

NINA OPACIC, ASSISTANT EDITOR

Victoria University of Wellington - Faculty of Law
nina.opacic@live.com

JOHN PREBBLE QC, EDITOR

Professor of Law, Victoria University of Wellington - Faculty of Law, Gastprofessor, Institut für Österreichisches und Internationales Steuerrecht, Wirtschaftsuniversität Wien, Adjunct Professor of Law, University of Notre Dame Australia - School of Law
john.prebble@vuw.ac.nz

[Browse ALL abstracts for this journal](#)

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

Announcements

Law and Sexuality: Papers by Elisabeth McDonald, Associate Professor of Law Victoria University of Wellington

Table of Contents

Provoking Law Reform: Feminism, Queer Theory and the Legislative Agenda

[Elisabeth McDonald](#), Victoria University of Wellington - Faculty of Law

Response to Mark Masterson: Gender Conforming Bodies: Consent, Sexuality and the Criminal Law

[Elisabeth McDonald](#), Victoria University of Wellington - Faculty of Law

No Straight Answer: Homophobia as Both an Aggravating and Mitigating Factor in New Zealand Homicide Cases

[Elisabeth McDonald](#), Victoria University of Wellington - Faculty of Law

Discrimination and Trans People: The Abandoned Proposal to Amend the Human Rights Act 1993

[Elisabeth McDonald](#), Victoria University of Wellington - Faculty of Law

Her Sexuality as Indicative of His Innocence: The Operation of New Zealand's 'Rape Shield' Provision

[Elisabeth McDonald](#), Victoria University of Wellington - Faculty of Law

[^top](#)

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

"Provoking Law Reform: Feminism, Queer Theory and the Legislative Agenda"

Claire Charters and Dean R Knight (eds) We, The People(s): Participation in Governance (Victoria University Press and NZCPL, Wellington, 2011) pp 237-257

Victoria University of Wellington Legal Research Paper No. 137

ELISABETH MCDONALD, Victoria University of Wellington - Faculty of Law

Email: Elisabeth.McDonald@vuw.ac.nz

This chapter uses the abolition of the partial defence of provocation as a case study to illustrate the impact (or not) of two particular non-dominant groups in law reform. There is a discussion on the number of elements that need to be present for effective law reform to occur, and a conclusion that a number of these will not usually be present with regard to issues that are identified as significant for feminists or members of the GBLT community. There is also a consideration of the author's own experience with regard to other lobbying efforts, with a conclusion that hard cases may be required to

achieve law reform, especially with regard to concerns identified by non-dominant groups.

"Response to Mark Masterson: Gender Conforming Bodies: Consent, Sexuality and the Criminal Law"

Michael Hemmingsen and J L Shaw (eds) Meaning and Identity: An Interdisciplinary Perspective (Society for Philosophy and Culture, Wellington, 2013) pp 177-192

Victoria University of Wellington Legal Research Paper No. 138

ELISABETH MCDONALD, Victoria University of Wellington - Faculty of Law

Email: Elisabeth.McDonald@vuw.ac.nz

In response to Mark Masterson's piece, this chapter considers the practice of gender assignment surgery and its impact on sex and gender, while also questioning New Zealand's cultural and specific criminalisation of genital surgery. The difference between intersexuals and transsexuals is explored, along with the historical assertions that have been made in regards to treatment of intersexual infants and how these assertions have been challenged. The chapter then focuses on the psychological well being of those who did and those who did not receive surgery. There is particular focus on New Zealand's legislation of specific cultural values, which tends to enforce one cultural perspective over another. Finally, the chapter concludes that a healthy post-surgical sex life should be a recognised legitimate aim.

"No Straight Answer: Homophobia as Both an Aggravating and Mitigating Factor in New Zealand Homicide Cases"

Elisabeth McDonald "No Straight Answer: Homophobia as Both an Aggravating and Mitigating Factor in New Zealand Homicide Cases" VUWLR 37(2) (2006) pp 223-248.

Victoria University of Wellington Legal Research Paper No. 139

ELISABETH MCDONALD, Victoria University of Wellington - Faculty of Law

Email: Elisabeth.McDonald@vuw.ac.nz

This article discusses recent New Zealand homicide cases in which male defendants have sought to rely on the partial defence of provocation to excuse the killing of a man who allegedly made them the subject of unwanted sexual advances. The author argues that at least in cases in which such claims are unsuccessful, reference should be made to section (9)(1)(h) of the Sentencing Act 2002, which renders homophobia an aggravating feature in sentencing. To the extent that section 9(1)(h) is not relied on, while provocation is successfully pleaded in some cases, the author concludes that gay male citizens are not afforded equal protection under the criminal law.

"Discrimination and Trans People: The Abandoned Proposal to Amend the Human Rights Act 1993"

Vol 5 NZJPIL, pp 301-316, 2007

Victoria University of Wellington Legal Research Paper No. 140

ELISABETH MCDONALD, Victoria University of Wellington - Faculty of Law

Email: Elisabeth.McDonald@vuw.ac.nz

The trans community debate concerning the application of section 21 of the Human Rights Act 1993 to trans people became public when the Human Rights (Gender Identity) Amendment Bill 2004 was selected from the legislative ballot. The Bill proposed to amend section 21 to include gender identity as a prohibited ground of discrimination. Before the Bill received its first reading, however, it was withdrawn by its proponent, on the grounds that an opinion from the Crown Law Office concluded that such an amendment was unnecessary as trans people could well be covered by the existing prohibited ground of "sex" in section 21. In this comment, the author questions the conclusion of the Crown Law opinion and argues that an amendment is still required in order to protect the trans community from discrimination.

"Her Sexuality as Indicative of His Innocence: The Operation of New Zealand's 'Rape Shield' Provision"

Criminal Law Journal V 18 No 6

Victoria University of Wellington Legal Research Paper No. 141

ELISABETH MCDONALD, Victoria University of Wellington - Faculty of Law

Email: Elisabeth.McDonald@vuw.ac.nz

This article examines the judicial interpretation of section 23A of the Evidence Act 1908 (New Zealand) since the 1985 legislative reforms of rape law and procedure. The author argues that some of the

decisions concerning the admissibility of sexual history evidence may still be informed by traditional views of women's sexuality and credibility. The article concludes that it is now appropriate to ask the judiciary to counter rape myths.

[^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

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](#)

Links: [Subscribe to Journal](#) | [Unsubscribe from Journal](#) | [Join Site Subscription](#) | [Financial Hardship](#)

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 (Prebble/Opacic)** 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