

FROM THE DEAN

I have just come to the end of my second year at AUT and I continue to be impressed by the energy of the Law School and the dedication and commitment of its staff and students.

It has been an extremely busy and exciting 12 months. At the beginning of the year we saw a doubling (to 240) in the number of students coming into the first year of the LLB. The degree is now in its eighth year of operation and is no longer an unknown quantity with school leavers. The legal education which students get at AUT is second to none, our graduates are securing good jobs and the feedback we are getting from the profession is very positive.

There is perennial debate about the numbers of law graduates coming on to the job market but, as most of us would agree, the law degree provides a fantastic liberal education which develops powers of analysis, reasoning and oral and written communication – and flexibility of thinking – in a way which prepares graduates extremely well for a wide variety of career opportunities both inside and outside the profession.

In May we held a special networking breakfast to celebrate the law degree being taught for the first time at the AUT South Campus in Manukau. The University has a commitment to developing the education opportunities in South Auckland and in 2017 both first and second year papers will be offered there.

Following a comprehensive review, we have made significant improvements to the structure of our LLB which will be introduced over the next two years. The changes, which include strengthening our offerings in the property law area as well as introducing compulsory papers in Advanced Private Law and Public International Law, aim to consolidate those conceptual areas which

underpin the students' understanding of the law.

We have welcomed a number of new staff to the faculty this year: Professor Warren Brookbanks and Associate Professor Kris Gledhill joined us from the University of Auckland and we were also delighted to appoint Amy Baker Benjamin, Lida Ayoubi, Cassandra Mudgway and Léonid Sirota to the School. And, arriving in time for the start of teaching next year, are Khylee Quince and Alison Cleland from the University of Auckland, Guy Charlton from Curtin Law School, and Moshood Abdussalam from the University of Tasmania.

It is pleasing to see a vibrant research culture developing in the School under the leadership of our Director of Research, Professor Allan Beever. Two new centres of research have been established within the Law School. Allan has set up the Centre for Private Law to promote research and debate across the whole spectrum of private law. This year the centre has hosted Professor Mel Kenny from the University of Exeter, Emeritus Professor Michael Bryan, from the University of Melbourne and Professor Sonja Meier, Professor of Private and Comparative Law at the University of Freiburg. Professor Warren Brookbanks is heading the Centre for Non-Adversarial Justice which will promote research into alternative approaches to resolving legal disputes.

Others who visited the Law School this year include Graham Virgo, Professor of English Private Law at the University of Cambridge, who presented a seminar on judicial discretion in private law, and Professor Glen Luther from the University of Saskatchewan who talked about racialised policing in Canada.

We continue to develop exciting links with the profession which bring a richness to the learning experience of our students. As

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highlighted in an earlier issue of AUTlaw, Kalev Crossland and his team at Shieff Angland offered an elective paper in Commercial and Civil Litigation this semester and that proved to be extremely popular. Staff from Meredith Connell generously gave up their time to act as judges in the moot exercise which forms part of the assessment in the Criminal Law paper. Also, Auckland Council, Lowndes Associates, Baldwins, Hesketh Henry and Minter Ellison Rudd Watts hosted students in the *Shadow a Leader* (SAL) programme. SAL is a Faculty of Business, Economics and Law initiative and provides the opportunity for AUT and high school students to follow a senior manager in law or business for a full day. SAL is an annual event, so if you or your organisation would like to participate in the future please contact me.

In July we held our awards evening to celebrate the academic achievements of our students. This is an annual highlight in the life of the School where we can not only celebrate students' successes but also meet their families. It was an added delight that we had barrister, Simativa Perese, as the guest speaker at the event. As I said when introducing Simativa, my first connection with him was hearing his dulcet tones presenting the reports on the condition of the sports grounds on Saturday morning local radio in Wellington when I first arrived in New Zealand. Simativa subsequently completed a law degree (I was privileged to have him as one of my students) and over the past 30 years has had a very successful career at the bar. It was a pleasure to have Simativa regale those present with the story of his journey in the law.

In August/September, delegates and competition winners from law schools around the country enjoyed AUT's hospitality at the NZ Law Students Society Annual Conference. From the opening night gala dinner in the Sir Paul Reeves Building, through three days of serious competition, an education forum focusing on resilience at law school and beyond (which I would probably also find useful), to the final ball at The Wharf (not to mention other various diversions in between!), the attendees were able to enjoy AUT's fabulous facilities and experience some of Auckland's iconic attractions

Conference convener Emilee Clark and her team worked tirelessly in ensuring that the conference was an overwhelming success – helped in no small part by the time, financial support and other contributions generously donated by industry and the profession. The week was outstanding in all respects and the positive feedback from participants and sponsors testifies to the fact that I am not alone in being very impressed by the professionalism displayed by Emilee and the others in pulling the event together; while the experience will no doubt be something which they will draw on in the future, their efforts reflect well on the students we are privileged to have in this law school.

In summary, while the past year has been full-on in many respects, it has been immensely satisfying and a lot has been achieved. Now that the exams and the marking are over we can take some time to reflect as we enjoy the summer and look forward to the challenges of 2017. I would like to wish you, our readers and supporters, a very merry Christmas and a prosperous new year.

Professor Charles Rickett
Dean of Law



Shadow a Leader : Lloyd Kavanagh from Minter Ellison Rudd Watts with Liam Closey, AUT Law School, and Cecilia Yang, Carmel College



Awards evening: Charles Rickett and Simativa Perese with top graduating student, Vikki Quinn



NZLSA Conference organisers: Polina Kozlova, Sally Al-Joubory, Christine James, James Devine, Emilee Clark, Shananne Joyce, Nosia Fogogo (absent Sam Parsons)

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CRYPTIC CORNER

WIN A BOTTLE OF CHAMPAGNE

Here is the cryptic for this issue:

School hoons oft clamber over vege garden; tort on?

Once sorted, maybe. In the (old) Supreme Court McMullin J thought an actionable nuisance or cause of action in negligence might be arguable although not the rule in *Rylands v Fletcher*.

What is the name of the case? [8, 1, 9, 7, 5, 2, 9]

Email your solution to mike.french@aut.ac.nz by 4pm on Wednesday 14 December. 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 cryptic clue:

Megan & Bill in porn (art oeuvre) film? Losing some energy and getting totally confused led the Court of Appeal to conclude that Mr B had missed out on the chance of getting a property at a Coromandel hotspot for the right price.

The answer was *Benton v Miller & Poulgrain* (a firm) and our congratulations go to Sophie Meares who won the draw for the bottle of champagne. Sophie is an Associate with Wynn Williams in Christchurch.



THE TEACHING OF CRIMINAL LAW



The first in a series of books exploring legal pedagogy has just been put out by Routledge Publishing. *The Teaching of Criminal Law*, co-edited by Kris Gledhill of AUT and Ben Livings from the University of New England, brings together the contributions of teachers of criminal law from Australia, New Zealand, the United Kingdom and Ireland.

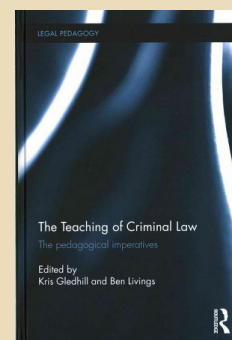
Arising out of a survey which showed that there is a high degree of similarity in criminal law courses in different parts of the English-speaking world, Kris and Ben sought out academics who had contemplated different approaches.

The diversity of views presented in this collection raises a number of questions, and throws down some challenges in relation to the content and teaching of the subject. Why, for example, do criminal law courses tend to focus on black-letter doctrine while failing to engage with the broader societal context within which the law operates? Why do violent and property offending predominate as the specific offences invariably used to illustrate the principles or themes of the law? Why isn't there a greater focus on statutory interpretation? These are just some of the issues examined by the respective authors. It may be that the traditional structure and content is the best way to do things but, as Kris and Ben observe in their conclusion, "how we teach criminal law, or indeed any other

subject within a law school curriculum, should be informed by reflective choices and research rather than by simply replicating what was done previously".

It is intended that the individual books in the Legal Pedagogy series will explore various aspects of curriculum design and teaching methods, including the place of specific conceptual and contextual subjects in the law degree, a consideration of jurisprudential approaches across the curriculum and, at the broadest level, an examination of the aims of legal education, investigating such matters as the place of law as a general education degree and the relationship between academic and post-degree professional training.

Kris, who is the Series Editor for Routledge, says that "the aim of the series is to encourage reflection, promote discussion and stimulate debate on the design and content of the curriculum in law degrees and the learning and teaching methodologies adopted". Other commissioned books include one exploring legal education generally in various common law and civil law jurisdictions and another that will examine innovative practice in relation to the teaching of contract law. If you have an idea for a book that might fit within this Series contact Kris Gledhill, at kris.gledhill@aut.ac.nz



A THEORY OF TORT LIABILITY



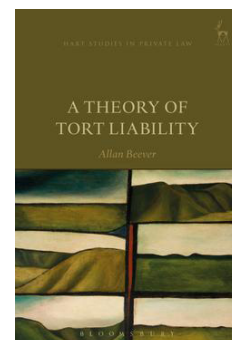
Professor Allan Beever is recognised as one of the world's leading tort lawyers and theorists of private law. His most recent book, *A Theory of Tort Liability*, issued in Hart Publishing's Studies in Private Law, provides a comprehensive theory of the rights upon which tort law is based and the liability that flows from violating those rights. Allan completed undergraduate studies and his PhD in philosophy and, as was his

approach in his earlier much-acclaimed works, *Rediscovering the Law of Negligence*, and *The Law of Private Nuisance* (both also published by Hart), he draws on that background in attempting to make sense of this area of the law and to present it in a coherent and meaningful light – an interpretive approach which does not shirk from challenging more traditional legal thinking.

In *A Theory of Tort Liability*, Allan draws on Immanuel Kant's account of private law to elucidate a conception of interpersonal wrongdoing. His thesis is that the ideas which Kant explored in his *Rechtslehre* provide a framework for understanding the operation of any area of law, including tort. Allan's analysis derives from two basic propositions: first, that "individuals are entitled to the maximum amount of freedom possible consistent with the recognition of the same freedom in others" (equal maximum

freedom); and secondly, that "the individual's fundamental legal entitlement is to freedom understood as independence from constraint imposed by others' choices". From his examination of cases across the major common law jurisdictions including the United States, Allan identifies two forms of constraint which can arise in relation to persons or property: control occurs where one constrains another by putting that person or that person's property, to one's own purposes; injury occurs where one constrains another by acting so as to damage the means, rightly possessed by the other, to realise her legitimate purposes. Allan points out that constraint is a necessary feature of society and it will only be wrongful when it is not necessary to protect equal maximum freedom; a defendant is found liable only when he has coerced the plaintiff by constraining her in a way which is not consistent with that concept.

Allan's approach is based on the idea that the principles of tort liability are better understood as protecting freedom than as responding to loss and this Kantian perspective, he argues, provides a unified conceptual basis, at least at the theoretical level, to the law of tort.



LÉONID SIROTA – GOOD FOR THE CONSTITUTION

“Does the Chief Justice believe in (the common) law? All law means constraint, first and foremost for government officials judges among them. Constraining officials, as well as having rules announced in advance for citizens to follow, provides predictability. If judges do not regard themselves as bound by the law, the Rule of Law’s promise of limited government and certainty is an empty one.”

Challenging words; but relax – they are not referring to New Zealand’s Chief Justice. Instead, the inculcation was in response to a speech delivered by Canada’s Chief Justice, Beverley McLachlin, at the “Supreme Courts and the Common Law” symposium held at the Université de Montréal’s Faculty of Law in May. The critical analysis was posted on *Double Aspect*, an award-winning blog hosted by Russian Canadian academic, Léonid Sirota, who has a keen interest in politics and all things constitutional.

We are delighted to welcome Léonid to the Law School faculty. He is a graduate of McGill University, completed his LLM at New York University and joined us in August, fresh from being confirmed in his JSD, also from NYU, following a successful defence of his dissertation on the legitimacy of judicial law-making in a democratic polity before a panel which included Professor Jeremy Waldron. Besides the extensive analyses which he regularly publishes on his blog, Léonid has articulated his carefully considered views on a wide range of matters in various publications, conference papers and presentations.

Léonid will be bringing his academic rigour to the compulsory Constitutional Law paper and is planning to offer an elective paper



on the Law of Democracy. In September Léonid gave a lunchtime lecture to a full house on the legal issues in the US presidential election which included an interesting exploration of the impact the election is having on the make-up of the US Supreme Court – but not even Léonid anticipated the events of 8 November. He is looking forward to the opportunities and challenges which teaching, researching and writing on constitutional issues in a different jurisdiction will bring – with the added bonus of being able to provide yet another dimension to *Double Aspect*.

You can find more of the *Double Aspect* blog at: <http://doubleaspectblog.wordpress.com>. Here we print an abridged version of a blog posted by Léonid recently, commenting on the proposal by Sir Geoffrey Palmer and Dr Andrew Butler that New Zealand should adopt a written constitution.

WHY DO THEY WRITE THINGS?

The former Prime Minister Sir Geoffrey Palmer and Dr Andrew Butler have recently published a book called *A Constitution for Aotearoa New Zealand*, in which they advocate that New Zealand enact a “written” – that is to say, a comprehensively codified and entrenched – constitution. They have provided a number of reasons for this significant constitutional change: some of them have to do with the democratic process; others with the limitation of state power; others still with transparency and accountability of government institutions. In my respectful view, none of these reasons is compelling when we consider the experiences of countries that have constitutional texts of the sort Sir Geoffrey and Dr Butler are advocating for New Zealand, such as Canada and the United States.

The authors say that a “written” constitution would strengthen New Zealand’s democracy, notably by making it easier to participate in government. It’s not obvious how a “written” constitution would do that. Polities with “unwritten” constitutions – including of course New Zealand but also Canadian provinces – can be well-functioning democracies. They can and already do hold free and fair elections which produce regular changes of government. Is democracy stronger, whatever that means, in Canada or in the United States than it is in New Zealand? In fact quite a few Canadian election reformers passionately believe the opposite, because Canada uses the first-past-the-post electoral system (as does the US, mostly), while New Zealand has moved to a version of proportional representation. Whether or not one agrees with them, it is not obvious what democratic gains might result

simply from having an entrenched constitutional text.

Sir Geoffrey and Dr Butler also state that a “written” constitution would impose clear limits on state power and prevent abuses, notably by protecting the Rule of Law and human rights. It will indeed do that to some extent. A “written” constitution might be clearer and thus easier to understand than an “unwritten” one. It is, ostensibly anyway, less malleable than one that can be amended by ordinary legislation. It can, in principle, better protect individual and minority rights. But the gains on these various counts are actually rather smaller than they might at first appear.

So far as clarity is concerned, the current sources of New Zealand’s constitution do not strike me as any more obscure than Canadian or American ones. For one thing, it is important to recall that, as applied to New Zealand, the term “unwritten constitution” is very much a misnomer. Between the Constitution Act 1986 and other legislation and a Cabinet Manual that records most, if not all, of the existing constitutional conventions (in addition to containing a wealth of information on the functioning of government), most constitutional rules are already set out in an authoritative written form. For another, any attempt at setting out constitutional arrangements in a comprehensive fashion risks yielding a text that is much too long and complex to be readily understood. Sir Geoffrey and Dr Butler have not avoided this danger, as their proposed constitution runs up to more than 40 pages in their book! And of course any “written” constitution cannot be understood without reference to the decisions of the courts charged with interpreting its text.

As for stability, an entrenched constitution is only as stable as the courts let it be. In Canada, the Supreme Court has “re-written” the constitution a couple of times a year at least. The Supreme Court of the United States is regularly accused of similar mischief. The same goes, of course, for protecting rights. The protections provided by an entrenched constitution can be no stronger than the judiciary’s inclination to enforce those rights. Would, for example, the adoption of an entrenched constitution, change anything of what seems to be a consensus among elected officials and judges that it is unobjectionable to disenfranchise prisoners sentenced for serious crimes? I doubt it.

Sir Geoffrey and Dr Butler further contend that a “written” constitution would make government more transparent and accountable. But it is not the lack of a “written” constitution that stands in the way of people understanding and keeping an eye on government – it is political ignorance. Ignorance of basic facts about the constitution is prevalent in the United States, where only a third of the respondents to a recent poll could name the three branches of government – despite a “written” constitution the very structure of which begins with these three branches. As the scholars of political ignorance explain, most people simply have no incentive to become better informed about the workings of government, and the existence of an entrenched constitution changes nothing of this reality.

That said, New Zealand already has a number of useful accountability mechanisms, some of which seem to be functioning better than those in place in Canada. New Zealand’s Official Information Act is far stronger than its Canadian counterpart, for instance. And New Zealand’s government is much better than Canada’s at proactively making a lot of information (such as the advice it receives on the compliance of its laws with the NZBORA) available to the public. A “written” constitution would provide no benefit in this regard.

In short, for a polity like New Zealand – which already has a well-functioning, if in some people’s view imperfect, democratic system, and which largely, if again imperfectly, respects human rights – the gains from constitutional entrenchment are likely to be marginal in the short or even medium term. There will be some costs, too, though I have not discussed them here. Other than the speculative prospect of a long-term crumbling of the polity’s commitment to human rights and the Rule of Law that would somehow not affect the judiciary, is there a good reason for having a “written” constitution in New Zealand?

Well, maybe, but it’s not one that Sir Geoffrey and Dr Butler identify. A “written” constitution is the means one would use to transfer power from Parliament and the executive to the courts. The courts’ incentives are different than those of the “political branches”. Courts might be more solicitous of minorities, but more importantly, they may also be less solicitous of special interests, because these special interests can do little for independent, life-tenured judges. (That said, some special interests may still find keen listeners on the bench if, for example, they can provide the plaudits and recognition that judges, not unlike politicians, may come to crave). It may be that, in a unitary, Westminster-type constitutional system, democracy becomes too potent a force, and judicial review of legislation is the only countermeasure available; so it must be used *faute de mieux*, despite the fact that judicial power too will be abused, and can degrade the Rule of Law as much as the legislative and the executive.

These are serious reasons in my view. But whether or not they are conclusive, one thing is certain: shifting power from elected officials to judges does not strengthen democracy – it deliberately weakens it. It does not make law clear. And it certainly does not make those who wield power more accountable. It might be worth doing regardless, but not for the reasons that Sir Geoffrey and Dr Butler have given us.

ON PURPOSE: THE RUATANIWHA LAND SWAP UNDER JUDICIAL SCRUTINY

Despite the fact that the phrase ‘net environmental gain’ appears nowhere in the Department of Conservation’s governing legislation, the concept has emerged as an increasingly integral part of environmental policy within New Zealand’s single largest landowner in recent years. It has been the guiding criterion for significant land swaps involving DOC ‘stewardship land’, including the divestment of land to Porter Heights Ski Field to build an alpine lodge and the proposed (though now withdrawn) Meridian Mokihinui hydro scheme on the West Coast of the South Island.

The ‘net environmental gain’ approach has also been accepted in a number of leading court decisions under the RMA, so it is interesting that recently a majority of the Court of Appeal (Harrison and Winkelmann JJ, France J dissenting) in *Royal Forest and Bird Protection Society of New Zealand Inc v Minister of Conservation* ([2016] NZCA 411) considered that its use as a touchstone for a proposed land swap as part of the controversial Ruataniwha dam project was misconceived and invalid.

The decision (leave has been sought to appeal) has obvious implications for the use and protection of large parts of the conservation estate designated as ‘specially protected’ under Part 4 of the Conservation Act 1987 (CA) – and to other CA contexts where recourse to statutory purpose is required, such as the granting of concessions. The decision also contributes

to jurisprudence on judicial treatment of ‘outside of statutory purpose’ challenges to decision-making which potentially extends beyond the CA context.

Vernon Rive, who is the co-convenor of the Resource Management Law Association Academic Advisory Group, discusses the decision on the Group’s website at www.rmla.org.nz/community/academic-advisory-group



In March it will be 30 years since the Fair Trading Act 1986 (FTA) came into force. In one of the first prosecutions under the legislation, Greig J noted that the real purpose of the FTA is to “prevent infractions of the standards and to ensure compliance with them” (see *Commerce Commission v L D Nathan & Co Ltd* [1990] 2 NZLR 160 at 166), but, as a review of recent cases dealt with by the Commerce Commission (Commission) makes abundantly clear, three decades on many traders continue to push the boundaries (*Commerce Commission v New Zealand Nutritional Limited* [2016] NZHC 832), indulge in conduct which amounts to serious carelessness (*Commerce Commission v Trustpower Limited* [2016] NZDC 18850) or, in the most egregious of cases, to blatantly flout the rules to such an extent that it borders on the fraudulent (*Premium Alpaca Limited v Commerce Commission* [2014] NZHC 1836).

Labelling the defendants' conduct as "a cynical attempt to take advantage of consumers' desire to make healthier food choices", the Judge stressed that he would have imposed fines totalling \$270,000 but, instead, reduced that figure to \$70,000, "[g]iven the impecuniosity of the companies in liquidation and the potential for this debt to unfairly affect other unsecured creditors" ([29]).

The level of fines is important in ensuring that “those engaged in

One of the effects of an increasingly global market for goods and services and the commonality of branding and advertising in different countries is that offences by multinational companies under the FTA in New Zealand are often mirrored by similar prosecutions under corresponding provisions of the Australian Consumer Law (ACL). One such recent case concerns Reckitt Benckiser's packaging of its Nurofen Specific Pain Range and the website descriptions of those products.

In fact, each of the four products contained the same active ingredient, was of the same formulation, had the same Australian Register of Therapeutic Goods' indications and no one of the products was more or less effective in treating the specified pain.

In December 2015, in the Federal Court of Australia, Edelman J confirmed various orders which had been agreed between the Australian Competition and Consumer Commission (ACCC) and RB including: declaratory relief to record the Court's disapproval of the contravening conduct, vindicate the Commission's claim, inform consumers of the contravening conduct and deter corporations from contravention; an injunction to restrain further breaches; a corrective notice and corrective advertising; an order amending RB's existing compliance programme (see at [21]-[24]).

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(*Australian Competition and Consumer Commission v Reckitt Benckiser (Australia) Pty Ltd (No 7)* [2016] FCA 424). While it is impossible, in the space available, to do justice to the learned judge's detailed analysis of the issues and the evidence before him, it is worth highlighting some of the key aspects of his reasoning.

First, one of the central arguments between the parties concerned the profits which RB had derived from its contravening conduct. The evidence established that, between 2011 and 2015, RB sold around 5.9 million units of the products generating a total revenue of \$45 million, however Edelman J considered that any attempt to quantify profits from the impugned conduct would be "either an impossible task or so speculative as to be useless" given the difficulty of establishing the counterfactual and the lack of evidence concerning the likely behaviour of consumers had there been no contravening conduct ([5]).

Secondly, Edelman J stressed that before deciding on the appropriate penalty there needs to be an assessment of all the relevant factors (an "instinctive synthesis") and that this involves a consideration of the related concepts of the "totality principle" and the "courses of conduct principle". The "totality principle" is concerned with ensuring that the penalty imposed is proportionate to all the circumstances of the contravening conduct; the "courses of conduct principle" seeks to ensure that the offender is not punished more than once for what is essentially the same criminality. Edelman J acknowledged that "the exercise of characterising the conduct to determine the number of courses of conduct requires evaluative judgment" on which reasonable minds might differ ([30]).

Under s 224(3) of the ACL, the maximum penalty for each contravention of s 33 by a body corporate is \$1.1 million. The ACCC argued that there were six courses of conduct involved in RB's contraventions (four in relation to the packaging and two in relation to the website) and sought a penalty of \$6 million. On the pleaded facts, however, Edelman J concluded that there had been two contraventions. On that basis, and having regard to the circumstances, he imposed a penalty of \$1.2 million for the course of conduct involving the packaging representations and \$500,000 for the course of conduct involving the website's representations; a total penalty of \$1.7 million.

Following the institution of proceedings in Australia, Reckitt Benckiser (New Zealand) Ltd (RBNZ) saw the writing on the wall. In December 2015 it entered into Court Enforceable Undertakings with the Commission under s 46A of the FTA and agreed to amend its packaging and advertising. Products with the old packaging were removed from sale by March 2016; offending website pages had been removed earlier.

In September 2016, the Commission brought ten charges against RBNZ under the FTA. The charges allege the company misled the public about "the nature, characteristics and suitability of its Nurofen Specific Pain Range products". Eight of the charges relate to the packaging and promotion of the products; the other two charges relate to the advertising of the products on RBNZ's website. The Commission reports that RBNZ has cooperated with the investigation and intends to plead guilty to the charges.

It will be interesting to see what approach the New Zealand court adopts in settling on the appropriate penalty to be imposed. The purposes and principles set out in ss 7 to 10 of the Sentencing Act 2002 are applicable and, in particular, the court will take into account the following: the objectives of the FTA, the importance of the untrue statements, the degree of wilfulness or carelessness involved, the extent of the "untruthfulness", the degree of dissemination, the resulting prejudice to consumers, any efforts made to correct the statements and the need to impose deterrent penalties. In determining the level of penalty, New Zealand courts have tended to take a "global approach" to the balancing of the various matters (*Commerce Commission v Trustpower Ltd* [2016] NZDC 18850 at [16]).

Generally, these factors mirror those considered by the Australian courts under its legislation, however whether the penalty ultimately imposed here is proportionately similar to that arrived at under Edelman J's nuanced approach remains to be seen. It is worth noting that the ACCC has filed an appeal against the penalty of \$1.7 million; the hearing was scheduled for November but at the time of going to press no update was available.

Suzanne McMeekin
Mike French

STAYING IN TOUCH

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