

Eden Crescent

FACULTY OF LAW ANNUAL 2014

**The Law School Farewells
Nin Tomas and Others**

**Khylee Quince: National
Tertiary Teaching Excellence
Award Winner**

**Student Mooting
Thrives**

 **THE UNIVERSITY
OF AUCKLAND**

NEW ZEALAND

Te Whare Wānanga o Tāmaki Makaurau



Eden Crescent

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From the Dean

2014 has been a busy and successful year for staff and students. Auckland has again done extremely well in law student competitions, including reaching the quarter-finals of the Vis International Commercial Arbitration Moot in Vienna (competing against 300 other universities), the quarter-finals of the International Chamber of Commerce International Mediation Competition in Paris, and the semi-finals of the International Client Consultation Competition in Puerto Rico. Earlier this year an Auckland Law School Mooting Society was established. Over 400 students joined and have participated in its programme of seminars, competitions and social events. At the recent New Zealand Law Students' Association Championships we again won the President's Shield for the top law school and Auckland will represent New Zealand at the Jessup Moot Competition in Washington DC for the seventh time in the last eight years.

As you will see in the magazine, we are continuing to provide more opportunities for our top students. Last year I signed student exchange agreements with five of the best law schools in China. Our first students have now arrived from Tsinghua and Renmin Universities in Beijing. The increasing importance of links with China for New Zealand companies and law firms means that the Auckland students who spend a semester studying in Beijing and Shanghai will benefit considerably from learning about Chinese law and practice at the very best Chinese law schools.

During the last year the Faculty has hosted visits from a range of distinguished visitors, judges and public officials, including the former Prime Minister, Helen Clark, the President of the Special Tribunal for Lebanon, Sir David Baragwanath, this year's Cameron Fellow, Professor Stephen Bainbridge (University of California, Los Angeles) and the 2014 Legal Research Foundation Visiting Scholar, Professor Joe McCahery (Tilburg and Amsterdam Universities). We have celebrated Paul Rishworth being made a QC and Khylee Quince winning a national tertiary teaching award.

The Law School has hosted major conferences on capital gains taxes, corporate ownership and control, and the first ten years of New Zealand's Supreme Court. Caroline Foster and David Williams have both won prestigious Marsden Awards. The Auckland Law School won two of the four New Zealand Legal Writing Awards. Peter Devonshire was the joint winner of the JR Northey Memorial Book Award for his book *Account of Profits*.

In February this year we were deeply saddened by the death of Faculty member Nin Tomas. Nin was someone who was committed to making a difference in the law, for Māori, and in the lives of her students. She was always enthusiastic and passionate about her teaching and her research. Nin had a big heart. She was direct, straight forward and said what she thought. She was unafraid to speak truth to power and to speak up for those who needed it. Her courage and tenacity were no less evident as she fought against her final illness.

Former Faculty members George Hinde and Pam Ringwood also died during 2014. Like Nin, they will be greatly missed by staff in the Law School and by the students they taught, inspired and mentored.

My thanks to all alumni who have sent their condolences. The Faculty and I are extremely grateful for all the support we continue to receive from alumni and friends of the Law School. This has enabled new scholarships to be established, including for the best new LLM students and, in the case of the Moana Schwalger Memorial Pasifika Scholarship, to encourage postgraduate study by Pacific Island law students. The generosity of alumni has allowed us to establish the John Haigh QC Memorial Moot Competition, which was held for the first time this year with 32 teams competing. We are grateful to everyone who has helped adjudicate our competitions and has supported our major events. This has been a very successful year for the Law School, as can be seen in the pages of the magazine, and the support given by our alumni has contributed to this.

Andrew Stockley
Dean of Law

Farewell to Nin Tomas



This year we laid to rest our Whaea Nin Tomas. Nin was born Violet Cecilia, but has always been known as Nin, in reference to her love of a whānau swimming hole known as “te puna o nini”. She was of the Rapihana whānau of Te Uri o Hina, a hapu of Te Rarawa, with other links to Lake Ohia and also our shared whakapapa through the Leef/Moetara line of Ngāti Korokoro in South Hokianga. Nin was sent to convent school in Auckland, then attended her beloved Queen Vic. She came to university as a young mother to Inia, and quickly shone as a student in Māori Studies, where she tutored. Nin went on to study law, where she excelled in contract, and became a protégée (and later close friend) of Professor Brian Coote. Nin was recruited by the Faculty immediately upon her graduation in 1992, becoming only the second Māori member of staff, following the brief but influential stay of Ani Mikaere.

Nin’s vision for the Law School was to provide a space for Māori legal thinking, teaching and research. She also brought Māori people to the law - as students and manuhiri and as members of the community - to be consulted in times of review or for new proposals. She certainly made significant progress towards these goals during her 22 years with the Faculty. Many of the things now institutionally ingrained in the Faculty and degree programme are the product of Nin’s determination (ie Tarara stubbornness). These include the presence of Māori focused electives such as Māori Land Law, Contemporary Tiriti Issues and Comparative Indigenous Rights; and the inclusion of Māori content in compulsory courses such as Public Law, Land Law and Jurisprudence. Under Nin’s leadership, the Māori

Academic Programme was founded and developed - a programme based upon fundamental tikanga principles of whanaungatanga, manaakitanga and utu. She placed these principles and Waipapa marae at the centre of our consciousness as Māori law students and her belief in this kaupapa was unwavering. The programme instituted by Nin formed the basis of the Tuākana programme rolled out across the entire university some years later.

Nin’s research had both national and international impact. She was the first Māori to earn a PhD in law - and her thesis is an in-depth analysis of those fundamental principles of tikanga as a framework for Māori custom law. Over the years she forged many links with indigenous communities - from Turtle Island (North America), South America, Australia, Rapanui and the Saami peoples - sharing our tikanga and history with them and learning of their own customs and experiences. These relationships were often shared with us as members of Te Tai Haruru, so that our whānau of international indigenous legal scholars was ever-growing.

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On a more personal reflection, Nin was a complex and unique character. Often hilarious, with a cutting wit, her teaching was charismatic, unpredictable and inspiring. You always knew what she thought - she was uncompromising and fearless - certainly living up to the reputation of Te Rarawa as people without extreme. Although we had some major bust-ups over the past few years, we had many, many great times together. Nin was a hoot as a travelling companion. We travelled together to Hawaii, Samoa, Melbourne, Sydney, Brisbane, Byron Bay. The travel agent messed up our booking for Samoa and we were booked as “Mr and Mrs Quince” and put in the honeymoon suite - so I’ve never been married, but I’ve been on honeymoon - with Nin. She yelled at me that my short hair meant they must have thought we were a couple. LOL.

In 2000 we went to a conference in Byron Bay - and stayed for a week. Nin insisted on taking no cash and said that I was a fool for carrying money. She took only a credit card - a new one she got just for the trip. When we got to the airport she took out her old card and chopped it up with her scissors. When we got to Australia of course she realized that she had chopped up the brand new one - and had to rely on me for cash the whole week. After a memorable night drinking with our Abo mates from Southern Cross Uni we went “moon bathing” on the roof of their house in Nimbin.

Before another trip, Nin decided that she wanted a “tragedy photo” - to be pulled out and used in the media, should the occasion arise - such as a kidnapping for ransom, which would require a picture on the TV news (good luck to anyone who would try to kidnap Nin). She went to a professional photographer’s studio for a session, then brought the results into work for me to choose the best one. She then wrote out instructions about where the photo would be kept in her house, and I was under strict direction to go and retrieve it if necessary.

We would speak at conferences and sing terribly afterward (although lots of people loved it - foreigners are easily impressed like that). She loved meeting new people and experiencing new things - we went to an Elvis tribute show in Honolulu, a fa’afafine show in Apia (we got up on stage at both



Nin with Andrea Tunks



shows), and many concerts, plays and kapa haka festivals over the years. Nin loved a good project - she learned to paint, to do mosaic, to do DIY on her whare in Titirangi and her bach in Ahipara, to learn new languages (Croatian, Spanish, French). Nin always had to be doing something new - and she put her heart and soul into whatever her latest obsession was - saving Queen Vic, revamping tutorials, or working on a piece of research. I called this her Pet Project Syndrome. She would demand that you kōrero with her about her latest idea, whether you wanted to or not - which meant that we would sometimes sneak around the building to avoid being caught in a three hour conversation/debate about Hobbes' Leviathan or how tapu worked as a conceptual regulator of behaviour. She was brilliant, mad as a snake and often socially inept. Like another Violet of the north (the magnificent late kuia Waerete Norman), Nin could cut you dead with a single look over those over-sized glasses.

Nin and I co-taught - Māori Land Law (she kicked me out in 2002 as she said the students liked me too much and she didn't like that), and the Comparative Indigenous Rights Course. Some days we were like a Laurel and Hardy double act. One week we were on deck to present to all of the students in a live video link to Queensland, Oklahoma, Ottawa, and Saskatchewan - a basic intro to Māori legal concepts and the impact of the imposition of the common law. We decided to jazz it up by dressing up as genuine natives. We drew silly moko on our faces with eyeliner, wore huge plastic tikis, souvenir shop kowhaiwhai headbands, piupiu tied around our waists and tino rangatiratanga flags over our shoulders. We thought we were hilarious - and presented our material completely straight faced. At the end of three hours, our co-teacher in Saskatchewan said that he had a special visitor sitting in on the class (off camera). Just then his voice comes booming over the video-link - "kia ora kōrua - those are very interesting outfits you have on - is it a Northern thing?" It was Rongo Wetere - then the CEO of Te Wananga o Aotearoa, one of the high-flyers in Maori education circles. We did the Law School proud that day.

International visitors to the Law School always want the Māori experience - and Nin loved to meet and host them. We had a regular tour - take them up the maunga of central Tāmaki, to Orākei for a kōrero about Takaparawha and the occupation, out to Piha (stopping for fish and chips for lunch at the RSA) then for dinner on the waterfront. Blown away by her manaaki, many of these visitors extended invitations for reciprocal visits, which Nin often accepted.

I have many more memories of Nin as my teacher, colleague, sometimes-friend, whanaunga, mentor and regular pain in the neck. I loved her dearly, even when I didn't like her very much. She was certainly the taniwha of her longstanding reputation. But she was also big-hearted, passionate and constant in her drive and determination to provide a korowai of protection over us as Māori in the law school. Nin's professional legacy includes the many, many students (Māori and otherwise) who have been influenced and inspired by her, our support network for Māori students and her research. (Nin's whānau was especially impressed that several Pākehā students from her Legal Method class last semester came to Waipapa to pay their respects). She would say that her greatest achievement is her son Inia, now an emergency doctor, and her two beloved mokopuna, Te Moananuikiwa and Manawanui.



From left: Tim McBride, Nin Tomas and David Grinlinton

A very special mention should be made of Māori students Jeremy Hema, Jonaan McLeod and Emmeline Croft for their mahi during the tangi at Waipapa, and thanks to our colleagues Rosemary Tobin, Bruce Harris and Andrew Stockley for making the journey to Tai Tokerau for the tangi. Our TRT and Te Tai Haruru tawhito crew of myself, Andrea Tunks, Pierre Tohe, Kerensa Johnston, Sharon Toi and Tina Barclay gave Nin a good send-off, full of laughter, tears and reminiscing about our mate. The last night of a tangi is traditionally “open mike night” - a no holds-barred event where the good, the bad and the ugly of the guest of honour is shared. On this occasion we spoke of Nin and enjoyed each other’s company until nearly 2am.

It was a privilege to be with you on your final journey e hoa. We farewelled Nin from Te Rarawa marae on an extremely hot and sunny day, and she rests next to her sister and grandparents at Rangihaukaha urupa, where she has a magnificent view over her beloved Te Kohanga (Shipwreck Bay at the foot of Te Oneroa a Tōhē - Ninety Mile Beach).

E te wahine toa, moe mai rā, moe mai rā, moe mai rā e te rangatira. Haere ki te kainga o Te Rarawa. Haere ki te Rerenga Wairua, ki Hawaiki nui, Hawaiki roa, Hawaiki pāmamao. Haere ki te moenga roa i roto i te rangimārie o Te Atua.

█ Khylee Quince

Khylee Quince: National Tertiary Teaching Excellence Award Winner

Sustained excellence in tertiary teaching has earned Khylee Quince a national Tertiary Teaching Excellence Award. Khylee received one of the 12 annual awards (worth \$20,000 each) at a ceremony at Parliament to celebrate New Zealand’s finest tertiary teachers as recognised by their organisations, colleagues, learners and broader communities. Khylee’s citation describes her as the “real deal” – a teacher who is transformative, radical and supportive of learner empowerment and success.

WHAT MADE YOU DECIDE TO MAKE THE TRANSITION TO A LECTURER IN LAW?

I was asked back only two years after graduating by Nin Tomas, my former teacher and the senior Māori academic at the Faculty of Law at Auckland. Nin, who passed away in February of this year, was a formidable woman, and one who it was not easy to say no to. I was enjoying practice as a general litigator, but us Māori have a strong sense of obligation - and when Nin told me I was needed at the Law School, I came. So I was really “army volunteered” to become a lecturer.

WHAT DOES WINNING THE TERTIARY TEACHING EXCELLENCE AWARD MEAN TO YOU?

In some ways I’m *whakama* (shy/embarrassed) about it, as I know that so many of my colleagues are fantastic teachers, and I live in fear of being exposed as a fraud or imposter. On the other hand, I am proud to have won this as a member of Te Tai Haruru, the Māori academic staff of my Faculty, and particularly for our Māori students. We identify and operate as a family, so I see this recognition as affirming that philosophy and practice. I am also really pleased that teaching is recognised in a day and age where externally funded research, and its outputs, are the clear priority of our universities. I think that is a real shame, as teaching students remains the bread and butter of these institutions.





Khylee Quince and son Levi with Professor John Morrow

WHAT ARE SOME OF THE MAIN MESSAGES IN RELATION TO LAW THAT YOU TRY AND IMPRESS ON YOUR STUDENTS?

I think the teaching, learning and practice of law has this mystique around it, that perpetuates this myth of unattainability. This causes unnecessary stress and fear for students and for clients. I want to send the message that law is a human-science, and it should reflect the communities it serves. If it is not doing that, then I urge students to push its boundaries, be creative, argue for reform. In New Zealand, this means that we need to adapt the values, processes and practices of our common law heritage to construct a legal system that is "fit for purpose" for a multicultural nation that is respectful of Māori as tangata whenua in a globalised world.

HOW WOULD YOU DESCRIBE YOUR TEACHING STYLE?

I don't think I have any real tricks to my teaching. I speak plainly and clearly - I aim to challenge thinking and analysis without being pretentious. I like to be approachable, sharing myself, and stories of my life and family - so that students feel they know me and can relate to me on some level. I'm self-deprecating and love to tell a good story.

IN WHAT WAY DO YOU THINK THAT LAWYERS OF THE FUTURE WILL BE DIFFERENT FROM THE LAWYERS OF TODAY?

While the obvious answer might be to consider preparing lawyers for the global legal market, in many ways this only highlights the need to preserve what makes us unique as New Zealand lawyers. This will mean a new focus on Māori, and New Zealand's place in the Pacific. In addition, cost, convenience and public opinion will inevitably result in less adversarial court-centred justice, so lawyers will need to be skilled in other forms and processes of dispute resolution. This will include not only negotiation and mediation techniques, but a focus on the use of law as a therapeutic agent to address social problems. Lawyers often act like they are the most important people in the room - this new philosophy requires lawyers to be members of a team of professionals dedicated to solving problems.

IF YOU COULD INVITE THREE PEOPLE FOR DINNER, DEAD OR ALIVE AND EXCLUDING FAMILY AND FRIENDS, WHO WOULD THEY BE AND WHY?

Oooh that's a tough one. Luis Suarez, Jamie Lannister (I know he's not a real person, but I don't care), and Yoda (not a person at all).

WHAT'S THE BEST ADVICE YOU'VE EVER BEEN GIVEN (WORK OR PERSONAL)?

Be yourself - everyone else is taken.

WHAT DO YOU THINK WILL BE THE SINGLE BIGGEST ISSUE FACING THE LEGAL SPACE IN NEW ZEALAND IN 2014?

Protecting women and children from family and intimate partner violence.

IF YOU HAD JOHN KEY'S JOB FOR ONE DAY, WHAT WOULD YOU DO?

I would totally revamp our criminal justice system - to focus on responses that take restorative, rehabilitative and transformative approaches to address and repair harm and wrongdoing. I would pledge a lot of taxpayer money to facilities, programmes and interventions aimed at eliminating structural inequalities, particularly risk factors associated with social harm.

DO YOU HAVE ANY HOBBIES/INTERESTS OUTSIDE OF WORK?

Supporting my three children in their endeavours - I'm a shocking shouty sideline mum at soccer and netball and I make a mean Lego spaceship. I am a dedicated sports-fan, especially of my beloved Liverpool Football Club and the Warriors. I love television - including Game of Thrones, Dr Who and the Big Bang Theory and I support the global economy with a lot of online shopping.

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Appointments

Arie Rosen

The late great Ronald Dworkin of NYU Law School once said to John Gardner of Oxford University that he “thought that legal philosophy should be interesting”. The riposte was immediate: “Don’t you see” (said Gardner) “that’s your trouble!” Dr Arie Rosen, who joined us in January of 2014 from a post-doctoral position at NYU Law School, shares Dworkin’s “trouble”. He is deeply committed to making jurisprudence interesting to disciplines both more and less abstract than itself - as his Auckland students in Jurisprudence and Law and Society can readily attest. His work on legal authority, statutory interpretation and private law draws deeply on historical, empirical and theoretical sources. His reading is wide and deep and already he has stimulated and enriched academic debates in the law school with his incisive, critical intellect - all delivered with a disarming charm. Dr Rosen originally hails from Tel Aviv where he graduated with bachelor’s degrees in law (*magna cum laude*) and philosophy (*summa cum laude*) and was editor-in-chief of the *Tel Aviv University Law Review*. He completed his master of laws at NYU and went on to study for a JSD there under the supervision of Jeremy Waldron. In 2013 he held the Emile Noël Postdoctoral fellowship and was Associate Editor of the *International Journal of Constitutional Law*.



Arie comes with a stellar record from one of the very top law programmes in the world. We are thrilled to have been able to attract him to New Zealand and to Auckland and hope that he will thrive here. He is joined by his wife, Ayelete Zoran-Rosen, who is currently completing her doctorate in the Departments of History and Middle Eastern and Islamic Studies, NYU.

■ Janet McLean

Promotions

Michael Littlewood

Most of us academics champion the importance of our subjects, but no more ardent advocate for their subject can be found than Michael Littlewood in respect of his field of expertise - Taxation Law. It is, apparently, the foundation of modern civilisation. One has to report, however, that many well-ranked law schools around the Commonwealth, having either failed to grasp this powerful insight, or having had too much trouble recruiting good tax scholars away from practice, barely offer any tax teaching at all to their undergraduate students. Yet so effective has Michael’s advocacy for his subject been amongst Auckland’s undergraduate cohort that basic Taxation is now offered in two streams and he has a popular Advanced Tax elective as well. He has also had a remarkable procession of the Faculty’s very best students undertake research in the field. One of his former students (now based abroad, as the following spelling might suggest) attests to Michael’s rapport with his students as follows: “The only analog I can find for Michael’s talent in looking after his students is Felix Frankfurter during his years at Harvard”; legendary in other words. Michael’s excellent international links have been responsible for bringing to the Faculty some of the world’s most prominent tax lawyers to teach in our postgraduate programme. This is the sort of subject leadership that has helped to assure Michael his promotion to full professor this year.

But it is not only Michael’s strength as a teacher that has seen him elevated to professor. Few academics anywhere, let alone from New Zealand, have had their pure research draw the attention of the mass-circulation press, as Michael’s 2010 monograph, *Taxation Without Representation: the History of Hong Kong’s Troublingly Successful Tax System*, did to the *The Economist* and *Forbes* magazines. Eminent commentators described it as “a research masterpiece”, “a monumental masterpiece”, “seminal”, “fascinating”, “first rate”, “indispensable”, “engrossing”. Michael has also had many articles published in the premier tax journal, *British Tax Review*, and pieces in leading journals in the Commonwealth, including the *Law Quarterly Review*. His



book chapters have appeared alongside those of John Finnis of Oxford and Justice Heydon, then of the High Court of Australia. He also has research interests in legal history and in law and economics.

Michael’s strong links into tax practice and reform have seen him appointed as a consultant to the International Fiscal Association, and to major governmental agencies in the United States, the United Kingdom, China, Hong Kong, and New Zealand.

He is a graduate of the University of Auckland in Arts and Law, and undertook his PhD at the University of Hong Kong. Michael was on the staff of the City University of Hong Kong from 1989, and returned with his wife and two daughters in 2003 to become a strongly collegial member of the Law School here. He is a keen sailor, and it is therefore fitting that he is currently supervising a PhD student writing on the America’s Cup.

■ Peter Watts

Farewell to Pam Ringwood

Pam Ringwood, former senior lecturer, passed away peacefully in 2014. Pam was a member of the Auckland Law School for almost 30 years until her retirement in 1997. She is survived by her three children.

"I recall that Pam, who had particular interests in family law, was the first single person in New Zealand to be approved to adopt an unrelated child. This overcame a longstanding departmental policy that only married couples should adopt children," says Associate Professor Ken Palmer. In 1970 Pam adopted three children: Sharon, Mia and David. "Changing 40 nappies a day is one hell of a way to prove a point," she mused to an Australian journalist covering the ground-breaking story. "I have always liked children and I had the facilities and the opportunities to offer them."

Pam was born and raised in Australia. She was asked by the Universal House of Justice, the supreme governing body of the Baha'i Faith, to move to New Zealand in 1967 to assist the fledgling community. She was one of the Baha'i community's longest-serving, devoted members.

Here Pauline Tapp reminisces about Pam:



... she saw the people who family law impacted on as unique individuals, each in a specific family, cultural, social and economic context which had to be understood and respected by law makers and practitioners if the law was to be relevant.

News of Pam's death on 19 March this year led me to reflect on her influence on my development as a teacher, the style and purpose of family law teaching, and the ethos of the Law School from the 1970's until her retirement in 1997. I write in the hope that my personal memories of Pam will bring a smile to you as you remember her, her love of her children, her devotion to her many rescued dogs and her understanding of and compassion for all of humanity. You may also remember the chaos and laughter which so often accompanied Pam as she rushed into class, always with a broad smile, having dealt with at least one vehicle malfunction on her long trek in from the then muddy outback of Taupaki. You might smile when remembering the many ragged pieces of paper on which Pam had scrawled her class notes, her handwriting which climbed up the blackboard and her unusual spelling (a result of dyslexia).

When Pam arrived from Australia and joined the Faculty in 1975 she added a new dimension to the important "black letter law" foundation of family law teaching at Auckland which had been laid down by two founding "fathers", the highly respected late Professor Peter Sim and much loved Professor P R H (Dick) Webb. Pam's training in social work and sociology and her Baha'i faith meant she saw the people who family law impacted on as unique individuals, each in a specific family, cultural, social and economic context which had to be understood and respected by law makers and practitioners if the law was to be relevant. For Pam clients were definitely not the disembodied legal problems prescribed in statute and case law. In her teaching Pam introduced real life scenarios, the practical skills of interviewing, mediation and negotiation and multidisciplinary material. All of which are now seen as essential to the modern holistic, contextual approach to family law.

For me Pam's Australian sense of humour, her direct language (never used to harm or demean anyone) and her impatience with mindless bureaucracy, brought a delightful sense of the real world to the often stultifying and hide bound proceedings of the Faculty.

Pam was a very special person who made an important contribution to the development of family law in Aotearoa/New Zealand.

Just looking: The Trust Territory of Papua New Guinea 1968

Reading the records
I was staggered
at the number of natives
convicted
of the curtilage offence
(Peeping Toms to you).

Is it due
to cargo lust or carnal
curiosity?
(the latter is as hard
to contemplate
as would be most
Port Moresby mems-
grey-white of night
and rich in varicose).

For looking at indigenes
an anthropologist
receives a PhD.
But that's in rather
different vein.

By B.J.B.

Bernard says Pam quite liked this poem. She saw anthropology as essentially a voyeur occupation. In pre-independence New Guinea, Pam would decidedly not have been a mere observer while indigenous people got prosecuted for misinterpreted curiosity.

■ Pauline Tapp

Farewell to George Hinde

Many of our alumni will be sad to hear of the death of Professor George Hinde. Associate Professor Bernard Brown delivered the following tribute at his funeral service in October 2014:

"I am conscious that I am the fourth speaker. I can imagine what George's advice would have been to me as the fourth speaker:

Be succinct Bernard

Use plain English – for a change

Avoid repetition

I shall try to comply with the first two admonitions, but I make no apology for repetition. You know about George's great attributes - and you will have heard about them. His integrity, both personal and professional. His meticulous approach to every task. His caring for students and colleagues. His rigour in scholarship. I think repetition is best seen and heard as reinforcement and reaffirmation. I almost prefaced that remark with the word "however". Woe betide anyone starting a sentence with "however", for George was also a rigorous grammarian and stylist. If one heard a loud exclamation from George's office it was most probably that a colleague had committed the sin of starting a sentence with "however".

Very few law academics in New Zealand history have dominated their area of expertise as George has. His influence on students and practitioners over 50 years has been deep and far reaching - I would say monumental and the basis of a legend. George much admired his first Dean of Law - AG Davis and the admiration was reciprocated. George, according to AG Davis had come to him without Latin, but within one year - rather than the then usual three - he was fully competent in that discipline. Whatever the challenge George would respond with a devout focus and with all his attention. All his colleagues can testify to that. For they saw the years of toil which went into the compilation and the editing of the great text of *Land Law*. AG Davis was also impressed by George's organisational skills. Early in the 1960s there was a visit to the Law School by the then Dean of the Melbourne Law School, Zelman Cowan, who subsequently became Governor General of Australia. The schedule was calculated by George not to the minute, but to the second and it was executed in accordance with that measure. When about that time materials for the new legal system course needed to be prepared, they were prepared with wonderful detail and a minimum of fuss.

Bruce Tabb, who is here today, told me what a joy it was to deal with George on behalf of the Commerce Faculty. Bruce said that George was as straight as an arrow, totally relevant and thorough. That sentiment would also be echoed by the members of the Property Law and Equity Reform Committee, who sat with George through the 1970s. Not long after that decade of service, members of the governing party approached George hoping to attract him for selection to a Parliamentary seat. They were looking for a person of George's quality and legal experience. Had he decided to go ahead it is possible that George would have become associated with the Ministry of Justice. He would have been a force for reform - for careful reform, in the Ralph Hannan tradition. But George was no grandstander. He always stayed wary of the potential insolence of power. The 1970s in academia - and specifically the Law Faculty in Auckland - were testing times in that regard. George did not waver nor did he hesitate at any time to support any student or colleague in difficulty. I can testify that he crossed the globe on my behalf on a delicate mission discreetly and without my direct request. During the 1960s, George and I spent many evenings over a swift dinner in Lorne Street. Then we would repair to the Law School till 11 pm or later. George was a workaholic and he remained so. It was hard to keep up with him. Already, he had his Magnum Opus *Land Law* in his sight.



His teaching also embraced equity and tax and the ground-breaking legal system course with Nadia Tollemache. Many generations of students have benefited from the thoroughness of his teaching and his examining. There was not a word or a mark wasted or out of place. If you were sitting land law or equity you earned your pass - there was no bell curve to rescue you in those days.

On returning to Auckland in 1961 after a very good LLM at Melbourne, George was appointed senior lecturer. In the late 1960s there was a spell in Christchurch, and then he was appointed to a chair in Auckland. And after yeoman service in the authorship of legal texts, he was awarded the University's highest honour, the LLD by examination. No one made better use of sabbaticals than George. They were usually spent in London. They were divided between work, work, and work. Refreshment would come in the form of a newly discovered law library with a cache of Selden Society materials.

Very few law academics in New Zealand history have dominated their area of expertise as George has.

When George became a partner in a New Zealand law firm in the 1980s he farewelled his colleagues at Old Government House with a memorably laconic slideshow of the ups and downs of the Law School. I for one took it biblically and I decided I needed to spend at least another 40 days and 40 nights striving to be braver and to do better. After a brief spell in practice, George and Marion went to Queensland where George took up an appointment at Bond University. Bond was lucky and grateful to attract George and sad to lose him after some fruitful years. But the Australian sun was no friend to George's fair English complexion - not that George would go out of his way to test the Australian sun. I remember meeting with George at Bondi Beach in Sydney. He arrived in a three-piece suit. His only concession to the seaside venue was that his suit was blue.

George returned from Queensland to practice in High Street as a barrister and as an author, and two more editions of *Land Law*, and his new venture *Commercial Leases* duly appeared. It's not hard to calculate the magnitude of George's legacy to legal scholarship - it is monumental. In everything he wrote and taught, he examined the legal roots. Years before the great global debate about history teaching George reminded me over lunch at Tony's never to think of using history as a problem-solving device until every relevant fact was perfectly researched and ordered. George put more rigour into his footnotes than many modern authors put into their entire text. Everything George wrote or said was precisely accurate. There was hardly a throwaway comma or word, let alone a stray dog metaphor. Puns were encouraged, but they had to be very good. Of an outwardly serious mien George could be extremely amusing. On the word "however", George once remarked that sitting on two stools was little better than falling between them.

About many scholars and barristers it is said in cliché that we shall never see or know their like again. With regard to Professor George William Hinde, that is ever so precisely true. By Marion, George was loved as completely as she was loved by him. Their four decades together were a joy to them and to those who know them. Marion, our thoughts are with you. Rest well good George."

I Bernard Brown



Distinguished Alumni Award for Dr Julie Maxton

Dr Maxton was Professor of Law at Auckland from 1993 and Dean of the Faculty of Law from 2000. She left Auckland in 2006 to become Registrar at the University of Oxford, where she is now an Honorary Fellow of University College. Since 2011 Dr Maxton has been Executive Director of the Royal Society of London.

She was the first woman to hold each of these four roles - the first woman in 550 years in the case of Registrar at Oxford and the first woman director in 350 years at the Royal Society.

"It's important to do the very best you can and take opportunities as they come up," she says. In a way it's a bit like sport which has always been a big interest in my life. You keep doing your best in every part of the game, whether it is going well for you or not."

"I never set out to attain any institutional firsts, and I certainly would not like to be the last woman in any of the roles I have had," said Dr Julie Maxton, whose illustrious career has been recognised with a Distinguished Alumni Award from the University of Auckland.

Profession Honours a Legal and Literary Luminary



The life and times of Associate Professor Bernard Brown were celebrated at a dinner hosted by ADLSI at Auckland's Northern Club in October 2013. The great and the good of New Zealand's legal community were joined by a large number of Bernie Brown acolytes to honour the man whose sharp mind and devastating wit have made him everyone's favourite academic over many decades.

Among the key speakers were Peter Watts, Andrew Stockley and the Chief Justice, Dame Sian Elias. His Honour Judge Adams was one of several to read poetry.

Clearly not one to throw things away, Associate Professor Brown delighted the audience early on by presenting Dr Rodney Harrison QC with an exam paper from the late 1960s for which Dr Harrison had gained an A grade - to which he quipped, "I was wondering when I'd get this back". Associate Professor Brown rejoined immediately, "I was checking your footnotes".

Dr Harrison went on to deliver one of many warm and humorous speeches of the night, proving his 'A' was merited as he detailed the many intricacies of legal history as taught by the "somewhat dishevelled Englishman" who has entertained students at the University of Auckland for over 50 years with his "rich fund of embroidered whimsy".

Chief among the anecdotes were references to Associate Professor Brown's possibly apocryphal tales of pre-University life. He purported to have been at kindergarten with the Kray twins, whose later foray into crime is legendary. Dr Harrison reported: "Being bullied and tortured by the fledgling Krays is said by Bernard to have sparked his later interest in criminology." Associate Professor Brown was apparently also proud of telling how, as an RAF Legal Services Officer in Singapore, he had conducted 32 defences at Courts Martial, resulting in 32 convictions.

The evening continued in a convivial manner with poetry readings and the sort of revelry appropriate for a notorious bon viveur such as Bernie Brown.

This article originally appeared in LawNews in October 2013



From left: Susan Watson, Rohan Havelock and Andrew Stockley

Teaching Excellence Award for Rohan Havelock

Experimenting with innovative active learning techniques in his classes has contributed to Rohan Havelock's outstanding success as a teacher in the Faculty of Law.

Rohan was awarded this year's Teaching Excellence Award, a tribute to his willingness to try something new. He promotes direct interaction with students, using techniques such as group discussions, mini-debates and short quizzes and he is a proponent of problem-based learning.

He has used this to effect in his Contract and Insurance Law classes. He approached a major insurance company for permission to incorporate its policies in his Insurance Law casebook, enabling him to base practice questions on these policies. In requiring students to work through this material, Rohan fosters academic rigour in a real-world context.

Rohan joined the Faculty in January 2012 after practising in the commercial/litigation department of a major Auckland law firm. The teaching award therefore marks a significant achievement at this relatively early stage of his career.

He has achieved excellent student survey results, despite teaching two compulsory subjects for which there is initially perhaps less student enthusiasm. By way of example, in 2013, 100 percent of the students surveyed agreed or strongly agreed that Rohan was an effective lecturer in Contract and Insurance Law, and 98 percent agreed or strongly agreed in Equity.

One factor which may have contributed to Rohan's success was his completion, over two years, of the University's post-graduate Certificate in Academic Practice, offered by the Centre for Learning and Research in Higher Education (CLearR). This qualification is designed to provide University lecturers with a solid theoretical and practical grounding in higher education teaching, research productivity and academic citizenship. The course inspired Rohan to write an article: "Law Studies and Active Learning: Friends not Foes?" (2013) 47 *The Law Teacher* 382.

Rohan is to be congratulated on receiving the Teaching Excellence Award which is a fitting recognition of his achievements.

■ Peter Devonshire

Auckland Success in Legal Writing Awards

The Auckland Law School won two of the four Legal Research Foundation writing awards for 2013. Associate Professor Peter Devonshire's monograph *Account of Profits* was joint winner of the JF Northey Memorial Book Award for the best law book published in 2013. *Account of Profits* was praised by the judges as "an extremely clear and concise articulation of a particular area of law".

Auckland law student Fionna Cumming won the Post-Graduate Student Paper Award for her Master's paper *Mediation for International Environmental Dispute Resolution*. Fionna, a student in Senior Lecturer Nina Khouri's *Mediation LLM* intensive last year, won the award for her research paper for this course.

A new course, International Aviation Law, has been made possible through the sponsorship of Air New Zealand.

It is being taught by a Master's graduate of McGill University's Institute of Air and Space Law in Montreal, with guest lectures by Air New Zealand's corporate legal team. Air New Zealand's General Counsel John Blair says, "Aviation law is a great area of legal study, particularly for students aspiring to a highly rewarding international career." Dean Stockley says, "This course offers students an opportunity to develop life-long personal connections in the aviation industry." An added bonus is an Air New Zealand subject prize package for the best two students in the course, who will each receive two return economy airfares to any of the airline's destinations in New Zealand, Australia or the Pacific Islands.

Paul Rishworth Appointed QC

Professor Paul Rishworth was appointed a Queen's Counsel in 2014. Announcing the appointments, Attorney-General Chris Finlayson QC said that Paul: "had been appointed under the Royal prerogative in recognition of his extraordinary contribution to the law. This follows last year's appointment of his colleague Peter Watts QC and confirms the University of Auckland's reputation as a centre of excellence for public law."

At a Faculty function to celebrate the appointment, Paul paid tribute to his former teachers at the Law School. He said he had been privileged, especially, to be invited by colleagues in the profession to give advice in many cases over the years concerning the Bill of Rights, the Human Rights Act, and general public law.

Starting February 2015, Paul is to be a Senior Crown Counsel at Crown Law in Wellington. He will retain a fractional appointment at the Faculty (teaching, in September 2015, an LLM course on human rights jointly with Kate O'Regan, former Justice of the South African Constitutional Court).



NEW BOOKS

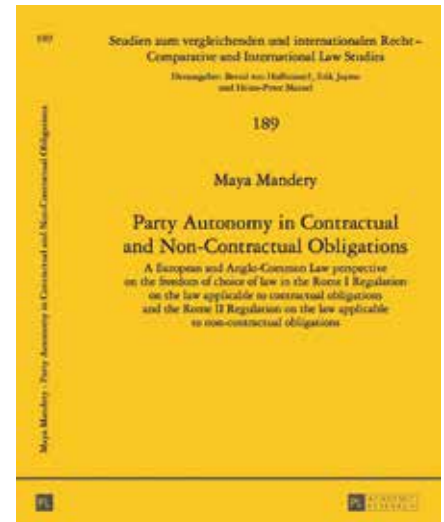
Maya Mandery, *Party Autonomy in Contractual and Non-Contractual Obligations: A European and Anglo-Common Law perspective on the freedom of choice of law in the Rome I Regulation on the law applicable to contractual obligations and the Rome II Regulation on the law applicable to non-contractual obligations*, Peter Lang Publishing Group, 2014

This book is the published version of Maya's PhD thesis, completed at the University of Cologne, and examines party autonomy (choosing the legal system that will govern a legal relationship) in contract and tort. It constitutes the most comprehensive analysis undertaken and makes a huge contribution to existing private international law scholarship in the area. For Anglo-Common Law researchers, this book provides a gateway to understanding the more advanced concept of party autonomy as it features in relevant EU Regulations.

The book follows an integrated method of analysis, comparing the provision for party autonomy in the Anglo-common law systems of New Zealand, Australia, Canada and Singapore. This is informed and enlightened by the preceding chapters in which German law and the EU Rome Regulations are critically examined. Bearing in mind that Germany is the cradle of modern private international law, the German part of this work is an indispensable prerequisite for any study in this area of the law.

The book covers choice of law in contract, the doctrine of the proper law, justification of party autonomy in the conflict of laws, the procedural treatment and application of foreign law in national courts, choice of law in tort and the double actionability rule, and provides a theoretical framework within which to develop the principle of party autonomy in tort in Anglo-Common Law systems.

■ Elsabe Schoeman



Alison Cleland and Khylee Quince, *Youth Justice in Aotearoa New Zealand: Law, Policy and Critique*, LexisNexis, 2014



From left: Khylee Quince, Judge Heemi Taumaumu and Alison Cleland

Youth Justice in Aotearoa New Zealand represents the culmination of several years researching, teaching, debating and refining their thinking about the youth justice system in New Zealand by Alison Cleland and Khylee Quince - and it provides students in their ground breaking course, Youth Justice, with a supporting text. However, the book will also appeal to judges, policy makers and professionals from all disciplines who engage with youth justice issues.

New Zealand's youth justice system is founded upon potentially conflicting values of welfare and justice - and this is reflected in both its specialised rules and procedures and also its flexibility, in providing for multiple pathways for young people who offend. This book provides a clear map through that system, as well as filling an important gap in the literature by providing critiques of the system from a Māori perspective and also through the international human rights lens. The authors locate the youth justice system within the larger historical and political context of Māori as key stakeholders - documenting Māori engagement with, and challenges to, the concepts that underpin the system and the authority that animates it. In addition, the book evaluates the New Zealand system against our obligations at international law - both the specific instruments relating to youth justice, and also broader duties owed to children, young people and offenders.

The opening and concluding chapters provide the framework for the book. This is an assessment as to whether the youth justice system in New Zealand is "fit for purpose" - using the values and principles set out in international human rights instruments and the Treaty of Waitangi, as well as Māori models of health and wellbeing. The book does not provide a simple answer - noting strengths, synchronicities and promising developments, as well as paradoxes and failures.

Contributing to New Zealand's Constitutional Debates

A \$700,000 Marsden Fund grant has been awarded for a collaborative study between Professors David Williams from the Faculty of Law and Cris Shore from the Faculty of Arts.

A particular concern of the study is to understand the social, semantic and political significance that the Crown holds in the New Zealand national imagination, and the implications this has for social change and political reforms. The study aims to analyse the complex, shifting and ambiguous meanings the Crown holds for iwi, the wider New Zealand public, and Crown officials themselves. It also involves comparative study into perceptions of the Crown in Australia, Canada and the United Kingdom.

The research seeks answers to a raft of questions: How does the Crown represent itself? For whom is it useful and how? How do policy-makers use the Crown as a strategic and symbolic resource? Is the Crown, as a symbol of monarchy and colonialism, an obstacle to current constitutional reform?

About 36 politicians, lawyers and Māori tribal leaders answered questions about the Crown for a Faculty of Arts pilot study completed prior to the Marsden Fund proposal. David says the responses showed a huge range of different points-of-view and a lack of clarity about the key constitutional elements and the way our society puts them together.

Professor Williams was recently a Visiting Research Associate at the St John's College Research Centre, University of Oxford. During his time there he prepared for the interdisciplinary Crown project by participating in the Centre's weekly seminars on "Legalism: History and Anthropology." Furthermore, participation in those seminars led to invitations to participate in stimulating workshops elsewhere in Oxford, such as a one day workshop at Wolfson College to launch Fernanda Pirie's book *The Anthropology of Law*.

How do policy-makers use the Crown as a strategic and symbolic resource? Is the Crown, as a symbol of monarchy and colonialism, an obstacle to current constitutional reform?



The Changing Role of International Arbitration

A \$390,000 Marsden Fund grant to study the changing role of the judge and arbitrator under international law has been awarded to Dr Caroline Foster.

Dr Foster's project, entitled *On the Forge: The Role of the International Judge and Arbitrator in the 21st Century*, deals with disputes arising over matters such as tobacco control, food safety, horticultural diseases, fisheries, seabed-mining, rare earth production, fracking, renewable energy, biotechnology, nanotechnology, aerial spraying, whaling and major pollution episodes.

It focuses on how international judges and arbitrators are inevitably taking positions on vitally important policy matters, moving beyond the existing conception of the international judicial role that has prevailed for more than a century. "They are becoming a dimension of international government, in addition to serving as agents of dispute settlement," says Dr Foster. Their influence has grown tremendously with so many new international tribunals established since the mid-1990s in trade, investment and law of the sea.

The funding will enable Dr Foster to undertake fieldwork interviewing judges and arbitrators in international legal centres like The Hague, Geneva and Hamburg, as well as buying her time to analyse recent decisions.

Postgraduate Studies at the Law School



The Auckland Law School continues to invest in high quality courses taught both by our own staff and a number of invited international academics and leading authorities.

The school offers one of the most comprehensive and highly regarded postgraduate programmes in Australasia, and 2014 has been another successful year. Domestic Masters enrolments have maintained a steady level, while international enrolments are exhibiting renewed growth following a global downturn in postgraduate study consequent upon the financial crisis of 2008-09. At the time of writing, overall postgraduate enrolments in 2014 numbered 385 active students enrolled in the LLM, MLS, PGCLL and other postgraduate study. PhD enrolments are also on the rise with 18 enrolments, and a number of applications currently being processed. Current PhD research includes such diverse topics as corporate governance, corporate social responsibility, a study of unwritten constitutions, assisted dying legislation, transnational human rights and mental disorders, indigenous courts, Treaty of Waitangi issues, international trade, animal rights, climate change issues, protection of biodiversity, governance of the "global commons", and a legal review of the America's Cup Deed of Gift of 1887.

An exciting and diverse programme is confirmed with twenty-two postgraduate courses on offer in 2015.

Commercial law offerings include Commercial Equity (taught by Professor Richard Nolan of York Law School), Comparative Company Law (Professor John Armour of Oriol College, Oxford), Insurance Contracts (Professor Rob Merkin, University of Exeter), International and Comparative Copyright Law (Professor Nigel Gravells, University of Nottingham), Remedies Law (Professor Jeff Berryman, University of Windsor in Ontario, Canada), and International Arbitration (David AR Williams QC, Professor Chester Brown of the University of Sydney and Amokura Kawharu of this Faculty). The commercial law programme is rounded out with offerings by local staff, including Corporate Governance (co-taught by Professors John Farrar and Susan Watson), Competition Law (Chris Noonan), International Commercial Contracts (Maya Mandery), and Cross-border Commercial Litigation (Elsabe Schoeman).

One of the attractive features of the Law School's postgraduate programme is the flexibility of enrolment which allows part-time or full-time study spread over two to four years for the LLM, with a wide range of combinations of coursework and dissertation, coursework and thesis and thesis only options.

Environmental law options in 2015 include Water Law (taught by Janice Grey, University of New South Wales), and Climate Change Law (Professor Don Brown, Pennsylvania State University). Professor Klaus Bosselmann teaches Global Environmental Law in semester one, and David Grinlinton teaches Mining, Energy and Natural Resources Law in semester two.

International and public law offerings include Comparative Human Rights (co-taught by Professors Paul Rishworth and Justice Kate O'Regan, recently retired from the Constitutional Court of South Africa), Contemporary Free-Trade Agreements (Professor Jane Kelsey), Public International Law (Trea Dunworth), and Vulnerable Adults - Rights protection in the Modern Age (Alex Ruck Keane, English Barrister, and Kris Gledhill).

Medico-legal courses in 2015 include Patient Safety and the Law (taught by Dr Marie Bismark who leads the Public Health Group at the University of Melbourne, and Professor Ron Paterson who was the Health and Disability Commissioner from 2000-2010, and is currently a Parliamentary Ombudsman) and Therapeutic Jurisprudence (Professor Warren Brookbanks).

Courses focusing on **Indigenous legal issues** in 2015 include Constitution and Custom in the South Pacific (Alex Frame, Honorary Professor at the University of Waikato) and Indigenous Persons (Professor James Anaya from the University of Arizona, and Claire Charters of this Faculty).

One of the attractive features of the Law School's postgraduate programme is the flexibility of enrolment which allows part-time or full-time study spread over two to four years for the LLM, with a wide range of combinations of coursework and dissertation, coursework and thesis and thesis only options.

In addition, many of the courses are taught on an intensive basis over a "residential" block of five days, or on a semi-intensive basis with two evening seminars a week over six weeks. Full-semester courses are also available with one seminar a week over twelve weeks.

The current Associate Dean (Postgraduate) is David Grinlinton, although this role will be taken up by Treasa Dunworth in 2015. Dr Suranjika Tittawella remains as the Manager of Postgraduate Programmes and Angela Vaai is the Postgraduate Student Adviser in the Faculty.

The 2015 Postgraduate Prospectus and full course outlines are available on the website:

www.law.auckland.ac.nz/en/about/our-faculty/prospectuses-2.html

Enquiries about the postgraduate programme at the Law School should be directed to:

Law Student Centre

Level 2, 1-11 Short Street

Auckland 1010

Phone: (0800)61 62 675 or +64 9 923 1973

Email: postgradlaw@auckland.ac.nz

Verbatim: Tackling Justice Issues through Theatre

Recently I had the opportunity to step completely outside my day job and go "on the road" for a month, masquerading as a theatre producer. With me were a handful of actors and crew, a (fairly minimal) set and lighting rig, and two scripts - which, all assembled, created two powerful plays that focused on the realities and complexities of violent crime in New Zealand. We were visiting public venues, high schools, and prisons around the country, looking to open up some hard discussion about how we in New Zealand deal with, respond to, and prevent, violent crime.

The plays, *Verbatim* (by William Brandt and Miranda Harcourt) and *Portraits* (by Miranda Harcourt and Stuart McKenzie) are based on interviews with violent offenders, their families and families of victims. They are crafted - verbatim - from the words spoken in those interviews and so present raw, unembellished stories of how a single act can affect so many lives for such a long time.

Verbatim tells the story of Aaron, a burglar-come-murderer ("I'm a burglar, that's what I am, I am not a murderer"), who is 22 and doing life in prison. We hear his story, through his own voice as well as that of his sister, his mother, and his ex-partner. We also, poignantly, hear from Robert, the husband of the woman that Aaron killed while on a drug-fuelled burglary spree. A single actor moves between each of the roles, taking the audience's sympathies with her into every character.

Portraits is a harrowing story of the rape and murder of a 15-year-old, told through the experiences of her two parents who are still struggling to come to terms with it four years later. It also tells the story from the voices of the perpetrator himself, and of his de-facto wife.

Verbatim was a collaboration between the young and vibrant advocacy group JustSpeak and the equally young and vibrant Auckland-based Last Tapes Theatre Company, and was born out of a desire to strive for both good theatre, and explore different ways of encouraging holistic discussion of criminal justice ideas.

As a person more used to discussing these sorts of issues in the context of a lecture theatre, the quality of this post-show discussion was a real highlight. Not only was the composition of the audience quite different from the usual law class, but theatre has a unique way of allowing people to identify and engage with the humanity of complex issues. Regardless of your background, these plays reflect people you recognise, and also give you a glimpse into the experiences of others. The shared experience of watching the plays seemed to allow a rare open discussion between diverse groups within the audience. I think particularly of 16-year-old Mariah, from a Black Power family in the Hawkes Bay, who told the audience about her life, her imprisoned father, and what made the difference between one path and another for her and her



siblings; contributing to an extended general discussion about what could be done to “turn the tide”. A patched Mongrel Mob member said to the same room “you never get to see the victim’s side, so thanks for that”. In some audiences, victims of violent crime spoke of their losses and frustrations, in the same rooms as people acknowledged having committed violence against others.

In the prisons too, it was the humanity and real-ness of the characters that both drew audience members in and challenged their realities. It is a premise that is also behind a lot of restorative justice initiatives - allowing people to see the human on all “sides” of offending can sometimes provide a powerful space for facing up to the effects of a person’s actions, especially when this is accompanied by some understanding of the circumstances that led to it. While this was not the primary goal, the potential for it was certainly felt.

A particularly memorable inmate, with gang affiliations tattooed across the centre of his face, said to me afterwards: “Are you showing this to the young guys? I don’t want to say it is too late for us or anything, but young people need to see this so they know. First it’s just small, just car theft, six months, and then...I don’t want my son to end up like this.” Another, a young guy, in his late teens, came up and chatted afterwards: “So did you fullas all go to uni or something? What’s that like?”

■ Danielle Kelly



Cast and hosts (from left): Delia Cormack, Fraser Brown, Jodie Rimmer, Tau Kapea, Renee Lyons, Jonathan Burgess, Danielle Kelly, and ‘Nanny Kay’

Key Issues in the Design of Capital Gains Taxes

The design of capital gains taxes was the subject of a fully subscribed conference hosted by the Law School, together with the Business School, in July 2014. The conference was organised and chaired by Professor Michael Littlewood (of the Law School) and Professor Craig Elliffe (of the Business School). It did *not* address the question: should New Zealand introduce a capital gains tax? On that score much has been said and opinions differ. In particular, the National Party is opposed and Labour and the Greens are in favour. Rather, the Conference attempted to answer the question: *if* New Zealand were to adopt a capital gains tax, what shape should it take? In particular, if capital gains are to be taxed at all, what, exactly, should be taxed? And at what rate? To shed light on these questions, we were lucky to attract to Auckland distinguished visitors from countries whose capital gains taxes might be viewed as helpful models, as well as a number of New Zealand experts.

The basic idea of capital gains taxes is, of course, to tax capital gains and the basic scope of the tax is as indicated by its name. Most importantly, tax would be charged on gains made on sales of investment property and shares in listed companies. But capital gains taxes typically extend also to gains made on the disposal of other sorts of property - for example, unlisted shares, securities other than shares, unincorporated businesses and

collectible chattels. Such gains are already chargeable to income tax in some circumstances - in particular, where the taxpayer is engaged in a business of dealing or otherwise acquires the property in question with the intention of selling it. The point of a capital gains tax is thus to tax gains made where the taxpayer is not engaged in business and acquired the property as an investment, rather than with a view to selling it. The line is not always easy to draw, but short-term profits are typically counted as income and longer-term gains as of a capital nature.

Beyond those basic parameters, however, the design of a capital gains tax presents a number of difficult questions. The best known of these is, what should be done about the family home? One view is that all economically significant gains should be taxed; and that there is no reason for providing for any preferential treatment for family homes. In other words, according to this school of thought, gains made on the sale of a family home should be taxed in the same way as any other capital gain. But whatever arguments might be marshalled in support of this idea, it seems unlikely to happen because any political party proposing it seems unlikely to be elected. The question, then, is, should family homes be categorically exempt? Or should the exemption be subject to some limitation? For instance, perhaps each family should be limited to only one tax-exempt family home - in which case



From left: Reuven Avi-Yonah and Craig Elliffe

the gain made on the sale of a bach would be taxable (unless it was the family's only home). Or perhaps the exemption should be limited to gains of less than a prescribed amount - in which case, how much? What should be done where the taxpayer buys a house, lives in it for a few years, moves out and lets it for a few more years - and then sells it at a profit?

Other design issues include the following. Should capital gains be taxed at the same rates as income tax? Or some other rate? For instance, the Labour Party's proposal is for the tax to be charged at a flat rate of 15 per cent. That would make the introduction of the tax more palatable (or at least, less unpalatable) and it could also be seen as making a rough and ready allowance for inflation.

Some countries' capital gains taxes provide for what is called roll-over relief. That is, if you sell an asset and buy another of the same class, liability is deferred (for example, if you sell one investment property and buy another). In other words, you are not required to pay the tax until you sell the replacement asset (and at that point, liability is again deferred, if you again buy another asset of the same class). The point of this is that it largely overcomes the "lock in" effect. If people are taxed on gains made on the sale of capital assets, they are likely to defer liability by simply retaining their assets - which is inefficient and tends to clog up the economy (in that the tax incentivises people to retain assets that they would otherwise sell).



The papers will be published soon and in the meantime summaries can be found in the conference handbook which is available on the Law School's website.

Ownership and Control after the Global Financial Crisis

How to re-frame ownership and control after the Global Financial Crisis occupied the minds of legal, finance, accounting and management academics who gathered in Auckland for a two-day workshop hosted by the Auckland Law School this year.

The attendees represented the Indian School of Business, Vanderbilt University, the University of Oklahoma and the University of Auckland's Faculty of Law and Business School, along with practitioners from several top Auckland law firms.

One consequence of the Global Financial Crisis was a re-questioning of what had previously been treated by many as settled assumptions. In corporate law, the paradigm corporation with dispersed ownership run on behalf of shareholders in the interests of maximising profits for those shareholders was treated as an ideal, with the goal of corporate law considered to be solving the agency problem between shareholders as owners and managers as controllers. But shareholders may no longer be the ideal means of corporate governance, and shareholder wealth maximization - at least in the short term - may not be the ideal ends of corporate governance. This shift in thinking and other questions were considered during the course of the workshop, held at the Auckland Business School.

Conference organiser Professor Susan Watson noted some of the distinctive features of corporate law in New Zealand:

"New Zealanders are globally focused with laws and cultures influenced by the United Kingdom and North America, but with personal and trade links with China and throughout Asia and India. People from all of those places have settled here. The origin of New Zealand's corporate law is English, although its most recent Companies Act draws on the North American Model Business Corporation Act. Most New Zealand companies are small and medium enterprises or family-owned businesses and the unique features of the corporate landscape are the number of listed companies that are partially owned by the State, and the growing number of Maori tribes that are funded from recent settlements of historical injustices. The Maori perspective on sustainable business adds a unique dimension to corporate governance in New Zealand, as sustainability in governance becomes increasingly discussed internationally. These factors made Auckland, the commercial centre of New Zealand, an ideal venue for the bringing together of new thinking on ownership and control of corporations."



New Zealand Centre for Human Rights Law, Policy and Practice



The Human Rights Centre is connecting international and New Zealand human rights developments, as illustrated by two events hosted by the Centre at the end of last year.

In November, the Hon. Justice Lowell Goddard delivered the 2013 Human Rights Lecture on “The Optional Protocol to the Convention against Torture (OPCAT) and its Preventive Role in the Elimination or Reduction of Torture and Ill-Treatment of Detainees”. Justice Goddard’s paper drew on her experience of establishing the first preventive monitoring mechanism of Police in New Zealand and her election to the UN Subcommittee against Torture, which is mandated to undertake international inspections of places of detention.

In December, then Deputy Director Chris Mahony led a conference analysing the refugee and asylum-seeker resettlement policies of five countries and their compliance with international human rights obligations. It brought together leading academics from New Zealand, Australia, Canada, the United States and the United Kingdom. The research, an initiative of the Human Rights Centre, was supported by the World University Network Fund.

Four public events this year have had an international dimension:

In January, at the request of the Ministry of Foreign Affairs and Trade, the Centre organised a public lecture by Dr Simon Adams, Executive Director of the New York based Global Centre for the Responsibility to Protect. Twenty years after the Rwandan genocide, Dr Simon Adams discussed the development of the “Responsibility to Protect” norm in light of the Libyan intervention in 2011 and the situation in Syria, arguing that it is generally accepted now that the international community of states does owe a responsibility of care to populations caught up in mass atrocity. The remaining point of debate centers on *how* the international community should react in the face of atrocity, not *whether* the international community should react.

“The Work of the Special Tribunal for Lebanon and its Contribution to the Rule of Law” was the subject of an address by Justice Sir David Baragwanath (pictured left) in February. Sir David is the elected President of the Special



Tribunal for Lebanon based in The Hague. The Tribunal was established in 2009, with the primary mandate of holding trials for the people accused of carrying out the attack on 14 February 2005 which killed 22 people, including the former Prime Minister of Lebanon, Rafiq Hariri. Sir David spoke movingly about how important the Tribunal is for the people of Lebanon and how it is assisting that country come to terms with its legacy of civil war.

Parliament is not a political venue that encourages independent, moral judgements ... about how rights-based or compatibility-based considerations [as primarily informed by the Bill of Rights Act] should guide or constrain legislation.

UN Development Programme Administrator Helen Clark (pictured right) spoke in April on “Access to Justice and the Rule of Law in the New Global Development Agenda.” The former New Zealand Prime Minister explored the links between access to justice and sustainable development, and she shared examples of the UNDP’s work to strengthen justice systems and legally empower the poor in more than 100 countries, many of them affected by conflict. From mobile courts of justice in remote areas of Somalia, to training 1000 judges, police prosecutors and criminal investigators in Mozambique, she showed the UNDP’s work was far-reaching. “We work to set up good systems and processes in developing countries but we’re not in the business of telling people what’s good or bad - we give them a range of development options,” she said. However, that work is also carried out in difficult and sometimes dangerous circumstances. “There’s not a week that goes by

without harrowing experiences, and some weeks are worse than others.”

In July, Professor James Anaya from the University of Arizona, and immediate past UN Special Rapporteur on the Rights of Indigenous Peoples gave a lecture on business and indigenous peoples’ rights.

There was a predominantly New Zealand focus at a very well attended forum on “Parliament’s Role in Protecting Human Rights” (generously hosted by Russell McVeigh) in March this year. Speakers included Attorney-General Chris Finlayson, Canadian Professor Janet Hiebert and Otago University’s Andrew Geddis.

The Attorney-General gave a brief history of s 7 of the New Zealand Bill of Rights Act 1990 - which requires the Attorney-General to notify the House of Representatives of any provision in any Bill introduced into the House that appears to be inconsistent with the Bill of Rights. He noted that Attorneys-General have brought 62 Bills to the attention of the House since 1990. Thirty of these were government Bills and 32 were private Bills. He mentioned the failure to produce s 7 reports for the Foreshore and Seabed Act 2004 and the Electoral Finance Act 2007, which to this day still “shocked” him. Agreeing with Professor Hiebert, he noted that parliamentary debate fails to engage adequately with Bill of Rights Act issues but that s 7 reports do have a resonance during the development of policy. Professor Hiebert suggested that despite the frequency of s 7 reports: “Parliament is not a political venue that encourages independent, moral judgements ... about how rights-based or compatibility-based considerations [as primarily informed by the Bill of Rights Act] should guide or constrain legislation”.

■ Rosslyn Noonan

Improving our Response to Family Violence

History, despite its wrenching pain, cannot be un-lived, but if faced with courage, need not be lived again.

Maya Angelou

A radical change in the way New Zealand responds to its most dangerous and chronic cases of family violence is called for in a report from the Family Violence Death Review Committee, chaired by Associate Professor Julia Tolmie (pictured above).

Julia says the strong reaction to the committee’s fourth report illustrates the need to improve our problematic response to family violence.

“When family members of victims killed in family violence homicides tell you they wept with relief and surprise on reading your report, and when family violence liaison officers in key agencies call it ‘the family violence bible’, you know you are saying something that people at the coalface think needs to be said.”

The report suggests we need to think completely differently about family violence in order to be in a position to practice more effectively.

“Many of our systems - including the legal system - are set up to react to individual incidents of physical abuse. We need to appreciate that family violence is an ongoing pattern of harmful relating that has a cumulative and compounding effect on the victims and has a larger architecture than simply the physical violence that takes place,” says Julia. “When this understanding underpins professional practice, including the institutional processes that inform professional practice, we will start to see every family violence incident as an opportunity to intervene to prevent future harm from taking place.”



The committee counted 240 children “left behind” after the 100 child abuse and intimate partner violence deaths that took place between 2009 and 2012. “The death reviews we have conducted suggest current processes are not adequate to ensure these children are safe and have their trauma needs addressed,” Julia says.

Report recommendations of interest to legal professionals include the need for:

- judicial education on family violence
- more complete information to be given to judges about the family violence background of offenders
- law reforms designed to better recognise family violence victimisation, including: better homicide defences for primary victims of family violence who kill the predominant aggressor; and a specific strangulation offence (which would highlight on an offender’s record a major risk indicator for future intimate partner violence homicide).

The Family Violence Death Review Committee’s Fourth Annual Report: January 2013 to December 2013 is available at: www.hqsc.govt.nz/news-and-events/media/1604/



From left: Gerald Torres and Klaus Bosselmann

New Zealand Centre for Environmental Law: Working for Sustainability

“Legal scholarship and social activism can go hand in hand”, said Professor Gerald Torres (Cornell University) in a public lecture he gave as a recent visitor to the New Zealand Centre for Environmental Law. “Good lawyers don’t just go where the wind is blowing, they aim for changing the wind.”

This “wind-changers” metaphor befits the *New Zealand Centre for Environmental Law* (NZCEL), celebrating its 15th anniversary this year.

Established in 1999, NZCEL has developed a reputation as a world leader in sustainability-oriented legal research. Through the *New Zealand Journal of Environmental Law* (NZJEL), the NZCEL monograph series, internationally published books and articles and academic conferences, NZCEL has pioneered the field of sustainable development law, integrating environmental, social, cultural and economic policies on the basis of ecological integrity.

New Zealand’s Resource Management Act 1991 was the world’s first legislation based on the principle of sustainability, yet in over twenty years the Resource Management Act has done very little to protect New Zealand’s natural environment. Quite obviously the importance and core meaning of sustainability, i.e. to preserve and enhance the integrity of ecological systems, has not been well understood. NZCEL’s critique and advocacy is well documented, for example, in the 2nd edition (2013) of *Environmental Law for Sustainable Society*, edited by Klaus Bosselmann, David Grinlinton and Prue Taylor.

“We are a centre of excellence recognised by the NZ Resource Management Law Association and by the United Nations. We are also a founding member of the IUCN Academy of Environmental Law, the global body of environmental law scholars”, explains NZCEL director Professor Klaus Bosselmann. “Our visibility has helped to attract students and leading scholars from around the world.”

About twenty PhD and Masters students are currently specialising in environmental law with a focus on climate change, energy, biodiversity, sustainable development and environmental constitutionalism. Recent visiting scholars included JB Ruhl (Vanderbilt University), Christina Voigt (University of Oslo), Gerald Torres (Cornell University), David Hodas (Widener University), Weixung Wu (Nanjing University), Peter Sankoff (University of Alberta), Janice Gray (University of New South Wales), David Vanderzwaag (Dalhousie University), Sanford Gaines (University of New Mexico) and Nicholas Robinson (Pace University).

Good lawyers don’t just go where the wind is blowing, they aim for changing the wind.

The Auckland Law School attracts a regular stream of interesting visitors from around the globe. The following are a brief selection. More information can be found on the Faculty Website under the item "News".

Clive Walker on Protective Security Against Terrorism

An internationally acknowledged authority in the field of counterterrorism law was hosted by the Auckland Law School in February 2014.

Clive Walker, Professor of Criminal Justice Studies at the School of Law, University of Leeds has written extensively on criminal justice and human rights issues. In addition to several collections and numerous articles and book chapters, Professor Walker's many published works include *Terrorism and the Law* (Oxford University Press, 2011), *The Anti-Terrorism Legislation* (Oxford University Press, 2009) and *The Civil Contingencies Act 2004: Risk, Resilience and the Law in the United Kingdom* (Oxford University Press, 2006). Since 2011, he has also served as the special advisor to David Anderson QC, the United Kingdom's Independent Reviewer of Terrorism Legislation.

During his visit, Professor Walker presented a seminar entitled "Protective Security Against Terrorism: In Service of the State, the Corporation, or the Citizen?" The discussion focused on the notion of protective security, its various strategic manifestations in the form of strengthening border control and protecting infrastructure, its implementation through such measures as suspicionless stop and search powers and target-hardening, and the resulting issues of displacement effects, private sector involvement and cost.

Professor Walker highlighted the fact that, although academic and media attention has tended to focus on headline-grabbing measures such as detention without trial, most people are far more likely to encounter quotidian counterterrorism measures operating under the rubric of protective security.

Although academic and media attention has tended to focus on headline-grabbing measures such as detention without trial, most people are far more likely to encounter quotidian counterterrorism measures operating under the rubric of protective security.

For example, control orders, the executive detention measure created by the Prevention of Terrorism Act 2005, precipitated a series of high-level appellate court decisions and sustained academic commentary; but only 52 people were ever subject to control orders during the life of the 2005 Act. By contrast, suspicionless stop and search powers, which used to operate in various places including Greater London for the better of a decade, and which continue to operate at border areas, impact thousands of people. This makes scholarly attention on the topic of protective security all the more timely.

■ John Ip





From right: Juan Nunez, Jannie Lasimbang, Claire Charters and Sir Edward Taihakurei Durie. Far left: Bill Hamilton.

Bringing the United Nations to Auckland to Enhance the Rights of Indigenous Peoples Worldwide

In a first for New Zealand, the Auckland Law School brought the United Nations to Auckland in February 2014, co-hosting the United Nations Expert Seminar on restorative justice, Indigenous peoples' juridical systems and access to justice for Indigenous women, children and youth and persons with disabilities.

The purpose of the seminar was to contribute to the Expert Mechanism's study on restorative justice, Indigenous peoples' juridical systems and access to justice due to be submitted to the United Nations Human Rights Council, the United Nations highest-level multi-lateral state body devoted exclusively to human rights, in September 2014. The study will direct and inform states and Indigenous peoples the world over on the nature of their obligations to provide for restorative justice and access to justice for Indigenous peoples.

Working closely with the United Nations Office of the High Commissioner for Human Rights, the Auckland Law School brought world-renowned experts on Indigenous peoples' rights to the University of Auckland's Waipapa Marae for the seminar, including,

- members of the Expert Mechanism, Jannie Lasimbang (Malaysia), Dr Danfred Titus (South Africa), Aleksey Tsykarev (Russian Federation);
- members of the United Nations Permanent Forum on Indigenous Issues, including Professor Dr Megan Davis (Australia) and Valmaine Toki (Aotearoa);
- some of Aotearoa's foremost legal scholars in the area including Sir Taihakurei (Eddie) Durie, Te Huia Bill Hamilton, Moana Jackson, Professor Margaret Mutu, Dayle Takitimu and Tracey Castro Whare;
- world-class academics in the area such as Andrew Erueti (Waikato), Dr Carwyn Jones (Wellington), Dr Robert Joseph (Waikato), Dr Hannah McGlade (Australia), Celeste McKay (Canada), Professor Bradford Morse (Waikato and Ottawa), Ipul Powaseu (Papua New Guinea) and Professor Dr Rachel Sieder (Mexico and United Kingdom);
- representatives of the Geneva UN Office of the High Commissioner for Human Rights and the New Zealand Human Rights Commission.

Auckland co-ordinators Claire Charters and Natalie Coates were proud to be part of the team responsible for bringing the Expert Seminar to Auckland, commenting: "These discussions will help determine the shape of the final

draft of the study, which in turn will play a part in the promotion and protection of human rights around the world."

The full agenda and more information is available on the website of the United Nations Office of the High Commissioner for Human Rights: www.ohchr.org/en/issues/ipeoples/emrip/pages/emripindex.aspx.

These discussions will help determine the shape of the final draft of the study, which in turn will play a part in the promotion and protection of human rights around the world.

The seminar is part of a wider, longer-term project to enhance the Auckland Law School's research and teaching relevant to Indigenous peoples and the law, especially within the Pacific region. To that end, since the beginning of the year, the Nin Tomas Indigenous Peoples and the Law Group was established and the Law School has hosted leading lights on Indigenous peoples and the law such as former Special Rapporteur on the rights of Indigenous peoples, Professor James Anaya (University of Arizona), Professor Gerald Torres (Cornell University), Professor Taiiake Alfred (University of Victoria) and Professor Jeff Corntassel (University of Victoria). We have also instituted a new course on Indigenous Peoples and International Law, which will be taught in part from, and with, the University of South Pacific in Vanuatu in January 2015. Moreover, four Auckland students are undertaking internships with the Indigenous peoples' and minorities' section and Pacific Office respectively of the Office of the High Commissioner for Human Rights in 2014.

Professor Barry Cushman on the “Lochner Era”

The famous *Lochner*-era cases in the United States were discussed in a Faculty seminar presented by Professor Cushman, a legal history scholar from the University of Notre Dame Law School, who spent a brief time at the Auckland Law School in March.

These were the cases, of which *Lochner v New York* 198 US 45 (1905) is the most famous, where the United States Supreme Court invalidated minimum wage laws and other progressive labour laws on the basis of the Fourteenth Amendment’s guarantee that “liberty” would not be infringed save by “due process”. The paradoxical outcome was to invest the due process clause with *substantive* impact - guaranteeing “freedom of contract” and not merely a set of process rights. Justice Oliver Wendell Holmes famously dissented in *Lochner* (the case invalidated a law prescribing maximum working hours for bakers). Said Holmes: “a constitution is not intended to embody a particular economic theory.”

The *Lochner*-era is now famous in US Constitutional law, not least because it led to the “Court-packing plan” in which President Franklin D Roosevelt contemplated appointing up to six new judges to the Supreme Court to increase the chance of gaining favourable rulings on his “New Deal” legislation. That plan did not proceed, largely due to the Supreme Court’s own reversal of its approach in the 1937 case of *West Coast Hotel v Parrish* 300 US 379 (1937) - the so-called “switch in time that saved nine”.

Since then the economic component of substantive liberty has been excised from the constitutional understanding, but liberty is still taken to include fundamental personal rights (choice of sexual practices, reproductive liberty, directing the education of one’s children, and so on).

Professor Cushman explained the phenomenon of “*Lochner*-era revisionism”, in which the battles of those days are depicted as a clash between two opposing visions of the judicial role (the “Four Horsemen” and the “Three Musketeers”), finally settled in 1937 by a judicial retreat from “activism” under the shadow of Roosevelt’s court-packing plan. But there were, he explained, more nuanced explanations. One strain of the *Lochner*-era cases framed the issues, not so much in terms of liberty of contract as in the idea of the state’s wrongful taking of property from A and transferring it to B. Another strain was the requirement of state neutrality in its regulating. All these approaches were in play, and so the apparent abandonment of the “liberty of contract” idea in 1937 actually represented an outcome that could plausibly have been reached at other junctures. It was not necessarily an ideological capitulation.



All that said, the United States *Lochner*-era cases have come to enjoy a talismanic status in modern comparative law, as illustrating the perils of judicial ideologies. It was a fascinating account of US legal history by a leading US scholar. Professor Cushman’s book on the topic is *Rethinking the New Deal Court: The Structure of a Constitutional Revolution*. New York: Oxford University Press, 1998.

■ Paul Rishworth

Visitors in Brief

The contempt of court project undertaken by the Law Commission was the subject of an informative discussion by Law Commissioner, Judge Peter Boshier, who opened the Media Law Honours’ seminar class in March. The law related to contempt of court had developed over centuries and in the Internet age inevitably requires modernisation, he said. The Law Commission was also concerned to examine ways to make the law of contempt accessible to the public in general. Once the report was released it was discussed in class and the students made a number of group submissions on those areas that impacted on the media. The students also had the advantage of hearing William Akel, a noted media law lawyer from Simpson Grierson, discuss his involvement in the Kim Dot Com saga and the legal issues it raised.

Prospects for disarmament were discussed by Angela Kane, the United Nations High Representative for Disarmament Affairs. In her role Ms Kane has been at the forefront of efforts to disarm Syria, leading the negotiations that have led to the ongoing process to identify and destroy the Assad regime’s chemical weapons stockpile and directing the teams investigating the use of such weapons. Her public lecture was hosted by the Auckland Law School in partnership with the Department of Politics and International Relations, the New Zealand Institute for International Affairs and the International Law Association. Ms Kane was visiting New Zealand as a guest of the New Zealand Ministry of Foreign Affairs and Trade and she was accompanied during her visit to the Law School by New Zealand’s Ambassador for Disarmament, Dell Higgle.

Professor John Carter on the Construction of Contracts



A leading authority on contract law - whose texts are the first port-of-call for both academics and students when they are confused about the intricacies of the relevant jurisprudence across the Tasman - was an honoured guest in May.

The Faculty of Law was extremely privileged to co-host, along with the Department of Commercial Law, a public seminar by Emeritus Professor John Carter, author of *Carter's Guide to Australian Contract Law*, *Carter's Breach of Contract and Restitution in Australia*.

The public seminar was entitled the "Construction of Commercial Contracts" and it was attended by more than 100 academics, practitioners and students. Professor Carter used the hour long presentation to draw some threads from the diffuse case law surrounding the interpretation of commercial contracts. His main thesis was drawn from his latest text, *The Construction of Commercial Contracts*, and was that the approach to interpretation taken by Lord Hoffmann in *ICS v West Bromwich BS* could no longer be seen as unproblematic. Although his Lordship's five principles of interpretation seem commonsensical, there are major difficulties in applying them in a consistent manner. The questions by the audience at the end of the seminar showed that many agreed with Professor Carter's analysis!

For over 30 years Carter was on the staff at the University of Sydney and aside from his lengthy academic career, he has also been a consultant with Herbert Smith Freehills for over two decades. However, prior to both careers, Carter had developed enduring links with the University of Auckland. When he was finishing his PhD at the University of Cambridge at the beginning of the 1980s, Professor Carter was partially supervised and then examined by our very own Emeritus Professor Brian Coote. Professor Coote is still in close contact with Professor Carter and was instrumental in arranging Carter's trip to the University of Auckland. Obviously Professor Coote was not too harsh as a PhD supervisor! The seminar was a great success for both the Faculty of Law and the Department of Commercial Law.

■ Marcus Roberts

"When Freedoms Collide": Professor Helen Alvaré

Societies have generally sought, historically, to respect the consciences of their citizens. But, in modern times, there are proving to be more occasions when people are forced by law to act contrary to their consciences.

Professor Alvaré, of George Mason University School of Law in Virginia, US, made this observation in July when she addressed staff and students on the subject "When Freedoms Collide?" (the topic of her Sir John Graham Lecture being given at a Maxim Institute event later that day).

In large part this shift is due to a greater degree of regulation in modern life, some of it resting on contested visions of "the good", she said. A contemporary US example was the US law requiring employers to fund health insurance cover for their employees, where that cover involved the provision of contraceptives including a small number that functioned as abortifacients. That was the subject of the *Hobby Lobby* decision in the US Supreme Court, where a majority held that closely-held corporations enjoyed an exemption from such a law if it violated their religious beliefs.

Professor Alvaré argued that accommodating religious conscience is a positive good in society, as it had been in cases of war-time claims by pacifists to exemptions from military conscription. There need be no fear, she said, of multitudinous claims for exemptions from laws - and consequent "anarchy" (a concern first voiced in a 1990 US Supreme Court decision rejecting the religious freedom claim by those who used the prohibited drug peyote in their religious ceremonies). Rather, Professor Alvaré emphasised the need for empirical data to gauge the impact of law on conscience, and for debates to be conducted according to reason and not closed down by caricatures.

■ Paul Rishworth

Approachable Professor Thrives on the Challenge of Complex Research

Given his reputation as an international expert in corporate law, corporate finance, international securities and banking regulation, and European business law, it's something of a surprise to find that Professor Joe McCahery comes across as a fairly regular sort of guy.

He's approachable, funny, interested and interesting, down-to-earth and all those other things not readily associated with the upper echelons of the academic landscape. And he's mercurial in thought, darting from one subject to another, going wherever his many thoughts take him.

Among other things, Professor McCahery is a Professor of International Law at Tilburg University, Fellow of the Tilburg University Law and Economics Centre and the European Banking Centre, and Programme Director of the MSc and LLM in Finance and Law at Duisenberg School of Finance in Amsterdam.

His recent visit to New Zealand - his second trip down-under - was to be the keynote speaker at the Auckland Law School's recent conference, *The Changing Landscape of Corporate Law*, at the invitation of Deputy Dean, Professor Susan Watson.

Boilerplate provisions in limited partnerships are sometimes accepted by investors, not because they believe the standardised terms and conditions sufficiently align the interests of investors and fund managers, but merely because they think their peers, including their competitors, prefer to include them in the limited partnership agreement.

In a lecture to students, Professor McCahery talked about "Conservatism and Innovation in Venture Capital Contracting", conjecturing that venture capitalists and their investors often fall prey to what is known as "collective conservatism." Boilerplate provisions in limited partnerships are sometimes accepted by investors, not because they believe the standardised terms and conditions sufficiently align the interests of investors and fund managers, but merely because they think their peers, including their competitors, prefer to include them in the limited partnership agreement, he contends.

"The financial crisis has facilitated some notable deviations in the provisions that are aimed at returning confidence in the venture capital industry," Professor McCahery says.

"A gradual shift toward more investor-favourable limited partnership agreements or separate accounts and pledge funds arrangements may be taking place. These shifts, which do not lead to significant changes in the limited partnership agreements, appear to be particularly effective for bigger funds that focus on later stage investments. Early stage funds are more inclined to enter into innovative collaborative agreements that differ from the traditional limited partnership agreements in that they focus less on curtailing principal agent problems and more on joint development and value creation."



Today, however, the Professor is more worried about his cats back home in Leiden. There are three English shorthair cats in the family and one of them is just back from surgery - a colon operation which hopefully will go some way towards righting an odour problem. But he digresses, as he does in his mercurial fashion.

He was a high school journalist in Ohio, and hence knows about "hooks" like the cat-phrase above - that's why he threw it in there, he admits with a grin. He shares his home life with his wife of 22 years, Coby - an oil and gas economist and a linguist - their daughter Meagan who is in her second year at medical school, and the cats.

He's "thoroughly impressed" with the Auckland Law School, and for that matter, Auckland. "The Law School has a great reputation," he says. "People I know are attracted to it and come here regularly. It is an engaged school with top researchers and high-achieving students."

Professor McCahery (58) says the Netherlands retirement age is 67 but it's kind of irrelevant to his life because he doesn't really want to stop and he hopes other people don't want him to either.

■ Alison Lees



Top US Corporate Governance Scholar Visits Auckland

Professor Stephen Bainbridge was this year's Cameron Fellow. The fellowship, funded by Auckland alumnus Tim Cameron, a litigation partner in the leading New York law firm of Cravath, Swaine & Moore LLP, and his wife Kathy, enables the Auckland Law School to bring out a leading North American scholar to spend time with faculty and students at the Law School.

Stephen Bainbridge is the William D. Warren Distinguished Professor of Law at the University of California (Los Angeles). He is a prolific scholar, whose work has a strong emphasis on the law and economics of public corporations. In 2008, 2011, and 2012, Professor Bainbridge was named by the National Association of Corporate Directors' Directorship magazine as among the 100 most influential people in corporate governance.

During his visit to the Auckland Law School in May, Professor Bainbridge took part in a wide range of activities. These included teaching classes in Takeover Law and Company Law, a round table luncheon with top undergraduate and postgraduate corporate law students and a variety of lectures and seminars.

Professor Bainbridge delivered a public lecture on "Director Versus Shareholder Primacy" to a large audience at Old Government House. Any model of corporate governance must answer two basic sets of questions, he contended. Who decides? And when the ultimate decision-maker is presented with a zero sum game, in which it must prefer the interests of one constituency class over those of all others, whose interests prevail?

On the means question, prior scholarship has almost uniformly favoured either shareholder primacy or managerialism. On the ends question, prior scholarship has tended to favour either shareholder primacy or various stakeholder theories. Professor Bainbridge, however, proposes a "director primacy" model in which the board of directors is the ultimate decision maker but is required to evaluate decisions using shareholder wealth maximisation as the governing normative rule.

Comparing New Zealand company law to the considerably more board-centric regime of US corporate law raises a critical policy issue. If the separation of ownership and control mandated by a director primacy model has significant efficiency advantages, why has New Zealand opted for a more shareholder-centric model? The most plausible explanation focuses on domain issues - there are a small number of New Zealand firms for which director primacy would be optimal because of the predominance of small and closely held companies in New Zealand. The unitary nature of the New Zealand government may also be a factor, because the competitive federalism inherent in the US system of government promotes a race to the top in which efficient corporate law rules are favoured. Finally, New Zealand's social welfare net may also be a factor.

Any model of corporate governance must answer two basic sets of questions. Who decides? And when the ultimate decision-maker is presented with a zero sum game, in which it must prefer the interests of one constituency class over those of all others, whose interests prevail?



Moana Schwalger Memorial Pasifika Scholarship Winner

Tongan law student Elynn Tupou Ta'anea 'Atiola (Tupou) has been awarded the University of Auckland Moana Schwalger Memorial Pasifika Scholarship. The scholarship was established by the law firm Meredith Connell, together with the Pacific Lawyers' Association, to encourage postgraduate study by Pasifika students at the Faculty of Law. Moana Schwalger was a highly regarded Pasifika lawyer who lost her 18 month battle with cancer in 2012 at the age of 35.

"I am humbled, honoured and very grateful for the scholarship," says Tupou, who was born in New Zealand, raised in Tonga and is the eldest of seven children. Tupou came to the Law School after graduating with a Bachelor of Commerce and Administration from Victoria University in 2008 and teaching Accounting and History for a year back in Tonga at Tupou High School.

She came to the Law School because one of her younger sisters was already studying health science at The University of Auckland and their parents wanted them to live together in Auckland. She applied to different study programmes at the University and was first accepted into the Bachelor of Laws programme. Although she was uncertain at first, it was Land Law and South Pacific Legal Studies in her third year that really sparked her interest in the law: "I grew up in Tonga, but I had never heard about the land laws there, so I became very interested in this totally different type of land system."

Tupou has returned to Tonga during the summers to work an internship at the Ministry of Lands. "I'm hoping one day I'll be able to go back home and work there," she says.



Alice Wang and The Rt Hon Sir Jerry Mateparae

Top Law Student Wins Rhodes

"If you are in a position to make things happen, then you should. Why wouldn't you? Instead of asking why, my first reaction is always to ask 'why not?'" This is the winning attitude of bright and bubbly Alice Wang, the University of Auckland's newest Rhodes Scholar, who freely admits that she sometimes acts without thinking about how she's going to fit everything in to her already very full schedule.

"It hasn't really sunk in yet," she says frankly. "The Rhodes Scholarship is something that you always hope for, but never actually expect to get. It's not like competitive sports where you know where you rank - with the Rhodes Scholarship you really have no idea. You just lob something out and hope it happens."

Prior to taking up her scholarship Alice will spend six months in Wellington as Judge's Clerk to Justice William Young in the Supreme Court. The only drawback she can see is that it's taking her away from her family - her father Lishan and 16-year-old sister Jane, both of whom live in Mt Albert. She lost her mother earlier this year to cancer and this makes it harder still to be away.

Alice was born in Beijing and came to Auckland with her parents when she was four. She credits her late mother for her interest in a variety of different things, her appetite for new experiences, and her strong motivation to help those less fortunate than herself.

"Mum spent a lot of her time helping others in the community by whatever means possible. She taught me that if you have time to give, you should give it. I'm not rich or powerful - so I can't make any big changes yet - but I was brought up with the understanding that it's a privilege to be in a position to help others and to give whatever you are able to contribute."



Back row from left: Rohan Havelock, Madeleine Everard, Andrew Stockley, Frances Everard, and Scott Optican. Front row from left: Rosa Polaschek, Ian Ko, Caitlin Hollings, Justice Murray Gilbert, Brierley Penn, Mark Harborow, and Brian Dickey.

Student Mooting Thrives at Auckland

Caitlin Hollings has just stepped down as the inaugural president of The University of Auckland Mooting Society. She helped establish the society late last year with the aim of getting as many Auckland Law School students as possible involved in mooting. Over 400 students joined the society this year and have benefited from its programme of seminars, competitions and social events.

Caitlin says the society gives students the opportunity to improve their legal research, presentation and communication abilities. "There is no better way to learn the law. There are compulsory moots at law school, but doing extracurricular moots is a great way to hone skills and impress future employers. The society has been incredibly popular and it will go from strength to strength in the years ahead."

Caitlin says the inaugural John Haigh QC Memorial Moot, organised to provide an intermediate level moot between junior and senior mooting at the Law School, was the highlight of the year. The event attracted 32 teams, making it the largest mooting competition in the country, and there was standing room only at the final in the High Court which was judged by Justices Harrison, Moore and Toogood.

There are few other law schools in the world that can match Auckland's current record in national and international mooting and other student competitions. Auckland is now achieving consistently outstanding results at all levels.

Tiaan Nelson, a member of the winning team, will be co-president of the society next year with this year's vice-president, Andrew Grant. They are looking forward to creating more mooting opportunities for students. One innovation this year was the introduction of eight 'wildcard' places in the Stout Shield, the Law School's premier mooting competition, from which its representatives at the New Zealand Law Students' Association's senior mooting competition are selected. This allowed eight students who had done well in junior mooting and other competitions to join members of the Advocacy class in competing for the Stout Shield. Caitlin says that the students who participated "found the experience a great learning opportunity" and she hopes that this will open the way for more students being able to compete in the Law School's most important moot.

As well as helping establish the Mooting Society, Caitlin has had an extremely successful year as a competitor. She represented Auckland at the Vis International Commercial Arbitration Moot, which is the world's largest mooting competition, attracting more than 2000 students from 300 universities and 900 arbitrators to Vienna each year.

This was the first time Auckland has competed in over a decade and the team comprising Caitlin, Philip Arnold, Thom Clark, Sally Wu, and Luke Sizer (who researched for but did not travel with the team) did incredibly well, reaching the quarter-finals, with Caitlin and Sally ranked among the top 50 speakers.

Later in the year Caitlin won the Meredith Connell Greg Everard Memorial Mooting Competition and she has recently been selected as a member of the Auckland team to represent New Zealand in the Jessup International Law Mooting Competition in Washington DC next year, along with Danielle Houghton and Aidan Lomas. This is the seventh time in the last eight years that Auckland has won the New Zealand Law Students' Association's senior mooting competition and the right to represent New Zealand at the world's most prestigious mooting championship.

The Auckland Law School continues to dominate the New Zealand law student competitions, this year winning not only the senior mooting (Danielle Houghton and Aidan Lomas), but also the junior mooting (Ed Foley and James Penn) and the witness examination (Sam Jeffs). By winning three of the five competitions, Auckland again won the President's Shield for the top law school.

Other notable successes included Auckland students winning the witness examination competition (Marcus Playle) and reaching the final of the negotiation competition (Hamish Saunders and Josh Baxter) at the Australian Law Students' Association conference in Perth. Andrew McLeod and Luke Sizer reached the semi-finals of the International Client Consultation Competition in Puerto Rico and Brierley Penn, Stephanie Panzic, Jean Yang and Katya Curran reached the quarter-finals of the International Chamber of Commerce International Mediation Competition in Paris (competing against 66 other universities).

There are few other law schools in the world that can match Auckland's current record in national and international mooting and other student competitions. Auckland is now achieving consistently outstanding results at all levels. Dean Andrew Stockley thanks alumni for their support which has been critical in helping the Law School meet the costs of participating internationally. He thanked Caroline Foster, Nina Khouri, Isaac Hikaka, Campbell Herbert, Cheyne Cudby, Anna Quinn, Robert Clarke, Benedict Tompkins, Mark Tushingham, and the other Faculty members and alumni who have contributed large amounts of time coaching and judging the Law School's teams. "Not least, I congratulate the students who have worked incredibly hard and with immense enthusiasm, whether as team members or competition organisers. Caitlin Hollings stands out for having helped establish and popularise the Mooting Society as well as having had an incredibly successful year as a competitor."



From left: Tiaan Nelson, Sue Haigh and Matt Budler



From left: Callum Rose, Danielle Houghton, Aidan Lomas, Victoria Clark, James Penn, Ben Kirkpatrick, Ed Foley, Sam Jeffs and Jack Davies.

Law School Students Win Prime Minister's Pacific Youth Awards

Two outstanding law students have had their humanitarian efforts recognised through the Prime Minister's Pacific Youth Awards.

Reina Vaai, who received a Mobiles4Good Award, is from a high achieving family - brother Didier has a law degree from Waikato University, older sister Angela has a degree in law from the University of Auckland and younger sister Taute is at Baradene College with ambitions to become an engineer. Reina says, "Our parents worked so hard to send us to Baradene - so by working hard ourselves, we acknowledge that hardship and show appreciation for what we have."

Reina recently worked in the office of Samoa's Auditor General and made the most of the opportunity by setting up a voluntary project called Readers' Revolution and taking 1000 books with her to distribute among small villages.



She is also an aspiring writer, photographer and documentary maker with ambitions to make a mini documentary series about young Pacific Island people who have had to struggle. "Some people wonder why I want to go off and make documentaries when I am studying law but I see the two as being complementary," she says. "I have always been interested in people and my passion for helping others has grown - law has opened my eyes to the injustices people face and videography gives me a means of bringing that to people's attention."

Reina is involved in the Pacific Island Law Students' Association (PILSA) particularly through outreach programmes which encourage Pacific Island students from low decile schools to attend university and study law. She is a mentor for Mangere students through a programme called Pacific Power.

I have always been interested in people and my passion for helping others has grown - law has opened my eyes to the injustices people face and videography gives me a means of bringing that to people's attention.

Mary Tiimalu received an Inspiration Award. Her drive to work hard and help others is also linked with her upbringing - both her parents lived through struggles and she feels she breathes their stories.

The eldest in her Samoan family, her mother Turu came to New Zealand at the age of 13 to continue her education. She lived with an aunt in Grey Lynn and walked from there to St Patrick's School in Panmure and back every day: "It was very hard for her to leave her family in Samoa," Mary says. Turu met her husband Tauave when he came to New Zealand and they settled in Massey, raising four children - son Jeremy and daughters Elaine, Nora and Mary. "They were very pro-active in making things better for themselves - it was their dream to achieve a better life," Mary says. "They passed this dream on to me and they always encouraged me to do my best and do something I'm happy with."



Mary loves to give to others and, along with two colleagues, mentors Pacific Island students at her old school, Auckland Girls' Grammar School (AGGS) through a programme called Polycation. "We launched the programme this year and it's hugely successful," she says. "We want to do more to bridge the gap between the school and parents, the school and students, and students and parents." Mary says the programme is "holistic, focussing on cultural awareness, spiritual wellbeing and academic achievement. I've seen great progress in students' confidence and self-esteem and I'm proud that one of our Polycation students won the AGGS Positive Achievers' Award while still in the fifth form this year.... so many people I've helped are reaching their goals, it makes me scream with excitement on the inside."

Mary has been the co-president of PILSA this year. Through PILSA, she helped set up a community-based project TULA'I (Together Using Law Against Injustice) and she is involved with Law in Schools, a project which examines issues facing young Pasifika people and youth groups and educates them about their fundamental legal rights.

Her drive to work hard and help others is also linked with her upbringing - both her parents lived through struggles and she feels she breathes their stories.

New Awards Support Outstanding Postgraduate Students



Two young legal practitioners have each received awards to put towards their study for a Master of Laws at the Auckland Law School. The recipients of the inaugural awards are Elise Verdonck from Belgium and David Tong from Auckland. “We are very grateful for the generous support of alumni in New York and London who have made these awards possible” said Associate Professor Paul Myburgh.

Elise is a legal adviser from Belgium who has been admitted to the Law School for the first semester to study for an LLM in Environmental Law next year. “This award is great news for me because it makes my overseas study possible,” she says. “In comparison with Belgium, the LLM is rather expensive and I was worried I may not be able to afford the costs.... I’m fascinated by the environment and environmental regulations and I very much want to find out more about how things are done in New Zealand.”

David Tong is a former litigation solicitor who is undertaking a Master’s degree by minor thesis at the University of Auckland to deepen his understanding of international environmental law and human rights law. “I am very pleased to receive this scholarship because it will let me delve deeper into the areas of law I find most fascinating, especially the international climate change regime.” He is a co-founder of the P3 Foundation, New Zealand’s leading youth charity for extreme poverty and development, and has held leadership roles within the Aotearoa New Zealand Human Rights Lawyers’ Association, Gifted Education Centre, and United Nations Youth Aotearoa New Zealand.

We are very grateful for the generous support of alumni in New York and London who have made these awards possible.

International Student Exchanges

International exchanges to destinations in Europe, North America and Asia enriched the lives of 40 of our final year students in 2014. These exchanges provide an invaluable opportunity to attend courses of study at leading law schools overseas, and have this study credited towards an Auckland degree. The Law School has one of the most successful exchange programmes of any Faculty in the University with 15-18 percent of our final year cohort taking advantage of the opportunity.

Exchange agreements depend for their success upon the reciprocity of our overseas partners, and in 2014 we hosted thirty-seven law students from Universities in the UK, the US, France, Germany, Norway, the Netherlands, Denmark, Sweden, Japan, China, and Singapore. Such exchanges add to the vitality and diversity of the Law School, providing a unique and stimulating experience for the overseas students, while enhancing the social and academic life of the School.

During the year the Law School finalised new exchange and cooperation agreements with several of the leading Law Schools in China, including Renmin, Tsinghua and the Chinese University of Political Science and Law (CUPL), all in Beijing. Further agreements are currently being negotiated with other Universities in Asia, North America and Europe.

The Law School is strongly committed to maintaining and extending its international engagement and links with other leading law schools and institutions, and this is a key ingredient to the success the Law School has enjoyed in recent years in international law school rankings.

David Grinlinton
Associate Dean (International)



LGBTI Law Student and Allies' Network

The Law School launched its LGBTI law students' and allies' network at Simpson Grierson in August 2014.

The Hon Michael Kirby gave a candid and heartfelt account of issues facing the LGBTI legal community and law students especially. For more information and/or to be included in the law student LGBTI and allies' network, open to all, please contact Claire Charters at c.charters@auckland.ac.nz.



Judge Lisa Tremewan encourages top law students.

More than 100 awards were presented to the Law Faculty's top students at a ceremony in May. "This is just the tip of the iceberg in terms of the outstanding students we have here," Dean Stockley said, thanking the Faculty of Law's many supporters and sponsors. The evening's guest speaker was Judge Lisa Tremewan (BA, LLB (Hons), M.Jur (Dist.)) who sits at Waitakere District Court, where her duties include presiding over Waitakere's Alcohol and Other Drug Treatment Court. She provided advice to the Law School's prize winning students. "Keep an open mind and look out for opportunities to extend yourselves but also to pass on what you learn to others," she said. "You are privileged and clever - feel proud of your success - as your families are also proud of you, and don't forget to thank them for their support. Take the time to serve your community. And remember it's important to be modest. The kumara does not speak of its own sweetness."

Auckland law student appointed trial court judge in the Philippines.

Joan Mosatalla, a 37-year-old Masters student, has become the youngest trial court judge in the province of Albay. Her husband, Attorney Neil Canicula, a specialist in elections and family law, will celebrate with her when she returns home to take her oath in the presence of her family from Tabaco City, Albay in the Philippines.

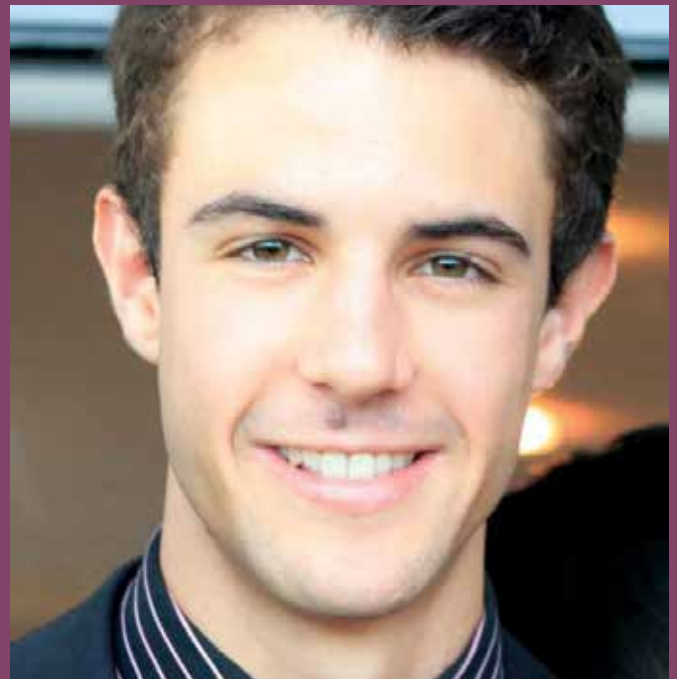


Scholarships and awards

The Boston Consulting Group, has awarded a \$15,000 scholarship to Brierley Penn. The BCG Scholarship was introduced in 2004 to provide financial support and recognition to outstanding tertiary students from Australasia in their second-to-last year of study. Brierley will take up the opportunity to work for the company in Sydney, which she says has "a really strong non-profit focus, something which is very important to me". As an example, she refers to BCG's willingness to share its management consulting skills to help Aboriginal communities.

Law student selected for Model United Nations Conference

Law student Emil Kiroff has been selected to fill one of three places offered to New Zealand students at the 2015 Harvard National Model United Nations conference in Boston.



Danielle Newton has won a Zonta International Young Women in Public Affairs Award, after having won the New Zealand equivalent earlier this year. With an interest in human rights and international relations, she impressed the judges as "a young women with the vision and potential to contribute fully to society where inequalities exist."

Sir Owen Woodhouse

ONZ, KBE, DSC

Sir Owen Woodhouse was one of The University of Auckland's most eminent graduates. He was an outstanding New Zealander whose vision and passion for social justice encompassed all areas of his life. While his greatest legacy to New Zealanders, and those who visit us, is the New Zealand accident compensation scheme, his achievements in other areas of his life must not be ignored - in the Navy during World War II, his stellar career at the bench and then his appointment as the foundation President of the Law Commission. Through all of this he was a committed family man whose life-long love affair with his wife Peggy was immortalised in his book, *A Personal Affair* (Magari Publishing, Taupo, 2004).

Sir Owen's early years were spent in Napier where he seems to have had an idyllic childhood. On leaving school in 1932, he started his legal working life as an office junior in the Napier firm of Humphries & Humphries. In 1935 he left to go and study law at The University of Auckland, also working as a junior clerk in the Auckland firms of Earl, Kent, Massey and North and later Brookfield, Prendergast & Schnauer. He enjoyed his time at the Auckland Law School with many lifelong friendships being made, and good times had. Recalling in *A Personal Affair* the then Law School Dean Professor Ronald Algie, he noted:

"Although an academic lawyer his approach to the law was direct, practical and aimed at getting to essentials rather than ruminative or philosophical. The theoretical enquiries which constantly floated to the surface in such a thoughtful subject as jurisprudence he gladly left to be pondered upon by others. But he did succeed in driving home the basic elements of the subjects he taught; and this, together with the brisk and cheerful approach which he brought to his lectures and his impish, immediate gift of repartee, appealed to us all."

Completing his legal studies, Sir Owen returned to Napier in September 1939 to take up a position with Kennedy, Lusk & Willis.

Undoubtedly his wartime experiences also contributed substantially to his lifelong concerns for social justice, fairness and equality as reflected in his decisions on the bench, and his contributions to *inter alia* matrimonial property reform and the accident compensation scheme.

The War Years

Sir Owen's legal career was interrupted by World War II. Following a brief period of Army training in New Zealand, he transferred to the Royal New Zealand Naval Volunteer Reserve and was accepted into "Scheme B" for accelerated Naval training in the UK. What followed was a remarkable and distinguished wartime Naval career, eventually commanding Motor Torpedo Boats (MTB's) operating in the Mediterranean. He saw considerable action particularly around the coast of Italy, Sicily and the Adriatic, and proved a highly effective and courageous Naval officer. From late 1943 until mid-1944 he was posted as Coastal Forces Liaison Officer working with Tito's partisans and the small Yugoslav Navy from the island of Hvar in the Adriatic. Extracts from some of his intelligence reports (see Appendix 2 of his book *A Personal Affair*) illustrate the significant contribution he must have made to the war effort in that region.



Following that role he returned to command MTBs in the region, including clandestine operations in support of special forces and Yugoslav partisans. He was awarded the DFC for his "gallantry, skill and determination in the Adriatic" ["Sir Owen Woodhouse - Obituary", *The Telegraph* (23 August 2014)]. In a letter to Peggy, his wife, on 18 July 1945, in classic understatement, he recalled:

"Although I may not be a very heroic person, the thing that was always uppermost in my mind was not the possibility of a very sticky moment from a purely selfish angle, but rather the fact that somehow or other it was my job to get that boat and all the men on board, safely back again." [Owen Woodhouse, *A Personal Affair*, at 405]

At the end of the war LTCDR Woodhouse was posted as Assistant Naval Attaché at the British Embassy in Belgrade, before finally returning to New Zealand in late January 1946.

Legal Career

After the war he resumed his legal career in Napier, becoming Crown Solicitor in 1953. He was appointed to the then Supreme Court in 1961 and 12 years later to the Court of Appeal, becoming its President in 1981, which position he retained until he retired in 1986.

It is impossible to do justice to all of the judgments he delivered but two in particular spring to mind. His sense of humour can be seen in the following passage from *Kinney v Police* [1971] NZLR 924, still cited in Criminal Law, Law 201, today. The case involved a successful appeal against a conviction for disorderly behavior, namely wading in an ornamental duck pond at a daylight festival in Napier.

"But as the appellant made his way up the road he found himself passing the pond Normally it is occupied only by goldfish and a few wild ducks, but on this occasion they were joined for a few brief moments by the appellant. The ducks seemed unperturbed - they remained on the surface of the water with scarcely an increase in their rate of stroke. The attitude of the goldfish is unknown."

He was the author of some leading family law decisions, especially on relationship property, where his sense of fairness and social responsibility shines through. In *Reid v Reid* [1979] 1 NZLR 572 he referred to the Matrimonial Property Act 1976 as social legislation with the wider legislative purpose of ensuring the equal status of women in society. The "hypnotic influence" of money, the "entirely disproportionate weight to monetary considerations particularly when they had been provided by the husband" could no longer drive the division of property.



The Woodhouse Report

On the 14th of September 1966 a Royal Commission was established to Inquire into and Report upon Workers' Compensation. Sir Owen was its chairman and his fellow commissioners were Herbert Bockett and Geoffrey Persons. All New Zealanders owe these men a deep debt of gratitude. The Report of the Inquiry, referred to as the "Woodhouse Report" was presented to Parliament on the 13 December 1967. In the symposium held at the University of Auckland in 2007 to celebrate that event and to honour Sir Owen he recalled Herbert Brockett's initial concern about a "fuddy duddy judge" becoming its chairman and then finding he had a "tiger by its tail".

The Report demonstrated Sir Owen's willingness to push the boundaries of New Zealand's social conscience. Although all of the terms of the inquiry were directed to persons injured in employment the escape clause "and any other matters that the Commission may deem relevant" was used by the members of the Commission to recommend a comprehensive, no fault accident compensation scheme that would encompass all New Zealanders whether in employment or not. It attracted worldwide recognition.

This beautifully crafted report has a clarity of language, a cogency and a cohesiveness rarely seen. It reflects Sir Owen's aspiration for a more humane, harmonious and responsible society and its guiding principles of community responsibility, comprehensive entitlement, complete rehabilitation, real compensation, and administrative efficiency still resonate today.

Law Commission

Sir Owen continued his work on the Accident Compensation Scheme at the Law Commission when he was appointed its President in 1986 and led a large project on the court system. During his tenure he sought to involve a wide range of expertise to ensure that law reform was based on solid empirical evidence. The Accident Compensation Project involved two of Australasia's leading actuaries, and the court project relied on the findings of a large empirical research project conducted in-house. He valued the expertise of others but was never intimidated by it - it made for lively debates at times.

As President, he had an uncanny knack of knowing exactly what was going on in the various projects, including the work the young legal researchers were doing. He showed a lively interest in the people who worked for him and their development. He also had a mischievous streak. There were occasions when he mysteriously disappeared without telling anyone where he would be. His colleagues learnt not to be alarmed if this happened on the first day of a test at the Basin Reserve.

Later Years

In his latter life, Sir Owen always held his naval experience in high esteem. He believed the rigorous training, discipline and pragmatic decision-making of wartime military service provided a good framework to develop his legal practice on return to New Zealand and during his subsequent judicial career. Undoubtedly his wartime experiences also contributed substantially to his lifelong concerns for social justice, fairness and equality as reflected in his decisions on the bench, and his contributions to *inter alia* matrimonial property reform and the accident compensation scheme. Sir Owen was a supporter of the ACC Group at the University of Auckland and his interest in the scheme itself continued until his death. Above all, however, Sir Owen's guiding star was his beloved wife Peggy. In *A Personal Affair* he recounted his first meeting with her in the offices of Mayne & Runciman in 1933:

"The place had come alight as she sat behind her desk in the front office. Shall I compare thee to a summer's day, I found myself thinking".



From Left: Grant Duncan, Susan St John, Richard Gaskins, Sir Owen Woodhouse, Sir Geoffrey Palmer, Rosemary Tobin and The Rt Hon Sir Edmund Thomas



Sir Muir Chilwell QC: 1924-2014

A full profile of Sir Muir Chilwell's distinguished career can be found in Eden Crescent 2011, pp 36-39. The following is a truncated version of a eulogy delivered by Sir Edmund W Thomas. The full text can be found on the Law School's website under the item "News."

I am confident that I speak for the profession in saying that Sir Muir Chilwell QC was universally respected as a Judge, as a lawyer and as a man. That respect ignited a deep affection that was exceptional.

Muir Chilwell was never driven by thoughts of personal aggrandisement or personal promotion. Such personal conceits were foreign to his nature. He was a modest and humble man. Rather, the lawyers' fiduciary duty was imbedded in his soul. He was driven by a deeply-rooted sense of responsibility to represent his clients' interests to the utmost of his physical and mental resources.

Those who worked at his side will be aware that in court Muir Chilwell was always even-tempered, civil and courteous. On one occasion I witnessed a different Muir. I was sitting alongside him as his junior. The Judge, a judge of the irascible kind, began to question the structure of Muir's well-prepared argument and suggested he adopt a different format. The Judge's assistance was politely and patiently declined. But the Judge persisted and, indeed, warmed to the task of explaining how Muir's argument would be enhanced if restructured as the Judge suggested. The Judge persisted. I expected Muir to again, and again, and again if necessary, firmly but courteously decline the Judge's invitation.

But Muir had finally had enough. He squared his shoulders and gave the Judge what can only be described as prolonged blast. He told the Judge in no uncertain terms with a force and at a volume I had not previously heard from my senior that he was counsel in this case and that he would structure his argument as he saw fit. It was quite vigorously pointed out to the Judge that his suggested format was inferior. And my senior reinforced this rebuke from the bar by repeating his argument in such strong terms that it could not be refuted, and, indeed, it was eventually the basis of the Judge's decision.

It is not a misstatement to say that at that moment my role model became my hero - although I suppose I am obliged to acknowledge that some of the judges whom I was to appear before in the future might have preferred that it was a lesson better left unlearned.

Muir Chilwell's appointment to the High Court (then called the Supreme Court) in 1973 was roundly applauded by the profession. At the time he was the doyen of the bar. But the Bench gained a Judge of outstanding intelligence, perception, patience, kindness, humility and integrity. It is not surprising that in the 18 years he was on that Court, for counsel seeking a hearing, whether in a civil matter or a criminal trial and whether for the plaintiff or for the defendant or for the accused, Justice Chilwell was the judge of first choice.

It takes about ten years for a retired judge's decisions to slide seamlessly from lecture notes, overtaken by an ever-changing law. Justice Chilwell is an exception. Some 23 years after his retirement from the High Court many of his judgments are still referred to.

I had cause to call upon Muir's common sense and wisdom within a year of being appointed to the High Court. Muir was now the senior puisne Judge in Auckland. I had difficulty in criminal cases accommodating the defence of putting the Crown to the proof, accompanied as it was, by the so-called right to silence and reinforced by the mandatory direction to the jury that they were not to draw an adverse inference from that silence. After trial, after trial, after trial in which there was no defence other than that the accused was putting the Crown to the proof, I became fearful that my disenchantment with the system would lead to something akin to the judicial equivalent of civil disobedience.

It was inevitable that I went to see Muir and inevitable that he would put his busy pen down and give me his full attention. Whatever his own views might have been, Muir did not disagree that the defence were, and the phrase is his, “playing the system”. But in the lengthy discussion that followed he managed to convey, without being condescending, or superior, or even overtly “mentorish”, that this was the system, that a judge is part of that system and that all and any reservations a judge might have are subservient to a judge’s basic function to ensure that the accused, simply by virtue of being the accused, receives a fair trial.

It was inevitable that Muir would be a first-rate Judge. For the purposes of this eulogy I have read, or re-read, a number of his judgments. Not unexpectedly, he carried forward the same painstaking research and preparation that had marked his work at the bar. But I have been impressed by his skill as a writer. His judgments are well-crafted and persuasive. And it is clear that, whereas at the bar he was driven to do the right thing by his client, he was now driven to do justice in the individual case. His pursuit of justice was unrelenting.

It would be remiss... not to refer to a judgment which is widely known for its inordinate length. It deserves recognition for much more than that. Mr Benipal was a desperate refugee who had been harshly and unfairly treated by the authorities. He was imprisoned unlawfully and faced summary removal from this country. He was badly treated. Apart from his admirable legal team he had no friends and no resources. His prospects were bleak.

It was Mr Benipal’s good fortune to strike a Judge who had an instinctive compassion and empathy for the underdog. The various proceedings were protracted, extending over a number of hearings before Mr Benipal was

granted permanent residence in New Zealand. On the Crown’s appeal, which was disallowed, the President, Sir Robin Cooke, as he then was, had this to say:

“These judgments.... consisted of a meticulous review of the evidence and submissions heard in the High Court and a full explanation of Chilwell J’s reasons for deciding as he did... As together they extend to the unprecedented length of 459 pages, they are presumably for practical purposes not reportable. It is impossible to read them fully without being struck by [the] single-minded concern to do justice that has led to these remarkable judgments. We pay that tribute...”

The President’s tribute is well-deserved. It is to be emphasised that the judgments are not impressive for their length as such. They are impressive for what page after page they reveal about the Judge: page after page his courage to call the shots as he saw them without fear or favour or regard to personal consequences; page after page a determination to see justice done; page after page an empathy for a stranded soul in a sea of autocratic indifference; and page after page a conscious desire to recognise the innate dignity of a hapless and helpless human being. Standing back, it is impossible to ignore the fact that there is something fine and noble about the Judge’s massive effort to see justice done for this fragment of humanity.

There were, of course, many other outstanding judgments. My colleagues at the Law School tell me that it takes about ten years for a retired judge’s decisions to slide seamlessly from their lecture notes overtaken by an ever-changing law. Justice Chilwell is an exception. Some 23 years after his retirement from the High Court many of his judgments are still referred to.

Justice Rodney Hansen Retires from the High Court

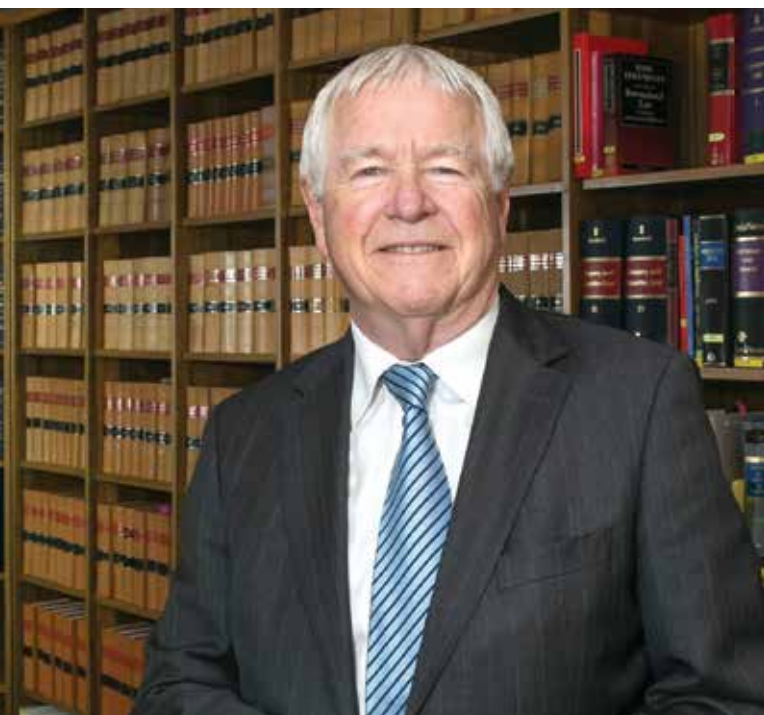
Justice Hansen was called to the Bench in 1999 via the conventional route of commercial litigation in a large law firm (Simpson Grierson), a period at the bar (Shortland Chambers) and the taking of silk in 1995. One of the things that attracted him to the Bench was the breadth and variety of work it offered. He does not see the High Court Judge’s role necessarily as being to specialise in those areas of law in which he or she had previously practiced.

A University of Auckland graduate in both accounting and law, he found in his commercial practice that his experience of accounting and understanding of basic economic concepts and numeracy stood him in good stead. At that time it was rare for law graduates to have any accounting training, or even experience at reading balance sheets. Later on the Bench he would often find himself sitting on Commerce Act cases where all of these skills were again put to good use.

His work as a judge included admiralty cases - one of which was subsequently reported in the Lloyd’s Reports (he modestly attributes this to good counsel and good arguments). One of the last major cases in which he sat involved intellectual property issues where the question was whether software innovations should attract intellectual property protection and the challenge and complexity lay in interpreting the facts and the subtleties of computer programming. *Fisher & Paykel Financial Services Ltd (No 4) v Karum Group LLC* [2013] 2 NZLR 266 has just been unsuccessfully appealed to the Court of Appeal [2014] NZCA 389.

What is particularly striking, given his background at the commercial bar, is that when asked about the highlights of his judicial career he frequently comes back to the criminal law.

What is particularly striking, given his background at the commercial bar, is that when asked about the highlights of his judicial career he frequently comes back to the criminal law. The outstanding cases include the “Urewera four”, the 16 week trial of Taito Philip Field and the trial of the former CIB chief John Dewar. Despite the additional pressures such high profile cases place on the Judge, it is clear that Justice Hansen found these cases and the criminal work generally, particularly interesting, intellectually challenging and important. He attributes the appeal of the criminal work to the fact that it brings the Court into a direct connection with the community. His interactions with the juries and registrars were an important part of this. Jurors take their role seriously and registrars are skilled at “reading” them. He tells me that, while he did not always agree with jury verdicts, he always understood how they came to them. The reforms to the jury system, to allow majority verdicts and to end the sequestering of juries, have in his view, been positive.



Criminal sentencing poses its own challenges. Justice Hansen is a warm, empathetic and compassionate man and it is difficult to imagine his being comfortable with contemporary calls for a more retributive approach to sentencing. A related difficulty is the issue of the appropriate role for the victim in the sentencing process. It is evident that he was forced to learn to tread a very difficult line in this area under increasing public scrutiny.

It is the variety of the work of the High Court judge that seems to have sustained Justice Hansen in his 14 years at the Bench. He is inclined to the view that High Court judges ought to be able to turn their hands to anything rather than become too specialised. That means, however, that they need time and the training to get up to speed in new areas. He hopes that the moves towards greater specialisation do not go too far and limit the range of work too much.

Justice Hansen began law school at the beginning of the Northey era. Among his teachers were A G Davis, Bernard Brown, Peter Burns, George Hinde, a young Don McMorland, Richard Sutton and Brian Coote. Fred McCarthy supervised his honours dissertation. It was a very different time.

Northey, recently returned from North America, was introducing the Socratic method (to some resistance it seems - the traditional lecture style was much more popular among students). Though Justice Hansen excelled (he won the senior prize for the best undergraduate record in his LLB) he did not feel as if he got to know the academic staff. There was no mentoring at that time and no one gave any indication to students that they had done well. Significantly, much later during his tenure as President of the Legal Research Foundation (1999-2006), he worked hard to ensure that law students were involved in the governing council as well as in the broader work of the Foundation and were given pathways into the profession.

Justice Hansen has returned to Shortland Chambers. Having undertaken further training, (this is evidently a man who likes to learn new things) he is now involved in mediation and arbitration. One is left with the impression of a humane, compassionate and thoughtful judge - a generalist with very broad skills and a deep sense of practical justice.

■ Janet McLean

Tracey Tawhiao: An LLB as a Fine Arts Degree

When I ask Tracey what she is most proud of in her career, it is what the sun revealed in 1998 in a cow paddock in the Uraweras on a misty morning. Tracey had just graduated with an LLB. At the Auckland Law School she had quickly gotten involved with a group of Māori radicals (half of whom were studying at the Law School). It was a time when decolonization was a word that had just entered the vernacular and she was fascinated with the impact of law on Māori women and the manner in which the law was used to enforce colonization at the grass roots level of people's lived experiences. For example, the Māori Land Tax Law introduced a Māori land tax of 6 pence a month. This was the biggest change in her grandparents' lives. Prior to the enactment of the law they were gardening, eating off the land

and getting on with their lives. After the enactment of the law their survival became dependent on money and their entire lives were reorganized around the need to find money from month to month so that they wouldn't lose their land.

After graduation Tracey was ostensibly working as a law clerk in her (now ex) husband's entertainment law practice. In fact she was using the photocopier and telephone to fund-raise and curate her first art exhibition - a protest exhibition (*Te Urupatu - Scorched Earth*) with Tame Iti, which took place on the Tuhoe land confiscation line. Tracey's works in the show were large bill boards on which she had painted in gold on clear vinyl the words from the legislation used to confiscate the land that the bill boards stood on.





When the sun came up it revealed the words shimmering in the morning mist and everyone was reading them. Whilst protests resulted in people going to prison, protest and performance as “art” had the advantage in that people did not run the risk of getting arrested. Tracey’s career as an artist, curator and agent for other artists became about doing art in a political environment based on a Māori kaupapa.

Tracey describes herself as an “outsider artist” - a poet, writer and painter - who is most recognizable for her detailed lattice works of koru that envelope buildings, windows, mirrors and populate canvasses, as well as her distinctive and colourful newspaper paintings, in which blocks of colour and design decontextualise solitary phrases and words to create new associations and meanings. Tracey says that in newspapers she sees “words as light and signs. The words that stay in write poetry.” This body of work originated in her anger at how unfair media commentary and mainstream legal discourses and institutions were to Māori - she began to paint over newspaper text so that the original print became a backdrop to the “real news”, which she describes as “positive, philosophic and poetic.” This body of work began at Law School - because law is so disciplined and the voice of Māori women is “fettered” and “disqualified” within its conventions and technologies this became her way “to say what I wanted and couldn’t say in a 10,000 word essay.” In choosing not to follow a traditional path into legal practice she was also conscious that the areas that she was most powerfully drawn to - criminal law and, in particular, criminal law as it impacted on Māori young people - would locate her at the bottom of the cliff dealing with the damage caused by a dysfunctional system and unable to walk away or front up to the care of her own (at the time) very young children.

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She says, “I am so fortunate I did a law degree rather than a fine arts degree. The two disciplines are very compatible. One gives me rigour. The other gives me freedom. And both are interchangeable.”

■ Julia Tolmie

Nicola Parton: On Leadership and Life Lessons

In 2011 Nicola Parton was appointed Global Head of Claims for the newly established Corporate Solutions - a stand-alone business unit at Swiss Re, one of the world's top reinsurers. She says that the last three years have been an exciting and challenging time for her, her team and the business unit.

In May 2014 she was invited to deliver the keynote presentation to the annual Women in Claims conference. She took the opportunity to share frankly her own most important life lessons in the hopes of stimulating reflection and conversation. The first is the value of embracing your roots (she credits the "can do" pioneering spirit which is "a significant part of the cultural underpinning" of New Zealand with giving her a sense that she could enjoy a career in any field).

The second is the need to own your choices and mistakes. She describes setting off on her OE in 1999 to join a magic circle London law firm which: *"was and still is impressive. It was full of talented people. It was full of young lawyers with great dreams. And yet, it was like a Disney nightmare. The unhappiest place on earth. My learning was not about the team. Indeed, a number of the team remain good friends of mine today. But it was this lesson: it is the leader who sets the tone. The culture literally grows around them. And the leader of my team at the time, and for whom I was required to work ultimately exclusively, was at best old fashioned, and at worst, tyrannical. It was not a supportive, learning environment. Well, at least not about the law or good customer service. I learned something else: you work for bosses not companies.."*

She owned her mistake, made the decision "not to throw good time after bad", faced up to the disappointment of her father and took the opportunity to try something that had never previously crossed her mind, "to join an in-house claims team at a Lloyd's Syndicate. So my 'mistake' to join a London law firm was a pivotal failure which in turn led to one of the most significant and positive changes in my life and career."

Another lesson is that "balance does not mean life in equal parts." Nicola says that she does not believe in work life balance because work is life. If her work does not pass the "skip test" (is she skipping to work?), then it is not



aligned with her values and is not right. She believes, instead, in "life balance" which, "is all about your energy levels and how you recharge, because there are going to be some activities which drain your batteries more than others. So the key is to find what is right for you." She has learned that she personally thrives on new challenges and her energy levels, ironically, decline when she slows down. How she recharges her batteries is to:

"Run! It really is my way to mentally unwind. I have a great thing going with some girlfriends where we run a half marathon in a different city every year. We obviously throw in some shopping. We recently discovered tough Mudders and are enjoying the team spirit of those events. And in five weeks I have a sabbatical (due to 10 years at Swiss Re) to cycle from Lhasa in Tibet to Kathmandu via Everest Base Camp."

In her opinion it is important for "all of us to regularly reflect on how we spend our time and where are we restoring vs spending energy. Do we have that balance right? Do we know where we feel passionate? Life shouldn't just happen to us."

So my 'mistake' to join a London law firm was a pivotal failure which in turn led to one of the most significant and positive changes in my life and career

And her last lesson is that, "At the end of the day, business is about human connections." She describes an experience that she had after her company announced that it had acquired a majority stake in Confianza Seguros - the number one surety insurer in Colombia, with some 330 employees in Bogota and several regional offices.

She organised to go and meet the claims team (only two of whom spoke English) in order to assure them that this was not going to be a takeover and that the change ahead should be seen as exciting opportunity:

"In other words I was there to win hearts and minds. My plan was to speak sincerely in English, translated valiantly by my head of LatAm claims and the CEO, about Swiss Re's culture and philosophy and how I felt that this matched theirs. I know I said the right things but how effective can this be in a large meeting room being translated austerely from a foreign language. Polite smiles were shared but I couldn't have said at that moment that they were persuaded!"

Luckily for me the CEO had a much better idea. He invited the entire claims team to come and join my colleague Ray and me for dinner. They took us to 'the' place in Bogota. A restaurant with four stories - ranging from heaven to hell - and full of lively waiters and waitresses all with musical instruments, men that appear to be mice, and dance floors on every level. I had only been in the restaurant for half an hour when I broke two of my cardinal rules: no dancing before dinner or whilst sober!"

By the time she left the place at 2 am she had danced with every member of the claims team, and experienced their genuine warmth as individuals and as a team. She said, "They certainly won over my heart and mind and I look forward to working with them in the future." She concludes that this is her most important lesson:

"Enjoy the people you meet. Take the time to connect with them. Share something of yourself. Be willing to open up and share your vulnerability or problem if you need help. That goes a long way to building a bridge and encouraging reciprocity. In the formality of the office and/or your roles, consider how that might inhibit you from really making a connection and how you could improve it. What you will cherish at the end of day, is the people and the experiences. They're what make work life and not work after all."

■ Julia Tolmie

Robert Tibbo: On Acting for the Very Vulnerable

Hong Kong based Robert Tibbo (LLB 2002) recently featured in National Magazine as a result of acting for Edward Snowden in Hong Kong, prior to Snowden's current asylum in Russia. Edward Snowden is unlikely to need introduction to most readers after the global media frenzy which was triggered when the US National Security Agency (NSA) systems analyst leaked sensitive government documents to a number of journalists in Hong Kong. He was motivated, in his words, by the desire "to inform the public as to that which is done in their name and that which is done against them." The disclosures have fuelled global debates over mass surveillance, and the balance between national security and information privacy.

Hong Kong is one of the few places in the Asia Pacific where the rule of law exists and it is generally respected. It is one of the few places where human rights are increasingly being caught in the middle of important debates.

Robert considers himself to have been fortunate enough to be able to build a law practice centered on his specific areas of interest, namely criminal law and judicial review. Much of his work involves clients who have made claims under the UN Convention Against Torture (UNCAT), but he has also been acting for clients at first instance in asylum claims under UNCAT, the UN Convention Relating to the Status of Refugees and non-refoulement protection claims under Article 3 of the Hong Kong Bill of Rights and Art 39 of the Basic Law.

Canadian born Tibbo's career path has been by no means straightforward. This is how it is summarized in the *National*:

"After earning a chemical engineering degree from McGill University in 1988, Tibbo quickly discovered a passion for Asia. 'Montreal was very Eurocentric, whereas I saw Japan and South Korea emerging as rising economic powers. After a few months, I realised Asia's potential. This region was going to become very important and I wanted to be a part of that development.'

So he headed to Melbourne, where he stayed for a few years, and then moved on to the Chinese city of Tianjin, where he learned Mandarin in the early 1990s. Over the next decade, he travelled around Asia, working in various regions of China, as well as in Thailand and Hong Kong. 'I worked mainly in the energy and chemical industries. It was primarily due diligence work and that extended to the agriculture and food processing industries,' he says. 'During this period, in Yunnan, I saw people who had been forcibly removed from the cities and sent to the countryside to work in agriculture. I think that it was at this moment that I really became more aware of the plight of refugees.'

In 1999, Tibbo decided to study law at the University of Auckland, where he developed a special interest in administrative and constitutional law. He took courses on these subjects with such highly esteemed professors as Grant Huscroft, who is now at the University of Western Ontario, and Mike Taggart, who died in 2009. Shortly after graduating in 2001, he settled in Hong Kong to take the mandatory Bar courses. He got his law licence in Hong Kong in 2005, and launched his practice as a barrister the same year. His founded his law firm, Eastern Chambers, in 2006.

'Hong Kong is one of the few places in the Asia Pacific where the rule of law exists and it is generally respected - but not always,' Tibbo says regarding his choice of markets. 'It is one of the few places where human rights are increasingly being caught in the middle of important debates. That is especially true when it comes to refugees.' While Hong Kong was



Photo by Dan Froese

historically a safe haven for millions of Chinese after the Second World War, the city, which is now a special administrative region of China, has become rather hostile to refugees in recent years. Many of his first refugee cases involved clients who were tortured in Sri Lanka or in Pakistan, Indonesia, the Philippines, or West Africa.

It was by working with such a clientele on a daily basis that Tibbo developed expertise in working on sensitive files. His clients, finding themselves in very difficult situations, were often destitute or required psychological assessments. In some instances, they had been tortured or sexually abused in their home country. It is largely because of his heightened sensitivity to the plight of this clientele that Tibbo has become a director of Vision First, a non-profit organisation based in Hong Kong which provides humanitarian and legal aid and advocates on behalf of people seeking asylum there."

Of the Snowden case, Robert points out that in 2009 the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Sheinin, warned of the potential abuses by government in its mass public surveillance programs and the necessity for an internal whistle blower mechanism to both encourage and protect those who come forward with information on government abuse of citizens' privacy rights. The Obama administration was aware of the Special Rapporteur's report and did nothing that would have allowed Snowden (or any other person out of the hundreds of thousands of employees of the NSA) to have made the disclosures at an earlier stage.

Robert also says that Mr Snowden made a clear decision of conscience at an enormous personal cost and risk to his life, to inform, not just the American public, but the global community, of the egregious transgressions of the NSA and the Five Eyes governments (USA, UK, Canada, Australia and NZ). But for Snowden's disclosures the NSA and its Five Eyes partners' activities would have gone unchecked. Meanwhile Snowden's acts of courage have left him in circumstances of extreme vulnerability.

■ Julia Tolmie

Vinerian Scholarship Winners - Then and Now



In July we learnt that Auckland graduate James Ruddell had so excelled in this year's BCL (Bachelor of Civil Law) examinations at the University of Oxford that he had been awarded the Vinerian Scholarship for best overall performance in the degree examinations. Charles Viner (1678-1756) was an English jurist, the author of *Viner's Abridgment*, benefactor of the Vinerian Professorship of English Law (formerly Vinerian Professorship of Common Law), and benefactor as well of the Vinerian scholarships now awarded to the top performers in the BCL. The first holder of the Vinerian chair was Sir William Blackstone and current holder of the chair is Hugh Collins. Past winners of the Vinerian Scholarship include Oxford dons such as John Gardner, legal luminaries such as law lord Lord Hoffmann, South African Supreme Court judge Edwin Cameron, the former Governor-General of Australia, Sir Zelman Cowen, and Justice Dyson Heydon, recently retired from the bench of the High Court of Australia and now inquiring into alleged corruption in New South Wales trade unions. So James is in exalted company by winning this scholarship.

On a more personal note, though perhaps also of interest to *Eden Crescent* readers, in June I had lunch at Kingham in the Cotswolds outside Oxford with Don Harris and his wife Jacqueline. Don is another Auckland graduate, in classics and law, who read for the BCL in the 1950s and won the Vinerian. He was a law tutor at Balliol College for many years where he taught or supervised Sir David Baragwanath, Alan Galbraith QC, Jock Brookfield, Bryan Gould, myself and a number of other New Zealanders. Then he was a founder and director of the Centre of Socio-Legal Studies in Oxford. That Centre engaged over the years of his leadership in many important empirical studies of the law in action. Some aspects of that work are discussed in K Hawkins (ed), *The Human Face of Law: Essays in Honour of Donald Harris* (Oxford, Clarendon, 1997). Now well into his nineties Don is a little frail, but very alert and keeping up with current scholarship. When I visited him, he had just read a paper by a South Australian academic that is about to be published in Cardiff's *Journal of Law and Society*. He proudly noted that the article included footnote references to my work and that of several others of his former students. He continues to be a teacher - giving lessons on biblical Greek to local clergy in the Cotswolds.

David V Williams

Friendships Renewed at 30-year Law School Reunion

Law School graduates from the 1980s turned out in force for a 30-year reunion. Alumni from all over the globe, including Australia, the United States, Philippines and the Cayman Islands gathered for the weekend reunion, which attracted about 160 former students.

The celebrations started with a gathering at the Faculty where the highlight was a hilarious address from Associate Professor Bernard Brown, which included a recital of one of his poems and set the tone for the rest of the evening. There were more bellows of laughter when some of the alumni took over the stage and shared some anecdotes from their university days - stories of cockroaches in the Law School common room coffee machine, chants of "Coote for Dean" as students lobbied for Brian Coote to become

Dean following the death of former Dean, Jack Northey, and reference to a law school divided during the Springbok tour.

The hilarity continued for a second night with an 80s-themed party complete with some outrageous outfits put together by those who chose the fancy-dress option.

On a more serious note, the classes of the 1980s are contributing to a new "Jack Northey Memorial Teaching Scholarship," with the aim of raising \$40,000 for a deserving member of the Law School teaching staff to spend a semester teaching at a top international university.



Alumni news in brief

Scholarships

Barrister **Mark Tushingham** (BCom/LLB (Hons) 2012) from Bankside Chambers has won the FMB Reynolds Scholarship to pursue postgraduate study in law at Oxford University at The Queen's College. The scholarship, established last year, is named for Emeritus Professor Francis Reynolds, longstanding editor of the *Law Quarterly Review*, and author of books on a range of commercial law subjects. The scholarship initiative came from Professor Peter Watts and has received generous support from the many Oxford alumni in New Zealand and abroad.

Alix Boberg (BCom/LLB Hons) 2010) received a Fulbright graduate award to complete an LLM in trial procedure and dispute resolution at Harvard University.

Mike Regan (BA/LLB (Hons) 2011) received a Fulbright graduate award to complete an LLM in criminal justice and advocacy at Columbia University. He will specialise in the role of community courts in addressing the over-representation of ethnic minorities in the criminal justice system.

Elizabeth Chan (BA/LLB (Hons) 2012) received a Fulbright graduate award to complete an LLM, specialising in international commercial arbitration and investment arbitration, at Yale University.

Sharon Toi (BA/LLB (1997/98) Auckland, LLM (Hons) 2010 Waikato) has won a Fulbright-Nga Pae o Te Maramatanga Graduate Award. Ms Toi will research the invisibility of indigenous women in tribal governance at the University of Arizona, towards a PhD in Law from Waikato University.

Alumni Appointed Queens Counsel

In addition to Paul Rishworth, a number of Auckland alumni were appointed Queens Counsel in 2014. They are **Antonia Fisher** (LLB 1981), **Marie Dyhrberg**, **Paul Wicks**, **Russell Bartlett** and **Stephen Bonnar** (BA/LLB(Hons) 1986/1988).



Honours

Seven alumni of the Auckland Law School are among those named in the Queen's Birthday Honours List 2014, two of them as Dames Companion of the New Zealand Order of Merit. The Honourable Dame **Susan Glazebrook** (BA 1974, MA 1977, LLB(Hons) 1979), a judge of the Supreme Court, has been honoured for services to the judiciary, and the Honourable Dame **Lowell Goddard, QC**, (pictured above) a judge of the High Court in Wellington, has been honoured for services to the law. The Honourable **Rodney Hansen, QC**, of Auckland has been made a Companion of the New Zealand Order of Merit for services to the judiciary. Judge **Jeremy Gittos**, of Auckland, has been made a Companion of the Queen's Service Order for services to the judiciary along with Judge **Shonagh Kenderdine**, of Wellington, and Judge **David Sheppard**, of Melbourne. **Karen Sherry**, of Auckland, has been awarded a Queen's Service Medal for services to the electricity industry.

Elevations on the Bench

Justice **John Faire** (LLB(Hons) 1971), previously a temporary High Court Judge, was made a permanent High Court Judge in December 2013. Other appointments to the High Court earlier this year are Justice **Simon Moore** (BA(Hons) Otago, LLB 1980 Auckland) and Justice **Susan Thomas** (BA/LLB(Hons) 1982).

Justice **Mark Cooper** (LLB(Hons) M Jur (Dist) 1979) has been appointed to the Court of Appeal. Justice **Ellen France** (LLB(Hons) 1981, LLM 1983 Ontario) has been appointed as the President of the Court of Appeal. This marks an historical juncture at which the principal judges at all four levels of the New Zealand court hierarchy are female.



Other News

There was a large turnout of Auckland Law School alumni to hear **Sir Kenneth Keith** speak about his work as a judge of the International Court of Justice. Sir Kenneth, who began his legal education at the Auckland Law School, was joined by 40 other alumni at a drinks reception at the offices of Mayer Brown in London in February 2014. He talked about the changes which have been occurring at the International Court and discussed some of the recent developments and cases which have shaped the court's work. The Law Faculty is particularly grateful to William Glassey and Jane Childs, partners at Mayer Brown, for hosting this alumni event.

Kingsley Abbott, after two years in the Hague, has been asked to return to Cambodia to help the new judge at the United Nations at the Extraordinary Chambers in the Courts of Cambodia complete the Khmer Rouge investigations.

Dr **Guy Fiti Sinclair** (BA/LLB(Hons) Auckland, JSD (New York)) has joined the Law Faculty at the Victoria University of Wellington. His principal area of teaching and research is public international law.

Minuk Kim is a graduate policy analyst in the international fisheries management team at the Ministry for Primary Industries. His day to day work involves issuing export documents for the Antarctic toothfish, preparing for the annual Commission for the Antarctic Marine Living Resources (CCAMLR) conference where new conservation measures are agreed upon, researching various international oceans initiatives to analyse the overlaps and gaps, dealing with the regional fisheries management organisations (RFMOs) that New Zealand is a member of, and working on the fisheries development programmes in the Pacific.

Anna Zhou (BA/LLB(Hons) 2007) works as a Senior Solicitor at the Australian Prudential Regulation Authority (APRA) in Sydney. APRA is the prudential regulator of the Australian financial services industry. Anna provides internal legal advice, particularly to the policy team and frontline supervisors of the regulated entities. The work draws upon her previous experience as a junior barrister at Shortland Chambers (Auckland) and litigator at Gibson, Dunn & Crutcher (London) and contributes directly to making the Australian financial system safer. In 2009 Anna produced the New Zealand research report to the International Committee of the Red Cross (under the supervision of Associate Professor Treasa Dunworth) to update their Customary International Humanitarian Law textbooks. One of her highlights in Sydney is providing pro bono representation of clients in the Magistrate's Court. Within APRA, she will be able to continue broadening her skill set as there are opportunities to rotate into non-legal roles such as policy, technical industry advice, or working directly with banks as a frontline prudential supervisor.

Two Auckland lawyers, alumni **Darsan Singh** and **Carole Curtis** have been instrumental in setting up the Immigration New Zealand Lawyers Association (INZLA) - the first time that immigration lawyers in New Zealand have had their own specialist national association. The organization is established in order to promote justice, advocate for immigration law and policy, advance the quality of immigration law and practice and enhance the professional development of all its members. Darsan Singh is also the Vice-President, whilst the President is Mark Manhire.

The Auckland Law School thanks all the alumni and friends for the support they have given to the Faculty of Law in recent years, including the following alumni and friends who have given support since the 2013 *Eden Crescent*.

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The Hon Sir Thomas Thorp
Judge Arnold Turner CMG

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William Akel
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Pravir Tesiram
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We would also like to acknowledge and thank the law firms and individuals who have assisted our student societies and the events and competitions they organise.

