

ALORA JOHNSON, ASSISTANT EDITOR

LLB Student, Victoria University of Wellington, Students

MĀMARI STEPHENS, EDITOR

Senior Lecturer of Law, Victoria University of Wellington

[Browse ALL abstracts for this journal](#)

[Links: Subscribe ~ Unsubscribe](#) | [Distribution](#) | [Network Directors](#) | [Submit ~ Revise Your Papers](#)

Announcements

Victoria University of Wellington Student and Alumni Subseries Issue XIII: Protecting Human Rights

'Protecting Human Rights' is the fifth in 2016 of several issues of the Student and Alumni sub-Series of the VUW Legal Research Papers. The Student and Alumni sub-Series was launched in 2015. It publishes a selection of honours and postgraduate papers from Victoria University of Wellington Law School. The sub-Series includes both general and thematic issues.

Table of Contents

The Person Who Really Loves Me Will Be the One Who Helps Me Die: A Critique of Seales v Attorney-General

[Louise Grey](#), Victoria University of Wellington, Faculty of Law, Students

Religious Vilification Laws in New Zealand: Should the Freedom of Expression Be Taken as Gospel?

[Fran Barber](#), Victoria University of Wellington, Faculty of Law, Students

A Decay of Rights: The Decision in New Health New Zealand Inc v South Taranaki District Council

[Rose Goss](#), Victoria University of Wellington, Faculty of Law, Student

All Smoke and Mirrors? The Taylor Litigation and Issues Surrounding the Smoking Ban in New Zealand Prisons

[Caitlin Olsen](#), Victoria University of Wellington, Faculty of Law, Students

The Limits of Free Speech: Democratic Legitimacy in Canada and New Zealand

[Alexander Winsley](#), Victoria University of Wellington, Faculty of Law, Students

Public Nudity and the Right to Freedom of Expression: Balancing Competing Interests

[Laura Lincoln](#), Victoria University of Wellington, Faculty of Law, Students

Protest at Sea: An Analysis of the Crown Minerals Amendment Act 2013

[Matthew McMenemy](#), Victoria University of Wellington, Faculty of Law, Students

[^top](#)

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

"The Person Who Really Loves Me Will Be the One Who Helps Me Die: A Critique of Seales v Attorney-General"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 21/2016

LOUISE GREY, Victoria University of Wellington, Faculty of Law, Students

Email: louise.grey93@gmail.com

Euthanasia is a deeply personal and multifaceted topic that has become increasingly relevant in contemporary society. New Zealand's stance on the practice of assisted dying was unsuccessfully challenged in *Seales v Attorney-General*. This paper critically evaluates the foundations of that decision, applying the *R v Hansen* majority test for interpreting legislation that appears inconsistent with the New Zealand Bill of Rights Act 1990. The right to life bears a broad meaning capable of including a right to die; furthermore the rights methodology adopted is out of step with New Zealand case law and commentary. The purpose of criminalising assisted suicide is attainable through regulating euthanasia, and an alternative reading was, at a stretch, tenable. This paper argues that the criminalisation of assisted suicide is inconsistent with the right to life, so a declaration of inconsistency was an appropriate remedy, if not a strained reading of the Crimes Act 1961 excluding euthanasia from the scope of suicide. Although lacking in legal significance, the decision's enduring importance lies in provoking discussion and potential reform. Future developments in this area will be watched with interest; *Seales* is undoubtedly not the end of the story but rather the beginning of a wider social conversation.

"Religious Vilification Laws in New Zealand: Should the Freedom of Expression Be Taken as Gospel?"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 22/2016

FRAN BARBER, Victoria University of Wellington, Faculty of Law, Students

Email: barberfran@myvuw.ac.nz

With ever-increasing multiculturalism and diversity within New Zealand, this paper explores the potential for religious vilification laws to be passed in order to promote community tolerance. New Zealand's Human Rights Act 1993 includes both civil and criminal offences for the incitement of hostility on the grounds of race. There is no commensurate provision protecting religion. This paper considers the harm that religious vilification laws seek to remedy, and whether their efficacy in preventing this harm is proportionate to the incursion upon the freedom of expression. Ultimately, it suggests that while there are real harms associated with religious hate speech, the adversarial legal system is a flawed instrument through which to deal with it.

"A Decay of Rights: The Decision in *New Health New Zealand Inc v South Taranaki District Council*"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 23/2016

ROSE GOSS, Victoria University of Wellington, Faculty of Law, Student

Email: rosegoss61@hotmail.com

The decision in *New Health New Zealand Inc v South Taranaki District Council* is the most recent legal development in the New Zealand debate about fluoridation of public water supplies. That decision centred on the interpretation of section 11 of the New Zealand Bill of Rights Act, the right to refuse medical treatment. The Court held that the fluoridation in question was legal, and reached a limited definition of medical treatment that did not encompass fluoridation. This paper analyses the reasoning leading to that interpretation, concluding that the decision is problematic and that the definition of s 11 needs to be remedied. The use of the wording of s 11 to limit the definition of medical treatment was inappropriate, as was the policy reasoning used to support that limitation. The structure of reasoning followed exacerbated these issues and adhered too closely to the reasoning in United States cases. Furthermore, the application of a *de minimis* threshold was conducted without adequate scrutiny, and such a threshold should not be applied to s 11.

"All Smoke and Mirrors? The Taylor Litigation and Issues Surrounding the Smoking Ban in New Zealand Prisons"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 24/2016

CAITLIN OLSEN, Victoria University of Wellington, Faculty of Law, Students

Email: caitlin.o.olsen@gmail.com

A 2005 prisoner health survey found that almost three quarters of the New Zealand prison population identified as smokers. Tobacco was deeply engrained in prison culture and smoking was viewed as an aid for managing the stress and boredom associated with prison life. The Department of Corrections implemented a policy on 1 July 2011, banning smoking in all areas of all prisons in New Zealand. The policy aimed to improve the long-term health of prisoners, and create a healthier workplace environment. Arthur Taylor, a notorious and litigious criminal, successfully challenged the delegated legislation implementing the policy by way of judicial review. This paper argues that the judicial reasoning was flawed, as it was based on erroneous assumptions without a thorough assessment and interpretation of the legislative history. Despite Taylor's successful claims, the smoking ban was then

incorporated into primary legislation. This paper examines the method of implementation, finding issues with retrospective and privative clauses introduced by a late stage supplementary order paper. Prisoners are a group especially vulnerable to curtailment of rights and freedoms, and this paper concludes that removal of the freedom to smoke in prison cells and outside in prison yards was a step too far.

"The Limits of Free Speech: Democratic Legitimacy in Canada and New Zealand"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 25/2016

ALEXANDER WINSLEY, Victoria University of Wellington, Faculty of Law, Students
Email: alexwinsley@hotmail.com

This paper explores the balancing act between freedom of expression and hate speech. It takes its cue from a recent dialogue between Ronald Dworkin and Jeremy Waldron concerning democratic legitimacy. This dialogue forms the conceptual starting point for the paper, and a detailed analysis of democratic principles will follow. Robert Post's participatory theory of democracy is critiqued, and his recent conversion to democratic relativism is analysed. The operation of hate speech laws in Canada and New Zealand will both be assessed in order to see how both of these countries treat the issue of democratic legitimacy.

"Public Nudity and the Right to Freedom of Expression: Balancing Competing Interests"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 26/2016

LAURA LINCOLN, Victoria University of Wellington, Faculty of Law, Students
Email: laura.lincoln@hotmail.com

With little case law concerning nudity and the right to freedom of expression, this paper aims to uncover the appropriate frameworks to be used to determine the following questions: (a) when is public nudity "expression" for the purposes of s 14 of the New Zealand Bill of Rights Act 1990, and (b) in what circumstances involving "expressive" public nudity would it be reasonable and demonstrably justifiable to limit the right to freedom of expression using s 4(1)(a), as per s 5 of the Bill of Rights Act? As regards the first of these questions, this paper critiques the current test in use in New Zealand for determining whether conduct is expression – the test developed by the Canadian Supreme Court in *Irwin Toy Ltd v Attorney-General (Quebec)* – and advocates for the adoption of a purposive approach to determining the scope of the right to freedom of expression. As for the second of these questions, this paper advocates for the adoption of "the modified Hansen sequence" proposed by Professor Claudia Geiringer. This paper then uses recent examples of public nudity involving naturists and protestors to test these frameworks and to illustrate how they would operate in practice.

"Protest at Sea: An Analysis of the Crown Minerals Amendment Act 2013"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 27/2016

MATTHEW MCMENAMIN, Victoria University of Wellington, Faculty of Law, Students
Email: be-sf@hotmail.com

This paper examines the criminal offences introduced under the Crown Minerals Amendment Act 2013 in response to direct action protest at sea. These offences have proved controversial as they restrict fundamental protest rights and purport to apply in respect of foreign vessels beyond New Zealand's territory. This paper advances two central propositions in relation to these offences. First, the prescription and enforcement of the offences is permitted under the jurisdiction accorded to New Zealand at international law. Second, the limitations placed upon protest rights are justified in accordance with s 5 of the New Zealand Bill of Rights Act 1990.

[^top](#)

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.

Submissions

To submit your research to SSRN, sign in to the [SSRN User Headquarters](#), click the My Papers link on left menu and then the Start New Submission button at top of page.

Distribution Services

If your organization is interested in increasing readership for its research by starting a Research Paper Series, or sponsoring a Subject Matter eJournal, please email: RPS@SSRN.com

Distributed by

Legal Scholarship Network (LSN), a division of Social Science Electronic Publishing (SSEP) and Social Science Research Network (SSRN)

Directors

LAW SCHOOL RESEARCH PAPERS - LEGAL STUDIES

BERNARD S. BLACK

Northwestern University - Pritzker School of Law, Northwestern University - Kellogg School of Management, European Corporate Governance Institute (ECGI)

Email: bblack@northwestern.edu

RONALD J. GILSON

Stanford Law School, Columbia Law School, European Corporate Governance Institute (ECGI)

Email: rgilson@leland.stanford.edu

Please contact us at the above addresses with your comments, questions or suggestions for LSN-LEG.

[^top](#)

Subscription Management

You can change your journal subscriptions by logging into **SSRN User HQ**. If you have questions or problems with this process, please email Support@SSRN.com or call 877-SSRNHelp (877.777.6435 or 585.442.8170). Outside of the United States, call 00+1+585+4428170.

Site Subscription Membership

Many university departments and other institutions have purchased site subscriptions covering all of the eJournals in a particular network. If you want to subscribe to any of the SSRN eJournals, you may be able to do so without charge by first checking to see if your institution currently has a site subscription.

To do this please click on any of the following URLs. Instructions for joining the site are included on these pages.

[Accounting Research Network](#)

[Cognitive Science Network](#)

[Corporate Governance Network](#)

[Economics Research Network](#)

[Entrepreneurship Research & Policy Network](#)

[Financial Economics Network](#)

[Health Economics Network](#)

[Information Systems & eBusiness Network](#)

[Legal Scholarship Network](#)

[Management Research Network](#)

[Political Science Network](#)

[Social Insurance Research Network](#)

[Classics Research Network](#)

[English & American Literature Research Network](#)

[Philosophy Research Network](#)

If your institution or department is not listed as a site, we would be happy to work with you to set one up. Please contact site@ssrn.com for more information.

Individual Membership (for those not covered by a site subscription)

Join a site subscription, request a trial subscription, or purchase a subscription within the SSRN User Headquarters: <http://www.ssrn.com/subscribe>

Financial Hardship

If you are undergoing financial hardship and believe you cannot pay for an eJournal, please send a detailed explanation to Subscribe@SSRN.com

[^top](#)

To ensure delivery of this eJournal, please add **LSN@publish.ssrn.com (Stephens/Johnson)** to your email contact list. If you are missing an issue or are having any problems with your subscription, please Email Support@ssrn.com or call 877-SSRNHELP (877.777.6435 or 585.442.8170).

FORWARDING & REDISTRIBUTION

Subscriptions to the journal are for single users. You may forward a particular eJournal issue, or an excerpt from an issue, to an individual or individuals who might be interested in it. It is a violation of copyright to redistribute this eJournal on a recurring basis to another person or persons, without the

permission of Social Science Electronic Publishing, Inc. For information about individual subscriptions and site subscriptions, please contact us at Site@SSRN.com

[^top](#)

Copyright © 2016 Social Science Electronic Publishing, Inc. All Rights Reserved