

Staff

New staff

Ms **Jessica Palmer** BCom, LLM(Auck), LLM(Cantab) joined the staff as a lecturer in 2005. Jessica has been teaching Contract and Commercial Transactions. Her research interests lie in the field of commercial equity.

Ms **Ceri Warnock** LLB(Hons)(Cardiff), LLM(Auck) joined the Faculty in 2006 as a lecturer, having practised for some years as a barrister in England and Wales specialising in family and public law cases. She completed her Masters degree at Auckland in 2005. Ceri teaches Resource Management Law. Her primary research interests include environmental law, international environmental law and energy law.

Mr **Stephen Smith** BSc(Alta) LLB(Qu) LLM(Harv) took up a lecturing position in October 2006. Stephen grew up in Alberta and before joining the Faculty spent a year as a visiting professor at the University of Oklahoma in Norman. Since his arrival Stephen has been teaching the English legal history portion of the Legal System course and about half of the Evidence paper. Stephen's research interests include international criminal law, criminal law and procedure, evidence, transitional justice and international humanitarian law.

Dr **Tracey Epps** BA LLB(Hons)(Auck), LLM(Tor), SJD(Tor) joined the Faculty, again as a lecturer, in Jan 2007. After graduating from Auckland in 1995 Tracey spent four years working there as a solicitor before undertaking postgraduate study at the University of Toronto. Her doctoral thesis examined the role of science and public sentiment in international trade disputes involving trade restrictive health regulations. This year Tracey has been teaching International Trade Regulation. Her research interests are in the field of international economic law, including international trade and investment, law and development and regulatory law and policy.

Promotions

Professor **Rex Ahdar** has been appointed to a chair in law. Rex has edited several books and authored others, most recently *Religious Freedom in the Liberal State* (2005, with Professor Ian Leigh). He is the co-founder of the Christian Scholars Network at Otago. His current research projects are the antitrust regulation of professional sport, laws tending to the incitement of religious hatred and defending the parental right of corporal punishment.

Kevin Dawkins has also been appointed to a chair in law. Kevin is co-author of the leading text *Adams on Criminal Law* and is the contributing editor on Criminal Law for the New Zealand Law Review. As well as Criminal Law, his other teaching speciality is International Law. Kevin's current research interests are the right of an accused to be present at trial, the scope of the defence of consent, and criminal liability for the sexual transmission of HIV.

Andrew Geddis has become an associate professor. During a 2006 sabbatical Andrew was able to complete the research for his book *Electoral Law in New Zealand: Practice and Policy*, which was published in 2007. His research interests lie in the field of public law, rights jurisprudence and democratic theory, with a particular focus on the legal regulation of elections. Andrew's teaching responsibilities include Public Law, Law and the Democratic Process and a newly established course – Bills of Rights: Theory and Practice.

Donna Buckingham has also become an associate professor. Donna's teaching responsibilities lie in legislation, the law of evidence and civil procedure. She was one of nine recipients of a National Tertiary Teaching Excellence award in 2007. Donna directs the New Zealand Legal Information Institute which provides free online access to legal information and authors the Evidence section of Electronic Business and Technology Law (LEXIS/NEXIS).

STAFF

Selene Mize and **Nicola Wheen** have both been promoted to senior lecturer beyond the bar. Selene's research goes to issues involving human rights, media law, negotiation and legal ethics. In 2007 she has taught Civil Liberties, Negotiation and Legal Ethics. Nicola's current research focuses on environmental law – she is involved in projects concerning fauna by-catch and wildlife corridors. Her teaching is still in Public Law and Environmental Law and now International Environmental Law.

Barry Allan has been promoted to senior lecturer. Barry has numerous research interests arising from torts and contract (especially involving credit and credit transactions) and internet legal issues. Barry's teaching includes Contract, Torts, Secured Transactions and Civil Procedure.

Retirements

Ian Williams formally retired in April 2006, and was given a splendid send-off, but was immediately re-engaged to continue with the Planning course through the end of the semester and has since carried on with Vendor and Purchaser, supervising the Laws 499 mootng programme and editing this newsletter.

Giora Shapira retired in April 2009, again with a fine send-off. Giora intends to return to the Faculty to teach the Conflict of Law course during the first semester of 2008.



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OTAGO LAW

NEWSLETTER OF THE FACULTY OF LAW

UNIVERSITY OF OTAGO



DEAN'S WELCOME

MARK HENAGHAN
PROFESSOR AND DEAN OF LAW

Welcome to our first newsletter. We are making a humble start and hope to develop this newsletter into a regular publication with wide ranging contributions from the Faculty and alumni/ae.

The Law Faculty is in good heart. An independent review of the Law Faculty was carried out this year. Professor Andrew Ashworth, the Vinerian Scholar at Oxford University, was on the Panel. The Panel said "The morale and commitment of the Law Faculty have left a strong impression on the Review Panel and these translate into excellence in teaching ... The Law Faculty deservedly has a strong national and international reputation." The Review Panel also commented on our research saying they were "Impressed with the range and strength of research and writings in the Faculty. Not only do several authoritative New Zealand texts find their home in the Faculty, but it also produces an impressive spread of journal articles and book chapters." We are also delighted that Otago has been ranked first in New Zealand for research in law in both the 2004 and 2007 PBRF results.

A major highlight this year, which you will read about in this newsletter, was the honour bestowed on Professor John Smillie by the New Zealand Academy of the Humanities for his outstanding research over a very distinguished career.

Professors Peter Skegg, John Dawson and Nicola Peart were the major authors of the legal treatise *Medical Law in New Zealand*, which won the JF Northey prize this year for the best published book by New Zealand legal academics. Rachel Kennard won the 2007 Legal Research Foundation prize for the best unpublished work by a law student.

In the last two years we have been very pleased to recruit several outstanding young staff members

Genetic technologies spark debate

Saviour siblings, designer babies, "warrior genes", genetic manipulation – there is no shortage of emotive terms in the lexicon that has developed around recent rapid advances in knowledge about the human genome.

These advances have presented researchers and clinicians alike with new opportunities and challenges, but they have also unearthed previously undreamed of ethical, medical, legal and cultural issues – raising the question of whether, how, and to what extent human genome-based technologies should be regulated?

There is no simple answer, but the University of Otago has taken a key leadership role in the New Zealand Law Foundation-funded Human Genome Research Project (HGRP), a three-year, full-scale, multidisciplinary, international investigation into how New Zealand should respond to emerging human genetic technologies.

whom you will learn about in this newsletter. Jessica Palmer, was appointed in 2005 and in her first year of teaching she won an Otago University Students' Association Teaching Award. This year Stephen Smith, in his first year of teaching, won the same award. Donna Buckingham was awarded a national teaching award this year for her work in Legal System and Evidence.

Otago students continued their outstanding success in international competitions. In 2006 Charlotte Kirkcaldie and Sophie Atkinson won the world negotiation competition under the coaching of Selene Mize. We now have international world champions in negotiation, client interviewing (Melanie Robertson and Safraz Zavahir) and mootng (Chris Curran, Hamish Forsyth, Pip Jones, Alex Smithyman and Reuven Young).

Jesse Wall became our eighth Rhodes Scholar this year following an illustrious line back to Christine French in 1981. Two Otago law graduates shone in world championship sports events this year – Adine Wilson captained the New Zealand Silver Ferns with courage and grace at the world netball championships. James Ryan, unable to play because of injury, became a television personality wearing beautiful ties and giving insightful comments.

We have a section in the newsletter about what is happening to some of our alumni/ae but we know a lot more is happening so we want to hear from you so that we can regularly keep you all in touch with each other.

Thank you to Ian Williams who has kindly edited this first newsletter and ensured that it has gone to print.

MARK HENAGHAN
PROFESSOR AND DEAN OF LAW

Project leader and Law Faculty Dean Professor Mark Henaghan says their theme, Genes, Society and the Future, recognises that rapidly developing genetics research has outpaced medical, ethical, legal and cultural debates.

The HGRP has recently released its second report – a 950-page, two-volume document covering the genetic testing of embryos, newborns, children and communities, and examines new testing technologies and their implications.

"The report shows that there is a lack of understanding in the community of the immense benefits genetic testing can bring to improving health outcomes," says Henaghan.

"Information that is obtained as a result of genetic testing has the potential to be misused or misunderstood," he says. "Throughout this report, we provide legal and ethical frameworks to ensure

that the potential for misuse of genetic information is avoided as much as possible.

“Overall, the benefits of genetic testing for the health of individuals and populations outweigh the potential harms, and we hope that the frameworks in this report will minimise the impact of those harms.”

For example, one of the report’s key findings revolves around the way genetic tests could be incorporated into the current newborn-testing programme to look for susceptibility to common diseases such as type 1 diabetes.

Henaghan says screening children for such a disease could potentially enable parents to ensure an environment that is appropriate for a child with such a susceptibility.

“The major concern about widespread uses of such screening is that

The Waiting Game

OTAGO’S NEW LEGAL ISSUES CENTRE AIMS TO CROSS-EXAMINE THE LEGAL SYSTEM AND ASK WHETHER JUSTICE IN NEW ZEALAND CAN BE FAST AND FAIR.

If justice delayed is justice denied, then spending a decade battling for money that is rightfully yours is no justice at all.

“You watch people who become embroiled in such cases,” comments Otago’s Dean of Faculty of Law Professor Mark Henaghan. “It takes over their lives, their conversations, their identities. They become so weighed down by the process.”

By this standard, believes Henaghan, the system that enables such protracted, costly, consuming cases to occur might be a legal system, but it is no justice system at all.

But where many of those mired in such a process might come out of the experience obsessing over the details, Christchurch couple Grant and Marilyn Nelson went macro.

A claim sought after tenants badly damaged a commercial building rented from them dragged the couple through the courts for years.

The legal system, they felt, need to be examined as a whole. How well does the adversarial system serve justice in cases of civil law? How do the economics of running a law firm contribute to the efficiency of the legal system? What are emotional experiences of those engaged in long-running cases?

These are scholarly questions. And with no New Zealand legal faculty currently oriented to such a participant-centred, birds-eye view of how law works in practice, the Nelson’s quest for answers involved a tremendous step. The couple donated \$1 million to the University of Otago through its Leading Thinkers initiative to establish a Legal Issues Centre. The gift is matched by \$1 million from the Government’s Partnerships in Excellence framework.

The donation came with three pages of potential topics suggested by the Nelsons, conveying a vision for the centre that lends itself to interdisciplinary study. They span issues of psychology, economics, ethics and more. Examples include how the rules of evidence can be changed to encourage greater honesty and integrity on the part of lawyers, their clients and expert witnesses; how some lawyers are able to create work, cause delays and abuse the legal system, and what measures can be taken to prevent this happening. They ask whether depositions hearings should be eliminated altogether.

Henaghan says the concept of the centre – which will be overseen by a professor or associate professor yet to be appointed – has captured the imaginations of his colleagues within the Faculty of Law and across the University. “When the idea was put to us, there was a great sense of ‘Yes. This is what we need to be looking at.’ There is a real need for these questions to be answered, especially in the realm of civil law,” agrees Henaghan.

“Everything about the system hinders accessibility. Even the cost of

parents may overreact if they find out the child has a susceptibility to diabetes and overprotect the child,” he says.

“Our own research, carried out for this report by Dr Nikki Kerruish, showed that the group of parents who knew their child had an increased risk of type 1 diabetes were, in fact, lowest on the anxiety scale in terms of how they related to their child.”

The report recommends that particular attention must be given to minimising risks to children and implementing procedures for obtaining informed consent for newborn screening.

Work has already begun on the HGRP’s next report, dealing with the effects of gene patents on health practice and research, genetic privacy, and pharmacogenetics – the tailor-making of medicines to match a person’s genetic make-up.

lodging an application stops many people from pursuing a claim, even where the evidence is overwhelmingly in their favour.”

“There are tactics employed known as things like ‘burning your opponent off’. This is basically the principle of dragging the case out until the other party has run out of money or willpower. It’s not a good principle for justice.

Codes of ethics such as those stipulated by the Law Society are not consistently monitored or enforced, says Henaghan. Furthermore, some larger law firms are opting out of signing up to them at all.

And for judges, he continues, “there is an issue of accountability that needs to be looked at”.

“Judges are very highly paid, highly responsible people. Every time they accept a request for adjournment, they need to ask very seriously whether this is promoting or hindering justice.”

Is there another way? Alternative models of resolving legal disputes have emerged, which the Nelsons and Henaghan agree are worthy of academic enquiry. The process of “collaborative law”, for example, is gaining popularity across the United States and United Kingdom as a way of settling divorce proceedings in a less oppositional and arduous manner than that offered by the courts. Under this approach, each party and their legal advocate sit down for a series of meetings and work their way to an agreement.

But of course the point, and to some extent the beauty, of law is its abiding commitment to process. All the principles of law and justice – the correct identification of the points of law at issues and examination of whether the evidence points to a detailed breach of the legislation; the onus and burden of proof being upon the prosecuting party – is built around robust systems and due process.

Is there a danger that, in the drive for a speedier outcome, this rigour may be undermined?

“That is the nub of the issue,” agrees Henaghan. “What is the legality and justice of cases resolved via alternate models?”

But if clients are more satisfied, and experience the process and outcome as reasonable, does this count as a measure of justice? And Henaghan returns to his initial argument. “If justice is delayed, and comes at such a high financial and personal cost, then justice is undermined anyway.

“The worst consequence is that people lose confidence in the legal system. This has happened already. Many people do not even seek justice because the system is so hard to deal with. This is not conducive to a society that expects its members to respect the law, and to be protected by a system of justice.”

NICOLA MUTCH

Graduate News

Justice **Jillian Mallon** has been appointed a judge of the High Court. Justice Mallon completed the Otago degree in 1988 and went on to further study at Cornell. Her Honour is expected to sit mainly in Wellington.

Professor **Malcolm Grant** was awarded an honorary LL.D. at a graduation ceremony in December 2006, at which he gave the graduation address. Professor Grant took up the position of President and Provost (principal academic and administrative officer) of University College London in August 2003.

Two of Otago’s graduates have established careers as professional singers. The bass **Martin Snell**, who completed his LL.B. in 1988, is now based in Lucerne, Switzerland. His singing has been in constant demand, mainly in Europe and Asia, for the past twelve years. The bass baritone **Jonathan Lemalu**, who graduated with his LL.B. in 1999, completed three years of study at the Royal College of Music in 2002 (taking the College’s highly esteemed gold medal) and went on to postgraduate study at the School. He is now a sought-after talent on the international concert, operatic and recital circuit and has been signed to the EMI Classics label.

Stephen Harrop of New Plymouth and **Noel Cocurullo** of Whangarei have both been appointed judges of the District Court. Judge Harrop is sitting in Wellington and Judge Cocurullo in Hamilton and Palmerston North.

Saeeda Verrall, who graduated LL.B.(Hons) in 2004, has been awarded a Fulbright Scholarship. She is studying for an LL.M. at Harvard specialising in public interest law.

An article in the *Guardian Weekly* (18.05.07) reveals the role played by the late Professor **Frank Guest**, the Faculty’s first full time professor and dean, in wartime education. By a 1929 convention the University of London was able to conduct its distance learning courses in World War II prisoner of war camps. Professor Guest gave lectures to his fellow prisoners at Stalag IVB. His son, Professor **Stephen Guest** of University College London’s Faculty of Laws, has also engaged in distance learning.

Richard McElrea and Dr **Wallace Bain** have been appointed coroners under the Coroners Act 2006 to sit in Christchurch and Rotorua respectively.

Otago graduate and former law lecturer Professor **Don McRae** has been elected to the International Law Commission, which was established in 1948 by the United Nations to codify and develop international law. Professor McRae holds the Hyman Solway Chair of Business and Trade Law of the University of Ottawa. Election to the Commission, by the General Assembly of the United Nations, is for a term of five years. During his term Professor McRae hopes to be able to employ his experiences in international trade and investment law.

Kali Mercier has been working in London for several years for Survival International, which promotes the interests of tribal peoples. Most of her work has been on behalf of the Bushmen of the Kalahari, the indigenous hunter-gather people of southern Africa. The Botswana government progressively evicted the Bushmen from the Kalahari Reserve. A court decision, promoted by Survival, ruled in December 2006 that the Bushmen were entitled to return. The government is resisting this process, but Survival and Kali continue to press the claim.



A Welcome Election

Professor John Smillie has been elected one of the inaugural sixteen Fellows of the New Zealand Academy of the Humanities. The Academy was established in 2006 by Te Whaingā Aronui The Humanities Trust of Aotearoa New Zealand. The Trust’s objective is “To promote the value of the humanities in the creation, conservation and transmission of knowledge essential to personal well-being and the cultural, social and economic development of New Zealand.” Fellowship of the Academy is awarded for distinguished achievement in research in a field of the humanities. It is an award for academic achievement over a sustained period, where this achievement is demonstrated by a combination of peer esteem, outstanding publications, and contribution to the well-being of the professional field. The Trust is intended to advance the interests of the humanities in the same general way as the interests of science and technology are promoted by the Royal Society of New Zealand. The Board of the Trust, known as the Council for the Humanities and comprising fifteen eminent persons drawn from the humanities, assumed responsibility for the election of Fellows for the years 2007-2009. Thereafter it is envisaged that the Fellows of the Academy will themselves elect new members – perhaps some six per annum.

Professor Smillie’s Fellowship citation states that:

“Professor John Smillie has a long-standing reputation as a critical scholar who has challenged the basis of civil obligations. His 1996 article in the *New Zealand Law Review*, for example, contributed significantly to the efficiency and fairness of adjudication in New Zealand. ...He wrote a seminal article on the function of contract law in 2000, and he is the co-author of *The Law of Torts in New Zealand*, ... In recent years he has extended his reputation beyond torts to intellectual property, writing on copyright reform....

“Having supervised the work of over thirty research students, Professor Smillie sets a high benchmark which has influenced many young legal scholars in New Zealand. He is held in the highest regard by legal academics throughout the nation.”

Professor Smillie’s election to this Fellowship is a great and fully merited personal honour. The Faculty quietly basks in his presence and in his achievements.