A Pakeha Working-Class Mature Male Student's Recollection of His Legal Education: The Waikato Law School Experience

By Stuart Robertson*

This article will hopefully provide a perspective of the Waikato Law School experience that will amuse, and hearten those who worked and studied there, and challenge those sceptics that have all but faded into history. In doing so I endeavour to illustrate how the Waikato Law School's founding principles: to deliver a legal education; to do so relevant to the legal, social, cultural, economic and political context of the time; and to foster a bicultural approach to legal studies, permeated our studies and affected my professional career.

I. How Did I Get Here?

It was not that I did not thoroughly enjoy being an electrician in Hamilton through the 1980s, but underlying that occupation was a passion for the law. It is a misnomer that your genealogy or whakapapa entirely predisposes you one way or the other to a particular vocation. Society, including the state school system, has a lot to answer for. A high school of 1500 pupils leaves little room for proper assessment of one's academic talents or nurturing passion that requires anything other than the minimal investment in students' aspirations. At 15 years of age and with four School Certificate subjects, I left and embarked on an apprenticeship as an electrician with the local power board. This led on to night classes to obtain advanced trade and University entrance qualifications, followed by a New Zealand Certificate of Engineering. It was shortly thereafter that the opportunity arose, coinciding with the opening of the Waikato Law School, to embark on my first passion.[1]

In looking at alternatives to the Waikato Law School, for no other reason than one should always look at the alternatives, it became apparent that a working-class, mature Pakeha male, with minimal university entrance papers, would prove a long shot to obtaining a place in one of the four well established law schools. In fact my recollection was that the life skills that I could bring to the degree held little value to any law school other than the Waikato Law School. As it happened, with those life skills I very nearly had sufficient credit to undertake the degree in three years. On reflection I am grateful to the admissions committee for their decision as this required me to do the full four years. The reason for this acknowledgement is that I undertook a second major in political science, specifically international relations. It also allowed me to take an introductory Māori language course. Interestingly, both complemented my legal education.

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1 In this regard I must give full credit to my wife, Tracey, for reigniting that passion.

So it was that, in March 1992, I began my legal studies at the Waikato Law School. However, I was not a founding student of the School. Those students began by taking an 'intermediate' year at the Auckland Law School, starting at Waikato in their second year, in 1991. That year also saw a first year intake. I was, therefore, in the third intake. As such I benefited from the experiences of those pioneering students, especially in working through the curriculum, new teaching styles and examinations. We are all indebted to those students and I gratefully acknowledge their contribution to the Waikato Law School.

II. What about those Founding Principles?

Of the School's three primary objectives the first is a given. Delivering a legal education can be done over the internet. Doing it well is another issue altogether. It is the remaining two objectives that distinguished the Waikato Law School – teaching law within the legal, social, economic and political context of the time; and developing a bicultural approach to legal education. It should not be overlooked that professionalism and the Treaty of Waitangi were also important tenets of the Waikato Law School.

I am firmly of the view that the wide demographic of both the Faculty and the students added to the success of achieving law in context. The Waikato Law School was an extraordinary melting pot of cultures and backgrounds. Students from many different countries read law at Waikato. Students came from Asia, Africa, North and South America and beyond. We had graduates that were straight from Form 6 (Year 12) to semi-retired civil servants taking on law as a 'late in life' experience. There were a notable number of ex-policemen and nurses and of course an ex-electrician. The richness of this diversity was extraordinary in its ability to test, debate and apply the legal education provided. An example was a classroom debate led, I believe, by Ken Mackinnon on the 1981 Springbok tour. The topic was focussed on the pitch invasion by spectators at Rugby Park in Hamilton. The younger students had no idea of the international implications of that event, some not aware of the event at all. At least one student was an indigenous South African, naturally with her own views. By chance I attended that game as a paying spectator. It made for a thoroughly interesting and relevant debate on the law in context. What requires equal acknowledgement is the abilities and openness of the lecturers to encourage and allow that debate and learning. It always helps to break the ice when a certain female lecturer challenges the class with the visions of her waters breaking in the library of an august North American Ivy League law school - with pictures of past alumni and Supreme Court judges gazing down on her. That same lecturer would embark on a lively debate, at the opening of the year, challenging students as to whether a turkey baster could be held criminally liable for assault. The lecturers and others (such as Anna Kingsbury, then law librarian) led by example in their unique areas of the law, in the research that they undertook and the practical application of that research in areas such as domestic violence, international indigenous rights, national and international environmental law to name just a few. Such examples remain vivid and essential in why we have chosen this profession.

What then of developing a bicultural approach to legal education? The immediate and early exposure to our unique bicultural society and, in particular, the social and legal context instilled at the Waikato Law School was invaluable. I had always thought that, notwithstanding my background, I would have had a better understanding of Māori culture. Born in England, my family emigrated to New Zealand in the late 1960s. As I was only three at the time, all of my schooling was in New Zealand. My parents encouraged learning and I cannot recall anything negative in

relation to biculturalism. The last three years of state school education was at Te Awamutu College (the first High School to have a whare on its campus). My wife attended Ngaruawahia High School. Notwithstanding that we were patently Pakeha, I was surprised at my sheer lack of understanding of Māori cultural, political and legal issues.

It would almost have seemed that education in the 1970s and 1980s had not truly broken free of the policies of the 1950s and 1960s, despite the rhetoric. My state school education had not even scratched the surface of issues in the forefront of Māori leaders' and academics' minds of the time, let alone historical issues. There was accordingly a period of accelerated learning and adjustment at the Waikato Law School to understand why Dame Whina Cooper led her much celebrated hikoi or why the occupations at Bastion Point and Raglan golf course occurred, and for that matter the roots of both stemming back 150 years.

Biculturalism should not be confused with te reo Māori. Neither is it limited to tikanga Māori. It is a frame of mind that for law to be effective it must cater for all cultures. In the 1980s Japanese was the favoured culture to study, moving away from traditional European culture and languages. In the first decade of the 21st century it was clearly Chinese culture. The foundation principles of the Waikato Law School prepare its students for all forms of biculturalism. To have embarked on a legal education without recognising biculturalism and the Treaty of Waitangi would have been a pointless exercise. Law in context must be just that.

For many reasons I chose to take a first year paper in te reo Māori. I am not good at languages, but that was not the point. The point was to gain an appreciation of the Māori language because it, as with any language, is not just written or spoken. It has a relevance to its surroundings and in this regard assisted in better understanding the many law papers which touched on bicultural issues. I was particularly proud of being able to complete an oral presentation to the class on my limited whakapapa. I was fortunate enough that my migration to New Zealand was not in a silver winged bird, but by the waka 'P&O Himalaya'.

Biculturalism also peaked my interest in resource management and Māori land law, both of which I took as final year papers. It surprises me why these two papers should not always be taken together as it almost seems artificial to learn about resource management without it being in the context of Māori land. This in large part may be a reflection on the need for the legislators to better address those issues within the Resource Management Act 1991.

III. What were we like back then ... and how WLSA became WULSA

In preparing this article I found some old papers from my days at the Waikato Law School, including a number of Waikato Law Student Association (WLSA) meeting minutes and accounts. They make for interesting reading. We were all so earnest in our endeavours and fiercely proud.

I am sure far more knowledgeable and qualified contributors will enlighten you on the opposition to the establishment of the Waikato Law School, and its difficult gestation and birth. Such opposition, even ridicule, continued for a number of years and was a challenge not only for the Faculty, but also for the students and fledgling student association. I recall that naysayers were still around in mid 1992, including the then Prime Minister, Jim Bolger. Mr Bolger was complaining of too many accountants and lawyers and not enough engineers. This only brought out the opponents of the Waikato Law School with letters written to the New Zealand Herald and Waikato Times. Of two such articles, written by persons from Hamilton, neither names appeared in a Waikato directory nor were registered voters in the area.

The then Dean, Professor Margaret Wilson, made available to all staff and students an information pack that brought some balance to the debate. This included such documents as Te Mātāhauariki Waikato Law School: A new beginning; draft statement of objectives, School of Law, 1993-1995; excerpt from the University of Waikato Research Report 1991; excerpts from an article in New Zealand Lawyer by Georgina Murray, and excerpts (tables) from the NZ Vice-Chancellors' Committee Report on Graduate Employment in New Zealand.[2] Those of you interested in the historical roots of the formation of the Waikato Law School should read this material.

I am privileged to be able to keep in contact with the Waikato Law School, through supporting the Waikato University Law Students' Association (WULSA) mentoring programme, graduate recruitment and other initiatives. It never ceases to amaze me how far WULSA has come since its early days and how the Faculty has continued to support the students. I was lucky enough to be involved with the formation of the Students' Association and will take you back to what it and we were like back then. This is also a reflection of the lecturers and administration staff and their drive to make the School a success.

The Students' Association had its beginnings in 1991 with the founding year students and the fresh faces of the 1991 first year students. That same year they were recognised by the Waikato Students' Union enabling receipt of minimal funding, albeit we were then known as WLSA. This necessarily involved drafting and adopting a constitution. The challenge was to then be recognised by the New Zealand Law Students' Association. I still have my copy of the first ever issue of the NZLSA magazine "The Case Note".[3] It states in relation to the:

> Waikato Law School Students' Association
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> The Dean of the law school at Waikato, Margaret Wilson, has advised us that at the time of going to print, the law students have yet to decide on the formation of a Waikato Law Students Association.
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> The following is some information from Waikato that was presented at last years NZLSA Conference in Dunedin. Readers may find the unique nature of the Waikato course of considerable interest.
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> "The schools' principles as biculturalism, professionalism and law in context (listed in no particular order). The degree programme is:
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> | LAW I: | Legal Systems |
> | | Legal Method |
> | | Law and Societies |
> | | Four non-law papers |
> | LAW II: | Public Law (Constitutional) |
> | | Public Law (Administrative) |
> | | Jurisprudence |
> | | Three non-law papers |
> | LAW III: | Crimes |
> | | Torts |
> | | Contract |
> | | Property |
> | | Corporate Entities |
> | | Theory and Methods of Dispute Resolution |
> | LAW IV: | Six full year courses from a wide range of choice. |

2 'Information Pack', internal memorandum to all staff and students, from Dean, School of Law, 3 July 1992.

3 Issue #1, June 1992.

> The reason our programme is as above is simply because that's what many see as being valuable in todays and tomorrow's legal profession and other related fields.
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> The students themselves come from a diverse background as do the staff. The atmosphere at the school is one of friendship among the staff and students, of challenge towards completing the degree and of facing such opposition and resistance that exists."

I became involved in the Student Association in my first year (1992) helping out with the few events during the year. By the end of the year I was an active member, largely in part to the passion shown by the founding members. Many of those students were entering their final year (in 1993) and were focussed on studies. Rightly so it was for the 'younger' students to step up and carry on the good work. With the risk of missing names, for which I apologise, here are the people who featured in the Students' Association in those early days, and in no particular order:

Damien Chesterman	Bruce Hesketh
Sandy Ghaemaghamy	Terry Harris
Micheal Irons	Jonathan Hills
Fiona Roberts	Paula Sullivan
Steve Macbeth	Brenda Mailman
Kathryn Elsmore	Simon Jones
Catherine McIntosh	Alex Kupka
Jamie Meikleham	Madeleine Richards
Joel Rendle	*Anaru Hapeta*
Nigel Christie	Leah Whiu
Sarah Parsons	Doreen Ford
Nadia Ellis	Lottie Haines
Rueben Lawson	Terry Hami
Carolyn Wait	Neil Shaw
Bruce Jackson	Nicole Boyle
Joan Forret	Michelle Cassidy
Ewan Eggleston	Kim Boreham
Rhyl Jansen	Anna Rutten
Donna Llewell	Arthur Fagrua

I was 'volunteered' as president of WLSA in March 1993, largely due to the necessity of ensuring the brilliant work of those early students did not go to waste. To re-qualify for Waikato Student Union recognition and grants, and ultimately to be affiliated to the New Zealand Law Students' Association, it was critical that we formally adopted a constitution. The early WLSA meeting minutes for 1993 record, on 17 March, that I was to get together the necessary documentation to secure WSU affiliation, for a meeting to be held in the ironically name 'Layabouts Lounge', the following week. To achieve this, the following individuals were 'elected': president, me; secretary, Fiona Roberts; treasurer, Kathryn Elsmore, and media officer, Brenda Mailman. We also had a committee made up of a number of the names from the table above.

It was at the WSU meeting that I discovered a lack of a constitution. Nevertheless I secured an extension of a fortnight for WLSA to put together a constitution and in the meantime we were affiliated. In almost comic fashion, we held a special general meeting on 7 April 1993, as although we had finally located the 1991 constitution, it was void for lapse in WSU affiliation in 1992. We then hurriedly debated and approved the use of the WSU Model Constitution. In true budding lawyer style we set up a working group to analyse that Model, taking stock from copies of constitutions we had obtained from the Women's Refuge and the Victoria University Law Students' Association. But it was sometime after this, possibly in 1994 or 1995, that the Association's name became the Waikato University Law Students' Association (WULSA).

I have highlighted Anaru Hapeta in the table above. Anaru was the liaison representative of the Māori law students' forum – Te Whakaiapo. This group was set up to cater specifically for Māori law students and ran in tandem with WULSA. It enabled the freedom of te reo Māori and a whanau atmosphere to manage appropriately Māori issues within the Law School environment. We all recognised that neither WULSA nor Te Whakaiapo could or should attempt to be all things for all students. We ran the serious risk of failing in both. We worked together for the benefit of the students having a representative from both, for each year group, and combining efforts for orientation and the hangi event.

The hangi evening was one of two events WULSA put on each year, starting in 1992, the other being the annual Ball. I should pause here and give you some insight as to how fledgling we were at this stage. In taking over the presidency (it sounds far more regal than it was) I was handed a statement of accounts for the period 12 August 1992 to 12 February 1993. Our opening balance was $117.61. Our closing balance (due solely to the profit from the Ball) was $1,512.16. There was a $17.43 discrepancy, which we simply took on the chin. These were not heady days of excess.

The hangi event typified the passion students held to make the Waikato Law School a success. It was a very hands-on event with everyone chipping in with whatever they could offer. It was held at the sports clubrooms, below the Teachers' College, with the hangi pit in the grass area adjacent to the clubrooms. We never made money from the event, but that was not its aim. It was to foster collegiality across the whole student body. It was a real eye opening experience for our international students. I found my copy of the 'Statement of Accounts' for the 1993 hangi event. It cost $542.15 and we raised, through a koha, $276.20, a shortfall of $265.95. I now recall working with Mike Irons the evening before the hangi in his garage, I think in Dey Street, cutting up the pork, mutton and chicken carcasses. On the day, Junior Witehira and I hired a trailer to get more manuka, the drums and hangi stones, and with a few volunteers we dug the pit. I am not sure that WULSA runs such events nowadays, or if they do, whether it would be so hands-on. I am not suggesting they have gone all frappuccino and croissant, but these were 'old school' times.

The annual Ball was a slightly different affair. It began as a Law School dinner, strongly supported by Professor Margaret Wilson and the Faculty, with invitations going to all local practitioners and judiciary. I understand a dinner was held in 1991, but it was in 1992 that the first Ball was held. This was at the Te Rapa Racecourse and our guest of honour/speaker was David Lange. Despite a ticket price of $40 it was a huge success with 160 tickets sold. It was a real honour meeting and listening to David Lange. In 1993 we again held the Ball at the racecourse with our guest being Judge Coral Shaw, then sitting in the Henderson (later renamed the Waitakere) District Court. In 1994 I was the treasurer of WULSA. That year's Ball moved to the Hamilton Gardens Pavilion, with guest speaker cartoonist and political commentator, Tom Scott. I believe in my

final year (1995) the venue may have moved again, this time to the Le Grand Hotel, but I cannot recall the speaker. I was very fortunate to attend this year's Law School Ball, and what an amazing event. It was held at the Performing Arts Centre with a 'Cluedo' theme. Some 360 guests were treated to a very polished and professional event that pales in comparison to the first Balls that I was involved in. Again a real tribute to WULSA.

IV. Staff and Others

In 1993 I was a student representative on the Board of Studies. This was a fascinating experience, not only because of the topics covered (to which I am sworn to secrecy), but in the almost military, that is efficient, way they were conduct by Professor Margaret Wilson. If only our Partners' meetings were conducted so efficiently.

It was through the Board of Studies that I first met the Honourable Robert Fisher QC, then a High Court Judge sitting in Auckland. The tenet of professionalism I mentioned above, is illustrated here. I now meet Mr Fisher as a barrister, arbitrator and mediator, and through the Arbitrators and Mediators Institute of New Zealand, of which we are both members. Not surprising Mr Fisher does not recall meeting on those few occasions some 17 years ago. But, I am sure if I had been anything other than professional in my dealings with the Board and Mr Fisher I would be remembered, but for the wrong reasons. Professionalism means many things, importantly courtesy and respect, even in the face of great stress (litigation or a Board of Studies meeting).

Of course any mention of the early years of the Waikato Law School can not overlook our founding Dean, Professor Margaret Wilson. Professor Wilson's fierce determination was often misinterpreted by students as being unapproachable. While it is true that it was unwise to fall foul of Professor Wilson, the fact was she fully supported the students and their efforts to make the Waikato Law School a success.

I take the opportunity to acknowledge a number of supporters from outside the School. First is David Wilson QC, now Judge Wilson QC, sitting in the North Shore District Court. David was a great supporter of the competitive mooting programmes at the Waikato Law School. In 1995 he set up the Wilson prize for best individual mooter, chosen from the finalists in the Penlington/Hammond mooting finals. This leads nicely to introducing Justices Penlington and Hammond. Justice Peter Penlington (now retired) was at the time the resident High Court judge in Hamilton. His Honour Justice Grant Hammond, former judge of the Court of Appeal and now President of the Law Commission, had at the time very recently stepped down as Dean of Law at Auckland to take a position as a High Court Judge. Together Justices Penlington and Hammond conducted the High Court trials in Hamilton. More importantly for law students, they established the Penlington/Hammond Trophy for the best competitive mooting team. The JAFA equivalent being the, lesser, Stout Shield.

I was fortunate enough to compete in the finals of the mooting competitions in 1994 and 1995, being in the winning team for both years. I also won the inaugural Wilson Trophy in 1995. The value of this support was not immediately obvious to me or the other students but to the Faculty, local practitioners, other law schools and prospective employers it was extremely important. Not only did it foster excellence in mooting (legal research, written submissions and oratory skills), it led to participation at national and international law students' conferences and competitions. It also provided an influential stamp of approval for the Waikato Law School. It was therefore very

pleasing to see reported recently that Justice Hammond, hailing originally from Te Awamutu, gave a speech at a function to commemorate 20 years of the Waikato Law School.

Before moving on I should also recognise that the Faculty staff regularly went above and beyond the call of duty to assist students. Again apologising for the many names I am sure to miss, those that stood out for me included Bede Harris, Paul Hunt and Tim Blake for mooting, Christine Hickey for student/staff Liaison, and Ruth Busch for the Family law moot and just for being Ruth Busch.

There were also sad and tragic events that occurred during my time at the Waikato Law School, two of which highlighted for me the high esteem in which the students held members of the Faculty. I will only recount one of those events. I mentioned above taking Māori land law in my final year (1995). This was in the second semester with Angela Rogers. As with all subjects, if not more so with Māori land law, there was a sense of whanau. I am not being trivial in this remark. While the class had a real multicultural feel to it we were all part of a community. At that time my first child, my daughter, was six months old and at times I would bring her to the University Crèche or to classes. After two attempts in the L Block lecture theatre I made other arrangements. However, in Māori land law, once a bottle had been consumed, she was whisked away by Angela Rogers who proceeded to finish the lecture/discussion while carrying around my daughter.

Tragically, over the Christmas/New Year break of 1995/96 Angela was killed in a road accident. She was survived by her husband and young son, but her unborn baby did not survive the crash. I returned to the Law School early in 1996 for her memorial service, held in the quadrant. It was a very moving occasion with waiata, karakia and speeches from staff and students alike. I still recall it being a beautiful Summer's day and so many people that the quadrant was overflowing. Sad as it was, I must also share a connected story which typifies the diversity of the student body. At the memorial I sat under the marquee next to a tall older woman. Throughout we exchanged the occasional pleasantry and one or two tears were shed by my neighbour. It was not until I was leaving that I realised my neighbour was in fact a mature male student (a year or two behind me), who had made the courageous decision to live, and dress, as a woman. Without in anyway belittling that decision, the fact is you must always find something in life to make you smile, even at the saddest of times.

By the end of my tenure as president and then as treasurer (1994), WULSA had grown in leaps and bounds. I cannot take any credit for this as it came from the huge efforts of everyone at the School. We could only have achieved this from the base created by the founding students. In my President's letter to NZLSA in July 1993, for their magazine 'Casenote', I recorded that the close co-operation between students and staff had resulted in:

- Student representatives, both Māori and non-Māori
- Staff/student liaison group
- Student representation on:
  - Student literacy
  - Māori language policy
  - Computer laboratory
- Staff/student support for student groups:
  - Māori
  - International
  - Gay/lesbian
  - Feminist.

I would note two interesting points. The Waikato Law School was the first law school to have a dedicated computer laboratory. Course work included online research and computer skills. Remember, this was 20 years ago. Just before entering the Waikato Law School I had spent two and a half years as a hardware engineer with IBM. Notwithstanding that the laboratory was stocked with Apple/Mac's, this was a bold move by the School.

The Māori language policy is very interesting and a tribute to those founding students. As I recall (beware the urban myth), a group of Māori students from the founding and/or second intake, chose to answer certain of their exam papers in Māori. Even the Waikato University establishment had difficulty dealing with that issue. But as with all radical acts, it was eventually resolved and I understand all involved learnt valuable lessons. Rather than bury the issue, the Faculty engaged with the students and kept a dialogue going on how best to address this for the future. In my view this typified the School's founding principles of professionalism and biculturalism, both for the Faculty and students. Te reo Māori had been enshrined as an official language of New Zealand in 1987,[4] but there was still resistance, and ignorance, to its widespread use outside of kohanga reo pre-schools and kura kaupapa primary schooling. The principle of professionalism arguably instilled an obligation on those students to take the action they did. In private practice, professionalism brings with it obligations to assist positively in the upholding of the rule of law and to act steadfastly in the best interest of your clients. The Waikato Law School's tenet of biculturalism ensured that the right to answer exam questions in te reo Māori was embraced, rather than swept under the carpet.

V. Where did I end up?

Waikato graduates are literally everywhere, which in itself is a huge achievement. True to its diversity, there is no expectation at the Waikato Law School that you will come out with your degree to take a common or single career path. For my part, I wished to practice law in Hamilton with ideals of being a champion for the underprivileged, but essentially adding something positive to society. There were no illusions of LA Law, Boston Legal or The Good Wife. Late in my second year I wrote to all the law firms in the Waikato region looking for a Summer clerkship. Not surprisingly, I did not find work. As a result, the following year (1994) I championed my fellow third year students to take on the Summer clerkship programme for positions in the large Auckland firms. At that time the graduate recruitment programme was rather loose in its organisation and surprisingly we got little information from the law firms or NZLSA.

I am now embarrassed to admit that I was surprised at how successful we were carpooling several times a week to cocktail functions in those monolithic tower blocks, interview panels and post-offer smoozing. But we did our School and fellow students proud with the numbers we achieved. The collegiality of that group extended to leasing student accommodation for the Summer and working for all of the top law firms in Auckland. I was very fortunate to have worked at Kensington Swan within their fledging Auckland construction law practice. Kensington Swan has similar values to the Waikato Law School. Waikato graduates are now sought after for Summer clerk and law clerk positions with all the large law firms and throughout New Zealand. Nevertheless, each year's students need to chase every opportunity for placement in these positions.

Why then move to Auckland? The reality is that the major law firms are in Auckland and Wellington, if that is the path your career is to follow. By March of the last year at law school,

4 Māori Language Act 1987 (No 176).

those same firms are interviewing for law clerk positions for the following year. If you were lucky enough to have Summer clerked, you may have already been offered a full time position. The alternative is to decline that offer and hope that at the end of the year a local firm would have a position and hire you. I was left in that position. However, having Summer clerked with Kensington Swan, it was an easy decision to make. I had become a 'Queen Street' lawyer.

Fifteen years on, this ex-electrician is now a partner in one of the top full service law firms in New Zealand, with the largest specialist construction law practice involving national and international projects and clients, and specialising in building, construction and infrastructure law. How then does the legal education at Waikato Law School contribute to such success and how can it be relevant in daily practice?

That is a difficult question to answer, simply because the founding principles of the Waikato Law School are so relevant to a successful practice that they cannot be neatly separated from the whole. Succeeding in a commercial legal practice requires openness to new concepts, new ideas and people. Whether it is a family home, high rise apartment building, waste water treatment plant, motorway extension or a subdivision, each call on all the principles central to the Waikato Law School experience.

None of these examples can be separated from the legal, social, cultural, economic and political context of the time. For example, I was lucky enough to advise a tender consortium on the State Highway 1 extension to the last section of the Albany to Puhoi project (Alpurt B2). Rather than simply act as a traditional legal advisor, I was part of the tender team. That project had to consider significant environmental issues, consultation with iwi and local land owners. Rather than paying lip service, that process resulted in a number of innovative ways of dealing with unique areas of the environment, vegetation and fisheries. It also resulted in a significant change in design of the road, from a huge cut in the most northern hill, to the twin tunnel option. This project also involved the first toll road in the Auckland region since the removal of tolling from the Auckland Harbour Bridge in 1984.

In dealing with the litigation from the leaky home crisis, I often act for homeowners. This provides its own challenges in being able to advise professionally your client while understanding the unique personal pressures the client is often under. It is not simply a question of providing bland legal advice. Neither is your client a typical middle class Pakeha family. Many homeowners have just lost their life savings, their health has suffered directly from the leaks, and indirectly from the financial and other stresses. The law continues to develop in this area at times consistent with the public's expectations of accountability, but sometimes contrary to those expectations. In either case, the High Court and Court of Appeal look to apply the law in the context unique to New Zealand. This is illustrated none more so than in the area of whether a duty of care is owed by Councils to owners or subsequent owners of leaky buildings. Richardson J's analysis in the early case of *Invercargill City Council v Hamlin*[5] is an excellent example. In the Court of Appeal His Honour lists six distinctive and long-standing social, legal and economic factors in New Zealand that were to be used to decide whether the Council owed the Hamlins a duty of care in undertaking its regulatory and inspection roles.

5 *Invercargill City Council v Hamlin* [1994] 3 NZLR 513, at 524.

The question of whether Councils owe a duty of care for leaky buildings has traversed motels,[6] schools,[7] commercial buildings,[8] apartments under a hotel management arrangement[9] and aged care facilities.[10] The Building Industry Authority (BIA) has escaped any liability for approving untreated timber and monolithic cladding,[11] and most recently for its periodic reviews of a Council's processes for ensuring inspections of building works were adequate.[12] Each decision was made in the legal, social, economic and political context of the time. I do not envy the judges in our High or appellate courts.

I have often been asked of all the cases that I have acted on which was the most rewarding. There are two. Early in my career I worked with two partners to manage and act for 90 construction clients, mostly mums and dads, in 23 sets of High Court proceedings. The claims were against a major multinational telecommunications company and topped $180 million. After three and a half years, and the first court ordered judicial settlement conference (which itself lasted a week), the claims were settled. One client died; three clients suffered heart attacks; one client miscarried, and three marriages broke up before the case was resolved.

The other case involved the daughter of one of those clients. She had guaranteed a girlfriend's car loan to a less than reputable, and now defunct loan company. The amount was $15,000, which amounted to all her hard-earned savings for her OE. I was able to provide not just legal, but also practical, advice as to what the implications of the guarantee were for her. I was also able to quickly extract her from that guarantee. No doubt I could have adequately provided legal advice in both these cases with a law degree from any of our Universities, but I believe I could not have provided the required quality of legal service without my legal education having its foundation in the Waikato Law School's principles.

While neither case had a direct bicultural element, the 90 clients came from a number of cultures, backgrounds and age groups. Legal education in a bicultural environment enables you to consider and apply the law in the context of the particular client's needs. Not everyone or every culture views the law in the same way, or has the same expectations as to how it is to be applied. They also have differing expectations on what the legal process can provide as a solution. The ability to ask the right questions and accept those differing expectations makes you a far better advisor. In turn this enables achievement of an outcome more closely aligned to your client's expectations.

Professionalism is always important. While you can provide support for your client through your legal practice, your role is foremost as an independent legal advisor. This can be very challenging at times. It was often the case that I had to be quite firm with particular clients so as to avoid them prejudicing their case, or worse, committing some breach of court rules or statute. You also have a duty of confidentiality. Despite the common interests within such a 'class action', that

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6 *Three Meade Street Limited v Rotorua District Council* [2005] 1 NZLR 504 (HC) and *Te Mata Properties Limited v Hastings District Council* [2009] 1 NZLR 460 (CA).

7 *Mt Albert Grammar School Board of Trustees v Auckland City Council & Ors* HC Auckland, CIV 2007-404-4090, 25 June 2009, Asher J.

8 *North Shore City Council v Body Corporate 188529* [2010] CA ANZ ConvR 10-020; *O'Hagan v Body Corporate 189855* [2010] CA NZCA 65.

9 *Body Corporate 207654 v Chen* HC Auckland, CIV 2007-404-4037, 11 November 2009, Potter J.

10 *Kerikeri Village Trust v Nicholas* HC Auckland, CIV 2006-404-5110, 27 November 2008, Andrews J.

11 *Attorney General v Body Corporate 200200* [2007] 1 NZLR 95.

12 *Attorney General v North Shore City Council* [2010] NZCA 324.

duty cannot be overridden, certainly not without express instructions. Fundamental is also the manner in which you interact with opposing counsel and, where a party is unrepresented, other parties. All these elements of professionalism ensure the smooth operation of the law and indeed provide your clients with the best legal service.

That legal service also involves providing the best solution to your client's problems. In both cases it was, to a greater or lesser extent, critical to examine the political, social and economic context in which the issue/dispute arose and the 'environment' in which it could be resolved. For the personal guarantee issue those contextual elements were at a very low and somewhat personal level. For the class action these were at a national and international level. For example, the original impetus to enter the contracts with our clients arose from the moves of an independent telecommunications operator entering the New Zealand residential telephone market. They were installing high speed (broadband capable) cabling to residential properties in Wellington and Auckland. This was a direct threat to the local loop monopoly held by Telecom New Zealand, but with the added benefit of high speed data cabling that could support cable television. The Government was not yet ready to require Telecom to 'unbundle' that local network. Telecom (although I should clarify that Telecom was not the 'other party' nor had it any involvement in the proceedings) chose to meet the competition with its own high speed cabling project, and it was our clients who were eventually contracted to install it. Unfortunately for our clients, three things occurred almost simultaneously:

- The independent operator was slowing down, and eventually it stopped its installation of the high speed cabling. The competition was no longer there.
- The defendant had failed to assess properly the costs for our clients to install the cabling to residential properties. It was not uneconomic to continue, and
- ADSL technology was being developed that would allow transmission of broadband over the existing copper local loop. There was no longer a need for the new cabling.
- Understanding the issues in this context also impacted on the desire and ability of all the parties to resolve the disputes. Even this had its twists with the case finally being resolved outside the court process.

In supporting initiatives involving Waikato Law School it is very rare that I meet a student who is anything but well grounded, talented and passionate. The adherence to the delivery of legal education in the contextual basis of the time and with the underlying bicultural approach differentiates Waikato students and graduates in sometimes subtle ways. This results in the ability to apply law in context to peoples' needs, to the reality of doing business with the world, and more importantly being able to truly understand one's client. Ivory tower legal education completely misses the point that law is about society and its real application.

That background has shaped a number of decisions that I have made and cases that I have taken on through my 15 years in practice. I seem to favour the underdog. Where possible I undertake the occasional worthy cause on a pro-bono basis and when I was an employed solicitor this usually flew under the radar. I regularly present seminars at no cost for various industry organisations and lately for the New Zealand Law Society. I recently co-authored the NZLS' submissions on the Building Act 2004 review.

Presenting seminars and assisting with submissions are particularly rewarding. They bring into play many of the Waikato Law School's principles. With either activity the real benefits are gained when the subject matter is presented, applied or challenged in the full New Zealand context. For example, the current review of the Building Act 2004 has its roots in the changes intro-

duced under the Building Act 1991 (and Building Code 1992). Those earlier changes eventually resulted in the leaky home crisis. The current review is not what it seems. Rather than bringing a more balanced approach to building regulation, streamlining and making those best able to bear the risk take that responsibility, the review is an exercise in significantly reducing Council input into the consenting and inspection processes. The objective is to reduce Councils' direct costs and future liability. It will not go unnoticed that a number of these changes will be in place by next year – an election year. Hidden within the review document[13] is a clear desire of the Minister/Department of Building and Housing, to introduce proportionate liability. Such a move having been rejected twice by the Law Commission, it is quite extraordinary that is being considered as a side issue within the review.

The skills and principles on which the Waikato Law School is founded enables me take a wider approach to the law, beyond the simple words in statutes and judicial decisions. Educating industry groups requires that wider approach. Aiding the legislature and its select committees to consider properly new and amending Bills requires the same broad approach.

I was proud and humbled to be asked to contribute to this commemorative edition of the Waikato Law Review. In closing I challenge all the current students to understand and champion the School's principles. I ask the present and past Faculty members to celebrate their achievements in making the School and its graduates what we are today. Finally, I encourage all alumni to reflect on their own experiences at the Waikato Law School and to continue to support the best law school in New Zealand.

13 'Cost-effective quality: next generation building control in New Zealand', Building Act Review discussion document February 2010 (Department of Building and Housing, Wellington, 2010).