

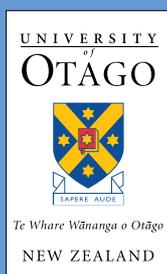
# OTAGO LAW

FACULTY OF LAW NEWSLETTER 1 2010  
UNIVERSITY OF OTAGO



## CONTENTS

1. Welcome from the Dean
2. Inaugural Professorial Lecture – Kevin Dawkins
3. Vanuatu Exchange
4. Anna Jacobs – International Law Conference
5. Awards and achievements
6. Mooting and Competitions
7. FW Guest Memorial Lecture
8. NZ Law Foundation Distinguished Visiting Fellow – Professor Dame Hazel Genn
9. Graduation Profiles
10. Exchange Student Profile
11. Introducing staff
12. Art in Law
13. Law Library makeover
14. In Memory
15. Catching up with Alumni/ae



## Welcome from the Dean

Dear Fellow graduates of the Otago Law Faculty,

We hope you enjoy our latest newsletter. The Otago Law Faculty is thriving. In 2009, Selene Mize was awarded the Prime Minister's Award for the Outstanding Teacher in Tertiary Education in New Zealand. Professor Stuart Anderson has completed a long haul research project on the history of English law published by Oxford University Press. Otago Law Faculty students won the President's cup in 2009 for the best performing University at the National Student Competitions in mooted, negotiation, client interviewing and witness examination.

Last year we hosted University of South Pacific law students and academics for a conference and mooted competition. Alice Irving was awarded a Rhodes Scholarship (the Faculty's 10th Rhodes Scholar in recent times). This is the third year in a row an Otago Law Faculty student has been awarded a Rhodes Scholarship. Laura Fraser won the Legal Research Foundation paper for the best piece of research by a law student on the topic "Property Rights in Environmental Management: The Nature

of Resource Consents in the Resource Management Act 1991".

The Law Library has been extended to the 6th floor and completely refurbished. If you are in Dunedin do pay a visit to the Law Library – it is an oasis of peace, quiet and wonderful reading.

We sadly lost Emeritus Professor Richard Sutton last year. Richard was still researching and writing strongly. Richard's final article has just been published in the Restitution Law Review. Thank you to everyone who sent their kind thoughts and memories of Richard. Kensie Sutton and Richard's family as well as us all in the Law Faculty very much appreciated your wishes.

We hope you all had a good year in 2009. We know it is tough in a recession year but we all know that as resilient Otago law graduates you will have adapted just as you did when the roof leaked and you had insufficient money for heating on those cold July nights in your flats during your time at Otago.

All the very best for 2010.

## Inaugural Professorial Lecture

*(Extracts taken from the University of Otago Magazine, Issue 24: October 2009)*

It's been a big year for the jury, remarks Professor Kevin Dawkins. David Bain (historic events and the ghosts of trials past), Clayton Weatherston and Ferdinand Ambach (fatally undermining the defence of provocation), Taito Philip Field (conflicting recollections, 35 charges) have tested the ability of the jury system to manage complex evidence, emotions, time commitments – and deliver justice.



It's been a national spectacle that prompted Dawkins to dedicate his inaugural professorial lecture to a rethink of the jury system. "Given the task required of our juries," he asked, "is the system still 'fit for purpose'?" Dawkins admits he began his research in a sceptical frame of mind. He worried that the high rates of jurors being excused from duty – mostly for employment reasons – leads to a less-than-optimally-competent pool of potential decision-makers. He held reservations about their ability to grapple with complex laws.

His concerns reflected something of a national zeitgeist, and were echoed by bloggers, columnists and writers of letters to editors since verdicts have been delivered in the high-profile trials. Reports of over-familiarity in the behaviour of jurors towards defendants – as in attending Bain's party and giving him a hug – added to doubts about jurors' judgement.

"We have seen defences run which should have been ruled out by the trial judge. By even allowing a defence to be put forward, the judge affords it some legitimacy. This

issue is compounded where laws are not well written and instructions on how to apply them are unclear."

In other cases, judges and legal teams have not highlighted explicitly the "crunch issues" juries must decide upon. "Furthermore, the prosecution's case and the defence's rebuttal on a particular point – ballistics evidence, for example – can be weeks apart. That all hinders ease of understanding and judgement."

And then there is the problem of "reasonable doubt". Bestpractice directions from the judge advise juries they need to be "sure", but they do not need to be "certain". To most minds – and to most dictionaries – the terms are synonyms. "The instruction comes from a Court of Appeal decision designed to direct jurors from taking a probabilistic approach to assigning guilt. But it's quite confusing and research suggests jurors are often uncertain about what this means."

But, says Dawkins, judges face exactly the same problem. Just like juries, they too are subject to prejudice, emotion, time pressures and negotiating complicated law. And if judges start making problematic judgments, it becomes an extremely difficult situation to remedy. Say what you like about the jury system, says Dawkins, its highly devolved decision-making model means that if a miscarriage of justice does occur, it is likely to be a one-off, not a systemic, problem.

Dawkins' preferred approach now is not to rethink the jury system, but to refine it. He has reservations about a proposal by the Criminal Procedure Simplification Project to increase the threshold for electing trial by jury from the present level of liability to more than three months' imprisonment to more than three or five, or even seven, years' imprisonment. Much more information is required about what offences would be excluded from jury trial were the threshold to be increased. However, Dawkins entirely agrees with another proposal which would abolish the discretion of the police to charge about 700 "either way" offences indictably or summarily. It is wrong in principle for the police to dictate trial by jury by laying such charges indictably. Instead, they should all be laid summarily, with the defence able to elect jury trial when the electable threshold of more than three months' imprisonment is met. On a best estimate, this would reduce the number of jury trials by around 300 annually.



## Vanuatu Exchange

The University of Otago hosted a delegation of seven staff and students in 2009 from the University of the South Pacific (USP) Law School, in Vanuatu, for a week-long visit. The visitors spoke at a conference on Pacific and Māori legal issues on April 17 and 18 at the Faculty of Law, University of Otago.

The USP Law School was established in the 1990s and has early ties to Otago, with its first Dean, Professor Don Paterson, having taught at Otago during the 1960s and 70s. Its students are drawn from ten Pacific countries, many of which continue to rely heavily on local custom as an official source of law. The visit to Otago followed a successful trip made in 2008 by an Otago Law Faculty delegation to the USP Law School, which was the first leg

of a two-year programme aimed at establishing a longer-term relationship between the schools.

The focus of the conference was the complex relations between Pacific cultures and western (or international) legal concepts introduced to the Pacific. The conference involved senior law students, and some staff, from USP and Otago presenting their research on Pacific and Māori legal issues. Another highlight was Judge Semi Epati, of the New Zealand District Court, speaking on his involvement in cases concerning freedom of religion in Samoa.

Papers at the conference covered the Land and Titles Court of Samoa, the jury system in Tonga, the role of the Great Council of Chiefs in Fiji, co-management of natural resources in New Zealand, the foreshore and seabed debate, and the recent judicial decision on the constitutionality of the Fijian government.



The papers from both years' conferences are being published online in the Journal of South Pacific Law, and the costs of the exchange have been covered by the Pacific Cooperation Foundation and the University of Otago.

During the visit, a moot was held between students from the two schools, concerning a conflict between local customs and contemporary notions of human rights (especially religious freedom). The moot was located in a fictional island state called Pacifica, whose constitution contains an entrenched bill of rights and recognises the authority of customary law.

The facts of the moot involved a Village Council, acting as a customary body, banishing from the village the members of four extended families who had long been resident there, for setting up a new religion within the village, and for continuing to hold their religious meetings after repeated directions from the Village Council to stop.

The meeting of the Village Council at which the banishment order was made was conducted in accordance with custom. All village members were present, including members of the new religion, but it was clear a majority of the village strongly opposed the spread of the new religion, and some had previously threatened violence against the new religion's members. The pastor of the new religion was given only a brief opportunity to speak and explain his group's actions before the banishment decision was made.

Banishment by order of the Village Council had long been a customary practice in this village as a means of preventing violence or unrest. So, the issue on appeal was whether the banishment order was lawfully made.

After much deliberation, the Otago team took the win, although according to one of the judges – Professor Mark Henaghan, Dean of the Faculty of Law at Otago – the outcome was very close. He commended both sides on their professional approach and convincing arguments.

Professor John Dawson, who has organised the exchanges, said, "It has been incredibly interesting to learn more about the complexities of Pacific legal systems, and hugely beneficial for the students taking part, many of whom are giving their first conference talks and getting their first publications. Having two consecutive exchanges has cemented more fully the relationship between the two schools."

Alex Latu, a senior Otago law student, who has participated strongly in both years of the exchange, adds: "The exchanges have been an incredibly valuable experience, which is testament to the amount of work that everyone involved has invested. I hope that this exchange will occur again in years to come, giving future students a chance to get involved."

## Anna Jacobs – International Law Conference

In July 2009, in Kolkata, India, the National University of Juridical Sciences (NUJS) held the annual International Law Students Association (ILSA) International Law Conference. The conference brought together hundreds of law students from around the world to learn and network with esteemed members of the international legal community. Presenting a paper to these students was Anna Jacobs, a senior law student from the University of Otago. Anna was one of only two students from Australasia to be selected to present at the conference, organised by the same group (ILSA) involved with the prestigious Jessup Moot Competition.

The overall theme of the conference was "Trade and the Environment: Does International Law Have the Answers?" The background for the conference and topic was clearly

outlined by the NUJS International Law Society, stating, "International trade both drives global economic growth and depletes the world's natural resources. Lawyers are often tasked with determining how to reconcile the competing interests of businesses and environmentalists. Among other issues, international lawyers must determine how to best incorporate environmental protections into bilateral and regional trade agreements and how to harmonize the environmental policies of trading partners such that efforts to protect the environment are equitably shared."

In addressing these issues, the conference featured discussions, student presentations, and social events. In the student presentations, Anna presented her paper "Eco-labelling: climate change saviour or WTO nightmare? The Status of Eco-Labelling under World Trade Organisation Law: balancing measures aimed to combat climate change with measures aimed to restrict trade".

As Anna's paper discussed, in order to combat climate change, it has been recognised that collective changes to green house gas emitting behaviour by the wider public must be made. Currently, eco-labels are used as a means of communicating the carbon impact of a product to the end consumer. However these labels are not currently uniform, or uniformly regulated and the status of such labelling schemes is unclear under WTO (World Trade Organisation) rules. Anna's paper demonstrates that such schemes fall under the Technical Barriers to Trade Agreement, and, in the alternative, the General Agreement of Tariffs and Trade. As such, Anna argues that governments must ensure that schemes are consistent with their obligations under those agreements, including that they must not result in foreign products being treated less favourably than like domestic products. Ultimately, Anna's paper explored how labelling schemes might be designed in a manner consistent with WTO rules, while contributing to environmental goals.

Anna's presentation at the conference built on these themes, but went further and considered the impact of labelling schemes which are WTO compliant but still trade restrictive. This scenario presents challenges to countries in complying with labelling schemes, particularly for countries classified as developing and least developed.

These challenges include market access, particularly because of the financial and technological support required to comply with any kind of "carbon footprint" scheme. The presentation proposed practical applications to real world businesses and governments considering mandatory labelling which would allow countries to retain market access and stay competitive in a market which is increasingly focussed on combating climate change.

This is not the first time Anna has taken off overseas to represent Australasia. It was only in May last year when Anna travelled to Taipei for the ELSA (European Law Students Association) Moot Court Competition – (EMC<sup>2</sup>) in association with the WTO, where Anna's team gained a finalist place ahead of Sydney University. "Being able to attend the conference in India allowed me to build on what I had learned through the submissions and research for the Taipei competition. Rather than focus on WTO law, the discussion was wider with a general focus on climate change. It was a great setting for discussion on issues and challenges which climate change, and more broadly environmental conservation, present especially given India's perspective as a developing country." The other aspect that Anna found particularly rewarding was the "amazing networking opportunities with such a diverse group of people from all over the world".

## Awards and achievements

### 10th Rhodes scholar in recent years

Late last year, Alice Irving was one of two Otago University students to be awarded with a prestigious Rhodes scholarship. Alice has undertaken an LLB (Hons) and BA in Community and Family Studies at the University of Otago and should complete her studies midway through this year.

At Oxford, Alice will undertake a Bachelor of Civil Law (BCL) and an MSc in Criminology and Criminal Justice. She intends to work as a criminal defence lawyer, then in social policy and legal reform work.

Alice has served as a volunteer at law centres and as a Pacific Island mentor and tutor at the Otago Faculty of Law. A runner up in the New Zealand Law Students' Association Mooting Nationals, Alice is Otago University's 2008 mooting champion and best speaker and has won numerous university prizes for law.



### Selene Mize – Prime Minister's Supreme Award

One of our Senior Law Lecturers, Selene Mize received the country's highest tertiary teaching honour – the Prime Minister's Supreme Award – at last year's national Tertiary Teaching Excellence Awards, administered by Ako Aotearoa, New Zealand's National Centre for Tertiary Teaching Excellence.

The Award, which is worth \$30,000, was announced at a special parliamentary ceremony in July. Selene says receiving the award was a great honour and a wonderful recognition of the importance of teaching. "I've always cared a lot about my teaching," she says. "I decided I

wanted to be a teacher before I even decided what I wanted to teach."

Selene was selected by the Awards Committee for an exceptional portfolio, which highlights her passion for law over a 20-year career, her contribution to the international reputation of New Zealand law education and an absolute and unstinting commitment to her students and their success.



Earlier last year, Selene was one of three academic staff to win a University of Otago Teaching Excellence Award.

### Law student to Captain Storm

*(Summary taken from ODT By Adrian Seconi on Fri, 11 Sep 2009)*

Last year, fifth year law student, Larissa Wall took over the captaincy of the Storm Hockey team.

Larissa has not had too much to cheer about in her two previous seasons with the southern side. But, as she pointed out, the only way is up for the National Hockey League perennial strugglers.

"We definitely want to improve and I think we've got a team which is going to work hard enough and has got the right attitude to do so," she said.

"Being a defender, you are expected to take charge. So it's pretty easy to slot into the leadership from the back."

Larissa grew up in Manawatu and played for all the age-group representative teams, from the under-11s to the under-21s. She made the New Zealand under-16 and under-18 teams and played for Central in the NHL before shifting down to Dunedin to attend university in 2005.

Hockey had to take a back seat for two seasons while she got on top of her studies.

But she loves the sport and plans to continue playing when she moves to Wellington to work as a lawyer.

Storm coach Mark Smithells said Larissa was just the sort of person who could inspire his side. He believes his side is capable of inflicting the odd upset. "I'm quietly confident we can shake and rattle more than last year. If everything goes well, we can certainly take a few down this year."

## Mooting and Competitions

### Presidents Prize – Best Overall University Team



Photo: Peter McIntosh, Otago Daily Times.

From left to right: Daniel Eyre, Matthew Harrop, Phil Thomson, Mitch Singh and his sister Roshni Kaur, Stephanie Mullally, and Anthony Wicks. Absent was Rebecca Thomson.

In September last year, the national conference of the New Zealand Law Students Association saw a group of Otago University law students achieve great success. The group won the esteemed president's prize for the best overall university team. The prize took into account the four contest events, which included negotiation, moot, client interviewing and a witness examination competition.

Brother and sister team, Mitch Singh and Roshni Kaur won the final of the Buddle Findlay negotiation competition and will go on to be the New Zealand representatives at the international competition in July this year.

In the moot competition, Anthony Wicks and Rebecca Thomson gained second place. Also taking the second place spot was Daniel Eyre and Stephanie Mullally for the client interviewing competition. Fellow student Matthew Harrop was a participant in the witness examination competition.

At the conference, 2009 SOULS president Phil Thomson was named president of the NZLSA (New Zealand Law Students Association).

### University of Otago law students represented Pacific region

On May 19-24, 2009, Hannah Macdonald, Grace Brown, Andrew Tringham and Anna Jacobs represented the Pacific region in an international moot court competition in Taipei. The four students worked throughout the summer to prepare written submissions for the competition, which gained them their finalist position.

Organised by the European Law Students Association (ELSA), the competition focus was on World Trade Organisation (WTO) law. The WTO creates a rules-based system for international trade, and through its various constituent agreements, sets out the legal framework for trade in goods and services.

The University of Otago team made the finals when they came second in the Pacific regional round where they

were judged on their written submissions. The team was coached by Dr Tracey Epps, a lecturer specialising in international trade at the Faculty of Law. They were also being coached in moot technique by Professors Mark Henaghan and Kevin Dawkins.

The moot was a simulated hearing in the WTO dispute settlement system. Teams represented both the complainant and respondent parties to the case by presenting oral submissions in front of a panel. The panels consisted of WTO law experts and included academic, trade law practitioners, and members of the WTO Secretariat.

Twenty teams from all over the world argued a case concerning complex legal issues arising out of a dispute between the fictional countries of Ecoland and Forestland. The dispute was over a series of measures introduced by Ecoland with the stated aim of addressing the negative impacts of climate change which were threatening Ecoland's forests and wildlife. Forestland was aggrieved at Ecoland's actions, arguing that its measures impact negatively on Forestland's exports and were in violation of various WTO rules.

The case context was particularly relevant, as the tension between international trade rules and domestic regulatory autonomy in the area of the environment is an important issue facing governments around the world, including New Zealand. In addition, the fictional measures in question were representative of the types of measures that various governments are currently considering. They included a sales tax on fossil fuel and biofuels based largely on the amount of carbon emitted during the fuel's production process, and an eco-labelling system based on the products' production process.

The competition in Taipei provided an opportunity for discussion and debate of the difficult legal and policy questions that arise in the context of trade and climate change. It also provided encouragement for further development of international trade law in university curricula, and to contribute to the broader ongoing discussion about globalisation in the context of the WTO Agreements.

"This competition has enabled us to get a feel for what it would be like practising in the real world away from law school. We have had to deal with time pressures, a potentially real life fact scenario and deal with the pitfalls and surprises that working on a real legal case entails" said Andrew Tringham.



Photo: Otago Daily Times.

## FW Guest

In July last year, one of our graduates, James Every-Palmer, Partner at Russell McVeagh presented the FW Guest Memorial Lecture. His topic, was on: The State and monopolies: New Zealand's experience.

With the election of the 1984 Lange/Douglas Labour Government, New Zealand underwent an extensive period of de-regulation, corporatisation and privatisation. The process by which many State owned and run industries (such as telecommunications and electricity) became subject to market forces and "light-handed" regulation is well documented. What is not well documented is the re-regulation of many of the same industries under the 1999 Clark-led Labour Government. As a result of legislative reform, the Commerce Commission now has a role in controlling prices and



setting access terms in many industries including electricity, telecommunications, gas, airports, dairy and banking.

James' lecture examined the appropriate balance between State control and markets. James investigates how this re-regulation occurred and proposed two important reforms: introducing a Productivity Commission to consider these issues in a more pro-active ongoing manner, and increasing the appeal rights of parties subject to regulatory decisions.



## NZ Law Foundation Distinguished Visiting Fellow – Professor Dame Hazel Genn

*(Summary taken from LawTalk, Issue 734)*

Professor Dame Hazel Genn was the New Zealand Law Foundation's Distinguished Visiting Fellow last year, and the Faculty of Law was proud to host her month long New Zealand wide visit.

Dame Hazel is the Law Dean and Professor of Socio-Legal Studies at University College, London. She is the co-director of the Centre for Empirical Legal Studies at University College London, where she is also an honorary fellow. Dame Hazel previously held a chair and was head of the Department of Law at Queen Mary and Westfield College, University of London.



Dame Hazel's work has had a major influence on policymakers around the world and she is regularly invited to lecture and provide advice abroad. Consistent with her interest in public use of and experiences of the justice system, she recently led a task force on public legal education (PLEAS).

While in New Zealand, Dame Hazel spoke about a new study she is undertaking on judicial decision-making. At Otago, Dame Hazel presented a seminar titled "Civil justice an important public service."

Dame Hazel believes the first step need to reform civil justice was "to get a really good understanding of what the problems are that need to be fixed." The solution to that needed research – much more than has been carried out to date.

Dame Hazel has been researching the extent to which the civil justice system serves the needs of the public for the last 30 years, and she has found that what people want from the courts is "relatively cheap, quick, authoritative decisions."

"People want acknowledgement. They want to win. They want a decision by a person they can respect. They want to be listened to. Even if they have lost, they want to understand why they have lost. And they want it to be done relatively quickly and without too much cost.

"If people have been through a process that they think is fair, people can lose and still move on," Dame Hazel points out.

"More research is needed to identify what the problems are that you are trying to fix.

"We need to get a better understanding of what the public wants.

"And we need to get a very clear understanding of what factors are affecting the system in order to ensure the reforms that are put in place are effective."

From what she had heard, Dame Hazel said, "over here you actually don't have a good body of research that would help you identify what the issues are with the civil justice system."

The University of Otago Legal Issues Centre has begun researching this area, and has been collating answers to a series of questions from a sample of people who had been involved in civil litigation.

## Graduation Profiles

### Velma Tor – LLM

Velma is a Ni-Vanuatu who graduated in May last year with a Masters of Laws in Administrative law. Before embarking on this program, she worked as a legal officer with the Ombudsman's Office in Vanuatu.

Having left home an eight month old baby, Velma recalls that when she first arrived at the University of Otago, she felt homesick and alone. However, the first thing that struck her was the size of the campus and the very cold weather that she must soon adapt to. She also found that there were no other students from Vanuatu that she could socialise with except a handful of students from the Solomon Islands whom she got to know later. It was a slow process to get used to the weather but eventually, life became interesting as she got to meet students from other nationalities and soon found her circle of friends.

The area of Velma's thesis is specific to researching ways to build an Ombudsman with teeth in Vanuatu. Vanuatu is a small island country in the South Pacific whose economy is heavily based on agriculture and tourism. It has a population of approximately 212,000 and is a democratic country whose seat of government is based in Port Vila.

Public perception has it in Vanuatu that the Ombudsman in Vanuatu is a sleeping watchdog that can only growl and not bite. This kind of negativity alludes to the fact that Vanuatu has a *Leadership Code Act 1998* which specifically sets out standards by which those defined as leaders should conduct themselves both in their private and public life. Despite this, many leaders still choose not to adhere to it. Although complaints have been investigated by the Ombudsman and reports have been forwarded to relevant government agencies for prosecution, none has been successful yet. There are a lot of technical difficulties constraining a successful prosecution, however, the main one is due to the shifts in standard to prove what is purely an administrative error in a criminal court beyond reasonable doubt.

Velma's research involves identifying many of these difficulties and suggesting ways to have them corrected. She has found that there is no particular standard model of an Ombudsman. It depends entirely on many factors such as cultural, social, and political conditions specific to a particular country. In the case of Vanuatu, it appears that people's attitude is generally not matured to assisting the Ombudsman in reporting and providing information on leaders. Furthermore, enforcing Ombudsman's recommendations appears to be a lesser priority of many government agencies. A major recommendation that Velma put forward in her thesis is to establish a Leadership Code Tribunal whereby leaders would be prosecuted. It is expected that with such a development, many leaders would be brought to justice instead of escaping punishment. A similar practice is found in Papua New Guinea where cases involving leaders breaching the Leadership Code are heard by a Leadership Code Tribunal.

Upon returning to her organization, Velma found that the information contained in her research has assisted her in contributing to the positive development of the Ombudsman's Office in Vanuatu and the country as a whole. For example, recently the Government has embarked on developing a Law and Justice Sector Plan for Vanuatu and for the organization, they had to identify their strengths and weaknesses and Velma found that she has always referred to her findings whenever it is necessary.

### Laura Fraser – LLB(Hons), Rhodes Scholar

Laura Fraser completed her LLB (Hons) and BA in politics at the University of Otago in 2008 and graduated in May. Laura was selected as a Rhodes scholar, which is tenable at Oxford University. Born and bred in Southland, Laura was educated at James Hargest High School in Invercargill where she



was an avid cricket, netball, basketball and hockey player. Laura has captained Invercargill representative hockey teams and is passionate about continuing the sport at Oxford. Also, an accomplished debater, Laura has put those skills to use in international mooted competitions.

Laura will pursue studies towards a Bachelor of Civil Law (BCL) followed by a Master of Science (MSc) in environmental change and management at Oxford University. This will give her the knowledge to contribute to the development and management of environmental policy in New Zealand.

In 2008, Laura's partner Jesse Wall, also a Law Graduate from Otago, won a Rhodes scholarship, so she is now able to join him at Oxford.

### Fanaafi Aiono-Le Tagaloa (PhD)

In December last year, Fanaafi Aiono-Le Tagaloa graduated with her PhD in Law.

Looking at Fanaafi's family track record, she was destined for success. Fanaafi's mum was the first Samoan to get a PhD. As if that wasn't enough to set the standards, Fanaafi was living up to a very talented reputation set by the rest of her siblings. Her brother is a General Surgeon, one of her sister's an Assistant Clinical Professor in Anaesthesiology at UC Davis and her other sister is a Microbiologist who swapped to Arts and is a Principal of a Private School focused on indigenous education. However Fanaafi is the first, and the youngest of her siblings to gain a PhD.



Whilst having high standards to live up to, Fanaafi faced serious financial hardship as an international student from Samoa.

Fanaafi was awarded a Vice Chancellor's scholarship to attend school in Dunedin, and was subsequently offered a scholarship to study a double degree in Law and History here at Otago. During her studies, Fanaafi was invited to do honours in History, Classics and Economics. By the third year of Law, Fanaafi was in the honours programme for Law. Fanaafi graduated with double honours in Law and History in 2001.

Fanaafi was granted a spot in the PhD programme in Law in 2003, however again facing financial hardship. Fanaafi was supported by her family for the first two years, after

which, she went home to Samoa from the end of 2003-mid 2006 and worked for the Ministry of Justice and Courts Administration and the Office of the Attorney General while she did field work. Fanaafi then got an Otago Maori and Pacific Islands PhD Scholarship, enabling her to come back to finish her PhD.

Fanaafi has flown solo so to speak – being away from her home and family in Samoa from such a young age (after intermediate). However she has received tremendous support from her family, and while it was hard being away from them, Fanaafi believes it added to her experience, growth and development.

## Exchange Student Profile

### Andrew Gow – University of Glasgow

Andrew is from the United Kingdom where he studies Law at the University of Glasgow. Andrew's year abroad here at Otago is the third year of his LL.B. Andrew's exchange is not the first time he has been to New Zealand, in fact, he lived in Parnell, Auckland for a while during his childhood. In 2008, Andrew travelled around most of the country over a period of 2 months and one of the few places Andrew was yet to visit was Dunedin – which played a significant role in his decision to study here – he wanted a “new” New Zealand experience! For Andrew, it's proved to be an excellent choice and, now half-way through his time here, he has had a most enjoyable time both academically and socially. Andrew was also selected to be on Otago's Mooting Team for World Trade Law Competition in 2010 so he is currently working on the task over the summer vacation.

“There are so many opportunities here and it is definitely a great place to study abroad. When I return to my home

institution, I look forward to promoting Otago to other students”, says Andrew.

Andrew's interests are quite varied. He does a lot of personal research on Apartheid South Africa and, in particular, the concept of restorative justice in facilitating a transition to democracy. Andrew follows all things South African very closely - particularly the politics and, of course, the Springboks! Andrew spent a lot of time there and it's a special place for him. Andrew has twice undertaken voluntary work in rural and underprivileged areas, which he found to be hugely rewarding. Outside of academia, Andrew is also interested in football (soccer) and cricket.

When Andrew finishes his studies, he plans to practice in private client work. His particular interests are in tax & trusts, and family law to a certain extent. However, Andrew also states, “I would like to do something with my personal research, though. At the moment, two legal journals are reviewing my first substantive piece of work on the Rule of Law Dilemma and Restorative Justice in South Africa... so fingers crossed that I might get published. I won't be too disheartened if I don't succeed first time anyway.”

## Introducing Staff

### Professor Kim Economides

*(Summary from University of Otago press release)*

Professor Kim Economides, a leading UK academic was appointed as the University of Otago's inaugural Director of the new Legal Issues Centre and Professor in the Faculty of Law. The focus of the Centre, which is the first of its kind in New Zealand, is on how to reorient the legal system so that it works better for ordinary people.



Professor Kim Economides took up the professorial appointment and Centre directorship in August. He comes to Otago from the University of Exeter where he was Professor of Legal Ethics and a former Head of its School of Law. Kim was founding General Editor of the international journal *Legal Ethics* and has held several advisory positions to the UK Parliament on legal reform issues.

Kim's previous academic positions include Acting Director of the Centre for Legal Practice (2005-2006) prior to the Centre's transfer to the University of Plymouth. Professor Economides also co-directed the Access to Justice in Rural Britain Project from 1983-1987.

From 1993-95, Kim was seconded as Education Secretary

to the UK Lord Chancellor's Advisory Committee on Legal Education & Conduct, and was appointed in 2006 as Specialist Adviser to the Parliamentary Joint Committee on the Draft Legal Services Bill.

Three decades ago, Professor Economides was a researcher on the Florence Access to Justice Project based at the European University Institute in Italy.

“In many ways, my new position with the Legal Issues Centre represents a return to this first research focus of mine,” Kim says.

The Centre's purpose is to carry out socio-legal and policy-oriented research relating to how a more accessible, affordable and efficient legal system can be created for the benefit of all citizens, and how courts can best ascertain the truth and arrive at a fair and just outcome.

The professorial chair and Centre were established through the University's Leading Thinkers initiative, following a \$1m donation by Christchurch philanthropists Grant and Marilyn Nelson, as trustees of the Gama Foundation. The donation was matched under the Government's Partnerships for Excellence scheme, lifting the total to \$2m. The Gama Foundation recently enhanced its support of the Centre through an additional generous endowment.

Professor Economides says that while the Centre has a wide brief to research many aspects of the legal system, it is likely to focus initially on civil legal processes and how these can be made cheaper and more accessible for ordinary citizens.

To this end, the Centre has already launched a nationwide survey to try to build up a picture, for the first time, of New Zealanders' perceptions and use of the legal system.

## Associate Professor Colin Gavaghan

Colin began his role at the Faculty of Law only in November last year, in the position of the newly created Law Foundation Chair in Emerging Technologies and Policy. Colin graduated with an LL.B. (Hons) from Glasgow University in 1992. After working in several research jobs, he was appointed as a lecturer in medical law and ethics in 1998. His PhD considered the legal and ethical implications of embryo screening. His first book, *Defending the Genetic Supermarket: The Law and Ethics of Selecting the Next*

*Generation*, was published by RoutledgeCavendish in 2008; it has been described as “a brilliant contribution to the debates about ethical and policy issues in PGD, tissue typing and embryo selection” (Medical Law Review).

Colin is the author of numerous articles and chapters dealing with genetic and reproductive technologies, end of life choices, dangerous patients and alcohol advice to pregnant women. He is an avid reader of science fiction, and has appeared as a panellist at several SF conventions.

## Art in Law

Last year saw the creation of the “Art in Law” exhibition, a joint project between the Faculty of Law at the University of Otago, and the School of Art at Otago Polytechnic.

The ball began rolling when the Faculty approached Bridie Lonie, Head of the Art School, for ideas on brightening the top four floors of the Richardson Building, where the Faculty is based. Bridie recommended that the Faculty work with Peter Stupples, a former Associate Professor in Art History and Theory at the University, who since his retirement, has been working at the Art School. Peter is an experienced curator of art exhibitions, with three recent shows at the Dunedin Public Art Gallery and others in the pipeline.

The Art in Law exhibitions have many advantages for both the Art School and Faculty of Law. “This is a win-win for everyone” Peter Stupples said.

With a number of very large areas in stairwells, foyers and corridors at the Faculty, there was every reason to benefit from having art work on display. The bright paintings and other works liven up the walls and stairwells. For the artists, it is a public domain to show their work, one in which they do not need to pay to have their pieces on exhibition, and where they are sure to have a new and wide audience.

“Having access to the new venue was an encouragement for the students,” Peter Stupples said.

The Art School has arranged for graduates and current students who are interested, to display their work in the Faculty for a period of time. The goal is to have works on display regularly, as it not only exposes different works to the public, but it also prevents each exhibition from becoming stale.

Whilst the space may limit some of the work that can be displayed, it has been a wonderful opportunity to showcase the work of new up and comers, or those artists who have come back to study in a different area to that of their original artistic medium.

“So far, responses from my Law Faculty Colleagues and students have all been very positive. The Art work has been provocative and challenging at times, but as we are in the business of thinking it has added a new dimension to how we see the world.” Professor Mark Henaghan, Dean at the Faculty of Law said.

“At the end of the day, the exhibitions help to enliven the physical environment as well as expose the work of the Art School to a new audience,” Peter Stupples said.

So far, the Faculty has successfully hosted two exhibitions, with the third exhibition set to open early in 2010.

## Law Library makeover

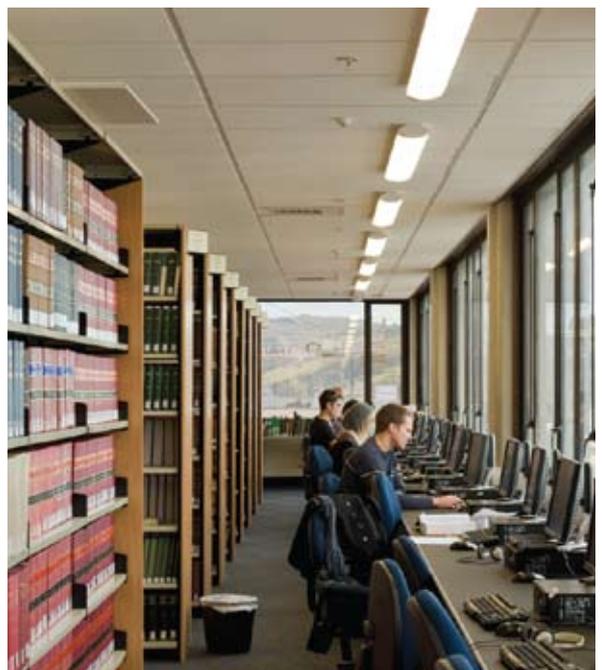
Light, airy and much more user-friendly spaces – as well as what students have called “eggs” – await staff and students in the newly revamped Law Library in the Richardson Building. The renovations started late 2008, and in December last year staff returned to the new and ergonomically designed eighth floor reception area.

Faculty Librarian Kate Thompson says it has been worth the wait. “It’s been a highly orchestrated activity because the Library has still had to be used. But now it’s fantastic.”

The new design allows for more natural light, new reading and working spaces, four times more data-laptop outlets, and a technology-free zone. It has also created extra space at the south end of the sixth floor.

Students particularly like the “eggs” – spaces to study separated by removable yellow egg-shaped partitions, while staff are pleased to finally have a tearoom.

Sustainability has underlined the project. Carpet tiles are designed to be lifted out and replaced once worn and there are motion sensor timers on all the lights.



## In Memory

### EMERITUS PROFESSOR RICHARD SUTTON

Tributes flowed following the passing of Emeritus Professor Richard Sutton, a leading light amongst legal academics, in April last year.

Richard graduated from the University of Auckland in 1963, then worked as a law lecturer before heading to Harvard as a Fulbright Scholar and Knox Memorial Fellow, obtaining an LLM in 1968. He returned to Auckland as a Senior Lecturer then Associate Professor, before moving south to take up a Professorship here at Otago in 1980, a position he held until 2004. Richard spent two periods as Dean of the Faculty of Law (1981-1984 and 1998-1999), as well as taking leave without pay to serve as a Law Commissioner from 1992-1997. Richard was particularly proud of the work he did with Māori to incorporate their customs and values into the law of passing on property within families.

Professor Mark Henaghan fondly recalled starting his own academic career almost 30 years ago as an assistant lecturer with Sutton, then the newly appointed Dean. “Richard was the Law Faculty’s secret weapon to send out into the university bureaucracy and brilliantly throw a spanner into their works,” said Henaghan. “A couple of flow diagrams later and [the bureaucracy] left us alone to prey on more defenceless beings.”

Outside of the law, Richard was a Master of Chess – New Zealand Champion in 1963, 1971 and 1972, New Zealand representative at the Chess Olympics in Yugoslavia in 1972, national master 1963 and 1968. As recently as 2005 Richard was the South Island Champion. He was a life member of the Otago Chess Club and a Selector for the New Zealand Chess Olympiad teams.

Richard regularly crushed our two resident Canadians, Jim Allan and Richard Mahoney, simultaneously over Chess at lunch. Allan and Mahoney took 15 minutes each to decide their moves. Richard, 10 seconds.

As Allan and Mahoney said: “After only two or three moves, it felt as though you had no options left on the entire board as though this powerful intellect was bearing down on you from every direction.”

Afterwards, Richard would patiently point out the possible moves that could have been made. Jim Allan, who is now in Australia, says “it was that gracious nature and willingness to help that came through in everything he did around the law school.”

Richard describes his research as follows: “*My research is a questioning, always assuming that there is something much deeper lying behind the pattern of law I am studying*”.

As a Law Commissioner for five years, Richard was responsible for 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.

Richard wrote two books, one on Creditors Remedies and the other on Actionable Non-Disclosure and numerous legal articles. The one on testamentary claims by adult children written with Nicola Peart challenges the Law Commission, Court of Appeal and the High court.

Since 1996, Richard has worked on the Te Matahauariki Project with colleagues at the University

of Waikato to develop Māori legal structures that would be recognised by New Zealand Law.

Richard has served with distinction on the Auckland, Wellington and Otago District Law Societies.

Richard has worked tirelessly as a member of the Anglican Church – using his legal skills to draft constitutions for the Church.

Richard said of this work: “*It is a privilege, a different world which has called on all my skills. It has also tested the things I hold sacred in the Church – its tolerance, its emphasis on the direct access of the people to their God, its distrust of doctrinal extravagance and of oversimplified fundamentalist thought. I see these values in my churchgoing, and in the way I have lived my life. I still carry them close to my heart.*”

Richard is survived by his wife of 44 years Kensie, and family Alistair, Pip, Greg, Rachel, Mike, Ashley, Callum, Kearne, Jack and Tom.

Professor Mark Henaghan

### JOHNNY BURT

Sadly, in August last year, an ex graduate, and the kindest taxi driver in the world passed away. Countless numbers of students who had overindulged are grateful for the fact that Johnny got them home safely. Johnny often insisted that they did not need to pay.

From 1995 to 2000, Johnny studied part time for a law degree whilst still driving a taxi. That is a remarkable and courageous achievement for a person in their mid-forties. Johnny was well loved in the Faculty of Law by fellow students and colleagues. Johnny did not ask for any quarter and always completed his work on time to a very good standard.

Johnny graduated with his LLB in December 2000 and was admitted as a Barrister and Solicitor to the High Court of New Zealand in 2001 – Dunedin’s own Rumpole. The Otago Daily Times celebrated Johnny’s achievements appropriately by writing an article about him.

A highlight of Johnny’s legal studies was when he won through to the finals of the Client Interviewing Competition. Over 100 students enter this competition and preliminary rounds were held over three nights until the final two pairs are selected for the final. The competition is sponsored by Russell McVeagh, who send down senior partners to judge the finals. I will never forget the looks on their faces – the three other finalists were dressed in their finest suits. Johnny came in with an open necked short sleeved shirt and trousers. The Russell McVeagh lawyers said “Who is that?” I said with pride “That is Johnny Burt. You now need to offer him a job in your Auckland office because he has made it through to the finals.” Johnny made it to the finals because he listened to people, he cared about their problems and he had an immense amount of practical wisdom.

Johnny worked in the Courts as a Duty Solicitor since 2002. He never had a bad word to say about his clients. He could always see some good in them. He asked a young Mongrel Mob member how he was able to break into cars and he told Johnny “I could break into your car before you had your car keys out of your pocket.” Johnny laughed his head off.

Johnny will be dearly missed by all staff and students at the Faculty.

Professor Mark Henaghan

## JUDGE RON GILBERT

Judge Ron Gilbert will be known to many alumni, firstly as a lawyer in the Dunedin courts who was a calm, cool and collected advocate, and secondly, as a part time lecturer in the Law Faculty teaching evidence and office and courtroom practice. In more recent times, Ron was a Judge of the District Court sitting mainly in the Auckland area

and occasionally coming down south to sit in Dunedin.

Ron was a great raconteur with a sharp incisive legal mind, as well as a great sense of humour and love of life. He will be greatly missed by the legal fraternity. He can rest in peace knowing he has made significant and lasting contributions to the law in this country through his advocacy, teaching and judging.

## Catching up with Alumni/ae

### PROFESSOR DON MCRAE

FRSC, LL.B. (Otago), LL.M. (ibid.), Dipl.Int.Law (Cant.), of the Bars of New Zealand and Ontario, Full Professor

Professor McRae holds the Hyman Soloway Chair in Business and Trade Law at the University of Ottawa and is a former Dean of the Common Law Section. He was formerly Professor and Associate Dean at the Faculty of Law at the University of British Columbia. He specializes in the field of International Law and has been an Advisor to the Department of External Affairs of the Government of Canada and Counsel for Canada in several international fisheries and boundary arbitrations. He was Chair of the first dispute settlement panel set up under Chapter 18 of the Canada-U.S. Free Trade Agreement, and has sat on subsequent panels under Chapters 18 and 19 of the Free Trade Agreement. He was also Chair of the first dispute settlement panel set up under the U.S. – Israel Free Trade Agreement. He is currently on the roster of panellists under Chapter 19 of NAFTA and on the Indicative List of Panelists of the World Trade Organization. In 1998 he was appointed the Chief Negotiator for Canada for the Pacific Salmon Treaty. His publications are principally in the field of International law and he is Editor-in-Chief of the Canadian Yearbook of International Law. Professor McRae teaches contracts, international law and international trade law.

*(Profile taken from University of Ottawa website)*

### PROFESSOR MALCOLM GRANT

*(Taken from ODT Sat 7th November 2009)*

University College London, whose provost is distinguished University of Otago graduate Prof Malcolm Grant, has now leapfrogged Oxford University to become the world's fourth-top university in the latest Times Higher Education rankings.

Born in Oamaru, Prof Grant attended Waitaki Boys High School and later gained three law degrees from Otago University: LLB (1970), LL.M. (1972) and LL.D. (1986), as well as an honorary doctorate of laws degree in 2006.

A recent article in the Daily Telegraph newspaper in England noted that, according to the latest Times Higher Education-QS World University Rankings, UCL was ranked behind only Harvard, Cambridge and Yale universities.

In 2006, UCL had been only 26th on this table.

In the six years since Prof Grant became provost and president, UCL had become "an academic powerhouse, respected around the world," particularly for its scientific research", the newspaper said.

UCL has about 20,000 students, similar to Otago University student numbers.

Prof Grant has had an outstanding career in research, some of it involving town planning and law. He has been

a law professor at three United Kingdom universities, and is a former chairman of the UK Local Government Commission and has been pro-vice-chancellor of Cambridge University.

In an interview with the Otago Daily Times, Prof Grant said league tables were "interesting measures of performance" but measured "only a fraction of the real activity of a university".

UCL's success had resulted from a "long-run strategy of hiring the best academic talent in the world, investing in world-class facilities and attracting top students globally".

He was delighted not only with UCL's success, but also with the global recognition it was now receiving.

"This is simply a wonderful institution, with a strong sense of loyalty and community, and I've got the best job I could ever have hoped for."

### MARK BERRY

*(Profile from Commerce Commission website)*

Dr Mark Berry was appointed Chair of the Commerce Commission in April 2009 for a term of 18 months. He previously held the position of Deputy Chair between 1999 and 2001. Mark has specialised in competition law and economic regulation. He is a former partner of law firm Bell Gully and former consultant with Chapman Tripp. Since 2002 he has been in practice as a barrister sole. Mark also taught Contract Law, Competition Law and Securities Regulation here at the Otago Law Faculty, and is a member of the International Advisory board at the Institute for Consumer Anti-trust studies at Loyola University Chicago School of Law.

### DAVID MAYHEW

*(Summary taken from Niko Kloeten – National Business Review) Monday September 21 2009)*

Former Otago graduate, David Mayhew has been appointed last year as the new commissioner for financial advisers.

"David Mayhew is a returning New Zealander who is recognised internationally as a leading practitioner in contentious financial services regulatory work. I'm pleased he'll be bringing this expertise back to New Zealand," Mr Power said.

Mr Mayhew will formally take over the role on January 25 from Annabel Cotton, who was appointed on a temporary basis.

The role of commissioner for financial advisers was created under the Financial Advisers Act 2008.

The commissioner will oversee the drafting, approval and implementation of a professional code of conduct for authorised financial advisers.

The code will set the minimum standards of competence, knowledge and skills, ethical behaviour, client care, and professional training requirements that authorised financial advisers must comply with.

Once the code is implemented, the commissioner will chair the disciplinary committee, which will hear complaints against authorised financial advisers.

The committee will also conduct disciplinary court proceedings and, when necessary, impose penalties arising from disciplinary proceedings.

Mr Mayhew was the United Kingdom's Financial Services Authority's leading advocate from 2001 to 2005, and during 2005 was its acting director for enforcement.

Before joining the Financial Services Authority, he was a partner in London at Clifford Chance LLP (limited liability partnership) for 14 years.

He returned to private practice at the end of 2005 and has since been a partner at Herbert Smith LLP.

### KNIGHTHOOD FOR JUSTICE BRUCE ROBERTSON

*(summary taken from Otago Daily Times, Thu, 31 Dec 2009)*

When Justice Bruce Robertson received recognition in the New Year's honours for services as a judge of the High Court and the Court of Appeal, he also became the second milk monitor from the 1954 standard 3 class at Wakari School to be knighted.

His classmate, fellow milk monitor and judge, Sir John Hansen, received a knighthood for services to the judiciary in 2008.

Sir Bruce is one of four people to be made Knights Companion of the New Zealand Order of Merit (KNZM) this year.



Photo: Peter Bruggeman

## Tour of Southland – Floyd Landis rides with Otago Graduates

*(Information taken from Bikenz website – news release 7/10/2009)*

Three Otago law graduates rode alongside American cyclist Floyd Landis last year in the 2009 PowerNet Tour of Southland, Nico de Jong, Nick Lovegrove and Jeremy Meech.

Nico (26), works for a boutique intellectual property and technology law firm in Auckland. He has been riding competitively for two seasons, after being a "social" multisport competitor. Nico is also a former nationally ranked rock climber.

Nick (28), works full time for a corporate law firm in Auckland. Nick has raced competitively for nearly two years after making the switch from triathlon to road cycling at the start of 2008.

Jeremy (27), works full time as a commercial intellectual property lawyer in Auckland. Jeremy has raced competitively for three seasons after switching from soccer and cricket, and has steadily progressed through the grades under the initial guidance of Gordon McCauley and more recently Karl Murray of Exceed Coaching.

Wayne Hudson and Richard McIlraith, both Auckland lawyers and cycling enthusiasts, had already formed a team of 5 riders, 4 of whom had ridden together in the 2008 Tour of Southland but a couple of weeks before the event, their fifth rider switched to another team. Although they asked a number of local riders if they wanted to ride for the team, nearly all of them had made commitments to other teams that were entering the PowerNet Tour. Over a coffee, they considered inviting Floyd Landis, winner of the first edition of the Tour of California, Paris Nice and the Tour de Georgia, before going on to finish first in the 2006 Tour de France. Floyd was consequently stripped of his Tour de France victory after a drug-control test demonstrated the presence of a skewed testosterone/epitestosterone ratio.

Floyd maintained his innocence and mounted a vigorous defence. Although Floyd's legal team documented many inconsistencies in the handling and evaluation of his urine samples, the disqualification was upheld. Floyd served his suspension, and got back to racing in 2009 after also having hip resurfacing surgery.

At the time he was asked, Floyd had just finished his competitive season, so was in pretty good form and his agent was confident that Floyd would rise to the occasion, which he did.

Since the Tour of Southland, Nick Lovegrove came 4th in the Taupo Cycle Challenge and has secured a place on New Zealand's only pro team, the Subway – Avanti Pro Cycling Team for 2010.