

ALORA JOHNSON, ASSISTANT EDITOR

Student, Victoria University of Wellington
johnsonalora@gmail.com

MĀMARI STEPHENS, EDITOR

Senior Lecturer of Law, Victoria University of Wellington
mamari.stephens@vuw.ac.nz

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LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES VICTORIA UNIVERSITY OF WELLINGTON LEGAL RESEARCH PAPERS

"No Soul to Damn? Revisiting the Case for Corporate Manslaughter in New Zealand"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 24

MITCHELL SPENCE, Victoria University of Wellington

Email: m.spence1@hotmail.com

Currently a corporation cannot be convicted of manslaughter in New Zealand. Increasingly, this distinction demarcated between individuals and corporations seems out of touch, particularly in light of legislation passed in cognate jurisdictions and the ascendance of a plethora of industrial disasters both in New Zealand and abroad.

Taking as its focus the Report of the Independent Taskforce on Workplace Health and Safety (2013), this paper contemplates the above issues, concluding that the offence's alignment with fundamental

criminal law principles makes a strong case for its introduction in New Zealand. Consideration is also given to the format and rules of attribution that should accompany a resolve to prosecute corporate manslaughter, finding that a more comprehensive discussion, going beyond the recommendations of the Taskforce, is necessary before any legislation is settled on.

■ **"Criminal Stain on a White Collar – A Critical Analysis of Proposed Changes to Directors' Liabilities"**

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 25

STEPHEN CRANNEY, Victoria University of Wellington - Victoria University of Wellington, Students/Alumni
Email: stephen_cranney@msn.com

The recent finance company collapses have highlighted the need for improved director accountability. However where is the appropriate point to draw the line, which if crossed, imposes criminal liability? The Financial Markets Conduct Bill and the Companies and Limited Partnerships Amendment Bill both attempt to redefine when criminal liability will attach to directors. By assessing the proposed changes in the light of two recent cases, it can be seen that under the proposed changes, directors have the potential to be found criminally liable for less than dishonest behaviour. This raises the issue of whether criminal liability is appropriate in regards to directors' actions, or whether a civil liability scheme would be more appropriate. This paper looks at the current law and the proposed changes to directors' liability, and by considering the situations of two failed finance companies, attempts to draw conclusions as to the effects of such changes.

■ **"Stemming the Flow of Corporate Human Rights Abuses: Incorporating the Ruggie Report in the Common Law Doctrine of Foreign Judgment Enforcement"**

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 26

ERIN CARR, Victoria University of Wellington - Victoria University of Wellington, Students/Alumni
Email: erin.carr@vuw.ac.nz

The eminent case of *Aguinda v. Chevron Corporation*, currently in its twentieth year of litigation, represents a growing phenomenon in international commercial litigation between multinational corporations and victims of human rights abuse from developing nations. In 2011 *Aguinda* awarded approximately US \$18 billion against Chevron for extreme environmental and human rights abuse from oil contamination in the Amazon region of Ecuador. Chevron has removed its assets from Ecuador's jurisdiction leaving the plaintiffs without remedy.

This paper traces *Aguinda* to Canada where the plaintiffs' action in *Yaiguaje* to enforce the judgment to satisfy their debt is stayed. This paper critiques this decision of the Ontario Superior Court of Justice as being unprincipled and failing to consider the wider implications of its decision on the struggle for developing nations to remedy human rights abuses by multinational corporations.

This paper argues that the common law doctrine of foreign judgment enforcement must evolve to reflect the needs of modern society. The paper does this by incorporating the "Protect, Respect and Remedy: A Framework for Business and Human Rights" report released by the United Nations in 2011.

■ **"Defining the Relationship between Domestic General Anti-Avoidance Rules and Double Tax Agreements"**

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 27

ALEXANDRA COOPER, Victoria University of Wellington - Victoria University of Wellington, Students/Alumni
Email: a.cooper021@gmail.com

Double taxation agreements pose a particular analytical problem. While they provide a coherent structure that encourages cross-border investment, the agreements also provide opportunities for taxpayers to avoid their domestic tax obligations. To prevent tax avoidance, some countries enact domestic general anti-avoidance rules to protect their domestic interests. These rules raise questions as to what the relationship between the domestic law and the double tax agreement is. The Organisation for Economic Cooperation and Development's Committee on Fiscal Affairs provides Commentary on the Organisation for Cooperation and Economic Development Model Double Tax Agreement. This Commentary sets out an analytical framework from which this relationship is to be evaluated. This paper argues that the framework is of little practical significance. The paper concludes that the weight and usefulness of the Commentary lies in a guiding principle set out in the Commentary. Consequently, the wider interpretative approaches do not practically add to the analysis and should be given little weight.

FRAN BARBER, Victoria University of Wellington - Victoria University of Wellington, Students/Alumni

Email: barberfran@myvuw.ac.nz

Recently, the High Court of Australia considered the scope of the term "officer" in a case concerning the breach of a statutory duty under the Corporations Act 2001 (Cth). The equivalent duties prescribed by the New Zealand Companies Act 1993 are owed by an ostensibly narrower class. In considering how New Zealand law would apply to the same facts, this essay discusses the extent to which directors' duties are, or should be owed by those below directorship level. It concludes that an expansive interpretation of the "director" definition is unnecessary and undesirable, and that explicitly extending directors' duties to encompass certain senior managers would merely create uncertainties for courts and corporate leaders.

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About this eJournal

Victoria University of Wellington Legal Research Papers Series primarily contains scholarly papers by members of the **Faculty of Law at Victoria University of Wellington**. Some issues collect a number of papers on a similar theme to form a suite of papers on a single topic. Others issues are general or distribute mainly recent work.

The Student/Alumni Series is a subseries of the Victoria University of Wellington Legal Research Paper Series. The subseries started in 2015 and publishes papers by students and alumni of Victoria University of Wellington, comprising primarily work for honours and postgraduate courses. Papers are collected into thematic or general issues.

The Victoria University of Wellington was founded in 1899 to mark the Diamond Jubilee of the reign of Queen Victoria of Great Britain and of the then British Empire. Law teaching started in 1900. The Law Faculty was formally constituted in 1907. The first dean was Richard Maclaurin (1870-1920), an eminent scholar of both law and mathematics. Maclaurin went on to lead the Massachusetts Institute of Technology as President in its formative years. Early professors included Sir John Salmond (1862-1924), still one of the Common Law's leading scholars. His texts on jurisprudence and torts have gone through many editions and remain in print.

Alumni include Sir Robin Cooke (1926-2006), one of the leading judges of the British Commonwealth. As Baron Cooke of Thorndon, he sat on over 100 appeals to the Appellate Committee of the House of Lords, one of very few Commonwealth judges ever appointed to do so.

Since 1996 the Law School has occupied the Old Government Building in central Wellington. Designed by William Clayton and opened in 1876 to house New Zealand's then civil service, the building is a particularly fine example of Italianate neo-Renaissance style. Unusually among large colonial official buildings of the time it is constructed of wood, apart from chimneys and vaults.

The School is close to New Zealand's Parliament, courts, and the headquarters of government departments. Throughout Victoria's history, our law teachers have contributed actively to policy formation and to law reform. As a result, in addition to many scholarly articles and books, the Victoria SSRN pages include a number of official reports.

Victoria graduates approximately 230 LLB and LLB(Hons) students each year, and about 60 LLM students. The faculty has an increasing number of doctoral students. Ordinarily there are ten to twelve students engaged in PhD research.

Victoria University observes the British system of academic ranks. In North American terms, lecturers and senior lecturers are tenured doctrinal scholars, not legal writing teachers. A senior lecturer corresponds approximately to a North American associate professor in rank.

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Stanford Law School, Columbia Law School, European Corporate Governance Institute (ECGI)

Email: rgilson@leland.stanford.edu

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