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Shortland Chambers is pleased to announce that Yvonne Wang and Sarah Armstrong have joined Chambers. We wish them well in their careers at the bar.

Yvonne Wang
Prior to returning to the independent bar, Yvonne was a Senior Solicitor at the highly respected Auckland firm Meredith Connell. Before that, Yvonne practised as a barrister at two different sets of Chambers in Auckland. Yvonne acts in criminal and civil proceedings with a particular interest in serious fraud, regulatory prosecutions, proceeds of crime, disciplinary proceedings and public interest litigation.

Sarah Armstrong
Sarah is an award-winning commercial litigation specialist. Sarah joins the bar after 12 years as a partner of Russell McVeagh’s litigation practice where she has appeared in complex contract and tort claims, banking and financial markets investigations and litigation, company and securities disputes, insurance, tax payer challenge proceedings, product liability and intellectual property.

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

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PLACE RECYCLE

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The beginning of the year is often a time for contemplating changes to our personal and professional lives. The beginning of a new decade adds a certain piquancy to this process as we seek to set long-term goals.

With that in mind, my first column for LawTalk as we enter a new decade focuses on wellbeing not just as an optimistic “nice to have” but as one of the Law Society’s four key strategic pillars.

Since 2018 the Law Society, and the profession we regulate and represent, have moved from becoming starkly aware of the degree of change required to the culture of the legal profession through reaction and response and now, in 2020, to a focus on wellbeing as a central strategic element.

This is about wellbeing in its broadest sense, with a focus on the Law Society being one of the leaders in evolving the law profession’s culture. It is about ensuring we can use our powers as a regulator, and our resources as a membership organisation, to bring about enduring change by ourselves and in partnership with others.

That statement does need to carry with it a caveat. The decision announced by Law Society President Tiana Epati last October to commission an independent review of the structure and function of the Law Society reflects the constraints the current Act places on our ability to be transparent about our complaints process, and to deal with a broad range of unacceptable behaviour, including complaints of sexual harassment, and bullying within profession.

The review will take time and we need to keep working within the existing legislation to make progress building on the work done by the Working Group chaired by Dame Silvia Cartwright, the more recent work done by the Culture Change Taskforce and the evidence base provided by the 2018 Workplace Environment Survey.

We anticipate further conversations and feedback opportunities on key pieces of work currently in progress including:

• The Culture Change Taskforce Strategy was received by the Law Society’s Board as a draft in December 2019. The Taskforce members, volunteers drawn from across the profession, have committed an enormous amount of time and energy in preparing the strategy and the Board expressed their thanks for this work.

Further engagement on the draft will occur early this year prior to it being finalised.

• We are also progressing proposed changes to the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 which were recommended by the Working Group. These changes are being made to improve our ability to respond to issues of sexual harassment, discrimination and bullying in the profession within the constraints of the LCA. The proposed changes will provide enhanced standards for conduct, reporting and compliance. We will be releasing a draft for comment shortly.

We are also continuing the two pilot projects started in 2019 and will be evaluating these and sharing the outcomes:

• To date, the mentoring pilot programme, being run in Auckland and Canterbury, has been accessed by more than 483 lawyers and resulted in 189 mentoring matches. Feedback from participants in the programme has been overwhelmingly positive.

• A pilot community counselling service, helping lawyers and those who directly work in the legal
community, to deal with the pressures of their roles is also being well used. Since May 2019, 268 people have used this service (202 lawyers and 66 legal workplace staff) with an average of two sessions per person.
Later this year, we will mark two years since the launch of the Gender Equality Charter and will provide an opportunity to measure progress. There will also be the opportunity to be involved in the group that supports this work with expressions of interest recently opening for four new members of the Women’s Advisory Panel.

Another new initiative is the establishment of a Wellbeing Oversight Group which will provide independent expert guidance and expert advice to inform and assist us to develop a comprehensive Wellbeing Strategy.

Over the coming months, I will be sharing more detail of both the role of this group and the overall Wellbeing Strategy. As we implement the strategy, we will continue with a mix of evaluating whether what we have is fit for purpose, piloting new approaches and gaining a better understanding of where there are gaps and our role as a driver, or supporter, in filling those gaps.

In doing this work we will continue to report to, and be guided by, the President, Law Society Board and Council and well as engaging with a broad range of stakeholders so the work we do fits with other initiatives and has impact.

HELEN MORGAN-BANDA
Chief Executive, New Zealand Law Society.

The Law Society Board agreed in December that the title Chief Executive will be used rather than Executive Director as it better reflects the role.

SUPREME COURT

Justice Joseph Victor Williams was made a Knight Companion of the New Zealand Order of Merit for services to the judiciary.
Justice Williams is an internationally recognised expert in indigenous rights law and one of New Zealand’s leading specialists on Māori land and legal issues. He established the first unit specialising in Māori issues in a major New Zealand law firm at Kensington Swan in 1988. He co-founded the law firm Walters Williams and Co in 1994. He was appointed Chief Judge of the Māori Land Court in 1999. Justice Williams was appointed acting Chairperson of the Waitangi Tribunal in 2000 and as the permanent Chairperson in 2004. As Chairperson he played a pivotal role in the report on the Wai 262 claim relating to New Zealand’s law and policy affecting Māori culture and identity.
Sir Joe was appointed as a judge of the High Court in 2008, a judge of the Court of Appeal in 2018 and to the Supreme Court in 2019. He was a founding member and former vice-president of the Māori Law Society, a former president of Te Runanga Rōia o Tāmaki Makaurau – the Auckland Māori Lawyers’ Association, a fellow of the International Academy of Trial Lawyers, and a fellow of the Law Faculty of Victoria University of Wellington.
“Sir Joe Williams has made an immense contribution to the elevation of Māori voices in the justice system. This honour is well-deserved,” Justice Minister Andrew Little said.
“Sir Joe Williams has brought a unique blend of legal intellectual rigour and tikanga Māori to his present role, and so reflects New Zealand in the 21st century. Having been a Judge of the High Court since 2008,
and of the Court of Appeal since 2018, it was only fitting he became a Judge of the Supreme Court earlier this year, and now is a worthy recipient of this knighthood."

Former lawyer Robert (Bob) Narev MNZM was honoured as an Officer of the New Zealand Order of Merit for his contribution to the community and education. Mr Narev is the Chairman of the Holocaust and Antisemitism Foundation (formerly Shadows of Shoah Trust) and has chaired the Auckland Holocaust Memorial Trust since 2016. He has been an Educator for Holocaust Education since 2002, regularly speaking to children at secondary schools and to adult groups. He has used his experience as a Holocaust survivor to teach thousands of New Zealand students about the dangers of racism, prejudice and bigotry and the importance of respecting people of all races and religions. He has been a Founding Trustee for the Senior Outreach Service since 2003 and a Trustee of the Gemach Fund since 2016. Mr Narev spent over 60 years at Auckland firm Glaister Ennor, which he joined in November 1956 before his admission to the bar in 1960.

Taupo lawyer Clayton Trevor Arthur Stent was honoured as a Member of the New Zealand Order of Merit for services to the community and governance. Mr Stent was Mayor of Taupo from for two terms from 2001 to 2007 and has contributed to a range of community organisations for over 30 years. Mr Stent is Chair of the Lake Taupo Protection Trust, having been a Trustee since 2010. The project has been acknowledged by the OECD as a leading national and international environmental project. He played a key role in bringing Life Education to the Taupo Ruapehu District in 1994 and led the process of raising funds to purchase the first mobile classroom. He remains involved with the Life Education Trust as Patron, having been Chairman until 2000. He is a director in Taupo law firm Cargill Stent Clarke Lawyers.

On the Move

Julie Ding appointed director of K3 Legal

Julie Ding has been appointed a director of Auckland firm K3 Legal. She joined K3 Legal in 2015 and has worked across a variety of complex civil, commercial and family disputes, appearing in the District and High Courts - everything from murder trials and complex fraud through to family-related issues has come under her purview. Julie will lead K3’s criminal team, aiming to develop it into a firm specialty.

Kensington Swan announces new partner

Wook Jin Lee has been promoted to the Kensington Swan partnership. Wook Jin has experience working across a wide spectrum of sectors, including electricity, technology, telecommunications, hospitality and insurance. His expertise includes advising on mergers and acquisitions (including takeovers of NZX-listed companies, and private equity investment and divestment transactions), joint venture arrangements, corporate governance considerations, and equity capital raising transactions. He is also a fluent Korean speaker.

Anthony Harper announces new partner

Kathryn McKinney has become a partner in Anthony Harper’s employment practice. Kathryn has over 20 years’ employment law experience gained at top-tier firms in New Zealand and the United Kingdom. Her expertise covers the employment aspects of large-scale mergers and acquisitions, advice on employment disputes and Holidays Act compliance, executive employment remuneration, high value termination and exit settlements.

Chapman Tripp announces three new partners

Chapman Tripp has announced three new partners across their Auckland and Christchurch offices, effective from 1 December.

Lauren Curtayne has become a corporate and commercial partner in the Auckland office, with particular expertise in the energy sector. Lauren started with the firm in 2008, and previously worked for UK-based multinational firm Allen & Overy in its Abu Dhabi Projects team. Lauren advises on the development of a wide range of major projects, including power, gas, solar and infrastructure projects, together with general commercial, regulatory and consumer law issues. She has particular interests in renewable projects and emerging technology.

Tessa Baker has become a...
Attorney-General David Parker announced the appointment of eight Queen’s Counsel on 5 December. Mr Parker said the appointments were made under a new criterion of a commitment to improving access to justice.

“The new criterion was included this year. It emphasises that excellence and leadership in the profession can be seen through a wider, community lens. It is pleasing to see the profession is making a good contribution to access to justice,” he said. The newly appointed Queen’s Counsel are:

**Stephen Hunter**

Graduating with an LLB(Hons) and BA from the University of Auckland in 1999, Stephen Hunter was awarded a Fulbright Scholarship and gained an LLM from Harvard University in 2002. He was admitted as a barrister and solicitor in September 1998. From Harvard he went to London in 2002 to work in the litigation team at Herbert Smith. He returned to New Zealand in 2006 to work at Gilbert Walker in Auckland, becoming a partner in 2008 and acting mainly in High Court civil cases. He also lectured part-time in public law at the University of Auckland from 2006 to 2008.

Mr Hunter became a barrister sole and a member of Shortland Chambers in 2016, focusing on commercial and regulatory matters in the High Court. He is a member of the Auckland Crown Prosecution Panel, the SPCA Pro Bono Panel, and the New Zealand Lawyers and Conveyancers Disciplinary Tribunal. Mr Hunter also serves as a faculty member of the NZLS CLE Ltd Litigation Skills Programme, as the New Zealand member of the Institute for Transnational Arbitration Board of Reporters, and as a trustee of the Hugo Charitable Trust.

**Julie-Anne Kincade**

Julie-Anne Kincade graduated LLB(Hons) from the University of Huddersfield, England in 1990 and was admitted in New Zealand in July 2007. She began her legal career at the Chambers of Richard Ferguson...
Lawyers’ Association, and Auckland Medico-Legal Society.

Simon Foote

Simon Foote graduated with an LLB(Hons) in 1993 and a Diploma of International Commercial Arbitration in 2010. He is currently a PhD Candidate at Victoria University of Wellington. Mr Foote was admitted in September 1993 and began working at Russell McVeagh as a litigation solicitor. He moved to London in 1997 where he worked as a solicitor in the international arbitration team at Clifford Chance. After a year, he returned to New Zealand, joining Ben Vanderkolk & Associates in Palmerston North where he worked as a Crown Prosecutor and civil litigation solicitor.

In 2001, Mr Foote returned to Russell McVeagh, before moving to the Bar a year later at City Chambers in Auckland. He joined Bankside Chambers in 2008, and practises in commercial and civil litigation and arbitration, Crown panel work, and regulatory criminal defence matters. Mr Foote is a Council member of the New Zealand Bar Association and a Fellow of the Chartered Institute of Arbitrators and the Arbitrators’ and Mediators’ Institute of New Zealand. He is a co-author of the New Zealand Bar Association’s 2018 Report on Access to Justice.

Janet McLean

Janet McLean graduated LLB(Hons) from Victoria University and gained an LLM from the University of Michigan. She was admitted as a barrister and solicitor in December 1986. Early in her legal career she served as a legal research officer at the New Zealand Law Commission and as a legislative drafter in Alberta, Canada. Professor McLean has spent much of her career at the University of Auckland, teaching from 1991 to 1997, 1999 to 2006, and from 2011 onwards. She served as Professor of Law and Governance at the University of Dundee and has held visiting fellowships at Woodrow Wilson School of Politics and International Affairs, the Program in Law and Public Affairs at Princeton University (2009), the Australian National University (2001), and at Indiana University as the George P. Smith Distinguished Visiting Professor (2003). Professor McLean also taught for two years at Victoria University, serving as the Director of the New Zealand Institute of Public Law.

She is currently a Professor of Law and Associate Dean (Research) at the University of Auckland and a visiting Professor at the University of Melbourne where she teaches in their Masters programme. As a specialist in constitutional and administrative law, she is the author of a number of publications. Professor McLean has also acted as an advisor for the New Zealand government, serving on the Legislation Advisory Committee and on a ministerial inquiry into Human Rights Protection in New Zealand (2000).
Attorney-General David Parker says Professor McLean has been appointed Queen’s Counsel under the Royal Prerogative in recognition of her extraordinary and longstanding contribution to, and development of, the law.

Nicolette Levy

Nicolette Levy graduated with an LLB(Hons) from Victoria University in 1990 and was admitted to the Bar in November 1990. She was employed as a law clerk at Bell Gully Buddle Weir in 1990, before becoming a staff solicitor working in litigation. In 1993 she moved to John Salmon Chambers where she was a pupil to Don Matheson QC for 18 months.

Since 1994, Ms Levy has worked as a barrister sole, specialising in civil litigation and criminal appeals to the Court of Appeal and Supreme Court. Ms Levy takes many civil cases on legal aid and has appeared in more than 90 criminal appeals funded by legal aid. Ms Levy is a faculty member for Civil Litigation Skills and Expert Witness programmes. She is also a member of the New Zealand Bar Association Criminal subcommittee.

Karen Feint

Karen Feint graduated with a BA and LLB(Hons) from the University of Otago and an LLM from the University of Toronto. She also holds a Diploma in Te Aupūkithanga ki te Reo Kairangi from Te Wānanga o Aotearoa. Having been admitted in October 1990, Ms Feint began her legal career as a solicitor at Bell Gully. After completing her LLM in 1994, she returned to New Zealand to work in the litigation department at Buddle Findlay.

She has been practising as a barrister at Wellington’s Thorndon Chambers since 2009, where she specialises in civil litigation, public and constitutional law, and Māori legal issues. Ms Feint has particular expertise in the Treaty of Waitangi and is the author of a number of publications on Māori jurisprudence. She is also a former co-convenor of the New Zealand Law Society Women in Law Committee, and a current member of the Wellington Women Lawyers’ Association Committee and the New Zealand Bar Association’s Diversity Committee.

Leonard Andersen

Leonard Andersen graduated LLB(Hons) from the University of Otago in 1975 and was admitted in December 1975. His first legal role was as a teaching fellow in the Law Faculty at Otago University, before he moved to Whakatāne in 1976 to join Osborne Handley Gray & Richardson as a staff solicitor. In 1979 he became a partner and was responsible for all litigation within the firm until his departure in 1990.

Since 1991, Mr Andersen has been a barrister sole practising in Dunedin. His practice is varied, ranging from civil and criminal litigation to Family Court cases, employment cases and Resource Management Act proceedings. He has been a part-time lecturer at Otago University since 1992, teaching courses in advocacy, criminal procedure, and forensic law. He is the creator of both the first advocacy course to be taught in a New Zealand university and the only forensic law course to be taught in the country. Mr Andersen is the current President of the Criminal Bar Association and the chair of one of the two New Zealand Law Society Practice Approval Committees. He also serves on the faculty of the NZLS CLE Ltd Litigation Skills Programme and on the Southern Selection Committee responsible for granting approvals for legal aid.

Jonathan Temm

Jonathan Temm graduated with a BA and an LLB(Hons) from the University of Auckland in 1993 and was admitted to the Bar in June 1993. He joined Chapman Tripp Sheffield Young as a law clerk and went on to work as a solicitor with a focus on litigation and property law. In 1995, he joined Davys Burton in Rotorua as an associate, becoming a partner in 2000.

Mr Temm moved to the Bar in 2005, undertaking criminal defence work and civil litigation. In 2010 he became President of the New Zealand Law Society where he represented the national legal profession for three years. In 2013, he returned to his private practice where he continues to specialise in criminal and civil litigation. Mr Temm has been significantly involved in his local community, undertaking a number of pro bono cases for Rotorua residents and serving on the Executive Board of the Rotorua Chamber of Commerce for eight years. He has also served several years on the New Zealand Council of Law Reporting and as the Director of the Litigation Skills Faculty. Mr Temm is a member of the New Zealand Bar Association and a Trustee of the NZ Law Foundation.
Karen Feint says it is personally thrilling to have been appointed a Queen’s Counsel, but more importantly it represents overdue recognition for the Treaty of Waitangi Bar. Ms Feint has been practising law for over 25 years and over the past two decades has found her legal voice was best served in representing issues of social justice as they intersect with the power of the state.

Since 2009, she has practised as a barrister at Wellington’s waterfront Thorndon Chambers in public and constitutional law, with a strong focus on Crown-Māori relations. Ms Feint holds a Bachelor of Arts in social sciences, with a First-Class Honours degree in law from the University of Otago and a Master of Laws (International Human Rights Law) from the University of Toronto, Canada.

Finding her niche in law
Karen Feint started her legal career in the litigation department at Bell Gully, but found herself searching for a deeper purpose in the profession.

“It took me a while to find my feet in the law. I found that commercial law left me cold, and I was disillusioned by the big law firm model that is so driven by the bottom line.”

She wanted to work in areas of law where she could see and feel the effect of the legal work she was doing.

It wasn’t until she returned from her OE in 1995 and took a job at Buddle Findlay that she found her niche. Working with then partner Carrie Wainwright (now a Māori Land Court judge), she began acting on historical Treaty of Waitangi claims before the Waitangi Tribunal. Ms Feint was drawn into learning more about New Zealand’s history, and she loved the challenge.

“For the first time I felt that I was doing work that was both interesting and meaningful. Commercial litigation is mainly just about money; I was much more inspired by being able to play a role in remedying injustices and creating meaningful social change through the advancement of indigenous legal rights. I have witnessed first-hand how airing and redressing historical grievances have revitalised hapū and iwi, and made a genuine difference to people’s lives,” she says.

Ms Feint has developed her expertise in public law but continues to have a strong practice acting for Māori in litigation covering topics as diverse as constitutional law, judicial review, equity, torts, property and environmental law.

Her career path was not an obvious direction for an Australian to take. She was born in Melbourne, but her family moved to Dunedin when she was a child. Ms Feint has schooled herself in te reo and tikanga Māori through a Diploma in Te Aupikitanga ki te Reo Kairangi from Te Wānanga o Aotearoa, but modestly describes her te reo as “intermediate level”.

Landmark Supreme Court decision
Karen Feint regards the Proprietors of...
Wakatū v Attorney-General [2017] 1 NZLR 423 case as a highlight of her career, saying that it is “one of those once-in-a-lifetime cases that has been such an enormous privilege to have been involved in”.

The case dates back to the 1840s when the New Zealand Company was acquiring land for its Nelson settlement. As part of its systematic colonisation plan, the company proposed the ‘tenths’ scheme, whereby one-tenth of the land would be reserved and held on trust for the Māori customary owners so that they too would benefit from the new town in their midst. The Crown approved the land purchase on that basis, but failed to reserve the full tenth, and it was not until 1977 that the remnant tenths were returned to Wakatū Incorporation. The case was brought against the Crown on the basis that it owed trust and fiduciary duties to the Māori customary owners.

The High Court and Court of Appeal rejected the claim, deciding that the Crown’s obligations to Māori were in the nature of a ‘political trust’, and therefore were not legally enforceable. However, in 2017 the Supreme Court overturned the lower courts in a mammoth judgment that occupied 255 pages of the law reports. The court decided that the Crown owed fiduciary duties to reserve 15,100 acres of land for the Māori customary owners, and to exclude their pā, urupā and cultivations. The case was sent back to the High Court to make findings on liability, loss and remedy, and is still ongoing.

The Supreme Court decision is a landmark precedent, as it marks the first occasion in which the courts have found that the Crown can owe legally enforceable duties to Māori. Ms Feint says that this is significant because “there is a need for the constitutional relationship between the Crown and Māori to be subject to judicial oversight. We know from history that (as Justice Williams has put it) it is ‘wrong in principle and dangerous in practice’ for the Crown to be the arbiter of its own justice”.

The decision has spawned a special issue of the New Zealand Law Review [2019] devoted to academic analysis of what the case might mean for New Zealand law.

**Alternative career pathways**

Karen Feint says her appointment to QC proves there are alternatives to the more traditional career pathways in law firms.

“I did not find large law firm practice conducive to a family-friendly lifestyle. I went to the Bar back in 2003 when my youngest son was a baby, and it turned out to be the best thing I ever did. I loved and still love having the freedom to do the work I want to do and the flexibility that comes through having no boss or budget to worry about.

“One young lawyer told me recently that she was excited by my appointment because she had thought that for women barristers to succeed they needed to have gone through Crown Law first. Of course, she is right that a high proportion of female silks are ex-Crown Law, but it is good to see that the mould is being broken,” she says.

However, Ms Feint points out that the perception that women are succeeding disproportionately through the public service compared to private practice is borne out by the facts – in 2018, NZ Bar Association research showed that the proportion of women acting as lead counsel for the respondent in the Court of Appeal and Supreme Court in 2017 dropped from 38% and 37% respectively to just 17% and 18% when Crown Law was excluded from the statistics (comparable to the 17% and 18% of female lead counsel appearing for
the appellant).

**Barriers for senior women at the Bar**

Ms Feint believes there continue to be real barriers to progression for women at the Bar. She says that, as these figures highlight, it’s still relatively rare for female barristers to be instructed as lead counsel, particularly in appellate cases. Ms Feint has had a long involvement in promoting gender equality in the profession.

She considers it unacceptable that the Inner Bar is nowhere near to achieving gender equality or reflecting the diversity of the legal community.

After the 2019 appointments, only 31 of 138 practising QCs (22.5%) are women, even though women have been entering the legal profession in equal or greater numbers to men for over 25 years. Statistics are not kept on ethnicity, but the ranks of QCs do not appear to be particularly culturally diverse either. Ms Feint believes that the fact that the Inner Bar is so male dominated matters because it reinforces the (perhaps unconscious) stereotype of a barrister as a “grey-haired white man in a pin-striped suit”.

However, in the last two rounds under the current Attorney-General, David Parker, 50% of the appointees have been women (contrasting with the 2002-2017 rounds when around three-quarters of the appointees were men). Ms Feint posits that one way to achieve change more quickly would be simply to abolish the rank.

**The new criterion of ‘improving access to justice’**

The Queen’s Counsel were announced by Mr Parker in December 2019, and were chosen under a process that now includes a new standard of demonstrating a commitment to improving access to justice.

“I think the new criterion rightly reframes the focus by emphasising the importance of making a contribution to law and the legal profession,” Ms Feint says.

Being part of the profession, she says, carries with it a responsibility for promoting access to justice, and in her experience it is as big an issue as it is often portrayed in media reports.

“The need that Māori have for pro bono or low-cost legal advice can feel overwhelming. I have done a lot of legal aid work and while Māori can get legal aid to go to the Waitangi Tribunal, an iwi or hapū can’t get legal aid as a group to go the senior courts. That’s a real barrier for Māori.”

Ms Feint also considers the independence and leadership of the Bar is critical for upholding access to justice.

“My philosophy of the law has also been shaped in part by the insights I have gained from an understanding of New Zealand’s legal history. The arc of that history since 1840 illustrates the fragility of the rule of law, given that on occasion law has been used as an instrument of oppression, or has not been applied impartially. To me, the very human fallibility of law underscores the importance of civil society in upholding the rule of law, adhering to the Treaty of Waitangi and international human rights norms, and ensuring the independence of the Bar and the judiciary,” she says.

Since the role was established in 1907 just 325 people have been appointed Queen’s Counsel. This shows it recognises the highest standard of excellence for lawyers representing people in court.

**Life outside law**

Karen Feint QC has a partner, Andrew, and two sons. Her eldest, Dai, will miss her admission ceremony, as he is over in Boulder, Colorado on an exchange as part of his civil engineering degree at the University of Canterbury. Her younger son, Camden, is still at school, but is focused on achieving a competitive road cycling career in Europe.

In her down time, Karen enjoys reading, travelling, mountain biking and sailing. Over the Christmas break, she completed a 35km mountain bike race at Bannockburn.

“I finished an undistinguished second-to-last but I was just happy to have made it that far.

“We have a 12-metre long Whiting yacht and regularly sail from Mana Marina in Porirua over to the Marlborough Sounds. I find it very relaxing being on the water in such a beautiful location. In November we went further afield, embarking on a voyage to Golden Bay to attend a party. It took two days each way via Rangitoto/D’Urville Island, and we were lucky enough to have a pod of dolphins playing around the boat for an hour or so as we crossed Tasman Bay,” she says.
MWIS announces new partner

Richard Annandale has joined the partnership of MWIS Lawyers in Whangārei, effective from 1 November 2019. Richard has been with MWIS Lawyers since moving to Northland in 2014 from Hamilton. Richard is an experienced lawyer, with a speciality in all aspects of criminal prosecution work. Over his time as a criminal prosecutor he has conducted numerous jury trials in the District Court and High Court, both in Northland and in the Waikato.

Simpson Grierson promotes nine to special counsel

Simpson Grierson has promoted nine senior associates to the position of special counsel, effective from 1 January 2020.

Sonia Vitas is a member of the Auckland-based construction team. Sonia has advised clients on construction projects across a wide range of industry sectors. Most recently she has advised Watercare on the Central Interceptor Project – one of the largest and most complex wastewater infrastructure projects undertaken in New Zealand. She has particular expertise in project procurement and documentation. Deborah Rowe is also a member of the Auckland-based construction team. Deborah has helped clients across a range of sectors on construction contracts and in resolving construction related disputes, including Construction Contracts Act adjudications, arbitration and litigation. Sandy Donaldson is based in the Auckland commercial property team. Sandy specialises in property law and property development – from small scale residential subdivisions to complex commercial developments. Her expertise also extends to property and due diligence advice in residential and commercial developments and commercial leasing. John Craig is a member of the Wellington commercial property group. John has advised on major projects for Crown and local authority entities, as well as corporate clients. These include the development and leasing of new build premises, refurbishment projects, due diligence, joint ventures, and the management of significant sales and purchases of commercial properties. Louise Taylor is an Auckland-based member of the commercial group. Louise specialises in all aspects of technology law and advises clients across a range of general commercial and technology-related projects. She has particular expertise in new and emerging tech, including AI, blockchain, internet of things, cloud/fog, quantum computing and drones. Louise is also a Deputy Chair of the AI Forum NZ Executive Council. Jane Harris is a member of the Auckland-based commercial group. Jane has advised corporate clients on a variety of transactions related to the sale and purchase of companies and businesses – including Inner Mongolian Yili Industrial Group’s acquisition of Westland by scheme of arrangement, the sale of TRG Imaging to a Waterman Fund, and assisting Hilton Foods with a green-fields processing factory development.

Carl Blake is an Auckland-based member of the employment group. Carl advises on all aspects of employment law including corporate restructuring, personal grievances, employment agreements and policies, health and safety, human rights and privacy, and collective bargaining. He regularly represents employers in mediations and has appeared before the Employment Relations Authority, Employment Court and Court of Appeal. Nicky Hall is a senior litigator with over 20 years’ experience in general civil litigation. She has particular expertise in property litigation, public works compensation and rent reviews, as well as contract and commercial disputes. Nicky is currently leading the process for addressing land compensation issues in respect of the City Rail Link project. Graeme Palmer is an Auckland-based member of the local government and environment group. Graeme advises public entities, and in particular local government clients across a wide range of matters including rates, council-controlled organisations, infrastructure, bylaws and statutory bills. He also specialises in judicial review, appearing in numerous High Court and Court of Appeal hearings, the Privy Council and the Supreme Court.
Tony Bouchier laughs ruefully when we finally connect on the phone.

At the time he is in Japan and it is a few days since the disappointing Rugby World Cup match between the All Blacks and England. He serves a refreshing dose of positivity to kick things off.

“I’ve never been to Japan before, it’s wonderful,” he says. “Wonderful country, wonderful people and we’ve been watching a bit of footy and doing a bit of touristy stuff.”

The trip, Mr Bouchier says, is an ideal combination of his and his wife’s – retired District Court Judge Josephine Bouchier – love for travel and rugby. With the bulk of their careers behind them, the Auckland-based couple are making the most of a more leisurely lifestyle.

“I’ve been a barrister for 20-something years – I’m not quite sure how long ... and now, I’m semi-retired.”

Mr Bouchier has had two full and varied careers in “the law”. The first began when he entered the police as a constable in Rotorua. A stint in the police undercover programme is also mentioned, and at the peak of his career, he is an inspector in Auckland.

Despite his rise through the ranks, Mr Bouchier says he was deeply dissatisfied with his work by his mid-40s. The decision to leave the police came after a period of professional frustration, he says.

“I hadn’t been to university, so when I was a senior sergeant I thought it was time to get some tertiary qualiﬁcations. I went to the University of Auckland and did a Masters of Business Administration and I thought that would help my prospects in the police, but I found that it didn’t.”

Law student to barrister sole

The suggestion of studying law came from his wife, Mr Bouchier says.

“When I was expressing my unhappiness in the police, she said: ‘Well you always criticise these lawyers you appear in front of. Why don’t you go and do a law degree?’

“The penny literally dropped on the spot and I thought ‘what a good idea’.

“So, I took three years of leave without pay and I went to Auckland University and did a law degree.”

He intended to return to the police at its completion, however, familiar reservations about the work returned.

“While they had a job for me, they didn’t have any specific plan for my career, and I thought that all I would be doing is going back to more of the same,” he says.

Once he left, it was “a very short period of time” in the finance industry. But he quickly realised “it wasn’t my thing”.

“I literally stepped out of there, hung out my shingle as a barrister and have never looked back.”

Transitioning away from the prosecutorial process, and shifting into self-employment, was exactly what he needed. Knowledge of the police process also made him uniquely qualiﬁed to represent defendants, Mr Bouchier adds wryly.

“I suppose I sort of spent 20-something years prosecuting...
as an investigator, and I’ve got to say that probably the best training you can get as a defence counsel is to do the police detective training course. “And I wasn’t interested in doing prosecution work because it would have meant I would have had to go work for the police or the Crown and I wanted to be self-employed.”

The view from the other side

The new-found enthusiasm for his work also came with a more circum-spect understanding of the criminal justice process.

“The objective of being a policeman is a little different to being a defence counsel,” he says. “Without doubt, some police go beyond the rules in their attempt to prosecute people and you certainly see that unfairness regularly. It’s something that you don’t realise when you are a policeman.”

His unwavering belief in a robust and well-resourced criminal bar is rooted in his experiences as a lawyer and police officer. While Mr Bouchier includes two attendances before the Privy Council as a member of David Bain’s legal team as career highlights, he says the less complex cases have their own profound impacts.

“The most memorable cases are often just the minor ones, where you can see there’s some travesty, some injustice committed against a client, and that you can go to the court and the court does listen and you get a good outcome for them.”

Mr Bouchier, a former president of the Criminal Bar Association, goes on to discuss challenges facing the defence bar, linking in the politicisa-tion of criminal justice issues.

“The voting public out there has a certain attitude towards criminal law,” he says.

“It’s basically ‘lock them up and throw away the key’. There’s got to be a change in mindset in the community and people must acknowledge that a good and robust criminal justice system adds huge value and is really important for our democracy.

“If people can get that mindset, then they wouldn’t be opposed to more money being thrown into crim-inal law – into the Ministry of Justice, into legal aid, and into rehabilitative matters around our prisons.”

The current president of ADLS Incorporated notes it is increasingly difficult to attract younger lawyers to criminal defence work. Legal aid payments being out-of-step with the requirements of the job are a significant factor, he says.

“Legal aid payments are really just appalling, and the criminal law community really does rely heavily on legal aid. I think in the future we might have a problem that we just simply will not have enough lawyers who are taking up criminal law as an option because, financially, it’s not worthwhile.”

More police a ‘misdirected solution’

The police’s role in the criminal justice system is another point of discussion. I ask whether the Government’s promise to add 1,800 new police officers is helpful. Mr Bouchier couches his response in the phrase “misdirected solution”.

“The problem is the more police you have out there, the more people that are being arrested. Those people are being pushed into a system that is under-resourced and it’s just caus-ing more capacity problems in the justice system itself.”

He identifies initiatives like the Alcohol and Other Drug Treatment Court, and the Family Violence Court as more effective responses to an over-burdened system. Those courts prioritise rehabilitation and interfere with the “merry-go-round” of reoffending, harm and prison, Mr Bouchier says.

October’s Court of Appeal decision on methamphetamine sentencing guidelines (Zhang v R [2019] NZCA 507) also comes up.

Mr Bouchier says while changes stemming from the judgment are long overdue, its significance should not be understated.

“Over the years, we’ve had prob-lems with heroin and other serious drugs, but methamphetamine absolutely stands out on its own,” he says. “It is a huge problem. It requires thinking outside the square as to how we deal with offending under the Misuse of Drugs Act.”

Seeing sense in the haze

Related to that is this year’s can-nabis legalisation referendum, Mr Bouchier says.

A supporter of legalising and regulating recreational use of the drug, he talks about the unnec-essary harm perpetuated by New Zealand’s approach to cannabis. His upbringing in a family which immigrated from the Netherlands ties into his view of current legis-lation. The country is known for its liberal approach to recreational cannabis use and its coffee shops that sell the drug.

“I’m Dutch by birth. My family immi-grated to New Zealand in 1953 from Holland,” he says.

“I’ve been travelling back to Holland pretty much every year since the mid-seventies, since they set up their coffee shops. Their world hasn’t imploded, and it hasn’t resulted in a higher uptake of the drug.

“It’s actually relieved the crim-inal justice system of all that minor offending.”

For New Zealand, he believes legalising and regulating the drug is the best way forward. “There’s a whole lot of good reasons as to why we should be dealing with it as a health issue and why it would be more beneficial to both the public and the justice system to change. We just have to see sense in it,” he says.

Teuila Fuatai  teuila.fuatai@gmail.com is an Auckland-based journalist.
On The Move

Khushbu Sundarji promoted to Senior Associate

Khushbu Sundarji, who has been an associate at Stewart Germann Law Office for the past two years, has been appointed Senior Associate effective from 1 December 2019. She undertakes commercial, franchising and business law.

Chapman Tripp promotes two special counsel

Two Chapman Tripp lawyers have been promoted to Special Counsel, effective from 1 December 2019.

Vivian Cheng joined Chapman Tripp in 2012. She has 17 years’ experience advising clients on all aspects of taxation law, with particular expertise in business structures and reorganisations, mergers and acquisitions, financing transactions and cross-border taxation. She also advises on FATCA and the automatic exchange of financial account information. Vivian regularly speaks at events, was past chair at the annual NZLS Tax Conference, is a regular contributor to the New Zealand Law Journal, and is ranked by Chambers Asia Pacific as an Associate to Watch.

Nicholas Wood provides advice on dealing with commercial disputes, civil litigation and arbitration, as well as on managing the risk of disputes before they arise. In recent years, he has been responsible for the management of a large Canterbury earthquake-based insurance litigation portfolio. He successfully defended an insurer in two High Court trials brought by dissatisfied homeowners. Nicholas authored the legal textbook Sale of Goods in New Zealand, which won the JF Northey Memorial Award for 2018. He has also been a member of the McGechan on Procedure author team.

Russell McVeagh announces senior associates and special counsel

Russell McVeagh has announced four promotions and one new appointment to the firm. Jeremy Upson has joined the litigation team in Wellington as a Senior Associate. Jeremy specialises in commercial and public law disputes and has appeared at all levels of the New Zealand court system.

Natalie Sundstrom has been promoted to Special Counsel. Natalie is a commercial property and construction specialist with extensive experience advising clients in capital markets transactions, leasing and construction projects.

Bradley Aburn has been promoted to Senior Associate. Bradley specialises in competition and consumer law and has extensive experience in advising clients on competition investigations, competitor collaborations, merger control and market power issues.

Kristen Gunnell and Lauren Eaton have both been promoted to Senior Associate. Kirsten and Lauren are environmental and resource management law specialists, with experience in major commercial development and infrastructure projects.

NZLS

Rule of Law Committee writes to Minister of Foreign Affairs

Following release of its statement on the situation in Nauru, the Convenor of the Law Society’s Rule of Law Committee, Austin Forbes QC, wrote to the Minister of Foreign Affairs, Winston Peters on 9 December.

Mr Forbes outlined the Law Society’s concerns and concluded: “We are aware from a media statement on 30 January [2019] that the New Zealand government is looking to extend New Zealand’s relationship with Nauru in order to promote regional values and support development and good governance in Nauru. Current developments in Nauru run directly contrary to those objectives and the Law Society would urge you to take steps to raise the concerns directly with the Nauruan government.”

Mr Peters responded, saying the Law Society’s continued advocacy of justice and the rule of law was appreciated. He said New Zealand continued to follow developments in the Nauruan justice system.

He noted that on 30 January 2019 New Zealand had increased its development funding to Nauru to NZ$18.5 million over three years, an increase of about NZ$8 million.

“New Zealand’s diplomatic and development partnership with Nauru provides a basis for regular, constructive discussions with Nauru on issues of importance to New Zealand, such as the importance of good governance, democratic institutions and the rule of law,” he concluded.

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Tell us about yourself?
I’ve been fortunate to have fallen into this world of tech and innovation so early on in my legal career. I’ve always been somewhat inclined to think about how things could be done differently, more efficiently and more collaboratively. It wasn’t until the Young Legalpreneurs scholarship opportunity with the Centre for Legal Innovation (CLI) came up earlier this year that I realised how innovation and tech could really drive positive change. I am by no means an expert, but I come to the legal profession with fresh eyes and a new perspective, and that’s really what I think innovation and tech are all about.

What does legal innovation mean to you?
For me, legal innovation is fundamentally about being open to change. It’s about understanding that improvement is a continuous, iterative process, and not a destination. We work in a notoriously conservative profession, and it’s becoming clearer and clearer that much of what we do and the way we work is unsustainable. Innovation speaks to our ability as both individuals and as an entire community to accept that there are areas in which we could do better, that this is okay as long as we are willing to try new solutions, and importantly, that failure is part of the process, and not a reason to give up.

What role does technology play in innovation?
Technology can be a fantastic tool in supporting and enabling innovation; one need only look at something like automation to see how tech can increase efficiency exponentially. In the same vein, technology can provide as much hindrance as it can support if implemented improperly, or particularly where organisations are required to make best use of outdated legacy systems. A huge learning for me has been understanding that innovation and tech are not the same thing. I’ve found that there are many in our profession that also confuse the terms, marred by their own experiences with poor technology and systems, and apply the same hesitancy and suspicion toward innovation and design. For me, we need to get the innovation part right before looking to buy/create/apply tech solutions.

What pressures are organisations facing in the delivery of legal services?
Clients continue to demand more for less from their legal service providers. The growth of in-house capability shows that clients are wanting legal services even more quickly and for less money. On the other hand, the legal profession has been asked to take better care of its people, with mental health and wellbeing a huge priority across a multitude of sectors and industries. I believe when done properly, innovation and tech can be a huge leveller in this space, maximising the capability of existing individuals while also increasing the efficiency of legal systems and services.

What developments do you see in how legal services are delivered?
With AI taking over much of the low-level work of law firms and organisations, younger members of the profession will need to leave university with better legal expertise and strategic skill right off the bat. On the flip side, this requires buy-in from law firms, willing to
allow younger legal professionals greater influence and input into higher level work, particularly given clients continue to demand better legal services at a lower cost.

What opportunities has legal innovation brought to you?

Aside from the CLI scholarship opportunity and the amazing connections I’ve been able to make – both of which I am incredibly grateful for – legal innovation has opened my eyes to the endless possibilities for legal services. The law can be isolating and discouraging for many who might not fit in the stereotypical idea of what a lawyer should be. Legal innovation has taught me that thinking differently is something to be valued, and puts me and others like me, on the forefront of change.

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

Just start! It sounds easy enough, but most people who may be thinking about alternative ways of doing things don’t realise that they’re thinking innovatively. There are so many free resources online for those who may be new at things like innovation and tech so look for them next time you’re perusing Google or LinkedIn.

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

Without overstating the fact – because it would be irresponsible not to. You wouldn’t use a pen and paper to draft pages and pages of written submissions (or at least I hope not), so it makes no sense not to learn about what’s next in innovation and technology. Whether you like it or not, change is already here, so might as well look into now.

Andrew King is the organiser of LawFest, an annual legal technology event which will be held at the Cordis Auckland on 18 March.

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On The Move

Murray Grant appointed Special Counsel at Wotton + Kearney

New Zealand-based Murray Grant is one of seven promotions announced by Australasian insurance law specialist firm Wotton + Kearney. Murray specialises in employment-related disputes including issues of discrimination and whistleblowing. He has a strong advocacy background in mediations, tribunals and courts including in the Human Rights Commission. Murray also has considerable experience assisting healthcare professionals on medicolegal and regulatory issues in New Zealand.

Fiona McMillan in the employment team has been promoted to Senior Associate. Based out of the Dunedin office, Fiona specialises in employment and education law. Fiona has been with the firm since 2007. Before becoming a lawyer, Fiona worked as a primary school teacher, which puts her in a strong position to advise on legal issues affecting schools.

Steve O’Dea in the corporate-commercial team has been promoted to Associate. Steve, who is based out of the Auckland office, advises on a wide range of corporate and commercial matters, with particular specialism in infrastructure, construction, intellectual property and technology. He has advised clients on transactions and problem solving in a range of sectors, in multiple jurisdictions, including public private partnerships, infrastructure and construction matters, mergers and acquisitions, and a wide variety of commercial contracts.

Lois Stone of the property and private client team has been promoted to Associate. Based out of the Christchurch office, her areas of expertise include corporate and commercial, private client, property and development, and wills and estate administration.

Fiona Henderson of the property and personal client team has been promoted to Associate. Based out of the Christchurch office, Fiona advises on a number of matters including residential and commercial property transactions, subdivisions, commercial leasing and property matters affecting irrigation schemes.

Sam Buchan of the corporate-commercial team has been promoted to Associate. Based out of the Dunedin office, Sam’s areas of expertise include commercial contracts, mergers and acquisitions, infrastructure and construction, intellectual property and corporate advisory.

James Cowan has been promoted to Associate in the Dunedin litigation and employment team. James specialises in employment law as well as health and safety and general civil litigation. James has particular expertise in advising on and conducting employment investigations.

Laura McPhail of the corporate-commercial team has been promoted to Associate. Based out of the Queenstown office, Laura specialises in unique business structures and commercial deals. She also is heavily involved in early stage, complex, property development projects.
On The Move

Terry Kirkham joins Holland Beckett Law in Rotorua

Bay of Plenty firm Holland Beckett Law has announced Terry Kirkham as Special Counsel in the firm’s Rotorua office. Terry has 26 years’ experience and has been practising law in the Taupo region for the past 10 years, specialising across land and commercial law. His commercial practice includes leasing, business start-ups, commercial contracts and asset ownership structures, and he also acts for iwi-owned entities and farming clients.

New special counsel and senior associates at Buddle Findlay

Buddle Findlay has promoted three Special Counsel and eight Senior Associates from 1 January 2020.

Special Counsel

Natasha Wilson specialises in public law and advises on government departments, Crown entities and State-owned enterprises, as well as private clients, on a range of public, regulatory, and commercial matters.

Nicola Ridder specialises in health law, employment and industrial relations, information law, and dispute resolution.

Thaddeus Ryan specialises in resource management, environmental, local government and Māori law. He has helped many Buddle Findlay clients navigate complex and contentious RMA consenting and planning processes.

Senior Associates

Celia Olds specialises in commercial litigation and dispute resolution.

Esther Bennett specialises in environmental and resource management law.

Lorraine Hercus specialises in employment law, health and safety, information law, litigation and dispute resolution.

Stephanie Snedden advises on all aspects of commercial property.

Luke Sizer specialises in commercial litigation and arbitration.

Amy Cunniffe specialises in corporate and commercial law with particular experience in mergers and acquisitions, joint ventures, restructuring, corporate governance and commercial contracting.

Leigh Zeigler specialises in various areas of environmental, resource management and local government law.

Jonathan Schwarcz has experience in debt recovery, insolvency matters and contractual claims.

Two join Morrison Kent

DeAnne Brabant has joined Morrison Kent as a Senior Associate in the litigation team. DeAnne is an experienced dispute lawyer, with extensive history in government regulation and is skilled in crisis management, policy advice, regulatory practice and corporate governance and leadership. DeAnne has worked for IRD and WorkSafe, and is an Associate Teaching Fellow at Massey University at the Centre for Ergonomics, Occupational Safety and Health (C ErgOsh). She has presented training for NZLS CLE, at conferences and to non-profit organisations. She is also a Trustee in the Fertility Funding Charitable Trust.

David Abricossow has joined the firm’s family law and civil litigation teams as a Senior Associate. David is an experienced civil litigator with considerable experience at all stages of the litigation process.

His areas of specialty include commercial and property litigation, relationship property, and trust and estate disputes. He has also worked with various types of alternative dispute resolution. He has made numerous appearances in the High Court, District Court, and Family Court. He also has Court of Appeal, Alcohol Regulatory and Licensing Authority, and Disputes Tribunal advisory experience. David is a volunteer trustee and co-chair of Community Law Wellington and Hutt Valley.

Brenton Rooney joins Race Douglas Burke

Brenton Rooney has joined Dunedin firm Race Douglas Burke as a Senior Associate. Brenton specialises in property and trust law but has specific expertise in advising rural clients on succession and high value transactions. Before joining Race Douglas Burke Brenton was an Associate at Anderson Lloyd.

Two new Senior Legal Counsel at the Electricity Authority

The Electricity Authority’s legal team has announced Voon Shan Kong and Katie Wyllie as Senior Legal Counsel.

Voon comes to the authority from the Reserve Bank of New Zealand and was previously in the legal team at MBIE.

Katie was previously at Nokia New Zealand for several years, with her most recent role being Director Legal & Contract Management New Zealand & Pacific Islands.
Focus on the Law Society’s Public and Administrative Law Committee

The Public and Administrative Law Committee began in 2010, to provide expert advice and opinion on issues relating to public and administrative law.

The committee’s convenor, Jason McHerron, is a Wellington barrister at Woodward Street Chambers. Admitted in September 1996, he specialises in civil litigation and has appeared in all the general courts, as well as specialist tribunals here and overseas. He has been a co-author of McGechan on Procedure since 2007 and was one of the authors of Subordinate Legislation in New Zealand (LexisNexis NZ Ltd, 2013). As well as convening the committee, Jason is an adjudicator for the Motor Vehicle Disputes Tribunal and a New Zealand Law Society representative on the Rules Committee.

The other committee members are Anthony Wicks, a senior solicitor with Chapman Tripp in Wellington who specialises in commercial and public law litigation and dispute resolution; Ben Keith, a barrister at Wellington’s Thorndon Chambers whose main fields of expertise are in administrative, constitutional, human rights and public international law; Lambton Chambers, Wellington barrister Debra Angus, who specialises in public law and democratic governance; Elana Geddis, a barrister at Wellington’s Harbour Chambers and specialist in public, administrative and international law; Duncan Cotterill Wellington partner Nick Crang, who leads the firm’s national public law practice; Stephanie Winson, who is the chief legal counsel for Maritime New Zealand in Wellington; and Susannah Shaw, an associate at Meredith Connell’s Wellington office, specialising in public law, company and securities law, trusts, property and tort claims.

The committee commented on a wide range of reform proposals in 2019 in relation to:

Official Information: On 24 April the committee contributed to the Law Society’s feedback to the Ministry of Justice on how the Official Information Act 1982 is working in practice.

Racing industry reform: Committee convenor Jason McHerron presented a submission to the Transport and Infrastructure select committee on 5 June on the Racing Reform Bill, expressing concern at the penalty provisions in the bill and its fast-tracking through the parliamentary process.

Civil aviation law: The committee provided comments to the Ministry of Transport on 4 July on the Civil Aviation Exposure Draft Bill and associated commentary.

2020 general election referenda: On 16 September the committee provided the Law Society’s submission to the Justice select committee on the Referendums Framework Bill.

Parliament’s Standing Orders: A submission on 31 October to the House of Representatives Standing Orders Committee provided input on the Review of Standing Orders.

Other work: The committee also contributed to a number of other submissions and legislative and discussion document assessments over the year. These included the Electoral Amendment Bill (on 20 September) and an urgent submission on the Terrorism Suppression (Control Orders) Bill on 13 November. It is also working on a major submission on the Public Service Legislation Bill.

Writing for LawTalk

Submission of articles for publication in LawTalk is welcomed. Articles must relate to matters which are of interest to members of the New Zealand legal profession and should be less than 2,000 words. All articles must not have appeared elsewhere and will be edited. Articles should be submitted to editor@lawsociety.org.nz as a MS Word document (no PDFs are accepted). LawTalk does not publish advertorial or articles in exchange for advertising or payment.
Some issues with disclosure of climate-related financial information

It is problematic to assume the existing annual return mechanism in s 211 of the Companies Act 1993 either naturally fits with or can be easily adapted to meet the policy goals for proposed climate-related reporting, the Law Society says.

This has been raised in response to the MBIE discussion document, Climate-related financial disclosures - understanding your business risks and opportunities related to climate change.

The document sought feedback on the implications of s 211 for the disclosure of material climate-related information in annual reports. The Law Society says the two sets of information are fundamentally different and are created for different purposes. While a company’s annual report and financial statements are backward-looking and premised on empirical certainty, reporting on climate-related issues is necessarily forward-looking, speculative and uncertain.

The information to be provided in an annual report is the minimum a company must provide to its shareholders, with failure to do so carrying a risk of criminal liability. However, the purpose of the proposed disclosure regime appears to be aimed at a different goal: to ensure enterprise-wide assessment of specific risks and to increase the quality of on-going disclosure. The risk of criminal liability for non-compliance does not seem to fit well with the goal of encouraging disclosure on an on-going and constantly improving basis.

“There is nothing to stop a company from providing more information in its annual report than s 211 specifically requires,” the submission says. “However, to avoid liability, the company and its directors must be confident any such information is accurate and able to be substantiated. The nature of climate-related information makes this assessment virtually impossible.”

In response to a question on directors’ legal obligations, the Law Society says it considers it is now difficult to argue that statutory directors’ duties do not include a requirement to consider climate-related matters. It therefore agrees with the thorough and comprehensive legal opinion prepared for the Aotearoa Circle in October 2019.

Changing your details

Various rules and regulations require lawyers and/or firms to notify the Law Society about certain information or when there is a change to that information. This includes matters such as change of work address, employer, name, practising certificate type and trust accounting arrangements. Information on how to change or update your details is available on the Law Society’s website at www.lawsociety.org.nz/for-lawyers/change-your-details

On The Move

Auckland Council makes three senior appointments

Auckland Council Legal Services has announced three recent senior appointments.

Kathryn Hickling is a senior property specialist, coming to Council with 20 years’ experience in private practice in large and boutique firms in New Zealand and Australia. Kathryn most recently headed up the property team in a boutique firm in central Auckland.

Kate Lawson-Bradshaw has recently returned from London, after spending a year specialising in immigration law at the Government Legal Department. Prior to this Kate worked at a major Auckland law firm where she primarily practised in professional disciplinary matters and criminal prosecutions.

Kate Morrison is an experienced public lawyer and litigator, with a background in commercial litigation. Kate has previously worked in a national full-service firm where she specialised in public law litigation, and in a boutique litigation practice.

PwC Legal New Zealand announces two new appointments

Helen Johnson has been promoted to Principal and will lead the PwC Legal New Zealand tax practice.
Helen advises corporate and family clients on a range of tax matters, including corporate income tax, cross-border investment, commercial property investment, financing and corporate transactions and restructurings, tax disputes and rulings. Helen joined PwC Legal in 2017, having previously worked at top tier firms in New Zealand and London.

Nicky Harrison joins PwC Legal New Zealand as a Director. She specialises in property and commercial law and has over 20 years of experience supporting clients with complex land development agreements, land transactions, lease documentation, construction contracts, incorporated societies, shareholders agreements, finance and security arrangements, supply arrangements, JVs, partnerships and OIO applications. Nicky will drive the PwC Legal property and real estate practice.

Two promotions at WRMK Lawyers

WRMK has promoted Chloe Davenport and Nicola Hartwell to senior lawyers, effective 1 December 2019. Chloe is a Kerikeri local who her clients trust with a broad range of trusts, life planning and property matters, including relationship property agreements, property transactions, commercial leases, wills, enduring powers of attorney and occupation right agreements. She is based in WRMK’s Kerikeri office and joined the firm in 2017.

Nicola is a passionate client advocate and a member of WRMK’s litigation team. She specialises in civil litigation and insolvency matters. She also joined WRMK in 2017. Nicola is highly involved in Northland’s community through her role as a trustee of the Northland Foundation, a volunteer for the Bream Head Conservation Trust and a coach at Whangarei Heads Surf Club.

Andrew de Boyett and Jason Mitchell join LOD

LOD (Lawyers on Demand) has announced two new additions in their Auckland office. Andrew de Boyett has joined as Director – Client Solutions. Andrew is responsible for building and strengthening LOD’s relationships with clients, coordinating and driving business development activities, and growing and promoting LOD’s brand and reputation. Before joining LOD, Andrew worked as a management consultant; and in senior business development, marketing, and management team roles in ‘Big Law’ firms in New Zealand and the UK.

Jason Mitchell has joined as Senior Manager – Legal, Risk and Compliance Services. Jason has joined the LOD team after working as a lawyer and risk and compliance specialist in the banking sector. He says he enjoys the variety that his role at LOD brings and the opportunity to work with a diverse range of people and clients.

Support for proposed Te Ture Whenua Māori administration amendments

The Law Society says it is generally supportive of proposed amendments to the Te Ture Whenua Māori (Succession, Dispute Resolution, and Related Matters) Amendment Bill.

However, in a submission, it points out that the bill does not appear to have specifically considered the implications for the jurisdiction of the Māori Land Court arising from the Māori Appellate Court’s decision in Moke v Trustees of Ngāti Tarāwhai Iwi Trust 2019 Māori Appellate Court MB 265.

In overturning a Māori Land Court decision, the court concluded that section 236 of Te Ture Whenua Māori Act 1993 should be read to include trusts established to receive Treaty settlement entities. The Māori Appellate Court could not discern a clear statutory purpose intended by Parliament otherwise.

“The difficulty is that the modern Treaty settlement entities have been put in place since the passage of the Act. As a result, the jurisdiction of the Māori Land Court in relation to post-settlement entities would not have been within the contemplation of Parliament at the time.”

The Law Society says it does not have a view as to whether the Māori Land Court should have jurisdiction over these types of bodies, but it notes that the bill is a chance for that debate to be had and to clarify Parliament’s intention.
Consultation document

Addressing Temporary Migrant Worker Exploitation

The Law Society has commented on proposals in an MBIE consultation document, *Addressing Temporary Migrant Worker Exploitation*. The paper summarises the findings of the Temporary Migrant Exploitation Review to date, along with proposals and options designed to reduce exploitation of temporary migrant workers.

The Law Society says the paper has not set out sufficient evidence to clearly identify and assess the problem of exploitation of temporary migrant workers and to identify solutions. For example, it does not indicate how broad the exploitation of migrants is and how much of that is over and above exploitation of other vulnerable workers. Although the paper indicates that relevant background information will be available – including independent research commissioned as part of the review – it has not been possible to locate that on the ministry’s website.

The Law Society also questions whether there has been enough analysis of the existing regulatory tools which are available to address concerns about workplace exploitation, particularly of international students, and whether those tools are adequate.

On The Move

Two join Wilkinson Rodgers

Diana Hudson has joined Wilkinson Rodgers as a Consultant. Diana has extensive experience in employment law, industrial relations and health and safety working with business owners, HR practitioners and senior managers.

Linda Mulholland has joined Wilkinson Rodgers as an Associate. She is an expert in property transactions having over 25 years of knowledge in this area. Linda has been involved in residential, farm and business transactions, along with both small and large scale subdivisions.

Two promotions at Layburn Hodgins

Kirstin Williamson has been promoted to Associate at Christchurch firm Layburn Hodgins. Kirstin practises in property, commercial and private client law and has a particular interest in elder law and asset protection. Kirsten started as a trust accountant, then legal secretary and completed her law degree through the University of Waikato while working as a law clerk.

Claire Finn has been promoted to Associate. Claire practises family and employment law and is experienced in employment law matters, including personal grievances, disciplinary matters and preparing employment contracts. She is also experienced in civil litigation disputes.

Melissa Russell joins Rice Speir

Melissa Russell joined Rice Speir on 13 January 2020. Melissa has been working in Hong Kong since 2018 as Associate General Counsel for Allied World Assurance and prior to this was at a large litigation firm in Auckland. She is an experienced insurance and civil litigation lawyer who has represented international insurers and their insureds. Melissa has a keen interest in product liability, property and construction claims.

Reuben Payne promoted to Associate at Lowndes

Reuben Payne joined the Lowndes Corporate and Commercial team in September 2019 and has been promoted to Associate. Reuben advises on transactional M&A matters, complex commercial contracts, business structuring and intellectual property. Reuben also has a strong background in commercial property, and previously spent over nine years specialising in transfer pricing and international tax with EY and KPMG.
Nauru trial “extraordinary breach of individual rights”

The trial of 12 people without legal representation in Nauru’s Supreme Court was an extraordinary breach of individual rights and the rule of law, the New Zealand Law Society’s Rule of Law Committee has said.

The trial ended on 11 December with the conviction of 11 defendants of an offence of riot and the other remaining defendant of serious assault, with six also individually convicted of other offences. The defendants were acquitted of a charge of disturbing the Legislature.

“The criminal charges against what has been known as the Nauru 19 have been a blight on justice in the South Pacific region for the last four years,” committee convenor Austin Forbes QC said in a statement.

“It is almost unbelievable that such events in Nauru should be occurring in 2019. We had 12 people who were on trial for serious offences but who had been unable to get lawyers to represent them. The Nauruan Minister of Justice was also reported as stating in Parliament that no lawyers in Nauru were expected to provide any assistance to them, no legal aid was available for them, and that they deserved to be convicted and have the maximum penalty according to law imposed.

“It is time for the Pacific community to stand up and make it very clear to the government of Nauru that it cannot continue to flout the rule of law.”

The Nauru 19 – down to 12 in the final trial – were charged with rioting and disturbing the Legislature after a protest against government corruption outside Nauru’s Parliament in June 2015. The defendants were forbidden to leave Nauru and prevented from speaking out.

The trial finally got underway in 2018 before Nauru Supreme Court Justice Geoffrey Muecke. He granted a permanent stay in the proceedings. His decision was severely critical of the actions of the Nauru Government, finding it had displayed persecutory conduct towards the defendants.

Justice Muecke, a former Australian judge, was later dismissed by the Nauruan Government and in June 2019 the Nauruan Court of Appeal overturned his decision to permanently stay the proceedings. A new trial was scheduled to begin on 29 October before Justice Daniel Fatiaki, a former Chief Justice of Fiji.

Justice Fatiaki dismissed another application for a stay on 8 November and ordered the trial proper to begin on 14 November. Nauru has just two public defenders. One was directed to represent all the defendants but said he was unable to adequately represent such a large group. However, Justice Fatiaki ruled that the trial could be held without the defendants being represented.

Justice Fatiaki released his decision on 11 December. A Nauru Government statement released at the same time said claims that the defendants were denied legal representation were a “false narrative” and it was noted that the defendants wanted Australian lawyers only. It said five Australian lawyers had been issued special purpose visas but did not turn up for the trial, and that it was clear that the defendants had refused local representation.

The Law Council of Australia also released a statement, on 20 December. This said the conviction and sentencing of the Nauru 19 had been an affront to the rule of law and a stain on the Nauru justice system. It called on the Australian government to urgently seek pardons for the members of the Nauru 19.
On The Move

Melanie Naulls joins Juno Legal

On-demand legal services provider and Newlaw firm Juno legal has announced Melanie Naulls has become part of the team. Melanie joins the firm in Wellington from the Southern District Health Board where she was the sole in-house lawyer, providing legal services to support the operational and organisational demands of two large hospitals. Prior to that she spent 10 years working in the utility and infrastructure sectors in Sydney and London. Melanie commenced her career more than 20 years ago in private practice with Buddle Findlay.

Four promotions and an addition for McCaw Lewis

Jonathan Aquilina has been promoted to Special Counsel. Jonathan joined the firm in 2014 and is a member of the commercial team. The appointment recognises his expert skills and experience in advising on complex construction, engineering and property development matters.

Laura Monahan has been promoted to Managing Associate. Laura joined the firm in 2012 and is a member of the commercial team. Laura’s appointment acknowledges her skills and ability to assist with the firm’s management.

Dale Thomas has been promoted to Managing Associate. Dale joined the firm in 2015 and is a member of the property, commercial and asset planning teams. Dale’s appointment recognises his growing leadership role within the firm. Dale has developed a broad range of skills working across the teams on projects involving iwi property interests, farm succession, syndication and leasehold issues.

Luke Paerata has been promoted to Senior Solicitor. Luke joined the firm in 2016 and is a member of the property team. Luke has developed a range of skills including subdivisions, leases and property transactions.

Chantelle Tyler has joined the McCaw Lewis whānau as a Law Clerk predominantly with the workplace law team. Chantelle graduated from Te Piringa – Faculty of Law at Waikato and is now undertaking her Professional Studies.

Riverbank Chambers now open in Hamilton

A new barristers’ chambers has opened in Hamilton. Six principal barristers, five additional barristers and administration staff occupy Riverbank Chambers which is located on level 5 of the newly refurbished The Riverbanks building on Hamilton’s Victoria Street, overlooking the Waikato River.

The principals of Riverbank Chambers are David O’Neill, Phil Lang, Melanie O’Neill, Philip Cornégé, James Gurnick and Truc Tran. The other members are Maria Cole, Emma Miles, Martin Dillon, Paul Depledge and Fleur Oback. Paul Heath QC and Royden Hindle, both barristers of Bankside Chambers in Auckland, have become associate members.

Chambers members provide advice and advocacy on commercial, civil, criminal, employment,
family, local government, public, regulatory and resource management disputes. Some members act as arbitrators and mediators.

McVeagh Fleming and Fleming Foster merge

Auckland firms McVeagh Fleming and Fleming Foster Solicitors have merged. McVeagh Fleming previously had a substantial office in Manurewa which was the genesis for the Fleming Foster practice.

The firm provides a full range of legal services, including corporate, commercial, property, litigation, private client and family.

McVeagh Fleming has operated for over 100 years, and has offices in Auckland CBD, Albany and Manukau.

Two notaries public represent NZ on trans-Tasman board for first time

The Australian New Zealand College of Notaries (ANZCN) has appointed two members to represent New Zealand to its Board of Governors for the first time.

Ken Lord, consultant for Parry Field Lawyers in Christchurch, and Stewart Germann, partner at Stewart Germann Law Office (SGL) in Auckland began their terms on the Board on 1 January 2020.

David Roughan of Northlaw in Whangārei won the first contested election to become the only New Zealand member on the Board two years ago. David has been a notary public for more than 40 years. His term on the Board ended on 31 December 2019.

The ANZCN is an independent professional trans-Tasman network of notaries public, with voluntary membership, complementing the work of the Societies of Notaries in New Zealand and in most Australian states.

Fair Pay Agreements system design considered

Two tests proposed to initiate a Fair Pay Agreement (FPA) both have practical implications and potential unintended consequences, the Law Society has said in a submission to MBIE on its discussion paper Designing a Fair Pay Agreements System.

While a public interest test might be easier to administer, without a minimum threshold test the outcome could be an FPA that covers more people than is desirable and may affect individuals and businesses who have not had the chance to be involved in determining whether bargaining should be initiated.

A representation threshold test would have difficulties with measurement and proof of representation required for initiation, the submission says. These include how total employee numbers across an occupation or sector are measured, and how representation will be evidenced in practice to ensure the representation being claimed is accurate.

The Law Society suggests that consideration is given to a mixed test which includes both a sector and occupation qualification. Including an income threshold to exclude those with a certain level of income could also be considered.

Commenting on the bargaining process, the Law Society says the duty of good faith should apply. Consistency with the provisions of the Employment Relations Act 2000 and existing bargaining case law is appropriate, noting that the current provisions are already equipped to apply to multi-employer and multi-union agreements.

The Law Society is cautious about excluding particular categories in the FPA “as it is important to retain flexibility to cater for changing work patterns/environments and to allow parties to reach agreement on terms that may be specific to their industry or sector”. However, it says, to ensure that the concept of FPAs meets base-line standards and to meet the legislation’s intent, specification of core mandatory provisions is likely to be required. In selecting these, there should be consideration of the purpose of the proposed legislation, which is to “set binding minimum terms at sector or occupation level”. For this reason, mandatory topics should be focused on core minimum employment terms that are likely to be easily and widely applicable.

Receiving LawTalk only online

An online version of LawTalk is available on the New Zealand Law Society’s website at www.lawsociety.org.nz/lawtalk. This is displayed as a flip-book, a PDF, and with website versions of many of the articles in each. A link to the latest online LawTalk is emailed to all practising lawyers each month on the Friday after publication. The hardcopy LawTalk is automatically mailed to all New Zealand-based lawyers who hold a current practising certificate. Receipt of the hardcopy version may be cancelled by emailing subscriptions@lawsociety.org.nz and stating “Please cancel LawTalk hardcopy” with details of name, workplace and lawyer ID. The lawyer ID is needed to instruct the mailing list extraction program to remove a name and address.
On The Move

Neville Smith’s retirement, incorporation to ARL Lawyers announced

From 1 January 2020, the practice of N.J.H. Smith & Co has been incorporated into the practice of Lower Hutt firm ARL Lawyers. Neville has been a proud member of the Wellington legal community for more than 50 years, mostly alongside his secretary, Jan Crichton, who has worked with him for 35 years.

Hamilton lawyer gets her own rose

Julie Hardaker has received a species of rose named after her as a farewell gift from Hamilton City. The gift was promised after she finished serving two terms as Hamilton Mayor. The Julie Marguerite Rose has been grown by New Zealand rose grower Rob Somerfield, and features a unique creamy pink colouring. Julie runs her own law practice, specialising in employment, relationship property and public law. She holds many governance roles, including being a board member of Governance New Zealand, and chairperson of Women on Boards.

Peter Macauley made a Knight of St John

Senior partner of Kaikohe’s Palmer Macauley Lawyers, Peter Macauley, has been made a Knight of St John by the Governor-General Dame Patsy Reddy. Peter recently stepped down after 32 years as chairman of St John’s Kaikohe Area Committee, remaining the committee’s deputy chairman. Peter is also a life member of the Kaikohe and Districts Memorial RSA, the Kaikohe Rugby Club and the Lloyd Morgan Lions Clubs Charitable Trust. He acts as the honorary solicitor for a number of clubs and sporting bodies.

Rabin Rabindran appointed Director of MMH Holdings

Auckland barrister and international legal consultant Rabin Rabindran has been appointed to the Board of Marsden Maritime Holdings Ltd. Rabin specialises in fields of construction, infrastructure development, energy and transport. He is the Chairman of the Bank of India (NZ), Director of Auckland Transport, previously a director of Solid Energy and Chair of Auckland Regional Transport Authority. Marsden Maritime Holdings Ltd is an NZX-listed company which owns 50% of Northport.

New Zealand Lawyers appointed IAAF Disciplinary Tribunal members

Two New Zealand lawyers have been appointed and one re-appointed members of the International Association of Athletics Federations (IAAF) Disciplinary Tribunal, effective from 1 October 2019.

The IAAF Disciplinary Tribunal is an international specialist body which hears and decides all breaches of the IAAF Integrity Code of Conduct. Of the 47 members worldwide, three members of the six from Oceania are New Zealand lawyers.

Young Hunter Lawyers litigation partner and sports lawyer Ian Hunt has been appointed to the tribunal. Ian has had 20 years’ experience as a sports lawyer, advising individuals and organisations in a wide variety of sports, in dispute resolution and governance. He is a former President of ANZSLA (Australian and New Zealand Sports Law Association) and is currently a director of High Performance Sport New Zealand (HPSNZ), and a member of the Panel of Arbitrators of the International Court of Arbitration for Sport (CAS), to which he was recently reappointed.

A founding member of Shortland Chambers, Alan Galbraith QC, has also been appointed to the tribunal. Alan was a Rhodes Scholar and gained a BCL from Oxford University in 1970. For over 10 years until August 2019 he was Deputy Chairperson of the Sports Tribunal and has also served as a board member of the TAB, the NZ Racing Industry Board, NZ Racing Authority and Broadcasting Commission.

Alan has appeared as counsel in commercial litigation on behalf of many prominent public and private organisations, including the Commerce Commission, Auckland City Council, Fisher & Paykel Ltd, and Air New Zealand.

Sir David Williams QC of Bankside Chambers has been reappointed as a member of the tribunal, having been appointed a member of the inaugural tribunal, whose members served 2017-19. Sir David is formerly a Justice of the High Court of New Zealand with an extensive background in commercial litigation, having appeared before New Zealand and overseas Courts and Arbitral Tribunals, including numerous New Zealand cases heard in the Privy Council, London. Sir David is an honorary professor at the University of Auckland Law School, where he teaches international arbitration.
Law Society seeks exemption for lawyers practising in insolvency

Lawyers entitled to practise on their own account should not be required to have a higher amount of insolvency experience than people holding a Certificate of Public Practice (CPP), the Law Society has told the Ministry of Business, Innovation and Employment (MBIE).

Its comments are in response to a MBIE discussion paper Implementation of the Insolvency Practitioners Regulation Act 2019: licensing of insolvency practitioners – proposed minimum standards and conditions.

The paper proposes a minimum of 1,000 hours of experience over five years for CPP holders and 2,000 hours over five years for non-CPP holders. MBIE asks if non-CPP holders should be required to have a higher amount of insolvency experience than CPP holders. The Law Society says while non-lawyers should, lawyers entitled to practise on their own account should not. They have met similar minimum education, professional experience, and fit and proper person requirements as CPP holders in their respective profession, it says.

The Law Society disagrees that the calculation of required hours should be limited to work on “insolvency engagements”. It says legal experience in relation to restructuring and insolvency law is valuable experience that lawyers who are insolvency practitioners should be able to count as part of their minimum required hours.

Commenting on general experience requirements, the Law Society says a proposal that insolvency practitioners must have at least five years of general insolvency experience is too onerous for lawyers who take occasional insolvency assignments. It submits that lawyers meeting the proposed minimum number of hours of insolvency experience should be exempt from the requirement to have at least five years of general insolvency experience, or alternatively should be required to have at least five years of general commercial legal experience.

Law Society to move into new national office

The New Zealand Law Society will move into a new national office it has leased in central Wellington in September 2020.

The announcement follows a decision to move out of the previous office in the central business district at 26 Waring Taylor Street in July 2019 after a Detailed Seismic Assessment (DSA) revealed that part of the building was earthquake prone.

“I am delighted to announce that the Law Society’s new Wellington office will be at 10 Brandon Street. The building is currently being strengthened to 130% of the National Building Standard (NBS) which will mean we can provide staff, lawyers, members of the public and other stakeholders with a safe, modern, welcoming, environment,” says Chief Executive Helen Morgan-Banda.

All staff from the Law Society’s National Office, Wellington branch and NZLS CLE Ltd (Continuing Legal Education) have been working from temporary offices, along with some staff working from home since July.

“Our staff have displayed commitment and resilience during a challenging time to continue to deliver services. I thank everyone for their patience as we have worked through this period of disruption,” she says.

The Law Society Board has approved the sale of the Waring Taylor Street building, which it owns although the land the building sits on is leasehold, and a sales process began in the New Year.
Better definition of EPA enforcement functions urged

Further clarification is needed for new enforcement powers for the Environmental Protection Authority (EPA) imposed by the Resource Management Amendment Bill, the Law Society has said in a submission to the Environment select committee. Additional responsibilities and the accompanying powers enable the EPA to take over an investigation, but these need to be properly defined and implemented.

“The circumstances in which the EPA can act are broad. To provide guidance to the EPA, a threshold, perhaps similar in structure to the powers provided to the Minister under section 142 of the principal Act, could be included. This would identify in what circumstances the EPA may exercise its powers to intervene and take over an investigation or enforcement process.”

The submission notes that the bill does not require the EPA and local authority to consult with each other before the EPA exercises its powers to intervene. It suggests that an obligation to consult could assist the EPA to determine whether it should exercise its powers, and to plan sharing of information and local authority involvement in the investigation and enforcement when it is transferred to the EPA.

The bill does not address what formal involvement local authorities may have once the EPA has exercised its powers. It also does not specify whether once the EPA is involved, it is required to provide ongoing support to the local authority for monitoring any remedial steps following an intervention.

Legal aid provider experience work welcomed

The Law Society says it acknowledges the extensive work done by the Ministry of Justice and Legal Aid Services to ease the administrative burden on legal aid providers. In brief comments on the ministry’s consultation Improving the legal aid provider experience – proposed changes to the approvals process, it says improvements to the approvals process will assist with relieving some of the burdensome administration on legal aid lawyers and provide a more efficient and effective legal aid process.

“The Law Society supports the overarching objective of the proposed changes ‘to ensure that any improvements made will streamline, integrate and align with the rest of the legal aid system.’”

On The Move

Hayley Buckley appointed to Snowball Effect Advisory Board

Hayley Buckley has joined the Advisory Board of online investment marketplace Snowball Effect as Director. Hayley is a partner in Wynn Williams’ corporate advisory team and has provided legal consulting services to Snowball Effect over the past four years. She has previously held a senior associate role at global law firm Paul Hastings.

Contributing information to On the Move

Brief summaries of information about promotions, changes in law firms, recruitment and retirement are published without charge in On the Move (which is also available on the Law Society website and included in LawPoints each week). Please send information as an email or MS Word document (no PDFs please) to editor@lawsociety.org.nz. Submissions should be three or four sentences without superlatives. We may edit them to conform to the format used. A jpeg photo may be included but please ensure you have permission for us to use it.
Te Tangi o te Manawanui

This report was prepared by the Chief Victims Adviser to Government, Kim McGregor, and released by the Government in December.

Dr McGregor said the report resulted from nearly two years’ feedback from victims around the country. These included engagements through the Hāpaitia te Oranga Tangata, Safe and Effective Justice reform programme, at the Strengthening the Criminal Justice System for Victims Workshop in March 2019, and an online victims’ survey Dr McGregor ran in February 2019, which heard from 620 victims of crime.

“Many victims say their overall experiences in the justice system are negative, and some victims are recommending that others who are victimised shouldn’t report the crime because their treatment is so poor,” Dr McGregor said. “I believe this amounts to a growing crisis of confidence in our justice system from a victim’s perspective.”

The report makes four key recommendations on how the justice system can be improved for victims. These are for both immediate and more transformative change:

• Improve procedural justice for victims by upholding victims’ rights, improving access to support and information, and ensuring their safety throughout the system. At a minimum, all government agencies should review their practices.
• Develop an integrated, pro-active and tailored support system focused on restoring victims’ wellbeing.
• Develop a variety of alternative justice processes by partnering with Māori, and restorative and therapeutic justice specialists.
• Establish a Te Tiriti-based, independent mechanism to enforce victims’ rights and monitor the criminal justice system from a victim’s perspective.

The report says an independent body should be established that can:

• Urgently focus on improving victim safety.
• Focus on reducing barriers to reporting crime.
• Help to properly implement and enforce the rights of victims and their whānau.
• Enable victims easy access to co-ordinated, tailored and pro-active support services whether they have reported to the Police or not.
• Monitor the criminal justice system and develop a continuous system improvement feedback loop to provide impetus for ongoing system improvements.
• Advocate for victims across the system, providing feedback on the system’s performance for victims.
• Empower Māori and Tauiwi victims alike.
• Receive and investigate complaints and resolve issues (including breaches of victims’ rights).

Civil litigation and access to justice

The Rules Committee has commenced a project which looks at potential areas of reform to the rules governing civil trial procedures. The objective is to improve access to justice by reducing the costs associated with bringing a civil matter to court. Committee chair, Justice Robert Dobson, describes the project as “the widest-reaching and arguably most important, review of the rules in a generation”.

The Rules Committee has made background research papers available at courts.govt.nz/about-the-judiciary/rules_committee/, and is seeking comment from members of the legal profession and other courts users. These are sought by 1 May 2020 and may be sent to rulescommittee@justice.govt.nz.
Justice Minister Andrew Little announced a number of government commitments in response to the two criminal justice system reports, Turuki! Turuki! and Te Tangi o te Manawanui: Recommendations for Reform.

“The Government is open to reaching across the aisle on tackling our failed criminal justice system and building a new consensus on how we approach this issue,” he said.

“We need to change the course of our criminal justice system to ensure less offending, less reoffending, and fewer victims of crime who are better supported. Thirty years of locking more people up for longer has not changed re-offending rates nor made communities safer.”

Mr Little said as a first step to respond to the reports’ recommendations, the government has committed to:

• Ensuring the environment in which justice is administered is safe and effective for victims, offenders, and all participants.
• Comprehensive system change over time that treats victims with respect and dignity, treats offenders more effectively in order to reduce offending, and makes the system more responsive to community expectations of accountability and harm prevention.
• Making the pilot Alcohol and Other Drug Treatment (AODT) courts in Auckland and Waitakere permanent immediately, and to immediately fund a new AODT court in Hamilton because of the impact these courts have on reducing offending. Within two years, AODT Court participants are 23% less likely to reoffend for any offence, 35% less likely to reoffend for a serious offence, and 25% less likely to be imprisoned because of their reoffending.
• The rollout of other therapeutic and specialist courts over time.
• Working with Māori on decision-making to improve outcomes across the justice system.

“Transforming our criminal justice system will take time. We need to both address immediate issues with the current system and also deliver a long-term plan for changing the system,” he said.

First steps for criminal justice reform outlined

**LETTER TO THE EDITOR**

Limited-licence applications

I read Allie Cunninghame’s article about online non-lawyer options for a limited-licence application (“Are legal disrupters steering people off the road?”, LawTalk 935, December 2019, pages 60–63).

Valid concerns were raised about the lack of information about those who were providing the services.

The article revealed possible confusion about where the line falls between reserved and non-reserved legal work.

Non-lawyer providers may provide legal advice, and charge for doing so.

They may even provide legal advice about proceedings, whether contemplated or otherwise, and charge for doing so.

What they may NOT do is provide legal advice about the direction and management of legal proceedings. The statute uses this wording deliberately. It is not the same as legal advice about proceedings. The Lawyers and Conveyancers Bill originally used ‘conduct of’ instead of ‘direction and management of’; and the select committee changed it in order to ensure the restriction was narrow.

It is not clear from the article whether those who provide online court documents are doing so under the supervision of a lawyer (ie, holder of a current practising certificate). If they are not, they are breaching section 26 of the Lawyers and Conveyancers Act 2006.

I prefer the term ‘non-lawyer providers’ to ‘non-lawyers’ – because non-lawyers who are providing services to a lawyer’s clients, on behalf of the lawyer, are not breaching the LCA even if those services include advice about the direction and management of a proceeding. (Thus a law firm can legitimately employ non-lawyers who advise the firm’s clients about the direction and management of proceedings.)

The simplest solution is for lawyers and law firms to provide cost-effective, reputable online services themselves, and support those colleagues who do so.

Disclosure: I provide online probate services direct to the public, and now also to lawyers (https://kiwilaw.co.nz/probate-for-lawyers).

Cheryl Simes
Principal, Kiwilaw, Oxford, Canterbury.
Turuki! Turuki! Transforming our Criminal Justice System

Released in December, the final report from Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group followed its He Waka Roimata report in June 2019.

Turuki! Turuki! – which is the traditional call for the crew of a waka to work together and create forward motion with urgency – makes a number of key recommendations. These fall under three headings: Commit, Empower, Transform.

Commit
• Establishment of a cross-party parliamentary accord for transformative justice.
• Establishment of a Mana Ōrite (equal power) governance model under which Māori and Crown agencies share in justice sector decision-making.
• Transfer power and resources to Māori communities so they can design and develop Māori-led responses to offending.
• Make tikanga Māori and te ao Māori values central to the operation of the justice system.
• Prioritise investment in community-led transformative justice.
• Adoption of a common vision and common values by the Government, statutory purposes and governance for the whole justice sector and alignment of justice statutes accordingly.
• Improvement of coordination and information sharing among government agencies and implementation of whole-of-government responsibility for justice sector outcomes.

Empower
• Everyone harmed by criminal offending has access to an independent person who can guide and advocate for them during their contact with the justice system and other services for as long as needed. Better access to a wider range of therapeutic services and more financial support for victims, families and whānau. Strengthening of victims’ rights, including rights to have input into criminal justice decisions and rights to privacy.
• Streamlining protection order and name suppression processes, changes to courtroom layout, and review of reparations.
• Transfer resources and decision-making powers to communities.
• Together we address poverty and social deprivation, increase support for parents and families, and challenge attitudes and behaviour that support family violence.

Transform
• Challenge racism within the justice system with more diverse recruitment and more effective training in the justice system, as well as school programmes, media campaigns, and law changes.
• Improve access to culturally informed trauma recovery and mental health services, and adoption of trauma-informed approaches throughout the justice system, including in all training, policies and practices.
• Strengthen regulation of alcohol, legalise and regulate personal use of cannabis, and consider that for all drugs. Treat personal drug use as a health issue with more funding towards prevention, education and treatment.
• Significantly increase investment in rehabilitation programmes. Greatly expanded access to rehabilitation opportunities for all prisoners including those on remand and serving short sentences.
• Gradually replace most prisons with community-based ‘habilitation centres’.
• Strengthening ‘wrap-around’ reintegration services that meet basic needs and provide ongoing rehabilitation support for prisoners returning to the community.
• Redesign of criminal investigation and court procedures to make them consistent with transformative justice values and principles. Ensuring everyone is treated fairly and equitably, with humanity, dignity, respect and compassion; those who cause harm are accountable; and restoration of mana to all is supported.
• Interim reforms would include reviewing youth, specialist and therapeutic courts and applying learning across the court system, reviewing laws and guidelines for sentencing, the pre-trial period (whether in custody or on bail) and post-release reintegration (parole), to ensure consistency with our values and principles, strengthening and increasing access to alternative justice processes. “These changes will lead to a positive and fair justice system which prevents further harm wherever possible, restores mana where harm occurs, and ensures that all New Zealanders who come into contact with the system are affected positively.”
The Waikato Bay of Plenty legal profession has welcomed news that Tauranga’s courthouse is to be replaced.

Late last year the Justice Minister Andrew Little announced that the Government would invest $100 million on a new courthouse which Mr Little said would be a model for future courthouse design. Mr Little said the courthouse would be designed in partnership with iwi, the local community, and the legal community. It would draw on te ao Māori values, and directly address victims’ safety needs.

“Victims routinely provide feedback about the alienating and distressing environment of the courthouse. It’s time to re-think the traditional courthouse design,” Mr Little said.

Tauranga barrister Bill Nabney has described the news as excellent as the current courtroom was inadequate, with trials with more than three defendants involved having to be moved elsewhere, such as Hamilton which is 105 km away.

He also said the current courthouse on McLean Street was mouldy and frequently prone to leaking roofs - late last year a trial had to be adjourned due to water coming in through a light fitting.

However, Mr Nabney was somewhat bemused about the time being allowed for feedback.

“We can’t understand why there has to be a two-year consultation period. My hope is that it will meaningfully include those who use the courthouse on a daily basis such as lawyers, the Crown Solicitor, Police, probation, mental health and drug addiction specialists, local people who use the court regularly, and court staff and Judges, rather than have the lead from Wellington with little meaningful input from those aforementioned users.”

Terry Singh, President of the Law Society’s Waikato Bay of Plenty branch, has also welcomed the development.

“I think it’s wonderful news for the Bay of Plenty region, and in a growth area like Tauranga, it is desperately needed. “I’m hopeful that Hamilton, as another significant growth area - probably the fastest growing of any - in terms of criminal court business, is given the okay for a much-needed upgrade soon.”

International Women Judges conference in Auckland

The International Association of Women Judges (IAWJ) is hosting its biennial conference in Auckland from 7-10 May 2020.

The theme of the conference is celebrating diversity and it provides an opportunity, rare in New Zealand, to listen to and meet judicial leaders from around the world and to experience a global perspective on issues such as human rights, the rule of law, discrimination, trafficking and family violence.

Keynote speakers include Baroness Brenda Hale (recently retired President of the UK Supreme Court), Helen Clark, Mary Robinson (former President of Ireland), Baroness Helen Kennedy QC, Justice Andromache Karakatsanis (Supreme Court of Canada), Justice Kudirat Kerekere-Ekun (Supreme Court of Nigeria), Professor Larissa Behrendt (University of Technology, Sydney) and Professor James Hathaway (University of Michigan).

The IAWJ says it warmly invites members of the legal profession to register. There are options to attend the full conference or just the weekend, with reduced fees for young lawyers, academics and students. Registration information is available at www.iawj2020auckland.com

Pakistan focus of 2020 Day of Endangered Lawyer

The 10th annual Day of the Endangered Lawyer, on 24 January, focused on Pakistan. The Day of the Endangered Lawyer Foundation is based in the Netherlands. It has developed a wide range of activities around the world on 24 January to raise awareness of lawyers who are being harassed, silenced, pressured, threatened, persecuted, tortured and murdered for their work as lawyers.

Information released by the organisers says that over the past several years lawyers in Pakistan have been subjected to acts of mass terrorism, murder, attempted murder, assaults, death threats, contempt proceedings, harassment and intimidation in the execution of their professional duties.
Mental Health Awareness Week, held during late September 2019, was an opportunity for law firms and organisations across New Zealand to examine what they are doing to provide a safe workplace for staff dealing with mental health issues. The current legislative position in New Zealand is that employers are obliged to minimise any risk of harm to an employee’s physical and mental health and make reasonable accommodation for employees suffering from mental illness. Other jurisdictions such as Australia and the United Kingdom have relatively well-developed jurisprudence in this field, with a significant body of case law explaining and expanding on governing principles.

Meredith Connell, a large law firm with 250 staff in Auckland and Wellington and the Office of the Crown Solicitor in Auckland, recently took the opportunity to examine its practices and policy in the area of mental health. This included introducing a range of short and long-term initiatives to assist lawyers in handling confrontational material, unique to Crown prosecution work, and erasing the stigma which sadly often accompanies mental health issues. The preliminary message to staff was simple: identify the warning signs as a means of prevention, seek help, ask if you see someone struggling and, most importantly, talk about it.

Normalising conversations about mental health is a primary focus for the firm and while culture change takes time there is already a sense that the tide is turning. Lawyers traditionally face various obstacles to seeking help. The practice of law is inherently driven by a desire to succeed. At Meredith Connell, as in other Crown solicitor firms around the country, prosecutors work day-in, day-out in a highly adversarial environment. Prosecutors now have additional responsibilities beyond simply presenting the Crown case, including the management of victims’ rights. The prosecutor’s role is a public one and subject to public scrutiny, not to mention the close eye of the appellate courts.

The effect of some cases

More critically, prosecutors are often exposed to the worst side of human behaviour. The content of criminal cases can test even the most dispassionate of prosecutors. If we are to get real about mental health, we need to get real about the effect certain types of cases may have on lawyers working in this high-risk area. This may be particularly the case with younger lawyers who are often more conscious of wellness when confronted with such material. If we expect younger lawyers to take up the baton, support in this area must be tangible and proactive.

The challenge with developing in-house policy in this area is that history shows that lawyers, like doctors, may be the last to admit there is a problem. Many, it appears, would rather battle on with the job, rather than admit they are not coping. Recognising this dynamic, for those working on cases with highly challenging material, such as sexual violence, child abuse or objectionable publications, a four-monthly session with a clinical psychologist has been
made a mandatory requirement to enable professional supervision and debriefing. The session schedule can be supplemented with additional support as required, all paid for by the firm. The hope is that lawyers will find these sessions helpful and an opportunity to raise and proactively deal with any issues that are becoming (or could become) problematic.

Some other support initiatives
As the firm looks to lead the industry forward in the mental health space, other support initiatives have either been continued or expanded. The firm has increased the counselling services available to all staff from three to five appointments per person per year. Mandatory resilience training continues for all staff. Other new, long-term initiatives aim to support new prosecutors and the firm’s wider objectives in mental health awareness, for example, our popular in-house litigation skills training is being expanded to include a component for new lawyers appearing on behalf of the Crown on how to deal with confrontational material. A Wellness Committee has been established with a core membership including the Chief Executive Officer, Chief People Officer and partners responsible for shaping and driving the wellness agenda within the firm.

Industry wide there is a long way to go in the support of lawyers’ mental health but there are law firms recognising the importance of the agenda and adopting new positive practices. ■

Jo Murdoch is a partner in the Crown Specialist Group at Meredith Connell, undertaking jury trials in the District and High Courts with a speciality in sexual violence cases.

Andy Smith is the Chief People and Capability Officer at Meredith Connell, responsible for the development and delivery of the firm’s People and Capability strategy.

### How I’ve helped myself

A sole practitioner’s tale

I am a sole practitioner who has been challenged with an extreme stress response and extreme levels of anxiety all my practising life. I have practised since 1984, for the first 15 years as a lawyer for three middle-size law firms and thereafter as a sole practitioner.

I have been particularly proactive throughout the last year to self-help my way through an increasingly stressful professional life.

These are some of my tips which I have found very helpful. I acknowledge that not all of these will help all of you, but hopefully some of them will resonate:

**Gentle to moderate exercise for 30 minutes every day**

Move the stress out of the physical body (in order to control the emotional stress) – moderate daily exercise such as walking, stretching or restorative yoga, and tai chi. I find it best not to do anything too strenuous as that only adds to the stress which an already stressed body is holding – so no more running, weight training or interval training as that drove me into a state of physical exhaustion.

**Learn how to relax**

Quieting the mind to minimise the mental activity of the mind – guided meditation or guided relaxation works best because the restless mind cannot shut off by itself, especially after a stressful day. This gives the mind and body a chance to relax properly for a period of time each day without you feeling frustrated that you can’t sit in meditation without being overwhelmed by the stressful thoughts running through your mind when you should be achieving mindfulness. I am also seeing a hypnotherapist once a week and have really benefited from the guided relaxation that brings to the body and mind.

**Juices to the rescue**

I juice vegetables and fruits every day – usually twice a day and have found this to be incredible in replenishing much needed vitamins, minerals and enzymes lost through the relentless stress response. It’s incredibly easy to do and very easy to consume. When one is stressed, the appetite either takes a nosedive or increases rapidly with an unhealthy fondness for junk food and alcohol – neither is helpful long term. It’s not difficult to drink your way to health in a positive way.

**Get your bloods done**

I was recently incorrectly diagnosed with Addison’s disease and was put on a two-month waiting list to see an endocrinologist for treatment going forward. With my symptoms getting worse by the day, I was desperate to find a way to cope with my professional and personal life while waiting for my appointment. I undertook my own medical research with the assistance of Dr Google and I asked my doctor for a new set of blood tests based from a neurological angle and not the hormonal angle he had approached my condition. The new blood results showed that I had a high folate level but normal vitamin B12 level. I then...
researched what a high folate level meant and found it was known to mask a vitamin B12 deficiency. Now, with the assistance of monthly vitamin B12 shots and daily vitamin B12 supplements, I am feeling a million times better and ALL my symptoms have gone … and I cancelled the endocrinologist appointment.

Consider coming from a wellness stance
I saw an alternative health practitioner during my wait time for the endocrinologist appointment and I found profound benefits from this. The body does not lie and the weekly kinesiology session gave me some very interesting insights into where my stress is held and how it can be released from the body. I also learned more about diet, relaxation and the general wellness state of my body and how to improve that. As an aside, my first employer has been seeing the same practitioner for the last three years to assist him to rid his body and mind of the effects of stress, even though he retired five years ago. It seems that the damage stress does to our bodies continues even after retirement, unless we actively address it, as he was doing. The first sign is: we cannot relax, even after the stressors which caused the stress are long gone because our bodies have literally forgotten how to do so – we need to relearn the relaxation response.

New way of working
I now work from home in the mornings to deal with complicated matters without the constant interruption experienced in the office. I still receive the same emails as my staff do, so I can easily and quickly deal with “urgents” which invariably crop up. I have employed a legal executive to attend to immediate client matters and progress files in the mornings. I have gained a huge amount of time by doing this. I have also gained relief from the constant “being on top of everything” and clients don’t even notice the difference as they are still being well looked after. I regularly check in during the morning with my staff to make sure all is running smoothly.

Use vitamin and mineral supplements
Stress strips vitamins and minerals from our system, hence my vitamin B12 deficiency, so I take supplements every day to prevent this. This helps build a resilience in the body to the physical impact of stress.

Emotional freedom technique or “tapping”
This is a very strange process which helps to calm down the amygdala (responsible for the “fight or flight” response) and is very helpful in clearing a distressed mind and body to enable meaningful action to take place. It’s very useful when one is in the midst of the stress or anxiety response. See the website www.facebook.com/tappingsolution.

Soak the stress away
Epsom salt baths are amazing for coaxing those stressed muscles and nerves into calm at the end of a stressful day. It also helps to remove the resulting toxins left behind by the stress and anxiety response.

Off-load the stress
Find someone to talk to regularly. It’s best to use someone who is skilled to assist, such as a life coach or counsellor. The chance to offload and verbalise the stress and anxiety in a constructive way moves the effects out of the body.

Breathe the stress out/become a “surrender warrior”
The fastest way to calm the body and mind down is to use special breathing techniques to clear the nervous system and mind. Look to yoga or YouTube to learn these techniques; they really do help.

I believe the practice of law is a stressful one and we all need to take proactive steps to look after ourselves and those around us. I wish I’d known about some of these de-stress strategies years ago (acknowledging, again, that what works for me, may not necessarily work for you). I wish you all the best on your own self-help journeys.

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 or your workplace is doing something interesting in this space, please contact Sarah: sarah.taylor@lodlaw.com
We are two years on from when harassment and bullying in the legal profession in Aotearoa made the national news. The discussion began with five summer clerks coming forward to disclose their experiences of sexual assault and harassment at Russell McVeagh, but quickly expanded to question the culture of the profession generally. It became clear that these issues were not new, and neither were they unique to Russell McVeagh. They are present in different forms and to varying degrees in many, if not all, legal workplaces. They affect lawyers, non-legal staff, academics, students and even those who have left the profession.

A wealth of important work has already been completed to take stock of the issues that prevent people from having positive experiences in the legal profession: from Zoë Lawton’s #metoo blog, to the New Zealand Law Society’s 2018 Workplace Environment Survey, the International Bar Association’s 2019 bullying and harassment report and the Employment Information Survey released in late 2019 by the Aotearoa Legal Workers’ Union.

And yet, how far have we come since 14 February 2018? A new report, Purea Nei: Changing the Culture of the Legal Profession, released just before Christmas seeks to continue the conversation about culture change in the legal profession by asking the next question: how? What needs to occur in order to make a meaningful difference to workplace culture? How can we translate the concerns about what has happened before into meaningful improvements to the everyday experiences of the people in our profession in the future? We, the report’s authors, believe the people best positioned to answer these questions are people within the legal community themselves. Titled Purea Nei, which means to cleanse and renew, this report brings together a collection of ideas from people within and associated with the profession, to provide a path towards making the profession happier and healthier.

To that end, we sought to engage with members of the legal profession and anyone associated with it – non-legal staff, legal executives, law students, legal academics, and former members of the profession – with a particular focus on solutions for change. The report is a culmination of workshops held in Auckland, Wellington, Christchurch and Dunedin; open-ended discussions online and via email; and an online survey which attracted almost 650 responses. In total, over 700 people engaged in the project, which was funded by the Law Foundation, the Michael and Suzanne Borrin Foundation and the New Zealand Women’s Law Journal – Te Aho Kawe Kaupapa Ture a ngā Wāhine.

In terms of demographics, the typical survey participant in the project is best described as a young, Auckland-based Pākehā female, employed in a law firm, with 0-1 years’ Post-Qualification Experience (PQE). About half of the survey respondents were under 30. Almost two-thirds of our survey participants had under five years’ PQE, were not yet employed in the profession (eg, law students) or did not define their career by reference to PQE. Evidently, the average age and experience level of participants is not representative of the profession as a whole, and we acknowledge the limitations of our engagement. However, we see this project as only the beginning of what we hope will be many more conversations with those who are affected by the culture of the profession, and who have ideas for how we can move forward.

The methodology behind the report seeks to identify and describe most of the solutions that we collected from our various channels of engagement in a generally qualitative way. In essence, Purea Nei tries to capture a conversation, with some reliance on quantitative data.

The report outlines ideas for change across a range of issues: workplace expectations and culture; diversity and inclusion; work format; training and education; leadership and management; remuneration; human
resources and procedures for managing workplace issues; holding the profession to account; and the role of clients in shaping the experiences of people associated with the profession.

Across these various issues, several key themes emerged.

There is a lot we can do in the workplace to make a difference

We encouraged participants to think about all aspects of the workplace and how things could be different in order to improve safety, wellbeing and overall happiness at work. Participants repeatedly identified the following:

1. Examining and changing the structure of the workplace is important.

Alternatives or changes to the partnership model, which was widely regarded as concentrating too much power in just a few and failing to provide sufficient checks and balances, were favoured. This might involve changing legislation, but could also involve: reducing levels of hierarchy; exploring contractor models; or empowering staff by enabling them to actively participate in governance and management.

2. Culture needs to be crafted.

Leaders, working together with staff, should regularly take stock of workplace culture, examine what is working well and what needs changing, and put pen to paper on what the firm culture will be. Culture needs to be based on values that foster safety and wellbeing at work, and that are supported by all people in the workplace.

3. The mechanics of work need to be examined and upgraded to better support a healthy and productive workplace.

The most favoured solutions were: flexibility about the 9-5 model; appropriate pay to reflect the hours required eg. through higher starting salaries or overtime pay; and utilising technology for efficiency and not over-work. At the core of all of the solutions was the desire for autonomy, respect, recognition of value-add, and trust.

4. Where human resources services are utilised, they need to be supported and equipped in order to make good hiring, retention and progression decisions.

Training on how to deal appropriately with misconduct needs to be sufficient and needs to enable HR teams to protect and support those who have suffered as a result of workplace misconduct. Services such as counselling should also be provided and their use encouraged.

5. Achieving meaningful diversity and inclusion were seen as important goals.

The most favoured solutions include specifically recruiting diverse staff, recognising and implementing tikanga and te reo Māori in the workplace, and self-measurement and diversity targets. Diversity and inclusion mindsets and approaches must also be embedded in law schools.

But we need real leadership in order to achieve meaningful change

Respondents felt that good leaders are good lawyers – approachable, caring, good at communicating, supportive and providing appropriate feedback.

Good leaders ‘lead from the top’ by modelling the culture they hope to create, by investing in their own training and people management skills, and by holding themselves and others accountable.

Participants believed that promotion into leadership roles has to be based on management skills, as well as technical ability, and prospective managers need to display superior people skills (communication, approachability, supportiveness). Finally, respondents were in favour of extensive and rigorous due diligence on future managers, and a clean record as far as bullying, harassment or other misconduct is concerned.

And we need proper education and external help

When asked about how training and education could be utilised to resolve culture issues, participants were overwhelmingly in favour of frequent and appropriate training at all levels of a person’s career – at university, at work and at professional development courses. Training needs to be self-referential and allow people to explore and unpack their biases, and it needs to equip people with the right skills for dealing with difficult situations and conversations (eg, calling out bad behaviour, supporting people in the workplace, and holding perpetrators to account).

Allanah Colley is an Assistant Crown Counsel at the Crown Law Office, Ana Lenard and Bridget McLay are junior barristers at Auckland’s Shortland Chambers.
AML/CFT Update

Strategy release anticipates Financial Action Task Force visit

The Ministry of Justice says it has proactively released New Zealand’s first National Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) Strategy.

The strategy is contained in a Cabinet paper entitled “Setting the strategic direction for New Zealand’s Anti-Money Laundering and Countering the Financing of Terrorism Regime”. This was considered by Cabinet on 21 October 2019 and publicly released in December.

The announcement of a strategy appears to be part of a move to prepare for an upcoming Financial Action Task Force evaluation of New Zealand’s compliance with AML/CFT technical recommendations.

The ministry says the National Strategy will coordinate efforts across government and the private sector and guide prioritisation of work to improve the system.

The Cabinet paper says New Zealand is a member of the inter-governmental Financial Action Task Force (FATF) and as part of that membership, all member states are periodically evaluated for compliance with FATF technical recommendations. New Zealand’s last Mutual Evaluation was in 2009, and the paper says New Zealand was found to be deficient in some areas with many being addressed through passage of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

FATF assessors are expected to conduct an onsite visit in March 2020.

Criticism possible

The Cabinet paper says there are some features of New Zealand’s AML/CFT system that may attract FATF criticism “and media attention when the FATF report on the outcomes of New Zealand’s Mutual Evaluation are made public in February 2021”.

After a paragraph which has been suppressed under section 9(2)(g)(i) of the Official Information Act 1982, the paper says the Ministry of Business, Innovation and Employment (MBIE) is currently leading work on requiring New Zealand incorporated companies and limited partnerships to disclose their beneficial ownership information. These are being considered in a separate Cabinet paper and if approved, it says the changes will demonstrate to FATF that New Zealand is undertaking legislative reform to address issues to one of the required outcomes.

The Cabinet paper says there are several other features of New Zealand’s AML/CFT regime that may attract comment from the FATF. The appendix which outlines these is suppressed under section 9(2)(g)(i).

Law Society joins DIA Industry Advisory Group

The New Zealand Law Society has joined the Department of Internal Affairs’ Industry Advisory Group (IAG).

The department has established the forum as a communication pathway with representatives of the sectors it supervises under the AML/CFT regime. The Law Society says it welcomes this initiative by the department.

The IAG meets quarterly and was established in August 2019. Members include representatives of peak industry bodies who come together to share knowledge and discuss common AML/CFT compliance challenges facing their sectors. The intention is to develop understanding between the DIA and the supervised sectors and to work together to find constructive solutions.

The forum also provides co-design opportunities on engagement and guidance programmes. Peak industry bodies are able to share general information and updates from the forum with their supervised sectors.

The Law Society says it looks forward to continued engagement in the IAG and the opportunity it provides to assist lawyers with meeting their AML/CFT obligations.

Number of onsite inspections of businesses by the Department of Internal Affairs under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 between 1 October 2018 and 30 September 2019 (Internal Affairs Minister Tracey Martin in response to a written parliamentary question from Kanwaljit Singh Bakshi).
Financial Intelligence Unit report points to lawyer AML/CFT risk

The "National Risk Assessment of Money Laundering and Terrorism Financing for 2019" document was released by the Police Financial Intelligence Unit (FIU) at the end of November. It says the unit had received 137 suspicious activity reports from lawyers since they became AML/CFT reporting entities on 1 July 2018.

The report says lawyers, conveyancers, accountants and real estate agents provide a ‘gatekeeper’ role in providing professional services to clients. The types of services provided and the everyday nature of these services in the legitimate economy also make them attractive to money launderers and terrorism financiers.

It says increasing financial sector and law enforcement scrutiny of possible illicit funds further incentivises criminals’ use of professional services when seeking to hide criminal financial and business dealings, to obscure identity of those behind the criminal dealings, and to hide illicit financial assets in property and other investments.

Funds laundered through trust accounts

The report says analysis of 47 properties subject to criminal proceeds recovery action by the New Zealand Police’s Asset Recovery Unit (ARU), identified a number of professional services used to launder funds through trust accounts; purchasing of real estate; creation of trusts and companies; management of trusts and companies; management of client affairs; and to transfer ownership of assets to third parties.

“In all of these cases, there was no evidence of complicity on the part of the gatekeeper professionals involved. Hiding the ownership of property was the most common money laundering method, generally by putting property in the name of a trust set up by a lawyer. The second most common method was transferring the criminal proceeds to a lawyer or real estate agent by electronic transfer,” the report says.

It says lawyers and conveyancers adhere to high standards of practice and ethics that may, in turn, reduce the vulnerability of lawyers to criminal misconduct.

“Specifically, lawyers must not act in a way that unwittingly facilitates criminal offending, with current standards enforced by the New Zealand Law Society. Lawyers practising on their own account and operating a trust account are subject to oversight, including risk-based inspections, by the New Zealand Law Society Inspectorate. This oversight aims to ensure proper conduct in operating a professional’s trust account to protect clients’ money and minimise exposure of the Lawyers Fidelity Fund; which also has some mitigating effect on money laundering and terrorism financing risk.”

Suspicious activity reporting by lawyers

The unit says historical low rates of suspicious activity reporting by professional services (under the Financial Transactions Reporting Act 1996) indicate the general measures were not ensuring sufficient professional vigilance to mitigate the risk of money laundering and terrorism financing. Between the commencement of the FTRA 1996 and 1 December 2017, the FIU only received 190 suspicious activity reports from lawyers and seven suspicious activity reports from accountants.

The report says introduction of the second phase of the AML/CFT reforms has gone some way to addressing this vulnerability and enhancing professional vigilance to mitigate the risk of the money laundering risk to lawyers, conveyancers, accountants and real estate agents. Since they became reporting entities under the AML/CFT Act, the FIU has received 137 suspicious activity reports from lawyers, 65 suspicious activity reports from real estate agents, and 14 suspicious activity reports from accountants.

“In addition, regulatory vulnerability in relation to companies and trusts create further incentives for criminals to use professional services. Companies and trusts can be quickly and cheaply set up to obscure beneficial ownership. Furthermore, criminals can place companies in the names of nominee directors and/or shareholders, who are often the facilitating professional. Parties to trusts may not be recorded anywhere except in the facilitating professional’s records. This exposes professionals to criminals seeking to obscure their interest in illicit funds.”

The report says trusts are the main type of vulnerable legal arrangement in New Zealand. It says their principle attraction to criminals is that they can be used to hide beneficial ownership and create a front behind which criminals may mask their activity. Trust arrangements can also be an effective means of dispersing assets while retaining effective control.

Feedback welcomed on AML/CFT concerns

Lawyers are encouraged to provide feedback to the Law Society about specific AML/CFT concerns facing the legal profession via our dedicated email address nzls.aml@lawsociety.org.nz.
Everything is not ka pai
New Zealand universities are ill-equipped to protect Māori IP

BY LIDA AYOUBI

Mātauranga Māori (Māori knowledge) has been shown to inform and enrich various areas of university research in New Zealand, from unlocking the benefits of mānuka honey, to building resilience against natural hazards and potentially finding a solution to the kauri dieback crisis.

In New Zealand, universities account for around 28% of the country’s research and development (R&D) expenditure. University R&D may result in commercially valuable innovations. In fact, commercialisation of universities’ R&D generates more than $500 million annually—about 15% of this country’s total university income.

Part of that income comes from the commercialisation of intellectual property rights that arise out of university-driven research. Intellectual property (IP) rights in patents, copyrights, designs or plant varieties are becoming increasingly important commercial assets for universities. University research that generates IP may involve the use of Māori knowledge in many different ways.

In its comprehensive Wai262 report, the Waitangi Tribunal stipulated that kaitiaki (guardians or custodians) have the right to be acknowledged as the source of mātauranga Māori where appropriate and to have their commercial interests in such mātauranga recognised and protected.

The Government is changing New Zealand’s intellectual property law to partly address the misappropriation of mātauranga Māori in the IP regime. Amendments to the patents system focusing on a “disclosure of origin” requirement as well as to the copyright, plant variety rights and geographical indications legislation are all on the Government’s agenda.

In light of these legislative reforms, a question remains: How are universities, as one of the main New Zealand public entities engaging in R&D and commercialisation of related IP rights, fulfilling their Treaty obligations?

This question was the focus of a New Zealand Law Foundation-funded research project in which the performance of universities was assessed.

How are universities doing?
The research was conducted in collaboration with the commercialisation teams of eight New Zealand universities surveying both the policies and practices of universities. A summary report of the findings is now available online on the Law Foundation’s website. (Dr Lida Ayoubi, “Intellectual property commercialisation and protection of mātauranga Māori in New Zealand universities”, November 2019). The research shows that recognition of and protection for mātauranga Māori at universities appears rather inconsistent, siloed and ad-hoc.

For instance, in many cases, the intellectual property or commercialisation policies of universities make no reference to mātauranga Māori. If mentioned at all, it is often unclear how the policy provisions should be implemented. The same appears to apply to the implementation of the government’s “Vision Mātauranga” policy which is viewed by the commercialisation experts interviewed as mainly relating to funding of university research only and not necessarily its commercialisation.

Most commercialisation experts interviewed for the research expressed an understanding of the need to respect the Treaty principles. However, in many cases they were unsure of how to identify or address Māori interests in the commercialisation of research intellectual property.

Some universities have created a specific role for an expert to consult on Māori interests in research generally, and in fewer cases in relation to intellectual property commercialisation more specifically. However, such guidance is not available across all universities and in some cases is limited to the funding stage of a research project and is not carried out through to the commercialisation stage. Furthermore, the current impact of such roles on the universities’ processes is not clear.

How can the protection of mātauranga be improved?
Recognition of the potential role of mātauranga Māori in university research is arguably the most important step in protecting Māori interests in the context of intellectual property commercialisation. As such, it is recommended that universities explicitly recognise potential mātauranga Māori interests in their intellectual property or commercialisation policies.

The next step would be the introduction, clarification or strengthening of identification and assessment practices. Such guidelines would help address the rights of kaitiaki in mātauranga that is utilised in
Whether and what to disclose, these are the questions

BY RHONDA POWELL

The Trusts Act 2019 ("Trusts Act") comes into force on 30 January 2021. Many of the changes to the law of trusts brought about by this Act are aimed at strengthening the ability of beneficiaries to hold trustees to account. To this end, Subpart 3 sets new rules for trustees about keeping trust documentation and disclosing trust information to beneficiaries, to ensure that beneficiaries have sufficient information to enforce the terms of the trust.

Although the new rules about retention of documentation apply to charitable trusts, the new rules about disclosure of information do not. Neither do they apply to other permitted purpose trusts that do not have beneficiaries.

This article describes the requirements to retain and disclose information, together with some ideas about how the new rules are likely to affect legal practice.

What information to retain

Section 45 of the Trusts Act requires trustees to keep core trust documents, including:

- documents setting out the terms of the trust or varying those terms;
- records of the trust property, including income and expenses, appropriate to the value and complexity of that property;
- records of trustee decisions;
- contracts;
- accounting and financial statements;
- appointment, removal and discharge documents;
- letters of wishes by the settlor; and
- other documents necessary for the administration of the trust.

One trustee may hold most documents, but each trustee must hold at least a copy of the terms of the trust and any variation to those terms (s 46). The documents must be kept by the trustee for the duration of their trusteeship and must be given to any replacement or continuing trustee when their trusteeship ends (ss 47-48).

Complete record keeping is essential for good trust administration. To the extent that trustees are not currently retaining copies of trust documentation, the Trusts Act should provide a useful wake-up call. Further, trustees are personally liable for their actions and inactions (but in many circumstances, they will be able to rely upon their right of indemnity from the trust fund)
and good record keeping will assist them to protect themselves against any allegations.

What information to disclose

The Trusts Act creates a presumption that a trustee must disclose ‘basic trust information’ to every beneficiary and ‘trust information’ to beneficiaries who request it (ss 51-52). In the case of beneficiaries who are minors or who lack capacity, the information must be given to a parent, guardian, attorney or property manager.

‘Basic trust information’ includes (s 51(2)):
- the fact that a person is a beneficiary;
- the name and contact details of a trustee;
- the occurrence of, and details about, any change to the trusteeship; and
- the right to request a copy of the terms of the trust and trust information.

‘Trust information’ is information about the terms of the trust, the administration of the trust, and the trust property, that is reasonably necessary for the beneficiary to have the trust enforced (s 49).

Before providing either basic trust information or trust information, trustees must consider a range of factors. If the trustee then reasonably considers that the information should not be disclosed, then they may withhold the information.

This creates a new ongoing and active obligation on the trustee. At the same time, there is sufficient flexibility to cater for most circumstances in which trustees might reasonably choose to withhold information. Lawyers will play a critical role in guiding trustees through the routine exercise of balancing considerations before deciding what to disclose.

Factors to consider when deciding whether to disclose

The list of relevant factors (whether for routine disclosure of basic trust information or responding to a request for trust information) is set out in s 53 and includes:
- the nature of the beneficial interests;
- whether there are any issues of personal or commercial confidentiality;
- the expectations of the settlor;
- the age and circumstances of the beneficiary;
- the nature and context of any request for information;
- the effect of giving the information, including the effect on relationships within the family and relationships between the trustees and beneficiaries; and
- the practicality of giving the information or imposing restrictions or safeguards.

It can be expected that the proper interpretation of these factors, the proper weight to be given to them and the effect of general principles of trust law on the factors will form the subject of judicial decisions in 2021 and beyond, as trustee decisions about non-disclosure are challenged.

The trustee does not need to treat every beneficiary the same. The Trusts Act permits the trustee to withhold information from a particular beneficiary or class of beneficiaries if this is reasonable having considered the required factors. It may therefore be permissible for the trustee to disclose more information to beneficiaries with vested interests when compared to discretionary beneficiaries with ‘mere expectancies’.

In some cases, if a particular beneficiary is unusually litigious, if family relationships could be damaged, or if the settlor intended the information to be kept confidential, trustees might reasonably withhold information. In other cases, transparency may be the most astute strategy to prevent disputes arising.

It is expectations that at the time the trust was settled that are relevant to the disclosure decision but if a settlor is alive and fully competent, there appears to be nothing stopping them from now stating the expectations as to disclosure that they had at the time of the settlement. In some cases, the settlor’s expectations as to privacy or disclosure may be ascertained from lawyers’ files. In any case, the settlor’s wishes are only one of the relevant factors for the trustees to consider and should not be treated as determinative.

In future, settlors may choose to express their wishes about disclosure of information in letters of wishes, or law firms may incorporate provisions about disclosure into their trust deed precedents. However, Subpart 3 is not included in the list of provisions which may be excluded by the trust deed (Schedule 2) and so the requirements for trustees to retain and disclose information in the Trusts Act will prevail over anything contrary in the trust deed.

How disclosure should take place

It will sometimes be appropriate for disclosure to take place via the trustees’ lawyers. However, the Trusts Act does not require this, or even that information be disclosed in writing, and it may sometimes be appropriate to keep disclosure low-key. Either way, trustees should keep a written record of the fact that they have considered
the relevant factors and of the decision reached. Some trust deeds require trustee decisions to be recorded in a particular form.

In general, the reasons for trustee decisions are not required to be disclosed. It follows that trustee reasons for deciding not to disclose trust information also do not need to be disclosed.

The reasonable cost of responding to beneficiary requests for trust information under s 52 may be passed onto the beneficiary (s 55), although one would assume that in most cases documents will be stored electronically and can be passed on for little or no cost. If the trustee incurs legal costs in seeking advice about their disclosure obligations, this expense is recoverable from the trust fund.

When to disclose

The trustee has a duty to consider at ‘reasonable intervals’ whether the trustee should be making basic trust information available. ‘Reasonable intervals’ is not defined and is likely to be context dependent. For a straightforward family trust with little activity, consideration at an annual trustee meeting should be sufficient.

In many cases, if basic trust information has already been made available, and there has been no change in circumstances, then this exercise should be straightforward and nothing further should be required. However, the trustee has a duty to consider disclosure and to make a decision.

If there is a change of trustee, then beneficiaries must be notified ‘as it occurs’. One would expect the trustees to make basic trust information available to any new beneficiary at the time they are nominated.

Court supervision

The trustee retains significant discretion under the new provisions. However, whether the trustee’s decision was ‘reasonably open in the circumstances’ may be challenged by any beneficiary in the High Court (s 126).

Further, if no beneficiary has any trust information (information reasonably necessary for the beneficiary to have to enable the trust to be enforced) then an obligation arises for the trustee to apply to the High Court for directions (s 54). This obligation applies if no beneficiary can be identified, if the trustee has decided not to disclose basic trust information to any beneficiary, or if the trustee has declined a request for information.

The application for directions need not be made if the period during which no beneficiary has any trust information is less than a year.

Practical implications

In 2020, it will be important for trustees to develop robust decision-making practices around the provision or withholding of trust information and if necessary, to seek advice to help them strike the right balance.

If they haven’t already, lawyers who act as professional trustees need to review their files and their ongoing practices to ensure they hold the information required by the

Dr Rhonda Powell TEP is a Christchurch barrister who specialises in trusts and estates law.
The Evolution of Trustees

From Medieval England to contemporary NZ

BY HENRY BRANDTS-GIESEN

The role of a trustee and its variants have evolved significantly over many centuries. Grain surpluses 7,000 years BCE apparently led to the development of the concept of “bailment” and increasing trade in commodities and precious metals led to the concepts of “agency”, “brokerage”, “custody” and “mandate”. The Greeks, Romans and Egyptians all had legal relationships and structures similar to modern day trusts which they used to hold and manage property for estate planning and commercial purposes (K Wallace, “The First Professional Trustees”, (2018) Trust Quarterly Review, vol.16, issue 2, p 12).

The influence of the Knights Templar

The Knights Templar are perhaps the forerunners of the modern day trustee. In the 11th century, devout pilgrims from Europe visited the Holy Land but were frequently robbed or exploited on their pilgrimage across south-east Europe and the Middle East. In response, knights were mobilised to guard the pilgrims on their travels.

The Knights Templar developed a reputation as obedient, religious defenders of Christians. They were granted exemptions from local taxes and entitled to paint a Templar cross on their properties to declare their tax-free status to the authorities. Perhaps predictably, some other opportunistic property owners mischievously copied this and thereby carried out an early example of tax evasion.

As a highly respected, well organised, devout and prosperous religious order, the Knights Templar were entrusted with estates while the owners went on pilgrimage across south-east Europe. They became property managers, consolidators of small parcels of land into large estates, revenue generators, cash accumulators, lenders, and distributors of surplus funds.

An important reason why the Knights Templar were so highly regarded and entrusted with such responsibility was that they were independent, experienced and qualified professionals. They were also subject to rigorously enforced moral, legal and religious codes.

They were accountable, organised and structured and were fulfilling a calling that required them to put the interests of others ahead of their own.

Customisation

It was on this basis that the office of trustee as we know it today evolved in England and then, with the advent of British imperialism, was transplanted to all corners of the globe. However, since Commonwealth independence after the Second World War the use of trusts and the role of trustees in various countries has arguably been less influenced by these English origins and jurisprudence as local advisers, courts and parliaments have customised the use of trusts to a domestic context.

In some countries this customisation has been very successful and has led to sophisticated financial services industries and eminent judges, trustees and professionals expert in the law, governance and administration of trusts. In other countries, the outcomes have been less successful.

Unfortunately, the use, governance and administration of trusts in New Zealand has evolved in a way that leaves some things to be desired.

The use of trusts in New Zealand

Trusts are typically the centrepiece of a New Zealand family’s asset plan. However, quite often people in New Zealand have assets held in a trust in circumstances where they receive only limited benefit from the arrangements. In some cases the following matters have obviously not been considered at the time the trust was set up:

- The assets held by the trust are encumbered with debt and security to banks and/or there are substantial settlor and beneficiary current accounts. And so there is not much wealth that is actually being protected by the trust.
- Often the trust has no income, and even if it does, there are no material tax advantages in New Zealand to having income producing assets in a trust. If indirect ownership is desirable then a limited partnership or company may well be more tax efficient. In any event, New Zealand is a relatively benign fiscal environment compared to most developed countries (we have no general capital gains, inheritance, estate or wealth taxes).
- Our succession laws are mature and relatively certain. They allow almost unrestricted freedom to benefit whoever we want under our wills. There are some requirements to provide for people to whom we have a moral duty but nothing like the forced heirship regimes that exist in many European and Middle Eastern countries.
- Our laws and nationalised accident compensation regime generally prevent claims being made against individuals for personal injuries caused by negligence.
- Tax authorities and government agencies nowadays typically look
through trusts to the people who set them up and benefit from them. Increasingly the same approach is being taken by courts in cases involving the dissolution of relationships and recovery of debts.

- We have a well-functioning and relatively sophisticated insurance industry.

In many cases, the trusts may just add unnecessary complexity and expense to people’s lives. This soon becomes apparent when the family is refinancing, buying and selling property, preparing tax returns or adjusting succession planning settings. Many trusts in New Zealand would not withstand scrutiny from the court because of the way they are set up and/or operated.

The role of trustee in New Zealand

Another unique aspect of New Zealand asset planning is the distinct lack of independent governance of trusts and family investment holding entities (such as underlying companies). Globally, there is an entire industry dedicated to the independent governance of private wealth. However, in New Zealand we tend to conflate the provision of two very distinct functions, legal advice and fiduciary services. In each case the providers of those services require different skills and have duties which are owed to different classes of people.

Trusts are one of the most complex legal relationships. Many lawyers do not properly understand trusts and fiduciary powers and duties, let alone lay settlors, trustees and beneficiaries. In New Zealand, many clients are reluctant to appoint an independent professional trustee who is not also the family lawyer or accountant. A problem with that approach is that the family lawyer or accountant could be conflicted by a long-standing relationship with the people who set up the trust (whose interests may become misaligned with the next generation) and unaware of, or unable to fulfil, fiduciary duties to the wider family. In many cases he or she will not have the specialist skills to perform the role in an increasingly complex and regulated modern professional environment.

In other countries, it is generally undesirable for family members to be the trustees and/or have effective control over the trust. Instead, truly independent, professional and licensed trustees are typically granted wide discretionary powers, which they exercise judiciously, whilst mindful of fiduciary and other duties which are enforced by the courts and regulators.

The future of trusts in New Zealand

Historically, these idiosyncrasies were probably of only academic relevance in New Zealand, given net asset values may have been low and the interests of the beneficiaries and the trustees are often aligned whilst the second generation are young and uninformed. However, in recent years some asset classes have increased exponentially in value and many beneficiaries have grown into adulthood and are likely to be better educated, informed and advised in relation to trust matters. This represents both risks and opportunities for advisers and requires us to rethink the way we have traditionally done asset planning in New Zealand.

Paradoxically, this may lead us to consider the example set by the Knights Templar many hundreds of years ago and commit to a higher standard of governance and administration of trusts in New Zealand. The Trusts Act 2019 will almost certainly increase the level of scrutiny on New Zealand’s community of trustees – most of whom are either lay persons or professional advisors rather than professional fiduciaries.

As the New Zealand private wealth sector eventually matures and aligns with other countries, there should be commercial opportunities for specialised, independent, professional (and perhaps regulated) trustees to fulfil these increasingly important governance and administrative roles. That should be a good thing for the preservation, enhancement and aggregation of family wealth in New Zealand. It may not be such a good thing for the trusts litigators of New Zealand who are currently dealing with an entire generation of trusts which have been set up and run in a rather peculiar manner.

Henry Brandts-Giesen is a partner with Kensington Swan, Auckland.
In late 2016, the Government implemented changes to the residence programme. The effect of this was to reduce the number of places for family member migrants to obtain residence from 5,500 to 1,000 per year.

The greatest impact of the policy change had been in relation to the Parent Residence Visa Category. Under this category, individuals who have adult children in New Zealand who are New Zealand citizens or residents can apply for New Zealand residence. Prior to the suspension of the category in 2016, there were essentially three different parent categories. The categories ranged from parents investing a substantial amount of funds into New Zealand to parents (or their sponsors) having to demonstrate a certain income in order to be able to support their applications and living expenses in New Zealand.

Aside from the above, parents also had to meet the requirements of being of acceptable health and of good character – which is standard across all visa categories. Upon arriving in New Zealand, parents were eligible to access publicly funded health services and welfare and superannuation payments upon qualifying.

The parent visa category was declared as suspended in 2016 to clear Immigration New Zealand’s backlog of applications. The decision to suspend the category was one which came as a surprise to many migrants. This included those whose parents’ applications were in progress, those who intended to submit Expressions of Interests for their parents’ applications, those who submitted Expressions of Interests and those whose parents’ applications were in the queue waiting for allocation.

What changed?

On 31 October 2019, Cabinet published a paper suggesting the Government acknowledges the benefits of the parent category, stressing the contribution to the social and economic wellbeing of sponsoring families. However, the paper also noted these benefits were difficult to “objectively quantify” and outweighed by the long-term cost to the Crown of health and social benefits drawn on by parents.

Earlier that month however, the changes were announced to the parent category with perhaps the most exciting being that the parent category was scheduled to reopen in February 2020 – which some would say was perhaps the only positive.

From the previously allocated 5,500 places for parents, the numbers were reduced to 1,000 per year; and the Government decided to substantially increase the income threshold at which a sponsor could support their parents.

Under the new policy, income thresholds will vary depending on the composition of the sponsoring child’s partnership status, and the number of parents to be sponsored. However, a sponsoring child who is either married or in a de facto relationship will now need to have a combined income of $212,160 with their partner in order to sponsor two parents – as opposed to a combined income of $90,000 under the old policy; this new figure being four times the median salary. These new financial requirements will be updated every year based on the New Zealand median income. Additionally, sponsors will have to provide evidence of their annual income through IRD tax statements and show that they have met the income requirement for two out of the three years before the visa application is lodged.

Why all the fuss?

Unfortunately, these policy changes will impact heavily on many migrants who were intending to bring their parents to New Zealand – simply put, a substantial number will no longer have the option.

While credit must be given to the Government for reopening the category, the vast income difference excludes the parents of many migrants New Zealand is seeking to attract. Those being the myriad of workers who arrive in New Zealand every year and contribute at all levels across the country. Those working as teachers; in the trades; and a range of other skilled occupations, who will now struggle to get anywhere near the threshold required.

For migrants this is a highly emotive issue. Many have argued the expectation that one would eventually be able to bring their
parents to New Zealand was not a "legitimate expectation". The counter to that, of course, is clear. Under previous governments, New Zealand marketed itself as a country where migrants, their children, their spouses and their parents were welcome. It marketed itself as a country which supported family connections, and its policy objectives stated that family categories were in place to "strengthen families and communities". Many migrants bought into this, mortgaging family homes, selling land and spending savings to establish a presence in New Zealand. Migrants have arrived here on student and work visas seeking long-term pathways to residence in the hopes of one day being able to bring their parents. In their view, their social and cultural contributions, and the sacrifices they have made to be here have no value if their goal to eventually bring their parents remains unaccomplished.

However, it is also difficult to compare expectations across cultures. For example, filial piety (the Confucian concept of being respectful towards one’s parents), is central to the Chinese culture. The same can be said for the Indian culture – where the concept of a joint-family (ie, multiple generations in one home), is given priority and importance. Some cultures also place an importance on the eldest child supporting and living with their parents and others place importance on a son, looking after his parents. Therefore, what may be a legitimate expectation for one culture, may not be the same for another.

The specifics of the policy are yet to be released and we can only speculate what the policy may look like going forward. That said, with Immigration New Zealand already giving the public remuneration limitations to work with, we do not see this being received well by the industry and migrants alike.

In the meantime, migrant community newspapers continue to capitalise on the sentiments of migrants and question MPs from ethnic backgrounds on how they are representing their communities through their political positions. Although some shift the conversation to the standard “at least the parent category has reopened under the present Government” argument, others rely on rhetoric such as “…if you don’t like it and you’re threatening to go home – catch the next flight”.

There was a shift in how migration policies are looked at in 2019 and it’s fair to say that globally, these are being reviewed, scrutinised and restricted. This year will herald the first wave of migrant parents arriving under the new policy. It will be interesting to see if by restricting the policy as the Government has, it will have achieved its goal of reducing fiscal obligations on the Crown; or has it just disappointed many thousands of migrants, who consider Aotearoa home?

Mahafrin Variava

Mahafrin Variava is a Senior Solicitor based in Lane Neave’s Auckland office. She specialises in immigration matters and is a member of the New Zealand Law Society’s Immigration and Refugee Law Committee.
Recent events, including the death of a student in a university hall of residence, have prompted the Government to reassess the quality of pastoral care being provided to tertiary education students. The recently passed Education (Pastoral Care) Amendment Act 2019 attempts to rectify the apparent shortcomings, allowing the Minister of Education to issue a mandatory code of practice to govern the pastoral care of all tertiary students. Such a code was already in place for international students, but not domestic. The Pastoral Care Act addresses this regulatory gap to ensure that all tertiary students live in a safe environment and have their emotional and physical wellbeing adequately cared for.

Code of Practice

In 2004, a number of tertiary education providers adopted a voluntary code of practice. Unfortunately, some did not and over time the code effectively fell into abeyance. Many of the monitoring regimes imposed to ensure the wellbeing and safety of students were eventually scrapped in cost-cutting measures.

Under the Pastoral Care Act, the Minister of Education will impose a mandatory code of practice requiring all tertiary education providers to take all reasonable steps to “maintain the wellbeing” of domestic tertiary students and to “protect” international students.

As the Act only received its Royal assent on 19 December 2019, the minister has imposed an interim code of practice for the 2020 academic year, which took effect on 1 January 2020. The interim code imposes on to all tertiary education providers a general duty of pastoral care over their students. This general duty covers physical safety, access to advice and support services, physical and mental health support, freedom from discrimination and racism, support for transition to tertiary study, and the opportunity to take part in decision-making of support services.

The code also includes specific additional requirements for those that provide student accommodation. These requirements are plentiful and seek to provide students with a positive and supportive environment in student accommodation.

Throughout 2020, the Government will consult relevant stakeholders on the development of a long-term code to take effect from 2021.

Administering and enforcing the code

The Minister of Education has appointed the New Zealand Qualifications Authority (NZQA) to be responsible for administering the code. A key part of this role will include monitoring and investigating any suspected breaches of the code. The interim code allows any person to refer any issue related to an alleged breach to NZQA. If the breach is particularly serious, the Pastoral Care Act allows financial sanctions to be placed onto the tertiary education provider.
These sanctions may come in the form of a criminal or civil penalty.

Under s 238S, a provider commits a criminal offence if it:
- without reasonable excuse, breaches the code of practice; and
- the breach results in serious harm to or the death of one or more of its students.

The adjudicating court will determine whether a reasonable excuse existed, whether the breach caused the harm, and whether “serious harm” occurred. A tertiary service provider who commits this criminal offence is liable on conviction to a fine not exceeding $100,000.

Similarly, NZQA may apply to the court to order a tertiary service provider to pay a civil pecuniary penalty. Under s 238T, the court may order a civil pecuniary penalty not exceeding $100,000 if it is satisfied that the provider has, without reasonable excuse, committed a “serious breach” of the code of practice. The scheme doesn’t apply to the interim code, but is anticipated to come into force in with the permanent code of practice in 2021, once the details of its application are arranged and agreed.

Dispute resolution scheme
Separate from the code of practice, the Pastoral Care Act also establishes a student contract dispute resolution scheme (DRS) to resolve contractual and financial disputes between students and tertiary service providers. The scheme doesn’t apply to the interim code, but is anticipated to come into force in with the permanent code of practice in 2021, once the details of its application are arranged and agreed.

The Pastoral Care Act requires all providers to comply with the rules of the DRS, which will be operated by a person or agency appointed by the Minister of Education. A student may lodge a claim with the DRS operator if:
- the provider has refused or not tried to resolve the dispute; or
- if the provider has been given an opportunity to resolve the dispute, but the student is not satisfied with the process or outcome.

The DRS operator may then issue a resolution through an adjudication or following a mediation process. This resolution may require a tertiary education provider to pay a student claimant up to $200,000.

Once the resolution is made, the student may then apply to the District Court to have this enforced as if were a judgment of the court. However, the District Court may modify the resolution before giving effect to it if it is satisfied that the terms of the resolution are manifestly unreasonable.

Oliver Fredrickson recently completed an LLB(Hons)/BCom at Victoria University and works as a clerk to the Chief District Court Judge Heemi Taumaunu.
Law school Deans reflect on 2019 and look ahead to 2020

BY NICK BUTCHER

Each year around 10,600 students are enrolled to study law at one of New Zealand's six tertiary institutions offering law degrees. The four or more years spent at university are an essential introduction to the law for all lawyers.

The Deans of each of New Zealand's law schools were asked for their reflections on how 2019 went and invited to look forward to 2020.
Otago University Law School Dean, Professor Jessica Palmer, says 2019 was a busy year, and particularly special as the university celebrated its 150th anniversary.

Two events were held for law alumni, one a Deans’ panel event which brought together five past Otago Deans.

The other was a celebratory dinner which featured speeches from Justices French, Miller and Lang.

“They’re all proud Otago alumni and gave very entertaining speeches. It was a great opportunity to catch up with over 100 alumni, some of whom had travelled some distance to attend,” she says.

**LLB review begins**

Last year at Otago University Law School marked the beginning of an ongoing process to review the LLB curriculum which will continue into 2020.

“This is no easy task and I am grateful to Professor Shelley Griffiths for leading this project. We have heard from Professor Prue Vines (University of New South Wales) and from various people across the university as we think through the learning methods and practices that best suit today’s university students and consider our aspirations for a modern LLB,” Professor Palmer says.

She says the faculty is committed to ensuring the Otago law degree continues to provide students with excellent analytical and problem-solving skills, while also broadening their understanding of the value that law can bring to society.

**Students challenge themselves outside of the classroom**

Professor Palmer says Otago law students have continued to challenge themselves by expanding their knowledge and skills outside of the university.

Savanna Gaskell and Meghan Laing represented Otago at the New Zealand Red Cross International Humanitarian Law Moot and won the competition for Otago for the first time since 2011. The team, coached by Marcelo Rodriguez Ferrere, edged out Victoria University in the final, in front of a panel including Sir Kenneth Keith, Judge Bill Hastings and Brigadier Lisa Ferris.

They’ll now represent New Zealand at the Asia-Pacific finals in Hong Kong in March.

In addition, Nerys Udy represented Otago in the national Kaupapa Māori Moot final held in the Supreme Court before a bench of five judges, including Justice Joe Williams. Abie Faletoese won the Pasifika Law Students Sentencing Competition held at Canterbury Law School.

And in February 2019, fourth year student Hannah Morgan swam 32km across Foveaux Strait in 8 hours and 43 minutes, raising $30,000 for the Mental Health Foundation and the Otago University Students Association.

**2020... new subjects such as Chinese law**

This year the law school offers a range of new subjects including Chinese law; immigration and refugee law; international litigation and dispute settlement; law and indigenous peoples; international family law; and children and the family justice system. From 2021, that range will expand to include Pacific law; global governance; advanced criminal law; and climate change law.

“In 2020, we’ll be paying particular attention to how we can encourage greater diversity in our student body and support the success of students from all walks of life. As a faculty, we are committed to the value of diversity, both in the university and in the legal profession. We have started this already with some research and faculty discussion on different meanings of diversity and a detailed review of our student cohort over the last 10 years,” says Jessica Palmer.

2019 was also the first year that female professors outnumbered male professors at the faculty.
Last year was a busy one at the Canterbury School of Law, says acting Dean, Professor Elizabeth Toomey. This included the appointment of a new University Vice-Chancellor, Professor Cheryl de la Rey.

**Review of undergraduate programme**

In line with the university’s vision of providing accessible, flexible and future-focused education, the school is reviewing and refreshing all levels of its undergraduate programme to ensure that graduates have the skills and attributes to thrive in their chosen careers.

“This work is informed by the student voice, legal education research undertaken by school staff, and the views and experiences of the four new academic staff who have joined the school. Closely linked to this programme refresh is ongoing work to support student wellbeing and success in line with the University of Canterbury vision of nurturing staff and supporting students,” Professor Toomey says.

She says work in this area is aimed at building stronger working relationships between staff and students, and among students. The school also plans to review and transform its criminal justice degree.

“As always, change comes with challenges, including balancing new ideas with practicality.”

She says the staff have been involved in wide-ranging activities and academic interests.

Externally-funded research projects include: the comparison of various aspects of trial process in adult rape jury trials with 20 comparator cases from judge alone trials; the investigation of Forensic Brainwave Analysis (FBA) technology; research into the regulation of resilience; the examination of anti-corruption mechanisms in the South Pacific region; and a project in the Sustainable Seas National Science Challenge.

**Law student research completed**

Professor Toomey says Professors Lynne Taylor and Ursula Cheer and their inter-disciplinary socio-legal research team completed the final-year survey in their ground-breaking national and longitudinal study of the expectations and experiences of New Zealand law students.


Professor Karen Scott was elected as President of ANZSIL and was appointed as Editor-in-Chief of the leading international journal *Ocean Development and International Law*. Dr Olivia Erdelyi was the New Zealand representative on the OECD AI expert group AIGO, which was mandated to scope the OECD’s AI principles, and Dr Toni Collins and Dr Shea Esterling have been awarded grants under the Cambridge/Canterbury and Oxford/Canterbury exchange programme.

**2020...**

Professor Toomey says these activities, by no means exclusive, promise a successful 2020 for the school, along with a new University Strategic Vision for 2020-2030: Tangata Tū Tangata Ora.
2019 was a year of consolidation and progress for Te Herenga Waka – Victoria University of Wellington’s Faculty of Law, says Pro Vice-Chancellor and Dean of Law Professor Mark Hickford.

**Student success coordinator appointed**

Professor Hickford introduced a new key staff role – the Student Success Coordinator. This position is partly about responding to increasing expectations around pastoral care, he says, focused around wellbeing, along with managing the learning and teaching pressures on students.

“What the service does is to support students who might be at risk in relation to their performance in courses through a range of factors and circumstances. This is a specialist role that is focused on dealing with the risks and stresses that come with student life. The whole point of this was to have someone who had the acumen and skill set but at the same time knew who to escalate matters to and when in a very proficient way.”

**New technology**

The faculty invested in technology during 2019. It hired Dr Marcin Betkier who – along with the Law of Torts and Data Privacy – specialises in information technology law.

The law faculty is looking at reviewing and improving programmes that include Māori and tikanga, something Professor Hickford says all law schools are involved in.

“This includes tikanga in areas such as contract law and subjects such as commercial law. Broader approaches are needed around the role of the Treaty of Waitangi and tikanga in these areas,” he says.

**Enhancing student sense of community**

In 2019, the faculty piloted a newsletter for law students, which aimed to improve student access to relevant information, and to build a stronger sense of community.

About half the students who study law in universities don’t go on to be practising lawyers.

But that’s not a new issue as Professor Hickford explains.

“We’ve regarded this as part of our normalised landscape for some years. Law schools are there to train people how to think critically rather than to prepare them for any particular professional outcome. Notwithstanding that we must always have an outlook towards practical legal professional skills such as writing an opinion or mooting. We focus on teaching our students to think and evaluate critically, knowing that those skills may not only benefit the legal profession but also public policy, the non-government sector and so forth.

“There’s always been a relative liberalism as to where students might end up and that the skills that we teach are not just for them to become a legal practitioner,” he says.

**2020...**

Professor Hickford says a digital examinations pilot programme was run at the law faculty in 2019, which proved successful and worthy of further investigation. It was trialled while the New Zealand Qualifications Authority continued to run a digital exam pilot in secondary schools.

He says they’ve had excellent feedback from students and professional and academic staff say it has provided them the ability to grade papers more efficiently and therefore be able to give students feedback more efficiently.

Professor Hickford says other institutions are providing digital exams, such as Australia’s Monash University.

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**What the service does is to support students who might be at risk in relation to their performance in courses through a range of factors and circumstances.**
Women studying law at Te Piringa – the Faculty of Law at the University of Waikato significantly outnumbered male students in 2019. For the first time, the percentage of female law students exceeded 70%. Māori made up 29% and Pacific students 13%.

“The diversity of the student body is a strength of Te Piringa and challenges the faculty to ensure that its programmes are reflective and cognisant of the increasing diversity of New Zealand society as a whole,” says Dean of Law Wayne Rumbles.

He says the figures add further impetus for Te Piringa to contemplate how it can contribute to a change in legal culture.

“We have introduced an induction programme for all interns and work placements; we have further developed our work-ready programme of seminars in conjunction with our student associations. This programme includes focusing on general wellbeing, mental health, managing stress, work-life balance and dealing with bullying, sexual and other forms of harassment,” he says.

**BA majoring in Law for people not intending to practise**

Associate Professor Rumbles says in recognition that some understanding of the law is important for many professions beyond traditional law practice, Te Piringa launched its new Bachelor of Arts in Law this year.

“The BA in Law programme is designed for those that want to gain a non-practice understanding of the law and apply it to specialist areas of interest within the humanities,” he says.

Furthermore, he says to bring law and legal understanding to non-LLB students, Te Piringa started offering commercial law papers in the Waikato Management School and co-teaches the Master of Cyber Security with Computer Science.

2020 and what’s next

Wayne Rumbles says an ongoing challenge for law schools will be to respond to a rapidly changing legal services environment as it reacts to a range of disruptive technologies and new business models.

“Cloud computing, block chain, big data, artificial intelligence and machine learning will contribute to the automation of many legal tasks but also provides exciting new opportunities for wider access and delivery of legal solutions. This challenge means law schools need to reflect and define our role in preparing graduates to practise and take up the opportunities of a very different world.”

He says an ongoing challenge for their students will be how to operate in this rapidly changing legal environment where the way traditional law firms operate is being challenged, where new business models are emerging and technology is moving from concept to real-world application.

“Our graduates need to have flexible high-level skills that can adapt to rapid change, embrace technology and seize new opportunities that will emerge.”

**New Dean in 2020**

Associate Professor Wayne Rumbles’ term as Dean will end when he steps down to go on study leave in February 2020, to focus on a New Zealand Law Foundation-sponsored TeLENZ (Technology in Legal Education New Zealand) project.

Professor Alpana Roy has been appointed to the role of Dean starting on 10 February. Professor Roy comes from the School of Law at the Western Sydney University.

“She has established an international reputation for research in intellectual property law,” Associate Professor Rumbles says.
The AUT Law School is in good shape after a decade of providing higher education, the Dean of Law, Professor Charles Rickett, says. It celebrated its 10th anniversary in July 2019 and he says it’s pleasing that the undergraduate numbers have continued to grow.

“In 2013 our first graduating cohort was 54 and by 2018 this had risen to 77. Our LLB(Hons) graduation numbers have also risen, from five in 2013 to 16 in 2018.”

First PhD in Law graduate

Professor Rickett says the law school celebrated its first PhD in Law graduate last year.

“Judge Layne Harvey will now forever hold the distinction of being that person.”

AUT’s permanent staff numbers include 28 academic staff and five administrative staff. They welcomed three new academic members of staff last year with Dr Akshaya Kamalnath coming from Deakin Law School in Australia, Christopher Whitehead arriving from McGill University in Montreal where he has been completing his PhD in an area of insurance law, and Dr Natalia Szablewska taking up a position as a senior lecturer after teaching torts, human rights and international law at the Southern Cross University on the Gold Coast.

Professor Rickett says the school has attracted a range of lawyers who have been teaching various papers.

Lawyers teaching papers success

“The practical legal knowledge and expertise which they contribute to the learning experiences of our students is invaluable,” he says.

These lawyers include Deborah Manning (immigration and refugee law and clinical legal education) and Frances Joychil QC (human rights litigation).

“Staff have also had a busy year on the publications front and our reputation for research continues to grow.”

Lord Thomas of Cwmgiedd

In October AUT welcomed Lord Thomas, the former Lord Chief Justice of England and Wales, to AUT as the 2019 New Zealand Law Foundation Distinguished Visiting Fellow. In a series of illuminating lectures, seminars and meetings, Lord Thomas explored various perspectives on the way in which technology is impacting on the law, the courts and the profession.

“It was also wonderful to have Dame Helen Winkelmann lend her support to an event organised jointly by Meredith Connell, AUT Law School and Auckland Law School in September, when around 60 pupils from 10 schools in lower decile areas spent the day at AUT to experience lectures and workshops,” he says.

Professor Rickett says the school continues to teach all its compulsory LLB papers at its South Auckland campus at Manukau.

“This commitment presents resource challenges and the university has been very generous in providing funding to enlarge our staffing cohort. The student demographic at AUT is healthily diverse, but this too presents challenges. Student performance and retention in some groups is not as high as it could be.

“We have recently secured funding from a generous South Auckland sponsor and have established the Aiono Matthew 9 Lectureship in South Pacific Legal Studies. The first appointee takes up her new position in February. We are also facing the need to consider carefully the place of tikanga Māori in our programme,” he says.
2019 was Professor Penelope Mathew’s first year as Dean of the University of Auckland’s law school. Reflecting on the academic year, she says legal work is changing and some of it is driven by technology which she says a law degree that is fit for the profession needs to continually address. She says even when she attended law school, there were students who had no desire to study law for the purpose of practising it. These days, Professor Mathew says, it is more common for students to be doing conjoint degrees to spread their career options. She herself did a conjoint degree about 30 years ago in Australia.

“Many students see the law as supporting the other field they’re studying. For example, aspiring business people and entrepreneurs want an understanding of the law. Other graduates are focused on policy so for them the law will be one area that is relevant to policy decisions. Others want to be advocates for human rights or environmental issues, so the law is one facet of the knowledge base required to do this type of work,” she says.

End of year retreat
In 2019, the law school and its public lawyers went on an end of year retreat where they discussed a range of issues, with particular focus on what she describes as the changing role of the law degree.

“How do we respond to changes in the legal profession and how do we ensure the profession changes in ways that it should – for example, how does a law school contribute to a profession that ensures better access to justice?”

Before the retreat, Professor Mathew met 30 of their student leaders and posed questions to them around what they viewed as the future challenges for new members of the law profession.

“Wellbeing was high on their agenda. They are certainly aware of the pressures imposed by long hours at work and issues of diversity and inclusion such as gender, race, ethnicity, sexuality. Many of them work part-time in law firms or have friends or family members who do.”

More technology in first-year law
Professor Mathew wants to include more technology in the first-year law curriculum and the school will be looking at how to integrate innovation content into it with the support of the university’s Hynds Entrepreneurial Teaching Fellow, Peter Rachor. That role was created by the university’s Centre for Innovation and Entrepreneurship. The aim is to embed innovation and entrepreneurship into the curricula across the university.

“We are also participating along with other law schools in the Law Foundation-funded project Technology in Legal Education in New Zealand. The project is looking at helping develop content, resources and information that can be introduced in core legal subjects at the second and third year of the LLB degree,” she says.

LLM and AI Law & Policy
In 2019 the Faculty’s LLM (Masters) programme offered a specialist course, Artificial Intelligence, Law and Policy, which will be available again in 2020.

She says the faculty is engaged in critically evaluating what new skills, content and knowledge its law graduates will require in light of a landscape impacted by new technology.

Jean Yang from McCarthyFinch presented at our faculty retreat on how technology is disrupting, altering, and providing opportunities for the legal profession.

“The law school introduces a new Vice Chancellor for 2020 with Professor Dawn Freshwater starting in March.
Finally, this century delivers a decade that has a catchy, easy to agree upon moniker. No more ‘two thousands’ (erm... are we talking about – the decade or the millennium?), ‘naughties’, ‘aughts’ or... what do we call the 10s, anyway?

Thank you Gregorian calendar for giving us the 20s again and what a decade of technology it’s going to be.

Although I’m not entirely sure what names history will assign to the previous two decades, it is clear that – from a technology perspective – the 00s and 10s were tectonic. We got smartphones, private space companies, and universal broadband.

What the past 20 years is most notable for, however, was the emergence of technologies that will change the face of civilisation as we know it, but that haven’t yet quite made the prime time.

So buckle up and join me as I bravely (some would say foolishly) predict the technological achievements that will most affect our lives over the next 10 years.

In 10 years’ time we will have:

Lost jobs to artificial intelligence

AI has progressed in leaps and bounds over the past 20 years. In December I received an automated call from Google asking whether our office was open over the Christmas holidays so they could update opening hours in Google Maps. The caller was an AI bot (ie, a computer) and ‘he’ identified himself as one, but I managed to chat with him almost intelligently for a couple of minutes. He was so human-like that it was exhilarating and downright scary at the same time. He made small talk and even laughed at my jokes (a sure sign he wasn’t a sentient being) and I was taken aback by how naturally the conversation flowed.

AI is here and it’s mature and we’re going to see more and more jobs lost to computers over the decade ahead. This will have a profound impact on law as much of the low hanging fruit will start to be performed by algorithm rather than by associate. Innovative new competitors will emerge with new and exciting technologies that have the potential to disrupt areas of the industry in ways that are hard to predict until it happens.

Given up driving and even car ownership

My eldest daughter is 13 and I am looking forward to teaching her to drive and to helping her buy her first car in the not too distant future. My youngest is eight and I doubt she will ever either learn to drive or own a car.

Why would she want to when cars will drive themselves and arrive within seconds of being summoned? She will never have to look for a car park again – once she’s at her destination her chariot will simply drive itself away, ready to pick up the next passenger.

By 2030 most trucks will be fully self-driving, making the trucking industry significantly safer and more efficient than it is today.

Tens of thousands of driving jobs will become redundant across the country, which sucks, but thousands of lives will be saved as more and more of us let our cars do the driving for us.

Electric cars

In the 1980s the music industry switched from vinyl and cassette to CD. In the 20s the automobile industry is going to switch from gas guzzlers to electric. Yes, there are plenty of us who insist that we’ll stick with the ‘richer sound’ of good old vinyl, thank you very much, but more of the holdouts will make the switch than even they think.

By 2030 over 75% of new cars sold in New Zealand will be fully electric. Electric cars will be cheaper, cleaner, safer and better in almost every way than their internal combustion counterparts. My bet is that the EU will have set a ban on the sale of new internal combustion-powered cars and light trucks from the mid-30s, meaning many car manufacturers will be well on their way toward phasing out gas guzzlers by the end of the 20s.

Colonised Mars

Despite the momentous achievements of the Russian and American space programmes during the 60s and 70s, no human has set foot on another celestial body within my lifetime. And, as my kids will happily tell you, I’m older than dirt.

This will all change in the 20s, during which time we will have true space tourism
for the first time, humans will again set foot on the moon and we’ll even colonise Mars. Let that sink in for a moment – within the next decade we will become an interplanetary species. Whether this is a good or a bad thing remains to be seen, but it will be hugely significant to the progression of the human race.

Even more interesting will be who manages to get there first. Will it be NASA or SpaceX? My money is on the latter. In the meantime, I’m looking forward to Virgin Galactic finally providing tourist trips into space this year after 15 or so years of building and testing. Watch for companies such as SpaceX and Jeff Bezos’ Blue Origin to start offering tourist trips into space and possibly even the moon before the decade is out. What a time to be alive for an old space nerd.

Embraced blockchain and cryptocurrencies

I’ve attended and/or have spoken at a fair number of ‘Blockchain in [insert industry name here]’ events over the past few years. I think it’s safe to say I’ve never seen so many desperately bored faces in all my life.

Yes, blockchain technologies will have a huge impact on our society, but no, that doesn’t make understanding how blockchain works any more interesting, or important for the lay person.

What will be a lot more interesting is how blockchain technologies are applied into products and services that become part of our everyday lives.

One or more cryptocurrencies will enter the mainstream and will be used by more and more of us, particularly for online transactions. Blockchain features, such as smart contracts, will be found in more and more applications, particularly those related to handling large and complex financial transactions.

Said goodbye to cash registers

Does anyone else resent lining up at the till, or is it just me? ‘Look, I’ve decided I want to buy something from you and I’m ready to give you my money ... why are you making me wait to give it to you?’

Companies such as Amazon already offer cashier-free stores where customers can simply grab what they want and walk out. The customer is automatically charged as they leave.

These stores use a combination of AI technologies, such as computer vision and deep learning. The technology is still immature and very expensive to deploy, but this will change.

By the end of the decade this technology will be sufficiently inexpensive and robust to allow it to be deployed almost anywhere, meaning cashier-free stores will become commonplace. Just as we’ve become accustomed to simply waving our Uber driver goodbye at the end of each trip, we’ll soon get used to grabbing what we want at the supermarket and simply walking out the door.

A quantum of quantum computing

Just as the 00s and 10s were the ‘sleeper’ decades for some of the most promising technologies that will transform the 20s, the 20s will be the sleeper decade for quantum computing.

Without getting too technical, quantum computers take advantage of the mind-bending physics of quantum mechanics to solve problems that would be very difficult, if not impossible, for the traditional microprocessor-based devices we use today.

Unlike a traditional computer, where adding a ‘bit’ gives you a linear increase in processing capacity, adding a qubit to a quantum computer gives you an exponential increase in processing capacity.

This means that quantum computers can perform some really difficult tasks (like decoding strong encryption) really, really quickly.

This is important as the number of transistors that we can cram into each square millimetre of a microprocessor has remained static since around 2013. Until then manufacturers such as Intel managed to double the number of transistors per square millimetre every two years or so (referred to as ‘Moore’s Law’), meaning we had faster and faster processors to meet our insatiable desire for more and more capable devices.

Quantum computing promises to deliver computational performance far in excess of what is possible with current technologies. It’s an exceedingly difficult technology to perfect, however, as it utilises the spin states of electrons or the polarisation of photons to store and process data. You don’t need to have a PhD in physics to realise that manipulating electrons and photons is really, really hard.
During 2019 companies such as IBM released the first commercial quantum computers. These are not devices that you can buy, but you can rent time on them over the internet. Quantum computing will remain relatively exotic during the 20s, but will come of age in the 30s. During that time we will have to come to terms with new machines that can decrypt data (in seconds or minutes) that would take today’s supercomputers thousands of years to decrypt. What will we do when encryption can no longer be relied upon to protect data and transactions from prying eyes?

**How will we change?**

Sometimes the pace of technological change can be a bit much to take in. How can we possibly process it all, let alone adapt to it?

The important thing to remember is that, although our society will be forever changed by these and other technological advancements, we’re already well-rehearsed at understanding and adapting to such changes. Look at what a massive change smartphones have had in almost every country around the world. This change was rapid and hugely significant, but we’re adapting just fine.

Although it’s clear that society will change, no one knows quite what this will mean and I for one can’t wait to find out. If I was driving for a living then I think now would be a good time to think about re-training, but otherwise I’m happy to watch in awe and amusement.

What I hope will happen is that we start spending more time trying to solve some of our most pressing technological challenges, such as saving the planet, particularly as ‘technology’ is responsible for so much of the waste and pollution that we’re grappling with.

**Damian Funnell**

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### TECHNOLOGY

**Legal tech roundup**

**In-house lawyers grappling with AI impact, says Lex Mundi**

A report from international law firm network Lex Mundi says General Counsel are grappling with how AI technologies are reshaping their companies and the business environment, creating unchartered areas of corporate liability exposure and new regulatory challenges.

The report, *Big Data and Big Brother: How General Counsel cope with Artificial Intelligence in an era of economic nationalism*, brings together three practical areas where vigilance is needed from General Counsel, as even traditional industries become digital players and business models evolve:

**Governance**

The composition of boards may need to be adjusted to ensure the right mix of expertise, to avoid conflicts of interest, and to comply with the regulation of data. Companies will need to consider having an ethical and governance framework for AI that is cascaded across the business. Never has the “tone from the top” been so important.

**Compliance**

Companies may stray into new industries and become subject to unexpected regulation. AI may be used by authorities to surveil companies, industries and markets, creating unprecedented liability. Authorities may expect companies to leverage AI capabilities for compliance monitoring, including third parties, which would render compliance programmes built for the “analog-era” inadequate.

**The legal function**

Members of the in-house team will need to be trained on what to look for and get involved in product development, in order to anticipate new regulatory exposure. The legal department may require specialists in data science. The legal team will lead, or at least be involved in, the development of the company’s legal and ethical framework for AI, including training the business.
Draft algorithm charter under consideration

Submissions closed on 31 December 2019 on a draft algorithm charter which would commit government agencies to use algorithms in a fair, ethical and transparent way. Initiated by Statistics NZ, the one-page draft follows a 2018 review by the Government Chief Data Steward of how agencies use algorithms. This found there was room to promote good practice across the data system.

The draft charter draws on the Principles for the Safe and Effective Use of Data and Analytics co-designed with the Privacy Commissioner. It sets out specific actions for agencies to ensure they have the right tools and safeguards in place to increase transparency and ethical practice.

Legal tech investments well over US$1 billion in 2019

Legal technology deals and investments stayed on a fast track in 2019 as the sector became increasingly relevant to how Big Law firms and corporate legal divisions operate, Bloomberg Law has reported in an end-of-year review.

Reporter Sam Skolnik says legal tech investments “flew past” the US$1 billion mark by the end of the third quarter of 2019, after hitting that mark for the first time in 2018. He says by the end of Q3 2019, legal tech investments were US$1.23 billion.

“Several significant mergers and acquisitions also were announced in 2019, another sign of legal tech’s maturation as a market sector. Perhaps chief among them: EY’s purchase of legal managed services company Pangea3 for an undisclosed amount. It’s a deal believed by some to be one of the most expensive legal tech buys of all time,” says the report.

Heard of WeChat?
It’s really big ...

In December, China’s Supreme People’s Court released a policy paper which stated that it is committed to developing digitisation to streamline case handling in its court system. This includes a “mobile court” which was launched in March 2019 on social media platform WeChat and which has already handled over three million cases or other judicial procedures. Now, in 12 regions, the mobile court lets users complete case filings, hearings, and evidence exchange without needing to appear physically in court.

WeChat, owned by Chinese company Tencent, has over a billion monthly users. It started as a messaging service in 2011 but has now become an app which can manage most aspects of daily life, from payments to booking taxis or doctor’s appointments and applying for jobs. On 5 January 2020 the South China Morning Post revealed that the Government is rolling out WeChat-based electronic social security cards in 26 cities. As long as you have a Chinese bank account, you can link to WeChat. Every WeChat user has a unique barcode, or QR code. It is one of the main ways people communicate in China.

Alongside the mobile court details, judicial authorities demonstrated China’s first “cyber court”. This was established in Hangzhou to deal with legal disputes with a digital aspect. The demonstration featured an online interface in which litigants appear by video chat. An AI judge – shown by an avatar on screen – asks them to present their cases. The cases handled at the court include online trade disputes, intellectual property cases, and e-commerce product liability claims. Since establishing the Hangzhou court, China has set up cyber courts in Guangzhou and Beijing.
“Legal arms race” threatens cross-border internet

Major new research on internet jurisdiction trends has found that 79% of surveyed stakeholders consider there is insufficient international co-ordination and coherence to address cross-border legal challenges on the internet.

The Internet & Jurisdiction Global Status Report was released on 27 November at the United Nations Internet Governance Forum in Berlin. It combines detailed desk research with a global data collection from over 150 key stakeholders – states, internet companies, technical operators, civil society, academic and international organisations.

The report says there is a “dangerous spiral of uncoordinated policy making”.

“At a time when the world has never been so interconnected, reactive and quick-fix, unilateral regulatory initiatives proliferate to tackle new digital challenges. This legal arms race is threatening the future of the cross-border internet, unless actors actively coordinate.”

New Zealand’s Domain Name Commissioner Brent Carey and InternetNZ Chief Executive Jordan Carter were participants in the research.

The research also found that 95% of participants see cross-border legal challenges on the internet becoming increasingly acute over the next three years.

Only 15% believe New Zealand has the right institutions to address those challenges.

“Much of what has been done to date sought to solve global problems through a national lens,” the report says.

“However, the constant flux of digital innovation and the transnational nature of the internet makes it increasingly challenging to address online abuses with traditional national legal tools. Moreover, as transnational interactions become the new normal, people and entities are often unable to determine their ‘contextual legal environment’, ie, all the states’ laws and other norms that apply to their activity online at a given moment.

“Due to extraterritorial assertions of jurisdiction, in some regions, individuals, organisations and even states are concerned that they are subjected to online rules developed without them in a country far away.”

A high cost of inaction

Stakeholders of the Internet & Jurisdiction Policy Network stressed that not addressing jurisdictional challenges would come at a high cost: the question now is not whether to regulate but how, and by whom.

“As pointed out by one surveyed expert, the internet is neither the problem, nor the cause of the problem. Indeed, the internet risks becoming the victim of our lack of appropriate governance mechanisms.

“The task that lies before us all demands governance innovation: it involves developing the standards for legal interoperability and policy coordination, so that we are equipped with methods and tools that are as transnational, distributed, scalable and resilient as the internet itself. What is at stake is nothing less than the future of the digital society that we collectively want – for us and for future generations.”

Powers to order decryption may need more safeguards

A University of Waikato research report, A matter of security, privacy and trust: A study of the principles and values of encryption in New Zealand, says the power of government to order users and companies to decrypt encrypted data and devices needs stronger privacy protection and additional safeguards.

The report says the problem with current legislative powers is that there are no express standards and guidelines on how they are carried out. This is especially in relation to human rights, and there is a potential for misinterpretation, misapplication and possible misuse of the powers. Focus group interviews by the researchers indicated New Zealanders place the greatest importance on privacy, data protection and information security when using encryption.

The researchers recommend that the right or privilege against self-incrimination should be more strongly recognised in computer searches, and that anyone suspected or charged with a crime should not be forced to disclose their passwords.

The principal researchers were Dr Michael Dizon, Associate Professor Wayne Rumbles and Professor Ryan Ko. The study was funded by both the University of Waikato and the New Zealand Law Foundation.
As part of their repertoire, mediation professionals use tools to guide parties toward settlement more efficiently than if the parties were left to their own devices. The added dynamic of having a third person in the room changes the nature of the conversation that the parties have regarding the issue in dispute. In these articles we have spent a lot of time looking at the skills that an experienced mediator can develop to assist in this conversation. But what about the mediator and the parties’ adviser’s personal authority? How does this impact upon the conflict resolution process and what tools help them establish their authority?

The parties come to rely on the mediator for his or her expertise to guide them during a mediation. The same can be said for their legal advisers. It is important therefore that the mediator can establish their personal authority and expertise in order to maximise the potential to assist the parties. However, many mediators do not take up this opportunity because they assume their expertise will be recognised automatically: because of their reputation or because they have worked with some of the advisers associated with the parties before.

However, if the mediator does not establish expertise and authority with each new engagement it is a lost opportunity and their experience can be overlooked. As a consequence their authority can be compromised. The same can, of course, occur for lawyers. As professionals, lawyers and mediators must make sure that we share our expertise and put ourselves “out there” sufficiently in order to establish a position of influence.

Dr Robert Cialdini, Professor Emeritus of Psychology and Marketing at Arizona State University and author of Influence: The Psychology of Persuasion (1984), established authority as one of the key principles of influence and developed three symbols which he says trigger the authority principle: titles, clothing and trappings.

**Titles**
When involved in an area that we are unskilled in, we turn to those who we see as credible for guidance. The parties turning to the mediator for guidance on how to resolve their conflict is an example of this. Titles are a factor in assessing credibility. For example, “founder”, “CEO” and “mediator” are titles that denote professionals in their fields and are thus deemed more influential by those around them.

When in a new environment or entering a new area of professionalism, authority may be established through titles associated with already successful entities or groups such as companies or successful barristers’ chambers or law firms. For example, the “PayPal Mafia” refers to the group of PayPal employees and founders who left the business following its sale to eBay in 2002. Some of these employees went on to found companies such as Yelp, LinkedIn and Tesla. When we hear statements such as “Tesla was co-founded by former PayPal founder Elon Musk”, we subconsciously attribute a certain level of respect for Elon Musk based on the references to his positions in business and history. As a result, Elon Musk can establish authority and therefore influence as a result of his prior successes and titles and can use this to create more opportunities for himself.

Attaining titles such as “founder”, “CEO”, etc is easier said than done. It is often an arduous and slow process, sometimes aided by opportunities obtained by pure luck. Many people do not attain such titles. However, being a figure of authority begins with our own sense of self achievement. If we are not successful in our own eyes, we will not be in the eyes of others. We must have faith in our own abilities and recognise every achievement, no matter how small, in order to keep growing and pushing beyond our limits to success. Self-belief and persistence will result in goals being met, titles being attained and reaching positions of authority.

**Clothing**
Clothes are superficial cues that signal authority. How we present ourselves determines the first impressions formed by those around us. Accordingly, what we wear often affects how people treat and respond to us.

Dr Cialdini discusses an experiment that was conducted in 1955,

On half the occasions, the man was wearing a business suit and tie, and on the other occasions he was wearing work shirt and trousers. The study measured the number of times other pedestrians that were also waiting at the crossing would follow the man across the road, ignoring the instructions of the traffic light. Interestingly, three and a half times as many people jay-walked into traffic behind the man when he was dressed in the suit compared to when he was dressed in shirt and trousers.

This experiment demonstrates the significant impact that our clothing has on our ability to influence others. Here, the pedestrians at the crossing knew nothing of the man’s expertise. Instead, their varying levels of trust in him derived from what he was wearing.

Although it may seem superficial, we cannot escape or avoid the effects of our attire. First impressions based on these areas of non-verbal communication contribute heavily to how we are perceived. It is therefore important to consciously communicate who we want to be and what we want to achieve, not only through our actions but also by our presentation.

Trappings

Trappings are accessories that can be used to establish authority and influence. A police badge is an obvious symbol of authority, but there are other, and more subtle, ways to make use of trappings.

In business, the law and conflict resolution, social media, a website and your reputation conveyed through word of mouth are all examples of trappings. The key is to establish and maintain a relevant, attractive and informative brand via these channels that all convey your personal authority and expertise. Whether this be through a website or through your chosen social media (typically LinkedIn for professionals), expanding beyond the confines of your office, city or even country is key to establishing influence through authority.

This is about putting yourself out there and not limiting yourself to what is in front of you. Fishing is a useful analogy to explore the effects of trappings. Using different accessories to create our personal brands is essentially ‘casting a net’ and then all the opportunities that we catch as a result can be pulled in. This is particularly relevant in mediation and in business. In order to establish yourself and grow your brand, it is advisable to use all the trappings available in order to expand your authority and influence.

While titles, clothing and trappings can be useful tools, it is also important to be aware of potential pitfalls – just because someone appears to be a figure of authority does not necessarily mean that they have the expertise and experience that titles, clothing and trapping symbolise. We must slow down our perception process in order to form our opinions on a person in a more controlled and methodical way. Just being aware of the effects of the symbols, as discussed in this article, is helpful. The next article in this series will focus on scarcity and consistency as principles of influence.

First impressions based on these areas of non-verbal communication contribute heavily to how we are perceived. It is therefore important to consciously communicate who we want to be and what we want to achieve, not only through our actions but also by our presentation.

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Focus on ... South Auckland

By Craig Stephen

Some of the issues around practising law in South Auckland are ‘pretty challenging’ but lawyers are also being kept busy with the amount of development and expansion going on.

Manukau and the wider South Auckland area provides plentiful work for criminal barristers. The District Court is the busiest in the country, but the continual expansion due to Auckland’s extraordinary growth means plenty of work for lawyers in other fields.

One Manukau-based firm, Denham Bramwell, does the whole gamut of suburban legal work: family, property, conveyancing and commercial work as well as civil litigation and employment matters.

Amy McCormick, a solicitor on the firm’s family team, says, like many suburban and provincial areas, there’s a diverse range of work to attend to.

“It does seem like a whole different part of Auckland; there’s something about the South Auckland legal community that’s nice. We have a really collegial bar: it’s a nice, collegial place to work.

“The issues that some of our clients face are pretty challenging, there’s a huge diversity, huge socio-economic issues so it’s good to be in a place where everyone gets that and works together.”

Legal aid work

Denham Bramwell continues to do legal aid. Amy’s colleague Anna Fuiava, an associate in civil litigation, says their legal aid work is not restricted to crime and family law.

“Our civil team does do legal aid and I think there are even fewer civil legal aid providers than there are family law legal providers, so that is quite a big part of what Denham Bramwell does in Manukau.”

Ms Fuiava, who was born and raised in Auckland, has worked in Manukau for both Denham Bramwell and another barrister for “pretty much most of my legal career”. She says there’s good reasons for plumping for local lawyers.

“In terms of what we do in civil litigation there’s a lot of work out here, there’s a lot of businesses here who don’t necessarily want to travel into the city to see a lawyer,” she says.

“There’s a huge population that, particularly for legal aid matters, would just have no means of seeing a lawyer in the city. There are several community law centres in South Auckland which we liaise with if their clients need to go to court often and then they’ll be referred to us to take the matter further.

“It just feels like it is real and you’re seeing people on a day-to-day basis that you’re trying to make a difference for.”

A great place to learn

Panama Le’au’anae of Friendship Chambers has been a barrister for 20 years and a lawyer for 35 years, most of that in Manukau apart from a spell in Otahuhu.

Mr Le’au’anae says the area provides some interesting and challenging work.

“You get a range of work, very challenging work, but it’s very rewarding because you’re dealing with some of the most difficult cases out here. It is a great learning place. You learn very quickly because of the diversity and the nature of the work you are dealing with.

“There’s a lot of legal aid work and the majority of what I do has a legal aid element, I’d probably say 90%, and that’s down to the socio-economic make-up of the area.”

This is not surprising given that the District Court is busier than any other around the country. Ministry of Justice figures show that in the
year to 30 June 2019, Manukau District Court had 4,805 active criminal cases, about 700 more than Auckland’s District Court. It is also the busiest Youth Court in the land and the second busiest Family Court, behind Christchurch.

“Those who work out here appreciate just how challenging the work is and the complexities of it,” says Mr Le’au’anae.

Wide social range
Importantly, Mr Le’au’anae notes, the Manukau courts and the practitioners based there cover a wide range of society.

“It has a very large catchment area; you have East Auckland which is a lot more affluent, then you have the much more economically-deprived areas such as Otara and Mangere.”

He says some areas don’t have any lawyers, and Mangere, for example, has a community law centre to deal with much of the legal needs of that suburb.

“A lot of law firms don’t deal in legal aid – they don’t see it as being financially worthwhile so you don’t get the law firms out here. Instead, there’s a lot of small operators. You’ve also got firms out in Papakura, and around there which are well established and they have old clients, and a lot of those are from the farming communities.”

Amy McCormick says many of Denham Bramwell’s legal aid clients live below the poverty line.

“There are a lot of issues with gangs and drugs, there’s a lot of children in need of care and protection, and there’s a lot of involvement with Oranga Tamariki. You have to be aware that it’s a really daunting process and there’s an awful lot going on for clients when you’re acting for them.”

Anna Fuiava told LawTalk a tale of how one family living in an over-crowded rental property was completely unaware about even the basics of tenancy agreements. She says that family may be a lucky one in finding legal support but many others might not be so fortunate.

Community foothold
Panama Le’au’anae says his Pacific background and being based in the area for many years makes it easier to understand the complexities of some people’s issues.

“I find it extremely enjoyable working in Manukau; I suppose that’s because I am Pasifika, I deal with a lot of Pacific Island people, from Samoa, Tonga, Cook Islands, and Māori, so I feel comfortable working with those communities. I was born and raised here so I understand the New Zealand psyche.

“We have a lot of barristers sole who mainly deal with Family Court and criminal work but there are a lot of Auckland lawyers who come down and pick up serious criminal briefs. But they work and operate in town, which makes it difficult.
for our clients because they don’t have the financial means just to get into town. A lot of High Court cases in Auckland are South Auckland related.”

And he feels that the busy workload of the court should warrant consideration for expanding the court so that many of the more serious cases can be dealt with in Manukau.

“There has certainly been a desire to get a High Court in Manukau given the large number of serious cases here, but I guess it comes down to cost as with many things. I would have thought there would be enough work to justify having a High Court here.

“The Family Court is bursting at the seams. We don’t have enough judges out here so it’s always one of the challenges we have: far too much work and not enough resources.”

Property boom

Paul Maskell is the managing partner of Inder Lynch, which has been in Papakura since 1946, and has offices in Papakura, Pukekohe and Manukau. He joined the firm in 1979 at its then Manurewa office.

Mr Maskell, who works predominantly in family law, including elder law, says property is the biggest money-earner for the firm.

“About 40% of the firm’s work is in property. Chris Lynch, one of the partners at Papakura, is the leader of our property law team and he’s doing a lot of sub-divisional work because there is so much going on in Papakura, Drury, Karaka and out to Pukekohe now. And we’ve got a number of young lawyers dealing with residential conveyancing that flows from that.”

Inder Lynch is one firm that has cut back on legal aid work, due to necessity.

“We just could not see how our firm structure could make the rates that we were being paid back then economically viable but we have four lawyers who are primarily doing family law, and that is mainly paying client family law,” says Mr Maskell.

Regional rather than suburban

A story that has been told to LawTalk many times in our visits to regional and suburban settlements is that the client base is loyal and often generational, leading to a need for more general practice work rather than specialising in certain areas. “We see ourselves more as a regional firm than a suburban firm, as much as you would get in Rotorua, Hamilton, Tauranga.”

Mr Maskell says while Inder Lynch has a strong base in Papakura and ‘south South Auckland’, it is a different situation a little further
north. “Manukau is, to an extent, in competition with the Queen Street law firms because if they [clients] live in Onehunga or Howick they can come south to us but equally they could go slightly north into the central city.”

“People from outside of Auckland often think of Auckland as one big entity but the reality is that there are significant differences and South Auckland is different from the city and the community is reasonably tight,” he says.

“These areas have grown considerably recently. For example, Flat Bush will have about 40,000 people from virtually zero a few years ago, and that will continue due to the pressures elsewhere.”

Amy McCormick says lawyers in court tend to help each other and that’s partly down to the type of work that presents itself in Manukau.

“Everyone knows the issues that our clients are facing. When you’re dealing with hard cases and often quite emotionally challenging cases as well, the last thing you want to be doing is having a fight with the lawyer on the other side. But we get all get on and are there to help each other.”

New Zealand Law Society Auckland branch data shows there are about 650 lawyers in an area stretching from Penrose down to Waiuku/Pukekohe.

The Manukau centre was planned in the 1960s, and it was designed as a major administrative and commercial centre that would service southern Auckland, at a time when the area was predominantly rural.

Several government functions and service agencies were shifted into purpose-built office buildings well before the wider area developed. The Manukau Mall followed in 1976 and the Rainbow’s End theme park opened in 1982.

The Auckland Plan expects significant growth in Manukau over the next 30 years both in terms of population and jobs.

The Ministry of Health’s website notes that the population projection of the Counties Manukau District Health Board (which covers the diverse areas of Manukau, Franklin and Papakura) for 2018/19 numbers 563,210. Of these, 21.1% are Pacific – compared to a national average of 6.5% – Māori contribute 15.7% – the exact same as the national average – and ‘Other’ (which includes Pākehā and all Asian communities) make up 63.2%, whereas the national average is 77.8%.

The increasing population has resulted in the Representation Commission recommending that a new electorate be created in South Auckland.

The DHB statistics also note that the population is generally younger than the national average – for example 14.5% of the DHB’s population is aged under nine, and 14.1% are aged 10 to 19. This compares to the national average of 12.8% for both age demographics. Meanwhile, at the other end of the age scale, only 5.3% are in their 70s, lower than the national average of 7.0%.

The figures show that: “Counties Manukau has proportionally more people in the most deprived section and fewer in the less deprived sections of the population.”

While Rainbow’s End is the biggest attraction, there is also Ōtara market on Saturday mornings plus a number of other regular markets, the Auckland Botanic Gardens, Manukau Memorial Gardens, Ambury Park, Ayrilies Garden & Wetlands, and the Mangere Arts Centre.

Sources: Auckland Council, New Zealand Law Society, Counties Manukau District Health Board, and TripAdvisor.
My name is Jack Drummond MB ChB (1970).

What a funny way to start an article on 50 years of forensic medicine in New Zealand!

Actually, it isn’t really because these are the only qualifications I held during my first 19 years of giving forensic evidence. To make matters worse, I had no formal training in forensic medicine until around 1995, so perhaps, I can entitle this journey “The Good, The Bad and The Ugly”. Did my lack of qualifications become obvious? Probably not, as most of my peers in the Police Medical Officer (PMO) role were even less qualified. We were an untrained, un-peer reviewed and unaudited group of mostly GPs who had inherited the job.

My initial entry into forensic work was in Dunedin in the early 1970s when New Zealand was in the grip of a drink-driving blitz. On some nights, I would see 10 people, and interestingly, two separate charges would be laid: one of Driving with Excess Blood Alcohol and the other of Driving under the Influence and Being Incapable of Proper Control. A first offence on the latter charge resulted in a seven-day stay in Dunedin Prison. A second offence was rewarded with 21 days’ accommodation in the said prison, as one of my friends (a member of the clergy and now ex-priest) found out. He reported the experience as not being too bad, as the jailer would come on duty with a one-quart of gin and a chess board. “Those were the days”.

I returned to Palmerston North in late 1973 and continued in my role as a PMO until 2000. This was at a time when such animals were in short supply and my duty roster varied between a 1-in-1 and 1-in-3 roster. Duties included dealing with sexual assaults, blood alcohols, sick and injured prisoners (many from dog bites), certification of life extinct and attendance at accidents and AOS callouts. General care and welfare of Police officers and entrance medicals were also included. An average week comprised five to seven call-outs.

After being asked to review a case (R v Donnelly) for Les Atkins QC, it became apparent to me that a certain amount of non-scientific, anecdotal medical nonsense was being produced in court (if only we knew how much of it was being expounded). It became obvious that unless we were going to continue in forensic isolation, we were going to have to change the nature of our training and our attitudes. Fortunately, I met a wandering professor from the Victoria Institute of Forensic Medicine (VIFM) who invited me to enrol in a new course on forensic medicine run by VIFM for Monash University. This changed me forever. I graduated with a Diploma in Forensic Medicine in 2005 and a subsequent Masters Degree in 2008.

To complete my personal story, in 2005 after much lobbying, the New Zealand Police created a new position as National Coordinator of Forensic Medicine, which I occupied until mid-2019. My role encompassed the training, peer review and quality auditing of New Zealand’s PMOs. Additionally, I provided general assistance to districts and coroners, and the giving of expert evidence on selected cases. In my period of tenure, we have advanced from 50 PMOs (1 woman) to 75 PMOs (12 women).

Enough about me. Let’s look at the changes that have since occurred.

1 DNA

This is surely the greatest advance in the history of trace evidence; a wonderful double-edged sword. There has been amazing progress with national databases and connection/collaboration with those of other countries. The advent of STR (single tandem repeat) replication has eliminated the need for large amounts of sample. Both the use of mitochondrial DNA and sex-linked DNA have recorded great advances. Similarly, the value of familial sampling is of great advantage. We are fortunate to have such a progressive ESR. Conversely, the other side of the sword incorporates issues of contamination (the Farah Jama case in Melbourne), the planting of evidence, error, and trying to obtain a unanimous
understanding/conclusion from judges, counsel and juries. There is also difficulty in expelling the absurd myth of: “If there is no DNA, then the person was not there”.

2 The emergence of large-scale psychoactive drug use
This has resulted in a plethora of violent crimes and a marked increase both in domestic and irrational violence, as well as escalating instances of sudden death from these substances. Similarly, the increased incidence of impaired driving has necessitated the implementation of new measures to deal with the problems.

3 The implementation of roadside technology for blood alcohol and drugs
The latter is still evolving.

4 More “friendly” courts
An emerging willingness of the courts to allow experts to explain evidence in accordance with their own particular style.

5 The emergence of sexual assault examination as a separate entity
This has resulted in the establishment of a well-trained group of sexual assault trained and audited doctors and nurses. It commenced as DSAC (later to become MEDSAC – Medical Sexual Assault Clinicians Aotearoa). This is a well-funded organisation which currently serves all districts, except the West Coast.

6 The use of audio-visual aids to obtain expert evidence
There has been a marked increase in use of this technology, which has probably led to much better researched local evidence.

7 The proliferation of prescribed medications that may have interactive and impairing effects
Many of the cases referred to me revolve around this issue, particularly as related to driving.

8 Issues pertaining to the new strangulation offence legislation (section 189A of the Crimes Act 1961)
I believe this is a minefield; we have yet to see how it plays out.

9 Wonderful new techniques
For example, the use of human leucocyte antigen alleles in complex DNA samples.

Dr Jack Drummond, jd.em.drummond@xtra.co.nz MB ChB, M.Forensic Med (Monash), FRNZCP, FRACGP, FRCPA (Forensics), has a long experience in forensic medicine and was National Co-ordinator of Forensic Medicine with the New Zealand Police until 2019.
In the 1970s, when I was in university doing an inter-disciplinary baccalaureate degree in psychology, sociology and anthropology, I took a psychology course taught by Dr Pauline Clance. She was a little woman (barely 5 ft tall) and from the Appalachian region of Kentucky with a strong eastern Kentucky accent. She had grown up in a low-income family and, through sheer force of will and native intelligence, worked her way through university to get a PhD in psychology. Despite being small in stature, she was forceful in personality. Of all the courses I took in university, this is the one I remember best and has had the greatest impact on my life.

Dr Clance spoke about research she was doing on what she referred to as the “imposter phenomenon” based on interviews with many high-achieving women. There was a clear gap between the empirical success of these women and their self-perceived notion of who they were. Although they had a lot of external validation for their success, the women failed to acknowledge their accomplishments and take ownership of them. Rather, the interviewees attributed their success to luck and to others perceiving the interviewees to be more competent than they really were. They felt they were imposters who would surely be “outed” over time and lived with chronic anxiety over this.

Several years later, despite having obtained a doctorate in law, I found myself plagued by exactly what Dr Clance had described. Those same anxieties continued to bother me during at least the first half of my professional career as a practising lawyer. There was a real lack of correlation between my professional success and my self-perception as being successful.

Phenomenon prevalent

I remembered my course with Dr Clance and read her now famous book, *The Imposter Phenomenon: Overcoming the Fear that Haunts Your Success* (Peachtree Publications Ltd, 1985). It gave me great insight into the psychological mechanism behind what had plagued me. I began discussing the issue with other lawyers (both men and women) and was shocked to find out how prevalent the phenomenon was. Perhaps because I realised I was not alone and that this condition was rampant in the legal profession, I found myself taking a hard, critical look at these anxieties.

In working with lawyers and law firms, I have again been struck by how common this problem is. I have also seen many lawyers who struggled with imposter syndrome anxieties move beyond these by learning about the phenomenon and gaining greater insight about themselves and how to manage their concerns. Hence this article.

Based on Dr Clance’s book, imposter syndrome symptoms include:

- feeling like you are a fraud and that others will discover this if they only get to know you better;
- lack of self-confidence in your position;
- chronic doubts about your abilities, personally, intellectually and otherwise;
- internal monologue of a negative nature that one is not...
good enough;
• ruminating on mistakes or assuming that no one else make similar mistakes.

Law perfect for syndrome
Although the imposter syndrome is not limited to lawyers, the adversarial, hierarchical and stressful nature of law creates a perfect environment for the syndrome to flourish. In fact, if one were to interview all practising lawyers and ask them whether they had ever experienced any of these symptoms, I suspect that close to 100% would agree they had at one point or another in their careers. Those who are afflicted by this phenomenon are often the highest achievers and performers.

In my experience, one is never completely “symptom free”. In fact, to this day, I still find it creeping up on me from time to time. This is true despite the fact that I have had considerable success and relatively few personal or professional failures. To be honest, I feel I have been lucky and that my life has been somewhat blessed in that way (which is a classic imposter syndrome thing to say, of course).

In dealing with the imposter syndrome, it helps to acknowledge that these intrusive thoughts are normal and one may never be entirely free of them. There is, however, a certain relief associated with this realisation. It is part of who we are so it is not necessarily something we should fight. It reminds me of people who talk about how someone had a “courageous battle” with cancer and then subsequently died. I am a cancer survivor and I never felt I was “battling” with my cancer. Instead, I did better if I danced gracefully with my cancer as a former companion in my life, albeit it an unwelcome and unwanted one. I find the same is true in terms of the imposter syndrome.

Antidotes
Focusing on self-confidence, insight and general awareness of self as an individual and a professional are excellent antidotes to the imposter syndrome. This can include work with psychotherapists, professional coaching, honest and transparent conversations with trusted friends and mentors and the like. In each of these experiences, I have learned something about myself and, in most cases, somewhat surprisingly, I have liked what I have learned.

Some years ago, about midway through my law career, while waiting in a doctor’s surgery, I began reading a magazine that had an interview with Justice Sandra Day O’Connor, the first female judge on the US Supreme Court. In the interview, she was asked “To what do you attribute your great success in the law?” Her answer was memorable. She said two things. Firstly, that whenever she was working on something, she focused on it 100% and intentionally checked in with herself to ensure she was doing her very best work. Secondly, after doing that, she never looked back or worried about what she had done unless some new information was brought to her attention that would have impacted her work. She said she had trained herself to do these two things.

I started intentionally incorporating these two approaches into my work and my thinking. The results were helpful and I noticed that my anxiety level dropped, my self-confidence increased and my concerns about my abilities diminished. I commend her wise words to you as well.

So, fellow travellers, be of stout heart and good faith. Although these worries may never completely disappear from your life and psyche, they are manageable and are also normal and healthy in a peculiar way. Despite creating anxiety, they also can ensure you do your very best work, even under extraordinarily difficult circumstances. In fact, you may, from time to time, want to congratulate yourself on being one of those high achievers with a non-negotiable commitment to excellent work. Well done you. Thank you Dr Pauline Clance for having been a part of my life.

Emily Morrow  www.emilymorrow.com was a lawyer and senior partner in the United States. She now resides in Auckland and provides tailored consulting services.
Reduce, reuse and recycle. The new three Rs might appear to be straightforward, but the “recycle” component can be confusing. For example, can a paper lunch bag go into the office paper recycling bin? Which plastics are accepted by which local council? Let’s try and simplify it.

In the office – which bin takes what waste? – reducing the “wish-cycle”

You are about to dispose of something (say a greasy pizza box or a plastic bag) but because you are unsure where it goes, you place it in the recycling bin. However, this is one of the biggest issues facing waste management today. It can create more waste because it might contaminate the whole bin, which will then need to be put in “landfill”.

Stop and check before disposing of the packaging as it is sometimes difficult to work out which bin some items take, whether they are recyclable or whether they should be in the landfill bin.

For the landfill bin

Plastic bags are declined by most local councils because the bags may jam recycling sorting machines.

Tetra Pak cartons (made from paper, plastic and aluminium) – for example, juice boxes, rice or almond milk containers – are generally not accepted as only some paper recyclers can separate the components.

Metal jar lids are accepted by many councils, but others such as Christchurch, Wellington and Taranaki decline them because the lids can be too small for some of the machines to sort and they can contaminate other forms of recycling.

Batteries are not accepted because the chemicals inside them may be hazardous.

Foam trays such as those that might be under a sandwich or meat are not accepted as these trays are easily contaminated and there is little demand for used polystyrene.

Takeaway coffee cups are not accepted because paper-recycling stations can’t separate the waxy or plastic lining in them.

Recyclable items

Clean aluminium foil and aluminium cans are recyclable.

Plastic bottles: PET (recycling symbol #1) and HDPE (recycling symbol #2) are recyclable. These are commonly milk bottles or soft drink bottles. Thermoplastics are flexible plastics that can be recycled. They are labelled from 1–7. Not all councils accept these plastics, however. Some reject types 3–7 as they are harder to recycle.

In New Zealand there are only two onshore processing plants for processing of post-consumer soft plastics: Future Post in Waiuku and Second Life Plastics in Levin. Look for collection points at selected retail stores in Auckland, Waiheke Island, Hamilton and Wellington. The bins are available at a number of Countdown, The Warehouse and Huckleberry stores. They can’t recycle compostable bags, cling film, heavy foiled bags or bags contaminated with food or liquid that cannot be easily cleaned out. Biscuit wrappers can be recycled as the foil backing is painted on and not foil backed, but dog biscuit wrappers, for example, have actual foil backing and cannot be recycled here.
Consider a bokashi bucket for your office or workplace cafeteria as part of the recycling effort. Bokashi are home composting systems that are designed to be used indoors (technically fermenting not composting). The system comprises a bucket with a sealable lid and a tap, and a bokashi mix of fermented grains that contain micro-organisms. The tray inside the bucket separates the liquid leachate that drains off with the solid waste. They are odourless because the food is not decomposing and it doesn’t attract pests. They can deal with all types of food waste including cooked food, meat bones, citrus peels/onion skins, egg shells and dairy.

Glass: Clean unbroken glass can go in the recycling bin

How many times can material be recycled?

Every time plastic is recycled its quality is downgraded. Each time this process happens additional virgin material is added to help upgrade its quality. This means plastic can be recycled seven to nine times before it is no longer recyclable.

Glass and metal, including aluminium, can be recycled indefinitely without losing quality or purity.

Paper can be recycled four to six times as every time it is recycled the fibres shorten.

Tips to improve recycling

Separate at source – this reduces contamination. A smashed bottle will contaminate a recycling bin with paper in it even though both materials are recyclable.

Rinse recyclables – Dirty containers are less valuable and can contaminate other recyclables in the recycling process and in the bins.

Learn local recyclable procedures – Recycle NZ (see link at bottom) has put together local council recycle guides.

Learn your plastics – for example, clear hard plastics are more valuable in the recycling process that soft plastics such as cling film.

The easiest things to recycle are the products made from a single material, for example water bottles (100% PET plastic).

If you see the number 7 on a product it will be unclear whether it is recyclable or not.

Open plan recycling bins could be or might be part of your office space. These bins are labelled and come in different colours to make the process easy and help change behaviours.

A visible bin will or should help with the correct placement of waste and also reinforce accountability as when people are being watched they will tend to take more thought over their decisions and sort their waste more accurately. Open plan recycling should eliminate the need for individual desk bins and improve the effectiveness of the recycling process. Place the organic bins near the coffee machine and the paper bin near the photocopier for example.

Educate others – consider recycling education sessions, posters or find out how to educate your team – see https://methodrecycling.com/nz.

More information can be found at www.recycle.co.nz/
Anthony George Whitcombe fined and censured

Greymouth lawyer Anthony George Whitcombe has been fined a total of $10,000 and censured after admitting two charges before the New Zealand Lawyers and Conveyancers Disciplinary Tribunal.

The charges arose after Mr Whitcombe agreed to act for both the seller and purchaser of a property who were well known to each other and to Mr Whitcombe. He failed to obtain informed consent or a waiver from either client, gave neither client advice of the need or desirability of taking independent legal advice, and did not obtain or seek an independent valuation of the property. The agreement which Mr Whitcombe prepared had a number of serious defects and the sale did not proceed as planned.

The Tribunal found that Mr Whitcombe’s actions were neither a wilful nor reckless disregard of the Rules of Conduct and Client Care. Instead, he had blurred the boundaries between his personal and professional relationship and had been too willing to help implement the agreement without considering the implications of the conflict it provided.

“We considered that this particular conduct, occurring as it did in a small town with few legal representatives available to the parties, was a one-off for this practitioner and not an example of his usual practice, rather than a wilful or reckless ignoring of his obligations,” the Tribunal said.

The level of negligence with the sale transaction was at a high level and must be viewed as relatively serious, it said. However, the Tribunal said Mr Whitcombe was entitled to considerable credit for a career of some 30 years without any previous disciplinary findings against him. He was also practising in a region which was under-resourced with lawyers and fulfilled a role as a diligent practitioner for the community, particularly practising in branches of law which many lawyers avoid. No dishonesty or personal gain was involved, and Mr Whitcombe took responsibility at an early date.

The Tribunal said it was not necessary to suspend Mr Whitcombe. It imposed a fine of $8,000 on the first charge and $2,000 on the second, as well as a censure. He is also required to pay total costs of $17,551.

Former lawyer suspended for 15 months

The New Zealand Lawyers and Conveyancers Tribunal suspended Nigel Mason, a former lawyer, from practice for 15 months commencing on 8 March 2019.

Details of the suspension are now available following the lapse of name suppression.

Mr Mason pleaded guilty to two charges of misconduct brought by a lawyers standards committee. The first charge arose from a conflict of interest when he acted for a client who sold her residential property to Mr Mason’s wife. The second charge related to his failure to pay costs and fines ordered by other standards committees following six prior findings of unsatisfactory conduct.

As well as the 15-month suspension, the Tribunal ordered Mr Mason to pay $15,879 towards the costs of the Tribunal and the standards committee. A High Court decision has since found that the cost award was made in error as it failed to have regard to his financial situation and was effectively and substantially punitive.

Mr Mason ceased legal practice in mid-2018 after his application to the New Zealand Law Society for renewal of his practising certificate was declined.

Supervision and mentoring ordered for barrister

The New Zealand Lawyers and Conveyancers Disciplinary Tribunal has ordered that Christchurch barrister Phillip Nigel Allan undergoes a period of six months’ supervision and mentoring.

The supervision and mentoring is to be provided by Andrew McKenzie, a Christchurch barrister. Mr Allan is also required to engage another lawyer to complete a legal aid assignment. Problems with the assignment resulted in the Tribunal finding Mr Allan was guilty of unsatisfactory conduct.

The Tribunal decided that a censure was not an appropriate penalty. It has also ordered that he pay total costs of $20,992.

Failed to treat lawyers with respect

All names used in this article are fictitious.

A lawyer has been found to have failed to treat other lawyers with respect and courtesy in two separate standards committee decisions.

In each of those decisions the lawyer,
Bristol, was fined $2,000 and ordered to pay $1,000 costs to the New Zealand Law Society.

The first complaint was by Oxfordshire, a fellow practitioner in family law, who had received a series of emails from Bristol which the committee considered were unnecessarily aggressive, abusive and insulting. The committee was particularly shocked by an emotionally charged email from Bristol in response to a firm but polite request from Oxfordshire. In the email, Bristol described Oxfordshire as “like a girl in high school”.

The committee found the email to be a breach of rule 10.1 of the Lawyers and Conveyancers Act (Conduct and Client Care) Rules 2008, which amounted to unsatisfactory conduct under s 12(c) of the Lawyers and Conveyancers Act 2006. It noted that a finding under s 12(c) did not require that the lawyer in question provide regulated services at the time of the conduct concerned. It was satisfied rule 10.1 applies to all interactions between lawyers regardless of whether they occur in a strictly professional setting.

The second decision came after another lawyer, Armagh, sent the Lawyers Complaints Service (LCS) a letter in support of Oxfordshire’s complaint. The LCS treated Armagh’s letter as a further formal complaint about Bristol.

Armagh cited instances where Bristol had behaved in an aggressive and unprofessional manner towards her and other lawyers. Armagh was particularly concerned about the way Bristol had behaved towards a junior lawyer. Bristol sent two emails to the practitioner threatening to make a complaint to the Law Society. The committee was concerned about the overly aggressive tone and intentionally intimidating content of the emails. It considered that Bristol had failed to exhibit any respect or courtesy towards her. Around the same time, Bristol wrote an email to another lawyer describing the younger practitioner as a “little upstart” and suggesting that she “got her degree in a weetbix packet”.

The committee was concerned that Bristol, in defending her derogatory comments about the junior lawyer, characterised it as just “letting off steam” and appeared to believe that this was an acceptable response to a stressful situation.

**Duty of professionalism**

The committee said that there can be no justification for such conduct. It considered that the behaviour was particularly egregious in view of the fact that the comments were about a junior lawyer. The committee referred to a passage in Webb, Dalziel and Cook, Ethics, Professional Responsibility and the Lawyer (3rd edition, LexisNexis NZ Ltd, Wellington, 2016) which states that all lawyers, regardless of age and experience, owe a duty of professionalism and a junior lawyer should not be disparaged or ridiculed for mistakes or intimidated by more senior practitioners.

In another incident Bristol made an offensive comment about Armagh’s client, within earshot of the client, when she learned that a settlement proposal had not been accepted. The committee found this completely unacceptable. It considered it to be particularly concerning that Bristol spoke in this manner in front of members of the public.

The committee noted that, pursuant to s 9A of the Family Court Act 1980, lawyers acting for parties in any proceeding in the Family Court must, as far as possible, promote conciliation. Disputes between counsel could risk jeopardising such conciliation and for that reason they cannot be tolerated, the committee said.

Although the lawyer had breached rules 10 and 10.1 on a number of occasions the committee made a single finding of unsatisfactory conduct in respect of each complaint. The committee was of the view that Bristol’s conduct was relatively serious and would ordinarily have merited a more substantial fine. It reduced the fine in recognition of Bristol’s efforts to address the original bullying behaviour and to take steps to avoid future occurrences.
Sir Alec Haslam was a Wellington judge who rarely, if ever, ventured to Auckland. My experiences with him were confined to New Plymouth, from which city I had been favoured with a few instructions. Taranaki lawyers were great to work with. He liked to take the spring sitting in New Plymouth because he was thus able to visit the spectacular rhododendron display which occurs annually about that time.

I had briefs for one such spring session and was somewhat apprehensive about appearing before Haslam J, since I heard he was a stickler for appearances and had been known for telling counsel he could not “hear” them if they were wearing brown shoes or sporting an unsuitably loud suit. But what the local lawyers told me was correct. He was sweetness and light in New Plymouth in the spring. In the two cases where I was due to appear, opposing counsel and I were invited to the judge’s chambers where polite and friendly suggestions were made about settlement – without, of course, any indication of a firm judicial view. These suggestions usually bore fruit. He was said by my friends at the bar in Wellington to be sometimes difficult to appear before and to have been disappointed not to have been appointed to the Court of Appeal.

The leaky centre for justice

New Plymouth was also the venue for a 1960s appearance before Sir George McGregor on a two-day fixture about a boat-building contract. (Civil cases didn’t take so long in the days before pre-trial conferences, written briefs, filed opening submissions and the like). This was in the old, old courthouse which had served for decades as the leaky centre for justice in the province until the advent of the Ministry of Works mark 1 model, replicated at several
provincial centres. All of these Palais de Justice have now undergone additions, alterations, refurbishment, some more than once. I lost the case and, looking back, I must resort to the standard advocate’s excuse – “my main witness did not come up to brief”. Sir George had been my grandfather’s lawyer in Palmerston North until Grandfather Humphrys died. His more demanding role had been that of Manawatu Crown Solicitor. 

Sir George was pleasant to appear before and a sound lawyer. He could be fairly direct but never unreasonable. His bushy eyebrows would twitch a bit if he disagreed with a submission. He had the awful task of imposing the death sentence in Greymouth in 1953 – shortly after he had been appointed – on the man who had shot the booking clerk at the Reefton station and then ran out onto the path of an oncoming train which stopped before it hit him. New Zealand went through an unpleasant phase in the 1950s when the Sidney Holland government reintroduced capital punishment, which was abolished for murder with the Crimes Act 1961, thanks to the efforts of one of our greatest law reformers, Ralph Hanan. 

Before the Privy Council

I also remember McGregor J for having been one of the majority in the Court of Appeal who found against me in Jeffs v New Zealand Dairy Production and Marketing Board [1966] NZLR 73 (CA) in 1965. The practice in the Privy Council in those days was for counsel for the appellant (in this case, me) to have to read out word-for-word all the judgments in the courts below; including McGregor J’s. It was said that their Lordships didn’t know what the appeal was about until this reading occurred! Naturally, I read the dissenting judgment of North P (which was in my favour) with great fervour. Fortunately for my clients, Lord Wilberforce, who was probably the brightest judge I ever appeared before, cottoned on to the principal issue fairly quickly. His questioning of counsel, whilst always polite and friendly, showed an exceptional intellect and an unsurpassed grasp of the issues.

McGregor J’s late daughter, Margaret Vennell, was a well-regarded academic at the Auckland Law School who pioneered in New Zealand the study of air and space law.

I never appeared before Sir Ian MacArthur who was appointed as a Christchurch judge to the very old Christchurch Supreme Court building – long since demolished. No trendy names like Justice Precinct in those days! My appearances as counsel in the South Island were confined to Christchurch and Invercargill, although I managed over the course of 21 years on the bench to have sat in every place where the High Court had sittings.

My Christchurch appearances as counsel were before Justice Nigel Wilson who was the only judge sitting in Christchurch regularly at the time because MacArthur J was busy revising the companies’ legislation in a little house in the grounds of the old courthouse. More about Wilson J later.

MacArthur J was known (hearsay so far as I was concerned) as a courteous judge and a good lawyer, but not the speediest occupant of the bench. Very sadly, he died suddenly at the church where his daughter was being married.
Honours for the judiciary

He was knighted under what I suspect to have been the then policy that High (then Supreme) Court puisne judges would receive a knighthood (damehoods were not contemplated for judges in those days) on completion of 15 years’ service or on retirement. I do not know, but speculate, that this rather generous provision was offered by the Kirk government because it had altered the Order of Precedence to place ordinary members of Parliament ahead of Supreme Court judges. Sir Richard Wild, as Chief Justice, saw this alteration as a slight on the judiciary and a lack of recognition by the government of the judges’ constitutional position. The latest version of the Order of Precedence, dated 15 September 2016, still has judges – except the Chief Justice – listed in the official pecking-order behind MPs and ambassadors. The issue seems less important now than it did in the 1970s.

Government policy on royal honours for judges has fluctuated over the years about which I can speak. But, speaking outside of that bygone era, I am sorry to observe that a number of recently-retired judges who have given excellent service, seem not to have been honoured at all in the Queen’s Birthday or New Year’s Honours lists. I imagine that the increase in judicial numbers plus the addition of another and higher layer of judicial officers with the creation of the Supreme Court, have made former protocols redundant and the honouring of all judges on retirement impracticable politically.

Which brings me to Sir Richard Wild. At the time of his appointment as Chief Justice in 1966 he was Solicitor-General, having previously been a partner in Bell Gully. His selection came as no surprise to the profession. Rumour had it that the only other candidate was Denis Blundell, later the Governor-General who signed my QC and Judge warrants. I now mention my first encounter with Sir Richard, other than appearances in court.

The path to silk

Some Auckland judges had suggested to me in 1972 that I should consider applying for silk. In those days, there were no forms to fill in wherein one had to spell out one’s career and say why, in Muhammed Ali style, one should be appointed. No appointment “round”; no $500 fee; no referees; no requirement of community service, although almost all appointees in those days did pro bono work without publicity. Just a one-on-one interview with the CJ, expected to be a bit scary. He turned out to be pleasant and gave me his approval and told me to contact the Attorney-General – then Martyn Finlay whom I had juniored in a murder trial. Martyn and the then Solicitor-General, Richard Savage, were most helpful and I duly became a silk in March 1973 with precedence after my good friend, the late Maurice O’Brien QC who had been appointed two years previously. No multiple appointments in those days.

Sir Richard was a rather awe-inspiring figure to those at the bar who didn’t know him. That category included most Auckland lawyers. Sir Richard had a habit of referring to “The Republic of Auckland” but that jocular reference did not diminish his performance as one of a team of Wellington heavies from the New Zealand
Law Society’s then ruling class (before his appointment as CJ), when he addressed, and won over, a majority of the sceptical members of the Auckland profession at a crowded meeting in 1961. The Wellington delegation sought approval from the largest district law society for the construction of a building in Wellington to house the NZLS and a levy on every lawyer to pay for it. Earthquake safety problems meant the Law Society had to leave the building at 26 Waring Taylor Street in mid-2019, never to return.

I become a Judge

Sir Richard was Chief Justice when I was appointed to the then Supreme Court in March 1976. At the time of being telephoned on a Saturday in February 1976 with the offer of appointment from the newly-elected Muldoon Government’s Attorney-General, Peter Wilkinson, I was in the middle of what turned out to be my last major case at the bar, Tawharamui Farm Ltd v Auckland Regional Authority [1976] 2 NZLR 230, before Wild CJ and a specialist valuer in the Administrative Division (then in existence). I was sworn-in on Easter Thursday by Wild CJ and started sitting after the Easter break. My first case was not a criminal trial (as it had been for many new judges) but a sort of building dispute. More about who was liable for what rather than a trawl through schedules of quantities and other delights of that form of litigation.

In Wild CJ’s reign, if one refused appointment to the Supreme Court bench, the offer was quite often not repeated. Moreover, the offer was for me to sit in Auckland where my family and I wanted to remain. Other recent appointees had been moved south with a vague promise of return to Auckland sometime. Hence my decision to become a “boy judge” at age 42 – a decision I have not regretted.

Led by example

Sir Richard had a strong personality and was a forceful and effective leader of the judiciary. He micro-managed the business of the court and expected his judges to work hard. He led by example as could be discerned, for instance, on my receiving a call from him from a circuit town in the South Island to the lovely old Hamilton courthouse (now apparently and inexplicably abandoned), enquiring how many appeals I had heard that day and how many had yet to be heard. In those days, Hamilton could always be relied upon to provide lots of appeals. One often drove back to Auckland, exhausted, with a bag full of reserves at 5pm on a Friday. Another judge told me, a few months after my appointment, that I had passed muster with Sir Richard by coping with the grab bag of diffuse files which greeted one in the Auckland circuit towns of the day. I found him very reasonable and approachable, although someone as new to the judiciary as I could not help experiencing a headmaster image of him.

His successor created the position of Executive Judge which devolved administration of judicial work locally instead of being under the central control of the CJ. This was an excellent idea which worked well after a few inaugural hiccups. Wild CJ instituted a week’s “spring leave” for judges and generally improved their conditions of service.

During Sir Richard’s term as CJ, sittings of the court were instituted in Whangarei (which had had a registry for many years) which led to petty inefficiency since cases being heard in Auckland had to be filed in Whangarei. It was said, facetiously, that files got lost in transit whilst coming over the Brynderwyns.

Rotorua and Tauranga

Sittings were also inaugurated in Rotorua despite the Auckland District Law Society’s research that Tauranga was more worthy of the honour on demographic grounds. Tauranga was still within the Auckland Law Society’s diocese at the time because it was still within the Northern Judicial District with all its litigation required to be held in Auckland. Judicial Districts were abolished as a belated recognition of the fact that Hamilton and Rotorua were closer to Tauranga than Auckland.

The then government’s decision in 1973 to opt for Rotorua instead of Tauranga for Supreme Court sittings may have been pragmatic. The old courthouse had been burnt down in Rotorua. The Rotorua court – then and now – generates a lot of High Court work – especially criminal trials and appeals. Tauranga has lived up to the Auckland District Law Society’s predictions of the 1970s with its ever-increasing population. It achieved High Court registry status some years before High Court judge-alone sittings occurred there. I am told that planning for its existing and remodelled
Nigel Wilson was a most courteous gentleman who suffered from a very painful hip which retarded his mobility and required him to use a walking stick. He had gone to the independent bar in Auckland in the 1950s after being in the small to medium-sized solicitors’ firm of Gittos, Uren, Wilson, Greig and Bourke. A courageous move in those days, since there were very few barristers sole. His chambers were a single room in the unpretentious building of Victoria Insurance in Shortland Street. Nigel’s practice was more focused on equity and probate law. Although he was granted silk in 1958, he did not appear to have the comprehensive and lucrative practice that most of today’s silks enjoy. So, when he was appointed to the Supreme Court in 1962, it was said (I don’t know how accurately) that he might benefit from a slight increase in earnings.

Nigel was despatched to Christchurch as a resident judge and he soon displayed a propensity for speedy decisions and oral judgments. Consequently, although appealed against quite often, he got

Justice Wilson takes his leave of the bench at a special sitting of the Supreme Court in Christchurch on 19 November 1976 to mark his retirement. He wore the same wig and gown when first appointed to the bench, but had discarded them because of their condition. The wig previously belonged to both Justice Callan and Sir Alexander Turner.

courthouse extended only to District Court jury trials. A rather odd situation for our fifth largest city, if this be so. As I complete this article, the news has shown that Tauranga is to get a new courthouse in a few years’ time. One said to be not so “intimidating”, whatever that may mean.

Sir Richard was committed to maintaining standards of courtroom etiquette, administrative efficiency and respect for the judicial office. He encouraged collegiality amongst the judges. He maintained a punishing workload – never sparing himself. He died in 1978 after ill health had forced his retirement. His relationship with various Presidents of the Court of Appeal was not always smooth. See Professor Peter Spiller’s book on the history of the Court of Appeal for details (The New Zealand Court of Appeal (1958-96), A History, 2002, Brookers).

Working through the pain barrier

Nigel Wilson was a most courteous gentleman who suffered from a very painful hip which retarded his mobility and required him to use a walking stick. He had gone to the independent bar in Auckland in the 1950s after being in the small to medium-sized solicitors’ firm of Gittos, Uren, Wilson, Greig and Bourke. A courageous move in those days, since there were very few barristers sole. His chambers were a single room in the unpretentious building of Victoria Insurance in Shortland Street. Nigel’s practice was more focused on equity and probate law. Although he was granted silk in 1958, he did not appear to have the comprehensive and lucrative practice that most of today’s silks enjoy. So, when he was appointed to the Supreme Court in 1962, it was said (I don’t know how accurately) that he might benefit from a slight increase in earnings.

Nigel was despatched to Christchurch as a resident judge and he soon displayed a propensity for speedy decisions and oral judgments. Consequently, although appealed against quite often, he got
through a huge amount of work and displayed an acquaintance with many branches of the law. All this work was accomplished when he was frequently in pain. Personal injury insurance lawyers often settled their cases before him, not because he was other than impar-
tial, but because it was thought that he would understand a plaintiff’s evidence of pain and suffering better than most.

But he never let his affliction interfere with dispensing justice. Conditions in the antediluvian Christchurch courthouse of the 1960s were far from ideal. Nigel’s Chambers were upstairs (no lift, so how he coped with the stairs is hard to imagine). I appeared before him in about 1965 in the smallish upstairs courtroom and he came on to the bench in obvious pain: but that didn’t stop him from being charming to counsel and from giving an oral judgment which was eminently appropriate.

Alone in the South Island

There were times when Wilson J was the only judge for all the Supreme Court centres in the South Island (apart from Nelson and Blenheim which were served from Wellington). MacArthur J was doing his companies thing and Henry J (the last judge appointed to reside in Dunedin) was either on sabbatical leave or had by then transferred from Dunedin back to Auckland. Wilson J traversed his territory tirelessly. He transferred back to Auckland for his last years on the bench and retired around 1976.

After his retirement, Nigel received no royal honour, although a knighthood in those days would have been customary for a Supreme Court retiree with Nigel’s length of service. A highly principled man, he could be outspoken and sometimes adopted causes which were not universally popular. One that I recall concerned a proposal to transport the elegant wooden St Mary’s Cathedral church from one side of Parnell Road, Auckland to the other so that the old building would be alongside the new, but then incomplete, Holy Trinity Cathedral. I forget the detail after almost 50 years, but Nigel led the charge against the relocation of St Mary’s but was unsuccessful in his opposition. It was said that he was denied any recognition by way of an honour because he had been publicly outspoken (after his retirement) about something favoured by the then Prime Minister, Robert Muldoon. I do not know whether that theory is correct but many felt that Nigel had been unfairly treated and that his efforts on the bench should have been recognised.

The former judge who appeared as counsel

Nigel received none of the appointments now often given to retired judges, such as chairing enquiries of various kinds. Nor was any trend for such retirees to become ADR practitioners discernible in those times. Bear in mind that this was before the reform of the arbitration legislation and before anyone had heard of mediation as the “go-to” healing balm for
most litigation. So he not only took out a practising certificate, but he actually made a few appearances as a QC after he had retired from the bench. To my embarrassment (not outwardly expressed) one was before me. I can still recall sitting in the historic Auckland No.1 Court, before its refurbishment, to see Nigel with his stick coming through counsel’s door and announcing that he was appearing for a party in what was a fairly standard Family Protection Act claim in a not-so-large estate. I forget the detail of the case which had no novel features. I think I reserved judgment. Nigel’s submissions were par for the course but I could not but feel sad that Nigel – despite the non-binding convention to the contrary – was appearing as counsel in his retirement, after a judicial career where, although he had been no stellar legal genius, he had worked extremely hard and conscientiously.

Clifford Perry (who became Sir Clifford in 1976) was the senior judge in Auckland at the time of my appointment in 1976. He was very welcoming and kind to me in my early days on the bench. He may have had a fellow feeling for me in that he too had won a Privy Council appeal (Lee v Lee’s Air Farming Ltd [1961] AC 12) when both judgments in the New Zealand courts had not been in the appellant’s favour.

I appeared before him in 1967 in a three-week jury trial. I unsuccessfully defended the Cook Islands Government which was being sued for malicious prosecution. In the early days of independence for the Cooks, one could still litigate civil cases in the New Zealand Supreme Court. I had felt that some of Perry J’s interventions and questioning of witnesses was hovering around the Jones v National Coal Board [1957] 2 All ER 155 strictures – but the case was settled before an appeal could be heard. My detailed knowledge of the law of malicious prosecution, of necessity acquired in the course of that trial, was never again called upon in the years that followed!

Later in that same year, I appeared before Perry J as counsel for the accused in a murder trial where the jury accepted provocation as a defence and found manslaughter. Sadly, Perry J did not get on so well with certain other Auckland judges nor with Wild CJ, despite his being ex officio as Senior Puisne, Acting Chief Justice, if Sir Richard was out of New Zealand. He presided over the second Arthur Allan Thomas trial, for which role he prepared meticulously. His health was not robust – a fact that did little to boost his judicial output to the level of that of younger colleagues. His judgments were careful and not often appealed.

The triennial law conferences
I had got to know Lester Moller when he was Chairman, and I was one of the Joint Secretaries, for the 1961 NZ Law Conference in Auckland. The late Richard Craddock was the other Joint Secretary - an interesting position that involved a lot of work, accommodating the vagaries of some egos and enjoying the chance to meet legal celebrities from overseas.
The grand triennial law conferences, with their extravagant opening ceremonies and their arrays of visiting Commonwealth jurists, are no more, sadly. Replaced by specialist gatherings, they provided the opportunity for all members of the profession, city and rural, litigation and conveyancing, old and young, to mingle, attend papers on hot legal topics of the day, meet the great and good from overseas, enjoy sporting and social occasions and generally do what lawyers like doing – talking to their peers. As numbers of attendees increased and suitably-sized venues became harder to find, the logistics of running the conference became all the more difficult. But being a Joint Secretary, a role given to two youngish practitioners every three years, was exhausting but highly enjoyable.

A son of the South and a brilliant graduate from the Otago Law School, Lester was a pre-war Rhodes Scholar. He “went up” to Brasenose College and obtained his Oxford degree. After the war, he became a partner in an Invercargill firm. His abilities as counsel there led to an invitation to join the Auckland firm of Wallace McLean (now absorbed into Denton’s Kensington Swan). In Auckland, he quickly became a leading counsel and highly popular in the profession. So much so that he became President of the Auckland District Law Society in the year of its hosting of the Triennial Law Conference which meant that he was the titular host for what was to be the biggest legal gathering in the country to date. He had to entertain the visiting grandees (with plenty of helpers) – Lord Parker LCJ and Lady Parker from London and Sir Charles Lowe, a senior judge from Victoria – for example.

The copious file notes

In the following year, 1964, to nobody’s surprise, Lester Moller was appointed to the Supreme Court Bench. As a judge, he was meticulous over detail, strict on enforcing rules of evidence and on upholding standards of conduct at the bar. He always made copious file notes – even writing extensive reasons for adjourning a proceeding.

He was particularly strict on undefended divorce day, especially with those counsel who sought to prove verbal separation agreements by asking leading questions. His questioning of private enquiry agents giving evidence in adultery-based petitions for divorce enforced adherence to the rules of evidence, so much so that several after-dinner speakers have been known to quote these questions. At times, his experience with the Otago and Oxford dramatic societies could be detected in his demeanour with juries or witnesses. He had a good grasp of legal principle and a judge-alone argument before him could be a satisfying experience for counsel. His judgments were soundly based and not often successfully appealed.

After his retirement, he became stricken with a serious illness. Yet, he faced his many health-related ordeals with huge courage. I would visit him at home when he was quite ill. He always greeted me immaculately attired and pressed me to join him in a drink, although his ability to enjoy a drink was hugely limited. Always interested in what was happening at the court, always cheerful, charming and amusing. Yet, underneath it all, in considerable distress.

Common-sense approach

Sir Clinton Roper was the Christchurch Crown Solicitor when appointed to the Supreme Court in 1968. As a judge he sat in that city where he was greatly respected and loved by Canterbury lawyers. He was hugely experienced and had a direct and common-sense approach to the many problems one faces on the bench. His humanity was demonstrated in the one major appearance I had before him when he was helping out in Auckland. With a youthful Sir Grant Hammond (as he then wasn’t) as my junior, we appeared for an unfortunate lady who had some mental problems and who had undergone a lobotomy (sadly, not uncommon in the 1970s) at the behest of her father. He was a staunch member of a sect which was very controlling and which ostracised any family member who did not want to follow the party line. I forget much of the detail of this distressing case, but I do recall how sensitively, yet firmly, Roper J dealt with it. He certainly won my admiration for finding a solution in a humane manner. No solution was ever going to be ideal, but Roper J did well in an impossible situation.

An early member of the corps of retired judges and senior barristers who have served the Cook Islands well as Chief Justice, Clinton invited me to become a member of the Cook Islands Court of Appeal in 1990. I have been honoured to have served in that role until my retirement in 2019.

Admitted as a solicitor in 1957, Sir Ian Barker QC’s legal career has seen him in the roles of solicitor, barrister, Queen’s Counsel, High Court Judge, law academic, arbitrator and mediator.

Correction: Sir Wilfrid Sim

The first instalment of Sir Ian’s personal memories of the judges of the 1950s and 1960s (LawTalk 935, December 2019) suggested that Sir Wilfrid Sim was passed over for appointment as Chief Justice at the time of Sir Humphrey O’Leary’s appointment to the role. Sir Ian now notes that Sir Wilfrid was a candidate when Sir Harold Barrowclough was appointed after O’Leary CJ’s retirement, but not on O’Leary CJ’s appointment.
Recent legal books

Safeguard Health & Safety Handbook 2020
By Mike Cosman, Michael Tooma, Ann Butler, Craig Marriott and Rachael Schmidt-McCleave

It’s now nearly four years since the important Health and Safety at Work Act 2015 came into force. As the authors say, legislation cannot change culture but it, and the regulator, can send signals about the kind of environment in which safe, health and productive workplace cultures can develop. The latest edition of the Handbook – the third – creates a comprehensive and practical picture of the requirements of New Zealand’s health and safety laws. It is written for a wide audience and not as a legal textbook. The 11 chapters follow a logical sequence, from Key Concepts, Duties, Leadership and Tools to the closing piece on Occupational Health. One chapter provides plain English summaries of a wide range of health and safety cases, organised by subject, and another describes the key elements of health and safety regulations. There are two lawyers in the author team, with the rest being experienced health and safety practitioners.

Thomson Reuters New Zealand Ltd, 978–1–988591–23–0, Paperback, 349 pages, January 2020, $87 (GST and postage not included).

Health and Safety at work in New Zealand: Know the Law, 2nd edition
By Rachael Schmidt-McCleave and Stacey Shortall

This is a new edition of one of the books which appeared following the new legislation. Developments since then have prompted a new chapter, on workplace bullying, harassment and mental health and their relationship with the Act and WorkSafe. Written by two lawyers specialising in health and safety law with contributions from MinterEllisonRuddWatts lawyers Megan Richards, Emma Warden, April Payne and Matthew Ferrier, the book’s 14 chapters cover all elements of the law relating to health and safety at work. The new edition incorporates legal and policy developments since the Act came into force, and this is evident in chapters such as those on Sentencing and Enforceable Undertakings. More of a book for lawyers than the Safeguard guide, this is also intended for health and safety practitioners.


Nevill’s Companion to the Trusts Act 2019
By Lindsay Breach

Short and succinct, this is promoted as a “rapid response guide to the new Act” – which comes into force on 30 January 2021. Trusts consultant Dr Lindsay Breach is author of the 13th edition of the long-standing Nevill’s Law of Trusts, Wills and Administration and he says a companion text to the Trusts Act is appropriate because the new statute represents the most significant change to trust law in 63 years. The book is in nine parts, to follow the headings and sections of the Act.


Youth Justice in New Zealand, 3rd edition
By Nessa Lynch

Since publication of the second edition in 2016 there has been major legislative and policy reform in youth justice – a “radical re-drawing of the parameters and principles underpinning the youth justice system”, says Dr Lynch. This has included raising the youth justice age to 18 for most offences, a new operating model for Oranga Tamariki and major changes in the theoretical framework of the legislation. With the new edition, Dr Lynch’s intention remains one of analysing law, policy and practice from the minimum age of criminal responsibility...
Free law online

Cannabis Law Report
With legalisation of the cannabis industry possible in this year’s referendum, lawyers wanting to start pondering the potential legal issues which might arise may find a (free) subscription to Cannabis Law Report is useful. Delivered weekly since 2016, and created by long-time legal publisher Sean Hocking, the extensive report features a number of regular lawyer columnists. Australian expat Hocking keeps a close eye on Australia and New Zealand.

To sign up, visit the website at https://cannabislaw.report/ and click the Join Newsletter icon.

Charity Law in New Zealand
This is indeed charitable. Written by Dr Donald Poirier and published by the Department of Internal Affairs, the full 397-page PDF of this work can be freely downloaded at www.charities.govt.nz/assets/Uploads/Resources/Charity-Law-in-New-Zealand.pdf. It was published in 2013, so some checking of the latest developments will be needed, but the work contains an extensive discussion of case and statute law.


Will Notices

Avery, Nigel John
Brownson, Roderick Alwin
Chaloner, Robert Austen

Cook, Aaron James
Cousins, Janice Lee
Deng, Funfa
Huang, Xiaowen
Meehan, Perry Brian
Nagaiya, Sadhu Nagaiya
Pivac, Allan Marian aka Pivac, Allan Marino
Pritchard (nee Ford), Orapa Margaret
Robinson, Peter Leonard
Sampson, Merlin Jeanette
Sepp, Nanette Morgan
Sionetali, Dino Misili
Teahenui, Castro Casper
Walker, Susan Joy
Yeung, Kwok Wai William

Avery, Nigel John
Would any lawyer holding a will for the above-named, late of Auckland, chartered accountant, born on 8 August 1970 who died on 6 October 2019, please contact Isabelle McKay at Morgan Coakle:

imckay@morgancoakle.co.nz
(09) 379 9077
PO Box 114, Shortland Street, Auckland 1140

Brownson, Roderick Alwin
Would any lawyer holding a will for the above-named, late of Carters Beach Road, Westport, Retired, born on 10 July 1952, who died on 6 September 2019, please contact Vicky Brown, Helmore Stewart Lawyers:

vicky@helmores-law.co.nz
(03) 311 8750
PO Box 44 Rangiora 7440

Chaloner, Robert Austen
Would any lawyer holding a will for the above-named, late of Hamilton, Contractor Silage Bailer, born on 18 January 1977, who died on 10 November 2019, please contact Lena Wong of Complete Legal Limited:

lenaw@completelegal.co.nz
(09) 238 7004
PO Box 264, Pupekohe 2340 or DX EP77026

Will Notices
Cook, Aaron James
Would any lawyer holding a will for the above-named, late of Te Kauwhata, Businessman, born 2 August 1986 who died on 10 November 2019, please contact Karen Brown:
☎ (07) 839 1258
✉ PO Box 1329, WMC, Hamilton 3204

Cousins, Janice Lee
Would any lawyer holding a will for the above-named, late of Christchurch, born on 16 October 1953, who died on 2 October 2019, please contact Richard John Little of Eagles, Eagles and Redpath:
☎ (03) 218 2182 Fax (03) 218 2185
✉ PO Box 1445, Invercargill 9840

Deng, Funfa
Would any lawyer holding a will for the above-named, late of 48 Saint Johns Road, Saint Johns, Auckland, Businessman, born on 8 August 1950, who died on 1 December 2019, please contact Winston W. Wang of Winston Wang & Associates:
☎ (09) 522 2258
✉ PO Box 99974 Newmarket, Auckland 1149

Huang, Xiaowen
Would any lawyer holding a will for the above-named, late of Auckland, Businesswoman, born on 17 June 1972 who died on 1 September 2018, please contact Kelly Xu of East Law:
☎ (09) 533 6228
✉ PO Box 39 360 Howick, Auckland 2145

Meehan, Perry Brian
Would any lawyer holding a will for the above-named, late of Ohaupo, Golf Court Superintendent, born on 10 June 1959 who died on 26 December 2019, please contact Karen Brown:
☎ (07) 839 1258
✉ PO Box 1329, WMC, Hamilton 3204

Nagaiya, Sadhu Nagaiya
Would any lawyer holding a will for the above-named, late of Papatoetoe, Auckland, born on 29 March 1953 who died on 11 September 2019, please contact Conveyancing Plus:
☎ papakura@conveyancingplus.co.nz
✉ (09) 236 5016
✉ PO Box 231, Waiuku 2341

Pivac, Allan Marian aka Pivac, Allan Marino
Would any lawyer holding a will for the above-named, late of Auckland, retired, who died on 1 December 2019, please contact Richard John Little of Eagles, Eagles and Redpath:
☎ (03) 218 2182 Fax (03) 218 2185
✉ PO Box 1445, Invercargill 9840

Pritchard (nee Ford), Orapa Margaret
Would any lawyer holding a will for the above-named, formally of 57 Yvonne Street, Melville, Hamilton, latterly of Negara, Brunei, born on 16 February 1977, who died on 12 September 2019, please contact Natalie Whitelock, McCaw Lewis:
☎ (07) 958 7435 or Fax 07 839 4652
✉ PO Box 9348, Hamilton 3204 DX GP 20020

Robinson, Peter Leonard
Would any lawyer holding a will for the above-named, late of 44 Murdoch Crescent, Raumanga, Whangarei, Retired, born on 26 October 1935, who died on 1 December 2019, please contact Tina Herman, Marsden Woods Inskip Smith:
☎ tinah@mwis.co.nz
☎ (09) 438 4239
✉ PO Box 146, Whangarei 0140

Sampson, Merlin Jeanette
Would any lawyer holding a will for the above-named, late of Palmerston North, Retired, born on 31 May 1940 who died on 15 December 2019, please contact Alison Green Lawyer:
☎ mary@greenlaw.co.nz
☎ (06) 352 1191
✉ PO Box 4017, Palmerston North 4442

Sepp, Nanette Morgan
Would any lawyer holding a will for the above-named, late of Christchurch, born on 20 August 1938, who died 23 December 2019, please contact Siobhan Cuttance, Lane Neave:
☎ Siobhan.cuttance@laneneave.co.nz
☎ (03) 379 3270
✉ PO Box 2331, Christchurch 8140

Sionetali, Dino Misili
Would any lawyer holding a will for the above-named, late of Avondale, Auckland, who died on 4th March 2019, please contact Mark Henley-Smith of Henley-Smith Law:
☎ mark@henley smithlaw.co.nz
☎ (09) 818 6153
✉ PO Box 20067, Glen Auckland, Auckland 0641

Teaheniu, Castro Casper
Would any lawyer holding a will for the above-named, late of Auckland, Despatch Coordinator, born on 30 October 1946, who died on 20 November 2019, please contact Bernadette Power:
☎ bdp@whaleygarnett.co.nz
☎ (09) 520 4477
✉ First Floor 217 Great South Road, Greenlane, Auckland 1051

Walker, Susan Joy
Would any lawyer holding a will for the above-named, late of 4/109A Kolmar Road, Papatoetoe, Auckland, Cleaner, born on 18 February 1964 who died on 12 November 2017, please contact Rosalie McGuire:
☎ rosalie@auroralaw.co.nz
☎ (09) 23 58179
✉ PO Box 121 Waiuku 2341

Yeung, Kwok Wai William
Would any lawyer holding a will for the above-named, late of Unit 2, 73 Hattaway Avenue, Howick, Auckland, Retired, born on 17 August 1946, who died on or about 27 October 2019, please contact Philip Wong, Wong & Bong Law Office:
☎ phil@wongbong.co.nz
☎ (09) 535 5886 Fax (09) 535 5947
✉ PO Box 51454, Pakuranga, Auckland 2140
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www.gets.govt.nz/SSC

Registrations close at 5pm on 28 February 2020.

Vacancies (2) for deputy lawyer members of the Mental Health Review Tribunal

The Ministry of Health is seeking two experienced candidates to be appointed as deputy lawyer members of the Mental Health Review Tribunal (MHRT). The MHRT comprises of three members: a lawyer (the convener), a psychiatrist, and a community member.

The Minister of Health appoints MHRT members under section 101 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (the Act) to consider the condition of patients’ subject to the Act and undertake certain investigations. Deputy members act as equivalent members where that member is unable to perform MHRT duties.

You must be a barrister or solicitor with a current practicing certificate, preferably in a current law practice, and have an interest in mental health.

Applications must be submitted by 3 March 2020. Interviews will take place during March 2020. Appointments follow two resignations and will expire on 18 September 2021 along with the terms of all current members.

For further information please search for the tribunal on www.health.govt.nz or contact sarah.paterson@health.govt.nz

All applicants should supply:
• a letter of application
• a curriculum vitae
• two written references
• the application form (to obtain this please contact sarah.paterson@health.govt.nz)

Call for registrations of interest to be an Inquirer and/or a Lead Reviewer

Commercial/property law practice for sale

Ready to be your own boss? We’re an established sole practice on the fast-growing Kapiti Coast. Our great reputation and client base has developed over eleven years, and there’s plenty of potential for further growth.

Call 027 4988 745 in confidence for further information.

GENERAL PRACTICE SOLICITOR
Partnership Opportunity

Small, well established Takapuna-based general practice seeks lawyer to assist partner looking to reduce his work load.

The successful applicant will likely have at least 4yrs + PQE with a bias towards property, trust and estates work, and be looking to move to a partnership role over a period to be tailored to suit the right person, but likely within 3 years. This would also be an opportunity for a lawyer at a more senior level, with partnership aspirations.

All applications and expressions of interest will be treated in confidence.

Please contact the advertiser, in confidence, at:
Confidential Advertiser No. 20-1, advertising@lawsociety.org.nz

LOCUM

Roger Donnell, retired general practitioner with 45 years’ experience, is now available to undertake locum assignments. Any location considered.

Ph 027 2427390 or E-mail rogerdonnell@gmail.com

SENior Commercial and Property Lawyer

Fletcher Vautier Moore is one of Nelson’s longest-standing, most reputable law firms with offices in Nelson, Richmond and Motueka. We attract top quality legal professionals, and this is reflected in our longstanding private, corporate and local government clients. Our people enjoy a varied and stimulating variety of top-shelf work, as well as enjoying one of New Zealand’s most beautiful places. We have a great team environment across all our branches.

We have an outstanding opportunity for a senior lawyer with partnership aspirations to join our commercial and property team, based in our Nelson office. The work is wide-ranging and interesting. It includes:

• commercial leasing
• sales and purchases of commercial businesses
• residential conveyancing
• subdivisions
• rural transactions
• trust and estate work
• asset structuring.

You will have initiative and drive. You will be a leader, someone who likes engaging with clients and takes a genuine interest in mentoring and supervising junior lawyers.

This role provides a great opportunity to advance your career with quality work and clients in the growing Nelson/Tasman region.

If you would like to apply for this role, please send your CV and covering letter to Keeley Pitchford at kpitchford@fvm.co.nz
Tenancy Adjudicators are required for the Tenancy Tribunal in the Auckland area. The standard commitment is one to two days per week. Some travel for training or to provide cover in other regions may occasionally be required.

The successful applicants will have a legal qualification or relevant experience in adjudication. Applicants must demonstrate a capacity for impartial adjudication, the ability to conduct a hearing professionally, and an ability to manage hearings with self-representing parties. They must also be able to demonstrate efficient work habits, good time-management and an ability to make clear, logical decisions. Good oral and written communication skills are essential, as is computer literacy. Some flexibility to travel would be beneficial.

Further information is included in the application pack which can be downloaded at: www.justice.govt.nz/about/statutory-vacancies/

For more information about the position, contact Tania Togiatama, PA to Principal Tenancy Adjudicator – email: tania.togiatama@justice.govt.nz or phone (07) 921 7478.

Applications for the position close at 5.00pm, Thursday 20 February 2020.

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**Almao Douch**

*Office of the Crown Solicitor at Hamilton*

Almao Douch is expanding its diverse and progressive team of lawyers following the appointment of a new Crown Solicitor.

We are a well-established Hamilton firm with a strong Crown identity. Our team of expert litigators undertake challenging and publicly important work to exacting standards.

We are looking for skilled communicators who excel in the law, demonstrate a genuine interest in people, have a strong sense of justice and an unwavering commitment to doing the right thing.

Ours is a highly collaborative culture with a clear team focus. We recognise the importance of looking after our people and providing opportunities for them to develop and succeed.

As well as seeking applications from established trial lawyers, we also welcome applications from diligent and dynamic lawyers with other courtroom experience, who are interested in undertaking Crown prosecutions, regulatory work and asset recovery actions.

Please email your CV and cover letter through to our office manager, Sue Brice, at sb@almaodouch.co.nz

Applications close 10 December 2019.

---

**LangtonHudsonButcher**

*Leading niche employment law firm*

LangtonHudsonButcher is a specialist employment law firm, recognised as a leader in its field. We are the largest employment law team in Auckland, providing advice to and representation of top-tier corporates. We offer a highly collaborative work environment and an extensive range of employment law work.

We want this work to be performed by clever and passionate lawyers, who know their clients and their clients’ business.

We are currently seeking a highly motivated intermediate/senior-level lawyer to join the team. Our ideal candidate will have strong academics, at least 3 years’ experience in employment law (contentious and advisory), a commitment to the on-going refinement of legal skills, a focus on client service, and a track record of contributing to the achievement of team goals. We are open to discussing flexible working arrangements for the right candidate.

For a confidential discussion about this opportunity, please contact Lara Brown, Practice Manager, on 09 916 2593, or submit your application to lbrown@lhb.co.nz
Kayes Fletcher Walker, the office of the Manukau Crown Solicitor, is looking to recruit junior prosecutors to begin in early February 2021.

The positions are suitable for recent graduates through to solicitors with 3 years PQE (but not necessarily with prosecution experience).

Successful applicants will be joining a dynamic medium-sized law firm based in South Auckland committed to providing great training and career development, with unrivalled opportunities to appear regularly in court.

To obtain an application form please visit our website www.kfw.co.nz

Applications close Wednesday 11 March 2020, and can be sent to office@kfw.co.nz

Kayes Fletcher Walker, the office of the Manukau Crown Solicitor, is looking to recruit motivated and enthusiastic team members for our busy general practice in beautiful Taupo.

We have a friendly and capable team with relaxed offices, affordable housing, no parking hassles, zero traffic worries and access to a wonderful lifestyle in the central North Island. A competitive remuneration package is available depending on experience, we offer 5 weeks annual leave per annum, and you will have the opportunity to participate in an attractive bonus structure. If you are looking to re-locate your family and your partner needs a job also, talk to us about the wonders of a small town and using our contacts and client base to facilitate that.

You can drive these roles as hard as you like and be able to participate in other areas of interest available in the firm’s general practice. There are good career prospects for the right applicants.

Property/Commercial Lawyer

An experienced property/commercial lawyer, working primarily in property, including conveyancing, subdivisions, trusts, business sales and purchases, leasing, company Law and general commercial practice. Ideally you will have at least 3 years PQE, but applications from more junior practitioners and graduates may be considered if you have an excellent work ethic and references.

Family Lawyer

A Family Litigator with at least 2 years PQE and Lead Provider status. You will be working with a primary focus on family matters including protection orders, Care of Children Act proceedings, Oranga Tamariki advocacy and relationship property. Applications from graduates may be considered.

We work hard and have fun doing it!

Applications with accompanying CV should be made by 28 February 2020.

Email: ldunn@mmclaw.co.nz – with “Job Application” in the subject line.
**COMPANY, COMMERCIAL AND TAX**

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<thead>
<tr>
<th>PROGRAMME</th>
<th>PRESENTERS</th>
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<th>WHERE</th>
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<tbody>
<tr>
<td>AMALGAMATIONS – GETTING THE APPLICATION RIGHT</td>
<td>David Josland, Calantha Juneja</td>
<td>Currently, a high percentage of amalgamation applications are being rejected because of, often, simple drafting errors. This webinar will outline the key common errors that the New Zealand Companies Office in Auckland are encountering and will consider some effective ways to avoid your applications being rejected. It will provide practical tips to assist you in reviewing your documentation before submission and supply compliant wording for you to update your short-form amalgamation templates for future use.</td>
<td>Webinar</td>
<td>11 Feb</td>
</tr>
<tr>
<td>UPDATE ON CONTRACT</td>
<td>Paul David QC</td>
<td>Contract law is at the heart of commercial law and practice. A sound up-to-date knowledge of the area is essential for all lawyers. This seminar will address recent developments in contract law in a practical manner, including: Formation; Interpretation – drafting mistakes and rectification; Estoppel – no oral variation clauses; Implied terms; Obligations of good faith; Mistake, misrepresentation, FTA, disclaimer clauses and reasonableness; Exception clauses; Unfair contract terms; Relief from forfeiture; Liquidated damages, penalties; and Recovery and assessment of damages.</td>
<td>Various</td>
<td>3 Mar</td>
</tr>
<tr>
<td>TAX SNAPSHOT FOR NON-SPECIALISTS</td>
<td>Chris Harker, Tim Stewart, Fred Ward</td>
<td>How does tax impact on transactions and commercial agreements for your clients? This seminar will help ensure that you have a robust understanding of how tax can impact on commercial transactions for your clients.</td>
<td>Auckland</td>
<td>17 Mar</td>
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**CRIMINAL**

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<th>PROGRAMME</th>
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<tbody>
<tr>
<td>DUTY LAWYER TRAINING PROGRAMME</td>
<td>Local Presenters</td>
<td>Duty lawyers are critical to the smooth running of a District Court list. Here is a way to gain more of the knowledge and skills you need to join this important group. You MUST be prepared to do sufficient pre-course study and preparation for these sessions. <em>CPD hours may vary, see website</em></td>
<td>Various</td>
<td>Feb-Oct</td>
</tr>
<tr>
<td>EVIDENCE AND TRIAL PREPARATION</td>
<td>Chris Patterson</td>
<td>Dispute resolution has never been as complex as it is today. Successful outcomes only happen with meticulous planning and skilful execution. Whether working in a civil or criminal context, collecting, organising and using evidence to best effect are the essential skills of every litigator and dispute-resolution practitioner. This practical workshop covers the core skills of evidence, proof and factual analysis (EPF), as well as approaches to investigations, the development of case theory and how to manage the paperwork associated with any case.</td>
<td>Wellington</td>
<td>15 Feb</td>
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<tr>
<td>INTRODUCTION TO CRIMINAL LAW PRACTICE</td>
<td>Jo Wicklife</td>
<td>This practical two-day workshop will cover the fundamentals of being an effective criminal lawyer. The course addresses the steps that lawyers new to criminal practice need to know about to prepare for and run a Judge-alone trial in the District Court.</td>
<td>Auckland</td>
<td>18 Feb</td>
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**FAMILY**

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<th>PROGRAMME</th>
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<tr>
<td>DRAFTING WILLS – S 55 PPPR ACT APPLICATIONS</td>
<td>Theresa Donnelly, Henry Stokes</td>
<td>The PPPR Act 1988 provides authority to the Court to promote and protect people and under s 55 of this legislation and authorised property manager can apply to the Court to execute a will on behalf of a protected person. This seminar will look at: when a s 55 will should be contemplated, the entry level jurisdiction and legal tests, the drafting exercise, the potential inclusion of charities, what the application needs to cover, and will conclude with insights into the management of s 55 applications.</td>
<td>Auckland</td>
<td>18 Feb</td>
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<td>FAMILY</td>
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<td><strong>TRUSTS AND OFFSHORE BENEFICIARIES</strong></td>
<td><strong>Terry Baucher</strong></td>
<td>Living and working overseas is a New Zealand way of life. Add being a beneficiary of a New Zealand trust, and the complications start. The tax treatment of distributions can vary widely from the New Zealand treatment. Terry will make sense of this for you by examining these issues, the potential potholes for your clients and what can be done to mitigate the potential impact. He will steer you on the right course of action in different jurisdictions such as Australia, the UK and the US.</td>
<td><strong>Webinar</strong></td>
<td><strong>20 Feb</strong></td>
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<tr>
<td><strong>- TAXATION</strong></td>
<td></td>
<td>1.5 CPD hours</td>
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<tr>
<td><strong>RELATIONSHIP PROPERTY</strong></td>
<td><strong>Toni Brown</strong></td>
<td>The PRA provides a framework for the determination of the division of relationship property of a married or de facto couple. Problems arise when debts or third-party interests must be taken into account. This seminar will provide insight into the way in which third parties, including the Official Assignee of a bankrupt spouse/partner may invoke the Act for their benefit.</td>
<td><strong>Auckland</strong></td>
<td><strong>25 Feb</strong></td>
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<tr>
<td><strong>- DEBTS AND THIRD PARTIES</strong></td>
<td><strong>The Hon Paul Heath QC</strong></td>
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<tr>
<td><strong>LAWYER FOR CHILD</strong></td>
<td><strong>Wendy Kelly</strong></td>
<td>An integral part of the New Zealand Family Court system is the state-funded legal representation of children. Lawyers entrusted with these duties must possess a range of skills to enable them to represent children effectively in care and protection cases, in addition to facilitating the new emphasis on children’s participation in respect of parenting arrangements. 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 effectively.</td>
<td><strong>Wellington</strong></td>
<td><strong>25-27 Mar</strong></td>
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<tr>
<td><strong>18.5 CPD hours</strong></td>
<td><strong>Lisa Samusamanwodre</strong></td>
<td><strong>April Trenberth</strong></td>
<td><strong>Jason Wren</strong></td>
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| IN-HOUSE                               | **Chair: Jane Meares** | Designed for the busy in-house and government practitioner to “top-up” your years’ CPD. 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. Offered in Wellington and by live web stream. | **Wellington** | **12 Feb** |
| **CPD TOP-UP DAY**                    |                     | 7 + 3 CPD hours    |                     |                     |
| **IN-House & GOVERNMENT**             |                     |                     |                     |                     |

| PROPERTY & TRUSTS                     | **Anna Crosbie** | Following on from a popular session at the 2019 Construction Law Intensive, Anna and Polly will consider some of the key developments in the law of penalties and the practical implications for your clients. This webinar will focus on developments affecting the interpretation and drafting of construction contracts in New Zealand. Topics covered will include: the enforceability of liquidated damages clauses; decisions on the interpretation of standard form termination clauses and the interpretation of popular special conditions; and possible legislative inroads into freedom of contract in the commercial context. | **Webinar** | **19 Feb** |
| **CONSTRUCTION - CASE LAW UPDATE**   | **Polly Pope**     |                     |                     |                     |
| **1.5 CPD hours**                    |                     | 1.5 CPD hours       |                     |                     |

| PROPERTY - CONVERTING CROSS LEASES TO FREEHOLD & UNIT TITLE | **Joanna Pidgeon** | Cross leases are a popular form of subdivision going back to the 1960s where the land and buildings are owned by the occupants as tenants in common and the flats leased. This type of ownership has the potential to lead to significant issues. This webinar will take a practical approach in examining the factors that you need to consider when advising your clients whether it is viable to seek freehold title, and, if so, the steps to take in order to achieve this. It will also consider the situations when it may be more appropriate to convert a property to unit title. Case law will be examined, and company lease conversions will also be discussed. This webinar also looks at conversion issues for converting company lease schemes. | **Webinar** | **24 Feb** |

| AGREEMENT FOR SALE & PURCHASE - VENDOR WARRANTIES | **Barbara McDermott** | Practitioners and legal executives can add real value for their clients by providing proactive and practical advice to both vendors and purchasers regarding the scope and application of the vendor warranties in the Agreement for Sale and Purchase – prior to the signing of the agreement and when potential breaches arise, before or on settlement. | **Webinar** | **11 Mar** |
| **1.5 CPD hours**                           | **Gill Whinray**   |                     |                     |                     |
### OTHER PRACTICE AREAS

**THE ART OF HAPPINESS**

<table>
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<tr>
<th>Course Details</th>
<th>Speaker</th>
<th>Description</th>
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<tbody>
<tr>
<td><strong>6.5 CPD hours</strong></td>
<td>Jonathan Robinson</td>
<td>Stress is commonplace in today's modern world and impacts on our feelings of happiness. The field of positive psychology provides effective methods and ideas for helping people to be happier, healthier, and better at what they do. This workshop will show you how to: use simple methods to improve your own and your co-worker's level of happiness and productivity; identify the key behaviours that get in the way of happiness and productivity; and reduce your sick days, enjoy life more, and handle stress more effectively.</td>
<td>Christchurch Wellington Auckland 19 Mar 23 Mar 26 Mar</td>
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**SPEAKING WITH IMPACT – TALKING SO THAT PEOPLE LISTEN**

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<tr>
<td><strong>6.5 CPD hours</strong></td>
<td>Jonathan Robinson</td>
<td>The importance of being an effective speaker with the ability to get your ideas across to either a single person, or an audience, cannot be over-emphasised and is a major advantage to becoming successful in your career. This workshop will teach you how to organise and present a good speech as well as teaching you ways to overcome your nervousness and stress.</td>
<td>Christchurch Wellington Auckland 20 Mar 24 Mar 27 Mar</td>
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### PRACTICE AND PROFESSIONAL SKILLS

**CPD TOP-UP DAY GENERAL PRACTITIONER**

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<tr>
<td><strong>7 + 3 CPD hours</strong></td>
<td>Various</td>
<td>Designed for the busy general practitioner to “top-up” your years’ CPD. 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. Offered in Christchurch, Wellington, Auckland and by live web stream.</td>
<td>Christchurch Wellington Live Web Stream Auckland 11 Feb 12 Feb 12 Feb 13 Feb</td>
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**STEPPING UP – FOUNDATION FOR PRACTISING ON OWN ACCOUNT**

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<th>Course Details</th>
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<tr>
<td><strong>18.5 CPD hours</strong></td>
<td>Director: Warwick Deuchrass</td>
<td>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.</td>
<td>Auckland 1 (full) Christchurch Auckland 2 Wellington Auckland 3 13-15 Feb 14-16 May 23-25 Jul 17-19 Sep 5-7 Nov</td>
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**TRUST ACCOUNT ADMINISTRATORS**

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<tr>
<th>Course Details</th>
<th>Speaker</th>
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<th>Dates</th>
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<tbody>
<tr>
<td><strong>4 CPD hours</strong></td>
<td>Philip Strang Melanie Ashall</td>
<td>How do you keep a trust account in good order? This practical training is for new trust accounting staff, legal executives, legal secretaries and office managers.</td>
<td>Invercargill Wellington Palmerston North Tauranga Auckland 1 Auckland 2 Christchurch 17 Mar 18 Mar 19 Mar 31 Mar 1 Apr 2 Apr 7 Apr</td>
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**TRUST ACCOUNT SUPERVISOR TRAINING PROGRAMME**

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<tbody>
<tr>
<td><strong>7.5 CPD hours</strong></td>
<td>Philip Strang Melanie Ashall</td>
<td>Under the Financial Assurance Scheme all practices operating a trust account must appoint a qualified trust account supervisor. A candidate must be a lawyer and must pass the NZLS trust account supervisor assessments, which take place during a full day programme. The training consists of self-study learning material (approx. 40-50 hours) to help you prepare for the assessments.</td>
<td>Auckland 1 Hamilton Wellington Auckland 2 Christchurch 16 Apr 14 Jul 22 Sep 3 Nov 10 Nov</td>
</tr>
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**CPD – A Few Hours Short?**

Check out our Online CPD

24/7 Access from your Device

[www.lawyerseducation.co.nz](http://www.lawyerseducation.co.nz)
A New Zealand Legal Crossword

SET BY MĀYĀ

Across answers contain a term related to 30 in some way, which is ignored in the wordplay except in 13, 30 and 41.

Across
1 Regular moolah we own from a sitcom (definitely not “Porridge”) (4, 3, 5)
8 Define limits to exclude (5)
11 King and Queen’s underwear (8)
12 Gore conduit? (5)
13 Opener traditionally includes cake, or vice versa (4)
14 Reckon half-hearted return for 1959 Nobel laureate (4, 5)
15 If it’s French, it’s French desiccant (6, 3)
17 Somewhat leading the paper? (5)
19 See 36
21/25 Day during which French King (who?) mixed drink (6, 8)
22 Small chap will slowly grow taller (10)
25 See 21
27 Bitterness and pain? Not good (8)
28 Run ended, caught up for farewell drink (7, 3)
30 Electoral system’s active? Little reason for it being so here (6)
32 Snowman’s creator finding Gilbert and Sullivan’s sources (6)
33 Marine article supplied by French (2, 3)

Across continued
36/19 Leroy almost stood for a medieval French poem (2, 5, 2, 2, 4)
38 Headgear worn by some bottles (5, 4)
41 Sentence obtained after a change of 13 (4)
42 Due to nothing? (5)
43 Brian, a musician – yes, responsible for this 1980 song (5, 3)
44 Traditional way to prepare food for one (5)
45 Metallophone used to announce Jennifer’s striptease (12)

Down
2 Exponent first to enter a state of unreasoning fear of Hegelian philosophy (11)
3 No Scots hold 30’s covering (7)
4 Slack cut for Mack? (6)
5 Has Lawrence Rush? (5)
6 Posh military officer – that’s strange (4)
7 Dawn’s organisation to rebel (7)
8 How you might greet David Jason’s character in India (5)
9 Polish a small projection, say, for a Comanche War Chief (7, 4)
10 Excuse to right falsehood about First Lady, or vice versa (7)
16 Wombles in movement for gender equality? (6, 3)
18 Nearly ease out toward surfer’s destination (5)
20 Hitting it off with a daydreamer, say (5)
21 Religious type puts religious instruction in a good way (5)
23 Valued enough to have used as foundation for shop? (4, 5, 2)
24 Titus’ response to pun? (5)
25 Deed makes a sound like a ball hitting a bell (5)
26 King Neputune, say, almost used to smooth sunken panels (6, 5)
29 I hear you are left with surfer’s destination (6)
31 Send up Sir Henry about layer being related to a European river (7)
32 Shifting friend, partly orange (7)
34 Hold broken lance (not a snake) (7)
35 Smack aviator with large bill around one (6)
37 Dip Muhammad X held (5)
39 Double noise of burn? (5)
40 Selection of adagios provide fee for currency exchange (4)
The Court Report was fronted by barrister Greg King with 80 programmes being made between 2010 and 2012, discussing and dissecting the crucial legal issues of the day.

The format was a panel discussion, hosted by King (and later by Linda Clark) with leading experts, players and commentators. The aim was to ‘go behind the headlines’ of the legal news stories of the day. It was in its way, unique, where legal programmes tend to be fictional, and some would say detached from reality.

However, its ability to develop a large following was limited by being shown on the now defunct TVNZ7 channel. After being filmed at Victoria University of Wellington law school, the programme aired on Thursday nights (at 9:30pm), and was repeated three times over the next few days.

“This is real life”

King, who was also the show’s executive producer, made it clear in the show’s trailer what would make The Court Report distinctive.

“The criminals don’t always get caught; the evidence isn’t always conclusive; the sentence doesn’t always seem fair; and psychics don’t always find out what really happened. Because this is real life and not a TV drama. Law affects us all, but it can be hard to work out what’s real and what’s make believe.

“We’ll go inside the minds of the lawmakers with experts who navigate the world of legislation, we how our court system works.”

Among the episodes, one featured the retired Supreme Court Justice Bill Wilson QC, who was interviewed for the first time on the circumstances leading to his resignation.

Another episode looked at science and the law.

“As far as crime fighting tools go, DNA is like a gift from heaven for investigators but are we too easily blinded by science and the dazzle of a white lab coat?” the promo for this particular episode promised.

“While science can sometimes prove who did it, or who didn’t do it as we discovered in the David Dougherty case, it’s not always the smoking gun we want it to be. Real life is a far cry from CSI.”

That programme also looked at the Bain killings and the murders of Eugene and Gene Thomas.

The one-hour special

The 50th episode was a one-hour special filmed in Christchurch in July 2011. The episode looked into the myriad of legal problems and issues arising out of the earthquakes.

Other guests included the then Minister of Justice, Attorney-General and many other MPs, present and past, including Sir Geoffrey Palmer. A number of judges also featured as well as

Solution to December 2019 crossword

Across

Down
legal professionals such as QCs. It also featured Garth McVicar of the Sensible Sentencing Trust and Gill Elliott, father of Sophie Elliott.

“Public debate is usually driven by emotion and uninformed comment, and is centred on blaming people rather than understanding the underlying principles of law,” said King at the start of the series.

“Often people simply don’t know what the law says, and why, and that has a huge effect on the level of the debate.”

After 68 episodes, King quit as presenter to take up an Eisenhower Fellowship. After his departure the show was hosted by journalist and new lawyer Linda Clark. Fittingly, the final episode of the show featured King as the last guest, discussing his experiences on his Eisenhower Fellowship. TVNZ7’s decline in July 2012 also saw the end of The Court Report, after more than 80 episodes.

Greg King died on 2 November 2012.

Unfortunately, there are no episodes of the show available to see on TVNZ’s online on-demand service and none appear on YouTube.

This was undoubtedly a show that served a great deal of purpose but given how constrained television is today, it is unlikely it could be repeated.

Lyon: a culinary gem amid a violent history

BY JOHN BISHOP

Lyon is a gem of a city. Set on a hilly site, it’s where the Rhône and Saône rivers meet – making it a natural military and commercial junction and an attractive location in its own right.

Its long history dates back to Roman times when it was called Lugdunum and was the capital of Roman Gaul. By 1032 it was part of the Holy Roman Empire but was annexed to France in 1312.

It is France’s third city (after Paris and Marseilles), the home of French gastronomy, centre of the Marist movement, and a city with a complex and violent social history.

The city flourished in the Renaissance period; commercial fairs started in 1464 when Italian bankers arrived, and from 1473 it was one of the most active printing centres in Europe. In the 17th century it was the silk manufacturing capital of Europe.

Gastronomic capital of France

It is known as a centre of the arts and culture, and most particularly for being the gastronomic capital of France, a title bestowed on it by the gourmet Curnonsky in 1934, although its culinary reputation goes back to Roman times.

At the time of the French Revolution, Lyon was a centre of monarchist resistance and later opposition to the new French Republic and the National Convention that ruled France.

Paris sent the Revolutionary Army to quell dissent to its programme and 1,684 people are recorded as being shot or guillotined.

In 1831, 1834 and 1848 there were uprisings in Lyon led by the silk workers known as Canuts. In the first revolt the silk workers sought a minimum price to counter the effects of falling demand and lower prices for silk products. The manufacturers refused and the silk workers revolted and seized the city in a battle that had about 600 casualties including 169 deaths. Paris sent in the army which peacefully retook the town and plans for a minimum price were dropped.

In 1834 the manufacturers wanted to cut wages which the silk workers, who had formed numerous secret societies and had absorbed the ideas of French socialist thinker Henri de Saint-Simon, resisted violently. Again, they were defeated. After a mass trial, about 10,000 people were deported or imprisoned for lengthy periods.

There was a further uprising in 1848 (most of Europe was ablaze with revolutions that year), but it is the 1831 revolt that is best remembered and commemorated in the silk museum in the city.

“Butcher of Lyon”

In World War II Lyon was a centre of the French resistance movement. Nazi commander Klaus Barbie, “the Butcher of Lyon”, is thought to be
responsible for the deaths of 4,000 people including Jean Moulin, a handsome and dashing resistance leader.

At the end of the war Barbie was captured but was recruited into American and later West German intelligence to work against the communists. As a reward he was sent to Bolivia, but the French government eventually managed to extradite him to France where he was convicted of war crimes in 1987 and he died in a French jail aged 77, four years into a life sentence.

On the hill above the town is the Basilica of Notre-Dame de Fourvière, which is dedicated to the Virgin Mary. It has a large statue of Mary with child positioned over the altar instead of the usual Christ on a cross. The two Christ figures are much smaller and positioned off to each side of the altar, which conventional American Catholics on my most recent visit found both odd and somewhat distressing.

Lyon is the epicentre of the Marist movement which makes the mother of Jesus almost as important as her son.

The basilica was built after the Franco-Prussian War of 1870-71. The good citizens of Lyon, scared that the Prussians would wreck the city, prayed to the Virgin to protect them.

In fact, the Prussians did not come close and marched instead on Paris, but Mary got the credit for saving the city and a public appeal raised funds to build a church in dedication to her.

Inside are extraordinarily elaborate and beautiful pictures, carvings and decorative religious art eclipsing even some of the most lavishly painted baroque style churches, but outside the stone is rather rough-hewn and plain by comparison.

Apparently other than building the basilica itself, most of the money raised was spent on art and decoration for the interior and none remained to titivate the exterior.

Most recently a statue of Pope Benedict, a great believer in the power of the Virgin, was installed immediately outside; further testimony to the power of the Marist movement within the church.

Outside the basilica visitors can take in a panoramic view of the city including three skyscrapers known locally as the pencil, the sharpener and the rubber because, at a distance, their shape and positioning in relation to each other make them look like a box set of school kids writing equipment. (Other buildings also have nicknames including the cheese grater and the death star).

Wine country

In the 19th century the French writer Stendhal remarked: “I know of only one thing that one does very well in Lyon, one eats admirably and better than in Paris.”

The culinary tradition goes back 2,000 years to when Lyon was Lugdunum, capital of the Three Gauls and controlling the wine trade – all imported back then.

Coming from the north or the east, Lyon is a gateway to wine country; the light and flavoursome reds of Beaujolais and then the deeper more complex reds of Burgundy and the majestic whites of Beaune and Chablis (and Montrachet) and then further south to Provence and its characteristic rosé style whites – pink in complexion but tasting earthy white.

Numerous tours are available, and I spent half a day at a typical vineyard where a banker from Paris was converting the place into a purely organic vineyard.

Back in the 16th century the Dutch humanist Erasmus declared: “It is not better treated at home than it is in Lyon in a hotel. The mother first comes to greet you, begging us to be in a good mood and to be pleased that we will serve you. The table is truly sumptuous.”

The “mothers” are one of the cornerstones of the local culinary
scene and to them is owed much of what makes Lyonnaise cuisine distinctive. In the 18th century they cooked in the great houses of the bourgeoisie, but later had their own establishments.

**Three Michelin Stars**

The greatest “mother” is Eugénie Brazier the first woman to have a restaurant with three Michelin stars. She fostered a generation of great chefs including Paul Bocuse, himself a legend in the cuisine industry.

The bouchon is a small intimate restaurant that serves traditional lyonnaise food. According to L’Association de défense des bouchons lyonnaise: “the emphasis is not on *haute* cuisine but rather on a convivial atmosphere and a personal relationship with the owner”.

The association certifies restaurants seeking accreditation as authentic bouchons annually, and currently there are about 20 such establishments although many more trade as such. The whole sector is now heavily oriented towards the tourist trade.

**Gnafron**

The origin of bouchons lies in the small inns visited by silk workers passing through Lyon in the 17th and 18th centuries. Nowadays certified restaurants display a marionette called Gnafron, (in puppetry the companion of Guignol) who has a glass of wine in one hand and a napkin in the other symbolising the pleasures of dining. The agreed standard was that the food was to be locally sourced, nutritious, simply prepared and cheap.

I ate at an accredited bouchon which offered four different menus starting at €15 for a four-course meal including cheese. There were choices in each menu for starters, mains and desserts, and one could choose a dish from a lower-priced menu if something particularly took your fancy.

The room was crowded with about 40 diners, but my wife and I arrived without a booking and were seated at a table for two. Service was as good as anywhere else in France and better than some more expensive places.

I started with a dish of what appeared to be thick gravy in which a poached egg had been placed in such a way that the yolk looked like an enormous yellow eye protruding from a muddy background.

That said, the gravy-like mixture was very tasty and filling. A piece of bavette steak followed with lyonnaise potatoes and a green vegetable.

I thought that quite a good meal already, only to be presented with a cheese course, which looked like whipped white butter and tasted like a young comté, France’s single most popular cheese.

A fruity dessert followed but I could have had meringue and other delicacies. This was €25 which I thought to be a bargain. I had certainly paid more elsewhere and got less, and of a lower quality.

John Bishop visited Lyon at his own expense. His travel writing can be viewed at www.eatdrinktravel.co.nz
Um, President Trump... what about the butterflies?

US President Donald Trump’s efforts to build a wall along the Mexican border have resulted in legal action by individuals and organisations, including the North American Butterfly Association (NABA). The NABA’s 100-acre Butterfly Center in South Texas is alongside the Rio Grande and part of a designated wildlife corridor. In July 2017 the Center’s Executive Director Marianna Wright discovered a work crew on the property armed with chainsaws and other machinery which they were using to cut down trees and widen a road. She also found surveyor flags elsewhere on the property. The Customs and Border Protection agency eventually owned up to starting the work, said it was totally justified in doing so, and is alleged to have begun a concerted campaign of confronting and harassing Center staff.

On 11 December 2017 the NABA sought declaratory and injunctive relief in the US District Court for the District of Columbia. It claimed construction of the proposed wall along the southern border would cut off two-thirds of its property, effectively destroying the Butterfly Center and leaving behind a 70-acre no man’s land between the proposed border wall and the Rio Grande. The court was asked to block the administration from building the wall until it complies with the National Environmental Policy Act, Endangered Species Act and the implementing regulations for those laws. The action was very quickly dismissed, with District Judge Richard Leon noting that Congress had granted the Secretary of the Department of Homeland Security the authority to waive all legal requirements that in her sole discretion are necessary to build the wall. The NABA has appealed.

Congress has since barred the use of appropriated funds to build a wall along the Butterfly Center. However, in another setback for the butterflies, the NABA sought a restraining order in December 2019 against We Build the Wall, a group of allies of President Trump which solicits crowd funding to build sections of the wall on private property. The NABA said planned construction of an 18-foot tall bollard barrier along a 3-1/2-mile stretch of the Rio Grande would worsen erosion and flood a preserve where butterflies dwell. However, on 9 January 2020, Southern District of Texas Judge Randy Crane denied the restraining order request, saying all evidence of potential injury was “highly speculative”.

The Bristol Butterfly Killer

The Large Blue butterfly became extinct in the United Kingdom in 1979. It’s since been carefully reintroduced at several sites and is one of six butterfly species where capture, possession or killing is illegal under the Conservation of Habitats and Species Regulations 2010.

On 18 June 2015, Phillip Cullen was spotted climbing over a locked fence to access the Gloucestershire Wildlife Trust’s Daneway Banks nature reserve. He was seen trying to catch a Large Blue in a net. When confronted, he claimed he was attempting to catch parasitic wasps. However, the next day at another nature reserve, the Collard Hill reserve, he was seen to net and kill a Large Blue.

Officers of the National Wildlife Crime unit searched Cullen’s house several months later and found an illegal collection of some of the UK’s rarest butterflies. These included two Large...
Blue Specimens, one labelled “DB” and the other “CH”.

In April 2017 Mr Cullen went on trial at Bristol Magistrates’ Court, charged with the illegal capture, killing and possession of Large Blues. He unsuccessfully argued that the labels DB and CH stood for “dark blue” and “cobalt hue” rather than Daneway Banks and Collard Hill. He was found guilty, given a six-month suspended sentence and ordered to pay costs. The Gloucestershire Wildlife Trust said it was the first UK conviction for collecting a butterfly and “a breakthrough in the battle against wildlife crime”.

Mr Cullen also pleaded guilty to other offences related to possession of rare butterflies and moths, and he was made subject to a Criminal Behaviour Order after shouting outside the court “See you all on the sites next summer”. The Order prevents him from visiting three nature reserves for five years. The Butterfly Conservation Organisation also immediately revoked his membership.

A Department of Conservation report in 2015, Conservation status of New Zealand butterflies and moths, found that of 202 New Zealand butterflies and moths, 66 were threatened, 77 at risk, 12 not threatened and 47 data deficient.

Police Chief’s permission needed to move butterflies

Heading south for the winter in Mexico (over the Wall!), thousands of monarch butterflies pause for a rest in the Californian city of Pacific Grove every year in October. The city has an ordinance to protect them, with a fine of $1,000 for breach:

“It is declared to be unlawful for any person to molest or interfere with, in any way, the peaceful occupancy of the monarch butterflies in their annual visit to the city of Pacific Grove, and during the entire time they remain within the corporate limits of the city, in whatever spot they may choose to stop in, provided, however, that if said butterflies should at any time swarm in, upon or near the private dwelling house or other buildings of a citizen of the city of Pacific Grove in such a way as to interfere with the occupancy and use of said dwelling and/or other buildings, that said butterflies may be removed, if possible, to another location upon the application of said citizen to the chief of police.”

Word by word, picture by picture, I put everything important I wanted children whose moms are lawyers to know about their moms. I wrote the book so that moms who are lawyers would read it with their kids night after night and be reminded of their accomplishments.

— Kentucky lawyer Michelle Browning Coughlin explains why she wrote a children’s book, “My Mom is a Lawyer”.

The new court will provide both victims and offenders and other users with access to wrap-around services which support, restore and rehabilitate, through the co-location of social sector agencies and the community on the premises. This is a major milestone in ensuring less offending, less reoffending, and fewer victims of crime who are better supported.

— Justice Minister Andrew Little announces that a new courthouse in Tauranga for delivery by mid-2025 will be a model for future courthouse design.

Sir Joe Williams has brought a unique blend of legal intellectual rigour and tikanga Māori to his present role, and so reflects New Zealand in the 21st century. Having been a Judge of the High Court since 2008, and of the Court of Appeal since 2018, it was only fitting he became a Judge of the Supreme Court earlier this year, and now is a worthy recipient of this knighthood.

— Justice Minister Andrew Little.

There’s two parts of it that are true – my name and that I was in prison. Half of it was made up by police and the other half was made up by myself… I’m not giving any more evidence. I’m not swearing the oath. Go and catch the real killers, rather than having a prosecution based on lies.

— Scott Marshall, prison inmate, tells the High Court in Palmerston North that he will not be giving evidence about an alleged confession to murder made to him in prison (North and South, December 2019).
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