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Announcements

The Victoria University of Wellington Faculty of Law is delighted to announce, as part of the VUWLRP series, the creation of a new sub series of legal research papers: The Student and Alumni of Victoria University of Wellington Law Faculty Series. The subseries will publish a selection of Honours and postgraduate papers from Victoria University of Wellington through a series of thematic and general issues.

This is the first issue: **Sexuality: Papers by Students and Alumni of Victoria University of Wellington Law Faculty**

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

"Sentencing the Killers of Gay Men Since the Abolition of Provocation in New Zealand: Have the Courts Reflected Community Concerns?"

Victoria University of Wellington Legal Research Paper Series Student/Alumni Paper No. 1/2015

ANNIE O'CONNOR, Victoria University of Wellington, Faculty of Law, Students/Alumni
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This paper discusses sentencing in New Zealand homicide cases in which the offence was prompted by

a homosexual advance in light of the abolition of the partial defence of provocation. The author argues that, despite the concerns around sentencing in homosexual advance cases that partly led to the abolition of the partial defence, there has been no real change in the way these cases are being sentenced. This paper suggests that prejudice against homosexuals may be a significant contributing factor toward the low sentences that have continued to be given to offenders in unwanted homosexual advance cases.

"Same-Sex Marriage and Religious Exemption Under the Marriage Act: Where Does Section 29 Leave Religious Objectors?"

Victoria University of Wellington Legal Research Paper Series Student/Alumni Paper No. 2/2015

SIMON WILSON, Victoria University of Wellington, Faculty of Law, Students/Alumni

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This paper analyses the implications of section 29(1) of the Marriage Act 1955 for marriage celebrants wishing to refuse to solemnise same-sex marriages on religious grounds. Section 29(2) of the Marriage Act (as amended in 2013) allows a limited religious exemption for some celebrants, but not all are covered by this provision. Those not included (namely independent celebrants) can only refuse to solemnise a marriage if section 29(1) allows such a refusal. This paper asserts that when solemnising marriages, celebrants perform a 'public function' and are therefore subject to human rights obligations arising from the New Zealand Bill of Rights Act 1990 (NZBORA). These obligations are not overridden by section 29(1), so a celebrant can only refuse to solemnise a marriage if NZBORA allows this. A refusal to solemnise a same-sex marriage on religious grounds limits the right to freedom from discrimination in a way that is demonstrably justified in a free and democratic society, and thus permitted by NZBORA. Section 29(1) therefore provides a broader protection for celebrants than section 29(2), allowing all celebrants to refuse to solemnise same-sex marriages on religious grounds.

"Discrimination on the Grounds of Sexual Orientation: a Comparison between the United Kingdom and New Zealand"

Victoria University of Wellington Legal Research Paper Series Student/Alumni Paper No. 3/2015

JOSHUA C R AIRD, Victoria University of Wellington, Faculty of Law, Students/Alumni

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This paper compares the way in which the United Kingdom and New Zealand approach discrimination claims on the ground of sexual orientation. This paper uses the recent judgment in the case of Bull v Hall as an avenue to explore this issue contrasting it with a similar fact situation in New Zealand, the Pilgrim Planet Lodge discrimination. This paper illustrates that the majority in Bull v Hall were able to take a substantive equality approach to their reasoning. This approach is the most consistent with the principle of non-discrimination. The paper then focuses on the legislative and process differences in the United Kingdom and New Zealand and the results they produce. Finally by looking at the advantages and disadvantages of both approaches this paper concludes that to build a human rights culture and respect the principle of non-discrimination there needs to be more availability of public litigation of discrimination claims.

"'Get Your Gavel Out of My Pants' - Replacing the Medical and Legal Scrutiny of Trans Bodies with Self-Identification as a Basis for Changing Sex Markers on Birth Certificates"

Victoria University of Wellington Legal Research Paper Series Student/Alumni Paper No. 4/2015

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Section 28 of the Births, Deaths, Marriages, and Relationships Registration Act 1995 allows people to apply to the Family Court to change the sex marker on their birth certificate. This essay argues that this provision is out-dated and does not serve the needs of the trans community. It is based on the medical model of sex, and requires medical evidence that the applicant's body conforms sufficiently to that of the "nominated sex". This essay suggests a reform based on the self-identification model, which exists in Argentina for birth certificates, and in New Zealand for passports and drivers' licences. Such a reform of s 28 would bring birth certificates in line with these other documents, leading to more consistency and increased respect for the human rights of trans people.

"But Names Will Never Hurt Me: Extending Hate Speech Legislation to Protect Gender and Sexual Minorities in New Zealand"

Victoria University of Wellington Legal Research Paper Series Student/Alumni Paper No. 5/2015

VANESSA HAGGIE, Victoria University of Wellington, Faculty of Law, Students/Alumni

Hate speech legislation involves a fundamental conflict with the right to freedom of expression. However, it is a conflict that can be justified in a constitutional framework in which free speech is not paramount and can be balanced against other rights and freedoms. This paper discusses the concept of "hate speech" legislation, the conflict between freedom of expression and hate speech censorship, and ways in which these seemingly-incompatible concepts might be harmonised. It considers, drawing on legislation and case law from other jurisdictions, and in light of the Marriage (Definition of Marriage) Amendment Act 2013, the possibility of extending such legislation to protect gender and sexual minorities in New Zealand, and suggests a potential framework for such legislative change.

Any provision concerning hate speech must avoid overreaching into the realm of free expression. As a result, 'hate speech' should be clearly defined and narrowly focussed in scope, as words or matter which "exposes or tends to expose to hatred or contempt" the minority group at which the protection is aimed. In New Zealand's constitutional/rights framework, this limitation on freedom of expression can be justified as reasonable and appropriate. While hate speech legislation does create a conflict with freedom of expression, to protect hate speech at the risk of perpetuating harm, discrimination, marginalisation and silencing is not appropriate. It sends the message that the voice of hate speakers is worth more than that of minorities, and undervalues the dignity and social assurance of those minority groups as valued members of society.

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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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