LawTalk

KŌRERO MŌ TE TURE

A new way forward

WINTER 2025

New Zealand Law Society
Te Kāhui Ture o Aotearoa

Contents

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.

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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*

Rule of law: is winter coming?

BY **FRAZER BARTON**

As I enter my third and final one-year term as Law Society President, change and how our profession deals with it is very much on my mind. The world is shifting at a rate that we once would have considered impossible. Legal practice has shifted dramatically, going from fax machine to AI in just a few decades. The legal profession also faces ongoing and demanding legislative changes both here and internationally. Democratic norms are under threat globally, often at the hand of elected leaders. We need only look at what's happening in the United States to be reminded daily of the importance of the rule of law and administration of justice.

The Law Society is strongly committed to advocating for lawyers and the legal profession in this context. At a recent Council meeting, I shared my concerns about what's happening on the world stage at present and how it reinforces for me, the importance of the rule of law in New Zealand. It is a key priority underlying much of the work the Law Society does.

The Law Society has taken a proactive approach by preparing a report on strengthening the rule of law in Aotearoa New Zealand, which will be released on 25 June. Partnering with LexisNexis and Victoria University of Wellington, this report marks a significant milestone in the Law Society's ongoing commitment to safeguarding and promoting the rule of law.

I enjoyed catching up with many Auckland-based lawyers at our Inaugural Annual Breakfast with the Chief Justice, the Right Honourable Dame Helen Winkelmann. It was a pleasure to introduce Justice Winkelmann who delivered an engaging address about the critical role courts play in a stable and peaceful society, and the common responsibilities the judiciary and the profession share in upholding the rule of law. Her insights and address are covered in this edition of LawTalk.

Adding to the quality of our law

Law reform and advocacy have always been a vital part of the Law Society's role, and our work in these areas has been some of the most rewarding to me as President. It is becoming increasingly clear that the work of these expert volunteers is now more important than ever.

In the past 12 months we have made 82 submissions on discussion documents and 43 submissions on bills. These submissions have covered a wide range of topics, from the Term of Parliament Bill to the taxation of not-for-profits, and other regulatory and justice reforms. Some of this work has been prepared at pace, responding to reforms progressed under urgency. Over many years now, the Law Society has been clear that urgency should be used judiciously, and that policy development and public consultation processes are essential to good law.

Regarding our submissions to select committees, it's been delightful to hear from cabinet ministers, both current and former, that submissions from the Law Society are highly valued and well respected. It's clear our contribution adds enormously to the quality of laws being passed in this country. This is something of which we can collectively be proud.

From the outside it might be unclear how our advocacy and law reform work impact your daily life. Perhaps it doesn't in an immediate and tangible way, but it is work for the greater good of not just our profession, but all of Aotearoa New Zealand.

Ingredients of a functioning democracy

As evidenced by what's happening globally, we know you can't have a working democracy without the

rule of law and a key part of that is access to justice. You can't have access to justice without functioning legal aid – and I look forward to the Law Society contributing to the current legal aid review, and its eventual outcome. Internationally, New Zealand remains respected for upholding the rule of law, but there is an onus on all of us to ensure that the legal profession works together to maintain a strong, trusted democracy.

Last year at the International Bar Association (IBA) conference in Bucharest, I met Baroness Helena Kennedy who referred to all lawyers as defenders of human rights no matter which area of law they practise in. Numerous speakers at the conference spoke of attacks on judicial independence and lawyers. Around the world law firms are being penalised by governments for representing 'unpopular' clients. This is a reminder of why legal independence matters.

Recently, at the IBA Bar Leaders conference in Milan, there were similar conversations. These are important discussions to be part of. We need to understand what is happening in other countries and remain vigilant in our own.

Catching up with in-house lawyers

Speaking at the In-house Lawyers Association of New Zealand (ILANZ) Conference last month, I offered the observation that it is possible we take the rule of law for granted in New Zealand, and that we do so at our peril.

I also spoke about another topic the Law Society is passionate about – wellbeing in the legal sector. The Law Society is very much aware of the pressure the legal profession finds itself under in 2025. The increasing workloads, fiscal environment, and significant legislative changes, all of which sit uncomfortably against a backdrop of disruption and uncertainty.

Concerns about lawyer wellbeing are a global issue. All the research undertaken here and overseas highlights worrying concerns about stress and the wellbeing of lawyers by comparison to the population and other professions. For these reasons the Law Society and ILANZ have made lawyer wellbeing a priority and are working hard to provide wellbeing services to the profession and members, including a contract with Vitae to run the free Legal Community Counselling Service. In the past two years more than 500 lawyers have taken advantage of this service.

This month also sees the launch of our Wellbeing in Action Webinar series, among many other events. Collegiality and connection are an important part of our work, and I am delighted when my board papers report strong turnout for our events across the motu.

The ILANZ conference was an excellent example. The event was enormously successful and enjoyed a great turn out and a range of stimulating speakers. It was pleasing to see people taking time to connect, reflect and spend time with each other. I know the enormous value of connecting with a fellow lawyer who understands the pressures that I face.

Courts updates and Bill of Rights 35th Anniversary

In this edition of LawTalk, we provide an update on Te Au Reka, the new digital case management system. And for those involved in commercial litigation in Tamaki-Makaurau Auckland, the article on the Auckland commercial list is a must-read.

We showcase the New Lawyers Conference, which is on 22 August

in Ōtautahi Christchurch. Designed by new lawyers for new lawyers, the conference will focus on the future of practising law. I encourage all early career lawyers to attend – whether straight from university or with a few years under their belt.

On page 16 there is information about the upcoming conference series: *Bill of Rights Act: Legacy and Lessons – Where to now?* A collaboration with University of Canterbury, the seminar series and conference will reflect on 35 years of the Bill of Rights Act, and generate discussion among the legal profession about the future value and importance of the Bill of Rights Act as part of a strong, functioning democracy.

A long-planned life change

Many of you will be aware that my professional life has undergone a notable change recently. After 37 years at Anderson Lloyd, I have retired from that practice to become a barrister, working from home in Ōtepoti Dunedin. This is a long-planned move, but I genuinely miss the wonderful team of lawyers I had around me, not to mention the privilege of having someone else organise my technological needs! I am becoming more familiar with the challenges faced by my sole practitioner peers, and registering for GST is several hours of my life that I won't get back. However, one of the many positives of my new life is that my day now starts with my youngest granddaughter Te Ao Marama joining me for breakfast.

I hope you enjoy this edition and for the next quarter will commit a little time to creating life balance, engaging with others and not taking ourselves too seriously. ■

Frazer Barton re-elected, welcome to our new Board members

At its meeting on 11 April, the Law Society Council re-elected President Frazer Barton for a third one-year term. Mark Sherry was voted in as the new South Island Vice-President, after Taryn Gudmanz stepped down. "Taryn, you have been a steady voice around the Board table, and we thank you for your valuable service", Frazer said. Mark was previously Chair of the Property Law Section and is the Managing Partner at Harmans Lawyers in Christchurch.

Christchurch lawyer Anna Fox was appointed as an Independent Board Observer. A Partner at Saunders Robinson Brown, Anna has deep experience in corporate, commercial and property law. She is a Director of the Nelson Building Society and chairs their audit and risk committee.

Anna and Mark join existing Board members Ataga'i Esera, David Campbell, Jesse Savage, and Board Observers Baden Vertongen and Michael Mills. ■

LEFT: Anna Fox, Taryn Gudmanz, Mark Sherry

Use your expertise to make a difference

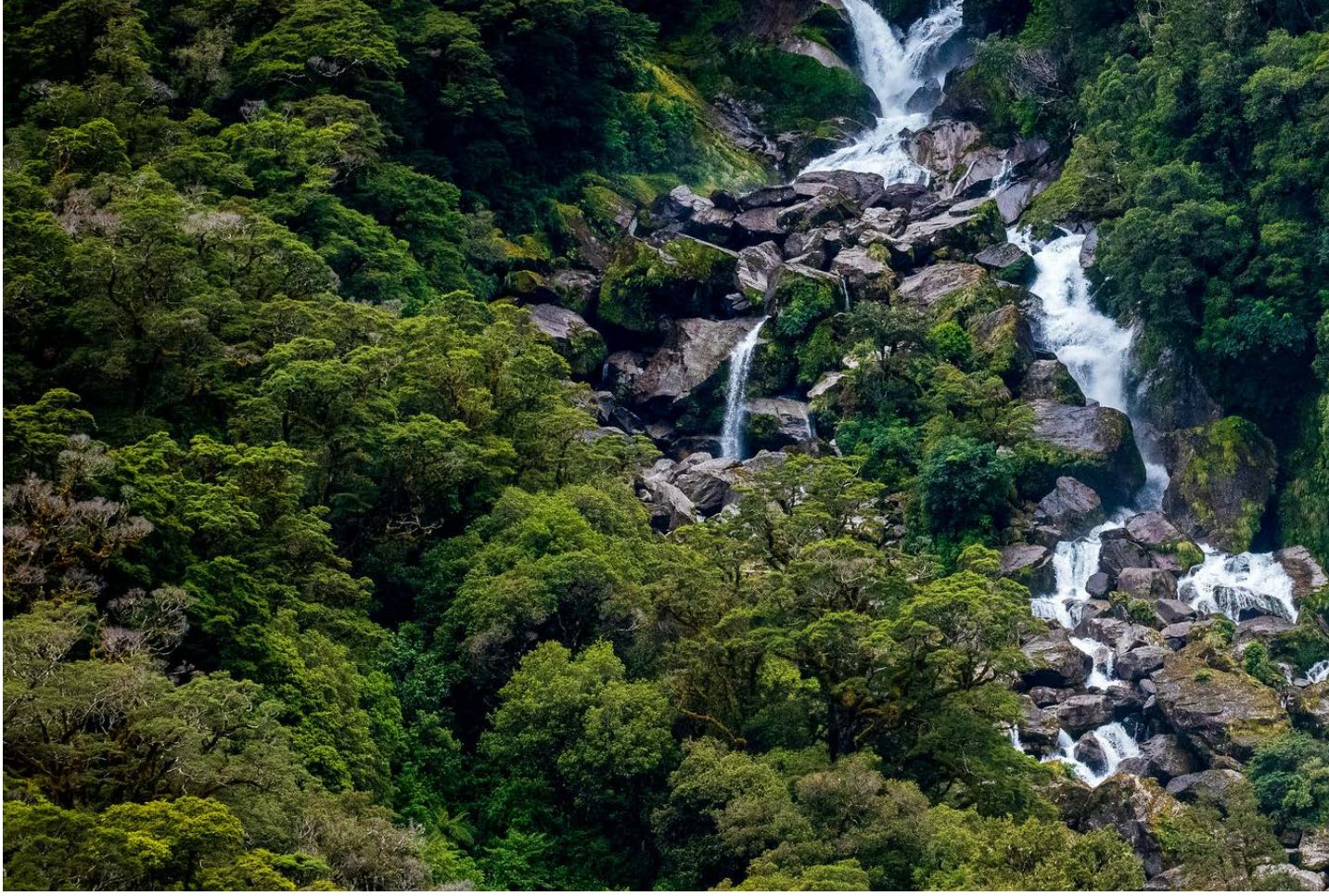
Interested in volunteering but can't commit to a permanent role?

Join over 1,200 Law Society volunteers and make a meaningful contribution to your profession and the people we serve.

The Lawyers Complaints Service is looking for cost assessors who are fundamental to the fair and efficient processing of costs complaints.

For more information,
email *warrick.hickman@lawsociety.org.nz*

New Zealand Law Society
Te Kāhui Ture o Aotearoa



Modernising our courts to improve access to justice: Te Au Reka

The Ministry of Justice and the Judiciary are working together to deliver Te Au Reka, an exciting programme to modernise how our courts and tribunals function and improve access to justice.

Justice David Goddard, Te Au Reka Judicial Lead, and Victoria McLaughlin, Deputy Secretary, Te Au Reka at the Ministry of Justice talk about the importance of Te Au Reka and what the legal profession can expect.

Te Au translates as 'current' or 'flow', and Reka translates as 'sweet, palatable, and pleasant. ' Te Au Reka conjures an image of a case management system that enables court processes to flow seamlessly from beginning to end.

Te Au Reka will make a significant difference to all those who access and participate in our courts and tribunals, by establishing trusted, modern, and responsive digital case and court management capability. It will move courts away from manually intensive, paper-based processes to modern and proactive digital case management. This will make it easier to engage with the courts, reduce uncertainty, improve the effectiveness of the court, and support access to justice.

The Digital Strategy for Courts and Tribunals of Aotearoa New Zealand identifies Te Au Reka as one of the judiciary's four highest priority technology initiatives. The project is a once in a generation

ABOVE LEFT: Justice David Goddard, Judge of the Court of Appeal and Te Au Reka Judicial Lead
ABOVE RIGHT: Victoria McLaughlin, Deputy Secretary, Te Au Reka, Ministry of Justice

ABOVE: Te Au translates as 'current' or 'flow', and Reka translates as 'sweet, palatable, and pleasant. ' Te Au Reka conjures an image of a case management system that enables court processes to flow seamlessly from beginning to end.

modernisation of the processes supporting the operation of the courts.

Te Au Reka will enable the legal profession and court participants to engage with the court through a secure digital portal (the 'ePortal'), including filing online, accessing a calendar of upcoming events, tracking the progress of cases, receiving reminders, and accessing case documents. Over time, Te Au Reka will support collaboration between parties, including preparing bundles of evidence for filing with the court. In the ePortal, lawyers will be able to enter case details (such as names or addresses) in an initial filing and the information will be available for re-use across subsequent filings on that case.

Courts will be able to manage the entire life cycle of a case electronically, reducing the administrative burden on the registry and the time invested in managing the risks associated with manually intensive paper processes. The Judiciary will work digitally, confident that all the information about a case is at their fingertips and their decisions are actioned promptly.

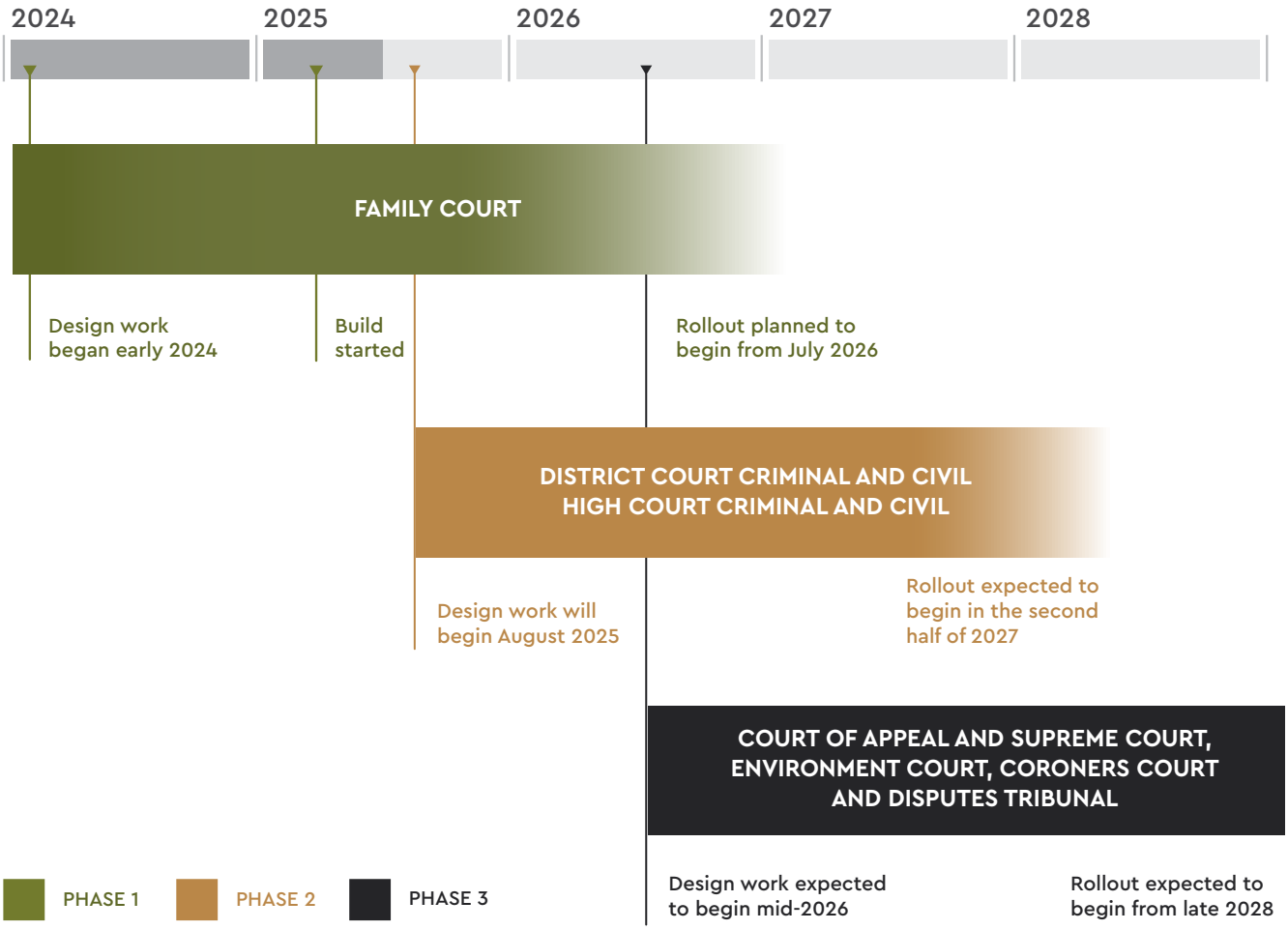
Te Au Reka will be rolled out in the Family Court first

The first jurisdiction that will benefit is the Family Court. Significant design activity has occurred since early 2024, and the build is now progressing. Te Au Reka is planned to begin rollout in the Family Court from mid-2026, for new cases.

The Government has recently agreed that design work for the next group of jurisdictions can begin from August this year. Originally, the intention was that this second phase would only focus on District Court criminal proceedings and civil proceedings (other than family proceedings). The Government and the Judiciary have approved bringing forward work in relation to High Court criminal and civil proceedings to take place at the same time, with the rollout estimated to begin from mid-2027. Dates for the rollout will be confirmed once the design activity is complete.

Finally, from late 2028, we plan to begin rolling out functionality that supports appellate processes (including proceedings in the Court of Appeal and Supreme Court), as well as extending Te Au Reka to the Environment Court, Coroners Court, and the Disputes Tribunal. Further information on this will be available once planning starts next year.

Timeline for Te Au Reka implementation

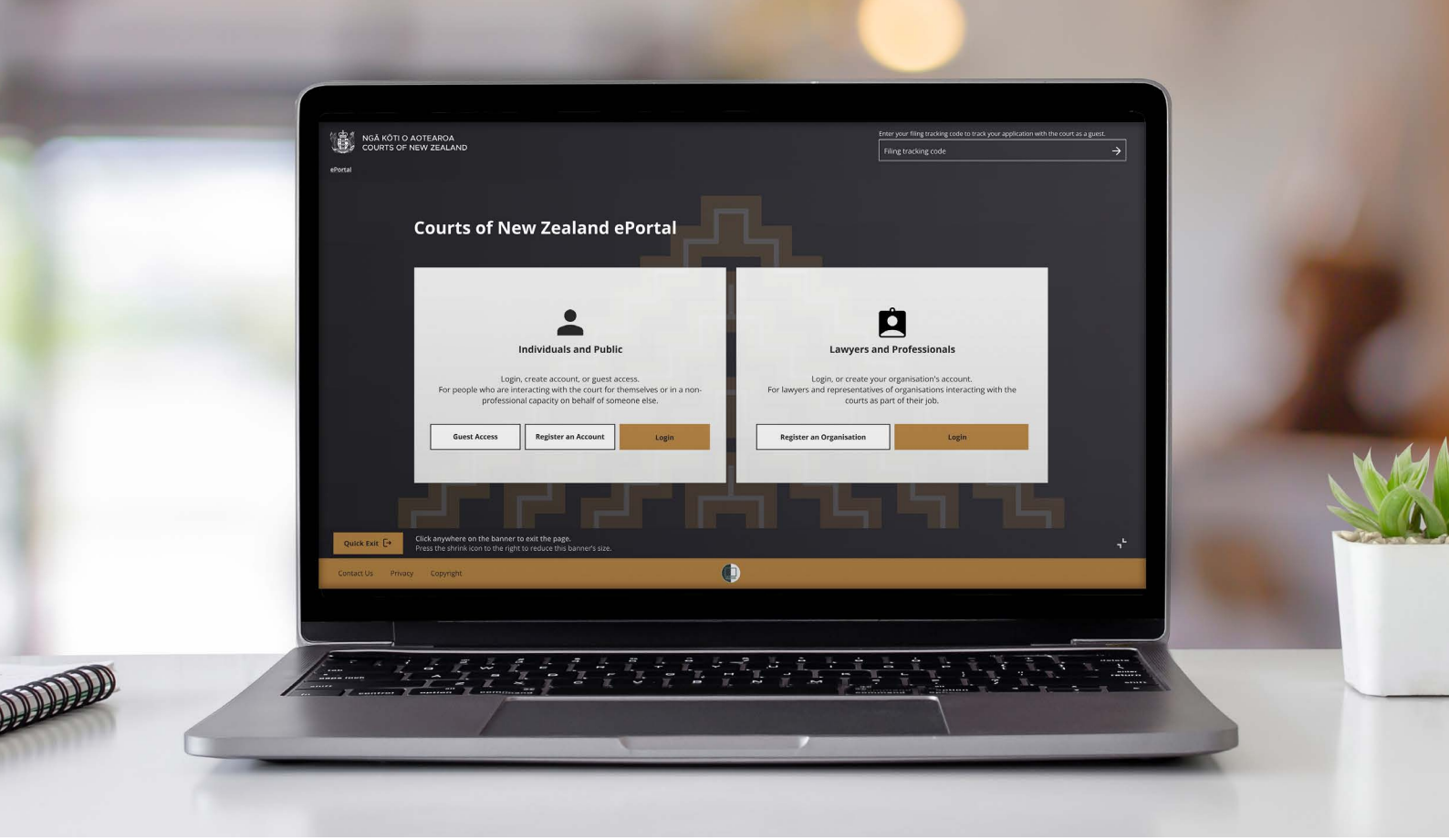


Designing Te Au Reka for the user

It has been, and continues to be, very important to the Ministry of Justice and the Judiciary that Te Au Reka is a joint initiative, governed and managed in a way that reflects our joint and separate responsibilities. Internationally, this has been found to be critical to the success of similarly complex projects, requiring sustained focus and commitment. A user-centred approach also requires meaningful involvement from users – not at the end but all the way through.

Last year, we completed the substantive parts of the design for the Family Court. This included testing the design using functionality that courts in other countries have found difficult to deliver. To do this, three proofs of concept (small builds) were produced to test how the solution would function before we built the real thing. These small builds enabled us to learn what worked and, more importantly, what did not work in the design. They enabled people to experience how different ways of designing the solution create new ways of working and ways of thinking about how we practice. Input from the profession into these small builds was instrumental in refining the design. The proofs of concept focused on the following areas:

- Family Court – judicial decision-making in court and in chambers, where the solution needs to support recording of detailed and complex decisions without hindering the flow of the proceedings.
- Criminal List Court – supporting judicial decision-making in a busy List Court, where the solution needs to support a high speed environment while ensuring the judge can engage meaningfully with court participants.
- High Court Civil – supporting the creation of an electronic bundle of evidence (casebook) and using it in a hearing, where the



ABOVE: A mock-up of how the ePortal home page is likely to look. The design of the ePortal adheres to Government Web Standards.

solution needs to support parties to collaborate and enable those attending the hearing to work with the casebook in real time, including making annotations and notes that only they can see.

The Family and Criminal List Court proofs of concept tested the immediate generation of decision documents, available to court participants as soon as a judge has made their decision.

A highlight of 2024 was testing the usability of the proofs of concept in mock courts in Christchurch, Wellington, and Auckland. Members of the Judiciary, the legal profession and court staff were involved, providing helpful feedback on design and usability. For the High Court mock court, a law firm used the proof of concept to build the bundle of evidence, acting as counsel for the parties.

The project team also worked on the design of the ePortal. This involved producing mock-ups of screens which were tested with members of the legal profession and other court participants. As with the proofs of concept, these mock-ups enabled the project team to refine the design by incorporating feedback from users including the profession.

The proofs of concept and the ePortal screen mock-ups have given us confidence that the technology underpinning Te Au Reka can meet the complex needs of the courts and court participants. They also have shown us that, if designed well, Te Au Reka will be intuitive to use, reducing the time it takes to become proficient.

Data protection and information security are key considerations in the design of Te Au Reka. Careful consideration is being given to the technical design to ensure the right safeguards are in place. As part of the design work, the project team are defining the ways Te Au Reka will work functionally: for example, the information access settings for ePortal users. These types of functional design decisions are governed by primary legislation, court rules, and principles determined by the judiciary.

Court rules will make the use of Te Au Reka mandatory for lawyers

Changes to the Family Court Rules 2002 are required to enable digital ways of working in the Family Court.

Late in 2023, the Ministry of Justice asked for input on areas of the court rules where changes may be needed to make sure Te Au Reka can operate in the Family Court. Submitters shared their thoughts on service, access to information and how the rules will accommodate the period of change between the old ways of working and new.

Following consultation, the Ministry of Justice and the Judiciary have confirmed that the use of Te Au Reka will be mandatory for lawyers involved in new proceedings in the

> "We are already working to make sure that the legal profession is supported through the change to digital ways of working in the courts"

Family Court, unless exempted in certain very limited circumstances. The Ministry of Justice's Policy team have since made an exposure draft of proposed changes to the Family Court Rules publicly available. Consultation on the draft has now closed and the Ministry's Policy team is considering any further changes that may be needed before the rules are finalised, in consultation with the Judiciary.

In parallel, work has begun on the approach that will be adopted for rule changes to enable use of Te Au Reka in criminal and civil jurisdictions, in consultation with the Rules Committee. Work on the rule changes for these jurisdictions will also involve consultation with the legal profession. These changes will enable electronic ways of working and will require lawyers to use Te Au Reka in the courts where it is rolled out, again subject to certain very limited exemptions.

Making Te Au Reka a reality

With the Family Court design work now complete, the project team have started to build Te Au Reka for the Family Court. Getting to this stage is a major milestone that has taken years of work, including valuable input from the legal profession.

We are already working to make sure that the legal profession is supported through the change to digital ways of working in the courts. The legal profession will be represented on a newly established Change and Transition reference group. This group's purpose is to provide advice on our approach to training, and to ensure we have the right support in place so that the profession feel confident in the transition to Te Au Reka.

Reference groups have also been set up to support the build of the ePortal. These groups include legal professionals from a range of practice areas, as well as from organisations supporting court participants such as Community Law Centres.

The build of Te Au Reka is complex with lots of moving parts, including user testing and feedback along the way. In the background, the project team is starting to prepare for the design of Te Au Reka for the District Court and High Court. As we get further into the design for these jurisdictions, user reference groups will change and evolve.

Keeping the profession informed

We have a big and exciting year ahead as we prepare for this change. You can expect to hear more from us as we work towards delivering Te Au Reka. ■

New Auckland Commercial List expected to change commercial litigation

BY **JUSTICE SALLY FITZGERALD**

Chief High Court Judge

As members of the profession may be aware, the High Court is developing a new Commercial List, which is expected to come into operation in October this year. The List differs from the Commercial List that operated in Auckland many years ago, in that the Commercial List Judges (who will be drawn from the Commercial Panel) will not only case manage proceedings entered onto the List but will also preside over the trials.

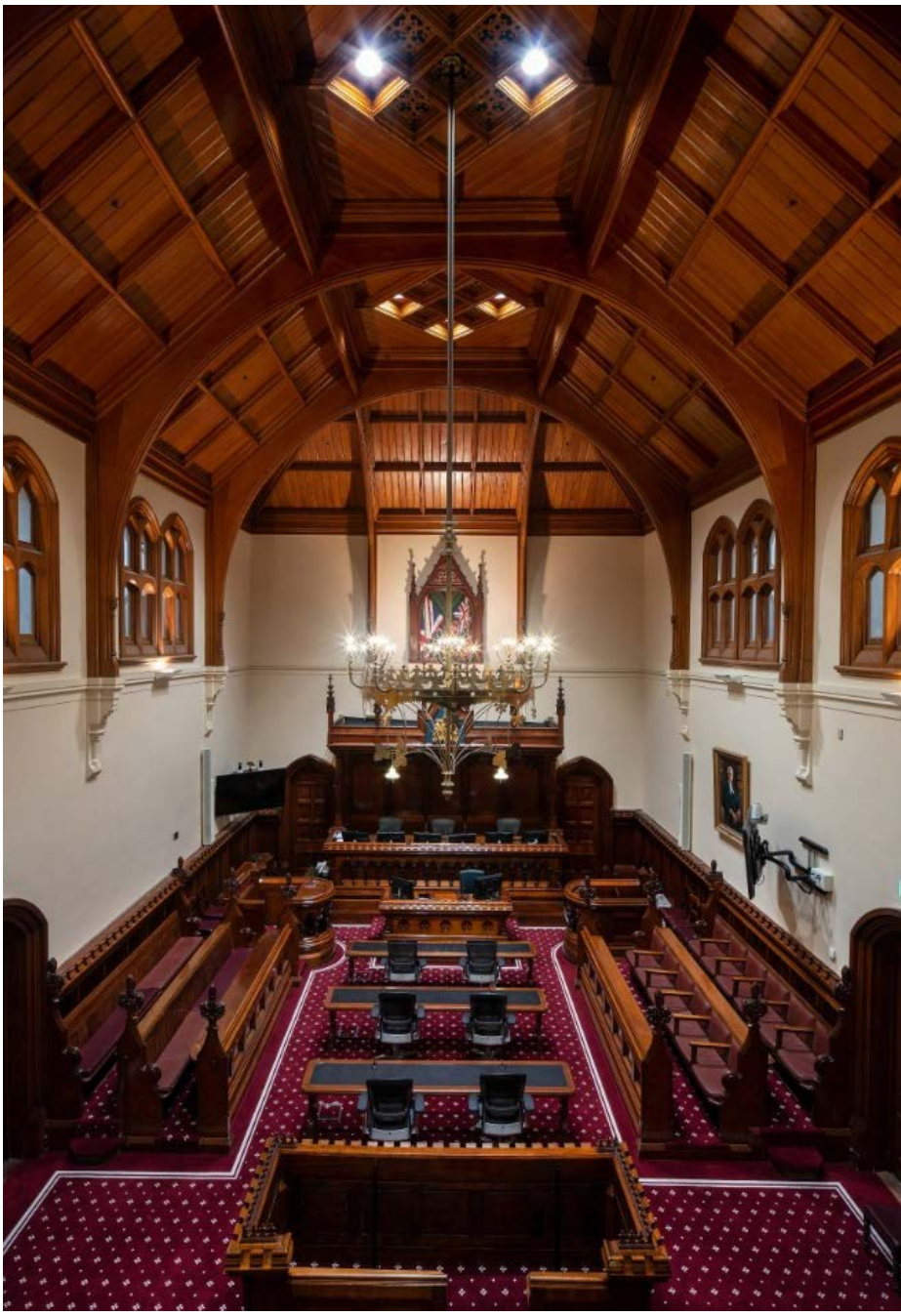
The processes to be deployed in the Commercial List are expected to reduce considerably the time spent in interlocutory phases, and lead to earlier substantive hearing dates. The combination of these initiatives will materially change the approach to commercial litigation in Auckland.

The new List will be based on the very successful and longstanding New South Wales Supreme Court's Commercial List (NSW Commercial List), adapted appropriately to local conditions. This project was initially proposed by the Chief Justice, who asked me to visit Sydney in late 2023 to observe the NSW Commercial List in action, and to consult with the NSW Supreme Court Judges who manage it. This visit was an important first step in adapting the List to the New Zealand context. A session on the NSW Commercial List led by Justice James Stevenson (who presently oversees the List) at the High Court's 2024 annual conference provided further insights. The New Zealand model has since been developed in consultation with a profession working group, made up of senior members of the profession who specialise in commercial litigation.

The NSW Supreme Court's Commercial List

The purpose and aim of the NSW Commercial List is to provide specialist expertise for the matters heard by it, and to ensure that cases are heard as expeditiously as possible. This involves a reasonably rigorous case management regime, with a focus on the real issues in dispute. Key case management features include:

- A callover of interlocutory applications ("motions") held at 9.15am each Friday, and hearings (of usually no more than one hour) held later that day for applications ready to be heard.
- A directions list held at 10am each Friday.
- Encouraging the parties to use mediation (or other alternative dispute resolution mechanisms) to resolve the proceedings or any material issues arising.
- Firmly discouraging applications for summary judgment and strike out, the focus instead on being progressing matters to prompt substantive hearing.



RIGHT:
The Hight Court, Auckland
Andy Spain

- An expectation that the parties will actively engage on and agree timetabling and other steps required to progress a matter to trial.
- That requests for Court intervention in relation to timetabling will be rare.

A link to the NSW Commercial List Practice Note is *here*.[1]

The High Court's new Commercial List

The Auckland Commercial List will broadly adopt the same processes and procedures. The overriding approach will be an expectation that parties will actively engage and cooperate on those steps necessary to progress a proceeding to trial (including an early focus on the real issues in dispute), in response to which the Court will offer close case management, prompt determination of interlocutory disputes, and earlier trial fixtures.

As noted, Commercial List Judges will be drawn from the Commercial Panel, and will be assigned to the List by the Chief High Court Judge with the concurrence of the Chief Justice. The List Judges will be taken out of the main High Court roster and manage their own schedule of hearings for cases entered onto the Commercial List.

Justice Gault and I will be the inaugural Commercial List Judges.[2]

Qualifying criteria for entry onto the Commercial List will be similar to the requirements specified in clause 5(1)(a)–(f) of the *Senior Courts (High Court Commercial Panel) Order 2017*, subject to the value of the claim or transaction in dispute being not less than $1 million.

Like the NSW Commercial List, the Auckland Commercial List will be administered in Court on the Friday of each week. A callover of interlocutory applications will be held at 9.15am, followed by the directions list at 10am. In-person appearances will generally be expected (much like the current civil Duty Judge lists), though with remote appearance where required.[3]

> "As noted, the judicial working group leading the development of the Commercial List has consulted with a profession working group, to ensure that the processes and procedures for the List will be practical and effective"

When a proceeding is first placed on the List, it will be allocated a first listing for directions on the Friday of the following week. At the first and/or subsequent listing for directions, directions will be made with a view to the just, speedy, and inexpensive disposal of the proceeding, aiming to avoid unnecessary steps.

Applications for strike-out, summary judgment, and for discovery prior to factual evidence being served, will be discouraged unless clearly consistent with the just, speedy, and inexpensive resolution of the issues in dispute.

At the 9.15am callover, any interlocutory applications ready to be heard will be scheduled for hearing later that day, or if not possible (due, for example, to courtroom unavailability), on an afternoon the following week. Interlocutory hearings will generally be no more than one hour, and it is expected that many hearings will result in the issues being resolved by agreement, or at least narrowed significantly. Decisions – and reasons if required – will be issued promptly and will be relatively brief.

The Court's expectations of counsel appearing in the List include:

- Active engagement and discussion to seek to agree timetabling and similar matters.
- Requests for Court intervention in relation to timetabling only being necessary in the rare instances where, for good reason, reaching agreement has proved to be impossible.
- That counsel will discuss and seek to agree on any categories of documents for discovery before or after fact evidence. Applications concerning disputed categories of documents for discovery are expected to be rare.
- Submissions will be focused and concise, and time allocations will be respected, including at the substantive hearing or trial.
- Parties will have considered referring their disputes to mediation prior to or after entry onto the Commercial List.

A link to the current draft of the Commercial List Practice Note can be found *here*.[4]

As noted, the judicial working group leading the development of the Commercial List has consulted with a profession working group, to ensure that the processes and procedures for the List will be practical and effective. The judicial working group has greatly benefitted from the profession's input. The collaboration between the judiciary and the profession has been instrumental in shaping a case management system which it is hoped will be both effective and responsive to the commercial community's needs.

More detailed profession education roadshows about the Commercial List will be held in July. ■

1. *https://supremecourt.nsw.gov.au/documents/Practice-and-Procedure/Practice-Notes/equity-practice-notes/current/SCEQ32025_02_26_Practice_Note_Commercial_List_and_Technology__Construction_List.pdf*
2. We may also draw on other Commercial Panel Judges from time to time, particularly in relation to substantive fixtures on the Commercial List. The Commercial Panel will remain in operation, dealing with qualifying commercial cases in centres other than Auckland. Some commercial cases in Auckland will remain on the Commercial Panel, for example, those already assigned to Commercial Panel Judges, extremely large cases which would otherwise risk "swamping" the Commercial List's schedule, and other cases suitable for bespoke case management.
3. Such as counsel being located outside of Auckland.
4. *https://www.courtsofnz.govt.nz/assets/6-Going-to-Court/practice-directions/practice-notes/high-court/Draft-CL-Practice-Note.pdf*

RIGHT: James Rapley KC
Barrister Bridgeside
Chambers

The Bill of Rights Act 35 Years On

When Sir Geoffrey Palmer's Bill of Rights Act was enacted in 1990, it was seen as something that would provide greater protection for fundamental rights and freedoms vital to democracy and New Zealand's multi-cultural society. It was designed to place limits on the powers of government and restrain abuse of power. Its application and limitations, then and now, have often been the subject of debate and criticism but it became one of the most important changes to our democracy in New Zealand's history and remains a cornerstone of New Zealand's human rights framework.

This year the New Zealand Bill of Rights Act (NZBORA) marks its 35th anniversary and it seems fitting to take a moment to reflect on the significance of this enduring legislation.

LawTalk invited James Rapley KC, Executive Dean University of Canterbury Professor Petra Butler and Law Society Manager of Law Reform and Advocacy Aimee Bryant to consider the impact of the 35-year-old act.

What is the most significant impact of the Bill of Rights Act?

James Rapley KC
Barrister Bridgeside Chambers

It was quite revolutionary for Aotearoa New Zealand, an Act of Parliament like no other. It created a set of statutory rights to which all are entitled. Its purpose is to set out values and notions all would subscribe to, rights that always existed but were never set out in one form, in one act, in one document. They existed in other countries, just not in Aotearoa New Zealand. NZBORA's purpose was grand; to affirm, protect and promote human rights and fundamental freedoms in New Zealand. It was originally intended to be entrenched, a form of superior law, an Act to trump all Acts. The Bill of Rights Act didn't become superior law, it was passed and has the same status as any other legislation. This is due to Westminster's constitutional orthodoxy that one Parliament can't bind another. Parliament is sovereign. Parliament is supreme and if NZBORA was supreme law then power shifts; it shifts from the elected parliamentarian to the unelected judges.

Despite NZBORA being just an Act, like any other, the Court has taken it seriously, particularly in the first few years, and most recently in the last few years. Our highest appellate courts have confirmed it is a document with constitutional significance and casts the court in a supervisory role. Elias CJ said the enactment of NZBORA did indeed effect radical change to New Zealand law. And that the rights affirmed by the NZBORA are enacted as fundamental values of the legal system.

The impact of NZBORA is most clearly seen in the criminal law. It ensures the state behaves and placed a check on its power. It demands that searches are lawful and reasonable, that suspects are treated fairly and appropriately and that trials are fair. If the state breaches those fundamental values and rights, evidence may be ruled inadmissible and the case dismissed. Initially in the early 1990s, breaches of fair trial standards or rights often meant evidence was excluded and cases dismissed. What followed could be described as a period of judicial retreat followed by legislative confirmation in the Evidence Act whereby despite the breach of a right it was held that exclusion of the evidence may not be appropriate and continuing with the trial may not be unfair. So

ABOVE: Executive Dean Professor Petra Butler, Faculty of Law, University of Canterbury

"The impact of NZBORA is most clearly seen in the criminal law. It ensured the state behaves and placed a check on its power"

Executive Dean Professor Petra Butler
Faculty of Law, University of Canterbury

Looking back to the 30th anniversary of the Bill of Rights Act, Parliament underscored the Act's status as one of New Zealand's constitutional documents. This recognition is significant, harking back to Geoffrey Palmer's White Paper, which envisioned the Bill of Rights as supreme law. Although it was not entrenched, the Act has transcended its role as a mere statute to become a fundamental part of the constitution.

It has led to law changes that have significantly influenced the legal landscape. Early cases such as *Noort* and *Baigent* cemented New Zealanders' right to a lawyer and now, at least in the criminal courts, we have this face off and balancing exercise.

the right to compensation for a right's breach, respectively.

The Bill of Rights Act has also profoundly influenced legislative processes. Government departments, trained in policy development that aligns with the Bill of Rights and Human Rights principles, routinely consider how new legislation can be crafted without infringing on these rights – asking how can we do this without violating the Bill of Rights? This proactive approach is crucial in addressing New Zealand's access to justice crisis, emphasising prevention over remediation of rights violations.

Moreover, the legal profession has seen a generational shift. The majority of lawyers today are educated in the principles of the Bill of Rights so there's a heightened awareness. They bring their Bill of Rights Act knowledge to bear inter alia when advising clients, to policy development, and to the vetting of bills.

LEFT: Aimee Bryant
Law Society Manager of Law Reform and Advocacy and PhD Candidate

Aimee Bryant
Law Society Manager of Law Reform and Advocacy and PhD Candidate

One of the Act's most visible and immediate impacts was on criminal procedure rights. We may have seen this retrench a little, or maybe it has just not sustained our early excitement: I'm thinking here in particular of the admissibility of improperly obtained evidence. I do think the Act, and many of the rights it protects, has entered the public lexicon. That must surely be the dream of many legislative drafters! For me this is a comforting reflection of the Act's constitutional role.

From my current vantage point, which has me travelling through hundreds of cases from the first years of the Act through to the end of 2024 for my PhD, the Act's overall impact has been significant yet variable in terms of both the breadth of its impact, and the evolving way in which it has achieved that impact. We've seen, for example: the development of remedies in the form of damages through to declarations of inconsistency, and the growing role of the Act within both statutory interpretation and judicial review. As we get further away from the Act's genesis, it is fair to say there are some areas where hopes might not have been realised, and there's still a lot we can learn from the last 35 years. So many questions! Has the right-vetting process been sufficiently protective? How does the Act influence or constrain the daily conduct of officials? Do unsuccessful claims tell us anything about rights that are perhaps deserving of inclusion in the Act? I'm hopeful I can address a small part of my curiosity through my PhD, which is a socio-legal approach to considering who the claimants have been and what this can tell us.

Why is it important to reflect on this legislation at this point in time?

Executive Dean Professor Petra Butler

Without delving too deeply into politics, it is an opportune moment to discuss rights once again, particularly the rule of law and adherence to the Bill of Rights, which is designed to protect citizens from government overreach. This is the fundamental purpose of the Bill of Rights.

There are certainly areas where it would be beneficial to pause and consider how to best give full effect to the Bill of Rights. In today's world, the challenges are becoming more significant, and the rapid advancements in technology present new and unforeseen issues. It is crucial to ensure that our rights discourse remains robust and relevant, adapting to these fast-moving changes while continuing to safeguard the freedoms that are essential to our society.

For example, comparative analysis is important when it comes to analysing the rights enshrined in the Bill of Rights Act. Even though the New Zealand courts have developed their own Bill of Rights Act jurisprudence over the last 35 years, it remains important to draw on the expertise and experience of other jurisdictions and the pronouncements of the UN Human Rights Committee.

Despite an entire generation educated in the Bill of Rights Act there is still a lack of exploration in non-traditional areas. The focus has predominantly been on criminal law, criminal procedure, some aspects of discrimination, and freedom of expression – these are the classic areas.

Supporting the rule of law is essential, and our democracy must engage in these discourses. The Bill of Rights is a crucial instrument in this regard. Ultimately, it acknowledges the necessity of allowing courts to tell Parliament when it has erred.

> "These rights are something we need to take seriously and cherish – without them our most vulnerable and marginalised people can and will be taken advantage of by others, by those with power and those in power"

Aimee Bryant

The Act reflects many of the normative rules and values central to our liberal democratic society. It organises and informs the relationship between the Government and its citizens. In addition to reflecting on policy, legislation, and administrative decision making through the lens of the Bill of Rights Act, we should also reflect on the content and performance of the Act itself. Those protected rights have not undergone any substantive amendment since passage of the Act, but it is not just about reflecting on the Act in terms of whether it requires amendment – it is about reflecting on how we use the Act, other ways in which it can be used and argued, and how it continues to serve the people. Regular post-legislative scrutiny is always the dream, and while maybe that should look a little different for legislation of such constitutional importance, a 35th birthday is as good a time as any to take stock.

James Rapley KC

It is timely that we reflect on our BORA because some of us in the criminal jurisdiction have become weary or flat and wonder what's the point in bringing a breach of rights argument as the court will let the evidence in anyway. It's timely because despite it being in force for 35 years many in the police appear to pay it no heed, or give it lip service or worse actively try and get around it. It's timely because when this is drawn to a court's attention often there are no consequences. The police will continue to breach a suspect's rights if no one does anything about it if it is ultimately uncovered.

It is also timely to reflect on NZBORA in a wider sense given the political space that we're in now. Things are very different politically and socially in 2025 than they were in 1990. In 1990 we had the First Past the Post electoral System. We still had the Privy Council until 2004. It's timely to reflect on NZBORA because we are now experiencing historic miscarriage of justice cases being brought to light. It's timely because as a country we are looking at ourselves, our government, our system, our constitution, the Treaty of Waitangi and wondering what sort of nation we want to be.

It is therefore a good time to ask are we happy with the NZBORA that we've got; do we all agree with these rights in the first place? And if we do – are we happy that it is just a normal act? Are we happy with how it's being applied by parliamentarians and by our courts?

Given the modern world in which we now find ourselves living, such rights are turned to more than ever. These rights are something we need to take seriously and cherish – without them our most vulnerable and marginalised people can and will be taken advantage of by others, by those with power and those in power. So, let's dust off this 1990 Act, read it, think about it, debate it and look at its legacy and what lessons we have learnt over the last 35 years and ask ourselves where to now? ■

The University of Canterbury Faculty of Law and the Law Society are collaborating on a seminar series and conference to recognise the 35th anniversary of the New Zealand Bill of Rights Act.

The Bill of Rights Act: Legacy and Lessons – Where to from here? event series will culminate in a two-day conference, 1–2 October at the University of Canterbury in Ōtautahi Christchurch.

With a range of highly regarded speakers and panellists, this is a conference not to be missed.

For more information on the seminars and conference, go to the Law Society website NZLS | Bill of Rights Act: Legacy and Lessons – Where to now?

Rule of Law a focus at inaugural annual breakfast

"If people do not have access to independent courts, the rule of law is replaced by the rule of the strong over the economically weak and the vulnerable."

True to the old-fashioned phrase, the Law Society's Inaugural Annual Breakfast left no one in doubt that the early bird does indeed get the worm.

The worm in this case being an inspiring and engaging address from the Right Honourable Chief Justice Dame Helen Winkelmann GNZM.

The sold-out event saw lawyers join Law Society President Frazer Barton and Chief Executive Katie Rusbatch to hear Justice Winkelmann's insights on the broad issues, concerns and opportunities facing the courts and the profession.

Following a welcome from Frazer Barton and a karakia mō te kai from Tataioterangi Reedy from Te Hunga Rōia Māori o Aotearoa Māori Law Society, Justice Winkelmann began her address by stating that the judiciary and the legal profession shared a common mission, namely to uphold the rule of law and ensure access to justice across all sectors of society.

An ideal to strive towards

She described the rule of law as "the ideal we are all committed to", adding it was the constitutional duty of both the profession and the judiciary to uphold it. She posited that it was also an ideal that societies must continually strive for, rather than a fixed state to be achieved, adding that few, if any, societies have achieved a state where all have equal access to the protection of the law.

"A society cannot be fair if all are not equally subject to the law and equally entitled to its benefit. Strong, independent courts are necessary to secure that condition. If people do not have access to independent courts, the rule of law is replaced by the rule of the strong over the economically weak and the vulnerable."

She also observed that justice as an ideal is never secure, but one that the profession needs to keep working towards regardless. It was a testament to the profession, she said, that despite knowing the system often falls short, it continues to strive toward the ideal of the rule of law due to a strong commitment to fairness.

She also acknowledged Aotearoa New Zealand's strong global ranking in the World Justice Project's Rule of Law Index – surmising that "we are doing something right."

"We ranked sixth in the World Justice Project's Rule of Law index, ahead of many wealthier countries. People working in the system know the rule of law is served well in this country by a skilled legal profession committed to access to justice as a defining characteristic of excellence. The profession supports and values justice-focused organisations such as Community Law and its associates, Aotearoa Disability Law, and Youth Law. We know too that we have independent courts, made up of judges with high levels of integrity."

She clarified the significance of this ranking by explaining that the index weighs, amongst other considerations, ease, and quality of access to civil and criminal justice. For civil justice, the index focuses upon accessibility and affordability of civil justice, and also the absence of corruption, discrimination, and delay.

ABOVE: Chief Justice Dame Helen Winkelmann

No room for complacency

But her optimism aside, the Chief Justice warned against complacency. Despite the country's comparatively high performance, significant barriers to justice remained, especially for the economically disadvantaged, the geographically isolated, and those living with disability.

"We know that inequality of means, of geographic location, inequality of access to legal information and assistance, and disability all tilt the playing field when it comes to obtaining the protection of the law."

She also noted that the rule of law was in decline worldwide as indicated by an eroded public confidence in institutions and attacks on the independence of the judiciary. Both of which strike at the heart of rule of law, she said, and send a worrying signal, as courts are often targeted by those who resist any restraint of their abuse of power.

Justice Winkelmann shared a quote from a former world leader:

> *"The legal system we have, and the rule of law are far more responsible for our traditional liberties than any system of one man one vote. Any country or government which wants to proceed towards tyranny starts to undermine legal rights and undermine the law."*

She pointed out that these words may have hailed from Margaret Thatcher at a 1966 Conservative Party Conference in Blackpool but still resonated today and served as a reminder that attacks on rule of law are not new. She noted that she was very much looking forward to the Law Society's report on strengthening the rule of law in Aotearoa New Zealand.

Barriers to access to justice

While acknowledging an independent judiciary was not under serious attack in Aotearoa New Zealand, she affirmed that there are definitely "work on" areas for our country, referring to her concerns that systemic barriers such as cost, procedural complexity, and delay continue to impede access to justice.

Justice Winkelmann also expressed particular concern about the cost of litigation, noting that both legal representation and court-imposed hearing fees remain prohibitively high. She reiterated the need for a more robustly funded legal aid system and criticised the government's recent 30 per cent increase in court fees as counterproductive to equitable access.

Shifting to procedural reform, she discussed significant changes being implemented to civil litigation rules in the High Court, set to take effect in January 2026. These reforms, the result of an extensive review by the Rules Committee chaired by Justice Francis Cooke, aimed to simplify procedures, reduce costs, and promote timeliness.

She appreciated that the reforms would demand a cultural shift from both the judiciary and legal practitioners but emphasised that they are essential for ensuring the sustainability and integrity of the justice system.

"For many, our courts remain an intimidating and difficult place to seek justice – and rules alone cannot change that. There is still much work to be done to improve access for Disabled People and the Deaf Community."

She cited the findings of the Royal Commission of Inquiry into Abuse

FAR RIGHT: Law Society Chief Executive Katie Rusbatch, Chief Justice Dame Helen Winkelmann, Law Society President Frazer Barton

in Care and acknowledged the justice system's historical failure to adequately support disabled participants to navigate court processes and avoid the re-traumatising effects of being in our adversarial system.

"Fairness and justice require that our courts do a better job of supporting disabled and deaf communities. We know that disabled people suffer much higher levels of victimisation than the general population and have greater levels of civil justice because of vulnerability to exploitation."

She added that supporting access by members of the disabled and deaf community should be seen as simply part of the core work of the courts and that she was pleased to announce the forthcoming publication of the Kia Mana *Te Tangata Handbook* – designed to equip judges with practical tools for accommodating disabled and deaf court users – and urged the profession to engage with this important resource when released.

The Chief Justice acknowledged that new rules and initiatives would bring significant changes for the profession but reassured participants that the judiciary was already working with the Law Society on seminars and guidance materials that would be rolled out later this year to support the transition.

She noted that substantial improvement would require changes at an operational level and that as registry services fall within the Ministry of Justice's remit, she had requested investment in two initiatives: enhancing online information about accessibility and establishing centres of expertise within registries to guide best practices. She praised the work of Aotearoa Disability Law and the judiciary's Tomo Mai Committee for their leadership in identifying current systemic barriers, such as the lack of clear, accessible guidance on how to request courtroom accommodations.

Delay across the court system was another issue highlighted by Justice Winkelmann. Longstanding structural limitations, including caps on judicial appointments and inadequate courtroom infrastructure, are seen as key contributors. These issues, she noted, were especially acute in the District and High Courts, affecting both civil and criminal jurisdictions. In the High Court, for example, homicide trials now make up roughly 80 per cent of criminal workload, leaving little room for other serious matters and placing further pressure on the District Court. She also drew attention to the shortage of experienced criminal defence lawyers, another problem linked to the fragility of the legal aid system. The consequences of such delays, she emphasised, are felt most acutely by victims, defendants, and their families.

Transforming the courts

Looking to the future, she outlined several transformational projects, chief among them Te Au Reka, a digital case and court management system being developed jointly by the judiciary and the Ministry of Justice. She remarked that this long-overdue shift would see our paper-based operational system replaced to enhance efficiency, transparency, and access to justice. She informed the room that the system will be rolled out gradually, region by region between 2026 and 2028, starting with the Family Court.

She said that Te Au Reka had been identified in the Digital Strategy for Courts and Tribunals as one of the judiciary's highest priority technology initiatives. She urged participants to investigate this "important document", wryly observing that it was a "surprisingly good read."

She was clear, however, that such projects do come with risk and must be designed and implemented carefully noting that the judiciary and the Ministry of Justice were alive to those risks. She was also quick to express how grateful she was to members of the profession working with the judiciary on the design

phases and to the Law Society for facilitating this work.

Remote participation protocols were another talking point during the address and Justice Winkelmann hoped that people were already aware of the work underway to create protocols to regulate remote participation in courts. She was pleased to note that the judiciary had developed and issued the District Court and High Court new guidelines for civil and family proceedings, with criminal protocols currently being finalised. While aware that remote technology offers significant efficiency gains, she took a moment to remind attendees that the judiciary also considers that sometimes remote participation is not appropriate – particularly where significant rights are at stake or the participant is young, vulnerable, or disabled. Minimum standards and safeguards, she affirmed, are a must and the right to a fair hearing must remain paramount.

"As Chief Justice, I regard the level of judicial control set out in these protocols, and the level of procedural protections, as being non-negotiable – because the right to a fair hearing is non-negotiable"

"As Chief Justice, I regard the level of judicial control set out in these protocols, and the level of procedural protections, as being non-negotiable – because the right to a fair hearing is non-negotiable"

In closing, Justice Winkelmann announced the launch of the Auckland Commercial List[1] – an access-to-justice initiative tailored to expedite the resolution of commercial disputes. She said that while it will involve the reprioritisation of judicial resources, she believes this is justified by the economic and legal significance of robust commercial law.

Partnership with the legal profession

Justice Winkelmann concluded her address by reiterating how much she appreciated the opportunity to speak to the profession, telling the packed room that "there is much for me to thank you for" including the legal profession's ongoing partnership with the judiciary in supporting and defending the rule of law, and for its contribution to the collaborative initiatives. She acknowledged the opportunity to reflect on all the work that has been achieved together, and the role the profession plays in explaining and defending the importance of an independent judiciary.

Law Society President Frazer Barton closed the event by warmly thanking the Chief Justice for her insights. He said her commitment to making the address an annual event makes it "more a case of ka kite anō rather than haere rā," and echoed her reminder about "the responsibility we all share in upholding the rule of law." ■

1. Refer to article on page 13 Justice Sally Fitzgerald

Professional Standards

Expert witnesses: counsel advocating for a client's position - where's the line?

Recently, the New Zealand Law Society Te Kāhui Ture o Aotearoa has received queries about whether it is permissible for counsel to ask an expert witness to amend or remove material from a court report, for the benefit of their client. This article provides guidance on this issue and examines counsels' professional obligations when interacting with expert witnesses.[1]

The starting point is always the unique position of an expert witness. In the civil context, an expert witness is bound by the Code of Conduct of Expert Witnesses in the High Court Rules 2016. The Court has held that the relevant obligations do not differ in the criminal context and apply to expert witnessess in criminal trials.[2]

The special role expert witnesses play in assisting the decision-maker is reflected in the statutory provisions dealing with admissibility "…[an expert opinion] *is admissible if the fact-finder is likely to obtain substantial help from the opinion in understanding other evidence in the proceeding or ascertaining any fact that is of consequence to the determination of the proceeding.*"[3]

Consonant with this unique role, key obligations for all expert witnesses are that:

- An expert witness has an *overriding duty* to assist the court impartially on relevant matters within the expert's area of expertise.
- An expert witness is not an *advocate* for the party who engages the witness (emphasis added).

The role of expert witness is to provide impartial, independent assistance to the Court. As a corollary to that, lawyers have specific obligations to take reasonable steps to ensure that the expert's independence is preserved.[4] As some commenters have described it, the expert witness should not be considered part of counsels' "legal team".[5]

Lawyers' obligations to uphold the special role of expert witness, aligns with counsels' broader duty of fidelity to the Court:

- r.13.1 "A lawyer has an absolute duty of honesty to the court and must not mislead or deceive the court."

As will be self-evident from this context, counsel engaging an expert witness needs to exercise caution in the way they interact with and make any requests of an expert witness. The primary concern is always to avoid any perception that the lawyer seeks to undermine the independence of the expert witness or compromise their overriding duty to the Court.

What does this mean in practice for counsel – how far can a lawyer go in engaging with an expert witness on their client's behalf?

- A lawyer can and should discuss with the expert witness the content of their evidence to test whether and how it addresses the key issue(s) or questions before the Court.
- Counsel can assist the expert witness, for example, through asking pertinent questions to point out gaps or inconsistencies in the expert's evidence or other witness evidence for the expert to consider. Counsel can also address potential weaknesses with the expert witness – for example, raising areas where the expert witness may need to consider clarifying or expanding on a statement. Counsel can and should also point out irrelevant material or issues around the admissibility of proposed evidence.[6]
- The lawyer must also ensure the expert witness is properly briefed and has all the relevant information before them.

Editing or re-framing expert witness briefs should be approached very cautiously to avoid the perception that the lawyer is 'shaping' the experts' evidence thereby undermining neutrality.[7]

In relation to the question of whether it is permissible for counsel in advocating for their client's position to ask an expert to remove or amend their report, the answer from Lord Denning on this point is clear:

> *"... [counsel] must not ask a medical expert to change his report, at their own instance, so as to favour their own legally-aided client or conceal things that may be against him. They must not 'settle' the evidence of the medical experts as they did in Whitehouse v Jordan, which received the condemnation of this court (see [1980] 1 All ER 650 at 655) and the House of Lords. As Lord Wilberforce said ([1981] 1 All ER 267 at 276, [1981] 1 WLR 246 at 256–257):*
>
> *'Expert evidence presented to the court should be, and should be seen to be, the independent product of the expert, uninfluenced as to form or content by the exigencies of litigation.'"*[8]

The position in New Zealand remains aligned with that taken by Lord Denning. The advocate "should in no way shape or coach the expert's evidence" to fit their theory of the case or advance their client's position.[9] More pointedly, commentators are clear that "A lawyer should never suggest that an expert witness's report be altered or modified to remove unfavourable aspects. Such conduct is usurping the fact-finding responsibilities of the Judge or jury."[10] Ultimately, a lawyer can decline to call an expert witness who will not support the client's case.

What are the consequences of a failure to adhere to the principles of expert neutrality?

The impact can be significant not only in terms of the proceedings themselves, but also professionally for both the expert witness and counsel, including that:

- Section 26 (2) of the Evidence Act permits the Court to exclude evidence of an expert witness who has not complied with the applicable rules of Court. Even if the evidence is not excluded:
  - the evidence may be given less weight
  - the reliability or credibility of the expert witness's evidence may be called in to question
  - another expert witness's evidence may be preferred.
- Attempting to influence or make inappropriate requests of an expert witness could also be a complaints and disciplinary matter for the lawyer involved. The rules in Chapter 13[11] are clear that a lawyer must not mislead or deceive the Court. The authors of *Professional Responsibility in New Zealand* observe that the "correct dealing with witnesses is fundamental to the integrity of the court and justice system".[12] Respecting and preserving the independence of expert witnesses is an integral part of this.
- The reputation of the professional expert witness is also on the line when they present evidence. Any suggestion that an expert witness has been improperly influenced or lacks impartiality can have a negative impact on their reputation and could result in disciplinary action in their own regulated sphere. An expert's willingness to work with particular counsel in the future could also be undermined if there is a perception that the lawyer may seek to shape or influence expert witness evidence.
- As with all professional obligations, if in doubt, seek advice or guidance from a trusted senior colleague or the Law Society's Panel of Friends. ■

1. For broader discussion of expert witness obligations see: CLE New Zealand Law Society seminar 'Expert Witnesses – important issues', Chris Browne and Julie-Anne Kincade, May 2025 available at *lawyerseducation.co.nz* and Matthew Palmer (ed) *Professional Responsibility in New Zealand* (online looseleaf ed, LexisNexis)
2. HCR Code of Conduct of Expert Witnesses and see: *R v Hutton* [2008] NZCA 126 and *R v Carter* (2005) 22 CRNZ 476
3. S25(1) Evidence Act 2006
4. r13.10.9 Lawyers and Conveyancers (Lawyers: Conduct and Client Care) Rules 2008
5. See: *Professional Responsibility in New Zealand* at 25.8
6. See *Professional Responsibility in New Zealand* at 25.2 fn 25
7. See discussion by J Kincade KC and C Browne (fn 1 above), at 21 which includes reference to the cautionary case of *Hudspeth v Scholastic Cleaning and Consultancy Service Pty Ltd* [2014] VSCA 78
8. *Kelly v London Transport Executive* [1982] 2 All ER 842 at 851 per Lord Denning (CA); *Whitehouse v Jordan* [1981] 1 All ER 276
9. *Professional Responsibility in New Zealand* at 25.8
10. See: *Professional Responsibility in New Zealand* at 25.3
11. Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008
12. *Professional Responsibility in New Zealand* at 25.2

Law Reform and Advocacy update

The last few months have been a busy period of both law reform submissions and engagement with the profession on various law reform and other practice issues. In the past quarter, the Law Society has made 12 submissions on Bills, and 24 submissions on a range of discussion documents released by government agencies.

Recent law reform submissions include:

- The Law Commission's Issues Paper on hate crime, *Hara ngākau kino*. The Law Society's submission acknowledged the seriousness of hate crime, but noted the establishment of new criminal offences demands strong justification, and there are significant information gaps about how the criminal justice system is currently recognising, responding to and denouncing hate crime, and whether denunciation of this type of offending is insufficient at present.
- A submission on the Anti-money Laundering and Countering Financing of Terrorism Amendment Bill, supporting proposed amendments to reduce enhanced customer due diligence requirements for customers that are low risk trusts. However, the Law Society raised concerns about proposals to broaden the definition of "designated non-financial business or profession", and to require that reporting entities undertake risk assessments in accordance with guidance produced by supervisors, rather than 'having regard' to such guidance.
- A submission on Inland Revenue's issues paper on Taxation and the Not-for-Profit Sector, suggesting that competitive advantage is not a compelling reason to tax business income derived by charities, and the fundamental issue is not whether business income derived by charities is taxed, but rather whether the Government remains satisfied it is appropriate to support charities through tax concessions. This would require a first principles review of the Charities Act 2005 and the definition of "charitable purposes".
- The Regulatory Systems (Occupational Regulation) Bill: the Law Society submitted in support of this Bill, which proposes amendments to the Lawyers and Conveyancers Act 2006. The amendments are aimed at improving the efficiency of the complaints process, and will allow the Lawyers Complaints Service to make an administrative decision – for specified purposes – not to refer a complaint to a Standards Committee. The Law Society consulted the profession on these proposals in 2021/2022, and they received broad support.
- The Term of Parliament (Enabling 4-year Term) Legislation Amendment Bill, which proposes to enact a mechanism to extend the maximum term of Parliament to four years in certain circumstances. The Law Society's submission notes that a variable Parliamentary term will create uncertainty, and majority opposition membership of select committees is an insufficient safeguard. Of particular concern, any extension to the term of Parliament is a significant constitutional change and the Bill's process has been deficient, and inconsistent with best practice policy development processes.
- A Department of Corrections consultation on the management of extreme threat prisoners (ETPs). The Law Society's submission expresses support for increased transparency and a review of the regime so that it affords prisoners their full rights under the New Zealand Bill of Rights Act 1990. It encourages a clear statutory framework for ETP designation and the establishment of corollary units, legal representation for prisoners facing ETP designation, the appointment of an independent panel to consider designation and segregation, and regular review of a prisoner's status where designated an ETP.

All public submissions are available on the Law Society's website.

Recent engagement with the profession and stakeholders

Recent work with the judiciary

The Law Society has been engaging with the Employment Court, MBIE Employment Mediation Services and the Employment Relations Authority about issues impacting employment lawyers and their clients.

Representatives on the Rules Committee have been involved in drafting the new High Court Rules, which are aimed at improving access to civil justice in the High Court, and the Law Society will continue to work closely with the Rules Committee and the Ministry of Justice to deliver training to the profession before the new Rules commence on 1 January 2026.

The Law Society has also been engaging with the Judiciary to develop a new Commercial List for the Auckland High Court. This initiative is expected to materially change the approach to commercial litigation in Auckland by reducing the time spent in interlocutory phases, and leading to earlier substantive hearing dates.

Finally, we worked with Judge Nicholls and Justice Fitzgerald to deliver an online session for the profession, to facilitate consultation on the District Court and High Court protocols for remote participation by defendants in custody.

Courthouse safety and security

The Law Society has worked with the Ministry of Justice to introduce a new process to enable lawyers to bypass the queue for court security, and proceed directly to the screening station. Lawyers can now show their entry on the Law Society's Register of Lawyers if they wish to bypass the security screening queue.

Alongside the Family Law Section, we also consulted the profession on preferences for the frosting of interview room glass within courthouses, to assist the Ministry of Justice with establishing a default position that can apply to new and refurbished courtrooms. Results were mixed, with a small majority preferring no frosting, and others raising concerns around privacy. Given the need to prioritise safety, the Law Society has suggested it would be best if the default for new rooms was no frosting, but where there is more than one interview room, there is a room available that has some privacy (whether in the form of partial frosting that does not obstruct the view of security, or through the location of that interview room).

We continue to engage with the Ministry of Justice about the implementation of Te Au Reka in the Family Court in July 2026.

AML/CFT reform continues

Throughout May, the Ministry of Justice undertook targeted consultation on design options for the proposed AML/CFT Industry Levy. The levy is intended to partially recover the costs of the AML/CFT regime, and the consultation set out design principles (such as proportionality and equity), as well as proposed metrics for calculation, and the structure of the levy.

The Law Society facilitated the provision of feedback from the profession, and at the time of LawTalk going to print, was preparing a submission to the Ministry of Justice.

Further consultation on the levy, including the legislative amendments required to enable it, will follow. It is intended collection of the levy will commence in mid-2027. Further AML/CFT reform is on the way, aimed at providing further regulatory relief and preparing New Zealand for the next Financial Action Task Force review in 2028. ■

Interested in the above? Join a law reform committee or the PLS law reform panel

Expressions of interest for membership of the Law Reform Committees and the Property Law Section's Law Reform Panel and subcommittees, will formally open in late July. If you are interested in joining, or would like additional information in the meantime, please get in touch via *lawreform@lawsociety.org.nz*.

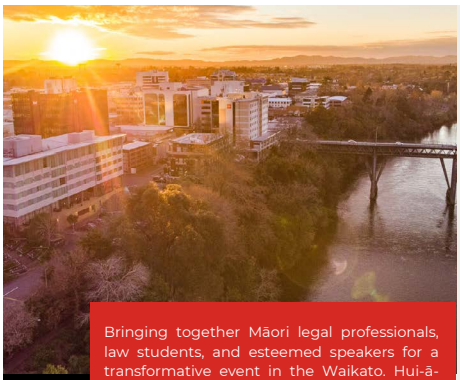
Strengthening the rule of law: insights into protecting the rule of law in Aotearoa New Zealand

When: Wednesday 25 June 2025, 5.30 – 6.30pm
Where: Faculty of Law, Victoria University of Wellington

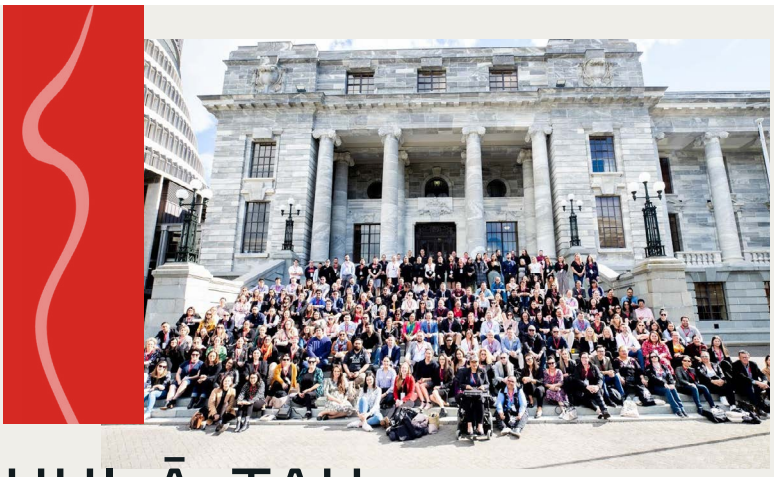
The Law Society, in partnership with LexisNexis, will launch its *Strengthening the Rule of Law in Aotearoa New Zealand* report. Law Society President Frazer Barton will present key findings. The event includes insights from LexisNexis, a panel discussion with legal experts, a Q&A session, and refreshments. Attendees will earn 1 CPD point.

Register today by scanning the QR code or visiting ***lawsociety.org.nz/events***

New Zealand Law Society
Te Kāhui Ture o Aotearoa



Bringing together Māori legal professionals, law students, and esteemed speakers for a transformative event in the Waikato. Hui-ā-Tau provides a platform for professional development, whanaungatanga, and critical discussions on pressing legal and political issues affecting Māori.



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The Māori Law Society

www.maorilawsociety.co.nz
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Being proactive about wellbeing

A deep belief that mental health services for professionals could be delivered more effectively prompted clinical and organisational psychologist Rajna Bogdanovic to found her company Optimally.

Formerly known as First Response Health, Rajna says that proactive wellbeing services services are often provided too little and too late.

Rajna had seen first-hand how job pressure – particularly in roles with high demand and low control – negatively impact on people's mental and physical health.

"Grinding through using willpower and intellect just won't cut it," she says.

Instead, Optimally develops and implements proactive wellbeing strategies for individuals and organisations. More recently Optimally has added an employee assistance programme to its offering.

The team's focus is on the professional services sector, including law firms.

Backed by science

Rajna says Optimally's proactive approach is backed by science.

"You cannot wait until you're unwell," she says. "The science and research are clear that a focus on early preventative intervention reduces the incidence and severity of mental and physical health problems."

While Rajna thought her career would lead her to provide psychological services in private practice or in hospitals dealing with individuals, after graduating she quickly realised that she wanted to work with groups and systems.

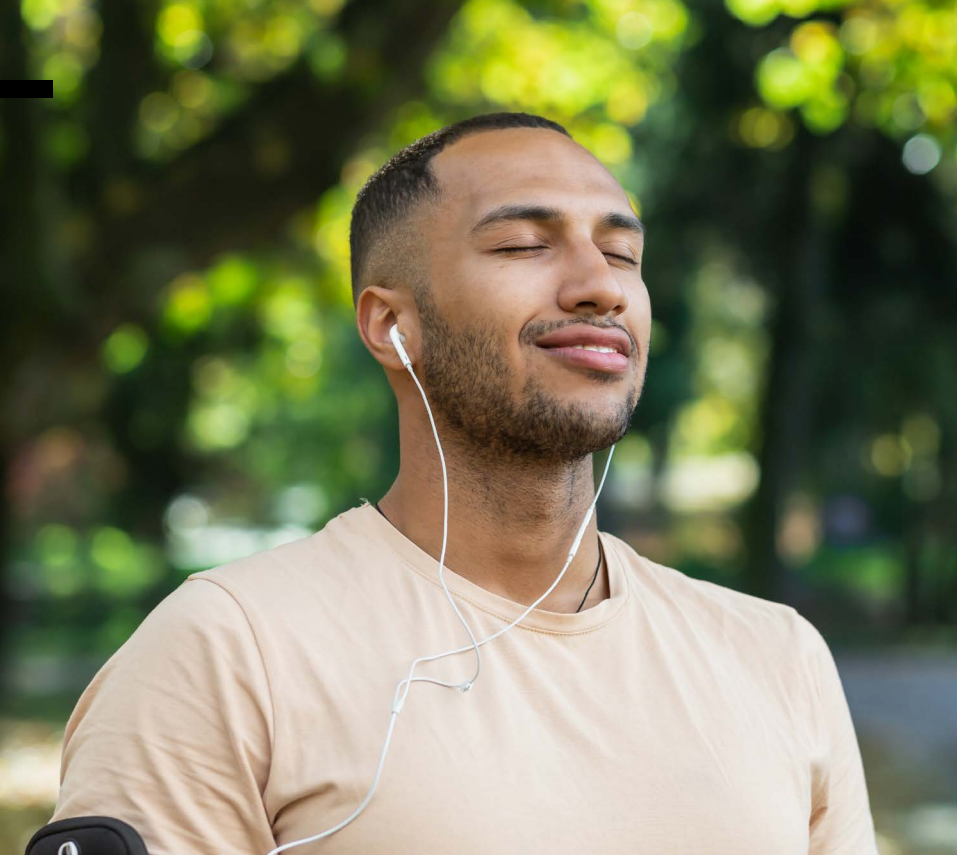
ABOVE: Rajna Bogdanovic Optimally, Founder and CEO

And after time working for United Nation's international criminal courts, she realised she wanted to work with lawyers.

"I love working with professional services – specifically lawyers," says Rajna. "They are receptive to optimising their mental and physical health."

However, Rajna says it is important that lawyers, like all professional services, create sustainable practice.

"You only have one life and it's important to think about the sustainability of it," she says. "You need to work out how to make the best use of your time and create



> "Whatever you decide to do, your body will thank you for it"

long term sustainable physical and mental health."

"It's not sustainable to work at pace and under pressure day after day. Everyone needs to include rest and recovery in their day."

Ultradian rhythm

Rajna explains that our bodies follow an ultradian rhythm – a natural cycle in which we alternate between periods of heightened focus and energy, followed by phases of rest and recovery.

"Honouring these rhythms by taking short breaks throughout the day can help sustain focus, energy, and overall performance," she says.

How to rest

Options include:

- Going outside
- Putting on headphones or ear pods
- Taking deep breaths to calm your system
- Taking a bathroom break and pause
- Having a micro break

"Whatever you decide to do, your body will thank you for it," she says.

Knowing yourself

Having self-awareness is also important, says Rajna.

"Before starting your workday, take five minutes to intentionally reflect on what lies ahead and identify practical strategies to manage potential stressors," she says.

Rajna says good questions to ask include:

- If something unexpected or stressful happens in your day, how are you going to manage it?
  - Will you take some breaths?
  - Will you change your self-talk?
  - Will you think about who you are working with?

Having a pre-emptive strategy to deal with situational stress will help you to feel much better physically and psychologically, says Rajna.

"You know your own triggers," she says. "So, before you get to work have a think about the day ahead and how you could manage them. It's not just about getting through; it's about being proactive and having strategies to look after your mental wellbeing."

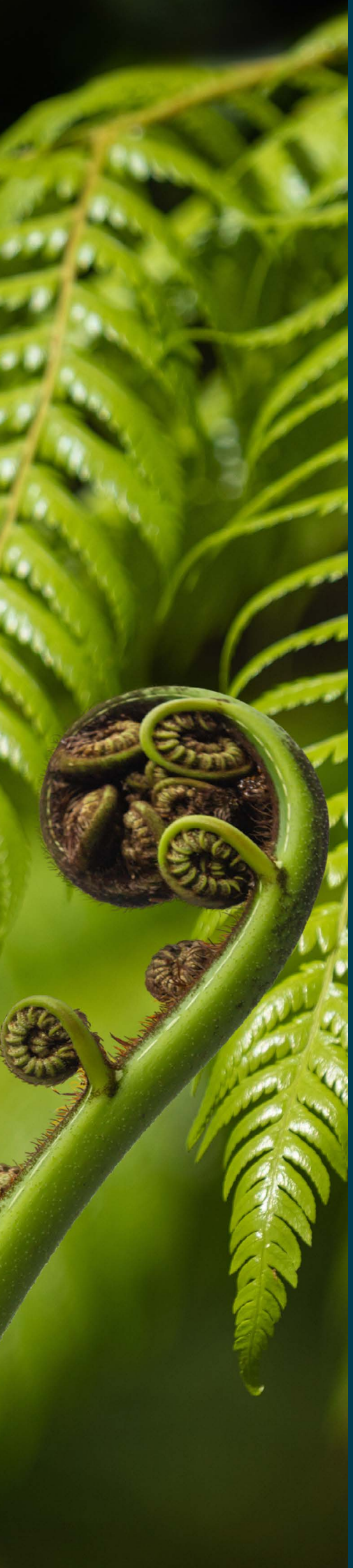
"Ask yourself the question, how am I going to physically and psychologically manage my day. And that includes how you're going to rest and recover at the end of it."

Learn more about Optimally

Find out about the Optimising Performance and Wellbeing webinar series, presented by the New Zealand Law Society Te Kāhui Ture o Aotearoa in partnership with workplace wellbeing services provider Optimally. ■

Optimising Performance and Wellbeing webinars

The New Zealand Law Society Te Kāhui Ture o Aotearoa in partnership with Optimally, is presenting a five-part webinar series entitled Optimising Performance and Wellbeing. The first session – Managing Workload Stress with Psycho-Neuro-Immunology – is being held on 12 June.



WELLBEING IN ACTION

Optimising Performance and Wellbeing

Lunchtime seminar series with Optimally

RAJNA BOGDANOVIC
Founder and CEO

SEINI O'CONNOR
Head of Clinical

Sessions

12 June	Managing Workload Stress with Psycho-Neuro-Immunology	1–2pm
30 July	Transforming Imposter Syndrome	1–2pm
26 August	Managing Compassion Fatigue and Vicarious Trauma	1–2pm
8 October	Supporting Your Colleagues	1–2pm
4 November	Top Topics in Legal Sector Wellbeing	1–2pm

Find out more
www.lawsociety.org.nz/events

New Zealand Law Society
Te Kāhui Ture o Aotearoa

Connection, collaboration and confidence building

Inaugural conference designed specifically for new lawyers

Lawyers in the early stage of their career are the focus of the inaugural New Lawyers Conference 2025. Being held at the wonderful Te Pae Christchurch Convention Centre, the conference is a must attend for early career lawyers to reflect, explore and connect with their peers.

It's the first Law Society conference designed specifically for new lawyers with 0-7 years post qualification experience (PQE).

"We've never had a national conference specifically for early career lawyers and that seemed to be a huge gap,"says Colin McDougall, the Law Society's Canterbury Westland Branch Manager and previously Convenor of the National New Lawyers Group, who has led the team putting the conference together.

"This group of lawyers encompasses those newly qualified to those with a number of years under their belt. But they're all still relatively early in their career trajectory and will benefit from the development opportunities the conference will provide."

Designed by new lawyers for new lawyers, the conference programme is forward thinking and includes personal and professional development opportunities for attendees to take into their legal journey and future practice.

ABOVE: Jordan Neville
Law Society, New lawyers Conference organising team

"We thought it was important to have new lawyers involved in shaping the conference programme and identifying areas of interest to their peers," says Colin.

Jordan Neville is one of the new lawyers on the conference organising team and is the current convener of the New Lawyers Committee for Canterbury Westland. He says that

in addition to developing skills and tools to help prepare lawyers for the future of the profession, attendees will be able to look at different but not commonly considered career path options within law.

"You don't come into law knowing all the pathways you can take. There are a whole range of career options within law that early career lawyers are not aware of," says Jordan.

Having started out working in a Community Law Centre before transitioning to a medium sized law firm, Jordan is now working as an Employed Barrister for Amy Lake Barrister based at Riverlands Chambers in Christchurch. "When I started out, I had no idea that was an option or that would become my pathway, however six years down the track here I am."

For those who are not familiar with the term employed barrister, it is a lawyer employed by a sole practitioner.

"My experience over the past six years of practice and my involvement with the New Lawyers Committee have shown me that there are diverse pathways for a career within the legal profession. Everyone has their own journey ahead of them, and each person brings their own unique character and perspective to the practice of law," says Jordan.

Opportunities to thrive

A panel discussion on legal careers will be facilitated by three dynamic senior lawyers sharing the real stories behind their career journeys. Sam Lindsay, a Director and Search Partner for Lawyers at Chisholm Clarke, will head the discussion. Sam also hosts the *What a Lawyer* podcast that reaches hundreds of kiwi lawyers at home and around the globe.

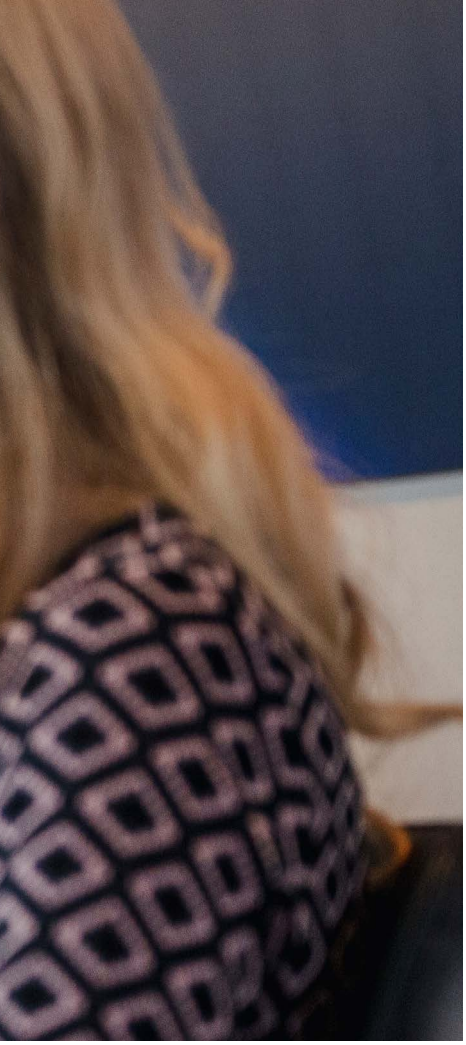
The session will explore how each of the panellists started out, and how they've navigated critical decision points, unexpected challenges, and evolving definitions of success. Rather than presenting a single path, the chat will highlight the diverse ways one can thrive in the legal profession both now and later in careers.

Core career capabilities

A vital professional capability for navigating the complex demands of contemporary legal practice is the development of emotional intelligence (EI). Dr Sarah Anticich will introduce the core competencies of EI.

Lawyers who develop these competencies are better positioned to maintain professional standards, foster productive relationships, exercise sound judgment under pressure and effectively manage the demands of the legal profession.

Joe Consedine, Co-founder of Mobilise – Inclusive Leadership



> **"Lawyers who develop these (EI) competencies are better positioned to maintain professional standards, foster productive relationships, exercise sound judgement under pressure and effectively manage the demands of the legal profession"**

and Allyship, will run a session on inclusive leadership and explore the critical traits of future-ready leaders. He will challenge conference attendees to think beyond technical excellence and look at a broader range of skills to develop to meet future leadership requirements.

With more ethnically diverse communities, a new wave of technological transformation impacting our workplaces and different work expectations from Gen Z, inclusive leadership is a strategic imperative.

"Both of these sessions will challenge attendees to look at the competencies they need to build their career into the future. Likewise, the session on AI which will look at the AI-powered legal tools available in NZ or coming soon and how to develop AI skills to meet the demands of the future legal landscape," says Colin.

Networking and connection

To top off the day, the conference dinner will provide ample opportunity for networking and meeting other early career lawyers. It'll be a more communal, move-around type of atmosphere with different types of cuisine to tantalise the taste buds.

"All in all, the conference will be a fantastic opportunity for early career lawyers to connect and foster relationships with each other, collaborate on what's important to them in their individual careers and develop more confidence and capability for their own pathway in law,"says Jordan. ■

Registrations are open now.
Go to the Events page of the Law Society website to register. New Lawyers Conference 2025 Tāraitia a anamata | Create the Future
When: Friday 22 August 2025
Where: Te Pae Christchurch Convention Centre

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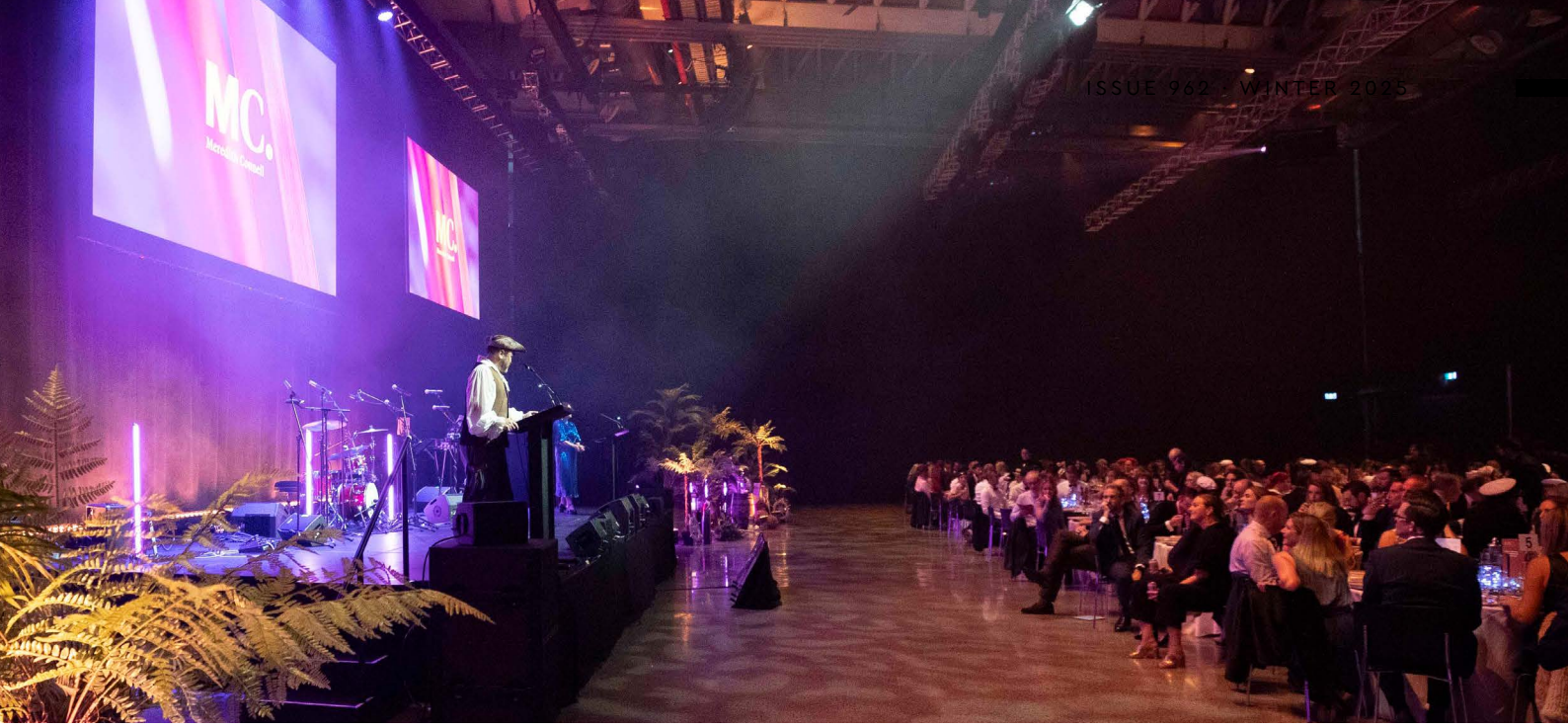

ABOVE: Photos from the annual ILANZ conference 2025

A wonderful turn out for the 37th annual ILANZ conference

A record number of delegates (nearly 450) attended our annual conference at the Viaduct Events Centre in Auckland, Tamaki Makaurau in May.

The Law Society was privileged to have a welcome video from the Attorney General, Hon Judith Collins KC; the Solicitor General, Una Jagose KC also presented and provided words of encouragement in her opening remarks. ILANZ President Ben Jacobs gave an overview of the importance of the Rule of Law, what ILANZ had achieved in the last membership year and what is coming up – namely our online communities.

Overall, we had 35 speakers over two days covering a wide range of topics including Whistleblowing, Fraud and Corruption; the Use of AI; Te Ao Māori and Law Reform; and Supporting

ABOVE: Law Society Chief Executive Katie Rusbatch

CONTINUED FROM PAGE 37

Neurodiversity in the Workplace. We also had the popular Meredith Connell Gala Dinner and Awards Ceremony and the AJ Park Welcome Function.

These concise comments from the feedback survey represent the general consensus – "A good range of speakers across different disciplines", "A varied and interesting programme' and 'I liked the mix of law and practice and wellbeing".

Our conference next year will be held in Whanganui-a-Tara, from 6-8 May 2026. ■

Amendments to the Law Society's Constitution

Following consultation with the profession with a view to modernising the Law Society's governance structure, the Law Society Council recently passed amendments to its Constitution. These amendments will come into force on 1 July and include amendments to the Board size and composition (including the introduction of Independent Board members), the tenure of Board members, how the President/Chair is appointed, and the ability to remove Board members. ■

UPCOMING CLE EVENTS

TRUSTS CONFERENCE 2025

In-person *Online* *12 CPD hours*

When: 23-24 June 2025
Chair: Greg Kelly

REMEDIES FOR BREACH OF CONTRACT 2025

In-person *Online* *2 CPD hours*

When: 17 June 2025
Presenters: Nina Blomfield & Alice Poole

RESIDENTIAL PROPERTY TRANSACTIONS 2025

In-person *13 CPD hours*

Starts: 14 July 2025
Presenters: Various

TRUSTS AND THE PRA 2025

In-person *6.5 CPD hours*

Starts: 15 July 2025
Presenters: Sharon Chandra & Samantha Wilson

LEGAL EXECUTIVES CONFERENCE 2025

In-person *Online* *11.5 CPD hours*

When: 1-2 September 2025
Chair: Carmen Franich

TAX CONFERENCE 2025

In-person *Online* *7 CPD hours*

When: 4 September 2025
Chair: Helen Johnson

FAMILY LAW CONFERENCE 2025

In-person *Online* *12 CPD hours*

When: 15-17 October 2025
Chair: Stephen McCarthy KC

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