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VICTORIA UNIVERSITY OF WELLINGTON - TE HERENGA WAKA

"Law Reform in New Zealand"

Victoria University of Wellington Legal Research Paper No. 60/2022

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Why should the international law reform community be interested in how New Zealanders do law reform, or how New Zealanders debate how law reform? This article argues that there are three principal reasons that New Zealand ought to be of interest.

1 A small place that does lots of reform, or at least thinks a lot about reform
First, the very smallness of New Zealand (a population of 4.8 million) creates both opportunities and problems for law reform that do not necessarily exist in the same way in larger countries. Literature

often focuses on the difficulties of reform in large legal systems, such as those is in Europe or North America, but smaller countries present issues that are worthy of study. New Zealand is a case study of how law reform can, and should, be done in smaller jurisdictions, as well as what cannot be done, or done only with difficulty.

2 A successful legal system
Second, observers often see New Zealand as successful both in its respect for the rule of law and in the state of its law more generally. While there is some contrast between the helicopter view of a successful legal system and the angst of local commentators who claim that New Zealand is falling behind, that success ought to prick overseas attention as to how New Zealand accomplishes what it does.

3 A different kind of traditional Law Commission?
Thirdly, while New Zealand has an independent Law Commission, as other Commonwealth countries do, there has been a distinct change of emphasis from an identity model to a process model of law reform. The identity model presents law reform as accomplished by a certain kind of body, while the process model focuses on the significance of the Commission's independence in the policy and law reform process. This process model of law reform claims not to remove politics from law reform, but rather to enable law reform even where politics might otherwise have prevented it. Moreover, focusing on the process rather than the identity of the body raises the prospect that the "law reform" process can be applied to subjects beyond technical "lawyer's law". This is a view that is most associated in New Zealand with Sir Geoffrey Palmer, who was the founder of the New Zealand Law Commission during his time as Attorney-General and Minister of Justice, and who served as president of the Law Commission from 2005 to 2010.

"Nervous Shock, Tort and Accident Compensation: Tort Regained?"
Victoria University of Wellington Legal Research Paper 61/2022
(1999) 30 VUWLR 197

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This case note examines the 1999 Court of Appeal decision in Palmer v Danes Shotover Rafts dealing with the relationship between the common law and the Accident Compensation regime. The author acknowledges the practical importance of the Court's holding in Danes Shotover Rafts that plaintiffs who have not suffered physical injury can sue for nervous shock. The author contends that the case is, like the exemplary damages cases, yet another example of the complex interaction between common law and statutory compensation regimes. The author argues that the case may signal a judicial switch from a welfare or communitarian approach to the interpretation of the Accident Compensation scheme to a rights-based approach and that gives primacy to common law rights rather than to the integrity of the Accident Compensation scheme. A wider view not based solely on the statutory provisions, or on the assumption that the common law or statutory compensation regimes "trump" one another, but one which views the interaction between the common law and statutory compensation schemes as dynamic, may lead to a greater understanding of the relationship between statutory tort reform and the common law.

"Should New Zealand Shirk its Obligations? A Critical Perspective on Private Law Scholarship"
(2016) 47 VUWLR 429
Victoria University of Wellington Legal Research Paper No. 62/2022

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This article concerns the role of the private law scholar in New Zealand, and how such scholars use their skills to improve the law. It argues that while an obligations scholar's preference may be to engage with the courts and other academics in their scholarly activities, a focus on statutory reform better suits New Zealand conditions. Scholars should share their talents with policy makers, law reform bodies and legislators, helping to explain the importance of a coherent system of private law, and how this may be achieved. The authors then go a step further by suggesting that, in the New Zealand context, the preferable approach to reform may be one involving policy-based solutions exemplified by the accident compensation scheme, as opposed to approaches based on traditional private law principles such as party autonomy.

"How to read New Zealand's new Trusts Act 2019"

(2020) 13 Journal of Equity 325
Victoria University of Wellington Legal Research Paper No. 63/2022

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The Trusts Act 2019 (NZ), which come into effect at the end of January 2021, is the most significant private law reform in New Zealand since the Companies Act 1993 (NZ). This article gives essential background to the Act, to read the Act against, and points to the conceptual issues and debates that lie at the heart of successfully navigating the Act.

"Justice between Defendants: A New Zealand Note on (non) Law Reform"

"Justice Between Defendants: A New Zealand Note on (non) Law Reform" in Kit Barker and Ross Grantham (eds) Apportionment in Private Law (Hart Publishing, Oxford, 2019) 321–341
Victoria University of Wellington Legal Research Paper No. 64/2022

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This chapter examines the persistent calls over the last four decades for statutory change to the contribution of joint tortfeasors provision in New Zealand. The New Zealand Law Commission, and its predecessor the Contracts and Commercial Law Reform Committee, rejected any general change in the law towards the acceptance of proportionate liability, but recommended (in 1998 and 2014) statutory modernisation similar to that carried out in other countries. The Law Commission also recently (2014) proposed that 'minor defendants' should only have to pay a proportionate amount of a plaintiff's loss, and suggested that liability be capped for local authorities and auditors.

In the absence of statutory change resulting from the Commission's recommendations, the New Zealand Supreme Court has, in two cases in the last decade, ended up achieving the modernisation reform to allow plaintiffs, and co-defendants, to better seek contribution. First, the Court has used the doctrine of equitable contribution to allow the joining of tortfeasors to contract claims (*Altimarloch*); and secondly, has liberally interpreted the statute's 'same damage' requirement to allow coordinate liability. Despite the building industry's claims that some are exposed to too disproportionate a liability, New Zealand has not acted on calls to institute proportionate liability to control the extent of its liability. The Government also looks unlikely to adopt the minor defendant regime, and is yet to determine the fate of the recommended liability caps. The debate in New Zealand has been increasingly focused on contribution as a way of dealing with the expanded negligence claims for economic loss, particularly in the building industry and in regard to liability for the 'leaky homes' crisis.

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Victoria University of Wellington - Te Herenga Waka Legal Studies Research Paper Series primarily contains scholarly papers by members of the **Faculty of Law at Victoria University of Wellington**. Some issues collect a number of papers on a similar theme to form a suite of papers on a single topic. Others issues are general or distribute mainly recent work.

The Student/Alumni Series is a subseries of the Victoria University of Wellington - Te Herenga Waka Legal Studies Research Paper Series. The subseries started in 2015 and publishes papers by students and alumni of Victoria University of Wellington, comprising primarily work for honours and postgraduate courses. Papers are collected into thematic or general issues.

The Victoria University of Wellington was founded in 1899 to mark the Diamond Jubilee of the reign of Queen Victoria of Great Britain and of the then British Empire. Law teaching started in 1900. The Law Faculty was formally constituted in 1907. The first dean was Richard Maclaurin (1870-1920), an eminent scholar of both law and mathematics. Maclaurin went on to lead the Massachusetts Institute of Technology as President in its formative years. Early professors included Sir John Salmond (1862-1924), still one of the Common Law's leading scholars. His texts on jurisprudence and torts have gone through many editions and remain in print.

Alumni include Sir Robin Cooke (1926-2006), one of the leading judges of the British Commonwealth. As Baron Cooke of Thorndon, he sat on over 100 appeals to the Appellate Committee of the House of Lords, one of very few Commonwealth judges ever appointed to do so.

Since 1996 the Law School has occupied the Old Government Building in central Wellington. Designed by William Clayton and opened in 1876 to house New Zealand's then civil service, the building is a particularly fine example of Italianate neo-Renaissance style. Unusually among large colonial official buildings of the time it is constructed of wood, apart from chimneys and vaults.

The School is close to New Zealand's Parliament, courts, and the headquarters of government departments. Throughout Victoria's history, our law teachers have contributed actively to policy formation and to law reform. As a result, in addition to many scholarly articles and books, the Victoria SSRN pages include a number of official reports.

Victoria graduates approximately 230 LLB and LLB(Hons) students each year, and about 60 LLM students. The faculty has an increasing number of doctoral students. Ordinarily there are ten to twelve students engaged in PhD research.

Victoria University observes the British system of academic ranks. In North American terms, lecturers and senior lecturers are tenured doctrinal scholars, not legal writing teachers. A senior lecturer corresponds approximately to a North American associate professor in rank.

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