

## *Editors' Note*

This year marks an official decade since the inauguration of the Supreme Court in 2004 as the highest appellate court of New Zealand. The adoption of the Supreme Court Act 2003 respectively abolished all future appeals to the Privy Council in Britain. Since its first hearing in July 2004, the Supreme Court led by Chief Justice Dame Sian Elias (who was an editor of this journal in 1970) has fully integrated into our constitutional system as an indispensable institution to guarantee New Zealanders' access to justice. There is a relatable truth to the observation of Oliver Wendell Holmes Jr that the "law embodies the story of a nation's development". In New Zealand, our story dates back to colonisation in 1840 and successive events that have culminated in our constitutional breakaway in the 21st century when we established our own highest court in close actual physical proximity, putting to sleep the concerns of those who thought it wiser to defer to the 'bigger' pool of judges and lawyers in the United Kingdom. On one hand, we were later than other Commonwealth countries in taking the independent step, but on the other hand, that simply makes it our distinct story of national development. Our story, told time and again, is of the small, geographically remote country with a way of asserting its uniqueness and value-driven customs at large international fora. Certainly, there are features of our constitutional development that render us distinct, such as our unwritten constitution and statutory bill of rights.

If the law embodies the story of experience and development, then we ask ourselves what propels development in New Zealand. Development requires testing the successes and inadequacies of the status quo, while experimenting with evolving ideas to improve the inadequacies. One obvious medium by which traditional thinking is challenged by new ideas is dialogue and debate about law and policy, which drive reform everywhere and here in particular. This links to three values that have been very much the ethos of the Auckland University Law Review this year: dialogue, innovation and looking 'wider'.

With these values in mind, we have carefully selected 10 articles from a myriad of submissions to comprise this edition. The outcome is variety, in terms of the subject matter and the areas of law concerned. What attracted us to these articles during selection was that each article poses a distinct question, ignites a debate or presents an alternative perspective or approach to the status quo in a particular, unsettled area of law. Importantly, they seek to put forward something new and, in our judgement, add value to the existing discourse. This is precisely our aspiration for this publication.

Some articles delve into the application of legal concepts in novel contexts: Robert Schultz considers the application of the concepts of implied warranty of authority and ratification in New Zealand agency law and Rachael Baillie analyses the need and benefits of a development of systemic negligence in relation to public service claims. Adam Holden analyses the different approaches that have been taken when courts have sought to assess

the legality of revolutions. Some articles call for a dialogue to fill gaps in the current system: Hilary Wham engages with a key deficiency in disclosure law in the insurance context, Finn Lowery advocates for a more structured approach by courts to determining stay applications in criminal proceedings as there is little discourse on this, and Luke Sizer considers how the courts should interpret privative clauses – and the shortcomings of the current approach. Melinda Jacomb’s article primarily seeks to uncover our national story by tracing a history of ‘near miss’ attempts at implementing capital gains tax in New Zealand. We have also included three articles that concern relatively topical debates with implications not just for New Zealand but globally: Himmy Lui advocates for conceptualising a fiduciary duty on the state to the environment, Elle Crump examines the emerging jurisprudence and research on the correlation of violence and video games (if it even exists), and Thomas Clark analyses the consideration of Indigeneity in sentencing.

Continuing the theme of dialogue, we held a Symposium in September that featured a high-profile panel of financial law experts to discuss the key reforms implemented by the Financial Markets Conduct Act 2013. As tradition goes, the panel was composed of past editors and contributors of AULR. Nick Williams (Editor-in-Chief in 1994 and Sub-Editor in 1993) chaired the discussion, followed by presentations from Roger Wallis (Publishing Editor in 1992), Rachel Paris (Contributor in 1999) and Garth Stanish (Contributor in 1993 and 1994). The presenters dissected what is an extensive and detailed legislation into digestible themes, and shared their knowledge and practical advice on adapting to a new regime of financial lawyering with the advent of the Act. We are fortunate to be publishing one of these presentations, by Rachel Paris, as a special feature piece in this edition. The Symposium was followed by the annual Alumni Dinner, where we were honoured with a guest speech by David AR Williams QC, who had written an article for the inaugural edition of this journal in 1967.

We have also included a legislation note on the Financial Markets Conduct Act, jointly written by two contributors, again reflecting the sheer enormity of the legislation. Moreover, Rosa Polaschek has reviewed *Youth Justice in Aotearoa New Zealand: Law, Policy and Critique* by legal academics of the University of Auckland, Alison Cleland and Khylee Quince. For case notes, our Commentaries Editor has endeavoured to select diverse cases that raise significant questions for the particular area of law concerned or are the ‘first of its kind’ in New Zealand in terms of the issues they address. The analyses of *Carr v Gallaway Allan Cook* and *Vinelight Nominees Ltd v Commissioner of Inland Revenue* fall under the former category and the commentary of *Tasman Insulation New Zealand Ltd v Knauf Insulation Ltd* (the Pink Batts case) in the latter.

Behind every production are the people who drive it and there are many people who have supported and assisted AULR in various ways over the course of this year. As always, we are grateful to John Ip and Professor Michael Littlewood for supporting our ideas and advising us on the

administrative and management side of AULR by imparting their experience and practical wisdom. We owe many thanks to Joshua Chang and Jean Yang, our Business Managers, for AULR's seamless administration and accounting this year. Our Advertising Managers, Genevieve Young and Keegan Lopez, have been industrious on the marketing front and we saw particular success with the Alumni Dinner through their effort. A third Advertising Manager, Victoria Henderson, joined the team, whose role concentrated on activating AULR on social media to connect with budding lawyers, graduates and AULR alumni. We appreciate the continued support of the Faculty of Law of the University of Auckland, Bell Gully and Chapman Tripp as well as welcoming our new connections: Anderson Lloyd, TGT Legal, Hudson Gavin Martin and College of Law.

There are certain members of our alumni, who have also had an impact on AULR's operation this year. We are grateful for the continuous enthusiasm of Adam Ross, who willingly ran his annual, intense workshop for the editors. We wish to thank former Editors-in-Chief, Augustine Choi, Thom Clark and Nupur Upadhyay, who have never been more than a telephone call away to give us valuable advice and mentoring. And finally, our editors have devoted countless hours and energy to this edition to ensure the utmost accuracy of the information contained in the articles and to improve the delivery of their message by working on the technicalities and style. They made this edition possible and we cherish their input.

We hope that you enjoy this year's edition and the dialogue it hopes to stimulate through each of the distinctive articles. It has been a journey for everyone involved and we are proud of the final result.

Soyeon Lim and Ye Miao

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