

# Auckland Law

TE WĀHANGA TURE O WAIPAPA TAUMATA RAU

AUCKLAND LAW SCHOOL ALUMNI ANNUAL 2023



## **A combined century of service to the Law School**

*Professors Klaus Bosselmann, Paul Rishworth and Ron Paterson*

## **Farewell to the Dean**

*Pene Mathew appointed Human Rights Commissioner and President of the Australian Capital Territory Human Rights Commission*

## **Shaneel Lal**

*Young New Zealander of the Year*



UNIVERSITY OF  
**AUCKLAND**  
Waipapa Taumata Rau  
NEW ZEALAND

**AUCKLAND  
LAW SCHOOL**

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TE WĀHANGA TURE O WAIPAPA TAUMATA RAU  
AUCKLAND LAW SCHOOL ALUMNI ANNUAL 2023

## MANAGING DIRECTORS

Lorraine Correia  
Rose Stringer

## EDITORS

Mark Henaghan, Nicole Roughan  
Joshua Yuvaraj

## LAYOUT

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## EDITORIAL CONTACT DETAILS

aucklandlaw@auckland.ac.nz

Auckland Law School  
Waipapa Taumata Rau  
University of Auckland  
Private Bag 92019  
Auckland 1142  
New Zealand

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# From the Dean

## Nō Te Manukura

**KIA ORA KATOA**, 2023 has been another busy and fruitful year for the Law School. Although the year opened with extreme weather events, it was good to have semester one start on campus.

I had the pleasure of travelling to India for the QS Summit in Goa (Quacquarelli Symonds is one of the chief rankings organisations). It was also an opportunity to visit the National Law University in Delhi, OP Jindal Global Law School and the National Law School of India University in Bangalore, meet with the Bar Council of India and give a lecture at the India International University of Legal Education and Research in Goa. My thanks to Dr Anna Hood for her great work on our collaborations with OP Jindal, which she managed to do online while the pandemic was in full swing.

The visit brought home the importance of in-person contacts, which give a greater appreciation of faculty research interests, the infrastructure and facilities and levels of student engagement. Thanks, as always, to Professor Warren Swain for acting as dean in my absence. Indian scholars are very interested in Warren's work on Indian contract law and I am sure he will be able to take these contacts forward.

This year we have welcomed a number of outstanding academics and professional staff into our ranks. We have been delighted to welcome Professor Jodi Gardner as the Brian Coote Chair in Private Law and new Associate Dean Research. The Chair is named in honour of and partially funded through the generous bequest of the late Professor Brian Coote CBE FRSNZ. Recently retired judge Roger Bell is now teaching at the Law School as an adjunct. Associate Professor Vernon Rive has been a welcome addition to the Law School's group of environmental lawyers and the management team. Alex Allen-Franks has joined us as a lecturer and Co-Director of the NZ Centre for Human Rights Law, Policy and Practice. We have also been delighted to welcome Anna Broadmore, Suliana Mone and Julia Harper-Hinton as lecturers. A number of our new academic staff have joined us from the profession, including Eru Kapa-Kingi, who is a professional teaching fellow advising and assisting the Law School with the implementation of the Council of Legal Education's resolutions on Tikanga Māori,

and Simon Schofield, also a professional teaching fellow. Finally, we have been delighted to welcome Beatrice Tabangcora as Susuga Faiako/Professional Teaching fellow.

Our professional staff has seen a few departures and new additions, all of whom are working well to support the Faculty. Some are Faculty appointments and some are University appointments who work across a number of different faculties. Notable appointments include Wiremu Tipuna, who has taken on the role of the Law School's Kaiārahi; Lorraine Correia, Communications and Marketing Manager; Fiona Scanlen, Alumni Relations Manager; Delphine Gesché, Executive Assistant to the Dean's Office; Tiana Trego-Hall, Pouāwhina Māori; Rose Stringer, Marketing Coordinator; Emasha Kodithuwakku, Doctoral and Sub-Doctoral Coordinator; Paige Chong, Events and Conference Planner; Natalie Wilson, Schools & Community Engagement Adviser; and Rutuja Bhagwat, Programme Coordinator.

As you will see from the following Dean's Highlights, our alumni, Faculty and students achieved great success during 2023. Auckland Law School continues to go from strength to strength, and I hope you enjoy reading about the many triumphs during the year. We also acknowledge the passing of some alumni, whose contributions have been significant. We remember them with appreciation and gratitude. ■



Ahorangi Penelope (Pene) Mathew  
Manukura Ture

Professor Penelope (Pene) Mathew  
Dean, Auckland Law School

# The Dean's highlights

## Ngā kōrero whakanui a Te Manukura mō te tau 2023

### Appointments and achievements of our faculty members

Numerous faculty members have been recognised for their wisdom and achievements, with some stepping into new roles.

Professor Emeritus **David V. Williams** was appointed to the Waitangi Tribunal.

Professors **Klaus Bosselmann** and **Julia Tolmie** were elected to the Academy of the Royal Society Te Apārangi for their distinction in research and advancement of science, technology or the humanities.

Professor **Claire Charters** was appointed to the Human Rights Commission to serve in a part-time capacity as Rongomau Taketake/Indigenous Rights Governance Partner.

Professor **Jaime S. King** (Principal Investigator) and colleagues received a Transdisciplinary Ideation Fund Grant to develop Ki Te Pae Tawhiti: Aotearoa New Zealand's Health Reform Collective.

**Nikki Chamberlain** and **Stephen Penk** along with the publisher Thomson Reuters released *Privacy Law in New Zealand* (3rd Edition).

Associate Professor **Treasa Dunworth** won the Faculty Teaching Excellence Award for Sustained Excellence for 2023.

**Guy Fiti Sinclair** and **Julian Long** won the Student Choice Teaching Excellence Award for semester one 2023.

### Achievements of graduates and students

The Law School was thrilled to learn that Dr **Ned Fletcher** won the General Non-Fiction Ockham Book Award for his work *The English Text of the Treaty of Waitangi* (Bridget Williams Books, 2022). Ned's book is based on his PhD thesis, supervised by Emeritus Professor David V. Williams and the late Professor and Dean Mike Taggart.

Congratulations also to Dr **Lynn Buckley** who has been placed on the Dean's list for her doctoral thesis "Directors' Duty to Act in Good Faith and in the Best Interests of the Company in New Zealand: Understanding the implications of the duty for environmental consideration in director decision-making". Congratulations also to her supervisors

Professor **Susan Watson** (Dean of the Business School) and Associate Professor **Ljiljana Erakovic**.

At the undergraduate level, our mooters, mediation and negotiating teams have been stellar, as always.

The Auckland Law School team came third at the ICC Commercial Mediation Competition 2023 in Paris.

**Andrew Fu** and **Isabella Wensley** won the national International Humanitarian Law moot and Andrew Fu was named Best Oralist.

The team went on to place second in the Red Cross International Humanitarian Law Moot Competition in Hong Kong.

Congratulations also to **Airu Teng**, **Gulliver MacDonald**, **Lauren Hansen** and **Maddison Lewis** who represented Auckland in the Transatlantic negotiation team and won the competition.

Finally, I would like to congratulate the student association, **Rainbow Law**, for winning the inaugural Te Whaingā i te Tika award. The award was established in honour of Professor Emerita **Jane Kelsey**.

### Events

The Law School events schedule has been busy as always. We are grateful to alumna Justice **Susan Glazebrook** who, together with former Afghan judge and current Auckland Law student **Raihana Attaee**, gave inspiring lectures about the efforts to secure the safe departure from Afghanistan of women judges.

Professor **Caroline Foster** worked with the Legal Research Foundation to organise the highly successful Climate Litigation in Comparative Contexts conference.

The New Zealand Centre for Legal Theory and Political Theory has hosted several successful events. Dr **Arie Rosen** and Professor **Nicole Roughan** also hosted the Australasian Society of Legal Philosophy Conference at Auckland Law School.

Associate Professor **Guy Fiti Sinclair** played a leading role in organising the annual conference of the International Society of Public Law (ICON-S) at Victoria University of Wellington, and there was good representation from Auckland Law School at the conference.

We were lucky to have the **Hon Michael Kirby** deliver several talks including a very moving public lecture on LGBTQIA+ Takatāpui rights around the world. His lecture kicked off substantive equality month. Thank you to Associate Professor **Hanna Wilberg** and the Equity Committee of Associate Professor **Treasa Dunworth**, **Suliana Mone** and **Simon Schofield** for putting together such a wonderful programme.

We also welcomed Professor **Joseph Weiler** to present and speak on "Is the Church of European Integration Facing a Reformation? Should It?", as well as Professor **Brian Tamanaha**, the John S. Lehmann University Professor from Washington University, to present the annual "Theory Matters" lecture.

### Alumni and supporters

The Law School has been generously supported by alumni and other donors. One of the highlights has been the establishment of the Olive Malienafau Nelson Scholarship for Pasifika Excellence, which has been awarded to **Hope Parsons**. A beautiful celebration in honour of Olive, a trailblazing Pacific lawyer, and the scholarship was held in the Fale Pasifika. It has been a pleasure to work with **Sir Michael Jones** and **Lady Maliena Jones** as well as the University's Pro Vice Chancellor Pacific, Jemaima Tiatia, on the establishment of this scholarship.

The Law School would also like to extend its thanks to MinterEllisonRuddWatts for the establishment of a First in Family Award of \$5000 per year for Māori students in Part III and above. We are also pleased to report that the first awards from the International Legal Scholars Fund have been made to two students who have joined us after fleeing Afghanistan in 2021. The students have been awarded \$2000 each. This was made possible with the support of a small group of alumni. The International Chamber of Commerce Commercial Mediation team celebrated their most recent success in Paris with a celebratory morning tea hosted by sponsors Shortland Chambers.

Auckland District Law Society have increased their annual prize value from \$2000 to \$3000.

Finally, Simpson Grierson are sponsoring the newly established Social Issues Moot, which took place in August at Waipapa marae and involved a fascinating problem concerning Tikanga Māori. ■

# Farewell to the Dean

## Pene Mathew appointed President of ACT Human Rights

SOPHIE BOLADERAS

*Professor Pene Mathew, who led the law faculty from 2019 and who has devoted her career to human rights, returned to her hometown of Canberra in October to take up the role of President and Human Rights Commissioner of the Australian Capital Territory Human Rights Commission.*

**WHEN A DEAN** leaves thoughts inevitably turn to their legacy, says Acting Dean Warren Swain, who notes that two aspects stand out among Pene Mathew's many achievements during her tenure.

The first, he says, is the Juris Doctor degree, which will be a New Zealand first and an exciting new programme that the Faculty will offer, subject to final approvals, from 2025 as a way to enable those with an existing degree to meet the Council for Legal Education requirements for qualifying as lawyers.

"The second is how, under Pene's leadership, the Faculty has increased staffing diversity with growing Māori and Pacific academic staff through career development roles and permanent positions. During Pene's tenure, the Faculty has also made some excellent international hires, including Professor Jaime King to the John and Marylyn Mayo Chair in Health Law and Jodi Gardner to the Brian Coote Chair in Private Law."

Professor King, who gained her PhD in Health Policy from Harvard University and worked at the University of California before starting with the University of Auckland in 2020, says that Pene deftly navigated the numerous challenges that arose as a result of Covid and the lockdowns.

"Despite having to start remotely, set up payment abroad, address health insurance, tax and other legal issues and orchestrate an international move during a global pandemic, Pene was with me every step of the way, and she kept me confident that I was making the right decision.

"Once we arrived Pene invited my family to her house on Waiheke for a lovely day and showed us around the island. I will never forget her kindness during that uncertain and challenging time."

**“Grappling with substantive human rights issues is a key element the former Dean, who successfully guided the Faculty through important change programmes and the acute challenges of Covid, is enjoying in her new role.”**

Another recent addition to the Faculty, Professor Gardner, who previously held positions at Oxford and Cambridge before coming to Auckland, says Pene made the transition from the UK as smooth as possible for her family of seven.

"Pene has been a wonderful, supportive and caring Dean and colleague during my time with the University. She was incredibly understanding and helpful with my move from the United Kingdom and I will be forever grateful for her support. Pene is sorely missed, but she's moving on to do some amazing things in Australia."

Grappling with substantive human rights issues is a key element the former Dean, who successfully guided the Faculty through important change programmes and the acute challenges of Covid, is enjoying in her new role in the Australian Capital Territory.

She's also getting to spend time with her son, who lives in Canberra, and she's reconnecting with old friends.

"The sense of community and the fact that it's possible to meet the Chief Minister in Bunnings and have a chat about matters like double jeopardy, and that Canberra is the seat of government nationally and the location of the High Court, make it a really interesting place to be," she says.

Meanwhile, Vice Chancellor Dawn Freshwater says Professor Mathew's new role is an important and exciting one, which sees her working with human rights in a practical, impactful way for the benefit of residents of the Territory, the first Australian jurisdiction to adopt a Human Rights Act.

"I would like to acknowledge and thank Pene for her outstanding leadership of the Law Faculty over her tenure," says the Vice Chancellor.

Pene knows the ACT well, having previously worked as a legal and policy adviser at the Human Rights Commission. In that role she audited the Territory's remand centres and was frequently called upon to advise on human rights issues arising from legislative proposals.

She also designed and delivered human rights education for public servants and the ACT community.

In 2008, the ACT Government awarded her an International Women's Day Award for outstanding human rights and social justice contributions.

As an expert adviser on international refugee law, she also brings experience working in other human rights jurisdictions and with the United Nations to her new position.

"My priorities include preparation for proposed additions to the Human Rights

Act – the right to a healthy environment and a quick and accessible way for community members to complain about human rights abuses to the ACT Human Rights Commission."

The ACT is a particularly innovative jurisdiction, she says. "It was the first to adopt a Human Rights Act and has continued innovating. The work on the right to a healthy environment will be really interesting."

Despite enjoying the new challenge, leaving her Auckland colleagues after four years with the Faculty was difficult for Pene.

"There are so many people in the Law School I will miss dearly. I have some very quick-witted, good-humoured, hard-working academic and professional colleagues."

One such colleague, Associate Professor Scott Optican, who has been with the Law Faculty for 31 years, says Pene's talent for connecting with people during the pandemic made a massive difference to morale.

"I remember during the lockdowns Pene hosted virtual drinks a few times. I always enjoyed and appreciated those events and the fact that Pene thought to organise them. It felt good to be connected," he says. "The problem, of course, was trying to refill each

other's glasses through the Zoom screen. It never really worked..."

Meanwhile, leaving Auckland, particularly Waiheke Island, wasn't easy for the former Dean of Law.

"It was painful to leave Waiheke, which is just so very beautiful. My new favourite pastime, horse riding, continues in Canberra, but it's not like riding with Waiheke Horse Tours and there are some horses I miss very much."

During her time in the country, gaining insight into te ao Māori and the Pacific was a fascinating journey for Pene, who highlights how far Australia is behind Aotearoa regarding Indigenous peoples' rights.

"The fact that the courts in New Zealand grapple with tikanga Māori and that the Council of Legal Education [CLE] has mandated the teaching of tikanga in the Law curriculum are examples of just how far ahead Aotearoa New Zealand is. I gained knowledge from my time on the CLE and university discussions on mātauranga Māori that I have taken with me."

The University's Māori Research and Data Sovereignty Steward, Jeremy Hema (Ngāti Paoa, Te Rarawa), worked with Pene on many occasions and says she exhibited a great enthusiasm and spirit of support for taura.

"At every Māori Graduation celebration on Waipapa marae, Pene was there to support our graduates and meet their whānau," says Hema.

"He wahine rangatira a Pene. He ngākau nui nōna ki ō tātou taura, me ō tātou taura Māori. I ngā hui whakapōtae Māori katoa i runga Waipapa Marae, i reira a Pene, hei tautoko i ngā raukura. Haere rā e Pene, haere i runga i te aroha."

"Farewell Pene, go well, go with our aroha. I shall remain forever grateful for your support and friendship."

Pene says she was also privileged to work with many members of the law profession, including through the Legal Research Foundation, the Spencer Mason Trust, the Auckland District Law Society and the Council of Legal Education, as well as the judiciary, the New Zealand Law Society, the Borrin Foundation and many law firms and barristers' chambers.

"Watching the many mootings successes on the part of our students was amazing and I loved engaging with the student clubs," she says.

"Reading students' names as they graduated and meeting their families was a great privilege." ■



# A combined century of service to the Law School

**PROFESSORS** Klaus Bosselmann, Paul Rishworth and Ron Paterson have all retired this year after long and dedicated service to the Law Faculty. It is this type of long service that has sustained the excellence and high ranking of the Faculty. Colleagues have generously agreed to give readers a taste of the contributions of the three Professors whose total time in the Law Faculty exceeded over 100 years.

## Professor Klaus Bosselmann

Klaus Bosselmann needs little introduction. He has a well-earned reputation as an environmental law expert, ecological ethicist, philosopher and activist within New Zealand and globally. His academic credentials accumulated over almost five decades are very impressive, including some 16 authored books, 19 edited books, around 100 book chapters, over 55 refereed journal articles, dozens of reports and other articles and numerous invited lectures and presentations both here and overseas. He has also won numerous awards for his writings and professional activities, including the Bild der Wissenschaft Book of the Year Award in 1992 for *Im Namen der Natur*. In 2009 his book *The Principle of Sustainability* was shortlisted for the UK Socio-legal Studies Association Book Prize. He was the inaugural winner of the IUCN Academy of Environmental Law Senior Scholarship Prize also in 2009, was elected a member of the IUCN World Commission on Environmental Law in 2012 and was appointed a Fellow of the IUCN Academy of Environmental Law in 2013. He was also the winner of the International Carlowitz Sustainability Award in Germany in 2021 and also in that year was appointed by the UN Secretary General's Office as an Expert Adviser on Global Environmental Governance. In 2023 Klaus was made a Fellow of the Royal Society of New Zealand.

As impressive as those professional and academic credentials are, there is much more to Klaus the man. Born in the early 1950s in a recovering post-war Germany, Klaus enjoyed a childhood growing up in the countryside surrounded by forests and wildlife. This no doubt provided a strong formative influence for his later



Prof Bosselmann with his PhD student Justin Sobion and two colleagues launching a book at a recent conference on Earth Trusteeship at Chulalongkorn University in Bangkok.

life and career, which he has dedicated to environmental protection and ecological sustainability. His university years at the Universität Tübingen and later the Freie Universität Berlin spanned the turbulent times of the latter stages of the Vietnam War, and of course the nuclear arms race of the Cold War period. Klaus became a Judge at the age of 27 years; an alternative career path from legal practice in Germany. However, as an anti-nuclear and environmental activist Klaus found himself unable to “toe the establishment line” of the judiciary not criticising government policies on the development of nuclear power. This led to Klaus moving to an academic career, and we are all the better for it.

Following a decade of mixed legal practice, law teaching and consulting work for the European Commission in Brussels, the OECD in Paris, UNEP in Nairobi and the German Environmental Protection Agency in Berlin, Klaus found himself in the late 1980s “washed up” on the shores of Waiheke Island near Auckland working as a Lecturer at Auckland Law School. As they say – “the rest is history”. Klaus had in fact come to New Zealand earlier, first in 1981 working on a comparative project on environmental assessment and again in 1985 as a visiting lecturer. He had purchased a small bach on Waiheke Island, a place he had fallen in

*“Klaus is one of those rare people who seems to have found his perfect niche in life, and who lives and breathes his work as both a lifetime ‘calling’ and also a great joy.”*

love with, and in 1990 he met Prue Taylor with whom he also fell in love. Klaus and Prue have raised two children on Waiheke, and also shared a rich academic and professional collaboration on environmental law and policy, philosophy and ethics. Prue is a leading international environmental law academic in her own right, and many of the achievements in their careers and lives are the result of their mutual support, healthy debate with one another and shared views of what is right, and what is not, in the world.

In 1998 Klaus spearheaded the establishment of the New Zealand Centre for Environmental Law (NZCEL) based

in Auckland Law School. He was the founding Director of the NZCEL and in that capacity provided inspiring leadership and encouragement to colleagues and students alike. Klaus led the NZCEL for over three decades and it is fair to say that environmental law and the NZCEL is in good heart and health in the Law School today largely through his efforts. Some of the tangible outputs of the Centre under Klaus’ leadership have included several monographs on various aspects of environmental law and policy, the *New Zealand Journal of Environmental Law* (now in its 26th year of production edited by Dr Ken Palmer from 1997-2021 and now by Professor David Grinlinton), and numerous conferences and symposia attracting many leading international academics and thought-leaders to Auckland. Klaus’ international reputation has been a major element in putting Auckland Law School on the map as a leading centre of environmental legal teaching and scholarship in this part of the world and students, colleagues and the institution have all benefitted from that. It is true to say that Klaus’ encouragement and inspirational leadership has – like the ripples in a pond – had great impacts both here and internationally. His lifelong advocacy of an ecocentric approach to environmental management, instead of the conventional anthropocentric approach, has been directed in recent times to placing ecological integrity at the heart of law and governance.

Klaus is one of those rare people who seems to have found his perfect niche in life, and who lives and breathes his work as both a lifetime “calling” and also a great joy. This is clear in his continual optimism of a better future for all, the inspiration he has given to generations of students and colleagues alike, his dedication to pursuing a more ethical, sustainable and equal world and his overarching generosity of spirit. Although he has now formally retired from his full-time position at the Law School, Klaus remains a part of the Faculty on a fractional appointment, and internationally continues to be one of the leaders in the evolving field of ecological law and governance working closely with the world’s leading earth system scientists. This includes further work with the Earth Charter movement, advising the German government on the inclusion of ecological human rights in the German Constitution and his work assisting the UN Secretary-General and the UN General Assembly with advice on global environmental governance and preparations for the Summit of the Future to be held in August 2024.

DAVID GRINLINTON,  
CAROLINE FOSTER, KEN PALMER

## Professor Paul Rishworth

Professor Paul Rishworth, one of New Zealand’s most distinguished lawyers, will retire from Auckland Law School later this year. An understated, humble and gentle man, Paul is an internationally respected expert on bills of rights in general and the New Zealand Bill of Rights in particular. His scholarship and teaching have made major contributions to the understanding and the development of the law, the relationship between theories of rights and statutory interpretation, the relationship of common law notions of rights and liberties and statutory bills of rights, and the application of rights theory to complex real-life situations. His book *The New Zealand Bill of Rights* (co-authored with Grant Huscroft, Scott Optican and Richard Mahoney), published 20 years ago, remains an essential reference work. He has taught and influenced thousands of young public lawyers in New Zealand as well as given lectures in Canada, Australia, the UK and the USA (with several stints at William and Mary).

Words matter to Paul. His careful scholarship is a model of erudition – so much so that some of my colleagues use his writing as an exemplar of lawyerly precision for their students. We can trace the journey from his honours dissertation about “Foss v Harbottle” (Paul is never one to shy away from the difficult questions!) to his later M Jur thesis at the University of Auckland in 1985 “The Canadian Charter of Rights and Freedoms and its implications for a NZ Bill of Rights” (both still available from the Davis Law library). The latter he undertook under the supervision of Associate Professor Bill Hodge after Paul returned to study following a period in practice. This work marked a change in the direction of his own life and career, presaged a very significant change in the direction of New Zealand law and was a signal of what was to come. His has been a fruitful academic career marked by keen intelligence, scholarly precision, hard work, variety and relevance. He has a rare ability to get into the middle of a problem and to unravel it from a number of directions.

Paul is a wonderful academic relied upon by many for his discretion and good counsel. He has quietly helped numerous colleagues in their academic writing and careers and his sage advice is frequently sought in relation to a range of legal and ethical dilemmas. Paul brought the same care and compassion to his role as Dean of the Law Faculty (2005-2010). I am reliably told (though no one at the Faculty knew at the time) that during a busy and difficult period of his deanship, he not only taught for a colleague who was ill but also drove them to

*“Paul is a wonderful academic relied upon by many for his discretion and good counsel. He has quietly helped numerous colleagues in their academic writing and careers and his sage advice is frequently sought in relation to a range of legal and ethical dilemmas.”*

their hospital appointments. He has served in a wide range of advisory and governance roles at the University. One of the more memorable of these was his appointment as University Orator – presumably in recognition of his understated flair for language and his ability to avoid cliché. I remember interrupting him one day with the conventional question “are you busy?” and receiving the unexpected reply that he was preparing a formal address to His Holiness the 14th Dalai Lama.

Paul has played a large part in hosting a number of distinguished guests to the Faculty. Many visitors have enjoyed the relaxed warmth of Paul and Sara Rishworth’s hospitality including at Sara’s family bach at Anawhata. And who could forget the scene after the 1999 Rights and Freedom conference of Paul on the guitar playing *Bye Bye Miss American Pie* with the ACLU’s Professor Nadine Strossen and Scott Optican on vocals? (I cannot remember if the late Justice Scalia or Justice Binnie joined in the singing.) Another distinguished visitor (who shall remain nameless) was inadvertently introduced to Kiwi adventure tourism on a visit with Paul and his family to a Northland Beach that tested her climbing skills in the face of a strong incoming tide. Happily she survived and headlines in the *New York Times* were averted. She is reputed to have strong memories of her visit.

Paul is well read in the theoretical and comparative literature, but he is by no means an academic who sits in a contemplative pose in an ivory tower.

While a full-time academic he argued several important public law cases. I recall sitting in the back of the High Court in a case about the entrenchment provisions in the Electoral Act in which Arthur Taylor, appearing as a litigant in person, quoted from “the eminent academic Professor Rishworth”. Paul was opposing counsel. The late Justice Fogarty, who was presiding over the whole, maintained stern control. During a period of leave served at the New Zealand Crown Law Office, Paul acted for the Crown in prominent cases that included *Attorney-General v Taylor* (the bills of rights declaration case) and in the High Court case of *Seales v Attorney-General* (assisted dying). Paul also served for a period of leave in the equivalent office in Western Samoa.

Paul’s expertise in statutory interpretation led to an interest in legislative design and he has served for many years on Law Society law reform and human rights committees making submissions on legislation. He has chaired and is now a member of the Legislative Design Advisory Committee. He has also served on the boards of the Mangere Law Centre, Epsom Girls Grammar School (where his three independent-minded daughters were pupils) and the Maclaurin Chapel. For his many contributions to New Zealand law and the wider community, he was fittingly recognised by appointment as a Queen’s Counsel in 2014.

Paul served as legal adviser to (2007-2010) and later Attorney-General of (2010-2015) the Pitcairn Islands in recognition of which the UK government made him a Member of the British Empire in 2015.

Paul wears his intellect, experience, abilities and achievements lightly and is well-known around the Faculty for his dry wit and his delight in the peculiarities of language. He can spot an ambiguity a mile off and can always be relied on for a good statutory interpretation question (“Dogs must be carried on escalators” comes to mind). His radar for the faddish is unerring. At a time when it was fashionable in public-law circles to think that the introduction of Mixed Member Proportional Representation would fundamentally change the constitution, I recall his knocking on my office door and tentatively enquiring if we should go to the common room for coffee “before everything changes with MMP”. At a time when it was mandatory for public entities to have a pithy mission statement, his contribution “The Law Faculty: we teach, read, think and write about law” remains iconic (though what the Faculty actually agreed upon no one seems able to recall). Paul is still the main suspect in the “fridge-gate” incident of



Professor Ron Paterson and Professor Paul Rishworth.

**“Paul wears his intellect, experience, abilities and achievements lightly and is well-known around the Faculty for his dry wit and his delight in the peculiarities of language.”**

the 1990s. An overripe banana had taken up permanent residence in the communal fridge. At some point it acquired a very professional museum label: “Donated to the Faculty of Law from the collection of Glanville Williams c 1933”. We could never prove anything. As pressures of leadership, responsibility and time have increased, this mischievous streak has become more subdued, but I also suspect Paul’s hand

at work in the plaque outside the Small Lecture Theatre in Building 803 that appeared when he was Dean. You can read it for yourself.

On my first day as a new lecturer appointed to the Law School, Paul, also newly back from Canada, knocked on my door. After introducing himself and giving me details of a possible flat to rent, we started to talk about law. That conversation has been going for 30 years and I very much hope it will continue for decades yet. This is not intended as some kind of eulogy. Paul will continue his barristerial practice, his law reform and other activities and to write scholarly articles. He will continue to “read, think and write about law” and no doubt teach us something along the way. We hope his wife Sara, his daughters Ellie, Hannah and Josie, and his grandchildren will enjoy a greater share of his time. Thank you Paul for your contributions, collegiality and friendship over several decades and we look forward to more to come.

JANET MCLEAN

## Professor Ron Paterson

In 2023 Professor Ron Paterson retired after 30 years on the academic staff at the Law School.

Ron was a law student in the 1970s. He was inspired by the teaching of Jim Evans and Francis Dawson. Ron graduated in the class of 1975-77, a pretty special cohort several of whom went on to make their mark in the law. In his first year at Law School Ron met and formed an enduring friendship with Mike Taggart until Mike’s death in 2009. Mike saw Ron going into the Davis Law Library on pub-crawl day and dragged Ron away, probably without much difficulty! They were inseparable from then on. On graduation they shared the Auckland District Law Society’s prize for best overall law graduate.

After postgraduate studies at Oxford (Ron) and Harvard (Mike) and academic teaching stints in Canada, they both returned to academic positions at Auckland. They were part of a group of appointments in the mid-1980s who included Paul Rishworth, Peter Watts, Julie Maxton and me. We became close friends and colleagues, making Law School life a joyful and stimulating experience. Ron recalls the fun of participating in annual Law Revues and Faculty tramps as highlights.

While Mike quickly found his academic home in public and administrative law, Ron took longer. Early on he taught and researched in a wide range of areas (commercial law, conflicts and international trade). It was Mike who encouraged Ron to research and write in medical law, the field where Ron found his voice and academic passion. Ron started teaching the Medico-Legal Honours seminar in 1990 and established the undergraduate elective course in Health Care Law in 1994. He also served as Deputy Dean to Jock Brookfield in the early 1990s and was inaugural editor of the *New Zealand Law Review*.



Ron Paterson and Mike Taggart, Auckland Law School Common Room, May 1988.



Launch of the Good Doctor, Old Government House, The University of Auckland, 6 June 2012.

Ron was quickly drawn into the world of health. He doubts that any legal academic has been given so many periods of leave and is grateful to successive Deans for their support. He was awarded a Fulbright scholarship which took him to Case Western Reserve University in 1993, studying the emerging discipline of bioethics. On his return he worked as a contracts analyst at the new Northern Regional Health Funding Authority (established in the competitive health reforms of the 1990s), before departing again for the US in 1998-99 on a Harkness Fellowship in health policy at Georgetown University. He was appointed Deputy Director-General of Health in 1999 and Health and Disability Commissioner in 2000, a position he held for a decade.

The two jobs Ron has really loved were Health and Disability Commissioner and academic lawyer at Auckland Law School. As the “other” health lawyer on the Faculty for much of that time, my own academic career would have been much less enriching without Ron as a colleague and friend. He has taught and researched in areas – health law and legal ethics – where he has later led changes in practice. As Commissioner, Ron significantly grew the influence of the HDC as a public watchdog and enhanced the credibility of its decisions. Ron also served as Parliamentary Ombudsman (2013-2016). He was happy to return to the Law School after his stint at “Complaints Central” in Wellington.

Sometimes dubbed “Ron the Reviewer”, he has been a “go to” man for complex law and policy reviews. Ron has undertaken three national reviews in Australia leading to major law reforms, including the creation of the Australian Commission on Safety and Quality in Health Care, residential aged-care reforms and major changes in the handling of sexual misconduct allegations against health practitioners. In New Zealand he chaired a review of the Veterans’ Support

**“Sometimes dubbed ‘Ron the Reviewer’, he has been a ‘go to’ man for complex law and policy reviews. Ron has undertaken three national reviews in Australia, leading to major law reforms.”**

Act (2017), the Government Mental Health & Addiction Inquiry (2018) and the Regulation of Lawyers in Aotearoa New Zealand (2023). Each has been influential. Ron says of this work: “It’s a privilege to undertake these reviews and to see your recommendations lead to positive change.”

Although retiring from the Law School, Ron is keeping busy. He chairs the Faculty of Medical & Health Sciences’ Fitness to Practise Committee, is a lay member of the Medical Council of New Zealand, a board member of the Health Quality and Safety Commission and mediates and investigates complaints about elected members as Principal Conduct Commissioner for Auckland Council. In his spare time Ron keeps fit off-road running and tramping (pastimes inspired by Bill Hodge in the 1970s) and helping on a farm near Lake Waikaremoana. He and partner Greg enjoy living in Devonport and at Kawakawa Bay with their beloved dog Tora.

Ron counts himself blessed to have joined the legal academy and is thankful for a varied and enriching professional life. ■

JO MANNING

# A promise to forget no one

## Rescuing the women judges of Afghanistan

JUSTICE SUSAN GLAZEBROOK<sup>1</sup>

**IN AUGUST 2021** the Taliban reclaimed Afghanistan, placing the 250 Afghan women judges in grave danger. This is the story of the efforts of the International Association of Women Judges (IAWJ) to rescue these judges and their families.

### Background

When the Taliban took power in 1995 women's rights in Afghanistan were seriously curtailed.<sup>2</sup> As a result, after the fall of the Taliban in 2001 Western-backed reconstruction efforts focused heavily on improving the lives of women and girls. This included reform of the justice sector through increasing women's involvement in the legal profession and the judiciary and introducing laws and policies to address issues faced by Afghan women, such as domestic violence.<sup>3</sup>

There was, however, a continual threat of terrorism. Between 2015 and 2020 more than 300 justice-sector workers, including judges, prosecutors and prison personnel, were killed, injured or abducted.<sup>4</sup> The Taliban are believed to have been behind many of these attacks.

Women with high public profiles were particularly targeted in an effort to intimidate not only women holding public office but women generally. In January 2021 two women judges, Judges Qadria Yasini and Zakia Herawi, were shot and killed on their way to court. And yet despite the danger the Afghan women judges went into work each day not knowing if they would return home to their families in the evening. Their courage is beyond belief.

### IAWJ involvement

The IAWJ has had a long relationship with the Afghan women judges. They were involved from 2003 to 2014 with an exchange programme to the US and they attended our IAWJ regional and biennial conferences. At our biennial conference in May 2021, held mostly virtually in Auckland, we agreed to set up a small IAWJ Afghan support committee to publicise the difficult security conditions the judges were working under and to provide training support.



Justice Susan Glazebrook.

The situation changed drastically, however, when the Taliban reached Kabul in August. The position of the Afghan women judges became untenable. The idea of women as judges just does not fit with the Taliban view of the world. To make matters worse the Taliban emptied the prisons of even the worst criminals and terrorists. Many of these offenders had been sentenced by the women judges and were out for revenge. There was also a heightened risk of retaliation from disgruntled litigants in family cases. Despite being well outside our comfort zone our IAWJ Afghan support committee knew we had to act.

### First stage

Our involvement in the rescue efforts can be split into three stages. The first was after the Taliban takeover but while the United States remained in control of Kabul airport. The only option was a place on official military evacuation flights. Considering the serious dangers the women judges were facing, we presumed they would be guaranteed places on these flights. We could not have been more wrong. Only some 30 of the 250 women judges were rescued in this period

and mostly through the efforts of a Polish lawyer who persuaded her government to offer places on Polish military evacuation flights.

Even for those lucky enough to be offered a place on an evacuation flight, getting into the airport was a serious challenge. On average the journey took 30 hours through searing heat, armed Taliban checkpoints, crushes of people and, in the final stages, wading through a sewer, with little food and water and often with young children. Some had to turn back before they reached the designated airport entrance. The committee members and interpreters got very little sleep in this period as we all felt the need to stay awake to support the judges on their journey to the airport and to liaise with the authorities inside the airport.

This first stage ended on 26 August when a bomb went off at one of the main airport gates, killing almost 200 people and effectively stopping any further evacuation flights for civilians.

### Second stage

After this point the burden of evacuating the many at-risk people still in Afghanistan fell almost entirely on civil society. During this period evacuations were mainly undertaken via chartered aircraft to transit destinations where those evacuated could wait for visas for their final destinations. This was enormously expensive and a logistical nightmare. The IAWJ partnered with several other non-governmental organisations to rescue our sister judges, including the International Bar Association and Jewish Humanitarian Response.<sup>6</sup> We are immensely grateful for their support.

### Third stage

We are now in the third stage. It is no longer possible to charter flights. The only option has been to evacuate via land, one family at a time. Once the judges cross the border into neighbouring countries, they face a wait of up to two years for visas to final destination countries. We are hopeful that some destination countries will resume evacuations directly from Afghanistan but as yet that has not happened.

We made a promise to forget no one and we intend to do everything we can to keep that promise. Heartbreakingly it is becoming more and more difficult to achieve and we have some 50 judges and their families still trapped and in increasing danger in Afghanistan.

### Afghanistan now

The people of Afghanistan are suffering because of natural disasters and the dire economic situation. In general the Taliban regime has little respect for the rule of law and human rights, with widespread reports of arbitrary detention, torture and extrajudicial killings.<sup>7</sup> Terrorism remains a threat. Particularly at risk are the Hazara community, a minority ethnic and religious group.<sup>8</sup>

Life for women is also becoming more and more difficult. When the Taliban first entered Kabul, they claimed they would not reinstitute the harsh restrictions on women that existed under their 1990s regime.<sup>9</sup> Our committee members were highly sceptical and, unfortunately, we have been proved right.

Girls have been banned from secondary schools and universities. They have few work opportunities and have had their access to healthcare severely limited. They can no longer visit parks or gymnasiums and recently all beauty salons have been closed. When women are in public they must wear full body and face coverings. Essentially, women are at risk whenever they are in public without a male chaperone.<sup>10</sup> The Taliban's policy on women has been labelled a crime against humanity and gender apartheid.<sup>11</sup>

“... we have some 50 judges and their families still trapped and in increasing danger in Afghanistan.”

### Resettlement

Against that background we are of course very worried about those still in Afghanistan, but we are also worried about the roughly 50 women judges and their families still in limbo in transit destinations.

We now have about 150 judges and families resettled in final destinations and are incredibly grateful to the countries that have agreed to accept our judges, including six judges and their families in New Zealand. But it would be a mistake to think that the judges in final destinations have no problems. They are safe but they face years of hardship and retraining. Many are seriously traumatised and desperately worried about family and colleagues left behind in Afghanistan. The judges are nonetheless determined women and will no doubt eventually make a huge contribution to the countries they now call home.

I should also say that our committee is acutely aware that there are other groups at risk in Afghanistan and elsewhere, but we are a very small group of volunteers and cannot help everyone. The IAWJ is a women judges group and we therefore felt an obligation to assist our sister Afghan women judges, particularly because of their long history with the IAWJ.

### Lessons learned

There have been many lessons throughout this experience. The first is the power of modern communications, which have enabled us to keep in contact with the Afghan judges safely. Second is the power of information. Through our database we have access to full information on all our judges that can be provided to those helping with evacuations and to national authorities. Third is the importance of international networks to coordinate efforts. And, finally, there is the importance but also the fragility of the rule of law. It can be compromised suddenly and completely as in Afghanistan but it can also be compromised by stealth and by stages. We must be ever-vigilant and protective.

I end with a tribute to my Afghan colleagues. Their dignity, resilience and courage have been truly awe-inspiring. It is these Afghan women judges who are the heroes of this story. ■

### Endnotes

- Judge of the Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa and the immediate Past President of the International Association of Women Judges (IAWJ). This article is a shortened and adapted version of a speech given at the University of Auckland Law School on 5 April 2023. Thanks to my clerk, Emily Duckett, for her invaluable assistance with this article.
- Amnesty International UK “Women in Afghanistan: The Back Story” (8 June 2023) <www.amnesty.org.uk>. That article notes, however, that, until the war in the 1970s there had been reasonably steady progress for women's rights. Indeed, women had been given the vote in 1919 just a year after United States women.
- Fereshta Abbasi and Patricia Gossman “I Thought Our Life Might Get Better”: Implementing Afghanistan's Elimination of Violence against Women Law (Human Rights Watch, 5 August 2021).
- Bureau of Democracy, Human Rights, and Labor *Afghanistan 2020 Human Rights Report* (US Department of State, 2020) at 30.
- See, for example, David F Levi and others “Leaving Afghanistan” (2021–2022) *Judicature International*.
- See Jewish Humanitarian Response <www.jhr.ngo>; and International Bar Association “International Bar Association's Human Rights Institute” <www.ibanet.org/IBAHRI>.
- Amnesty International *The Rule of Taliban: A Year of Violence, Impunity and False Promises* (2022) at 25–36.
- Tallan Donine “Urgent Action Needed: Hazaras in Afghanistan Under Attack” (10 August 2022) United States Holocaust Memorial Museum <www.ushmm.org>; and Weronika Strzyżyńska “Hundreds of Hazaras killed by ISKP since Taliban took power, says rights group” (6 September 2022) *the Guardian* <www.theguardian.com>.
- Sophie Tanno “The Taliban pledged to honor women's rights in Afghanistan. Here's how it eroded them instead” (23 December 2022) *CNN* <edition.cnn.com>.
- Silja Thoms “How the Taliban are violating women's rights in Afghanistan” (7 August 2023) *DW* <www.dw.com>; Emma Graham-Harrison “‘I daren't go far’: Taliban rules trap Afghan women with no male guardian” (15 August 2022) *the Guardian* <www.theguardian.com>; and Tanno, above n 9.
- Report of the Special Rapporteur on the situation of human rights in Afghanistan and the Working Group on discrimination against women and girls UN Doc A/HRC/53/21* (20 June 2023) at [92]–[97].

# Ned Fletcher

## David Williams on the Ockham award

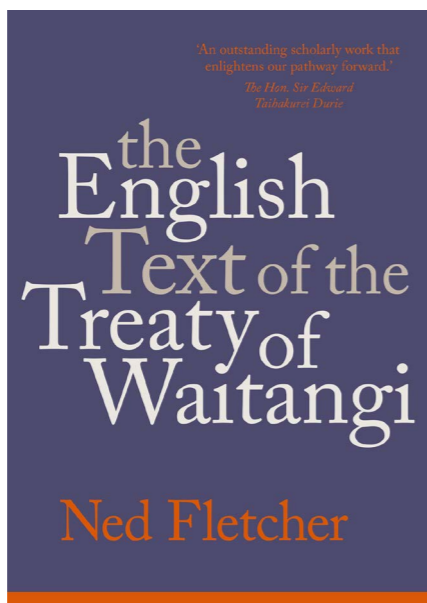
Interviewed by MARK HENAGHAN

ON 17 MAY 2023 a large crowd gathered in the Kiri Te Kanawa Theatre of the Aotea Centre for the annual Ockham New Zealand Book Awards. For each award category, the authors of the four shortlisted books are called forward. The non-fiction category every year is inclusive of books published on a considerable variety of topics. For this award ceremony, the four books selected for short-listing from all non-fiction books published in Aotearoa in 2022, were:

- *A Fire in the Belly of Hineāmaru: A Collection of Narratives about Te Tai Tokerau Tūpuna* written by Melinda Webber (Ngāti Kahu, Ngāti Hau, Ngāti Hine, Ngāpuhi, Ngāti Whakaue) and Te Kapua O'Connor (Ngāti Kuri, Pohūtiare) and published by Auckland University Press;
- *Downfall: The Destruction of Charles Mackay* written by Paul Diamond (Ngāti Hauā, Te Rarawa, Ngāpuhi) and published by Massey University Press;
- *Grand: Becoming my Mother's Daughter* written by Noelle McCarthy and published by Penguin; and
- *The English Text of the Treaty of Waitangi* written by Ned Fletcher and published by Bridget Williams Books.

Dr Ned Fletcher is a graduate of Waipapa Taumata Rau University of Auckland with an MA degree in history and a PhD degree in law. His doctoral thesis topic was "A Praiseworthy Device for Amusing and Pacifying Savages: What the Framers Meant by the English Text of the Treaty of Waitangi". The book shortlisted for the Ockham Award is a version of that thesis revised and edited for publication.

As Ned explained to Philip Matthews in an interview for *Stuff* after the book was published, he hadn't studied New Zealand history at school or even as an undergraduate at university. But then he embarked on a master's thesis on how English law was introduced in New Zealand. That was in the late 1990s. One chapter dealt with James Busby, the British Resident



or consular representative in New Zealand in the 1830s, which Ned calls "a hinge decade". Once the MA thesis was done, Ned felt there was more to say. He imagined when he enrolled for the PhD that he had done much of the work already and that he could have a fairly straightforward three years: "In fact it took me more like seven years. I submitted it in 2014 and the book is coming out in 2022, and in some ways, it feels like the origins are in the late 1990s with the MA thesis."

In the Kiri Te Kanawa Theatre on awards night, when the four authors of the non-fiction books are called to the stage, they sit beside each other in comfortable chairs but none of them looks entirely relaxed. None of them yet knows who will be announced as the winner. Each author in turn is invited to read a short extract from their work. When it was Ned's turn to read an extract, he chose a section containing his current assessment of James Busby. In the light of all the research and writing he has done since his MA thesis, Ned now offers a not very flattering assessment of Busby, whom he described as a man "constitutionally unable to acknowledge mistakes or give credit to others", and "quick to feel slighted

and held furious grudges. Those whom he resented were often oblivious to having given offence or were later bemused to discover they had." (p 497)

When each author has read their piece, they leave the stage for seats in the stalls. It then falls to the convenor of the judging panel to announce the category winner. The three judges who decided on the 2022 winner were:

- Anna Rawhiti-Connell, a writer, editor of *The Bulletin* and newsletters editor at *The Spinoff*. She won Best General Columnist at the 2021 Voyager Media Awards and contributes to *North & South*. Anna is a trustee on the board of the Auckland Writers Festival.
- Alison Jones, a professor, researcher and writer in the field of Māori-Pākehā relations. Her book with Kuni Jenkins, *Tuāi: A Traveller in Two Worlds*, won the Illustrated Non-Fiction category at the 2018 Ockham New Zealand Book Awards, and her memoir, *This Pākehā Life*, was shortlisted in the General Non-Fiction category in 2021.
- Professor Te Maire Tau (Ūpoko of Ngāi Tūāhuriri, a hapu of Ngāi Tahu), an historian of oral traditions, tribal genealogies and indigenous knowledge systems. He served as an expert witness for the settlement of Ngāi Tahu's Treaty of Waitangi claim and his research interests include the philosophy of knowledge, oral traditions, myth, indigenous development and history.

In calling Ned back to the stage, Anna Rawhiti-O'Connell, as convenor of the judging panel, said that his book is "a meticulously constructed work of scholarship that provides surprising and essential analysis of Te Tiriti". She read from the citation for the award:

"*The English Text of the Treaty of Waitangi* will shift and inform debates about the intentions of those who constructed and signed the Treaty and how we interpret it today. Fletcher's comprehensive examination

sheds new light on the document's implications and contributes fresh thinking to what remains a very live conversation for all of us who call this country home."

The Ockham Awards evening was a wonderful celebration for Ned, his wife Natalie Walker (Auckland law graduate and Manukau Crown Solicitor), their three children, and Ned's parents Dame Sian Elias (Auckland law graduate and former Chief Justice) and Hugh Fletcher (9th Chancellor of the University of Auckland). In his speech of thanks Ned included those who had supervised his doctoral thesis: Emeritus Professor David Williams, Dr Ruth Barton (History) and "the late great Mike Taggart", our former Dean. Our Faculty and the History Department may bask in a little reflected glory from Dr Ned Fletcher's outstanding achievement in being awarded the 2023 Ockham Book Award for non-fiction.

### What motivated you to start on the massive amount of research on which the book is based?

"There wasn't any earth-shattering reason for writing the book. It's based on a PhD thesis I wrote between 2007 and 2014. Like most PhD students I've tried pretty hard to block out the origins of my topic. The short answer is I'd done an MA thesis some years before – Associate Professor Bernard Brown of the Law Faculty was one of my supervisors – which had given me a taste for original archival research. I'd really caught the bug. That led to an interest in 1830s New Zealand and the Treaty. The received view at the time – and perhaps still now – was that the Treaty was hastily and inexpertly drawn up and that the English and Māori texts were ambiguous and contradictory. I'd done enough research to wonder if that was correct. So I enrolled for a PhD with the question 'what was the meaning of the Treaty in English to its framers?'. I thought I knew the parameters of the topic and that the PhD wouldn't take me very long. But it didn't work out like that. The book was published 15 years after I started the PhD, and 25 years after the MA, so that's more than half my life."

### What did you enjoy most about unearthing your research material?

"I loved every moment of the research for the PhD although I can't say the same thing for the writing! My happy place is a library, archive or even microfilm room. And it wasn't hard to be sustained on the research journey because the topic always seemed worthwhile, I was making discoveries and I had encouraging supervisors, family and friends. I was very fortunate indeed that the direction of the research was set with the encouragement of two outstanding scholars,



Ned Fletcher. Photo: William Chea

the late Professor Michael Taggart and now Emeritus Professor David Williams. With their own different interests and broad imaginations, they pushed me to read and research widely. I never knew where the conversations at our meetings would go with two pilots of such enthusiasm and curiosity.

"At the start of the PhD I hadn't anticipated all the paths the research would take me down in order to understand the text of the Treaty in context: into matters of biography connected to everyone who, directly or indirectly, had a hand in drafting the Treaty; into the actual process by which the Treaty in English was drafted; into the history of British dealings with indigenous peoples in other parts of the Empire; into the ideas and forces that were shaping Britain and its Empire in 1840; and into the nitty-gritty of the steps by which, in 1839, Britain decided to send Hobson to New Zealand to negotiate for sovereignty, the drafting of his instructions and the often violent debates over Māori sovereignty and property in land in New Zealand, Sydney and London before and after 1840.

"All these threads came together in the ultimate conclusions of the thesis/book – that British intervention in New Zealand in 1840 was to establish government over British settlers for the protection of Māori; that Māori were recognised as full owners of their lands according to custom; that Māori tribal government and custom were to be maintained; that British sovereignty wasn't seen as inconsistent with plurality in government and law; that the Treaty wasn't a fraud; and that the Māori and English texts of the Treaty reconcile."

### Were there any surprises?

"I'm not sure there were that many eureka moments. One small thing that amazed me

"... it wasn't hard to be sustained on the research journey because the topic always seemed worthwhile, I was making discoveries ..."

was to find how much interest was taken in New Zealand affairs in Australia before and after 1840. For example, there was no bigger issue in the Sydney press in 1840 than Governor Gipps' Land Claims Bill to set up a commission to investigate pre-Treaty European land purchases in New Zealand. Pages and pages of the newspapers were given over to reporting the Legislative Council debates on the Bill that pitted Gipps against one of the principal framers of the Treaty, James Busby. I was also interested to see how the use and abuse of the Native American Indian land cases of the United States Supreme Court came about through the advocacy of the New Zealand Company – and how the framers of the Treaty, the Colonial Office and the British Government more generally, denied their applicability to Māori and New Zealand for most of the 1840s."

### What do you hope citizens of Aotearoa draw from the book in terms of the status and relevance of Te Tiriti for all of us?

"Foundations matter and the Treaty/te Tiriti is the foundation of government and law in New Zealand. If the Treaty had been a dishonest document, that would inevitably constitute a stain, which would need to be addressed. As it is I think we can be more optimistic about the foundation and about the expectations and possibilities we have today. If continued self-government of Māori society was not unthinkable in 1840, and different laws were not thought inconsistent with the sovereignty acquired by Britain, perhaps we can be released from thinking of sovereignty as monolithic and realise that we can be open to different forms of government and justice, reflecting the changes in our society over the past 183 years but holding to the ideas of the Treaty. Similarly if we understand the expectations of full protection of Māori property, it may help in facing up to how far we have fallen short and justify more imaginative responses in our time." ■



# Justice Mark Cooper

## President of the New Zealand Court of Appeal

**“I WAS BORN** in Invercargill in 1954 and grew up in Whanganui, where I went to school. My father worked for the Bank of New South Wales, later to merge into Westpac.

“I was attracted to the study of law because at school I developed an interest in history. In those days we were not taught much New Zealand history but we were taught about the English Civil War, and I was interested in the idea of how power is allocated between the various branches of government and what happens when there is a dispute about who exercises the power. So I was attracted as a teenager to ideas about the separation of powers as they were played out in 17th-century England. I planned to study law as a result and tailored my school subjects accordingly. I dropped all maths and science after the fifth form and concentrated on English, history, geography, Latin and French. In those days te reo Māori was not a subject taught at my school, and most others I think.

“My initial plans to study law were derailed by a weak response to my mother’s persistent idea that I should become a doctor. So having done well in scholarship history and English, I then applied to Auckland Medical School and was accepted into first-year medicine as part of a policy of making spaces available for people from a non-science background. That led to a spectacular failure in my first year of university. I failed every subject except psychology. Having failed and lost all my bursary funding, I applied to repeat the course the following year, but after one term pulled out and it was at that point that I enrolled in law intermediate, which I should have done at the outset.

“I did history, political studies and English and having been in a position where I understood very little of what I was being taught at medical school I could suddenly enjoy university life. I was in a small tutorial group led by Helen Clark for political studies. Mike Taggart was in the same group. One person did a lot of the talking: it wasn’t me, or Helen Clark.

“I completed an LLB Honours degree and also did an MJur before getting my first job in a law firm. I remember my time in Law



Justice Mark Cooper.

**“My initial plans to study law were derailed by a weak response to my mother’s persistent idea that I should become a doctor.”**

School very well. In Law I the legal system was taught by David Williams, Contract lectures were with Professor Brian Coote and Francis Dawson, Torts with Stephen Mills, Constitutional Law with Jock Brookfield and Bill Hodge and Criminal Law with Bernard Brown. Bernard Brown delivered a series of jokes as he made the Criminal Law come alive. I remember a particular anecdote about the law of provocation among others. Most of us really looked forward to Bernard’s lectures because he was just so funny.

“In Law II we had Jack Northey, the Dean, for Administrative Law, which was my first

real introduction to the Socratic method, although Francis Dawson had taught part of the Contract course in that way. I remember the pregnant silence that followed when the Dean asked me about a case and I had to confess that I hadn’t read it. After he took a moment to compose himself he offered quietly that I wouldn’t be able to say that again, a statement, which although delivered quietly, was full of menace. I readily agreed with him. I think I did read every case after that. We also had Richard Sutton teaching us Equity, and he deployed the Socratic method – sometimes much to the annoyance of members of the class because of his particular approach. This was encapsulated by an exchange that took place one day when an exasperated student asked, ‘Associate Prof Sutton why do you always answer a question by asking another?’ Richard Sutton had a particularly broad smile – he was a close relative of the Cheshire cat, I think – which he produced before saying quietly, ‘Do I?’

“I did papers in advanced Criminal Law and Constitutional Law in Law III as well as Comparative Law with Nadia Tollemache and Criminology with Alan Nixon. He was a great man, I think, humble and full of wisdom and compassion. One of the set

texts was *The Honest Politician’s Guide to Crime Control*. Perhaps it needs a new edition.

“I did my Honours dissertation on the subject of electoral petitions. John Prebble was my supervisor. This was before his move to Victoria University. This turned out to be quite a topical subject at the time because it coincided with electoral shenanigans in the Cook Islands where an election was won after the commission of the full raft of election offences known to the law. I discovered there were a whole series of Law Reports devoted to offences in 19th-century England. Personation, bribery, treating and so on. And in New Zealand at about this time we had the Hunua electoral petition and one in Wairarapa, I think. People were asking to borrow my dissertation, which I was flattered by.

“I did papers in Criminal Law and Restitution for my MJur. I was back with Bernard Brown and Richard Sutton. With Richard there were two of us in the class and we met once a week on a Friday morning having read upwards of two dozen cases tracing the evolution of restitutionary principles in particular fields such as unjust enrichment, contractual mistakes, estoppel, tracing in equity and in common law. All of it was very demanding and at the end of it we had the famous 48-hour exam in which you picked up the paper at 9.30 one morning and handed it in at five the following day. And in the meantime you were free to consult whatever books, cases or statutes you thought you needed to.

“Looking back I would say I owe a real debt of gratitude to the Auckland University Law School, the quality of the education that was provided and the commitment and integrity of all those who taught me.

“I went to the bar in 1997 and took silk in 2000. At the bar I continued to do resource-management work and also branched out into civil litigation. But I had a reputation as a specialist in the resource-management field and had a daunting workload, which eventually became irksome.

“I was asked to be a judge in 2004 and was sworn in that March. Criminal jury trials were new to me and it was a steep learning curve, but it was exciting trying to keep trials on track when dealing with the numerous issues that can arise with juries. I never got over a feeling of apprehension and wondering what fresh challenge each day might produce until the verdict was in. Sometimes I made mistakes, but then again, sometimes the Court of Appeal did, as I recall it, in those days.

“On the Court of Appeal there is if anything a greater variety of work than any one High

**“Criminal jury trials were new to me and it was a steep learning curve, but it was exciting trying to keep trials on track when dealing with the numerous issues that can arise with juries.”**

Court judge can expect to get. So it is very stimulating from that point of view. We still have a lot of crime to deal with, but the issues are presented on the basis of a record already established. So it is possible to isolate and concentrate on the point that really arises for decision. Intellectually, the criminal law is as demanding as most others and at appellate level there is the ability to think about how the law might be developed in a way that better meets the interests of justice. We have very interesting cases about the law of evidence here, and we also have to think carefully about the New Zealand Bill of Rights Act as it affects more and more of our statute and common law. So too we are acknowledging the need to be alive to the challenges presented by the growing reference to and recognition of tikanga Māori. The challenge is to welcome these influences in a way that adapts and builds on the strengths of the British inheritance, as well, in doing what we have always tried to do: finding just outcomes to the disputes that come before us.

“I was appointed President in April last year. We had just got over the Molesworth St occupation and the worst effects of Covid. This was a challenging time for the Court of Appeal, as well as all our other courts. The President has a number of administrative functions, and always presides if sitting, but otherwise functions as a judge like the others. I adopt a fairly hands-off approach to the scheduling of the work but see it as my duty to sit on some important cases, particularly those of a public-law nature where there might be significant implications in terms of precedent. I also try to ensure that the court remains “coherent”, in the sense that it does not lightly depart from legal principles it has decided in comparatively recent times. I think there should be a high degree of predictability in this Court, which is not to say the law should not be developed. It must be, to

fulfil peoples’ expectations of what justice means here and now. We are not judging for the benefit of the past. I believe in what Roscoe Pound said: ‘The law must be stable, but it must not stand still.’ This is one of the aphorisms that cover the glass walls of the Court of Appeal. So I am for incremental change and also for keeping that which remains good. This is all down to my colleagues of course, not just me, because we are all independent judges, but I can try to set an example.

“I have also had the role of Chair of the New Zealand Council for Legal Education and during the past few years that has grappled with the need to ensure that tikanga and Māori law achieve an appropriate place in the curriculum in law schools. There was nothing contentious about this: all the members of the Council saw the need to take that step, since the senior courts had clearly recognised that tikanga was part of the law of New Zealand. I coupled my work on the Council with seminar papers given to new judges, and although I do not claim expertise in tikanga, I thought I could contribute to an understanding of how the principles could be applied by judges operating in the legal system without a specific statutory mandate. We now have the benefit of the Supreme Court’s decision in *Ellis*: binding and all the authority needed to continue down this path.

“The most important advice I can give to law students is to be committed to learning the law. It is a great privilege to have this opportunity of learning how it is that society creates and enforces rules that govern its relationships. And today the particular challenge is the way in which the law – including tikanga – can be deployed as a force for good to help people realise and achieve their potential in an increasingly diverse society. Law students and younger lawyers should understand that they have a real contribution to make in ensuring the law can accommodate change in a sustainable way. Each generation brings to the table new ideas about what is important and needs fixing. Lawyers can have a real influence because they understand how the rules are made and changed. So I would say that role should be embraced.

“But progress is not made without hard work and application. That goes with the territory of being a serious lawyer, and a good one.” ■

# Cecilia Tarrant

## Chancellor of the University of Auckland

**“I GREW UP** in the Waitomo Caves village and went to the local primary school. My parents both had seven-day-a-week businesses – my father and his sister ran the general store and camping ground until we moved from the village down on to the family farm when I was 15, and my mother sold souvenirs out of a caravan outside the main Glowworm Cave.

“For secondary school I was a boarder at St Dominic’s College in Henderson. When choosing a University I never considered anywhere other than Auckland. My friends were all going there and I didn’t need to leave Auckland to leave home – I had already done that. When I started University I had no idea what I wanted to do when I finished. I did know that I wanted to make the most of my time there both from a learning and social perspective. My choice of law was motivated more by an interest in studying the subject than a desire to be a lawyer. When I started, I didn’t know whether I would become a lawyer. Studying at Auckland was a wonderful experience: intellectual challenge, lots of fun and great people – students and teachers. Combining law with an arts degree provided a great balance but could also be a lot of work, so I didn’t at first decide to do Honours. I am very grateful to the Dean at the time, Jack Northey, who encouraged me to take up Honours in my last year. Although it meant more work in that year and completing my dissertation while working, the thing that swayed me was his telling me that without an Honours degree I would not be able to study overseas.

“After finishing at Auckland I spent two-and-a-half years at Simpson Grierson before going overseas to study at the University of California at Berkeley. Like many young New Zealanders, I was keen to go overseas and also keen to experience studying overseas. Although I applied to both the UK and the US, I chose the US as I believed it would expose me to quite a different legal system. My perception was that studying in the UK would be more like an extension of my Auckland education. The LLM at Berkeley required a course of study where you took classes with the regular American law students, participated in a number of seminars specifically for the LLM



Cecilia Tarrant.

class and wrote a thesis. In my last year at Simpson Grierson, I was working in litigation specialising in the construction industry. My choice of Berkeley was influenced by the fact that the foremost expert in Construction Law in the US, Justin Sweet, was a professor there. He became my professor and my thesis dealt with a fairly esoteric topic in construction law. Berkeley was a fabulous experience – I lived in International House, which accommodated students from around the world. My LLM class was also full of interesting international students. Observing the American students in class and getting to know many of them was fascinating. My education at Auckland compared favourably with what I was seeing at Berkeley and I had no problem succeeding there.

“To finance the cost of studying in the US, my plan was to get a job with an American law firm for a year before going on to the UK; however, the American law firms would only hire you if you were willing to stay longer. This meant I had to sit the California Bar Exam. Studying for, applying for and then sitting the California Bar Exam was a surreal experience. Preparation for the exam includes a Bar Review course where they attempt to teach you just what they think you will need to know, and give you practice tests, for the six weeks leading up to the exam. The exam is actually three days of two three-hour exams per day, including one day devoted entirely to multiple choice questions.

“My first job in the US was in the San

**“My education at Auckland compared favourably with what I was seeing at Berkeley and I had no problem succeeding there.”**

Francisco office of the law firm of Csaplár & Bok. They were a Boston firm that had opened a San Francisco office to service some of their West Coast clients. The office practice was almost exclusively real-estate finance. This was not an area I had any exposure to – I had been a litigation lawyer in New Zealand – but they took me on at the same level as a new graduate out of law school. For me it was an opportunity to try a completely different area of law. I enjoyed the work despite long hours and often very difficult characters.

“A lot of the work at Csaplár & Bok, and then Gaston & Snow after the two firms merged, involved working with investment-banking firms. After five years in San Francisco I took the opportunity to move from law to investment banking, going to work for one of the firms that had been one of my clients, CS First Boston. The attraction was moving from being a lawyer to being a banker. As the lawyer, transactions only came to me once the decision had been made to proceed. Being a banker allowed me to be there at the beginning and gain a much greater understanding of the motivations of the parties and all aspects of the transaction. My legal background gave me a considerable advantage when dealing with lawyers, whether they were our lawyers or those acting for others.

“At CS First Boston I was involved in a number of financial products. At Morgan Stanley, while involved in a range of structured products, the majority of my work related to real estate finance and commercial mortgage securitisation.

“When I returned to New Zealand I spent some time working out what I wanted to do. Ultimately I decided that I would pursue a career in governance. My first governance appointment in New Zealand was to the board of the University of Auckland Foundation. I have held a number of other government, public, company and private-governance positions. At present my primary roles are as the chair of New Zealand Green Investment Finance, a director of Seeka Limited and Payments NZ, and Chancellor of the University of Auckland. It is an honour to serve as the Chancellor of Waipapa Taumata Rau University of Auckland.

“I have been fortunate to be involved with the University as it has been led by two exceptional Vice-Chancellors – first Professor Stuart McCutcheon and now Professor Dawn Freshwater. The pace of change in the world today is mind-boggling and tertiary education must adapt to meet the needs of society. It is exciting to be part of the University as it grapples with the challenges of change and responds to its place in Aotearoa New Zealand, the Pacific and the wider world.

“The time that I worked as a lawyer has only been a small part of my career. The education that I received at Auckland,

both in Law and Arts, however, has stood me in good stead in every position I have held. In addition, the friendships I made at University are still some of the most important in my life. Studying the law provided me with a framework and discipline that I have been able to apply in numerous situations well beyond the practice of law. Any student graduating from Waipapa Taumata Rau University of Auckland should take confidence from knowing that they have graduated from a world-class institution and have the education to take on the world.” ■

# Ruahei Demant, MNZM

*Te Whānau-ā-Apanui, Te Whakatōhea, Ngāti Awa*

## MARK HENAGHAN

**IN 2022** rugby star Ruahei Demant, MNZM, was named captain for the Pacific Four Series in New Zealand. She co-captained the Black Ferns to Rugby World Cup glory in the same year. As well as being named player of the match of the final, she was named 2022 World Rugby Women’s 15s Player of the Year. She was also named the Kelvin R Tremain Memorial Player of the Year, the Tom French Māori Player of the Year and the Black Ferns Player of the Year.

Ruahei’s time-management skills are also finely honed as, along with her training and match commitments to her College Rifles club, the Storm and the Black Ferns, she is a fully qualified lawyer. Ruahei completed a BA/LLB majoring in Sociology and Law from the University of Auckland in 2020.

Ruahei and her siblings grew up speaking te reo Māori as their first language at home. She attended kura kaupapa before attending Mahurangi College. She later became head girl.

During her university studies she worked full-time at an immigration consultancy and was supported by a Moana Ngarimu VC Scholarship. After graduating she worked at the North Shore District Court as a Deputy Registrar in the Judge Alone Trials Team. At the NSDC she developed relationships with key stakeholders including judges, Police and Crown prosecutors, lawyers and



Ruahei Demant with the Pacific Four trophy after the competition’s third-round women’s rugby match between New Zealand and the USA in Whangarei, 18 June 2022.

probation officers. She is now employed part-time at Dentons Kensington Swan as a Law Graduate while also being a full-time professional rugby player.

This year she was appointed a Member of the New Zealand Order of Merit (MNZM) for

her services to rugby. Ruahei co-captained the Black Ferns to O’Reilly Cup victory in the test series between New Zealand and Australia. Once again Ruahei performed outstandingly as a leader and a first five-eighth, running, passing and kicking of the highest standard. ■

# Adam Hyams

## Pursuing the law overseas

Interviewed by JOSHUA YUVARAJ

**WE ARE ALWAYS** thrilled to see our graduates succeed, particularly when they go out into the wider world. Adam Hyams is one such example. As a recent graduate of Auckland Law School, he is now a lawyer working for the Department for Business and Trade in London. Below, he shares some of his journey through and from Law School to his current role.

### What attracted you to go overseas for work and what was that experience like?

"I knew I wanted to practise public international law. A beautiful part of the discipline is that it is inherently transferable around the world and enables you to live and work in many locations and get involved in many interesting things.

"Public international law is one of the more niche practice areas and I would encourage those wishing to practise it to keep sight of the opportunities arising both in New Zealand and overseas to maximise your chances of finding a way in. Those chances might not come from places you expect, and it did not for me.

"I set my sights on a career in trade law and anticipated my search would eventually take me to Geneva, where the World Trade Organisation and many other international bodies are located. The milestone of 23 June 2016 set in motion different plans – the UK had voted to leave the EU. As Brexit loomed a thought crossed my mind – 'the UK probably needs trade lawyers'. Leaving the EU would mean – for the first time in nearly 50 years – the UK would have its own independent trade policy and establish a cohort of policy officials and legal. I impulsively searched [www.civilservicejobs.service.gov.uk/](http://www.civilservicejobs.service.gov.uk/) and lo and behold found an ad for Trade Lawyers wanted.

"I was not the only one to have this thought. My arrival at the Department for International Trade as it was then known was greeted by a number of Antipodeans and lawyers from across the Commonwealth. The UK's chief trade negotiator adviser and Second Permanent



Adam Hyams.

Secretary for the Department, Crawford Falconer, was among the ranks of New Zealanders. There was an immediate sense of community: here was a new department, fledgling newly established functions, that attracted and brought together lawyers from across the world, all with a shared interest in practising trade law, facing the looming uncertainty of the day the UK formally leaves the EU. The collective energy everyone had for the work would be hard to replicate in many other workplaces."

### What is it like working in legal practice for the government in the UK versus practising in the private sector in New Zealand?

"Transitioning from financial services law at MinterEllisonRuddWatts to the Department for International Trade was a sharp contrast. In private practice I worked closely with other solicitors, senior associates and partners and it was a team endeavour to prepare and advise on legal matters. Moving in-house, and in the public sector, your clients become your team – ultimately it is the Ministers who are your clients – and you can quickly gain significant responsibility

in a way you cannot at a law firm. I became the lead lawyer for a range of matters and policy areas.

"The range of work the department has offered has been incredible and it has been a privilege to be involved. An abridged summary of my work includes being the lead lawyer for a number of policy areas in free-trade agreement negotiations with Japan, the United States, Australia and New Zealand, supporting the UK's accession to the WTO Agreement on Government Procurement, leading legislation work to take trade-related Bills through the UK Parliament and much more. I am currently working as the deputy agreement lawyer for the UK-India free-trade agreement negotiations.

"Trade negotiations particularly are such fantastic experiences, and over the course of a negotiation you can build great relationships with people across the world. Every negotiation is also different. For the Australian and New Zealand negotiations, for example, these took place during the pandemic and were almost entirely virtual – revealing everyone's deficiencies at using IT equipment – and it is a feat that such detailed work was achieved without needing to board a plane. Unfortunately it also meant I didn't get the opportunity to visit home during those negotiations. But there is something incredibly satisfying about being in the negotiating room as a lawyer, and your ability to shape discussions or find a solution or bridge position with some clever legal drafting that leads to the conclusion of a chapter. The role of a lawyer in FTA negotiations extends beyond the room too. Before negotiations you will be working with officials on developing policy and mandate, drafting legal text and planning negotiation strategy. When a deal is finally done, work turns to producing legislation to implement in domestic law the obligations in the FTA and enable its entry into force. Throughout all of this you are working closely with policy officials, economists and lawyers across Government and developing lasting bonds."

### What are some of the ways those in power in the legal profession can create healthier cultures?

"I will start by caveating that I don't have all the answers and that my own observations are only part of the conversation. An appreciation of not having all the answers is perhaps a useful starting point in creating a healthier culture. An inclusive culture has to empower and bring together different groups to be part of those relevant structures and decisions.

"Having spent time in both the public and private sectors in different countries, as well as hearing others' experiences, I have observed how various organisations may have different work cultures and expectations of what is and isn't accepted. Unfortunately the competitiveness of law and some entrenched negative work cultures have conditioned a number of young lawyers to reluctantly accept or tolerate aspects of the profession that would not be the case in other workplaces. Burnout and stress are symptoms of a bigger issue.

"Good leaders must be willing to acknowledge these problems, see the value in a healthy work environment and be prepared to take real steps towards making culture and wellbeing as included in that process as they can be.

"As a general comment on some of the matters that have come to light about the profession in recent times, there are cases where bullying, harassment, sexual harassment and discrimination are clear, and that is unacceptable. There are other cases where bullying and harassment are not direct or intended by the person at issue, but still amount to such conduct and have a harmful impact. For example, the manager who is too focused on results and overworks staff, but hasn't appreciated the impact on welfare, or situations where someone's style of communication or their 'banter' has offended or excluded another. In regard to the latter, there is an onus on everyone to take time to understand and reflect how their actions are felt by others. Gaining awareness of the effect of how we work is a starting point to taking steps to improve the culture within our teams and workplace."

### What advice would you give to the law students of today?

"There are two key pieces of advice I will offer. First, do what interests you. The passion and drive you get from doing something that interests you is what can differentiate you and set you apart from others. That said, be open to exploring

### "As an overriding principle I took every opportunity I could to immerse myself in the international law community."

opportunities that you mightn't expect to enjoy – they might turn out to be your calling. Second, don't sweat the small stuff: learn from any setbacks and make them your strengths by demonstrating how you overcame them. I don't think either of these pieces of advice is anything a law student hasn't already heard. But for many students, including me, when university makes up such a big part of your life, it is hard to fully appreciate at the time. If you still don't believe me, think back to your teenage years and ask yourself if there was anything minor in hindsight that felt massive at the time.

"For me, I did not have the perfect Law School career. I did not receive a summer clerkship or leave University with a job offer to a major law firm waiting for me upon graduation. For someone working in the civil service, my public-law grade probably does not do me justice either! Despite this I wanted to practise public international law and had to think about how I would get there.

"As an overriding principle I took every opportunity I could to immerse myself in the international law community. Being part of that community allowed me to develop an understanding of the field and gain awareness of the opportunities. There were a few steps I took to set myself on that pathway:

- I took every international related paper I could at University, including taking international business papers in the BCom side of my degree and doing a certificate in languages. I learnt Russian, but French will have broader use if you want to work at some of the main NGOs.
- I began researching international trade and investment law while at University outside of my courses. I was lucky to see a one-off master's paper in WTO law being offered as an undergrad elective. I used that class as a springboard by publishing that paper in an international economic law journal. Think about how you can use your courses to produce novel research – perhaps your Honours papers – and speak to your lecturers to help navigate the perils of academic publishing. Doing

summer research with a lecturer is also a great alternative to a clerkship.

• The extracurricular groups and activities run by the University are valuable. I did not get involved with groups as much as I could have, but near the end of my degree I signed up for the Red Cross international humanitarian law moot, another good alternative to a clerkship over summer, which offered the opportunity to develop a new set of advocacy skills and gain exposure to the wider international-law community.

• I attended international-law and trade-related seminars, which helped me develop my understanding of topical issues and build a network of people involved in the field. Ultimately it was those networks where I could demonstrate my interest and where I met someone from the Ministry of Foreign Affairs and Trade who supported me in organising an opportunity to do some policy research for the department.

"A couple of other points I would make:

- The first step of your professional career – that pedestalled graduation role – is going to be the hardest, particularly if you weren't lucky enough to go through a clerkship route. But remember, you are still at an early stage of your career and most employers aren't interested in the level of knowledge you have in a particular specialty of law. You will learn that on the job – prior to working at Minters I hadn't the slightest idea about financial-services law. Instead, develop and showcase your skills, and don't be afraid to develop that experience outside of law. Maybe you have supercomputer-like research skills. Maybe you have experience resolving disagreements, helping others with stressful situations or are able to persuade someone to make difficult decisions. Throughout University the majority of my work experience came from being a teaching assistant in the business school, sprinkled with a variety of short-term, one-off roles in both legal and non-legal capacities. When I did land a solicitor role at Minters after graduating, I was selling my enthusiasm and skills learned elsewhere.
- Find yourself a good mentor. Someone who gets you and inspires you. They should also be equally invested in seeing you succeed, understand your needs and hold you to account. It might not be the first person you ask and you may need to look beyond some of the typical mentor schemes that randomly allocate pairs. Don't be shy about reaching out to those in a field in which you are interested; many appreciate being approached and are willing to share their experience and support." ■

# From Mildon to Mugabe

The career of New Zealand's most celebrated international arbitrator – Sir David Williams, KNZM, KC

DR ANNA KIRK

IT IS NOT an overstatement to say that Sir David Williams is a pioneer of international arbitration in New Zealand and is recognised as one of our top legal minds. Sir David was honoured with a knighthood in 2017 for his services to arbitration law and practice in New Zealand and internationally. He is consistently rated among the top arbitrators in the world and has sat as arbitrator in over 150 international cases. His contribution to arbitration is evident from the fact that a simple search of his name in “Global Arbitration Review” reveals more than 300 articles written about Sir David’s cases, including recent entries about the promotion of young New Zealanders mentored by him and the opening of Bankside Chambers’ Singapore office under his auspices.

Sir David’s arbitral career includes many highlights. My first interaction with Sir David in 2008 was to phone him from London to ask if he would be willing to accept appointment as arbitrator in a major trade dispute between Canada and the United States. It was the first state-to-state arbitration filed with the London Court of International Arbitration (LCIA) and an important case in the international trade-law context. In 2012, Sir David was a member of the Arbitral Tribunal in *Occidental v Ecuador* that awarded the largest damages sum for breach of an investment treaty granted to that date – US\$1.77 billion.<sup>1</sup> He recently sat as presiding arbitrator in the largest-ever claim to have been filed with the International Chamber of Commerce (ICC) Court of Arbitration in Paris – a US\$30 billion dispute between Iraq and Turkey concerning an oil pipeline that runs between the two states.

Throughout his career Sir David has been a courageous arbitrator, not afraid to make difficult decisions. He was the chair of a three-member tribunal that barred David Mildon QC from representing a party on the basis that he was a barrister at the same Chambers where Sir David was a door tenant and notification of his role had been made at a very late stage.<sup>2</sup> The decision was based on the inherent jurisdiction of



Sir David Williams, KNZM, KC.

a tribunal to protect the integrity of the arbitration proceedings and has often been quoted and relied upon by subsequent tribunals.<sup>3</sup> The IBA Guidelines on Conflicts now reflect the dangers inherent in this relationship, while acknowledging that such a situation will not always constitute a conflict.

Sir David also chaired a Court of Arbitration for Sport (CAS) tribunal that found Floyd Landis, the 2006 Tour de France champion, guilty of doping.<sup>4</sup> The case was an appeal by Mr Landis against a finding of doping in an American Arbitration Association (AAA) case. This arbitration was not only significant because of the high profile nature of the applicant and the controversy surrounding doping in cycling at that time, but also because the tribunal imposed costs sanctions on Mr Landis for the improper manner in which his appeal was conducted including witness intimidation and making serious allegations (including fraud) without foundation.<sup>5</sup> Although costs are not normally awarded in CAS cases, the tribunal felt compelled to do so given the egregious circumstances and behaviour of counsel.

While the Floyd Landis case was extremely high-profile (it even has its own Wikipedia

“The Tribunal ordered the Government to ‘immediately take all necessary measures to protect the life and safety of the Claimants ...’”

page<sup>6</sup>), perhaps Sir David’s most sensational decision concerned interim measures applications in the case of *von Pezold v Zimbabwe*, where the tribunal was asked to order the Zimbabwean Government (then still controlled by Robert Mugabe) “to instruct its police force to prevent people from coming onto the Claimants’ Estate, and ... to cease threatening to kill the claimant in an investment treaty case”.<sup>7</sup> A second application by the claimant related to an alleged plan by Zimbabwe’s Central Intelligence Organisation to kill one of the claimants. The tribunal ordered

the Government to “immediately take all necessary measures to protect the life and safety of the Claimants ... from any harm by any member, organ or agent of the Respondent or any person or entity instructed by the Respondent”.<sup>8</sup>

One of the hallmarks of Sir David’s career has been the strong relationships he has nurtured. For example, since gaining his LLB in 1965 from the University of Auckland, he has been a proud Auckland Law School alumnus and maintained a close relationship with the University. Sir David often recounts how his father told him and his younger brother, Michael Williams sc, that he had decided to enrol them at law school. It is clear that Sir David’s father was a wise man – both of his sons have become highly successful lawyers. Sir David clearly cherished his time at Auckland Law School and actually joined the teaching faculty on his return from Harvard University in 1966. He later taught International Arbitration to postgraduate students and remains an Honorary Professor at the University to this day.

Sir David was involved in many high-profile cases while at Russell McVeagh, including advising Air New Zealand during the investigation into the Erebus disaster. It was also at Russell McVeagh and in his early career at the Bar that Sir David first became involved in arbitration. He was counsel in *CBI NZ Ltd v Badger Chiyoda*, an ICC arbitration arising out of the construction of the Marsden Point oil refinery in Whangarei. The case later went to the Court of Appeal.<sup>9</sup> He was also counsel in New Zealand’s first and only investment arbitration, *Mobil Oil v New Zealand*, which was heard at the International Centre for the Settlement of Investment Disputes (ICSID) in Washington DC.<sup>10</sup>

In the early 1990s, Sir David spent two years as a Judge of the High Court of New Zealand and it was on his retirement from the Bench that his international arbitration career really accelerated.

Sir David has been a member of Bankside Chambers throughout his arbitral career and has contributed much to helping Bankside become the largest chambers in New Zealand, with a thriving arbitration and mediation offering. It was at Bankside Chambers 10 years ago that Sir David published the second textbook of his career with Amokura Kawharu, *Williams & Kawharu on Arbitration*. Contributing authors include Wendy Miles KC, Daniel Kalderimis and Anna Kirk. It is no exaggeration to say that this book, now in its second edition, is the authoritative text on arbitration in New Zealand, frequently relied upon in arbitration-related court cases.

Over the past 25 years Sir David has served on the boards or governing councils of many of the world’s largest and most respected arbitral organisations.

Those of us who know Sir David well will also know of his affiliation with the Cook Islands. Not only did Sir David write the Cook Islands’ Arbitration Act, he has also been a Judge of the Cook Islands High Court and Court of Appeal for more than 20 years. Over that time he has served as Chief Justice and President of the Court of Appeal. His final sitting in the Court of Appeal took place in October 2021.

Yet for all his pre-eminence in the legal world, at his core Sir David is a family man. His dedication to Lady Gail, Nick, Melissa and his grandchildren is obvious to all those who know him. Perhaps this strong family grounding explains why Sir David has remained approachable and genuinely happy to assist his fellow New Zealand arbitrators despite his phenomenal international career. Sir David has recently retired to enjoy some well-deserved time with his family.

Sir David continues to act as a mentor and share his wisdom with all those who seek his guidance. He is a true treasure of the New Zealand legal system to whom we are all eternally grateful. I am just one of many New Zealand arbitration practitioners who owe him a great debt of gratitude. Sir David has worked tirelessly over the years to promote New Zealand and New Zealanders in the international arbitration community and to raise the profile of arbitration domestically. From all of us, we simply say “thank you”. ■

Adapted from the Editorial for the Special Volume of the Auckland University Law Review 27(2), (2021)

## Endnotes

- Occidental Petroleum Corporation and Occidental Exploration and Production Company v. The Republic of Ecuador*, ICSID Case No. ARB/06/11, Award, 5 October 2012 (Fortier, Williams & Stern). The award was later reduced to \$1.06 billion on an issue of Ecuadorian law and has since been dwarfed by the US\$50 billion award in the *Yukos* arbitrations (see *Veteran Petroleum Limited et. al. v The Russian Federation*, Judgment of the Court of Appeal of The Hague, Civil Law Section, Case Number 200.197.079/01, 18 February 2020).
- See *Hrvatska Elektroprivreda d.d. v. Republic of Slovenia*, ICSID Case No. ARB/05/24, Order Concerning the Participation of Counsel, 6 May 2008 (Williams, Brower & Paulsson). The late notification of Mr Mildon’s role was significant in the decision (see para [35] of the Order).
- Ibid, [33].
- CAS 2007/A/1394 *Floyd Landis v. USADA*, Award, June 2008 (Williams, Paulsson & Rivkin).
- CAS 2007/A/1394 *Floyd Landis v. USADA*, Award, June 2008 (Williams, Paulsson & Rivkin) see also DAR Williams and A Kirk “Fair and Equitable Treatment of Witnesses in International Arbitration – Some Emerging Principles” chapter in D. Caron et al (eds) *Practising Virtue – Inside International Arbitration* (OUP, 2015).
- [https://en.wikipedia.org/wiki/Floyd\\_Landis\\_doping\\_case](https://en.wikipedia.org/wiki/Floyd_Landis_doping_case)
- Bernhard von Pezold and Others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15, Procedural Order No.4, 16 March 2013 (Fortier, Williams & Hwang). The interim measure was not granted on the basis of undertakings given by the Respondent that its police force was to protect the Claimants.
- Bernhard von Pezold and Others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15, Procedural Order No.5, 3 April 2013 at [65] (Fortier, Williams & Hwang).
- CBI NZ Ltd v Badger Chiyoda* [1989] 2 NZLR 669 (CA).
- Mobil Oil Corp. v New Zealand* ICSID Case No. ARB/87/24 (ICSID Reports 140). The case was settled. See also *Attorney-General v Mobil Oil NZ Ltd* [1989] 2 NZLR 649.

# Tudor Clee

## Breaking open the border

Interviewed by **NICOLE ROUGHAN**

**TUDOR CLEE** (LLB/BCom) is a criminal and human-rights barrister whose pro bono work challenging the government's system of managed isolation and quarantine (MIQ) during the Covid pandemic saw more than a dozen Kiwi families reunited. Tudor's advocacy for pregnant women and families seeking to return to New Zealand, including the high-profile case of Charlotte Bellis, a pregnant Kiwi journalist in Afghanistan, is credited with helping to end the MIQ system. In his own words, Tudor tells *Auckland Law* about this work and its impact, which saw him named Lawfuel's 2022 Lawyer of the Year and one of NZ Lawyer's Most Influential Lawyers of 2023.



Tudor Clee.

### Tell us about your trajectory since leaving law school.

"I was a full-time fashion designer when I graduated and had shown at NZ Fashion Week the previous year. I had no interest in practising. I designed suits for a criminal barrister who pressured me to do profs and make 'at least one appearance'. I went down to Manukau as a duty lawyer and was instantly hooked. I really connected with my clients and within two years I had the largest legal-aid practice in New Zealand. My time in Manukau was profoundly humbling. The community really rallied around me and I'll never forget that."

"The legal-aid system changed in 2010. I didn't have the constant obligation to hundreds of people at a time any more. I was 30 years old and had come to realise I wasn't as educated as I had previously believed. I decided to take a seven-year sabbatical to work on it. I visited every country in the world – all 193 UN members – visiting museums and just wandering around meeting people."

"Wanting to share the experience in a positive way, I created the first digital world book for kids where kids are the teachers. The programme, [touchableearth.org](http://touchableearth.org), has been used by more than 100,000 kids in 180 plus countries."

"In August 2021 my partner and I had a baby and I intended being a stay-at-home

dad for at least a year, doing as little law as possible. That dream ended abruptly when the following month a pregnant friend asked for help to get her husband back to New Zealand for the birth of their child. He was denied emergency entry to MIQ and I agreed to assist. That snowballed into 35 families seeking help; eight Judicial Review applications; dozens of OIA requests, and, at the peak, a dozen media interviews in a day, including on BBC Live, Sky News Australia and ABC730.

"All the work was pro bono."

"Only a few months later the government was hoist with its own petard. The Charlotte Bellis case resulted in the total humiliation globally of the government for its misogynistic policy."

"MIQ was gone in less than a month."

"I was named Lawyer of the Year 2022 by Lawfuel and Most Influential Lawyer 2023 by NZ Lawyer magazine. The recognition is of course appreciated, but it was precisely the opposite of being a present dad and supportive partner for that precious time."

### What achievements are you most proud of?

"Breaking open the border. The moment foreign DJs were allowed in to come and play drum and bass sets, while pregnant Kiwis were banned, MIQ was a political tool, not a health measure."

"MIQ epitomised the reality that when rights are violated it is the people who got them last who lose them first. It disproportionately harmed women more than men at every level."

"The exclusion of women's health from MIQ Emergency Guidelines was only part of the problem."

"The New Zealand Defence Force was put in charge of staffing MIQs. This was in spite of the recently published report 'Operation Respect' detailing the failures of the NZDF to protect women. Entirely predictably, numerous women were threatened and harassed by NZDF staff with no repercussions. I haven't even started on that litigation yet."

"By mid-2021 it was clear to me that MIQ had to end as quickly as possible."

"I published a method for people stranded outside New Zealand to return whenever they wished without using the lottery system. All they needed to do was buy a plane ticket transiting New Zealand, then enter New Zealand instead of flying onwards. Under the Immigration Act, a citizen cannot be denied entering their own country."

"I predicted it would circumvent the MIQ system to the point of ending it within a month, but internal emails obtained through the OIA show the Department of the Prime Minister and Cabinet and government officials in total panic mode. A proposed solution was making entering this way an imprisonable offence. Not a single person raised any concerns about imprisoning Kiwi citizens entering their own country. The dissent was solely on the basis that it would require extra paperwork amending other pieces of legislation to make it work."

### Do you have any advice for graduating and senior students entering the profession?

"Ask yourself, 'What do I want to change?' It can be anything. You have a lot more power to do so as a lawyer than you think." ■

# Ngaire Woods

## Fighting for good and accountable governments

Interviewed by **MARK HENAGHAN**

**NGAIRE WOODS** was appointed Commander of the Most Excellent Order of the British Empire (CBE) in the 2018 New Year Honours for Services to Higher Education and Public Policy. She is a Fellow of the Academy of Social Sciences, an International Honorary Member of the American Academy of Arts and Sciences and an Honorary Fellow of the Royal Academy of Arts.

Auckland Law Faculty graduate Professor Woods is the founding Dean of the Blavatnik School of Government at Oxford University. She has been described as one of New Zealand's most decorated overseas graduates. Ngaire sits on a number of important advisory boards, including for the Centre for Global Development, the Hoffmann Global Institute for Business and Society, the African Leadership Institute, the School of Management and Public Policy at Beijing's Tsinghua University, the Nelson Mandela School of Public Governance at Cape Town University and the International Business and Diplomatic Exchange.

Ngaire did her undergraduate degrees in economics and law at the University of Auckland, after which she was awarded a Rhodes Scholarship to study at Balliol College, Oxford, where she did a DPhil in International Relations and a Research Fellowship at New College, Oxford. She taught at the Government Department at Harvard University before taking up her fellowship at University College, Oxford.

Ngaire is a sought-after commentator on how governments can do better. Eric Tracey, chair of the UK Friends of the University of Auckland, said, "She's really impressive, and you can see that from what she is asked to do. She's right up in the top level." In her own words, when Oxford set up a School of Government, Ngaire said: "Wow, that's a fantastic idea! Government is one of the hardest things to get right in the world. If human beings could solve all their problems on their own, they wouldn't have invented something called government. So, by definition, it's really hard. A school that aimed to help governments do better, and



Ngaire Woods. Photo: John Cairns

was a professional school of training and education, but also a place of research and a place of engagement, was a great idea."

Ngaire is concerned about the high rates of homelessness in New Zealand. She is on the record as saying: "We really have to think about how our country makes its way back to being a country of genuinely equal opportunity, like the New Zealand that you and I grew up in."

"They used to talk about people having a fair go, and I love that about New Zealand. And that starts when you are kids, because kids don't get to choose their parents. I think that if Kiwis work together they can collectively restore that sense of fairness in a really powerful way. And that's what I want New Zealand to be for every kid coming after me."

Ngaire accepts that many people have lost faith in democracy and believe that most governments are just feathering their own nest rather than trying to do their best for everyone. She came out with the following conclusion:

"So we looked at the data on that and in a lot of democracies they're right: over the past 30 years a lot of people have less stake in the system. They're seeing their own livelihoods and the prospects for their children decrease, which is what really matters to people. So people are understandably angry."

Here are Ngaire's answers:

### What drew you to study law?

"It seemed like important training for thinking about government and public policy – and also seemed really interesting. And it was."

### What memories do you have of your time at the Auckland Law Faculty?

"So many wonderful memories, mainly of my teachers – Nadia Tollemache – Jim Evans, Margaret Wilson, Julie Maxton, Jane Kelsey, Brian Coote, George Hinde, Mike Taggart. Each had a particular talent for interesting us in their subject and making us think."

### Did you ever imagine as a student you'd be doing what you are doing now?

"No, I did not imagine becoming an academic, nor leaving New Zealand."

### What drew you into the field of global economic governance?

"The global debt crisis in the 1980s that plunged millions of people across the world into poverty. I was immediately interested in what a small country could do to navigate that better, to get better help from the international institutions and to set rules

and institutions for the system that would make smaller countries less vulnerable."

### What do you find the most challenging aspects of the field?

"The current US-China relationship, driven by domestic politics on each side, which makes it difficult to resolve such challenges as pandemics, climate change and artificial intelligence, which can only be resolved with global cooperation. My own work has focused on when and how international institutions can help, and what that means for the way their governance needs to be structured."

### Do your law degree and your legal training help you in the work that you are now doing?

"Yes. My training at Auckland Law School taught me to take the facts of a situation, discern what is important and what is not, what the law says and does not, and draw out the key questions, concepts and arguments."

### What career advice do you have for current law students and recent graduates?

"Be bold." ■

## Julie Maxton

### First female executive director of Royal Society receives damehood

#### MARK HENAGHAN

**JULIE MAXTON** was made a Dame Commander of the Order of the British Empire (DBE) in the 2023 New Year Honours for Services to Science and Law. Dame Julie had already received a CBE in the 2017 Queen's Birthday Honours for Services to Science, Law and Education.

Dame Julie started her legal studies at University College London where she gained an LLB (Hons) and was admitted to the bar at Middle Temple in 1978. She moved to New Zealand after qualifying as a barrister and undertook postgraduate study at the University of Canterbury where she completed her LLM.

At Canterbury she taught within the University's School of Law as a lecturer. Upon marrying Jim Carson, she moved to the University of Auckland, where Dame Julie's career was both academic and administrative. Joining the University in 1985 as a lecturer, she went on to complete a PhD in 1991. She was promoted to Senior Lecturer in 1987 and later to Associate Professor.

She spent periods as the Dean of Graduate Studies and was twice the acting Deputy Vice-Chancellor. In 1993, she was appointed a Professor of Law. She was Dean of Auckland Law School between 2000 and 2005.



Julie Maxton.

During her academic career, Dame Julie was also a practising barrister. She concentrated on appellate cases. In October 2012 she was made a Master of the Bench of Middle Temple.

From 2006 to 2011 Dame Julie held the position of Registrar of the University of Oxford. In that role she was head of the University of Oxford's administration. She was the first woman to hold the office in the 550 years since the position was first established. During the appointment she was also a Fellow of University College, Oxford.

In 2011 Dame Julie was appointed Executive Director of the Royal Society. The Royal Society is possibly the oldest learned society still in existence and serves as the United Kingdom's academy of sciences. She is the first woman to be appointed to the position in its 350-year history.

In 2011 Dame Julie was also awarded the Prince of Asturias Award for Communication and Humanities, the Spanish equivalent of the Nobel Prize. She received a Distinguished Alumni Award from the University of Auckland in 2014.

In 2016 she received an Honorary Doctorate from The University of Huddersfield, followed by an Honorary Doctorate in Laws from the University of Canterbury in 2017 and an Honorary Doctor of Laws from the University of Bristol in 2019. She was also made an Honorary Fellow of University College, Oxford, a Bencher of the Middle Temple and a Freeman of the Goldsmith's Company.

Dame Julie is very fondly remembered by the Auckland Law Faculty, both academic colleagues and students, for her vibrant personality, sharp intellect and positive attitude. ■

## James Wilson

### Author of "Lord Denning: Life, Law and Legacy"

**MY BIOGRAPHY** of Lord Denning represents the end – or at least some sort of milestone – in a journey that began in the early 1990s when I studied for a BA/LLB (Hons) at the University of Auckland. My father, who grew up in England and studied commercial law as part of his training at BP from the 1950s, remembered only one English Judge by name – Lord Denning. Very quickly Denning was the name all of us students came to know above all others because we enjoyed his readable style and admired the disarming manner in which he seemed to brush aside technicalities in search of justice.

We also quickly learned some of the more traditional lecturers took against Denning, ironically for the same reasons we liked him: Professor Coote, for example, complained that students for many years had liked Denning because of his "short sentences and simplistic reasoning" that almost invariably produced a result with which Coote and other formalists disagreed. Nonetheless he would regale his students with "Lord Denning stories" at the end of classes, almost all of which involved personal contact. I was not in that class but had each tale related to me afterwards by those who were – clearly they made an impression. A few other lecturers tried to follow suit but unlike Professor Coote their anecdotes were rarely first hand, so they tended to be less well received. More than a few tort lecturers read out Denning's opening paragraph in *Miller v Jackson* in the style of an amateur thespian. Even as one progressed through the degree and Denning's novelty started to wear off (probably because we became used to the more traditional judicial prose), he kept popping up with influential judgments here and there across the whole legal spectrum, from family law to international trade.<sup>1</sup>

I graduated in 1996 with a Senior Prize in Law. My first legal job was a short stint as the Judge's Clerk to the Chief Justice, Sir Thomas Eichelbaum. He had a reputation for being somewhat taciturn, but was always very fair and approachable to the court staff including me.<sup>2</sup> As I enjoyed being



James Wilson.

in a new city I looked further afield for my next role. I ended up working for a couple of years for Anthony Harper, a medium-sized firm in Christchurch, primarily in civil litigation. By then I thought I had accrued enough experience and so set off on the almost ritual OE, basing myself as most did in the United Kingdom. As I had dual nationality and a British passport I was not hog-tied by any of the visa restrictions in Britain that constrained most of my friends and colleagues.

My first job was for a City firm as an extra staff solicitor, taken on for a very large-scale international commercial fraud case. It came to a fairly juddering halt when the client's fingers were found in an especially copious till (involving an eight-figure sum). As I had always enjoyed legal research and writing, I then started working in law reporting for LexisNexis. After a few years writing and working as a line manager, I was asked to help with a book consisting of a collection of essays written by various legal panjandrums that were intended to be interesting revisitations of classic cases. (Notably, though I did not pay much attention to the fact at the time, two of the 24 cases were Denning's – *High Trees* and *Mareva*.) The book was called *Cases That Changed Our Lives* (2012). I wrote the chapter introductions and drafted some other material that was used by another author. The introductions were quite well

"... we enjoyed his readable style and admired the disarming manner in which he seemed to brush aside technicalities in search of justice."

received and led to a request by a couple of legal journal editors for me to write back-page articles on other interesting cases past and present.

After a couple of years of writing back pages semi-regularly, I put them together and they formed what I immodestly thought might be an interesting compendium in their own. I pitched the idea to Wildy, Simmonds & Hill (Wildy), one of the oldest legal publishers in London and one with a charming shop in Lincoln's Inn Archway (it is used from time to time as a television or film set – including an episode of *Downton Abbey* – having hardly changed since the 19th century). At that time Wildy still had a second shop in the Temple, though it closed during Covid (even more sadly, their original Temple branch had been in a Christopher Wren building, but it was destroyed in the Blitz). Wildy readily accepted and in 2013 published it under the title *Cases, Causes and Controversies: Fifty Tales from the Law*. It was well reviewed – including, in a somewhat random coincidence, by the *Christchurch Press* (to this day I've no idea who sent it to them since Wildy doesn't operate in New Zealand).

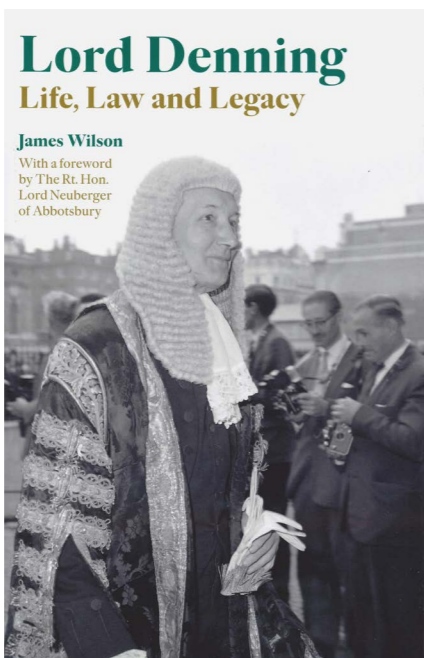
The success of the book prompted me to spend a bit of time researching a pitch for another book on something I was interested in only to be told it wasn't viable. Noticing that I looked slightly deflated, the

commissioning editor asked, “Well, if you could write a book about anything, what would it be?”, to which I gave the flippant answer, “Cricket, obviously”. They pondered for a while before surprising me by saying they thought it would actually be a very good idea. The resultant book, *Court and Bowled* (Wildy, 2014) took me about a year to write – much quicker than any other subject probably would have done since I had spent most of my life reading cricket publications so had already done the bulk of the research. At about the same time Lexis produced a second volume of *Cases That Changed Our Lives*. Once again I wrote the chapter introductions, as well as one of the essays, on a series of discrimination cases before the European Court of Human Rights. *Court and Bowled* received very favourable reviews including one by the former Lord Chief Justice in the *Times*, another by a silk who was chair of the MCC Laws Subcommittee and one in *Wisden Cricketers’ Almanack* by Patrick Collins, a well-known English sports journalist. It was also long-listed for the MCC Book of the Year award.

I left LexisNexis in 2014 and went to work for a time at Bloomberg BNA, also in Central London, and in 2015 published a second volume of back pages and other essays, called *Trials and Tribulations* (once more published by Wildy).

In 2016 I decided to try something different from law and tax and went to work as a publishing manager for the British Standards Institution (BSI). By then I had been a member for a while of one of the traditional London clubs, the Savage Club, which like most British institutions its age had a very interesting memorial from the First World War. The war had long been an interest of mine so I spent some time researching the names on the memorial, and then the other names involved in the conflict whom I found in the candidate books. That led to my book *Noble Savages: The Savage Club and the Great War 1914–18*, published to coincide with the centenary of the Armistice in November 2018.

In 2019 I moved to my current role at BSI, as head of standards governance, the responsibilities for which include drafting and implementing their internal processes. I have also recently become a member of the International Electrotechnical Commission’s Governance Review and Audit Committee in Geneva. The roles have meant I have left writing about other people’s cases and am now back on the playing field of actual rather than academic laws and procedure. For some years, however, Wildy had been suggesting that a new biography of Lord Denning was overdue. I had always



resisted on the ground that I simply didn’t have the time, though I still made a point of collecting Denning cases and materials here and there, and without much effort soon built up quite a substantial amount. When the Covid lockdown occurred in early 2020, I figured I actually did have time at least to have a crack at Denning. Fortunately, during the short periods in which restrictions were lifted, I was able to travel to view the Denning Archive in Hampshire and stay in his former house, The Lawn, as well as speaking to members of the Denning family. Perhaps inevitably I hadn’t quite finished when lockdown lifted, so the last 10th or so of the book took distinctly longer than I would have preferred, as did obtaining rights for photographs and quotation (mere mention of Denning’s name tended to throw publishers and other rights-holders into an inordinately cautionary stance if not outright panic, though the Hampshire Archivists could not have been more helpful, save when it came to Profumo papers – another story).

Still, I managed to get there in the end with the book. It may be the last legal book I write, or at least it will be for the foreseeable future. But since Denning was present at the very start of my legal journey, he would be an appropriate note upon which to finish. I hope it will be of some interest to students and staff at Auckland today. I would also like to visit the next time I am able to come to Auckland. ■

*If anyone is interested in more detail on any of the books, please see my website at [jamesrjw.wixsite.com/jamesrjwilson](http://jamesrjw.wixsite.com/jamesrjwilson) or send me an email at [jrjw321@gmail.com](mailto:jrjw321@gmail.com)*

#### Endnotes

- 1 I was fortunate to be taught international trade (effectively, shipping law) by FMB Reynolds QC, one of the most distinguished academics of his era. At the time he was editor of the *LQR* and author of multiple editions of *Bowstead on Agency*, which eventually – and properly – changed its name to *Bowstead and Reynolds on Agency*. He told us about the circumstances of Denning’s retirement, which none of our other lecturers had mentioned.
- 2 Somewhat randomly, one of the first people to contact me about my Denning book was a retired judge, who invited me to lunch at Lincoln’s Inn to discuss it. When I mentioned Sir Thomas he beamed and said that he had known him through a law conference in the early 1990s, and that they had both stayed in each others’ houses on respective business trips. The common law world can seem rather small at times.

The law faculty had a great night at the Legal Research Foundation awards this week. Amokura Kawharu was made an honorary life member of the Foundation. Ned Fletcher won the JF Northey Book Award for his book, *The English Text of the Treaty of Waitangi*. Jeannine Cheong won the unpublished postgraduate paper award for her paper on legal consent to puberty blockers. Hugo Meachen won the unpublished undergraduate student paper award for his paper “Retrospective Tax Legislation: A solution to an Enduring Problem” Michael Littlewood and Jane Norton were given special mention for their outstanding work as Editors of the *NZ Law Review*.

## Judicial appointments

### HIGH COURT

The University of Auckland Law School would like to offer warm congratulations to alumna **Laura Anne O’Gorman**, who has been appointed a Judge of the High Court.

Justice O’Gorman graduated from the University of Auckland in 1996 with a BCom/LLB (Hons) and worked as a law clerk, then a solicitor, with Buddle Findlay until 1998.

She relocated to the United Kingdom and obtained an LLM from the University of Cambridge in 1999, and worked at a law firm in Jersey during 2000.

Justice O’Gorman returned to New Zealand in 2001, becoming a senior associate at Buddle Findlay. In 2005 she joined the partnership of Buddle Findlay.

In 2019 Justice O’Gorman became a barrister sole, joining Bankside

Chambers in Auckland. Her practice includes a broad range of commercial litigation with specialist expertise in insolvency, competition law, judicial review and statutory appeals, conflict of laws, company law and contractual disputes. Justice O’Gorman was appointed Queen’s Counsel in 2021 before her appointment as a Judge of the High Court in October 2023.

### DISTRICT COURT

Warm congratulations from Auckland Law School to alumni appointed as District Court Judges during 2023.

- Judge **Ali’imuamua Sandra Alofiavae**
- Judge **Debra Bell**
- Judge **Kate Davenport KC**
- Judge **Ngaroma Tahana**
- Judge **Tania Margaret Sharkey**
- Judge **Susie Houghton**

### THE MĀORI LAND COURT

Auckland Law School would like to congratulate **Alana Thomas**, Ngāpuhi, for her appointment as a Judge of Te Kooti Whenua Māori – the Māori Land Court.

Judge Thomas graduated from the University of Auckland in 2007 with a Bachelor of Laws and a Bachelor of Arts. During her time at Auckland Law School she was the president of Te Rākau Ture, the Māori Law Students Association.

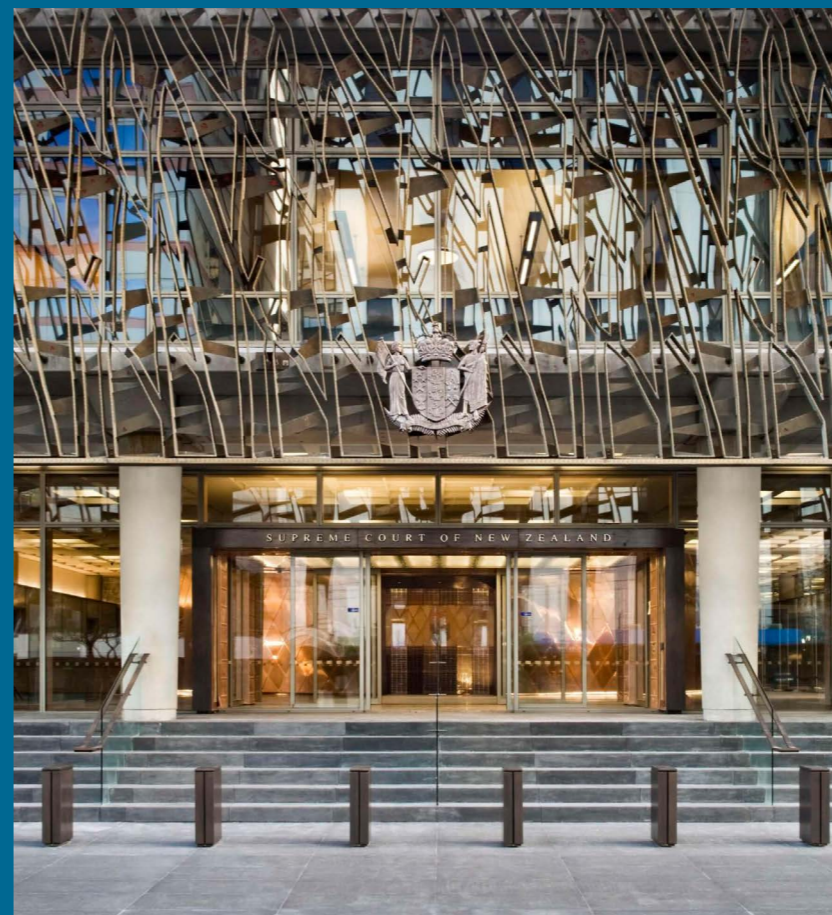
She has predominantly been involved in Māori legal issues, representing clients in the Māori Land Court and Appellate Court, as well as representing a number of iwi, hapū and whānau claimants in the Waitangi Tribunal historical and urgency inquiry processes. She is also Coordinating Counsel in a number of these inquiries. Judge Thomas was sworn in on May 2023.

### KING’S COUNSEL APPOINTMENTS

Auckland Law School has a long line of alumni that have gone to the very heights of the legal profession. We are thrilled to congratulate the following (who either partially or fully completed their law degrees at Auckland Law School) for their appointments as King’s Counsel in November 2022.

- **David Cooper KC**
- **Tiffany Cooper KC**
- **Catherine Cull KC**
- **Jason Goodall KC**
- **Simon Mitchell KC**

These appointments highlight Auckland Law School’s dedication to producing lawyers recognised as among the best in the profession.



The Supreme Court of New Zealand, Wellington.

# Anna Broadmore

MARK HENAGHAN

**ANNA BROADMORE** completed her undergraduate degrees – LLB (First Class Hons)/BCom – at the University of Canterbury. After graduating in 2003 Anna spent 14 years practising law. Seven years were spent working in leading private practice law firms in Auckland (Simpson Grierson) and London (Barlow Lyde & Gilbert), predominantly in commercial litigation teams. After returning from London Anna joined the in-house legal team at Suncorp New Zealand, where she was involved in insurance disputes until December 2017.

Following this Anna decided to pursue postgraduate study. Under the supervision of Associate Professor Jesse Wall and Professor Jo Manning, Anna graduated with a PhD in spring 2023. Anna's thesis explores how a private law right to reproductive control can move the common law forward to protect our interest in reproductive control.

Anna's research interest is in private



Anna Broadmore.

law, particularly tort law. Her approach is primarily doctrinal and she is interested in how reference to theoretical frameworks can help illuminate and resolve contemporary problems in the common law.

Anna's thesis approaches the problem of interference with reproductive choices

through a rights-based conception of tort law. From this theoretical basis, she identifies how a private-law right to reproductive control will resolve the existing doctrinal difficulties in the area and move the law forward in a principled manner.

The Faculty is delighted that Anna has accepted a position as a full-time lecturer. She currently teaches in the compulsory Law of Torts course at the Auckland Law School. Anna is well-known for the clarity of her lectures and her ability to break things down so her students can understand the law well. Outside her academic work, Anna enjoys running, tennis, reading about almost anything, music, playing the piano, mountain biking, architecture, exploring the natural world and caring for her two primary school-aged children. Anna is currently the Under 10 grade convenor for the Auckland University Cricket Club.

We wish Anna all the best for her academic career. ■

# Vernon Rive

JOSHUA YUVARAJ and VERNON RIVE

**VERNON RIVE** joined the staff of Auckland Law School as an Associate Professor in 2023. Vernon has been a longtime member of the Auckland legal academic community as a founding member of the Auckland University of Technology Law School and most recently an Associate Professor and Deputy Head of School. He practised law for many years, most recently as a partner at national firm Chapman Tripp until 2009. Vernon's new appointment brings him back to the start, in a manner of speaking, as he completed both a BA/LLB and an LLM (Envir) at the University of Auckland.

Vernon brings with him a wealth of academic experience in public law, environmental law (both international and New Zealand environmental law) and climate-change law. He is a widely respected voice in these fields and has written numerous books and chapters in such respected publications as the *New Zealand Yearbook of International Law*. Vernon is completing a doctoral dissertation through the University of Melbourne on



Vernon Rive.

displacement and migration related to climate change throughout the Oceania region under the supervision of Professor Margaret Young and Professor Michelle Foster.

He is also an excellent teacher, having taught various courses including Public

Law, International Law, Judicial Review, Climate-Change Law, Resource-Management Law and International-Environmental Law during the course of his academic career. Vernon is Course Director for Public Law in the LLB programme. As well as contributing to the LLM programme, he will be launching a new LLB elective in Climate-Change Law in 2024. Vernon's engaging manner, range of experience in academia and legal practice and excellent grasp of the subject matter make him an excellent educator and our students will doubtless benefit from his guidance now and in the future.

Outside work Vernon is a musician and photographer. In 2022 he co-produced the sixth album by New Zealand singer-songwriter, APRA Silver Scroll and NZ Tui winner Guy Wishart, *Where the Water Runs Through*, also playing keyboards and double bass on the recording released in March 2023 through Rattle Records. He has made a wonderful contribution to the Law School thus far and we celebrate his appointment. ■

# Alexandra Allen-Franks

MARK HENAGHAN

**ALEX ALLEN-FRANKS** graduated from the University of Otago with an LLB (First Class Hons). After graduating, Alex worked as a Judges' Clerk at the Auckland High Court from 2013 to 2014. In 2014 she was admitted as a Barrister and Solicitor of the High Court of New Zealand. Alex then worked with Andrew Brown QC at Bankside Chambers from 2015 to 2017.

Alex completed her Master of Laws, First Class, at Lucy Cavendish College at the University of Cambridge. She was awarded the Spencer Mason Scholarship to pursue this study and was also awarded the Kate Bertram Prize for her examination results.

Alex worked for Watson Farley & Williams in 2019 as a foreign-qualified dispute resolution associate. From 2019 to 2023 she embarked on her PhD in Law at the University of Cambridge with Dr Jonathan Rogers, entitled "Development of powers enabling exclusion of improperly obtained evidence in civil proceedings in England



Alexandra Allen-Franks.

and Wales, Aotearoa New Zealand and Australia". Alex was awarded a Trinity Hall Research Studentship, which is a merit-based full-fee scholarship, as well as the Cambridge Trust Scholarship, a living costs

scholarship, to support her PhD research.

In September 2023 Alex passed the viva voce for her PhD at Cambridge. After final deposit of the thesis, Alex will graduate from the University.

The thesis concludes with structuring the power to exclude evidence by adopting a presumption of non-admission for evidence that has been attained unlawfully and suggesting factors that have been taken into account when considering whether the presumption has been rebutted.

The Auckland Law Faculty is delighted that Alex has accepted a position as Lecturer here at the Faculty. She currently teaches Legal Foundations, Evidence and Trade Marks. Alex is the Co-Director of the New Zealand Centre for Human Rights Law, Policy and Practice, which is based at the Faculty. Alex is well known by the students for her exemplary clarity, conciseness and engaging teaching. Alex also organises staff seminars for the Faculty. ■

# Julia Kahu Harper-Hinton

MARK HENAGHAN

**JULIA KAHU HAPER-HINTON** graduated with a Bachelor of Arts in Anthropology and Politics and a Bachelor of Laws in 2005 from Victoria University of Wellington. Julia completed her Master of Laws at Victoria in 2015. Julia is currently doing a Postgraduate Diploma in secondary teaching at the University of Auckland, which shows her dedication to teaching.

From 2006-2008 Julia was a solicitor at Stevensons' Lawyers in Samoa. In 2009 she became a paralegal in the Baha Mousa Public Inquiry in London, codifying documents and preparing evidence bundles for hearings. In 2011 she became the legal education and staff solicitor at the Otago Community Law Centre, where she did a lot of work on legal education for community groups such as churches and teen parent units. In 2012 Julia became the solicitor for Family Law Results in Papakura, where she worked in family law, parenting agreements and protection orders. From 2014 - 2022 Julia worked as a solicitor for Corban Revell Lawyers in Henderson, where she



Julia Kahu Harper-Hinton.

carried out a lot of work in the Māori and commercial teams, primarily in litigation and Waitangi Tribunal hearings.

Julia is currently teaching Law and Society and Indigenous Law. She will also be a significant asset to the faculty when the compulsory teaching of tikanga starts in

2025. Julia also has a strong interest in legal history and public law.

Outside her academic interests, Julia has a wide range of interests. She is a wife, and mother of three children aged 13, 10 and seven. Julia loves reading historical fiction and watching movies and TV shows. *The White Lotus* was a favourite of hers in 2023. During the lockdown she and her son took up model making. She is also keen on outdoor activities including surfing, snorkelling, scuba diving and trampolining.

Julia worked on a number of important matters that came before the Waitangi Tribunal, the Tuhoronuku Urgency Inquiry, the Ngātiwai Urgency Inquiry and the Wai 1040 Te Paparahi o Te Raki Inquiry. She prepared tangata whenua evidence for historical claims and closing submissions for hapū clients. Julia appeared in the Court of Appeal case under section 40 of the Public Works Act 1981 in 2021. She is a great asset to our faculty, a delight as a colleague who we wish all the very best. ■



# Suliana Mone

GUY FITI SINCLAIR

**FAKAFETA'IA** Sihova he 'oku lele la. 'Oku tolonga 'o ta'engata 'ene 'alo'ofa.

Fakatapu moe 'Año 'ae 'Otua Mafimafi. Fakatulou atu.

Introducing herself to the first class of any course she teaches, Dr Suliana Mone begins with these words in Tongan. Acknowledging the presence of the divine and all others present and listening, they are words she heard her father, Rev Dr Fisi'ihoi Mone, speak many times.



Suliana Mone.

Engagement, liaising between senior Faculty and University leadership, the Pacific Law Students' Association and the wider Pacific Community in Hamilton, and providing pastoral care for all Pasifika students enrolled in Law.

Suliana's current research focuses on international law, human rights, women's rights and law in the Pacific region generally. Written under the supervision of former Attorney-General and Speaker of the House, Emeritus Professor Margaret Wilson, DCNZM, her PhD thesis examines an important topic: opposition to adopting the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in the Kingdom of Tonga.

Through a combination of grounded theory, the Kakala Research Framework and feminist legal theory, Suliana's research shows how patriarchal structures have contributed significantly to resistance

against CEDAW and the advancement of women's human rights in Tonga. Suliana acknowledges that her findings might be controversial in some parts of the Tongan community but believes her role as a legal scholar requires her to be honest and (self-)critical, even if the results are uncomfortable. As she puts it, "the motivation behind my PhD topic, any research I undertake and in my teaching is a desire to help improve the quality of life for women in Tonga and Pacific peoples generally".

Since joining Auckland Law School, Suliana has made an immediate impact as a dynamic and popular lecturer on the first-year Law and Society course. In semester two, she taught South Pacific Legal Studies, and in 2024 she will teach a new masters-level course on South Pacific Legal Systems: Critical Issues. She has also taken on a significant service responsibility as Assistant Dean (Moana Oceania), and she looks forward to supervising Honours, Masters and PhD researchers on topics relating to law in the Pacific region.

This new phase in Suliana's academic journey is tinged with both pride and sadness. Two years ago, in the course of her doctoral studies, her father passed away. Suliana wore his regalia to her own graduation, paying tribute to his legacy. Now, as she introduces herself to each class, she repeats the words she learned from her father to remind herself of her intellectual and spiritual inheritance and to inspire her to live up to his example. ■

# Barbara-Luhia Graham

GUY FITI SINCLAIR

**ON JOINING** Auckland Law School at the start of 2022, Barbara-Luhia Graham's career took a new direction that may have surprised some, but which allowed her to pursue her long-held passions for teaching, scholarship and service to the Moana Oceania community.

Born and raised in Wellington, Barbara-Luhia - Barb or Barbs to her friends - is of Tokelauan, Sāmoan and Pālagi/Pākeha descent. After graduating from Te Herenga Waka - Victoria University of Wellington, she began practising as a solicitor at Meredith Connell. With court appearances on a range of civil, criminal and commercial matters, Barbara-Luhia appeared destined for a career in litigation.

That trajectory changed in late 2021 when she saw an advertisement for the role of Susuga Faiako/Professional Teaching Fellow at the Law School. Encouraged by friends who had worked in similar roles in Wellington she applied in the hope that the role would enable her to work more closely with her Moana Oceania community.

Looking back, it seems inevitable that Barbara-Luhia would find a way to return to legal academic teaching and service.



Barbara-Luhia Graham.

Together with her Law degree - in which, among other achievements, she topped her class in Māori Customary Law - Barbara-Luhia completed a Bachelor of Arts in Pacific Studies and Sāmoan Studies. While studying she began tutoring courses in both Pacific Studies and Law, receiving a tutoring award for Introduction to Case Law. She also served for several years as a Pasifika Law Students Mentor and as a member of the Pasifika Law Students' Society (PLSS), eventually being elected as Co-President of PLSS for two successive years.

All these experiences prepared her well for her role at Auckland Law School. As Susuga Faiako, Barbara-Luhia is responsible for overseeing the Moana-Oceania Academic Initiative (MAI) programme. She has lectured in the Law School's popular course on Race and the Law (alongside Senior Lecturer Dylan Asafo), which she will repeat in 2024, and has tutored on the large first-year course on Law and Society. She has also given several guest lectures for various courses, including the Arts Scholars programme.

Despite this demanding set of duties, Barbara-Luhia has managed to find time for research: she is working on a book chapter about structural racism in Aotearoa New Zealand. And she looks forward to undertaking further postgraduate studies to boost her new academic journey. Asked whether she has any regrets about the "road not taken" as a litigator, Barbara-Luhia says: "I have loved my time working as a Susuga Faiako in the Folaui Team. I really enjoyed and benefited from being mentored by the senior members in our team and this has encouraged me to pursue a range of opportunities in teaching, research and service at the Law School." ■

# Eru Kapa-Kingi

MAUREEN MALCOLM

**NEW PROFESSIONAL** Teaching Fellow, Eru Kapa-Kingi is a man of few words, whose achievements speak for themselves. A graduate of Te Panekiretanga. A Māori Party list candidate in the 2023 election. A graduate of Victoria University of Wellington but most importantly Eru is a kaupapa-oriented man who has dedicated much of his life to Te Ao Māori. We are lucky to welcome Eru into our whānau here at Waipapa Taumata Rau.

Eru is a descendant of Te Aupōuri, Ngāpuhi ki Whangaroa, Waikato and Te Whānau-a-Apanui. When speaking about his early life, he always uses the word "we", which is a nod to the fact that he is a triplet.

When he and his siblings were growing up,



Eru Kapa-Kingi.

their parents deliberately made them aware of what was happening around them and in te ao Māori. Conversations around Te Tiriti o Waitangi and He Whakaputanga were normal dinner conversations in their whare. Te reo Māori was also important at home. They were often taken to hui and kaupapa around the motu. Looking back Eru believes that these were all important elements in shaping him.

Growing up Eru started noticing inequities within his own community. Not everyone was treated the same, which instilled in him a sense of justice. Before starting high school he and his siblings were fortunate enough to get scholarships to attend Huanui College near Whangārei. Here he saw a world vastly different to what he was used

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to. Though grateful to have thereby received a quality mainstream education, he questioned why this wasn't an opportunity available to everyone.

During his teenage years Eru also turned away from his Māoritanga. At that time being Māori was not celebrated in the way it is now. Interestingly, going to Victoria University changed Eru's perspective about being Māori. Seeing other young Māori embrace their Māoritanga restored his pride in being Māori and made him acutely aware of the power of identity. He started to reconnect with his Māori language, which reawakened a part of himself that lay dormant.

While at Victoria University he studied Law which opened another realm of thinking for him. Through studying Law, he could see much more clearly the connection between Te Tiriti o Waitangi, Tino Rangatiratanga and Māori legal and political power. He finished at Victoria with an LLB with Honours and a BA in Te Reo Māori.

From there he clerked at the Auckland High Court and then joined the Māori team at Chapman Tripp, where he had summer-clerked previously.

Making the move into the academic world wasn't a huge shift for Eru as he had already done some teaching in Māori studies at

Victoria University. He enjoyed teaching because it was an opportunity to influence a new generation of students. In terms of moving into the Law School, while in practice Eru saw first-hand what an absence of education in tikanga looks like. When he was approached about this job he seized the opportunity to influence the future legal profession. His experience so far has shown him that there is hope for an Aotearoa hou, where being Māori is neither a source of shame nor fear and can be embraced by all peoples. ■

## Beatrice Tabangcora

GUY FITI SINCLAIR

**THE NEWEST** member of the Law School's Folau (Pacific staff) team comes with a wealth of experience in teaching, research and practice on legal issues in Oceania.

Born in Hawai'i to Samoan and Filipino parents, Beatrice Tabangcora was raised in Apia. After completing her secondary schooling, she moved to Port Vila, Vanuatu, to study Law at the University of the South Pacific (USP). She then completed a Master of Laws at Victoria University of Wellington, where she was awarded the Quentin Baxter Prize in International Law. While in Wellington she undertook internships at the Ministry of Business, Innovation and Employment and the Ministry for the Environment.

Beatrice returned to USP as a lecturer, coordinating and teaching courses in Introductory Law, Tort Law, and Commercial Law. However, her contributions went far beyond the classroom: she devised and coordinated a First-Year Initiative Programme, which provides a range of support and assistance services to over 150 first-year law students; she organised and facilitated public-awareness sessions with the USP Community Legal Information Centre; she contributed to a range of other committees and activities at the Law School; and she worked as a legal consultant, reviewing and suggesting reforms to Vanuatu's price-control framework. In addition, she was an active



Beatrice Tabangcora.

supporter (formally recognised as a "Friend") of the World Youth for Climate Change Initiative, which earlier this year was successful in persuading the United Nations General Assembly to request an advisory opinion on climate change and human rights from the International Court of Justice.

So far Beatrice's research has focused largely on legal issues in Samoa. In addition to contributing the chapter on her home country in a recent survey of Pacific legal systems,<sup>1</sup> her publications include articles on the revival of criminal libel in Samoa, the 2020 amendments to Samoa's constitution and legal issues in the 2021 elections. Looking ahead, Beatrice expects to maintain a keen interest in current legal issues

in Samoa. "However, I plan to focus my research on the development of torts law in the Pacific, an area that has been somewhat neglected in legal scholarship in the Pacific in the past years."

At Auckland Law School Beatrice joins Barbara-Luhia Graham in the role of Susuga Faiako/Professional Teaching Fellow, greatly augmenting the Folau team's capacity to serve Pacific students. In only a few months, she has already made notable contributions in drafting the Pacific Issues Moot problem, and in helping to prepare the course materials and teaching into South Pacific Legal Studies. Everyone who meets her is impressed by Beatrice's positive energy, good humour and can-do attitude. When asked what motivated her to join the Folau team, she says it comes down to service.

"Service is an integral part of our Samoan culture. From young we are taught to serve our families and communities wholeheartedly. No matter where I am I strive to incorporate my cultural values into my work, research or teaching. I am humbled and grateful for this opportunity to serve our Pacific students, and students undertaking research on Pacific law, at Auckland Law School." ■

<sup>1</sup> Beatrice Tabangcora, "Samoa", in Tony Angelo and Jennifer Corrin (eds), *Introduction to South Pacific Legal Systems: Introducing Sixteen Gems* (2021) 249–302.

## Wiremu Tipuna

NICOLE ROUGHAN and SOPHIE BOLADERAS

**WIREMU TIPUNA** (Ngāti Kahungunu ki Wairoa, Ngāti Mākoro) joined us in November 2022 as Kaiārahi o Te Wāhanga Ture – Principal Leader and Cultural Adviser at the Law School.

Wiremu's background in tertiary education spans 16 years, including positions as Takawaenga Māori (Māori Liaison – Māori Student Support) and Kaihautū Mātauranga Māori/Kaitaunaki Reo (Māori Knowledge and Language Lead Advocate – Staff Development and Cultural Engagement) at AUT.

For his various roles at AUT, Wiremu's work was recognised in the ATEM Best Practice Awards in Tertiary Education Management with the UAC Award for Excellence in Student Engagement 2019. Wiremu received the AUT Vice-Chancellor's Excellence Award for Professional Excellence in 2018. In 2022, Wiremu was Highly Commended for the Australasian AHEIA Award for Excellence in People & Culture for his work as Katiaunaki Reo.

Wiremu completed a Master of Arts Māori Development in 2015. He was the recipient of a Wairoa Waikaremoana Māori Trust Board Postgraduate Research Scholarship in 2017, a Kahungunu Research Grant in 2017 and Roy Watling Mitchell Prestigious Professional Scholarship from the Māori Education Trust in 2012.

Wiremu's career in tertiary education



Wiremu Tipuna.

comes after diverse experience including 14 years as an electrician and four years as a personal trainer. Wiremu says he didn't have an academic background. His father worked as a general hand and fencer on farms across Wairoa.

Wiremu could not speak te reo Māori until 2006, but says when he headed down that path it opened many doors.

Coming into the role of Kaiārahi, Wiremu set a personal goal to increase grade point averages over the next five years by "moulding a model where Māori can see themselves being a part of it".

"I'm really excited and passionate about the role because it means supporting Māori and Pacific success. It allows me to speak at

an executive level, advocate for ideas and share our vision of who we wish to be and what success looks like to us. We explore how we can make good contributions to our communities within and outside the University.

"My priority is to see the success of Māori learners. I look through the lens of a multi-faceted linguist. I support the Faculty and staff by developing and supporting tikanga."

Those inside the Law School have already been fortunate over the past year to experience Wiremu's incisive contributions across the Faculty's diverse programmes and projects. To those outside the Law School, Wiremu's most visible impact has been the leadership and aroha he brings to formal and informal events. Thanks to Wiremu's encouragement, his teaching and his own beautiful harmonies we have been upping our game with new waiata. Just one example is the impression Wiremu made when he was thrown into immediate duties in support of the major Constitutional Kōrero conference hosted by Te Wai Ariki in November 2022. Wiremu's skills and grace under pressure were remarked upon by many participants, who were moved by his waiata responding to and respecting the disagreements that were aired in that forum.

We are very lucky to have Wiremu with us at the Law School, alongside his other roles as a father, foodie, diver and footy fan. ■

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# David V Williams, FRSNZ

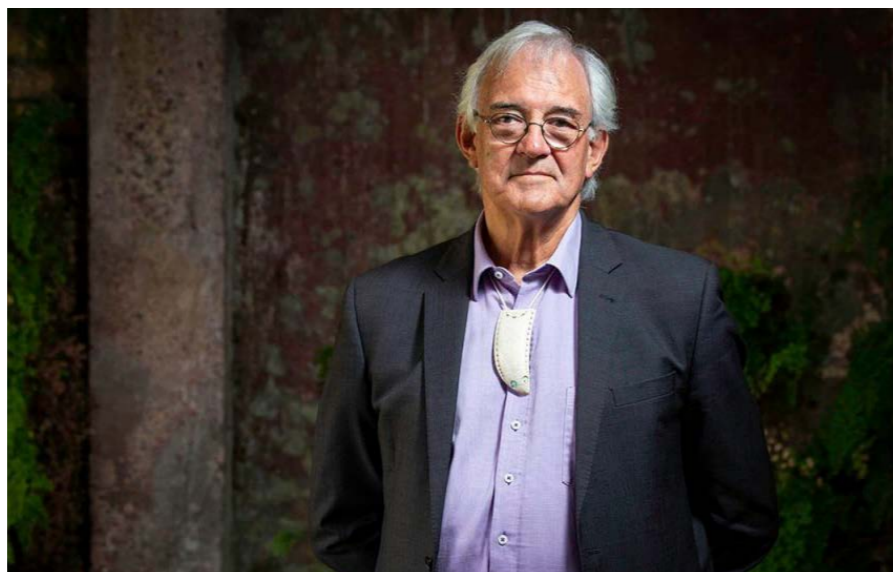
## Appointment to the Waitangi Tribunal

KATHERINE SANDERS and JAYDEN HOUGHTON

**IN HIS VALEDICTORY** lecture of 2018, Professor Emeritus David V Williams, FRSNZ, shared stories of his time as a “political busybody”, protester, pen thief, teacher, historian and voyager to Antarctica. David’s valedictory also challenged his audience to work towards a more just future. It is testament, then, to his commitment to justice that he takes up his own challenge in this new chapter of his distinguished career as a member of the Waitangi Tribunal.

In March 2023, David was honoured with an appointment to the tribunal to sit on the Wai 3300 Constitutional Kaupapa Inquiry, which will examine claims concerning New Zealand’s constitution, self-government and the electoral system. David joins Kevin Prime, Derek Fox, Prue Kapua and Dr Grant Phillipson in a panel chaired by Caren Fox, Chief Judge of the Māori Land Court and Chair of the Waitangi Tribunal. Kaupapa inquiries focus on issues of national significance. The Constitutional Kaupapa panel will investigate how Māori voices are heard before government decisions are made and legislation is created. For David, the inquiry is a “chance to consider what a constitution would look like if Te Tiriti was its basic foundation”. Further, when Māori are an Indigenous minority, “how can their voice be heard in a meaningful way when the elected majority can always get its way?”

David’s appointment to the tribunal draws together interests that have shaped his 46 years as a public academic. It recognises his legal and historical expertise and longstanding commitment to critical inquiry into both the constitutional histories of Aotearoa New Zealand and its constitutional future. In recent interdisciplinary work with Professor Cris Shore, “The Shapeshifting Crown: Locating the State in Postcolonial New Zealand, Australia, Canada and the UK”, David examined the changing nature of the Crown, and its many ambiguous meanings. Some highlights of David’s work in colonial legal history include his books *A Simple Nullity? The Wi Parata case in New Zealand law & history* and *Te Kooti tango whenua: The Native Land Court 1864-1909*. David has brought this historical



Professor Emeritus Dr David V Williams, FRSNZ.

rigour and imagination to his constitutional scholarship. For example, a paper published in the *New Zealand Universities Law Review* used the metaphor of a “bridle”, first proposed by 13th-century English writer Henry de Bracton, to argue the Treaty of Waitangi should constrain parliamentary supremacy.

David has also been engaged as an expert on several occasions by the tribunal and in judicial proceedings. In 1997 David was commissioned by the tribunal to write a report on the nature and extent of Treaty rights held by iwi and hapū in Indigenous flora and fauna, cultural heritage objects and valued traditional knowledge. David’s philosophy and methodology for that report will have prepared him well to take Te Tiriti as a starting point for the Constitutional Kaupapa Inquiry. David wrote at the time: “The starting point for the consideration of the claim must be concepts and categories of te ao Māori, rather than commencing with Crown policies and proposals and then trying to accommodate Māori concerns in a framework and agenda for reform that has already been stipulated by those Government policies”. Subsequently, in

“...think about and argue about myths of a modern Aotearoa New Zealand constitution”.

1999 David was commissioned by the tribunal to complete an exploratory overview report for the Wai 262 claim, providing an analytical narrative of Crown policy affecting Māori historical and contemporary knowledge systems. These reports were fundamental to the Wai 262 inquiry. A notable example of David’s work in the courts is when he provided expert evidence as a legal historian on behalf of the appellants in the landmark case on Crown-owed fiduciary duties to Indigenous peoples, *Proprietors of Wakatū v Attorney-General* [2017] NZSC 17, [2017] 1 NZLR 423.

Even in his retirement from teaching, David’s scholarship continues to feature prominently in students’ legal education right through

the curriculum, from courses on Cultural Property and Indigenous Intellectual Property to Contemporary Tiriti/Treaty Issues, Māori Land Law and Legal History. David’s constitutional work also remains a bedrock for LAW 121G Law and Society, the first course prospective law students take at the University of Auckland. David, with his colleagues Jane Kelsey and Ani Mikaere, designed this introductory course decades ago, insisting on an immediate central focus on He Whakaputanga and Te Tiriti, which remains. David says a crucial aspect of the Constitutional Kaupapa Inquiry will be to identify opportunities to enable Māori iwi and hapū to revitalise tikanga Māori and

give practical effect to tino rangatiratanga. David’s work has long considered these questions. David has worked with many iwi as an historian and claims negotiator, especially with Ngāti Whātua Orakei in a relationship going back to the occupation of Takaparawhau/Bastion Point in the 1970s. A committed public academic, David has also spoken out about the benefits of Treaty settlements and co-governance and in support of hapū and iwi-led initiatives in response to Covid.

In a 2007 paper David called on us to “think about and argue about myths of a modern Aotearoa New Zealand constitution” and

seek “a constitution that arises from this land and makes sense to the peoples of this land”. In the Constitutional Kaupapa Inquiry, David continues this mahi, asking challenging questions about meaningful representation for Māori and a truly autochthonous constitution based on Te Tiriti. In this work, David is supported by his wife, novelist Helen McNeil, and proud whānau. ■

**Whāia te iti kahurangi, ki te tuohu koe, me he maunga teitei**

**Seek the treasure that you value most dearly; if you bow your head, let it be to a lofty mountain.**

# Treasa Dunworth

## Auckland Law School Award for Sustained Excellence in Teaching

MARK HENAGHAN

**CONGRATULATIONS** to Associate Professor Treasa Dunworth for the Auckland Law School Award for Sustained Excellence in Teaching.

Treasa is a committed, diligent and passionate teacher. Her work with our cohort of Pacific Island students over many years stands out in a long list of teaching achievements and activities. In her capacity as (Acting) Associate Dean Moana Oceania, she supported, mentored and challenged the students. She not only provided leadership to the students (and to her former students, Dylan and Litia in the Folau team), but also engaged in considerable “hands-on” teaching with this cohort. For example, she would take writing workshops for senior students; she ran an “honours club” for many years to prepare the top students for application to honours (or sometimes, to even aspire to be invited into the honours programme). She unfailingly attended the “boot camps” that for many years were held off-site for Pacific and Māori students. For several years she sought funding for and supported students to do research into various aspects of Pacific Law, and she would attend the law and culture conferences with the students for them to deliver their papers and present their findings.

Besides these very tangible manifestations of her care for the students and



Treasa Dunworth.

determination to help them excel academically, she encouraged students to create their own culturally appropriate learning spaces (physically and otherwise) and she worked hard and consistently to protect and nurture those spaces. She read widely to educate herself on “affirmative action” programmes and on issues of substantive equality within tertiary education. She was always mindful that as a palagi, the programme needed to be led by a Pacific person, and reflecting that she always insisted on her designation as “Acting” AD to signal that her time leading

the programme could only ever be a temporary, stop-gap measure.

Outside the Moana space Treasa maintains the same level of care for all her students. She is a popular and excellent supervisor. She always has a waiting list for supervisions as students know that she not only will challenge them to do their very best work, but also do so with kindness and compassion. Her supervision strategy is structured and careful but not punitive. She takes the time to give detailed written feedback on drafts and has meetings with students to ensure they are not overwhelmed and understand her guidance.

Classroom teaching is also an area in which Treasa excels – her student teaching evaluations demonstrate this. Common themes from her student feedback are her passion and enthusiasm for her subject (whether it is legal method or her disarmament course); her respectful and inclusive manner in the classroom; her self-deprecating sense of humour; and her careful and helpful feedback on various assessments to allow students to continuously improve their performance. Once again we see her maintain the highest academic standards while being warm and genuinely caring for the students. ■

# Peter Devonshire

## The Equitable Remedy of an Account of Profits

**PETER DEVONSHIRE'S** inaugural Professorial lecture was introduced by the Hon Justice Stephen Kós, who was recently appointed to the Supreme Court. Justice Kós gave an erudite and entertaining presentation on the nature of law and private law in particular.

The proceedings concluded with a vote of thanks, engagingly presented by Dr Noel Ingram KC, an alumnus of Auckland Law School.

The inaugural lecture was an account of profits originated in the late Middle Ages as a common law procedure.<sup>1</sup> In one of its earliest forms an account was limited to proceedings against manorial bailiffs who had failed to record for rents and profits received on behalf of the lord of the manor.<sup>2</sup> The action gradually extended to wider classes of persons entrusted with money.<sup>3</sup> Ultimately it evolved from narrow and specific relationships to cases where parties were strangers.<sup>4</sup>

Although an account of profits originated as a common law proceeding, it has for several centuries been the purview of equity. How this came to pass reflects a simple paradigm familiar to scholars of equity – in the great jurisdictional rivalry between Chancery and the courts of law, Chancery simply did things better. Chancery's administrative procedures and inquisitorial techniques facilitated by the practice of compelling a party to account on oath made it particularly suited for unravelling misconduct and evidential complexities.<sup>5</sup> Perhaps not surprisingly an account of profits ultimately evolved into a general equitable remedy dispensed in the court's auxiliary and exclusive jurisdiction.

Turning to its modern application, first and perhaps foremost an account of profits arises in cases of breach of fiduciary duty – importantly, this includes breach of trust. Its scope is wide, fuelled in part by the expansion of the fiduciary principle from the traditional trust to a diverse range of personal and commercial relationships. The remedy also has an important role in proceedings for breach of confidence,<sup>6</sup> intellectual property infringement<sup>7</sup> and certain common-law wrongs.<sup>8</sup>

In defining the modern application of an account of profits, much can be garnered from its function in respect of fiduciary



Professor Peter Devonshire delivers his inaugural lecture.

relationships. The standards governing fiduciary duty are notoriously strict. The fiduciary's obligation to disgorge illicit gains is calculated to discourage temptation and enforce the highest ethical standards. It is settled law that a fiduciary is accountable regardless of whether the principal has suffered any loss<sup>9</sup> or the principal would not<sup>10</sup> or could not obtain the profit.<sup>11</sup> The fiduciary must act unselfishly, subordinating his or her personal interest to the principal. From this perspective it must be asked whether an account of profits reflects, or departs from, that normative regime. This can be explored by reference to the contrasting positions of causation and allowances.

The stringent standards for fiduciary duty are reflected most notably in the reduced scope of causation and limiting principles such as remoteness, foreseeability and intervening cause. Moreover the court is reluctant to engage in speculation as to what might or might not have happened if there had been no breach of duty.<sup>12</sup> To do so would undermine the paramount objective of the deterrent principle.

In a secondary sense causation has a bearing on the content of an account. On the taking of accounts a defaulting fiduciary is not required to account for

more than he or she actually received.<sup>13</sup> The fiduciary may therefore be permitted to set off certain claims against gross profits.<sup>14</sup> This is consistent with the view that an account of profits is restitutionary and that an applicant for relief must not unfairly deny value provided by the defendant. Accordingly a fiduciary may be reimbursed for expenses reasonably incurred in obtaining profits. This is not inconsistent with the enforcement of strict fiduciary duty. The reimbursement of expenses is not a reward. An expense is the economic cost of generating a financial return, which ultimately inures to the principal. Subtracting expenses from gross receipts reflects the orthodox view that a fiduciary is accountable for net gains.<sup>15</sup> If this were not so, the fiduciary would effectively be funding the profit-making activity. Profit should therefore be understood in its usual sense as the margin of receipts over costs. Expenses are a legitimate deduction from accountable gains and such awards do not offend the normative regime for liability.

In addition allowances may be granted for the fiduciary's industry, enterprise and skill in generating the illicit profit.<sup>16</sup> It is difficult to reconcile such awards with the expectation that those in a position of trust must conform to the highest ethical

standards and be financially disinterested in the execution of their duties.<sup>17</sup> If an allowance is classed as a profit to the defendant rather than a labour cost to the plaintiff, it can be argued that the value of the errant fiduciary's services should be disallowed because it condones a breach of trust and conflicts with the profit rule.

Overlaying these principles, there are settings where the case for allowances is strong and awards may be granted on a liberal scale without profoundly undermining the standards of fiduciary duty.

First, a fiduciary may have made unauthorised gains pursuant to a transaction that is voidable at the instance of the principal. In rescinding a contract, the principal may recover property and any associated profits. If the fiduciary acted in good faith and to the principal's advantage, a claim for liberal allowances for post-contract performance may be justified.<sup>18</sup> Second, some breaches of fiduciary duty do not in any realistic sense represent an opportunity that the trust has foregone.<sup>19</sup> Third, there are contexts where a strict duty to account does not reflect the nature of the relationship. An account of profits has become increasingly nuanced as it moves from the sanctity of trust obligations to a diverse range of personal and commercial relationships that may be recognised as fiduciary. At one end of the spectrum these include commercial joint ventures,<sup>20</sup> and at the other the relationship of parent and child.<sup>21</sup> In a contemporary setting fiduciary duty is a chameleon, responding to different intensities of obligation. The remedy is necessarily tailored to the context.

As a result of its alignment with fiduciary doctrine, an account of profits will continue to play a pivotal role in enforcing relationships of trust. Its parameters will be tested by the scope of the doctrine it serves. Much depends on where, philosophically and practically, the line should be drawn. Ultimately this raises the taxonomy of civil wrongs and whether and to what extent equity displaces tort and contract as a basis of obligation. That is a broader debate best left for another day. For present purposes it can be said with confidence that an account of profits will continue its resolute journey into the future. ■

*This is a summary of Professor Peter Devonshire's inaugural lecture, 10 May 2023, titled "The long and resolute journey of an account of profits".*



Justice Stephen Kós, left, and Peter Devonshire.

### Endnotes

- W Holdsworth, *A History of English Law* (3rd ed, Little Brown, Boston, 1923) vol 2 at 367.
- SFC Milsom *Historical Foundations of the Common Law* (Butterworths, London 1969) at 238-239.
- SJ Stoljar "the Transformation of Account" (1964) 80 LQR 203.
- E Belsheim "The Old Action of Account" (1932) 45 Harv L Rev 466.
- W Holdsworth, *A History of English Law* (Methuen, London, 1924) vol 5 at 288.
- Attorney-General (UK) v Heinemann Publishers Australia Pty Ltd* [1987] 10 NSWLR 86 (CA).
- In the intellectual property sphere an account of profits is generally a statutory remedy. However, the order retains its status as an equitable remedy and is applied by reference to general equitable principles. See *Nova Chemicals Corporation v Dow Chemical Company* 2022 SCC 43 at [108]; *Lifestyle Equities CV v Ahmed* [2021] EWCA 675 at [7].
- See P Devonshire, *Account of Profits* (Thomson Reuters, Wellington, 2013) Chapter 7.
- Attorney General v Blake* [2001] 1 AC 268 (HL) at 280.
- For example, *Boardman v Phipps* [1967] 2 AC 46 (HL); *Regal (Hastings) Ltd v Gulliver* [1967] 2 AC 134n (HL).
- For example, in *Attorney General for Hong Kong v Reid* [1994] 1 AC 324 (PC) where the subject matter was a bribe.
- Ex parte James* (1803) 8 Ves 337 (Ch) at 345.
- Vyse v Foster* (1872) LR 8 Ch App 309 at 333.
- Or such profits as might reasonably have been obtained but for the wrongdoer's wilful default.
- Nicholls v Nicholls* [2020] NZCA 346 at [72].
- In limited cases, a defaulting fiduciary may be entitled to participate in the profits of unauthorised activities. Such awards are rare outside the realm of intellectual property infringement and will not be discussed further in this paper.
- See J Palmer "The Availability of Allowances in Equity: Rewarding the Bad Guy" (2004) 21 *New Zealand Universities Law Review* 146.
- O' Sullivan v Management Agency & Music Ltd* [1985] QB 428 (CA).
- Boardman v Phipps* [1967] 2 AC 46 (HL).
- United Dominions Corporation Ltd v Brian Proprietary Ltd* (1985) 157 CLR 1; *Chirnside v Fay* [2007] 1 NZLR 433 (SC); *Ross River Ltd v Wavely Commercial Ltd* [2013] EWCA Civ 910.
- M (K) v M (H)* [1992] 3 SCR 6; *D & E Ltd v A, B and C* [2022] NZCA 430.

# Jodi Gardner

## Inaugural Brian Coote Chair in Private Law

MARK HENAGHAN

**PROFESSOR JODI** Gardner is the inaugural Brian Coote Chair in Private Law, coming to the University of Auckland after completing her DPhil at Oxford and working as a Fellow of Law at St John's College, University of Cambridge. Jodi has a very distinguished academic record, which began with an LLB and Bachelor of International Relations at Griffith University, where she won the Graduate University Medal, the Law Medal and International Relations Medal. She then went on to complete an LLM at the Australian National University, before completing a BCL/MPhil at Magdalen College, University of Oxford. Her DPhil in Law, "How to Approach High-Cost Credit: Beyond Freedom and Protection", was completed at Corpus Christi College, University of Oxford, in 2018. Jodi was the runner-up in the Cambridge Vice-Chancellor's Award for Research Impact and Engagement.

Having a background in both legal practice and academia, Jodi started her career as a consumer advocate at the Centre for Credit and Consumer Law in Australia. She then qualified as a solicitor and worked at Clayton Utz Solicitors in litigation and banking and finance before moving to Caxton Legal Centre as a community lawyer specialising in consumer protection. Jodi's expertise has been recognised internationally: she has previously held visiting positions at the Woodrow Wilson School of International and Public Policy (Princeton University), Centre on Household Assets and Savings Management (University of Birmingham), Columbia Law School and the Max Planck Institute for Comparative and International Private Law, and is currently a Senior Adjunct Research Fellow at the Centre for Banking and Finance Law, National University of Singapore.

Jodi's primary research interest is in the law's relationship with inequality, particularly how apparently neutral private-law rules can exacerbate existing vulnerabilities. In her recently published monograph, *The Future of High-Cost Credit: Rethinking Payday Lending*, Jodi explored the theoretical grounding,



Professor Jodi Gardner.

policy initiatives and interdisciplinary perspectives associated with this potentially exploitative market. In his forward to the book, Lord Leggatt (a current Justice of the Supreme Court of the United Kingdom) notes that Jodi's research is "philosophical and intensely practical", commenting that "questions raised and the thoughts provoked have ramifications that extend more broadly about how the balance should be struck in our law and our society between freedom of contract and the protection of consumers". The book was shortlisted for the Peter Birks Prize for Outstanding Legal Scholarship.

In general terms, Jodi's research looks at the relationship between private law and social policy. She analyses how private law interacts with social welfare, including the limitations of doctrinal law in responding to the challenges posed by poverty and inequality. Jodi's research has covered topics including inequality in contract law, vulnerability in tort law, high-cost credit agreements, the impact of austerity measures, debt-collection contracts, the effect of technological developments on equality and financial exclusion, and concurrent liability in tort and contract.

Jodi's research has been highly impactful in law reform. The Financial Conduct Authority in the United Kingdom invited her

for a briefing in relation to the total cap on credit, which contributed to law reforms in the United Kingdom. Her research at the National University of Singapore has influenced the country's money-lending laws and bankruptcy regime. Jodi was also approached by the Archbishop of Canterbury's task force to conduct research on time delay to access credit.

Jodi is well known for her interdisciplinary approach to research. She is currently looking at the post-pandemic economic system and the relationship between debt and inequality. More recently Jodi has submitted two edited collections with Hart Publishing, one on landmark cases in consumer law (with Iain Ramsay) and the second on politics and private law (with Sarah Worthington).

Jodi is also an outstanding teacher. She is a fellow of the United Kingdom Higher Education Academy and she has completed a Postgraduate Diploma in Teaching and Learning at the University of Cambridge. In 2022 Jodi was awarded the Cambridge University Student-Led Teaching Award for working in partnership with students, and in 2021 she was awarded the Cambridge University Student-Run Association Law Award for Lecturer of the Year.

Jodi comes into the faculty at a time when the University of Auckland is emphasising transdisciplinary research. She is a leader in the field of transdisciplinary research and will bring all her skills and knowledge to the Law Faculty. Jodi has a vibrance and a love for teaching and research that is infectious. She is the ideal candidate for the inaugural Brian Coote Chair in Private Law and we are delighted that she is with us.

Jodi grew up in Darwin, Australia. She is a mother of five beautiful children, and her husband, Seb, has connections with Aotearoa New Zealand. We look forward to working with Jodi and sharing her enthusiasm and love for teaching and research. ■

# Claire Charters

## Law professor joins Human Rights Commission

SOPHIE BOLADERAS

**IN 2023** Indigenous rights scholar and activist Professor Claire Charters stepped into a new role with the Human Rights Commission while continuing her work at Auckland Law School.

Claire (Ngāti Whakaue, Ngāti Tūwharetoa, Ngā Puhi and Tainui) was formally appointed to Te Kāhui Tika Tangata, the Human Rights Commission, to lead work on Indigenous Peoples' rights. Claire's appointment as Rongomau Taketake is for one year in a part-time capacity.

She was welcomed with a pōwhiri into the role of Rongomau Taketake, Indigenous rights governance partner on March 6.

"The pōwhiri was beautiful. I felt very welcomed and it was lovely that the Law School Kaiārahi and my Ngāti Whakaue kaumātua were there to hand me over to the Commission. It meant a lot."

Te Amokapua Chief Human Rights Commissioner Paul Hunt says the Commission, which partnered with the National Iwi Chairs Forum to bolster its Indigenous leadership, including the appointment of Claire, is delighted to have her on board.

"She brings internationally recognised expertise on Indigenous Peoples' rights that will greatly benefit the commission's work," he says.

In the new role Claire provides tangata whenua leadership with a view to enhancing the commission's governance. She also advises and supports existing projects and mahi to advance understanding of Te Tiriti o Waitangi and the United Nations Declaration on the Rights of Indigenous Peoples.

Progressing Indigenous Peoples' rights here is about honouring our tūpuna and ensuring future generations can achieve the vision set down in Te Tiriti o Waitangi.

Claire spearheaded the Constitutional Kōrero at Waipapa Taumata Rau in 2022. It saw leading minds on constitutional law and politics discuss arguments and options for constitutional transformation to realise Māori rights within Te Tiriti o Waitangi, He



Professor Claire Charters and Chief Human Rights Commissioner Paul Hunt.

Whakaputanga and the UN Declaration on the Rights of Indigenous Peoples.

She has published and spoken widely on the declaration, as well as comparative Indigenous constitutional rights in New Zealand, Canada and the United States, and tino rangatiratanga and tikanga Māori in Aotearoa. She sees an opportunity within her new role to uplift the Indigenous rights work the commission is undertaking.

"I'm looking forward to putting into practice a lot of my hopes and ambitions for constitutional transformation and the realisation of Indigenous peoples' rights. Progressing those rights is about honouring our tūpuna and ensuring future generations can achieve the vision set down in Te Tiriti o Waitangi to enjoy equality alongside all New Zealanders," says Claire.

Meanwhile, Meng Foon, the Kaihautū Whakawhanaungatanga-ā-Iwi Race Relations Commissioner, says the Forum's selection, and Claire's appointment, are another step towards the commission respecting and implementing te Tiriti o Waitangi.

"Claire has extensive experience working on the United Nations Declaration on the Rights of Indigenous Peoples and that will be a huge asset as we support the

**"Progressing Indigenous Peoples' rights here is about honouring our tūpuna and ensuring future generations can achieve the vision set down in Te Tiriti o Waitangi."**

implementation of the declaration here in Aotearoa New Zealand," says Meng.

National Iwi Chairs Forum Pou Tikanga Professor Margaret Mutu hopes the commission's joint initiative with the forum is one that the whole public sector can learn from.

"We relish this opportunity to work with Te Kāhui Tika Tangata to ensure that it is responsive and accountable to tangata whenua aspirations and needs," says Margaret. ■

# Warren Swain

## Acting Dean at Auckland Law School

Interviewed by MARK HENAGHAN

**PROFESSOR WARREN** Swain was elected to a Fellowship of the Royal Historical Society in 2022 based on his original contributions to Legal History scholarship. Warren talks about his work in legal history.

### When did your interest in history begin?

"I have been interested in history for as long as I can remember. As a very small child at primary school like so many people of my age I was certainly introduced to history through the Ladybird books. My parents joined me up to a public library as soon as I could walk and from an early age I pretty much read anything that I could get my hands on. I studied history in sixth form and did consider reading history at university but in the end thought that law probably offered better career prospects. At Oxford we were only given a choice of two electives, and I took English Legal History with Jeffrey Hackney and David Ibbetson, both of whom in their different ways were inspirational. I then studied the somewhat esoteric and now defunct course, the Legislation of Edward 1st, on the BCL, and read for a DPhil with David on the history of contract law."

### What is it about legal history that fascinates you?

"All history fascinates me. Sir Walter Scott summed it up very well for lawyers in the 19th century: 'A lawyer without history or literature is a mechanic, a mere working mason; if he possessed some knowledge of these, he may venture to call himself an architect'. I am particularly fascinated by legal change. What really interests me is why the law developed in one way rather than another. There are parallels with another historical interest of mine in military history. The reasons why battles and wars are lost are complex – the egos of the generals, political pressures, equipment, terrain, weather, morale, public opinion and sometimes plain stupidity. The line between success and failure is often slight. Obviously legal history is rather less catastrophic but the multiple factors, and the balance between them, make it difficult not to be fascinated. I am sceptical that legal change



Warren Swain.

can be put down to a single theory, idea or even moment in time. I like the fact that legal history is deceptively, intellectually tough. A legal historian not only has to understand the law but also try their best to understand the wider society and legal system that produced it."

### How do you decide what issues in legal history that you will explore? Can you give examples of the areas of legal history that you have explored?

"I largely focus on the history of private law, particularly contract, tort and unjust enrichment. But also legal biography. I write on modern law and certainly don't think of myself as just a legal historian. I have co-authored a book on modern contract and another on unjust enrichment is under contract. At my stage some of what I write about is increasingly chosen for me in that I am asked to contribute to a book or give a talk on a particular subject. I have something of a magpie mind and a low boredom threshold. In the last 10 years, in

addition to a big book on the history of English contract law in the 18th and 19th centuries, I have written on historical subjects as diverse as vicarious liability, intoxicated contracting, Indian contract law, the Napoleonic code, the legal liability of owners of domestic animals, small claims in 19th century New Zealand and Australia, the New Zealand contract statutes, contract law in New Zealand in the 1840s-1860s, reform of usury in 19th-century Australia, law and public policy and equitable doctrine in contract. At the moment I am writing a paper on charities law reform in early Victorian England."

### What frontiers of legal history do you think have been underexplored?

"In the late 1990s the leading living English legal historian Sir John Baker wrote that 'few other fields apart from archaeology can offer as much opportunity to delve into unbroken ground and recover lost worlds'. Sir John was primarily talking about the huge amount of primary sources that are still unexplored. He is right. From my own periods of interest in the 18th and 19th centuries there are lots of barristers' and judges' notebooks, for example, that remain inaccessible. These often add detail missing from printed reports, which in any event were not very extensive until the mid-19th century. The history of colonial private law especially is massively unexplored. In New Zealand this has become a bit easier with the electronic availability of newspapers that can be searched. With a few notable exceptions modern legal history, meaning in the 20th century, generally is also particularly poorly served by scholars. I hope to write a book on the history of contract, tort and unjust enrichment, from 1945 to 2000."

### How do you find the research material for all that you research and write about?

"Much of the material is from printed sources whether in books or law reports. Some is archival including court records but also records of law-reform bodies. This is often more fascinating than one might think. The material relating to the New Zealand Contract

and Commercial Law Reform Committee gave a real insight into the opinions of those involved who included people like Brian Coote, Colin Patterson and Donald Dugdale."

### What are the main controversies in legal history in terms of the methods of doing it?

"There are two challenges facing legal historians. First is that some historians tend to think that legal history is not 'proper' history. This is wrong. A great 19th century figure like FW Maitland was a serious historian as well as a lawyer. It is true that there are few Maitlands about, but legal history is now a strong and diverse discipline. The other problem is caused by those who dabble in legal history. These are often legal theorists of one sort or

another convinced that history can be used to support their particular hobbyhorses. The problem is that history is messy and rarely produces the easy or neat answers that these scholars pretend it does. Some appellate judges are not immune from this tendency either. An idea first made popular by Archilochus in ancient times and by Isaiah Berlin more recently helps here. A good historian is a fox who knows many small things rather than a hedgehog who knows one big thing."

### What do you think are the main lessons that we can learn from legal history?

"We need to be a bit careful about drawing direct lessons from history. Lawyers of course are used to dealing with precedent.

On a more sophisticated level societies change and the law with it. However, many problems that are fundamentally the same do present themselves albeit in different forms. Since the very earliest times societies have grappled with issues of what to do about people who fail to keep their agreements or who cause injury. One has only to look at the ancient Mesopotamian law codes of nearly 4000 years ago to realise that is the case. I hope to explore these sorts of ideas in a large study of the law of exchange and contract from early times to the present day. History is not simply a mirror of the present, but it enables us to understand our own place in the world and how that world works for good and ill, with a proper sense of humility." ■

# Simon Schofield

## Professional teaching fellow

MARK HENAGHAN



Simon Schofield.

**SIMON SCHOFIELD** is a professional teaching fellow at the University of Auckland Law School. Simon gained his qualifications at the University of Canterbury and began his career working as an employment-advocate exclusively for employers. He then worked as a solicitor at a large regional law firm before taking on the role as an associate in a boutique employment law firm. While in practice Simon advised on and acted in relation to the gamut of employment-law issues. Simon previously lectured on employment law at the University of Waikato, has lectured on employment law at the University of Auckland as a teaching fellow since 2021 and has now taken on a full-time teaching fellow position with the University of Auckland. Simon has written widely on employment law, is the editor of Wolters Kluwer's *New Zealand Employment Law Guide* and is a contributing author of *Mazengarb's Employment Law* by LexisNexis. He is also a member of the ADLS Employment Law Committee.

Simon is a very enthusiastic and passionate teacher. He is currently teaching

employment law, advanced employment law, torts and planning law. Simon puts a lot of preparation into his classes to ensure students get a strong grasp of the material. He goes the extra mile for his students to clarify any matter they may be struggling with.

Simon organised a very successful employment moot this year, which involved bringing in experienced practitioners and the legendary Dr Bill Hodge, who taught employment law in the Law Faculty for many years. The moot was very successful and gave students the opportunity to develop their oral skills and think on their feet.

Simon took part in Substantive Equality Month at the Law School by giving an excellent public lecture on how the country can do better in establishing fair pay within Aotearoa New Zealand. The lecture was very well attended. Simon answered various questions clearly as he has a strong interest in the area. ■

# Michael Littlewood

## The New Multinational Top-Up Tax and the rule of law

**PROFESSOR MICHAEL** Littlewood recently visited the Universities of Oxford and Cambridge and at Cambridge delivered a paper examining New Zealand's new Multinational Top-Up Tax and, in particular, whether the manner in which the government is proposing to impose it is consistent with the rule of law.

"As most people are aware, a tax bill is currently making its way through Parliament; and as most people are also aware it will, if enacted, raise the rate of tax on trustee income from 33 percent to 39 percent. What most people seem not to be aware of, however, is that this bill will also impose an entirely new tax on the profits of large multinational enterprises (MNEs). The Bill is called the Taxation (Annual Rates for 2023-24, Multinational Tax, and Remedial Matters) Bill 2023, and the new tax is called the Multinational Top-Up Tax.

"This new tax was designed by the OECD, and the OECD's plan is that every country in the world, or at least as many countries as can be persuaded or bullied into joining this campaign, should adopt it and impose it on large MNEs carrying on business within their territory. The basic thinking behind the new tax is that large MNEs – defined as those with annual revenues of €750 million or more – should be taxed at a rate of at least 15 percent.

"You might think that MNEs are already paying tax at a rate of at least 15 percent; but if you were to think that you would be mistaken. Over the past several decades most countries have reduced the rate at which they tax corporate profits so as to encourage investment. Even so most countries, including New Zealand, still tax them at more than 15 percent. For instance, New Zealand currently taxes corporations at 28 percent. But MNEs commonly pay less than 15 percent on their profits because they are able to arrange their affairs so that (a) their profits are earned by a subsidiary in a tax haven or (b) their taxable profits are less than their actual profits. See, for example, *Commissioner of Inland Revenue v Frucor Ltd* [2022] NZSC 113 – where, however, the taxpayer failed to achieve its objective.

"In principle the Multinational Top-Up Tax



Michael Littlewood punting in Cambridge.



The Bridge of Sighs.

**"The basic thinking behind the new tax is that large MNEs – defined as those with annual revenues of €750 million or more – should be taxed at a rate of at least 15 percent."**

is simple: any large MNE paying tax at less than 15 percent on its total profits will have to pay enough top-up tax to bring its overall rate of tax up to 15 percent – so any MNE already paying tax at 15 percent or more on its total profits will not be liable for any top-up tax. But for technical reasons too obscure to go into here, the new tax will be unavoidably complex, so the OECD produced a set of Model Rules (70 pages, published in 2021) plus a Commentary – another 228 pages, published in 2022 – illustrating how it is intended to work.

Some countries, for example the United Kingdom, are taking the orthodox approach to adopting the OECD's proposal: they are enacting legislation that gives effect to the OECD's recommendations but that accords with their usual style of legislative drafting and that does not incorporate any of the text produced by the OECD. The New Zealand government, however, has used a drafting technique called 'incorporation by reference' explained by a leading Canadian commentator as follows: 'This technique involves providing in a legislative text that material expressed elsewhere is part of the text, even though it is not reproduced in the text itself', so that the material referred to 'has the same binding legal effect as the legislative text and is judicially enforceable': John Mark Keyes, 'Incorporation by Reference in Legislation' (2004) 25 Statute Law Review 180. Thus the New Zealand Bill does not itself set out the rules providing for the Multinational Top-Up Tax. Instead it provides that the OECD's Model Rules are New Zealand law subject to a small number of exceptions. Moreover the Bill refers not only to the Model Rules but also to the OECD's Commentary on them. Thus once the Bill is enacted both the Model Rules and the Commentary will be part of New Zealand law. But that is not all, for these references are what is described as

'ambulatory' – that is the Bill does not refer to the version of the Rules published in 2021 or to the version of the Commentary published in 2022. Rather it refers to the Rules and the Commentary 'as amended from time to time' by the OECD. Any revision of either document by the OECD will of itself therefore constitute an amendment of New Zealand law. In other words the Bill effectively authorises the OECD to amend the scope of the New Zealand tax system. This is not a merely theoretical possibility because it is generally thought it is inevitable that the OECD will amend both the Rules and the Commentary and that the amendments are likely to be substantial.

"Incorporation by reference has several obvious advantages. First, the legislation is much simpler than it would be if Parliament had recast the OECD Rules in its own language: the New Zealand legislation giving effect to the OECD's Rules is only half a dozen pages; the British legislation, in contrast, is 116 pages. Second, the British approach invites argument as to the significance of the differences between the legislation and the OECD's Rules, whereas the New Zealand approach leaves no room for such arguments: once the Bill is passed, the OECD Rules *will be the law* – so there will be no differences. And third, if other countries adopt New Zealand's approach, there will be consistency between their tax systems. That is important because the types of tax planning engaged in by MNEs largely depend on exploiting gaps between two or more countries' tax rules (see again the *Frucor* case); to the extent that different countries adopt identically worded rules, there would be fewer such gaps.

"The 'incorporation by reference' technique is routinely used in various other contexts (for example, incorporating technical standards in regulations governing the construction and transport industries), but using it to impose a tax seems to be jurisprudentially and constitutionally novel and perhaps contrary to the rule of law. The New Zealand Parliament is supposedly supreme; if it chooses to authorise some other body, such as the OECD, to amend New Zealand tax law, it is presumably competent to do so. As for the rule of law, its meaning is contested. According to the 'thin' version of the concept, it is purely formal – all that is required is that legislation should be enacted in the proper form, that rules should be prescriptive not retrospective, that the judiciary should be independent and so on. According to the 'thick' version, the rule of law entails not only formal requirements but substantive elements also, such as democracy and respect for human rights – and, according



Divinity School, Oxford.

to Dame Susan Glazebrook writing extrajudicially, 'redress for historical disadvantage', such as in particular the disadvantage suffered by the Māori people as a result of colonisation and the taking by force of their land: 'The Rule of Law: Guiding Principle or Catchphrase?': [www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz).

"Complaints that a government has breached the rule of law are usually based on the thick version, because even the most odious governments – the Nazi regime, for example – are commonly able to comply with the thin version. But the Bill currently making its way through the New Zealand Parliament is in this respect unusual: it seems entirely compliant with the thick version – democracy, human rights, the redressing of historical disadvantage, etc; but arguably non-compliant with the thin version – using the incorporation-by-

reference technique to impose a tax, and authorising a body over which Parliament has no control whatever to amend the scope of the New Zealand tax system." ■

*Professor Littlewood's paper will be published in a book being edited by Professors Peter Harris and Dominic de Cogan, both of the Cambridge Law Faculty.*

# Shaneel Lal

## Auckland Law School student and Young New Zealander of the Year

**I WAS BORN** in Fiji to a native Fijian and Indo-Fijian family. It was a few months before Fiji's third coup but the first ethnic coup. For the first time in 1999 an Indo-Fijian was elected Prime Minister of Fiji. In 2000, approximately four months after I was born, a small group of native Fijian nationalists walked into Parliament and, at gunpoint, asked the Indo-Fijian members of Parliament to either resign or get shot. The coup leaders terrorised the country; they burned stores owned by Indo-Fijians, smashed cars and set barbed wires on the road. There had always been racial tensions between native Fijians and Indo-Fijians, but when the coup leader started the coup, it emboldened those who despised Indo-Fijians to act on their hatred. Native Fijians who showed solidarity with Indo-Fijians were treated like Indo-Fijians. The President of Fiji supported the Indo-Fijian Prime Minister and refused to endorse the coup-leaders' government. The coup leaders took the President and his children hostage. The coup leaders warned the President that if his children tried to escape, the coup leaders would shoot the children.

My family found themselves in an unfortunate position. The Indo-Fijians were under attack, but so were the native Fijians who supported the Indo-Fijians. The two sides of the family decided to part ways. I was torn away from my native Fijian family. My Indo-Fijian family had their work cut out for them. In class 2, my friend Neha brought nail polish to school. The two of us joyously painted our toenails. I wore Crocs to school. My toenails were visible. My teachers had a ghastly reaction to it. As all good teachers in Fiji do, she hit me with a metre ruler. The techniques used to discipline children in Fiji are crimes in New Zealand. She was mortified at the sight of a boy with nail polish. She said that boys were not allowed to wear nail polish, which made no sense to me even then. How could something so frivolous as paint on nails have a gender?

The word made it home and my granddad was furious. My mum's best friend, who sometimes took care of us, was our neighbour; her daughters were my and



Shaneel Lal.

my sister's best friends. The houses in Fiji are built on planks. There is always space between the ground and the floor of the house. All the kids made forts under the house and played games, in our case with dolls. At dinner my granddad said I could no longer play with dolls. I did not understand why my granddad was stopping me from doing the things that brought me joy. I still did not understand what things were meant for girls and what for boys, but I was learning that whoever I was was not okay and if I wanted to be accepted I needed to conform. I tried to carry myself more conservatively, but I couldn't change the very way in which I walked, talked, ran, or picked up a glass. I tried and I failed and the act of trying to change to fit in wasn't bringing me any happiness. Fiji

*“When my village elders started catching on to the fact that I might be queer, they knew they had to intervene to fix me. I did not know I was queer.”*

is a collectivist community. That meant what others thought of your life was more important than your happiness and that all elders could care for each other's children without their parents' permission. Status was everything in Fiji. My grandparents worked tirelessly to build a name for themselves in our village and because they both looked more like Indo-Fijians their journey was much more challenging. My grandparents cared very deeply about their reputation and status in the community, so if the village disapproved of something they would make sure not to get on the wrong side. When my village elders started catching on to the fact that I might be queer they knew they had to intervene to fix me. I did not know I was queer. I did not know the word queer. But the elders saw a feminine boy and decided of all things in the world I would start the rapture just by being gay. I remember being asked by the religious leaders to go to the temple. I went in and there were a few of them in there and they closed the door behind me. They asked me if I loved my family. The answer was an enthusiastic yes. They asked me if I wanted to be a part of the village. Again, yes. Then they said that if I did not change things about my life my family would disown me, my village would banish me and I would burn in hell for eternity. As a kid the only thing I had known and loved was my family and my village. There was no world outside it for me and so the idea of losing the only things I had loved and known was terrifying. I would do anything to stay a part of my family and village, so when the elders told me I had to change something about my life, not knowing what that meant, I knew I just had to do what they said.

It started with wearing enchanted bracelets to rid me of the evil spirits making me queer. Fiji is well known for voodoo or black magic. When the bracelets did not work, the religious elders ramped up my conversion therapy to exorcisms that often included praying. When the praying did not work the beatings started, and at the height of it extreme violence. Growing up in a little village in Fiji I thought my life would start and end with hiding my true self. I remember another queer person in my village and I looked up to that person as a role model. She was a trans woman. One day on the bus from school to home I saw that the other students spat at her, yelled slurs and threw rubbish at her. In those moments I realised that this would be my reality if I accepted myself. When I felt like things would never get better I held on harder than ever. There was a glimpse of hope that things would change, and in 2014 my family moved to New Zealand. That was my lifeline. I thought for a moment

*“As a survivor, I felt obligated to protect young queer people who may suffer the same fate. A movement that started with two petitions turned into the most significant movement of my time.”*

that I escaped conversion therapy. I started high school at Otahuhu College. I signed up to volunteer at Middlemore Hospital in the summer of 2017. One day I was sitting at reception when a church leader approached me and offered to pray my gay away. I refused to pray, so he looked at me and said, “It is hot, but do you know what is hotter? Hell!” At 10 the idea of going to hell terrified me, but at 17 the idea of going to hell made perfect sense with my fantasy. If all the gays are going to hell that is where I want to be. I told myself I can, must and will ban conversion therapy in New Zealand, and in 2022, we did. As a survivor I felt obligated to protect young queer people who may suffer the same fate. A movement that started with two petitions turned into the most significant movement of my time. I spoke at Youth Parliament in 2018 and advocated relentlessly for the next four years. It included lobbying politicians, mobilising New Zealanders and going head-to-head with megachurches. The subsequent petitions gained more than 150,000 signatures and the select committee process received 100,000-plus submissions with more than 80,000 favouring the ban.

A year later I won Young New Zealander of the Year. I remembered the trans woman in my village growing up and how the children threw rubbish at her, spat at her and yelled slurs at her and it made me feel like I couldn't be my true self while being safe. I went into the awards night thinking that if I win tonight I will show a generation of queer folk that there is a reality in which they can be their authentic selves and be celebrated for it. ■

Shaneel Lal's memoir *One of Them* is now available in stores and online.



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# Raihana Attaee

## New pathways through adversity

Interviewed by JOSHUA YUVARAJ

**RAIHANA ATTAEE** is an extraordinary individual. Currently undertaking studies at Auckland Law School to qualify for admission to legal practice in Aotearoa New Zealand, Raihana was formerly a judge in Afghanistan. She was forced to flee when the Taliban retook power in August 2021 and freed those she had previously imprisoned. Now located with her family in Aotearoa New Zealand, it is a privilege to have her as a member of the Law School. Some of her story is below.

**Following the fall of the Taliban in 2001, could you explain your pathway to becoming a judge? What inspired you to enter the legal profession, can you describe your experience as a lawyer in Afghanistan and what motivated you to enter the judiciary?**

"I studied law and political science in Kabul, Afghanistan. I graduated in 2013 from the Law Faculty of Kabul University. I wanted to do law from the time I was growing up. I saw much discrimination between men and women. For example, in my village women worked at home, looked after many children and helped men with planting, yet men got more privileges. Men were the owners of everything even though women always worked hard. My mother raised me but her name was not on my identity card. It seemed so unfair.

"From 1996 to 2001 the Taliban ruled Afghanistan. As a girl I was not allowed to go to school. I loved to go to school. I remember I would go up to the top of the hill near my house. I sat there and looked at the school for the boys where my brother went and watched how they would come and go. I kept hoping for the same.

"When I was 10 years old the Taliban collapsed. I cannot forget my father's words, who told me I could attend school. It was such an incredible feeling for me. I remember the first day I went to school. My classmates were thrilled. In my class they were of all ages. I was 10; others were



Raihana Attaee.

15, 18 or 20. Two of my classmates were married and had children. Our teacher was not very good at teaching as there were no qualified people to teach us, but still, we were happy. Over time things improved and we were given good teachers and the classes were divided according to age.

"We went to Kabul so we could have better education. I studied law to learn more about women's rights and gender-based discrimination. Why were women treated lower than men? Why were we treated differently? If I could learn more I could also help women more. As a law student I noticed discrimination against women within legislations. Based on Afghanistan's family Code a man could divorce a woman but a woman had no right to divorce. And there were many other legal discriminations.

"When I told my friends and community I wanted to be a judge they all laughed at me and said that a woman could not become a

judge, and as I was from the Hazara tribe it would be even more difficult for me. I took the exam in 2015. I passed. In my time many women also sat for the exam and 50 passed, the highest number ever. My family was pleased and proud though they were concerned about my security as a woman. I graduated as a judge in 2017. I chose to be a judge in the Court of Elimination of Violence Against Women, a criminal court that existed in each province. I worked for four years as a judge at the same court in two regions of Afghanistan before the Taliban regained power in Afghanistan.

"A significant difference between the legal system in New Zealand and Afghanistan is that in Afghanistan anyone with a bachelor degree in Law or Sharia law with a higher GPA could participate in a national exam conducted by the Afghanistan Supreme Court every two years called the Stagh Exam. The Stagh Exam was highly competitive. From thousands of participants

only a limited number could pass the exam. After passing the exam there were two years of full-time judicial training. After doing the training successfully a person could be appointed as a judge in a primary court. So after I graduated from Law School in 2013, I worked with a US company on a legal reform project in Afghanistan and then sat the Stagh Exam. I did not practise as a professional lawyer before being a judge."

**What were some of your proudest moments as a judge in Afghanistan?**

"Working as a judge at the Elimination of Violence against Women Court was difficult. As a judge in such a Court I always had to read and think about crimes against women, from homicide to rape, forced-to-suicide, underage marriages, financial and many different types of violations. It was hard to see women suffering all their life only because of being a woman. My proudest moment as a woman judge was when I went to Nangarhar Province as the first female judge. I was so pleased to see women feel happy when they saw a woman judge in the court. I was grateful to see women sharing their stories with me, as a woman judge, when they could not share those stories with a male judge, especially when the case was sexual violence. It was significant to advise other judges from a woman's perspective, placing me as a woman in a victim or defendant's shoes. When I first moved to Nangarhar, male judges tried to convince me not to work in that province. After months of working there they understood that they needed me as a woman judge in that court. I was happy to see those male judges who did not want me to work in that court become respectful to me and ask about my opinions in different cases."

**How has it been for you and your family settling into New Zealand after leaving your homeland?**

"I moved to New Zealand in December 2021 with my family. I did not know much about New Zealand before coming here. The first thing I love about New Zealand is the natural beauty of this country. The way people speak English was extraordinary for me. Before coming to New Zealand I could speak English, the dominant form of English in Afghanistan is American English. The first time I talked to New Zealanders, I was shocked because I couldn't understand what they said. It seemed too fast and different from the English that I knew. It took a little bit longer to be familiar with Kiwi English.

"After spending some time in a hotel in the city we rented a house. Having a home brought us some comfort after we lost everything in Afghanistan. Things got busy



Raihana Attaee.

very quickly. When we were in Afghanistan, my husband, Maqsood Rezeyee, received a scholarship from the University of Auckland. He studied online because of the pandemic and the closed borders in New Zealand. After we moved here, he continued his studies in person. I studied English for one semester at Unitec.

"With the support of Kiwi friends and the New Zealand Association of Women Judges, I sent my degrees to the New Zealand Council of Legal Education. As a result of the assessment, I had to do some papers at university to practise law in New Zealand. Fortunately I got a place at the University of Auckland Law School to do those compulsory papers. I just completed the first semester. It may take more than two years to do all the mandatory subjects. My son Arsam is now three and a half years old. He goes to kindergarten and speaks a mix of Farsi and English. We have resettled well in New Zealand. The only thing that worries me is my close family members who are left in Afghanistan. Given the situation in Afghanistan, I can not forget about them and the difficulties that they are facing. Each time I sit in class and listen to the lecturers, I feel sad for girls in Afghanistan deprived of going to school and universities by the Taliban."

**How has it been undertaking legal studies at Auckland Law School as a judge from another jurisdiction?**

"Afghanistan and New Zealand follow completely different legal systems. Afghanistan follows civil law. Before the Taliban took over it had a written constitution and codified laws. New Zealand follows common law. When I started studying law at the University of Auckland it seemed strange to understand that New Zealand has no specific written constitution.

**"My proudest moment as a woman judge was when I went to Nangarhar Province as the first female judge. I was so pleased to see women feel happy when they saw a woman judge in the court."**

In Afghanistan we had written codes for every legal issue. The judge needed to go only to those legislations and apply them to the facts. There was no such a fact to see or use the case law. At the beginning of the semester it was challenging for me to go and read the court cases because I had no experience doing so in Afghanistan as a law student or as a judge.

"Also in the first days of my studies at the uni, I had difficulties making notes, using Canvas and reading. Six years ago, as a student at law school in Afghanistan, we did not use computers or online materials during classes. Here everything is online and you must be good at using devices and online sources to complete the course successfully. About the reading, I need more time to do my tasks than a native English speaker or a student with pre-studies in English. During the exam I felt stressed about the time. For example, in the Law 121G [Law and Society, a first-year paper] exam, I was thoroughly familiar with the course materials and was prepared to take the test. Still, I was under pressure during the exam because of the time limitation. Writing a 1000-word essay within one hour in English was hard for me. If the same essay was in my language, Farsi, I could do much better than what I did in the Law 121G exam.

"However, I am optimistic about the rest of my studies as I get better daily and find my way. I have a dream: practising law here once again after the Taliban forced me to stop being a judge in my own country, Afghanistan, because I was a woman. Here I got this opportunity to regain what I lost so I do my best to achieve what I deserve." ■

# Nina Santos

## Young lawyer fights for fair pay

SOPHIE BOLADERAS

ONE OF THE most anxiety-inducing questions Nina Santos faced during her tenure as a law and politics student was, “What kind of lawyer do you want to be?”

It took the Kiwibank Local Hero Medallist and 2023 Young New Zealander of the Year semi-finalist several inspiring mentors, a challenging stint at a law firm, the lived experience of her parents and other fellow migrants and a propensity for creating positive change and inspiring social justice before she could answer this question with confidence.

“Throughout my time at Law School I often felt a bit unsure because the majority of my friends followed the traditional route of internship, clerkship and going to a firm,” said Nina, in the run-up to her March 2023 graduation, and having just found out that she’s a semi-finalist in the Young New Zealander of the Year Awards.

“At many points during my law journey I questioned my path, as did others around me. But now that I can see more of the road ahead I understand that there are many other ways to use your law degree.”

Nina’s road has been an impressive one. At only 24, the Filipina-New Zealander and University of Auckland law alumna is using her platform to challenge the status quo and fight for a more inclusive and equitable Aotearoa.

Determined to address rampant gender and ethnic pay gaps, she is the delivery manager for Mind the Gap – a campaign calling for new pay-gap transparency legislation. She also sits on the board of the National Council of Women and was named one of the Asia New Zealand Foundation’s 25 under 25.

Through her work she has become a regular speaker and media commentator on pay equity, women’s rights and anti-racism. Nina is also a Kiwibank Local Hero Medallist and has been recognised as part of YWCA’s “Y25” – a list of young women under 25 who are trailblazers in their fields.



Nina on the steps of Parliament in October 2022, speaking to a crowd as the Mind the Gap coalition handed over their petition to the government. Nearly 9000 people signed the petition for mandatory pay-gap reporting.

### The grateful migrant effect

Nina moved to Auckland from Manila with her mum, dad and brother when she was 14 and as a first-generation migrant she’s driven by her family’s experiences of racism and exploitation.

“Often there is an acceptance among migrant groups that when you move to another country you have to start from scratch and you kind of just accept the bare minimum. It’s a phenomenon that’s referred to as ‘the grateful migrant effect’ where you kind of accept things such as being paid less because you’re used to not having much back home.”

Soon after moving to Aotearoa, Nina watched as her parents encountered unfair treatment in their workplaces.

“I’ve witnessed my parents go through exploitation with employers and normalise and accept unfair pay,” she says.

“The migrant pay gap will persist until the constructs of colonialism and the system of racial capitalism it imposes are understood and addressed.”

During her time at Law School, Nina was driven by her family’s personal experiences, and her honours dissertation explores the root causes that drive migrant pay gaps. In her dissertation she says the pay gap for migrants of colour goes beyond just bias in the workplace and that it is a manifestation of ongoing racist, colonial and capitalist constructs that shape Aotearoa New Zealand.

“The migrant pay gap will persist until the constructs of colonialism and the system of racial capitalism it imposes are understood and addressed,” says Nina.

### An awakening and a meeting of the minds

In Nina’s first year of law she set a goal of working at a particular firm, and towards the end of her degree she was elated to land an internship there. However, things didn’t pan out the way she envisioned.

“I didn’t have a great experience. In fact it was an awakening,” she says. “The culture was geared towards overwork and I realised it wasn’t the place for me. Thankfully halfway through my stint at the law firm I was recognised in YWCA Auckland’s Y25

awards and got a chance to connect with inspiring wāhine.”

Through this experience, Nina met Dellwyn Stuart, the CEO of the YWCA who was in the early stages of developing Mind the Gap.

“She knew I was finishing my law degree and that I wanted to do impact-driven work. She said, ‘I’m thinking of planning something and I think you would really thrive in this space.’ At that time, I wasn’t sure what shape it would take but I knew it was about pay equity and that we would be fighting for legislative reform and pay transparency.”

Through her work Nina has found her calling as a campaigner and is a regular speaker and media commentator on pay equity, women’s rights, intersectional gender equity and anti-racism.

“I’ve learned not to align myself to a role or a job title but rather to focus on my ‘why’. Moving forward I will continue working to create change in the areas of intersectional gender equity, migrant and human rights,” says Nina.

“This is the kind of lawyer I want to be, the kind who fights to change the law and uplift marginalised communities.” ■

*Editor’s note: Nina Santos was admitted as a Barrister and Solicitor of the High Court of New Zealand in September 2023. This article was previously published on the University’s website: “Young law graduate fights for fair pay” (19 December 2022) [www.auckland.ac.nz/en/news/2022/12/19/young-lawyer-fights-for-fair-pay.html](http://www.auckland.ac.nz/en/news/2022/12/19/young-lawyer-fights-for-fair-pay.html).*

# Hai Ly Bui

## The genealogy of the rule of law conception in Vietnam

HAI LY BUI, PhD candidate at Auckland Law School, discusses some of her doctoral research

MY RESEARCH interest starts from an ongoing debate regarding the authenticity of the socialist rule-of-law doctrine endorsed by the Vietnamese socialist regime. While some scholars promote this doctrine as a locally refined rule of law version, which is built on the combination of Marxism-Leninism and Ho Chi Minh’s ideology with selected cosmopolitan rule of law ideals, by contrast, other scholars criticise it as the “rule by law” or a dualist mishmash of “rule of law” and “rule of the Party”. In many cases, this debate will easily lead to two extreme ends – either total rejection or propagandist endorsement. The question of authenticity is a lot more problematic than it may sound because it requires a rule-of-law benchmark for assessment and it assumes the static nature of the doctrine. In fact the Vietnamese socialist rule-of-law state is a dynamic doctrine formed out of changing layers of underlying ideologies and philosophical values.

Therefore my research idea is to conduct an investigation into the genealogy of the present-day rule-of-law conception in Vietnam. Two of my research questions are: i) how has the present-day rule-of-law conception in Vietnam emerged and



Hai Ly Bui.

incrementally transformed? and ii) to what extent have these transformations been contingent on the political, social and economic contexts? One primary outcome of my research is the description of core elements of the Vietnamese rule-of-law conception as well as the layers of ideologies and principles embedded in them. My research will also depict the developments and adaptations of such elements over time, in that it will identify key actors or driving forces forging those changes.

The outcomes of my study will hopefully enrich comparative law scholarship, in which law in socialist states like Vietnam seems to be oversimplified and marginalised because of approaches such as “legal orientalism” or “Ideal Western Legal Order”. Above all, I expect that a thorough research into the genealogy of rule-of-law conception in Vietnam will contribute to the revision of the rule-of-law concept and in general to a more vivid and inclusive dialogue in the field of comparative law. ■

“The question of authenticity is a lot more problematic than it may sound because it requires a rule-of-law benchmark for assessment and it assumes the static nature of the doctrine.”

# Auxentius Andry Yudhianto

## PhD graduate: from classroom whistleblower to government adviser

SOPHIE BOLADERAS

**PHD GRADUATE** Auxentius Andry Yudhianto went from exposing classroom corruption in Jakarta to advising the government on legal reforms.

In his high-school classroom in Jakarta, Indonesia's sprawling capital on the northwest coast of Java, Auxentius Andry Yudhianto uncovered a bribery scandal.

His teacher was encouraging students to pay for good grades, says Andry, who graduated in spring 2023 with a PhD in International Law from the University of Auckland's Law School.

"I had a tendency to try to right any wrongs I came across and my friends and I exposed the scandal. The teacher breached our trust and I wanted him to be held accountable. That's when I realised I wanted to pursue law and formalise how I solved problems."

The road to becoming a lawyer, however, wasn't entirely smooth. Indonesia in the 1990s was in the grip of a dictatorship, corruption was rife and lawyers were seen as threats to the establishment. Parents, including Andry's, were hesitant about their children entering the legal profession.

"There was a common belief that choosing law meant opening yourself up to a difficult life," he says. Despite this, Andry forged ahead, and his tendency to try to right wrongs further solidified in 2004 when his dad had a heart attack and his family encountered an expensive and unregulated healthcare system.

"It was a challenging time for my family and that's what made me interested in exploring the country's healthcare sector, in particular patent law, which on the one hand can improve innovation, but on the other hand can increase the cost of medicine."

Andry's doctoral research examines patent law under free-trade agreements, Indonesia's constitutional norms and access to medicine. He also developed a "framework of reciprocity" to address tensions in the area derived from positive constitutionalism theory and Indonesia's founding concept, Pancasila, which



Auxentius Andry graduated with his PhD in International Law. Photo: Billy Wong

comprises five principles: monotheism, civilised humanity, national unity, deliberative democracy and social justice.

"I want to support continuous reforms in the Indonesian legal system and my focus is now on advising the Indonesian government," he says. "Interestingly most of the advice I give is based on New Zealand practice."

Aotearoa New Zealand's legal system and a scholarship advertisement in a local paper drew him to the country in 2012 to undertake his Master of Laws.

Family was a huge factor in his decision to pursue higher education. Andry's wife, Arshella, is also a lawyer, and the two are co-founders of the law firm Indonesian Law Alliance. They have two daughters aged 17 and 12, with their older girl also showing an inclination towards law.

"A lot of people said that if you're doing your PhD you need to set boundaries with your family because you need a lot of time to concentrate, a lot of time for your research, things like that," says Andry. "But I didn't listen. My wife also has her career and my daughters need their dad. So I didn't put up those barriers and it worked fine. It's possible to do your PhD and have a family life!"

During his Masters Andry explored several areas, but the subject that interested him most was international trade law under Professor Jane Kelsey.

"She was an excellent teacher and I asked her to be my PhD supervisor and to continue on a similar course of research," says Andry, who was awarded a New Zealand ASEAN scholarship twice – to support both his Masters and his PhD.

"This was the only way I could tap into higher education overseas, and when I read about the scholarship in one of the newspapers in Jakarta my heart just told me to pursue it.

"I did my research on New Zealand's legal system. Its position as one of the least corrupt nations in the world as well as its consistently high ranking for ease of doing business on the World Bank index encouraged me to pursue my studies in Aotearoa."

When he arrived in the country Andry says he found the people he met receptive and friendly.

"I felt welcomed, like this was my second home. Studying in New Zealand was probably the best decision I made in my life."

An interview with Auxentius Andry Yudhianto by JANE KELSEY, his PhD supervisor, her last PhD supervision

### What are your goals in Indonesia now your study has ended?

"After completing my Doctor of Philosophy in International Law in 2021 I am resuming my role as an Indonesian policy and development lawyer. I advise the Government of Indonesia in various areas of law ranging from free-trade agreements, investment-framework reform to gender-equality issues.

"Since 2010 I have been conducting development work after leaving my position as a legal manager in a telecommunications company in Indonesia. Prior to that role I spent five years in the Jakarta office of Baker & McKenzie as an Associate in the Corporate/Commercial Practice. After spending more than seven years in the corporate law practice I thought it was time for me to apply the knowledge and experiences that I have gained to pursue various legal reforms in Indonesia. Indonesia was just free from a dictatorship in 1998 and its legal system was in a state of disarray where corruption was rampant and the rule of law was practically ignored. Indonesia needs many experienced legal professionals to put the legal system and rule of law back on the right track."

### What is your current role? What do you love about your work? What do you like most about it?

"I am currently a policy and development lawyer. In 2010 my wife and I started our law practice focusing on law reform work. We decided to practise law independently to be able to carry out work in various legal issues, including those with little or no interest from the legal profession such as policy and development work.

"I love my profession as I can provide independent advice to the Indonesian government on how to reform various aspects of the legal system and in carrying out international-trade relations. What I like most about my work is the fact that I can be involved in legal-reform activities in various areas of law that in turn enrich my legal knowledge. Since 2010 my work has resulted in the creation of the Online Single Submission (OSS) business licensing platform and risk-based licensing system in 2018, flexible working arrangements in the public sector in 2020, liberalisation of the foreign-investment regulations in 2021, introduction of the electronic court e-court system in 2022 and major overhaul of the Indonesian immigration system in 2023."

### Were there any highlights from your time at Auckland Law School? Are there any staff or students you particularly remember or who influenced you?

"During my PhD study at Auckland Law School I particularly appreciated the opportunity to access the world-class resources provided in the Davis Law Library. Coming from a third-world country with lack of access to international law literature had made me excited when I delved into the vast library collections. My PhD supervisors are particularly influential in shaping my research and analytical skills. My research has also been significant in providing a comparative best-practice experience in reforming various areas of law in Indonesia. The OSS platform, the risk-based business licensing scheme as well as the e-court system are three examples where Indonesia has adopted the Aotearoa New Zealand model based on my advice."

"The research reflects the intersection between international-trade law, patent law and constitutional law, which make it complicated. I admire my main supervisor Professor Jane Kelsey for her patience in dragging me out of 'rabbit holes' over and over again for following false leads in my research. She taught me perseverance and the skills to self-criticise my research. Professor Susy Frankel, a patent-law expert from Victoria University of Wellington, had been so amazing in agreeing to co-supervise me to get me up to speed with the complex patent-law issues. She even allowed me to sit in her class so I could get all the patent-law knowledge that I needed to write my thesis. Dr Ed Willis was also instrumental in introducing me to the positive constitutionalism theory. The theory focuses on the key principles that a state should possess in carrying out its affairs. The positive-constitutionalism theory assists me in drawing principles from the Indonesian constitutional foundation of Pancasila into a lens that I refer to as the 'framework of reciprocity' to analyse the tensions that I explored in my research."

### What were your aspirations then? Have these changed at all?

"I always wanted to become a lawyer since I was in high school to try to right any wrongs. It started when my friends and I uncovered corruption by a teacher in my high school who solicited bribes from students for good grades. Since then my passion was burning to become a lawyer even when the profession was not favourable when I entered law school

in 1998 because the profession was considered as a threat to the establishment. My postgraduate education, in particular my doctoral education, has further shaped me as a lawyer with a complete skill set."

### How has legal training helped you in your work, if at all?

"My Masters and Doctoral studies at Auckland Law School are instrumental for me in carrying out my role as a policy and development lawyer. I use the robust research and analytical skills from my legal training in providing evidence-based legal advice to the Indonesian government. My study tenure in Aotearoa New Zealand has also been significant in providing a comparative best-practice experience in reforming various areas of law in Indonesia. The OSS platform, the risk-based business licensing scheme as well as the e-court system are three examples where Indonesia has adopted the Aotearoa New Zealand model based on my advice."

### What extracurricular activities did you pursue?

"With busy work and family roles I did not really have time for extracurricular activities. However since I can say that I am quite a legal geek I always spend my spare time with law-related activities. John Grisham's novels are my go-to leisure books and crime and courtroom dramas are my favourite TV shows. Even when I am playing my guitar or cooking the family's favourite recipes, I am still looking for inspiration for my next legal advice. My wife always tells me that if your career is something that you are most passionate about you won't need a hobby anymore. I couldn't agree more with her!"

### What advice, if any, would you give to current young law students?

"I would encourage young law students to follow their passion without hesitation. They should always aim high and never settle for anything less. I do not come from a family that can afford higher education overseas. However this did not stop me from pursuing my dream of studying in a reputable law school overseas. This persistent attitude had led me to obtaining the Aotearoa New Zealand-ASEAN Scholarship Awards twice for my Master's and Doctoral studies." ■

# Tara McGoldrick

## Student support award gives helping hand to future lawyer

HELEN BORNE

**AFTER CHANGING** tack late in her studies and switching from science to law, Tara McGoldrick is now working as a Judges' Clerk at the Court of Appeal in Wellington.

Tara is graduating this year with a Bachelor of Laws and a Bachelor of Science. And although she now dreams of becoming a barrister – perhaps one day arguing cases in the Court of Appeal herself – it wasn't until she reached the final semester of her science degree that the 23-year-old realised her true passion lay in law.

"I decided that I'd just take the first semester of Law School papers and see what they were like. And if I hated them it was just one semester wasted. But I ended up really enjoying it – so here I am," she says.

Because it was too late in her studies to combine the degrees as a conjoint, she finished both degrees separately. However, due to the rules around how many courses students can take and get StudyLink funding for, Tara found she was ineligible for financial support by the time it came to completing her final Honours dissertation over summer school, putting her whole law degree at risk.

Fortunately for her she received an Auckland Law School Student Support Award – something she says was a "huge relief". The Auckland Law School Student Support Award is backed by a number of generous donors to the University's Annual Appeal.

"Essentially the scholarship meant that I was able to pay for those courses and actually complete the degree. It would have been quite horrible to have qualified to do the Honours dissertation and have put in the effort to start writing it throughout the year, then not be able to pay the course fees to actually hand it in and get the Honours at the end of the period."

Tara's dissertation focused on the legal aspects surrounding accessible housing for disabled people in Aotearoa. Tara says she was inspired to pursue the topic by her mother, a Whangārei-based lawyer



Tara McGoldrick.

**"I definitely want to be working in court ... maybe arguing here in the Court of Appeal – with everything coming full circle."**

with nail-patella syndrome – a rare genetic condition that can cause problems with the nails, bones and kidneys – who is a strong advocate for the disabled community.

Despite a heavy course load, it hasn't been all study for Tara throughout her time at university. She also does karate, is currently an advanced brown belt and is just a step away from becoming a black belt. As well as the mental discipline the martial art demands, Tara says it serves as a great way to manage stress and balance the mental side of her studies.

"As soon as someone starts trying to punch you in the face you don't think about assignments anymore," she says. "So it is an excellent way to just take a proper break."

Tara has been working as a Judges' Clerk at the Court of Appeal since earlier this year, after being offered the position while still studying. While the job, a fixed-term two-year appointment, has been a "steep learning curve", she says so far it has been an invaluable experience that she is enjoying immensely.

The role has also piqued her interest in criminal law with her ultimate goal to become a barrister.

"I definitely want to be working in court," she says, "maybe arguing here in the Court of Appeal – with everything coming full circle."

Tara was very active during her time at the Law Faculty. She was an outstanding tutor for first years in Legal Method, always going the extra mile encouraging her students to succeed. Tara was prominent in the Student Mooting Society as Co-Competitions Officer developing moot problems and organising a wide range and number of moots for fellow students. And she was the Co-Education Officer for Women in Law organising many events and activities for students. ■

# Maria Pouliasi

## Towards international tax arbitration: a theoretical and practical perspective

MARIA POULIASI, PhD candidate at Auckland Law School, discusses some of her doctoral research

**MY STUDY** investigates what is effective international tax-dispute resolution in the 21st century. International tax disputes are expected to increase as efforts to tackle aggressive tax planning become more intense. The Base Erosion and Profit Shifting (BEPS) Project aims to introduce various anti-abuse measures in areas traditionally exploited for tax avoidance purposes. Simultaneously, taxation of the digital economy creates new challenges for international tax law as countries are making efforts to create a new source-country taxation right that will be targeting highly digitalised businesses that are able to function in various markets without a physical presence. The existing international tax-dispute resolution mechanisms are unable to provide sufficient protection.

Let's envisage a three-tier scale in international tax-dispute resolution. Excluding a scenario in which there is absolute unavailability of a tax-dispute resolution mechanism and the only available route is domestic litigation, the first tier is resolution of tax disputes through negotiations between the two contracting states. This will be called the "negotiations approach" and it is the mildest form of international tax-dispute resolution. The second tier is a system in which states still solve tax disputes through negotiations but there is an advisory body, a third party to the resolution to assist them in case the negotiations fail. This will be called the "advisory-body approach". The third tier is mandatory and binding tax-dispute resolution by an independent body and it is the hardest form of tax-dispute-resolution for states to accept. It will be called the "adjudication approach".

An historical analysis of early double-taxation avoidance agreements and of the first-draft model conventions of the League of Nations reveals that all three approaches lie in the core of international tax law. However, the "negotiations approach" was preferred in the OECD Model tax conventions until 2008, when it was supplemented by an arbitration clause. The "negotiations approach" still dominates in the international tax world.



Maria Pouliasi.

A literature review reveals that most strong points and weaknesses of the "negotiations approach" and the "adjudication approach" have remained similar throughout the years. This means the system is in need of reform. Further, after the release of the BEPS Project the academic literature shifted its focus to the examination and analysis of the anti-abuse measures and research on international tax-dispute resolution decreased. This tendency is also true regarding the literature in the area of taxation of the digital economy. New tax-dispute settlement mechanisms have been suggested but very little has been written.

A distinct characteristic in the existing literature is the lack of studies exploring the theoretical foundations and a proper normative framework for international tax-dispute resolution. Hence the system keeps developing in an unsystematic way. Only four studies have addressed the issue, out of which three use theories of international relations and one suggests economic grounds based on the transaction-cost theory of New Institutional Economics. There are no studies addressing the issue of establishment of a normative framework as

**"This study aims to suggest robust theoretical grounds for international tax-dispute resolution and recommendations for the enhancement of the system by taking into account theories of economics, ethics, and other disciplines."**

a whole. This study aims to suggest robust theoretical grounds for international tax-dispute resolution and recommendations for the enhancement of the system by taking into account theories of economics, ethics and other disciplines. Additionally, it will be the first study to explore the issue of ethics of international tax-dispute resolution.

This study will also be the first to use qualitative data as a method for the assessment of the existing international tax-dispute resolution mechanisms and to make recommendations for the reform of the system. The experience of the users will be used to assess the process, timeliness and effectiveness of the current international tax system and to make suggestions for its improvement.

I am the first PhD student to be awarded a Professor Brian Coote Memorial scholarship. I have also been awarded a scholarship from the Foundation for Education and European Culture, Greece. It is a great honour and I want to sincerely thank the University of Auckland and the Foundation for Education and European Culture for their support. ■

# Bernard Sama

## Transforming the treatment of refugee claimants in Aotearoa New Zealand

HANNA WILBERG and ANNA HOOD

**TE WHAINGA I TE TIKA** Award for Social Justice was established last year to honour the social-justice research, teaching and activism of Professor Emerita Jane Kelsey. It was funded by generous donations from donors who admire Jane and her work.

This year the award has gone to PhD student Bernard Sama. It is difficult to imagine a worthier recipient – both of Bernard's referees commented that the award seems made for him. Bernard came to Aotearoa New Zealand as a refugee claimant after being persecuted for his work as a human-rights lawyer in his native Cameroon. Since gaining refugee status and settling here he has made it his mission to improve the experience of other refugee claimants. In this his determined and committed efforts have been extraordinarily effective.

He is the chair of the Asylum Seekers Support Trust and his PhD research is devoted to critiquing the refugee-law system in Aotearoa New Zealand from a therapeutic jurisprudence perspective. Using this PhD research as part of a platform for advocating for change he has been instrumental in contributing to two major improvements for refugees in Aotearoa New Zealand that had been needed for decades.



Bernard Sama.

The first change was to end the highly problematic practice of detaining refugee claimants in prisons and police cells. Bernard played a large part in getting this on the government's agenda. He worked with Amnesty International on a major report on the topic, took part in protests, met with the Immigration Minister and worked on lobbying initiatives. Once the government acknowledged the problem he was appointed to a working group with Immigration New Zealand to determine what changes were needed. The resulting

change is a monumental achievement.

The second change is a very recent government announcement that resettlement support will be extended to refugee claimants and those who have been recognised as refugees after arriving as refugee claimants. Comprehensive support has long been provided to quota refugees, the fixed annual number of refugees who are selected from refugee camps overseas and approved as refugees before they arrive. But only now is similar support being extended to those who arrive as refugee claimants. Bernard's advocacy for this change has included him speaking in Parliament on the topic and being part of meetings with a range of ministers and government departments. Bernard has also been part of a working group designing best-practice guidelines for the refugee-status determination process.

Overall it is no exaggeration to say that Bernard's work in this field has been transformative. Future refugee claimants in Aotearoa will now experience an entirely different and immeasurably more humane process.

Warmest congratulations to Bernard on winning this award. ■

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# Moana Oceania

## Student success

PAUL LAXTON KORAU and TAYLA-RAE HALL

**MY NAME IS** Paul Laxton Korau. I am of Papua New Guinea and Kiribati descent but I was born in the Solomon Islands. My family and I moved to New Zealand when I was four years old and have been here ever since. Both my parents grew up in small villages in their respective homelands and through hard work and education managed to create opportunities for me and my siblings that they never had. And so, like many other Pasifika peoples, a lot of the hard work that I do is to repay my parents for the sacrifice and opportunities they have provided me.

I have been a student at the University of Auckland Law School since 2017 and have been working professionally in the financial sector since late 2018. The further I got through Law School the more I wanted to take classes and courses that I found meaningful and related to my cultural heritage. Thankfully at the University of Auckland there were a number of different avenues to participate in Pacific-related

studies, which I took advantage of.

Participating in the Moana Oceania Issues Moot was the last activity I had to do to complete my Law degree and so I set my sights on the competition with the goal of completing my studies and with no expectations of winning the moot. Like many people, I have always found public speaking a challenge, but it is a skill and I had spent lots of time practising and jumping at opportunities to push myself out of my comfort zone. For me, winning the Moana Oceania moot was a real highlight and was an amazing way to complete my time at the University of Auckland Law School – not only because it proved to me that I can get up and present myself confidently in such a setting but also because I got to finish my degree advocating for Pasifika issues that are important to me, my family and my communities.



Tayla-Rae Hall with Hon Aupito William Sio.

**TALOFA LAVA**, my name is Tayla-Rae Hall. I am in my final year of studying a BCom/LLB conjoint degree majoring in Accounting and Marketing. I hail from the almighty 685 and from the villages of Fasito'outa, Malifa, Lepā and Manase in Samoa.

I am honoured to have served as the President of the Pasifika Commerce Student Association, known as "Commerce 'o Pasifika", in 2023. In addition to my full-time studies, I am the Head Tuākana Tutor at the Business School and also mentor Pasifika and Māori scholarship students at my former high school, St Cuthbert's College.

Growing up, my family instilled in me the Samoan values of service, reciprocity and respect. To this day I use these core values to help navigate all types of decisions, big or small. Participating and coming runner-up in the Moana Oceania Issues Moot and being named EY Pasifika Business Student of the Year are both achievements that I am extremely proud of. These achievements are a testament to my family's sacrifices to allow me to be in the position I am today.

Fa'afetai lava to the Pacific Island Law Students' Association and the Folau team for always holding it down for our Pasifika students here at the Law School and for creating safe spaces for our taurira to achieve academic excellence. ■



Paul Laxton Korau and Tayla-Rae Hall.

# Academic excellence

## Student awards



### Red Cross International Humanitarian Law Moot

An Auckland Law School team placed second in the Red Cross International Humanitarian Law Moot for the Asia-Pacific Region, the best result Law School has managed in the competition. Over four days in Hong Kong three law students took on the roles of counsel for both prosecution and defence in a fictional case before the International Criminal Court.

The successful students from Auckland Law School were **Oscar Read, Isabella Wensley and Andrew Fu**, pictured (left to right) above.

### Transatlantic Negotiation Competition

The Auckland Law School team placed first for the second year running defending the University of Auckland's title as reigning champions of the Transatlantic Negotiation Competition across two preliminary and three knockout rounds. The team's negotiation scenarios included an energy crisis and a *Friends*-inspired problem in the quarter-finals.

This year the moot was held on Zoom, the team competing against various others from around the world, with a 4am finals log-in time.

The members of the winning team and their coaches are pictured (left to right) below: **Gulliver MacDonald, Spencer Barley** (coach), **Lauren Hansen, Airu Teng, Arianna Bacic** (coach), and **Maddison Lewis**.



### International Chamber of Commerce mediation competition

Four Auckland Law School students took out third place in the 18th International Chamber of Commerce (ICC) Mediation Competition in Paris. The Auckland team went head-to-head against 48 others from around the world to resolve international business disputes.

The successful team were **Sian Vaughan-Jones, Libby Gane, Andrew Fu and Maria Romero De Medeiros**.

Congratulations to Law School student Jack Paine who ran a personal best in the 1500 metres on 11 November at Mount Smart in a time of 3 minutes and 46 seconds. He is off to represent New Zealand at the Oceania games.

## Mooting competitions

### Bell Gully Junior Mooting Competition

**Elijah Kasmara and Francis Wee**

### Buddle Findlay Senior Negotiation Competition

**James Rosendale and Joshua Kennedy**

### Brian Shenkin Family Law Moot

**Jean Choi and Melissa Connolly**



Auckland Law Students placed 1st in the New Zealand Universities' Limited Preparation Debating Championships.



Social Issues Moot winners **Jimin Seo and Charlie Matthews**.



Judges and finalists in the Justice Sir Robert Chambers first year memorial moot held in the High Court. **Sean O'Loughlin, Lady Deborah Chambers KC, Joshua Taefu, Justice Venning, Annabel Zhang, Mark Henaghan, Syon Kapoo.**

### Chapman Tripp Junior Negotiation Competition

**Josh Boshra and Jake Inskip**

### DLA Piper Law and Technology Moot

**Campbell Walker and Donovan Kelso**  
Runners-up **Cara Gibson and Nathan Pinder**

### Duncan Cotterill Junior Client Interviewing

**Lily Woods and Kyle Maxwell**

### IPLS Senior Client Interviewing

**Spencer Barley and Arianna Bacic**

### John Haigh QC Memorial Moot

**Emma Austin-Mannes and Aaron Kemp**

### Justice Sir Robert Chambers Memorial Moot

**Joshua Taefu and Annabel Zhang**

### Kiely Thompson Caisley Employment Law Moot

**Anna Hamilton and Felicity Lewis**

### MinterEllisonRuddWatts Witness Examination Competition

**Danica Loulie-Wijtenburg**

### Moana Oceania Issues Moot

Winner **Paul Koraua**  
Runner-up **Tayla-Rae Hall**

### Social Issues Moot

**Jimin Seo and Charlie Matthews**

### Stout Shield (Geoffrey Powell Prize for Top Mooter)

**Andrew Fu**

### Stout Shield (Gary Davies Memorial Prize)

**Andrew Fu and Maria Romero De Medeiros**

# Student clubs

## The Auckland University Law Review

The *Auckland University Law Review* is one of New Zealand's leading student law journals. It plays an important role in the Law School each year by publishing outstanding student research, upskilling up to 30 editors and a formidable business team and running various events that form part of the Law School's annual calendar. The *Review's* alumni have gone on to become distinguished members of the judiciary, academia and the legal profession. Although the *Review* retains many similarities to its first volume, it has grown and developed considerably in its 57 years.

### Moana Pasifika Issues Paper

The Moana Oceania Issues Paper (previously Moana Pasifika Issue Papers) is a section of the *Review* that was established in 2021 to give space to Pasifika legal scholarship, an area not often featured in traditional law journals. Although the section is not exclusive to authors of Pacific descent, the Moana Pasifika section hopes to help achieve the *Review's* purpose of providing all undergraduate students with a platform to further the discussion of significant legal issues.

Thies Moran-Vaihū wrote the inaugural article in this section, in which she analysed the tabooing over time of tātatau (traditional Tongan tattooing) as part of the wider erasure of Tongan culture by the Wesleyan Methodist Church. Last year's Moana Pasifika article, written by

Emma Kerr, argued for the elevation of marginalised and colonised voices in the development of international climate-change law.

This year's Editors-in-Chief are delighted that the Moana Oceania section in the 2023 volume will feature two authors, one Pākeha and one Pasifika, who together engage in a race-conscious critique of Australian and New Zealand government policy.

### Workshops

This year the *Review* has begun a new workshops initiative, with its Editors-in-Chief hosting four academic workshops throughout the year. These workshops were kindly sponsored by the College of Law. The workshops aim to share with the wider student body some tips, tricks and techniques that the *Review* is known for.

The first workshop covered exam writing, with a particular focus on helping first-year law students transition from what is expected of them at school to the expectations of Law School. Later workshops will cover legal research, argument, editing and referencing. Much of the workshop content integrates well with compulsory LLB components such as LAW 298, prominent course assessments and extracurricular activities such as moot competitions.

It is hoped these workshops will make the *Review* more prominent and accessible to all students. Many students strive to be involved in the *Review*, either as members of our editor or business teams or as published authors, which is something the journal takes pride in.

### Māori Editors

The *Review's* first article in its first volume was a contribution to Māori legal scholarship, namely the fragmentation of Māori legal scholarship. The *Review* has regularly published articles concerning Māori legal issues since 1978. In 1996 the *Review* formally established the Ko Ngā Take Ture Māori section of the journal, and had Māori editors from 1996 to 2004.

This year has seen the re-introduction of the Māori editor positions, which helps the *Review* ensure its articles and editing process are culturally competent.

### Alumni Dinner and Symposium

On 2 August 2023 the *Review* hosted its annual Alumni Dinner and Symposium. At the Symposium AULR alumna and former Attorney-General and Speaker of the House Hon Margaret Wilson DCNZM presented her research paper titled "Parliamentary Sovereignty and the Rule of Law: An Exercise in Creative Tension". She focused on how competitive economic models have affected policy-making and the relationship between Parliament and the executive government. She argued for more recognition of the rule of law in policy-making, and the need to liberate it from some of the pressures of the competitive economic model. After her presentation, Professor Mark Henaghan facilitated a question-and-answer session that sparked debate between Elias CJ, Priestley J and Margaret. Witnessing such a robust discussion between these distinguished members of the legal profession was quite a spectacle for young law students in attendance.

At the Alumni Dinner Dr Max Harris presented his paper surveying 15 years of legal and political development in New Zealand. He argued that while lawyers and law students are often encouraged to stay "above the fray" rather than wade into contentious legal and political issues, some of the challenges facing modern New Zealand require bold leadership. His call-to-action left many pondering other ways they might use their legal education to bring about change.

**CHRISTIAN POLAND and NATHAN PINDER, Editors-in-Chief**



Auckland University Law Students' Society.

## Auckland University Law Students' Society

The Auckland University Law Students' Society (AULSS) aims to enrich student life through a range of events and initiatives. In 2023 we have hosted regular social and sporting events, legal competitions, wellbeing initiatives and educational workshops. These provide law students with opportunities to grow their skills and build lasting connections that extend beyond the classroom.

Earlier this year AULSS hosted its Recruitment Series, providing students with valuable insights and networking opportunities to support their professional growth. The series included panel discussions featuring legal professionals from law firms with the aim of helping students make informed decisions about their future legal careers.

AULSS also challenged law students to gain practical experience through participating in client interviewing and negotiation competitions hosted by law firms. Participants were able to showcase their skills and gain valuable feedback from experienced professionals. These opportunities will continue to be offered at various levels so students can develop practical skills for their future careers.

As part of our commitment to student growth and wellbeing AULSS organises an annual Wellness Week and Study Series. This year we supported students as they approached exams by offering course-specific study advice from older students and free sushi to enjoy as part of a group study session in the Law Cafe.

AULSS also recognises the importance of providing students with opportunities to unwind and socialise, so our community has had a busy social calendar this year. In addition to the immensely popular Law Stein, our social officers facilitated a trip

to Eden Park to watch the Blues v Moana Pasifika. Eagerly anticipated semester two events included the annual Law Ball, Cocktail Night and Quiz Night.

As well as watching sports AULSS encourages students to engage in various inter-faculty sporting events, and as part of Orientation Week some students did the Round the Bays fun run together. These friendly competitions allow law students to showcase their abilities, develop teamwork skills and make connections with students from other faculties.

### Chinese Law Club

Chinese Law Club (CLC) is an academic and cultural club at the University that encourages and facilitates the involvement of Chinese law students and other law students interested in Chinese culture in various social, cultural and academic events. It is important for us to enhance the profile of Chinese law students in New Zealand by building and strengthening their

relationships in the legal community. We are dedicated to celebrating the richness and diversity of Chinese culture while supporting students at Law School. Since our establishment in 2021 we have had over 500 members join and gain valuable experiences and academic advice through our events. Each year CLC hosts our popular LAW121 and LAW131/141 workshops. These workshops cater to first-year law students in hope of supporting them through their first few exams at Law School. Additionally we host various speaker panels including for summer clerkships and careers that are open to students at all levels of Law School. These panels provide helpful and personal insight into experiences and positions that students may take interest in in the future.

Another key part of our club is our mentoring programme. Part I and II students are paired with students in their latter years of Law School. We encourage mentoring pairs to take part in a wide variety of activities that we host throughout the year. The mentoring programme has been very popular as it has helped many students form friendships and connections within various communities at the University. Currently we are working on creating a Chinese Law Dictionary. We aim to finalise this by the end of 2023 and hope it will be beneficial for international law students who may be struggling to get a grasp on English legal jargon.

Each year as CLC grows we are more focused on and passionate about providing a supportive environment for law students to explore Chinese culture while building friendships and connections. With many events to come in 2024 we look forward to continuing to fulfil our club's vision.



AULR's inaugural workshop, 30 May 2023.



Chinese Law Club.

## Equal Justice Project

The Equal Justice Project (EJP) is a non-partisan pro bono charity. Since 2005 our student volunteers have been applying their legal training and knowledge to promote access to justice. We mobilise 100-plus volunteers annually in six teams: Access, Advocacy, Alliance, Communications, Community and Pro Bono.

Looking back at the past year we've delivered exciting work. Communications, which increases understanding about legal developments and issues, published 22 articles. Topics included lowering the voting age, reducing alcohol-related harm and home detention as an alternative to incarceration. Access, which does outreach and education, delivered the first of their 2023 school presentations to low-decile schools in partnership with Youth Law. Alliance, focusing on equity within the Law School, delivered our Part I law-mentoring programme and plans to promote social-justice lawyering. Our Advocacy volunteers have focused on the two issues of climate action and reducing alcohol harm and have presented research about these to Auckland Local Boards and council-controlled organisations. More than 60 student volunteers have been placed in local Community Law Centres through the community. Finally, Pro Bono have continued their legal research for human rights-oriented academics and community groups covering topics including bail reform and Indigenous advocacy to the United Nations.

We're excited to see what next year holds for EJP.



The Equal Justice Project.



South Asian Law Student Association.

## South Asian Law Student Association

SALSA, the South Asian Law Student Association, is all about embracing diversity, promoting our vibrant South Asian culture and having a blast. This year has been a whirlwind of exciting events that brought our members closer and showcased the richness of our heritage.

First up we had our Recruitment Panel. We gathered an inspiring line-up of South Asian speakers who shared their incredible journeys and offered valuable advice for professional development. Next we held a very successful Quiz Night. Our questions were the perfect blend of brain-teasers and South Asian trivia, making everyone laugh, learn and cheer. It was the ultimate stress-buster before the dreaded exams hit us.

But that's not all. SALSA teed-up three incredible events for semester 2, starting with a South Asian Eats Night, that brought together the best flavours, aromas and culinary traditions from South Asia. Also on the semester 2 programme is another professional development event. This event is to enable members to engage in workshops designed to help them with recruitment and hear from experienced professionals about their recruitment journeys. We plan to end the year with our very relaxing Paint and Chai event where members can unleash their creativity and enjoy a memorable evening.

SALSA is more than just events; it's a community that celebrates our shared roots. We believe in creating an inclusive space where every South Asian law student can be heard and represented. Whether it's through food, lively festivities or engaging discussions, we bring the spirit of South Asia to your doorstep.

## Women in Law

Throughout the year the University of Auckland Women in Law Club has thrived in our mission to empower aspiring legal professionals, foster a strong sense of community and advocate for gender equity within the legal field.

To kick off the year we successfully delivered an informative Lowdown on Recruitment with the help of Chapman Tripp. This session provided us with invaluable insights into the recruitment process from professionals in the industry and older students who had clerked. Armed with insights from our wonderful guests, our members left the event inspired and better prepared to navigate the competitive legal job market and secure their dream summer clerkship. We then had an energetic launch

party for our Mentoring Programme. This initiative began in 2019 and we were proud to continue the programme this year. The event was the first time our mentees connected with their mentors. The event was a huge success and fostered ties between our members in different stages of their degrees.

In an effort to foster social connections and relaxation we hosted a pub quiz night at Shad's offering a fun and friendly environment for us to unwind and show off our general knowledge. The event not only strengthened our friendships but also promoted a sense of camaraderie. Thanks to our wonderful MC, Mark Henaghan, it was a night of laughter.

Adding a creative touch to our events we organised a Paint n' Sip night where we could express ourselves artistically while enjoying a relaxed social setting. We had an insightful artist to lead us through our painting and explore our creativity. It certainly gave our legal brains a much needed creative challenge.

Beyond the confines of the University our outreach programme has been instrumental in inspiring young women from South Auckland high schools. With the help of the South Auckland Crown Solicitor Office's Kayes Fletcher Walker, we gave engaging presentations, offered mentorship and shared our personal experiences. We have served as role models and advocates for gender equity, encouraging young wāhine from underprivileged areas to pursue careers in the legal profession and providing them guidance along the way.

Recognising the importance of holistic wellbeing we organised a wellness day sponsored by College of Law. The event was dedicated to nurturing our physical, mental and emotional health near the end of semester when the pressure comes



Women in Law.



Te Rākau Ture.

on. There were mindful activities such as colouring and clay work, which provided a much needed break from study. By offering a diverse array of events and initiatives our club has created an enriching and supportive environment that advocates for gender equity. We are excited to host more events and continue with our initiatives in the upcoming semester.

## Veritas

Veritas had a great start to the year providing a forum to learn more about God, Jesus, humanity and the world. Aside from law students, our group is open to non-law students and non-Christians who have questions or doubts about their faith. We have had the privilege of co-hosting the Thinking Matters event "From Atheism to Christianity" with Jonathan Noyes. Another notable highlight was a visit by Dr Josh Yuvaraj. We have enjoyed various social



Veritas.

events including bowling and a dodgeball tournament with the Christian Medical Students. We're looking forward to next semester.

## Te Rākau Ture

2023 marks 34 years of Te Rākau Ture and the association is showing no signs of slowing down. After a successful past few years and navigating the post-Covid period, we have been excited to see many of our taura returning to campus and engaging with our events and each other.

We started the year off as strongly as ever by taking a large group of our new part IIs on our annual Tōia Mai - Part II camp. After arriving at the beautiful Piritahi Marae on Waiheke Island we began to see the connections forming between our incoming part IIs and our tuakana, who were able to explain to them a bit of our history and



get the competitive spirits going with some controversial debate topics (because nothing says law students like debating during a camp, right?). This got the year into full swing as Te Ako o Te Tui began to fill up more often with firms coming to talk to us about opportunities, kai tahi and farewelling our graduates.

The first semester also saw the commencement of our mentorship programme. This was a fantastic opportunity to connect our taura with our alumni and strengthened relationships between the association and firms. It also encouraged connections between current TRT and past TRT, which was a promising way to see how our alumni have succeeded and how they can help ensure the next generation of TRT succeeds to the same level that alumni have.

This led us to our annual Haerenga, an annual outreach trip targeting schools in rural areas, such as Kura Kaupapa Māori, to encourage further education. This year saw our rōpū travel farther than we had before, and we were welcomed by the beautiful Manawatū with open arms, facilitated by the manaakitanga and whanaungatanga of the whānau of some of our taura, without whom our trip could not have been the same. Visiting schools, whakawhanaungatanga and a few haerenga shenanigans definitely highlighted this journey as one for the books.

The second semester has featured a further range of sports and social events. We look forward to preparing for year number 35.

## Korean Law Students' Association

### Co-Presidents' Report

#### Eric and Fred introduce KLSA and report on some key highlights of 2023

Korean Law Students' Association (KLSA) provides academic and social support to Korean law students and those interested in Korean culture. Our vision for KLSA is to thrive academically and socially and in doing so prepare our members for the next steps in their professional careers. We aim to consolidate the connections between our members, alumni and legal professionals to establish a cohesive community.

The 2023 highlights of KLSA include:

#### Mentorship Programmes

##### Buddy system (within KLSA)

Buddy system is KLSA's traditional programme that pairs first-year law students with a senior law student. This system was established to help first-year law students academically and also to help them get involved in various KLSA-hosted social events. KLSA aims for unity and inclusivity. Buddies meet twice per semester to socialise and give and receive help with their studies in university.

#### Professional buddy programme with alumni/lawyers

The professional buddy system is a programme that builds bridges between our members and KLSA alumni lawyers working in the fields in which our members are interested. This system is to motivate our members and help them better navigate when job hunting and deciding on a career path. We introduced this system last year and repeated the programme with a broader spectrum of professionals in 2023. KLSA members and lawyers or non-legal professionals meet once or twice per semester to exchange advice on things they are interested in or are planning to do.

#### Social

##### First-years exclusive event

KLSA kickstarted 2023 with the first-years' exclusive event, an introduction to the club for first-year/new members with executives organising a bowling outing. It facilitated social interactions between newcomers, existing members and executives providing a comfortable and inclusive environment for everyone to connect and build relationships within KLSA.

##### Shinhwan (welcome night)

Club welcome-night is our first official social



Korean Law Students' Association.

event where all year levels are invited to enjoy food and drinks. This event allows all our members to gather and greet our new members, including first-year law students. It is an excellent opportunity for members to catch up after a long break. The aim was to support and build community and opportunities for interaction with senior students for first-year students and new members.

##### Picnic day

The KLSA buddy system organised a special event that brought together mentors and mentees for a day of fun, food and bonding. Held at Cornwall Park, the participants formed buddy pairs and engaged in various games inspired by Korean entertainment shows. The event provided an excellent opportunity for mentors and mentees to strengthen their relationships through enjoyable activities and meaningful conversations.

##### Team-building night (MT)

Team-building night is our club's annual big camp of the year. In the past MT took place for one night at the same venue every year. This year KLSA stepped up its game extending the camp to two nights at a new venue.

We saw a record high attendance since the pandemic at this year's post-Covid MT and the feedback was overwhelmingly positive. MT is a fun night with K-BBQ, team activities and deep and meaningful conversations. This camp aimed to reward students by allowing them to fully enjoy their semester break after getting through the first semester. Through this camp we wanted to help our students balance the study stress and workload with activities the executives prepared.

## Academic

### Tutorials

KLSA offers several academic tutorials for the Part I and II core courses. Our highly skilled tutors, who are KLSA members themselves, deliver high-quality tutorial sessions and advice to succeed in law assignments. In particular Cherry Park and Andrew Kim, the LAW121 tutors, have displayed exceptional dedication in assisting first-year students getting into the second semester of law studies.

### IAKL career seminar

The International Association of Korean Lawyers had their first interaction with KLSA this year at Buddle Findlay. We had an opportunity to hear from prominent Korean lawyers practising internationally and learn more about what it takes to practise overseas. We also had the privilege of receiving the IAKL foundation grant, recognising our achievements throughout 2022. Our members had a chance to network with various Korean lawyers practising internationally and locally as well.

### Annual careers evening – litigation panel at MC

KLSA had the privilege of holding our annual careers evening at New Zealand's leading litigation firm, Meredith Connell. We invited five prominent litigators to share their experiences and tips studying at Law School and working as lawyers in New Zealand. Our members were invited to prepare questions for the panellists. All year levels were invited to this networking event, which aimed to give KLSA members insights into what it is like and what it takes to work as a litigator. After the official event members and lawyers had an opportunity to interact with each other, allowing individual members to ask questions of the panellists.

## Pacific Island Law Students' Association

Mālō e lelei, Tena Koe, Talofa lava, Taloha ni, Kia orana, Fakaalofa lahi atu, Namaste, Ni sa bula and warm Pacific greetings.

We are the Pacific Islands Law Students' Association (PILSA) and our aim is to facilitate a fun, friendly and collaborative community for Pacific law students within Law School. As an association we provide fantastic social, academic and cultural support networks for Pacific law students. We encourage all students to participate and get involved in our Part II Camp, MAI tutorials, sports days, socials, professional



Pacific Islands Law Students' Association (PILSA).

networking events, mentoring programme and the Pacific Island Issues Moot. The three PILSA values we build our association upon are faith, education and culture. These values empower us in our commitment to create a safe and inclusive environment that enables each member to thrive in their legal studies and take pride in their Pacific heritage.

## Rainbow Law

Rainbow Law is a student-led group that provides support to LGBTQIA+ students and allies. Rainbow Law focuses on the twin pillars of community and advocacy, staging social events and facilitating initiatives to improve the wellbeing of Rainbow students. We aim to create a wider network for queer students and advocate for inclusion within the legal industry.



The Mooting Society.

## The Mooting Society

The Mooting Society at the University of Auckland is a student-run organisation that aims to develop the advocacy skills of law students through mooting competitions. The society organises six annual moots providing law students with the opportunity to develop their advocacy skills and experience the thrill of mooting. In addition the society offers How-to-Moot workshops that provide training in various aspects of mooting including legal research, advocacy and oral presentation. The workshops are open to all law students regardless of their level of experience. The Mooting Society is a valuable resource for law students at the University of Auckland who are interested in developing their advocacy skills and pursuing a career in law.

# Nadia Sussman

## Off to Michigan

Interviewed by MARK HENAGHAN

### What were your favourite subjects at school?

“English, history, French, art and ‘theory of knowledge’, in large part because the respective teachers had a contagious enthusiasm for their subjects. Mr Shaw – English – had particularly exacting standards and it was wonderful as a high-schooler to feel held to adult expectations. He also observed how I enjoyed doing close readings of texts and noted that I might similarly enjoy law.”

### What attracted you to study law?

“I was an inadvertent law student. When I entered the University of Auckland it was through the Faculty of Arts and I had great ambitions of becoming a public-radio broadcaster. At the time I had a dim view of lawyers and only enrolled in the introductory course, Law & Society, to better understand the nature of their force and fulfil the ‘General Education’ requirement within my BA. But I hadn’t reckoned on Jane Kelsey and the way she taught that course. About mid-way through the semester, the former stakes – fulfilling my GenEd requirement – morphed and my new objective was to get into law school.”

### What do you like about studying law?

“On the one hand I like that studying law involves studying human stories. What appeals is both the stranger-than-fiction factual circumstances that the law might engage with, as well as what we can learn from the law’s response to those circumstances: what does society value? who has power? where are the realms of personal choice? what is a human’s role on this planet? On the other hand, there’s just a simple satisfaction in the problem-solving aspect of law.”

### What are your particular areas of interest in legal scholarship? How did you come to them?

“My particular interests lie in legal theory at the intersection of legal ethics, dispute



Nadia Sussman.

resolution and civil procedure. I developed these interests during my years volunteering at the Auckland Community Law Centre – ACLC – as well as during my judges’ clerkship and stint as a civil litigator. The clients at the ACLC take me out of the library and entrust me with lived, personal legal issues. They show me how their worlds collide with the frameworks I study. Conversely I had a bird’s-eye view of civil procedure during my judges’ clerkship. In my second year I clerked exclusively for Associate Judges who predominantly preside over interlocutory applications. I saw direct applications of rules of civil procedure and began to better understand how they can help – and hinder – the pursuit of justice. My adventures in civil procedure continued in litigation practice. I was also able to apply my interest in legal theory in this role. One of my employers, David Bullock, is a Doctoral candidate with the University of Toronto Faculty of Law. He had read my dissertation in the *NZ Law Review* and invited me to be part of the team acting for Mr Smith in *Smith v Fonterra Co-Operative Group Ltd*. Never in my wildest dreams had I imagined getting to work on a case concerning private-law theory, tikanga and climate change. The

proceeding afforded me a sense of how embedded and interdisciplinary scholarship might open up creative solutions to some of our community’s biggest challenges.”

### What have you enjoyed most about tutoring Law & Society and Jurisprudence?

“This past semester being back on campus tutoring these courses has been a treat. I enjoyed seeing how the respective course directors approached these courses. It has also been fulfilling to see some determined students take on feedback from formative assessment and apply it to their subsequent work.”

### You are going overseas to undertake further study. Where are you going and what are you going to do there?

“I’m very grateful to have received an International and Comparative Law Scholarship from the University of Michigan and a Spencer Mason Travelling Scholarship in Law. This support has meant that in August 2023 I was able to begin a 10-month LLM at the University of Michigan.

“The programme is a taught-Masters so I have the opportunity to select a range of courses alongside the compulsory grounding in American constitutional law and legal process. I will also conduct supervised research into the ramifications of the practice of lawyers preparing witness briefs.”

### What are you hoping to experience and learn from this further study?

“The University of Michigan Faculty of Law is reputed to foster a pragmatic, interdisciplinary and holistic culture. Further, their LLM cohort is a small – around 40 – and international group. I’m hoping to be challenged and to grow within this inclusive and academically rigorous environment.” ■

# Jessie Fenton

## Pursuing LLM studies at Yale Law School

**IN MARCH** 2023 I found out I had been accepted to study for an LLM at Yale Law School. It felt like a fantasy at that stage – I would tell people I was going to Yale in August, but it might as well have been the moon. But now, after months of filling out forms, converting things to US dollars and logging into university Zoom calls at all hours of the night, I have actually made it here to New Haven!

Yale offers a paper-based LLM, meaning Masters students take papers alongside general law students. I’m intending to take a range of courses, focusing particularly on the intersection of Indigenous, public and criminal law. My personal research interest is whether Indigenous concepts can be incorporated into New Zealand law through an incremental common law approach or whether constitutional reform is needed – I’m hoping through taking a comparative approach with the US system I’ll be able to bring back useful ideas that can be applied in a New Zealand jurisdiction.



The campus of Yale itself is beautiful – it boasts an extraordinary library, fairy-tale stone buildings and the adjacent East Rock Park, which is an amazing nature reserve. But my highlight so far has been meeting the other LLM students. Yale differs from other schools in having a small programme size – there are only 27 LLM students here and most are international students. Already I’ve found myself fervently discussing comparative constitutional law with Russian and South African students while on the bus to get groceries at Trader Joes or explaining New Zealand’s criminal justice system to Belgians over cheese pizza.

In classes we’ll be learning from academics who literally “wrote the book” on their topic. I’m lucky to be supported here not only by my wonderful referees but also by the Law Foundation through an Ethel Benjamin scholarship, which is making my study possible. The fantasy of Yale is finally starting to feel real. ■

**“The campus of Yale itself is beautiful – it boasts an extraordinary library, fairy-tale stone buildings and the adjacent East Rock Park, which is an amazing nature reserve.”**

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# Substantive Equality Month

OLIVIA BING, *Equal Justice Project Communications Team*

**THIS YEAR'S** Substantive Equality Month shed light on the theme of socio-economic inequality. In Aotearoa New Zealand we like to think we are committed to giving everyone a fair go and that we lack a class system. However income and wealth inequalities have been increasing for some time. Many outstanding speakers came from across the country and internationally to discuss persisting systemic and structural inequities and possible solutions.

The Honourable Michael Kirby, AC, CMG, was this year's Legal Research Foundation visiting scholar; his lecture made for the perfect opening event for the Month. His Honour discussed many states' progress in advancing LGBTIQ+ rights, and the deterioration of such rights in other countries. He noted that legislatures and judicial decisions have contributed to change, as has the tireless work of activists. His Honour concluded by stating that despite nations' continued oppression progress continues to be made.

Dr John Taggart then discussed the UK criminal-justice system's intermediary special measure, described as "little short of revolutionary". He talked about New Zealand's implementation of "communication assistants", modelled on the special measure. It allows for more equitable communication between the criminal-justice system and individuals with communication needs. Though criminal-justice professionals have overwhelmingly supported communication assistants, John Taggart posed critical questions needed for consideration to further accommodate vulnerable court users in the system.

Professor Jodi Gardner's lecture then marked an informative beginning to the talks on economic inequality, the theme for the remainder of the Month. Despite assumptions that private law disregards power imbalances between parties, many aspects of private law can in fact be seen as addressing inequality concerns. Jodi Gardner also showed that considering inequities should be an essential part of private law.

Simon Schofield closely examined the continuation of ethnic and gender pay gaps, despite laws prohibiting pay discrimination.



iStock

Simon delved into such causes for pay gaps as "the motherhood penalty", involving pregnancy discrimination and unpaid domestic work. Simon listed various solutions to mitigate the pay gap, such as abolishing the law allowing employers to prohibit salary discussions. Simon concluded by expressing the importance of holistic, intersectional approaches rather than continuing to provide "band-aid solutions".

The Panel on Poverty explored structural causes of poverty and structural solutions. The panellists' work involves tackling poverty. Tania Pouwhare leads Auckland Council's Southern Initiative, building community partnerships and decreasing poverty through sustainable, mana-enhancing solutions. Māngere-Ōtāhuhu Local Board member Harry Toleafoa is also a legal advocate for the local Community Law Centre. People Against Prisons Aotearoa spokesperson Emmy Rāketē understands prisons as part of an economic system that depends on keeping populations impoverished. Max Harris works with campaign groups ActionStations and the Fairer Futures Coalition.

Recurring themes from the presentations included problems with commercialising basic needs such as housing. Another theme was the intergenerational cycle of disadvantage stemming from poor education and health for deprived populations.

Auckland Law School Associate Professor Hanna Wilberg and Reader at Victoria University of Wellington Māmari Stephens held the penultimate lecture, detailing

problems with our social-security system. Māmari discussed the historically successful Māori welfare system and the idea of implementing Māori-run systems in broader government, against the idea of the need for a separate system providing welfare solutions for Māori communities and individuals.

In the lecture's second half, Hanna talked about the social-security system's failure in eliminating poverty. For example, as well as current benefits being inadequate to live on, the system forces beneficiaries into taking any available job, often pushing them into precarious work. Hanna ended the talk on a sobering note: although change is possible, the current system does not do enough to eliminate poverty.

Senior Law Lecturer at Victoria University of Wellington Dr Mele Tupou-Vaitohi provided the final lecture about Pasifika peoples' participation in the legal sector. Mele focused on the continuing uphill battle Pasifika lawyers and students face with systemic and structural factors continuing to hinder success. The talk ended on a hopeful note, discussing the research project: "Equity, Belonging and Authority" – on improving Pasifika legal education and helping students thrive.

Hanna Wilberg, as Associate Dean Equity, organised Substantive Equality Month with the valuable contributions of committee members Associate Professor Treasa Dunworth, Suliana Mone and Simon Schofield and events coordinator Christy Wang. The Month's success was thanks to their efforts in ensuring smooth operation and bringing in a wide range of informative speakers.

The Equal Justice Project would like to extend its thanks to the speakers of Substantive Equality Month. The lectures provided a highly informative, in-depth discussion of our current system's many inequities. The Month showcased just some of the many outstanding individuals who continue to work towards achieving equality. ■

# Hon Michael Kirby, AC CMG

## Legal Research Foundation 2023 Distinguished Visiting Scholar

MARK HENAGHAN

**THE HON** Michael Kirby visited the Law School in late July. He was very generous with his time to students, academics and the wider profession.

Michael first hosted a seminar for students interested in international law. The seminar focused on Michael's work developing the Charter of Commonwealth Nations and his work as the chair of the Commission of Inquiry for Human Rights in North Korea. What was interesting in this seminar is that Michael told the students that action is important. He wrote the draft Charter of Commonwealth Nations on napkins while on a flight to get the ball rolling. Often international agreements can take a long time and if nobody puts pen to paper nothing will happen.

Michael hosted a lunchtime staff seminar discussing the role of academics as critics of conscience in society. In this seminar he sang the praises of Professor Julius Stone, after whom the Stone Lecture Theatre is named. Michael sat in on Professor Stone's lectures while at University. Judges can exercise leeway when faced with a new situation and this gives rise to the opportunity for law to adjust to the changing circumstances in society. Michael said this teaching was instrumental for judges on the High Court of Australia when deciding the *Mabo* case that gave Aboriginal people rights to their land. Michael made clear his belief that a purely formalistic view of law will mean that law remains stagnant and will never move forward.

Michael then met with Rainbow students in the Faculty. He talked very personally to the students present about his own experiences as a gay senior judge in Australia. Michael has been in a 54-year relationship with his partner, Johan van Vloten, but for many years he had to remain silent because he realised that it would be the death knell of his career if it was widely known that he had a male partner. Michael talked movingly about how grateful he was for growing acceptance in the world of, and progress on, LGBTIQ+ rights. Michael and Johan married on the 50th anniversary of



Hon Michael Kirby.

their first meeting, at the same hour and location. Michael was very thankful that the Faculty and Legal Research Foundation were generous to invite Johan as well.

Michael's public lecture, entitled "Good News and Bad News on LGBTIQ+ Rights", marked the start of Substantive Equality Month at the Law School. Michael traversed the historical treatment of homosexual offences in the law worldwide. He made the point that in France, due to the Napoleonic Code, it was no offence for men to have sexual relations. In the British empire it was an offence and thousands of people were put to death as a consequence. The general trend, at least in developed countries, is towards acceptance of equality. But in many other parts of the world there are oppressive regimes with regard to same-sex relationships and people can still be subject to severe and life-threatening penalties. He made it clear there is much work to be done to support others who live in fear of their relationship.

Michael commented on the *Quilter v Attorney-General* case that came before the Court of Appeal and reflected upon Sir Ted Thomas' dissent that it would be inconsistent with the NZBORA to not allow

**"Michael talked very personally to the students present about his own experiences as a gay senior judge in Australia."**

same-sex couples to marry. Michael had been so conditioned by his society that he could not believe Sir Ted Thomas' legal reasoning process despite him living in a same-sex relationship for well over 30 years.

Towards the end of the lecture Michael was brought to tears, as was the audience, when he talked about how moved he was by Johan being invited here. Macquarie University has recently opened a new building named after Michael with an auditorium inside being named after Johan.

The following morning Bell Gully hosted Michael for a breakfast discussion on the

**"Michael said to the large number of students present that, in the end, hard work, trustworthiness and chance were the reasons why he was invited to the Bench and was eventually elevated to the High Court of Australia."**

pressing challenges facing the profession and judiciary including issues of diversity and access to justice. The session was well attended by practitioners, the former Governor-General Dame Silvia Cartwright, academics and students. Michael began by talking about how when he was a student there were many unfair things in the world. Looking back he wished he had challenged these, but it was so normal in his world and his law school, in which all the students were men, that he could not see outside that world. Even though he knew he was gay he did not question the situation of his own life because he felt he would be treated very differently if he did.

Michael challenged the audience by saying lawyers should be at the forefront of change. Given his involvement in various civil-liberty movements advocating for law reform when the law was causing injustice, Michael advised us to always seek opportunities to use the law for change. Michael concluded with what he sees as the



Hon Michael Kirby pictured alongside his partner Johan van Vloten with Auckland Law School students.

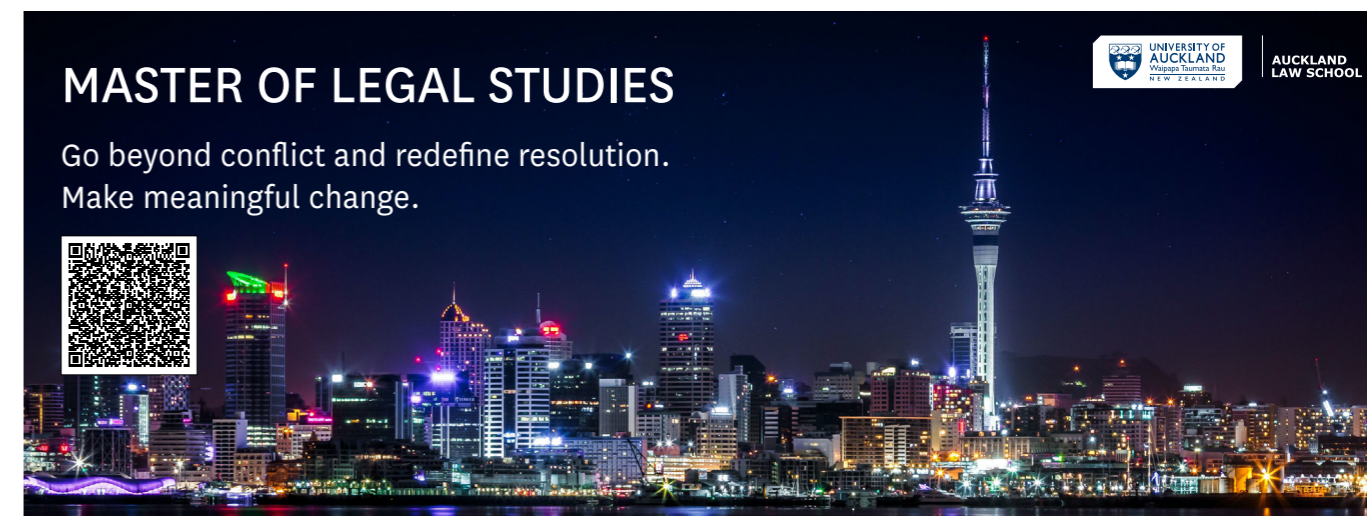
main threat in the world, that being nuclear weapons. He said that in a rational world they would never be used, but given his experience working on issues such as North Korea, he has found that rationality is not common. There are many nuclear weapons throughout the world and it will only take one wrong move to spark nuclear war. Climate change and inequality are other issues that we must tackle head-on if the world is to be a place where everyone feels understood and can live a good life.

Michael's final lecture for students focused on the option of the judiciary as a career. He shared his experience being appointed as a judge and his conflicting views on appointment. Michael's main message was that the hurdle of getting appointed depends partly on chance and luck, including being favourable to the appointing government minister, but also on actively participating in legal networks such as bar associations and law societies. Michael never applied to be a judge and

he thought that if one were to apply that would be fatal. Once appointed, first on the Arbitration Commission, Michael noted that the glamour and prestige soon diminishes and is replaced by an often crushing workload. Michael then moved to the Australian Law Reform Commission as its inaugural chair, and he shared that he enjoyed this position greatly as it provided him a direct opportunity to improve the law. Michael insisted on making the Law Reform Commission's work transparent and open to the public. His hard work was noticed and he was then invited to serve on the New South Wales Court of Appeal, after which he moved to the High Court of Australia in 1996. Michael said to the large number of students present that, in the end, hard work, trustworthiness and chance were the reasons he was invited to the Bench and was eventually elevated to the High Court of Australia. ■

## MASTER OF LEGAL STUDIES

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# Brian Z Tamanaha

## A theoretical framework for legal pluralism

NICOLE ROUGHAN summarises the annual “Theory Matters” lecture

**LEGAL PLURALISM** should be theoretically recognised and analysed as a particular type of law and society relationship that merits consideration on its own terms. This is wholly distinct from the monistic law state image that dominates the minds of jurists.

The standard view of jurists is that law is the product of sovereign states. The monistic law state construes state law as a singular unified entity with supremacy over a territory. Although legal theorists have presented this legal monism as the nature of law, it is better understood as an idealised projection of legal theorists, judges and lawyers who have been trained to see law this way.

At the outset, two points about the monistic state law image should be emphasised. The first is that this image of a monopolistic, comprehensive, supreme state law is a *relatively recent invention*. The consolidation of the state involved building the state legal bureaucracy and absorbing coexisting forms of law within the state. It was not until deep into the 19th century that the bureaucratic consolidation of law within the state was substantially achieved, and even then it was not fully accomplished anywhere.

The second point is that although the image of monistic state law has become dominant, at least in the minds of jurists, it is *not a descriptively accurate account of law anywhere* in the world. Even highly developed state legal systems in the West have not achieved supreme, hierarchically organised, unified, comprehensive state legal systems with a monopoly over law.

Although it is false, the monistic state law image has significant consequences because jurists implicitly and explicitly use this image as the standard for what a valid legal system looks like. The monistic law state image was repeatedly invoked by jurists as a justification for Western colonisation of large parts of the globe.

In contrast to the image of the monistic law state, legal pluralism is the coexistence



Brian Z Tamanaha.

“One of the sources of theoretical confusion surrounding legal pluralism is that it must come up with some way to deal with the classic question: ‘What is law?’”

of multiple bodies of law within society. One of the sources of theoretical confusion surrounding legal pluralism is that it must come up with some way to deal with the classic question, “What is law?” An answer to this question is necessary to identify the existence of multiple forms of law besides state law.

To begin exploring this issue, consider a question that jurists seldom ask “What makes state law law? This might seem like a bizarre question. Of course state law is law, you might think.

But still, *why* is state law law?

A constitutionalist might say state law is law because the written or unwritten constitution makes it so – and the constitution is the foundation for law. For those who offer this answer, I rephrase the question, “What makes the Constitution the foundation of law?”

The answer to these questions, I submit, is that state law is law because people within society *collectively recognise* state law to be law. And the constitution is the foundation of law because people within society collectively recognise it as the foundation of law.

The *crucial existence condition* for state law, then, is *collective recognition* that it is law. There is nothing special about state law that sets it apart from other forms of law. State law seems to be special only because it *claims* to be monopolistic and supreme and *jurists are indoctrinated* into seeing state law this way. But the grounds for the existence of state law as law are the same as for the existence of customary law, religious law and international law – and any other form of law.

Nothing in this account requires that all collectively recognised law has the same features or elements. To the contrary, they are different from state law. Law does not have a single set of defining elements or features but rather there are multiple forms of collectively recognised law.

However, the existence condition for *all* forms of law – state law, customary law, religious law, international law and so forth – is precisely the same: each *is* law because it is collectively recognised as law.

Grounding law on collective recognition is what I have called the “folk law” approach to the identification of law. Legal theorists who object to my conventionalist approach fail to realise that they also rely on collective recognition when they identify law with state law – the only difference is that I do not stop there but instead accept that more than one form of law can exist.

What I call “manifest legal pluralism” was created around the world in the wake of European colonisation through the transplantation of law and the movement of people and ideas. What stands out about manifest legal pluralism is the evident contrast – the stark diversity – between transplanted norms and institutions of colonial and post-colonial state legal regimes and surrounding social, cultural, economic and legal arrangements. This diversity creates complex issues and clashes with significant consequences for law and for society.

When decolonisation swept across the global south in the decades following the Second World War, many newly independent countries expressed *two goals related to law*. One goal was to *incorporate customary values* into state law, and the second goal was to *create unified systems of state law*. Jurists in particular espoused these goals. They believed that legal pluralism was a harmful legacy of colonisation that prevented them from developing modern, unified state legal systems.

Attempts to incorporate customary values within the official state legal systems have not met much success. The underlying source of the difficulties is that state law and customary law are each a *holistic product of their respective surroundings in the course of their development* and operation. This holistic product includes *processes as well as norms, which all work together*. State law and customary law are like oil and water that cannot easily be combined because each consists of a cluster of integrated traits that cannot easily be pried apart and selectively merged with one another.

“What I call ‘manifest legal pluralism’ was created around the world in the wake of European colonisation through the transplantation of law and the movement of people and ideas.”

State legal systems typically are *dis-embedded* from society while customary law systems typically are embedded within society.

What I mean by dis-embedded is that legal institutions staffed by *jurists create legal knowledge*, declare the law, execute the law, carry out legal tasks and apply the law. The legal system is differentiated from society in the sense that it is largely operated by people with specialised training in law. Because legal actors control the creation of state law, the law *they create can diverge from social values*. This divergence is precisely what occurred with colonial legal systems.

Customary legal systems, in contrast, are *embedded in society* in the sense that members of the community preside over disputes, engage in discussions over the applicable norms, render decisions and often carry out sanctions. There is no separate legal system as such that handles things. *The community itself identifies and carries out the law*. So for example when a council of elders decides that the wrongdoer must suffer a beating as punishment for a rape, the beating is socially authorised punishment, which is duly carried out by members of the community.

This gives rise to a fundamental distinction between dis-embedded state legal systems and socially embedded customary law. When state court judges incorporate customary law, scholars have called it “judicial customary law” – to distinguish it from what is called “living customary law” as it functions in the community. Judicial customary law is used by legal officials in ways that sever its original connection within community life.

Officials in state legal systems have been *trained to understand law as a coherent*

*system of legal institutions, processes, doctrines and knowledge*. When state law judges attempt to incorporate norms from customary law they do so *in terms that fit within state law doctrines and concepts*.

But this incorporation inevitably alters the content and operation of the customary norm. That is because, as I mentioned, customary norms have different content and do not operate the same way. A state court that takes a customary norm and turns it into a binding law *distorts* how that norm actually operates in the customary system.

If my analysis is correct, state legal systems will not be able to incorporate customary law – because it cannot be done in a way that retains the integrity of customary law and how it functions.

Both forms of law provide important services for those who use it. So both state law and customary law are essential and necessary. Each serves part of society that the other form of law does not serve well.

Legal pluralism in these societies – the coexistence of state law and customary law – is a *functional arrangement* that works quite well given their history and contemporary circumstances.

Jurists who believe in the monistic state law image will have difficulty accepting this, but as I suggested earlier, all state legal systems are pluralistic internally and externally. So the difference is just a matter of degree. ■

*Summary extracts from the annual “Theory Matters” lecture, hosted by the NZ Centre for Legal and Political Theory.*

# Faculty events



Winners of the Simpson Grierson Social Issues Moot Charlie Matthews and Jimin Seo pictured debating at Waipapa Marae.



Auckland Law School students at the 2023 Law Awards, an event to celebrate the top students of the year.



Auckland Law School students pictured at the May 2023 Graduation Celebration.



Dr John Taggart, Lecturer at Queen's University in Belfast, travelled to Auckland Law School to present a successful lecture on "Intermediaries and Communication Assistants: An inter-jurisdictional comparison".



Mentors from Auckland Law School's Women's Mentoring Programme present a panel for mentees.



The Dean of Law, Pene Mathew, welcoming students and whanau to the 2023 graduation celebration.



New Zealand Centre for Environmental Law hosts a successful conference on climate litigation with the Legal Research Foundation.



Professor Brian Z Tamanaha from George Washington University, St Louis, Missouri travelled to Auckland in June 2023 and presented a lecture on the basic aspects of legal pluralism.



The Honourable Tony Randerson CNZM KC, Senior Lecturer Nikki Chamberlain, Thomson Reuters Senior Product Developer Renay Taylor and Professional Teaching Fellow Stephen Penk at the launch of Privacy Law in New Zealand (third edition) on Wednesday, 23 May 2023.



Sir Michael Jones and Lady Melina pictured with Hope Parsons, the first recipient of the Olive Malienafau Nelson Scholarship for Pasifika Excellence.



Professor Andy Spalding from the University of Richmond presents a lecture on "Human Rights and Megasports after Qatar: The Prospect of a Human Rights Legacy" at the Auckland Law School.

# Research highlights 2023

JODI GARDNER, Associate Dean (Research)

**BEING THE** Associate Dean (Research) has been a professional highlight. Seeing all the fabulous research projects and outcomes from the faculty this year has been fascinating and inspiring. It has been an incredibly successful year and everyone should be very proud of their exceptional work during a difficult and busy time.

We had a number of award successes and general recognition, two members of the faculty were elected as Fellows of the Royal Society of New Zealand Te Aparāngi (**Julia Tolmie**, **Klaus Bosselmann**) and **Warren Swain** was elected as a Fellow of the Royal Historical Society. **Craig Elliffe** was awarded the 2022 University of Auckland Research Excellence Medal and was Highly Commended in the 2022 Legal Research Foundation writing awards for his article “The Justification for source taxation in the digital age”.

Our faculty members continue to get around – travelling to some prestigious places:

**Nichole Roughan** was the HLA Hart Visiting Fellowship at University College, Oxford, Faculty of Law and **Katherine Doolin** was a visitor at the Institute of Criminology (based in the Cambridge Prisons Research Centre) at the University of Cambridge, where she presented her research on “Prison Violence, Prisoner Society and Prison Gangs: A View from Aotearoa New Zealand”. Members of the faculty participated in some world-leading conferences, including the International Society of Public Law (ICON-S) at Victoria University of Wellington (**Guy Fiti Sinclair**, **Janet McLean**, **Claire Charters**, **Tamasailau Suaalii**), Obligations Conference at Banff in Canada (**Arie Rosen**), presenting to 2000 tax lawyers at the International Fiscal Association (**Craig Elliffe**), the Symposium on “Property, Environment and Law: New Directions” to mark the retirement of Professor Chris Rodgers (**David Grinlinton**), and **Alexandra Allen-Franks** presented at the European Human Rights Law Conference held at the University of Cambridge. **Katherine Doolin** gave keynote addresses at the 6th International Research Days in the Penitentiary Environment hosted by the Département Des Relations Internationales in Agen, France, and UK Restorative Justice Council annual conference. **Josh Yuvaraj**



Professor Jodi Gardner.

went all around the world: presenting at the Society for Economic Research on Copyright Issues Conference in Bournemouth, UK, attending a research day for the University of Cambridge Centre for Intellectual Property and Information Law and presenting at the Australian Digital Alliance Copyright Forum in Canberra.

It is important for academics to use their expertise to improve society and policy work is exceptionally valuable. The law faculty’s expertise was noted in a range of policy areas, such as **John Ip** attending the International Roundtable hosted by Independent Commission on UK Counter-Terrorism Law, Policy and Practice, **Jaime King** co-authoring “A Step Forward for Health Care Market Oversight: Oregon Health Authority’s Health Care Market Oversight Program” Milbank Memorial Fund Report, **David Grinlinton** contributed to formal submissions by the Auckland District Law Society to the environment select committee considering the Natural and Built Environment Bill and Strategic Planning Bill. In addition to these activities, **Alexandra Allen-Franks** made a submission to the New Zealand Law Commission’s Third Review of the Evidence Act 2006, **Simon Schofield** made a formal submission to the

Education and Workforce Select Committee considering the Employment Relations (Extended Time for Personal Grievance for Sexual Harassment) Amendment Bill and **Julia Tolmie** participated in the Monash Prato Centre Policy Responses to Violence Against Women & Femicide Roundtables. **Klaus Bosselmann** was the Adviser to the UN Secretary General including co-organisation of several Expert Roundtables on global environmental governance in Utrecht, Geneva and New York, contributed to the Report “A Breakthrough for People and Planet” by the UN High-Level Advisory Board on Effective Multilateralism in preparation for the Summit of the Future, September 2024 and contributed to a UN General Assembly Resolution calling for annual “Earth Assembly” meetings. **Caroline Foster** was part of a team that wrote the submission to the International Court of Justice by the International Union for the Conservation of Nature (IUCN) and also assisted the IUCN with its written submission to the International Tribunal for the Law of the Sea in relation to the Advisory Opinion on Climate Change lodged by the Commission of Small Island States on Climate Change and International Law (COSIS).

The Law Faculty made a significant contribution to the incredibly important Law Commission Study Paper *He Poutama* (NZLC SP24) on tikanga and the law. Not only is the Commissioner, the Hon Justice Christian Whata, a proud Auckland alumnus, the work of many colleagues was cited (**Fleur Te Aho**, **Julia Tolmie**, **Claire Charters**, **Jayden Houghton** and **David Williams**). In addition a **Nicole Roughan** commissioned paper appears as Appendix 3, **Claire Charters** produced two research notes and **David Williams** was on the Internal Advisory Group.

We had significant transdisciplinary successes. **Jaime King** as the Principal Investigator on Ki Te Pae Tawhiti: Aotearoa New Zealand’s Health Reform Collective, which received a Transdisciplinary Ideation Fund grant in December 2022. The initiative is for a group of scholars from around the University to develop a public website that shares information and analysis on health reform. **Peter Devonshire** spearheaded the

project “Diversifying Pedagogical Landscapes: Investigating How Teaching-Learning Cultures Impact Student and Staff Wellbeing”, which was a collaboration between Faculty of Law, Faculty of Medical and Health Sciences, Faculty of Creative Arts and Industries (University of Auckland) and School of Medicine (University of Leeds, UK). **Katherine Doolin** led a transdisciplinary international collaboration researching prison violence with colleagues at the Department of Social & Policy Sciences, University of Bath (UK).

Faculty members also had an impressive number of publications in top-ranking New Zealand and international journals, including:

- “Antitrust’s Healthcare Conundrum: Cross-Market Mergers and the Rise of System Power” (2023) 74 *Hasting L. J.* 1057 (**Jaime King**)
- “Clearing the decks: The Siskina in the Privy Council” [2022] *Lloyd’s Maritime and Commercial Law Quarterly* 193-200 (**Peter Devonshire**)
- “Implementing copyright revocation in Ireland and Malta: lessons for lawmakers” (2023) 18(7) *Journal of Intellectual Property Law & Practice* 528 (**Josh Yuvaraj**)
- “Honing ‘our Jurisprudence’ to respond to interacting legalities in Aotearoa New Zealand” (2022) *NZ Law Review* 300-330 (**Nicole Roughan**)
- “In This Together: Climate Change, Health and the Potential of International Collaboration” (2023) *Journal of Law Medicine and Ethics* (**Jaime King**, **Joanna Manning** and **Alistair Woodward**)
- “Learning modules: problem-based learning, blended learning and flipping the classroom” (2023) 57(3) *The Law Teacher* 271-294 (**Jayden Houghton**)
- “Māori rejections of the state’s criminal jurisdiction over Māori in Aotearoa New Zealand’s courts” (2023) 30 *NZULR* 409 (**Fleur Te Aho** and **Julia Tolmie**)
- “Negligence in the Criminal Law in Aotearoa New Zealand: Becoming Confused on a Higher Level and About More Important Things” (2022) 4 *NZLR* 481 (**Julia Tolmie** and **Hannah Swedlund**)
- “Nothing New Under the Sun: Tax Avoidance in Otago in 1856” [2023] *New Zealand Law Journal* 1856 (**Michael Littlewood**)
- “On Consolidation and Competition: The Trials and Triumphs of Health Care Antitrust Law” (2023) 388 *New England Journal of Medicine* 1057 (**Jaime King**)
- “Pandemic Litigation Reaffirms Hansen Approach But Also Exposes Two Flaws

in its Formulation” (2022) 30 *New Zealand Universities Law Review* 69-78 (**Hanna Wilberg**)

- “Political Reasons and the Limits of Political Authority” (2023) 29(1) *Legal Theory* 63 – 88 (**Arie Rosen**)
- “Preventing treaty overrides” (2023) *British Tax Review* (**Craig Elliffe**)
- “Public Nuisance in Aotearoa New Zealand in 1849” [2022] *New Zealand Law Journal* (**Michael Littlewood**)
- “Recent Developments in Soil Law and Policy in New Zealand” (2023) 12 *Soil Security* (**David Grinlinton**)
- “Straddling the Civil/Criminal Divide: The Terrorism Suppression (Control Orders) Act 2019” [2022] *New Zealand Law Review* 419-453 (**John Ip**)
- “The Brave New World of International Tax under the 2020s Compromise” (2023) *World Tax Journal* (**Craig Elliffe**)
- “The Doctrine of Part Performance: Where Should the Line be Drawn?” (2022) 17 *Otago Law Review* 277-301 (**Peter Devonshire**)
- “The intersection of property rights and environmental law” (2023) *Environmental Law Review* (**David Grinlinton**)
- “The Recognition in Authority: roles, relations, and reasons” (2023) 14 *Jurisprudence* 171-201 (**Nicole Roughan**)

**Jaime King** and **Jo Manning** also co-edited a Special Issue of the *Journal of Law, Medicine and Ethics* titled “International Collaborations: The Future of Health Care”, featuring 10 articles on how international collaboration can be used to promote health and improve healthcare worldwide.

Numerous books by faculty members have been published, or will be published in early 2024 – including *International Tax at the Crossroads* (Edward Elgar, edited by **Craig Elliffe**), *Pragmatism, Principle, and Power in Common Law Constitutional Systems* (Intersentia, co-edited by **Hanna Wilberg**), *Housing Law and Policy* (LexisNexis, **David Grinlinton**), **Nikki Chamberlain** and **Stephen Penk** co-edited *Privacy Law in New Zealand: 3rd Edition* (Thompson Reuters), which features chapters from a number of our current and former colleagues including **Jayden Houghton**, **Mark Heneghan**, **Nikki Chamberlain**, **Stephen Penk**, **Bill Hodge** and **Rosemary Tobin**.

There were a wide and varied number of chapters in edited collections. **Hanna Wilberg** had two chapters in different Hart Publishing edited collections –

“Mistake of Fact as a Ground of Review: Distinct and Defensible” and “Legislators’ Understanding as a Constraint on Interpretive Presumptions in Aotearoa New Zealand”. **Nicole Roughan** published “Escaping Precedent: inter-legality and change in rules of recognition” in Endicott et al (eds.) *Philosophical Foundations of Precedent* (Oxford University Press), and **Nicole Roughan** and **Jesse Wall** published “Interpreting Community: agency, coercion, and the structure of legal practice” in T. Bustamante, & M. Martin (eds.) *New Essays on the Fish-Dworkin Debate* (Hart Publishing). **David Grinlinton** published a chapter on the “Rights of Property in Environmental Law” in the *Research Handbook on Fundamental Concepts of Environmental Law* (Edward Elgar). **Michael Littlewood** had two chapters in different edited collections – “Sir George Grey’s Machiavellian Constitutional and Fiscal Reforms in Aotearoa New Zealand, 1845-1875” and “The OECD as a Lawmaker, the Rule of Law and the Instructive Case of New Zealand”. **Josh Yuvaraj** published “Copyright Reversion: Debates, data, and directions” in Jens Schovsbo (ed) *The Exploitation of Intellectual Property Rights in Search of the Right Balance* (Edward Elgar). And finally **Klaus Bosselmann** has a number of chapters in different collections looking at topics such as sustainable development, the Earth System approach to International Environmental Law, the Hague Principles on rights and responsibilities concerning humans and the earth, ecological integrity and planetary commons.

Also a number of our colleagues were cited in various courts around the world on many different issues and appeared in countless newspaper articles.

I am sure you will agree with me that this is an incredible list of achievements. It has been an honour to be Associate Dean Research and support these excellent outcomes and projects and I cannot wait to see what 2024 has in store. ■

Just as the magazine went to print, our wonderful erstwhile colleague Professor Emeritus Peter Watts has been awarded the degree of Doctor of Civil Law from Oxford University for his writing on the law of agency. Peter has been teaching law at Oxford for several weeks a year as a Visiting Professor since 2017. We will have a full story in next year’s magazine on Peter’s amazing work.

## The New Zealand Centre for Law and Business

CRAIG ELLIFFE, *Director*

**THE CENTRE HAD** a successful year as we emerged from the restrictions of the Covid period. Although there were other functions, without a doubt one of the highlights was the running of the *International Tax at the Crossroads* symposium and conference in December 2022. Although many of our distinguished international academic visitors made the trip in person, this was a hybrid conference. The forum had been a long time in planning and delayed for several years. Looking back this was many attendees' first in-person, internationally oriented event.

The symposium was held on 8 December. It was an invitation-only event hosting leading international academics, academics based in New Zealand and the private and public sectors (including New Zealand Treasury and Inland Revenue). The general conference was held at the Law School on 9 December. An audience of more than 70 conference attendees enjoyed insightful academic papers by Reuven Avi-Yonah of the University of Michigan, Wolfgang Schon of the Max Planck Institute in Munich, Philip Baker KC, barrister and professor at Oxford, John Vella of the University of Oxford, Wei Cui of the University of British Columbia, Ruth Mason of the University of Virginia and Miranda Stewart of the University of Melbourne. There were also excellent papers by local academics including Chris Noonan, Michael Littlewood, Matt Andrew and Julie Cassidy of the University of Auckland, and Alison Pavlovich of Victoria University of Wellington and Victoria Plekhanova of Massey University.

The conference has generated a greatly anticipated book titled *International Tax at the Crossroads*, published by Edward Elgar. The New Zealand Centre for Law and Business was delighted to host such an important and relevant event. It acknowledges the sponsors, including significant research funding from the University of Auckland and the New Zealand Law Foundation (concerning the publication). Private-sector funding was vital: thanks to Bell Gully, Chartered Accountants Australia and New Zealand, Chapman Tripp, Deloitte, KPMG, Mayne Weatherall and PricewaterhouseCoopers. ■



Discussion on important issues amongst respected colleagues: "Should New Zealand impose a digital services tax?", at the *International Tax at the Crossroads* conference.

### Twenty Years of the Trade Marks Act 2002

#### Associate Professor Rob Batty

The New Zealand Centre for Law and Business in conjunction with the Legal Research Foundation hosted the Twenty Years of the Trade Marks Act 2002 Conference on 1 September 2023. The Trade Marks Act 2002 (2002 Act) came into force on 20 August 2003. The conference commemorated this occasion and reflected on trends in and characteristics of New Zealand trade-mark law that have developed over the past 20 years.

The first session, introduced by Justice Brendan Brown, tracked the influences and external factors that shaped the drafting of the 2002 Act and some of the unique issues that have emerged in the case law. In the second session four legal academics from Australia analysed New Zealand law and drew comparisons with the law in Australia

and the United States in the areas of non-traditional trade marks, offensive and racist trade marks and trade-mark infringement. The speakers in the third session considered issues related to trade-mark non-use and bad faith under the 2002 Act. The fourth session reflected on the role of the Māori Trade Marks Advisory Committee under the 2002 Act and various features of the hearings and adjudication processes of the Intellectual Property Office of New Zealand.

The conference was a great success. The diverse range of terrific speakers provided attendees with much food for thought about how trade mark has developed in New Zealand over the past 20 years and the future direction it may take. Most of the papers presented will be published in a special edition of the *New Zealand Law Review* in 2024. ■



#### Professor Craig Elliffe

Craig Elliffe is an experienced PhD supervisor who researches and supervises any area of taxation, but he has particular interest in international tax, corporate tax, tax policy, tax avoidance and tax reform.

## The New Zealand Centre for Legal and Political Theory

ARIE ROSEN and NICOLE ROUGHAN, *Directors*

**2023 HAS BEEN** a busy year for the Centre with our calendar of activities back in full swing after several years of disruption.

In June the Centre's annual Theory Matters Lecture was delivered by Professor Brian Tamanaha, of George Washington University in St Louis, Missouri. Professor Tamanaha captivated a large audience of students, scholars and lawyers with his presentation of "A Framework for Legal Pluralism".

In July the Centre hosted the Australasian Society for Legal Philosophy Annual Conference, which returned to New Zealand for the first time since 2017. Over two days we welcomed more than 50 participants from New Zealand, Australia, Europe, North America and Asia discussing 30 papers. The conference opened with a PhD workshop discussing the work of PhD candidates from New Zealand, Australia and the UK, including Auckland's own Maria Pouliasi, who presented her work on "International Tax Dispute Resolution: A Hohfeldian Analysis". Highlights of the conference included keynote presentations from Professor Ruth Chang, Chair of Jurisprudence at the University of Oxford, on "Hard Cases in Law"; and Professor Martin Krygier, Gordon Samuels Professor of Law and Social Theory at the University of New South Wales, on "Well-tempered Power: A Cultural Achievement of Universal Significance". The conference concluded with a Book Symposium on Rosalind Dixon's *Responsive Judicial Review: Democracy and Dysfunction in the Modern Age* with commentaries from Jeff King (University College London), Aileen Kavanagh (Trinity College Dublin) and Vanessa McDonnell (Ottawa), as well as the author's reply.

A number of Centre members participated throughout the conference, which also included paper presentations from Centre leaders Stephen Winter (Philosophy), "Rousseau's Republican Judges"; Arie Rosen, "The Constitutional Structure of Contract Law"; Jesse Wall, "Is it possible to have a theory?" and Nicole Roughan,



Australasian Society for Legal Philosophy Annual Conference.



#### Ruth Chang.

"A Recognition Model of Legality".

We are grateful to Christy Wang for her assistance with the planning and delivery of these events and to Rose Stringer for photography.

Together with our colleagues in Philosophy, we hosted Professor Ruth Chang for a longer stay as a Visiting Hood Fellow, which also enabled her to deliver the Annual Solomon Lecture in Philosophy. We are grateful to the University of Auckland Foundation for the award of this fellowship that brings esteemed overseas scholars to the University of Auckland to connect with, challenge and inspire local research.

The 2023 NZCLPT Seminar Series featured seminars from four visitors. In February we were joined by Professor Andrew Simester (National University of Singapore) presenting his work on "Free, Deliberate, and Informed?" with commentary from Jesse Wall. In March we hosted Professor Joshua Getzler (University of Oxford) discussing "Securities lending, the right to use, and financial trusts – lessons (imperfectly learned) from the Lehman insolvency". In June Professor Brian Tamanaha (George Washington) workshopped a book chapter on "Contemporary Natural Law Philosophy", and we welcomed Emeritus Professor Jerry Postema (University of North Carolina) in October to discuss his new book *Law's Rule*.

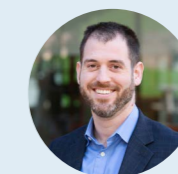
We also welcomed Professor Dr Niels Petersen, Professor of Public Law, International Law, and EU Law at the University of Münster, as a Visiting Scholar. In Semester 2 Niels taught an undergraduate course on Economic Analysis of Public and Private Law.

The Centre's Student Jurisprudence Reading Group continues to provide a forum for keen undergraduate students to meet and discuss work in legal theory. This year the group has been convened by Nathan Pinder and Spencer Barley. ■



#### Associate Professor Nicole Roughan

Nicole's research in the philosophy of law includes work on law's authority, law's persons (both officials and subjects) and law's relation to the state. Her work in "pluralist jurisprudence" explores the ways in which interactions between legal orders make key questions of general jurisprudence both more difficult and more important.



#### Dr Arie Rosen

Arie's research in legal and political philosophy focuses on political authority, the grounds for its exercise, the ideology that sustains it and the impact it has on law and practical reasoning. His work appears in *Legal Theory*, the *Oxford Journal of Legal Studies*, the *University of Toronto Law Journal* and the *Canadian Journal of Law and Jurisprudence*.



# Te Puna Rangahau o te Wai Ariki/Aotearoa New Zealand Centre for Indigenous Peoples and the Law

CLAIRE CHARTERS and FLEUR TE AHO, *Directors*

TE WAI ARIKI has had another exciting year in 2023.

## Claire Charters appointed a Professor

The year began with Te Wai Ariki co-director Claire Charters' appointment as a Professor within the Law Faculty. Claire is the first member of Te Tai Haruru, the Māori legal academics and professional staff group at the Faculty, to be appointed as a Professor. Congratulations Claire.

## New website launched

Te Wai Ariki was delighted to launch a new up to date website for its mahi. The website contains information on the different mahi we have undertaken since the Centre was first established and gives access to our various reports and events. The website will be regularly updated. If you are interested in our mahi we encourage you to take a look. The website is accessible at: [www.auckland.ac.nz/en/law/our-research/research-centres/te-puna-rangahau-o-te-wai-ariki.html](http://www.auckland.ac.nz/en/law/our-research/research-centres/te-puna-rangahau-o-te-wai-ariki.html)

## Expert advice and advocacy on Māori and Indigenous rights

Te Wai Ariki continued to provide expert advice and advocate for Māori and Indigenous peoples' rights both domestically and at the international level:

- Professor Claire Charters was appointed to the role of Rongomau Taketake, Indigenous rights governance partner, at Te Kāhui Tika Tangata | The New Zealand Human Rights Commission. In the role Claire is providing tangata whenua leadership to enhance the Commission's governance and advising and supporting the Commission's work to advance understanding of Te Tiriti o Waitangi and the UN Declaration on the Rights of Indigenous Peoples ("Indigenous Declaration"). Her appointment is a product of a partnership between the Commission and the National Iwi Chairs Forum.

- We released in May a report critiquing how determinations of the best interests of tamariki Māori in need of care and protection are made within New Zealand law, and comparing this with practice in other jurisdictions. The report was shared with child-rights advocacy groups and with members of the Family Court and is available via our website.

- We have provided advocacy support at the United Nations, for example, working with the Iwi Chairs' Forum to present an annual review of New Zealand's compliance with the UN Declaration on the Rights of Indigenous Peoples at the annual session of the UN Expert Mechanism on the Rights of Indigenous Peoples in July 2023.

- Dr Fleur Te Aho continued to support Māori survivors of abuse in care as a member of Te Ara Takatū. Te Ara Takatū is a multi-disciplinary collective of survivors and advocates, formed in 2021 following a wānanga hosted by Te Wai Ariki, that advocates for survivors and meets regularly with the Royal Commission of Inquiry into Abuse in Care. In 2023 members of Te Ara Takatū presented in the Forum Tent at Waitangi during the Waitangi Day celebrations to draw attention to these issues.

- We have provided expert advice to agencies and organisations both inside and outside government on Māori and Indigenous rights.

- We regularly provided media comment on issues of relevance to Māori to inform and shape national dialogue. For example, Professor Claire Charters has contributed to media reporting regarding the doctrine of discovery's legacy of racism and dispossession, the New Zealand government's unilateral decision to postpone work to finalise a plan to implement the UN Declaration on the Rights of Indigenous Peoples, shortcomings in the government's Severe Weather Emergency Recovery Bill in relation to Māori, and the government's breaches of Wairarapa Moana's human rights and rights as indigenous peoples.

- We also provided students with the opportunity to do research on issues that ended up, for example, in Te Wai Ariki-supported submissions to bodies such as the UN Permanent Forum on Indigenous Issues and the UN Expert Mechanism on the Rights of Indigenous Peoples.

## Annette Sykes leads Indigenous Rights Legal Clinic

Adjunct Professor Annette Sykes led the Indigenous Rights Legal Clinic for a second year in 2023. Established in 2019 the Clinic is Auckland Law School's first clinical programme providing taura with practical opportunities to work on issues of importance for Māori and to learn more about tikanga Māori.

## Events

- Te Wai Ariki hosted a seminar presentation by Éloïse Décoste, a visiting scholar with Te Wai Ariki from the Département des sciences juridiques of the Université du Québec à Montréal, on the topic "From legislated discrimination to systemic racism: Indigenous women and settler colonialism in Canada", in April. Holly Reynolds (Te Āti Haunui-a-Pāpārangī, Ngāti Maniapoto) provided initial commentary and questions on Éloïse's paper, connecting its themes to the Aotearoa New Zealand context.
- Jayden Houghton and Maureen Malcolm hosted a visiting Indigenous research team led by Dr Yi-shiuan Yayut Chen and Dr Wu Chin-Wen from National Chengchi University, Taipei, for a half-day workshop on Māori land trusts.
- Te Wai Ariki hosted an international seminar on the Latin American dimensions of a project on constitutional law globally and Indigenous peoples, as part of Claire's Rutherford research, in Mexico City in October. The hui was held in partnership with the University of California, Los Angeles, and the Universidad Nacional Autónoma de México.

## Collaborations with other institutions – globally and domestically

- Columbia University – Te Wai Ariki continued to collaborate with Columbia University to run their summer programme on Indigenous Rights and Policy in May-June, including teaching into the programme.
- Other law schools around the motu – members of Te Wai Ariki have continued to collaborate with Māori legal academics from across the motu to progress the "Indigenising the LLB project" and to plan implementation of the CLE's requirement that tikanga be taught as part of the LLB from 2025.
- University of British Columbia and University of Guelph – members of Te Wai Ariki began collaborating with colleagues at the University of British Columbia and the University of Guelph on a new project that will run until 2028 on "maximising Indigenous Self-Determination: Theory and Practice of Indigenous Sovereignities in Settler States and the International System". It follows on from collaboration on an earlier project concerning implementation of the UN Declaration on the Rights of Indigenous Peoples.
- University of Arizona – taura Māori have been provided with overseas postgraduate study opportunities and Te Wai Ariki engaged in teaching collaborations.
- Melbourne Law School – after the success of last year's travelling subject Te Wai Ariki is looking to collaborate with Melbourne Law School regarding future travelling subjects on "Indigenous Law in Aotearoa and Australia".

- We are working towards a partnership with UCLA Law School and the University of Hawai'i at Manoa.

## Targeted research on Māori and Indigenous peoples' rights includes

- Professor Claire Charters, Dr Fleur Te Aho and Tracey Whare co-authored a book chapter on "Contemporary Critical Legal Accounts of the Relationship between International Law and Domestic Law and Policy" for the *Springer Handbook on Indigenous Peoples and Public Policy*.
- Professor Claire Charters authored an article on constitutional issues in Aotearoa with Amelia Kendell in the *Public Law Review*.
- Dr Fleur Te Aho co-authored with Professor Julia Tolmie an article on "Māori rejections of the state's criminal jurisdiction over Māori in Aotearoa New Zealand's courts" in the *NZULR*.

## Conferences around the globe

Te Wai Ariki members spoke at various events including conferences, seminars and workshops focused on Indigenous peoples, law and policy at Victoria University of Wellington, the London School of Economics and Melbourne University and as part of the Law and Society Association's annual meeting.

## Visiting fellows

The Centre enjoyed hosting two visiting fellows in 2023:

- Professor David McDonald, who is a Political Science Professor at the University of Guelph, Canada, focusing on Comparative Indigenous Politics in Canada, Aotearoa New Zealand and the United States.

- Éloïse Décoste, who is a LLD candidate at the Département des sciences juridiques of the Université du Québec à Montréal (UQÀM) where she studies the right to reparation for settler colonialism in light of international standards, as well as a Pierre Elliott Trudeau Foundation and a Fonds de recherche du Québec scholar. Éloïse is also a pro bono lawyer and lecturer at UQÀM's International Clinic for the Defence of Human Rights.

## Opportunities for taura Māori

Te Wai Ariki has provided opportunities to taura Māori to:

- Participate in Columbia University's summer programme on Indigenous Rights and Policy. Raeana Araroa was awarded the Indigenous Scholarship for 2023 to attend the programme.
- Support Te Hunga Roia Māori o Aotearoa to develop law reform submissions.
- Undertake research placements with Te Wai Ariki for academic credit working on constitutional transformation and claims made by roopu Māori to the United Nations.

## Opportunities to study Māori and Indigenous rights and the law

- Auckland Law School has the largest number of Māori legal academics and largest number of specialist legal courses involving Māori and the law, from specific courses on Te Tiriti issues, to comparative constitutional issues, to international law, mātauranga Māori, tikanga Māori and Indigenous peoples, criminal law and justice. ■



**Professor Claire Charters**

Dr Claire Charters (Ngāti Whakaue, Tūwharetoa, Ngāpuhi and Tainui) is a Professor in the Faculty. She researches in Indigenous peoples' rights in international and constitutional law, often with a comparative focus.



**Dr Fleur Te Aho**

Dr Fleur Te Aho (Ngāti Mutunga) is a Senior Lecturer in the Faculty. She researches and teaches in Indigenous peoples and the law and criminal law.

## New Zealand Centre for Human Rights Law, Policy and Practice

ALEXANDRA ALLEN-FRANKS and CARRIE LEONETTI, *Directors*

**FOR THE PAST** few years the Centre has been under the directorship of Professor Paul Rishworth KC. As of July 2023 the new co-directors of the Centre are two members of the Faculty of Law, Alexandra Allen-Franks (lecturer) and Associate Professor Carrie Leonetti.



Alexandra Allen-Franks started with the Law Faculty in January 2023 and has previously worked as a Judges' Clerk at the High Court of New Zealand, as an employed barrister in Auckland and as a disputes associate in London. She has recently submitted a PhD thesis at the University of Cambridge on the admissibility of improperly obtained evidence in civil proceedings. She taught Human Rights Law at Cambridge and was a Director of the Cambridge Pro Bono Project.



Associate Professor Carrie Leonetti has been with the Faculty of Law since 2018. She has also held faculty positions at the University of Milano-Bicocca, the University of Oregon and the University of Sarajevo. Her research focuses on the intersection of science and the law, digital surveillance, gender equality, children's rights, psychiatric disability, miscarriages of justice and the role that human factors play in the decision-making of judges, juries and lawyers and failures of

justice-system reform. She is a member of the Coalition for the Safety of Women and Children, the Safer Auckland Families Through Intervention Network and the Systems Working Group sponsored by Te Puna Aonui (the New Zealand Government Family Violence/Sexual Violence Joint Business Venture). Her recent scholarship has been published in *Psychiatry, Psychology and Law* (Australia), the *Harvard Civil Rights – Civil Liberties Law Review* (US), the *Children's Legal Rights Journal* (US), the *Wrongful Conviction Law Review* (Canada), the *New Zealand Law Review* and the *American Criminal Law Review*.

The new co-directors would like to thank Professor Rishworth for his stewardship of the Centre. ■



### European Human Rights Law Review's inaugural Bi-Annual Conference

Alexandra recently represented the Centre at the European Human Rights Law Review's inaugural Bi-Annual Conference held at the University of Cambridge over 28-29 September 2023. The theme of the conference was "Human Rights Law: Prospects, Possibilities, Fears and Limitations". Alexandra was on a panel focused on Remedies and Enforcement and presented her paper titled "Possibilities and limitations of the inherent power of the court as a tool to secure remedies for human-rights violations". Her presentation addressed the way courts in Aotearoa New Zealand have used their inherent power to provide remedies for breaches of the New Zealand Bill of Rights Act 1990 (NZBORA), discussing the development of the prima facie rule of exclusion of evidence obtained in breach of the NZBORA, Baigent damages, the recognition of ability to exclude evidence obtained in breach of the NZBORA in civil proceedings and the Supreme Court's recent affirmation of the power of the High Court to issue a declaration of inconsistency pursuant to NZBORA. The conference was well attended by hundreds of human-rights academics and practitioners from all over the world. Keynote addresses were given by Judge Paulo Pinto de Albuquerque (former judge of the European Court of Human Rights), Conor Gearty KC, Elaine Webster and the Rt Hon Baroness Hale of Richmond DBE (former president of the United Kingdom Supreme Court). Alexandra enjoyed reconnecting with Cambridge colleagues as well as making new connections and raising awareness of the Centre and its work. Alexandra is grateful to the Faculty's Research Committee for providing funding for her to attend. ■

## New Zealand Centre for Environmental Law

CAROLINE FOSTER and DAVID GRINLINTON, *Directors*

**THE NZCEL** has enjoyed a vibrant period of activity in recent months involving new research publications, participation in a variety of scholarly symposia in New Zealand and abroad, organising and hosting public events and making policy and legal submissions to the New Zealand government and internationally. Highlights include:

### Climate Litigation in Comparative Contexts Conference

A hybrid event held in Auckland on 11-12 May 2023 co-hosted with the Legal Research Foundation. Attendees from the private and public sectors expressed appreciation for the opportunity to hear speakers from jurisdictions around the world. The event was held in partnership with the World Commission on Environmental Law and sponsored by the International Union for the Conservation of Nature (IUCN) Academy of Environmental Law and the Australian and New Zealand Society of International Law. NZCEL was grateful for the involvement of members of the New Zealand judiciary, including Chief Justice Helen Winkelmann, Justice Neil Campbell, Justice Jillian Mallon and Chief Environment Court Judge David Kirkpatrick chairing panels as well as the Prime Minister's Chief Science Adviser.

### International Court of Justice Advisory Opinion on Climate Change

**Professor Caroline Foster** has participated in the team researching and writing the submission to the Court by the IUCN contributing on the customary international law on prevention of environmental harm. Caroline also assisted the IUCN with its written submission to the International Tribunal for the Law of the Sea in relation to the Advisory Opinion on Climate Change lodged by the Commission of Small Island States on Climate Change and International Law.



**Professor David Grinlinton**

*Professor David Grinlinton's teaching and research interests include real property law, planning and resource management law and policy. He has a particular interest in housing law and policy, including the expanding narrative of housing as a human-rights crisis, the appropriate role of the state in addressing current housing challenges, tenancy protection mechanisms and housing in post-conflict and disaster environments.*



**Professor Caroline Foster**

*Professor Caroline Foster is an international lawyer with over two decades' experience in academia and approximately a decade in government and the NGO sector. She researches, teaches and supervises in international law, international environmental law and international dispute settlement.*

### Earth Trusteeship Working Group

In April 2023 the Earth Trusteeship Working Group launched its inaugural book *Reflections on Earth Trusteeship – Mother Earth and a New 21st-Century Governance Paradigm* (edited by Justin Sobion & Hans van Willenswaard). NZCEL co-sponsored the Pacific Regional Consultation for the Global Futures Forum on 1 March 2023 in preparation for the 2024 United Nations General Assembly Summit of the Future: Multilateral solutions for a better tomorrow. The summit will address a range of critical issues affecting the future including peace, security, the climate crisis and sustainable development. States are expected to adopt a Pact for the Future and establish a UN Special Envoy for Future Generations. **Professor Klaus Bosselmann** also participated in the Global Futures Forum on 20-21 March 2023, and regional and thematic consultations.

### Passage of the Natural and Built Environment Bill and the Spatial Planning Bill

NZCEL members contributed to submissions on the Bill by the Auckland District Law Society, Environmental Defence Society and Resource Management Law Association, and independently. The Bills were scheduled to be read a third time in Parliament on 15 August 2023, with Royal Assent to follow shortly thereafter.

### Resource Management Law teaching

**David Grinlinton** organised a four-week experiential resource management role-play for students based on an appeal to the Environment Court against consents to enlarge the Port of Onehunga. Leading Auckland resource management barristers including **Grant Hewison**, **Gerald Lanning**, **Bronwyn Carruthers KC**, **Kitt Littlejohn** and **Alan Webb** mentored students with the exercise culminating in a mock environment court hearing presided over by Chief

Environment Court Judge David Kirkpatrick with Ken Palmer, David Grinlinton and Alan Webb playing the role of 'Environment Commissioners'. This activity was well received and will be repeated in 2024.

### Students Environmental Law Association

NZCEL was pleased to support the formation of the University of Auckland students' Environmental Law Association.

### Inaugural Professorial Lectures

David Grinlinton's Inaugural Professorial Lecture on 8 September (2022) addressed the interface between property rights and environmental law and policy; while Caroline Foster's Inaugural Professorial Lecture on 2 November examined compliance with multilateral international treaties, including the climate change, pandemics, plastics and high-seas biodiversity treaties. The published lectures will shortly be available.

### New Zealand Journal of Environmental Law (NZJEL)

NZCEL published the 26th Issue of the *New Zealand Journal of Environmental Law* under the General Editorship of David Grinlinton. New subscriptions to the journal can be arranged by emailing [d.grinlinton@auckland.ac.nz](mailto:d.grinlinton@auckland.ac.nz)

### Appointment of Professor Klaus Bosselmann to the Royal Society Te Apārangi

NZCEL was delighted to see Founding Director Professor Klaus Bosselmann appointed a Fellow of the Royal Society Te Apārangi.

### Welcome to Associate Professor Vernon Rive

Vernon Rive joined the Faculty of Law in March 2023, specialising in climate change and resource management law, and has established a new LLB course in Climate Change Law to run from 2024. ■

# Philanthropy highlights

STACEY OGG



## Simpson Grierson Social Issues Moot

This year we were thrilled to partner with Simpson Grierson, which came on board as sponsors of the Social Issues Moot. The purpose of the Social Issues Moot is to provide participants from both Auckland Law School and AUT Law School with the opportunity to debate contemporary social-justice issues with a focus on the intersection between law and tikanga Māori.

Simpson Grierson Partner **Jo-Anne Knight** and solicitor **Avary Patutama**, both Auckland Law School alumni, organised a wānanga for our competitors hosted at Simpson Grierson. This event introduced tikanga Māori in our courts, including how to formally introduce yourself and address a Judge in te reo Māori, Māori issues in court, as well as a problem question written by the Simpson Grierson Whānau Group.

Jo-Anne Knight shared that “Identifying a suitable topic for this moot – one that was legally and socially relevant, and sufficiently challenging – was a great learning opportunity for us ... engaging with taurira studying law and those about to start their legal careers always presents a wonderful opportunity for us to reflect on what we do as lawyers and why we are doing it and what our hopes are for the future of the law in Aotearoa.”

Students participated in the preliminary round at Auckland Law School and the semi-final round at Simpson Grierson. The participants particularly enjoyed meeting staff who gave up their time to judge. The two teams who made it through to the final round were both from Auckland Law School comprising Counsel for the Appellants Kevin Qian and Henry Fitzgerald and Counsel for the Respondents Charlie Matthews and Jimin Seo.

The final round took place on 14 August at Waipapa marae with a mihi whakatau led by Wiremu Tipuna, Kaiārahi at Auckland Law School. The fictional problem, written by Jo-Anne Knight, was on water rights for waters running from a headwater on Māori freehold land that was being extracted from bores located on adjoining land. The question focused on the jurisdiction of the Māori Land Court over water, Māori ownership in water and the weight given to the principles of the Treaty of Waitangi/Te Tiriti o Waitangi when interpreting Te Ture Whenua Māori Act 1993. Both sides presented well developed, clear arguments and after a longer than anticipated deliberation the judges ruled in favour of the Counsel for the Respondents. Congratulations to **Charlie Matthews** and **Jimin Seo**, the winners of the inaugural Simpson Grierson Social Issues Moot.

## Inaugural Olive Malienafau Nelson Scholarship for Pasifika Excellence award

On a cold and wet Auckland evening in August the Fale Pasifika burst into life with a vibrant event to celebrate the launch of the Olive Malienafau Nelson Scholarship for Pasifika Excellence, which was established in 2022 by the Sir Michael Jones Foundation. The evening included heartfelt speeches, talanoa, singing and dancing as the Pasifika legal community, Law School staff, students and alumni came together to mark the launch of the scholarship and to celebrate the inaugural recipient, fifth-year law and commerce student **Hope Parsons**.

Hope, whose whakapapa connects her to the villages of Satalo and Papauta in Samoa and Ngatangia and Ruatonga in Rarotonga, as well as Kimiangatau in Mauke, received the \$10,000 scholarship, which has made a real difference enabling her to focus solely on her studies reflecting positively in her results.

The scholarship was established by Sir La’auli Michael and Lady Maliena Jones to honour and celebrate the legacy of the late Olive Malienafau Nelson (Maliena’s grandmother), the first Pacific graduate, first Samoan graduate, one of the first women graduates of Waipapa Taumata Rau and the first woman to practise law in Samoa, where she made a notable contribution to drafting the country’s constitution.

The scholarship aims to encourage excellence in academic study, leadership and service by Pacific students in Auckland Law School. It is funded through the Olive Malienafau Nelson Legacy Fund established by the Sir Michael Jones Foundation and will be awarded annually in perpetuity, having been set up as an endowment with the University of Auckland Foundation. ■



### MORE INFORMATION

If you would like to learn more about how you can support Auckland Law School please visit:

[www.giving.auckland.ac.nz/law](http://www.giving.auckland.ac.nz/law)

# Donor Wall

Auckland Law School thanks all alumni and friends for their support, including the following alumni and friends who have given support over the past year:

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We would also like to acknowledge and thank the law firms and individuals who have assisted the students at Auckland Law School through mentoring, judging competitions, speaking at events and offering support for student-led initiatives throughout 2023.

# In memoriam

## Remembering Dame Alison, a pioneer for women in law

Politics and law, Auckland Law School, Alumni

The first female chair of Auckland University College's law students' society, Dame Alison Quentin-Baxter, passed away peacefully at home on 30 September 2023 aged 93.

Dame Alison Quentin-Baxter was a distinguished public and international lawyer, a graduate of Auckland Law School, the first woman chair of the law students' society, a writer of constitutions, a diplomat and a law reformer.

The trailblazer for women in law was a dear friend, mentor, teacher and example to many in Aotearoa New Zealand, including Waipapa Taumata Rau's Professor of Law Janet McLean.

The two wrote and published *This Realm of New Zealand: The Sovereign, the Governor-General, the Crown* together, and McLean says Dame Alison was a remarkable woman, lawyer and New Zealander.

"She broke the glass ceiling for women in many ways, including in her role as head of the legal division for the Ministry of Foreign Affairs and as New Zealand's representative to the legal committee of the UN General Assembly.

"As was expected at the time, she put her career on hold when she married fellow diplomat Robert Quentin-Baxter [commonly called Quentin], but they continued to work together on the reform of international law."

In 1970 Quentin was appointed constitutional adviser to the Niue Island Assembly and the couple worked together to draft a new constitution for the country. In 1974 the Niue Constitution Act was passed and 10 years later Dame Alison was appointed to the Niue Review Group and the Niue Public Service Commission.

She also advised the Fiji Constitution Review Commission, served as counsel to the Marshall Islands Constitutional Conventions and was an independent constitutional adviser to the members of the Saint Helena Legislative Council.

In addition to these international roles, Dame Alison was the New Zealand Law Commission director from 1987 to 1994.



Dame Alison Burns Quentin-Baxter, DNZM QSO, was a New Zealand public and international lawyer. Photo: Image Services, Te Herenga Waka – Victoria University of Wellington.

### The making of a trailblazer

Born in 1929, Dame Alison spent her childhood on a farm north of Auckland, and in an interview with Te Herenga Waka Victoria University of Wellington last year she said her family didn't share many traditionally held expectations around gender.

"There were no girls in my father's family so the boys had to do what girls would have otherwise done," she said.

"I remember being about five and my father picking me up and putting me on a pony to visit my uncle. I didn't think anything of it, it didn't seem strange. But people were shocked – that I, as a girl, wanted to and was able to sit happily and ride along."

Dame Alison excelled academically from a young age and attended Epsom Girls Grammar and Nga Tawa Diocesan School.

"There was a man on our street who was a professor at Auckland University and my father got hold of him and said, 'Could I come talk to you about my daughter?'"

"Between the two of them they decided I would be best at law. So at the age of 14 my father asked me if I wanted to be a lawyer, and I told him I didn't know the first thing about law! To which he said, 'You will.'"

In the late 1940s Alison enrolled at Auckland University's Faculty of Law, where she was one of very few women, and in

some of her classes the only woman. In her final year she became chair of the students' law society – the first woman to hold the position.

After graduating she declined an offer from a leading Auckland firm. Instead she applied to the Department of External Affairs where she landed a role and went on to represent New Zealand in New York on the Legal Committee of the UN General Assembly.

A few years later she was promoted to head of the department's legal division, a position she held until 1960 when she was posted to Washington DC as the first secretary in the New Zealand Embassy.

After she and Quentin were married they spent two years in Tokyo before moving together to Wellington, where from 1967 to 1969 Dame Alison taught law and constitutional history at Victoria. The University later awarded her an honorary Doctorate of Laws.

Dame Alison's work has received significant honour and recognition over the years – in 1993 she was appointed a Companion of the Queen's Service Order for public services. Later, in the 2007 Queen's Birthday Honours, she was appointed a Distinguished Companion of the New Zealand Order of Merit for services to the law, and in 2009 she was named a Dame Companion of the New Zealand Order of Merit. ■



## Paul East, CNZM KC PC

The Auckland Law School community was saddened by news in February of the death of the Rt Hon Paul East, CNZM KC PC, at the age of 76. The former Attorney-General was a graduate of the University of Auckland completing his Bachelor of Laws degree in 1970.

Following his law degree in Auckland, Paul completed his LLM at the University of Virginia, where he met Lyn, a native New Yorker who later became his wife of more than 50 years. Paul and Lyn moved to New Zealand where Paul practised at East Brewster in Rotorua and the couple started a family and put down their roots. Paul served as a Rotorua city councillor and as Deputy Mayor before being elected to Parliament in 1978 as the MP for Rotorua, beginning a parliamentary career that would last 21 years. Paul was dedicated

to his constituency and with his warmth, quick wit, wicked sense of humour and innate desire to help those who elected him was much respected and a vital part of the community.

In 1990 Paul was appointed Attorney-General and Leader of the House. Among his significant achievements as Attorney-General in 1995 Paul argued New Zealand's second case before the International Court of Justice against France's nuclear testing in the Pacific. Although that case was unsuccessful, that same year Paul was back arguing before the International Court of Justice, convincing the Court to issue its landmark Advisory Opinion on the illegality of nuclear weapons. The Court held that the threat or use of nuclear weapons would "generally be contrary to the rules

of international law applicable in armed conflict, and in particular the principles and rules of international law."

The Court's Opinion also found that there is "an obligation to pursue in good faith and bring to a conclusion negotiations leading to complete nuclear disarmament in all its aspects under strict and effective international control."

Paul's other Cabinet appointments included service as Minister of Defence, Minister of State Services and Minister of Corrections. He was also appointed a QC and Privy Councillor. In 1999 Paul left Parliament to take up an appointment as New Zealand's High Commissioner to the United Kingdom. Paul spoke of his time in London with pride and described the three-year term as "one of the high points" of his life.

Paul was made a Companion of the New Zealand Order of Merit in 2005 for Services to Parliament and the Law. In addition to his work in Parliament and the Law, he was dedicated to community service and found great joy in sharing his knowledge and supporting the charitable sector. He was on many boards throughout his lifetime including 11 years as the chair of the Antarctic Heritage Trust, and he was chair of Auckland Law School Campaign Committee throughout the Campaign for All Our Futures, which saw Paul lead on the establishment of the Kings Counsel Award for exceptional law students.

Paul is survived by Lyn, daughters Sophie, Nina and Lucinda and their partners, and grandchildren Edwin, Leonard, Freddie, Hugh, Dylan and Frida. ■

## Chief Justice pays tribute to Simon France

The Chief Justice, the Rt Hon Dame Helen Winkelmann, GNZM, has paid tribute to the Honourable Simon France, recently retired Judge of the Court of Appeal, who passed away on 8 April 2023 after a brief illness.

"On behalf of the New Zealand judiciary, I acknowledge Simon's lifetime of service to the law and to his community – as a legal practitioner, a teacher, an academic and latterly as a judge.

"Simon was respected and loved by his former students, by his colleagues from his years in practice and by his judicial peers. He was a gifted lawyer and a skilled communicator with a style that was unmistakably his own. Throughout

his career he was engaging and effective whether teaching law students, arguing cases as counsel, editing *Adams on Criminal Law*, summing up a case to the jury or writing a judgment. As a judge he presided over some of New Zealand's most difficult trials and earned widespread respect for the manner in which he conducted them. Simon combined a deep knowledge of the law with a sure-footed common-sense approach to judging.

"His colleagues from the profession and the bench remember all of this and they also remember a kind man and a good friend. His passing is a tremendous loss for his wife Ellen, his whānau, friends and colleagues, for the legal community and for New Zealand."

Simon France was educated at Pompallier College in Whangārei, before studying law



at the University of Auckland. He graduated with an LLB (Hons) and was admitted to the bar in 1979. After briefly working as a solicitor at Auckland firm Nicholson Gribbin, Simon studied at Queen's University in Ontario, graduating with an LLM in 1983.

On his return to New Zealand in 1984 he joined the faculty of Victoria University of Wellington where he lectured on criminal law, evidence and administrative law. He published extensively during his time at the university, including co-editing the VUW Law Review Monograph *Essays on Criminal Law – towards reform?*. Simon was later appointed Dean of Students and Deputy Dean of the Law School.

In 1995 Simon joined the Crown Law Office as a Crown Counsel where he specialised in criminal appellate work. He appeared as counsel for the Crown before the Court of Appeal in many of the most significant criminal appeals of the time. He was lead counsel in *R v Siloata* – the first criminal case to be heard by New Zealand's Supreme Court following its establishment in 2004.<sup>1</sup>

Simon became Crown Law's human-rights team leader in 2002. While at Crown Law he chaired an international working party established by the Commonwealth Secretariat to produce a model evidence law facilitating electronic commerce – as part of the Secretariat's role of producing model legislation for adoption by small island states. He contributed further to the rule of law in the Pacific representing

Crown Law at meetings of Pacific Island Law Officers for a number of years and serving as an educator in PILON, a litigation skills programme for senior Pacific Island government law officers. He continued his involvement with PILON following his appointment to the bench.

Simon was appointed as a Judge of the High Court on 19 January 2005. His appointment made national headlines and New Zealand legal history as he became one-half of the first married couple to both sit as High Court judges. His wife, now-Supreme Court Justice Dame Ellen France, was appointed to the High Court in 2002.

Ellen and Simon met in their first year at Auckland University Law School in the late 1970s. Both completed their legal studies together in New Zealand and Canada and worked together at Crown Law. At his swearing-in ceremony, Simon remarked with characteristic humility, "Wherever Ellen has gone, I have followed".<sup>2</sup>

During his time on the High Court bench Simon presided over many high-profile criminal trials – including the Jack Nicholas murder trial in 2008, the Scott Guy murder trial in 2012, the eight-week retrial of Mark Lundy in 2015 and the Lois Tolley murder trial in 2022.<sup>3</sup>

From October 2014 until the end of 2015 Simon chaired the Criminal Rules Subcommittee of the Rules Committee – responsible for reviewing the operation of the Criminal Procedure Act 2011 and all

criminal practice notes. He was also an editor of *Cross on Evidence*, the General Editor of *Adams on Criminal Law*, a member of the High Court Commercial Panel from 2019, and from 2013 to 2019 he was a member (and for one period, the chair) of the Council of Legal Education, the statutory body charged with overseeing legal education in New Zealand. Simon sat as a criminal and civil divisional member of the Court of Appeal from 2008 until his permanent appointment to the Court of Appeal on 26 August 2022.

He retired from the Court of Appeal on 28 February 2023 because of ill-health. Simon was 64 years old when he passed away. He is survived by his wife, Dame Ellen France, his four siblings, Mark, Julie, Jeremy and Cecilia, and by the extended France and Larkin whānau. ■

**Endnotes**

- 1 *R v Siloata* [2005] 2 NZLR 145 (SC).
- 2 "Wedded to the Bench" *Dominion Post* (Wellington, 5 February 2005) at A15.
- 3 *R v Foreman* HC Napier CRI-2006-041-001363, 27 May 2008; *New Zealand Police v Ewen Kerry MacDonald* [2012] NZHC 2388; *R v Lundy* [2015] NZHC 542; *R v X* [2021] NZHC 2444.



**Geoff Ricketts**

Geoff Ricketts, CNZM, died at home with his family on 10 March after a short illness. He was 77.

Geoff's connections to the University of Auckland are many and generational. His father James (Jim) was an alumnus, his wife Fran an alumna and two of their four children graduated from this university.

Geoff graduated LLB (Hons) in 1970 and started his career at Russell McVeagh. He worked there, on both sides of the Tasman, for more than 25 years, becoming a senior partner and chair of the board. Later he worked for the firm as a consultant. Over the decades he held directorships in more

than 200 companies including some of this country's best known: Todd Corporation, Lion Nathan, Royal and Sun Alliance and Heartland Bank.

He was a widely respected and well connected business leader, considered one of Aotearoa New Zealand's best commercial chairmen who brought to any board of directors considerable institutional knowledge and experience in commercial law, mergers and acquisitions and governance, together with a strong sense of integrity and probity. The University has been a beneficiary of that ability and experience.

When the University's philanthropic arm, the University of Auckland Foundation, was established in January 2000, Geoff was the establishment chair and retained that position until his death. He guided it with considerable skill through the global financial crisis of 2007-2008 and the Covid market crash of 2020 and under his stewardship the Foundation has become an integral and valuable financial supporter of the University's people and research.

When asked for the number one thing he had learned about strategic philanthropy, he replied, "if you can put your hand up for a cause you believe in and put your hands in your pocket at the same time to support it, others in the community will follow. That has been the case for me with the University of Auckland Foundation and," he added, "the Ipipiri Nature Conservancy Trust," which he

and Fran Ricketts had helped establish to purchase and preserve Elliot Bay and the surrounding native forest in Northland.

In addition to his work with the Foundation, he was a member of the University Business School Supporters Council, the Law School Innovation and Development committee and chaired the campaign committees of the University's – and New Zealand's – two most successful fundraising campaigns. His own and Fran's philanthropy included gifts to the Law and Business Schools, for fellowships and for the prestigious Kupe Leadership Scholarships.

Beyond campus, Geoff, with Fran, was a strong supporter of education and the visual and performing arts. He was also on the advisory board of the NEXT Foundation. In 2013 he received the Companion of New Zealand Order of Merit (CNZM) for services to education, the arts and business; and in 2022 he was made a Distinguished Fellow of the Institute of Directors. The University made him an Honorary Fellow in 2006 and awarded him an Honorary Doctorate in 2016.

Geoff worked alongside three vice-chancellors, seven chancellors and numerous other staff. He will be remembered by those who knew him as a kind man, thoughtful and considered, with a gentle, dry sense of humour, who made a point of recognising other people's work while making little of his own significant contributions. ■



**Judge Arnold Turner**

Auckland Law School mourns the passing of Judge Arnold Turner, CMG, in July 2023. Arnold began his law degree at Otago University in 1943 and completed an LLM at the University of Auckland in 1949. Arnold had a long, successful and impactful career in the legal profession and in service to the community. For many years Judge Turner practised in administrative law with Gaze Burt in Auckland, before serving as a councillor and Deputy Mayor in the Mt Albert Borough and then becoming the first chair of the Auckland Regional Authority Centennial Park & Regional Reserves Committee. He was later appointed a District Court Judge and subsequently the Principal Planning Judge of the new Planning Tribunal in 1977. The

Environment Court today has doubtlessly been influenced by Arnold's efforts as head of the Planning Tribunal. Arnold was awarded his CMG in 1984. Outside the law, Arnold was actively involved in advocacy for regional parks in Aotearoa New Zealand and was President of the Bible College of New Zealand for a decade from 1986. Arnold was married to Marjorie for 73 years before she passed away in April 2023, and the two had four children. Auckland Law School celebrates Arnold's life and career and sends its deepest condolences to his friends, family and loved ones. ■



**Telise Martin**

Auckland Law School is deeply saddened by the death of Telise Martin in a car accident in April 2023. Telise Martin, 31, graduated from the University of Auckland in 2014. She was admitted to practice law in New Zealand in 2015 and was most recently a senior associate in the litigation team at Martelli McKegg. She was also a member of the New Zealand Law Society's Family Law Section, the Auckland Women Lawyers' Association and the Auckland District Law Society Council. Telise Martin was known as a very capable lawyer with a bright future in the profession. The President of the Auckland District Law Society described her as a "very talented and engaging lawyer", while her colleagues indicated she was

"well respected", will "be missed greatly", and her loss is a tragedy for the profession and for all who knew her. The Law School expresses its sincere condolences to Telise's friends, colleagues and loved ones. ■

**Quote sources**

Rachel Maher, "Tributes pour in for Auckland lawyer Telise Martin who was fatally hit by a car minutes before court appearance", *New Zealand Herald*, 20 April 2023

Tom Dillane, "Telise Martin death: Lawyer killed by car remembered by top school as 'exceptional young woman'", *New Zealand Herald*, 22 April 2023



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