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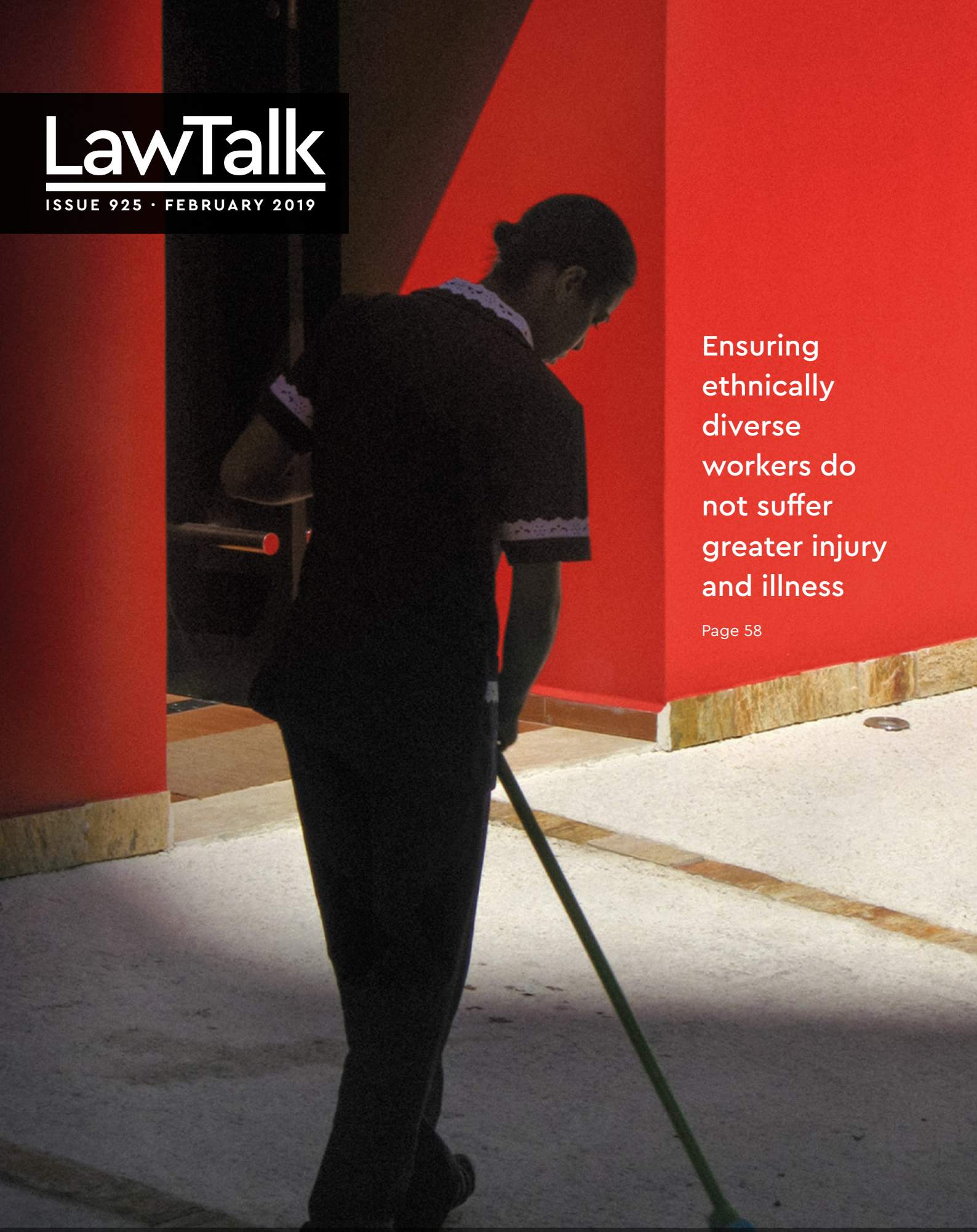

Ensuring ethnically diverse workers do not suffer greater injury and illness

Page 58

NEW ZEALAND LAW SOCIETY
NZLS EST 1869

Outward Bound experience inspires lawyer to partnership
Page 24

Talking about mental health: a former lawyer shares his lived experience
Page 44

The interpretation of contracts
Page 51

Lessons learned from serving on a standards committee
Page 76

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Senior Solicitor, Christchurch

7 · **From The Law Society**

People In The Law

8 · On the move

24 · How an Outward Bound experience inspired a lawyer to partnership ▷ BY NICK BUTCHER

28 · Peter makes his next move... ▷ BY STUART READ

30 · Lawyer plans to start NZ chapter of charity surfing organisation ▷ BY NICK BUTCHER

32 · Lawyer Karateka! ▷ BY TAUFIL OMAR

35 · First UK woman barrister Helena Normanton KC commemorated ▷ BY TRACEY CORMACK

37 · The Innovators: Tamina Cunningham-Adams, ▷ BY ANDREW KING

Letter To The Editor

39 · Should We Legalise All Drugs?

42 · **New Zealand Law Society**

Practising Well

44 · Talking about mental health ▷ BY SARAH TAYLOR

Update

48 · Price fixing without fixing the whole price ▷ BY JOHN LAND

51 · The interpretation of contracts ▷ BY TIM SMITH AND SAM CATHRO

55 · What is good faith in franchising? Part 2 ▷ BY DEIRDRE WATSON

59 · Ensuring ethnically diverse workers do not suffer greater injury and illness ▷ BY MAI CHEN

ABOUT LAWTALK

LawTalk is published monthly by the New Zealand Law Society for the legal profession. It has been published since 1974 and is available without charge to every New Zealand-based lawyer who holds a current practising certificate. *LawTalk* is also distributed to others involved in the justice system or legal services industry. These include members of the judiciary, legal executives, librarians, academics, law students, journalists, Members of Parliament and government agencies. Total *LawTalk* circulation is around 13,400 copies.

ABOUT THE LAW SOCIETY

The New Zealand Law Society was established on 3 September 1869. It regulates the practice of law in New Zealand and represents lawyers who choose to be members. The powers and functions of the Law Society are set out in the Lawyers and Conveyancers Act 2006. As well as upholding the fundamental obligations imposed on lawyers who provide regulated services, the Law Society is required to assist and promote the reform of the law, for the purpose of upholding the rule of law and facilitating the administration of justice in New Zealand.

SUBMISSION OF MATERIAL

All contributions, letters and inquiries about submission of articles should be directed to the Managing Editor, *editor@lawsociety.org.nz*.

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Contents

64 · Rectification and indefeasibility of title ▷ BY TIM HERBERT

66 · Taxing the digital behemoths ▷ BY LYNDA HAGEN

67 · Family protection claim by estranged children in multimillion dollar estate ▷ BY SHARON CHANDRA

Alternative Dispute Resolution

68 · Consensus Building, Part 5 ▷ BY PAUL SILLS

70 · **Lawyers Complaints Service**

Practice

76 · Lessons learnt from serving on a standards committee ▷ BY SAMUEL HOOD

77 · Are you being served? ▷ BY RACHEL NOTTINGHAM

80 · What's in a story? ▷ BY SIAN WINGATE

84 · Focus on... Gisborne ▷ BY CRAIG STEPHEN

Classifieds

89 · Will notices

90 · Legal Jobs

95 · CPD Calendar

Lifestyle

76 · A New Zealand Legal Crossword ▷ SET BY MĀYĀ

The Case And The Story

98 · Playing rights for women ▷ BY GEOFF ADLAM

102 · **Tail end**

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FROM THE LAW SOCIETY

Moving forward positively

Becoming a lawyer is hard work. And practising law is also hard. A lot of personal commitment is needed. As President of the Law Society I would like 2019 to be a year where we enjoy our work as lawyers, where we celebrate our success – and where we are proud of who we are and what we do. Let us make this a year where we explicitly value ourselves and our colleagues, and where we conect with each other.

As a profession we make a difference for others through our skills and our understanding of what is needed. Let's do it for our legal community as well. We can build on the enormous satisfaction that can be obtained from doing our jobs well. Wherever we live, whatever type of law we practise, and however long we have been practising, we have a common purpose. When we interact with other lawyers it's not hard to ask ourselves if we are recognising our similarities. Let's make this a year of commitment to civility, caring and connection. We are thinkers; let's be thoughtful and respectful of different views and opinions. We will persuade most effectively through discussion, not name calling.

2019 is going to be another very important year for the the legal profession. Looking back over 2018, there is obviously one theme that stands out: the focus on and exploration of sexual harassment and bullying behaviour in legal workplaces. However you see the role of the New Zealand Law Society in this, the environment in which our profession operates has changed dramatically.

Progress thrives on positivity. Yes, we can be critical of what has happened. But to move onwards requires a unified commitment to change. We are learning how to work and to regulate in this more open environment. We will do this. The Culture Change Taskforce will spend much of this year consulting and establishing a clear pathway forwards. The Law Society is now working on what is needed to implement all the recommendations for change made by the Dame Silvia Cartwright-led regulatory working group at the end of 2018. We will succeed, but it needs us all to accept the need for change and the need to contribute in a positive and collaborative way to building an inclusive, resilient, safe and respectful environment in which we deliver legal services to all.

There will be some key events this year where there is an opportunity for us to celebrate our profession and its leaders.

We farewell our Chief Justice, Dame Sian Elias, with a valedictory sitting in the Supreme Court on 8 March. Over half of New Zealand's lawyers have commenced practice since Dame Sian became Chief Justice in 1999. Her contribution and impact on our justice system has been immense.

A few days later, on 13 March, Justice Helen Winkelmann will become our new Chief Justice. We look forward to a continuation of courageous, strong and respectful leadership of the judiciary under her tenure.

Tiana Epati will become the 31st elected President of the Law Society on 10 April and I will step down after three years in the role. In Tiana the profession has a dynamic and modern leader who will have been president for several months on 3 September when the New Zealand Law Society turns 150. This will be an opportunity to take stock again of our profession and how it measures up in 2019.

Another date which I didn't include in that list, and which often results in a smile, is 9 April. That has been designated "International Be Kind to Lawyers Day". Seriously though, as a profession, how highly do we value kindness to each other? Let's add that to the list: 2019 will be a year where the legal profession in Aotearoa New Zealand became better connected with each other and a more civil, caring and kinder group of professionals.

Kathryn Beck
President New Zealand Law Society.

PEOPLE IN THE LAW
ON THE MOVE

The Judiciary

Justice Winkelmann to be next Chief Justice

Court of Appeal judge **Helen Winkelmann** has been appointed Chief Justice of New Zealand and a Judge of the Supreme Court. She will take office on 13 March 2019.

Justice Winkelmann graduated with an LLB and a BA in History from Auckland University in 1987 and began work as a law clerk with Auckland firm Nicholson Gribbin (later Phillips Fox, now DLA Piper). In 1988, aged 25, Justice Winkelmann became the first female partner and one of the youngest partners ever in the firm's then 117-year history.

In 2001, she left Phillips Fox to join the independent Bar, specialising in commercial litigation, insolvency and medico legal.

Justice Winkelmann was appointed a High Court Judge in 2004 and Chief High Court Judge in 2009. In 2015 she was appointed a Judge of the Court of Appeal.

In a statement following the announcement of her appointment, Justice Winkelmann said it was a great honour, bringing with it significant responsibility.

She said the courts, like the other branches of government, face the challenge of responding to an increasingly complex and diverse society. As Chief Justice, she intends to continue the work of the present Chief Justice in supporting the judiciary's response to these challenges while preserving its critical independence.

"An independent, and skilled judiciary is vital to the health of our democracy. So too a judiciary that has a good understanding of, and remains connected to the communities which make up New Zealand."

Justice Winkelmann said the legitimacy and authority of the courts depend on public trust and confidence.

"I believe that it is part of the role of judicial leaders to promote understanding of the role of the courts, the work that judges do and the importance of having courts that are accessible to all."

She said she intends to continue her focus on issues affecting people's ability to access the courts to seek justice.

"Access to justice is the critical underpinning of the rule of law in our society: it is the notion that all, the good, the bad, the weak, the powerful, exist under and are bound by the law. That condition cannot exist without access to courts, and without the ability to obtain a just resolution of claims before those courts. Cost, delay and a lack of representation all can act as barriers to justice."

Valedictory sitting for Dame Sian Elias

A valedictory sitting in honour of the retirement of Chief Justice **Dame Sian Elias** will be held at the Supreme Court in Wellington at 11:30am on Friday, 8 March. Because the courtroom has limited seating, the sitting can be watched from the foyer by video link.

Dame Sian was appointed Chief Justice on 17 May 1999 at the age of 50. Her 70th birthday will be on 13 March 2019. The Senior Courts Act 2016 requires members of the judiciary to retire on attaining the age of 70 years.

Dame Sian's retirement has also been marked by a two-day conference in Auckland from 31 January to 1 February. The conference, which brought together distinguished international and New Zealand speakers, explored tradition and direction in the law. It was hosted by the Legal Research Foundation, with the support of the New Zealand Law Foundation.

Memorial sitting for Sir Thomas Eichelbaum

A memorial sitting was held at the Old High Court in Wellington on 6 December for **Sir Thomas Eichelbaum**. Sir Thomas, who was Chief Justice of New Zealand from 1989 to 1999, died on 31 October.

New High Court Judges

Associate Judge Robert Osborne was appointed a Judge of the High Court and sworn in on 17 December in Christchurch where he will continue to be based. Justice Osborne graduated with an LLB(Hons) from the University of Canterbury in 1975 followed by an LLM in 1980. He practised as a solicitor in Christchurch from 1976 before travelling overseas in 1980 to spend five years as a Crown Counsel, then Senior Crown Counsel, with the Hong Kong Government.

He was subsequently a partner at Duncan Cotterill for 21 years. He moved to the independent Bar in 2007. In the latter part of his practising career he worked primarily in civil/commercial and trust litigation, and professional discipline. Justice Osborne was appointed an Associate Judge in 2009.

Justice Ian Gault was sworn in on 18 December in Auckland where he will be based. He graduated with LLB(Hons) from Victoria University in 1987 while employed as a Judges' Clerk for judges of the High Court and Court of Appeal. In 1988 he travelled to the UK to study, graduating with an LLM from the University of Cambridge in 1989 and joining the London office of international law firm Clifford Chance in the same year.

In 1993 he returned to New Zealand and the Auckland office of Bell Gully, joining the partnership in 1997. He specialised in commercial dispute resolution and regulatory proceedings, with particular experience in trade practices, intellectual property, international trade, insurance, cyber security, public law and trusts.

Justice Gault was also admitted as a solicitor in New South Wales in 2001 and is a Commissioned Officer (Major) in the New Zealand Defence Force Reserves.

Associate Judge Dale Lester was sworn in on 19 December at the High Court in Christchurch, where he will be based. After graduating LLB(Hons) from Canterbury University in 1990, he was admitted as a barrister and solicitor of the High Court in January 1991 and started work as a staff solicitor at Christchurch law firm White Fox & Jones.

During 1991 and 1992 he was a Judges' Clerk to the Christchurch High Court Bench. In 1994 he was employed as a litigation solicitor at Rhodes & Co, leaving the following year to join Saunders & Co in Christchurch, initially as a litigation solicitor and then an associate, before joining the partnership in 1998.

Associate Judge Lester left Saunders & Co in 2003 to join the Bar, subsequently co-founding Canterbury Chambers in 2007. His main areas of practice were contract, commercial, insolvency and estate litigation.

Principal Family Court Judge appointed

Judge Jacquelyn (Jackie) Moran of Christchurch has been appointed Principal Family Court Judge. Her appointment is for an eight year term. Admitted as a barrister and solicitor in 1980, she practised in Whanganui until 1991 when she joined Invercargill firm Arthur Watson Savage where she led the disputes resolution team. She then moved into sole practice in Invercargill until her appointment to the bench.

Judge Moran has been a Family Court Judge in Christchurch since 2003 and was Administrative Family Court Judge for the Southern Region from 2008 to 2014.

Attorney-General David Parker says she has provided strong strategic leadership in this field, including national leadership of the Early Intervention Process which seeks to provide a more efficient approach to proceedings about the care of children.

Environment Court Judge appointed

Auckland lawyer **Melinda Dickey** has been appointed an Environment Court and District Court Judge to serve in Auckland. She was sworn in on 1 February. Admitted as a barrister and solicitor in March 1983, Judge Dickey was a partner at Brookfields Lawyers from 1996 and, until recently, a member of the firm's board.

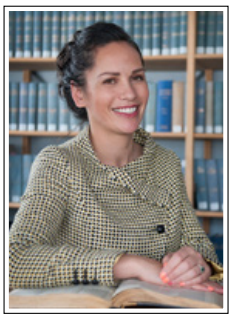
Judge Dickey specialised in all aspects of resource management and environmental law. From 2013 she acted for Auckland Council providing advice and attending hearings on the Auckland Unitary Plan. This work included various Environment Court and High Court proceedings. She also had extensive experience in advising on infrastructure projects and planning instruments for a number of local authorities.

Māori Land Court Judges appointed

Damian Stone and **Terena Wara** have been appointed Judges of the Māori Land Court.

Judge Stone was admitted as a barrister and solicitor in May 1998. He holds an LLB from the University of Auckland and a BA from Victoria University of Wellington. He is a managing partner at Kāhui Legal, specialising in commercial law. Before joining the firm he spent 10 years working for a large national law firm and was General Counsel for the Treaty of Waitangi Fisheries Commission. Judge Stone regularly appeared in the Māori Land Court and before the Waitangi Tribunal.

Judge Wara was admitted as a barrister and solicitor in July 2006 after graduating LLB(Hons) from the University of Waikato. She is a director at Rotorua firm Tū Pono Legal Ltd, of which she was a founding director in 2014. Her main focus is in the Māori Land Court and the Waitangi Tribunal where she acted for Māori Land owners, Māori land trusts and incorporations, post-settlement governance entities, whānau, hapū and iwi.



Judge **Patrick Savage** has also been reappointed an Acting Judge of the Māori Land Court. Judge Savage was first appointed to the Court on 7 July 1994 after serving as Crown Solicitor for the Bay of Plenty. He retired from the court in 2015 but has been reappointed as an Acting Judge since.

District Court Judge appointed

Northland lawyer **La-Verne King** has been appointed a District Court Judge with Family Court jurisdiction, to be sworn in on 31 May. Judge King, whose iwi include Ngatikahu ki Whangaroa and Ngati Paoa, was admitted as a barrister and solicitor in December 1989.

In 1994, along with Judge Ida Malosi and Ali'imuamua Sandra Alofivae, she established the first Māori and Pasifika women law firm, KAM Legal. In 2007 La-Verne King returned to the Far North and went on to establish Doubtless Bay Law Ltd in response to the many and varied legal needs of the local community.

She was appointed as Youth Advocate in 1992, Counsel for Child in 1994, District Inspector for Mental Health in 2003 and Visiting Justice in 2009. In August 2018 she was appointed a member of the Independent Panel considering the 2014 Family Justice Reforms.

Acting District Court Judge appointments made permanent

Seven acting District Court Judges have been appointed as District Court Judges.

Judge Sanjay Patel was appointed from 1 January as a District Court Judge with a warrant to conduct jury trials. Judge Patel was appointed an Acting District Court Judge on 22 June 2016.

Judge Soana Moala was appointed from 1 January as a District Court Judge with a warrant to conduct jury trials. Judge Moala was appointed an Acting District Court Judge on 2 September 2016.

Judge Catriona Mary Doyle was appointed from 1 January as a District Court Judge and to exercise the jurisdiction of the Family Court. Judge Doyle was appointed an Acting District Court Judge on 18 August 2016.

Judge Noel Joseph Sainsbury was appointed from 8 January as a District Court Judge with a warrant to conduct jury trials. Judge Sainsbury was appointed an Acting District Court Judge on 18 November 2016.

Judge Gregory Charles Hollister-Jones was appointed from 10 January as a District Court Judge with a warrant to conduct jury trials. Judge Hollister-Jones was appointed an Acting District Court Judge on 5 April 2017.

Judge Haamiora Lincoln Cooper Raumati is appointed from 20 February to be a District Court Judge and to exercise the jurisdiction of the Family Court. Judge Raumati was appointed an Acting District Court Judge on 3 April 2017.

Judge John Joseph Brandts-Giesen is appointed from 20 March to be a District Court Judge and to exercise the jurisdiction of the Family Court. Judge Brandts-Giesen was appointed an Acting District Court Judge on 5 August 2016.

Acting Employment Court Judge

Mark Eversfield Perkins, retired Employment Court Judge, was appointed an Acting Judge of the Employment Court for a term of 12 months commencing on 28 December 2018.

Acting District Court Judges

Judge Craig James Thompson, retiring District Court Judge, was appointed an Acting District Court Judge and also alternate Judge of the Environment Court for a term commencing on 13 December 2018 and expiring on 25 October 2020.

Alexander James Twaddle, retired District Court Judge, was appointed an Acting District Court Judge able to exercise the jurisdiction of the Family Court for a two-year term commencing on 22 December 2018.

Sharon Elizabeth Couper McAuslan

and **Charles Stuart Blackie**, retired District Court Judges, were appointed Acting District Court Judges able to exercise the criminal jurisdiction of the District Court, for a term of two years commencing on 14 January and 22 January respectively.

Christopher David Sygrove, retiring District Court Judge, was appointed an Acting District Court Judge able to exercise the jurisdiction of the Family Court for a two-year term commencing on 15 January.

Christopher John McGuire, retiring District Court Judge, was appointed an Acting District Court Judge able to exercise the criminal jurisdiction of the District Court, for a two-year term commencing on 15 January.

Brian Hamish Struthers Neal and **Paul Whitehead**, retired District Court Judges, have been appointed Acting District Court Judges able to exercise the jurisdiction of the Family Court for a two-year term commencing on 1 March.

Anne-Marie Josephine Bouchier and **John Enoka Macdonald**, retired District Court Judges, have been appointed Acting District Court Judges able to exercise the criminal jurisdiction of the District Court for a term of two years commencing on 1 March.

Dale Fleur Clarkson, retired District Court Judge, has been appointed an Acting District Court Judge for a term of two years commencing on 1 March.

Gary Michael Harrison and **David Graham Mather**, retired District Court Judges, have been appointed Acting District Court Judges for two year terms commencing on 2 March and 4 March respectively.

Anthony Patrick Walsh, retiring District Court Judge, has been appointed an Acting District Court Judge able to exercise the jurisdiction of the Family Court for a two-year term commencing on 20 March.

Peter John Butler, retiring District Court Judge, has been appointed an Acting District Court Judge able to exercise the criminal jurisdiction of the District Court, for a two-year term commencing on 20 March.

Judicial retirements

A final sitting will be held at 4pm on 7 March for **Justice Raynor Asher** in the Court of Appeal to mark his retirement. Justice Asher was appointed to the High Court bench on 17 August 2005. He was appointed to the Court of Appeal on 22 July 2016.

▲ The final sitting for Judge McGuire, Manukau District Court. Left to right, Principal Family Court Judge Moran, Chief District Court Judge Doogue, Judge McGuire, Executive Judge Malosi.

A final sitting for **Judge Christopher McGuire** was held on 7 December at Manukau District Court. Judge McGuire graduated from Auckland University and was admitted in 1973. He spent three years as a legal officer at the Ministry of Defence and nine as Crown counsel in Auckland and Wellington before going into sole practice in Auckland in 1988. He was appointed to the bench on 19 December 1997.

A final sitting for **Judge Kevin Phillips** was held at Dunedin District Court on 10 December. He was admitted in 1972 and first practised in Gore with Bannerman Brydone and Folster, becoming a partner in 1976. He moved to Queenstown in 1985, joining Macalister Todd Phillips Bodkins as a partner and head of litigation in 1986. He specialised in criminal law and was also solicitor for the Queenstown Lakes District Council. Judge Phillips was sworn in as a District Court Judge on 20 February 2006.

A final sitting for **Judge Chris Sygrove** was held at New Plymouth District Court in December. A family law specialist in practice, he was a partner with Wellington firm McCulloch and Sygrove from 1979 to 1996. He became a sole practitioner in 1996 and was sworn in as a District Court Judge on 4 July 2014.

A final sitting for **Judge Rosemary Riddell** was held at Hamilton District Court on 13 December. She was admitted in 1992 after working in broadcasting and public relations and started work with Gaze Burt in Auckland before moving to Dunedin to join Gallaway Haggitt Sinclair in 1997. After becoming a partner in 1999, she was sworn in as a District Court Judge on 2 February 2006.

A final sitting for **Judge Robert Murfitt** was held at Christchurch District Court on 19 December. After graduating LLB(Hons) from Canterbury University in 1971, he was admitted in 1972 and began work at Weston Ward & Lascelles. He became a barrister sole in 1996, specialising in family law after initially focusing on civil and criminal work. He was sworn in as a District Court Judge on 10 March 2004.

PhD gained by Māori Land Court Judge

Māori Land Court Judge **Layne Harvey** has been awarded a PhD by Auckland University of Technology Law School following his research into the management of Māori land trusts. Judge Harvey's thesis was entitled "Would the proposed reforms affecting Ahu Whenua trusts have impeded hapū in the development of their lands? A Ngāti Awa perspective." Judge Harvey is the first PhD graduate for the AUT Law School.

Queen's Counsel

Attorney-General David Parker announced the appointment of 10 Queen's Counsel on 28 November 2018.

Paul Dale graduated LLB in 1974 and was admitted to the Bar in 1975. He joined the firm Terry & Frankovich in 1974 and moved to Dale Nicholson & Pollard in 1976. In 1982 he moved to Hong Kong to work for the government as a Crown Counsel. After 11 months he was promoted to Senior Crown Counsel and appeared on a daily basis in the Supreme Court and Court of Appeal. He returned to New Zealand in 1987.

In 1998 he became the senior litigation partner at Grove Darlow & Partners, where his responsibilities included a wide range of civil and commercial litigation. He joined the independent Bar in 2006 and specialises in civil and commercial litigation. He practises from Auckland's Chancery Street Chambers.

Maria Dew graduated LLB from the University of Otago in 1987 and LLM from Victoria University in 1999. She was admitted to the Bar in 1987 and joined Christchurch firm RA Young Hunter & Co. In 1989 she began working for Wellington firm Morrison Morpeth doing civil litigation. In 1991 Ms Dew travelled to the United Kingdom and worked first as a construction litigation solicitor and then as a prosecution solicitor working under the former Financial Services Act 1986 (UK). In 1993 she returned to Wellington and to Morrison Morpeth as a senior associate, then moved to the Bank of New Zealand as in-house counsel in employment law. In 1998 she moved to Auckland.

She joined the independent Bar in 2000, first at Princess Chambers and then at Bankside Chambers. She specialises in employment law. Since 2013 Maria Dew has been the Deputy Chair of the Health Practitioners Disciplinary Tribunal and in 2017 she was elected to the Council of the New Zealand Bar Association. She is convenor of the New Zealand Law Society's Employment Law Committee.

Vivienne Crawshaw graduated LLB(Hons) from the University of Auckland in 1988. She was admitted to the Bar in 1988, then worked as a staff solicitor at McElroy Milne. In 1990 she joined Grey Lynn Neighbourhood Law working in civil, criminal and family litigation. From 1995 she worked for Mangere Community Law Centre. In 1999 she joined Mahon & Associates as a staff solicitor and then a senior associate specialising in family law and employment litigation. In 2003 she became a partner at Gubb & Partners, where she led the family law team.

She joined the independent Bar in 2008 specialising in family law with a particular focus on relationship property matters and cases involving children, at first instance and appellate levels. She is a member of the Lawyer for Child panel and has presented at a wide range of conferences in New Zealand and overseas. She is based in Auckland.

Belinda Sellars graduated with a LLB(Hons) and a BA from the University of Auckland in 1995. She was admitted to the Bar in 1994. In 1994 she was a junior employed barrister for Michael Harte Barrister.

From 1996 to 2002 she was a solicitor and then senior solicitor in general litigation at Russell McVeagh. In 2004 she joined the Public Defence Service and was an original member of the Public Defence Service pilot in the Auckland office. In 2009 she joined the independent Bar, specialising in criminal law. Belinda Sellars was admitted to the Bar in Samoa in 2012. She is based at Auckland's Freyberg Chambers.

Robert (Bob) Hollyman graduated LLB(Hons) and BA from the University of Auckland. He was admitted to the Bar in 1995 and was a Judges' Clerk at the Court of Appeal before moving to Crown Law. He then completed an LLM at the University of Toronto and worked as Legal Counsel to the Court of Appeal of Alberta.

He returned to New Zealand to take up a position at Bell Gully, before joining the independent Bar in 2006. His specialist areas of practice are contract, company, insolvency, property and equity. Mr Hollyman has lectured on Advanced Torts at the University of Auckland, and is the author of *Falsehood and Breach of Contract in New Zealand*. He is a member of Auckland's Shortland Chambers.

James Rapley graduated with an LLB from the University of Canterbury in 1989 and an LLM(Hons) from the University of Auckland in 1999. He was admitted to the Bar in 1990. He worked for several Auckland law firms before joining the Serious Fraud Office as a prosecutor between 1992 and 1994. After a period working overseas, he returned to the SFO in 1996, then moved to Christchurch in 1999 as a Crown prosecutor for Raymond Donnelly & Co.

Mr Rapley joined the independent Bar in 2004 and practises from Christchurch's Bridgeside Chambers. He specialises in criminal litigation and has significant experience in regulatory prosecutions. He has been a part-time law lecturer at the University of Canterbury since 2003 and from 2012, a visiting law lecturer at the University of South Pacific, Vanuatu.

He is a member of the New Zealand Law Society's Criminal Law Committee and a Lawyers Standards Committee. In 2013 with Judge Tony Willy he co-authored

the Thomson Reuters text, *Advocacy* and is Criminal Course Director for the NZBA's Mastering Advocacy Programme.

Anthony (James) Wilding graduated with an LLB and BA from the University of Canterbury. He was admitted in 1993 and worked for Cameron and Company. He joined the independent Bar in 1996, with Riverlands Chambers then Clarendon Chambers. His work includes public and constitutional, trust, relationship property and medical issues.

From 1999 to 2011 he was a District Inspector of Mental Health for Canterbury, Nelson, Marlborough and West Coast. James Wilding is convenor of the New Zealand Mental Health Review Tribunal. He practises from Christchurch's Clarendon Chambers.

Andru Isac graduated with a BA and an LLB(Hons) from the University of Canterbury in 1994 and a BCL from the University of Oxford in 2001. He was admitted in 1994 and began his legal career at Chapman Tripp before working as a Crown prosecutor at Preston Russell in Invercargill.

From 1999 to 2001 he completed a Bachelor of Civil Law at the University of Oxford and worked for Barlow Lyde & Gilbert in London. In 2001 he returned to New Zealand and lectured at the University of Canterbury. Between 2005 and 2013 he was a litigation partner at Fitzherbert Rowe and Gibson Sheat. Andru Isac joined the independent Bar in 2013 and specialises in commercial, public and criminal litigation. He is a member of Wellington's Stout Street Chambers.

Margaret (Anne) Stevens graduated with an LLB in 1987. She was admitted to the Bar in 1988 and was an employed barrister for JM Conradson. In 1994 she moved to Mitchell & Mackersy. In 1998 she returned to the Bar as a barrister sole, specialising in criminal law and associated mental health law.

She has appeared as lead counsel since 1998 in over 140 jury trials. From 1998 she has been a guest lecturer in law and psychiatry at the University of Otago and to mental health staff at the Forensic Mental Health Unit at Wakari Hospital. In 2005 and 2006 she was also a guest lecturer on ethics in the role of defence lawyers.

From 2006 to 2012 Anne Stevens was a New Zealand Law Society Vice-President, representing the South Island. From 2012 she has been the chair of the New Zealand Law Society Practice Approval Committee. Since 2001 she has been a faculty member and presenter at the NZLS Litigation Skills programme including Director of the programme in 2005. She is based at Dunedin's Octagon Chambers.

Fiona Guy Kidd graduated with LLB(Hons) (First Class) from the University of Otago in 1992 and LLM from the University of Virginia in 1995. She was admitted to the Bar in 1992. She worked first as a solicitor in the litigation department of Russell McVeagh in 1992.

After completing her study at the University of Virginia, she returned to Auckland in 1995 and was an employed junior barrister for David AR Williams QC. From 1997 to 2000 she was a Crown Prosecutor at Luke Cunningham and Clere. Fiona Guy Kidd then moved to the criminal team at the Crown Law Office where she worked from 2000 to 2011, holding the role of team leader in 2005-2006. From 2011 to 2016 she was an associate and then partner of AWS Legal in Invercargill.

She joined the independent Bar in 2016 and specialises in criminal law. She is a former Convenor of the Wellington Women Lawyers' Association, current Vice President of the Criminal Bar Association and a member of the New Zealand Law Society Criminal Law Committee. She practises from Invercargill's Montrose Chambers and is an associate member of Christchurch's Bridgeside Chambers.

Honours And Awards

New Year Honours

Members of the legal profession and justice community were among the New Zealanders in the New Years' Honours List 2018.

Robert Kinsela (Kim) Workman QSO was appointed a Knight Companion of the New Zealand Order of Merit for services to prisoner welfare and the justice sector. Sir Kim (Ngāti Kahungunu ki Wairarapa) stepped down from his role as National Director of Prison Fellowship New Zealand in 2008, becoming Families Commissioner until 2011. In that year he founded JustSpeak, a non-partisan network of young people speaking up for change in the criminal justice system. He remains a board member and strategic adviser. He became an Adjunct Research Fellow at the Institute of Criminology at Victoria University of Wellington in 2013. Victoria and Massey University have both awarded him honorary Doctor of Literature degrees.

Professor Margaret Ann Bedggood QSO was appointed a Companion of the New Zealand Order of Merit for services to human rights law. An Honorary Professor of Law at Waikato University, she was Dean of the School of Law from 1994 to 1999. She has also served as Chief Commissioner of the Human Rights Commission.

Andrée Elizabeth Talbot was appointed a Companion of the New Zealand Order of Merit for services to the Plunket Society. Mrs Talbot, who is an associate with Auckland law firm Simpson Western, has been involved with Plunket in governance roles since the late 1990s and served as National President from 2014 to 2017. She oversaw Plunket's move towards consolidating nationally into a charitable trust, which occurred on 1 January 2018.

William (Russell) Howie was appointed an Officer of the New Zealand Order of Merit for services to environmental resource management. Mr Howie has been a Commissioner of the Environment Court since 2001 and a member of several boards of inquiry.

Kristy Pearl McDonald QC was appointed an Officer of the New Zealand Order of Merit for services to the law and governance. Admitted as a barrister and solicitor in February 1983 and appointed Queen's Counsel in 1999, she has advised Ministers of the Crown and government agency heads for nearly 40 years and advised on or represented the Crown's interest in a number of highly sensitive and complex matters.

Denise Pamela Hutchins ED, JP was appointed a Member of the New Zealand Order of Merit for services as a Justice of the Peace and to the health sector. She became a JP in 2002 and was President of the Royal Federation of New Zealand Justices Association from 2016 to 2018, overseeing a voluntary accreditation process for justices.

Simon George Mortlock was appointed a Member of the New Zealand Order of Merit for services to the community and education. Admitted as a barrister and solicitor in January 1970, Mr Mortlock was founding partner of Mortlock McCormack Law and has provided his expertise to a range of community initiatives and organisations, including the Launchpad scheme which employs young people in a professional firm for a year.

Alison Muriel Thomson JP was awarded a Queen's Service Medal for services to the community. Miss Thomson was President of the New Zealand Justices Associations from 2009 to 2011 and a board member from 2005 to 2013. She organised a roster of local JPs to assist in the swearing of affidavits, statutory declarations and certifying documents at Hastings District Court.

Steph Dyhrberg Wellingtonian of the Year

Wellington employment lawyer **Steph Dyhrberg** won the *Dominion Post* 2018 Wellingtonian of Year Award. Ms Dhyrberg, who is Vice-President of the Wellington branch of the New Zealand Law Society and convenor of the Wellington Women Lawyers' Association, also won the Community Service Award for leading the fight against sexual harassment in the legal sector. The judges said Ms Dyhrberg's voice and actions had had a huge effect and would give women and interns the confidence that they will be treated fairly and respectfully at law firms.

Children's Commissioner and former Principal Youth Court **Judge Andrew Becroft** was winner of the Public Service award for helping vulnerable young people as Children's Commissioner.

Professor David Williams to be inducted as Royal Society Fellow

Auckland University Professor of Law **David V Williams** will this month be inducted as a Fellow of the Academy of the Royal Society Te Apārangi, in recognition of his research, scholarship and the advancement of knowledge in the areas of constitutional law, colonial legal history and the Treaty of Waitangi. He was one of 20 new Fellows and three Honorary Fellows elected in 2018 for their distinction in research and advancement of science, technology or the humanities. Professor Williams was elected Honorary Fellow of the American Society for Legal History in 2017, the first New Zealander to be so honoured.

CONTINUED FROM PAGE 14

Anthony Harper finalist in Best Event Sponsorship at national awards

Anthony Harper has been named in the New Zealand Event Awards finalists for the Best Event Sponsorship category. The firm is a finalist for its sponsorship of the Pop-up Globe theatre. It says it became the inaugural sponsor in 2015 and over the years over 500,000 people have attended a performance at the theatre, both in Auckland and Christchurch. The winner of the Best Event Sponsorship will be announced in March/April.

Isaac Whatnall now at Davidson Twaddle Isaac

Isaac Whatnall has joined the firm of Davidson Twaddle Isaac as a solicitor in the commercial law team. Isaac was admitted as a barrister and solicitor in December 2016 after graduating with an LLB from the University of Waikato. He joined Davidson Twaddle Isaac from McBreens Lawyers.

Bartlett Law appoints Carolyn Heaton as Special Counsel

Wellington firm Bartlett Law has welcomed **Carolyn Heaton** as Special Counsel. She was previously a litigation partner in a national law firm and has over 25 years' experience, including appearances in all employment authorities and courts. Carolyn has a special interest in mediation and dispute resolution.

Two senior appointments at Wynn Williams

Andrew Watkins joined Wynn Williams on 1 December and will join the firm's partnership early in 2019. He will be based in the Christchurch office in the national dispute resolution team. Andrew has specialised in relationship property and trusts for over 20 years. He has been involved in many high profile cases and regularly provides media comment on family law issues.

Mike Doesburg joined the national resource management team on 15 November as a senior associate based in the Auckland office. Mike has specific experience advising on infrastructure, industrial, residential and coastal projects, along with experience dealing with complicated district and regional planning matters.

Lisa Meyer joins Baker Meech

Lisa Meyer has joined Auckland firm Baker Meech as a principal. Admitted as a barrister and solicitor in September 2004, she has 14 years' of local and international experience in New Zealand and the UK as a banking and finance lawyer, with expertise in transactional and regulatory matters. She also advises on corporate and commercial and property law matters. Lisa was previously at Allen & Overy (London) and Westpac and DLA Piper (Auckland).

John Mansell joins Catalyst Intellectual Property

John Mansell has joined Catalyst Intellectual Property as a partner. Based in Auckland, he is a lawyer and a patent attorney with over 15 years' experience in intellectual property law and the commercialisation of intellectual property. John has a PhD in molecular biology from the University of Otago and an LLB from the University of Auckland.

Dale Thomas now McCaw Lewis senior associate

Dale Thomas has been promoted to senior associate at Hamilton firm McCaw Lewis. He joined the firm in 2015 and is an experienced lawyer in the commercial, property and asset planning teams. Dale's practice areas include agribusiness, farm sale and purchase, refinancing transactions, commercial property and leases.

Chris Bernhardt moves to Greymouth

Chris Bernhardt, former solicitor and Crown Prosecutor at Raymond Donnelly & Co in Christchurch, has moved to Greymouth to take up the position of sole Police prosecutor for the West Coast region. His new contact details are: *CBME66@police.govt.nz*

Russell McVeagh appoints five partners

Russell McVeagh appointed four new partners from 1 December and one (David Weavers) from 10 December.

Liz Blythe is a member of the Auckland technology team. She was admitted in September 2009 and returned to New Zealand from the United Kingdom in 2017 where she acted for some of the world's largest technology suppliers and consumers. Liz specialises in complex technology transactions, including for the procurement, supply, development, manufacturing, outsourcing and commercialisation of technology and e-commerce arrangements.

Anna Crosbie is a member of the Auckland property and construction team. Admitted in November 2006, she began her career at Russell McVeagh and returned to the firm in 2015 after practising in-house. Anna advises on all aspects of property and construction law and has particular expertise in high-value acquisition and divestment transactions, inbound overseas investment, retail and commercial leasing, hotel management and masterplanned residential development.

Emmeline Rushbrook is a member of the Wellington litigation and dispute resolution team. She specialises in commercial and financial dispute resolution, regulatory compliance and enforcement, and public/administrative law. She has extensive experience advising on regulatory investigations, internal investigations and public inquiries. Emmeline was admitted in January 2002 and began her career at the firm. She spent nine years at Clifford Chance in London before returning to Russell McVeagh.

Nathaniel Walker is a member of the Wellington litigation and dispute resolution team. He is a commercial litigator with particular expertise in trusts and equity, disputes with a cross-border dimension, consumer law and financial services litigation. Nat was admitted in October 2011. He returned to the firm in late 2017 from Cravath, Swaine & Moore LLP, New York. While in New York, Nat also completed his LLM at Columbia University.

David Weavers is a member of the Auckland banking and finance team. He advises financial institutions, private equity sponsors, corporate clients, non-bank lenders and sovereigns on a wide range of financing and restructuring transactions. David was admitted in November 2008. He began his career with the firm before basing himself in London with New York firm Cleary Gottlieb Steen & Hamilton LLP, and then in Hong Kong with Weil, Gotshal & Manges LLP.

Russell McVeagh appoints four special counsel

Russell McVeagh has appointed four special counsel, effective from 1 December.

Lance Jones is a member of the Auckland corporate advisory team. He has extensive corporate law experience in mergers and acquisitions, private equity transactions, joint ventures and shareholder arrangements, inbound overseas investment and complex commercial contracts. Before joining Russell McVeagh, Lance worked at global firms in London and Sydney.

Joanna Khoo is a member of the Auckland corporate advisory team. She specialises in funds management, financial services, securities law and general corporate

matters. After her admission in 2007 Joanna worked in the tax and banking and finance practice groups before moving to corporate advisory in 2011. She also advises on the provision of financial services.

Bevan Peachey is a member of the Auckland banking and finance team. He specialises in a wide range of complex and strategic transactions, including corporate lending, project finance, acquisition/leveraged finance, property and development finance, refinancing and restructuring. Bevan re-joined Russell McVeagh when he returned to New Zealand from the UK in 2017.

Gareth Worthington is a member of the Wellington corporate advisory team. He has expertise in securities law, mergers and acquisitions, funds management, private equity and other corporate transactions. Gareth has worked at a number of leading New Zealand and international law firms. This has included work in Dubai at two top tier English law firms.

Russell McVeagh appoints senior associates

Russell McVeagh has promoted two lawyers to senior associate.

Hamish Beckett is a member of the Auckland corporate advisory team. He joined the firm in 2013 and specialises in mergers and acquisitions, private equity transactions, overseas investment, joint venture arrangements and a broad range of commercial contracts and general corporate matters.

Rachel O'Brien is a member of the Auckland litigation team and recently returned to the firm after working in London and the Middle East. She specialises in intellectual property, data protection and privacy law.

Simpson Grierson appoints Business Transformation & Innovation Director

Simpson Grierson promoted **Caroline Ferguson** to Business Transformation and Innovation Director, from 1 December. She has been leading Simpson Grierson's business transformation and innovation activities for the last three years as Business Transformation Manager. Previously a finance lawyer, Caroline transitioned into innovation and technology roles while at global law firm Allen & Overy in London.

Clive Gardner retires

Mt Maunganui lawyer **Clive Gardner** retired from legal practice and CG Law Ltd on 30 November. The practice continues with Grant Aislabie as director. Clive was admitted as a barrister and solicitor in December 1976 after graduating LLB from Otago University. He specialised in all aspects of property law and has been an honorary lawyer for various community organisations.

Four new partners and two special counsel at Chapman Tripp

Chapman Tripp has announced the appointment of four new partners and two special counsel, effective from 1 December 2018.

Simon Peart has been appointed a partner in the Wellington competition and regulatory team. Simon was admitted as a barrister and solicitor in 2006 in New Zealand and 2013 for England and Wales. He re-joined Chapman Tripp in 2015 after five years in the competition department at Freshfields Bruckhaus Deringer LLP, based in London. Simon specialises in competition, regulatory and public law.

Leigh Kissick has been appointed a commercial finance and infrastructure partner in the Wellington office. She was admitted in 2004. Leigh advises clients on the commercial and financing aspects of projects, including large infrastructure projects. Before Chapman Tripp she worked for another major New Zealand law firm for 10 years and also worked for English firm Slaughter and May from 2008 to 2012.

Laura Fraser has been appointed a partner in the litigation team in the Auckland

A Window into Life on the Bench

An invitation from the Chief District Court Judge and the Principal Family Court Judge to hear what it takes to be a modern judge

The District Court is the engine room of New Zealand's civil and criminal justice system. It touches the lives of thousands of people, and many people's entire futures may turn on its decisions.

Barristers derive professional fulfilment through helping clients to reach fair outcomes during a conflict or crisis in their lives, the cut and thrust of courtroom argument and a love of the law. Members of the profession will appreciate the importance of good quality judging to this process. Perhaps less appreciated are the opportunities a judicial career offers for taking professional fulfilment to a new level while continuing to make a real difference in people's lives.

The District Court is entering a phase of renewal in the next few years as a wave of judges reach retirement age. This opens the door to experienced lawyers to consider whether joining the Bench might be a good career move. Yet many potential candidates may be put off because of outdated perceptions about the role and qualities of a judge.

Modern judging is increasingly dynamic. To truly represent the public it serves, the District Court needs a diverse mix of judges who reflect the wide range of communities who make up Aotearoa New Zealand. Both the criminal and family divisions of the District Court need judges who are compassionate, in touch with community views and expectations, solutions focused and innovative, and of course knowledgeable of the law and skilled in its practice. The modern District Court judge is nimble, open to new ideas and able to withstand the public gaze and criticism in an age of relentless media scrutiny. In the District Court, the role is particularly varied and offers wide scope for individuals to show initiative and make their mark.

To help determine whether this role might be for you, and whether your current career settings are right should you wish to progress on to the Bench, NZLS CLE Ltd is hosting a series of seminars around the country to provide a window into the life of a District Court Judge.

We will lead what we aim to be lively sessions where we will answer questions, step attendees through a typical day in the life of a judge, and explain the selection process and more about the qualities we are seeking. You might be surprised.

We encourage you to more than think about, and to come along.

Jan-Marie Doogue
Chief District Court Judge

Jackie Moran
Principal Family Court Judge

NZLS CLE Ltd Seminar: A Window into Becoming a District Court and/or Family Court Judge

1.25 CPD Hours
Fee: No Charge
Presenters: Jan-Marie Doogue, Chief District Court Judge
Jackie Moran, Principal Family Court Judge

CHRISTCHURCH

Wednesday 27 February, 5:15 – 6:30 pm
NZLS Canterbury-Westland Branch, 307 Durham Street.

WELLINGTON

Thursday 28 February, 5:15 – 6:30 pm
NZLS National Office, Level 8, 26 Waring Taylor Street.

AUCKLAND

Monday 11 March, 5:15 – 6:30 pm
NZLS Auckland Branch, Level 12, 51 Shortland Street.

HAMILTON

Tuesday 12 March, 5:15 – 6:30 pm
NZLS Waikato Bay of Plenty Branch, 109 Angelsea Street.

To register go to www.lawyerseducation.co.nz

CONTINUED FROM PAGE 18

office. Admitted in 2009, Laura specialises in complex commercial litigation and advises on a broad range of commercial disputes, including corporate and regulatory matters, as well as general contract and tort issues. She began her career as a Judges' Clerk at the Supreme Court before completing post-graduate studies at the University of Oxford.

Gerard Souness has been appointed a partner in the Auckland finance team. He was admitted in 2006 and specialises in corporate and institutional finance, advising banks, corporates and other entities. Gerard has worked across the banking spectrum both in private practice and in-house at a major New Zealand bank. He has a particular interest in syndications, corporate finance, structured product, receivables finance and export credit finance.

Anna Kraack has been appointed special counsel in the Wellington office. Anna specialises in civil litigation, with a focus on contract disputes, gas and energy, aquaculture, insurance and trusts. She was admitted in 2007 and has appeared in the High Court, District Court and a diverse range of tribunals.

Joanna Bain has been appointed special counsel in the Auckland resource management and infrastructure team. She advises on district and regional planning, consenting and compliance issues, Overseas Investment Act matters, and climate change. Jo was admitted as a barrister and solicitor in 1995.

Maia Wikaira joins Whāia Legal

Maia Wikaira has joined Horiana-Irwin Easthope as a Director of Whāia Legal. They will continue their working relationship, which has spanned their legal careers, and has its roots in life-long whānau connections. Maia recently returned to Aotearoa after completing her LLM at Stanford Law School and a Legal Fellowship with the Office of Tribal Attorney for the Yurok Tribe. The Yurok Tribe is the largest federally recognised tribe in California, and Maia practised Yurok Tribal Law and represented the tribe in engagement with federal, state and other tribal governments.

Duncan Cotterill appoints new CEO

Duncan Cotterill has appointed **Pete Boyle** as Chief Executive Officer, from February 2019. Having previously worked with PwC in London, Mr Boyle became a partner at accounting firm Deloitte based in Wellington upon returning to New Zealand. He also established and led consulting firm Acuity Partners. In 2010, he was appointed CEO of intellectual property firm AJ Park Ltd. He led the sale of AJ Park to Australian company IPH, a transaction which was completed in 2017.

Blair Franklin appointed Holmden Horrocks partner

Blair Franklin has been appointed a partner of Auckland firm Holmden Horrocks. Blair specialises in property law (residential and commercial), trusts, estates, asset planning, general commercial matters and personal affairs. He was admitted in January 2004 after graduating from Auckland University. Blair will continue to practise from the Auckland office in the property and commercial department.

Teressa Cho joins ARL Lawyers

Teressa Cho has joined Lower Hutt firm ARL Lawyers as a solicitor, specialising in family law. Teressa graduated with BSc and LLB degrees from Victoria University of Wellington in 2014 and was admitted as a barrister and solicitor in 2015. She worked at the Ministry of Justice before entering private practice and obtained a postgraduate certificate in children's issues from Otago University in 2017.

Maria Dew QC to investigate bullying allegations

Maria Dew QC has been appointed to investigate allegations of bullying by the Retirement Commissioner, Diane

CPD DECLARATIONS DUE SOON

The CPD year ends on **31 March 2019**. Your CPD declaration is due no later than 5 working days after this date. Now is a good time to check you have completed your CPD requirements and your CPD learning plan and record is up to date. To refresh your memory on CPD see the resources on the NZLS website – **www.lawsociety.org.nz/cpd**

Not yet completed your CPD requirements?
You ought to have received an email outlining how to complete this process.
Contact helen.comrie-thomson@lawsociety.org.nz if this is not the case.

Maxwell. The Minister of Commerce and Consumer Affairs requested the State Services Commission investigate the allegations, using the Commissioner's powers and functions under sections 6 to 10 of the State Sector Act 1988. State Services Commissioner has asked for a report by 28 February 2019.

Kristy McDonald QC appointed to racing committee

Wellington QC **Kristy McDonald** is one of five appointees to a Ministerial Advisory Committee to inform the next steps on the Messara Review of the New Zealand Racing Industry. The committee is required to provide an interim report to Racing Minister Winston Peters by the end of February 2019.

Two Buddle Findlay partners appointed

Buddle Findlay appointed two partners in its Auckland office, effective from 1 January.

Sarah McEwan is a member of the corporate and commercial team and specialises in mergers and acquisitions, capital markets and securities transactions. Sarah was admitted in June 2001. Before joining the firm in 2017, she worked as a transaction director in the capital markets and loan execution team of one of New Zealand's largest banks.

Tom Bennett joins the Auckland property team, specialising in procurement, local government, construction and infrastructure projects. Admitted in December 1992, his work covers both public and private sector clients. Tom's construction experience includes FIDIC and other recognised construction contract forms, as well as Public Works Act compulsory acquisition, real estate, and overseas investment.

Buddle Findlay appoints four senior associates

Buddle Findlay has appointed four senior associates.

Frances Wedde has joined the Wellington office in the RMA and Māori legal team. Frances advises on resource management matters, including resource consents, designations, and the plan making process; and Māori legal matters, including Treaty settlements and matters under the Marine and Coastal Area (Takutai Moana) Act. Before joining Buddle Findlay, Frances worked at another law firm and for central government.

Danielle Kelly is based in the Auckland office and specialises in banking and finance law. She acts for both lenders and borrowers and has represented a number of banks, corporates, financial institutions and private equity firms. Danielle has particular expertise in leveraged and acquisition finance, corporate lending, debt restructuring and real estate and development finance.

Alastair Pettitt is based in the Auckland office and specialises in commercial property and local government law. He advises local authorities, Crown entities, banks and corporates on a range of real estate matters including property development, local government issues, compulsory acquisitions, commercial leasing, acquisitions and divestments, subdivisions of land and property finance.

Shaun Brookes is based in the Christchurch office, specialising in employment law, industrial relations, and health and safety, as well as dispute resolution and general litigation. He is an experienced litigator who appears in the Employment Relations Authority and Employment Court, the District Court and High Court, and at mediation on behalf of clients.

Simon Waalkens joins Rice Speir

Simon Waalkens has joined Rice Speir as a senior associate. He is a civil litigation and regulatory/compliance lawyer with extensive insurance, healthcare and criminal law experience. Simon has acted for private and public sector clients in a wide range of

dispute resolution and court/tribunal related processes. He recently spent a few years in London working both in-house and at large law firms in primarily professional indemnity and medico-legal cases.

Lawyer reappointed Chief Gambling Commissioner

Wellington lawyer **Graeme Reeves** has been re-appointed Chief Gambling Commissioner of the Gambling Commission. First appointed to the role in 2011, Mr Reeves has been re-appointed for a one-year term, expiring on 20 December 2019.

Gavin Cairns joins Thomas Dewar Sziranyi Letts

Gavin Cairns has joined Thomas Dewar Sziranyi Letts as a senior associate and a member of the property team. He has over 18 years' experience specialising in all aspects of elder and property law including trusts, wills, enduring powers of attorney, estates and PPPR matters. Gavin has extensive trustee industry experience and has worked as legal counsel for Public Trust and at Trustees Executors Ltd.

McCaw Lewis to celebrate centenary

Hamilton-based **McCaw Lewis** will celebrate its centenary this year. Founded by Wally King in 1919, McCaw Lewis has grown to become one of the Waikato's biggest law firms, employing over 50 people. It specialises in commercial and property law, with a particular focus on Māori law and tikanga. One of the highlights of the 100th year is a move to new premises at 586 Victoria Street, which has undergone a complete renovation and refurbishment. McCaw Lewis is also planning several events, including commissioning a book on its heritage and people.

Hugh Hamilton's Honour forfeited

The New Zealand Order of Merit awarded to Hugh Edward Staples Hamilton on 2 June 1997 has been cancelled and annulled. Mr Hamilton was struck off the roll of barristers and solicitors on 28 May 2013 after he admitted charges of misconduct brought by the New Zealand Law Society. He was Mayor of Central Hawke's Bay from 1989 to 1995 and was awarded the NZOM for services to the community. In May 2014 he was found guilty of 14 charges of theft by a person in a special relationship and jailed for 4 years and 9 months.

New Chief Legal Officer for Kiwibank

Mike Hendriksen has joined Kiwibank as its Chief Legal Officer. Admitted in October 1995 after graduating LLB from the University of Auckland, Mr Hendriksen leaves Westpac New Zealand Ltd to take up his role. He has specialised in financial services and was closely involved in the response to the findings of the Australian Royal Commission on banking conduct and culture.

Abbie Hollingworth joins Walker Street Chambers

Abbie Hollingworth has joined Walker Street Chambers in Christchurch as an employed barrister. Abbie was admitted in October 2017. She was previously a junior lawyer at the Public Defence Service in Christchurch, and specialises in criminal defence work.

Two new solicitors join Heaney & Partners

Two solicitors have joined Heaney & Partners' Auckland office. Both will be working in the litigation team.

John Tian graduated with LLB and BSc degrees from the University of Auckland and was admitted in November 2017. He joins Heaney & Partners after having previously worked for another Auckland firm.

Saskia Mautner has joined the firm from a Dunedin law firm. She graduated LLB from the University of Otago and was admitted as a barrister and solicitor in October September 2018.

Sarah Sinclair elected MinterEllisonRuddWatts chair

MinterEllisonRuddWatts has announced the election of partner **Sarah Sinclair** as its board chair, effective from 1 January 2019. Ms Sinclair joined the firm in 2010 and takes on the role of Chair in addition to her existing practice specialising in construction and infrastructure projects for both public and private sector clients.

Takeovers Panel appointments

Bell Gully partner and Chair **Anna Buchly** has been appointed to the Takeovers Panel. Admitted in 1998, Ms Buchly specialises in capital markets, mergers and acquisitions, private equity, and joint ventures.

Corporate consultant **Martin Stearne** has been appointed to the Panel. He is a member of the NZX listing sub-committee and was a former investment banker with First New Zealand Capital, with extensive experience in takeovers and equity capital markets.

Asking for help is a sign of strength

Law is a fulfilling profession, but it can be a stressful one. If you want ideas on improving your work-life balance, make a start by engaging with our Practising Well resources at **lawsociety.org.nz/practising-well**

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PEOPLE IN THE LAW
PROFILE

How an Outward Bound experience inspired a lawyer to partnership

BY **NICK BUTCHER**

Some might be under the impression that outdoor pursuit courses are for adrenalin junkies or people who are attempting to find their inner self or perhaps having a midlife crisis.

However, nowadays they're increasingly tailored to meet the needs of professionals and leaders working in stressful corporate environments.

Sarah Scott, a partner at Simpson Grierson in Christchurch, has been practising law since being admitted in 2007. Before she made partner, Sarah completed what is now known as the Outward Bound Professional, an eight-day course that involved building on and utilising a range of outdoor survival skills, including navigation and leadership. There was no social media, no online access or cellphones, and no contact with work. It was back to basics immersed in nature.

As she explains, the experience in 2014 at Anakiwa at the head of Queen Charlotte Sound in Marlborough has filtered into and influenced many aspects of her professional life.

Reflecting on the experience

"The course was certainly designed to challenge our thinking on leadership: how to lead, how others respond to different leadership styles, and also how you conduct yourself in a team," she says.

Sarah's outdoor experience involved being part of a group of people from all walks of life and various career backgrounds. They'd all come to the course through encouragement from their respective workplaces. Sarah's fees were paid by Simpson Grierson.

She wasn't intimidated by the physical demands of the outdoor side of the course as that's an environment she is confident in. But there were plenty of mental challenges to overcome.

"You're working with team members, who are one or two day-old friends. They're opening up on some pretty tough personal issues and sometimes seeking guidance on these issues," she says.

The unpredictability also took time to get used to, yet time wasn't in abundance and she had to adapt quickly.

"We have no idea what you are going to do next from the moment we met everyone at the Picton ferry terminal. There were times when we were literally heading to bed at Anakiwa, when we were then told to pack a couple of days' worth of gear and food in our backpacks, given a point on a map to tramp to and camp under a couple of tarps, and be packed up and ready to leave at 6:30am."

She loved the adventures. But having no idea or input into what came next was very much outside of Sarah's normal professional life at the law firm.

"In my job, I have a team and clients who have expectations and deadlines. You need to be organised. Although very few days at work generally happen as planned as clients' and team needs generally come first. But you do tend to have some control over it. So not knowing what was coming up next at Outward Bound was hard. but about halfway through the course I was loving it and the digital detox was just awesome," she says.

The course was certainly designed to challenge our thinking on leadership: how to lead, how others respond to different leadership styles, and also how you conduct yourself in a team

How outdoor skills benefit the office environment

Everyone in the group had very different skill levels and strengths. Some people, for example, were experienced swimmers while others were not and that was something

they needed to overcome and work with.

"One person in our team had only been in a boat once and unfortunately for him it had sunk, so going sailing in a small cutter, and indeed sleeping in it, was a petrifying experience for this person. As a team we all had to take part in sailing or even what may seem like simple problem solving activities largely at the pace of the least efficient or confident person. Just throwing an obvious answer out there was, at times, a no-no. It makes you think about how you approach those scenarios at work, in that you have to bring everyone along with you regardless of their skill level," she says.

Before everyone embarked on the Outward Bound course they had to do what is known as a '360' where work colleagues who are professionally above, below, or at the same level, provided anonymous feedback on their experience with the Outward Bounder. A client's perspective was also sought.

"Some people were really upset by the feedback they received, which was given to everyone on the first day. It's free and frank so you're not going to like it all. Some of it was really kind though, it got you thinking about how others viewed you and what they saw to be your strengths," she says.

Personality types were also assessed and Sarah came back as 'a doer', meaning that she liked to get things done.

As a team we all had to take part in... activities largely at the pace of the least efficient or confident person... It makes you think about how you approach those scenarios at work, in that you have to bring everyone along with you regardless of their skill level

"What you learn is that you need a mix of personalities to have a really effective working group. Outward Bound teaches you this.

"Some people find it hard to work with doers because they prefer to spend more time assessing options or risks," she says.

Reflecting on those skills in relation to her work, Sarah says she learned that as a leader she needs to step back and allow the people in her team to put forward their view, so that they can have a healthy debate and collectively work out a way to solve a problem or create a project.

Morning runs and dips in the sea to start the day

Every morning of the adventure required a vigorous start to the day with aerobics, a run and a swim in the ocean.

"All before 7am. It was September so the water wasn't too warm, but certainly a kick-start to the day," she says.

The team also tramped together, did some orienteering, blind rock climbing, high ropes, sailing and slept in various places including on board a classic 10-metre 'cutter' which did not have a cabin. It was a tight fit with about a dozen people and Sarah says she slept sitting up that night.

You'd possibly assume that after spending the night on an open air boat without modern comforts, it might mean some respite, but Sarah recalls the team was then thrust into a two-night solo camping challenge.

"I was quite nervous about that, being a people person. It seemed like a long time to be on my own and being forced to write about my thoughts," she says.

However, after days of being shoulder to shoulder with everyone, it turned out the alone time was quite liberating.

"It was out on a peninsula. I think I got lucky – I affectionately named my spot the penthouse suite because I had 180 degree views of the Marlborough Sounds. I was very

close to the water, a seal played out in front of me and people on boats waved as they sailed by," she says.

Not everyone had the same view with some team mates simply surrounded by bush. All team members were provided with a sleeping bag, a bed roll and a tarpaulin for shelter, a bucket and a limited amount of rations. And of course, paper for writing. "We were meant to stay within a 10-metre radius of our spot – there were plenty of birdcalls between the group members during those nights."

"It rained for 24 hours but I enjoyed it. You get quite deep in that you begin to really think about everything that you've learned all week. You also had to write yourself a letter, which Outward Bound send to you six months after the course. It was all about looking at your goals and values, reminding yourself what's important to you. It's so easy to just return to your previous life and carry on, so receiving that letter after a long time had passed was really beneficial," she says.

Outward Bound influenced decision to join partnership

Something Sarah Scott had been contemplating before the Outward Bound course was whether she might pursue joining the partnership at Simpson Grierson.

"Outward Bound was a decisive moment. I've never been the best goal setter, instead grabbing opportunities and seeing where they take me. Outward Bound forced me to make some hard decisions on whether I wanted a partnership in a commercial firm. My group were focused on how we can make the most of the one life we get," she says.

She says it was inspiring because it gave her courage, confidence and drive to go for it, and helped her with ideas for overcoming something many people experience: imposter syndrome.

"Some of my colleagues have 30 years' experience as partners. You go through thoughts such as how could they want me in the room. You're surrounded by people that are so experienced, so exceptional and some of the best in New Zealand. I was thinking, how I could keep up with them.

"But what I realised was that was not why they wanted me in the partnership. They wanted me because of who I am, my life experiences, my perspectives on things. They wanted me because I was Sarah Scott, not because I was someone else. That was probably the biggest thing I took away from going through the Outward Bound course," she says. ■


Organisational
Development
Priorities

PEOPLE IN THE LAW
PROFILE

Peter makes his next move...

BY **STUART READ**

WIDELY ACKNOWLEDGED AS THE 'go-to guy' for companies and charities legislation, senior solicitor Peter Weir retired in December after nearly 25 years with the Companies Office.

"Some people earn the label 'indispensable', but few deserve it quite as much as Peter," says National Manager, Business Registries, Lawrence Wells.

"Over the years his expertise, experience and enthusiasm have added huge value to the service and support we've been able to provide to the New Zealand professional community," he says.

A life in law for Peter began at Auckland University, as a prize-winning student. After 18 months working in litigation in Auckland, he completed his master's degree at the London School of Economics, before moving to Rotorua, then back to Auckland and into commercial law.

Peter joined the Companies Office in 1993 as its sole solicitor, and his talents were immediately put to good use implementing the new Companies Act. So, what attracted him to the role?

"I was studying again but keen to return to practice, and particularly into company law. I knew the Companies Act was about to be introduced, so contacted the Companies Office to see if a position was available," he says.

"I was soon totally absorbed in dealing with the new law; explaining its workings to staff and callers, helping them to understand the new documents and procedures."

Since then Peter has contributed significantly to the transition from a manual to an online self-service model, especially in the area of amalgamations.

"The Companies Office is at the hub of so much that goes on in the commercial world. It's very progressive – and I've always enjoyed the interaction with fellow solicitors and other professionals, discussing the many issues that arise."

A well-known figure in professional circles, Peter has regularly presented seminars for ADLS Incorporated, and to accounting and community groups, on subjects ranging from company constitutions and directors' duties to incorporated societies.

The biggest challenges at the Companies Office, he says, have come when there's been a high volume of often difficult work to review, with fixed deadlines to meet.

"The people at the Companies Office are fantastic – always busy and energetic – and we've achieved some great results together."

Those who know Peter well invariably describe him as "meticulous", "modest" and "a true gentleman".

"He's hugely respected for his knowledge, professionalism and generosity. He will be sorely missed," says one former colleague.

Peter will now have more time to pursue his interests outside of the office, which include chess (he is a former member of the New Zealand chess team) and tennis. ■

Stuart Read *stuart.read@mbie.govt.nz* is Content Specialist at the New Zealand Companies Office.

Review of legal services – a message from the Companies Office

Over the years, our senior solicitor Peter Weir has provided invaluable support to our customers, particularly in the area of amalgamations.

Such was his contribution, in fact, that it's been necessary to review how our services can best be provided in future.

During the transition from manual to online processes, Peter's support of applicants went above and beyond that required of our legal team.

While undoubtedly helpful to the profession, these 'pre-submission' services are not the role of the Registrar, and can no longer be sustained.

Our legal team will, in future, continue to apply their expertise in supporting registry staff who evaluate applications for registration, providing legal advice to them as required.

Any subsequent enquiry to the legal team will be managed through regular customer relationship channels, so that calls can be logged and progress monitored.

You can contact us by phoning 0508 266 726 or emailing us at *www.companies-register.companiesoffice.govt.nz/about/contact-us/email-us/*

Our contact centre's hours of operations are:
Monday to Thursday – 8am to 6pm
Friday – 9am to 6pm

Online help and resources

Should you need assistance, you can also take advantage of a range of online options, such as our website's help guides, a new amalgamation check-list, and a 'how to' video guide is planned to be launched soon.

PEOPLE IN THE LAW
PROFILE

Lawyer plans to start NZ chapter of charity surfing organisation

BY **NICK BUTCHER**

Lawyer Mike Newdick remembers the days of surfing at Takapuna Beach on Auckland's North Shore during the 1960s. Those youthful beach boy days may have long passed but he still loves riding waves and has also turned his attention to charities that benefit from lawyers who surf.

"Back in those days we surfed on very large long-boards. You didn't need a particularly big wave to ride. There was even a surf lane at Takapuna. My father was a surfer and was one of the first guys to bring a proper board into New Zealand. That was around 1960 so I was exposed to it at a very young age," he says.

As a teenager at Takapuna Grammar School, he entered, and won, surfing contests and the lure of the ocean has been a bug for life.

Mike Newdick is a partner at Turner Hopkins in Auckland. He's been with the firm for 30 years, since graduating from law school. His commitment to the firm matches his commitment to surfing.

In August 2018 he attended the Australasian Lawyers Surfing Association conference, held on Telos Island in Sumatra, Indonesia. The opportunity came about after he was curiously googling whether other lawyers shared his passion for surfing. It turned out they did.

A chance conference leads to meeting surfing lawyers

"It was during winter. I was keen to head to Australia for a surfing trip and I wondered if there were any related law conferences that I could do at the same time. I googled 'lawyers surfing conferences' and up pops the Australasian Lawyers Surfing Association," he says.

It was through contacting the Association that the invite to Sumatra came about.

"I had no idea of what to expect and when I arrived there were 20 other Australian lawyers. They were mostly very senior people in the profession; criminal barristers and senior commercial lawyers. Every day we went out on a boat at about 7am, surfed a break and exchanged ideas. When we returned at the end of the day, we would talk about law and there'd be seminars about various aspects of Australian law. It was really good to be able to build relationships over a week – which is usually difficult when you're at short, two-day conferences," he says.

Thank you, All Blacks...

Being the only Kiwi amongst the Australians had its challenges but the timeliness of the Bledisloe Cup rugby test win by the All Blacks quietened the banter.

"That kept them a little bit under control," he says laughing.

Mr Newdick says the largely Australian organisation has a few members from Europe and the United States on its books and there are plans for an international conference to be held.

"One of the fundamental reasons they get together is to support a charity called SurfAid which was actually started by a New Zealander, physician Dave Jenkins," he says.

Dr Jenkins came up with the idea in 1999 during a surfing holiday he was having in the Mentawai Islands off Sumatra. SurfAid is an international development agency employing many Indonesian nationals. Over the years Dr Jenkins has also been a speaker on the well-known Ted Talk circuit.

Reflecting on his career in law, Mr Newdick says lawyers are often dealing with people in an adversarial environment and to find a bunch of lawyers passionate about supporting this charity impressed him.

"It showed real camaraderie. They're people who really feel good about helping others with less. Sumatra is incredibly poor. There's a high mortality rate, particularly among children. Many people live in small villages, paddling out to sea in very rudimentary canoes to catch fish. It's a very subsistent lifestyle, so being able to give something back to them, help them with medical needs and improve their standard of living is what SurfAid does really well," he says.

Competing with the Aussie lawyers surf team

A SurfAid contest was held at Sydney's Manly beach in September 2018 which Mr Newdick competed in as part of the ASLA team. That competition, the SurfAid Cup, was held to raise funds to help support SurfAid's Mother and Child Health Programmes in Indonesia. It was one of seven international events the charity organisation held last year. Mr Newdick's firm Turner Hopkins also made a donation to SurfAid.

"They raised about $130,000 towards SurfAid projects. I was really impressed with the passion they have for the cause."

Based on his experience in Manly and following conversations with other lawyers and event organisers, it was suggested that the charity would benefit if an Australasian Surfing Lawyers Association chapter

was established in New Zealand.

"It's possible there might be lawyers here that surf and are keen on being involved. When you get a bit further down the road in your career, you start looking at ways of how your skills can also be used to give back in some way."

A surfing competition for lawyers was planned for Easter last year but was postponed and is due to be held in 2020, in Gisborne.

Mr Newdick says the collegial nature of lawyers from various backgrounds getting together for a common purpose really affected him, a bit like that salty bug he caught years ago that has kept him surfing since the 1960s.

"Early in my career I was working with commercial property and it used to be easy to get to know people in the profession because you'd do your settlements every week. Usually, on a Friday, you'd pack half a dozen files under your arm, then go off and meet senior practitioners around town, but that doesn't happen anymore. Technology has made us much more isolated. We even use the phone a lot less. It's communication by email. So it would be good for the profession to have a purpose to get together."

It's possible there might be lawyers here that surf and are keen on being involved. When you get a bit further down the road in your career, you start looking at ways of how your skills can also be used to give back in some way

Why SurfAid?

SurfAid is a non-profit humanitarian organisation. Its aim is to improve the health, wellbeing and self-reliance of people living in isolated regions.

The New Zealand Government has partnered with SurfAid since the early 2000s to help deliver about $12.5 million of assistance for development and disaster response projects in Indonesia.

This work includes malaria control and eradication programmes in Western Sumatra, women and children's health initiatives in Nias, an island off Sumatra, long-term disaster recovery projects in Mentawai as well as in response to the 2004 Indian Ocean earthquake and tsunami, the 2009 Padang earthquake and the 2010 Mentawai tsunami.

What's both attractive and worthy about SurfAid, Mr Newdick says, is that a high percentage of what is raised goes directly to the beneficiaries and is not swallowed up by administration costs.

"The ocean brings out good things in people. It makes you feel human and we have a real opportunity to help improve the lives of people who really need it," he says.

Mr Newdick says any lawyers that surf who are interested in being part of the New Zealand chapter of the Australasian Lawyers Surfing Association should contact him at *mike@turnerhopkins.co.nz*

He says it's possible that an event similar to those that are held in Australia could be held at one of the country's best surfing locations.

"They're certainly interested in Raglan which is one of our premier breaks. They've asked me about the logistics of holding a competition there. There would be a lot of work to do to make it happen but in the end it would also raise money for really worthwhile causes," he says. ■

PEOPLE IN THE LAW
PROFILE

Lawyer Karateka!

BY **TAUFIL OMAR**

Auckland lawyer Taufil Omar shares his life-long experience in karate and a recent trip to Japan where he helped his team win a medal. And as he explains, the sport helps him in his daily work routine.

We all grew up wanting to be someone else, looking up to a role model or skill set that would set us apart from the masses. My growing up was done in Brisbane and then in Fiji. I was introduced to martial arts in the form of taekwon-do, referred to by my parents as "karate", in a small town called Labasa, on Vanua Levu, one of the two larger islands in Fiji.

As a kid, I was amazed by the legendary Bruce Lee and other prominent martial artists. Obviously, my folks saw some benefit in my participation in sports, learning self-defence and discipline and also gain some self-confidence. One of my uncles was an amateur boxer in the 1970s and was a tough cookie. I am not sure if that was also an incentive to make me a bit "tough" like my uncle, Mohammed Rafiq, who is now involved in boxing promotions and scouting young boxing talent in Fiji.

Fast forward a few years, I was still stuck in the earlier green to blue belts, and as a teenager I was distracted by football, touch and other activities. I withdrew from the martial arts scene towards the end of my first year at uni and thought that may be the end of my love for the sport.

I moved to New Zealand over 20 years ago. A few years ago a friend mentioned that Syed Mohiuddin was a 2nd Dan in Budokan karate. Syed is originally from Hyderabad in India and has been practising karate for more than 30 years. He is also the director of an Auckland-based IT company specialising in digital marketing.

My immediate reaction was to show my enthusiasm for martial arts and we ended up pushing the now Renshi Syed ("renshi" being the term for a senior teacher) to start an adult's class on Saturdays after sunrise, the time most of us could make due to work, young families and other commitments that most professionals have. Renshi Syed is now a 4th Dan black belt.

My firm KiwiLawyers has been sponsoring the club over the years to allow for youth as well as the old to take part in sports, gain self confidence and discipline and achieve personal milestones. It has been a tremendous journey.

The club has grown to include other classes that Renshi Syed started in conjunction at the New Windsor School, the Mt Roskill Intermediate School, and the Bay Roskill Sports Club and there are more than 120 students in all. The Budokan Karate Club is one of the fastest growing clubs in Auckland. My firm KiwiLawyers has been sponsoring the club over the years to allow for youth as well as the old to take part in sports, gain self confidence and discipline and achieve personal milestones. It has been a tremendous journey.

The home of karate

Budokan karate has since joined with Seishin Kan Shorinji Ryu Okinawa karate, a karate style with its headquarters in the city of Fukuoka and lineage to Kyan Chotoku, one of the five main grandmasters where different karate styles originated, via Kancho Yoshitoshi Sato San, an 84-year-old legend in Fukuoka. This was made possible via the inspirational Hanshi Chris Dessa of Seishin Budo Kyokai in Auckland. Kancho Sato San, a 10th Dan, is the President of the All Japan Shorinji Seishin Kan Karate Do Renmei. Hanshi Chris Dessa is a 9th Dan black belt graded in September 2017.

I was honoured to meet these people as part of my martial arts travels. I achieved my 1st Dan Shodan black belt in budokan karate (1st style) under Renshi Syed in November 2017 after being graded by Renshi Syed as the main examiner together with Hanshi Chris Dessa and Sensei Ray Irving, a 7th Dan black belt in Shotokan karate in Auckland as moderators.

Hanshi Chris then chose a few of us to participate in a tournament in Japan known as the Okinawa Shorinji Ryu Seishin Kan Karate Do Tournament which is in its 70th year. Preparations included being graded for my 1st Dan Shodan in Seishin Kan Shorinji Ryu Okinawa Karate (2nd style) starting with grading for my brown 1st kyu and then in August 2018, for my black belt. Along the way, Hanshi Chris set up the gradings which included Renshi Peter Thompson, a 4th Dan from Invercargill, together with his students and later the world champion Carl Van Roon who is a 4th Dan in the seishin style. This was all leading up to preparations towards the tournament in Japan.

The team arrived in Japan for a stay of around 14 days. We visited Okinawa and the previous Grandmaster Kancho Joan Nakazato's (10th Dan) Dojo. Due to Kancho Sato's contacts, we were also able to practise at the new, purpose-built ¥63 billion Okinawa Karate Kaikan. It was all surreal being in Okinawa and the home of karate with a legend of karate himself.

Hanshi Chris is himself a legend. He has dedicated his life to karate and still resides in Sandringham, Auckland. He is an amazing person with so much positive energy. Hanshi Chris has also been advocating for some years to put in place a proper legal regime to regulate the martial arts industry in New Zealand so that only genuine martial artists can function and to reduce fraud and other criminal activities in New Zealand. His concern over the years has been fraudsters cashing

in on unsuspecting parents and students. A passionate karateka who has karate's wellbeing in his heart and soul.

The tournament was held on Sunday, 4 November 2018 at the Sports Complex in Fukuoka. As is well known, the Japanese do things at the highest level of excellence and the experience of visiting Japan, the training and the tournament were no exceptions. The team also trained with the locals prior to the tournament. Sensei Akinori Fujimoto, 4th Dan Ho, was one of these inspirational individuals. A beautiful person and an example as to why karate has been preserved over the centuries. I was also honoured to meet Hanshi Masatoshi Mitarai, 8th Dan, and share dinner with him at the end of the event.

Bronze medal winners & trophy award

On the day I was full of nerves. I prepared by having the usual freshly baked buns, sea weed, pan fried mackerel, miso soup and orange juice beforehand. There were about 150 participants and the tournament was well organised, everything running to time, punctuality being the essence.

I reached the quarter finals of the 'Kata' competition and lost to Sensei Fujimoto's son. In the open men's 'team kumite' (full contact sparring with protective gear), we won all our rounds, and only lost to the silver medal winners in the open category. In the bronze medal round, I was honoured to beat the senior individual kumite champion of 2017 and helped knock his team out of the competition to gain third place for New Zealand. I received Kancho Sato's trophy award for freestyle kumite.

Being at the competition itself was enough really and to win awards was simply the icing on the cake – especially when I really am no longer a "youth".

Karate really does help to relax and take one's mind off the usual daily grind and I personally came back to martial arts after a break of more than 15 years. It calms one down and provides great health benefits. One may be able to give back to the community by assisting the younger ones when the competitive days are over. I believe the art has a positive impact on a sole practitioner's life. ■

Karate really does help to relax and take one's mind off the usual daily grind and I personally came back to martial arts after a break of more than 15 years. It calms one down and provides great health benefits.

Taufil Omar *taufil@gmail.com* is a solicitor with Auckland firm KiwiLawyers.

PEOPLE IN THE LAW
PROFILE

First UK woman barrister Helena Normanton KC commemorated

BY **TRACEY CORMACK**

THE BAR IN BRITAIN IS ABOUT TO GET its first set of chambers named after a woman, Helena Normanton KC, the first woman to practise as a barrister in England. The 218 Strand Chambers, which a set of eight members launched at the start of 2018 in London, was due to rebrand as Normanton Chambers in February 2019.

Jonathan Dingle, the Joint Head of Chambers, says it's a logical decision.

"From my perspective, Helena Normanton was an amazing person – her life is more than just the first to join an Inn or Middle Temple 100 years ago [this] year. The things she did, stood for and represented were visionary, brave, and far reaching.

"The friends who set up chambers with me last January were determined to make a difference to diversity, inclusion and reach at the Bar (as we already do worldwide with the Society of Mediators). We wanted to put equality at the heart of the agenda and saw that not only were women under-represented at the Bar, but no chambers had been named after the pantheon of inspiring women who had done so much over the last hundred years. Indeed, many seemed to look back to a certain category of corpulent corporates who were certainly heavyweights in the law, and often too in their dining chairs, but were hardly representative of society.

"Andi – my joint head and friend for 25 years – and I wanted a role model to embody the Chambers' philosophy and some research, reading, and discussion with her biographer led to the obvious choice."

Mr Dingle says at the formal launch "some inspiring contemporary women will speak and reflect – both on the last 100 years, and the next 10".

Helena Normanton's early years

Ms Normanton was born in London in 1882. Her father died when she was four. Her mother ran a small grocery shop and a boarding house. She was reportedly an excellent student and in 1896 won a scholarship to a science school. She left in July 1900 as a pupil teacher and helped run her mother's boarding house. She later attended teacher training college and then lectured at universities.

She was interested in the position of women and was a speaker on feminist issues. She completed a history degree, and a diploma in French language, literature and history from Dijon University in France.

Equal opportunity for women

In 1914 Helena Normanton published a pamphlet entitled *Sex Differentiation in Salary* arguing for equal pay for equal work. She wrote a book *Everyday Law for Women* (1932) in which she said that she became interested in becoming a barrister at age 12. She applied unsuccessfully to be admitted to the Middle Temple (one of the four Inns of Court which have the exclusive right to call students to the Bar) in 1918 and then successfully in 1919 within days of the Sex Disqualification (Removal) Bill (1919) being introduced.

This was the first piece of equal opportunities legislation to be entered into statute in the UK. The Act enabled women to join the professions and to sit in the House of Lords (although the House of Lords deleted the clause on allowing women to sit there, which was not overturned until 1958). However, 'Proviso A' of the Act enabled restrictions to be made on the admission of women to the civil service. Women were permitted to sit on juries, but 'Proviso B' permitted judges to have single sex juries on the basis of the nature of the evidence or issues. Women were essentially excluded from sexual assault and rape cases, which is surely where their point of view would have been most valuable. This continued until 1972.

Helena Normanton took and passed three compulsory parts of the bar examination simultaneously. She was called to the Bar on 17 November 1922, soon after Ivy Williams had become the first woman to do so. She would be the first woman in England to practise as Ms Williams instead taught law. However, Ms Normanton was not the first woman to practise in the UK as that honour went to Madge Easton Anderson in Glasgow in 1920 (after a successful appeal to the Court of Session).

She married Gavin Bowman Watson Clark in 1921 but they did not have children. She was the first married woman to be issued a passport in her maiden name (1924).

"Anne Boleyn did not change her name even though she married the King. He at least had the decency to leave her with her own name even though he took her head." *(Yorkshire Post,* 26 March 1954, quoting Helena).

Firsts in court

Ms Normanton was the first female counsel in cases in the High Court of Justice (1922), the Old Bailey (1924) and the London sessions (1926) and the first woman to obtain a divorce for a client and to lead the prosecution in a murder trial (May 1948).

She was the first woman to conduct a case in the United States, appearing in the test case in which a married woman's right to retain her maiden name was confirmed.

In 1949 she became the first female King's Counsel (along with Rose Heilbron) in England and Wales.

She had to face challenges targeted at her by the legal profession. She was accused of advertising (which was forbidden) and her application to practise on the western circuit (the south and south-west of England) was rejected.

Because of these difficulties she tried to support other women pursuing a legal career, including mentoring female students. To supplement her relatively low law income, Helena let rooms in her house and charged fees for speaking engagements.

Feminism and divorce reform

Helena Normanton was a staunch advocate for women's rights and in 1952 she drew up a memorandum of evidence as President of the Married Women's Association for consideration by the Royal Commission on Marriage and Divorce (she later resigned and withdrew the memorandum and formed the Council of Married Women and submitted a revised memorandum to the Royal Commission).

She sought to expand the grounds on which a divorce petition could be made. She was not challenging marriage per se but trying to standardise 'irregular' partnerships. Her argument was that limited grounds to apply for and the costs of divorce meant that couples were forced to stay married and to form separate relationships to which illegitimate children were born.

"The gloves are off"

The following is an excerpt from an interview that was recorded in March 1918 in *Ladies' Pictorial*. Interestingly some of the issues she has raised are still current 100 years later.

"The gloves are off now. I made my application to be admitted as a student of the Middle Temple in the most courteous and approved formal manner. I was rebuffed in the curtest fashion, with no reason given for the refusal. So now I shall frankly say what I think.

"What do I think? Well, in the first place, you have heard what I think of the institution of Benchers. But what goads me to fury is that by refusing to allow a woman to be called, the citizens' right of representation in court by an advocate of their own choice is completely set aside. Look here, is it logical to admit women to the medical profession to enter into competition with men ... while refusing admission to the sacrosanct legal circle to women?

"Do I think women lawyers are needed? Of course I do. What is more, I know they are. I've had hundreds of letters from women all over the country begging me to go on – they need not fear I shall faint by the way to the Middle Temple – as they would much prefer to have a woman advocate for the particular cases they wish to bring before the Court. Besides, I have already been promised by certain women's societies that I shall be their legal adviser *when* I get through.

"I am perfectly certain, that it is high time that a women's interests were in the hands of their own sex ... I believe the sex-exclusiveness of the legal profession is doomed. Women won't stand it, and men, who've been learning a great deal lately about women's capabilities, will not tolerate it either. Why, it is positively blocking genius. And we can't afford to do that, seeing what has to be made up during the next generation. We shall want all the brains we can collect together. Apparently, it's not among Benchers we shall find a surplus. For they do not seem to grasp the fact that the interests of the individual must henceforth give way to the higher good of the community, and there will now be six million women voters on the register. Do you think, do the Benchers think, that lawyers are going to be returned, by hundreds to Parliament, if women citizens are to be debarred from the possibility of participating in the administration of justice? Not a bit of it."

During her lifetime she campaigned for women's rights and women's suffrage, paving the way for generations of women. Her niece Elsie Cannon wrote about how being made King's Counsel came too late for Helena as she was in poor health and "too old to forge a career as a Silk". In 1954 she had a coronary which led her to consider renewing her will, which centered on establishing a university in Sussex. Ms Normanton died on 14 October 1957 aged 74 in a Sydenham nursing home, and was buried at Ovingdean Churchyard, Brighton. ■

PEOPLE IN THE LAW
PROFILE

The Innovators

Tamina Cunningham-Adams, Co-Founder & Director, Evolution Lawyers

BY **ANDREW KING**

LawFest organiser Andrew King continues a series of interviews with key legal professionals with their innovation and technology stories.

What does legal innovation mean to you?

Legal innovation is the continual evolution of legal practice. Innovation may occur by adopting or developing processes to better serve client needs. It can enable a firm to reduce waste and compete more efficiently in the market. Legal innovation is far wider than just technological innovation, however. There are many ways that a firm can innovate without spending significantly on digital technologies.

What role does technology play in innovation?

Technology is a key part of innovation in all industries. It changes practices and procedures, which can also affect the people within those industries. In some ways, the legal profession has been slow to adopt many of the technological developments embraced by other industries much earlier. For example, electronic signing, cloud-based data storage, video conferencing, digital templates, and digital marketing. Perhaps this is why some criticise the legal profession and the continuation of expensive, cumbersome, and paper-based practice.

That said, technology is not the only way to innovate practice. There are firms that appear to still serve their clients well, despite using outdated technology like fax machines and avoiding accepted technologies like email. While they may not be innovating in a technological sense, perhaps they are innovating legal practice by investing more in effective communication, face-to-face dealings, updating their clients more frequently, collaborating with other firms, or perhaps charging fees that are far lower than the average.

I believe that technology has a large part to play in legal innovation. However, there are lots of ways to embrace technology, and lots of ways to innovate without adopting technology, especially the expensive technologies.

What pressures are organisations facing in the delivery of legal services?

Increasing regulatory compliance and the constant threats of digital intrusion are two overriding issues for solicitors, especially those with trust accounts. The costs of practising in an AML/CFT environment is challenging, as is complying with our duties to report under various legislation. Changes to property tax and overseas investment rules have increased the number of documents

required for simple property transactions. Some practitioners will charge more as a result of time; some firms will simply bear the cost internally.

Digital intrusion is a real issue. Intrusions can be slow and insidious. There could be a keylogger taking note of every word you type or a virus forwarding every email sent from or received by your account to another, controlled email account, all without your knowledge. Practices must be vigilant and proactive, and stay up-to-date with the creative ways hackers and thieves are using digital technologies to intrude into systems. Updating systems immediately, training your staff to spot issues and report them early, and adopting other proactive digital safety measures, could be the key to avoiding business interruption, comprised devices, breach of privacy, confidence, and privilege, and incorrect disbursements of client funds.

What developments do you see in how legal services are delivered?

There appears to be a trend towards using bots to interact with clients. This is an interesting technological development that may be beneficial for people who do not like communicating with people. However, in my experience, clients still want to speak with a real person, especially if they consider their issue to be stressful or significant. For example, in dispute resolution many clients simply want to know that we have got their back or that someone is in their corner. They are looking for empathy, assurance, confidence, and other things best provided by human beings.

Culturally, there are many who prefer to do business 'kanohi ki te kanohi' or face-to-face. So, while bots may have their place, such as dealing with routine communications and non-contentious work, I question whether clients feel special when their first interaction is with a bot. While lawyers should use every tool at their disposal to provide better client service, including automated technologies in many cases, the service provider should be a person whenever possible, in my view at least.

What opportunities has legal innovation brought you?

Evolution Lawyers has adopted or developed whatever technologies or innovations we believe we need to provide the type of legal service modern clients would expect. Our aim is to practise as leanly and agile as possible. By simplifying practice, our lawyers have more bandwidth to work on legal problems and complete tasks accurately. Administration and paperwork can burden a legal mind significantly, and the cost of a person to attend to that administration is significant for small businesses.

We are fortunate that many of our clients have similar philosophies to us. For example, Evolution Lawyers works closely with Arizto Real Estate, a company that documents and processes its residential property contracts digitally. Like us, they have an in-house software development team. By working and keeping pace with innovative clients, we create opportunities for our young firm.

What are some of your tips to start innovating or developing an innovative mindset?

Keep it simple – identify a problem and find a solution. We do not need to be tech-experts to do this in practice. Indeed, this is what lawyers do on a daily basis. Many of Evolution Lawyers' innovations have come from having to deal with something unsatisfactory in existing, normal practice. Rather than tolerating the issue, we find a way to fix it – immediately, if possible.

There are many excellent, cost-effective steps that firms could take right now. For example, two-step authentication, digital signing, legal working day calculators, and more. Some of those benefits are free. One just has to investigate and try them.

Work with professional developers. As lawyers, we see the consequences of the bush lawyer or the legal dabbler trying to do their own legal work. We engage a competent professional to build our software, so that it can be maintained by any professional in the future. For us, we see it as a risk to build sustainable software ourselves, and a heavy time commitment to learn to code. So, we leave that job to the experts.

Why is it important for legal professionals to continue to learn about legal innovation and leveraging technology?

Lawyers should be continually learning. That is part of being a professional. Legal innovation is part of that continual learning practice. Like anything, the more you know, the more you can leverage that knowledge to create opportunity and benefit for yourself and others. ■

Andrew King ✉ *andrew@lawfest.nz* is organiser of LawFest 2019, which will be held in Auckland on 21 March. Tamina Cunningham-Adams will be one of the speakers at the event.

LETTER TO THE EDITOR

Should We Legalise All Drugs?

METHAMPHETAMINES ARE NOT THE PROBLEM, THE GANGS are.

I have been working and living in the Wellington region as a family lawyer for the past 17 years. Up until around 2013, illicit drugs were not really an issue in any of my cases. Marijuana use featured in some cases, but that was never really a major concern for Family Court judges.

However, since 2013, the number of cases where methamphetamine use by at least one of the parties, has steadily risen until now around half of my cases include issues over methamphetamine use.

Consequently, I am seeing children suffering with addictive parents and I am feeling the pain of my clients, when the Family Court has to separate families as a result of it.

Through talking to my clients, I understand that my cases involving methamphetamine use are so many, because I live and work in an area that is central to gang locations and widespread methamphetamine dealing and use.

I also understand that local gang members are at the forefront of the importing, manufacturing and distribution of methamphetamines around our community.

Local gang members are making no secret of the fact that they are reaching all levels of our community.

They are getting children aged 12 or younger hooked and dealing to other children for them.

They are driving men into huge drug debts to them and women prostituting themselves to them because of their debts.

Violence in our neighbourhoods has increased due to desperate drug addicts as a result of gang involvement.

The drug itself is being disseminated with cheap unregulated substances, so that the gangs can make more money.

Gang members now have a stranglehold over our community like never before.

Isn't it now time to legalise or decriminalise illicit drugs so that the criminal element can be removed and the whole industry can be regulated?

We could then move the whole issue away from the criminal justice system and into the health system, for drug addiction treatment.

Of course, there should be age restrictions, and the supply of Methamphetamines should also be controlled in other ways."

- [NAME PROVIDED]

The author of the letter, who provided their name, wished to remain anonymous out of concern for retaliation by local gang members. This has been respected.

Following the receipt of this letter LawTalk asked other lawyers for their opinions on whether they had noticed an increase in drug-related issues in their practice and if they thought that illicit drugs should be legalised. Locations and areas of practice are given. We have also gathered other information on drug use in New Zealand.

Christchurch – Family law and criminal defence

It's a balancing issue but I suspect, like Family Harm, it's not an area that we can arrest our way to a resolution. Biggest drivers of crime and family harm are:

- Alcohol,
- Drugs,
- Mental health,
- Addiction (see the first two).

Cannabis is pervasive and frankly the prohibition battle is probably lost and it may well be time to treat it was a health issue rather than criminal one. Sends a terrible message but might be the lesser of two evils.

Synthetics and P are on a par. The former is possibly worse and seems to be de rigour with, particularly, youth offenders. Also, unlike cannabis which generally makes people a bit useless, synthetics can have all sorts of behavioural nastiness. They are similar to P and a big deal cash-wise. Police have told me they are bigger than P but certainly on a par and penalties are far less, so any sensible criminal is likely to be pushing synthetics.

There's no panacea and I would be reluctant to see wholesale legalisation without significant evidence but claiming solutions are as simple as prohibition (or mass legalisation for that matter) is dream world. It would not surprise me if there is evidence to support dialling back the criminality of cannabis though, with resource better used in the health sector than the policing of it. I could live with that – just don't smoke that stinky shit near me!

Regional South Island – Family law

My current position is I am happy for all drugs to be decriminalised, by which I mean there should be no penalty attached that requires loss of job or imprisonment, but maybe a referral to a counselling service or to an anti-drug service. I do not consider it is sensible to prosecute drug users, or to refer them to prison.

I am not sure whether this is a "medical problem", but

I do not think it is sensible to continue to make it a criminal offence to use "illegal drugs".

I remain open to advice about my position, but I cannot think it has been effective to continue to devote so many resources to prosecuting offenders who use "drugs", and then imprisoning them. It is the purveyors and dealers who need to be pursued, not the users.

Years and years of "War on Drugs" does not seem to have reduced the problem and seems to provide the criminal world with a constant income. However, I am keeping an open mind on the problem, and trying to assess whether my current position is an appropriate one, given all the harm illegal drugs cause to people and to society.

Regional Wellington – Family law

I have noticed that over the past few years meth has become more prevalent in many sectors of society. I have seen it feature in family law cases, but then marijuana features often also.

I do not agree that it should be legalised, but I do feel that there should be greater awareness of it and greater education could have a major role in combating it. It is ruining families and yes, gangs do appear to be driving it. However, legalising it would just make it more readily available to the community.

If it were legal, you couldn't stop or prosecute gangs from supplying it even though it is destroying lives. In effect the government would be allowing a deadly drug to be distributed.

Wellington central – Criminal and family law

There is an important difference between legalisation and decriminalisation of a drug. Broadly speaking, decriminalisation means that although a drug is still illegal, it would no longer be a criminal offence to possess small quantities for personal use. Legalisation means that a drug is no longer on the list of banned substances. It could be that a legalised drug is widely available and even commercialised, regulated and taxed.

New Zealand is currently debating law reform around cannabis. According to the New Zealand Drug Foundation's annual poll on drug use, the percentage of people that support legal or decriminalised access to medicinal cannabis is growing: in 2018, 89% say it should be legal or decriminalised for those with a terminal illness, 87% said it should be available for pain relief and 67% said it should be available for personal possession.

Prohibition and the "War on Drugs" have proved to be ineffective in controlling drug use. Prohibition has led to the growth of the black market for drugs and gang involvement in the supply of drugs leads to more crime.

Many advocates are proposing a health-based approach to drug reform which treats drug addiction as a medical issue where a person found in possession of a drug would be dealt with through a rehab process rather than the justice system. Many advocates also say that cannabis use should be a personal choice, like drinking alcohol, and only needs a rehabilitative approach if it leads to problems in an individual's life.

However, there is a significant difference between cannabis and methamphetamine. Cannabis has proven health benefits and its recreational use is arguably less harmful than alcohol. Methamphetamine does not appear to have any benefits, it is more expensive than cannabis and leads to more crime to support an addict's habit, and extended use can lead to extreme violence.

There is a compelling argument that methamphetamine users should be decriminalised for personal use. Users could be dealt with by a rehabilitative approach and not end up with criminal convictions, which only lead to other problems in their lives. But New Zealanders would not support the legalisation and commercial distribution of methamphetamine. Decriminalisation would not stop the gang involvement with methamphetamine, but it would lead to better outcomes for users.

Police Investigations – Gangs and Methamphetamine

A Bay of Plenty community contacted the police in 2017 with concerns that mirrored those of the lawyers above. This resulted in a six-month long investigation, *Operation Notus*, that identified that members of the Kawerau Mongrel Mob were involved in the commercial distribution of methamphetamine and cannabis to the community. Three hundred staff were involved in the investigation with firearms, methamphetamine, cannabis and cash being found at various addresses. The investigation resulted in 25 people being arrested who faced charges including possession for supply and supplying methamphetamine and cannabis.

A similar operation in Rotorua targeting an organised crime group, including patched members of the Head Hunters gang, resulted in four arrests, including a 40-year old man who was a patched member of the Head Hunters gang.

In November 2018 11 people were arrested in Auckland – including a senior Head Hunters West Chapter gang member – and charged with supplying and conspiring to manufacture methamphetamine. Detective Inspector Greg Cramer said that the arrests demonstrate "...our message to those involved in the manufacture or distribution of methamphetamine is that you will be held to account."

Methamphetamine use data

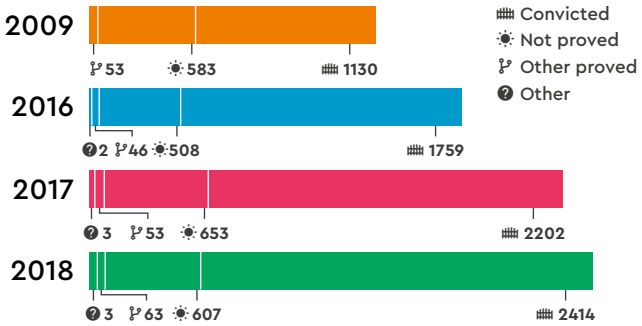
There is information collected about drug use in New Zealand, but unfortunately not in much detail. The New Zealand Drug Foundation says the most recent New Zealand Health Survey (2016/17) showed that at least 11.6% of NZ adults (aged 15+ years) had used illicit drugs (cannabis in the past 12 months). This has climbed a bit in the last few years from 8% in 2012.

The survey also found that 0.8% of adults had used amphetamines (including methamphetamine) in the past 12 months. This hasn't really changed in the past 5 years.

But these official surveys may fail to reach a large portion of populations that have higher rates of drug use, such as the homeless and those in prison. It is fair to say that while overall usage remains low, methamphetamine use has become a serious concern in some communities.

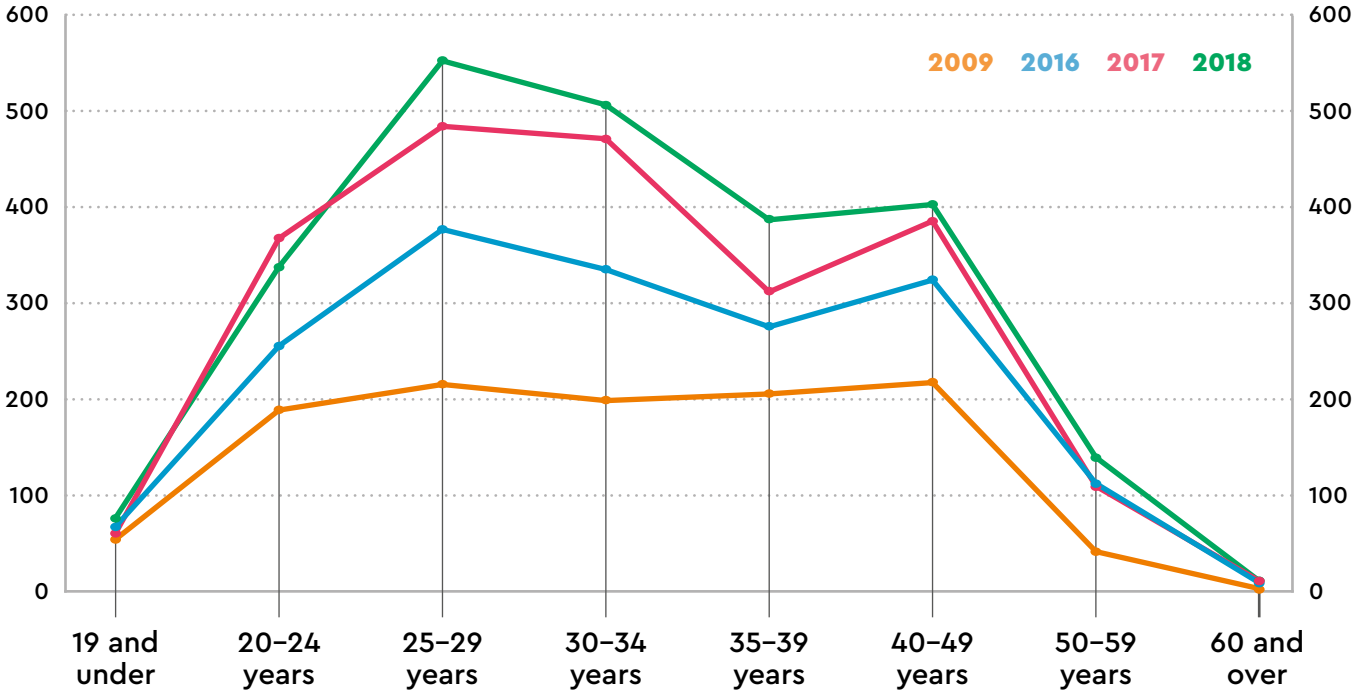
Cases in the courts

PEOPLE CHARGED WITH METHAMPHETAMINE OFFENCES (YEAR TO 30 JUNE)



Charges outcome	2009	2016	2017	2018
Convicted	1,130	1,759	2,202	2,414
Not proved	583	508	653	607
Other proved	53	46	53	63
Other	0	2	3	3
Total	**1,766**	**2,315**	**2,911**	**3,087**

PEOPLE CONVICTED OF METHAMPHETAMINE OFFENCES BY AGE (YEAR TO 30 JUNE)



Portugal: A case for decriminalisation?

Portugal decriminalised the use and possession of all drugs in 2001, so that the focus went from criminal punishment to treatment. However, the manufacture, importation and sale of drugs is still illegal. People caught with drugs (for personal use) face civil consequences. They are assessed by a Commission comprising a social worker, a psychiatrist and a lawyer and if found to have an addiction problem they will be offered treatment. Since 2001 there has been a decline in drug use, a decrease in drug-induced deaths and a decrease in imprisonment on drug-related charges.

Age group	2009	2016	2017	2018
19 years and under	54	67	60	76
20-24 years	190	256	368	338
25-29 years	217	378	485	553
30-34 years	200	336	472	507
35-39 years	207	276	312	387
40-49 years	219	325	386	403
50-59 years	41	112	109	139
60 years and over	2	8	10	10
Unknown	0	1	0	1
Total	**1,130**	**1,759**	**2,202**	**2,414**

NEW ZEALAND LAW SOCIETY

Changes to regulatory process for inappropriate behaviour planned

The New Zealand Law Society is planning a number of changes to the processes for reporting and taking action on sexual harassment and bullying in the legal profession.

These include:

- New rules for lawyers which specifically require high personal and professional standards with specific reference to sexual harassment, bullying, discrimination and other unacceptable behaviour.
- A specific prohibition on victimisation of people who report unacceptable behaviour in good faith.
- The imposition of minimum obligations on legal workplaces or lawyers who are responsible for workplaces. This will include auditing and monitoring of compliance and a prevention of the use of non-disclosure agreements to contract out or conceal unacceptable behaviour.
- A more flexible two-stage approach to confidentiality for complaints about sexual violence, bullying, sexual harassment, discrimination and related conduct.
- Creation of a specialised process for dealing with complaints of unacceptable behaviour.
- Changes to the procedures of the New Zealand Lawyers and Conveyancers Disciplinary Tribunal.
- Investigation of mandatory training and education of lawyers to address culture problems in the legal profession.

The Law Society's Board has accepted the recommendations made in a report on the regulatory processes for lawyers where unacceptable workplace behaviour occurs. The report was prepared by a five-person independent working group established by the Law Society in March 2018 and chaired by Dame Silvia Cartwright.

Presented to the Law Society Board on 7 December, it identifies a range of problems with the current reporting regime and concludes that the regulatory mechanisms and processes are not effectively designed for dealing with complaints about sexual violence, harassment, discrimination and bullying.

New Zealand Law Society President, Kathryn Beck, says the working group prepared a comprehensive and well-researched report which fully meets its terms of reference.

"Dame Silvia and the other four members have provided valuable information and insights into the issues involved. They have consulted widely and they have developed several recommendations. We thank them for their careful and thoughtful report.

"We wanted to know what was wrong with the current system and have received compelling independent answers including that conduct and reporting standards are unclear and must be addressed so to remove any confusion over what is expected of all lawyers," she says.

Ms Beck says some of the recommendations are complex and far-reaching, but they will assist in making the legal community a safe place for all.

"The Law Society will now develop a programme to determine how they can be put into effect. Some of the recommendations are currently outside the mandate of the Law Society and require legislative change. The Law Society will work in consultation with the government, the profession and other organisations to achieve the appropriate outcome.

"We have already advised the Minister, Andrew Little, of the report's recommendations and will seek a meeting to hear his views and to discuss how we can implement the required rules changes," Ms Beck says.

"As indicated in the working group's report, and as with all legislative change, it will be important to take care to ensure there are no unintended consequences. A consultative and collaborative approach is needed, and this is essential to ensure we achieve our objective of healthy, safe, respectful and inclusive legal workplaces."

The full regulatory working group report is available on the Law Society website in the section "Bullying and harassment in the legal profession".

Time for CPD declarations approaching

The Continuing Professional Development (CPD) year ends on 31 March 2019 and declarations of completion are due no later than five working days after this. The Law Society suggests that it is a good time for practitioners to check completion of their CPD requirements and whether their CPD learning plan and record are up to date. Further information and resources are available on the Law Society website at www.lawsociety.org.nz/cpd

Non-disclosure agreement cannot prevent complaints to Law Society

The New Zealand Law Society says it believes that settlement or non-disclosure agreements between law firms and employees cannot prevent a person from making a complaint to the Law Society.

"An agreement which seeks to prohibit a person from exercising their right to complain to the Law Society in return for a sum of money or some perceived advantage or concession could be unenforceable, against public policy and could breach a lawyer's obligation to uphold the rule of law. It could also foster corrupt practices and abuses of power," the Law Society says.

The Law Society has reiterated its views on such agreements following release by the Law Society of England and Wales of a practice note for all solicitors who draft non-disclosure agreements and confidentiality in an employment law context, whether for their own firm or for a client.

The UK practice note states that, in any conflict of principles, the public interest in the proper administration of justice must come first. It draws a distinction between "appropriate and lawful clauses" aiming to protect trade secrets and "situations in which confidentiality provisions are aimed at preventing disclosure of conduct or other circumstances which, for example, may have led to a dispute or to the breakdown of the relationship between an individual and the business."

The practice note says solicitors must remember that the UK Solicitor Regulation Authority Code of Conduct says their duty to clients is subject to a duty to the court and to the administration of justice.

"Where two or more mandatory principles come into conflict, the principle which takes precedence is the one which best serves the public interest in the circumstances, especially the public interest in the proper administration of justice. It is unlikely to be legitimate to ask a person to sign an agreement in which they agree not to disclose an unlawful act that has not yet happened, as the chances of such an agreement being legally enforceable are slim."

The New Zealand Law Society says confidentiality provisions are often sought by both parties in a dispute and are beneficial in many cases. However, lawyers should not be able to "buy off" complainants. The Law Society says this has been endorsed by the Legal Complaints Review Office, which is the statutory appeal body for lawyer complaints, and this has been the Law Society's position in the past.

"A confidentiality or non-disclosure clause does not absolve a lawyer from the obligation to report misconduct under rule 2.8 of the Rule for Conduct and Client Care. Failure to report the matter when required to do so could result in disciplinary action being taken against the lawyers who were a party to the agreement," the New Zealand Law Society says.

The Law Society's independent working group which considered the regulatory processes for unacceptable behaviour, specifically examined the use of non-disclosure agreements and a lack of clarity in the scope of the Lawyers and Conveyancers Act 2006 as a mechanism to regulate their use.

Sole practice attorney arrangement review recommended

The start of 2019 is a good time for sole practitioners to review their power of attorney arrangements, the Law Society says.

Sole practitioners are required by s 44 of the Lawyers and Conveyancers Act 2006 to appoint an attorney and an alternate under a power of attorney authorising them to conduct their sole practice if the sole practitioner is unable to do so.

"Start the year by making contact with your attorney and alternate and updating them on all aspects of your practice," says Law Society Registry Manager, Christine Schofield.

"If you have changed your password during 2018, upgraded your software, and if you have changed PI providers or made any other significant changes, your attorney needs to be advised of this.

"If you are the attorney for another sole practitioner, be proactive and make contact directly. Such updates may make all the difference in an unexpected situation where an attorney is required to step in to run a practice at short notice."

Ms Schofield says acting now can provide peace of mind for both attorney and donor by allowing them to discuss an action plan if a power of attorney is invoked. This may include how files will be referred on and who else might be able to provide some support to the donor (for example, does the attorney have a list of lawyer friends/colleagues who would be able to help if needed?).

Further information about the types of matters which sole practitioners and their attorneys should be aware of is available on the Law Society website in the section For Lawyers/Legal practice/Entering sole practice.

PRACTISING WELL

Talking about mental health

A conversation with Tony Southall

BY **SARAH TAYLOR**

Tony Southall contacted me after reading my article in the October LawTalk *(issue 922). He congratulated me for having the courage to share my story and indicated that he'd been through some pretty dark times. "Shining sunlight on this issue is very important," he said. "Mental health is a significant issue across the legal profession and those of us with lived experience can help others by speaking up and de-stigmatising the issues." Tony told me that he was aware from data he had obtained from the Office of the Chief Coroner that 17 lawyers had taken their own life in the 10-year period to August 2017 and that statistic deeply concerned him. He shared with me that he came close to being Number 18.*

Tony and I met for coffee and he told me about his experience. It rocked me. I asked Tony if he'd be willing to share his story and he kindly agreed to me writing this article. We met again a few weeks later and talked, laughed, and cried (well, I did) on the balcony of the Wellington Club on a gloriously hot still Wellington day.

***Sarah Taylor:** Tony, can you please tell me a bit about what you went through a few years ago?*

Tony Southall: In 2011, I had several very challenging things happen to me, both at work and in my personal life. My previously stable, largely successful world suddenly fell apart. I hadn't previously experienced mental unwellness, but was diagnosed with situational depression in mid-2012. I was in severe mental distress and struggled to function. I found it difficult to get out of bed for months – I describe it as having an emotional stroke. My friends and colleagues have previously judged me as a strong, resilient person but the confluence of difficulties I faced meant I collapsed, emotionally.

I lived on the 9th floor of an apartment complex and frequently thought about taking my own life. At my worst, I carried a rope around in my backpack and scoped out spots to use it. The thought of the damage my suicide would cause to my loved ones always (thankfully) pulled me back from the brink. It was very scary and I had to 'stare down' such thoughts on a daily basis for many months. No one really wants to take their own life, but you get in a space where you feel so bad that you just want to eliminate the pain.

Everyone, kindly, tells you it will get better, but at the time you are blinkered by mental distress and can't see that from your 'dark cave'. Of course, those people are right – it always gets better. In fact, it often leads to a better life than the life you had before, like it has for me.

***ST:** How did you get through it?*

TS: I was fortunate. I had a great GP friend and he facilitated my medical care. During extreme periods of crisis and suicidality, I was under the care of the local DHB's Crisis and Trauma team. I had a lot of non-medical support, most notably from a very committed group of four people. One member of that group, a lawyer friend, would either see, ring, text or email me every day. Every day for over four years! An extraordinary friend. My other pillars were my partner at the time and my daughter. They were unfailingly loving and supportive. I was also on a cocktail of anti-depressants overseen by my GP and a psychiatrist.

The real key to my returning to wellness was my four walls or pillars of human support. It was the people, not the pharmaceuticals that got me through my crises. I really encourage people suffering mental distress to speak up, reach out, and look within your own networks and families to help build a self-care programme. Building your own self-care programme can include reducing stressors, exercising, meditation and a stress and support team like I was lucky to have. Talking therapy was effective for me, as well as exercising and being in nature. I also learnt the benefits of mindfulness and enjoyed the support and love of my 'whare walls' and other close friends. My elderly and lovely late Mum used to say "just try a bit harder dear" and I would tell her that didn't work – if it was a case of trying harder I would be back to wellness in a few minutes!

I was in and out of work for 3-4 years which was hard as I had always been a very busy and active member of the community and undertook a lot of pro bono work. I strongly believe that helping others helps your wellbeing and alleviates mental distress – it can help remove you (at least temporarily) out of your own painful paradigm. The 'feel good' factor of helping others can remove social isolation and be personally very healing.

Of course, those people are right – it always gets better. In fact, it often leads to a better life than the life you had before, like it has for me.

Photo by Max Sat

ST: How are you now?

TS: I'm well now and my life is happily very different. I no longer suffer from depression and I'm no longer on medication, but I know it could re-visit if life throws up new severe emotional distress. That's not something I relish and I indulge in self-care activities to build my resilience. They are my emotional "insurance policy".

I think I am a better person because of what I went through. I have a different, more fulfilling life and look through a different, better lens than previously. I'm now a lot more empathetic of people suffering emotional distress.

I've always believed that out of a negative comes a positive. Re-setting my working and personal life due to my mental distress experience has led to many positives, including me meeting some amazing people working in mental health and who have got through depression, etc challenges. It has empowered me to do more fulfilling things which has been a huge positive. I want my life defined by my successes post my difficulties including service to others, rather than my period of depression and suicidality.

ST: What advice would you give to someone going through something similar as to what you went through?

TS: Put your hand up for help. Don't suffer in silence. Be vulnerable – tell someone that you're struggling – it's part of journey out of mental distress. Not everyone you reveal your vulnerability to will know how to deal with it, so identify those within your network who may be able to help. Visit your GP and work with them and other close friends and family to build your own self-care programme and support team like I was lucky to have.

As lawyers, male lawyers in particular, it is generally counter to our culture to reveal your vulnerability. But doing so is incredibly empowering. There are some great websites with excellent resources in this space *[see links at the end of this article]*.

ST: What advice would you give to someone who suspects or is aware that their friend or colleague is struggling?

TS: If you suspect someone is in mental distress and they're not connecting, it's not because they don't like you, it's because they're unwell. They're not their normal selves. Stay connected with them – go into their 'cave'. I was lucky to have friends who came into my dark cave even though I was pushing people away. I didn't want to see people, I felt ashamed. I was no longer a partner/chairman of a law firm, I was no longer working, I felt isolated and didn't want to be seen in public, play golf, or even walk down Lambton Quay. My truly committed friends with a deeper empathy and understanding of mental health stayed closely connected with me however.

If someone says they're ok but your intuition is that they're not, don't ignore it. Listen to your intuition. Dig deeper. Reach out to them. Suggest to them "Let's go for a coffee," "Let's go for a walk," "Let's talk because I sense you're not ok."

Be brave and have a deeper conversation with them. I use the '1 to 10' technique to drill down with people about how they're really feeling. I ask them "How are you feeling on a scale of 1 to 10?" If they give a low score and I am worried about their mindset I am very direct: "Are you feeling safe? Are you suicidal?" and then ask them to respond on the 1 to 10 scale. If they self-report low scores I take immediate steps to connect them to help.

And if, for whatever reason, you're not comfortable having that deeper conversation, then go and find someone who can. For example, if you're a junior lawyer and you sense a senior partner is struggling but you don't feel comfortable having that conversation, then go and find someone else, maybe a peer of that person, who can have that conversation.

We all lead busy lives and it is easy to ignore the signals. But don't ignore the signals. Alcohol and other addictive behaviours are often strong indicators of mental health issues so be alert to that as well.

ST: What are your thoughts about the current mental health system in New Zealand?

TS: It is a broken system that is under-resourced and over-medicalised. There is an over-dependence on prescription medicine. Don't get me wrong, chemicals have their place, but they are only one spoke of the wheel. There is too much weight put on them as opposed to other things that can help. We need to be exposed to the full menu, to all the things that can help. For some people, physical activity can help, for others, it is talking therapy, mediation, yoga, cognitive behavioural therapy (CBT), or counselling – we need to work out what is right for each person and provide a bespoke solution. We need to de-stress our lives in general and to de-compress. Life, business, and practising law have all become far too complex and stressful. There is, in my view, a severe case of "Affluenza" affecting a significant portion of the profession. I think law firm leaders should be prepared to reduce focus on bigger fee budgets and greater profits. Less can be more when it comes to life balance and life quality. Debilitating stress is, in my view, at the heart of most mental distress and illness.

I think, throughout our lives, we all move on a spectrum of mental wellbeing. Most people are lucky enough not to face severe life challenges that tip them over to debilitating mental health issues such as severe anxiety, depression or worse. Those of us that do, need to seek help and be brave in taking positive steps to do that. Individuals, the legal community and society in general need to be more proactive and receptive in supporting those that do.

I've spent a lot of time over the last 14 months researching the mental health system so that I could better understand it. I wanted to reach my own views about where change might be needed and what that change might look like.

We all lead busy lives and it is easy to ignore the signals. But don't ignore the signals. Alcohol and other addictive behaviours are often strong indicators of mental health issues so be alert to that as well.

ST: What do you think some of the key changes could be?

TS: I made a submission to the Government Inquiry into Mental Health and Addiction and as part of my submission I outlined several key areas where I think changes could be made. In a nutshell, some of these are:

- **Wellbeing Manifesto:** I think the approach and recommendations outlined in the *Wellbeing Manifesto* promulgated by Mary O'Hagan should be adopted. We need a less medicalised-approach and client co-designed and community-led solutions. See the Wellbeing Manifesto here: *www.wellbeingmanifesto.nz*
- **A targeted/sector-based approach:** I advocated for increased and targeted funding of sector/community wellbeing, addiction, mental distress, and suicide prevention strategies. By all means, have a generalised overarching strategy, but use co-design to develop specific solution-focused strategies for each sector/community.
- **A more integrated approach:** We need to foster greater connectedness and integration across the mental health system at all levels. There currently appears to be a lot of silos and a lack of overall integration.
- **Wellbeing, mental health, and suicide:** We need to reduce our shameful record of suicide in New Zealand. Why can't we lead the world in having the lowest rate of suicide? If we can win Rugby World Cups, Americas Cups, and launch space rockets and satellites from New Zealand, why can't we be number one in wellbeing and mental health? Why not make that our collective vision and a key goal for us as a nation?

[Note: At the time of finalising this article, the Mental Health and Addiction Inquiry had just released its report (mentalhealth.inquiry.govt.nz). Tony told me that he is pleased with many aspects of the report, notably its recommendation to establish a Mental Health and Wellbeing Commission but feels that some of the recommendations are not "gamechanging" enough. We hope to explore the Inquiry's recommendations in a future article in this series.]

ST: And what about in the legal profession – what more could be done to help and support lawyers and prioritise our mental health and wellbeing?

TS: We need to change the culture of the profession and create supportive and mentally healthy work environments where it's ok to be vulnerable.

At least 17 lawyers took their own lives in the 10 years to August 2017. That's 17 too many and I would like to see an independent organisation leading research, providing support resources, and being a 'go to' organisation for lawyers when they are suffering mental distress. It could be modelled on Farmstrong (*farmstrong.co.nz*) – the nationwide mental health and wellbeing programme for farmers. It needs to be independent from NZLS in my view so that lawyers feel free to self-report their mental

▲ Tony Southall

▲ Sarah Taylor

distress with strict confidentiality and no fear of stigmatisation or regulatory consequences.

Firms need to understand that it is not all about meeting fee budgets. We need to remember why we went in to this profession. Most of us did not become lawyers for the purpose of making money. We went into the profession because we wanted to make a difference, to help people. But somehow, over the years, we (and society in general) got a bit lost along the way.

I don't want to say the legal profession is toxic and terrible, because it's not. The vast majority of lawyers are hardworking people of integrity who are motivated to protect the rule of law and benefit communities. However, the profession needs to recalibrate. Law firms and their leaders need to re-set their goals, just as the NZ Treasury is resetting our goals as a country. The Treasury is looking beyond economic goals and considering the wellbeing of the nation and measuring happiness levels. I suggest that law firms need to do the same. It is time for a values re-set that is deep and fundamental. And the threads of those new values need to permeate every aspect of the law firm including the way people develop and progress. It's got to be more than just talk – if a firm values and espouses collegiality, it needs to consistently show such collegiality.

ST: What else can be done to help lawyers from getting in the state that you were in?

TS: We need to destigmatise mental health issues and make it ok to talk about mental health and reveal if you're not coping. We need sessions within our organisations where we openly talk about what we can do to improve and maintain our mental health. We need to have self-care plans, like we have professional development plans. We need to 'de-compress' more and take the pressure off ourselves. Severe anxiety, depression, etc are alarm signals of deeper (often structural) issues that need addressing in your life. We need to be real and honest with ourselves to resolve them – and sometimes you need third party help to do that. A solution focused, step-by-step approach can often help. We need a more holistic approach to how we run our law firms and organisations. And these things need to be more than words – they've got to be part of the DNA of a firm, values that are lived and breathed.

Tony and I had a lot more to talk about and I hope to explore some of these issues in more detail in future articles. I want to deeply thank Tony for his honesty, openness, and willingness to be vulnerable. Kia kaha, arohanui Tony.

Me mahi tahi tatou mo te oranga o te katoa.

We need to work together for the wellbeing of all ■

Tony Southall has had a varied 34-year legal career including being a partner at 25, working as both a sole practitioner, a board member of Lawlink, and nine years as the chairman of Gibson Sheat. Tony spent 16 years on the board of the Cancer Society (Wellington) and was appointed a life member in 2016. He is no longer practising law and now has a mixed portfolio of business and pro-bono activities involving fundraising, capital raising, governance and investment in a variety of start-up businesses. He is active in the reform of mental health services in New Zealand.

Sarah Taylor is a senior lawyer, the Director of Business Development at lexvoco, and a mental health advocate.

If you would like to contribute to an article in this ongoing series or have a topic you would like covered, please contact Sarah Taylor ✉ *sarah@lexvoco.com*

Some useful resources:

- *www.mentalhealth.org.nz*
- *www.depression.org.nz*
- *www.toughtalk.nz*
- *www.wellbeingatthebar.org.uk*
- *www.wellplace.nz*
- *www.ruok.org.au*
- *www.lawsociety.org.nz/practice-resources/practising-well*

Need to talk? Free call or text 1737 any time for support from a trained counsellor
Lifeline Aotearoa 0800 54 33 54 (0800 LIFELINE) or free text HELP (4357)
Suicide Crisis Helpline 0508 82 88 65 (0508 TAUTOKO)
Samaritans 0800 726 666

UPDATE
CONTRACTS

The interpretation of contracts

A lordly extrajudicial conflict, and its potential significance for New Zealand

BY **TIM SMITH** AND **SAM CATHRO**

Those engaged in the ever controversial topic of contractual interpretation will be intrigued by the current spat between Lords Sumption and Hoffman playing out in their recent extrajudicial musings. In the latest *Law Quarterly Review*, Lord Hoffman has sought to defend the interpretive philosophies that have predominated in the UK (and even more in New Zealand) in recent years from stinging criticisms levelled at both those philosophies – and Lord Hoffman's personal role in expounding them – by Lord Sumption. (See Lord Hoffman, "Language and Lawyers" (2018) 134 LQR 553, responding to Lord Sumption, "A Question of Taste: The Supreme Court and the Interpretation of Contracts" (2016-2017) 8 *The UK Supreme Court Yearbook* 74, previously given as a speech at Keble College, Oxford (Harris Society Annual Lecture, Keble College, Oxford, 8 May 2017)).

The contextual approach to interpretation that Lord Hoffman championed has permeated the common law system's most significant decisions on contractual interpretation in recent years – with the UK Supreme Court decision in *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896 (*ICS*), often being seen as the start of a paradigm shift. In that case, Lord Hoffman, giving the leading judgment, applied five "principles" to reach an interpretation of the contract which the Court of Appeal had rejected on the basis that it was "not an available meaning of the words". Lord Sumption attacked this approach, and claimed that since Lord Hoffman's departure from the bench, the UK Supreme Court has "begun to withdraw from the more advanced positions seized during the Hoffman offensive, to what [Lord Sumption sees] as a more defensible position".

So far New Zealand's highest courts have embraced Lord Hoffman's contextual approach, and arguably taken it even further, perhaps reaching a high point in the Supreme Court decision in *Vector Gas Ltd v Bay of Plenty Energy Ltd* [2010] NZSC 5, [2010] 2 NZLR 444 (*Vector v BOPE*), as discussed below. However, the potential impact of the Sumption-Hoffman debate is, of course, yet to be seen. But the arguments will, no doubt, be fully re-rehearsed in the leading courts in both the UK and New Zealand when the right cases arise. And there are already hints here suggesting a subtly shifting judicial mood abroad.

Lord Sumption's criticism

Lord Sumption's chief criticism of contemporary interpretive approaches is that the trend towards admitting contextual evidence as an interpretive tool, and invoking commercial common sense to elucidate meaning, has led courts to depart from the true meaning of the contract. Instead, he says, the contextual approach amounts to the court substituting a meaning which accords with its own view of reasonableness.

Lord Sumption began his criticism boldly, suggesting that judges are out of touch with the reality of business and the real intentions of contracting parties. He asserted:

> "Judges are fond of speculating about the motives and practices of businessmen in drafting contracts. It is a luxurious occupation. The rules of admissibility protect them from the uncomfortable experience of being confronted by actual facts."

He continued "[o]ne would think that the language that the parties have agreed provided the one sure foundation for a hypothetical reconstruction of their intentions." However, his Lordship suggested that the recent focus on "commercial common

Photo by Tambako the Jaguar

sense", and the "surrounding circumstances", in particular, has departed from this "sure foundation".

Addressing the first of these concepts, Lord Sumption was disdainful of the view that commercial common sense can be a valid interpretive tool. His Lordship disapproved of Lord Diplock's much-cited pronouncement in *Antaios Compania S.A. v Salen A.B.* [1984] 3 WLR 592 that "if detailed semantic and syntactical analysis of words in a commercial contract is going to lead to a conclusion that flouts business common sense, it must be made to yield to business common sense."

Lord Sumption notes "[a]s a canon of construction, this seems both unnecessary and wrong", explaining that the focus on commercial common sense here is a means by which the court overrides the language of the contract, rather than interpreting it. In his view, Lord Diplock's reference to commercial common sense does not illuminate a distinction between a literal interpretation and a commercial one. Rather, it presents a choice between "an approach to contractual construction which elucidates the meaning of the words, and an approach which modifies or contradicts the words in pursuit of what appears to a judge to be a reasonable result." This seems to be a thinly veiled suggestion that judges use "commercial common sense" as an excuse to substitute their view of a reasonable outcome for the true agreement which is reflected by the language adopted by the parties.

Addressing "the surrounding circumstances", Lord Sumption specifically attacks Lord Hoffman – and in particular the fourth and fifth "principles" of contractual interpretation Lord Hoffman elucidates in *ICS* – namely that:

> "(4) ... [T]he meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean... [and]
>
> (5) ... if one would conclude... from the background that something must have gone wrong with the language, the law does not require judges to attribute to the parties an intention which they plainly could not have had."

Lord Sumption suggests that Lord Hoffman's real conclusion (which can be identified by "[l]ooking through his seductive prose") is that "the background may be used to show that the parties cannot as reasonable people have meant what they said, so that the court is entitled to substitute something else."

Lord Sumption goes on to criticise several cases decided by the Supreme Court of the UK, which he suggests exemplify this approach. The Supreme Court's decision in *Rainy Sky SA v Kookmin Bank* [2011] 1 WLR 2100 is, in Lord Sumption's view, the high point of this trend. In that case, the court preferred a construction of a bank guarantee that was consistent with the court's view of the commercial purpose of the transaction, rather than adopting the meaning Patten LJ in the Court of Appeal had considered was the "natural and obvious construction". Lord Sumption explains, with reference to the result in that case "[w]e are simply leaving judges to reconstruct an ideal contract which the parties might have been wiser to make, but never actually did." Speaking in blunt terms, he stated that "[e]xperience has suggested that the loose approach to the construction of commercial documents which reached its highest point in *Rainy Sky* may have done a disservice to commercial parties by depriving them of the only effective means of making their intentions known".

Unsurprisingly in light of those comments, Lord Sumption's view is that the language chosen by the parties ought to be the primary indicator of the contract's meaning, and that contextual information, or information of what would make commercial common sense, ought to have little weight in the interpretive process. He explains that the language chosen by the parties should speak for itself, and the more care that has gone in to drafting the contract, the less the surrounding circumstances are likely to be useful. The fact that a particular term may appear harsh or unreasonable may not necessarily mean it was unintended. It may instead have been decided in exchange for another concession, or "because the deal was concluded at 3am and one of the parties was more interested in going to bed than in the finer points of drafting".

Lord Hoffman's response

In response, Lord Hoffman traverses the theoretical justifications for his interpretive approach, beginning with an examination of the way we use language to convey meaning. He dismisses Lord Sumption's view as "nostalgia" for the old rules of interpretation, and sets out a detailed case for why we must not have an "irrebuttable presumption that the author of a document has used language in its strict and primary sense, irrespective of the strength of background evidence that shows this could not have been the case" (which Lord Hoffman suggests is in reality what Lord Sumption is advocating for). While Lord Hoffman agrees that we should not depart from conventional language merely because to do so would be fair or reasonable, he implores:

> "... let us not go back to the dark ages of word magic, of irrebuttable presumptions by which the intentions of a user of language are stretched, truncated or otherwise mangled to give effect to the "admissible", "strict and proper", "natural and ordinary" or "autonomous"

meanings of words, even when it is obvious that it was not the meaning the author, actual or notional, could have intended."

A swing back to "plain meaning"?

Regardless of which side of the line one falls, there is force to Lord Sumption's arguments that recently courts have begun to retreat from the contextual approach advocated by Lord Hoffman in *ICS* and adopted by the Supreme Court in *Rainy Sky*. For example, in *Arnold v Britton* [2015] UKSC 36, Lord Neuberger cautioned that:

" ... the reliance placed in some cases on commercial common sense and the surrounding circumstances... should not be invoked to undervalue the importance of the language of the provision which is to be construed .... Unlike commercial common sense and the surrounding circumstances, the parties have control over the language they use in a contract. And, again save perhaps in a very unusual case, the parties must have been specifically focusing on the issue covered by the provision when agreeing the wording of that provision."

And there are hints that a similar shift may also be occurring in New Zealand, shifting slightly away from *Vector v BOPE*. In that case, McGrath J explained that Lord Hoffman's principles in *ICS* were quickly adopted in New Zealand, and Tipping J, in a much cited judgment (with which Wilson J, at least in part, appeared to agree), went further, concluding that evidence of parties' pre-contractual negotiations is relevant and admissible when that evidence is capable of shedding objective light on meaning (as well as just being evidence of the background and subject matter of the contract). Lord Hoffman had not gone so far in *ICS*, where his Lordship explained that the "law excludes from the admissible background the previous negotiations of the parties and their declarations of subjective intent" (in his third principle).

Tipping J in *Vector v BOPE* also referred to the Supreme Court's earlier decision in *Gibbons Holdings Ltd v Wholesale Distributors Ltd* [2007] NZSC 37, [2008] 1 NZLR 277 that post-contractual conduct can also be admissible evidence of the meaning of a contract. Such evidence remains inadmissible in England and Wales (save for specific exceptions).

The Supreme Court also considered that business common sense was relevant to the meaning of the contract. When considering whether the price of gas in the contract was inclusive or exclusive of transmission costs, McGrath J noted that the conclusion that the price was inclusive of transmission costs "would be so extraordinary that it would flout business common sense". Blanchard J explained that interpreting the price as being exclusive of transmission costs was the "only commercially sensible conclusion". This was despite the fact that parties had agreed gas was to be supplied on the terms of an earlier agreement, under which the price did include the cost of transmission.

Vector v BOPE has not been overruled, and, given that it now seems to be an established canon (despite the inconsistencies between judgments), it would seem unlikely to be. However, there are now suggestions that it might have represented a high point for the contextual approach in New Zealand. The Supreme Court hinted as much in *Firm PI 1 Ltd v Zurich Australian Insurance Ltd t/as Zurich New Zealand* [2014] NZSC 147, [2015] 1 NZLR 432. Citing *Vector v BOPE* the majority noted that adopting a "purposive or contextual approach is not dependent on there being an ambiguity in the contractual language". The majority also stated, however, that: "where contractual language, viewed as a whole in the context of the whole contract, has an ordinary and natural meaning, a conclusion that it produces a commercially absurd result should be reached only in the most obvious and extreme of cases."

Similarly, in *Lakes International Golf Management Ltd v Vincent* [2017] NZSC 99, [2017] 1 NZLR 935, the Supreme Court declined to look at extrinsic evidence, because the term in question was "crystal clear" on its face, and there was no "genuine issue of interpretation." In *M v H* [2018] NZCA 525, the Court of Appeal noted, with reference to *Arnold v Britten*, that "[t]he text is of central importance" and the "clearer the natural meaning, the more difficult it is to justify departing from it". Finally, in *The Malthouse Ltd v Rangatira Ltd* [2018] NZCA 621, after endorsing the Supreme Court's comments in *Firm PI 1 Ltd*, the Court of Appeal explained that "only in a very rare case should a court depart from the plain meaning of a closely negotiated commercial contract to achieve a commercial purpose." It overturned the approach taken in the High Court on the basis that the commercial purpose referred to was "far from self-evident".

Counsel will, no doubt, increasingly seek to rely on the comments made by Lord Sumption to bolster the argument that courts should be slow to look outside the words of the agreement to extrinsic material, or to invoke the principle of commercial common sense. The extent to which this results in Lord Hoffman's seminal judgments in the UK, and *Vector v BOPE* in New Zealand, becoming increasingly highly distinguished in the pejorative sense remains to be seen ■

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UPDATE
COMMERCIAL LAW

Price fixing without fixing the whole price

The court of appeal decision in *Lodge*

BY **JOHN LAND**

On 23 November 2018 the Court of Appeal issued its decision in *Commerce Commission v Lodge Real Estate Ltd* [2018] NZCA 523. The court held that a number of Hamilton's biggest real estate agencies breached the prohibition on price fixing in the Commerce Act by reaching an arrangement to move to "vendor funding" of the cost of advertising properties on Trade Me. This decision overturned the decision of Justice Jagose in the High Court ([2017] NZHC 1497) who had held that the arrangement was not sufficient to fix or control the price of real estate agency services.

The Court of Appeal decision is significant as it shows that is possible to breach the Commerce Act by agreeing with your competitors on just a relatively small proportion of the overall price of a good or service. The reasoning of the court also shows that you can breach the Commerce Act even where you and your competitors reserve a discretion as to the overall price you might charge. Agreeing on a starting price, or even on a component of a starting price, will likely amount to price fixing.

The clarification of the scope of what amounts to price fixing under the Commerce Act is particularly important given the bill currently before Parliament which will criminalise price fixing. That proposed criminalisation will add jail terms of up to seven years as potential consequences of breaching s 30 in addition to the suite of civil remedies already available.

An application for leave to appeal the Court of Appeal's decision has been made to the Supreme Court.

The trigger

In 2013 Trade Me changed its fee structure for property listings. Previously, real estate agent offices could pay a capped monthly fee for unlimited property listings on the site. This fee structure was replaced with a fee per individual property listing. This change substantially increased the overall cost of listings. For example, Lodge Real Estate faced an expected increase in annual Trade Me listing fees from about $9,000 to $220,000.

The substantial increase in cost was the cause of much concern by real estate agents. At a meeting of Hamilton real estate agents in September 2013, the agencies agreed in principle to stop absorbing the cost of Trade Me advertising and move in January 2014 to a model of "vendor funding" of the cost of Trade Me listings.

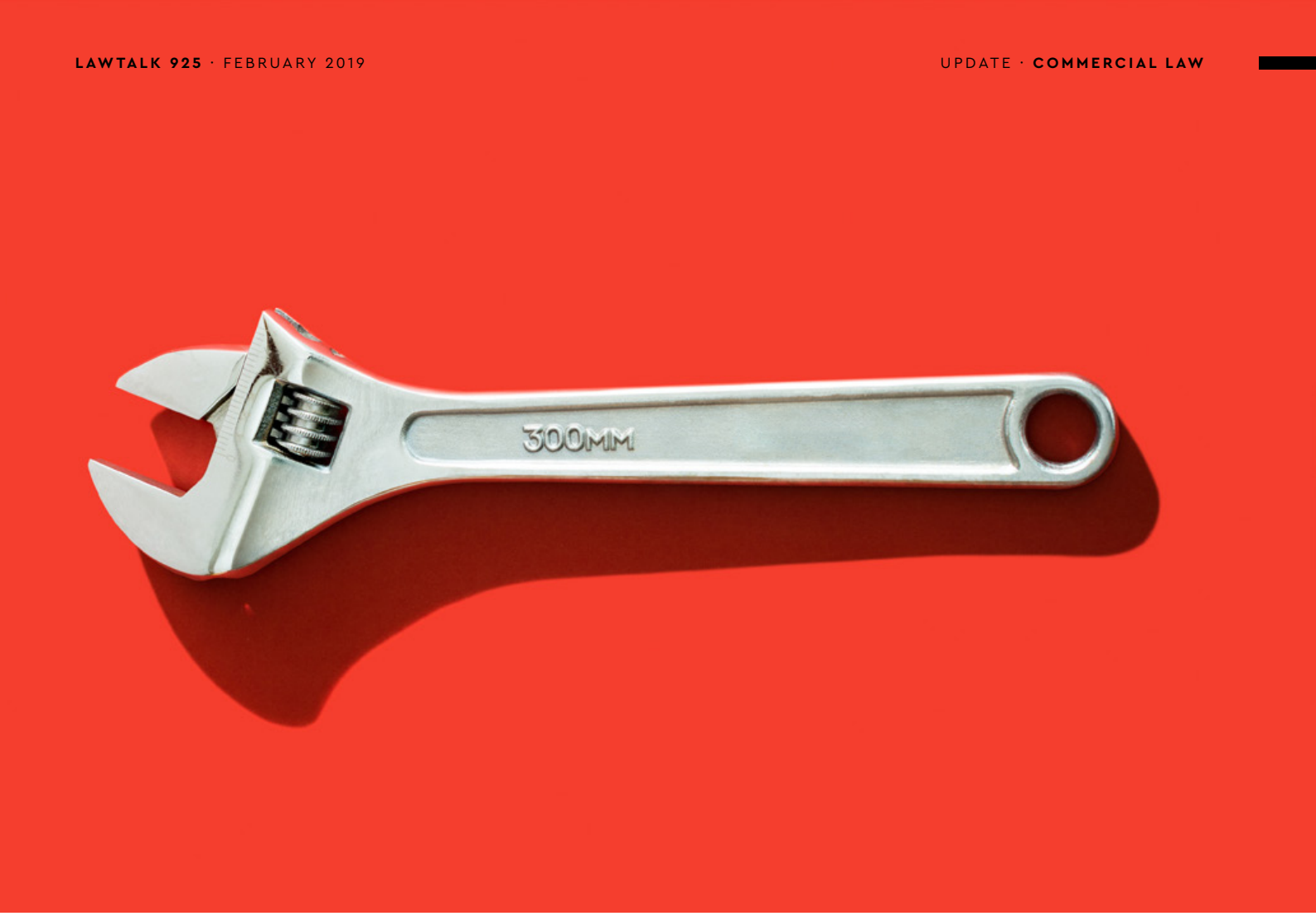
The Commerce Commission alleged that this agreement amounted to unlawful price fixing between the competing real estate agents under s 30 of the Commerce Act. The case was considered under the old form of s 30 prior to the recent amendments to that section passed in August 2017. However, the recent changes to s 30 would not have made any difference to this case. Both the old and new form of s 30 effectively prohibit competitors entering into a contract, arrangement or understanding containing a provision that has the purpose, effect or likely effect of fixing, controlling or maintaining price.

Both the old and new form of s 30 effectively prohibit competitors entering into a contract, arrangement or understanding containing a provision that has the purpose, effect or likely effect of fixing, controlling or maintaining price.

The issues

The Court of Appeal had to consider two issues. First, was there in fact an "arrangement" between the real estate agents? Secondly, if there was such an arrangement, did a provision of that arrangement have the purpose or likely effect of controlling price?

On the question of whether there was an arrangement the Court of Appeal agreed



with Justice Jagose. There was an arrangement between the real estate agents that they would *not* absorb the cost of Trade Me's proposed new listing fees and that subsequent Trade Me listings would be vendor funded.

The consideration

There was some debate before the Court of Appeal about the correct test for deciding whether there is an "arrangement" for the purpose of the Commerce Act. The court indicated that it preferred the approach of the majority of the court in its previous decision in *Giltrap City Ltd v Commerce Commission* [2004] 1 NZLR 608. That is, there is an "arrangement" between competitors where there is a consensus among them giving rise to mutual expectations as to how those competitors would act. By contrast, the minority approach of McGrath J in *Giltrap* would have required a finding of a "moral obligation" before there could be said to be an arrangement. The Court of Appeal in *Lodge* had concerns about a moral obligation test, as moral assessments were inherently unpredictable and imprecise.

The court accordingly applied the language of "consensus" and "mutual expectations" used by the majority in *Giltrap*. The court held that there was evidence that real estate agents appreciated the competitive risk that would occur if not all agents moved to vendor funding. The court considered the purpose of the real estate agents' meeting in September 2013 was to avoid that competitive risk by reaching a "consensus" as to how the agencies would respond to the change in Trade Me fee structure, and that this resulted in "mutual expectations" that all agents present would commence vendor funding of Trade Me listings. That was enough to amount to an arrangement.

However, importantly the court in *Lodge* does also seem to recognise a requirement that there must be some "commitment" entered into by the parties before they can be said to have entered into an arrangement. The court accepted that to establish an "arrangement", there needed to be more than just consciously parallel conduct. The court said (at [68]): "There has to be an element of conditionality in an understanding, that is the parties recognise that they will commit to a course of future conduct on the basis that others are making the same or a similar commitment and act in accordance with that commitment."

Such a commitment-based test for an arrangement brings the test somewhat closer to that applied in Australia. There, the courts have been strict in requiring evidence of a clear commitment (moral or otherwise) before finding that there is an arrangement or understanding (*Apco Service Stations v ACCC* (2005) ATPR 42-078). However, the relevant evidence to establish such a test is different. In New Zealand, the question of whether there is a commitment between the parties will be determined objectively from outward appearances (see *Lodge* at [66]-[67]). By contrast, in Australia the courts are more concerned with whether the parties subjectively felt they were under a commitment to act in a certain way.

The second issue that the court had to consider in *Lodge* was whether the arrangement had the purpose or likely effect of fixing or controlling the price of real estate agency services. In the High Court, Justice Jagose had said there was no controlling of price because the real estate agents still retained a discretion as to whether they would in particular cases bear some or all of the Trade Me listing cost.

The Court of Appeal, however, said the fact there was such a discretion did not mean there was no purpose or likely effect of controlling price. Section 30 could be breached even if the arrangement allowed the parties discretion as to the end price for real estate agent services.

The judgment

The Court of Appeal's judgment makes it clear, if it wasn't already, that competitors agreeing on a starting price or list price amounts to price fixing. The court noted by way of example "... [If] the retailers of motor vehicles in a street all agreed on an asking price for a certain model, aware that this was the asking price only and the end price after negotiation could be quite different, that would have an anti-competitive effect..." (at [88]).

Accordingly, agreeing with competitors on a starting position for price will breach s 30 as the starting position of any vendor as to price will have some effect on the ultimate agreement on price. In the view of the Court of Appeal, all that is needed to breach s 30 is an arrangement "that will be likely to interfere with the competitive setting of price" (see [90] and [91]).

The Court of Appeal therefore considered the arrangement between the Hamilton real estate agents controlled price as the agencies agreeing in principle to move to vendor funding was an agreement on a starting position which affected price (of real estate agent services) adversely for customers.

The court, however, had to deal with an important argument by Lodge Real Estate that the Trade Me fee was not a sufficiently significant proportion of the price of real estate agent services so as to have the effect of controlling the overall price. A similar argument had succeeded in one Australian case (*ACCC v Olex Australia* [2017] ATPR 42-540).

In *Olex,* an alleged agreement between suppliers of electrical cable as to a cable cutting fee was held not to have the likely effect of controlling the overall price for supply of electrical cable. The cable cutting fee was not a materially significant proportion of the overall price for supply of cable. Further, not only was the cable cutting fee in question only a modest component of the overall price of electrical cable, the price of cable supplied by each manufacturer was not visible to each other. Accordingly, there was no commercially realistic ability to control the price of cable by controlling the price for cutting services.

The Court of Appeal in *Lodge*, however, considered that the cost of advertising on Trade Me *was* a significant part of the price of the services provided by the Hamilton agencies. That was especially so if no property sale eventuated. Even if a property sale did occur, the strong reaction by the Hamilton agencies to the change of policy by Trade Me was an indication of the importance of the cost as a part of the price of the agents' services.

Further, the Court of Appeal also considered the move to vendor funding could be seen as the removal of a "discount or allowance" (in the form of the provision of free advertising on Trade Me). (It can be noted that the definition of price fixing in the Commerce Act extends to agreements concerning any "discount, allowance, rebate or credit" in relation to goods or services – see now s 30A(2)(b)).

Conclusion

While I agree generally with the Court of Appeal's analysis on the question of s 30, and the end result in *Lodge*, there is one statement in the judgment (not essential to the court's view) that I disagree with. The Court of Appeal judgment in my view goes too far in asserting without qualification that under s 30 "price also extends to the component parts of a price" (at [99]). As the decision in *Olex* shows, there can be situations where agreement on a component part of price could have no conceivable impact on the overall price of a good or service, or on competitive dynamics in the market.

Although s 30 has now been replaced by a wider prohibition on cartel conduct, that prohibition includes a definition of price fixing that is in essentially the same terms as the prohibition on price fixing in the old s 30. Accordingly, the guidance provided by the Court of Appeal in *Lodge* remains relevant under the new prohibition.

Further, the guidance will also be relevant in considering the proposal for criminalisation of cartel conduct. The Commerce (Criminalisation of Cartels) Amendment Bill had its second reading on 25 October 2018. That bill will insert a new criminal offence provision, s 82B, into the Commerce Act. Section 82B is based on a definition of cartel conduct (including price fixing) that is the same as that applying for civil remedies already applicable under the Commerce Act. The only additional requirement for an offence to be committed is the addition of a mens rea requirement- in the case of price fixing, the defendant must have intended to engage in price fixing.

Given the potentially severe consequences of breaching s 30, the *Lodge* decision suggests the need for greater care in any discussions between competitors. To be safe, businesses should not discuss any aspect of price with their competitors and should avoid any arrangements with competitors that interfere with competitive price setting.

Lodge makes it clear that businesses cannot assume that discussions about price are OK just because the competitors involved retain a discretion as to the final price of the service or product in question. Further, *Lodge* suggests it is unwise for competitors to even discuss the price of a small component of an end service or product. ■

John Land is a senior competition law specialist and commercial litigator at Bankside Chambers in Auckland. Formerly a partner of Kensington Swan for 20 years, he can be contacted on (09) 379 1513 or at john.land@bankside.co.nz

UPDATE
FRANCHISING

What is good faith in franchising?

Part 2

BY **DEIRDRE WATSON**

In Part 1 (*LawTalk* 924, December 2018, pages 30-32), I explored the concept of good faith in franchising, including referring to some of the more commonly expressed attempts at a definition of "good faith". I also discussed some of the Australian law and the Australian Franchising Code of Conduct which has, since 2015, included a compulsory obligation on all parties to a franchise agreement to act in good faith towards each other.

New Zealand doesn't have any franchise specific legislation and it has very little case law which touches on the topic of good faith in a franchise agreement.

Franchisors who are members of the New Zealand Franchise Association must act in accordance with its codes. Those codes contain a requirement that a franchisor must "act in an honourable and fair manner in all its business dealings" and "adopt the highest standards of competency, practice and integrity in all matters pertaining to franchising". This is layperson's wording, but would be broad enough to cover good faith and indeed arguably goes much wider.

Therefore, whilst there is no franchise specific legislation in New Zealand, where there is a contractual requirement on a franchisor under their franchise agreement to abide by the New Zealand Franchise Association codes, then there is a clear contractual requirement on the franchisor, enforceable by the franchisee, to act in a fair and honourable way and with integrity.

The Franchise Association is however a voluntary association, whose members account for only roughly one quarter of all franchise systems in New Zealand. Not all franchisors are therefore subject to their code, and not all lawyers acting for franchisees know about the codes.

Where there is a contractual requirement on a franchisor under their franchise agreement to abide by the New Zealand Franchise Association codes, then there is a clear contractual requirement on the franchisor... to act in a fair and honourable way and with integrity

The elements

Assuming there is an implied obligation of good faith in a franchise agreement, what are the elements of good faith or its counterpart, bad faith?

The Australian Competition and Consumer Commission (the ACCC) has published some explanatory material on its website by way of guidance to the franchise industry in Australia as to what will amount to good faith in the franchise context.

In fleshing out the sort of conduct that would demonstrate a lack of good faith, it asks the following useful questions:

- Have you been honest with the other party?
- Have you considered the other party's interests?
- Have you made timely decisions?
- Have you consulted with the other party regarding issues/proposed changes?
- Do you have a contractual right to act in that way?
- Are you imposing any conditions on the other party? Are those conditions necessary to protect your interests?
- Where a dispute has arisen, have you attempted to resolve the dispute (either directly with the other party, or through mediation)?
- Are you acting for some ulterior purpose?

The ACCC then goes on to provide a couple of hypothetical examples of good and bad faith. One such example is where a term of the franchise agreement requires the franchisee to follow specific procedures for invoicing and reporting. The franchisee experiences difficulty in accurately processing invoices using the software and hardware that is provided by the franchisor. Meetings fail to resolve the issues, leading to a breakdown in the relationship. Subsequently, the franchisor issues breach notices, relying on non-compliance with the invoicing and reporting requirements. However, there is a lack of clarity around whether or not the franchisee has failed to follow these requirements. It is proven that the franchisor's breach notices are motivated by desire to simply terminate the franchise agreement.

In this instance, the franchisor *has not* acted in good faith because it was acting for an ulterior purpose.

In another example provided by the ACCC, the franchisor of a takeaway food franchise gives the franchisee the right to operate a franchise business at a specific location but not within an exclusive territory. There is no limit on the franchisor's ability to open new stores and the franchisee did not have the right to be considered to own and operate additional stores. However, under the franchisor's expansion policy, an existing franchisee would be eligible to operate another store if they satisfy certain eligibility criteria, including compliance with the franchisor's standards of operation. During the agreement, reviews of the franchisee's store indicate that it is not meeting the necessary standards. This leads to issues between the franchisee and the franchisor and several months later the franchisor decides to open up a new store in the vicinity of the franchisee's store, due to perceived commercial benefits of expanding its system.

There is a lot franchisees have to lose when franchisors and franchisees do not have a meeting of minds about operational matters, resulting in termination of the franchise agreement.

In this situation, the ACCC posits that the franchisor *has* acted in good faith because all of its actions are motivated by perceived commercial advantage to the franchisor in opening new stores. In other words, the franchisor is merely acting in the pursuit of its own legitimate business interests.

This latter type of situation is not atypical of many franchise disputes where there is controversy about the operation of the franchise following a process of consultation but where franchisees nevertheless allege there has been a lack of good faith simply because the franchisor will not accept their arguments. In reality, while the conduct of the franchisor certainly appears at face value unreasonable and draconian, the franchisor is simply acting in the pursuit of its legitimate business expansion interests.

Strong note of caution: *Supatreats*

A recent case before the High Court of New Zealand highlights the mess franchisees and franchisors can get into when they don't see eye to eye about what is best for the business following consultation, and when neither side will back down. It's another example (such as *Health Club Brands Ltd v Colven Botany Ltd* [2013] NZHC 428) of franchisees coming off far worse than the franchisor when there is an operational dispute leading to termination of the franchise agreement. It sounds a strong note of caution to practitioners advising franchisees to

follow a conservative route when seeking to resolve disputes about operational matters.

The essential facts in *Supatreats Asia Pte Ltd v Grace & Glory Ltd* [2018] NZHC 1612 were that in 2017 the master franchisor and the New Zealand master franchisee fell out over a proposed change by the master franchisor to the approved supplier of product to franchise stores. The master franchisee argued that the proposed new supplier was too expensive and that its product was inferior to that provided by the existing supplier. It is natural that the master franchisee would want to protect its franchisees from increased costs and exposure to an inferior product. It is also understandable that the master franchisee would have taken issue with these proposed changes.

When neither side would back down, the master franchisor formally requested that the master franchisee and franchisees purchase product from the new approved supplier and, when they failed to do so, a breach notice was issued. Following further breach notices issued for non-payment of marketing and franchise fees, eventually the master franchise agreement was terminated.

Amidst all the strife, lawyers acting for the master franchisee advised the master franchisor that all of the franchisees had surrendered their franchise agreements. A company was incorporated by the cousin of the director of the master franchisee. That company then set up a similar business with new branding. Franchisees began to rebrand their businesses to that new branding. Materials put in evidence by the master franchisor supported the assertion that there was a marked similarity between the master franchisor's stores and the stores run by the franchisees under the new branding.

With the master franchise agreement having been terminated, the master franchisor sought to enforce the post termination provisions of the franchise agreement, one of which was that all franchise agreements held by the master franchisee would need to be assigned to the master franchisor. The master franchisor sought orders from the court, amongst other things, seeking to restrain any of the defendants from trading as the new branded business.

The defendants made the submission that the master franchisor repudiated the franchise agreements by insisting on its franchisees using a nominated supplier. There is no record of the basis for that submission, but it is assumed this would have been developed on the grounds of a lack of good faith. That said, there is no record in the judgment which highlights or mentions any dishonesty or lack of integrity on the part of the master franchisor or even any evidential matter which might have suggested a lack of consultation, or an improper or arbitrary motive.

By the time the case came before the court, it was clear that the full rollout of the new brand was largely complete. The system involved a large number of franchisees, not all of whom were before the court. In finding that the balance of convenience was in favour of the master franchisor, and in granting the injunctions, Wylie J stated [at 79] that he regarded it as significant that the defendants had rebranded with their eyes open and despite express notice from the master franchisor. One can only imagine that the outcome of the decision would have led to some difficult circumstances for the master franchisee and franchisees.

There is a lot franchisees have to lose when franchisors and franchisees do not have a meeting of minds about operational matters, resulting in termination of the franchise agreement. It is therefore understandable why, increasingly, practitioners are advising franchise clients to use dispute resolution provisions in their agreements to reach a negotiated outcome about the operation of the franchise that at least brings with it contractual certainty regarding the future. When parties are in a relational contract such as a franchise agreement, disputes don't always have to lead to breach notices and termination. Unless there has been a loss of trust and confidence between the parties, there is no reason why dispute resolution should not ensure the relationship repairs itself and remains on foot. ■

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Ensuring ethnically diverse workers do not suffer greater injury and illness

BY **MAI CHEN**

On 14 December 2018, the Superdiversity Institute for Law, Policy and Business released its latest report: *Health and Safety regulators in a superdiverse context: review of challenges and lessons from United Kingdom, Canada and Australia*.

Commissioned by WorkSafe, New Zealand's primary workplace health and safety regulator, and supported by the Ministry of Business, Innovation and Employment, the report examines how regulators in those three countries are challenged by and are working to improve the health and safety outcomes for their culturally and linguistically diverse (CALD) populations, which tend to have a significantly higher rate of injury.

Superdiversity is defined as "the substantial increase in the diversity of ethnic, minority and immigrant groups in a city or country". New Zealand is already superdiverse – and is becoming increasingly so. How can New Zealand effectively meet the health and safety needs of the increasing number of ethnicities, cultures, and languages which make up our population so they do not suffer worse health and safety outcomes than the general population?

ACC claims data shows a significantly elevated incidence rate of work-related claims for injury and illness among Pacific peoples, and people identifying as Middle Eastern, Latin American or African, as compared to European people. While Asian people have a lower claim rate than European people, research has found that there are significant language and other barriers to accessing ACC services among Māori and Asians – so this data is unlikely to reveal the full extent of workplace injury and illness amongst CALD people in New Zealand. (Statistics NZ "Injury Statistics – work-related claims: 2017" (August 2018)).

Workers (and employers) arriving from very different health and safety cultures often have different expectations, and think and behave differently from those born in New Zealand. There is an urgent need to understand these issues, particularly as the 2018 Census is likely to show an even greater increase in New Zealand's superdiversity.

The Superdiversity Institute's report researches three countries which, like New Zealand, follow the Robens model, which is a self-regulatory and flexible framework (Robens Committee Safety and Health at Work: Report of the Committee 1970-1972 (July 1972), available at *www.mineaccidents.com.au*), and who have similar levels of superdiversity.

Superdiverse cities have been defined as those where migrants comprise more than 25% of the resident population, or where more than 100 nationalities are represented. The three countries examined in the report, and particularly their major cities, more than meet this definition. In London, 33% of residents were born outside the United Kingdom; in Toronto, 46.1% of the population was not born in Canada; and in Melbourne, 40.2% of the population was not born in Australia. This compares to Auckland where 44% of the population was not born in New Zealand (2013 Census).

Superdiversity is defined as "the substantial increase in the diversity of ethnic, minority and immigrant groups in a city or country". New Zealand is already superdiverse – and is becoming increasingly so.

Still a long way to go

Our research found that while the overseas regulators have taken some steps towards reducing injury and illness amongst CALD workers, there is still a long way to go. Canada had done the most, followed by the United Kingdom and then Australia. For example,

in Ontario, following an accident involving the death of four migrant construction workers, an Expert Advisory Panel on Occupational Health and Safety was appointed to "take a broad look at the [occupational health and safety] system from end to end." This prompted sweeping reforms and a strategic approach emanating from a legislatively mandated focus on workplace injury and illness prevention, as opposed to the previous focus on enforcement. This included the appointment of a committee to advise on vulnerable (including CALD) workers, whose recommendations were adopted by the regulator and included targeting outreach to specific newcomer and migrant worker groups (See page 110 of the report onwards).

There is a real opportunity for WorkSafe and New Zealand to show international leadership in this area. The research found a gap in proactive and strategic measures to ensure that CALD workers are not more vulnerable to workplace injury and illness than other workers. Most regulators took reactive and ad hoc measures once accidents had happened and focused on communication and language initiatives. The report finds that there are many more critical but less intuitive measures WorkSafe should consider to more effectively protect CALD workers.

Recommendations

I review below the less intuitive of the 15 key recommendations made in the report which are critical for overcoming the greater vulnerability of CALD workers to injury and illness.

Defining the problem, and consistency of definitions

None of the countries surveyed had or used consistent definitions for CALD workers. The term "CALD" actually captures many different types of people, from temporary guest workers, and refugees at one end of the spectrum, new migrants in the middle, to 1.5/second/third generation migrants and the "visually diverse" at the other end. But in each of the three countries surveyed, the overwhelming focus was on "new migrants" – and even then, the definition of "new" varied significantly, between and even within countries. In New Zealand, definitions of "recent migrant" across seven different public sector bodies used nine separate definitions ranging from under two to less than ten years of residence.

This definitional confusion poses significant problems for regulators. It is important to have accurate definitions to determine who is included/excluded in each definition, to determine the real size of the problem. Definitions used also have an important effect on what data is collected, from whom and the analysis generated from such data. It is also important that these definitions are used consistently, not just within WorkSafe but also in other government agencies who play a relevant role in reducing workplace injury.

Prioritise mental health of CALD workers arising from discrimination

The report identifies mental health as the most urgent issue and gap facing CALD workers. The Health and Safety at Work Act 2015 has given increased visibility to mental health being as important as physical health and safety. Cultural safety is critical to preventing high levels of occupational stress. Mental health issues arise from working in a new country without any family, communications issues for those without English as a first (or any) language and unlawful discrimination on the basis of ethnicity, race, and religion. Migrants' mental health also suffers from verbal and physical abuse from those they work with and from clients/patients (see Ha do Byon and others, "Language Barrier as a Risk Factor for Injuries from Patient Violence Among Direct Care Workers in Home Settings: Findings from a US National Sample" (2017) 32(5) *Violence and Victims* (ePub)). A study of home care workers in the United States found an association between having a language barrier and suffering an injury from patient violence. This is confirmed by a recent study on internationally qualified nurses in New Zealand by Professor Margaret Brunton.

Being overqualified for a role due to lack of local experience or credentialing issues can also impact

detrimentally on new migrants' mental health. Therefore new migrants' downward mobility increases their risk of both physical and mental injury (an issue raised by several of the Canadian regulators).

A recognition and understanding of the greater stresses on the mental health of CALD workers is needed to ensure that it is properly identified as an issue, so that data is collected to allow targeted solutions to prevent it, and to address its effects.

Taking a strategic and system-level approach to upstream factors

The report finds that achieving good health and safety outcomes for CALD populations requires regulators to take a strategic and joined up approach to address the systemic issues that cause greater health and safety vulnerability.

CALD workers are disproportionately found in precarious employment, including the gig and shadow economy, with heightened injury rates, disease risk, hazard exposures, and decreased worker (and manager) knowledge of health and safety responsibilities. Where professional CALD workers, particularly migrants, are unable to get other roles, they can be at risk of increased physical injury as a result of performing physically demanding manual labour for the first time.

Mental health issues arise from working in a new country without any family, communications issues for those without English as a first (or any) language and unlawful discrimination on the basis of ethnicity, race, and religion.

These issues cannot be solved by WorkSafe alone. But consistent with its statutory function "to promote and coordinate the implementation of work health and safety initiatives by establishing partnerships or collaborating with other agencies or interested persons in a coherent, efficient and effective way" (s 190(j) Health and Safety at Work Act 2015), WorkSafe can work with other agencies which do have the ability to address credentialing and other structure of work issues.

Use inspections and investigations to improve outcomes for CALD workers

WorkSafe can better use enforcement mechanisms like assessments to prevent workplace injury and illness amongst CALD workers if

inspectors understand how the different cultures of CALD employers or workers may have contributed to accidents. Cultural values are relevant to understanding the causes of an incident and why employers or workers behaved as they did, which can include different perceptions of risk, or religious factors such as fatalism and that God will determine the outcome regardless.

WorkSafe can also use inspections to increase health and safety compliance among ethnic and minority businesses. To be effective in workplaces with CALD employers or workers, WorkSafe needs to have multilingual inspectors; and use inspection strategies and techniques to mitigate issues common among vulnerable CALD workers, like the fear of being sent home if they raise a health and safety issue, or being concerned about not respecting their elders or being disloyal to their employer.

Strengthen protections from reprisal

The report refers to Ontario's measures to strengthen the protection of workers from "reprisal" for reporting health and safety breaches. The challenges identified by the Ontario regulator related to low worker knowledge of the anti-reprisal provisions, reluctance by the regulator to prosecute (owing to evidentiary challenges if the worker or/and employer speak poor English), delays in prosecution, and limited support being provided to victims.

In New Zealand, sections 88-90 of the Health and Safety at Work Act prohibit the taking of adverse action against a worker for a "health and safety reason". A person who contravenes this requirement commits an offence and is liable to a fine of $100,000 if they are an individual or $500,000 if they are a company. Although there have been no prosecutions since the Act came into force, anecdotal evidence suggests that CALD workers are likely experiencing the same issues as those in Ontario which have resulted in the need for more measures to strengthen the protection for workers from adverse conduct.

WorkSafe needs to collect data on the prevalence of reprisals for staff reporting health and safety breaches. It needs to ensure that CALD workers and employers are educated on their rights and responsibilities and publicise the ability to report health and safety concerns or incidents confidentially.

Provide more guidance to employers (CALD, and non-CALD)

A big gap identified in the report concerns employers who are themselves CALD. Despite research showing that *CALD employers* are less aware of health and safety regulations, there have been limited targeted initiatives overseas to address this issue. They do not know how to avail themselves of the help being offered by public agencies. This gap is of particular concern because of the crucial role of employers/Persons Conducting a Business or Undertaking (PCBUs) in the Act as the primary duty holder. It is also of concern because ethnic businesses often employ ethnic workers who are at increased risk of workplace injury and illness, as new migrant employers and employees have been found to have less understanding of health and safety obligations and rights.

WorkSafe should develop targeted resources and training for ethnic employers, and use intermediaries (such as chambers of commerce or ethnic advocacy groups) to help deliver these resources and training.

More also needs to be done to help *all employers* meet their obligations to CALD workers, particularly by helping them understand the impact of cultural and linguistic diversity on workplace health and safety. For example, understanding that CALD workers are more likely to take health and safety advice from their peers.

WorkSafe has already recognised the impact of cultural differences to employers in an indirect fashion through a recent enforceable undertaking accepted by Woods Glass, following an incident in January 2017 where a Filipino worker was injured. Woods Glass undertook to revise its induction programme so that it is more effective for workers who are not native to New Zealand, including simpler English, offering interpretation services on request, and addressing the cultural differences between New Zealand and other ethnicities with particular regard to health and safety and employer expectations (WorkSafe New Zealand "Enforceable undertaking – Woods Glass" (31 July 2018)).

More also needs to be done to help *all employers* meet their obligations to CALD workers, particularly by helping them understand the impact of cultural and linguistic diversity on workplace health and safety.

Apply a Superdiversity framework to WorkSafe, including prioritising diversity in recruitment and training

The report shows a lack of strategic and proactive approaches taken by overseas regulators to assessing the impact of superdiversity on workplace health and safety, so that those impacts can be addressed.

It recommends that WorkSafe apply a superdiversity framework to the whole organisation and its statutory role, to identify where the needs are, and to make its education, engagement, and enforcement activities more effective for CALD workers and employers. This includes recruiting more CALD staff, and growing the cultural capability and intercultural communication abilities of existing staff to understand the unique vulnerabilities of CALD workers and employers, and to engage effectively with them.

Other recommendations

The other recommendations in the report *not* reviewed above include improving the data collected about CALD workers; taking an intersectional approach to vulnerable work factors; greater engagement with CALD communities; focusing on communications and language (including using professional translators and not just CALD workmates, using plain English, diagrams, photos, signs and symbols); encouraging high risk sectors like construction, forestry, agriculture and manufacturing to take the lead on addressing the vulnerabilities of CALD workers; and better measurement of the effectiveness of CALD specific measures.

New Health and Safety at Work Strategy 2018–2028

The principles of the Government's new *Health and Safety at Work Strategy 2018-2028*, released in December 2018, are well-suited to applying a superdiversity framework to health and safety at work, and set an excellent platform to improve workplace health and safety outcomes for CALD workers. With the new Strategy, and this new report as a roadmap, we look forward to seeing the mainstreaming of superdiversity in health and safety for the benefit of *all* workers and employers in New Zealand.

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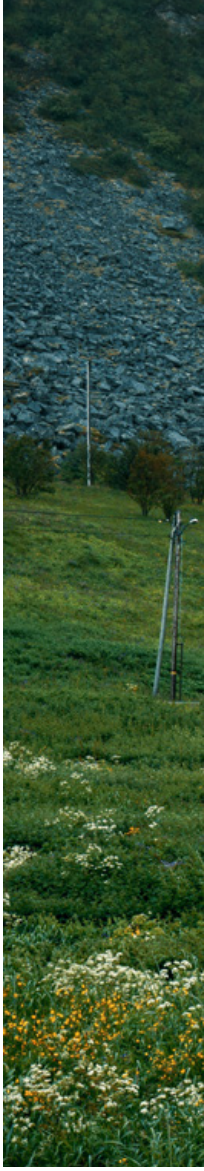
UPDATE
PROPERTY LAW

Rectification and indefeasibility of title



BY **TIM HERBERT**

The equitable remedy of rectification of documents (expressly preserved by ss 22(3)(b) of the Contract and Commercial Law Act 2017) enables a court to correct a document so that it properly reflects the intention of the original parties to that document.

The document in question need not be purely contractual – documents creating an interest in land fall within the equitable remedy. Examples of this are *Wellington City Council v New Zealand Law Society* [1988] 2 NZLR 614 (HC); affirmed [1990] 2 NZLR 22 (CA) (lease); *Westland Savings Bank Ltd v Hancock* [1987] 2NZLR 21(mortgage); *Green Growth No. 2 Ltd v Queen Elizabeth the Second National Trust* [2016] NZCA 308; [2016] 3 NZLR 726 (covenant over land) (CA).

Such documents inevitably cause remedial tension, because the interest in the land invariably changes hands. One or both of the original parties to the document may cease to be parties to it.

Where the interest does not change hands, rectification should not cause a problem. There is no good reason why the document creating the interest should not be altered to reflect properly the original parties' common contractual intention.

Successors in title

What, though, as to a successor in title to the original party? Should the document still be capable of correction, when the successor may have purchased on the basis of the document as registered? Does the situation change if the successor knew of the possibility of rectification?

These were the questions that arose before the Supreme Court in *Green Growth No. 2 Ltd v Queen Elizabeth the Second National Trust* [2018] NZSC 75.

The respondent (a statutory trust) sought rectification of a covenant that had been granted to it by the appellant's predecessor in title. The covenant defined a parcel of "protected land" with reference to an aerial photograph that was, erroneously, omitted when the covenant was registered against the land's title.

It was accepted that if the original parties to the covenant had applied to the court, they would have had been entitled to rectification. However, the appellant now asserted that that any remedy was barred, amongst other things, due to its right to indefeasibility of title under the Land Transfer Act 1952 (LTA).

While the High Court and the Court of Appeal determined that rectification should be available, despite that indefeasibility, the Supreme Court ruled that it should not.

It began its analysis by noting the position in equity:

- The assignee of a contract takes subject to equities, and thus is susceptible to a claim to rectification;
- A person who acquires an interest in land will be able to exercise any right to rectify a prior agreement affecting that interest which that person's vendor had;
- Where the competition is between a party with a right to rectify and a subsequent equitable owner of the land, the principles of indefeasibility are not engaged.

It then turned to the legal position.

As to this, it determined that the appellant was protected by s 62 and s 182 of the Land Transfer Act 1952, namely the indefeasibility provisions. Section 62 reads (as relevant):

> "Notwithstanding the existence in any other person of any estate or interest … the registered proprietor of land … shall, except in case of fraud, hold the same subject to such encumbrances, liens, estates, or interests as may be notified on … the register … but absolutely free from all other encumbrances, liens, estates or interests whatsoever…"

Section 182 reads (as relevant):

> "Except in the case of fraud, no person contracting … with … the registered proprietor of any registered estate or interest shall … be affected by notice, direct or constructive, of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding, and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud."

The Supreme Court held that the appellant was not guilty of fraud, even though it had been aware of the likelihood of claim for rectification. This conclusion

was on the basis of the last clause of s 182; the availability of a claim for rectification being determined to be an unregistered interest for these purposes.

Australian authority followed

In making its determination, the Supreme Court distinguished two authorities from the lower courts and decided instead to follow Australian authority.

In *Merbank Corp Ltd v Cramp* [1980] 1 NZLR 721 (SC), a charging clause had been omitted in a mortgage deed, that was then registered. Other charges were also registered. Barker J, in the New Zealand High Court, held that rectification was available, because any third parties would not be prejudiced. It was distinguished on the basis that indefeasibility of title was not specifically addressed and that the charging clause could have been implied into the deed, with no need to resort to rectification.

In *Child v Dynes* [1985] 2 NZLR 554 (HC) a restrictive covenant was incorrectly drafted. The successors in title to the original parties sought rectification. Barker J held that rectification was available, again on the basis that there was no prejudice. Once more, his decision was distinguished on the basis that indefeasibility of title was not really addressed and that the covenant could be construed to have the intended effect. This was the approach which the Court of Appeal took when the decision was appealed [1985] 2 NZLR 561 (CA).

The Supreme Court instead followed the decision in the New South Wales Supreme Court: *Tanzone Pty Ltd v Westpac Banking Corp* [1999] NSWSC 478, where the court upheld indefeasibility above any equity of rectification.

The fact that such an equity of rectification might not prejudice a successor in title or be adverse to its interests was found to be irrelevant.

Deceptively good news

The decision of the Supreme Court is deceptively good news as to commercial certainty. If a document creating an interest in land is registered against the title to that land then a successor in title will take subject to that interest, as registered, without fear that the document may be rectified in due course to alter that interest. The only exception is fraud, which, by virtue of s 182, does not include knowledge of the existence of a right to rectification.

However, what the Lord giveth with one hand, he taketh away with the other. In a continuing trend, the Supreme Court in *Green Growth* in effect determined that the covenant was wrongly expressed, and interpreted it in a way such that its function became very close to that of rectification. As it noted (at [55]):

> "As a matter of logic, construction should come before rectification. This is because construction involves interpreting the words used in a document to reflect the intention of the parties. Conversely, rectification achieves this by altering the words used. If the words used in a document as it stands can be construed to reflect the intention of the parties, there is no need to alter the document to reach the same result."

So, while a purchaser may take a transfer of land knowing of the possibility of rectification but understanding that rectification will not be effected, it may still see the error in the registered document remedied by the courts under the guise of "construction".

Rectification requirements are exacting, demanding cogent evidence of the parties' common intention. Construction, however, has different requirements.

As a result, it appears that the courts will be trying to fulfil the common intention of the parties on the basis of the standard tools of interpretation (the wording of the document and its background factual matrix) rather than adducing and assessing actual evidence of that intention.

Quite why this is a preferable course to the more stringent approach required under rectification remains to be seen. Arguably, the approach has the potential to further distance the enforcement of rights from the intentions of the original parties and their informed successors. ■

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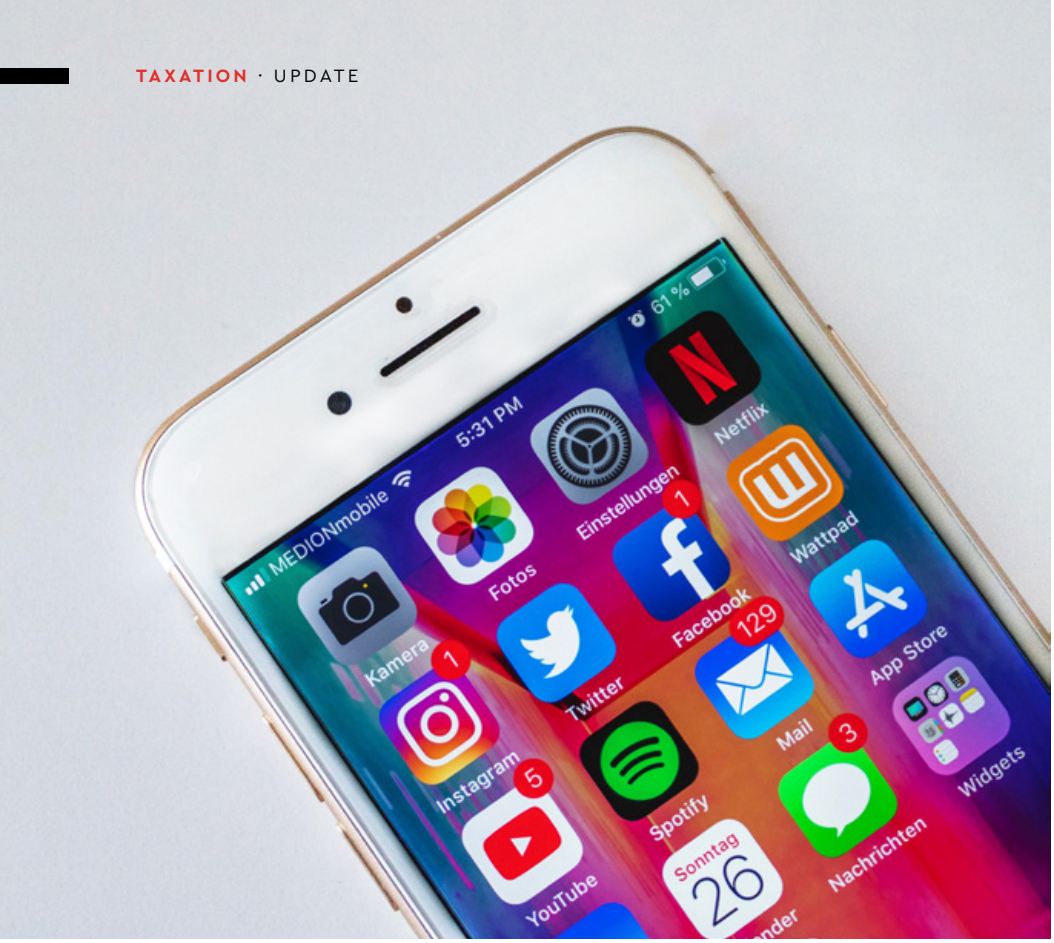

UPDATE
TAXATION

Taxing the digital behemoths

BY **LYNDA HAGEN**

THE RISE OF MASSIVE DIGITALLY-based multinational businesses like Google, Facebook and Airbnb has created an as-yet unsolved problem for governments worldwide: how can they be made to pay their fair share of tax?

These companies and other digital giants pay little tax in the countries they do business in, mainly because they ply their trade exclusively on the worldwide web, with little or no taxable presence within national borders. As a result, governments are missing out on most of the tax revenue available from the estimated US$7.7 trillion global digital economy.

Efforts to produce solutions nationally and multilaterally, through the OECD, have so far produced little. A recent European Union report estimates that the average multinational digitalised business pays an effective tax rate of 9.5%, much lower than other non-digital multinationals.

But Auckland University Professor Craig Elliffe is not daunted: he aims to research and develop new solutions to the challenge of taxing digital business, aided by New Zealand's leading legal research award, the New Zealand Law Foundation International Research Fellowship Te Karahipi Rangahau ā Taiao.

Professor Elliffe was awarded the 2018 Fellowship, worth up to $125,000 for study in New Zealand and overseas, on a topic that will make a significant contribution to an area of law in New Zealand. A leading international tax expert and member of the Government's tax working group, he has taken on a huge, complex task: "It's a moving feast. I know I have bitten off a big topic."

He aims to review alternatives being tried worldwide, but he acknowledges that meaningful change will require a coordinated global solution and, potentially, radical new approaches.

"Technology has outpaced the way we have traditionally taxed businesses. The divergence was initially very slow, now it's very fast. But in responding, we have to be mindful of the established order – it's important to quarantine any changes to the digital economy, but then what belongs to the digital economy?"

A possible solution he says is to change the definition of "permanent establishment" – that is, the degree of connection that a non-resident has to a country. Traditionally this is determined by physical presence, such as a fixed place of business or warehousing, factors largely absent for web-based digital businesses.

"We would need a new, much broader, more sophisticated definition of things like creation of value so we could deem a permanent establishment in order to have taxing rights. Some countries are moving towards this – for example, the UK is looking at a new withholding levy regime. But no one country can do that, it has to be the OECD to propose a global solution. The EU was planning a digital services tax but has scrapped it because it can't get agreement – Ireland, Germany and the Scandinavian countries were opposed."

Craig Elliffe says care must be taken so that countries like New Zealand are not disadvantaged: "We don't want the international order to change so rapidly that we would find exports taxed in the country of importation. That risks opening up a Pandora's box that could extend beyond digital services to disrupt the international order of tax treaties and global taxation."

He will work with politicians, tax policy officials and academics, and he aims to produce a monograph with Cambridge University Press, symposia and a public conference to discuss solutions.

For more information on the Law Foundation's Fellowship, head to the 'Apply for Scholarships' tab on the website home page: *www.lawfoundation.org.nz* ■

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UPDATE
WILLS

Family protection claim by estranged children in multimillion dollar estate

BY **SHARON CHANDRA**

The 2018 High Court case of *Cartwright v Joseph* [2018] NZHC 2383 (11 September 2018) involved a multi-million dollar estate where a family protection claim was made by children who were estranged from the deceased. The deceased had made no provision for his daughters, Cathy and Sarah, in his will and went so far as to explicitly state the reason why no provision was made for Cathy.

Cathy and Sarah were children to the deceased's first wife. Mr Harrison began a subsequent relationship with Nita Joseph, which lasted for more than 20 years. Their relationship ended by way of Mr Harrison's death.

Under his will, the entire estate was to go to Nita. The will specifically expressed a wish not to provide for Cathy due to his estranged relationship with her and the court considered this portrayed a "chronic sense of bitterness and betrayal" by the deceased. Sarah was not specifically provided for in the will and was only to receive a bequest in the event that Nita was not living (which was not the case).

As a result of the lack of provision for them from the estate, Cathy and Sarah made a family protection claim for proper maintenance and support.

Much of the evidence focused on Sarah and Cathy's respective relationships with their father. Both initially had a close relationship with him, but it deteriorated at a young age after their parents separated.

By the time of the deceased's death, Cathy's relationship with her father had deteriorated to the point where she had been estranged from him for 30 years. While Sarah had maintained some form of a relationship, it was found to be unstable and strained.

At issue

The executors conceded there had been a breach of moral duty. However, the issues for the court were twofold:

1 The quantum of compensation; and
2 How best to compensate Sarah and Cathy given the majority of the estate was tied up in land.

Sarah and Cathy sought provision of 15% from the estate and the executors sought 6.5%. It was accepted by both children that they were not in financial need. In deciding quantum, the court considered an award of 10% was appropriate in the circumstances, in keeping with the authorities to date.

The court then turned its mind to assessing the form the award should take. A balance was required between allowing Sarah and Cathy to each receive their 10% share while still allowing Nita to remain on the land, given that was the deceased's express wish.

A number of various options were traversed and the court came to the conclusion that one of the parcels of land should be sold in order to pay a cash sum to Sarah and Cathy.

This case is interesting in that it serves a reminder for practitioners that, even in circumstances where a parent is estranged from a child and there is a clear expressed wish not to provide for that child, a moral duty is still owed. ■

This case is interesting in that it serves a reminder for practitioners that, even in circumstances where a parent is estranged from a child and there is a clear expressed wish not to provide for that child, a moral duty is still owed.

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ALTERNATIVE DISPUTE RESOLUTION

Consensus Building, Part 5

Reaching agreement and holding the parties to it

BY **PAUL SILLS**

In this final article on the Consensus Building Approach (CBA) to dispute resolution we look at the last two steps in the process: reaching agreement and implementation – holding the parties to the commitments that they have made. Too often participants are focused only on getting to an agreement so they can report their success to their constituents. In the rush to say "we did it" the representatives can forget to look closely at the practicality of implementation and whether the agreement reached is one which the various interest groups are likely to keep.

An example might be where warring factions rush into agreeing the terms of a ceasefire. That news is of significance to both sides, and the negotiators and politicians want to be able to say they have made a breakthrough in the war. However, matters can become worse if little attention is given to how to make the ceasefire actually work. All too often a return to hostilities happens quickly, which significantly impacts the morale of both factions and makes a further ceasefire all but impossible.

Let's look at how to tie these two steps together to give any agreement reached a greater chance of long-term success. When the facilitator thinks that the groups are nearing agreement, they should consider the use of straw polls to ascertain how close the various interest groups are to each other. Armed with that information the facilitator can work on the strategy for getting the participants into a position of unanimous (or nearly unanimous – 80%) consent.

Moving to commitment

As the CBA process nears an end, the facilitator needs to move the group discussion from option generation to commitment to a single text agreement that will be signed by all parties. If a straw poll or other process used by the facilitator indicates that not everybody is yet in agreement, the facilitator may opt to work with the parties on conditional commitments. These are useful where, for example, one interest group thinks a contingency is likely to occur, but the balance of the group thinks it is highly unlikely. The agreement entered into by the parties can take account of this unlikely contingency by factoring it into the terms. That contingency would be recorded as an 'if/then' statement.

On the other hand, if the work of the facilitator reveals that it is not contingencies that are causing a party or parties to resist reaching agreement but the fact that they remain unhappy with the terms, another approach is required to get an agreement across the line. In this instance the party or parties who object to the agreement in its current form need to first articulate why they object. This should reveal to the other participants what interests the objecting group has that they feel are not being met. Secondly, the objecting party or parties must suggest changes to the agreement that would meet their interests *but at the same time* will not result in the agreement as amended becoming unacceptable to the other groups. That is, they need to put forward amendments that – if agreed – would result in them saying yes to the agreement but will not result in others who were in a "yes" position to now say no. That is, an agreement that meets the interests of all.

Too often participants are focused only on getting to an agreement so they can report their success to their constituents. In the rush to say "we did it" the representatives can forget to look closely at the practicality of implementation

Before the agreement is signed the participants need to consider challenges that will arise post-signature and during the implementation phase that could derail the agreement. That is, they need to identify the obstacles that are likely to arise and how to deal with those obstacles. Both the participants in the CBA process and the agreement itself need to be up to this challenge. Put another way – how do you get an agreement that both the participants and the stakeholders that they represent would rather have succeed than look for ways to make it fail?

Ensuring interests are met

The first and most obvious point is to use the process to ensure that everyone's interests are being met.

A key step to achieving this is to ensure that the representatives are, in fact, checking in with their interest groups throughout the negotiation process, keeping them informed, and bringing their interests to the table. The facilitator should also be checking that the representatives of the groups are personally committed to both the process and the agreement that they are negotiating. For example, if the facilitator suspects that a particular participant does not have his or her heart in the agreement, for whatever reason, the facilitator needs to be able to address that issue directly with the stakeholder group and, if necessary, get the group to agree to send a new negotiator.

Another tool is to get the agreement ratified by the interest groups. As part of this process, the facilitator would check with each group that they understand the terms of the agreement and are committed to its final form. It is key during this process that those with the mandate to act on behalf of any of the interest groups ratify the agreement. For example, if one of the interest groups is the legislative body and one of the steps following agreement will be a change in public policy, it is pointless having the agreement ratified by anyone other than the person or persons within the group who can effect the legislative change. To do otherwise risks an immediate veto of the agreement. Rather than reach agreement on something that may be vetoed, it would be better to reconvene the CBA process to discuss further modifications that may be necessary to get those in authority across the line. That is, it is essential to know whether those in authority agree and will support what is put before them before the agreement is finalised and the process brought to an end.

A binding final agreement

Finding ways to make the final form of the agreement binding is critical for implementation. Again, if the agreement is on public policy then legislative changes, regulatory changes or public policy changes may result which would bring the agreement into law – ensuring it is enforceable. Even if the negotiation is about a private matter, consider making the negotiated agreement into a binding contract that each of the interest groups legally commits to. Make sure that a dispute resolution provision is in the agreement in the event of issues arising.

The parties to an agreement reached by the CBA process should build into the agreement regular monitoring of implementation, thereby enabling issues to be addressed as soon as they arise. The facilitator can have an ongoing role in that respect by acting as the neutral person running that monitoring process and managing the communication that needs to stem from it.

The idea of monitoring the progress of an agreement and testing the health of the relationships between the parties as time progresses is not unique to the CBA process. The next article will look at this idea of monitoring agreements to keep relationships healthy and prevent issues from building up and becoming unnecessary conflict. ■

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Lawyers complaints Service

Acted for more than one client

Names used in this summary are fictitious.

A LAWYER HAS BEEN FINED $2,000 FOR acting for more than one client where there was more than a negligible risk that he was unable to discharge the obligations owed to all clients.

As well as imposing the fine, a lawyers standards committee ordered the lawyer, Banton, to pay $1,000 costs.

Banton acted for two companies on a transaction where company A sold a parcel of leasehold land to company B.

The principals of company A were existing clients of Banton. Those principals were also shareholders (via a trust) of company B, as were Mr and Mrs Slate and Mr and Mrs Bounderby.

Banton prepared a Shareholders Agreement for company B. This confirmed, among other things, that company B was incorporated to purchase the land and develop the property into 14 residential sections.

The agreement also provided that the Slates and Bounderbys were to jointly contribute to the purchase price for the land by a loan to the company. Funds required for development were to be advanced by the shareholders pro rata to the parties' shareholding.

The Slates held 25% of the shares, the Bounderbys 25% and the trust for the other shareholders 50%.

Following the transaction the parties in company B fell out, according to Mr Slate who complained about Banton to the Law Society. That was as a result of the other parties (those in the trust) disclosing that they had no funds to contribute to the venture.

Mr Slate also told the committee that there was a provision in the lease for the land (the property was leased from a Māori Incorporation) restricting further subdivision of the land – restricting the ability to subdivide it into 14 separate lots.

The committee determined that Banton has breached rule 6.1 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, and that was unsatisfactory conduct.

Rule 6.1 states that "a lawyer must not act for more than one client on a matter in any circumstances where there is a more than negligible risk that the lawyer may be unable to discharge the obligations owed to one or more of the clients".

In this case, the risk of the interests of Banton's historical clients (the principals of company A) being advanced at the expense of the proposed purchaser client (company B) "was, in the view of the committee, more than negligible".

There was a more than negligible risk that there was a "significant disparity in the knowledge of the [company A] directors in that [Banton] did not know whether or not the directors of the purchaser company were fully appraised of all information relevant to the transaction and proposed development," the committee said.

"Even if they were aware of all the information, was [Banton] able to discharge his obligations to [company B] given he acted for [company A] as well?"

In relation to such situations, it has been observed (in LCRO 290/2013 at para [30]) that: "A lawyer has training and experience to recognise issues that have not been addressed by a client or to recognise unexpected consequences flowing from instructions given by a client. In those cases a lawyer must be proactive in offering advice rather than merely implementing a client's instructions without further inquiry".

In this case, Banton was not assisted by Mr Slate's seeming reluctance to obtain independent legal advice despite numerous requests to do so.

"However, even if Mr [Slate] had obtained independent advice and elected to proceed that would not have overcome the fundamental barrier to [Banton] acting for both vendor and purchaser companies where the lawyer's professional obligations of loyalty and confidence to all clients are unable to be discharged," the committee said.

Sexual harassment of two employees of a law firm at work social functions

A LAWYERS STANDARDS COMMITTEE HAS made a finding of unsatisfactory conduct against a lawyer who sexually harassed two law firm employees at work social functions. The committee's decision has been published on the Law Society's website (at For the Community/Standards Committee decisions).

While a standards committee has previously made a finding against a lawyer for sexually harassing a lawyer on the other side of a matter, this decision concerning Mr X is the first to tackle sexual harassment in the workplace and the type of unacceptable behaviour that has been broadly publicised in the wake of the #Me Too movement.

As the decision details, one of the barriers in responding to sexual harassment in the legal workplace is that, with limited exceptions, the current disciplinary regime is primarily focused on the protection of consumers of legal services. It does not directly address sexual harassment or a lawyer's conduct when they are not engaged in providing legal services to a client unless it is sufficiently serious to justify their removal from the profession.

This issue was highlighted in the report of the Regulatory Working Group chaired by Dame Silvia Cartwright. The report was accepted by the Law Society's Board and its recommended changes to the current disciplinary regime are being progressed

by the Law Society. This will include consultation with the legal profession.

In the meantime until any changes are implemented, committees must work within the existing framework to address unacceptable conduct.

How did the committee address sexual harassment by Mr X at workplace social functions?

Did Mr X's behaviour occur at a time when he was providing regulated services?

One of the central issues addressed in the committee's decision is its jurisdiction to make a disciplinary finding against Mr X in relation to conduct that is not expressly captured by the Lawyers and Conveyancers Act 2006 (LCA). The LCA is predominantly consumer focused and targeted at behaviour that occurs 'at a time when the lawyer is providing regulated services' (see sections 7(1)(a), 12(a) and 12(b)).

If a lawyer's behaviour is unconnected to the provision of regulated services, a strict reading of the LCA suggests it can only be addressed if it would justify a finding that the lawyer is not a fit and proper person or is otherwise unsuited to engage in practice as a lawyer (see section 7(1)(b)(ii)). This distinction is important as if the conduct is unconnected to regulated services, it can typically only be addressed by a misconduct finding imposed by the New Zealand Lawyers and Conveyancers Disciplinary Tribunal (the Tribunal) – unless it is found to be a breach of a relevant rule or regulation relating to the provision of legal services as per section 12(c) of the LCA.

However, if the conduct is found to have occurred at time when the lawyer is providing regulated services, the ability to address the lawyer's behaviour under the LCA is broadened and a finding of unsatisfactory conduct (or misconduct) can be imposed if the conduct is adjudged to be either unacceptable, unprofessional, unbecoming, dishonourable, disgraceful or a reckless or wilful breach of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (Rules).

In addressing this issue the committee considered a number of High Court and Tribunal cases that have broadened the reach of the LCA when responding to conduct that is considered to be 'connected' with the provision of legal services.

The committee applied the reasoning in the High Court decision of *Orlov v New Zealand Lawyers and Conveyancers Disciplinary Tribunal* [2014] NZHC 1987; [2015] 2 NZLR 606 and other cases, in determining that Mr X's behaviour towards two of his firm's employees at work organised social functions was not 'unconnected to being a lawyer' or 'clearly outside the work environment'. As a result the committee considered it had a broadened jurisdiction to consider Mr X's conduct.

It was relevant that Mr X's behaviour occurred at social events organised by the lawyer's firm (on the firm's premises and offsite with transport arranged by the firm) and attended by employees of the firm. All attendees at the functions were present because they worked for a law firm which provided regulated services. It was apparent the work functions were intended to assist the functioning of the law firm by building supportive internal relations, rewarding staff for their efforts, enhancing job satisfaction and staff retention.

Having found the conduct occurred a time when Mr X was providing regulated services, the committee was able to consider whether it amounted to unsatisfactory conduct under s 12(b) of the LCA or misconduct under s 7(1)(a). It decided on the facts of the case that Mr X's behaviour amounted to conduct which would be regarded by lawyers of good standing as being unacceptable and therefore amounted to unsatisfactory conduct under s 12(b).

Even if Mr X was not providing regulated services, did his behaviour fall foul of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008?

The committee also considered, if its reasoning set out above was incorrect, whether Mr X could be guilty of unsatisfactory conduct for breaching his ethical obligations under the Rules.

In doing so, the committee adopted a broad interpretation of 'professional dealings' and 'lawyer's dealings' in Rule 10. Rule 10 states:

"Chapter 10

"Professional dealings

"10 A lawyer must promote and maintain proper standards of professionalism in the lawyer's dealings."

It is well established that standards committees can make a finding of unsatisfactory conduct (s 12(c) of the LCA for a breach of the Rules) if the conduct occurred at a time when the lawyer was not providing regulated services (*EA v ABO* (LCRO 237/2010) such as a breach of the Rules.

The committee determined that 'professional dealings' and 'lawyer's dealings' (in Chapter 10 of the Rules) are not limited to circumstances where the lawyer is providing regulated services. It considered 'lawyer's dealings' are broader than 'regulated services' and that Rule 10 can apply in every circumstance in which a lawyer is expected to act with proper standards of professionalism.

The committee considered the scope of Rule 10 extends to the 'business of law' and that 'lawyer's dealings' is broad enough to include a lawyer's dealings with his or her clients, fellow partners or directors, fellow employees, suppliers and others on a range of matters relating to the business of a legal practice, including such things as staff recruitment and training.

The committee ultimately concluded that each of the instances of the lawyer's conduct amounted to a breach of Rule 10, being a failure to promote and maintain proper standards of professionalism in the lawyer's dealings as a lawyer. It also determined, in relation to one of the incidents,

the lawyer's conduct amounted to a further breach of the rule for failing to treat another lawyer with respect and courtesy.

The committee's determination

The committee unanimously determined that Mr X's conduct amounted to unsatisfactory conduct. However, it was divided on the reasons for its determination.

Because of a number of mitigating factors the committee did not consider that a charge of misconduct before the Tribunal was justified. Mr X had taken full responsibility for his actions, including promptly resigning from the firm at which he was a partner at the time of the conduct. He had not disputed the alleged conduct before the committee. He had shown significant contrition and remorse. He had taken – and was taking – a number of positive steps to ensure there was no repeat of the behaviour. This included seeking treatment from a mental health specialist. The two employees concerned had indicated they were satisfied with the way the firm dealt with the matter internally. Mr X had no prior disciplinary history with the Law Society.

The committee ordered that Mr X be censured for his unsatisfactory conduct and imposed a fine of $12,500. Being over 80% of the statutory maximum of $15,000, the fine reflected the seriousness of Mr X's conduct. He was also ordered to pay costs of $2,500.

What guidance can be taken from the decision?

The committee's interpretation and reasoning in relation to 'conduct that occurs at a time when the lawyer is providing regulated services' and its application of Rules 10 and 10.1 has clarified the breadth of what might be considered unsatisfactory conduct and misconduct under the LCA.

This means that for lawyers, this decision could assist in clarifying their reporting obligations under Rules 2.8 and 2.9. Rule 2.8 provides that if a lawyer has reasonable grounds to suspect another lawyer has been guilty of misconduct they must make a confidential report to the Law Society. Support and guidance on whether and when lawyers are required to report a lawyer's conduct can be found in the Bullying and Harassment in the Legal Profession section of the Law Society's website.

This decision makes it clear that there can be disciplinary consequences for lawyers who engage in unacceptable behaviour, such as sexual harassment, in the workplace.

Anyone who has been harmed by or is concerned about such conduct in a legal workplace can call Law Care 0800 0800 28 or go to the Law Society website section for support and guidance.

Fined for not inquiring before filing caveats

Names used in this summary are fictitious.

A LAWYER HAS BEEN FINED $8,500 FOR failing to inquire whether there were "caveatable interests" before filing caveats on land titles.

When imposing the fine, a lawyers standards committee noted that it appeared that the lawyer, Boythorn, had "no basis to lodge the caveats other than the assertions in his client's instructions".

Boythorn acted for a development company (company A) and company A's new directors.

Company A's directors asserted that the company's agents – director Mr Gradgrind and silent director Ms Veller – improperly used company funds to purchase properties and to make mortgage payments for their own personal benefit but not for the benefit of the company.

The new directors claimed an interest in those properties and Boythorn lodged caveats on behalf of company A and its current directors.

Lodging caveats simply on the basis of client instructions was against the purpose of rule 2.3 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, the committee said.

Rule 2.3 says a lawyer may not use legal processes for an improper purpose. A footnote to the rule includes some examples of how a lawyer may breach the rule. Those examples include: "registering a caveat on a title to land knowing that (or failing to inquire whether) there is not a 'caveatable interest' on the part of the client to be protected".

In this context, rule 2.3 "is to prevent lawyers from assisting clients to improperly interfere with the property rights of the registered proprietor of a property," the committee said.

The committee noted that in order to discharge his duties under rule 2.3, Boythorn was not required to establish that his client had caveatable interests.

"What [Boythorn] has to show is that he had an honest belief based on reasonable grounds that his client had caveatable interests in the affected properties. The part of this test (honest belief) is subjective, but the second part (reasonable grounds) is objective."

"In relation to the reasonable grounds element, the [standards committee] considers that Boythorn failed to make proper inquiries as to whether his client [company A] (and its new directors) had caveatable interests in the properties affected."

Boythorn said that he had lodged the caveat on the basis of his client's instructions, stating: "I have no ground to believe anything to the contrary".

"This falls well short of the reasonable inquiries expected of a solicitor in the position [Boythorn] found himself in," the committee said.

"For example, the [standards committee] would have expected [Boythorn] to have tested the veracity of his client's instructions by requesting his client to substantiate, with documentary evidence such as bank statements, the allegation Mr [Gradgrind] and Ms [Veller] misused [company A] funds to purchase properties for their own personal benefit."

In breaching rule 2.3, Boythorn 's conduct was unsatisfactory, the committee found.

As well as the $8,500 fine, the committee ordered Boythorn to pay $1,500 costs and to

undergo practical training at his own cost by undertaking a New Zealand Law Society Continuing Legal Education course dealing with e-dealings and, preferably, addressing caveats in particular.

The committee also ordered that a copy of its determination be provided to the Registrar-General of Land.

Frederick William Baker struck off

The New Zealand Lawyers and Conveyancers Disciplinary Tribunal has ordered that Auckland lawyer Frederick William Baker be struck off the roll of barristers and solicitors.

Mr Baker had pleaded guilty to a number of charges which related to the use of client funds from his firm's trust account to pay debts owed by the firm. He apologised to the Tribunal and said he took full responsibility for his actions.

As well as misusing client funds he failed to maintain required trust account records. He also transferred funds from the firm's Interest in Trust ledger when the funds were not available, causing the ledger to be overdrawn on a number of occasions.

From August 2013 until his offending was detected by a New Zealand Law Society inspector in September 2017, Mr Baker made a number of transfers from the trust account for which he processed false receipts.

"A law firm's trust account must be a completely safe repository for the money of its clients. It must never be overdrawn or even be at the risk of being overdrawn," New Zealand Law Society President Kathryn Beck says.

"No client lost money as a result of Mr Baker's actions. However, the Law Society has strict rules for operation of trust accounts and all lawyers and law firms who operate one must submit monthly reports and keep relevant records.

"A lawyer who intentionally falsifies reports or receipts or does not comply with any of the trust accounting rules is committing a gross breach of trust. There is absolutely no room for that in the New Zealand legal profession."

Instructing solicitor failed to pay barrister

Names used in this summary are fictitious.

An instructing solicitor failed to provide a lawyers standards committee any evidence that he entered into an agreement that he would not be responsible for a barrister's fees, the committee found.

The instructing solicitor, Zamiel, had therefore breached rule 10.7 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (RCCC).

Rule 10.7 states that "a lawyer who, acting in a professional capacity, instructs another lawyer, must pay the other lawyer's account promptly and in full unless agreement to the contrary is reached, or the fee is promptly disputed through proper professional channels. This rule applies to the accounts of barristers' sole and foreign lawyers."

In breaching the rule, Zamiel's conduct was unsatisfactory, the committee found.

The barrister, Baffin, agreed that he would render invoices to the client, who would then pay him direct. However, it appeared that the client stopped paying Baffin's invoices.

Baffin continued work on the retainer and the client's appeal concluded in early 2017. Baffin subsequently rendered a final account, including a 50% reduction in the fees.

After Baffin complained to the Lawyers Complaints Service, a standards committee invited the parties to explore the possibility of resolving the complaint by negotiation, conciliation or mediation.

Baffin agreed to mediation but Zamiel declined mediation because "it was unlikely to achieve any resolution as the issue of [Baffin]'s fees were between [Baffin] and [the client] alone."

It was accepted that Baffin's terms of engagement contained an express requirement that the instructing solicitor "is and remains personally liable" to Baffin for any fees.

Zamiel, however, said that it was "expressly or impliedly agreed" that he was not liable for the fees.

The committee said that Zamiel presented no evidence to show that such an agreement – whether express or implied – was ever reached with Baffin. If there was such an agreement, the committee considered that Zamiel would have retained a record of such, given that the default position under the RCCC was that Zamiel was otherwise liable for the payment of [Baffin's] fees.

Further, even if an agreement had been reached, Zamiel still had a professional obligation under rule 10.7.1 to use reasonable endeavours to recover Baffin's fees from the client if the fees remained unpaid. However, contrary to that rule, Zamiel proposed that any recovery of the fees was Baffin's responsibility.

"With respect, [Zamiel] appeared to have misunderstood the rationale behind the rule and professional obligations," the committee said. "The rule is necessary as a barrister sole is not entitled to sue for the recovery of fees whereas an instructing solicitor can."

Having made a finding of unsatisfactory conduct, the committee ordered Zamiel to pay Baffin $89,387, and to pay $500 costs.

Zamiel applied for a review by the Legal Complaints Review Officer (LCRO).

The LCRO (in LCRO 64/2018) upheld both the committee's finding of unsatisfactory conduct by Zamiel and the $500 costs order.

However, the LCRO reversed the committee's determination that Zamiel rectify his error and make a payment to Baffin. The LCRO noted that after the committee made its determination, the client lodged a complaint about the level of Baffin's fees.

"In the circumstances, it seems to me that the only practical approach is to reverse the committee's money order," the LCRO said.

"The same standards committee is inquiring into [the] fees complaint and

it will eventually determine whether [Baffin]'s fees were fair and reasonable, and whether there is a balance still owing to him."

The LCRO also ordered Zamiel to pay the Law Society $1,200 costs.

Lawyer disclosed confidential information

Names used in this summary are fictitious.

A lawyer has been censured for disclosing information about a sensitive domestic matter to a third party.

In addition to the censure, a lawyers standards committee also ordered the lawyer, Bansad, to pay $1,000 compensation to his client, Ms Stans, for the distress and anxiety she suffered as a result of his conduct.

Ms Stans had asked Bansad to draw up a deed of agreement between her and another individual and specifically asked that this remain confidential, especially with regards to her family, who were known to Bansad.

Ms Stans also asked that her will be updated. When Ms Stans asked about the cost, she was told by Bansad that "we will sort something out". It took over six months for the deed to be prepared and when it was, Ms Stans took it to be signed by the other party.

When she returned the deed to the firm, it was pointed out to her that it should also have been witnessed. An employee of the firm said they would enquire about "the authenticity" of the deed without the signatures having been witnessed. However, at the time of making her complaint, Ms Stans said she had not heard back about that.

Ms Stans subsequently received an invoice from the firm. This covered the deed and updating her will and included the other individual's name. The invoice was also copied to a family member without Ms Stans's authority, and despite her explicit instructions that the matter was to remain confidential.

Ms Stans complained that:

- Bansad's firm had breached her privacy by providing a family member with a copy of the invoice recording the other individual's name;
- she was still unsure of the authenticity of the deed; and
- that the total invoice was excessive considering the lack of timeliness and considerable effort she took to get anything done.

The committee found unsatisfactory conduct by Bansad in that:

- he did not provide his client, in advance, information in writing on the principal aspects of client service, including the basis on which fees would be charged;
- he breached his duty of confidence to his client by disclosing information about her to a third party without authority; and
- he failed to act competently and in a timely manner consistent with the terms of his retainer and duty to respond to inquiries in a timely manner.

While noting that the unauthorised disclosure was not intentional, the committee said it "considers that the disclosure was serious and careless and could have significant consequences for both Ms [Stans] and a third party".

After receiving the complaint, Bansad accepted the fact that issues relating to the deed needed to be looked at afresh and suggested that an independent lawyer review the matter at his cost.

A barrister instructed by Bansad's firm to review the deed provided a report to Ms Stans, Bansad and the committee.

The barrister noted that: "It is important … that both parties are strongly advised of the effect and implications of any such agreement and whether in fact such an agreement would be enforceable at the end of the day. Importantly it could have results unintended by the parties."

The committee noted that it appeared likely that Ms Stans was not advised that the deed, as drafted, was not necessary and may have unintended consequences.

As well as the censure and compensation order, the committee ordered Bansad to pay $500 costs.

Unsatisfactory conduct findings reversed

Names used in this summary are fictitious.

The Legal Complaints Review Officer (LCRO) has reversed findings of unsatisfactory conduct by a lawyer, but in doing so stated that the complaint "was justified".

Ms Waterbrook asked a lawyer, Turvey, to act for her on several matters, including the proposed sale of her apartment, enduring powers of attorney (EPoAs) and a proposed will. Ms Waterbrook also advised that she would shortly be looking at retirement village living and would "need advice about that".

Ms Waterbrook subsequently complained about a number of aspects of Turvey's service to the Lawyers Complaints Service.

Upon consideration of Ms Waterbrook's complaint, a lawyers standards committee considered that Turvey had breached a number of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (RCCC). The committee noted that:

- by drafting a will and medical directives without Ms Waterbrook's instructions, Turvey had contravened rule 3;
- Turvey's failure to respond to a number of Ms Waterbrook's emails in a timely manner contravened rules 3.2 and 7.2; and
- by failing to inform Ms Waterbrook that her EPoAs were ready to sign, Turvey had contravened rules 7 and 7.1.

Further, because there were "a number of shortcomings" with the client service Turvey provided the committee considered that Turvey's second invoice was not "fair and reasonable" in contravention of rule 9.

After making a finding of unsatisfactory conduct, the committee fined Turvey and ordered him to cancel the second of the two invoices he issued Ms Waterbrook.

On review

Turvey sought a review of the committee's determinations. In LCRO 116/2017, the LCRO noted that it was presented with

conflicting versions of events.

"Ms [Waterbrook]'s evidence is that she did not instruct [Turvey] to prepare the will and medical directives. [Turvey]'s evidence is that Ms [Waterbrook] did.

"Where, in such circumstances, there is both conflicting and insufficient information, without the benefit of examining the witnesses it is not possible for me to decide which party's version of events is to be preferred," the LCRO said.

Unfortunately, Turvey's letter of engagement, which described the legal services as "matters from time to time", provided no clarification on the issue. It would have been sensible for Turvey to have written to Ms Waterbrook to clarify with her exactly what legal work he understood she required of him, the LCRO said.

On the question of whether Turvey had prepared the EPoAs in a timely manner, the LCRO noted that there was no mention in any of Ms Waterbrook's written communications that she required the EPoAs to be completed urgently. She had not established to the degree of proof necessary, on the balance of probabilities, that her instructions to prepare the new EPoAs were urgent.

Although [Turvey] ought to have taken the initiative and informed Ms Waterbrook that the EPoAs were ready for her signature, "by a fine margin, I do not consider that his failure to do so warrants an adverse finding against him," the LCRO said.

Ms Waterbrook complained that Turvey had not responded to her emails asking if an offer to purchase her apartment communicated to the firm by email could be accepted by email.

The LCRO noted that Turvey delegated the task of responding to a legal executive his firm employed. "That request was overtaken by events, namely Ms Waterbrook attending at the firm's office the following morning to sign the sale agreement.

"However, although it is evident Ms [Waterbrook] did not receive the advice she requested, I observe that no adverse consequences followed for either Ms [Waterbrook] or [Turvey]. In these particular circumstances, I do not consider that Mr [Turvey]'s omission deserves an adverse finding on this aspect of Ms [Waterbrook]'s complaint," the LCRO said.

Because the LCRO had not made a finding of unsatisfactory conduct against Turvey, it was not open to order that the second invoice be either reduced or cancelled.

However, because the LCRO considered Ms A's complaint was justified, Turvey was ordered to pay $500 costs.

PRACTICE

Lessons learnt from serving on a standards committee

Nine years on a standards committee, six key learnings.

BY **SAMUEL HOOD**

Lesson one: ethical pitfalls are all around us

We are surrounded by potential ethical pitfalls, some more obvious than others. To successfully navigate past these pitfalls, a good starting point is developing an intimate knowledge of the Conduct and Client Care Rules 2008.

Lawyers who go for weeks or even months without studying the Rules are likely playing a dangerous game of Russian roulette with their professional obligations.

Lawyers who know the Rules will recognise a loaded chamber before they pull the trigger.

Lesson two: foundational principles

Though significant, the Rules are not the touchstone of professional responsibility. Rather, they are non-exhaustive minimum standards of behaviour that lawyers must observe and are a reference point for discipline.

The foundational principles for professional conduct are found in section 4 of the Lawyers and Conveyancers Act 2006. Lawyers must:

- uphold the rule of law and facilitate the administration of justice;
- be independent in providing regulated services to clients;
- act in accordance with all fiduciary duties and duties of care owed to their clients;
- protect, subject to overriding duties as officers of the High Court and to duties under any enactment, the interests of clients.

Sir Robin Cooke once said when speaking of the foundational document that is the Treaty of Waitangi, "a nation cannot cast adrift from its own foundations".

So it is with the foundational principles that guide the professional conduct of the legal profession: Lawyers cannot cast adrift from such foundations.

To study the Rules without reference to the foundational principles is like building a house on weak subsoils.

Lesson three: fiduciary duties

One of the foundational principles is to act in accordance with all fiduciary duties owed to clients.

The distinguishing obligation of a fiduciary is the obligation of single-minded loyalty to a client. Most lawyers understand that.

Unfortunately that principle is often overlooked when a lawyer or law firm acts for more than one client on a particular matter. It is very difficult to provide single-minded loyalty to more than one client. As a wise man once said, "no man can serve two masters".

Ten years after the Rules were implemented, the legal profession continues to be afflicted by lawyers who act for more than one client in breach of rule 6.

This ethical affliction does not discriminate according to area, location or size of practice. To the contrary, I have seen national law firms attempting to circumvent their professional obligations by having different members of the firm acting for different clients on the same commercial transaction or even in a dispute or legal proceeding. (Worryingly, not all such cases end up before a standards committee).

In my experience, rule 6 is the most commonly breached of all the Rules. Even in those rare situations where a lawyer or law firm may permissibly act for more than one client, it is unusual for the lawyer to have obtained the necessary prior informed consent of all parties concerned.

Lesson four: the correct use of information barriers

An information barrier does not cure a conflict. This is because fiduciary obligations are not divisible but are owed to each client by all lawyers in a firm.

Information barriers are concerned with confidentiality obligations (see lesson five), not fiduciary obligations.

Ironically, the use of an information barrier when acting for multiple clients is actually a red flag that the law firm should not be acting for more than one client in the first place. It often suggests that the law firm has appreciated there is more than a negligible risk of a conflict and that the law firm is attempting to circumvent rule 6 by using a Chinese wall.

Lesson five: the duty of confidentiality

I have come to understand that a lawyer's fiduciary obligations end with the termination of the retainer. The only duty to the former client which survives the termination of the client relationship is the continuing duty of confidentiality.

Illogically, lawyers still seem to have it backwards – we are generally reluctant to

act against a former client, but generally happy to act for more than one client on the same matter.

We overlook the fact that our ethical obligations have it the other way around; it is often permissible for a lawyer to act against a former client (so long as confidentiality is maintained – rule 8.7.1), but generally not permissible to act for more than one client in the same matter.

Lesson six: the importance of an ethics committee

In my view, every firm (no matter the size) should have a committee of designated lawyers to consider ethical dilemmas and make recommendations and decisions when tricky situations arise.

Such committees function best when comprised of a range of people across different disciplines, who meet regularly and are genuinely committed to upholding professional responsibilities, even at the cost of short term profitability.

A fully functional ethics committee is a repository of wisdom and knowledge and a safeguard against ethical atrophy.

Conclusion

Lawyers occupy a privileged place in society. With that privilege comes great responsibility. All lawyers share a responsibility to meet high professional standards and to maintain public confidence in the legal profession.

Lawyers who devote regular time to familiarising themselves with their professional obligations are more likely to understand their obligations and unsurprisingly less likely to fall into one of the many pitfalls they will encounter during professional practice.

A good starting point is being familiar with rules 6 and 8.7.1 and more importantly, the foundational principles that underpin these rules.

In the case of law firms, individual diligence is best supported by a fully functional ethics committee, to ensure that ethical adherence is not just an individual matter. ■

Sam Hood *samuel.hood@nwm.co.nz* is a partner with Hamilton firm Norris Ward McKinnon.

PRACTICE

Are you being served?

Notes from the client's chair

BY **RACHEL NOTTINGHAM**

Have you got a favorite café or bar? Why are you loyal to it – the convenience, the calibre of coffee, or the service? There is a high probability that the quality of customer interaction is a contributing factor to your choice. Most of us encounter and evaluate customer service every day. Poor service leaves us resentful and prone to bad-mouthing the supplier to others while a memorable customer experience generates loyalty and recommendations. Administering the law is a service, but as lawyers, do we pay more attention to the law than the service?

A report undertaken by a UK legal regulator, the Solicitors Regulation Authority (*www.sra.org.uk*) painted an unflattering picture of lawyers' services. The report took a broad-ranging look at the changing legal marketplace: how legal services are delivered, consumer perspectives and the impact of technology.

There are two stark facts within the wealth of the information: the first that 80% of lawyers consider their services are 'above average' but only 40% of clients agree and secondly, only one in 10 people with a legal need sought out a lawyer's assistance.

A 50% difference between perceptions of service from suppliers and customers should not be brushed off. Even allowing for overconfidence, this statistic indicates the UK legal profession has inadequate focus on and understanding of client expectations. While the results of this report may be of limited interest to New Zealand lawyers, the underlying issue should not be. Are your clients being served? How much do you know of your clients' expectations of your services or if they are being met?

Without knowledge of client perceptions, you are missing opportunities. An opportunity to modify your services to delight and retain clients, to create net promoters of your practice, to generate new clients via referrals and to tap into the large pool of unserved clients with a legal issue who don't currently seek legal advice. Clients come to lawyers with a legal need but like other customers, want to receive a great service. So how do you go about it? Here

are four actions for creating memorable and sustainable services.

1: Ask

Asking for feedback is the obvious way to establish whether the services provided are meeting clients' expectations. It has become the norm in some restaurants for the service team to ask customers during their meal how they are finding the experience, demonstrating their interest in customers' views and care. So why not lawyers?

There are of many ways to seek feedback. A survey of all clients provides a high-level indication of the quality of relationships and a benchmark of client perceptions. Other options include establishing client advisory board or panels which meet regularly to provide a conduit for service evaluation and improvement. If simplicity is your touchstone, seek feedback from each client during the progress of a matter. Asking for feedback from a client when a matter is in flight allows for timely, specific and meaningful feedback. This approach has two other advantages: the opportunity to adjust services, if needed, in order to align to client expectations and through meeting or exceeding expectations, an increased likelihood of invoices being paid, rather than queried.

Direct feedback can be confronting for both parties. If you're not comfortable asking, or a client is unwilling to provide their views directly to the person providing the service, find an intermediary. This could be a colleague, a practice manager or an independent party but do it and commit to affording your clients regular opportunities to feedback. You may be pleasantly surprised. Regardless of the commentary, you will have real data on which to make more informed practice decisions and you will be actively demonstrating client care; showing you value a client's opinions, as well as their instructions.

2: Tailor

There's much in legal services that is being commoditised but that should not extend to the way the service is delivered to a client. Clients have different needs and expectations so reflect that in your services. Personalising services does not need to result in costly system or process changes; start with the small things as they often deliver the most impact.

Communication preferences

How does each client like to be communicated with: text, instant messages, email, phone calls? When can they be reached? What are their specific expectations or requirements for a new matter? Record preferences and act on them every time.

Delivering advice

In plain English with no legalese every time. Beyond this, ask what level of detail they want. A 10-page opinion, an executive summary, a short slide deck, or five bullet points emailed to forward to other colleagues?

Updates

On matters that are likely to endure several weeks or months, how often would does the client want updates? In what form and in how much detail? It goes without saying, billing narratives are not a form of update.

Fee estimates

Monitor work-in-progress closely against the estimate and communicate updates regularly, with explanations. Few aspects of legal services are more damaging to a client-lawyer relationship than a retrospective admission that the fee estimate has been blown. If you are embarrassed to render a bigger bill than your estimate, remember your client who has to explain or wear a budget overrun.

Billing

Make billing narratives meaningful; underline the progress made and value added to their matter. Make bills easy to

pay, ideally online. For matters that run for months, bill monthly by all means but show total costs on the file against the fee estimate.

Knowledge sharing

As a former in-house lawyer, I have always appreciated law firms' willingness to share updates and thought pieces on legal developments for the benefit of clients. But those that want to excel, tailor even their knowledge-sharing. Don't just send generic firm updates; send a relevant update with commentary highlighting the relevance to that particular client. From personal experience, that can be a powerful service differentiator.

3: Review

With lawyer numbers surpassing 13,000 in 2018, the legal marketplace is increasingly crowded – so how do you stand out? To differentiate, you need to define your market positioning and your target clients – Amazon apart, no service provider can successfully be all things to all people. Then review your firm's practices and systems with a client's eye view. Take your shop window, ie, your website and online presence. Is it attractive to your target clients? What are the first impressions? Does it communicate clearly your approach to client care or does it focus on regulation and fees? What are the first impressions of your firm's people and processes? If you don't know, mystery-shop your client reception and onboarding experiences and ask your clients. Engage with your team and workshop opportunities to improve service based on client feedback.

4: Explore

In a popular TED talk, Knut Haanaes argues that smart businesses balance exploitation and exploration. In his view, exploitation, capitalising on what you know now in today's market in the absence of exploring tomorrow's opportunities leads to business failure. Legal services have grown exponentially in lawyer numbers and revenue over the last 100 years but has there been a proportionate evolution in practice and service delivery? While the legal profession has not been challenged by change in the past, the "we've always done it this way" attitude is no longer tenable for the future.

As with other service industries, the relentless development and democratisation of technology has started to, and will increasingly disrupt, the legal profession's traditional business models and practices. That does not mean technology should be maligned or ignored; technology used well is an enabler of opportunity and improved services. It doesn't (yet) replace legal expertise but already it can expedite processes, manage information and assess and automate documents. Such innovations offer opportunities to deliver enhanced efficiency, reduced costs and a richer client experience, freeing up lawyers' time to focus on a personalised, client experience. So don't be an ostrich, start exploring opportunities that assure your or your firm's sustainability.

And finally, a closing remark for clients reading this. Don't sit back and hope for the best from your lawyers. You are important influencers of change. Be clear on your expectations of lawyers. Be brave. Give honest and constructive feedback regularly, even if unprompted. And you will be served, well. ■

Rachel Nottingham *rachel@votc.nz* has worked in law for most of her career: in private practice, in-house and in management. She is the founder of consultancy, Voice of the Client, which improves law firm operations.

PRACTICE

What's in a story?

BY **SIAN WINGATE**

In-house legal teams strive to add value. The in-house lawyer's role is to manage risk with a balance of reaching the outcome that the business needs.

In-house legal teams want to be involved in high-risk, high-value work. From an organisational perspective this is because the majority of legal risk lies here, and so it benefits from the biggest value-add by having a legal mind reviewing it.

From a development angle, it meets the need that lawyers working in-house often crave. This is the opportunity to utilise the numerous skills they have acquired during their career. Undertaking high-risk, highly complex work with various stakeholders across the entire business or institution enables the team to develop its skill set each time a project is worked on.

However, there may be a barrier to getting enough of this kind of work into the legal team's pipeline.

Does your business actually know about your team's skill set?

If you are aiming to encourage the business to use your team's services, the single most important thing you need to be able to do is to showcase your team's service offering.

Your team may include a lawyer who excels at legal project management or due diligence. They can be called on for an asset sale, transfer or acquisition.

Another lawyer may be a great communicator. That person may be able to navigate between stakeholder groups to manage risk on a project by getting everyone to talk and discuss the outcomes needed.

You may have team members who excel in legal process. These lawyers can analyse several different tasks performed across the business and create an efficient legal process as a result.

Your colleagues need to understand what you do, why you do it and how it adds value to the business.

If the business has no idea that an in-house lawyer does something more than certify copy documents, 'check' contracts or manage unspecified and vaguely understood 'legal work', it may not gain the best value from your team. This can result in frustration among your team members that their abilities are not being fully utilised because no-one seems to know much about them.

Telling your team's story can help you to achieve this

In November, I attended the national conference of the Association of Corporate Counsel Australia in Brisbane. A half day of masterclasses was offered to help us improve our skills in a specific area related to in-house practice. I took part in a session led by communications expert Gretel Hunnerup.

Gretel explained a little of the science of story-telling. She told us that brain studies show that humans are primed to feel connected to those we meet in person as well as those online – provided they have a compelling tale to tell.

Story-telling is a powerful tool for everyone in every discipline, she said. It has been used for thousands of years to communicate, preserve history and to explain life events across almost every culture.

Does your team have a story?

You may not initially think your team has a 'story'. Yet all legal functions started somewhere. The in-house legal function is still an emerging and growing area. There are still entities who are establishing their in-house legal

team or sole counsel from scratch every year.

In-house lawyers in New Zealand make up over 23% of the total legal profession. This is a big proportion of lawyers who need to get the stakeholders in their business, company or government department on side to use them to their full potential.

What story do you want to tell and for whom should you craft it?

Stories have a purpose. Gretel noted that there are numerous types of purpose. It is helpful to be clear on what your story is aiming to achieve.

Stories for change

You may first tell a strategy story to encourage the team or the business to head off in a new direction.

A current example is contract automation change. Legal teams are moving to launch self-service contract tools for the wider business to use without the need to refer everything 'to legal'.

Gretel suggests you use a moment to explain how a business unit benefitted from the change you have implemented.

The problem: Imagine you need to justify the time a business colleague will need to invest in training on a new self-service contract system. They need to allocate at least two hours for an online learning module.

Your change story could be about a real business colleague who is an early champion of the new tool. This adds credibility to the story and personalises it to your own institution or business. This could be told as follows:

"James, a telecommunications project manager in our Hamilton team, needed to get a new telecommunications licence in place with a local landowner.

"The landowner was due to go on an extended trip overseas in a few weeks. James needed the land right to be secured before she left as the project needed to commence as soon as possible.

"So, James opened his Favourites tab on the intranet and launched the contract tool. He opened a licence template which was pre-approved by legal.

"He completed the information when prompted. He then issued an auto-generated email with a PDF of the licence attached to the landowner that day for signing. The landowner signed it digitally and submitted it back two days later.

"James realised that the two hours of contract user-training to use the self-service contract tool was well worth the effort. His licence took a couple of days to obtain instead of the usual 3-4 weeks in the past when legal had to be involved for every step."

The organisational narrative

The organisational narrative is powerful. It offers the business the chance to reflect on an evolution of change and how this has added value overall.

Hayley Evans of Wellington City Council grew her team from her sole counsel role to a team of eight in just two years. She used data to tell her story to management for specialist lawyers to be brought into the team. She religiously recorded what team members (including herself) were doing, when, for how long and on what category of work.

She says that if you explain that you have grown, why you have grown and how that growth has added value by managing risk better, providing transactional services and encouraging the business to think up front about organisational risk, it can justify your request for more resource.

The success story

Gretel recommends that you can now tell a series of success stories to reflect how well the change has worked or how teams who have not adopted the change are still struggling.

Once you have implemented a change, there will still be an ongoing need to sell the idea to others. There may be colleagues who have not needed the legal team until now and so have not yet heard of your great new way of working. There may be detractors who have held off adopting the change for as long as possible.

Telling a success story works well for Theo Kapodistrias, who also spoke at the Brisbane conference. His story was about the shift the legal team of the University of Tasmania made to a hybrid of the Agile model of working collaboratively.

For internal stakeholders who are cautious of a new project-based approach to working, he tells the story of the department which got on board with the change.

He talks about how the legal team was involved in a relatively innovative project a couple of years ago. They had to ask each different department the same questions over multiple meetings. They got differing views and direction from each. They had to manage this and it was time-consuming and inefficient.

The legal team decided to conduct a team-wide debriefing session to gather some lessons learned. Theo then researched project management techniques, including the Agile methodology. As a team they all agreed that the legal team now acts as co-ordinator for project teams of stakeholders in the university.

Theo explains to internal colleagues through a case study example what software the legal team will use (Microsoft Team). He notes that all the stakeholders from across the organisation agreed roles and responsibilities for actions in a combined meeting at the beginning of the project. He is enthusiastic about how the regular update meetings with the Microsoft Team status dashboard helped keep everyone up to date and on track. He uses an anecdote that senior management comment that the collaborative and unified

In-house lawyers in New Zealand make up over 23% of the total legal profession. This is a big proportion of lawyers who need to get the stakeholders in their business, company or government department on side to use them to their full potential.

Hayley Evans is head of Legal and Risk (General Counsel) at Wellington City Council. Hayley joined the council in 2016 to establish a legal services unit, moving the council from a decentralised and outsourced model to building strong in-house capability. The team is now well established with seven lawyers, and Hayley has added risk, business continuity and emergency management and project governance to her portfolio, moving her away from transactional legal work into a leadership role.

Theo Kapodistrias is an in-house lawyer at The University of Tasmania where he works alongside a team of seven in-house counsel to help the university achieve its educational goals. He is the president of the Tasmanian Division of the Association of Corporate Counsel of Australia. He is an active supporter of young lawyers and legal education. He is organises all CPD and networking events in and across Tasmania for in-house lawyers.

Gretel Hunnerup helps Australian business leaders to build their influence and impact by telling great stories. With 15 years of journalism and communications experience gained in Australia and abroad, Gretel delivers in-house workshops and talks on storytelling for innovation, brand, team-building, business development and transformation.

approach gives them confidence that all stakeholders are aligned and endorse the decision that management are expected to approve. Finally, he provides statistics to demonstrate the value. The case study he uses is of an AU$8 million contract achieved in five days compared to 2-5 months using the older approach of contacting each team separately and in a silo.

Every team has a story

The key message is that every team has a story. You just need to tell it to show how much value you truly add and how much more you can add.

As a team building exercise, creating your team's stories can be a bonding and empowering experience. It is a great way to look back on the achievements you have made individually and as a team. You could do this off site at a team planning day with someone outside the team acting as note-taker (another great way to showcase what you do). The resulting stories are recorded for any number of uses. They can be material for your development plan. Perhaps they are content for your team intranet page. They could even be a winning team submission for an award. ■

Sian Wingate is President of ILANZ, the in-house section of the Law Society. In this voluntary role, she uses her spare time and energy to be an advocate for the advancement of in-house lawyers in New Zealand, to ensure they can continue to develop fulfilling and healthy careers both inside and outside the law. Sian is always keen to chat with other in-house counsel or private practitioners on aspects of legal life that can be shared to offer practical and helpful insights on day-to-day life as a lawyer. Contact her at *ILANZ.president@lawsociety.org.nz*. This article includes contributions from Gretel Hunnerup, Theo Kapodistrias and Hayley Evans.

PRACTICE

Focus on … Gisborne

BY **CRAIG STEPHEN**

The most eastern city in the islands is remote, but it's where lawyers look after each other

Stephen Taylor arrived from the Bay of Plenty a green and enthusiastic lawyer without a friend or relative in Gisborne he could rely on to help him get up and running.

Nearly two years later and Mr Taylor feels very much at home in the city and is grateful for the support he's received from the local legal community.

"It's such a welcoming place. Tauranga was like that but because it has become so much bigger the city has largely lost that community feeling," he says.

"But Gisborne definitely has that, there's a real community heart and the lawyers here are a whānau and I class it as that. When you need support you've got people to catch you; if you're standing in court and you get stuck somebody will be around to help you out. You get to know all the lawyers and everyone else in the legal community pretty quickly."

Mr Taylor moved to Gisborne to work at Woodward Chrisp from Tauranga where he began his career.

When the offer came up it was an easy choice to make.

"I'd never been to Gisborne, and didn't know anyone, but I thought, well the opportunity is here so take it. It's very hard to get a criminal (law) job and that's what I wanted to do it so it was a no-brainer to get some experience here.

"I see all sorts, some of the people I see are in gangs, some of them face charges for serious crimes; it's all about learning and I'm certainly doing that. I'm certainly not the lawyer I was a month ago, never mind 18 months ago."

Mr Taylor also has the chance to get out to the courts in Wairoa and Ruatoria.

"It's probably the most isolated city in New Zealand. Coming from Tauranga, it's about three and a half hours to here, and about the same to Napier/Hastings, but that's part and parcel of living and working here."

▲ Aerial view of Gisborne

I love working here and being back in the community, and I feel like I am giving something back. I might not be changing the world but I love helping some of the more vulnerable people in society

Helping the most vulnerable

Another young solicitor, Hiria-Te Kauru Green, is a local who studied at Wellington, with her family moving down to support her. She initially worked in Ōtaki with her iwi and hapu for three years before returning to Gisborne.

"I love working here and being back in the community, and I feel like I am giving something back. I might not be changing the world but I love helping some of the more vulnerable people in society."

She works in family law and cases often take her up to Wairoa, which involves a near three-hour round trip.

"All of my clients are legally aided and I am happy to help them. This

Facts

1. The Gisborne region – also known as Te Tairāwhiti – stretches from the Wharerata Hills in the south to Potaka in the north, west of East Cape. As well as the city itself, it includes Hicks Bay, Te Araroa, Ruatoria, Tokomaru and Tolaga Bay, none of which have more than 1,000 people. While the Gisborne branch covers Wairoa, the district council's reach stops just north of the town.
2. The main iwi of Te Tairāwhiti are Ngati Porou, Rongowhakaata, Ngai Tamanuhiri, and Te Aitanga a Mahaki.
3. Gisborne is also known as the city of rivers. The Taruheru and Waimata Rivers join to form the 1200 metre Turanganui River – the country's shortest river.
4. Local industry includes agriculture, horticulture – including wine – fishing, farming and forestry.
5. Rawhiti (the east) was first inhabited by Māori who arrived in canoes after long journeys. Captain James Cook landed on Kaiti beach on 9 October 1769. The city is named after the Colonial Secretary William Gisborne, who to settle some confusion over the name generously offered his own name to the new settlement.
7. The 2013 Census reveals that the population of the region was 43,656, a decrease of 843 people, or 1.9%, since the 2006 Census. Of this 19,683 (45%) are Māori. However, official population estimates for 2018 are 47,900 for the broader region, and 36,100 for Gisborne itself.
8. Among notable New Zealanders from Gisborne are cartoonist Murray Ball, writer Witi Ihimaera, politician Apirana Ngata, activist Te Kooti, actor George Henare, Clarke Gayford, and several All Blacks and All Whites.
9. There are 55 lawyers practising in the city and two in Wairoa.

Sources: Statistics New Zealand, New Zealand Law Society, and the Gisborne District Council.

firm (Woodward Chrisp) never closes the door to legal aid applicants in the Family Court. You're helping those who need it the most."

Māori prominent in the local fraternity

Jacqueline Blake of Burnard Bull works mainly in family law, as well as estate work, conveyancing, commercial, trust and elder law.

She is also a local and affiliates with many of the local iwi. She says with Māori making up a high proportion of the regional population, it follows that there will be a good few Māori lawyers working in the city.

"A lot of people who study and then, initially, work outside the area tend to come back. At Burnard Bull we have a good ratio of Māori lawyers including Mana Taumaunu, David Walker and Darcelle Koia.

"We are lucky in having a small number of lawyers, there is a great deal of collegiality among the [Law Society] branch. The branch manages our social functions which is a way of meeting lawyers in different areas of law. I really enjoy working here, though I've only worked here so have nothing to compare it to."

Mrs Blake says with such a high number of Māori living in the region, that influence reflects on a different way of doing things on several levels.

"One of the unique things that Gisborne offers at the moment is some of its more Māori-based programmes and the way that they are working with Māori people. So today, for example, I met some people from Te Hiringa Matua, a framework service providing support for mothers, pregnant women and their families dealing with drug and alcohol addictions and mental health issues using Mahi-a-Atua and Matauranga Māori. They work with their clients through stories telling how the world was created through Ranginui and Papatūānuku and the gods and then they tell stories about each of the gods and get people to relate to those stories in their own lives. So it's a different way of working.

"And there's other organisations here that work in a similar way.

▲David Ure

▲Jacqueline Blake

▲Hiria-Te Kauru Green

▲Stephen Taylor

I prefer to do a bit of everything, that I am not stuck working in only one area of law and I need to regularly upskill but it works for me. I would imagine that if I was working in a city firm working in one or two particular areas I would get quite bored with that system

That's something that's very exciting. Having more of these Māori-based organisations is really going to help in our community because Māori have a different way of thinking and a different way of healing so that is of real benefit.

"Gisborne has a very rich Māori culture. For example, a kapa haka group I perform with, Te Kapa Haka o Whangara mai Tawhiti, are the current national champions. Kapa haka and Māori performance is nurtured in the local schools right from when children are in kohanga or daycare and through to the seniors."

Kept on his toes

David Ure, who is the President of the local branch of the Law Society, was brought up in Gisborne when his father Charlie Ure moved from Nelson to play for the local football side Gisborne City. This was a time when the team was one of the best in the country and Ure senior was a regular pick at left back for the National League side for many years.

He says doing the bread and butter legal work that provincial firms tend to focus on works within his outlook toward life.

"I prefer to do a bit of everything, that I am not stuck

working in only one area of law and I need to regularly upskill but it works for me. I would imagine that if I was working in a city firm working in one or two particular areas I would get quite bored with that system."

He does mainly property law. "The Gisborne distinction is those who go to court and those who don't, and apart from some rare appearances in court I am not in that category. We are cruelly called librarians by my criminal law operating colleagues," he jokes.

A large chunk of his firm Grey Street Legal's work is with rural clients, with farm succession one area that keeps the firm busy, as well as relationship property.

"It's a small but fantastic legal community. If you come to a Gisborne Bar dinner there will be a good mix of women and Māori and Pasifika lawyers, so we do quite well in having a diverse mix of people working in the city in law."

The carrots for the adventrous

Often, Mr Ure says, it can be difficult enticing lawyers to the region.

"It can take a while to convince people that a lifestyle in Gisborne is something to appreciate. It is easy for me, I have obviously made the decision, but I think the ability to get a wide range of work and live in a place where you can go home for lunch is something to be applauded. We have young kids and the schools are round the corner, but if they weren't we'd have to get up early to get them there."

He says that in the digital age there's little to stop companies and individuals from moving outside the cities and one large firm has already made the move.

"I think there is a change, one IT company is moving base and their 38 employees to Gisborne. They say they can operate from anywhere and there's no barriers to where they are based. House prices have gone up recently but are still very competitive compared to Auckland and many other places."

Jacqueline Blake adds that some changes, such as the drop in the prices of flights, make it easier for people to move to Gisborne.

"And being in Gisborne you are five minutes from anything unless you live out in the country. One of our partners, Amanda Courtney, moved from Wellington up here and she talks about how wonderful it has been to move to a city where everything is close by.

"But it is defintely isolated in terms of driving here, and you have to drive through a gorge if you're driving either from the south or the north which slows the drive down quite a bit."

▲ Te Tauihu Turanga Whakamana is a large modern sculpture in the shape of a tauihu (canoe prow) that celebrates early Māori explorers.

If you want experience, and you want to do the real work and get opportunities to do things that you would never get the chance to do in the big centres, the provinces provide those opportunities.

And though that can be an issue, Stephen Taylor says there's some things that can only be gained in a city like Gisborne.

"Working here has been been fantastic – I tell people to come to the provinces. If you want experience, and you want to do the real work and get opportunities to do things that you would *never* get the chance to do in the big centres, the provinces provide those opportunities. I've been involved with cases and appeared in some of the higher courts that I wouldn't have been able to do by this point in my career in any of the other big cities.

"I'm in the District Court every day and most of my work is legal aid; I've had the opportunity to work on appeals, up to the High Court and the Court of Appeal, and assisted in submissions for the Supreme Court as well."

If the President's from here ...

And mention of Gisborne's law fraternity can't pass with the election of Tiana Epati as President of the Law Society from this coming April, which David Ure says is great for both the local and the national wings.

"It'll be good for the Council to have things seen through someone from the region's eyes. There are some slightly different concerns and for what we have to deal with in the regions. If there is a problem with recruiting lawyers to Gisborne there may be a knock-on effect in that people might think 'well the President is from Gisborne so it's not like it's a backwater with no work'. The work we do is challenging, lucrative and good quality."

Jacqueline Blake says Tiana is a great role model, and her election will have substantial knock-on effects.

"We are all very proud of her being elected President. It's good not only for the Gisborne law community but for the New Zealand law community. It's quite an achievement for one small branch to have the next head of the national body.

"We also punch above our weight in terms of appointments of judges; from our own firm, David Sharp was appointed a judge a few years ago, from other firms there was also Denys Barry and Hemi Taumaunu who initiated the Rangatahi Courts. This shows the excellence in Gisborne of the legal fraternity."

And Ms Blake also notes the surfing tradition that's another enticement for relocating. The area has some of the best beaches and breaks in the country, and Woodward Chrisp partner Adam Simperingham told *LawTalk* 912 (November 2017) of his love of the sport, which is shared by other lawyers who use it to boost that work/life balance. ■

Will Notices

PAGE 89

Banks, Allan Robert
Chen, Yijie
Driver, Alisi Maca
Evans, David Henry
Fesilafa'i, Jasmine Ruta Nu'u
Finnie, Raymond Neil
McDonough, Robert John
McFaull, Neil William
Moore, Owen Barry (used Barry as first name most of the time)
Ngaporo, Amelia (Amiria)
Ngaporo, Leon (Reone)
Ngaporo, Theresa Imelda
Ni, Desheng
Paterson, Denis Roy

PAGE 90

Ramas, Jezreel Grace Mutia
Shim, Kap Soon
Thompson, Thelma Eileen

Banks, Allan Robert

Would any lawyer holding a will for the above-named, late of 65 The Avenue, Lucas Heights, Albany 0632, Auckland, Mechanical Engineer, born on 7 November 1951, who died on 22 December 2018, **please contact Rick Phillips, Barter Law:**

- info@barterlaw.co.nz
- 09 415 0000

Chen, Yijie

Would any lawyer holding a will for the above-named, late of 189 Grimseys Road, Christchurch, born on 6 October 1958, **please contact Richard Sprott, Bishopdale Law:**

- richard@bishopdalelaw.co.nz
- 03 662 9070
- PO Box 20031, Christchurch 8543 or DX WP 24010

Driver, Alisi Maca

Would any lawyer holding a Will for the above-named, late of 62A Birkdale Road, Birkdale, Auckland, aged 86 years, born on 19 August 1932, Retired, who died on 28 October 2018, **please contact Lena Wong, Complete Legal Limited:**

- lenaw@completelegal.co.nz
- 09 237 0068
- PO Box 264, Pukekohe or DX EP 77026

Evans, David Henry

Would any lawyer holding a will for the above-named, aged 63 years, born on 19 May 1955, who resided in Taranaki, Otago and Canterbury, died on or about 10 December 2018, **please contact Rachel Evans, Legal Solutions:**

- rachel@legalsolutions.nz
- 06 758 7101
- PO Box 145, Taranaki Mail Centre, New Plymouth, 4340

Fesilafa'i, Jasmine Ruta Nu'u

Would any lawyer holding a will for the above-named, born on 4 December 1976, who died in Lower Hutt on 31 December 2018, **please contact Freya Boyd, Collins & May Law:**

- freya@collinsmay.co.nz
- 04 576 1409 or fax 04 566 5776
- PO Box 30614, Lower Hutt 5040

Finnie, Raymond Neil

Would any lawyer holding a will for the above-named, late of 322 Greers Road, Bishopdale, Christchurch, Retired, who went missing in September 2015 (a death certificate has now been received), **please contact Lauren-Beth Stitt, Susie Mills Law:**

- lauren-beth@susiemills.com
- 04 293 3735

McDonough, Robert John

Would any lawyer holding a will for the above-named, late of Hastings, born on 3 October 1952, who died on 7 January 2019, **please contact James Drysdale, Hansen Bate:**

- jd@hansenbate.co.nz
- 06 873 0900
- PO Box 235, Hastings 4156

McFaull, Neil William

Would any lawyer holding a will for the above-named, late of Havelock North (formerly Rotorua), who died on 18 November 2018, **please contact David MacCallum, Baker MacCallum:**

- david@bakermac.co.nz
- 06 877 8024 or fax 06 877 8022
- PO Box 8510, Havelock North 4157

Moore, Owen Barry (used Barry as first name most of the time)

Would any lawyer holding a will for the above-named, late of Flat 21A, 88 Hanson street, Newton, Wellington, born on 9 August 1950, who died on 30 December 2018, **please contact Andre Moore:**

- Andre.Moore@ballance.co.nz
- 027 5771050

Ngaporo, Amelia (Amiria)

Would any lawyer holding a will for the above-named, late of 29 Fisher Cres., Otara, Auckland, occupation unknown, born on 12 December 1907, who died on 7 October 1976, **please contact William Remehio Smith:**

- wrsmith@orcon.net.nz
- 022 636 2599
- PO Box 75-268, Manurewa, Auckland 2243

Ngaporo, Leon (Reone)

Would any lawyer holding a will for the above-named, late of 29 Fisher Cres., Otara, Auckland, occupation unknown, date of birth unknown, who died on 16 October 1967, **please contact William Remehio Smith:**

- wrsmith@orcon.net.nz
- 022 636 2599
- PO Box 75-268, Manurewa, Auckland 2243

Ngaporo, Theresa Imelda

Would any lawyer holding a will for the above-named, late of Te Karaka Rd., Lower Waihou, Northland, Dietician, born on 29 October 1935, who died on 22 December 1997, **please contact William Remehio Smith:**

- wrsmith@orcon.net.nz
- 022 636 2599
- PO Box 75-268, Manurewa, Auckland 2243

Ni, Desheng

Would any lawyer holding a will for the above-named, late of 23 Palomino Drive, Henderson, Auckland, Retired, born on 30 July 1957, who died on 7 December 2018, **please contact Audrey Yang, Loo & Koo:**

- ayang@loo-koo.co.nz
- 09 529 3280
- PO Box 99687 Newmarket, Auckland

Paterson, Denis Roy

Would any lawyer holding a will dated later than 8 July 1996 for the above-named, late of 2 Hewson Crescent, Otaki, Plumber, who died on 22 November 2018, **please contact Lauren-Beth Stitt, Susie Mills Law:**

- lauren-beth@susiemills.com
- 04 293 3735

WILL NOTICES CONTINUED

Ramas, Jezreel Grace Mutia

Would any lawyer holding a will for the above-named, late of 47 Kiln Street, Upper Hutt, who died on 11 October 2018, **please contact Suné Hume, Main Street Legal Limited:**

- sune@mainstreetlegal.co.nz
- 04 527 9727 or fax 04 527 9723
- PO Box 40 457 or DX RP44011

Shim, Kap Soon

Would any lawyer holding a will for the above-named, late of 33A Tarewa Road, Rotorua, who died on 10 November 2013, **please contact Tenille Homes, Vallant Hooker & Partners:**

- thomes@vhp.co.nz
- 09 360 0321 or fax 09 360 9291
- PO Box 47088, Ponsonby, Auckland 1011 or DX CP 30015

Thompson, Thelma Eileen

Would any lawyer holding a will for the above-named, late of 5 Arklow Place, Flaxmere, Homemaker, born on 18 September 1947, who died on 8 March 2010, **please contact Tim Jeffcott, Lowndes Ltd:**

- tim.jeffcott@lowndeslaw.com
- 09 373 7714
- C/- Lowndes Ltd, PO Box 7311, Auckland 1141

JUNIOR CRIMINAL LAWYER

SHANE TAIT BARRISTER

Junior lawyer required to join a busy South Auckland based criminal law practice. Assisting other barristers in the conduct of a large and busy practice incorporating a wide range of criminal offending including bail applications, jury trials, Criminal Proceeds (Recovery) Act proceedings and appellate work. Strong research and written skills are essential as is an ability to prioritise and multitask.

This role provides exposure to a range of serious criminal offending and matters spanning the District Court, High Court, Court of Appeal and Parole Board.

All applications will be treated in confidence.
Please forward your curriculum vitae to info@shanetait.co.nz

JUDICIAL APPOINTMENTS AND DISCIPLINE PANEL

NOTICE OF JUDICIAL VACANCY

Lord Chief Justice — Kingdom of Tonga

The Judicial Appointments and Discipline Panel, established by the Constitution of the Kingdom of Tonga, makes recommendations to the King in Privy Council on the appointment of eminently qualified persons to the Judiciary. The Panel hereby notifies that a vacancy is expected in December 2019 for the position of Lord Chief Justice.

Expressions of interest should be sent by e-mail to Ms. Rosamond Bing, Clerk (Judicial Appointments and Discipline Panel) at **rosamond.c.bing@gmail.com** to be received in Tonga no later than **12 Noon on Tuesday, 30 April 2019.** All expressions of interest will be treated in the strictest confidence.

Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions

EXPRESSIONS OF INTEREST — COUNSEL TO ASSIST

The Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions seeks expressions of interest from lawyers wishing to be considered for appointment as Counsel to Assist.

The Royal Commission Chair is the Rt Hon Sir Anand Satyanand, and Simon Mount QC is Senior Counsel assisting. The Commission will form a team of lawyers to provide hearing and advisory functions to the Commission. In accordance with the Inquiries Act 2013, the appointments will be made by the Solicitor-General.

The Royal Commission's reporting date is 3 January 2023, and it is likely there will be full time and part time appointments of counsel.

Expressions of interest are sought from practitioners. Helpful attributes include experience of inquisitorial practice, comfort working in a team environment, and the ability to work with participants from a wide range of cultural and socio-economic backgrounds.

Expressions of interest, including a curriculum vitae, should be sent to: legalvacancies@royalcommission.govt.nz by 15 February 2019.

Te Kōmihana Karauna mō ngā Tūkino o Mua ki te Hunga i Tiakina e te Kāwanatanga i Tiakina hoki e ngā Whare o te Whakapono
Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions

WHITMARSH LAW

General Practice Lawyer

We are seeking an outstanding lawyer with strong general practice and especially property law skills to join our centrally located Lower Hutt firm. Our client base is wide and varied with a largely younger demographic, including many first home buyers and many clients that have never required the services of a lawyer before. The work in this role will be varied in nature but with a particular emphasis on property law, dealing with a wide range of conveyancing transactions, including residential and commercial. The firm also provides advice with regard to the preparation of Wills and Enduring Powers of Attorney, Estate Administration, setting up Family Trusts, the implications of the Property (Relationship) Act, and other aspects of a general legal practice. If you are looking to further your career there is a great opportunity of advancement for the right candidate.

Benefits and perks

- Competitive salary commensurate with experience
- Car park
- Casual Fridays

Skills and experience

- A minimum of one years' post-admission experience;
- Strong general practice and property law skills;
- Trust and Relationship Property Law experience would be an advantage;
- Self-managing, and comfortable engaging in a client facing role; and
- Outstanding work ethic and attitude.

Email paul@wlaw.co.nz to apply

KAYES FLETCHER WALKER

JUNIOR PROSECUTORS

Kayes Fletcher Walker, the office of the Manukau Crown Solicitor, has vacancies for junior prosecutors beginning in late January 2020.

The positions are suitable for recent graduates through to solicitors with 3 years PQE (but not necessarily with prosecution experience).

Successful applicants will be joining a dynamic medium-sized law firm committed to providing great training and career development, with unrivalled opportunities to appear regularly in court.

To obtain an application form please visit our website **www.kfw.co.nz**.

Applications close **Wednesday 20 March 2019**, and can be sent to office@kfw.co.nz

LOVEGROVES Lawyers

EXPERIENCED LAWYER REQUIRED

- Quality, varied work
- Mentoring
- A medium sized firm with good prospects of advancement and succession

Lovegroves is a long established successful law firm with quality clients.

We are looking for an experienced property based lawyer who is interested in good and rewarding work on a wide range of investments and transactions.

We are seeking a person with between 5 and 10 years' experience who is client focussed and has excellent interpersonal and communication skills and able to competently manage files.

We see a long term future within the firm including partnership prospects.

If you wish to apply in confidence for this position please email: jradley@lovegroves.co.nz

Applications should include a covering letter detailing relevant experience, CV and academic transcripts.

LUCRATIVE **LAW PRACTICE FOR SALE:** FAR NORTH

WORK/LIFE BALANCE GUARANTEED!

Please email expressions of interest to enquiries@doubtlessbaylaw.co.nz by 28th February 2019

NEW ZEALAND FOREIGN AFFAIRS & TRADE

Our people represent New Zealand offshore to make New Zealanders safer and more prosperous.

By building connections and relationships with other countries and international institutions, we advance New Zealand's interests and values. We provide advice to the Government on what is happening in the world and the implications for New Zealand.

We currently have Policy Officer and Senior Policy Officer rotational roles available. For those with a legal background, policy work can include international law.

For more information about these opportunities please visit the website of our recruitment partners at OCG Consulting: www.ocg.co.nz/mfat-content

If you bring an authentic view of New Zealand's place in the world, we welcome your application.

MINISTRY OF JUSTICE
Tāhū o te Ture

TENANCY ADJUDICATORS

AUCKLAND, CHRISTCHURCH, MANAWATU AND ROTORUA

Adjudicators are required for the Tenancy Tribunal in the Auckland, Christchurch, Manawatu and Rotorua/Taupo areas.

These are part time positions with a standard commitment of one to two days per week, but more days may be available if desired. Some flexibility may be necessary to fit the demands of the roster.

These positions will cover a range of court locations. Please refer to the individual application packs at http://www.justice.govt.nz/statutory-vacancies/ for detailed information.

The successful applicants will have a legal qualification or relevant experience in adjudication. Applicants must demonstrate a capacity for impartial adjudication, the ability to conduct a hearing professionally, and an ability to manage hearings with self-representing parties. They must also be able to demonstrate efficient work habits, good time-management and an ability to make clear, logical decisions. Good oral and written communication skills are essential, as is computer literacy. Some flexibility to travel would be beneficial.

For more information about these positions, contact Tania Togiatama, PA to Principal Tenancy Adjudicator – email: tania.togiatama@justice.govt.nz or phone (07) 921 7478.

Applications for the position close at 5.00pm, Thursday 21 February 2019.

MINISTRY OF JUSTICE
Tāhū o te Ture

REFEREES, DISPUTES TRIBUNAL

DUNEDIN

There will shortly be a process for the appointment of Referees in the Dunedin Region. Members of the public are invited to submit the names of persons who are considered suitable for appointment as Referee.

Nominations must be sent in writing or by email. They must contain the name, address, telephone number and email address of both the nominator and the person being nominated.

Once a nomination has been received, the person who is nominated will be sent an application pack with details relating to the position and how to apply for it.

Nominations are to be made to the Principal Disputes Referee, DX SX11159, Wellington 6011, Ph: (04) 462 6695, or email Kelly-Lea.Brown@justice.govt.nz

Nominations must be received by this office no later than 12 noon on Friday 15 February 2019.

40 WALKER STREET CHAMBERS

Make a move.

The members of Walker Street Chambers, Christchurch seek expressions of interest from barristers sole (or prospective barristers) interested in joining our progressive and collegial chambers.

Our membership currently includes eight barristers and two associate members (a forensic scientist and a private investigator). **From mid-2019** Walker Street Chambers will be in a position to accommodate additional members.

For more information please contact us in strictest confidence at chambers@walkerstreet.co.nz

HUMAN RIGHTS REVIEW TRIBUNAL

DEPUTY CHAIRPERSONS PART-TIME

(Auckland, Wellington or Christchurch)

Applications are invited from persons wishing to be considered for appointment as a part-time Deputy Chairperson of the Human Rights Review Tribunal based in Auckland, Wellington or Christchurch.

The Human Rights Review Tribunal hears and determines proceedings lodged pursuant to the Human Rights Act 1993 (the Act), the Privacy Act 1993 and the Health and Disability Commissioner Act 1994 after complaints have first been dealt with by the Human Rights Commission, the Privacy Commissioner and the Health and Disability Commissioner pursuant to their respective Acts. The principal matters considered by the Tribunal concern privacy issues, human rights, discrimination and health and disability issues. The Tribunal has jurisdiction to award damages of up to $350,000 and to declare an enactment inconsistent with the right to freedom from discrimination as affirmed by the New Zealand Bill of Rights Act 1990.

The Act provides that for any particular case the Tribunal must comprise:

- the Chairperson and/or a Deputy Chairperson
- two other persons appointed by the Chairperson for the purposes of each hearing from the Panel maintained by the Minister of Justice under section 101 of the Act.

Further details and an application pack are available for the Ministry of Justice website **www.justice.govt.nz/about/statutory-vacancies**

The closing date for applications is 22 February 2019.

MINISTRY OF JUSTICE
Tāhū o te Ture

REFEREES, DISPUTES TRIBUNAL

CHRISTCHURCH

There will shortly be a process for the appointment of Referees in the Christchurch Region. Members of the public are invited to submit the names of persons who are considered suitable for appointment as Referee.

Nominations must be sent in writing or by email. They must contain the name, address, telephone number and email address of both the nominator and the person being nominated.

Once a nomination has been received, the person who is nominated will be sent an application pack with details relating to the position and how to apply for it.

Nominations are to be made to the Principal Disputes Referee, DX SX11159, Wellington 6011, Ph: (04) 462 6695, or email Kelly-Lea.Brown@justice.govt.nz

Nominations must be received by this office no later than 12 noon on Wednesday 20 February 2019.

JUDICIAL APPOINTMENTS AND DISCIPLINE PANEL

NOTICE OF VACANCY

Attorney General — Kingdom of Tonga

The Kingdom of Tonga is seeking expressions of interest from experienced legal practitioners who wish to be considered for appointment as Attorney General in the Kingdom of Tonga.

To be eligible for appointment a candidate must –

- either hold or have held high judicial officer; or
- have at least 10 years experience as an advocate in Courts of unlimited civil and criminal jurisdiction in a country within the British Commonwealth of Nations.

Ideally the candidate will have achieved the status of Queen's Counsel (or equivalent Senior Counsel status).

Under the Constitution of the Kingdom of Tonga the Attorney-General enjoys a complete discretion to exercise all the legal powers of that Office, independently, and without any interference whatsoever from any person or authority.

The Attorney General is –

- the principal legal advisor to Cabinet and the Government; and
- in charge of all criminal prosecutions on behalf of the Crown; and
- required to perform such other functions and duties as may be required by law.

In assessing applicants, regard will be had also to the following criteria:

- experience in legal practice.
- record of professional achievement and public service.
- knowledge and understanding of the law consistent with appointment as the Senior Law Officer of the Crown.
- understanding of Constitutional principles (including the Rule of Law, Judicial Independence, Prosecutorial Independence and Individual Rights).
- conceptual and analytical thinking.
- effective oral and verbal communication.
- ability to lead a professional team and mentor professional staff.
- organisational skills.
- ability to work well under pressure.
- capable of making fair, balanced and consistent decisions, and tender advice, according to law and without delay.
- committed to promoting proper legal administration, and leading continuous improvements in policy and practice.

In addition, it is expected that the successful applicant will be a person of maturity, discretion, patience and of integrity who can inspire respect and confidence.

Anyone lodging an Expression of Interest is asked to provide full personal particulars; a detailed curriculum vitae; and any further material relevant to eligibility or the criteria for appointment. The names and contact details of two professional and two character reference should also be provided. Terms and and conditions will be provided to anyone who is shortlisted.

Expressions of interest should be sent by e-mail to Ms. Rosamond Bing, Clerk (Judicial Appointments and Discipline Panel) at **rosamond.c.bing@gmail.com** to be received in Tonga no later than **12 Noon on Thursday, 28 February 2019.** All expressions of interest will be treated in the strictest confidence.

Like any big concept the idea of justice evolves as our society changes. What was normal 5 years' ago may not be acceptable now.

That's why, at the Ministry of Justice we're on a journey to redefine our relationship with New Zealanders.

Senior Criminal Defence Lawyer

Manukau Public Defence Service
MOJ/1373059

- **Satisfying, interesting and intellectually challenging work**
- **Significant time in court and running trials**
- **Supportive, experienced and talented colleagues**

We are looking for a Senior Lawyer - Team Leader, with a speciality in criminal advocacy, to join the team in the largest of the PDS offices - with around 65 legal and support staff. We have clients at the Manukau, Papakura and Pukekohe District Courts, as well as the higher courts. It is a busy and sometimes demanding environment with variety and challenge and you will join a diverse and supportive team in one of the fastest growing communities in the country.

The Public Defence Service (PDS) is New Zealand's largest criminal law practice, providing high quality legal advice and representation in a full range of criminal cases. Aimed at helping people access justice, the PDS promotes the values of respect, integrity, service and the delivery of excellent service to its clients. In this role you are the voice of some of the most marginalised people in the criminal justice system.

To qualify you must be passionate about criminal justice issues and:

- have a PAL 3 or 4 approval level and be qualified to practice law in New Zealand
- have proven credibility with judges, peers and others in the legal community
- be comfortable to be part of a team who support and rely on one-another
- enjoy sharing legal expertise, exchanging ideas and brainstorming
- have empathy and the ability to relate to a wide range of people.

This is a challenging but truly satisfying job and our lawyers love what they do.

You will lead a team of up to six lawyers and have a caseload of varied criminal work - including high profile and challenging cases, High Court and Court of Appeal appearances. You will also be involved in training, mentoring and supervising junior PDS lawyers. Our work comes to us via Legal Aid and we make sure that you are supported by an experience administrative team - meaning you can focus on doing what you do best.

As an employee of the PDS you will have access to a well-designed and embedded national training programme, professional development and opportunities to attend conferences, along with access to a professional supervision programme. The PDS is part of the Ministry of Justice and the wider justice sector. The ministry provides centralised business services, infrastructure and support to the work of the PDS.

Salary range: $119,000 - $140,000

To apply, please go to our Careers Website. You can view a detailed position description at the site, as well as complete an online application form by attaching your CV and cover letter.

For tracking purposes, all applications must be submitted via our online process.

Applications close on Sunday, 17 February 2019.

MINISTRY OF JUSTICE
Tāhū o te Ture

apply.justice.govt.nz

CPD *Calendar*

PROGRAMME	PRESENTERS	CONTENT	WHERE	WHEN
CIVIL LITIGATION				
INTRODUCTION TO CIVIL LITIGATION SKILLS *9 CPD hours*	*Roderick Joyce QSO QC* *Sandra Grant* *Nikki Pender* *Paul Radich QC*	This workshop is an excellent opportunity for recently admitted practitioners to develop practical skills in civil litigation in an intense small-group workshop. You will learn how to handle a single file from beginning to end, be able to identify and understand the various steps in the process, develop the practical skills you need to handle this and a range of other litigation files, competently and confidently.	Dunedin Auckland 1 Wellington Auckland 2	13-14 May 27-28 May 21-22 Oct 4-5 Nov
BUSINESS INSOLVENCY UPDATE *1.5 CPD hours*	*Rachel Pinny* *Marcus McMillian*	This webinar will consider some of the key recent developments and discuss how they will impact your clients both in the insolvency context and in their day to day business operations.	Webinar	7 Mar
COMPANY, COMMERCIAL AND TAX				
INTRODUCTION TO COMPANY LAW PRACTICE *13 CPD hours*	*Local Presenters*	A practical two-day transaction-based workshop that will equip you with the knowledge and understanding to deal with the purchase, establishment, operation and sale of a business. A popular, regular in the CLE calendar.	Christchurch Wellington Auckland	11-12 Mar 18-19 Mar 25-26 Mar
CRIMINAL				
DUTY LAWYER TRAINING PROGRAMME *11* CPD hours*	*Local Presenters*	Duty lawyers are critical to the smooth running of a District Court list. Here is a way to gain more of the knowledge and skills you need to join this important group. This workshop is made up of several parts. **CPD hours may vary, see website*	Various	Feb-Oct
INTRODUCTION TO CRIMINAL LAW PRACTICE *13 CPD hours*	*Brett Crowley*	A practical two-day workshop covering the fundamentals of being an effective criminal lawyer. This workshop will benefit all practitioners wanting to be appointed to level one of the criminal legal aid list, and those recently appointed to level one.	Wellington Auckland	6-7 May 2-3 Sept
FAMILY VIOLENCE LEGISLATION – PHASE ONE *1.5 CPD hours*	*Julia Robertson* *Professor Julia Tolmie*	The Family Violence Act and the Family Violence (Amendments) Act constitute a major step in supporting an integrated response to reduce New Zealand's unacceptable rate of family violence. Phase One took effect effect on 3 December 2018 strengthening the criminal justice system by: adding three offences in the Crimes Act 1961; making victim safety the primary consideration in bail decisions in the Bail Act 2000; and making it easier for complainants to give evidence by video recording (Evidence Act 2006).	Webinar	20 Feb
FAMILY				
LAWYER FOR CHILD *18.5 CPD hours*	*Hana Ellis* *Wendy Kelly* *April Trenberth* *Jason Wren*	This workshop has been designed to ensure participants have the opportunity to develop the full range of skills, knowledge and attitudes required to carry out the role of Lawyer for Child effectively.	Wellington	20-22 Mar
SPOUSAL MAINTENANCE – CLAIMS AGAINST AN ESTATE & ENFORCEMENT OF ORDERS *1.5 CPD hours*	*Fiona McGeorge* *Karen Pearce*	Did you know you could claim spousal maintenance from an estate? And do you know how to enforce an order for spousal maintenance once your client has been successful in obtaining one? This webinar will take a two-pronged approach in considering: applications for spousal maintenance against an estate (a remedy that is presently often not well understood), and also outline the practical steps required to enforce a spousal maintenance order in the event that the respondent refuses to pay.	Webinar	28 Feb
GENERAL				
CPD TOP-UP DAY *7+3 CPD hours*	*Chairs:* *John Mackintosh* *Dan Parker* *Jane Meares* *Matthew Tetley-Jones*	Designed for the busy general practitioner to "top-up" your year's CPD. A one-day programme offering 7 hours face-to-face CPD together with a bonus 3 hour Online CPD, for you to complete when and where it suits. Whatever your level of experience, the programme will provide practical advice on hot topics across a range of practice areas, with a regional focus and presented by an impressive line-up of speakers.	Christchurch Wellington A Wellington B Auckland Live Webstream	12 Feb 13 Feb 13 Feb 14 Feb 13 Feb

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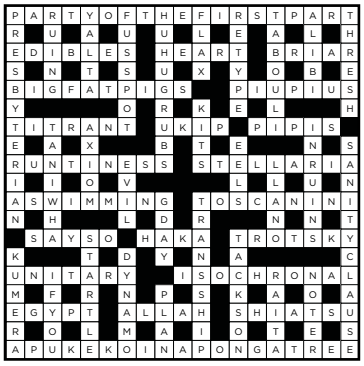
www.lawyerseducation.co.nz

PROGRAMME	PRESENTERS	CONTENT	WHERE	WHEN
GENERAL				
PRIVACY LANDSCAPE – KEY DEVELOPMENTS *1.5 CPD hours*	*June Hardacre* *Suzy McMillan*	Aftershocks from the arrival of the General Data Protection Regulation (GDPR), are still being felt around the world as other countries face the question of whether their own privacy laws are up to the required standard. This webinar will examine the international landscape and current trends in privacy, consider the implications of key case law in NZ and provide practical advice to assist you in developing and reviewing effective privacy compliance procedures.	Webinar	6 Mar
A WINDOW INTO BECOMING A DISTRICT COURT AND/OR FAMILY COURT JUDGE *1.25 CPD hours*	*Chief District Court Judge Doogue* *Principal Family Court Judge Moran*	An invitation from the Chief District Court Judge and the Principal Family Court Judge to hear what it takes to be a modern judge. This seminar will help you determine whether this role might be for you, and whether your current career settings are right should you wish to progress on to the Bench. See full invitation to attend at: www.lawyerseducation.co.nz	Christchurch Wellington Auckland Hamilton	27 Feb 28 Feb 11 Mar 12 Mar
IN SHORT				
NO WILL – AN INTESTATE ESTATE *2 CPD hours*	*Theresa Donnelly* *Henry Stokes*	The death of a family member is an extremely stressful time and this stress can be compounded when the deceased has died without a will. Even when there is a will, if gifts fail, there may be an intestacy or partial intestacy. This seminar will provide practical advice aimed at helping ensure that you are able to effectively guide your clients through the process of an intestate deceased estate.	Auckland Live Web Stream	19 Feb 19 Feb
FRANCHISING – KEY ISSUES *2 CPD hours*	*Sarah Pilcher* *Deirdre Watson*	Franchising remains a growth industry in NZ that is becoming increasingly complex and specialised and it is important that practitioners are able to provide their clients with effective advice on potentially life changing decisions. This seminar will cover the fundamentals of advising your clients on entry into a franchise agreement and working through some of the common disputes that may emerge both in the course of the relationship and on termination.	Auckland Live Web Stream	21 Feb 21 Feb
PRACTICE & PROFESSIONAL SKILLS				
TRUST ACCOUNT ADMINISTRATORS *4 CPD hours*	*Philip Strang*	How do you keep a trust account in good order? This practical training is for new trust accounting staff, legal executives, legal secretaries and office managers.	Various	Mar-Sep
TRUST ACCOUNT SUPERVISOR TRAINING PROGRAMME *7.5 CPD hours*	*Philip Strang*	Under the Financial Assurance Scheme all practices operating a trust account must appoint a qualified trust account supervisor. A candidate must be a lawyer and must pass the NZLS trust account supervisor assessments, which take place during a full day programme. The training consists of self-study learning material (approx. 40-50 hours) to help you prepare for the assessments.	Auckland 1 Hamilton Wellington Auckland 2 Christchurch	16 Apr 18 Jul 24 Sept 5 Nov 12 Nov
STEPPING UP – FOUNDATION FOR PRACTISING ON OWN ACCOUNT 2019 *18.5 CPD hours*	*Director:* *Warwick Deuchrass*	All lawyers wishing to practise on their own account whether alone, in partnership, in an incorporated practice or as a barrister, will be required to complete this course. (Note: From 1 October 2012 all lawyers applying to be barristers sole are required to complete Stepping Up.) Developed with the support of the New Zealand Law Foundation.	Auckland 1 (Full) Christchurch Auckland 2 Wellington Auckland 3	7-9 Mar 9-11 May 11-13 Jul 12-14 Sep 21-23 Nov
PROPERTY				
SALE AND PURCHASE OF APARTMENTS – KEY ISSUES *1.5 CPD hours*	*Laurie Pallet* *Claire Tyler*	Apartment living can align well with many people's lifestyles, however, there are many issues to consider when providing clients with advice on these transactions. This webinar will take a practical approach in considering disclosure requirements, Long Term Maintenance Plans, key issues to be mindful of, the relevance of builder's reports, and matters pertaining to Company Share Apartments.	Webinar	5 Mar
RESIDENTIAL TENANCIES *1.5 CPD hours*	*Lofi Talimalo* *Claire Leadbetter*	The obligations of residential landlords are changing and you need to be up-to-date with the latest requirements. This session provides an overview of the recent changes: landlord responsibilities; what can be rented as a residence; property maintenance; landlord access; insulation and heating; and insurance. Tenant's rights will also be discussed.	Webinar	27 Feb

LIFESTYLE

A New Zealand Legal Crossword

SET BY **MĀYĀ**



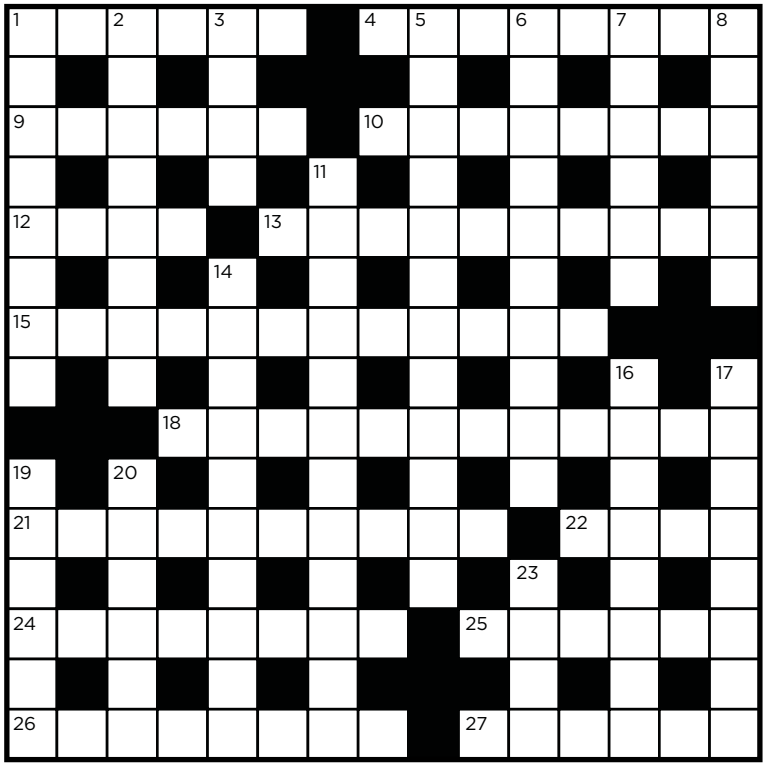
Solution to December 2018 crossword

Across

1. Party of the first part, **11.** Edibles, **12.** Heart, **13.** Briar, **14.** Big fat pigs, **15.** Piupius, **17.** Titrant, **20.** UKIP, **21.** Pipis, **25.** Runtiness, **27.** Stellaria, **29.** A swimming, **31.** Toscanini, **32.** Say so, **38.** Unitary, **40.** Isochronal, **44.** Egypt, **45.** Allah, **46.** Shiatsu, **47.** A pukeko in a ponga tree.

Down

1. Presbyterian, **2.** Ruing, **3.** Yalta, **4.** Fusspot, **5.** Huhu grubs, **6.** Flax, **7.** Retype, **8.** Tabouli, **9.** Alibi, **10.** Thresh, **16.** Kits, **18.** Taniwha, **19.** Axiom, **22.** In ruins, **23.** Eels, **24.** Sanity Clause, **26.** Evil, **28.** Llano, **30.** Gday, **31.** Transship, **33.** Startle, **35.** Tack son, **36.** Kumera, **37.** Dynamo, **39.** If you, **41.** Raita, **42.** Noter, **43.** Plan.



Across

1 19 Material Girl and spicy Ms B (or C) (6)
4 A blockhead points the finger: first chip stolen from early computers! (8)
9/13 19 hygiene that involves a PC? (1,5,4,3,3)
10 Effort Cockney girl may use to catch a tea leaf (8)
12 I take a turn at being the villain (4)
13 See 9
15 Admirer of 19 worker can remove smells (9,3)
18 Be familiar with routine, as a 19 worker should (4,3,5)
21 Adds details, as when a 19 worker puts on a cap (8,)
22 Our unknown first solver's... (4)
24 ...green tea's stirred by youth (8)
25 Alternative to belt may be fitted by a 19 worker (6)
26 Star Wars character, say, has team to save up wealth (3,5)
27 Singular Simon may be fitted by a 19 worker (6)

Down

1 Cockney geas one pits against and tests (8)
2 Lay claim to Cockney town in Yorkshire (8)
3 Gaelic Cockney's funeral carriage, say? (4)
5 But singer was quivering to get a Cockney gander (8,4)
6 In an emergency, puts down money to protect river, lake and sea (5,5)
7 Gaga to view river, say (6)
8 Back-breaking items trade leaders found in Proverbs (6)
11 Clandestine get-together for laundering, perhaps? (5,7)
14 Ring awes an unusual group of admirers (10)
16 Ferocious creature entered water, about to be separated (8)
17 She put religious instruction into the French schoolroom (8)
19 Nick and Cockney King Henry once concerned with choppers (6)
20 Bond, for example, around fish raised by tired miner (6)
23 Rabbit who escaped a sticky situation with a patch (4)

THE CASE AND THE STORY

Playing rights for women

The Pupuke Golf Club case

BY **GEOFF ADLAM**

Surrounded by forest with views over the Hauraki Gulf, Pupuke Golf Club on Auckland's North Shore describes itself as a great escape from the hustle and bustle of the city. Like most golf clubs it has lawyers among its members, but litigation will be far from their minds as they line up their putts. Not so over 80 years ago, when a battle over the rights of women to play reached the Supreme Court.

The club was founded in 1914 and today's pleasant but often precipitous course was hacked out of bush and straggly grassland through thousands of hours of voluntary labour. It flourished, and by 1932 it had hundreds of men and women members. In an age of dances it was renowned for its annual ball. The fifth such event on 25 June 1932 at the Pirate Ship in Milford was organised by a ladies' committee. A full report in the *New Zealand Herald* said the Pirate Ship Orchestra played "enlivening music" and supper was served on the upper deck, where the long tables were decorated with floating bowls of violets and Iceland poppies.

One month later the harmonious spirit in the club had vanished. Four women members sought a Supreme Court injunction to restrain the committee from preventing women from playing before three o'clock on Saturdays.

Like all golf clubs, Pupuke was incorporated with a set of rules. These established different classes of members, such as junior members, country members, non-playing members and full playing members. There was no distinction between the rights of male ("gentleman") and female ("lady") full playing members.

The dispute arose when more women began to play on Saturdays, instead of during the week. Male members complained to the club's committee which decided to take action. It refused a request by some of the women for a general meeting of the club to consider the matter and instead passed a by-law.

The by-law

The by-law read: "Saturday morning play by lady members, other than week-end members, is absolutely prohibited. The course is, however, open to lady members on Saturday afternoons, but only on condition that their round must not start till after 3pm and until all gentlemen players have commenced their matches, and that right of way must be given to the men at all times."

Breach of the by-law was to be punished by a fine of £2 and exclusion of offenders from club rights and privileges until it was paid. Four defiant women – Alma O'Neill, Grace MacDonald, Winifred (Olive) Stevens and Mabel Stevens – refused to be cowed and turned up on a Saturday morning to play. They were duly fined and suspended until payment. In 1932 New Zealand was well into the Great Depression, and £2 would have purchased $230 in 2019.

The women engaged Howard Richmond (1878-1974) (appointed King's Counsel in February 1952 and father of Sir Clifford Richmond) of the firm Buddle, Richmond and Buddle. Representing the golf club were Alexander Johnstone (1877-1956) (later Sir Alexander Johnstone KC) and a Mr McKay of the firm Stanton, Johnstone and Spence. Johnstone was widely regarded as Auckland's leading barrister. Three years earlier he had been offered the Chief Justiceship. Overcome by severe doubts he had discussed matters with the puisne judges (who urged him to accept), sent a letter of acceptance, and then (after a sleepless night) sent a telegram cancelling his acceptance (*Portrait of a Profession*, page 97).

Presiding was Justice Alexander Lawrence Herdman (1869-1953). He had practised law in Naseby for eight years before moving to Wellington and entering Parliament. His career flourished and he became Attorney-General and Minister of

Justice in 1912.

The Attorney-General is ultimately responsible for judicial appointment, and Attorney-General Herdman had created an uproar in 1918 when, on the retirement of Justice Denniston, he appointed himself to the Supreme Court bench. There were furious public meetings around the country and fervent motions in opposition, but to no avail. Following his self-appointment Herdman J resigned as an MP on 4 February 1918 and began a judicial career that ended with his retirement in 1935 (including a brief tenure as Acting Chief Justice in 1929).

By most accounts Herdman J (knighted in 1929) was an "adequate rather than distinguished" judge. He was a prominent Mason and regarded as authoritarian in the courtroom. It is not known if he was a golfer.

The proceedings

The application for injunction was heard in the Supreme Court in Auckland on 22 August 1932. The applicants argued that the committee had no power to make the by-law, which effectively cut down privileges conferred by the rules. Alteration of the rules could be effectively done only by the members in general meeting.

The applicants had done everything possible to resolve matters, said their counsel, including offering to suspend play for three weeks and to bring it to arbitration. They had been subjected to a great deal of annoyance, statements having made that they were entirely selfish "and ploughed up the greens," Richmond told the court. The real reason for the by-law was to enable the men to have the course to themselves. "The whole object is to ensure the links are perfect for the men players; that there shall not be a blade of grass trampled on before they commence play," he said.

The club argued that the sole question was whether the rule giving the committee power to make by-laws was wide enough in its terms. "A power to regulate and control involves a necessary restriction of liberty". The by-law was made to preserve the conditions of the greens and to allow male members to conduct their competitions without congestion and interference. "A perfect army of these women turn up in the morning and ruin the game for the men in the afternoon. They are not deterred by any regard for rules of sportsmanship or consideration for other members," said Johnstone.

In response to a question from the judge, Johnstone said the women paid less for their subscription and the by-law was not enforced when first made. However, women had played in such numbers on Saturday mornings as to interfere with the preparation of the greens and it had become necessary to enforce the by-law.

The by-law read: "Saturday morning play by lady members... is absolutely prohibited. The course is, however, open to lady members on Saturday afternoons, but only on condition that their round must not start till after 3pm and until all gentlemen players have commenced their matches

The decision

Ten days later, on 1 September, Herdman J delivered his decision (*O'Neill v Pupuke Golf Club Inc* [1932] NZLR 1012). The injunction was

granted. In making the contested by-law the committee had acted beyond the powers conferred upon it by the rules of the club, he held. The by-law was therefore invalid.

Herdman J noted that the affidavit evidence was so conflicting that it was impossible for him to decide whether it was in the interests of the club as a whole that the prohibition created by the by-law should exist. The club's rules did not go the length of enabling the committee to make a by-law which benefitted one section of members only, which restricted the playing rights of another section "and which authorises the committee, if a breach of the by-law be committed and the authority of the committee is defied, to take some action against an offending member which involves disqualification."

The committee had discriminated between men and women players and had deprived the women of an advantage they possessed under the club rules when they joined the club.

"It think it is plain that the rule cannot have been devised for the protection of the grounds in the interests of all players, for ... men and boys may, if they like, use the links on Saturday mornings. The committee must have had some other object in view, and that object appears to have been to give men players special facilities on Saturdays."

Herdman J said the club, in general meeting, might lawfully make rules which benefit one section of the members only, but it was difficult to believe that a committee, by means of by-laws which usually related to matters of minor importance, could seriously interfere with the rights conferred upon a member by rules in existence when "he" joined the club and paid "his" subscription.

The committee had discriminated between men and women players and had deprived the women of an advantage they possessed under the club rules when they joined the club.

The sting in the tail

Victory was short-lived. A few days later the *Auckland Star* reported that a special general meeting of the club had been convened for 13 September 1932 "when proposals to add to the rules of the club will be submitted to members".

The proposed amendments to the rules included empowering the committee to close the course for play on such days or parts of days as it thought necessary and to regulate times "at which particular classes, or grade, or sex of members shall play".

Another proposed amendment was that "at any general meeting each lady member shall have one vote and each gentleman player two votes".

And, even more punitively, two-thirds of present committee members (effectively eliminating the women members) could resolve to refuse to accept "without giving reasons therefor" the annual subscription tendered by any member.

Finally, "no action on legal proceeding whatever ... shall be taken or instituted against the club committee or an official, notwithstanding any irregularity in the committee's action or procedure."

Commenting in the *New Zealand Herald* lawyer and club stalwart DRC Mowbray admitted that "the proposed new rules were something quite foreign to

the rules of golf clubs generally".

Resolution

The meeting was attended by about 150 members, men and women being present in about equal proportions, the *New Zealand Herald* reported. All proposed rules were adopted, except the one allowing the committee to refuse to accept an annual subscription.

"I cannot emphasise too strongly that the amendments to the rules of the club which are now proposed are not brought forward in any spirit of vindictiveness as a result of the recent regrettable Supreme Court case," club president JA Howie said.

The meeting, however, resolved the Saturday play issue amicably. The press was excluded, but the *New Zealand Herald* understood that a proposal to transfer the by-law into the club's constitution was abandoned at the outset. It appears this was because the large number of women present may have successfully called for a vote of no confidence in the committee.

"In respect to the contentious question of the hours during which women may play the committee has now been given power to frame by-laws to suit the convenience of the majority of players of the club," it said.

"Mr Howie pointed out that the proposed rule concerning players' hours would certainly give the committee wide powers, but it could be trusted to do the fair thing in the interests of all the members."

The women involved remained (no longer suspended) members. Indeed, just days after the general meeting, Olive Stevens beat Mabel Stevens in the final of the Ladies' Senior Championship. Bad feelings must have lingered, as – after spending part of February 1933 in Port Albert "for the opening of the godwit shooting season [!]" – Alma O'Neill and also Mabel Stevens were reported as playing at the North Shore Golf Club (which had opened on 13 May 1931).

Moving forward

Time has passed and the case is forgotten. In 2014 the club's centenary publication *One Hundred Years of Golf* made just one oblique reference. In a paragraph headed "Another one about the Ladies" it noted "Rumour has it that during the early Thirties there was a bit of a debate about Lady Members. So much so that a group left Pupuke and joined together to help establish the North Shore Golf Club".

The difference between men and women still applied in the 1960s with women paying lower subscriptions, but "only entitled to half a vote at the AGMs," the centenary history states. This changed in the mid-1990s when subscriptions were equalised and the club structure reformed. Under the 2011 rules "Full Playing Members" have use of the full privileges of the club regardless of their gender.

New Zealand of course now has legislation which prohibits overt discrimination on a gender basis. In his entertaining article "Golf and the Law: More than errant golf balls" *Otago Law Review* (1998) Vol 9 No 2, 373-398, Craig Brown says exclusion of and restrictions on women have long been a part of private golf clubs. On the other side of the world from Pupuke, the "home" of golf was not exempt: "In early days the Royal and Ancient at St Andrews confined women to their own course, a large putting green thought appropriate since women were not physically suited to the rigours of the full game" (at 390). As the women of Pupuke showed, change can come through challenging discrimination. ■

TAIL END

Characters in the law

BY **DAVID SPARKS**

I loved the article about the bombing of 'Dickie' Singer (*LawTalk* 924, December 2018, pages 90–91).

It brought back a few memories of characters in the law from days gone by, of which there were rather a lot.

Others that spring readily to my mind – and not in any particular order – include **Michael ('Mick') Robinson**, a well-known divorce lawyer in Auckland in the 50s/early 60s who later got struck off but who still would come to court, sit in the public gallery and shout instructions to whoever was appearing for 'his' clients. I actually met him a couple of times as a teenager when my mother consulted him on her matrimonial issues and took me along as well. I recall a larger-than-life person with a booming voice.

Another was **Leonard Leary**, Eb Leary's father. Len took us for classes on legal ethics in our last year in law school back in the 60s and told us some fascinating tales of his involvements in various famous trials.

Then there was **Bryce Hart** the Auckland lawyer and wit. Anecdotally he would sometimes swear affidavits on a copy of *Best Bets* if a Bible was not handy. There was a legendary Auckland Magistrate called **Freddy Hunt** who was known for his rather brusque manner – not the only one, as I well recall others from the 60s in the then Auckland Magistrate's Court where we young lawyers learned our craft. On one occasion Bryce was apparently appearing for a client with numerous

Notable Quotes

"The law is not dealing with this well at the moment, it will need to be addressed. We just need to come up with some kind of solution to the fact that jurors google."

— Tauranga barrister Thomas Harré talks to Radio NZ about mass breaches of suppression orders in the Grace Millane case.

"I've actually received emails from people who said they're sorry they signed the petition. Once they read the sentencing judgment they wished they hadn't."

— Belinda Sellars, lawyer for Rouxie Le Roux who was sentenced to 11 months home detention and 250 hours community service after driving into and killing cyclist Nathan Kraatskow. A petition asking the Crown to appeal the sentence reportedly secured 140,000 signatures.

"What particularly unimpresses me is I don't detect anyone here from Corrections. They haven't had the courtesy to appear before the court, knowing the mistake has been made."

— Justice John Champion of the Supreme Court of Victoria, Australia, after the wrong Peter Brown was brought before him for sentencing. The correct Peter Brown had been found guilty of murder and was eventually sentenced to 30 years' imprisonment. It is not known what the other Peter Brown was held for.

"Getting a threat-to-your-life warning delivered by uniformed officers is serious. I was concerned, to say the least. I had just finished my involvement in a High Court murder trial. All sorts were going through my mind. After discussions, I knew it was a case of mistaken identity."

— Scottish lawyer Neil Kilcoyne after two police officers visited him to say his life was in danger from a possible attack by a disgruntled client. However, Mr Kilcoyne – who helped defend a gangland killer in a high profile case – quickly realised that the threat was to the life of another lawyer.

previous 'form' for bookmaking. Bryce told Mr Hunt that this was his client's hundredth appearance for bookmaking whereupon His Worship said "What am I supposed to do, stand up and cheer?"

When Sir Joseph Ward was Prime Minister (Liberal Party), Bryce Hart was appearing in the Magistrate's Court for a chap of the same name who was charged with urinating in a public place. The Magistrate asked Bryce if his client was related to the PM. Bryce said "Not as far as I know Your Worship, but he is a liberal peer nonetheless!"

Others of course would be great counsel like the late Peter Williams QC and Kevin Ryan QC. Well worth listening to in the famous Courtroom Number 1 in the old Auckland Supreme Court (as it then was).

I would be interested in hearing other readers' memories. ■

It brought back a few memories of characters in the law from days gone by, of which there were rather a lot.

David Sparks is Senior Solicitor with Baywide Community Law Service in Whakatane. We would also enjoy hearing of any (publishable) anecdotes of lawyers and courtrooms past. An email to *editor@lawsociety.org.nz* will work perfectly.

"People are telling us they are very proud to work for the Law Society and really believe in our public interest mandate."

— Law Society of Ontario CEO Diana Miles, after the Law Society was named as one of Greater Toronto's Top Employers for 2019, the 13th year in a row that it has been included.

"This is a very excellent service because previously there have been many cases in which women are divorced without knowing their status."

— Saudi Arabian lawyer Bayan Zahran comments on Saudi TV on news that women in Saudi Arabia will receive a text message when a court confirms their divorces. Men have been able to register divorce deeds in court without the woman's knowledge.

"I just couldn't take it anymore. Just couldn't. The lengthy questionnaire, and Robinson should just be shot in the face and that's just how it is."

— An email allegedly sent by already-suspended Rhode Island lawyer Nicholas Gelfuso about the state's Supreme Court Justice William Robinson. He was arrested on charges of threats to public officials.

"We are clear that you don't need lawyers in a family court. It's about getting a fair outcome. The legal system in family law is no more than human disagreement – there are no legal questions."

— Former English police officer Philip Kedge, who has established the Blue Light McKenzie Friends website to link 100 former police officers acting as McKenzie Friends with members of the public.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