New Zealand Law Society
Te Kāhui Ture o Aotearoa

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Ministry of Justice

By email: anouk.alexander@justice.govt.nz

Tēnā koe

I am writing on behalf of the New Zealand Law Society Te Kāhui Ture o Aotearoa, regarding an item published this week by Newsroom, titled '*Lawyers bridle at claim court delays are to make money*.'

The article refers to a June 2021 report commissioned by the Ministry and prepared by Research First, '*A Qualitative Insight into the increase in Later Guilty Pleas and Election of Jury Trials*' (the report). Rebecca Parish, General Manager Sector Insights, is quoted as confirming that while this report was not 'specifically' used in design of the Criminal Process Improvement Programme, it has 'been cited in various reports to the Justice sector and the judiciary.'

The report appears to focus on reporting the anecdotal feedback of 28 individuals, only 10 of whom were defence counsel. I acknowledge that it identifies some limitations, in particular that private defence counsel were under-represented (comprising only 2 of the 10 defence lawyers), and that participants were organised by the Ministry. I also acknowledge that the report identifies several factors that may be contributing to late guilty pleas and the election of jury trial, beyond suggested benefits to defence counsel.

The Law Society frequently assists with the recruitment of participants for projects such as this, as well as the collection and provision of feedback and submissions. It does not appear we were contacted about this project, and the results were not shared. This is unfortunate, as we could have assisted in ensuring the focus groups were more representative, thereby avoiding the skewed results the report refers to.

To the extent that the report suggests defence counsel may seek to delay the entering of a guilty plea for financial or personal benefit, I note some concerns with the report:

- A comment regarding lawyers being able to progress matters while avoiding work was made at a Christchurch focus group in which no private defence lawyers were in attendance.
- The suggestion of a 'huge financial motive not to deal with something straight away' was made by a non-lawyer, again at the Christchurch focus group. The suggestion of the same point being made by a 'lawyer' in the Manukau focus group is unclear. It is not clear whether they were responding to the same question or statement, or who that lawyer was attending on behalf of.

- It is not clear which participant referred to private lawyers receiving 'large filing fees' for a CMM.

Further on, the report covers well-known systemic issues contributing to later guilty pleas, such as the operation of the Criminal Procedure Act 2011, late disclosure, and case complexity.

There is a similarly imprecise treatment of findings around jury trial election, including a suggestion this is for 'fun', and the statement that 'it is likely that many lawyers simply find jury trials more interesting than JATs'. Again, these speculative and less robust findings are discussed prior to the more systemic and independently verifiable causes (for example, operation of the CPA). The language employed is less than objective, such as use of the term 'game' at 4.6.1 and 5.6.2. It does not appear that participants used this term themselves, and in fact what is referred to (in particular at 5.6.2) is participants learning how the CPA has come to impact the progress and handling of proceedings 'on the ground', and how they ought to then adjust their practice for the benefit of their clients.

The Law Society's concern is that the report is not sufficiently robust or objective to be used in the scoping or development of policy and reform options. While it may not have been used 'specifically' in the CPIP programme, it continues to be referred to and cited. As all participants in the justice sector work to achieve transformational change for defendants, complainants, victims and their whānau, we encourage the use of better evidence and the development of more robust and critical resources. It is unfortunate the report was commissioned while CPIP was commencing, the latter having generated real insights into a range of issues, including the CPA, CMM, and late guilty pleas.

On that note, we welcome news of the High Impact Innovation Programme's new project, which will consider the behavioural reasons for why some cases cannot be progressed in a timely manner. The Department of Corrections has been in contact to discuss engagement with the profession, and we look forward to facilitating this.

As always, we remain available to assist in any further work the Ministry may wish to undertake in this area, and we look forward to continued involvement in the CPIP programme. Should you wish to discuss this further, or have any questions, I can be contacted via Aimee Bryant, Manager Law Reform and Advocacy (aimee.bryant@lawsociety.org.nz).

Ngā mihi

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