

So Near Yet So Far

implications of the Organised Crime and Anti-corruption Legislation Bill

When is a bribe not a bribe? A surprisingly large number of times under current New Zealand law. So many, in fact, that its outdated legislation has regularly been cited as a key reason why, despite its deserved reputation for good governance, New Zealand remains one of very few signatories to the United Nations Convention against Corruption (UNCAC) that has yet to ratify it, alongside Syria, Bhutan, Barbados and Japan.¹ The Organised Crime and Anti-corruption Legislation Bill (OCACL Bill) is explicitly designed to change this state of affairs. As stated by Amy Adams, the minister of justice:

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A range of amendments in the bill will also strengthen New Zealand's ability to combat bribery and corruption. These will enable the Government to ratify the United Nations Convention Against Corruption, which is the first global instrument to address corruption in both the public and private spheres. (Adams, 2015)

An omnibus bill, which was introduced on 25 June 2015 after a second reading in May, the OCACL Bill makes amendments to 12 other acts and covers such subjects as money laundering, drug trafficking and people trafficking. There is no doubt that it does many good things and it is broadly to be welcomed. Yet in terms of bribery and corruption it leaves loopholes that not only potentially damage New Zealand but are inconsistent with the professed desire to ratify UNCAC.

This article will briefly review what the changes to the legislation are in terms of bribery and corruption, and will focus on the arguments surrounding a remaining

loophole which potentially offers a legal defence for bribery of a foreign public official. It will suggest that the existence of this defence is not only wrong in and of itself, it is also potentially counter-productive towards the aim of ratifying UNCAC. It will then discuss two other areas of interest that raise questions that are still to be answered: the role of politically exposed persons and trading in influence.

The catastrophic yet frequently unacknowledged effects of corruption have been noted on many occasions. A study in the UK observed that, whereas some illegal activities get far more attention in the media, such as terrorism, they actually devastate far fewer lives (and kill fewer people) than corruption (Transparency International UK, 2011).² The classic case against the manifold threats of bribery is well rehearsed:

The effects of corruption on society are well documented. Politically it represents an obstacle to democracy and the rule of law; economically it depletes a country's wealth, often diverting it to corrupt officials' pockets and, at its core, it puts an imbalance in the way that business is done, enabling those who practise corruption to win. The language of bribery also deceives, implying that what is being offered or expected is of no consequence. But corruption is not a victimless crime; it leads to decisions being made for the wrong reasons. Contracts are awarded because of kickbacks and not whether they are the best value for the community. Corruption costs people freedom, health and human rights and, in the worst cases, their lives (Kemp, 2014).

In terms of business alone, the World Bank estimates that corruption costs approximately US\$1 trillion per year globally. Doing business in corrupt markets has been found to add costs equivalent to a 20% tax on business, with an additional 25% of the cost of procurement contracts in developing countries. Firms that win contracts by paying bribes have been found to underperform for up to three years before and

after winning the contract for which the bribe was paid. Firms that bribe are fixated on sales growth, not on maximising shareholder value. The higher the rank of person bribed, the lower the benefit firms receive, while the size of the bribe more than offsets the value of the contract to the firm (Cheung, Rau and Stouraitis, 2011).

Bribery also has a negative effect on business morale. Healy and Serafeim (2015) argue that there are a number of factors that can adversely affect workers' morale once corruption has been discovered. First, it is important to note who may be involved in the act of bribery itself; the more senior the person, the more negative the impact on workforce morale. Second, who discovered and reported the incident is also important;

'Size does not matter when it comes to bribery ... Small or big bribing is bad business in the long term' (ibid.). In short, any size bribe has a detrimental impact

there is a correlation between being discovered by front-line staff and the way people subsequently feel about the action. Most important of all, however, is the reaction of the firm upon uncovering corruption and bribery. Cases in which the main perpetrator is dismissed are less likely to be associated with a negative impact on firm competitiveness.

Of all these variables, however, by far the least important is the size of the bribe: 'Size does not matter when it comes to bribery ... Small or big bribing is bad business in the long term' (ibid.). In short, any size bribe has a detrimental impact.

Corruption and bribery legislation in New Zealand: the Crimes Act 1961

There are a number of pieces of legislation that currently touch upon aspects of bribery and corruption, including the Serious Fraud Office Act 1990, the Criminal Proceeds (Recovery) Act 2009, the Protected Disclosures Act

2000, the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, the Commerce Act 1986 and the Local Authorities (Members' Interests) Act 1968. New Zealand is also subject to extra-territorial legislation, notably the US Foreign Corrupt Practices Act and the UK Bribery Act 2010. Of chief importance, however, are two pieces of legislation: the Secret Commissions Act 1910, which deals primarily with private sector corruption, and the Crimes Act 1961, which outlines offences against public officials and which we will primarily focus on here.

The Crimes Act 1961 creates specific offences of bribery and corruption of: judicial officers (section 101); minister (section 102); members of Parliament (section 103); law enforcement officers (section 104); public officials, including

local government officials and members of other public bodies (section 105 and, specifically the corrupt use of official information, sections 105A and 105B), and foreign officials (sections 105C and 105D). In terms of domestic bribery the law is unequivocal: a bribe is defined as 'any money, valuable consideration, office, or employment, or any benefit, whether direct or indirect' (section 99). There are no exceptions or grey areas. Sentences are also prohibitive, with maximum imprisonment of either seven or 14 years depending on the offence. In all cases prosecutions can proceed only with the express permission of the attorney-general (section 106(1)).

Bribery of foreign officials, however, is somewhat more complex. The Crimes Act was already the subject of a number of amendments for bribery of foreign officials, which was to bring legislation into line with the OECD Convention on Combating Bribery of Foreign Public Officials (Newman and Macaulay, 2013).

Box 1: Article 16, UNCAC

Article 16. Bribery of foreign public officials and officials of public international organizations

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.
2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

Incidentally, the OECD convention was invoked in Parliament in May 2015 during questions on the gifting of \$6 million of livestock and farm equipment to Saudi Arabian businessman Hamood Al Ali Khalaf, allegedly as an inducement for expediting the free trade agreement (Parker, 2015). Even taking these into account, though, a number of loopholes remained which provided two separate defences for bribery and corruption.

Section 105E states that an offence only occurs if it:

- (a) was done outside New Zealand; and
- (b) was not, at the time of its commission, an offence under the laws of the foreign country in which the principal office of the person, organisation, or other body for whom the foreign public official is employed or otherwise provides services, is situated.

Section 105C.3 also allows for a defence of bribery, if:

- (a) the act that is alleged to constitute the offence was committed for the sole or primary purpose of ensuring or expediting the performance by a

foreign public official of a routine government action; and

- (b) the value of the benefit is small.

This second defence applies to what is commonly known as ‘facilitation payments’ or ‘grease money’. Clearly it would have no bearing on a case such as the one above; but it would apply to payments that are designed to speed up a service or move one to the front of a queue. They are frequently justified as essential for doing business in jurisdictions where such payments are widely accepted, if not the norm. Furthermore, it is argued that *not* engaging in such payments can lead to a diminution of competitive advantage: criminalising small-scale bribes would be bad for New Zealand business. Such a view is challenged, as has been shown, by empirical research, but, nonetheless, how has the OCACL Bill responded to these challenges?

Bribery of foreign public officials

There is no question that the OCACL Bill makes substantial ground in bolstering legislation: for example, increasing the sentencing for private corruption under the Secret Commission Act 1910 to imprisonment for up to seven years. In addition, the Crimes Act has undeniably

been strengthened. One major development in terms of the Crimes Act is that the ‘national law’ defence of section 105E has now been dropped altogether. It is no longer relevant whether or not a corrupt act is legal in another jurisdiction; from now on it will be illegal under New Zealand law.

There are still some areas, however, that are open to debate. The first is that the defence of bribery of foreign officials in section 105C.3 remains unchanged. This clause was challenged by three different submissions to the law and order select committee (from the Institute for Governance and Policy Studies, Transparency International New Zealand and the Human Rights Commission) and was also the subject of a supplementary order paper by Green MP David Clendon which asked for its removal (Clendon, 2015).

UNCAC’s wording is unequivocal: bribery is not acceptable no matter how large or small the value, or where the jurisdiction may be. It is as clear for domestic bribery as it is for overseas bribery (see Box 1).

During the first reading debate the defence in section 105C.3 was explicitly linked to the facilitation payments and was addressed by, among others, Amy Adams:

A final amendment to the foreign bribery offence addresses the existing exception for small payments made to foreign public officials for the sole purpose of expediting a service to which the payer is already entitled, commonly known as facilitation payments. It is important to note that this exception has been part of our law for many years and is important to ensure that New Zealanders acting in good faith are not unintentionally criminalised ... I note that this is consistent with the treatment of such facilitation payments in Australia, in the US, and in South Korea, and with operational practice in the UK. (Adams, 2014)

This is an interesting response for a number of reasons. The reference to ‘operational practice in the UK’ is

perhaps a little disingenuous. Such bribes are illegal under UK law, and always have been; long before the advent of the Bribery Act 2010, in fact. It is true that the director of public prosecutions has provided guidance to suggest that it is unlikely that an individual or company would be prosecuted for low-value facilitation payments, but this would apply equally to New Zealand anyway, which requires the assent of the attorney-general for all bribery prosecutions. There is a distinction between making a judgement call on a case-by-case basis, and a legal defence that is backed by legislation, which, under the new provisions of the OCACL Bill, has been blurred.

Similarly, the reference to other jurisdictions is not entirely accurate. While it is true that the US Foreign Corrupt Practices Act allows facilitation payments, the US has come under substantial pressure, particularly from the OECD, to close that loophole. Australia has been repeatedly criticised by both the OECD and the UN for its stance on facilitation payments: in the UN's review of Australia's commitment to UNCAC in 2012, for example, there was substantial criticism and an express call for a review of its policy on facilitation payments. The UN's position was restated yet again during the fifth session of the Conference of the States Parties to the Convention (November 2013), which states: 'It is a different matter if the national law extends only to 'bribes', leaving facilitation payments outside the scope of criminal liability ... *In such cases the State party clearly falls short of fulfilling Convention requirements*' (emphasis added).³ It is also worth stating that other countries have recently altered their own legislation. In 2013, for example, the Canadian parliament passed an act to amend the Corruption of Foreign Public Officials Act to remove facilitation payments as a defence.

The OCACL Bill does, however, tackle facilitation payments in a different way. As the minister of justice suggests, one of the ways that facilitation payments will now be dealt with is through greater transparency. The bill amends section 194 of the Companies Act, which now

'requires companies to keep a record of transactions that constitute acts of the kind described in section 105C(3) of the Crimes Act 1961'. In other words, as long as they are suitably recorded, small bribes of overseas officials will be permissible.

In addition, the facilitation payments issue has been addressed by changing the definition of routine government action in section 105C.1 to:

- (c) any action that provides –
 - (i) an undue material benefit to a person who makes a payment; or
 - (ii) an undue material disadvantage to any other person.

Amending the definition of routine government action to include 'an undue material disadvantage' has twice been

narrow reading of UNCAC, relying on the minutiae rather than the overall message. It bears restating that UNCAC does not allow any forms of bribery at all. None. Indeed, this is one key reason why the convention does not use the words 'facilitation payments' anywhere in its text; it does not make distinctions between different types of bribes.

Nonetheless, articles 15 (bribery of national public officials) and 16 (bribery of foreign public officials and officials of public international organisations) both explicitly refer to an official acting, or refraining from acting, 'in the exercise of his or her official duties'. It does not distinguish between 'routine government actions' and other types of action. The

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identified as the means by which the Crimes Act now facilitates ratification of UNCAC. The Ministry of Justice offered the following justification in the select committee report,⁴ and Amy Adams repeated it during her speech to Parliament:

The bill tightens this already narrow exception, such that it will not now apply to payments that provide an undue material advantage to the payer or an undue disadvantage to anyone else. This *maintains compliance with the UN convention, which requires parties to criminalise payments that provide the recipient with an undue advantage* (Adams, 2014, emphasis added).

These words are worth unpicking a little further. Arguably, Adams' explanation rests on an extremely

OCACL Bill clause, therefore, regarding whether or not it offers an advantage or disadvantage is largely immaterial. In addition, however, if a 'routine government action' is defined as one that does not confer an advantage, then defence under section 105C.3 is now redundant. What else can 'expediting a routine government action' possibly mean, other than to confer this advantage? The simplest and most elegant solution would have been to remove 105C.3 (a) and (b) from the Crimes Act.

Besides which, removing any further doubt around bribery is something that New Zealand should be leading the way in. It's just the right thing to do. A facilitation payment is still a bribe no matter how small the amount, and such payments inculcate a culture of corruption. Given New Zealand's leadership in the field of ethics and integrity, and also its deserved global reputation for anti-corruption,

Box 2: Article 52 (1), UNCAC

Article 52: Prevention and detection of transfers of proceeds of crime

(1) ... each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require banks within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained *by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and associates*. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purposes of reporting to competent authorities and should not be so construed as to discourage or prohibit banks from doing business with any legitimate customer [emphasis added].

it seems anomalous that we would wish to leave such a loophole in place. The Serious Fraud Office (in partnership with Transparency International New Zealand and other organisations) now provides anti-bribery and corruption training for businesses operating abroad. It is notable that the training suggests that, as good practice, facilitation payments should not be paid. Removing clause 105C.3 would simply formalise in law this good practice.

There seems to be a somewhat Janus-faced view of the problem. The OCACL Bill offers two solutions to a problem that it suggests is not a big issue. Ironically, both of these solutions still go up against the wording and spirit of the relevant sections of UNCAC.

Politically exposed persons

Another area in which the OCACL Bill seeks to enact greater affinity with UNCAC is money laundering. The explanatory note to the Organised Crime and Anti-corruption Legislation Bill states, *inter alia*, that:

The Bill also contains amendments to enhance New Zealand's anti-corruption legislative frameworks and bring New Zealand into line with international best practice as set by the United Nations Convention Against Corruption ... The Bill is intended to ensure New Zealand's full

compliance with the United Nations Convention Against Corruption, while taking into account the existing legislative framework and the extent to which obligations under that Convention can be met through non-legislative means.

One area that has potentially been overlooked, however, is that of 'politically exposed persons'. Legislation on politically exposed persons is found in section 26 of New Zealand's Anti-Money Laundering and Countering Financing of Terrorism Act 2009, which states that:

- (1) The reporting entity must, as soon as practicable after establishing a business relationship or conducting an occasional transaction, take reasonable steps to determine whether the customer or any beneficial owner is a politically exposed person.
- (2) If a reporting entity determines that a customer or beneficial owner with whom it has established a business relationship is a politically exposed person, then –
 - (a) the reporting entity must have senior management approval for continuing the business relationship; and
 - (b) the reporting entity must obtain information about the source of wealth or funds of the customer or beneficial owner and take

reasonable steps to verify the source of that wealth or those funds.

- (3) If a reporting entity determines that a customer or beneficial owner with whom it has conducted an occasional transaction is a politically exposed person, then the reporting entity must, as soon as practicable after conducting that transaction, take reasonable steps to obtain information about the source of wealth or funds of the customer or beneficial owner and verify the source of that wealth or those funds.

But who exactly counts as a politically exposed person? In the New Zealand legislation a politically exposed person is defined as 'an individual who holds, or has held at any time in the preceding 12 months, *in any overseas country* [emphasis added] the prominent public function of' – and these are listed. Anti-money laundering legislation on politically exposed persons, therefore, only applies to persons who have held positions outside the country. It does not apply domestically. Again, this stands in opposition to UNCAC (see Box 2).

Thus, UNCAC makes no distinction between foreign or domestic politically exposed persons (although, notably, it does not use the term politically exposed person directly, unlike the New Zealand legislation). The new OCACL Bill does not update legislation around politically exposed persons at all, and therefore, again, a number of questions emerge. Does the OCACL Bill in fact satisfy the requirements as stated in article 52 (1) of UNCAC? As this article does not distinguish between foreign and domestic politically exposed persons, it must apply to both. And yet the bill says nothing about politically exposed persons, unlike the Anti-Money Laundering and Countering Financing of Terrorism Act, which, however, applies only to foreign politically exposed persons. We recall that the foreign affairs, defence and trade select committee was of the view in 2009 that in regard to the Anti-Money Laundering and Countering Financing of Terrorism Bill, existing legislation was

sufficient to cover domestic politically exposed persons.

As with facilitation payments, there still seems to be a disconcerting attitude that offences in other jurisdictions are not the same as in New Zealand itself. And also, there are still gaps in New Zealand's laws that may yet prevent it from ratifying the UNCAC.

Trading in influence

One area where there has been, however, a clear and concerted effort to fulfil New Zealand's UNCAC obligations is the addition of a new offence of trading in influence. The new Crimes Act, section 105F states:

Every person is liable to imprisonment for a term not exceeding 7 years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, a bribe for that person or another person with intent to influence an official in respect of any act or omission by that official in the official's official capacity (whether or not the act or omission is within the scope of the official's authority).

Introducing such an offence is a very forward-thinking approach and one that clearly brings New Zealand legislation into line with UNCAC (see Box 3).

The creation of this new law is really quite remarkable. There is no equivalent in, for example, the UK legislation, which is often touted as the world's most comprehensive and punitive anti-corruption legislation (see Newman and Macaulay, 2013). Indeed, as recently as February 2015 Transparency International UK called for just such a law to be made (Transparency International UK, 2015). Not only is the new offence admirably succinct; it also refuses to distinguish between domestic and overseas jurisdictions. The explanatory note to the bill simply states that: 'New section 105F sets out an offence for trading in influence. The penalty is imprisonment for a term not exceeding 7 years.' Perhaps most remarkable, however, is that trading in influence (often referred to as 'influence marketing') has long been identified as

Box 3: Article 18, UNCAC

Article 18. Trading in influence

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;
- (b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

the most common form of corruption in developed Western economies. Indeed, Michael Johnston (2006) has labelled trading in influence as one of the four 'syndromes of corruption' that describe and explain corrupt practices in different jurisdictions around the world.

New Zealand obviously prides itself on its reputation for integrity and a lack of corruption. Our arguments do not seek to diminish that. However, it is fair to suggest, using research such as Transparency International New Zealand's 2013 National Integrity System study, that there are problems around 'grey areas': party funding; patronage; perceived nepotism and/or cronyism; unresolved conflicts of interest; misuse of lobbying, etc. (See Transparency International New Zealand, 2013). These problems are not dissimilar to those found in the US or continental Europe: they are the problems of access versus influence. This was one reason why the Transparency International study also suggested that the time may be ripe to consider introducing in New Zealand the common law offence of misconduct in public office, as exists in Britain and Hong Kong.⁵ This law covers corruption offences that are not as serious as those covered in statutory law, but which fall within some of these 'grey

areas' of official behaviour. Arguably, the new law of trading in influence goes far beyond this.

It is usually clear who has access to politicians and decision-makers; what is less clear is whether or not this access garners any influence. To use the UK as an example, the Conservative Party 'Leader's Group' allows members direct meetings and engagements with the prime minister for an annual fee of £50,000.⁶ The group is fairly transparent and lists its donors/members for all to see.⁷ What is never clear, though, is the extent to which this access ever becomes translated into something more tangible. It is clear that the Leader's Group donated £43 million to the Conservative Party during 2012–2014 alone, which, of course, may be dwarfed by donations in the US, for example, but in terms of UK party funding represents a substantial sum (Graham, 2014). Earlier in 2015 a study from Oxford University demonstrated a more worrying trend. Confirming what many suspected, it showed conclusively a link between party donations and peerages: that is, a seat in the House of Lords. These are no mere vanity appointments; party donations are buying people a seat at the legislative table (Mell, Radford and Thévoz, 2015).

Without a second chamber this is something that does not of course affect New Zealand. Yet cash for honours is an issue that continues to raise its head. There is also a New Zealand equivalent of the Leader's Group: the Cabinet Club. Although this has been dismissed as giving 'no suggestion of cash for access' (Bill English quoted in O'Brien,

Conclusion

While there is much to admire in the new Organised Crime and Anti-corruption Legislation Bill, there are still some areas that have been left open-ended. Despite its highly progressive nature, it is difficult to foresee any prosecutions for trading in influence in the near future, not without some serious public debate first. Parts

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2014), there is an obvious concern that anonymous donations can grant a person direct contact (however innocent) with a member of the government.

This article is not seeking to cast judgement on current political arrangements. The point is a much broader one. To put it starkly, most of our political institutions and processes rely to some degree or other on influence, not necessarily in the sense of a secret society or a tap on the shoulder, but through the political infrastructure in which we operate: for instance, the lobbying industry and the corporate hospitality sector. These are vital components of our democracy, but it is undeniable that they work on the principle of the buying and selling of access and influence. The extent to which the new offence has been created through legislative logic, to meet the requirements of the UN convention, rather than with any serious consideration to future prosecutions is open to debate.

If nothing else, though, it is to be hoped that this new provision in the OCACL Bill will reactivate much-needed discussions about how such agencies can enhance democracy rather than potentially restrict it.

of the OCACL Bill are contradictory: for example, the maintenance of the defence for facilitation payments while the definition of 'routine government business' has been altered. Other sections seem to rub up against the stated aim of ratifying the UN Convention against Corruption. Legislation on politically exposed persons still does not correspond to the requisite article. There remains a loophole for overseas bribery, albeit a relatively small one.

In both cases changes to the legislation would have been easy to make, although perhaps not so easy to enforce. All that needed to be done was to delete section 105C.3 from the Crimes Act and to alter the definition of a politically exposed person in the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 to: 'an individual who holds, or has held at any time in the preceding 12 months, the prominent public function of'. Two small changes, but both with significant meaning.

Perhaps the most intriguing aspect, however, is that New Zealand probably will shortly ratify UNCAC. Herein lies the biggest implication of all: not for our country, but for the world. Looking

at those who have already ratified the convention, it is clear that many countries are beset with problems of corruption, far more than New Zealand, in fact. Which raises the question: what is the true value of UNCAC and other such agreements? Yet it is easy for healthy scepticism to deteriorate into outright cynicism, and easier still to decry imperfect solutions to agonisingly complex problems.

The point of UNCAC is to provide commitment to, and a platform by which nations can share, a common vision and approach; implementing such will continue to take a long time. While one of the explicit ends of the new Organised Crime and Anti-corruption Legislation Bill is to allow ratification of UNCAC, this really should be secondary to improving legislation and providing international leadership in this area. The new amendments contained in the bill do make legislation more robust, but it still includes some grey areas, albeit relatively small, that go against its own aims. While such debates rage, millions of lives will continue to be degraded or destroyed by corruption on a daily basis, and this surely is the ultimate test: how lives will be improved. Time will tell.

- 1 It may also be noted that Germany only ratified UNCAC as recently as November 2014. For a full list of signatories see <https://www.unodc.org/unodc/en/treaties/CAC/signatories.html>.
- 2 One former chair of the Serious Organised Crime Agency likened the difference in media coverage to that between plane crashes and road traffic accidents.
- 3 <https://www.unodc.org/documents/treaties/UNCAC/COSP/session5/V1388054e.pdf>.
- 4 The select committee reported that: 'The Ministry of Justice departmental report refers to these payments as being for things such as "small payments relating to the grant of a permit or licence, the provision of utility services, or loading or unloading cargo." The Ministry commented that these payments do not yield an "undue advantage", and that measures in the bill to ensure the recording of these payments mitigate any concerns that the exception may be abused.' http://www.parliament.nz/resource/en-nz/51DBSCH_SCR62835_1/fb244777b2a0130a9317026b233229ea4408543.
- 5 As defined by the Hong Kong Court of Final Appeal, a MIPD offence is committed where:
 1. a public official; 2. in the course of or in relation to his/her public office; 3. wilfully misconducts him/herself; by act or omission (for example, by wilfully neglecting or failing to perform his/her duty); 4. without reasonable excuse or justification; and 5. where such misconduct is serious, not trivial, having regard to the responsibilities of the office and the office-holder, the importance of the public objects which they serve and the nature and extent of the departure from those responsibilities.The UK definition is similar, but omits the proviso that the misconduct must be serious, not trivial.
- 6 For all Conservative Party donor groups see https://www.conservatives.com/donate/Donor_Clubs.
- 7 <https://www.conservatives.com/~media/Files/Downloadable%20Files/Donors/LG%20Meals%20Q4%202014.ashx>.

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Restorative Justice Conference Held Recently



Minister of Justice, Amy Adams, opens the conference at Parliament

The appropriateness and effectiveness of using restorative justice in situations of family violence has long been debated. In New Zealand, this debate is no longer hypothetical. The decision of the Ministry of Justice in 2013 to bring family violence within the orbit of restorative justice provision, together with changes to s.24a of the Sentencing Act in 2014 which make an assessment of suitability for restorative justice mandatory in the great

majority of cases coming before the District Court, irrespective of the type of offending involved, mean that examination of the proper place of restorative interventions in this area is more urgent than ever.

To promote dialogue on the matter, the **Diana Unwin Chair in Restorative Justice** at Victoria University, with funding assistance from the New Zealand Law Foundation, organised a major conference on *Family Violence, the Law and Restorative Justice* at Parliament on 7 May.

The conference was opened by the Minister of Justice and featured **Professor Leigh Goodmark** from the University of Maryland's Carey Law School as keynote speaker. A specialist on gendered violence, Professor Goodmark offered a critique of the direction government policy has taken over the past 40 years and explored the potential of alternative, community-based approaches, such as restorative justice, to address the problem.

A Summary of Proceedings of the conference is available at www.victoria.ac.nz/sog/researchcentres/chair-in-restorative-justice