LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES
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Announcements

Victoria University of Wellington Student and Alumni Subseries Issue V: Sentencing

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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"When the Company Causes Harm: Effective Corporate Sentencing in a Justice System Based on Individual Fault"
Victoria University of Wellington Legal Research Paper Series, Student/Alumni Paper No. 20

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The imposition of corporate liability is problematic in terms of both conviction and sentencing. Once convicted, it is still difficult to effectively sanction a corporation, as the artificial nature of the entity means it cannot be imprisoned. This problem is illustrated by the Pike River disaster and the relevant corporation's conviction for nine health and safety offences. In that case, the defendant was insolvent, so no effective financial penalty could be imposed. This paper will consider the range of sanctions that could be used to effectively punish a guilty corporate defendant. A starting point for corporate sentencing would be the imposition of a financial penalty (both reparation orders and fines). However, if the

company is insolvent, this may be ineffective. There are several mechanisms which could be used to overcome the issue of insolvency, but the court should also consider various non-financial penalties and the imposition of sanctions against individuals. The court may be able to adequately punish a company if a variety of penalties is used.

"R V Cunnard: Judicial Application and Expansion of Section 102 of the Sentencing Act 2002"
Victoria University of Wellington Legal Research Paper Series, Student/Alumni Paper No. 21

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Section 102 of the Sentencing Act 2002 gives judges' only limited discretion when sentencing for stage-1 murder: the discretion to rebut the presumption of life imprisonment in circumstances where the sentence would otherwise be "manifestly unjust". This is a high threshold, and the Court of Appeal has said that it will be met only in exceptional cases. The judgment in R v Cunnard is the first time that a person who derived their conviction of murder from a principal offender has had the presumption displaced, and this essay explores whether or not this decision has lowered the threshold to establish manifest injustice. Although Miller J's judgment conforms to the common features that exist in the few cases where the presumption has been successfully displaced, it is not without criticism. There are issues as to whether an overall assessment of the circumstances of the offence and the offender were made, as well as significant concerns regarding the emphasis the judge placed on sentence parity between co-offenders.

"Judicial Infringement of the Right to Internet Access by the Imposition of Special Sentencing Conditions"
Victoria University of Wellington Legal Research Paper Series, Student/Alumni Paper No. 22

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Section 14 of the Bill of Rights Act extends to protect internet access within New Zealand as a means of expression. Judicial restriction of internet access via the imposition of special conditions during sentencing is therefore an infringement of s 14. This interpretation of s 14 is consistent with its purpose, legislative history, and the broad approach afforded to human rights generally, as well as international case law and statutes. Any imposition of special conditions restricting internet access must be a demonstrably justifiable limit per s 5 of the Bill of Rights Act to be legitimate. The practical considerations of such a technological limit also warrant judicial consideration before it is imposed. As yet, New Zealand has no explicit protection of internet access but growing acceptance of its importance indicates that reform or judicial acknowledgement are, or soon will be, required.

"R v Mika: An Investigation into the Court of Appeal's Neglect of s 27 of the Sentencing Act 2002"
Victoria University of Wellington Legal Research Paper Series, Student/Alumni Paper No. 23

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The Court of Appeal in the case of R v Mika failed to engage with section 27 of the Sentencing Act 2002 in dismissing Mr Mika's appeal against his sentence. In both the High Court and Court of Appeal the focus was on Mr Mika's argument for a discount of 10 per cent to be applied to his sentence to reflect his Māori heritage and associated social disadvantages. Section 27 of the Sentencing Act would allow a court to take into account cultural information regarding Maori offenders' backgrounds and the systemic disadvantages stemming from this. In dismissing Mika's appeal, the Court erred in not considering the clear signals from Parliament that the judiciary were to take into account Maori offenders' backgrounds at the sentencing stage through s 27 in an effort to fit appropriate sentences to Maori offenders. Recent developments in Canada have seen the Canadian judiciary recognise their role in the over-representation of Aboriginal people in the Canadian prison population. The New Zealand judiciary can take lessons from the willingness of the Canadian judiciary to take cultural information into account at sentencing.
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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 Massachussetts 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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