

# *Eden Crescent*

Te Kerehiniti o Itena · Auckland Law School Annual 2015



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## **Appointments**

Record recruitment round  
for Auckland Law School

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## **Supreme Court**

10 year anniversary conference

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## **Legal writing**

New programme launched



**THE UNIVERSITY OF  
AUCKLAND**  
Te Whare Wānanga o Tāmaki Makaurau  
NEW ZEALAND



# Eden Crescent

The Auckland Law School Alumni Annual.

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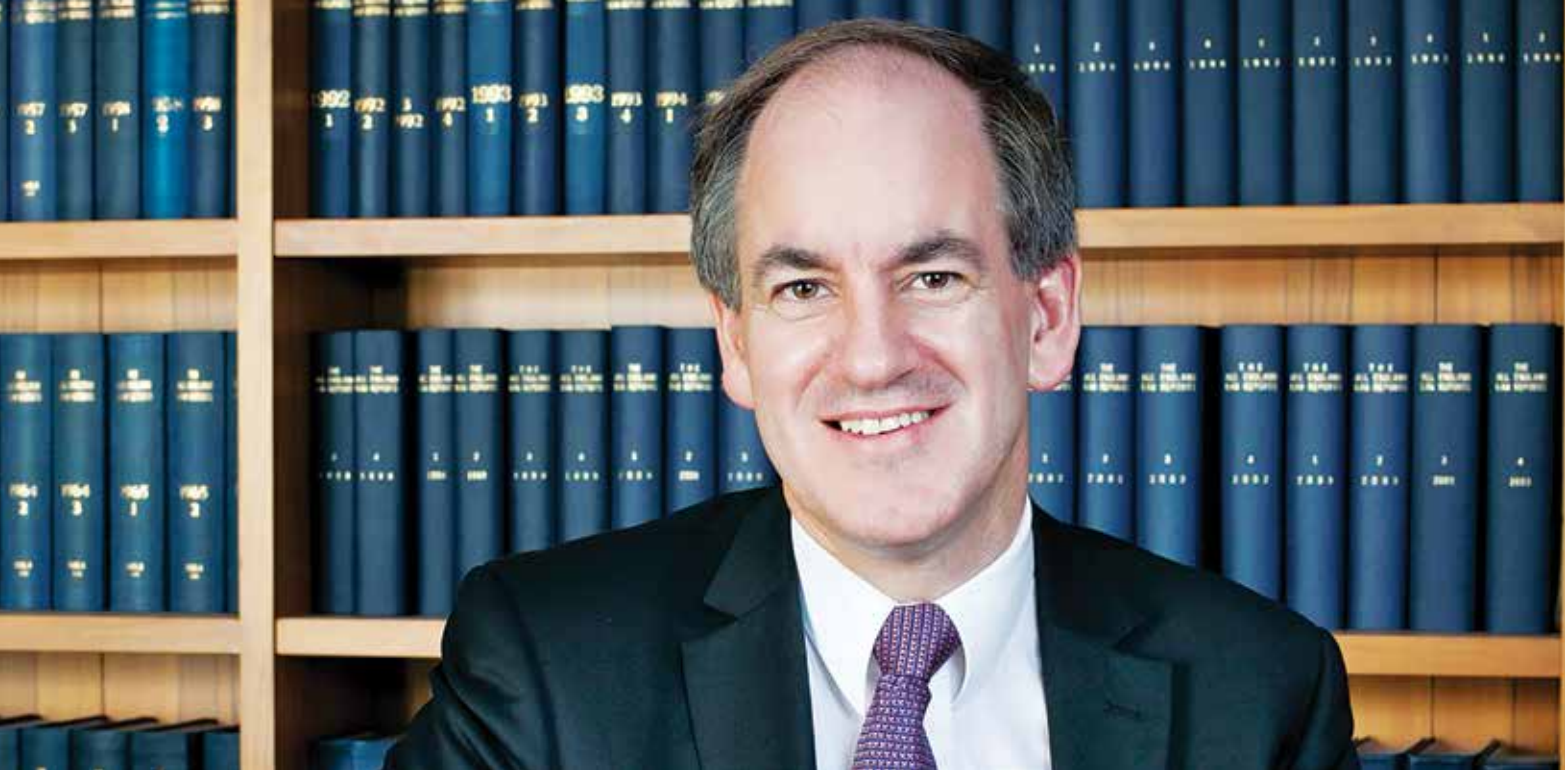
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## From the Dean

During the last five years I have appointed a third of the Faculty. This number of appointments has brought some exciting new and emerging scholars to the Auckland Law School, as well as new hires with significant and highly regarded publication records, and with extensive connections with the profession and the judiciary.

Since the last edition of this magazine I have appointed seven new members of the permanent academic staff. They bring considerable strengths in areas including Contract, Tax, Company Law, Competition Law, Commercial Law, Securities Law, Financial Regulation, Equity and Trusts, the Treaty of Waitangi, Māori Land Law, Māori Customary Law, Public Law, International Law, Human Rights Law, Legal History, Legal Method and Legal Writing. Craig Elliffe, Andrew Erueti, An Hertogen, Anna Hood, Chris Noonan and Warren Swain have all started at the Law School during the course of this year and are profiled in the first few pages of the magazine. They will be joined by Jane Norton in February. I am also pleased to have been able to appoint Helena Kaho as an Assistant Lecturer. She is the first Pacific Islander to become a member of the Faculty and her appointment has been greeted with enthusiasm by our Pacific students and alumni.

The Auckland Law School is comprehensively strong across all major areas of the law. Whether in public and international law, corporate and commercial law, or private law more generally, we have a Faculty of outstanding teachers and scholars.

The Faculty is committed to ensuring that we continually review and update our curriculum and programmes and compare these to best overseas practice. We are in the process of introducing a more comprehensive legal writing programme and, as part of this, all our second year students will be required to take a new legal research, writing and communication course beginning in 2016. This will be taught in

small groups with fortnightly writing, research and presentation exercises, drawing upon best practice experience in many North American and some leading Australian law schools. It will be taught primarily through small group workshops and intensive mentoring and will help ensure that we continue to maintain and enhance the high standards for which this Law School is known.

We have also recently reviewed and extended our LLM programme. In response to a survey of previous students and legal practitioners, from 2016 we will be offering more choice from a range of three or five day courses, Saturday courses and half or full semester evening courses. Full-time or part-time students can choose from a range of courses and six specialisations. The Law Faculty has also taken on responsibility for the MTaxS degree, meaning that considerably more tax courses will be available to LLM as well as MTaxS students.

As you will see in the magazine, we have celebrated a wide range of staff and student successes during the course of the year. This has included Peter Watts being made a Fellow of the Royal Society of New Zealand and being awarded a prestigious Leverhulme Visiting Professorship, and Jane Kelsey winning a \$600,000 Marsden grant for a research project on international economic regulation. The Auckland Law School won three of the four New Zealand Legal Writing Awards for 2015.

Our success in student mooting competitions continues unabated. 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 eighth time in the last nine years. Over 700 students joined our Mooting Society this year and two new internal mooting competitions (for first year and intermediate-level mooting) have been established in the last twelve months. In October we won the Australia-New Zealand Aviation Law Moot.

Earlier this year we were deeply saddened by the death of long-serving Faculty member Margaret Vennell. I know she is remembered fondly by many of her past students and she will be greatly missed.

My thanks to all alumni who have shared memories and sent condolences. The Faculty and I are extremely grateful for all the support we receive from alumni and friends of the Law School. To give but one example, our participation in mooting competitions would not be possible without the financial support provided by law firms and barristers' chambers, and the coaching, mentoring, and adjudicating willingly offered by alumni, practitioners and judges. The generosity of our alumni is critical to the success of the Law School in all sorts of ways and we are very grateful for all the contributions that have supported and enabled what has been a very busy and successful year, as reflected in the pages of this magazine.

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**Andrew Stockley - Dean of Law**





Back row: Chris Noonan, An Hertogen, Andrew Erueti. Front row: Helena Kaho, Anna Hood, Craig Elliffe

# Biggest appointment round in Auckland Law School's history

The strength of a law school is built on its people – staff and students. The Auckland Law School is fortunate in being able to continue to attract top students and also to attract gifted academics.

The 2014 appointment round was the largest in the history of the Law School, with nine new appointments for 2015 and 2016.

Professor Craig Elliffe came to the Auckland Law School from the Department of Commercial Law in the Business School and was previously in practice at Chapman Tripp and KPMG. Craig, along with Professor Michael Littlewood, will provide leadership in taxation law and policy. Craig will also co-direct the New Zealand Centre for Law and Business.

Professor Warren Swain joins the Law School from the University of Queensland. Warren has published extensively in private legal history, including *The Law of Contract 1670-1870*. He will teach Contract and Legal History in the Law School.

Associate Professor Chris Noonan joins the Law School from the Department of Commercial Law in the Business School. Chris's researching and teaching in Competition Law and Company Law will strengthen the Law School in those key areas. He is the author of the *Emerging Principles of International Competition Law* (Cambridge University Press). He also brings leadership experience to the Law School and has taken on the role of Associate Dean (International).

Andrew Erueti joins the Law School from Waikato as a Senior Lecturer. Andrew's teaching and research areas include Māori Land Law, human rights and indigenous rights. He brings the complement of Māori staff at the Law School to four, the highest in its history.

Dr An Hertogen further strengthens the Law School in commercial law. She will teach the Commercial Law elective. Her research focuses on the regulation of economic activity by states and she has already won a prestigious Marsden Grant for her research in that area.

Dr Anna Hood joins the Auckland Law School from Melbourne. Her research interests are in public law and international public law. She teaches in those areas as well as being the inaugural Director of the Legal Writing, Research and Communication Programme.

Dr Jane Norton returns to her alma mater in 2016 – this time as a lecturer in her areas of research interest: Public Law; Equity; and Trusts. Her book, *The Freedom of Religious Organisations* has recently been published by Oxford University Press.

Helena Kaho has been appointed as an Assistant Lecturer and is the first Pacific Islander appointed as a Faculty member. Her research will focus on Pacific Island issues.

Julia Harker has been appointed as an Assistant Lecturer and Research Fellow. She brings expertise from practice in Resource Management Law and in Land Law and will teach and research in those areas from 2016.

The new hires are profiled in this issue of *Eden Crescent*. Dr Jane Norton and Julia Harker will be profiled in the 2016 issue.

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**Professor Susan Watson**



## Professor Craig Elliffe

As I recall it, the day on which I first met Craig Elliffe started like many others – some early morning mist, an initial skirmish with the Companies Office on the meaning of the securities regulations, and the negotiation of a terms sheet.

The late morning meeting to follow was an important one. The transaction was sizeable and the Inland Revenue not likely to be accommodating if the boundaries were overstepped. Making one's way up to KPMG's offices one readied oneself for the usual volley of mumble speak that accompanied the giving and receipt of any advice on the interpretation of the Tax Act. But my fears were completely misplaced, for the next hour consisted of a lucid exposition of the policy behind the relevant exemption, the generally received revenue interpretation of that exemption, certain difficulties with that approach, and a considered assessment as to how best to approach the transaction in question. Craig Elliffe had announced himself. He was a pleasure to work with because when he talked tax it was as if you were having a normal conversation about everyday matters. It was all so eminently clear and straightforward, and there was a refreshing absence of the bells and whistles which generally accompanied the mysterious art of giving and receiving tax advice. It wasn't difficult to see how he had become a partner in a big six firm (there were six in those days) only three years after completing the Cambridge LLM and only two years after joining his firm. He was in every way a highflyer.

Over the years there were many more such meetings which almost persuaded me that the Tax Act made sense. One learned that Craig had also somehow found time both to be on the board of his firm and to lecture on taxation at the law school in Otago – his alma mater. I reminded him on one occasion that there was English High Court authority for the proposition that there were only three professions – the three original



celibate professions – and that membership of NZICA only gave one access to the realm of corporate princes. It was with some surprise then that I heard that Rupert Wilson had persuaded him to abandon life as a corporate prince and engage in a real profession as a partner at Chapman Tripp. From all accounts it was like a duck taking to water and there he remained until nearly 10 years later the lure of academia compelled a further move. Why was this? A love of teaching certainly, for Craig won a teaching excellence award for teaching in the Master of Taxation. One rather suspects, however, that it was a recognition that it was very difficult, if not impossible to do serious academic work and be a partner in a leading law firm at the same time. Perhaps too there was a desire to be engaged on the side of the angels rather than foster the interests of the corporates. We do know that since his move into full-time academia his focus

has been on tax avoidance and capital gains and that there have been a number of publications on those matters in specialist journals such as the *Journal of Business Law*, the *New Zealand Business Law Quarterly*, the *British Tax Review* and the *New Zealand Universities Law Review*. He has also managed to complete his work – *International and Cross-Border Taxation in New Zealand*, a book of 765 pages published by Thomson Reuters. This is what Professor Avi-Yonah, a professor at the University of Michigan has said about the book:

“This is an outstanding book that should be read not just by anyone interested in NZ tax, but by students and practitioners of international tax worldwide. It shows how a small country can build a very sophisticated international tax system, while remaining competitive.”

We are surely very lucky to be joined by a person of such talents. And perhaps more importantly, so are the students.

Professor Francis Dawson

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**He was a pleasure to work with because when he talked tax it was as if you were having a normal conversation about everyday matters.**



Warren Swain's creaking bookcases

## Professor Warren Swain

Warren Swain, a distinguished legal historian, arrived at the Law Faculty in June 2015 to take up his professorship.

To get here he had only to cross the ditch from the University of Queensland, but Warren hails from Yorkshire, England, more specifically Harrogate. Sharing the pride one finds in the sons and daughters of that County, his warm northern accent, dry sense of humour, and willingness to pitch in have already made a most favourable impression. His origins also explain why he is mad on cricket, both past and present. This is an interest shared with our other senior contract teacher, Francis Dawson.

Working backwards from his time in Queensland, Warren was six years at Durham University in England, several years at Birmingham University, and had his first teaching post at Hertford College, Oxford. Hertford College is Warren's academic

home. There he successively completed a BA in Jurisprudence, the BCL, and a DPhil. His doctorate was on Aspects of the Law of Assumpsit (contract law) 1750-1855. That doctorate has recently borne fruit in the form of a highly readable and wide-ranging history of contract, *The Law of Contract 1670-1870*.

Warren is not solely a legal historian. He writes on contemporary private law as well, particularly the law of contract. Nor is he an historian only of English private law. He has written on Australian legal history, and is in the process of writing a book on the history of the law of contract in Australia. Dipping into his extensive list of publications, one sees articles on horse sales, usury, pawnbroking, and the development of medical liability. As

for his teaching, Warren has taught nearly every branch of private law in the peregrination above, including land law, equity and trusts, contract, tort, remedies, advanced private law, Roman law and restitution. He is teaching contract law and legal history this year at Auckland.

Warren has settled in with his William IV bookcases creaking with an astonishing array of books – old and modern, circling Holmesian (S, and possibly OW as well) rugs and leather furniture. All in considerable contrast to the outside fabric of No 17 Eden Crescent!

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Professor Peter Watts





## Associate Professor Chris Noonan

We were delighted this year to entice Associate Professor Chris Noonan to join the Faculty from the University's Department of Commercial Law. Chris is an academic lawyer specialising in competition and company law, and the law of international trade.

Chris adds quality to an already vibrant cadre of commercial and company lawyers in the Faculty. Joining Professors Peter Watts, Susan Watson and Francis Dawson, the Faculty is the national centre of excellence in company and commercial law, befitting its location as the nation's commercial centre. (It has been a strategic aim to future-proof this strength by also appointing newer academics in the field). Chris brings a key strength, his specialism in competition law, which he has taught in the LL.M. for us in the past, but in which the Faculty has not had its own in-house senior academic for some time. This increasingly important area involves large stakes litigation and is a major practice area in which all major firms are engaged. Our students are enjoying his engaging and expert instruction in competition and company law at postgraduate and undergraduate levels. Watch for publicity for an ADLS seminar on company law for March 2016, to which Chris has agreed to contribute.

Chris's research interests are wide-ranging. His monograph, *The Emerging Principles of International Competition Law*, was published in 2008. Few can persuade the most prestigious press worldwide (Oxford University Press) to publish a 640 pp tome! Clearly a labour of love, it is a reduced version of a massive 590,000

word PhD thesis (the current word limit for which is 100,000 words). Descriptions by Elias CJ as "a fascinating work of breathtaking scholarship," by one reviewer as "delectable" and another as "glorious, sweeping" and the one book he would save if compelled to discard all but one of his international texts (!) tempted this medical lawyer to dip into it. But the effect was momentary; the appeal of my new *Landmark Cases in Medical Law* proved just too great! In the end life is too short! Clearly, however, the text is a standard work of reference, indispensable to practitioners and students of competition law.

Chris has also published on a host of issues, such as company directors, directors' duties, shareholder remedies, barriers to entry, anticompetitive agreements, competition law jurisdiction and the PACER Plus trade negotiations. Current research projects include another book on competition law. He is a former director of the Research Centre for Business Law and an editor of the New Zealand Business Law Quarterly. He is an experienced supervisor of PhD students; experience academic lawyers in law faculties often lack.

Chris has had a fascinating career path. Around the year 2000 he began to combine his academic appointment with a consultancy,

providing legal, economic and other assistance on trade matters to the fourteen island countries that comprise the Pacific Forum (Forum Island Countries or FICs). Involvement in the negotiation of the Economic Partnership Agreement (EPA) between the EU and the FICs to replace the non-reciprocal preferential trading arrangement that existed under the Cotonou Agreement on behalf of the island countries took him to Brussels more and more often for negotiations for several years. Chris says that it takes a particular set of skills, perseverance and vision to negotiate on behalf of smaller, poorer countries: "It is too easy for the other parties to just say 'no.' I would say to our people when the going got really tough, 'One day it would be nice to negotiate for someone rich, powerful and big!'" The results, however, can be uniquely satisfying. He recalls with satisfaction being part of the effort to secure a favourable rule of origin for fisheries products, which came to be known as the Global Sourcing Rule. The rule recognised fish as originating within a Pacific Island country for purposes of the preferential trade access to the European market if the fish was processed onshore. Some EU member states have regretted their generosity, but the provision has led to increased significant investment in processing and jobs in the Pacific.

With negotiations looming in 2009 for a new trade liberalisation agreement with Australia and New Zealand (PACER Plus), the countries had learnt from the EPA experience the need for preparation and increased negotiating capacity. Rather than use consultants, they wanted their own independent trade advisory organisation to provide them with legal and economic support and to co-ordinate their separate positions. After his appointment as inaugural Chief Trade Adviser by the Pacific Trade Ministers in 2009, Chris took leave from the University in 2010-11 with a brief to set up and run that organisation from Vanuatu. The Office of the Chief Trade Adviser was born. Two years later it comprised a staff of a number of economists, lawyers and other officials; its work continues to this day.

Chris has quite considerable leadership, managerial and administrative experience at Faculty level and University-wide, having served as both Head of Department and Deputy Head of the Department of Commercial Law. No sooner had he joined the Faculty than Chris was appointed Associate Dean (International), in which capacity one task will be negotiating our exchange agreements with international law faculties. We anticipate that these will comprise unusually favourable terms henceforth!

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Associate Professor Jo Manning



## Andrew Erueti

Nō ngā iwi o Ngāruahine mē Ruanui a Andrew Erueti. I tupu ake a Andrew i ngā tini tāone o te Waipounamu pēnā i a Twizel me Cromwell i te wā i mahi ai tōna matua mō tetahi ope nukunuku whakatika i ngā teihana hiko ā-awa. I tukuna a Andrew ki te Kura Kāretī Māori Katorika o Hāto Pētera kia kura ai mō ngā toru tau. I tana mutunga i reira i mahi a Andrew mō te Tari Kamupene mo te kotahi tau i mua atu i tana kakenga i runga i te waka o te mātauranga. I oti i a Andrew te whiriwhiri, ko te ture te rākau māna. I tīmata tana tohu ture i te Te Whare Wānanga o Waitaha, i oti i te Te Whare Wānanga o Te Ūpoko o Te Ika a Māui. I tīmata a Andrew i ana mahi rīoa i Pōneke, katahi ka hoki a Andrew ki Te Whare Wānanga o Te Ūpoko o Te Ika a Māui ki te whakaoti i tana Tohu Ture Paerua. Mai reira, kua pūkenga, kua tohunga a Andrew i roto i ngā āhuatanga o te ture me ngā tikanga o te Māori, tikanga tangata, tikanga hunga taketake.

I te Paenga-whāwhā o tēnei tau i tau atu a Andrew ki te taha o tōna hoa rangatira a Claire Charters, a, i whai tūranga a Andrew ki te Wānanga Ture o Te Whare Wānanga o Tāmaki Makaurau hei pūkenga matua. Kua whai wāhi hoki a ia ki te Kāhui Kaiako / Kairangahau Māori o taua wānanga, arā ko te Te Tai Haruru. Te kāhui rangahau i tīmatahia e Ahorangi Nin Tomas me Andrea Tunks, hei kāhui rangahau, wawāo hoki i ngā āhuatanga Māori me te hunga Māori e whai pātanga ki te ao o te ture. Kua tata oti a Andrew i tōna Tohu Kairangi SJD.



Growing up, Andrew Erueti (Ngāruahine, Ruanui) moved from place to place around the lower South Island, living in towns like Twizel and Cromwell while his father was part of the mobile workforce building and maintaining penstocks for hydroelectric power plants. Before he could develop a Southland 'burr', Andrew was sent to Hato Petera College where he spent three years immersing himself in te ao Māori. After that, a year working in the Companies Office as a filing clerk convinced him that more education would improve his career prospects. Five of his colleagues were in the same waka, and all six left for university at the same time. Andrew chose to study law, initially at Canterbury and then Victoria. On graduating, he spent a couple of years in practice with a Wellington firm, before being enticed back to Victoria to teach and complete an LLM. As with many young academics, he taught whatever subjects he was handed, including commercial law and sales and finance. Notwithstanding the commercial flavour of his early teaching, he also created a new course on comparative indigenous rights, which aligned very closely with his research interests in Te Tiriti o Waitangi, Māori land law, Māori customary law, human rights and indigenous rights.

Andrew took the opportunity provided by a sabbatical leave to enrol in an SJD at the University of Toronto. Ever the modern researcher, he spent a year in New York while his partner, Dr Claire Charters, was on a fellowship at New York University. His field work took him to Argentina (for comparative research), Arizona (ditto), and even Florence (the explanation he gave for this was that it's reasonably close to the birthplace of Christopher Columbus who had interesting interactions with indigenous peoples). Andrew's doctorate plans then went on hold so he could take up a position with Amnesty International in London and Geneva as its adviser on indigenous rights. Returning to New Zealand, Andrew taught for a couple of years at Waikato Law School, and in 2014, he won a major Nga Pae o te Maramatanga research grant to investigate how Māori communities can most effectively engage with the extractive industry. He joined the Auckland Law School in April 2015.

In addition to his role as a senior lecturer, Andrew is also a much valued member of Te Tai Haruru, the group comprised of the Law School's Māori academic staff, student representatives and the Pouawhina Māori. Te Tai Haruru was

created by our former colleagues the late Dr Nin Tomas and Andrea Tunks to ensure that Māori could have a distinct voice and presence in the University. The days of having to explain what the Treaty of Waitangi is and when it was signed are thankfully long past. Broad Treaty obligations, such as the duty to consult, are reasonably settled. Yet, to a certain extent, perhaps we have lost sight of the original intent of advocates like Nin and Andy for a more radical transformation towards Māori self determination. Māori often have to frame arguments using (for example) environmental law or Treaty law, with mixed results. Rights and remedies are conceptualised in Pākeha terms, at least by analogy. Andrew sums up the challenge perfectly, that what is missing is the right to culture. With his SJD thesis now close to completion, Andrew is ideally placed to take up the challenge and advance the development of that right as well as the development of indigenous research paradigms more generally.

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Amokura Kawharu and Jeremy Hema



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## Within two years of graduating An won a prestigious Marsden fast start grant for a project entitled “Good Neighbourliness in International Law”

and support each other. As Marcus Roberts said “It’s been great to have An join the faculty. Aside from her fantastic research track record, which is something we can all try and emulate, she always has a smile which is a great example for those of us with sleep-optional newborns.”

An came to Auckland after several years in legal practice at Linklaters in Brussels via a Master of Laws at Columbia University in New York. After completing the PhD An joined the lively intellectual community at the Hague Academy of International Law on a project considering the legal implications of the Global Financial Crisis and spent time as a visiting fellow at Tel Aviv University, working on the GlobalTrust project (more formally ‘Sovereigns as Trustees of Humanity: The Obligations of Nations in an Era of Global Interdependence’) directed by Professor Eyal Benvenisti, who is soon to succeed Professor James Crawford as the Whewell Professor of International Law at the University of Cambridge. The paper she wrote there has been accepted for publication in the *European Journal of International Law*. She was also invited to be a research assistant for Professor Ross Buckley from the University of New South Wales on a project “Rethinking Global Finance and Its Regulation”, and has worked as assistant editor of the highly reputed international law blog *Opinio Juris*.

The list of international publications An has accumulated in prestigious journals and edited collections over just a few years would be the envy of a mid-career academic. They range from theorising inter-state cooperation under conditions of growing inter-dependence, to the challenges of financial services liberalisation in the context of the financial crisis, into new areas such as tobacco policy.

The great bonus of a Marsden grant is that scarce commodity of research time to take this work further. Before that, however, An has a more pressing summer project - to complete the Tongariro crossing with her Dad when the doting grandparents come from Belgium to visit Mattias (and incidentally An and John) from November.

With the calibre of colleagues like An, the future of legal education and next generations of academia couldn’t be in better hands.

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Professor Jane Kelsey

## Dr An Hertogen

An joined us as a full time lecturer in July 2015. As a crusty old soul it’s always a joy to welcome new blood into the Law Faculty.

In An’s case it was an even greater pleasure for Caroline Foster and I because An had recently completed an impressive doctoral thesis entitled *Safeguarding a Liberal System of States: Reinterpreting States’ Freedoms in Increasing Interdependence*, which we supervised. During that time she became renowned for both her sharp intellect and her enthusiasm for university life as the President of the Postgraduate Students’ Association and a teaching fellow and graduate teaching assistant.

Within two years of graduating An won a prestigious Marsden fast start grant for a project entitled “Good Neighbourliness in International Law”, which builds on the argument in her thesis that new norms were needed to help

address the impacts of increasing global interdependence, especially its intangible economic and psychological consequences.

As if the challenges of a new job and a Marsden project aren’t enough, An has literally brought new life to the Faculty. A mark of the truly dedicated academic has been An’s cheerful visage during weeks of sleepless nights courtesy of young Mattias (born November 2014).

When I interrupted prep for her lecture on personal property (on “sausage meat and spices”) to ask what was top of her wish list these days, she said without hesitation: “an uninterrupted night’s sleep - or more than one”. That’s clearly a wish shared with our other young colleagues who are also new parents



# Dr Anna Hood

When Anna Hood joined the Law Faculty as a lecturer in July, it was a homecoming long in the making.

Since 2002 Anna, a born-and-bred Aucklander, had been studying, researching and working all around the world: in Australia, the United States, the United Kingdom and Uganda. Having been away for over 13 years, the pull back home was becoming stronger. So when the Auckland Law School started a major recruitment round late last year, it seemed like the right time to return – the homeward pull had become irresistible. It was not an easy decision – Anna had just successfully completed her PhD and had embarked on an academic career with Melbourne Law School. But she explains: “while I absolutely loved my job at the Melbourne Law School, I was very keen to come back home to New Zealand and I was really excited about the prospect of joining the Auckland Law School and becoming engaged in legal issues in New Zealand.”

Anna is an international lawyer. Her PhD explored the United Nations Security Council and the rise of emergency international law making. It was a topic that in many ways was a culmination of all her earlier work. She had studied history and law as an undergraduate at Melbourne (graduating with first class honours). Drawn to law due to her concern with issues of social justice and human rights, she discovered a passion for history. As she puts it: “Studying history, allowed me to develop an understanding of the different movements, and political, economic and social forces that have shaped the world and affected people’s lives in tangible ways.” Anna’s studies at New York University, specialising in International Legal Studies, allowed her to keep her focus on international developments. Meanwhile, she had embarked on a few years’ legal practice, but even then hankered after social justice, doing pro bono work during this period with the Public Interest Law Clearing House (providing advice for homeless persons in Victoria).

Awarded the NYU Human Rights Fellowship at the end of the LLM, Anna was selected to work with the Refugee Law Project in Uganda. There she worked both on routine legal advice, but also broader policy issues. “That” she says “was a great split. It allowed me to deal with immediate practical issues of law as well as having the space to think about issues at a policy level. In the end, structural change must come from a policy level, so it’s important to be proactive about policy as well as dealing with immediate issues.” It is this blend of pragmatism and policy orientation that has led Anna to become involved with a number of international legal consulting projects. She sees this engagement as an integral part of being an academic. “There are many people, organisations and even countries that



have little access to international legal advice” she says “and we need to do better at ensuring that there is greater access to such advice for those who want it.” Over the years, Anna has worked on diverse issues such as Australia’s extended nuclear deterrence policy, the jurisdiction of the Extraordinary Chambers in the Courts of Cambodia, questions of human rights structures in the Commonwealth and extra-judicial killings that occur in the United States. While she enjoys engaging with international law consulting projects, she is also very aware of the many problems within international law and is conscious that it is frequently more of a hindrance than help in many spheres. These concerns are one of the themes that Anna develops in her academic work.

Arriving at the Auckland Law School, Anna hit the ground running. She is teaching Immigration

and Refugee Law this year and is a part of a team putting together a new legal writing programme which will run from next year. She is already busy coaching the Jessup moot team, which will represent New Zealand in Washington DC next March. There is a packed agenda on the research front as well, including projects on the changing role of the Security Council and the way in which “security” is understood as well as projects on nuclear weapons law and disarmament.

And then, there is the process of settling back home. With summer coming, she wants to get re-acquainted with Auckland’s West Coast beaches and find time to enjoy her love of the New Zealand bush.

Welcome home Anna!

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Associate Professor Tresa Dunworth



Pictured here are Justices O'Regan, Glazebrook, McGrath, Blanchard, William Young and Arnold

The University of Auckland's Faculty of Law held a conference on "The New Zealand Supreme Court – the first ten years" in Auckland on 13 and 14 November 2014. Apart from the Chief Justice, The Rt Hon Dame Sian Elias (who was in London sitting with the Privy Council), all of the judges currently sitting on the Supreme Court bench were present at the conference, along with some former judges as well.

## Faculty hosts major conference on the first ten years of the Supreme Court

Ten years ago, the passage of the Supreme Court Act 2003 and the abolition of our right of appeal to the Privy Council generated a fair share of controversy.

Professor Margaret Wilson of the University of Waikato, who was in many ways, "midwife to the new Supreme Court", said that she "faced the task with some trepidation – those who came before me had only produced stillbirths".

There was little nostalgia floating around at the recent retrospective on the Supreme Court, hosted by the University of Auckland's Faculty of Law. Most agreed that, while perhaps not always perfect, the Court has contributed to New Zealand jurisprudence in ways that the Privy Council was never going to be able to do. The conference looked at how the Supreme Court has been performing ten years on and whether it has met its original objectives. The answer, according to Dean of Auckland Law School and conference co-organiser Andrew Stockley, is "undoubtedly so". Professor Philip Joseph of the University of Canterbury concurred that the Court is now "firmly part of New Zealand's judicial architecture".

### Reflections on the Court – establishment, leave to appeal and issuing judgments

Although abolition of the right of appeal to the Privy Council was first suggested in 1904, New Zealand was a little slow on the uptake, according to Dean Stockley. Whereas Canada and Australia abolished their rights of appeal in 1949 and 1986 respectively, as at the turn of the 21st century, New Zealand was in company with only a handful of countries in retaining it (all the others being small Caribbean and Pacific Island states).

"The most noteworthy feature about the Supreme Court was that it came into being at all," commented Professor Joseph. Concerns included the threat of disruption, increased insurance premiums, uncertainty, that only the Privy Council could ensure "the purity of the law", that a Supreme Court would threaten the sovereignty of the Executive through Parliament,

that there were not enough well-qualified judges to fill the bench, that the Court would be "stacked with judges of a particular political persuasion", and that there would be a lack of "judicial independence". Weighed against those arguments was the desire for a court with a full understanding of the New Zealand context. And although the legislation to establish the Court passed with a majority of only 63 out of 120, after that, says Dean Stockley, "we just got on with it."

During the 1990s, only six appeals a year were making it to London, as compared to some 150 civil and 350 criminal appeals a year being heard by the Court of Appeal, meaning the Privy Council did not deal with a sufficient number of cases to be familiar with the New Zealand context. "We really didn't have, for practical purposes, a second appeal in New Zealand," said former Supreme Court Justice The Right Hon Sir Peter Blanchard KNZM, as the Privy Council was



not providing “final court guidance” on large areas of our law. The Supreme Court is now taking the lead in terms of developing the law and providing guidance to the courts below, leaving the Court of Appeal to revert to more of an “error correction” role.

Important issues that may not have been viable (either financially or geographically) to take to London are now able to reach our Supreme Court, providing New Zealand authority at the highest level on a wide range of significant issues, noted David Goddard QC of Thorndon Chambers in Wellington. He found his one appearance before the Privy Council challenging in terms of “just getting there and finding somewhere to work whilst in London”. The Supreme Court is much more accessible (in his case, about a seven-minute stroll from his chambers), and “much less peculiar and scary”.

The Supreme Court was designed to deal with the “vexed questions of law” – leave to appeal is not as of right and should only be given if there is an issue of general and public importance at stake. Only 220 out of 1130 applications for leave to date have been granted. By contrast, many cases that did go to London did not deserve a second appeal, in the opinion of Sir Peter Blanchard – they either had “no precedent value” or were “hopelessly optimistic”.

A number of the speakers suggested that when the Court issues multiple judgments as part of a single decision, they should be sequenced in order of majority support (as is done by the UK Supreme Court), rather than by seniority (as is presently done here). It was also queried whether we would be better served by the Court more consistently issuing a single judgment rather than each judge writing his or her own, as sometimes even concurring judgments can raise questions of interpretation. Dean Stockley acknowledged that multiple judgments, reflecting a genuine divergence of opinions and displaying different lines of reasoning, may be useful in other cases, but suggested that additional opinions are only warranted where they really add something.

### Academic viewpoints

It was then the turn of the academics to review and critique the way in which the Court has dealt with various areas of law since its establishment. There was much joking about going “where angels fear to tread” – a justifiable concern given that the first two tables were peopled by five of the six judges currently sitting on the Supreme Court bench – The Hon Justice Glazebrook, The Hon Justice McGrath, The Hon Justice William



Law Commission President Sir Grant Hammond opens conference

Young, The Hon Justice Arnold and The Hon Justice Mark O’Regan (only the Chief Justice, The Rt Hon Dame Sian Elias, was absent due to a prior engagement sitting with the Privy Council on what is likely to be its last New Zealand appeal). While some felt that it was not an occasion to “mark the judges’ homework”, others felt less compunction, venturing into the tricky territory of constructive criticism. Sir Peter Blanchard (somewhat tongue in cheek) compared the experience to “opening the latest legal publications and seeing one’s latest judgment being roasted by junior academics”.

Justice McGrath had a “right of reply” at the conference’s close, and made a very gracious response to the commentary offered by the academic experts. The discussions reminded him of exchanges with faculty members from Victoria’s Law School when the Court shared its quarters, and he considered that the conference had been of “huge benefit to the Court” and “in the best tradition of academic and judicial relations”. While judges must decide cases as brought to them (which is “not inherently a creative role”) and have a limited time in which to issue their decisions, academics have the time to explore issues and ideas more fully, leading him to suggest that they need not be in competition but could learn from each other.

### Public law

Only 20 or so constitutional/administrative law decisions have been issued by the Supreme Court to date, counting for barely 10% of

## The Supreme Court is now taking the lead in terms of developing the law and providing guidance to the courts below, leaving the Court of Appeal to revert to more of an “error correction” role.

the decided cases over the ten year period. This, considered Professor Philip Joseph of the University of Canterbury, “understates the importance of public law jurisprudence at the level of our highest Court”. Professor Joseph, like others, touched on the apparent reluctance to pen single judgments and the high incidence of dissenting judgments. He noted that, while there was the tension between the desire for judicial unity and the need for intellectual rigour and impartial decision-making, guaranteed judicial independence was nevertheless very important.

### Māori legal issues

Dr Claire Charters of the University of Auckland considered several decisions dealing with Māori legal issues from a critical, comparative and international legal perspective. Cases touched on included *Takamore v Clarke* ([2012] NZSC 116) (which involved questions of burial in accordance with the wishes of the deceased’s Pakeha partner versus the wishes of other family members) and *Paki v Attorney-General* (Paki 2) ([2014] NZSC 118) (which dealt with customary title in riverbeds). Dr Charters felt that the decisions represented “a mixed bag for the recognition and protection of Māori rights”, and that while there have been some significant successes in principle, this had not yet translated into meaningful outcomes: “It is remarkable the extent to which the Court has shown sensitivity to cultural issues in a way in which the Privy Council

**It is remarkable the extent to which the Court has shown sensitivity to cultural issues in a way in which the Privy Council would not have been able to do. But it would be good to see some success in practice as well as principle.**



The Supreme Court. Photo courtesy of Paul McCredie

would not have been able to do. But it would be good to see some success in practice as well as principle.” She would like to see more room given to tikanga as compared to Western ways of thinking, which tend to focus on the individual. “We need to apply the law with an eye on the outcome, not just an eye on the law,” she said.

### The Bill of Rights

Professor Paul Rishworth QC of the University of Auckland focused on the treatment of the *New Zealand Bill of Rights Act 1990* (NZBORA) by the Supreme Court, and in particular, how the Court (which is not bound by the jurisprudence of the Court of Appeal yet was largely responsible for it) has treated the NZBORA. The inherent ambiguity of the NZBORA itself adds another wrinkle – while originally designed to be New Zealand’s “supreme law”, it has the form of a “mere” ordinary statute. Professor Rishworth QC discussed two possible narratives as to how the NZBORA fits into our “constitutional architecture” – the constitutional approach taken by the courts, which describes a baseline below which we cannot go; and the statutory path, which takes the view that the NZBORA can be overridden if there are policy justifications for doing so (the approach taken by the wide executive). Answers to these questions are only partial to date, and it remains to be seen to what extent the NZBORA will be used to read down or re-interpret statutes in future.

### Agency law

According to Professor Peter Watts QC of the University of Auckland, it has been “business as usual” in terms of the Supreme Court’s first ten years of commercial law jurisprudence. However, there have been surprisingly few company and

insolvency law decisions. The principal decision he discussed was *Chirnside v Fay* [2007] 1 NZLR 433, which recognised that fiduciary duties between parties to a joint venture can arise without an express undertaking, and that allowances can be made for a defendant for skill and effort in an account of profits. While the decision has been much cited in New Zealand and has also had one overseas citation, Professor Watts QC cautioned against using equitable principles in an overly “paternalistic” manner. He considered that looking at this case from the point of view of breach of promise may have been a better approach, and wondered whether this may have been one of those cases where the parties’ failure to plead certain arguments “hamstrung” the Court.

### Contract

Professor Francis Dawson of the University of Auckland focused his remarks on the case of *Vector Gas Ltd v Bay of Plenty Energy Ltd* [2010] 2 NZLR 444, in which an underlying disagreement about the admissibility of extrinsic evidence to help interpret a contract was apparent. He discussed two rival approaches to contractual interpretation – one which looks at the written text of the agreement to find the expressed intention of the parties; and the other which attempts to discern the parties’ presumed intention by looking at wider circumstances (including negotiations and post-contractual conduct). Professor Dawson’s own views on the matter were not disguised – in large commercial deals, he asserted, parties want to express their agreement in its entirety in writing and to be bound by defined terms and nothing else. He considered that Lord Hoffmann’s attempt to bridge the two approaches by looking at the “intended meaning of the words” (*ICS v West Bromwich Building Society* [1998] 1 WLR 896)

does not assist, but is rather “a straddling of the Grand Canyon – an impossible exercise”. Professor Dawson concluded by urging the Court, when this issue arises again, to make a clear-cut choice.

### Competition

Paul Scott of Victoria University of Wellington looked at how the Supreme Court has dealt with regulation and competition law. He spent much of his time looking at the “0867” case’s treatment of section 36 of the *Commerce Act 1986* (*Commerce Commission v Telecom* [2010] NZSC 111). Mr Scott described it as a “legalistic, black letter decision”, which displayed “bottom-up reasoning” rather than the traditional competition law “top-down” approach, where the starting point is a principle such as economic efficiency. He criticised the decision as having treated the previous authority as “a universe – a black box into which nothing else intrudes”, for having failed to cite learned publications and/or international decisions and for giving insufficient consideration to economic analysis.

### Tax

In contrast to one or two other speakers, Professor Michael Littlewood of the University of Auckland thinks the Court has done a “terrific job” in his area of specialty. In terms of discernible trends, he noted that out of some seventeen or so tax cases heard by the Supreme Court, ten or eleven dealt with income tax (probably driven by tax payers’ attempts to avoid tax liability), five involved GST, one was an excise duty case and one dealt with unclaimed money. He touched on a number of decisions – *Ben Nevis Forestry Ventures Ltd v Commissioner of Inland Revenue* [2009] NZSC 40 (which dealt with tax avoidance





Conference speakers (left to right): Associate Professor Scott Optican, Dean Andrew Stockley, Professor Michael Littlewood, Professor Peter Watts QC, Dr Claire Charters, David Goddard QC, The Rt Hon Sir Peter Blanchard, Katherine Sanders, Professor Mark Henaghan, Professor Stephen Todd, Professor Philip Joseph, Professor Margaret Wilson, Paul Scott and Professor Francis Dawson



Deans from law schools across the country (left to right): Tony Smith of Victoria University of Wellington, Chris Gallavin of the University of Canterbury, Andrew Stockley of the University of Auckland, Bradford Morse of the University of Waikato and Mark Henaghan of the University of Otago

*Lightbody* [2009] 2 NZLR 433, which dealt with the in personam jurisdiction. She argued that unconscionability should only be required where it is an element of the cause of action against the proprietor, and if it is not, that it should not be “super-added”. She suggested that the Supreme Court may wish to reconsider whether unconscionability should be a requirement at all in personam claims.

### Torts

“Tort law is an area which throws up more new questions than any other area – it is a broad, sprawling, amorphous subject,” said Professor Stephen Todd of the University of Canterbury. The Supreme Court has been quite active in this area, with some 14 or 15 significant decisions – the law of negligence and questions surrounding the duty of care having attracted the greatest attention. Professor Todd discussed the Court’s treatment of issues ranging from negligent omission by public authorities, negligence by advocates, negligence in relation to leaky buildings, limitation issues and claims for exemplary damages. Among the cases he touched upon were *Allenby v H* [2012] NZSC 33 (where a woman who became pregnant after a failed sterilisation procedure was covered for accident compensation due to medical misadventure); the *Lai* decision [2006] NZSC 70 (which, in his view correctly, abolished barristers’ immunity in New Zealand); and the *Couch* decisions [2008] NZSC 45 and [2010] NZSC 27 (which dealt with the obligation of the probation service to control an ex-prisoner – a decision with which Professor Todd was not entirely satisfied).

versus acceptable tax planning); *Stiassny v Commissioner of Inland Revenue* [2012] NZSC 106 (which looked at the interpretation of tax statutes); *Re Greenpeace of New Zealand Inc* [2014] NZSC 105 (which considered whether a political purpose can be counted as charitable); and *Tannadyce Investments Ltd v Commissioner of Inland Revenue* [2011] NZSC 158 (which took a more restrictive approach to judicial review). He queried whether all of these cases deserved leave, but nevertheless noted that “bad cases sometimes enable the Court to make good law”. “It is unlikely that the Privy Council would have taken these opportunities to develop the law – the

Supreme Court has made significant contributions in this regard,” he said.

### Land law

Katherine Sanders of the University of Auckland (and a former clerk to Justice Blanchard) reviewed the Supreme Court’s land law jurisprudence, noting: “The Court has continued with a steady hand – there has not been a great deal of controversy in this area, which is not a bad thing.” However, she proceeded to make some gently constructive comments, particularly in relation to the case of *Regal Castings Ltd v*



The Supreme Court. Photo courtesy of Paul McCredie

## Criminal law

Historically, the criminal law jurisdiction of the Privy Council was scarcely ever exercised in appeals from New Zealand (only ten criminal appeals ever made it there). So, in terms of the Supreme Court's aim of improving access to justice, it must be regarded as a "spectacular success" in the case of criminal law, said Professor Tony Smith, Pro Vice-Chancellor and Dean of Law at Victoria University of Wellington, with an exponential increase in the number of criminal appeals now being heard. That said, there have been very few appeals in the area of substantive criminal law, which Professor Smith suggested may be due to our "mature, settled and reasonably well understood" criminal code as found in the *Crimes Act 1961*. Those cases which have come before the Court have been marked by "a tenacious adherence to the language of the statute". He cautioned the Supreme Court against going down the same route as the English House of Lords, which has taken to the common law with a rather free hand: "The criminal code we have is a far better thing than the untrammelled common law."

## Evidence

"The *Evidence Act 2006* has generated one of the largest bodies of linked cases produced by the Supreme Court to date," said Associate Professor Scott Optican of the University of Auckland, but this has not been without disagreement and uncertainty as to its proper scope and application. Associate Professor Optican is unsure that the Court is getting its job of stating and clarifying the law right in this area, and thinks some of its reasoning has been "somewhat murky".

Although disputes involving evidence rules are "quintessentially fact-based", he thinks that the Court has focused too narrowly on the facts and circumstances of particular cases, rather than on the development of law and elaboration of clear legal principles. He went on to consider a few case examples, including *Fenemor v R* [2011] NZSC 127 (which he felt "lacked guidance" as to what is meant by "unfairness" in terms of admissibility of past propensity); *Morgan v R* [2010] NZSC 23 (where the Court was split over a cell confession); and *Hamed v R* [2011] NZSC 27 (which dealt with the admission/exclusion of improperly obtained evidence and caused "disarray" in terms of previously well-accepted, although admittedly not perfect, jurisprudence). He concluded, "The Supreme Court can do better with Evidence Act cases – both in terms of its reasoning and in its role as New Zealand's highest court."

## Family law

Professor Henaghan, Dean of Law at the University of Otago, described the Supreme Court's first decade of dealing with family law matters as "a ten-year affair, with a few little blips". One case which clearly frustrated him was *Rose v Rose* [2009] NZSC 46, where the primary earner got credit for inflation and therefore 60% of the relationship property split. Although the Privy Council first recognised that a homemaker's contributions count in 1976 (albeit for less than the primary earner's contributions), it seems that by 2009 equality still had not been achieved. He admonished the judges to look hard at this issue the next time it comes up. He emphasised the particular need for family law decisions to be clear and timely, so that people can see for themselves what the law means and get on with

resolving their disputes: "As a final court, you are like a legislature in some ways – you are delivering the law. If the law is uncertain, don't equivocate – we at least need to go somewhere," he told the judges present. By way of illustration, he referred to a Hague Convention case in which the majority said the child's welfare needed to be balanced with the policy of the Convention (disagreeing with the Chief Justice, who focused solely on the welfare of the child). This result did not sit well with Professor Henaghan: "We are not trapeze artists – balancing tests are hopeless," he said.

**Lisa Clark, editor of LawNews**

Article published in issue 43, 5 December 2014

## Publication of proceedings

The papers presented at the conference have been revised, following the discussion that occurred, and are now published in a book edited by Andrew Stockley and Michael Littlewood. The book also contains short biographies of the Supreme Court judges, a table of all the substantive decisions of the court from 2004 to 2014, and photos of the Supreme Court – not only its exterior, the courtroom and other public areas, but also areas which are generally not accessible, such as the Chief Justice's Chambers and the Judges' Library. Sir John McGrath comments in the Foreword: "This book itself will be seen as a milestone in the life of the Court".





Stephen Penk, Anna Hood and Stephanie Carr

# New Legal Research, Writing and Communication Course for all students

The Auckland Law School is introducing a comprehensive legal writing programme for all students. The flagship of the new programme will be a compulsory stage two course, which will be taught primarily through small group workshops and intensive mentoring.

LAW298 (Legal Research, Writing and Communication) will provide students with an opportunity to develop even stronger legal research, writing and oral communication skills.

The legal writing component of the course will begin in the first semester with a workshop that allows students to get to know one another and their instructor. This workshop will focus on student well-being and will include a discussion on how to approach law school, the study of law and how to manage the stress of the law school environment. The second workshop will introduce students to legal writing while the remaining workshops for the semester will focus on predictive forms of writing. Specifically they will cover approaches to writing answers to problem questions and legal memorandums.

The legal writing workshops in the second semester will focus on persuasive writing. Specifically they will focus on legal essay writing and appellate briefs. There will also be a formal assessment in oral communication in the form of a negotiation exercise.

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**“I am very pleased to be part of this initiative and I am really looking forward to introducing the course next year,” Anna says. “I hope that it will provide students with some very important skills that they will be able to use throughout their careers.”**

The literature on legal writing courses shows that extensive feedback is one of the most important components of any legal writing programme. Students will have opportunities for feedback in class in the form of both peer to peer feedback and instructor to student feedback. They will get extensive written feedback on all assignments and they will also have an opportunity to meet with their instructor in a one on one setting after each assignment.

LAW298 will be taught in small group workshops. Restricting each workshop will ensure that students have an opportunity to get to know each other and that they receive comprehensive feedback on their work.

The organisers are Associate Professor Stephen Penk, Lecturer Dr Anna Hood, Dr Jane Norton and the Law Library Manager Stephanie Carr.

Anna will draw on her experience at the University of Melbourne and Jane on her experience at Columbia University (New York) to determine the content of the Auckland course and the Law School will advertise for writing instructors toward the end of this year.

“I am very pleased to be part of this initiative and I am really looking forward to introducing the course next year,” Anna says. “I hope that it will provide students with some very important skills that they will be able to use throughout their careers.”

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Alison Lees



The postgraduate team: Caroline Foster – Director of Doctoral Studies; Craig Elliffe – MTaxS Director; and Treasa Dunworth – Associate Dean (Postgraduate)

## New work-friendly postgraduate programmes: Introducing 15 point courses

It's been a great year for the postgraduate programme at the Law School. With almost 140 students in the programme overall, we've welcomed students from 10 different countries.

Overall, 21 courses were delivered in diverse subjects, ranging across the disciplines of corporate and commercial law, environmental law, public law, human rights, dispute resolution and international law.

As in previous years, many of our courses are taught by visiting professors as this allows us to deliver a broader and more diverse range of offerings. In June, we were delighted to welcome Professor James Anaya (United Nations Special Rapporteur on the rights of indigenous peoples from 2008 to 2014) who taught with our own Dr Claire Charters a Special Topic on Indigenous Persons in International Law. In September, we took advantage of Justice Kate O'Regan's visit to Auckland (as a guest of the Legal Research Foundation) to co-teach with Professor Paul Rishworth on Comparative Human Rights Law. Justice O'Regan is a former judge of the Constitutional Court of South Africa. We also had a number of visiting teachers in private law, including Professor John Amour of Oxford University on Comparative Company Law; and

Professor Chester Brown of the University of Sydney – recently appointed as a member of the International Law Commission (teaching International Arbitration with Amokura Kawharu and Honorary Professor David A R Williams QC). Janice Gray from University of New South Wales came to teach Comparative Water Law and Policy and Alex Ruck Keene, a British barrister, presented a course along with Kris Gledhill on the rights of vulnerable adults. We were also delighted to have Dr Alex Frame teach a course on Constitution and Custom in the South Pacific.

Increasingly, lawyers in practice are wanting to "upskill", reflecting the need for lawyers to be increasingly specialised and to keep up with the latest developments in their field. In other cases, many practitioners decide to build expertise in a new area of law, perhaps an emerging field.

Our postgraduate team is working hard to make studying as flexible as possible for working professionals and to deliver a wide variety of courses with these needs in mind. For example, from 2016 we will be offering "half courses". Up to now, the standard course has been a 30 point course – which is delivered either by a five-day intensive format or one evening per week across the semester. Now, with the introduction of the "half-courses", or 15 point papers, the workload can be spread out to make it more compatible with a full working week. Some 15 point papers are being taught one evening per week for six weeks and others will be taught in an intensive format. The Auckland Law School website provides more details.

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Associate Professor Treasa Dunworth

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**Our postgraduate team is working hard to make studying as flexible as possible for working professionals and to deliver a wide variety of courses with these needs in mind.**





Mengfei Geo – MTaxS graduate

## Master of Taxation Studies moves to Law School

One of the exciting developments for 2016 is that the Law School will become the host faculty for the Master of Taxation Studies Degree (MTaxS).

The degree is the premier postgraduate New Zealand tax qualification. As Craig Elliffe, the Director of the MTaxS notes, the advantage of this move “is the integration of the Master of Tax with studies in taxation in the LLM, as well as other associated degrees the Master of Legal Studies and the BCom (Hons)”.

Many alumni may not be aware but the 25th anniversary of the awarding of the MTaxS degree was recently celebrated with a function in May. It was a special time for class members to catch-up with some attendees being recent students and some even from the original classes. Many of our MTaxS graduates occupy senior roles in tax-related careers. MTaxS graduates include very senior officials in Treasury and Inland Revenue, and partners and senior advisers in law and accounting practices. Others make use of their skills in corporate roles. The 25th anniversary function featured each of these three work areas with a series of presentations from three former students (Mengfei Gao, Andrea Black and Nigel Smith).

For 2016 the structure and entry requirements for the degree remain unchanged. It is open to students with either commerce or law undergraduate backgrounds. The programme offers a highly relevant and focused degree to graduates who wish to make tax advocacy, tax consulting or tax administration their career, or to existing practitioners who wish to deepen their knowledge. The degree usually takes a few years of part-time study, or a single year full-time. A special attraction of the degree is the involvement of eminent Teaching Fellows (outstanding tax practitioners, such as leading barristers and tax partners, and very senior officials who are an integral part of the teaching programme). The tax academics involved are senior members of both the Law and Business faculties, teaching their particular areas of speciality.

The 2016 courses consist of The Tax Base (an advanced study of the New Zealand tax base and the concepts of income and tax policy); International Tax; Corporate Tax; Taxation of

Property Transaction; Tax Administration and Disputes; and Tax Avoidance (namely, what is it, not how to do it!). A feature is the ability to enrol and “audit” these courses, attending classes to obtain the technical content without examination or assessment.

For any queries please contact Professor Craig Elliffe at [c.elliffe@auckland.ac.nz](mailto:c.elliffe@auckland.ac.nz). He would be happy to assist you with advice about whether this programme is the right next stage for your career, or which courses might meet your needs.

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**The programme offers a highly relevant and focused degree to graduates who wish to make tax advocacy, tax consulting or tax administration their career, or to existing practitioners who wish to deepen their knowledge.**

# 2016 postgraduate courses

## LLM, MLS and PGCertLaw courses

Semester One	Lecturer	Type
Torture and Disappearances in International Human Rights Law and Practice	Manfred Nowak <b>University of Vienna</b>	30 points intensive
Iwi Governance	Nick Wells <b>Chapman Tripp</b>	30 points intensive
Corporate Governance	Marc Moore <b>University of Cambridge</b>	30 points intensive
International and Comparative Copyright Law	Nigel Gravells <b>University of Nottingham</b>	30 points intensive
Climate Change Law	Christina Voigt <b>University of Oslo</b>	30 points intensive
WTO Dispute Resolution	Gonzalo Villalta Puig <b>The Chinese University of Hong Kong</b>	30 points intensive
Data Privacy and the Law	Gehan Gunasekara <b>Auckland Business School</b>	15 points intensive
Equity and Anti-Discrimination	Paul Rishworth <b>Auckland Law School</b>	15 points intensive
Counterterrorism and Constitutionalism	John Ip <b>Auckland Law School</b>	15 points part semester
Selected Topics in Evidence and Criminal Procedure	Scott Optican <b>Auckland Law School</b>	15 points part semester
Semester Two	Lecturer	Type
Secured Transactions	Mike Gedye <b>Auckland Business School</b>	15 points intensive
Corporate Finance	Joseph A. McCahery <b>Tilburg University</b>	30 points intensive
Hidden Histories of International Law	Dino Kristiotis <b>University of Nottingham</b>	30 points intensive
Law of Insurance Contracts	Rob Merkin <b>University of Exeter</b>	30 points intensive
Comparative Environmental Law	Liz Fisher <b>University of Oxford</b>	30 points intensive
Environmental Hazards: Legal Responses to Natural and Man-made Hazards	Julia Harker <b>Auckland Law School</b>	15 points part semester
Tax Law and Sustainability	Mark Bowler-Smith <b>Auckland Business School</b>	30 points full semester
Competition Law and Policy	Chris Noonan <b>Auckland Law School</b>	30 points full semester
Waitangi Tribunal: Past, Present and Future	David Williams <b>Auckland Law School</b>	15 points Saturdays

To contact the team email:  
postgradlaw@auckland.ac.nz

For a full timetable see:  
www.law.auckland.ac.nz/  
postgraduatecourses



## MTaxS courses

	Lecturer	Type
The Tax Base	Craig Elliffe <b>Auckland Law School</b>	30 points intensive
International Tax	Craig Elliffe <b>Auckland Law School</b>	15 points intensive
Corporate Tax	Stewart McCulloch <b>PWC</b>	15 points intensive
Tax Administration and Disputes	Geoff Clews <b>Barrister</b>	15 points intensive
Taxation of Property Transactions		15 points intensive
Tax Avoidance	James Coleman <b>Barrister</b>	15 points intensive

## LLM by research

Although the majority of students choose to do their LLM by taught courses, a number elect to undertake their LLM by thesis (a piece of work undertaken in a year full-time or two years part-time, resulting in a 40,000 word thesis). This allows students who want to really explore a particular topic in depth, in close supervision with an experienced academic, to work on their own project. If you would like to explore this option, please email the Associate Dean (Postgraduate) Treasa Dunworth and she will be happy to discuss your ideas (t.dunworth@auckland.ac.nz).

## Financial support?

The University has a number of scholarships available for students at postgraduate level. Please consult our website for details.

They include:

- A G Davis Scholarship in Law
- Auckland Law School LLM Awards
- Chilean Bicentennial Scholarships
- Claude McCarthy Fellowship
- Commonwealth Scholarship
- Constable Pita Fuafiva Snr Police Pacific Scholarship
- Doctoral Completion Awards
- Fair Wind Foundation Scholarships
- Freemasons Postgraduate Scholarships
- Friends of The University of Auckland
- US/NZ Exchange Awards
- Gordon Watson Scholarship
- International Federation of Graduate Women Fellowships and Grants
- Kate Edger Educational Charitable Trust - Class Materials Awards
- Kate Edger Educational Charitable Trust - Masters Degree Award
- Kate Edger Educational Charitable Trust - Postgraduate Diploma Award
- Kate Edger Educational Charitable Trust Dame Dorothy Winstone Awards
- Māori Education Trust Professions Scholarships
- Margaret Wilson Scholarship
- Moana Schwalger Memorial Pasifika Student Scholarship
- New Zealand Law Foundation Doctoral Scholarship
- New Zealand Law Foundation Ethel Benjamin Scholarship (for women)
- Nga Pae o te Maramatanga Internships
- NZFGW Doctoral Award
- Ralph & Eve Seelye PG Scholarships
- Ryoichi Sasakawa Young Leaders Scholarship
- Shirtcliffe Fellowships
- Sir Alexander Johnstone Scholarship in Law
- Spencer Mason Postgraduate Scholarship in NZ Law
- Summer Research Scholarships
- University of Auckland Doctoral Scholarships
- University of Auckland Fulbright Scholarships
- University of Auckland Māori and Pacific Graduate Scholarships
- University of Auckland Masters/Honours/PGDip Scholarship
- University of Auckland Partnership Appeal Awards
- University of Auckland Research Masters Scholarships
- University of Auckland Universitas 21 Doctoral Student Mobility Schols
- University of Auckland Universitas 21 Joint PhD Programme Scholarships
- William Georgetti Scholarship
- Yvonne A M Smith Charitable Trust Scholarship



# Peter Devonshire promoted to Professor

Professor Peter Devonshire worked in private practice until he joined the Auckland Law School in 1992. Private practice's loss was our gain.

Since then Peter has been recognised not only as a distinguished teacher, but also as an internationally respected legal academic in his chosen field – examining and critiquing aspects of the law of equity and property. His research contribution has mainly been in the general area of remedies, and more specifically in the field of injunctions, and to this end his work has been published in leading international journals. His doctorate on interlocutory injunctions and third parties was awarded in 2003. Since then – although his publications have also covered a

number of diverse private law subjects, including remedies and related aspects of civil procedure, mortgage law, public tendering contracts and equity – his major focus has been on completing his monograph on account of profits.

This pioneering work was published in 2013 to immediate approval. *Account of Profits* explores, for the first time, a significant but – remarkably – overlooked remedy. It is the first book that addresses an account of profits as a distinct remedy and explains its applications.

The book had an international impact and has received sustained critical acclaim in England, Australia and Canada.

In New Zealand, its depth of scholarship and contribution to legal literature has likewise been recognised. Not only was it named Book of the Month by Law Talk in July 2013, but in June 2014 the Legal Research Foundation announced that *Account of Profits* was the joint winner of the JF Northey Memorial Book Award for the best law book published in 2013 by a New Zealand-based author.

High praise has also been received from the judiciary. Lord Millett wrote in the *Law Quarterly Review* that the book “will be of great value to practitioners, bringing together as it does the relevant cases in the leading common law jurisdictions and deploying both sides of the argument when dealing with the many questions which remain to be resolved in relation to an important if underused remedy.” The Honourable Michael Kirby, formerly of the High Court of Australia, thought it an “original, timely and forward-looking text that makes an important contribution to the field of remedies”.

Peter quickly established a reputation as an effective and successful lecturer. He received the Distinguished Teaching Award for the Faculty of Law in 1999 and then in 2004 was awarded a prestigious University of Auckland Teaching Excellence Award. His interest in teaching and his commitment to his students led naturally to the formal study of the scholarship of legal education, pedagogy, the law curriculum and law study in its wider social context. He has published a number of articles in this area and presented papers at international conferences.

Peter currently teaches in the compulsory Equity course as well as two elective papers: Personal Property and Equitable Remedies.

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Associate Professor Rosemary Tobin

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**"The book will be of great value to practitioners, bringing together as it does the relevant cases in the leading common law jurisdictions."**  
**Lord Millett**



# Stephen Penk promoted to Associate Professor

Stephen Penk, the Associate Dean Academic in the Law School, was promoted to Associate Professor in the 2014 promotion round.

Stephen has achieved much in his academic career. As a researcher he has focused on privacy law. He co-edited and co-authored *Privacy Law in New Zealand* (part of a prestigious series of treatises produced by Thomson Reuters and the only book to date written about an area of increasing importance). Stephen's chapters were cited and relied upon by Whata J in a leading case where the High Court expanded the tort of privacy. Stephen has also recently written a book on Legal Method and here as with privacy, his areas of teaching and research interest coincide. Stephen teaches on the Legal Method course, which, together with Law and Society, is the course that introduces students to the law and legal concepts for the first time (and is key, perhaps more than any other Law course, to developing an understanding of the process of legal reasoning). Legal Method is also the crucible students must pass through to reach Part II Law. In other hands the course could have been regarded as dry by first year students; but the course evaluations on the streams Stephen co-teaches are evidence that he has found an approach to disseminating content that is rigorous, clear and challenging. He achieves this by use of humour and real-life examples, combined with an evident sensitivity and empathy for the students in the class.

Stephen's involvement in teaching at the Auckland Law School extends far beyond the courses he delivers. He is currently the Associate Dean Academic, a role that involves providing academic leadership in teaching and in curriculum content. As well as his teaching, Stephen is perhaps most renowned for the many contributions he has made and continues to make to the running of the Auckland Law School. These contributions are to the aspect of the academic portfolio described within Universities as "service". It is a term that in one way understates the huge and important part these contributions play in a leading Law School. However, in another way, by encapsulating the selfless and collegial characteristics of those who excel in service, the term captures it perfectly. Stephen's service contributions are exemplary. He has an encyclopedic knowledge of academic administration and processes that would be surpassed by few within the University. He is key to all of the academic processes within the Law School running smoothly. His academic and administrative roles are all-encompassing and demanding.

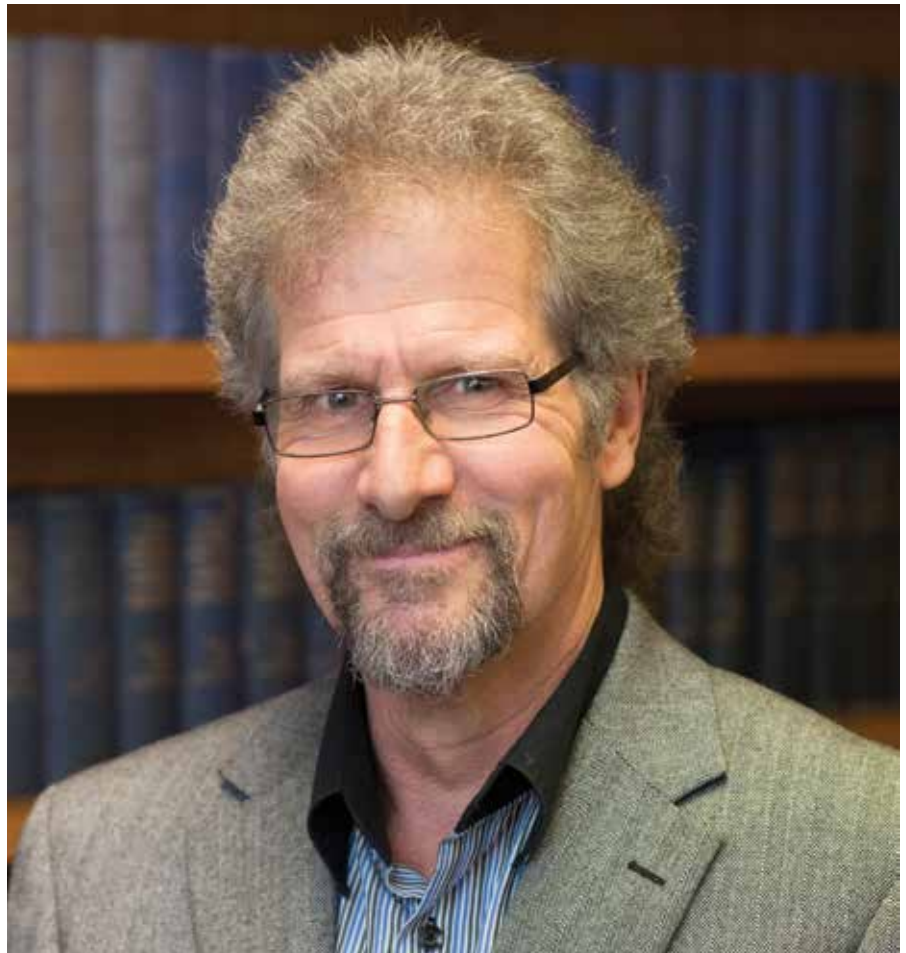
Stephen has been relied on as a trusted adviser to a succession of Law Deans. One might be tempted to regard Stephen as something of a "Sir Humphrey Appleby" to a string of hapless Hon Jim Hacker MPs, as in the 1980s series *Yes Minister* and *Yes Prime Minister*, were it not for the fact that there has never been any element of subterfuge or manipulation in Stephen's advice. His agendas are always transparent and premised on the best interests of the Law School, its Deans, staff and students. But Stephen's contributions move far beyond the administrative – he is a strategic thinker who always has ideas about the development and improvement of the Law School. He cares passionately about the place, its people (staff and students) and about their

success. He works hard to persuade colleagues about the merits of change and has succeeded in a number of areas. He is unfailingly positive, pleasant and self-effacing. Stephen is willing to take on tasks that will help further the collective endeavour, a mark of true collegiality.

In short he is an academic leader who has played an integral part in the success of the Auckland Law School. All those who work or have worked with Stephen – or who are taught or have been taught by him – are delighted about the recognition that his promotion to Associate Professor brings.

Professor Susan Watson

**Stephen's service contributions are exemplary. He has an encyclopedic knowledge of academic administration and processes.**







# Ken Palmer retires after 46 years of service

Associate Professor Ken Palmer retires at the end of this year after 46 years of service to the Law School.

(1995) and “Ports and Harbours” (2000). Most notably he is the sole author of the 1236 page *Local Authorities Law in New Zealand*, published by Thomson Reuters in 2012. These works have been the primary references in this area of the law for Judges, practitioners, government agencies, students, and non-lawyers. Ken has also been the General Editor of the *New Zealand Journal of Environmental Law* since its inception in 1997, and is the Consulting Editor for the *New Zealand Resource Management Appeals*.

Ken’s expertise and leadership in the planning and resource management field was recognized in 2012 with the Resource Management Law Association of New Zealand’s “Outstanding Person Award”. The citation reads inter alia: “It is no exaggeration to say that Dr Palmer is widely regarded as the ‘guru’ of resource management and local government law in New Zealand”. Ken is also held in high regard internationally, and has regularly given presentations at conferences and symposia overseas. He is a life member of Clare Hall, Cambridge.

Ken was also the editor and producer of the *New Zealand Recent Law Journal* (now *NZ Law Review*) for 10 years from 1978, and has remained a contributor to that publication and supporter of the Legal Research Foundation. These contributions were recognized by the LRF, which bestowed an Honorary Life Membership on Ken in 2015 in recognition of his “enormous contribution” and “outstanding and consistent effort”.

Ken’s achievements have not been restricted to academic research and writing. He was in 1992-1994 the president of the Auckland Branch of the Association of University Staff, before it was amalgamated into the Tertiary Education Union. He has made significant contributions to law reform and on occasions in the courtroom as a barrister. Although his contributions to law reform are numerous, he counts as the most significant his initiative in persuading Parliament to end the sale of Māori land for rates default (under the Rating Powers Act 1988). Over many years he has been actively involved on continuing education and environment committees of the Auckland District Law Society. The latter committee activities have included submissions on the reform of local government and resource management law, the

establishment of the Auckland Council “supercity”, and comment on rules in the Auckland Unitary Plan.

Ken has also been involved in various important cases as adviser and as counsel. In *Valuer-General v Mangatu Inc* [1997] 3 NZLR 641 (CA) he successfully argued that Māori freehold land should not be valued at open market prices, which had resulted in excessive land rates being imposed. Other cases he has been involved in are too numerous to list in this space, but in all cases his analysis has been impeccable, his approach balanced and non-partisan, and his message lucid and forthright.

Those who know Ken will know that his academic and professional qualities are only a part of the story. As a previous student of Ken’s in the 1980s, and an academic colleague since 1989, I can attest to his dedication as a teacher, and his outstanding personal qualities and character. Ken is a modest and courteous person, and can accurately be described as “one of life’s gentlemen”. His generosity with his time, his willingness to share his knowledge of the law, and his support and counsel as a friend and mentor have been appreciated, and have been a trademark of his interactions with colleagues and generations of students alike.

On the domestic front, Ken and Vivienne’s hospitality to visitors to Auckland is legendary, and well remembered by all who have enjoyed it. When overseas I am invariably asked to pass on best wishes to Ken and Vivienne from past visitors who remember those kindnesses, and who have become lifelong friends of the Palmers. Beyond the Law School Ken has a well-rounded life, including being a member of Rotary, chairperson for 10 years of the Tamaki Drive Protection Society, and maintains interests as diverse as art and heritage, and classic aircraft.

Although he is taking a well-earned retirement, Ken is already working on his next major project – a second edition of *Local Authorities Law in New Zealand*. As he continues to be a presence as a Research Fellow at the Law School, Ken will no doubt be a continuing source of legal knowledge and wise counsel for colleagues and students for many years to come.

Associate Professor David Grinlinton

Fortunately his extensive legal knowledge, practicality and collegiality will not be lost to the school as he continues as a Research Fellow.

It is hard to encapsulate in a few paragraphs Ken’s immense contribution to the school, the University, the legal profession, and the development of the law in New Zealand. He received his secondary schooling at Whanganui Collegiate, and then moved to Auckland to complete an LLB in 1965 and an LLM with 1st class Honours in 1966. Another LLM from Harvard Law School followed in 1968, and a Doctor of Juridical Science (SJD) from the University of Virginia in 1976. In between these achievements Ken pursued his interest in architecture and planning, gaining a Diploma in Town Planning from Auckland in 1974. It is a little known fact that Ken had a significant input, as a former Deputy Dean, into the pleasing design of the present Davis Law Library (that once housed a soft drink factory and more latterly the ADLS library during the Auckland High Court rebuild). The mezzanine floor was his main recommendation.

In the teaching area, Ken, as a former Crown prosecutor, initially lectured in Criminal Law. He was also responsible for a continuing education course in that subject for the New Zealand Police (for the commissioned officer’s qualification between 1969 and 1990). He introduced the first seminar in the Law School on civil rights, and briefly chaired the Auckland Council for Civil Liberties.

Ken’s research and writing achievements have been stellar. His SJD thesis for Virginia provided the foundation of his *Local Government Law in New Zealand*, and *Planning Law in New Zealand*, first published in 1977. A two-volume second edition of the planning text followed in 1984. He is a co-author of the current LexisNexis text *Environmental and Resource Management Law* now in its 5th edition (2015). He wrote the Laws of New Zealand chapters “Resource Management Law”

... in all cases his analysis has been impeccable, his approach balanced and non-partisan

# Margaret Vennell

The Auckland Law School lost a dear friend and colleague with the passing of Margaret McGregor-Vennell, aged 80 years, on 18 June this year.

Margaret Ann McGregor was born in Palmerston North on 18 September 1934, and schooled at Carnot Girls School and Woodford House, before studying Law at Victoria, where her father, Justice George McGregor – a highly respected and experienced Supreme Court (now High Court) Judge – known especially for his trial experience – was sitting. Margaret was encouraged to undertake the study of law by her father, who believed in the value of educating women. She began her law studies at Otago, where she was the only woman in the class and

was barred from some criminal law lectures, because of the distressing subject-matter and to prevent general embarrassment! She completed her degree at Victoria in 1959. She began her practising career assisting barrister Robin Cooke, later Lord Cooke, then joined the Civil Aviation Department in 1961. Her work involved advising the government on the implementation of international air law conventions. This was followed by a period working for the Ministry of Works and the Law Reform Division of the Justice Department.

Margaret started lecturing at the Faculty of Law in 1967 on a temporary appointment, taking up a permanent position in February 1973. She was the second woman appointment, after Nadja Tollemache (later an Ombudsman), appointed in 1966. She was Deputy Dean of the Law Faculty from 1982 to 1984.

Margaret taught a broad range of courses, undergraduate (including Honours seminars) and postgraduate, including Air and Space Law, Commercial Law, Medical Law, Advanced Contract and Tort. But she will be principally remembered by generations of law students for her teaching and research in tort law, in which she was an institution. Except when on leave Margaret taught one of two streams of Torts, usually in the Stone Moot Court room up on the 6th floor of the Library building on Alfred St. She started each course with the case study of the Canadian *Ogopogo* decision, legendary among Auckland Law students and remembered fondly at the dinner parties of former students everywhere!

When New Zealand's Accident Compensation Act was passed in 1972, Margaret was perfectly positioned to follow its fortunes. She soon became the country's leading expert on all matters to do with the scheme, and a staunch defender of this compassionate and efficient means of compensating her fellow citizens for accidental injuries (including, on too many occasions, her own good self!), in preference to the capricious tort action. Margaret presented countless national and international addresses and published extensively about its implementation and development, about judicial interpretations of that ubiquitous phrase "personal injury by accident" and the statutory bar on damages! In over 100 published articles and contributions to law books, two deserve special mention: her chapters as part of the team of authors for the first edition of Stephen Todd's *Law of Torts in New Zealand* (Law Book Company, 1991), the pre-eminent New Zealand treatise on the subject; and her article "The Scope of National No-Fault Accident Compensation in Australia and New Zealand" (1975) 49 *Australian Law Journal* 22, which the Court of Appeal relied on with approval in *Donselaar v Donselaar* [1982] 1 NZLR 97 to find that exemplary damages had survived the accident compensation scheme. She generously shared her expertise with a seemingly endless stream of visitors to New Zealand who came to



Bernard Brown, Jock Brookfield, Brian Coote, Nadja Tollemache and Margaret Vennell





Margaret and Adrian's wedding

## Margaret was a greatly admired and much respected member of the Faculty and her legacy will live on in the minds of those whose lives she touched during her years of service.

study the unique ACL scheme. Later (1986), the Government recognised her special expertise by appointing Margaret to the Board of Directors of the ACC, on which she sat for five years. The stewardship of pioneers like Margaret – as well as of course its architect, Sir Owen Woodhouse (who sadly died last year) Sir Geoffrey Palmer and Sir Ken Keith – is surely a key factor in why we still have this remarkable, world-leading scheme (a national *taonga*). Margaret deserves to be remembered as one of its first *kaitiaki*!

Other career highlights include Margaret's fearless expert evidence in 1987 to the Cervical Cancer Committee of Inquiry on the role of accepted medical practice in setting the standard of care in medical negligence, which guided Judge Silvia Cartwright to reject the discredited *Bolam* decision in favour of the patient-centred test (see pp 134-139 of the Cartwright Report), which was later enshrined in the Code of Patient's Rights in 1996. She was a member of the Commerce Commission from 1989 to 1992 and a Distinguished Member of the Auckland District Law Society. As a result of her expertise in health law she was appointed as a member of the Health Research Council's Ethics Committee in 1991. And in 1995 Margaret was appointed by a former student, the then Minister of Health, Hon Simon Upton, to prepare a blueprint for the establishment of the Health and Disability Commissioner's jurisdiction, much of the architecture of which remains in place today.

Margaret's extra-ordinary contribution to legal education and the law was recognised when she was made an Officer of the New Zealand Order of Merit in the 1996 Queen's Birthday Honours.

Dean Andrew Stockley says that Margaret was a greatly admired and much respected member of the Faculty and her legacy will live on in the minds of those whose lives she touched during her years of service.

"There was an instant response on her passing from a number of her long-standing colleagues who remember her with great fondness and were very sad to hear of her death," he says. "Margaret was held in great affection by her students and former colleagues. She remained in touch with the Law School and took part in our Alumni Celebration Event in 2012. She will be greatly missed."

Margaret was well known and loved for her kindness, support, and keen interest in her colleagues and students, the latter of whom she taught and supervised in countless numbers. She will be remembered as much for her wonderful, self-parodying anecdotes with which she entertained generations of torts students over many years, as for her extraordinary encyclopaedic knowledge of torts and the law in general. She had a wonderfully warm and colourful personality. Dinners with legal luminaries the likes of Professor Sir John Fleming, Professor Patrick Atiyah and Professor

Francis Reynolds – at the iconic Vennell house in Hapua St (designed by Group Architects *enfant terrible* Bill Wilson) – around the antique dining table laden with silver and Margaret's wonderful cooking, was a rare treat experienced by many of us!

One very special former student was her own dashing naval husband, Adrian, whom Margaret married in 1962 and with whom she raised two much loved daughters, Kate, born in 1969, and Arabella, in 1972. Adrian was encouraged to start studying law by his wife. Another exceptional student, in whom Margaret instilled a love of tort law, was Sir Robert Chambers. Margaret encouraged and supported Robert to pursue a doctorate at Oxford, where he excelled in tort law, and was later instrumental in his appointment to the Faculty as a part-time lecturer in that subject (which they sometimes team-taught, when he was practising at the Bar). Margaret delighted in Robert's extra-ordinary barristerial and judicial career, and the two enjoyed a lovely friendship over many years until Robert's deeply sad, untimely death in 2013.

Margaret served as a member of the permanent academic staff for 28 years, retiring as an Associate Professor in March 2001. She was among the "first wave" of women lecturers appointed to the Law Faculty in the second half of the 1960s, which included Pauline Tapp, Nadja Tollemache and Pam Ringwood, (later Margaret Wilson and Jane Kelsey). These women played a vanguard role for women law academics. During their early academic careers Margaret and Nadja shared an office, each supporting the other whilst they juggled careers and babies.

As part of the "second wave" of women academics to join the Faculty, I pay tribute to the groundwork that the first generation of women like Margaret laid for us. They had to fight battles and be "staunch" in a way that became less and less necessary as women's equal place in the workforce and academia became increasingly accepted as natural and rightful. Later, more glass ceilings were to be shattered in the Faculty, just as in the profession and in broader society – there were soon equal (indeed more than equal) numbers of women students as men; women were appointed to chairs, to Deanship, Deputy and Associate Dean roles. Margaret and her colleagues' legacy is being carried forward by a "third wave" of inspiring young women Law academics at Auckland, some who received their own legal educations here; some also balancing families and academic careers while trying to avoid the pressure and exhaustion of being "superwomen." They too are mindful of pioneers such as Margaret who went before them.

Associate Professor Jo Manning



## Professor Jane Kelsey – Critic and conscience

Whether or not you agree with Professor Jane Kelsey, you will always know what she thinks because she takes her critic and conscience responsibilities very seriously, and she punches well above her weight.

The role of public intellectual is incredibly privileged but it comes with obligations, the forthright academic says. “We are funded by the taxpayer and there is what I consider to be a constitutional role of universities, just as there is for the media as the fourth estate. It has been hard fought for by my forerunners in New Zealand and it needs to be defended and used with integrity.

“We need to fight that fight internally as well as externally because the conditions under which people can speak out and take risks are different now from when I started – then it was the Muldoon issues and the Business Roundtable and so on.

“Many of the pressures now are structural pressures – things like research funding, PBRF and promotion criteria and it’s become a matter of whether people are brave enough to put their heads up.”

The veteran campaigner is philosophical about the quite nasty attacks that can come with speaking out, but says it’s not so easy for those who are junior or mid-career.

“It’s part of our job as ‘old crusties’ to keep the space open, mentor, and provide precedents that show this is actually what academics are meant to do,” she says.

“And if we don’t do that, then the role of the public intellectual will be at serious risk. We need to have people to challenge the current orthodoxy so that when paradigms change there are some foundations that we can build on.

“We have to give real meaning to those almost unique words in our own Education Act, which make it a statutory responsibility for universities to protect and exercise academic freedom, and it is our responsibility to be the critic and conscience of society.

“Yet we are in a context where there is increasing Government control over universities – whether it’s through changes to the Council, or the increasing direction over fees subsidies – and this is seeking to erode that hard won space. It’s not just what we do in our own disciplines that is important, but how we defend the place of the University itself.”

Jane is thinking about our legacy to next generations and how we make space for them to do the kinds of things we did in a way that is appropriate to them, so that they can perform their roles according to whatever the new challenges are going to be.

“I have been doing this for long enough. I am robust enough to speak truth to power and cope with the consequences. My concern now is with ensuring that others can continue to do that.”

Jane, who is a great believer in three to five year plans, observed her father retiring at 60 and dying at 68 after being a public servant all his life. “So he had eight years, which is not nearly long enough.”

She turned 60 this year and she intends to retire at 65 so she’s got five years to do the things that she considers important. And if you think that means stepping back or toning down. Forget it.

She is selling the big, old house she has lived in since she started at the University in 1979, and she’s going to buy an apartment in central Auckland so she can spend time with her 98-year-old Mum. She’s bought some land and is building a home at Algies Bay where “the best views in the house are from the office”.

“I will be doing what I’m doing now without the hassles of elements of the University that I have had enough of,” she says.

And the three to five year plan? She wants to do some intensive mentoring and she has just been awarded a Royal Society of New Zealand Marsden Grant.

She said that would give her three years to work on “some of the embryonic stuff about countries that are seeking to exit from international agreements – their options and strategies for doing that”.

She alludes to some other “mega deals” that she’ll be working on because that’s where her technical and tactical expertise is, and she’ll be following-up on issues arising from her recently published book *“The Fire Economy”*.

“The book presents a work agenda in terms of setting-up project groups on different areas of policy that we need to think about if we are talking about transforming the model that we’re in now.”

Her advice to those following in her footsteps is to focus on the issues, not the person. “For me, it’s a matter of taking the higher ground,” she says. “I try not to indulge in slanging matches but to present a counter argument. I think that’s the best way to deal with it because if you buy into their game, they win. You’re diverting your time and energy into something that’s not productive and you’re not going to change their mind. By focusing on the issues, you can change the minds of others.”

Alison Lees





## Accolades for Peter Watts

It has been a good year for Peter Watts. He was among 12 New Zealanders elected as Fellows of the Royal Society of New Zealand (Te Apārangi) in 2014.

Peter has a high international standing in the general area of commercial law, more especially in agency law, company law, and the law of restitution. In agency law, which has connections to most branches of private law, he is one of the Commonwealth's most distinguished researchers.

Peter is the first lawyer to be made a Fellow of the Royal Society of New Zealand since the amalgamation of the New Zealand Academy of the Humanities with the Royal Society in 2010. Emeritus Professor Brian Coote is also a Fellow, as was the late Professor Mike Taggart.

Honorary Fellowships are aimed at encouraging liaison and collaboration between outstanding scientists and scholars of different nations with established and new initiatives in the New Zealand knowledge community.

Academy Chairperson Dr John Caradus FRSNZ says: "Being elected as a Fellow is an honour given to our top researchers for showing exceptional distinction in research or in the advancement of science, technology or the humanities."

Peter has also been awarded a prestigious Leverhulme Visiting Professorship to the United Kingdom for the first half of 2016. A limited number of these are awarded by the Leverhulme Trust each year across all disciplines (other than medicine) and across the United Kingdom's universities. Proposals are put forward by, and the Leverhulme grant made to, the host institution.

Peter's host is the University of Oxford, but he will be furthering research linked with University College London (where he will deliver one of the 2016 Current Legal Problems lectures), York University, and the University of Edinburgh. As part of his programme, he will be a participant in a joint Oxford-National University of Singapore conference in Singapore in April 2016. Peter will deliver three Leverhulme Lectures.

Finally, Peter has also been recognised in a recent UK Supreme Court case. In April 2015, Lord Toulson and Lord Hodge in their joint judgment in *Jetivia SA v Bilta (UK) Ltd* [2015] UKSC 23 at [159] wrote as follows:

We disagree with the reasoning. We have been greatly helped by the analysis provided by Professor Watts in a characteristically lucid article, *Illegality and Agency Law: Authorising Illegal Action* [2011] JBL 213.

Their disagreement was with the reasoning of the England and Wales Court of Appeal in *Safeway Stores Ltd v Twigger* [2010] EWCA Civ 1472. The Court there had held that Safeway could not sue a number of its directors and senior

employees for the loss caused the company by their having committed it to illegal price-fixing, as a result of which the company had been fined. Lords Toulson and Hodge proceeded to quote extensively from Peter's article. (Peter says that it's a pity that one of the passages they cited had a typo in it!)

Lord Mance in his judgment cited three other articles of Peter's, quoting extensively from one of them ((2010) 126 LQR 14) as well as from paragraphs Peter wrote in *Bowstead & Reynolds on Agency*. (Peter is quick to say that the articles are on different aspects of the law of agency and the attribution of conduct to companies, and not simply four attempts to say the same thing...)

Lord Neuberger, the President of the Supreme Court, was a bit more comprehensive in his extensive reference to academic writing, mentioning three members of the Auckland Law Faculty, past and present: Neil Campbell QC (an article written whilst he was still with the Faculty), Professor Susan Watson (article in the *Singapore Academic Law Journal*), and Peter. So far as we know, not since the contest between the views of Brian Coote and Francis Dawson over contractual exception clauses in *Photo Production Ltd v Securicor Transport Ltd* [1980] AC 827 at 837 and 839 (in those days it was not done to refer to academics in the judgments themselves) have the arguments of Auckland academics featured so prominently in a case before the United Kingdom's top court.

Of the four full judgments in *Jetivia* only Lord Sumption's made no reference to Auckland's expertise, but then it had been his successes as counsel in *Safeway* and in *Stone & Rolls Ltd v Moore Stephens* [2009] UKHL 39 (confining the options of businesses whose controllers had engaged in illegal conduct) that had helped to create the confusion which Peter, and others, were criticising. The Supreme Court sat in seven especially to review *Stone & Rolls*. It, and *Safeway*, survived by the skin of their teeth. Lord Neuberger adapted Lord Denning to say of *Stone & Rolls* that it should be put on one side and marked "not to be looked at again". The Supreme Court in *Jetivia*, again relying on Peter's writing, also expressly jettisoned from the law of agency the "fraud exception" to the attribution to the owners of businesses of the conduct and knowledge of their agents. This exception had had a long and shadowy history, which Peter had argued was incoherent and in many of its facets contrary to principle (see (2001) 117 LQR 300). Such attribution now turns on the type of issue before the court.

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**Academy Chairperson Dr John Caradus FRSNZ says: "Being elected as a Fellow is an honour given to our top researchers for showing exceptional distinction in research or in the advancement of science, technology or the humanities."**



## Grant Huscroft appointed to the bench in Canada

The Faculty is delighted at the appointment of our former colleague, Grant Huscroft, to the Court of Appeal of Ontario, Canada.

Grant joined us from Canada as a Lecturer in 1992, having earlier completed his LLM with us in 1986. Grant was a member of the Faculty until 2001, when he returned with his family (Tracy and their two New Zealand-born daughters, Hannah and Emma) to the University of Western Ontario.

At Western, Grant was a prolific and highly-regarded constitutional Law scholar.

He led the Law School's Public Law and Legal Philosophy Group, as well as being a prominent national commentator on constitutional law issues.

While at Auckland Grant taught Contract Law and established (with Paul Rishworth) the course on Rights and Freedoms. He was an

active member of the Legal Research Foundation Council, and served as editor of three books, Huscroft and Rishworth (eds) *Rights and Freedoms* (Brookers, 1995), Huscroft and Rishworth (eds) *Litigating Rights: Perspectives from Domestic and International Law* (Hart, 2001) and Rishworth, Huscroft, Optican and Mahoney, *New Zealand Bill of Rights* (OUP, 2003) – as well as numerous articles.

Grant also organised and edited, with David Dyzenhaus and Murray Hunt, the festschrift in honour of our friend and colleague Professor Mike Taggart (*A Simple Common Lawyer* published by Hart in 2009).

Grant has visited us several times since 2001, teaching in the LLM programme.

### Faculty news in brief



David Grinlinton (above) is spending the next three Fall terms at Western Law in Canada, as the Cassels Brock Visiting Professor in Mining Law. He will also contribute to the Yamana Centre for Sustainable Exploration and Resource Development and be the Stephen Dattels January Term Fellow in Mining Law and Finance, a position he has held for the past three years. David will return to Auckland when he is not teaching at Western.

Paul Myburgh has taken up a position as an Associate Professor with the National University of Singapore.



Professors Jeff Berryman (above) and John Farrar (below) have been appointed Honorary Professors at the Auckland Law School. Both have long-standing connections with the Faculty, teaching on the Master of Laws programme. Professor Berryman is an Auckland Alumnus and served as Dean of Law at the University of Windsor in Canada, where he is currently a Professor. Professor Farrar has been Dean of three law schools: Canterbury University, Waikato University, and Bond University in Australia, as well as a Partner at Bell Gully Buddle Weir.





# Action-packed year for Māori staff and students

2015 has been an exciting year for Māori academic staff and students.

Achievements focused on new research, collaborations with other law schools around the world focused on Indigenous legal issues, visits from world-renowned and trail blazing Indigenous academics and advocates, conferences and symposia (including an “Indigenous Law Speaker Series”) and the establishment of a new course on Ngā tikanga Māori. Highlights for our Māori academics in 2015 include:

Senior lecturer Andrew Erueti hosted a 2-day symposium on Indigenous rights and extractive industry in July as part of a broader project – funded by Ngā Pae o te Māramatanga – which aims to investigate how recent developments in international law might promote iwi autonomy in relation to mining in their rohe.

Senior lecturer Khylee Quince gave the keynote address, “Nau te Rourou, Naku te Rourou”, at the 4th International Conference on Therapeutic Jurisprudence before 200 delegates. Her talk was based on her chapter in a book edited by Warren Brookbanks: *Therapeutic Jurisprudence: New Zealand Perspectives* which was launched in conjunction with the conference.

Senior lecturer Claire Charters was appointed by the UN Secretary General as a trustee of the UN Voluntary Fund for Indigenous Peoples – which funds Indigenous peoples from around the globe to raise their human rights issues in international fora.



Professor James Anaya

## International trail-blazing visitors

Professor James Anaya visited us from the University of Arizona’s Indigenous Peoples Law and Policy Programme, sponsored by the University’s Hood Fellowship and supported by the Nin Tomas Indigenous Peoples and the Law Group.

Professor Anaya has just completed six years as United Nations Special Rapporteur on the Rights of Indigenous Peoples. An outstanding legal academic, he has a record of representing Indigenous groups from many parts of North and Central America in landmark cases before courts and international organisations.

During his five week visit to Auckland, Professor Anaya gave a public lecture, taught in the postgraduate programme, and took part in

both an informal research workshop and Senior Lecturer Andrew Erueti’s symposium on “Māori engagement with extractive industry: innovative solutions”.

Professor Megan Davis visited the Auckland Law School in November 2015 – from the University of New South Wales – to discuss potential joint research projects and student interaction. Professor Davis, an Aboriginal woman, is currently the Chair of the United Nations’ Permanent Forum on Indigenous Issues and Acting Commissioner of the New South Wales Land and Environment Court. Her research focuses on international and domestic law as it affects Indigenous peoples and, especially, Aboriginal women.

## Indigenous law speaker series 2015

Hosted in conjunction with the Māori Law Review and the Nin Tomas Indigenous Peoples and the Law Group, this series was held in August and September and featured three visiting law practitioners, Bernadette Arapere, Paul Beverley and Tracey Whare.

Bernadette (Ngāti Raukawa ki te tonga, Ngāti Tūwharetoa, Ngāti Maniapoto) has a LLB (Hons) and MA (Hons) in History from the University of Auckland. She talked about the transition from being an historian involved in claims and settlements to being a lawyer in that process. She also spoke about the Waitangi Tribunal process from different perspectives – historian, lawyer and as an iwi member.

Paul, a partner at Buddle Findlay – where he leads the resource management and Māori law team – talked about recent developments in the co-governance and co-management of natural resources. He has been involved in the development of innovative approaches to natural resource governance, including arrangements for the governance of Te Urewera and the Whanganui River.



Paul Beverley



Tracey Whare

International advocacy is a life-long passion for Tracey (Raukawa, Te Whānau a Apanui). She talked about the September 2014 resolution of the United Nations General Assembly committing to concrete outcomes to implement the United Nations Declaration on the Rights of Indigenous Peoples.

Although engagement of Indigenous peoples in the drafting of the resolution was often contested by states, they launched a global platform of engagement and used the opportunity to participate in ways that the United Nations had not considered before.



Claire Charters (front row, second left) at the University of the South Pacific

## Te Tai Haruru

Te Tai Haruru is pleased to welcome a new Māori academic to the group. Senior Lecturer Andrew Erueti joins fellow Māori academics Senior Lecturers Claire Charters, Khylee Quince and Amokura Kawharu. Te Tai Haruru also includes the co-presidents of Te Rakau Ture, the Māori Law Students Association, and Pera Bentson, the Law School's Pouāwhina Māori.

The group can now offer a large number of courses at undergraduate and postgraduate level on Māori and Indigenous issues, such as: Māori under criminal justice systems; Te Tiriti o Waitangi; Comparative Indigenous legal issues; and International Law and Indigenous peoples' rights. These courses supplement the focus on Māori legal issues in Jurisprudence, Criminal Law, Public Law and Law and Society, to name but a few.

## Collaborations with other universities

The University of Auckland's Law Faculty is entering into a formal collaborative arrangement with the University of Arizona's Indigenous Peoples Law and Policy Programme (IPLP).

Arizona Law has long been renowned for its expertise in Indigenous Peoples law. The IPLP has built upon that foundation and now provides the world's most advanced training in the field.

The formal arrangement between the two Universities will provide Auckland Law School students with exciting new opportunities for student exchange, research and collaboration.

Senior lecturer Claire Charters taught a course simultaneously, using video links, at the University of the South Pacific and Auckland in January and February, focusing on Indigenous peoples' rights under international law. She spent half the course in Auckland and the other half in Vanuatu. Students from the Pacific and Auckland could interact from both locations on current Indigenous legal issues.

In September Te Rakau Ture and the Law School hosted a visiting delegation of Aboriginal law and

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**The formal arrangement between the two Universities will provide Auckland Law School students with exciting new opportunities**

arts students from the University of Adelaide. The students were keen to come to the Law School to learn about our law courses on Indigenous rights and to share research about Māori and Aboriginal history and legal rights. In between talks led by Claire Charters, Khylee Quince and Anaru Erueti on Māori rights and criminal justice and treaty settlements, the students attended a Kooti Rangatahi Youth Court session (at Manurewa Marae) led by Judge Frances Eivers. Everyone then went on a guided tour of Auckland led by Ngati Whatua pukenga Ngarimu Blair followed by a feed of fish'n'chips at Mission Bay (in the rain!). This was a great opportunity for our Māori law students to learn more about Aboriginal rights law and to forge new friendships.



## Māori moot

Participants in this year's Māori moot held at the Law School in August faced some difficult questions about Crown fiduciary duties to Māori. Senior Lecturer Claire Charters wrote the curly moot problem based on the Wakatu litigation, which will be decided by the Supreme Court shortly.

The moot was won by Matt Tihi and the runners-up were Inigo Kwan Parsons, Stephanie Carr, Rutaia Framhein and Rily Kupa. All of the judges noted how impressed they were with the quality of the written submissions and oral argument.

The event was co-ordinated by Senior Lecturer Andrew Erueti and Pouāwhina Māori Pera Bentson, with support from Sarah, Jade, Ange and Paige from Te Rakau Ture.

The next stop for our top mooters was the national moot final at Te Hunga Roia at Waitangi in September 2015, where Inigo Kwan Parsons was a member of the winning team. Inigo was joined by Kohe Ruwhiu (Victoria) and Aperahama Hurihanganui (Waikato).



Matt Tihi and Riley Kupa

**All of the judges noted how impressed they were with the quality of the written submissions and oral argument.**

## The Nin Tomas Indigenous Peoples and the Law group



The Nin Tomas Indigenous Peoples and the Law Group was established in 2014 in honour of the late Associate Professor Dr Nin Tomas. Her research is the focus of the forthcoming and latest edition of the *Te Tai Haruru: Journal of Māori Legal Writing*, edited by Claire Charters and Kerensa Johnston.

The journal includes articles from almost all Māori legal academics in New Zealand, ranging from personal stories about Nin to legal articles engaging with her work.

Nin was the first Māori person to earn a PhD in law and the Auckland Law School's most senior Māori academic. She was a founding member of Te Tai Haruru, the Māori Academics Group, and led the Auckland Law School in the development of initiatives in support of Te Ao Māori, Māori law students and Indigenous peoples' rights globally.

The Indigenous Peoples and the Law Group also hosts valuable seminars, workshops and conferences as they relate to Indigenous peoples. It is comprised of all Auckland Law School members who research and teach on issues related to Indigenous peoples.

**Nin was the first Māori person to earn a PhD in law and the Auckland Law School's most senior Māori academic.**



### A note from our Pouāwhina Māori

Our Pouāwhina Māori, Pera Bentson, plays a vital role in the administration of the Māori Academic Programme and is integral to the success and retention rates of our Māori Law Students. It is a role that has evolved, and will continue to evolve, hopefully reflecting and responding to the changing needs of our tauira.

Pera writes, “I thoroughly enjoy the work of the Pouāwhina Māori because no two days are ever the same. I enjoy the appreciation shown from students and also feel a great deal of satisfaction after key initiatives have been successful. It is also a challenging role, in so far as I need to juggle between my role as Pouāwhina, and my LLB Part I advisory role.”

## Te Rākau Ture: the Māori Law Students Association

Te Rākau Ture offers academic and pastoral support to Māori students. It has grown to play an increasingly important part in their lives, offering a range of activities throughout the academic year under the shared leadership of Tumuaki Chris Carrington and Angeline Henry (and the guidance of Pouāwhina Pera Bentson).

In addition to sporting, social and academic activities, a popular part of Te Rākau’s work is Haerenga, where interested law students spend a week visiting high schools to promote tertiary education in areas of high density Māori population.

The visits are inspirational for all students who benefit from the opportunity to exchange ideas and share knowledge and experiences. Members of the University group sometimes felt they were there to teach, but often became students.

This year’s annual Haerenga by 60 Māori, Samoan, Tongan, Pākehā, Cook Island and Korean law students took place in Ōpōtiki, Whakatāne, Kawerau and Paeroa, ending with a visit to Waikeria prison.

A law student writes: “At the last secondary school we visited, Whakatāne High, a young man named Jackson stood up to thank us. As we were leaving, he said: ‘Maybe I’ll come to uni with you fullas and study law so I can help out people from Whakatāne’. At that point, I realised that although we hadn’t saved the world, a small group of university students had made an impact on the lives of many kids.”

### Relationships with Te Waka Ture, Chapman Tripp

The Law School has a strong relationship with Te Waka Ture, Chapman Tripp’s Māori Legal Group. Partners Nick Wells and Graeme Olding teach a course in iwi governance, and the firm provides generous support for Te Rakau Ture annually.

**Dr Claire Charters**





Toaiva Hitila, Taniela Tonga, Anjenette Heffernen, Piakura Passfield



Akatu John, Kya Lal, Ema Piutau, Max Harris, Harry Fatu Toleafoa, Helena Kaho



Joshua Harvey, Talapo Uiva'a, Jioji Konusi, Josh Ioelu

## Great year for Pacific staff and students

On 7 September 2015, a delegation of five Pacific law students and staff attended the launch of the Centre for Small States at Queen Mary University of London School of Law in the United Kingdom.

The aim of the Conference was to launch a Centre for Small States as a home for research and learning into the legal issues facing small states. The Conference boasted a number of leading professionals, including Her Honour Justice Mathilda Twomey – Chief Justice of the Supreme Court of the Seychelles, Commonwealth Secretariat member Steven Malby and Professor Lino Pascal Briguglio. Its topics ranged from competition law to development and intellectual property laws in small island states.

This Conference provided an incredible opportunity for our Pacific Postgraduate law students to engage and present on issues that were relevant to small island states in the South Pacific. It provided a forum for robust discussion and enabled our students to establish key networks with leading practitioners.

The Pacific law programme has provided numerous opportunities for students to attend international conferences on issues relevant to their legal studies. The 2015 Centre for Small States Conference was a natural progression from the 2014 United Nations Small Islands Developing States Conference that the Pacific law students attended last year in Apia, Samoa.

The delegation's visit was further enhanced by the opportunity to visit and be hosted at Oxford University by Auckland Law School alumnus, Max Harris. Max, who is currently a Prize Fellow at All Souls College at Oxford provided a tour and insider view into life as a student at Oxford.

This year we brought Helena Kaho on board the very first Pacific Islander to be appointed to an academic position at the Law Faculty.

A graduate of the Auckland Law School, Helena has spent the last few years working in legal practice in the Cook Islands. It's great to have her back on board: Malo e mo'ui Helena!

In addition to teaching Law and Society, Helena developed a new Pacific elective in semester two: Pacific People in Aotearoa: Legal Peripheries. Spanning the fields of youth justice, consumer law, criminal law and education, students were encouraged to look further into social and political issues to identify and critically analyse underlying law and legal frameworks, and to identify ways in which the law impacts upon Pacific people (both directly and indirectly). Classes regularly featured dynamic guest speakers who provided insight into their areas of expertise, including former Polynesian Panther members, Ministry of Education staff, and Pacific lawyers.

Associate Professor Treasa Dunworth





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As Helena puts it “the teaching makes students aware of the potential for law to be used to further various interests and that there are other, equally important cultural views they shouldn’t ignore. Hopefully they will never look at law in the same way again!”

# First Pacific Islander appointed at the Auckland Law School

**We were delighted to welcome Helena Kaho on board earlier this year.**

After struggling to focus and losing interest in school, she had her first child at age 18, and was a mother of four children by the time she was 26. Many people had written her off as something of a lost cause.

It was the knowledge that people were saying she had ruined her life and would never amount to anything that made her want to prove something to herself and others.

“I knew that if I made an effort, I could achieve a lot more. I wanted to do something impressive – something that would show them I could make something of my life.”

She found the answer in education, surprising herself and others by graduating BA, LLB (Hons) and LLM (Hons), becoming an Assistant Lecturer at the Auckland Law School this year and the first Pacific Islander to become a member of the academic staff.

Of New Zealand and Tongan descent, Helena was born and raised in Auckland. Her mother Beverley has a Bachelor of Education and her

late father Tavake was one of the first Pacific psychiatric nurses in New Zealand in the 1970s.

Helena went to St Mary’s College in Herne Bay, but didn’t enjoy her early college years, instead wagging classes, being naughty and missing out most of her fourth form year. She was sent to live in Tonga where she attended Tupou High School, returning to finish her final year of school at St Mary’s.

As a young mother, she says she and her children grew up together. “It probably would have been better to have a family when I was more rounded as an adult,” she says. “Instead, I was trying to work out who I was. I was trying to instil the right values in them when I was still trying to figure out my own. Being a younger mum does have its positives – we are close and can talk and laugh about anything and I love that.”

After qualifying as a beauty therapist, she often worked from home while her children were small. “I was freelancing, doing make-up for weddings. I enjoyed it, but I also knew it wasn’t what I wanted

to do forever. I started thinking about what else I could do.”

The turning point came with the University of Auckland’s New Start preparation and bridging programme. The programme helps people aged 20 or more, who don’t have UE, to take a first step into university study.

“I enjoyed all the lectures, I loved it and I found I could do it,” she says.

After that, there was no stopping Helena. She completed a year of Arts and then Part One of Law, recalling how nail-biting it was because the grades came through right on Christmas. “Depending on the outcome”, she remembers, “Part I law students either had a really good holiday or a really bad one!”

Helena says her parents were proud of her achievements, if not a little perplexed that a creative and free-spirited person such as herself had chosen to become qualified in the legal profession.





“I don’t think my kids really understood what I was doing, all they saw was me doing a lot of late nights and missing family outings because I’d be studying,” she said. “It wasn’t until they came to my first graduation ceremony that they realised what I’d done. When I walked across the stage, they were so excited, yelling ‘Chooohoooo!’ and stomping their feet.”

When nearing completion of her BA/LLB, Helena started work as the Law School’s Pacific Academic Coordinator – a full-time position which she combined with her Masters studies, leaving the job to gain some experience in legal practice when she finished her degree in 2012.

She next packed up the family and moved to the Cook Islands on a two-year contract as a solicitor. “I wanted the kids to get a taste of the islands,” she explains. “They moaned at first because it was so different – their diet changed and they couldn’t always get what they wanted. But now that we are back in New Zealand they miss things about Raro.”

Her father’s terminal illness brought the family back after 16 months and they are now re-

settled in Auckland, at least for the duration of the children’s schooling.

Helena’s time is now split between lecturing Law and Society and research focused on Pacific Island issues. In the second semester of 2015 she taught an elective called ‘Pacific People in Aotearoa: Legal Peripheries’.

“Never in a million years did I think I’d be doing something like this,” she says. “I really didn’t enjoy public speaking and I had to get over that really fast. I got advice from everyone I could think of and then, in the end, I just did it. I still find it nerve-wracking at times, but maybe if I got too comfortable, it wouldn’t be a good thing.”

Helena likes that she is once again in a position where she can support Pacific students at law school, and cites the Pacific Island Law Students’ Association (PILSA) as an example of the positive vibe that she now sees in action.

“Our Pacific students are coming together and achieving great things – we’ve got good Faculty support and there’s lots of collaboration with the other student associations – there’s a good vibe.”

Helena knows how it is to feel uncomfortable. “No matter how you look at it, the law school environment can be intimidating, for lots of people. For us, the value systems are very different and being brown, you can feel very out of place. There are still issues that we face that need to be addressed, but I think the will is there and it’s wonderful that the Faculty has hired a Pacific lecturer. I don’t think we can underestimate the positive impact on Pacific students when they can sit in a lecture and see someone who looks like them up there at the front teaching. I’m both proud and humbled to be that person.”

The course Helena teaches incorporates a good deal of material about the Treaty of Waitangi and tikanga Māori. For some students – and she includes herself when she did the same course – it is a real eye-opener.

As Helena puts it “the teaching makes students aware of the potential for law to be used to further various interests and that there are other, equally important cultural views they shouldn’t ignore. Hopefully they will never look at law in the same way again!”

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Alison Lees

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**“Our Pacific students are coming together and achieving great things – we’ve got good Faculty support and there’s lots of collaboration with the other student associations – there’s a good vibe.”**



## Research highlights

It has been another productive year for the Law Faculty's research effort. Among the major achievements has been the publication of a number of books.

These demonstrate the breadth and depth of scholarship in the Faculty and the different audiences we serve – including the practicing profession, government and public policy makers, the international scholarly community and the general public. Craig Elliffe's *International and Cross Border Taxation in New Zealand* (Thomson Reuters) is a major new work, as is Warren Swain's *The Law of Contract 1670-1870* (Cambridge University Press). Kris Gledhill's *Human Rights Acts: The Mechanisms Compared* (Hart) has already attracted favourable reviews. Jane Kelsey's *The Fire Economy* (Bridget Williams Books) made the New Zealand best seller list and has attracted a great deal of media attention and been widely reviewed. Klaus Bosselmann's *Earth Governance: Trusteeship of the Global Commons* (Edward Elgar) is also expected to gain a wide readership. New editions have appeared of Peter Watts, *Directors' Powers and Duties* (Lexis Nexis) and *Health Law in New Zealand* (Thomson Reuters) featuring new chapters by Joanna Manning and Ron Paterson. Hanna Wilberg's edited collection (with Mark Elliott) *The Scope and Intensity of Substantive Review: Traversing Taggart's Rainbow* (Hart) carries on a fine tradition of administrative law scholarship at Auckland. Warren Swain, in a typically productive year, has edited (with Ross Grantham, and Kit Barker), *The Law of Misstatements 50 Years on from Hedley Byrne v Heller* (Hart). Warren

Brookbanks continues his leadership in the field of therapeutic jurisprudence with his new edited collection *Therapeutic Jurisprudence: New Zealand Perspectives* (Thomson Reuters). David Grinlinton (with Peter Salmond) has contributed to and edited *Environmental Law in New Zealand* (Thomson).

Auckland legal research has achieved recognition both in New Zealand and internationally. The quality of the work has been recognised again this year in the annual Legal Research Foundation legal writing awards. David J Harvey won the J F Northey Memorial Book Award with his historical work *The Law Emprynted and Englysshed* (Hart Publishing) and Nina Khouri won the best published article for "Sorry Seems to Be the Hardest Word: The Case for Apology Legislation in New Zealand", 2014 New Zealand Law Review. Former PhD candidate, now Dr Edward Willis won the unpublished post graduate paper prize with "From Constitutional Structure to Constitutional Outcomes: A Comparative Analysis of Constitutional Reasoning". An Hertogen, a welcome new member of the academic staff, adds to the considerable international law expertise on the Faculty. Her work on international economic law attracted a Marsden Fast grant award for her project "Good neighbourliness in international law".

The relevance and impact of faculty scholarship is also in evidence across a range of different audiences. Books and articles are regularly cited in the courts often at the highest levels both here and overseas. A number of scholars have acted as expert witnesses (including for example Janet McLean in a recent Federal Court of Canada Constitutional case *Schmidt v Attorney-General of Canada*). The impact on public policy is also significant. Thought leaders include Craig Elliffe and Michael Littlewood in their work on capital gains tax regimes. Professor Jane Kelsey has been a leading New Zealand and international commentator about the Trans-Pacific Partnership agreements – and indeed has been recognised as one of New Zealand's leading public intellectuals. Less well-known is Julia Tolmie's work as chair of the Government's New Zealand Death Review Committee on domestic violence and the work of Treasa Dunworth who was commissioned by the Ministry of Foreign Affairs and Trade to write two papers about nuclear disarmament presented at the United Nations Sixth committee of the General Assembly. We are proud of the relevance of our scholarship and the range of audiences we serve.

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Associate Dean Research – Professor Janet McLean



# 2014 Research Publications

## Books – Authored and Edited

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- Rijn, The Netherlands, Kluwer Law International. Pages: 134.
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- Elliffe, C. M.** (2014). International Tax. R. Vosslamber (Ed.), *New Zealand Taxation 2014* (741-809). Wellington. Thomson Reuters.
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- Gledhill, K.** (2014). Deprivation of Liberty Safeguards. P. Taylor, K. Corteen, & S. Morley (Eds.), *Companion to Criminal Justice, Mental Health and Risk*. Bristol, UK. Policy Press (University of Bristol).
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- Brookbanks, W.** (2014). 'Special hearings' under New Zealand's Criminal Procedure (Mentally Impaired Persons) Act 2003. *Northern Ireland Legal Quarterly*, 65(2), 205-214.
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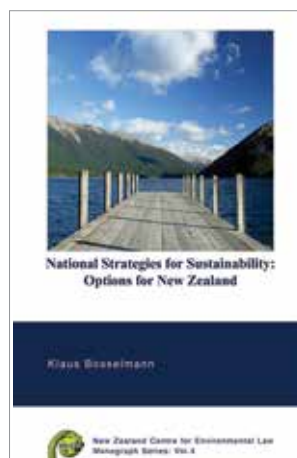
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## New books



### Klaus Bosselmann, *Earth Governance – Trusteeship of the Global Commons*

Uncontrolled growth in a finite world puts the global commons at risk. States have not yet found the means to protect what is outside their jurisdiction. International law has matured to a point that makes global governance beyond state-negotiated compromises possible and desirable. This book makes a well-researched and convincing case for trusteeship governance. It shows how the United Nations, together with states, can draw from their own traditions to develop new, effective regimes of trusteeship for the global commons.



### Klaus Bosselmann, *National Strategies for Sustainability: Options for New Zealand*

This e-book reviews national strategies for achieving sustainable development in the European Union, the United Kingdom, Germany, Sweden, Finland, Canada, Australia and New Zealand. Taking a comparative perspective, it identifies the main features of advanced national strategies, such as goals, comprehensiveness and effectiveness. These strategies are contrasted with efforts in New Zealand, which lag behind most OECD countries. The book provides guidance for developing a national strategy for sustainability in New Zealand, as well as in other countries.




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**Warren Brookbanks, *Therapeutic Jurisprudence: New Zealand Perspectives***

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The book explores the therapeutic potential of law in an eclectic range of subject areas. These include the role of apology, problem gambling, employment dispute resolution, problem-solving courts, and the Māori experience of law.

Its purpose is to expand the emerging discourse around therapeutic jurisprudence as a new methodology for legal problem solving while offering a practical insight into therapeutic jurisprudence in the New Zealand legal system.

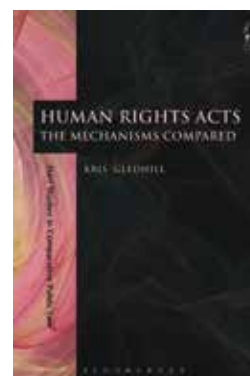



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**Craig Elliffe, *International and Cross-Border Taxation in New Zealand***

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International tax law specialist Professor Craig Elliffe provides commentary on New Zealand's international tax law and the transfer pricing regime. This book gives an understanding of the legal principles and concepts underpinning international tax law and cross border transactions. It introduces the history and concept of international taxation and the way in which New Zealand and other nations deal with international taxation transactions and covers residence-base taxation; source-based taxation; taxation of source based income; double tax agreements; and allocation of profits.




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**Kris Gledhill, *Human Rights Acts - The Mechanisms Compared***

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This book considers the developed jurisprudence of New Zealand, the United Kingdom, Ireland, the Australian Capital Territory and Victoria relating to non-constitutional protection mechanisms for the promotion of human rights. These mechanisms include strong interpretive obligations, quasi-tort actions and legislatures' obligations to consider whether statutes breach human rights obligations. Relevant case law from countries that have a constitutional approach, such as Canada, South Africa and the United States is also featured.

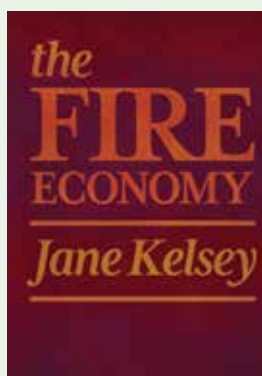



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**Peter Salmon and David Grinlinton, *Environmental Law in New Zealand***

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Expert commentary on environmental law and the challenges set by the preservation and sustainable management of New Zealand's unique environment is provided in this book. It is an invaluable source of information for resource management practitioners, academics and students in a variety of disciplines, and those in government, local government, or the private sector who deal with environmental law issues and whose work requires them to meet the challenges set by the preservation and sustainable management of New Zealand's unique environment.

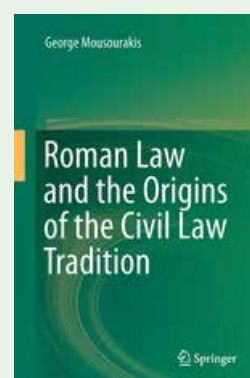



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**Jane Kelsey, *The FIRE Economy***

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*The FIRE Economy* (Finance, Insurance and Real Estate) is the world's principal source of wealth creation. Its rise has transformed our political, economic and social landscapes celebrating markets, profit and risk. From rising inequality and ballooning household debt to a global financial crisis and fiscal austerity, it has brought instability and empowered the few, but remains remarkably resilient in New Zealand and abroad. This book identifies the risks posed by FIRE and the barriers presented to a progressive, post-neoliberal transformation – urging us to act.




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**George Mousourakis, *Roman Law and the Origins of the Civil Law Tradition***

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This book provides an account of the history of Roman law from the early Middle Ages to modern times and illustrates its influence on contemporary civil law systems, highlighting the factors that warranted the revival and subsequent reception of Roman law as the 'common law' of Continental Europe. It includes sections on private and criminal law and procedure. It also includes a chapter on the history of Byzantine law – a topic not usually covered in standard introductory texts of its kind.





**Peter Skegg and Ron Paterson, *Health Law in New Zealand***

Contemporary health law in New Zealand is a complex area of specialisation, encompassing a broad range of personal health and public health issues arising in the private and public sectors. Divided into 10 major parts – including access to health care, standard of care, consent, health information, mental health and intellectual disability, the beginning and end of life, human tissue and coroners, public health, complaints, discipline and compensation the book is an invaluable source of scholarly and practical commentary.



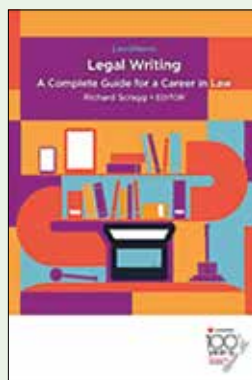
**Stephen Penk and Mary-Rose Russell, *New Zealand Legal Method***

More than a conventional textbook, this book is a complete, easy-to-read introduction to legal method. It brings theory to life with worked examples, Q&A and practice exercises. It introduces and develops concepts which include the structure of government and the sources of law; case law and the hierarchy of courts; judicial reasoning and the doctrine of precedent; statute law and statutory interpretation; the interaction between case law and statute law; and legal language and legal writing.



**d'Hélène Ruiz Fabri, Guy Sinclair and Arie Rosen, *Revisiting Van Gend en Loos***

Fifty years have passed since the European Court of Justice gave what is arguably its most consequential decision: Van Gend en Loos. The *UMR de droit comparé de Paris*, the *European Journal of International Law* (EJIL), and the *International Journal of Constitutional Law* (I.CON) marked this anniversary with a workshop on the case and the myriad of issues surrounding it. This book is the result of this workshop and provides a set of articles which demonstrate the legacy and the ongoing relevance of this landmark decision.



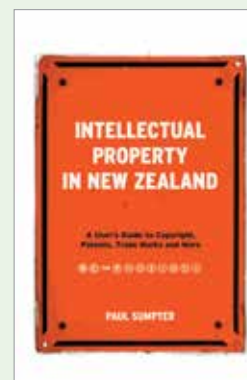
**Richard Scragg, *Legal Writing: A Complete Guide for a Career in Law***

This book provides law students with the skills they need from law school to admission to the Bar, in multiple jurisdictions. It helps students write essays, prepare for exams, prepare for the legal profession. It has been written by an experienced author team under the general editorship of Richard Scragg, one of the authors of the original *Legal Research and Writing in New Zealand*. Each contributor brings expertise and a practical understanding of their subject to both academic and professional environments.



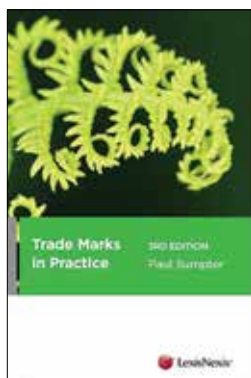
**Andrew Stockley and Michael Littlewood, *The New Zealand Supreme Court: The First Ten Years***

This book marks the 10th anniversary of the establishment of the New Zealand Supreme Court. It considers how the Supreme Court has been performing; the extent to which it has met its original objectives; and what trends and characteristics can be discerned from its first decade in existence. The first part of the book outlines the establishment, role and functioning of the court. The second part addresses the emerging jurisprudence of the court in the most important areas of New Zealand law.



**Paul Sumpter, *Intellectual Property in New Zealand: A User's Guide to Copyright, Patents, Trade Marks and More***

From small businesses filing patents to designers protecting their copyright, from a gas station seeing its logo ripped off by a competitor to a blogger posting photographs, New Zealanders encounter intellectual property every day. This book is an accessible introduction to patents, trade marks, copyright and other key elements of IP. Aimed at non-lawyers the book deals with key issues such as what can be patented, whether you have to register a trade mark, and how copyright works on the internet.

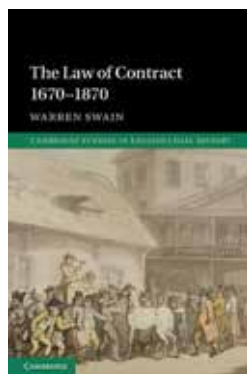



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**Paul Sumpter, *Trade Marks in Practice*, 3rd edition**

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This book provides an account of important developments in the Trade Marks Act 2002, which include: an outpouring of new decisions by the Tribunal that hears cases in the Intellectual Property Office of New Zealand; a significant number of High Court cases; the introduction of the Madrid system of international filings in New Zealand; a raft of changes to the regulations; as well as several high-profile UK and Australian cases of relevance in New Zealand.

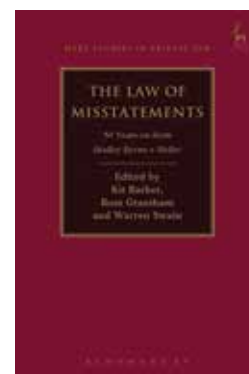



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**Warren Swain, *The Law of Contract 1670-1870***

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This book challenges many of the fundamental assumptions of Professor Patrick Atiyah's seminal, *Rise and Fall of Freedom of Contract*, published in 1979. This examination of the development of contract law doctrine in England during that time explores key themes in order to better understand the drivers of legal change. These themes include the relationship between lawyers and merchants, the role of equity, the place of statute, and the part played by legal literature.

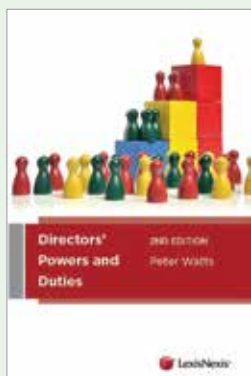



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**Kit Barker, Ross Grantham and Warren Swain, *The Law of Misstatements***

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2013 was the 50th anniversary of the House of Lords' landmark decision in *Hedley Byrne v Heller*. The collection brings together leading experts from the United Kingdom, the United States, New Zealand, Canada and Australia to reappraise its implications from historical, theoretical, conceptual, doctrinal and comparative perspectives. Inspired by *Hedley Byrne*, it reflects on the case's effects on the private law and provides a platform for thinking about how liabilities for misstatement and pure economic loss should be modelled in the modern day.

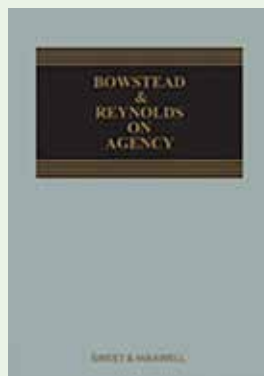



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**Peter Watts, *Directors' Powers and Duties*, 2nd edition**

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In this book practitioners are provided with a detailed treatment of the New Zealand law relating to directors' powers and (civil law) duties, one of the most important and complex aspects of company law. In the many areas where the law is unclear or contentious it comprehensively analyses the various options and attempts to provide clear solutions. It also supplies useful sketches of leading cases to illustrate the points of law in each section of the book.




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**Peter Watts, *Bowstead & Reynolds on Agency*, 20th Edition**

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*Bowstead & Reynolds on Agency* is an essential reference source for all commercial practitioners; both barristers and solicitors. Frequently cited in courts throughout the Commonwealth, this established title covers the role of both agent and principal in contract, tort, commercial, company and property law. It combines articles, commentary and illustrations to give a better understanding of the law. Part of the long-established Common Law Library, this edition incorporates recent changes and developments in law and practice integrated into each chapter.




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**Hanna Wilberg and Mark Elliott, *The Scope and Intensity of Substantive Review: Traversing Taggart's Rainbow***

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This book brings together leading administrative law scholars from the UK, Canada, Australia, South Africa and NZ. Inspired by the work of the late Professor Mike Taggart, it addresses two distinct but related topics: the expansion of substantive grounds of review such as unreasonableness; and the possibility of judicial deference in applying legality grounds. It also discusses rights-based review in a separate third part. The book brings together essays on these topics, seeking to build on Taggart's approach.





Michael Kirby, Justice Muir, James Peters, Andrew Stockley

# Michael Kirby

**Michael Kirby is one of the world's most famous judges. He was Australia's longest serving judge and sat on its highest court. His recent report to the United Nations on human rights abuses in North Korea has attracted world headlines.**

He has continued to maintain a close relationship with the Auckland Law School and carried out a full day of engagements when he visited on 25 September.

This included meeting and talking with student leaders and joining Faculty members over morning tea. Justice Kirby then took part in a seminar with international law students on his work for the UN and the process he followed in reporting on human rights abuses in North Korea. He was joined by Sir David Baragwanath, who offered interesting perspectives from his work as President and a member of the Appeals Chamber of the UN Special Tribunal for Lebanon.

Michael Kirby then gave a public lecture on marriage equality and justice. In a highly topical address, he noted that since the Netherlands legalised same-sex marriage in 2001, the issue has been debated in other countries and implemented by judicial decision, referendum and parliamentary legislation. He compared

recent developments in New Zealand (where equal marriage was enacted by legislation, supported by the Prime Minister), in Australia (where the then Prime Minister and other members of the governing coalition blocked legislation), and in the United States (where the Supreme Court has endorsed equal marriage in all parts of the United States). The topic is of particular importance to Justice Kirby, who was Australia's first openly gay judge. His lecture was attended by Justice Matthew Muir, a graduate of the Auckland Law School, who is New Zealand's first openly gay judge appointed to the High Court. Michael Kirby and Justice Muir are co-patrons of the Auckland Law School's LGBTIQ group, Rainbow Law. They talked with LGBTIQ students over afternoon tea after the lecture.

That evening Michael Kirby was the keynote speaker at the Legal Research Foundation's 50th Anniversary Dinner, attended by many of the academic staff, members of the profession and judiciary. He gave a humorous address, at one point mimicking Sir Robert Muldoon!

Dean Andrew Stockley noted how grateful the Faculty was to Michael Kirby. "His continued involvement with the Auckland Law School is greatly appreciated by staff and students. His talks this year were highly topical and much enjoyed by the students who attended, in particular our international law and LGBTIQ students, to whom he spoke directly and was incredibly inspiring."



Hongi between Michael Kirby and Geremy Hema

# Professor Jane Ginsburg

Professor Jane Ginsburg, a world renowned expert on copyright law kept her audiences interested during her visit to the Law School as the New Zealand Law Foundation's Distinguished Visiting Fellow.

Professor Ginsburg is the Morton L. Janklow Professor of Literary and Artistic Property Law at Columbia University School of Law, and Faculty Director of its Kernochan Center for Law, Media and the Arts.

In the first of two lectures, she posed the question: "21st-century technology may bring us the universal digital library..." but does it "... threaten copyright holders, particularly book publishers"?

She took her audience back to the Library of Alexandria and to other times when a universal archive of knowledge was the stuff of utopian dreams.

But another theme, somewhat in competition with the notion of access to 'all the world's knowledge', was the drive to borderless protection of authors' rights – "copyright universalism". The reach of copyright protection has now become world-wide, she said.

At the same time the internet and digitisation has arrived. The Google book project – the idea of scanning-in all the world's books – has suddenly made universal access to knowledge something actually within reach.

Professor Ginsburg pointed out the dangers in the convergence of access and universalism, and called for caution in law-making on the issue of how rights and rewards should be sorted.

The famous and difficult balance in copyright law between the rights of access for users and the rights of owners was also at the heart of her second lecture, in which she outlined the United States 'fair use' provision in its copyright law.

This is the general defence available to copyright infringement based on 'fairness', she explained. "Just how far can one go in transforming/using a creative work, protected by copyright, for parody or some other purpose?"



Photo by Arnold Adler © American Bar Association

Professor Ginsburg used a number of interesting examples in US case law drawn particularly from popular culture to explain her view.

Although the American approach to 'fair dealing' is often cited as a better model – compared to the more prescriptive New Zealand/UK one – Professor Ginsburg acknowledged it suffers from the criticism that it can be too arbitrary. "Fairness" like beauty can lie in the eye of the beholder.



Susanne Jenks, Paul Brand, David V Williams, Helen McNeil and Judge Harvey

# Professor Paul Brand

Professor Paul Brand – Emeritus Professor of Legal History from All Souls College, University of Oxford - visited Auckland in May accompanied by his partner Dr Susanne Jenks.

Paul presented a public lecture attended by more than 70 people entitled: "The first century of Magna Carta and the development of the Common Law." This visit followed a tour of Australian cities – Melbourne, Adelaide,

Canberra and Sydney – during which Professor Brand lectured to audiences at universities, at the High Court of Australia and at the Australian Academy of Law. The success of Professor Brand's Auckland address was that,

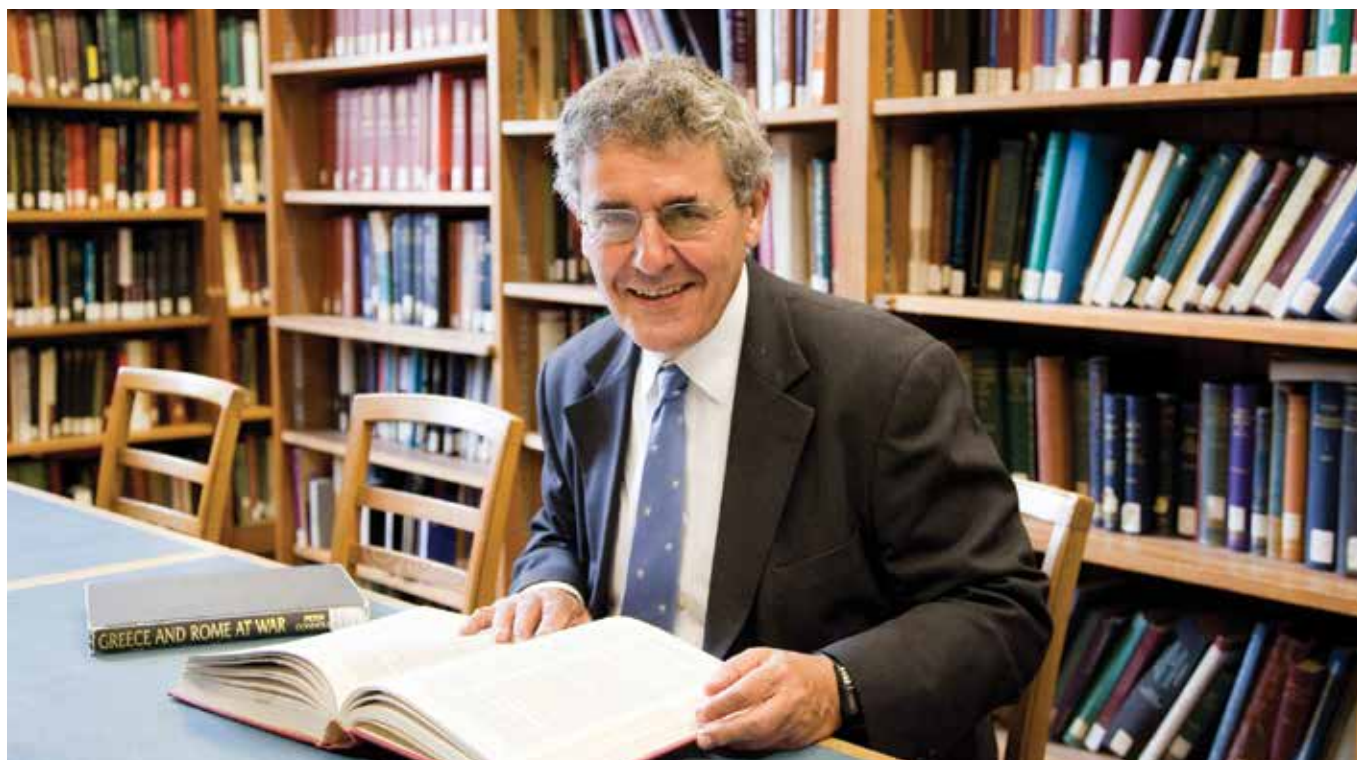
as in Australia, he attracted an audience that included a number of senior members of the judiciary, law practitioners, law and history academics and students.

Professor Brand was introduced by Professor David V Williams. His lecture focused for 45 minutes on the first century of Magna Carta – with a mass of fascinating historical detail – and then concluded with 15 minutes of reflection on the modern significance of the Great Charter. A question and response session followed and then His Honour Dr David Harvey, District Court Judge, proposed a vote of thanks.

In addition to the lecture, there was a lunch hosted by Professor Francis Dawson (as New Zealand secretary of the Selden Society) and an absorbing Legal History Honours seminar session with Professor Williams' students. In that seminar our two visitors first spoke of their work for the Selden Society and the Anglo-American Legal Traditions archives database. They then listened to and commented on a presentation by a student – Grant de Lisle. He spoke about his research paper in progress concerning the Peasants Uprising of 1391 – a suitably medieval topic for our visitors.

Professor Brand's and Dr Jenks' visit to Auckland was made possible by a grant from the New Zealand Law Foundation to cover the costs of the trans-Tasman travel and Auckland accommodation.





## Sir Robin Jacob

When I met him at the airport having just flown in from Tokyo, it was pretty clear that Sir Robin was keen for the English cricket team to do well in the World Cup.

Unfortunately New Zealand had already thrashed them in the round robin part of the tournament a week earlier. However the day he arrived New Zealand was playing Australia at Eden Park. I suggested that Sir Robin might like to see a bit of the cricket at the "Fanzone" a short walk from his hotel. He was very enthusiastic ('any enemy of my enemy is my friend!') So some enjoyable hours were spent in downtown Auckland watching New Zealand demolish the Australian batting, with a pint or two added in for good measure at a local watering hole. That, he said, was an excellent start to his sojourn in Auckland as the Legal Research Foundation's Research Scholar for 2015.

### Sir Robin gave his viewpoint, which generally did not leave room for any shades of grey.

In his career at the bar Sir Robin Jacob specialised in intellectual property law and argued a host of well known cases. He became a High Court Judge in 1993 and was then elevated to the English Court of Appeal in 2003. He has decided numerous, significant cases on trade marks and patents, but also in other areas of intellectual property and the general law. He retired in 2011 and was appointed a Professor at University College London.

The local cognoscenti were therefore eager to meet him and hear him talk. He did not disappoint. In his first lecture he ranged over some current issues in patent law. A central theme was his vigorous defence of the patent system as a means to incentivise R&D – with some pointed words about competition lawyers who, he said, sometimes tried to interfere. In his second talk he turned to copyright and trade marks. He mentioned, for instance, that the rights given to copyright owners seem always to expand, and referred to the increase in the term of copyright from 50 to 70 years after the death of an author as an illustration. The implication was that such expanded rights may not always be justified. One of the challenges facing English intellectual property lawyers is the influence of (and actually understanding) the decisions of the Court of Justice of the European Union. In copyright, there has been a subtle change in the notion of subsistence, tending to substitute the traditional United Kingdom test of originality for 'independent intellectual creation' which, as interpreted in practice by the CJEU, can encompass almost 'slithers' of a work. The CJEU was described as a somewhat unusual court because of the fact that each of the EU countries can choose someone to sit on it, some of whom may have had only limited commercial law experience or even not be lawyers at all.

Answering a few issues that had been provided to him, Sir Robin gave his viewpoint, which generally did not leave room for any shades of grey. The tendency for trade marks, comprising almost wholly descriptive matter, to get registered was not welcomed at all, it seemed, nor was the relatively new idea, enshrined in the legislation in England (and elsewhere including New Zealand) to give special protection to "well-known" brands based on something called 'anti-dilution'.

Apart from his public lectures Sir Robin made himself very accessible to one and all at the Law School as well as meeting up with and enjoying the company of practitioners in the intellectual property field. His anecdotes and observations on the law were well received. Indeed, it is on the smaller occasions that often the real value of the visits of the 'great and the good' are best appreciated. Even in this internet, globalised village age nothing beats actually meeting up with someone who has been at the pinnacle of deciding and developing the law.

Paul Sumpter



David Goddard

## Top practitioners

The Students Top Practitioners' Lecture Series for 2015 was organised and introduced by Mai Chen, who was appointed as an adjunct professor in the Auckland Law School in 2014. It was a chance for law students to hear about lives in the law from some of New Zealand's leading practitioners.

**Judith Ablett-Kerr QC** kicked the series off on 21 July with a stimulating and thought-provoking talk about the role of a criminal barrister. She brought to vivid life the challenges inherent in the cab rank rule and at the same time brought home to her audience that the right of every defendant to representation may be at times difficult for a barrister, but it is nevertheless a core fundamental and ethical obligation. This obligation involves operating without fear or favour, taking on clients who may make the barrister popular, but also those who will make the barrister unpopular. Ablett-Kerr stressed that the adversarial system can only work if everyone has a right of representation. Her advice to students contemplating life as a criminal barrister was clear and unflinching – that the role of an advocate is not a simple or easy role, it should not be undertaken by those who are not courageous or honest or do not have a strong moral code. The role of the advocate is

nevertheless an essential role in a democratic society; the rule of law depends on society respecting rights and obligations.

Ablett-Kerr spoke eloquently about speaking for others; how as a young girl from a family background where service was highly valued and where a core value was contributing to society, she read the sad stories of the lives of those recently executed in Britain. She read about Ruth Ellis – the 5 foot 2 inch 45kg woman who left school at 14 and was a mother at 17 – executed for murdering her abusive on-again, off-again boyfriend. She read about Derek Bentley – simple minded and party to a burglary where he did not hurt anyone but where someone was killed – who was, at 16 years of age, too young to marry but not too young to be put to death. Those stories inspired in the 12 year old Judith a desire to speak for those who could not speak for themselves that she has carried with her. It is

the reason why she has spent 45 years of her life in a job that is draining and exhausting, but which at the same time she says gives her incredible satisfaction.

**Andrew Brown QC** is linked with Auckland Law School as the Director of the Legal Research Foundation (which as one of its roles showcases the research of legal academics at Auckland University to the profession). Andrew spoke on 27 August about intellectual property, the practice area Mai Chen described as the hottest and fastest growing. Andrew Brown told students how areas of practice can develop; and how when he started working (almost inadvertently) in the IP area there was not a huge amount of work – but how in the 1980s it was an area of practice that took off. Technological innovation means it is also a disrupted area where the ground rules can change quickly. For example since the digitization of music in the mid-1990s, many musicians own





Mai Chen, Andrew Brown, Susan Watson and Paul Sumpter

the copyright in their own music. But what drew Brown to Intellectual Property Law was not the rollercoaster ride it has become, but instead a passion for the subject. He described IP as an interesting branch of the law that combines litigation problems with an overlay of technology and clients' businesses. It is also a subject of wide general interest – Andrew can discuss IP with his daughter Stephanie who is not an IP lawyer. Stephanie's interest stems from being a songwriter – she was the winner of the 2012 APRA silver scroll.

**David Goddard QC** drew a large and engaged audience to his entertaining talk intriguingly

entitled: "A Banquet of Snake Six Ways" (it turned out that the title was an allusion to his experience of visiting Vietnam as a consultant on company law reform). David spoke about how his career (and his education, since he majored in mathematics for his undergraduate degree) has not followed a projected and planned path, but instead how a series of events have led him to where he is now. In his own words, and according to the widely used Myers-Briggs personality test, David is not well suited to being a lawyer. About 20 years ago two leading law firm partners who are now judges advised him that he should give up litigation. He has in fact given up litigation

several times, but still seems to be doing quite a lot of it. David is currently wondering what to try next. In fact, although he didn't tell his audience, he is identified in the Chambers & Partners guide as one of New Zealand's top three barristers. David's advice to the Auckland law students was to use the anecdotes drawn from his own career as an illustration of why you should ignore career advice and personality tests, try (almost) anything, work with good people, and throw yourself whole-heartedly into whatever you are doing.

**Professor Susan Watson**



Peter Watts, Mai Chen and David Goddard



Judith Ablett-Kerr

# Visitors news in brief



His Excellency Izzat Abdulhadi, Treasa Dunworth, Andrew Shearer and Dr Riad Al Malki

## Auckland Law School welcomed the following visitors who gave staff seminars or public lectures:

Visitor	Institution	Topic of Lecture
Gordon Smith	Glen L. Farr Professor of Law, BYU Law	Fiduciary Law and Entrepreneurial Action
Kathryn Tucker	Executive Director of The Disability Rights Legal Center	Advocacy to Expand Autonomy at the End of Life in the US: Evolving Law, Medicine and Policy
Judge Catherine Crawford	Magistrate Perth Children's Court	How youth affected by Fetal Alcohol Spectrum Disorder (FASD) are treated in criminal jurisdictions
Riad Al Malki	Minister of Foreign Affairs, Palestine	Palestine - Ending the Occupation, Establishing the State
James Hathaway	Professor of Law and Director of the Program in Refugee and Asylum Law at the University of Michigan	Moving Beyond Good Intentions on the Road to Refugee Rights
Paul Brand	All Souls College, Oxford	The first century of Magna Carta and the development of the common law
James Anaya	Regents Professor and the James T Lenoir Professor of Human Rights Law and Policy at the University of Arizona	Indigenous Peoples Rights & Business Responsibilities: Lessons from Six Years as UN Special Rapporteur on the Rights of Indigenous Peoples
Peter Cane	Australian National University	Controlling Administrative Power: An Historical Comparison of England, the US and Australia
Kevin Heller	University of Melbourne	The Use and Abuse of Analogy in International Humanitarian Law
Tim Wright	Asia Pacific Director of the International Campaign to Abolish Nuclear Weapons	The Transformative Potential of a Treaty Banning Nuclear Weapons

Visitor	Institution	Topic of Lecture
Adam Perry	Queen Mary University of London	Top down and Bottom up Conventions and Constitutional Statutes
Michael Perlin and Yoshikazu Ikehara	New York Law School and Tokyo Advocacy Law Office	Enforcing the Convention on the Rights of Persons with Disabilities through Asia-Pacific
Michael Kirby	Former Justice of the High Court of Australia	Marriage Equality and Justice
Justice Paul Heath and Justice Patricia Courtney	President of Legal Research Foundation and HC Judge	Pathways to the Bench
Adolfo Paolini	University of Buckingham	Auditor's liability, ex turpi causa defence, company law and the rules of attribution
Adriana Braghetta	Vice President of ICCA	Doing Business in the Changing Global Market
Brendan Gogarth	Lecturer, University of Tasmania	Resolving Scientific Disputes in the Global Common
David Fox	Senior Lecturer, University of Cambridge	Monetary Obligations and the Fragmentation of the Sterling Monetary Union
Guy Seidman	IDC Herzliya	Comparative Administrative Law can be done. A triple gambit
Stephen Thomson	Chinese University of Hong Kong	Constitutional and Legal Systemic Implications of Judicial Narrative in the Context of Judicial Review: Towards a General Theory



## The Auckland Law School also hosted the following academic visitors in 2015:

Name	Institution
Joanna Siekiera	University of Wroclaw, Poland
Sandra Fagerlund	Stockholm University, Sweden
Takeshi Tsunodea	Kansai University, Osaka, Japan
Ian Macduff	Singapore Management University
Mari Kotani	Doshisa University, Japan
Kate Fitz-Gibbon	Deakin University
Delegation of Chinese Academics	Chinese University of Political Science and Law
Louise Ford	University College, York
Cai Xueen, Zhou Di and Pei Yilin	Candidates of RIEL and Yuhan University
Helena Connors	University of Oxford
Hon Eitan Orenstein	Tel Aviv District Court, Israel



Adriana Braghetta, Nina Khouri and Caroline Foster

## LLM Visitors to the Faculty in 2015

Name	Role/Institution	Course title
Janice Grey	University of New South Wales	Comparative Water Law and Policy
Rob Merkin QC	University of Exeter	Law of Insurance Contracts
Richard Nolan	University of York	Commercial Equity
John Armour	University of Oxford	Comparative Company Law
Nigel Gravells	University of Nottingham	UK Copyright Law in an EU Environment
Alex Frame	Barrister	Constitution and Custom in the South Pacific
James Anaya	University of Arizona	Indigenous Persons
Chester Brown	University of Sydney	International Arbitration
Alex Ruck Keene	Barrister, 39 Essex Chambers, England	Vulnerable Adults – Rights Protection in the Modern Age
Marie Bismark	The University of Melbourne	Patient Rights and Public Protection
Justice Kate O'Regan	Honorary Professor University of Cape Town	Comparative Human Rights
Alice Palmer	Legal Practitioner	Environmental Rights

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Professor Paterson challenged prize-winners to find a way to “use the talents and skills recognised by the Law School, to make a fulfilling career for yourself, and to serve our community.”



## Ron Paterson encourages law students to follow their hearts at Law Awards

More than 100 awards were presented to the Law Faculty’s top students at a ceremony on 7 May.

Dean Andrew Stockley and Associate Dean Stephen Penk presented certificates to students who had won prizes and scholarships, who had major leadership roles in the law student societies, and who had won law student competitions and represented the Law School internationally.

About 450 students, their friends and families, members of the legal profession and the judiciary, and individuals and representatives of firms and organisations that support the Faculty filled a marquee outside Old Government House for the special occasion.

The Auckland District Law Society’s prize for the top undergraduate went to Taylor Burgess

who is Judge’s Clerk to the Honourable Justice Ellen France, President of the Court of Appeal.

“I have enjoyed my studies at Auckland Law School and this award is a wonderful way to end my time there,” Taylor said. “I am very grateful to my lecturers for their support and encouragement.”

Dean Stockley introduced the evening’s guest speaker, Professor Ron Paterson, the Ombudsman, who shared the prize of top undergraduate in his last year at the Law School with his good friend the late Professor Mike Taggart, who also became a law academic and went on to be Dean.

Professor Paterson said he had found his 1978 handbook and was struck by the absence of Māori, Pacific and Asian names compared with today.

Drawing on his own experience, he said he had never imagined he would be able to combine his interests in medicine and law to carve out a career that has included writing a book *“The Good Doctor – What Patients Want”* and a decade’s service as a Health and Disability Commissioner.

“So my first piece of advice is ‘follow your heart,’” he said.

Professor Paterson noted how the law takes practitioners in surprising directions, citing examples from his work as Ombudsman, in fields as diverse as conservation and customs, education and health.

He said Auckland Law School students had a wide range of career options before them. “Armed with an Auckland law degree and the bonus of a prize on your CV, your job possibilities here and overseas are almost limitless – you can chart your own path.”

Professor Paterson challenged prize-winners to find a way to “use the talents and skills recognised by the Law School, to make a fulfilling career for yourself, and to serve our community.”

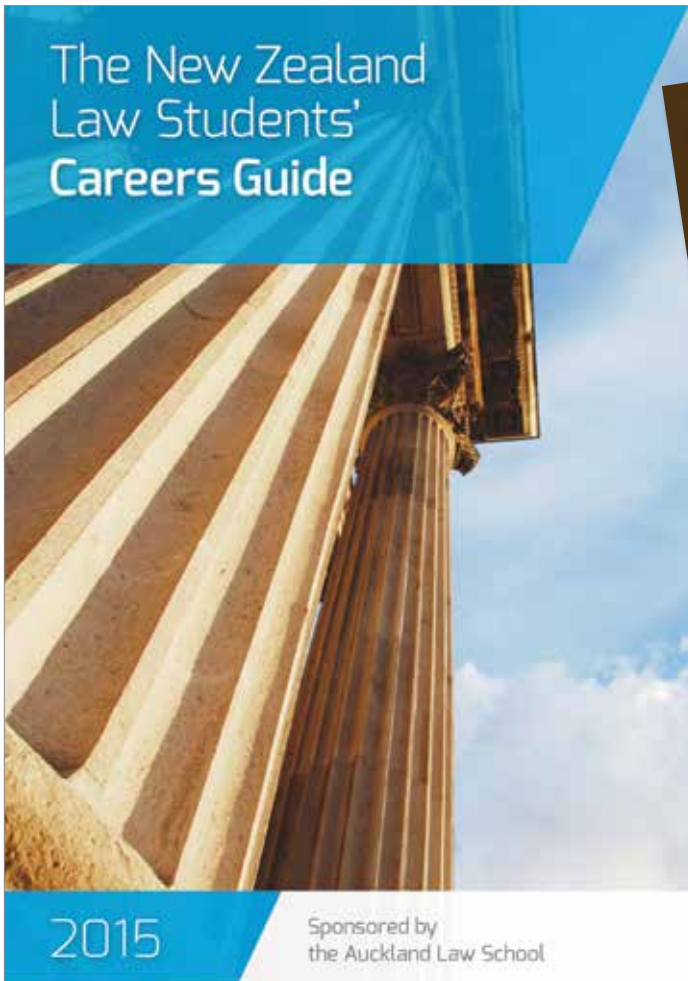
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Alison Lees



Associate Dean Stephen Penk, Taylor Burgess and Dean Andrew Stockley





# New Zealand's first Law Students' Careers Guide

The inaugural New Zealand Law Students' Careers Guide 2015, sponsored by the Auckland Law School, has been very well received and is becoming a valued resource at law schools around the country.

The guide was put together by Nick Fenton and Michael Smol, both members of the Auckland University Law Students' Society executive, in the belief that a careers guide by students, for students, was something that New Zealand law schools sorely needed.

The pair put in two-and-a-half months' solid work last summer "badgering law firms and interviewing some quite incredible people" to put the practical 70-page publication together.

In the course of gathering information, people in the law profession consistently told them that "a law degree presents so many options and opportunities, but too often students only hear about a few of them".

"Many students worry about how difficult it will be to find a job in the legal sector once they graduate, and that task is made more difficult by the fact that many of them don't know what kinds of jobs are out there," Nick says.

"We thought that a careers publication that examines a wide variety of legal professions – not just law firms – would be really useful, so that students can see just how many doors a law degree can open.

"There are many career opportunities in the legal sector that exist outside the big commercial firms."

Dean Andrew Stockley says students who graduate with a law degree are prized by employers for their ability to research, write, analyse and reason. "They consequently end up in all sorts of careers," he says "Only half our graduates work in the legal profession and judiciary. Just as many work in business, government and an enormous variety of other fields."

The publication includes profiles on 18 of the major law firms in New Zealand, several smaller boutique firms, the Government Legal Network,

a High Court judge, expert mediators and arbitrators, lawyers working in-house and social justice organisations such as Community Law.

"We made contact with more than 40 organisations and 20 people and sent them questions we thought students would really like to have answered," Nick says.

"This stage was great fun and we met a lot of fascinating people, such as the Solicitor General Mike Heron, who was very generous with his time and connections."

Nick and Michael say the goal of the first edition is to start a more diverse and informed dialogue about careers in the law among undergraduate law students, which future editions can build on.

"We really hope that students will find it useful this year, and that it will be updated regularly so that it goes from strength to strength."

Alison Lees



John Haigh QC Memorial Moot winners Joy Guo and Hayden Hughes with judges Paul Davison QC, Justice Raynor Asher and Paul Wicks QC

## Mooting programme goes from strength to strength

The Auckland Law School Mooting Society has continued to offer a range of seminars, competitions and social events for the benefit of its members.

There is a growing interest in mooting at Auckland, with over 730 students joining the Mooting Society in 2015. Two other New Zealand universities followed Auckland's lead by establishing mooting societies this year.

All students must complete compulsory moots at Law School but the Society gives students opportunities to develop and refine their advocacy skills. Andrew Grant and Tiaan Nelson were Co-Presidents of the Society this year.

The mooting year started off with the Stout Shield, sponsored by Bell Gully. Sam Jeffs and Carter Pearce won the competition. As a result, they earned the opportunity to represent the University at the national senior mooting competition. Justice Kit Toogood judged the final. The "wildcard" system once again provided students that had done well in junior mooting and other competitions to join members of the Advocacy class in competing in the Stout Shield. Andrew Grant did particularly well, reaching the final as a fourth year student and "wildcard".

The John Haigh QC Memorial Moot once again filled the High Court number one courtroom and gallery. Although only in its second year, 82 students signed up to compete, easily filling the draw of 64 students. Justice Raynor Asher, Paul Davison QC and Paul Wicks QC judged the final. Before the moot started, they took time to share personal memories of John Haigh QC, the leading barrister in whose memory the competition was named. All of the judges emphasised how close the contest was and praised the competitors for their high level of oral advocacy. Hayden Hughes and Joy Guo were the winners.

As part of organising the John Haigh QC Memorial Moot, the Mooting Society has implemented a registrar system. This involved second year law students acting as registrars in the preliminary moots. The spots were extremely sought after. This gives new law students an opportunity to observe mooting before competing. Several registrars went on to make the semi-finals of the Junior Moot, with one being part of the winning team.

The Meredith Connell Greg Everard Memorial Moot is one of Auckland's premier mooting competitions and was held in semester two this year. Andrew Grant was the winner. The Faculty of Law moot organiser, senior lecturer Nina Khouri, said she was particularly pleased with the high number of students who elected to participate in the moot this year and the increased audience numbers, all of which contributed to a particularly vibrant final. Justice Anne Hinton judged the final.

Developing mooting at a junior level has been a key focus of the Mooting Society this year. The Society worked with the Auckland University Law Students' Society to increase the capacity of

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**Auckland has now won the senior mooting competition eight times in the last nine years. In the 65 years that the competition has existed, no other university has achieved a similar streak.**

the Junior Moot, with 32 teams competing this year. Katy Eichelbaum and Caitlin Anyon-Peters won the competition. The Mooting Society also ran the inaugural First Year Moot, targeted at students in their first year of university studies. The problem covered content from the LAW 131 Legal Method course. It was New Zealand's biggest mooting competition this year, with 128 students competing. Nick Cartwright and Karen





Air Law Moot Team: Caitlin Hollings, Marion Hiriart, Jack Davies, Nick Porter and Michael Greenop

Chow eventually won the competition. The standard of mooting bodes well for the future of Auckland Law School.

Auckland mooters have also continued to achieve success at an international level. For the second year, a team from the University of Auckland Law School competed at the Willem C Vis International Commercial Arbitration Moot in Vienna. The team was made up of five students: Matt Budler, Finn Lowery, Jack Davies, Michael Greenop and Ana Lenard; ably assisting them as coaches were Campbell Herbert, Nupur Upadhyay and Thom Clark. They did very well to reach the knockout rounds of the competition, placing in the bracket of teams between 32 and 64, ahead of universities such as Harvard, Oxford and Cambridge.

Finn Lowery and Michael Greenop both received an Honourable Mention for their oral performance, placing them in the top fifty speakers at the competition. The team as a whole also received an Honourable Mention for its oral performance. The team also competed in multiple pre-tournaments. They placed 9th out of 32 teams in Shanghai, came 2nd in Heidelberg and reached the final (but unfortunately had to leave early due to travel bookings) in Brussels. Most impressively though, they enjoyed two victories, placing first in both Romania and Budapest. If that wasn't enough, our mooters also entered non-competitive tournaments in Dusseldorf and Belgrade.

Caitlin Hollings, Danielle Houghton, Sally Wu and Aidan Lomas competed in the Philip C Jessup International Law Moot Competition. They placed in the top 25 for their written submissions, with Aidan and Caitlin also ranked in the top 100 speakers. In a competition involving some 500 teams and 2000 student competitors, this is an excellent result.

Michael Greenop, Jack Davies and Nick Porter represented the University at the Australia and New Zealand Air Law Moot in Brisbane. They did exceptionally well by winning the competition, as well as receiving further awards for the best Appellant Memorial and the best Respondent Memorial. This achievement is particularly significant as 2015 was the first year that Auckland sent a team.

The Auckland Law School continues to dominate the New Zealand law student competitions, this year winning not only the senior mooting (Sam Jeffs and Carter Pearce), but also the junior mooting (Katy Eichelbaum and Caitlin Anyon-Peters). By winning two of the five competitions, Auckland again won the President's Shield for the top law school. This is the third year running that Auckland has won

both the national senior and junior mooting competitions. Remarkably, Auckland has now won the senior mooting competition eight times in the last nine years. In the 65 years that the competition has existed, no other university has achieved a similar streak. Sam and Carter will get the chance to represent New Zealand at the Philip C. Jessup International Law Moot Court Competition in Washington D.C. next year.

Other notable successes included Auckland students winning the Australasian Client Interviewing Competition (Andrew Grant and Tiaan Nelson) at the Australian Law Students' Association conference in Sydney. Roshana Ching also performed exceptionally well, reaching both the Australasian and New Zealand finals of the witness examination competition.

**Tiaan Nelson**



Meredith Connell Greg Everard Mooting Competition winner Andrew Grant with Justice Hinton

# Student news in brief



The Governor-General, Lt Gen The Rt Hon Sir Jerry Mateparae and Finn Lowery

## Auckland Law School has a new Rhodes Scholar – Finn Lowery

Auckland Law School student Finn Lowery has won a prestigious Rhodes scholarship to undertake postgraduate study at the University of Oxford.

He will study for the Master of Public Policy, examining criminal justice and state security and their connection with social justice, which is his key area of interest.

Finn worked as a legal intern for the UN International Criminal Tribunal in the Hague.

He represented New Zealand as a member of the Men's water polo team and coached junior teams.

Auckland Law School students have won Rhodes Scholarships in three of the last four years.

Finn will be joining Max Harris and Alice Wang, who are already in Oxford.



Emil Kiroff

## StatesMUN 2015

In February 2012, seven students from the University of Auckland took part in the inaugural New Zealand Universities' Delegation to the Harvard National Model United Nations in Boston, Massachusetts. This is the world's largest and most prestigious conference of its kind. The organisation of the tour was also led by an Auckland University student. The delegation travelled on a study tour through San Francisco, Washington, D.C. and New York City. The group discussed global affairs with a variety of players in international diplomacy and law.

Emil Kiroff, co-director, says "There is so much value in this study tour for students. It aligns with the goals of Auckland University in terms of giving students a global outlook and developing international leaders. This complements

academic study, by reinforcing learnings from their courses and adding practical insights to more theoretical perspectives.

"I am so proud of what we have achieved. We had 23 meetings across the four cities, from Wikimedia Foundation to Oxfam America, from Global Fund to the US Department of State. The students had the opportunity to see a broad range of different actors within international diplomacy and contemplate how they work together. The meetings and functions enabled the delegation to engage directly with practitioners of international relations and law. They were able to see the different paths that may lead to the careers they aspire to. The advice and insights we received were immensely valuable."

## 2015 Student leaders

### *AULSS President*

Ben Kirkpatrick

### *AULSS Administrative Vice President*

Rebecca Brehmer

### *AULSS Educational Vice President*

Nick Fenton

### *AULSS Educational Vice President & Equal Justice Project Director*

Rayhan Langdana

### *AULSS Competitions Officers*

Connie Bollen

Milan Djurich

### *Te Rakau Ture Co-Tumuaki*

Chris Carrington

Angeline Nielsen

### *PILSA Co-Presidents*

Toaiva Hitila

Taniela Tonga

### *Rainbow Law Directors*

Matt Denton

Rekha Patel

### *Equal Justice Project Director*

Allanah Colley

### *Law Review Editors*

Kit Adamson

Sam Jeffs

### *Law Revue Directors*

Connie Bollen

Jamie Crosbie

Ben Gregson

Ana Harris

James Toebes

### *Mooting Society Co-Presidents*

Andrew Grant

Tiaan Nelson



Student Leaders at the 2015 Law Student Awards





# Justice Lowell Goddard heads historic British inquiry

Justice Lowell Goddard's appointment as the head of an inquiry into child sexual abuse in the United Kingdom comes as another achievement in an outstanding legal career spanning 40 years.

The third chair of the inquiry since it was set up last July following high profile historic sexual abuse cases, Goddard's aim is to revisit past wrongs, clarify what happened and ensure children are protected from sexual abuse.

She also intends for the inquiry to have a "truth and reconciliation" element to it, which will allow survivors to speak about their experiences in private if necessary, as well as an investigative function.

"I am honoured to be asked to lead this crucial inquiry and am well aware of the scale of the undertaking," she said.

Goddard, 66, who was last year made Dame Companion of the New Zealand Order of Merit, has led New Zealand's judiciary in many ways. In 1992, she became deputy solicitor-general, overseeing prosecution of serious crime.

Of Ngāti Kahungunu ancestry, she was the first person of Māori descent to sit in the High Court, joining the bench in 1995. She later became the first woman appointed to a division of the Court of Appeal.

Earlier, in 1988, alongside her close friend Dame Sian Elias, she was one of the first women in New Zealand to be appointed as Queen's Counsel.

At the time, the late Lord Cooke of Thorndon said the pair had shown the necessary qualities of integrity, ability, responsibility, learning and judgment.

"They happen to be women as well," he added.

That was the attitude Goddard herself maintained when in 2007 she was chosen to chair the Independent Police Conduct Authority (IPCA) – then known as the Police Complaints Authority – and became its first female leader in its 18 years of existence.

"That's not a big deal anymore," Goddard said in an interview at the time.

"I don't see it as a first for women. I think it's simply a matter of being a suitable person in the right place at the right time."

During her five-year tenure she oversaw the authority's transformation from a reviewing agency

to one that focused on active investigations of serious complaints against police.

Auckland-born Goddard gained her Bachelor of Laws from the University of Auckland in 1974 and was admitted to the Bar the following year.

She began practice as a barrister in 1977, and a decade later acted as senior counsel assisting the commission of inquiry into cervical cancer chaired by Dame Silvia Cartwright, then an Auckland District Court judge.

In an interview in 2007, Goddard was described as an "imposing figure on the bench, her glasses sliding down her nose so she can gaze intently over them at a lawyer or a witness."

In 2002, she gave what was then a record jail sentence – with no hope of parole for 28 years – to Bruce Howse, who murdered his two young step-daughters in their Masterton sleep-out.

She would later admit: "There have been very few people throughout my career that I have not been able to relate to in any way. These were the paedophiles and the psychopaths. Usually I could relate in a professional way to anyone, no matter what they'd done."

Goddard is married to fellow barrister and judge Chris Hodson QC. She has three stepchildren and a daughter from her first marriage, Rebecca Scott, who is also a barrister. As well as the law, the family shares a passion for horses. Hodson is president of Equestrian Sports New Zealand, and Scott was an equestrian rival of Catriona Williams, who became a tetraplegic after a 2002 riding accident.

Goddard is a significant supporter of the CatWalk Spinal Cord Injury Trust, founded by Williams.

In her latest role, which will see her lead an investigation into child sex abuse cases from as far back as 1945, Goddard will be able to draw on her work for the IPCC where she led an inquiry into police handling of more than 100 cases of child abuse.

She also has relevant international experience, having been appointed to the United Nations Subcommittee on the Prevention of Torture in 2010.

British lawyer Ben Emmerson QC, a UN rapporteur on counter-terrorism who will work as a counsel to the inquiry panel, said Goddard was one of the most respected and experienced judges in the Commonwealth.

"She is a judge with a longstanding commitment to the promotion and protection of human rights, both in New Zealand and within the United Nations system," he said.

"She has the courage, independence and vision required to run a major national investigation into the failure to protect vulnerable children against sexual abuse, which has reportedly taken place on an almost industrial scale in institutional settings in the United Kingdom over many years."

Alison Lees

# James Hosking and Anne Capelle

University of Auckland Law School alumnus, James Hosking, grew up in West Auckland in the 1970s and is now a Partner at the New York firm he helped establish, Chaffetz Lindsey LLP. James and his wife (and fellow alumna) Anne Capelle are generous supporters of the Auckland Law School.

## Early life

James Hosking grew up in West Auckland and attended Green Bay High School. He also spent part of his childhood living and going to school in the US and Germany, to which he attributes his international outlook. Hosking's father taught at the University of Auckland for more than 40 years and some of his earliest memories are of hanging out at the University. As a consequence, he says he "never even thought about attending any other New Zealand university".

Hosking undertook a BA/LLB and majored in German and Political Studies for his BA. His first few years of study were focused on German-related activities, especially the German theatre group and German students' association. He was also very involved in the Debating Society and either debated, mooted or judged throughout his time at university.

After graduating from Auckland University with a Bachelor of Arts/Bachelor of Laws (Hons), Hosking began working at Russell McVeagh's Auckland office, which he credits with giving him an excellent training in general lawyering skills as well as exposing him to a broad range of disputes that proved very helpful for the work he does today. Hosking worked at Russell McVeagh for two years before moving to the bar in 1997. He spent the next two-and-a-half years as a barrister, working primarily with David Williams QC.

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**"I was offered a job in New York with Clifford Chance as it was about to implement what was then the biggest trans-Atlantic merger. I decided to try it for a year. In the end, I stayed there for nine years and became a partner before a group of us split off to form our own firm, Chaffetz Lindsey LLP."**

Hosking enjoyed practising at the bar as well as co-lecturing the arbitration and mediation course and tutoring the equity course at Auckland Law School, but he always had an interest in postgraduate studies. "I always knew that I wanted to undertake further studies but was unsure of my direction. David introduced me to international arbitration and was instrumental in showing me the advantages of having a global

perspective on law. With an American mother, and given my specific interests, the US seemed like a natural fit. I was encouraged to apply to US LLM programs by several members of the Auckland Law School faculty, including the late Professor Mike Taggart, who was not just a great teacher, but also an important mentor to me."

## A move to the US

Hosking completed his Master of Laws degree at Harvard Law School in 2000. He had intended to come back to Auckland after his year overseas and pick up where he had left off as a junior barrister and to continue teaching, but an unexpected job opportunity arose. "I was offered

a job in New York with Clifford Chance as it was about to implement what was then the biggest trans-Atlantic merger. I decided to try it for a year. In the end, I stayed there for nine years and became a partner before a group of us split off to form our own firm, Chaffetz Lindsey LLP."

Hosking and his wife Anne, whom he met when they were both students at Law School, have now been in New York for fifteen years. Their two children, Ava and Lucy, were born in the city and the family is now well entrenched in their New York home. Hosking describes New York as a very dynamic and cosmopolitan city. "Despite what some people may think, it is also a very liveable city and a great place to raise our kids."





They say the circumstances that led them to stay in the US were “largely accidental”.

“Firstly, I really enjoyed the multi-jurisdictional nature of the practice at Clifford Chance and the opportunity to use my foreign language skills. Secondly, I had helped build up an international arbitration practice in the US and Latin America and it was hard to simply walk away from all that effort.” But their decision to stay was also influenced by an unexpected tragedy. As James and Anne were contemplating returning to Auckland, the September 11 terrorist attacks happened. “We were in New York during 9/11 and, while it may sound strange, that created a bond with the city that we hadn’t felt before,” he says. “It didn’t seem right to leave then, so we didn’t.”

### Life and career in NY

Hosking thinks that there are some distinct advantages to being a New Zealand lawyer abroad. “New Zealand-educated lawyers are well-respected in the international law community. In my specialty area of international arbitration, there is an unusually large number of New Zealanders. To generalise, I think that New Zealanders tend to be hard working and culturally adaptable, so they are well-suited to the challenges of international practice.”

However it was an adjustment fitting into the American model. “Many of the traditional New York big law firms are still surprisingly old-fashioned in terms of hierarchies, work environments and work expectations. It’s not quite ‘Mad Men’ but there is a lot of resistance to change. It’s one of the reasons why we set up our own firm with a more progressive culture.”

“My partners and I handle the same kind of complex commercial disputes we had at the big firms at which we all worked. Most of our clients are multinational companies. We also do a lot of work for and against sovereigns,” he says.

The dispute resolution boutique is now 30 lawyers strong and growing.

In addition to general commercial work, Hosking enjoys the freedom that comes with being in a small firm. “We can take on cases because they are intellectually interesting or important: we’ve done cases as diverse as representing Iran at the Iran-US Claims Tribunal to a litigation over the disputed ownership of a Picasso.”

**“My partners and I handle the same kind of complex commercial disputes we had at the big firms at which we all worked. Most of our clients are multinational companies. We also do a lot of work for and against sovereigns,” he says.**

Hosking’s personal workload is primarily as counsel and arbitrator in international commercial and investment arbitrations. But outside of his arbitration work, he also previously represented several detainees at Guantanamo Bay in habeas corpus litigation in federal court (challenging the basis for their detention).

“One of our cases ended up in the US Supreme Court and became a precedent on certain aspects of the limits of executive power and the reach of the writ of habeas corpus. I was also lead counsel in a case that was just the second to go to trial where a federal judge ruled on the lawfulness of my client’s detention – he ruled against us. I went to Guantanamo Bay about a dozen times for client meetings. The cases were incredibly intense with impossibly tight deadlines and deliberately unworkable restrictions on the use of information. I have mixed feelings about this work because at the end of the day the absence of any evidence that my clients had done anything wrong was irrelevant. My clients were Yemenis and the US government simply refused to release them because of the instability of their homeland. It was a good lesson on the limits of the law. Guantanamo was a political project from day one and it still needs a comprehensive political solution.”

### Advice for students

When asked, Hosking had some words of advice for our students and young graduates. “For students, take a wide range of classes and try to avoid making assumptions about what you will find interesting. More importantly, learn a foreign language as it will open doors.

“For graduates, don’t underestimate the excellent training available in New Zealand law firms and the benefits of getting a solid grounding in a general practice. A lot of US law school graduates choose to specialise at law school, go into that specialty when they graduate and, in doing so, unwittingly limit their options for practice as they get more senior.

“For students and graduates – regardless of whether you are thinking of practising internationally – take any opportunity to learn

about other legal cultures. Whether it is taking a comparative law class at law school, undertaking an exchange programme, or working on a matter that exposes you to foreign law, this will make you a better lawyer. The world is too interconnected for lawyers today to have just a purely ‘domestic’ view of legal problem solving. I think that’s the biggest challenge in legal education today.”

### Philanthropy

James and Anne have been generously supporting the Auckland Law School since 2010. “We both received an excellent education at Auckland Law School and it’s nice to be able to give something back. There is a strong tradition of philanthropy in US schools and it is commonly seen as a way of allowing graduates to remain connected with their law school and classmates. I see a gradual change in the ‘gifting’ culture in New Zealand.”

Dean Andrew Stockley is grateful for James and Anne’s on-going support of the Law School. “Their generosity has helped enable us to offer scholarships to LLM students, which has meant that some very good students who would not otherwise have been able to undertake further study have been able to come to Auckland and complete postgraduate degrees here. James and Anne’s support is very much appreciated and has made a very real difference.”

They see their philanthropic giving as important in setting an example for other graduates. As James says, “I encourage others to consider how they can make a contribution to the law school: be it financial or otherwise. I was originally discouraged by the magnitude of donations that US graduates make to their schools. I’m never going to be Bill Gates. But in New Zealand even a small contribution can go a long way.”

**Catherine Davies**

**“For students and graduates– regardless of whether you are thinking of practising internationally take any opportunity to learn about other legal cultures. Whether it is taking a comparative law class at law school, undertaking an exchange programme, or working on a matter that exposes you to foreign law, this will make you a better lawyer. The world is too interconnected for lawyers today to have just a purely ‘domestic’ view of legal problem solving. I think that’s the biggest challenge in legal education today.”**



Ned Fletcher, Natalie Walker, Gareth Kayes

# Natalie Walker awarded new Crown warrant for Manukau

When University of Auckland law graduates Gareth Kayes (2000), Ned Fletcher (2001) and Natalie Walker (1999) set up their law firm – Kayes Fletcher Walker – in June 2014, their aim was to engage in publicly important work of the highest standard.

The trio, all former Crown prosecutors at the Meredith Connell law firm in Auckland, envisaged doing predominantly criminal defence, supplemented by some civil, regulatory and public law work. Starting with just three partners and an office manager, the firm set a long-term goal of simply being able to grow.

## The Manukau Crown Warrant Opportunity

However, as Walker herself acknowledges, things did not quite work out that way.

In October 2014, Crown Law announced that the greater Auckland Crown Solicitor warrant would be split in two: an Auckland warrant and a Manukau warrant. Walker and her partners knew this was a possibility when they established their firm, but it was not the reason they went out on their own.

Nonetheless, when applications for the newly created Manukau warrant were called for in late August 2014, Kayes Fletcher Walker submitted the eventually successful bid. The firm became the first ever Office of the Manukau Crown Solicitor, with Walker herself appointed as the Manukau Crown Solicitor in May 2015.

As Walker told *Eden Crescent*: “We wanted to create our own firm – having had the experience of

knowing that it is hard to influence the values and direction of an old firm with a large partnership. We loved our brief time as defence lawyers. Defence work is every bit as important as prosecuting, but it is much harder. The highs are higher and the lows are much, much lower. We experienced both and hope that our firm today is richer for that.”

“If we had been further down the track as defence lawyers, we might not have been interested in applying for the warrant. But prosecution was familiar to us and we knew that getting the warrant would give us the opportunity to grow our firm in a way that being defence lawyers would not. Also representing the Crown is an enormous privilege and responsibility – and so it was not an opportunity easily passed up.”

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**“Our vision is to build a Crown Solicitor’s office that reflects its community, prosecutes crime firmly but fairly, and works collaboratively with justice sector partners to provide a timely, cost-effective service without compromise to principle or quality.”**

## A Vision for Manukau

The Crown prosecution work in Manukau is estimated to be worth about \$4 million annually. But Walker and her partners see their new enterprise as more than just the business of law.

“We saw the creation of the Manukau Crown Solicitor’s warrant as an exciting opportunity to establish a high-quality prosecution service for New Zealand’s most diverse, dynamic and challenging community”, Walker told *Eden Crescent*. “Our vision is to build a Crown Solicitor’s office that reflects its community, prosecutes crime firmly but fairly, and works collaboratively with justice sector partners to provide a timely, cost-effective service without compromise to principle or quality.”

To achieve this goal, Kayes Fletcher Walker has sought to employ people from diverse backgrounds who are intelligent, fair-minded, public-spirited, diligent and fun to work with. Their aim is to train these persons to be the best lawyers and Crown prosecutors possible.

As Walker sketches out, “We want to achieve a 50/50 balance of men and women at all levels of our firm. We also believe that a South Auckland Crown Solicitor’s office has a particular obligation and opportunity to bring through Māori and Pacific lawyers. Our involvement tutoring



Auckland Law School's MAP [Māori Academic Programme] and PASS [Pacific Academic Support Strategies] students in criminal law has shown us how much talent there is out there – too often overlooked by the big firms."

"Our mission is to create a successful firm with a strong Crown identity that takes pride in its work and in its people. We want to create a legacy – a Crown Solicitor's office whose best days will still be ahead of it when we leave."

### The New Manukau Crown Solicitor's Office

Walker observes that getting the warrant has been a humbling experience. As she and her partners quickly found out: "Suddenly everyone wants to work for us!"

Following the announcement that they had been awarded the Manukau warrant, Kayes Fletcher Walker received well over 200 applications for about 18 solicitor positions. Walker, Fletcher and Kayes did all the recruitment themselves, interviewing about 50 candidates.

According to Walker, the calibre of applicants was so high that they ended up taking on 23 new solicitors – the majority of whom are University of Auckland graduates. Walker and her partners were both pleased and excited that so many talented lawyers and support staff wanted to work in South Auckland. More than half of the firm's employees are women – with a range of ethnicities represented in the office, including four Te Reo speakers.

As Walker told the *New Zealand Herald* in May 2015, their organisation intends to grow, but at a "slow pace". To this end, Kayes Fletcher Walker ultimately plans to bid for contested legal work from various Crown departments – work that can generate fees beyond those currently paid by the government for criminal prosecutions. According to Walker, "you can only attract the best staff, offer them the best wages or the best training opportunities if you've got the money to do that". However, she made clear to the *Herald* that the firm will only seek additional Crown business after demonstrating that they can accomplish "the core Crown [prosecution] work to the highest standard".

Reflecting on the experience of starting the new Manukau Crown Solicitor's Office from scratch, Walker acknowledges that the rapid growth and sudden work flow has been "a bit of a shock for us". However, summing up the journey so far, Walker told *Eden Crescent* that it has also been "the best thing that ever happened to us and our firm".

"With our talented team at Kayes Fletcher Walker, we are looking forward to getting through this period of transition and creating a distinctively South Auckland Crown Solicitor's Office in Manukau."

While still early days, these three highly accomplished lawyers – and University of Auckland law graduates – seem well on their way to doing just that.

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Associate Professor Scott Optican



Pictured from left to right. Back Row: Norman Elliott, Hon Prof Judge Peter Skelton CNZM, Bill Patterson, Hon Justice David Tupou, Richard Wilson, Patrick Gibson, Dean Andrew Stockley, Derek Firth, Warren Kyd MNZM. Front Row: Michael Williams SC, Piers Davies, Judge Bernard Kendall, Sidney Pavett, Elizabeth Wright, Hon Justice Christopher Allan, Hon Prof David Williams QC, Associate Professor Kenneth Palmer, Paul Callaghan

## Class of 1965 – 50th Anniversary dinner

The Auckland Law School's "Class of 1965" has successfully raised more than \$20,000 to fund a Commercial Arbitration prize of \$1,000 a year (in perpetuity) to be awarded to the top student in that subject each year.

Class members recently gathered for a 50th Anniversary dinner at the Northern Club, organised by Patrick Gibson and David Williams QC of Bankside Chambers. The guest speaker was Hon Justice David Tupou of the Tonga Court of Appeal, one of the 1965 graduates. At the dinner the results of the prior fund raising programme were announced.

"We wanted the award to operate in perpetuity and the generosity of our 1965 class members has enabled us to do this," David Williams said. "We are very pleased that we have been able to make this happen – it is an acknowledgement of the debt we all owe to the Law School for providing us with a solid base with which to pursue our respective careers."

Dean Andrew Stockley says he is delighted with the success of the class prize project and the first award from the fund would be made to the top student in the LLB elective course on Commercial Arbitration this year.

"This is a very popular course taught by Amokura Kawharu who is co-author of *Williams and Kawharu on Arbitration*. It generally attracts around 70 students, yet there has been to date no class prize for the subject," he said.

"This assistance from these former students will enable us to reward excellence in this important area of law and it is marvellous to have this recognition from former students of the Law School. We are very grateful for their support."

## Sir Ronald Davison

Auckland Law School alumnus and former Chief Justice Sir Ronald Davison has died at the age of 94.

Sir Ronald attended the University of Auckland from 1937 to 1946, graduating with an LLB in 1947.

He was one of the last remaining members of the New Zealand judiciary to have served in the Second World War.

Sir Ronald was appointed Chief Justice at the age of 57 and served in the position for 11 years. He was at the centre of some of New Zealand's defining legal moments, including the sentencing of the two Frenchmen who were part of a team that sunk the Greenpeace flagship vessel *Rainbow Warrior*.

He imposed 10-year sentences on two of the saboteurs, Alain Mafart and Dominique Prieur, earning respect for his tough stance on the

bombing, which killed crew member Fernando Pereira 30 years ago.

He is also remembered for chairing the Winebox Inquiry into alleged tax frauds in the mid-1990s. The inquiry into allegations of criminal conspiracy and massive fraud through the Cook Islands tax haven took three years and is New Zealand's longest ever inquiry. Sir Ronald found no fraud but recommended major changes to the law on tax matters.

In retirement, he chaired the 1992 inquiry into the Electricorp power crisis and the 1994 inquiry into Family Court proceedings involving the Bristol family case where the father had killed his children. A number of changes were made to New Zealand's child protection legislation as a result.

Sir Ronald is survived by his wife Jacqueline and two children, with one son predeceasing him.



## Judge Mick Brown

His Honour Judge Michael John Albert Brown, Companion of the New Zealand Order of Merit, Doctor of Laws (honoris causa) and holder of the Blake Medal, has died at age 77.

Words to describe Mick Brown come easily – magisterial, dynamic, eloquent and direct, for example as well as dignified and fun loving.

Many will recall encounters with him with pleasure and joy. He was someone who made his mark wherever he was. An instance is the Wilson Home, where the permanent stiffening of his leg through poliomyelitis was borne in a way that did not preclude later effort in playing viola in the Junior Symphony orchestra and in playing senior cricket. A principal theatre in which he excelled was the law where he developed and maintained the skills of analysis and use of appropriate language.

He was a master of the understatement. Picture him prosecuting for the Reserve Bank, a well-known Aucklanders for then illegal currency transactions, this being Mick in his Crown prosecutor days. A full account had been presented by the prosecution and a long and florid plea in mitigation by the lawyer acting for

the defendant. The judicial officer then asked Mick, "Mr Brown, what does the Reserve Bank have to say about this?" The immediate reply, which could only have been delivered by one person, was "My client resents competition of this nature!".

He was a consummate lawyer, the kind of person whose clients always felt, whatever the result that the best decision they had ever made was to engage him as their lawyer.

Central to all of this was a person who commanded a warm following – from child students at the Beresford Street Primary School in Freemans Bay, where he taught, from the many clients for whom he acted, from those who joined him at the myriad of meetings needed to be a successful University Chancellor, and for the many many hundreds of people who appeared in the courts where he presided as a Judge (and became the Principal Youth Court Judge when the new legislation was passed in 1989). All were subjected to the personality of a special person who studied to understand the system and who challenged them to do better.

For one example out of many, he saw the prospect of combining the matter of criminal justice with community inclusion and use of Māori protocol. He was able to change the Judge from the one dimensional authority figure denouncing the wicked and imposing sentence to one who endeavoured to challenge the person before the court to acknowledge what had occurred and the part they had played in it (and working out a means of achieving redress). In his toolbox lay a command of the English language in which silence and use of pause had their places, alongside a ready wit and an inimitable repertoire of expression.

It is little wonder that one heard and still hears descriptions like "what a great teacher", "what a sterling advocate", "what a superb chancellor" and "what a fine Judge". The citations which accompanied the honours he received from the Queen, the University and the Blake Medal, underline the actions of a rare creature – a great man.

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Sir Anand Satyand





## Sir Peter Williams QC

Poignantly, Peter Williams, already very ill, received the accolade of knighthood in the backyard of his Ponsonby villa where elderly former prisoners sat alongside judges of the various courts.

Sir Peter had an extraordinary courtroom presence. That might be instinctive, it might be partly inherited: most advocates have to learn the hard way. His grasp of the rules of evidence and procedure was prodigious. (In a Wellington trial he called for a polling of the jury that had delivered a guilty verdict. *Ex tempore* he was able to refer to a very old precedent from another jurisdiction.) What set him apart from his contemporaries – a basic aspect of his skill-set – was a mastery of in-court strategy and tactics. He went to extreme lengths to sieve the facts, and he could be calmly terrifying in cross-examination. And no one was more adept at communicating with juries: he tailored this mode of address to what he saw as the particular cut of the jurors in each case and he spoke directly to the bench only when required to.

He may well have been the most charismatic and successful of all criminal defence counsel in New Zealand's history. In his "banco" roles, applications to the bench and appellate appearances, he was equally effective. Peter's long association with the A. A. Thomas affair, culminating in a pardon, took him to the highest courts including the Privy Council. He also made a mark in defamation cases and in one created common law history.

Equally at ease with rough-edged clients (some crewed for him on his yacht) and Governors-General and judges, Peter's common touch proved an asset in important cases. Some persons with bad records found him an empathetic listener and gained his services (usually on legal aid) whenever he detected a credible narrative of a defence, even insanity, or a weakness in the prosecution's case. "Mr. Asia", Terry Clarke, is an instance of the latter. Again, Peter's inbuilt lie-detector mechanism created out of a plethora of "all sorts of Hogarthian experiences," proved of incalculable value in preparing trials and conducting examinations in court.

Nothing deterred the advocate from doing what he saw as his duty to defend. I was with him at Mt. Eden prison when, after the Clarke case, he was cat-called. In late career he and his wife, Lady Heeni, a graduate of this Law School, travelled to Fiji following the 2006 coup to represent clients in the face of daily threats to themselves. In the 1980s Peter's family home was destroyed in a suspected arson.

This gutsy spirit spurred him to sail many times in offshore yachting races and protest at nuclear testing in the Pacific.



After years presiding over the Howard League, Peter established his own organisation to champion the cause of prison reform. Following his death this was renamed The Sir Peter Williams Q.C. Penal Reform League. Although prison reform remains a central feature, its widened scope covers *inter alia* non-custodial sentencing, parole, miscarriages of justice and, when relevant to reforms, the victims of crime.

His practice concentrated on the adversarial trial yet Sir Peter Williams saw a future for mediation in criminal matters. Indeed, on a number of occasions he managed (somehow) to persuade judges to permit that informally to occur.

Charisma can be made to count? So long as it is backed by a deep knowledge of law and people and a remarkably agile mind.

**Bernard Brown**

# Former All Black Bryan Williams honoured by University



Pacific leader, lawyer and former All Black Bryan Williams was one of six University of Auckland graduates to be honoured with a Distinguished Alumni Award, which he received at a gala dinner in Auckland on 13 March.

Bryan, who graduated with an LLB in 1974, played 113 matches for the All Blacks between 1970 and 1978. He was one of the first Pacific

Islanders to play for New Zealand in a game dominated by players of Celtic, Anglo Saxon and Māori origin. The 19-year-old Samoan winger broke the mould, scoring 14 tries in 13 matches during the All Blacks 1970 tour of South Africa.

The hallmarks of his game were strong running, a nifty sidestep and a reliable boot.

Bryan has kept in touch with the grassroots of the sport he began playing in 1960, notching up years of service for which he has been awarded an MBE, a Samoan Order of Merit and a Companion of the New Zealand Order of Merit.

Through his example on the field and in the legal profession, Bryan has become a role model for others, paving a way for young Polynesians to follow. "I like to think I helped forge a pathway," he says.

A high point for Mr Williams was coaching Manu Samoa for 10 years and helping unleash the full powers of the team onto the global rugby stage. "The other special highlight was when I got involved with Manu Samoa and went to three world cups," he says.

"My Dad passed away before he could see us burst on to the world scene and beat Wales at Cardiff Arms Park in 1991 and 1999. He would have been really proud about that."

Bryan said he was honoured to become a Distinguished Alumni of the University of Auckland. "I never imagined I would be in this position – my awards are for doing something I really love and enjoy."

Alison Lees

## Max Harris elected Prize Fellow of All Souls College, Oxford

Former Auckland Law School student Max Harris has been elected as an Examination Fellow (also known as a Prize Fellow) at All Souls College, Oxford.

Dean Andrew Stockley says that a prize fellowship at All Souls is one of the world's most competitive and prestigious academic awards.

"Max is an exceptional scholar - he was one of our best students at Auckland, was selected as a Judge's Clerk for the Chief Justice, and he won a Rhodes Scholarship to Oxford. He now has an incredible opportunity to pursue research in any field he wishes," he says.

Prize fellows have seven years during which they are provided with accommodation, meals and living expenses at one of the most well-known Oxford colleges. All Souls College was founded in 1438 and its world-famous

Codrington library, completed in 1751, has 185,000 holdings, about a third of which were published before 1800.

Up to two Prize Fellowships are awarded at All Souls each year and are competed for by some of the very best students across all disciplines and from around the world.

Described as 'the hardest examination in the world', selection is made after a competitive examination and interview process. There are two subject-specific examination papers and two general examination papers.

Four to six finalists are then invited to an oral examination at which between 50 to 60 All Souls Fellows interview the candidates.

There are about a dozen Prize Fellows at All Souls at any one time, and around 75 Fellows in total.

Alison Lees





# Alumni news in brief

## Recent Graduates

Russell McVeagh have apparently adopted a policy of hiring elite sportspersons, their recent recruits including Tom Ashley, Jacob Spoonley and Alex Mackenzie.

Tom represented New Zealand in windsurfing at the Beijing Olympics in 2008 and won the gold medal. He now somehow combines legal practice with coaching the Chinese Olympic Windsurfing Squad. Jacob is a national

representative footballer (goalkeeper). He has represented New Zealand, the Phoenix and Auckland City FC (who came third in the 2014 FIFA Club World Cup, beating Cruz Azul FC of Mexico in a penalty shootout, largely as a result of Jacob's performance in goal). Alex was a member of the New Zealand Men's Water Polo team in 2012, competing in various events including the World League in Auckland in 2013. He has also coached at elite levels. All three are not only elite athletes but formidable intellectuals, and all three recently completed their studies at the Auckland Law School.

**Michael Littlewood**



## Briar Charmley

Briar finished her studies at the end of 2006 and moved to Wellington to join the Dispute Resolution Team at Minter Ellison Rudd Watts. She says "larger firms are great places to start your career, as they provide excellent training and they're fun socially, but in the end, working in a commercial context was not for me".

Next she secured a role as an Assistant Crown Counsel in the Criminal Law Team at the Crown Law Office where she spent the following four years. During that time she had the opportunity to go on secondment to the Attorney-General's Office as one of his Private Secretaries. Briar explains "Although very different to litigation, I loved my time there. I gained great exposure to how law is made and government works".

In 2012 Briar took some time out and travelled through Africa before settling in South Asia and taking up a role as a Legal Fellow with

an American based NGO called the International Justice Mission (IJM). The IJM fights forced labour – a form of modern day slavery – and she was part of the legal team that advocated for police reports to be filed against owners and fought in court for perpetrators to be convicted and sentenced.

After her year in India, she spent a few months back at Crown Law in Wellington before heading to the United Kingdom, where she completed an LLM at Cambridge. "Australasians all did extremely well at Cambridge and my education at the University of Auckland put me in good stead for the masters course" says Briar.

With local and international experience under her belt, and armed with a postgraduate qualification, Briar returned home to Auckland in July. She has recently taken up a position as Crown Counsel in a Public Law team at Crown Law and is looking forward to the next stage of her legal career.



## Brierley Penn

Brierley Penn is working as a consultant for the Boston Consulting Group in Sydney, a global management consulting firm that advises clients in the private, public, and not-for-profit sectors. Throughout her time with BCG so far, Brierley has worked primarily in the public sector and financial services industries, advising clients on a wide range of strategic and financial decisions, and business transformation projects. Over the coming years, Brierley hopes to spend time at one of BCG's international offices, and to complete a secondment at Jawun, an indigenous organisation with which BCG has an affiliation, before undertaking further study (likely an MBA). Brierley relocated to Sydney earlier this year after spending her final semester on exchange at the Center for Transnational Legal Studies in London, where she focused on the study of transnational securities law, comparative tax law and global economic regulation.

## Judicial appointments and promotions

The Honourable Justice **Helen Winkelmann** (BA/LLB 1984) previously Chief High Court Judge has been appointed to the Court of Appeal. Justice **Matthew Muir QC** (LLB(Hons) 1981) Justice **Anne Hinton QC**, (LLB(Hons) 1975) and Justice **Rebecca Anne Edwards** (BA/LLB (Hons) 1983) were all made High Court Judges earlier this year.

Justice **Grant Huscroft** (LLM 1987) Faculty member from 1992-2001 was appointed to the Court of Appeal of Ontario Canada late last year.

**Deborah Marshall** (BA/LLB(Hons) 1998) was sworn in as a District Court Judge and also Appointed Chief Coroner. Auckland barrister **Debra Bell** (LLB 1997) has been appointed a coroner.



Kiri Toki – Fulbright Awardee



Benedict Tompkins

## Appointed Queens Counsel

**Margaret Casey** (BA/LLB 1983) was appointed Queens Counsel in 2015.

## Appointed Dean of Law

Professor **Mark Hickford** (BA/LLB (Hons) 1993) was appointed Dean of Law at Victoria University of Wellington.

## Scholarships

Alumni **Benedict Tompkins** and **Hamish McQueen** have been awarded W.M Tapp Studentships in Law to study for the LLM at University of Cambridge. **William Fotherby**, **Namita Singh**, **Amanda Stoltz**, **Stephanie Thompson** and **Hannah Yiu** have won Spencer Mason Travelling Scholarships tenable at the University of Cambridge.

**Rachel McMaster (Tompkins)** has won a Fulbright Award to study at Harvard University. **Kingi Snelgar** and **Kiri Toki** have also won Fulbright - Ngā Pae o te Māramatanga Graduate Awards to study at Harvard University.

The following recent graduates have also won Spencer Mason Travelling Scholarships:

- Columbia University: **Jessica Pridgeon**
- London School of Economics and Political Science: **James Wilkinson**
- New York University: **Helen Brown** and **Zoe Fuhr**
- Oxford University: **Samuel Hiebendaal**
- Stanford University: **Desley Horton**
- Universiteit Leiden The Netherlands: **Sebastien Davys-Brown**
- University of Toronto: **Jessica Blythe** and **Sara Jackson**
- Vanderbilt Law School: **Nikki Chamberlain**



Minister for Pacific Peoples, Hon. **Peseta Sam Lotu-Liga**, Wellington Tamatimu, Citizen Tamatimu, Housing New Zealand Chief Executive, **Glen Sowry**

## Alumni inspire future generations with a lane named after them

A new Housing New Zealand development in Kelston has recognised the academic and professional success of Auckland Law School Alumni twins, Wellington and Citizen Tamatimu, by naming a lane after them. Tamatimu Lane is close to where the brothers were raised.



The Auckland Law School thanks all 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 2014 *Eden Crescent*.

#### Graduates of the 1940s

Judge Arnold Turner CMG

#### Graduates of the 1950s

Duncan Bamfield

Cedric Jordan

John Partridge

The Hon Barry Paterson CNZM, OBE, QC

The Hon Peter Salmon CNZM, QC

#### Graduates of the 1960s

The Hon Christopher Allan CNZM

Barry Atkins

Rodney Austin

Keith Berman

The Rt Hon Justice Sir Peter Blanchard, KNZM

Paul Callaghan

Trevor Clarke

Christopher Cornwell

Ian Davidson

Piers Davies ONZM

William Duncan

Norman Elliot

Jonathan Field

Derek Firth

Patrick Gibson

Graham Hubble

Judge Bernard Kendall

John King QSO

Warren Kyd MNZM

Judge Trevor Maxwell JP

Bob McDermott

Ian McHardy

Bruce Page

Associate Prof Kenneth Palmer

William Patterson

Sidney Pavett

The Hon Dame Judith Potter DNZM, CBE

Ewan Price

Judge David Robinson

Peter Rowe

Prof Peter Skelton

Michael Thomson

David Tupou

The Hon Prof David Williams QC

Michael Williams SC

Richard Wilson

Elizabeth Wright

#### Graduates of the 1970s

Stephen Anderson

Anthony Banbrook

Russell Bartlett QC

Prof Philip Clarke

Judge Graeme Colgan

The Rt Hon Chief Justice Dame Sian Elias

Emeritus Prof Jim Evans

John Faire

Keith Familton

Peter Fuscic

John Gerard

Judge David Harvey

John Holmes

Judge David Mather

Prof Ron Paterson

Judge Mark Perkins

The Hon Justice Tony Randerson

Geoff Ricketts CNZM

Judge David Smith

The Hon Justice Lyn Stevens

Ross Sutherland

Michael Whale

#### Graduates of the 1980s

Miriam Dean CNZM, QC

Kate Davenport QC

Guyon Foley

Julie Goodyear

Megan Gundesen

Jane Kingstone

Garth Mathieson

John Sadler

Dato R. R. Sethu

Philip Skelton QC

Ana Sokratov

Cecilia Tarrant

Pravir Tesiram

Robin Turner

#### Graduates of the 1990s

Kent Chaplin

James Hosking and Anne Capelle

Gudrun Jones

Anita Killeen

Ashok Patel

The Hon Justice Christian Whata

#### Graduates of the 2000s

Richard Chen

Dr Alan Green

#### Graduates of the 2010s

Barbara Matthews

Matthew and Lara Tihi

#### Other donors and friends

Anonymous (1)

Elaine Davies

Hugh Fletcher

Lynda Park

Dr John Mayo

The Rt Hon Sir Ted Thomas KNZM

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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.



