

NZULR ABSTRACTS
Vol 31, No 4 December 2025

**POLITICS AND TAX POLICY DEVELOPMENT: REVITALISING THE GENERIC TAX POLICY PROCESS
DURING A TREND OF POLITICAL EXPEDIENCY**

GAIGE NORTJE

This paper examines the relationship between politics and tax policy development in New Zealand. Specifically, it reviews the literature on recent developments in New Zealand's tax policy development framework, the Generic Tax Policy Process (GTPP), building on the research of Professor Adrian Sawyer of the University of Canterbury. The review highlights that the government's recent preference for political expediency over proper tax policy development has led to the process becoming increasingly degraded. The paper then explores the key factors contributing to this trend, concentrating on the relationship between politics and the technical design and implementation of tax policies. Ultimately, the paper makes recommendations to encourage not only a revitalisation of the GTPP, but also reinforcement of it. This is worth doing because, notwithstanding that politics is necessary in developing tax policy, undue political influence can give rise to many problems. Therefore, consideration of politics' appropriate role in the GTPP may assist in illuminating key sticking points and lead to better legislation. Also, given that it seems likely that the government will continue to subordinate the GTPP to its political aims, it might be useful to propose mechanisms that would help enforce the framework, preventing its further degradation.

**“THE KING IN ALL HIS CABINETS”: CROWN AND EMPIRE
IN TE HEUHEU TUKINO V AOTEA DISTRICT MAORI LAND BOARD**

KATHERINE SANDERS

The report of the Judicial Committee of the Privy Council in Te Heuheu Tukino v Aotea District Maori Land Board [1941] NZLR 590 is today well-known for the finding that rights under the Treaty of Waitangi have no effect in New Zealand law, save where they are incorporated by legislation. This article asks what Te Heuheu and his supporters hoped to achieve in the litigation, and considers ideas of Crown and empire underpinning that strategy. It argues that debates about the legal and constitutional status of the Treaty were framed by the politics of the 1940 centennial of its signing. The article concludes by characterising “The Memorial of the Maori People of New Zealand to the Privy Council”, He Pukapuka Whakamaharatanga, as a means of marking the history of the Treaty and its breach at the Centennial. It argues that the Memorial served both to highlight injustice, and to reassert a vision of a political order in which the promises of the Treaty would be fulfilled.

**SYMPOSIUM IN HONOUR OF EMERITUS PROFESSOR STEPHEN TODD,
UNIVERSITY OF CANTERBURY**

**THE LAW OF TORTS IN AOTEAROA NEW ZEALAND:
LOOKING BACKWARDS, LOOKING FORWARDS**

INTRODUCTION: PROFESSOR STEPHEN TODD

HON JUSTICE CHRISTINE FRENCH

WHAT ITS CONFRONTATION WITH TIKANGA SHOULD TEACH TORT LAW ABOUT ITSELF

ALLAN BEEVER

Though it examines tikanga to a limited extent, this is primarily an essay about tort law. It is about our failure to understand this law and how this will affect that law's confrontation with tikanga. If we think of the future as involving a kind of “conversation” between tort law and tikanga, then we have a big problem: while those speaking for tikanga have much to say that is informative and important, on the tort side of the fence our message is almost vacuous. That second point is often made, but it needs at last to be properly acknowledged and its consequences squarely faced: Tort law's confrontation with tikanga ought to reveal to us how hollow our understanding of tort law has become, a revelation that should lead us to rethink that understanding and begin again.

**POLITICS, PRESS “FREEDOM” AND THE ABSENCE OF DEFAMATION LAW REFORM
IN NEW ZEALAND 1845-1910**

JEREMY FINN

This article explores an unusual aspect of the history of defamation law in New Zealand, the place of qualified privilege for reports of political issues, and the influence of political concerns as a reason for an absence of law reform. It outlines the historical development – or lack of it – of defamation law in New Zealand between 1840 and 1910.

STATE LAW AND “TIKANGA-BASED LOSS” IN SMITH V FONTEIRA

MARIA HOOK AND METIRIA STANTON TUREI

In Smith v Fonterra Co-Operative Group Ltd, Mr Smith, of Ngāpuhi and Ngāti Kahu, claims that the defendants are tortiously liable for climate change harm caused to his whenua, wai and moana in coastal Northland. In the context of an application for strike-out of the claim, the Supreme Court considered that “addressing and assessing matters of tikanga” at trial could not “be avoided” insofar as Mr Smith pleaded tikanga-related or tikanga-based harm. However, the Court did not engage with the question whether it was appropriate for tikanga to apply as law or as values – a distinction drawn by Te Aka Matua o te Ture | the Law Commission in He Poutama. Mr Smith's claim has been advanced on the basis that tikanga would inform the claim as values rather than a source of legal rules to be applied on their own terms.

The purpose of this article is to examine the potential implications of this choice. It draws on previous work that compares the distinction between “law” and “values” to a similar distinction, made in a different context, between the conflict of laws and harmonisation. Based on this analysis, it identifies the following question as a question that may need to be answered in Smith v Fonterra: is the development of tort law to recognise claims for tikanga-based loss the best way forward, or would it be better to apply tikanga as law? This is not a question that can be avoided on the basis that Mr Smith decided to rely on the application of tikanga as values. If the better outcome for tikanga-based loss claims is for tikanga to be applied as law, then developing the law of torts in line with tikanga values may lead to inappropriate or less desirable outcomes.

THE EARLY HISTORY OF THE LAW OF TORT IN NEW ZEALAND 1840–1900: WORTH MORE THAN MENTIONING IN PASSING?

WARREN SWAIN

By the time Stephen Todd was writing New Zealand tort law had unquestionably developed a character of its own. It is more difficult to come to a definitive view about the early colony. In his A History of Australian Tort Law 1901–1945, Mark Lunney makes the point that the law of tort in Australia in the first half of the twentieth century “was not independent of the English common law”, but in “Australian conditions it developed in ways that were not necessarily mirrored in England”. Similar observations can be applied to contract law in early New Zealand. This article explores the extent to which the same might hold true for the law of tort in the period up until the turn of the twentieth century.

DISABLED LIFE, THE COMMON LAW AND COVER FOR ACCIDENT COMPENSATION

STEPHEN TODD

A claim at common law in respect of a child’s “disabled life” is a claim that a medical professional’s negligent advice or treatment caused the child’s mother to become pregnant or not to terminate her existing pregnancy, that as a consequence a child has been born, and that he or she has disabilities of some kind. Such claims are controversial, and nearly always fail, because without the negligence the child would not have been born at all. The child could only have come to live in this world in the state in which he or she now exists, and being born with a disability cannot be seen as “damage” for the purposes of a claim in tort where being born without it could never have been an option. A similar question has arisen in New Zealand, not via a claim for damages but via a claim for compensation under the accident compensation scheme. In Accident Compensation Corporation v AZ (2023) a child was born with spina bifida after the radiologist reading her mother’s ultrasound scan had failed to detect her condition, but here the child’s claim for cover succeeded on the ground that she had suffered a treatment injury within the meaning of the scheme. While the basis for establishing cover under the scheme depends only on the provisions of the Accident Compensation Act 2001 and does not depend on establishing another person’s liability for causing damage, in this article I contend that these provisions lead to the same conclusion as at common law and that AZ is wrongly decided. However, I also argue that where a negligent professional has actually caused a child’s disability, and also has caused the child to be born, it may be that a claim for damages or a claim under the statutory scheme ought to succeed.