



OTAGO LAW

Faculty of Law Newsletter
Summer 2018-2019

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KIA ORA FROM THE DEAN

I hope this 20th edition of *OtagoLaw* finds you as positive and excited about 2019 as we are. Last year was a tough one for the New Zealand legal profession and for law schools, but we continued to see many successes in the Faculty.

Our academics contribute to legal discourse locally and globally. Rarely a week passes without one of our academics being asked for their view on legal issues in New Zealand. Over the past few months, interesting political times have kept Professor Andrew Geddis busy on the airwaves; Dr Ben France-Hudson's work on property rights and climate change was highlighted in discussions about how rising seas will affect New Zealand home owners; Associate Professor Colin Gavaghan and Assistant Research Fellow Joy Liddicoat from Otago's Centre for Law and Emerging Technologies delivered well-received workshops on Artificial Intelligence and the Law, in the UK; and Professor Jacinta Ruru and Associate Professor Nicola Taylor were appointed by the Minister of Justice as experts to support the Independent Panel examining the 2014 family justice reforms. Through these engagements the Faculty is certainly living up to its responsibility to be the critic and conscience of society. We also welcomed some promising young scholars in to the Faculty in 2018, Dr Anna High and Dr Danica McGovern. You can read interviews with them later in this newsletter.

Our students have also been busy. We celebrated the graduation in December of our two newest PhDs. Dr Sarah Butcher's thesis on the 'right to be forgotten' in the internet age and Dr Ruth Jeffery's thesis on mental health and employment rights are both important contributions to current issues in New Zealand. Our undergraduate students too have had much success, such as Isabella Hawkins and Erin Gourley's securing of Otago Law's first win in the *Australia New Zealand Inter-varsity Moot on Animal Law*. Our students also continue to impress us by their capacity to contribute to the community above and beyond their legal studies. Recently, our student, Hannah Morgan, swam from Stewart Island to Bluff, in 8 hours 43 minutes, to increase awareness of mental health issues, raising over \$25,000 in the process.



What an amazing feat of endurance, and an inspiration for our students to tackle long hours of reading this year! You can read more about our undergraduate and postgraduate students' achievements in this newsletter.

A special highlight last year was Te Roopū Whai Pūtake's 25th anniversary celebrations in September. During two meaningful days of events, Otago Law Māori alumni converged from all over Aotearoa, to reaffirm lifelong bonds and look to the future. Our taurira were able to connect with those who forged the way for Te Roopū Whai Pūtake in its early years and be inspired to follow in their footsteps. It was a perfect illustration of the proverb, ka mua, ka muri – walking backwards into the future.

2019 has begun in the best way possible, by welcoming new staff, who will add to the superb new generation of academics emerging at the Faculty. Lecturers Dr Stephen Young and Dr Lili Song joined us in February, bringing with them expertise in Chinese law, indigenous law, human rights, international law, and torts. Our suite of research centres has been added to by the move of the University of Otago's Children's Issues Centre to the Law Faculty. The Centre is led by Associate Professor Nicola Taylor, who has previously worked closely with Faculty members on family law issues. We are glad Nicola is now officially one of us. We will introduce you to these new Faculty members in greater detail in our annual review of 2019 that will be out in December.

Another exciting development is the recently announced establishment of a new Chair of Jurisprudence named after Otago law alumnus and internationally renowned scholar, Professor Jeremy Waldron. The Chair was the initiative of former Otago law lecturer, Noel Carroll. This wonderful gesture provides an enduring link between our proud history and our future students, and ensures jurisprudence remains a strong part of an Otago law degree.

Last but not least, 2019 marks the University of Otago's 150th Birthday. The celebrations provide a great opportunity to catch up with old friends and reflect on the past and future. We would love for you to join us at the special events occurring over Queen's Birthday weekend. Many of you will have received an invitation from us already. If not, there is further detail at the back of this newsletter.

STAFF NEWS

New faculty members

Dr Anna High

Dr Anna High joined us as a lecturer in criminal and evidence law, in late 2017. Anna's primary research interests are Chinese Law and Criminal Law.

Where are you from and what brought you to Otago?

I'm originally from Horsham, Victoria, and attended university at the University of Queensland. My journey to Dunedin has taken me almost right around the globe – from UQ to Oxford, to complete the BCL, MPhil and DPhil in law as the Queensland Rhodes Scholar '08 (Magdalen College); to the US, where I was first Visiting Assistant Professor at Marquette University Law School, and then Distinguished Scholar-in-Residence at Loyola University Chicago School of Law; then finally to Dunedin. Our family felt the time was right to return down-under, and we were excited for a sea-change in a beautiful part of the world with a world-class faculty.



Tell us about your interest in Chinese Law

My Arts degree major was in Chinese, which led to some really great opportunities as a law student – including clerking in Hong Kong, Beijing and Shanghai. When it came time to choose my DPhil topic, it was an easy decision to focus on Chinese law. I'd already spent many months in Hong Kong and China – traveling, clerking, studying Mandarin and volunteering – and had done some work with various child relief organisations in Beijing. As a legal scholar, I became interested in the extra-legal regulation of this sector, which at the time of my earliest fieldwork was not technically lawful but was widely tolerated by local authorities – a “one eye open, one eye closed” approach which is common in China. I carried out fieldwork in 2009, 2010 and most recently in 2017, to be presented in a research monograph with Routledge sometime in 2019.

How do you perceive life as a law student in today's times?

I believe our students deserve an enormous amount of respect for their commitment to their studies and to the practice of law. It's a tough degree and a tough profession, and it takes a lot of hard work to make it to law school. My goal as a lecturer is to support students in any way I can – by being clear about expectations, by assuming the best of each student, by giving them the tools they need to succeed both inside and outside the classroom. A wonderful development in terms of student life in recent years has been an increasing acknowledgement of the pressures and stress students face, both at university and on graduation to legal practice, and the importance of promoting resilience and wellbeing in our students in the face of those pressures. One way I try to do that for my students is by bringing contemplative learning techniques into the classroom – in small doses, and on a voluntary basis – as just one example of the various ways students can proactively protect their mental health and welfare.

How has your first year at Otago been?

It's been a busy but very rewarding first year at Otago. The highlight has definitely been meeting students – in Evidence, in tutorials, at the staff-student cricket match and other social events. They're a really interesting and inspiring group. I've also enjoyed getting out and about in the wider university in my role as acting Associate Dean International for Humanities. There are some wonderful things happening at Otago in terms of exchanges and partnerships with other universities around the world, and it's great to be involved in some of those initiatives.

Dr Danica McGovern



Dr Danica McGovern joined us in January 2018 as a lecturer in Criminal Law and Criminal Justice. Danica's research interests are primarily in criminal justice, with a focus on sentencing and on the intersection between the criminal law and forensic psychology (including risk assessment and rehabilitation).

What led to your interest in Criminal Justice?

I studied Law, Psychology and Criminology at Victoria University of Wellington. That combination sparked my interest in the intersection between criminal justice and forensic psychology. The political climate at the time was just starting to shift towards embracing more innovative responses to offending – particularly restorative and rehabilitative responses – and I became very interested in how the criminal justice system could embrace these more constructive responses without compromising fundamental principles. At the same time, victims of crime were increasingly calling for greater respect of their interests, and I wanted to explore further what those interests actually are and how they might be better incorporated into the criminal process. I was working part-time for a defence lawyer while studying, and what I saw in that role left me with the strong desire to work towards a system that does less harm to everyone involved.

How did you translate this interest into your post-graduate research?

I began exploring these ideas in depth during my LLM and PhD, in the context of serious sexual offending. For my PhD, I looked at the feasibility of a treatment-based alternative to prison for men who have sexually assaulted an adult – and found many more questions than answers. I completed my PhD thesis in the middle of 2018. I'm now working on publishing my findings in a series of articles and doing some further theoretical development that I hope will help us institute alternatives to prison in a safe and principled way.

What is your approach to teaching criminal justice?

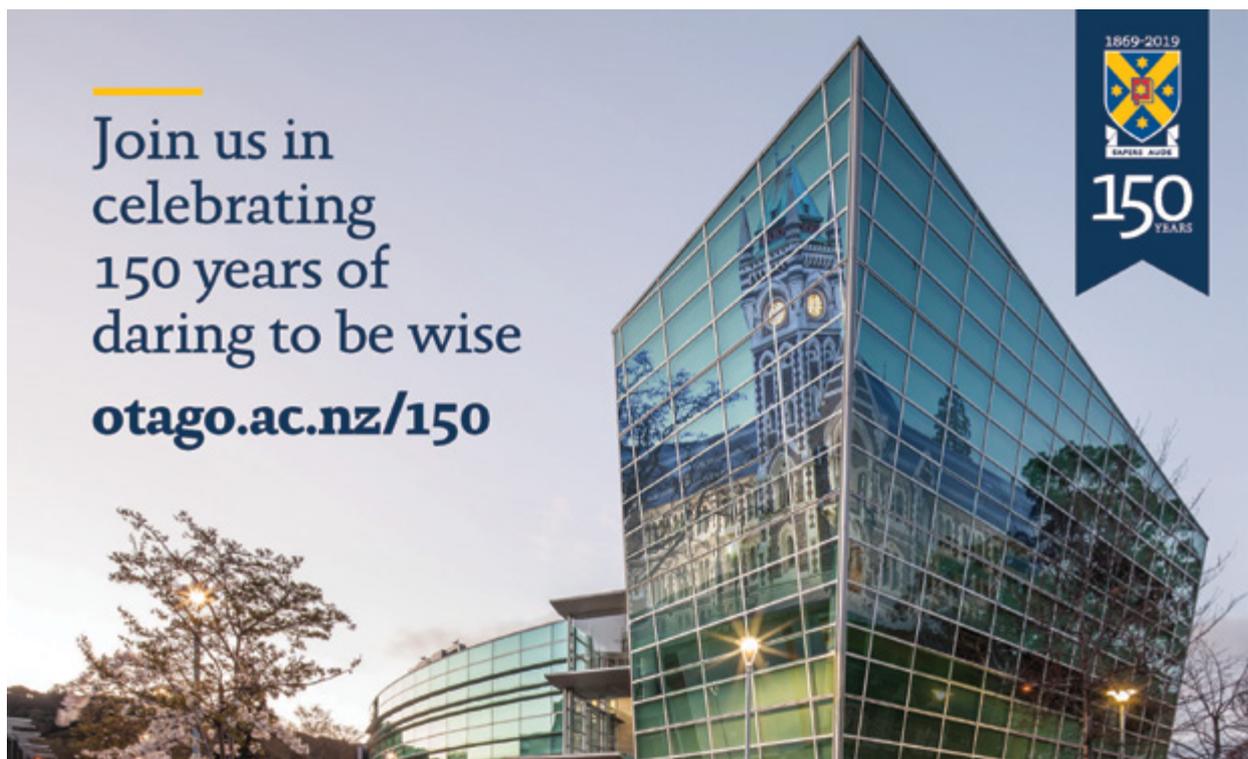
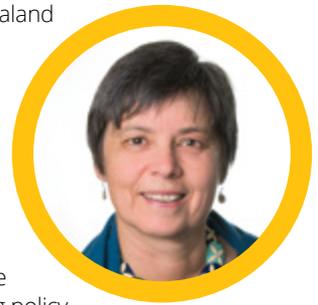
My commitment to a principled, effective, and constructive criminal justice system influences my teaching in Criminal Law and Criminal Justice. It's a heavily value-laden area – all those ideals mean different things to different people. I want my students to critically examine the law, legal processes, and proposed reforms to see what's going on underneath and to think about the impact the law has on the people most affected (often those who are most vulnerable or marginalised already). I also encourage them to think about what they think is right and why – and to be open to those answers changing.

How has your first year at Otago been?

The move to Dunedin has been a good one. It's an exciting time to be part of the Law Faculty, with a new Dean, a great cohort of early career academics, fantastic admin staff, and very generous senior colleagues. I've enjoyed getting to know some of the students, particularly those in my Criminal Justice class and members of Te Roopu Whai Putake and the Pacific Island Law Students Association. I hope to continue and expand those relationships over the coming years.

Joy Liddicoat

has joined the New Zealand Law Foundation Centre for Law and Policy in Emerging Technologies (situated in the Faculty of Law), as an Assistant Research Fellow, to work on the law and artificial intelligence project. Joy's primary research interest is human rights and technology and she brings a wealth of experience to the Centre. Her previous role as an Assistant Commissioner at the Office of the Privacy Commissioner, included overseeing policy and technology related research and advice. As Human Rights Commissioner for eight years, Joy was responsible for research on women's rights, national human rights institutions and led the Commission's 2010 inquiry into the experiences of transgender people in New Zealand.



FACULTY NEWS

- Congratulations to our environmental adjudication expert **Ceri Warnock** for her well-deserved promotion to Professor. Ceri's research in environmental law has been published in respected international journals, cited in case law, and quoted by Supreme Court judges. Her honours include the New Zealand Law Foundation International Research Fellowship. Ceri teaches Resource Management Law, Energy Law and Inter-disciplinary Aspects of Climate Change. She also contributes teaching to Public Law and LAWS 101.



- Congratulations also to **Dr Ben France-Hudson** and **Dr Simon Connell** who have both been promoted to Senior Lecturer. Ben is a private property expert and his recent research has focused on property law and the anticipated effects of climate change. Simon's research and teaching focus on contract law and accidents and the law. Simon is especially interested in the law of contract interpretation and how it interacts with other areas of contract law, and how different areas of New Zealand law respond to the same 'accident' events.
- The **Court of Appeal** visited the Faculty in August, during its first Dunedin sitting in 15 years. The Hon Justices Kós, French and Miller joined our academics for a seminar to discuss the Court of Appeal's role and performance as New Zealand's intermediate appeal court. The discussion focused on the different approaches of the Court of Appeal and the Supreme Court to relationship property law. Justices French and Miller are both Otago Law alumni and the Faculty was especially proud to welcome them back.

Our students met the Court of Appeal at the Dunedin Law Courts. Sitting in the close proximity of the jury box, the students watched the workday interaction between counsel and the Court of Appeal judges, gaining a good dose of the reality of an appeals court. Prior to each hearing, counsel talked to the students about the backgrounds of their cases and the submissions they intended to make, which gave the students a rare unvarnished insight into the preparation and submission of appeal cases.

- In December **Jacinta Ruru** was recognized as one of fifteen 'Kiwibank Local Heroes,' an award given to 'everyday people who do exceptional things'. Speaking about the occasion, Otago Law Alumni and Kiwibank chief executive officer Steve Jurkovich said that while some recipients may not see themselves as heroes, their stories of courage, charity, achievement and ambition made them heroes. We are very proud of Jacinta as an amazing role model for all of our students and a strong change-maker in how people perceive Māori and the law in Aotearoa.



Te Roopū Whai Pūtake 25th Anniversary

Te Roopū Whai Pūtake's 25th anniversary celebrations on 7-8 September 2018 were a fantastic tribute to the strength of spirit and friendship among our Māori taura and kāhui ākongā onamata. Close to a hundred people from all over Aotearoa attended the event, which included many special moments and reunions. The celebrations were jointly organised by the TRWP student executive, TRWP alumni and Otago Law staff.

The Jolene Patuawa-Tuilave Māori Leadership in Law Award was presented to Kaahu White (BA (Māori Studies), LLB). The ceremony included moving korero from special guests Tame Te Rangi (education spokesperson for Te Runanga o Ngāti Whatua), and Rachel Mullins, who was a dear friend of Jolene Patuawa-Tuilave. The occasion was made extra special by the attendance of all past recipients of the award: Adam Tapsell, Alice Anderson and Amber Russell.



Previous Jolene Patuawa-Tuilave Māori Leadership in Law Award recipients Adam Tapsell, Amber Russell, Alice Anderson, with 2018 recipient Kaahu White.



Ian Taylor, CEO of global Dunedin company Animation Research Ltd, and of course an Otago LLB graduate, delivered an uplifting talk about how he turned down his first law job to present the children's television show Play School and start a basement video production company, which he eventually built into the global sports animation company we know today. We were very grateful to hear his story first hand. Ian was born into a house with no electricity in the small East Coast town of Raupunga, in a close community to which some of our current students and other alumni also belong. Among them is Warren Alcock, who grew up just down the road from Ian, and introduced Ian's korero.

Following Ian's talk, a kōrero on family law was held with Miaana Walden, Sommer Paekau, Kelsey Brown, and Lisa Samusamuvodre, which acknowledged Mark Henaghan's work in the area, followed by a waiata for Mark composed and performed by students..

Nerys Udy and Jacobi K Morris jointly earned the Māori Moot trophy, which was judged by Adam Tapsell, along with Marcelo Rodriguez and Professor Paul Roth.

The events concluded on the Saturday morning with a roundtable reflection on the future for Māori within (or beyond) the legal profession, and a celebratory birthday brunch.



A year in Jerusalem

Professor Rex Ahdar returned to the Faculty in December 2018 after a year-long sabbatical at the Faculty of Law, The Hebrew University of Jerusalem, where he was a Visiting Professor. While there, Rex edited a new book, *Research Handbook on Law and Religion* (Edward Elgar, 2018). The book explores perennial and recent legal issues between modern states and religious communities, through interdisciplinary, international and philosophical perspectives. He provided the following report for *OtagoLaw* about his travels.

I was fortunate to spend 2018 on sabbatical leave in Israel. I managed to return unscathed despite the best efforts of rapacious taxi drivers, a few loony ultra-religious types (Jewish, Muslim and Christian), a paucity of swimming pools and a vast over-supply of dreadful vegetarian food outlets. I had the temerity to teach a one semester course called "Religious Freedom and Secularism" at The Hebrew University of Jerusalem, Faculty of Law. Surprisingly, the students managed to understand my broad NZ accent. I held a book launch (Research Handbook on Law and Religion [Edward Elgar]) at the Faculty thanks to the generosity of the Dean, Professor Michael Karayanni.

Despite all the gloomy news media coverage, Israel is a safe place, with the only real trouble spot being the southern district of Israel that borders the Gaza Strip. I felt entirely safe walking round the streets of Jerusalem at night. The religious, political and ethnic complexities of this small nation (the size of Otago) defy summary. Suffice to say that it has an expanding economy with outstanding IT industries, an ever-present military, a plethora of barricades and security check-points, superb roads, a wonderful rich history replete with Biblical landmarks, a dry hot climate and people that are about the most pushy I have ever met. Of course, I am generalizing about the locals and I made lasting friends with many splendid folk, Jewish and Arab. It was, in all, a most stimulating experience.



PROFESSOR MARK HENAGHAN

A PERSONAL TRIBUTE

Over the course of more than 40 years, I have seen my good friend Mark Henaghan in a number of different roles.

Although he insists that I taught him in 1973 when I gave a few lectures in Constitutional Law shortly after arriving back from the United States, my first recollection of Mark was some years later as a bright enthusiastic student in my Administrative Law class. In those days Mark sported long, wavy hair cascading down to his shoulders – a most impressive sight. I also knew him as a very useful centre-three-quarter for the University B rugby team, which in the 1970s was a very good side that played in the Dunedin senior club competition. It will come as no surprise to anyone to know that Mark talked a pretty good game too! Those communication skills were also put to good use in debating, and Mark was a prominent member of the University debating club. Indeed he was a member of an OU team – alongside such celebrities as Jim Mora and Michael Laws – that defeated a visiting Australian Universities debating team.

When Mark completed his Honours degree he joined the teaching staff of the Law faculty and it soon became apparent that he was a truly gifted teacher and motivator. He has always had the unique ability to inspire his students to produce the very best they are capable of. In fact I've long thought that Mark could have made a fortune in the United States as a television evangelist.

I next knew Mark as an established senior academic – on top of his chosen research field of Family Law; well on the way to compiling a prodigious publication record; in demand as a keynote speaker at conferences; and widely acknowledged as an expert in his field.

Then in 2000, Mark became Dean of the Otago Law Faculty, a role that he performed with great distinction for 18 years. He brought enormous energy and commitment to that role. Right at the outset, Mark decided that if people in positions of authority were to take him seriously, he had to look as if he meant business. So out went the jeans and the T-shirts and in came the sharp suits and matching accessories, as well as the famous Armani overcoat. This clearly worked, because Mark proved a very effective advocate for the Law Faculty within the wider University, and a tireless and very successful promoter of both the Law Faculty and the University throughout New Zealand and overseas.

FROM EMERITUS PROFESSOR JOHN SMILLIE



These external demands on his time did not cause Mark to reduce his day to day academic commitments. He continued to carry a full teaching load; because his classes were large he marked more exam scripts than anyone else; he supervised more Honours and post-graduate research students than anyone else; and he published more than anyone else.

At the same time, he made himself fully accessible to students, staff and visitors to the Faculty. In particular, Mark has always found time to listen to the concerns of students and he would do everything in his power to address them. I know there are many families throughout New Zealand who are extremely grateful to Mark for counselling and assisting their children through personal difficulties.

Mark also got the very best out of his staff, and he did this through positive encouragement and support, rather than by employing the top down, command and obey style currently favoured by many managers and administrators. Mark was a practitioner of "relentless positivity" long before it was adopted as a political slogan!

Of course Mark would not have been able to devote the same amount of time and energy to his job if his wife Aimy had not been in total control on the home front, and she deserves a special vote of thanks.

Finally, and most important of all for me personally, I have known Mark as a thoroughly good man and a true and loyal friend over many years. I will really miss his company.

Mark's departure to a personal chair at Auckland Law School will leave a huge gap and I fear that Otago's loss will be very much Auckland's gain. But I know that Mark and Aimy have a lot to look forward to in Auckland – both their children, Misha and Ryan, are firmly established in Auckland, and there is also a much loved granddaughter, Sophie, who they are looking forward to spending more time with.

So Mark, I thank you for all you have done for the Otago Law Faculty, the University of Otago, and the wider Dunedin legal community, and I wish you and Aimy all the very best for the future.



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POSTGRADUATE



Administrative Staff

Karen Warrington

Karen steadfastly supported Mark Henaghan, as Dean of Law for many years. She organised busy and changeable schedules wonderfully well and provided an empathetic ear to the many people seeking help and advice from the Dean. Karen forged a great working partnership with Mark, managing the formidable task of keeping him on track even on the most hectic days. The Faculty wishes Karen all the best.



Mel Black

Mel Black worked tirelessly behind the scenes to support the smooth running of the Law Faculty's administration, for a total of 12 years, firstly between 2005 and 2008, and from 2011 until the end of 2018. We are very thankful for Mel's hard work and her great humour, and wish her well as she goes on to serve in other areas of the University.



RESEARCH AND ENGAGEMENT HIGHLIGHTS

The Faculty of Law's research contributes strongly to New Zealand's academic, judicial and political landscapes. Our research is at the frontier of many important New Zealand issues, including climate change, access to justice, relationship property, Māori law, and the rise of gene editing and artificial intelligence. Here are just some of our research highlights from the second half of 2018.

Access to Justice

The New Zealand Legal Services Mapping Project:
Finding Free and Low-Cost Legal Services



The University of Otago Legal Issues Centre (UOLIC) is building evidence to help improve access to civil justice and inform the development of Aotearoa's future courts, through several project areas.

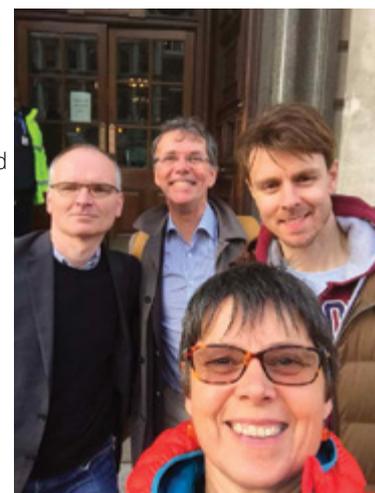
- In May 2018 a UOLIC report, *New Zealand Legal Services Mapping Project: Finding Free and Low-Cost Legal Services Pilot Report*, found significant barriers to accessing legal representation in civil legal disputes, including declining numbers of lawyers providing civil legal aid services. The study's next phase, undertaken in the latter half of 2018, explored why some legal aid providers no longer offer civil legal aid services – or only do so on a very limited basis – and the scope, availability, and accessibility of low cost and pro bono legal services. The UOLIC surveyed lawyers to find out what types of work they consider to be pro bono, and to clarify the extent to which such services are performed and the results are currently being analysed.
- The UOLIC has been interviewing lay people and lawyers as part of its two-year multi-disciplinary, multi-institutional study into the potential of online civil courts in New Zealand. This study uses laboratory testing to investigate the accuracy and clarity of lay people's explanations of a dispute to a court. It compares these findings to laboratory testing of the accuracy and clarity of the perceived "gold standard" mode of litigating a dispute: a lawyer's explanation of a dispute to a court. It will use these findings to suggest and test how an online court might support lay people to communicate their dispute to a decision maker. The project is co-funded by the New Zealand Law Foundation's Information Law & Policy project.
- **Bridgette Toy-Cronin** is undertaking fieldwork for the Marsden funded research on "Eviction and its Consequences". The project, which forms part of a larger project led by Professor Philippa Howden-Chapman called "Eviction and its consequences: Representation, Discourse & Reality", uses social science methods to study the termination of tenancies for unpaid rent and the enforcement of those decisions. This project examines the fairness of the legal process that underpins forced residential mobility and the balance being struck between the property rights of landlords and the treatment of tenants.

Administrative and constitutional law

- **Andrew Geddis** and **Marcelo Rodriguez Ferrere** provided an update on the state of New Zealand's liberal democracy for the *2017 Global Review of Constitutional Democracy*.
Geddis, A., & Rodriguez Ferrere, M. B. (2018). New Zealand: The state of liberal democracy. In R. Albert, D. Landau, P. Faraguna & S. Drugda (Eds.), *2017 Global Review of Constitutional Law*. (pp. 199-203).
- **Marcelo Rodriguez Ferrere** continued his contributions to animal law in New Zealand, with an article assessing New Zealand's suite of new regulations that introduce a series of infringement offences designed to better enforce animal welfare. Marcelo notes that the new regulations relegate existing enforcement mechanisms, including codes of welfare. He compares and contrasts the status quo with the new system, and queries whether these regulations are in fact the best way of improving animal welfare enforcement.
Rodriguez Ferrere, M. B. (2018). *Codes vs regulations: How best to enforce animal welfare in New Zealand? Alternative Law Journal*.

Emerging technologies and the law

- In late 2018, **Colin Gavaghan** and Joy **Liddicoat** and others from the New Zealand Law Foundation sponsored 'AI and law' project undertook research visits in the United Kingdom and Brussels to understand more deeply how different sectors of society were responding to the emerging issues of AI and employment and what, if any, new forms of regulatory or policy approaches were being developed. They met with 21 people from 12 agencies including representatives of government, universities, civil society groups, education providers, research bodies and the European Parliament.



During the visit, the team ran an Artificial Intelligence and Employment Roundtable with its partner The Oxford Uehiro Centre for Practical Ethics, at Oxford University. The Roundtable examined the effects of AI on employment and in particular on several professions, including the legal profession. The Roundtable included experts from several AI-disrupted professions and identified trends and issues in AI and employment and as well as emerging responses, including possible policy or regulatory responses.

The legal issues involved included whether replacing human employees with AI might erode the social dimension of the law professions, whether we will need new legal mechanisms for defining corporate rights and obligations, and whether AI systems be regarded as 'legal persons' for some purposes. Employment related questions included whether AI technology related job losses fit within existing categories of redundancy and unfair dismissal and whether employment law will need to change in order to cater for this scenario.

- **Colin Gavaghan** co-authored an article expressing concerns over the opacity of algorithmic decision tools while also asking if automated decision-making is being held to an unrealistically high standard:
Transparency in Algorithmic and Human Decision-Making: Is There a Double Standard?, Zerilli, J., Knott, A., Maclaurin, J. Gavaghan C, Philos. Technol. (2018)
- **Jeanne Snelling** presented to the *Advisory Committee on Assisted Reproductive Technology (ACART)* in August. ACART formulates policy and provides advice to the Minister of Health on assisted reproductive technology in New Zealand. Jeanne discussed her research findings on "embryo selection in the post-genomic era".

Employment law

- **Paul Roth** examined the relationship between Indigenous values and employment law in New Zealand and Australia, with some comparative reference to the position in North America and in relation to international standards.
"Indigenous Peoples and Employment Law: the Australasian model" [2018] 43(2) *New Zealand Journal of Employment Relations* 36-51

Securities Law

- **Shelley Griffiths** contributed four chapters on the regulation of NZ's primary and secondary securities markets and corporate fund raising to Susan Watson and Lynne Taylor (eds) *Corporate Law In New Zealand* published by Thomson Reuters.

Tax

- **Shelley Griffiths** presented three papers:
At the 9th conference on Tax History in Cambridge in July on 'Income tax in New Zealand 1914-1918: the World War I watershed', which will be published in a collection in 2019 by Hart Publishing
At the NZLS Tax conference in September on "Fairly, impartially and according to law: thinking about taxpayer rights in New Zealand tax administration"
And to the tax group at the Ross Parsons Centre of Commercial, Corporate and Taxation at the University of Sydney Law school entitled "Reconciling the 'care and management' function of the Commissioner of Inland Revenue and the dominance of 'correctness' of assessment in NZ tax administration"

Environment

- **Ceri Warnock** and **Nicola Wheen** made significant contributions to the second edition of *Environmental Law in New Zealand* (2nd Edition), Eds. David Grinlinton, Hon Peter Salmon QC, published by Thompson Reuters. Ceri Warnock contributed three chapters, two on air pollution and one co-authored on compliance and enforcement. Nic Wheen contributed a chapter on the protection and conservation of ecosystems and species.

Family, Relationships, Wills and Trusts

- **Nicola Peart** updated United Kingdom academics on New Zealand's approach to the law of testamentary promises, at the Landmark Cases in Succession Law conference at Cambridge, England.

Māori and indigenous law

- *The Māori Law Review* published online the text of Jacinta Ruru's 2017 Shirley Smith memorial address, First laws: tikanga Māori in / and the law, in which Jacinta examines the past and future of the law and Māori in Aotearoa.

Property

- **Ben France-Hudson** has been writing on the emerging issue of climate change compensation. He co-authored an article with Benjamin Dudley Tombs: "Climate Change Compensation: An Unavoidable Discussion" (2018) 14 Policy Quarterly 50 – 58. The article noted that even though climate change will cause significant loss and damage throughout New Zealand, people are so far reticent to engage with the idea of compensation. The authors argue that compensation will be an unavoidable part of the discussion about how best to respond to the challenges of climate change. They suggest that careful thought should be given, as soon as possible, to the development of a principled approach to compensation for climate change loss and damage.
- At the conference *New Horizons for Torrens – Current Reforms, Emerging Issues* in August, **Struan Scott** chaired a session on *Current and emerging issues in practice*. In that session **Ben France-Hudson** spoke on "Judicial interpretation of Torrens registered documents"

PUBLIC LECTURES

We had outstanding visitors in the second half of 2018, both old friends and new, who delivered some very insightful talks. We are extremely grateful for their time and especially for making an extra effort to meet with our students. You can see the full list of visitors at the end of this newsletter.

FW Guest Memorial Lecture: Una Jagose - An ancient office in modern times: the Solicitor-General's role in New Zealand's democracy

The Moot Court was full to the brim when Otago Law Graduate and Solicitor-General Una Jagose Q.C. delivered the 2019 F.W. Guest Memorial Lecture in September. As Una holds one of New Zealand's more interesting, demanding, and constitutionally important roles in NZ, it was great to hear her passion for upholding the Rule of Law and about the values important to working at 'the border of law and government'.



NZLF Distinguished Fellow: Tim McCormack

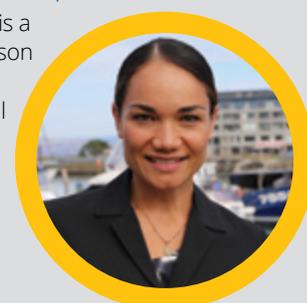
Professor Tim McCormack visited us as the New Zealand Law Foundation Distinguished Fellow. Being the Dean of Australia's most southern law school, the University of Tasmania Law School, Professor McCormack felt a strong affinity with the Otago Faculty of Law. Professor McCormack has an impressive CV, including as the Special Adviser on International Humanitarian Law to the Prosecutor of the International Criminal Court in The Hague and a Director of World Vision Australia. His visit was a unique opportunity to get both practical and strategic insights into the operation of international law.



As well as delivering a public lecture on the Syrian Crisis and chemical weapons, Professor McCormack delivered a guest lecture to our international law students about the high expectations on the International Criminal Court, given its very challenging situation. He also met with the Zealand Law Foundation Centre for Law and Policy in Emerging Technologies to discuss his work on international law applicable to cyber-operations, such as cyber-attacks.

Pacific Islands Law Students Association Annual Public Lecture: Tiana Epati

Gisborne criminal lawyer Tiana Epati is a principal at Rishworth, Wall & Mathieson and the President-elect of the New Zealand Law society. It was wonderful to have her deliver the PILSA Annual Public Lecture. Her talk was by turns inspiring and invigorating, as she told of her journey to becoming a lawyer



and the ways she has challenged the status quo and become a change maker in the legal profession. There were sure to be law students in the audience who will mention those 50 minutes when reflecting on their own career, years down the track. Tiana's husband, Matanuku Mahuika, Partner of Kahui Legal, joined Tiana on the visit and spoke to Te Roopū Whai Pūtake members.

University of Otago William Evans Fellow 2019: Professor Robin Craig



In October, in conjunction with the water and environment group *Catchments Otago*, the Faculty hosted Professor Robin Craig, the James I. Farr Presidential Endowed Professor of Law, at the University of Utah S.J. Quinney College of Law. Professor Craig was visiting the University of Otago on a William Evans Fellowship. She specializes in all things water, including climate change and water; the food-water-energy nexus; water quality and water allocation law; and marine protected areas and marine spatial planning.

Professor Craig gave a public talk about how various US rivers and water basins have been saved or not saved thanks to US law and the competing interests of farmers, animals, indigenous people and public agencies. She used fascinating case studies to highlight in a very concrete way how governance and the law needs to adapt in the face of climate change. It was a cogent talk given the increasing complexity and significance of New Zealand's own water challenges.

Supreme Court Justice Mark O'Regan



In October, we had the honour of hosting Supreme Court Justice Mark O'Regan.

O'Regan J delivered an enlightening lecture about his involvement in Treaty of Waitangi negotiations and settlements as a lawyer and a judge. From crafting of detailed commercial provisions in the engine rooms of the momentous Waikato-Tainui and Ngāi Tahu Treaty Settlement negotiations, to now adjudicating the big issues in the Supreme Court, Justice O'Regan was able to provide a fascinating insight into one of the most significant stories of New Zealand's history.

Jeremy Waldron, Professor, New York University School of Law



As one of one of the world's foremost legal philosophers and one of Otago Law's most distinguished academic alumni, Professor Jeremy Waldron did not disappoint, drawing a large audience and delivering a thought-provoking and timely philosophical address on the foundations of Migration Law. Professor Waldron stripped back the different cultural, economic and legal conceptions of migration to examine the fundamentals of movement of humans across the globe. He set out what questions we should be asking ourselves, not only in the current political climate but also in view of the large-scale migrations that will come with climate change.

Professor Jim Allan

In September, we welcomed back our old friend and colleague Professor Jim Allan, who gave a public lecture on Human Rights, Doubts and Democracy. As always, Professor Allan presented a robust critique about the merits of legal developments driven by human-rights rather than votes and democratic process. He voiced doubts about some of the foundations or underpinnings for human rights claims, and about the difficulty of reconciling a human-rights dominated worldview and program for future action with a worldview that puts democracy front and centre.



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POSTGRADUATE NEWS

PhD graduates

We celebrated the graduation of two of our PhD students at our December graduation, both of whom completed theses on very topical issues for New Zealand.



Dr Sarah Butcher – Privacy and leaving your past behind

2019 was a momentous year for Dr Sarah Butcher, in more ways than one. Not long before her graduation, Sarah became a New Zealand citizen. Before her arrival at the bottom of the Southern Hemisphere, the enthusiastic new Dunedinite lectured at the University of Plymouth in the UK and also worked at the Office of Fair Trading in competition enforcement law and at the European Commission in Brussels.

While completing her PhD, Sarah also completed a more physical challenge - the half distance Challenge Wanaka Triathlon – a 1.9km swim, 90km bike and 21.1km run, which she describes as 'a great way of escapism from other aspects of life!' She is now training for the Ironman New Zealand in Taupo in March.

Sarah's PhD thesis, *Privacy and leaving your past behind*, (<https://ourarchive.otago.ac.nz/handle/10523/8341>), examined the right to be forgotten in the age of Google, and how it might be practical for people to move on with their life without their online histories pursuing them. The right to privacy has become an important issue in the short time it has taken the task of leaving your past you to become much more than simply leaving town. The term 'right to be forgotten' came to prominence after the 2014 *Google Spain* case in which the Court of Justice for the European Union decided that a person should be able to request Google to modify search results lists. But the decision alarmed those who believe in freedom of speech and the internet. Sarah's thesis considers that individuals should have a way of being 'forgotten', and seeks to establish parameters which would guide individuals, companies and governments on how to achieve this for those who should not be left haunted by unfortunate events in their past.

Dr Ruth Jeffery

Dr Ruth Jeffery's journey to a PhD at Otago took many interesting paths. Ruth came to the law after a career in medical imaging, first as a medical radiation technologist, and then with post-graduate qualifications in Ultrasound and Nuclear Medicine. She worked in this area for about 20 years, in NZ, UK and Saudi Arabia. Ruth then decided to try the law and in 2008 graduated from Otago with honours before practicing for two years. Ruth then went sailing for a time and then worked at Fisher & Paykel. During this time Ruth became an employment advocate, which sparked her interest in employment law and so she decided to undertake a PhD on the subject.

Ruth's PhD focused on mental health and employment law. Her thesis, *Defining the parameters of the employee-employer relationship in the presence of mental health disorders*, examined situations where an employee develops a mental illness during employment, which compromises their performance, and the extent to which legislation requires the employer to accommodate (or tolerate) poor performance. The key question was, if an employee could otherwise be justifiably dismissed for poor performance, would this nevertheless be discrimination if the poor performance was due to a mental illness? To answer this question, Ruth examined the employment discrimination provisions of the Human Rights Act, seeking to clarify the obligations and prerogatives of the employer, and the rights of the disabled employee.

Otago Law PhD candidate **Claire Browning** has been awarded a New Zealand Law Foundation Doctoral Scholarship for her research on constitutional relationships and Māori law. Claire's research asks, how do tikanga Māori concepts of kaitiakitanga and kinship alter our constitutional understanding of relationships? The three relationships she is examining are between the Crown and Māori; humanity with the world beyond human kind; and between tikanga Māori and ture Pākehā.

UNDERGRADUATE NEWS

- **Isabella Hawkins** and **Erin Gourley** won the *The Australia New Zealand Inter-varsity Moot on Animal Law (ANIMAL)* on 23 September. The Moot was held at Griffith University and was organised by The Animal Law Institute.



(Erin left, Isabella right)

- **Jienwern Cook** and **Hansaka Ranaweera** won the Chapman Tripp Junior Negotiation Competition on 16 August in the Moot Court. The judges were Daniel Kalderimis, partner of Chapman Tripp, Nicola Peart and Selene Mize.
- The Pacifica Sentencing Competition held between the Otago and Canterbury law schools was won by Otago third year student **Naomi Saulala**. The judges were Geoff Hall and Nicola Wheen.



Naomi Saulala (Left) and 2017 winner Petrina Siania

- The work of about 30 law students volunteering for Community Law Otago was highlighted in the *Otago Daily Times* in August. The ODT spoke to law student **Libby Waalkens** who coordinates talks about everyday aspects of the law, presented by Community Law Otago volunteers at the Dunedin City Library. The students also present similar talks on *Otago Access Radio*. Read more about it in the *Otago Daily Times* article, "Law for Tea" (odt.co.nz/news/dunedin/spreading-power-legal-knowledge)
- Otago law and science student **George Mander** and his fellow student entrepreneurs are launching a new environmentally friendly super food - locust powder, as reported in the *Otago Daily Times* (odt.co.nz/news/dunedin/students-taking-locusts-plague-plate). George Mander also won the 2018 Sir Paul Callaghan Eureka! Premier Award in September with his proposal to use crickets as an alternative food source. He won \$10,000 plus the trophy presented by the Governor-General.

- Law and politics student **Hannah Morgan** swam across the Foveaux Strait on 12 February 2019 to heighten awareness and understanding of the importance of mental health and wellbeing in NZ. She completed the 31.9km swim in 8 hours and 43 minutes and raised over \$25,000 while doing so.
- Congratulations to our 52 newest law graduates who celebrated their capping on Wednesday 12th of December. We celebrated their achievement at a law brunch with friends, family and staff at the University, before the graduates marched to the Town Hall for their capping ceremony.

ALUMNI NEWS

- **Lizzie Christmas** has been awarded a Fulbright Science and Innovation award. Lizzie will complete a Masters in Law specialising in Law, Technology, and Entrepreneurship at Cornell Tech in New York City, New York. Her research will be on block chain and its entrepreneurial application. Lizzie is from Rotorua and graduated with an LLB (Hons) and a BA in Politics from the University of Otago in 2016.
- **Greg Lewis** has been appointed as New Zealand's Ambassador to Egypt. Greg speaks Arabic and has previously served in the New Zealand Embassies in Cairo and in Riyadh.
- Three of our alumnae were appointed as Queen's Counsel in November 2018: **Anne Stevens**, **Fiona Guy Kidd**, and **Maria Dew**.



Students in Law Library

Alumni Profile

Sam Wevers, Energy adviser, UK

I write this from a shared office space in London, where I'm working on an energy software project. My path here from the law library in the Richardson Building was not something I ever expected to follow, but I surely wouldn't be here (and wearing sneakers to work!) without Otago law school.

My dissertation (supervised by the brilliant John Dawson) focused on co-management in Treaty of Waitangi settlements, and the constitutional implications of this for post-settlement Crown-Māori relations. I then worked in Russell McVeagh's Wellington public law and litigation teams. While there, I was lucky enough to act for Tūhoronuku on the important Ngāpuhi settlement mandate dispute before the Waitangi Tribunal, attending multiple hearings literally next to the Treaty grounds. Briefing kaumātua and kuia, and being part of such a historic process, was incredibly humbling. As well as this work, I also did extensive work for electricity market clients at Russell McVeagh, exposing me to a complex and fascinating market. While at Otago, and in Wellington, I spent some time working on climate change issues, so getting to grips with how electricity markets work (and how they could be decarbonised) was of deep personal interest.

My core career goal is to do all I can (however infinitesimal) to help decarbonise the planet over the next 30 years. As such, I wanted to get involved "up the curve" in shaping how the decarbonisation of electricity markets might happen, and contribute to policy and technology solutions (that are then implemented through regulation). I was extremely lucky to get accepted into Oxford to study a Masters of Public Policy at the Blavatnik School of Government, where I focussed on climate change and infrastructure policy. My course was made of up 120 students from 60 different countries, which made the educational experience incredibly enriching and diverse, and brought learning beyond the classroom.

“At first glance, my job seems distant from the Richardson law library, but I wouldn't be here without the legal education I received at Otago.”

As a part of this degree, I undertook a summer project at the Department of Energy and Climate Change in Whitehall, researching how electricity markets around the world have approached making their systems more green and flexible. While on this project, I happened to be in the House of Commons when Andrea Leadsom was asked if the rumours were true and DECC was to be abolished. By 4.30pm DECC had been replaced with a new department, the sign outside had literally been scrubbed clean, and a new Secretary of State was giving a speech on the office floor. (All this occurred when Theresa May became PM after that referendum). I then worked in the Cotswolds briefly in the legal team at Ecotricity, the UK's first green energy supplier. While there, I also had fun giving legal advice to Forest Green Rovers, the world's only vegan professional football team.



I then moved to London and began working for Centrica, one of the UK's biggest energy companies. I am working on an innovation project (with European funding) to build a local energy market in Cornwall. Cornwall has had rapid growth in renewable generation, and this is causing such problems for the local grid that additional wind and solar can't get connected. The question of how to build cheap renewables has largely been answered, but the question of how to integrate them into the grid has not, and we're trying to come up with a potential model.

We are building a market platform where flexible generation and demand (e.g. batteries) from homes, businesses, and "virtual power plants" can unlock capacity in the local grid and therefore increase renewable penetration. Flexibility is critical to a decarbonised energy system, and will save consumers billions of pounds in avoided lines upgrades and excess generation capacity.

My role as product manager for the platform is about engaging with network operators and regulators to design the market models and auctions, to set out how the platform must work from a functional perspective, and to communicate these requirements to the developers. I am constantly using skills from my legal training: assessing regulatory frameworks and finding places for improvement, taking complex facts and communicating them simply and logically, and making evidence-based arguments for why a course of action should be taken.

At first glance, my job seems distant from the Richardson law library, but I wouldn't be here without the legal education I received at Otago.

FACULTY VISITORS August-December 2018

Prof Jeremy Waldron	NYU Law School	Public lecture and jurisprudence guest lecturer
Prof Jonathan Krebs	Shakespeare Chambers, Napier	Criminal law guest lecturer
Prof Tim McCormack	Dean, Faculty of Law, University of Tasmania	NZ Law Foundation Distinguished Fellow
Louise Nicholas	National Sexual Violence Survivor Advocate	Criminal Justice guest lecturer
Prof Ursula Cheer	Dean of Law, University of Canterbury	Thomson Reuters New & Emerging Scholars Symposium
Assoc Prof Wayne Rumbles	Dean of Law, Waikato University	Thomson Reuters New & Emerging Scholars Symposium
Jennifer Campion	University of Waikato	Thomson Reuters New & Emerging Scholars Symposium
Dawn Duncan	University of Auckland	Thomson Reuters New & Emerging Scholars Symposium
Shea Esterling	University of Canterbury	Thomson Reuters New & Emerging Scholars Symposium
Zoe Prebble	Victoria University of Wellington	Thomson Reuters New & Emerging Scholars Symposium
Edward Willis	University of Auckland	Thomson Reuters New & Emerging Scholars Symposium
Anna Marie Brennan	University of Waikato	Thomson Reuters New & Emerging Scholars Symposium
Tiana Epati	Rishworth, Wall & Mathieson, President-elect of the New Zealand Law Society	Pacific Islands Law Students Association Annual Guest lecture
Matanuku Mahuika	Kahui Legal	Te Roopū Whai Pūtake Student workshop
Justice Kós	President, Court of Appeal	Court of Appeal seminar
Justice French	Court of Appeal	Court of Appeal seminar
Justice Miller	Court of Appeal	Court of Appeal seminar
Prof Nick Bala	Queens University, Canada	Family law seminar
Una Jagose QC	Solicitor-General	FW Guest Lecture
Prof James Allan	University of Queensland, TC Beirne School of Law	Public lecture and Public Law guest lecturer
Prof Robin Craig	S. J. Quinney College, University of Utah	William Evans Fellow
Judge Andrew Becroft	Children's Commissioner	Family Law guest lecturer
Justice Mark O'Regan	Supreme Court	Public Lecture - Treaty settlements
Hon Paul Heath Q.C.	Bankside Chambers	Insolvency Law guest lecturer
Julie Copley	University of Southern Queensland,	Visiting Scholar



Law Faculty's 150th celebration

150 YEARS
1869-2019



The Dean and Faculty of Law are delighted to invite Law Faculty Alumni to celebrate 150 years of the University of Otago at our Dunedin Campus

Saturday, 1 June 2019, 9.30am – 1.00pm

Richardson Building, Leith Walk, University of Otago (Dunedin Campus)

- 9.30am - 10.30 am Morning tea, Faculty of Law, Richardson Building, 10th floor

- 10.30am - 11.45am "Counsel of Deans":
former Deans will take you on a trip down memory lane
Moot Court, Richardson Building, 10th floor

- 11.45am - 1.00pm Finger food lunch
Richardson Building, 10th floor

There is no charge for this event, but for catering purposes, please register your attendance online at

otago.ac.nz/conferences/law-alumni-150/

Saturday, 1 June 2019, 7.00pm

The Dunedin Club, 33 Melville Street, Dunedin

150th Celebratory Dinner for Law Alumni
Ticket price: \$100pp
Dress: Formal

The ticket price includes a 3 course meal and welcome drinks

Guest Speakers: The Three Ronnies: French J, Miller J and Lang J

Number of places is limited to 110 persons and registrations are on a first-come, first-served basis. This event is restricted to Law Alumni only.

Please register your attendance online at

otago.ac.nz/conferences/law-alumni-150/

Online registration accepts payments via credit card.

This is a wonderful occasion to share University of Otago memories and stories, we hope to see you there!

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otago.ac.nz/law/

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