



A year like no other



New Zealand
Law Society
Te Kāhui Ture o Aotearoa

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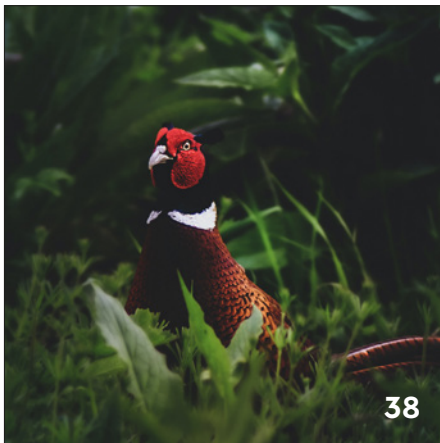
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2020 – A year like no other

As we near the end of 2020 I reflect on the challenges faced by our profession in what has been one of the most disruptive years we will experience in our lifetimes, both professionally and personally.

The disruption brought by the lockdowns and border restrictions severely tested long-standing business models, with unpredictable revenue streams in some practice areas, being particularly affected.

I know the impact of Covid will continue to weigh heavily on many lawyers as their clients' face spending the holidays in custody due to further delayed court appearances, and families will be kept apart due to border restrictions. We reflect on these ongoing issues in our feature section telling the stories of lawyers and their 2020 experience.

I want to acknowledge the Law Society's strong response to the Covid lockdown, led by our President and supported by the executive team, which saw an unprecedented level of active engagement from our profession, as well as a positive endorsement from the Chief Justice.

As one of the three new Board members, we have worked collaboratively to provide continuity of governance during this time, with the support of outgoing Board members Andrew Logan and Tim Jones, particularly with Tiana taking maternity leave for a short period.

I would like to highlight a few key items that the Law Society has progressed this year.

We, in what is a historic event, welcomed Te Hunga Rōia Māori o Aotearoa and the Pacific Lawyers Association as permanent members of our Council, a

motion that was put forward by Tiana Epati, and led by Jacque Lethbridge (Vice President – Auckland) in Tiana's absence, with the full support of the Board at the October Council meeting.

The steering group leading the Independent Review of the statutory framework for lawyers experienced some delays due to the pandemic. However, the work is now progressing and the draft Terms of Reference, as prepared by the steering group, will be considered at the upcoming December Board meeting. Wider consultation on this will follow thereafter.

Subject to final sign-off by the Law Society's Council, we envisage rolling out changes to lawyers' conduct rules under the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (RCCC) and the (Lawyer: Ongoing Legal Education Continuing Professional Development) Rules 2013 (CPD) in early 2021. These changes are a product of wide consultation within our profession and we acknowledge everyone who took the time to contribute to this process.

In the practising well space, we are pleased to see the take up of the National Mentoring Programme. We have had encouraging feedback from mentoring participants about the connections they have made and the positive impact of being in a mentoring relationship. We continue to also offer a free counselling service as part of our health and wellbeing offering.

We also have the new Government settling in with the team of five Ministers working across justice-related portfolios. And, in this edition of LawTalk, lawyer and political commentator Brigitte Morten



breaks down the challenges and expected priorities for the Government when it comes to justice.

Finally, I would like to thank Tiana for her ongoing leadership, my fellow Board members for their collegiality and commitment, and all our volunteers who sit on Standards Committees, law reform, branch and section committees. Your hard work has enabled the organisation to continue to deliver its regulatory and representative services throughout a very unsettled year. A special thanks to the staff of the Law Society and NZLS CLE who have done a tremendous job in the face of ongoing disruption.

Whatever you are doing as we head into the final few weeks of 2020 and welcome 2021, I hope you manage to get some time to enjoy the summer and to rest and recharge with your whānau and friends.

Vinaka vaka levu.

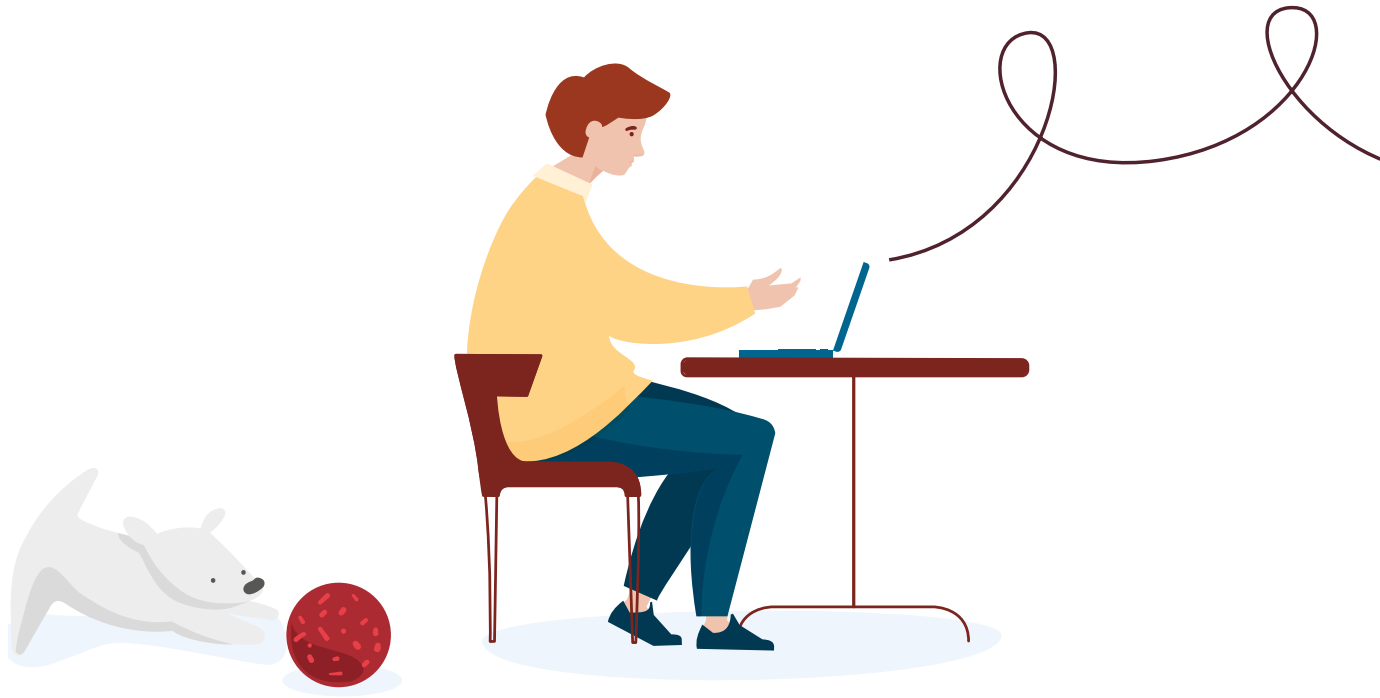
ARTI CHAND
Vice President

2020

A year like no other

BY **MORWENNA GRILLS** AND **JAMIE DOBSON**

No matter what area of the law you work in, the arrival of COVID-19 saw the biggest disruption to our way of working since the second world war.



The legal profession faced significant challenges on a number of levels. Businesses had to run without any income, there was new primary and secondary legislation alongside protocols and guidelines to interpret, understand and implement. Many lawyers had had highly emotional clients dealing with situations they had never predicted and all of us had to work in new ways using virtual technologies and electronic systems in what has traditionally been a highly paper-based profession.

This was an incredibly challenging time for the profession. People need lawyers at some of the most important, most stressful times of their lives. Many lawyers enter this profession driven by a sense of service to help people, and not being able to help clients has been one of the hardest aspects of this year.

In this article we reflect on the impacts of Covid from this year and what the legal profession can expect going forward. Whilst every area of law was impacted, we have spoken to employment, immigration, criminal and in-house lawyers for this article.

Chris Macklin, Crown Prosecutor with Gordon & Pilditch based in Rotorua is acutely aware that his

experience is not unique.

“Across the legal profession we will continue to feel the impacts of this year. It doesn’t really matter if you’re prosecuting or defending, or in a solicitor role without as much court work, all practitioners are up against a very difficult balance managing multiple clients and stakeholders.”

For Immigration Lawyer Mark Williams of Lane Neave, based in Christchurch this has been the most difficult year on record.

“I started in 1999 and nothing has come close to the difficulties we have faced this year. It’s been challenging on so many levels, and far more so than the Christchurch earthquakes were to manage. Financially we’ve all been hit by the border being closed, whilst at the same time the level we’re working at in terms of legislation and policies has grown increasingly complex.”

Impact on lawyers as employers and employees

Running a business, either as a partner or sole practitioner is challenging at the best of times but this year there were major disruptions to income streams which led to some firms having to restructure. At the same time many organisations needed to equip staff to work

remotely.

“It’s a constant challenge for us in the legal profession to balance admin, our own workloads, meeting with clients and advocating for them in court, but 2020 took this to a whole new level”, says Chris.

“As a partner I was particularly aware of the obligations to our staff, in terms of their work as well as to them as people. Our income stream dried up almost overnight with the postponement of jury trials. We were fortunate to very quickly get assurance from Crown Law that arrangements would be put in place, but it was incredibly stressful.”

That disruption to income was a similar story for immigration lawyers and advisers, as Mark Williams explains.

“With the border closing the immigration system effectively froze. This meant that we didn’t have new business and the existing business we could bill on was locked up. Most immigration lawyers faced a significant revenue reduction over the first two to three months in particular. We had reduced revenue coming in but were still working hard, fielding hundreds of calls from highly stressed clients and dealing with new complex policies that constantly changed.”

Mark’s experience at Lane Neave has been echoed across many

The role of in-house counsel as the only gig in town

Mike Brooker, General Counsel and Julian Benefield Associate General Counsel, Foodstuffs

"It was one of the most memorable times in my career," says Mike, "and I've been doing this for 30 years. I feel we did right by New Zealand."



Mike and Julian can recount moment-by-moment each move as it happened. From the first case entering the country in February, responding to panic-buying and questions of supply when shelves were empty, to when they were just about to pack up on holiday in August when Auckland re-escalated to Alert Level 3.

Supermarkets were the first cabs off the rank responsible for ensuring appropriate safety measures were in place for trading. "As 'one of the only gigs in town', we had the attention of everyone."

"But we were able to help our stores by taking on some of the focus and pressures at a Cooperative level, that helped us get clear messaging for our stores, from organising PPE to coordinating and answering questions from Regulators and external stakeholders," adds Julian.

Empty shelves were a backend issue for the stores. "Not much was actually running out. We were dealing with filling the demand as it ramped up from truck to store."

The team says they also had to become experts in the vast array of ISO standards and CE numbers that accompany PPE, and carefully manage the risks of counterfeit PPE.

When they were finally getting on top of things life changed again with a second lockdown. "We

had everything in place from the first lockdown, but now we were met with different problems, this time particularly in Auckland. We had employees across the regional borders who had to get to work on the other side. We had to figure out quickly how that worked in terms of where our employees could travel," says Mike.



"Our demands were very different from others. Smaller businesses and people close to us were closing down or couldn't work. We were in a very privileged position to be able to trade and never wanted to lose sight of that."

And where challenges became prevalent, some things changed by the nature of what was deemed essential work. "There was also rapid action on projects, which helped what we had been wanting to do for some time," says Julian. "E-signatures became necessary, and we had begun to automate contracts, but the take-up of our automation offering increased greatly because of the nature of working during COVID-19."

While they've been entrenched in supporting the business the past few months, Foodstuffs' Legal Team say they have some break time between them. "Taking care of your own wellbeing or putting on your own oxygen mask is really important, especially when this thing might go on for a long time," Julian says.

Olivia Taylor, Jodie Gallagher, Jenine Briggs and Michelle Gibbs also had key parts to play in managing the demands on the Foodies Legal Team during COVID-19.

“It was one of the most memorable times in my career... I feel we did right by New Zealand”

firms. In July, LawTalk reported findings from interviews carried out by consultant Emily Morrow with a number of law firms. She reported that almost all of them received wage subsidy benefits. Some partners voluntarily reduced their earnings and a few firms cut everyone's pay by approximately 20%. All interviewees reported that revenue decreased in April and May.

Emily's interviews also reflected the significant change in working to a paperless or paper lite work style, online meetings and remote locations. This flexibility is something that many legal organisations are now adopting, either offering employees a choice or structuring when people are in the office.

In-house legal teams have also felt the impact on their organisations from Covid. In early May LOD surveyed in-house legal counsel about their experiences. All survey respondents said their workload changed to new or more immediate priorities. Two-thirds of respondents said workloads increased, and just



over half (56%) said that a lot of BAU and projects were deferred. Just under half (45%) had been asked to make budget cuts.

The role of senior in-house legal counsel also changed, becoming more involved in executive management decision-making, acting as the voice that reminded leaders that decisions still needed to be made thoughtfully and involve certain stakeholders.

For the Foodstuffs Legal Team this saw them step into an advisory role working with the Government, helping to define how certain essential businesses could operate.

General Counsel Mike Brooker's role was to chair the co-operative's Crisis Management Team (CMT). At the height of lockdown, the CMT daily stand-ups became the catalyst for decisions, which were then opened to a forum to cover all bases. Often more than 300 New World, PAK'nSAVE and Four Square operators joined the call.

"The position we were in was a privilege," says Mike. "While businesses we dealt with were closing down, here we were overtrading."

As the Alert Level system cemented its position in 'normality',

New Zealand's supermarkets were first to inherit a unique logistical issue of essential businesses. "We had increased demand while balancing the risk of a decreased amount of people working in stores," Mike says.

"A fair amount of workers across our stores are older in age, immunocompromised or had family at home in those groups to consider. We had to be prepared some couldn't or wouldn't want to come to work at the risk of being vulnerable, and we ensured they would still get paid."

"Meanwhile, there were others that wanted to come to work," Julian Benefield adds, Associate General Counsel for the cooperative.

Organising guidance for stores around vulnerable workers, employment and wellbeing and safety issues became a priority. The unfamiliar risks Covid posed challenged the team to make critical judgment calls as they worked between agencies, their stores, and assisted regulators and external stakeholders.

"We had an intranet set up which all our stores could access to find up to date information, but one of the key things we were able to do was to

coordinate and respond to answers to questions from regulators and external stakeholders, who wanted to know how we were complying with the law and taking care of our people."

Tackling complex and novel policies changing at speed

Because the law covers so many facets of society almost all lawyers faced challenges understanding the changing legal landscape at speed and translating complex policies into plain English for clients and colleagues.

Mark says this was particularly the case in the immigration space where for the first time in our nation's history the border closed to almost everyone. Only New Zealand citizens and permanent residents could enter.

"Whilst our industry has lost volume in terms of standard work what has replaced that are highly complex policies that are difficult to apply and likely to change at short notice. A lot of the work was so complex that it could only be completed at partner level, adding to the pressure on partners in our firm. We had changes coming through all the



time so we were constantly having to understand a new policy and what it meant for our clients.”

New orders and Government response tools such as the wage subsidy, presented a variety of challenging questions for employment lawyers.

“On the first day of the announcement (that we were going into Level 4 lockdown), there was this lull of sorts. The next day, the phone wouldn’t stop ringing” says Karen Radich, an employment law barrister at Clifton Chambers.

“Many of the questions were new for employment lawyers. And finding answers wasn’t easy. There wasn’t a piece of legislation or any regulations to read and consider, or a Court decision available as a clear precedent. Information about wage subsidy rules and around continuing to operate essential services needed to be located and interpreted from Government websites. What’s more, nuances between what information was displayed across different Government websites sometimes raised more questions than answers.”

In place of legal advice given with knowledge, experience of legislation and case law was advice based on whatever Government information was available at the time. Information flowed quickly online by the daily government announcements but could also change at the same pace. “The law is still the law, but websites are subject to change,” notes Karen.

“For employees, there was uncertainty about whether their next pay would be made and whether that would be at 100%, 80%, or wage-subsidy levels, and whether they would even still have a job in a couple of days. Decisions were needing to be made very quickly, often based on scant information. At the same time, all face-to-face employment mediations were cancelled and hearings were delayed.”

Impact on people

One of the most challenging aspects of the changing



▲ Thermal camera in operation and full PPE worn by CSOs under levels 3 and 4 at the Gisborne District Court. Left to right: Tala Taimalelagi, Wiremu Moa, Frances Kennedy, and Tui Tuia.

legal landscape has been the impact on people, and that’s not ended with the lifting of lockdowns. Heading towards Christmas, Chris Macklin’s thoughts are with those people who will spend the holiday period behind bars awaiting trial.

“There are very real and very challenging obstacles for criminal practitioners doing their best for their clients. There are massive challenges for rescheduling, particularly legal argument for bail and things have been pushed back so people are stuck.”

Prior to the pandemic the average wait for a jury trial in Auckland was already 436 days, while the nationwide average is 425 days. Family Court delays were also extensive. A review panel looking at family justice reform reported in the middle of last year that the time the court took to resolve each Care of Children Act case increased from an average of 284.7 days per case in 2014/15 to 307.9 days per case in 2017/18.

There is also no end in sight for the impact on those wanting to enter New Zealand. Mark recalls the many difficult phone calls he’s taken over the past few months.

“Initially things were okay – people understood that the Government had to take drastic action but the longer it went on, the uncertainty and the stress increased. We started to deal with people emotionally distraught at being separated from family. There were clients being made redundant but they couldn’t return home, others

“On the first day of the announcement, there was this lull of sorts. The next day the phone wouldn't stop ringing”

Mark Williams

Partner at Lane Neave, Christchurch

“The last six months have been the most difficult of my entire practice, and that includes managing a practice outside a building written off in the Christchurch earthquakes. When the border closed immigration just stopped dead and the whole system froze. We didn't have new business at a reasonable volume coming in and the existing business we could bill on was locked up.



Most immigration lawyers faced a significant revenue reduction over the first two to three months in particular. We had reduced revenue coming in but were still working hard, fielding hundreds of calls from highly stressed clients and dealing with new complex policies that constantly changed.

Our firm had to go through a restructuring process. If all you've done in your career is grow something, to have to partially destroy that through no fault of your own is really tough.

Whilst our industry lost volume in terms of standard work what has replaced that are highly complex policies that are difficult to apply and likely to change at short notice.

A lot of the work was so complex that it could only be completed at Partner level, adding to the pressure on Partners in our firm. We had changes coming through all the time so we were constantly having to understand a new policy, how that applied in practice to our clients and then communicate that very quickly to them.

I'm optimistic we will see changes at the border, especially as economic pressures increase.

I am relieved we survived this year, but I never want to go through it again. I guess the one plus is that I now travel a lot less around the country, as we use video conferencing a lot more!”

who had sold their homes and quit their jobs only at the last minute to not be allowed entry to New Zealand.

“As immigration lawyers and advisers we were on the front line of dealing with people in really challenging situations. It was really hard, we felt helpless. We understood what they were going through but could do very little to help them.”

Where the ability to work was threatened, so too were employment relationships. As soon as a business couldn't open doors, employers had to make quick decisions in response.

“And it varied tremendously, in terms of the circumstances,” says Karen Radich.

Deciding on when to apply for the wage subsidy could impact a payroll deadline, and whether there would be money available to pay staff. Questions were raised on what staff should be paid when the business was closed completely and had no income source. The onus on the employer to apply for the wage subsidies and meet the Government's conditions, changed the conversations many employers had with their employees.

Post-lockdown, employment lawyers have noticed that workplace problems that may traditionally have been resolved face-to-face on site, are more likely to bubble up



Chris Macklin

Crown Prosecutor and Partner at
Gordon & Pilditch, Rotorua

"My primary focus is on prosecuting jury trials, so within days of the Prime Minister's announcement about the alert levels our core work

was put on hold. But with that came a host of different challenges – as a lawyer, a business owner and a parent.

As a Partner I was particularly aware of the obligations to our staff, in terms of their work as well as to them as people. Across the firm we felt the human impact of the pandemic, and the different ways people reacted.

From our local perspective the courts in Rotorua started to roll out under-used remote resources like virtual rooms. They got more rooms up and running so we could participate remotely. Talking to others it sounds



like this wasn't always the case and other practitioners weren't experiencing the same rapid introduction of virtual technologies.

Outside of the Courts many other organisations within the justice system were experiencing far greater challenges trying to continue business as usual. There were very real and very challenging obstacles for criminal practitioners doing their best for their clients.

There is still no sense of when we will catch up on the Covid backlog. There will need to be significant changes to how business is done as we start 2021, and it's going to take all of us. It will need lawyers, judges and the government to work together to prioritise addressing the backlog of cases."

into a legal issue. The Government Centre for Dispute Resolution saw demand for dispute resolution services dip during Alert Level Four as preferences for face-to-face mediation remained, but was not available. Eventually the demand for mediation surpassed pre-Covid levels through Alert Level 2, and the service is still catching-up.

However, the pressure on lawyers to provide information and advice on new and unusual employment situations has continued throughout the year. As alert levels changed, employment issues also changed so there was the constant need to keep up-to-date.

On a positive note, Karen observed that MBIE, the Employment Relations Authority and the Employment Court were all very quick to update practitioners on how each was responding to the changing lockdown levels. "Updates and new protocols were circulated quickly and regularly through employment law committees."

Positive changes – increased use of technology and greater collaboration

One of the greatest changes to the profession from the Covid experience has been the move away from being so reliant on paper. For a time, everyone was using digital technologies, learning new systems and understanding how to operate in a paper-lite world.

This was a huge learning period for everyone. Across the judiciary, two schools of thought quickly arose during lockdown – those who embraced online courts and high-tech ways of conducting court business as a permanent move towards better access to justice, and those who felt quite strongly about criminal justice in Aotearoa fundamentally requiring a return to *kanohi ki te kanohi* (face to face) approach as soon as possible.

In favour of technology was the fact many practitioners noted benefits associated with being able to appear from their chambers via a

virtual meeting room for procedural/administrative hearings. This flexibility was valued by counsel given the efficiency of time and travel cost savings.

However, a major problem was the availability of good working technology. Many concerns were raised during the lockdown regarding counsel's inability to access their clients in custody. AVL meeting rooms were often not available and it was difficult to reach clients via the phone. There was also considerable variation in gaining access via telephone to clients in custody between the different courts and corrections facilities.

Even when it did work, lawyers learnt there simply was no substitute for seeing a client, taking instructions in person and attending court.

Speaking to Radio New Zealand earlier this year, Chief Justice Dame Helen Winklemann said she was keen to support lawyers to continue using new technology because of the time and cost savings.

However, she was keen to point out that remote technologies aren't appropriate for all situations, particularly when a person is at their first or second appearance in the court system.

Another positive change that will endure into the future was the collaborative ways of working that developed. For Mark Williams that meant taking part in an industry led Reference Group that meets regularly with Immigration New Zealand. INZ has also increased its direct communication to immigration lawyers and advisers, as INZ General Manager of Strategy, Engagement and Education Steve McGill explains.

"Webinars where participants had the chance to ask questions were very popular. A learning from this was confirmation that people who use the immigration system for their jobs appreciate the chance to ask INZ questions directly. It helped us respond accordingly and provide as much information as possible. We plan to continue regular webinars."

Wellington employment lawyers found themselves working much

more closely, supporting each other with information and answers despite the remote requirements.

For Mike and Julian working in an essential industry there was an increased mandate for collaboration across supermarkets to deliver essential goods.

"At the outset, the Commerce Commission said they did not intend to take enforcement action against competitors talking to each other about the provision of essential services.

"That didn't mean we could talk to the likes of Countdown carte blanche, but it opened up the possibility for us to help in ways we couldn't otherwise. We also ensured that our quieter areas, such as our wholesaler, Gilmours, could help supply food banks and the like.

"That was a space where neither of us wanted to compete, but both wanted to coordinate to help to fill a need in the response to Covid."

Heading into 2021

2020 has been the most disruptive period in a generation. As the Chief Justice noted to Radio New Zealand "It's made us see that things we have thought are inevitable, or unchangeable, effectively are not. So, it's made us reflect about what we should take forward into our future from that past way of doing things."

For Chris Macklin he's concerned about the ongoing impact on the courts.

"There is still no sense of when we will catch up on the Covid backlog. I've seen really positive engagement

Lessons learned during this crisis:

- 1 Prepare:** preparing your organisation for a disaster cannot be left until the last minute. Use everything you've learnt from 2020 to prepare for future scenarios that test your business in novel ways..
- 2 Build relationships:** relationships are important in good times but in bad times, they're absolutely necessary. Collaborative relationships work best when built before a crisis.
- 3 Be brave:** sometimes as a leader you need to make hard decisions that won't always be popular.
- 4 Tap into your existing resources:** you will have built relationships and banked good will, a crisis is the time to help each other and further strengthen these relationships.
- 5 Ask for help and give it:** you will be amazed at how many people will help if you just ask. If you are in a position to help others, do so.
- 6 Communicate:** communication and the provision of information is the key to good leadership in a time of crisis.

from the Ministry of Justice and the senior bench and people working on solutions but there is an immense amount of work in the pipeline."

Mark Williams is also expecting a long tail in immigration from this year.

"It's going to take at least two to three years for the immigration industry to recover, but I'm optimistic we will see changes at the border. I also think that immigration lawyers and advisers will be in more demand as the policies become increasingly complex. It is going to be far more challenging for people to complete their own applications without representation moving forward."

Terms like lockdown, alert level, contact tracing, essential and non-essential have become mantras of 2020, seeping into all aspects of our professional and personal lives. As 2021 approaches it's highly likely they will continue to dominate conversation, but it's equally likely most of us feel like Mark Williams in never wanting to repeat this year. ■

LOOKING BACK AT 2020

New Zealand shows constitutional humility

BY **MORWENNA GRILLS**

2020 SAW THE INTRODUCTION OF POWERS from the Government the likes of which have never been seen before. All of us were ordered to stay home, and on the whole almost all of us did. Something that any other year would have seemed like a dangerous slide into 1984 territory.

But the Government didn't go down the road of using a vast new power to declare authoritarian rule, instead they did it the kiwi way – or as Dr Dean Knight from Victoria University of Wellington likes to put it – with “a degree of pragmatism and some doses of constitutional humility”.

“This was one of the biggest public law incidents of a generation, and what we saw the Government doing was extreme but with a wise purpose,” says the Associate Professor, Faculty of Law and member of the NZ Centre for Public Law.

“But what's really interesting about the New Zealand response was that it wasn't constitutionally bombastic. The Government didn't immediately seek new powers or immunise them from constitutional challenge. They looked at existing ones and how those could be pulled together through some innovative pragmatism.

“In fact, all the orders that were made and continue to be made under the Health Act and the Covid-19 Public Health Response Act are secondary legislation. They are subordinate instruments that can be invalidated if they're inconsistent with the Bill of Rights Act. They can be disallowed through Regulations Review Committee processes on the grounds that they unduly trespass on our rights.

“So unlike so many other countries, New Zealand has traversed the legalities of lockdowns, not regardless of human rights, but with the aim to be consistent with human rights.”

Dr Knight believes the level of accountability the Government has held itself to is one of the reasons that the “team of five million” formed such a tight bond, and



Dr Dean
Knight

So unlike so many other countries, New Zealand has traversed the legalities of lockdowns, not regardless of human rights, but with the aim to be consistent with human rights

we haven't seen the kind of protests and civil disobedience that other nations are grappling with.

“When I talk about constitutional humility, part of that for me is the level of accountability the Government exposed itself to. They didn't shut down democratic checks and balances, they worked with them – decisions were explained and continually interrogated in order to enhance their legitimacy.

“For example, when I mention to colleagues abroad that Cabinet papers are being released on a monthly basis, their jaws literally drop. They're getting nothing like the information we have here – blow by blow accounts of the decisions that were made by Cabinet during the height of the lockdown.”

Another interesting point of difference with our public law that Dr Knight points to is the fact that as a culture we're not litigious by nature. We've not seen the rush to test Covid laws in court like there has been in other countries, apart from the notable Borrowdale case well after the lockdown was lifted.

Whilst our approach has been very different to other nations, Dr Knight is keen to point out that not everything has been perfect. Early messaging during the lockdown was condemned for breaching the rule of law. There has been rushed legislation which wasn't tested at the appropriate point by Select Committee. And the wrong version of a Bill was passed but nobody noticed!

“It's important to remember from this time that, while the Government can act at speed and laws can be passed quickly, this was an exceptional time. This way of doing things can't bleed into normal life.

“But what this year has shown is that we have a pretty good constitutional culture, built over decades, with strong values and lessons learned from previous emergency legislation, such as the legislation passed following the Christchurch earthquakes.

“We've shown an ability to learn and adapt through emergencies like Covid, even though we probably were underprepared. And when our small system of government comes to the party running at full steam, it is overall pretty top notch.”

Now the greatest challenge facing our country heading into 2021, says Dr Knight, is how we reintegrate with the rest of the world. ■



LOOKING BACK AT 2020

Tikanga in 2020

An interview with Natalie Coates

FOR THE WHAKATĀNE BASED KĀHUI LEGAL Partner 2020, hasn't only been dominated by Covid. This year will be the one she remembers for the case she hopes will significantly progress the recognition of tikanga in our legal system. Natalie Coates was at the forefront of making New Zealand legal history this year when the Supreme Court allowed former Christchurch Civic Creche worker Peter Ellis's appeal against charges of sexual offending to continue, despite the fact he died in 2019.

What's your experience of 2020 been like?

2020 for me has been a huge year of highs and lows for so many reasons - both professionally and personally. One of the highlights was being involved in the Ellis case that shone the spotlight on an issue that I have long been passionate

about - the intersection between tikanga and the state legal system. The fact that the Supreme Court asked for submissions on the relevance of tikanga and that the Crown accepted as a base proposition that it was relevant, shows how far we have come on these matters.

In terms of the lows - Covid was a battle for everyone and has made this a remarkable year to live through. I also ruptured my achilles trying to relive my 18-year-old soccer self so I had a moon boot on for part of the year and am still going through a slow recovery period. It makes keeping up with my energetic three year old a challenge.

Why was the Ellis case so critical?

Although the Supreme Court have allowed the Appeal to proceed posthumously, the Court has not yet published their reasons. So we are still not sure what they are going

to say. But I think whatever happens, we're on a journey and a nation-building exercise and the Ellis case is but one small part of that.

Tikanga is the first law of Aotearoa. In the last 40 years we have moved on from the period of rejection and active suppression, have accepted that tikanga is part of the common law, and are now engaged in testing the bounds of that recognition on a case by case basis. The challenge going forward more broadly is how tikanga can inform the state legal system in ways that are genuine, meaningful and culturally safe.

During the hearing earlier this year you used the analogy of state law and tikanga being like a whariki (woven mat) - can you explain what you meant?

I drew on a well-quoted saying by Potatau Te Wherowhero who at his coronation as the first Māori King in 1857 said (in te reo) there is but one eye of the needle through which the white, the black and the red threads must pass.

I invited the Court to conceptualise the law as a whariki (woven mat) and themselves as one of the kairaranga (weavers) that develop and add to this rich tapestry of law. I argued that when they are engaged in that task, not only can they draw on the thread of law as it derived from England

but also to tikanga Māori.

Sometimes people talk about a blending of the laws, but visually I didn't think that quite hit the mark. It conjures up a mixing and dilution into one big messy picture. The weaving metaphor worked better because the threads retain their true colours.

I also thought it worked because the whariki represents the fabric of law in Aotearoa more broadly, and is not just limited to the state legal system. In that sense, not only are the Courts and Parliaments weavers but so is society and Māori communities themselves.

This has always been the case, but I thought it was highlighted last year when there was the eruption of Whakaari – and the local iwi placed a number of rāhui that prohibited people from going into the sea in peak summer. I was really proud of our local community as it was universally abided by. We didn't need Parliament or the Courts to say it or enforce it. The rāhui was a form of law that, for lots of different reasons, was followed.

How does this year and the Ellis case in particular fit with your journey into the law?

With the Ellis case I feel like I was just at the right place at the right time. The relevance of tikanga would not have been identified, nor the argument we ran have been made, even ten years earlier. I feel like we are practicing law in a particular context at the moment.

There are lots of things that go into this including: increasing legislative references to tikanga and Te Tiriti o Waitangi; the Supreme Court affirming that tikanga is part of the common law; a post-Treaty settlement era where the Crown-Māori relationship is being reset and Māori continue to strengthen and rebuild. Tikanga aspects are now taught at all law schools and there are more Māori lawyers and Judges than ever before.

All of these things are culminating in an exciting time to be in the law – as well as a scary one. I think that the navigation of this complex intersection between tikanga and the state legal system is one of the major challenges of the moment: for the judiciary, for the law profession and for society.

As a young Māori student what was your experience of going to Dunedin to study law at the University of Otago?

Going to Otago was a huge culture shock. I went from a small Māori town to Knox College, Dunedin where I was one of the few Māori there. I took about six months to get over being homesick and adjust to scarfie life. But I was so glad I went through that experience, it taught me invaluable life lessons and I have some amazing friends from that time.

I joined Kāhui Legal because it aligns with my interest and I supported the kaupapa of the firm which is to use the law and push the boundaries of it in ways that go towards advancing the well-being of Māori

I was also fortunate to have Professor Jacinta Ruru as one of my lecturers. As a young Māori woman I could see a bit of myself reflected in her. She was incredible then, and still is now. In fact, she definitely remains a role model (and friend) to this day.

And after law school – what happened then?

When I finished law school I initially decided I didn't want to be a lawyer! I did a very ill-timed OE to London during the global recession, returning to New Zealand after a year or so to take up a short-term junior role with Aurere Law under Annette Sykes. I then went to Harvard before returning to work as a lecturer at the University of Auckland, Faculty of Law.

I loved teaching but in 2014 I decided to try my hand at practise. I joined Kāhui Legal because it aligns with my interest and I supported the kaupapa of the firm which is to use the law and push the boundaries of it in ways that go towards advancing the well-being of Māori.

I keep a hand in teaching, doing the odd seminar. I think teaching has influenced my work as a practitioner. One of the subjects I taught before I went into practice was jurisprudence – in that subject you are engaging with theories of law and fundamental questions around what is the law and how it works. Although on the face of it, it seems theoretical, when you are working on the hard cases it has practical application. I draw on those ideas as a lawyer.

You mention Harvard University – what was that like?

I love academia and learning in general. It gives you the freedom and space to think and challenge and explore ideas. So I loved that year at Harvard because it allowed me to do that more.

Harvard itself has marketed itself exceptionally well. I had applied on a whim and when accepted I was naturally terrified that I would be completely out of my league. But what I found is that everyone there is human like the rest of us. It took a bit of time to get used to the Americans that fight each other for air-time in class (our style is to tend to hang back unless asked). But we can foot it amongst the best and in some ways we are more advanced. I was disappointed with how little focus they had on indigenous issues there.

One of the most valuable things for me was the exposure to people from different countries. I had friends from Poland, Syria, Brazil, India all over Europe. Having that level of concentrated diversity of background, culture and thought was a privilege.

2020 is nearly over – what's 2021 looking like for you?

First of all I'm really looking forward to Christmas and having a break with my family!

After that 2021 for me is really more of the same when it comes to work. I'll be continuing to work for our clients, to do the best I can for them. It's a huge privilege to be able to work on issues that I care about. ■

LOOKING BACK AT 2020

The challenges facing the new Labour Government in justice

BY **BRIGITTE MORTEN**

THERE ARE UNLIKELY TO BE ANY SURPRISES in the 53rd Parliament when it comes to justice reform. At least if the manifesto commitments and ministerial appointments are anything to go by.

The appointment of Kris Faafoi to the justice portfolio was not predicted but signalled the Prime Minister was after a safe pair of hands. Faafoi is respected across the House. And other than a blip earlier this year where he promised preferential treatment on an immigration matter, he has had a clean record.

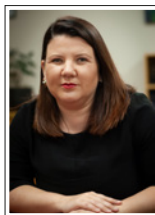
Much has been made of the fact that the line-up of justice sector Ministers – Kris Faafoi, Kelvin Davis, Poto Williams, Willie Jackson and Aupito William Sio – are all Māori and Pasifika. This has resulted in two key narratives. First, that they will be under increased pressure from within their own communities to address the inequalities in the justice system, and second that they will be best to address it.

However, the likelihood of significant justice reform comes down much more to political context than it does to political intent.

Resourcing

It will be challenging to direct resources to justice reform. The Prime Minister has made it clear she has a Covid Cabinet to tackle a Covid impacted country. Resources will be directed at measures that either protect us from Covid or assist in the recovery. The budget allocation (Vote Justice) for justice has very little to directly offer to either outcome.

Labour's 2020 Election justice manifesto focuses on a wellbeing approach; addressing factors of criminal offending before they get anywhere near the justice system. This is a continuation of the Bill English



Brigitte Morten

Ministers across the Justice Sector

Minister of Justice: Kris Faafoi
Associate Minister of Justice: Willie Jackson
Associate Minister Justice, and
Minister for Courts: Aupito William Sio
Minister of Corrections: Kelvin Davis
Minister of Police: Poto Williams

social investment approach. For this to work, minimal investment is made in Vote Justice itself and resourcing is redirected to early intervention in health, education and social welfare.

Finance Minister Grant Robertson runs his budgets using multi-agency bids. Ministries must work together to put in joint bids that demonstrates they are taking an across government approach to targeting spending. But the new Justice Sector ministers have only small roles in the

portfolios driving the required cross agency bids. And not a lot of political power to drive their budget bids.

For there to be real change, the justice team needed to also have senior portfolios in education, health or Finance. Lifting educational achievement across the community and targeting early mental health initiatives to those most at risk will be required.

Political capital

It is assumed the first majority government under MMP will have the political capital to spend on whatever reform is needed. However, Labour got to a majority by capturing some National voters based on their Covid record. These voters will bring with them their views on law and order.

Labour is not immune to running the 'tough on crime' narrative to reflect the

The appointment of Kris Faafoi to the justice portfolio was not predicted but signalled the Prime Minister was after a safe pair of hands. Faafoi is respected across the House



views of the people. It was the Prime Minister's mentor, Helen Clark, who implemented the outcome of the 1999 referendum. This referendum called for a greater emphasis on the needs of victims, and imposing minimum sentences and hard labour for all serious violent offences. The measures taken under the fifth Labour Government directly contradict the approach to justice the current sixth Labour Government is taking. And were a cause of the prison number increases they are now fighting to get under control.

This trade-off between reform and political capital will be highlighted with the repeal of the Three Strikes Law. Former Minister of Justice Andrew Little made no secret of his desire to repeal this law as soon as possible, and that it was NZ First preventing them from doing so.

The repeal is almost certain to go through now but it will be an easy area of attack for the Opposition. It will only take the first case of a person committing an offence who would have otherwise been in prison under Three Strikes Law

The policy priorities of Minister Faafoi are yet to be seen. It is not clear whether he will pursue the same policy agenda of his predecessor and whether he will have the same determination to get them through

for voters to demand tougher action on crime. This will put at risk any other law reform the Government wants to do. If it wants the repeal to be successful, the Government is going to need to be able to show positive change in the early intervention areas.

New Minister Priorities

The policy priorities of Minister Faafoi are yet to be seen. It is not clear whether he will pursue the same policy agenda of his predecessor and whether he will have the same determination to get them through. Since the March 15 terrorist attack, the Government has been promising to introduce new hate speech laws. They are currently under review and both Andrew Little and Jacinda Ardern strongly advocated for stricter laws prior to the election.

Similarly, new Green Party Minister Marama Davidson has taken the work on sexual and family violence from her predecessor, then Parliamentary Under-Secretary Jan Logie. The Sexual Violence Legislation Bill was stalled in the House prior to election by NZ First. This Bill will change how victims of sexual violence give evidence. NZ First didn't outright oppose it but raised concerns about the changes to admissibility of evidence. Lawyers in submissions to Select Committee raised concerns about a defendant's right to a fair trial. It is unclear whether the Government will take this opportunity to reconsider the Bill.

Covid response

The backlog and disruption to the justice sector, particularly in the courts, caused by Covid show little sign of abating. In July, the Government announced \$50 million for the COVID-19 Response and Recovery Fund to provide for additional judges, court support, Police prosecution and corrections staff. Inherent in this funding was an assumption that prosecutions for Covid response breaches would also increase the pressure on the courts.

Legislative issues arising from the Covid response are ongoing. The management of commercial leases was never really resolved and there are still issues with



The most significant challenge facing the new justice team will be getting heard. Meaningful justice reform rarely gets the political attention it deserves, and usually only negative attention

the implementation of the Covid response legislation.

Unfinished Business

There are a number of ongoing issues the new Minister will have to deal with. Possible extradition of Kim Dotcom will likely draw public attention after another round in the Courts, although interest in the case is diminished.

The close result on the cannabis referendum means

there is unfinished business on drug reform. When the results were released, Andrew Little appeared to close the door on any further action. But the Greens won't quit this fight and say they will at least push for decriminalisation and no-prosecution policies.

Labour's election promises in drug reform focused more on what to do with people with drug issues appearing before the courts, including a meth treatment programme and a drug and alcohol court.

The Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions will release an interim report in December and a final report before January 2023. The Ministry of Justice is one of eleven agencies supporting this inquiry and it is likely that there will be changes recommended to the justice sector as a result of the inquiry.

The next term

The most significant challenge facing the new justice team will be getting heard. Meaningful justice reform rarely gets the political attention it deserves, and usually only negative attention. This will be so much harder in a Covid world when the policy agenda is much more crowded. ■

Brigitte Morten is a Senior Consultant with the Wellington based firm Franks Ogilvie. Brigitte has over a decade of experience working in politics across Australia and New Zealand. She was a Senior Political Advisor to the Education Ministers in the last National Government. She has a Bachelor of Law from Victoria University, a Masters of Law from the Australian National University, and a Graduate Certificate in Counter-Terrorism from Interdisciplinary Center (Israel).



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LOOKING BACK AT 2020

Law Reform ‘year in review’

2020 HAS BEEN AN EXTRAORDINARY year and the Law Society has been heavily involved in working on the legislative response to the many challenges Covid has thrown up for the justice system, the profession and New Zealanders – in addition to our normal ‘bread and butter’ law reform and advocacy work.

This work is central to representing the profession and speaking out in the public interest on key issues such as access to justice, constitutional protections, the rule of law, operation of the justice system, and the quality of legislation.

In total, the Law Society made more than 100 submissions during the year to government departments, the Rules Committee, the senior judiciary and Parliamentary select committees, and appeared at many select committee hearings about Bills. The submissions covered virtually all areas of the law and legal practice, and express views on behalf of the profession on many significant reform proposals. The work is carried out on a voluntary basis by lawyers on the Law Society’s 16 specialist committees, Family Law and Property Law Sections, and Law Reform Committee. It is an immense collective effort on behalf of the profession and in the public interest, and is central to our engagement with the government and the judiciary.

Covid was a significant focus in the first half of the year: the Law Society and its volunteer contributors worked closely with judges and officials, particularly in the Level 4 lockdown period, on many urgent changes to court rules, legislation and justice sector operations. That work, and other significant topics

Enhancing civil access to justice

IMPROVING ACCESS TO JUSTICE in the civil courts has been a key theme in 2020. The Law Society’s Civil Litigation & Tribunals Committee has spent a lot of time discussing reform options for the rules governing civil trial procedure and solutions to reduce barriers in the civil justice system.

The Committee prepared the Law Society’s submission to the Rules Committee regarding reform options to improve access to justice by reducing the cost of bringing civil matters to court. The Law Society supports changes that require early, substantive and flexible case management, minimising the procedural steps required to resolve disputes fairly and effectively. The Law Society also supports modernising the rules by embracing technology, for example by further enabling remote participation in hearings.

The Committee also provided extensive feedback to the Rules Committee on proposed changes to the costs rules, which currently prevent successful self-represented litigants from being awarded costs.

Another significant development was the Supreme Court appeal in *Southern Response v Ross*, concerning the principles that apply in deciding whether class actions should proceed on an ‘opt-in’ or ‘opt-out’ basis. The Law Society was invited to intervene as a neutral party, on issues of significant public interest regarding the procedures for efficient and fair conduct of representative proceedings and access to justice. While comprehensive legislation is the preferred solution, the Law Society submitted that the senior courts are institutionally capable of addressing procedural questions arising from opt-out orders.

on which we made submissions – and in some cases appeared before select committees and the senior Courts – included:

- **Covid urgent legislative response:** Submissions on a number of fast-tracked bills, including the Immigration (COVID-19 Response) Amendment Bill 2020, the COVID-19 Response (Further Management Measures) Legislation Bill and the COVID-19 Recovery (Fast-track Consenting) Bill.
- Brief comments at short notice

on a consultation draft COVID-19 Public Health Response Bill, and a comprehensive submission on the select committee post-enactment inquiry into operation of the COVID-19 Public Health Response Act 2020.

- **Covid legality:** Comments to assist Parliament’s Epidemic Response Committee scrutiny of the emergency legislation response to the Covid pandemic, and Intervenor submissions to assist the High Court in a judicial review



of the legality of the Government's Covid lockdown restrictions.

- **Legal & operational issues arising from Covid:** intensive engagement with officials and other stakeholders, particularly in relation to the operation of the courts, immigration and tax.
- **New Zealand's legislative response to terrorism:** Following the Christchurch mosque terrorist attacks, submissions on the first urgent firearms legislation reforms, and subsequent tranche of reforms, and comments on NZ Police consultation about the potential introduction of Firearms Prohibition Orders, and Comments on the Terrorism Suppression Control Orders Bill regime, enabling serious restrictions to be imposed on people coming into NZ suspected of participating in terrorism-related activities overseas.
- **Access to legal advice:** Intervenor submissions in an appeal to the Court of Appeal re the Police Detention Legal Assistance scheme and NZBORA rights.
- **Class actions and litigation funding:** Intervenor submissions

The criminal justice system – responding to the Covid pandemic

MONITORING THE IMPACT OF COVID on the criminal justice system was a priority for the Law Society's Criminal Law Committee in 2020. Adjusting to more remote ways of providing legal advice and appearing in court quickly became the norm for most criminal lawyers.

Led by the Chief Justice, the courts had to quickly adapt to ensure that as an essential service, they remained operational. From early March, the courts engaged extensively with the Law Society and others to plan for and effectively conduct court business. It took a collaborative effort from all participants to keep the wheels of justice turning. The health and safety of all court users was prioritised while ensuring that operational changes upheld the rule of law and fundamental rights.

The committee provided feedback on a wide range of issues including

the use of remote technology, health and safety measures, court protocols, and problems lawyers encountered on a daily basis during lockdown.

The committee also closely monitored lawyers' access to clients in custody, which saw significant variations throughout the country. The Law Society appreciated the opportunity to raise concerns directly with Corrections to ensure access was facilitated via alternative means.

Looking ahead to 2021, there will be opportunities to consider what we learnt during the pandemic and apply that to criminal practice. Access to justice will remain a paramount consideration: as the Chief Justice has said, innovations to facilitate better access and improve administrative efficiency will not overturn the fundamental premise that in New Zealand justice is administered *kanohi ki te kanohi* (face to face).

to assist the Supreme Court in relation to procedures for efficient and fair conduct of representative proceedings; the appeal involved issues of significant public interest, including access to justice.

- **Civil access to justice:** Feedback to the Rules Committee on significant proposed civil rules reforms.
- **Sexual violence legislative reforms:** Submissions on significant legislative reforms relating to sexual violence trials.
- **NZBORA Declarations of Inconsistency:** A submission supporting reforms enabling the government and Parliament to consider and respond to declarations of inconsistency made by the senior Courts, under the

New Zealand Bill of Rights Act 1990 or Human Rights Act 1993.

Heading into 2021

We anticipate a busy year ahead, as the new Government progresses its legislative agenda. Government priorities already signalled include the ongoing restructure of the family justice system, reform of the criminal justice system, an ongoing focus on improving access to justice and updating a number of outdated statutes. The Law Society will continue to monitor reform proposals and contribute views on behalf of the profession. ■

NZLS submissions are available at www.lawsociety.org.nz/news/law-reform-submissions. For more information contact lawreform@lawsociety.org.nz.

Law Reform and Advocacy team:

Vicky Stanbridge – Manager Law Reform
 Nilu Ariyaratne – Law Reform Advisor
 Amanda Frank – Law Reform Advisor
 Emily Sutton – Law Reform Advisor

Covid – the tax response

ASSISTING WITH THE DEVELOPMENT OF urgent tax law changes to respond to Covid was a key focus for the Law Society's Tax Law Committee in 2020. Tax practitioners on the committee worked alongside Inland Revenue and other stakeholders to help navigate the Covid crisis.

The committee considered, usually at very short notice, a wide range of new tax issues affecting New Zealand individuals and businesses, as well as previous issues brought to the fore by the pandemic, including:

- Business debt hibernation
- Small business cashflow loan scheme
- Loss carry back scheme
- The Commissioner's care and management and statutory variation powers
- Reimbursing employees for work from home costs

The rule of law and legislation

The Law Society's remit is to uphold the rule of law and to support clear, workable and accessible legislation. As recently observed by Law Society President Tiana Epati "responding to the [Covid] crisis requires a

commitment to the fundamental values that underpin our legal system" (Lawtalk 939, May 2020, p14). Public scrutiny and input into the law-making process and the maintenance of the rule of law are critical considerations, and never more so than in a crisis.

Broadly speaking, the committee is concerned that tax legislation is being drafted at pace. Currently we see a vast amount of legislation produced each year by a very small team which gets insufficient scrutiny, so there is a lack of opportunity for considered review and comment. We acknowledge the need for a reasonably speedy legislative process, but the appropriate quality checks and independent scrutiny need to be built into the system. In our view there is also a need for greater separation and independence of the tax legislation drafters, and a more disciplined and principled drafting process – including reducing the current over-reliance on supplementary piecemeal amendments and secondary legislation.

The committee and the Law Society will continue to engage with officials on key tax issues in the next phase of the Covid response.

FAMILY LAW

Adoption and Surrogacy

BY **ANNIE
RAKENA**

Auckland based lawyer Annie Rakena shares her journey supporting a couple on their road to parenthood via surrogacy and adoption; a road interrupted and made even more challenging by Covid.

We are hugely grateful to Annie for her words and to Matt and Steph Larnder for allowing her to tell their story. We wish them and baby Grayson the very happiest of lives.

Why I wanted to tell this story

For almost a decade now I have handled a range of family court cases. Perhaps more than any other field family law is inherently emotional because the cases are about people's biggest life choices. There are feelings of failure, grief, hate and on occasion happiness.

While it helps to be empathetic, I won't be the first family lawyer to admit that at times it can also be hard professionally to be objective in the break-up of a family. As the years go on you start to feel insane because you cycle through all sorts of clients and cases. You will have more than one client break down in tears as you advise them of legal realities. Divorce and separations make the most rational people – you know – irrational.

However, every now and then, you come across a case or client and you take a deep breath and you think, well this is the reason why I do what I do. Which is why I wanted to share my recent experience that was unique and inspiring. An experience that makes me realise that I do love my work and love what I do.

I wanted to take this opportunity to speak about this case because it

touched me both personally and professionally. It reminded me of the difficulties that people can face and also the amazing gift that other people can give just out of the kindness of their hearts.

Matt and Steph Larnder

Steph and Matt met as teenagers and always dreamed of one day having a child. But they knew it would be challenging.

When Steph was born she was three months premature and suffered complications affecting her heart. A new drug was trialled, but it failed, causing major damage to her intestines. At just a few months old she had 17 centimetres of her intestines removed. Since then she's suffered multiple problems with her digestive system and had many trips to hospital.

Fast forward to 2014 and Steph was diagnosed with endometriosis. She suffered for years with the symptoms of the condition which uniquely affected her due to her own medical history.

Matt and Steph wanted to become parents but the advice of medical professionals could not be ignored. So, at the age of just 25 Steph had a hysterectomy.



▲ Annie Rakena

The rocky road to surrogacy

Matt and Steph considered all their options as they wanted to complete their family with children. They did a New Zealand adoption course through Oranga Tamariki and started their journey to adopt.

But in 2017, Steph's sister offered to be an egg doner and surrogate. Matt, Steph and her sister embarked on the process of surrogacy – meeting with a Fertility Clinic where they were assessed and granted the rounds of invitro fertilisation (IVF).

In the months that followed they completed a series of counselling sessions as a couple. They progressed to the stage of meeting with independent lawyers,

completing necessary paperwork for reports that were being prepared for the Ethics Committee on Assisted Reproductive Technology (ECART). ECART is a ministerial committee established under section 27 of the Human Assisted Reproductive Technology Act 2004 that reviews, determines and monitors applications for assisted reproductive procedures and human reproductive research.

Along the way, Steph's sister became unsure about being both egg donor and surrogate, and they put the process on hold. This was, as you can imagine, a very difficult process for a sister and her family, let alone this couple having to go through the emotional rollercoaster of "what ifs" and "whys" once again.

In the end, Steph's sister decided that she was happy to complete an IVF cycle as the egg donor only, which meant they needed to find a surrogate.

They embarked down the road again with a friend from high school but, unfortunately, she withdrew. For Matt and Steph this was another round on the emotional rollercoaster of "what ifs" and "whys".

At this point, the process of fertilisation was successful and embryos were frozen while they waited for the right surrogate to come along.

About six months later Matt and Steph put an anonymous post on a New Zealand-based fertility/surrogate Facebook page and this is where they met their surrogate. Over the next few months they got to know each other, they met the surrogate, her family and her children. That particular person stood out as having a selfless motivation to do this. For those of you that do not know, it is illegal to pay a surrogate in New Zealand. Further to this, the surrogate was also an animal lover, appreciating Steph and Matt's fur baby, Titan.

This person agreed to be their surrogate and they began the process again through the fertility clinic, which included counselling and independent legal advice.

2019 started off with monitoring the surrogate's fertility cycles and unfortunately again there were many months where it did not go to plan. But in July 2019 their embryo transfer was completed, and 10 days later the results came in that the transfer was successful. At that stage they were officially four weeks and one day pregnant.

All of the years of heartache and struggle did not seem to matter anymore as their dream of becoming parents was getting closer and closer. Throughout the pregnancy they celebrated every milestone, including a baby announcement, a gender reveal and a baby shower. They furnished their home ready for their baby boy's arrival.

Throughout this process, Matt and Steph made the decision that they would breastfeed their son. So



from week 20 of the pregnancy they engaged a lactation specialist. Steph was prescribed a series of medications and also began a daily pumping routine to induce lactation. This process was highly successful which saw her lactating and producing milk without issue.

The birth

In the first week of the Covid Level 4 lockdown, on 1 April 2020 at 11.36pm weighing 7lb 6oz, Grayson Christopher Larnder was born at the North Shore Hospital by way of an emergency caesarean.

Due to the implications of lockdown, Steph was the only one permitted to be present in the hospital during the course of the labour, as well as at Grayson's birth.

Grayson was born, handed straight over to Steph and placed on her chest for skin to skin. Such an overwhelming feeling flooded her. Grayson latched perfectly and was able to breastfeed right from when he was born.

You must be thinking, where is Matt? Matt was in the hospital carpark waiting anxiously, alone, in isolation for the duration of the 12 hour labour.

The final stage – Adoption

Despite the arrangement that Matt and Steph had with the surrogate they had to go through a legal process to adopt their son – even Matt, who was the biological father of Grayson.

So cue the social worker who has been working with Matt and Steph throughout the IVF process. They provide a report to the Ethics Committee, speak to the surrogate (who is legally considered the birth mother) to obtain her verbal consent for an approval pursuant to section 6 of the Adoption Act granting Steph and Matt permission to leave the hospital with Grayson.

A few hours after Grayson's birth, he is discharged from hospital and

an elated Matt and Steph head home to start their new life together.

But to legally complete this process, an application to the Family Court has to be made and on the 13th of September we appeared in the Papakura Family Court before His Honour Judge Mahon under COVID-19 level 3 lockdown conditions.

As Judge Mahon delivers his Oral Judgment giving the reasons for granting a Final Adoption Order, I turn around and everyone in the Court room has tears running down their faces.

Everyone is there – Matt and Steph, the egg doner, the surrogate, the social worker and of course baby Grayson. The Final Adoption Order completes the process for Grayson – Matt and Steph are his legal parents. But they will need to go through the entire process again for Grayson's sibling.

For me it was an overwhelming experience, a unique case and one I will always remember in my career. That day will forever remind me of the force for good that lawyers can be.

Should the law change?

In terms of the law, there is no legal framework around surrogacy.

The subject of surrogacy sheds light on a number of complex issues such as legal ownership of an embryo once transferred to the surrogate, enforceability of surrogacy agreements and the legal status of the surrogate and genetic parents.

The Adoption Act 1955 was made during a time where children being born out of wedlock was treated as if it never happened, so the idea of surrogacy and the complex issues of women birthing children not biologically related to them is never going to fit within this legislation.

The reality is that society – our values, our science, our expectations are well beyond the 1955 adoption



legislation and this specific legislation has failed to catch up.

Earlier this year Labour MP *Tāmami Coffey* lodged a Member's Bill, Improving Arrangements for Surrogacy Bill, aiming to update the rules on surrogacy. This followed his own road to parenthood with husband Tim Smith.

The bill will amend five acts and two sets of regulations to simplify surrogacy arrangements, ensure information recorded on birth certificates is complete and provide a way to enforce surrogacy arrangements in case an intending parent chooses not to take custody of the child.

Steph and Matt are hopeful that parliament will move on the new proposed surrogacy bill as a priority. ■

IDENTITY IN LAW

Grief, when it has nowhere to go

BY **HIBA
HUSSAIN**

Hiba Hussain is a young lawyer who comes from a Muslim family. She is at the beginning of her career, having practiced at a boutique commercial law firm in Wellington for almost two years, and is interested in the areas of criminal law and litigation.

Hiba shares her struggle of dealing with the Christchurch Mosque attack and how her experience intersects with the legal profession. She hopes her writing is able to spark conversation amongst lawyers in relation to identity and mental health.

THE SPACE LEFT BY THE LOSS OF someone is all but an uncommon occurrence. It may begin with a grandparent, and seep its way into losing a person who you never expected to lose. There is often a tonne of emotional labour used in trying to fill that space again.

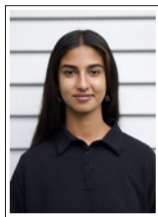
We go a lifetime of trying to explain grief, and cope with loss. We understand rationally that it is the natural course of life, or that accidents happen, and people leave. We understand that the person who leaves, will cause a ripple effect in the lives of those they immediately affected.

It is a bit more difficult to explain grief when you did not know the person who has left. However, the space is still there, and in this instance there seems to be an extraordinary amount of emotional labour required.

That is the aftermath of the Christchurch Mosque shooting on March 15, 2019.

Identity in New Zealand

It is difficult to convey to those



Hiba Hussain

who have always felt like they belong what it feels like to not. It is a special type of displacement, where you know you are at home but sometimes feel like a guest.

Let us begin with a child attending a school in a town in New Zealand.

This child looks different, sounds different, eats different, and quite frankly is different. This child is the product of parents who are not Pākehā. The child is a part of a community, where people share names which sound like her name. All the child knows is the affection of her parents, and the worldview of her community.

At school, the child is fully aware of the difference, not just from noticing it from her own eyes, but because other children do not fail to make it apparent. The adults make a slight effort to conceal their thoughts, but their aloof glances at the child and her family have the same effect.

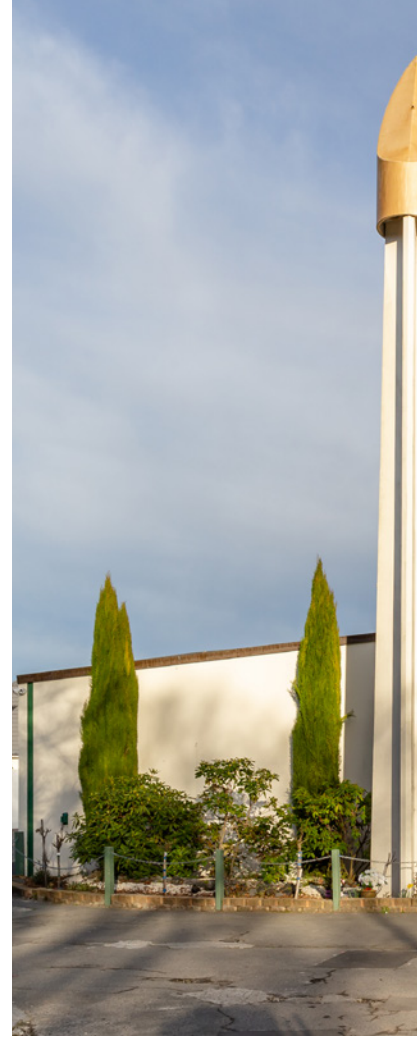
Each day at school, the teasing, the remarks, the insults accumulate. *Why is it not okay to be the way I have been so far? What is wrong with me? Do I have to change?* Naturally, the

child has to make a choice: being in, or being out.

The child adopts a New Zealand accent, noticeable mannerisms and any cultural norms she can. She fights the uphill battle of not feeling as if she is on the outskirts of a secret society. She makes Pākehā friends. She is grateful that they provide her with an entrance to a club which once seemed unattainable.

At home she finds comfort in the child she used to be – eating different food, speaking a different language, praying to a different God. But now to her parents, she is no longer that child. She has become different, to *them*. She challenges their ideals. She is ashamed of being seen with them wearing their clothing. She brings home friends that give them those aloof glances.

The dichotomy of home versus the outside form two personalities. The child is a mix of both. This grants her exposure, empathy, adaptability, and tolerance. However, for her, there is an ongoing internal conflict. Her home influences one and the outside accepts the other.





The child carries into adulthood a sense of estrangement.

Identity in law

For those like the child, estrangement is a perpetual feeling throughout the legal profession.

This is hardly surprising. A profession with its foundations in 19th century English common law naturally has a trickle-down effect of Eurocentric cultural ideals.

The profession invites and easily accepts those who are comfortable in a certain type of identity. As at 2019, 78% of lawyers stated they were of New Zealand European ethnicity.

This informs the way lawyers in New Zealand think, behave and interact. Everything from the adversarial system, to the topics discussed over workplace morning teas, to the necessity of alcohol as a social tool, to the requirement of having to know a lawyer in order to be admitted – the legal profession is a generational vacuum for homogenous identity.

The child, who is now an adult entering the legal profession,

▲ Al Noor Mosque, Christchurch

📷 Michal Klajban ⓘ

Her profession, which engulfs her life, requires her to present herself in a certain way in order to be accepted. Her existence in the profession is not as smooth as it is for the other 78%

naturally shuns the other side of herself to once again not feel that she is on the outskirts of a secret society. Her profession, which engulfs her life, requires her to present herself in a certain way in order to be accepted. Her existence in the profession is not as smooth as it is for the other 78%.

Racism and grief

There are few spaces where you can be honest with yourself. For those who are spiritually inclined, a Mosque serves that place. For those who no longer practice, a Mosque is an imperial symbol of their identity.

Friday March 15 was an attack on every Muslim in New Zealand.

The grief is two-fold.

There is the screaming agony for the families who lost someone. The loss of your brothers and sisters. They were those who had the weekend, year, and lifetime ahead of them – but had paused for one hour to reflect and pray. They were praying for their family who they would never return to.

There is then the damage from the loss of yourself. The child who looks different, eats different – is not welcome. Her fear of being exposed as an outsider is now a reality. It is quite clear that a part of what she represents is not accepted here. Despite all efforts to present herself as no different to any other Pākehā, the reality is that she is different and always will be.

The first type of grief slowly dulls its impact on those who are affected. The second type of grief – losing a sense of self – is a constant reminder of feeling inadequate, estranged, and lost.

Response and mental health

There have been vigils, protests, gun reforms, articles written, and a sentencing of the crime. The overwhelming government and media response has allowed for a small sense of pride for New Zealand.

However, that is where the pride stops.

Day-to-day, friends and colleagues do not know what to say to someone who is still grieving. The shock of the event has now worn off. The moment reduced to a mere hiccup in our history.

For Muslims, the sentencing decision re-opened all wounds. It brought back the screaming agony for families as the victim impact statements were read out.

It also brought back the reminder of the estrangement.

When people around you remain silent, it sends a clear message: *You feel the grief in a way others do not. It was an attack on your other community, and on the other side of yourself. We are only concerned with the version of you that we knew and we can relate to. The pain related to your other self is your problem, because you are different.*

The absence of acknowledgement and conversation about grief, identity, and ongoing impacts to mental health is reflective of the classic “she’ll be right” attitude. Actively checking-in on people, offering a shoulder to cry on, being

CONTINUED FROM PAGE 25

proactive in workplace mental health support, are all things that New Zealand does not have a culture of doing, let alone the legal profession. It may be because Kiwis don't like to be intrusive, or that we do not like to show vulnerability. Regardless, there are little to no cultural tools available for addressing an ongoing struggle.

For lawyers, our work is a second-home. We invest so much of ourselves into the profession; it is a part of our identity. The emotional barrier and impersonal culture that exists within the workplace is harmful. Failure to turn our minds to what people outside of the 78% may be experiencing worsens the harm. It reaffirms the message underlying the Mosque shooting, that is, anything outside of what the majority feels has no place.

If a response to a terrorist attack cannot push your awareness further, what will? Being a lawyer is a strong signifier of our identity, but it shouldn't compete with our capability to be human.

Where space is not made for conversations to cross bridges, for vulnerability to be accepted or for kindness to be promoted, other groups will continue to feel displaced in our second homes.

The tragedy of Ihumātao, Black Lives Matter, the Mosque shooting, any other catastrophic event may be affecting employees and colleagues in a way which you are unable to comprehend. The effect of these events may be ongoing. The solution is not to ignore, but to proactively reach out, and offer support. If workplaces wish to wave the flag of "diversity" then they must live up to it.

And if this article helps to further create a sense of awareness and understanding of other communities, their experiences with grief and how it entangles their identity, in turn our conversations about our identity, and our grief may become more present. For most lawyers it seems, this is the first step. ■

WHY I PRACTISE

Tania Te Whenua

Te Waiariki – Bay of Plenty

Kaupapa Māori

"I always wanted to be an advocate and a voice for those who can't easily advocate for themselves or whose voices are marginalised. I originally thought I would advocate for others in an international context. In my experience, growing up in Aotearoa, the stories we learnt about oppression always referenced other cultures. That's a living example of how New Zealand's education system ignores our own histories of social injustice.

Having said that though, my kaumātua, kuia (elders) were deeply aware of the oppression that we had faced as Māori having witnessed their communities being forcefully relocated from their lands after suffering debilitating invasion. My earliest experience of protest was being taken as a child by my koro (grandfather) to pick the tops of young pines that were growing on the confiscated land that neighbours our farm. When I entered tertiary education and had the ability to choose what I learnt about, I realised the true depth of oppression and inequity that we as Māori face in our own country. I became attuned to the flow on effect of colonialism that drives oppression today and which I myself have lived through.

I grew up in Ōpōtiki, raised by my mum – a solo mother of five, and her Tūhoe whānau, the Te Whenua whānau. In Ōpōtiki, the intergenerational impact of our early colonial history is palpable. We experienced some of the highest rates of land confiscations per capita during the "land wars" and now have some of the highest rates of socio-economic deprivation, including being named the homicide capital of New Zealand



in a Ministry of Justice Report published in 2019. The intergenerational impact of colonisation is not an issue that can be resolved overnight, without true partnership in the spirit of the Treaty of Waitangi the disparities will only continue to compound over time.

It's this background that fuels my passion and commitment to kaupapa Māori and the bigger picture of improved outcomes for Māori."

For my Whanau

"I studied law whilst raising my first two children and am now leading my own practice while raising my second two. My children have always been there with me throughout my career. I see them as a real source of motivation. Whānau is a hugely important part of my culture and values, as is the importance of raising well-grounded tamariki to step into the whānau legacy and continue to realise our values when I am gone.

My older children are now at Auckland University. My eldest is in the throes of completing a Bachelor of Medical Science and will begin a cardiology internship later this month where he is excited to work with Ngāti Porou who we whakapapa to on my father's side.

My daughter is also a social justice commentator who plans to create her first documentary this summer. My two younger children are just beginning their own journeys. Life is very busy, but I've become very effective at managing my time and commitments. I've had to, as without children I would not consider myself successful."

For my people

"As a Māori lawyer and advocate part of my work is supporting organisations to truly fulfil their commitment to the Treaty of Waitangi. I started this work in 2006 as the Programme Manager Māori at Victoria University's Centre for Lifelong Learning, and since then I've worked with organisations from every corner of the public sector. I'm currently working with the likes of Auckland University School of Medical and Health Sciences where I'm supporting a major strategic shift to strengthen the Māori health workforce and ultimately improve health outcomes for Māori. This is largely why I opened my own practice – so that I could devote my time solely to matters that are important to me.

I'm really proud to be representing a number of significant clients within the Waitangi Tribunal Mana Wahine Kaupapa Inquiry – an inquiry into the Crown's failures to adequately protect the mana of Māori women; a subject that is close to my heart.

These include my clients, the New Zealand Council of Trade Unions and the New Zealand Public Service Association in their claims alleging the Crown has failed to adequately protect wahine Māori from significant inequities in employment, particularly with respect to the gender-ethno pay gap and unconscious bias in the workplace. The Crown has a significant role to play as the biggest employer of Māori in our country and as a procurer of other significant employers, and lastly as the regulator of all employers.

I'm also proud to represent the Wāhine Toa (all female) Chapter of the Mongrel Mob Kingdom who claim that the Crown has failed to adequately protect them from acute levels of inequity such as intimate partner violence resulting in serious harm or death, for example via a system which treats deeply engrained mental health issues, addictions and associated disorders

This is largely why I opened my own practice – so that I could devote my time solely to matters that are important to me



as criminal justice issues. My clients are devoted to working from within their own institution to turn the tide and wish to be supported by Government in their efforts to do so.

Overall, what's at the heart of my work is my steadfast belief that after 180 years since the Treaty partnership was established it's not good enough that Māori are still at the sharpest end of every socio-economic statistic. We're more likely to leave school without higher education, most likely to receive the lowest pay, have the poorest health outcomes and the highest rates of youth suicide, not only in our own country, but in the OECD. We are 15 percent of the population and up to 67 percent of the prison population, with our women being most likely to suffer intimate partner violence resulting in serious harm or death. We need to see those statistics move and they will only do so through true partnership that aspires to achieve equity of outcomes for Māori. My role in all that I do, whether professionally or personally is simply to refuse to compromise on this aspiration." ■

Tania Te Whenua (Tūhoe, Whakatōhea) is the Principal of Te Whenua Law & Consulting based in Te Waiariki, the Bay of Plenty. She is passionate about social justice and Te Tiriti o Waitangi and practices as a lawyer within the Waitangi Tribunal whilst also consulting directly to organisations to realise the Treaty in practise.



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HOW WE PRACTISE

Māori values are the heart of our culture

"To oohonga ake i taku moemoeā, ko te puāwaitanga o te whakairo."
 Dreams become reality when we take action. — Te Puea Herangi

A SENTIMENT WHICH RENIKA SICILIANO, THE NEWLY appointed Executive Director of McCaw Lewis lawyers, believes in wholeheartedly. Renika considers it a privilege to lead an organisation with over 100 years of history and as the firm's first wahine Māori Director and now Executive Director she is excited to build on and add to the accomplishments of the firm and their vision as a Māori commercial firm.

In 2019 McCaw Lewis celebrated its centenary. Over the last 100 years the Hamilton based firm has changed significantly, evolving to reflect more modern values and practises. It's also had a growing focus on incorporating Māori values into its core practise, encouraging and enabling its 45-strong team of people to not only understand the culture of so many of their clients but to respect and value those cultural beliefs.

"At the heart of the change in our practise has been our values. These are values/concepts that have strong roots in te ao Māori, but at their heart, we believe they're common values that apply to all people – certainly to our whānau anyway. They're about guiding us in how we want to engage with each other, and as lawyers with our clients," explains Renika.

Working with a te ao Māori perspective is not a new practice for this firm. Since the very early Treaty settlements and Māori land matters, McCaw Lewis has represented Māori on a number of these fronts, primarily through their Māori Legal Team (now with 11 lawyers).

In 2016 the Directors made a conscious decision to cement their identity as a Māori commercial law firm. They retained all core services including property law, commercial, dispute resolution, employment law and asset planning to complement this new identity. This vision was successfully driven by former Managing Director, Aidan Warren. As new Executive Director Renika Siciliano explains, this has been about the evolution of how they deliver to clients across the whole firm, not just in one dedicated area.

"This means that no matter what assistance you are seeking, we will treat you as our whānau."

It's been a significant journey for many of the staff at McCaw Lewis. As Renika explains, the majority of staff are non-Māori so there were a lot of people who



▲ Renika Siciliano

weren't immediately familiar with the concepts, pronunciations and protocols embedded in Māori culture and language.

"Our clients have never said to us that they need "Māori lawyers" for "Māori issues". And we love that. For us, it's about having the people with the right skills, knowledge and understanding working in their areas of expertise."

"We work with a lot of Māori clients, across different teams at different levels. We have a Māori Legal Team dealing primarily with our iwi, hapū and whānau clients but it's important that – regardless of the work area – everyone across our firm understands and feels comfortable working alongside Māori clients.

"When we made a conscious decision to put more resources into this space in a really deliberate way, there was a lot of discussion

**This means
that no
matter
what
assistance
you are
seeking, we
will treat
you as our
whānau**



about our values and our story. Understanding the background and meaning is absolutely key for any collective goal. Those additional resources included running monthly te reo sessions at different levels covering those who were starting, those who knew some basics and those of us who were more advanced.

“It wasn’t compulsory, but almost everyone did it and the feedback was great.

“Our firm has been grateful to visit our local Marae including Kirikiriroa Marae in Hamilton and Tūrangawaewae, Ngāruawāhia. The purpose of this was to help our staff to feel comfortable in those spaces and to embed the importance of matters of tika such as karakia, mihi and waiata.”

Underpinning the practice of this firm are the values of whaia te iti Kahurangi, manaakitanga and kotahitanga.

“It’s not so much about the Māori or tikanga aspect, it’s that value of manaakitanga and demonstrating

care for those around you regardless of a person’s cultural background,” explains Renika.

“It is also about kotahitanga, which is about working together as a whole firm to deliver for our clients. And working as one with our clients.”

Sitting alongside these values is the passion for excellence demonstrated in the value of “whaia te iti Kahurangi”.

“We know that our clients deserve the best and ensuring we have a constant passion for excellence enables us to show our clients how we care.”

Cultural practise across the legal profession

“As a wahine Māori I am excited to lead McCaw Lewis into the future and to continue to go from strength to strength in the development of our reo and tikanga within the firm. We have come a long way, but there is always more to be done.

“Law firms are certainly becoming more and more culturally responsive

and I see a lot more out there about te ao Māori, celebrating te reo Māori and the role of tikanga/kawa.

“But it’s like many things, in some pockets there is very little and others a lot and it is important that we both as individuals and as a collective can support and uplift the journey of our colleagues in Te Ao Māori.

“When our team attends the annual Te Hunga Rōia Māori o Aotearoa conference, we are encouraged about the advancement of reo, tikanga and its incorporation into Te Ao Ture and it is uplifting. It also makes you realise that some of us are privileged to work in the spaces we do with the support of colleagues and clients around us to continue to help us build our capabilities. This is particularly important for the times when we find ourselves in environments where reo and tikanga are less commonplace and I think it is important that in those times we take the opportunity to show manaakitanga and kotahitanga to people.” ■

PROFILE

Taking up Law as a third career

**Peter McKenzie-Bridle,
Good+Law, Wellington**

WELLINGTON BASED LAWYER PETER McKenzie-Bridle has had an unusual route to the law. In fact, he's had a pretty unique career path altogether. He started out as a social worker before moving into IT in the mid-nineties. Then in 2010 he decided to join the legal profession, completing his law degree at Victoria University of Wellington in 2013. Not one to stay still, Peter has also just started his sole-practice, Good+Law.

From social worker to IT whizz

"I originally decided to go into social work because I've always been concerned when people face hardship. I've a strong sense of empathy for others, particularly those who suffer the most in our society, so for me social work was all about helping individuals solve their problems.

It was a really challenging role. If I'm honest, I was a bit too much of a 'heart on my sleeve' social worker. I eventually began to bring some of my clients' problems home with me which started to affect my mental well-being. It wasn't a huge issue, but enough to make me question what I was doing.

When my wife, Kate, and I took our big OE in 1997, I intentionally looked for a non-social work job. Like many "amateur IT experts", I had been playing around with computers at home and had a natural interest and inclination toward them. It was the time of the 'Y2k bug' and I found work quickly. There

was heaps of IT work in London, even if you were unqualified and lacked experience.

IT is a really interesting sector which is always changing. It is incredibly collaborative and engaging and I was able to fill my boots doing varied and challenging work. Even though I am no longer working in the area, I still try to keep up with new developments."

Why the change to law?

"Technology can devastate traditional business within a very short time – often within a matter of 2-3 years. One of the catalysts for changing to law was seeing how developments within IT decimated the careers people had built up around certain technologies. Once the technology changed, those skills quickly became redundant. I could see that potentially happening to me unless I kept pushing and developing myself.

Computers are interesting but nowhere near as interesting as people and I wanted to get back to working with people. I seriously considered heading back to social work but thought I'd just end up as a cynical old social worker!

My wife is a very good lawyer, and her side of the family is heavily populated with lawyers. Although I used to love rolling out the lawyer jokes, I realised that law provided a great opportunity to move into a career that allowed me to utilise the unique experiences I had picked up from my social work and IT backgrounds, and develop my skills and

interests.

It was a privilege to be able to study for a few years. I was also the main caregiver for my three kids during that period which was time I really valued. And I met a bunch of great people at Law School, many of whom, like me, were taking on law as a second/third career and have made it work.

How do your backgrounds in IT and social services help you in your role as a lawyer?

"One common area between IT, social work and law is problem solving. Each profession involves solving complex problems, often with many moving parts. You need to be able to absorb a lot of information in a short period and make sense of it to give someone else an answer or response. It has only been since I entered legal practice that I've seen that link, and it's been pleasing to see that my skills have been transferable this way.

However, problem solving in law is much more structured than IT or social work. When I went to law school, I discovered that my thinking had become a bit lazy – law challenges me to think about things more carefully, and it can be less forgiving when you overlook something that turns out to be important. My varied background gives me a different perspective on my clients' problems and they seem to value my ability to un-muddle the problem.

Another link is communication. There is a surprising amount of



overlap in the communication and listening skills required to sell an IT solution to a large corporate, participate at a Family Group Conference, or explain my client's concerns to a judge.

I have been able to utilise my IT skills to establish a paperless office that largely works as intended. My scanner works pretty hard, but I find most documents are exchanged electronically anyway and it's easy to include them in my clients' files. I also utilise full-text indexing on files so I can search for a phrase or word to locate a document I know is in one of my files.

My social work experience has kept me alert to increasing demands on our social services, and the pressure many people in our society face. Those demands continue to increase, the problems they are dealing with are more and more complex, and there is never enough time or resource.

Our courts are often left to deal with that fall-out. Social problems like inadequate access to mental health support, poor housing and addictions commonly show up in the criminal court and family courts. They can also be a key factor behind some of the disputes that arise in employment or in other relationships.

I have enjoyed learning how the legal system responds to these issues. I was a legal outsider when I worked in the social services, and there was always a mystique about court. I didn't really get to grips with the process and left it to the lawyers, but it fascinated me.

Now that I work as a lawyer, my empathy for the lawyers working with these problems has increased. Complicated personal situations can really challenge our legal system. There are limits to what our courts can do, but sometimes the system can respond ingenuously, such as the creative use of bail and sentencing in the special circumstances court here in Wellington.

Moving into sole practice

"I have had the privilege of working



with some really good practitioners since finishing my degree – Dan Vincent at Thomas Dewar and Andy Bell at Bell and Co. They have helped me to become a better lawyer than I otherwise would have been.

Lockdown disrupted some of my plans but also gave me time to think about how I wanted to practise. I am fortunate that I have recently been able to set up practice within a sort of nursery environment – an established set of offices with other sole-practice lawyers. Andy and Charles McGuinness have also supported me with referrals which I have really appreciated.

I saw setting up my own practice as an adventure and had to give it a go. It's early days and hard to know if or how well I will succeed, but I don't regret meeting the challenge.

Encouraging others to consider extending the scope of practice

"I remain involved in a number of community organisations, including the Mothers Project, which is part of the charitable trust founded by Stacey Shortall who is a partner at MinterEllisonRuddWatts. The project connects lawyers with women in prison, supporting them to maintain or repair relationships with their children.

I got involved in Mothers Project through my wife, Kate, who was doing a family law education

session for volunteers. I did the Oranga Tamariki segment and became interested in the project from there.

I have since helped develop some online resources (with huge help from Antonia Leggat and Maddy Pears – a couple of Minter lawyers) and take referrals from the prison social workers for mothers who have Family Court matters and no representation. A few mothers have looked at me sideways when I've told them I used to work for Oranga Tamariki, but they eventually soften up and start to trust me.

I have also joined the New Zealand Law Society's mentoring programme as a mentor. The programme is a great way to connect with lawyers who are walking a road I have only recently been on. I wasn't sure what to expect but I've found that mentees really value just having someone to bounce things off – whether it is job hunting, developing their career, moving into private practice or just chewing the fat.

I regularly volunteer at the Wellington Community Law Centre in the employment session, and also take on some legal aid cases in employment, family and ACC.

Perhaps it is because of my background in social work, but I have been surprised at how few lawyers do legal aid work or volunteer at Community Law Centres. I don't

want to guilt anyone, but I believe that as lawyers we hold a lot of influence over who gets to access our legal system. Paraphrasing Spiderman: With great influence comes great responsibility. Because we have that influence, I think we owe it to society to make justice accessible to all.

A recent *LawTalk* article identified only 462 civil legal aid providers, with only 35 of them doing five or more cases a year. That work covers everything from employment to debt recovery to contract disputes. I realise that legal aid rates are very low which often discourages many lawyers from taking legal aid cases. However, if all lawyers took on only a few cases then together that would make an enormous impact on reducing some of the legal access barriers.

Currently though, too few of us are providing services to those that can't pay market rates. This leads to some problems going unaddressed because getting a lawyer is simply unaffordable. Taking on some legal aid funded clients or volunteering at Community Law sessions really helps to reduce some of the barriers.

The profession could also respond in different ways to that challenge. For example, the profession could own the challenge by introducing something like the 10 hours CPD but requiring each lawyer to demonstrate 10 hours each year they have given back to the community. That may be through education, volunteering at Community Law Centres, doing pro bono work, taking on legal aid cases, assisting Mothers Project and the like.

Many lawyers already do that, but more of us could. It needn't be a chore, and instead it could be something the profession is really proud of; something that demonstrates our positive contribution in society." ■

Peter McKenzie-Bridle can be contacted at peter@good-law.co

LAW SOCIETY | TE KĀHUI TURE NEWS

Changes to Professional Indemnity Insurance Minimum Standards

THE MINIMUM STANDARDS FOR THE level of professional indemnity insurance (PI Insurance) held by law practices are increasing from Tuesday 6 April 2021. These changes follow a review by the New Zealand Law Society | Te Kāhui Ture o Aotearoa.

At present the minimum indemnity limit is whichever is the greater of:

1. \$1 million per practice; or
2. \$750,000 per partner.

These rates have been in place since 2008 and their review incorporated an inflationary adjustment to ensure they remain current. The revised minimum indemnity limits, and standards are set out below.

Increased minimum indemnity

Following the review, the minimum indemnity limit will now be whichever is the greater of:

1. \$1.2 million per practice; or
2. \$900,000 per partner.

Rule 3.4(b) of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 requires a law practice to disclose its professional indemnity insurance arrangements to its clients. However, the rule provides that this obligation is met if it is disclosed that the practice holds indemnity insurance that meets or exceeds minimum standards from time to time specified by the Law Society. The rule further provides that if a practice is not indemnified this must be disclosed in writing to the client.

The above are not 'minimum

standards' in the true sense. They are simply standards that must be met to enable a law practice to limit its disclosure to stating that the practice holds PI insurance that meets the minimum standards specified by the Law Society. However, for convenience, they are referred to as minimum standards.

Reinstatement

The present requirements will remain in force under which the indemnity limit applies either:

1. on an aggregated basis to claims made in the policy period with not less than one automatic reinstatement; or
2. on any one claim basis, with no aggregate limit.

Excess

The current requirement is that the excess payable by a law practice must not exceed 1% of the indemnity limit.

It is understood that this is causing difficulty for some practices which carry out significant conveyancing or trust work. In such cases, some insurers are requiring the excess to be increased to 2% of the indemnity limit or charging an increased premium if it remains at 1%.

However, a large law practice would normally have an excess of much less than 1%. An excess of 1% for a law practice with cover of \$50 million would result in \$500,000, whilst an excess of 2% would amount to \$1 million.

In the circumstances, it has been decided that the excess requirement is amended so that the excess

payable does not exceed the greater of:

1. 1% of the indemnity limit; or
2. \$20,000.

The table below shows how this will operate (using the increased minimum indemnity limits). It will have the effect of allowing a practice of not more than two partners to have a higher maximum excess but would not alter the position for practices with three or more partners.

Partners	Limit	Current maximum excess	Revised maximum excess
1	\$1,200,000	\$12,000	\$20,000
2	\$1,800,000	\$18,000	\$20,000
3	\$2,700,000	\$27,000	\$27,000
5	\$4,500,000	\$45,000	\$45,000
10	\$9,000,000	\$90,000	\$90,000

Defence costs cover, Cyber cover and Run-off cover, do not form part of the minimum standard requirements set out above, but are recommended matters for law practices to consider when arranging their PI Insurance.

Cost of increased cover

A law practice which decides to increase its cover to meet the new minimum standards will wish to ascertain the additional cost involved. Each law practice will be individually assessed by its insurer. However, the Law Society is advised that the additional premium for a two-partner law firm which increases its cover from \$1.5 million to \$1.8 million is likely to be in the 7.5% to 10% range.

Of course, where defence costs, cyber or run-off cover is also arranged, this will involve an additional premium as well.

Effective date

The above minimum requirements will take effect from and inclusive of Tuesday 6 April 2021. However, PI insurance cover which meets the present minimum standards and is in place at Tuesday 6 April 2021 may remain in force until the annual expiry date. At that time the cover must, if necessary, be extended to meet the above minimum standards, if disclosure is to be avoided. ■

INTERNSHIPS

Raising the bar on legal internships

BY **MORWENNA GRILLS** AND **JAMIE DOBSON**

AS THE UNIVERSITY HALLS START TO empty out for the summer hundreds of law students and graduates will be heading to firms, public service departments and other organisations to take up an internship.

But what makes for a good experience? And how can employers ensure that young people are getting the most from their placements?

Results from a survey by the Deans of New Zealand's six law schools provides some useful insights into what makes an internship a productive and useful experience vs one that's more akin to babysitting. The survey also highlights that some young people are still witnessing and experiencing unprofessional behaviour during an internship.

582 law students responded to the survey, and 321 of these had taken part in an internship. The survey was carried out in March and April 2019 across all New Zealand law schools. It was intended to capture the experience of law students who had engaged in legal internships during their tertiary studies.

"We carried out the survey as part of our joint response to concerns about harassment and bullying in the legal profession that were raised in 2018," says Professor Ursula Cheer, Dean of Law at Canterbury University School of Law

"The survey is part of our efforts to better support our students.

"The resulting report from the responses gives a good picture

of what internships are like for students. It contains many useful suggestions about how internships might be improved, but also identifies what students like and appreciate about internships."

Almost all (96%) found their internship valuable and most reported a sense of belonging during the internship.

The most common things the students said they gained from the experience were:

- Learning about different areas of the law.
- Learning how a law firm operates.
- Developing the skills required to work in a professional environment.
- Understanding how law is practically applied and how lawyers think about law in the interests of their clients.
- Getting a better understanding of the areas of law they want to work in or the type of role they want to pursue following graduation.

Comments from the survey demonstrate that the best organisations provide:

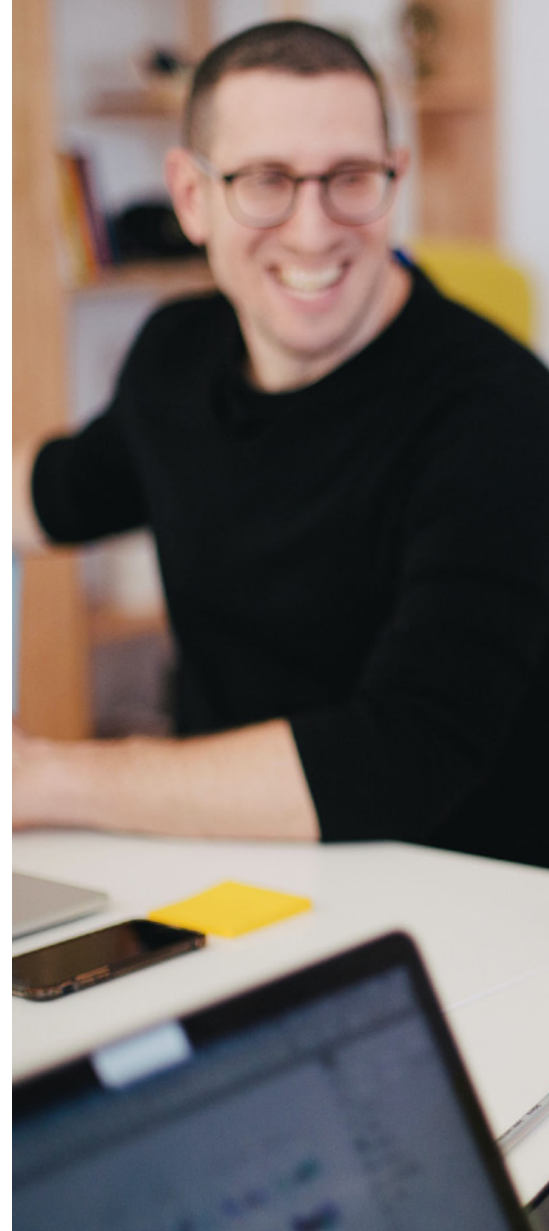
- A specific person to act as a mentor to the intern who can support them to understand what's required of them and be available to answer questions.
- A structured induction programme tailored for interns that provides insights into the organisation as well as clear expectations of what's required from the intern.
- A consistent flow of work,

meetings and tasks for the intern to complete.

- Regular feedback as well as explanations about the work that's being carried out to support the intern to truly learn from their experience.
- A buddy, such as a young lawyer, to support the intern and help them understand aspects of the work they may not be familiar with.

When it comes to office culture the survey does demonstrate ongoing concerns for young people entering into internships. Whilst more than 80% of those who responded said they never experienced unprofessional behaviour during their internship, 12% said they experienced unprofessional behaviour occasionally and one person reported that happening on a daily basis.

The most common forms of unprofessional behaviour noted





In the deep end; why my internship didn't work

BY ANONYMOUS

Speaking to the Deans' survey, one lawyer who wished to remain anonymous said he'd had a negative internship experience which he "wouldn't wish on anybody."

"It wasn't just the disrespectful, belittling comments as the newest in the office, but also having my work torn apart after being asked to spend extra efforts on it, without any training – I was in essence thrown into the super deep end without mercy.

"I was expected to work long hours, to work when sick and it all took its toll on me – to essentially feel entirely grateful to the partner for the opportunity being given to me.

"The promises of the hands-on experience and being involved with practical work of the firm fell away, and the internship ultimately felt like it wasn't going to be what was promised. It took its toll on my mental health and a swift debilitating diagnosis followed.

"If you needed to escalate the issue, there was no one in the appropriate position to talk to."

Reporting or acknowledging poor behaviour against those in power naturally carries a sense of risk. And with risk, fear of the consequences on your role in the company, and what it might mean for your future.

Any organisation welcoming interns this summer needs to be cognizant of having a transparent and clear complaints process in place that interns can use without fear of repercussions. ■

by interns were:

- disrespectful or dismissive behaviour (9.87%)
- inappropriate or offensive language (9.44%)
- drunkenness (7.73%)
- racism (5.58%)
- sexism (4.29%)
- bullying (3.86%)
- sexual harassment (1.29%)

Feedback provided in the survey demonstrates the need for organisations to make it clear to interns how they can raise concerns if they witness or experience inappropriate culture.

There is also a call from some students for employers to be clear about the culture of the office from the start and the kinds of behaviours which are not accepted at that particular workplace. Having a defined reporting mechanism for interns to raise concerns, either through a mentor or supervisor is also important.

The internship survey will be run every two years, with results distributed to the profession, law schools and the media. ■

The results from 2019 can be view here: dropbox.com/s/lj8fb6bevif9rlp

I was expected to work long hours, to work when sick and it all took its toll on me – to essentially feel entirely grateful to the partner for the opportunity being given to me

My internship story

BY **RHIANNA MORAR**

I've done two internships over the course of my studies and I'm preparing to spend this summer at the Law Commission. Over the summer of 2018 to 2019 I interned at a government department. This was organised through a university partnership. I worked as part of the team putting together some really significant changes that would impact the public sector. A large part of my work was to focus on the Te Tiriti aspects of the bill. This was an incredibly important piece of work and one I was hugely honoured to be involved in. However, at times I did feel quite isolated. I wasn't feeling very included or supported.



There were only two interns in the organisation that summer and there was no structured programme, dedicated induction or catch-ups focussed on feedback about my work. I struggled with being the only Māori on the team and felt a lot of pressure to deliver to a level I didn't have experience in – this was my first time working on a Cabinet paper.

I reached out to Te Hunga Rōia Māori o Aotearoa and spoke to my contacts there about what I was experiencing. They were incredible as they were able to use their relationships to speak to people at the right level and advocate on my behalf.

Last summer I went through the Government Legal Network's (GLN) internship scheme and secured a place at Crown Law in the Treaty team. I ended up working on the Peter Ellis case which was a once in a lifetime opportunity.

I thoroughly enjoyed this internship as the GLN provided a great programme. I was assigned a buddy in my team who was a young lawyer, and to this day we're still friends. I was able to learn from her and

she was able to learn from me as a pākehā lawyer in the Treaty team.

There was a structured induction specifically for interns and GLN held seminars and workshops for all the interns placed through their programme across the public service. Having this structured programme made a real difference.

My advice for an organisation that will have interns this summer is to think about the whole package. Think about who can support the intern, especially if there aren't many young people. As an intern there's only so much you can learn on your own, you need people you can talk to in confidence so you don't feel whakamā (shame).

If you're going into an internship this year then my advice is to back yourself but be prepared to ask for help when you need it. It can be really intimidating coming into an organisation as a law student working with people with years of experience, so it's easy to feel you're not good enough because you don't know what to do. What I've found is that those people appreciate when you ask how to do things. It's better to do that than to not live up to expectation. ■

[Rhianna Morar](#) is a 5th year Victoria University of Wellington Law student



My advice for an organisation that will have interns this summer is to think about the whole package. Think about who can support the intern, especially if there aren't many young people



Making the best environment for summer internships, with Buddle Findlay

An internship extends a drawbridge from the working world to future lawyers. Providing an environment for interns that builds this bridge is important. A sense of belonging is the key foundation for ensuring interns feel part of, and can learn from their internship.

"What makes a positive summer clerk experience is when students are provided with an opportunity to add value to the firm," says Buddle Findlay.

"It's important to us that we provide an environment where students feel comfortable to participate. Our summer clerks receive on the job experience and we help them to be a part of Buddle Findlay by enabling them to grow, succeed and have fun. We enjoy the curiosity, energy and enthusiasm that students bring to our collaborative firm."

Part of crossing the bridge into the workplace environment is about demonstrating the value of a legal career by offering hands-on experience.

"Our summer clerk programme provides interns with a practical understanding of

the inner workings of a corporate law firm and this helps to connect the theoretical learnings of law with real life application," says Buddle Findlay.

"The most valuable part of our program is that the students get to know us, and develop connections with experienced professionals in the legal field."

The team at Buddle Findlay recognise the importance of having a supportive, structured programme for young interns.

"We ensure our summer clerks are provided with a diverse range of experiences during their time at Buddle Findlay

to create a smooth transition into the corporate world. Our supervisors are committed to supporting the students' growth and development. Each summer clerk has a dedicated buddy to support them through their journey.

At Buddle Findlay, we value the importance of collaboration and having a team who are diverse in thought and feel comfortable bringing innovative ideas to the table. Students who have passion, curiosity and drive are in the best position to experience an exceptional summer clerkship." ■



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AML/CFT

Observations from recent AML/CFT audits

What have we learned?

BY **NEIL RUSS** AND **TRACY OWEN**

THERE ARE APPROXIMATELY 3500 “LAW FIRMS” AS defined in the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the Act). Not all of them are subject to the Act, but most of those that are will have recently completed their first independent AML/CFT audit.

Over the last 12 months or so we have carried out numerous AML/CFT audits of different types of reporting entities, including law firms, accounting practices and managed trust companies.

Our independent AML/CFT audits of law firms, and our advisory work in relation to AML/CFT documentation, have shown that the legal profession is, in general, taking its AML/CFT responsibilities seriously and is making every effort to comply with the Act’s requirements.

Our audits have also revealed some reasonably common issues where law firms are failing to meet the standards required by the Act. We set out below a summary of three key issues we have identified, and how they can easily be addressed.

1. Use of templates without sufficient modification

The Act requires each reporting entity to undertake an assessment of the risk of money laundering (**ML**) and the financing of terrorism (**FT**) that it may reasonably expect to face in the course of its business, and to put in place appropriate procedures, policies and controls (**PPCs**) to manage and mitigate those risks.

Templates can provide a useful starting point. However, as other commentators have already noted, they should not be adopted without customising them to meet the law firm’s specific circumstances. Adopting templates without sufficient modification can lead to compliance documents that are not appropriate for the law firm and its business.

For smaller law firms in particular, the use of templates has the potential to overly complicate the firm’s compliance systems.

In an AML/CFT context, it is important that any template is reviewed and modified so that the



Neil Russ



Tracy Owen

Adopting templates without sufficient modification can lead to compliance documents that are not appropriate for the law firm and its business

identified ML/FT risks are your law firm’s risks, and the PPCs are relevant to, and workable within, your firm’s business. Ask yourself: *Do these documents reflect what my law firm does in practice? Can I integrate the Act’s requirements into my business to meet all of the information-gathering and verification requirements (AML/CFT, FATCA, CRS, Landonline, IRD, and so on) as efficiently as possible?*

2. Failure to consider all the items in sections 58(2) and 57(1) of the Act

Risk assessment – section 58(2)

The Act requires a reporting entity to have regard to seven matters when assessing the ML/FT risks that it may reasonably expect to face in the course of its business. These are:

- (a) the nature, size, and complexity of its business;
- (b) the products and services it offers;
- (c) the methods by which it delivers products and services to its customers;





- (d) the types of customers it deals with;
- (e) the countries it deals with;
- (f) the institutions it deals with; and
- (g) any applicable guidance material produced by AML/CFT supervisors or the Commissioner relating to risk assessments.

We frequently observed in the course of our audits that not all of these matters were considered by the law firm when drafting its risk assessment.

Your firm's risk assessment must consider each of these matters separately, even if there is some overlap in the factors considered. For example, when considering "nature, size and complexity" client types and services offered may also be relevant.

This can be seen in the December 2019 Sector Risk Assessment produced by the DIA. It concludes that in relation to "nature, size and complexity" lawyers are "high-risk" because "client relationships can be complex and the identity of

beneficial owners may not be clear (ie client type). The ease of access to the legal sector, its wide geographic spread, the gatekeeper role it plays in accessing the financial sector [i.e. services offered] and the veneer of respectability it affords all compound ML/TF risk".

Compliance programme – section 57(1)

A reporting entity's compliance programme must contain adequate and effective PPCs for the matters set out in section 57(1). Not all compliance programmes we reviewed included PPCs for each of these matters. Most notable was a lack of PPCs for:

- (a) examining, and keeping written findings relating to:
 - (i) complex or unusually large transactions;
 - (ii) unusual patterns of transactions that have no apparent economic or visible lawful purpose; and
 - (iii) any other activity that the law firm regards as being particularly likely by its nature to be related to ML or FT;

- (b) monitoring, examining, and keeping written findings relating to business relationships and transactions from or in countries that do not have or have insufficient AML/CFT systems in place, and having additional measures for dealing with or restricting dealings with such countries; and
- (c) preventing the use, for ML/FT, of products and transactions that might favour anonymity.

We consider that *examining, and keeping written findings for complex or unusually large transactions, unusual patterns of transactions and other activity likely to be related to ML/FT* applies to a law firm even if it does not have a trust account.

"Transaction" means any deposit, withdrawal, exchange, or transfer of funds and includes any payment made in satisfaction, in whole or in part, of any contractual or other legal obligation. Unlike the provisions relating to "prescribed transactions", the requirement to examine and keep written findings for complex or unusually large transactions or

unusual patterns of transactions is not limited by the words “conducted through the reporting entity”. Also, the requirement extends to other non-transactional activities that might be related to ML/FT.

It is important to set out in your compliance programme what “complex”, “unusually large” and “unusual pattern” mean in the context of your law firm. These terms can then be included in your compliance programme as triggers for further examination.

A written record of the examination and the conclusion reached must be retained. The Department of Internal Affairs recommends keeping a register of complex, unusually large and unusual patterns of transactions. In some compliance programmes we reviewed, reference was made to the “reporting suspicious activities” procedure in the firm’s compliance programme. This is also likely to be an appropriate way to comply with the requirements to “examine” and “keep written findings”.

To meet the requirement of *monitoring, examining, and keeping written findings, and having additional measures for dealing with countries that do not have or have insufficient AML/CFT systems* in place, we consider that a law firm’s compliance programme should include a process that covers the following:

- (a) The law firm will consider if the client or transaction is from a country that does not have or has insufficient AML/CFT systems in place. For this purpose the DIA recommends checking the Financial Action Task Force (FATF) list of high-risk and other monitored jurisdictions, which can be found on the FATF website. However, countries beyond this list may still be considered “high-risk”. Country risk is considered as part of the firm’s risk assessment and is a different but overlapping obligation.
- (b) If yes, the law firm will examine if there is anything suspicious about the business relationship or transaction and keep a

written record of the examination undertaken and the conclusion reached. Again, it may be appropriate for the “reporting suspicious activities” procedure to be activated.

- (c) The law firm will take the additional measures set out in its programme for dealing with or restricting dealings with clients from such countries. These additional measures will depend on the law firm but may include a blanket prohibition on acting for clients from such countries or requiring the approval of the Board or senior compliance partner before acting.
- (d) The steps the firm will take to monitor the relevant client. The compliance programme must have a section on “on-going CDD and account monitoring” and it may be appropriate to refer to the provisions on monitoring high-risk clients set out in that section.

For *Preventing the use, for ML/FT, of products and transactions that might favour anonymity*, section 22 sets out when a reporting entity must carry out enhanced CDD. It includes where a law firm establishes a business relationship with a client that involves new or developing technologies, or new or developing products, that might favour anonymity.

In these circumstances, enhanced CDD must be carried out in accordance with section 30 (and not sections 23 and 24) of the Act. Section 30 requires the law firm to carry out standard CDD and to “take any additional measures that may be needed to mitigate and manage the risk of new or developing technologies, or new or developing products, that might favour anonymity from being used in the commission of a money laundering offence or for the financing of terrorism”. The additional measures a law firm may take depend on the law firm and may include understanding more fully the new or developing technology or products or treating the client as a high-risk client and



taking additional or more sophisticated measures to verify the client’s identity.

It seems to us that section 57(1)(i) has a different focus. It requires the law firm to include in its compliance programme information about how it will respond when faced with products and transactions that might favour anonymity. For example, what steps will the firm take when it receives an email via an encrypted mail service provider or is asked to accept crypto currency in payment of its fees?

3. No, and incomplete, PEP checking procedures

The Act requires a law firm’s compliance programme to contain adequate and effective “procedures”. Procedures set out “how” my law firm meets that requirement.

A lack of procedure for checking if an individual is a “politically exposed person” (PEP) was an area of non-compliance we identified in our independent audits. It was also identified as an area of non-compliance by the Department of Internal



and it should pick up any material deficiencies in the effectiveness of the risk assessment and the compliance programme. Other trigger events may be the release of new guidance by DIA. The most recent of which was guidance on enhanced CDD on 18 September 2020.

Based on the audits we have carried out, we recommend that as part of your next review, you ask yourself:

- Does the risk assessment address the specific matters in sections 58(2) in the context of my law firm's business?
- Does the compliance programme address each of the matters in section 57(1)? Are the PPCs set out in the compliance programme relevant to my law firm?
- Does the compliance programme set out how my firm will comply day-to-day with each of the matters in section 57(1)? Is there a process for checking PEPs?
- Do the documents reflect what my law firm does in practice?

Law firms should also consider taking the opportunity in the post-audit period of getting specialist help to refine their risk assessment and compliance programme, if they are unclear about the best way of improving their next audit outcome, or if the Department of Internal Affairs has begun a desktop audit or onsite review.

Affairs in its Regulatory Findings Report 2018-2019.

It is not enough for the compliance programme to state "We will carry out enhanced CDD where we determine that a client is a PEP". The compliance programme should set out how the law firm will determine if a client or beneficial owner is a PEP. The actual procedure to identify if someone is a PEP will depend on the particular circumstances of the law firm and its ML/FT risks.

What is clear is that your law firm cannot rely on self-declarations by clients, although asking a client if they or a member of their immediate family are PEPs may be a useful starting point. The procedure may also involve checking publicly available websites or using a commercial provider of PEP checking services. Whatever the steps, they should be set out in your firm's compliance programme.

It is important to note that an individual may be a PEP even if they are resident in New Zealand. The definition of PEP includes a spouse, partner, child, child's spouse or partner, and parent of an individual who holds or has held in the previous 12 months one of the prominent public functions set out in the definition. This captures an individual living in New Zealand whose child is the ambassador in an overseas country, for example.

Conclusion

Law firms need to ensure that their risk assessment and compliance programme are regularly reviewed. An independent audit is a useful trigger event for a review,

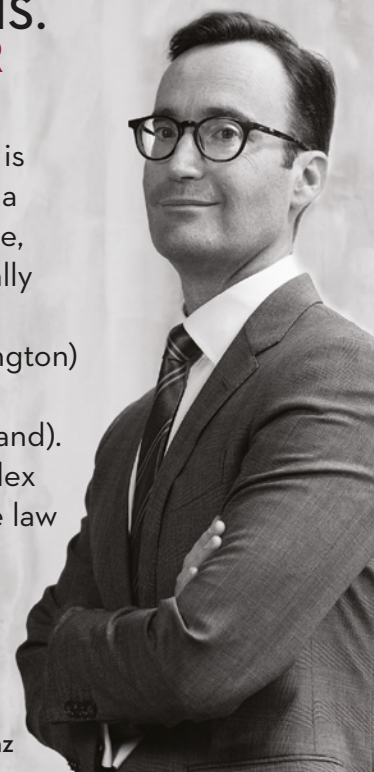
DANIEL KALDERIMIS. BARRISTER

Daniel Kalderimis is joining the bar as a specialist advocate, practising nationally from Thorndon Chambers (Wellington) and Richmond Chambers (Auckland). He handles complex public and private law disputes, and has international law expertise.

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SOCIAL CONFLICT

Connection and Collaboration

An antidote to social conflict

BY **PAUL SILLS**

A FOCUS ON CONNECTION AND COLLABORATION IS NOT a focus on conflict avoidance as many probably assume – quite the opposite. It is to embrace the inevitability and desirability of many facets of conflict while addressing our approach to conflict. As Catholic Priest, Richard Rohr has said:

“We grow through necessary conflicts and tensions. I don’t think there is any other way. Dancing along a self-created primrose path will merely lead you to illusion and superficiality.”

A study of the underlying principles of both non-violent action and negotiation shows that we need to engage constructively with conflict. There is a transformative aspect to conflict which highlights the potential for meaningful change for all parties when conflict is handled collaboratively. As leading expert on negotiation and mediation William Ury states:

“We need more conflict, not less, to really uncover and address a lot of issues that are still not being addressed properly in this world ... it’s about transforming conflict from its often destructive forms of violence and war to more constructive forms such as non-violent action and negotiation.”

It is how we respond to conflict that causes problems. Conflict can encourage open-mindedness and help avoid the tendency towards collectivist group thinking that many organisations and tribes in societies fall prey to. The key is not avoiding conflict, but learning how to manage conflict effectively so that it can serve as a positive catalyst, rather than a hindrance to society at large.

We can achieve this through collaboration rather than competition/aggression/violence/war.

“Collaboration is a habit of mind, solidified by routine, predicated on openness, generosity, rigour and patience. It requires precise and fearless communication, without status, or intimidation.” — Professor Margaret Heffernan

Professor Brené Brown in her book *“The Gifts of Imperfection”* defines connection as:

“The energy that exists between people when they feel



seen, heard and valued; when they can give and receive without judgment; and when they derive sustenance and strength from the relationship.”

The connection economy

In spite of our current self-centred ego centric lives, connection is what we do better than anything else and what we crave far more than we know.

In his book *“The Icarus Effect,”* marketing guru Seth Godin asserts that we have moved from the industrial economy to the connection economy.

A lasting consequence of the industrial revolution and living in an industrial economy is that innovation and creativity have given way to precedent and process. The focus of business was on standardising production, achieving economies of scale, using interchangeable parts (and people) and serving the middle of the bell curve (aiming for the average). We were programmed and trained to think that what we did well was to follow instructions. The industrialist needed cheap, obedient labour, people who would sit still and do what they were told. Our education system dutifully provides such people.

Godin does not believe that we are very good at following instructions. He thinks that is a fallacy. Instead, we are very good at connecting. As a species we are one of the best on the planet.

But do we actually connect well? We certainly have huge resources for connection – just look at the growth of social media. Does that make us connected? Yes, superficially but not in a meaningful way that helps us grow, or benefits society and helps us deal with conflict.

Godin identifies four pillars in a connected economy:

1. Coordination;
2. Trust – earning trust is critical in the connection



economy;

3. Permission – you need the permission of the people that you want to talk to in order to engage with them;

4. Exchange of ideas.

Godin puts it this way:

“What happens when we create an environment of connection, we create enormous value by combining all four of these things (coordination, trust, permission, exchange of ideas) into a network of people who want to pay attention to one another.”

Humanity fuels the new economy. Whilst technology enables us to transition to this new economy, it is connections in the new economy that are the focus. These connections are fuelled by a focus on humanity. Godin goes on to state that the four ideas are based on two principles:

1. Generosity – because no one wants to trust or connect with a selfish person;
2. Art – because we do not want to connect to someone who is going to do just what they did yesterday. It is the work of a human being doing something real and personal that might not work. The minute somebody gives you a map (a process, procedure or precedent) then it is no longer art.

We are wired for connection. It is in our biology and we need connection to thrive emotionally, physically, spiritually and intellectually

Building trust and connections are the hard (and necessary) part of working in the connection economy. That requires collaboration.

Neuroscience

It seems that neuroscience supports Seth Godin and his comments about connection.

We are wired for connection. It is in our biology and we need connection to thrive emotionally, physically, spiritually and intellectually.

In his book *“Social Intelligence: The New Science of Human Relationships”*, Daniel Goleman explores the latest findings in biology and neuroscience and confirms that we are hard-wired for connection and our relationships shape our biology as well as our experiences.

Kelly McGonigal – in her TEDx talk *“How to make stress your friend”* – identifies the fact that when we are stressed we produce the hormone oxytocin. This is known as the *“cuddle hormone”* because it is also released when you hug somebody. Oxytocin in fact fine-tunes your brain’s social instincts. It primes you to do things that strengthen close relationships. Oxytocin makes you crave physical contact with your friends and family. It enhances your empathy. It even makes you more willing to help and support the people you care about.

But oxytocin is in fact a stress hormone. The pituitary gland pumps out oxytocin as part of the stress response, motivating you to seek support. So your biological stress response is nudging you to tell someone how you feel, instead of bottling it up. Your stress response wants to make sure you notice when someone else in your life is struggling so that you can support each other. When life is difficult, your stress response wants you to be surrounded by people who care about you.

Our innate need for connection makes the consequences of disconnection more acute and dangerous. The same can be said for convincing ourselves that we are connected when we are not. Technology in this instance is an imposter for meaningful connection – making us believe we are connected when we are not.

In her book, Brown concludes that we need to consider letting go of the myth of self-sufficiency. One of the greatest barriers to connection is the cultural importance placed on toughing it out and *“going it alone”*. While many of us may be willing to lend a hand, we are completely opposed to reaching out for help when we need it ourselves.

While connection and collaboration appear to be natural parts of humanity that should aid us in dealing with conflict effectively, we have put a number of cultural barriers in our own way. It will take conscious effort to remove those obstacles so we can use conflict to uncover and address issues. ■

Paul Sills ✉ paulsills@paulsills.co.nz is an arbitrator, mediator and barrister specialising in the effective resolution of commercial and civil disputes.

TALKING ABOUT MENTAL HEALTH

Obsessive and compulsive

How much do we really know about OCD?

BY **SARAH TAYLOR**

I recently received a lovely email from Mary* in relation to an article published in this series. Mary congratulated me on encouraging open and positive discussion about mental health in the workplace, but she queried whether the author of a recent article knows what it's really like to experience the mental distress of Obsessive Compulsive Disorder (OCD). The article "Why it's time to stop dealing with mental illness and start building mental strength" (*issue 940*, June 2020) referred to tennis player Rafael Nadal's "...almost OCD approach to maintaining order in his environment prior to and during his match" as a technique to boost performance.

Mary pointed out that referring to OCD lightly can downplay the mental distress that underlies compulsive behaviours and can discourage people from being open about it. She mentioned hearing people talk about "needing to be OCD" with washing their hands due to the spread of Covid-19. This sort of remark can thoughtlessly perpetuate a stereotype that dilutes the seriousness of OCD.

Mary's email got me thinking. How many times have I inadvertently used the term "OCD" without thinking about the distress that OCD causes? What do I really know about OCD?

In this article, four fabulous members of Fixate, a Facebook-based group for New Zealanders with OCD and their supporters, share some of their experiences to help us try to understand OCD better.



Geoff

OCD bombarded my mind with unwanted thoughts

OCD IS MADE UP OF TWO PARTS, OBSESSIONS AND COMPULSIONS. The way I think of obsessions is that they are a broken warning alarm in the brain that won't turn off. The obsessions warn you about something and the more you fight them, the louder that they continue to warn you. The compulsions are the short-term fixes you do to try to stop the warnings but you never really fix them.

OCD has spent years warning me that I could purposely harm my wife, my children or myself. It has done this by bombarding me with intrusive images and thoughts that would fill the worst horror stories ever written. Believe me when I say that doing any of this is not only against all of my values but also not something I have any desire to do!

I now understand that everyone has random disturbing thoughts that come into our minds without invitation. These are called intrusive thoughts. For most people they are usually quickly forgotten (think of them as junk mail). In OCD, an intrusive thought gets stuck in your mind, and you begin to obsess over whether it could be true and that you might do something that goes against your core beliefs. Feelings of anxiety, fear and disgust mean that you are compelled to take action, in the hope of gaining relief. But this is a major mistake because it actually reinforces the obsession, and you get drawn further in.

One of the hardest parts about OCD is the feeling of



shame associated with it. OCD thrives on shame! It tends to pick subjects that matter the most to people. Common themes include contamination, harm, sexuality, relationships, morality and religion.

For a decade I lived in fear, not knowing why I was having these intrusive thoughts. When it started to get really bad, at the time of the birth of our first child, I sought help. Despite seeing various health professionals, it took another five years and a Netflix documentary for me to stumble on a clear explanation of what was going on.

The great news is that it is possible to recover. It effectively means reprogramming the brain, which takes time and commitment. The first step is to expose yourself to feared thoughts or situations to bring down the associated anxiety. For me this means writing scripts about thoughts of harm and reading them over and over again until the level of fear is reduced to boredom. The second part is to teach the brain not to engage when intrusive thoughts pop up, whether by arguing, debating or ruminating. A psychologist put it to me that OCD is like a criminal lawyer that constantly tries to discredit the witness, the answer is to not take the bait, instead plead the 5th and not respond. Little by little the brain is reprogrammed to not give out these false warnings, this involves accepting the thoughts but giving them no energy.

All of this has taken time, effort, and commitment but day by day I am recovering from OCD. I have had to learn and accept that OCD is part of my DNA and will continue to arise throughout my life. This acceptance is what gives me the ability to sit above the storm when it does arise.

Jane*

I needed constant reassurance that our baby was okay

MY FIRST EXPERIENCE WITH OCD WAS when I was pregnant. Looking back, I probably had signs of it growing up but nowhere as full on as it was during pregnancy and after.

During the pregnancy we didn't really know what was happening. It started when I was following the guidance in pamphlets given out to new parents which specify what foods you can and can't eat. Slowly that list extended to add more foods that I couldn't eat and certain ways that items needed to be cleaned before they could be used.

At my peak I would eat only one meal a day because it took 3-4 hours to prepare something to eat. I couldn't eat away from home for fear of contamination. I don't know how I thought this was normal, but it all happened so gradually that I just assumed it was. Finally, one night at about 11pm I ran out of the house anxious about food that I had eaten and experienced my first panic attack.

My partner and my midwife knew I needed help. I was referred and quickly seen by maternal mental health services. By this time, I was eating limited amounts of food and they were worried about the baby not getting enough nutrients.

When I first started treatment it was very hard to accept the help. I did exposure therapy and mindfulness techniques, agreed to medication and saw a dietician. It was very tough to accept medication and to eat more because it involved a mental battle that went against all my urges – the fear that the baby would die if I did these things was always on my mind.

OCD is something that is in your head and it is very sticky. It is the most time-consuming thing I have ever experienced. My fears about food and germs are less now than they were before. I still have my triggers and times when OCD starts to rear its head again, but over all I have come a long way.

Anna*

Recovery from OCD required that I accept uncertainty

MOST STUDENTS ARE COMFORTABLE IN their decisions regarding morals and ethics. When doing assignments, they reference sources because it is required. They do not triple-check their browser history to ensure they have listed every single website and blog post. They do not feel guilty if they jay-walk across a quiet intersection.

Studying for NCEA and university papers was completely different for me. My intrusive thoughts were spinning the narrative that I had to be morally perfect. The rules and regulations, whether unequivocally stated in course outlines or mentioned in a few imprecise sentences tacked onto the end of an assignment, routinely led me into a spiral of querying, doubt and fear.

For me, the exclusion of written material from the exam room did not apply solely to notes. I would make sure that none of my clothes had brand names on them. I would also isolate myself as much as possible before a test, so I wouldn't hear anything at all about it from an earlier test stream.

Even at the time, I knew how ridiculous these behaviours were. But when I was caught up in hours of ruminating and months of tears and despair, it was too difficult to pull away. The intrusive thoughts in my head were telling me that if I relaxed for just a moment, I would be doomed to an existence as a liar and a cheat.

Exposure Response Prevention therapy and medication has reduced the frequency and intensity of my obsessions and compulsions. I have learned to accept that uncertainty is a part of life and that uncomfortable emotions can be tolerated. The tension and physical unease that accompany obsessions and triggering situations still bother me on occasion. But I am so thankful for the progress that I have made.

Despite the unique challenges that my OCD presents, I have continued to study full-time at university. I have energy to put into a part-time job and living in a flat.

Mary*, Anna's mother

We can and must do better to support families

WE DON'T KNOW WHY ONE PERSON EXPERIENCES OCD WHEN another does not. As a family you become entangled in a son or daughter's mental distress and compulsive behaviours, scrambling to find information and a way forward.

By the time of diagnosis, our teenager's everyday life and ability to pursue her educational goals were severely disrupted. We decided to seek a private therapist with expertise in treatment of OCD. We were fortunate to be able to afford this option; weekly appointments for about four months came to several thousand dollars.

Our daughter is now flying solo, equipped with an understanding of OCD and how to manage it, and an acceptance that this is something that will be a part of her life. As a parent, I am proud of her courage and resilience.

I was surprised to learn that OCD often first develops when someone is quite young – a child or adolescent. Moreover, it is also more common than I thought – about 1% of people live with OCD.

The mental distress and the loss of enjoyment of individual and family life that we experienced were largely unnecessary. OCD is a form of mental health impairment. It need not be a disability. As a country, I believe New Zealand can and must do better, including ensuring that our frontline health professionals can recognise OCD in whatever form it takes, and that more clinical psychologists are trained in OCD treatment.

It would help if everyone had an understanding that OCD is a form of mental distress. It is time people stopped joking about "being OCD" and started supporting the many individuals and families who experience this condition.

Conclusion

These stories challenged and reshaped my knowledge of OCD. It's a misunderstood condition and it's certainly not just about compulsive cleanliness and hand-washing. Flippant use of the term "OCD" can dilute its seriousness and create barriers to openness, treatment, and recovery.

I'm very grateful to Geoff, Jane, Anna, and Mary for having the courage to share their stories, and a big thank you to Mary for co-ordinating all of them. Kia kaha arohanui. ■

*Names have been changed to respect the privacy of these individuals and their families.

Sarah Taylor is the co-ordinator of this series, a senior lawyer, and the Director of Client Solutions at LOD, a law firm focused on the success and wellbeing of lawyers. If you'd like to contribute to this series, please contact Sarah ✉ sarah.taylor@lodlaw.com



RETIREMENT

Bowing out gracefully from sole practice

BY **MORWENNA GRILLS**

STARTING OUT IN ANY PROFESSION CAN BE a daunting process, as can moving roles or organisations. The same is also true of finishing one's career.

After four decades in the law, the last 15 as a sole practitioner Wellington lawyer John Swan is very carefully and meticulously shutting up shop. For John this has not been a simple process of closing the blinds, pulling the door shut and walking away. He's acutely aware of the duty he has to his clients.

"It has been a daunting process getting ready to finally close the business," explains John.

"I've had so many loyal clients who have followed me from firm to firm, continuing to place their faith in me that it's only right

that I repay that loyalty.

"When I first started thinking about retirement, I knew I had to put in a plan for each of my clients in terms of who I could pass them on to. I had to think carefully about who would be a good fit for them and how I could manage my retirement so it posed the least immediate and ongoing inconvenience to my clients."

This is where local networks have proved invaluable to John, particularly as a sole practitioner.

"It's really important to build a sense of collegiality with fellow lawyers. There's not so many opportunities to do that these days but it is important for those times when we need to support each other."

John recognises that spending time proactively planning for and putting in

place mechanisms to ensure continuity of support for clients if something happens to their lawyer is a time-consuming exercise that can be hard to prioritise. It can be confronting and challenging to consider what will continue when we have gone, but it is critical to put that pre-planning in place to leave the best legacy we can.

"It's been a pretty time-consuming process retiring," admits John.

"I started thinking about winding things up in 2018. At the end of that year I sent out a mailer to all my clients to let them know I was scaling back my work.

"I began working with a couple of other practices and sole-practitioners to hand on clients where they would be a good fit. We did an introductory interview between the proposed lawyer and my client to ensure



▲ John enjoying a hike at Transmission Gully



▲ John speaking at Old St Paul's in Wellington

they would feel comfortable transferring their confidence. There was no charge for that first interview.”

As well as considering the ongoing support for clients, there are many other aspects of practice to think about as well as business protocol when retiring.

As John notes, one of the difficulties of not having a central repository for important documents like deeds is that it can be challenging for people to know who holds those once a lawyer is no longer practising. This is one of the many reasons why it's so important to keep clients up to date with your movements.

There is also the need to plan for the storage of records for the required time, information that

the Law Society requires and specific requirements around Trust Accounts amongst many other considerations.

John is still making his way through many of these processes, but at least he's comfortable that his clients know who to call when they need legal advice now that he's no longer picking up the phone.

Moving forward, a home office has been established and John's family history has reached the working draft stage. An interest in public art is fostered through association with the Wellington Sculpture Trust.

“There is more time for family involvement, albeit through digital channels to grandchildren in



London,” he says.

“The Wellington Club is a venue for snooker and convivial occasions with fellow lawyers, clients and friends both at work and retired. Retirement can be recommended without reservation.”

Further Information

The Law Society has a practice briefing that provides further details about what's required when closing down or selling a law firm. In terms of taking a proactive approach to retirement – former lawyer Emily Morrow has written previously about taking a strategic approach to succession planning in *LawTalk* 935.

There is information on *Business.govt.nz* on closing a business, including one where you are a sole-trader or leaving a partnership.










Keeping in touch



Lawyers no longer in active practice can keep up-to-date with the happenings in law by signing up to NZLS Weekly, the Law Society's weekly e-newsletter for non-lawyers. This contains most of the information in *LawPoints*. To sign up, go to News and Communications/Email updates on the Law Society website.

LawTalk is also uploaded onto the Law Society's website. Another option is to apply for associate membership of the Law Society.



CPD Calendar 2021

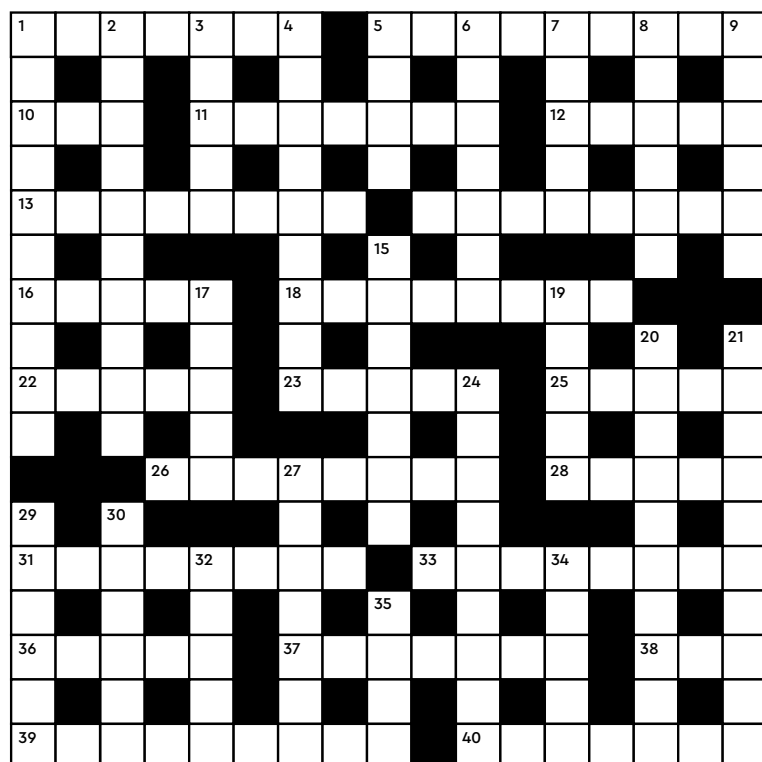
PROGRAMME	PRESENTERS	CONTENT	WHERE	WHEN
CIVIL LITIGATION AND EMPLOYMENT				
IMMIGRATION & PROTECTION TRIBUNAL & COVID-19  2 CPD hours	<i>Judge Peter Spiller</i> <i>Martin Treadwell</i>	The Immigration and Protection Tribunal (the Tribunal) is an independent body established under the Immigration Act 2009 and hears a range of appeals. The stakes are extremely high with the decisions of the Tribunal often life changing for those subject to its decisions and these stakes are potentially compounded in a COVID-19 world. This seminar will take a practical approach in providing candid advice with regard to submitting strong appeals including when there are COVID-19 related matters to take into account.	Auckland Live Web Stream	4 Feb 4 Feb
JUDICIAL REVIEW SEMINAR  3.5 CPD hours  3.5 CPD hours	<i>Sally McKechnie</i> <i>Robert Kirkness</i>	Judicial review proceedings are a useful means of challenging decisions made by a range of public, private and voluntary organisations. If you operate in the public law area or advise decision-makers, this seminar offers you a practical approach to the principles and processes of judicial review.	Wellington Live Web Stream Auckland Christchurch	24 Feb 24 Feb 25 Feb 2 Mar
INSOLVENCY UPDATE FORUM  3.5 CPD hours	<i>Chair:</i> <i>Hon Paul Health QC</i>	Accelerating corporate insolvencies are unfortunately likely to be a continuing consequence of the COVID-19 pandemic and associated economic fallout for many businesses. This forum will provide assistance with making sense of the key developments in this rapidly changing landscape and also provide you with the tools to identify if any of your clients may be in financial difficulties and what options might be available to them.	Auckland Live Web Stream	19 May 19 May
COMPANY, COMMERCIAL AND TAX				
COMMERCIAL PROPERTY - SUBLEASES  1.5 CPD hours	<i>Mark Anderson</i> <i>Antonia Shanahan</i>	COVID-19 with the associated moves through the various lockdown levels and the extremely adverse impact on the economic landscape has resulted in significant anguish for commercial landlords and tenants alike. In the current environment, it is likely that you will have clients who are closely considering a potential sublease option. This webinar will take a practical approach to help ensure that you are able to provide effective advice in this area irrespective of the party that you are assisting.	Webinar	18 Feb
FAMILY				
LAWYER FOR CHILD  18.5 CPD hours	<i>Jason Wren</i> <i>April Trenberth</i> <i>Lisa Samusamuvodre</i> <i>Wendy Kelly</i>	This workshop has been designed to ensure participants have the opportunity to develop the full range of skills, knowledge and attitudes required to carry out the role of Lawyer for Child effectively.	Wellington	22-24 Mar
PROPERTY AND TRUSTS				
TRUST LITIGATION - COMMON ISSUES  1.5 CPD hours	<i>Shane Campbell</i> <i>Janna McGuigan</i>	Trusts are a popular way of managing assets and protecting property and have proliferated in New Zealand with some well managed and others less so. Adding to the complexity is the New Trusts Act 2019 which comes into force on 30 January 2021 with important changes including the information that needs to be provided to beneficiaries. This webinar will consider some of the key common issues that the presenters are experiencing when litigating in this area and also outline steps that you can take for your clients at the front end of the process to help reduce the likelihood of issues emerging later on.	Webinar	3 Feb
PROPERTY LAW CONFERENCE  13 CPD hours	<i>Chair: Duncan Terris</i>	The Biennial Property Law Conference will provide practitioners, at all levels, with the opportunity to update themselves on topics of essential importance and interest in the property law field.	Wellington Live Web Stream	10-11 May 10-11 May
TRUSTS CONFERENCE  13 CPD hours	<i>Chair: Greg Kelly</i>	Described as "New Zealand's Premier Trust Conference" and the "Most useful update on current issues & developments in Trust Law" the biennial NZLS CLE Trusts Conference, now in its 12th year, will once again offer an excellent programme providing practical advice by a stellar line up of presenters.	Auckland Wellington Live Web Stream	21-22 Jun 28-29 Jun 28-29 Jun

CRIMINAL				
EVIDENCE AND TRIAL PREPARATION  4.5 CPD hours	<i>DeAnne Brabant</i> <i>Chris Patterson</i>	A practical workshop focusing on how to prepare a case for court, including the development of a case theory, and the core competencies of evidence, proof and factual analysis.	Dunedin Auckland Christchurch Wellington	27 Feb 13 Mar 20 Mar 27 Mar
IN-HOUSE				
CPD DAY IN-HOUSE & GOVERNMENT  7 + 3 CPD hours	<i>Chair: Jane Meares</i>	Designed for the busy in-house and government practitioner, a one-day programme offering 7 hours face-to-face CPD and a bonus 3 hours of online CPD for you to complete when and where it suits you.	Wellington B Live Web Stream	12 Feb 12 Feb
PRACTICE AND PROFESSIONAL SKILLS				
CPD DAY GENERAL PRACTITIONER  7 + 3 CPD hours	<i>Chairs:</i> <i>Ingrid Taylor (CH)</i> <i>Caroline Hamman (WN)</i> <i>Mary Joy Simpson (AK)</i>	Designed for the busy general practitioner, a one-day programme offering 7 hours face-to-face CPD and a bonus 3 hours of online CPD for you to complete when and where it suits you.	Christchurch Wellington A Live Web Stream Auckland	9 Feb 9 Feb 9 Feb 11 Feb
STEPPING UP – FOUNDATION FOR PRACTISING ON OWN ACCOUNT  18.5 CPD hours	<i>Director:</i> <i>Warwick Deuchrass</i>	All lawyers wishing to practise on their own account whether alone, in partnership, in an incorporated practice or as a barrister, will be required to complete this course.	 Auckland 1 (FULL) Christchurch Auckland 2 Wellington Auckland 3	11-13 Feb 13-15 May 29-31 Jul 23-25 Sep 25-27 Nov
OTHER PRACTICE AREAS				
VIRTUAL COURT APPEARANCES – COMMUNICATING EFFECTIVELY  1.5 CPD hours	<i>Ish Jayanandan</i> <i>Julie-Anne Kincade QC</i>	Things are moving at a rapid rate in the court system as we move through the various COVID-19 levels. There is a high likelihood that you will be asked whether your hearing is suitable for a virtual court appearance and this trend is only going to accelerate. This webinar is aimed at all court lawyers and will take a practical approach aimed at helping you understand the pros and cons of virtual appearances and the steps that you can take to communicate effectively in this environment.	Webinar	22 Feb
JUDGMENTS AND HOW TO ENFORCE THEM  1.5 CPD hours	<i>Toby Braun</i> <i>Kevin Glover</i>	You and your client may have been to trial and won the case but actually enforcing the judgment in their favour can often be a vexed issue. This webinar will outline some of the key aspects for obtaining judgment and provide guidance on the steps that you can take to strengthen your client's position post judgment. It will also examine the steps following judgment, including fixed costs, interest, sealing the judgment and the various options to help with enforcement of final orders of the Court.	Webinar	24 Mar

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Across

- 1 Johnny's back, covered in gold. Grape? (7)
 5 Outraged crowd shoot cap off time traveller (6,3)
 8/10/8 "Wit will woo wicked without weave" – a work from 4 by 1 across and 33 (6,3–6)
 11 Dark circles are heartily backing fanatic (7)
 12 Drug powder returned? Good show (5)
 13 Backing us against 2–40? Informally, I'd be stiffish (8)
 14 "Absolute zero," the French pigeon's heard to state (8)
 16 Female help within – 4 has three little ones (5)
 18 At bridges that noble French made into a conduit (8)
 22 Mulled wine spotted during Hurricane Gustav (5)
 23 Yes, a constant giraffe (5)
 25/3 President ain't a problem I record over (5,5)
 26 Church with rector gone west left by 4's wand'ring son (8)
 28 Quiet Hulk leaving W.C. is green and like an onion, he claims (5)
 31 One blotter could be 1 across's contribution to 4 (8)
 33 Verbally smear camper Harry, a 5 across appeared in 5 across (8)
 36 Back once more, without direction? She never became the time-traveller's wife (5)
 37 Evaporate under tree (7)
 38 Everyone may occasionally fall ill (3)
 39 My rents (or rent) for acoustic guitar, analogue watch, etc (9)
 40 See 2 Down

Down

- 1 Garden gets me and a hen worried (10)
 2/40 Alistair Gordon, 5 across's friend, left the running game with Rod (10–7)
 3 See 25 Across
 4 Had OK time travelling in time, he shall achieve his 30 38 37 (3,6)
 5 "Finish off an enemy of 5 across, Agent Cooper!" (4)
 6 Looked to see if the King's in trouble (7)
 7 Agent Cooper, a contributor to musical theatre? (5)
 8 See 10 Across
 9 Otago University returning Disney's "Robin Hood", for example (6)
 15 Sanskrit treatise accepts Morocco's home to Holmes' giant rat (7)
 17 Japanese dish – square, posh, second hand one (5)
 19 Mentions municipalities one of me has left (5)
 20 Nigel admits Indian to a 7 (2,8)
 21 Mean Biblical ruler replaced Paradise, according to Mitchell (7,3)
 24 Graves product I-I clothing – clothed – clothing u-us? (1, 8)
 27 Say, 'tis loud inside – that's meet (7)
 29 A river found in a bed?... (6)
 30 ...The Thing may disagree! (6)
 32 Overweight love for Muse (5)
 34 Fake news about, for example, King (5)
 35 Bird's one twice (4)

Answers from LawTalk 943, Spring 2020

Across: 1 Moala, 4 Bus, 6 Ascot, 9 Lalbhai, 10 Apirana, 11 Silvia, 12 Benjamin, 14 Ingot, 16 Athenaeum, 18 Goose step, 20 Patel, 21 Outwears, 22 Nelson, 25 Ironing, 26 Mishaps, 27 Ethel, 28 TNT, 29 Ngata.

Down: 1 Molesting, 2 Allyl, 3 Atheist, 4 Bail, 5 Spaceships, 6 Abidjan, 7 Clammiest, 8 Train, 13 Cartwright, 15 Ghost moth, 17 Melanesia, 19 Ezekiel, 20 Press on, 21 Olive, 23 Soana, 24 Omit.

ABOUT LAWTALK

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