

9 December 2020

His Honour Chief Judge Taumaunu  
Chief District Court Judge  
Judges' Chambers  
**Wellington**

By email: c/o [steven.bishop@justice.govt.nz](mailto:steven.bishop@justice.govt.nz)

Tēnā koe Chief Judge

### **Covid-19 and clearing backlogs in criminal and civil jurisdictions**

The New Zealand Law Society | Te Kāhui Ture o Aotearoa is writing to endorse concerns recently raised about the impact of current court scheduling practices on practitioners' workloads and wellbeing. All stakeholders are aware of the pressure to clear backlogs in the criminal and civil jurisdictions in the wake of the Covid-19 pandemic, and as you know this has been the subject of discussion, including at the recent Criminal Practice Committee meeting.

The Law Society acknowledges the need to clear backlogs in the courts but shares the concerns expressed by other bar representatives about the impact of current scheduling on practitioners, particularly criminal lawyers (defence and prosecution) working in the Auckland and Manukau regions. Feedback from the defence bar in particular indicates high trial workloads and intensive scheduling of pre-trial and trial hearings.

The Law Society and the profession are acutely aware of the current backlogs and want to contribute to proposed initiatives to address them, such as through the new District Court Criminal Process and Backlog Improvement Programme. It is of course important to achieve a balance between progressing cases in a timely manner and allowing adequate preparation time (for example) so that members of the profession, and others in the justice system, do not risk suffering from burnout.

We understand from the recent CPC discussions that Your Honour is aware of the issue and that you plan to travel to Manukau and Auckland to speak with practitioners directly. The Law Society welcomes this and notes similar concerns have also subsequently been raised in other parts of the country (for example Rotorua, Hamilton and Wellington). We are aware there are similar pressures to clear cases in the civil jurisdiction, and of course the pressures also bear on other participants (notably the judiciary, court staff, parties and witnesses).

We would welcome the opportunity to discuss these issues with you, with the aim of identifying measures to help alleviate the pressures on practitioners and others.

### **Wellbeing concerns**

Criminal practitioners, like others in the profession, have had substantial workloads during and following the Covid-19 lockdowns. Many practitioners have indicated they are in significant need of a break over the Christmas period, and have raised concerns, including:

- Some practitioners advise they are currently undertaking back-to-back trials.
- In other instances, lawyers say they have been told by judges to find other counsel after indicating they are unavailable, despite often being unable to find alternative counsel. (We note this appears to be more of a concern in relation to private representation rather than legal aid (where reassignments can happen more freely)).
- Some defence counsel, for example in Wellington, are being asked to accept fixtures at short notice for pre-trial hearings and sentencing hearings.
- Some practitioners have trials (or other hearings) up to 24 December and then resume trials in mid-January, leaving little time to down tools and recharge and then prepare for the hearing.

Defence lawyers are concerned about the personal impact of this increased pressure, but equally if not more concerned about the impact on their clients. Running back-to-back trials means they are not able to prepare for the case and support their clients as they need to. Switching counsel at short notice also raises access to justice concerns: the defendant then needs to build trust and confidence in the new lawyer, and there may be further delays to allow the new lawyer to get up to speed with the case, all of which can impact on defendants' trust in the justice system.

Civil litigators have also expressed similar concerns. Civil litigation lawyers often have time-intensive preparation requirements because of the nature of civil cases, and some are experiencing scheduling pressures, with deadlines in January. The backlogs exacerbated by the lockdowns have affected clients and this has had a flow-on impact on lawyers (discovery being a good example where the Covid delays have had a knock-on effect). This is particularly keen in Auckland, which experienced the second lockdown. With the gains in efficiency with electronic filing, video-link hearings and electronic bundles (initiatives that are welcomed and needed), has come a corresponding expectation by the courts that lawyers can work much faster even though they were locked out of their offices for a significant period of the year.

As the regulator of the profession, Practising Well and lawyers' wellbeing are priorities for the Law Society. We now understand more about the stress of practising law and the importance of appropriate breaks to support resilience. Pressure to accept dates at short notice or undertake back-to-back trials does not take account of lawyers' other work commitments, their own wellbeing, and their duties to their clients and the court.

### **Possible interim measures**

The Law Society agrees with the proposed measures put forward in the recent memorandum from the New Zealand Bar Association and ADLSi. In particular, we support the following suggestions:

1. The continued use of remote technology (virtual meeting rooms and audio-visual links) for procedural matters should be encouraged as a measure to ensure efficient use of counsel, court and client time. We note there appear to be inconsistent practices adopted by different courts around the country, with some still not in a position to adequately support remote hearings. We appreciate this is an issue for ongoing discussion with other stakeholders and look forward to contributing to that discussion in 2021.
2. Encouraging senior counsel to assist (where possible) with supervision of junior trial counsel workloads.
3. Encouraging counsel to proactively liaise with the courts to consider availability for fixtures once the courts reopen in 2021 (in accordance with Your Honour's announcement in May 2020).

4. Advocate for Legal Aid Services to consider if junior counsel can be appointed to assist lead counsel in appropriate cases to help relieve the pressure.

### **Conclusion**

The Law Society acknowledges that lawyers are not alone in having to manage increased workloads in the lead-up to the end of the year. However, legal practice is a stressful profession (and particularly so for criminal practitioners) and the wellbeing of all lawyers – and the retention of criminal lawyers – is more important than ever.

The Law Society is grateful for Your Honour's receptiveness to concerns raised earlier in the year around setting timetable orders over the Christmas period. As already noted, we do understand the importance of progressing cases to alleviate the backlogs but where possible we ask that the judiciary also consider the wellbeing of lawyers and their clients when setting general timetabling orders and fixtures and when deciding whether it is appropriate for other counsel to be assigned at short notice.

We look forward to discussing these issues with you at the next available opportunity. I can be contacted in the first instance via the Law Society's Principal Advisor, Bronwyn Jones ([Bronwyn.jones@lawsociety.org.nz](mailto:Bronwyn.jones@lawsociety.org.nz))

Nāku iti noa, nā



Jacque Lethbridge  
**NZLS Vice-President**