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FIFTY YEARS OF NEW ZEALAND FAMILY LAW
BILL ATKIN, JOHN CALDWELL, MARK HENAGHAN AND PAULINE TAPP

This collaborative article examines the significant changes to New Zealand family law during the last 50 years. The article canvasses three areas that have seen substantial changes during this time – what constitutes a legal family; changes in the exercise of judicial discretion in family law cases involving children; and the evolution of the financial and property consequences of family breakdown. The article initially focuses on the law's reaction to the changing New Zealand family and the important milestones in this legal evolution. This is accompanied by a detailed, historic analysis of the difficulties in deciding what is "best" for children involved in family law disputes and the degree of judicial discretion that should be exercised during this process. The article concludes by chronicling the significant legislative changes since 1963 concerning the financial implications of relationship breakdown and how this affects the children involved. This article illustrates how far New Zealand has come in the last 50 years regarding the increased legal recognition and protection of a wide variety of familial relationships. However, it argues that the recent debates surrounding adoption and marriage equality indicate that there is still a way to go before the law treats all New Zealand families equally.

ACADEMICS AND LAW REFORM
JOHN BURROWS

Academics can make a vitally important contribution to law reform. They have expertise in research, and the subject-matter understanding necessary to propound principled solutions. However they cannot act alone. Law reform is a team activity:depending on the project in question, the academic contribution may have to be supplemented by the expertise of other disciplines, and the input of many people whose experience is necessary to gauge the practical effect of the reform proposals. The academic contribution in New Zealand has taken several forms. Published writings are always a first port of call for a reform body. Academics may also be invited to join advisory committees or steering groups, or be asked to peer review drafts. Sometimes they are appointed to law reform bodies such as the Law Commission. But in two respects their involvement has sometimes been less than optimal. Due to constraints of time and research expectations they do not make as many submissions to issues or discussion papers as would be ideal. Nor has New Zealand always had quite such close and continuing institutional links between the Universities and law reform agencies as is evident in some other jurisdictions. Thought should be given to how the relationships might be strengthened.

JUDGES AND ACADEMICS IN NEW ZEALAND
GRANT HAMMOND

What should be the relationship (if any) between judicial and academic writing in New Zealand? Are there in fact "two solitudes"? This article suggests that there are not in the New Zealand, and that is all to the good. The piece then tracks the importance academic writing has had for the judiciary in this country. It undertakes a close examination of the use of academic writing by the Supreme Court of New Zealand since its inception. It then traverses some problems for the future; in particular, the unhappy pressures to some extent distancing academic writing from contemporary professional problems.

TAWHAKI AND TE TIRITI: A PRINCIPLED APPROACH TO THECONSTITUTIONAL FUTURE OF THE TREATY OF WAITANGI
CARWYN JONES

Over the last 35 years, public discussion around the Treaty of Waitangi has been dominated by claims and settlements. Generally, there has been a focus on claims to land and natural resources based on historical breaches. But the Treaty has always been more than an instrument for dealing with claims against the Crown. With the deadline for lodging historical claims with the Waitangi Tribunal now passed, and the government ambitiously aiming to have all historical claims settled by 2014, it is timely to consider the constitutional significance of the Treaty beyond the historical claims and settlement processes. Treaty principles have played a vitally important role in the claims process to date, but, this paper argues, they ought not to be the foundation of a discussion about our constitutional arrangements because they do not allow for a truly principled approach to the constitutional future of the Treaty. A discussion about the constitutional place of the Treaty should instead be framed by principles that underlie the Maori legal system and be grounded in the Treaty as understood in its indigenous context.

NEW ZEALAND AND INTERNATIONAL LAW: 1963–2013
KENNETH KEITH

This paper discusses the ways in which the New Zealand legal community has become increasingly receptive to developments in international law over the 50 years of this Review. It also indicates ways in which New Zealanders have been givers as well as receivers of international law. The paper provides that account against the background of the major changes that have occurred in the world and in New Zealand's place in it over that time – changes which have brought extensive changes to international law, its institutions, and its impact on national

law, policy and practice. By reference to the law of the sea, the law of trade and commerce, and international human rights law, including labour rights, it considers the role of government lawyers, lawyers in private practice, judges and academics. The paper concludes with remarks about the need for a wider involvement of New Zealanders in international law-making processes, and, amidst what appears to be breakneck speed, the critical importance of basic values and principles, including ethical standards, and good legal skills.

FAIR CRIMINAL TRIAL AND THE EXCLUSION OF "UNFAIR EVIDENCE"

DON MATHIESON

There are two recognised discretions to exclude evidence in criminal trials. There was no additional discretion at common law to exclude evidence the probative value of which exceeded any illegitimate prejudicial effect, and which had not been unfairly obtained, simply because it was "unfair". In any event such a vague discretion, if any judicial support could be found for it, did not survive the Evidence Act 2006. Once the inference can be drawn that a particular provision or set of provisions was intended to be comprehensive, judges must treat any previously existing common law as excluded by the Act. A "general discretion" does not exist and it is sound policy to refuse to recognise the same. The Supreme Court is urged to rid us of the opposite view espoused by the Court of Appeal in a 2012 decision. Fair trial" needs elaboration: this underanalysed concept applies to the procedure(in the broadest sense) of a criminal trial,not to various issues that arise from the way police investigations are conducted, evidence for future use collected and statements obtained – issues which are comprehensively dealt with in ss 28–30 of the Act.

"THE LAW AS IT SHOULD BE" WHEN PROSECUTING SEXUAL OFFENCES: THE CONTRIBUTION OF LEGAL ACADEMICS TO LAW REFORM

ELISABETH MCDONALD AND YVETTE TINSLEY

Since the 1983 Rape Study there has been a significant amount of research aimed at identifying and changing aspects of criminal justice processes which impact unfairly on victims of sexual offending – especially those who have not been victims of what is referred to as "real rape". As 2013 marks 30 years since the first comprehensive New Zealand review of rape law and practice, it is an appropriate time to consider how academic research has influenced the way sexual cases are prosecuted, and how past and present academic evaluation of legal responses to sexual violence can guide and inform future reform. In this piece the authors reflect on their recent experiences of contributing to the law and policy debate concerning the prosecution of sexual offences and consider the importance and the challenges of engaging with "law as it should be".

CONSTITUTIONAL REFLECTIONS ON FIFTY YEARS OF THE OMBUDSMEN IN NEW ZEALAND

GEOFFREY PALMER

This paper explores the Ombudsmen after 50 years in New Zealand within the context of New Zealand's rather odd Constitution. It is odd because there is no upper house, no entrenched written constitution, no judicial review of legislative action, and many of the arrangements flow from constitutional conventions not law. New Zealand has a strong tradition of parliamentary supremacy. The New Zealand Constitution is highly fluid and elastic. It is like a living, breathing organism that mutates. This may be thought of as a somewhat unstable foundation for the Ombudsmen but this has not proved to be the case. The institution of the Ombudsmen has become an established and settled part of the constitutional landscape in New Zealand. The paper discusses the original vision of the Ombudsman's Office and considers its performance against that original idea. It explains the institution's role and its relationship with both Parliament and the Executive. It covers the other functions that the Office has been given alongside its original Ombudsmen role, and contemplates the potential threat for the Office to be crowded out with a proliferation of complaint agencies. It also considers the potential for the Office itself to draw complaint resolution functions away from MPs, when such a function has been a traditional part of MP roles with regard to their constituents. The latter half of the paper turns to the Official Information Act and raises the question of whether this jurisdiction should have been added to the functions of the Office. It discusses the recent Law Commission report into official information legislation and sets out an overview of the recommendations in that report, responds to and critiques the Government's response, and lays out an alternative potential option to modernise and streamline official information legislation while reducing the additional workload of the Ombudsman's Office and ensuring it can focus on its core constitutional and human functions.

FIFTY YEARS OF LEGAL EDUCATION IN NEW ZEALAND: 1963–2013 WHERE TO FROM HERE?

MARGARET WILSON AND ATH SMITH

The article examines the principal changes that have occurred within legal education in New Zealand since 1963. It explores the tensions that have existed throughout the period, arising from the perceived need for the provision of an education that prepares students for legal practice on the one hand, and which at the same time satisfies the demands of the university community (and increasingly governments) that legal scholars should engage in original research that (inter alia) contributes to New Zealand's economic development. The pressures that are inherent in

these competing demands are exacerbated by the fact that there has been a huge increase in the numbers of students wishing to study the Law at university level. The critical role of the Council for Legal Education (whose role and function changed considerably during the period) in mediating these pressures is explained. An attempt is then made to sketch the likely impact of the most recent government attempts to ensure that the sector is providing value for money.

A LOVING EXCAVATION: UNCOVERING THE CONSTITUTIONAL CULTURE OF THE MAORI DEMOS

MAMARI STEPHENS

In 2000 Professor Alex Frame suggested that, rather than build the perfect edifice for the New Zealand constitution, we ought to engage in a scholarly process of 'loving excavation' in order to determine the critical values and institutions of our society for our present and future needs. Subsequently, Dr Matthew Palmer in 2007 identified pragmatism, egalitarianism, and authoritarianism as three major cultural values in New Zealand constitutionality. This article argues that there is also a distinctive and constantly evolving Maori constitutional culture with values directly relevant to the New Zealand constitution. This culture is discoverable by way of textual and linguistic evidence for 19th and 20th century Maori political practices. This paper presents some limited linguistic evidence about the certain highly prominent terms that have a notable presence in a set of constitutionally relevant Maori language texts derived from the Legal Maori Corpus, a large body of Maori language texts from between 1828 and 2009. Using such primary information and as further secondary research, this article identifies particular Maori attitudes as to how the exercise of civic decision-making ought to be carried out.

SCIENCE IN THE CRIMINAL COURTS: TOOL IN SERVICE, CHALLENGE TO LEGAL AUTHORITY OR INDISPENSABLE ALLY

YVETTE TINSLEY

There is considerable challenge for the courts in generating admissibility rules in court that are robust, clear, and adaptable to scientific advances and novel disciplines; and for forensic science to ensure that accreditation and standards are upheld within their own professions. While there are many detailed issues to be usefully considered with regard to individual disciplines, meaningful specific change should not be undertaken without first addressing the basic problems underpinning particular concerns. This article examines the law-science relationship, focusing on law's conception of science, that conception's impact on legal decision-making, and how we can apply lessons learned to our use of science in the courtrooms of the future. Innovations to address the problems accompanying law's reception of expert scientific opinions in criminal proceedings are assessed. The article concludes that no panacea is available but meaningful improvements can be made.

THE BILL OF RIGHTS IN ADMINISTRATIVE LAW CASES: TAKING STOCK AND SUGGESTING SOME REASSESSMENT

HANNA WILBERG

More than 20 years after the enactment of the New Zealand Bill of Rights Act 1990, reliance on it in administrative law cases is still not commonplace. Nonetheless, commentators have long presented the approach to be taken to the Bill of Rights in this context as clear and settled. The Bill of Rights substantively constrains the exercise of discretionary powers, and where powers have been exercised so as to infringe rights, it is for the reviewing court to decide whether this can be defended as a justified limit in terms of s 5. However, a close look at the full range of available case law reveals a much less settled picture. While authority in favour of the commentators' approach can be found, two surprisingly different approaches have also been used. One approach appears to treat the Bill of Rights as no more than a mandatory relevant consideration, while the other treats it as relevant only to the interpretation of statutory powers. This article surveys these apparently diverging approaches, attempts to make sense of them, and suggests a possible reassessment of the commentators' approach. The variant approaches in the cases may be less radically different than they appear – they may be interpreted as disagreeing with the commentators' approach only as to the respective roles of the court and the primary decision-maker. On this issue they may hold lessons that are worth further consideration.