support of the New Zealand Law Foundation as its 2010 International Research Fellow, and was holding a contract from Cambridge University Press for the book.

So my first priority was to find some uninterrupted time to write, which I certainly did in my college study looking out on the beautiful and whisper-quiet fellows' garden and the famous Nicholas Hawksmoor towers.

But an unexpected pleasure of the fellowship was the wonderful opportunity that College life provided for discussion. Of course, I already knew a number of the superb lawyers in the College: Andrew Ashworth, Vinerian Professor of English Law; Vaughan Lowe, Chichele Professor of International Law; Jeremy Waldron, who had just taken up the Chichele Chair in Political Philosophy; Nicola Lacey; Andrew Burrows and Guy Goodwin-Gill.

But active participation in College life provided many occasions to get to know fellows working in other disciplines, and to talk about research in ways that helped me think creatively about my project.

This intangible, but crucially important, atmosphere of the College completely dispelled its mystique. I found the fellows to be incredibly welcoming to the visiting fellows and ready and interested to engage with them.

It will not surprise you to know that the College maintains an amazing kitchen and wine cellar (with a dedicated and friendly staff) which supports research by refreshment!

A highlight was the Encaenia luncheon –the only day of the year that one can walk freely on the grass of the Great Quad and eat in the magnificent Codrington Library. Encaenia celebrates those awarded honorary doctorates at Oxford, which this year included President Napolitano of Italy, Justice Edwin Cameron of the South African Constitutional Court and Sir George Martin, manager of the Beatles.

Of course, I was intent on getting the best out of my time in Europe, visiting Cambridge and Edinburgh universities and the Foreign & Commonwealth Office to talk about my research project. I also spoke at international law conferences in London and Geneva. But, looking back, it was really the concentrated research time in All Souls itself which was the most important part of my time in the UK.

Now back in New Zealand, the writing of the book is proceeding apace. But it has been the initial time, encouragement and stimulation afforded by the generosity of both the New Zealand Law Foundation and All Souls College that has made it possible.

*Campbell McLachlan*

# The New Zealand Law Foundation Regulatory Reform Project

## Learning from the Past, Adapting for the Future: Regulatory Reform in New Zealand

Edited by  
Susy Frankel

*If New Zealand wants better regulation for the future, part of achieving that goal involves learning from past successes and failures. New regulation is often created, or the old changed, without a full analysis of what when wrong or a proper identification of the problem that regulation might be able to address and what the regulation is suppose to achieve.*

**T**HIS THEME UNDERLIES the first book of essays, *Learning from the Past: Adapting for the Future: Regulatory Reform in New Zealand*, which outlines a series of detailed issues in regulatory reform from the Law Foundation's major Regulatory Reform Research Project. This project looks into issues around regulatory practice in New Zealand and involves an interdisciplinary and multi-institutional team from Victoria University, Chapman Tripp and the New Zealand Institute of Economic Research.

The Law Foundation's core focus is to support independent legal research into the major legal challenges facing our country. The Foundation identified regulation as an area of national importance. This first published output is a series of essays drawing out specific learnings from New Zealand's regulatory experience and posing questions to frame and develop the ongoing research of the project team.

The broad characteristics of our regulatory environment are well known, including: the

small size and openness of our economy, the importance of the rule of law, sensitivities around property rights, and our dependence on international trade.

"We know about particular areas where regulation has worked, and areas that have been problematic. This project analyses the issues within those themes, from a systemic as well as a case study viewpoint," says Project Leader, Professor Susy Frankel.

"We are looking at the lessons, not to build a 'one size fits all' model, but to develop a toolkit that shows what to look for. This first set of papers is a detailed articulation of the issues, from which further analysis will develop."

Issues examined in the essays include:

- + desirable levels of public participation in creating regulation
- + the success of competition law in creating certainty for businesses and consumers, following the 1980s deregulation era
- + whether general anti-tax avoidance rules breach the rule of law – and whether the state would be justified in responding more strongly to produce greater certainty
- + what are property rights, and is extending property rights merited to compensate owners when regulation affects property?
- + the rationale for regulatory management and what it aims to solve

- + the role of judicial supervision of regulatory decisions, and when appellate review is appropriate
- + rights and regulation, including when laws are needed to secure rights
- + consumer law and paternalism, including when policymakers can intervene to protect consumers from themselves
- + consumer credit regulation to achieve effective social outcomes
- + regulatory failure in the building industry, with a possible cause being the lack of an articulated understanding of the purpose of regulation
- + network industries – constant reviews, regulatory uncertainty, and the relationship between regulation and property rights
- + trade and investment – integrating the region through open frameworks
- + trade agreements and constraints on regulatory autonomy
- + the desirability of restrictions and incentives for inward foreign direct investment
- + trans-Tasman integration – lessons from the failure to establish a therapeutics agency
- + trans-Tasman intellectual property coordination – when, and when not, to harmonise

Questions which emerge from these chapters include: what factors are relevant in deciding whether and how to regulate? How important is precise problem identification? What are the likely effects of choosing one method over another? Who decides who is affected, and how? Should we create a New Zealand way, or use tested overseas models? How practical is specific regulation in New Zealand given our size? And, how much regulation should be rules-based, and how much left to discretion?

Following this research, there will be further interdisciplinary analysis of the issues, including economic, legal and policy analysis. In the final stage, the results will be drawn together into proposals for a toolkit for use in future regulatory design, implementation and enforcement.

The Law Foundation is providing funding of \$1.75 million for this project.

*Learning from the Past: Adapting for the Future: Regulatory Reform in New Zealand* is available from LexisNexis.

# Law and language: The Legal Māori Project

The researchers of the Legal Māori Project are working hard on the final outcome for the Legal Māori Dictionary, the first ever substantial dictionary of legal Māori terms.

“The dictionary will assist Māori speakers to practise law, draft agreements, or write, teach and talk about law,” says Māmari Stephens, Senior Lecturer and Project Co-Leader.

“Māori is a polysemic language, meaning that one word can hold a number of meanings depending on the context in which it’s used. So the words rangatira, or mana, or utu, for example, can have thousands of usages with subtly different meanings in both customary and Western law contexts.”

To tease out these different meanings, Ms Stephens and her team are drawing on a corpus of more than eight million word types taken from the Legal Māori Corpus: a collation of Māori language texts from 1829 up to 2009.

The dictionary will be unique among existing Māori language dictionaries in that it will allow users to identify the use of a term over time. “There used to be a lot of transliteration of

English words into the Māori sound system, such as ‘apitireihana’ for arbitration. These words may well be replaced by newly coined words or by extending the meaning of an existing word such as ‘whakataunga’ in the case of arbitration. Dictionary users will be able to find out if a word appears in corpus texts in the historical or contemporary era or if it’s a word that’s been used across those periods and therefore has a really good, long history to it.”

The Project outcomes have also been generating exciting new scholarship on the development of Māori as a language of law in New Zealand. Some of the fruits of that scholarship can be seen in the 2011 collaborative publication of the *VUW Law Review* and the *Revue Juridique Polynésienne*. Issue 42, Volume 2 has a law and language theme and contains three contributions by senior Project researchers. It will soon be available online at [www.victoria.ac.nz/law/research/VUWLR](http://www.victoria.ac.nz/law/research/VUWLR).

In another exciting development, the Legal Māori Project has been granted further funding from the Ministry of Science and Innovation for 2011 and 2012. This will see the creation of new resources, including a searchable online database to enable members of the public to carry out their own word searches of the digitised Legal Māori Corpus documents.

This resource will be very useful, not only for those who are interested in New Zealand’s bilingual legal history, but also for those interested in seeing how Māori vocabulary has changed over time, and what sort of vocabulary is used in particular legal contexts.

These new outputs from the Project are expected to be publicly available by the end of 2012, along with the Legal Māori Dictionary.

One of the most pleasing aspects of the Project for Māmari Stephens is the range and quality of the researchers that have become involved over the past few years: “I’ve got almost every Māori speaking senior law student I can find working on the project,” says Stephens.

As well as Māori-speaking staff and students from the Faculty of Law, lawyers from the Crown Law Office and private practice are employed or volunteering their time to work on the Project.

“It can only be hoped that at least some of these researchers will be able to make future contribution to the study of law and language in New Zealand,” says Stephens.

*The Legal Māori Project was funded by the Foundation for Research, Science and Technology (now the Ministry of Science and Innovation).*

## Providing a toolkit – the law of small states and countries

THE FOCUS OF THE WORK led by Professor Tony Angelo has been on access to law within the general frame of the rule of law. The perennial finding lists and law books of legislation have been provided for Niue and the Cook Islands. These are essential tools for the operation of those legal systems but for reasons of lack of resource or lack of continuity of personnel are not produced in the states themselves. These fundamentals of the legal systems have been complemented by government workshops and papers, all with the same goal of making the law accessible and fostering the operation of the rule of law. These are matters of systems.

At a different level, the small country interest has been pursued in the field of conflict of laws, with the publication of two private

international law monographs by Wolters Kluwer – one on the private international law of the South Pacific and the other (with Sir Victor Glover, a former Chief Justice of Mauritius) for Mauritius.

For the environment conference in Cancun in 2010, Niue produced its second national statement on the environment. Tony Angelo and Tim Fletcher were responsible for the editing and publishing of that report.

The main research commitment in 2011 has been to the Law of Seychelles. The finding list which was first produced in 2009 (still unique in Seychelles) has been updated, a second edition of *Sauzier’s Law of Evidence* has been prepared, a *Case Miscellany 2010-2011* published, and a 700-page *Seychelles Digest* completed.

These publications enhance the armoury of the barristers and judges of Seychelles and, given the continuing lack of a complete set of legislation and of law reports since 1996, provide the necessary platform for a comparative study of the law of Seychelles with its colonial background of French and English Law. The *Seychelles Digest* will be the first text of its kind since the ground breaking *Law of Seychelles through the Cases* which was produced by Venchard, Glover and Tony Angelo in 1997. The new volume is arranged in 19 subject-matter chapters and contains over 3500 case entries; it almost doubles the case law coverage from the 1997 text and brings the case references up to date as at the middle of 2011.



## Casting our net worldwide

This year the Faculty consolidated its presence in cyberspace with the publishing of three major online resources.

DURING 2011 the Faculty launched a scholarly series, *Victoria University of Wellington Legal Research Papers*, an electronic journal of the same name (subscription is free), and a Victoria University of Wellington page on the website of the Social Science Research Network, based in Rochester, New York and known as “SSRN”.

Professor John Prebble directed these projects as editor of the research paper series and of the electronic journal. SSRN publishes the electronic journal for us. Volume 1, of 2011, has seven issues, comprising approximately 45 papers.

The research paper series collects scholarly work by members of the Law Faculty, previously or contemporaneously published in a wide variety of journals throughout the world. The electronic journal publishes abstracts of papers in the research paper series, together with links to download the full text. In addition, the electronic journal carries abstracts of “working papers”: work in progress not yet formally

published. Authors welcome comments on all papers in the research paper series, and particularly in respect of working papers.

Bringing out a full series of seven issues of Volume 1 *Victoria University of Wellington Legal Research Papers* between August and December 2011 was a challenge that could not have been achieved without the help of Brent Cresswell, a Wellington legal editor familiar with electronic publishing from a career that included Brookers and the Office of Parliamentary Counsel. Brent put the final issue of 2011 to bed as this issue of *V. Alum* went to press. Now that systems are in place, the Faculty plans to publish *Victoria University of Wellington Legal Research Papers* indefinitely, with Issue 1 of Volume 2 appearing in early 2012.

Most issues of *Victoria University of Wellington Legal Research Papers* will address an eclectic mix of topics, in the manner of standard legal journals. Occasionally, issues will collect papers on a single theme or topic. Volume 1 included three themed issues: “Constitutionalism and Democracy as Conflicting Ideals” (Dr Joel Colón-Ríos); “Intellectual Property, with Particular Reference to Trade Agreements, Trade Marks, and Intellectual Property-Related Rights of Indigenous Peoples” (Professor Susy Frankel and one piece co-authored with Professor

Megan Richardson, of Melbourne); and “Ectopia, Fictions, and Autopoiesis: Income Tax Law from Perspectives of Analytical Jurisprudence” (Professor John Prebble and co-authors).

In parallel with *Victoria University of Wellington Legal Research Papers*, Professor Prebble is running a project to encourage members of the Faculty to post their work to the Faculty page on the SSRN website. SSRN has become one of the world’s major resources for scholarly research, with over 300,000 papers by 175,000 authors and over 8 million downloads in the last 12 months.

Victoria is the only New Zealand law faculty with a full presence on the SSRN site, a development that has greatly enhanced the dissemination of work. During 2011, SSRN advised VUW authors over 70 times that their papers were among the week’s ten most downloaded in the paper’s subject area.

This thread leads to Volume 1 of the series: Victoria University of Wellington Law Faculty → Research → *Victoria University of Wellington Legal Research Papers*. To subscribe, open any issue from Volume 1 and select “subscribe” or write to [brent.cresswell@vuw.ac.nz](mailto:brent.cresswell@vuw.ac.nz).

<http://victoria.ac.nz/law/research/legal-research-papers.aspx>



# Alumni Achievements 2011

**Helena Cook LLB 2011** was recognised as a 2011 Kiwibank New Zealander of the Year Local Hero for her work setting up the Community Justice Project in 2010.

**Sir Thomas Gault LLB 1962, LLM 1963** was given a Distinguished Alumni Award from Victoria University (see below).

**Peter Graham LLB(Hons) 1971** has followed up his first book *Vile Crimes* (2007) with *So Brilliantly Clever*, an analysis of the Parker-Hulme case.

District Court Judge **Christine Inglis LLB 1993, LLM 2000** was appointed as an Employment Court Judge.

**Stephen Kós QC LLB(Hons) 1981** was appointed a judge of the High Court in Wellington.

**John McLinden LLB(Hons) 1975, LLM 1989**, a former Wellington barrister, was appointed Queen's Counsel at the English bar.

**Nicole Roughan LLM 2006** awarded a doctorate. It was supervised by Professor Jules Coleman of Yale Law. The dissertation is entitled 'Authority: Pluralism, Relationships and Relativity' and develops a theory of 'relative authority' to explain the legitimacy of relationships between legal and political authorities, including intra-state, supra-state and sub-state authorities.

**David Rutherford LLB 1981, LLM 2004** was appointed Chief Commissioner of the Human Rights Commission.

**Bill Sheat LLB 1954** was made a Companion of the New Zealand Order of Merit in the Queen's Birthday honours list.

**James G. Stewart BA, LLB(Hons) 2000**, a lecturer at the University of British Columbia Law, was awarded the highly prestigious (Canadian) 2011 Social Sciences and Humanities Research Council Aurora Prize. This \$25,000 award recognises an outstanding new researcher.

**Christopher Toogood QC LLB 1972** was appointed a judge of the High Court in Auckland.

**The Honourable Sir Hugh Williams LLB 1963, LLM 1967** was appointed to the New Zealand Registered Architects Board, for a three-year term.

High Court judge **John Wild LLB 1969** was appointed to the Court of Appeal.

## Sir Thomas Gault – Distinguished Alumni Award 2011

Sir Thomas Gault, recipient of a 2011 Distinguished Alumni Award from Victoria University, has had a glorious career in law – and golf.

HE GRADUATED FROM VICTORIA with an LLB (1962) and a LLM (1963). He then spent 20 years with law firm A J Park & Son, where he earned a reputation as a rigorous lawyer and built a strong expertise in the intellectual property field.

Sir Thomas was appointed a High Court judge in 1987, rising through the ranks to become President of the Court of Appeal in 2002.

He was a member of the inaugural bench of the Supreme Court of New Zealand and is also a member of the Privy Council in the United Kingdom. He was knighted in 2009.

Throughout this long and distinguished career, Sir Thomas had another life – on the golf course.

As a student, he won the New Zealand Universities' Championship and was awarded Blues by both Victoria University and the University of New Zealand. Moving into the



administration of the game, he was President of the New Zealand Golf Association from 1987 to 1996 and an Advisory Member of the Rules of Golf and Amateur Status Committees from 1978 to 1996.

He was referee for The Open Championship from 1993 to 1998. He joined The Royal and Ancient Golf Club of St Andrews in 1994, and was made its first New Zealand captain in September 2005.

### DISTINGUISHED ALUMNI AWARDS

Other law alumni who have received a Distinguished Alumni Award are:

**2009:** Judge Peter Boshier LLB(Hons) 1975

**2007:** Robin Congreve LLM 1968

**2006:** John Allen LLB 1984  
David Gascoigne LLM 1962  
Hon Justice Joe Williams LLB 1986



# Obituaries 2011

GEORGE BARTON 1925 – 2011



DR GEORGE BARTON, who died on 17 May, a few days after his 86th birthday, was a man of deep faith and strong principle. Born in the Herne Bay Presbyterian manse and educated initially in Gore and Dunedin, the young George developed a love of learning and education which was to establish him later as one of New Zealand's leading and most respected legal scholars. Victoria University and generations of its students were to be the beneficiaries of George's scholarship and teaching. They were also to benefit from George's special interest in international law and his career as one of New Zealand's leading counsel, which ultimately earned him the accolade from the Attorney-General "as the father of the profession in New Zealand".

George initially studied theology at Otago, where he met his wife Ailsa, but moved with her to Victoria University College to study law, graduating BA LLB (1948) and LLM (1953). He was admitted to the bar in 1948, an event celebrated 60 years later by a dinner hosted by the Governor-General.

From Victoria, George and Ailsa travelled to Cambridge University on the Humanitarian Trust Fund Studentship to study international law under the renowned Professor Hersch Lauterpacht. This led to a PhD for his dissertation entitled "Jurisdiction over Visiting Forces" and work at the Human Rights Division of the United Nations in New York and Geneva.

These experiences were to have a lasting impact on George and laid the foundation for his lifelong concern for human rights, the rights of the individual in both domestic and international law. His concerns were to be reflected in the many cases he took to uphold the rights of individuals, particularly constitutional cases and those involving Pacific Islanders, and in his membership of international organisations, including his role as a representative of the Commonwealth Lawyers Association on the Advisory Group of the Commonwealth Human Rights Initiative 1989-1993, and his membership of the American Law Institute which he addressed in 2003 on the issue of capital punishment.

After New York, George, now Dr Barton, returned in 1952 to Victoria and practice in Wellington. It was not unusual in those days for members of the Law Faculty to pursue careers teaching and practising simultaneously, but Dr Barton, later Professor, did so almost continuously for over 20 years. At Victoria he held positions as lecturer, senior lecturer, Professor of Jurisprudence and Constitutional Law and Dean of Law. He taught nearly every branch of law, including international law, legal system, contract, torts, criminal law, evidence, civil procedure, equity and trusts, and legal history.

Those who had the privilege of being taught by George recall attending carefully prepared and well-researched lectures designed to educate and elucidate and presented in such a measured manner and well-modulated voice that note-taking was no burden. Who will forget his precise enunciation of the great principles of equity (a person who comes to equity must come with clean hands) or his explanations of the intricacies of the law of trusts?

In pursuit of learning, George read voraciously and widely. He maintained in his chambers on The Terrace in Wellington one of the most extensive private law libraries in New Zealand. From his chambers he also conducted an extraordinary international correspondence with friends and colleagues in the law, including Professor Lauterpacht's son and at least one member of the Australian judiciary.

As a legal scholar, with an abiding interest in human rights, it was not surprising that George's career in practice, first in a firm and then for

over 50 years at the independent bar, should have focused significantly on representing individuals with causes at the boundaries of the law. What emerges from an examination of George's cases is not only their range of subject matter but also their reliance on great, but seldom invoked, principles. Who but Dr Barton would have resurrected the ancient writ of *ne exeat regno* and used it to endeavour to prevent the 1971 All Blacks from leaving New Zealand for South Africa? Who but Dr Barton would have relied on the Bill of Rights 1688 to stop a Prime Minister in his tracks in 1976?

At the same time George's career in practice was not focused exclusively on representing individuals at the boundaries of the law. As Sir Ivor Richardson pointed out at a dinner in 2000 to mark George's contribution to the law, George had then appeared in 170 cases reported in the *New Zealand Law Reports*, 10 in the Privy Council, 81 in the Court of Appeal, 78 in the High or Supreme Court, and one before the Visitor of Waikato University. In addition there would have been appearances in hundreds of other cases reported in specialist reports or not reported at all. As Sir Ivor said, "a remarkable achievement".

George's Privy Council appearances demonstrated the diversity of his practice: from the issue of fluoridation of water in Lower Hutt to the taxation of sterling funds remitted to New Zealand, the taxation of a major oil company, the Western Samoan citizenship case, the time of the coming into force of Accident Compensation Corporation levies and the powers of the Commissioner of Inland Revenue to require the provision of information.

Dr George Barton was tenacious and courageous in his pursuit of the principles which supported the interests of his clients. He provided an example to all counsel and his leadership at the bar was ultimately recognised when he was prevailed upon to accept appointment to the rank of Queen's Counsel in 1990.

The people of Western Samoa also recognised Dr Barton by conferring on him the honour of matai with the title of Vaitoa Sa, translated as Guardian of the Sacred Fountain, an honour which meant much to George and his family.

But Dr Barton was more than a renowned legal scholar, fine teacher and leading counsel. His faith and his understanding of human frailty meant that he was always available to give



advice on all manner of issues to all manner of persons. Many in the legal profession, including the good and the great, sought his advice as colleague, mentor or friend. Who will forget his wonderful ability as a listener and as a giver of wise, positive and constructive advice or counsel? George's door was always open and a cup of tea always ready.

Victoria University was indeed fortunate to have Dr Barton as one of its most distinguished alumni and to have had the opportunity in 1987 to confer on him the degree of Doctor of Laws (*Honoris Causa*), the citation for which concluded:

"He has sought constantly to deepen his knowledge and attain wisdom; he has been eager for diverse experience; and the fruit of that knowledge working upon that experience has been the distinctive and admirable contribution he has made to the well-being of the community he has served."

*Hon Justice Douglas White LLM 1972*

## SANDRA MORAN 1945 – 2011



SANDRA MORAN attained significant achievements as a woman lawyer in the Wellington profession, but her focus remained on her clients and their interests.

After completing her law degree at Victoria University, Sandra was admitted as a barrister and solicitor in February 1970. She was employed by Alexander, JH & Julia Dunn and, unusually for a woman at the time, Sandra was

made a partner in 1971. This was a ground-breaking achievement.

Within a year of admission, Sandra had become a partner in a litigation firm and was undertaking a wide variety of litigation at a time when women rarely appeared in Court. Consistent with the approach to litigation at the time, which is now described as a generalist practice, Sandra undertook a wide variety of Court work; criminal, family, civil (District Court) as well as High Court, employment, and of course, defamation, an area in which she specialised.

Sandra was an effective and experienced trial litigator. She understood the needs of her clients, which she always put first. She was perceptive, sharp and determined. During complex trials, Sandra would often work through the night, displaying stamina that few juniors could keep pace with. Her preparation, attention to detail and her understanding of human nature and its frailties made Sandra an effective and successful advocate with juries, in both civil and criminal fields. Her breadth of knowledge and experience enabled her to undertake complex civil and criminal work, which now, in the era of specialisation, is rare.

It was particularly significant, therefore, that Sandra became one of the most experienced and respected defamation lawyers, able to provide skilled advice to publishers and media interests, as well as conducting litigation defending them.

In 1989, after serving on the Wellington District Law Society as an elected Council member and office-bearer for 8 years, she was elected as the first woman President of the Wellington District Law Society. The position she held as the Society's Vice President and Treasurer were also the first time a woman had held those positions. Sandra was a member of the New Zealand Law Society Council from 1987 to 1989; she was Deputy Chair of the Wellington Law Practitioners' Disciplinary Tribunal from 1992 to 2005 and had served on a number of Wellington District Law Society Committees for many years.

As a lawyer, her focus was on achieving the right outcome for her clients, many of whom were disempowered and in need of a strong legal advocate. As well as her legal acumen, Sandra showed considerable compassion for the underdog. She undertook many criminal and family cases to give those clients the best defence or legal assistance that she could

provide and despite her high profile defamation expertise, Sandra would always have room for a criminal or family client who needed her assistance, often waiving or reducing her fee for those who could not pay.

Sandra also served on a number of statutory bodies. She was Deputy Chair of the New Zealand Medical Practitioners' Disciplinary Tribunal and more latterly, the Health Practitioners' Disciplinary Tribunal; President of the Film and Literature Board of Review (April 1995-June 2001); independent adviser to the Medical Misadventure Unit of ACC and the legal member of the Chiropractic Board and the Psychologists' Board.

For 19 years, from February 1985 to April 2004, Sandra was a director of Independent Newspapers Ltd, New Zealand's largest media company until it sold its assets (except SKY Television) to Fairfax in 2003.

She held the position of President of Zonta Wellington; she was the Executive Member of the Wellington Division of the Cancer Society of New Zealand and founding member and Trustee of the Cancer Institute of New Zealand.

Sandra was an intensely private person. Unknown to most in the legal profession, Sandra battled ill-health for 20 years. Even as late as December 2010, Sandra never revealed that she was ill with cancer.

Sandra's success in acting for the New Zealand Firefighters' Union and their right to access workplaces was a triumphant one in a case which was said to be unwinnable. New Zealand Firefighters' Union still pays tribute to Sandra's work on its website and that litigation marked, for Sandra, a significant victory in her legal career.

Sandra Moran was a pioneer of women lawyers in New Zealand, but she never claimed that title. Her focus was on achieving a fair result for her clients and in one case, where I was involved for a group of unresourced women, offered her assistance as an independent Counsel, without a fee. Sandra was a truly able lawyer, a skilled litigator and a fearless advocate. Those are the attributes she sought to attain and in addition to all her other pioneering achievements, unquestionably succeeded.

*Helen Cull QC, LLB(Hons) 1978*

## Visitors to the Faculty 2011

### JANUARY

**John Cook** is a former academic of the VUW Law Faculty who has been working and living in the UK for many years. While visiting he was conducting some private consultancy work.

### FEBRUARY

**Richard Cornes**, Senior Lecturer in Public Law at the University of Essex. Richard visited briefly while conducting some research.

**Rebecca Stahl** visited on a Fulbright from the United States. She was mainly based in Christchurch but spent a couple of months in Wellington working on her thesis.

**Russell Brown**, University of Alberta, visited as part of the Regulatory Reform Project.

**Christian Vaccaro**, Professor and Head of Economic Law Department, Faculty of Law, Catholic University of Concepción, Chile. Christian was awarded a Chilean Scholarship from Victoria University of Wellington for academic researchers who were unduly affected by the Chilean earthquake. This scholarship enabled academics to come to New Zealand to continue their research. His project in association with Susy Frankel involves Trans-Pacific partnership and intellectual property issues in free trade agreements.

**Albin Eser**, Professor and former Director of the Max Planck Institute for Foreign and International Criminal law and former judge in German courts. Professor Eser gave a public lecture "Human Rights guarantees in criminal law and procedures from a European perspective."

### MARCH

**Mario Patrono**, Sapienza University of Rome, is a regular visitor to the Faculty. Professor Patrono teaches in Community and European Union Law. He continues to research and write on matters of comparative constitutional law and the law of small states.

### APRIL

**Ben Boer**, Law Foundation Distinguished Visiting Fellow 2011. Emeritus Professor Ben Boer is at the University of Sydney, where he teaches various units of study in the Master's

programme at the University of Sydney. His latest work, of which he was the main editor, is *Environmental Law and Sustainability after Rio* with Jamie Benidickson, Antonio Benjamin and Karen Morrow, (eds. Edward Elgar 2011). He is currently the head of the IUCN World Commission on Protected Areas Law Specialist Group. During his visit Professor Boer gave a public lecture "International Human Rights Norms and Environmental Law".

### MAY

**Larry Helfer**, Harry R. Chadwick Sr Professor of Law at Duke University School of Law. He also co-directs the Centre for International and Comparative Law at Duke and is a member of the faculty steering committee of the Duke Centre on Human Rights. Professor Helfer has co-authored a book with Professor Graeme Austin entitled *Human Rights and Intellectual Property: Mapping the Global Interface*. During his visit Professor Helfer and Professor Austin gave a joint public lecture and launched their book.

**Mary Boyce**, University of Hawai'i at Mānoa, visited while she worked on the Legal Māori Project with Māmari Stephens.

### JULY

**Paul Gudel**, Professor of Law, California Western School of Law. Paul taught LAWS 330 Jurisprudence on an exchange in the second trimester. Professor Gudel teaches in the areas of contracts, employment discrimination, jurisprudence and labour law.

### AUGUST

**Carol Rose**, Ashby Lohse Professor of Water and Natural Resource Law, University of Arizona & Gordon Bradford Tweedy Emeritus Professor of Law and Organisation, Yale Law School. Professor Rose gave an NZCIEL public lecture entitled "Enlisting Market Forces in Service to the Environment – the Optimists vs the Pessimists".

**Janet McLean**, Professor of Law at Auckland University, is a former academic at Victoria and a former Director of the New Zealand Institute of Public Law at Victoria University of Wellington. Professor McLean gave a paper at

the BORA Symposium entitled "Rights Against the State?" and a public lecture entitled "Bill of Rights and Constitutional Conventions".

**Rabinder Singh QC** was recently a barrister at Matrix Chambers in London, specialising in public law and human rights. He is now The Hon. Mr Justice Singh at the Royal Courts of Justice, Strand, London. Justice Singh acted as a Moderator for the BORA Symposium and gave a public lecture entitled "The Moral Force of the UK Human Rights Act".

### OCTOBER

**Shaunnagh Dorsett**, Associate Professor, Faculty of Law, University of Technology, Sydney. Dr Dorsett is a former academic at the Faculty and continues her involvement with the Lost Cases project. Shaunnagh visited briefly and gave a staff seminar entitled "The Precedent Is India: Hobson's 1840 Draft Legislation For The Modification Of Criminal Laws In Their Application To Māori".

### NOVEMBER

**Lord Collins of Mapesbury**, Inaugural Borrin Fellow 2011, recently retired from the Supreme Court of the United Kingdom, where he was one of the first Justices of the new Court. Lord Collins gave a public lecture entitled "With all due respect to the Judiciary?"

### DECEMBER

**Monique Egli Costi** is an expert in international securities regulatory affairs. During her visit she is writing a monograph on the International Organisation of Securities Commissions (IOSCO). She is also preparing a paper on IOSCO's strategic direction for presentation at a conference.

**Cheryl Saunders** is a laureate professor and holds a personal chair in law at the University of Melbourne. She is presenting the annual Robin Cooke Lecture entitled "Human Rights: Interpretation, Declarations of Inconsistency and the Limits of Judicial Power".





## Take three visitors: Human rights, the environment and stealing beauty

**J**UST BEFORE COMING TO WELLINGTON, Visiting Professor Dr Albin Eser and his wife lost all their luggage in the Christchurch earthquake, including the papers he was scheduled to deliver. His talks could go ahead because he had a memory stick in the bag he was carrying and because he was lent a jacket by the Dean of Law at Victoria, Professor Tony Smith. Putting aside such unsettling circumstances, Professor Eser gave a lecture “Human rights guarantees in criminal law and procedure from a European perspective.”

New Zealand’s criminal Three Strikes law might violate the principle of proportionality in European human rights law, he said, stating that he was somewhat amazed by it: “Such legislation would probably pay insufficient heed to the individuality of each case.” He said California’s Three Strikes law would certainly contravene Article 49 of the European Union’s Charter of Fundamental Human Rights, which sets out principles of legality and proportionality in relation to criminal offences and penalties.

His lecture covered the European Convention on Human Rights and the Charter mentioned above, current debate in Europe about the right to defend oneself and the nature of the presumption of innocence, amongst other matters.

Professor Eser is one of Germany’s best known criminal law academics and a former ad litem judge at the International Criminal Tribunal for

the former Yugoslavia. He served as a judge in German courts from 1971 and was director of the Max Planck Institute for Foreign and International Criminal Law in Freiburg from 1991 to 1994. Professor Eser has held many visiting professorships, including at the University of California in Los Angeles and Columbia University Law School in New York and the University of Texas at Galveston.

**T**HE NEW ZEALAND LAW FOUNDATION Distinguished Visiting Fellow 2011 was Emeritus Professor Ben Boer.

A Canadian, Ben Boer was appointed as Emeritus Professor in Environmental Law in 2008 at the University of Sydney. Between 2006 and 2008, he was the international Co-Director of the IUCN (International Union for the Conservation of Nature) Academy of Environmental Law and Visiting Professor based at the University of Ottawa, while continuing to teach in the Master of Environmental Law at the University of Sydney. With his departure from Canada, he was appointed as an honorary Adjunct Professor at the University of Ottawa.

His lecture “International Human Rights Norms and Environmental Law” surveyed the development of closer connections between the international human rights regime and the international treaty regime for environmental protection, using examples from a number of regions.

**I**T COULD ONLY HAPPEN IN WELLINGTON. Judge Arthur Tompkins, from the Hamilton District Court, had standing room only at his 6pm lecture on a Friday in November: “Stealing Beauty: Art Crime during War”.

The lecture was a compelling mix of law, art, crime, history and human greed: “Art always suffers during wartime,” says Judge Tompkins, “from the sack of the Temple of Solomon, through the many crimes committed against the Ghent Altarpiece, and the depredations of Napoleon and Hitler across Europe, this has always been so.”

He covered fascinating examples of these sorts of crimes, the people involved and some of the myths which surround them. These included the long history of the Four Horses of San Marco Basilica in Venice, the theft of Veronese’s *Wedding at Cana*, the sack of Constantinople by the Fourth Crusade, the miracle of the Alt Aussee salt mine, the survival of the *Sarajevo Haggadah* and the bizarre story connecting Goya, the Duke of Wellington, James Bond and television licensing fees.

Arthur Tompkins teaches Art in War at the Summer Masters Programme in International Art Crime and Heritage Protection Studies, offered annually by the Association for Research into Crimes against Art, in Umbria, Italy.

# Faculty events 2011

## FACULTY OF LAW

### FEBRUARY

#### PUBLIC LECTURES

##### **The Accomplice Liability of Arms Vendors for International Crimes**

James G Stewart, University of British Columbia

##### **Enhancing Performance-based Regulation: Lessons from New Zealand's 'Leaky Building' Crisis**

Peter Mumford, Director, Ministry of Economic Development

*A New Zealand Law Foundation Regulatory Reform Project Lecture*

### MARCH

#### PUBLIC LECTURE

##### **Human Rights Guarantees in Criminal Law and Procedure from a European Perspective**

Professor Albin Eser, former director of the Max Planck Institute for Foreign and International Criminal Law and former judge in German courts

See page 21.

#### INAUGURAL LECTURE

##### **Treaties on the Frontier: Crown-Māori Treaties other than the Treaty of Waitangi and their significance**

Professor Richard Boast, VUW Faculty of Law  
*In association with the Vice-Chancellor's office*

#### LAUNCH

##### **Wellington Community Justice Project**

Guest Speaker: Judge Peter Boshier

See page 8.

### APRIL

#### PUBLIC LECTURE

##### **Statelessness in Europe and beyond**

Dr Caroline Sawyer, VUW Faculty of Law  
*In association with the New Zealand Association of Comparative Law and the International Law Association*

### MAY

#### PUBLIC LECTURE

##### **International Human Rights Norms and Environmental Law**

Emeritus Professor Ben Boer, New Zealand Law Foundation Distinguished Visiting Fellow  
See page 21.



### JUNE

#### LAUNCH

##### **Special Edition of the VUW Law Review in honour of Professor David McLauchlan's 40 years at the Faculty of Law**

See page 24.

#### INAUGURAL LECTURE

##### **A Capital Custom: Victoria and the New Zealand legal tradition**

Professor Geoff McLay, VUW Faculty of Law  
*In association with the Vice-Chancellor's Office*

### AUGUST

#### DEAN'S RECEPTION

To honour competitions and prizewinners  
See page 30

### SEPTEMBER

#### PUBLIC LECTURES

##### **Geographical Indications: International Deal Maker or Breaker?**

Professor Susy Frankel, VUW Faculty of Law and Chair of the Copyright Tribunal (NZ).  
*In association with the New Zealand Association for Comparative Law and the International Law Association*

##### **CISG & International Arbitration**

##### **– A Fruitful Marriage?**

Dr Petra Butler, VUW Faculty of Law  
*In association with the New Zealand Association for Comparative Law*

### SEMINAR

##### **The Extra-Territorial Application of Human Rights**

Professor Campbell McLauchlan QC and Dr Rayner Thwaites, VUW Faculty of Law

### OCTOBER

#### LAUNCH

##### **The Law and Language themed issue of the VUW Law Review, an interdisciplinary initiative.**

### NOVEMBER

#### PUBLIC LECTURES

##### **Stealing Beauty: Art Crime during War**

Judge Arthur Tompkins, District Court, Hamilton

See page 21.

##### **The Principle of Proportionality and the Paradox of Constitutional Rights**

Dr Carlos L. Bernal-Pulido, Senior Lecturer, Macquarie School of Law, Sydney

##### **With all due respect to the Judiciary?**

Lord Collins of Mapesbury, Inaugural Borrin Fellow in the Law School at Victoria University, Former Justice of the Supreme Court of the UK

##### **BEEBY COLLOQUIUM ON INTERNATIONAL LAW**

##### **Perspectives on International Dispute Settlement from a Participant**

Rt Hon Sir Geoffrey Palmer SC

*In association with the Ministry of Foreign Affairs and Trade*

### DECEMBER

#### INAUGURAL CONFERENCE

Three workshops on the following themes: Good Faith Bargaining; Employment Security; National Employment Standards for New Zealand

*New Zealand Labour Law Society in conjunction with the Victoria University of Wellington Law School*

#### ROBIN COOKE LECTURE

##### **A Constitution as Catalyst: Different Paths within Australasian Administrative Law**

Professor Cheryl Saunders, University of Melbourne



## NEW ZEALAND CENTRE FOR PUBLIC LAW

### JANUARY/FEBRUARY

#### THE TREATY DEBATE SERIES

##### **The foreshore and seabed revisited**

Matanuku Mahuika and Tom Bennion

Chair: Dr Claudia Orange

##### **New challenges going forward**

Joris de Bres and Whaimutu Dewes

Chair: Dr Claudia Orange

*In association with Te Papa*

### MARCH

#### PUBLIC SEMINAR

##### **The UK's Human Rights Act: Its first ten years, and its uncertain future**

Dr Mark Elliot, University of Cambridge

### MAY

#### PUBLIC LECTURE & BOOK LAUNCH

##### **Human Rights and Intellectual Property: Mapping the Global Interface**

Professor Graeme W. Austin, VUW Faculty of Law, and Professor Laurence R. Helfer

#### PUBLIC LECTURE

##### **The Urgency Project Reports**

Claudia Geiringer, Polly Higbee and Professor Elizabeth McLeay, VUW Faculty of Law

### JULY

#### PUBLIC LECTURE

##### **The role of the New Zealand Chief Coroner**

Judge Neil MacLean, Chief Coroner of New Zealand

### AUGUST

#### PUBLIC LECTURES

##### **The Moral Force of the UK Human Rights Act**

Rabinder Singh QC

##### **Bill of Rights and Constitutional Conventions**

Professor Janet McLean, University of Auckland

See page 2.

#### SYMPOSIUM

##### **Celebrating 21 years of the New Zealand Bill of Rights**

See page 2.

## NEW ZEALAND CENTRE OF INTERNATIONAL ECONOMIC LAW

### JULY

#### CONFERENCE

##### **Enhancing Stability in the International Economic Order**

*Supported by the New Zealand Law Foundation and sponsored in honour of Dan Chan*

See page 4.

### AUGUST

#### PUBLIC LECTURE

##### **Enlisting Market Forces in Service to the Environment – Optimists vs the Pessimists**

Professor Carol Rose, Ashby Lohse, Professor of Water and Natural Resource Law, University of Arizona, and Gordon Bradford Tweedy Emeritus Professor of Law and Organisation, Yale Law School

### SEPTEMBER

##### **Investor-State Dispute Settlement in the Trans-Pacific Partnership: Issues for New Zealand**

Amokura Kawharu, University of Auckland



# Faculty publications 2011

## VUW LAW REVIEW

### VOLUME 42, NUMBER 1

MAY 2011

#### Issue in Honour of Professor David McLauchlan

- 1 Celebrating David McLauchlan's Contribution *Geoff McLay and Nessa Lynch*
- 3 But Where's the Contract? A Tribute to Professor David McLauchlan *Amelia Keene and Sarah Leslie*
- 17 Constraints on the Exercise of Contractual Powers *Hon Justice Stephen Kós*
- 17 The Uncertain Doctrine of Part Performance *Susy Frankel*
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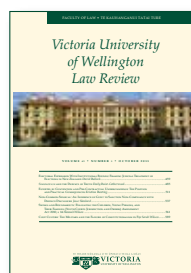
#### Framework of Protections for the Māori Language *Māmari Stephens*

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- 307 Les Langues de Polynésie Française et la Constitution: *Liberté, Egalité, Identité* *Marc Debène*
- 331 Droit et Semiotique: La Cohérence Narrative *Sylvie André*
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- 561 Swings and Roundabouts: Evaluating the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010, s 14 *Hannah Wilson*
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- 639 *Harris v Fitzherbert*: Customary Rights of Labour on a Shore Whaling Station *Stuart Anderson*
- 653 Treaties Nobody Counted On *R P Boast*
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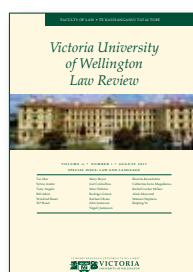
- 137 Consent Searches and Section 21 of the NZ Bill of Rights Act 1990 *Christopher Harker*
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- 241 Taonga, Rights and Interests: Some Observations on WAI 262 and the

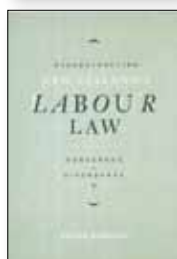




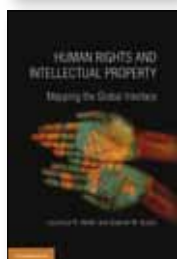
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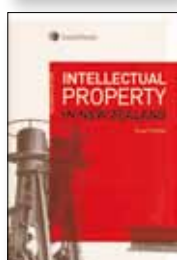
**Gordon Anderson**  
*Labour Law in New Zealand*  
(The Netherlands, Wolters Kluwer, 2011)  
237pp.



**Gordon Anderson**  
*Reconstructing New Zealand's Labour Law: Consensus or Divergence?*  
(Victoria University Press, Wellington, 2011)  
280pp.



**Graeme Austin**  
and L Helfer  
*Human Rights and Intellectual Property: Mapping the Global Interface*  
(Cambridge University Press, New York, 2011)  
568pp.



**Susy Frankel**  
*Intellectual Property in New Zealand*  
(2nd ed, LexisNexis, Wellington, 2011)  
900pp.



**Dean Knight** and  
Chris Mitchell  
*Local Government Law in Practice*  
(LexisNexis, Wellington, 2011)  
726pp.



**Grant Morris**  
*Law Alive: The New Zealand Legal System in Context*  
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256pp.

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*Employment Law: A Practical Guide*  
(LexisNexis, Wellington, 2010) 1174pp.

**Tony Angelo** and Yves-Louis Sage (eds) (2011)  
*17 Comparative Law Journal of the Pacific: Revue Juridique Polynésienne*, 126pp.

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*Droit Foncier et Gouvernance Judiciaire dans le Pacifique Sud Essais Comparatistes/ Land Law and Judicial Governance in the South Pacific Comparative Studies* (Comparative Law Journal of the Pacific Revue Juridique Polynésienne, Wellington 2011) 406pp.

**Tony Angelo** and Māmari Stephens (eds)  
*Victoria University of Wellington Law Review Special Issue: Law and Language* (2011) 42(2) 278pp.

**Bill Atkin** (ed) *International Survey of Family Law 2011* (Bristol, Jordan Publishing, 2011) 424pp.

**Petra Butler**, Jonathan Boston and Caroline Morris (eds) *Reconstituting the Constitution* (Heidelberg, Springer, 2011) 519pp.

**Susy Frankel** (ed) *Learning from the Past, Adapting for the Future: Regulatory Reform in New Zealand* (Wellington, LexisNexis, 2011) 555pp.

**Nessa Lynch** and **Geoff McLay** (eds) *Victoria University of Wellington Law Review Special Issue in Honour of Professor David McLauchlan* (2011) 42(1) 180pp.

**Elisabeth McDonald** and **Yvette Tinsley** (eds)  
*From "Real Rape" to Real Justice: Prosecuting Rape in New Zealand* (Wellington, Victoria University Press, 2011) 552pp.

**Nicole Moreham**, I Christie, M Warby and H M Tugendhat (eds) *Tugendhat and Christie: The Law of Privacy and the Media* (2nd ed, Oxford University Press, London, 2010) 800pp.

**Caroline Sawyer** and B K Blitz *Statelessness in the European Union: Displaced, Undocumented and Unwanted* (Cambridge University Press, Cambridge, 2010) 340pp.

## MONOGRAPHS

**Tony Angelo** *Constitutional Law in New Zealand* (The Netherlands, Wolters Kluwer, 2011) 184pp.

**Tony Angelo** *Private International Law – Mauritius* (The Netherlands, Wolters Kluwer, 2010) 70pp.

**Tony Angelo** *Private International Law – South Pacific* (The Netherlands, Wolters Kluwer, 2010) 170pp.

**Tony Angelo** (with R Pulehetoa-Mitiepo, K S Sinahemana Hekau, Dr G Manful, Dr J Barnett, S Waller, T Fletcher) *Niue – Second National Communication Relating to the United Nations Framework Convention on Climate Change* (Niue Climate Change Project, Wellington, 2010) 132pp.

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**Tony Angelo** and N Stephens *The Cook Islands Legislation Supplement 2010-2011 as at 19 April 2011* (Law Publications, Wellington, 2011) 116pp.

**Tony Angelo** and N Stephens *The Cook Islands Legislation: A Finding List as at 19 April 2011* (Law Publications, Wellington, 2011) 170pp.

**Tony Angelo** and Ruiping Ye *Niue Legislation Supplement 2009-2011* (Law Publications, Wellington, 2011) 101pp.

**Bill Atkin** *International Encyclopaedia of Laws "Family Law" New Zealand* (Kluwer, 2008) 146pp.

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**Gordon Anderson** and D Wahyudhi "Report on New Zealand" in Monika Schlachter (ed) *The Prohibition of Age Discrimination in Labour Relations* (Nomos, Baden Baden, 2011) 373-442.

**Graeme Austin** "The Regulation of Consumer Credit Products: An Examination of Baseline Assumptions" in Susy Frankel (ed) *Learning from the Past, Adapting for the Future: Regulatory Reform in New Zealand* (LexisNexis, Wellington, 2011) 295-310.

**Mark Bennett** and **Joel Colón-Ríos** "Public Participation and Regulation" in Susy Frankel (ed) *Learning from the Past, Adapting for the Future: Regulatory Reform in New Zealand* (LexisNexis, Wellington, 2011) 21-69.

**Richard Boast** and N Quigley "Regulatory Reform and Property Rights in New Zealand" in Susy Frankel (ed) *Learning from the Past, Adapting for the Future: Regulatory Reform in New Zealand* (LexisNexis, Wellington, 2011) 127-143.

**Petra Butler** "Articles 53-60 CISG" in Stefan Kröll, Loukas Mistelis and Pilar Perales Viscasillas (eds) *UN-Convention on the International Sale of Goods (CISG)* (Beck & Hart Publishing, Baden Baden, 2011).

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# Student prizewinners 2011

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

## COMPETITION WINNERS 2011

### Bell Gully Mooting

Kristina Bunting and David Bullock

### Minter Ellison Rudd Watts Witness Examination

William Findlay

### Russell McVeagh Client Interviewing

David Smith and Laila Dookia

### Buddle Findlay Negotiation

Jessica Murchison and James Pearson

### Buddle Findlay Junior Mooting

David Hill and Jacob Bourke

### VUWLS Junior Negotiation

Molly Woods and Lauren Brazier

## FACULTY OF LAW PRIZEWINNERS 2010

### A H Johnstone Scholarships in Law

Best result in top three 200-level courses

Amy Dixon and Adele Taylor

### AJ Park Prize in Intellectual Property

Top result in Intellectual Property

Fiona Pringle

### Archibald Francis McCallum Scholarship in Law

Best result in LAWS 301 Property Law

David Bullock

### Bernard Randall Prize in Family Law

Top student in LAWS 370

Amy Whittaker

### Chapman Tripp Prize

Top graduating law student

Christopher Harker

### Chris Highfield Memorial Prize in Judicial Law

Best result in LAWS 322 Judicial Review

Conrad Reyners

### Chris Highfield Memorial Prize in Public Law

Best result in LAWS 213 Public Law

Kimberley Lewis

### Coleman-Brown Memorial Award

Top female student in the field of Legal Theory

Kimberley Lewis

### Cullen Employment Law Prizes

Top students in LAWS 355 Employment Law

Linda Clark, Cameron Elliot and Dirk Lenz



### Faculty of Law Prize in Legal System

Best result in LAWS 121 Legal System

Jasmin Moran

### John Miller Award – Undergraduate

Award in Social Justice and Community

Development

Helena Nunn

### LEADR Prize in Dispute Resolution

Best work in Dispute Resolution

Abby Tearle

### Lord Cooke of Thorndon Prize

Best student entering the Honours programme

Adele Taylor

### Mario Patrono Prize in Legal System

Highest average grades in LAWS 121, 122 & 123

Laura Hardcastle

### NZ Law Review Prize

Top students over four 200-level Law courses

Carissa Cross, Amy Dixon and Adele Taylor

### Quentin-Baxter Prize in International Law

Best work in LAWS 340 International Law

David Bullock

### Quentin-Baxter Prize in Public and

International Law LLM

Shannon Ward

### Robert Orr McGechan Memorial Prize

Best work for VUWLR

David Bullock

### Thomson Reuters Prize in Jurisprudence

Best work in Jurisprudence class

Kimberley Lewis

### Thomson Reuters Prize in the Law of Contract

Best work in Law of Contract class

Adele Taylor

### Val Gormly Memorial Prize

Top student in LAWS 301 Property Law

David Bullock

### VicBooks Award – Laws 301

Top tutor in LAWS 310

Abby Tearle

### VicBooks Award – Laws 214

Top tutor in LAWS 214

Amy Whittaker

### VicBooks Award – Laws 211

Top tutor in LAWS 211

Anne O'Driscoll

### VicBooks Award – Laws 213

Top tutor in LAWS 213

David Bullock

### VicBooks Award – Laws 212

Top tutor in LAWS 212

Sarah Wilson

### Medal of Excellence

Christopher Harker



# Student achievements 2011

## AUSTRALASIAN MOOTING COMPETITION

The Victoria moot team of David Bullock, Kristina Bunting and Campbell Herbert travelled to Australia in mid-July to compete in the Australian Law Students Association National Championship Moot. The annual event is part of the ALSA conference and provides an opportunity for Australasian law students to test their practical legal skills in a moot court.

Throughout the four preliminary rounds, the VUW team faced university teams from Adelaide, Western Australia, Queensland and Tasmania and had three wins. The arguments involved issues regarding negligence and the liability of a public body for psychiatric injury under the Civil Liability Act 2002 (NSW); the enforceability of a contract following the death of an appointed arbitrator; the effect of a partly-written, partly-oral contract; and liability under the Corporations Act 2001 (Aus.) for statements made to the Australian Securities Exchange.

The team's success placed it in the top bracket. They advanced to the quarterfinals where they came up against the University of Auckland. Appearing before a bench comprised of a Sydney barrister and a Professor of Criminal Law at UNSW, and acting for the Crown, Victoria successfully argued for the dismissal of an appeal of convictions for murder and manslaughter. The moot covered issues of *mens rea*, party liability and intervening acts.

For the semifinals, the team travelled to the Sydney offices of Australian law firm Mallesons Stephen Jacques to face the University of Adelaide. The bench was two solicitors from Mallesons (one of whom had previously led UNSW to win the Philip C. Jessup International Law Moot), and a Justice of the Supreme Court of New South Wales. Faced with the challenge of arguing against a High Court of Australia authority on a point of law, the team was able to successfully distinguish the case at hand. The win pushed it through to the Grand Finals.

Faced with 18 hours to prepare in the rather daunting area of Australian restitution and equity, the Victoria team presented a case involving misappropriated funds, unjust enrichment and breach of trust. Appearing in the Banco Court before Michael Evens (an

expert in equity), Justice Brennan (former Chief Justice of Australia) and a partner from Mallesons, the Victoria team was closely beaten by one from the University of Otago, finishing the tournament second out of 32 teams.

Victoria also performed admirably in other disciplines: the Client Interviewing team (David Smith and Laila Dookia) breaking to the quarterfinals; and the Witex competitor William Findlay, and Negotiation team (James Pearson and Jess Murchison) performing well in their preliminary rounds. Overall, New Zealand teams won three out of the four competitions they entered.

*Kristina Bunting*

## BLUES AWARDS WINNERS

Blues are the highest recognition Victoria University can give to students who have brought credit to the University through their sporting achievements. Two law students, Sebastian Templeton and Richard D'Ath, were honoured in this year's awards.

Richard D'Ath was a finalist for the Victoria University Sportsman of the Year and received a Blues Award for Sports. Richard was in the team that were runners-up in the Joynt Scroll competition.

Sebastian was named the University's Sports Administrator of the Year. He is President of the University's Debating Society; President of the NZ Universities' Debating Council and the Chairperson of the VUWSA Sports Council.

This year he was Chief Adjudicator of the Officer's Cup and South Island Novice Champs, and a selector at the Joynt Scroll and the North Island Novice Champs. He currently holds the Centennial Cup for the Best Adjudicator in New Zealand.

Sebastian coached a Wellington Regional Schools Debating Team and was convenor of the Wellington School Premier 'A' Debating Grade. The Debating Society has won more competitions in 2011 than any other year. Sebastian is also Vice-President of the Australasian Intervarsity Debating Society.

## MOOTING COMPETITION IN HONG KONG

A Victoria University Law School team composed of Sam Humphrey and Sarah Wilson won the 9th Annual Red Cross International Humanitarian Law Moot (an inter-university competition for the Asia-Pacific region) in Hong Kong in March.

They performed superbly in the semi-finals and finals, which were held at the High Court building and received prizes for second and third best oralists in the competition and for second best memorial. They were accompanied by Associate Professor Alberto Costi and Senior Lecturer Joanna Mossop.

The competition featured 20 teams from the Asia-Pacific region (including Australian National University, a joint NUS and SMU team from Singapore and the three Hong Kong-based law schools), 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 participating in the semi-finals.

The best teams for the Prosecutor (Hidayatullah National Law University from India) and the Defendant (Mr Humphrey and Ms Wilson) then met in the finals, which was judged by Mr Antoine Bouvier, Legal Adviser, International Committee of the Red Cross (Geneva); 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).

Unlike the other teams in Hong Kong, the Victoria Law School team did not have to win a national round before competing there. This disadvantage, in terms of mooting experience, was minimised in part by the kind assistance of a number of colleagues, adjuncts, practitioners and the participants of last year, who tested the students in a number of rehearsals and offered invaluable advice.

The achievement could not have been realised without the support of the Hong Kong Red Cross, the International Committee of the Red Cross Mission in the Pacific, and the Law School.

# Student activities 2011

Law Camp 2011

Top: O-Week tennis  
Bottom: Students at the  
Women in Law evening



## FROM THE LAW STUDENTS' SOCIETY PRESIDENT

IN THE LATE HAZE OF SUMMER, the 2011 executive took to its work with green horns and an aim to increase the reach of its activities and broaden engagement with students. By building on the work of previous executives and keeping the core of what makes the Society great, we hoped to make things relevant and interesting to *all* members.

With these aims in mind and the year behind us, I'm glad to say that 2011 has been a very successful year.

February posed the first challenge of the year: How to bring 80-ish slightly awkward second-year law students together? We thought we would send them to the wilderness (aka no cell phone coverage).

The second annual Law Camp was once again a great success. With lots of activities and a chance for students to get to know each other in a relaxed setting, it has been great to see this initiative continue. It has been especially encouraging to see the increased cohesion amongst the 200-level cohort and their high level of participation in events and competitions this year.

However, Law Camp was only the curtain raiser to a stream of events in the first few weeks of school. Chapman Tripp O-Week kicked off the biggest T-shirt night ever, with around 500 students cramming in to our new venue at Bar Bodega. Those poor souls looking for a revitalising breakfast the next morning were thoroughly rewarded with their Recovery Brunch tickets, while the Tennis Evening was once again a success thanks to our friends at Thorndon Tennis Club. The first few weeks also saw the prestigious Jackson Trophy up for grabs at the Bell Gully Staff-Student Cricket.

Throughout the year, students also found time to relax with all the old favourites – the DLA Phillip Fox Cocktail Night, Morrison Kent Quiz Night, and, of course, the Russell McVeagh Law Ball. And for leaving students, the IPLS Leavers' Dinner meant one last 'hurrah', with guest speaker Professor Bill Atkin imparting some 'wise words' for the future.

VUWLSS even committed to hosting the biggest rugby fixture of 2011: the annual Law-Geology rugby match. Much like Wales' semi-final match against France, fate had the law students robbed and the precious Greywacke Trophy was lost for the first time.

However, while all these events promote an important sense of community and some much needed relaxation for students, they are only one

side of what the Society does. As always, 2011 also meant ensuring quality advocacy for law students, running legal skills competitions and promoting a range of educational initiatives.

We looked to broaden the scope of O-Week by introducing lunchtime talks where a range of prominent figures spoke about their interests and explained the different ways they had used their law degree. It was fantastic to see the spectrum of opinions presented. One could not help but appreciate the special level of accessibility available in New Zealand, with students getting the chance to engage directly with the likes of Mai Chen, Jack Hodder SC, Judge Bill Hastings and MFAT CEO John Allen.

Also in the first term was the running of the annual legal skills competitions, the launch of the Kensington Swan first-year mentoring programme, a very successful bake sale to raise money for the Christchurch Earthquakes, and a forum for law students considering overseas exchange.

With the help of IPLS we introduced a new annual seminar explaining what students might expect in the transition from student to professional. It was great to see this initiative come together with a range of perspectives (public sector, community law, in-house counsel, corporate law) represented by our panellists. A great deal of thanks must go to



Top: The MMP debaters  
Bottom: Women in Law  
evening



The Law Ball 2011

those who volunteered their time to help. With a good explanation of how professionals work and what to expect in the workplace, it will be exciting to see this initiative continue.

During the year we also held an important debate on the upcoming referendum on electoral systems, worked closely with the Wellington Community Justice Project in promoting tenancy rights, and held the third annual Law Students' Society Patron's Lecture.

With the topic "What would Ethel Benjamin think?" Chapman Tripp once again hosted the Women in Law evening. It was a sobering but encouraging event, with some very affecting words from Helen Cull QC, Green Co-Leader Metiria Turei, Associate Professor Elisabeth McDonald and Chapman Tripp Principal Emma Sutcliffe.

I would like to thank everyone who has helped make 2011 a success for the Law Students' Society. In particular, I would like to single out the outstanding individuals in this year's executive. That enthusiasm and initiative has been hugely appreciated.

The Society is in fine shape and I look forward to some exciting developments in 2012 from incoming president, Ben Land-Maycock, and his team.

*David Smith*

## LAW BALL 2011

An assortment of dark hues reigned supreme at the Queen's Wharf Ballroom as Foxglove hosted the Russell McVeagh Law Ball for 2011.

While the theme may have been "All Black", the charms of the humble rugby clubroom would have stood no match for this monochromatic wonderland, with a nightscape of glowing candles and carefully arranged flowers complementing the ballroom's rich wooden tones.

Over 400 students glided into the premier social event of the year, dressed to the nines and dripping with class and sophistication.

While the decorum of the string quartet prevailed early in the evening, things soon gave way to raucous dancing as live band Johnny and the Dreamboats took centre stage and everyone partied the night away.

As always, the evening provided an excellent opportunity for students and staff to mix, mingle and 'let the hair down' in a polished setting. With too many stories than could possibly be printed here, it is safe to say many new friends were made.

The evening proved a fantastic success and thanks must go to major sponsor Russell McVeagh for making the event possible.

The Law Students' Society also wishes to thank Kate Slyvester and Crane Brothers for providing best-dressed awards, and the Victoria University of Wellington Students' Association for its continuing support of the Society's activities.







The annual Bell Gully staff-student cricket match



The third annual Patron's Lecture



## BELL GULLY STAFF-STUDENT CRICKET

David Fraser notes in his book, *Cricket and the Law: The Man in White is Always Right*, that cricket and law share many common characteristics. Among others, these include the ideals of fair play, 'gentlemanly behaviour', and 'good sportsmanship'.

It is perhaps therefore not surprising that cricket is practically infused in the DNA of Victoria University Law School. The hallways of the Old Government Buildings echo with the ghosts of games won and lost on the bounce of the ball; classrooms resound with the cricketing of anecdotes of lecturers; and perhaps the most memorable judgment studied by students concerns none other than the game in white (read: *Miller v Jackson*).

With a view to bringing these two magnetically attracted entities together, the Law Student's Society once again held the Bell Gully Staff-Student Cricket Match on a clear blue day in March.

Playing in Twenty20 format and batting first on a green Kelburn Park pitch, the students shot off to a good score. Cameo appearances from sporting titans Robert Hegarty, Paul Ranier and Jesse Strafford ensured that the students retained some much needed impetus throughout the innings.

However, despite posting a reasonable total the students were eventually run down in a tense last two overs. While staff captain Bill Atkin was a stabilising presence throughout the innings, it was a man-of-the-match performance from Bell Gully maestro, Michael Green, that saw the staff team home.

Whoever won, a good crowd, great food from Wholly Bagels, beautiful weather and plenty of hydrating beverages made for a brilliant event. Thanks must go to sponsors Bell Gully, and staff, students and supporters for coming along and making a day of it.

With the first student loss in recent memory, next year's match is sure to be a cracker as the students seek revenge and reclaim the coveted Jackson Trophy.

## THIRD ANNUAL PATRON'S LECTURE

In 2011, the Law Students' Society held its third annual Patron's Lecture, which provides a forum for the formal recognition of the Society's achievements, as well as a chance to hear from an esteemed member of the legal community. It also recognises the role of the Society's Patron, who provides commentary and facilitates discussion on issues raised by the guest speaker. The role of Patron is held by former Prime Minister and long-time friend of the Law Student's Society, Sir Geoffrey Palmer KCMG, SC.

This year, the Society was privileged to have Attorney-General, the Honourable Christopher Finlayson, speak about his experiences from 'University to the Bar', with Sir Geoffrey providing commentary.

Rather than talk about his career as politician, Mr Finlayson gave a memorable address about surviving Law School and encouraged students to question authority. While admitting that he was a "model conformist" while at school, the Attorney-General said that although students should be realistic, they shouldn't be afraid to rebel for those things that matter to them. He also urged students to maintain a healthy work-life balance. His final words were "do a few things, and do them well."

Sir Geoffrey praised Mr Finlayson, and in reference to his own political past, noted that there were "good people on both sides of the House." He also agreed with the substance of the Attorney-General's message but wasn't as optimistic about students acting on it saying: "Well done on your speech, Chris, however I'm not sure if they will take it in."

After some thought-provoking questions from the audience, Law Students' Society President David Smith thanked both speakers and invited guests to finish the evening with canapés and refreshments at Rutherford House.

*Joseph Jajjo and David Smith*

## LAW REVUE

The curtain rises to a sight repressed by three decades of Wellington lawyers and law students; David McLauchlan setting an assignment for the class. The goal: a video of John Rowles singing the Carbolic Smoke Ball jingle. Those students who can obtain it will get an A+ and those who cannot will fail the paper. No regard is to be had for the bell curve: remember, we're lawyers, not statisticians.

Our heroes, Chris, Karen and Tina, quickly found themselves stuck in a world of movies – guided by John Key, but not John Key as we know it. The original John Key moved to this 'world of movies' many years ago, leaving behind a robot in his place, incapable of doing much more than smiling and waving but apparently doing quite well for himself. The group find themselves in a variety of movies over the course of the Revue. They encounter a mystical genie, singing nuns, camp Nazis, and a collection of worryingly ferocious oompa-loompas in their quest towards a surprising, but somehow equally predictable conclusion – a feat only possible in a Law Revue.

Following tradition, the production was filled with skits showcasing the talent of some remarkably skilful cast members. Apparently one can study a law degree and still have time for other things – who knew? Fun was poked at bus drivers with maskophobia, Christchurch, nuclear meltdown in Japan and of course the South Island generally. Had you ever wondered why Justices Wild, Savage and Smellie were so named, the cast was there to explain it to you. Not to mention the odd inside legal joke and a more light-hearted consideration of New Zealand politics in election year.

Nothing was sacred, everything was offensive, though, as the cast repeated in the final number: *"but you laughed anyway didn't you?"*.

The cast this year was made up of 30 of the brightest from Wellington with some connection to a law degree. Be it grappling with Public Law, relaxing in the public service, photocopying as a law clerk or being a BA student who has made a conscious effort to avoid a law degree at all costs, each made it through auditions into a comparatively small cast. Putting together a production in a short period demonstrated everyone's talent and determination, as well as

the directors' and producers' abilities to yell until things they wanted, happened.

A huge thanks needs to go the sponsors. This year's sponsors provided the support needed to pull off a successful production. This involved financial support, free stomach-filling support for the cast, and a trip over to Picton on the Interislander creating sets for a number of skits as well as a convenient run in with Governor-General Jerry Mateparae for a five second cameo. At least, we think it was him. It may have been a look-alike with an equally impressive moustache who responded to 'sir'. This year the Law Revue was proudly sponsored by the Wellington Branch of the New Zealand Law Society, Chapman Tripp, Minter Ellison, Russell McVeagh, Simpson Grierson, The Interislander, Simply Legal, the Costume Cave, Thomson Reuters and Hell Pizza.

If you missed it or are keen to relive the greatest night of your life, DVDs are available for purchase – email [wlawrevue@gmail.com](mailto:wlawrevue@gmail.com). Keep an eye out for the casting call next year if you want to be involved in the funniest thing to come out of Law School.

*Nigel Smith*





# Law graduates 2011

Qualifications granted by the Victoria University of Wellington Council  
for the Law Faculty in 2011 at the time of publication:

## MASTER OF LAWS

Andreau, Emma  
Barker, Sarah [M]  
Bishop, Stephanie [D]  
Buchinski, Julianne [M]  
Gardjito Bismo, Nunki  
Gill, Sukhjot [M]  
Gush, Frances [D]  
Hercher, Philipp [D]  
Hill, Meredith  
Holder, Florian  
Holzinger, Esther [M]  
Johns, Lorraine [M]  
Johnson Navis, Mary Ann  
Kessen, Johannes [D]  
Klesse, Julia [M]  
Krauthausen, Udo [M]  
Lodemann, Matthias [M]  
Martin, Andrea  
Modeste, Dara [D]  
Niedermeier, Sandra [M]  
Perera, Samantha  
Pietschmann, Thomas [M]  
Poata, Meipara [M]  
Polakoski, Julie May [M]  
Sander, Judith [D]  
Seitz, Karl Georg [M]  
Shand, Cecilia  
Shum, Dennis [M]  
Sinclair, Angela  
Sonntag, Michael [M]  
Stehberger, Christopher  
Thomas, Kym [M]  
Turvey, Arnu [M]  
Williams, Te Rangimarie [M]  
Woods, Lisa  
Zag, Natalie [M]

## BACHELOR OF LAWS WITH HONOURS

Armstrong, Nadine [1]  
Braithwaite, Jessica [1]  
Bunn, Kristen [1]  
Collings, Rachel [2/1]  
Donnelly, Riki [2/1]  
Fitzgerald, Joseph [1]  
Fransen, Abigail [1]  
Gilbert, James [1]  
Green, Michael [2/1]  
Grimwood, Timothy [1]  
Harcourt, Anna [2/1]  
Harker, Christopher [1]  
Ho, Alden [2/1]  
Juneja, Tarun [2/1]  
Langlands, Emma [1]  
Lau, Yi-Shen [2/1]  
Liu, Tina [2/1]  
McCaffrey, Hugh [2/1]

McGeown, Jeremy [2/1]  
Michel, Paul [2/1]  
Moinfar, Yasmin [1]  
Muir, Ashley [2/1]  
Mulholland, Mark [2/1]  
Naik, Monica [2/1]  
O'Driscoll, Anne [1]  
On, Maria [1]  
Osman, Robert [2/1]  
Owen, Elizabeth [1]  
Pedler, Hadleigh [1]  
Pentecost, Cameron [1]  
Rigby, Alicia [2/1]  
Rivers-McCombs, Stephen [1]  
Shaw, Susannah [1]  
Sheehan, Christopher [2/1]  
Spelman, Julia [1]  
Tearle, Abby [1]  
Thomson, Ellen [1]  
Whittaker, Amy [1]  
Whittington, Stephen [2/1]  
Williams, Katherine [2/1]  
Williams, Lara [2/1]

## BACHELOR OF LAWS

Abraham, Rupert  
Al Yarubi, Sumaiya  
Arcus, Susan  
Armstrong, Callum  
Balasingam, Rachael  
Bardebes, Nicole  
Barnett, Rachel  
Baxter, Kirsty  
Baxter, Sophie  
Beashel, Liam  
Bennett, Esther  
Berry, Andrew  
Binsted, Katherine  
Boddington, Mark  
Bodington, Caroline  
Broadhurst, Daniel  
Brown, Jane  
Brown, Jeremy  
Bryant, Martin  
Budhia, Trushil  
Cade, Edward  
Carr, Alexander  
Carroll, Michael  
Casey, Sharon  
Chan, Shannon  
Chiew, Jessica  
Chin, Sarah  
Christeller, Oliver  
Christmas, James  
Christoforou, Emilia  
Clark, Linda  
Coffey, Nicci  
Coleman, Michaela  
Cook, Helena  
Coulston, Nicola  
Craig, Stephanie  
Croft, Craig  
Dalit, Kristina  
de Montalk, Andrew  
Dempster, Helen  
Dinneen, Luke  
Dombroski, Alice  
Dryden, Victoria  
Dye, Alexander  
Eglinton, Hamish  
Evans, Alex  
Fallow, Jordan  
Foster, Darren  
Franks, Monique  
Frowein, Kate  
Gall, Kelly-Ann  
Garcia, Andrea  
Gastaldo-Brac, Nadia  
Gay, Elizabeth  
Gazley, Scott  
Gendall, David  
Gibson, Merran  
Gibson, Owen  
Goguel, Robert  
Green, Fiona  
Griffith, Jonathon  
Groundwater, Anna  
Haggie, Vanessa  
Haigh, Charlotte  
Haigh, Stasia  
Haira, Keitaria  
Handcock, Alice  
Harison, Julia  
Harrington, Mathew  
Harris, Tracy  
Harrison, David  
Hay, Heather  
Haynes, Nicola  
Hensman, Caleb  
Herd, Jessica  
Herder, Brendan  
Hicklin, Esther  
Hilton, Daniel  
Hislop, Claire  
Hosegood, Sarah  
Hutton, Leith  
Irving, Aaron  
Jackson, Alexandra  
Johnson, Sharlene  
Johnston, Leah  
Jones, David  
Juchnowicz, Christopher  
Julian Brougham, Gabriel  
Keenan, Sean  
Kennerley, Aidan  
Kenyon, Alexandra  
Kiddle, Kieran  
Kim, Paul

King, Emma  
Knighton, Deborah  
Law, Nicholas  
Leadbetter, Sarah  
Leathart, Harriet  
Lee, Richard  
Legaspi, Maria Francesca  
Leloir, Louis  
Leslie, Katherine  
Lethbridge, Harriet  
Lindsay, Julia  
Lloyd, Benjamin  
Logan, Nicholas  
Loh, Sarah  
Lovegrove, Shanelle  
Lowe, Rita  
Lythgoe, Jeremy  
Maass, Amanda  
Major, Elizabeth  
Mallinson, Maxine  
Manning, Gina  
Marks, Jared  
Martin Grant, Rhys  
Mazengarb, Hayden  
McCarthy, David  
McGregor, Nicola  
McIlroy, Aaron  
McKee, Duncan  
McKelvey, Jessica  
McKeown, Elliot  
McLellan, David  
McDonald, Fiona  
McGovern, Danica  
Melkiau, Anne  
Melville, Julia  
Mihailoff, Alexa  
Minnee, Cassandra  
Mosley, Carla  
Moss, Jared  
Moughan, Eileen  
Mumford, Nicholas  
Nathu, Roshni  
Neil, Michael  
Nicholson, Daniel  
Niven, Lisa  
Nixon, Christopher  
Norman, Daniel  
O'Connor, Clare  
O'Neill, Magnus  
Parker, Bernard  
Patel, Hiran  
Pettersson, Jonathan  
Pigou, Simon  
Porter, Lisa  
Prentice, Glen  
Press, Christina  
Priest, Lauren  
Prior, Catherine  
Raeburn, Jenna

Rapson, Sophie  
Renwick, Maxine  
Revell, Wallace  
Riach, Claire  
Roach, James  
Robb, James  
Robb, Stephanie  
Robertson, Julia  
Rood, Georgina  
Ross, Christopher  
Ross, Peter  
Rowe, Anna  
Sagele, Vai  
Scanlon, Bernadette  
Scarlet, Kathryn  
Schroder, Alexander  
Schröter, Lukas  
Schumacher, Miriam  
Scott, Dale  
Shaw, Andrew  
Shih, Chung-Ren  
Smith, Anna  
Smith, Ryan  
Solomon, Naomi  
Steele, Amy  
Stephen, Erin  
Stewart, Alistair  
Stone, Kate  
Story, William  
Sue, Janice  
Sutherland, Crystal  
Tang, Regina  
Tejano, Ronn Michael  
Thomson, Sonja  
Thurlow, Annika  
Townshend, Leith  
Tulitua, Tamara  
Turner, Stephanie  
Va'ai, Monique  
Verbokken, Nicola  
Vermeulen, Lisa  
Wakely, Benjamin  
Waldron, Holly  
Warner, Matthew  
Weatherhead, Raine  
Whatman, Patrick  
Williams, Bronwyn  
Williment, David  
Wilson, Claire  
Young, Helen  
Young, Victoria

## GRADUATE CERTIFICATE IN LAW

Gray, Brendon  
Le Leu, Jonathon  
Takitimu, Dayle



## Faculty of Law 2011

### HEAD OF SCHOOL

Professor A.T.H (Tony) Smith

### PROFESSORS

Gordon Anderson, LL.M *Cantur*

Anthony H. Angelo, *Palme Académiques*,  
BA LL.M *Well*, *DiplDrComp Stras*

William R. Atkin, BA LL.M *Well*

Graeme Austin, BA(Hons) LL.M *Well*, JSD *Col*

Richard P. Boast, MA *Waik*, LL.M *Well*

Susy Frankel, LLB(Hons) *Well*, LL.M *Lond*

Campbell McLachlan, QC, LLB(Hons) *Well*,

Dip(cum laude) *HagueAcIntlLaw*, PhD *Lond*

David W. McLauchlan, LL.M *Well*

Geoffrey McLay, BA LLB(Hons) *Well*, LL.M SJD *Mich*

John Prebble, BA LLB(Hons) *Auck*, BCL *Oxf*,

JSD *C'nell*, Inner Temple

A.T.H (Tony) Smith, LL.M *Cantur*, LL.D *Cantab*

### ASSOCIATE PROFESSORS/READERS

Petra Butler, LL.M *Well*, Dr Jur *Gött*

Alberto Costi, BA *St-Jerome*, LLB *Mont*,

DipIntl&CompLaw *San Diego*, DipAELS *Bruges*,  
LL.M *Harv*

Elisabeth McDonald, BA LLB *Well*, LL.M *Mich*

Yvette Tinsley, LLB(Hons) PhD *Birm*

### SENIOR LECTURERS

Joel Colón-Ríos, BA JD *Puerto Rico*, LL.M *Tor*,  
PhD *York(Can)*

Claudia Geiringer, BA(Hons) *Otago*, LLB *Well*,  
LL.M *Col*

Catherine Iorns Magallanes, BA LLB(Hons) *Well*,  
LL.M *Yale*

Dean Knight, BCA LLB(Hons) *Well*, LL.M *Br Col*

Meredith Kolsky Lewis, BA(Hons) *N'Western*,  
MSFS JD *G'town*

Nicole Moreham, LLB(Hons) *Cantur*,  
LL.M PhD *Cantab*

Grant Morris, LLB(Hons) BA(Hons) PhD *Waik*,  
LTCL

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Caroline Sawyer, BA(Hons) *Oxf*, MA *Brunel*,  
PhD *Bris*

Paul Scott, LLB(Hons) LL.M(Hons) *Cantur*

Māmari Stephens, LLB(Hons) MA *Well*

Gordon W. Stewart, BA LLB(Hons) LL.M *Well*,  
DipTchg

Kate Tokeley, LLB(Hons) LL.M *Well*

### LECTURERS

Mark Bennett, BA LLB(Hons) *Well*, LL.M *Harv*

Carwyn Jones, BA LLB *Well*, MA *York(Can)*

Nessa Lynch, BCL LL.M *NUI*, PhD *Otago*

Rayner Thwaites, BA LLB *Melb*, LL.M *Tor*

### ASSISTANT LECTURERS

Tai Ahu, LLB BA *Well*

Kate Stone, LLB BA(Hons) *Well*

### DISTINGUISHED FELLOWS

Sir Kenneth Keith, ONZ, KBE, LLB LL.M *Harv &*  
*Well*, LL.D(Hon) *Auck & Well*

Sir Geoffrey Palmer, PC, KCMG, BA LLB Hon  
LL.D *Well*, Hon LL.D *Wash*, AC JurDr *Chic*, Hon  
DHumLitt *Hofstra*

Sir Ivor Richardson, PC, KB, PCNZ, LLB *Cantur*,  
LL.M SJD *Mich*, Hon LL.D *Well & Cantur*

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Justice Denis Clifford, BA LLB(Hons) *Well*

David B. Collins, QC, LL.M LL.D *Well*

Judge William K. Hastings, BA *Tor*, LLB *York (Can)*,  
LL.M *Lond*

Jack E. Hodder, SC, BA LLB(Hons) *Well*,  
LL.M *Lond*

Justice Jill Mallon, LLB(Hons) *Well*, LL.M *C'nell*

Bill Mansfield, BA LL.M *Well*

Matthew Palmer, BA *Cantur*, LLB(Hons) *Well*,  
LL.M JSD *Yale*

Judge Peter Spiller, BA LLB PhD *Natal*,  
LL.M MPhil *Cantab*, PhD *Cantur*, PGCTT *Waik*

Jeremy Waldron, BA LLB *Otago*, DPhil *Oxf*

Justice Joe Williams, LLB *Well*, LL.M *Br Col*

Dan Chan Fellow 2012

Associate Professor Luo Li, LLB LL.M *CUPL*,  
PhD *Köln*

### HONORARY LECTURERS

Brendan Brown, BCom *Otago*, LLB(Hons) *Well*

Kenneth Johnston, BA GradDipHRM LLB *Well*

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Steven Price, LLB(Hons) BA MJour *Calif*

Kevin Riordan, ONZM, BA LLB *Well*,  
LL.M *C'nell*

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Faculty of Law  
Victoria University of Wellington  
PO Box 600, Wellington 6140  
New Zealand  
Phone +64-4-463 6366  
Fax +64-4-463 6365  
Email law@vuw.ac.nz  
Website www.victoria.ac.nz/law



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