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The Student and Alumni subseries forms part of the Victoria University of Wellington Legal Research Paper Series (VUWLRPS). For more information about both VUWLRPS and the Student and Alumni subseries, see "About this eJournal" near the end of this issue.

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LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES

VICTORIA UNIVERSITY OF WELLINGTON LEGAL RESEARCH PAPERS

"Should the Use of an Alternative Trial Process Preclude Referral Back to the Criminal Justice System? Consideration of One Aspect of the Law Commission's Proposal for Trial Process Reform in Cases of Sexual Offending"

Victoria University of Wellington Legal Research Paper Series, Student/Alumni Paper No. 16

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In its recent Issues Paper, *Alternative Pre-Trial and Trial Processes: Possible Reforms*, the New Zealand Law Commission proposed to make available some form of restorative justice process as a complete alternative to the criminal justice system in certain sexual offence cases. It also proposed that where an offender participates in an alternative process in good faith and fulfils all undertakings, the case cannot be referred back to the criminal justice system. This paper considers situations where alternative trial processes should be referred back to the criminal justice system and what should

happen to material disclosed during the alternative process if referral occurs.

If restorative processes are to be used as a complete alternative to the criminal justice system, there must be a "public safety override" which prioritises public safety over victim autonomy. This override will be applied by restorative justice providers, who will have the ability to refer cases back to the criminal justice system. If referral does occur, the content of the restorative proceedings should be privileged, and that privilege should belong to the offender. The fact of the offender's agreement to participate should also be privileged.

"Jurors on Trial: Lawyers Using the Internet to Research Prospective Jurors"

Victoria University of Wellington Legal Research Paper Series, Student/Alumni Paper No. 17

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This paper examines a practice underpinning the exercise of the peremptory right whereby lawyers use the internet to research prospective jurors with a view to challenge. Although it is unclear how common the practice is in New Zealand, the increasing availability of personal information online means that lawyers have a plethora of personal information about prospective jurors at their fingertips. Currently peremptory challenges are exercised in a discriminatory fashion on the basis of broad stereotypes. It is argued that pretrial research by lawyers on prospective jurors could secure a more impartial jury by providing a mechanism for uncovering attitudinal biases or predispositions of prospective jurors, meaning they will be exercised on the basis of stereotypes alone less often. Pretrial research by lawyers could also remedy the disparity of resources between prosecution and defence by providing an independent vehicle for obtaining information. This paper discusses the benefits of pretrial research of prospective jurors and argues that any drawbacks are limited. Potential guidelines for lawyers conducting pretrial research around the collection, use, retention and disclosure of information are proposed before concluding. This paper concludes that pretrial research of prospective jurors serves to protect, rather than undermine, the fundamental right of all parties to a fair trial.

"Pushing 'Pause' on Video Evidence: An Analysis of the Proposed Amendments to s 106 of the Evidence Act 2006"

Victoria University of Wellington Legal Research Paper Series, Student/Alumni Paper No. 18

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This paper assesses the ramifications of the Cabinet Social Policy Committees proposals contained in the paper Amendments to the Evidence Act 2006. The Committee proposed a change to s 106 of the Evidence Act, which currently lies in favour of full disclosure of video evidence to the defence. The proposed amendments will reverse this presumption, ultimately restricting the defence's access to the complainants video evidence. This paper will assess the validity and practicality of these proposed amendments, by assessing whether they are consistent with the New Zealand Bill of Rights Act, the equality of arms doctrine and international case law. Although the proposed amendments were made to protect vulnerable complainants, attrition rates in New Zealand show that vulnerable witnesses do not drop out of the criminal justice system just because they are fearful about their video evidence being disclosed. The attrition rates are more complex. However, this paper argues that there are still adequate safeguards in place to protect the defence's right to a fair trial. Whilst these safeguards hold fast, any effort to protect vulnerable victims should be encouraged.

"At Face Value : Should a Jury Warning About the Risks of Assessing Credibility from Demeanour Be Mandatory In Criminal Jury Trials ?"

Victoria University of Wellington Legal Research Paper Series, Student/Alumni Paper No. 19

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In *E (CA799/2012) v R* [2013] NZCA 678 the Court of Appeal directly confronted the issue of whether demeanour warnings should be required in all criminal jury trials. Such a warning would alert a jury to the risks of using demeanour to assess credibility. While science has shown that demeanour is an unreliable tool for assessing credibility, the Court decided that a demeanour warning was not always required. As such, the law appears to be out of step with contemporary science. This article contrasts the traditional approach to the usefulness of demeanour evidence in criminal jury trials with a more modern understanding of its actual usefulness. Drawing on both social science and case authorities, this paper will critically evaluate the Court's approach to this issue. The conclusion is reached that a demeanour warning actually should be mandatory in all criminal jury trials.

About this eJournal

Victoria University of Wellington Legal Research Papers 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 Legal 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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