

EDITORS' NOTE

This year's controversy surrounding judicial bias and Justice Bill Wilson of the Supreme Court has led to claims from some quarters that New Zealand's smallness creates special problems for the viability of our core institutions. But amidst this heated debate, and indeed more generally, there has been lamentably little discussion of the benefits of our size as a nation. New Zealanders' tendency to be self-deprecating and dismissive of our own talents may explain this gap in the public discourse. Whatever the cause, there is a need to take stock of what it is about ourselves that we can cherish, and — echoing United States Supreme Court Justice Louis Brandeis's claim about "the curse of bigness" — a need to extol *the virtues of smallness*. Three virtues need to be valued in particular: proximity, open-mindedness and our capacity for change. Each virtue has proven to be of distinctive relevance to the Auckland University Law Review this year.

Proximity can be understood as representing not just a physical nearness to our fellow New Zealanders, but also a way of viewing other people in society as close to us, regardless of disparities in wealth, race, gender or status. For the Auckland University Law Review this year, that proximity has enabled us to host our first Contributors' Symposium, bringing together judges, practitioners, academics and students to reflect on past contributions to the Review. In most countries, students would not be able to e-mail judges in the highest courts and receive a friendly reply the next day. Not New Zealand: we were pleasantly surprised with the response received from high-profile past contributors, and are very grateful to the Rt Hon Dame Sian Elias, Rt Hon Sir Peter Blanchard, Hon Grant Hammond, Hon Anthony Randerson, Professor Paul Rishworth and Adam Ross for speaking on their original AULR articles, and in some cases, travelling up from Wellington for the event. The Symposium was followed by an Alumni Dinner, in which AULR editors and authors sat next to the Symposium speakers and other distinguished members of the legal community. The guest dinner speaker was AULR alumnus, Simon Mount. The special kind of proximity present in New Zealand was also beneficial to us this year in the support that we received from staff at the law school, in particular Dr Michael Littlewood and John Ip, who acted as Faculty Advisors to the AULR. It was valuable to be able to knock on Michael and John's doors, and they often offered thoughtful and wise advice. We are also grateful to Samuel Beswick and Rina See, last year's Editors-in-Chief, who were always close by and willing to answer our many questions. Their proximity to us was always appreciated.

Secondly, New Zealand's size means we have a smaller marketplace of ideas (though we do not lack world-class scholars). As a consequence, we recognise the advantages that a larger marketplace can provide, and invariably look abroad for inspiration, which has made us more receptive

to different ideas and more open-minded in general. This was a point made eloquently by Justice David Baragwanath in a lecture delivered to students at the University of Auckland Faculty of Law before his retirement this year. We hope that this year's articles embody that open-mindedness and originality of thought. The 2010 Review contains diverse contributions. There are articles that deal with the international influences on our law, such as OECD double taxation agreements, international letter of credit contracts and movements to criminalise cartels overseas. Other articles turn to our own history as a source of insight, examining New Zealand's first income tax and the 1950s moral panic that resulted in short-lived censorship legislation. The emerging rights jurisprudence that is developing in the common law world is reflected in contributions concerning the right to life and the UN Declaration on the Rights of Indigenous Peoples (the latter in the Ko Ngā Take Ture Māori section). Finally, three articles, considering self-represented litigants, witness misidentification and parliamentary law-making, address issues of procedure in the civil, criminal and legislative spheres. Such articles draw on the open-mindedness that is a product of New Zealand's size, while also aiming to advance that open-mindedness through the suggestion of constructive solutions to legal problems.

The third virtue of smallness is that change is easier. Perhaps this explains some of New Zealand's 'world-firsts' in the law: the enfranchisement of women in 1893, the passage of revolutionary accident compensation legislation in 1972 and the introduction of a unique statutory bill of rights with the New Zealand Bill of Rights Act 1990. We have tried to build on this culture of innovation and experimentation, albeit on a much smaller scale, with this year's Review. The Review has expanded to accommodate ten articles and eight commentaries. The commentaries include case notes on the *Couch (No 2)* decision, the *Saxmere* saga, and the *Telecom* judgment; legislation notes on prison privatisation and tax changes; and reviews of recent publications on privacy law, directors' duties and assumption of responsibility in contract law. Continuing the theme of change, these commentaries have all been penned by Senior Editors, as opposed to recent graduates, as had become the practice in recent years. This year also saw a stronger push for advertising, driven by our industrious and enthusiastic Business and Marketing Manager, Lucy Luo. We appreciate the continued support of Chapman Tripp, Bell Gully and Minter Ellison Rudd Watts (the latter for judging and providing the annual AULR Writing Prize, this year awarding a joint prize to Hamish McQueen and Ogy Kabzamalov), as well as the new relationships formed with Simpson Grierson, Hesketh Henry and Hudson Gavin Martin. Furthermore, we have initiated a productive collaboration with the Auckland Branch of the New Zealand Society for Legal and Social Philosophy, whereby several of our authors have presented seminars on their articles, and we are very grateful to Dr Richard Ekins for his help with this endeavour. Finally, it is not just easier to initiate change in New Zealand, but to respond to change, and we have also coped well (we

hope!) with the introduction of the New Zealand Law Style Guide, which has replaced much of our former style guidelines.

There is much to celebrate, then, in our legal and national culture, which we ought to bear in mind in response to those who criticise its defects. We need to build on the virtues of proximity, open-mindedness and capacity for change, and remember that these virtues make possible achievements and attitudes that might be unthinkable elsewhere.

We hope that you enjoy the 2010 edition of the Review, which, as always, is the product of the hard work of our superb team of editors. Earlier this year, the Chief Justice spoke at the Australasian Law Teachers Association Conference about the worrying lack of “excitement in the movement of ideas, the sense of the bigger picture and a willingness to engage in it” amongst the legal profession. This Review aims to ignite — or reignite — that excitement among its readers by harnessing the energy of some of the best and brightest students in New Zealand, and capitalising on the country’s virtues of smallness.

Max Harris and Patricia Leong

Auckland, October 2010