

EDEN crescent

Faculty of Law Annual 2009



**Professor Michael Taggart
(1955-2009)**

**Unravelling the
Khmer Rouge regime**

Contents



The Festschrift, *A Simple Common Lawyer* (page 25), was launched at a lunch on Waiheke Island attended by the publisher and eight of the 15 contributors.

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Message from the Dean



It is a truism that we live in interesting times. How many of us, when first introduced to the “worldwide web” some time in the early 1990s, had any inkling what that was going to mean for our professional and personal lives?

It’s important for the Law School to be aware of global trends and developments. In our subject specialties this is, of course, central to our mission: the academic enterprise demands awareness of what is happening in one’s field. We strive to keep our horizon lifted above the latest case, the

latest statute, and to see our subjects in the larger context of principle and history. I believe the Law School does well on this front.

But, needless to say, it’s what you are not thinking about that takes you by surprise. So we must consider all the dimensions of what a modern law school needs to do and be. What, for example, does this new technology mean for the way knowledge and skills are imparted to students? How important is the centuries-old phenomenon of “the lecture” in the digital era? When there is more and more law, are we trying to teach too much? Should we concentrate on the core fundamentals and, if so, what are they exactly?

Then there are the “skills” needed to be a modern lawyer – have they changed? Does legal education offered by a good law school really end with a student’s graduation? Are we catering properly for the continuing legal education needs of the profession? Might we teach our LLM courses to practitioners around the country with online materials and (in an age of cheap airfares) weekend “face-to-face” discussions? Might we teach some courses internationally, through video links, in which our students mix with others (virtually) in other continents? And what weds us, really, to the established pattern of a two-semester academic year with 32 weeks of instruction and exams?

In all these areas we have been doing some thinking (and some acting), and will continue to do so. Some of that thinking is reflected in recent innovations: our move in 2002 to week-long “intensive” LLM courses taught by visiting international scholars, our introduction of compulsory modules in Legal Research skills, the growing use by some colleagues of online discussion groups, and Nin Tomas’s indigenous rights course taught simultaneously to classes in across four countries. Next year we will explore a more formal and rigorous legal writing programme that elevates the signal importance of effective legal writing as a necessary skill that all law graduates must have (even if they don’t practise law).

Back to the substance of the law itself. This impacts upon our Faculty in numerous ways. A hundred years ago positive laws were like islands in an ocean of basic liberty, governed by judge-made common law. Now the myriad problems of the modern world have spawned a massive web of legal regulation, on almost every conceivable subject. The work of lawyers increasingly includes the design and critique of regimes for the future, alongside the transactional (and often transnational) work and litigation of disputes. The new reach of law into every dimension of life has expanded employment opportunities for lawyers, and has led to understandable demand for new postgraduate and undergraduate courses.

Many subjects now press for inclusion as “de facto” compulsions – as the core of a good legal education that most students will seek to include. To mention just four areas, there is the growing significance of international law which has led to several new courses and at least

some overseas law schools building a foundational international law course into their core curriculum; there is the modern emphasis on rights; and the burgeoning law about the Treaty of Waitangi, which continues to influence our core courses and spawn specialist electives; and there is statutory interpretation - more important than ever.

This year we have offered Youth Justice, Islamic Law, Counter-terrorism, and the Law and European Commercial Litigation for the first time, and re-established the course on Statutes. Along with other recently added courses, these reflect real concerns in the modern world – as well as the likelihood that many of our graduates will end up practising, at least for a time, in other jurisdictions.

Through our seminar programme and visitors we have striven to make the Auckland Law School a vibrant place where practitioners can be exposed to new and exciting ideas from around the world.

In an age of straitened financial circumstances, the result of all the above is that the same number of staff – academic, administrative, and library – need to do more, with academics also producing high quality research that brings in the necessary funding for our salaries from the Tertiary Education Commission. This is our biggest challenge: finding the resources to attract and keep excellent staff and to constantly improve the Law School experience for our students and graduates.

I am very proud to be part of the Auckland Law School community and, for a period - just one more year – to hold the office of Dean. The collegiality, industry and professionalism of my colleagues, and the enthusiasm of our students, make it always rewarding.

This year we have felt, more than words can say, the loss of our friend and colleague Mike Taggart who died on 13 August at the age of 54. A tribute to Mike that I gave at the subsequent Senate meeting is reproduced in this magazine. But I would add here that losing Mike has been like losing half a dozen people – a mentor, a world-class scholar, a magnificent teacher, an inspiring leader, a research collaborator, and most of all, a great friend.

It has been a particular delight to welcome new staff in 2008 and 2009. Mohsen Al Attar, joined us from Canada at the beginning of 2008, Richard Ekins (who had been part-time since 2004 while doing his DPhil at Oxford), and Katherine Sanders who joined in July of 2009.

We farewelled Karena Lyons, who had served us superbly as Pacific Islands Support Co-ordinator over five years. And, sadly, we have farewelled Mary-Rose Russell, Manager of the Davis Law Library since January 1999.

A special tribute must be paid to Mary-Rose. Those alumni reading this who have highly developed organisational skills should now extract Eden Crescent 1998-99 from their indexed bookshelves (it has a picture of Bernard Brown on the cover!) and read, at page 43, Mary-Rose’s statement of her personal ambitions for the Law Library. These were to see the Library play a more integrated role in the training of law students, to see it bring more to the partnership with the Law School, and to make the Library into a national resource for legal research. This set of aspirations has been comprehensively accomplished under Mary-Rose’s stewardship. Her personal contribution to what makes the Law School a great place cannot be under-estimated. The advocacy of Mary-Rose and Mike Taggart, and the support of the University, has made the Davis collection and especially its electronic databases the leading research library in New Zealand and one of (a small handful of) the best in Australasia. And the Legal Research courses taught by Mary-Rose and her team in the Davis have been a major factor in making Auckland law graduates especially qualified for the legal workplace. Mary-Rose Russell leaves us for the AUT Law School for a new phase in her career, this time as Senior Lecturer in Law. We wish her all the very best and thank her for the legacy she has left here.

I would like to thank our alumni for their support to us and welcome any questions, comments or suggestions about the Law School.

Paul Rishworth

New staff

★ Mohsen Al Attar

A conversation with Mohsen Al Attar uncovers a man passionate about furthering understanding between different cultures and making the world a more equitable place.

Mohsen's research interests cover international trade law, law and development, Islamic law, globalisation, and intellectual property law. In 2008/9 he taught Law and Society, From Colonialism to Globalisation: How International Law Made a Third World and Islamic Law.

As a teacher his aim is to instil in his students an eagerness to learn and a desire to contribute to society, not just as consumers but also as citizens. Paulo Freire encapsulates Mohsen's educational philosophy in this quote: "Liberating education consists in acts of cognition, not transferrals of information."

Mohsen Al Attar in his own words

Why did you study law?

...basically my parents forced me to! Let's say parental influence!

Why did you do two Masters in Law?

I did my first LLM at the University of Texas in 2001. I wanted to deepen my understanding of Intellectual Property Law (formally) and Capital Punishment (practically). While I was there I assisted a team of lawyers who represented individuals who had been convicted of a capital crime and sentenced to death. We appealed the decisions and sought to have their death sentences commuted. In fact, just a few months ago, I heard that one of the clients I was working with, Kenneth Foster, had his sentence commuted, so I am very happy.

I witnessed some pretty dodgy "justice" while I was there – stacked juries, a disregard for the law, and, in Kenneth's case, ignoring the fact that he hadn't actually killed anyone. I vividly remember interviewing one juror who held so much contempt for the accused, he had made up his mind about the case before he had even heard the evidence. He said: "We have to show these thugs that they can't get away with this kind of behaviour. We have to send a message out." When I pointed out that the "thug" in question hadn't killed anyone he said it didn't matter; it was important to send a message to the community (wink-wink, the "black" community) that we won't tolerate criminal activity any more. Another juror had track marks on her arms and ankles from shooting up and couldn't remember the case she had sat on. So, all in all, it was a pretty educational experience about how "justice" is meted out.

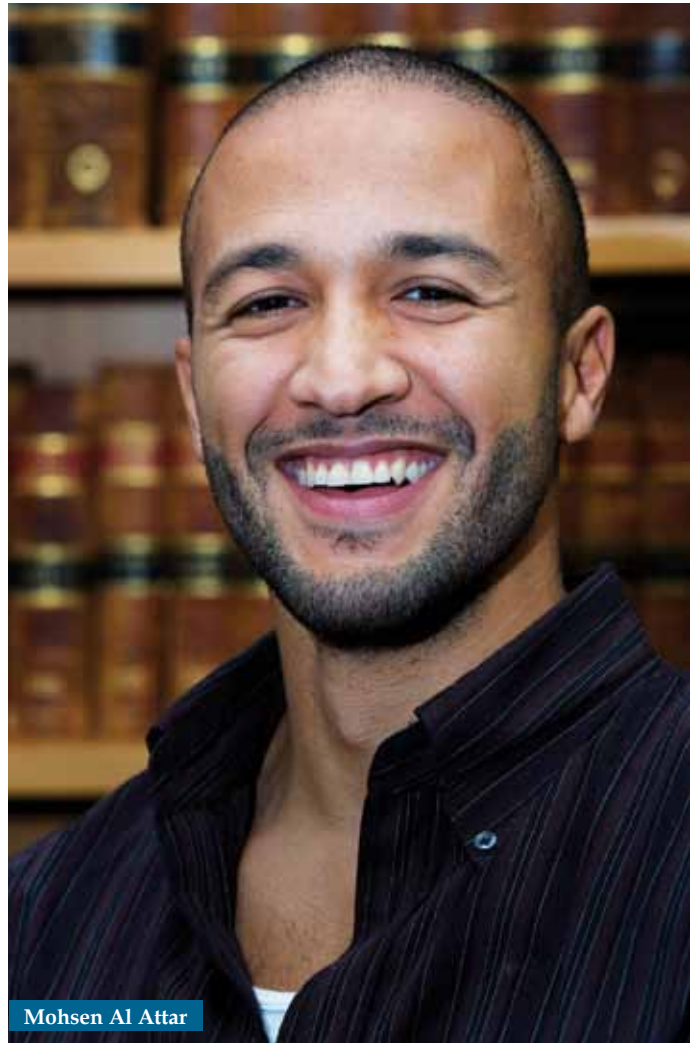
The second LLM came about after 9/11. I was living in LA at the time and, after 9/11, it was no longer a hospitable place for someone of my ethnic background. I sought the fastest way out which turned out to be a research position at Stockholm University. Education is still state-subsidised there (even for internationals) so I got a second LLM from Stockholm University in 2004.

Why did you decide to come to New Zealand?

I have a history of trying to get to Auckland. Twice I applied for a Commonwealth Scholarship but was unsuccessful both times. I was really keen on working with Jane Kelsey on issues related to law and globalisation.

It was a difficult decision to move so far away from family and friends but I was attracted to the Faculty for two reasons:

- Collegiality – I have been involved with many faculties over the years and have never experienced such a sincere feeling of collegiality. It was apparent straight away.



Mohsen Al Attar

- Curricular freedom – by this I mean the freedom to develop and teach courses of my choosing. Not many law faculties are as supportive as Auckland in allowing me to teach the courses I want to teach.

What do you hope students will learn from your courses?

University education is about helping young people learn about themselves and about their place in society: to find their way in life. I want young people to learn that they have the ability and the responsibility, and should have the desire, to contribute to society – Edward Said taught me this. I want to help them develop the self-confidence and the skills to transform the world into a far better, a far more equitable place than what we have today.

Can you tell me more about Islamic Law? Why do you want to teach it and is it the first time it's been taught at Auckland?

The philosophy of Islam has been taught at the uni before but this will be a first for Islamic Law. I relish the opportunity to dispel many of the myths surrounding Islamic Law that are being circulated by popular media and opportunistic politicians. It's a sophisticated and complex legal system that has been evolving for well over a millennium (not unlike Tikanga Māori as I recently discovered). I think it's important for

scholars to challenge propaganda by promoting critical inquiry into issues of contemporary relevance.

Islam, for instance, has a universal message but there are multiple readings of it and it sits across diverse cultures. This is why it's important to study it; to better understand the people, communities, and societies who practise the religion and make up nearly a quarter of the world's population.

Do you identify spiritually or culturally as a Muslim?

Wow! You know the difference! Spirituality is something I do not discuss often. Like my father says, it is a personal relationship that an individual shares with whatever they believe in, God, Supreme Being, or otherwise. I do identify as a Muslim and stand in solidarity with Islam; it is the faith of my family and my community. This being said, I also stand in solidarity with people of other faiths. To me, a person's religion doesn't determine who they are; their actions do and so I judge them accordingly (even though judging is not a very Muslim thing to do... there's the Canadian in me).

Have you established links to the Muslim community in Auckland?

I recently attended a community forum where Oxford professor and Islamic theologian Tariq Ramadan was speaking. The Office of Ethnic Affairs hosted the event, whilst the Ministry of Foreign Affairs and Trade sponsored Professor Ramadan's visit. I met numerous members of the Kiwi Muslim community there. Most of all, I was impressed by the diversity, solidarity, and confidence of the community; they are, indeed, an admirable bunch. I guess you could say that I have established links with the community in that I now have regular conversations with a couple of local Islamic philosophers.

This being said, I do not want this to be misunderstood as an endorsement of Muslim self-segregation; Muslims and non-Muslims alike should make an effort to reach out to the many different communities we have the luxury of being surrounded by. In fact, last week, I attended the Pasifika Festival. I was delighted to see so many non Pacific-Islanders in attendance (including a small but present Muslim contingent). Cultural homogeneity is a thing of the past. Diversity is the key to the future.

Where were you born? Where did you grow up?

My family is Egyptian and emigrated to Canada right around the time of my birth. I was born in Port Hope, a small town (and I mean small) between Montreal and Toronto. We travelled a lot when I was young – across Canada and across Europe – but settled in Montreal when I was about ten. I spent the next eight years there before beginning my own adventures.

How do you see yourself – as an Egyptian or a Canadian? Both?

There is a term that is becoming common in Canada now: "hyphenated Canadians." I am a hyphenated Canadian: an Egyptian-Canadian.

Can you tell me a little about your PhD?

I will be finishing it this year. It is an examination of the relationship between transnational law and class struggle in different parts of the world. International law is, on some levels, a thing of the past and with

globalisation we have moved into an era of transnational law; laws created by institutions and non-state entities. How do these new laws impact people? Peasants? Farmers? Workers? Do they improve their lifestyles or harm them? Do they promote greater equity or continue to polarise the world between spas and slums? These are some of the questions I answer in my PhD.

I see you are interested in anarchist legal studies, globalisation, class struggle etc. Do you identify as a Marxist, anarchist or lefty?

As an academic it's my job to investigate political ideologies. I'm not overly concerned with labels – they can pigeon-hole a person. I critique society – the way it works and the way it doesn't – and some of these ideologies are useful in helping me do that. There is much conflict in the world and many of these ideologies help explain why people take the sides they do. Ultimately, I am interested in joining others in the struggle for greater equity. Yes, there will likely always be spas and slums but there's no reason why we can't tone down the spas a little and upgrade the slums. If this makes me a Marxist, anarchist, lefty, Muslim, wolf, goat, sheep, or elk then so be it.

I see that you are reading Malcolm X and Gramsci...

I use Gramsci a lot in my PhD, particularly his theory of hegemony. It differs from other theories of hegemony. It emphasises agency by recognising that hegemony would not be successful unless people submitted to it, ie we consent to our own oppression. This is empowering. If we are consenting to the world then the removal of our consent is an important part in changing it.

Malcolm X is my personal hero. He is one of the foremost intellectuals of the 20th century. "Power only takes a step back in the face of greater power." That quote is as true today as it was 40 years ago when he first spoke it.

Cerian Wagstaff

★ Katherine Sanders

Katherine Sanders, whose specialties are public and property law, took up a lectureship at the Law School in July 2009.

Katherine is an alumna, gaining her BA/LLB(Hons) from Auckland in 2004 with an Arts major in French. Her honours papers examined, in the context of the rule of law, the 1881 invasion of Parihaka by militia and armed constabulary in a stand-off between the colonial government and dispossessed Māori over land. She also looked at the tension between human rights and national security through the lens of the Ahmed Zaoui case.

After graduating, Katherine served as Judge's Clerk to Justice Peter Blanchard at the Supreme Court in Wellington for two years. This involved researching points of law for decisions and seminar papers with an emphasis on property law, one of the judge's fortes. "It was an exciting time," she says. "The Court had just started and was still developing its jurisdiction. There were really interesting questions about the kinds of cases for which leave would be granted to appeal to this new higher court." Later Katherine spent six months with Chapman Tripp in a litigation team.

She went on to Yale University to undertake an LLM. There her

Catherine Sanders



research focused on the Queen’s Chain and the law of custom, and administrative law. Katherine relished the Yale Law School’s “wonderful resources”, “very small classes”, the close contact with her professors and New Haven’s proximity to New York.

Then followed two years in London working for the Treasury Solicitor (the equivalent of the Crown Law Office in New Zealand) and conducting public law litigation on behalf of the British Government. She acted for a range of government departments including the Department for Children, Schools and Families and the Ministry of Defence, instructing barristers and taking charge of cases from start to finish. The work, “very urgent” at times, kept her busy and challenged.

Katherine had always wanted to return to the Auckland Law School. “When the position came up I jumped for it.” Mentors from her undergraduate years and colleagues have been “very welcoming”. The late Professor Mike Taggart was “very encouraging and supportive of my coming back. He was a wonderful teacher and is greatly missed.”

Bill Williams

★ Richard Ekins

Richard Ekins, who took up full-time teaching at the Law School earlier this year, has successfully defended his DPhil thesis at Oxford. Richard’s thesis on was on “The Nature of Legislative Intent”. His examiners, Professor John Gardner and Professor Jeremy Waldron, were “very positive” about the thesis. “On their recommendation, while in England I met with the editors at a major academic press who are reviewing the thesis for publication as a monograph.”

Richard says his time away in Oxford was “very valuable”. After reading for the BCL, “I pursued my own research under the supervision of Professor John Finnis, one of the two or three leading legal philosophers in the world. I was also able to present my ongoing work within Oxford, receiving feedback from a wide, able and interested legal and philosophical community. There is no better place for the study of legal philosophy.” Richard’s research “has required extensive work in the philosophy of action (the nature of reasons and intentions, the nature of group action and institutions), the philosophy of language (meaning, semantics and pragmatics), and political philosophy (democracy, institutional structures, political legitimacy).” He has also examined closely political science literature on legislatures and on

problems of group action.

Richard held a part-time position at the Law School, “happily teaching jurisprudence,” for five years while completing his doctorate. As an Aucklander with family here, like his wife, he was eager to take up a full-time post (focusing on legal theory). “Also, it is an opportunity to be the mainstay of the jurisprudence course, and other theoretical courses, for the Auckland Law Faculty, rather than one of many (very good) legal philosophers in Oxford, mainly teaching only a small set of students in tutorials.”

A BA/LLB(Hons) graduate of Auckland, Richard says the Law School “has been a very supportive institution throughout my education. So it is a privilege to be able to contribute to it now in a formal capacity and to benefit from interaction with able colleagues and students.” The brightest students at Auckland are, he says, “every bit as good as those in Oxford. The main difference of course is that the average at Oxford – which is a

highly selective elite institution – is higher than the average at Auckland. Also, the tutorial system and the Oxford ethos tend to drive students to work extremely hard, and to sharpen their writing and argument skills, in a way that is not possible in a much larger and less well-resourced place like Auckland. The tutorial system at Oxford is very good – teaching students in pairs or triples – and forces regular work (three essays every two weeks quite often) and constant intellectual engagement (defending one’s ideas under very close scrutiny). There is less room to hide, but also they receive much closer support and assistance with writing and argument. If one can afford it (which few institutions can), it is a great way to teach. However, lectures are less central as a result and the Law Faculty (like most other faculties) is less cohesive. The colleges are the focus for students rather than the wider law community.”

Bill Williams



Richard Ekins

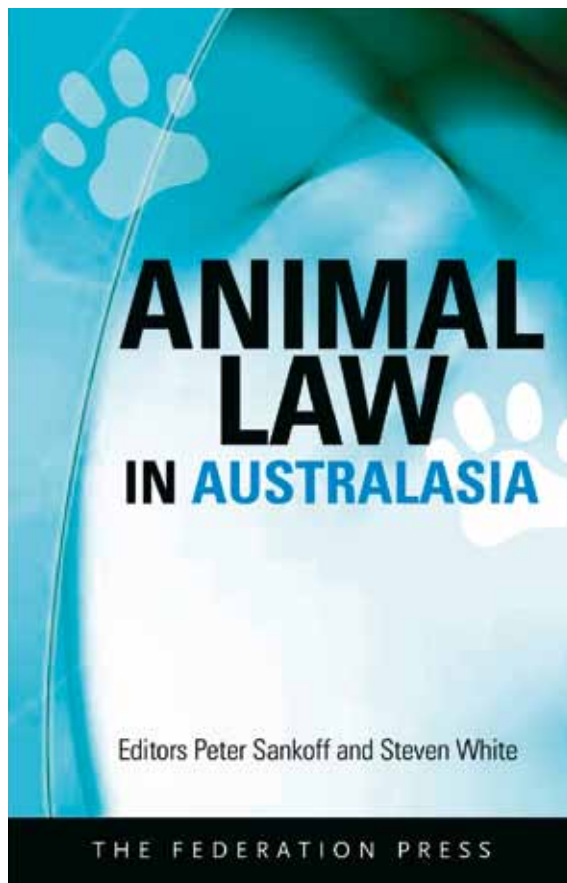
New books

Animal Law in Australasia, edited by Peter Sankoff and Steven White, Federation Press, 2009

Animal Law in Australasia is the first scholarly book on the fraught legal relationship between humans and animals published in this part of the world. "It is surprising that such a book has been so long in coming", says Peter Sankoff. "Post-colonial Australia and New Zealand were built in part upon the backs of animals. Today, farmers raise several hundred million animals for slaughter every year, and animal-based industries producing meat, dairy products, eggs and wool form a key part of our economies."

Until recently animals were regarded as property and could be treated as their owners saw fit. "We could breed them, sell them, kill them – even torture them – without running foul of any law," Peter says. However, "the once radical notion that pain and suffering on animals by humans should be constrained is now commonplace across the Western world. This is reflected in elaborate regulatory regimes ostensibly committed to protecting animals from human mistreatment." It is now commonplace for the popular media to debate the ethical acceptability of live sheep export, battery hen cages, sow stalls and other practices exploiting animals. "However, there has been very little assessment, or even understanding, of how the law addresses these practices." The book takes up this challenge. It asks whether existing laws really do protect animals, identifies where the law is inadequate and proposes how it can be improved. Recreational hunting, commercial uses of animals in farming and research, and live animal exports are among issues covered.

Bill Williams



The Permanent New Zealand Court of Appeal: Essays on the First 50 Years, edited by Dr Rick Bigwood, Hart Publishing, Oxford, 2009

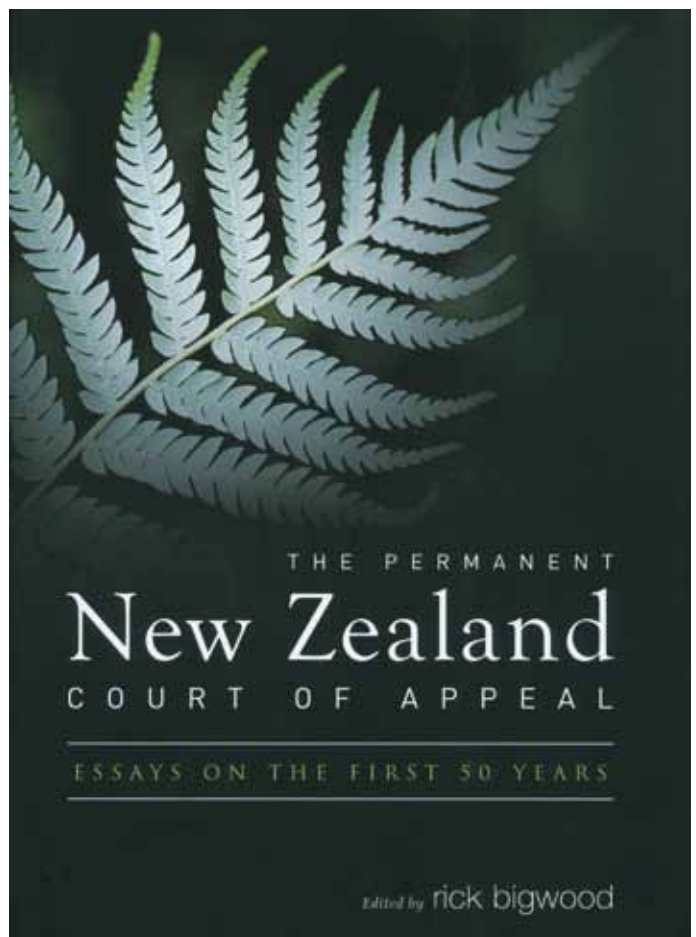
This volume of essays, edited by Rick Bigwood, celebrates the first 50 years in the life of the New Zealand Court of Appeal. The move, in 1958, to a Court of Appeal comprising permanent appellate judges was an important waypoint in the development of New Zealand law.

The chapters, written by prominent legal academics, highlight areas where the Court of Appeal has made a significant contribution to New Zealand and wider Commonwealth law, showing how the Court's jurisprudence has both reflected and contributed to resolving some of the pressing issues of the times. They are a critical reflection on the changing work and achievements of the permanent Court over the past half-century.

In addition to recording the perspectives of a former President on the Court's achievements, the chapters in this volume deal with such varied topics as: the role and use of precedent by the Court of Appeal; the Court's contribution to Commonwealth administrative law; criminal appeals; relationship property; accident compensation and tort litigation; company law; equity in commercial dealings; and the rights of Māori.

The conference at which the papers in this book were presented took place in March 2008, under the auspices of the Legal Research Foundation. Professors Mike Taggart, Paul Rishworth and Rick Bigwood served on the organising committee, along with other members of the LRF.

Bill Williams



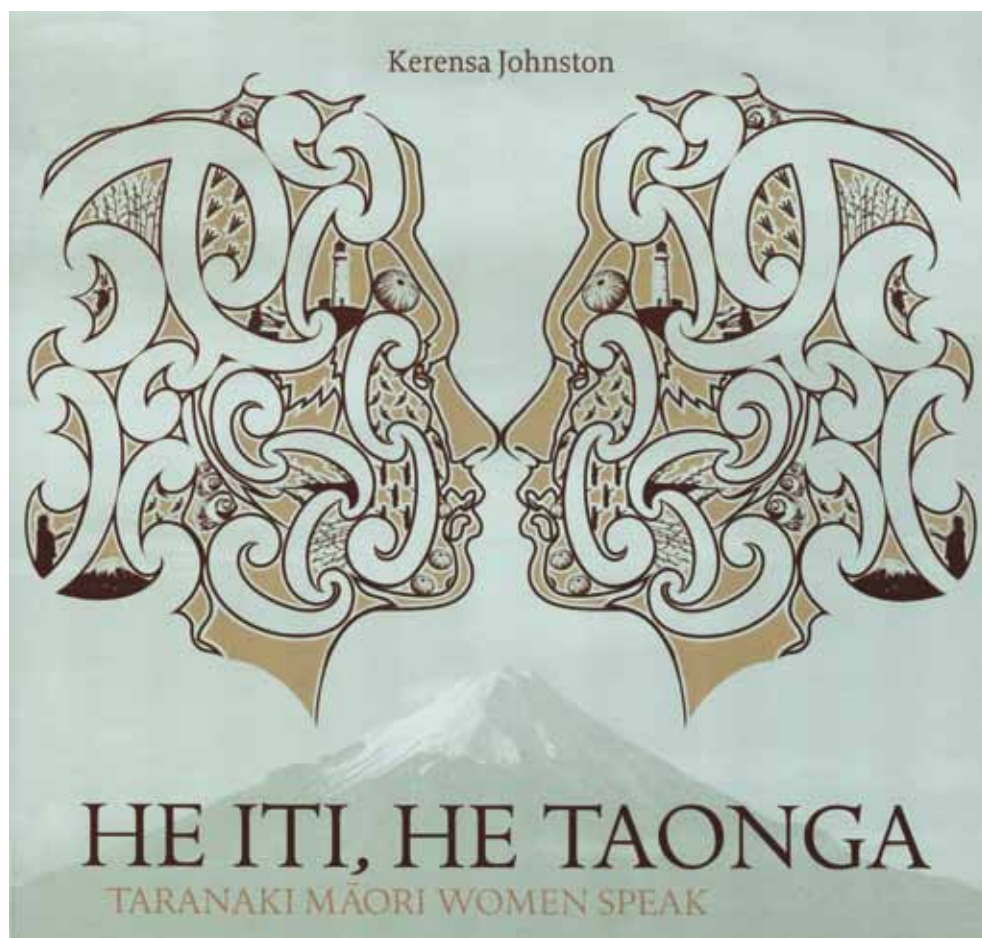
He Iti, He Taonga – Taranaki Māori Women Speak, Kerensa Johnston, Pindar NZ, 2008. Front cover art by Kereama Taepa

The richness and variety of ten individual lives is revealed in *He Iti, He Taonga – Taranaki Māori Women Speak*. Lecturer Kerensa Johnston interviewed a variety of Māori women from Taranaki of different ages, background and experience. Some are urban-based while others are from rural areas with strong attachments to their marae and traditional land base. Launched in Ōākura in September 2008 the book tells the women’s stories in their own words.

Māori and indigenous people elsewhere will relate to many of the themes that emerge from these women’s kōrero, says Kerensa. “Themes of community, family and relationships, work and education, politics and colonisation are the threads that bind the stories together.” Māori women see the world in a particular way with their own approaches to health, childbirth and childcare, and to the environment. “These approaches are unique. They should be recognised and celebrated. They help to keep us connected to our whenua, to our ancestors and to our identity as Māori.”

Kerensa says many people seek the wisdom that exists within indigenous cultures. “They try to make sense of the rapid change that is taking place in modern society by turning to well-established and holistic principles and practices – practices that recognise the role of the individual, while also taking care of the collective and the environment.” Although the book has been compiled primarily for the contributors, their families and for wider Māori communities, Kerensa hopes others will also enjoy and benefit from the wisdom shared in its pages.

Bill Williams



Children’s Rights in Scotland (3rd edn), Alison Cleland and Elaine E Sutherland, Green, Edinburgh, 2009

Senior Lecturer Alison Cleland has co-produced a third edition of *Children’s Rights in Scotland*. It provides a detailed analysis of the extent to which Scots law complies with the UN Convention on the Rights of the Child and the European Convention on Human Rights. It covers equal opportunities, adoption, abduction, youth justice, education, health, children’s voices in legal proceedings and state care for children and so is of interest to a wide variety of professionals working with children and young people. New chapters dealing with the media, with freedom from sexual exploitation and with immigration and asylum reflect contemporary issues facing children and their families.

Manning, Mewett and Sankoff on Criminal Law, Peter Sankoff and Morris Manning, Lexis-Nexis Canada, 2009

Manning, Mewett and Sankoff on Criminal Law explores Canadian criminal law in considerable detail, articulating the governing principles and featuring a comprehensive analysis of every one of the 500 odd crimes in the *Criminal Code* and *Controlled Drugs and Substances Act*.

First published in 1978, *Mewett and Manning on Criminal Law* – as it was originally named – is Canada’s oldest and most famous criminal law treatise, and has run into three editions, the last appearing in 1994. Not surprisingly, it was cited in over 30 Supreme Court of Canada decisions, and was regarded as an invaluable resource. After a 15-year hiatus, and the death of original author Alan Mewett in 2001, Peter was solicited in 2005 to help re-establish the text. He decided to

revamp the book and provide an entirely new work, creating new content to include coverage of topics that had become increasingly relevant in recent years. New chapters focus upon the automatism defence, the imposition of liability for terrorism, gang membership, firearms offences and war crimes, while existing chapters have been almost completely rewritten. Peter said:

“The project required me to assess Canada’s criminal law in its entirety, and to do so, I had to look at every offence in existence. Doing so allowed me to consider the law from an overarching perspective and draw some insights about the nature of criminal liability. Amongst other things, I considered the relentless expansion of the criminal law, and the concerns that arise from this. I hope this book will sound a cautionary note about the direction that Canadian law is taking... We can’t simply go on creating new crimes without considering whether other acts need to be removed from this designation. The continued expansion of the criminal sanction cannot go on forever, as it has consequences for the individual and huge costs for the state.”

Professional life in the tax practice of a large firm: David Simcock



I bumped into David Simcock recently at the Law School's graduation ceremonies in October of 2009. David was there with his family to celebrate the graduation of his daughter. All three of David's children (Kate, Emily and Tom) have studied, or are studying, at Auckland Law School. He remarked that he has encouraged them to study law because it is a good way to improve

one's thinking – and skills of analysis and discussion will stand them in excellent stead whatever they should choose to do in the future. I took the opportunity to chat with David about his longstanding career as a tax partner in a large Auckland law firm.

David Simcock graduated with a conjoint LLB(Hons)/BCom from The University of Auckland in 1975. After a brief stint with Buddle Weir & Co (now Bell Gully) in 1975, he completed an LLM at the University of British Columbia in Canada and spent a year working as an accountant in England.

In 1978 he returned both to Auckland and Buddle Weir & Co. He began doing general corporate work for the firm but quickly, under the guidance of his senior partner Norman Johnson, who was the "leading light in the area", began to specialise in debenture trust deeds. These were the financing documents that were the "lifeblood" of the significant corporate players of the time, being the primary means of company financing. Today chief financial officers take care of large corporate borrowings but in the late 1970s the directors of the companies were involved in organising such matters and these were the people with whom David was working.

On the strength of such work he was invited in 1980, at age 28, and with less than three years experience, to become a partner in the firm. At the time some partners were appointed as young as 24, something that today would be highly unusual.

In the late 70s and early 80s only two major New Zealand legal firms had the beginnings of a tax practice and in 1982 David agreed to specialise in taxation for Buddle Weir & Co. He did so because he had enjoyed studying tax with George Hinde at the Law School, had the requisite numeracy skills, and saw the opportunity for a variety of work and constant intellectual challenge. What he did not appreciate at the time, however, was that this area of law, more than any other, would involve such constant change. David describes tax as a "pot-pourri of everything" and his background in commercial and company law has been invaluable.

David has practised in the area ever since. As a consequence he is able to comment on major events and transformations that have taken place in the last 28 years. Tax law was "dramatically more embryonic" in the early 80s than it is today. Today the legislation has swollen in

volume by more than three times and tax practice is more "technical," involving primarily legislative interpretation and black letter law. In the early 80s, it was more about analysing first principles (for example, answering fundamental questions about capital/revenue distinctions, and sometimes tax avoidance issues) and case law. Another key change has been the fact that the Inland Revenue Department has improved the quality of its technical staff over the years so that debates with it today are both more of a challenge and more rewarding.

In 1984 the Labour Government opened New Zealand up to the world and the country quickly needed tax legislation that would enable it to be part of the international community. The process of reform was rapid, with legislation enacted for the first time on subjects such as the taxation of foreign investments and dealing with financial arrangements. David finds the fact that he was there when the rules were first created helpful in interpreting them today.

During the late 1980s David became involved in tax litigation, which he has thoroughly enjoyed. He has been fortunate to have had good clients who have allowed him to prepare properly. He has also had the advantage of operating in a large firm. It has provided him with the opportunity to work through, in discussion and debate with other able minds, the issues raised by the Inland Revenue Department to arrive at answers that are likely to be successful. As a consequence, he has won more cases than he has lost. David likes to think that a way of resolving difficult issues is to simplify them until one can synthesise the issues and the answers in a few sentences. As well as assisting in the resolution of complex problems, such a skill is essential when dealing with judges who have no background in tax law.

David counts his career highlights as being involved in the 1980s (on behalf of clients who were making submissions) in the formulation of some of the tax legislation we still have today, successful resolutions of disputes with the Inland Revenue Department on behalf of major corporate clients, and the various changes he has made in his career over the time he has been in practice. He believes in the need for change to provide restimulation and refreshment at different intervals during a legal career.

Outside his professional life, giving back to the community has been important to David. He has been president of the Auckland Grammar Old Boys' Association and has served on the school's board for a number of years, spent five years as the chairperson of the New Zealand branch of the International Fiscal Association (IFA), acted as chairperson of his son's cricket club when his son was playing, was chairperson of his firm at one point and, in that capacity, served on the Business Roundtable and a university advisory board. He is currently on the New Zealand Law Society Council as the representative of the large firm group, and is Honorary Vice-Consul for the Republic of Turkey.

David is a keen and intrepid traveller. He has been, for example, in the last few years to Cuba, Mongolia, Tibet, Turkey, Russia and the Galapagos Islands. He is also a keen photographer and uses his travel to take advantage of photographic opportunities. An enthusiastic student of history in his personal reading (the day that we spoke he was flying to China and was doing so with a book on the Ottoman Empire in his bag), he looks forward to the opportunity to become a formal student of history at some point in the future.

Julia Tolmie



Dame Hazel Genn with Paul Rishworth.

Dame Hazel Genn, New Zealand Law Foundation Distinguished Visiting Fellow 2009

Dame Hazel Genn, Dean of Law and co-director of the Centre for Empirical Legal Studies in the Faculty of Law at University College London, was in New Zealand for two weeks in September as the 2009 New Zealand Law Foundation Distinguished Visiting Fellow.

While in Auckland, Dame Hazel delivered an address at the Faculty of Law titled "Judicial appointment, diversity and decision-making". Pointing to the historic dominance of the English judiciary by middle-class, white males, reflecting the historic demographic of the Bar, Dame Hazel said the traditional method of senior appointments had been based on invitation and patronage. By the mid-1990s, there was criticism of the process and especially of the lack of women and ethnic

minority appointments, despite changes both in eligibility and in the profession. For example, by 2006 52 percent of barristers in pupillage were women and 33 percent of practising barristers and 66 percent of practising solicitors were women. Minority ethnic groups comprised 15 percent of those in pupillage and 11 percent of those practising at the bar. From 1993 solicitors had become eligible to join the High Court bench. Despite this, the numbers of female and ethnic minority judges remained tiny, particularly at senior levels.

In 2004, the Department for Constitutional Affairs released a report titled *Increasing diversity in the Judiciary*. That document said that it was essential for the judicial system to benefit from the talents of

the widest possible range of persons. If the make-up of the judiciary was not reflective of the diversity of the nation, people might question whether judges were able to appreciate fully the circumstances in which people of different backgrounds found themselves.

Dame Hazel said that there were three key arguments in favour of increasing the diversity of the judiciary. The first was that of equal opportunities: "The failure to appoint candidates from underrepresented groups raises the suspicion of discrimination." Secondly, she said that lack of diversity undermined the legitimacy of the judiciary, as it appeared that some groups were being deliberately excluded from participation in power. The judiciary was a critical social institution, as judicial decisions affected every corner of social and economic life. Judges wielded enormous power but, because they were not elected, the legitimacy of the judiciary could not be taken for granted. Thirdly, it was argued that people from diverse backgrounds "made a difference" to judicial decisions. Dame Hazel said that the first two arguments were unassailable but that she had difficulty with the third. She considered that it could be patronising and stereotypical.

Moves to increase diversity in the British judiciary had gathered pace with the passing of the Constitutional Reform Act 2005, which provided for the establishment of a Judicial Appointments Commission. It was set up in April 2006 and Dame Hazel was an Inaugural Commissioner. The Commission comprised a lay chair, Baroness Usha Prashar, and 14 members. The Commission's statutory obligations were to appoint judges solely on merit, to ensure that they were persons of good character, and to increase the diversity of the pool from which selections could be made. Dame Hazel said that the Commission had devised its own selection process, which required intellectual capacity, personal qualities, an ability to understand and deal fairly with people and legal issues, authority, communication skills and efficiency. She said that "howls of criticism" and a long

line of judicial review cases had greeted the Commission's decision that qualifying tests would be introduced as a means of short-listing candidates. Role plays were also required for most appointments, as well as interviews and the collection of references.

Dame Hazel said that the Commission wanted to encourage underrepresented groups such as women, blacks, members of ethnic minorities, solicitors, candidates with special needs and academics to put their names forward. She said that there had been a huge increase in the number of applications for judicial appointment since the establishment of the Commission. Candidates were of a very high quality, as were the resulting appointments.

However, Dame Hazel said that there had been impatience about the speed of change and concern that not enough women and ethnic minority members were being appointed to the most senior positions. "I think there were unrealistic expectations of what we could achieve – an expectation that somehow, overnight, things could change. Many people think we've already failed on the diversity front." As a result, in April 2009 the Lord Chancellor's Advisory Panel on Judicial Diversity had been created. Dame Hazel is a member of the panel. She said that its role was to identify barriers to progress on judicial diversity and make recommendations for speedier and more sustained progress towards a more diverse judiciary at every level and in all courts in England and Wales.

Dame Hazel concluded that winning the argument about diversity was only the first step. Delivering on diversity was even harder. It required loosening the grip on power of traditional office-holders, as well as determination, transparent processes and well-trained, diverse selectors.

Dame Genn's public lecture was jointly sponsored by the Law Faculty and the Law Foundation.

Catriona MacLennan

(a version of this article first appeared in *Law News*, issue 37)

Directors' Powers and Duties, Peter Watts, LexisNexis, Wellington, 2009

Directors' Powers and Duties, is among the more detailed treatments of the subject in the Commonwealth. It draws heavily on Commonwealth case law, particularly from Australia and England. It makes comparison too with statutory provisions in Australian and England, and draws on academic literature from the United States, where corporate law scholarship has been a major focus of law faculty output for about 20 years. On the many aspects where there is yet no clear law, the book attempts to provide workable solutions, and where controversy exists the author does not hesitate to enter the fray. The following extract (minus footnotes) is from section 11.3.3, "Taking steps to thwart a shareholder selling shares, and soliciting alternative offers for shares":

The case law has, in general, resisted extending the proper purposes concept to any action taken for the purpose of defeating a takeover. If, however, one rephrases the duty as one not to thwart a shareholder's ability to sell his or her shares, rather than simply as a duty not to oppose takeovers, there is more to be said for the operation of the

proper purposes duty in this context. This is the point made above that directors do not owe duties to bidders, but they might owe duties to shareholders not to act to thwart their receiving an offer to purchase their shares.

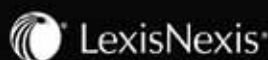
It is pertinent to observe at this point that although the adjective "hostile" is often applied to takeovers, it is a polemical term. It implies that the person staging the takeover, the bidder, is somehow an aggressor. But ordinarily, the bidder is merely offering to buy shares. It cannot obtain the shares by force. A takeover is, at base, a consensual process, and not one of conquest. Any hostility is likely to originate from the directors.

The sort of conduct that might be challenged as improper includes selling an asset that would not otherwise be sold because the directors know that the company's continuing possession of the asset is attracting a takeover bid. Similar conduct would be buying an asset that will use up the company's cash reserves, simply because those reserves had been attracting the attention of a bidder. Another technique has been for directors to enter into unfavourable contractual arrangements with a third party. The variations are endless, and US players in the market for stocks have coined a range of colourful terms for the array of takeover deterrents that have been used over the years, encouraged by the fact that US company law has not developed a proper purposes doctrine:

- "White knight" contracts (transactions with director-sympathetic promisees, particularly issues of shares or share options);
- "Crown jewel" defences (sales of key assets);
- "Poison pills" (unfavourable contracts, acquisitions of assets on poor

Directors' Powers and Duties

PETER WATTS



- terms or that involve the company having large debt levels);
- "Pac-man defences" (a reverse bid by the target company for the bidder);
- "Clayton's" defences (buying a business that will create competition law (Clayton's Act in the US) issues for the bidder);
- "Golden parachute" agreements (very favourable severance packages made with management should a takeover occur); and
- "Shark repellents" or "scorched earth tactics" (general terms for deterrent activity that reduces the attractiveness of the company as a target, for example, the use of staggered fixed term board appointments).

....

If one accepts the classical view that the interests of a company are, *prima facie*, to be identified with the interests of shareholders (what we have called the shareholder primacy doctrine), then ultimately it must be for the shareholders to determine whether directors should be given a power to interfere with opportunities that they get to sell their shares. The interests of other stakeholders cannot override that principle, at least not without nationalising the institution of the company. By the same token, the mere fact that empirical evidence might suggest that an unrestricted takeover market creates wealth would be beside the point if shareholders did decide to give directors a say in to whom they should be able to transfer their shares. Law and economics arguments based on the overall efficiency of active takeover markets are instrumentalist, and should not override freedom of contract, namely the freedom of shareholders to allocate power through the constitution.

It follows that what we are considering is a default rule. Should it be up to shareholders to express a restraint on directorial power,

which makes improper the intentional thwarting of chances that shareholders, collectively or individually, receive to sell their shares? Or should we assume that it is *prima facie* no business of directors to whom a shareholder might wish to sell his or her shares, leaving open the possibility of modification of that position in the constitution? Under the latter default rule, the rights of the individual shareholder could be overridden by special resolution of other shareholders, but not by the directors of their own motion. Such a rule would involve an extension of Lord Wilberforce's dictum in *Howard Smith*, namely from the proscription of interference with voting power to the proscription of interference with the privilege of selling shares "[t]o [interfere] is to interfere with that element of the company's constitution which is separate from and set against their powers".

The import of the latter default rule would be that directors are, *prima facie*, not allowed to act out of a distaste for an acquirer of shares, even if, conversely, directors are allowed to issue new shares to a party who has something in particular to offer the business of the company (subject, of course, to s 40 of the CA).

There is much to be said for this default rule. A share is designed to be personal property in the hands of the shareholder, and to be freely transferable. In the absence of preemptive provisions in a company's constitution, shareholders are entitled to accept offers from anyone. Section 39(1) of the CA provides as follows:

Subject to any limitation or restriction on the transfer of shares in the constitution, a share in a company is transferable.

This provision conforms to the presumption of the common law. Just as the shareholders as a whole are entitled to treat a solvent company as theirs so too individual shareholders expect to be able to sell their shares to whoever will pay them the best price. A shareholder would not expect to have to defer to directors, nor indeed to other shareholders (subject to constitutional restrictions imposed by special majority), let alone other stakeholders, in deciding whether to accept an offer to buy his or her property. Not that it is a crucial point, it should be remembered that a sale may sometimes be the only remedy available to a shareholder who is dissatisfied with the company's direction. On this analysis, contrary to the assumption of *McPherson J* in *Pine Vale Investments*, actions to thwart a takeover from proceeding do implicate "shareholders' individual rights".

Unlike some commentators, the foregoing argument makes nothing of the fact that directors are inevitably in a position of conflict where a takeover is underway; their jobs are likely to be on the line. This is a reason for examining their motives for action carefully, but it is not a standalone argument for denying them the power to thwart a share offer. If one took the conflict point too seriously, one would deny directors power to do anything during a takeover, other than perhaps the taking of essential decisions, and not just the power to thwart the takeover itself.

At the same time, a rule that prohibits directors from acting for the purpose of thwarting a takeover offer need not reduce them to a position of inertia, contrary to the assertion made in *Pine Vale Investments*. So long as the takeover bid, or potential bid, is not the motivation for the action directors take, they may take it. It will not always be easy for a court to determine what has motivated the directors, but coping with this difficulty seems simpler than trying to judge the substantive merits of the takeover and of the directors' actions, which exercise comes with the current US approach.

Professor Jane Kelsey awarded prestigious Marsden grant

Professor Jane Kelsey has been awarded a grant from the Marsden Fund to research and write an appraisal of neoliberalism, especially in light of the global financial crisis. Her project, entitled “Embedded neoliberalism in a post-neoliberal era”, secured a \$336,000 grant over two years.

“As yet, there is no informed analysis of the long-term implications of the global financial crisis for our direction in this country,” says Jane. She wants to stimulate a critical policy debate on the challenges we will face because of our pre-commitment in domestic and international law to maintain a neoliberal regulatory regime.

In 1984 New Zealand had been in the vanguard when it embarked on a neoliberal restructuring of economic, political and social life and governance, explains Jane. “The New Zealand experiment was celebrated by international institutions and became an exemplar for countries across the global North and South. Over a period of 25 years many other countries have implemented very similar policies, but few, at least in the OECD, adopted such a comprehensive, systematic and coherent legal regime.”

The international hegemony of neoliberalism had not been seriously threatened until 2007 when minimal regulation of speculative financial markets infected the globally integrated economy and provoked a contagious recession.

Jane will examine the contradictions of embedded neoliberalism in the face of the global financial crisis and the implications for law, policy and governance in New Zealand. She will be testing the hypothesis that “embedded neoliberalism”, as exemplified in New Zealand, is intrinsically contradictory. This is because it requires a pre-commitment



Jane Kelsey

to a market-driven regulatory regime that is politically, economically, ecologically and socially unsustainable.

In theory, she says, it should be difficult to sustain market-driven regulation where it is blamed for a catastrophic global recession and where governments’ responses have violated the most basic tenets of neoliberalism. “If governments do not have the autonomy to respond to chronic policy failures, domestic or international crises through intervention and pro-social, rather than pro-market, regulation there is a risk that social distress will fuel political upheaval.”

Jane’s research will build on her theoretical and empirical work during the 1990s, and more recently on the political economy of trade in services and on the global financial crisis. She will carry out fieldwork in Iceland, Latvia, Mongolia and Victoria which were all strongly influenced by New Zealand’s neoliberal model. Her findings will result in a book to be published by Bridget Williams Books, Wellington. Jane hopes the book, and associated conferences, public lectures and media commentary will help to revitalise research and public interest in contemporary policy to 1980s and early 1990s levels.

Bill Williams



The Greg Everard Memorial Moot 2009 (from left): Chris Ashton (finalist), Frances Everard (Law student), Chris Booth (Kensington Swan), Monique Meyer (finalist), Louise Everard, Professor Paul Rishworth (Dean), Madeleine Everard, Tom Price (finalist), Justice Raynor Asher, Sam Hiebendaal (winner).



Tim Cameron

Cameron Visiting Fellowship established

A very generous gift by alumnus Tim Cameron and his wife, Kathy, will, over the next few years, fund annual visits to the Faculty by distinguished US law professors. Tim, who was profiled in *Eden Crescent* 2004-05, is a litigation partner in the leading New York law firm of Cravath, Swaine & Moore LLP. Tim graduated from the Law School with a LLB(Hons)/BCom in 1994, and then subsequently completed an LLM at the University of Chicago in 1998. Tim is also the son of Gray Cameron, a barrister in Auckland and an Auckland Law School graduate with ties to the US that go back to 1961-62, when he spent a year in New York as an AFS Scholar.

The vision that Tim and the Faculty share in establishing the Fellowship is to expose students and staff to the thinking, teaching and scholarship of some of the best US law professors. Having a visiting academic amongst us for an extended time is profitable on several levels. It enables the development of profitable research relationships between academics, creates opportunities for the visitor to have input into a range of courses, and exposes our students to new ideas. Often in research and teaching it is the serendipitous conversation

over morning coffee that can open new doors for inquiry and lead to important new insights. Tim's and Kathy's gift will create opportunities for that sort of interchange.

The first Cameron Visiting Fellow is to be Professor Jim Ryan from the University of Virginia Law School. Professor Ryan is the William L. Matheson & Robert M. Morgenthau Distinguished Professor of Law, an expert in law and education and constitutional law. He will be teaching two intensive courses in the LLM programme and offering two public lectures, one for an educational audience at the Faculty of Education and the other for lawyers. Jim will be accompanied by his wife Katie and their four children. Katie is also on the University of Virginia Law School staff, as supervisor of the Law School's Child Advocacy Clinic. Jim and Katie are both UVa graduates; Jim has also been a visitor at Harvard Law School and clerked for the late Chief Justice William H Rehnquist.

The Faculty is hugely grateful to Tim and Kathy Cameron for making such visits possible and looks forward to the visit of Jim Ryan, the first Cameron Fellow, in Semester One of 2010.

Two new international connections

In the globalised world of the twenty-first century, connections between universities are more important than ever. National legal systems are coming into contact with one another to an ever-increasing degree, and the internationalisation of legal institutions and curricula is becoming more and more important. It is vitally important for the Auckland Law School to develop and maintain its international connections. Student exchange agreements are one means of doing this, and we are pleased to have entered into two new arrangements this year.

The first, with the Chinese University of Hong Kong (CUHK) Faculty of Law, allows Auckland undergraduate and postgraduate law students to spend a semester on exchange studying in Hong Kong. CUHK is the second oldest university in Hong Kong, and is ranked by the 2009 Times Higher Education - Quacquarelli Symonds (THE-QS) World Rankings of Universities as the 38th equal top university worldwide. "The CUHK Faculty of Law offers a diverse and interesting range of common law and Chinese law courses at both undergraduate and postgraduate level," says Paul Myburgh, Associate Dean (International). "Its Graduate Law Centre is located in the heart of Hong Kong's central business district. Law students who are interested in studying international commercial law, Asian legal systems and comparative law will greatly benefit from this new exchange link."

The second exchange agreement is with the School of Law at King's College London. This allows Auckland law students to study at King's for a year, and Auckland looks forward to welcoming law students from King's. Law at King's has enjoyed a tradition of excellence for over 175 years and it is recognised globally as one of the UK's top five law schools. Its Strand campus is ideally situated, with Parliament, government departments, the Royal Courts of Justice, the Inns of Court and major City law firms within walking distance. "We are delighted to be partnered with such an illustrious law school", says Paul. "This exchange destination will complement our existing European partnerships, and will provide our students with a unique opportunity to study in the heart of the common law legal system."

Cerian Wagstaff

Exchange student report: Ghent University, Belgium

In 2008 I spent five months studying law at Ghent University, on an Auckland Abroad exchange. Ghent is a city in the Flemish region of Belgium. Its residents speak Flemish, a dialect of Dutch. On my arrival, I stepped off the train and everywhere I looked there were students, careering past on bicycles. In Ghent you are either a student or you make your money off them (five months of beer specials, late night kebabs, pizza shops and bicycle hire taught me this).

I soon worked out there is an undersupply of student accommodation in Ghent which made me appreciate my room on the third floor of a large student residence building, which although small and sterile (I called it "the cell"), was reasonably cheap and the communal kitchen was a good way of getting to know other students. As Christmas approached and the temperature plummeted, each country would put on a traditional meal to share with the other students. Among the stand-outs were Spanish omelette with sangria

and French tarti flette with wine from Bordeaux.

The law courses offered to foreign students were from the Master in European and Comparative Law programme. I took courses on the law of the sea, criminal justice systems, transport law, human rights and public international law. Most foreign students were from various European nations so already had a grounding in the structure of the European Union and the history of European integration – completely new concepts to me. With this in mind I also took a basic introductory course on the history of the EU.

I loved Ghent for its size. With only 240,000 inhabitants, it's larger than Dunedin but smaller than Wellington. I found I could walk or cycle anywhere I wished to go. Ghent also has charm. Much of the city's medieval architecture remains intact and is well preserved. Its centre is the largest car-free area in Belgium. I spent many hours wandering around (fuelled on waffles and Belgian beer) in awe of Saint Bavo Cathedral, the belfry, Gravensteen Castle and the canals.

Ghent is well positioned for exploring other parts of Europe. I used weekends and the Christmas break to catch the train across the French border to Paris, across the German border to Cologne and across the Dutch border to Amsterdam. I also met some fantastic characters who looked after me, fed me and shared my curiosity to explore new places. I hope to one day be able to show New Zealand to them (and convince them we have more than hobbits and Dan Carter!).

Kelsey Serjeant (BSc/LLB 2009)

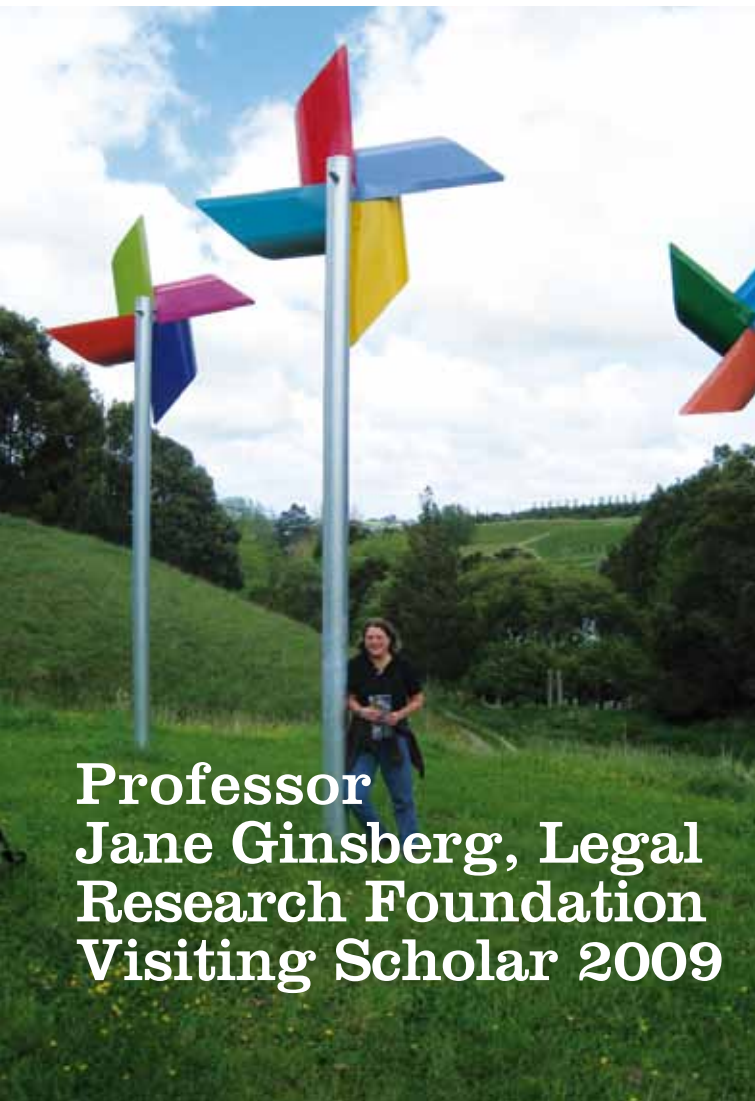
Professor Jane Ginsburg visited the Law School in October as the Legal Research Foundation's Visiting Scholar for 2009. Professor Ginsburg is the Morton L. Janklow Professor of Literary and Artistic Property at the Columbia University Law School, as well as directing its Kernochan Center for Law, Media and the Arts. She is a world authority on copyright and trade marks.

Professor Ginsburg is known for her speaking skills, as well as her expertise on copyright, and she gave an entertaining guest lecture entitled "The author's place in the future of copyright". In her address she surveyed the problems which innovations like the internet and downloadable music and films have created for those who use copyright laws, and suggested a few possible responses to those problems.

Professor Ginsburg began her talk by pointing out that, even before the present digital age, authors often struggled to get a good deal out of publishers, and often felt compelled to sign away their copyright for long periods. Professor Ginsburg explained that many users of the internet feel justified in downloading books, music and films for free, because the money they would otherwise have paid for the material would have gone to "evil industry exploiters", and not to creative artists. Postmodernist conceptions of "the death of the author" have also legitimised free downloads of copyrighted work. Companies losing money through the free downloading of copyrighted material often struggle to prevent the practice, because of the size and trans-national nature of the internet.

Professor Ginsburg argued that the rise of free-to-use, collaborative writing and publishing projects like Wikipedia was undermining some traditional notions of authorship, but insisted that the individual author was not obsolete, because people "still value genius, or at least expertise". She called for the creation of new, "consumer-friendly payment and protection mechanisms", which can allow authors to be remunerated for work which is accessed through the internet.

Cerian Wagstaff



Professor Jane Ginsburg, Legal Research Foundation Visiting Scholar 2009



Peter Fitzsimons

Practising faith, and practising the law

Over the past two years Peter Fitzsimons has lectured at the University of Auckland Law School in Company Law, and will lecture in the Law of Capital Markets in 2010. Peter enriches our School not only because of his knowledge of law, but because of the unusual and distinguished career he built before arriving at our institution.

Peter was raised in Sydney, and studied law and commerce at the University of New South Wales in the 1980s. In 1989 he crossed the Tasman to take up a job at the law firm Tompkins Wake. From 1992 until 1997, Peter taught a range of commercial law subjects at Waikato University, and also found time to complete a masters degree in commercial law at Auckland. In 1997 he came to Auckland and worked with Buddle Findlay and Bell Gully as well as teaching postgraduate studies in Commercial Law.

It was while he was studying law that Peter became aware of a spiritual calling. He became involved in the Catholic organisation Opus Dei, because he wanted to “get closer to God”, and to help other people have the same experience. Dan Brown’s controversial but massively popular novel *The Da Vinci Code* has created a few misconceptions about Opus Dei. The main villain in Brown’s novel is an albino monk who is a member of Opus Dei but, as Peter is quick to point out, the organisation does not include even a single monk, and he is neither albino nor has he killed anyone. “Opus Dei’s main focus is lay people, and helping them to deepen their spiritual lives,” says Peter.

Opus Dei’s emphasis on the “practice of faith” in everyday life deeply affected Peter, and he decided to train for the priesthood. In 2000 he travelled to Rome, where he studied philosophy and

theology at the University of the Holy Cross. Peter found his time at the institution challenging – he had to adjust to being a student, after spending many years teaching, and he had to listen to lectures in Italian – but ultimately rewarding. In May 2004 Peter was ordained as a priest in a ceremony at the Roman Basilica of Saint Eugenio, and later that year he returned to Australia, where he worked for 18 months before returning to Auckland in March 2007 as a chaplain of Glenrowan Study Centre in Grafton and Fernhall Study Centre in Epsom.

Peter does not see a separation between his duties as a priest and his work in the legal sector. He points out that both priests and lawyers must undergo years of training before they can enter their professions, and that both jobs are about serving the community. Peter balances his teaching duties at the Law School with work in the community and with his duties in the Catholic Church. Peter says that it is “an interesting time” to be teaching Company Law, because of the fall-out from last year’s global financial meltdown. He is careful to keep up with reports of the legal investigations into big companies caught up in the financial crisis and uses current cases in his teaching.

Peter likes to relax from his teaching and pastoral work by watching rugby. Despite the years he has spent living in New Zealand, and despite the ribbings he has received from Kiwi friends, he still cheers for the Wallabies when the Bledisloe Cup is at stake. He says he supports the All Blacks, though, “whenever they are playing England and South Africa”.

Cerian Wagstaff

Chris Hare: Profile of an academic



Chris Hare grew up in Britain, and originally wanted to be an actor. After taking his father's advice and reading law at Cambridge University's Trinity College, though, he quickly found the subject satisfying, and decided to make a career in the legal profession. Chris thinks that, with its demands for both logic and literary skills, the law "just fits in" with the way his mind works.

After receiving his degree from Cambridge, Chris undertook postgraduate studies at Oxford's Brasenose College and at Harvard Law School. He was called to the English bar in 1998 and practised in chambers specialising in commercial, company, and banking law, appearing once before the House of Lords. Before coming to New Zealand, Christopher was a law fellow at Jesus College, Cambridge.

Since he joined the faculty at the University of Auckland Law

School in 2005, Chris has lectured in Contract, Commercial, Banking, International Sales and Finance, Commercial Transactions and European Commercial Litigation. Chris is currently editor of the *New Zealand Law Review*, and recently appeared before the New Zealand Supreme Court as a junior counsel in *Dollars & Sense Ltd v Nathan*, a case about the fraud exception to the indefeasibility principle.

Chris says he has benefited from pursuing his career in different countries with different, though related, legal systems. He credits the experience with interesting him in comparative legal systems and making him realise that "all but the most straightforward commercial dispute is likely to throw up jurisdictional issues and questions of foreign law".

Chris's academic research focuses on the international dimensions of commercial and banking law, subjects that have become topical in the wake of last year's global financial crisis. He believes that legal scholars have a role to play in developing supervisory models for banks and similar institutions in the aftermath of the crisis. He is not certain, though, how much attention will be paid to academics like himself, and notes that "there are already signs" of financial institutions "returning to their old ways".

Chris says he was attracted to New Zealand by "the novelty of seeing the sun in December", and he loves how easy it is to escape Auckland and find "wonderful countryside". Apart from taking drives in the country, Chris enjoys reading, cooking, and playing with his new daughter Daisy in his spare time.

Cerian Wagstaff

Provence in Parnell



Auckland alumni may be acquainted with La Cigale in St George's Bay Road, Parnell, owned and operated by Michael and Elizabeth Lind. They may be surprised to hear that Michael and Elizabeth are also Law School alumni.

Elizabeth (nee Allen) and Michael graduated from the Law School in 1977 and 1978 respectively and went into legal practice – Mike for six years (with McVeagh Fleming and Cutting & Co) and Liz for 18

months with the Housing Corporation. Liz then began with Blair & Kent Ltd, the successful textile importing business owned by her father. Subsequently Mike joined as well. For some years their fashion and textile buying trips took them around the world, from Milan to Paris to Osaka. By the late 1990s the rag trade was declining and Mike and Liz began to diversify, importing items from their favourite region of France – Provence – where they had had a family holiday with their two children. First it was pottery, soaps, fragrances, food and some antiques. By 1997 Mike and Liz had developed the vision that has become La Cigale – an institution that caters to all the senses, with French wine, food (a café serving lunch), music, clothes, and a variety of indoor and outdoor furniture, antiques and ornaments.

More recently the La Cigale French Market has been operating on Saturday and Sunday mornings and Wednesday afternoons, with local growers and operators selling their bread, fruit, vegetables and cheeses. And on Tuesdays,

Wednesdays and Thursdays (and every fourth Friday) part of the shop is given over to a restaurant serving meals and French wine.

Mike and Liz work hours with which busy corporate lawyers would be familiar, but are happy to have created from scratch a unique retail experience which many people enjoy.

Paul Rishworth

Deliberating on Tonga's constitutional future



Tonga's Constitutional and Electoral Commission in Auckland (from left): Dr Sitiveni Halapua, Dr 'Ana Taufé'ulungaki, Talita Tu'ipulotu (Senior Project Officer, Commission Secretariat), Gordon Ward, Noble Vaea, Sione Tu'itavake Fonua.

The Law School played host to an important body which will help chart the future form of government in the Kingdom of Tonga. The Constitutional and Electoral Commission, established last year, spent the whole of the last week of July 2009 deliberating in the fourth-floor boardroom.

Auckland was a convenient place for the five members to gather. The Commission's chairman, Gordon Ward, a former Chief Justice of Tonga, travelled from the Caribbean where he is now Chief Justice of the Turks and Caicos Islands. Sione Tu'itavake Fonua, elected to the Commission by the Judiciary Services, practises in Auckland as a solicitor. Two of the other Commissioners, both Tongan based, felt at home here as University of Auckland graduates. Noble Vaea (elected by the Nobles Representatives) has a BA in Anthropology, while Dr 'Ana Taufé'ulungaki (elected by the Judiciary Services) has a BA in History. The other Commissioner, elected by the People's Representatives, is Dr Sitiveni Halapua, Director of the Pacific Islands Development Program at the East-West Center in Hawaii.

The Commission began work in January 2009 and, following a final meeting in Tonga, was due to report its recommendations in early November. It is considering aspects of constitutional and electoral reform, including the roles of the King, Privy Council and Government, as well as the composition of the Legislative Assembly.

Bill Williams

Judgment and humility in the law

During his career as Crown Prosecutor Simon Mount has seen some interesting cases. From international computer fraud to a jealous husband's hit man; from the Privy Council in London to dealing with genocide in Africa, the stories are full of human drama. But some of the most satisfying parts of Simon's job are not the stuff of sensationalist headlines, he says. He enjoys the challenge of cross-examination in any type of case, he likes the human side of working with witnesses, and he enjoys working with other lawyers at all stages of their careers.

New York District Attorney Robert Morgenthau has said a good prosecutor needs a combination of judgment and humility and Simon agrees. "It's good to remember the job isn't actually about us."

"I think it can be dangerous when prosecutors start thinking too much about their own careers or 'their' cases," says Simon. "For me the most important thing is to try and make good decisions day by day and to try and remain balanced and fair."

Simon has clear memories of the beginning of his own career. In 1990 he attended the swearing-in of Sir Edmund Thomas as a High Court Judge. Hearing David Lange and others tell the story of Sir

Edmund's long career in the law inspired him to attend law school and opened his eyes to the potential of life in the legal profession.

After graduating Simon worked as a Judge's Clerk at the Auckland High Court. He enjoyed working on both civil and criminal cases, and he continues to practise civil law in judicial review cases, and enjoys his contact with the civil law through the Law School and Legal Research Foundation.

After his work at the High Court Simon spent time assisting Sir Thomas Thorp on a Government Inquiry, and then spent two years at the Columbia Law School in New York where he co-taught a course in appellate advocacy. When he returned to New Zealand he developed the advocacy course at the University of Auckland Faculty of Law. He has been teaching the course for nine years now, and several hundred students have now been through the class.

Simon says courtroom advocacy draws together both intellectual analysis and humanity, which makes the subject a natural bridge between the law school and the outside world. Simon enjoys the enthusiasm of the students, and notes their success in mooting competitions over recent years. The University of Auckland has won the Bell Gully National Mooting Competition the last three years in a row, and has had considerable success in international competitions from Germany to Washington DC.

Simon's energies are not exhausted by his busy life of teaching and prosecuting. Since being introduced to long-distance running by Law School colleague Bill Hodge in the early 1990s he has run at least one or two marathons most years. His favourites are the New York Marathon, with its "extraordinary spectacle and drama", and the Rotorua event.

For all the enjoyment it gives, running is less important than family life, and Simon admits to taking "any excuse" to spend time with his wife Vicki and daughter Sylvia.

Cerian Wagstaff



Debbie Hineikauia Amoamo-Smart



It was with great sadness that the members of Te Tai Haruru, the Pouawhina Māori and members of Te Rakau Ture attended the tangi of Debbie Hineikauia Amoamo-Smart on 12 September 2009. During her time at Law School she was a treasured and supportive friend and a focused student who excelled in all her papers. Her sudden death is tragic and Debbie will be missed by all those who knew her. She is survived by her husband and her two daughters, Maia and Holly.

Kua heke nga roimata, no reira, e te wahine, haere atu ma runga te whakaaro aroha.

I first met Debbie at Law school in 2005. We were both studying for our law degrees full-time that year and found the compulsory courses of Torts, Criminal, Contract and Public Law stimulating and exciting. We were both mature students who had careers before studying law. We were happy to be at Law School because it was an exciting new start. Debbie was always very focused on her studies and was a very careful and diligent student. Her assignments were always ready well before the due date and she was very methodical.

We were both pregnant at the same time with our, now three-year-old, children. During the pregnancies we endured morning sickness at the back of Algie Lecture theatre – not the best place to be when the waves of nausea came!! Of course, Debbie suffered more than I did as she subsequently discovered she was having twin girls. She had a difficult pregnancy and spent some time at Auckland Hospital. When I visited her there, she had her law books with her and was still studying. Once the children arrived, Debbie returned to part-time study. It was always a challenge, balancing caring for the twins with the demands of study, but Debbie's focused determination meant that she was able to excel both in her studies and in her role as a mother.

We completed the general moot together and Debbie was the driving force behind the study days we did to prepare for it. I was planning on leaving it all until the last week but Debbie ensured that we caught up regularly and ran through several practice sessions beforehand. She was always keen to get things right.

She often spoke about the family support she received which enabled her to do so well in her studies. Her partner Karl gave her encouragement and shared childcare responsibilities which meant Debbie was able to come into the library to study at weekends and in the lead-up to exams. She was very proud of the fact that she was a good role model for her two girls, Holly and Maia. She hoped that her example of hard work, determination and achievement would inspire them in their own lives.

Debbie loved the law and had a deep sense of justice. She planned to combine her background as a scientist with her interests in Tax and Commercial Law. She was very excited about finishing law school and moving on to the next chapter in her life. She should have finished at the end of Semester Two, 2009 and was completing her last two papers when she died suddenly, aged 37 years, on 8 September. She is greatly missed.

Irene McLachlan (Law student July 2001 – July 2009)



Unravelling the Khmer Rouge regime

Kingsley Abbott (BA/LLB 2001) is part of the legal process to ascertain the truth about what happened during a terrible period in Cambodia's history. He is an Associate Legal Officer with the Extraordinary Chambers in the Courts of Cambodia (ECCC) which, since February 2009, has been holding its first trial, 30 years after the Khmer Rouge's rule came to an end. On 17 September, after 72 days of hearings, the parties made their final submissions on the evidence they wish to be taken into account by the Trial Judges. Closing arguments were being heard in November, and a judgment is expected in early 2010.

The accused, Kaing Guek Eav, alias Duch, is one of five former members of the Khmer Rouge detained by the Tribunal. He was head of the Khmer Rouge's most notorious prison, known as S-21, in which it is alleged that more than 12,000 people, including one New Zealander, were tortured and executed. Kingsley played a key role in drafting the first closing order in the case of Kaing Guek Eav.

The ECCC is a joint venture between the Government of Cambodia and the United Nations, established to prosecute senior leaders of the Khmer Rouge and others most responsible for crimes committed between April 1975 and January 1979. While the Tribunal is technically part of the local Cambodian justice system, it has its own rules, law, and developing jurisprudence – giving it its “extraordinary” status. The lawyers and judges involved are a mix of international and local jurists. “At the moment, the office contains lawyers from New Zealand, Argentina, France, Australia, Cyprus, and Canada.” One of the Trial Judges is New Zealand's former Governor-General and High Court

Judge, Dame Silvia Cartwright.

Due to the historical influence of the French in the region, the ECCC follows the civil law tradition as opposed to the common law. One of the main differences between the two systems is that in civil law, the criminal investigation is carried out by an impartial Investigating Judge – in this case a Cambodian and an international Judge working together.

The role of the Office of the Co-Investigating Judges is to investigate the crimes committed during the Khmer Rouge's four-year reign, alleged to have been a combination of national crimes, crimes against humanity, war crimes, and genocide. “They decide whether any crimes have been committed, and if so, draft a detailed indictment committing a person to trial,” says Kingsley. “This is an enormous job with significant evidential and legal challenges.” The evidence gathered by the Co-Investigating Judges is placed on a “case-file”, which is the written record of the investigation and which forms the basis of the trial proceedings. Kingsley works in this office as part of a multinational team, advising the judges on matters of law, evidence, and procedure.

A major difference between the ECCC and some of the other internationalised tribunals, he explains, is that it is located within the country where the crimes allegedly occurred. “All Cambodians have been affected by the Khmer Rouge regime, either directly or indirectly, and by living among them we are frequently reminded of the seriousness and importance of our work.”

No one knows yet how long the whole process will take or whether there will be other trials, says Kingsley, but the first trial is “an

The role of the Office of the Co-Investigating Judges is to investigate the crimes committed during the Khmer Rouge's four-year reign, alleged to have been a combination of national crimes, crimes against humanity, war crimes, and genocide. "They decide whether any crimes have been committed, and if so, draft a detailed indictment committing a person to trial," says Kingsley. "This is an enormous job with significant evidential and legal challenges."



important step towards helping Cambodians discover the truth about what happened during this period in their history. Encouragingly, since the commencement of the trial, nearly 24,000 visitors have observed the proceedings from the public gallery. In addition, it is believed that up to three million people a week, or 20 percent of Cambodia's population, watched the trial on television in its final months."

Before going to Cambodia Kingsley was a barrister specialising in domestic criminal law, working alongside Stuart Grieve QC in Auckland. "I was very lucky to work for Stuart, as he was not only a boss but also a mentor to me. During our time together we worked on numerous cases including several murder trials, the review of Ahmed Zaoui's security risk certificate, and the extradition of an African national to face charges of genocide and crimes against humanity. After three and a half years I felt it was time to go it alone, and so with some reluctance, I left New Zealand to look for work at the English bar."

He left New Zealand, intending to travel slowly overland to London, but ended up working as a scuba diving instructor in Indonesia. "After a year, I got moving again and passed through Cambodia. I knew that the United Nations and the Cambodian Government had established a tribunal in Phnom Penh to investigate crimes committed in Cambodia during the Khmer Rouge regime. I had read about Dame Sylvia Silvia Cartwright's appointment as a judge at the ECCC and my interest in the court motivated me to apply for an unpaid internship with the Office of Co-Investigating Judges. Initially I was accepted into a three-month internship but after a few months was offered a staff position with the United Nations as an Associate Legal Officer."

Kingsley, a former student of Rosmini College on Auckland's North Shore, graduated from The University of Auckland University in 2001 with a conjoint LLB and a BA in Philosophy. He was inspired to attend

Law School after his mother took him to a murder trial at the Auckland High Court aged 13. "I was captivated, and attended nearly every day until the verdict," he says. He was "fortunate that Scott Optican and Bernard Brown taught a number of the papers which touched on criminal law, including advanced criminal law and evidence. Both are known for their expertise and engaging style of lecturing, and their classes helped cement my desire to practice as a criminal lawyer."

In his last year of Law School, Kingsley worked as a clerk for a solicitor who had a criminal law practice. His first case was an appeal on the ground of judicial bias following a conviction in a rape trial. Upon graduation he was employed by, then solicitor, Antonia Fisher, to work in her medical law team at Brookfields Lawyers in Auckland. "Antonia was a wonderful mentor who showed a keen interest in my career from the beginning. By the end of my first year with her, I had travelled to the Privy Council in London and had appeared as junior counsel in one of New Zealand's first 'nervous shock' trials. But she knew of my desire to practise criminal law, and pushed me in that direction."

Kingsley enjoys living in Cambodia with its rich and vibrant culture dating back many centuries. The capital, Phnom Penh, where he resides, is known for its great food, bustling markets, chaotic roads and beautiful French colonial architecture. "Although it sometimes feels like the city is overflowing with people, it somehow manages to retain a leisurely pace of life." Expat life has its pleasures and its challenges, says Kingsley. "On the one hand we are fortunate to live and work in such a fascinating region, but on the other, it is a transient community and all of us miss home, and our friends and family."

Auckland Law School students and graduates interested in a career with the United Nations or in international criminal law are more than welcome to contact Kingsley at kingsley.d.abbott@gmail.com

Bill Williams



Eulogy for Professor Michael Taggart

Sir Alexander Turner Professor of Law

Given at a meeting of Senate of The University of Auckland on 24 August 2009 and a meeting of the Faculty of Law on 25 August 2009.

Mike Taggart, Sir Alexander Turner Professor of Law, died on 13 August 2009 after a two and a half year battle with cancer. He was 54 years old.

Mike was an Aucklander. He grew up in Dominion Road, went to the local primary school and then to Mt Albert Grammar School. There he excelled both academically and in sport.

Mike came to the University of Auckland in 1974 where he studied Law. It was immediately obvious that he had found his life-long vocation. His enthusiasm and his love for law soon became legendary. From then on his subsequent career was seamless: whether as student, as beginning teacher, or as an established legal academic with a world-wide reputation, Mike brought to bear the same passion, the same relentlessly inquiring mind, the same fierce intelligence – and always, of

course, unfailing good humour.

Mike graduated LLB(Hons) as joint Senior Scholar in Law. From Law School he went to be one of two judges' clerks at the High Court in Auckland. There he established the highest of reputations, gaining the lifelong respect and, in many cases, friendship of the judges with whom he worked.

Mike next went to Harvard Law School as a Fulbright Scholar, amongst other scholarships. He graduated with a Harvard LLM in 1980. That year he also won the New Zealand Law Society's Cleary Memorial Prize. That prize goes to the person adjudged as giving the most promise of service to the profession having regard to personal character; academic attainments, qualities of leadership as shown by achievement and service at school and at university; reliability, progress and enthusiasm displayed for the practice of law. The selection panel for that year can feel their choice of Mike Taggart was well vindicated.

From Harvard Mike was recruited by the University of Western

As a teacher Mike was indefatigable, his teaching style infectious and uplifting. He recognised the power of education to lift people from the social strictures of class and the circumstances of their birth, and he put all he could into it.

Ontario in Canada where he taught for two years, 1981 and 1982.

Mike was then hired back to Auckland by Dean Jack Northey of the Auckland Law School, commencing in August of 1982. His stated teaching interests at the time were administrative law, contract, restitution, commercial law, and intellectual property.

By 1987 Mike was a Senior Lecturer. That year, he was encouraged to apply for a Chair. At 32 years of age he duly became one of the youngest professors ever appointed at this University.

Mike's love was administrative law: the law about the interface between state and citizen. His early work focused on the legal requirement of courts and tribunals to give reasoned decisions. The idea of transparency and justification in decision-making led him to the field of Official Information legislation. In due course he co-authored with Ian Eagles and Grant Liddell the authoritative text on New Zealand's freedom of information legislation – the first of the two books for which he was honoured with the annual JF Northey Prize for the best law book published in New Zealand.

Mike's elevation to a Chair in 1987 came at the time of the great re-configuration of the state. Those were the days of de-regulation, of privatisation, and corporatisation. (The "ugly-isations" Mike called them). Whether the subject matter was telecommunications, forests, coal, electricity generation, airports, ports, or broadcasting, the state was retreating, surrendering its ownership. New private or state-owned institutions were taking these enterprises over. The law had to reckon with when, and how, the public law obligations of the state – to act reasonably and to make legally accountable decisions – could apply when the functions it once performed had passed to these new trading enterprises, tasked with making a profit yet also being socially responsible.

This was virgin territory for lawyers. Mike explored it in his inaugural lecture in 1990 entitled "Corporatisation, Privatisation and Public Law". In a later article entitled "Public Utilities and Public Law" in 1995 Mike traced back to seventeenth-century lawyer Sir Matthew Hale the notion that some enterprises, though private, were so affected by a public interest "that they bore special duties including the duty to deal with all who were willing to pay a reasonable price". These old common law doctrines had lain dormant but were reawakened by public sector reforms, especially in the fields of water and electricity supply and the operation of ports.

As these new state-owned enterprises tussled in the courts with regulators such as the Commerce Commission, and with their major customers and suppliers, Mike's research was enormously influential.

Mike's interest in these deeper questions led him to his work on property rights. In 2002 he published his second prize-winning book, *Private Property and Abuse of Rights in Victorian England: the Story of Edward Pickles and the Bradford Water Supply*. This was an historical



Mike and Nicky Taggart at Mike's retirement function.

case study through which deeper questions about the nature of property rights were explored. Edward Pickles was a nineteenth-century Yorkshire farmer. His farm (called Manywells) contained an underground spring that fed the river providing water for the city of Bradford. Following failed negotiations with the City of Bradford about the city buying his land to secure its water supply, Mr Pickles deliberately dug a mineshaft on his land that diverted the underground water away from the river. The question became whether a private person who owned land was entitled to deal with that land as he saw fit. Were his motives in digging the mineshaft relevant in any legal sense? Did Pickles have some sort of duty to exercise his or her rights reasonably, or at least not to abuse his rights? As Mike showed, different legal systems resolve these questions in different ways. Mike's analytical and elegantly written book, the product of meticulous archival research, was justly praised by reviewers in three continents, including in the *London Review of Books*. It, too, received the J F Northey Book Prize.

Mike was never attracted to legal practice, but behind the scenes his opinions and advice were sought by law firms, barristers and Queen's Counsel in many of the major administrative law cases of the past three decades. An early example concerned the New Zealand rugby union. Was the Rugby Union an organisation that was sufficiently public to be amenable to judicial review in the Courts, or merely a private association that could run its affairs, wisely or unwisely, as it saw fit? As is well known, a High Court judge was indeed persuaded that the Union's decision to send the All Blacks to South Africa was amenable to judicial review and hence to the possibility of being ruled unlawful. In the end the Rugby Union abandoned the tour.



From left: Richard Taggart, Danny Taggart, Lisa Taggart, Mike Taggart and Nicky Taggart

In 2002 he appeared in the Court of Appeal in a legal challenge to the rights of a casino owner to issue a trespass notice against a patron, a case raising many of the same issues as the case of Edward Pickles: could a private company assert its property rights by requiring people to leave, giving no reason for its actions? Or was it affected by public interest duties, so that it was required to act reasonably, especially given that it had taken a licence from the state to run a casino?

Mike was keenly interested in the related fields of human rights and international law, exploring the legitimacy of judicial review of administrative decisions on the grounds of alleged inconsistency with rights or international treaty obligations. He had a side interest in the field of vexatious litigants, and the circumstances in which it was appropriate for a person to be denied access to the courts on account of their persistent vexatious use of legal processes. His published work in that field is an authoritative statement of the law about vexatious litigants, as well as providing fascinating stories about the lives and antics of particular litigants.

As an administrative law scholar, Mike was without peer in New Zealand and is known around the common law world as one of the most eminent academic administrative lawyers of his generation. That recognition came in various ways: invitations to give named lectures in Australia and Canada, service on a panel of international experts to advise the South African Law Commission on administrative law, a year spent as the Law Foundation of Saskatchewan Fellow in Saskatoon, many invitations to distinguished conferences.

As a teacher Mike was indefatigable, his teaching style infectious and uplifting. He recognised the power of education to lift people from the social strictures of class and the circumstances of their birth, and he put all he could into it. One of the nicest compliments I ever heard about any teacher was paid to Mike some years back by the

student who in the leavers' magazine wrote of Mike: "He was just so enthusiastic that he made you want to do the readings."

As a citizen of the University Mike was loyal and diligent. He would defend the University against what he saw as attacks from outside or inside. When in the late 1980s there were reforms afoot that would have subjected universities to the same governance arrangements as kindergartens, Mike was influential in marshalling legal arguments in opposition. The University challenged the processes surrounding the Hawke Report on University governance and the resolution of that challenge led to the enactment of section 161 which protects academic freedom.

Mike was an enthusiastic supporter for the rights and powers of Senate to be consulted and to advise. He was tireless in University service, as reviewer of other departments and schools, a member and sometime Chair of the University's Board of Graduate Studies, and over the last five years, served nationally as one of the four law reviewers in the PBRF exercise that assesses the quality of academic research. For the years 1992 to 1995 Mike served as Dean of the Faculty of Law.

As a colleague, Mike was the best we could imagine. Always willing to read and comment on others' work, always offering insightful and helpful commentary, he had the ability to get to the heart of a matter, put it into perspective, and logically unfold the alternatives.

All this he combined with unfailing good humour and a special blend of benign subversiveness. His humour enlivened many a Faculty and Departmental meeting, but his abiding concern was always what was best for the Law School and the University.

Such accomplishment meant, as members of Senate will appreciate, countless solitary hours in the office, working in libraries, weekends, late nights and early mornings, the often solitary life of an academic. The wonderful painting by Mike and Nicky's son Richard captures this: it is

the cover for the festschrift book published in Mike's honour earlier this year, *A Simple Common Lawyer*, Hart Publishing, Oxford, 2009.

Mike's accomplishments could have come at a cost to his friends and family but they did not. Mike and Nicky have raised a wonderful family of Lisa, Sarah, Richard and Danny to whom Mike was devoted. The Taggart household was an example to us all: a maelstrom of creativity and fun, of pets and jokes, the Taggart Halloween parties especially being legendary.

Above all, Mike was a complete person. He was happy in what he was doing, and grateful to have the opportunities that he knew had been given him. Acclaimed as a legal scholar on the world's stage, yet firmly grounded amongst his friends and colleagues here in Auckland. A devoted husband and father, a wise friend and mentor. But most of all, Mike was kind, Mike was generous, and Mike was fun. We all miss him greatly.

Paul Rishworth

Cartwright conference

On 29 August 2008 the Law Faculty hosted a conference, "Twenty years after the Cartwright Report: What have we learned?" to mark the twentieth anniversary of the release of the *Report of the Cervical Cancer Inquiry*, often known as the *Cartwright Report*, after its author, Dame (then Judge) Silvia Cartwright. The conference was organised by Associate Professor Jo Manning and generously sponsored by the Law Foundation, the National Ethics Advisory Committee, and the Health Research Council.

In June 1987 Judge Cartwright was appointed by government to a committee of inquiry in response to public concern sparked by the publication of an article in *Metro* magazine, called "An unfortunate experiment at National Women's Hospital", by Sandra Coney and Phillida Bunkle. The article claimed that Associate Professor Green, the doctor responsible for the treatment of significant numbers of invasive cervical cancer cases and many patients with what was generally presumed to be its precursor stages at National Women's Hospital, then New Zealand's primary teaching hospital in gynaecology, was carrying out research on his patients without their knowledge or consent. Since the mid-1960s, it was reported, Green had been withholding conventional treatment from some patients with carcinoma in situ of the cervix (CIS), in order to prove his theory that CIS was a harmless disease which hardly, if ever, progressed to invasive cancer. The article claimed that the experiment endangered women's lives and that some women had died.

During 1987-8 the Committee of Inquiry, assisted by legal and medical advisers, conducted some six months of public hearings. The *Report* was released in August 1988. Judge Cartwright made findings that a research programme initiated by Green and approved by the Hospital's Medical Committee had indeed been carried out into the natural history of carcinoma in situ of the genital tract. It involved the withholding of then generally accepted treatment from some women, in an attempt to prove that Green's belief that carcinoma in situ did not progress to invasive cancer or only rarely did so. The Judge found that the research study was unethical from the outset, both because it submitted patients to an unacceptable risk of developing invasive cancer and on the critical basis that it totally overlooked any requirement to inform patients and obtain their consent to be included in the experiment. When the first cases of invasive cancer were found in the late 1960s, it was then clear that carcinoma in situ was a

pre-malignant disease in some cases. The Judge found that by 1969 it should have been clear that the trial was unsafe for participants and terminated. With no way of knowing which cases would become invasive, all should then have been offered accepted treatment. But inadequate treatment in accordance with the study protocol continued thereafter, although it diminished after 1974 when more new patients were treated with cone biopsies designed to eradicate the lesion of abnormal cells.

The *Report's* recommendations were wide-ranging: for a Code of Patients' Rights; patient advocacy and a Health Commissioner; an independent system of ethical review of research; for stricter informed consent requirements; and the establishment of a nationwide population-based cervical screening programme. They set much of the agenda for legal and regulatory change for the 1990s and beyond.

The conference was chaired by Justice Lowell Goddard, who had been one of two legal counsel assisting the inquiry. The speakers were a mix of participants in the Inquiry and expert commentators. Clare Matheson, whose case Coney and Bunkle had focused on in their *Metro* article, was a party to the ensuing Inquiry. She gave a courageous and moving account of the experience of finding herself, unknowingly, a participant in "the most alarming saga in New Zealand medical history". Dame Silvia Cartwright, in a pre-recorded address brought to the conference electronically, reflected on the intense professional challenge of conducting the Inquiry and drafting the subsequent *Report*. The Inquiry was lengthy and difficult, and was the subject of unprecedented media interest throughout, completely contrary to her expectations at the outset of "a brief, interesting, and anonymous exercise . . . a storm in a teacup". Sandra Coney and Phillida Bunkle, authors of the *Metro* article, both shared their reflections and insights, as did Professor Charlotte Paul, one of three medical advisers appointed to the Inquiry. Professor Ron Jones, one of the co-authors of the "whistle-blowing" medical article published in 1984 which was leaked to Coney and Bunkle and set them on the trail of their investigation, described efforts within National Women's Hospital by some of Dr Green's colleagues to halt the study, and the story of how the 1984 paper came to be written and published.

Four remaining presentations consisted of expert commentary on events since 1988, or subsequent regulatory changes which had their genesis in one or other of the *Report's* recommendations. The Health and Disability Commissioner, Ron Paterson, described the advantages and limitations of New Zealand's Code of Rights. Dr Kenneth Clark presented a modern obstetrician and gynaecologist's perspective. Dr David Collins QC, the Solicitor General, described changes to medical discipline since 1988.

The Cartwright Report proved to be a defining moment in the relationship between the health professions in New Zealand, particularly the medical profession, and the wider public and patients. There is strong continuing interest in the "unfortunate experiment" at National Women's Hospital, and the Inquiry and *Report* within the legal and medical professions, the research ethics community, and health policy groups, in particular, as well as among the public. This twentieth anniversary offered a unique chance to hear the reflections of some of the key participants in the Inquiry. It also provided an opportunity to reflect on this important episode in New Zealand's medical and legal history and its implications for today, in an age where medical advances regularly create new ethical and legal dilemmas. The papers from the conference are currently being edited for publication as a collection to be published by Bridget Williams Books in November 2009.

Jo Manning



Caroline Bilkey has been the New Zealand High Commissioner to Samoa since 2007. It is the latest chapter in a diverse and interesting career working for the Ministry of Foreign Affairs and Trade, which she joined in 1985 straight out of law school. She commenced working in the Legal Division and was seconded to the Australian Department of Foreign Affairs for a year in 1986. Her next posting saw her spending four years at New Zealand's mission to the UN in Geneva working on human rights and humanitarian issues, which led to a stint in 1995 as a Protection Officer with the UNHCR in Rwanda and Tanzania. From 1997 she spent three years as New Zealand's Deputy Ambassador in Bangkok, after which she took leave without pay and completed an MBA in Thailand. In 2002 she moved with her husband and two little girls to Washington DC and worked on congressional relations for the New Zealand Embassy. In 2004 she returned to the Legal Division of the Ministry of Foreign Affairs and Trade in Wellington as Deputy Director responsible for general international law, before her most recent appointment. She remarks that she considers herself lucky "because I love what I do although if you had asked me 20 years ago I would not have predicted I would end up where I am now. I love the variety in my job and I have had the privilege of meeting all kinds of fascinating people from all walks of life because of my position. It is an honour to represent New Zealand and I'm looking forward to the challenges and surprises the next decade will bring."

She takes time out of a busy schedule to generously answer some questions I have for her:

What took you in the direction you have gone in?

I enjoyed the law and that was the specialist skill that I brought to Foreign Affairs. I learned a lot from working in Legal Division, which is really the coalface of public international law. In a small Ministry like MFAT, however, it is important to have more general experiences and I have also really enjoyed working on bilateral trade and political issues and now leading a team as High Commissioner.

What have been some career highlights for you?

Working on the Rainbow Warrior case; participating in negotiations on international instruments such as the Rights of the Child Convention (UNCROC); the Declaration on the Elimination of

Caroline Bilkey – New Zealand High Commissioner to Samoa



Auckland alumni in Apia, Samoa (from left): Julia Tolmie, Caroline Bilkey and Maiava So'oalo Aiolupotea Visekota Peteru (Barrister, Solicitor and Notary Public)

Violence Against Women, the Declaration on the Rights of Indigenous Peoples; living and working as a Protection Officer in a tiny village in southeastern Rwanda; being the only International Protection Officer for half a million refugees in the Ngara camps in Tanzania; meeting Aung San Suu Kyi in Rangoon; presenting credentials to the Head of State of Samoa as New Zealand's High Commissioner.

What have been some of the challenges/difficulties?

With the peripatetic lifestyle it took a while to get my personal life sorted out! It can sometimes be a bit lonely in the initial stages of a posting especially when you are single but we all learn techniques to make friends – join a tennis club; go to all the functions and find people with whom you have something in common; learn the local language.

What was your experience of Auckland Law School? How has that experience contributed to and prepared you for your experiences subsequently?

I cannot say I was the most assiduous student but I had a good time! I doubt that many of the lecturers would remember me. But I think the core legal skills of being able to logically set out an argument, to distinguish between what is fact and what is speculation or opinion, and to be able to make both sides of a case on paper and orally are very useful in diplomacy. I was also active in the Law Students Society and that was helpful in terms of confidence in public speaking.

What has been the experience of being the New Zealand High Commissioner in Samoa during a crisis like the tsunami?

This has been an extraordinary time. It was a terrible tragedy but it has been inspiring to see people come together to grieve and to help one another. The New Zealand High Commission staff have worked very hard in helping to mobilise the New Zealand relief effort, as well as provide assistance to the many New Zealanders who were caught up in the tsunami. As a New Zealander I have been very proud of New Zealand's response. We have had medical teams, police, defence and emergency management personnel here over the last few weeks working with the Samoan authorities to respond to the emergency. I have also been impressed by the overwhelming warmth and generosity of the New Zealand people towards Samoa.

Julia Tolmie



Published lawyer turns to priesthood

Dr Justin Glyn of Auckland, whose doctoral thesis led to a book on legal curbs on decision-making in immigration and refugee cases, is now a novice of the Society of Jesus (Jesuits) in Australia. If accepted by the order he will take his vows as a Jesuit at the beginning of 2011 and begin studies for the Catholic priesthood.

Justin qualified and practised law as an attorney in South Africa before immigrating to New Zealand. Here he worked as a barrister sole and then in major commercial law firms in Auckland. He graduated PhD from the University of Auckland Law School in 2008 with a thesis on whether and how international law legitimately constrains administrative decision-making in immigration and refugee cases. This is a topical issue, highlighted by controversies over the Tampa refugees and immigration to the West.

A book based on his thesis, *Fundamental Rights in Administrative Decision-making*, was published recently by Presidian Legal Publications. As with writing the thesis, he produced the book, "to try and give real life to the idea that the common law should protect some individual rights on a consistent basis. So far its record in doing so is distinctly mixed, particularly in immigration and refugee cases which are often seen through lenses of national security. International law does recognise that some human rights are fundamental. Despite the fact that customary international law, at least, is often said to form part of the common law, these fundamental rights are not always seen as such by common law courts. Immigrants and refugees suffer as a result."

Justin hopes to use his legal skills as a Jesuit. Whether he will finally practise as a lawyer (as well as a priest) "will be a matter for future discussion and discernment. A lot will depend on the Society of Jesus's needs at the time. At present, though, the Jesuits do have a number of socio-legal ministries (including the Jesuit Refugee Service, Jesuit Social Services). A Jesuit lawyer-priest, Father Frank Brennan SJ, is also active on the Australian Human Rights Commission." Justin says he would enjoy doing more legal or other writing but is unlikely to have too much time for this in the near future while he studies. "The Jesuits do, however, have a long and vibrant intellectual tradition and so there is no reason why I shouldn't get to do some writing in the longer term. Again, however, the Society's needs will be crucial here."

Bill Williams



Tamina Cunningham (centre) with Tawhiri and Kaa Williams, the parents of the late Judge Karina Williams.

Prize honours Māori Judge

The inaugural winner of a prize honouring the second Māori woman to become a District Court Judge is Tamina Cunningham. The annual prize goes to the student of Māori descent at the Auckland Law School who completes the LLB, LLB (Hons) or an LLB conjoint with the highest grade point average.

Worth \$1500, it was established in memory of the late Judge Karina Williams, an Auckland graduate, who was appointed to the Manukau District Court bench in 2003. It is financed from funds donated by Dr Yash Ghai (the Sir Douglas Robb Lecturer at The University of Auckland in 2007), by legal colleagues and friends, and by Judge Williams's family.

Tamina Cunningham received the scholarship at the Te Rakau Ture (Māori Law Students' Association) end of year hakari held at the University's Waipapa Marae on 24 October. Judge Williams's father, Tawhiri Williams, formally handed the scholarship certificate to Tamina. Her mother, Kaa Williams, then presented Tamina with a kete, pounamu and a scarf. Attending the celebration were family and friends of Karina, Judges Heemi Taumaunu, Gregory Hikaka and

Lisa Tremewan (who had a key role in setting up the scholarship), and Law School staff.

Tamina Cunningham, of Ngati Awa, Te Ati Awa and Korean descent, graduated in 2009 and works in commercial litigation at Simpson Grierson in Auckland. She gained a Senior Prize in Law and, after her second year of law study, the Simpson Grierson scholarship in law.

Tamina intends to honour the memory of Judge Karina Williams by working hard and taking on new challenges in the law. She aspires to be appointed to the bench but says as a junior solicitor she still has a long way to go.

Judge Karina Williams, who was of Tuhoē, Te Whakatohea, Tainui, Te Aupouri and Ngaitai descent, died of cancer in 2005 aged 42. An obituary by a long-time colleague said she touched the lives of everyone she encountered, being "charming with her warmth, helpfulness, and the twinkle in her eyes" as well as "humane and endowed with deep humility".

Bill Williams

Thesis on religious freedom turns into book

A doctoral thesis, gained at the University of Auckland, contrasting French and American approaches to the wearing of religious insignia in public schools has resulted in a book. *Veiled Threats? Islam, Headscarves and Religious Freedom in America and France* is by Dr Herman Salton, who graduated PhD September 2008. Herman is now affiliated with Exeter College, Oxford University, pursuing further postgraduate studies in international relations. His 384-page book, published by VDM Publishing (UK), was officially launched at St

Antony's College, Oxford in May 2009.

The Islamic veil has become increasingly controversial in Europe, particularly in France where Parliament passed, in 2004, legislation prohibiting students from wearing the Muslim veil (with any other conspicuous religious sign) in the classroom. This book compares the French and American attitudes towards religious symbolism in general and the Islamic veil in particular. Against conventional wisdom, it argues that, before the 2004 statute was passed, the French and American legal systems were substantially similar in respecting religious insignia. The book also tries to demolish some popular myths: that the French legal system is fiercely secular; that the American one is strongly religious; and that France was, in 2004, confronted with a "veil emergency" that rendered the passage of the new statute all but inevitable.

Bill Williams



Arduous road to London Chambers

Craig Ulyatt (BA/LLB(Hons) 2003) has joined one of London's most prestigious sets of barristers' chambers. In October 2009 he gained a "tenancy" at Fountain Court based in the Temple, EC4, which specialises in commercial work. Famous alumni include Lord Bingham of Cornhill and Lord Scarman.

Gaining tenancy makes Craig officially a member of the chambers. As a "junior" he is instructed alone in smaller cases and, as part of a team of barristers usually "led" by a Silk, in bigger cases. "The juniors tend to undertake the bulk of the written work (overseen by the Silk leader), while the Silk will undertake the advocacy (assisted by the juniors)," explains Craig. "At the commercial bar, barristers start applying to take Silk from around 17 to 18 years 'call' onwards." Craig plans to practise mainly in banking and financial services, insurance and reinsurance, civil fraud, conflict of laws and general commercial law.

His path to membership of Fountain Court was a demanding one, starting in October 2008 with a year's "pupillage". This largely involved preparing written work, including research notes, opinions, pleadings and skeleton arguments. Every piece was assessed with a written report compiled and a grade given. He assisted his pupilmasters and other members of chambers in a number of large cases, including *The Office of Fair Trading v Abbey National* (the "bank charges" case), *Deutsche Bank v Highland* (an anti-suit injunction case), and *Levicom v Linklaters* (professional negligence against a leading commercial law firm). His first (of three) pupilmasters, Richard Coleman, was a New Zealander who studied at Cambridge after securing the Girdlers' Scholarship. Craig did not appear in court - apart from watching his "pupilmasters" from the public gallery - until nine months into his pupillage. At that point the Pupillage Committee circulated a recommendation to all members of chambers, who decided at their annual general meeting to offer him a tenancy. Of the three pupils, only Craig was offered tenancy. He then spent the final three months (June to September) making the transition to tenancy.

At Auckland Law School, Craig most enjoyed contract law and equity of the compulsory subjects. Restitution (the subject of his honours dissertation and, later, his Oxford doctorate) and insurance law were

his favourite electives. His standout teachers were Professor Charles Rickett (equity and restitution), Neil Campbell (insurance and company law) and Paul Myburgh (conflict of laws). "While neither of them actually taught me I owe a considerable debt to both Professor Julie Maxton and Professor Peter Watts, for both of whom I acted as research assistant under the Chapman Tripp Research Scholarship scheme. They were sources of advice, encouragement and support, and in the end numerous references!"

A Spencer Mason Trust Travelling Scholarship in Law took him to Oxford to embark on the BCL and then a DPhil. His thesis was on "Three Party Claims in Unjust Enrichment."

Fountain Court has more than 60 members, 22 of them QCs. The challenges of working there, says Craig, are "the same as working in other commercial chambers and firms - demanding clients and (often) unrealistic expectations. The most rewarding aspect is being involved in the largest and most important commercial cases and working with the true leaders in the field." As for his long-term future Craig is, "not looking too far ahead. I have been working towards securing tenancy for a number of years and am just trying to enjoy it for a little while. I intend to practise at Fountain Court for the foreseeable future and, though it causes my mother to despair, do not currently have any plans to return to New Zealand to live."

Bill Williams

Thai judiciary learns from Law School

Thirty Supreme Court judges from Thailand availed themselves of the Auckland Law School's expertise on environmental law in New Zealand. They attended a one-day seminar on the topic on 18 May 2009, arranged by the Centre for Continuing Education as part of its international programme.

Associate Professor Ken Palmer presented the morning session on the system of governance for resource management in this country, concentrating on the Resource Management Act 1991. He covered national environmental standards, regional and district plans, resource consents, and enforcement through the courts. In a one-hour session after lunch, Valmaine Toki, a lecturer at the Law School, addressed environmental law from an indigenous Māori perspective. Then Ross Dunlop, a Commissioner from the Environment Court, talked about the court's functions and the commissioners' mediation role.

On environmental matters the judges enforce Thailand's regulatory systems. "These systems are not as comprehensive as the statutes applying in New Zealand," explains Ken.

Bill Williams

High-flying student sees the world



Ireland, Australia, Switzerland, Scotland – BA/LLB(Hons) student Max Harris has packed in an impressive amount of international travel this year. And he's not about to rest on his laurels, spending the summer break at the Australian National University on a summer research scholarship. Meanwhile Max has clocked up an enviable academic record in his four years of study, gaining straight A pluses in all but one Arts paper (for which he received an A) and nothing less than an A in Law (with three A pluses).

A mixture of debating – his major activity outside study – and scholarly prowess brought about his extensive globetrotting in 2009. It started in January when he was part of the two-person University of Auckland team which competed at the World Universities Debating Championship in Cork, Ireland. The duo reached the octo-finals (the first of the knock-out rounds), while Max was ranked twenty-second in the world. At the Australasian Intersarsity Debating Championships ("Australians") in Melbourne in July he represented The University of Auckland. His team got to the octo-finals and he was judged seventh best speaker.

In May he attended the 39th St Gallen Symposium in Switzerland. This prestigious event brings together entrepreneurs, top managers, politicians, academics, decision-makers and students to discuss key business and political issues. Max was among 200 students chosen to attend the symposium on the basis of an essay competition which 1,000 entered. In October he represented the University at the Universitas 21 Undergraduate Research Conference in Glasgow. There he delivered a paper examining whether courts in New Zealand should have the power to declare formally that legislation is inconsistent with the Bill of Rights Act.

Max, a Wellingtonian, is in no doubt that he was wise to study at The University of Auckland. "It's offered me some amazing international opportunities and in the last couple of years I have had the privilege of working closely with several fantastic academics. It is great when students and academics can work alongside one another, and Auckland encourages this – particularly later in one's degree."

Bill Williams

A hat trick of 'Supreme Court' citations

Within a period of not much more than a year, Peter Watts has had three of his articles referred to in three of the Commonwealth's supreme courts – the House of Lords, the High Court of Australia, and the New Zealand Supreme Court.

In July 2009, Peter's article on imputed knowledge in agency law ((2001) 117 LQR 300) was cited by Lord Phillips of Worth Matravers in *Stone & Rolls Ltd v Moore Stephens (a firm)* [2009] UKHL 39; [2009] 2 WLR 455 at [44]. This was one of the last cases to be decided by the House of Lords as the United Kingdom's highest court. Taking up nearly 100 pages in the Weekly Law Reports, the Court split three to two, with

Lord Phillips (now President of the United Kingdom Supreme Court) leading the majority. The case was concerned with the odd point, whether a company can successfully sue its auditors for failing to detect that its sole manager and beneficial shareholder was causing it to operate a business that comprised nothing more than defrauding banks. The answer was "no".

In June 2008, the then Chief Justice of the High Court of Australia, Gleeson CJ, in *Lumbers v W Cook Builders Pty Ltd* [2008] HCA 27; (2008) 232 CLR 635 at [62] cited Peter's article, "Does a subcontractor have restitutionary rights against the employer?" [1995] LMCLQ 398. The case was about the very topic of that article; can a subcontractor who has not been paid by the head contractor sue the landowner in a restitutionary claim for the value of the work that has been undertaken on its land? Again, the answer was "no".

In April 2008, two of Peter's articles on the imputation of an agent's knowledge were cited by Blanchard J, giving the judgment of the New Zealand Supreme Court, in *Dollars & Sense Ltd v Nathan* [2008] NZSC 20; [2008] 2 NZLR 557 at [43], and [49]. One of these articles was the same as that cited in the House of Lords' case, the other being [2005] NZ Law Review 307. This case was concerned with whether a mortgagee could enforce a forged mortgage that had been registered under the Land Transfer Act 1952. The forgery had been carried out by the son of the "mortgagor", in circumstances where, unusually, the son was found to have been acting as the mortgagee's agent in procuring his mother's agreement to the mortgage. The mortgage was held unenforceable.

Negotiation, mediation and dispute resolution cements its place



The Law School was pleased to welcome back its alumna, Nina Khouri (BA/LLB(Hons), 2003), as a part-time lecturer. Nina has previously taught Jurisprudence, and returned in the second semester of 2009 to teach the LLB elective course Negotiation, Mediation and Dispute Resolution. While Negotiation, Mediation and Dispute Resolution has been a regular fixture on

the electives list for many years, Nina has resurrected teaching of the course after a brief hiatus, and brings to it her own experience and particular interests.

That experience includes Nina's LLM in dispute resolution and international law, which she obtained from New York University in 2005-2006, while studying as a Fulbright Scholar and a NYU Vanderbilt Scholar. Following her LLM, Nina worked in London for the Centre for Effective Dispute Resolution (CEDR), Europe's largest commercial mediation provider, and acted as co- and solo-mediator on a number of disputes. Nina is now an associate with Gilbert Walker, the specialist litigation and arbitration practice in Auckland. She is a CEDR- and LEADR-accredited mediator and currently serves on the board of LEADR New Zealand.

The importance of negotiation, mediation and other dispute resolution processes as a subject of legal study has grown rapidly in

recent years, both in New Zealand and internationally, as parties to legal disputes opt for alternatives to traditional litigation. This growth has occurred for a range of reasons, including an increasing desire by parties for resolution on terms outside the scope of the remedies available through litigation, for privacy, and for time and cost savings. On a wider scale, court systems around the world are looking to alternative dispute resolution processes to improve access to justice and ease over-burdened court dockets. New Zealand now has over 30 statutes providing for mediation or other ADR processes. The new District Court Rules, which come into effect in November, have as their stated objective “the just, speedy, and inexpensive determination” of proceedings and incorporate ADR processes to create a focus on early settlement. The Auckland High Court has launched a six-month pilot whereby private mediators will mediate civil proceedings.

Lawyers in all areas of practice are now required to make strategic choices between the various dispute resolution processes available. The limited-entry course is designed to prepare students for this. Teaching is modelled on a postgraduate workshop, with a combination of traditional lectures, group discussions and practical exercises. The focus is on developing skills in conflict diagnosis, communication, negotiation and mediation as well as an understanding of the theory behind these processes and the applicable law. The paper was, not surprisingly, over-subscribed.

Amokura Kawharu

Vital for Māori voice to be heard

Keeping the Māori seats for the present is favoured by Sir Douglas Graham, but not a separate Māori House making laws for Māori. He made this clear in his lecture on “Māori representation in Parliament” at the Distinguished Alumni Speaker Day at the University on 14 March 2009. Sir Douglas, Minister in Charge of Treaty of Waitangi Negotiations for nine years in the 1990s, was one of five individuals to receive a Distinguished Alumni Award the previous evening.

It was “arguable”, he said, that the Māori seats were no longer required under MMP which had resulted in more MPs of Māori descent than the percentage of Māori in the total population. It had also produced an overhang in the last election, giving the Māori Party influence out of proportion to its public support. On the other hand, said Sir Douglas, the Māori seats had made certain the Māori voice was heard. This voice was now concentrated in the Māori Party, rather than being spread around other parties in smaller disparate groups but “if the Māori Party disappears – which I don’t think will happen but it might – there is perhaps greater justification for retention”. However, “what is critical is that Māori are involved in the electoral process and their views are being considered. It is certainly a great safety valve that this is so.” Without the Māori dimension being properly represented, tensions would inevitably have

arisen leading to possible civil unrest.

Progress on Treaty grievance claims had provided a sound economic base for iwi. This in turn had led to greater political influence, protection of Te Reo, the flourishing of Kapa haka in schools and “the inherent respect which Māori and non-Māori have for each other.” There was still some tension but, whenever put to the test, as over Bastion Point, Māori had “shown remarkable generosity of spirit”.

Some Māori academics had advocated a different parliamentary structure to better recognise the “partnership” under the Treaty of Waitangi, said Sir Douglas. While the Treaty had created reciprocal duties, similar to partners in a partnership, this had never meant joint government. Furthermore, “unless it can be shown that the Parliament is not respecting tino rangatiratanga in some way, it is hard to see anything better than the present state of affairs, including the costly alternative of a second House. A Māori House making laws for Māori seems unlikely to gain acceptance.” Unlike the First Nation reservations in Canada or the semi-sovereign Indian reservations in the USA where the residents chose whether to live there or not, New Zealand had few, if any, regions where a Māori writ of authority could apply. “We all live together and most Māori are now urbanised.”

In conclusion he said: “We should be grateful we are able to debate these important issues, which are quite sensitive, calmly, rationally, constructively and sensibly, showing courtesy and respect to opposing viewpoints.”

Bill Williams



Sir Douglas Graham

Property rights versus sustainability?

An international conference on “Property rights and sustainability” was held at The University of Auckland from 16-18 April 2009 to mark the tenth anniversary of the New Zealand Centre for Environmental Law (NZCEL). Hosted by the Faculty of Law and NZCEL, the conference brought together 150 leading academics, judges, government officials, policy analysts and practitioners from New Zealand, Australia, the United States, Canada, Britain and Germany. More than 50 papers examined present and future property rights within the context of sustainable development.

The aim of the conference was to create a forum for debate about how property rights can evolve to better meet the objectives of sustainability. As human pressure on ecological systems grows, tensions between individual entitlements and collective responsibilities are forcefully felt, both in New Zealand and globally. Current discussions about climate change, water management, soils and the protection of marine ecosystems all demonstrate that there are crucial decisions to be made regarding ecological integrity, human security and economic prosperity.

In the NZ context, perceived conflicts between individual entitlements and collective responsibilities are evident both in the context of privately owned resources (eg land) and common resources (eg water). In the case of private land, for example, requirements to avoid certain land uses, curb pollution or protect biodiversity can be met with claims that property rights are being violated and compensation is required. To what extent are these claims legitimate? To what extent do they reflect an historic understanding of property rights that gave land-owners the freedom to exploit the land and no responsibilities to protect the ecosystems of which it is a part? In the instance of water management, should water permits be treated as property rights to support investment in irrigation and hydro development? Or should they be treated as a special privilege, subject to responsibilities to protect ecological systems, non-commercial values and the collective interests of all New Zealanders?

In NZ, our ability to resolve such issues is often constrained by a reluctance to openly debate the extent to which property rights can and should evolve in response to a changing ecological, social and economic contexts. In part, this reluctance reflects fears of economic disadvantage relative to public benefit and concern to preserve dominant forms of economic growth and wealth creation. However, it also reflects uncertainty about the degree to which conventional legal theory can change to embrace a growing awareness that human prosperity depends upon healthy and resilient ecosystems and respect of collective well-being. With these issues in mind, the conference speakers addressed both how sustainability objectives can be met in a manner that is “fair and just” and what our sources are for pushing the boundaries of legal theory. The second of these tasks requires, in the words of the ecologist Aldo Leopold, the unleashing of an intellectual (and emotional) process that requires us to “quit thinking about decent land-use as solely an economic problem. Examine each question in terms of what is ethically and aesthetically right, as well as economically expedient. A thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise.”

This conference was held at a particularly opportune time. Proposed reforms of the Resource Management Act 1991 and changes to energy policy are creating a political context in which New Zealanders are being asked to prioritise economic growth over



environmental protection as a response to the global economic crisis and infrastructure needs. This framing of the issues overlooks the view that long-term economic and social prosperity will be eroded by compromising environmental objectives. While changes to the RMA, and energy policy will be of immediate relevance, broader issues concerning water management, housing affordability, urban intensification, soil protection and coastal management will soon demand our attention. Lifting our sights to another level, recognition of Māori rangatiratanga over natural resources may provide NZ with a unique opportunity to search for balance between conventional rights-based approaches and acknowledgement of responsibilities for the long term benefit of all. As Pita Sharples recently commented in relation to water management: “Rangatiratanga is asserted through the collective exercise of responsibilities – to protect, to conserve, to augment and to enhance over time for the security of future generations.”

The proceedings of the conference will be published in early 2010.

Klaus Bosselmann

Alumni news in brief

The Bench

Auckland High Court Judge Hon Justice **Helen Winkelmann** (BA/LLB 1987) has been appointed Chief High Court Judge to replace Hon Justice **Anthony Randerson** (LLB(Hons) 1972) when he joins the bench of the Court of Appeal next year. Justice Randerson's appointment as a Judge of the Court of Appeal will take effect from 1 February 2010, when Justice Winkelmann's appointment as Chief High Court Judge will also take effect.

Justice Randerson has been Chief High Court Judge since December 2004, and a Judge of the High Court since 1997. He graduated from The University of Auckland with an LLB (Hons) in 1972. He practised with Wallace McLean Bawden & Partners, which later became Kensington Swan. Justice Randerson left the firm for the independent bar in 1989 and was appointed Queen's Counsel in 1996.

Justice Winkelmann will be only the second woman to head the High Court. The current Chief Justice, Dame Sian Elias, headed the High Court until the establishment of the Supreme Court in 2004. Justice Winkelmann has been a Judge of the High Court since 2004. A graduate of The University of Auckland, she was a partner with Phillips Fox for a number of years before commencing practice at the independent bar in 2001.

Academia



Dr Ngaire Woods (BA/LLB 1987) was presented with a Distinguished Alumni Award by the Vice-Chancellor, Professor Stuart McCutcheon, at the Reform Club in London on 16 March 2009. Dr Woods gained a BA in economics, as well as an LLB (Hons), at Auckland before going on to the University of Oxford to complete Master of Philosophy in International Relations and later a DPhil. Now a Professor of International Political Economy at Oxford and Director of the Global Economic

Governance Programme (based in University College) she is one of the world's leading experts on global economic governance.

At the ceremony, Professor David Williams of Auckland Law School gave the citation. He taught Ngaire at Auckland and was a Visiting Fellow at Oxford's Exeter College in early 2009. "The early 1980s had seen the enrolment at Auckland of a significant number of young women as law students," said David. "Women students were no longer conspicuous purely because of their rarity. Nevertheless, there was one truly outstanding woman student from that period whom it was my great pleasure to know - Ngaire Woods. She was a multi-talented person with a passion for economics as well as law. I was delighted to encourage her in applying for the Rhodes Scholarship that was awarded to her in 1986." Hers was an academic career "of stellar contributions". She was also passionate about the necessity for economic institutions to serve the needs of the majority of the world's population, and concerned to raise the quality of debate and discussion on global economics in the general population. "To that end, she has been the presenter of more than one series of public policy debates on Radio 4 and on BBC2 television. She is an adviser to the British Prime Minister on international economic affairs." The University of Auckland had already honoured Ngaire with the award of one of the first Hood Fellowships in 2005.

Practice

■ **Chloe Barker** (BSc/LLB 2003) writes: "After graduation I headed to Rarotonga where I was admitted to the High Court of the Cook Islands and spent two and a half years practising in paradise! I worked for Browne Gibson Harvey PC and had a great range of work. The Cooks are amazing - I loved the people and the culture. After I left Raro I travelled for six months - highlights were Mongolia, Egypt, Peru and Cuba. Back in New Zealand I worked for a commercial team at Duncan Cotterill. At the end of last year I headed to Africa for four months. I was lucky enough to attend a UN International Criminal Tribunal for Rwanda hearing in Arusha, Tanzania. The time in Africa was intense but vividly alive. I met the little girl who I have been sponsoring in Uganda which was amazing. I've been back in New Zealand since January, working at Baldwins Intellectual Property, seconded on a part-time basis to 42 Below. This year I also started part-time postgraduate study at The University of Auckland in forensic science which has been really interesting - a great crossover of the legal and scientific fields. I'm hoping to continue this next year."

■ **Aditya Basur** (BA/LLB (Hons) 2006) has spent the last two years in the middle of the global financial crisis in Dubai, where he works as a corporate and investment funds lawyer practising Cayman Islands law at Maples & Calder. His work involves advising on Shari'a-compliant and conventional investment funds and some Islamic finance lending arrangements, as well as general corporate advice. In his spare time



Aditya finds that his social life interferes with following Scott Optican's weight-loss regime, tries to write for a few news websites, and does his best to see the region. Aditya spent part of September this year at the Kamala Nayan Society, a non-governmental organisation in New Delhi which attempts to teach children living in slums basic Maths and English. For many of their parents, even the heavily subsidised government schools are not financially viable options. Improving his broken Hindi through the children's interrogations and sweeping floors and alleyways clean of garbage and cigarette-butts made quite a change from reviewing documents. Aditya's firm kindly provided several stuffed turtles - symbolic of the breed native to the Cayman Islands - to distribute to the children at the Society. As the photo shows, they were very popular.

■ **William Gunson** (BA/LLB(Hons) 2008) has recently moved to Paris, to teach English at the Sorbonne and complete a further degree in French. This prestigious university, also known as Paris IV, is one of the

oldest in Europe and has been housed in the Latin Quarter since the Middle Ages. In August, he and Elizabeth Cook (BA/LLB 2008) became engaged to be married and, for at least the next European academic year, they will be living in the 5th arrondissement in Paris. Both William and Elizabeth studied Law and Arts at Auckland and were admitted to the Bar in 2008. William was a solicitor with Russell McVeagh in the litigation team, before returning to university and then moving to France. Elizabeth specialised in Classical Studies and also worked with well-known antiques dealer John Stephens, before moving offshore. William writes: "The pace of life here in France is somewhat different to that in New Zealand. The French are also used to living on top of one another, with shops piled up against houses in narrow streets, right next to the wide boulevards of main-street Paris. The Sorbonne buildings themselves are famous for a distinctive tower with a copper observatory on top, and the chapel with its classical dome. Yet in true European style, these landmarks are packed in amongst crowded student bars and seven-storey bookshops. Anyone passing through France is welcome to make contact, via williamgunson@gmail.com"



William Gunson and Elizabeth Cook on the Pont Louis-Philippe.

■ Twin brothers **Citizen Iosefa-Tamatimu** and **Wellington Iosefa-Tamatimu** graduated BCom/LLB in May 2009. Citizen and Wellington, whose parents are Samoan, went through the University's MATES (Mentoring and Tutoring Education Scheme) while at Kelston Boys' High School. MATES has been offered in selected secondary schools in Auckland since 2002, working with Year 12-13 students identified by their schools as "having the potential to succeed in tertiary education". It matches them with successful university students to foster academic achievement, raise aspirations and enhance self-confidence through mentoring and tutoring. The pair were assisted financially by a Chancellor's Award for top Māori and Pacific scholars. While at university they in turn mentored MATES students at Kelston and two other schools. They are working in the tax department of different accounting firms and completed their accounting professionals in August.

■ Since graduating from Harvard Law School in June 2008 with her LLM, **Vicki McCall** (BA/LLB(Hons) 2005) has been working for a New York law firm, Cravath, Swaine & Moore LLP. As an associate for a senior litigation partner, Vicki has worked primarily on the case *In re Vivendi Securities Litigation*. That case, a so-called "foreign-cubed" class action lawsuit (so-called because the case involves foreign plaintiffs who purchased shares of a foreign company on a foreign securities exchange), is one of the largest securities class actions ever to go to trial. The plaintiffs purchased shares in Vivendi Universal, SA, a French company that owned Universal Studios, Seagram, and today still owns Universal Music (one of the world's largest recording labels), during

a period between 2000 and 2002. The lawsuit was filed in the latter half of 2002. Trial began on 5 October 2009 and is projected to last at least four months.

■ **Peter Marshall** (BSc/LLB(Hons) 2008) is currently finishing his clerkship for the Court of Appeal and will work at the Law Commission for a while before heading overseas for his LLM. He has had an article recently cited by the Court of Appeal in one of its Evidence Act cases.

■ **Sally Morris** (BA/LLB(Hons) 2006), who just finished her LLM at Columbia Law School, is back working as a junior doing international arbitration work for David Williams QC. She passed the New York bar examinations.

■ **Paul Paterson** (BA/LLB(Hons) 2006) recently joined the New York law firm Paul, Weiss, Rifkind, Wharton & Garrison LLP as a Litigation Associate. After graduation, Paul was an Associate at Gilbert Walker until August 2008, when he left to pursue an LLM at Harvard Law School, funded by a Frank Knox Memorial Fellowship, a William Georgetti Scholarship, and a Spencer Mason Travelling Scholarship. He graduated from Harvard in June and sat and passed the New York bar exam at the end of July 2009.

Paul found his time at Harvard to be very interesting and enjoyable, both academically and socially. He was accepted into two intensive clinical workshops in negotiation and trial advocacy – both of which Associate Professor Scott Optican also took while studying at Harvard. The trial advocacy workshop, which was taught for seven hours a day over a three-week period in the winter, involved more than 50 professors, visiting lawyers and judges and culminated in two mock trials in federal and state courthouses in Boston. Paul also took two constitutional law classes taught by Professor Martha Minow – now the Dean of Harvard Law School – and an intensive administrative law class with Professor Cass Sunstein, a prominent scholar who is currently heading the Office of Information and Regulatory Affairs for President Obama's administration. In both those and other courses and activities, Paul made strong friendships with lawyers from countries such as Austria, England, France, Israel, Scotland, and the United States, some of whom he is now working with in New York – not to mention meeting his fiancée, a young corporate lawyer from Venezuela, who was also part of the LLM programme.

■ **Ed Scorgie** (BA/LLB(Hons) 2000), who has just come back from Cambridge where he topped his LLM class, has now gone back to work at Chapman Tripp.

■ **John Seong Lee** (**Lee Seong-uk**) (BA 2002, LLB 2002) is a member of the newly established New Zealand Chamber of Commerce in Korea called Kiwi Chamber – see www.kiwichamber.com. John is a foreign legal counsel at Kim & Min law firm, and he is also a member of the bar in New South Wales and New York.

■ **Jesse Wilson** (BA/LLB(Hons) 2005), who has just returned from finishing his LLM at Stanford in corporate governance (he is the first Auckland LLB graduate to do so), is now back working for Bell Gully.

Postgraduate study

■ **Sarah Cahill**, who has a BA in Political Studies and an LLB(Hons), is off to New York University to undertake an LLM. She won a Hauser Global Scholarship which provides full tuition plus a US\$20,000 living stipend.

After finishing her law studies in Auckland she spent two years in Wellington as Clerk to the Hon Justice Terence Arnold at the Court



Cat Fleming, Claire Nielsen and Sarah Cahill

of Appeal. Since January this year she has worked as an Associate at Gilbert Walker in Auckland.

She is excited about the opportunity to study in a US university “where the course offerings are vast, the professors renowned and the students motivated to get the most they can out of their studies. Even the competition to get into courses (a three-round bidding system where students are given a number of points to bid for places in coveted courses) is unlike anything you get the chance to experience in a New Zealand law school.”

■ **Kenneth Chan** gained scholarships for a prestigious international criminal law programme in the Netherlands. In September 2009 he started an LLM (adv.) in public international law at Leiden University, specialising in international criminal law. It is an intensive, high-level postgraduate programme intended for those already working in international organisations, governmental institutions or in academia. Many classes will be held at the world famous Grotius Centre for Public International Law in the Hague, with several lectures to be held on site at the Peace Palace (which houses the renowned Peace Palace library and the International Court of Justice).

After taking the last couple of papers of his Auckland law degree on exchange at the University of Copenhagen, Kenneth graduated LLB(Hons)/BProp in absentia in August. Before starting at Leiden, he spent the European summer backpacking across Eastern Europe and the Balkans.

He is attending Leiden on two scholarships: an HSP Huygens Scholarship awarded by the Dutch government, and a Spencer Mason Travelling Scholarship in Law. The prestigious HSP Huygens Scholarship is open to excellent students from across the world, attracting around 2,000 applicants each year.

Kenneth is interested in working with victims of atrocity, and helping to develop the jurisprudence used to punish those who would commit war crimes. “International criminal justice is – and will continue to be – a vital tool for negotiating peace in the world, and mitigating the suffering of those in it. Bearing this in mind, I hope to use the opportunities provided at The Hague to pursue a career as an international criminal prosecutor, or as a legal adviser in an international NGO such as Human Rights Watch.”

Kenneth praises the strength and academic diversity of the Auckland Law Faculty. “In particular, the guidance offered by Professor Rick Bigwood, Kevin Heller and Treasa Dunworth has proven consistently invaluable. “It has been a genuine pleasure,” says Kenneth, to have his legal interests fostered in Auckland Law School’s “unique academic environment, where personal and professional growth comes second to none. Amongst other highlights, studying law at Auckland has already given me the chance to take up a significant international law research

fellowship at the Australian National University, and to have my dissertation published in a major international legal journal in 2010.”

■ **Cat Fleming** (BA/LLB(Hons) 2008) will be studying for a BCL at Oxford University with the assistance of a Spencer Mason Travelling Scholarship. After graduating BA/LLB(Hons) from Auckland she worked as a Judge’s Clerk at the Court of Appeal in Wellington, where she co-founded the Law in Schools Project. She has been employed as a solicitor at Bell Gully in Auckland.

■ **Blair Keown** (BCom/LLB(Hons) 2006) has been awarded a distinction in the BCL, as well as the Clifford Chance prize for the highest mark in the civil procedure course at Oxford.

■ **Eesvan Krishnan** (BCom/LLB(Hons) 2006), a Rhodes Scholar, is about to get his Masters from Oxford and then matriculate to the DPhil. As part of his research, he will travel to India next year and stay there for almost a full year doing work in and on their legal system.

■ **Lauren Lindsay** (BSc/LLB(Hons) 2007) has completed her LLM at the European Institute in Florence. She writes:



“I didn’t quite do things the usual way at university. I remember waking up one morning in my third year and wondering what the hell I was doing studying commerce. Shortly after, over the course of a morning, I inquired about the BSc, informed the BCom people what I was doing, selected four stage one science papers and switched to an LLB/BSc conjoint, majoring in Biology. It wasn’t easy. It meant a sixth year of study at university; a year which demanded that I write a dissertation, take six stage three science papers, work and complete professionals.

“The theme of my life so far has been to make less mainstream choices. I was invited to join Bankside Chambers in Auckland as an independent barrister towards the end of 2006, a few months after being admitted to the bar. Although the prospect of running my own business as such a young and inexperienced lawyer frightened me, I went for it. What a dream: to be 25 years old, choosing your working hours and collaborating with top-class barristers on cases ranging from unconscionable conduct to family protection; international arbitration to employment disputes. I was fortunate to practise alongside wise, experienced and generous advocates. Such generosity extended beyond chambers to the New Zealand Bar Association. As the junior barrister representative my fellow Council members assisted me greatly, not just in the development of my craft but also the practical skills required for running your own business.

“I had always aspired to complete an LLM. And I got to the point where I wanted to attend an institution which would enable me to blend genetics and law. Enter Treasa Dunworth with the question of a lifetime: have you heard of the European University Institute in Florence? Fast forward 12 months. I sat in the cloister of the Badia Fiesolana, the 9th century church which constitutes the heart of the EUI, in the Tuscan countryside, overlooking the birthplace of the Renaissance. I had made it into the LLM programme in Comparative,

European and International Law at the EUI! The EUI is a postgraduate only institution with four faculties: History, Law, Political Science and Economics. The EUI adopts English as its working language but requires that every student speak at least two languages (I grew up in Port Vila, Vanuatu and completed a high school exchange to Spain so spoke French and Spanish). The law faculty is the sole faculty to offer a masters programme. As a research degree, the LLM saw me combine genetics and the law in a 30,000-word paper. My research explored the genetic testing of children in New Zealand examining the limitation of a parent's authority to consent to a genetic test on behalf of their child, when the child is deemed incapable of providing consent. In short, I inquired whether the traditional best interests should remain the legal formula regulating the provision of consent or whether an alternative formulation based upon 'benefit' should be adopted. From both an academic and personal perspective, it was a wonderful year. I lived in the historical centre of Florence, surrounded by the breathtaking beauty of Brunelleschi's Duomo, the white marble of Santa Croce and Michelangelo's David. I learned Italian through the integrated language school of the university, mixed with the PhD students at the EUI and discovered that I was capable of devoting 12 months to one project.

"Having completed my LLM I am not sure where the next few years will take me. For now, I am off to France – initially to do some grape picking, ultimately to secure full-time employment as a lawyer. A year at the EUI has only confirmed how many diverse opportunities there are out there for someone to take the road less travelled. I hope to keep seizing them."

■ **Claire Nielsen**, BA/LLB(Hons 2007), is embarking on a PhD in law at the University of Cambridge. She has been awarded a W.M. Tapp Studentship in Law from Gonville and Caius College and a Spencer Mason Travelling Scholarship in Law.

Previously a Judge's Clerk at the Auckland High Court and, in 2007 and 2008, a Public Law tutor in the Auckland Law Faculty she has been working as a research assistant in the faculty.

Claire is excited to be able to "take the excellent legal education I have received in New Zealand and to test it and gain fresh perspectives at a leading international university. Cambridge is the ideal place for me to do this with its world-leading reputation in international law, excellent faculty and proximity to Europe where many of the

international institutions I will be studying are based. Also having a background in history, I am looking forward to experiencing the rich history of Cambridge and to studying at an institution with such a long and illustrious past."

■ **Sunita Patel** (BCom/LLB(Hons) 2007) has won a prestigious William Georgetti Scholarship, worth \$45,000, to undertake an LLM at the New York University Faculty of Law. Her study will focus on public international law and the law of armed conflict in particular.

Sunita won a Senior Prize in Law. She wrote her honours dissertation on "Superior orders and detainee abuse in Iraq", receiving an A plus grade and having her paper published in the *New Zealand Yearbook of International Law*. Since 2007 Sunita has worked in the litigation department of Chapman Tripp in Auckland while also providing research assistance to the Auckland Faculty of Law. She is a volunteer solicitor at the Glenfield and Otara Citizens' Advice Bureaux.

In her masters at NYU she wants to explore further the themes she encountered in research for her dissertation. "I am particularly interested in examining the interaction between the way members of the armed forces are educated in the law of armed conflict, how those rules are applied in practice and whether there is consistency in the way soldiers are held accountable for breaches in international criminal law or at the domestic level."

■ **Iva Rosic** (LLB(Hons) 2003) graduated in her LLM from Cambridge with first class honours.

■ **Guy Sinclair** has won a Fulbright New Zealand General Graduate Award to study at New York University. There he will take a Doctor of Juridical Science (JSD) degree in public international law. Guy was one of five New Zealanders to receive the award, valued at US\$25,000 (plus travel expenses and insurance), for 2009. Along with two other Kiwis he also gained a Sir Wallace Rowling Memorial Award, worth \$2,500, to undertake an internship in Washington DC.

He graduated BA/LLB(Hons) from Auckland in 1999, and with an LLM in international and constitutional law subjects in 2008. He worked in London as a paralegal at Freshfields Bruckhaus Deringer and did a training contract (Articles) at Baker & McKenzie, also in London, from 2000-2002. Since then he has worked as a solicitor and senior solicitor in the business services (corporate and commercial) team at Buddle Findlay in Auckland, as legal adviser at Unitec, and as Corporate



Kerry Tetzlaff



Counsel New Zealand at Goodman Fielder.

Guy is "delighted" to be granted a prestigious Fulbright Graduate Award. "The international law faculty at NYU is unparalleled," he says. "It includes New Zealanders Benedict Kingsbury and Jeremy Waldron, who are leaders in their fields, and other prominent international law academics such as Joseph Weiler and Robert Howse." His thesis will examine the constitutional powers of international organisations, and their expansion through informal reform processes.

■ After a ten-month stint as a visiting researcher at the European University Institute (Florence, Italy) and teaching at the Universities of Cambridge (International Environmental Law) and Trier (English Contract Law and the English Legal System), **Kerry Tetzlaff** (BA/LLB 1998) moved to Boston at the end of January 2009 to spend six months

as a visiting researcher at Harvard Law School, while completing her Cambridge PhD in International Fisheries Law.

While in Boston, Kerry was invited to give a presentation on her research at HLS as well as guest lecture at Northeastern School of Law. She also managed to sample a diverse array of east coast culture including Cape Cod, Martha's Vineyard, New York, Newport, and New Hampshire.

Two months into her stay at Harvard, Kerry was invited to give a keynote speech and presentation at a conference on high seas fisheries in the Cook Islands. She was also invited to present her research at the Scandinavian Institute of Maritime Law, the University of Bergen Faculty of Law and the University of Cambridge (Darwin College). Kerry continued her annual contribution to the *Yearbook of International Environmental Law* in 2009, writing chapters on Oceania, France, the Indian Ocean Commission and the United Nations Environment Programme. In addition, one of her articles was included in the 2009 Philip C Jessup International Law Moot Court Competition Materials.

Faculty publications

Rick Bigwood

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Klaus Bosselmann

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"New Zealand Nature Protection Law", Ch 8.7, in Anker, Olsen and Ronne (eds), *Legal Systems and Wind Energy Law – A Comparative Perspective*, 2008, DJOF Publishing, Copenhagen, 201-204.

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Julia Tolmie

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the Interests of Indigenous Women" (2008) 41(1) *Australian and New Zealand Journal of Criminology* 138-161.

Nin Tomas

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DRL 1942-2005

"This year Auckland like me has had an Indian summer. I can see through my windows that the elm trees are shedding their leaves and that the ivy on the barn has reddened and will soon disappear. If I see its leaves green again I shall be very happy."

David Lange, *My Life*, 2005.

You didn't.

Yet weeks ahead
in Ward One
at Middlemore
you were a cheerful lightning
to everyone who called
or ministered to you.

Words, when little else
would function quite
to plan, your words, your sorceries
entranced us
with their ripe-
throated rhythms,
bits of Old
Bible and sheer hilarity
thrown in.

That great big heart
and some other parts
could not keep pace.
Buckled. Yet still
you shared the insights
 made jokes
right up to near-
finite.

* * *

Then only
a stone's throw from
places where you had
thrilled us, castigating
super powers,
 a calm padre
at Grey Street Uniting
helped the nation
say goodbye.

 And all seemed
Ordinary at Onehunga
Til that choir
Of Rarotongan ladies
in boaters
sang you off.

 The hard cases
Among us choked up
And joined the rest
In tears, or came
Close.

 You went
in your own way
alone
in the black car
but at a slower speed
than you had travelled
in some sixty years;

 too sedately
for your spirit. Yet
just right for older Onehungans at their gates
coming to attention
as you passed,
without your wave
this time
and sudden shift
up
into overdrive.

Bernard Brown

The Postgraduate programme

The Faculty's LLM programme, offered in conjunction with the Department of Commercial Law, has had record enrolments in 2009. Many of its courses were fully subscribed (there is a maximum of 30 in each course). Visiting professors from abroad have included Judge Weeramantry, Ian Fletcher (University College London), Ellis Ferran (Cambridge), Richard Nolan (Cambridge), Martin Matthews (Oxford), Mindy Chen-Wishart (Oxford), Geoffrey Samuel (Kent), Simone Borg (Malta), Donald Donovan (US attorney and New York University, teaching with David Williams QC), David Duff (Toronto), Andrew Simester (National University of Singapore), Andrew Terry (New South Wales), and George Barker (Australian National University).

In the 2009 Budget, the Government announced the withdrawal of the long-running exchange arrangements with France and Germany whereby students from each country could enrol in tertiary studies on the same footing as domestic students. This scheme had attracted a lot of German students to the postgraduate programme, approximately one third of enrolments, and some French students as well. It is anticipated that this important change will commence to be felt by mid-2010. While the Faculty is receiving increasing interest in its programme from Scandinavian students and will continue to market it strongly abroad, it will be necessary to attract more enrolments from Auckland and the rest of New Zealand.

The raft of courses that is being offered for 2010 is not much smaller than for 2009, and includes the same range of attractive offerings from high-profile teachers from abroad and Auckland's full-time staff. Among the overseas institutions from which we have drawn for 2010 are the London School of Economics, Durham, Oxford, Utrecht, Virginia, Illinois, Western Ontario, and Sydney. The table that follows is grouped by the three specialisms available in the LLM degree, but it is possible to select courses from any group. Owing to some late cancellations by proposed teachers, it is expected that one or two more courses will yet be offered that are not listed in the table below. Any additions will be notified on the website: www.law.auckland.ac.nz. Where no institutional allegiance is shown in the table, the teacher is from The University of Auckland.



Karena Lyons

For further information, inquiries should be directed to Jeanna Marshall (Acting Postgraduate Manager; jd.marshall@auckland.ac.nz) or to Peter Watts (Associate Dean (Postgraduate); pg.watts@auckland.ac.nz).

COMMERCIAL LAW – Intensive Courses

Remedies for Breach of Contract

David Campbell (University of Durham)
February 2010

New Zealand's International Tax

Craig Elliffe
March 2010

International Sales and Finance

Michael Bridge (LSE)
March 2010

Law of Agency

Francis Reynolds QC (Oxford), Peter Watts
April 2010

Fraud and White Collar Crime

John Farrar
April 2010

Internet Governance

Lawrence Solum (Illinois)
June 2010

Restitution in Commercial Contexts

Jeff Berryman (Windsor)
June – July 2010

Corporate Governance

John Farrar, Susan Watson
July 2010

Taxation of Financial Instruments

Tim Edgar (Western Ontario)
July 2010

Concepts of Secured Transactions

Mike Gedye
August 2010

New Zealand's International Tax

Craig Elliffe
October 2010

Secured Transactions: Practical Issues

Mike Gedye
October 2010

COMMERCIAL LAW – Semester Courses

Commercial Leases

David Grinlinton

Selected Aspects of Intellectual Property

Paul Sumpter

Franchising Law

Gehan Guneseckera

Voluntary Administration

Mike Josling

Contemporary Issues in Insolvency Law

Mike Josling

ENVIRONMENTAL LAW – Intensive Courses

Climate Change Law

Sanford Gaires (University of New Mexico)
June 2010

Law of the Sea

Fred Soons (Utrecht)
March 2010

Asian and Pacific Environmental Law

Ben Boer (Sydney)
April 2010

Corporate Environmental Governance

Ben Richardson (Osgoode Hall)
April 2010

ENVIRONMENTAL LAW – Semester Courses

International Environmental Law

Klaus Bosselmann

PUBLIC LAW – Intensive Courses

Comparative Human Rights Law: Civil and Political Rights in the US and NZ

Jim Ryan (Virginia)
March 2010

Human Rights in Education Law and Policy: US and NZ Perspectives

Jim Ryan (Virginia)
March – April 2010

Prosecuting in the 21st Century: Ethical Conduct and Effective Advocacy

Rob Frater (SGC, Ottawa), Simon Mount
August 2010

Local Government Law

Ken Palmer
August 2010

PUBLIC LAW – Semester Courses

Employment Law

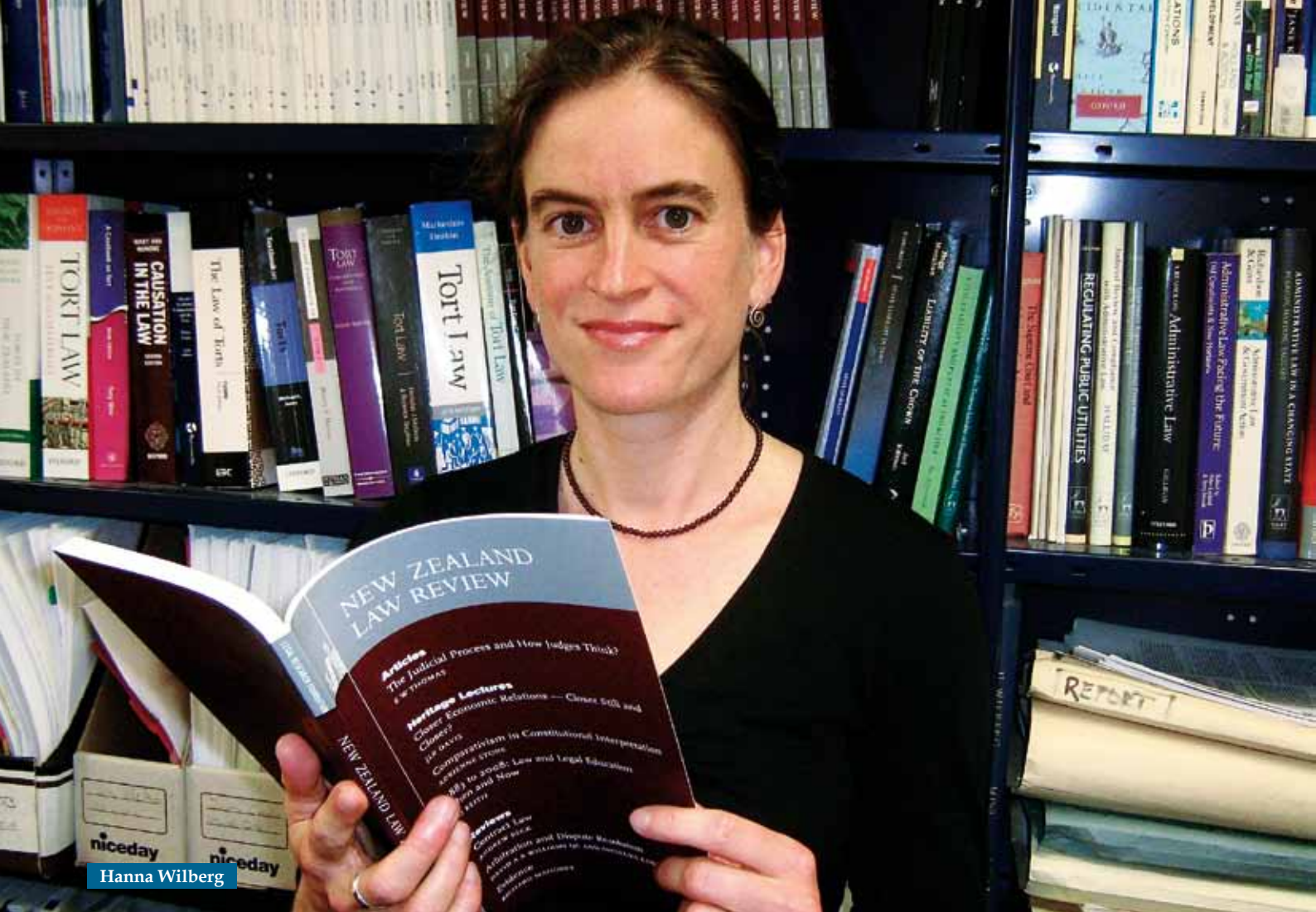
Bill Hodge

Criminal Law and Policy

Warren Brookbanks

Public International Law

Caroline Foster



Hanna Wilberg

New Zealand Law Review: the first 20 years

In 1989 the Legal Research Foundation established the *New Zealand Law Review*, then called *NZ Recent Law Review* to reflect that it was a revision – albeit a radical one – of the Foundation’s flagship monthly publication *Recent Law*. That publication, superbly edited and organised for many years by Associate Professor Ken Palmer, had been extremely successful in providing synopses and commentary on recent cases. But the move in 1989 to a different type of journal reflected the then-emerging world of legal publications at the dawn of the computer era. The field of updates and brief commentary, felt the Foundation, was best left for other, more commercial, publishers. The Foundation’s contribution would lie in adding the sort of value that reflected its own objectives: legal scholarship and analysis. So a new style of *Recent Law Review* was welcomed into the world, the first issue containing a preface by (as he was then) Sir Robin Cooke. The new review would be quarterly, would have a biennial cycle of commentary on most of the main subject areas of law, and also carry scholarly articles of a significant length.

Ron Paterson, who as a Legal Research Foundation member had led the process of deciding the journal’s future, became its first editor. From the beginning the journal was a tremendous success, both financially and in the reception it gained amongst its audience of lawyers, judges and academics both nationally and internationally. It soon began to attract submissions of articles, not only from New Zealand but also Australia.

In 1994 the word “recent” was dropped from the title to become

New Zealand Law Review. Throughout the 20 years since 1989 the editors of the *Review* have been drawn from the Auckland Law School, but the journal is, of course, a national journal. Specialist contributors for each subject area have, over the years, been drawn from all of the nation’s law schools as well as the Bar. First editor Ron Paterson was followed by Paul Rishworth, then Janet McLean, Tom Telfer, Grant Huscroft, Neil Campbell, Scott Optican, Rick Bigwood, and (currently) Chris Hare and Hanna Wilberg.

Compared to early years the *Review* now usually contains a higher proportion of articles (compared to subject matter reviews). A consequence of its excellent reputation is that it continues to attract a high calibre of submissions, enabling the editors (after the “blind” refereeing process) to select the very best. In recent years a trend has been to publish some of the best articles arising out of LRF seminars, when they are not to be published in book form (as has been the practice with the biennial “Legal Method” series of conferences held since 2001).

The *New Zealand Law Review* is available internationally on several electronic databases. It was especially pleasing to the Foundation that, in the recent journal ranking exercise undertaken by the Australian Research Council the *New Zealand Law Review* was one of only two New Zealand law journals to rank A* – that is, in the top 5 percent of journals worldwide. (The other New Zealand journal was the *New Zealand Universities Law Review*.) This ranking reflects a variety of factors including the calibre of the editorial board and team, citation rates, the refereeing process, and the strength of the articles published over the years.

The Law School greatly values its close association with the Legal Research Foundation, which was founded more than 40 years ago by former Dean Jack Northey as a collaboration between the Law School, judiciary and profession. And it is pleased to have been involved in producing the *New Zealand Law Review* these past 20 years.

Paul Rishworth

History brings personalities to life

Professor Brian Coote's history of the Auckland Law School, *Learned in the Law*, was launched on 30 March amid plaudits for the institution as well as for the book itself.

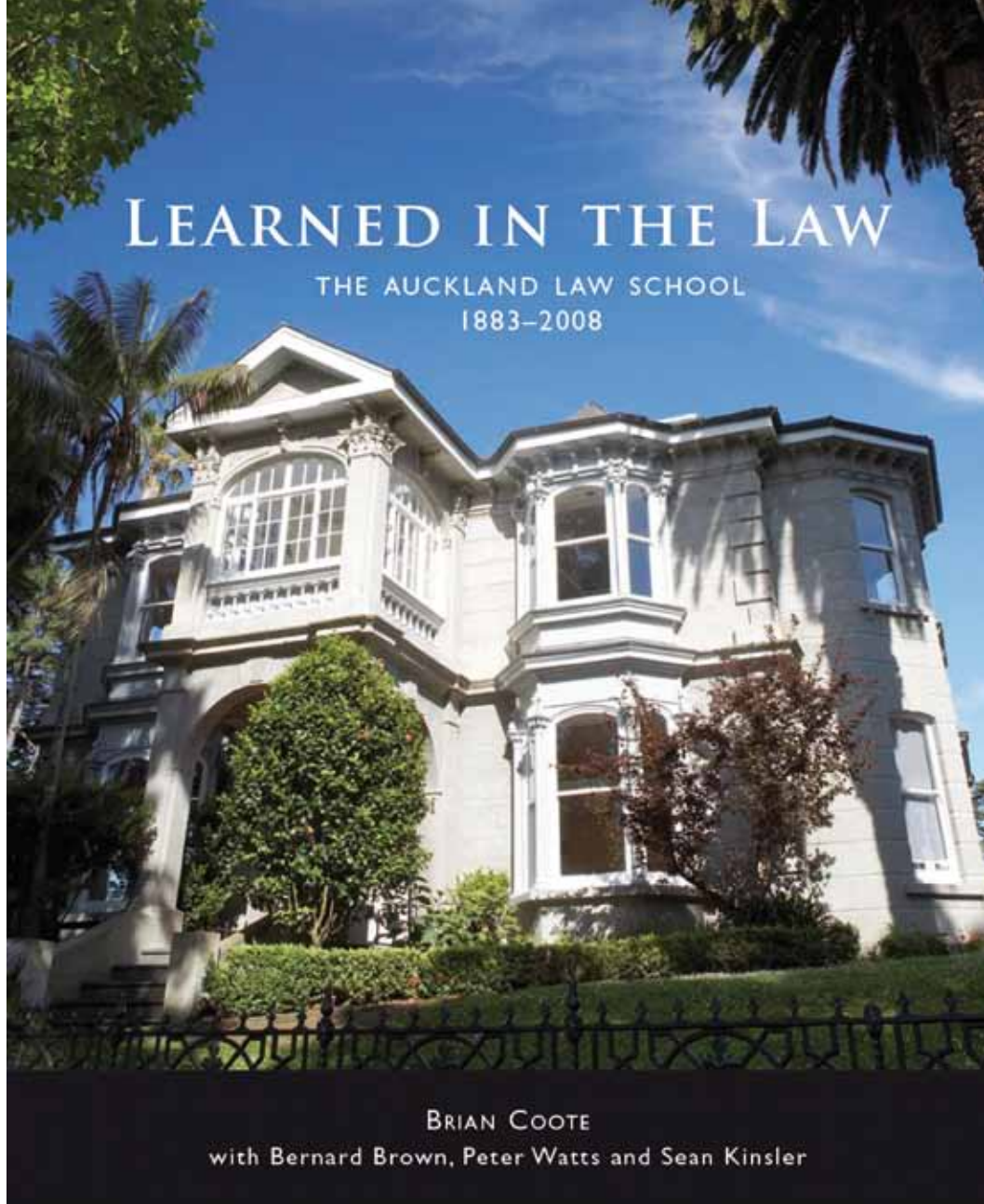
In performing the honours Justice Grant Hammond, a former Dean, said it was hard to think of any significant legal initiative in New Zealand "which has not in some way been distinctly marked by the devoted efforts of the Auckland Law Faculty". Mentioning, in particular, law reform and efforts to establish a system of judicial review, Justice Hammond said "the contribution to public life by so many graduates of the Law School" had not been sufficiently recognised. "On occasions such as this it is right to recall all the selfless work that has decidedly improved the law in this country and the lives of New Zealanders." The strength of the Law School had, he said, lain in its insistence that students be equipped both with the "intellectual techniques of law as a discipline in its own right" and with the law's ideals.

Justice Raynor Asher, President of the Legal Research Foundation which published the history, said it was essentially a book about people. It brought to life figures such as Ronald Algie, Julius Stone and A.G. Davis whom he had known only as names. He had also "learned a lot about heroes more familiar to us" such as Jack Northey. Brian Coote had, however, been "too modest" to feature his own contribution even though he had been "a central figure". Praising Brian Coote's "principled approach and absolute lack of compromise", Justice Asher said he still measured a contract problem by asking "What would Coote think?" adding: "You are still an example to us all."

"How proud we are in Auckland of our Law School," he said in conclusion, calling it "a wonderful institution with very high standards and academics of international quality", and "fundamental" to the way law is practised in New Zealand now and in the future.

In a brief address, read for him by Professor Peter Watts, Brian Coote began: "Mike Taggart persists in calling this book my 'memoir'. However, despite the physical appearances to the contrary, I have not, in fact, been round the Law School since 1883!"

Mike Taggart had asked him to write a history "and that's what I've tried to do. But, as is emphasised in both the foreword and the preface, it is not an 'official' history. Given the politics of the Law School, I'd have found it impossible to write one anyway. Nor is it a celebration of the multitudinous and multifarious achievements of individual members of staff or of our former students. I was asked to include lots of names, but my main concern was to tell stories and,



particularly from the 1960s on, there were just too many names to list in the text without disrupting the narrative." Accordingly, a great many had, instead, been listed in side bars and in Appendices B and C, said Brian. "These latter have not been included in the index. So, if you should fail to find your name in the index, then, as those of us who were law students before 1952 are wont to say, nil desperandum. It may well turn up in an appendix."

Brian expressed his gratitude to those who had loaned photographs and especially to Anna Hodge and her colleagues at Auckland University Press for all their help in bringing the book to publication.

Bill Williams



From left: Paul Rishworth, Richard Northey, Brian Coote, and Bruce Northey.

