Foreword

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As I understand it, the purpose of this journal is to encourage student research and writing by providing a platform for its publication. I am pleased to lend my support to this project by providing this foreword.

Student writing is an important sub-genre of legal writing because law students are an important sub-genre of the legally educated. When I say this, I have the following characteristics of law students in mind. They are learning, or have recently learned, about the law in an entire system sort of way. They have had the opportunity to spend all day and over a course of years, thinking, reading, and writing about the law. They have not (yet) been driven to specialise in the way that academic life encourages or even requires or been distracted by the distracting but essential business and client management of legal practice. Nor have their interests been shaped by the perspectives and interests of those they will represent in practice. This is, in a sense, the perfect point in the intellectual life of a lawyer for thoughtful and creative thinking. It is the perfect point in a career for heterodox thinking. A perfect point to critically analyse existing laws and existing structures and suggest new and perhaps better ways of doing things.

I understand that the Editorial Board of the *New Zealand Law Students' Journal* is made up entirely of students or first-year graduates. When I think back on my time as a student journal editor on another publication, I wish we had made more of our opportunities to criticise and challenge. It appears from reading this selection of articles that today's law students who have contributed articles or edited this publication are made of sterner stuff.

One such example is Shivali Ben's article on tax law—an area of study that is often thought of as being a business law topic, but which in reality entails core public law concepts, and with very real consequences for inequality in Aotearoa New Zealand. Shivali makes the case for increased regulation of high-income taxpayers shifting their income by making deductible payments to their relatives for services.

Harry Pottinger-Coombes' article also focuses on tax law and wealth inequality, but from a historical perspective and with an access to justice lens. He traces the history of New Zealand tax law cases heard by the Privy Council, finding that appellants were largely wealthy individuals or corporations who

could afford to travel to London to bring their case, regardless of its merits. Harry concludes that the decision to abolish the Privy Council was correct, and that the Supreme Court and its leave criteria are more suited to a final appellate court for this country. In this regard I note that the purpose provision in the statute establishing the Supreme Court dovetails with his conclusion: to enable important legal matters, including legal matters relating to the Treaty of Waitangi, to be resolved with an understanding of New Zealand conditions, history and traditions and improving access to justice.[1]

The problem of climate change continues to be productive of litigation in New Zealand and elsewhere. Often the claims advanced, if accepted, would secure development of the common law. In an article inspired by the events in September 2021, where Extinction Rebellion protestors tied themselves to train tracks in Dunedin Railway Station to prevent the transportation of coal, Max Benter-Lynch explores the availability of a defence of climate necessity for climate activists charged with trespass for civil disobedience.

Another topical development affecting the law, and the profession, is artificial intelligence (AI). So great is the buzz around AI that it is hard to find an original thing to say about it, and yet Jonathan de Jongh manages to do just that. He asks how the accident compensation scheme and law of medical negligence should respond to the use of AI, and who should be held to account when the computer gets it wrong. Jonathan is obviously a science fiction enthusiast. As the course of twentieth century history showed, science fiction has often predicted, sometimes shaped the course of events. Jonathan uses science fiction as inspiration, but his article is deeply rooted in the not-too-distant future and realities of how law and healthcare interact to impact people's lives.

A great value of New Zealand-based journals is that they enable publication of New Zealand-specific scholarship. India Bulman's article is a contribution to the valuable and growing body of literature on tikanga. Her exploration of the connection between tikanga Māori and te reo Māori, using examples of reporting on rāhui from the 19th century, is a timely reminder for judges and lawyers that tikanga Māori cannot be fully understood through the English language.

Anja Shearer-Sonier's analysis of WorkSafe's response to the Whakaari White Island disaster also shows how important it is that academic focus is brought to bear upon New Zealand systems. Her article is a fascinating crossover between policy and law. She proposes shifting the mindset in health and safety

1 Supreme Court Act 2003, s 3.

regulation from one of prosecution and blame for individuals to one of "just culture" (encouraging people to report and learn from their mistakes) and makes recommendations for specific regulations for adventure tourism which will be of interest to policymakers.

Oscar Zambuto's article also relates to a quintessentially New Zealand value↓the right to use humour and satire to challenge power and institutions. In his article about protecting parody and satire in the Copyright Act 1994, Oscar takes the reader from discussions of morality through to art history and meme culture. This piece is no laughing matter, however—at its core are important questions of artistic integrity and maintaining a healthy democracy. In the spirit of the piece, I take his comment that "the judiciary is not well-equipped to assess cases concerning comedic value" as constructive feedback.

The analysis and criticism contained in these articles, along with proposals for change, challenge us to have second thoughts about the status quo and to think about the law differently. Even though the common law, ruled as it is by precedent, can be characterised as backward looking, it functions in accordance with its design when it is challenged with new ideas and new arguments and responds to them. I therefore congratulate the contributors and editors on this excellent and important publication.

Rt Hon Dame Helen Winkelmann GNZM
Chief Justice of New Zealand
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