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Special Issue: Labour Law: Bargaining, Human Resources, and Other Issues: Papers by Gordon Anderson

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## **LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES VICTORIA UNIVERSITY OF WELLINGTON LEGAL RESEARCH PAPERS**

**"Transplanting and Growing Good Faith in New Zealand Labour Law"** 

*Australian Journal of Labour Law*, Vol. 19, No. 1, 2006

*Victoria University of Wellington Legal Research Paper No. 11/2014*

**GORDON J. ANDERSON**, Victoria University of Wellington - Faculty of Law

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Following a decade of labour law deregulation in New Zealand, the new Labour Government introduced the Employment Relations Act 2000 with the express objective of building productive employment relationships. Central to this objective was a new statutory obligation of good faith applying to all parties to an employment relationship throughout all aspects of the relationship. The original provisions proved to be inadequate in a number of respects and in response the Act was amended in 2004 to reinforce the good faith obligation. This paper examines the extent to which the good faith obligation has taken root in New Zealand soil and suggests that the transplant has proved difficult partly because the drafters of the 2000 legislation miscalculated the degree of judicial and employer resistance to the more balanced and pluralistic philosophy underpinning the Employment Relations Act.

### "Intractable Issues in the Workplace: Dealing with Workplace Bullying, Typhoid Chris and Stress"

*Victoria University of Wellington Legal Research Paper No. 12/2014*

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This paper focuses on two particular problems: workplace bullying and the problems created by an employee who is the catalyst for the development of a dysfunctional workplace. The paper also comments on workplace stress. Stress is of course a problem in its own right and can arise for a wide variety of reasons. The problem of workplace bullying in particular, but also that of the dysfunctional workplace, have become increasingly recognised as having serious negative impacts for employees - in particular the risk of significant psychological trauma which may culminate in very high levels of stress and its subsequent physical manifestations. Workplace bullying in particular has been the focus of considerable research with the result that its impact is becoming increasingly appreciated.

### "Reconstructing New Zealand's Labour Law: Consensus or Divergence?"

*RECONSTRUCTING NEW ZEALAND'S LABOUR LAW: CONSENSUS OR DIVERGENCE*, Victoria University Press, Wellington, 2011

*Victoria University of Wellington Legal Research Paper No. 13/2014*

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This book traces the process of labour law reconstruction in New Zealand over the last four decades. By the mid-1960s it was apparent that the arbitral system that had dominated labour law since 1894 was failing to meet the needs of a rapidly changing economic environment. Although legislators, and to a lesser extent the courts, struggled to modernise labour law, it was not until the late 1980s that the political and economic environment developed to the point where a new model of labour law could be contemplated. This process began with the Labour Relations Act 1987, but the foundations for contemporary labour law were not laid until the Employment Contracts Act 1991. The ideological character of that Act meant that it was unlikely to survive in the longer term, and it was the Employment Relations Act 2000 that created a legislative structure with at least a reasonable prospect of medium-term survival. While there are still pressures for change, in the absence of major economic volatility it seems probable that labour law may have achieved a state of reasonable stability for at least the medium-term future.

### "The Good-Faith Obligation: An Effective Model for Promoting Voice?"

*Voices at Work*, Tonia Novitz & Alan Bogg, eds., Oxford Univ. Press, 2014, Forthcoming

*Victoria University of Wellington Legal Research Paper No. 14/2014*

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Historically worker voice in New Zealand was supported by the state through the arbitration system, support that was lost in the neoliberal reforms of the 1990s when employment law became individualized and increasingly dominated by the common law. A decade later an attempt to recreate effective worker voice through a comprehensive statutory duty of good faith applying to all aspects of employment relationships had only a limited impact in the face of an entrenched unitary perspective of the employment relationship. To overcome this hostility stronger mechanisms through which worker voice can be expressed are required and must be accompanied by a higher cost for non-compliance. Such reforms are, however, unlikely unless the state again accepts that promoting the employment and economic interests of workers, including providing them with a strong and effective voice in employment, is a legitimate role for a state committed to social democracy.

## "The Interface between the Law and the Workplace: The Role of Human Resource Managers"

Paper Presented to LLRN Conference Barcelona 2013: New Governance and Labour Law Session: Saturday 15 June  
Victoria University of Wellington Legal Research Paper No. 15/2014

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Much modern labor legislation is intended to achieve its objectives through influencing an employer's internal decision making processes. The benefits of this mode of regulation are particularly apparent where the legislative objective is to deliver tangible protections to employees by restraining the discretionary powers of the employer. Examples include constraints on disciplinary powers, provisions to encourage flexible working arrangements and generic expectations such as conducting employment relations in good faith. If such expectations are not successfully embedded at workplace level the legislative objectives are likely to have limited success.

This paper reports on research that investigates the extent to which HR managers and their organizations encourage/discourage or are indifferent to legislative compliance. It builds on initial research by the authors exploring the relationship between employment law and human resource management. That work has shown that with the enactment of statutory requirements setting expectations of employer conduct the courts have paid increasing attention to the internal processes of employers and in particular to their HRM practices when evaluating employer decisions. The project from which this paper is derived investigates the extent to which HR managers are aware of legal reforms and developments and how they and their organization respond to such developments. It seeks to assess the extent to which legal solutions are sought, for example external legal advice, new forms of employment contract, development of employment policies, as well as the approach taken within the firm: for example is the firm response dominated by risk avoidance, minimal compliance or active resistance or is there a positive acceptance of the need to implement legislative objectives and if so to what extent.

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## About this eJournal

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 Judicial 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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