



# ylc. Advocate

Winter 2012

*INSIDE THIS ISSUE:*

**Illegal Immigrants  
Trust-busting  
Cats in Court**

*ALSO:*

**Young Professionals' Ball | Speed Dating**

The quarterly magazine of the Young Lawyers' Committee Wellington



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## CONTENTS

# YLC Advocate Winter 2012

04

Editors' Note  
Upcoming events

06

Convenors' Notes

08

YLC Committee  
Members

09

Committee Member  
Profile – Hélène in the  
Hot Spot

10

Trust Busting  
Mechanisms  
Tessie von Dadelsen

13

JustSpeak — Maori  
and Criminal Justice

14

YLC DLA Phillips Fox  
Lawyer's Toolbox  
Seminar

15

Illegal Immigrants  
are Not Welcome:  
Proposed Changes  
to New Zealand's  
Immigration Laws  
Jessica Willis

18

YLC Speed Dating  
2012

19

YLC Chapman Tripp  
Comedy Debate

20

Law for Change

22

Cats in Court  
Sarah Keast

24

YLC/VUWLSS  
Bridging the  
Gap Mentoring  
Programme

25

Book Review: "Zen  
Under Fire" by  
Marianne Elliot  
Sarah Backhouse

26

YLC Young  
Professionals' Ball

28

Q&A with  
Kris Gledhill  
(Human Rights  
Lawyers' Association)

30

YLC/NZLS "A Good  
Day at the Office?"  
Seminar

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# Editors’ note

The YLC has had an action-packed winter, and reflecting this we have produced a bumper edition of *Advocate* for your enjoyment.

Winter means long evenings by the fire, great comfort food, and hanging out with friends. We have been enjoying mid-winter Christmases (check out our photo!), fondue, eggnog and mulled wine! Plus the YLC has put on a great array of social events. The annual favourites of Speed Dating and the Chapman Tripp comedy debate were both sold out. We also have photos and news from the YLC Young Professionals’ Ball — the highlight of the YLC and Wellington young professionals’ calendar. The theme this year was Mad Men, and we were transported back to the 1960s by our host Yvette Laughton-Campbell.

In our last editorial we discussed our thoughts on Wellington as new arrivals in town. In particular we commented on how public-spirited the Wellington legal profession is. In this edition we have plenty of evidence to back up that first impression. JustSpeak is a criminal justice group founded in Wellington by young lawyers and students. *Advocate* has all the details on JustSpeak’s recently released first major position paper on Māori and the criminal justice system. We also have an article by Jessica Willis discussing the proposed amendments to the Immigration Act in response to the risk of a “mass arrival” of asylum seekers. We have information about the new Human Rights Lawyers’ Association (HRLA) and how you can get involved. Plus, Sarah Backhouse reviews *Zen Under Fire*, an inspirational book by Marianne Elliott in which she writes about her time working with the United Nations Assistance Mission to Afghanistan.

In addition to articles on social justice issues, we also have the low-down on “Law for Change”, an initiative that aims to help law students and young lawyers to become aware of pathways to careers in public interest law. A recent Law for Change event in Wellington had over 100 people attend to hear speakers on the pos-

sibilities of doing law in the public interest. As young lawyers it is important that we are active members of our community, and if you have an interest in issues of social justice we encourage you to get in touch with groups like JustSpeak and the HRLA (and LawSpot which featured in our Autumn issue), and look out for future Law for Change events.

The YLC has also put on two extremely well-attended events to help young lawyers grapple with the issues that they encounter in their first years of practice. The DLA Phillips Fox Toolbox seminar examined the financial issues experienced by young lawyers, gave some insight into the overseas legal job market and discussed ways to achieve a healthy work-life balance. The YLC, in conjunction with the NZLS, also put on the “A Good Day at the Office?” event, which explored the challenges that young lawyers face in the workplace. Another exciting initiative that the YLC has just started in conjunction with VUWLSS is the “Bridging the Gap” mentoring programme, which aims to assist fourth and fifth year university students make the leap from study to practice.

Branching out from public interest and education, we feature an informative article from Tessie von Dadelszen that keeps us up to date with the Law Commission’s review of the law of trusts, and in particular trust-busting mechanisms. Are family trusts the fortresses so many New Zealanders think they are? In addition, Sarah Keast keeps us entertained with a light-hearted look at the role that animals play in the legal profession.

This issue of *Advocate* also has a hint of sadness as the YLC says goodbye to our convenor Dave Turner as he sets off to study at Harvard. Dave has made a huge contribution to the development of the YLC, and we will miss his always-cheerful personality and enthusiasm.



ABOVE Farewell Dave! We wish you all the best at Harvard University.

The YLC wishes Dave all the best for his time in the States, and he can leave with the knowledge that he has left the YLC stronger than ever. We are excited about Jamie’s leadership of the YLC and we’re sure the YLC will continue to flourish under Jamie’s convenorship.

For more check out the YLC website, and make sure to join our Facebook page ([www.facebook.com/younglawyerscommittee](http://www.facebook.com/younglawyerscommittee)) to keep up to date with the latest YLC activities.

We also thank the YLC’s general sponsors: MAS and Simply Legal (soon to be called JLegal). Thanks also to Rebecca Walthall, our designer, and Sushrutha Metikurke for the beautiful photograph featuring on the cover of *Advocate*.

LIZZIE CHAN AND HAMISH MCQUEEN

## What would you like to see included in the YLC Advocate?

We’d love to hear any feedback about the magazine — especially from potential contributors! So please get in touch at [elizabeth.chan@justice.govt.nz](mailto:elizabeth.chan@justice.govt.nz) or [hamish.mcqueen@justice.govt.nz](mailto:hamish.mcqueen@justice.govt.nz).

## Upcoming Events

- ASB Networking Event: **early September**
- Human Rights Lawyers’ Association information evening: **September 25**
- Oktoberfest Event: **October 11**
- Meet the Judiciary Event: **late October**
- YLC/Young Accountants’ Quiz Night: **November**

JAN	FEB	MAR	APR
MAY	JUN	JUL	AUG
SEP	OCT	NOV	DEC



## So long YLC!

In what seems to have come around all too quickly, this will be my last note as YLC convenor. Not that I'm moving on because I'm tired or I feel that I've achieved all I want to with the YLC — far from it — but because I'm leaving this month for the shores of the United States, where I'm set to do some further law study. My mother is worried I'm going to become fat. Only time will tell whether her fears are realised.

**On these occasions it's generally customary to offer some reflections on one's tenure.** I don't want to bore the reader with a tedious descent into nostalgia, but I think it is valuable to reflect on how far the YLC has come, even since I first became a committee member in 2010. When I joined the committee, we could quite comfortably fit around a 10-person boardroom table to hold our meetings — often with room to spare. These days, we have a large, active and vibrant committee of around 25 members, all of whom contribute their time and energy to organising a number of YLC events. Only a few firms in Wellington can now accommodate our meetings!

We have built a strong executive team, which manages the day-to-day affairs of the committee. We have a broad membership base of 500+ young lawyers, public-sector workers, in-house counsel and others. We continue to diversify our range of events, including a recent focus on community-based projects, of which the "Bridging the Gap" mentoring programme is the latest example. We've seen the arrival of a fantastic new sponsor, MAS, and the strengthening of ties with our other key annual sponsor, Simply Legal, as well as the many legal firms, bars and other organisations that sponsor or support us throughout the year. We also have a strong relationship with the NZLS Wellington branch — of which we are a committee — and the success of our recent "A Good Day at the Office?" seminar is a fine example of our productive working relationship. And, of course, we publish this beautiful magazine.



In short, the YLC is in very good heart, and although I am sad to leave I know the committee will remain in capable hands. To attempt some bold and enduring synthesis of the messages from my previous columns: young lawyers are a fairly privileged bunch. Make sure you use your skills and powers for good. Give back to the community. Make the most of Wellington. It's a great place to be a young professional. Get involved in things. Don't underestimate the importance of networking. Look after yourselves and your fellow lawyers. And go to YLC events — they're a lot of fun.

My thanks to everyone who has contributed their time and effort to making the YLC a success while I have been convenor: the executive officeholders, committee members, Catherine Harris and the NZLS staff, Nerissa Barber and the Wellington branch council, our YLC sponsors, YLC partners, and others too numerous to mention.

I can't wait to come back to Wellington one day and — although I may no longer quite sneak within the definition of a young lawyer — perhaps you'll allow me to attend a YLC event just for old time's sake, and so I can see what new and impressive directions the YLC is bound to take in the years ahead.

DAVID TURNER

## Why Hello, YLC!

Well, not really. I've been here a while now, lurking in the background. Let me introduce myself formally (and less sinisterly). I'm Jamie Grant. Until Monday 6 August, I was one of the Marketing and Membership Officers of the YLC, and I am now its Convenor.



**To say that I have large shoes to fill would be an understatement.**

Dave has been a powerhouse of enthusiasm and guidance over the last seven months or so; and frankly, I don't know when he sleeps. I'm a little nervous about when I'm going to sleep. But I have some wonderful support.

Monday also saw the election (and a reshuffling) of a number of new individuals to the YLC executive. As a result of an executive meeting in June, we have cemented the roles of the YLC executive to ensure that the YLC is less dependent on the ad hoc efforts of individual committee members (which are nonetheless commendable) and in particular on the convenor. Now specific tasks will be allocated to executive members to ensure a collective and persistent drive within the committee.

Despite my infectious enthusiasm for committee bureaucracy, I won't titillate you with the specifics of the new executive arrangements, save to say that Monday's appointments are no

less dedicated and committed that you would expect.

The Deputy Convenor role has now been split in two with Heléna Cook stepping up to share the burden with Pearl Roy, who has been doing a stellar job in that role since the beginning of the year. That division was seen as necessary due to the ever expanding scope of the committee and the accompanying administrative responsibilities.

Sarah Backhouse and Jordan Williams have been elected as the new Marketing and Membership officers — both of whom I know will bring creative flair to the role.

That is all great news for the committee, which has been going from strength to strength this year and has really grown into its role as "the voice of young lawyers in Wellington". We run numerous events promoting young practitioners' holistic health, as opposed to simply catering to their more hedonistic needs. As Dave

discussed, the recent wellness seminar was a resounding success and we have a number of exciting professional development events on the cards.

None of that means we won't continue to cater to your natural legal proclivity for a tippie or two. At the time of penning this note we're all looking forward to the Young Professionals Ball, which I'm confident will be known as the best Young Professionals Ball held to date!

Lastly, I ask you to remember that we are YOUR voice. If you need assistance (perhaps as a result of your post-ball activities), or you feel that there is something we should be doing, something we should be saying, let us know. The real value of our growing prominence is not our ability to throw an awesome party, but to represent you in the wider legal community.

JAMIE GRANT

## Have you got something you'd like to say?

The Young Lawyers' Committee is the voice of young lawyers in Wellington.

We meet regularly with the New Zealand Law Society to represent the views and interests of young lawyers on issues affecting the legal profession. Our role is not only to entertain and inform you, but to advocate on your behalf. If you have any issues, concerns or complaints, or anything you'd like to let us know about, email our convenor in confidence at [info@younglawyers.co.nz](mailto:info@younglawyers.co.nz).

If you want to join the YLC as a committee member, send us an email at [info@younglawyers.co.nz](mailto:info@younglawyers.co.nz).



# Committee Members

Amberley James	Jamie Grant	Natalie Pierce
David Turner	Jess Willis	Pearl Roy
Elizabeth Chan	Jordan Williams	Richard Evans
Guy Carter	Joseph Fitzgerald	Sarah Backhouse
Hadleigh Pedler	Katherine Leslie	Sarah Keast
Hamish McQueen	Katie Mortimer	Sarah Watson
Heléna Cook	Katie Williams	Simon Wilson
Helen Arathimos	Lorraine Hercus	Tim Cochrane
Ian Miller	Matthew Jenkins	

# YLC Executive 2012

Outgoing Convenor	David Turner
Incoming Convenor	Jamie Grant
Co-Deputy Convenors	Pearl Roy Heléna Cook
Treasurer	Tim Cochrane
Secretary	Lorraine Hercus
Sponsorship officers	Guy Carter Sarah Watson
Marketing/membership officers	Jordan Williams Sarah Backhouse
Communications officer	Simon Wilson
Magazine editors	Elizabeth Chan Hamish McQueen

# Heléna in the Hot Spot



Hi Heléna! What's your role on the Committee?

My role seems to change month by month. In July, I was a co-runner of a mentoring scheme for final year law students who will be mentored by members of the wider YLC community. I was also on the ball committee — it was Mad Men themed! [Editors' note: check out the mentoring event, Bridging the Gap, on page 24 and the ball on page 26!] I've also recently been elected as the Co-Deputy Convenor of the YLC.

When did you join and why?

When I joined the YLC in 2011, I saw it as an organisation that had huge potential to network young Wellington lawyers together and represent them within the wider profession. YLC does this networking very well, with a little lubrication from the vine. Even more importantly, and perhaps surprisingly, we still manage to represent young lawyers within the profession as energetic, astute and somewhat responsible individuals.

After a strategic meeting in June, I'm excited to see YLC taking on a greater representative role that will see it reach a wider market of lawyers (particularly in-house and public sector lawyers) and become involved in more charitable work. As a committee we want to harness the enthusiasm that young lawyers have and use that to build a network of Wellington Lawyers who are connected, involved and have a positive identity as young lawyers within the wider profession.

What do you do outside of the Committee?

Eat, pray, love...drink, socialise, shower, sleep...in that order. I'm also a member of the Medico-legal society, the Women in Law Committee, and CLANZ (in-house lawyers), and I volunteer at Wellington Community Law Centre. I also enjoy going adventuring with my husband to wineries or walks in the wind along the South Coast.

Tell us about founding the Community Justice Project!

In my penultimate year of law school (2009) I decided that students should have more opportunities to become involved in public interest law. It seemed that we came into law school dreaming of becoming the next Atticus Finch but left feeling that the only viable option was a clerkship at one of the Big 8 law firms.

My solution was to gather a group of like-minded students and launch the Wellington Community Justice Project (CJP). CJP partnered law students with community organisations in order to facilitate legal training opportunities for students while providing volunteer resources to community organisations. CJP is now in its third year with over 80 student volunteers working in education, advocacy, human rights and law reform. CJP recognises that being a lawyer involves a social responsibility and these student volunteers are doing their bit to fill that role.

What was your involvement in Women's Refuge?

I have volunteered as a crisis worker for the Wellington Women's Refuge for about five years. The most important lesson I learnt from the Refuge was that we always have a greater capacity than we think we do to handle what life throws our way. The women I met coped with more than you or I would ever think we could manage, and they often did so with great dignity and strength.

What's your favourite Wellington café?

Gotham in Chews Lane has the best coffee up my end of town. And Southern Cross has the best café vibe!

If you could bring a famous person back to life and have dinner with them, who would it be?

This is so hard. Eleanor Roosevelt because of her work advocating for women's rights and civil rights. Or maybe CS Lewis because he has a lot of really interesting things to say. Oooh wait, maybe Rosa Parks — she was a gutsy woman! Or Mother Theresa — I've always wondered at the work she did with the poor in Calcutta and her complete humility while she served. Or Nelson Mandela (he's not dead though, so I wouldn't have to bring him back to life). I guess the answer is that I would host a dinner party with all of these amazing people!





Public Trust

New Zealanders love family trusts. The Law Commission estimates (based on 2008 figures) that there is one trust for every 18 people in New Zealand. Why is this? Are New Zealanders especially keen to protect assets and capital for future generations? Or is there a more sinister motive at work, with Kiwis hiding away their true wealth to avoid their obligations to creditors, former partners and the Government?

**TESSIE VON DADELSZEN**  
IS A SOLICITOR  
AT KENSINGTON  
SWAN

**G**ranted, there are many trusts in New Zealand, but we have tools to “bust” them where it can be shown that trusts are being used for illegitimate purposes. This article examines the existing “trust busting” mechanisms in New Zealand law, and then considers what changes are needed to ensure that sufficient methods are available to counter the illegitimate use of trusts.

*What is a trust and what are the possible risks/abuses of the use of trusts?*

Family trusts are used to hold the assets of an individual or a couple during a relationship. They protect the interests of that family so that new relationships do not disturb the interests contemplated at the time the trust was formed, as set out in the trust deed. Trusts allow families to provide for future generations by creating a system for the distribution of the benefits that come from the property in the manner desired by the settlor.

However, the trust structure can be abused. Trusts can be used as a way of defeating creditors: shielding a person’s true wealth by transferring all their property into a trust and leaving nothing against which creditors can enforce the repayment of debts. This approach to sheltering wealth is also used to defeat the interests of former spouses, civil union or de facto partners at the end of a relationship. When a relationship ends, the only property to be divided between the parties is that which is beneficially owned by both parties. If property has been transferred to a discretionary trust, the property cannot be divided in accordance with the statutory provisions governing the division of relationship property.

Trusts also provide a method of avoiding the means-testing provisions of the Social Securities Act 1964. The elderly may be able to avoid trust assets being taken into account in applications for residential care subsidies if they have transferred those assets into a trust. However, the Ministry of Social Development can look into gifts to a trust to ensure they have not been made to gain a higher level of subsidy than they are entitled to.

## Current methods of “trust busting”

There are a number of legislative controls for ensuring that trusts are used for proper purposes. Essentially, these controls allow the Court (or in some cases, the Official Assignee, the Chief Executive of the Ministry of Social Development or the Commissioner of Inland Revenue) to deem that the particular use of a trust is illegal because of an improper motive, when that use of a trust would otherwise be legal. A summary of some of the most common “trust busting” mechanisms is set out below.

**Property Law Act 2007** (“PLA”) — Sections 344 to 350 allow dispositions made to trusts by a debtor with the intention to “prejudice” a creditor to be set aside. However, the Court cannot set aside a transaction made to a purchaser for value in good faith without knowledge of the prejudicial nature of the transactions (s 349).

**Insolvency Act 2007** — Sections 204 and 205 allow the Official Assignee to set aside transactions (including those made into a trust) made within two years of a person being adjudicated bankrupt. Transactions made up to five years prior to bankruptcy can also be set aside where there is evidence that the bankrupt was unable to pay their debts at the time. However, as with the PLA, there is a good faith exception to the Court’s power to set aside a transaction (s 208).

**Property (Relationships) Act 1976** — The Court may set aside transactions made with the “intention to defeat” the claim or rights of any person. This phrase has been interpreted broadly so that knowledge of a consequence can constitute intent for the purposes of the Act. Under s 44, where a disposition was made to a trust in order to defeat the interests of a spouse or partner, the Court can require a repayment of a sum of money, the reversal of a transfer of property to a trust, or require the trustees to pay the income of a trust to the spouse or partner whose interests were defeated. As with the PLA and Insolvency Act, there is a good faith exception in s 44. While s 44 is a true “trust busting” provision, s 44C provides an additional remedy for former partners. Under this section the Court can make an order compensating a spouse or partner whose interests have been defeated by a disposal of relationship property to a trust, even though the Court has been unable to infer the necessary intention needed to allow it to set aside the disposition under s 44.

**Family Proceedings Act 1980** — Section 182 allows the Court to vary the terms of ante and post-nuptial settlements (including trusts) when a marriage or civil union is legally dissolved. However, the Court has been reluctant to use this provision to disturb trust structures any more than absolutely necessary. Indeed, in one case the Court divided an existing trust into two separate trusts,

but on very similar terms as the original, rather than destroying the intentions of the settlor altogether.<sup>2</sup>

**Social Security Act 1964** — Section 146 provides for an assets assessment in order to determine whether a person is eligible for a residential care subsidy. This allows the Chief Executive of the Ministry of Social Development to take into consideration transactions made into a trust as if the disposition had not occurred. Regulation 9B of the Social Security (Long Term Residential Care) Regulations 2005 does not impose a limit on the length of time that can be taken into consideration when assessing dispositions to a trust. Section 74(1) also acts as another method for looking into a person’s access to benefits from trusts in the process of applying for government assistance.

**Income Tax Act 2007** — A settlor of a trust may be liable to pay income tax on the income from the trust fund. The general anti-avoidance provision in section BG 1 also allows the Commissioner of Inland Revenue to adjust a taxpayer’s taxable income where the Commissioner considers that a tax avoidance arrangement is in place.

**Sham Trusts** — The Courts will consider a trust to be a “sham” where the settlor and the trustee(s) share a common intention to create rights and obligations different from those set out in the trust deed. For example, there might be a common intention that the settlor retains the benefit of the “trust” property, despite not being a beneficiary of the trust. The requirement of common intention has proven to be a very difficult standard to meet.<sup>4</sup>



1. See *Ryan v Unkovich* [2010] 1 NZLR 434 (HC) at [33]. See also *Regal Castings Ltd v Lightbody* [2008] NZSC 87, [2009] 2 NZLR 433.

2. *Ward v Ward* [2009] NZSC 125, [2010] 2 NZLR 31. See also *X v X* [2008] NZCA 20, [2009] NZFLR 956 at [39], which limits the extent to which a trust structure can be disregarded. This case shows that the correct approach to challenging the apportionment of trust property should be through the general law rather than broad-brush trust breaking provisions in relationship property.

3. *Official Assignee v Wilson* [2007] NZCA 122, [2008] 3 NZLR 45 at [52].

4. At [52].

As outlined above, there are a number of approaches available to “bust” trusts. However, these mechanisms are difficult to use as they require a high standard of proof to be shown. The case law shows a general reluctance by the Courts to override trust structures.

So what can we do to clarify when a trust will be busted and the types of arrangements that will not be tolerated? The Law Commission has set out a series of options in its second issues paper to address the difficulties with the trust busting regime as it stands:

- 1 Create a provision in the Trustee Act 1956 (or as part of a new Trusts Act) that sets out factors to be considered in assessing whether a disposition of property to a trust can be disregarded in assessing a person’s obligations to another person or the Government. This would replace the variety of approaches used at present, and allow for consistency in the treatment of property and income regardless of the abuse of the trust at issue.
- 2 Amend the existing individual statutes to include a specific “look through” provision that takes account of the case law and issues experienced at present. Such a provision would provide a specific approach for each context in which trust busting is required.
- 3 Incorporate a principles section into trust legislation along the lines of “a trust can be created for any reason which is not illegal, [and] which is not against public policy”.<sup>5</sup> This would provide a framework for evaluating trusts in relation to their general affect on creditors, the Government and any other people with an interest in the property.
- 4 Set out a series of administrative guidelines for agencies when considering the implications of trusts in their particular policy contexts.

The simplest option is an amendment to the Trustee Act 1956 to include a provision which nullifies any trust “if it exists for a purpose or effect of enabling a person to obtain a benefit or an entitlement or to avoid an obligation”, as discussed by the Law Commission.

This very broad provision would apply in the various contexts in which trusts are used. If such a provision were enacted, it would be important to define the term “existing for a purpose”. This is because the term could be interpreted to mean either “existing for the sole purpose of obtaining a benefit or avoiding an obligation” or “existing partly to avoid obligations”. Alternatively, the section could provide that the trust itself need not be nullified, but only the offending transaction.

However, a broadly framed “catch—all” provision may lead to ambiguity. It may also allow lawyers to find loopholes and draft trusts in a manner that avoids the provision entirely.



The most effective approach would be the insertion of a strong “look through” provision into each statute that deals with trusts. This approach allows for consideration of the specific context of the challenge to the trust (e.g. relationship property or debt recovery), and would provide for context-appropriate methods of remedying the improper use of the trust in question.<sup>6</sup>

.....  
The simplest option is an amendment to the Trustee Act 1956 to include a provision which nullifies any trust “if it exists for a purpose or effect of enabling a person to obtain a benefit...”

Some might be concerned with the courts having broad interpretative powers over the legitimacy of trusts. However, if a trust is set up, or a disposition is made to a trust, for the purposes of defeating another’s legitimate interest in property, then it is only right that the courts have power to review and reverse that action in the interests of justice.

Parliament should pass legislation to ensure that people do not improperly avoid their legal obligations to the Government and others, and to make sure that government assistance is only available to those that genuinely need it. Current trust busting mechanisms are inadequate. The time is ripe to review the law to ensure that legitimate trusts are protected, and that those created for improper purposes are busted.

.....  
*The Law Commission’s second issues paper on this topic can be found at [www.lawcom.govt.nz/project/review-law-trusts](http://www.lawcom.govt.nz/project/review-law-trusts). A paper outlining the Commission’s preferred approach to the issues discussed in this article will be published later this year.*

5. AW Scott *The Law of Trusts* (2nd ed, Little Brown & Co, Boston, 1956) at 1, as cited in Law Commission *Some Issues with the use of Trusts in New Zealand: Review of the Law of Trusts Second Issues Paper* (NZLC IP20, 2010) at 57.

6. See Nicola Peart, Mark Henaghan and Greg Kelly “Trusts and Relationship Property in New Zealand” (2011) 17*Trusts & Trustees* 866 at 881 for a discussion of this type of amendment to the Property (Relationships) Act 1976.

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## JustSpeak Speaks Out with Report on Māori and the Criminal Justice System

Some of *Advocate’s* readers may have heard of JustSpeak, a criminal justice group founded by Wellington young people, which has been hosting monthly forums and doing policy work since mid-2011. JustSpeak’s steering group is made up of a number of young lawyers — as well as social workers and students — and the group has welcomed young lawyers to many of its monthly forums (including recent forums on Women and Prisons in July, Media and the Criminal Justice System in June and Politicians and the Criminal Justice System in May).

**The group is a youth offshoot of Rethinking Crime and Punishment, which was formed in 2006** by Kim Workman to contribute a fresh and more humane voice in the debate on criminal justice. While some contributors to the criminal justice debate claim to be sensible, Rethinking Crime and Punishment and JustSpeak consider that the debate has all too often tended to veer away from common sense. It is characterised by harsh outbursts and hard-edged punitiveness — and the upshot of all of this is that New Zealand now has one of the largest prison populations (per capita) in the Western world.

JustSpeak aims to inject fresh thinking into the criminal justice debate, drawing on the imagination, innovation and impatience of young people (though JustSpeak welcomes people of all ages). It seeks at the same time to dispel the myth that young people have nothing to offer in policy formation.

JustSpeak recently released its first major position paper, *Māori and the Criminal Justice System: A Youth Perspective*, at Te Puni Kōkiri on Wednesday 2 May. The launch was opened by Minister of Māori Affairs Pita Sharples, and speeches were also given on the night by Justice Joe Williams, Sir Eddie Taihakurei Durie, Moana Jackson, the co-chairs of JustSpeak, and other JustSpeak members. The event was given strong media coverage, which included an interview on TV3 with JustSpeak co-chair Kate Stone on the morning of the launch.

The paper emerged out of a forum held in November 2011 on Māori and the Criminal Justice System at the Wellington Community Law Centre. After speeches were given there by Justice Joe Williams, Judge Andrew Becroft and Chuck Harris (a young man recently released from prison), small groups formulated statements about Māori and the criminal justice system, and these were used as starting points for the writing of the longer report.



**JustSpeak launch for the position paper:** Hon Pita Sharples, Justice Joseph Williams and Sir Eddie Durie.

The report aimed to stimulate thinking on the topic, to encourage more discussion, more just speak, about solutions to the challenges relating to Māori and the criminal justice system — and to suggest some actions that would go some way to achieving a just Aotearoa.

The report began by examining Moana Jackson’s 1988 report, *He Whaipaanga Hou*, which highlighted the interconnectedness of challenges around Māori and the criminal justice system, and made a series of practical, constructive suggestions that have largely been ignored in the policy arena. Turning to the current policy context, the JustSpeak report accepted that there had been some positive trends in criminal justice policy affecting Māori since the publication of Moana Jackson’s report (including in the development of initiatives like ranga-tahi courts and family group conferences), but noted that statistics and public debate on this issue showed that there was still a long way to go before we could say that we have a criminal justice system that serves Māori and Pākehā alike adequately. >



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Building on what was said at JustSpeak's forum on Māori and the criminal justice system, JustSpeak's report made four broad proposals relating to Māori and the criminal justice system:

1. That greater emphasis be placed by Government and media on showcasing success stories and positive attitudes in the area of Māori and the criminal justice system (such as through essay competitions, television programmes, and further forums).
2. That lawyers, amongst others, investigate use of existing legal mechanisms that might contribute to reducing rates of Māori incarceration (since there are a number of interesting statutory provisions in existence, such as ss 8(i) and 27 of the Sentencing Act 2002, that have been neglected but could be used to address the over-incarceration of Māori).
3. That in the creation of criminal justice policy a Māori lens is always used so that criminal justice policy does not have an unintentionally disproportionate impact on Māori.
4. That consideration should be given to ways in which conversations and small-scale change can be fostered on issues of Māori and the criminal justice system (in light of the power of what might be called "conversational activism" in a country as small as New Zealand).



JustSpeak forum in action.

JustSpeak also suggested that further attention be directed towards interdisciplinary research in this area, solutions-based research, and analysis of whether the Youth Court model might be borrowed in aspects of the mainstream criminal justice system. The report closed by urging readers to have a renewed sense of positivity and hope. While the challenges in this area are daunting, they are not insurmountable, and can only be addressed with four million of us committing together to resolve them.

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The report is available online at: <http://goo.gl/R5NoV>. A copy of the report can also be requested through email to [justspeaknz@gmail.com](mailto:justspeaknz@gmail.com). JustSpeak welcomes any feedback.  
If you would like to find out more about JustSpeak, check out: JustSpeak's Facebook page: [www.facebook.com/justspeaknz](http://www.facebook.com/justspeaknz) or JustSpeak's website [www.justspeak.org.nz](http://www.justspeak.org.nz)

## YLC DLA Phillips Fox Lawyer's Toolbox Seminar: Tools to equip you for the future

In keeping with YLC's 2012 "Master Plan" to facilitate education and opportunities for young lawyers, on Tuesday 22 May we ran a "toolbox seminar" for young lawyers. The aim was to provide tools to young lawyers in the early stages of their legal careers and professional lives. We had three fantastic speakers share their expertise with us in a panel-style discussion. We had a great response to the event afterwards, and RSVPs reached into the 60s and 70s after only a few days of marketing — so watch this space — we are sure to be running another seminar later on this year.

### The Speakers:

**Alison Snook**, a financial adviser from MAS, gave us a run down on key financial tips — and provided answers to mystifying questions, such as "What Kiwisaver scheme should I be in?" and "Should I pay my student loan off voluntarily, and what has Bill done to the loan in his budget?" and "Can Guy Carter party every weekend and still save money?". One of the key messages from Alison's talk was that we all need to make a Really Good Financial Plan.

Next, **Damian Hanna**, from Simply Legal (part of the global legal recruiting agency JLegal), gave us some valuable insights into the legal job market in the United Kingdom, Asia and Dubai, as well as some helpful tips on how to make ourselves more "recruit-able" (partial answer — in these troubled times, it's best to stay put for now in your current role and gain as much experience as you can).

Finally, **Anthea Williams**, a Crown Counsel at Crown Law, gave us some tips and tricks around balancing a legal career with a healthy lifestyle. Anthea was well-qualified to speak on this subject, as she is not only a keen triathlete but has also done half-Ironman and Ironman competitions, completed an LLM overseas and does academic writing — all on top of an extraordinary legal career.

# Illegal Immigrants are Not Welcome: Proposed Changes to New Zealand's Immigration Laws Contravene International Human Rights Law

**JESSICA WILLIS** IS A SOLICITOR AND VOLUNTEER FOR THE REFUGEE AND IMMIGRATION LEGAL ADVICE SERVICE

### *The Immigration Amendment Bill: a mandatory detention regime*

As part of a wider range of policy measures aimed at deterring people-smuggling, the Government has introduced the Immigration Amendment Bill. Of the proposed amendments, the most concerning is the introduction of a mandatory detention regime for members of a "mass arrival" group and the suspension of processing individual refugee and protection claims. Proposed limits on access to judicial review also cause concern. The Bill threatens New Zealand's obligations under international human rights and refugee laws, and lacks compliance with the New Zealand Bill of Rights Act 1990.

Under our current immigration regime an asylum seeker can be detained for an initial period of 72 hours without a warrant, followed by a further 96 hours' detention. They may then be held for consecutive periods of 28 days in detention under a warrant issued by the District Court. The Bill will allow for mandatory detention under a group warrant for an initial period of up to 6 months, with the possibility of further detention for periods of up to 28 days. Detention may be at the Māngere Refugee Resettlement Centre or a defence or correctional facility.

### *Implications for New Zealand's human rights obligations*

The proposed detention regime is discriminatory and breaches New Zealand's human rights obligations. New Zealand has responsibilities to protect refugees under both the 1951 Refugee Convention and the 1967 Protocol Relating to the Status of Refugees. The Convention and Protocol have been incorporated into New Zealand law through the Immigration Act 2009. The proposed detention regime and associated measures do not represent good faith observations of these obligations. While the interests of the state can be balanced against the rights of the asylum seeker (art 31), the detention of asylum seekers is inherently undesirable and should be avoided.



The Bill discriminates by targeting groups arriving by means other than a scheduled international service. In particular, it treats unfavourably those who arrive as part of a "mass arrival" group. This policy is arbitrary. International refugee law does not distinguish on the basis of asylum seekers' mode of arrival. An entire group of people should not be placed illegally in detention on the basis of being a member of that group. Each asylum case should be treated individually.

Furthermore, the new provisions are an unjustified limit on asylum seekers' rights not to be arbitrarily detained. This right is protected by s 22 of the New Zealand Bill of Rights Act 1990 and is an extension of New Zealand's obligations under art 9.1 of the International Covenant on Civil and Political Rights to ensure that everyone "has the right to liberty and security of the person". Under this right, no one may be subjected to arbitrary arrest or detention. Similarly, art 14 of the Universal Declaration of Human Rights protects the right to seek and enjoy in other countries asylum from persecution. It is therefore a human right for people to seek asylum.





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### *Dispelling the myths about asylum seekers*

It is necessary to explain the differences between asylum seekers, illegal immigrants and refugees. There is danger in treating these three groups as a homogenous whole, which shows a lack of understanding for the circumstances under which asylum seekers, illegal immigrants and refugees arrive in New Zealand.

The Government claims that New Zealand is facing an ongoing risk of “mass arrival” of illegal immigrants. But the use of the term “illegal immigrants” in the context of this Bill is misleading as it suggests that being an asylum seeker or a refugee is an illegal activity. It is not. International law recognises that refugees may enter a country without official documentation or authorisation.

Nor should refugees and asylum seekers be confused with each other. New Zealand currently accepts around 750 refugees each year under a voluntary quota as part of its annual resettlement programme on behalf of the United Nations High Commissioner for Refugees (UNHCR). The quota system for refugees should not be confused with those who claim asylum when they arrive at our borders. An asylum seeker is someone who says he or she is a refugee, but whose claim has not yet been definitively evaluated. It is inaccurate to say that “boat people” are “queue jumpers” because there is no queue for asylum seekers. Of the 22 million refugees worldwide, only 1 per cent will ever be resettled through small quota systems in developed countries. (Of this 1 per cent, 750 refugees will be resettled in New Zealand each year.) By comparison,

around 300 asylum seekers arrive in New Zealand each year. Of this number, 60 per cent do not meet the criteria for a “refugee” and are deported. Those that are found to be genuine refugees are allowed to stay. As a party to the 1951 Convention and Protocol, New Zealand has separate international obligations to ensure that people who meet the UN definition of a “refugee” are granted asylum, and to avoid imposing penalties on asylum seekers based on their mode of entry to New Zealand.

The fear of a “mass arrival” of asylum seekers to New Zealand is exaggerated. During the Bill’s first reading, Nathan Guy, the Minister of Immigration, expressed concern that people smuggling operations in South East Asia which have arranged ventures to as far afield as Canada (none of which have been successful) may also target New Zealand. The ten Chinese asylum seekers that were trying to sail to New Zealand from Malaysia in April this year supposedly illustrated this “risk”. The Government has gone from worrying about ten asylum seekers coming to New Zealand to legislating for the arrival of 500. In its regulatory impact statement, the Department of Labour admitted that it was difficult to quantify the likelihood of a “mass arrival” occurring in the future, or when it might occur. But given New Zealand’s geographic isolation, it seems unlikely New Zealand will ever be “swamped” by the mass arrival of asylum seekers.

Furthermore, the solution proposed by the Government will not solve the problem. The Bill, if passed, will crimi-



“Not only do mandatory and indeterminate detention further victimise asylum seekers, they damage the people and societies which carry out such acts. New Zealand’s international obligations are clear. We should protect the rights of asylum seekers, regardless of how they arrive. ”

nalise asylum seekers rather than the traffickers. One of the Bill’s stated goals is to enhance New Zealand’s ability to deter people-smuggling to New Zealand, but having harsher detention regimes for asylum seekers is unlikely to have a deterrent effect. People smugglers do not care for a country’s sovereignty or laws, nor do they care about the safety of those whom they smuggle. Those involved in people smuggling are willing to put the lives of those bound for a new country at risk, by placing them on overcrowded and unsafe boats. The harsh measures asylum seekers face upon arrival will not deter people smugglers and further, are unlikely to deter asylum seekers, many of whom are desperate for any way to escape persecution and oppression in their own country.

### *The Immigration Amendment Bill should be opposed*

If this Bill is passed, New Zealand risks making the same mistakes as Australia. The legislation introduced under the Howard Government has compromised Australia’s human rights record. Under Australia’s mandatory detention policy, thousands of asylum seekers have been held in Australia’s detention camps for prolonged periods of time. Damaging political rhetoric in Australia has led to widely held misconceptions of asylum seekers as queue jumpers, irrespective of the dangers they have fled.

Asylum seekers are not criminals. They are often fleeing war, famine, poverty and extreme human rights abuses. There is overwhelming evidence that placing asylum seekers in detention for prolonged or indeterminate periods of time leads to deep trauma and creates long term psychological damage. Not only do mandatory and indeterminate detention further victimise asylum seekers, they damage the people and societies which carry out such acts. New Zealand’s international obligations are clear. We should protect the rights of asylum seekers, regardless of how they arrive. The Bill is not only based on a misconception of risk but it is difficult to see how its measures could work to deter people smugglers. It is flawed in principle and practice. New Zealand needs to uphold its obligations under both international and domestic human rights law.





## YLC Speed Dating 2012 — Finding love in half a billable unit?

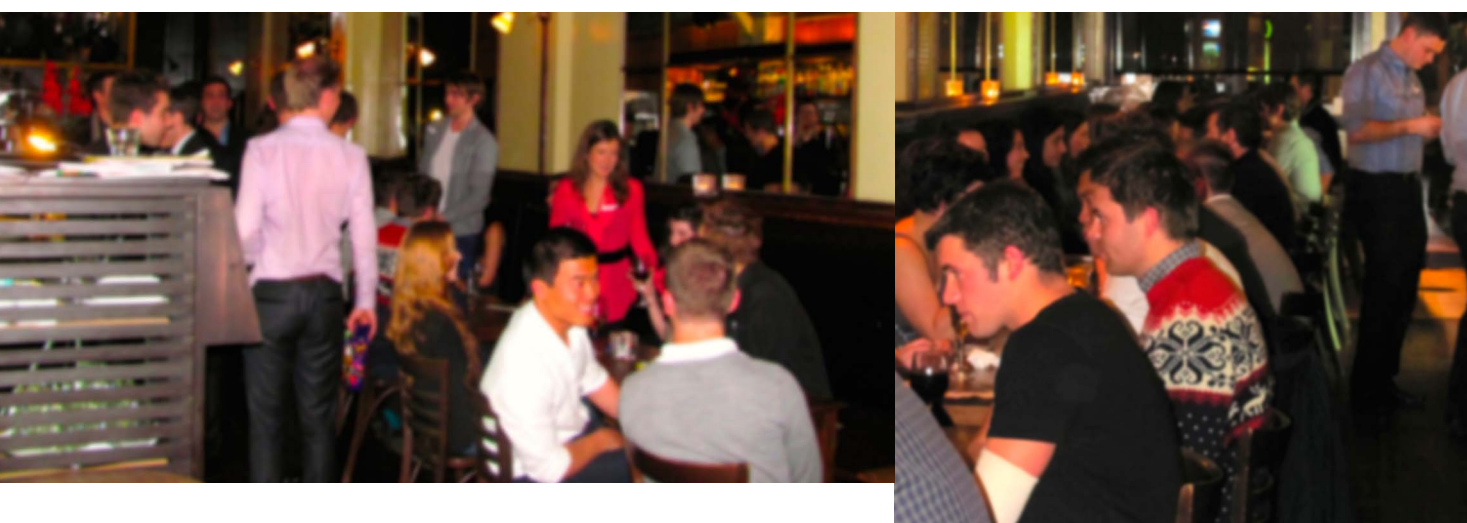
The Young Lawyers' Committee speed dating event (for young professionals) was another popular night on the YLC calendar this year, attracting 40 participants searching for cupid.

The rules for this new form of matchmaking are quite simple. Armed with a nametag, a scorecard and the outstanding personalities lawyers are known for, couples were paired up to begin their first date. After three minutes of conversation, a bell was rung, and the men asked to move on to meet their next date. Think of it as a flirt's version of musical chairs.

Following each date, participants marked on a card whether they would have an interest in meeting their date again. If a mutual interest resulted, the YLC provided each party with the other's phone number.

But does it work?

*Advocate* understands that last year's event resulted in at least one couple having "settled down" and gone to the United Kingdom together. Will the 2012 event also result in love? We hope so — and the YLC looks forward to all the engagement party and wedding invitations ...



## YLC Chapman Tripp Comedy Debate

There were bears, blind kiwis, low humour and high amusement at the annual YLC Comedy Debate hosted at Chapman Tripp's offices on 28 June.



The affirmative team of Greg Robins, Rachel Ward and Marcelo Rodriguez-Ferrere gamely tried to persuade the audience "that New Zealand should just give up now, turn the lights off and head overseas". They seemed undazed by their ursine opponent (Michael was in a bear suit) with Marcelo enthusiastically heckling the other team. Despite having the more audience-friendly side of the debate, the negative team comprising Michael Dobson, Nikki Kaye and Tom Hallett-Hook set a low standard for their argument early on with some truly "unbearable" puns. In spite of the quality of the speeches, the audience had a rollicking good time, even contributing to the "sing-off" to determine the winner. Who cares who won, no one covered themselves with glory or escaped with dignity intact but plenty of funny bones were tickled pink. Special thanks go to MC Geof Shirtcliffe for gamely riding herd on an unruly mob, and not giving the participants too much to live up to. The YLC is proud to help support LawSpot through this event.



TOP Michael: the Ursine Opponent  
MIDDLE Marcelo heckling Nikki Kaye  
LEFT The affirmative team: Marcelo, Rachel and Greg  
BELOW Marcelo



# Law for Change: Wellington

On Monday 28 May an event called “Law for Change” was held at Victoria University. Louis Chambers (a fifth year student at Otago), Jess Kerr (from Crown Law), Matt Smith (a barrister at Thorndon Chambers), and Max Harris (a judge’s clerk at the Supreme Court) spoke about the possibilities of doing law in the public interest, away from the corporate law pathways that are so often presented to up-and-coming lawyers. Over 100 students and young lawyers attended, and broke away into small groups after the first hour (addressing long-term options in public interest law — such as human rights law, environmental law, and criminal law — and short-term opportunities: internships, community involvement, and at university).

Out of this evening (and a similar evening in Otago and Auckland) it is hoped that a public interest law network can start to be built in New Zealand — so watch this space! We provide below excerpts of what each of the speakers said on the night.

## Louis Chambers

As a law student approaching the end of my degree, I’m beginning to face the hard questions about what I want to do with my law degree. Although I started out believing that I could make a difference, at times it’s felt like that dream has been lost in the day-to-day grind of law school. We can be so busy competing with our peers that we fail to ask the fundamental questions about how we can use our skills to help others.

We should all think critically about the next few years of our lives. Here are a few tips that come to mind. First, making a difference is not something you do, it’s an attitude you take. It is easy to turn public interest law into a simple decision. The real challenge is to manifest your commitment to doing good in everything you do. Second, even though there’s no one right answer, our law degrees present us with an incredible set of opportunities. The skills we learn as lawyers, the rigour with which we approach problems, the calm and clear attention to detail that we possess — these are the hallmarks of the legal profession. The last tip is something of a warning: skills alone are not enough. If you really want to make change you need to realise the moments of choice and act upon them. Although making a difference is partly a matter of attitude, moments will arise when we are forced to make big decisions. We owe it to ourselves to align the big decisions with our values — we cannot keep postponing the decision to live the values that we claim to hold.

## Jessica Kerr

Law school is valuable for helping us to find our own skills. Cherish the moments, in class or out of it, that help you understand your strengths, and start thinking about the situations and people who are crying out for your help. Law for change is an abstract ideal but first and foremost, it is an individual lived experience. The more you know about yourself and what you have to offer, the more change you can effect. So go find out. That’s still my dream, and a work in progress.

In that spirit, I’d like share four lessons: one, *public interest law is in the eye of the beholder*; two, *don’t be afraid to take it a step at a time — there’s no single track to get to any destination*; three, *you don’t have to be just one kind of public interest lawyer*; and four, finally, *never say no — at least when it comes to law opportunities*.

In some ways New Zealand lawyers have been quietly doing law for change, for ever — concepts of social justice and innovation are so deeply rooted here. But what we don’t have is an organised, vocal, visible body of lawyers and institutions devoted to advocating for change through law. There’s no reason why we shouldn’t create that body.



Law for Change speakers (L–R) Louis Chambers, Jessica Kerr, Matt Smith and Max Harris

## Matt Smith

There is a breadth of public interest law work that can be done. I hope by providing some examples of some of the options that already exist, I can gesture at some of the steps you might take in building a public interest law career.

It is possible to identify six broad categories of public interest law work. First, there’s community and local work: at a citizens’ advice bureau, or with political parties; for example, I was lucky enough to do work on the Obama campaign in 2008. Secondly, law firms can provide a rich source of public interest work (and can channel people towards that work through secondments and internships, as well). Thirdly, there’s the independent bar, where I work, which provides a flexibility that allows for public interest work to flourish, as well as offering outlets for writing and speaking (through which public interest law can also be furthered). Fourthly, academia is often forgotten as a place for public interest law, but can be a centre of much farsighted thinking, especially when combined with clinical workshops (as has become common in the United States). Fifthly, IGOs (international governmental agencies) and UN agencies allow for the development of public interest law skills. And sixthly, NGO and not-for-profit work of many different kinds is available — nationally, regionally, and internationally. These work opportunities are out there already: one just needs to be aware of them and to show those who generate these jobs that there is a market of hungry people who are looking for them.

## Max Harris

I had two inspiring experiences that amplified my passion for public interest law: a summer at the Australian National University doing human rights research with Professor Hilary Charlesworth, and a summer in New York doing volunteer legal work with the American Civil Liberties Union (ACLU). My work at ANU and with the ACLU exposed me to lawyers committed to using law as a lever of social change, helped me to view law in terms of outcomes (and not just in terms of reasoning processes), and allowed me to understand law in a broader social context.

That work has forced me to ask: how can law make social change? To me, law does three things to achieve social change. First, it can secure (often through litigation) particular, concrete outcomes for marginalised groups — as has occurred in much human rights litigation. Secondly, law can change the terms of public debate (as exemplified by Treaty litigation in the 1980s which cemented notions of “partnership” in general discourse). And thirdly, law gives students skills for social change — familiarity with policy, the ability to make arguments, as well as an awareness of how law can be changed.

My view is that we need to sketch a vision of a legal community that embraces how law can support social change. We need more structured pro bono work in New Zealand. We need to get rid of the perception that lawyers are amoral or greedy and create a new image of lawyers as servants of the community. Of course, we should think critically about public interest law — it’s a glamorous field that might lead us to overstate the power of law, and this field faces other challenges. Ultimately, however, what we all have to work towards is bringing home Michael Kirby’s view, that “law is not just a business. Never was. Never can be so. It is a special profession. Its only claim to public respect is the commitment of each and every one of us to equal justice under law.”



# Cats in Court

Animal law was recently recognised by *LawTalk* as a growth area of law. In particular, animal rights and welfare are taking on greater importance. Although one may scoff at the idea of human rights for apes, or the existence of animal advocates, the law is more than ever recognising that animals have agency. This article looks at some less common arguments for why animals should have greater legal standing.

**SARAH KEAST**  
IS A JUDGE'S  
CLERK AT THE  
COURT OF APPEAL

First, animals are currently under-valued as potential witnesses. How many crimes without witnesses could be solved if we consulted animals at the scene? France is ahead of us in this respect, using a dog witness to help ascertain whether an apparent suicide was actually a murder. In what is believed to be a world first, the victim's dog was put on the stand to see how it would respond to the alleged murderer. The dog, nicknamed Scooby, is said to have "barked furiously" at the defendant. The Judge praised Scooby for his "exemplary behaviour and invaluable assistance". It is unknown whether the defendant's lawyer attempted cross-examination, although it was noted that the two and a half years that had elapsed since the death amounted to 17 dog years, casting doubt on the accuracy of Scooby's evidence.

Then there's the apocryphal story of a parrot testifying as to a spouse's infidelity, which actually happened. In an acrimonious divorce case, Bozo, an Argentinean cockatoo, described three "pretty dollies" that the husband had "tickled", and identified photographs of said "dollies". The wife had been alerted to her husband's philandering when Bozo began "giggling in a high-pitched feminine voice" and his vocabulary expanded to include adult themes.

Secondly, animals are analogous to children. Some pet-lovers may confess to liking their cat more than their children. But what happens when a relationship breaks down, and a couple is left arguing over who gets to keep Fido? The orthodox legal approach is that animals are chattels, to be divvied up along with the car, the house and the golf clubs. That hasn't stopped some couples from going to the courts to rule on the pet's best interests, and New Zealand judges have at times considered pet ownership in the same way they approach child custody. In *Pence v Pence*, Roper J displayed paternalistic concern for a pair of chihuahuas:

Mr Boyle submitted that each party should have a dog, but applying the principles applicable to the custody of children I feel they should not be separated ... In cross-examination the husband admitted that two king charles spaniels, a pointer and a labrador were regular visitors to his home. I do not see them as appropriate company for such delicate animals as Pablo and Rosita.

In the United States, couples even hire animal psychologists to decide who has a stronger bond with the pet. In light of animals' sentience and value to their caregivers, they must surely be considered to be more than chattels.

Thirdly, animals currently commit crimes with impunity. Readers may remember the Dunedin seagull that habitually took chips from a dairy without paying for them. Stories of kleptomaniac animals abound — Reuters recently reported on Oscar the cat, a career criminal who averaged 10 burglaries (largely socks and underwear) a day. There would be some issues in holding animals criminally liable; mens rea in particular may be difficult to prove. Perhaps pet owners should be held vicariously liable for their animals' thieving, trespass and other disorderly conduct?

Putting animals in prison does have its benefits, such as reducing recidivism. For instance, the "puppies in prison" programme allows low-security prisoners to train mobility dogs to assist people with disabilities. These schemes have reduced re-offending overseas, teaching prisoners responsibility and building their self-esteem.

Granted, there are some issues with affording animals greater legal standing — would pets be able to bring a writ of habeas corpus? Would eating meat become murder? And should some animals have more rights than others? New Zealand has granted basic "hominid rights" to five great ape species, banning their use in testing or research, but has not extended these protections to other species.

Hammond J considered this issue in *Lowe v Auckland City Council*, a case concerning "a handsome German Shepherd called Ben" who had not been registered. The appellant challenged his fine for not doing so, leading to an erudite judgment from Hammond J. His Honour pondered the widespread "discrimination between cats and dogs", noting that while dogs are rigorously controlled, "cats are entitled to pounce about town, completely unregulated". Perhaps the New Zealand Bill of Rights Act could provide a remedy? However the Judge opted for a more pragmatic approach, reducing the fine and providing the warning: "*cave canem*" (beware of the dog).

This developing area of law raises more questions than answers, but there are compelling reasons to extend human rights and responsibilities to animals.





# Bridging the Gap: YLC Mentoring for Law Students

The YLC, in collaboration with the Victoria University of Wellington Law Students' Society (VUWLSS), launched their mentoring programme, "Bridging the Gap", on Wednesday 18 July at Foxglove. The function was attended by around 50 students and young lawyers. Sharyn Joe from the programme's sponsor, College of Law, shared with us her insights on the benefits of mentoring.

Bridging the Gap pairs up young Wellington lawyers with fourth or fifth year law students from Victoria University to provide some professional mentoring and career guidance. Bridging the Gap aims to guide students through the transition from academic to professional life and to create a strong network of young lawyers and senior law students in Wellington. In the future, the programme will offer students and mentors the opportunity to attend sector-specific mentoring events, where students can meet other lawyers working in their field of interest and young lawyers can network with other lawyers working in a similar field.

All young Wellington lawyers are encouraged to get involved. If you are interested in joining the programme, email the YLC at [info@younglawyers.co.nz](mailto:info@younglawyers.co.nz).



## Book review: "Zen Under Fire" by Marianne Elliott

Marianne Elliott's *Zen Under Fire* will certainly make you reconsider complaining about having a bad day at the office.

**SARAH  
BACKHOUSE**  
IS A SOLICITOR  
AT KENSINGTON  
SWAN

Marianne's tale begins with a punch: one of her more stressful days working for the United Nations Assistance Mission to Afghanistan. She is left in a situation which some of us may, at first, relate to. She is given more responsibility than she feels comfortable with. However, this is a far cry from the situations most New Zealand lawyers find themselves in. After only a month in her new job as a human rights officer, Marianne is left as acting Officer in Charge. Her boss's parting words provide ironic encouragement: "You'll be fine, Marianne. As long as no one kills Amanullah Khan, you'll be fine". By midday, Amanullah Khan is dead. Now that's a bad day at work.

*Zen Under Fire* is a must-read. This is not so much because it explains the heroics of the UN from a political or insider perspective, or provides some revelation about how the international community can better address the international human rights breaches that occur in Afghanistan. It is because Marianne manages to find a balance between commenting on the political environment in Afghanistan, in a very local way, and explaining her own triumphs and tragedies, both professionally and in her personal relationships. She reflects on her experiences with honesty and vulnerability, leaving the reader with a recognition of the toll that this sort of job can take even on the most independent and confident person. Her personal struggles in particular set the book apart. They inform her conclusion that resilience, something which is encouraged by humanitarian workers, needs to be "unpicked and stripped of its connotations of toughness". True resilience, Marianne finds, involves allowing ourselves to be emotional and being open with others about our feelings.

Without detracting from these important observations, Marianne breaks up the heavy with just the right amount of humour. Her stories range from visiting a prison, as a human rights officer, to make sure that no prisoners were being unlawfully detained; to a particular American prosecutor's (affectionately referred to as the Cowboy) misunderstanding of her mere helpfulness, resulting in him spreading rumours that she had the "hots" for him. Needless to say, she stopped being so helpful to the Cowboy!



A particular interesting aspect of the book addresses the "line walking" that Marianne found she had to do as a foreigner in Afghanistan. In her post as a human rights officer, she was a foreigner trying to implement change in a country that was not her own. At times, Marianne found that her foreignness helped her to assist others. The lesser expectations placed on foreigners to conform to local custom meant that she could get away with more. As she put it, "there [were] ... times when only I [could] say what need[ed] to be said, when it [was] too dangerous for anyone else to say it". But then there were also times when there was nothing for her to say and it was more appropriate for locals, whose country was at stake, to do the talking.

What is especially inspiring for New Zealand readers is that Marianne's career is rooted in this country. She cut her teeth at a corporate law firm in Wellington before launching her career in international human rights in Gaza, monitoring the conflict between Palestinians and Israeli soldiers and settlers. *Zen Under Fire* will remind lawyers among *Advocate's* readers that our top-notch legal education can be used in diverse circumstances. It will leave you asking yourself what your mission in the law is and how you are going to go about achieving that mission.





## YLC Young Professionals' Ball

The young socialites of Wellington transformed into the darlings and gentlemen of Madison Avenue on Saturday 11 August for the annual Young Professionals' Ball.

The venue was a Mad Men 1960s abode, fitted out for a night of scandal and satisfaction with a board room, whiskey lounge and swinging dance floor. The night had something to offer for everyone. Yvette Laughton-Campbell had charming boys with pocket squares queuing at the door, and the ladies channelled their inner housewife and donned their grandmothers' fur coats to impress the numerous Don Drapers. Some hearts were won, dealings were made and much fun was had by all. But as Joan Holloway so elegantly once said, "One minute you're on top of the world, the next minute some secretary's running you over with a lawn mower." For 350 young professionals, that secretary was Sunday morning — "But that's life." A great night to try and remember. A special thanks to all those who made the night possible, in particular the fabulous sponsors: MAS, Simply Legal Recruitment, Steinlager and Daniel Le Brun.

*Images by Natalie Siefe Photography*





# “Advocate” talks to Kris Gledhill about the new Human Rights Lawyers’ Association

Hi Kris!

We hear you’ve been doing some human rights work at the University of Auckland as the Director of the new Human Rights Centre for Law, Policy and Practice, as well as starting up the Human Rights Lawyers’ Association. We’re keen to hear how lawyers in Wellington can get involved!

## How well do we advocate for human rights in New Zealand, in comparison to other jurisdictions you’ve worked in?

It is worth recalling that New Zealand has a great history in human rights advocacy. This has included being an early supporter of legislation or processes that secured rights — extending the franchise, introducing social security, allowing the development of the Waitangi Tribunal jurisprudence that has breathed life into an indigenous human rights framework. On an international level, New Zealand was a key player in ensuring that the Universal Declaration of Human Rights 1948 included economic, social and cultural rights. It is also worth noting that New Zealand judges were way ahead of other Common Law judges in saying that international obligations were to be taken seriously even if not incorporated into domestic legislation. Add to this the model of the New Zealand Bill of Rights Act being adopted by the United Kingdom, Ireland, the Australian Capital Territory and Victoria. In short, we have a tradition and a framework that is very pro-human rights. So building on this legacy is what is important.

## Tell us a bit about the Human Rights Centre for Law, Policy and Practice!

The New Zealand Centre for Human Rights Law, Policy and Practice ([www.humanrights.auckland.ac.nz](http://www.humanrights.auckland.ac.nz)) was established in January at the University of Auckland. It is a Centre of the Department of Law, with initial funding from the Faculty of Law and the University of Auckland. However, as the name indicates, we aim to be a resource for the country as a whole (and indeed the wider Asia-Pacific region) and also to be multi-disciplinary: the legal framework for human rights law is only one aspect, and developing effective policies and encouraging human rights compliant practices is also of central importance.

The establishment of the Centre is intended to provide a focal point for research, education, community-service, and a range of human rights activities in New Zealand and the wider Asia Pacific region. The Centre is composed of a growing number of academic members from various universities in New Zealand (both in law faculties and in other disciplines) and others involved in human rights research and activities. We have an Advisory Board including academics but also members of the judiciary and the legal profession. And we are gradually establishing a Consultative Committee that will include people from various parts of New Zealand society and from abroad. We also have roles for students, as research associates for the Centre.



The Centre’s aims include:

- providing a multi-disciplinary online forum for debate about human rights law, policy and practice;
- hosting public lectures and seminars on human rights topics;
- providing a forum for cross disciplinary and inter-university collaboration on human rights related research;
- developing courses in human rights law at the undergraduate and post-graduate level, including a practicum course involving experiential learning by doing human rights work for NGOs and similar bodies;
- working with the legal profession to improve the use made of human rights law;
- working with non-governmental organisations and government on the development of human rights policies;
- researching into the pedagogy of human rights law; and
- assisting students who want to intern in human rights matters and graduates who want to find a career in human rights.

## We’ve heard about a Human Rights Lawyers’ Association (HRLA) starting up in Auckland. What is it?

The HRLA has been established by a group of recent Auckland graduates with the aim of assisting the Centre in its work and promoting the use of human rights in practice. It has an Advisory Council of senior practitioners, and the former Chief Human Rights Commissioner Rosslyn Noonan and former Governor-General Sir Anand Satyanand. The Management Board, with David Tong and Caroline Fergusson as co-chairs, will put together a plan of activities, but it is likely that it will include continuing professional development, pro bono work, perhaps seeking to make amicus interventions in domestic litigation, and then taking cases to the UN Human Rights Committee. The Management Board includes lawyers doing various things — commercial firms, law centres, judicial clerks, academics. It is open to all practising lawyers; we will also allow non-practising lawyers and law students to be involved.



ABOVE Human Rights Centre for Law, Policy and Practice director Kris Gledhill.

## What impact do you hope that the HRLA will have in developing human rights law in New Zealand?

The plan is to build on the heritage and put human rights front and centre again.

## Are there plans to expand the HRLA to Wellington and other parts of New Zealand?

We have set up the HRLA to be a national organisation. Formally, it is the Aotearoa New Zealand Human Rights Lawyers’ Association and we very much hope that it will operate as a New Zealand wide organisation. We have, for example, reserved a number of places on our initial Management Board that can be filled by people outside Auckland: and it is a membership organisation so elections of the future Board will be determined by the membership.

## How can Wellingtonians get involved? Who can get involved?

Visit our website, [www.hrla.org.nz](http://www.hrla.org.nz), and come along to the information meeting on Tuesday 25 September at DLA Phillips Fox at 5.30pm. Join the YLC facebook page ([www.facebook.com/younglawyerscommittee](http://www.facebook.com/younglawyerscommittee)) for more information about the event. If you have any questions, email Kris Gledhill at [k.gledhill@auckland.ac.nz](mailto:k.gledhill@auckland.ac.nz).



## YLC/NZLS “A Good Day at the Office?” Seminar



On the evening of Thursday 26 July, the young lawyers of the YLC and more senior members of the Wellington branch got together at Minter Ellison Rudd Watts for a discussion on a subject relevant to all: how to succeed in the workplace, how to strike that difficult work-life balance, and how to deal with the stresses and demands of modern-day legal practice.

Facilitator Rachael Dewar (Vice President, NZLS Wellington) hosted a forum with five outstanding and varied panellists: Sandy Baigent (Public Defender Southern), Julia Coleman (NLZS Wellington chaplain), Nikki Pender (Franks & Ogilvie), John Miller (John Miller Law) and young barrister Matt Smith (Thorndon Chambers). The topics covered a variety of issues, including highlights such as: what to do with an amorous client who can't let go, how to cope with a colleague determined to push you down on their way to the top, how to sleep at night after dealing with emotionally challenging work, and tips and tricks for managing an inter-office romance. Though the subject-matter was a serious and important one, the good humour, interesting anecdotes and honest wisdom of our panellists made the evening enjoyable as well as informative. Particular mention should also be made of the Minter Ellison catering and the fantastic mini-croque monsieurs (as Dave put it, they were “food ... for thought”). The evening was a great collaboration between YLC and NZLS Wellington, and hopefully the start of more work in this area to come.



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