

OTAGO LAW

FACULTY OF LAW NEWSLETTER WINTER 2011
UNIVERSITY OF OTAGO



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Greetings from the Dean

Welcome to the winter edition of OtagoLaw. You will all fondly remember the approach of winter in Dunedin as boards were removed from the flat to put on the fire to keep warm.

The character, collegiality, innovation and teamwork that have emerged from those earlier years are bearing fruit for you all now.

We hope that you enjoy seeing what is going on in the Faculty, which you are all a part of as alumni.

Do keep in touch – hearing from you makes us all smile with delight.

All the very best in your endeavours.



Visitors to the Faculty

The Faculty of Law was pleased to host a number of eminent visitors from universities around the world.

NEW ZEALAND LAW FOUNDATION 2011 DISTINGUISHED VISITING FELLOW

The Faculty of Law was pleased to host the New Zealand Law foundation 2011 Distinguished Visiting Fellow at the University of Otago in April.

Emeritus Professor Ben Boer is an expert in Environmental Law. He is currently Emeritus Professor at the University of Sydney, and he has also taught at other universities in Australia, Canada, Italy and China, where he ran a teaching programme for environmental law lecturers. He has consulted to inter-governmental agencies and NGOs in numerous countries, was international co-director of the International Union for the Conservation of Nature, and is widely published in environmental and natural resources law and policy.

His New Zealand lectures covered issues around protected areas and climate change. He contends that the world is suffering two interlinked environmental crises, climate change and loss of biodiversity. One can assist the other – increasing the number of marine and terrestrial protected areas around the world will expand the number of carbon sinks and



slow down climate change. One means of doing this is through “marine forests” – while there are as yet no major programmes for this, the concept is now being investigated and verified scientifically and is clearly of great interest to Australia and New Zealand with their offshore islands and Exclusive Economic Zones.

Another means is “connectivity conservation” which links national parks and other protected conservation areas together to improve the ecosystem by creating “conservation corridors.” Examples include the Great Eastern Corridor in Australia and the Yellowstone to Yukon initiative in North America. These substantial corridors can encourage ecosystem resilience, where fauna can cover greatly expanded ranges, and ultimately help slow climate change.

He discussed human rights and the environment, and the convergence between human rights and environmental law, an area relevant to Māori land claims.

VISITING FULBRIGHT SCHOLAR

Jeffrey Matsuura, an American lawyer, was in residence at the University of Otago as a Fulbright Senior Scholar. Hosted by the New Zealand Law Foundation Centre for Law and Policy in Emerging Technologies in the Faculty of Law, Mr Matsuura has been conducting research on the ways in which law and legal institutions facilitate



and impede the development of new technologies and their associated commercial applications. His research addresses a range of law and technology topics, including intellectual property rights, technology transfer and commercialization, information security and privacy, and technology regulation. Mr Matsuura was on campus until April 30.

Mr Matsuura has nearly thirty years of experience providing legal counsel on technology related topics. He is currently counsel with the technology law firm, the Alliance Law Group, located near Washington, D.C. Previously, Mr Matsuura served as counsel for a variety of technology companies, including MCI Communications Corporation, Communications Satellite Corporation, and The Discovery Channel. He has also advised major research organizations, academic institutions, and governments in the U.S and abroad (including Lebanon, Canada, Jordan, and China) on technology law topics.

Mr Matsuura formerly served as assistant professor of law and Director of the Program in Law and Technology at the University of Dayton, in the U.S.

He has been awarded research fellowships from major international institutions including the University of Edinburgh, the Thomas Jefferson Foundation at Monticello, and the Smithsonian Institution.

Mr Matsuura has written extensively on law and technology topics. He is the author of numerous articles and seven published books. His books include the highly regarded treatise on Internet and e-commerce legal issues, Law

of the Internet. Other titles addressing topics including managing intellectual property rights associated with digital content, legal aspects of electronic commerce security, and nanotechnology regulation Mr Matsuura’s most recently published book is *Jefferson vs. The Patent Trolls: A Populist Vision of Intellectual Property Rights and Global Information Technology Law*.

REFLECTIONS ON MY OTAGO VISIT

By: Jeffrey Matsuura

As I sat in the Los Angeles International Airport, having just completed an overnight trans-Pacific flight and facing a layover of several hours before my overnight trans-continental flight to Washington, D.C., it occurred to me just how exceptional my visit to the University of Otago had been. I have logged many hours of international travel over the years, and usually at this point in a return trip home, one seriously questions why anyone ever bothers to put their body, mind, and spirit through the ordeal of long-distance travel. With the availability of the Internet, Skype, and a range of modern technologies, no one in their right mind should willingly undertake such abuse. But on this long return voyage, my thoughts were not focused on the question of why I chose to put up with the pain of another long international trip, but instead on how I will be able to find a way to return to New Zealand, and to Dunedin, in the near future. That extraordinary difference in perspective is a direct reflection of the quality of my visit.

I came to Otago thanks to the support of the Fulbright Commission. My visit would, I thought, give me the opportunity to conduct research to help me write a book on the interaction between law and the development of new technologies. With the help of many colleagues at Otago, in Dunedin, and throughout New Zealand, I was able to achieve the research goals I had established.

However, my time at Otago also provided me with opportunities far beyond my original project. With guidance from my new colleagues in New Zealand, I had the opportunity to begin to explore a set of new and challenging issues. I look forward to expanding that collaboration with those colleagues over the years ahead.

Thanks to the generosity and goodwill of the University of Otago community, (particularly the Faculty of Law), the broader Dunedin community, and many people throughout New Zealand I was treated, not like an outsider or a temporary guest, but instead as a highly valued new colleague. It is impossible to duplicate that connection from a distance. And so I will eagerly and energetically look for future opportunities to fold myself up into uncomfortable and crowded planes, put up with questionable airline meals, and sit around for hours in airports waiting for connecting flights to have the opportunity to rejoin my friends here at Otago.

The Faculty of Law also welcomed Dr Dan Meagher (Deakin University), Professor Michal Tomasek (Charles University Prague), Professor Brent Cotter (University of Saskatchewan), Ms Anita Jowitt, (University of the South Pacific), and Professor Craig Brown (University of Western Ontario).

We hoped they had an enjoyable and productive stay here.

Faculty Events

3RD ANZ GENOMICS ROUNDTABLE MARCH

The 3rd Australia New Zealand Roundtable on Genomics was held in Melbourne on Monday 14 February 2011, at the Royal Melbourne Hospital.

This event was co-chaired by Professor Ingrid Winship and Professor Mark Henaghan.

Topics of discussion included:

Roundtable 1: 'Direct-to-Consumer Genetic Testing'

Roundtable 2: 'Holistic Genetics for Indigenous Peoples'

Roundtable 3: 'Research Biobanks'; Genetic Disclosure to Third Parties

Roundtable 4: 'Commercialisation of Genetic Knowledge'

THE RISKS OF DIRECT TO CONSUMER GENETIC TESTING – UNCHARTED WATERS

Genetic testing which was once in the domain of the scientists and doctors is now available directly to consumers through popular websites.

Described as offering a 'leisure activity', these sites offer a service, which will test human tissue samples and provide genetic information directly to the consumer.

The implications of this to consumers and to public health policy makers are vast.

The challenges to law and ethics of leaving access to this information unfettered was the topic of debate by experts in these areas at the 3rd ANZ Genomics Roundtable held in Melbourne recently. The Centre jointly organized the event for Law and Policy in Emerging Technologies, sponsored by the New Zealand Law Foundation, the Faculty of Law, University of Otago, the Royal Melbourne Hospital, and the University of Melbourne.

The consumer's right to access personal information by direct to consumer testing websites such as 23andme begs the question what happens when people become aware that they may have a genetic condition that has ongoing health and legal implications, including for ongoing treatment or for life and health insurance.

"We set out to generate discussions about the emerging issues that New Zealand and Australia should both consider and work on together in light of new applications and their ramifications for research, ethics, policy and the law. The interests of consumers are paramount and should be kept utmost when considering the issues," says Professor Mark Henaghan.

Professor Loane Skene identified the major reasons that such websites appeal to the general public – people are curious, they are educated about their bodies and health, they want to have access to all their health information, and the confidentiality and anonymity of an online experience is appealing.

However the risks associated with this type of testing arguably outweigh the benefits. Direct to consumer websites carry disclaimers, waiving obligations or responsibility around providing genetic information or for any follow up. In contrast, testing undertaken by medical practitioners allows for provision of realistic diagnostic and treatment advice as well as genetic counseling where appropriate. Doctors have a level of accountability including gaining informed consent from patients and advice on ongoing

treatment. This is of particular significance to indigenous communities.

Less than a third of people tested will ask for clinical follow up for fear of jeopardizing health insurance policies. A consequence of this is to chill research opportunities.

Other concerns include the possibility of contaminated samples, faulty laboratories, incomplete background information – the consumer will often get only some of the picture which will often be out of its wider and meaningful context.

Direct-to-consumer companies are venturing into genetic research by leveraging their cohort of web customers. While such research may be regarded as innovative and yielding beneficial information, there are issues over the adequacy of consent for research being bundled with a contract to buy a service. Questions arise about the need for ethics review of how the research will be carried out and what will be studied, and data security and confidentiality. There is also the issue of who owns the genetic material and who will profit from it when new discoveries are made.

Direct-to-consumer testing is here to stay. The concerns expressed by the Roundtable were not that we turn back the clock – rather that we must ensure that consumers have the best available information and that they receive adequate support and understanding.

The websites setting up commercial suppliers of genetic testing are very sophisticated and do provide readily accessible information to consumers.

Knowledge of genetic heritage can be very empowering and important for facilitating health decisions. The key issue is making sure consumers have access to genetic counseling and appropriate health services so that they can make the most of what they have learnt about their genetic profile.

MELBOURNE LAW RECRUITMENT

The Faculty of Law held an information evening about the undergraduate and postgraduate programmes on Monday 14 February at Rydges on Swanston in Melbourne.

Hosted by the Dean, it was a great occasion for anyone who may be interested in studying law in New Zealand at the University of Otago to meet the Dean, and to hear about the many advantages of studying law here. We also took the chance to meet up with some of our Melbourne alumni.

NEW ZEALAND LAW FOUNDATION CENTRE FOR LAW AND POLICY IN EMERGING TECHNOLOGIES – FUTURE OF FAIRNESS SYMPOSIUM MARCH 2011



Photo: Andy Miah

Whether in the sporting arena, the genetics lab or the exam hall, new technologies present new challenges for ideas of 'fairness' and 'justice'. Two Otago University centres have

combined to begin to address this important, but complex, relationship.

On 22 and 23 March, the New Zealand Law Foundation Centre for Law and Policy in Emerging Technologies, together with Genetics Otago, hosted a symposium on The Future of Fairness. The event included guest speakers from the United Kingdom and the USA, as well as experts from throughout New Zealand.

The first day focused on fairness, technology and sport. Keynote speaker Andy Miah, Professor of Ethics and Emerging Technologies at the University of the West of Scotland, argued that genetically and technologically enhanced athletes were not only an inevitable, but also potentially a desirable, step in the evolution of sport. This controversial thesis was then considered and debated from a range of other perspectives, philosophical, sociological and legal, while Associate Professor David Gerrard offered a valuable insight from the perspective of a former Olympian and member of the World Anti Doping Agency.

The second day concentrated on issues of fairness to future generations. The keynote speaker was Ronald M Green, Professor for the Study of Ethics and Human Values at Dartmouth College, who led the audience through the challenging philosophical terrain of thoughts on what we might owe to future people. Again, this was followed by a rich and varied array of papers offering differing perspectives on reproductive and genetic technologies.

The symposium – which included a public talk in the evening – was attended by well over a hundred speakers and audience members, including representatives of at least ten different faculties and departments throughout the University. The organizers intend for this to be a launch pad for a series of events and publications aiming to cast further light on the questions raised in the symposium.

A selection of the talks from the symposium was recorded, and can be viewed at www.otago.ac.nz/thefuture. This site will also contain information about further events in the Future of Fairness series.

WIKILEAKS

On 24 March 2011, the New Zealand Law Foundation Centre for Law and Policy in Emerging Technologies hosted a discussion of the myriad legal and ethical issues raised by the Wikileaks phenomenon. A packed Moot Court heard from international experts Jeff Matsuura – a US technology lawyer, Fulbright scholar and co-author of *Law of the Internet* (Aspen Law and Business) – and Professor Andy Miah, Chair of Ethics and Emerging Technologies and Director of the Creative Futures Research Centre at the University of the West of Scotland.



It is nearly incredible to think that, until about a year ago, most of us had probably never heard of Wikileaks. Although it has existed since 2006, it was only in April 2010, with the publication of the 'Collateral Murder' video, showing US Apache helicopter fire on a group of civilians in Baghdad, that the organization caught the attention of the world's media.

Since then, the publication of the Iraqi War Logs – classified US Army field reports from the Iraqi war – and the ¼ million leaked State Department cables, have seen its activities described as 'a pivotal moment in the future of journalism' (Dan Gillmour on salon.com) that could 'change history' (TIME magazine).

The subsequent attempts to curtail Wikileaks' activities, the backlash from supporters – most famously, by the cyber-collective Anonymous – and the recent attempts to extradite founder Julian Assange have, if anything, come close to eclipsing the content of the leaks themselves, and have seen terms such as 'hactivism' and 'DDOS' enter the popular lexicon.

GENOMICS AND CANCER MEDICINE

Will cancer treatment and other healthcare soon be routinely tailored to individual patients according to their particular genetic make-up?



Professor Edison Liu, a leading international expert explored this rapidly developing field of personalised medicine during his visit to this country last month.

Professor Liu, a distinguished scientist from Singapore, visited New Zealand under the Ministry of Foreign

Affairs and Trade's Seriously Asia Programme. The New Zealand Law Foundation Centre for Law and Policy in Emerging Technologies hosted him at the University of Otago's Faculty of Law.



Professor Liu is Executive Director of the Genome Institute of Singapore (GIS) and Professor of

Medicine at the National University of Singapore. During his visit he gave public lectures in Dunedin, Wellington and Auckland and also met with researchers and government officials. Topics he discussed include genomics and cancer medicine, genomics in health and the economy; and personalised and precise genomic medicine.

Last year, Professor Liu was re-elected as President of the international Human Genome Organization (HUGO) and is involved with the Singapore Bio-Bank as a member of its Scientific Advisory Group. The Bio-bank is a national, non-profit research tissue and DNA bank funded by Singapore's Agency for Science, Technology and Research.

SHANGHAI BUREAU OF JUSTICE DELEGATION 2010: 28 NOVEMBER – 3 DECEMBER



Since 2006 the Faculty of Law at the University of Otago has been pleased to host the Shanghai Bureau of Justice delegations that visit annually to study the New Zealand corrections system in law and in practice in an intensive 6-day course.

Each year 20 delegates enjoy a unique experience, which includes an intensive series of presentations from practitioners working in the field of law and corrections. The programme includes visits to the District and High Courts, the Otago Correction Facility, Moana House and a variety of Community Probation work sites.

Last year the delegates received presentations from Community Probation, Restorative Justice, Psychological Services, senior defence lawyers, police bail assessors, Intervention Services, the Court liaison nurse, the Salvation Army Bridge Programme, a prisoners' aid and rehabilitation advocate, and Problem Gambling.

Alongside the formal presentations the delegates were welcomed by his Honour the Mayor Mr David Cull at a cocktail party hosted by coordinator Associate Professor Donna Buckingham.

At the final ceremony Professor Mark Henaghan and the Mayor presented certificates of completion.

The Shanghai Delegations have provided a wonderful opportunity to connect the law and corrections systems between the sister cities and the delegates experience of New Zealand law and practice has helped guide the development of the office of community work in Shanghai.

The Faculty of Law is very grateful for the support from local justice officials who contribute their skills and experience to make the Shanghai Bureau of Justice Delegations a successful and collaborative event.

In April this year the Faculty of Law hosted a delegation from the Shanghai Prison Administration Bureau.

We very much value the ongoing relationship between the Faculty of Law and the Shanghai Bureau of Justice that has been nurtured by Associate Professor Donna Buckingham and look forward to the Bureau of Justice delegation later this year.

ART IN LAW V EXHIBITION

ART IN LAW V Exhibition March 11 – June 3 2011

The Faculty of Law and the Dunedin Art School were pleased to open the Art in Law Exhibition at a launch in March.

This is the fifth exhibition of work by the staff, senior students and graduates of the Dunedin School of Art on

show in the Faculty of Law, Richardson Building, University of Otago.

This show highlights painters working, with one exception, in the medium of abstraction.

Alexandra Kennedy has exhibited recently in Europe and has a deep interest in the work of Malevich, one of the founders of modern abstraction.

Lynnette Taylor, a recent Master of Fine Art graduate, is represented by what may be her major work to date, *Toitu I*, making good use of the best space for the display of art in the Faculty on the 8th floor.

Sue Novell's work uses photography, computer technology and chance to play with the tension between the random and the ordered, making startling use of vibrant colours.

Clive Humphreys is a senior New Zealand painter and the only non-abstract artist in the show, developing allegories of recent personal experiences, somewhat in the manner of the American artist Ron Kitaj.

James Bellaney is a student at the School, but has already had a show in Auckland. His work also looks abstract but explores visual sensations associated the grand narratives of Māori legends.

The Dunedin School of Art and the Faculty of Law have created a partnership that both celebrates creativity and decorates the somewhat austere walls of the Richardson Building to everyone's advantage.



Artist James Bellaney

All are welcome to view the works.

If you would like to purchase any of the works or find out more from the artists you can contact them at the following:

Sue Novell suenovell@me.com www.suenovell.com

James Bellaney jimmybellaney@yahoo.co.nz

Clive Humphreys Clive.Humphreys@op.ac.nz

Alexandra Kennedy Alex@op.ac.nz

HEALTH SYSTEMS LAW INTENSIVE 26 – 29 APRIL

The University of Otago and Buddle Findlay are pleased to announce that the Health Systems Law Intensive was held in Wellington from 26 - 29 April.

This course is designed specifically for senior clinicians, board members chief executives and senior managers working in the New Zealand and Australian health sector. Enrolment is also open to post-graduate law students and practising lawyers with an interest in health law.

Enrolment is restricted to appropriately qualified and experienced participants who hold a degree in medicine or law or another qualification approved by the Dean of Law.

The Faculty of Law intends to run this course again next year. For those who may be interested in enrolling and for further information please contact the Faculty Administrator on +64 3 479 8854 or law@otago.ac.nz.

2011 SUMMER SCHOOL LAW PAPERS

Summer School Law was very successful at our Auckland, Wellington and Dunedin campuses. Dr Tracey Epps taught International Trade Regulation, Professor Henry J Lischer Jr, SMU Dedman School of Law, Dallas, Texas taught International Taxation, Dr Brent T White, James E Rogers College of Law, University of Arizona taught Mediation, Anita Jowitt, senior lecturer, University of the South Pacific, Emalus Campus, Vanuatu taught Colonisation Globalisation and Pacific Legal Issues. Mr L A Andersen and Dr Robin J Watt taught Forensic Law and Mr Richard Cornes, University of Essex taught Constitutional Law Reform. There were very high enrolments for these papers.

Two of these very popular papers were:

Forensic Law

Taught on the University of Otago Wellington Campus this paper covered the importance of forensics to court cases. The students learned about such topics as the strength of evidence, the importance of trace evidence, firearms, visual identification evidence, facial mapping, DNA, blood stains and splatters, computer forensics, the application of forensics to law, ethics, junk science. These themes were well explored in contemporary case studies

The Forensic Law Paper also had an interesting and fun practical aspect. Students had a trip to the Trentham Rifle Range as guests of the Karori Rifle Club on Sunday 30 January 2011.

Nicole McKee, who is president of the Karori Rifle Club and a licensed rifle instructor, hosted the day. The students were given a talk on the basics of firearm safety before given the opportunity to fire rifles at targets under direct one-to-one supervision. The each kept the cartridges so they could compare the different indentation marks on the cartridges made by different rifles.

Mediation

Otago summer students have been very enthusiastic about an increasing trend to mediate disputes out of the courtroom.

There was an unprecedented enrolment for the Dunedin campus paper Mediation, taught by visiting lecturer Dr Brent T White of the E Rogers College of Law at the University of Arizona.

Marketing Coordinator for Law Ruth Molloy said more than 100 students were enrolled in the paper, more than normally expected for summer Law papers.

“A move away from the courtroom is beginning to gain traction here,” she explained. “It is often a more agreeable solution than litigation – more cost effective and time effective. I think the paper has piqued the students’ imagination as an add-on to their professional degree.”

Dr White said that for many clients, the adversarial method in litigation is not always the best fit for dealing with conflict and law firms are recognising the increased demand for mediation services.

More women than men enrol in his mediation courses which may reflect different styles of conflict resolution he said.

Staff

FACULTY OF LAW, UNIVERSITY OF OTAGO, PROFESSOR PAUL ROTH ADVISES EU ON PRIVACY LAW

The work of Professor Paul Roth of the Faculty of Law, University of Otago, was acknowledged in a recent European Union legal opinion.

Roth had been commissioned by the European Commission to write a report on the adequacy of New Zealand’s privacy law in terms of the European Union Directive on the processing of personal data. The report was written under the aegis of the Centre de Recherches Informatique et Droit of the University of Namur, Belgium.

The working party established under the European Union Directive adopted its *Opinion 11/2011 on the level of protection of personal data in New Zealand* on 4 April 2011, in which it acknowledged that it “draws heavily on Professor Roth’s report”.

After the opinion was released, Marie Schroff, the New Zealand Privacy Commissioner, issued a press release (13 April 2011) in which she welcomed the European Union working party’s recognition that New Zealand’s privacy law satisfies the adequacy requirements of the Directive on the processing of personal data. She commented, “This is a key step towards obtaining a formal legal finding from the European Commission that New Zealand is a safe destination for European companies to send personal data for processing. The finding will be significant for cross-border trade and will open doors for New Zealand business.”

ROWHEATH TRUST AWARD AND CARL SMITH MEDAL

Congratulations to Jacinta Ruru for being awarded the Rowheath Trust Award and Carl Smith Medal for one of two best researchers in the University in the first years of their career.



Jacinta Ruru was appointed Lecturer in Law at the Law Faculty (her first career appointment) on 1 February 2002. Jacinta has a record of outstanding scholarly achievement based on her work at Otago University.

The following referees, experts in Jacinta Ruru’s field, are testament to the impact Jacinta’s scholarship is making nationally and internationally.

Professor John Borrows, Robina Chair in Law, Public Policy and Society, University of Minnesota Law School, is one of the world’s leading authorities in indigenous rights and a top scholar in comparative constitutional law. Professor Borrows writes “Jacinta’s work is very innovative and of the highest quality. She is making a significant contribution and is working at the leading edges of her field. Her work is simply outstanding”.

Professor Borrows also states “It is my opinion that Jacinta’s scholarship is refreshingly unique and creative, and is making a difference to the constructive reconciliation of Māori/Crown relations in New Zealand. It is also influential in revealing helpful alternatives to the resolution of Crown/Aboriginal issues in Canada and Australia. She is an outstanding emerging scholar with a bright future ahead of her”.

Professor Bradford W Morse, (Dean of Law at the University of Waikato and previously Professor of Law, Vice-Dean and Director of Graduate Studies, University of Ottawa and is a world leader in Canadian and comparative Indigenous law issues) states that “Jacinta has developed an extraordinary record in the 8 years since accepting the post of Lecturer at University of Otago in 2002. She has become a significant force in generating collaborative research projects within the University of Otago, throughout New Zealand and internationally”. Professor Morse goes on to say “Her list of publications is outstanding, and especially so for someone who only received her first law degree a mere decade ago from the University of Otago. She has authored or co-authored 19 articles in a wide variety of journals as well as 11 book chapters”.

Judge Wilson Isaac, (Chief Judge of the Maori Land Court) says of Jacinta’s work as the independent academic appointee to the Māori Land Court education committee “Jacinta has been instrumental in providing the judges with a broad range of educational options to develop particular areas of their jurisdiction”.

Sir Ken Keith, a Judge at the International Court of Justice and former New Zealand Supreme Court Judge speaks of “her great industry, her interdisciplinary instinct and actions”.

Sir Tipene O’Regan (instrumental in negotiating two of the first and largest Treaty of Waitangi settlements) writes of Jacinta “I regard her as an outstanding professional academic of great promise who has already made a significant contribution to the wider understanding of the position of Māori and other indigenous peoples in respect of the Law and legal systems”. He also comments “Although early in her academic career, she has already become one of the more widely regarded and respected scholars in her field”.

The fact that Jacinta Ruru has already won a major distinction for her scholarship is further testament to the exceptionally high quality of her work. In 2006 Jacinta was awarded a University of Otago Early Career Award for Distinction in Research.

The areas of law in which Jacinta Ruru specialises (comparative Indigenous peoples law relating to the environment and family and Māori land law) are nationally and internationally significant.

FAREWELL TO RACHAEL FAHEY

Faculty of Law Staff are sad to see Faculty secretary extraordinaire, Rachael Fahey, leave to take up a new position in Christchurch.

Rachael has been on the staff for 5 years and will be very much missed by her colleagues. We wish her well.



Law Prizes

New prizes have been established for law students who show outstanding achievement.

THE SHONA REEVE MEMORIAL PRIZE

The Shona Reeve Memorial Prize was established in memory of Shona Margaret Reeve with the support of family and friends and colleagues. The prize is to be awarded annually to the student achieving to best overall result in Advanced Family Property Law.

Shona was a very highly respected member of the legal profession and focussed primarily on family law and relationship property.

2010 is the first year that this prize has been awarded and congratulations go to Jennifer Sullivan who is the recipient of this prize.

SOCIETY OF OTAGO UNIVERSITY LAW STUDENTS PRIZE LEGAL ETHICS (THIRD & FOURTH YEAR)

The Society of Otago University Law Students (SOULS) Prize Legal Ethics (Third & Fourth year) was established in 2010 by SOULS for the student who achieves the highest in Legal Ethics.

The prize is awarded by the university Council on the recommendation of the Dean of the Faculty of Law, and the 2010 recipient was Jessica Rose.

ANDERSON LLOYD LAW PRIZE GIVING



On Monday 21 March, Anderson Lloyd held the prize giving for the winners of the 2010 Law Prizes, the Joseph Gerard Butler Prize and the Anderson Lloyd Public Law Prize.

The Faculty of Law were invited along with Denise & Connor Butler and family, and of course the prize winners and their families. Frazer Barton presented (along with assistance from Connor Butler) the Joseph Gerard Butler Prize to Jessica Elder and Michelle Nicol (absent Grace Holgate) and Michael Garbett presented the Anderson Lloyd Public Law Prize to Phoebe Harrop.

THE RICHARD SUTTON MEMORIAL PRIZE IN RESTITUTION APPEAL LAUNCH

In a function on Wednesday 27 April the Faculty of Law, University of Otago celebrated the launch of the Richard Sutton Memorial Appeal. The Appeal is in honour of the late Emeritus Professor Richard Sutton – a man of great brilliance and of equal kindness, who touched many lives. Speakers at the Function included the Dean of the Law Faculty, Professor Mark Henaghan, Sir James (Bruce) Robertson, a retired judge of the NZ Court of Appeal, and Justice Paul Heath.



Richard's contribution to the development of the law, legal education, and to the knowledge and skills of his students was immense. He took up his professorship at Otago in 1980, a position he held until his retirement in 2004. During this time he spent two periods as Dean of the Faculty of Law (1981-1984 and 1998-1999). He also served as a Law Commissioner from 1992-1997. In this role he worked on many projects, which have led to considerable improvements in the Wills Act, the law of damages, the law of evidence, the law of contract, property law and fraudulent conveyancing.

From 1996 onwards Richard worked on the Te Matahauriki Project with colleagues at the University of Waikato to help develop Māori legal systems recognized in New Zealand law. He was instrumental in helping Māori to incorporate their customs and values into the law of passing on property within families.

To date the appeal has raised sufficient funds to support the payment of an annual prize – the 'Richard Sutton Memorial Prize in Restitution' – to be awarded to the top student undertaking the Faculty's Law of Restitution Paper in any given year. The Law of Restitution was one of Richard's key research interests.

The appeal is also raising funds to support the establishment of a scholarship available to students undertaking the LLB or LLB (Hons) degree at Otago. The scholarship will be awarded on the basis of both academic achievement and financial need, reflecting Richard's concerns for equity and justice.

For more information about the Appeal please contact the Campaign Officer on +64 3 4795246 or email alumniappeal@otago.ac.nz.

The Faculty of Law wishes to thank all those generous donors who make awarding these prizes possible

Student Achievements

LAW STUDENT COMPETITIONS 2011 Otago Law Students Win 3rd Place in the Brown-Mosten International Client Consultation Competition in the Netherlands

The Faculty of Law would like to congratulate Nic Blumsky-Gibbs and Sean Conway for being placed 3rd in the Brown-Mosten International Client Consultation Competition.

The University of Maastricht in the Netherlands hosted the competition under the auspices of the International Bar Association.

Nic and Sean competed very well to gain 3rd place and were particularly astute in picking up on ethical issues, which underpins good lawyering skills.

The overall winners were a combined team from Jamaica and 2nd place winners were from Australia. Congratulations also to Selene Mize who coached the students. Nic and Sean would like to thank the New Zealand Law Foundation, Russell McVeagh and the Faculty of Law for their support. They would particularly like to thank Selene for her fantastic coaching.



ELSA WTO MOOT COMPETITION 2011 ASIA PACIFIC ROUND



A team from the University of Otago finished second out of 16 teams in the Asia Pacific Regional Round of the ELSA World Trade Organisation (WTO) Moot Court competition held in Taipei from 1-6 March. The team consisted of final year law students Brierly Broad, Emma Foley, and Jeremy Stewart. Tracey Epps, a trade lawyer at the Ministry of Foreign Affairs and Trade and part-time senior lecturer at Otago coached the team.

Organised by the European Law Students Association (ELSA), the moot is a simulated hearing in the WTO dispute settlement system. Having worked over summer to prepare extensive written submissions, the team presented their oral submissions to panels of trade law experts in Taipei. In the final (against the University of Melbourne) the teams faced questions from a nine-member panel that included two former WTO Appellate Body members, Professors Mitsuo Matsushita and Yasuhei Tanaguchi. Emma Foley says that "presenting our arguments to former WTO Appellate Body members was an amazing experience, especially considering some of them had decided the cases we were arguing about! It was awesome that people with such distinguished backgrounds gave their time up to judge a student competition."

As runner-up, the Otago team qualified for the international final round of the competition, to be held in France and Switzerland in late May. Sixteen teams will compete and argue the case, which involves a dispute between the fictional countries of Russelia and Aldousia. The dispute concerns Russelia's import prohibition on cloned sheep and their progeny and derivative products due to alleged risks to human and animal health arising from the cloning technology. As complainant, Aldousia alleges violation of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement). The SPS Agreement requires countries – where no international standard exists – to ensure that their SPS measures are applied only to the extent necessary to protect human, animal or plant life or health, and are not maintained without sufficient scientific evidence.

The ELSA competition provides an invaluable opportunity for students to develop their litigation skills while engaging with topical legal and policy questions. As Emma Foley says: "The competition has been a fantastic opportunity to help us develop our mooted skills. While we had all done a little mooted before this competition, the time and level of detail involved in the ELSA competition really pushed us to a new level". Jeremy Stewart adds that, "aside from the mooted itself, the competition provided a unique opportunity to meet and interact with law students from throughout Asia and the Pacific – that alone was a definite highlight!"

BELL GULLY UNIVERSITY OF OTAGO MOOTING COMPETITION



Congratulations to Louis Chambers and Alice Osman for winning the Bell Gully Mooting Competition University of Otago final on April 1.

The competition was fierce between the teams as they made submissions to the Judges on the finer points of law on exclusion of evidence that has arguably been obtained by torture.

Both teams had researched the law extremely well and offered some finely honed arguments to support their positions.

Well done also to the runners up, Alec Dawson and Michael Blaschke.

The winners go on to compete in the National competitions in Hamilton and the ALSA in Sydney in July.

We wish them well.

RUSSELL MCVEAGH CLIENT INTERVIEWING COMPETITION



Once again SOULS has successfully organised the most recent round of the Russell McVeagh Client Interviewing Competition for University of Otago law students

There was huge interest with 36 teams competing in the round and 10 teams on the waitlist.

The finals were held on Thursday the 10th of March, after two rounds of heated competition, judged by fellow students, staff and local practitioners.

There were three teams in the final: Matthew Joyce and Tom Cleary, Alex Boock and Rob Clarke, and David Owen and Toby Holborrow.

We are very grateful to the judges, Professor Mark Henaghan and Ms Selene Mize from the Faculty of Law, and Jan Blair and Polly Pope from Russell McVeagh.

The judges deliberated at length before announcing the winners, Rob Clarke and Alex Boock.

We congratulate the winners who will go on to compete at the NZLSA conference on 30th August to 3rd of September and at the ALSA conference on the 11th to 17th of July.

The Client Interviewing competition was the first of the four main senior law competitions run by SOULS throughout the year including Senior Mooting, Witness Examination and Senior Negotiation.

NZ SDS NATIONAL BUSINESS COMPETITION CASE LEAGUE IN AUCKLAND FRIDAY 15 APRIL

Otago has been restored to its rightful position as number 1 in the NZ Case Competition league by winning round 1 of the 2011 NZ SDS National Business Competition Case League in Auckland on Friday.

The case was on Youthline www.youthline.co.nz/

The competing universities were: Canterbury, Massey, Waikato, AUT, Auckland and Otago.

The Otago team was:

Ollie Hornbrook (FINC & ACCT; LAW)

Nathan Blane (ECON, POLS, LAW)

Laura Goudie (ACCT, MANT, BLAW)

Emma Hoksbergen (MART)

Congratulations to the team.

AURORA PROJECT SUMMER INTERNSHIP 2010/2011 – HUMAN RIGHTS AND INDIGENOUS ISSUES

With law firms and other summer clerk and graduate employers throwing beautiful coloured pamphlets and offers of fabulous legal careers around the Richardson building of late, sometimes it's hard to see past the glitz and glamour of working for a top law firm. However, there are still students, such as Jordy Bowman, looking for an alternative way to investigate career moves.



After searching far and wide last year for somewhere to test whether Jordy really wanted to get into policy work, and pursue her interests in Indigenous issues and human rights, Jordy stumbled across The Aurora Native Title Internship Program. The program places law, anthropology and some social science (archaeology, cultural heritage, environmental management, human geography, history and sociology) students and graduates in unpaid six week internships over the winter and summer university break at the 15 Native Title Representative Bodies around Australia as well as over 50 other Indigenous organisations working in land rights, policy development, human rights and social justice.

After successfully making it through Aurora's application process, Jordy was placed in the Sex and Age Discrimination Unit (SAGE) at the Australian Human Rights Commission in Sydney. The Commission is an independent statutory body responsible for monitoring Australia's compliance with federal discrimination laws and international human rights treaties, as well as administering a complaints mechanism.

For six weeks of summer Jordy worked as an intern at SAGE, which confirmed the area of work she would like to be involved in when she finishes university. Secondly, it allowed Jordy to put into practice the research and writing skills, and other analytical skills she'd acquired over the last four years at Otago. Thirdly, she got to do some really interesting stuff!

With stories circulating of summer interns spending days in front of a photocopier or doing endless coffee runs, one

is always a little apprehensive about what their internship has in store for them. At the Commission, however, Jordy was very pleasantly surprised by the amount of stimulating, interesting and relevant work she was asked to complete. Tasks ranged from developing website material on current Commission projects, to drafting briefs and articles, developing research proposals and summarising key reports from other organisations. Jordy also got to sit in on staff training and attend Commission meetings and functions. The variety of work meant she was constantly learning new skills and expanding her knowledge of sex and age related human rights issues – the work broached topics including domestic violence, women in leadership, age discrimination in employment, and sustainable populations.

Jordy would definitely recommend the Aurora internship program for students and graduates looking for an alternative to your regular summer law clerkships, or for social science students looking for an awesome way to spend part of their summer. The Aurora placements team was great in organising all parts of the internship and providing support throughout. For more information on the Aurora Project and its host organisations see www.auroraproject.com.au. Applications for the summer 2011/12 round will be open in August.

Jordy is currently applying for graduate positions with the Australian government. Her experience at the Commission has confirmed that she is keen to pursue a career in Indigenous and development policy, and hopes to work in native title in the future.

CONGRATULATIONS TO MATTHEW DOWNS FOR HIS OUTSTANDING ACHIEVEMENT WITH HIS PHD LAW

Matthew has been recognised for his outstanding work in his thesis entitled "*No Substantial Miscarriage of Justice: The history and application of the proviso to section 385(1) of the Crimes Act 1961*".

Professor Paul Fairhall, Fellow of the Australian Academy of Law, examined his thesis, along with Sir Bruce Robertson, and Professor Richard Mahoney.

Catching up with Alumni

KENBE LA FOUNDATION

Last year we let you know of the tragedy that befell one of our Otago Law graduates, Emily Sanson-Rejouis who lost her husband and two of her three daughters in the horrific earthquake that struck Haiti in January last year.

Emily's story is one of courage and survival and she has gone on to establish the *Kenbe La Foundation* in memory of her family.

Emily tells us Kenbe La means 'Never Give Up' in Haitian Creole. It is a vehicle for hope in the face of a tragedy that is literally incomprehensible. It honours Emmanuel her husband, and the passion and dreams he had to help disadvantaged children of his native Haiti – to provide educational opportunities to help them realize their potential.

The Kenbe La Foundation would welcome your support.

THE UNIVERSITY OF OTAGO HOLDS GREAT APPEAL FOR THE NEXT GENERATION

One Sydney family are delighted to have their 2 daughters studying here at Otago.

Harriet Enright and her sister Madeline (Maddie) are recent arrivals to the University of Otago from Sydney. Both parents studied for their bachelor degrees here and have inspired their daughters to choose Otago as the preferred option for furthering their education.



Having completed a Bachelor in Medical Science, at Sydney University Harriet says she was unsure of her next academic step.



She was attending the University of Otago Alumni meeting in Sydney with her parents, Mavis Duncanson and Kerry Enright, who are both Otago graduates, and was so impressed with what she experienced at the Alumni meeting, she was encouraged to make Otago her next choice and combine a law degree with her science background.

Harriet says having been absorbed by her parents' fond memories of life and study at the University of Otago campus the choice was made easy.

Harriet's mother Mavis graduated from Otago in 1980 with a Bachelor of Medicine and is currently undertaking a PhD in Public Health.

Mavis is now the Head of Public and Population health at Notre Dame Medical School Harriet's father Kerry, graduated with a Bachelor of Theology in 1982. He completed a Masters of Theology at Princeton University and a Doctorate at San Francisco Theological Seminary 'Kerry is the Director of Unitingworld, an Australian NGO providing relief and development to communities outside Australia' is easier to follow.

The family moved to Sydney in 2007.

Harriet says that she wanted to study law here as she values our New Zealand way of doing things. "New Zealand ideals are more suited to my own values", she says.

She is particularly encouraged by how New Zealand implements its public health goals and would eventually like to work in the public health area in law and policy.

Harriet's sister Maddie is studying for a Bachelor of Arts and a Bachelor of Theology majoring in Christian Thought and History and European Studies.

FORMER WHAKATANE HIGH SCHOOL STUDENT, NATALIE COATES HAS CHOSEN HARVARD LAW SCHOOL TO UNDERTAKE A MASTER OF LAWS

Four top universities – Harvard, Columbia, New York and Arizona, accepted Natalie into their Masters programme but she chose Harvard for its outstanding resources and the opportunity as she says to "learn along side some of the brightest and most accomplished students on the planet."

Natalie credits her success to the support of extended whanau and awesome teachers at Whakatane High School as well as going through school with a group of high achieving Māori girls. She also praises the tutelage received from some amazing lecturers at Otago University. She enrolled at Otago in 2004 to do a double degree in Māori studies and law and graduated with two first class honours degrees.

Natalie decided to pursue her interest in indigenous rights and travelled through South East Asia while undergoing a

training programme on these issues. On her travels she met with indigenous human rights activists and was inspired by their courage in extreme circumstances.

Natalie then moved to London where she volunteered at Survival International working with tribal and indigenous peoples.

Natalie would love to work with indigenous peoples around the world either as an academic or for the United Nations permanent forum for Indigenous peoples.

One thing she is sure of is that she would like to return to the Eastern Bay at some stage to work with her own iwi.

We wish her every success.

MINDY CHEN-WISHART

LLB (Otago) BA (Hons)
(Otago) MA (Oxford)
Barrister and Solicitor New Zealand



Mindy graduated from the University of Otago with a BA (Hons) in 1982 and then with an LLB in 1985. She went on to complete an LLM in 1988 and an MA at Oxford.

Until 1992, Mindy was a Senior Lecturer at the Faculty of Law at Otago. She then spent two years as the Rhodes Visiting Research Fellow at St. Hilda's College before taking up her current position. Mindy is the senior Fellow of Law Merton College, Oxford and Reader at Oxford University. She is also Director of Undergraduate Studies in Law.

Mindy delivered the recent Hochelaga lectures at the University of Hong Kong in October.

The first lecture 'In Defence of Consideration', interpreted the consideration requirement in the common law of contract as reflective of a core aspect of human behavior, confirmed by anthropologists, evolutionary biologists, psychologists and social scientists.



Portrait by Mindy's son

In her second lecture, 'A Bird in the Hand', Mindy addressed one of the most persistent problems for contract law namely, the enforceability of one-sided contract modifications.

Mindy also gave a seminar titled 'Legal Transplant of Undue Influence: Lost in Translation or a Working Misunderstanding?' She noted that the English

law of undue influence is overwhelmingly accepted as the applicable law in Singapore. She then went on to explore the issues arising from the transplanting of law from one jurisdiction to another.

Mindy is currently on a major working party that is reviewing contract law in Asian societies.

OTAGO LAW GRADUATE GAINS RECOGNITION FROM UNCTAD

The United Nations Conference on Trade and Development (UNCTAD) recently recognized the work of five former LLM students for work they did in connection with a seminar on International Competition and Developing Countries.

The five students, who earned their LLM degrees recently were a kind of mini United Nations themselves, each hailing from a different country: Simon Peart (New Zealand), Felipe Serrano Pinilla (Colombia), Denise Junqueira (Brazil), Tone Oeyen (Belgium), and Apostolos Giannakoulis (Greece).

They are thanked in the official UNCTAD document that incorporates their work. All were also invited to attend the 6th Review Conference of the UNCTAD competition principles, which was held in Geneva in November, where competition law officials from around the world assembled and where the document including their work was adopted. Simon Peart and Felipe Serrano attended.

Simon graduated from the Faculty of Law at the University of Otago with a BA and LLB (Hons) in 2006. He was top in his LLM class at NYU in Trade Regulation.

In Memory

MIKE RADFORD

Staff at the Faculty of Law were saddened to hear of the passing of Judge Michael Radford who died on the 16 March 2011 at the age of 63.

Michael passed away after two years of illness.

Michael graduated with an LLB from the University of Otago in 1970. After he was admitted to practice, he worked in Invercargill for Cruikshank, Pryde & Hay. His practice largely consisted of both civil and criminal litigation. After becoming a partner in Gallaway Son & Chettleburgh he left to form his own practice in 1980.

In 1985 Michael joined Aspinall Joel & Co. and later became a Principal in that firm (as Aspinall Joel Radford Bowler); he spread his time between the Timaru and Dunedin office.

His legal career spanned well beyond his practice however. Michael served as president of the Otago District Law Society; he served on the council of the New Zealand Law society and the New Zealand Law Society ethics committee. He was also a member of the Legal Aid Board.

In 2006 Michael became a District Court Judge. In 2007 he moved to serve at the Wanganui District Court. He continued as a Judge until late in his life including adjudicating over looting cases from the Christchurch earthquake in September.

Outside of his professional life Michael was passionate about motorcycles and classical music.

LLM and PhD in Law

Enhance your research skills, gain specialised legal knowledge and expand your employment skills

Welcome to the University of Otago Faculty of Law. Established in 1873, the Otago Law Faculty is proud of its long history and tradition of providing a world class legal education. Our very experienced staff have international

reputations in their fields. The University of Otago is New Zealand's most research intensive university. High quality research is a major contributor to our legal system. Be part of this contribution.



CRITERIA FOR ENTRY TO LLM AND PhD

LLM (by Thesis)

LLB or equivalent undergraduate legal qualification

B+ average in papers taken in final years of undergraduate law degree

B+ standard in legal research

Demonstrated English language proficiency

Discretionary admission in other cases

2 academic letters of reference

The LLM is intended to represent the product of 12 months (or equivalent) full-time research

PhD

Honours or Masters degree or appropriate research experience

B+ grade point average for all 300/400 level papers (or equivalent) taken in LLB degree and other prior bachelor degrees, and Masters coursework or research

Demonstrated English language proficiency

2 academic letters of reference

The PhD involves a minimum of two and a half years' full-time, or at least four years' part-time study

UNIVERSITY OF OTAGO POSTGRADUATE AWARDS AND SCHOLARSHIPS

These awards and scholarships are awarded for the first 12 months of a Masters Thesis or the first 36 months of a PhD Thesis.

For scholarship and awards information contact the University of Otago Postgraduate Scholarships office at email: scholarships@otago.ac.nz or visit the website: www.otago.ac.nz/study/scholarships/postgraduate_scholarships

To further your enrolment plans, formulate a research proposal and discuss your plans with the Postgraduate Co-ordinator, Faculty of Law, email postgraduatelaw@otago.ac.nz

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