

FACULTY
OF LAW

A YEAR IN REVIEW 2008



Victoria

From the Dean

Welcome to this edition of V.Alum.

It is larger and fuller than that of 2007 and represents a lot of work from many people.

It is too easy during the course of a year and all its business to neglect to see the whole work of the Faculty of Law at Victoria University. We tend to revolve around this place much like atoms around a nucleus: there are individual projects, full teaching schedules and research interests, all creating different orbits and spheres of operation and influence.

One benefit of this publication is to appreciate quite how productive we are as individuals and as a group. These pages are testament to a vibrant, resourceful and energetic Faculty, staff and students alike. As you read, you become aware of the interplay between the two, as a student becomes a teacher and then goes on to higher office, whether it be the senior public service, judiciary, or politics.

Victoria's Faculty of Law is a part of the city of Wellington's life. We can all feel proud of its health and successes.

I hope you enjoy this year's V.Alum.



Professor A.T.H. Smith
Dean, VUW Law Faculty



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Te Reo Deal: The Legal Māori Project

The right of New Zealanders to use Māori language in a legal context is being bolstered by a three-year research project centred at Victoria's Faculty of Law.

Law lecturer Māmari Stephens (Te Rarawa) aims to produce New Zealand's first Legal Māori Dictionary by 2011: "From the kaumātua at the marae who wants to challenge in the reo the extent of the Treaty settlement offer, to the Māori-speaking academic interviewed for Māori Television without vocabulary for 'bail conditions', 'Attorney General' or even 'charges' – this project is one of the fronts of Māori language revitalisation."

Māmari Stephens is joined on the project team by Faculty of Law Associate Professor Richard Boast and lecturer Carwyn Jones (Ngāti Kahungunu me Te Aitanga a Māhaki). Four Research Assistants are involved: Rachael Hoare, Tai Ahu and Paranihia Walker and Joeliee Seed-Pihema.

Dr Mary Boyce, formerly of Victoria's School of Linguistics and Applied Language Studies and currently Assistant Professor of Māori at the University of Hawaii, is a research partner to the project. "She adds an important international aspect," says Stephens, "and we rely on her linguistic expertise."

The project team is in the process of completing its pilot and will be disseminating the results early in 2009. The pilot has involved testing methods of creating a corpus of texts and identifying legal Māori terminology for a legal lexicon. Two sets of texts have been piloted, both of Parliamentary speeches in Māori. One is from 1901-1902 and the other from 2006-2008. Creating this small corpus has enabled the project team to see, in a limited way, how legal Māori vocabulary has changed over time.

To complete the pilot, a small dictionary will be made of terms selected from the word list derived from the pilot corpus. This exercise will enable the project team to work out the kind of dictionary that will best serve the needs of Māori speakers when seeking to use legal Māori vocabulary.

The pilot dictionary will include historical and contemporary citations and will be finished by the end of January 2009.



Māmari Stephens

The project then consists of four stages. The first stage is gathering and accessing any texts in Māori from the 19th, 20th and 21st centuries about any legal topic. The task is to analyse the frequency of terms and most frequently used words, which form the basis of a lexicon from which the dictionary is written.

There is a surprising amount of 19th century material, says Stephens: "We have a bilingual legal past – at least until the late 1800s – but much of it is hidden in the Alexander Turnbull Library. Early Acts of Parliament and many other legal documents were translated in Māori – mainly because Māori became a written language very early on."

The second stage involves seeing where gaps exist and what new terms might need to be made. A steering group (see below) which includes Māori language experts, legal academics and members of the judiciary has been formed to inform this process and develop principles for the adoption of new terms.

The third stage is the completion of the dictionary and putting it together in usable form. “The aim of the project is to have a work that is user-friendly and helpful to those working in the legal areas involving Māori language. This is an ever increasing sphere – the Māori Affairs Select Committee, for example, now has its reports in Māori as well as English,” says Stephens.

The fourth stage is the creation of the Legal Māori Archive, which is being launched online

is excluded from such discourse almost completely, says Stephens. That said, she emphasises that the work is focusing on Western legal meaning, as opposed to customary meaning.

The project has attracted funding of \$673,000, consisting of \$593,000 from the Foundation for Research, Science and Technology (FRST); \$55,000 from the Contestable Fund; \$20,000 from the University Research Fund and \$5,000 from a New Researchers’ Fund. It is rare for FRST to give funding for a legal project and represents something of a departure from their traditional funding of science and technology-based projects.

“I believe this is an acknowledgement of the importance of this work and recognition of Māori’s potential to carry out this ground-breaking research,” says Professor Tony Smith,

The Reference Group membership is:

- + Judge Craig Coxhead (Ngāti Māhino, Ngāti Pūkiao, Ngāti Awa, Ngāti Maru) of the Māori Land Court; former Senior Lecturer in Law at Waikato University
- + Judge David Ambler, Māori Land Court, former partner of East Brewster in Rotorua
- + Moana Jackson (Ngāti Kahungunu, Ngāti Porou) lawyer specialising in Treaty of Waitangi and constitutional issues; co-founding director of Ngā Kaiwhakamārama i ngā Ture (the Māori Legal Service) and lecturer in law and philosophy at Te Whare Wānanga o Raukawa
- + Te Ripowai Higgins (Tuhoe) taurima (Manager) of Te herenga Waka Marae at Victoria University and Trustee for Te Ataarangi Educational Trust
- + Paul Meredith (Ngāti Kaputuhi, Maniapoto and Pakeha descent) Research Fellow at Te Mātāhauāriki Institute at Waikato University; working on the compendium of Māori customary law (Te Matapunenga) until his recent appointment at Victoria University as Pou Hautu, policy assistant to the Pro Vice Chancellor (Māori)
- Professor Richard Benton, internationally respected linguist and adjunct Professor, Te Mātāhauāriki Institute at Waikato University
- + Wiha Te Raki-Hāwea (Ngāti Awa, Ngāti Māhino, Tuhoe, Ngāti Kahungunu) Māori language lexicographer and broadcaster, creator of a standardized glossary of IT terminology for the Māori language; a key contributor to Te Taura Whiri i te Reo’s new monolingual dictionary He Pataka Kupu
- + Mokena Reedy (Ngāti Porou) author of Māori language children’s literature and Huia Short Story award winner
- + Tonga Karena (Tuhoe, Taranaki) formerly a lecturer at Te Kawa a Māui; research interests involve the exploration of different translation methodologies and the way this impacts upon the quality of translation.

“This work is of importance to New Zealand, to Māori speakers and to the University. Its potential impact is great – it will, in short, allow a Māori voice in a legal context in a way never before possible.”

in May 2009. A significant amount of the historical texts gathered at the first stage are to be made digitally available and hosted by the New Zealand Electronic Text Centre.

Without a generally known legal Māori terminology, Māori speaking law practitioners, academics, students and laypeople must often “make up” their own vocabulary if they wish to use te reo Māori in legal proceedings or discourse. When this occurs, the speaker or writer cannot be confident that he or she will be understood. The use of English would solve the immediate problem. However, the ongoing status of English as the de facto language in these contexts means that the Māori world view that is best expressed in its own language

Dean of Law.

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The Reference (steering) Group is a critical factor in the success of the work, providing linguistic, language, tikanga and legal expertise. It has met twice this year and provided invaluable advice. “Any dictionary can strongly influence how people use a language and we take that responsibility very seriously”, says Stephens. “The steering group helps us to keep to a principled way of working.”

Making It Real: South Pacific Human Rights conference

The Law Faculty continues its long association with the countries of the Pacific as organiser of *Strategies for the Future: Protecting Human Rights in the Pacific in Apia* on 27 and 28 April 2008.

The idea for this conference emerged in 2005 at the inaugural conference of the Australian Centre for Peace and Conflict Studies.

One of the break-out groups had already discussed whether the 1989 LAWASIA Pacific Human Rights Charter could and should be revived. The 1989 Charter had been drafted by Pacific experts and discussed in several meetings around the Pacific, but failed to have any impact. The main reason suggested for this was the lack of follow up and opportunities for participation at the highest levels, and the lack of involvement of key stakeholders. The Charter was also seen as containing and promoting only Western values, drawn up by outsiders – despite those outsiders being acknowledged experts from the Pacific, Australia and New Zealand. Furthermore, limited resources, both financial and regarding personnel, was seen as one of the major reasons why the Pacific Island States failed to develop the LAWASIA Charter.

The organisation of the 2008 conference developed with this background and a concerted effort was made to invite representatives from all Pacific Island States. The aim of the conference was to identify key human rights challenges in the Pacific and strategies for strengthening national, regional and international mechanisms for enhanced protection of human rights in the region.

Representatives were asked to prepare a country report on the following human rights

issues: health, environment, culture and language, education, and rule of law. These reports were a useful background to the discussions at the conference and country reports from Federated States of Micronesia, Papua New Guinea, Australia and New Zealand were available at the conference.

As well as having papers on some core issues of the conference – such as the question of whether the Pacific should have its own human rights charter or whether the practice of customs and traditions was incompatible with the adherence to human rights – conference participants heard about the experience of the Inter-American, European and African regional mechanisms and the development of a regional mechanism in Asia.

Before the conference opened, speakers had been invited by the New Zealand High Commissioner to Samoa, Ms Caroline Bilkey, to the High Commissioner's residence. This very successful evening was used to discuss some of the more pertinent regional human rights issues of the conference.

The following morning began in good spirit. The conference was opened by Reverend Dr Iutisone Saluvao, Secretary of the Congregational Christian Church of Samoa, with a prayer followed by a welcome of the participants by the three organisers represented by: Ms Rebecca Wendt, Assistant Attorney-General of Samoa; Mr Ian Byrne, Interights; and Dr Petra Butler, Associate Director New Zealand Centre for Public Law.

Ms Purna Sen, Director of the Human Rights Unit, Commonwealth Secretariat, the main sponsor of the conference, gave the welcoming address before the conference dived into the real issues.

The first day of the conference was devoted to an analysis of human rights issues in the Pacific. The keynote address was given by Imrana Jalal, Fiji's first human rights commissioner, and explored whether a Pacific human rights charter was desirable. After covering the history of a regional Pacific human rights charter and its failure to evolve, she pointed out that in 2007, Judicial Officers





and NGOs in the Pacific called for a regional human rights mechanism. She emphasised that 19 years after the LAWASIA Charter, the call for a regional human rights mechanism has been made by Pacific people themselves.

She believes this is because:

- + knowledge of human rights has improved
- + a large number of NGOs are committed to and using human rights
- + there is greater ratification of Conventions
- + there is greater use of human rights standards in the courts
- + there is greater use of language of human rights by governments and others
- + there is a gradual thawing of the suspicion of human rights.

Ms Jalal argued a regional mechanism could take account of regional peculiarities and complement the UN human rights convention system. For example, the right to fish and the right to a safe environment are critical to Pacific Islanders, especially since climate change effects are being felt disproportionately in the Pacific.

A regional human rights commission would provide greater relevance, visibility and

accessibility as the locations of the offices of the UN system are considered inaccessible. A regional commission would be staffed with the sons and daughters of the Pacific and the perception that human rights are Western constructs could be adequately addressed. Such a commission, Imrana Jalal argued, would better implement the Paris principles and would be less vulnerable to political interference. However, she also stressed that a regional commission should not exclude the establishment of national human rights commissions.

Her speech was complemented the following day by Kathryn Hey, Massey University, whose paper drew on interviews with six participants in the Pacific region on whether a regional human rights mechanism was desirable. She concluded that a coordinated approach was needed for a regional mechanism to be successfully implemented.

In the following sessions, the issues of culture and language, education, health, environment and rule of law were discussed on the basis of the country reports. Professor Lau Asofou Soo, National University of Samoa, examined culture and language and its interface with human rights. He came to the conclusion that

reconciling traditional values with human rights principles was a possible but gradual process which will take time and patience.

In the next session Father Tevita, Friendly Island Human Rights and Democracy Movement in Tonga, focused on health, recounting his experiences in Tonga. He stated the need for good governance and transparency in Tonga and noted that economic restraints meant public health care was sub-standard. He gave an example of a drug in current use which had not been on the market in Germany or New Zealand for the last 30 years.

Freda Talo, human rights lawyer and Chair, Individual and Community Rights Advocacy Forum, Papua New Guinea, spoke on education, pointing out that Papua New Guinea has six million people with 850 tribal groups and 860 languages. This creates enormous challenges, and that it is "quite amazing that we have held together without bloodshed." Transport is extremely difficult and, therefore, education is a difficult task. PNG has 19 provinces, with only one woman Member of Parliament.

PNG became independent in 1975 and human rights are protected in the Constitution, with 16 basic rights. However, all the economic, social and cultural rights are set out as national

goals and directive principles, not justiciable rights. The influence of civil society groups to act as a check with regard to the adherence of human rights in PNG is not very strong, but they bring human rights to the forefront.

Freda Talo gave a case study of an MP who had been sexually abusing his daughter-in-law. The police refused to investigate the case until the Ombudsman and the media pressured them into it, and a 12-year jail term resulted. The MP then ran successful election campaign from inside jail. However, his election was nullified by the court. Simply educating people about their rights is a major challenge.

Susan Glazebrook, Judge of the New Zealand Court of Appeal, addressed the question of the right to a quality environment. The LAWASIA draft charter already had environment as a separate right. Justice Glazebrook discussed the following issues:

- + the Pacific will be first to show effects of climate change
- + the right to environment is essential to any regional mechanism, and fits in with Pacific values, culture and institutions
- + making other nations that are more responsible do something about it.

The last presentation, canvassing the country reports and focussing on the rule of law, was by Tupou Vere, Pacific Concerns Resource Centre, Fiji. Drawing from the country reports she pointed out that sometimes the line between Executive and Legislature is blurred. Naturally, Tupou Vere's presentation focussed on the situation in Fiji, examining the state of the rule of law during and since the last coup.

The formal part of the first day ended with Mark Thompson, Secretary General of the Association for the Prevention of Torture, presenting on "Working with Pacific Police". He drew attention to the incidents of police misconduct the participants had heard during the day and advocated the adoption of the UN Code of Conduct for Law Enforcement as a minimum standard. He suggested Pacific Island States should review and revise policies around custody of detainees and survey its judiciary to ensure that arrests and prosecutions are consistent. Further, a shift

from being purely reactive to being more proactive is needed.

The day ended with a dinner at the conference hotel which provided the participants with a feast of local food. Professor Tony Smith, Dean of Law at Victoria University, amused the participants with some sporting anecdotes in his after dinner speech.

The second day of the conference looked at some general themes and at other regional human rights instruments around the world.

Professor Sarah Joseph, Monash University, discussed the impact of the WTO on human rights. She suggested that economic globalisation will be a challenge for the Pacific and discussed the role of the WTO as one of its chief agents. Outlining the pros and cons of Free Trade agreements and their impact on human rights, she identified challenges for the Pacific States such as the danger of being used as precedent, in the case of Vanuatu, for other countries which have not yet joined the WTO.

Professor Unasa Faa, National University of Samoa, then spoke on "Human Rights and Custom". He used his native Samoa to demonstrate that custom and human rights are compatible concepts and the implementation of human rights standards would not lead to the demise of customary practices.

The four following presentations gave an overview of the European Convention on Human Rights and its implementation (Professor Kevin Boyle, Essex), the Inter-American Human Rights Commission (Felipe Gonzalez, Human Rights Commissioner), the African Charter on Human and Peoples Rights (prepared by Professor Jacques Fremont, University of Montreal and summarised by Dr Petra Butler) and the emerging ASEAN Charter (Sou Chiam, Barrister, Auckland). The presentations gave the participants the chance to compare what had crystallised as human rights challenges in the Pacific with experiences in other parts of the world.

Ms Kendra Dessereux, PACLII, demonstrated the possibilities an online database like PACLII offers to disseminate information around the Pacific and to empower courts, NGOs, and



human rights lawyers in their use of and adherence to human rights.

The final panel discussion with Imrana Jalal, Professor Kevin Boyle, and Susan Farran, Senior Lecturer, University of Dundee, chaired by Andie Fong-Toy, Director of the Political and Security Programme, Pacific Island Forum Secretariat, drew together the discussion of the two days. They said the conference had shown that discussion on a regional mechanism had markedly evolved and it was time to establish a working group to draft a proposal for a regional mechanism.

The final conference statement will be published in a special conference edition of the *VUW Law Review* in early 2009.

The conference ended with a speech by the Prime Minister of Samoa in which he stated Samoa's continuous commitment to ratification of international human rights convention and that its recent ratification of the ICCPR would not be the last convention Samoa would sign.

The conference was made possible with the help of Embassy of the Federal Republic of Germany; NZAid and the Commonwealth Secretariat. Its co-organisers were Interights and the Attorney-General's Office of Samoa.

Bringing It All Together: NZCIEL's inaugural conference

Professor Susy Frankel

NZCIEL's inaugural conference, International Economic Law and National Autonomy: Convergence or Divergence, attracted international attention.



The newly launched New Zealand Centre of International Economic Law got off to a flying start with its first conference late last year.

Speakers from over 10 countries and five continents participated in a day and a half of panel sessions addressing a wide range of issues, including trade and development; trade and the environment; trade in services; international financial institutions; bilateral investment treaties; WTO obligations; intellectual property; and free trade agreements.

Paul Meredith from the Office of the Pro Vice Chancellor (Māori) opened the conference with a mihi and the Dean of Law, Professor Tony Smith, welcomed attendees.

The formal proceedings began with one of three major addresses. Professor Robert Howse of the University of Michigan, an internationally recognised expert in international trade law issues, delivered a well-received opening address, “The End of the Globalisation Debate”.

Part of his thesis was that even those opposed to globalisation have taken the social justice debate to a global level. Themes from this address continued to inform the discussion throughout the conference.

Four panel sessions followed, two plenary and two concurrent. The day concluded with a reception.

The second day's keynote address saw New Zealand's ambassador to the World Trade Organisation, Crawford Falconer, deliver a thought-provoking speech focusing on past, present and potential future directions for the WTO.

Due to the state of the Doha Round agriculture negotiations of which he was Chair, the ambassador was unable to travel to New Zealand for the conference as planned. His speech was broadcast via video and held everyone's attention.

Participants had the opportunity to interact with the ambassador as the video broadcast was followed by a live question and answer session via teleconference, linking the conference in Wellington with the ambassador in Geneva.

The conference concluded with a formal luncheon in the Grand Hall of Parliament, hosted by Speaker Margaret Wilson.

Ko-Yung Tung, former Vice-President and Senior Counsel to the World Bank and currently counsellor at Morrison & Foerster LLP in New York and a visiting lecturer at Yale

Law School, delivered the third and final major address of the conference, entitled “Foreign Investors Versus Sovereign States: Toward a Global Framework, BIT by BIT”.

Around 80 attendees from government, industry, academia, non-profits and private practice participated in the event. As well as the speakers, some attendees came from overseas, including Europe, Japan and Australia.

The conference was partly funded by donations from two alumni. The major sponsor's donation was in honour of Dan Chan in the year of his 100th birthday. Bernard Randall, a Singapore-based alumnus, also provided generous support. In addition, Minter Ellison Rudd Watts supported the event by sponsoring the Friday evening drinks reception.

NZCIEL co-directors Professor Susy Frankel and Senior Lecturer Meredith Kolsky Lewis said: “We were delighted with the range of experience and diversity of views featured at the conference. The feedback has been extremely positive and many attendees who had travelled from abroad have expressed an eagerness to return for future events.”

Papers from the conference will be available in a book published by Cambridge University Press (UK) in 2009.

A Spanish Inquisition: Prebble and Tax Law

The work of Victoria University's Professor of Law, John Prebble, was studied this year at an international colloquium in Madrid's Universidad Complutense – a university known as “The Sorbonne of Spain”.

Professor Prebble is a pioneer in the field of jurisprudential perspectives of taxation law. “Parliaments forever try to make tax legislation simpler and more coherent. More commissions and official committees investigate and report on taxation than any other field of law. Yet tax statutes grow ever longer,” he says.

His work asks the question: “Does tax law suffer from some singularity that may explain these problems?” and combines analytical and descriptive legal philosophy as well as examining judicial reasoning in tax cases.

His research is also a family affair. “It is difficult to find students to become research assistants who have combined law and philosophy. My daughter, Rebecca, and a niece, Zoë, have that combination.”

Zoë and Rebecca Prebble graduated in 2006 from Victoria University with double firsts in law and philosophy. They developed several strands of Professor Prebble's work in papers written for Victoria's law and philosophy schools. Rebecca has recently been awarded a William Georgetti Scholarship to study law at Columbia University.

The colloquium had registrants from Canada, India, Israel, Hungary, the Netherlands, Spain, the UK and the US. It was convened by Professor Maria Ampara Grau Ruiz, Vicedecanato de Alumnos, of Universidad Complutense.

“This is an extraordinary honour for one of our academics,” says Professor Tony Smith, Dean of Victoria's Law School. “It places our



Professor John Prebble

research right at the very top of international achievement and interest.”

A Faculty Win-Win

The Legal Research Foundation's 2008 J F Northey Book Prize was this year awarded to former and current Professors of Law from Victoria University.

Current Professor Campbell McLachlan QC co-authored McLachlan, Shore and Weiniger *International Investment Arbitration* (Oxford 2007). Former Professor Don Inglis (deceased), a Family Court judge, received the award for his book *New Zealand Family Law in the 21st Century*.

The judging panel comprised a senior academic, a senior barrister and a High Court judge. They stated in relation to Professor McLachlan's work: “This lucidly written text is the first of the Oxford Arbitration series, and is a subject on which there is no modern work. Professor McLachlan is the author first cited



Professor Campbell McLachlan QC

and having responsibility for more than a third of the text. The award from the Foundation recognises his achievement in producing a

book that will undoubtedly attain international standing.”

The book is prescribed in the 2008-2009 Cambridge University Faculty handbook as a principal reference text for the LLM course on “Settlement of International Disputes”, which is taught by Professor James Crawford SC, Whewell Professor of International Law, and others.

Of the Inglis book, the judges said: “This text will make a substantial contribution to family law in New Zealand with practical utility for judges, academics, practitioners and students. The text carries with it the unparalleled New Zealand experience of Professor Inglis as an academic, legal author and Family Court judge.”

Dean of Law, Professor Tony Smith says of the award: “We are delighted with the honour bestowed on both Professor McLachlan and the late Professor Inglis. It affirms the status of this Faculty as a primary centre for legal research.”

Privacy is the Next Frontier

2008 Cyberlaw Fellow Cynthia Laberge shares what her year at Vic has meant to her.

Having come to Victoria University with no idea of what to expect from the Cyberlaw Fellowship, I have been rewarded with the job of a lifetime. The InternetNZ Cyberlaw Research Fellowship is a dream come true for anyone with an interest in research, writing and teaching in the area of cyberlaw.

After a legal career in San Francisco, California, primarily in the areas of business litigation and trademark enforcement, I came to New Zealand at the end of 2005 with my Kiwi husband for a change of lifestyle. A chance email from a colleague at my old US law firm, who saw an advert for the Cyberlaw Fellowship position, led me to the job.

On my first day at the office, I figured I would spend it attending to administrative matters. Right! No sooner had I found my office than the phone began to ring. I was being invited to participate in an Information Law Forum coming up in May. After accepting, my first question was: "How do they know I'm here?" The press release hadn't even been published yet. My next question was: "How do they know my phone number?" I didn't even know it yet! I would soon learn that although I didn't know them, they certainly knew me.

The Fellowship has become a high-profile position, in no small measure due to the efforts of my predecessor, Philip Greene from the Department of Commerce in Washington, DC.

Meeting Phil was instrumental. His words of wisdom to me were: "Hit the ground running; the year will be up before you know it!" Taking Phil's advice to heart, and because my research topic involved issues of information privacy, I scheduled meetings with both the Law Commission and the Office of the Privacy Commissioner straight away.



"We are your friends." Sir Geoffrey Palmer's words still echo in my ears. My topic, "Gaps in the Privacy Law and the Extent to which Issues of National Security Override New Zealanders' Rights to Privacy", was received with some attention. The topic, I explained, arose from

willing to weigh in on my subsequent research.

My reception at the Office of the Privacy Commissioner was no less welcoming. Having since participated in the Privacy Awareness Week organised by that office in August, I feel I have made genuine friends there.

But some of the most fun I have had to date is teaching LAWS 431/531 Law and the Regulation of Cyberspace, an Honours and Masters level seminar course offered at the Law Faculty. It has been intellectually stimulating to engage in discussions with students who have a sincere interest in the subject area. This year, we were

fortunate to have various local, and international, high-profile guest speakers from InternetNZ, Internet Corporation for Assigned Names and Numbers (ICANN), Sony Pictures, and Electronic Frontier Foundation (EFF).

As I look back on the past 12 months, I have many fond memories for which I have many people to thank. But most of all, I want to thank InternetNZ and Victoria University for the experience. I wish the programme much ongoing success, and to the next Cyberlaw Fellow, I can only say "Don't be surprised if they know your name before you know theirs!"

“ I have been rewarded with the job of a lifetime.

The InternetNZ Cyberlaw Research Fellowship is a dream come true for anyone with an interest in research, writing and teaching in cyberlaw. ”

my interest in ongoing invasion of privacy lawsuits against 40+ telcos in the US regarding warrantless disclosure of customer data to the Executive Branch of the US Government. (The data had been released through the use of administrative subpoenas that, unlike warrants, do not require a judge's signature. The US Congress recently passed legislation effectively granting the telcos retroactive immunity from suit.) I wondered if something similar could happen here. We brainstormed the topic for about an hour, and I remember leaving buoyed by the thought that the Law Commission was genuinely interested and

The Way We Are: An MMP Symposium

The 15th anniversary of the public referendum on proportional representation was marked by an international symposium at the New Zealand Centre for Public Law in August.

This country's political and constitutional system is notable for its adoption of the Mixed Member Proportional voting system. The shift to MMP has been called "the greatest change to the New Zealand constitution" and the symposium was an opportunity to review the effect of MMP on the constitutional fabric of the country.

The event was organised in by the New Zealand Centre for Public Law in conjunction with the University's Institute of Policy Studies and the Centre for New Zealand Studies, Birkbeck, University of London.

A similar voting system has been adopted in National Assembly of Wales and Scottish Parliament, with continuing calls for a form of proportional representation also to be adopted for the British Parliament.

The symposium was video-cast between Wellington and London, with speakers and panellists from both centres contributing to the evaluation of the effect of proportional representation on the Westminster form of government.

When Leader of the Opposition, Prime Minister John Key promised to hold a referendum in 2011 on MMP. If a majority of voters indicates its dissatisfaction with (one or other aspect of) the current electoral system, there will probably be a second binding electoral reform referendum.

"When you think of it, Wales and Scotland are not dissimilar to New Zealand in population terms particularly," says the Director of the Centre for Public Law, Professor Tony Smith. "Their experiences should not be overlooked as we contemplate changes to our own."

"For example, Wales has legislated to foreclose the possibility of what was referred to as 'back door' MPs – those who miss out through the electorate and are then resurrected through the list process. Professor Nigel Roberts informed the audience that they are referred to as 'zombie' MPs in Japan. But the comparison cannot be taken too far.

"I was astonished to hear that in Wales there is only about a 30% turnout for the elections to the National Assembly; but we were assured that this is because they are sub-national legislatures and that this is a familiar pattern worldwide."

Equally, the lessons learned, and the challenges faced, by New Zealand and its system is of particular interest to the UK audience.

"Certainly," says Professor Smith, "the prospect of exporting New Zealand's experience to Westminster is another matter." Symposium speaker Professor Jonathan



Bradbury of Swansea University said his research showed that the principal stumbling block surrounds the modifications that MMP requires to be made to the doctrines (convention) of collective responsibility. The UK has very little experience of agreements to disagree and is mistrustful of the arrangements that have been arrived at in this country.

The symposium brought together constitutional and political experts from New Zealand with their UK and European counterparts. "This is an example of what universities should do: bring together experts to discuss and analyse a matter of profound consequence for the society in which we live," says Professor Smith.



Matthew Palmer Launches Treaty Book

The Deputy Solicitor General and former Dean of Law at Victoria, Matthew Palmer, has launched his book, *The Treaty of Waitangi in New Zealand's Law and Constitution*.

Matthew Palmer left the Faculty in 2006 to pursue his research with a New Zealand Law Foundation grant which took him to Cambridge and Yale universities.

This timely and well received book covers the attitudes of major institutions of public power in this country: Parliament, the higher courts, the Waitangi Tribunal in Treaty matters and successive Cabinets, as well as proposing a way forward with the Treaty.

London Calling: Professor Tony Smith with Professor Andrew Sharp on screen in London

Shine a Light: Day O'Connor on a dark subject

Sandra Day O'Connor



The combination of law, politics and human rights is a cocktail Wellington finds irresistible.

Retired US Supreme Court Justice Sandra Day O'Connor spoke on "Guantanamo Bay: Legal Black Hole?" in July 2008 to an audience that filled two lecture theatres and another with an audiovisual connection.

The Texan judge was introduced by Dean of Law, Professor Tony Smith, at a public seminar arranged by the Faculty of Law. He referred to her distinguished career, 25 years of which was on the US Supreme Court.

She began by stating that Guantanamo Bay and its treatment of prisoners is of worldwide interest. She then went on to explain how the

US Supreme Court had treated the legal issues arising from Guantanamo Bay and referred to other relevant cases.

Justice O'Connor gave an historical context, referring to a conflict between the Executive and the Judiciary in the 1860s when President Abraham Lincoln decided defendants should be tried by military courts. The Supreme Court found that military courts had no jurisdiction over non-military people.

President Lincoln maintained that during wartime habeas corpus could be suspended. The Supreme Court disagreed.

The judge commented that she thinks the United States has not always achieved the correct balance between national security and personal liberty.

She said the US Congress provided the President with the enabling power to establish a detention centre at Guantanamo Bay, which has given rise to four decisions from the US Supreme Court. The judge covered these decisions with reference to international human rights.

She also dwelt on the matter of the separation of powers. She thought it a major concern when a court contradicts the other branches of government, the President and the Congress.

Justice Sandra Day O'Connor's address avoided personal insight and kept to the official record rather than an interpreting the implications of her subject matter. It was a decisive and authoritative presentation to an attentive and appreciative audience.

A Leaf from Her Book

Jessica Kerr



Vic law alumna Jessica Kerr, who received a 2008 Fulbright New Zealand General Graduate Award to complete a Master of Laws at Yale, reports on her first impressions of an historic Ivy League university.

Flying into New Orleans hot on the heels of Hurricane Dolly, over a giant oil spill in the Mississippi and into a city of thunderstorms, oppressive heat, unforgettable jazz and super-sized everything, made for a dramatic start to my Fulbright year. The three weeks I and another New Zealand Fulbrighter, Rob Vosslander, spent at Tulane University were designed to give us an introduction to the US legal system and help us catch our breath before the year began in earnest.

There were definitely some academic eye-openers, like the day spent in court watching first-time marijuana possession accused, some of whom had been in custody for days, shuffling in shackled at their wrists and ankles. But the city was a whole learning curve in itself. Being robbed on our first night out in the French Quarter may have been a little too educational for comfort, but everyone else I met was so overwhelmingly friendly that it was hard to take away anything other than happy memories – in fact, memories verging on awe at how such a ravaged city had sustained an incredible, all-pervading mood of dedication to eating, drinking and generally making merry.

Onwards and upwards from Louisiana, I survived Philadelphia airport and staggered

into the more sedate environs of Yale Law School, where the first week flew by as I recovered from sensory overload and let the tranquil New England summer ease me into an appropriately dignified Ivy League state of mind. New Haven is a small city, perched on the coastal arc between Boston and NYC. It has a fairly grim reputation that I'm now beginning to understand as stemming from the pervasive economic gulf between Yalies and, well, almost everyone else around here. In the central Yale campus area it's breathtakingly pretty, and in the late summer the campus buildings – which could be described as a testament to Americans' complete unconcern with historical snobbery – almost seem to glow. Even my underdeveloped colonial sense of history had to respond to the surreal vibe of our gorgeous Harry Potter-style Sterling Law Building, which proudly juxtaposes several distinct architectural eras and many artfully “repaired” leadlight windows – making it easy to forget that it was all constructed in the space of a year or so in the 1920s.

Our orientation into the “small but perfectly formed” law school community was perfectly managed – it's amazing how quickly my sense of unmitigated unworthiness (standard for YLS international students!) faded, as a succession of accomplished and articulate faculty and undergraduates reached out to welcome me.

And it was astonishing to realize that my nationality was a source of much, much more than polite curiosity. There really is a sense of wonder about our tiny, tough little country and how we seem to have escaped so much of the grief and rage that fills the political and cultural histories of classmates, especially those from Latin America and Eastern Europe. Taking the first tentative steps towards seeing my personal and national history through the eyes of perceptive, interested people from all over the world has already opened my eyes in a way that I don't think any amount of sitting and thinking at home could have done.

And it really has been true so far, as we were told on our first day, that the richest part of the learning experience at this very sophisticated

institution is often in simple conversation – in talking, and listening, and marvelling at the space that opens up as our different perspectives gain new depth and possibility in relation to each other. Which isn't to say that the formal teaching environment isn't wonderful – I'm lucky (or foolhardy) enough to be taking only very small seminar courses this semester, which puts me in astonishing and pretty daunting proximity to professors I could spend a whole lifetime listening to, if they didn't spend most of the time listening to us and inviting us to discover and sharpen our own ideas.

Did I mention that when I'm not in class, in conversation or in rapture at the fall foliage just starting to turn, I've been walking 100 metres down the road to a hall where I've seen Tony Blair speak one week, Bill Clinton the next, and had the unbelievable good fortune to be allowed to sit in on three absolutely blissful (for me) days of frank and inspired discussions between some of the most distinguished Supreme Court judges in the world? I've eight months left at Yale to soak in everything I can, and this new life in New Haven, in a country that may be about to usher in an entirely new political age, won't be getting old in a hurry.



Pacific Report

The feature of South Pacific legal systems that gets publicity is the continuing constitutional difficulties faced by people in many of the countries.

But “life goes on” and, consistent with the Pacific Way, it goes on for some with a degree of resignation but always with the resilience that is characteristic of Pacific peoples.

From the temperate times of Wellington and the Old Government Buildings, several things of Pacific Island interest can be reported for 2008. Work in the Faculty continues with particular reference to the countries of the Realm and generally in relation to matters of regional interest.

The second edition of the *Cook Island Laws* (Legislation finding lists) was completed. It is part of a project that brought up-to-date, as at January 2008, the 10-volume collection of Cook Islands legislation that was completed in the Faculty in 1994 (and the 2-volume supplement of 1997). The finding lists in those collections have been refined and they are now

in the most complete form that has ever been available for the Cook Islands. All Cook Islands legislation currently in force is listed with references to its amendments and, by using the chronological tables, past legislation can be tracked.

Following the publication of the consolidated *Niue Laws* at the end of 2006, further annual roll volumes of the laws have been produced. Based on these texts, substantial reform is now being considered in the fields of family law, the judiciary, land law and the criminal law. The first stage in the reform projects has been to reprint in a consolidated official version all current legislation relating to the particular subject matter. Against that collation of related material, commentary is being provided on the inadequacies and inconsistencies (given that much of the legislation is of at least 50 years standing and predates Niue self-government) and proposals provided on possible reforms appropriate to the 21st century and current circumstances in Niue. Comparisons with New Zealand are, in the field of family law, particularly apposite, because approximately 20,000 Niueans live in New Zealand and they have frequent and continuing interaction with the 1200 or 1300 members of their extended

families who remain in Niue. There is therefore likely to be a move to harmonisation between the laws of Niue and New Zealand in matters of family relations.

A *Benchbook for Tokelau* was completed in August by a team of Tokelauans working in collaboration with Tony Angelo, Nessa Lynch and Michael McKay (a Faculty of Law research assistant). The Tokelau team included a government lawyer and two experienced translators. The resultant product is a substantial dual language book that the lay Law Commissioners of Tokelau, the court clerks and the Tokelau police can use (see page 27 for a summary of its contents).

Following the launch of the book (with due ceremony including the spontaneous performance of an action song led by the host island's Commissioner) in November 2008, an awareness workshop was conducted for the Commissioners, law clerks and police of Tokelau. The two day awareness programme indicated areas where the book can usefully be expanded to respond to the particular needs and experiences of the court officials in Tokelau and also disclosed content and cross-referencing matters that can be reformed to make the book even more useful.

Vic's Viennese Waltz: The Wilhelm C Vis Moot

by Dr Petra Butler

The Danube and Strauss, Kaiserschmarrn and cosy Kaffeehaeuser, Heurigen and Grinzing are what most people associate with Vienna. For the Vic Vis Mooters the Austrian capital means six months of agonising preparation, late nights, two executive memoranda, high adrenalin knock-out rounds, fun and friendships.

For the last 15 years students from around the world have descended on Vienna 10 days before Easter to take part in the Wilhelm C Vis Moot. The Moot is dedicated to the UN Conventions on the International Sale of Goods and issues relating to international arbitration.

It has in previous years been the biggest legal competition in the world. In its 15th year, 204 teams from 53 countries took part involving over 1,000 students alongside 400 coaches and competition judges (arbitrators). The Vic Law Faculty has been involved in the Vis Moot for the last 11 years and has been one of the most successful teams in its history.

The Vis Moot is held annually and begins in October when a new fact situation is released on the Vis Moot website. The teams have until December to submit the first memoranda on behalf of the claimant. About two weeks after submitting the claimant memorandum, each team receives another team's claimant memorandum, which is the basis for the team's second memorandum on behalf of the respondent which is due in January. The weeks between the handing in of the respondent memorandum and the



actual mootings in Vienna are taken up with practice moots.

For the last six years, this preparation period has seen the Vic Vis Moot team undertake an extensive tour of Germany and other European countries lasting about four weeks. Previously a pre-moot practice circuit has established itself and travelling before the moot has become an essential part of the preparation. The practice moot tour has been possible due to the fact that the New Zealand students have been billeted with German teams.

However, it is not only the generosity of the European hosts that has made it possible for the Vic Vis Moot team to prepare for the main event in Vienna; the New Zealand Law Society, the Wellington District Law Society, and the Law Faculty itself have regularly contributed to the expenses which such an endeavour incurs. The team has been savvy with the money too. For example, instead of paying for hotel accommodation and restaurant meals, the team shares a flat and cooks, using Europe's cheapest supermarket as their main food source.

The oral competition in Vienna starts a week before Good Friday, with a big gathering in one of Vienna's many amazing town halls. From



The 2008 Vic Vis Moot team.
From left to right: Catherine Harwood, Michael Cavanaugh, Arjun Harindranath, Dr Petra Butler, David Hume

Saturday to Tuesday the students have a moot each day for which each mooter (two mooters per team speak in each moot) competes for points. Following this, the top 64 teams are announced at the famed Rathaus and proceed to the next round. The first four knock-out rounds are on Wednesday with the semi-finals at 9am on Thursday morning and the final at 1pm just before the farewell "dinner" at the Vienna Congress Centre.

The average team in Vienna is eight members, enabling them to alternate members for each moot. Vic's team consists of two mooters and one researcher – our mooters cannot take a 'bye' and on knock-out day are mooting from 8.30am to 6.30pm without a break.

At this point let's recount the Vic Vis Moot team's success. We are one of only three teams which has made it into all the knock-out rounds in the last six years. We have made it into the quarterfinals twice and have reached the semifinals and finals once in 2008 and 2004 respectively. We have received honourable mentions for most of our mooters and once achieved a second place (Richard May in 2005). We have also been awarded two honourable mentions for our claimant memoranda.

In summary, we have shown the most consistent high achieving performance of all teams in the last six years. Some of our mooters were subsequently asked to coach other teams in Europe.

See page 17 for a report on this year's successes.

So, what makes the Vis Moot experience so special for students and coaches to give up their summer, sacrifice a social life for six months with no teaching or academic credit? To articulate the magic of the Vis Moot is probably a lost endeavour. Here is my effort.

The attraction to the moot is not the trip to Vienna itself – given Austria's propensity for snow-filled winters. In the six years I have travelled to Vienna, I have not had the chance to visit the many tourist attractions and explore this magical city in the heart of Europe. I had glimpses of it when heading home from a moot or other associated functions.

There is the opportunity to acquaint myself with colleagues. The Moot is definitely used as a meeting point for academics and practitioners interested in the international sale of goods and international arbitration. Since it is organised around individual universities rather than single country representatives, there is continuity of coaches and participants and the practitioners also come back year after year. One of the most repeated phrases is "See you next year".

I think it is the opportunity to implement Humboldt's educational idea of an overarching comprehensive education or, to use a Latin phrase, *non scholae sed vitae discimus*. Working intensely over six months and seeing a piece of work evolving, being constructively criticised every step of the way and realising that answers, even for lecturers, do not come within five minutes, is a huge learning curve.

But that is not all. For most Vic Vis Mooters it's their first experience of Europe and of negotiating around a new country that uses a language they do not speak. They get to know

German student life and some of the German sights.

One year I joined the team in Munich and we went on a day trip to Dachau; another year the team went on a day trip to Amsterdam when they had a day spare in Muenster. The Michel in Hamburg has been a constant, too, as well as the Freiburger Muenster. We generally met up in Vienna a few days before the competition, and discuss the impressions of the trip. For me that is always interesting: an outside view from the Antipodes on my own culture.

“ Vic law students have shown the most consistent high achieving performance of all teams in the last six years. Some of our mooters were subsequently asked to coach other teams in Europe.”

The Vis Moot experience has inspired some of the mooters to finish their law degree overseas, at universities in France, Germany and China. Some have made lasting friendships and have a network of Vis Moot friends, making travelling through Europe far more enjoyable (and cost-effective!).

And of course, I have enjoyed getting to know some students at Law School a bit better. If one chooses to be a teacher, one does generally have an interest in other people and especially one's students. I've had wonderful conversations about life in general including intense discussions on matters as diverse as the Bible to Bebo. I also learned useful things like how to use a mobile phone, how to Skype, and the pros and cons of Facebook.

I would like to end with the impressions of a former Vis Mooter:

“It's really hard to write about. The effects of the moot have become so interwoven into my life that I can't unravel it to explain it – or at least do it justice.”

“I see it as many things: a catalyst, a connection and a benchmark. A catalyst for change, opportunity and development. The moot provided the chance for me to find direction at the Law School, to develop legal skills outside the classroom, opened the door for an exchange at a German university, allowed me to test the limits of my abilities, and rewarded me with a lifetime of experiences. I'm in a fantastic role, doing at least one mediation a week, daily court appearances and am considered an 'expert' on international private law all thanks to the moot.”

“The moot is a connection, as it provided so many experiences tightly bound that ties me with the people involved – the Vis Moot Family. There's the immediate family, those who shared the moot with me at Vic, meeting on a regular basis, keeping in contact and forever changed because we met. And there's the extended family, those you met on your travels, and will continue to meet every year at least.”

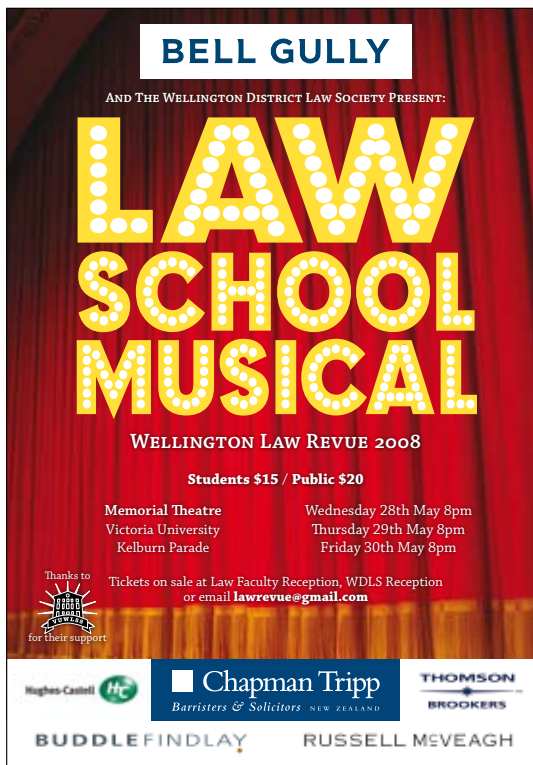
“And the moot is a benchmark, as coming back to it every year allows me to see what I've learnt, how I've changed and how I've developed in my critical thinking, legal analysis and advocacy. Moving from researcher, to competitor, to coach, to arbitrator has been a seamless transition and shows me I will always be learning no matter where I end up.”

For this year's team's progress visit: <http://vismoot2009.blogspot.com>. To donate towards the costs the team incurs every year, contact Tricia Walbridge, Victoria Foundation, email tricia.walbridge@vuw.ac.nz.



Student Activities

Top right: the grand finale
Bottom left: the megatron
Bottom right: Chad Birmingham



Camping it up at the Bell Gully Wellington Law Revue IX

by Jamie Eng

*We go together like Arthur Alan Thomas and
Triumphs of Justice*

*Remembered for ever like Freedom of
Expression and the Electoral Finance Act*

Zaoui and the Rule of Law

That's the way it should be

Waaah-oo YEA!

If any audience member was in doubt as to what to expect from the 2008 Wellington Law Revue, the first lines of the show must have given a pretty good indication that they were in for a powerful mix of comic satire and explosive energy. From the moment three dozen students and young lawyers ran down the stairs of the University's Memorial Theatre belting out the lyrics to a unique version of "We go Together" (*Grease*) the crowd were on the edge of their seats.

Following a classic plot, the 2008 Revue, *Law School Musical*, had everything: Boy meets Girl (at an end-of-Prof's celebration); evil Villain intervenes (David Bain-Grey, maniacal, entirely disturbing); shock reunion of Boy and Girl in a courtroom battle over an RMA application that would see Mt Victoria become an open cast coal mine; kidnap of Girl by Villain; show-down between Villain and Boy in Wellington's seediest Karaoke bar; installation by Villain of a nuclear plant on Mt Victoria; everyone living happily ever after.

But of course the plot of a Law Review cannot go unaccompanied and so the ninth Wellington Review was peppered with satirical skits and lambasting lyrics. Victims included the major political parties (the 'Legend of the National Party' was told in the style of an ancient Māori creation-myth); public servants; Fonterra, and of course, lawyers, judges and law students.

For the sell-out audiences the Revue was a rollicking good time and a breath of fresh air in a country where University revues are few and far between. For the students and young lawyers in the cast and crew, it was a fantastic

opportunity to experience the unique excitement of putting on a such a show. While the cast ranged from first to fifth year law students, non-law students, and graduates, the experience will be remembered by all. For the all those law students involved, the 2008 Revue will be remembered as an absolute highlight of their Law School days.

The production of a Law Revue is a complex and time-consuming business, with countless hundreds of hours invested by more than 50 cast and crew members. Crucially, the Revue would not have been possible without being underwritten by the Wellington District Law Society and without the support of various sponsors. The principal sponsor of the 2008 Law Revue was Bell Gully and other sponsors included Chapman Tripp, Hughes Castell, Buddle Findlay, Thomson Brookers and Russell McVeagh. The generous support of these sponsors as well as the Victoria University Law Students' Society ensured its success.

The 9th Annual Wellington Law Revue: *Law School Musical* ran at Victoria University's Memorial Theatre on 28, 29 and 30 May 2008.

VICTORIA VICTORIOUS

Victoria University Law School's WTO moot court team won the South-East Asian/Pacific regional competition of the European Law Student Association's WTO Moot Court Competition held in Adelaide this year.

This year's moot, run as a panel hearing in a mock World Trade Organization dispute, concerned trade in telecommunications services. The team defeated last year's regional and international champion, the University of Melbourne, in a hard-fought final.

As well as winning, the team swept all of the awards for oralist performances. Three awards were given for best preliminary round speakers who had argued as both Complainant and Respondent: Stephen Whittington was awarded third-best oralist; Amelia Keene second-best oralist and Daniel Watterson best oralist.

For the finals, Stephen Whittington won the only speaker award given – for the best speaker in the final round.

Team Coach and Senior Lecturer Meredith Kolsky Lewis says: "These are tremendously talented students and it was wonderful to see their hard work pay off."

VICTORIA'S SECRET WEAPON IS WORLD CLASS

The power of legal argument is alive and well in Wellington. The Victoria Law School Moot team came third in the international Willem C. Vis Moot competition held in Vienna, Austria recently. Over 200 teams from 53 countries competed and Victoria beat universities such as Harvard, Columbia, NYU, Monash and NSW.

The Vis Moot team comprised Catherine Harwood and Arjun Harindranath, David Hume as researcher, and Michael Cavanaugh with Dr Petra Butler as coaches. Both Harwood and Harindranath got an honourable mention for their oral performance – two of 30 such mentions out of a field of 1,000 students.

"The teamwork was outstanding," says Dr Butler. "It was awe-inspiring to watch, as was the preparation the students put in. Catherine



and Arjun visited a number of teams in Europe for practice moots, sometimes three a day."

The Dean of the Law Faculty, Professor Tony Smith says: "It's a fantastic achievement – the legal equivalent of young Tim Southee coming in and knocking England all round the park. It augurs well for the future of legal argument in the Faculty, the city and beyond."

See page 14 for the full story.

TEN-YEAR WINNING STREAK

Two law students won the Officers' Cup for debating for the tenth year in a row for Victoria at the University Games at Rotorua this year. For the third time, the final involved two Victoria teams. Furthermore, four of the top five teams were from Victoria.

The winning team this year was Polly Higbee and Richard D'Ath (Vic One). In the final they defeated Yogesh Patel and Ihaia Tichborne (Vic Two). The Vic Three team of Ella Edginton and Kathy Scott-Dowell was 4th, and Hugh McCaffrey and Jordan Boyd (Vic Four) were 5th.

Polly Higbee was named best speaker of the tournament and Ella Edginton was Most Promising Speaker.

Past winners have included (* indicates a Vic law student at the time of competition):

- 2008 Polly Higbee* & Richard d'Ath*
- 2007 Yogesh Patel* & Stephen Whittington*

- 2006 Tom Fitsimons & Stephen Whittington
- 2005 Christopher Bishop* & Joe Connell*
- 2004 Christopher Bishop* & Gareth Richards*
- 2003 Ranald Clouston & Sayeqa Islam*
- 2002 Chelsea Payne* & Nicola Willis
- 2001 Kevin Moar* & Nicola Willis
- 2000 Chelsea Payne & Duncan Small*
- 1999 Matt Cuthell & Angela Ballantyne*

CLIENT INTERVIEWING

Henry Clayton and Adam Edwards won the Russell McVeagh Client Interviewing Competition at the New Zealand Law Students' Association Conference in September, competing against four other teams who had each won the regional round of the competition at their respective law schools.

The two will travel to the University of Nevada in April 2009 to represent New Zealand in the Louis M Brown International Client Counselling Competition. Victoria has represented New Zealand in the Louis M Brown Competition in 2002 and 2004.

This competition judges pairs of competitors on how they handle a fictitious client problem. In 2008 representatives from 16 countries participated. Each team is judged on: How they interact with a client; how they handle issues that arise during the interview; how they extract information from the client; and ultimately the legal advice they give. The fictitious problems can be from any area of law.

Staff Activities

Professors **Gordon Anderson** and **Susy Frankel**, with Senior Lecturer **Meredith Kolsky Lewis**, won one of 16 Vice-Chancellor's Strategic Research Scholarships for 2008. Their subject is "Trade in Indigenous Products: the Interplay Between WTO Rules and National Regulatory Autonomy".

Adjunct Lecturer **Brian Brooks**, former Dean of Law, has been appointed Visiting Professor in the Faculty of Law at the University of Johannesburg and was made an Officer of the New Zealand Order of Merit in the Queen's Birthday Honours.

Reader in Law, **Shaunnagh Dorsett** (pictured below, centre), received a fellowship under the Melbourne Law School International Visitor Scheme 2008 to work on research projects.

Professor **Susy Frankel** (below, left) was appointed Chair of the Copyright Tribunal for a one-year term and was awarded a Clare Hall Visitor Fellowship at the University of Cambridge.

Senior Lecturer **Alberto Costi** (below, right) was invited to join the editorial board of Environmental Policy and Governance, a new scientific publication replacing European Environment.



Senior Lecturer **Dean Knight** has been appointed to the Legal Aid Review Panel, a (part-time and ad hoc) statutory review panel for considering challenges to decisions of the Legal Services Agency on legal aid matters.

Adjunct lecturer **Verena Murschetz** won the prestigious Dr Otto Seibert Wissenschafts-Forderungs Preis 2007, for her Habilitationsschrift (the book she wrote to become a Professor) on *Extradition and the European Arrest Warrant*. The award is made annually for outstanding scientific (including legal) research.

Senior Lecturer **Grant Morris** received a 2009 URF grant to support the completion of the New Zealand Law and Literature Database Project.

Reader in Law **Geoff McLay** was awarded his SJD from Michigan University.

Professor **Campbell McLachlan** was appointed by the Governing Council of ICSID (International Centre for the Settlement of Investment Disputes) as a member of an Annulment Committee (the review level within the ICSID system) in the case: *Fraport AG v Republic of Philippines*.

Professor **David McLauchlan** won the Victoria's Award for Best Lecturer for the third year in a row. He was McWilliam Professor in Commercial Law at the University of Sydney where he taught in the Masters programme and gave a seminar to the profession, attended by 120. He also taught in the graduate programme at the School of Law at the University of Queensland where he continues to be an Honorary Professor.



The Deputy Vice-Chancellor (Research) has appointed **Steven Price** (pictured) and **Peter Spiller** Honorary Research Associates in the Faculty of Law.

Senior Lecturer **Joanna Mossop** received an Early Career Researcher Award in December 2007.

Senior Lecturer **Nichole Moreham** received an Early Career Researcher Award in September 2008.

Senior Lecturer **David Brown** was given URF funding of \$18,300 for his project on legal professional education.

Contract tutor, **Sarah Leslie**, won Best Tutor award for 2008.

The Recovering New Zealand Lost Cases project has been funded for a further two years thanks to the New Zealand Law Foundation and Victoria University.



Visitors to the Faculty

2008

Professor Graeme Austin is an Honorary Fellow in the Law Faculty. Graeme is the J Byron McCormick Professor of Law at the University of Arizona's College of Law. He holds an LLM and JSD from Columbia Law School, and has first degrees in law from Victoria University of Wellington. Before taking up his current position at the University of Arizona, he was a senior solicitor in the commercial litigation department of a large commercial firm in Auckland, where he practised mainly in the area of copyright and trade marks. Graeme taught in LAWS 212 Torts during his visit.

JANUARY – FEBRUARY

Verena Murshetz, an Associate Professor at the University of Innsbruck/Austria, has been joining Victoria University for Summer School as an Adjunct Lecturer since 2003. Verena has published numerous articles and books on Criminal Law and Procedure, Comparative Criminal Law, Law on Drugs, Juvenile Law and International Criminal Law. This year Verena taught LAWS 395 European Union Law with Francesco Schurr.

Francesco Schurr is an Associate Professor at the University of Innsbruck/Austria. He has been joining Victoria University for Summer School as an Adjunct Lecturer since 2003. Francesco has published numerous articles and books on Consumer Protection Law, Corporate Governance, Trust Law, Contracts, European Law. Francesco taught LAWS 395 European Union Law with Verena Murschetz.

Rick Libman was appointed to the Ontario Court of Justice in November 1996. He is Chair, Rules Committee of the Ontario Court of Justice. Adjunct Professor and Sessional Instructor (Advanced Criminal Law; Regulatory Offences) at Faculty of Law, University of Western Ontario and University of Windsor. This is Rick's second summer school with the Law School teaching LAWS 334 Ethics.

MARCH

Professor Bruce Duthu, an internationally recognised scholar on native American issues including tribal sovereignty and federal recognition of Indian Tribes, presented a public lecture for the New Zealand Centre for Public Law entitled "Accommodating the First Sovereigns: A Convention on Tribal Sovereignty".

Stephanie Shaw, a Senior Lecturer in Law at the University of Portsmouth in the UK. Stephanie's areas of expertise are European, Commercial and Criminal Law.

Professor Paul Chartrand, IPC (Indigenous Counsel of the Canadian Bar Association), Professor of Law at the College of Law, University of Saskatchewan, presented a lecture entitled "Indigenous Policy: Pathways to Progress", organised with Manu Ao, the National network for Māori academics.

MAY

Professor Frans Vanistendael from the International Bureau of Fiscal Documentation in Amsterdam.

JUNE

Ross Carter from the Parliamentary Council Office while on a period of study leave. During this time Ross completed research and writing for the 4th edition of JF Burrow (and RI Carter) *Statute Law in New Zealand*.

JULY

Professor Mario Patrono of Sapienza University of Rome from July to September. He used the time to work on two books. Professor Patrono teaches in Community and European Union Law.

Professor Peter Bowal, University of Calgary, Alberta, Canada.

Lisa Tortell, a former student now researching and teaching at the ISCTE in Lisbon, to work on two research projects. The first related to the legal regulation of domestic workers and the second regarding the ILO maritime labour convention.

Justice Sandra Day O'Connor, former Justice of the Supreme Court of the United States of America gave an extremely well-attended public lecture entitled "Guantanamo Bay: Legal Black Hole?".

Olita Hakai and **Lise Suveinakama**, both of the Tokelau Government, worked on a Tokelau Benchbook as part of the Pacific Judicial Development Programme.

AUGUST

Associate Professor Yuriko Moto from Osaka Jogakuin College in Japan.

Sung Pil Cho, a Judge from Korea, is with the Faculty until February 2009 while he completes some research.

SEPTEMBER

Associate Professor Luke Nottage from the University of Sydney Law School and former colleague in the Law Faculty while on sabbatical.

Dr David Erdos from Oxford's Centre for Socio-Legal Studies.

Professor Jingwen Zhu, Dan Chan Visitor 2008.

Martin Krygier, 2008 NZ Law Foundation Distinguished Visiting Fellow.

Professor Don Rothwell, Australian National University College of Law.

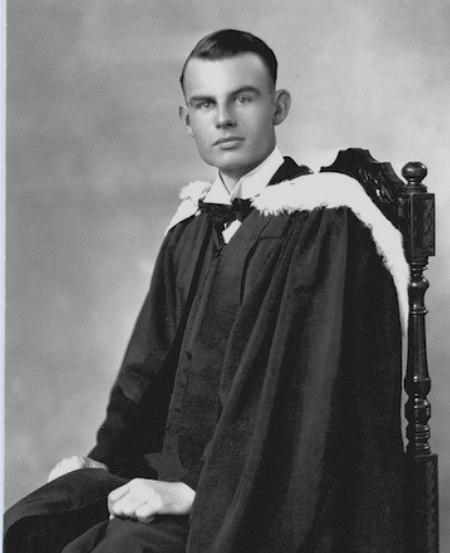
NOVEMBER

Professor Kenneth Norrie, University of Strathclyde, Glasgow, is teaching LAWS 534/434 Comparative Family Law. Kenneth's main research interests are family law, in particular child law and child protection law. He has also developed interests in the areas of law and sexual orientation and same-sex families.

DECEMBER

Rt Hon Lord Bingham of Cornhill for the Robin Cooke Lecture 2008. His subject: "What is the Law?"

Obituaries



SIR GEORGE LAKING 1912–2008

Sir George Laking, who died earlier this year, studied law at Auckland University College and then Victoria University College, completing his LLB degree in 1935. His study of the Diploma of Public Administration was interrupted by the outbreak of World War Two when, after a decade in the Department of Customs, he was already a member of the Prime Minister's Department and about to be a founding member of the Department of External Affairs. In 2001, the University conferred on Sir George the degree of Doctor of Laws, *honoris causa*, recognising him as "a great New Zealander with a capacity to see things steadily and to see them whole".

From 1949 to 1956 he served as deputy to the New Zealand ambassador in Washington. Because the Ambassador, Sir Carl Berendsen and later Sir Leslie Munro, was also New Zealand's Permanent Representative to the United Nations in New York, George Laking was frequently the main point of contact with senior members of the United States administration.

After two years in Wellington as Deputy Secretary of External Affairs, he was Acting High Commissioner in London from 1958 – 61. In that time he negotiated a trade agreement with Germany and, as Ambassador to the European Economic Community, he dealt, in his words, with "an imminent and possibly cataclysmic threat" to New Zealand's economic

and financial future.

From London, George Laking was posted to Washington as Ambassador from 1961 to 1967 during the Presidencies of John Kennedy and Lyndon Johnson with excellent access to the great and the good in that capital and a central role in the advice given to New Zealand Ministers in the process leading to their decision to commit combat troops to the Vietnam War. In 1967, George Laking became Secretary of Foreign Affairs and Head of the Prime Minister's Department, an office he held until his retirement in 1972.

George Laking's public service had not, however, ended. In 1975, he joined his former departmental colleague Sir Guy Powles as an Ombudsman, later replacing him as Chief Ombudsman, until retiring from that office in 1984. His splendid public service continued with Sir George, as he had become, chairing a committee on the sale of liquor and, until 1991, chairing the Legislation Advisory Committee. To that full 60 years of dedicated public service at the highest levels, Sir George also added important contributions to a number of community organisations including the Oral History Archive, the NZ Institute of International Affairs and the Fulbright Programme.

Sir George showed throughout this time qualities which make great public servants and great diplomats. These qualities meant that he understood early in his career, and ahead of most New Zealanders, that the world had

changed profoundly and that New Zealand would not take a worthy place in that world by remaining under the cloak of old associations. He had found in the American capital a "sense of expansiveness, of new horizons looking towards the Pacific rather than back to Europe" and, building on the efforts of those who were in Washington before him, he ensured a New Zealand identity in one place where it counted.

He brought that expansiveness of view to the Office of the Ombudsman and to the striking of a reasonable balance between the interests of the individual and those of the State. He rejected cautious and narrow interpretations of his mandate. He also recognised that the effectiveness of his mandate depended on his ability to maintain mutual respect with the agencies under his jurisdiction, and to command the support of Ministers.

For much of the past century, New Zealanders have taken for granted the tradition of a public service of integrity, one whose appointments up to the most eminent are filled on merit. It is a public service imbued with a spirit of genuine service to the community, independent from improper political influence, loyal to the government of the day, and committed to offering free and frank advice and to acting within the law. Sir George Laking contributed splendidly to that tradition and those principles.

*Rt Hon Judge Sir Kenneth Keith
LLM (VUW) 1964, Hon LLD 1992*



JFK meets George Laking



KENNETH GORDON STONE 1942-2008

Ken Stone (LLM VUW 1965), who was Crown Solicitor at Wellington from 1987 to 2008 died on 1 February at the age of 65.

As was customary at the time, Ken worked as a law clerk during most of the time he studied law at Victoria. His first employer was Macalister Mazengarb Parkin and Rose, where, as a law clerk and staff solicitor, he found that conveyancing was not to his taste. He commenced his career in litigation in that firm working for Les Rose and Gordon McLeod for several years.

He came to the attention of J H C Larsen, the Crown Solicitor, who liked Ken's style in court. Ken moved to Luke Cunningham and Clere in 1970 and quickly became a partner.

In his early years, in addition to assisting the Crown Solicitor with the prosecution of criminal trials in Wellington, all of which at that time took place in the High Court, Ken had an administrative tribunal and civil litigation practice. Initially he also had a number of private sector clients but over time there was an increasing emphasis on instructions associated with appearing on behalf of public bodies. During this period he appeared in trade practice proceedings before the Commerce Commission on behalf of the Examiner of Commercial Practices, and in

valuation proceedings, including those concerning the rental of Athletic Park which was on Māori leasehold land. Ken also regularly represented Inland Revenue in tax appeals in the High Court and Court of Appeal. At the same time he prosecuted in many criminal trials and regularly appeared for the Crown in criminal appeals.

Over time Ken found that his work assisting Jim Larsen on the criminal side of the Crown Solicitor's responsibilities squeezed out the opportunity to continue his administrative law and commercial litigation work. This reflected a pattern common in Crown Solicitors' practices as the volume of criminal trials increased during the mid-1980s. Crown Solicitors and their senior prosecutors in the main centres came to focus on their core responsibilities as trial prosecutors.

When Jim Larsen died in 1987 Ken Stone was appointed Crown Solicitor and assumed principal responsibility in Wellington for the prosecution of crime. He led for the Crown in the great majority of major criminal trials during the next 20 years.

In New Zealand, Crown Solicitors are lawyers in private practice. There is a Crown Solicitor in each centre in which High Court criminal jury trials take place. The office is independent of the Police. In governmental terms, it comes under the Solicitor-General, to whom the Crown Solicitor is accountable. But the Crown Solicitor makes his or her own prosecution decisions in individual cases without outside interference.

The role includes taking over responsibility for a prosecution of indictable crime after committal of an accused for trial, framing indictments and prosecuting all criminal jury trials in the High Court and District Court. The office of Crown Solicitor can be seen as involving the privatisation of the governmental function of trial prosecution in New Zealand, in the interests of effectiveness and independence.

As the Crown's senior prosecutor in Wellington, Ken Stone was an astute advocate who had a strong sense of the ethical

responsibilities of his office. He was of the old school when it came to demonstrating courtesy to all in court and to other practitioners, clients and staff generally. The police and indeed any Crown official who needed help in the course of the criminal law process always found Ken readily available, and very helpful with advice on the problem in hand. His long-time partner in Luke Cunningham and Clere, Brian Cunningham, aptly described him in his eulogy as a "gentleman".

Ken Stone was the epitome of the independent prosecutor in being firm but fair in his presentation of a case. His ability to absorb and sift the factual detail of his case and to put it concisely and clearly to the judge and jury was phenomenal. He was a most efficient and competent advocate for the Crown. Ken was always ready to lend advice to colleagues, something I greatly appreciated in relation to responsibilities I had to discharge in the criminal law as Solicitor General.

Outside of the office, he was a private man who preferred that his wife Ngaire and his family not be exposed to the stress and pressure he constantly coped with in his daily work. He was very well read and had a close interest in British and New Zealand history. He also had an encyclopaedic memory and enjoyed discussing with friends what had and was taking place in the world and, in particular, why events had happened.

Ken's final illness had caused him to become physically disabled some ten years before it claimed his life, but that did not stop him continuing on fully and effectively in his public role. He died in office shortly before his planned retirement.

His funeral was well attended by many other Crown Solicitors from all over New Zealand. Many judges, practitioners, members of the police and other public servants were also present to show their fondness and respect for him.

Hon Justice John McGrath
LLM (VUW) 1970, Hon LLD 1992



DR BRINDSLEY DONALD INGLIS QC 1929-2008

Dr Brindsley Donald Inglis QC was born in 1929 and died earlier this year on 26 April, aged 78. He packed an astonishing amount into his life.

Dr Inglis' early years demonstrated a drive for scholastic achievement and an intellectual vitality that ran as a thread throughout his life. From Scots College in Wellington he went to Victoria University, obtaining first a Bachelor of Arts degree, and then a law degree in 1954. He then obtained a Master of Laws, with first class honours, before taking up a Commonwealth Scholarship. It was while he was at Chicago on his scholarship that he obtained his first doctorate, JD.

Don then returned to Victoria University, where he became a senior lecturer in law and completed the first of his major texts on family law. A passion and knowledge for family law was to become a dominant theme in his professional life, a feature for which we can all be grateful. In 1961 he obtained his second doctorate – this time from Victoria University, in family law. Don's family law texts became legendary for their scope and authority amongst the profession.

Dr Inglis successfully combined academic life with practice at the Bar. In the 1960s and 70s he actively taught at Victoria University as a Professor in law, and such were his skills at the

Bar he became a Queen's Counsel in 1976. His interest in the practical side of law also encouraged him to become involved in Law Society affairs and after serving on the council of the Wellington District Law Society he became its President in 1981. This was consistent with an attitude in him that recognised the fullest expression of his gifts also demanded service to others.

Perhaps it was inevitable that when a specialist Family Court was created in 1981, as a result of a Royal Commission on the courts, Don felt the irresistible challenge – and opportunity – of exercising his enormous knowledge and skill in a judicial role. He was made a Judge in 1983 and was the first QC to be appointed to the District Court Bench. He regularly sat in the New Plymouth, Hawkes Bay and Palmerston North Family Courts until his retirement in 1997. In such a person as Don, however, retirement is often notional and he continued sitting with an Acting Warrant until 2003.

Judge Inglis – as he now was – produced judgments, often overnight, on a breadth of complex issues. An ability to distil complex legal argument and write powerful, authoritative and readable judgments at speed became his hallmark. Unquestionably, New Zealand Family Law Reports pertaining to the 1980s and 90s contain more of his judgments than anyone else's. In the profession we relied on Don to pick up new law and to translate it.

Don saw his family cases as constant challenges of legal reasoning and principle. Where counsel unwittingly approached a case assuming that the law was either settled or otherwise unimportant, they often came aground on his acute perception of the issues. New and important principles would frequently emerge from cases that Don had espied as giving rise to significant issues, even though counsel had not.

But although passionate about the law, his interests and talents extended well beyond his professional life. As befitting a man of great practical aptitude, he was a builder of considerable ability and, having already built beach houses in Raumati, Don substantially completed the building of his last family home in Te Horo in 1980, where he and his wife, Susan, lived up until his death. Don also loved music and enjoyed times of reflection amongst his formidable collection of classical recordings.

Over the last few years, Don knew that he was seriously ill and that the chance of recovery was slim. And yet he decided to embark on another enormous project, the writing of a comprehensive text to update New Zealand family law, to which he had already contributed so much. On 19 February this year he returned to Napier, where he had spent so much of his time as a Judge, in order to be present at the launch of his new book *New Zealand Family Law in the 21st Century*. This impressive, seven-part text of over 1,200 pages is a living monument to this extraordinary man and his unbelievable energy.

Dr Inglis will be remembered as an academic of rigor and breadth, a lecturer of relaxed and engaging style, a practitioner dedicated to the interests of his clients, and a judge of powerful intellect. He will also be remembered by those who knew him as an unassuming and modest man, who, notwithstanding his remarkable abilities, never sought the limelight but understood that his abilities shone most brightly in the service of his community.

*Judge Peter Boshier
LLB (Hons) VUW 1975*



SHIRLEY HILDA STANLEY SMITH 1916-2007

Shirley Smith and her family were intimately associated with legal practice in New Zealand. Her father, Sir David Stanley Smith, son of a Minister of St Andrew's Church on The Terrace, was a successful Wellington practitioner who, when aged only 40 years, was appointed to the Supreme (now High) Court Bench where he served with distinction, followed by some years as Chancellor of the then University of New Zealand. Shirley's sister-in-law and close friend, Helen Mary Smith, was a great niece of the late Sir Henry Hubert Ostler, another much admired Justice of the old Supreme Court Bench. Helen died three days before Shirley. Both were remarkable women who, each in her separate way, left a trail of good works in the Wellington region.

I first knew Shirley in Auckland in the 1940s when I was working as Associate to the late Justice Arthur Fair. Shirley had come down from Oxford with a degree in classics and was teaching in that field at Auckland University. Classics was her second choice after her father had discouraged her from law, the belief among lawyers at that time and indeed until relatively recently being that the legal profession (and indeed any profession) was not a suitable activity for a woman, whose proper function was to bear children and

attend to what was then known as 'domestic duties'.

It is difficult to believe the changes that have occurred within one lifetime when contemplating the number of women now holding and successfully serving our present society as Governors-General, Justices (including Chief Justice) and Ministers of the Crown (including Prime Minister) as well as many other senior posts both at home and abroad. Difficult, but gratifying to know that we have passed into a far more enlightened age, thanks mainly to the persistence of such women as Shirley Smith. Her description of their successful struggle is to be found in the Vol. 23 No.2 issue of *Victoria University of Wellington Law Review* (1993).

When I next came into touch with Shirley, she had completed a law degree at Victoria and came to my firm, Duncan Matthews Taylor, as it was then known, to acquire the preliminary practical experience she would require before she could enter practice on her own account. While with us she was enlisted to lecture at Victoria part-time in Roman Law and Constitutional Law. Since I had first known her, Shirley had married Dr W.B. (Bill) Sutch (but without adopting his surname), produced a daughter, the distinguished Helen, passed several years in New York during her husband's posting to the UN and completed a degree in law. It can be seen that, like many women, she was able to cope contemporaneously with a number of tasks, a skill most men seem to lack.

But that is not all. As a member of the Thorndon Society, Shirley played an active part in preserving significant portions of Wellington's oldest suburb from development, in particular the Tinakori Road village, the lower reaches of Tinakori Hill, the Glenbervie Terrace ridge and Wellington's oldest cemetery, now known as the Bolton Street Memorial Park. Along with the architect, the late Martin Hill, the late Aileen Finucane and Gillian McGregor, she formed the Thorndon Trust which purchased four houses under threat. They lobbied the Wellington City Council to save the surrounding group of workers'

cottages dating back to the 1850s, '60s and '70s and promoted the historically protected E Zone. Now extended, it is known as the Thorndon Character Zone. The Trust went on to canvas donations for the purchase of the Rita Angus Cottage in Sydney Street West and with members of the Thorndon Society encouraged the establishment of the Katherine Mansfield Birthplace in Tinakori Road, the Pandell Cottage in St Mary Street and the late Douglas Lilburn's home in Ascot Street. Shirley played a significant role in most of these initiatives which have made of Thorndon a centre of intellectual activity.

Professionally, Shirley went on from strength to strength, not the least of her distinctions being the help and support she provided to the late Michael Bungay, counsel in the spectacularly unsuccessful trial of her husband on charges of supplying secret confidential information to the Soviet Union, a presumed enemy power at the time.

Her belief in justice as an ideal and the fact that she was not entirely dependent upon her professional income enabled her to accept a brief without too much concern for payment. Thus many, though not all, of her clients were members of the underprivileged sections of society in whose right to the protection of the law and to a fair trial she fervently believed.

It is testimony to the respect in which she was held by her profession and by other sections of our society that her large funeral service in St Andrew's was attended not only by numerous colleagues and a number of current and retired judges but also by a whole chapter of the Black Power gang who performed a moving valedictory haka.

Keith Matthews
BA LLB (VUW) 1945



JOHN WALTER GEORGE TILL (1917 - 2008)

Born in the Wairarapa in 1917, John Till practised law in Taranaki, firstly in Stratford and then New Plymouth from 1945 until he retired from active practice in 1992. He continued working in his firm, now Till Henderson, as a consultant, for some years afterwards. Before coming to Taranaki he had been educated at Wellington College and the then Victoria University College. After

graduating LLB in 1940 he spent the remainder of the war years as an Airforce Flying Instructor in Canada.

He practised during a period when the practice of law was markedly different from today. Legal firms were generally much smaller and were run by partners who were used to dealing with a wide range of legal work. Within most firms there was some degree of specialisation, usually split between court work on the one hand and commercial work, including conveyancing, on the other.

John Till was notable for his ability to cope with virtually all aspects of legal work. Even more notable was the extent to which he was able to do so with a very high level of competence and skill.

His principal interest was in court work, where he became a leading advocate in criminal cases and a wide range of civil litigation. His many successes were due not to any superficial flamboyance in court but rather to a painstaking and expert preparation coupled with a wide and sympathetic understanding of people. He was a firm and determined opponent but unfailingly fair and ethical in all his dealings with other practitioners. Any client of his was invariably very well

represented indeed. He saw his work in the law as being much more than just an occupation. To him it was a vocation which he enjoyed and respected, and which by dint of his skill and dedication he enhanced. As part of this he played a full and meaningful part in the affairs of the legal profession, including terms as President of the Taranaki District Law Society and as a member of the Council of the New Zealand Law Society.

He was always available to act as a mentor to other lawyers. Within the profession he was held in the highest respect, as was also the case by people within the communities he served.

In his private life his first interest was his family. His leisure time was spent with his farming interests and outdoor pursuits, notably hunting and diving. He was a warm and generous host.

He was predeceased by his first wife Jennie and his daughter Candy. He is survived by his wife Pam, his son Max, and grandchildren.

It can truly be said of John Till that throughout his life, he was true to himself, his family, his profession and the communities in which he worked and lived. A good man.

*Hon John Laurensen
LLB (VUW) 1961*



New Attorney General has long-time Vic connections

Newly appointed Attorney General Chris Finlayson is an alumnus with a long record of loyalty and support for Victoria's Faculty of Law.

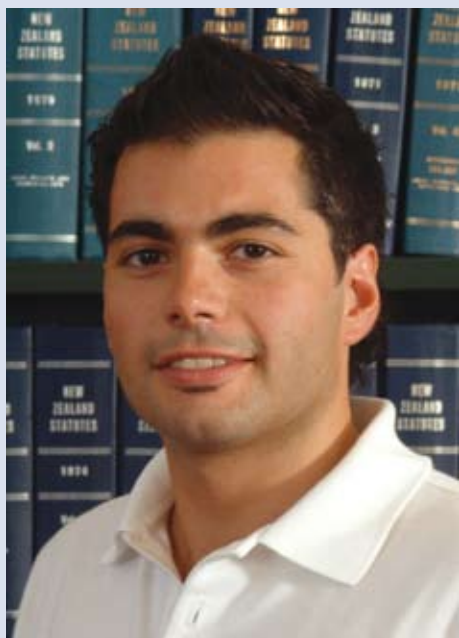
Chris graduated with a BA in Latin and French and a Masters Degree in Law in 1985. He practised law for 25 years in Wellington, first at Brandons, where he was a partner for a number of years and then as a partner at Bell Gully from 1990-2002. He became a barrister sole in 2003.

His career has included nine appearances at the Privy Council as well as representations in all this country's Courts and Tribunals.

He taught part-time at the Faculty of Law for many years and continues to be a supportive colleague and friend.

The Faculty wishes him well in this new stage of his legal career.

Alumni Achievements



Jason Varuhas (LLB Hon 2004) was awarded the University of London Derby/Bryce Prize in Law, which goes to the candidate who achieves the best results in the final examinations for the LLM degree across the Law Schools of the University of London. Jason was also announced as the 2008 winner of the Cleary Memorial Prize.

Former Dean of Law at Victoria, **George Barton** (BA LLB 1948, LL.M 1953, Hon LL.D 1987) celebrated 60 years in law.

Wellington lawyer **Peter Dengate Thrush** (BSC 1977, LLB 1982) was elected Head of ICANN, the international internet governance body.

Barrister **Robert Dobson** (LLB 1971) was appointed to the High Court in Wellington.

A Fulbright New Zealand general graduate award was given to **Jessica Kerr** (BA LLB Hon 2005) to complete a Master of Laws degree at Yale University.

Simon John Maude (LLB 1976) a Wellington solicitor, was sworn in as a District Court judge with a Family Court warrant and has been appointed to sit in Whangarei.



Tingika Elikana (LLB 1994) was appointed Solicitor General of the Cook Islands.

Rebecca Prebble (LLB Hon 2005) along with Jessica Kerr (*see above*) received a William Georgetti Scholarship, chosen for the relevance of their research to the social, economic and cultural development of New Zealand.

One of the youngest people ever appointed a District Court judge, **Maree Mackenzie** (LLB 1988) was sworn in this January.

Taranaki's newest coroner is **Carla na Nagara** (LLB 1999), one of New Zealand's youngest appointments.

Greg Robins (LLB Hon 2007) received a Highly Commended in the student section of 2006-2008 Wallace Awards for electoral writing for his paper "The Rights of Prisoners to Vote: A Review of Prisoner Disenfranchisement in New Zealand".

Vis Mooter **Martin Smith** (LLB Hon 2003) starred in this year's University of Cambridge graduation, receiving the BRD Clarke Prize (best overall LL.M student); Chancellor's Medal for English Law; Gareth Jones Prize for Restitution. He also came first in his International Commercial Litigation class.

Thalia Rowden (LLB Hon 2001) was officially commissioned as a Baptist minister and inducted as the pastor of New Plymouth West Baptist Church.

An Honorary Fellow of Victoria's Law School, **Justice Joe Williams** (LLB 1986) Chairperson of the Waitangi Tribunal, was appointed to the High Court in Wellington.



Distinguished alumnus **Christopher Finlayson** hosted a reception in the Grand Hall at Parliament in August to celebrate the success of the Victoria Debating Society. Many distinguished alumni and former members of the Debating Society attended.

Research Centres and Events

New Zealand Centre for Public Law

EVENTS IN 2008

JANUARY/FEBRUARY:

THE TREATY DEBATE SERIES

Organised in conjunction with Te Papa

Finding Common Ground (1)

Chair: Dr Claudia Orange, Director of History and Pacific Cultures, Te Papa. Speakers: Dr Matthew Palmer, former Dean of Law, Victoria University of Wellington and Professor Mason Durie, Deputy Vice-Chancellor (Māori) and Professor of Māori Research and Development, Massey University

Finding Common Ground (2)

Chair: Claudia Geiringer, NZ Centre for Public Law. Speakers: Dr Charles Royal, composer and researcher in the creative use of indigenous knowledge, and Joris de Bres, New Zealand's Race Relations Commissioner

FEBRUARY: PUBLIC LECTURE

Recent issues in US Immigration

Speaker: Professor Peter H Schuck, Simeon E Baldwin Professor of Law, Yale Law School

MARCH: PUBLIC LECTURES

Accommodating the First Sovereigns: A Convention on Tribal Sovereignty

Speaker: Professor Bruce Duthu, Professor of Law, Vermont Law School

Challenges Facing the Auditor General

Speaker: Kevin Brady, NZ Controller and Auditor General

APRIL: PUBLIC LECTURE

Challenges the Family Court is Facing

Speaker: Peter Boshier, Principal Family Court Judge

APRIL: SYMPOSIUM

Strategies for the Future: Protecting Rights in the Pacific

An international forum in Apia – see page 4.

MAY: PUBLIC LECTURE

The Role of the State Services

Commissioner: A Report from Experience

Speaker: Dr Mark Prebble

JUNE: PUBLIC LECTURE

Use of interpretative presumptions

Speaker: Hanna Wilberg, University of Auckland, Faculty of Law

JULY: PUBLIC LECTURE

Policing for Tomorrow

Speaker: Howard Broad, Commissioner of Police

AUGUST: PUBLIC LECTURES

Organised with the Institute of Policy Studies

Copyright Law Reform Through a Human Rights Lens

Speakers: Graeme Austin, J. Byron McCormick Professor of Law, Rogers College of Law, University of Arizona and Honorary Fellow, Faculty of Law, Victoria University of Wellington

“Capturing” the judiciary in Zimbabwe – how it was done and how it might be undone

Speaker: Sigrid Rausing Fellow, Benjamin Paradza

AUGUST: SYMPOSIUM

The Constitutional Implications of MMP: 15 years past, 15 years forward

Organised in conjunction with Victoria University of Wellington's Institute of Policy Studies and the Centre for New Zealand Studies, Birkbeck, University of London. (See page 10)

NOVEMBER: PUBLIC LECTURE

Constitutional Challenges to Private Health Insurance: The Canadian Story

Speaker: Associate Professor, Colleen Flood, University of Toronto



EXPLORING ANTARCTICA SEMINAR SERIES

Scientists, non-governmental organisations, universities, policy makers and governments are focusing on Antarctica as part of the International Polar Year which ends in March 2009. The last International Polar Year was 1957-8, which saw the creation of the Antarctic Treaty and ushered in a new era for governance of the continent and its environment.

As part of the Exploring Antarctica Festival organised by the New Zealand Symphony Orchestra, Victoria University of Wellington is holding three seminars to highlight the unique qualities of Antarctica and discuss the current challenges facing countries cooperating in the area.

The seminars are free of charge.

ANTARCTIC ANTARCTICA
Why is Antarctica a special?
Monday 14 April, 7.30-9pm, Duff Theatre
Chaired by Kim Hill, actors Bill Mervin and Dick Fritwell and scientists David Dyer and David Curren (one together to talk about their experiences and perspectives on the world where longitudes and latitudes, night and day, houses and hell, coverage, shade of mountains, icebergs and strange landscapes in a thousand shades of white. Equally sensitive to the impact of climate change, Antarctica is more than a white geographical void, we may need to preserve it to survive. Held in partnership with the Royal Society of New Zealand.

PROTECTING ANTARCTICA
Tuesday 15 April, 5.30-7.30pm, Paramount Theatre
What threats exist to a pristine, isolated environment like Antarctica? Who and what protects it? You might be surprised by the fragile nature of the Antarctic environment. Chaired by former New Zealand Ambassador to the UN David McDowell, guests will discuss efforts to ensure that the unique qualities of Antarctica are not undermined by human activities. Topics include Antarctic governance, current issues facing the Antarctic environment, the role of NGOs and the public in protecting Antarctica, and security obligations in Antarctica.

COOL ANTARCTICA
Wednesday 16 April, 5.30-7.30pm, Paramount Theatre
How does Antarctica as the driver of global ocean and atmospheric systems, the climate change regulator, and what New Zealanders can do to play a part in the solution. Topics include Antarctica's influence on the global climate, the impact of climate change on Antarctica, the role and cooperation surrounding climate change and Antarctica, international efforts to address climate change and tackling the climate change message can action in New Zealand.

More information about the seminars can be found at www.vic.ac.nz/news/about_us/news/antarctica_seminars.aspx
See also www.vic.ac.nz for further information about the other events at the Exploring Antarctica Festival.

EXPLORING ANTARCTICA SEMINAR SERIES

In April the Law Faculty joined scientists, government and non-government organisations, universities and policy makers to focus on Antarctica as part of the International Polar Year which ends in March 2009. The last International Polar Year in 1957-8 saw the creation of the Antarctic Treaty and ushered in a new era for governance of the continent and its environment.

Victoria University held three seminars to highlight the unique qualities of Antarctica and discuss the current challenges facing countries cooperating in the area. These included a seminar entitled Protecting Antarctica held on Tuesday 15 April, chaired by former New Zealand Ambassador to the UN David McDowell at which Joanna Mossop of the Law Faculty spoke on 'Antarctic governance'.

A specialist in the law of the sea and international environmental law, Joanna maintains that "as the continent becomes more hospitable, its uses will change. The Antarctic Treaty system and the protocols in place are clunky, but they have served a purpose to date. The continent of Antarctica fires the imagination, and there is a tremendous determination to ensure its qualities are protected."

DECEMBER: CONFERENCE

Celebrating 60 years of the Universal Declaration of Human Rights

Organised with support from the NZ Human Rights Commission; Australia and New Zealand Society of International Law; NZ Institute of International Affairs; Amnesty International New Zealand; Human Rights in Education New Zealand and the NZ United Nations Association

New Zealand Centre of International Economic Law

JANUARY: CONFERENCE

Australasian Intellectual Property Academics' Conference

This was attended by 32 academics from Australia and New Zealand to present and discuss research and teaching in the field. Three PhD students – one from Victoria and two from Australian universities – presented work in progress.

MARCH: PUBLIC LECTURE

The intersection between World Trade Organisation rules and the Kyoto process

Speaker: Charles Finny, CEO, Wellington Chamber of Commerce

29-30 MAY: CONFERENCE

Patent Law Reform: Getting it Right to Support and Drive Innovation

This NZCIEL hosted conference discussing patent law drew on international expertise and local business knowledge to explore how New Zealand patent law should be shaped in the reform process to its benefit. It had sessions focusing on incentives for innovation, the life sciences, experimental use, registration issues and the role of specialist courts and specialist judges.

Keynote speakers: Professor Rochelle Dreyfuss from New York University School of Law, whose address was entitled "Taking Incentives Seriously" and Professor Daniel Gervais, from the University of Ottawa, who discussed patents and development.

The major sponsor for this conference was the New Zealand Law Foundation. There was also

support from AJ Park and MED.

Conference papers will be published in a special issue of the *Journal of World Intellectual Property* (Oxford) in 2009.

SEPTEMBER: PUBLIC LECTURE

The Private/Public Interface in Regulating Consumer Product Safety and Credit Services

Speaker: Luke Nottage, Associate Professor, Sydney Law School
With the New Zealand Association for Comparative Law

DECEMBER: SEMINAR

Culture as Resource: Limits and Possibilities of Capitalising upon Spatial Difference

Speaker: Rosemary Coombe, Professor of Law, Communication and Cultural Studies at York University, Toronto.
With the School of Accounting & Commercial Law and the Centre for Accounting, Governance and Taxation

2008: LAW FACULTY EVENTS

FEBRUARY: PUBLIC SEMINAR

The EU Services Directive and the Changing Institutions of German Labour Market Regulation

Speaker: Dr John Leslie, Department of Political Science and International Relations
Organised in conjunction with the New Zealand Association for Comparative Law

JULY: PUBLIC LECTURE

Guantanamo Bay: Legal Black Hole?

Speaker: Former US Supreme Court Justice, Sandra Day O'Connor

AUGUST: BEEBY COLLOQUIUM

The Making of International Law

Speakers: Sir Kenneth Keith, Judge, International Court of Justice; Gerard van Bohemen, Director of the Legal Division, New Zealand Ministry of Foreign Affairs and Trade; Professor Campbell McLachlan, Victoria's Faculty of Law. *Organised in conjunction with the International Law Association and Ministry of Foreign Affairs and Trade*

SEPTEMBER: PUBLIC LECTURES

Misconceiving the Rule of Law: why those who have it find it hard to understand and why those who need it find it hard to get

Speaker: Professor Martin Krygier, Professor and Co-Director for Interdisciplinary Studies of Law, University of New South Wales and New Zealand Law Foundation Distinguished Visiting Fellow for 2008

Rethinking Legalisation – China's Data Analysis

Speaker: Professor Zhu Jingwen, Dan Chan Visiting Fellow 2008

LAUNCH OF SPECIAL VUWLR ISSUE

A special issue in honour of Lord Cooke of Thorndon edited by Dr Petra Butler commemorating Lord Cooke

OCTOBER: PUBLIC SEMINAR

Recovering New Zealand's Lost Cases

This project seeks to recover 'lost' Supreme Court decisions from 1841-1883, the year in which official records began. The results of the first stage of this major research project were presented at the seminar.

OCTOBER: PUBLIC LECTURE

Pacific Jurisprudence: Issues and Challenges

Speakers: Judge Aea Semi Epati, Professor Tony Angelo.
Panel: Tae Moala-Mafi Tu'inukuafe, Criminal and Youth Jurisdiction; Tunumafono Ken Ah Khoi, Barrister and Solicitor, Wellington
Organised with Va'aomanu Pasifika

DECEMBER: ROBIN COOKE LECTURE

What is the Law?

Speaker: Rt Hon Lord Bingham of Cornhill

Faculty Publications 2008

SEEING THE WORLD WHOLE: ESSAYS IN HONOUR OF SIR KENNETH KEITH

*Edited by Claudia Geiringer and Dean Knight
Victoria University Press (2008)*



Seeing the World Whole
Essays in Honour of
Sir Kenneth Keith
Edited by Claudia Geiringer and Dean R Knight

The Rt Hon Judge Sir Kenneth Keith ONZ KBE QC is one of New Zealand's most eminent jurists. This collection of essays marks his retirement from the New Zealand Supreme Court, honours his distinguished career

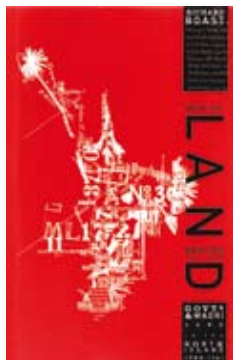
as academic, law reformer, legal advisor, international advocate and judge, and celebrates his appointment as a permanent judge of the International Court of Justice – the first and only New Zealander ever to be so appointed.

In these essays, leading judges, scholars and practitioners reflect on Sir Kenneth's contribution to the law and advance dialogue on a range of areas of legal policy and practice of particular interest to Sir Kenneth. The essays reflect, in particular, Sir Kenneth's preoccupation with the connections that underlie the legal universe – between the local and the international, the past and the present, the practical and the theoretical; between law and policy, law and history, law and literature; between the varying sources that underlie the law and legal reasoning, and between the varying professional roles that may constitute a legal career.

Contributors: Rt Hon Justice Peter Blanchard, Gerard van Bohemen, Emeritus Professor John Burrows QC, Treasa Dunworth, Rt Hon Dame Sian Elias, Professor David Feldman, Claudia Geiringer, Emeritus Professor Gary Hawke, Jack Hodder SC, Professor Emeritus Peter W Hogg QC, Ben Keith, Professor Benedict Kingsbury, Dean R Knight, Hon Justice John McGrath, Professor Janet McLean, Joanna Mossop, Rt Hon Sir Geoffrey Palmer SC, Jacinta Ruru, Rt Hon Sir Stephen Sedley, Marie Shroff, Professor ATH Smith, Professor Michael Taggart

BUYING THE LAND, SELLING THE LAND

*Richard Boast
Victoria University Press (2008)*



This book is a study of Crown Māori land policy and practice in the period 1865–1929 and is something of a reaction to the Crown-has-been-very-naughty school of New Zealand history.

Boast posits that it is important to recognise that government purchasing of Māori land was in its own way driven by genuine, if blinkered, idealism. Many of the most impressive and most idealistic politicians that New Zealand has produced, including Sir Donald McLean, John Ballance and John McKenzie were strong advocates of expanded and state-controlled land purchasing.

The narrative that unfolds, however, is a bleak and grim one of tsunami of Crown purchasing crashing over a people who were in very difficult circumstances.

Boast says: “Alienation of land requires two parties, a buyer and a seller. The book is about both. It is as important to understand the motives of the Crown as it is to attempt to gauge the social and economic effects of purchasing on Māori people.”

Associate Professor Richard Boast currently teaches property law, legal history and energy and resources law. He also practises in the area of Māori and Treaty litigation and represents several iwi groups in inquiries currently being heard by the Waitangi Tribunal.

Professor Paul Moon of AUT University in Auckland, said in his review (NZ Listener, May 2008) of *Buying the Land, Selling the Land*: “Boast's book is also a timely and courageous corrective to what has become in some quarters a self-indulgent view of Māori land. In particular, he “explodes a myth” as he puts it, by pointing out what should have been obvious

to generations of historians but has not always been: the erroneous notion that “possession of land equals wealth and wellbeing.” Elsewhere in his review, he states: “Boast and his publisher have rendered a great service to New Zealand and all who study it.”

THE EVIDENCE ACT 2006: ACT & ANALYSIS

*McDonald, Tinsley, Mahoney & Optican
Thomson Brookers (2008)*



Faculty of Law staff Associate Professor Elisabeth McDonald and Dr Yvette Tinsley joined Professor Richard Mahoney (University of Otago) and Associate Professor Scott Optican (Auckland University) to

co-author a significant new book on the criminal justice system.

The Evidence Act 2006: Act and Analysis, launched early 2008, is the first authoritative text on the far-reaching overhaul of the law of evidence, which took the Law Commission and Parliament 20 years to complete.

Sir Geoffrey Palmer, President of the Law Commission, launched the book, saying: “It is comprehensive and timely”, noting that the Evidence Act 2006 “comes as close to a codification of evidence law in New Zealand as is ever likely to be achieved.”

The book comments on the Act section by section and includes recent cases arising from key provisions. It also analyses the Evidence Act 2006 and its underlying principles. The discussion refers to the history and development of the Act, from its initial stages as a project of the New Zealand Law Commission through the legislative process and into final statutory form.

Extensive and sophisticated cross-referencing is one of the strengths of the book. “It makes the text highly user-friendly for practitioners, judges, policymakers, law students and academics alike,” say McDonald and Tinsley.

LAW ALIVE: THE NEW ZEALAND LEGAL SYSTEM IN CONTEXT

Grant Morris, Oxford (2008)



Senior Lecturer Grant Morris's book has been written for first-year legal studies. It will be used as a key text at Victoria and, it is hoped, at other New Zealand universities.

It encourages

students to see the law as a living part of the political, social, economic and cultural life of New Zealand. It covers all key areas of study in a legal system course, contains exercises, examples, case studies, essay topics, puzzles and problem-solving features, makes connections between the principles and theory of law and its real life applications, and includes discussion of law beyond the courts – including jurisprudence and dispute resolution.

Grant Morris has received a VUW “Excellence in Teaching” award and it is his experience as a teacher that inspired him to write the book: “I especially enjoy teaching at first-year level. It is exciting introducing students to the law, especially those with no previous knowledge. You can see a whole new world opening up.”

“The New Zealand legal system itself is becoming more contextual and reflective of society. There is a growing awareness of our legal heritage and in particular, the Treaty of Waitangi, and a growing appreciation of New Zealand’s role in international affairs.”

“New Zealanders are becoming more willing to question the role of different constitutional actors, especially the executive. Litigation’s dominance is being challenged by alternative forms of dispute resolution. The large number of women entering the legal profession has forced the system to modify its conception of a lawyer.”

“Law in context is here to stay. As law teachers we can either try to ignore this fact or we can embrace it. This book is dedicated to the view that we should embrace it.”

HANDBOOK FOR THE LAW COMMISSIONERS OF TOKELAU

Tony Angelo, Lise Hope Suveinakama &
Nessa Lynch
Government of Tokelau, Wellington (2008)



A handbook for the guidance of the Law Commissioners of Tokelau, reflecting the needs of the Law Commissioners and the circumstances of the villages of Tokelau.

The work of the Law

Commissioners mostly concerns minor criminal offences. They have no jurisdiction in relation to land matters or family matters, and in practice hear very few civil claims. This book therefore deals with criminal procedure, evidence and some relevant offences.

Until 1975, the village judges had few laws to administer and no guidance for the use of their powers. In 1984, a *Handbook for the Commissioners* was published. It was little used and largely overtaken by the Crimes Procedure and Evidence Rules 2003 (the Crimes Rules).

Information on the law and court procedures has frequently been sought by the elders, the Law Commissioners, and the Police of Tokelau. The main response to date to those requests has been the conducting of judicial workshops. They have taken place increasingly often over the last 12 years.

This handbook has built on the experience of those workshops and will in its turn provide a solid basis for future workshops. It is the latest step by the Government of Tokelau to assist its Law Commissioners and all involved with the administration of the law in Tokelau. Experience in the use of this book will inform the development of future editions.

The goal of all these endeavours is to improve the administration of the law and quality of justice in Tokelau. It is hoped this book assists in achieving this goal and answers the needs of those who have the duty to apply the law.

INTERNATIONAL INVESTMENT ARBITRATION: SUBSTANTIVE PRINCIPLES

Campbell McLachlan QC, Laurence Shore &
Matthew Weiniger
Oxford University Press (2008)



Arbitration of investment treaty disputes is one of the fastest growing areas of international dispute resolution. The legal principles developing out of these arbitrations are subject to

intense debate, and are still in a state of flux. The authors of *International Investment Arbitration: Substantive Principles* have begun the important process of codifying the principles, as applied and analysed by tribunals.

Widely cited since it was published in 2007, this new paperback edition is essential reading for students of international arbitration as well as international arbitration practitioners. It restates the general principles of international law found in investment treaties as applied by investment arbitration tribunals; offers a clear analysis of the present state of the law; and has comprehensive commentary on the main treaties and published investment awards.

Christopher Greenwood QC CMG says of the book: “This is an excellent work which will be indispensable to anyone – arbitrator, counsel or academic – concerned with international investment arbitration.”

Jan Paul, Head of International Arbitration and Public International law, Freshfields Bruckhaus Deringer; President of the London Court of International Arbitration adds: “This is now the first place for the international lawyer to go when confronting a new problem of relations between States and foreign investors.”

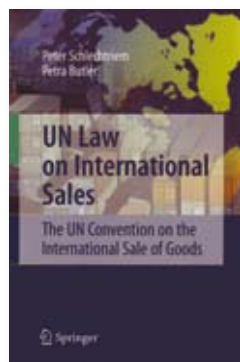
Following the book’s publication, the Government appointed Campbell McLachlan in place of the late Lord Cooke to serve as one of

the four New Zealand members on the List of Arbitrators of the International Centre for the Settlement of International Disputes (ICSJID) in Washington.

International Investment Arbitration: Substantive Principles also won the 2008 Northey Prize – see page 8.

THE UN CONVENTION ON THE INTERNATIONAL SALES OF GOODS

*Peter Schlechtriem & Petra Butler
Springer (2008)*



This book describes and analyses the rules and provisions of the UN Convention on the International Sale of Goods of 1980.

Since coming into force in 1988, thousands of cases have been decided in

more than 70 states that have enacted the Convention. The CISG has become the subject of courses and classes in International and Commercial Law in the curricula of law schools and other institutions throughout the world.

The authors have a long experience in teaching these subject matters. They explain the details of the CISG's text, report the essence of the scholarly discussions of its issues, and, in particular, present numerous cases decided by courts and arbitration tribunals both as illustrations of problems arising under the CISG and as case law interpreting the Convention.

The book is mainly intended to be used in teaching, but it can also help practitioners to understand the structure and basic solutions of sales law issues encoded in the CISG.

Dr Butler says: "The main aim of the book is to facilitate discussion on the use and application of the provisions of the CISG. As the CISG itself was the outcome of nearly a decade of debate between nations polarised in ideology, the importance of continuing discussion cannot be overstated."



At the launch of Richard Boast's *Buying the Land, Selling the Land*:

- (1) Hon Justice Mark O'Regan, Richard Boast, Hon Eddie Durie
- (2) Hon Eddie Durie
- (3) Judge Ian Borrin

At the launch of *The Evidence Act 2006: Act & Analysis*:

- (4) Yvette Tinsley and Elisabeth McDonald
- (5) Sir Geoffrey Palmer

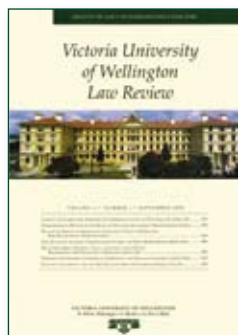
At the launch of Grant Morris's *Law Alive: The New Zealand Legal System in Context*

- (6) Andrew Morris, Grant Morris, Olivia Fraser-Morris and Lindsay Morris
- (7) Tina Uiese, Pauline Castle, Rozina Khan
- (8) Tony Smith and Sir Ivor Richardson

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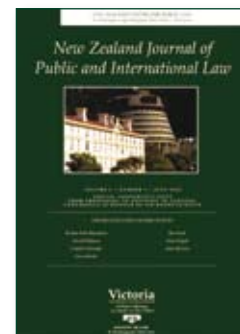
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