

Introduction

The third biennial conference of the New Zealand Labour Laws Association was hosted by the Faculty of Law at the Victoria University of Wellington on 27 November 2015. In this issue of the *Journal*, we continue the tradition developed after the previous two conferences of publishing a special labour law issue containing a selection of papers presented at the conference. In doing so, it is our intention to disseminate to a wider audience the discussions and issues presented at the conference by a broad range of contributors, both young and old, from academia and from legal practice. In this issue of the *Journal*, we publish six papers, with further papers to be published in a second Issue.

The 2015 conference theme, *Challenges of Regulating Future Labour Markets*, was chosen to recognise that traditional labour law structures are under increasing pressure from a variety of forces. These include the continuing effects of labour market deregulation that have resulted in the deunionisation of the workforce and increased individualised employment. This, in turn, has led to the increased commodification of labour manifested in a number of forms. These include increased job insecurity as new forms of employment relationships are created to avoid traditional employment protections and the increasing intrusion of employment into the private life of employees.

One response to these pressures has been an increasing interest by labour law scholars in the interface between human rights law and labour law. In this issue, we publish three papers dealing with this theme. The first, by the conference's keynote speaker, Dr Virginia Mantouvalou of University College London, looks at this interrelationship from a broad perspective but focusses particularly on developments within Europe through the interpretation of the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights. These developments are mixed but there has been recognition that at least some labour rights are also human rights, particularly in the case of the exploitative use of labour.

Jonathan Barrett's paper deals with the belief of some that human rights stop at the workplace door. He considers the position of rights-bearing citizens as employees and argues that the rights and responsibilities of citizenship should be fully exercisable within employer organisations and that contractual terms restricting an employee's rights should be void. He stresses the important point that corporations, in particular, should be made more accountable to the societies which enable them to exist and prosper.

The final paper on the human rights theme is by Paul Roth and deals with the review of New Zealand's privacy law and its possible influence on workplace privacy. The paper's conclusion is pessimistic – regulation of the “diabolical partnership” of negative attitudes towards workers combined with technological advances is not in prospect. At the same time, the workplace becomes broader as worker conduct beyond the bounds of the workplace is increasingly seen as the employer's business.

The final three papers deal with aspects of health and safety law, perhaps the most visible challenge for labour law over the last few years. The Pike River mine disaster in 2010 highlighted New Zealand's appalling safety record and the associated regulatory failures. Following the reports of the Pike River Royal Commission and the report of the Independent

Taskforce, the Health and Safety at Work Act 2015, modelled on the Australian Model Health and Safety Act, was passed. However, while the new HSW Act made major reforms to the previous legislative framework, its passage became increasingly politicised and a number of the proposed reforms, especially those relating to worker participation in health and safety, were significantly weakened. The papers by Jeff Sissons and Viktoriya Pashorina-Nichols deal directly with this failure to properly provide for worker participation.

Sissons argues that, while the Government had both public support and a legitimate opportunity to address New Zealand's poor workplace health and safety record, it fell at the final hurdle, resulting in a law that falls far short of comparable countries like the United Kingdom or Australia and which constitutes another chapter in the history of muddled compromise that has led to the death of thousands of New Zealand workers.

Pashorina-Nichols argues that worker participation can support OHS in any workplace and that, of the many worker participation practices available, the two that are the most suitable are H&S representatives and H&S committees. Unfortunately, while the HSW Act provides for those practices, the original proposals were substantially weakened, allowing PCBUs (person conducting a business or undertaking) to undermine them and, in the case of a business with fewer than 20 workers, to reject any request for either practice if the business is not considered high-risk.

The final paper by Dawn Duncan addresses the "tragic paradox" of New Zealand's response to chronic work-related harm and advocates reform in three key areas – the need for the ACC scheme to be reoriented from the nature of the health problem to its 'work-relatedness' and for its coverage to be extended to a wider range of health conditions; a change in willingness and approach to regulating for healthy work; and the development of a new set of enforcement tools. One such tool may be a statutory 'right to request' that enables workers to deal with hazardous work before it results in health problems.

Finally, I would like to acknowledge those who provided the support to make the conference possible and this publication possible. The success of the conference was largely due to the administrative support of Rozina Kahn at the Victoria Law School. Particular thanks, on behalf of both myself and the authors, are due to Louise Grey who edited the papers in this issue and the forthcoming issue of the *Journal*. Louise's work went well beyond proof reading and footnoting and her editorial skills contributed significantly to the transformation of the conference papers into publishable articles.

Guest editor

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