

FOREWORD

In this issue we proudly publish the papers presented at the New Zealand Leading Cases Conference, held at the Faculty of Law, Victoria University of Wellington, in June 2010. This conference celebrated the New Zealand Lost Cases project (www.victoria.ac.nz/law/nzlostcases/default.aspx), and was preceded by the Second Salmond Lecture, delivered by Professor Jim Phillips from the University of Toronto.

The basic idea behind the Lost Cases project was to identify and collect cases decided by the New Zealand Superior Courts before the official beginning of law reporting in 1883. The project involved the collation of both the cases themselves, and of a raft of other sources which provided information about the cases or the early New Zealand courts themselves. From this, two databases were established. The first included all sources about courts and cases. The second database contains the cases. From small beginnings, the Lost Cases project turned into a major enterprise. As the project developed, it emerged that there was an explosion in litigation in the 1860s (a time of major growth in the colony), with the result that the database was in the end completed until 1869, rather than 1883. In the end, over 4000 early cases were identified and entered into the case database. A second arm of the project, on the early judgments of the Native Land Court, will result in a book, to be published by team member, Professor Richard Boast, in 2011.

In the course of the project a vast amount of unknown information about the operation of the New Zealand courts was uncovered. There is, we suspect, enough material now contained in the source and cases database for several academic careers. The overarching impression gained by looking through either database is of the extraordinary hard work of those who were involved in the early New Zealand legal system. At a time when New Zealand was very much developing its colonial, and later national, infrastructure, it had a fully functioning legal system that not only took debates about the law seriously but often took a sophisticated approach in trying to resolve them. New Zealand historians should not, in our view, ignore the importance of early efforts to establish an enduring and effective legal culture as an important facet of the development of modern New Zealand.

It is, however, not enough to just identify and collate sources. Much of the material either covers entirely new knowledge areas, or has the potential to re-write that which we thought we already knew. Throughout the project the team members have worked to ensure that material reaches the public domain through scholarly publication. The Leading Cases Conference was an attempt to take this wider and to encourage historians to access the information and to use it to (re)evaluate New Zealand's legal heritage. The participants for the conference were asked to select a case from the database or, in the case of later cases, from other sources, which illustrated or reflected an important theme in, or an aspect of, the development of the New Zealand legal system. The result was an incredibly diverse two days of historical enquiry into the very beginnings of our legal system, as

well as of its later consolidation. Importantly the event was preceded by Jim Phillips' lecture on why legal history matters. This lecture opens this edition of the journal.

The papers which we now publish are not, in the main, traditional analyses of the development of doctrine, but rather use the case as a point of departure for exploring a wider theme in legal or social history. They showcase contextual history at its best. The papers in this volume demonstrate the ways in which material from the Lost Cases database can be used, both as a window into New Zealand's legal past and as part of a broader social and constitutional history. It is intended that there will be another conference in two or three years time. In the meantime, we hope that scholars, teachers and students will continue to explore the material in the database and produce either fully fledged articles, such as those in this issue, or contextualized case notes which will continue to be published regularly in the Victoria University of Wellington Law Review.

As this issue is a celebration of the last cases project we would like to acknowledge the contribution of our research fellow Megan Simpson. Megan worked on the project for three years and it is her hard work, skill, care, intelligence and good humour which have been the major factors in the success of the project. We would also like to acknowledge a source of the original inspiration for this project was Bruce Kercher's successful New South Wales Colonial Case Law project (www.law.mq.edu.au/scnsw/).

Finally we would like to thank the New Zealand Law Foundation for its continued support of the project, and in particular we would like to acknowledge the assistance of the Foundation's Director, Lynda Hagen, over the course of the project.

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