

Pegasus Scholarship Trust – New Zealand Placement 2023

Talia Keskin, Outgoing Pegasus Scholar 2023

I was thrilled when I found out I was going to New Zealand as an outgoing Pegasus Scholar in 2023 and, indeed, it was the most wonderful experience.



Photo 1 The view of the waterfront from Luke Cunningham Clere's Wellington Office

In the capital of New Zealand, I was welcomed to the firm of Luke Cunningham Clere (LCC), the Crown Solicitor in the Wellington region. When I arrived at the office (*Photo 1*) I was greeted with a mihi whakatau - a form of welcome ceremony attended by the whole firm - followed by waiata (a traditional Māori song) and sharing kai (food). I was honoured as a visitor to be able to experience this.

A Crown Solicitor in New Zealand is responsible for Crown prosecutions in its region. LCC is a private firm warranted by Crown Law (similar to the UK's Crown Prosecution Service and Government Legal Department) to conduct prosecutions in the District Court and High Court. There are two types of lawyer in New Zealand: (i) those who practice as barristers and solicitors, and (ii) those who are only barristers ('barristers sole'). My colleagues at LCC were former, so they did their own court advocacy. Lawyers do either prosecution or defence work (not both, as we often do in England and Wales), but some of my LCC colleagues had worked as defence lawyers previously, before moving to the Crown.

Whilst at LCC I attended client meetings (conferences), wrote submissions, attended a variety of hearing and trials, and saw some brilliant advocacy. I worked at LCC from October to December and for one month I was on a multi-hander manslaughter trial in the High Court (*Photo 2*). This was great chance to meet lawyers and police teams, and learn about how complainants, lay and expert witnesses, and juries are dealt with in New Zealand. I did not have any rights of audience as a member of the bar of England and Wales, although I was permitted to sit robed on counsel's row.



Photo 2 Legal and police team on the manslaughter trial outside the Parliament building in Wellington

Many of the trials I saw had similar formalities and procedure to England and Wales. However, I noted some significant differences, which included:

- i. Lawyers can challenge jurors 'without cause' up to 4 times;
- ii. Defence counsel can give a short opening speech (called a defence statement) after the prosecution opening speech to briefly set out the issues, in addition to their opening speech at the start of the defence case that we are familiar with in England and Wales;
- iii. The jury cannot draw adverse inferences if defendants give a 'no comment' interview to police;
- iv. It seemed to me that more defendants choose not to give evidence than in England and Wales;
- v. Defence does not have to provide any information to the prosecution about its case prior to trial - the prosecutor has to work out the defence case by listening to cross examination and then hearing the defence case play out in court – there is no defence case statement equivalent like in England and Wales.

Wellington has a vibrant café culture; for a small city of 200,000 people, it is packed with more cafés, restaurants and bars than I have ever seen. So much choice! There are no Prets or supermarket meal deals in sight which means workers venture to cafés for lunch (this is my theory why New Zealanders are so friendly and cheerful; no sweaty pre-packed sandwiches...). Te Tohu Pakanga o Aotearoa (the New Zealand coat of arms) is displayed in courtrooms across the country. On the left is the European woman holding the flag of New Zealand, and on the right is a Māori rangatira (chief) holding a taiaha (traditional Māori weapon). A nearby café to the LCC office is Raglan Roast. It displays a parody of the coat of arms with the European woman holding a cup of coffee, and the Māori rangatira holding a surfboard in place of the taiaha (*Photo 3*). I was amused to discover that the Ministry for Culture and Heritage sent Raglan Roast a letter in 2014 warning of legal action,¹ but Christopher Finlayson, Former Minister for Culture and Heritage, commented that the notion of legal action against Raglan Roast was “ridiculous”. He explained that The Flags, Emblems, and Names Protection Act 1981 “protects the use of images of the actual coat of arms... intended to prevent advertisers from... misleading the public into thinking a person is an official supplier of services to the government,” but this parody image is not a breach of the Act.² Wellington café culture even pervades the politico-legal space in Wellington!



Photo 3 Sign outside café, Raglan Roast, on The Terrace, Wellington, showing a parody of the New Zealand coat of arms



Photo 4 Inside the New Zealand Supreme Court

The New Zealand Supreme Court is a beautiful building that looks like a cone of the native kauri tree, with a window into the courtroom from outside representing open justice. It was great to meet the Supreme Court judges and discuss law and rugby (everyone seemed to know I came from Cardiff, the home of Welsh rugby) before attending the Pegasus Scholar drinks function there. When lawyers found out I was a Welsh barrister, I was very interested when they told me about how New Zealand has taken inspiration from Wales in its approach to bilingualism. For example, the Māori Language Act 1987 (updated in 2016) patterns the Welsh Language Act 1967 (updated 1993). The Waitangi Tribunal has considered the use of bilingual road signs in Wales and has commented that Wales takes bilingualism more seriously in Government services.³ The Rules Committee made proposals in 2023 to amend the High Court rules by softening them⁴ which, once approved by Cabinet, will bring the court procedure in closer to Wales'. Bilingualism in the courts of Wales and New Zealand is something I took a particular interest in and researched with my co-Pegasus Scholar, Georgie Rea of Garden Court Chambers. I am continuing this research now I am back in Wales. We are immensely grateful to the

¹ Raglan Roast, 'Coat of Arms T-shirt' <<https://raglanroast.co.nz/products/coat-of-arms-t-shirt>> accessed on 11 December 2023.

² New Zealand Government, 'Action on parody emblem "ridiculous"' <<https://www.beehive.govt.nz/release/action-parody-emblem-%E2%80%99Cridiculous%E2%80%99D>> (accessed on 11 December 2023).

³ Waitangi Tribunal, *Ko Aotearoa tēnei: a report into claims concerning New Zealand law and policy affecting Māori culture and identity*, (vol 2, WAI 262, Legislation Direct, Wellington, New Zealand, 2011) ch 5, para 5.6.2.

⁴ Rules Committee, Minutes of Meeting of 3 April 2023, (04/2023, 3 April 2023).

judges, lawyers, activists and academics who offered their time, knowledge and expertise as part of our research.

It was by no means all work. I flew into Auckland initially and spent a week back-packing through North Island on the way down to my placement in Wellington. Well, there was a backpack involved, but there were also 30kg of court dress and swimsuits.

Highlights were surfing at black sand beaches, hiking over active volcanoes, and visiting geothermal pools where I had kānga waru (a Māori steamed pudding) cooked in one of the pools. Up the volcano (photos 6 and 7), I bumped into a judge and solicitor from Cardiff where I practice - small world! I visited New Zealand's (and the world's) longest place name, "Taumatawhakatangihangakoauauotamateapokaiwhenuakitanatahu" (85 letters), which beats Wales' longest place name ("Llanfairpwllgwyngyllgogerychwyrndrobwllllantysiliogogogoch" with 58 letters) which I also visited for the first time last year.

Once I arrived in Wellington, every weekend was a new adventure and it was a real treat to have free weekends for a few months! Amongst many interesting and stunningly beautiful trips was a 2-day paddle in a canoe along the Whanganui River and staying at a marae (meeting ground and a focal point for Māori communities) at the halfway point. This river was controlled by Whanganui iwi (tribes) for more than 700 years until European settlers arrived in the mid-1800s and the tribes' traditional authority was undermined.⁵ In 2017, the Government gave the Whanganui River legal personhood, acknowledging that all its physical and metaphysical elements are a living whole (*Te Awa Tupua (Whanganui River Claims Settlement) Act 2017*). This recognised the unique ancestral relationship between the Whanganui River and Whanganui iwi⁶ and acknowledged te Tiriti o Waitangi (the Treaty of Waitangi). The Te Tiriti o Waitangi is an agreement made between the British Crown and about 540 Māori rangatira (chiefs) in 1840. There is a te reo Māori (Māori language) and English language version.⁷ Relevant to te Tiriti o Waitangi today is the Waitangi Tribunal which has exclusive authority to determine the meaning and effect of te Tiriti o Waitangi and decide issues raised between the two language versions.



Photo 5 Wairēinga/Bridal Veil Falls



Photo 6 Mount Ngauruhoe



Photo 7 Emerald Lakes, Tongariro Crossing

⁵ Kennedy Warne, 'This river in New Zealand is a legal person. How will it use its voice?' (National Geographic, 22 April 2019) < <https://www.nationalgeographic.com/culture/article/maori-river-in-new-zealand-is-a-legal-person-article> > accessed 11 December 2023.

⁶ New Zealand Parliament, 'Innovative bill protects Whanganui River with legal personhood' (28 March 2017) < <https://www.parliament.nz/en/get-involved/features/innovative-bill-protects-whanganui-river-with-legal-personhood/> > accessed 11 December 2023.

⁷ Ministry for Culture and Heritage, 'The Treaty in brief' (New Zealand History, 17 May 2017) < <https://nzhistory.govt.nz/politics/treaty/the-treaty-in-brief> > accessed 11 December 2023.

It also “makes recommendations on claims brought by Māori relating to legislation, policies, actions or omissions of the Crown that are alleged to breach the promises made in the Treaty of Waitangi”.⁸

I finished work at LCC before Christmas and then spent 3 weeks travelling around the South Island before arriving back home to British winter and, thankfully, a full diary.

Visting New Zealand as a Pegasus scholar was a fabulously enriching experience. Special thanks to the Pegasus Scholarship Trust, the Crown Law Office and Inner Temple for the opportunity. Thank you to all my colleagues at LCC for their patience, warmth and guidance and for sharing their knowledge with me, to Kate Feltham who was my first contact in New Zealand, and Wilber Tupua, my LCC buddy.

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⁸ Waitangi Tribunal, ‘About the Waitangi Tribunal’ < <https://waitangitribunal.govt.nz/about/> > accessed 11 December 2023.