LawTalk
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Some practical tips for lawyers working from home

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New Zealand Law Society
Te Kāhui Ture o Aotearoa

ABOUT LAWTALK

LawTalk is published monthly by the New Zealand Law Society | Te Kāhui Ture o Aotearoa for the legal profession. It has been published since 1974 and is available to every New Zealand-based lawyer who holds a current practising certificate.

ABOUT THE LAW SOCIETY

The New Zealand Law Society | Te Kāhui Ture o Aotearoa 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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SUBSCRIPTIONS

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FORMAT OF THIS ISSUE

On 23 March 2020 the Prime Minister issued an Epidemic Notice pursuant to section 5 of the Epidemic Preparedness Act 2006 and because of the COVID-19 pandemic. Two days later on 25 March a State of National Emergency was declared. Actions taken because of these have resulted in this issue of LawTalk not being published

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in hardcopy - the first time this has ever occurred. Instead, it is available online and has been distributed by email and through the Law Society's website. The printer of LawTalk, Blue Star, has been designated as providing essential services, but the printing and distribution by post or DX of this magazine does not constitute an essential service. This issue retains the design and layout of the hardcopy version and we hope that readers will find it as informative and useful to the practice of law as the 937 issues previously delivered in hardcopy.

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NEW ZEALAND LAW SOCIETY | TE KĀHUI TURE O AOTEAROA

COVID-19: the potential to thrive in uncertainty

As this issue of LawTalk is readied for release, we are watching the COVID-19 pandemic continue to unfold around the globe.

In New Zealand, our history will record 11.59pm on 25 March 2020 as an historic moment, the exact time our country went into an unprecedented national lockdown to control the spread of this highly contagious virus. The steps being taken by the Government, by the judiciary and courts, and by the Law Society all have one unifying goal – to prevent the spread of COVID-19 and thereby protect all of us, the people we serve, our families and our friends.

While this is undoubtedly the greatest collective fight of our lifetime, now is the time for all of us to keep a cool head and respond to our new circumstances with courage and fortitude. And come together as a united profession.

In the first few hours of putting out the call for volunteers to do pro bono work the Law Society and the NZBA had over 230 lawyers offering their services. Since Level 4 was announced I have been humbled by the collaboration occurring across government, the judiciary and legal organizations to literally paddle the waka in unison. I am truly proud of the selflessness of Law Society staff, volunteers and governors to support the profession and the utter commitment from everyone to help us all see this through. This all gives me confidence we can be united and show the best of ourselves in this extraordinary time. Indeed, it gives me hope that we will not just survive but thrive.

The Law Society is providing, and will continue to provide, guidance and information as soon as it comes to hand, particularly on how to keep the wheels of justice turning. We are doing this in close partnership with other professional legal organizations, the judiciary and government departments to ensure the advice comes from trusted sources, has judicial support (where appropriate) and is consistent.

Regularly updated information is being provided on the dedicated COVID-19 page on our website. Our Family Law Section, for example, have been working hard to provide on-going practical guidance on the vexing issue of obtaining affidavit evidence for without notice priority proceedings. Further guidance was recently provided on filing unsworn affidavit evidence and other topical issues like shared custody arrangements.

We're also providing additional services aimed at supporting our members. One of these is our new, free webinar series, designed to help you respond to practising during COVID-19 Alert Level 4. We have already run a webinar on working effectively from home during a lockdown; and, a session with the Registrar General of Land and Chair of Property Law Section on property matters arising in this unique time.

A key decision made by the Board since Level 4 was announced by the Government is the expansion of our National Mentoring pilot to the whole of the profession. The pilot has been running successfully for the past nine months in Auckland and Christchurch.

Why mentoring, and why now?

Reaching out to another lawyer, who may come from a different part of the profession, or be from a different generation, or area of law and developing a professional mentoring relationship can offer great benefits. It also unites us.

Nobody understands better what it means to be part of our profession than another lawyer, and a professional problem or two shared, and possibly solved, can keep you on track through what will no doubt be an arduous journey for many parts of our profession, country and world.

A national mentoring programme can improve our collective

wellbeing, help us stay united, build networks, and connect mentors and mentees so they can develop the sort of adaptive thinking we will all need.

The mentoring programme will be a professional support network that complements the well-established Friends Panel and the free counselling that continues to be provided to the legal profession, and those working in legal offices, via Vitae. In addition to the Friends Panel, mentoring will assist with responding to some of the professional challenges which COVID-19 will throw up. While confidential and individual focused counselling will provide the emotional support needed to build and maintain personal resilience.

As this edition goes to virtual print, I will be arriving at my first anniversary of being President of the New Zealand Law Society (having taken up the role on 10 April 2019). I can honestly say I have never been prouder to lead the Law Society, and be part of, the profession than right now. My favourite John F Kennedy quote is that "we do these things, not because they are easy, but because they are hard....and they need to be done". We will do what needs to be done.

He waka eke noa, kia kotahi te hoe o te waka – we are in the same waka and we need to continue to paddle as one.

Keep safe and strong everyone. Our community is going to need us, and we will need each other, in the challenging months ahead.

Tiana Epati, President
New Zealand Law Society | Te Kāhui Ture o Aotearoa

Parliamentary oversight important safeguard for secondary legislation

The New Zealand Law Society | Te Kāhui Ture o Aotearoa says the new framework governing secondary legislation is an important part of New Zealand's constitution, and changes to the framework would better support the accessibility and Parliamentary oversight of secondary legislation.

The Law Society presented its submission on the Secondary Legislation Bill to Parliament's Regulations Review select committee and recommended changes to ensure better coverage, and more safeguards on the process for exempting secondary legislation from the usual requirements of publication, presentation and disallowance.

"The bill has an important role in supporting the rule of law – by ensuring that people can easily know what the law is – and upholding the constitutional principle that Parliament is the supreme legislative power in New Zealand. The Law Society considers the bill could be improved in two areas to better achieve those objectives," Law Society spokesperson Debra Angus said.

The bill substantially changes the current definition of 'secondary legislation', so that in the future, legislative instruments made under the Royal prerogative which are not already listed, will not have to be published and will not fall under Parliament's oversight. Unlike other secondary legislation, these instruments are made under the Sovereign's common law powers, not under a power delegated by Parliament.

"This has significant implications. The Law Society has consistently highlighted the need to ensure that all instruments with legislative effect should be published and subject to Parliament's oversight," Ms Angus said.

The Law Society also recommends greater scrutiny of the proposed regime allowing exemptions from the requirement for secondary legislation to be published, presented to the House and subject to Parliament's disallowance procedures.

"Any such exemptions should be rare. It is not clear that all the proposed exemptions in the bill are justified. The committee will need to be satisfied that each exemption is legitimate and no broader than necessary," Ms Angus said.

The Law Society recommends incorporating a reporting system in the bill to ensure that exemptions are properly applied, to provide an appropriate level of transparency. ■

Steering group appointed for review of statutory framework for legal services

The New Zealand Law Society | Te Kāhui Ture o Aotearoa is undertaking an independent review of the statutory framework for legal services, including the structure and functions of the Law Society.

Law Society President Tiana Epati said the review was launched in response to the constraints the current Lawyers and Conveyancers Act 2006 places on the Law Society's ability to be transparent about our complaints process, and to deal with a broad range of unacceptable behaviour, including complaints of sexual harassment and bullying within the profession.

Ms Epati last month announced the seven-member steering group who will develop a terms of reference for the Law Society's review of the Act.

The steering group will be chaired by businessman Whaimutu Dewes. The other members are former Consumer New Zealand Chief Executive, Sue Chetwin; Otago University Associate Professor, Selene Mize; Chief Legal Adviser at the Ministry of Business, Innovation and Employment, Ann Brennan; barrister Paul Collins; and Wakatū Inc Chief Executive, Kerensa Johnston. The Law Society Board's independent observer, Jason Pemberton, is also on the group.

"We are delighted to have appointed a group of high-calibre individuals with a strong and varied skill base. They bring substantial credibility to this important work," says Ms Epati.

The group's main task is to provide the Law Society with a comprehensive terms of reference. The terms of reference will then form the basis of the substantive review, she said.

"It's important to ensure the terms of reference is sufficiently wide and forward looking. The steering group will consult widely with both the profession and stakeholders to produce a terms of reference that identifies the main areas of representation and regulation that need to be addressed in the review."

Everyone will have an opportunity to respond to the steering group in some way, Ms Epati says. More information about this will be shared soon.

Members of the Steering Group

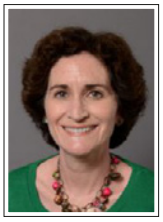
Whaimutu Dewes (Chair) of Ngāti Porou and Ngāti Rangitihi descent, has an intense interest in the role of economics and governance in New Zealand and Māori economic development. He has worked as a lawyer at the Ministry of Justice and is currently a member of the board of Contact Energy and the Chairman of Ngāti Porou Forests, Aotearoa Fisheries and Sealord Group and Ngāti Porou Seafoods. He is also a member of the Major Outsourced Contracts advisory board to the Department of Corrections. Previous directorships include the Ngāti Porou Holding Company, Housing New Zealand, Television New Zealand and the Advisory Board to the Treasury and to AMP. Whaimutu has also held senior management roles at Fletcher Challenge and the Department of Māori Affairs. Whaimutu has been instrumental in developments in New Zealand constitutional law, particularly the recognition of property rights of Māori people secured under the Treaty of Waitangi and setting up the governance and execution structures to realise the economic outcomes from that process. He has also negotiated long term and significant joint venture arrangements and now oversees joint ventures between international and Māori companies in the fields of forestry and carbon sequestration as well as seafood harvest and marketing globally.

Sue Chetwin is the former Chief Executive of Consumer New


Whaimutu Dewes


Sue Chetwin


Selene Mize


Ann Brennan


Paul Collins


Kerensa Johnston


Jason Pemberton

Zealand, a role she held for almost 13 years, and is widely recognised for her work as a consumer advocate. Sue joined Consumer New Zealand after more than 25 years in print journalism; she has been editor of all of the country's Sunday newspapers. She is a member of the Banking Ombudsman Scheme and on the boards of both the Financial Markets Authority and the Food Standards Australia New Zealand Authority. Sue is currently chairing a review of the .nz domain names space for InternetNZ.

Selene Mize is an Associate Professor of Law at the University of Otago in Dunedin. She has a BSc from Northwestern University and a JD from Stanford Law School. Prior to shifting to New Zealand in 1985, she clerked for the US Courts of Appeals in New York, and then practised law in the media litigation department of a major international law firm. Selene is a past fellow of the National Institute for Teaching Ethics and Professionalism, and has trained judges through the Institute for Judicial Studies and mediators for the Samoan Lands and Titles Court. She has served on the Executive Board of the International Association of Legal Ethics, co-organised the Australia-New Zealand Legal Ethics Colloquium in 2012, and has contributed to a number of international working groups on regulating lawyers. She was the *New Zealand Law Journal*'s commentator on legal ethics from 2010-2018.

Ann Brennan is Chief Legal Advisor at the Ministry of Business, Innovation and Employment, a position she has held since May 2013. She is responsible for the provision of all legal services to MBIE as well as MBIE's integrity and privacy functions. Ann leads a team of about 90 lawyers and technical specialists who support a broad and diverse business focused on growing the New Zealand economy to provide a better standard of living for all New Zealanders. In addition to general management experience, Ann has considerable governance experience as a board secretary, director and member of a range of Government governance and advisory boards. Early in her career Ms Brennan was a litigator with Kensington Swan and Chapman Tripp. Ann was Senior Counsel at Westpac for six years. In 2007 she was appointed General Counsel of the Public Trust where she was a member of the executive team and responsible for the legal, risk, compliance, regulatory affairs and customer quality functions.

Paul Collins is a barrister at Shortland Chambers, Auckland, with wide experience in areas of professional discipline and regulation in the legal profession. He has prosecuted numerous cases in the Disciplinary Tribunal and has appeared in the senior courts in cases involving discipline and regulation of the legal profession. He was a convenor of the National Standards Committee for nine years and has been involved in standards committee and practice approval committee training since the outset of the Lawyers and Conveyancers Act. He is a contributing author to *Professional Responsibility in New Zealand* (LexisNexis) and was consulting editor for *The Laws of New Zealand: Lawyers and Conveyancers*.

Kerensa Johnston of Ngāti Tama, Ngāruahine and Ngāti Whāwhakia descent, is the Chief Executive of Wakatū Inc. She has worked as a solicitor in the private sector and as a legal academic in the Faculty of Law, University of Auckland, where she specialised in Māori legal development, public law, land law and as a barrister. Kerensa has a BA in History and an LLB from Victoria University and a Master of Laws in International Law (First Class Honours) from the University of Auckland. She is the Chair of the board for Ngā Pae o te Māramatanga, the Māori Centre of Research Excellence. She is a member of the Association of Corporate Counsel, ILANZ, the in-house lawyers' section of the Law Society, and Te Hunga Rōia Māori o Aotearoa.

Jason Pemberton, Law Society Board independent observer, is an independent director, entrepreneur, and multidisciplinary artist based in Ōtautahi Christchurch. He was instrumental in the establishment of the Student Volunteer Army that arose in response to the Canterbury earthquakes and now manages a small portfolio of governance and teaching roles with charitable, regulatory, and purpose-for-profit organisations. In late 2018, Jason joined the board of the New Zealand Law Society as an independent observer, the first non-lawyer at the governing table in its 150-year history. Jason's professional background includes emergency management, sales, community development, adult education and music, having initially trained in human resource development and psychology. ■

Sexual violence trial reforms must strike the right balance

The New Zealand Law Society | Te Kāhui Ture o Aotearoa says it supports efforts to reduce retraumatisation for sexual violence complainants, but proposed law changes need to strike the right balance between ensuring complainants are treated fairly and upholding the fundamental right to a fair trial.

The Law Society presented its submission on the Sexual Violence Legislation Bill to Parliament's Justice select committee and recommended some changes to the bill about the way complainants and witnesses give evidence in sexual violence trials.

"The Law Society supports efforts to ease the burden on vulnerable complainants of giving evidence but is concerned aspects of the bill erode fair trial rights," Law Society spokesperson Chris Macklin said.

"It is essential this law change ensures all participants are treated fairly, so that justice is not only done but seen to be done and fundamental fair trial rights are upheld.

"The bill substantially changes the way sexual violence complainants and witnesses give evidence, including by allowing greater use of pre-recorded evidence and cross-examination. It attempts to strike an appropriate balance on difficult issues, but some of the reforms will cause serious difficulties in practice."

The Law Society believes changes to the bill are needed to ensure that pre-recording evidence does not erode defendants' right to a fair hearing of the criminal charges against them.

"The Law Society is particularly concerned the reforms will place extra strain on the criminal justice system where resources are already stretched thin. All criminal practitioners – defence lawyers and prosecutors – we consulted expressed grave concerns about delays in trial courts and processes, and system-wide improvement is required before these reforms can feasibly be implemented," Mr Macklin said.

The Law Society broadly supports the bill's changes to the way victim impact statements are presented to the court and has recommended some amendments to support this. ■

▲ The New Zealand Law Society Building was built from 1962–1965
DW-1289-F. Alexander Turnbull Library.

Law Society sells national office building

The New Zealand Law Society | Te Kāhui Ture o Aotearoa has sold its national office building at 26 Waring Taylor Street, Wellington to The Wellington Company.

The settlement date was 31 March 2020.

The Law Society moved out of the building in July 2019 after a Detailed Seismic Assessment revealed that part of the building was earthquake prone. While the Law Society has owned the building, which was constructed in the early 1960s, the land it sits on is leasehold and is owned by Wellington City Council.

"We are very pleased to have reached agreement on sale of our former national office to The Wellington Company," Law Society Chief Executive Helen Morgan-Banda said.

"The building has served the Law Society and New Zealand's legal profession well for five decades.

"The Law Society will be moving into a new national office it has leased in Wellington's Brandon Street later this year. This is currently being strengthened to 130% of the National Building Standard." ■

Law change not necessary to protect first responders

Law changes being proposed to provide protection for first responders and prison officers are well-intentioned, but New Zealand's criminal law system already provides this protection.

The New Zealand Law Society | Te Kāhui Ture o Aotearoa says these changes would add unnecessary confusion and inconsistency.

The Law Society has presented its submission on the Protection for First Responders and Prison Officers Bill to Parliament's Justice select committee, saying the member's bill is unnecessary and should not proceed.

"The bill seeks to provide greater protection to first responders and prison officers, by creating a new criminal offence and expanding existing offences. While this is an understandable aim, it is not necessary to amend legislation to achieve it," Law Society spokesperson David Neild says.

"New Zealand's criminal statutes already include specific offences for assaults on police and other responders, and the courts have a discretion to take the status of the victim – police and prison officers, and emergency health or fire service personnel at emergency scenes – into account as an aggravating factor at sentencing," he says.

The Law Society says the new offence, with a maximum penalty of 10 years' imprisonment, would also introduce unnecessary and unhelpful complexity in sentencing.

"It would double the maximum penalty for one type of assault (injuring with intent to injure) but not for other assault offences where the victim is a first responder or prison officer. The Law Society considers this is not justified," Mr Neild says.

"It would be preferable to use the current legislative mechanisms to treat the victim's status as a first responder or prison officer as an aggravating factor, which can then be applied to the full spectrum of assault charges."

The Law Society also questioned the bill's scope and terminology, including the justification for limiting the protections to a specific group of 'first responders'. If the bill is to proceed, advice and drafting assistance will be needed to ensure the law changes are in fact fit for purpose.

"However, the Law Society considers the bill to be fundamentally unnecessary and recommends that it not be enacted. If amendment of New Zealand's criminal law is considered necessary, the better course would be for the government to introduce a bill so that the reforms can be properly informed by policy analysis from officials and drafting support from experienced parliamentary drafters," Mr Neild says. ■

Emergency caller location privacy safeguards suffice

Privacy safeguards included in the proposed changes to the emergency caller location system appear to be sufficient, with strong oversight mechanisms required, the New Zealand Law Society | Te Kāhui Ture o Aotearoa says.

The Office of the Privacy Commissioner has proposed an amendment to the Telecommunications Information Privacy Code 2003. This extends the emergency caller location information system by facilitating the active collection of location information from devices where necessary to prevent or lessen a serious threat to the life or health of an individual. While the system will still require the existence of an emergency, this would no longer be contingent on the making of an emergency call.

The Law Society says it recognises the potential public safety benefits. However, to justify a more intrusive system, any proposed changes should have sufficiently strong oversight mechanisms to curb any actual or potential abuse.

It says the new powers are extensive, increasing the risk of potential misuse or abuse. Strong oversight mechanisms are required and, as suggested, it is appropriate that the Privacy Commissioner regularly reviews emergency providers' logs of disclosures and retains the power to amend the code to prevent potential or actual abuse. ■

Comments made on purchase price allocation proposals

The New Zealand Law Society | Te Kāhui Ture o Aotearoa has commented on proposals in a tax policy issues paper relating to the current law on taxation and purchase price allocation. It says it has reservations about the proposal that in various circumstances the vendor should set the values allocated to the assets, and that the purchaser should be required to use the values determined by the vendor.

"This proposal would seem to put too much power in the hands of the vendor, and to leave the purchaser at risk of being unable to determine its tax position on completion of the transaction," it says. "The proposal assumes that a purchaser who objects to the vendor's allocation will be able to renegotiate the price, or to postpone entering into an agreement until the allocation is resolved. However, in practice these assumptions may be unrealistic. Officials should consider whether the proposed procedure for resolving disputes will be unduly time-consuming and unpredictable."

The Law Society also says it would be desirable for the law to provide for a series of default rules for allocating values. It outlines how this could be done with four default rules for trading stock, depreciable property, other revenue account property, and also for non-depreciable capital property. ■

Focus on the Rule of Law Committee

The Lawyers and Conveyancers Act 2006 requires that every lawyer must uphold the rule of law and facilitate the administration of justice. The New Zealand Law Society | Te Kāhui Ture o Aotearoa has always spoken out as a defender of the rule of law.

The Rule of Law Committee was established in 2007 to acknowledge the duty in the 2006 Act. Among the committee's terms of reference are requirements to advise and assist the legal profession in meeting that obligation, to monitor and respond to rule of law issues, to maintain a neutral political position, and to respond, as appropriate, to requests for advice and assistance from international legal associations on rule of law issues. The committee also is required to promote the continued separation of the legislative, executive and judicial functions of government and, in particular, to promote and protect judicial independence.

Austin Forbes QC has been convenor of the committee since its establishment. Admitted in February 1970, Austin was a litigation partner at Duncan Cotterill in Christchurch until 1990 when he began to practise as a barrister sole. He was New Zealand Law Society President from 1994 to 1997 and was appointed Queen's Counsel on 27 May 1996 and awarded the CNZM in 1997. He specialises in commercial and civil litigation.

The other committee members are:

Gregor Allan is a Wellington barrister at Port Nicholson Chambers, specialising in public and criminal law. He has extensive public sector experience, including as a Crown Counsel, Ministry of Justice policy manager, public sector in-house counsel and Crown Prosecutor. He has particular experience with inquiries.

Isaac Hikaka is a partner with Auckland firm Lee Salmon Long. He specialises in trusts, relationship property, South Pacific law, electoral law, public law and sports disputes. A permanently admitted member of the Cook Islands bar, Isaac also appears in domestic and international arbitrations and has extensive experience in electoral petitions.

Professor Philip Joseph is a member of the University of Canterbury School of Law and is author of the definitive *Constitutional and Administrative Law in New Zealand,* which is now in its fourth edition, with the fifth edition to publish this year. He has taught and written extensively on constitutional and administrative law, and holds a practising certificate as a barrister, specialising in public law cases.

Sir Geoffrey Palmer QC now practises from Harbour Chambers in Wellington. Since his admission as a solicitor in 1965 he has been Prime Minister, Attorney-General, Minister of Justice, a law professor in New Zealand and the United States, Law Commission President and a public law practitioner. He has written and taught extensively on constitutional, international, privacy and resource management law.

James Wilding QC is Convenor of the Mental Health Review Tribunal. He practises in the areas of child, human rights and public law, relationship property, trusts and legal ethics. He is a member of the Legislation Design and Advisory Committee.

Professor Geoff McLay is a member of Victoria University of Wellington's Faculty of Law. He was a Law Commissioner from 2010 to 2015, is editor of the New Zealand Law Reports and is chair of the Legislation Design Advisory Committee's external

subcommittee.

Christopher Griggs is a Wellington barrister at *Barristers.Comm*. His main focus is civil and commercial litigation, but his experience includes criminal, aviation, maritime, military and international law. He is an Honorary Senior Fellow of the Australian National Centre for Ocean Resources and Security and a director of the International Society for Military Law and the Law of War.

Sarah Jerebine is an Auckland barrister at Bankside Chambers. She is an experienced civil litigation lawyer, with particular experience in public law and commercial litigation. Over the last decade she has acted primarily for the Government as Crown Counsel.

Some recent initiatives

The committee monitors developments relevant to the rule of law both domestically and internationally. Over the past year it has made public statements drawing attention to rule of law concerns. The trial of 12 people without legal representation in Nauru's Supreme Court was seen as an extraordinary breach of legal rights and the rule of law, with a statement to that effect released on 5 December 2019. Convenor Austin Forbes QC was interviewed by New Zealand and Australian media several times during the trial process. The committee also wrote to Justice Minister Andrew Little and Foreign Affairs Minister Winston Peters to urge New Zealand government involvement.

The International Day of the Endangered Lawyer on 23 January 2020 was also marked with a statement by Mr Forbes. "Every year New Zealand consistently ranks highly in the World Justice Project's Rule of Law Index. This is something which all New Zealanders should value," he said. "We can speak out or criticise our government, our justice system and other institutions without fear of arrest or violence."

However, he said, the New Zealand Law Society recognises the courage of lawyers around the world in countries where the rule of law is less secure, who continue to represent clients no matter what they are charged with, and who speak out against oppression and violation of human rights.

Committee member Geoff McLay presented the Law Society's submission on the Terrorism Suppression (Control Orders) Bill to the Foreign Affairs, Defence and Trade select committee on 14 November 2019. He recommended a number of significant changes and said the bill was being rushed through Parliament with inadequate justification and insufficient scrutiny.

Committee member Chris Griggs presented the Law Society's submission on the Asia-Pacific Economic Cooperation (APEC 2021) Bill to the Foreign Affairs, Defence and Trade select committee on 13 February 2020. He said that legislation to support safety and security for world leaders and others attending APEC 2021 events needed additional safeguards and public scrutiny of the powers to be given to the armed forces and APEC security staff. The bill grants significant coercive powers to members of the armed forces and APEC security staff and departs from the usual constitutional restriction against using the armed forces to support Police law enforcement. The Law Society recommended that the role of the armed forces, APEC security staff and foreign protection officers in the APEC 2021 security operation be carefully considered. ■

Unclaimed money changes welcome and long overdue

MODERNISING THE PRACTICAL OPERATION of the Unclaimed Money Act 1971 is necessary and overdue, the New Zealand Law Society | Te Kāhui Ture o Aotearoa says. The Act is outdated and difficult for users to navigate.

Commenting on an Inland Revenue tax policy consultation, *Unclaimed money*, it says the changes which are proposed are welcome and long overdue. These include removing the need to maintain physical registers, reducing the period of time before money is deemed unclaimed, and improving Inland Revenue's ability to match unclaimed money with people.

The Law Society says the processes and legislation associated with unclaimed money are relevant to all lawyers holding a trust account. There are currently 1,350 such trust accounts, and lawyers would welcome any improvements to the current system for payment which increases administrative ease and convenience. ■

PEOPLE

On the Move

Acting District Court Judges appointed

The appointments of a number of Acting District Court Judges have been gazetted.

Jocelyn Frances Munro, retiring District Court Judge, has been appointed an Acting District Court Judge and also to exercise the jurisdiction of the Family Court for a term of two years commencing on 16 November 2020. Judge Munro was appointed to the bench on 11 July 2007.

Philip Richard Connell, retiring District Court Judge, has been appointed an Acting District Court Judge and also to exercise the jurisdiction of the District Court under section 354(3) of the Criminal Procedure Act 2011 for a term of two years commencing on 14 August 2020. Judge Connell was appointed to the bench on 12 April 2000.

Ian Grant Mill, retiring District Court Judge, has been appointed an Acting District Court Judge and also to exercise the jurisdiction of the District Court under section 354(3) of the Criminal Procedure Act 2011 for a term of two years commencing on 20 October 2020. Judge Mill was appointed to the bench on 15 January 1998.

John Gordon Adams, retired District Court Judge, has been appointed an Acting District Court Judge and also to exercise the jurisdiction of the Family Court for a term of one year commencing on 2 March 2020.

Robert James Murfitt, retired District Court Judge, has been appointed an Acting District Court Judge and also to exercise the jurisdiction of the Family Court for a term of one year commencing on 2 March 2020.

David McCaw Wilson QC, retired District Court Judge, has been appointed an Acting District Court Judge and also to exercise the jurisdiction of the District Court under section 354(3) of the Criminal Procedure Act 2011 for a term of two years commencing on 2 March 2020.

Two join Wynn Williams

Penny Birch has joined Wynn Williams as a senior associate in the national corporate and commercial team, based in Auckland. Penny advises on a broad range of corporate and commercial work, including commercial contracting, mergers and acquisitions, consumer law, franchising and licensing. She works with clients on all aspects of supply chain, including procurement, manufacturing, transport and logistics. Penny was admitted in December 2016.

Tegan Wadworth joined the firm in November 2019 and is a law clerk in the national resource management and environmental law team based in Christchurch. Tegan has an LLB and BSc and previously worked for a regional council and has particular experience with resource consents.

Tracy Chubb now at Old South British Chambers

Tracy Chubb has joined Old South British Chambers in Auckland. Admitted as a barrister and solicitor in May 2000, she has considerable litigation experience, in both general civil law and family law (including relationship property and parenting disputes). Tracy particularly enjoys how civil law issues such as company law and debt recovery often intertwine with relationship property, estate and trust disputes.

Two promotions at Pegasus Bay Law

Canterbury-based firm Pegasus Bay Law has promoted two lawyers in its Christchurch and Kaiapoi offices.

Anneliese Muldoon has been promoted to Associate. Anneliese joined the firm in 2018 and is a member of the conveyancing team.

Admitted as a barrister and solicitor in March 2015, she is based in the Kaiapoi office, specialising in residential transactions, wills and enduring powers of attorney.

Jess Voysey has been promoted to Associate. Jess was admitted in August 2017 and joined the firm in 2018. She is a member of the conveyancing team, based in Christchurch. Jess has developed expertise in both residential and small business transactions.

Former lawyer new Police Commissioner

Andrew Coster has been appointed Police Commissioner for a five-year term beginning on 3 April 2020. He takes over from retiring Commissioner Mike Bush. Mr Coster has an LLB(Hons) from the University of Auckland and a masters degree in public management. He graduated from the New Zealand Police College in April 1997 and worked in various frontline and investigative roles until he was admitted as a barrister and solicitor in 2004. This was followed by a period working as a solicitor with Crown Solicitor Meredith Connell. In 2016 he was seconded to the Ministry of Justice as Deputy Chief Executive, where he led the development of a five-year plan to modernise courts and tribunals.

Tompkins Wake appoints five new lawyers

Tompkins Wake has added five new lawyers across three of their four offices.

Jasmine Findlater is a Senior Solicitor in the Rotorua office and is a member of the property and private client and trust teams. She has a particular focus on commercial property, complex refinancing and residential transactions, commercial leasing and local government property. She also assists the firm's private clients with the establishment and maintenance of trusts, wills and enduring powers of attorney.

Michelle Urquhart is a Senior Solicitor based in the Rotorua office. Michelle has also worked for the Ministry of Justice as a Disputes Tribunal referee and as a mediator, assessor and lecturer at Te Piringa Law Faculty of Waikato University. Michelle mediates in a wide range of civil, consumer, property, rural, employment and commercial disputes. She has a particular interest in cross-cultural disputes and has specific expertise in employment and immigration matters.

Charlotte Lunt has joined the firm as a Solicitor in the Hamilton office. Charlotte is a member of the disputes resolution team with a focus on relationship property, family law and civil litigation. Before joining Tompkins Wake, Charlotte spent two years at a boutique law firm in Auckland specialising in construction disputes.

Wendy Embling has joined the firm as Associate in the environmental and resource management team in the Hamilton office. Wendy brings more than 10 years' experience in resource management and local government law for both local authority and private sector clients. With a background in top tier national law firms, Wendy has represented council and corporate clients in plan reviews and resource consent applications before councils and the Environment Court.

Juliet Short has joined the Auckland office as a Senior Associate. Juliet is an experienced corporate and commercial lawyer, advising clients across a wide range of matters including business establishments and restructuring, mergers and acquisitions, and drafting and negotiating commercial contracts. Juliet has first-hand experience working in-house, having been seconded to large companies in the insurance and primary industry sectors.

Simon Gyenge becomes Associate

Lyon O'Neale Arnold Lawyers has announced the promotion of **Simon Gyenge** to Associate. Simon has been a solicitor with LOA for five years having completed a conjoint Bachelor of Law and Science at the University of Auckland. He specialises in business and commercial law, property law and trusts and succession planning.

Lisa Hansen appointed Chief Gambling Commissioner

Wellington barrister **Lisa Hansen** has been appointed Chief Gambling Commissioner. Ms Hansen's appointment is for a term beginning on 16 March 2020 and ending on 30 November 2022.

Admitted in December 1992 after graduating BA(Hons) and LLB(Hons) at the University of Otago, Ms Hansen worked at Caudwells in Dunedin and the Department of Conservation before joining the Crown Law Law Office in Wellington. After working 13 years as a Crown Counsel, Ms Hansen became a barrister sole in February 2010. She specialises in civil and commercial dispute resolution.

Dundas Street announces two new lawyers

Two lawyers have joined Dundas Street Employment Lawyers in Wellington.

Alice Anderson, Ngāi Tahu, graduated in 2016 and developed experience in employment,

as well as immigration and Māori legal issues before following her passion for employment law to Dundas Street. She is a member of Te Hunga Rōia Māori o Aotearoa, the Māori Law Society, and has previously sat as a regional representative on their national executive committee.

Megan Vant has returned to Dundas Street after a four-year absence during which she raised children, was heavily involved in running her local playcentre, and set up a charitable trust aimed at helping tamariki to learn te reo Māori. In her spare time, she studied te reo Māori. Megan originally joined the team in 2011 and has experience in all aspects of employment law. She has also worked in both central and local government organisations.

Marie Dyhrberg QC new ADLS Inc President

Marie Dyhrberg QC has been elected President of ADLS Inc for a one-year term. Admitted in October 1982, Ms Dyhrberg was appointed Queen's Counsel in June 2014. She specialises in criminal law and was the first woman to chair the International Bar Association's criminal law committee and first woman President of the Criminal Bar Association. She takes over from Tony Bouchier as president.

Kirsten Massey joins Russell McVeagh partnership

Kirsten Massey has joined the Russell McVeagh partnership. Admitted in September 2000, she was a clerk at the Court of Appeal and then an associate at Russell McVeagh before moving to London in 2004. She worked at international firm Herbert Smith Freehills in London for nearly 15 years, the last 10 as a partner. Kirsten is a commercial litigation and dispute resolution specialist, with particular expertise in class actions, financial services litigation and professional negligence disputes.

Three more senior appointments for Russell McVeagh

Russell McVeagh has employed three senior lawyers in the property and construction and litigation practice areas.

Special Counsel **Spencer Naicker** has joined the firm's property and construction practice from South African-based firm, Bowmans. He is a specialist front-end construction and infrastructure practitioner. Spencer has drafted construction contracts for a range of different projects (both balance sheet funded and project financed) and has advised on transactions, from a construction law perspective, across various sectors.

Special Counsel **Brigette Shone** has moved from Baldwins Intellectual Property to join Russell McVeagh's litigation practice in Auckland. Brigette specialises in commercial litigation and all areas of intellectual property dispute resolution and advice, including consumer law matters.

Senior Associate **Patrick Tumelty** is a litigator. He recently moved from London-based Herbert Smith Freehills. He has specialist knowledge in health and safety, commercial litigation, insurance, and professional negligence. Patrick worked on several high-profile cases in the UK, including advising Chevron in respect of a Health and Safety Executive investigation arising out of the well-publicised Pembroke refinery explosion in Wales in 2011.

Morrison Mallett appoints new partner

Specialist commercial law advisory practice Morrison Mallett has announced the appointment of **Luke Walker** as partner. Luke has 20 years' expertise in all matters of finance, from assisting clients with their banking arrangements to developing complex, bespoke lending and security arrangements with private lenders. He has also acted for several high-profile property developers on acquisitions and disposals of their commercial property portfolios, including advising on greenfield developments. Luke will be based in Morrison Mallett's Wellington office.

Juno Legal expands team

Two new lawyers have joined NewLaw firm Juno Legal with, Sabina Bickelmann in the Auckland team and Sarah Dalziell-Clout in the Wellington team.

Sabina Bickelmann is a technology, commercial and privacy lawyer who was most recently General Counsel and Company Secretary with global tech company Vend. Sabina was also previously New Zealand Lead Counsel for Pfizer after commencing practice in large law firms in New Zealand, London and Cayman Islands. Sabina is dual New Zealand and Australian qualified, holds an LLB from Auckland University and is a Certified Information Privacy Professional.

Sarah Dalziell-Clout is a technology, media and telecommunications, banking and commercial lawyer. She was previously a legal and contract management lawyer with Alcatel-Lucent (now Nokia) and Senior Commercial Advisor with Gen-i. Sarah commenced practice in a large New Zealand law firm before heading to London to move in-house with Lloyd's TSB. Her most recent role was as High Performance Director with Equestrian Sports New Zealand.

Rebecca Steens joins Holland Beckett Law

Rebecca Steens has joined Holland Beckett Law's civil litigation and dispute resolution team, based in the Tauranga office. Rebecca was admitted as a barrister and solicitor in June 2013 and has a range of expertise in general civil litigation matters. Before joining Holland Beckett Law she spent four years working for an international offshore firm based in the Channel Islands.

McElroys announces new partner

Andrew Colgan has joined McElroys' partnership. Andrew first joined the firm in 2010. He is experienced in a range of areas of practice, with a particular emphasis on maritime law and marine insurance, as well as professional indemnity and general liability. Andrew will be leading the firm's Marine team, while also continuing to represent clients on the other aspects of his practice.

Stuart Harray joins Bingham Centre Development Board

Former Russell McVeagh partner **Stuart Harray** has been invited to join the Development Board of the UK-based Bingham Centre for the Rule of Law. The centre was founded in 2010 with the objective of promoting and enhancing the rule of law worldwide.

Stuart is co-head of the London corporate team of international law firm Milbank LLP. His practice covers international and domestic corporate and M&A.

After graduating with an LLB(Hons) from the University of Canterbury, he was admitted as a barrister and solicitor of the High Court of New Zealand in 1988. After starting at Russell McVeagh he travelled to London and worked with Allen & Overy from 1991 to 1993 and was admitted as a solicitor for England and Wales in 1993. He returned to Russell McVeagh in 1994 for two years before joining Allen & Overy again in 1996.

He became a partner with the firm in 1998 in the London corporate team, and Managing Partner, London Corporate & Global Corporate Board from 2003 to 2005. Mr Harray returned to New Zealand to become a partner with Russell McVeagh in 2006 before returning to London where he joined the Milbank partnership in 2007.

Lowndes announces addition to commercial property team

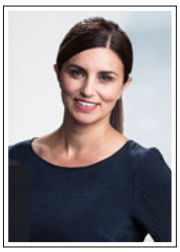
Grania Clark has joined Lowndes as Principal in the commercial property team. Grania works with commercial property clients and public bodies advising on subdivisions, land development, commercial and residential property transactional agreements, commercial leasing, acquisitions and infrastructure agreements. She also gives advice under the Public Works Act, Building Act, Overseas Investment Act, Unit Titles Act and the Resource Management Act.

Simpson Grierson appoints partners, senior associates and senior solicitors

Simpson Grierson has announced the appointment of three partners.

Shanti Frater is based in the Auckland construction group. She specialises in drafting tender and contract documentation for construction projects of all sizes, as well as the resolution of construction disputes through adjudication, mediation, arbitration, and other forms of alternative dispute resolution. Shanti spent six years with a top litigation firm in Canada before joining Simpson Grierson in 2009. She has been involved in numerous complex adjudications, ranging from a few hundred thousand dollars to multi-million dollar claims.

Donna Hurley is based in the Wellington resources and infrastructure group and specialises in property development, leasing, subdivision, acquisitions, and disposals of commercial property. She also advises local government and other public sector clients on a range of issues, with a focus on property work and public works. Donna has extensive experience drafting local bills, commenting on Government legislation proposals, and assisting local authorities with the passage of legislation through Parliament.



Rebecca Rendle is based in Simpson Grierson's Auckland employment law group. She advises clients on all aspects of employment law, specialising in personal grievance claims, restructuring, holiday pay compliance and remediation, disciplinary, and performance management processes. Rebecca is also actively involved in calling for a reform of the Holiday Act legislation and assists a number of large employer clients on compliance and remediation programmes, including in their dealings with the Labour Inspectorate.

Simpson Grierson has also appointed eight new senior associates.

Alice Poole is a member of the Auckland commercial litigation group and advises across a range of contentious matters, including regulatory investigations and court proceedings. She was admitted as a barrister and solicitor in June 2012 and has particular expertise handling complex commercial disputes.

Amanda Stephenson is in the Wellington commercial group. She advises on a wide range of commercial and corporate issues for both public and private sector clients, with a particular focus on commercial and technology contracts. Amanda joined Simpson Grierson in 2017 after working in London for four years at CMS in the technology, media and telecommunications team.

Edward Fear is in the Auckland banking and finance group. He specialises in property finance transactions across a wide range of property assets, as well as advising on

corporate banking and leveraged and acquisition finance transactions. Edward came to Simpson Grierson from the real estate finance team of Hogan Lovells in London.

Kate Tidbury is a member of the intellectual property, sports, and sales and marketing group in Auckland. Kate advises on a wide range of IP/commercial issues, specialising in trade mark protection, IP arrangements and local/international enforcement strategies. She has a particular interest in sport and regularly advises national sporting organisations on rights protection and enforcement.

Mark Gillard in the Auckland construction group specialises in construction and infrastructure contracts and disputes. Before joining Simpson Grierson, he spent 15 years in Sydney advising on major transport projects, both at Clayton Utz and in-house. Mark focuses on preventing project issues from turning into disputes through early identification and resolution.

Matthew Prendergast is a member of the commercial litigation group and is based in Christchurch. He specialises in complex commercial disputes, with a particular focus on professional indemnity, insolvency, tort and contract claims, and contentious trust issues. Matthew has a focus on resolving disputes and managing reputational risk.

Rachael Judge is based in the Auckland employment group. She advises across all aspects of employment and education law, including personal grievances, disciplinary processes, holiday pay compliance, collective bargaining, investigations and student disciplinary issues and claims. Rachael has been admitted to practise in New South Wales and previously worked for a leading Sydney employment law firm.

Sarah Kuper is in the public law team, based in Wellington. She recently joined Simpson Grierson having returned from five years in London and the United States. Her experience spans a wide range of commercial and public law advice and disputes.

Simpson Grierson has also promoted five team members to senior solicitor: Sam Comber (litigation, Auckland), Viola Lam (commercial property, Auckland), Lincoln Matthews (commercial, Wellington), Edward Warren (commercial property, Auckland), and Louw Wessels (corporate, Auckland).

Don Mackinnon joins City Chambers

Employment lawyer **Don Mackinnon** has joined City Chambers. Don was previously a founding partner of SBM Legal and before that was a partner at Simpson Grierson for 10 years, the last three years as Head of Litigation. He specialises in employment law, particularly private investigations and mediations. He also has a busy sports law practice, is Chair of the Blues and the World Athletics Integrity Vetting Panel, and is a director of NZ Cricket.

Joanna Hayward appointed General Counsel Privacy Commissioner

Joanna Hayward has been appointed General Counsel to the Privacy Commissioner as the Office prepares for the enactment of new privacy law later this year. Joanna has been acting in the role since September 2019, after joining OPC in 2014. She was formerly an adviser to the Law Commission on information law reform projects including the law of privacy, official information, search and surveillance, harmful digital communications and news media. She is a graduate of Canterbury University and is an experienced practitioner in public, commercial and banking law.

Two lawyers return to Buddle Findlay

Mark Mulholland has re-joined Buddle Findlay's Wellington office as a senior associate in the resource management and Māori law team. Mark advises on all aspects of resource management and environmental law, with a particular focus on the consenting of major energy, transport, and water infrastructure. Before re-joining Buddle Findlay, Mark was a senior associate at Clifford Chance LLP in London.

Lara Wood has re-joined the firm's Auckland office as a senior associate in the banking and financial services team. Lara has a wide range of domestic and international banking, financial services and corporate experience, but she specialises in funds management and regulatory advice relating to financial services, products and markets. Before re-joining Buddle Findlay, Lara worked for one of Australia's largest banks based in Sydney and before that she worked at an international law firm based in Sydney.

Andrew Skinner joins Martelli McKegg partnership

Martelli McKegg has appointed **Andrew Skinner** to the partnership. Andrew is an experienced commercial lawyer with specialist experience in building and construction and franchising. Until recently he was a partner at a boutique business and franchising

law practice and before that was General Counsel at Carters Building Supplies.

Morgan Coakle appoints Special Counsel

Phillip McKinnon has been appointed Special Counsel at Morgan Coakle. Phillip has been practising for over 20 years and joined the firm in 2017, bringing his insurance and reinsurance expertise to the litigation team. Phillip specialises in professional and general liability coverage advice and defence work, with particular experience and expertise in professional indemnity and D&O policies and the defence of insured professionals in the legal and financial sectors.

Davidson Twaddle Isaac announces two new directors

Hamilton Law firm Davidson Twaddle Isaac has added two directors. They will be joining Charlotte Isaac and Andrea Twaddle from 1 April 2020.

Hayley Willers has over 13 years' experience and joined the firm's commercial/property/private client team in October 2016.

Hayley is an experienced property lawyer who deals with a wide range of private and commercial property matters including but not limited to residential and rural conveyancing, subdivisions, refinancing, retirement villages, relationship property, trusts, wills and enduring powers of attorney.

Jaime Lomas has been practising law for 16 years and joined the firm's employment team in May 2018.

Jaime has significant dispute resolution experience. She takes a pragmatic and practical approach to achieve commercial and workable solutions for her clients. She is committed to understanding the issues her clients face and the impact on their businesses or on them personally.

PROFILE

Cutting your own track

Chris Merrick

BY **TEUILA FUATAI**

Chris Merrick's tone deepens when he talks about his year of full-immersion learning in te reo Māori.

At a cafe close to the South Auckland chambers he shares with four other Māori barristers, including his wife Corrin, he describes the impact of the 2016 course at Te Wānanga Takiura.

"It's changed the way that I think about the law. The way that I analyse it and the way that I construct arguments has changed."

The youth advocate and criminal barrister is of Te Whakapiko, Tongan (Ma'ufanga, Niua), and New Zealand European descent. Raised in South Auckland, he returned to his roots to set up his own law firm with Soana Moala – now a District Court judge – in 2012. Three years ago he became a barrister sole.

Appearing primarily at the Manukau District Court, most of Mr Merrick's clients are young Māori. As he goes back over key developments in his career, it is clear the father-of-two considers

development of his te reo Māori and cultural understanding integral to professional development.

Mr Merrick brings up submissions he made on behalf of Te Hunga Rōia Māori The Māori Law Society in the Court of Appeal case that resulted in new methamphetamine sentencing guidelines last year. In that, four whakataukī or Māori proverbs feature.

"I used them to lay the foundations for what the preceding arguments were going to be," he says.

"Previously, I might not have done that, but when I thought about the particular arguments we were trying to make, the whakataukī goes to the heart of what I'm trying to say. So it makes sense to put it in and make it a natural part of the way I argue and write."

Fitting culture into the law

It is why a year immersed in te reo Māori, largely away from the practice of law, made him a better lawyer, Mr Merrick says.

"I think it's about knowing where your cultural knowledge and upbringing fits in. How they impact the arguments you run and how you run them. I think, as Māori people, as Pacific people, we've got a lot to offer as advocates in that space and there's a lot of room to move there and cut your own track."

He repeats that last phrase numerous times during our interview. It seems to be a strong theme for Mr Merrick throughout his career.

He goes back to when he and Judge Moala founded their law firm Moala Merrick. At the time, both were working as Crown prosecutors at Meredith Connell. Mr Merrick had been been at the firm for four years – starting at its Manukau office before moving into the central city.

"We had spoken about coming back to Manukau, working in our community and making the switch from prosecuting to defending," he says.

"I also think we were pretty privileged to have worked at Meredith Connell and had the sort of training and experience we did. For me, in the relatively short period of time I was there, I managed to do a lot of really cool work. That set me up well to come out here and have a crack at it. The pull to being a youth advocate was also an important part of the decision, and being able to work for myself."

It was also before he and his wife had any children and a mortgage, so it was "pretty low-risk in some ways", he says with a laugh.

Different versions of success

Mr Merrick also discusses his shift to self-employment in the context of his earlier comments.

"I got to the four-year mark and to many people it was probably too early to go out on your own.

"But I think – and others have written about this – the nature of the law and the profession is that we're conformists. Everything is precedent-based and we follow this precedent in court, and then in practice things are usually focused around 'the well-trodden path' to success."

Mr Merrick believes young lawyers, particularly Māori and Pasifika, should assess what that means alongside their own unique experiences.

"For us, we come from different backgrounds, we have different versions of success and we have different family obligations.

"We've got to weigh that for ourselves and not be so tied into what the establishment thinks is the well-trodden path. I would encourage people to responsibly take risks and cut their own track."

He talks about his own experience, and how standing aside from his peers almost resulted in a career away from the law.

"To be honest, in the beginning, I hated law school. It didn't feel like it was a fit for the first couple of years. I really enjoyed my history papers, and was taking some Pacific Studies papers and Tongan language papers.

"I almost gave it [law] up ... because I seriously thought I would go on and do my post grad in history and carry on with that."

Things changed during his final years of university. Mr Merrick recalls electives like legal history and criminal procedure beginning to pique his interest. There was also

an advocacy course taught by Simon Mount QC, which demonstrated how legal principles worked practically. However, it was job stints at the Family and District Courts in Manukau, and the Auckland District Court, which he says cemented his interest in practising law.

"It was basically admin work ... but I got to see how the back office worked. At the Family Court in Manukau, I spent a summer as a registrar looking after Child, Youth and Family cases."

Learning on-the-job

Then, after graduation, Mr Merrick took on a seven-month contract to work as a registrar at the Manukau District Court.

"I was covering for someone on maternity leave. I was sitting at the registrar's desk in court calling matters," he says. "That was a really cool opening to the court and to the sharp end of jury trial advocacy and court advocacy in general."

Criminal lawyers Lemalu Hermann Retzlaff, Panama Le'au'anae, and Kirsten Gray, as well as his future partner, Judge Moala, are some of the personalities he fondly remembers from that period.

"It was really interesting to watch these people on their feet, and watch someone like Panama close a jury trial. I remember feeling inspired and thinking: 'Yeah, I could do that'."

An opportunity to observe in the Youth Court, via Judge Ida Malosi, was also important.

"She took me in there one day ... just so I could have a look. I didn't have to do anything, just watch. And then one day, I got to help take court in there as a registrar.

"I really liked how the court worked and really enjoyed working with young people. I was also doing a little bit of mentoring work with my old school and I realised that was one of the areas I really wanted to pursue."

The ups and downs of youth advocacy

Twelve years on, Mr Merrick says he would not have things any other way.

He believes the Youth Court is the most "hopeful" of the criminal jurisdictions in New Zealand.

"I know it sounds cheesy, but there are cases where you do make a difference. And when everyone is doing their job well, the outcomes for young people and their whānau can be really positive."

Acknowledging its place within an overburdened judicial system with significant shortfalls for Māori, he touches on the intergenerational nature of offending and harm from it, and how some families grow up in the system.

"Some of the names of the files from when I was working as a student at the Family Court, I still encounter now. A lot of the children who I think were probably really young at that time, going through CYFs and Family Court processes as children, I've seen those names in the Youth Court.

"But, it's not clearcut. There's also cases of young people who come before the court with no obvious history of trauma, abuse or state care in their lives. At that point, like with all cases, it's about getting the best outcome for everyone involved, and really asking whether a record of conviction or notation is a good thing for a 16 or 17-year-old," he says.

The Royal Commission of Inquiry

That breadth of experience, and his knowledge of the disproportionate harm certain elements of the justice system has for Māori, has been particularly useful in Mr Merrick's current role as counsel assisting to the Royal Commission of Inquiry into abuse in care.

We discuss the nature of the work, and what it is like to examine stories and evidence from survivors.

"It's really sad to know that this is what was happening in our country," he says.

Similar to his portrayal of the Youth Court system, Mr Merrick goes on to frame the inquiry and his role as necessary to achieving better outcomes for young people and their whānau.

"I'd like to see us change the way we care for our kids in this country, particularly children and whānau that need help – serious structural change.

"And while it's really sad to know what has happened, I feel very privileged to be assisting in a process in which those stories will be acknowledged while working towards something which is going to make recommendations on how we do things better now and into the future." ■

I'd like to see us change the way we care for our kids in this country, particularly children and whānau that need help – serious structural change

Teuila Fuatai ✉ *teuila.fuatai@gmail.com* is an Auckland-based journalist.

▲ Professor Mark Hickford and Chris Griggs sign on behalf of Victoria University of Wellington and Barristers.comm

PEOPLE

Barristers.Comm establishes Māori and Pasifika internship

Wellington barristers chambers *Barristers.Comm* has established a partnership with Te Herenga Waka – Victoria University of Wellington's Faculty of Law, by offering an annual internship to Māori and Pasifika law students.

A signing ceremony in the Old Government Buildings in December, was attended by Deputy Vice-Chancellor (Māori) Professor Rawinia Higgins, Assistant Vice-Chancellor (Pasifika) Luamanuvao Dame Winnie Laban, and Pro Vice-Chancellor and Dean of Law Professor Mark Hickford, as well as the members of *Barristers.Comm*.

The intern will assist members of chambers as a law clerk with legal research, preparing court documents and correspondence, supporting appearances in courts and tribunals, and many other ancillary tasks.

Barristers.Comm says there were several matters that influenced the offer of the internships.

"The law profession in Aotearoa New Zealand, and particularly the independent Bar, does not reflect the ethnic and cultural diversity of this country, and this is a loss to the profession. A law profession that better reflects the diversity in Aotearoa New Zealand will better serve our communities. More people with diverse backgrounds entering the law will facilitate the continued promotion of new ideas and perspectives in the law and make for a more just society," the chambers says.

"We recognise that Māori and Pasifika are under-represented in our profession compared to the general population and there are a number of factors that have influenced this imbalance. Our chambers can provide the opportunity to network amongst professionals and support our intern's smooth transition into the legal profession. By offering this new internship opportunity we hope to smooth our intern's path into the legal profession by providing valuable work experience, encouragement and collegiality."

Professor Hickford says he is delighted that the Faculty has partnered with *Barristers.Comm* to give Māori and Pasifika students such an opportunity.

"This will give our students real life experience in a set of barristers' chambers, while maintaining their studies in law at Te Herenga Waka–Victoria University of Wellington." ■

PROFILE

Ian Ross looks back over 50 years in practice

BY **JACKI JEANMONOD**

Admitted as a barrister and solicitor in January 1967, Ian Ross recently wound down a long and successful legal career as a consultant for Auckland-based property law firm AlexanderDorrington. His six years there followed its acquisition of Ross & Whitney in 2014. I asked him about his long career and the changes he's seen over time.

Learning how to think

Ian gained an honours law degree from the University of Auckland. He went on to obtain a coveted Bachelor of Civil Law from Oxford University in England.

He credits his two years at Oxford for teaching him how to think. He reflects that nobody can know everything about the law, but a good law school will turn out great thinkers who can recognise what they need to know and have the skills to find it. Mixing with some of the world's most brilliant legal minds was also hugely beneficial in developing his own.

A legal legacy

As many clients became close personal friends, Ian gained huge satisfaction from the contribution he made to their lives, sometimes acting for three or four generations of one family. He was delighted when young people chose to work with him. Admitting in his understated way that, "maybe he was doing something right".

He comes from a family of noted professionals who excelled in business. But rather than pursue a high-profile career himself, Ian preferred to remain under the radar measuring success through that of his clients.

What his colleagues say

Ian and Ken Whitney enjoyed the best of partnerships and built their successful practice over 20 years. Ian reflects that there was never an argument between them in all the years they worked together, even though it wasn't always plain sailing.

"Ian is a person of the highest integrity who cares deeply about people and ensuring they are treated fairly," says Ken. "He devoted his career to helping people through their legal issues with a calm and reassuring manner backed by an extraordinary ability to see the heart of the problem."

Ken says Ian has a real feel for the law – "a tremendous intellect and breadth of knowledge which was invaluable to his clients. He has a long record of achieving successful outcomes which have been enormously appreciated."

A tremendous intellect and breadth of knowledge which was invaluable to his clients. He has a long record of achieving successful outcomes which have been enormously appreciated

"As much as his legal expertise, Ian's deep humanity and understanding of the human condition, with all its messy frailties and imperfections, which can often muddy the waters of legal disputes, have shone through. He is not judgmental but is perceptive which leads to wise and practical guidance appropriate to the circumstances."

The directors of AlexanderDorrington say they've thoroughly enjoyed having Ian in the firm. Debra Dorrington, Denise Marsden and Jourdan Griffin say everyone

appreciated his caring manner.

"In an era when lawyers are so busy trying to keep up with the many demands of modern practice, Ian always made time for his clients. It is a testament to Ian's character and his skills as a lawyer, that he has maintained lifelong friendships with both his clients and his colleagues."

The AlexanderDorrington experience

Since joining the Shortland Street firm, Ian worked closely with its Senior Legal Executive, Megan Mischewski, whom he describes as "exceptional". Thus, the transition from running his firm to being part of a larger one was easy on both sides. He now knows he leaves his clients in the hands of "extremely good lawyers".

When Ian started practising, lawyers were more generalist. They turned their hands to just about any aspect of the law. Greater specialisation has gone hand-in-hand with the transition of law from a profession to a business. Now a more transactional commercial process – the traditional concept of the family lawyer is gradually disappearing. As a rule, lawyers become less personally engaged in clients' lives.

Ian considers himself fortunate to have practised in an era when you could make a good living without commercial stress. He recognises the role of a good practice manager as pivotal to the structure of today's firms.

What's next?

Ian recommends a gradual disengagement for lawyers considering retirement, working part-time prior to finishing. He knows he will miss coming to work, however and plans to continue providing his expertise to the community by working with the Citizens Advice Bureau. ■

Jacki Jeanmonod is an Auckland-based marketing consultant jackijeanmonod@hotmail.com.

▲ Clive Elliott QC (left) and Professor James Renwick in front of Clive's painting "The Drain", the first in the collection, and describing "a filthy urban drain which, sadly, many Wellingtonians will identify with".

PROFILE

Clive Elliott QC and the climate change exhibition

Auckland QC Clive Elliott is a passionate advocate for action to address climate change. He is also an artist and says he has used his art to express his concern. During March he mounted an exhibition of a collection of eight of his paintings at showings in Wellington and Auckland. Entitled "So Much to Lose", Clive Elliott says the impetus for the exhibition came from the failure of governments from 2016 onwards to honour the Paris Accord "and the assumption of power by climate change deniers like Trump, Abbot and Morrison".

"What I'm trying to do with this exhibition is reflect my own personal sense of alarm and desperation. Others may not have that same sense of foreboding and others will reject what I'm portraying – that's fine, I just want to get people to think about the terrible dilemma we are in," he says.

In a short introductory address at the exhibition he spoke about his concerns. "Some people talk about saving the planet. However, as one environmental advocate put it, there is no need to save the planet, our planet will survive just fine. What we need to do is ensure that humans are able to survive on earth. The challenge is a fundamental one – to preserve the environment in order to save humanity. We need to act now – while we still have a chance.

"Many of the solutions needed to tackle the crisis already exist. They are real-world, practical solutions. What is lacking is the will and determination to implement them," he concluded.

A short video followed with poems by Clive on each of the paintings, to the Doors' "When the Music's Over". Professor James Renwick of Victoria University of Wellington's School of Geography, Environment and Earth Sciences also spoke on the impact of climate change and the need for action.

All artwork was sold by silent auction, with the proceeds going to Sustainable Business Network and Sustainable Coastlines. ■

THE INNOVATORS

Wayne Rumbles

Associate Professor, University of Waikato

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

Tell us about yourself

I have been a legal academic for the past 20 years. I began my academic career at the University of Waikato teaching law and information technology and criminal law in 2000. In those early years, I quickly understood the importance of technology to law and the potential impacts of technology on law and the legal system. I have been fortunate over the years to continue to explore technology and its interface with law by developing a suite of technology related law papers at Te Piringa and sharing these with a continuous stream of students.

What does legal innovation mean to you?

Legal innovation in my view requires a holistic vision of law; lawyers, law firms, students and academics must know what they wish to achieve. Innovation requires an understanding of where you are, where you want to be and the ability to plot the necessary pathway to achieve this goal. Innovation occurs along this journey by applying flexible knowledge and skills to available technology.

What role does technology play in innovation?

Technology provides us with the tools to innovate. It is the means by which we progress and re-imagine law, legal education and legal services.

What pressures are law faculties facing in the delivery of legal education?

Law schools are challenged to respond to a rapidly changing legal service environment that is evolving in response to disruptive technologies.

Law schools need to prepare graduates to practise in a new law paradigm where flexible, high-level skills are valued that allow practitioners to adapt and change, embracing new technologies and opportunities.

Law schools need to bring both students and academics along this journey against a background of increased expectations for student numbers, research outputs and sourcing of externally funded projects.

What opportunities has legal innovation brought you?

As an academic working in this space since 2000, legal innovation and technology has been a constant inspiration for my research and the development of new law courses for future lawyers. Alongside papers in cyber law, law and new technologies, digital privacy, AI and robotics in the law we also teach a joint masters in cyber security with computer science.

One of my recent opportunities has been the Technology in Legal Education for New Zealand project (TeLENZ) supported and funded by the Law Foundation. The vision for the project is that all law students in New Zealand are exposed to technology and legal innovation throughout the core law curriculum. To achieve this vision, I am teaming up with academics from across the six New Zealand law schools to build greater digital capability, to develop a set of tools and resources that any legal academic can use to integrate technology and the impact of technology into their core law courses. This unique and exciting project allows me to further focus my area of passion in partnership with all law schools as we work together to create better prepared graduates for the changing legal workspaces.

What are some of your tips to develop an innovative mind-set in law students?

The basis for any innovative legal mindset is a firm and solid understanding of legal principles. Law schools in part need to keep doing what they are doing teaching critical analytical legal skills.

Students also need to have a range of flexible skills relevant to the current legal environment and be able to see linkages between disparate areas of learning.

We cannot teach individual (or all) technologies due to rapid advancements where technology is quickly updated/replaced. However, students need to be aware of the possibilities and potential technology will continue to bring to the profession. We need to expose students to technology and the impact of legal tech throughout their legal studies.

We need to inspire curiosity and excitement about the possibilities of technology and legal tech, we need to instil a growth mindset in future lawyers. Technology is not the end of law and lawyers but the path to opportunity and diversity of legal services.

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

I say in my welcome speech for new students at the Law Faculty, that studying law is the study of life, the universe and everything.

Technology and innovation is everywhere; it is what our clients, business and students are using, living and consuming. Lawyers and provisioners of legal services need to be able to interact, represent and facilitate the use of (and control the misuse of) these technologies to be relevant to the current and future users of legal services. ■

Sadly, LawFest 2020 was cancelled. Wayne Rumbles was on the speakers list.

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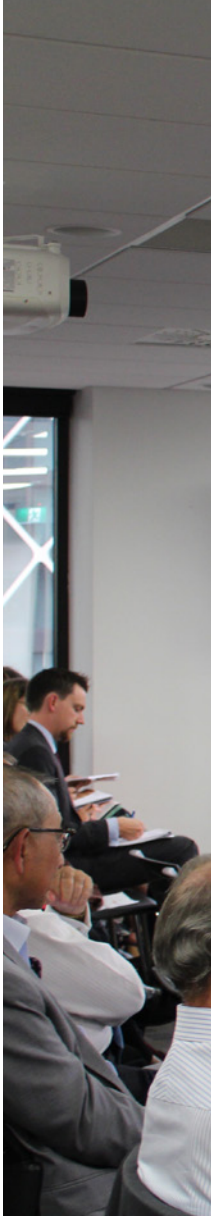
ACCESS TO JUSTICE

Judicial leadership on equal access to justice for culturally and linguistically diverse parties in courts

BY **MAI CHEN**



On 17 February 2020, New Zealand Asian Lawyers (a membership organisation under the umbrella of the Superdiversity Institute for Law, Policy and Business and New Zealand Asian Leaders) and the New Zealand Law Society's Auckland branch co-hosted a seminar on judges' perspectives on representing culturally, linguistically and ethnically diverse (CALD) parties in court. Judges of the Court of Appeal and High Court gave visibility to the issues and challenges raised by CALD parties and practical suggestions as to how these issues may be addressed to help those parties achieve equal access to justice before the courts.

The participants were: Justices Gordon, Muir, Palmer, Venning, Courtney, Powell, and Fitzgerald.

This session followed the launch of the Superdiversity Institute's report on "*CALD Parties in the Courts: A Chinese Case Study*" (the report) on 18 November 2019. The report was supported by the Ministry of Justice, the New Zealand Law Foundation, and the Michael and Suzanne Borrin Foundation.

Justice Gordon's question

The judges' seminar was sparked by a question that Justice Gordon had asked at a Brown Bag Lunch with the Auckland High Court judges after the report's launch. In the context of the report and the issues raised within it about *mianzi* (face) preventing Chinese parties from being more willing to settle disputes, Justice Gordon asked how best to ensure that cases that should be mediated (and settled) between CALD parties do not reach court.

Judges of the Court of Appeal and High Court gave visibility to the issues and challenges raised by CALD parties and practical suggestions as to how these issues may be addressed to help those parties achieve equal access to justice before the courts

Justice Muir shared his thoughts on that question, which he later recorded and permitted me to share:

"…[M]y comment was made in response to the untenable arguments we sometimes face and the seeming reluctance to engage in constructive resolution-focused dialogue was a function of always following (seemingly robotically) client instruction. I suggested that this was a breach of ethical obligations always to give clear and impartial advice and in particular to counsel clients realistically on trial risk, whether that arises out of factual or legal considerations. As we know a client may, for whatever purposes, instruct initiation or continuation of a case against advice. Counsel's role is then to advance the argument, however tenuous, to the best of his or her ability. But to suggest the role is simply to be the passive conduit of instructions, however untenable fails to recognize the first and primary obligation to ensure that client instruction is fully informed by a risk analysis. Anything less simply elevates counsel interest (in unnecessary and/or attenuated proceedings) over client interest which in most cases will be best served by a focus on problem resolution."

I asked if the judges would be prepared to lead in providing such guidance as that would best prompt lawyers to counsel their clients to mediate rather than go to court where appropriate. Their agreement resulted in the 17 February seminar.

▲ Mai Chen begins proceedings at the 17 February seminar.

Justice Gordon's question was further addressed at the seminar as follows:

Justice Venning: "'Face' can be a key driver affecting parties' approach to the court system and behaviour before the court. 'Face' has a significant effect on parties' willingness to settle, and also on the approaches of counsel to settlement negotiations. The concept of 'face' can be an obstacle to the resolution of civil and commercial cases if the Asian litigants value face considerations as equal to or higher than the outcome in a particular case. A lawyer from a Western background may see a lawyer or party from an Asian background as inefficient and indirect in negotiation, while the Asian lawyer or party may see the lawyer from a Western background as aggressive and impersonal.

"Lawyers must remember they have a duty to give objective advice to their clients. A client may not want to be told of the consequences or legal effect of a written contract, but the lawyer has an obligation to give hard and unwelcome advice if it is necessary to do so to satisfy their professional obligation to their client. I refer to r 5.3 of the Conduct and Client Care Rules which requires lawyers to give objective advice based on the law."

Justice Palmer: "Lawyers do not serve their clients well if they tell them only what they want to hear. Lawyers have a statutory obligation to uphold the rule of law and to advise their clients accordingly.

"On the civil side, my impression is that a lot of the lower level commercial disputes that reach the High Court involve Chinese litigants. These sometimes seem to be disputes that I would have expected Pākehā litigants to have settled. They may involve amounts of money which seem less than the likely cost of the litigation. And they may not involve any documentation so it all comes down to who to believe."

Chief High Court Judge, Justice Venning – Overview of the issues for the High Court

As the Chief High Court Judge, and thus a judicial administrator as well as a sitting judge, Justice Venning stated that 15% of the general proceedings currently active in the High Court at Auckland involve litigants with an Asian name. He noted also that while currently Asian lawyers make up 7.5% of the profession, in 2017, 22% of Bachelor of Laws or LLB graduates were of Asian ethnicity. Further, of the non-English languages spoken by those who appear in court, Mandarin is the most common and is spoken by almost twice as many lawyers as those who can speak te reo Māori.

Justice Venning said the reasons for the increase in the number of cases in New Zealand courts involving Asian litigants included demographic change (an increased proportion of Auckland's population is Asian); a significant number of cases now involving undocumented transfers of funds between generations and between broader family

groupings, which often lead to disputes over property purchases, family loans, and inheritance; and increasing foreign investment in New Zealand and Auckland in particular.

Justice Venning said the two principal ways the court and judges can equip themselves to deal effectively with issues arising from cultural differences are by hearing expert evidence on cultural issues, and ongoing education (including that provided by the Institute of Judicial Studies (IJS)).

Other judicial views on the impact of CALD parties on judging

Justice Courtney: "When I first came to the High Court in Auckland in 2004, that court was experiencing a significant volume of cases relating to methamphetamine offending, of which many of the defendants in those cases were of Asian ethnicity, mostly Chinese. A number of those cases were considered in the report. These cases unquestionably brought challenges but it was only some years after, that judges in Auckland began to talk about these issues collectively and outside the context of individual cases. There was a 'growing sense' among those judges that they needed to better understand the problem and find ways to manage such trials to ensure justice was being done.

"A typical Auckland jury is very likely to have at least one member who is Asian as well as European, Māori, and Pasifika people. When I was conducting jury trials in the Auckland High Court it was very common to have young Asian students empanelled on a jury."

Justice Palmer: "Diversity affects the job of judging. I have only ever empanelled one jury in Auckland where the majority of jurors were Pākehā; and most of the potential jurors who seek to be excused do so on the grounds that they do not speak English sufficiently well to be a juror."

Justice Powell: "...[T]here is nothing unusual in the types of issues we are seeing with Chinese litigants. It is the forum in which these issues are now emerging. Specialist courts and tribunals, including the Waitangi Tribunal, Māori Appellate Court and the Accident Compensation District Court Registry have always had to deal with difficult cultural and other specific communication issues, it is only really now that the High Court is having to deal with such issues in any volume."

Communication

Justice Venning: "In my experience, most Asian litigants and even a number of counsel do not have English as their first language. Further, the New Zealand court system is and will remain based on an adversarial system which emphasises viva voce evidence and oral advocacy."

Justice Palmer: "The report provides a careful consideration of what is happening when our predominantly British-based system of justice meets one part

▲ Justice Palmer

▲ Justice Courtney

of Auckland diversity – Chinese litigants."

Justice Powell: "The essence of the court process is communication – whether between judges and counsel, opposing counsel, or counsel and clients. There have always been issues of communication in the court process including through language issues; comprehension difficulties; or issues caused through a lack of legal representation."

Interpretation

Justice Venning: "More interpreters are needed, and they need to be accredited. Ensuring that testimony provided in other languages is accurately translated into English for the benefit of judge and jury is crucial in the context of ensuring fair trial rights. The issue of interpretation is one which the judiciary has been concerned about for some time but to which the report has brought renewed emphasis."

Justice Courtney: "Up until the 2011 Supreme Court decision in *Abdula v R* [2011] NZSC 130, [2012] 1 NZLR 534, interpretation normally took the form of 'simultaneous translation' (where the interpreter speaks at the same time as the person whose words are being translated). For anyone who has sat in a criminal trial, it is clear that this is not optimal as it is difficult for the defendant to follow. It can also be distracting for the jury to have two people talking at once. In *Abdula*, the Supreme Court recognised that *consecutive* translation (where the words are not translated until the speaker has finished speaking) is the preferred course. Although this does markedly lengthen trials, the consecutive translation approach is better for parties, judges, and juries.

"Interpretation adds greatly to the complexity of a trial, particularly where interpreters are required for more than one language. I presided over a murder trial where the defendants were Vietnamese, and the witnesses spoke Hindi and Mandarin, requiring each question and answer to be translated multiple times.

"Interpretation can be especially difficult where a party speaks a particular dialect not known to the interpreter. In addition, many interpreters do not have sufficient time or materials to prepare adequately, particularly where there are technical words which are likely to arise."

All judges stressed the need for lawyers to be proactive in identifying particular issues their CALD clients needed addressed to get equal access to justice, including an interpreter that could accurately interpret for their client

Educating CALD clients

Justice Courtney: "CALD parties are likely to hold markedly different expectations and perceptions about the New Zealand legal system. It behoves lawyers to ensure that their clients fully understand the system, but also ethnic communities too, to be proactive in ensuring that their members, especially recent arrivals, grasp the New Zealand legal system."

Justice Fitzgerald: "Lawyers should try to encourage their clients to get local advice *before* committing themselves to obligations that have legal implications, and to document significant transactions rather than relying on good faith or a handshake."

Judges' guidance for practitioners

Be proactive

All judges stressed the need for lawyers to be proactive in identifying particular issues their CALD clients needed addressed to get equal access to justice, including an interpreter that could accurately interpret for their client (ie, understand their dialect, accent and cultural context and proficiency in English); any expert evidence needed to explain the cultural context for their client's behaviour which may not be comprehendible (or could be misinterpreted) if New Zealand cultural norms were applied.

Justice Venning: "In an appropriate case, the particular cultural or communication issues relating to a case can be raised in the course of a case management conference. It is primarily the responsibility of counsel to raise the issue."

Justice Courtney: "The judge can only act if he or she is provided with the necessary material. Judges are now much more actively learning about the issues facing CALD parties and are receptive to the effect those issues may have on a particular defendant. However, it is, as it always is, for counsel to advance those issues. Judges can only act when they are given adequate information."

Justice Palmer: "The judiciary relies on the legal profession to make submissions about the facts of every case that comes before us. If there is something you think we may not understand, help us to do so."

Justice Powell: "With language issues or comprehension difficulties, it is important that these are identified as soon as possible so that solutions can be identified in order that no party's case is prejudiced. It is therefore for counsel, as those with the greatest knowledge of their clients, to identify or otherwise anticipate any issues in a timely manner, and to propose practical solutions

▲ Justice Fitzgerald

▲ Justice Powell

well before the start of any substantive fixture."

Communication

Justice Venning: "A simple way for counsel to help address feelings of disadvantage held by Asian litigants who have limited understanding of English is to make it clear to the court at an early stage how their client's name (and their name as counsel) is pronounced. Counsel should also make it clear which of the names is the surname. No judge wants to offend counsel or the parties. Judges want to correctly pronounce names but need assistance.

"Lawyers also have a role to play in addressing the issues that arise out of cultural differences. Where there is no written contract, they should lead relevant evidence to explain the context of the transaction in issue."

Justice Courtney: "In a trial where the issue of words that existed in English, Hindi, and Mandarin, but not in Vietnamese, posed difficulties, the Crown and defendant counsel collaborated on a list of words likely to cause problems which was provided to the interpreter in advance to allow her time to consider them.

"Where counsel become aware of inaccurate translation by an interpreter, they should raise the issue obliquely with the Judge so that it can be discussed in the absence of the jury."

Justice Powell: "Cases involving CALD parties, particularly when an interpreter is required, need more time to be heard and considered. Counsel need to be realistic when providing time estimates, instead of trying to hurry a hearing through."

Cultural factors

Justice Venning: "Mediators and judges in settlement conferences need to be aware of the importance of 'face' and cultural differences in the approach to negotiations and should address the issue at the outset of the conference (Joel Lee and The Hwee eds, *An Asian Perspective on Mediation,* Academy Publishing, 2009).

"A further related cultural issue is the approach and understanding of some Asian litigants to contractual or commercial obligations. That presents a broader challenge than just language and communication. It highlights the need for an awareness of cultural sensitivities, and philosophy."

Justice Courtney: "It might be that if cultural misunderstanding is likely to give rise to a specific issue in a trial, consideration might be given to a tailored direction dealing with it. That would be a matter for counsel to identify and raise with the judge."

Justices Fitzgerald and Powell: Both Justices Fitzgerald and Powell reiterated the benefits of expert evidence in appropriate cases (Justice Fitzgerald noted, for example, that expert evidence on currency export controls from China might have assisted in a case she had recently presided over), and noted that the extent to which judges can take "general training"

on cultural factors into account in a particular case is limited. This makes it crucial that, where appropriate, relevant and admissible cultural information is led as expert evidence.

Competent counsel to CALD clients

Justice Palmer: "The role of every lawyer in Auckland in the 21st century is, on occasion, the role of cultural translator. Lawyers must translate to the judiciary but also to their clients – educating their clients about what is within the law and what is outside it."

Justice Fitzgerald: "Counsel need to understand and be aware that if High Court litigation is not their area of expertise, that they ought to consider briefing the matter out. It is not in the client's interest to act as counsel, including through to trial, if you are not familiar with and proficient in litigation before the High Court, when the client could be better served by a practitioner with such experience.

"Given there is often a lack of contemporaneous documents in litigation involving CALD parties, there is an increased emphasis and reliance on oral evidence. It is therefore all the more important to ensure the evidence presented on behalf of your client is persuasive… relevant, [and] admissible…."

Justice Palmer – Chair of the Institute of Judicial Studies

As the new Chair of the IJS, Justice Palmer provided the following "snapshot" of IJS's activities in educating judges about issues arising from increased cultural and linguistic diversity in the courts:

In 2019, IJS provided a one-day seminar for all judges of the Supreme Court, Court of Appeal and High Court about Chinese litigants, Chinese practitioners, Chinese legal academics, and interpreters;

IJS subsequently expanded that into a two-day course available to all judges of those courts and the District Court covering interpretation and translation; the psychology of implicit bias; New Zealand population studies; and case studies in relation to Māori, Samoan, Chinese, and Indian cultural communities;

IJS has developed a series of one-day programmes specifically attuned to priority needs for the District Court to support those judges to develop their cultural capability; and

IJS is developing an "Equity before the law" bench book guide for judges about issues of diversity in the courts, informed by similar bench books in other jurisdictions highlighted in the report.

Justice Courtney – Reflections on the criminal trials and impact on juries

Justice Courtney was asked to speak solely on criminal trials and focused on the issues CALD parties (and jurors) can raise for juries and on credibility assessments. She said the report's real value for judges is the ability to see the "bigger picture" with regard to patterns and

▲ Justice Venning

themes arising from the large number of cases involving CALD parties, over and above what judges are seeing in individual cases they preside over.

Justice Courtney noted that the ability of jurors to assess credibility was impacted substantially by the culture of the person giving evidence but also by the juror's own cultural context:

"If the defendant or witness comes from a culture that is markedly different to that of the jurors (or some of them), how does the jury go about assessing credibility? They will not understand the words used, the tone will mean nothing to them, and the demeanour may convey one thing in the culture of that person but something else entirely in another culture, much less in the culture of diverse people of other ethnicities sitting on the jury.

"So if a jury is directed to take demeanour into account, jurors need to understand that their concept of what body language means may not be typical for the defendant's culture."

Justice Courtney discussed the use of judges' directions to juries regarding the extent to which demeanour can be taken into account when assessing credibility. As early as 1997, the Law Commission had stated in a discussion paper that "a determination of truthfulness by reference to demeanour has a subjective basis which will inevitably reflect the values, experience and cultural norms of the fact-finder." (*Evidence Law: Character and Credibility* (NZLPC PP27, 1997) at 115). These "cultural

disconnects", as Justice Courtney put it, between jurors and witnesses can be significant. An example from the report is the tendency among Chinese to retain an impassive facial expression, which may be interpreted by Westerners as lack of interest or remorse.

Justice Courtney referred to Glazebrook J's decision in *R v Munro* [2007] NZCA 510, [2008] 2 NZLR 87 at [79] (involving a Pākehā defendant), where commonly accepted "behavioural clues" as to when a person is lying have been shown to be inaccurate.

Justice Courtney also noted the Supreme Court's decision in *Taniwha v R* [2016] NZSC 123, [2017] 1 NZLR 116 where the court cautioned that directing against taking demeanour into account at all would be inconsistent with the oral tradition of trials recognised in s 83(1) of the Evidence Act 2006 (the ordinary way of giving evidence), the fact that the Evidence Act *does not require* a warning to be given, and the fact that the Law Commission had not recommended any amendment to this aspect of the Act. Justice Courtney indicated that in cases with a significant "cross-cultural" element, consideration should be given to a tailored direction to the jury addressing these cultural factors.

Justice Courtney noted that the jury pool is not one that is amenable to education as easily as judges and lawyers are. It is likely that there is more that can be done to assist juries in CALD cases.

On sentencing, Justice Courtney said that in many of the cases involving Chinese defendants, sentencing discounts recognised "generic" factors such as youth, vulnerability as a result of being in New Zealand without support or supervision, or being manipulated by others when vulnerable, rather than specific cultural factors, even where a section 27 (of the Sentencing Act 2002) cultural report is available. In fact, what the large majority of cases do not show is the effect of cultural imperatives on offending and the sentencing response. By way of example, Justice Courtney highlighted *R v Suluape* (2002) 10 CRNZ 492 where the court found that cultural factors were "highly germane" to assessing the appellant's criminality.

Justice Courtney also referred to *R v Chen* [2009] NZCA 445, [2010] 2 NZLR 158, where life sentences had been imposed for importing methamphetamine, without a discount for cultural factors on the basis that "those who specifically come to New Zealand for the purpose of offending and knowing they may get caught and imprisoned, can hardly complain when that happens."

Justice Fitzgerald – Reflections on the civil trials

Justice Fitzgerald was asked to speak solely on civil trials and highlighted common issues arising from four cases she had presided over resulting from the parties' cultural backgrounds and where most of the parties involved were Chinese-speaking.

All of the cases involved the following common themes: a purchase of property in New Zealand; uncertainty about whether funds advanced were by way of a loan or a gift or otherwise (eg, with an expectation of an interest in the property); complex issues about how property was to be divided up; and pleadings asserting various types of trust but where there was a lack of clarity or precision as to the nature of the trust being advanced.

Justice Fitzgerald said that if counsel is advancing a trust claim for their client, counsel needs to be clear about the pleading and present a proper footing for a trust claim. She said that practitioners are often advancing "all sorts" of trust claims on behalf of their clients, without a clear statement of the alleged basis for and nature of the trust (for example, pleadings often allege all or any of express, constructive and/or resulting trusts). Justice Fitzgerald said that the more orthodox claim in these sorts of cases will often be a resulting trust, and referred the audience to the case of *Chang v Lee* [2017] NZCA 308 as a useful example

◂ (L to R) Justice Palmer, Justice Venning, Justice Courtney, Justice Fitzgerald, Mai Chen, and Justice Powell.

of the key principles.

Justice Fitzgerald confirmed the issue canvassed in the report that some Asian parties have very little documentary evidence to support their claims. This makes it more difficult for judges to understand the basis for a transaction, and the parties often produce informal materials, such as 'WeChat' messages, to aid this understanding. This is often complicated given these materials will need to be translated.

Justice Fitzgerald also noted that many of the Chinese parties coming before the courts in civil disputes have entered into quite significant transactions without New Zealand legal advice. In some instances, she has seen Chinese litigants seeking to rely on informal handwritten 'IOUs' as the basis for contractual or other obligations in the context of such transactions.

Justice Powell – Importance of cultural capability (CQ)

Justice Powell spoke about innovative approaches taken by counsel to address issues arising from communication difficulties. He gave the example of a case that came across his desk as a duty judge late in 2019, where one of the parties was deaf and did not understand New Zealand Sign Language. Counsel for that party had asked the court if instantaneous transcription could be provided for the benefit of that party. While the issue has not yet been determined, having had it raised early means that the court and court staff have time to work through the issue to find a solution.

Justice Powell also spoke to the case he presided over in *R v Singh* [2019] NZHC 148, mentioned in the report, where the Fijian-Indian defendant had communication difficulties due to cognitive issues, resulting in significant comprehension difficulties in both English and Hindi. A number of measures were put in place to mitigate these issues, including the use of a Hindi-speaking junior barrister to communicate with the client in his own language; allowing time prior to the defence opening statement for counsel to take the defendant through a transcript of the Crown's opening address; and defence counsel being permitted to confer with the defendant after the conclusion of questioning a witness to determine whether there were any matters that needed to be addressed. Justice Powell advised that he could make the relevant directions available.

Speaking from his experience as a lawyer representing Māori clients in Treaty negotiations, Justice Powell said that, even without being able to speak te reo Māori fluently, he was able to get to know his clients, what was driving them, and to explain the process to them. This exercise is crucial for identifying and anticipating any issues before a matter comes before the court.

Judges' views on the report's recommendations

The judges thought there was merit in recommendation 9 in the report to move the responsibility for arranging interpreters from the Ministry of Justice to the court registry, and for interpretation in civil cases to be funded by the Ministry of Justice to avoid the risk of perception of bias. Justice Venning said the issue of interpretation is one which the judiciary has been concerned about for some time and the report has brought a new emphasis to the issue, the Chief Justice has recently written to the Secretary of Justice raising the issues identified in the report.

Justice Venning said that recommendation 1 from the report regarding an enhanced pre-trial and case management process would involve a restructuring of the court administration and an implementation of a docket system. He said that the court has considered, trialled, and rejected such a system in the past. He also said that such a system is not feasible in a

court with the general jurisdiction of the High Court, which is based in three major centres and has circuit commitments in 13 other centres, but that in an appropriate case, the particular issues relating to a case can be raised by counsel during a case management conference.

Justice Courtney said that "the focus in the Superdiversity report is on judges, lawyers, and interpreters, rather than jurors", save for recommendations 4, 23 and 24. Yet in criminal trials, "the jury is the fact-finder, not the judge, and therefore one of the most important parties involved in a criminal jury trial." Justice Courtney said more work needed to be done, over and above those recommendations set out above, to address the impact of CALD parties and CALD jurors on the ability of juries to effectively act as fact-finders. A particular area requiring further work is the question of assessing credibility in a cross-cultural context.

Justice Palmer said that the judicial education recommendations made in the report (including recommendation 6: Bench book guide for judges) are "well on the way to being satisfied."

Reflections and further research needed

Reflecting on the judges' presentations, four themes emerged:

a. The report is the start of the journey to understand the issues and challenges arising from the increased presence of CALD parties and CALD jurors in the New Zealand courts:

- **(i)** The report is a "Chinese Case Study," but there will be issues of a similar nature affecting other ethnicities in New Zealand courts. More research needs to be conducted to understand what issues are common (and different) to CALD parties of different ethnicities;
- **(ii)** More research is needed on whether increasing numbers of CALD parties are causing an increasing proportion of New Zealand cases not settling before reaching court. Justice Venning noted that over the last five years there has been a decrease in the percentage of cases settling without requiring a hearing and so the court is hearing more defended cases (about 10% of cases go to hearing in the High Court). This is statistically high when compared to other comparable civil jurisdictions.
- **(iii)** The report is only focused on cases in the senior courts and not on the issues and challenges arising at the District Court level, Family Court, Employment Court, and tribunals. Anecdotally, there are more issues arising in those courts and tribunals;
- **(iv)** Katz J's recent decision in *Zespri Group Ltd v Gao* [2020] NZHC 109 shows that issues with CALD parties are continuing to arise. It is therefore important to continue to review cases involving CALD parties in the courts to identify issues and devise solutions to ensure the efficient and effective administration of justice for all parties.

b. While all lawyers need to "know their client", often it is instructing solicitors who know their clients best (and who in many cases share a cultural and ethnic background with their clients). When those solicitors brief out court hearings, senior counsel need to ensure they have the cultural capability (and take the time) to understand the CALD client as they make the final judgment calls on what information and evidence is needed to properly context the issues for the court. For example, in an interview conducted for the report, an instructing solicitor said their Vietnamese client was matched with a Mandarin-speaking interpreter who did not speak Vietnamese on the basis of senior counsel's instruction that where a Vietnamese interpreter could not be found, a Mandarin-speaking one "would do" as the countries share borders. The Vietnamese client was not proficient in mandarin.

c. Even if lawyers do properly advise CALD clients to mediate appropriate cases meaning more cases settle, more court time will still be needed for those CALD party cases that do need a court hearing. This is due to the greater time needed for interpretation of viva voce evidence, translation of documents and the expert evidence or culture reports needed to context CALD party actions. The 2018 Census also confirms that the superdiversity of New Zealand's population, especially in Auckland but also throughout the country, is deepening and diffusing.

d. Judges and juries will need new tools to determine witness credibility in cases where there is a lack of contemporaneous evidence or reliable viva voce evidence if interpretation issues identified in the report are not prioritised for redress.

The challenge is that as the users of courts change, judges and lawyers need to adapt to ensure equal access to justice and that courts remain fit for that purpose. ■

Mai Chen is Managing Partner of Chen Palmer, Chair of the Superdiversity Institute for Law, Policy and Business (which includes NZ Asian Lawyers), and Adjunct Professor at the University of Auckland Law School.

ACCESS TO JUSTICE

The rebirth of a civil legal aid provider

BY **MARIA DEW**

I AM WRITING THIS ARTICLE IN THE HOPE that it will encourage others in the profession to join or re-join as civil legal aid providers.

I must immediately declare the "death" of my own civil legal aid provider status in or about 2002. I resigned at the time in frustration at the increasing administrative requirements and the limitations placed on clients. I reasoned that I was simply better to offer my services pro bono to those clients where it was merited. I am sure I am no different to many civil litigators who have adopted a similar rationale over the course of the last decade.

However, the impact of this decision, collectively, has been significant for access to civil justice. It is time for a collective rethink of our commitment to legal aid, given that there was a 54% decline in civil legal aid providers between 2011 and 2016.

Since that time, the downward trend has continued. In 2017 there were 147 active providers in New Zealand; in 2018 there were 123.

This data, from Dr Bridgette Toy-Cronin of the University of Otago Legal Issues Centre, has been provided based on Official Information requests made to the Ministry of Justice. The definition of "active" providers is based on providers who had been appointed to two or more civil legal aid cases per annum.

Maria Dew

Alarming statistics

These are alarming statistics and they expose that the bulk of civil litigators, in firms and in sole practice, are no longer making any contribution to legal aid work or the access to justice which legal aid work allows.

This sobering data has recently caused other civil barristers, including myself, to re-join as civil legal aid providers. I would like to think that 2020 will be the start of the "rebirth" of civil legal aid providers. It is vitally important that we reverse this trend of declining numbers for several reasons:

The number of active civil legal aid providers has shrunk to such an extent that it is now extremely difficult for people to get access to an active civil legal aid provider. These can be important cases for parties involving debt, employment, immigration status, disability, housing and judicial review.

There is now an unfair burden being placed on the very few civil legal aid providers; just 123 active providers across the whole of New Zealand; and

We collectively lose the impetus and mandate to seek improvements to civil legal aid, both for clients and providers, with the Ministry of Justice if we are not active providers with experience of the work.

Some welcome signs

There are now welcome signs from the ministry that it is willing to reassess what it can do to engage better with civil legal aid providers. Recently, the ministry agreed that all Queens Counsel were eligible to re-join as civil legal aid providers without any extensive application process. The ministry is also taking significant steps to improve processing and administration for all legal aid providers. While this will not happen overnight, it is hoped it will encourage more civil litigators to join and remain as legal aid providers.

By February 2022, my hope is the New Zealand Bar Association will be able to report that civil legal aid provider numbers have swelled, and we have law firms and barristers re-engaged and active in providing civil legal aid and pushing for improvements. This is not the only solution to access to justice issues we face but it is an important part of it.

Please consider going to the Ministry of Justice website section for legal aid lawyers and completing the application process. ■

Maria Dew QC is chair of the New Zealand Bar Association's Access to Justice Committee.

ACCESS TO JUSTICE

Developments

Ten-point plan to increase access to free and low-cost legal services

A NEW UNIVERSITY OF OTAGO LEGAL Issues Centre (UOLIC) report says research suggests there is little shared understanding by the legal profession of what constitutes pro bono legal services.

The report, *New Zealand Lawyers, Pro Bono and Access to Justice*, was co-authored by Kayla Stewart, Bridgette Toy-Cronin and Louisa Choe from the Legal Issues Centre.

It recommends ten steps to help New Zealand's law profession deliver more free services to people caught in New Zealand's widening 'justice gap'.

The UOLIC surveyed and interviewed lawyers about their attitudes, and actions, towards providing free or low-cost legal help. This was part of a wider project about free and low-cost services offered by lawyers.

Dr Bridgette Toy-Cronin

Minority of lawyers carry the burden

"Our research confirms that a minority of lawyers carry the burden of helping those who would otherwise face legal problems without legal help, yet encouragingly the vast majority of lawyers we surveyed saw pro bono as an important part of being a lawyer. In fact, almost half wanted to do more, if only we could improve the systems and support. We are proposing clear steps to increase free and low-cost services for those who need them most," says Dr Bridgette Toy-Cronin.

She says the research aimed to address an urgent need to improve how pro bono services work and reduce a "justice gap" that has emerged as growing numbers of people cannot afford a lawyer, or access legal aid.

"This makes accessing free or low-cost legal help most important, and there have been calls for more lawyers to step into the breach, including a recent suggestion from the New Zealand Law Society President that lawyers should aspire to deliver 35 hours of pro bono services per year (the same target set for Australian lawyers). However, finding solutions and taking action has been hampered by a lack of clarity about what is happening on the ground," she says.

The study team surveyed 360 lawyers about how they defined pro bono, how often they did free work, the type of clients they assisted, and whether they regarded providing free legal services as a professional obligation. They then interviewed 23 lawyers to understand their attitudes about current practice and potential solutions.

Major research findings

Major findings include:

- There is a need to better define and target pro bono services towards the areas of greatest need. While 86.4% of the participants reported delivering at least one type of free service in the preceding year, much of this service was not given to people who had legal problems and whose incomes placed them in the justice gap (defined as 'access pro bono'). Rather, it included other free services such as assisting charities, conducting law reform work, sitting on boards, or sponsoring activities.
- The access pro bono load is distributed unevenly across the profession and most lawyers would fall short of an aspirational target of 35 hours per year. The majority (58.6%) of participants reported completing less than 35 hours of access pro bono in the preceding year, including over a quarter who completed no pro bono access hours at all; 41% completed more than 35 hours in the preceding year.
- Access to pro bono resources is inequitable. Some people are guided to pro bono services via community law centres and other advice services, based on their needs. However, a large amount of pro bono is offered via personal connections that rely on an individual's social connections. This privileges access for those with existing connections to lawyers.
- To help spread the load and increase pro bono services, there is a need to improve systems and develop 'carrots' instead of 'sticks,' in the profession and in

the workplace. For example, while 53.1% of participants agreed their workplace supported them to provide pro bono services, only one in five participants agreed that their workplace recognised and/or rewarded those providing free services. The study also found that while lawyers believe pro bono is vital and want to do more, they are against the idea of any form of compulsion to provide it.

Recommendations

The study makes ten recommendations aimed at helping the profession to improve the availability of free and low-cost legal services. These focus on three key themes:

1. that the profession develops a shared definition of pro bono, focused on pro bono that enhances access to justice, and that this definition be the basis for all programmes, targets and incentives for carrying out pro bono;
2. that a national clearinghouse for pro bono be introduced to minimise the administrative burden on lawyers providing pro bono and to more equitably distribute pro bono services among the public. Clearinghouses match clients with pro bono lawyers and are guided by agreed priorities that aim to direct help to where it is most needed;
3. that the legal profession associations encourage an increase in the amount of pro bono service via a number of mechanisms including regulatory reforms to reduce administrative burdens and allow for the greater flexibility needed around pro bono services; and the introduction of an aspirational target.

The report also emphasises that increasing access to free services is just "one piece of the puzzle" of providing more equitable legal representation for all New Zealanders, and that it will work best together with improvements across New Zealand's justice system

The report also emphasises that increasing access to free services is just "one piece of the puzzle" of providing more equitable legal representation for all New Zealanders, and that it will work best together with improvements across New Zealand's justice system.

"The justice gap is so large that it cannot be filled only by asking lawyers to provide more free services. We must look for a range of solutions, including innovating legal services to make them more affordable and better funding and administration of legal aid," Dr Toy-Cronin says. ■

Criminal Procedure (Mentally Impaired Persons) Court begins

THE AUCKLAND DISTRICT COURT HAS STARTED HOLDING dedicated hearings for defendants whose sanity or fitness to enter a plea may need to be determined.

A Criminal Procedure (Mentally Impaired Persons) Court started on 18 March and will be led where possible by the same District Court Judges to ensure continuity. Chief District Court Judge Heemi Taumaunu blessed the court's opening session.

While it is on hold during the COVID-19 crisis, the plan is that the court will sit fortnightly and involve defendants from North Shore, Waitakere and Auckland courts who may have a fitness issue and those who are likely to plead not guilty on the basis of agreed insanity.

Chief Judge Taumaunu says the hearings are in effect an aggregated list of these types of cases, brought together through a streamlined process.

"It is not a specialist court but a dedicated list of cases that have been referred after preliminary assessment. The streamlined approach should reduce the time the CP (MIP) process takes, reduce the number of adjournments and avoid people being subject to Section 38 (psychiatric reports) unnecessarily," Chief Judge Taumaunu says.

"Unnecessary delay is an impediment to accessing justice, and the new approach promises to reduce that delay for some of the most vulnerable people who come before the District Court."

Streamlined process

Under the streamlined process developed by Judge Pippa Sinclair and Judge Claire Ryan, when fitness is raised in court – usually at first appearance – a forensic nurse will make an assessment. If fitness is found to be a potential issue the defendant will be remanded to the CP (MIP) Court in Auckland for a more in-depth assessment by a forensic nurse in liaison with a forensic psychiatrist.

This will provide the presiding judge more information to decide whether to trigger the full process under the Criminal Procedure Mentally Impaired Persons Act 2003. If the process is triggered, the defendant will remain in the CP (MIP) Court and if not, they will return to their original court to be dealt with under the Criminal procedure Act in the usual way.

At present these defendants tend to appear in the middle of busy list court sessions where it is difficult for judges to adequately address the complexity of their situation in a brief single hearing, resulting in cases being adjourned.

The pre-Level 4 plan was for the CP (MIP) court to have a transitional phase and is expected to take two months from its start date to be operating fully. ■

Cross-examination strategies in rape trials

CROSS-EXAMINATION STRATEGIES IN RAPE TRIALS remain resistant to reforms, which continues to negatively impact on complainants despite initiatives to improve the legal process.

This is a key theme of research by Professor Elisabeth McDonald of Canterbury University's School of Law. Her research report, *Rape Myths as Barriers to Fair Trial Process: Comparing adult rape trials with those in the Aotearoa Sexual Violence Court Pilot*, has been published as an Open Access book through Canterbury University Press to make her research freely available to those working in this area of the law (accessible at *www.canterbury.ac.nz/engage/cup/new*)

The 586-page report contains findings from four years of research. It compares the trial process in 30 adult rape cases from 2010 to 2015 (in which the defence at trial was consent) with 10 cases from the Sexual Violence Court Pilot heard in 2018 (the pilot was established to reduce trial delays and improve the courtroom experience for complainants, particularly children).

Professor McDonald was able to access audio records of rape trials. These contained additional material not included in transcripts, such as instances when a complainant was too distressed to continue giving evidence. This has helped shed light on how and why rape trials still often re-traumatise complainants.

Research aims

The aim of the research was to find out at which points in the questioning process the complainant displayed heightened emotionality, including distress, and why cross-examination (in particular) is so resistant to reform measures. The researchers also considered the extent to which the current rules of evidence and procedure are applied appropriately and consistently, and identified examples of best practice in order to develop proposals for changes to law and process.

Professor McDonald says that from the beginning of the research she "was determined that it would not just amount to yet another demonstration of how the criminal justice system does not do right by rape victims. Rather, it might demonstrate how the adversarial trial process could be different, could provide fair trial process

for both complainants and defendants, and not continue to be one of the reasons for the extraordinarily high attrition rates."

Factors contributing to complainant distress

Professor McDonald says the overall conclusion about the trial process in adult rape cases is that it is not only the nature and content of cross-examination that, at times, unnecessarily contributes to complainant distress.

"This research demonstrates that it is also the marked absence of judicial control over the questioning process and the lack of consistent application of the rules of evidence and procedure that indicate further political attention to the prosecution of sexual cases is warranted.

"In other words, while the primary focus of this research was on reform-resistant cross-examination, and its ongoing impact on the negative experiences reported by complainants, our analysis of all of the complainants' evidence as well as the closings and the summings-up, exposes that the trial process as a whole is resistant to legal and procedural change. Unfortunately, this conclusion replicates and reinforces the outcomes of many other inquiries into the prosecution of rape. These inquiries conclude that it is societal beliefs that must be changed, in order to see consequential change to the decision-making processes in rape trials."

Recommendations

The report contains 55 recommendations for changes to law and practice. These cover all aspects of the process, from the investigative process, to initial and pre-trial meetings with complainants, the actual trial process, the content and structure of closing arguments, summing-up and jury directions, evidential and procedural law reform, education and development programme content, and substantive law reform around sections 128 and 128A of the Crimes Act 1961. ■

New survey results show extent of offences by family members

ALMOST 80,000 ADULTS WERE offended against by a family member in 2018, according to a Ministry of Justice report, *Offences by Family Members*.

The report, which comes off the back of the 2018 New Zealand Crime and Victims Survey, also notes that just over 100,000 adults who had a partner in the last 12 months had experienced psychological violence by an intimate partner.

Figures from the report show:

Māori adults (4%) were found to be more at-risk of experiencing family member violence than European adults (2%).

Adult females (2.8%) were more than twice as likely to report offences by family members than adult males (1.2%).

Young people between 15 – 29 years of age were 1.7 times as likely to report offences by family members (3.4%) than the New Zealand average.

Quite often victims are injured (23%) and require medical attention for mental, emotional or physical health issues (15%) but only one in three offences by family members are reported to Police.

The *Offences by Family Members* report details who experiences offences by family members, what types of offences occur, and what services victims interact with. The offences include physical assault, sexual assault, psychological violence by intimate partners, harassment and threatening behaviour, property damage and robbery.

National level information

"The report is important because it provides precise, national level information about violence committed within families," says James Swindells, the ministry's Manager of Research and Evaluation. "It tells us more about the nature of this type of offending and gives those leading interventions in this area the evidence they need to refine initiatives or develop new ones and to monitor the impact of this work."

"Our findings show that victims of offences by family members experienced moderate-to-high levels of psychological distress, at more than four times the rate of other adults (37% compared to 8%). Data like this helps people understand the needs of those affected by violence and links with things like mental illness."

The report also identifies that adults facing high levels of financial stress are more vulnerable to offending by family members. For example, adults who could not afford a non-essential item costing $300 in the next month were five times as likely to have experienced an offence by a family member in the past year than those who could afford the item.

"Future work – once more data is accumulated from further cycles of NZCVS – will help to gain a deeper understanding of the relationship between offending by family members, and the demographic, socioeconomic and family circumstances of an individual," says Mr Swindells. ■

Young Adult List trial underway

The Porirua District Court has started trialing a Young Adult List which separates out those aged 18 to 25 from others appearing in court and provides extra support to help identify any health needs or impairments the young people may have.

The first Young Adult List was held on Friday, 6 March, and the sessions will be held at Porirua District Court every Friday.

Principal Youth Court Judge John Walker says the new approach recognises that a high percentage of young adult offenders suffer from neuro-disabilities such as dyslexia, acquired brain injury and foetal-alcohol spectrum disorder.

"Often they also come from a background of being exposed to trauma and abuse. Those challenges do not expire when they come into the adult court. We also know their brains are not fully developed. Currently we treat them as fully functioning adults when demonstrably they are not."

Judge Walker says if the law is to deliver effective interventions to reduce reoffending, the underlying issues for young adult offenders need to be identified and taken into account.

Judge Walker has developed the initiative with support from the Ministry of Justice, Judges from the Porirua District Court, justice agencies, local iwi and others from the local Porirua community. The first session began with a mihi whakatau, karakia and waiata.

The Young Adult List sessions also feature greater explanation of court procedure to ensure the young adults better engage with the process and understand the proceedings.

Those appearing are able to access a range of wrap-around services similar to those available in the Youth Court, and services represented in the court include specialist forensic services, adolescent focused Corrections Officers, iwi liaison, Alcohol and Other Drug Clinician, Community Link, and Restorative Justice. ■

Criminal Cases Review Commission in business

The Criminal Cases Review Commission will come into existence as an independent Crown entity on 3 April 2020.

The Criminal Cases Review Commission Act Commencement Order 2020 brings some provisions of the legislation which established the Commission into force on that day. This includes section 7, establishing the Commission, section 8 which declares it to be a Crown Entity, section 49 which defines the legal status of Commission members and other provisions relating to Crown entities.

Unless there are further Orders in Council, the remainder of the Criminal Cases Review Commission Act 2019 will come into force on 1 July 2020.

On 24 February Justice Minister Andrew Little announced that the Commission will be chaired by Colin Carruthers QC and based in Hamilton. ■

Information disclosed on restorative justice

The Ministry of Justice funds 27 organisations to deliver restorative justice to 57 courts nationwide, Justice Minister Andrew Little says.

Mr Little provided the information in response to a series of written parliamentary questions on the management of restorative justice from National MP David Bennett.

Facilitator critera

Asked what the criteria were that an organisation must fulfil in order to facilitate restorative justice in cooperation with the Ministry of Justice, Mr Little said providers must provide evidence that they can:

- Ensure their facilitators have completed, or are working towards, restorative justice accreditation through the Resolution Institute;
- Comply with the Ministry of Justice Practice Framework, Restorative Justice Practice Standards for Family Violence and the Restorative Justice Standards for Sexual Offending Cases (if applicable);
- Meet and maintain an appropriate level of Social Sector Accreditation;
- Be culturally responsive to the needs of their communities; and
- Maintain professional relationships with the courts they service and other key stakeholders in their communities.

He said there were no criteria set by the Ministry of Justice that organisations must fulfil to advertise themselves as a restorative justice provider. However, to advertise as a provider for the Ministry of Justice, they must have been selected and contracted by the ministry through a procurement process to deliver restorative justice services. ■

AML/CFT

AML/CFT developments

Former lawyer sentenced for money laundering

Former lawyer Andrew Neill Simpson has been sentenced to two years and nine months' imprisonment after pleading guilty on 27 November 2019 to 13 charges of money laundering under section 243(2) of the Crimes Act 1961.

Mr Simpson surrendered his practising certificate upon his guilty plea.

In his 25 February 2020 sentencing notes (*R v Daniels and Simpson* [2020] NZHC 275), Justice van Bohemen said Mr Simpson was the solicitor employed by members of and people affiliated with the New Zealand chapter of the Comanchero motorcycle gang, an organised criminal group.

A Police investigation which began in 2018 uncovered a sophisticated operation for the importation and supply of controlled drugs and associated money laundering. Mr Simpson and Comancheros Vice President Tyson Terei Daniels were arrested, along with seven other co-accused who will go on trial in September 2020.

"The money was deposited into structured trust accounts, usually in amounts of less than $10,000 at a time at various bank branches in an effort to disguise their origin and to avoid raising suspicion. To further avoid detection, the money was also channelled through associated companies such as Heavy Heavy Ltd, which provided an apparently legitimate source of income for Mr Daniels and others in the group and was also used to launder funds derived from criminal activity," van Bohemen J said (at [6]).

Justice van Bohemen said that as the gang's solicitor, Mr Simpson was the facilitator of the money laundering operation.

Knew it was "dodgy"

"You used your specialist knowledge as a lawyer to advise on structuring the laundering scheme across the multiple trust accounts you set up. You also channelled money through your solicitor's trust account and made deposits into the accounts yourself. You knew what you were doing was dodgy. Intercepted phone calls reveal that you told one of the others involved in the scheme that if he deposited 'nine' at each 'drop' it would not get 'flagged' by which you clearly meant avoiding the banks' reporting thresholds," he said (at [9]).

About $1.2 million was deposited or transfered into accounts Mr Simpson established for the scheme. He retained a little over $18,000 as remuneration for his work as a lawyer. The balance was transferred into trust accounts Mr Simpson set up for gang members. Using cash laundered through his trust account, he authorised payments on behalf of the trusts and made payments directly to luxury motor dealers for vehicles purchased by gangsters – including two Rolls Royces, a Bentley, a Lamborghini and two top-end Mercedes Benz. He also assisted in the purchase of a $1.4 million property using several different trust accounts and creating another purpose-built trust account for the transaction to avoid detection.

Mr Simpson contested the quantum particularised in the charges to which he had pleaded guilty, which came to a total of just over $2.2 million. His counsel argued that he should be sentenced on the basis that he dealt culpably with just over $1.4 million.

"Having regard to section 24(2) of the [Sentencing] Act [2002], I have indicated that I do not regard the difference between $1.4 million and $2.2 million as materially different in the context of offending by a man in Mr Simpson's position and the difference in amounts has not affected the starting point I set for your sentence or the overall length of the sentence," Justice van Bohemen said (at [15]).

Starting point

In setting the starting point of Mr Simpson's sentence, Justice van Bohemen had regard to the following circumstances:

- He was a key facilitator of the money laundering scheme

and made it work. He set up the trusts through which the funds flowed.

- He made it work because of his position as a lawyer and member of a professional body. He used his professional skill and knowledge and solicitor's trust fund both to make it happen and lend respectability.
- He did not just set up the legal and administrative arrangements to enable the operation, but took part in it personally and advised others on how to avoid triggering the banks' reporting thresholds.

Mr Simpson said he was duped and he did not appreciate the nature of the transactions in which he had become involved. However, he acknowledged that he had suspicions that some of the transactions may have involved tax avoidance. He said he turned a blind eye to the source of the funds.

It was only very late in the offending, in November 2018, that Mr Simpson undertook his own investigations and appreciated that his clients had been deported from Australia for gang-related offending. "Even then, however, you continued your involvement," van Bohemen J said.

"There can be little doubt that you were at least naive and incredibly foolish to get involved in this scheme. I accept that you did not know directly, as Mr Daniels knew, that you were involved in laundering funds from serious drug offending. I also accept that the fee charged for your time would not have been unreasonable had your advice been for setting up trusts to enable lawful transactions, and that in comparison to the benefits enjoyed by Mr Daniels, the benefits of your participation in the operation were modest." (at [44]).

However, van Bohemen J could not accept that Mr Simpson's culpability stopped at naivety and foolishness, even for the period until he made his belated inquiries.

"[45] By your own admission you knew that things were not right. You say you suspected tax avoidance. You say you had doubts as to the veracity of the assurances you were given that the funds came from business activities, gambling, or the sale of luxury cars. But you chose to continue.

"[46] In your own words, you turned a blind eye to the source of the funds. I am satisfied that in so doing you were reckless not just to the possibility that the funds came from activities such as tax avoidance or gambling but also to the possibility that they came from much more serious offending, including drug offending. The amounts and numbers of transactions themselves ought to have put you on notice…"

In addition, Mr Simpson was acting in his professional capacity "and when you chose to continue your involvement, even when your suspicions were raised, you not only placed your personal gain above your duties as a lawyer but you risked bringing your profession into disrepute. That is a significant distinguishing factor." (at [47]).

Compared to Mr Daniels (who was sentenced to four years and eight months' imprisonment with a starting point of six years for nine charges of money laundering and one of participating in an organised criminal group), there was a significant difference between Mr Simpson's situation of largely reckless involvement in a scheme devised by others with only modest personal gain, and that of Mr Daniels who knew exactly what was going on and gained a substantial personal benefit.

A starting point of four years and six months' imprisonment was appropriate for Mr Simpson.

Mitigating factors

Mr Simpson's Pre-Sentence Report stated that he felt huge regret, that he had found the experience humiliating and that he said that his offending stemmed from naivety, although he acknowledged that things "ramped up". The report writer had noted he had strong family and community connections.

"The writer acknowledges that the magnitude of your offending is such that a custodial sentence would be warranted but, taking account of the solid support that you have from family and friends, recommends a sentence of home detention to be followed by 12 months of post detention conditions," Justice van Bohemen said (at [37]).

"You and your father, who is also a practising lawyer, have worked out an arrangement under which you might continue to provide advice on matters within your professional competence, even taking into account the fact you have surrendered your practising certificate and the likelihood that you will be disbarred from practising as a lawyer for a period. You have a supportive wife and five young children under the age of 13. The Court has received many letters in support attesting to your usually good character. You have also written explaining your regret and remorse and the toll on you and your family."

Justice van Bohemen said he was satisfied that Mr Simpson's remorse was genuine as was his commitment to rehabilitation. These factors, combined with the lack of a previous criminal record, the strong community support he continued to enjoy, and the support of his family warranted a substantial discount of 15%. That reduced his sentence to three years and nine months' imprisonment, to which was added a further reduction of 12 months for an early guilty plea. That produced an end sentence of two years and nine months' imprisonment. ■

AML/CFT regulatory findings report released

A disconnect between a business' risk assessment and AML/CFT programme, and how these documents are used in practice was a common factor observed by the Department of Internal Affairs in its Regulatory Findings Report for Anti-Money Laundering and Countering Financing of Terrorism for the year to 30 June 2019.

It says the report shares its regulatory findings for the businesses it supervises – which includes lawyers and conveyancers – to assist them to understand the DIA expectations, and how they can improve their systems and processes to comply with their AML/CFT obligations.

On the disconnect between assessment and practice, the report says the department inspected businesses with well-written documents that seemed "technically compliant" on paper, but when they were visited their procedure, policies and controls were seen not to be effectively implemented.

"Many businesses have adopted generic templates for their risk assessment and AML/CFT programme documents. In some circumstances, the content has been wholly generic and not specific to their business, types of customers, transactions or activities conducted," it says.

"While a template can be a useful starting point for a risk assessment or developing an AML/CFT programme, the Act requires the identification of the specific money laundering and financing terrorism risks that a particular business faces. The risk assessment must also enable the business to determine the level of risk in relation to its AML/CFT obligations. This means the risk assessment must be specific to the individual business' circumstances, customers and activities. The risks must then be managed and mitigated through its AML/CFT programme."

Areas of non-compliance

The report identifies the most common areas of non-compliance in the year to 30 June 2019:

- Risk assessments too generic and not specific to the money laundering and financing terrorism risks the business faced.
- Written documents incomplete and not covering all the relevant obligations. These include a lack of procedures for politically exposed person (PEP) checking, beneficial ownership checks, enhanced customer due diligence, suspicious activity and prescribed transaction reporting.
- The written AML/CFT programme documentation is technically compliant but not implemented effectively in practice.
- Compliance officers' inadequate understanding of their businesses' money laundering and financing terrorism risks, and poor implementation of policies, procedures and controls in practice.
- Customer due diligence (CDD) and Enhanced CDD not undertaken in accordance with the Act's requirements.
- The compliance officer does not have the required level of influence in the business to escalate issues and ensure governance level support for the AML/CFT programme.
- Insufficient training and vetting of senior management, compliance officers and any staff member with AML/CFT duties.
- AML/CFT risk assessment and programme documents not kept up to date, with no version control used.
- Frequency of inspections.

In the year to 30 June 2019 the department says it completed 149 desk-based reviews and 49 on-site inspections. These resulted in 60 remediation plans, as well as other regulatory action – including formal warnings and one enforceable undertaking. ■

Videos to help with AML/CFT understanding

The Department of Internal Affairs has released a series of videos, Keeping New Zealand in Business for Good.

The series aims to help businesses and their employees understand the AML/CFT Act and what is required to protect businesses, and New Zealanders, from the social and economic harm caused by money laundering and terrorism financing.

The four titles are: "The ugly business of dirty money", "Dirty money dirties business", "Beware of the signs of business unusual", and "Shining a light on dark money".

The department says the four videos can be shared with front line staff, other employees or anyone else that could use help in understanding what they need to do and why it's important. ■

They can be viewed on the DIA's website, at *www.dia.govt.nz/AML-CFT-videos*

PRACTISING WELL

Practising with empathy

BY **TIM GUNN**

Practising law requires a wide skillset but an often overlooked skill is the difficult area of understanding the human side of a client's needs.

John L. Barkai of the University of Hawaii School of Law states that: "Most lawyers view the practice of law as a set of legal problems that must be solved like a puzzle, rather than as a vocation which assists people who have problems."

I believe that practising with empathy helps lawyers achieve the best results for their clients.

What does practising with empathy mean?

In a strict sense empathy means understanding and relating to a client's feelings. I believe practising with empathy requires a lawyer to not only address their client's legal problems, but also to recognise the emotional impact. Academics in this area remind us that empathy does not equate to sympathy. A client does not want their lawyer to feel sorry for them. Instead, the focus of practising with empathy should be on understanding the client and their problem holistically.

In my opinion the enemy of empathy is insincerity. You cannot feign interest in the client's wellbeing. Instead, a lawyer must make genuine attempts to understand and factor in their client's feelings into their decision-making.

I operate a practice where the majority of clients have experienced personal and financial hardship. For example, they have received an adverse health diagnosis that renders them unable to work. They arrive in my office with a letter from their insurance company informing them that they are refusing to pay out on their income protection or trauma policies. These clients have been traumatised by their health issues and then again by an insurance company.

In a strict sense empathy means understanding and relating to a client's feelings. I believe practising with empathy requires a lawyer to not only address their client's legal problems, but also to recognise the emotional impact

To be effective with these clients requires looking at the problem as a whole and addressing their personal as well as financial needs. I call this the priority of needs.

What should I do to practise with empathy?

While it may be an overused phrase, the key is 'active listening'. Active listening encompasses listening to the content of the client's problem and their emotional state.

Meeting a client, whether for the first time or the tenth, is one of the most important interactions for your clients. Busy lawyers can sometimes forget that what might be routine for them is daunting and overwhelming for their client.

A potential plaintiff does not go to a lawyer when they think they have a particular cause of action; they feel they have been damaged, cheated, taken advantage of, wronged or treated unfairly.

For my clients, their disputes are the most important thing in their life at that time. For the lawyer, it is important that the client is never made to feel like just another file but that you genuinely care and will work to get them the best outcome.

Key messages

When meeting with a client here are my key messages:

- Turn off your phone;
- Look at your client;
- Let your client speak;
- Let the client lead and listen – do not constantly interrupt or try to 'hurry them up';
- Summarise to the client what you understand; and
- If possible have someone with you in the meeting to take notes.

The simple act of looking at your client and engaging with them will help to alleviate their nerves and allow them to articulate their needs and feelings openly. I

believe that an unengaged/disinterested/rushed lawyer is unlikely to build rapport with a client. This could lead to issues later on when the lawyer fails to understand the client's priority of needs and achieves a sub-optimal result for the client.

When you understand what is at the core of your client's priority of needs then you can refer to that in all touchpoints you have with your client.

For example, in alternative dispute settings, I always invite the defendant to listen to the impact their decision-making has had on my client's life. In turn, I find it very healing when a defendant company offers an apology as a way of recognition of this hurt. This can work for both sides as the client becomes more amenable to a resolution if their emotional needs have been met.

Why practise with empathy?

I can't recall the number of times I have asked myself: why is my client digging in on this small issue? Why is this element so important to them? To solve this I generally return to that initial meeting where I listened and understood the client's priority of needs.

A lawyer who practises with empathy will implicitly understand that disputes are stressful for all parties involved. Furthermore, clients under stress – such as in a mediation or a courtroom – do not always make good decisions. If a client is displaying irritation and defensive behaviour then they are probably stressed. This inflexibility and hardening of a client's position will hamper a resolution of the dispute. In this scenario the empathetic lawyer can instinctively adjust their decision-making and approach. They can reflect and remind the client of their priority of needs which will lead to better decision-making.

In my opinion, if you have not invested the time in understanding your client you will be far less likely to achieve an outcome that is satisfactory for them.

A lawyer who is displaying empathy will build a rapport and establish trust with the client. While we may be loathe to admit it, we as lawyers are in the service industry. That service is not merely to file documents, send emails and take long lunches. In my area, the key service is dispute resolution. I sell solutions. I am a paid problem solver. I believe that a client is more likely to spend money with you if they see that you understand them and what is important to them.

However, for me the primary reason I incorporate empathy into my practice is that it gives me immense job satisfaction. I can see the relief and joy that comes from resolving people's disputes. I find it very rewarding to see that the client is both financially and emotionally ready to move on with their lives. ■

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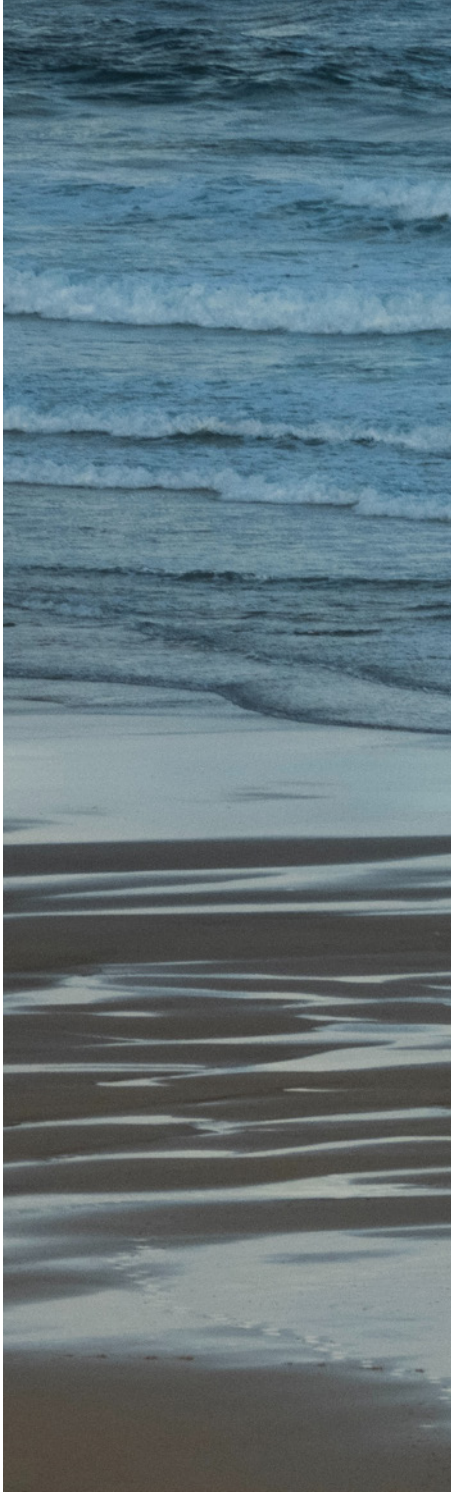

TALKING ABOUT MENTAL HEALTH

Wellbeing: Enough's enough

BY **MARTIN WILSON**

I'VE WRESTLED WITH THIS ...

For no amount of my preaching about the what and how of wellbeing is likely to make a jot of difference. We need to *action* wellbeing to be on a wellbeing path. Rather like, if we're into biking, we need to do more than think or talk about it and actually ride that bike.

What fuels a shift from wellbeing as a good idea or a wishful dream into a more grounded, living reality? For that's what seems to be the sticking point. We understand the value in wellbeing, we're comforted by the idea of it, yet we struggle to live it. With that in mind:

A. When do we get on a wellbeing path?

B. How might we UP or better 'generate' that shift (from wellbeing poor to wellbeing prosperous)?

C. What makes wellbeing a lasting habit, distinct from a one-day wonder?

Much of the answers to each of these questions might be captured in the word: ENOUGH. When:

- We've had *enough* of our lack of wellbeing (we 'recognise' our need);
- We accept we're *enough* and worthy of choosing an alternative to wellbeing deferral (we 'own' that path);
- We action wellbeing in a good *enough* way (we 'live' and 'are' wellbeing).

I'll come back to the idea of what's enough in addressing these questions (A – C). For much of the way forward with wellbeing lies in "enough's enough".

A: When do we get on a wellbeing path?

Whereas wellness might be an idea or outcome, wellbeing's an action. For some, simply actioning wellbeing is all it takes, with next to no forethought nor soul searching. They opt in, boots and all. For most of us though it takes more.

Most of us get on the wellbeing path by feeling our way forward. Most especially in feeling we've 'had enough', or there might too arise a feeling of not in fact being bullet proof. As some put it:

- "I've had a gutsful. I'm at my wit's end."
- "I'm sick of rescuing others. How about me?"
- "I'm fed up saving face. By saying 'yes' when I mean 'no'"
- "This isn't how I planned my life to turn out. Lifeless, joyless, endless."
- "I'm so tired ... but I can't sleep."
- "If I'm really honest, I loathe how I'm 'living' right now."
- "I get pissed off how people say I'm so serious these days, no fun anymore."
- "I keep on thinking I can do it. And I do. But at what price? I'm not sure I want to find out."
- "I want to be more responsible for those whom I love and feel a sense of belonging. Not kneeling at the altar of 'others' and their problems."

When we feel our way forward to wellbeing we begin to notice our underlying need for wellbeing.

Martin Wilson

To feel, we begin by actually noticing and allowing our feelings. We notice what our senses reveal about us internally and of our immediate environment. We give increasing presence to our self, tip to toe. We're aware of our feelings experientially, as physical sensations.

For the body is always present. A truth-teller of sorts. We need to appreciate what it's telling us. It broadens our intelligence, beyond the limits of the ever employable – but sometimes distorting, denying

– mind. None more so than when it's not partnered by what we feel, when it runs rampant, when it rules the roost.

In getting on a wellbeing path, we often discover we've been 'sitting on' our own wellbeing. As in, much of what we pick up and experience again are habits had or choices made before we got off the wellbeing path. Such as the feeling we've had after a week on holiday, in getting home early, in eating well, sitting still for once, in building a tree hut with the kids or baking a cake together.

We don't need to go in search of wellbeing. We can reflect on our past wellbeing lived life for:

- People or factors which were influential in our choosing a wellbeing tack.
- Circumstances or an environment which supported us to live in a more wellbeing way.

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- Our wellbeing choices and preferences back then, including living in a responsible way (eg, not being overly or unhealthily responsible for others).

Unless there are more deep-seated psychological or emotional factors at play, it doesn't take as much as we might think to rediscover wellbeing. It's not such a big deal. Yet, its deferral is potentially a calamity or worse. We can have hope, for a small drop of wellbeing activity (or possibly inactivity, eg, being still) can produce a surprisingly large pool of wellness. We too can have faith that in getting on the wellbeing path we'll be rewarded.

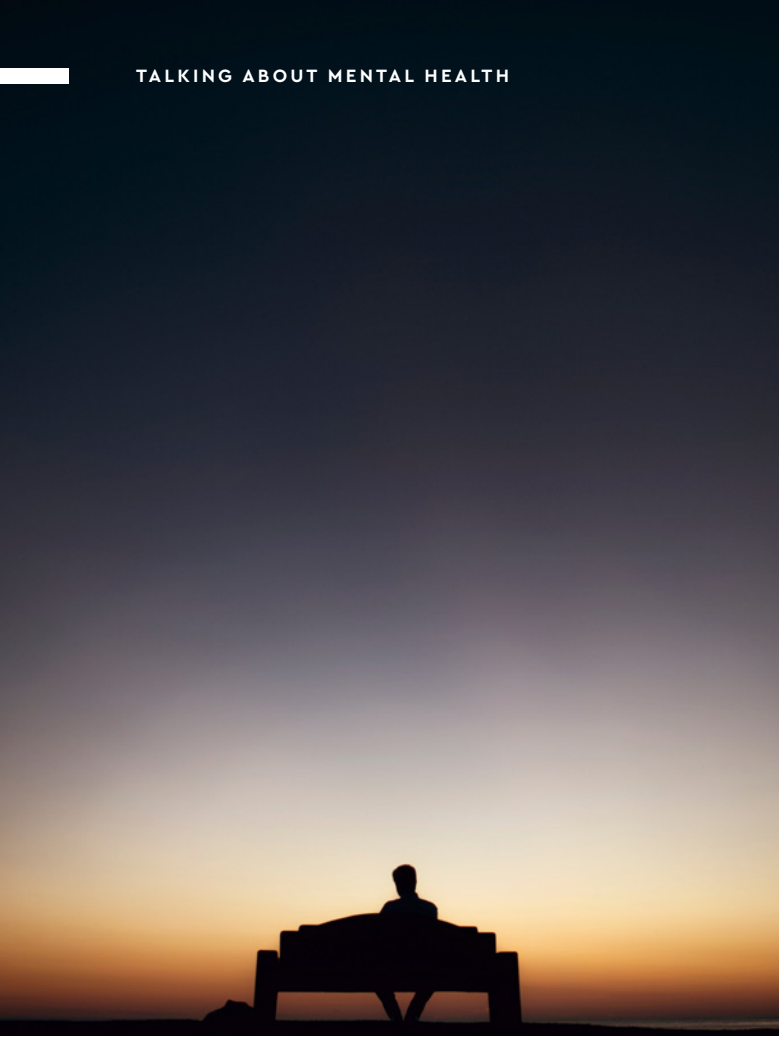
B: How might we UP or better generate that shift (from wellbeing poor to wellbeing prosperous)?

"Get comfortable with being uncomfortable," as a former colleague of mine coaxed me once. This being uncomfortable is akin to vulnerability, where we risk being more fully seen, in feeling more emotionally open (even exposed) and in our clinging less to undue certainty. Vulnerability leverages wellbeing.

We're sometimes too comfortable, drowning or suffocating as we do in seeking a 'better' life, so-called success, over-achievement, or the acquisition of 'gotta have' stuff, typically of a comforting, unsustaining, often avoiding, kind.

Brene Brown, of "The Power of Vulnerability" TED Talk, speaks of the 'comforts' we employ to avoid vulnerability, a vehicle for living more wholeheartedly (ie, with courage, compassion and connection).

These comforts might arise in our getting a rewarding hit – of "Ah, I'm actually okay after all" – out of persistently going beyond what is reasonable or necessary (ie, perfecting or a slave to certainty). Where we get a comforting 'spike' in buying that umpteenth outfit or device, that



sugar-laden 'food' (ie, numbing agents). Or, in telling our colleagues heroically that we work 12–14 hour days when in fact it's about wearing a people pleaser, saviour or martyr mask (ie, pretence). In our laughing off the fact we've got 50+ days paid leave owing (more pretence). In the meantime, we remain invulnerable to what's really going on. We don't fully experience (feel) what we're about. We hide behind a narrative of "she'll be right", "I'm good to go", "I'll give it another six months", and so on.

These comforts (or avoiders) may not – in themselves – be a problem, especially if they're the exception, rather than the norm. It's our over-attachment or clinging to the numbing, pretending, certainty fixing or escaping comfort in them – at the expense of our wellbeing – that's the problem. For in being so, we miss out on or avoid what might be at the heart of wellbeing, namely, CONNECTION … with our enoughness, with what's enough, with how it's enough to be a human being and what that involves, including stumbling or feeling uncomfortable, fragile or incomplete. Vulnerable.

How might we make the uncomfortable, vulnerable shift from the comfortable (ie, numbing/avoiding) life to one that's more wellbeing in character? Erik Rittenberry's article on *www.medium.com*, "The Comfortable Life Is Killing You" is helpful. Summarising his take on things, we can make this shift in these ways:

- Letting go of over-attachments and choosing that constant of life ie, change (Refer "From The Recipe Book To The Platter" *LawTalk* Issue 830, 25 October 2013).
- Having our suffering ('had enoughness') grow us, and not be a place of familiar, clung-to comfort.
- Becoming more self-aware and vulnerable, for self-awareness facilitates more self-supporting choices and vulnerability untaps our capacity for self-empathy (Refer "Self-Awareness and Vulnerability" *LawTalk* Issue 820, 7 June 2013).
- Consuming (including shopping) less. Enough said. Other than it opens us up to more experienced-based choices of a wellbeing rewarding kind, and to deeper connection to ourselves (to our body, purpose, experience, new ideas, soul and with others).
- Getting into nature, in terms of our own nature (eg, via reflection or meditation) or the physical environment (eg, a garden, a bush walk); where we might experience nature on the outside *and* in our internal response.

In vulnerably shedding such 'comforts' we're saying: "I'm enough". The more we vulnerably own our enoughness (and, at least initially, uncomfortably experience or connect with ourselves more fully), the more we UP our wellbeing. Ultimately, at a personal level, we begin to feel more like our true selves. A sense of 'I AM', I simply AM.

C: What makes wellbeing a lasting habit, distinct from a one-day wonder?

In the mid-1990s I undertook counselling to help find my wellbeing feet again. I was numb and fractured. I asked my counsellor "Why do I keep flip-flopping between being on track and being out of sorts? WHEN will I finally feel consistently well, more sorted?" She replied "When you're more fully *integrated*. For instance, when you're out of sorts, not latching or clinging on to one or other piece of the person 'pie', psychologically or behaviourally, eg, blame or being overly accountable. More choosing from time to time a combination of pieces of a whole person pie, eg. feeling your upset, owning your part, exploring what you might do to change things, practising self-care". Her advice was a vital clue of the way forward. It was later reinforced in my reading David Whyte's *The Three Marriages: Re-imagining Work, Self and Relationship* and Parker J Palmer's *A Hidden Wholeness: The Journey Toward An Undivided Life.*

A more integrated self is in large part a successful 'marriage' between:

- one's internal self (often neglected, but often more about one's heart and soul); and
- more external 'selves', in the form of a work self and a 'relationships with others' self (often overly inhabited or captured by mind or ego).

It might also be fostered by growing one's self-awareness.

From that 'platform' we're better able to develop and integrate self-management and relationship-building competencies. The combination of these takes matters to another level of self-integration, as in our employing emotional and social intelligences more competently, which helps grow or facilitate our wellbeing and that of others.

In undertaking our wellbeing journey, the more we explore and understand our integrated self, the more we fathom upon what's enough, including our own sense of enoughness, presence and worth. It's an all-important turning point in having wellbeing become part and parcel of who we are and how we live.

At a less conceptual level, this is what integration might look like ...

First, in terms of a person's self-awareness in relation to enoughness, as expressed to me by two acquaintances:

> "I've been feeling fragile today, not really sure why, not feeling that flash, and yet as I walked down the hill to the gym I felt a wellness, a sense of OK-ness with my off-ness. Almost 'enjoying' my state of feeling a little flat and emotional. And I felt physically well and strong. I don't know why but tears are coming while I write this. It's weird. But there you have it. I'll accept them, as well."

> "I felt depressed this week. Some days, I felt like I'd swallowed lead, that it flowed into my veins, weighed me down, poisoned me. Not every day. But it challenged and interested me watching the thing, allowing it, feeling compassion for myself. I accepted where I was at. Cared for myself regardless, understood that the pain and sadness and fear in the world just IS. It occurred to me that, yes, I feel my share of it too. That even when the fear and sadness feels like a bottomless abyss – a black vortex that might swallow me whole and leave no trace – the remedy for me is acceptance with love. Not a passive, floppy, helpless resignation, but a soft, loving acceptance that flows TOWARDS what is, rather than withdrawing or tensing up. That's all a bit long-winded I realise ... the actual feeling of doing this, of experiencing this shift in me, is much simpler."

Secondly, in the form of some outline or structure revealing what personal integration might be or mean for oneself. For me it looks something like this, in broad terms. A 'marriage' between knowing the driver for and direction in which I'm headed (the end in mind) coupled with actioning that end in mind (getting it on the road).

Knowing the end in mind (internal) involves:

- *A Why* (my Purpose), which for me is to recognise and own who I really AM and how then I might best contribute to and connect with the world around me (external); and
- *A Where To* (my Objectives), which for me are several but basically come down to LIVING life to further my Why.

Actioning the end in mind (mostly external, but some of which is internal actioning, eg, being) involves:

- Exercising personal leadership (who *I am* or choose *to be*), including being self-aware/loving/accepting, wholehearted, 'parenting' myself and in building a strong personal foundation (Refer "A Strong Personal Foundation" *LawTalk* issue 821, 21 June 2013).
- Having a Toolkit (of what *I do*), including practising mindfulness, embracing change, exploring new pastures, stretching and growing but knowing my limits, eliminating my To Do list and scheduling instead, operating in a 'wheel of life' like way, maintaining my health across the board, learning in an ongoing way, cultivating good relationships, and doing work that's purposeful and growing, etc.
- Locking in and employing good habits (Refer "Practising Well ... As A Matter of Habit" *LawTalk* issue 846, 18 July 2014).

This is one of many takes on how to get on a more integrated, wellbeing tracking life path. There are others. It's important to work out what that might be for oneself.

In conclusion ...

For me, there was a reckoning of sorts. An "enough's enough" moment. The integration insight I got in the mid-1990s was an integral part of that. A waking up to a gap between a 'golden (or good) boy' myth about myself and my associated quest to shine and succeed, AND my reality. And, for a while, I plunged into a feeling of 'not enoughness'.

In time though, as I began to know myself and marry up my inner and outer selves, I was able to develop a more integrated and grounded whole self. A whole self consisting of both light and dark, wonderful attributes and dismal shortcomings. Eventually the level of inquiry around whether "I'm enough" or not subsided. With that, so too did my undue attention given to trying to prove myself (or lose myself) externally, via workaholism and over achievement.

Nowadays, I'm more content and 'level'. I'm not pre-occupied with being enough, but enjoying simply checking in with being how ... I AM. In my experience, that fundamental sense of presence, morphing as it has out of a pupa like 'not enough' self, is at the heart of wellbeing. ■

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Martin Wilson is the Principal of Selfmade Coaching (*www.selfmade.co.nz*). His experience includes 24 years in legal practice, partnership in a large commercial law firm, and 11 years running his own commercial law practice.

ALTERNATIVE DISPUTE RESOLUTION

Assessing Risk

BY **PAUL SILLS**

Paul Sills

Our responses to fear and the unknown are in the spotlight as the coronavirus, COVID-19, spreads around the world and dominates the news. As well as media images of people covered head to toe in plastic bags for protection, and stories of those affected by travel bans and quarantine arrangements, we see toilet paper, cleaning products and tinned food becoming increasingly scarce in our own supermarkets. Why have we responded to the coronavirus in this way when the common flu doesn't really turn heads?

Our unconscious biases, or how we think about risks and the cognitive triggers that impact our responses, play a significant role. The cognitive risk management tools we use in situations of widespread panic such as the coronavirus are similar to those used in conflict– the same unconscious triggers affect how we respond to others, what we base our decisions on, and therefore how we act.

Prior to psychological research in the 1980s, scientists believed that we responded to risks in the moment as we experienced them. It was thought that humans would carry out a cost/benefit analysis every time we felt we were in a situation of unease. However, subsequent experiments upended this thinking and discovered that we actually use mental shortcuts when measuring danger, with instinct playing a larger part in decision making than originally thought. While these mental shortcuts can be beneficial, they may also result in irrational or suboptimal decisions. Aspects of our response to COVID-19 may be a case in point.

University of Oregon Psychologist Paul Slovic has said that the coronavirus "hits all the hot buttons that lead to heightened risk perception". (Max Fisher, "Coronavirus 'hits all the hot buttons' for how we misjudge risk", *New York Times*, 14 February 2020). When we encounter risk, our brains quickly search potentially related past experiences. However, in situations of 'extreme' danger, our brains often fail to assess whether these past experiences are particularly relevant. Dr Slovic compares our responses to COVID-19 to airplane crashes – when two planes crash in quick succession, flying suddenly becomes scarier, even if we know that there is no link to this statistical aberration and the safety of our upcoming flight. In the *New York Times* report Dr Slovic asserts that the reaction to coronavirus is like people hearing reports of one plane after another crashing: "We're hearing about the fatalities. We're not hearing about the percentages of people who are recovering from it and may have had mild cases".

This tendency goes both ways. We can have undue alarm or undue complacency. While the flu kills tens of thousands each year, the majority of us recover after a few days. Although we are aware of the risks the flu poses and are encouraged to get the flu vaccination, our own experiences result in our slowness to act. "We're conditioned by our experiences." Dr Slovic has said. "But experience can mislead us to be too comfortable with things."

The first cognitive shortcut that seems to be evident when assessing coronavirus risks involves novelty. We are constantly on the lookout for new dangers or causes for alarm, which may mean that we hone-in on the worst case scenarios and magnify the actual risk at hand. The media is an obvious culprit. Each time there has been a confirmed case of coronavirus in New Zealand this is announced as being "breaking news". While confirmed cases in New Zealand so far seem small compared to other countries, using the words "breaking news" amplifies each incident and may contribute to mass panic.

Emotion is arguably the most powerful shortcut. The emotions we associate with previous similar events act as strong guiding tools when making decisions. We essentially translate gut emotions into what we believe are reasoned conclusions, even if outside information tells us otherwise. Nobel Prize winning economist Daniel Kahneman perfectly summarised this: "The world in our heads is not a precise replica of reality".

Emotional impulses overwhelm our cognitive faculties. Certain emotional triggers cause us to act in ways that we would usually consider to be irrational. The first trigger is dread. If a risk appears particularly disturbing, we raise our estimate of how likely it is to happen to us. With COVID-19, for example, images of unhygienic food markets, overcrowded hospitals and cities in lockdown enhance this emotional trigger.

Fear of the unknown is another trigger. If little is understood about a threat, we tend to overestimate the danger. Therefore, it is only natural that when hearing about a virus outbreak with little other information, people resort to hoarding food

and other necessities. We tend to overcompensate when we feel that something is out of our control.

False information can also result in compulsive, irrational and dangerous actions. An extreme example occurred in Hong Kong in February, where armed robbers seized 600 rolls of toilet paper following a rumour that Wuhan was a central hub for toilet paper production (Hillary Leung, "Knife-wielding robbers in Hong Kong steal 600 rolls of toilet paper amid coronavirus panic", *Time*, 17 February 2020). This was a piece of false information, but lack of correct information and fear of the unknown produced a violent act. It is said that false information is more harmful than no information.

When we start seeing the world or a situation as dangerous or uncertain, we begin to tap into prejudices or stigmas. Senior Scientist at the John Hopkins Centre for Health Security explains: "when people are in that state of mind they start sorting the world into safe people, unsafe people, safe places, unsafe places" (Toby Ord, "Why we need worst case thinking to prevent pandemics", *The Guardian*, 6 March 2020). The categorisation of people and places as a result of fear is dangerous but reflects our brain's instinctual behaviour to deal with information in a way that appears to calm our anxieties. However, working to pinpoint the correct source of the problem is a better way to deal with these emotions and encourages us to act more effectively.

How do these lessons apply to our experiences in mediation and conflict resolution?

Parties often enter into mediation with feelings of hostility towards each other. Up to this point, the parties have often been unwilling to assess the merits/validity of the other side's arguments and may start the mediation process with narrow minded views that focus on worst case scenarios. They have generally responded to the risks with a lack of optimism, driven by emotions such as anger, fear and distrust.

The mediator must address these mentalities, which hinder the success of the mediation. The process requires discussion and understanding rather than argument and blame. Mediation aims to facilitate and maintain an equitable and forward-thinking relationship by giving the parties the opportunity to convey their concerns, respond to the other party's issues and then negotiate.

As with societal issues such as the coronavirus, in mediation it is important that all the correct information is communicated, parties try not to act on emotional impulses, and our evaluation of the available information includes recognising that we are subconsciously influenced by emotions and prior experiences.

In mediation and in life, being aware of our cognitive triggers and how they affect our decision making and actions is key to ensuring that we do not act irrationally. Such awareness better equips us to deal with situations of threat, stress and uncertainty. As mediators, we must be attuned to the preconceived emotions, fears and thoughts of the parties and actively work to address them through open and active discussion. As parties in mediation, it is vital that we enter into the process with open minds and some awareness of our own, and the other side's, cognitive triggers. ■

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UPDATE — INTELLECTUAL PROPERTY

When the confidential information you disclose "sucks"

...and should be avoided like a punch from Israel Adesanya

BY **KATE DUCKWORTH**

Kate Duckworth

IF I HAD A DOLLAR FOR EVERY TIME someone asked me for a free "standard" non-disclosure or confidentiality agreement, I could have long ago retired.

The decision of Dobson J in *Creative Development Solutions Ltd v Chorus New Zealand Ltd* [2019] NZHC 2959 from the High Court and issued on 13 November 2019 highlights problems with such agreements, but still indicates the importance of having them in place and ensuring they are fit for purpose.

Clients are often reluctant to enter into such agreements. Clients who are disclosing information usually want to, however they often fear the party they are disclosing to will not want to engage with them if they are expected to sign such an agreement. Clients who are receiving information are usually reluctant to do so because they want to leave themselves free to take up the idea or concept disclosed as part of the confidential information.

These issues aside, clients often believe they are standard form, one size fits all and should therefore be free. It is important that the nature of the information and what it is to be used for is well explained in such an agreement.

Background

Creative Development Solutions provides telecommunication services and had developed a product it called 'Smart Services Infrastructure'. Chorus too provides telecommunication services.

In February 2018, Creative, along with Marlborough District Council, met with Chorus to discuss the provision of services such as an ultra-fast broadband in the area to the Marlborough District Council.

Before providing any level of detail, Creative insisted on Chorus completing a non-disclosure agreement regulating the use that Chorus might make of any confidential information. The purpose of disclosure by Creative would be to inform Chorus sufficiently for it to decide whether it was interested in any further involvement with Creative in bidding for the Marlborough District Council work.

Creative also claimed that it was important to it that Chorus did not compete with it to provide the services to the council and that it relied on that understanding when deciding whether to share its confidential information with Chorus.

Meetings took place between Creative, Chorus and the district council. After a fourth meeting in April 2018, Creative came to believe that Chorus was showing an intention to use confidential information Chorus had learned from Creative for Chorus's own purposes, outside the Smart Services Infrastructure initiative.

In May 2018 Creative wrote to Chorus alleging a misuse of the confidential information and proceedings were issued in July 2018.

Creative claimed that Chorus had breached that non-disclosure agreement, as well as breaching its fiduciary duties and breach of an equitable duty of confidentiality and estoppel that prevented Chorus from competing on its own behalf in the bidding process for funding for the provision of services in Marlborough, which Chorus subsequently did.

Adding fuel to the fire was an email from one Chorus employee to another:

> "So how is this going to play out? We're basically going to say that we think his design sucks and would advise everyone to avoid it like the plague. AND we have done a high level design ourselves which is much better and can be contracted for immediately if MDC [Marlborough District Council] have the cash ...
>
> "To put it more politely we could say that we have adapted his design to factor in more use of our assets ..."

First cause of action: breach of fiduciary duty

Creative said its relationship with Chorus was one involving trust and confidence. Creative claimed it was dependent on Chorus to respect and act in Creative's interests, in circumstances imposing fiduciary obligations on Chorus.

The court was reluctant to overlay a fiduciary duty over the top of what was essentially a commercial relationship governed by contract, even if one party supposedly had more commercial clout than the other. This cause of action accordingly failed.

Second cause of action: breach of confidence

Both parties called expert evidence on the nature of the allegedly

confidential information used by Chorus. Chorus's expert claimed that the information shared by Creative was in the public domain or would already have been known to Chorus or had no commercial value to Chorus.

There was no evidence of direct copying Creative's design (both parties' experts agreed on that point), nor direct application of any confidential information.

Because important aspects of information supplied by Creative were insufficiently specific and because of Chorus's pre-existing industry knowledge, the judge considered it relevant to establish whether the information Chorus had received from Creative had value to it. Creative argued that, at the very least, what it had supplied to Chorus, allowed Chorus to springboard off that and Chorus was then in a better position to bid for the Marlborough District Council work.

The judge considered that a collocation of information or ideas, some in the public domain and some known to Chorus, could amount to confidential information. The real question was then said to be to what extent Chorus had used that information.

Despite acknowledging that what Creative disclosed influenced Chorus, it was found to be only in a "minor incremental" way and not sufficient to characterise any use as a springboard for Chorus. This cause of action also failed.

Third cause of action: equitable duty of confidentiality

Aside from any contractual relations, equity provides relief where the recipient of confidential information has used it inconsistently with the expectations of the owner of that information.

The judge found that if Chorus did have any equitable obligations, these had to be on the same terms as the non-disclosure agreement in this case on these facts, and accordingly this cause of action failed.

Fourth cause of action: estoppel

Creative claimed that Chorus had made statements that it had withdrawn from bidding for certain funding for the Marlborough District Council work, thereby creating a belief and expectation that it would not do so, which the judge ultimately agreed with.

Creative said it would not otherwise have disclosed the confidential information to Chorus and it had suffered loss as a result. While Chorus was said to have acted inequitably and was estopped, the judge could not find any loss because ultimately, neither party was successful in bidding for Marlborough District Council's work. The judge found Creative to have no more than a "disappointed expectation" that Chorus would not compete with it.

Being unable to make out any material detriment from its reliance on Chorus's representation not to compete, Creative was unable to make out estoppel.

And disappointed Creative must be, having failed to make out any of the four causes of action.

Lessons learned

Where both parties have knowledge of a certain industry then it will be harder to make out a breach because the recipient will be able to claim that it relied on pre-existing and/or industry knowledge. Even though Dobson J found that the combination of Creative's ideas presented to Chorus could amount to confidential information, because Chorus was already knowledgeable in field, it had not necessarily drawn on what Creative disclosed.

Another recurrent problem in this field is defining the scope of the information at an early stage in a relationship, or at all. Both drafting too narrowly and too broadly are problematic depending on the state of the recipient's pre-existing knowledge and experience.

It is fair to say that this case turned on its facts, as every confidential information case will, and it certainly highlights the risks in sharing information in order to further commercial dealings and relationships. ■

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UPDATE — PROPERTY

The new ADLS-REINZ agreement

Part 2

BY **THOMAS GIBBONS**

Thomas Gibbons

THIS ARTICLE CONTINUES ON FROM THE ONE PUBLISHED in the March issue of *LawTalk* (pages 47-48), addressing the changes in the ADLS-REINZ Agreement for Sale and Purchase of Real Estate (10th edition 2019).

In that article I covered in detail the changes to the first three pages, so logically here are the changes on subsequent pages.

Page Four

Stakeholder requirements

The stakeholder requirements of clause 2.4 have been amended by the inclusion of provisions requiring the deposit to be held by a stakeholder until the agreement is cancelled at the end of a requisition period under clause 6.2(3)(c), or under sections 36-37 of the Contract and Commercial Law Act 2017 (CCLA) (relating to repudiation or a misrepresentation that induces entry into the contract), or until the right to cancel in section 151(2) of the Unit Titles Act 2010 (UTA) has ended.

We now have a cascading series of steps that must be considered before any deposit is released. In simple terms these are:

1. No requisitions;
2. Satisfaction of all conditions;
3. Provision of all disclosure statements under the UTA;
4. No cancellation under the requisitions provisions, nor under the CCLA;
5. No cancellation under section 151(2) of the UTA.

It is the last of these that is perhaps most problematic, as the right of cancellation under section 151(2) of the UTA remains enigmatic, providing for a 10-day notice period if UTA disclosure is not provided on time, without stating why this relatively long period should exist, and without any ability to rectify during this period. In addition, the cancellation remedy set out in section 151(2) is based on time frames not being met, not on whether disclosure information is subjectively or objectively unsatisfactory. In unit titles, as in sketch comedy, timing is everything.

One must have some sympathy for the drafters of the 10th edition form, who have to work in with statutory cancellation provisions such as this, and restate them within a contractual framework.

The stakeholder requirements of clause 2.4 have been amended by the inclusion of provisions requiring the deposit to be held by a stakeholder until the agreement is cancelled at the end of a requisition period... has ended

The new clause 2.5 aims to clarify an agent's responsibility in relation to a deposit, stating that the period for which an agent must hold a deposit under clause 2.4 runs concurrently with the 10-working day period in section 123 of the Real Estate Agents Act 2008 (REAA).

There are however provisos (upon provisos). While these periods run concurrently, the agent must hold the deposit for the longer of those two periods (subject to any agreement of the parties to earlier release under section 123 of the REAA), but in no event can the deposit be released before the requisition period is complete (unless the requisition period is expressly waived in writing by the purchaser after the purchaser has received advice on the effect of this waiver). This is all clear, but the cascading series of steps to determine how this clause

should be read is better subject to a flow-chart. Perhaps an interactive ADLS-REINZ agreement is the next step.

There is no standard provision addressing where interest on a deposit should go. This would have been helpful, as interest (less administration costs and RWT) usually follows its destination.

Possession and settlement

The right of re-entry to determine compliance by the vendor with works under clause 3.2(2) has been clarified to be no later than the day prior to the settlement date. In practical terms, a pre-settlement inspection usually covers an examination of the property and chattels, and confirmation of any works, but these two steps could in theory be distinct. Unfortunately, or perhaps fortunately, the new version has not addressed an important practical point: that many pre-settlement inspections take place on the day of settlement, when under the agreement they should not. This makes sense, as a permitted inspection on the settlement date would allow too little time to resolve any issues.

Clause 3.8 of the agreement provides for the payment of the purchase price in cleared funds, less any credits. The credits include those matters under clauses 3.12 and 3.13 (relating to purchaser and vendor defaults), deductions allowed for damage or destruction under clause 5.2, agreed compensation in relation to a purchaser claim under clause 10.2, and for any interim amount under clause 10.8. This may seem like a myriad of cross-references, but at least settlement remains a contractual phenomenon, and one that exists independently from statutory requirements. On ...

Page Five

... we see that in addition to all leases, the vendor's settlement obligations include a letter to each tenant advising them to pay future rental as the purchaser directs. Purchasers still, of course, have to communicate what these details actually are.

Clause 3.12(3) provides that where the parties cannot agree on any amount payable for a purchaser default under 3.12, either party may make a claim for compensation under clause 10.

Page Six

The same provision flows through to vendor default or failure to give possession under clause 3.13: clause 3.13(7) references the same claim for compensation under clause 10.

Page Seven

A cross-reference in clause 5.2(4) has been updated.

Page Eight

The vendor warranties have seen some material changes. Clause 7.2 provides a warranty that the vendor has no knowledge or notice of any fact which might result in proceedings being instituted by or against the vendor or purchaser in respect of the property. This is broad: the phrase "fact which might result in proceedings" could cover a whole range of concerns, and we could place emphasis on the word *fact*, or the word *might*, or the word *proceedings* – or all three – depending on the nature of the issue or risk at hand. We can anticipate some future litigation on this clause.

Clause 7.3 has sensibly divided up warranties as to chattels and other items.

So – under clause 7.3(1), those items in Schedule 2 are to be in the *same state of repair as at the date of the agreement*, excepting fair wear and tear. Failure to deliver them in that state only allows a right of compensation.

And – under clause 7.3(2), those items in Schedule 3, including any equipment, systems, or devices, must be in *reasonable working order*, but otherwise in the same state of repair as at the date of the agreement, again excepting fair wear and tear.

The practical implication here is that a vendor can decide whether an item is included in the sale as it is, or whether it is included in the sale in reasonable working order. This is a good thing – rather than an assumption of reasonable working order, vendors can be more accurate, and purchasers can be more careful.

Clause 7.3(4) has also seen changes. Where a targeted rate has been imposed as a means of repayment for a loan, subsidy, or other financial assistance, the amount required to remove the imposition of that targeted rate has been repaid. This requires lawyers' and legal executives' attention not just to general rates and water rates, but to targeted rates that fit these parameters (loan, subsidy, or other financial assistance). A detailed understanding of rates within a local authority will often be necessary.

Conclusion

This article is one of a series on the new ADLS-REINZ agreement. It highlights the complexities of modern property practice – the interplay of contractual provisions with statutory rules, the difficulties of stakeholder arrangements, and the detail and uncertainties inherent in vendor warranties. Further articles in this series will consider other clauses, but at the moment, the rest is still unwritten. ■

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UPDATE — CONSTITUTIONAL LAW

Prorogation and politics

A report from paradise

BY **WARREN PYKE**

On 7 November 2019, the Judges of the Court of Appeal of the Cook Islands held a legal education update seminar in Rarotonga. The President of the Court, DAR Williams J, presented on the topic of international arbitration clauses in commercial contracts; Asher J on constructive trusts when property is held under an express trust; and White J on the prorogation judgment of the UK Supreme Court in *R (Miller) v Prime Minister* [2019] UKSC 41, [2019] 3 WLR 589 (*Miller*).

Warren Pyke

My wife and I attended the seminar. It was something of a first for us, as our goal when in the Pacific Islands is to avoid work. However, we are glad we attended. We were made welcome by our host, a lawyer of long-standing in the Cooks, and the local law society members, who took us along to the post seminar drinks and dinner, held at the Tamarind House. This report contains observations about the presentation of Justice White on the *Miller* case, and discusses aspects and implications of the judgment in *Miller*.

Following the presentations, lawyers were invited to comment and ask questions. Justice Asher presciently prefaced his presentation by saying that, as a new judge to the jurisdiction, he welcomed comment and critique. Participation was lively. The sophistication of the comments and questions displayed the local lawyers' in-depth knowledge and understanding of the legal principles under discussion.

The journey to *Miller* – the prorogation decision and the legal challenges to it

On 28 August 2019 at a Privy Council held at the Court at Balmoral, the Queen ordered that the UK Parliament be prorogued from a date between 9 and 12 September until 14 October 2019. The order was made on the advice of the Prime Minister, Boris Johnson. An application for judicial review was brought in the High Court, which, after dismissing the action (see *Miller v The Prime Minister* [2019] EWHC 2381(QB)), gave permission to directly appeal to the Supreme Court. The High Court observed that the refusal of the courts to review political questions is well established, citing *A v Secretary of State for the Home Department* [2005] 1 AC 68, per Lord Bingham, at [29]. Further, at [47]: "Almost all important decisions made by the Executive have a political hue to them. In the present context of non-justiciability, the essential characteristic of a 'political' issue is the absence of judicial or legal standards by which to assess the legality of the Executive's decision or action." The High Court held that the issue was not justiciable, because "the line of separation is set by the courts in the present context by reference to whether the issue is one of 'high policy' or 'political' or both. In the circumstances and on the facts of the present case the decision was political… ." (at [60]).

Parallel proceedings were under way in Scotland. The issue as framed in the Court of Session was: "first, as a matter of law, …whether the prorogation can be judicially reviewed in circumstances in which it is alleged that it has been requested for what is said to be an improper motive *viz*. the stymying of Parliamentary debate on the issue of the UK leaving the European Union. The second, as a matter of fact, is whether that improper motive has been demonstrated." (see *Cherry v The Advocate General* [2019] CSIH 49, at [1], per Lord Carloway).

The court considered that the Prime Minister's advice was calculated to prorogue for a reason important to the government's political stance on Brexit, as shown by internal memoranda and minutes from within the cabinet and the Prime Minister's office. The advice was that of the Prime Minster alone, rather than of the cabinet (see *Cherry* at [50]). The case for the applicants turned on whether the reason proffered by the Prime Minister in public, to prepare for a new legislative programme and to cover the period of the party conferences, was the true one. The true reason, it was argued, was to stymie Parliamentary scrutiny of Government action, which is a central pillar of the good governance constitutional principle.

Participation was lively. The sophistication of the comments and questions displayed the local lawyers' in-depth knowledge and understanding of the legal principles under discussion

Although the Court of Session considered that there was force in the contention that the courts should leave the issue to Parliament (*Cherry* at [52]), it nonetheless found that, because the prorogation had been sought in a clandestine manner, and because "remarkably little [was] said about the reason for

the prorogation in the respondent's pleadings", the Prime Minister's advice did not withstand scrutiny. The court added: "Although the court would not expect an affidavit from a Government minister or official testifying to the reason … it would expect averments in the respondent's answers setting out that reason. Such averments would require to be based upon information provided to counsel and to proceed upon counsel's responsibility (*McGeoch v Scottish Legal Aid Board* 2013 SLT 183, per Lord Brodie at para [64])." (see *Cherry*, at [55]).

Prorogation – law and practice

Prorogation ends a session of Parliament; it is the temporary suspension of parliamentary activity; it occurs in Westminster-style parliamentary systems when the government has largely completed its legislative agenda, as proposed in a Speech from the Throne, and wishes to set out a new legislative programme (Gerard Horgan, "Prorogation as a tool of the Executive in intercameral conflict" (2014) 29 *Australasian Parliamentary Review* 159-76).

The power to order the prorogation of Parliament is a prerogative power: it is a power exercised by the sovereign in person, or the sovereign's representative, acting on advice. Conventionally, the sovereign or their representative is obliged to accept the advice, which places on a Prime Minister a constitutional responsibility to have regard to all salient interests, including the interests of Parliament (*Miller*, at 30): however, as I outline below, this convention may not be absolute.

Prorogation can occur in New Zealand under s 18 of the Constitution Act 1986 (see s 20 as to its effects), but it is now a rarely used procedure (the last occasion I have found being in 1991 at the onset of the first Gulf War). In the Cook Islands, prorogation can occur through a process involving the Queen's Representative, under s 37 of the Constitution of the Cook Islands. Justice White observed that the judgment in *Miller* might have constitutional law implications for the Cook Islands in the future: White J qualified these observations by clarifying that he did not hold (nor did he express) any views about such implications.

Miller – reasons and relief

The Supreme Court agreed with the Court of Session in Scotland that the process was amenable to judicial review. It was true that the prorogation took place in the House of Lords and in the presence of Members of both Houses, but this fact alone did not mean it was a proceeding in Parliament, and therefore subject to Article 9 of the Bill of Rights Act 1688.

The court observed (at [66]): "the principal matter to which Article 9 is directed is freedom of speech and debate in the Houses of Parliament and in Parliamentary committees. This is where the core or essential business of Parliament takes place. In considering whether actions outside the Houses and committees are also covered, it is necessary to consider the nature of their connection to those and whether denying the actions privilege is likely to impact adversely on the core or essential business of Parliament."

Citing Lord Lloyd of Berwick in *R v Secretary of State for the Home Department, Ex p Fire Brigades Union* [1995] 2 AC 513, 572-573, the Supreme Court held that because the Prime Minister was politically accountable

to Parliament did not mean that he was immune from legal accountability to the courts, because (at [33]): "the effect of prorogation is to prevent the operation of ministerial accountability to Parliament during the period when Parliament stands prorogued. Indeed, if Parliament were to be prorogued with immediate effect, there would be no possibility of the Prime Minister being held accountable by Parliament until after a new session of Parliament had commenced, by which time the Government's purpose in having Parliament prorogued might have been accomplished. In such circumstances, the most that Parliament could do would amount to closing the stable door after the horse had bolted."

The Supreme Court held (at [50]): "In such a situation, the court will intervene if the effect is sufficiently serious to justify such an exceptional course," adding that there was no reason, "let alone a good reason", to justify the advice given by the Prime Minister to the Queen that Parliament be prorogued for five weeks. The advice led to the actual prorogation, which was "as if the Commissioners had walked into Parliament with a blank piece of paper. It too was unlawful, null and of no effect." (at [69]).

Justice White's observations

Justice White's review of *Miller* observed that two aspects of the Supreme Court's judgment were notable: the clarity and relative simplicity of the language used in the judgment, and the conventional approach to the problems raised in the case. Justice White observed that the applicable legal principles were drawn from precedent, findings of fact were made in an orthodox manner, including the drawing of inferences from an absence of evidence (here, from the Prime Minister, as discussed below), and that the court recognised the separation of powers. Further, that the remedy granted of a declaration was orthodox.

Contra-*Miller*

The Lord Ordinary had previously rejected the petition for the principal reason that the provision of advice to the Queen on the prorogation of Parliament was not justiciable. It is worthwhile considering the Lord Ordinary's reasoning as reported in *Cherry* [2019] CSIH 49 at [18] to [20], as follows: The exercise of prerogative powers in some circumstances is justiciable, but in others it is not. The power to advise the Queen in relation to the decision to prorogue Parliament was a political one. Its exercise could not be measured against legal standards. The accountability for the advice was to Parliament and, ultimately, the electorate, not the courts. The advice did not contravene the rule of law. It followed from the separation of powers that the courts would not interfere with Parliament's decisions on when to sit. It was not for the courts to devise restraints on prorogation beyond the limits which Parliament had set (relying on *Shergill v Khaira* [2015] AC 359 at [40]; *A v Secretary of State for the Home Department* [2005] 2 AC 68 at [29]). This principle was longstanding. Further support for this opinion can be found in the speech of Lord Roskill in *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374, at 418 and in the reasons for judgment given by Sedley and Waller JJ in *Secretary of State for the Foreign and Commonwealth Affairs v R (on the application of Bancoult)* [2008] QB 365 at [44] and [88]. See also the judgment of the Supreme Court of India in *S.R. Bommai v Union of India* [1994] INSC 173, 1994 (3) SCC 1, at 209: "Similarly prorogation of Parliament or dissolution of Parliament done under Article 85 is not liable to judicial review. The accountability is of the Prime Minister to the people though the President acts in his discretionary power, with the aid and advice of the Prime Minister."

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Questions from the Cooks

During the seminar, questions were asked about the Cook Islands Parliament sitting, in recent times, in a single annual session of, so it seems, relatively short duration. The written Constitution of the Cook Islands requires Parliament to sit at the instigation of the Queen's Representative, not later than 90 days after the holding of a general election and *at least* once in every year thereafter, so that a period of 12 months shall not intervene between the last sitting of Parliament in one session and the first sitting thereof in the next session. As in New Zealand, this is tailored to make provision for the annual supply vote.

These questions implicitly raise Article 13 of the Bill of Rights Act 1688, in force in the Cook Islands and New Zealand, which provides: "for redress of all grievances, and for the amending, strengthening, and preserving of the laws, Parliaments ought to be held *frequently*". Parliament should sit for so long, or sufficiently frequently, as is commensurate with fulfilment of its constitutional function as the elected legislative body: the ratios of *Miller* and *Bishop*, discussed above, suggest that this involves more than considerations affecting supply.

Examination of whether a vote taken in Parliament was in conformance with the Cook Islands Constitution was considered by the Cook Islands High Court in *Bishop v Attorney General* OA 18/00, 16 February 2000. In the

course of its judgment, the High Court observed: "Article 9 [of the Bill of Rights Act 1688] encapsulates one of the conventions applying to the relationship between the Courts and Parliament whereby the legislative, executive and judicial arms of the State do not intrude into the spheres of one another except when it is essential to the proper performance of a constitutional role. The long-established principle is that whatever is done within the walls of a House of Parliament must pass without question in the courts: *Stockdale v Hansard* (1839) 9 Ad and Ell; *Braataugh v Gossett* (1884) 12 QBD 271." To like effect, see the judgment of the Privy Council in *Prebble v Television New Zealand* [1994] 3 NZLR 1. Despite this principle, the High Court held that the motion passed in Parliament was invalid because it failed to adhere to the requirements of the Constitution, the result of which was that the Speaker remained in office.

Emerging Controversy

Serious questions remain about the future scope of such challenges to executive action. Prorogation is usually a "mundane" procedure (see the article by Professor Craig, cited below, at 28). But prorogation has been used to achieve political ends. Charles II prorogued Parliament several times to prevent discussion of the Exclusion Bill. John Major prorogued Parliament in order to prevent a report by the Parliamentary Commissioner for Standards on the cash-for-questions scandal from being tabled before the 1997 general election. In 2003, the Canadian Parliament was prorogued to delay the tabling of a report by the Auditor-General into a major sponsorship scandal. In 2011, the New South Wales Parliament was prorogued in order to prevent the production of State papers pursuant to standing orders of the Legislative Council (see Steven Spadijer, "Prorogation, Justiciability and the Reserve Powers", U.K. Const. L. Blog, 20 September 2019).

While the scope for review of prerogative decisions has increased in modern times (see, for example, *R v Secretary of State for the Home Department, ex p. Bentley* [1994] QB 349, grant of pardons; *Attorney General of Jamaica* [2001] 2 AC 50, prerogative of mercy; *R v Secretary of State for Foreign and Commonwealth Affairs, ex. p Everett* [1989] QB 811, refusal of passports), that does not mean that "the jurisprudential stage has now been reached where there is no longer any exercise of common law prerogative powers which is immune from judicial review, that is to say non-justiciable, but that there are merely areas in which the courts must proceed with caution." (see the High Court's judgment in *Miller* (at [37]), which added that there remains a question as to "whether the subject matter of the power is non-justiciable", (at [40])).

Professor Paul Craig, of St John's College, Oxford, offers support for the Supreme Court's approach (see Paul Craig, "Prorogation: principle and law, fact and causation", *Counsel*, Oct 2019:26-28). He says that: "All power is bounded". He points to constraints on the prerogative power since *The Case of Proclamations* (1611) 12 Co. Rep. 74. He characterises the prorogation at issue in *Miller* as an illegitimate "pre-emptive strike that takes Parliament out of the entire game for the crucial period during which it is prorogued," and argues against a view that the prorogation was not justiciable; he says this view is misconceived because, if it were correct, there could be no recourse to the courts when prorogation was a result of bribery, corruption or foreign influence.

On the other hand, it is worth observing that, despite convention, the sovereign is not altogether bound by advice, even in the face of political factors. Spadijer (*op cit*) points to examples in Australia and Canada when the Queen's representative questioned advice about the length of a proposed prorogation, resulting in the period being curtailed, adding that "the Queen and her advisers are not stupid." He points to scenarios where repeated attempts at prorogation after a court's intervention might lengthen a constitutional crisis, and entail a game of "ping pong" between the courts and the government. It follows that if there is evidence that the sovereign or the sovereign's representative has been frankly advised about the salient factors in the prorogation advice, and has elected to accept the advice (even if a court might think the advice to be wrong or faulty), the courts should not intervene. In *Miller*, it was the shrouding of the real reasons for the prorogation that moved the court to grant relief.

Professor Craig says the Supreme Court's judgment in *Miller* does not represent a sudden departure from principle; he says the contrary view misses a well-established qualification to the sovereignty of Parliament, which would "turn the clock back to the Stuart monarchical period, where Parliament sits at the grace and favour of the executive. The government's legal team tried to downplay such fears by contending that Parliament would have to be recalled in order to vote supply. This serves to reinforce, not assuage, comparison with Stuart monarchical power, since it was the very need for supply that motivated the Stuart kings to recall Parliament. The idea that we should be comforted by this comparison is ironic indeed."

Despite the opinion that the Supreme Court in *Miller* applied orthodox principles to a compelling case on the facts, it nevertheless represents a doorway which is visibly ajar, such as to encourage future litigants to push at it, in order to counter a government's use of prorogation to achieve political ends. ■

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PRACTICE

Second Performance and Wellbeing Study a valuable picture

BY **GEOFF ADLAM**

A survey of New Zealand lawyers conducted in 2018 and again in 2019 shows that serious health and wellbeing issues remain, but there are indicators that the deep self-scrutiny and impetus for change of the last year are having an impact.

Both surveys were carried out by the College of Law New Zealand in conjunction with customer insights agency Perceptive. The 2019 survey focused on understanding how key measures of workplace health and wellbeing had trended over the past 12 months, using the 2018 survey as a benchmark.

The College of Law says it and Perceptive are committed to a long-term partnership to continually monitor wellbeing in the legal industry. Such an annual health-check will be an important source of information on the legal profession. The areas targeted by the surveys are those which have emerged as key issues in other recent research, including the New Zealand Law Society's April 2018 Workplace Environment Survey and the December 2019 *Purea Nei – Changing the Culture of the Legal Profession* report and research findings.

While it attracted responses from just 3.8% of New Zealand's lawyers, the full survey is an important addition to the research about New Zealand's lawyers and legal workplaces today. Some of the findings are summarised here, but the full report gives a valuable picture of the current state of mind of some members of the legal profession on major issues in practice and the workplace, particularly younger women.

Participation

The surveys were carried out in November 2018 and 2019 and 525 lawyers participated in each (coincidentally, and not the same individuals). At the end of November 2019, 13,744 New Zealand-based lawyers held practising certificates.

Of the 2019 respondents, 74% were women and 26% men, out of kilter with the current 52% women, 48% men breakdown. The analysts say responses were weighted to reflect the actual gender breakdowns.

Physical health and mental health continued to be of major concern. Over half the participants had suffered impacts on these in the past year due to burnout

A relatively high 10% of respondents were aged 18 to 24, and 40% were aged 25 to 34. Medium-sized law firms contributed most respondents – 29% – followed by large law firms (22%) and small law firms (20%), with 20% practising in-house. The biggest group of respondents by role were staff solicitors (41%), followed by associates (10%) and senior associates (10%). Partners and directors contributed 9% of respondents.

Stress and burnout

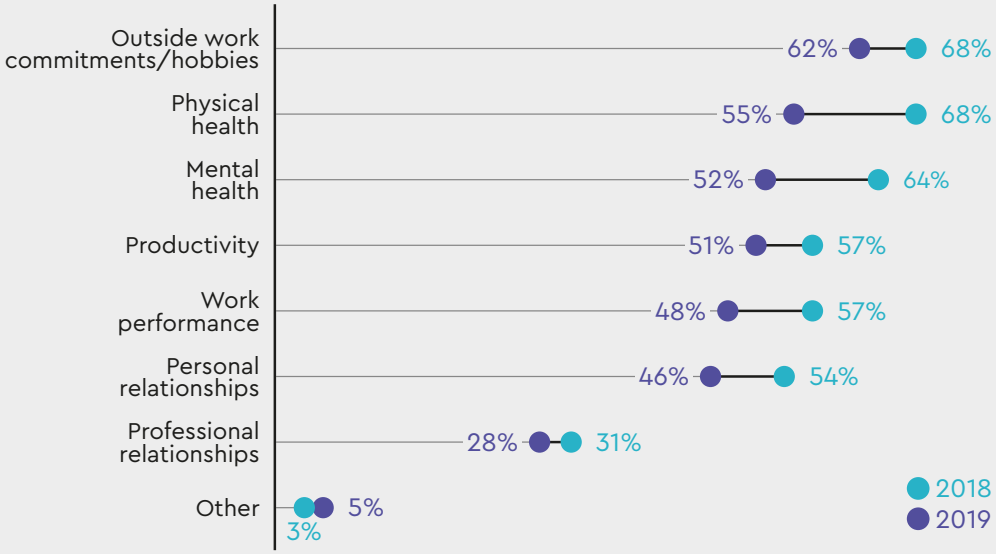
On average, 2019 participants said they were working 44.7 hours in a normal week. This was down 2.6 hours from 2018. And the number of billable hours a lawyer was expected to achieve in a day was 4.6 in 2019, down from 5.7 in 2018.

The (relatively) positive theme continued with a question asking participants if they had ever felt like they had been burnt out at work. In 2019, 46% said they had within the last month – compared with 54% in 2018. This is, of course, still alarming. Just 13% in 2019 and 9% in 2018 said they had never felt burnt out.

Physical health and mental health continued to be of major concern. Over half the participants had suffered impacts on these in the past year due to burnout. A high 61% of 18 to 34-year-old said their mental health had suffered as a result of burnout, compared with 28% of those aged over 55.

When asked how they relieved stress, exercise and confiding in friends, family or colleagues continued to be most common. More lawyers saw a health professional

In the past 12 months, which of the following have you suffered personally due to stress/burnout? (select all that apply)



Factor	2019	2018
Outside work commitments/hobbies	62%	68%
Physical health	55%	68%
Mental health	52%	64%
Productivity	51%	57%
Work performance	48%	57%
Personal relationships	46%	54%
Professional relationships	28%	31%
Other	5%	3%

in 2019 than in 2018, and 44% used alcohol in 2019 as a coping mechanism.

When asked if their workplace could do more to reduce stress, 62% said yes – down from 66% in 2018. Younger lawyers (80% in 2019) and those in large law firms (82%) were particularly sure their workplace could do more.

Asked what their place of work could do to improve work-related stress, 62% opted for offering mental health days, 62% for having better policies around incentivisation for overtime work, 55% for increasing the level of training for senior staff around how to be effective managers, 53% for having better support services, 52% for giving employees the "right to disconnect", and 49% for holding senior staff more accountable for the way they treat their staff.

Another question asked about the importance respondents placed on managers and senior staff having management skills as part of their selection criteria and/or an increased focus on such training. A high 94% felt it was either very important (71%) or somewhat important (23%).

Bullying and harassment

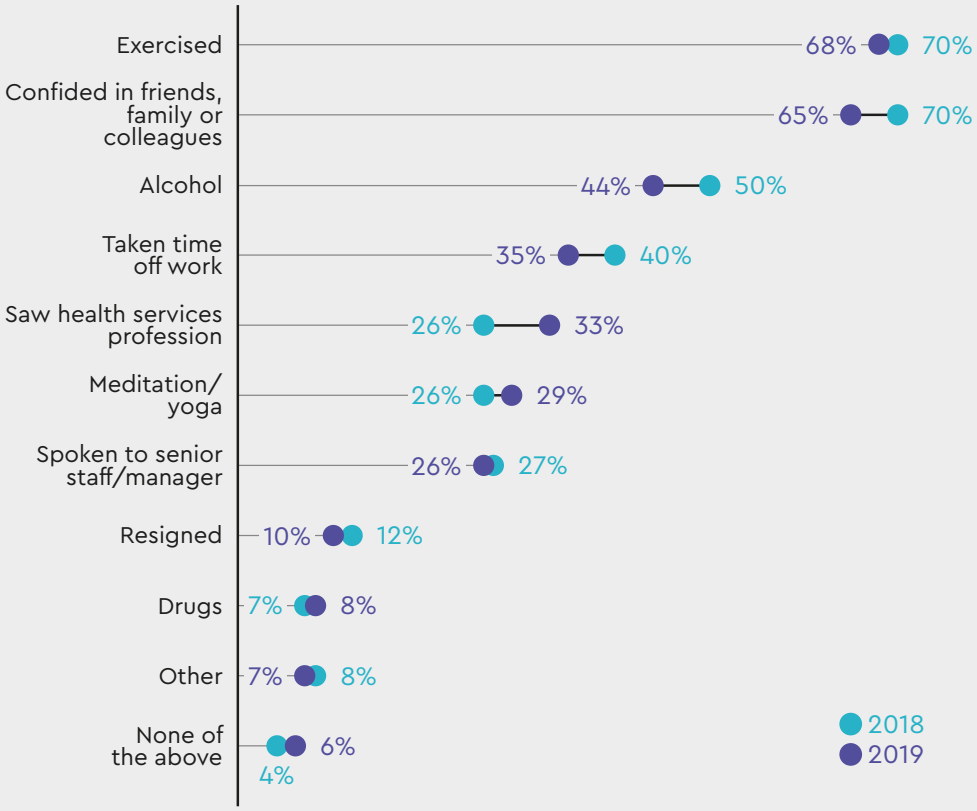
Bullying and harassment continue to be key issues in the legal profession. There are indicators of change, but these still have a significant impact on lawyers, particularly women.

When asked "besides yourself, do you know anyone who has been bullied within your workplace in the past 12 months?", 42% of respondents said they did – 48% of women and 35% of men. Younger lawyers were more likely to know someone, with 48% of those aged 18 to 34 in this group, along with 59% of those in associate roles and 48% in staff solicitor roles.

Asked "besides yourself, do you know anyone who has been sexually harassed within your workplace in the past 12 months", 10% of respondents said they did – 12% of women and 8% of men. Lawyers aged 18 to 34 (15%) and those in large law firms (18%) were most likely to know someone who had been sexually harassed.

One encouraging change from 2018 is in the proportion of lawyers who felt their workplaces needed to adapt to address some of the potential issues raised around sexual

Thinking about occasions you have felt under pressure/stressed in the past 12 months, have you used any of the following to help relieve this? (select all that apply)



Coping mechanism	2019	2018
Exercised	68%	70%
Confided in friends, family or colleagues	65%	70%
Alcohol	44%	50%
Taken time off work	35%	40%
Saw health services profession	33%	26%
Meditation/yoga	29%	26%
Spoken to senior staff/manager	26%	27%
Resigned	10%	12%
Drugs	8%	7%
Other	7%	8%
None of the above	6%	4%

assault allegations and bullying. In the 2019 survey, 38% said their workplace needed to adapt; this was down 10% from 48% in 2018.

However, there was a junior/senior role divide in 2019 and 48% of associates or staff solicitors said their place of work needed to adopt – compared to 19% of senior associate or partner/director roles. Also, 54% of those working in a large firm said it needed to adapt.

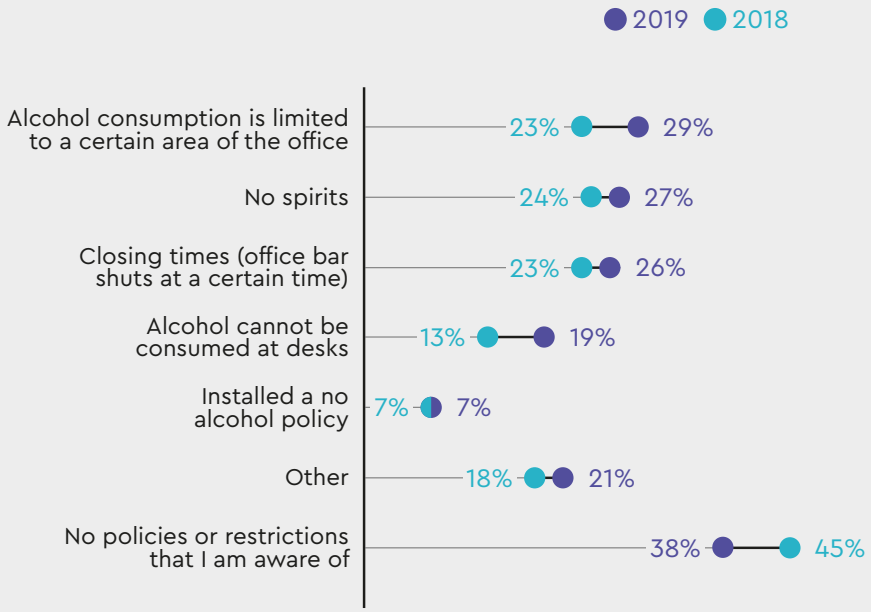
The improving trend was also reflected when participants were asked whether they had seen tangible changes in their work or area of law that increased their confidence that the system would respond appropriately to allegations of sexual harassment and bullying. While just 41% either strongly agreed (10%) or agreed (31%), this was up 8% on 2018. However, 40% neither agreed or disagreed and 18% disagreed – with 7% strongly disagreeing. Interestingly, 82% of those working in large law firms agreed there had been tangible changes.

Alcohol

One section of the survey focused on "the alcohol culture". Just 4% of respondents (up from 2% in 2018) said alcohol was consumed a great deal in their workplace, and 29% (down from 32%) said it was consumed a moderate amount. Large and medium-sized firms had the highest level of alcohol consumption, with 57% in large firms saying it was consumed moderately or a great deal, and 43% in medium firms.

Asked if the drinking culture in their workplace made them drink more than they otherwise would, 9% either strongly agreed or agreed. However, 42% strongly disagreed and 36% disagreed. When questioned about office policy, over one-third said there were none they were aware of – but just 4% of large firm lawyers said they had no policies,

If any, which of the following policies around alcohol consumption does your workplace have? (select all that apply)



Policy	2019	2018
Alcohol consumption is limited to a certain area of the office	29%	23%
No spirits	27%	24%
Closing times (office bar shuts at a certain time)	26%	23%
Alcohol cannot be consumed at desks	19%	13%
Installed a no alcohol policy	7%	7%
Other	21%	18%
No policies or restrictions that I am aware of	38%	45%

What type of bias have you encountered over the past 12 months? (select all that apply)

Type of bias	2019
Gender	22%
Age	21%
Appearance	13%
Ethnic	11%
Religious	2%
Sexual orientation	2%
Other	7%

compared with 40% in medium firms and 65% in small firms.

Unconscious bias

In the past 12 months, 38% of 2019 survey participants had experienced some level of bias against them in the workplace, 17% were unsure if they had, and 44% said they had not. The most commonly encountered bias was gender, followed closely by age. A high 37% of non-New Zealand European lawyers said they had experienced ethnic bias, and 38% of all women had experienced gender bias.

Support

Friends, family and colleagues were the key sources of support and advice for the lawyers who completed the survey. This did not change between 2019 and 2018.

When asked if the legal services industry had adequate support services/systems that are both available and accessible to lawyers when they are struggling, 36% agreed – up 8% from 2018. A further 37% neither agreed nor disagreed, but 21% disagreed and 15% strongly disagreed. The most popular support system/structure was one completely external to the legal services industry. Awareness of New Zealand Law Society initiatives was at 68% in 2019, up from 64% in 2018.

Where to from here?

A very illuminating question was posed near the end of the survey, with participants asked to reflect on how change could be achieved. The most popular was a change of generations or improvements to leaders – demonstrating the impact of management and leadership on workplace health and wellbeing. The relatively high performance of "other" indicates that there is no shortage of ideas or commitment to overcoming the issues which confront New Zealand's legal profession. ■

Where do you go for professional support/advice currently? (select all that apply)

Support or advice	2019	2018
Friends/family outside my office	78%	78%
Colleagues	66%	69%
Previous colleagues/lawyers outside of my workplace	49%	45%
Psychologists/other health services provider	22%	20%
Management	17%	15%
EAP	10%	15%
HR	7%	7%
New Zealand Law Society – including National Friends Panel	6%	8%
Professional Associations	3%	3%
ADLS Inc – Including Panel of Friends	2%	4%
Other	3%	4%
None of the above	5%	4%

If you needed support, which of the following support structures would be the most appealing to you?

Structures	2019	2018
Completely external to the legal industry (ie, independent psychologists or health professional)	46%	41%
External to individual firms but within the legal industry (ie part of the Law Society)	22%	23%
Informal internal system (buddy system, designated peer support staff)	22%	26%
Formal internal system (ie, HR management, training sessions)	6%	5%
Other	5%	5%

If you could pick one thing which you believe has the power to change the culture of the legal profession, what would it be?

Initiative	2019	2018
Change of generations/improvements to leadership	19%	16%
More diversity/equal opportunity	13%	13%
Awareness/education	11%	9%
More empathy/compassion/kindness/support	8%	4%
Removing/adapting billable hour structure	7%	10%
Flexibility/openess to change	6%	
Removing competitive/bias/bullying culture	5%	8%
Change structure within a firm	3%	15%
Law Society/government	3%	6%
Accountability	1%	5%
Training	0%	3%
Other	17%	16%
Unsure/Don't know	5%	5%

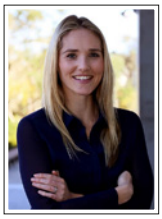
PRACTICE

CPD as a Growth Opportunity

BY **SARAH ALDERSON**

The end of March for the legal profession marks the end of a CPD year. This March, with the rapid escalation of the COVID-19 situation our scramble for CPD points was pushed to one side in aid of alternate ways of working. That said, all the usual advertisements for last-minute 10 points in a day, on-demand webinar packs promising conveniently packaged learning whilst in your pjs on a Sunday morning (or anytime now really!) and push notifications warning that your regulatory tick must be lodged by 31 March rolled in thick and fast. So, not wanting to minimise our current state of uncertainty, as March progressed there were still some amongst us commencing the crazed search for last minute points and, predictably, a collective groan from the profession questioning whether this CPD business is really all that necessary.

It's a time of year that deflates me. Particularly the grumbling from within the profession. And here's why: this is an annual event. I'm not referring to the fact that the CPD requirement is an annual one, but rather, the last-minute rush to collect the hours and the overwhelming remonstrance expressed by the profession at the need to do so. As the grumbling increases I wanted to share some thoughts on why I think this annual moan and rush might be the case. Why, in my view, we're failing at real engagement with CPD and why, at the end of the day, we're missing an opportunity at something great.



Sarah Alderson

It will be what you make it. That's on you.

Anyone who's ever got anywhere will tell you that attitude is key. If you start out with the view that CPD is a hassle, nothing more than a compulsory regulatory tick box and schoolish in nature, you'll will never engage in a meaningful way. It is these thoughts that lead to writing a CPDPR after the fact (one that records what it was you got around to doing), looking for the easiest most cost and time effective way to complete the requirement and, yes, the rise in the on-demand webinar and 10 points in a day offerings.

Growth opportunities should be a priority

As a profession we are forced to grow competency, technical skill and up to date knowledge just by doing our jobs. We learn as we go and we grow as we do. But there is a real difference between day to day learning and focused time dedicated to growth and improvement. The latter provides space and should, where done correctly, focus on engagement, reflection and improvement. It's a difference that is reflected in the rule requirement that a claimable CPD activity be separate from a lawyer's day to day activity.

We've all been so busy some weeks that the lessons learnt along the way get lost in the rush of keeping two steps ahead and in juggling all that needs to be attended to. Setting aside time to collate and reinforce learning opportunities or just provide yourself the space to engage in them at all, is key to cementing them in our experience. Scheduling those growth opportunities should be a priority.

But they're not.

I practised law in Australia for six years before returning to New Zealand last year. Upon my return I spent some time meeting and having informal conversations with legal practitioners of all levels of seniority regarding CPD. I wanted to know what their experiences of CPD were, what they thought of the current offerings and what importance they placed on continued learning within their practice. I wanted to know these things because I was, honestly, disappointed by what I perceived to be complete apathy from the New Zealand profession regarding continued learning and collegial opportunities. My Australian experience had been the complete opposite and I wanted to understand why in New Zealand it all seemed so... flat. My findings spurred me on to drive engagement and offer something new.

I took away two very salient points from those conversations: (1) CPD is an afterthought, and (2) undertaking it was tied to the regulatory requirement, not to a desire for self-improvement.

These points were reflected in the (numerous) junior level staff who told me their CPD engagement was dictated by their firm and in large part involved the outsourcing of one on one learning opportunities from seniors, to on-demand webinar. It was reflected in the fact that some

attended the same conference every year to hear the same speakers update the same topics. Or the admission that webinar was easier because you can catch up on emails while it's playing in the background. It's reflected in the annual March grumble.

Where CPD is not seen as a priority or an opportunity for growth but rather tied to the need to tick a box, engagement is diminished. The answer for me, however, is not to deregulate or take away the compulsory requirement. It's to encourage some ownership, reframe the intent and truly engage.

It's called continued learning for a reason

It sounds a little obvious to even have to state but if you're going to get the most out of CPD, you need to actually be learning. This is where I think the Law Society has provided some helpful direction. The requirement to write a CPDPR is a good one. You won't know where you are headed unless you take some time to sit down and plot it out.

Reflection is important to understanding what you need. Reflecting on your practice, what gaps in knowledge you have come across in the last year, what skills you think you need to develop to grow as a lawyer or a business owner helps you to go out and look for the opportunities to fulfil your learning goals.

Choose a method of learning that suits you. I will forever dislike on-demand webinar. That's just me. I don't think it serves any learning purpose (or arguably meets the rule requirement for interaction and feedback) so I want face to face seminars or if web based, options that allow me to directly engage with the speaker and their content. This was a driving force for me in offering face to face seminars in Christchurch. I wanted great speakers, relevant content and an opportunity to network.

Really think about that word "continuing". I wholeheartedly agree that our roles demand, require and largely provide continuing learning. That happens on the job. But when we're looking to engage in focused learning on a particular point, is an hour over lunchtime going to do it? Are there options for follow up sessions or does the provider enable you to continue your engagement after the session has concluded? There is plenty of scope here to include some of the things you are already doing. Pass on your learning to others by being a speaker at an event, organise a study group, become a mentor.

Reflection is important to understanding what you need. Reflecting on your practice, what gaps in knowledge you have come across in the last year, what skills you think you need to develop to grow as a lawyer

The current model – is there room for improvement?

In my view, the fact that CPD is compulsory, is a red herring. The real issue is our attitude to it.

As adults we're hard wired to reject compulsory requirements. No one really likes regulation (expect maybe regulatory lawyers) and it's easy to feel resentful when your hand is being forced on something you don't feel engaged in. Any young adult who returns home for a stint with their parents in between flats and is told to empty the dishwasher feels that keenly! But in my view, if your focus is on the fact that CPD is compulsory, you've already lost the battle for true engagement. For me, this is squarely a matter of attitude but if that doesn't get you over the line, there is the matter of your professional status.

It is a hallmark of being a member of a profession

(particularly traditional ones) that members are held to account for continued learning. Medicine, accountancy and engineering are three off the cuff examples of the same. Similar requirements are fit and proper person tests, the requirement to hold practicing certificates and being held to account over ethical standards. These three requirements are far more onerous than 10 hours of learning that's aimed at doing you good and at the risk of sounding facetious, we're not calling for them to be relaxed.

The current system is in fact remarkably malleable. For that I believe the Law Society should be applauded. It allows you to design your own learning programme complete with learning objectives and outcomes, seek fulfilment of it with any provider you choose and reflect on whether the content responded to your needs. The allocation of hours is at your discretion (within reason) and you are trusted by your regulator to engage with the threat of audit being the only stick to enforce compliance. In my view it's almost the exemplar of pedagogical learning.

I have only two suggested changes to the current CPD system. They're changes taken directly from the Australian system and while I acknowledge up front that they represent greater restriction on practitioner choice, I would argue despite that, they support a culture of continued and purposeful learning.

1. There should be a limit on the amount of hours a practitioner can claim for learning that is delivered by on-demand webinar. In New South Wales there is a unit cap on private study of audio/visual material at 5 points (hours). Conversations I have had with my peers regarding their use of on-demand webinar suggests that it is the perfect example of ticking the box and learning very little. This is not continued learning, but in pulling up short of suggesting that they shouldn't be counted at all, I hold out hope that for some it does represent a genuine learning opportunity and while as a profession we persist with this idea that CPD is a time drain (not a positive growth opportunity) it at least sees some learning achieved.
2. We should consider categorising the allocation of hours to gently encourage a well-rounded learning approach. By requiring that practitioners have at least a point each in a number of defined categories (the NSW categories are ethics and professional responsibility, practice management and business skills, professional skills and substantive law) a practitioner necessarily diversifies their learning. It would likely also have the benefit of addressing some areas that our profession has struggled with in recent times (work stress, mental health, flexible requirements and management of inappropriate behaviour) coupled with the carrot of regulatory fulfilment.

A Challenge

With a new CPD year on the horizon, we have the opportunity to engage in a new way. How about a new approach?

Inform yourself: Have you read the rules? You might be surprised by all that you can achieve within them.

Have a positive attitude and less apathy: You can make CPD boring, difficult and a last-minute thought if you want to, but you'll get no joy out of it.

Properly engage: For CPD this means setting aside some time to write a meaningful CPDPR. If you have time to complain, you have time to improve it. Research your options regarding learning opportunities and when you find them be present with them. Don't answer emails. Don't play with your phone. Listen, take it in and give some feedback.

Take some ownership and shape the system you want: Engage with each other. Talk about what you're struggling with in your practice or areas you might want upskilling in. Share ideas and attend something together. Talking to CPD providers on this point will be crucial in shaping a system that responds to the real needs of practitioners.

Think outside the box: It is not the intention of CPD that you attend only black letter law courses. Start viewing it as a vehicle for helping you become a better and perhaps more well-rounded legal professional. Find something on stress management. Learn te reo Māori. Seize an opportunity to improve your public speaking. For the benefit of up and coming lawyers, help others within your firms or chambers see the importance of these things too.

He waka eke noa.

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PRACTICE

Some practical tips for lawyers working from home

BY **ROS MORSHEAD**

Lockdown. A word that will make history, and a situation that has unilaterally pushed all lawyers and their firm's operations into the unknown without consultation. By the time you read this, some of the logistics and hurdles of an entire office working remotely for an extended period of time will likely be glaringly obvious. If not, it soon will be. The good news is there's lots of ways law firms can get through any temporary business operational speed-bump utilising resources you probably already have, or which can be easily and cheaply implemented – even in Lockdown.

Microsoft Office 365 suite

It's hard to imagine that any law firm and its employees aren't on Microsoft Office 365 business licences of some kind or other these days. For the uninitiated, Microsoft Office 365 is the software that gives us Word, Excel, OneDrive, email and so on, enabling users to log into it on any computer from anywhere at any time. But in addition to those more commonly known Office 365 suite products, there are also a number of other useful solutions and apps to help with remote working that your office probably don't use, or may not be aware of.

Sharepoint

One of the best bits about Office 365 is you get Sharepoint: a virtual, real-time, private cloud server intranet that's the perfect shared workspace platform, accessible to every user in your firm 24/7 from anywhere – kinda useful in a business continuity emergency situation like the one we're in now. The second best bit? You probably already pay for Sharepoint and a tonne of cloud storage as part of your Office 365 licence plus you can buy more (and it's cheap). This means you probably don't need to pay for that expensive physical back-room office server, or for your IT company to provide secondary 'emergency back-up and off-site storage' in the first place: at the end of the day it all ends up on the Microsoft servers (I believe in Australia) or some other cloud storage provider your IT company uses (because they need to have secondary backup too).

So how does Sharepoint Intranet work? Well basically within the Office 365 Sharepoint web server portal, document libraries are created containing the firm's document precedents which are then synchronised (synced) to user computer desktops for shared access. Private documents can still be saved to your personal Onedrive. Synchronising (syncing) to your desktop (rather than the web portal itself) makes it easier to manage files using Explorer and 'trees' of 'yellow folders' and sub-folders that continually sync and back-up into the O365 server in real time. Our office hooks directly into the Sharepoint server using our laptops as desk-top hard drives every day. One folder contains our office's document precedents, and another contains subfolders for each client matter. We pick up a document precedent, work on it, and save it to the client folder. We also save some emails and attachments to the client folder.

To find out about getting started with Sharepoint go to the Office 365 Support section and look at the article "Create a site in Sharepoint online". The Office 365 website has excellent step by step instructions, and any business licenses have free tech support available too – you can lodge an online help ticket, and they'll even call you if you need (these services are part of the licence price).

Shared generic email inboxes

I rather suspect that you'll soon be noticing your inbox clogging up fast, being tagged in on every email that comes in and out. One solution to this is that Office 365 lets you have email addresses that can be shared with any number of people within your office – without needing to pay for another licence. These can be called whatever you like. For example, you might use a shared email address/inbox for various separate employee teams or immediate workgroups within your firm to avoid everyone being tagged in every email. We use a shared 'office@' address for sending and receiving a variety of documents and correspondence so we can all see what's come in and gone out. Users with access to the shared inbox can see it on their email address directory and can send correspondence from the shared email address, too.

Microsoft Office Teams

And on the subject of email overload, what can you do to further reduce copious quantities of day to day internal email communication between employees? Install Microsoft Office Teams. Teams is great collaboration app that integrates with Office 365 and is free if you have a licence. Teams enables collaboration by instant desk-top messaging, video calling (ie: instead of Skype), sending attachments and sharing files. You can even access Sharepoint documents directly from the Teams platform. Even if you don't want to implement all the different parts of Teams right now, instant desk-top messaging is the immediate solution to avoiding email over-load between people in your office. Microsoft recently announced a clever marketing response to COVID-19, offering free Teams access to anybody for six months. The link to that offer also has further links on how to set up and use Teams.

There's also a Teams mobile phone app enabling instant messaging plus access to Sharepoint documents if

you're out and about (post-Lockdown of course). We've all had issues with our Telcos phone lines being overloaded, so this app is useful for messaging without the need for phone calls and/or text messages, too.

Printing – without a printer

It's unlikely everybody in your office has been sent home with a printer, or a very robust one at that. But there is a way to store downloaded documents, forms, titles or other searches for printing or accessing later: Microsoft Print to PDF. When wanting to save and store something you've downloaded you simply select the print icon (or ctrl+ p to print from your keyboard), scroll down the list of printer options until you find 'Microsoft Print to PDF', select that and then select where you want to save the document. We save ours directly to our shared Sharepoint client folders, others might use Drive or Onedrive. Not perfect, but it does mean you've got that downloaded item saved somewhere and can access it as needed.

Trello – Project/Client Management

Trello is a free, really cool project management/productivity app that's not a Microsoft product, but does integrate with Office 365 and Teams. Trello enables users an overview of what's happening with individual client matters and workflow throughout your firm (remember, everyone's at home … there's no paper file … what's happening on those documents for the Smith matter …). Note Trello is not a workspace, so avoid the temptation to save a bunch of documents to it unless it's a key document that others are working from. Trello is simply a brief overview of what's done, or to be done, or other key information. Each client matter gets a project 'card' on which users can add details, due dates, comments, check-lists, document attachments and more. You can also add Trello as an email integration, and sync with a mobile app. Find out more at *trello.com*.

Clockify – Time Recording

If you've concerns about capturing billable time spent on client matters while everyone's in lockdown, and you don't use any other form of time recording programs (or can't easily access your usual programme remotely), Clockify might be a solution. Again, it isn't a Microsoft product, but it's easy to set up, the base version is free, and your whole team can be added as users. It also has a synced mobile phone app. To set up a new matter/client/project you just click 'add' and type in the client name and file detail: 'J & D Smith – Lease issues'. Don't get technical: new clients/matters need only be set up as and when a file is worked on. To time record, select the client/matter, type a brief overview of what's being done on the file (eg: 'draft notice'), hit 'record' and 'stop' when finished. You might also set up non-billable time recording options so any non-billable office work done remotely by your team is also recorded. Clockify provides surprisingly comprehensive user time and matter reporting too. Check out Clockify at *clockify.me*.

Security and privacy

Unfortunately, it goes without saying that the current COVID-19 pandemic presents opportunities for the usual cohort of hackers and wrong-doers trying their luck accessing resources and systems, sending phishing or scam emails, etc. Data security and privacy are always important considerations, and to avoid third party security issues on any business or personal devices that might be used by your employees (including mobile phones), some form of security software is recommended. Trend Micro Security is one that's quite good value which can be bought online for multiple devices, or even AVG free (or paid) depending on your firm's needs and budget. Just get something in place to get you through the next month or so, and do check that whatever you buy is in NZ dollars, not US.

I personally do not recommend BYO devices of any kind for data security and privacy reasons (including dual sims), plus it blurs the lines between business and private, and information may end up being accessible by people other than your employees. There's valuable IP in any phone numbers owned by the firm, too. I'm also of the view that any employee can download/copy/take photos of anything and pass it on – if they're going to do it they're going to do it, regardless of whether it's in the office, on a mobile phone or on a laptop on the kitchen table.

Keep focusing on interim business continuity…

During Lockdown, and the weeks after, the focus and objective should be on keeping your firm functioning as best possible in the interim with minimal disruption, keeping people collaborating, and enabling as much work continuity as possible. No solution is perfect, but hopefully your firm might find implementing one or two of these ideas could help alleviate some of the remote-working logistical hurdles and pain-points that will undoubtedly crop up over time.

Ros Morshead ros@lawbox.co.nz is a Director at Tauranga/Rotorua law firm Law Box.

PRACTICE

Client-centric legal representation

What's unique about it?

BY **EMILY MORROW**

Emily Morrow

If one asked most lawyers whether they provide client-centric legal services, the vast majority would say they do. However, if one were to ask what client-centric representation means, I suspect many lawyers would say something like "legal work that is high-quality and addresses the problems and concerns the client has". Although this definition is not incorrect, it is incomplete and potentially misleading.

Lawyers who offer true client centric legal representation tailor the way they provide legal services so they:

- address the client's legal needs;
- take into account the educational, intellectual and professional capabilities of the client;
- employ excellent listening and communication skills;
- consider the client's life, business and personal experiences;
- accommodate the client's socio-economic, cultural, linguistic and physical and/or psychological special circumstances (such as eyesight, hearing, ADHD and the like);
- make reasonable assumptions about the client's temperament preferences and use that to achieve the best communication outcomes;
- consider the age and stage of the client; and
- decide, on a case-by-case manner, how best to communicate with clients including face-to-face meetings, telephone calls, emails, letters, video conferencing, etc.

From this perspective, much legal advice is offered in a "one-size-fits-all" manner which can result in less than ideal outcomes, client dissatisfaction and lost revenue. Many lawyers communicate with their clients as though the clients were other lawyers and provide information accordingly. As professionals, sometimes we lose the ability to communicate and build relationships well.

Some firms are making client-centric legal representation a core element of how they do their work and differentiate themselves. For example, Kylie Maree Haw of Carter Chung in Wellington says: "Our firm decided to focus on client-centric legal services so every client would be fully engaged in transactions and make informed decisions – as opposed to being told what to do and not fully understanding the advice. Benefits have included a large and loyal client base, many referrals from existing clients and frequent opportunities for our younger/less-experienced team members to provide excellent service and build their own client base."

Client-centric core capabilities

Assuming a lawyer wants to provide client-centric legal representation, what are the core capabilities they will need to develop beyond technical expertise in a particular practice area? I suggest the following:

Temperament: Learn a bit about your own and others' temperament preferences and how to use that knowledge to communicate more effectively. For example, is your client an introvert or extrovert? Is he or she someone who naturally thinks conceptually or do they need more concrete detail to process information? Do they rely more on analytical or emotional considerations? Does your client prefer brainstorming and opening up options or do they feel more comfortable approaching issues in an orderly and methodical way?

Listening/questioning skills: Fine-tune communication skills including active listening, strategic questioning and an understanding of how to develop high trust professional relationships. *Active listening* consists of clearing one's mind of other matters and focusing solely on what the other is saying, followed by a brief pause before one responds with either a comment or follow-up question. *Strategic questioning* is

based on the careful use of open-ended and probing/data gathering questions that ensure a high quality and comprehensive discussion. High trust professional relationships rely on sufficient disclosure of key information, flexibility in approach, regular high-quality interaction, consistency over time and bringing good intentions to the process.

Imagination: Use some imagination to put yourself into the mind of your client and tailor how and what you say so it will align well with the client's needs, interests and approaches. Walk around in the other person's shoes for a while.

Some case studies

Considering these capabilities, how might one approach working with the following hypothetical clients?

Susan

Susan is in her early 40s and is the founder of and CEO of a successful hi-tech company. She is a new client and has arrived for her first meeting dressed in well-pressed blue jeans and a T-shirt and is wearing beautifully crafted shoes. Susan has come to talk about representing her company and handling its commercial work. She has brought with her a list of questions about the firm's expertise, the services it offers and so forth, and takes notes during the meeting. Susan is direct in her approach and self-confident.

Susan is an extrovert and may appreciate regular and high-quality contact with her lawyer, either in person or remotely. She is likely to be focused on details, although she probably will have the natural ability to place these in an appropriate context. Asking her to describe how much detail she wants in providing legal advice will likely be helpful. Her background in IT may predispose her to preferring an analytical approach to problem-solving.

As a CEO, one can assume Susan will be a reasonably sophisticated legal services consumer. Therefore, it may be appropriate to use a certain amount of "legalese" in working with her, being sure, however to define any terms with which she may be unfamiliar. She will probably be comfortable with quite a businesslike arrangement in terms of fees and retainers and will appreciate a direct approach to financial matters.

Bill and Karen

Bill and Karen are a couple in their early 70s and are existing clients of the firm. Bill inherited a family business from his father and has been running it for the last 30 years. They have come in to review and update their estate plan. Bill has prepared a list of the outcomes he would like to achieve for the estate plan, whereas Karen is very interested in talking about their family. Bill is a relatively quiet individual and often defers to Karen who is quite talkative. Despite the success of the business, Bill and Karen have not put much time and effort into their estate plan to date. Bill is slightly hard of hearing and Karen has cataracts.

A lawyer working with Bill and Karen will need to combine two quite different work styles in advising them. Bill will benefit from a conceptual 'top down' approach that is outcomes driven and will need assistance in fitting the details into that approach in an analytical, organised and commercial way. Because he is quiet he may appear to defer to Karen so one will need to ensure his perspective is fully included. Karen will likely find 'legal jargon' off-putting. She will benefit from being presented with some clear options with predictable consequences.

There could be some underlying disagreement between Bill and Karen about the structure of their estate plan and how it will impact family members and disposition of the business. This, combined with their age and physical problems, could create communication challenges for their lawyer. Accordingly, it may be advisable to rely more on face-to-face meetings, followed by confirmatory written, hard copy letters

As with many 'soft skills' in the practice of law, incorporating client-centric capabilities into how one offers legal services is something that can be learned and perfected. It may require some changes in thinking, behaviour and priorities within a firm. Although many firms and lawyers already incorporate these approaches in their work, many will benefit from making this more of an organisational priority. As with most soft skills, the changes are subtle but can be significant, particularly in an increasingly competitive legal market. ■

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PRACTICE

Parental leave for members of barristers' chambers

BY **KATERINA WENDT** AND **GARRY WILLIAMS**

In recent years there has been an increasing trend overseas for barristers' chambers to adopt parental leave policies for their self-employed members.

In England, the Bar Standards Board, which regulates barristers, has equality rules that – since 2017 – require chambers to have parental leave policies for self-employed members and which specify certain minimum standards: see the BSB Handbook, Rule C110 (available at *www.barstandardsboard.org.uk*).

The Bar Council of England and Wales provides guidance and a template parental leave policy.

In Australia, while there are no mandatory leave requirements, State level Bar Councils encourage chambers to adopt parental leave policies and have best practice guidelines and template policies that sets can adopt (eg, Victorian Bar Council Parental Leave Policy).

The promotion of parental leave policies in New Zealand to the Bar has not happened in the same way. Yet, the adoption of such policies by barristers' chambers is to be encouraged.

No NZ requirements or guidelines

Unlike firms, barristers sole are required to operate independently (except for employed barristers), but can practise in a set of rooms or chambers and share resources and support services. Because of this, and the fact that there are no regulatory requirements or guidelines in respect of parental leave policies for chambers in New Zealand, they have not traditionally provided parental leave assistance for self-employed members. Parental leave policies have either been seen as unnecessary (because everyone is self-employed) or not a matter for chambers intervention.

We believe that that approach is wrong and that the support of new parent members by chambers is to be encouraged and has the potential to improve the diversity of the separate Bar significantly.

Given that the majority of primary caregivers continue to be women, parental leave policies, or the absence thereof, have a disproportionate impact on women. Anecdotally, reasons for female lawyers sometimes being reluctant to join the separate Bar include concerns around financial security and, in particular, the financial effect of taking time off work to have children. Not only is there no paid leave for barristers – who are self-employed sole practitioners – but if there is no chambers support they will usually need to continue to meet ongoing chambers costs while on leave.

While it's true that some chambers allow the sub-letting of rooms to ameliorate these costs, others do not.

Depending on the extent to which the barrister stops work while on leave, they will receive either no or limited income during the time taken out from practising, and potentially reduced income after returning and while rebuilding a practice.

Richmond Chambers' policy

Last December Richmond Chambers in Auckland adopted a parental leave policy which it hopes will assist its members with these issues. The policy allows members to take a period of up to six months' leave, free of rent and associated chambers costs, following the birth or adoption of a child. The policy also offers assistance to members returning from parental leave to re-establish their practice.

The policy applies to all members equally. Therefore, while it is intended that the policy will assist in redressing, at least, some of the issues that deter women from going to or remaining at the independent Bar, it is designed to remove some of the barriers which might otherwise prevent all barristers from stepping out of practice to care for their children.

Richmond Chambers' members are pleased to be able to offer this support. The adoption of the policy also aligns with chambers' broader commitment to encouraging and retaining diverse talent at the Bar and encouraging members to achieve a balance between their personal and professional lives. Richmond Chambers has adopted its own Equality and Diversity Policy as well as the New Zealand Law Society/New Zealand Bar Association Gender Equitable Engagement and Instruction Policy, both of which are available on the chambers website.

If anyone wishes to discuss the Richmond Chambers' Parental Leave Policy or adopt it or adapt it for their set, they can contact members or the Chambers Manager, Kate Thornber (*kate@richmondchambers.co.nz*). More broadly, lawyers or students/graduates who are considering joining the independent Bar are very welcome to contact Richmond Chambers to discuss any aspect of practice at the independent Bar. ■

Katerina Wendt *katerina@richmondchambers.co.nz* and Garry Williams *williams@richmondchambers.co.nz* are members of Richmond Chambers based on Shortland Street, Auckland.

TECHNOLOGY

Phil Goff's email account was... possibly... hacked

Will yours be next?

BY **DAMIAN FUNNELL**

By now you're probably aware that Phil Goff's personal email account was allegedly hacked and, according to the *New Zealand Herald*, someone tried to sell tens of thousands of his emails. These emails purportedly included a ton of sensitive personal information and confidential emails.

Mr Goff said most of the emails were "of very little significance". Of course, a number of public figures have definitely had their email accounts hacked.

As I've written about previously, John Podesta, chair of Hillary Clinton's 2016 presidential campaign, had his personal Gmail account hacked by a shady group of Russians, resulting in over 20,000 pages of his emails being plastered all over WikiLeaks. While it is impossible to know if these messages were doctored before being posted, it's very likely that this breach changed the course of history by contributing directly to Clinton's loss and Donald Trump's presidency.

Lots of examples

There are dozens of domestic examples that I'm aware of, including the hacking of email accounts belonging to public figures (anyone remember Whaleoil?), businesses and professionals from around New Zealand. Most of these hacks are kept confidential for obvious reasons, but it's always distressing to see how disastrous they can be to the victim, both commercially and personally.

Damian Funnell

And not everyone knows when they've been hacked. We've helped several customers recently who have not only had their mailboxes hacked, but the hackers have set up 'forwarders' that forward the victim's incoming email to the hacker's account, effectively allowing them to continue siphoning information from the victim's inbox.

Why does this happen? Is email insecure and should we be using it at all?

Put simply, these hacks occur because the targets are complacent and, based on the stats, you probably are too.

If we are careful and responsible then yes, email is *secure enough* and most of us rely on it. Getting rid of email is not an option, but if we're smart then we shouldn't need to.

The hacking industry

Hacks of this type are becoming more and more common because hacking is becoming a bigger and bigger industry. There are more hackers than ever before and we can no longer consider ourselves too small or too insignificant to be hacked. According to Cybint, 43% of cyber attacks in the United States targeted small businesses and that number is growing. The legal fraternity is a particularly popular target for hackers as lawyers' email accounts often contain a treasure trove of valuable information.

We also store more email than ever before, which makes our email accounts that much more valuable to hackers. It wasn't too long ago that Hotmail provided a puny 2MB of mail storage and we all had 50MB mailboxes at work. This forced us to continually archive and/or delete old emails to keep our mailbox sizes down. Now, mailboxes are much larger or even unlimited in size and we no longer have to delete anything, which is great. While this makes our inboxes more valuable to us (I can instantly search through every email I've sent or received over the better part of 20 years) it also makes them more valuable to hackers looking for sensitive or financial information.

Helping keep your mailbox secure

Here are a few tips for keeping that growing mailbox secure:

Stop being complacent. Almost everyone I talk to who has been hacked tells me that they knew better, but they just didn't have time to improve their email security.

Seek high-quality professional advice. Ask a professional to review your email security at least once per year, preferably every quarter. If you already have an IT provider (in-house or external) then get a third party to come in and audit their security processes on a regular basis.

Don't use your own email server. Use secure cloud-based services such as Google G Suite instead. It doesn't matter how many firewalls or other security measures you put in place – if I gain physical access to your server I'm almost certainly

Your Honour, Counsel submits the emails are admissible on the basis that anyone could have guessed that password.

going to gain access to ALL of your company's emails.

Don't use insecure email services. There have been numerous high-profile Xtra service and security failings over the years and its reputation is appalling. That someone with Phil Goff's stature would be using it at all is beyond belief and it demonstrates very poor judgement on his part. There are a significant number of barristers and solicitors in New Zealand using Xtra or similar ISP-provided email accounts for their practices, which is downright scary. Use your work email account for work-related emails and use a secure email service, such as Gmail, for your personal email.

Use anti-SPAM and antivirus filters. All email should be filtered to remove as many nasties as possible before it lands in your or your colleague's inboxes.

Keep your work and personal email separate, but make both accounts secure. Your personal account is still likely to contain sensitive information, such as credit card and bank account numbers.

Don't open attachments or click on links unless you're 100% certain they're safe. According to Verizon, 94% of malware is distributed via email. Be suspicious by default. Even if the message comes from someone you know think carefully before you open it or before you click on that link. Ask your IT security provider for advice if you're not 100% certain.

Delete old email accounts, as every account comprises a security risk. If you have unused accounts of your own, delete them. If employees leave the practice then ensure that their accounts are deleted promptly after they leave. You should never keep an email account intact as an email archive – there are much better and more secure ways of archiving mailboxes.

Use a strong and unique password. This is so obvious, but I'm always amazed at how lazy and complacent people can be when it comes to passwords. It's easy to create a strong password that's easy to remember and you can use a password safe to keep track of your passwords if you need to.

Use two factor authentication (2FA). This prevents unauthorised users from logging in to your email account, even if they have your password. If your email service doesn't provide a 2FA option then move to a different service. Every work or personal email account should be protected by 2FA.

Delete sensitive email. I don't do this as I have confidence in the security measures that I put in place to protect my email account. If you delete sensitive emails then they can't be accessed by hackers in future, however, so it's an option worth considering for extremely sensitive communications.

Secure your devices and encrypt local mail storage so your mailbox won't be compromised if someone steals your laptop or cellphone.

It's not difficult to keep your email account secure – you just have to decide to act now rather than wait until it's too late. ■

Damian Funnell ✉ *damian.funnell@choicetechnology.co.nz* advises lawyers and law firms and is the founder of an IT services company, and 🖵 *panaceahq.com*, a cloud software company.

LAWYERS COMPLAINTS SERVICE

Complaints decision summaries

Failed to maintain proper accounting records

All names are fictitious.

A lawyer has been censured for failing to maintain proper accounting records and failing to correctly complete the monthly trust account certification.

A lawyers standards committee determined those two failures were unsatisfactory conduct.

The committee began an own motion investigation on receipt of a report from the New Zealand Law Society | Te Kāhui Ture o Aotearoa Inspectorate.

The report showed that from December 2017 to October 2018 proper accounting records were not maintained and monies received were not receipted.

The report also identified that the lawyer, Fermanagh, failed to correctly complete the required monthly trust account certifications.

"In both her initial response and submissions [Fermanagh] has set out a number of personal factors that impacted on her ability to properly attend to the requirements of running her practice," the committee said. There were also issues with the accounting system that Fermanagh was operating.

"There is no doubt that things were done incorrectly, and errors were made.

"[Fermanagh] accepts that the standard of her record keeping deteriorated as a result of the circumstances she found herself in, although she believed that at the time she was correctly certifying.

"With the assistance of the Law Society inspector and professional colleagues she has improved her systems and practices to a standard where the appropriate records are being maintained and proper and timely certification is occurring," the committee said.

The committee agreed that Fermanagh's actions since the investigation began went to mitigation and penalty and noted that there was no evidence of loss of client monies.

The committee said it considered the facts in this case were similar to the New Zealand Lawyers and Conveyancers Disciplinary Tribunal decision in [2011] NZLCDT 31.

In that decision, the Tribunal said: "lawyers hold a position of privilege and trust in handling the funds of their clients, thus there must be strict observance with the conditions on which they do so, in order to maintain the confidence of the public in the profession as a whole."

"Ultimately there is little room for discretion with trust account breaches, whatever the reasons may be," the committee said.

As well as the censure, the committee ordered Fermanagh to undertake the Trust Account Supervisor Refresher Course within 12 months of its decision and to pay $500 costs.

Fined for failing to provide adequate advice

All names are fictitious.

A lawyer has been fined $1,000 for failing to provide adequate advice about a loan.

A loan agreement, prepared by a law firm, recorded that Mr P would lend his brother a substantial sum of money in order to buy their late parents' house.

Before the matter was finalised, the law firm referred Mr P to a sole practitioner, Tyneside, to provide independent advice in relation to the loan agreement. Mr P met with Tyneside and the loan agreement was subsequently signed.

Mr P then lodged a formal complaint against Tyneside, alleging that:

- Tyneside failed to advise him of the flaws in the agreement, namely that there was no provision for interest to be payable and that no timeframe for repayment was stipulated;
- the arrangement was rushed, and he was not informed of the potential consequences of trusting his brother; and
- his brother has only repaid about $13,000, which has caused him significant anxiety and financial difficulty.

When it considered the complaint, a lawyers standards committee noted at the outset that Tyneside's dealings with Mr P were brief.

"Although Mr [P]'s general obligations were discussed, there was no evidence that Tyneside had raised the issues of interest or repayment with Mr [P]. Nor was there any evidence that Tyneside had taken sufficient steps to inquire as to Mr [P]'s personal financial circumstances or the impact that a substantial loan would have on Mr [P]," the committee said.

The committee considered that this was a failure on Tyneside's part.

"Whilst lawyers are not generally retained as financial advisers, all lawyers are required to provide fulsome advice and protect their clients' interests. Where a significant financial transaction is involved, a lawyer's role will necessarily require an assessment of their client's financial circumstances and advice as to how to limit any potential adverse effects of the transaction," the committee said.

"[Tyneside]'s failure to take these steps was exacerbated by the fact that the loan agreement was prepared at short notice.

"Mr [P] submitted that he felt under pressure by his brother to provide the loan before family members arrived for Christmas and that he felt uncomfortable doing this. In these circumstances, the committee was of the view that a prudent lawyer ought to have advised their client to

wait and to consider the full ramifications of the loan agreement at a later date."

The committee said Tyneside's conduct in that regard fell short of the standard of competence and diligence that a member of the public was entitled to expect of a reasonably competent lawyer and was therefore unsatisfactory conduct.

As well as fining Tyneside $1,000 the committee ordered him to pay $500 costs.

Fined for intimate relationship with client

All names are fictitious.

A lawyer who entered into an intimate relationship with a client, and continued to act, has been fined $4,000 by a lawyers standards committee.

The lawyer, Banffshire, was acting for the client, Mr T, in respect of legal issues arising from his separation from his former partner. The nature of the relationship between Banffshire and Mr T evolved over the course of the retainer.

On 27 January 2019, while Banffshire was still acting for Mr T, the pair dined together with friends. Banffshire described this as a first public 'date'. It followed a meeting with Mr T where Banffshire had noticed a change in the 'chemistry' of their relationship.

Banffshire said she and Mr T believed the dinner would be a safe measuring stick to ascertain whether the "chemistry was anything other than flirting". Banffshire pointed out that a first date may result in nothing more being pursued or, alternatively, an agreement to see each other again.

In late January, Banffshire and Mr T agreed that a referral to new counsel should be made, given the ongoing change in the nature of their relationship.

In early February, apparently as an interim measure, Mr T's matter was passed to a lawyer employed by Banffshire's firm and under Banffshire's direct supervision. The next day, Mr T was referred to another firm, and the retainer with Banffshire's firm was terminated.

Banffshire accepted that she and Mr T were now in a relationship.

Rule 5.7

Rule 5.7 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (RCCC) states that "a lawyer must not enter into an intimate personal relationship with a client where to do so would or could be inconsistent with the trust and confidence reposed by the client".

Rule 5.7.1 states that "a lawyer must not enter into an intimate personal relationship with a client where the lawyer is representing the client in any domestic relations matter."

The standards committee said that it was "extremely unwise for [Banffshire] to go on a date with any client, let alone a client she was acting for in respect of a domestic relations matter.

"While it is not unheard of for a lawyer and client to go for a celebratory drink at the resolution of a longstanding matter, the pub dinner did not fall into this category.

"The reality is that [Banffshire], by her own admission, knew from at least as early as 14 January 2019, and from subsequent discussions with Mr [T], that there was a romantic interest.

"[Banffshire] made a conscious decision to go on a date with Mr [T] despite the risk that this would compromise the lawyer-client relationship and result in a breach of the RCCC," the committee said.

It was "simply untenable" for Banffshire to continue to act in the matter yet the retainer was not terminated until 12 February 2019.

Rationale for rules

The committee reflected on the rationale for Rules 5.7 and 5.7.1, which are found within Chapter 5 of the RCCC, the heading of which is "Independence". It considered that "the decision to place Rules 5.7 and 5.7.1 within Chapter 5 is not coincidental.

"It is clearly intended to be a reflection of the fact that a lawyer who enters into an intimate personal relationship with their client may become compromised in their ability to exercise independent judgement in relation to their client's affairs".

The committee observed that there can be a high level of acrimony between parties to family law disputes. "A lawyer who is emotionally-invested in a client's matter may lose their objectivity. This may adversely impact on the lawyer's representation of the client, and even exacerbate pre-existing conflict" the committee said.

Banffshire's continued representation of Mr T until 12 February "created a very real public perception issue that risked bring the legal profession into disrepute," the committee said.

The committee considered that by acting for Mr T between 29 January and 12 February 2019, Banffshire was in breach of rules 5.7 and 5.7.1, and that was unsatisfactory conduct.

As well as fining Banffshire $4,000, the committee ordered her to pay $1,000 costs.

Failed to provide adequate invoice

All names are fictitious.

A lawyers standards committee has fined a partner of a law firm, Guernsey, for significant delays in providing adequate invoices to the beneficiaries of a will.

Mr Alderney, the brother of the deceased, represented three beneficiaries of the estate. Mr Alderney, himself, was not a beneficiary.

Mr Alderney made written requests for copies of invoices billed to the estate between 19 February 2014 and 9 October 2015.

Four and a half months after the first request, an employed solicitor at the firm emailed the relevant invoices to Mr Alderney. The narration on the invoices simply stated, "for professional services".

On 9 October 2015, more than a year and a half after first trying to get details of the professional services, which the beneficiaries had repeatedly requested and which had been assured would be made available

to them, they had still not been supplied to Mr Alderney by the firm.

Mr Alderney then again requested invoices "including the nature of the work performed (not merely professional services), when, and the time taken on each activity, and the rates that have been charged without further delay".

Long delay was unsatisfactory conduct

The committee found that the long delay in failing to provide adequate invoices was unsatisfactory conduct.

While it appeared that other, apparently senior lawyers, had primarily dealt with the file and the estate, the committee found that the partner, Guernsey, as the firm's estate administration partner, was ultimately responsible for the delay.

"While the committee had some sympathy for [Guernsey]'s position given the apparent seniority of the employed lawyers who were primarily working on the file, the committee considered that [Guernsey] did not fully discharge his supervisory responsibilities," the committee said.

"It was not apparent to the committee that the firm had an internal system in place to ensure that requests such as [this one] were referred to the appropriate supervising partner of the firm.

"Had any such system been in place, the fact of [the] requests ought to have come to the attention of [Guernsey] much earlier, rather than having only been known by the employed lawyers working on the file.

As well a fine of $1,000, Guernsey was ordered to pay $2,500 costs.

Advised will was valid despite being revoked

Lawyer John Campion has been censured and fined $1,500 by a lawyers standards committee after he advised that a will was valid when it had been revoked by a subsequent marriage.

Mr Campion was also ordered to pay the deceased's children a total of $2,604 compensation for the legal fees they incurred as a result of Mr Campion's incorrect advice.

He was further ordered to reduce his fees from $4,500 to $2,000; to refund $2,500 to the estate; and to pay the Law Society | Te Kāhui Ture $1,500 as a contribution towards costs.

The deceased's will appointed Mr Q as executor of the estate, and Mr Q instructed John Campion on the estates administration.

Mr Campion applied for probate, which was granted.

As the will did not provide for two of the deceased's children, Mr Q proposed that the children enter into a Deed of Family Arrangement to equally share the estate.

In response, Mr Campion advised Mr Q that:

- his role was to uphold the terms of the will;
- a Deed of Family Arrangement may be invalid; and
- the deceased's children should each seek independent legal advice.

Children sought advice

Two of the deceased's children sought advice from another lawyer, Mr R.

Mr R advised Mr Campion by letter that the executor and deceased's children had entered into a Deed of Family Arrangement distributing the estate to the children in equal shares.

Mr R also indicated that Mr Q had instructed him to attend to the estate administration and requested a transfer of the estate's files and funds to him.

Mr Q and the deceased's children complained to the Law Society about the incorrect advice Mr Campion had given them.

The death certificate held on Mr Campion's file showed that the deceased had been married twice and that information "clearly showed [the deceased] had remarried after he had made his will," the committee noted.

"It should have been apparent to Mr Campion that [the deceased] had remarried after the date of the will and therefore, under s 18(1) of the Wills Act 2007, the will had been revoked.

"Consequently, Mr Campion should have been aware it was not possible to make an application for probate and ought to have advised Mr [Q] the appropriate course of action was to apply for administration.

"The committee considered the existence of children born after [the deceased's] first marriage and who were not named in the will should have put Mr Campion on notice of the possibility of a second marriage.

"It disagreed with Mr Campion's submission that there was no reason to inquire further. In the circumstances, a reasonable practitioner would have queried whether there had been a subsequent marriage that could invalidate the will."

Advised that will valid

Additionally, Mr Campion's file note records he advised one of the deceased's children that, despite the second marriage, the will was valid and only provisions relating to the spouse had been revoked.

"This is clearly incorrect in view of s 18 of the Wills Act 2007," the committee said.

"A reasonable lawyer practising in estates should have been aware of s 18 and its effects. While this occurred after probate had been granted, it showed Mr Campion did not correctly understand s 18."

In view of that, the committee said it was satisfied Mr Campion had not acted competently or consistently with his duty of care and was in breach of rule 3 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008. It found Mr Campion's conduct to be unsatisfactory under s 12 of the Lawyers and Conveyancers Act 2006.

Considering age, circumstances and professional history, the committee decided that name publication was appropriate. It considered there may be other former clients affected by Mr Campion's conduct who would benefit in knowing they can have their own matters considered by a standards committee.

"Furthermore, Mr Campion's conduct needed to be publicly acknowledged to protect the reputation of the profession and to educate other practitioners that such conduct is considered unacceptable," the committee said.

LEGAL INFORMATION

Recent legal books

BY **GEOFF ADLAM**

Family Law Policy in New Zealand, 5th edition

Mark Henaghan and Bill Atkin, General Editors

Family law policy has developed piecemeal and there is no single family law code which fits all the pieces together, the authors say in a preface. They also comment that the piecemeal approach to law reform continued as this new edition went to press. The fourth edition was published in January 2013 and there has been a lot of policy and a lot of family legislation passed since then. The very experienced author team says their goal is to isolate what they see as the assumptions, values, and aspirations of particular areas of family law, and to subject them to analysis in terms of their coherence, consistency, and fairness. Each of the seven chapters is a self-contained essay on a particular aspect of family law policy. As well as law professors Mark Henaghan and Bill Atkin, law lecturer Ruth Ballantyne, Professor Jacinta Ruru and University of Otago Children's Issues Centre Director Nicola Taylor contribute.

LexisNexis NZ Ltd, 978-0-947514-96-9, Paperback and e-book, 428 pages, March 2020, $160 (GST included, postage excluded).

The Herstory of OWLS: The first 30 years (1986–2016)

By Janet November

One of the earliest and most influential of the organisations established to advocate for women in the legal profession, Otago Women Lawyers' Association (OWLS) is already well on the way to its first 40 years. Janet November is well-known for her definitive biography of Ethel Benjamin, *In the footsteps of Ethel Benjamin: New Zealand's first woman lawyer*. She was invited by the 2015-16 OWLS Committee to record the first 30 years. She has done so admirably in a fast-paced and personable narrative which brings together a substantial collection of anecdotes, memories and documents from 1 May 1986 when OWLS was "hatched".

Apparently the easily memorable OWLS acronym was chosen to bring the eyes back to justice, and the owl was the symbol of Athena, the Greek goddess of wisdom and war. "More than one of [those at the first meeting] has told me that it is surprising how much change can be made with a bit of humour", Janet November records. That active sense of humour and a willingness to see the lighter side of things as well as the very serious and important issues which OWLS has tackled since 1986 shines through.

Janet November is a constant presence. She has talked to a large number of the women involved in OWLS and read an enormous number of reports and documents, and manages to distill them into an engaging tale of a dedicated group of women lawyers united with a desire to work for the equal opportunity and advancement of women in the study and practice of law. She is present as the storyteller who relates the OWLS history but doesn't hesitate to make her own comments, such as "I imagine many of the meetings at Kathryn's house were enhanced by delicious aromas of culinary delights provided by Kathryn and/or her family." The result is an always-interesting herstory which, as Dame Silvia Cartwright says in a foreword, "outlines the struggles, the fun and the achievements" of the group. "There is much to celebrate but much yet to be achieved," she says.

Otago Women Lawyers Society, 978-0-473501-66-2, Paperback, 213 pages, $40 (GST included, postage excluded). Orders to *members.owls@gmail.com* – use "HerStoryBook" in the subject line.

Will Notices

Alexander, Evan Bruce

Would any lawyer holding a will for the above-named, late of 1502-1455 George Street, White Rock, British Columbiam V4B OA9, Canada, born on 6 February 1943 who died on 26 March 2019, **please contact Yvonne Clarkson at Anthony Harper:**

yvonne.clarkson@ah.co.nz
(03) 379 0920
PO Box 2646 Christchurch 8140

Arancibia Hurtado, Pablo Antonio

Would any lawyer holding a will for the above-named, late of Valparaiso, Chile, born on 25 July 1980, who died on 28 November 2017, **please contact Joyce Sia of Davidson Legal:**

joyce@davidsonlegal.co.nz
(03) 365 6050
PO Box 6613 Christchurch 8442

Bly, Catherine May

Would any lawyer holding a will for the above-named, late of Upper Hutt, Retired who died on 6 August 2019, **please contact Main Street Legal Limited:**

john@mainstreetlegal.co.nz
(04) 527 9727 or Fax (04) 527 9723
PO Box 40 457, DX RP44011 Upper Hutt

Brough, Andrew Mark

Would any lawyer holding a will for the above-named, late of 43 Selwyn St, NEV, Dunedin, born on 7 May 1963, who died 4 Feb 2020, **please contact Don Brough:**

dgbrough4@gmail.com
(09) 8133107 or 0273066802
49 Withers Rd, Glen Eden, Auckland 0602

Brown, Patrick Ross Ngakihi

Would any lawyer holding a will for the above-named, late of Auckland, Truck Driver, who died on the 30 May 2018, 56 years of age, **please contact Jo Lovett, Franklin Law Solicitors:**

JoL@franklinlaw.co.nz
(09) 552 1195 or Fax (09) 238 7141
PO Box 43 Pukekohe 2340 DX EP 77020

Garmonsway, Timothy Roger John

Would any lawyer holding a will for the above-named, late of 5/3 Allington Road, Karori, Wellington, who died at Masterton on 12 January 2020, **please contact Andrew Stewart or Virginia Nelson of Morrison Kent Lawyers:**

virginia.nelson@morrisonkent.com or andrew.stewart@morrisonkent.com
(04) 472 0020
DX SP20203 PO Box 10035 Wellington 6143

Gifford, Leonard

Would any lawyer holding a will for the above-named, late of 60 Redoubt Road, Goodwood Heights, Manukau, Territory Manager at MM Kembla Auckland, born 1st November 1965 who died on 31st October 2019, **please contact Frances M Gifford - daughter:**

frani_dani@hotmail.com
(021) 02527073
60 Redoubt Road, Goodwood Heights, Manukau, Auckland 2105

Hughes, Michael Tancred

Would any lawyer holding a will for the above-named, late of Bupa Beachhaven Care Home, 249 Birkdale Road, Birkdale, Auckland, Retired, born on 1 December 1928, who died on 17 January 2020, **please contact Tina Wilson, Wilson McKay Barristers and Solicitors:**

tinawilson@wilsonmckay.co.nz
(09) 523 0766
PO Box 28347, Remuera Auckland 1541

Lawson, Thelma Mabel

Would any lawyer holding a will for the above-named, late of Auckland, Retired, born on 8 November 1926 who died on 14 January 2020, **please contact Sarah Wells at Gaze Burt:**

sarah.wells@gazeburt.co.nz
(09) 414 9800
PO Box 301 251, Albany, Auckland 0752

Lloyd, Whetu Marama Teresa (nee Hepana)

Would any lawyer holding a will for the above-named, late of 30 Roore Street, Foxton Beach, born 25 February 1968 and who died on 22 January 2020, **please contact Emma Henderson, Wakefields Lawyers:**

emma@wakefieldslaw.com
(06) 364 7245
PO Box 99, Otaki; DX RA61505

Manuel, Maui

Would any lawyer holding a will for the above-named, late of 26 Pirika Street, Dargaville, who died on 19 January 2020, **please contact Marcus Quinn, Hammonds Solicitors:**

marcus@hammondslaw.co.nz
(09) 439 7099 or Fax (09) 439 6464
DX AA23502 PO Box 16 Dargaville 0340

Maynard, Susan Jane

Would any lawyer holding a will for the above-named, late of Waimate, formerly of Alexandra, Orchard Foreman, born in 1958 who died on or about 21 February 2020 in Timaru, aged 62 years, **please contact Justine Baird, Checketts McKay Law Limited:**

justine@cmlaw.co.nz
(03) 440 0125
PO Box Box 41, Alexandra 9340

Radich, Mirna Mara

Would any lawyer holding a will for the above-named, late of Remuera, Auckland, born on 1 August 1964 who died on 31 March 2019, **please contact Jill De La Mare at Wilson McKay:**

jilldelamare@wilsonmckay.co.nz
(09) 523 0768
PO Box 28347, Remuera 1541, Auckland

Rotherham, Robyn Linda

Would any lawyer holding a will for the above-named, late of Hamilton, Bakery Manager, born on 5 October 1963, who died on 20 January 2020, **please contact Christine Masters of Chartwell Law:**

christine@chartwelllaw.co.nz
(07) 854 7192
PO Box 12162, Hamilton 3248

Saboo, Shobha

Would any lawyer holding a will for the above-named, late of 64 Staveley Avenue, Mount Roskill, Auckland, Technician, born on 26 May 1962, who died on 13th November 2019, **please contact Boon B Toh Solicitors:**

boontoh@boontoh.co.nz
(09) 6206133
PO Box 27562, Mt. Roskill, Auckland 1440

Smith, Keith Charles

Would any lawyer holding a will for the above-named, late of Nelson, Meat worker, born on 13 February 1957, who died on 28 December 2019, **please contact Ashleigh Rush of Duncan Cotterill Nelson:**

ashleigh.rush@duncancotterill.com
(03) 539 5401
PO Box 827, Nelson 7010

Tau, Katrina Marama

Would any lawyer holding a will for the above-named, late of Moerewa, Kaikohe, Logistics Co-ordinator, born on the 7 December 1978 who died on the 22 September 2019, **please contact Leanne Wood of Lewis Lawyers:**

leanne.wood@lewislawyers.co.nz
(07) 8231767
PO Box 529, Cambridge 3450

Vea-Williams, Kapelieli

Would any lawyer who has previously acted for or who holds a will for the above-named, late of Auckland, who died on 27 April 2018, **please contact Andrew Lemalu, Andrew Lemalu Law:**

andrew@andrewlemalulaw.co.nz
(09) 579 0045 or Fax: (09) 579 0049
PO Box 11-321, Ellerslie, Auckland 1542

Viliamu, Hariesa Kumata (aka Hariesa Kumata Williams)

Would any lawyer holding a will for the above-named, late of 101 Rose Road, Grey Lynn, Auckland, NZ born on 23 August 1930 in Niue Island, who died on 27 January 2006, **please contact Greg Presland at Presland & Co Limited:**

greg.presland@mylawyer.co.nz
(09) 818 1071 or Fax (09) 818 4966
PO Box 20310, Glen Eden, Auckland 0642 (DX DP94003)

Wiki, Robyn Jane

Would any lawyer holding a will for the above-named, late of Kaitaia, Social Worker, born on 31 July 1960, who died on 1 February 2020, **please contact Michael Fennessy of Innes Dean Tararua Law:**

michael@innesdean.co.nz
(06) 952 3264
PO Box 43, DX PP82510, Palmerston North

Wilson, Maurice Te Pouri

Would any lawyer holding a will for the above-named, late of 7 Olive Crescent, Papatoetoe, Auckland, born on 8 November 1931 who died on 9 January 2013, **please contact Matthew Kennelly of Law & Associates:**

matthew@lawasscociates.co.nz
(09) 262 5513
PO Box 76 124, Manukau, Auckland 2241

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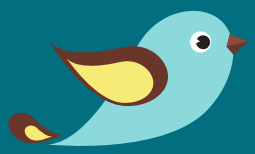

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CORONER BASED AT WHANGAREI

Applications are invited from persons wishing to be considered for appointment as a Coroner based at Whangarei.

Coroners are appointed under section 103 of the Coroners Act 2006. That Act introduced significant reforms to enhance public confidence in the integrity and independence of the coronial system.

To be appointed as a coroner the Act requires that the appointee must have held a practising certificate as a barrister or solicitor for at least five years.

A position description and application forms are available from the Ministry of Justice website *www.justice.govt.nz*.

Expressions of interest are sought by Friday 17 April 2020.

PRINCIPAL DISPUTES REFEREE

The Secretary for Justice invites expressions of interest from suitably qualified persons wishing to be considered for appointment as the Principal Disputes Referee.

Candidates are required to have a Bachelor of Laws from a New Zealand university, or an equivalent qualification. Candidates must also have demonstrated leadership and management skills, a reputation for honesty, good judgement, highly effective communication skills and an awareness of Tikanga Māori and the diversity of New Zealand's communities, and must have the ability to accept a level of public scrutiny.

The Principal Disputes Tribunal Referee will carry out a range of functions aimed at ensuring the integrity of the office of Referee is maintained, and enhancing the quality of decision making by Disputes Tribunal Referees. Functions include overseeing the selection process for Referees, giving legal advice to Referees, and advising the Chief District Court Judge on matters such as the rostering and performance of Referees.

The Principal Disputes Referee may also sit as a Disputes Tribunal Referee. Referees mediate or adjudicate disputes involving civil claims brought before them by parties who represent themselves.

The Principal Disputes Tribunal Referee is appointed by the Governor-General on the advice of the Minister of Justice, for a term of 5 years and may be reappointed.

For a position profile and expression of interest form please go to: www.justice.govt.nz/about/statutory-vacancies

Expressions of interest will be processed in accordance with rule 35A of the Disputes Tribunal Rules 1989.

Expressions of interest close at 5pm on Friday, 1 May 2020.

MINISTRY OF JUSTICE
Tāhū o te Ture

TENANCY ADJUDICATORS
Napier and Rotorua

Adjudicators are required for the Tenancy Tribunal in the Hawkes Bay 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 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, email: tania.togiatama@justice.govt.nz or phone 07 921 7478.

MINISTRY OF JUSTICE
Tāhū o te Ture

Applications for the position close at 5.00pm, Thursday 23 April 2020.

JUDGE OF THE EMPLOYMENT COURT

The Attorney-General wishes to hear from suitably qualified persons who would like to be considered for appointment as a Judge of the Employment Court in Auckland. Persons appointed to the Employment Court must have held a practising certificate as a barrister or solicitor for at least seven years or otherwise as set out in section 200 of the Employment Relations Act 2000. The position will suit someone with a particular interest in, and knowledge of, New Zealand's employment law. The criteria for judicial appointment includes:

- sound knowledge of the law and experience of its application
- qualities of character such as personal honesty and integrity, impartiality, good judgement, the ability to work hard and independence
- ability to assist persons to resolve litigation other than by judgment
- effective oral and written communication skills
- ability to absorb and analyse complex and competing factual and legal material
- aware of, and sensitive to, the diversity of modern New Zealand society
- aware of the special characteristics of employment relationships.

A copy of the document setting out the process and criteria for appointment and a copy of the Expression of Interest form are available at www.justice.govt.nz/statutory-vacancies

Persons interested in appointment are asked to complete an Expression of Interest form, provide a curriculum vitae and submit them to the Judicial Appointments Unit by 5pm on Friday, 24 April 2020.

All expressions of interest will be handled with the highest degree of confidentiality.

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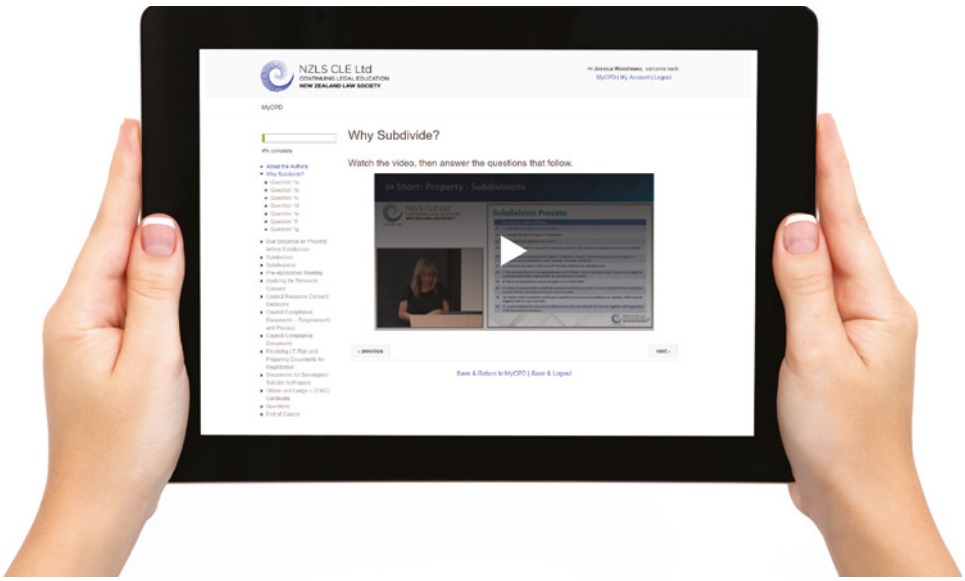

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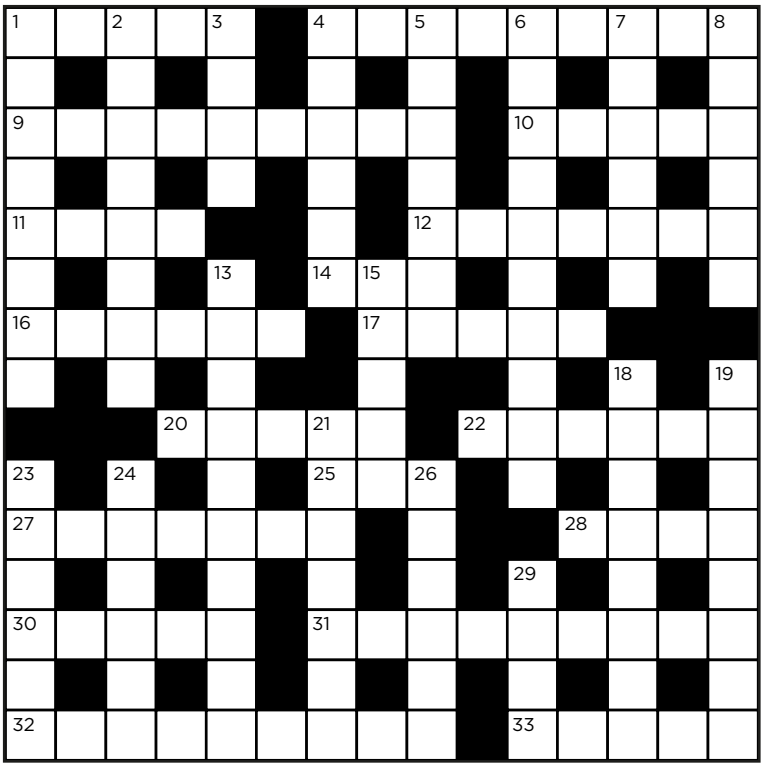
LIFESTYLE

A New Zealand Legal Crossword

SET BY **MĀYĀ**



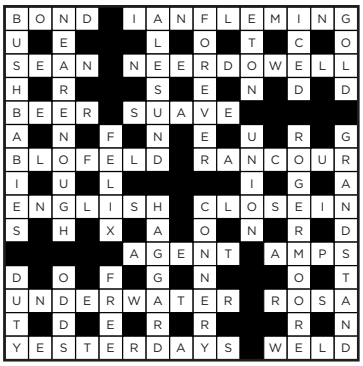
"Supplementary Speaker, Mr Question!"

Across

1/3 Leader of 33 20 – yes, German - to fix what may accompany hem (5,4)
4 Brace for spat during René's comeback (9)
9 Phage leak solved by leader in specialised field (5,4)
10 Doughnut addressed to 8 7? (5)
11 Made off with the cheese (4)
12 All above board(s) ? (7)
14 Particle drops ring dispenser (3)
16 Cover Alliance over holding overseas trip (6)
17 Hillary's boss is a graduate and a mother (5)
20 Do one out of equality? (5)
22 Chancellor to feel effect of 4 across between articles (6)
25/26 Previous leader of 33 20 uneven in Reagan's housing (3,6)
27 Something Rotten in the state of the UK? (7)
28 Detailed wade in streambed (4)
30 Divert Calliope, for example (5)
31 Non-digital parallels? (9)
32 Collected when drained after steamy evening out (9)
33 Info about imprisoned innocent (5)

Down

1/6 Essentially better, oddly feisty, last character to meet a simple chap wearing denim – and a sad loss to us all (8,10)
2 Mercator, perhaps, to represent God? (3,5)
3 See 1 Across
4 Hillary's companion's her parent? Rip off! (6)
5 Device to indelibly mark thief in kilobytes or, briefly, megabytes (3,4)
6 See 1
7 See 8
8/7 Previous leader of 33 20 may steal wisdom, they say (6,6)
13 Declared caramel's a poor substitute for mayonnaise (5,5)
15 Novice not right to embrace 'OK' in Japan (5)
18 Remove property from one wearing false teeth (8)
19 See 23
21 At sea, rays lit part of ship (7)
23/19 Leader of 33 20 shows that Asimov and drama can mix (6,8)
24 Treasures precursor to 33 20 (6)
26 See 25 Across
29 Air obtained from prison guard (4)



Solution to March 2020 crossword

Across

1. Bond, **3.** Ian Fleming, **9.** Sean, **10.** Neer Do Well, **11.** Beer, **12.** Suave, **17.** Blofeld, **18.** Rancour, **19.** English, **21.** Close In, **22.** Agent, **23.** Amps, **27.** Underwater, **28.** Rosa, **29.** Yesterdays, **30.** Weld.

Down

1. Bush Babies, **2.** Near Enough, **4.** Alesund, **5.** Forever, **6.** Eton, **7.** Iced, **8.** Gold, **13.** Felix, **14.** Union, **15.** Roger Moore, **16.** Grandstand, **20.** Haggard, **21.** Connery, **24.** Duty, **25.** Odds, **26.** Free.

LIFESTYLE

Houston: space, history and food

BY **JOHN BISHOP**

▲ The JPMorgan Chase Tower at 75 stories and 304.5m is the tallest building in Houston

HOUSTON CLAIMS THE HONOUR OF ITS NAME BEING THE first word spoken on the moon. Remember what Neil Armstrong said: "Houston, the eagle has landed."

Today the Houston Space Centre isn't nearly as important as it once was because the space programme isn't as important as it once was.

It is still the Texan city's most visited attraction with over a million visitors a year. Thousands of kids, parents, teachers and school parties pour through each day, taking in Mission Control and the displays and exhibits.

The Space Shuttle and International Space Station displays and the retrospectives from the first space missions in the 1960s are well presented and interesting. I thought the control room a little disappointing – seeing it on television was way more exciting than seeing it in real life.

There is a show about getting to Mars and beyond, which has a certain propaganda value for NASA. "Getting to Mars will be hard but NASA is up for it," the mission briefing officer told his audience.

Houston is well rated as a business centre. It scores highly on ease of starting a business, assistance available to get started – which doesn't include tax breaks or subsidies. It also rates well among its residents on liveability scores: there's good housing and good public schools, green spaces, support for the arts, culture and recreation. It is politically progressive, racially mixed and tolerant.

Energy a key driver

The pillars of commerce here are the energy sector – over 2,000 companies operate out of Houston, many listed on the NYSE or the NASDAQ; the space industry, arts and culture and more recently education, medical research and technology and treatment.

It is the largest city in the United States by total area, 1,620 square km, and the fourth most populous city, with an estimated population of 2.3 million in 2017.

Geographically it resembles a large circle and with a hub and spoke system of freeways emanating from downtown, supplemented by ring roads.

Ideally you need a car to get around and only 8% of households don't have one. Yes, there is public transport, but it's limited. There are trams downtown in and around the theatre district (the second biggest in the US after New York).

A 2017 Rice University study found a majority of Houstonians favoured dense housing in a mixed use walkable setting over low density single family housing.

Traffic congestion was also cited as the city's most pressing problem. There is a bus service: 1,200 buses service 75 routes and is used by 275,000 riders a day. I took lots of Ubers as the most efficient way to get around.

The major department stores and their shoppers aren't downtown. Unlike Chicago with Michigan Avenue or New York with Fifth Avenue, you don't go downtown to shop for clothes, furniture, whiteware or other big ticket items. Do that in the suburbs.

A special feature of downtown is Houston's system of underground walking tunnels which connect the massive skyscrapers. The tunnel system has eight routes (not all connected together). It covers 95 city blocks six metres below the streets for a total distance of just under 10 km.

There are shops and cafes in the tunnels. All the entrances are in city office blocks which are closed at night.

The tunnels are climate controlled, a literally "cool"

▲ Inside the Lunar landing space capsule

◂ Truck Yard, a popular outdoor bar area

way to get around away from the blazing Texas heat.

Blue haven in a sea of red

In August 1836 a group of land speculators founded Houston where the Buffalo Bayou meets the White Oak Bayou and named it after General Sam Houston, the commander of the Texas army which won independence from Mexico earlier that year.

Houston was the first and third President of the Republic of Texas, later to become a US Senator after Texas joined the Union in 1845, and at the end of his life he was its Governor.

Politically, Houston is a blue spot (meaning Democratic Party) in a red state (Republican). Democrats have hopes of taking the state blue in this year's presidential election. It hasn't been blue in a presidential contest since Carter won it (and most of the rest of the south) in 1976. Since Reagan beat Carter in 1980 Texas has been reliably Republican.

There are lots of green spaces, notably Buffalo Bayou Park, a 65 hectare big green lung in the city which is widely used by walkers, riders, and recreators generally.

There's lots of greenery, water, and places to sit and reflect. Cities need places like this. It's run by a special trust and funded by a dedicated tax and corporate philanthropy.

In the park I went on a tour of the old water storage and pumping system, which held two million gallons – enough to supply the city's needs in its early days. Now it needs up to 500 million gallons per day and the city's water is held in three lakes with a capacity in the hundreds of billions of gallons.

Once underground, our party walked along the path running around the top of the storage area, which is sometimes used for art installations and to record music. There is also a 17-second echo in the chamber. We all yelled loudly on cue and listened intently and with pleasure to the sound we had created.

Fun, food and sports

They all go together here. I went to an Astros baseball game. There was so much other entertainment going on, the game was almost incidental to the crowd's enjoyment. As it was Mothers' Day some of the Houston-born players had their mothers out on the mound throwing balls to them.

Then there was the "kiss camera" which roamed around looking for couples and putting their image up

on the big screen. That demanded a big, public smooch carried out to loud cheers, catcalls and general whoopie.

And there was singing. *Deep in the Heart of Texas* was a singalong number. Words were on the screen but the crowd knew both tune and words. And the *Yellow Rose of Texas* too. No emotional lever was left unpulled.

Beers, hotdogs, popcorn, pizza, all the trashy food imaginable. How could you not like this place? The Astros played the Cowboys from Dallas and slaughtered them much to everyone's delight.

Out the back of the stadium is Houston's party central, several sprawling hectares of dried out industrial land converted into an endless stream of bars.

One I visited was called Truck Yard, a primitive industrial space turned into an outdoor beer and food venue. I suppose it had niche appeal, which is to say that no one would call it classy.

Families were kicking back in the sun at wooded trestle tables with umbrellas, or at round metal tables with metal chairs on the bare ground with some stones for traction. On stage a singer was grinding out her tunes to an audience only lightly listening.

Food was available from three food trucks: Brazilian, hotdogs and waffles, with a steak and cheese counter next to one of the two bars. Someone was cooking up crawfish in a big pot.

I had some gaucho fries from the Brazilian truck which were standard French fries with diced sausage and chipotle sauce sprinkled with spring onions and parmesan. Nice enough, but it would have been better if the fries had started out hot.

Texas barbecue and fried chicken

Talking of food, Texas barbecue and fried chicken are dietary staples here. For barbecue I went to Goode Co. These guys have been doing it for a long time. It shows in the quality of their food and in the aged, even shabby, nature of their premises.

The specialities are beef brisket, ribs and sausages, although there is chicken, pork and other stuff on offer as well. I had a beef brisket sandwich at $7.95 on jalapeno bread. It came with a spicy tomato dipping sauce; you help yourself to pickles and chillies. Biting into the soft white bread and the melt in your mouth brisket was just a delight.

For chicken I was pointed to Max's Wine Dive – the name is a complete misnomer. This place is famous for its fried chicken so that's what I had. I got three huge pieces of chicken sealed and tender with collard greens and mashed potato. The greens were like industrial strength spinach and I found them hard to get down in quantity.

▲ Minute Maid Park home of the Houston Astros. Parades, displays and antics with the crowd are all part of the fun

There was also a slice of what was called Texas toast, but it was just white bread toast, and nothing to get excited about. Lots of 80s music playing with craft beers on tap and a wide selection of wines in a bar atmosphere. Combined with massive servings of chicken, it was a winning formula.

Houston has joined Chicago (with New York soon to be added) as inland destinations with direct, but lengthy, flights from Auckland. This makes it a convenient entry point for travellers heading to the South, or south-east of the United States as well as an interesting place in its own right. ■

John Bishop was assisted in his visit by Visit Houston.

TAIL END

Some interesting New Zealand legislation

Raupo Houses Act 1842: To discourage the erection of houses made of raupo and other inflammable materials, an annual tax of £20 could be levied in a specified town on every building constructed wholly or in part of raupo, nikau, toetoe, wiwi, kakaho, straw, or thatch of any description. The legislation was applied first in Auckland and then Wellington after a bakery with a thatched roof caught fire. It was gradually extended to Dunedin and Christchurch and repealed in 1878.

Vaccination Act 1863: The parent of every child born in New Zealand after 1 March 1864 was required, within six calendar months of the birth, to have the child vaccinated against smallpox. Eight days after vaccination the parent was required to take the child to the vaccinating doctor or medical officer for inspection to see if had been successful. The vaccinator was then required to give the parent a certificate of successful vaccination. Another copy went to the registrar of births in every district, who was required to record it opposite the name of the child. Parents who did not have their child vaccinated had to pay a penalty of a sum "not exceeding forty shillings". Vaccination was compulsory from 1864 until 1920 (except in 1872) but apparently most parents did not comply and less than 1% of babies were reported vaccinated in 1916.

Solicitors' Bills of Costs Act 1902: Anyone receiving any bill of costs from a solicitor could, within 30 days of receipt, elect to refer it to a Supreme Court Registrar or Stipendiary Magistrate, "who may reduce such bill of costs to such amount as he may consider fair under the circumstances". The Law Practitioners Act 1882, which still applied, required solicitors not to commence actions for their fees until one month after delivery of their bill of costs and had an involved process for taxation of the bill, but made no provision for contesting the amount charged. The New Zealand Law Society | Te Kāhui Ture o Aotearoa is now responsible for investigating complaints about the amount of any bill of costs, under section 132 of the Lawyers and Conveyancers Act 2006.

Punishment of High Treason Act 1870: "2. From and after the passing of this Act [Imperial Act 54 George III c146] shall be deemed not to extend to or be applicable in the administration of justice within the Colony of New Zealand." The Imperial Act referred to required the sentence in all cases of high treason to

Notable Quotes

"The review of our hate speech laws are in the final stages. I expect there will be an announcement in a matter of weeks."
— Justice Minister Andrew Little says work is progressing on laws around hate speech.

"I enjoyed debating so I had it in my head I'd be quite a good lawyer. Mum and Dad were quite encouraged by the thought I'd be going into a profession with job security."
— Marlborough wine maker Sophie Parker-Thomson, who gave up law to establish Blank Canvas Wines with her husband Matt and is now close to becoming one of just a few hundred Masters of Wine in the world.

"We sit there and wait. It's very hard to plan. It's also very hard to get a commitment out of Immigration NZ. The system is ... under-resourced basically."
— Dunedin immigration lawyer Teresa Chan expresses her frustration at visa processing delays.

"This exercise has really shown the value of community groups getting together with lawyers who are prepared to provide their services without charge. It was really a group effort."
— Mount Maunganui barrister Michael Sharp who led judicial review proceedings against the Tauranga City Council's plan to ban begging in a bylaw. The Council backed down and voted to revoke it.

be "that such person should be drawn on a hurdle to the place of execution and be there hanged by the neck until such person should be dead and that afterwards the head should be severed from the body of such person and the body divided into four quarters" to be disposed of as the monarch sees fit.

The 1814 English statute was definitely the law in New Zealand by virtue of our English Laws Act 1858. The sentence has actually been imposed in this country, provoking the 1870 legislation. On 23 September 1869, after a jury had found Te Kooti associates Hetariki Te Oikau, Rewi Tamanui Totitoti and Matene Te Karo guilty of high treason, Justice Johnston unwillingly sentenced each to be hanged, drawn and quartered. None of the three was executed and their sentences were commuted to imprisonment.

On 30 June 1870 New Zealand's Parliament changed the punishment for high treason from hanging, drawing and quartering to hanging. This remained the law until the Abolition of the Death Penalty Act 1989 came into force on 26 December 1989.

The Commencement of Acts Act 1862 Repeal Act 1863: Pretty boring, really, but a contender for the coolest name of any New Zealand statute. The 1862 Act, which amended the Interpretation Act 1858, provided that any Act which did not specify when it took effect should come into effect three calendar months after the Governor's (now Royal) Assent. The 1863 repealing Act came into operation on the day of the Governor's assent, 14 December 1863. Why did this happen? "The operation of The Commencement of Acts Act 1862 was found very inconvenient, and was repealed," the *Papers relative to the Acts of the Assembly session 1863* states tersely and unhelpfully. ■

"More people want to do the city and maybe this is more hard work but you can probably earn more as a lawyer, but I don't know, I wouldn't be doing that."
— Mike Brems from Team Denmark at the World Hereford Conference's competition for young farmers in Wanaka. The objective was to inspire more young people to get involved in farming.

"I didn't think I would get back into the New Zealand team. You get to that age and if you haven't really made it into the team, I was in and out a fair bit and never really got an extended run in the New Zealand team. I had my law degree and we thought it was time to move on with our lives."
— Former New Zealand cricketer Andrew Penn, who has taken up a role as principal with Treadwell Gordon in Whanganui. He gave up top level cricket when aged 28 to focus on his legal career.

"Keep the facials down. It won't impress me, I'm not a juror."
— Judge Paul Mabey warns defendant Danny Cancian during Tauranga City Council lawyer Richard Marchant's opening address in a judge-alone trial where Mr Cancian and others face charges under the Building Act 2004 related to the Bella Vista housing project.

"When I got admitted to the bar, I gave a speech in the High Court saying how I had dreamt of that moment for a very long time, but I never thought it would come true. As a young girl I felt hopeless in Afghanistan that I would never be able to get an education. And now I am standing in front of His Honour and addressing the court. It was such a big moment for me."
— New lawyer Nazira Afzali, who has overcome victimization by the Taliban and life as a refugee in Pakistan to become the first woman Afghan lawyer in Christchurch.