Otago Law

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UNIVERSITY of OTAGO
Te Whare Wānanga o Otāgo
NEW ZEALAND
SAPERE AUDE

Contents

Welcome to the third issue of the annual University of Otago Faculty of Law Alumni Magazine.

I am pleased to again oversee the creation of another annual magazine. It has, of course, been a most testing year. Nevertheless, amidst the interruptions we have managed to secure some interesting stories as well as mark the significant developments and events within the life of the Faculty.

I wish to thank all those who contributed items and a special thanks to the industrious and skilful efforts of Sam Stevens, Communications Adviser, Humanities Division. My sincere thanks also to Glen Ross, Design Unit, University of Otago, for his expert layout and design.

Professor Rex Ahdar

Editor

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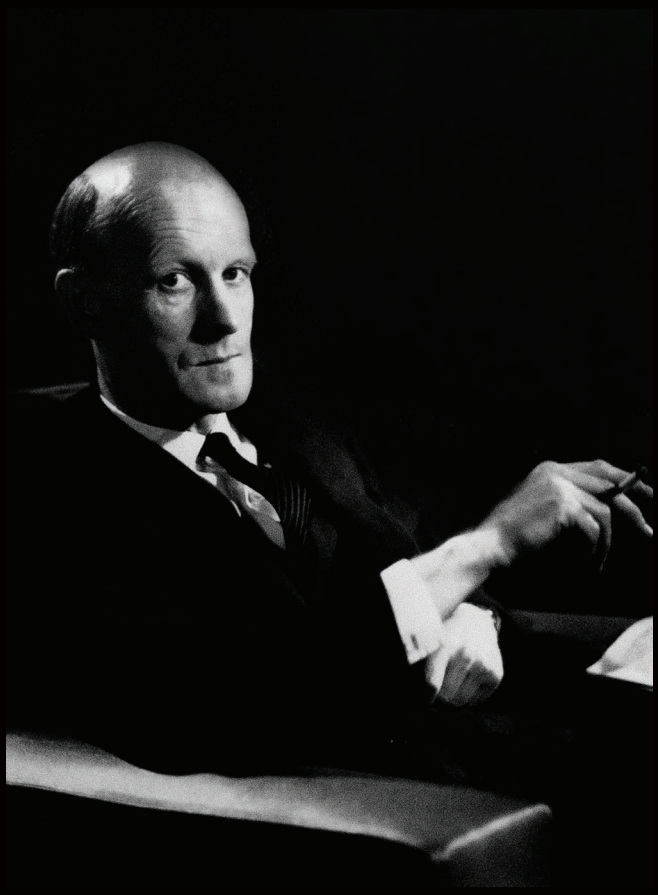
1873–2023

LAW AT OTAGO *Te Ture ki Ōtākou*

150 YEARS

Professor Frank Guest

Much-admired first full-time Dean of the Otago Law Faculty: A short biography



Born 1911, Balclutha, into a family with links to Devon and Scotland. Late 1920s: dux of South Otago High School. 1930s, studies at University of Otago (BA, MA in Philosophy; LLB, LLM). Six years in Knox, president of its students, editor of *Critic* (known for its journalism). 1937, appointed lecturer in Philosophy. 1941, a big year: marries Pat Muir, of Alexandra, whom he met at the University (they will have five sons); joins NZ army; posted to Middle East; wounded, captured at Sidi Rezegh, Libya. POW in Italy then Germany until 1945. Teaches philosophy, psychology, economics, and law to other prisoners via University of London external degree programme. 1945: returns to Dunedin and commences practice of law. In various law partnerships through 1950s; appears in complex civil and criminal cases and before Court of Appeal; teaches philosophy, Tort, Evidence part-time at university; chairs national law revision committee. 1959: appointed first full-time Dean of Law, when teaching moved from courthouse in lower Stuart Street to the University. 1960s: popular and busy dean and reputedly a most engaging lecturer; involved in hiring new full-time staff. 1964: President, Otago District Law Society. Dies suddenly, late 1967, of heart problem associated with war wound. 1968: FW Guest Memorial Lecture established in his honour; his inaugural professorial lecture, 'Freedom and status', published at (1968) 4(1) *Otago Law Review* 265.

Right: POWs in Stalag VIB, Germany, involved in teaching via the University of London external degree programme: **Frank Guest** on far left, in greatcoat; Arnold Entwistle, fourth from right, in front row, also came to teach at Otago.]

Some advocates who are graduates of the Otago Law Faculty

Mai Chen, recently involved in making submissions to the Supreme Court in the appeal in Zheng v Deng, on the interpretation of documents and the cultural setting when the two Chinese parties appear to have conducted their business relationship in Mandarin.

Tiho Mijatov, counsel in the Borrowdale case (2020) regarding the lawfulness of Covid-related conduct of the government.

Natalie Coates, presenting submissions to the Supreme Court on the relevance of tikanga Māori to the continuation of the appeal of Peter Ellis, after his death.

Hon Martyn Finlay, Attorney-General and Minister of Justice 1972-75, at the International Court of Justice in The Hague, presenting NZ's case against French nuclear testing at Mururoa Atoll, in 1973.

The late Greg King, with Judith Ablett-Kerr, during the trial of Clayton Weatherston, in 2009.
Photo courtesy Otago Daily Times

Otago Law alumni in the news

Una Jagose QC, the Solicitor-General, is representing the Crown in proceedings arising out of events at Lake Alice Hospital.
In 1990, Jagose gained an LLB from Otago and was admitted to the bar. After postgraduate study in Wellington she joined the Ministry of Consumer Affairs before being appointed Ministry of Fisheries Chief Legal Advisor in 1999. Jagose joined Crown Law in 2002 and was appointed Deputy Solicitor-General in 2012. She was appointed Acting Director of the Government Communications Security Bureau in 2015, then as the Solicitor-General in February 2016 and as a Queen's Counsel in June 2016.

Hon David Parker, current Minister for the Environment, is promoting resource management law reform.
Parker grew up and studied in Dunedin, graduating with a BCom/LLB from Otago in the early 1980s. In addition to co-founding the Dunedin Community Law Centre, he had a long career in business and law – he was managing and litigation partner in South Island law firm Anderson Lloyd – before being elected as Labour Member of Parliament in the former electorate of Otago in 2002. In the 2020 Labour Government he was appointed as Attorney-General, Minister for the Environment, Minister of Revenue and Associate Minister of Finance and heads the newly-named Oceans and Fisheries portfolio.

Claire Charters, author of the He Puapua report on New Zealand's compliance with the UN Declaration on the Rights of Indigenous Peoples.
Claire (Ngāti Whakaue, Tūwharetoa, Ngā Puhi and Tainui) graduated with a BA and LLB from Otago in 1998. Claire mainly researches Indigenous peoples' rights in international and constitutional law. From 2010 to 2013, Claire worked for the UN's Office of the High Commissioner for Human Rights in the Indigenous Peoples and Minorities Section, and is currently a co-director of the Aotearoa New Zealand Centre for Indigenous Peoples and the Law.

Sir Ron Young, currently chairs the New Zealand Parole Board.
Sir Ron was appointed chairperson of the New Zealand Parole Board in August 2018. He has spent more than 27 years in the judiciary, 14 of those as a High Court Judge before he stepped down in 2015. Sir Ron was Chief District Court Judge from 1993 until 2001, responsible for overseeing 112 judges from the criminal, civil, Family, and Youth court jurisdictions nationwide. He is a current Judge of both the Solomon Islands' Court of Appeal and the Vanuatu Court of

Appeal and has sat on the divisional courts of the Court of Appeal in New Zealand.

By New Zealand Government, Office of the Governor-General

Jonathan Lemalu, was back from abroad in early 2021 and singing at concerts throughout New Zealand.

Otago Law 150th Celebrations 2023

Kia ora koutou.

Warm greetings to you from the Otago Law Faculty.
In 2023, we will celebrate 150 years of law teaching and study at Otago (Robert Stout started teaching law here in 1873, before becoming Prime Minister and Chief Justice).

Save the date:

Thursday 13 – Saturday 15 April 2023

In this week after Easter, we will hold a major conference, reunion and social events in Dunedin, to gather and celebrate.

Put this date in your calendar

and please tell other Otago alumni. Spread the word!

We don't want anyone to miss out on the opportunity to celebrate with us.
Please feel free to send this info to your fellow Law alumni who may not have received this magazine.
To include (or update) your contact details with the University's Alumni Office and ensure you receive further information:

- Email database.alumni@otago.ac.nz
- Tel 03 479 8487

Scholarships and research support

A fund-raising campaign for student scholarships and to support research is also planned.

More information

Look for further information in the coming months on the Law Faculty's website
otago.ac.nz/law150

Please send ideas and offers of support to the organiser:
john.dawson@otago.ac.nz or **law@otago.ac.nz**

Be here or be square!

Very best wishes,

The Otago Law Faculty

From the Dean

It is a great pleasure to provide you with the third issue of our annual Otago Law Magazine, which highlights events, research and achievements in the Faculty and stories from students and alumni both near and far.

So 2021 turns out to be another year dominated by COVID – perhaps not what we expected and certainly not what we hoped for. We ended the year teaching mainly online and relishing any opportunities we had to engage with students face to face. As I write this, students are sitting their exams online and we are marking them online as well. Did we ever think we would miss those yellow exam booklets that many of you will remember and feel wistful about not being in Archway 4?
We are acutely aware of how much more difficult this final part of the year has been for some of you. I hope you find some interesting reading in this magazine and remember fondly your days at Law@Otago.

Last year ended with Professor Jessica Palmer being appointed as Pro-Vice-Chancellor of the Division of Humanities, of which the Faculty is a part. She began her new role in January. Jess was Otago's first female Dean and in the two-and-a-half years in the role she continued many of our traditions, and began some new initiatives. She began a Curriculum Review and the establishment of a Diversity Working Group to consider, as she herself said last year, 'whether and how we can make changes to better support the success of students from all walks of life'.

The period she was Dean was also one in which the administrative structures of the University were completely altered and Jess bore the load of embedding those changes. We thank Jess for the energy, commitment and vision (not to mention a pealing laugh that permeated the building!) that she brought to this role and we wish her well for the next step in her journey. She has this year continued to teach in the Faculty and I know she hopes to be able to continue this.

This year we completed a refresh of the images we use to convey what this Faculty is about. We decided as a group that encouraging students to 'be part of Otago's unrivalled law community' which is 'innovative, supportive and inclusive' summed up what is special about this place. Check out our website for some amazing images (and follow us on Twitter for information about our research and activities).

A significant highlight this year was the F W Guest Memorial Lecture, delivered in April by Honourable Justice Tā Joe Williams. His topic was 'Decolonising the law in Aotearoa: Can we start with the law schools'. It was wonderful to have him with us for three days, to meet with students, deliver the lecture and engage with the Faculty on the issues he raised.

It was also a moment of pride when he was complementary about the enthusiasm of our waiata performances! Inspired by that we continued our waiata sessions led by two rangitahi Valerie Poutamu and Te Hau Gardiner-Toi. We were looking forward to sharing our hopefully improving performance with Natalie Coates when she came to deliver the Inaugural Annual Law and Society Lecture, sponsored by Downie Stewart Lawyers. Natalie's lecture , 'How can we protect the integrity of tikanga in the Lex Aotearoa eneavour?', was scheduled for 19 August. It is now postponed until 2022!

The content of these lectures fit appropriately with the resolution of the Council of Legal Education in May 2021 that te ao Māori concepts, and particularly tikanga Māori, must be taught in each of the core subjects. This a matter to which we will increasingly turn our minds in the next months and bring together the two projects of curriculum review and diversity we have already been working on.

This year three of our alumni who have continued to have close relationships with the Faculty have been appointed to the bench. David Robinson and Jo Hambleton have been appointed District Court judges in Dunedin and Christchurch respectively. Mike Mika, who played rugby for the Highlanders and Samoa while studying, is now sitting as a DCJ in the Hutt Valley and Rachel Mullins has been appointed to the Māori Land Court. David and Jo have done guest lectures, judged competitions and been involved in various ways in the life of the Faculty. Rachel has had a close connection to the awarding of the Jolene Patuawa Māori Leadership in Law Scholarship (an award won this year by Valerie Poutamu). We wish them all well.

The Faculty congratulates Georgia Bellett who is the 2021 recipient of the New Zealand Law Foundation Ethel Benjamin Scholarship. Georgia is now studying for a LLM at the University of California Berkley with a certificate of Specialisation in Energy, Clean Technology and Environmental Law. Jacobi Kohu-Morris received the Legal Research Foundation Unpublished Undergraduate Student Paper Award for 2020. Jacobi's work, 'Ko Wai Te Mana Whenua? Identifying Mana Whenua under Aotearoa New Zealand's Three Laws' was his 2020 honours dissertation supervised by Professor Jacinta Ruru.

Further success in these awards for Faculty came when Dr Maria Hook and co-author Jack Wass were joint winners of the JF Northey Memorial Book Award for their book *The Conflict of Laws in New Zealand* (LexisNexis 2020). Dr Anna High (and Caroline Hickman, a Napier based barrister) were co-recipients of the Sir Ian Barker Published Article Award for their paper 'The Any Evidence Rule in New Zealand Family Law'. These are just the tip of the considerable iceberg of great research being produced in the Faculty on an extraordinarily broad range of topics. Some of it you may hear and see in the media, some of it you may read as you engage in your own legal work and some of it engages with many audiences in New Zealand and overseas.

Earlier this year we appointed Dr Lucas Clover Alcolea (a graduate of Glasgow, Edinburgh and McGill Universities) to a position in Equity and Trusts. Lucas will join us mid-2022 after spending a year on a postdoctoral appointment at Cornell University, in Ithaca, New York.

Back here, Dr Lili Song, Dr Stephen Young and Dr Jeanne Snelling were promoted to Senior Lecturer and Dr Maria Hook has been promoted to Associate Professor. Next year we will also welcome back Dr Ben France Hudson who will have spent 18 months working with the Ministry for the Environment on the development of proposed Managed Retreat and Climate Change Adaptation Act.

As always, Professor Rex Ahdar has done a great job in providing a fascinating glimpse into the doings of all those connected with Law@Otago.

Wherever this magazine finds you, I hope that you find some interesting reading and some memories of your time here in this community. As this year draws inexorably to its close, I wish you all the very best wherever you may be. Keep in touch, and let us all hope that 2022 provides more certainty and increased and unbroken opportunities for connection.

My colleagues and I wish you all the very best.

Ngā manakitaanga.

Shelley Griffiths

Elizabeth Bulger

Blue and gold forever!

Riverlands Chambers lawyer Elizabeth Bulger describes her 34-year-career as "rewarding, surprising and varied" – a great outcome, says the 1987 Law and Arts graduate, because she initially didn't want to study Law.

I didn't always want to be a lawyer, or at least, I didn't think I did. I had always loved talking, and debating, and deliberately taking the opposite point of view even if it wasn't what I really thought. But I always imagined I would have a job in the Foreign Service, living somewhere like Paris or Brussels and travelling on a diplomatic passport to faraway places and brokering important deals.

I never saw myself addressing a jury or advocating for the least restrictive outcome available for a recidivist burglar or aggravated robber, working in the trenches of the District Court. And I certainly never imagined that nearly 34 years later, I would be looking back on a career in the law that has been rewarding, surprising and varied.

In 1982 I embarked on Legal System with an open mind as to what the future beyond university might hold. But something deep inside me was stirring, particularly in the lectures given

by Professors Richard Sutton, John Smillie and Mark Henaghan. They had such enthusiasm for their subjects and inspired such interest in their students that one could not fail to be spurred on to greater things.

By the end of Legal System, and with a reasonable pass, I knew the law was for me. I embarked on a mix of second-year Law subjects with my Arts choices; that combination continued until my graduation with LLB and BA degrees in 1987.

I was lucky enough to have secured a job that I started on the Monday after my Friday Jurisprudence exam and, after only having been admitted for three days, I found myself acting as Duty Solicitor in the absence of the rostered person, and taking instructions on a rubbish bin in the waiting room of the District Court, in relation to a variation of bail conditions.

For the next 14 years I worked for a small firm, as a sole practitioner, for a mid-sized firm and then Caudwells, where I worked with and for two more great inspirations in Frazer Barton and (now) Justice Peter Churchman, as part of the firm's Litigation team.

I continued doing Duty Solicitor work, conducting defended hearings, bail applications, name suppression arguments and the other tasks required of a jobbing criminal lawyer in the 1990s.

In 2001, after nearly six happy years at Caudwells, and having married my English husband, we moved away from my beloved Dunedin so that he could take up a job in Christchurch with what is now WorkSafe.

Leaving my alma mater behind, not to mention friends and family, was a huge wrench, but looking back on 20 years of practice in Christchurch, it was well timed and worth the risk.

I initially started out in a locum position at Layburn Hodgins filling the criminal and civil litigation spot of an Associate who had taken leave to travel.
The Associate decided not to return, the job became permanent, and I spent the next five years working primarily in the criminal area and regularly conducting jury trials and honing my Youth Advocate skills.

In 2006, a phone call came that would change my direction for the better.
Now both District Court Judges, Raoul Neave and Gerard Lynch were at Riverlands Chambers and called to say that a vacancy was pending there that would see Riverlands have seven barristers for the first time in its history – if I agreed to join.

This was something I had been toying with for some time – not because of unhappiness where I was, but because of an innate desire to be my own boss. After a weekend angsting I conveyed my decision and worked out my notice.

Joining Riverlands changed my outlook on the law. By the time I joined I had been in practice for almost 20 years, and I was looking for a different way forward for the years ahead – some expansion of my practice into more of the areas that interested me, and a little less of the cut and thrust of the District Court.

I found my niche at Riverlands and my only regret is that I didn't do it sooner. Since I joined in September 2006, four of the barristers who were there at the time have been appointed District Court Judges, and three of us remain together now, with some younger additions, still flying the Riverlands Chambers flag.

There is a special bond amongst Chambers colleagues, and I have had the benefit of that, and still enjoy it now. Those who have departed to the Bench and for other ventures keep in touch and maintain an interest in Chambers matters. Short of my husband making me move again, I think this is where I will end my career, hopefully in a lot of years' time.

"Looking back my time in practice, I know that my Otago Law School experience very much shaped the lawyer I have become."

I still do some jury trials, but have expanded my practice to include inquests, Courts Martial and other work that interests and invigorates me.

I also now teach, with a Police contract to teach advocacy to prosecutors at the Royal New Zealand Police College.
I love the role and my career to date has equipped me well; I have, over 34 years, seen the best and worst of prosecutors.

Looking back my time in practice, I know that my Otago Law School experience very much shaped the lawyer I have become. The friends I made, the experiences I had, the teachers who imparted their wisdom and knowledge – all have contributed to my longevity in the Law, instilling in me at an early stage a fascination especially for the criminal law, and piquing my interest in human rights, access to justice and the contribution of the profession to wider society.

I am proud to be an Otago Law School graduate. I still champion Dunedin, Otago, Otago University and the Highlanders, at every opportunity. I am extremely grateful for the time I had at Otago and for the teachers who instilled that desire in me to practice law and to be the best I could be. I continue to encourage every young person I meet to ignore the overtures from other universities and go south for their education.

Otago. My alma mater. Blue and gold forever.

Raewyn Peart:
Environmental defender

I have very fond memories of my time studying at the University of Otago during the late 1980s.

Dunedin was a wonderful place to be a student, with cheap living and the beautiful outdoors close at hand. It was also a supportive environment to try out new things. I had fun being a student politician as well as writing for *Critic*, the student magazine.

My law and commerce degrees provided an excellent foundation for my later career. On leaving university I had little idea of a preferred career path except that I was keen to use my hard-won legal knowledge.

I started out on the traditional path of working as a junior lawyer in a corporate law firm. Little did I know that it would lead me into the world of being an 'environmental defender'.

In 1988 I joined Kensington Swan, a year after the stock market crash, and I was in commercial litigation. I found myself with the rather depressing task of winding up companies and bankrupting people who couldn't pay their credit card debts. But there was a ray of bright light; every month a group of lawyers and scientists would meet at the Kensington Swan offices to talk about litigating to protect the

environment (rather than commercial banks) and eventually I was invited to join them. That was how I first came in contact with the Environmental Defence Society.

A couple of years later Russell McVeagh invited me to join their newly formed resource management team. New Zealand's revolutionary new environmental legislation, in the form of the Resource Management Act 1991, was coming into force and the firm rightly predicted an exponential growth in resource management legal work. Little did I know that my career would see the legislation go full circle and that I would be closely involved in the development of its successor. Working for what was then known as 'The Factory', was extremely hard work, but I learnt an enormous amount under the mentorship of Derek Nolan.

In the mid-1990s I followed my then husband to South Africa. I couldn't practice law and had to find another use for my legal skills, so moved into environmental policy. It was exciting times; Nelson Mandela had been sworn in as President the previous year and the country was going through a massive change from apartheid to a black-led government. There was a shortage of professionals in the country due to 'white flight' and my skills were in demand. I worked on many fascinating projects, ranging from provincial-wide strategic environmental assessments to local economic development initiatives.

Returning to Auckland in the early 2000s (with a young daughter) was a turning point in my career. At that time, it was not generally possible to work part-time in a professional position and – because I wanted to be a hands-on mother – I did not want to take on a demanding full-time role. With no suitable work available I had to look to creating my own job.

It was during this time that I reconnected with the Environmental Defence Society (EDS), which had recently been revived after a period of dormancy. This was in the wake of a court decision that consented development of the southern headland of Pakiri Beach, one of the few remaining undeveloped beaches within the Auckland region. On discussing the problematic decision with colleagues, Gary Taylor had decided that the country needed an environmental litigant, and he reconstituted the Society. At that time, New Zealand was undergoing a huge wave of coastal development, with stretches of wild coastlines and lakesides becoming bespoiled by urban development.

One of my early tasks for the EDS was to undertake an investigation into coastal development. In 2009, I published my first book *Castles in the sand: What's happening to the New Zealand coast?* Writing a book was a mammoth task but gave me a great sense of achievement. I subsequently wrote a book on human interaction with dolphins (*Dolphins of Aotearoa* (2013)), and in 2016 an environmental history of the Hauraki Gulf, as well as numerous policy reports.

As the EDS gradually built up a track record, we managed to raise more funding and employ additional people. But it was very hard work in the early days, when we were often not taken seriously and frequently ran out of money. It was also a lot of fun. My policy research has led me to travel widely around the country and overseas, and to spend time in some very beautiful places such as the Mackenzie Country, Banks Peninsula and Fiordland. I have also interviewed many fascinating people and feel privileged to have had the opportunity to gain some insights into their lives.

In 2019, my career turned full circle when I was appointed to the Resource Management Review Panel to provide recommendations to the Minister for the Environment on new environmental legislation for the country. I am hopeful that this will be a significant change in the way we care for our natural environment. Aotearoa New Zealand is a fantastic country and I feel very privileged to have been born here and to be able to live and work here.

> "I started out on the traditional path of working as a junior lawyer in a corporate law firm."

I hope other Otago law graduates will be inspired to follow careers in environmental law, which can be both extremely interesting and rewarding.

Rachel Brooking

on resource management

We briefly featured Otago alumna and Labour MP Rachel Brooking in our 2020 issue but are delighted she's returned to offer this comprehensive insight into the daunting task of reforming the Resource Management Act.

I was lucky to grow up around campus with my father in the History Department and, later, my mother in Education.

This meant that I encountered many interesting academics from around the world. One such academic questioned 16-year-old me about my interests and what I wanted to do in life. She suggested I study both ecology and law to practice environmental law – and so I did. Student politics was a slight distraction, but by May 2000 I had my BSc, LLB and professionals and was ready to go.

After a brief stint in London at a large law firm navigating EU environmental regulations I returned home and started working for the Parliamentary Commissioner for the Environment. After two years I moved back south to Ōtepoti to Anderson Lloyd. While at Anderson Lloyd I worked for a range of clients on everything resource management and also local government, and all related legislation – rates, conservation, building, official information, and so on. I was also involved with the Resource Management Law Association so was able to share opinions about how to improve the Resource Management Act 1991. I have also shared opinions on the RMA with many years of law and planning students (and sometimes surveying, politics and history) at Otago.

In September 2019 I was appointed to the expert panel tasked with reviewing the whole resource management system. We reported back in June 2020 with what is known as the Randerson Report.

The Resource Management Review Panel was chaired by the Hon Tony Randerson QC, a retired Court of Appeal Judge, plain language advocate, and past RMA practitioner. Other panellists had expertise in planning, infrastructure, tikanga Māori, farming, and environmental policy [Raewyn Peart, featured on page 12, was also a panellist]. Nonetheless, the review was wider than just the RMA and included Land Transport, Local Government, and Climate Change legislation. As is well known, the Review was instigated by general displeasure with the RMA for both failing the environment and preventing urgent developments such as housing.

The Panel published an 'issues and options' paper and received submissions on a wide range of fundamental questions including whether the RMA needed to be replaced or amended, and whether the RMA should be separated into a development act and an environmental protection act. There was support to the panel in the form of Ministry for the Environment officials and a range of working groups with specific expertise. We met with many iwi groups in hui throughout the country and spoke with numerous stakeholders. There was also COVID-19 to contend with, but we boxed on via Zoom.

The report recommended that the RMA be repealed and replaced with an Act that moved the focus from effects to outcomes, and provided environmental bottom lines (limits) in what will be called the Natural and Built Environments Act. In addition, the proposed Strategic Planning Act is to provide for spatial strategies at the regional level that the regulatory (natural and built environments) plans are consistent with. These spatial strategies are to look out at least 30 years and better align infrastructure planning with urban growth planning and also climate change adaptation. The two Acts should be viewed as a map and at a scale that doesn't impact private property rights. The third proposed act, the Climate Adaption Act, is to address climate change adaptation where existing activities are in areas that will be affected by climate change such as heavier rainfall or sea level rise. Funding and planning with central government involvement is needed to resolve equity issues and provide security for communities who find themselves in a situation that they could not have foreseen.

The recommendations were picked up in the Labour Party Manifesto and with the election result in October 2020, work has been underway to implement them. The proposed acts are being developed by the Minister for the Environment, the Hon David Parker, for the Strategic Planning and Natural and Built Environments Acts; and the Minister for Climate Change, the Hon James Shaw, for the Climate Adaptation Act. New standing orders have been used for an exposure draft of the purpose, and related provisions, of the Natural and Built Environments Bill to be investigated by the Environment Select Committee. The logic is that through submissions and inquiry the Bill will be well-tested before it undergoes the normal legislative process that is scheduled for 2022. Submissions were open until 4 August and, as I write this, the Select Committee was to report back by 18 October; a year and a day since the election.

The exposure draft of the Natural and Build Environments Bill picks up on wording suggested by the Randerson Report, with some amendments, for the purpose section and develops provisions for the setting of a National Planning Framework, and the making of the regulatory combined plan (the natural and built environments plan).

> "These spatial strategies are to look out at least 30 years and better align infrastructure planning with urban growth planning and climate change adaptation."

While the RMA provides for national direction there was a long period where there was very little national direction. Recently we have had a national policy statement for freshwater that was updated in 2020 with associated environmental standards and regulation. These are effectively to provide a bottom line to improve freshwater quality. The Randerson Report recommended the compulsory requirement for environmental bottom lines via national instruments.

This thinking is included in the exposure draft that requires "environmental limits" for: air; biodiversity, habitats, and ecosystems; coastal waters; estuaries; freshwater; and soil. All environmental limits must be complied with and this means that resource users will be very interested in the level that they are set at. These environmental limits will be included in the "National Planning Framework", which can prescribe requirements for the natural and built environments plan.

The natural and built environments plan is made at the regional level and replaces the multitude of plans that currently occur within a region. In Otago, for example, there are several plans made by the Otago Regional Council and then there is a district plan for every council that has a Mayor: Queenstown Lakes DC, Dunedin CC, Waitaki DC, Central Otago DC, and Clutha DC. These regional groupings of councils will need to work together to develop a plan but the existing jurisdictions of those councils doesn't change. That means that District and City councils will still control land use (including retaining control of zoning rules for housing) and Regional Councils will remain controlling air and water. In addition to councils making the plan, mana whenua will also be involved, as will a representative from the Minister of Conservation for the coastal environment. The same groupings of councils and mana whenua will also be involved in making the spatial strategy (under the Strategic Planning Act) but will be joined by central government as both asset owner of infrastructure (large roads, hospitals, schools etc.) and its role in planning for climate change adaptation.

One of the main objectives of reform is to shift the system activity from disputes around consents to plan-making. This will be in part achieved through having environmental limits that will prohibit some activity. Additionally, the reform is trying to move the RMA's focus on effects to positive outcomes. The exposure draft has outcomes from (a) to (p) that include a good range of matters. Some have the familiar wording of the RMA's matters of national importance, with some amendment, while others are entirely new. New issues include housing supply, well-functioning urban areas, infrastructure provision, and greenhouse gas emission reduction with an increase in the removal of those gases from the atmosphere. Given the range of issues the outcomes cover there will be conflict between some of the outcomes. For the system to work efficiently it is critical that decisions on conflict between outcomes are not made at the end of the line during the consent process. Instead, these decisions need to be made at either the national planning framework level or in the natural and built environments plans.

The Randerson Report identified the priority given by the RMA to the status quo as a serious flaw. Consent processes under the RMA often concentrate on the effects on existing activities and neighbours rather than a broader positive outcome. One of the reasons for this is the inclusion of "amenity" in both the definition of "environment" and as an "other matter". So the exposure draft does not refer to amenity, which should help reduce the power of the status quo.

Like most legislation of its time the RMA has a "Treaty clause" that says all persons exercising powers must "take into account" the principles of the Treaty of Waitangi. This phrase, "take into account", is weaker than the Conservation Act's "give effect to". The exposure draft moves to "give effect to the principles of Te Tiriti o Waitangi", which strengthens this Treaty clause. In addition, the purpose has changed from "sustainable management" to upholding "Te Oranga o te Taiao" (note the Randerson Report suggested "Te Mana o te Taiao"). Both the RMA and Natural and Built Environments Bill also include the concept of wellbeing of current and future generations.

"Te Oranga o te Taiao" is defined to incorporate:

(a) the health of the natural environment; and

(b) the intrinsic relationship between iwi and hapū and te taiao; and

(c) the interconnectedness of all parts of the natural environment; and

(d) the essential relationship between the health of the natural environment and its capacity to sustain all life.

As mentioned earlier, mana whenua will also be decision-makers in resource management processes and so will be part of the planning committee that produces the natural and built environments plan. In my opinion this is the most significant change in the suite of provisions that relate to mana whenua because being at the table enables mana whenua to focus on the strategic and not get so snarled-up in the consents process (as is currently the case).

Another change is to the provisions, introduced by the last National Government, for Mana Whakahono ā Rohe.

These are agreements between a council and iwi about how they will work together in RMA processes. The Randerson Report recommended adding to what these documents currently provide for.
There has always been a provision in the RMA for a s 33 transfer of functions from a council to an iwi authority, but it has been rarely used (the first time happened in 2020). The Report recommended that opportunities for such transfers should be actively looked for as well as wider involvement in non-RMA council functions. A national Māori Advisory Board was also recommended to help resolve conflicts and provide guidance. And very importantly, funding was also recommended so that mana whenua are able to participate fully, effectively and efficiently. As mentioned earlier, the Panel spoke with many iwi and Māori groups and were able to use the work of, and speak to, Professor Jacinta Ruru (of Otago's Faculty of Law) and the wider Kāhui Wai Māori.

A further focus of the Randerson Report was the role of compliance, monitoring and enforcement. One of the failings of the RMA has been the lack of enforcement. Some councils do not have any RMA compliance staff. This means that no-one is watching when people breach consent conditions or undertake activities without a consent when one is needed. It means that people who purposefully break the law don't get prosecuted. The Report recommends new regional hubs that have a similar relationship to councils as council-controlled organisations do (CCOs include some airports, ports, and water providers). The aim is to get compliance staff across a region working together and to be free of political interference in decisions around when to take enforcement action.

There is a role for all three proposed acts for climate change. Both mitigation (reducing emissions) and adaptation are relevant for the Strategic Planning Act and its spatial strategies. For example, the spatial strategies could identify areas where renewable energy could go and also identify areas likely to be affected by climate change and so should be avoided for development. A similar mechanism exists for the natural and built environments plans but at a more detailed level. And then there is the Climate Adaptation Act focused just on the adaptation piece.

Many of our towns, suburbs, and marae are built either close to a river, a flood plain, or the coast. These areas have been around for a long time and have not been built with any knowledge of climate changes. These areas are different from new developments on the coast where people have made some risk-based decision to go ahead and build despite climate change. The two scenarios are very different but unfortunately many people think only of the latter.
This problem of existing activity is exacerbated by 'existing use rights' and the inability for plans that look to the future to retrospectively require change. It is much simpler to address future activities than existing ones because provisions can be made to prohibit activities in hazard areas (the Randerson Report recommended strengthening these provisions) and this should happen.

There may need to be "managed retreat" of significant communities but before that there may also be opportunities to change how we live in those environments. Perhaps housing can be higher off the ground, relocatable, and infrastructure over-grounded. What is already a complicated equity issue is further complicated by not knowing what the world will do with reducing emissions and whether or not the Paris target of a 1.5 degree Celsius increase will be met and the resultant consequential changes to sea level and rainfall. We do know that with increased emissions at some point it will become unaffordable for people to obtain insurance and as a consequence property values will decrease. We also know that councils do not have the tools to deal with these issues alone, particularly if reliant on a small rating base. Hence the need for specific legislation and the involvement of central government and funding.

The Panel received expert advice from Otago Faculty of Law academic,

"Many of our towns, suburbs, and marae are built either close to a river, a flood plain, or the coast."

Dr Ben France-Hudson, and he has been seconded to the Ministry for the Environment to work on what is a very complicated area.

I loved my time on the expert panel and had already been moving away from law with a couple of company directorships (not an unusual move!).

To continue with my move from interpreting the law to proposing it, I stood for Labour as a list candidate and was elected. One of my roles includes being the Deputy Chair of the Environment Select Committee, which is the committee investigating the exposure draft, and that committee will access and hear submissions on all three pieces of legislation as they are developed. (If you are interested in this legislative reform, more information can be found on both the Ministry for the Environment and Environment Select Committee's websites.)

I am very pleased to be part of a process where there is cross-party support to test the wording to get the best result for achieving both a better environment as well as providing for housing and making the entire system simpler and more efficient for users. That's the aim.

Steph Dyhrberg

Steph Dyhrberg says after a good grounding in the law at Otago, the "best move" of her career came when she started a boutique employment firm with Joanna Drayton – the 2018 Wellingtonian of the Year's most recent accolade came when Dyhrberg Drayton received the 2020 Employment Specialist Firm of the Year in the NZ Law Awards.

I started studying Law (and German) at Otago in 1984, after a couple of years work, scraping together the money to start my studies. Working as a shearer's rousie, hotel waitress and cleaner, childminder, surveyor's labourer and office junior in a law firm all prepared me well for my future career.

Coming from a long line of teachers, and growing up in a small country town, I didn't see law as a natural option until my aunt did a law degree when I was a teenager. I loved writing and debating, and my upbringing meant I cared about the underdog. I thought I would enjoy law and I would escape the inevitable pressure to go teaching.

I found Otago Law School a convivial place to study and it had some great teachers. The legendary Mark Henaghan inspired me to use law to help people doing their best in turmoil. Nicola Peart fired my interest in Wills and Trusts and I won my only prize, the Thomas More

Prize for Equity. Paul Roth took his time getting to Otago so I missed Labour Law. Later, Nicola, Paul and I would do profs together, much to the dismay of our teachers.

I enjoyed dividing my time between Law and my German degree. Being an adult student (well, 20 years old) and paying for it myself meant I did all the readings and sat up the front (Hermione with better hair). I found my passion in Public Law and Grant Liddell hauled me into the honours programme. I split my last year and tutored Legal System and Public Law as a Teaching Fellow.

I graduated and was admitted in 1991 and worked at Russell McVeagh in Wellington, then a reasonably small off-shoot of the Auckland firm. I always knew I was destined for litigation and worked with partners like Robert Fardell, Stephen Kós, Justin Smith and Cheryl Gwyn. I made life-long friends. My husband Murray Bell and I had two daughters and I tried to juggle full-time work and mothering, with mixed results.

After seven fairly bruising years at Russell McVeagh I was lucky enough to get my dream job at the Crown Law Office. The position was tailor made for a Public Law nerd and by then, Employment Law specialist. Crown Law was a fabulous place to work and I learned a lot about how the public sector worked.

Next, I was lured away to a small HR consultancy the Empower Group and spent three interesting years learning how to 'sell solutions'. When the Lawyers and Conveyancers Bill was introduced, I realised I had to choose between being a consultant and paddling my own waka. I left to set up my own practice and had six years flying solo at No. 1 The Terrace.

Cue the best move of my career in 2011: setting up a boutique employment firm with Johanna Drayton. We started with our shared values and a commitment to supporting each other, no matter what. We built the firm up gradually and now, after 10 years, have eight awesome staff. Last year we won Employment Specialist Firm of the Year in the NZ Law Awards.

I have been privileged to be able to pursue my passions, supported by Murray, Johanna and our team. In 2013 a friend referred me to the feminist lobby group Coalition for Equal Value for Equal Pay (CEVEP). Led by the legendary Elizabeth Orr, the group had been hastily reconvened after frustrating decades advocating for pay equity. They had been invited by then Chief Judge Colgan to intervene in a case being taken against rest home employer, Terranova, by the Service and Food Workers Union on behalf of a caregiver, feisty grandmother Kristine Bartlett. So began my seven-year pro bono journey in pay equity.

We won in the Employment Court and in the Court of Appeal. The Supreme Court declined Terranova leave to appeal. The historic settlement resulted in significant pay rises for over 55,000 low-paid workers. We lobbied against the National Government's amendment Bill that would have pulled the teeth of the precedent we had fought so hard for. We helped fix the Labour Government's Bill. We helped bring pay equity legislation to fruition before Elizabeth died in 2021.

2018 brought a new challenge: the public revelations about allegations of sexual assaults on young women summer clerking at my old firm, Russell McVeagh. At the time I was Convenor of the Wellington Women Lawyers' Association. When the story broke, I went public, telling the truth about how women are treated in the legal profession. Many people contacted me to talk about their experiences, including the young women at the centre of the story. I worked with journalists and many strong women lawyers to tell the stories, advocate for change and support women through complaints processes.

My efforts to educate my profession about the reality of women's experiences and the urgent need for change resulted in my being awarded the honour of Wellingtonian of the Year in 2018. Three more years of hard work

followed: writing, speaking to countless conferences and groups, connecting and working with experts and social justice groups, submitting on the Law Society's new rules for conduct and the sexual violence law reforms.

Along with other senior women lawyers like Maria Dew QC, Wendy Aldred and Linda Clark, I supported the women affected by the Russell McVeagh debacle through the Dame Margaret Bazley review, Dame Sylvia Cartwright's review of the Law Society and the National Standards Committee's disciplinary process. (In June this year, James Gardner-Hopkins, a former partner at Russell McVeagh, was found guilty by the Lawyers and Conveyancers Disciplinary Tribunal of six charges of misconduct.)

> "I realised I had to choose between being a consultant and paddling my own waka."

Law has been a marvellous career for me. I have been able to combine my girlhood love for rules with stubborn determination, creativity and compassion for people going through difficult times.

Elisha Watson

Entrepreneurial skills turned to help refugees

Professor Andrew Geddis alerted Otago Law Magazine to this unfolding story and kindly interviewed 2015 Law alumna Elisha Watson on the Magazine's behalf.

"Sometimes I get into work and look around an underwear factory on Willis Street and ask myself, 'how did I come to be here?"

That's not something you necessarily would expect to hear from an Otago law graduate. But for Elisha Watson, founder and CEO of ethical underwear brand Nisa (pronounced Nee-sa), it represents the result of following her passion.

After graduating from Otago in 2015 with an LLB(Hons) and BA, Elisha began her working life in a quite conventional way as part of a commercial law firm's litigation team. However, a couple of years into legal practice her career path headed in a markedly different direction.

"I was volunteering in my spare time with the Red Cross, helping resettle former refugee families in Wellington. While people in the community were amazingly generous, the one thing they didn't seem able to offer was jobs. And that's something the families kept asking for help with, as they really wanted to earn money and lead a normal life in New Zealand.

"Seeing that need, I thought that some sort of social enterprise would be a great way to help get former refugees integrated into the New Zealand working world. Somewhere that could give them a safe place to become more comfortable with speaking English, develop workplace skills and build confidence.

"So, then I wondered what could that social enterprise look like? Making clothes seemed like something that could draw on the sewing skills that many former refugee women bring with them to New Zealand. And underwear is something that people always need, without creating yet more fast fashion items that just end up in a landfill. That really was where the idea for Nisa got born."

Four years on, Nisa has a team of twelve and employs refugee and migrant women from a range of countries including Somalia, Colombia, Myanmar, Iran, Hong Kong, Brazil and Sri Lanka. It works from a Willis Street factory and studio space and sells a range of women's and men's organic cotton underwear, swimwear and clothing, primarily via its online store.

While Elisha has now returned to her roots as a born-and-bred Wellingtonian, when it came time to consider university the attractions of campus life in Dunedin won her over.

"I had scholarship offers from Auckland and Otago, but Dunedin was where I wanted to go. I liked the idea of studying somewhere that wasn't in a big city, with a close-knit group of people living nearby one another. And, of course, it was cheaper!"

Life at Otago didn't disappoint.

"Your friends become your family and the entire campus is your house. I even remember making a bed in the library from chairs and settling down for a nap."

Being at the helm of a company presents a huge range of daily challenges, but the skills Elisha gained from her time at the Law Faculty have been immensely useful.

"I had scholarship offers from Auckland and Otago, but Dunedin was where I wanted to go."

"I use my legal training all the time. In particular, employment law is relevant on an almost daily basis.

"For a CEO, legal and accounting issues are the real grind. But I've never had to hire a lawyer—my studies and experience give me enough confidence to work through issues when they arise myself."

While Nisa is Elisha's full focus for the moment, it doesn't represent the end of her ambition.

"My dream is to get Nisa to a place where I could turn it over to the employees to run. Once that happens, then the company will have done what I set out at the beginning."

And after that?

"Well, I love doing new things and building systems. Having the experience of starting Nisa makes me feel like I can do anything really. It's been like doing an MBA ten times over!"

Nisa's products can be found at **https://nisa.co.nz.**

Michael Singleton

From seeing through Brunei's infamous playboy prince to structuring multi-billion-dollar deals, Otago alumnus Michael Singleton's career has taken some interesting twists and turns. He now leads the Christchurch Airport project exploring the potential for a new airport in Central Otago.

While others headed north at the end of our time at Otago in 1993, I headed south. Armed with a lesser degree than many of my colleagues, I was grateful for my first job in Invercargill.

It was a great place to start. With a less sheltered structure than a large firm I had to deal directly with people, the challenges they faced, and come up with solutions from the off. Having been sent to court on my second day and facing a sink or swim moment, I learnt three things very quickly; the importance of being prepared, the need to be confident, and that a 'commercial role' means different things to different people!

A move to England followed in 1997. Working in the fast-paced financial markets of London suited me; I've always been a curious person who enjoys looking at really complex challenges, breaking them down and mapping out the pathway to the desired outcome.

My first role there was a hand-me-down job from a fellow Otago graduate – I love the global reach of the network! – for a Japanese bank. I quickly found myself advising a group of Bank of England appointed directors to avoid entering into a questionable transaction with the Sultan of Brunei's now infamous brother, Prince Jefri Bolkiah. They listened carefully . . . and then got another legal opinion before approving the deal.

Perhaps fortuitously on the day of drawdown, news of an investigation into the Prince's financial affairs broke enabling the bank to quietly extricate itself. I must have got something right as I was soon involved in restructuring bits of the bank for sale.

From there I led a team of 30 lawyers supporting the trading floor and structured financial product activity at a major global bank. The transactions were eye-wateringly large and I had the pleasure of working with some pretty smart people (including actual rocket scientists!) putting together deals with structures that looked like an electrician's wiring diagram.

I also led a number of large-scale regulatory matters, including the bank's response to a long-running US Department of Justice investigation touted as the world's largest criminal tax prosecution.

On returning to New Zealand, I became a commercial partner in a Christchurch firm before realising that my head and heart have always been happiest when working inside a business where you can be part of creating solutions rather than just advising on them. Spending longer understanding and framing the true nature of a problem and looking at solutions through quite a different lens are real upsides to working in-house.

That led me, in 2012, to the dynamic business that is Christchurch Airport.

As a member of our Executive Leadership Team, I've helped the airport grow its non-aeronautical business interests and led the setting of our aeronautical pricing. That was a highly regulated consultation process with airline customers under the full scrutiny of the Commerce Commission. Our focus was on creating transparency and simplifying a complex structure. The results have seen us well-placed to weather the pandemic's impact. Over this time I've relished my role growing beyond that of General Counsel. I've led our corporate and regulatory affairs portfolios as well as a range of other functions and projects. These have included how the Airport can use new and emerging technologies such as developing a virtual reality platform to train our firefighters.

I've continued to recognise the value of lifelong learning and have been fortunate to have had a number of opportunities to attend immersive executive leadership programmes.

> "I've always appreciated the knowledge and networks that Otago University delivered me."

When I was asked to lead the Central Otago project, I immediately saw the opportunity to oversee a strategic assignment with real depth focused on creating solutions that will endure for generations. I've now given up my practising certificate to focus exclusively on the project which has seen me spend a lot of time all over Otago – closer to where my legal career began.

I've always appreciated the knowledge and networks that Otago University delivered me. As my children start their own tertiary learning journeys, I'm pleased my eldest son has also chosen to start his at the Otago Faculty of Law: more pleasing is that he seems to be a bit more on top of it than his father was 30 years ago!

Legal Journalist:

Mike Houlahan

Going to law school was not something I had planned to do. The idea had, briefly, been raised back in the mid-1980s at Tawa College when I was urged to consider possible alternatives to my chosen career as a journalist. Given I had wanted to do nothing else other than be a journalist since the age of 13, and despite being a fan of Rumpole of the Bailey and the TV version of The Paper Chase, that idea was not going to fly.

I started part-time with the Evening Post in 1987, and when they offered me a full-time job in 1990 it was an easy decision to park my History BA at Victoria in favour of covering the annual Christmas parade – I had been told not to get separated from the photographer … I managed to lose him in 10 seconds – and the arrival of the latest critter at Wellington Zoo.

Once I figured out what I was doing, I graduated to covering arts and entertainment, with a weekend sideline involving reports on horse racing. The job at the Evening Post included covering music, a role which years later meant I was able to have conversations along the following lines as my law lecturers prepared for class: "I saw these guys play live once … and, yes, I know you weren't even born then."

In 1997 I moved to the New Zealand Press Association, a wire agency that sent stories to every paper in the country, as a general reporter.

That meant I had to do anything and everything, which included more than my fair share of court reporting. This was a fairly intimidating exercise given my entire exposure to court thus far had been the aforementioned Rumpole and occasional episodes of Crown Court when I had been off sick from school.

Unknowingly, I was giving myself a solid grounding in high-level Criminal Law – at one stage I figured out that I had covered either the investigation, trial, appeal, or all of the above, in eight of the 10 cases with the longest sentences then imposed by New Zealand's courts.

I also covered the unforgettable R v Lee, where a Korean pastor pleaded not guilty to killing a parishioner during an exorcism. Years later, Colin Gavaghan was to lecture me about the case's relevance to intent. At the time I was more worried about having to watch the video of the days-long attempt to resurrect the unfortunate, decomposing, parishioner and Pastor Lee's self-represented "defence'", which involved trying to read the entire Bible to the court.

After a stint with The Press in Christchurch I moved back to Wellington to work for the New Zealand Herald in the Press Gallery. Again, had I but known, I was gaining a terrific grounding in Public Law, including covering Boscawen v Attorney-General and watching Mai Chen arguing Wednesbury unreasonableness at the High Court. I didn't understand a word of it then – and possibly do not now, despite Marcelo Rodriguez Ferrere's best efforts – but Mai Chen was most impressive.

After another stint at The Press (where I covered the first conviction ever gained in New Zealand through the use of familial DNA), we fetched up my wife's hometown, Dunedin. I ended up editing a weekly paper and engaged rising University of Otago law lecturer Colin Gavaghan as a columnist. Alas, Fairfax decreed that the newspaper had to close, and I was looking for a career change. Over a beer I asked Colin how he thought I'd go doing something I had not planned to do ... becoming a lawyer, to be told, "I'd kick the a**e out of an LLB." A few months later, I enrolled and tried to prove him right.

It turned out that I had more Otago law connections than I knew: Ceri Warnock's son and my children were at the same Montessori and my father-in-law was the chainsaw-wielding maniac in Cousins v Wilson.

I loved everything about being a law student – well, maybe not Property Law. I had some real highs: having an exam essay selected as a model answer, securing a research scholarship, and making it into Len Anderson's Advocacy course, to name just three. So, I was all primed for a glorious legal career ... except, something I had not planned for happened again. While doing professionals, journalism came calling once more and wanted me back.

I am now a senior reporter at the Otago Daily Times, covering health and national politics, where I get to cross swords with Andrew Geddis again.

Otago's Faculty of Law has provided plenty of stories, but it has also made the stories I write better informed ones. I write a weekly political column and careful observers might have noticed some have essentially been exercises in statutory interpretation, something I would never have written without Donna Buckingham's excellent teaching.

I also write editorials and would not have written the ones about declarations of inconsistency and Bridgette Toy-Cronin's legal research without my Otago education. My LLB also came in very handy when I covered the $15million plus Barry Kloogh fraud case, in which

"I was all primed for a glorious legal career ... except, something I had not planned for happened again."

those Property Law lectures on asset tracing ended up being very helpful indeed. And Len Anderson's advocacy classes have certainly helped me become a better interviewer.

My glorious legal career has not started yet, although I've learned what you might have planned to do and what you end up doing, may not be one and the same thing. So, you never know.

Jonathan Lemalu:

Singing law's praises

With the recent return to his home, Dunedin, Otago Law Magazine took the opportunity to have a brief chat with world-renowned opera singer and Otago Law alumnus, Jonathan Lemalu.

When did you do your LLB degree at Otago University?

I graduated in 1999.

Why did you decide to study Law (alongside your obvious talent and passion for music)?

To be honest, Legal System was one of the few things I passed in my first year! I genuinely enjoyed the concept of law and how it affected and influenced society, be it laws, rules, traffic lights etc. Rules have definitions but are ultimately still rules that must be interpreted. The fact that a musical note could be interpreted was something that came with experience and creative autonomy, much like the law I would assume. Music and singing are still very much seen as glorified hobbies in New Zealand. I knew very few singers who made a career or a living out of it. In hindsight I'm not sure how many law firms would want me making a career out the law for them either!

Looking back on your time at Law School what memories spring to mind? What subjects did you enjoy the most? Which did you find the hardest? Which area of law most attracted you back then in terms of specialisation?

The friendships, community and camaraderie stand out for me. I've kept in touch with the Faculty and still try and pop in and say 'hi'. I made lifelong friends as well – one of my two best men at my wedding was a fellow Law grad! Most of the lecturers I knew have moved on, but the space still reminds me of those formative years of panic, stress, waiting for the lift to and from the 8th floor, studying/napping in the Law Library, and an extraordinary amount of highlighters used with those phonebook-like readings.
I enjoyed Family Law, Criminal Law and International Law – the energy and the content were always interesting

and Mark Henaghan in Legal Systems and Family Law is still a favourite and a valued friend and supporter. Legal History with Nigel Jamieson was a struggle – I just couldn't wrap my head around it as hard as a I tried.
I would probably say Family Law and Criminal Law/Sentencing were the most attractive. Oddly they seemed the most real, and I could see the cases cinematically. This is a tool I use when performing to create real/realistic characters and an atmosphere, environment or mood from which to express myself. It sounds a lot like case law – creating a visual and verbal picture from which to persuade the hearer of a particular point of view.

Your life after graduation from Otago University has been devoted, with stunning success, to singing and music, not the Law. In a 2013 NZ Herald interview you were asked: "What kind of lawyer would you have been?" Any further thoughts?

What kind of lawyer? Probably an unemployed one!! Probably an overly emotional one who knew right from wrong but didn't know how to apply the law. The Law degree will always be one of the biggest achievements for me because it didn't come naturally. I never felt comfortable or that I had done enough in the study of law or in exams. It was a mode of thinking or mindset that I didn't 'get' then; yet, I do believe I would be a much more effective legal student now. In hindsight it seems quite logical how to apply the law and interpret it, but then I've had 25 years of applying rules of musical style, genre, language and interpreting them as a performer and a teacher. A lot of the principles and ethics of the law I have come to live by. Music came easier to me, or perhaps I found enjoyment in it easier. Being yourself in music was a natural thing, whereas with the law I felt I was always trying to be someone else … like a lawyer! My law friends always comment that I am so lucky to be doing something I love, but, conversely, I would love to have known what it was like to be a practising lawyer: particularly in the last 18 months of COVID-19 when being a professional singer has meant not doing very much!

Has your Law degree proved useful in the course of your busy professional life?

As I alluded to, the law degree was very much a slow burning degree for me. It seemed the older I got the more I drew upon lessons and experiences from the law in my professional life in music. By this I mean things such as commitment, diligence, work ethic, interpretation, attention to detail, language and words, using language to evoke emotion or make a point, being firm but fair. My love of languages stems from my musical impetus to tell stories in multiple languages, which is my job and passion. In a way, the law is taking a story and interpreting it through its language. I guess the law is a language that if you can speak it or convey your opinion in it, you can converse and ultimately communicate in any sphere.

Have you drawn upon those legal skills?

Reading contracts has been pretty useful (in English; German not so much!) and I'm known at my artist management for picking up on details with promoter's contracts and not signing if something is not as I expect it. My wife is not a lawyer, but also has an eagle eye for details. Perhaps it (law) is a frame of mind, or at least of attention to detail, neither of which I would say are a given for me! Thankfully, I haven't been in a position where I've had to use the law to defend myself to any serious degree as such. Long may that continue! The attention to detail is something I use all the time in various parts of my life; it's super useful to know the difference between "and" and "or" in life generally, let alone in the law. Particularly with kids, I feel everything I say can be used against me in a court of public opinion – it's certainly the case in my house.

Jonathan with his family Joshua, Sandra and Arabella

Dawn Duncan

Law of the Rings:

Hobbit laws, human rights and the making of a bad sequel

Much like The Lord of the Rings movies, the legal status of workers in the New Zealand film industry is something of a long and drawn-out saga.

This article re-examines the making of the "Hobbit Law", in light of its problematic sequel, the Screen Industry Workers Bill, introduced to Parliament. The "Hobbit Dispute" as it came to be known, provides a case study of political deal-making, excluding workers from the minimum standards of employment and trading away human rights for the sake of the commercial profitability of favoured industries. The Hobbit Dispute helps to explain the peculiar Screen Industry Workers Bill and provides timely warnings for future law reform efforts.

The legal background

The origins of the Hobbit Dispute begin in 2001 when a Mr Bryson, engaged as a model technician working on the Lord of the Rings movies, sought to challenge his termination, requiring him first to be declared an employee by the courts. His case was appealed to the Supreme Court, which eventually decided that Mr Bryson was an employee (Bryson v Three Foot Six [2005] NZSC 34). The Bryson case was significant, becoming the leading authority on employment status determinations. It also had a particular impact on the film industry, which had taken advantage of the previous Employment Contracts Act 1991, engaging a large proportion of its workforce as independent contractors.

The difference between an employee and an independent contractor is an important one as employee status opens the door to the rights and protections of employment law. For example, an employee must be provided with the minimum employment standards, such as being paid at least the minimum wage and provided paid annual or sick leave. Employees can access the personal grievances regime and can bring a legal case to challenge unfair treatment or dismissal, using the Employment Relations Mediation

Service, the Employment Relations Authority or the Employment Court to resolve their disputes. Importantly also, an employee can join a union, and exercise legally protected rights to collective bargaining and industrial action (see Anderson, Hughes and Duncan 2017, ch 5).

An independent contractor "being in business for themselves" is not covered by employment protections and is left largely to determine their own legal affairs. Employers sometimes engage in a practice called "sham contracting", which involves misclassifying their workers as independent contractors to avoid these minimum employment rights. The employment relationship is treated as a special legal relationship, with additional rules and protections due to the inequality of bargaining power that exists between the parties and the risk of exploitation. An explicit aim of the Employment Relations Act 2000 (ERA) is to acknowledge and address "the inherent inequality of power in employment relationships" (s 3). The legal test for determining the status of a worker reflects this aim, requiring the courts to determine "the real nature of the relationship" (s 6(2)). The courts look to all the circumstances and decide whether the worker being described as an independent contractor is genuinely in business for themselves, or is, in reality, an employee, and thus entitled to the rights and protections of employment law.

The Hobbit Dispute

The 2010 Hobbit Dispute received a lot of attention at the time (see Tyson 2011; Kelly 2011a; Kelly 2011b; Nuttall 2011; Wilson 2011; Haworth 2011; Handel and Bulbeck 2013). To summarise briefly, its director, Sir Peter Jackson, sought to film The Hobbit in New Zealand, as he had with the Lord of the Rings trilogy. The actors' union, New Zealand Actors Equity, supported by international unions, sought to enter into bargaining for a collective agreement. This was refused, with the production company claiming, among other things, that to do so would breach Part 2 of the Commerce Act 1986 as its workers were genuinely independent contractors (despite the decision in Bryson above). This is because the legal line between employee and independent contractor also operates as the line between legally protected collective bargaining and running a cartel.

Genuine independent contractors seeking to act collectively to improve their working conditions run the risk of being accused of price-fixing or entering into other cartel arrangements. While the Commerce Commission has not typically pursued legal actions against such workers in this grey area, the Commerce Act does allow for other parties to bring cases. A disgruntled film production company seeking to prevent union action could commence such proceedings, with the attendant delays and legal costs of defending the case. This has been a tactic used overseas to prevent workers such as Uber drivers from trying to act collectively to improve their working conditions (Brown 2020; Paul 2017).

At the time of the Hobbit Dispute, the film and television industry had seen a rise in large scale strike action internationally (Handel 2011; Littleton 2013). The dispute between the New Zealand actor's union and the film production company escalated and Jackson threatened to take production to another country, with the associated loss of jobs and reputation for New Zealand as a filming destination. New Zealand politicians and industry representatives had spent considerable time and effort developing a local film industry and the loss of The Hobbit film would have been a significant setback (Shelton 2005). Jackson also criticised New Zealand's employment laws as being too uncertain and inflexible for the film industry, specifically citing the decision in Bryson (Tyson 2011; Kelly 2011(b)).

The National Party-led Government of the time intervened in the escalating dispute, negotiating directly with the Warner Brothers to keep the film in New Zealand. A deal was reached in which the law would be changed for the film industry and subsidies to the company to make the film would be increased in return for tourism promotion benefits, such as advertising New Zealand tourism on distributed DVDs and launching a tourism campaign in association with the New Zealand film premier.

There was considerable backlash by unions and workers over the doing of this deal, with protests and widespread international condemnation. The deal resulted in the Employment Relations (Film Production Work) Amendment Act 2010, commonly referred to as the "Hobbit Law," being passed under urgency, meaning it was not subject to normal public consultation and submission processes (Wilson 2011).

The Hobbit Law and its effects

The Hobbit Law changed the definition of employee in s 6 of the ERA, to specifically exclude workers "engaged in film production work as an actor,

dancer, or entertainer" and workers "engaged in film production work in any other capacity" (s 6(1)(d)). A long list of possible film industry jobs were covered by the amendments, meaning that unless a contract specified a worker was an employee then they were deemed to be an independent contractor, regardless of what the courts considered to be the "real nature of the relationship." The film industry is the only industry that has been given such a special exemption, with the definition of "employee" and the resulting employment obligations otherwise near universally applicable. As few film workers have sufficient individual bargaining power to demand they be engaged as an employee, the effect of the amendment is to allow film production companies to dictate how their workers are engaged, depriving them of both their individual and collective employment rights. Declaring the film workers to be independent contractors, and thus outside the Commerce Act exemptions for employees, meant film industry workers and their organisations could not engage in collective bargaining activities. The interaction of the law in this area has been set out in more depth elsewhere (McCrystal 2014).

Reclassifying the film workers as independent contractors had obvious effects on individual bargaining power, as there were no applicable minimum legal standards and no associated inspection and enforcement machinery to support workers, as well as few protections from dismissal. The reclassification also damaged the collective bargaining power of workers in the industry, with workers largely unable to negotiate collectively for improvements to their working conditions or take industrial action.

One of the explicit goals of the ERA is "to promote observance in New Zealand of the principles underlying International Labour Organisation Convention 87 on Freedom of Association, and Convention 98 on the Right to Organise and Bargain Collectively" (ERA, s 3(b)). Freedom of association is a fundamental human right contained in Art 20 of the Universal Declaration of Human Rights (1948), which New Zealand was, and still is, a signatory to and is also protected under s 17 of the New Zealand Bill of Rights Act as well as the ERA. While film industry workers still had the "freedom" to join an organisation, those organisations lacked the legal rights of unions and were substantially prevented from taking action to improve the terms and conditions of those workers. It is difficult for union power to survive under such conditions. Quite simply, there is little value in belonging to a union that cannot engage in collective bargaining or take industrial action to improve wages.

Further, the absence of employment status effectively also prevents a union from enforcing minimum conditions or representing workers with individual claims. In such circumstances freedom of association rights are rendered effectively useless. As seen in the 1990s, unions are creatures profoundly affected by the statutory conditions they operate within, Prof Gordon Anderson concluding "it is almost axiomatic in industrial relations and labour law that effective collective representation requires substantial legislative support … History and practice make it clear that, in the absence of support and in the face of employer hostility to collective representation, union membership and the coverage of collective bargaining are likely to plummet" (Anderson, 2011, p 77).

The Film Industry Working Group

It is against this background that one can perhaps begin to make sense of the peculiar 2018 report of the Film Industry Working Group (FIWG). When the Hobbit Law was passed in 2010 the Labour Party stood in firm opposition to it, promising repeal. When the Labour-led Coalition Government was elected in 2017, rather than simply repeal the Hobbit Law amendments, it set up the FIWG and charged it to make recommendations "on a way to restore the rights of workers in the industry to collectively bargain, without necessarily changing the status of those who wish to continue working as individual contractors" (FIWG Terms of Reference 2018).

It is unclear why the Labour-led Coalition Government chose to do this, and whether it was the result of industry lobbying, internal Coalition dynamics or simply a desire to avoid a repeat of the publicity and political controversy that occurred in 2010. The FIWG involved representatives of a number of film industry bodies and guilds, and also the New Zealand Council for Trade Unions (FIWG Report 2018, p 20). While it is difficult to know exactly what happened in the meetings of the FIWG, or to get a sense of the negotiation dynamics at play, when the FIWG provided its report to the Government it recommended not a repeal of the Hobbit Law amendments but an extension.

The FIWG report proposed to include workers in the wider "screen industry" within the exceptions, including those involved in television, web-based productions, online games and "formats

not yet known to the film industry" (Film Industry Working Group 2018, p 4). The FIWG considered the screen industry to be so unique as to warrant its own legal regime, with watered-down minimum standards that could be opted-out of "by agreement", in which workers are "free to request" that they be engaged as employees, continue to have no meaningful protection from termination, and no right to engage in industrial action to support collective claims.

To justify such special treatment, the reasons advanced were that the market was global and competitive, there are different types of film productions ranging in size, producers require certainty of cost and flexibility of conditions, and the nature of filming (e.g. location, light, outdoor sets etc) requires late changes to schedules (FIWG Report 2018, p 6). There are few industries in New Zealand that are not subject to global competition, do not have market participants of varying sizes, would not prefer certainty in cost and flexibility of conditions and do not have to change working patterns and schedules due to factors such as weather or access to locations and resources. There was no evidence presented that the film industry could not operate under the normal laws of employment, as it had done before the Hobbit Law, and every other industry in New Zealand does. None of the factors listed were especially unique, and none were so compelling as to justify continuing to deprive workers of their fundamental human rights.

The Screen Industry Workers Bill

Based on the recommendations in the FIWG report the Screen Industry Workers Bill (SIWB) was introduced to Parliament in February 2020. Although the recommendations of the FIWG are peculiar, and the SIWB is a highly problematic piece of legislation as a result, it was likely thought politically easier to simply give the industry what it had apparently agreed to, than to propose something different that was more consistent with New Zealand's employment laws or international obligations. Continuing the Hobbit Law legacy, the SIWB, if passed, would create an even larger group of workers that are declared independent contractors, with no regard to the reality of their working situation and left without the full protections of employment law. While workers may "choose" to request to be employees, the production companies may also "choose" to refuse to engage them as such (the same position as presently the case). The SIWB does restore some collective bargaining rights, granting an exemption from the Commerce Act. It creates a watered-down good faith regime, with no right to strike, that falls far short of what is anticipated in ILO Conventions 87 and 98. This point is articulated well by Prof Anderson in his submissions to the Parliamentary Select Committee on the SIWB:

The Bill, as with the "Hobbit" legislation, provides a signal that New Zealand law is amenable to reform on the demand of overseas investors and that New Zealand is willing to tailor its laws to conform to the employment prejudices of such investors. The right to strike, other than in very limited circumstances, is an internationally recognised fundamental right of all workers. The convenience of one, non-essential, industry [does] not justify such an exception. Apart from depriving workers in the screen industry of a fundamental right, the removal of the right to strike sets an unwelcome precedent (Anderson 2020).

The decisions of the ILO Committee on Freedom of Association clearly set out that "the right to strike is a fundamental right of workers and their organisations", "an intrinsic corollary to the right to organise protected by Convention No. 87" and an "essential means through which workers may promote and defend their economic and social interests" (ILO Committee 2021). Further, it is clear that "all workers must be able to enjoy the right to freedom of association regardless of the type of contract", that "the status under which workers are engaged by the employer should not have any effect on their right to join workers organisations and participate in their activities", and further that "the criterion for determining the person covered by the right to organise is not based on the existence

of an employment relationship" (ILO Committee 2021).

A right to bargain without a right to strike is referred to as a "collective begging," and has far less practical value (Novitz 2020). While the right to strike is often unpopular with employers and governments (the Government itself being a very large employer), it is a fundamentally important human right, at the core of the ILO decent work agenda and the 2030 UN Sustainable Development Goals, operating as a civil and political right at the heart of a democratic society, and a social and economic right to counter the abusive exercises of economic power (ILO 2021; Novitz 2019).

The SIWB was reported back from Select Committee, and there were some changes made, but the core issues, especially in relation to the right to freedom of association, remained. At present, the SIWB has stalled, hopefully abandoned, but with no official statement made either way on the Government's intentions for reforms to the film industry. In April 2021, the Government announced it had done a deal with Amazon to film the television adaptation of The Lord of the Rings in New Zealand. While the full details of the Amazon deal were not released for commercial reasons, and it is impossible to know if it played a factor, the timing of the deal in combination with Amazon's notoriously anti-union reputation certainly raises questions. As of October 2021, the Amazon deal, and the New Zealand filming of The Lord of the Rings television series itself, looks to be in doubt.

Regardless of what happens with the Amazon filming deal, the SIWB provides an important warning for law reform efforts in New Zealand. The SIWB sets a dangerous precedent, slicing out segments of the workforce to exclude from the protections of employment law on the basis it may be more convenient for certain industries. The risk of setting a political precedent is a very real one. The Government has signalled its intentions to change to the law relating to independent contractors, but not what it is proposing to do (MBIE 2020). It has also stated it plans to introduce legislation creating a new Fair Pay Agreements process in late 2021. Fair Pay Agreements were originally set to involve bargaining for industry minimum conditions applicable to all workers (including contractors), but involve either a partial, or total, loss of the right to strike (Labour Party 2021). Although the full details of the proposed legislation are yet to emerge, and may well change, there are important reasons to be concerned about any Government seeking to reduce the rights of workers to strike.

There are also other industries that may be looking to the special treatment of the film industry as a template for their own lobbying and could just as easily argue they were "unique" in being subject to global competition and the risk of international capital flight and would prefer certainty of cost and increased flexibility.

For example, in 2020, there were three important legal cases on the employment status of drivers (Leota v Parcel Express [2020] NZEmpC 61; Southern Taxis v A Labour Inspector [2020] NZEmpC 63; and Archchige v Raiser New Zealand [2020] NZEmpC 230). The courier and taxi drivers in Leota and Southern Taxis were held to be employees, but the Uber driver in Archchige was held to be an independent contractor. The previous legal status of drivers had been an area of ongoing ambiguity (due to the peculiarities of how the Supreme Court in Bryson dealt with the previous leading case). A class action on behalf of a group of drivers is being filed, and further legal action following the determination of the status of the Uber drivers also looks likely. Transport sector companies unhappy with the "uncertainty" of these recent decisions may well be looking for the Government to do a similar deal to that done for the film industry.

A lesson for future reforms

The Hobbit Dispute and the SIWB are symptomatic of wider problems and provide important warnings for policy makers trying to solve them. In late 2019, the Government started consulting on reforms to the law relating to independent contractors, with a number of options open for consideration (MBIE 2019).

It is widely recognised that the centuries-old distinctions between employee and independent contractor are out of step with the hiring practices of the contemporary labour market and some type of reform is needed. There is no consensus, however, about what that reform should look like.

The SIWB is one model of response. While this response may be a dream come true for industries that would like to be free of their employment obligations and given a chance to write their own special laws, it also creates segments of the workforce with fewer legal rights than others, less access to justice and greater vulnerability to exploitation. For example, while some workers in the proposed expanded category of "screen production workers" will have greater rights than they had under the Hobbit Law, they will not have equal rights to other workers in the labour market, and they will not have the full rights they are entitled to in the human rights instruments that New Zealand has adopted.

Additionally, if the SIWB passes, many workers not previously covered by the Hobbit Law will then be able to be deprived of their employment status and the legal protections afforded by it. While these workers can notionally ask

to be engaged as employees, the reality is that very few will have the bargaining power to do so. This lack of individual bargaining power is the underlying reason for having universally applicable minimum employment protections in the first place and is also the reason that the right to freedom of association is a fundamental human right.

The Hobbit Dispute and the SIWB provide several warnings to policymakers and legislators.

The first warning relates to the role of working groups in law-making, and the need to carefully consider whether a working group is appropriate, its terms of reference, its membership, negotiation dynamics and the risk of capture. While potentially offering a Government the ability to avoid responsibility and controversy over the law that results, it does not guarantee better law will be made.

The second warning relates to attempts to tinker with bad law, rather than repealing and properly fixing the underlying problems. A key thing to remember is that, if not for the Hobbit Law, many of these film workers would be employees. The Hobbit Law removed these workers legal rights without consultation or due democratic process. Were it not for the Hobbit Law there would have been no reason to establish a FIWG, and had a FIWG not been established, the SIWB would likely never have been drafted in such a form, opening up a raft of new problems. If the Government considers there is a problem with the law relating to independent contractors, then it would be best to repeal the Hobbit Law and properly reform that area of law in a way that gives certainty to all businesses and workers.

The third warning is about the role of the law in protecting workers from exploitation and intervening in unequal bargaining relationships. There are very good reasons why universal minimum employment standards and international conventions on fundamental workers' rights exist, and trading-off those minimum standards and human rights for the convenience of powerful international corporations should not be an acceptable compromise in New Zealand employment law.

Anderson, G, *Reconstructing New Zealand's Labour Law, Consensus or Divergence?* (VUP, Wellington, 2011)

Anderson, G, Submissions to the Parliamentary Select Committee on the Screen Industry Workers Bill (4 June 2020)

Anderson, G, J Hughes and D Duncan, *Employment Law in New Zealand* (2nd edn, Wellington, Lexis Nexis, 2017)

Brown, R C, "Ride-hailing drivers as autonomous independent contractors: Let them bargain!" (2020) 29(3) Washington Int L J 533

Handel, J, *Hollywood on Strike! An industry at war in the internet age* (Hollywood Analytics, California, 2011)

Handel, J and Bulbeck, P, *The New Zealand Hobbit Crisis* (Hollywood Analytics, California, 2013)

Haworth, N, "A political economy of 'the Hobbit' dispute" (2011) 36(3) NZJER 100

Film Industry Working Group, Terms of Reference (January 2018)

Film Industry Working Group, New Zealand's Screen Industry, Great Work, Great Workers: Recommendations of the Film Industry Working Group (October, 2018)

ILO Committee on Freedom of Association Compilation of decision of the Committee

Kelly, H, "The Hobbit Dispute" (2011) 36(3) NZJER 30

Kelly, H, "Helen Kelly: The Hobbit Dispute (12 April 2011) < https://www.scoop.co.nz/stories/HL1104/S00081/helen-kelly-the-hobbit-dispute.htm>

Labour Party policies announced for the 2020 campaign, <https://www.labour.org.nz/workplacerelations>

Littleton, C, *TV on Strike: Why Hollywood went to war over the internet* (Syracuse University Press, New York, 2013)

McCrystal, S, "Organising Middle-Earth? Collective Bargaining and Film Production Workers in New Zealand" (2014) 26 NZULR 104

Ministry of Business, Innovation and Employment, Better Protections for Contractors: Discussion Document for Public Feedback (November 2019)

Novitz T, "Freedom of Association: Its emergence and the case for prevention of its decline" in Bellace J and te Haar B, *Research Handbook on Labour, Business and Human Rights* (Elgar online,2019)

Novitz, T, "The perils of collective begging: The case for reforming collective labour law globally and locally too" (2020) 44(2) NZJER 3

Nuttal, P, "Where shadows lie": Confusion, misunderstanding and misinformation about workplace status" (2011) 36(3) NZJER 73

Paul, S, "Uber as a For-Profit Hiring Hall: A Price-Fixing Paradox and its Implications" (2017) 38 Berkeley J of Employment and Labor Law 233

Shelton, L, *The selling of New Zealand movies* (Awa Press, Wellington, 2005)

Tyson, AF, "A synopsis of the Hobbit Dispute" (2011) 36(3) NZJER 5

3) NZJER 91

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Nicola Peart

Reforming Family Provision on Death

In 1900, New Zealand took the bold and unprecedented step of giving the courts discretion to intervene in a deceased's testamentary wishes if the deceased had failed to make adequate provision for the "proper maintenance and support" of their surviving spouse or children.

The Testator's Family Maintenance Act 1900, later renamed the Family Protection Act, was the first substantive reform of succession law since colonisation. It was introduced at a time of significant social reform in which the Women's Movement, including Lady Stout, campaigned to restrict testamentary freedom, because they saw it as a power exercised by men against women.

After Sir Robert Stout's failed attempts in 1896 and 1897 to limit testamentary power to a portion of the estate, Parliament eventually agreed to a discretionary system, which was described as minimal intervention to prevent destitution and dependence on the state.

The Family Protection Act soon became much more than that and now represents a major restriction on testamentary freedom, with adult children being the largest group of claimants. Even if they have no financial need, the courts will still find their parents in breach of their moral duty to provide "proper support" if they failed to recognise their children adequately as belonging to the family and being an important part of their parents' life (Williams v Aucutt [2000] 2 NZLR 479 (CA) at [52]).

During the 1990s the Law Commission initiated a review of succession legislation, led by our former colleague, the late Professor Richard Sutton. In its report on estate claims, the Commission described the family protection regime as indefensible (NZLC R39, 1997).

Enforcing moral duties depended on the views of individual judges, which created uncertainty for claimants and unpredictability for testators. These moral duties were also inconsistent with the testator's lifetime obligations. That criticism could not be made of the Testamentary Promises Act 1949 or the Matrimonial Property Act 1963, which were contribution based and broadly restitutionary in nature.

If anything, those statutes did not go far enough. That was particularly so for matrimonial property law which the Commission recommended should be reformed to put marriages ending on death on an equal footing with marriages ending on separation by extending the equal sharing regime of the Matrimonial Property Act 1976 to marriages ending on death.

On the other hand, in regard to family protection, the Commission recommended radical reform, limiting eligibility to spouses and de facto partners and to minor children to ensure consistency with lifetime obligations. Adult children would be eligible only if they were under 25 and undertaking educational or vocational training, or if they were unable to support themselves because of a physical or mental disability that arose before they turned 25.

If they were genuinely in financial need, they could make a needs claim to provide them with basic necessities. Beyond that, adult children could make only a memento claim. These recommendations were never considered by Parliament; the judicial response was far from positive, with Blanchard J suggesting in Williams v Aucutt at [68] that the Commission had taken "a rather extreme position". So, the broad approach to family protection jurisdiction continued unabated, albeit with a less liberal assessment of awards to remedy a breach. How the pendulum has swung over a period of 100 years: testamentary freedom has been reduced to a myth, without legislative approval.

The inability of testators to control the destination of their property on death has become a reason for transferring assets into trust during their lifetime, made easier by the abolition of gift duty in 2011. The lack of clawback provisions in the Family Protection Act and the Testamentary Promises Act puts trust assets beyond the reach of the court's jurisdiction under those Acts. Trusts also provided good protection against relationship property claims. The reforms introduced by the Property (Relationships) Amendment Act

2001 did little to prevent trusts from undermining the social aims of the equal sharing regime. The perceived widespread abuse of trusts was one of the reasons for referring trust law to the Law Commission for review and reform in 2012. However, its 2013 Report, Review of the Law of Trusts: A Trusts Act for New Zealand, focused on matters of core trust law. With the exception of some recommendations to limit the adverse effects of trusts on relationship property entitlements, the Commission did not consider the interaction of trusts with other policy areas. Parliament respected that approach and, instead of adopting the Commission's recommended amendments to relationship property law, referred the Property (Relationships) Act 1976 to the Law Commission for review.

The Commission's 2019 Report found the Property (Relationships) Act was no longer fit for purpose. Society had changed significantly since 1976. The Act did not reflect society's expectations and public values on what constitutes a just division of property on separation.

The Commission also concluded that death was sufficiently different from separation to require separate consideration and recommended that relationship property rights on death be considered as part of a comprehensive review of succession law. The Commission is expected to report on that review by the end of 2021. In April 2021, the Commission released an Issues Paper (NZLC IP46) dealing with rights to a person's property on death. It canvases options for reform of relationship property entitlements on death, family provision, contribution claims, intestacy, priorities, and claw back options. It also advances a framework for considering te ao Māori and succession.

The Commission reiterated its earlier reservations about the approach to the Family Protection Act, in particular the court's reliance on morality to override testamentary wishes. As before, the Commission sees no justification for imposing this duty on testators when they have no such duty during their lifetime. Its preference is to exclude adult children, over a certain age (18, 20 or 25), and allowing only spouses and partners and minor children to make a claim for family provision. The Commission presented two further options: to allow adult children with disabilities to make a claim and to allow adult children to make a recognition claim. This last option would effectively retain the status quo which the Commission does not favour for the reasons outlined earlier.

When presenting the Commission's proposals at several conferences, the responses to the Commission's preferred options were mixed. Some supported the Commission's preference of drastically limiting eligibility, recognising the advantage of certainty and ending the human and financial cost of litigation. Others accepted that family protection claims do nothing for family cohesion, but still saw a need for judicial intervention to protect adult children from unjust wills. In the paper that Juliet Moses and I presented to the NZLS CLE Ltd's 2021 Trust Conference, we expressed concern with the underlying principle that testamentary obligations should reflect lifetime obligations, as if death had not changed anything.

While we endorsed extending lifetime obligations beyond death, we saw no reason to adopt that as a limit on posthumous obligations. Death changes everything; the deceased has no ongoing needs and their death may have made life more difficult for those left behind. The distribution of an estate is not just about the money or the assets.

"What we have now is forced heirship with quantum at large, which is the worst of all possible situations!"

It represents the person who has died and the relationship that person had with their family. It has a material as well as a symbolic value. That is what the Court of Appeal recognised in its judgment in Williams v Aucutt. The question is whether that value ought to be accommodated in any reform of our succession law and, if so, how that might be achieved in a way that reduces uncertainty and avoids destroying family relationships.

What we have now is forced heirship with quantum at large, which is the worst of all possible situations! If there is acceptance that children should not be disinherited and that the family relationship should trump testamentary freedom in all but exceptional circumstances, then we should give serious consideration to a form of forced heirship where quantum is not at large.

Kōpū:

a new Māori research unit

We are thrilled to be establishing a Māori research unit within Te Kaupeka Tātai Ture. And we are super honoured to have been bestowed the powerful name "Kōpū" by Justice Sir Joe Williams (Ngāti Pūkenga, Waitaha, Tapuika). We invited a strong mana wahine name and we sure did get this!

Kōpū has many female oriented meanings. According to the Williams dictionary, Kōpū can mean (a) Venus, the morning star, used by navigators to get an eastward bearing before dawn, because it is the brightest star in the sky and the closest star to the sun before sunrise and after sunset; (b) Womb, pregnant; (c) October, end of frosts and the beginning of the planting season.

Justice Sir Joe is also encouraging us to think deeply about this particular whakataukī:

He ara e whakamāramatia
He pua e whakatupuria
He ao ka ora
When pathways are illuminated
And seeds nurtured
The world thrives

Our name and this whakataukī will provide what we believe are our pathways into a hopeful future, with the seeds of ideas full of potential. With more Māori staff, Māori researchers and Māori students, the possibilities for Māori-led research, ideas and solutions can gain a positive momentum.

Realising the goals of the University of Otago's Māori Strategic Framework 2022, and based in Te Kaupeka Tātai Ture, our interdisciplinary research unit seeks to reimagine law in Aotearoa by positioning mātauranga and tikanga at the heart of what we do.

We realise our leadership expertise in Ngā Pae o te Māramatanga New Zealand's Māori Centre of Research Excellence, the University of Otago's Te Poutama Māori / Māori Academic Staff Caucus and Poutama Ara Rau Research Theme, and the national programme Te Takarangi – Māori Books to create this research unit committed to interconnected, intergenerational, flourishing Māori knowledge.

We seek to ensure the next generation of New Zealanders are prepared, ready and at the leading edge for a new and different Aotearoa. We are striving to put into practice a bicultural, bilingual, bijural way of sitting together, learning, writing and teaching. We are working within a tertiary institution but at the interface with te ao Māori.

Sitting with us in Kōpū are Honorary Research Fellow Jeanette Wikaira (Ngāti Pukenga, Ngāti Tamatera, Ngapuhi) and full-time Research Fellow Jacinta Beckwith (Ngāti Porou, Ngāti Kahungunu). Through our research projects we employ a number of amazing research assistants. And, special to us this year are our nine Ngā Pae o te Māramatanga Matariki Interns: Ada Duffy (Ngāi Tahu), Isimeli Tuivaga (Ngāpuhi, Te Rarawa), Tukukino Royal (Te Whānau-ā-Apanui, Ngāti Raukawa, Ngāti Porou, Te Arawa), Valerie Houkamau (Ngāti Porou, Ngāti Manawa, Ngāti Raukawa, Ngāti Ranginui), Te Hau Ariki Gardiner-Toi (Ngāpuhi, Ngāi Te Rangi, Ngāti Ranginui), Grace Mohi (Ngāti Kahungunu ki Heretaunga), Evy Elliott (Ngāti Tahu), Marie Dunn (Kāi Tahu, Kāti Māmoe), Zoe Thomas (Raukawa).

Working with our colleagues within Te Kaupeka Tātai Ture and beyond, our research activities are currently anchored in:

1. Indigenising the LLB

Legal education (in the tertiary context and beyond) in Aotearoa is evolving in order to live up to the challenges that Lex Aotearoa (New Zealand's unique jurisprudence) demands of us. We help lead, with all Māori law academics across the six law schools, a national research project entitled "Inspiring New Indigenous Legal Education for Aotearoa New Zealand's LLB degree". Current full- and part-time research assistants include Destiny Grace (Ngāti Kahungunu), Rahera Douglas (Ngāti Maniapoto) and Hine Markham-Nicklin (Ngāti Kahungunu ki te Wairoa). We work closely with Dr Megan Gallop. We also work with five of our Matariki interns to provide researched te reo learning tools for law. This work aligns with Otago's Poutama Ara Rau Research Theme where Māori academics from many disciplines at Otago are collectively working on "How can mātauranga Māori and Māori pedagogies transform tertiary teaching and learning?"

2. Decolonising Law, Theory, Knowledge

Our interdisciplinary Indigenous legal scholarship is broad, often undertaken in conjunction with the social sciences and humanities (specifically environmental, design and art), and at times comparative, with colleagues in Australia, Canada, United States and the Nordic countries. We work across legal theory including Indigenous laws, common law, environmental law, jurisprudence, legal history, property law (specifically Māori freehold land), and constitutional law. Recent work includes research on 'Dignity and Mana' by Mihiata and Dr Anna High, and 'Te Mana o te Tai Ao' by Jacinta and Dr Royden Somerville QC (Ngāi Tahu).

3. Te Takarangi – Māori Books: A National Programme of Celebration

We curate collections of published Māori knowledge to publicly celebrate and embed new collective knowledge about the wealth of Māori published writing that spans more than 200 years. The takarangi spiral pattern is an inspiration for our work because it represents to us the enduring and interconnected nature of knowledge, experience and wisdom in te ao Māori. It reminds us of the importance of acknowledging past, present and future Māori scholars and scholarship – voices of inspiration from the past that continue to speak to us today and chart a pathway forward into the future. This programme, founded by Jacinta, Jeanette and Associate Professor Angela Wanhalla (Ngāi Te Ruahikihiki; Otago's History programme), lays a foundation for decolonised knowledge, including law, in Aotearoa. Current full- and part-time research fellows include Jacinta Beckwith, Ross Calman (Ngāti Toa, Ngāti Raukawa, Ngāi Tahu) and Emma Gattey. We work closely with Professor Lachy Paterson (Acting Dean, Te Tumu). Te Takarangi Reo Rangatira advisory board is chaired by Dr Poia Rewi (Tūhoe; CEO of Te Mātāwai).

4. Giving effect to Te Tiriti o Waitangi

We research how to structurally influence and reform Aotearoa so we can become compliant with Te Tiriti o Waitangi. Current projects are in the public sector (working with the Public Services Commission), the tertiary sector (working with Māori researchers across the country) and environmental decision-making (working with Kāhui Wai Māori). We seek constitutional reform and broader translation of Māori research into policy action and implementation. We value working with our Iwi and Māori communities, including providing affidavit evidence for Raukawa in High Court proceedings on the legal concept of mana whenua. Current work includes a paper on 'mana whakahaere' for Kāhui Wai Māori and the Ministry for the Environment led by Jacinta and Mihiata along with Professor Andrew Geddis and Jacobi Kohu-Morris (Ngāi Te Rangi, Ngāti Awa, Ngāti Ranginui).

These are our four programmes of research, for much of which we owe our gratitude to many, including Ngā Pae o te Māramatanga, Royal Society Te Apārangi and the Michael & Suzanne Borrin Foundation.

Kōpū is connected to important groups and initiatives within Te Kaupeka Tātai Ture including Te Rōpū Whai Pūtake the Māori Law Students' Association, the Indigenous Postgraduate Law Programme and Te Īhaka: Building Māori Leaders in Law Programme (named in honour of one of Otago's first Māori graduates Chief Judge Wilson Isaac). The Faculty also hosts the annual Jolene Patuawa-Tuilave Māori Leadership in Law Scholarship. We are continuously inspired by all our law alumni.

Over the coming years, we look forward to sharing with you our journey along these new pathways in law.

By the co-leaders of Kōpū

Professor Jacinta Ruru (Raukawa, Ngāti Ranginui), lecturer Mihiata Pirini (Ngāti Tūwharetoa, Whakatōhea), Research Fellow and LLM postgraduate student Metiria Stanton Turei (Ati Haunui a Pāpārangi, Ngāti Kahungunu ki Wairarapa, Rangitane)

Justice for all

Dr Bridgette Toy-Cronin is continuing work on access to justice as Director of the recently established Civil Justice Centre (CJC).

The CJC's socio-legal research is focusing on enhancing and promoting civil access to justice in Aotearoa.

Access to justice is the ability of people to resolve their legal problems and enforce their rights, Bridgette says.

"The CJC's ko te aronga (vision) is that everyone in Aotearoa can have equitable access to justice when they encounter a legal problem and that they can solve their problem in a system that is responsive to their needs and upholds the rule of law."

Transformation of legal services and the civil justice system – and informing policy and practice – will involve interdisciplinary research and engagement, so the Centre looks at all aspects of the civil justice system including:

- Legal services – legal information provision, litigation in-person support, advice and advocacy services provided by lawyers, non-lawyers, and the future of lawyering;

- Dispute resolution – adjudication (courts and tribunals) and adjudicators, alternative forms of resolution, and the future of dispute resolution (online courts and other innovations).

Bridgette has received a Borrin Foundation Grant to support a new project analysing Citizen's Advice Bureau client queries to identify the type of barriers people experience when seeking legal assistance.

Project details at: **borrinfoundation.nz/legal-needs-analysis-using-data-from-citizens-advice-bureau/**

Assistant Research Fellow Kayla Stewart joins Bridgette at the CJC and will be focusing on this project. Kayla has previously conducted civil justice research, focused on how the legal profession can facilitate access to justice. She is currently researching legal need in Aotearoa.

The CJC welcomes students interested in the field of civil justice research.

Distinguished Faculty Visitor 2021

Laurie Newhook

Environment Judge Laurie Newhook joined the Faculty in semester two as a Distinguished Faculty Visitor to lecture in Resource Management Law in LAWS 414/515.

He undertook this role standing in for Professor Ceri Warnock while she has been on sabbatical, and with whom he has a had a long collaborative professional relationship.

Laurie, who graduated LLB(Hons) from Auckland University in 1972, retired as Chief Environment Court Judge in July 2020. Over the course of his career he headed the New Zealand Environment Court for nearly a decade, had been a Judge of the Court for nearly two and, as counsel, amassed more than 30 years of advocacy experience (particularly on environmental matters, land, property, and maritime laws). He has written multiple papers on the subjects.

Judge Newhook has presented at many national and international conferences on the themes of environmental adjudication and the use of technology in adjudicative settings. He has also hosted international delegations to his Court from many parts of the world; chaired and presented at the 'International Forum for Environment Judges', Oslo, Norway, June 2016; and another in Auckland in April 2017, and chaired and addressed plenary sessions at IUCN Academy of Environmental Law colloquia and other international conferences. His collaborations with Professor Warnock included many of those events and writings.

Prior to this year, Laurie's teaching experience had been focused on giving guest lectures at several New Zealand law schools. He welcomed the opportunity to undertake a more complete and concentrated lecture series. While Otago is not his alma mater, his Scottish roots and family connections with Dunedin, and an "enormous respect for the Otago Law School", drew him readily into the fold.

In "retirement" Laurie holds an Alternate Environment Court warrant and continues to preside over many interesting cases in the Environment Court. They involve broad-ranging subject matter such as boat marinas, quarries, supermarkets, ports, dams for fresh water, expansion of housing precincts and enlarging of major health facilities. In the course of such cases, he encounters many complex but interesting problems often including protection of important ecosystems, freshwater quality and quantity, coastal processes, outstanding landscapes, urban amenity, and adequate provision of urban infrastructure.

Days after retiring as a full-time Judge and head of the Court, Laurie was appointed by the Minister for the Environment to lead a fast-track consenting process under the COVID-19 Recovery (Fast-Track Consenting) Act 2020, to provide economic recovery and jobs post-Covid. He has chaired some of the projects and appointed senior environmental law practitioners to chair many others. While lecturing at Otago he has led a consenting panel concerning the new Dunedin Hospital.

He has also agreed to take up the position of Chief Freshwater Commissioner from early 2022, leading a Government initiative requiring all regions in the country to prepare and establish new freshwater plans ensuring greater quality and care in abstraction and use pursuant to the important new principle of "Te Mana o Te Wai".

Laurie has been married to Judy for more decades that he is prepared to disclose. They have two adult children and two energetic young grandchildren. When not dabbling in the law and family life during the past half century, Laurie has indulged in competitive yachting including across oceans, other outdoor activities like hiking, and travel. He observes (as so many do) that the current time of pandemic brings home to New Zealanders the great beauty of where we live and what we can experience in it.

NZLF Centre for Law & Emerging Technologies

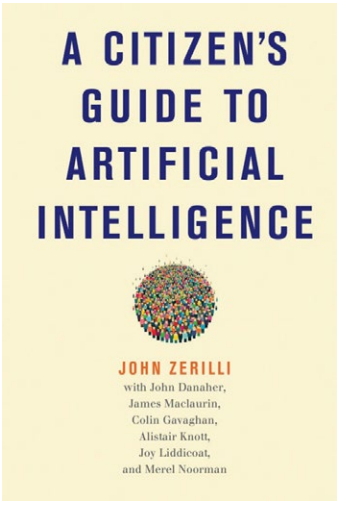
While some of our plans for the year have (like everyone else's) been disrupted by the pandemic, the Centre has still had a busy and fruitful year on various fronts.

The year started with an exciting and welcome development for the Centre, as Dr Jeanne Snelling was appointed as Deputy Director. Jeanne has played a major role in the Centre's activities for many years, and we are delighted to have this officially recognised.

Research

This year saw the culmination of the four-year Law Foundation-funded project on Artificial Intelligence and Law, led by Colin Gavaghan, together with Ali Knott (Computer Science) and James Maclaurin (Philosophy), and our research team of John Zerilli and Joy Liddicoat.

The project finished with something of a bang. February saw the publication



of *A Citizen's Guide to Artificial Intelligence* (MIT Press). This was co-authored by all project participants, as well as old Centre friend and former guest John Danaher, and new Centre friend Merel Noorman.

Former postdoc (and still very much a friend to the Centre) John Zerilli did most of the heavy lifting in chasing up contributors, dealing with publishers, and stitching the whole enterprise together, as well as contributing a fair portion of the text. Great job, JZ!

As the title suggests, the book is aimed at a non-specialist audience. It has been

well received. A review on the LSE blog described it as "a text that deserves to be read widely", praising the authors as "exemplary in the clarity of their explanations" of AI and its influence on society. It has also received positive reviews in places as diverse as Forbes magazine and Physicsworld.

In May, the project published its second and final major report, focused on the impact of AI on jobs and work. The report attracted significant interest. Colin was interviewed on RNZ's Nine to Noon programme and the report also featured on Newshub, Spinoff, Stuff, and other media.

Jeanne Snelling's article, "Obstruction and Obfuscation: Regulatory Barriers to Human Embryo Research in New Zealand" was published in *Medical Law International*. This formed the basis for a submission Jeanne made to the Minister of Justice, David Parker, regarding the Secondary Legislation Act. Her argument, that the guidelines promulgated under the HART Act be formally designated secondary legislation, was accepted by the Ministry of Justice Officials and Parliamentary Office Counsel.

Jeanne also published a short piece for the Health Research Annual Ethics Notes: "Human embryo research and the Human Assisted Reproductive Technology Act 2004: the ethical and legal imperative to revisit the legal parameters".

Colin has been working with the Global Partnership on AI (GPAI) on a project looking at governance of social media. He also took up an invitation to join a research project with colleagues in the Universities of Ottawa and Montreal, which will take a comparative approach to regulation of AI-enabled devices in healthcare. Finally, he has joined a Council of Canadian Academies (CCA) expert panel opportunity on public safety in the digital age. All of these projects should produce outputs in the year ahead.

Supervision

The Centre has been joined by two new postgraduate students. Neil Ballantyne has started a PhD on data justice. He is being jointly supervised by Colin Gavaghan and Emily Keddell, Associate Professor in Social Work. As well as bringing many years of academic expertise, Neil doubles the Centre's population of Scots!

Pooja Mohun has also joined us an LLM student. Pooja, who hails originally from Mauritius, will be researching artificial intelligence regulation in the finance sector.

They join PhD candidate Louise Wilsdon, who is researching New Zealand's regulatory framework for health data privacy. Louise is being jointly supervised by Colin and Jeanne.

Finally on the postgrad front, a huge congratulations to Fiona Seal, whose LLM thesis on regulating artificial intelligence passed (with an excellent mark) in October.

Police on proposals to trial or deploy new technologies. Colin also continued his membership of the Digital Council for Aotearoa, which advises the Government on all matters digital. In April, the Council published a report entitled *Towards trustworthy and trusted automated decision-making in Aotearoa,* on which Colin and Marianne Elliott were research leads. The report was formally launched in the Law Faculty Staff Library by Minister David Clark and Council Chair, Mitchell Pham, in front of local technology innovators and community groups.

Louise Wilsdon, Pooja Mohun and Nur Nizam, with Pooja's husband

We also had the pleasure of working with Nur Syairah Nizam, whose honours thesis was on the use of algorithms in criminal sentencing.

Expert roles

Colin has taken up a new position as Chair of NZ Police's newly formed Expert Panel on Emergent Technologies. The Panel, which comprises experts across a range of fields, advises the

In September, Colin gave oral (and supplementary written) evidence to the UK's House of Lords Justice and Home Affairs Committee, on the use of advanced technologies in the criminal justice system.

Back to basics?

Online courts and access to justice.

In a report release in June, Dr Bridgette Toy-Cronin discussed how online courts may hold the key to breaking barriers to justice, but the basics need to be right first.

The report, which was co-funded by the New Zealand Law Foundation Otago and University of Waikato researchers, described how important it is to get the design of online filing systems correct.

Bridgette, who was lead author of *Designing Online Court Forms: Recommendations for Courts and Tribunals in Aotearoa*, says the design of online forms for starting a proceeding is essential if online courts are to be accessible without a lawyer.

"Without well-designed forms the public will not be able to effectively engage, or coherently tell their story to the court and the promises of online courts will be lost," she says.

She describes online courts as the new frontier of justice delivery.

"They hold the promise of a modern, cost-effective, accessible, and efficient court system."

The pandemic has advanced online courts programmes in many countries, as they have been forced to shift online to protect public health. Dr Toy-Cronin has been advocating for more, free, Online Legal Information and Self-Help (Olish) in New Zealand.

For the public, the benefits of Olish are four-fold: cost reduction (avoiding legal fees); reduced time to resolution; increased engagement; fewer barriers to access.

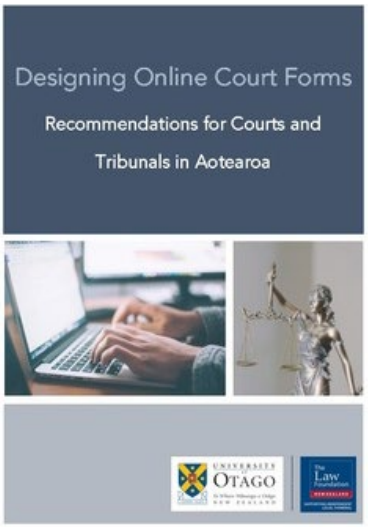
Online courts would reduce costs for Government by reducing the need for state sponsored subsidies to lawyers; increasing access to justice by reducing barriers of cost, inconvenience and fear; and protecting public health by enabling remote filing and processing of court files.

"Online filing for dispute resolution systems in both the court and tribunal setting offers significant benefits for all stakeholders. For these benefits to be realised, the systems need to be designed with a deep understanding of the users."

Even if a full online courts programme, which includes video conferencing, is not implemented, filing legal claims online offers the potential for considerable increases in efficiency and accuracy of court records, costs savings for both the Government and disputants, and greater accessibility.

The authors caution against making all forms 'digital by default', arguing for genuine offline alternatives. This acknowledges those who are digitally excluded, or who lack legal capability to engage with an online court form.

They also raise the issue of court documents containing forms of 'nudging' (built in incentives and disincentives which alter user behaviour), alongside the need for them to prompt users to provide the detail a legal narrative requires.



"The design of an online court form sounds like a simple exercise but in fact raises difficult and important issues about access to justice and the role of the courts.

"With the safeguards of a strong user-focus and judicial engagement, online court forms could provide greater physical and financial access for many disputants, and better data about our justice system to support ongoing design improvements and cost savings for Government.

"Most importantly, such safeguards will help ensure that courts deliver consistent and equal justice to all disputants, whether they seek it online or offline," Bridgette says.

Children's Issues Centre

Teaching and research update

Throughout 2021 the Centre has been focused on teaching, research and service activities. In semester one Nicola Taylor taught 305 students in LAWS 411.

Event guest speakers included Judge Jacquelyn Moran (Principal Family Court Judge), Judge Andrew Becroft (Children's Commissioner), Anita Chan QC and Luke Fitzmaurice.

Research Projects

Relationship Property Division in NZ: Funded by the Borrin Foundation (2017-2022)

This year, the CIC finalised the second phase of this project examining relationship property division in New Zealand. Phase One (2017-2018) involved a nationwide telephone survey to help inform the Law Commission's 2019 report on reform of the Property (Relationships) Act 1976.

Phase Two (2019-2021) focused on how separated couples divide property and resolve disputes. An online survey was completed by 378 separated people who had divided property in the previous five years, and 110 of them were interviewed; this year findings were written up, providing an important 'grass roots' perspective on relationship property division.

This research has never been undertaken in New Zealand, and many of the issues identified correspond with those raised in the Commission's 2019 report *Relationship Property Division in New Zealand: The Experiences of Separated People* (Oct 2021), which is available at: **otago.ac.nz/cic/research**

The Borrin Foundation has now provided an extension grant for six "Research Snapshots" on specific relationship property division topics.

Public Values and Attitudes about Entitlements to a Deceased's Property: Funded by the Borrin Foundation (2020-2021)

This nationwide project was completed in 2021 to assist the Law Commission's review of the law of succession. Telephone interviews were undertaken with 1,350 people aged over 18 to investigate public attitudes and values on entitlements to property when a deceased person has left a will or has died intestate. *Entitlements to deceased people's property in Aotearoa NZ: Public attitudes and values. A general population survey* (2021) is available at: **otago.ac.nz/cic/otago826528.pdf**

Other Research Projects

With colleagues from several Australian and UK universities, Nicola is a co-investigator on an Australian Research Council Discovery Grant (2018-2021) *Beyond Safety: Ethical Practice Involving Children* (EPIC).

Dr Megan Gollop assisted Professor Jacinta Ruru and Metiria Stanton Turei with the survey component of the consultation phase for their *Inspiring National Indigenous Legal Education for Aotearoa NZ's Bachelor of Laws Degree* project. With members of the Critical Disability Studies Research Network, she is a co-investigator on a UORG-funded project *Understanding disability matters: Applying university learning in professional practice.* Megan is also a co-investigator on the MSD-funded project (with colleagues from the Department of Preventive and Social Medicine and Kāinga Ora), examining children's connectedness to family/whānau.

Nicola and Megan are working with the Manager of the NZ Central Authority (Ministry of Justice) on international child abduction outcomes.

Postgraduate Supervision

Four PhD students supervised by CIC staff are due to submit their theses by early 2022: Richman Wee, Michael Morrison, Nicola Liebergreen and Luke Fitzmaurice.

Appointments and Achievements

Nicola is a member of the Family Court Judges' Education Committee and the Family Violence Proceedings in the Family Court Working Party. *An International Handbook on Child Participation in Family Law,* which she co-edited (published by Intersentia) was launched in October 2021.

Nicola is currently co-editing an International Handbook on *International Child Abduction* (Edward Elgar Publishing UK) and co-leading an international project to develop a child-friendly website *(Finding Home)* on the 1980 Hague Convention.

Anna High, Miranda Johnson,
Ben Schonthal and Bridgette Toy-Cronin

Te Pokapū Ture me te Papori ki Ōtākou

Centre for Law and Society at the University of Otago

The Otago Centre for Law and Society Te Pokapū Ture me te Papori ki Ōtākou (OCLaS) was launched in April 2021.

There is already a vibrant community of people across New Zealand doing important work in the law and society space, but until now our universities lacked a bespoke 'law and society' centre.

OCLaS is the first dedicated centre for the study of law and society – also known as socio-legal studies – in Aotearoa and is focused on supporting the social scientific and humanistic study of law across the University.

The Centre's four Co-Directors come from Religion (Professor Ben Schonthal), History (Dr Miranda Johnson) and the Faculty of Law (Dr Bridgette Toy-Cronin and Dr Anna High); and the Centre's Steering Committee includes representatives from across each of Otago's four Divisions (Commerce, Health Sciences, Humanities and Science).

As an interdisciplinary space, the Centre is uniquely positioned to support collaborative research projects, public events and academic symposia across numerous academic disciplines including Law, History, Religion, Politics, Bioethics, Philosophy, Economics, Psychology, Anthropology and Indigenous Studies.

International Links and Advisors

Law and society is a global field and OCLaS also provides a means to facilitate links and collaborations between Aotearoa and leading socio-legal associations and research groups around the world.

In this vision, the Centre will be ably supported by its International Advisory Board, constituted by (in alphabetical order) Associate Professor Noelani Arista (University of Hawai'i); Professor Benjamin Berger (Osgoode Hall Law School, York University, Canada); Professor John Borrows (University of Victoria, Canada); Professor Shaunnagh Dorsett (University of Technology Sydney); Professor Terry Halliday (American Bar Foundation and Australian National University); Professor Samuel Moyn (Yale University); Associate Professor Jaclyn Neo (Centre for Asian Legal Studies, National University of Singapore); Professor Fernanda Pirie (Centre for Socio-Legal Studies, Oxford University); Professor Mitra Sharafi (University of Wisconsin-Madison).

Interdisciplinary Research

Law and society grew as a field from critical theory and sociological methods, From that foundation, today socio-legal studies welcomes into its fold scholars from anthropology, religious studies, performance studies and virtually every other discipline in the University—bringing with it a range new methods and theoretical agendas.

While the field of study has grown, this has not been matched by engagement between the different departments and divisions in the University whose work might come under the law and society umbrella. OCLaS offers a way to build those connections between Otago's many scholars – situated in various Otago Divisions – who are carrying out law-related research. Otago has a history of strong connection with the socio-legal studies, hosting the annual conference for the Law and Society Association of Australia and New Zealand in 2017 and being the home of scholars who

have earned awards and prizes from international socio-legal studies associations. OCLaS is the next step in supporting law and society engagement at Otago, bringing researchers together and mobilising their diverse expertise collectively for collaborative research projects, teaching and student support.

A key mandate for OCLaS, then, is to serve as a truly interdisciplinary hub that encourages a wide range of socio-legal research, while also deepening Otago's existing areas of strength in the study of legal pluralism, law and religion, law and gender, legal institutions, environmental studies and legal cultures in the Asia Pacific.




Inaugural Events

To celebrate the establishment of Te Pokapū, in April OCLaS hosted an inaugural law-and-society seminar and reception at the Faculty of Law. Anna High presented on her recent monograph (*Non-Governmental Orphan Relief in China*, Routledge 2019; winner of the 2020 Asian Law and Society Association Distinguished Book Award), a work based on her doctorate at Oxford's Centre for Socio-Legal Studies. In her seminar, Anna noted that something she has always appreciated about the law and society perspective is that because it allows for an external point of view of law, rather than the internal doctrinal perspective that is so often emphasized in undergraduate law papers, there is a natural fit with narrative storytelling. Her book is very much in narrative form – adopting a law and society approach, it tells the story of a particular sphere of non-governmental activity in modern China, child welfare (with a focus on 'non-legal' church-based orphanages), and of how that field has changed over time, quite dramatically so, since its emergence in the 1980s.

In June, OCLaS co-hosted, with the University of New South Wales, a virtual launch and discussion of the *Routledge Handbook of Law and Society* (Mariana Valverde, Kamari M. Clarke, Eve Darian Smith and Prahba Kotiswaran eds., 2021). The Handbook provides a comprehensive and global overview of the main frameworks used to explore the relationship between law and society, including reflections on 42 "inherently interdisciplinary" topics concerning law, justice, and society – from Agriculture, Animals and Artificial Intelligence, to Water Disputes, Water Justice and White Supremacy. Miranda Johnson contributed a chapter on Indigeneity.

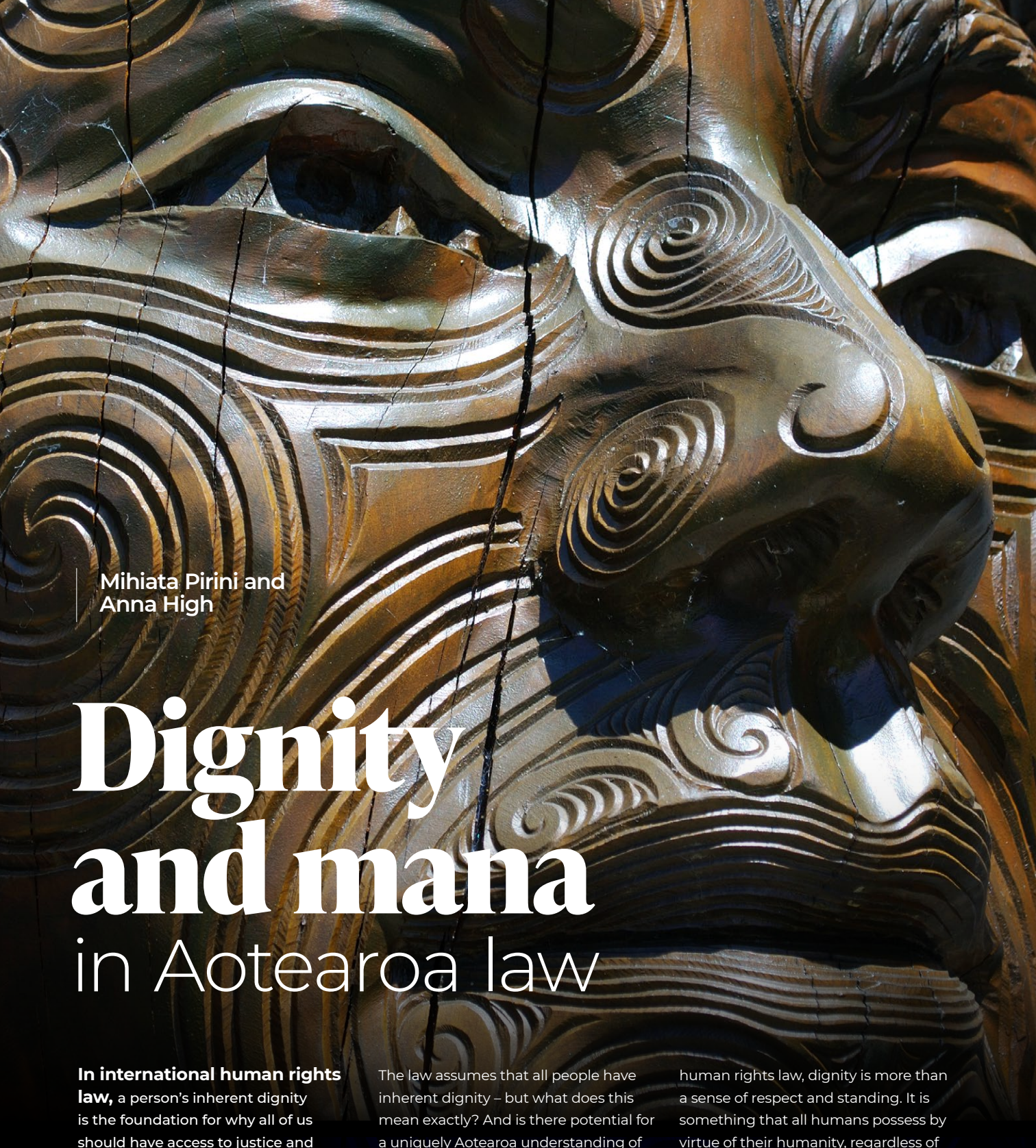
During the launch, co-editor Eve Darian-Smith highlighted the contribution of Sally Engle Merry, a foundational figure in legal anthropology to whose memory the Handbook is dedicated. We note here with gratitude that before her death, Sally Engle Merry had generously agreed to serve on the international advisory board of OCLaS.

Some events planned for August were unfortunately postponed due to lockdown. One event that did proceed, albeit via Zoom, was a seminar from Dr Stephen Young, lecturer at the Faculty of Law, on his monograph *Troubling Subjects: Legal Performativity and Indigenous Peoples* (Routledge, 2020) (the seminar was jointly hosted by the Religion Programme). This important and fascinating work was awarded the 2020 Law and Society Association of Australia and New Zealand Distinguished Book Award.

Further Information

For further information on the Centre, readers are warmly invited to visit our website:
otago.ac.nz/law/research/oclas.html#our-people
and to subscribe to our mailing list by emailing **oclas@otago.ac.nz**

Nau mai haere mai.



Mihiata Pirini and
Anna High

Dignity and mana in Aotearoa law

In international human rights law, a person's inherent dignity is the foundation for why all of us should have access to justice and safety. In Aotearoa we have a unique understanding of that value, but policymakers need to understand that 'mana' and 'dignity' are not interchangeable.

The law assumes that all people have inherent dignity – but what does this mean exactly? And is there potential for a uniquely Aotearoa understanding of dignity to take hold here?

Since the end of World War II, the idea that all humans possess equal, inherent dignity has become a hallmark of international law. In international human rights law, dignity is more than a sense of respect and standing. It is something that all humans possess by virtue of their humanity, regardless of how degrading their circumstances or treatment. Dignity is often treated as the foundation for all other rights, the status from which flows our right to be treated, or not treated, in certain ways.

In western law and philosophy, dignity is often associated with philosopher Immanuel Kant and the idea of protecting autonomy. Kant believed human beings had an intrinsic worth that elevated them over animals. "We have dignity too, so respect our autonomy" is a common argument in debates over same-sex marriage, abortion, and other civil liberties.

On the other hand, dignity can equally be used to argue that certain choices we make should be disallowed, because sometimes human choices lead to undignified behaviour. Most famously, in 1995 a top French court upheld a ban on consensual "dwarf tossing" – think Wolf of Wall Street, and men with dwarfism hiring themselves out as a living party trick – on the basis that it violated human dignity.

Dignity in New Zealand law

So what does New Zealand law say about dignity? Parliament has passed more than 30 statutes that use the term dignity or indignity, and the term dignity has been mentioned in over 4,000 court or tribunal cases.

One recent example was a 2020 decision of the Human Rights Review Tribunal, which concerned the "loss of dignity" that resulted from the substandard care provided to a profoundly disabled boy. The boy in question, the tribunal noted, was not capable of subjectively experiencing humiliation, but the tribunal still recognised a harm to his dignity – in other words, dignity is about more than our feelings or reactions. It's about the right to be treated in a way that recognises our inherent value, our humanity, our mana and our tapu.

The idea of dignity and mana is also squarely before the Supreme Court in the pending case of Peter Ellis. The former Christchurch Civic Creche worker was allowed to appeal against charges of sexual offending, despite the fact he died in September 2019. Ellis's lawyer used a tikanga-based argument that all people, Māori and Pākehā, have mana in death and if the appeal was successful, it would affect his mana and that of his whānau.

Mana and dignity – associated ideas?

One of the interesting things about "dignity" in New Zealand statutes and court decisions is that it is sometimes used alongside the idea of "mana". For example, a law passed in 2017 to allow for the compulsory assessment and treatment of people suffering substance addiction refers to the importance of protecting "mana and dignity".

Mana is commonly translated as status, prestige, authority or leadership. One high court justice has spoken of mana as a concept "understood implicitly by Māori and, now, by most New Zealanders".

That might be a stretch; and we argue there's a risk that if the phrase "mana and dignity" is used unthinkingly, mana might be misunderstood as just a te reo translation of dignity. Mana is actually a rich and complex idea that does not correspond simply to "dignity". There's also a very different cultural basis for mana – where dignity is usually premised on the idea of the autonomous individual, mana comes from a worldview that emphasises whanaungatanga.

When our predominantly English legal system uses te teo Māori terms such as mana, it's important that care is taken not to twist and subvert the concepts that term represents.

On the other hand, assuming great care is taken and we listen to tikanga experts, the idea of mana might be a positive symbol of a legal system that is committed to bijuralism and biculturalism.

A bijural, bicultural legal system, as our colleague Jacinta Ruru has written, is one that "presupposes the existence of two laws" – not just the law brought here by Cook, but also the law brought here by Kupe.

This suggests that it is possible, and indeed deeply desirable, to think about a uniquely Aotearoa understanding of dignity as a legal concept. To be a valid idea in New Zealand today, dignity must speak to the diversity of culture in this land. It should be informed not only by western thought and the value of autonomy, but equally by a te ao Māori understanding of whanaungatanga, connectedness, and the multiple, interrelated attributes that define our status and worth as people. Those interrelated values include mana, but also personal tapu, mauri, wairua and hau.

As dignity continues to develop as a legal principle in New Zealand, our hope is that legislators, policymakers, judges and ordinary New Zealanders alike will understand dignity as an idea that draws on the richness of both western and Māori law and philosophy. That will allow for a uniquely Aotearoa idea of dignity to emerge, with particular resonance and relevance for our time and place.

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This article first appeared in The Spinoff.

Alex Latu

Why NZ is unlikely to follow Australia's lead on social media defamation law

Some key differences in existing law mean that New Zealand media organisations remain generally safe from liability for comments posted under their content, writes Otago University law lecturer Alex Latu.

Let's face it, there's a reason people say "never read the comments": most commentary below social media posts is just the worst. So, the recent Voller decision of the High Court of Australia confirming that, for the purposes of defamation law, media organisations are "publishers" of such third party Facebook comments has been met with understandable concern. That decision has the potential to affect social media and internet users more generally – not just media organisations of the type that lost in the high court.

Against this background, Hal Crawford considered the prospect of the New Zealand courts following the Voller approach taken in Australia. While there are ways that this decision could influence our courts, there are also additional factors to be aware of that are likely to limit its impact – some applicable to Australia as well as New Zealand.

'Publication' not the end of the matter

The chief justice of New South Wales, quoting the observation that "[Australia] inherited the English common law and then made it worse", has pointed out that defamation law is convoluted, technical and perhaps overly hidebound by history. Some of this is evident from the attention paid by the Australian high court to cases involving verse placed on golf club walls, printers' assistants "clapping down" printing presses, and porters delivering handbills. Remember, the Voller case itself concerns Facebook comments on news stories posted in 2016.

What this means for the media organisations is that being found to be a "publisher" of someone else's Facebook comments is not the end of the matter. In effect, those organisations argued that they were not the comments' "publishers" to try and short-cut their way out of the litigation; you have to have "published" material to be liable for it in defamation. The media organisations lost this argument, with the high court ruling (five justices to two) that the way they operated their Facebook pages facilitated and encouraged third party comments. That was said to be enough for them to be "publishers" of those Facebook comments, despite the fact that they could not (at that point in time) be completely turned off.

However, "publishers" of material have other ways to successfully defend defamation actions. In many ways, the litigation now begins in earnest; whether the comments in question are actually defamatory, and what defences might be available to the media companies, are questions that remain to be decided.

Legislative protections in the online context

Nevertheless, even though defences may be available to publishers, these can be complicated and costly to establish. Going to court is always time consuming and expensive.

For this reason, New Zealand provides another source of protection from defamation liability for "facilitating" another person's online comments – the so-called "safe harbour" under the Harmful Digital Communications Act 2015.

> "While the new law applies to all social media, Australian media organisations are most worried about comments made on their Facebook pages."

As explained on the Ministry of Justice website, people who "host" social media where third parties can post comments can be protected from liability for other people's content. They just need to follow the requirements of the safe harbour process. This boils down to dealing with complaints about content in a specified way, which may result in that content having to be removed. In Australia, these types of hosts may be protected from liability for others' content where they were not aware of its nature, under another piece of online-focused legislation.

While New Zealand's safe harbour provisions may serve to protect many against liability in defamation for other's comments, they may not always be available. In that case, what our courts already have said on the matter of defamation and Facebook comments may provide another key protection against the Australian position on publication being readily adopted here.

The New Zealand position on Facebook comments

In 2014, the New Zealand court of appeal had to decide whether the operator of a Facebook page had "published" third party comments that the operator was said to have incited. The court ruled that such an operator would only have "published" those comments if it had actual knowledge of them and failed to remove them within a reasonable time. This sets a higher bar for finding publication than the high court of Australia's reliance on facilitating and encouraging comments.

In coming to this conclusion, the New Zealand court focused on considerations that do not have clear parallels in Australia. These included New Zealand's specific defamation legislation, which might restrict the defences available, as well as the potential effect of the safe harbour provisions just discussed. The New Zealand Bill of Rights Act also played an important part; the court thought that rules in this area of the law need to properly take into account the right of freedom of expression.

While two justices of the Australian high court thought that our court of appeal adopted too narrow a starting point on the question of publication, they acknowledged the role that our Bill of Rights Act played in the ultimate conclusion. As well, another justice (who would have reached a result more favourable to the media organisations) expressly approved of a core part of our court of appeal's reasoning. Overall, then, New Zealand's particular legal framework provides plenty of scope for our courts to continue with a higher threshold for publication in defamation. Certainly, it is not obvious that they would feel automatically compelled to depart from the court of appeal's previous position and adopt the Australian approach.

Future developments?

Both the Australian and New Zealand courts have recognised that whether or not someone has "published" a third party's comment online is a very fact-dependent enquiry. In essence, our court of appeal thought that the particular 2011-era Facebook page operator it was considering had done little more than someone who organised public discussion at a meeting, and was not prepared to consider them a "publisher" of comments on that basis.

On that point, even the Australian high court justices who were more favourable to the media organisations would not have let them off the hook as publishers for all comments. Sometimes, they thought, someone posting material online might do so in a way that is more culpable than a meeting-organiser and be justifiably considered a "publisher" – say, posting an outrageous story on a controversial topic, hoping for fireworks in the comments and thus greater algorithm-based optimisation. This may reflect a shift in perceptions of social media since 2014, away from a view that it only provides a neutral "venue" for a public meeting. It seems more likely that this aspect of Voller might influence New Zealand courts dealing with contemporary fact situations, rather than the more general ruling concerning all comments. Still, a court would have to be convinced that such a situation is different enough from the one previously before our court of appeal.

The high court's decision in Voller comes during a time of change in this area. Law reform processes in Australia concerning online publications and defamation are under way. Facebook, apparently in response to the Australian courts, changed its comments functionality this year to give users greater control. The question of who can be held responsible for online material is unlikely to go away, and while law reform in New Zealand might provide useful clarification, the situation here is – for now – different in several important respects from Australia. Whether and how new modes of social media and online interaction might affect this issue remains to be seen.

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This article first appeared in The Spinoff.

Jacinta Ruru and
Jacobi Kohu-Morris

Why Te Tiriti should place a limit on the supremacy of parliament

Ahead of Waitangi Day, Jacinta Ruru and Jacobi Kohu-Morris imagine an alternative to New Zealand's constitutional framework that gives Te Tiriti o Waitangi the mana it deserves and Māori a meaningful seat at the table.

In the early 1980s, fresh from law school, Sir Justice Joe Williams (Ngāti Pūkenga, Te Arawa) wrote 'Maranga Ake Ai' and recorded it with his band Aotearoa. It first aired in 1984 and caused a stir. It deeply offended many European New Zealanders. Lyrics included "Where's my freedom from oppression? Cos that's what my people need."

It's a song that we've been thinking about a lot as we look at the way our legal infrastructure treats Te Tiriti o Waitangi. Not just because of who wrote the song, or because the song itself was once banned from mainstream radio. But because the song speaks to something our families know about and something we want our country to "wake up" to.

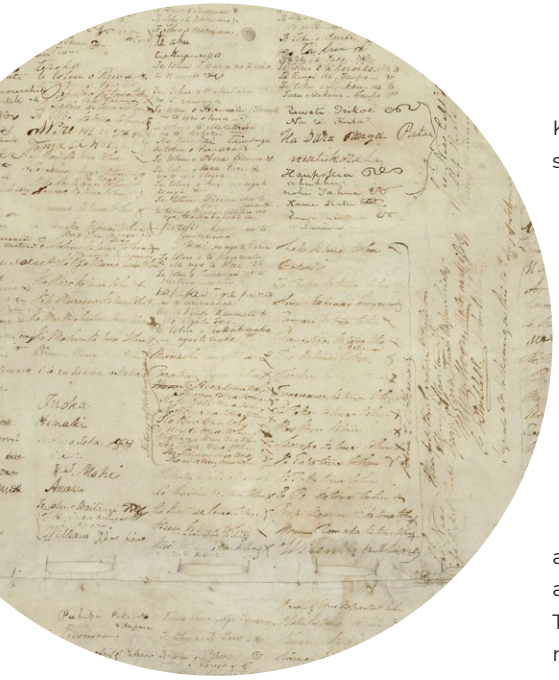
One of the best ways we know how to make change is through law. With another year upon us since Te Tiriti o Waitangi was signed, we question here the very basis of our constitutional system as we seek to realise in law the potential of a Te Tiriti compliant nation.

Sir Justice Williams is one of many Māori at the forefront of the movement to honour Te Tiriti o Waitangi. Others (past and present) who quickly come to mind are: Hone Heke, Sir Apirana Ngata, Dame Whina Cooper, Hon Matiu Rata, Dame Ngāneko Minhinnick, Sir Eddie Taihakurei Durie, Moana Jackson, Ani Mikaere, Annette Sykes, Margaret Mutu. We adore their work, their visions, their courage. Williams himself has had a stellar career, first as a lawyer, then as a judge, and he now sits on the Supreme Court, the country's highest appeal court, the first Māori to do so. He was knighted for his services to law in 2019.

The young Williams penned 'Maranga Ake Ai' in the early 1980s, capturing the deep frustrations of many Māori of the time. Fast forward to 2021 and some change is apparent. Te Tiriti is now referenced in most areas of law requiring decision-makers to have some level of regard to its intent. Most iwi throughout the country have agreed to reconciliation agreements with the Crown, receiving (albeit small amounts of) financial, commercial and cultural redress. Te Tiriti is now regarded as part of our unwritten constitution and there is a growing depth of Tiriti jurisprudence to lean on.

But even so, there are continuing problems across government and the constitution that stifle Māori rights and interests. The Waitangi Tribunal has described much of New Zealand's law as still in breach of Te Tiriti principles. The courts have only given lukewarm credence to the often weak legislative hooks to advance recognition of Te Tiriti, and the government can fail to, or improperly carry out, its duties to consider Tiriti implications.

One major obstacle is New Zealand's adherence to the doctrine of unlimited



parliamentary supremacy. The concept was imposed over the top of existing Indigenous nations and legal systems in European colonial states across the globe. The continuing effect of this doctrine on Indigenous peoples' legitimate claims to self-determination and self-governance is an important question for countries like Aotearoa New Zealand.

Parliamentary supremacy (or also known as parliamentary sovereignty) means, as a general principle, parliament can make or unmake any law, and no person or body can consider the validity of properly enacted laws. Parliament comprises the Queen, as sovereign through the Governor-General, and the House of Representatives of now 120 members, many of whom are now Māori. New Zealand's constitutional arrangements, in particular, have been described as an "executive paradise", where cabinet dominates the house.

Why is it a paradise? Because the only real check on parliament's powers is the three-yearly national electorate cycle. It is unconstrained by a supreme constitution (as in the United States), or an upper house (like the United Kingdom's House of Lords, or the senates of the United States and Canada).

But this can be problematic for Māori rights and interests because the electorate is predominantly non-Māori, and because Te Tiriti occupies a paradoxical legal position. It is considered our nation's founding document, yet it is, strictly speaking, unenforceable; it mainly relies on parliament to have any effect. This means "treaty rights are always in a slightly precarious position". They are especially vulnerable if the majority public opinion is hostile or unsympathetic to Māori rights.

This can often rear its head in clear ways. An obvious example is the "foreshore/seabed" saga that commenced following the Court of Appeal's 2003 decision that, yes, the Māori Land Court did have jurisdiction to determine whether areas of the foreshore and seabed were Māori customary land. The court said "the transfer of sovereignty did not affect customary property. They are interests preserved by the common law until extinguished in accordance with the law".

The decision ignited fierce public debate and was an extraordinarily divisive period in New Zealand political history (recall the "iwi-kiwi" billboards!). The government, coming under immense pressure, responded. Parliament passed the Foreshore and Seabed Act 2004, effectively overruling the court's decision, vesting full legal and beneficial ownership of the land in question in the Crown. Although the act was repealed and replaced by the Marine and Coastal Area Act 2011, many of the changes are cosmetic.

So, parliament can pass laws to remove Māori rights. Parliament can also pass laws that disproportionately and negatively affect Māori. One example is when parliament enacted the Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010, which banned those detained pursuant to a sentence of imprisonment from voting. Whatever your views are on this, it is clear that one demographic was stripped of their fundamental democratic rights the most. Sadly, Māori make up over half of New Zealand's male prisons, and nearly two thirds of our female prisons. Despite strong criticism from the courts and the Waitangi Tribunal, it took parliament a decade to repeal that law.

These examples demonstrate that the place of Te Tiriti – and by extension, the rights and interests of Māori – remains in a vulnerable state, despite the progress made in the last 40 years. The sentiment of Maranga Ake Ai continues to resonate: "how much longer must we keep on talkin'?".

In 2013, Justice Sir Williams wrote Lex Aotearoa, an extra-judicial article published to acclaim. He described the three stages of Aotearoa's legal development, from Kupe's law – the regulation of kinship communities grounded in core values such as prioritised importance of extended family, genealogy and reciprocity; to Cook's law – a system prioritising individual property rights and freedom of contract; to the current law of Aotearoa New Zealand. He reasoned that the second law "rejected the legal relevance of the Treaty" and "acknowledged tikanga Māori only as a temporary expedient in the wider project of title extinction and cultural assimilation". However, he sees promise in the evolving fusion of the first and second laws that make up our current legal system, especially as we begin to give more recognition to the first laws – Kupe's law (tikanga Māori).

As the blending of two legal systems continues, how could Te Tiriti limit parliamentary supremacy? This question goes to the heart of the country's foundation, and as former Chief Justice Dame Sian Elias has said, "we need to understand that when dealing with fundamentals of the legal order, we need to think constitutionally." Perhaps a useful starting point is to question whether, under our constitution, parliament should be supreme in an unlimited way.

Of course, it must remain free to legislate in the ways necessary to govern ordinarily and to respect its democratic mandate. But if we are prepared to entertain the possibility that parliament is not truly sovereign in an unlimited way in protection of something deeper and constitutional, then perhaps we could consider that the very document that planted the seeds of that very sovereignty might also temper its powers.

As far back as 1861, New Zealand's first Chief Justice, William Martin, suggested that Māori only ceded to the Queen those powers necessary for the establishment of settled government and law. "In return they retained what they understood full well – the 'tino rangatiratanga', in respect of all their lands."

A democratically elected parliament that constitutionally cannot infringe upon the protections afforded to Māori under Te Tiriti o Waitangi would help to live up to its true promise. After all, this is not an argument for separatism, but a synergetic, mutually respectful partnership. As Williams and many others have argued, the Treaty is best understood not as one of cession, but as a framework for the distribution of powers between two peoples.

How could this distribution be advanced? One significant option advanced by Māori is constitutional transformation.

In 2010, Māori nation state leaders established a Māori working group to engage in hundreds of consultative meetings with Māori throughout the country. Their report, Matike Mai Aotearoa, released in 2016, presents six constitutional structural transformation models as options to demonstrate the possibilities for enabling 'different spheres of influence'. They are premised on constitutional design as envisaged in Te Tiriti, advocating significant change to existing governance structures.

According to one model, Māori could make decisions in one sphere (the rangatiratanga sphere) through a Māori tribal nation assembly, the Crown could make decisions in another sphere (the kāwanatanga sphere) through the Crown in parliament, and in the third relational sphere "they will work together as equals" (the relationship sphere).

Another model is unicameral: a one sphere model focused on the relational sphere of joint decision-making. These models, along with the others, deserve close consideration because the implications of elevating Te Tiriti to a position of constitutional authority must result in enhanced decision-making for Māori.

We also suggest a further option; that a constitutional status be developed that recognises the uniqueness of our founding document, that is neither dependent on a statutory gateway nor susceptible to majoritarian concerns. Of course, this would be a major step for New Zealand's Courts to take but it is possible. The Supreme Court of Canada has identified the unique nature of first-contact treaties.

But if Te Tiriti is to constrain the supremacy of parliament to make law, in order to better protect the rights of our country's first inhabitants, new structures are required. Without structural transformation, the limit on parliament would be adjudicated simply by the state's courts which have few Māori judges.

" Perhaps a useful starting point is to question whether, under our constitution, parliament should be supreme in an unlimited way.

The Maranga Ake Ai lyrics continue to resonate with us in these summer days as we dream of the possibilities for a sophisticated discussion on the possibilities of adapting the doctrine of parliamentary sovereignty to realise the Tiriti promise of bicultural power sharing. Freed from the constraints of a principle imposed on us that may no longer reflect our legal and political reality, we might – together – reach a constitution that embraces all of our peoples, protects all of our rights, and reflects our shared history as we approach Te Tiriti's 200th anniversary in 2040.

This article first appeared in The Spinoff.

Simon Connell

No good reason to limit ACC birth injury cover

While expanding ACC to cover birth injuries is a positive step, limiting cover to a specific list of birth injuries will not help address inequitable treatment of women, argues Dr Simon Connell

The Government plans to expand ACC to cover some birth injuries, which is good. If we're going to have an accident compensation scheme, it shouldn't exclude a bad event that happens to women. However, the proposal is to only cover birthing parents who suffer a set list of injuries.

It's common for people to wonder why birth injuries aren't already in the scheme. The legal explanation is that the definition of accident usually requires an external force, and a foetus is legally considered part of the birthing parent's body during labour and birth. The only scope for birth injury cover is a 'treatment injury' which usually requires a failure on the treatment side or something unusual happening.

There are two main reasons for that legal definition. The first is that it is part of a series of changes made by National in the 1990s to limit the scope and thus cost of the scheme. The 'external force' requirement was targeted at excluding illness conditions, which develop gradually because of a person's innate characteristics rather than some external factor.

The second reason is, in a word: patriarchy. The scheme is much better at including bad stuff that happens to men because, in short, it was designed by men for men (more specifically for men working in the 20th century). As a result, it is not great in terms of what it provides women. This has been pointed out a number of times before.

To be clear, what I mean here is not that a group of men sat down and deliberately chose to exclude women simply for the sake of excluding women. Neither do I mean no women have ever been involved in setting ACC policy.

But it is fair to say that the history of ACC, much of which has a big impact on the state of the scheme today, has been dominated by men thinking about men's experiences. That is why birth injuries are excluded. The provisions for work-related cover are also better at capturing conditions suffered in conventionally male occupations.

That is not good enough, so we should do something about it. I think the obvious solution to this problem is to amend the definition of accident to include birth. The definition of 'accident' already includes several things that count as 'accident' without needing an 'external force' such as inhalations and radiation burns.

If a person suffers an injury during birth, they could then lodge a claim with ACC. Just like any other personal injury by accident claim, ACC will then need to consider whether it's plausible that that injury was caused by the accident and accept or decline the claim.

The Government considered doing just that but decided to go ahead with a more limited and technical approach. As well as amending the definition of 'accident' to include birth, the proposal accepted by Cabinet would set out a list of specific injuries which would be the only ones that could get cover.

I'm not a medic, but I believe the list includes several common injuries suffered by people giving birth, and it isn't limited to serious ones. The proposal would mean thousands of people get cover who don't currently.

So, what's my objection? A friend put it this way: Where is the list of acceptable injuries to have suffered on the rugby field? Why should a birthing parent who suffers an injury during birth who doesn't happen to be one of the ones on the list miss out? What is the justification for treating this type of accident, typically experienced by women, differently, when that is not normally how the scheme works?

To be fair, there is a precedent in the scheme for having a list of conditions that are treated differently. There is a schedule that gives a list of occupational diseases associated with specific kinds of work. If you have one of those conditions, it is easier for you to get cover compared to the normal process for work-related gradual process or disease conditions.

A rationale for the list is given in the MBIE Regulatory Impact Statement that preceded ACC Minister Carmel Sepuloni's proposal to Cabinet. The reason for the list is to ensure the boundaries of cover are clearer. That's probably correct, but the clarity in cover is achieved at the expense of excluding people who genuinely suffered injuries as a result of birth.

The main source of the ambiguity in introducing birth injuries is going to be the words used to define that type of accident. The current suggested wording seems to be 'mechanical trauma caused by labour and delivery'.

Whether or not there is a list of injuries, there are likely to be court cases testing the boundaries of the definition. There is also a risk that the listing of specific conditions adds complexity and ambiguity if there is room to argue what is included in those conditions.

The list of conditions does not really provide that much more clarity. It also risks becoming out-of-date, since all it can do is capture current medical thinking. That means it cannot adapt to developments in how we understand birth trauma.

I acknowledge that there are also important wider questions about the boundaries of the ACC scheme, and whether birth injury cover should include babies, which Green Party spokesperson Jan Logie, among others, has questioned.

Any expansion of ACC is better than the status quo. But there is something off to me about addressing inequitable treatment of women by introducing a special approach that only applies to injuries typically suffered by women.

That is exactly the sort of thing we should be trying to get rid of in the scheme. Introducing a list of covered birth injuries will not make the boundaries that much clearer, and any clarity is outweighed by the unfairness of excluding birthing parents who suffer injuries during birth that are not on the list.

This article first appeared in Newsroom.

Art in Law XVIII

Lawyers love and live in abstraction

From the very beginning of their studies to their lives in practice and beyond, lawyers are taught to embrace the hypothetical. When they look at a statute or case, they are considering the impact of the law in a hypothetical fact scenario. And while a particular set of facts will ultimately crystallise that impact, no less important is the idea of the rule or maxim in the abstract. Legal reasoning forces us to divorce the text from context and parse for meaning in a manner sometimes quite untethered from reality. Academic lawyers go one step further, sometimes questioning the process of legal reasoning itself and whether true abstraction is even possible. Like an artist, legal academics can spend their life in abstraction; an abyss of "what ifs". Like the artist, they find contentment in that abstraction, and deeper meaning in the process. Art, like law, embraces the abstract, and lawyers, like artists, consume and are consumed by that abstraction.

Marcelo Rodriguez Ferrere

Thank you to the artists whose work is reproduced here for exhibiting in the Faculty this year.

Sacred Connections 7, 2020,
acrylic on canvas

Sacred Connections 9, 2020,
acrylic on aluminium

Patricia Bennett
Trisha is interested in issues of transition in both her psychotherapy and art practice. In this series, 'Sacred connections', she has focused her explorations on the liminal space, between life and death.

Twins, 2011–2020, mixed media on canvas

Thomas Lord and Blair Thomson
Twins is the result of a collaboration, eight years in the making and completed a week before the March 2020 COVID-19 lockdown. Utilising the immediate studio surroundings and incorporating rain, seawater, soil, tree bark and other found objects, the work's intention is to consider the false dichotomy between humans and nature.

Eight painters you should know, 2020, oil and aerosol on linen

Salt and fat, 2020, oil and aerosol on linen

Flush, 2020, oil and aerosol on linen

Michael Greaves
Painting as a manifestation swerves away from the object itself, a document of it, and of the contextual relationship between the viewer and the viewed. Painting is like working through a collection of memories or parts of things, to arrive at a threshold moment, as if remembering these suddenly and with surprising context. In that, the act of making a work, then is like a process of trying to get closer to the thing, becoming more a force and quality of the medium, of a challenge of resemblance and association with its 'stuff'.

Yellowcake, 2019, oil on canvas

Alexandra Kennedy
This work was conceived of as a 'dirty monochrome.' Colour is used as material and as 'matter' to describe a hyperobject – a fragment or 'part object' – that forms part of a continuous field potentially extending indefinitely beyond the frame of the canvas.

Newly appointed Pacific resident district court judge Michael Mika

Earlier this year Otago alumnus Michael Mika was appointed as New Zealand's first Pacific resident district court judge outside of Auckland.

Judge Mika, who has lived in Southland since 2003, was sworn in as a district court judge at a special sitting of the Invercargill District Court in March. He and his extended aiga were also welcomed to Kairangi/Hutt Valley with a powhiri on the Waiwhetu Marae in April.

During his time in the South, the Preston Russell Law (now PR Law) partner and director had become a well-known Waihopai and Murihiku community leader, Mīharo Trust founding member, and from 2010 to 2021 deputy president of the ILT (Invercargill Licensing Trust) board.

Judge Mika relocated to preside in Kairangi, the Hutt Valley region where he was born.

In addition to gaining his law degree at Otago, Judge Mika has strong connections to the University and region through his rugby career.

He played for Otago University and Kaikorai RFC in the early 1990s, he also represented New Zealand Universities in 1992, 1993 and 1995.

He appeared 49 times for Otago and was in the team that defeated the British and Irish Lions in 1993. From 1995 to 1999 he made 15 test appearances for Samoa at prop appearing in the 1995 and 1999 World Cups. He also played professionally for the Highlanders and for the Coventry RFC in the UK.

Judge Mika was admitted to the bar in 1996 and told Radio NZ his rugby career took off at the perfect time.

"I had just finished my law degree and got my first job in Dunedin with O'Driscoll and Marks. One of the principals there, Stephen O'Driscoll, is now a district court judge in Christchurch. I was fortunate that I had an employer that was generous in basically letting me do the rugby thing at the same time".

Despite being born in Hurricanes country, Judge Mika said the ruling on his Super Rugby allegiance was crystal clear – "Always a Highlander first", with the Hurricanes a close second.

"Although Moana Pasifika might challenge that now!" he says.

Judge Mika maintains his involvement in rugby as a Judicial Officer for World Rugby, SANZAAR, Oceania Rugby and NZ Rugby.

Otago Law graduate wins prestigious national award

Dunedin-based employment law expert and Otago LLB graduate, David Browne, won the prestigious national 2021 Private Sector In-house Lawyer of the Year Award from ILANZ, earlier this year.

Mr Browne, who was the Senior Solicitor and Legal Team Manager at the Otago Southland Employers' Association (OSEA), was named the 2021 Private Sector In-house Lawyer of the year at a function in Wellington on Friday 21 May. He received the accolade and award funds of $5,000 ahead of two other category finalists – the Bank of New Zealand's Executive Chief General Counsel, Hayley Cassidy, and Spark New Zealand's General Counsel, Melissa Anastasiou.

David said it was "a huge honour" to win the award, and he planned to use the funds to embark on a project he has been thinking about for some time. "COVID-19 exposed some major problems with New Zealand employment law, and I plan to review these and consider ways to solve them," he says. "This project will be particularly useful at a time when OSEA and the Otago Chamber of Commerce are merging – two related but different organisations coming together to offer even stronger support to businesses across our region as Business South."

Departing OSEA Chief Executive, Virginia Nicholls, says she was thrilled that David's expertise and excellence had been recognised by the ILANZ Awards Committee, which is part of the New Zealand Law Society.

"David is an exceptional solicitor and leader who always goes the extra mile to support our members," she said. "It is wonderful to see David receiving the acknowledgement he deserves for his tireless work to support our members, a role that has been even more crucial over the past year as businesses have encountered considerable hardship and uncertainty due to COVID-19 restrictions," she added. "David is a real asset to OSEA, and it is a credit to his expertise, dedication and professionalism that he is receiving this national recognition."

As part of his role, David regularly found himself behind a lectern in Invercargill, Alexandra, Queenstown, Wanaka, Oamaru, or in-house at the OSEA offices in South Dunedin, delivering the employment law training programmes that he has helped to develop during his tenure.

"If someone had approached me when I was in law school and asked me who I would choose to work for – employer or employee – I would have said the employee, because I would have thought they were the underdog. I've learned that employers can also be the underdog. Employers deserve a lot more credit than they receive providing opportunities for others to contribute to organizations and in turn the culture in various roles. I am just one of those who have been given such a chance."

In David's view there is a huge need for employment law support for small and large business owners.

"Many business owners had a dream and took the financial risk to start an enterprise hoping others would be caught up in their vision and plans. Unfortunately, it doesn't always work out and there can be performance and disciplinary problems and sleepless nights for the hard-working employer. I tell them, 'Don't you worry about it, let me worry about it', and then our team works hard to give them back their agency."

Not only is David a lawyer and educator, he is also an acclaimed photographer and holds a Master of Fine Art degree from RMIT University in Melbourne. He recently won first prize at the Otago Art Society Awards and had previously been short-listed for the National Contemporary Art Award, the Wallace Arts Trust Awards and the Cleveland National Art Awards. He may be the only lawyer currently holding a practicing certificate from the New Zealand Law Society who has created artwork purchased and published by Te Papa.

Newly appointed Her Honour Judge Rachel Parata Mullins

In September Minister for Māori Development, Willie Jackson announced the appointment of Otago alumna Her Honour Judge Rachel Parata Mullins as a judge of the Māori Land Court, based in Hamilton.

In 2002, Judge Mullins (Kāi Tahu, Ngāti Kahungunu) graduated from Otago with both an LLB and a BA in Māori Studies. A proud third generation graduate of Otago, Judge Mullins' grandfather Dr Leonard Broughton graduated in medicine in 1944.

Dr Broughton went on to marry the granddaughter of the Honourable Tame Parata and it was that whakapapa that drew Judge Mullins back to her turangawaewae to study.

Between 2000 and 2002, Judge Mullins was President of Te Roopu Whai Pūtake Māori Law Students' Association and served on the Executive of SOULS (The Society of Otago University Law Students).

Judge Mullins worked at the Ngāi Tahu Māori Law Centre between 2002 and 2005 before joining McCaw Lewis Chapman in Hamilton until 2017, where she managed the firm's Māori Land practice. She has been an executive member of Te Hunga Roia Māori o Aotearoa (NZ Māori Law Society) and was the Tūmuaki Wahine/Female Co-President between 2014 and 2016.

Her legal practice was predominately in the Māori Land Court and Waitangi Tribunal and more recently in Education Law. Prior to her appointment Judge Mullins was the Director of Whakamana Law and Consultancy Ltd where, in her practice, she focused on building and nurturing strong and lasting relationships with clients, work referrers and their communities.

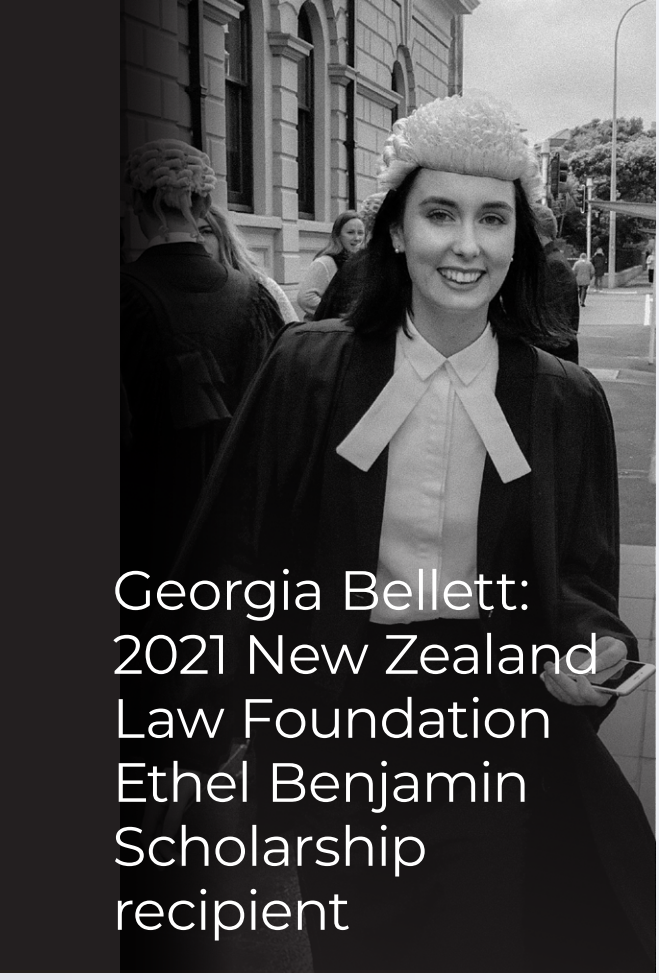
Judge Mullins was also regularly engaged by Boards of Trustees as an independent investigator in school matters and has been Deputy Chair of the Teachers' Disciplinary Tribunal since 2019.

Along with the Patuawa-Tuilave whānau, Professor Jacinta Ruru, and Te Rūnanga o Ngāti Whatua, she was instrumental in establishing the Jolene Patuawa-Tuilave Leadership in Law Scholarship in memory of Jolene Patuawa-Tuilave an Otago LLB/BA graduate, former Te Roopu Whai Pūtake President, accomplished lawyer, and dear friend who passed away aged 33 in 2010.

On announcing the appointment Mr Jackson noted Judge Mullins' 17-and-a half-years' legal experience "concentrated in Māori land law, including in the Māori Land Court, Māori Appellate Court and Waitangi Tribunal."

"As a current director of Whakamana Law and Consultancy, Judge Mullins also demonstrates the necessary leadership experience required in the role of Māori Land Court Judge", he said.

Judge Mullins reflects with fondness on her days at Otago, and on the leadership of the late Professor Richard Sutton and Professor Mark Henaghan whose "unwavering support for Māori students and commitment to providing a safe space for us to be unapologetically Māori."



Georgia Bellett: 2021 New Zealand Law Foundation Ethel Benjamin Scholarship recipient

Otago law alumna Georgia Bellett has vivid memories of dressing up as Ethel Benjamin – New Zealand's first woman barrister and solicitor – for a school project in Year 8. Who knew that one day she would be awarded a scholarship in her name?

"I think I actually wanted to be an astrophysicist at the time, but I found Benjamin's story so inspiring that I ended up choosing her for the project – when I told mum [I'd won the scholarship] she said it was like everything coming full circle."

Georgia graduated from Otago with an LLB(Hons) and a BSc majoring in Neuroscience in 2018, and then went on to work in the Wellington office of law firm Russell McVeagh.

Receiving the 2021 New Zealand Law Foundation Ethel Benjamin Scholarship for outstanding women lawyers has allowed Georgia to study towards a Master of Laws at the University of California, Berkeley, with a Certificate of Specialisation in Energy, Clean Technology and Environmental Law.

She has almost completed her first semester of the year-long programme and has taken some business papers, focusing on financing green infrastructure projects and the economics of biodiversity, in addition to her law papers.

"My first semester at Berkeley has been a whirlwind! Not only are the classes taught by leading academics and professionals in the fields of environmental, energy and business law, but my classmates also have impressive – and fascinating – backgrounds. There are countless opportunities available to us. Just last week I attended the 2021 Berkeley Forum for Corporate Governance and heard from Delaware Court Chancellors and top-tier professionals on how ESG is defining the future of corporate law. I also feel privileged to be the research assistant for one of my professors who is an expert in sustainable capitalism and currently writing a book on ESG in the boardroom."

At Berkeley, Georgia lives in the International House on campus, and enjoys the mix of cultures and disciplines of the master's and doctorate students that the house caters for. She also secured a scholarship from Berkeley, which means she can avoid taking out a loan to cover the "crippling" costs of tuition in the US.

Before heading to the US for study, Georgia was part of Russell McVeagh's Banking and Finance team. She credits a five-month secondment to the legal team at Meridian Energy as key to developing an interest in clean technology.

"I did everything from working on the early stages of a wind farm development, to writing the company's submissions on the government discussion document on the proposed mandatory climate-related financial disclosures."

She became chair of Banking and Financial Services Law Association Future Leaders Committee and also the chair of Russell McVeagh's Sustainability Committee in Wellington. In addition, she was a regular volunteer at Community Law Wellington and Hutt Valley, and for the Refugee and Immigration Legal Advice Service.

Just like at school, at Otago Georgia didn't intend to study Law, but found her friends' conversations about their law papers fascinating, and thought she'd do it for interest in her second year.

She particularly credits her lecturer and Dean of Law Professor Shelley Griffiths with fostering her interest in banking and finance law. She ended up taking all of her classes, "even tax law, which sounded horrific, but she made it so enjoyable that I decided to take an advanced tax paper and even write my honours dissertation on tax law".

SOULS

The Society of Otago University Law Students

SOULS has had a very busy 2021! The year has been an exciting and challenging time for students, and SOULS has endeavoured to provide events and resources to get us all through it.

This has involved social events like the classic Wine and Cheese, Cocktail Night and Law Camp. The administrative work to make these events safe and go smoothly was significant; Social Representatives Alex Martin and Charlie Robinson did an excellent job co-ordinating these around changing alert levels, keeping the standard of the favourite events high, and trying out new options for students.

Welfare and Education have stepped up too, with a big focus on making sure students were resourced to tackle their studies and get through the year with only minor trauma.

Tree planting got a bunch of students climbing a hill, which seemed like a scam at the time, but was well worth it in the end. Donut drops continue to be a highlight, striking at the core of our hungry stomachs, and the student advocacy for better accommodation of COVID for students and learning conditions on campus by Sarah Jocelyn and Alice Harrison were pretty good too.

The Sports portfolio has been transformed by Lucy Williams (who is also the incoming SOULS 2022 President). From Lawn Bowls to Paintball, more students than ever have gotten involved, burned some energy and made some friends.

The crowning achievement this year was raising nearly $18,000 for the Cancer Society in the Relay for Life. It was a cause that hit home for us, and it was a privilege to be able to rally students and the community to get behind the fundraising.

While that event wasn't competitive, the Competitions portfolio was hot. Jaz Nathan and Alex Thomson kept competitions running to a high level, with a very successful national's competition showing. The opportunity to apply practical law skills is amazing, and the Junior Competitions put Otago in a good position to dominate in future years and put Victoria in their rightful place.

The Leadership dream-team of President Kelly Cumming, Vice-President Aneesha Dahya, Treasurer Lennox Tait and Te Roopū Whai Pūtake (TRWP) representative Billie Rathbone have kept the ship afloat, and possibly added a new engine and very technologically advanced navigation system.

The admin that goes into running SOULS can be extensive for student volunteers with a lot else on their plate, but they have done a wonderful job of working to improve SOULS and what we provide, while keeping their heads screwed on. Billie has been great with interfacing with TRWP, and SOULS' relationship with PILSA, OALSA and PILO have been able to develop and will continue to do so off the productive relationships maintained in 2021.

All in all, a great year, but SOULS (and us all) eagerly await the departure of the shadow of COVID: that would make event planning just that little bit less stressful!

Te Roopū
Whai Pūtake

Kei te mutu mātou o te tau 2021!

That went fast! But it has been another great year for Te Roopū Whai Pūtake, the Māori Law Students' Association, here at Otago. We are privileged to be a rōpū of so many talented, capable, awesome tauira, and we have seen many successes and enjoyed many experiences together this year.

COVID-19 was nice enough to delay its return until semester two, so our first semester was jam-packed with different events and kaupapa. We hosted both of our competitions – mooting and negotiating – in semester one, in time for nationals which were held at Hunga Rōia Hui-ā-Tau in the semester break.

Very interesting fact patterns were involved in both competitions and tauira thoroughly enjoyed participating in these events. We also had a lot of success; our negotiation winner Jaz Mahana Nathan went on to win the national competition and mooting representative Samantha Fowler was part of the winning team at the national competition.

First semester built up to its apex – attending Hunga Rōia Hui-ā-tau, the annual Māori lawyers conference. We were lucky to take 16 tauira up to Ōtautahi for the four-day conference. For majority of the roopū it was our first time attending the conference, and it did not disappoint. There was a mixture of keynote speakers, panel discussions, presentations and social events (all with amaaazing kai!).

We filled our kete with mātauranga and left feeling renewed and ready to take on the wero that were posed to us.

It was great to see some of our Whai Pūtake alumni as well, from the OGs to our recent graduates. It also gave a great opportunity to make and strengthen friendships with our fellow Māori law tauira that will last our lifetimes. It was an invaluable experience and we are already looking forward to attending next year.

Throughout the year we also hosted many social, educational and cultural kaupapa, some classic and some new initiatives. These included our mentoring programme and those associated events, study nights, 10-pin bowling, inter-rōpū shield events, and a variety of guest talks. Special mentions also go out to Māori Graduation, which is always a mana-enhancing experience, and tauira noho marae, which Araiteuru Marae kindly hosted us for.

We have just had the AGM and exams are now fast approaching. Second semester has gotten away from us, but we are still grateful for an amazing year. To those returning next year – we look forward to seeing you at our events! Staff – that means you too! To those graduating, kia māia. Whāia te iti kahurangi ki te tūohu koe me he maunga teitei.

Noho ora mai
Te Roopū Whai Pūtake

E te whānau whānui o Te Roopu Whai Pūtake – Nau mai hoki mai ki Ōtakou!

On 12/13 April 2023 the 30th Anniversary Reunion of Te Roopu Whai Pūtake Māori Law Students' Association will be held in Ōtepōti prior to the University of Otago Faculty of Law 150th Anniversary. All whānau whānui from Te Roopu Whai Pūtake are warmly invited to attend.

Please register your interest with:
whaiputake2023@gmail.com

Or contact **TRWP 30th Kōmiti Whakahaere Paula J. Wilson on 021 162 5212**

PILSA

(Pacific Islands Law Students' Association)

Warm Pacific greetings!

PILSA has had a busy year. We kicked off the year with the Pasifika Welcome, sponsored by the Institute of Professional Legal Studies. It was so cool to see how many second-years we had, and have a record attendance of 66 first-year Law students!

We also started our PILSA buddies mentoring programme. We love seeing the comradery between our juniors and seniors within the law school. This helps build relationships that will last beyond our time in the Faculty of Law.

This year was also the start of our mentoring programme for our seniors with professionals from the Pacific Lawyers Association. This initiative sets up our seniors with lawyers to discuss landing first jobs and to gain valuable advice about legal careers, and university life in general.

Unfortunately, many events had to be cancelled this year – thanks COVID!

Fortunately, we were still able to attend our annual field trip, which made up for all the cancelled stuff. We began the day with a talanoa with the Chief Justice of the Supreme Court, Helen Winkelmann. This was a very inspiring chat that was a highlight for many of our members.

We also got to catch up with 2020 Tumuaki of TRWP – Nerys Udy. It was awesome to chat to her about her journey from the law school to the supreme court. We had a talanoa with Chapman Tripp about life in commercial and corporate law, which was done in a very comfortable environment with great people from CT.

We ended the day with Ata Esera, a family law partner and co-president of the Pacific Lawyers Association. This was just like having a chat with your cool aunty and was a real eye-opener into the life of a family lawyer. After this, we ended with a visit from past presidents of PILSA, Nera and Tausala. It is always awesome to see them because it shows how far our PILSA alumni can go within the professional life.

Another highlight of the year was the annual PILSA sentencing competition against University of Canterbury.

A massive shoutout to Priyanka Poulton for her appearance in the finals, especially as a second-year. Unfortunately, we just missed out on the shield, but we're coming for you next year UC! Big thanks to Ben Nevell and Crown Prosecutor Richard Smith for their support and for judging our preliminary rounds.

We would also like to acknowledge the hard work that was done by law faculty staff for PILSA this year. Alex Latu, Shelley Griffiths, the staff at 9th floor reception, and everyone else who supported us through this journey. A thank you to Mikaela, Nikita and Shani, our tutors. Thank you all so much for all that you have done for PILSA this year!

PILSA

PILO

(Pride in Law Otago)

2021 has been the first year of Pride in Law Otago's existence as an official executive, and we couldn't be more proud of what we have been able to achieve.

We have set up mentorship groups for both first-and second-year LAWS students, hosted social events, submitted on Bills, and raised over $3,000 across Relay for Life and Sweat with Pride for the Cancer Society and various Rainbow charity organisations.

Our proudest achievement, however, was our Pride Week. We ran eight events in six days – including a wine tasting night at Gallaway Cook Allan, a breakfast in the Botanical Gardens, and a panel discussion surrounding gender identities in different cultures – and they all went amazingly well.

We would like to give a special thanks to the Faculty of Law, Chapman Tripp, Gallaway Cook Allan, SOULS, TRWP, PILSA, and OALSA for supporting us in our beginning stages.

Finally, a huge shoutout to the team that made it all happen; Sophia Borthwick, Charlie Robinson, Jaz Nathan, Graeme Scobie, and Gabriel Clarke.

Looking to the future, PILO aims to only become bigger and better, with a new role added to round out a six- person executive team and more ambitions. We have no doubt that 2022 is going to be one for the books!

OALSA

(Otago Asian Law Students' Association)

Despite the implications of COVID-19 lockdowns, OALSA has had a year packed full of exciting events and engaging activities.

To start the year, OALSA's launch night was held alongside a sushi-making workshop. We treated everyone to some free kai and loved celebrating Japanese cuisine – just one small (yet delicious) aspect of Asian cuisine. Thank you to IPLS for sponsoring this event!

Over the course of the year, we have run some very successful mentoring breakfast meetups through our student-based mentoring scheme. Our Mentoring Programme provides the opportunity for younger law students in the association to build connections with older students and get advice. The programme connects club members from all year levels, and this means we come together as a more unified law student body. We also had an OALSA and Chapman Tripp Junior Breakfast at the beginning of the year to show our juniors that we'd be right by their side throughout their law school journey. Thank you to Chapman Tripp for sponsoring these events!

OALSA was proud to participate in the 2021 Relay for Life Otago team alongside SOULS (The Society of Otago University Law Students), Te Roopū Whai Pūtake, PILO (Pride in Law Otago), and PILSA (Otago Pacific Islands Law Students' Association). A big shout out to all our donors and everyone in the Faculty who supported our Bake Sale and coffee delivery service! This is the first time in Otago Law's history that all five of the student executives have come together as a collective, which given the nature and importance of Relay for Life, could not be more meaningful. Cancer affects so many of us in Aotearoa, including our Law students and their whānau which is why we feel proud to have come together as a collective to give back to both our students and community.

In semester one, OALSA was proud to present our first ever webinar about being Asian in Aotearoa's legal profession. We were lucky enough to hear from a variety of Asian-identifying legal professionals working in academia, personal plight, commercial, and public law and heard about their experiences of working in these spaces.

Thanks to the following speakers who attended the webinar:

Shaanil Senarath-Dassanayake LLB(Hons) BCom Accounting, University of Auckland.

Megan Cucerzan LLB(Hons) BA French, University of Auckland.

Teresa Chan LLB BCom Accounting, University of New South Wales.

Dr Lili Song LLB, Shanghai University of Finance and Economics; LLM, East China University of Political Science and Law; PhD, Victoria University of Wellington.

After an international crisis hit headlines around the world, OALSA teamed up with the Otago Indian Students' Association to help raise funds for the COVID crisis in India. With a range of yummy baking and gluten free / vegan options available, it was impossible to walk by without grabbing a sweet fix whilst at the same time contributing to an extraordinary cause. Thank you to everyone who supported this event.

During Wellness Week, OALSA hosted teatime, which was open to Law students who wanted a calm place to gather and recollect before the exam season. Additionally, OALSA held a potluck dinner with an 'Asia' cuisine theme, which proved to be very successful. The event not only revealed that we had some (secretly) talented chefs in the club, but also provided an opportunity for our members to interact outside an academic environment. We would like to thank everyone who has supported OALSA this year.

Student Achievements

Law for Change

Law for Change is a national student-led organisation. It began in 2012 with law students organising a series of talks on public interest law. The talks focused on ways to use the law degree outside conventional routes. Soon thereafter the Law for Change non-profit organisation was established and the trust linked to the organisation started. From there, activity grew around the kaupapa of being part of the development of a generation of lawyers who are passionate about public interest law.

At Law for Change Otago, our executive works to provide a space for students to explore their passions, have access to experts/mentors, help their communities and discover opportunities that lie beyond law school. This year, with the support of the Faculty and our sponsor Chapman Tripp, we have implemented various programmes to work towards the Law for Change Kaupapa.

Our legal education programme focuses on climate change and Māori values. These are two important areas for the future of the profession and New Zealand. This year we had two workshop series for climate change. The first series 'climate change and the profession' saw experts share their experiences and advice. The second series was led by our Law lecturers, providing the opportunity to delve further into issues that arise in class. In conjunction with Te Roopu Whai Pūtake we created the Māori values and the law speaker series where Rachel Robillard and Metiria Turei shared their work. Law for Change also offers opportunities for involvement through prison volunteering and law reform. A group will travel to Wellington to submit on a Bill and the prison volunteer group works with inmates on nutrition and political issues.

This year saw the establishment of monthly coffee koreros. The project involved guest speakers from the community hosting mini-lectures for students at a local café. This created a relaxed and interactive environment for discussing social justice and public interest issues with experts. Our project leaders ran a workshop, led by Joy Liddicoat and Bell Murphy, on speaking out against sexual harassment. We also partnered with Allied Justice to provide workshops for first-year students.

All our programmes are available to every student and member of Otago University. We believe these events foster conversation on important issues students are eager to learn more about. We hope students carry forward the knowledge and skills learnt through these programmes to their careers wherever that may be, contributing to a socially conscious generation.

Bianca Hawkins
Legal Education Leader on the Executive, Law for Change Otago

Tara Shepherd

Bachelor of Laws and Arts (Politics and Environmental Management) student **Tara Shepherd** was a Kiwibank local hero award finalist.

Tara was nominated for her work as a proactive climate change campaigner who has been instrumental in cleaning up and creating long-term environmental solutions for the Buller Region.

Tara launched a nationwide petition calling on the government to fund a full remediation of the Hector landfill that was exposed by cyclone Fehi in 2018. Her successful campaign saw $1 million provided to the Buller District Council by the Provincial Growth Fund.

Tara spends her summer months as Support Officer Solid Waste Management for Buller District Council. While home during the break between semesters this year she decided to pick up some hours in her hometown.

In July the Buller River overflowed in what was the largest flood flow of any New Zealand river in almost 100 years.

"I was on the night shift as the Welfare Manager when the flooding started. It was a huge amount of work with deploying Police and taking distress calls. We had one man who was 86 and his niece was calling from Australia worried that he was in trouble."

That was just the beginning of an enormous few days as Tara stepped into the role of Waste Management Co-ordinator and helped her community get back on its feet.

In addition to her success with environmental matters, Tara has been a Youth Advisor for Minister Chris Hipkins' Education Advisory Group for the past two years.

Tara has fibrolipomatous hamartoma in her right hand and Postural Orthostatic Tachycardia Syndrome, which can cause extreme fatigue and has shared her experiences to help others.

"I get to bring my perspective as a student from a rural town who had to complete half of my subjects by distance learning, and as a student with a disability."

Relay for Life

With an ambitious fundraising goal and a personal connection to the cause, a group of determined Law students relished the opportunity to contribute to this year's Student Relay for Life. The event began on 24 April outside the Clocktower building and concluded when runners headed to ANZAC Day commemorations the following morning. SOULS Organising Sports Representative Lucy Williams filed this report.

Despite a tiny storm and waterfalls appearing through the cracks of our tent, Relay for Life went surprisingly well. Our team hub was fairly dry and everyone wrapped up in blankets and happily snacked on pizza. The fantastic Ben Nevell and Dr Stephen Young came along and supported us on our runs, with a surprise appearance from Professor Nicola Peart.

We raised **$17,876** which blew our original goal of $10,000 out of the park. We were the highest overall fundraisers for the Dunedin region and I was the highest individual fundraiser in the Otago Region, raising $3,240. Alongside me, Jaz Mahana Nathan raised $1,525, Sarah Jocelyn $702, Te Hau Ariki Gardiner-Toi $618, Alex Martin $594, Charlie Robinson $583, Graeme Scobie $556, Alice Harrison $504 and Ben McCook-Weir $501. All nine of us were presented with special bandanas for raising over $500 individually for the Cancer Society; this was a very special recognition for us individually and as a team.

Alongside the fundraising efforts we also had some superstars on the night; Cameron Sisson ran more than a marathon; Tom Patterson ran 34km and Michelle Bruce, Grace Crosby and Ben McCook-Weir ran half marathons.

I was so impressed with everyone who came together to do something for such an important cause. We really stepped up as a Law School and it was a very special moment for me, having organised it all, to see how much everyone gave of themselves. This made it possible to raise as much as we did and turned the event into such a success.

Relay for Life came about as something that I wanted to introduce into the Sports Programme for this year, because I felt like that aspect of service was missing from the Law School and was something we could improve upon. The idea came about from my years at high school where Relay for Life was a massive part of our school year. Bringing that to the Law School was a no-brainer.

A massive part of that success was down to all of the student executives coming together and helping to unify everyone. The SOULS Executive was especially supportive and really got behind me. I am so grateful for that because it meant that we got to do something so special, meaningful and lasting for our community as a team.

Overall, Relay for Life has been a highlight of my time at Law School so far and showed just how capable we are when we all come together to give of ourselves. I hope participating in Relay for Life carries on in future!

Lucy Williams
SOULS Sports Representative

See:
otago.ac.nz/otagobulletin/undergraduate/news/otago826961.html

Early Career Awards for Distinction in Research

Dr Anna High: Anna is a socio-legal scholar who has adopted a "law in action" approach to three main areas of interest: Chinese law, feminist theory/sexual violence, and evidence law. She has also published in the area of legal education/pedagogy. Following the completion of her doctorate at the University of Oxford as a Rhodes Scholar, Anna was Distinguished Scholar-in-Residence and American Council of Learned Societies Postdoctoral Fellow at the Loyola University Chicago School of Law.

Since joining the Faculty of Law in 2017, Anna has completed a monograph on orphan relief in China which was awarded the 2020 Asian Law and Society Association Distinguished Book Award. She holds current research grants from Marsden and the New Zealand Law Foundation and is co-founder/director of the newly established Otago Centre for Law and Society. Her most recent work, exploring a theory of "sexual dignity" in feminist legal theory and comparative case law, is forthcoming in the Yale Journal of Law & Feminism.

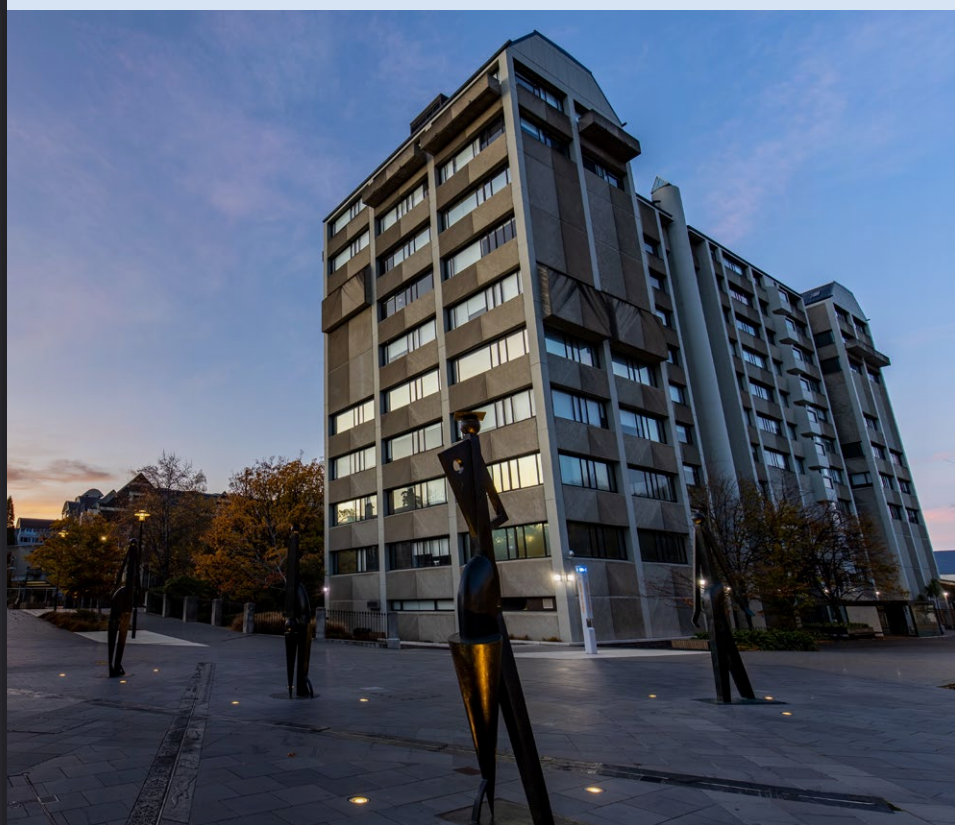
The Faculty excelled at the annual Legal Research Foundation 2020 awards.

Dr **Maria Hook's** book (co-authored with Jack Wass), *The Conflict of Laws in New Zealand,* won the JF Northey Memorial Book Award prize. Their treatise was a joint winner with a book by Elisabeth McDonald.

Dr **Anna High** won the Sir Ian Barker Published Article Award for her article (with Caroline Hickman), "The Any Evidence Rule in New Zealand Family Law".

In the Unpublished Undergraduate Student Paper Award category our LLB Honours student, **Jacobi Te Hingatu Kohu-Morris**, took the prize for his paper, "Ko Wai Te Mana Whenua? Identifying Mana Whenua Under Aotearoa New Zealand's Three Laws"

Rex Ahdar's book, *The Evolution of Competition Law in New Zealand*, was the subject of a Symposium Issue of US law journal, The Antitrust Bulletin, in October 2021. This was the first time New Zealand had featured in a symposium in this leading law review on American and foreign antitrust law and policy.



Otago Law Review

FW Guest Memorial Lecture 2018
Dogsbody, Dude, Defender of the Rule of Law – The Solicitor General
Una Jagose QC

New Zealand Law Foundation Ethel Benjamin Commemorative Address 2019
Imagining the Future Lawyer.
Una Jagose QC

Inaugural Professorial Lecture
The Lure of Equity and the Academic Voice
Jessica Palmer

Articles
The 'Juriste Garcon de Café': An Essay in Honour of Michael Robertson
Jesse Wall
Foreword: The "Private" Law's Response to Accident, Illness and Disability
Simon Connell and Geraint Howells
No-Fault Compensation for Medical Injuries: The Case of China
Ding Chunyan
Payments from At-Fault Parties in a No-Fault System: How New Zealand has Answered Questions about Extra Payments to Accident Victims
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Justifications for Preferential Adoption of No-fault Accident Compensation Schemes
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Strict Liability for Dangerous Activities in Nordic Tort Law – An Adequate Answer to Late Modern Uncertainty
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Anna High, *Non-Governmental Orphan Relief in China*
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Postgraduate candidates in the Faculty of Law

There are currently nine PhD candidates writing their theses under supervision in the Faculty of Law.

Claire Browning: Claire is a University of Otago and New Zealand Law Foundation Scholarship recipient. Her PhD thesis is an exploration into kaitiakitanga, in the context of the Treaty of Waitangi, Article 3. Claire's research has been supervised by Professors Nicola Wheen, Merata Kawharu (ex-Centre for Sustainability) and Janine Hayward (Politics).

Mike Crosbie: Mike is completing his PhD part-time, while also serving as a District Court Judge. Mike's thesis examines whether fairness in criminal justice is achieved in delayed cases. His research is supervised by Professor Margaret Briggs, Emeritus Professor Geoff Hall, and Dr Anna High.

Luke Fitzmaurice: Luke is researching Indigenous perspectives on child protection and children's rights. His PhD draws on kaupapa Māori and qualitative research methodologies to examine the role whānau and tamariki should have in deciding questions of wellbeing and safety of tamariki. Luke's PhD research is supervised by Professors Nicki Taylor and Jacinta Ruru and Associate Professor Nicola Atwool (Social and Community Work).

Frances Matthews: Frances is a GP and medico-legal adviser with qualifications in medicine and law. She is poised to submit her thesis for examination on elderly people with dementia. Frances' research supervisors are Professor John Dawson and Dr Jeanne Snelling.

Michael Morrison: Michael is researching long-term care options for children in Aotearoa New Zealand, and critically examining Home for Life and special guardianship practices. Michael's research is supervised by Professors Nicki Taylor and Mark Henaghan (University of Auckland).

Oliver Skinner: Oliver is writing a Māori legal history of Wairarapa Moana, the wetlands comprising lakes Wairarapa and Onoke and their tributary rivers and streams. Oliver's research is supervised by Professor Jacinta Ruru and Dr Paerau Warbrick (Te Tumu).

Benjamin Dudley Tombs: Ben is exploring the obligations and relationship between local government and communities' increasing exposure to property damage due to climate change. Ben's research supervisors are Professors Nicola Wheen, Janet Stephenson (Centre for Sustainability) and Lisa Ellis (Philosophy). (Dr Ben France-Hudson, one of Ben's original supervisors, is currently on secondment to the Ministry for the Environment.)

Richman Wee: Richman is back working on his PhD thesis on safeguarding the rights and interests of health research participants involved in biobanking in the genomics and digital era in New Zealand. Richman's research is supervised by Professors Nicki Taylor, Mark Henaghan (University of Auckland) and Ingrid Winship (University of Melbourne).

Louise Wilsdon: Louise is a member of the University's Centre for Artificial Intelligence and Public Policy, and she is writing her thesis on The Illusion of Informational Autonomy in the Age of Surveillance Capitalism. Louise's research is supervised by Professor Colin Gavaghan and Dr Jeanne Snelling.

The Faculty is also looking forward to welcoming **Oluwadamilola ("Dami") Ogunyemi,** who will begin her PhD studies remotely from Nigeria soon. Dami's thesis will investigate human rights and terrorism. Dami's research will be supervised by Professor Andrew Geddis and Dr Stephen Young.

The Faculty also offers an LLM by thesis. There are currently eight LLM candidates writing their theses under supervision in the Faculty of Law:

Kelsey Brown: Kelsey is currently on deferral and will be returning in 2022 to continue her research on children and young people's participation in legal settings in Aotearoa New Zealand. Her research is supervised by Professor Nicki Taylor and Dr Megan Gollop (Children's Issues Centre).

Michael Daya-Winterbottom: Michael's research concerns consideration and contractual variation. Michael's research is being supervised by the Pro-Vice-Chancellor Humanities Professor Jessica Palmer.

Renay Taylor (Ngāpuhi): Renay's thesis seeks to better understand how tikanga Māori (Māori law) is becoming more prominent in environmental legislation as a result of recent Treaty of Waitangi claim settlements, specifically focused on Te Urewera Act 2014 and Te Awa Tupua (Whanganui River Claims Settlement) Act 2017. Renay's research is supervised by Professor Jacinta Ruru.

Margaret Courtney (Tapuika, Tuhourangi Ngati Wahiao and Ngati Whakaue): Margaret is considering the role of the Māori Land Court in the modern Aotearoa New Zealand legal system. Informed by conceptions of the Court, and grounded in kaupapa Māori methodology and tikanga Māori values, her research will include whether the Māori Land Court can be more than a Court of Record heading into the future? Margaret's research is supervised by Dr Bridgette Toy-Cronin and Professor Jacinta Ruru.

Graham Strong: Graham will shortly submit his LLM thesis for examination. Graham's thesis examines intellectual property issues around indigenous species, especially manuka. Graham's research has been supervised by Professors Shelley Griffiths and Jacinta Ruru.

Fiona Seal: Fiona has recently submitted her thesis, Regulating Artificial Intelligence: A Critical Analysis of Technology Law's Gordian Knot in the New Zealand Context, for examination. Well done Fiona! Fiona's research has been supervised by Professor Colin Gavaghan.

Metiria Turei (Ngāti kahungunu ki Wairarapa, Ati Hau nui a Pāpārangi, Rangitane): Metiria's original research focuses on what the non-written visual means of documenting Māori law might be and how these non-written visual means help to communicate Māori law. Metiria is also about to submit her thesis! Metiria's research has been supervised by Professor Jacinta Ruru and Mihiata Pirini.

Russell Mawhinney: Russell has just begun his LLM journey. Welcome back to the Faculty, Russell. Russell's thesis will be on religious expression in professional sports, and is being supervised by Professors Rex Ahdar and Steve Jackson (Physical Education, Sport and Exercise Sciences).

The Faculty has also recently welcomed **Pooja Mohun** to the LLM programme. Pooja's research will examine legal and human rights issues in regulating artificial intelligence, and her research will be supervised by Professor Colin Gavaghan.

Seated around the table in seminar room 5 for Louise Wilsdon's PhD seminar, are (clockwise from bottom left) **Faculty Research Assistant Ruth Jeffery, Law Librarian Kate Thompson, Professor Nicola Wheen** (cleverly obscured), **Postgraduate Administrator Rebecca Sandford, PhD candidate Louise Wilsdon, Associate Professor Barry Allan** (Louise's progress convenor), and **Dr Jeanne Snelling** and **Professor Colin Gavaghan** (Louise's research supervisors).

Obituaries

The Faculty of Law extends condolences to the families, colleagues and friends of:

Iain Gallaway (1922-2021)

Iain Gallaway QSO MBE was a renowned sports commentator and especially acclaimed for his radio broadcasts of cricket where his astute analysis was without peer.

His first job was as a cadet reporter for the Otago Daily Times and he served in the Royal New Zealand Navy during World War 2. He was admitted to the bar in 1950 and joined the family firm that is now Gallaway Cook Allan.

His radio commentary career extended from 1953 to 1992, and he broadcast about 500 rugby matches and numerous cricket matches, mostly from Dunedin's Carisbrook ground. He was awarded an MBE in 1978 and a Halberg in 1999 for his services to sport, as well as a QSM for service to the Anglican church in 1986. His book *Not a Cloud in the Sky: The Autobiography of Iain Gallaway* was published in 1997. He was the official patron of the Otago Cricket Association until his death in April 2021.

Photo courtesy Otago Daily Times.

Neville Marquet (1927-2021)

During his 50-year career Mr Marquet, a Resource Management and Environmental lawyer of Dunedin firm Ross Dowling Marquet Griffin, practised in almost every division of the Environment Court throughout New Zealand.

He was President of the Otago District Law Society in 1975, Vice-President of the NZ Law Society from 1976-1979 and he also sat on the NZLS Disciplinary Committee for 13 years (and served as chair for seven years).

In 2004 he received a service award from the Queenstown Lakes District Council, to which he had provided legal counsel since 1977.

In 2017 family and friends established the Neville Marquet Prize in Resource Management and Environmental Law for Faculty of Law students. The inaugural presentation – to student Hannah Mills for her essay on why she wanted to work in environmental law – coincided with Mr Marquet's 90th birthday.

Professor Donald Paterson (1934-2021)

Professor Paterson completed BA, LLB and LLM degrees at Victoria University of Wellington, and a further LLM degree, and a JSD degree at Yale Law School in the US. After a short period in practice, he taught law at Victoria University of Wellington and Otago in the 1960s, and then served as legal counsel to New Zealand Ombudsmen.

In 1979 he relocated to warmer climes – the University of the South Pacific Professor of Public Administration at USP Laucala Campus. He later became the Head of the School of Social and Economic Development and "Professor Don", as he was known to students and staff alike, later became a Pro-Vice-Chancellor of the University.

He moved to the Vanuatu campus in 1985 as Director of the USP Pacific Law Unit, which was a training unit for Magistrates. In 1994, the University established the School of Law and he played an integral role in the establishment and development of the School over the next 26 years. He published widely on aspects of law in the Pacific. At the time of his passing in March, the Vanuatu Daily Post reported the Head of State, Prime Minister, Chief Justice, Speaker of Parliament, State Ministers, Leader of Opposition and Head of Missions were to pay respects at Teouma Christ the King Chapel.

Graham Sinclair (1935-2021)

Graham practiced law in Ashburton where he also served as a coroner. He was a world president of the Jaycees in 1971. In his later years he was chief executive of Ngāi Tahu Holdings. His prodigious and varied service across many fields was recognised with the award of a MNZM for services to the community and business in 2002.

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"I am thoroughly appreciative of those who contributed towards my scholarship. Due to their generosity, I have been alleviated of significant financial strain and stress. This has allowed me to place full concentration on my studies, for which I am eternally thankful."

Niamh Ede, 2020 Otago Law Alumni Scholarship Recipient.

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