

EDEN crescent

Faculty of Law Annual 2011



Auckland one of the top 20
law schools in the world

Chapman Tripp Chair in Corporate
and Commercial Law

Contents



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From the Dean



The Auckland Law School has had a very successful year. In July it was ranked one of the top 20 law schools in the world in the prestigious QS World University Rankings. This was the best result for any department or faculty in the University as well as being the best result of the six New Zealand law schools.

The breadth of the activities and achievements of members of the Law School are reflected in the pages of this magazine. Our staff include outstanding teachers

in all substantive areas of law. We have higher entry standards for our degrees than any other New Zealand law school. We offer the largest range of undergraduate courses and have the most extensive postgraduate programme. Law at Auckland is challenging, exciting, and taught by some of the best-known legal scholars in the country.

The challenge for the Law School will be to maintain and enhance this position in the face of increased competition from better resourced overseas law schools. The support of alumni and the profession will be critical in the years to come. The Law School will be holding functions for alumni during 2012, both within New Zealand and overseas, which I look forward to attending and having the opportunity to outline our vision for remaining amongst the world's leading law schools.

Auckland's mission includes being part of the international network of legal scholarship. Our staff publish in international journals and present their research at international conferences. This year we brought out 13 of the world's best scholars, from universities as diverse as Oxford, Vienna, Bergen, George Washington, and Virginia, to teach into our LLM programme and to take part in the life of the faculty. We hosted major visits, reported later in the magazine, by, among others, this year's Legal Research Foundation Visiting Scholar, Mark Elliott (from Cambridge) and this year's Cameron Fellow, Carol Rose (from Arizona and Yale). Tim Cameron's support of the latter fellowship is much appreciated, as is Greg Horton's ongoing support of the Law School, which will include assisting us develop our relations with some of the top law schools in Asia during 2012. We will be looking to put in place more staff exchanges, which will help inform us on overseas best practice and on curriculum development.

Last year's annual alumni appeal enabled the Law School to assist a top Honours student spend a semester at the Center for Transnational Legal Studies in London, where he was able to study alongside students from 20 other top law schools. This year's appeal aimed to build on this and to provide opportunities for several of our best students to spend a semester studying abroad. We have exchange agreements with some of the best universities in Britain, Europe, North America and Asia. Our study abroad programme has the largest uptake of any of the faculties and this year's appeal is designed to assist students who might not otherwise be able to take part. I thank all alumni who have given their support and also those who have made significant donations to various areas of the Law School's activities. This support has been critical to our success.

Our students epitomise Auckland's philosophy of academic rigour coupled with enthusiasm for the law. For the fifth consecutive year, Auckland has won the national mooted championships and our students will be representing New Zealand overseas. We have one of the most active and successful law student societies in the country, organising a wide range of competitions, seminars, workshops, social and sports events. The *Auckland University Law Review* continues

to be run by students and to publish outstanding student work. Two dozen Māori law students recently took part in this year's Haerenga, informing and enthusing large numbers of school pupils in the upper North Island. A dozen Pacific Island law students presented papers at the Law and Culture conference in Vanuatu. Some 180 of our students volunteered their time for the Equal Justice Project, providing free legal assistance in partnership with community groups and the legal profession.

Since arriving here in February, I have been struck by the enormous range of activities, the strength of the scholarship, and the vitality and energy of this Law School. The breadth and depth of what occurs are reflected in the pages of this magazine.

One of the most important developments this year has been the establishment of the Chapman Tripp Chair in Corporate and Commercial Law. This is the first time that a law firm has provided funding for a professorial chair in New Zealand and the significance of this gift cannot be overstated. The Faculty is most appreciative of Chapman Tripp's support for this position which will help ensure that Auckland remains a national and international leader in corporate and commercial law. We have now begun an international search for the Chapman Tripp Professor and have, at the same time, appointed two new lecturers in commercial law: Rohan Havelock and Marcus Roberts. We also look forward to welcoming Maya Mandery, who will be a lecturer here for the next two years.

We have been delighted to welcome Professor Janet McLean back to the Law School this year. Janet will be well known to many alumni, having taught here from 1991 to 1997 and again from 1999 to 2006. She has been Professor of Law and Governance at the University of Dundee for the last five years.

The Law School will be establishing a Centre for Human Rights Law, Policy and Practice in early 2012 and a Health, Law, Ethics and Policy Centre later that year. We are undertaking a review of the curriculum, including looking to establish a more formal and rigorous legal writing programme to match the very successful legal research courses, run by the staff of the Davis Law Library. I have enjoyed numerous discussions with judges and at law firms and barristers' chambers during the last six months and hearing feedback on the strengths of the Auckland law degree and suggestions of areas we could further develop. I look forward to meeting with more of the law firms next year and to developing closer partnerships between the Law School and the profession. We have strong ties with the judiciary, profession and alumni, and will be looking for ways to extend and enhance these during the next few years.

I would like to thank my colleagues, our students and the Law School's alumni for the very warm welcome you have given me. The Auckland Law School is in good heart, as is amply demonstrated in this magazine.

Dr Andrew Stockley
Dean of Law

Keep in Touch with the Law School

The Dean's Newsletter is sent out by email several times a year. This provides updates on news at the Law School and forthcoming alumni events. If we don't have your email and you would like to receive a copy, please contact g.vandrueten@auckland.ac.nz

One of the top twenty law schools in the world

The Auckland Law School was ranked 18th in the world in this year's QS World University Rankings.

It is estimated that there are about 10,000 universities in the world. Each year QS publishes its "top 700 universities" list. The University of Auckland is consistently ranked as one of the world's top 100 universities (this year being ranked 82nd), placing it in the top one percent worldwide. It is the only New Zealand university to be in the top 100.

This is the first year that the QS World University Rankings have included individual subjects. The Law Faculty's ranking as the 18th best in the world was the best result of any of the departments and faculties of the University. It is a signal achievement given that there are 200 law schools in the United States alone and thousands world-wide.

Auckland is in good company, with other top law schools including

Oxford, Cambridge, Harvard and Yale. Auckland was ahead of such major universities as Duke, Cornell, Georgetown, the National University of Singapore, King's College London, and University College London.

The QS rankings are based on academic reputation, employer reputation and citations per staff member. Global graduate employers identify for QS the universities that produce the best graduates, both overall and within a given discipline.

Dr Andrew Stockley, the Dean of Law, said: "We put a lot of effort into our teaching and research programmes and offer the largest range of courses of any law faculty in New Zealand. It is pleasing to have this international recognition that we are one of the best law schools in the world and it is a great tribute to the staff and students here."

Chapman Tripp Chair in Corporate and Commercial Law



An important milestone was marked earlier this year when the Dean of Law, Dr Andrew Stockley, and Chapman Tripp's Managing Partner, Andrew Poole (pictured), signed an agreement leading to the establishment of the Chapman Tripp Chair in Corporate and Commercial Law. There are similar chairs at Oxford and Cambridge and at many North American law schools but this is the first time that a New Zealand law firm has provided funding for a professorial chair.

The Dean noted that Chapman Tripp's support of this new position will help ensure that Auckland remains a national and international leader in corporate and commercial law. "Auckland is the natural centre of corporate and commercial practice and the Auckland Law School is determined to reflect this. We are increasing our profile in

corporate and commercial law and this Chair will greatly assist us in doing so."

The Faculty has considerable strengths in domestic and international commercial law. Professor Peter Watts is a world authority on company law, agency law, and the law of restitution. There are 18 other members of the faculty who teach and research one or another aspect of corporate and commercial law. The Faculty has significant research and teaching expertise in arbitration, banking law, equitable remedies, European commercial law, intellectual property, international trade law, maritime law, private international law, and tax law, and it publishes the *New Zealand Business Law Quarterly*.

The Law School offers a wide range of domestic and international commercial law papers in its undergraduate and postgraduate programmes. There are currently 22 such elective courses in the LLB programme, and 13 company and commercial law papers were offered in this year's LLM programme. As usual for the

Master of Laws programme, a number of these courses were taught by leading commercial law scholars from top overseas universities, whilst others are taught by local experts.

Chapman Tripp already gives considerable assistance to the Law School. In addition to teaching in the LLM programme, Matt Sumpter teaches Intellectual Property for the LLB. Nick Wells and others teach Commercial Transactions and are contributing a course in Iwi Corporate Governance, beginning next year. For a number of years Andrew Poole and Adam Ross have put on a very successful legal writing seminar for Law Honours students.

Chapman Tripp's Managing Partner, Andrew Poole, noted: "Chapman Tripp is committed to improving New Zealand's profile and

performance on the world stage. We see this opportunity as a way to make a tangible difference in an area of law where new thinking and application can have a direct impact on business growth." He added that the new Chapman Tripp Professor "will be uniquely placed to provide international-standard research to both the Law Faculty and wider community."

The Dean commented that he would be looking to the new professor to increase the profile of corporate and commercial law further, not just at the Auckland Law School but within the wider New Zealand business community.

New Zealand Centre for Human Rights Law



The New Zealand Centre for Human Rights Law, Policy and Practice will be established at the Law School in early 2012. The Centre will be directed by Kris Gledhill (pictured), a senior lecturer whose former London practice included human rights law and who now teaches a popular elective on International Human Rights Law. Kris says: "The establishment of the Centre reflects the fact that human rights law is both a significant area of law in its own right but also that it is becoming relevant in many other areas of law, including private and commercial law."

A variety of activities will be undertaken by the Centre, including both teaching and research in the area of human rights law. The focus on policy and practice will also allow the Centre to work with other departments and faculties at the University, as well as other universities and organisations, with an interest in human rights.

The Centre will liaise closely with the student-run Equal Justice Project to allow students to become involved with the practical face of human rights work. The Equal Justice Project was established at the

The establishment of the Centre reflects the fact that human rights law is both a significant area of law in its own right but also that it is becoming relevant in many other areas of law, including private and commercial law.

Auckland Law School in 2005 and this year involved 180 law school students in pro bono legal assistance provided in partnership with community groups and the legal profession. Projects with a human rights dimension included making submissions to the Human Rights Commission on behalf of the National Foundation for the Deaf, conducting research for the Human Rights Foundation and the Office of Human Rights Proceedings, making submissions to the Ministry of Justice and the United Nations Committee on the Rights of the Child, and helping with workshops, seminars and other human rights events.

Kris Gledhill comments: "If you look back to the history of the human rights movement, which can be traced back to the initial actions of the United Nations, New Zealand played a vital role in that. And the protection of fundamental rights in domestic law by having a Bill of Rights Act rather than a constitution is also a New Zealand invention. So there is a history of engagement and innovation on which to build." Alumni who have suggestions for the Centre should email Kris at k.gledhill@auckland.ac.nz

New appointments

Professor Janet McLean: Kuia returns to her turangawaewae



On 1 September Professor Janet McLean, a specialist in constitutional and administrative law, took up an appointment as Professor of Law in the Faculty. The Auckland Law School is Janet's turangawaewae. Friend and public law colleague, Professor Paul Rishworth, likes to refer to Janet as "kuia" to the Faculty. She taught at Auckland from 1991 to 1997 and again from 1999 to 2006, rising from lecturer to associate professor and serving for two years as Deputy Dean, before becoming Professor of Law and Governance at the University of Dundee. Janet will be remembered with affection by many of our readers.

Janet's husband, Professor Tim Mulgan, Professor of Moral and Political Philosophy at St

Andrews University, has also accepted an appointment at Auckland as Professor of Philosophy starting in 2012. Janet and Tim have just completed joint Visiting Fellowships at the prestigious Woodrow Wilson School of Public and International Affairs at Princeton University. "It was an environment in which different humanities disciplines were brought to bear on questions of law and government in a stimulating way - without losing disciplinary focus." Her previous visiting fellowships include The Australian National University (2001), the University of Dundee (2005) and the George P. Smith Distinguished Visiting Professor at Indiana University at Bloomington in 2003.

She teaches constitutional law, administrative law, legal method,

comparative human rights law and common law theory. She was voted Dundee Law School's best teacher for 2008-2009. She brings experience of the Scottish system, which she describes as "a unique subnational legal system which has always had its own private law and judicial system, and in which sovereignty is now shared between the Scottish Parliament, the United Kingdom Parliament and the European Union."

Our students will benefit immediately. In a recent email she stated herself to be "reading about the EU every evening these days!!!" - in preparation for teaching Auckland's first course in European Union Law in Summer School in January 2012.

Since leaving these shores in 2006, it seems that Janet has scarcely stood still. At the University of Dundee she served on the University's and Law School's Research Committees, and on the Law School management team. She ran the Law School's postgraduate programme. She is co-founder of the Centre for Freedom of Information, a collaboration between the Law School and the Scottish Information Commissioner, which established links with Scottish Government, the third sector and legal communities in Scotland.

Her current research straddles British and New Zealand public law issues. A book project entitled *Searching for the State in British Legal Thought* is nearing completion, and at the same time she is working on another, with Dame Alison Quentin-Baxter, about the personal roles of the Queen and the Governor-General in New Zealand's constitutional monarchy (funded by the New Zealand Law Foundation). While in Scotland she has continued to contribute articles on the New Zealand Bill of Rights and the Crown in the Treaty of Waitangi. Other published work includes human rights, the organisation of health services, the nature of the executive, privatisation, judicial review, and the effect of international law in domestic courts.

She has often acted as an adviser to the New Zealand government, serving on the Legislation Advisory Committee and on a ministerial inquiry into Human Rights Protection in New Zealand (2000). She has also contributed to the work of the World Health Organisation in the Western Pacific.

Janet says she is "delighted to be coming home to the dynamic New Zealand legal scene, and to wonderful colleagues and students at The University of Auckland".

Jo Manning

Marcus Roberts

Marcus Roberts joined the Auckland Law School in 2010. Marcus hails from Dannevirke in Hawkes Bay where his family is well represented in the legal profession. Marcus was educated at Wanganui Collegiate and then King's College, Auckland. He then enrolled for a conjoint degree in History and Law at The University of Auckland. Marcus regarded Law as a good fit with History and particularly appreciated the rigorous analytical training that a law degree provides.

After graduating with an LLB(Hons) in 2007, Marcus was invited to join Minter Ellison Rudd Watts, having taken a summer clerkship with the firm as an undergraduate. He initially practised tax, and then turned to insolvency litigation. After two years, Marcus felt the tug of

academia and returned to the Auckland Law School as a postgraduate student. During this time he also served as a law tutor at AUT. Marcus completed an LLM thesis on vicarious liability for employee negligent statements and graduated in September 2011.

2011 has turned out to be an eventful year. In January he took up a position as senior tutor in the Law School. In the short time he has been here, Marcus has made a significant contribution to the core curriculum, teaching contract and torts - the former with a challenging 8 am start! He has also taught Introduction to Common Law to overseas students during the inter-semester break. On the administrative side Marcus has taken on the role of Academic Mooting

Coordinator. He is well suited for this position, which provides both clinical and academic training for Part III and Part IV students. He has now accepted a permanent position with the Law School as a lecturer in commercial law.

The year will end on a truly memorable note because Marcus is marrying his fiancée, Shannon, in December. Marcus and Shannon have a shared interest in demography and human dignity. They contribute to a blog entitled “Demography is destiny” (www.mercatornet.com/demography/), which provides insight into the media treatment of world demographics and explores popular myths regarding the sustainability of global population growth.

In his spare time Marcus enjoys running. He is currently training for the Auckland Half-Marathon. Other sporting interests include tennis and golf. In terms of the latter, Marcus describes himself as a very occasional golfer and admits that he is probably at his best on the driving range where he doesn’t have to retrieve his golf balls from the undergrowth!

Peter Devonshire



Rohan Havelock



Rohan Havelock, an Auckland alumnus and a commercial litigation specialist, is leaving private practice to join the Law School as a lecturer in January 2012. His considerable academic credentials honed by high-level practical experience, he is very much looking forward to returning to his alma mater. In Semester One Rohan will be teaching Contract Law and in Semester Two Equity.

He has spent the past five years as a solicitor (and Senior Associate) at Bell Gully in Auckland, involved in a wide range of commercial litigation, including many complex and challenging cases. “I have gained practical experience in all aspects of commercial litigation, including preparing advice, drafting pleadings/evidence, and appearing as counsel. In particular, I have developed a commercial focus and insight into how law affects commercial parties and relationships.” His main challenges as a commercial litigator were “managing deadlines and workloads, maintaining excellent standards in all legal work, and developing client relationships”.

Rohan graduated BA and LLB(Hons) from Auckland in 2004, receiving a Senior Law Prize and the Annual Prize for Commercial Law. He owes all his lecturers in the commercial law papers a great deal - “for introducing me to the basic concepts, encouraging my own

thinking and analysis of the issues, and helping me to develop an attention to detail". He does, however, single out Professor Charles Rickett (now at the University of South Australia), for his invaluable mentoring.

After two years as a High Court Judge's clerk, Rohan went on to complete an LLM (First Class Hons) at Cambridge University with a thesis in the law of restitution on "Anticipated Contracts that do not Materialise". This was an analysis of recovery in situations where a party performs services, or takes steps, in anticipation of a contract with another party that is never in fact concluded. "My time at Cambridge was highly rewarding," says Rohan. "I was exposed to a rigorous intellectual environment and taught by world-class experts in their respective fields. This enriched my understanding not only of black-letter case law, but also in relation to wider issues of principle and policy. The

teaching and learning reinforced my interest in commercial law.

Asked about his career switch, Rohan says he has always been interested in legal research and writing, as well as helping others to learn. "Because academia will enable me to focus and develop these areas, it was a natural path for me." He has already tutored in Jurisprudence, published in the *New Zealand Law Journal* and the *Restitution Law Review*. His primary research focus will be in Insurance Law, Commercial Equity and the Law of Restitution. He expects to continue with some legal practice work - mainly opinions in his specialist areas combined with some advocacy.

On the personal front, Rohan is married and his interests include badminton, running, and literature.

Bill Williams

Maya Mandery



The Law School welcomes back one of its graduates after an academic sojourn in Germany. Maya Mandery, an LLB (Hons) graduate and Senior Prize recipient, rejoins us, this time as a member of the academic staff, after obtaining an LLM (magna cum laude) from the University of Würzburg and teaching Common Law courses at the same university. She is currently enrolled for her PhD at the University of Cologne and is writing a thesis on "Party Autonomy in Contractual and Non-Contractual Obligations". She decided to return to New Zealand earlier this year and has been appointed as a lecturer at the Law School.

Maya brings with her a wealth of international and comparative experience, having taught an impressive range of courses (including English Law of Contract; English Law of Torts; US Legal System; Legal System of New Zealand and Australia, as well as Legal English, including Cambridge ILEC and Legal Writing) in Germany and Mexico. She was heavily involved in faculty life at the University of Würzburg where she took a leading role in the establishment of the Foreign Law and Legal Languages Department, of which she became the Head.

She was also Head of the program "Law School Meets Practice", as well as academic and administrative assistant to the Head of the Dean's Office.

Maya will be teaching the Law of Torts in 2012. We sincerely hope that it will not simply be a case of "Wilkommen zurück!" for her, but rather "Wilkommen zu Hause!"

Elsabe Schoeman

Promotions

Michael Littlewood

Michael Littlewood worked in practice, both at Chapman Tripp and for the Grey Lynn Neighbourhood Law Office, before joining the academic staff at the City University of Hong Kong Law School. Since moving to the Auckland Law School in 2003, he has significantly increased the profile of tax law. There are now two tax courses for the LLB (Tax Law and Advanced Tax Law) and the number of undergraduates taking these has increased fourfold, from about 40 students a year to more than 180. Michael has also regularly offered tax courses for the LLM and has encouraged leading tax scholars from

overseas universities to visit the Faculty and teach into the programme. This year Professor John Tiley from Cambridge taught a course on aspects of British taxation. Many of Michael's students have been employed in the tax departments of the large law and accounting firms locally and internationally and by the Inland Revenue Department. A large number of students now undertake Honours dissertations in tax and Michael has assisted 21 of his former students to have their research published.

Michael's book, *Taxation Without Representation: the History of*

Hong Kong's Troublingly Successful Tax System, was reported in last year's *Eden Crescent*. His contributions to tax law have been wide-ranging, including serving as an occasional member of Hong Kong's Inland Revenue Board of Review (Hong Kong's tax court), being appointed a member of the Advisory Board of *Taxation Today*, and being engaged by the Internal Revenue Service (the US federal tax department) as a "foreign expert" to advise it on the non-US tax consequences of particular transactions. Michael is an active member of the International Fiscal Association (the world's leading organisation for tax professionals), for which he has written a report on the Hong Kong tax system and has been a member of a working group advising the Chinese government on its transfer-pricing rules. In 2010 he was only the eighth person to be elected a Fellow of the Law and Economics Association of New Zealand.

Michael is an avid yachtsman who enjoys making the most of Auckland's harbour location in his spare time.



Elsabe Schoeman



Elsabe Schoeman, an expert in private international law, was promoted to Associate Professor in 2011. Elsabe joined the Faculty in July 2002 from the Faculty of Law at the University of South Africa, and since that time has made a significant contribution to the life of the Law Faculty here. One of her achievements was the award of a New Zealand Law Foundation Grant for the development and creation of the electronic New Zealand Conflict of Laws Database (*Conflictz*). This has put New Zealand Conflict of Laws on the "international map", facilitating access for researchers, students and practitioners, both nationally as well as internationally.

Elsabe is a committed teacher. Elsabe began teaching contract law when she arrived at Auckland and then quickly moved to develop a

Conflict of Laws elective course that regularly attracts over 90 students. Her interest in European law led to the development with Chris Hare of the European Commercial Litigation elective. She has an enduring enthusiasm for sharing knowledge and skills with students, which she has sustained over her years in teaching. Above all she has a respect for, and an appreciation of all of her students.

Elsabe's scholarship was recognised when she was awarded an internationally contested post-doctoral Alexander von Humboldt Lifelong Fellowship in 2001. She returned as a Humboldt Fellow in 2008 to the University of Cologne, and will go again on a short sabbatical in the European summer in 2012 where her research will focus on aspects of Private International Law within the areas of international commercial law. She has also been invited to the Max Planck Institute of Comparative and Private International Law in Hamburg where she will spend the remaining months of her leave.

Elsabe has an international profile and during the last few years has spoken at conferences and symposia both in Australia and Europe. She was an invited speaker at the Private International Law Colloquium, in 2010 at Griffith University, in Brisbane, where her paper was entitled "Third countries and the EU: Dilemma or deliverance?" More recently she was awarded a grant from the Faculty's discretionary conference fund to present a paper at the Fourth Journal of Private International Law Conference in Milan. She has also maintained her contacts in South Africa and has been back many times since her arrival in New Zealand to speak at conferences there.

Elsabe is Deputy Director of the Europe Institute and was heavily involved in the organisation of the recent visit by the President of the European Commission President José Manuel Barroso. She is also a member of the Australasian Law Teachers Association, and during 2010 was a member of the organising committee for the very successful annual conference in Auckland. She has been appointed Deputy Dean of the Faculty from the start of next year.

Elsabe and Maarten have two children: Beaumont who completed his BCom/BA undergraduate degrees at The University of Auckland and is now studying towards a Masters in Economics at Freiburg University and Carmia, currently on an undergraduate exchange to Germany and studying towards a BA/BSc.

Rosemary Tobin

Gordon Williams



I still remember my first conversation with Gordon when I arrived at Auckland Law School. It was about dogs - Staffies, to be precise. That paved the way for discussions about the law, intermingled with cricket and rugby, of course. It was during those conversations with Gordon that I first became aware of his vast knowledge of and expertise in several areas of commercial law. This should not come as a surprise: Gordon has BCom, LLB and LLM degrees, as well as being a qualified chartered accountant, all of which provide him with the required specialist knowledge and experience to teach and research commercial law.

Gordon has taught an impressive range of commercial law courses in the Law School, including income tax (as well as estate and tax planning, and advanced taxation), company law (as well as company liquidations), personal property, equity and trusts, and creditor's remedies and insolvency law (at masters level). He has authored several articles and chapters in books in his areas of expertise, as well as monographs on "New Zealand Corporations" (currently in its second edition) and "Property and Trust Law in New Zealand" for the *International Encyclopaedia of Laws* (published by Kluwer Law International).

Gordon's promotion to senior lecturer at the beginning of 2011 was well deserved. Apart from his research across vast areas of commercial law, Gordon invests a lot of time and energy in his teaching. You will always find Gordon working on his teaching materials before the start of semester - revising, updating and writing new materials to ensure that students get the full benefit of the latest state of the law, informed by his own research.

Elsabe Schoeman

Peter Watts: Door tenant at Fountain Court in the Temple, London



In November 2010, Peter Watts became a door tenant of Fountain Court, in the Temple, London. Fountain Court is one of England's largest and best-known sets of commercial chambers. Currently headed by Timothy Dutton QC, it has as members 26 Queen's Counsel, and 32 other fulltime barristers. Many past and present members of the senior judiciary of England and Wales practised from Fountain Court before becoming judges, including Lord Bingham of Cornhill, Sir Mark Potter (former head of the Family Division and member of the Court of Appeal) and, in an earlier period, Lord Scarman.

Door tenants are not fulltime members of chambers, but barristers whose names (generally) appear outside the entry to chambers, "on the door". They come in various guises. Some are retired judges or retired lawyer-politicians (at Fountain Court, the names on the door include former Attorney-General, Lord Goldsmith, and former Lord Chancellor, Lord Falconer of Thoroton), who undertake advisory and arbitration work, some are international practitioners who need a London base, and others are academics, such as Peter. Also at Fountain Court as fulltime barristers are two New Zealanders, Richard Coleman, and Craig Ulyatt (an alumnus of Auckland).

Peter's role in Chambers will be confined to undertaking opinion work from time to time, primarily in the area of agency law. His appointment as General Editor of *Bowstead & Reynolds on Agency* was the principal reason for his receiving the invitation to become a door tenant, following an informal meeting with the head of Chambers, in London in July 2010. Peter flew to London again in February this year, to meet members of Chambers, and to give a talk to both the set and invited solicitors. This he gave on the topic of "Principals' liability for the negligent statements of agents" in a room in Inner Temple Hall. More than 70 people were present, including some former students of Peter's, now practising in London. Peter reports: "Eight silks from Chambers were there, which made it fairly nerve-wracking, and the talk was followed by some vigorous cross-examination. The directness of some of my answers provoked some laughter."

Japan and the Trans-Pacific Partnership



Widespread opposition to Japan joining the Trans-Pacific Partnership (TPP) was found by Professor Jane Kelsey on her recent lecture tour there. "Japan is in no state politically, economically or psychologically to join the TTP negotiations," says Jane.

Jane delivered public lectures to full venues in Sendai, Sapporo and Tokyo and held briefings with numerous politicians, sectoral representatives and media. She was invited to Japan by the Conference to Comment on the TPP. Its members include a group of parliamentarians from the ruling Democratic Party of Japan who aim to promote public debate over Japan's proposed participation in the deal. Prime Minister Kan and his Cabinet put the decision on hold in June, following the devastating tsunami.

"Opposition to the TPP in Japan is often dismissed as protectionism and Japanese refusal to confront the realities of the 21st century," says Jane. "Yet everyone I spoke to was realistic about the challenges facing Japan and absolutely focused on the future. The triple catastrophes of the earthquake, tsunami and nuclear power plant meltdown have focused people's minds on recovery. The prospect of a TPP-

driven economic experiment is terrifying, especially when it would be dominated by the interests of US corporations. One example was the proposed special regulatory zone in Sendai where a commercial fishing quotas system involving foreign corporate fishing operators is being promoted to replace the devastated traditional fisheries. People fear that a TPP would lock in those changes and guarantee foreign investors rights and enforcement options at the expense of the local fishing community which has been left with nothing. There were equally strong concerns about the future of Japan's public health care system, which has some similar issues to those involving Pharmacia; the long-standing goal of US corporations to increase their grip on Japan's partially privatised postal, banking and insurance system; and how more big-box department stores like Wal-Mart would further undermine the sustainability of local shops and markets."

There is now a Japanese translation of the book *No Ordinary Deal: Unmasking the Trans-Pacific free trade agreement*, edited by Jane Kelsey.

UN Peacekeeping in Timor-Leste



David Grinlinton writes:

A small island nation with an interesting but troubled history, Timor-Leste lies to the North-West of Australia around the 9oS line of latitude. The land rises steeply from the coast to almost 3,000 metres in the central highlands, and comprises the Eastern half of the island of Timor and the “exclave” of Oecusse in Indonesian West Timor. The current population of around 1.2 million is predominantly of mixed Malayo-Polynesian and Melanesian-Papuan descent with a significant genetic input from the Portuguese colonial period.

East Timor was forcibly annexed by Indonesia in December 1975 following the withdrawal of the Portuguese and a short-lived declaration of independence in November of that year. Almost 25 years of political and social unrest followed, including armed guerilla resistance by Timorese factions. During this period there were over 100,000 deaths, with approximately 18,000 direct killings and the remainder resulting from deprivation and starvation. Continued resistance by the Timorese, and evidence of abuses by Indonesian troops led to a UN-sponsored referendum in 1999. The result was overwhelming support for independence, but triggered a violent backlash by Indonesian supported militia. International peacekeeping intervention followed with Australia and New Zealand sending troops to help restore security and protect the UN presence. A number of UN peacekeeping missions have followed with the current one being the UN Integrated Mission to Timor-Leste (UNMIT).

I worked with a young Timorese in Australia in the late 1970’s, and learnt something of their struggles at that time. I have followed developments ever since, and recently had the unique opportunity to spend time there in a peacekeeping role. As a Naval Reservist I was posted as a UN Military Liaison Officer from October 2010 to May 2011. Thorough preparations are required for such deployments, so in the few weeks before leaving for Timor I juggled teaching and other University duties with military kit issue, vaccinations and medical briefings, off-road driving, and other pre-deployment requirements. I made it to the plane on time, although carrying a pile of exam scripts to complete marking en-route!

Today Timor-Leste has many social challenges including a young population with over 50 percent under 22 years of age. Ninety percent of people work in largely subsistence agriculture, and there is very high unemployment. Membership of martial arts groups – or “MAGs” as they are known - has grown rapidly, fuelled by high unemployment and lack of recreational opportunities for young people. Some of these groups have a genuine martial arts ethos and provide a recreational outlet for young people, while others are just gangs that are often linked to increasing levels of violence and confrontation.

The UN has attempted to scale down its involvement over the last decade, but various political and security crises have necessitated a continuation of a strong peacekeeping presence by the UN and by troop contributions from a number of countries – including New

Zealand – through the International Stabilisation Force (ISF). Although there are occasional outbreaks of violence in some areas, the country has been reasonably stable since 2008, and UNMIT is due to withdraw after the Presidential election in 2012.

So what does a UN peacekeeper do in Timor-Leste? Military Liaison Officers are part of the “Security Sector Support and Rule of Law” element of UNMIT, and come from various UN member

stunted and intellectual development compromised due to malnutrition. Forget computers in schools – many children don’t have basic books, pencils and paper for their lessons. And yet despite their impoverished condition, the children were always smiling and cheerful wherever we went!

I was fortunate to have the company of my wife Keiko who was also in Timor for much of the time working on a human rights legal

Our primary task was to collect information on the state of food, water, medical support, roads and infrastructure, education, policing and security, and local governance. These are all elements relevant to both immediate and long-term security and development.

countries, including Australia, Bangladesh, Brazil, China, Fiji, Malaysia, New Zealand, Nepal, Pakistan, Philippines, Portugal, Sierra Leone, Singapore, Japan and India. MLOs are usually unarmed, operate in national uniforms – but with UN insignia – and are subject to military procedures and discipline, although under the command of the UN. MLOs in Timor-Leste are spread through the country in field teams of four to six people each. My team comprised a Timorese interpreter, a Brazilian infantry officer, a Filipino helicopter pilot (female), a Portuguese marine officer and myself. Our area covered approximately one-fifth of the country, including Dili and its environs, the central highlands to the South and West, the coastal plains to the East, and the Island of Atauro to the North. We interacted on a daily basis with village Chiefs and leaders, NGO representatives, and members of the Timorese military and Government. Our normal routine included one or two-vehicle patrols to remote areas, sometimes necessitating overnight stays of several days. Occasionally we were dropped by UN helicopters in places inaccessible to 4WD, and when mechanical means failed - we walked.

Our primary task was to collect information on the state of food, water, medical support, roads and infrastructure, education, policing and security, and local governance. These are all elements relevant to both immediate and long-term security and development. We often visited areas suffering serious food shortages. Hunger can result in incidents such as the armed hijacking of a truck carrying rice in one case, and local confrontations in others. Instability is still a part of life in Timor-Leste, and confrontations over initially minor matters can quickly escalate into violence. Rock throwing is a common expression of frustration, and businesses and UN vehicles are sometimes a target. Patience, adaptability and a sense of humour are critical elements in this kind of work.

Sometimes we were tasked by the UN to investigate specific security issues, including village and border disputes, responses to natural disasters and other incidents. In late 2010 we identified a group of internally displaced persons who had been largely forgotten and were living in desperate conditions in an abandoned government camp. We visited them regularly and brought their situation to the notice of the Timorese government which eventually took steps to re-house the people.

In many areas we saw real poverty and deprivation. Most villages don’t have the infrastructure that we take for granted, such as all-weather roads, running water, electricity, medical support and transport. Many houses are simple shelters with mud floors, woven or tin walls and thatched roofs. In some places communities struggle to grow food due to poor soil, pests and a succession of bad seasons. Often families survive on only one to two small meals a day. There is a high level of infant mortality and maternal death due to lack of medical support or transport to a medical post. Diseases such as malaria, dengue fever, tuberculosis and respiratory problems are common. Leprosy is still present in some communities. Children’s growth is often

project for the UNDP in Dili. The six months passed all too quickly, and although the conditions were sometimes challenging, we would have liked to stay longer. One of the more difficult things was saying goodbye to the Sisters and children of the local orphanage that our team “adopted” during our spare time. Tears all round! Happily we were able to make some significant improvements to their living conditions and this work has continued with new members of the team.



Human rights in Chile



Speaking at the University de Chile



With locals who attended the seminar



The Presidential Commissioner for Rapanui (far right) with his entourage and the International Observers

In 2011 Dr Nin Tomas visited Rapa Nui (Easter Island) as a member of a four person International Observers Team invited to assess claims that the human rights of Rapanui were being breached by the Chilean government. The visit followed the violent evictions by Chilean armed police of Rapa Nui clans from ancestral lands, now in the hands of public offices or non-Rapanui touristic interests, in December 2010 and January 2011. The evictions raised the concern of international human rights entities such as the Inter-American Commission on Human Rights and the UN Special Rapporteur on the Rights of Indigenous peoples, James Anaya. The observers were specifically asked to assess the present state of self-determination and land rights of Rapanui under the American Convention on Human Rights and ILO Convention 169, which have both been ratified by Chile. While an official Observers Report representing the collective views of the Team is yet to be published, Dr Tomas discovered some interesting parallels and contrasts to Aotearoa New Zealand during her visit. She writes:

There are currently around 3,000 Rapanui living on the island. Modern-day rule of the Island by the state of Chile is based on the Spanish language version of a Treaty under which Chile claimed "sovereignty" over the territory and people living on Rapa Nui. This classical colonialism is now being challenged by the Rapanui. While the legal source of discontent is identified as non-ratification of the Treaty by Chile and non-compliance with its protective terms, claims to land and territory under the rubrics of "self-determination" and "land rights" are based on original occupation and ancestral rights to land that existed prior to the 1888 Treaty and which continue today. There

are also claims for greater Rapanui economic, political and social autonomy.

In Aotearoa New Zealand similar complaints have resulted in the Treaty settlement process whereby breaches have either been quantified and settled nationally, eg Language, Fisheries, Aquaculture, Foreshore - or by direct negotiation with Hapu and Iwi. The question of autonomy has been diverted into statutory recognition of hapu and iwi mana whenua and ongoing debates over the extent to which tino rangatiratanga is recognised in our governing structures.

By way of contrast, in 1933 Rapa Nui was registered as part of the Chilean state without specifically mentioning any obligations owed to the Rapanui people under the 1888 Treaty. The history of Rapa Nui is one in which the clans were forcibly moved off their lands and relocated to one small part of the island which they still occupy today. The rest of the island became State land, controlled first by the navy and then by the army.

Chilean government officials spoke about recent provisions the government has made for better representation of Rapanui in government, including stronger consultation with Rapanui, the settlement of land rights and the provision of public amenities on the island. The extent and efficacy of these measures were challenged by the Rapanui as being piecemeal and not a genuine attempt to implement the 1888 Treaty. Several breaches of the articles of the American Convention on Human Rights were also alleged.

Exposure to foreign ideas through travel and education makes it inevitable that Rapanui agitation for self-determination will continue to

grow. The Declaration on the Rights of Indigenous Peoples 2007 will exacerbate the situation by providing a baseline against which Rapanui can assess their future demands.

Rapanui society possesses several unique features that will influence how self-determination develops and the form it eventually takes. Rapanui identify themselves as Pacific peoples rather than as Chilean. Pacific identity is manifest in their language, culture and physical appearance. Māori terms such as “pono” true; “tana ingoa” his or her name; “henua” land/territory; “tangata henua” people of the land; “mana” authority/prestige; “tapu” sacred/restricted were frequently used by the islanders during discussions. Like Māori, they also connect the wairua (spirit) of the henua (land) with that of the tangata (people), their tupuna (ancestry) and express it in hakaapa form (familial genealogy). Intergenerational Clan associations underpin contemporary claims to land and territory. Rapanui also have very close ties to Tahiti and their overt cultural practices, particularly dance, have been influenced by this association. Interestingly, my presence in Rapa Nui was treated as that of “teina” (younger sibling) coming home and was marked by “karanga” (formal welcome by song) from the women’s organisation and ritualistic prayer. One group spoke of the Polynesian triangle formed by Rapa Nui, Hawaii and Aotearoa and how commonality between its peoples might be represented as a single entity in international law.

Another factor influencing self-determination is the “blue water” thesis adopted by the United Nations in the 1950s and 60s, whereby certain states permitted total independence to be granted to specifically named territories held by western powers. Although Rapa Nui is not on the list, it satisfies the criteria of being a nation that is culturally distinct and is physically separated from Chile by a great expanse of water.

Other important factors against seeking total independence are the small size of the island (14 square miles), its lack of natural resources (the volcanic island has only a thin coating of topsoil), and its isolation

(its nearest neighbours, Tahiti and Chile, are 4000 miles away). Several other islands in the Pacific such as Tokelau, Niue and the Cook Islands, when given the opportunity for independence under the United Nations Decolonisation Scheme, chose to remain in Free Association with their colonial state, Aotearoa New Zealand, for precisely these reasons.

There are some advantages that Rapanui possess that Māori did not have when entering into a Treaty settlement process. They are the majority population on the island, and the only persons (other than the State of Chile) entitled to own land on the island. Aside from one other individual owner of land (gained through an historical aberration), there are no other contenders to consider. A big obstacle in future negotiations will be reaching agreement over sharing the fisheries resource that Chile currently controls. Interestingly, Rapanui cited Te Ohu Kai Moana (Māori Fisheries Trust) as plundering their sea resources under a trade agreement with Chile.

Having endured the process of Treaty Settlement in Aotearoa New Zealand over the past 30 years, the Rapanui/Chile situation is an interesting one for us all to follow.

Rapanui society possesses several unique features that will influence how self-determination develops and the form it eventually takes. Rapanui identify themselves as Pacific peoples rather than as Chilean. Pacific identity is manifest in their language, culture and physical appearance.



Faculty 'bikers' tour of Scotland

Warren Brookbanks writes:

In July 2011 two members of the Faculty - myself and David Grinlinton - were part of a group of four New Zealanders and three riders from other countries who undertook a one week motorcycle tour of the North of Scotland and the Orkney Isles. The other Kiwi adventurers were Dr Lewis Randal (father of fourth year law student, Waldo Randal) and Bob Gibbons (wife of Barbara McKinney - practice partner of Dr Randal).

We met in Linlithgow, near Edinburgh and spent the first day travelling 250 miles to Gairloch on the far North West coast. We sat on the beach admiring the sun set over Loch Gairloch - at around 10pm!

Following a second night in an old hunting lodge converted to a hotel in Tongue, on the Northern coast, we rode to Scrabster to catch the ferry to Stromness on the Orkneys. The sweeping, largely deserted roads of the North West of Scotland, and dramatic vistas of mountains and lochs, were a feature of the trip north.

We visited many historically interesting sights during the tour. These included a number of neolithic settlements and burial cairns on the Scottish mainland and on the Orkneys such as the renowned Skara Brae, the Standing Stones of Stenness, the Tomb of the Eagles on Orkney Mainland, and the "Dwarfie Stane" on the Island of Hoy. The latter was a burial cairn carved by a neolithic traveller out of a solid block of granite, without the benefit of iron tools! The Churchill Barriers, built to keep German raiders out of the strategic Scapa Flow, and the beautiful Italian Chapel, constructed by Italian prisoners of war conscripted to build the Barriers, were powerful and moving reminders of the importance of the Orkneys to the allied war effort in WW II. This part of the journey was particularly significant to David, whose grandfather spent time in these challenging waters while serving as a gunnery officer with the Royal Navy during WWII. The naval museum at Lyness, constructed within a disused WWII fuel storage tank, contained further artifacts from both the First and Second World Wars.

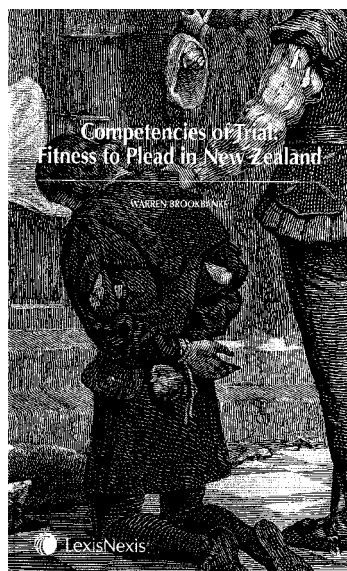
The return trip took us across the North East of Scotland to Dornoch for the final night. The last day's travel was down to Inverness and across the Grampian mountains back to Linlithgow.

Motorcycling the length and breadth of Scotland was a motorcyclist's dream and a memorable experience.



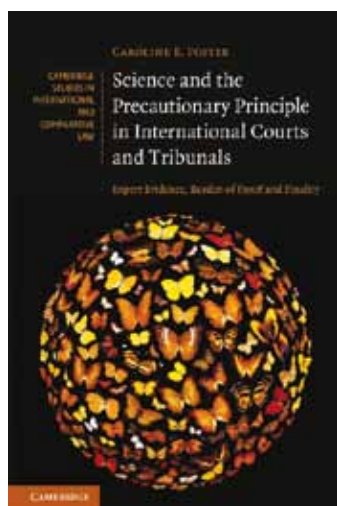
New books

Competencies of Trial: Fitness to Plead in New Zealand, Warren Brookbanks



Competencies of Trial: Fitness to Plead in New Zealand first examines how the courts have operationalised the fitness to plead rules in relation to such questions as how the issue is raised, how it is determined, and the extent to which the rules ought to reflect a best interest component. It then considers comparative and ethical issues, and addresses particular concerns about expert evidence in this context. Later chapters consider how the law has evolved, or is evolving in relation to particular cohorts of people for whom the unfitness rules have special significance in their application, namely juveniles and persons with an intellectual disability. Finally, issues around the disposition of unfit offenders are considered, together with the related question of whether the law should provide for fitness to be tested in the post-conviction phase.

Science and the Precautionary Principle in International Courts and Tribunals, Caroline Foster



I n our twenty-first century world the globalisation of trade and communications has intensified the consequences of both natural and human-induced threats to human health and the environment. The outbreak of a disease or the use of a flawed technology in one part of the world can rapidly create major difficulties in distant or neighbouring regions, and invite the intervention of both teams of scientists and transnational legal and political institutions.

Dr Caroline Foster examines what happens when organisations like the International Court of

Justice, the World Trade Organisation and arbitral authorities grapple alongside scientists with natural and human-made problems. *Science and the Precautionary Principle in International Courts and Tribunals* is published by Cambridge University Press, and draws on Caroline's experiences as an adviser in New Zealand's Ministry of Foreign Affairs and Trade and as a practitioner of international law.

As a lawyer and a legal theorist, Caroline has wrestled with the problem of how to deal with international legal disputes over subjects

which scientists as yet understand only incompletely. She argues that reforms to legal procedures governing expert evidence and the burden of proof are necessary to allow for the fact that the scientists who study the likes of large-scale pollution and genetic modification are still searching to achieve consensus and to give their work nuance.

The relevance of her book is shown by the fact it has already received a double citation in the International Court of Justice

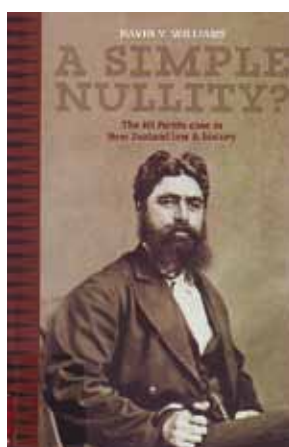
No Ordinary Deal: Unmasking the Trans-Pacific Partnership Free Trade Agreement, Jane Kelsey (ed)



The Trans-Pacific Partnership Agreement (TPPA) is no ordinary free trade deal. The proposed agreement raises questions about the political future of independent nations, about sovereignty, democracy and indigenous self-determination and, above all, the people's right to know what their governments are doing. In *No Ordinary Deal*, experts from Australia, New Zealand, the US and Chile examine the TPPA negotiations, and set out the costs of making concessions to the US simply to

achieve a deal. They argue that obligations under the TPPA will intrude into core areas of government policy - such as financial regulation, pharmaceutical controls, foreign investment, food standards, culture and intellectual property laws. Above all, it is suggested that the proposed agreement locks our countries even deeper into a neoliberal model of global free markets - when even political leaders admit that this has failed.

A Simple Nullity?: The Wi Parata Case in New Zealand Law and History, David Williams



David Williams sheds new light on a landmark nineteenth century court case which deemed the Treaty of Waitangi irrelevant in *A Simple Nullity?: The Wi Parata case in New Zealand Law and History*, published by Auckland University Press with support from the NZ Law Foundation.

The 1877 case of *Wi Parata v Bishop of Wellington* concerned the gift of Ngati Toa land to the Anglican Bishop for a school which was never built. In refusing to inquire into the block's ownership, the judges declared that insofar as the Treaty "purported to cede the sovereignty - a matter with which we are not directly concerned - it must be regarded as a simple nullity".

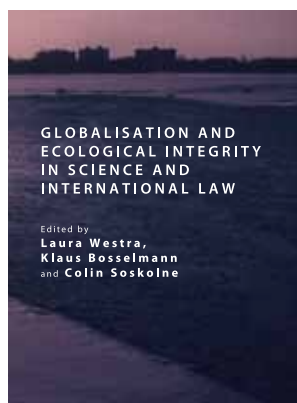
Over the past 25 years, judges, lawyers and commentators have

criticised the case as symbolising the neglect of Māori rights by settlers, government and the law. In taking a fresh look at the *Wi Parata* case - the protagonists, the origins of the dispute, the years of legal back and forth - David Williams affords new insights into both Māori-Pakeha relations in the nineteenth century and disputes within the settler communities about the role of church and state in education.

Officially launching the book at a function at Old Government House in June, the late Sir Paul Reeves called it "brave, even groundbreaking". Behind legal issues which had seemed so complicated lay a "long search for the common good and the growing realisation that what is good for Māori is good for everyone". He noted that David Williams had "augmented his critical observation of the issues" by advising many groups "as they seek to settle with the Crown".

David Williams told the gathering how he questioned the view that people today were enlightened on the Treaty compared with "the nasty old colonists": "Late nineteenth century people were not as bad as painted, while in the late twentieth and now the twenty-first century we are not as good as we like to paint ourselves." It is still the case that the Treaty is a legal nullity unless incorporated in a statute. "Have we moved as far as we like to think we have since 1877?" asks Professor Williams.

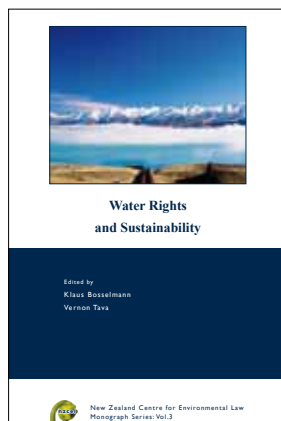
Globalisation and Ecological Integrity in Science and International Law, Laura Westra, Klaus Bosselmann and Colin Soskolne (eds)



Globalisation and Ecological Integrity in Science and International Law is another volume from the Global Ecological Integrity Group, a network of 300 leading environmental scientists, philosophers and lawyers that Klaus Bosselmann is co-chairing. Its theme is the interface between integrity as a scientific concept and a number of important issues in ethics, international law and public health. The core thesis common to all 27 chapters is that existing forms of governance (at

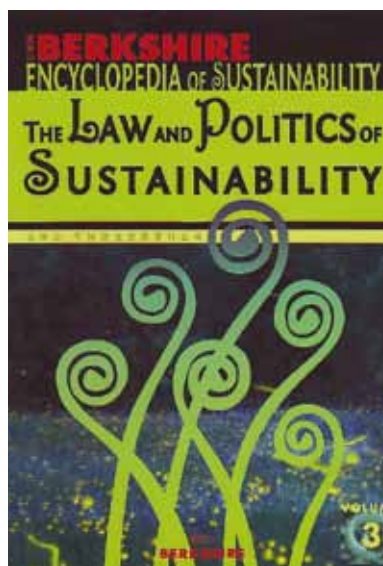
national and international levels) are in need of an overhaul to meet the challenges of the 21st century.

Water Rights and Sustainability, Klaus Bosselmann and Vernon Tava (eds)



Water Rights and Sustainability is a monograph that emerged from a selection of papers presented at the conference *Property Rights and Sustainability: The evolution of property rights to meet ecological challenges*, which was held in 2009 at The University of Auckland. The book covers key issues of contemporary water law and management in New Zealand and Australia. For the purpose of this publication, the papers selected have undergone a process of peer-review, revision and updates.

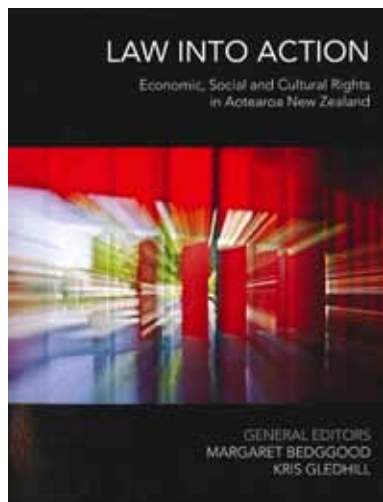
The Law and Politics of Sustainability, Klaus Bosselmann, Daniel Fogel and RB Ruhl (eds)



The Law and Politics of Sustainability is volume three of the ten-volume *Berkshire Encyclopedia of Sustainability* that brings together leading experts from around the world to provide authoritative coverage of ways to restore the planet. *The Law and Politics of Sustainability* explores efforts to promote sustainability through legislation, treaties, policies and institutions. Many contributors raise provocative questions about the effectiveness of both international and national

law in protecting the environment, offering readers a preview of steps we must take to develop laws and policies that will promote genuine sustainability.

Law into Action: Economic, Social and Cultural Rights in Aotearoa New Zealand, Margaret Bedggood and Kris Gledhill (eds)



Law into Action: Economic, Social and Cultural Rights in Aotearoa New Zealand is a comprehensive reference work for lawyers, policymakers, activists and all those interested in the history and protection of economic, social and cultural rights in New Zealand. The book is divided into four parts, which cover: the origins and framework of economic social and cultural rights; the difficulties in getting

recognition of those rights; the delivery of those rights to different groups in New Zealand; and the institutions and organisations that are responsible for promoting and protecting those rights.

Property Rights and Sustainability: The Evolution of Property Rights to Meet Ecological Challenges, David Grinlinton and Prue Taylor (eds)



Increasingly communities are facing environmental crises and collapses involving ecological systems. These problems are posing political, strategic, economic, technical and legal challenges, both domestically and globally. In most legal systems property concepts are an important element in the interaction between people and the natural environment. They are an important driver of ecological harm, but can also become a powerful tool for responding to ecological problems in innovative and constructive ways. Unfortunately the historical and legal persistence of entrenched absolutist views on private property rights have often left the environment and ecological systems unprotected and vulnerable to unsustainable exploitation of

natural resources and environmental degradation.

Property Rights and Sustainability: The evolution of Property Rights to Meet Ecological Challenges, co-edited by David Grinlinton of the Law School (pictured right) and Prue Taylor of the Architecture and Planning School (pictured left), was published as the eleventh volume of the prestigious Martinus Nijhoff series on *Legal Aspects of Sustainable Development*. The 15 chapters of the book comprise the updated and peer-reviewed contributions of a number of leading international and New Zealand scholars at the conference on “Property Rights and Sustainability” organised by the New Zealand Centre for Environmental Law at Auckland University in April 2009.

2012 Postgraduate Programme

2011 has been a challenging year throughout the University for attracting postgraduate enrolments. However, the Law Faculty has by year-end virtually maintained its 2010 enrolment numbers, itself a growth year. This means well over 300 students are engaged in postgraduate study at the Law School, many of them part-time. We have seen increasing numbers of Scandinavian law students arriving, particularly from Norway. Good links have been fostered with this region, and Germany, both by academic contacts and through the benefit we have had over the past five years of the services of Auckland alumna Dr Kerry Tetzlaff, who undertook promotional trips to Europe on our behalf whilst she was completing her PhD at Cambridge. Kerry has now taken up a fulltime academic position at the Law Faculty of the University of South Pacific.

The programme itself continues to be not only the most sophisticated in New Zealand, but is comparable with the best taught-LLM programmes in the common law world. This is achieved by the mix of our own very well qualified academics and the high-profile international visitors we bring to teach in the programme. This year, overseas visitors included, from continental Europe, Manfred Nowak (Vienna), Ernst Nordveit (Bergen) and Hans Christian Bugge (Oslo), from Britain, John Tiley (Cambridge), Richard Nolan (Cambridge), Robert Chambers (London), Rob Merkin (Southampton) and Ronnie Mackay (Leicester

De Montfort), from the United States, George Geis (Virginia), and Tom Schoenbaum (George Washington, DC), and from Australia, George Barker (ANU) and Chester Brown (Sydney). External New Zealand teachers comprised David Williams QC, Matt Sumpter, Roger Wallis, Kevin Glover, Justin Graham, Alex Frame, and Kerry Tetzlaff. Jeff Berryman maintained his annual visit, holding a fractional position with Auckland along with his position at the University of Windsor.

2011 also saw some innovations in the options available in the LLM programme. We introduced more specialisations. These now comprise: corporate and commercial law; international law; human rights; environmental law; public law; and dispute resolution. We have also introduced into the LLM and MLS degrees the concept of the research portfolio. The portfolio is something of a hybrid. It involves fewer papers than a taught LLM but longer writing requirements, including a linking paper. The result is a corpus of research of similar length to a full thesis.

Our PhD programme continues to grow slowly. Students who at this stage of the year have completed their PhD include David Griffiths and An Hertogen.

We are again offering a wide range of courses in 2012. The overseas universities from which we are drawing teachers are Bristol, Cambridge, Oxford, University College London, National University

of Singapore, Dalhousie, Western Ontario, Vanderbilt, New Mexico, Melbourne, and Sydney. Leslie Kosmin QC, eminent London barrister (now retired), joins the team. The full table of courses is below. The 2012 prospectus and full course outlines are available on our website: www.law.auckland.ac.nz.

The programme could not operate without the dedicated team of administrators and advisers, currently Andi Martin, Jeanna Tannion,

and Joanne Anderson. For 2012, we will be very sorry to lose Andi Martin. Andi has been a most efficient and innovative Postgraduate Manager, and we wish her well as she returns to live in Vancouver.

Peter Watts
Associate Dean (Postgraduate)

Enrolments for 2012 open on 7 November 2011. For further information, inquiries should be directed to Jeanna Tannion, Postgraduate Student Adviser. She can be contacted at j.tannion@auckland.ac.nz or +64 9 9232123.

Intensive Courses - Semester 1	
Legal Research Methods	Stephanie Carr, The University of Auckland
Commercial Arbitration	David Williams QC, The University of Auckland Chester Brown, The University of Sydney
Ocean Governance Law	David Vanderzwaag, Dalhousie University
Company Meetings	Leslie Kosmin QC, London
Comp Family & Small Business Taxation	Glen Loutzenhiser, Oxford University
Aspects of the Law of Personal Property	David Fox, Cambridge University
Tort Law	Robert Stevens, University College London
Public Law in a Commercial Context	Mai Chen, Solicitor, Wellington
Comparative Free Trade Agreements	Jane Kelsey, The University of Auckland
Sports Law	Paul David, Barrister, Auckland
International Environmental Law	Klaus Bosselmann, The University of Auckland
Franchising	Gehan Gunasekara, The University of Auckland
Full Semester Courses - Semester 1	
Criminal Law and Policy	Warren Brookbanks, The University of Auckland
Selected Aspects of IP	Paul Sumpter, The University of Auckland
Employment Law	Bill Hodge, The University of Auckland
Part Semester Course - Semester 1	
Comparative Indigenous Peoples and the Law	Nin Tomas, The University of Auckland
Intensive Courses-Semester 2	
International Criminal Law	Tim McCormack, University of Melbourne
Fundamental Principles of Criminal Liability	Andrew Simester, National University of Singapore
Legal Research Methods	Stephanie Carr, The University of Auckland
Proportionality in Human Rights	Grant Huscroft, University of Western Ontario
Restitution in Commercial Contexts	Jeff Berryman, University of Windsor
Comparative Corporate Governance	Randall Thomas, Vanderbilt University Susan Watson, The University of Auckland
Local Government Law	Ken Palmer, The University of Auckland
International and Comparative Labour Law	Tonia Novitz, Bristol University
Corporate Governance	John Farrar, Bond University
Crown and State Liability	Janet McLean, The University of Auckland
Climate Change Law	Sanford Gaines, University of New Mexico
Therapeutic Jurisprudence	Warren Brookbanks, The University of Auckland
Comparative Water & Natural Resources Law	Lee Godden, University of Melbourne
Full Semester Courses - Semester 2	
Commercial Leases	David Grinlinton, The University of Auckland
Insolvency	Mike Josling, The University of Auckland
Copyright Law	Alex Sims and Rob Batty, The University of Auckland
Competition Law and Policy	Chris Noonan, The University of Auckland

Prominent amongst next year's visitors is Leslie Kosmin QC, recently retired from practice at Erskine Chambers, London. Erskine Chambers is the United Kingdom's leading company law set, and Leslie has been one of its most prominent members. Leslie took silk in 1994 and was appointed a Deputy High Court Judge of the Chancery Division of the

English High Court in 2001. He had an extensive advisory and litigation practice and was engaged as counsel in many of the famous, or infamous, corporate collapses in the UK over recent decades, including Barings Bank, Polly Peck, Railtrack, BCCI, the International Tin Council, Maxwell Communications Group and the Bell Group. He has also

appeared as counsel in many of the best-known English company law and equity cases in this period. House of Lords and Privy Council cases include *Banque Financière de la Cité v Parc (Battersea) Ltd*, *Barclays Bank Ltd v TOSG Trust Fund Ltd*, *Heaton v AXA Equity and Law Life Assurance Society plc* and *Ting v Borrelli*. He has appeared in courts in many other Commonwealth jurisdictions and in Hong Kong. In the HK Court of Final Appeal in recent years he appeared in several ground-breaking appeals in the Akai Holdings Limited and Kong Wah Holdings

Group liquidations. Leslie is a graduate of Cambridge and Harvard universities. He is the joint author (with Catherine Roberts) of *Company Meetings: Law, Practice and Procedure* (OUP, 2008) and advisory editor of *Directors Duties* by Professor Andrew Keay (Jordans, 2009). He was the Bar representative on the English Law Commission's Working Party on Shareholder Remedies which led to the introduction into English Law of the statutory derivative action in the UK Companies Act 2006. He will be teaching the Law of Company Meetings.



Leslie Kosmin

Faculty news in brief

The Law School has sadly farewelled IT Manager Bruce Robinson, who retired at the end of 2010 after 14 years of outstanding service.

Professor Ron Paterson was made an Officer of the New Zealand Order of Merit (ONZM) for services to health. Former Dean, the Honourable Justice Sir Grant Hammond, and Auckland Law School alumnus, Sir David Baragwanath also received Honours.

Matt Sumpter won this year's JF Northey Memorial Book Award for his text, *New Zealand Competition Law and Policy*.

Dr Richard Ekins has received an Early Career Research Excellence Award from The University of Auckland.

The Harnos Horton Lusk Scholarship in Commercial Law 2011 has been awarded to Carl Li. This scholarship will assist a talented young solicitor to benefit from the Auckland LLM programme.

A generous endowment has established the annual Erica Pabst Scholarship, to be awarded to an alumna of Baradene College in Auckland in her second year of an LLB or LLB (Hons) degree. The scholarship honours the memory of educator Sister Erica Pabst (1902-1997), an alumna of the Convent of the Sacred Heart, now known as Baradene College, and a graduate of The University of Auckland where she studied law. The first Erica Pabst Scholarship was awarded to Katherine Yip.

Two Law School Staff have graduated LLM with first class honours: Danielle Kelly (senior tutor) and Vernon Tava (tutor and research fellow at the New Zealand Centre for Environmental Law).

A website containing commentary on decisions of the New Zealand Supreme Court has commenced operation this year.

The address is www.nzscblog.com.

Full coverage of these stories and other news can be found on the Law School's website, www.law.auckland.ac.nz

Dr Albin Eser: Criminal law and international human rights



Professor Eser is one of the world's most eminent academic specialists in criminal law. He was formerly Dean of the Law Faculty at Freiburg, and subsequently Director of the Max Planck Institute for Foreign and International Criminal Law, and then Chair of the entire Humanities Section of the Max Planck Institute, Germany's largest research institution.

The Faculty was delighted to host in March a visit from Professor Albin Eser, professor emeritus of the University of Freiburg (officially, the Albert-Ludwigs-Universität Freiburg). Professor Eser is one of the world's most eminent academic specialists in criminal law. He was formerly Dean of the Law Faculty at Freiburg, and subsequently Director of the Max Planck Institute for Foreign and International Criminal Law, and then Chair of the entire Humanities Section of the Max Planck Institute, Germany's largest research institution.

Professor Eser's visit was very kindly sponsored by the Crown solicitors, Meredith Connell. Professor Eser gave two talks while in Auckland. One was given at Meredith Connell to an invited audience. The subject of this talk was "Challenges of international criminal justice: Reflections of a Judge at the International Criminal Tribunal for the former Yugoslavia at the Hague". As the title implies, Professor Eser had been a member of the panel of judges in these trials. The talk was a fascinating account of his experience. He was rather critical of much of the process. A substantial part of his criticism was directed to aspects of the adversarial process adopted. Interestingly, the professor was not advocating the superiority of inquisitorial over adversarial processes in general, but rather suggesting that the particular mix of processes adopted and aspects of the structure of hearings within international criminal tribunals leave a lot to be desired.

Professor Eser also gave a public lecture at the Law Faculty entitled "Human rights guarantees in criminal law and procedure from a European perspective". He canvassed a wide range of issues in this talk, including a discussion of the fact that New Zealand's criminal three strikes law could violate the principle of proportionality in European human rights law. Catriona MacLennan wrote an item for Law News on the talk, which is reproduced on the Law School's webpage.

Professor Eser arrived in Christchurch shortly before the February 22 earthquake struck and was saved from being in Cathedral Square at the time it occurred only because of his wife's suggestion that the couple have a cup of coffee before they went for a walk. Professor Eser and his wife lost all their luggage in the earthquake, including the papers he was scheduled to deliver in New Zealand. His talks could go ahead because he had a memory stick in the bag he was carrying with him and because he was lent a jacket by the Dean of the Law Faculty at Victoria University.

Peter Watts

Dr Mark Elliott: Legal Research Foundation Visiting Scholar

Dr Mark Elliott of the University of Cambridge (St Catherine's College) proved an inspirational choice of Legal Research Foundation Visiting Scholar for 2011. Only just over a decade on from completing his doctoral studies at Cambridge, Mark has already established himself as a leading scholar in the fields of constitutional and administrative law. His seminal book, *The Constitutional Foundations of Judicial Review*, was published in 2001. He has this year produced the new edition of *Beatson, Matthews and Elliott's Administrative Law* and co-authored *Public Law*, published by Oxford University Press, to top off a long list of influential academic articles and essays.

True to form, Mark worked tirelessly during his three weeks here, giving no fewer than four different lectures or presentations. He began his visit with a staff seminar entitled "Substantive judicial review: prized values, twin-track deference and the 'rainbow of review'" further contributing to the debate arising from Mike Taggart's influential last article, which was on that topic. His student lecture attracted a capacity audience, and challenged students to question the orthodoxy on Parliamentary sovereignty.

At the Legal Research Foundation's conference on judicial review in commercial cases, Mark gave the keynote address on the foundations, purpose and scope of judicial review. Those who attended would no

doubt agree that Mark lived up to the expectation of providing an extra injection of intellectual fire-power to open the conference, with a very lucid line of argument on the difficult question of amenability to review. Question time was lively.

Finally, Mark's public lecture explored the similarities and differences between the New Zealand Bill of Rights Act and the British Human Rights Act; the extent to which they are best understood as largely expressive of pre-existing values and boundaries or rather as transformative; and the extent to which each fits into and conforms to the constitutional orthodoxy of Parliamentary sovereignty.

As well as providing remarkably lucid expositions along with plentiful food for thought in his lectures, Mark spent much of his time here talking individually with staff and students at the Law School, judges and members of the profession, and all came away richer for it. And if you expected someone from Cambridge and with his stellar achievements to be a bit "stuck up", you could have been no further off the mark in his case: Mark was the most accommodating and appreciative visitor to host, modest to a fault, and a pleasure to meet. We were extremely fortunate to have someone of his calibre in our midst, and are grateful to the Legal Research Foundation for making this possible.

Hanna Wilberg



Dr Mark Elliot and Dr Andrew Stockley

Professor Roberta Romano: Corporate law



In May the Faculty was privileged to host a ten day visit by one of the world's leading theorists in the law of corporations, Professor Roberta Romano of the Yale Law School. Professor Romano is the Oscar M Ruebhausen Professor of Law and Director of the Yale Law School Center for the Study of Corporate Law. Among her books are

The Advantage of Competitive Federalism for Securities Regulation, The Genius of American Corporate Law and Foundations of Corporate Law.

Professor Romano gave two talks during her visit. The first was given to an invited audience of lawyers, bankers and regulators at the offices of Chapman Tripp, who generously sponsored her visit to the Law School. The subject of this talk was "For international financial regulation diversity". Professor Romano's address challenged the contemporary enthusiasm for harmonisation of international financial regulation, and the view that harmonisation reduces systemic risk. She argued that there are a number of advantages to regulatory diversity, given the uncertain and dynamic environment in which financial institutions operate. Global efforts, she said, should focus on information sharing and enforcement coordination, rather than achieving regulatory uniformity.

The second talk was a public lecture held at the Law School, entitled "Reforming financial executives' compensation after the global financial crisis". While doubting that the much-discussed levels of executive compensation in the global banking industry were a major factor in the causes of the 2008 financial crisis, Professor Romano acknowledged that such compensation has been at the top of the reforms promulgated across the globe in reaction to the crisis. Given that regulation in this area was inevitable, Professor Romano presented a critique of the current schemes and proposals, and offered an alternative proposal, formulated with her colleague Professor Bhagat. In brief, this proposal was that incentive compensation plans for executives and staff, typically a large proportion of remuneration in the industry, should consist only of restricted stock and restricted stock options, restricted in the sense that the shares cannot be sold nor the options exercised for a period of at least two to four years after an individual's resignation or last day in office. Again, this was a most stimulating and insightful talk.

Peter Watts

Professor Michael Perlin: Mental disability law



During May 2011 the Law School received a visit from Professor Michael Perlin of the New York Law School, one of North America's pre-eminent scholars on mental disability law. Professor Perlin was a visitor to the University as the recipient of a Seelye Travelling Fellowship, held in conjunction with both the Law School and the Centre for Mental Health Research in the Faculty of Medical and Health Sciences. In the course of his visit he offered a number of public lectures and participated in a two-day symposium on mental health and social justice.

In a lecture given to the elective course, Psychiatry and the Law, entitled "Neuroimaging and the criminal trial process: Questions that must be asked" Professor Perlin explored some of the tensions inherent in the use of neuroscientific evidence, with particular reference to the insanity defence cases. The lecture examined three criminal procedure issues: the right to a neuroimaging expert; the standards of assessing consent to the administration of neuroimaging testing; and the implications of administering antipsychotic, neuroleptic medication to the findings of the neuroimaging examiner. He pointed out the ambiguities and ambivalences of neuroimaging evidence, in particular, how such notions as "visualisation" (ie the visual allure effect of neuroscience evidence), reductionism, the "attribution heuristic" (the way we seek to attribute human behaviour to a physical source in the head), and the impact of a belief in the "CSI effect," can dazzle and seduce jurors in ways that are inappropriately persuasive.

Warren Brookbanks

Professor Carol Rose: 2011 Cameron Fellow



Whilst scholars have considered how ownership affects the psychic makeup of the owner, insufficient attention has been paid to the perspective of the non-owner. This is a curious omission, given that property regimes rely upon respect for the property of others.

In July and August, the Faculty enjoyed a three-week visit by a leading theorist in the law of property, Professor Carol Rose. Professor Rose is the Lohse Chair in Water and Natural Resources at the James E. Rogers College of Law, University of Arizona and Professor Emerita of Yale Law School.

At a “work in progress” seminar with staff, Professor Rose addressed the relationship of “Property and psychology”. She argued that, whilst scholars have considered how ownership affects the psychic makeup of the owner, insufficient attention has been paid to the perspective of the non-owner. This is a curious omission, given that property regimes rely upon respect for the property of others. Professor Rose and staff attending the seminar explored when and why non-owners respect the property rights of owners: some favoured the view that non-owners abide by property rules because they hope to become owners themselves; others argued that an individual’s moral and ethical principles are a more significant constraint than the promise of future property ownership.

At a lunchtime student seminar, Professor Rose discussed the role of law in the context of “Science and environmental ethics”. The problem, she argued, is that scientific research often seems to operate first in ways that put the environment at risk - for example, in the development of the automobile - the environmental consequences of technological progress only becoming apparent much later. The seminar then explored how law might assist in alleviating this lag.

A smaller group of legal history and public law students enjoyed hearing from Professor Rose about her latest research regarding race and property. She with her colleague Professor Brooks has been working on a book about the historic use of racially restrictive covenants in the United States. In the first half of the 20th century, land covenants were used to prohibit homes being owned or occupied by African Americans and people of Jewish, Hispanic or Asian descent. The covenants were one means by which neighbourhoods were racially segregated. In a landmark decision in 1948, *Shelley v Kraemer*, the Supreme Court held that judicial enforcement of these discriminatory property instruments was prohibited under the Equal Protection Clause of the 14th amendment to the United States Constitution. Whilst this legal story was one particular to the United States, Professor Rose’s discussion of the state action doctrine in this case connected with familiar themes about the reach of the state in the regulation of the actions of private parties.

In Professor Rose’s public lecture “Property and the preservation of nature” she began by acknowledging that property is often considered an impediment to conservation. In the history of the United States, property has been aimed at productivity, and a kind of productivity that intrudes upon the natural environment. So, the forests and grasslands of the American West were logged and cleared for farming. Land laws encouraged this process, rewarding, for example, those first to capture wild animals with property rights. Professor Rose argued

this story was not one of too much property, but rather of too little property. In the absence of strong property rights, she said, many adopt a strategy of taking from the natural environment as much as they can, as quickly as possible. This leads to the well-known “tragedy of the commons”. Addressing the problem of the preservation of the Amazonian rainforest, Professor Rose discussed several property mechanisms, including some new forms of property that might assist to prevent deforestation. Alongside familiar solutions such as the reservation of public lands, conservation easements or land trusts; community based management regimes; bio-prospecting, and carbon trading schemes were discussed. Professor Rose emphasised the need to recognise that local people, or those “on the ground” and in effective control of resources, are essential to any solution. A community-based management regime acknowledges this by ensuring that local

people have a stake in the success of any conservation measure. Most property-based solutions will however present problems of monitoring and enforcement. Discussion following the lecture explored alternative approaches to conservation, including the possibility of recognising rights in or for nature itself, and giving nature standing in legal disputes. A transcript of this lecture is on the Faculty of Law website www.law.auckland.ac.nz/uoa/

Professor Rose visited the Auckland Law School as the 2011 Cameron Fellow. The Cameron Fellowship is funded by Auckland alumnus Tim Cameron, a litigation partner in the leading New York firm of Cravath Swaine & Moore LLP, and his wife Kathy. The Fellowship enables a leading American legal scholar to visit the Faculty annually.

Katherine Sanders.

Judge Peggy Hora: Drug courts



Judge Peggy Hora is a retired judge of the California Superior Court, where she served for 21 years. She is a former Dean of the BE Witkin Judicial College of California and served on the faculty of the national Judicial College for more than 15 years. She is currently a Senior Fellow for the National Drug Court Institute and a Judicial Outreach Liaison for the National Highway Traffic Safety Administration.

During the period 1998-2005 Judge Hora was the Presiding Judge of the Drug Treatment Court in California. Her work within, and extensive knowledge of the operation of Drug Treatment Courts, was the subject of her lecture at the Law Schol in April. The title of her address was “Adult Alcohol and other Drug Treatment Courts: Will they work in New Zealand?”

Judge Hora located the origins of the American Drug Treatment Courts in the endemic problems of the American criminal justice system

Drug Courts are seen as a radical new means of addressing the needs of offenders whose offending was a by-product of, or exacerbated by, a substance use disorder. The courts bring together all court personnel, including judges, prosecutors, defence lawyers and probation and treatment providers to address the offender’s addiction issues along with their offending.

- overcrowded court dockets, high recidivism rates, prison overcrowding and the fact that offenders were not any better off after incarceration. In North America one in 100 citizens are behind bars, with a total of 2.3 million people in US jails or prisons. Amongst this cohort substance abuse is a huge problem. Drug Courts are seen as a radical new means of addressing the needs of offenders whose offending was a by-product of, or exacerbated by, a substance use disorder. The courts bring together all court personnel, including judges, prosecutors, defence lawyers and probation and treatment providers to address the offender’s addiction issues along with their offending.

Judge Hora concluded that in terms of crime impact, re-arrest figures and cost benefits, drug courts outperform most other strategies that have been attempted for offenders with substance abuse problems.

Warren Brookbanks

Dr Yvonne Daly: Criminal procedure



One of the more colourful visitors to the Faculty this year was Dr Yvonne Daly, who was with us for eight months whilst on sabbatical leave. Yvonne is a Lecturer in the School of Law and Government at Dublin City University, where she teaches Criminal Law and the Law of Evidence. Her PhD thesis entitled “Assembly-lines and obstacle courses: The pre-trial process in Ireland” was awarded in 2008 from Trinity College Dublin, and she has written numerous articles, book chapters and reports, as well as co-authoring a text, on criminal justice and criminal procedure.

In Auckland, Yvonne worked on research involving comparative criminal procedure between Ireland and New Zealand. She gave an interesting and humorous staff seminar in which she conducted a comparative analysis on the Irish and New Zealand responses to perceived criminal terrorism. She also gave a guest lecture for

the Advanced Criminal Law class on the Irish pre-trial process and particularly the incursions into the right to silence.

Yvonne was involved in all aspects of Faculty life, as a regular supporter of morning tea, and other social events, often bringing her own excellent baking with her. Outside of law school, Yvonne and her partner Peter frequented rugby matches, kayaked to Rangitoto, skydived and spent their last three weeks in New Zealand on a nationwide campervan trip. On their last night in Auckland Peter proposed to Yvonne, with their wedding planned for June 2012. We wish them all the best in their marriage and hope that they return to Auckland in the near future to renew their connections with the Faculty.

Khylee Quince

Pasifika Academic Programme



Fourteen Māori and Pasifika Law School students had the opportunity this year to present original research at the Law and Culture conference hosted by the University of the South Pacific in the Vanuatuan capital of Port Vila. Given the scarcity of Pacific legal academics in Auckland, the opportunity for students to present their papers to an audience of legal academics, law practitioners and fellow law students from across the Pacific was invaluable.

The group received generous financial support for the trip from the Law Faculty, the University's Equity Office, and also carried out independent fundraising. The main fundraising event, the "Po Fiafia", was staged in August in the Fale Pasifika. A large and appreciative audience were treated to an unusual mixture of intellectual and physical performance. The event was MC'd by Efeso Collins, a former President of Auckland University Students' Association, now researcher and radio host. Students summarised the papers they were preparing for the conference. The presentations were punctuated by dances and songs which saw the students joined on stage by the likes of Joyanna Meyer, the reigning Miss South Pacific, and many of their friends, relatives, and colleagues. At one point the Dean of Law Andrew Stockley and his predecessor Paul Rishworth were invited onto the stage and won a round of loud applause by demonstrating their hitherto unknown proficiency at traditional Cook Islands dance. Just days after

the Po Fiafia, the group left Auckland bound for Port Vila with senior lecturer Treasa Dunworth, senior tutor Danielle Kelly, Pasifika Academic Support Coordinator Helena Kaho and Pouāwhina Māori Ihiperā Ulu (also presenting a paper at the conference).

At the conference parallels between the research paths different students had been investigating emerged. One theme concerned attempts to rescue elements of traditional Polynesian culture from misunderstanding and to show their usefulness in the twenty-first century. Another was the clash between the Western legal tradition and Polynesian society, with some presenters arguing that certain laws might usefully be imported into Pacific legal systems.

A further triumph at the conference was the most competition between Otago, Auckland, USP (Emalus and Laucala) law schools, with the Auckland moot team, Alexandrya Herman and Rachel Duncan, winning the Competition. The competition took place in the fictitious Court of Appeal of Ramos, a Pacific Island jurisdiction. The problem involved a dispute between four siblings in Ramos as to whether the customary law rule, whereby the eldest male should be the sole owner of customary land, should prevail over the provisions of the Constitution of Ramos, which included reference to equal treatment between men and women.

Participation at the conference was just one of many academic initiatives supported by the Pasifika Academic Support Strategies (PASS) Programme during 2011. In addition to the fortnightly PASS Tutorial Programme and associated workshops covering all compulsory Part I - III law courses, a range of events took place throughout 2011. Part I students were encouraged to attend Introductory Law 121 and Law 131 sessions before commencing their Part I LLB courses. These preparatory sessions aimed to have students "hit the ground running" and achieve the grades necessary for entry to LLB Part II. During semester one, a collaborative Māori/Pasifika Noho Marae weekend was heralded a great success by students who attended. It was followed in semester two by a Part II Boot Camp weekend. The PASS Programme also runs a Pacific Mooting Programme, and with the support of the Pacific Lawyers Association (PLA), Careers Development evenings and student/practitioner "meet and greet" events.

Next year Auckland will host the 2012 Law and Culture Conference.

Helena Kaho



The moot winners

For a story covering the Māori Academic Programme 2011 see the Law School's website, www.law.auckland.ac.nz

Auckland University Law Review

Now in its 44th year, the *Auckland University Law Review* continues to grow in its reputation as a rigorous academic journal showcasing the best undergraduate work, and as the focus for a significant alumni network. As a testament to the strength of the AULR, Alix Boberg's article in the 2010 journal on the potential criminalisation of cartels was cited in the High Court case of the *Commerce Commission v Telecom Corporation of New Zealand Ltd*.

This year's journal features ten articles, selected from a pool of over 70 Honours dissertations, seminar papers and research papers. These articles cover a range of complex and controversial legal subjects, including an historical analysis of slander against women in the 19th century, an account of the increase in incarceration in New Zealand between 1999 and 2009, and of the unusual nature of tax treaties with tax havens.

Earlier this year in May, the AULR also presented the inaugural AULR Honours Symposium, showcasing some of the best presentations from the 2010 Honours seminars. This Symposium was an opportunity to celebrate the AULR's connection with the Honours programme: the journal was established in 1967 to promote Honour students' work, an

initiative driven by then students Alan Galbraith (now Alan Galbraith QC) and John Priestley (now Justice Priestley of the High Court) and supported by the then Dean of the Law School, Jack Northey.

Building on the success of the previous year's inaugural Contributors' Symposium, the *AULR* held a second Symposium in October 2011. Justice Robert Chambers of the Court of Appeal chaired a panel discussion on access to justice, featuring three distinguished *AULR* alumni: Judge Andrew Becroft, Principal Youth Court Judge; John Katz QC, Barrister, Bankside Chambers and Professor Margaret Wilson. David Williams QC, Barrister, Bankside Chambers, has also prepared a paper, which will be published along with the three papers presented at the Symposium in the 2012 volume of the Review. The Symposium was attended by the Chief Justice, Dame Sian Elias (also an *AULR* alumnus) and was followed by the annual *AULR* Alumni Dinner, where the Hon John Tamihere (a recipient of the *AULR* Writing Prize and a former Cabinet minister) addressed guests at the Northern Club. *AULR* alumni interested in attending next year's symposium and dinner are invited to get in touch.

Elizabeth Chan (Co-Editor in Chief)



(L to R) Dr Michael Littlewood; Elizabeth Chan; Dr Andrew Stockley; Chief Justice Dame Sian Elias; Principal Youth Court Judge Andrew Becroft; Professor Margaret Wilson (University of Waikato); Benedict Tompkins; John Katz QC. Photo: Allison Tang.

Winners of overseas scholarships

This year ten of our graduates won prestigious scholarships to study for LLM and PhD degrees overseas. Three will be going to Harvard (Anna Crowe, Jennifer Devlin and Charlotte Leslie), one each to Stanford (Toby Futter), Chicago (Brendon Orr), and the University of California (Lisa Ko-En Hsin), two to Cambridge (James Little and Claire Paterson) and two to Oxford (Anita Kundu and Andelka Phillips). Here we profile Lisa Hsin. Later in this magazine we profile Anita Kundu. Profiles of some of the others can be found on the Law School's website, www.law.auckland.ac.nz



Lisa Hsin (BA/LLB (Hons) 2008) (pictured) is pursuing an LLM degree specialising in art law, assisted by a Spencer Mason Travelling Scholarship, at the University of California, Berkeley.

Lisa came to New Zealand from Taiwan aged ten without any English "but quickly picked it up". At The University of Auckland she won the Senior Prize in Art History. Until recently she was a solicitor at Chapman Tripp in Auckland where she worked for three years in litigation and dispute resolution. Lisa holds a Sotheby's Certificate in Art Law, a three-month course taught by Henry Lydiate, a leading art law expert in Britain. She has also served at the Pakuranga and Papakura Citizens Advice Bureaux as a volunteer lawyer and tutored for three years at the Law School.

After studying at Berkeley, Lisa wants to take a non-university masters in international art and heritage crime offered by the Association for Research into Crimes against Art. The six-month course is taught in the beautiful town of Amelia in the Umbria region of central Italy. As well as lawyers it is aimed at the likes of art police and security professionals, insurers, curators, conservators and members of the art trade. Judge Arthur Tompkins who sits at the Hamilton District Court is among the visiting lecturers, who include detectives from Scotland Yard and other law enforcement agencies.

Lisa's career ambition is to teach law. She also wants to use the law to facilitate growth of the arts, and to increase useful dialogue between museums and cultural heritage institutions across the Pacific. She is a guide at the Auckland Museum and an executive committee member of the Friends of the Auckland Art Gallery.

She writes: "The physical environment at Berkeley was very easy to get used to: the sunshine, buzz of a student town and perfectly adequate accommodation has made the transition no more difficult than what I had expected. Sure, the apartment was not furnished and I had to sleep in my suitcase on the first night, but it's all part of the experience.

Classes started on the fourth day after my arrival. All LLMs were required to attend a week-long course on introduction to US law. An exam followed on Friday, along with a test on legal research and writing (candidates with a high grade could waive the legal research and writing course). In total there are 140 LLM students at Berkeley this year, selected from 3000 applications. Forty nine countries are represented. My classmates come from a wide range of professions: from clerks of the supreme court justice of India, to patent attorneys, judges and community law advisers, there are some recent graduates too.

I have also gotten to know some of the JD students through the different journals I am thinking of joining, and from my contribution to the San Francisco Chinatown immigration clinic. The experience was so rewarding, it also made me realise how good we have it New Zealand. The state of the American immigration law is a mess and more often than not, the subject is a political football. I have also started teaching underperforming high school students at the Berkeley YMCA as a volunteer.

In terms of academics, I have secured a supervisor for my thesis. My focus is on traditional Chinese legal theories and the preservation of cultural heritage property. Particularly I will look at the UNESCO and UNIDROIT conventions on cultural property protection with reference to Confucianism, Daoism and Han Fei's legalist theory. My supervisor, Professor Bob Berring is very enthusiastic; he commented that it has been a long time since he last saw a thesis proposal starting with a quote from the *Analects*."

Student news in brief

Auckland's mooters were ranked 10th at the Jessup International Law Mooting Competition. Auckland achieved further success in this year's NZ student competitions.

A sentencing advocacy competition has been introduced into the Criminal Law programme.

You can find full coverage of these stories and news of other student events on the Law School's website, www.law.auckland.ac.nz

Chief Judge Russell Johnson



Judge Johnson was renowned for his large heart, people skills, smiling demeanour and commitment to restorative justice, combating domestic violence and innovation in the courts. The three great passions of Judge Johnson's life were his family, law and the navy. He left his mark on all three spheres.

Chief District Court Judge Russell Johnson will be remembered affectionately and respectfully by judges and lawyers as a great New Zealander whose shock death on 24 July 2011 has left a huge gap in this country's legal world. Judge Johnson was renowned for his large heart, people skills, smiling demeanour and commitment to restorative justice, combating domestic violence and innovation in the courts. The three great passions of Judge Johnson's life were his family, law and the navy. He left his mark on all three spheres.

Judge Johnson attended Kaitia Primary School and completed his secondary schooling at Inglewood High School before graduating with and LLB DipCrim from The University of Auckland. Manukau District Court Executive Judge, Charles Blackie, met Judge Johnson in 1965 when they were both 18 and had arrived in Auckland to attend law school. Judge Blackie, who was from Putaruru, stayed at the Auckland City Mission's hostel for young people from the country. Sitting at the lunch table soon after his arrival, he was asked what he planned to do in Auckland. When Judge Blackie said that he was going to study law, another voice piped up that its owner would be doing the same thing. The other voice belonged to Judge Johnson, who was from the small community of Inglewood. The chance meeting was the start of a life-long friendship between the two men, who went through law school together, joined the navy in tandem and rose to high ranks, and also both became judges.

Judge Johnson practised law for 24 years in Auckland, with a two-and-a-half year interval working in Hong Kong as a Crown Counsel during the mid-1970s. Judge Johnson prosecuted both criminal and tax cases during his time in Hong Kong. Auckland mayor Len Brown and Judge Johnson worked at the same law firm for a time. Mr Brown described Judge Johnson as a pre-eminent New Zealander and loyal

friend and said that, in their practice together, he had seen first-hand the judge's commitment and love for the people of Auckland.

In 1993, Judge Johnson was appointed a District Court Judge. He was based at the Waitakere, Auckland and Manukau District Courts. At the Waitakere District Court, he was involved with New Zealand's first Family Violence Court. When he moved to the Manukau District Court, he initiated the creation of a specialist court modelled on the Waitakere one. In late 2004, Judge Johnson called together victim advisers, lawyers and court staff to discuss the setting up of such a court.

At the meeting, he delivered a heartfelt and compelling speech about the blight of domestic violence on New Zealand society and the failure of the criminal justice system to deal effectively with it. Judge Johnson asked those present to imagine 400 or more women being "punched, kicked, stabbed or beaten with a belt" every month across the road in the Manukau shopping centre. He said that there would be an outcry and the community would mobilise to protect itself. However, because the violence was happening in the women's homes "What do you get? Same results but only muffled concern ... What's happening? Something is wrong with the process." Judge Johnson said that a combination of behaviours was coming together to frustrate justice and a new, effective and workable model was required for processing family violence cases in the criminal court. He said that the Manukau judges were aware of the problems and wanted a system that was "more than a masquerade." The Manukau Family Violence Court began operating in February 2005.

Judge Johnson was appointed Chief District Court Judge in 2005 and moved to Wellington. His six years as head of the country's busiest court were characterised by his scrupulous fairness, imperturbability

and cheerfulness in the face of pressure and a huge workload. As well as carrying out his administrative responsibilities, Judge Johnson continued to preside over court sittings and was invariably speedily on the spot in different parts of the country to take responsibility personally when crises arose or there were difficult cases to be heard.

He continued to advocate improvements to district court processes. In 2009, Judge Johnson described new rules aimed at resolving civil disputes in district courts as a world first which would mean that "greater access to justice will not be empty rhetoric but an achievable reality for many." In the same year, he delivered a speech in which he called for an end to "political poker" with the criminal justice system. In mid-2011, Judge Johnson took the unusual step for a judge of appearing on television channel Media7 to discuss criminal justice issues.

Judge Johnson was known for his commitment to restorative justice and was a supporter of the rangitahi courts. He encouraged the appointment of Māori judges and the use of te reo in the courts. Judge Johnson was a judge of the Supreme Court of Pitcairn Islands and a Deputy Chief Judge of the Court Martial. He was appointed a Deputy Judge Advocate General of the Armed Forces in 2011.

Judge Johnson and Judge Blackie shared long naval careers. They began as ordinary seamen, with their lives frequently involving legal work during the day and naval commitments in the evening and at weekends. Judge Johnson had lengthy sea deployments, commanding patrol craft and spending a summer in the Antarctic. He and Judge Blackie were involved in tactical exercises involving both New Zealand

and Australia. Both men commanded ships. Judge Johnson remained in the navy for 25 years, serving as an officer of the Royal New Zealand Naval Volunteer Reserve and being awarded the Volunteer Reserve Decoration in 1987. He retired as Commanding Officer of the RNZNVR in Auckland in 1992 with the rank of Commander RNZNVR.

Judge Johnson was a keen and accomplished small boat sailor and always owned a craft of one type or another. These were not always reliable vessels and there were frequent breakdowns and foundering. He and other Auckland judges enjoyed numerous sailing excursions. In addition, Judge Johnson had a lengthy involvement with the youth programme, the Ark Trust, served on the Law Society and was president of the Auckland Officers' Club.

Judge Johnson is survived by his wife, Margaret, daughters Katherine and Sarah, and five grandchildren. He was very much a family man and enjoyed family holidays with his daughters and was devoted to his grandchildren. Tributes to Judge Johnson have flowed from all sectors of the legal world. Judge Blackie summed up Judge Johnson's life when he said that he had left a gap that would not be easy to fill. Judge Blackie said that there were few activities in which Judge Johnson was involved that did not result in him ending up as president, or otherwise in charge of, the relevant organisation.

Catriona MacLennan. This article was first published in At The Bar (September 2011) and is reproduced here with the permission of the NZ Bar Association.

Donald Dugdale



Don Dugdale was a big man in every sense of the word. He was eloquent, succinct and fearless. There are many of us from the profession or judiciary who were greatly influenced by him, much more than any usual boss. He was brilliant and fun, and sometimes just a little dangerous. He always seemed to have time to listen and advise and he was generous to a fault, cheerfully passing on good work. He became a hero to us, and bits of him are part of our professional DNA.

When I went to work for Don in 1973, at the invitation of Keith Berman, I found myself in the presence of a person who was already a legal legend. He defied categorisation. In some ways in terms of human rights, as encapsulated in our Bill of Rights, or in relation to any limits on the ability of persons to do what they want to do, he was deeply conservative. He hated such restrictions. In other ways, in his loathing of discrimination and the pretensions of authority, and his dislike of cant and prejudice, he was a liberal.

I tried to make sure that my office was close to Don's because it was so enjoyable. Every now and then there would be some explosion from Don, and both his mock rages and his real rages were enjoyable - if the bullets weren't aimed at you. Through the 1970s and 1980s he was at the absolute top of the pyramid of litigation lawyers. At a Law Society seminar in the late 1970s a senior lawyer in the course of giving a speech observed that if he did such-and-such a thing his whole career would be at risk, and he would have to go and see Don Dugdale to fix things up. Because Don had the reputation of being able to do magic when he was on his feet.

He can be seen appearing as counsel in three reported cases of the early 1970s. In the first he put forward a proposition and he won. In the second, he put forward the opposite proposition, contradicting the first, and he won. In the third he reverted back to his first proposition and he still won. There was an occasion when he was appearing in the District Court on a hire purchase case and he told the Judge "Your Honour I have one short submission and this is it." He gave that submission. Two months later he was in front of the same Judge. He said "Your Honour

I have one short submission and this is it." After hearing the submission the Judge exclaimed: "But Mr Dugdale, that is the opposite of the proposition you put to me two months ago." Don closed his eyes in a slightly pained manner and said, "Your Honour, I was wrong." "But," said the Judge, even more heated, "I accepted your submission and found in your favour." Don looked even more pained. "Your Honour," he said – his eyes now very firmly shut – "You were wrong." The outcome of that case is not known.

I would enjoy following Don around as his junior. There was a time we were instructed by Australian lawyers on an insurance case. Our opponent was the formidable Richard Craddock QC. We had a settlement discussion, a process that Don never greatly enjoyed. We had been sitting with Richard Craddock and the Australian lawyer, and he and Richard had been having some very tense arguments. Finally Richard leapt to his feet and said that he could stay no longer and that he had a once in a lifetime appointment to go to. The Australian lawyer asked him "Hold on – what can this once in a lifetime appointment be?" Don, his eyes firmly shut as they had been for some time, intoned sonorously "circumcision."

I mention briefly some of Don's achievements in the law. He was on a Committee known as the Contracts and Commercial Law Reform Committee from, I think, the late 1960s, and certainly through the 1970s until it was disbanded. This was a great Committee that reformed significant parts of our contract law in a series of short statutes. These statutes, which include the Contracts (Privity) Act and the Contracts Enforcement Act, are now part of the backbone of our contract law, and have not been changed over all these years. They are superb pieces of work and Don was a significant contributor.

The second matter that I must refer to is his outstanding service to lawyers through various Councils and Committees. In particular, he was President of the Auckland District Law Society and a Vice President of the New Zealand Law Society. He was also a member of the New Zealand Council of Law Reporting and he served on the Council of Legal Education. While a member of the Ethics Committee he contributed to the decision that allowed lawyers to advertise their services.

The third significant aspect of his legal career was his work as a Law Commissioner between 1996 and 2002. He led the commercial team and was involved in many significant reforms. I know from the President of the Law Commission at the time, Sir David Baragwanath QC, and from others who served with him, that he was enormously valued and liked.

Fourth there was Don the legal writer. He published two significant books: one on hire purchase and the other on the Credit Contracts Act. He was a prolific writer in legal journals. He strongly resisted efforts, as he perceived them to be, by the higher courts to run roughshod over established legal principle, and to decide cases on their merits or through opaque reasoning, rather than through the strict and principled application of existing and known law. At one stage he famously accused the Court of Appeal of palm-tree justice. Needless to say, these actions did not necessarily endear him to the legal establishment of the time. This did not deter Don in the slightest.

He was greatly in demand as an after dinner speaker. Many of his great speeches are still talked about. One in particular needs to be mentioned. His theme was how middle names reflect the places where people were conceived. He noted in the audience Howard Carisbrooke Keyte, and mentioned that Kit Holden Toogood sent his apologies.

Finally before I leave his legal accomplishments, I return to Don the advocate. His presentations were powerful and succinct. He could peel the skin off an argument and expose the legal principle that supported his case with unparalleled efficiency and aplomb. He greatly enjoyed the gamesmanship of the law, and was disappointed when through the 1980s and 1990s much of this disappeared. His cross-examination style was unique. He was a great user of all the old tricks. It was a brave witness who could stand up to Don announcing "Will

ya now tell us the truth Mr X". In one case where identity was at issue he sensed the witness was unsure about what the defendant looked like. Therefore, in the course of cross-examination, he went up and had a word with a young man in the public gallery whom he had never seen before. A few questions later he asked the witness to identify the defendant and, sure enough, she pointed at the young man. The defendant, of course, was someone entirely different, and the case was won.

I finish with a few serious words about Don's qualities. Don cared for the law. Although he was never a hail-fellow-well-met sort of person, nor a back-slapper or a first-namer, he cared about people. Indeed, he was a fiercely loyal partner and lawyer. He might be rude to you to your face, but he would stand by you to the end. I think this was one reason why Don never went to the Bar.

For all his brilliance and charisma he was not an ambitious man. There was no touch of guile or jealousy about him. He did not seek public office. Indeed, he could have easily been a Queen's Counsel if he had wished to be so. But it ran against his grain to pursue such an appointment.

It is his superb legal mind and his loyalty that we will remember, leavened by our memories of his wit, which he used to best effect when he was making a legal point. Just recently he published an article despairing of the damage done by the new Wills Act. The drafters of that Act had substituted the word "testator" with the word "will-maker". Don's observation was, "This is a change for the better only if you believe that the word 'milk-maker' would be an improvement on the word 'cow'."

So Don goes to meet his maker, although he would not have seen his parting that way. Don always had a complex attitude to religion. He once sent his secretary out to get a Bible for the swearing of oaths. She came back, not with the King James version but with the New English Bible. Don was not happy. He was heard to exclaim: "I may be an atheist but I'm a traditional atheist."

Farewell Don, you are irreplaceable.
Raynor Asher J

Senior lecturer Paul Sumpter adds that he had the privilege of being a partner of Don's at Kensington Swan. He says: "His knowledge of the law was legendary. Many years later it was a nice surprise to find Don as a colleague once again when he came to the Law School to teach banking law from 2003-2006."

Don Dugdale was a big man in every sense of the word. He was eloquent, succinct and fearless. There are many of us from the profession or judiciary who were greatly influenced by him, much more than any usual boss. He was brilliant and fun, and sometimes just a little dangerous.

Auckland women head three of four courts

Women graduates of the Auckland Law School now hold three of the top judicial positions in New Zealand. Dame Sian Elias (LLB(Hons) 1971) has been Chief Justice since 1999, while Justice Helen Winkelmann (BA/LLB 1987) became Chief High Court Judge in 2010, having been appointed to the High Court in 2004. Judge Jan-Marie Doogue (LLB 1981) completed the triumvirate when she was appointed Chief District Court Judge in September this year, having been made a District and Family Court judge in 1994. Their only male equivalent is Justice Mark O'Regan, a Victoria University graduate, who is President of the Court of Appeal.

Dame Sian Elias, in particular, has a law career marked by firsts for women. She and Lowell Goddard were the first women to become Queen's Counsel in New Zealand in 1988. She was also the first woman to be appointed as Chief Justice in New Zealand. In 2004 she became the first woman to sit on the New Zealand Supreme Court when that court was established.

Bill Williams

Christian Whata appointed to the High Court



On 3 March 2011 Christian Whata (Ngati Pikiao) was sworn in as a High Court Judge. The ceremony took place in the historic Number 1 Court at Auckland. Justice Whata graduated BA (1992) LLB(Hons) (1994) from The University of Auckland. Subsequently he attended Cambridge University, gaining a Master of Laws with First Class Honours. After working for several law firms in Auckland, Christian became a partner at Russell McVeagh in 2001. His practice was mainly in the resource management area and he was a member of the Māori Lawyers Group in the firm. He has extensive experience in a number of high-profile court actions including appearances in the Privy Council.

The ceremony in the High Court acknowledged tikanga Māori, commencing with orations and waiata from Ngati Whatua and responses from Christian's Iwi and whanau. The full bench of the High Court also responded through Justice Joseph Williams, a former Judge of the Māori Land Court and now a High Court Justice. The formal ceremony was presided over by the Chief Justice Dame Sian Elias (another alumnus) with addresses from the Attorney-General Mr Christopher Finlayson on behalf of the Crown, Mr Jonathan Temm, President of the New Zealand Law Society (an Auckland Law School alumnus), Stephen Mills QC on behalf of the Bar (an Auckland alumnus), and Mr Paul Majurey (a former partner at Russell McVeagh). Christian Whata responded with acknowledgments of support from iwi, his colleagues at Russell McVeagh, and support from his wider family and wife Robyn. The Chief Justice noted that it was intended that Justice Whata would be presiding in Christchurch, but following the major earthquake on 22 February 2011, that assignment would be delayed. Also attending the ceremony were Christian's four young sons.

Following the ceremony there was a convivial reception in the foyer. Many judges, lawyers, and family friends attended from other parts of New Zealand. Christian is only 42 years old, and in his reply he acknowledged that he looked forward to a 28 year commitment as a High Court Judge. The Law School conveys its congratulations to his Honour.

Ken Palmer

Photo by He Tangata Digital Media

Claire Ryan appointed to the District Court

Newly appointed District Court Judge, breast cancer survivor, Matariki enthusiast and energetic teacher, Judge Claire Ryan does not do things by halves. Since being admitted in 1985, Ms Ryan has had a distinguished career. She worked for Nicholson Gribben (now Phillips Fox), Chapman Tripp and her late father, Kevin Ryan QC, before moving to Melbourne in 1990. Judge Ryan became an associate at Moores Legal, spending five years practising family and criminal law. She says she particularly enjoyed working in the St Kilda office with clients such as homeless people and those with disabilities, mental illnesses and alcohol and drug dependencies. "In dealing with a wide spectrum of people at Moores, I was confronted with humanity - both my clients' and my own. It helped me realise the privileges in my own life and it bought home law as a vocation," she says.

When Judge Ryan returned to New Zealand, she was armed with both valuable experience and a newly acquired theology degree. She went to teach theology at the Catholic Institute of Theology at The University of Auckland. Her specialty was the First Testament, especially the prophets, and she is fascinated with Māori prophets. "The fact that there is little written on [Māori prophets] as a whole is interesting. One day when I'm old and grey there may be a book about them," she says.

After working for Burns Hart & Co, then Judith Collins & Associates, Judge Ryan went to hold a position at Crown Law for 11 years. "There were no victories and no losses working for the state," she says. "We were encouraged to place all evidence before the court, including material that may not have assisted the Crown and left it to the court to make the decisions. For me, we were not zealously seeking convictions." From 2005 until her appointment to the District Court, Ms Ryan led the Youth and Family Court team at Meredith Connell. "I love the more inquisitorial nature of the Youth Court. I like the fact that New Zealand Youth Courts deal with young people in a way which is cutting edge. We can be internationally proud of what we do. The Youth Court is the 'esoteric meets the visceral,'" she says.

Both time and dedication were also given to endeavours outside Judge Ryan's career. She has been working at the Auckland Observatory for 14 years. As a member of the self-proclaimed "night riders" (evening educators) she has always been interested in the night sky and still teaches elements of astronomical education a few times a week to the public. She especially enjoys intertwining science with the spiritual and helping people to understand taitai aorangi (Māori astronomy). "It's a wonderful job. I grew up in the era when space exploration was beginning and have had a passion for it since. I have a particular interest in Māori astronomy and teaching others about Matariki - the background, context and stories are so exciting - and profound," she says.

Judge Ryan was diagnosed with breast cancer in 2000 and as she was relatively young, the cancer was aggressive. "I am an assertive person myself, so I wasn't surprised that my cells were too. I was given a 25 percent chance of surviving ten years. I had six years of treatment. I'm grateful to be alive," she says, "and I am now in good health". After making it through a tough few years, Judge Ryan says she had an opportunity to share what she had learned from her experiences. In 2004, she helped found the Breast Cancer Aotearoa Coalition (BCAC), established to educate the public and policy makers. "We were committed to improving access to treatment and helping people making informed choices about their care. We campaigned for public access to Herceptin which I see as one of our greatest achievements together with the publication of Step by Step, an information pack

BCAC gives to New Zealanders diagnosed with breast cancer. I spent time working for others with something that really resonated with me. It was a very positive and transformative time of my life," says Judge Ryan. She still supports people with breast cancer through their diagnoses and treatment. BCAC chair Libby Burgess says that Judge Ryan's legal mind was an incredibly valuable asset. "We owe a huge debt to Claire for the body of impressive work she has done for BCAC and for her generosity both with her time and financially," she says.

Judge Ryan has also always been interested in debating and has been a director of the World Schools Debating Championships and a member of the executive for many years, including chair for the last two years. "Debating teaches kids to think and speak clearly and coherently and challenges them to be aware of international issues. It breaks down barriers between nations and helps young people learn to be more open and tolerant," she says.

Judge Ryan says she is feeling honoured and privileged, yet daunted, about becoming a judge.

Hannah Grant. This article was first published in LawTalk (778, 11 August 2011), and is reproduced here with permission.



Congratulations

The Law School congratulates Maureen Southwick, Pippa Sinclair and Barney Thomas, who were also appointed District Court Judges in 2011.

Class of 1947-50: Talking to Peter Buddle, Sir Muir Chilwell and Sir Duncan McMullin



Sir Duncan McMullin

Following a very successful reunion of the Classes of 1947-50, three elder statesmen of Auckland's legal profession talked to *Eden Crescent* about a period of the law that has spanned great change.

Peter Buddle, Sir Muir Chilwell and Sir Duncan McMullin came to the law with varying degrees of enthusiasm. Unsure what to do when he left school, Peter Buddle was sent to talk to his uncle and to his consternation found himself summarily employed as a law clerk in Buddle, Richmond & Buddle; starting wage – 10 shillings a week. He began his law degree in 1938. There was also law in Sir Muir's family and he thinks he was pre-programmed for the profession from childhood. He joined Haddow & Haddow in 1941 as a clerk and began studying at Auckland University College the same year. The Second World War disrupted and extended both their degrees. Peter Buddle sat one of his papers, Procedure, from Egypt, despite his only textbook being a book on military law; and turned down a request to prosecute a soldier on a murder charge, insisting a qualified lawyer was needed. He did, however, assist the defence.

Sir Muir's study was interrupted by service in the Army Service Corps and later the Fleet Air Arm and he was also manpowered to work at Hellaby's abattoir at Westfield, familiar to later generations of students looking for a holiday job. He too had his first court experiences before he qualified, in the Land Sales Court. Every transaction involving land

had to have court approval. The object: to justify the price and keep values down.

For Sir Duncan McMullin, law was his first love and his second, and he committed to the profession while still at school. He joined Wynyard, Wilson & Baxter in 1944 and six years later was admitted to the bar. Study was part-time then. Students attended lectures in the early mornings and after work and on Saturdays. They all remember long days, the scramble to get between the office and university, and the constant grumbling of practitioners that their clerks were either arriving late or leaving early. "The principal advantage," says Sir Muir, "was that by the time you got your degree you really were qualified to practise." It is not a system he thinks would work now: "I'm very impressed with the standard of knowledge of the young graduates today. They are way ahead of where we were. I think the law is, in many respects, more complicated."

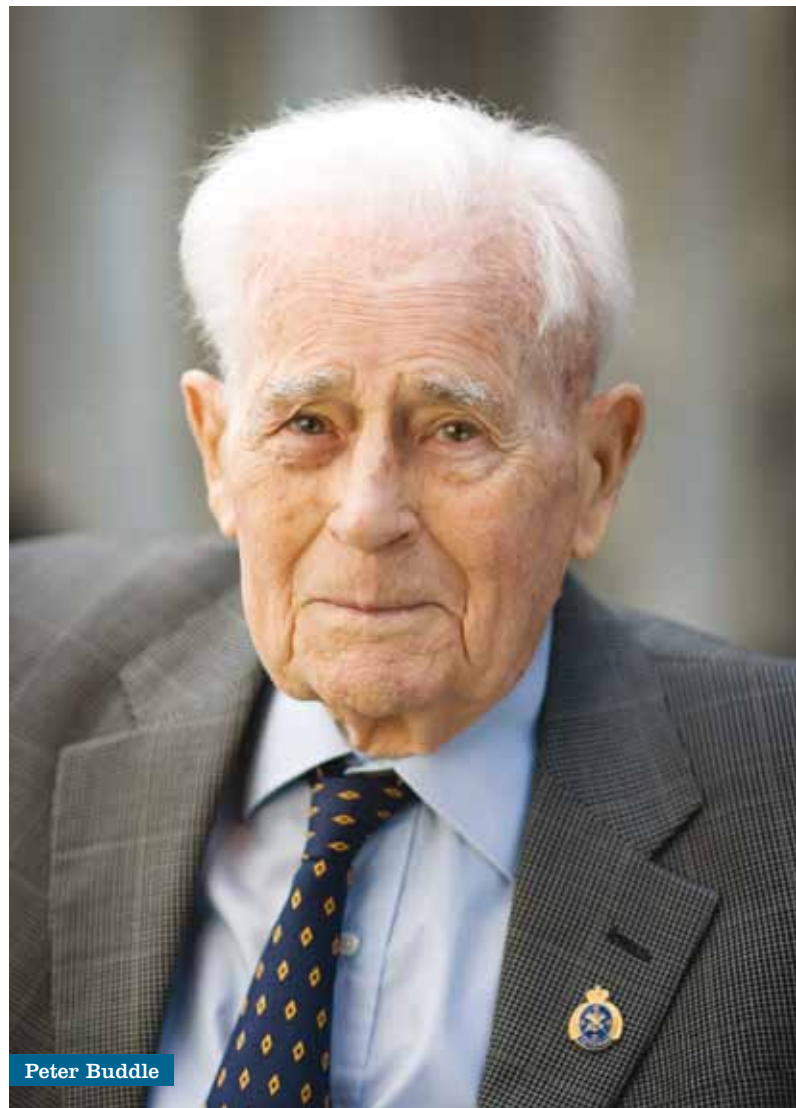
They each became partners in their firms within 18 months of admission, not unusual in the post-war years. Sir Duncan had moved to Hamilton to join Strang, Taylor & Sandford immediately after qualifying, attracted to their big court practice – Strang was Crown Solicitor. Fifteen months later he found himself thrown into his first major case in the Supreme Court when one of the partners collapsed. He took over prosecuting the manslaughter case already underway and two others

set for the week, a sodomy case and one of aggravated robbery. That all the defendants were convicted had less to do with his advocacy, he suspects, than the strength of the Crown's case. There were a large number of major works in the Waikato of the 1950s – dams, mines, logging, sawmills, and pulp and paper companies – with big workforces and a correspondingly large number of compensation claims for accidents and workplace deaths in the days before ACC.

Sir Muir was building up his court experience too, enjoying pitting his wits against opposing counsel. After standing in for Professor Davis, teaching Conflict of Laws during the Dean's sabbatical, he agreed to take over classes in Taxation and Conveyancing from Ted Henderson, the School's only other lecturer, who was a partner with Hesketh & Richmond. He began to get tax work and was soon known as something of an expert. Although he found it really interesting, it began to push out his other work. "It got rather tough. There was a lot of money involved and you didn't have to be wrong to be on the thick end of a negligence action." He was then asked to take Silk and decided to turn to more general litigation. In 1965, there were about half a dozen barristers sole in Auckland and he was one of only three Silks, when he and David Beattie QC, with barrister Graeme Hubble, broke with tradition and opened an office together on High Street. Work built slowly to start but he still regards those as some of his best times as a Queen's Counsel.

Peter Buddle chose a different course, specialising in conveyancing and estates and leaving the court work to the barristers in the firm. The first major issue he became involved in was the new Property Law Act, passed in 1952, working first on solicitors' audit regulations and then with the committee advising on the Act. "It completely revolutionised the whole structure of conveyancing, and it's still operating today without too much change to the regulations." He began a career-long relationship with the Auckland Savings Bank, second of the original New Zealand trustee savings banks, which were not allowed to open branches more than 25 miles from head office. The Auckland bank wanted to establish a branch in Pukekohe and Peter was asked if it met regulations. He thought that, as the bird flies, it just might. "We decided, 'Who's going to object?' I didn't think there was any government supervising body that was checking anyway. I suppose if we had set one up in Hamilton, they would have noticed!"

The 1970s brought professional advancement. Sir Duncan had set up as Hamilton's second only barrister sole and after queries from the Chief Justice on when he would apply to take Silk, unexpectedly received an offer to go onto the Supreme Court bench. He was sworn in in November 1970 in a 30-minute ceremony – "brevity was favoured in those days" – with a salary of \$14,000. He had wondered whether he might have a chance to join the judiciary in his fifties; instead he was



Peter Buddle

the 1600s". He upheld the magistrate's guilty verdict: "If the appellant wished to use the word 'fuck' in the privacy of her own home or in the presence of friends, she was free to do so, but in the context of a public meeting the use of that word was contrary to accepted standards."

Sir Muir was interested in a judicial position and he welcomed the complete change to being in practice that came with his elevation in 1973. "Everything is given to you when you are on the Bench; all the arguments and evidence are fed to you so, really, the pressure is off."

They all remember long days, the scramble to get between the office and university, and the constant grumbling of practitioners that their clerks were either arriving late or leaving early...

only 43. He liked the Bench: "It was more ordered and less stressful than being in practice." Early on, he presided over two cases that captured the decade's zeitgeist: the musical "Hair" and its producer, Harry M Miller, were charged with indecency and English feminist Germaine Greer appealed a guilty verdict for using the "f" word during an address on The University of Auckland campus. In the first case, Lloyd Brown QC and Michael Williams for the defence applied for the jury to see the show. Sir Duncan allowed it and attended himself, taking care not to show whether or not he enjoyed it. The jury's verdict was "not guilty". For Greer's appeal, he researched the use and status of the word and "discovered it was in good standing until about the end of

The 1970s and 1980s were decades with sharp and sometimes violent divisions in New Zealand society. One of the divisive issues, abortion, figured in Sir Muir's and Sir Duncan's judicial careers. Sir Muir was the presiding judge in the *Queen v. Woolnough*, where Dr Woolnough of the controversial Auckland Medical Aid Centre (AMAC) was tried on 11 charges of abortion. "I remember telling the jury that they had to consider each count as a separate trial, not to lump them altogether. They were out for 11 hours, exactly one hour each, and he was acquitted. That gave rise to the Royal Commission on Contraception, Sterilisation and Abortion, which Sir Duncan chaired."



Sir Muir Chilwell

Sir Duncan accepted the position with some misgivings. He had had a temporary appointment to the Court of Appeal and found the warrant for the police search of the AMAC was too general and therefore not valid. Nevertheless, he felt he knew very little about the issue and he had no views on the subject. "The public debate was very heated and acrimonious and after the first three weeks of hearings in Auckland, some of the women on the Commission began to wonder how they would get through it. People were tearing themselves apart." He feared that no matter which way their decision went, his tyres would be slashed, his car panels kicked in and he would receive hate mail. The final report published in March 1977 criticised both sides of the debate, but there was no such retaliation. The Contraception, Sterilisation and Abortion Act was passed later that year.

The establishment of the Waitangi Tribunal in 1975 was another development that had an impact on law and the courts. One such case, *Huakina Trust v Waikato Valley Authority*, was heard by Sir Muir. "There was an application to discharge effluent into the Waikato River that was opposed by a local Māori group and, at the Town and Country Planning Appeal Board stage, the Board refused to allow a submission on Māori spirituality related to the river and their deep feelings for that spirituality. I decided the Board had to hear the evidence and ordered a re-hearing. It would have been the first time that issue had been raised. I read every High Court and Supreme Court decision or bench law that had anything to do with the Treaty of Waitangi; and I also read the first four decisions of the Waitangi Tribunal, which included people like Paul Temm QC. The conclusion I came to was that, while judges initially respected the Treaty in the settlement of New Zealand, that changed when Chief Justice Prendergast said the Treaty was a 'nullity' in *Wi Parata v Bishop of Wellington* (1877); and the injustice of that really

did affect me. In laying out the factual elements and highlighting the grievances, the Waitangi Tribunal decisions emphasised the really bad way Māori had been treated. I was so pleased to be able to say that the question of Māori spiritualism is a factor to be taken into account."

Peter Buddle was by now spending the majority of his time advising the ASB, and on a memorable occasion ran up against one of the country's most formidable politicians. One of the questions I had to address was: could they as a savings bank issue cheques? I said, 'yes, they could.' Muldoon, who was Minister of Finance then, said, 'Tell your solicitor that if he goes ahead and does it, I'll pass an act to stop him.'" Peter believes that Sir Robert Muldoon didn't want a savings bank competing with the Bank of New Zealand. They had to wait until after the 1984 election when Sir Robert was no longer prime minister before the ASB could issue cheques drawn on itself. Peter also went through a merger that created one of the country's major firms, Bell Gully, known as Bell Gully Buddle Weir until he retired. The 1982 merger succeeded where an earlier attempt to open a firm in Wellington had floundered in the 19th century. "The original firm sent a partner to Wellington to see if he could operate from there but communications were too difficult. In those days firms were in one town and nowhere else. They did establish a partnership, Buddle Anderson & Kent, that eventually became Buddle Finlay; and then in 1986 Buddle Finlay established a firm in Auckland."

In 1979 Sir Duncan had been appointed to the Court of Appeal, which meant living in Wellington. For the first two years of his ten years at the Court, he "bached", coming home to Auckland only every third week. It is a point of pride that he never resorted to McDonald's. His cooking style was simple - "I boiled everything." Life on the Court was "the best of times". Although he wrote over 200 reported judgments,

he did far more oral judgments, as was the practice then: “We would never have survived if we hadn’t; and people like Court presidents Richmond, Woodhouse and Cooke were marvellous at how they could give oral judgments. They’d take a couple of hours to write it and then come back and give it. Richmond hardly altered a word of the draft his associate typed. We would have been swamped if we had had to give reserved judgments.” Nevertheless, he liked writing judgments and enjoyed spending Sunday afternoon in the Law Library crafting a good entrance to a judgment. When he left the Court of Appeal he thought he might receive the “odd arbitration case” but from the day he retired there were constant requests to do arbitration work. For various periods over the succeeding years he also chaired the Wanganui Computer Centre Policy Committee, the NZ Conservation Authority and the Market Surveillance Committee of the NZ Electricity Market. When Sir Muir retired in 1991 he had served ten years as Judge of the Administrative Division of the High Court, Judge of the High Court of

the Cook Islands and Judge of the Court of Appeal of the Cook Islands.

The three men have noted many changes in the profession since they joined. Peter Buddle recalls the collegiality of a small and close group of practitioners. “By my second year as a law clerk I would probably have known 90 percent of the solicitors in practice in Auckland and they would have known me.” There were the changes brought by technology as traditional legal processes moved into the digital age; and the sheer size of the new law firms: there were five partners when Peter Buddle started out and 16 when the firm merged with Bell Gully, which had more than twice that. They were the first legal firm in Auckland to rent space specifically to store files. Sir Duncan thinks the High Court judges carry the heaviest load now, rather than those in the Court of Appeal. Sentencing is also more difficult, and what once lasted no more than half an hour can now take a day.

Louise Callan

Governor-General hosts a reunion of the Class of 1970

The Class of 1970, looking a trifle haggard and worn in some instances, had an extremely enjoyable reunion at Government House in Auckland. We were there at the invitation of our most illustrious fellow alumnus the Right Honourable Sir Anand Satyanand, Governor-General, who together with Lady Susan Satyanand welcomed us all with much conviviality, food and liquid refreshments.

Another flashback from the past was present in the form of those well-known troubadours, the Lex Pistols who provided the musical entertainment.

Recognising some of the Class of 1970 proved difficult at times (fading memories, wrinkles etc) but once past the reintroduction phase there were some illuminating conversations. What was particularly interesting was the number of former graduates who had moved out of legal practice per se, and were engaged in a wide variety of other occupations. It was gratifying to see the breadth of use of a law degree from the Auckland Law School. There were indeed some who had a

touch of envy towards others who had broken away from the traditional approach to practice, and had embarked on careers which looked very interesting and rewarding.

Grateful thanks must go to Sir Anand and Lady Susan, who hosted the evening themselves in their personal capacities. Taking this lead, a number of the Class of 1970 are formulating a “Class Gift” to which we can all contribute both to formally acknowledge the benefit of receiving a legal education from the Auckland Law School and to offer support essential to maintaining a Law School of renowned excellence. It seems that a C or C+ is no longer sufficient on the world stage.

I recommend Class Reunions as being a lot of fun. This is the second reunion of our year organised (the last was to recognise 25 years) and subject to an anticipated drop off in numbers (somewhat like First World War veterans) we hope to put together another in due course.

John Haigh QC

Ian Narev: New head of the Commonwealth Bank of Australia

The Commonwealth Bank of Australia’s new boss has always been a high-flyer. He was aboard a plane waiting to take off at New York’s JFK airport on September 11, 2001, when two Boeing-767s ploughed into the World Trade Centre, blocks away from his office at consultancy firm McKinsey & Company. The disaster struck a fortnight after Ian Narev had finished a six-month stint working with a client on the 60th floor of one of the towers.

12-year-old Narev was a child television star, and appeared in the 1979 series *Children of Fire Mountain*. From Auckland Grammar School in 1984 he went on to claim a senior law prize from The University of Auckland, and a scholarship to continue his studies at Cambridge. He graduated as the top LLM student in 1994 and went on to gain a second masters at New York University in 1998.

In the same year, Narev joined high-powered management consultants McKinsey and began working with some of the United States’ largest financial institutions. He shifted to the firm’s Sydney

and Auckland offices in 2002 before becoming the head of McKinsey’s New Zealand operations in 2005. In 2007, he moved to Australia as group head of strategy for the Commonwealth Bank. A year later he was in charge of the A\$2.1 billion acquisition of the Bank of Western Australia and investment in Aussie Home Loans. He was appointed the Commonwealth’s group executive of business and private banking – a division with 4000 staff that generated A\$1 billion in profit – in 2009. Narev is also a director of ABS bank, a position he may not be able to stay in when he moves into the role of chief executive at Commonwealth Bank of Australia in December.

Ian Narev said that he was honoured by the appointment and looked forward to taking the bank through a time of rapid economic change. He lives in Sydney with his wife and two daughters.

Hamish Fletcher. This article was first published in the New Zealand Herald (July 23 2011 at C5), and is reproduced here with permission.

Joshua Bayliss: Virgin Group General Counsel



Joshua Bayliss (BA/LLB(Hons) 1996) spent two years as a judge's clerk at the Court of Appeal after graduation. He then worked at Bell Gully in Auckland until 1999, when he travelled to Europe expecting to capitalise on his BA in Spanish and work for a law firm in Barcelona. That job was not all that he had hoped and so he moved to London and spent six years at Slaughter and May, one of the so-called "magic circle" law firms based in the UK. Whilst he was there Virgin approached him and offered him the opportunity to establish a legal function as their first ever Group General Counsel, "which was too appealing to pass up." In October 2011 he will take on a new role as Co-CEO of the Group. He says, "I live just outside Geneva in Switzerland with my wife and daughter (7) and son (4). We love the outdoor lifestyle of Switzerland and spend our weekends boating on the lake in summer, skiing in winter and I try to ride my bike most of the year." Khylee Quince asked him a few questions:

How did your Auckland law degree set you up for an international career?

My law degree was a crucial stepping stone in my career, not just for the substantive training which was so important early in my career but also for teaching me to think critically and to be creative about how to solve problems. I regard some of the teachers I had at Auckland as among the most influential people in my career because they encouraged me to challenge myself.

What are some of the advantages/disadvantages of being a kiwi?

I found it a huge advantage to be a New Zealander working in London (especially in an Oxbridge-dominated environment) because my failure to fit into any convenient social category forced people to judge me on my merits, which is all I ever could have asked for.

What are some of your career highlights to date?

There have been many highlights along the way - writing a judgment that found its way almost unedited into the NZLR, successfully managing one of the most complex and long-running legal disputes in UK history for the liquidators of Barings Bank, winning the UK General Counsel of the Year award a few years ago, and being appointed Co-CEO of the company which represents one of the world's most admired consumer brands are some of the high points.

Do you have any advice for graduates hoping to seek an international legal career?

It sounds trite, but don't die wondering. You are leaving an internationally respected law school with a fabulous

platform to write your own destiny. Decide where you see yourself and go for it, but don't be afraid to change course - rather than compromise - along the way.

What is it like working for Virgin? What is Richard Branson like?

Virgin is a dynamic, fast-paced company to work for. Richard sets the tone for all of us with his boundless energy and wonderful enthusiasm to make positive change in people's lives whether through business, philanthropy or support and coaching (for example, through the Branson schools for entrepreneurship in South Africa and the Caribbean). There is never a dull moment at Virgin!

David Tobin: Life in The City



David Tobin's career since he left Buddle Findlay for London pretty much reflects the City's own highs and lows over the past few years. Graduating with a BSc/LLB(Hons) in 2002, he arrived in London via Machu Picchu in 2005, starting work just after the London bombing – "an eerie experience". He spent his first two years in the City at Travis Smith as a commercial lawyer where, owing to the heady days of the mergers and acquisitions boom, he ended up doing more than his fair share of corporate deal support as "corporate cannon fodder" (as one recruiter unkindly put it). This was a time when it was not unheard of for companies to be sold for twice their original price after little more than a year. He moved from there to Bear Stearns. It was during his time there that Bear Stearns nearly made the list of the great global corporate failures of the Noughties – had it not been for an eleventh hour rescue by JP Morgan for \$10 a share (at its peak in January 2007 Bear Stearns shares had been trading at \$172 a share). David is characteristically phlegmatic: the first six months were "fascinating" while the economy was still booming, the last six months held their own "interest" and at the end of it the expression "moral hazard" re-entered the City's lexicon.

David has since bounced back in ways that the economy has yet to do. Married to Donna (from South East London) in 2008, with a beautiful daughter Aoife born in September this year, and two marathons under his belt, he currently leads the London legal team for Aon Hewitt (which is part of the Aon Group and was formed by the merger of Aon and Hewitt Associates in October 2010). Aon Hewitt advise on a range of HR-related issues including consulting on the risks that pension funds face in these turbulent economic times (I told you his career has tracked the economy!) He has responsibility for the UK and

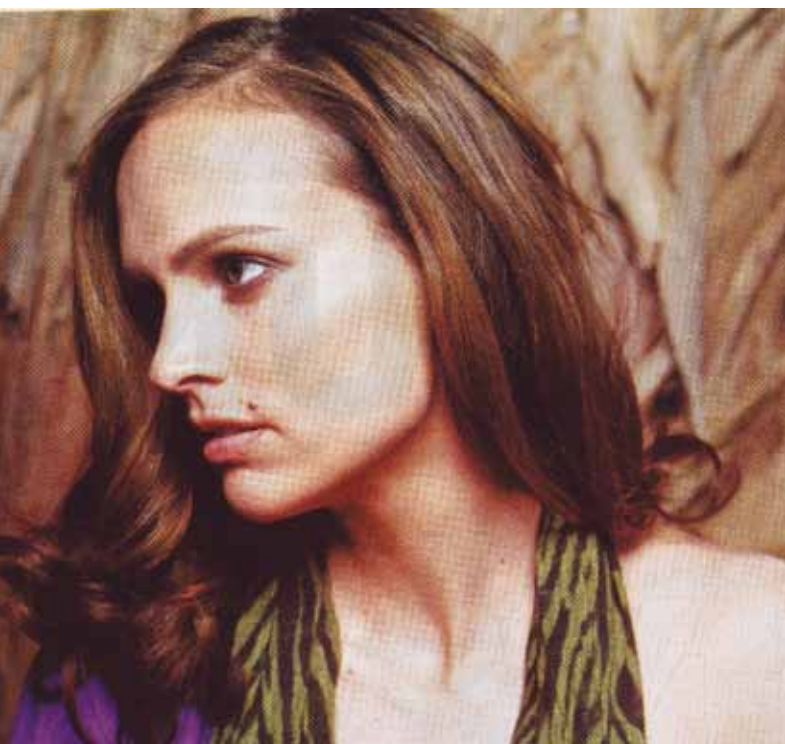
Ireland, Europe, the Middle East and Africa and has had a hectic few months completing the Aon Hewitt integration, which included moving a business that was dual regulated to a single FSA regulated business. He tells me that marathons are off the agenda for a while.

It all seems a long way from Auckland Law School and the Honours seminar paper he wrote for me on attempts to reform the law on criminal provocation. But David suggests that it was here that he was first introduced to critical thinking and that he learned not to accept everything he is told at face value. That surely will serve him in good stead for whatever the City brings next.

Janet McLean

David Tobin's career since he left Buddle Findlay for London pretty much reflects the City's own highs and lows over the past few years. Graduating in 2002, he arrived in London via Machu Picchu in 2005, starting work just after the London bombing – "an eerie experience".

Nadine Loren: A law unto herself



Clive Davis told her to drop the opera and go pop. David Foster told her to drop the pop and go opera. “I was like, ‘aaagh, what do I do?’” says kiwi singer Nadine Loren (BA/LLB(Hons)2001), on the phone from her home in Los Angeles. Baffled as to which record mogul to listen to, Loren followed her own advice, releasing her first album, *Living in Wonderland*, in 2009, a collection of pop songs laced with opera backing vocals, and now *Naked 80s*, a collection of covers of her favourite hits from the decade of leg-warmers and fluoro. In true Loren style, Nik Kershaw’s “Wouldn’t It Be Good” has eerie soprano vibrato in the background. Don Henley’s “Boy of Summer” has flamenco guitars – the opera starts at the bridge. It’s an odd mix and Loren hopes to head home to Auckland this winter to play gigs to promote it.

Seven years ago, Loren was living in Auckland, working as a stressed-out lawyer by day and singing with the NZ Opera chorus by night. Now she’s a singer-songwriter living her dream in LA, rubbing shoulders with Cat Stevens and the Beach Boys’ pianist and song-writer Ron Altbach, hanging at dinner parties with actor Matt LeBlanc and wine-tasting with radio and television personality Ryan Seacrest and consulting with the crème of the music industry. Loren credits her manager Barry Krost, Cat Stevens’ former right-hand-man, for introducing her to the right people.

Personally too, Loren is well-connected. When she married multi-millionaire investment firm chairman Michael J. Levitt this year, ice hockey star Wayne Gretzky and David Foster were among the guests. The couple were married by their friend Antonio Villaraigosa, the Mayor of Los Angeles. “I remember looking out into the room and seeing all these fabulous people. It was so surreal because I’m definitely that same girl from New Zealand.”

Well, it’s not quite that simple. Loren was born in Switzerland and spent the first eight years of her life in Germany. Her father is German and her mother, who grew up in New Zealand, is Dutch-Indonesian. Loren, then known as Nadine Bernecker, went to a Rudolf Steiner school, where the approach to learning was focused on the performing arts. She learnt the guitar and piano and grew up wanting to be a performer. In her teens she was signed to the Ford Model Agency, which sent her on assignments around the globe. “I enjoyed it, it got

me a lot of opportunities but I love the fact that I can eat anything I want now,” laughs Loren, who is fluent in English, German and Italian. “It got me through law school and I travelled the world with it and it was really fun at times but I think you get to an age where it becomes a little tiring.”

After studying at The University of Auckland she became a law clerk at Minter Ellison and then a lawyer, specialising in international trade law and corporate law. Although it didn’t compare to the high of performing, Loren says her day job was good training for her future life. “Law teaches you how to formulate arguments and it gives you a good business sense. I now sit back and make a list and really think things out, probably better than if I hadn’t done it.”

Small acting gigs came up throughout her early 20s, but it was her role in the American film production *Without a Paddle* that really encouraged her to rethink her life’s plan. “The director [Steven Brill] said, ‘If you’re serious about acting, move to LA’. I didn’t really think about it and I said, ‘okay’. I liked the challenge of it all.” She took the plunge that year and headed to Hollywood to pursue acting, promising her parents she’d be back in two. She also changed her surname to the easier-to-pronounce Loren.

Loren knew no one, so took every job she could think of to make ends meet. “There were times,” she says, “it really, really sucked.” Loren stuck it out and, about three years in, grew to love LA. She met her husband, adopted a big schnauzer called Rocco (who makes his presence known throughout the interview) and eventually settled in Brentwood, near Santa Monica.

The acting dream soon gave way to music. One night she was in New York having dinner at celebrity favourite Mr Chow, when a new acquaintance at her table said he’d heard she was a trained opera singer and dared her to prove it. She accepted and performed an impromptu aria to a crowd of stunned diners. Impressed, he suggested she cut a demo. “I said, ‘there’s no way I can afford to’. He said, ‘well how much do you think it would cost?’ I guessed about US\$12,000. That night I literally walked out with \$12,000 in cash. I’d never seen that kind of money in my life. I raced to the bank. I felt like a drug dealer.” Loren doesn’t name her mysterious investor – her husband, perhaps? – but she will say she has since acquired others willing to back her. Once she’d done a demo she recorded her debut album.

The underrated *Living in Wonderland*, independently released, was recorded everywhere from garages to studios around Hollywood. The album was nominated for Pop Album of the Year at the LA Music Awards, an annual talent competition designed to give indie artists a platform. Among those to praise her publicly was Altbach, who noted her playful phrasing and called her voice “completely original” and “superb”.

Given the songwriting award, it seems odd that Loren would almost abandon her songwriting on her second album. It was Davis’ idea to release an album of covers, she says, to show people what she was capable with her voice, a theatrical, sultry blend that calls to mind Kate Bush meets Kylie Minogue. And although not all the covers reinvent the wheel, Loren says she’s proud to have co-written the arrangements with Asher, stripping them back to “campfire mode”. Loren has also written two retro-styled songs on the album, both catchy to the point of becoming dangerous ear worms. “I’m not trying to fit into a genre, I just like having fun with music and have it be fun and playful – and sometimes a little darker, just because that’s life. But generally I’m trying to do something a bit different.”

Rebecca Barry Hill. This article was first published in Canvas Magazine (Weekend Herald July 23, 2011) and is reprinted here with permission.

The Arab Spring



Legal aid lawyers providing legal advice in a Bedouin community

Leanne McKay graduated from Auckland University in 2000 with a BA/LLB and is currently working as an independent rule of law consultant based in Cairo, Egypt.

She writes:

25 January 2011 - a day without precedent in the history of modern Egypt, as millions of Egyptians demanded an end to the 30-year dictator regime of President Hosni Mubarak. 11 February 2011 - a day that stunned and inspired the Arab world, when Mubarak announced his resignation from office. During these days and nights I sat glued alternately to my computer screen and television watching these remarkable events unfold. Having first worked in Egypt in 2006, and having returned countless times over the past five years, Egypt had become my 'home away from home,' and I had recently made the decision to return there to live.

That decision meant leaving Palestine, where I had spent the past one and a half years establishing and managing a legal aid project for Palestinians in Area C of the West Bank faced with unfair and unlawful Israeli policies and practices. These policies and practices threaten the housing, land and property rights of thousands of Palestinians, placing them at risk of being forcibly displaced from their homes and land. They include the continued unlawful construction of the Wall (held to be illegal by the International Court of Justice in 2004); the closure

system and resulting restriction of movement (a series of checkpoints, concrete roadblocks and barriers, metal gates, earth mounds, tunnels, trenches, and an elaborate set of permit restrictions that controls and restricts the movement of Palestinian residents across the West Bank, including East Jerusalem); confiscation or expropriation of land; house demolitions and forced evictions; restricted access to essential services including education and water; the revocation of identification documents for residents of East Jerusalem; settlement expansion and related incidents of settler violence and damage to property.

Assisted by Arab and Israeli lawyers, the legal aid project challenged these policies through the Israeli justice system. One policy area I focused on in particular was challenging the threat of demolition of Palestinian homes and structures in Area C. Palestinians resident in Area C must obtain building permits from the Israeli authorities prior to beginning construction of any structure - even a humanitarian agency delivered tent or a water cistern. However, the current Israeli planning and zoning regimes have effectively prohibited construction by Palestinians in almost 70 percent of Area C. In the remaining 30 percent, various restrictions have made it nearly impossible to obtain a building permit. Almost all Palestinian applications for building permits are rejected by the Israeli authorities and the majority of subsequent demolitions in Area C are executed as a result of lack of permits. In

the first six months of 2011, the UN recorded the Israeli authorities' demolition of 342 Palestinian-owned structures in Area C, including 125 residential structures, displacing a total of 656 Palestinians.

Though it remains possible to petition decisions taken by the Israeli authorities in the military judicial system and before the Israeli High Court of Justice, there are numerous obstacles for Palestinians engaging in the Israeli legal system. There is a political implication of submitting to Israeli jurisdiction. Other obstacles include the predominant use of the Hebrew language; a lack of understanding of the Israeli judicial system and its procedures; the high cost of legal assistance; and inequitable application of the law. In the West Bank, military orders (the primary source of law) are issued without adequate public notification and the ever-changing laws challenge even the most informed lawyers. Currently no Palestinian university teaches land law as it relates specifically to Area C/East Jerusalem or any applicable Israeli law. This has resulted in a limited pool of qualified Palestinian lawyers available to adopt cases in Area C and East Jerusalem.

However, though there are many challenges in taking cases through the Israeli legal system, it is the only option available for Palestinians to have recourse to justice and legally challenge these unfair policies and actions. Furthermore, if cases are to be challenged in the international courts, domestic remedies must have been exhausted first. During my time in Palestine, my team was able to indefinitely postpone the demolition of more than 500 Palestinian homes and livelihood structures, whilst simultaneously initiating public litigation aimed at challenging the very policies that placed these structures at risk.

Although I left Palestine in February 2011 with mixed emotions my attention was quickly diverted to the astounding 'Arab Awakening' that followed the resignation of Mubarak. In April, when I returned to Cairo, the mood in the streets was significantly less jubilant than during the first two heady months of the Revolution. Yet there remained a quiet optimism amongst people who believed that life was going to be vastly improved. Since then life has become harder for many Egyptians. Tourism, a crucial sector of the Egyptian economy has been decimated; the already high unemployment level has risen further; prices of basic goods have soared; regular protests by various newly-empowered groups disrupt traffic and frustrate as many as they inspire. Democratic reforms which began positively with such steps as the announcement of an interim constitution guaranteeing human rights and affirming the rule of law, and the disbanding of the hated State Security Investigations Service (replaced by the National Security Sector which retained around 25 percent of the officers from the SSI, many of whom are accused of torture) have increasingly come

under threat. The 30-year old emergency law, in force throughout Mubarak's reign, has been revived in order to "control" unrest on the streets following recent attacks on the Israeli embassy; laws have been passed banning workers' strikes; journalists, bloggers, activists have been detained, allegedly tortured, and many brought before military courts where in some cases, trials take place without the presence of lawyers; restrictions have been placed on media outlets, including the recent halting of all licences for satellite television stations; NGOs receiving foreign funding are under investigation; the interim ruling Supreme Council of Armed Forces has announced international election monitors will not be permitted to oversee upcoming elections; and the current draft Election Law is a confusing mix of different electoral systems that has angered many who believe it will make it difficult for citizens to vote and for candidates to organise election campaigns. Sadly, it appears the old guard, the Mubarak-era decision makers, have retained a significant level of power and in the face of disorder and uncertainty have resorted to the familiar Mubarak-era methods for instilling control. However, the Revolution is still underway in Egypt. Today as I draft this note I can hear hundreds of youth chanting on the streets, perhaps marching towards Tahrir Square. Their voice is one, and the air seems charged with hope.



A house demolition in Palestine

Human Rights in Europe



Rebecca McAllum writes:

After Law school I took up an internship with the Organisation for Security and Co-operation in Europe (OSCE) Mission to Bosnia and Herzegovina ("BiH") in the Human Rights Department in 2009. The work I subsequently found myself involved in was something I had only wished for while sitting in the lecture rooms on Eden Crescent. For instance, I assisted on a report regarding the existence of significant discrimination relating to non-war veterans, as well as worked on advocating for ensuring the accountability for war criminals. I also assisted on a report on eliminating the deficiencies within the witness support and protection systems in courts handling war crimes prosecutions, and working on ways to implement unenforced Constitutional Court and Human Rights cases. Although I was based in the head office, I was fortunate to visit the OSCE field offices, and see historically tragic, yet significant sites from the 1992-1995 conflict, such as Srebrenica – the location of the worst massacre in Europe since World War II (up to 8000 Bosniaks died there).

After six months in Bosnia I went for five months to the Hague to work in the Prosecutor's Office of the UN International Criminal Tribunal for Yugoslavia. I was assigned to work on the *Prlic et al case*, a case with six defendants on trial for grave breaches of the Geneva Conventions (wilful killing, inhuman treatment, unlawful deportation, etc); violations of the customs of war (cruel treatment; unlawful labour; wanton destruction of cities, towns or villages etc); and crimes against humanity (persecutions on political, racial or religious grounds; murder; rape etc). These defendants were all high officials in the Croatian community of Herceg-Bosnia, which declared itself a political and territorial entity on the territory of Bosnia and Herzegovina in 1991. Everyday I was reading, discussing and analysing witness accounts of these crimes, as well as examining Franjo Tudjman's (president of Croatia) recorded transcripts of all of his conversations during the war.

Following this, I returned to Sarajevo and became a legal officer for the Judicial and Legal Reform Section of the OSCE. Essentially, my main role is to analyse gaps between international human rights standards

and domestic legislative framework and practice, and advocate/recommend ways to remedy this.

Stark reminders of the war here are not only present in my professional life, but are physically present in everyday life. The majority of buildings in Sarajevo are smattered with bullet holes, and intermittently, pavements are scarred by large holes from mortar shell explosions. Sarajevo, however, remains a microcosm of life and vitality. Everybody is out drinking coffee or strolling the streets until late into the night. The city is set against a breathtaking backdrop of giant hills, ancient mosques and a charming ottoman-styled old town.

I will always be thankful for Auckland Law School's wide range of international law related electives, which equipped me with a solid educational foundation for this line of work. I am also thankful for the support I have received from the Faculty, most notably Treasa Dunworth and Bruce Harris.



Languages, arbitration and Oxford...



Anita Kundu (BA/LLB(Hons) 2004) writes:

My passion for literature and languages during secondary school, coupled with my interest in law, led me to pursue a conjoint degree in Arts and Law at The University of Auckland. As part of my BA degree, I also studied English literature and French. Even though I have drifted towards International Law during my career, the Honours seminar course in Media Law with Associate Professor Rosemary Tobin still stands out as one of my favourite and most memorable classes at law school and I continue to follow legal developments in the area closely. I also enjoyed Evidence and Criminal Procedure with Scott Optican immensely and carry fond memories of heated debates concerning rights issues held in class.

After graduating in 2004, I moved to Cherbourg, a small town situated in Normandy, France, where I took up a position as an English teaching assistant at a public lycée (secondary school) for an academic year. After learning French at secondary and tertiary level for eight years, I was suddenly plunged into the deep end. While I was required to communicate solely in English within the classroom, I quickly discovered that the only way to survive in an isolated town in provincial France was to speak French! Many difficult and thoroughly exhausting dinner parties later, punctuated of course by multiple rounds of wine

As I toured the remote, rugged construction site with our client, equipped with a helmet and steel-capped boots, I recall reflecting on how my understanding of the role of a lawyer has unfolded since my days as a student in Auckland, where I envisaged lawyers dressed in suits, confined to offices and courts, where they shuffled papers all day long.

and cheese, I noticed a significant improvement in my oral proficiency.

In August 2005, I moved to London, where I commenced a training contract with the international commercial law firm, Freshfields Bruckhaus Deringer LLP. In order to qualify as a solicitor in England, it is necessary to undertake a two-year training contract during which trainees rotate through various departments, assist with matters and attend training sessions. Towards the end of their training contract, trainees must decide where they wish to qualify. One advantage of this is that it allows individuals to gain an insight into how different departments operate, so they can make a more informed decision prior to specialising in a particular area. I completed seats in the Finance, Dispute Resolution, Employment and Corporate departments. During the last six months of my training contract, I was seconded to the firm's office in Paris, where I worked in the field of International Arbitration.

Freshfields has a renowned - if not unparalleled - arbitration practice. While London and New York are important centres for International Arbitration, Paris remains the major centre for this particular field of law. The work within the team fell within three main categories: (i) commercial disputes between entities (conducted pursuant to the arbitration rules of a variety of institutions, such as the International Chamber of Commerce, the Stockholm Chamber of Commerce and the London Court of International Arbitration); (ii) investor-state

disputes (normally conducted under the auspices of the ICSID Rules of the World Bank or the rules of the Permanent Court of Arbitration in the Netherlands); and (iii) state-state disputes (otherwise referred to as public international law; cases are normally heard before the International Court of Justice at the Hague and usually take many years to be heard before the court). It is necessary to become an expert in the area surrounding a dispute in a relatively short space of time. Subject matters vary from case to case, for example, construction cases normally involve an understanding of engineering and technology (and wading through a vast quantity of documentation), while economics and finance lie at the heart of investment disputes. It is slightly unnerving to realise that a company's existence can hinge upon the outcome of a case. During my secondment, I was extremely fortunate to be offered a position as an associate within the group. From that point onwards, I was given even greater responsibility and ran cases on my own.

One of the highlights of my career to date was representing a consortium of European companies involved in a dispute arising from the construction of a nuclear power plant in Finland. As I toured the remote, rugged construction site with our client, equipped with a helmet and steel-capped boots, I recall reflecting on how my understanding of the role of a lawyer has unfolded since my days as a student in Auckland, where I envisaged lawyers dressed in suits, confined to offices and courts, where they shuffled papers all day long. My cases have involved companies in different countries, consisting of

individuals of many nationalities. As a result, I have transformed into a global citizen who is comfortable conversing in other languages, taking account of differing customs and adapting to different environments.

Since leaving Freshfields and prior to commencing postgraduate studies at the University of Oxford, I have had the opportunity to indulge in various personal passions outside of the law, including walking the Milford Track, learning how to ski at Coronet Peak and starting to learn Spanish, which I hope to continue in Oxford at the University's reputable Languages Centre. I am also eager to embrace the Oxbridge tradition and participate in rowing for my college. It is my hope that the BCL degree will enable me to contribute usefully to the development of my practice area in the future.

Alumni news in brief

The Right Honourable Sir Peter Blanchard has received a Distinguished Alumni Award from The University of Auckland.

Associate Judge David Abbott has been made a Fellow of the University of Auckland.

You can find full coverage of these stories and news of other outstanding and interesting alumni on the Law School's website, www.law.auckland.ac.nz.



Charlotte Leslie: From Amnesty to Harvard. Full story on the Law School's website.

