

LawTalk

KŌRERO MŌ TE TURE

Growing
together

SPRING 2024



New Zealand
Law Society
Te Kāhui Ture o Aotearoa

Master of Laws in International Law and Politics

Prepare for a career
that can take you
around the world

Gain the advanced knowledge and skills you need to work for international organisations, government departments, law firms, and more.



Learn more and enrol today
– visit canterbury.ac.nz



Law
Ture

LIFTING *the human spirit*

A readiness to give lifts the human spirit in many ways, often unspoken.

A bequest to St Vincent de Paul is an act of generosity that will make a lasting difference to the most disadvantaged and needy in our community.

If you would like to discuss a Bequest with us, please give us a call, or send us an email...

Society of St Vincent de Paul

Freepost 992, PO Box 10-815,
Wellington 6143

Phone: **04 499 5070**

Email: national@svdp.org.nz

The St Vincent de Paul Society has a nationwide network of workers and helpers who provide practical assistance every day to people in desperate situations. The Society in New Zealand is an international Catholic social services agency which has been doing this vital work for more than 150 years. Help is offered to all, regardless of origin, cultural background or religious belief.



www.svdp.org.nz

Contents

Springing forward by Katie Rusbatch	04
Protection from frauds and scams	06
Law Society's regulatory reform journey: preparing for the road ahead	10
Law reform and advocacy update	16
"One-stop shops": business diversification for lawyers providing regulated and non- regulated services	18
Professional liability claims against lawyers: make sure that your firm is not next!	22
An insider view of the Practice Approval Committees' forward-looking mission ..	24
NZLS CLE Property Law Conference 2024	30
Property Law Section membership brings you more	32

ABOUT LAWTALK

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

DISCLAIMER

Unless it is clearly indicated, the views expressed in *LawTalk* are not to be taken as those of, or endorsed by the New Zealand Law Society Te Kāhui Ture o Aotearoa. No responsibility whatsoever is accepted by the Law Society for any opinion, information, or advertisement contained in *LawTalk*.

CONTACT DETAILS

✉ publications@lawsociety.org.nz

📍 PO Box 5041, Wellington 6140, New Zealand
DX SP 20202

ADVERTISING

For advertising placement:

✉ advertising@lawsociety.org.nz

PRINTING AND DISTRIBUTION

Blue Star, Petone, Wellington

ISSN 0114-989X (Print) · ISSN 2382-0330 (Digital)

PEOPLE

Frazer Barton, President (on leave of absence)

David Campbell, Vice President Auckland

Jesse Savage, Vice President
Central North Island

Ataga'i Esera, Vice President Wellington

Taryn Gudmanz, Vice President South Island

Katie Rusbatch, Chief Executive Officer

STORY SUGGESTIONS

Do you have a suggestion for a story idea you think would be interesting for an upcoming issue of *LawTalk*? Email: publications@lawsociety.org.nz



Springing forward

BY **KATIE RUSBATCH**

With the coming of kōanga (spring), we look towards new growth. This is true not just of the approaching season but also reflects the work underway across the Law Society's membership and regulatory areas.

The new financial year brought a pleasing response to our membership drive, which has been a year in the making. This progress will enable a more financially sustainable model and help to future proof the quality of representative services that we deliver to the profession.¹ With close to 10,000 members, the member services team is continuing its work to deliver a high-value proposition to members through a partner programme, discounts, and exclusive member offerings.

In this issue, we share some of the work undertaken in our regulatory area, including developing resources for consumers of legal services. It's important that people in Aotearoa New Zealand have trust and confidence in both the legal profession and the regulatory process.

Helping consumers

The first phase of our consumer communications programme was redefining the website's public pages concentrating on the Lawyers Complaints Service and how to work with a lawyer. The consumer

programme will help to increase awareness and inform the public about how to engage with a lawyer, what to expect and the protections available.

Recognising the cultural diversity of Aotearoa New Zealand is a feature of this work. This has commenced with translating our complaints information into six languages with further developments planned.

Regulatory progress

The Early Resolution Service (ERS) is showing promising results as it helps the parties to explore possibilities for a mutually acceptable solution and to resolve complaints in a timelier way.

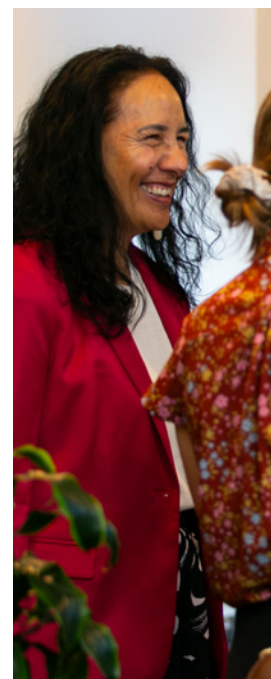
Meanwhile a specialist team to handle sensitive complaints has been in place since mid-2021.

We have commenced our Regulatory Reform and Response Programme. This programme will enable the Law Society to operate in a more transparent and efficient manner for both consumers and the legal profession until such time as broader legislative changes are made to reflect the recommendations of the Independent Review.² We are pleased the Government is progressing amendments to allow limited administrative triaging in the lawyers' complaints process. Such an amendment received significant

support when the Law Society consulted the profession on proposed changes aimed at improving the efficiency of the Lawyers Complaints Service. The proposed amendment is in line with other regulatory bodies and an important step for modernisation and regulatory reform. However, the Minister of Justice has said that wholesale reform is unlikely to be a priority in the first term of the current Government. So instead, we are looking at ongoing improvements that are within our control and don't require a law change. Examples include changes to the registration processes, improvements to the complaints model and governance.

Broadly the Regulatory Reform and Response programme outlines five priorities of work.

1. **Legal Practice Reform:** Looks at the practice on own account process with a focus on existing regulatory barriers to entry to the senior part of the profession.
2. **Lawyers Complaints Service:** The Lawyers Complaints Service is a key focus of our regulatory work and forms a significant element of our response to the Independent Review. The Law Society is undertaking a review to improve the efficiency and





LEFT: Katie at the Canterbury question and answer session in March

effectiveness of the Lawyers Complaints Service under the current legislative framework.

There has been a considerable increase in complaints being handled by ERS committees. These changes are designed to better serve both complainants and the lawyers who are the subject of a complaint.

3. **Continuing Professional Development (CPD):** Review and establish if the current CPD regime is meeting its regulatory purpose.
4. **Te ao Māori:** Work on a te ao Māori strategy is underway and links all areas of the regulatory reform response.
5. **Governance:** The Council has endorsed proposed amendments to the Constitution, and these will be provided to the Ministry of Justice to instruct the Parliamentary Counsel Office to draft amendments.

Post-2018 and steps taken after the Cartwright Report

The article on page 10 looks at the progress made since the 2018

Working Group Report chaired by the Hon Dame Silvia Cartwright and known as the Cartwright Report. The Cartwright Report's recommendations highlighted the need for a comprehensive review of the regulatory system, which was undertaken in the Independent Review.

As you may know, clearer standards of conduct were reflected in the revised Conduct and Client Care Rules. This included a new designated lawyer provision, clarified mandatory reporting obligations, and support for those who have experienced unacceptable behaviour.

There are some positive signs showing improvement relating to the culture around harassment, bullying, and discrimination in the legal profession. Last year, the 2023 Workplace Environment Survey reported a decline in the prevalence of sexual harassment, with lawyers much less likely to say that the behaviour was common in their workplace.

The 2023 survey noted that there is still a reluctance to seek support and speak up about unacceptable conduct for fear of the consequences

or a distrust in the process. Breaking down those barriers is a work in progress, as we want to see lawyers raising these issues with their employers and the Law Society.

Becoming a modern, responsive regulator

Articulating a regulatory strategy for 2022-2025 has enabled us to proactively build a framework for the advancement of regulatory reform through preparatory work prior to legislative change or Government direction. I believe that this preparedness and proactive approach stand us in excellent stead for shaping and building a modern, inclusive, and world-class profession.

The substantive work to date in the regulatory area, combined with our focussed approach to wellbeing amongst the profession and work in building the confidence and trust of consumers, is pivotal to the Law Society's role as the kaitiaki of an exemplary legal profession.

With the ground now well-tilled and a clear regulatory strategy focussed on immediate work programmes from 2022-2025, we look forward to working with our members and the wider legal community in growing and developing the profession. ■

1. By law, the practising certificate fee can only be spent on regulatory matters, so prior to this year member services were provided at zero cost to members.
2. Independent Review, March 2022. lawsociety.org.nz/about-us/independent-review

Protection from frauds and scams

Lawyers are increasingly being targeted by scammers in New Zealand and around the world due to their handling of confidential client data and the perception that they hold large sums of money for clients. Falling victim to scams can result in substantial financial loss and reputational damage.

The Law Society, in partnership with ANZ, is delivering a series of sessions across the motu about frauds, scams and cyber threats impacting the legal profession and wider community and how to prevent them.

The sessions, which started in July and run until September, provide information on how law firms are being targeted and how to keep your company, your staff, and your clients safe from malicious actors. Find out about future sessions at lawsociety.org.nz/events.

John Sheddan from Gore firm Sheddan Pritchard Law, said the seminar was a timely reminder of the form and scope of these attacks, and the risk that all lawyers and business owners face daily.

“An active cyber-attack could bring your practice to an absolute halt, ignore this threat at your peril!” he said.

For those unable to attend a session, below is some useful information on

what to look for and how to prevent becoming a victim of a fraud or scam.

About scams

Scams are on the rise and are increasingly complex in nature with the majority starting online, via social media and search engines, including through paid and promoted content.

- \$1.026 trillion in financial losses from scams globally.
- 62% of New Zealanders encounter a scam once a month.
- Only 41% of people reported scams to law enforcement in 2023.

What to look for

The Law Society has previously provided guidance to lawyers about scams and how to recognise them:

- lawsociety.org.nz/professional-practice/practice-briefings/email-scams-which-target-lawyers and;
- lawsociety.org.nz/professional-practice/practice-briefings/how-to-recognise-an-email-scam.

However, as the techniques scammers are using constantly evolve, it's important to keep up to date.

There are two key fraud and scam scenarios that are currently seen in the legal profession. These are:

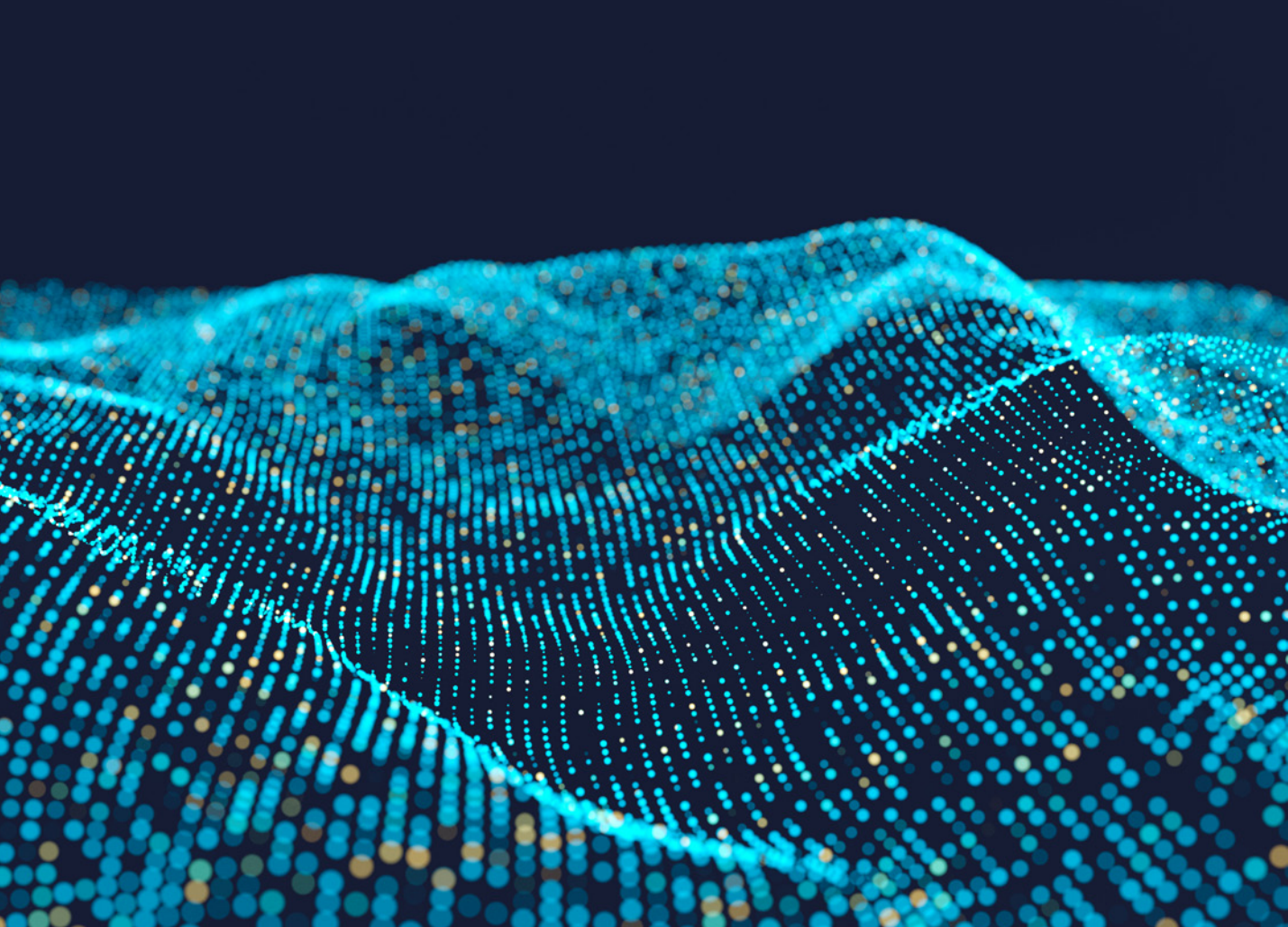
Email spoofing

Email spoofing is a deceptive technique to make an email's display name and address appear that it is from a trusted source. This could look like a lawyer receiving an email from a senior leader in their firm, urgently requesting a funds transfer for a client's emergency settlement. Closer inspection reveals small discrepancies revealing the email is fake.

Email hijacking

This scheme involves fraudsters penetrating a law firm's IT system. One way a fraudster might do this is by claiming they are interested in buying a house and intend to use the law firm to do the conveyancing. Emails are exchanged and eventually the fraudsters send an email with “important documents” attached. These are locked and access requires the lawyer to enter their email address and password. The law firm's information is then harvested giving





“Scams are on the rise and are increasingly complex in nature with the majority starting online, via social media and search engines, including through paid and promoted content”

the fraudster access to the lawyer’s email account. The fraudster then emails the client from the lawyer’s email address to explain that their account details have recently changed, or they send an invoice where the bank account details have been altered. The client then makes payment, and the money goes to the fraudster’s bank account.

Key activities to watch for

- The initial contact is out of the blue.
- They ask you to enter your email address and password to access their documents.
- They are unavailable on the phone because of time differences or because they are travelling.
- They are not located in New Zealand. They are working in another country (“on assignment” is one commonly used phrase).
- They put pressure on you to act quickly, sometimes late on a

Friday afternoon.

- They change bank account details just before a settlement or payment is due to be made.
- They make overly intrusive requests for personal information.
- They don’t pay a retainer or fees in advance.

Prevention is the best protection

There are a number of measures both in processes and technology that lawyers can take to try and prevent scams and frauds including:

Processes

- Implement and regularly review multiple payment approvers.
- Double check any suspicious payments and report them.
- Ensure effective reconciliation processes and timely detection of any issues.

“Lawyers need to adopt a balancing act between being available to act, with a healthy amount of skepticism”

- Validate all modified/new beneficiary requests with a trusted source, particularly if it comes from email or a phone call.
- Adopt Two Factor Authentication (2FA) and other available security controls.
- Have a robust call back procedure when your customer changes bank account.
- Update important passwords regularly.

Technology

- Use approved software only (whitelisting).
- Update software quickly.
- Disable untrusted Microsoft macros.
- Block risky web browsing/firewalls.
- Restrict who has administrator rights.
- Apply updates to operating systems.
- Use multiple forms of proof before allowing access (2FA).
- Backup files offline and test it.

And

- Ensure people are trained to identify potential scams.
- Create and invest in a strong culture that encourages positive

behaviours around cybersecurity and encourage employees to take action if they see/hear anything unusual.

- Work together across key areas including Finance, IT, Risk.
- Be prepared with a rapid response process.
- If you're not expecting a phone call, and don't know the person, don't give out or confirm any information. Don't give out phone numbers or any other identifying information.

Ethical and professional considerations

The Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 and the Privacy Act 2020 requires lawyers to protect and hold in strict confidence all information concerning a client acquired during the professional relationship. Chapters 8 and 11 of the Rules of Conduct and Client Care outline lawyers' fundamental obligations in protecting confidentiality.

What are your professional obligations if you think it's a scam?

Rule 4.1 of the Conduct and Client Care Rules (refusing instructions) lists when a lawyer has good cause to refuse instructions. When faced with a potential scam, a lawyer may

wish to inquire first about the basis of the introduction – given that the approach will have been unsolicited.

Lawyers need to adopt a balancing act between being available to act, with a healthy amount of skepticism, to avoid becoming a victim of an email scam. ■

Learn more

Here are some useful resources:

- Scam Watch – scamwatch.govt.nz.
- CERT NZ – cert.govt.nz.
- CERT NZ Own Your Online Business online security assessment tool.
- CERT NZ Own Your Online Keeping Secure Online.
- Netsafe – netsafe.org.nz.

ANZ offer via Law Society app

One of the many benefits members of the Law Society can access is discounted mortgage rates through ANZ. The ANZ benefits are available on the Law Society's app along with many other benefits to save you money. Not a member? Want to find out more? Join anytime by visiting lawsociety.org.nz/membership.

Save money with the *Partner Programme.*

Law Society members get access to discounts on banking, travel and accommodation, retail and more, all through the Law Society app.

Available for the 2024-25 membership year starting 1 July.

Learn more at
lawsociety.org.nz/membership/partner-programme



Law Society's regulatory reform journey

Preparing for the road ahead

The report of the Law Society working group chaired by Dame Silvia Cartwright in 2018 (Cartwright Report) was the result of a critical examination of the processes for reporting and taking action on harassment and other unacceptable conduct in legal workplaces. Since then, the Law Society has embarked on a transformation journey. *LawTalk* looks at the regulatory changes the Law Society has implemented in recent years and how it's preparing for the road ahead following the 2022 Independent Review Report into the regulation of lawyers.

Driving systemic change

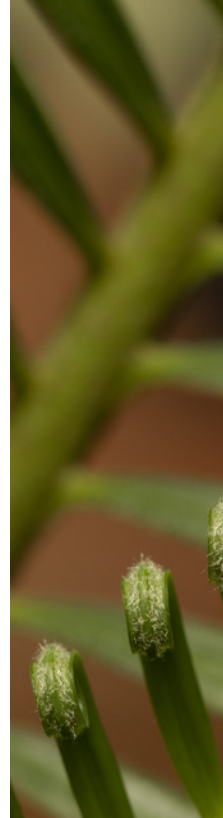
The 2018 Cartwright Report painted a stark reality of how the legislation, as well as the systems and processes that were in place at the time, was inadequate in dealing with issues around harassment and other unacceptable conduct in legal workplaces. The Cartwright Report recommendations drew attention to the need for systemic change. Law Society Chief Executive Katie Rusbatch highlights the recommendation in the Cartwright Report discussing the need for clearer conduct standards.

"It was apparent that changes needed to be made to the Conduct and Client Care Rules to address reporting issues around bullying, discrimination, harassment, and other unacceptable conduct. The result was the most substantial regulatory changes targeted at behaviour in the profession ever undertaken by the Law Society. Without amending primary legislation, it was also the most significant regulatory step available to the Law Society to tackle these issues."

The amended rules include clearer definitions of different types of unacceptable conduct and implement new designated lawyer obligations that require mandatory reporting to the Law Society. Each law practice also needs to have a bullying and harassment policy and a process for investigating allegations of unacceptable conduct. Designated lawyers are required to certify annually to the Law Society that their law practice has complied with the relevant obligations under the Conduct and Client Care Rules. Guidance was released to help lawyers understand their obligations, and to support and empower people who are affected by unacceptable conduct.

"Although undoubtedly there is still work to do, it is reassuring to see improvement in the workplace experiences of lawyers (in terms of sexual harassment and bullying) in last year's Workplace Environment Survey following these changes."

As the data in our Annual Reports demonstrates, since 2020, 453 complaints have been made about sexual harassment, harassment, discrimination and bullying. The Law Society has also seen an increase in reports being made to it. The New Zealand Lawyers and Conveyancers Disciplinary Tribunal has issued decisions clearly articulating that unacceptable conduct which broadly falls under the umbrella of sexual harassment can amount to misconduct. The Tribunal has made findings of misconduct in relation to non-consensual intimate touching in *National Standards Committee 1 v Gardner-Hopkins* [2021] NZLCDT 21 but has also made findings of misconduct for conduct which does not involve physical contact (such as taking junior staff to a sex shop *National Standards Committee 1 v Palmer* [2023] NZLCDT 13). In doing so, the Tribunal confirmed that conduct at work social functions is caught by the concept of regulated





services for the purpose of the definition of misconduct under the Lawyers and Conveyancers Act 2006 (the Act).

Further changes following the recommendations in the Cartwright Report

Further specific changes have also been made to respond to the Cartwright Report recommendations. The Law Society established a specialist team and Standards Committee in the Lawyers Complaints Service that handles sensitive complaints matters. Lawyers can contact the Law Society using a dedicated phone number to confidentially discuss their matters with a specialist advisor. An in-house investigation unit has also been set up to improve

“The result was the most substantial regulatory changes targeted at behaviour in the profession ever undertaken by the Law Society. Without amending primary legislation, it was also the most significant regulatory step available to the Law Society to tackle these issues”

timeliness and consistency of the investigation process.

“The Cartwright Report outlined some clear shortcomings with the regulatory framework and supported the Law Society to invest in making changes to the way that we did things,” Katie adds.

The genesis of the Independent Review

As well as the Cartwright Report, other programmes of work, including the 2019 Cultural Change Taskforce, were initiated by the Law Society or the profession. It became clear that a comprehensive review of the regulatory system needed to be undertaken to consider whether more fundamental changes needed to be made to the legislative

FOUND

Combined expertise and advanced technology
for your next document discovery

discoveryspecialists.co.nz



Discovery
Specialists





framework. As a result, the Law Society decided in 2019 to commission a wide-ranging independent review of the entire regulatory system for lawyers.

As the Law Society looked more closely at the findings in the Cartwright Report, it was apparent that a review was required of the entire approach to the regulation of lawyers under the Act.

The Independent Review, released in March 2023, ultimately recommended the establishment of a new independent regulator, which the Law Society has accepted in principle. It suggested that the objectives of the new regulator include promoting ethical conduct which, as the Independent Review Panel indicated, is directed at the prevention of harassment, bullying and sexual harassment in legal workplaces.

Embracing opportunities in the current environment

To fully implement many of the Independent Review's recommendations, wholesale reform of the Act is required. The Minister of Justice has signalled that this is unlikely to be a priority in the first term of the current Government so the Law Society has commenced work to identify what could be achieved within the current prescriptive regulatory environment.

Katie stresses the importance of looking for opportunities. "While substantive legislative reform would need to be initiated by the Government, we are pleased the Government is progressing amendments to allow administrative triaging in the lawyers' complaints process. The proposed amendment will allow the Lawyers Complaints Service to assess and decide whether in certain cases complaints

should not be referred to a standards committee."

The change would bring the legal profession in line with the way other regulatory and disciplinary bodies already operate, and is an important step for modernisation and timely complaints handling.

"We are also looking to identify changes that can be made to the rules and regulations we operate under or to our systems and processes that could positively enhance our regulatory environment."

The Law Society is exploring aspects of its current regulatory parameters and processes. The focus of this work is to consider potential changes that can be made within the parameters of the current statutory position.

Katie acknowledges that the Law Society is also faced with resource constraints. "As expected, any changes we make to our processes may require additional investment and resources. The Law Society's primary source of regulatory funding is the annual practising certificate fee. While we need to prioritise the work that we are undertaking, we are focused on taking us closer to our vision of all people in Aotearoa New Zealand benefiting from a strong, progressive and trusted legal profession."

Reducing regulatory barriers that have a discriminatory effect

The Law Society recognises feedback specifically received by the Independent Review Panel on the practice on own account process and

acknowledges that some barriers can disproportionately affect certain groups more than others. While the objectives and powers of the regulator cannot be amended without legislative reform, the Law Society has established a dedicated programme of work to focus on identifying and addressing discriminatory barriers that may exist in regulatory processes.

“Obviously, the very nature of regulation involves the imposition of barriers to entry. Nevertheless, we are aware that the minimum hours’ requirement for applicants to practise on own account does tend to affect lawyers returning from parental leave and can disproportionately affect women who are more likely to be the primary caregiver for young children,” Katie explains.

The Law Society’s regulatory work programme will look at regulatory barriers that may have a discriminatory effect with a view to identifying whether changes to the Practice Rules should be proposed.

Making changes to the regulations can be a lengthy process which involves multiple steps. These steps include policy development and consultation, the development of a policy paper and regulatory impact statement for consideration by Cabinet, drafting of the regulations by the Parliamentary Counsel Office in conjunction with relevant agencies, approval by the Law Society Council, and then authorisation by the Cabinet Legislation Committee and Cabinet itself.

“In the interim, we will evaluate whether the processes we currently use to assess practice on own account applications (including the section 30 interview process) can be adjusted or updated.

“We have also looked more broadly into the certificate of character and practising certificate application process and made changes to clarify that character references can come from a person who knows the applicant well and can speak to the applicant’s character, rather than necessarily from someone who is in a ‘preferred’ profession. If an applicant is not able to obtain a reference from one of the suggested categories, this will not adversely affect the application.”

Katie underlines the consumer protection focus in the work programme as well. “We are careful in assessing our processes to ensure the proposed changes do not remove or undermine regulatory barriers that are there to protect consumers. It’s a balance that we must maintain with caution.”

Reviewing CPD components

Part of the Law Society’s work programme includes considering and progressing the Independent Review panel’s recommendations on the CPD regime. This includes looking at the recommendation that the Law Society exercise its existing powers to make aspects of CPD mandatory and the broader recommendation that the regulator conduct a wholesale review of the CPD regime to determine whether a different model (such as a competency framework) would be more effective. These recommendations were accepted in principle.

“If the Law Society were to consider making aspects of CPD mandatory, some of the issues we would need to consider include what the mandatory requirement would be, how it would be imposed, monitored and enforced, as well as how and whether sufficient capacity exists in the legal education sector to meet the demand.



**Would you like to
expand your law firm’s
online offering?**

Law Central is an established Australian online legal document provider and we are looking for a New Zealand commercial law firm to partner with to offer a range of simple commercial agreements and deeds to the New Zealand market. For more information, please contact John@lawcentral.com.au.

www.lawcentral.com.au

“A meaningful and long-lasting systemic change does not happen overnight so it’s important that we do not lose sight of how each step is taking us further in the journey”

“Any consideration to making changes to CPD components should look to future-proof the process by considering how the legal profession is changing and what is on the horizon for practitioners,” Katie says.

Transparency and complaints

It is widely known that the Law Society is prohibited by the Act from commenting on whether we have received a complaint, or any details of concerns or complaints raised with the Lawyers Complaints Service. As indicated in the Cartwright Report, the constraints of our legislation contributed to ‘concerns about a lack of transparency and accountability’. A similar observation was made in the Independent Review Report, which called the complaints system “opaque” and said that it was “perceived as unfair”.

In 2022, the Law Society consulted with the profession on changes to the Act to allow for more transparency and disclosure about the status of a complaint or investigation. These proposed changes received considerable support. The Law Society has requested reform in this area from the Ministry of Justice. Pending any legislative reform in this area, work has

proceeded to improve the responsiveness and effectiveness of the complaints process.

Katie outlines the progress, “to enhance accountability and confidence in both our processes and the legal profession, we have a regulatory strategy in place that sets out how we will strengthen our ability to be a modern and effective regulator for the benefit of both the profession and consumers of legal services. We have also restructured our Early Resolution Service and added resources to our frontline complaints handling services.

“The majority of the complaints we receive currently go through the Early Resolution Service. It will take time to see the results of this work and get our average processing time down, but we are moving forward to make sure our services are responsive.”

Ongoing commitment

Katie reiterates the Law Society’s ongoing commitment to make sure the legal profession is safe, effective and well-functioning. “While we continue to strive to reach this goal, we need to remind ourselves not to overlook the significance of any progress or changes that may seem small in comparison. A meaningful and long-lasting systemic change

does not happen overnight so it’s important that we do not lose sight of how each step is taking us further in the journey. The legal profession and the communities that it serves are the focus of everything we do.”

The Board’s support has also been instrumental. Law Society Board Member David Campbell says, “the legal profession and the wider environment are constantly evolving but our focus and commitment to build a better and safer legal profession will not change.

“The legislative and financial constraints mean that we’ll have to be tactical in our approach to maximise the impact of our work. However, we are proactively seeking and embracing the opportunities ahead of us.

“Together, every lawyer can do their part to help shape the culture of the profession. I’m both hopeful and confident about the progress we have collectively achieved so far and how the Law Society’s current regulatory work programme will continue that momentum.”

A detailed table about the specific actions on each recommendation of the Cartwright Report can be found in the online version of this article on our website. ■

Protect big ideas with a Master of Intellectual Property



Learn how to protect your innovative ideas.

Learn how to protect your innovative ideas. Understand the ins and outs of Intellectual Property Law with a MIP from the Auckland Law School.



Find out more auckland.ac.nz/mip



AUCKLAND
LAW SCHOOL

No.1
New Zealand
law school¹

No.1
In New Zealand
for Employability²

No.55
In the world
by subject³



Law reform and advocacy update

As the voice of the profession, the Law Society's law reform and advocacy work is a vital function carried out in the interests of the public and the profession. The Law Society's submissions are influential and respected, drawing on the expertise of 160 volunteers sitting across 17 law reform committees. *LawTalk* shares an update on the previous quarter's work.

The Law Society's submissions continue to influence the development of the law. The Justice Select Committee's report back to Parliament on the *Gangs Legislation Amendment Bill* adopts several changes recommended by the Law Society. This includes refining the scope of the proposed new offences and introducing a *mens rea* element to the offence of displaying gang insignia, and enabling the Commissioner of Police to revoke a dispersal notice where the individual is not a gang member.

The majority of the Law Society's recommendations on the Firearms Prohibition Orders Legislation Amendment Bill were accepted, including recommendations to refine the Bill's scope to those individuals and offences which are related to gang offending. The

Local Government (Water Services Preliminary Arrangements) Bill has also been reported back, adopting several of the Law Society's recommendations around drafting and substantive content.

Law reform submissions made this quarter include:

- The Sentencing (Reinstating Three Strikes) Amendment Bill, which proposes to reinstate a revised version of the Three Strikes Regime. While acknowledging the changes that have been made to the new regime, the Law Society recommended the Bill does not proceed. If it proceeds, the Law Society recommends increasing the sentence threshold at which a strike can be made, and amending the 'manifestly unjust' exception to allow a court to rely on

mitigating factors when exercising this discretion.

- A submission in support of the Privacy Amendment Bill, identifying potential difficulties that agencies will encounter in identifying and notifying all individuals about whom information has been indirectly collected.
- The Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Bill, which introduces binding polls on whether local authorities keep or disestablish Māori ward and constituencies, amongst other changes. The Law Society raised concerns about the truncated select committee process and recommended the Bill did not proceed and noted differential treatment around

the creation of other wards and constituencies, which do not require a binding poll.

- The Resource Management (Extended Duration of Coastal Permits for Marine Farms) Amendment Bill, which seeks to extend the duration of all coastal permits authorising aquaculture activities, by 20 years. The Law Society raised concerns that the Bill is inconsistent with local planning frameworks and processes for reviewing and extending consents, and that the councils consulted opposed the Bill.
- The Oranga Tamariki (Repeal of Section 7AA) Amendment Bill. The Law Society's Family Law Section assisted with this submission and appeared before Select Committee. The submission canvassed the history of section 7AA and its impact so far, and emphasised that it is not in conflict with – and does not displace – the paramount consideration of a child's wellbeing and best interests.
- The Law Commission's second issues paper on its Review of Adult Decision-Making Capacity Law. This substantial submission was prepared with the assistance of the Family Law Section, Property Law Section, and the Health and Disability Law Committee.

Advocacy

The Law Society continues its work to support legal aid providers and advocate for the sustainability and improvement of the legal aid system. Throughout July, we worked with the Legal Services Commissioner to organise and deliver a series of workshops with criminal, civil and

family legal aid providers. With no budget increases for legal aid in Budget 2024, the workshops were an opportunity to discuss other changes that can be made to assist legal aid providers with aspects such as administrative burden. The Commissioner will soon consult the profession on proposed changes.

The Law Society also raised with the Legal Services Commissioner the issue of delays in payment of legal aid invoices. The impact of these delays on providers has been acknowledged by the Commissioner, and work has been underway to address the causes of the delay, including technological issues, vacancies, and staff illness.

The Law Society's Rule of Law project remains underway, and the profession was invited to complete a survey sharing their views on the rule of law in Aotearoa New Zealand, including what it means and current challenges. Further engagement is underway with those who were interested in discussing further.

We continue to raise with the judiciary issues around the scheduling of bail application hearings and sentencing, as well as challenges lawyers are facing in accessing clients in custody.

The Law Society also wrote to the Attorney-General to reiterate the fundamental principles of comity and mutual respect, following reports of comments made by a Minister of the Crown about High Court Judge, Justice Cheryl Gwyn. Following further comments by the same Minister about the wider judiciary, the Law Society wrote again, asking that all Ministers be reminded about their obligations and duties in respect of the judiciary. Law Society President Frazer Barton had earlier raised the importance of respectful debate and avoiding criticism of the judiciary in an opinion piece in April.

The Law Society wrote to the Minister of Justice about the introduction of an amendment paper on the Gangs Legislation Amendment Bill, after the Select Committee process. The Amendment Paper introduces a 'gang insignia prohibition order' regime, which will prohibit subject individuals having gang insignia in their homes and enable Police to search homes for insignia. The Law Society outlined Bill of Rights and rule of law issues, and has since spoken to several media outlets about these concerns. ■



Cairns Transcription Service

Amanda Cairns

027 634 2517

cairnstranscription@hotmail.com

www.cairnstranscription.co.nz

Accurate, fast, & confidential transcription service

“One-stop shops”

Business diversification for lawyers providing regulated and non-regulated services

Most of us will be very familiar with the concepts of ‘agility’, ‘pivoting’ and ‘collabs’ – words that have entered the mainstream lexicon over the past four years. Many businesses have had to embrace these concepts faced with significant pressures created by COVID-19 and economic factors. To keep up with the macro-environmental shifts in economy, geopolitics, technology and society, organisations are reimagining their future service offerings to ensure survival and sustainability. Diversification is one way that businesses can look to increase income streams, grow their client base and manage risk. This can include a “one-stop shop” model where customers’ varied needs are met ‘under one roof’.

The legal profession, as a key service provider, faces the same economic and social pressures as any other business. Many lawyers will be considering how best they can innovate and adapt to meet these significant challenges. This article examines the regulatory and legal requirements which relate to situations where diversification is being considered as an option.

Lawyers and Conveyancers Act framework

The definition of regulated services is broadly defined in section 6 of the Lawyers and Conveyancers Act

2006 (LCA) and includes advice on any legal or equitable rights or obligations. It is not unusual for non-law firms to provide legal advice as part of the suite of services which would potentially fall within this category, if those services were provided by a lawyer.

If a law firm or lawyer is exploring options to diversify their services and partner with other industry experts to move towards a one-stop shop business structure, it’s important to consider the requirements set out in the LCA about the provision of both regulated and non-regulated services by lawyers in association with other professionals.

Single entity practices providing legal services and non-regulated services

As a starting point, a lawyer employee may provide regulated services to the public only through a law firm, with limited exceptions (ss 9-10 LCA). A lawyer practising in a law firm may provide legal services and also non-regulated services directly to clients provided that the requirements of rules 5.5 and 5.5.1 of the LCA (Lawyers: Conduct and Client Care) Rules 2008 (RCCC) are met.

Rule 5.5 provides that a lawyer may not engage in another business

or professional activity where that activity could reasonably be expected to compromise the discharge of the lawyer’s professional obligations.

Under rule 5.5.1, if a lawyer is intending to provide services other than regulated services, those services must be associated with the provision of regulated services and be provided by the lawyer or an entity in which the lawyer or lawyer’s practice has a controlling interest. For example, a law firm specialising in health and safety law could employ a suitably qualified consultant to provide complementary practical compliance advice.

Multi-entity arrangements – teaming up with other industry professionals

If a lawyer wishes to team up with other external professionals, there are regulatory requirements which need to be carefully considered.

Structuring such an arrangement correctly will be vital to ensuring the regulatory requirements of the LCA are met and the consumer protection goals of the legislation are achieved. There is no discretion under the LCA to exempt any arrangement which does not strictly meet the regulatory requirements, which are outlined below.



“If a lawyer wishes to team up with other external professionals, there are regulatory requirements which need to be carefully considered”

In New Zealand there is no scope for multi-disciplinary practices. This is recognised by the prohibition on income sharing between lawyers and non-lawyers in relation to the provision of regulated services (s 7(3) of the LCA). Such income sharing amounts to misconduct. There is a statutory exception to this in respect of Patent Attorneys (see LCA (Lawyers: Income Sharing with Patent Attorneys) Regulations 2008). Lawyers must therefore take care to ensure that any arrangement with other professionals does not infringe this rule or the rule relating to collateral rewards (rule 5.9 RCCC).

Potential regulatory concerns in the talent structure and operations

Regulatory issues may arise if staff are shared by lawyer and non-lawyer organisations to provide those

services which would fall within the definition of regulated services, if provided by a lawyer.

It is not permissible for a lawyer to provide regulated services directly to the public through a non-law firm (ss 9-10 LCA). Care would also need to be taken to ensure there is no potential for clients to be misled about whether the person providing services is a lawyer or not. This means that any shared personnel

arrangement would need to be structured to avoid regulatory issues arising under these sections.

The paramount concern is the protection of clients. Any structured arrangement will need to clearly comply with the requirements of the LCA to ensure that there is no uncertainty over the application of regulatory safeguards such as the Lawyers Complaints Service or the Lawyers Fidelity Fund.

Moriarty Associates

Expert Valuations | Forensic Accounting

Paul Moriarty BSc FCA FFin

T 09 363 3700 | M 022 107 5787
moriartyassociates.co.nz

“Any arrangement must be structured within the LCA framework requirements to ensure that all lawyers involved are meeting their professional and legal obligations”

Lawyers will also need to ensure that they are aware of any risks relating to retaining legal professional privilege in respect of client advice. Consideration should also be given to the extent of any professional indemnity insurance cover in place.

The use of shared or similar names may be practical or attractive but care needs to be taken to ensure that there is no scope for public confusion to arise about the status of any particular entity (law firm or non-law firm). Lawyers must not mislead in relation to any aspect of their practice (RCCC rule 10.9) and the LCA contains offence provisions in respect of potentially misleading conduct by non-lawyers (ss 22 and 23 of the LCA).

Practical options to innovate in your practice

So how can lawyers work collaboratively with other professionals to provide a comprehensive service for clients? The types of arrangements likely to meet the regulatory requirements could include:

- A lawyer practising in a law firm

who provides legal services and also complementary non-regulated services directly to clients (provided that the requirements of rules 5.5 and 5.5.1 of the RCCC are met).

- A law firm working closely with a related non-law firm organisation. Legal staff should be employed only by the law firm and provide legal services through the law firm to clients of the non-law firm. Care would need to be taken to ensure the arrangement does not create any “income-sharing” or conflict of interest issues. Lawyers in this situation also need to manage their obligations of confidentiality to clients and be aware of the need to protect and preserve privilege.
- A non-law firm which employs an “in-house” lawyer to assist it to provide legal services which are not within the “reserved areas” for lawyers as defined in s 6 of the LCA. In such an arrangement the “in-house” lawyer cannot provide services directly to clients (ss 9-10 of the LCA) and needs to ensure that no lawyer-client relationship

arises between the lawyer and those who receive legal services (s10(4) of the LCA).

There may be other compliant structures which also provide business opportunities for lawyers and other professionals that are yet to be explored. The Professional Standards (Regulatory) team at the Law Society is available to provide general information and guidance about LCA regulatory matters. Email regulatory@lawsociety.org.nz if you would like more information.¹

Establishing a one-stop shop for clients can diversify revenue streams, enable cross-functional collaboration and improve operational agility. However, any arrangement must be structured carefully within the LCA framework requirements to ensure that all lawyers involved are meeting their professional and legal obligations. ■

1. The Independent Review recommended permitting new business structures, to allow non-lawyers to have an ownership interest in law firms and lawyers to enter into legal partnerships with non-lawyers. The Law Society's response to this recommendation was that further consideration was needed. You can find out more about this on our website.



Combined power: AI and trusted legal content

Combine the power of generative AI with reliable legal content to save hours on research and document review. This powerful combination ensures your productivity remains high and your practice runs smoothly.

Transform efficiencies into real time savings with **CoCounsel**

Our new Gen AI Assistant can become an extension of your team to manage preliminary legal tasks. Save hours summarising vast quantities of research in minutes, creating critical timelines, reviewing contracts, drafting correspondence and so much more - faster than you ever thought possible!

Simplify the complex with **Westlaw New Zealand**

Tried and trusted legal research, using natural legal language, enabling you to deepen your research and get to your answers quicker. Stay up to date with the latest developments and information to elevate your practice and stay ahead in the evolving legal landscape.

To find out more visit www.thomsonreuters.co.nz



Professional liability claims against lawyers

Make sure that your firm is not next!

BY **DAMIAN SCHADE**

Damian Schade is a Client Director for Lockton, advising clients on all areas of professional liability insurance, cyber and risk management. global.lockton.com

Professional liability or negligence claims continue to be a source of frustration, irritation and burden for lawyers in New Zealand. During times of economic decline and uncertainty we often see the level of litigation increase, particularly against professional services firms with lawyers often at the top of that list. In a challenging environment disgruntled clients or aggrieved parties are often looking at avenues to recover costs, so when the legal bill arrives there can be a temptation to avoid it by manufacturing a negligence claim or disputing the costs.

Any claims, even the frivolous, have to be defended and dealt with either through the avenue of the Law Society complaints process or possibly even with litigation. Either

way the exercise is timely and costly, placing an extra layer of strain on the firm.

Cyber Security Concerns & Artificial Intelligence (AI) Implications

Impact of Cyber: The recent CrowdStrike outage has shown the widespread impact even a minor Cyber issue can create. Law firms remain preferred targets for Cyber criminals especially in respect of Social Engineering through elaborate and well-constructed Phishing attacks. The sophistication of criminal emails and deepfake technology means that firms must stay vigilant and aware, especially around the transfer of funds. It remains crucial for law firms to understand and mitigate their associated AI risks

LEFT: Damian Schade, Client Director at Lockton.



“The impact of a professional liability claim brought against the firm may not only be financial but can be emotional as well”

as well, including taking steps to ensure that they adhere to the standards expected and these are not compromised through AI's use. Any inappropriate or unmonitored activity may expose the firm to additional risks and consequently, unexpected negligence claims.

It is not just about the money

The impact of a professional liability claim brought against the firm may not only be financial but can be emotional as well. It can be a particularly challenging and stressful time for everyone involved as often these claims can be complex and prolonged, taking years to mature. This means that your billable

client time could be replaced with preparation of documents, attending hearings and meetings with your own legal representatives. Whilst the original claim for damages might be insurable, the time and stress of dealing with the claim itself is generally not.

What can you do?

While the best advice for managing claims is to avoid them altogether, there are steps you can take to reduce the probability of liability claims impacting you or your firm, including:

- Provide legal advice within your area of expertise and don't be tempted to deviate.

- Make sure that there is an efficient supervision process in place so that appropriate reviews are undertaken before work is submitted.
- Ensure that electronic diary systems are utilised, so deadlines are not missed.
- Ensure procedures are adhered to in checking identities and account details when payments are made to third parties.

Professional Indemnity insurance is the last resort in the event of a claim, but good risk management can reduce the likelihood that your firm will be next! ■

FOUND

The complete document discovery service from Anthony Harper

discoveryspecialists.co.nz



**Discovery
Specialists**



An insider view of the Practice Approval Committees' forward-looking mission

Consisting of senior and experienced lawyer volunteers and lay members, the Law Society's two Practice Approval Committees consider 'non-standard' regulatory applications which can't be approved administratively. These applications can include practising certificate and renewal applications from lawyers who have declared a serious issue such as a criminal conviction, insolvency, or disciplinary issues; certificate of character applicants who may have a criminal conviction or have committed academic misconduct; or lawyers who want to practise on their own account but may not yet have the experience required or meet the suitability requirement.

In the 2022/23 year, the Committees considered 39 applications. To find out more about the process behind those critical decisions, *LawTalk* speaks to the Committees convenors, Anne Stevens KC and Truman Wee, and lay member Steve Osborne.

Assessing through a forward-looking lens

The Practice Approval Committees' process involves reviewing

information provided by the applicant, any objections received to an application, and any additional information requested by the Practice Approval Committee which may include a request to interview the applicant.

"Suitability to practise is only a question when concerns have surfaced in an application," says Dunedin criminal lawyer Anne Stevens.

"The Practice Approval Committees take these applications very seriously as the applicants' livelihood and mental wellbeing are often at stake. We are looking for information in an application that helps us determine whether it's safe for the individual to practise in the public arena without bringing disrepute to the profession's reputation."

Anne emphasises the importance of understanding that the assessment is future-focussed. "The committees are forward-looking in their approach. Our focus is whether the person is safe to practise in the future beginning from the day the decision is made."

"Each case is looked at on a case-by-case basis applying the established

tests as to whether an individual is a fit and proper person to practise if that is the issue.

"We regularly seek further information before reaching a decision, such as an up-to-date psychologist's report or a report from the Official Assignee. Ultimately, the question of whether the applicant can uphold the standards of the profession, and its fundamental obligations can only be answered by the material in front of us."

Hamilton commercial lawyer Truman Wee couldn't agree more. "It's a judgement that we can only make based on the information presented."

"The evaluation is a protective exercise to fulfil the need for public protection and maintain the public confidence in the profession. The committees must make a predictive evaluation from the information before them of whether the





BELOW: Truman Wee, Practice Approval Committee convenor



applicant is a fit and proper person and can be safely accredited to the public.

“We expect honesty and full disclosure from the applicants as we examine each case carefully. A quick once-over is never how the committees operate as we understand the weight of our decisions.

“Therefore, we may also interview the applicant to get to the bottom of the issue when the paper application doesn’t tell us enough about it. Interviews can be quite revealing, giving us a better picture before we make the decision.”

The Courts in New Zealand have set out the approach to the test for ‘fit and proper’ in *New Zealand Law Society v Stanley* [2020] NZSC 83 that states the fit and proper person test is a forward-looking exercise and requires an evaluation of the individual at the time they apply, and this approach must be

applied to the individual circumstances of each case.

Applying a non-punitive approach

Another crucial aspect of the Practice Approval Committees’ assessment is its non-punitive approach and the factors they look at in response to the issues presented in an application.

Anne stresses that punishment for previous wrongdoing or professional misconduct is not within the committees’ remit. “Punishment is a function of disciplinary bodies, and we are not a disciplinary body.”

“If the issue is whether an applicant has sufficient experience to practise on their own account, we look at the quality and quantity of their experience, their competence and their disciplinary history if there is one. If the issue relates to a period of

difficulty arising from any number of issues, such as alcoholism or mental health problems, then we usually seek professional opinions as to the practitioner’s current state, safety mechanisms in place and commitment to treatment or rehabilitation. Mentoring is a protection that arises frequently as do undertakings to practise in a particular way. These protections can only be by voluntary agreement.”

Truman also recognises the non-punitive facet of the approach. “Our approach is not punitive. The direction of our examination will be guided by the issues presented in an application.”

“Depending on the circumstances, a Practice Approval Committee’s approval may be conditional upon the applicant agreeing to provide a

RIGHT: Steve Osborne, Practice Approval Committee lay member

voluntary undertaking to the Law Society in respect of the nature of the applicant's suitability or areas of practice.

"It can include an applicant agreeing to restrict their areas of practice or entering into a supervision and mentoring arrangement with an approved senior practitioner. Applicants are reminded of the importance the legal profession places on a lawyer's undertaking and that non-compliance may result in the matter being referred to the Lawyers Complaints Service."



Recognition, rehabilitation and reinstatement

One of the first considerations of the Practice Approval Committees' assessment is an applicant's ability to recognise the extent of their past conduct and whether they've taken responsibility for this.

On a few occasions, Truman has come across applicants who decided to take a defensive position. "Acting defensively does not help the situation. We won't judge them for that, but they'll be judged by the information they provide. Examples include whether they've developed insights into their conduct and are able to identify the triggers for their behaviour."

When assessing the effect of prior convictions in relation to a regulatory application, the committees will consider three relevant aspects – nature of the offence, the time that has elapsed since the offending, and the applicant's age when the offence was committed.

In some cases, failing to take ownership of your conduct alone can lead to unfavourable outcomes regardless of the scale of the offence. Anne explains, "if a person can't accept the full onus is on them to reform and regain trust, you'll often see a repetitive pattern of the same behaviour. An example of this problem is where there are multiple drink driving convictions or instances of plagiarism at university."

Anne continues, "a strong rehabilitative effort is essential in determining the applicant's potential to practise safely. This can be active participation in counselling or relevant programmes to manage violence or addiction, or other restorative actions for the harm they did in the past."

The human aspect

In 2019, lay members were introduced to the Practice Approval Committees to ensure there was a public perspective to their

considerations. A former clinical psychologist for over two decades, Steve Osborne was one of the first lay members on the committees. Currently working in the Ministry of Health and the Ministry of Social Development, Steve was the Chief Executive and Registrar of the New Zealand Psychologists Board for almost thirteen years. Thanks to his career trajectory, Steve is no stranger to the regulatory function.

"The work of the Practice Approval Committees is not just about training and qualifications. Don't forget that this is a human being who also has a family. It's about the person behind the application and what it means to them. You can't divorce yourself from that reality."

"However, we can't let that overwhelm the requirements of the process. Our discussions are robust as we are conscious of the impact that our decisions can have on the applicant and the public."



LEFT: Anne Stevens KC, Practice Approval Committee convenor

Consensus decision-making and diverse perspectives

The Practice Approval Committees' decision-making process is run on a consensus basis. There has never been a decision that had to be concluded by vote.

As convenors of the two committees, both Anne and Truman are responsible for leading the discussions and ensuring 'all voices are heard'.

"The discussion isn't over until everybody has spoken and given their viewpoint," Anne says.

"There can be different positions at the beginning of a discussion, but no one comes with a 'fixed' position. Everyone is open-minded and tends to reach the same conclusion eventually. This is probably not surprising given our common driver is to do the best for the profession and the public."

Truman also shares the same observation. "We are persuaded by logic and argument. Our collaboration involves discussions and a quality check afterwards to ensure the correspondence is consistent with our discussions and reflects the decisions accurately."

Steve attributes the consensus approach to the calibre and commitment of his fellow committee members.

"If you've got good people with good heads and good motivations, it's not hard to collaborate and come to shared decisions. We discuss a matter for as long as it takes."

"It really shows how much people care about it though. We all

"For instance, consider a lawyer who works almost exclusively with vulnerable populations, such as the elderly or disabled. The risk in such a case is increased as a vulnerable person may not have the same capacity to take action to protect themselves, or even realise that they are being harmed. We have to be extra cautious," Steve underlines the consumer protection driver behind decision-making.

Although Steve is no longer a practising psychologist, his experience has enabled him to weigh in from a different perspective.

"Non-standard applications are often accompanied by various mental health aspects. Sometimes there can be a pattern of behaviour that

may require further mental health assessment. There can also be some indications of characterological issues that cannot be resolved by simply attending anger management sessions, for example.

"It's imperative to engage in meaningful rehabilitation. Simply taking time off and getting antidepressants from a GP doesn't give us evidence that you have fully recovered and have developed the resilience required to make sure you're better equipped to handle the stressors that can accompany practice.

"The entire purpose of regulation is the safety of the public. It's always in the forefront of everybody's mind on the committees," Steve affirms.

“We take a lot of care, responsibility and pride in what we achieve together as a committee. We are here because we want to be here. We know our decisions have an impact on a person’s livelihood, our colleagues in the wider profession and the public”

genuinely want the most reasonable and fair result, especially when they are not going to be in favour of the applicant. We also consider avenues that can give them a pathway back to practice where possible, even if we can’t approve the application at the time.”

What makes a good lawyer

When asked what makes a good lawyer, Anne, Truman and Steve share their personal views.

Anne says that a good lawyer is someone who absolutely treasures the rule of law. “That’s my daily nourishment. The rule of law makes for a harmonious and ultimately safer society, one that people can have confidence in.”

“Lawyers can be the butt of jokes, but they are there when someone is in trouble. For example, we are

needed to ensure the house you bought is your house, your contract is sound, and you get a fair trial. What a wonderful job!”

Truman highlights the role of values. “We all need a value system to help build our character and guide us, especially when making difficult decisions. If you have your compass pointing at the right direction in the way you conduct yourself, you will not go astray no matter how far you travel.”

Steve acknowledges the excellent legal help he has received over the years, particularly during his tenure on the New Zealand Psychologists Board. He also encourages lawyers to find your niche that brings out the best in you as a practitioner. “It’s hard to be good at what you do unless you’ve got a passion for it. Finding the area of law that brings

out the best in you can help shift you from the mechanical act of being a lawyer into a passion that will sustain you.”

Developing a long-lasting legal career

Looking at how others got to where they are now can help connect you with the people and communities you serve. Anne, Truman and Steve give insights into the dos and don’ts in developing a long-lasting legal career.

Anne’s top tip is keeping a habit of exercise. “Being fit helps me withstand the onslaught of other people’s misery, particularly as a criminal lawyer.”

Truman draws attention to the importance of being mindful of your limit. “Be aware at all times that you don’t overly push the boundaries beyond what your ability, experience and knowledge can take.”

“Don’t get all consumed by work either and learn to find balance in your life. If you go too deep in your work, you might lose focus on things that really matter. It’s hard but it can be solved by knowing when to say no.

“If you do find yourself getting too close to the edge, ask for help. The Law Society’s National Friends Panel is made up of lawyers who can be contacted on a confidential basis with questions or concerns about practice issues,” Truman adds.

Echoing Truman’s message, Steve underscores the danger of isolation and how we can sink without noticing it.

“Through research, we know that the most frequent flyers in complaints against professionals are those who are later in their career and have become isolated from the profession. This is a common observation amongst different professions.

“The earlier you can identify any indications that you’re starting to slip, the quicker and easier it is to fix it and make sure it doesn’t become a big problem that blows up. Isolation can be a hinderance when you don’t have an external lens to feed back to you.

“Too many people self-sacrifice and forget about themselves to look after somebody else, and they just go down that path. It’s a gradual process that you may not notice but people around you do.

“Have a support network who can honestly tell you when you’re stressing out and be part of that network for other colleagues.”

The Law Society’s Practising Well initiatives offer resources through counselling, mentoring and other support networks to help lawyers to take positive steps to actively

care for their mental health and wellbeing.

We are here because we want to be here to make a difference

The lawyer members of the Practice Approval Committees are volunteers with a wide and diverse range of legal experience. “Before each monthly meeting, we need to digest hundreds of pages of material to see the wood from the trees to form our viewpoints. Despite the workload, we take a lot of care, responsibility and pride in what we achieve together as a committee. We are here because we want to be here,” says Truman.

Anne also expresses a mutual sense of purpose. “We know our decisions have an impact on a person’s livelihood, our colleagues in the wider profession and the public. We enjoy the work and want to do it well.”

Representing the voice of the public on the committee, Steve has great respect for his fellow lawyer members. “I have a lot of respect for the work of the committees.

The information disclosed publicly is often a fraction of the actual material reviewed by the committees. I hope lawyers and the public can have faith that they’re being well served by these people.”

Outside of their regular meetings, the Practice Approval Committees meet annually to share their observations and hear from experts, such as drug and alcohol counsellors or an insolvency expert, on topics that can present as problems for practitioners, or counsel, in relation to case law developments.

Along with over 340 regulatory volunteers at the Law Society, the Practice Approval Committees are instrumental in maintaining a strong and trusted legal profession that the public can benefit from.

In the next edition of *LawTalk*, we will analyse the Supreme Court case *New Zealand Law Society v John Llewellyn Stanley* [2020] NZSC 83 and how the Courts in New Zealand have set out the approach to the test for ‘fit and proper’. A media release of the decision is available on the Courts of New Zealand’s website. ■

FOUND

Outsource document discovery to free up your time and resources

discoveryspecialists.co.nz



**Discovery
Specialists**





NZLS CLE Property Law Conference 2024

ABOVE: Hall of Fame inductees
(L-R) Justin March, Niamh McMahon, Duncan Terris, Jeannie Warnock and Robbie Muir

Highlights of this year's NZLS CLE Property Law Conference were the high calibre of speakers who combined energy and good humour with strong and relevant messaging. Networking was also a major feature of the conference

which culminated in the evening cocktail event to welcome and celebrate new inductees to the Property Law Section's "Hall of Fame". This was the second intake to the Hall of Fame, which was established in 2020 to recognise

individuals whose contribution has been truly outstanding and who, over their careers, have demonstrated exemplary service to the legal profession and to the practice of property law. ■





Looking for Answers? Quick. Qualified. Correct.

Research results matter!

Take the leg work out of your legal research and put it in the experienced hands of the Law Library's research services team. From research to document delivery and more, contact the team today for the right results, right on time.

lawsociety.org.nz/law-library



Property Law Section membership brings you more

The New Zealand Law Society's Property Law Section (PLS) was established in April 2000 to help property lawyers meet the many changes and challenges of law practice, and to support them as they deliver the highest possible quality service to their clients. It is also an active contributor to the Law Society's property law reform work.

One of its current goals is to educate both the legal profession and general public about the breadth of property law as a practice area. This goes well beyond conveyancing related to the buying and selling of residential property. Topics in the section's quarterly magazine, *The Property*

Lawyer, give a glimpse into this diverse subject area. They include estate planning and administration, trust law, commercial leases, resource management, Māori land and sustainability/climate change (with a property law theme of course!). Elder law, covering retirement villages, occupation right agreements and enduring powers of attorney, are also within the section's purview.

The pace of property law reform has accelerated. Property lawyers contributed to two recent Law Society law reform submissions: the Law Commission's Second Issues Paper Review of Adult Decision-making

“One of its current goals is to educate both the legal profession and general public about the breadth of property law as a practice area. This goes well beyond conveyancing related to the buying and selling of residential property”



Photos on pages 32–34: Lawyers attend the Property Law Section's Thinking Property event held in Dunedin



Capacity Law and the Residential Tenancies Amendment Bill. Additionally, the PLS corresponded with the Ministry of Business, Innovation and Employment regarding the implementation of the Incorporated Societies Act 2022, with a specific focus on residents' societies.







A recent highlight saw the PLS partnering with the Natural Hazards Commission Toka Tū Ake to host a webinar on the new Natural Hazards Insurance Act, which came into force

on 1 July. It replaced the Earthquake Commission Act and modernised the legislation, and introduced changes relevant to property lawyers who help homeowners navigate issues with insurance. Some of the changes include a new Code of Insured Persons' Rights and a new, independent dispute resolution pathway for natural hazards claims. There are also new definitions, providing clarity of cover and entitlements for homeowners. Toka Tū Ake has followed this up with a public

information campaign to encourage New Zealanders to know their cover and understand where insurance starts and finishes.

A lesser-known service provided by the PLS is the opportunity to tap into the knowledge and expertise of a network of experts from around the country. The section regularly answers queries from members on a variety of property-related topics. Responses are usually prepared with recourse to the PLS Executive Committee,



-  Latest immigration updates
-  Support for immigration lawyers and advisers
-  Immigration Reference Group (IRG). Regular clarification on policy questions
-  CPD
-  Join now
-  www.nzami.co.nz



specialist subcommittees or the Chair or Deputy Chair, depending on the nature of the enquiry. Through the collective wisdom from these specialist groups, they are often able to provide helpful insights. Responses do, of course, come with a disclaimer that they are not a substitute for specific legal advice.

The PLS has relationships with all the major trading banks, and is often asked to review, and sometimes it proactively seeks,

changes to banks' general instructions and solicitors' certificates. It also supports and assists in the professional development of property lawyers through its best practice *PLS Guidelines*, dissemination of topical property law information, and through its e-dealing consultancy service. The section facilitates networking and discussion among its members and hosts regular CPD-qualifying regional lunchtime seminars throughout the country. ■

Did you know?

Your 2024–25 New Zealand Law Society membership includes membership to a Law Society section of your choice. If you are not already a member, join now to gain access to a broad range of services and support offered by the Property Law Section. lawsociety.org.nz/membership.

Employment Law Conference 2024

Cordis, Auckland | 31 October – 1 November

“A lot has changed since our last conference. Employment law practitioners operate in a rapidly changing world where developments in legislation, common law, technology and an ever-changing society mean we all must be agile in order to remain relevant and respond to employment issues. This conference will cover not only developments in New Zealand, but also larger issues including international obligations and modern slavery. In addition to looking to the future, we acknowledge our past and recognise its impact on our present.”

Chair: Her Honour Judge M S King

Keynote Sessions:

- In Good Faith – British understanding of the Treaty of Waitangi in 1840
Presenter: Ned Fletcher
- Not All Roads Lead to Rome, Nor Indeed to Wellington – the relationship between the Māori experience of employment and the power dynamics in our history. *Presenter: Dr Hana O'Regan ONZM*
- Sailing on Uncertain Seas: Employment Law in Aotearoa New Zealand 2024 – in search of the lighthouse. *Presenter: Chief Employment Court Judge Inglis*

View the full programme and book your place today!
www.lawyerseducation.co.nz/shop/Conferences2024/25ELC



Take control of your KiwiSaver investments

With the KiwiWRAP KiwiSaver Scheme you can work with your adviser to invest in shares and managed funds from around the world. Choose from over **400 investment options**, including Apple, Vanguard, Berkshire Hathaway, index funds, ETFs and so many more.

It's time to get advice and treat your KiwiSaver as an investment.

Now you can.



★ ★ ★
Highest average member balance
as at March 2023*

Find an accredited adviser at www.kiwiwrap.co.nz



www.kiwiwrap.co.nz | 0800 KIWI WRAP (0800 5494 9727)

Designed for investors with a balance of \$50,000 and above.

Available only through a KiwiWRAP accredited adviser.

Consilium NZ Limited is the issuer and manager of the KiwiWRAP KiwiSaver Scheme. The Product Disclosure Statement and a full list of investment options for the KiwiWRAP KiwiSaver Scheme is available at www.kiwiwrap.co.nz.
*KiwiSaver Market Review 2023 (Melville Jessup Weaver).

KiwiWRAP
KiwiSaver Scheme