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For Law Students

Need a **Kidney?**
Solving the Organ Shortage

Gender and Judges

Privacy

Want **Change?**

Photos from Law O Week
Were You There?

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Apply for a Russell McVeagh Law Scholarship

UNIVERSITY LAW SCHOLARSHIP 2010

Application forms will be available from 19 July at the Law School Reception.

The closing date is Friday 13 August, 5.00pm.



Thanks to all writers and sponsors who contributed to the second issue of the LEX! We couldn't do it without your support!

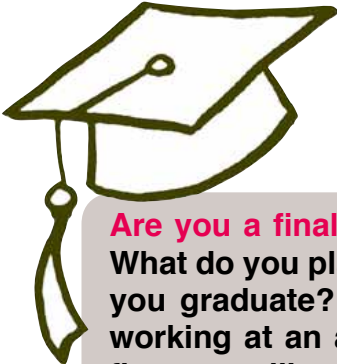
Issue Three is coming up. You can contribute by answering one of the questions below. Or if you would like to contribute your writing, art, photography or just have some cool ideas email me at:

elishakemp@mac.com.

- Elisha Kemp, LEX Editor

Get Published!

How YOU can get published in Issue 3 of the LEX!



Got Artistic Skill? Submit your artwork, photography or comic strips!

Are you a finalist this year? What do you plan to do once you graduate? Whether its working at an awesome law firm, travelling the world or saving orphaned monkeys we want to know!

Have you written an awesome research and writing assignment? Rework it into an article for the LEX!

The Best and Worst moments of law school 2010. What were the highlights, low points and most awkward moments of law school for you this year? Photos welcome!

Traveller? Where did you go over winter break? Tell us about your adventures and send us your photos!



Why are you here? What made you chose to study law? Did you unexpectedly pass first year exams? All your friends were doing it? For the money? We want the truth!

Email your thoughts and questions to:
elishakemp@mac.com.

Submissions are due the 2nd of October, so get writing!



Gender on the Agenda

Why it would be beneficial to appoint more women judges to the New Zealand judiciary - **Sharon Chandra**

This article will discuss the main reasons why altering the current composition of the New Zealand judiciary would be beneficial by appointing more women judges.

Equal opportunities

The current appointment process is biased toward males. All properly qualified candidates do not have a fair chance at being appointed. The judicial appointment process in New Zealand is “self perpetuating”. Those appointing people to the bench choose the candidates who are most similar to themselves. As a result, an individual may have all the necessary attributes but won't be considered due to their lack of other characteristics.

The criteria on which appointments are based is flawed. **The current system does not allow meritorious candidates with different backgrounds to be adequately considered.** A clear notion of what constitutes merit is required. The so-called “merits” on which appointments are based, are geared toward a male dominated ideology. Consequently, it becomes easier for males to possess the particular attributes necessary to become a judge. The concept of “merit” is subjective in the sense that each decision maker has the ability to create their own meaning of what attributes are considered to be meritorious. This leads to arbitrary assessment of individual characteristics. Thus, in order for women to have a fair chance at being appointed, the judicial appointment process requires improvement.

Will it make a difference?

Whether appointing more women to the bench will make a difference is dependent on one's perception of the degree to which existing law reflects judicial neutrality. If the current law is perceived as being judicially neutral then the conclusion is that more women judges will not make a difference. However, if current law is perceived as being the opposite then the answer differs.

There is no such thing as impartiality at an individual level. So in order to achieve judicial neutrality, the dominant male ideology must be offset with a countervailing female perspective. Thus, according to Madam Justice Wilson, there would be increased equality and impartiality in the judiciary as a whole with more women judges.

Many commentators suggest that more women judges will influence the development of substantive law. **This is based on the assumption that women perceive the world in a different way to men.** As a result, men and women would have different perceptions of justice, allowing the law as a whole to be influenced by appointing more women judges. However, it is entirely possible that any women that are appointed to the bench won't make a difference

as they will adapt to the male ideology of legal reasoning. They will accommodate themselves to the male dominated profession and follow the male norm of neutrality and objectivity.

There is no such thing as impartiality at an individual level.

Democratic legitimacy

The paramount consideration in a democratic society is public confidence. In such a society it appears absurd for judicial authority to be wielded by such an unrepresentative section of the population. The NZ judiciary is predominantly white, male and from a narrow range of universities and backgrounds. Increased representation by women will help to eliminate gender based stereotypes. The simple fact of having more women on the bench serves an educative function by eliminating stereotypes about the role of women in society. The NZ judiciary must be diversified in order to reflect the diversity of the population and allow it to be perceived as more impartial. This doesn't mean that a judge of a certain gender will necessarily advocate the interests of that gender. A judiciary that does not reflect the diversity of the population risks losing public confidence.

Women Judges Around the World

A glance at women judges from New Zealand to Egypt.

Egypt

First Woman Judge: **Tahani El Gabali** appointed in 2002

42 judges out of **12,000** are women

About **1/2** of Egyptian Law Students are women.



New Zealand

First Woman Judge in the High Court: **Dame Silvia Cartwright** appointed in 1993

26% of judges are women

In 2009 about **62%** of New Zealand Law Graduates were women.



United Kingdom

First Woman Justice in the UK Supreme Court: **Lady Brenda Hale** 2009

14% of High Court Judges are Women.

There is **1** woman judge and **11** male justices in the UK Supreme Court.



United States

First Woman Justice in the US Supreme Court: **Sandra Day O'Connor** appointed in 1981

26% of State Court Judges are women

In 2009 about **44%** of US Law Students were women.



Australia

First Woman Appointed to the High Court: **Justice Mary Gaudron** in 1987

3 out of 7 High Court Judges are Women



Conclusion

In my view, it would be beneficial to appoint more women judges in order for women to achieve equality in society as a whole. It is also beneficial for the public to maintain their trust in the judicial system. **As to whether more women judges will actually make a difference, I doubt there will be any significant changes in the development of substantive law.**

Instead, change will be incremental, filling gaps when required. I look forward to a time when our society reaches the point where there is no distinguishing between male and female judges. A judge will simply be a judge.

Canada

First Woman Justice in the Supreme Court of Canada: **Bertha Wilson** in 1982

4 out of 9 of Supreme Court Justices are women.



India

First Woman Justice in the Supreme Court of India: **M.Fathima Beevi** in **1989**

Currently there is no woman justice in the Supreme Court of India.

8.25% of judges in higher courts are women.



Want Change?



'Change' is the *en vogue* word in New Zealand politics and around the world. After seeing how successful Obama was using 'VOTE FOR CHANGE' as his slogan, John Key took up the banner as well and won the 2008 elections. As law students, we know that change can be a good thing or a bad thing. For example, changes in Evidence law meant a lot less cases to memorize for the Evidence exam. Heres a quick look at what your fellow law students think should and shouldn't change!

Old School Laws

"Shouldn't change 'the John Donald Macfarlane Estate Administration Empowering Act 1918 - **only in this act will you get the use of 'found lunatic on Inquisition' and 'retards settlement' as if the drafters weren't taking the piss...**'"

- Joseph Lill

CHANGE: Student Allowance

"Rules surrounding **student allowance** need to be revised as too many people that require assistance are missing out, and those who do not necessarily require assistance are receiving unfair benefit. **The current system is based on parental income but makes no room for situations in which students do not receive assistance from their parents.** Nor does it examine parents who are able to hide their large incomes in business and trust allocations. At university we are considered independent adults, and therefore the criteria should reflect the status of individual students, and not their parents." - Ben Gilbert

NOT: Membership

"I believe that the law surrounding **voluntary student membership should not be changed** as it will have a dramatic

negative impact on student associations and their affiliates throughout the country." - Ben Gilbert

We should retain the jury system despite any misgivings one perceives about it. The jury system is a central feature of the legal system and is a fundamental aspect of one's right to a fair trial. A jury allows democracy to prevail by involving everyday New Zealanders and their community and social values in the administration of justice. - Melissa Hammer

Governments should stop being so trigger happy with parliamentary urgency

- this is something that should change if we take our constitution seriously. A number of New Zealand academics (including Andrew Geddis, Claudia Geiringer and Philip Joseph) have written publicly on this topic recently, but it doesn't seem like the issue has a lot of traction in the popular press. **Maybe these constitutional matters seem arcane to most New Zealanders, but they're actually pretty important.** Two examples that spring to mind are the recent ECan legislation and the Parole Act (Extended Supervision Orders). As Claudia Geiringer has pointed out, we don't have a strong judicial branch that can strike down legislation. For that reason, we have to trust the deliberative abilities of our House of Representatives. I'm not sure that we can have such blind confidence in careful parliamentary deliberation when urgency is becoming less and less exceptional. - Jamie Eng

If law is to truly deliver a change, there **ought to be a change in attitude first.**



If society presents itself as a path upon which the Law serves as its direction, it is the attitude that determines how the path will be travelled, and it is how the path be travelled that brings meaning to the overall picture.

- Art and Commentary by Dala Huang

Law Summer School courses at Auckland

Summer School
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- LAW 401 Guarantees & Indemnities

Commences: 11 January 2011

- LAW 415 Commercial Law

Commences: 5 January 2011

- LAW 444 Maori Land Law

Commences: 10 January 2011

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Law O Week

This year Law O Week was celebrated by Law Students across the country. Activities ranged from Law Camps, BBQ's, Mentor Evenings and even a 'Log O Wood' at Waikato. Take a look at what some of the other Law Student Associations got up to and see if you can spot yourself!

Victoria - VUWLSS



Law Camp 2010



Waikato - WULSA



Simpson Grierson Law BBQ



Kensington Swan Mentor Evening



A victorious Waikato at Log-'o-Wood 2010



2nd Year Law Camp

OTAGO - SOULS



Eight

Auckland - AULSS



Cavell Leitch Race Night



Canterbury - LAWsoc



A Kidney Crisis

Addressing the Organ Shortage In New Zealand

A kidney is essential to life or at least the ability to lead a normal and dignified life. The problem facing New Zealand is that an insufficient number of organs are being supplied by donation to meet the medical demand of transplantation.

A kidney is essential to life or at least the ability to lead a normal and dignified life. The problem facing New Zealand (and many other countries) is not enough organs are being donated to meet demand for transplantation. Medical providers and potential recipients and donors have to deal with the reality of this shortage. **‘Organ tourism’ operates in many parts of the world due to the shortage of organs for transplantation.** The aim of this article is to provoke thought about the issues surrounding organ donation in New Zealand and to fuel discussion on the topic within legal discourse.

On 7 April 2010 Dr. Rhonda Shaw organized a multidisciplinary seminar in Wellington to discuss the donation shortage problem and surrounding issues in the New Zealand context. Whilst research, writing and discussion are important as these provide an evidence-based foundation for change, ultimately, any change must come from Parliament either as new legislation or possibly via section 60(1) of the Human Tissue Act 2008 (“HTA”).

New Zealand’s current legal position is governed by the HTA, which repealed and replaced the Human Tissue Act 1964. The HTA also updated the Health Act 1956 with respect to prohibiting trade in human tissue.

Section 56(1) of the HTA states it is illegal to procure an organ from an organ from an individual by offering them any financial incentive or consideration. It is even illegal to advertise to buy or sell an organ within New Zealand’s jurisdiction. The issue is that current legislation essentially ignores the problem of organ shortage and certainly does not take steps to increase live organ donation.



Legislative options regarding organ procurement from live donors could take many forms. Providing individuals an ‘open market’ regulated by the Government in which to sell their organs remains an option. However, the difficulties in regulating such markets so as to prevent opportunity for abuse is often quoted by politicians and media as being too difficult to overcome. **Open market organ trading (or even regulated organ trading) is probably untenable at present** given society’s current attitudes to this option.

- Christian Peters

One option Parliament could consider is **increasing the amount offered under the Work and Income (“WINZ”) benefit called the “Financial Assistance for live Organ Donors” (“FALOD”)**. This benefit provides individuals with a ‘loss of income’ payment for their organ donation. On the face of it, this scheme appears to sit uncomfortably with the HTA. However, Parliament commented within the select committee process that it did not intend for the “current Government policy of providing income support for live donors” to be affected by section 56(1) of the HTA.

Indeed, **it is hard to conceive how the current rates for loss of income could create an incentive for people to donate an organ** as the rates are so low that nearly all donors would suffer a financial detriment as well as a physical detriment (pain and loss of an organ) for donating their organ for the medical benefit of another.

This benefit provides individuals with a ‘loss of income’ payment for their organ donation.

The Value of a Kidney

According to the World Health Organization organ trafficking accounts for **5% - 10%** of all kidney transplants worldwide.

Organ sales are **LEGAL** in Iran and a kidney can retail for around \$6,000.

Selling or buying an organ in New Zealand can get you up to one year in jail or up to a **\$50,000 fine**.

Nick Rosen flew from Israel to New York to donate his kidney... and got paid **\$20,000**.



It costs **\$1.5 Million** per year to have 10 patients on Dialysis in New Zealand.

In New Zealand alone, about **350 people** are waiting for a kidney at this moment.

How much is your kidney worth and how much would you be willing to pay if you needed a new one?



Current WINZ Payments for Live Organ Donors

If you are...	Maximum weekly payment
Single 18-19 years at home	\$129.41
Single 18-19 years away from home	\$161.76
Single 20-24 years	\$161.76
Single 25 years or over	\$194.12
Married, civil union or de facto couple with or without children (total)	\$323.52
Sole parent	\$278.04

Rates at 1 April 2010

Parliament must take bold steps to increase organ donation as there are extremely low levels of public donation of organs. Organ donation, particularly **live organ donation, will not increase until Parliament intervenes** to create through legislation practical difference within hospitals and society which changes New Zealanders' attitudes towards organ donation. It is easy to point out the problems in a social system. The issue for policy-makers then becomes providing an alternative system that will be more effective and more morally palatable than the status quo.

A Look at the 'R' Word in NZ

In the 2001 NZ Census, **53,715** people reported their religion as **'Jedi'**.



About **57%** of the population claimed a **Christian** denomination.

235,212 people objected to stating their religion in the Census.

41,106 reported **Buddhist** and **23,202** reported **Islam** as their religion.

There are trading restrictions on **Christmas Day**, **Good Friday** and **ANZAC Day**.



The **maximum fine** for opening on a restricted holiday is **\$1000**.

The Dept. of Labour notes that **"the current cost of enforcing the penalty is higher than the fine itself"**

2010

NZLSA Conference

OTAGO

Join in the fun! See page 15.

Freedom of Trading on Religious Holidays

Ever since the conversion of Constantine in the 4th Century, Christianity has held an oppressive hand over Western Society. - John Renowden

Ever since the conversion of Constantine in the 4th Century, Christianity has held an oppressive hand over Western Society. From the attempts to build a Christian Republic by Charlemagne in the late 8th /early 9th Century and through the Middle Ages, where through the inadequacy of education the peasants of the world were held in the slumber of ignorance at the hand of the Catholic Church. It was their way or the highway, with such a strong conviction that heretics were culled rather than be allowed to object to the mighty authority, as if those who stood in opposition were a disease, like cancer, that needed to be removed before it would infect the body.

In the 21st Century there is still the hand of the Church oppressing us. However, it is not the Church enacting the oppression but our own rules in the form of laws, an overhanging of a time when Church and State were one and the same. We have the power to liberate ourselves from the hand of an oppressive regime, by breaking the bonds that hold us back. We have the power to stand alone, to climb a mountain that we would call freedom.

This may seem like an attack on Christianity in itself. However, it may surprise you that I am in fact a Christian theologian. Christianity is a subject that I have studied at a tertiary level for many years now. Yet it is not for my own needs that I make this argument, but for that of democracy.

Democracy demands that the people have freedom of religion, freedom to believe in anything that their heart desires. Christians, Jews, Muslims, and Buddhists alike all have the freedom within a democracy to practice their religion without fear of persecution. What of the atheists though? Should freedom of religion also not imply freedom from religion? If one is free to practice religion, should one also not be free to turn away from religion? After all, religion is based on claims of faith grounded in divine revelation, not empirical observation. Therefore, democracy should uphold the rights of not just the religious but the atheists alike.

Democracy demands that the people have freedom of religion, freedom to believe in anything that their heart desires.

It is here that I turn to the law that forbids one from trading freely on religious holidays dependent upon one's choice of income. This is not a right-wing protest towards selfish economic prosperity, but a hope for the emancipation of our society from the shackles of injustice that are in place due to the bias allowed to the faith of our forefathers.



It is nothing but a bias within Western culture to assume that Christianity is 'right' or 'true'. It needs to be put in its place as one faith amongst many. And in this, Christianity should not be allowed to dictate the rules of a nation.

I uphold the rights of the Christian within our society to not work on religious holidays, as this upholds democracy, and I do not wish to challenge that. It is for the rights of those who have no voice, that of the atheists, who are all too often silenced in the West.

New Zealand law must allow freedom of trading on religious holidays to uphold its claim to democracy. Freedom of religion necessarily must also realize its obligation to freedom from religion, and thus no laws within our society should have their foundation in claims of faith.

10 Ways to Change the World

Or at least make a difference in New Zealand law and your community! - **Elisha Kemp**

1 Pick a cause: A good starting point! Do you feel strongly about stopping animal abuse? Were you inspired watching An Inconvenient Truth? Were you upset that Israel didn't let those boats bring aid to Gaza? Want more wind farms in New Zealand? Knowing your own view point is the first step to creating change!

2 Use the Select Committee process to your advantage. Remember what you learned in Public law about how laws are made? During the Select Committee MPs accept submissions on whether or not a Bill should be passed or how it should be changed.

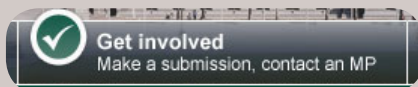
3 Donate: Often hard to do on a student budget but not impossible. And it can actually be fun. Try making donations in people's names as a birthday or Christmas present. **Instead of buying your mum a scarf she will never wear, buy her a goat she doesn't have to look after!** On Heifer.org you can buy a flock of geese for \$20 or a 'share' in a water buffalo for \$25.



4 Volunteer: Don't have money? Donate your time instead! It will look good on your CV as well!

5 Talk to people: Don't keep your thoughts and opinions hidden away, share them! Dialogue is an important part to understanding problems and creating solutions.

6 Annoy your MP: Write to them or call them up. Tell them what you think is important. They might get one of their staff to write you a courtesy letter back but chances are they will still listen to what you have to say. **You** are the reason they have a job, after all! To find out who has you to thank for their cushy job and travel money go to www.parliament.nz and click on this button:



9 Keep in Touch: take a little time each day to read the news and keep in touch with what is going on in the world around you. It can be hard to keep up on current events when you have 500 pages of Torts Law to read and research and writing assignment to do. But keeping in touch **will help give perspective to the law study you are doing**, and can even help things make a bit more sense.

10 Vote:

Have you enrolled to vote in the 2010 Local Elections? **Go to :**

www.elections.org.nz

It only takes 5 minutes!



7 Social Networking: How many causes have you joined on Facebook? **Its like putting a bumper sticker on your car without having to worry about your paint job.**

8



Put your money where your mouth is!

Vote with your wallet: If you are concerned about global poverty buy Fair Trade products. If you want to help boost your local economy buy Made in NZ products or shop at your local farmers market.

Privacy in Public

Should it Always be a Right?

I recently heard someone state that privacy is a fundamental constitutional right. He was talking with regard to his right to privacy against the instalment of security cameras in toilets in Kaikoura. It is clearly necessary for the public to have the right to privacy in their own homes.

But what about privacy in public places, aka public toilets? Some people simply do not want to be recorded on video while they are going toilet. But what is actually wrong with it? Sure, going to the toilet is a private act. But **it's not as if the camera will be installed so that it sees what you see at the urinal, or be watching you defecate while you are in a cubicle.**

Cameras angled in such a way would certainly be a breach of privacy. There can be nothing more private. But a camera installed in a public place will surely only be installed so that it can see what is already able to be seen by another person sharing the facilities; that is, your back or a closed door.

In fact, what is wrong with having video cameras in every place that the public has access? The cameras will only be recording what can be seen by someone who is there and then at the time. Can this really be considered an invasion of privacy?

Let me give you a scenario. Say I leave my car in a public car park. Say someone broke into my car and stole everything that was in it. Is my right to possession of my property a lesser right than that of the criminal to steal from me without detection? Can his act be considered a private one just because there is no one there to see the crime?

I think not. **There can be considerable gains by having security cameras everywhere to act as an ever-present eyewitness.** An eyewitness who can track exactly where the criminal went after the crime.

As attractive as this may be, not everyone is a criminal. Why should the innocent be recorded?

Is my right to possession of my property a lesser right than the right of the criminal to steal from me without detection?

They have done nothing wrong. Installing cameras everywhere suggests a mistrustful state. Maybe it will turn NZ into a 'nanny state', by making sure no one puts a foot wrong. Or maybe the thought of always being watched is just an oppressive one.

But then, if you are innocent, surely you have nothing to hide?

It can hardly be said that there will be somebody sitting in a room with a hundred TVs, watching your every move. A person should not be given such a role obvious reasons. The recordings could just be used as a database for criminal investigations.

If you have no reason to raise suspicion then you will not stand out while investigators sift through the footage.

As long as there are proper checks against abuse of the system then there is little risk in it.

Surely the benefits of a certain reduction in crime and the peace of mind gained by members of the public (not to mention the lower premiums) outweigh the risk of NZ becoming a "tyrannical state" (Neale McMillan).

Furthermore, **in an age where information and images are increasingly and openly shared, what is now considered an invasion of privacy will soon be considered the norm.** I believe that such privacy in public is merely a historical right that is not being flexed in the way that it should in order to meet current technological capabilities.



- Phillip Chrisp

2010

NZLSA Conference
OTAGO



Coming Soon!

The 2010 New Zealand Law Students Association Conference is proudly hosted this year by the Faculty of Law at Otago University.

Some of New Zealand's most talented law students will be heading down south from **Tuesday 31st August to Sunday 5th September.**

Time is fast approaching and the Conference Committee in Dunedin have been working hard planning the week which involves the national rounds of mooting, client interviewing, negotiation and witness examination as well as holding the NZLSA exec Annual General Meeting.

Finals of the competitions will be held in the High Court on Saturday 4th September, attended by Supreme Court Judges, The Honourable Justice McGrath and The Honourable Justice Young.



At NZLSA Conference 2009

The real fun however happens in the evening when delegates get a chance to mix and mingle with their fellow peers and some vino. Social events during the week include a themed pub crawl through the depths of South Dunedin, a break night cocktail evening to announce finalists and a final night dinner to be held at Lanarch's castle on the Otago Peninsula.

NZLSA Conference 2009



The Committee would like thank all their sponsors and those supporting Conference thus far. If you are interested in sponsoring and supporting this year's Conference please **contact the Conference Convenor Melissa Hammer at otago.convenor@gmail.com.**

If you are interested in attending Conference and becoming involved in the fun, it is not too late!! Conference is open to anyone who is willing to pay the delegates fees. For any queries contact the Conference Convenor, Melissa Hammer. For further information check out the Conference website at <http://www.nzlsa.co.nz/NZLSA/Conference.html>.

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11 October 10	14 February 11	
29 November 10	28 February 11	

Christchurch: 9 August 10

Dunedin: 17 January 11

Hamilton: 29 November 10

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- ▶ access to a wide range of legal resources
- ▶ online legal job noticeboard
- ▶ eligibility for student loans

For more information about the PLSC request an Information Guide.

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Application forms will be available at your Law Faculty Reception, University Scholarships office or on-line at: www.simpsongriersongrads.co.nz from 1 July 2010.



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