# AUTlaw

## NEWS FROM AUT LAW SCHOOL
## SPRING 2015

AUT

# MESSAGE FROM THE DEAN

As I come to the end of my first year as the Dean of Law, I can reflect on a year of continued success for the Law School and look forward to the exciting opportunities and interesting challenges which lie ahead.

The graduation ceremony is always a highlight in the academic calendar and in July 61 of our students took the stage at the Aotea Centre to graduate with their degrees. The top graduating law student, Justin Maloney, gave the response on behalf of the student body and received a standing ovation for the moving and heart-felt story of his journey through the four years of the degree. Justin is now employed as a law clerk at Bell Gully and it is especially pleasing that so many of our graduates are getting positions in law firms and elsewhere.

The annual prize giving and awards evening was also held in graduation week and that provided an opportunity to acknowledge the achievements of our best performing students. It was a great event for those receiving recognition and a huge delight for teachers, family and friends who were able to share in the celebration of their academic success. We were privileged to have Justice Anne Hinton give an inspirational account of her experiences of studying law and then going on to become one of the leading lights in the profession – a timely message for those graduating students who joined us for the evening.

Of course there would be no awards evening without the generous support of our sponsors and I would like to take the opportunity to thank Te Hunga Roia Māori a Aotearoa, South Pacific Lawyers' Association, Chapman Tripp, Swarbrick Beck MacKinnon, Prestige Lawyers, Baldwins, Thomson Reuters and LexisNexis in particular. These awards give an important signal to our students that excellence is valued and also that AUT's young Law School is seen as one with credibility and is worth investing in.

This also aligns with a commitment to ensuring that our students not only experience an excellent classroom dynamic while they are at law school but are given every opportunity to interact with, and learn from, leaders in the profession. We have been particularly fortunate in partnering with organisations such as AMINZ and STEP to enable our students to participate in their various events. In September ten of our students benefited by joining with Māori lawyers from across the country at the Hui-ā-Tau (which we helped to sponsor) held by Te Hunga Roia Māori a Aotearoa at Waitangi.

We continue to plan for the future. There will be changes to our curriculum from 2017 and from next year our first year programme will also be taught at the AUT South campus at Manukau. We are fast approaching another national research assessment exercise and that is giving us increased impetus to ensure that our teaching focus is supplemented and overarched by a vibrant research environment. We want to foster a culture of investigation by strengthening our research capacity, establishing centres of research excellence, hosting conferences and inviting respected international scholars to the School.

And, with that, it's my pleasure to welcome you to the latest issue of AUTlaw which I hope will give you a flavour of what we are doing here in the Law School – enjoy the read.

**Professor Charles Rickett**
Dean of Law

Top graduating student Justin Maloney with Professor Charles Rickett

Justice Anne Hinton

Kim Beange, winner of the Chapman Tripp prize for Contract and Torts, with Bruce McClintock, Partner, Chapman Tripp


## TELLING OUR STORIES

Schopenhauer said that, "there is nothing in the world to which every man has a more unassailable title than to his own life and person". The reality is though that "title" might count for little if you are not free to pass on to others a chronicle of your life and experiences and to do that in your own way. Our right to freedom of expression means that we should be entitled to tell our stories and, while recognising the right to do so may not be completely unrestrained, any limits should be clearly justified by legal principle. Here we review two recent cases in which the right to tell one's story has been examined through the legal lens, and upheld, in quite different contexts.

*Watson v Chief Executive of the Department of Corrections* [2015] NZHC 1227

Our first case concerns Scott Watson, who has served over 16 years of a life sentence for the murders of Ben Smart and Olivia Hope. Watson has exhausted his appeal rights but continues to protest his innocence. Sometime last year Watson, through his lawyer, approached a well-regarded journalist to explore the possibility of a feature article being written about his case. The proposal involved Watson being interviewed in prison. Under the Corrections Regulations 2005 (regs 108 and 109) such an interview requires the prior approval of the Chief Executive of the Department of Corrections. In making his decision, the Chief Executive applied an evaluative framework which addressed all the relevant factors, including certain mandatory considerations set out in the Regulations. The Chief Executive's prime consideration was whether the impact on the families of Ben Smart and Olivia Hope (who opposed the interview taking place) outweighed Watson's right to freedom of expression affirmed in s 14 of NZBORA. In his view it did, and the Chief Executive accordingly declined permission for the interview to take place.

Watson sought a judicial review of that decision and, in June, Dunningham J in the High Court upheld Watson's application, quashed the decision and referred the matter back to the Chief Executive for reconsideration. Interestingly, Watson's application for judicial review was brought on the ground that the decision was "unreasonable". While it is still relatively unusual for an application for judicial review to succeed solely on this ground, these days New Zealand courts do adopt a more expansive test than the *Wednesbury* irrationality standard (*Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223). Judges are prepared to find unreasonableness in the context of judicial review where, for example, a decision is not supported by reasoned justification or where a decision is the result of a disproportionate weighing of competing factors which makes the outcome unreasonable (at [26]). The Chief Executive argued that the questions concerning the reasonableness of the decision and the prisoner's right to freedom of expression had to be considered in the context of the prison environment, the statutory requirements and the expertise and skills of the person making the decision. While accepting that it was "appropriate to accord weight to the Chief Executive's assessment of what is required to ensure the security and good order of the prison [and] that a prisoner's right to freedom of expression is necessarily limited" (at [48]), Dunningham J considered that the "real issue" was when that right could be "fettered justifiably because of other considerations such as the interests of the victims" (at [42]). On that question, the learned Judge concluded that "the Chief Executive is not in any better position than the courts to judge how concerns about the interests of the victims should be weighed against the protection of the right affirmed in s 14 of NZBORA" (at 49]).

Referring to Lord Millet's conclusion in *ex parte Simms* ([2000] 2 AC 115 at 145) that, "A refusal to allow a prisoner to be interviewed by a responsible journalist investigating a complaint that he had been wrongly convicted would strike at the administration of justice itself", and noting that the Department's evaluative framework specifically identified an allegation of miscarriage of justice as a circumstance justifying particular consideration, Dunningham J stated (at [68]):

> Where no concerns of prison security are raised, and where the communication is to a reputable journalist, then that is a circumstance where the rights in s 14 NZBORA should almost always prevail. The effects on the victims which arise naturally and inevitably from any debate over the soundness of the prisoner's conviction, cannot reasonably, without more, justify declining the right to speak out on such issues.

As far as Dunningham J was concerned, it was telling that the Chief Executive's decision only prevented a face-to-face interview between Watson and the journalist. She noted that other forms of communication, such as written correspondence or conversations over the phone, though "less interactive and more drawn out", were still possible (at [56]). Consequently, Watson was able to tell his story to the journalist who could "use those communications in an unfettered way to write an article" ([at 58]). For that reason, a decision which merely controlled the means by which Watson could tell his story would not achieve the objective of alleviating the harm to the families of the victims. The Chief Executive had failed to demonstrate "why the limitation he has

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placed on Mr Watson's exercise of that right is justified" (at [69]) and his decision was therefore unreasonable.

*Rhodes v OPO* [2015] UKSC 32

The second case is a decision of the UK Supreme Court and concerns the autobiography of James Rhodes, the concert pianist, author and television filmmaker. Rhodes had a harrowing childhood and his graphic story relates the physical and psychological harms he suffered as a result of years of brutal rape. Despite being a no-holds-barred description of his experiences, Rhodes' account also seeks to inspire readers by explaining how he coped with the trauma through his music.

Rhodes dedicated the book to his son, then aged 11, who lives with his mother (Rhodes' former wife) in the United States. The mother was concerned that her son would be adversely affected if he gained access to the vivid details in the book. Expert evidence indicated that the son, who has Asperger's syndrome and other psychological problems, might suffer psychiatric injury as a result. The mother sought to prevent the publication of certain explicit passages which she considered particularly harmful.

The claim was brought by the son's litigation friend on various bases but by the time the case had reached the Supreme Court the only extant ground of appeal was intentional infliction of emotional distress. This tort has its origins in *Wilkinson v Downton* ([1897] 2 QB 57) where a misconceived practical joke went seriously awry. Downton's made-up story about the plaintiff's husband suffering serious injuries in an accident caused Mrs Wilkinson to suffer severe nervous shock which caused vomiting and other physical ailments including turning her hair white. In holding the defendant liable, Wright J decided that it is wrongful for another to infringe a plaintiff's right to personal safety by making intentional false statements without justification which cause physical injury (at 58-59).

*Wilkinson v Downton* was decided at a time when there was very limited recovery for nervous shock caused by negligence – and, indeed, before the general principles of the tort of negligence were set out by Lord Atkin in *Donoghue v Stevenson* in 1932. Consequently, while *Wilkinson v Downton* is argued from time to time, here and in other jurisdictions, some have questioned whether it still has a place in the modern law of torts. At first glance, it is hard to see how the facts of *Rhodes* fit into the requirements of the cause of action and, at trial, Bean J struck out the proceedings. He concluded that the tort did not extend beyond false and threatening words and declined to open the floodgates which would potentially make Rhodes liable for psychiatric injury suffered by any vulnerable reader of his book ([2014] EWHC 2468 (QB), handed down in private).

The Court of Appeal (*OPO v MLA* [2014] EWCA Civ 1277) disagreed. Arden LJ, who delivered the leading judgment, held that the claim of intentionally inflicting mental suffering should go to trial. She reasoned that the tort was not limited to false or intimidatory statements; it captured any intentional statement directed at the claimant and unjustified vis-à-vis him. Arden LJ concluded that, by dedicating his story and addressing one part of it to his son, Rhodes had aimed the graphic autobiography at him. She also noted that Rhodes had promised in his divorce settlement with his former wife to use his best endeavours to protect his frail son from harmful information. These factors convinced the learned Judge that, at trial, the claimant would have a good prospect of establishing the conduct elements of the tort and that the requisite intent would be "imputed" to Rhodes because he was aware of the psychiatric evidence. She granted an interlocutory injunction permitting publication of the book only in a bowdlerised version. Rhodes appealed.

The UK Supreme Court thought that Arden LJ had erred both in accepting that Rhodes had directed the autobiography at his son and in determining that the question of justification for the publication was to be judged solely in relation to the son. It allowed the appeal, holding that there should have been no injunction at all because the claim to restrain the publication of Rhodes' book had no prospect of success. In the Supreme Court's opinion, Rhodes had every justification for publishing his autobiography. It said (at [77]):

> It is difficult to envisage any circumstances in which speech which is not deceptive, threatening or possibly abusive could give rise in tort for willful infringement of another's right of personal safety.

The Supreme Court, therefore, concluded that the requisite conduct necessary to engage the tort was absent. However, it then proceeded to review in detail Wright J's decision in *Wilkinson v Downton*. In its view, in order for the tort to be made out three elements must be satisfied: words or conduct directed at the claimant for which there is no justification; an actual intention (not recklessness) to cause the claimant physical harm or severe mental or emotional distress; and the claimant must, as a consequence, suffer physical harm or recognised psychiatric illness (Lord Neuberger considered that it should be sufficient for the claimant to establish that she had suffered significant distress).

The Supreme Court's clarification of the elements in *Wilkinson v Downton* is helpful for the future direction it provides but it is the Court's discussion of freedom of expression, encompassing both the speaker's right to speak and the public's right to be informed, which is of particular interest here. The Court emphasised that the book was directed at a worldwide audience and that Rhodes had a legitimate interest in telling his significant story in the manner he thought best depicted it. The injunction effectively silenced the emotive force of Rhodes' expression. Rhodes had the right to use brutal language to describe "his emotional hell, self-hatred and rage" (at [78]) and correspondingly the public had the right to read his story "in all its searing detail" (at [76]). Indeed, "[t]o lighten the darkness would reduce the effect" (at [78]).

Lord Neuberger added that it would have made no difference if the story had been fiction. He was "unenthusiastic" about judges assessing the importance of the work to the public, or the writer, to justify publication. And in respect of the parts of the book that some would undoubtedly find offensive, his Lordship quoted Sedley LJ's memorable dictum in *Redmond-Bate v Director of Public Prosecutions* ((1999) 7 BHRC 375 at [20]) that 'freedom only to speak inoffensively is not worth having".

**Suzanne McMeekin and Mike French**

# STAFF NEWS

## NEW BOOKS


July saw the publication of **The Supreme Court of New Zealand 2004–2013**, edited by Mary-Rose Russell and Matthew Barber. The book, which was funded by the NZ Law Foundation and published by Thomson Reuters, provides a critical review of the Supreme Court's first decade of operation. As Mary-Rose says, what was initially conceived as an empirical analysis of the Court's decisions over that time, ended up as a much more expansive discussion on the impact the Court has had. The opening of the Supreme Court in 2004 marked one of the most significant developments in New Zealand's constitutional evolution, and the contributions, from academics and practitioners in New Zealand and overseas, provide a fascinating commentary, thought-provoking insights and a wealth of data on the achievements, trends and important decisions in this first ten years. In his preface Jeremy Waldron notes, "One of the strengths of this collection is the willingness of the various commentators to reflect quietly and professionally on the ordinary legal work that has been done so far . . . by the Supreme Court".

It is over 50 years since the House of Lords' landmark decision in *Hedley Byrne and Co Ltd v Heller & Partners* acknowledged (albeit obiter) that a duty of care could arise in respect of negligent statements causing pure economic loss. Hedley Byrne has come to be recognised as one of the most important cases in private law and Allan Beever's erudite examination of the basis of the action is included in **The Law of Misstatements: 50 years on from *Hedley Byrne v Heller*** (Hart Publishing), edited by Kit Barker, Ross Grantham and Warren Swain. Allan takes issue with the traditional negligence characterisation of the *Hedley Byrne* action, arguing that the requirement of an assumption of responsibility makes it much more contractual in nature; and, in the process, he takes the opportunity to challenge the accepted wisdom that agreements or promises are legally binding only if accompanied by consideration. Allan's chapter is one of the collection of essays which reappraises the *Hedley Byrne* decision from a number of perspectives and explores modern developments in the law of misstatement.

## FAREWELL TO MATT BARBER

We are reluctantly saying goodbye to our valued colleague, Matt Barber – after six years with the Law School, he has decided it is time to return to his roots on the mainland. Matt grew up in Invercargill and studied law at the University of Canterbury where he completed his PhD on theories of liberal justice. He joined the School in its first year of operation in 2009 and his enthusiastic approach to teaching contract and law and economics has received high praise from our students. Matt is also developing an enviable reputation as a researcher – his articles have appeared in various journals including the Modern Law Review, the Journal of Business Law, and the New Zealand Business Law Quarterly. Matt has been the Programme Director for the law degree for the past two years and he has carried out that role with his usual calm efficiency. Matt will be leaving us at the end of the year to take up a position in the Law School at the University of Canterbury. We would like to take this opportunity to wish Matt and his family every success in their new life down south.

The editorial team had a chat with Matt:

**What have you liked most about working at AUT?**

Working alongside so many great colleagues. And more recently, contributing to the running of the Law School.

**Why have you decided to return to the mainland?**

My wife and I have two young children and we are keen to return to Canterbury and raise them down there.

**Do you see yourself staying in academia?**

Yes! I love the job.

**What are your interests outside of AUT?**

At the moment, just my family. I do remember having other interests such as bowls and refereeing rugby, but that all seems a long time ago.

**Who do you think the ABs will meet in the World Cup final?**

There are probably seven teams capable of reaching the final but I don't think any one team has stood out in the lead-up.

**There's another challenging cryptic corner in this issue of AUTlaw; have your cryptic skills improved at all?**

They're terrible and I haven't solved a cryptic corner yet. My wife is much better than me because she has the ability to see anagrams of words that I cannot. This is why I can't stand scrabble.

# *Clayton v Clayton* – SHAMS AND ILLUSIONS

By the time this issue of AUTlaw goes to press the Supreme Court will have heard the appeal in *Clayton v Clayton* ([2015] NZCA 30). The case concerns the division of relationship property under the Property (Relationships) Act 1976 (PRA) and involves various trusts settled during the parties' 17 years of marriage. Mr Clayton's basic argument was that the property vested in the trusts was not relationship property and, therefore, Mrs Clayton was not entitled to share in it.

The appeal raises a number of issues but importantly provides the Supreme Court with its first opportunity to consider the status of the sham trust in New Zealand following the Court of Appeal's (obiter) discussion of the concept in *Official Assignee v Wilson* ([2007] NZCA 122 (*Wilson*)). While the question put to the Supreme Court specifically focuses on the relationship, if any, between a "sham trust" and an "illusory trust" ([2015] NZSC 84), it is hoped that the Court undertakes a more extensive examination of the requirements for finding a sham trust.

The sham issue arises in relation to the Vaughan Road Property Trust (VRPT), which has net assets of around $4.5 million. Mr Clayton settled the VRPT in 1999. He is the sole trustee and one of the discretionary beneficiaries (along with Mrs Clayton and the couple's children who are also the final beneficiaries). The trust deed gives Mr Clayton a general power to appoint himself as the sole discretionary beneficiary of the trust and the power to appoint and remove trustees. It is not unusual to find these types of powers in such trust arrangements but what is critical in this case is that these powers are conferred on Mr Clayton, not as trustee, but in his separate personal capacity as the "Principal Family Member". The consequence of this is that he owes no fiduciary obligation to the other beneficiaries in any potential exercise of those powers and could effectively transfer all the trust property to himself.

The question is whether the VRPT is a valid trust. The Court of Appeal was in no doubt that the VRPT satisfied the "three certainties" (the intention to create a trust, the property held by the trust, and the "objects" or beneficiaries of the trust) which are required for a trust to come into existence (at [50]). However Mrs Clayton argued that the trust was either a sham or illusory.

The sham doctrine is not peculiar to trusts and is a concept which can potentially apply in a variety of situations where the parties' written agreement does not accurately reflect what the parties are in fact doing. The issue of whether the sham doctrine has a conceptually independent role in the law of trusts is not without controversy. In *Wilson*, the Court of Appeal, having reviewed the authorities, expressed the view that a trust will be held to be void as a sham if the settlor and the trustee "commonly intend for the ostensible trust to operate as a sham" (at [53]). This requires the courts to go behind the documents that purportedly reflect the intentions of the parties and consider the transactions between them in order, in order to discover the 'true' subjective intentions of both the settlor and the trustee(s). It is argued that this is in tension with the principle of the objective construction of legal documents which is applied to determine whether there is an intention on the part of the settlor to create a trust at all, the first of the three certainties. The sham argument, though, is focused on a different question; namely, whether there has been a deceit on third parties.

In *Clayton*, Mr Clayton is both the settlor and the sole trustee so the question of common intention did not arise. However, the Court of Appeal did adopt the approach in *Wilson* in finding that "a subjectively assessed shamming transaction is required" (at [66]) and agreed with the finding in the Courts below that Mr Clayton had genuinely intended to create a trust when he established the VRPT. There was, therefore, no sham. However, both Judge Munro in the Family Court and Rodney Hansen J in the High Court held that the VRPT could be set aside on the alternative ground that the trust was "illusory". The respective Judges reached that conclusion by different routes having regard to the powers set out in the trust deed but, as explained below, we do not think it necessary to explore the reasoning in more detail. Suffice to say that the Court of Appeal disagreed. It took the view that there was no real difference between the terms "sham" and "illusory" and therefore the finding that the trust was not a sham also disposed of the "illusory trust" argument.

The Supreme Court is asked to consider whether "the Court of Appeal [was] correct to find that there is no distinction between a sham trust and . . . an illusory trust". With due respect, we think the question is poorly drafted. The answer to the question depends ultimately on what is understood by the term "illusory trust". It has no clearly defined meaning. The Court of Appeal's view is that it is "effectively synonymous" with a sham, but that would only be true if an "illusory trust" describes a situation where the settlor and the trustee "commonly intend for the ostensible trust to operate as a sham". It is not entirely clear that it is always used in that sense – as demonstrated by the reasoning in the lower Courts in *Clayton*.

But does it matter? If the Court of Appeal is correct and there is no difference between an illusory trust and a sham trust, then the former concept is redundant; if there is a difference, then the question is whether the concept of the "illusory trust" (however that term is defined) provides a distinct ground for impugning the validity of a trust. We are firmly of the view that it should not. We agree with the Court of Appeal that "[t]here is either a valid trust or there is not" (at [85]). As Richardson J said, in a different context, "at common law there is no halfway house between sham and characterisation of the transaction according to the true nature of the legal arrangements actually entered into and carried out" (*Marac Life Assurance Ltd v CIR* ([1986] 1 NZLR 694 at 706).

The Supreme Court, however, does need to provide the lower courts and practitioners with greater guidance and clarity around this important area of the law. If, as we think it should, the Court puts paid to the idea that the "illusory trust" has any place in the law of trusts as a separate concept (and, incidentally, we would

suggest that the death knell is sounded on the "alter ego trust" too), more general questions concerning the "sham trust" still remain. In a context where it is accepted that the sham doctrine is necessary to enable the courts to deal with the situation where, contrary to all outward appearances, a trust has been created with the intention of deceiving third parties, it needs to be clear what is required for a trust to be void as a sham. The position of the beneficiaries who will be affected by the finding of a sham trust is a critical consideration; as Glazebrook J said in *Wilson* (at [112]):

> [A]ny finding of sham where a trust is involved should not be lightly made. While other sham transactions are usually designed to defraud third parties, the sham transaction itself does not purportedly give rights to parties under the transaction itself apart from the sham parties to the transaction, all of whom know the true situation because of the requirement of mutuality of intention. With trusts, there are beneficiaries involved and a finding of sham will deprive them of their rights under the trust.

In our opinion, the approach adopted by the Court of Appeal in *Wilson*, which requires a shared intention by the settlor and the trustee to mislead others in order for there to be a sham, strikes an appropriate balance between the beneficiaries on the one hand and those who are deceived by the arrangement on the other.

As a post script, and in case readers are left with the impression that Mrs Clayton was unsuccessful with regards to her claim on the property in the VRPT, we should point out the Court of Appeal held that, despite there being a valid trust, she was nevertheless entitled to an equal share in the value of the trust property. The Court of Appeal considered that Mr Clayton's right to exercise his general power of appointment constituted "relationship property" under the PRA, and the value of the right was the value of the property over which he could exercise that right (at [113]). Unfortunately, the lack of space precludes us from looking at that interesting argument in more detail here but it is another of the issues to be examined by the Supreme Court. We await the judgment with interest.

**Mike French**

AUT competitions representatives at NZLSA nationals

Student delegates at the Hui-ā-Tau

Award winners Ally Tupuola, Justin Maloney, David Chen, Hannah Cleaver

Bell Gully Junior Moot AUT final winner Aimee Moss and runner-up Shananne Joyce with judges Sophie East (right) and Rebecca Rose (left) from Bell Gully and Mike French

Justice Anne Hinton and Chief Judge of the Employment Court, Graham Colgan, talking with AUT Vice Chancellor, Derek McCormack

Many thanks to Michaela Barnes and Wynyard Wood for their continued support judging our competitions

## STUDENTS LEARN FROM THE BEST

Resolution of Civil Disputes is a compulsory paper on the final year of the AUT law degree. This year our students had the opportunity to hear from an impressive line-up of experts, each of whom presented a masterclass on an aspect of dispute resolution, including cross-examination, pleadings, adjudication and domestic and international arbitration. While a sound understanding of the law is critical to unravelling the competing and often complex interests in any dispute, students also need to learn about effective ways to operate as a lawyer, how to think strategically and the importance of commercial reality and delivering client-focused solutions. The masterclasses have been instrumental in developing that understanding – and, incidentally, heightening the students' awareness of the diverse range of career opportunities which an expertise in the area provides. The Law School would like to acknowledge and thank those who delivered these classes. Their contribution and the expert guidance they provide for our students is very much appreciated.

**John Walton** is a commercial barrister at Bankside Chambers and is Vice-President and a Fellow of AMINZ. He is a technology, engineering and construction law specialist, domestic and international arbitrator, commercial mediator and adjudicator. John, who has practised in London and Hong Kong as well as New Zealand, has extensive experience in procurement of major technology, engineering and construction projects and dispute resolution. He has advised participants in all major industry sectors, including energy, transportation, communications technology, local government development, heavy engineering and the marine industry.

> Ultimately, we are simply ensuring that people do what they promised to do. For that to be effective, we need to bring more than just the law to the table; we need to understand the parties' commercial positions and offer efficient means of resolving their difficulties and enabling them to return to their core businesses.

**Jane Bawden** is a commercial barrister with extensive experience in the health and disability sector. She is Chair of Accuro Health Insurance, a director of Howick Baptist Healthcare Limited, and an invited member of the national adverse event expert advisory group of the Health Quality Safety Commission. Jane has worked with a variety of health providers and advises on consumer engagement in the health sector.

> Lawyers must recognise the significant impact disputes have on core business. They cost time and money but the most damaging aspect is often distraction from strategic planning and damage to commercial relationships. My mantra is that disputes are only "core business" for lawyers. Effective dispute resolution means that relationships are protected or rebuilt and senior management are freed up to concentrate on their own core businesses. Markets are highly competitive and you cannot afford to take your eye off the game if you wish to succeed.

**John Green** is a Fellow and former president of AMINZ. He is the founder and a director of the Building Disputes Tribunal, the New Zealand Dispute Resolution Centre, the New Zealand International Arbitration Centre, the Family Dispute Resolution Centre and the BuildSafe® Security of Payment Scheme. He is a strong advocate of modern dispute resolution processes and was recently awarded the LEADR & IAMA 2015 Australasian Award for Significant Contribution to Dispute Resolution for Creative Adaptation in Specific Circumstances.

> The primary objective of modern private dispute resolution is the fair, prompt and cost effective determination of any dispute in a manner that is proportionate to the amounts in dispute and the complexity of the issues involved. We are constantly focusing on designing and delivering innovative, cost effective dispute resolution services and I believe passionately that we can make a significant contribution to dispute resolution and improving access to justice.

**David Connor** is a barrister sole and a Fellow of AMINZ. He specialises in the areas of commercial, company, securities, insurance, trusts and construction law. David appears in all courts and regularly conducts arbitrations and mediations. In his early career, he gained experience in non-contentious commercial and banking work which has proved invaluable in his litigation practice and provides a strong foundation for case analysis and settlement negotiation. David is also an expert in the use of technology for legal applications including the construction of dedicated and secure sites for clients and expert witnesses.

> Dispute resolution is not dispute suppression. The most satisfying and lasting resolutions, whatever the process ultimately chosen, are those in which the client takes an active role and then sees all issues ventilated to their satisfaction. Exposing students to these processes teaches them about themselves and puts the importance of their future legal practice in context.

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Royden Hindle (centre) with Mary-Rose Russell and the student representatives funded by the New Zealand Law Foundation to attend the AMINZ annual conference.

**Royden Hindle** is a commercial barrister, arbitrator, mediator, and construction adjudicator at Bankside Chambers. He was formerly a partner at Simpson Grierson and Chair of the Human Rights Review Tribunal. As a Fellow of AMINZ Royden has extensive experience as a mediator and arbitrator and, in his commercial civil litigation, he has appeared before every New Zealand Court including the Privy Council and has an extensive list of reported decisions.

> Over 90% of cases settle before trial. An accomplished civil litigator in 2015 needs to be able to run a case in hearing and also be familiar with the many other techniques of dispute resolution. Knowing the law and the relevant procedural rules is just the start – common sense, practical experience and insight into the issues are every bit as important. I very much enjoy being a part of AUT's commitment to teaching dispute resolution in that wider context.

## CLANZ – AUT LAW SCHOOL COMMUNITY CONTRIBUTION AWARD

The Law School is delighted to be sponsoring the CLANZ Community Contribution Award this year. The award is made to an in-house lawyer who has given of their time and expertise to make an outstanding contribution to a charity, not-for-profit, or other similar organisation making an impact on the lives of the community it serves.

The winner for 2015 is Iain Feist, a Senior Solicitor with the Ministry of Business, Innovation and Employment. Iain received the award for his involvement with the Makara Peak Supporters which established, and now maintains, a world class mountain bike park and conservation area at Makara Peak outside Wellington. Iain has been involved in group governance, which has included securing Scenic Reserve status for the Park, completing a Memorandum of Understanding with the Wellington City Council, and developing short and medium term biodiversity/conservation and tracks plans.

Mike French from the Law School presented the award to Iain (pictured) at the CLANZ Annual Conference held at Paihia in May. The award included a donation of $2000 to Makara Peak Supporters.

## CRYPTIC CORNER

### WIN A BOTTLE OF CHAMPAGNE

Here is the cryptic for this issue:

Mafia king pin Trev (Plonker) Mallard has too much ecstasy and gets confused. The punter may have cashed in his chips but the House decides that all bets are off; using the firm's cash to fund his habit is not on and the stolen money needs to be paid back by the house.

**What was the name of the case? [6, 6, (1, 4), 1, 8, 3]**

Email your solution to mike.french@aut.ac.nz by 4.00 pm on Wednesday 21 October. All correct entries received by the deadline will go into the draw to win a bottle of champagne.

### LAST ISSUE

In the last issue we asked you to name the case provided by the following clues:

Say Peter, what's the reasoning from the wrong planet in the case where the Court of Appeal considered a convoluted tort involved randy rovers? It blew a raspberry to the idea that a one man band could be responsible for loose talk on the couch.

The answer was *Trevor Ivory Ltd v Anderson* and our congratulations go to Chris Chapman who won the draw for the bottle of champagne. Chris is a barrister at Quayside Chambers in Wellington.

## STAYING IN TOUCH

For inquiries about studying law at AUT, email: law@aut.ac.nz
or visit: www.aut.ac.nz

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**AUTlaw editorial team**
Suzanne McMeekin, Mike French, Vernon Rive

If you would like to contact the editorial team email: mike.french@aut.ac.nz