Responding to the Diversity Charter, anti-money laundering and the career of law

By David Dunbar

As most of you will be aware, the full NZLS Council (comprising NZLS Board members and branch and section representatives) meets twice a year - most recently on Friday 20 October. There are two matters I want to touch on in this brief report: the draft NZLS Gender Diversity and Inclusion Charter and the pending changes for lawyers arising from the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

At the council meeting a further draft of the Charter was released. The NZLS Women’s Advisory Committee received 26 emails/letters (one being ours) plus 116 responses to an online survey. You’ll see our Branch Council submission on page 3 in this issue of Council Brief.

In my view, the revised draft is a great improvement. It now includes a clear purpose statement and a revised format to make clear the key elements of the Charter: leading from the top, making plans and taking action, and measuring progress. The resulting revised Charter will be circulated to the profession soon. With the Charter the NZLS will provide guidelines on how to meet Charter commitments, including the equitable briefing and instruction practices referred to in the Charter.

A challenge remains for some, how to apply the Charter in sole practice and as an individual practitioner. How can those of us in Chambers or in very small in-house teams show the personal leadership and effect the changes asked of us by the Charter? With such a large percentage of Wellington lawyers working in-house and in small teams, this will clearly require some innovative thinking.

Anti-money laundering

From 1 July next year, lawyers will become reporting entities under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009. The message to the Council meeting was “don’t panic, but start to think about the issue now”. Before 1 July next year lawyers will need to appoint a money laundering and terrorist financing compliance officer and have prepared a written risk assessment and compliance program. After that date, firms will need to conduct customer due diligence, monitor transactions for unusual behaviour and file transaction and other reports. The NZLS intends to run seminars in the branches which I encourage you to attend. Keep an eye out too for the NZLS templates and start to take those first steps: look at your client base and systems, prepare new client care agreements and begin to familiarise your clients with the changes.

Career opportunities

At the Branch Council level, and at its most recent meeting, your Council discussed further a key project: working with firms and young lawyers to allow those lawyers to identify and access work opportunities to help them to acquire experience and explore career options. This is a key objective for the Council in the coming term, to address the challenges of the early years in practice.

Celebration of 50+ years

However, it is important also to take time to celebrate the rich history of legal practice in the Wellington region and those who have committed their professional lives to making it so. I and other Council members are very much looking forward to a lunch later this month to acknowledge those lawyers in Wellington still in practice after 50 years. That is a wonderful achievement and each of those lawyers has contributed in significant ways to our character and culture as a Branch.

Shirley Smith Address delivered by Professor Jacinta Ruru

By Maretta Twentyman

The New Zealand Law Society Wellington Branch’s Women in Law Committee were delighted that the tenth annual Shirley Smith Address was delivered by Professor Jacinta Ruru (Raukawa, Ngāti Ranginui) of the University of Otago on Wednesday, 18 October.

Amongst her many accolades, Professor Ruru was recently made the first Māori Professor of Law at Aotearoa New Zealand. Professor Ruru’s reputation as an inspiring teacher evidently preceded her, as close to 200 people (including many of her former students) packed out the lecture theatre to hear her speak.

Professor Ruru spoke about tikanga Māori as the first laws of Aotearoa, governed by principles such as whanaungatanga, kaitakitanga, mana, utu and tapu. She explored how the post-1840 legal system has been influenced (and, in some instances, has not) by tikanga Māori. She took us on a journey from early colonial decisions such as Symonds (1847) which recognised Māori customary title predated colonisation and that it could only be extinguished with the agreement of Māori, to points in our history where Māori law and Te Tiriti o Waitangi were not recognised (most famously Wi Parata, 1877), through to the current day where tikanga Māori is given a degree of recognition and implementation through both legislation and the common law.

For example, in the 1987 Lands case the Court of Appeal interpreted the SOE Act to recognise the Treaty of Waitangi as a living document; in 2003 Ngāti Aparo finally dispelled the myth that Wi Parata had promulgated that the Treaty is a “simple nullity”; and in 2012, the Supreme Court in Takamoare found that tikanga is part of the values of the common law.

Despite the distance still to cover in this regard, Professor Ruru was optimistic about the future, and spoke warmly and proudly of the progress that has been made to date. An example is the innovative enactment of Te Urewera through Ngāti Tūhoe’s eyes (‘Te Urewera is Te Manawā o te Ika a Māui the heart of the great fish of Maui’); it is “ancient and enduring, a fortress of nature, alive with history”; and “a place of spiritual value, with its own mana and mauri”). That visionary model has been followed with Te Awa Tupuna (Whanganui River Claims Settlement Act 2017, which gives legal personality and rights to the Whanganui River.

Poignantly, on the tenth annual Shirley Smith Address, Professor Ruru wove Shirley’s story as one of our pioneering women lawyers and the continuing struggle of women in the legal profession, with the under-representation of Māori (only 6 percent of lawyers are Māori). She drew parallels between Ethel Benjamin’s experience as the first woman lawyer with that of Sir Apirana Ngata, who became the first Māori lawyer in 1896. Professor Ruru observed that despite those early breakthroughs, it was many decades later before women and Māori started entering the legal profession in greater numbers (for instance, it was not until 1988 that Te Hunga Rōia Māori, the Māori law society was established). Today Professor Ruru works hard to empower future Māori leaders in law, running the University of Otago’s Te Ihaka Project – Building Māori Leaders in Law Programme, which had a part in her receiving the 2016 Prime Minister’s Supreme Award for Excellence in Tertiary Teaching.

Last, Professor Ruru explored the need for tikanga Māori to become a fundamental part of our education system (including at tertiary level), in order to create wider understanding and appreciation of our first laws. She left us all with much to think about, but feeling inspired for the future.

For this very special address, the Women in Law Committee enticed the assistance of Eru Kapa-Kingi, the co-president of Victoria University’s Māori Law Students Society, to open the address.
LEANZ essay competition

THE Law and Economics Association of NZ (LEANZ) has established an essay competition, open to current or recent under- or post-graduate New Zealand university students of any discipline. Academic essays that approach a legal or public policy issue using an economic analysis (or specifically addresses the failings of such an analysis) are invited. The essay should recognise the significance of legal instruments and institutions in creating or moulding the incentives. A first prize of $3,000 will be offered together with the opportunity to present the work at a LEANZ seminar event in 2018. A discretionary prize of $1,500 may be awarded to a high-quality runner up. Entries close on Monday 7 May 2018. Details are available at: leanz.org.nz

Law graduate CV scheme

THE scheme to assist law graduates into work is still being operated by the Wellington Branch. Law graduates seeking work leave their CVs at the Society. These are available to potential employers needing staff who can refer to the CVs and choose appropriate graduates. The work offered need not be permanent. Any work in a law office will give graduates experience that may be helpful next time they make job applications.

MADEaSIGN

Answers for puzzles from page 7

1. (a) cross  
(b) dead  
(c) natural  
(d) eat  
(e) super

2. 1...Re2 2 Re2+ 3 QxRe2 QxQe1#

Crossword Solutions

Cryptic Solutions


Quick Solutions


Diversity and Inclusion Charter

– a submission from the NZLS Wellington Branch Council

I am pleased to submit the response of the Wellington Branch Council to the call from Kathryn Beck, NZLS President, for submissions on the draft Gender Diversity and Inclusion Charter.

The Wellington Branch Council appreciates the opportunity to comment on the Gender Diversity and Inclusion Charter. We support aspects of the Charter and acknowledge the work that has gone into this. However, the Branch Council wishes to raise a number of concerns as it stands.

Accountability
We support having an accountability mechanism through regular reporting to NZLS by firms and organisations that sign to the Charter.

Some of the goals in the Charter are specific and measurable. However, we would like to see NZLS set some ambitious targets in the Charter for achieving workplaces in our profession that treat women and men with equivalent skills and experience equally. We suggest using the SMART methodology which requires Specific, Measurable, Attainable, Realistic, and Timely parameters.

We also suggest that NZLS should publish figures each year giving a gender breakdown in the following categories:
- Judicial appointments
- QC appointments
- Appointments to legal partnerships
- Appointments to senior management roles in public and private organisations that employ lawyers, including senior management positions and directors

A former EEO Commissioner previously did this in the form of a Women’s Census. It would not be difficult to prepare a pared down version of that publication for the categories relevant to NZLS members. Collecting this information together and publishing it along with Charter data each year will be important for measuring trends over time.

We suggest this be done annually.

‘Gender diverse’ members
We do not support including a category of ‘gender diverse’ members in the reporting requirements. We are strongly opposed to setting up a system which will be used by firms and organisations that employ lawyers to identify themselves as being in this category (or not).

What is the ‘mischief’ the Charter is seeking to address?
We have concerns about the language and messaging in the draft Charter.

The use of the words ‘diversity’ and ‘inclusion’ may confuse some people. This is because for many people it appears evident that women are included in the profession. Women have been employed in large numbers for years and we now have nearly equal numbers of men and women making up the membership of NZLS. As well, many women are now employed at senior levels in the profession.

The ‘mischief’ is that within a few years of joining the profession the remuneration and promotion of women as a group do not keep up with those of their male peers as a group, not because of lack of skills or experience, but because of a mix of unconscious bias, discrimination and harassment. The Charter does not directly acknowledge this disparity or these behaviours.

The opening words of the Charter talk about retaining talent and the success and sustainability of the legal profession. We consider this to be a larger problem than the Charter is providing a fix, and women as a group do not keep up with those of their male peers as a group, not because of lack of skills or experience, but because of a mix of unconscious bias, discrimination and harassment. The Charter does not directly acknowledge this disparity or these behaviours.

The Wellington Branch Council

The draft is a commendable step forward, but in its current form will not fully address the issues we face as a profession. Further amendments are required, to ensure that it challenges the status quo, generates a dialogue for action and creates a strong platform for positive and sustained change.

Thank you for your consideration of this submission.

David Dunbar
President
Wellington Branch NZLS

Annex
Additional data to be collected by NZLS
1. The number of male and female lawyers in each band;
2. The number and quality of court and tribunal appearances instructed to male litigators as compared with female litigators;
3. The number of male and female lawyers who applied internally for promotion and the gender of the successful candidate;
4. The number of male and female lawyers who applied externally for promotion and the gender of the successful candidate;
5. The charge out rates for male and female lawyers at each PQE band level;
6. The average pay rate for male and female lawyers in the firm or organisation;
7. The number of personal grievances raised by partners or employed lawyers against the firm or organisation;
8. The number of sexual harassment or bullying complaints made against anyone in the firm;
9. The number of male and female lawyers who left the firm or organisation’s employment, or the practice, for each gender, and their PQE;
10. The number of lawyers who applied for flexible working arrangements and their gender identity;
11. The number of male and female lawyers working in the non-legal sector;
12. The number of male and female barristers and other external counsel briefed by the firm or organisation.

The Solicitors’ Benevolent Fund – ways to donate
Donations to the Solicitors Benevolent Fund can be made through:
- “Give a Little” http://www.givealittle.co.nz/Solicitors, which will be automatically receipted, or
- by Direct debit: Bank of New Zealand: 02-0506-0101108-097

All donations go directly to the capital reserve. The Solicitors’ Benevolent Fund Trust is registered as a charitable trust (number CC48709) and has tax deductible status.

If a receipt is required when making a direct debit, please email wellington@lawsoociety.org.nz with your name, the amount deposited and a contact number to ensure a receipt is issued and sent to the correct place.
Advertising email change

ROBIN REYNOLDS, the advertising manager for Council Brief for many years, has a new email address.

nz.adman@gmail.com

The change comes about as a result of the demise of Vodafone email services. The new address is:

Wellington Branch submission on Diversity Charter

❑ See page 3

Wairarapa Garden Country Lunch

Details see page 6

Deadline Council Brief December Monday 20 November 2017

Successful YLC quiz night

ANOTHER successful YLC quiz was recently held at Munchen, on Queen’s wharf. There was plenty of food, drinks, and spot prizes to go around the 20 teams of young lawyers. The MCs, Myles and Matt even threw in a platter board and an applestrudel (a tasty dessert as I learned) as spot prizes. The winners on the night received a $100 restaurant voucher.

Thanks to all our generous sponsors who donated spot prizes:

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- Nicholas Jermy
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Wellington Women Lawyers’ Association celebrates anniversary

By Josie McNaught and Steph Dyhrberg

There was champagne, cake and the Chatham House Rule at WWLA’s recent 30th Anniversary of Incorporation celebration at the Wellesley Club. Any readers who are curious about the events which inspired the creation of the Association will have to hunt down a copy of the Wellington District Law Society’s Annual Reports (and minutes from the AGMs) from the early 1980s.

Luckily for the 70+ women who attended the celebration, Justice Helen Cull was brandishing her well-worn copy of a particular Annual Report, the contents of which were challenged by a small, brave group of concerned women lawyers (Cull only in her late 20s at the time), who sought equal recognition for women in the legal profession. Hon Marion Frater was also amongst the women who challenged the outdated views in the annual report. They encountered some backlash but also received a lot of support, including from the late Des Deacon and George Barton QC.

A few years later, under inaugural Convenor Judge Margaret Lee, women lawyers including Hon Marion Frater, Margaret Powell, Ann Wilson, Mary Jeffcoat (all present at the 30th anniversary celebration) met to establish WWLA. Their aim was to create an independent voice for women in the law in Wellington, to support and advocate for women lawyers, make submissions on important legislation and to promote women to take up leading roles in the profession. In 1987, the Association was incorporated, and over the years it has supported the careers of countless women in the law, including a number now sitting as judges. Many current and past members, committee members and convenors attended the function, from as far afield as Auckland and Invercargill.

Hon Marion Frater’s account of how having three children and taking very short periods of parental leave affected her prospects at her law firm in the 1970s was hard for today’s younger women lawyers to believe. On the upside, her experiences and determination helped break the ground for today’s women lawyers to believe. The stories shared at the event showed just how far women have progressed in the law over the last 30 years in the areas of pay parity, parental leave and support for their careers in general. There was a strong sense, however, that there is still a long way to go to achieve genuine equality of opportunity, and to improve the culture of the profession for all lawyers.

The evening Q & A anchored by WWLA convenor Steph Dyhrberg was inspiring, informative and peppered with plenty of humour. Justices Frater and Cull offered insights and pragmatic advice for women who are yet to make their mark in the profession. Above all, they confirmed to all the women present that independent lobby groups like WWLA play a crucial role in promoting women in law – from students through to the highest levels in the judiciary.
Jurisdiction of the Tenancy Tribunal

Where the applicability of the RTA is in dispute, the onus will be on the party contending the RTA does not apply to establish that the accommodation is "temporary or transient" and thus excluded.2 The exceptions from the RTA set out in section 5 are to be interpreted strictly, however the Tribunal has taken somewhat divergent approaches in these cases. In some circumstances the nature of the premises has been the focus and in others the nature of the particular agreement:

• Order TT 4004455 found the rental of a cottage which was a part of the landlords’ farm-stay business was within the scope of the RTA as: there were indications of other long-term arrangements; the parties’ intention was that the tenants would stay for “a month or so” or longer; the tenants stayed for over three months and the rent was fitted to a long-term arrangement.3

• Order TT 4042526 found a 39 day Airbnb booking to be within the scope of the RTA as: the property was a residential dwelling; the property was advertised as available for long-term lease by implication; and the nature of the accommodation and the contract were more closely aligned with a residential tenancy than holiday accommodation.4

• Order TT 4077840 found a motel unit to be within the scope of the RTA as the parties’ intentions were that the tenant could stay at the property long-term if he wanted. The tenant also had to give at least three weeks’ notice to end the tenancy, which indicated that it was expected to last for at least several weeks.5

• Order TT 4003568 determined that a room in “Downtown Backpackers” was outside the scope of the RTA as “the premises primarily operates as accommodation for transient guests and other staying for periods less than 28 days”.6

• Order TT 4066881 determined that a unit in the “St George Motel” was outside the scope of the RTA as “although some occupants stay for longer periods, the motel predominantly lets out units for short term”.7

• Order TT 4031584 determined that a motel unit was outside the scope of the RTA as “staying long term in a motel type transient accommodation does not in itself bring within the jurisdiction of the tribunal” and there was no guarantee as to long-term tenancy.8

If it is found the RTA does not apply, it is then still possible that the transient accommodation do have a right to redress under the Consumer Guarantees Act 1993 and they may take the owner to the Disputes Tribunal. Of the Disputes Tribunal cases available publicly none relate to this scenario, but as only a relatively small number of cases are published there may be cases where this has happened.

The bigger picture

Even where clients are in boarding house situations covered by the RTA, we frequently see clients with boarding house contracts that do not meet the requirements of the RTA and living conditions that are well below standard. Yet the majority of Tenancy Tribunal cases are taken by landlords against tenants, as there are huge barriers even for tenants with a clear case in asserting their rights. While landlords have income on the line, tenants have the roof over their head at stake and the fear of their reputation being damaged by having a Tribunal decision in their name. With our current housing shortage these cases are even more of a deterrent.

One way to mitigate this is for the Ministry of Business, Innovation and Employment (MBIE) to apply to the Tenancy Tribunal against landlords they see severely breaching the RTA. We are in support of MBIE further utilising their power under s 124A of the RTA to do so, as it reduces the risks faced by our most vulnerable tenants in taking action against landlords.

Footnotes

1. Being tenancies that are intended to, or that do in fact, last for 28 days or more, under which the tenant is granted exclusive rights to occupy the premises for sleeping quarters and has the right to the shared use of the facilities.

2. RTA, s 5(1)(k).

3. Such efforts to get tenants to waive their rights under the RTA are of no effect pursuant to s 11(3).

4. RTA, s 66B.

5. RTA, s 10.

6. Foster v Nixon Tenancy Tribunal Waitakere, 4004455 (7 March 2016).

7. Chuang v Lou Tenancy Tribunal Auckland, TT 4025264 (13 June 2016).

8. Quintrell v Bignell Street Motel and Caravan Park Tenancy Tribunal Whanganui, TT 4077840 (16 May 2017).


Media Law Committee established

By Josie McNaught

Against the background of the fast-moving and at times seemingly chaotic world of modern mass communication, the Law Society’s first Media Law Committee has been formed.

Convened by former arts journalist turned lawyer, Josie McNaught, the committee brings together a wide range of people from academia, media law practices and the bar, it’s a lively crew, but new members are always welcome.

If readers have ideas for a particular event or forum, please feel free to email the convenor, josie.mcnnaught@izardweston.co.nz
Williams v ACC: Getting the information right

By Jane Foster, General Counsel, Office of the Privacy Commissioner

ACC's due process error

Due to injury, Mr Williams was receiving weekly earnings-related compensation payments. On 24 December 2014, ACC advised the payments would cease from 21 January 2015. In reaching this decision, ACC relied on a supplementary medical report provided by an occupational medicine specialist that included a prognosis. Unsurprisingly there has been a further injury or a significant deterioration since I saw [Mr Williams] this would continue to be my opinion i.e. in my opinion he is capable of working. A temporary injury in his role as truck driver.

But ACC did not check with Mr Williams if he had suffered any further injury or deterioration before deciding to cancel the payments.

Mr Williams initially took the step of requesting review of the ACC decision but then opted to bring judicial review proceedings in the High Court, to try to have the decision overturned as soon as possible. He then became aware of information privacy principle 8.

Mr Williams wrote to ACC on 13 April 2015, drawing attention to the proviso in the supplementary medical report, and pointing out that had ACC sought to date, accurate, complete and relevant medical information relating to his injury, he would have provided relevant additional and new information.

This complaint to ACC about breach of principle 8 resulted in a prompt same day acknowledgment, and just over a week later, on 22 April 2015, ACC advised the decision to cease his payments had been overturned in light of the acknowledged due process had not followed when it made the 24 December 2014 decision. Mr Williams was advised his weekly compensation payments would be reinstated and backdated to January 2015. By 24 April 2015, ACC had acknowledged the breach of privacy principle 8 and provided a written apology.

But the apology was not adequate to fully resolve the matter for Mr Williams who sought monetary compensation for the error. Mr Williams complained to us but as we were unable to settle the matter to his satisfaction, he filed proceedings in the Human Rights Review Tribunal seeking $10,000.

Tribunal’s decision on causation and damages

As ACC accepted that there had been an interference with Mr Williams’ privacy, the Tribunal’s decision was about Mr Williams’ claim for $10,000 damages. The Tribunal accepted the credibility of the witnesses and observed that Mr Williams impressed as a reserved, quiet and private individual and, while he had a limited ability to speak freely about himself, the Tribunal did not doubt that he had experienced the emotional harm of which he spoke.

While ACC’s apology to Mr Williams was both genuine and immediate, the Tribunal noted that an appropriate and timely apology can be relevant and may lessen the harm suffered to an individual. But the apology could not erase the humiliation, loss of dignity or injury to feelings caused by the interference with privacy, nor is it a "get out of jail free" card.

Accepting the apology was not sufficient to adequately compensate for the consequences of the interference with his privacy, the Tribunal was satisfied the nature and degree of emotional harm experienced by Mr Williams required an award of damages:

The circumstances of the case are consistent with and reinforce the claim by Mr Williams he experienced humiliation, loss of dignity and injury to feelings. The announcement by ACC that his compensation payments would terminate was received on Christmas Eve. Over the holiday period he was left to contemplate a precarious future and the severe consequences which would inevitably flow from the termination of the payments in 21 January 2015. He could hardly have been anything other than worried, nervous and fearful about his financial insecurity, his inability to meet basic living costs and his uncertain and unknown future. It is not surprising his relationship with his partner came under strain. In the New Year, as a person who had been in continuous employment for 45 years and who took pride in supporting himself and his family, he found himself at risk of convailing (11).
**Two Intermediate Lawyer roles**

Izard Weston is a vibrant, long established and highly regarded mid-sized law firm based in central Wellington. We are looking for two new solicitors to join Izard Weston – one in the litigation team and one in the commercial/property team.

**Intermediate Litigation Lawyer**

We are looking for a bright and talented civil litigation lawyer, with at least 3–4 years’ PQE. Applicants should have strong advocacy skills and litigation experience, including as counsel in courts and tribunals.

In addition to a good understanding of civil procedure and commercial litigation, experience in some of the following areas would be an advantage (but is not essential): energy, motor trade, maritime, media, trade practices, consumer law, property, insolvency, debt collection, information technology, sports, insurance, regulatory issues and employment law.

**Commercial / Property / Private Client Lawyer**

We are also looking for a commercial/property/private client lawyer, ideally with 3–4 years’ PQE (though more or less will be considered for the right person). Applicants should ideally have experience in each of the commercial, property, and private client areas of practice.

Both roles require the candidate to have the ability to work autonomously. The successful applicants will have positive can-do attitudes, a good sense of fun, and the ability to build relationships within the firm and with clients.

Terms of employment will reflect the experience and ability of the successful applicants.

Applications for these roles, together with your CV and full academic transcript, should be sent to Richard Hogan, richard.hogan@izardweston.co.nz, or mailed to Izard Weston, PO Box 5348, Wellington, 6145.

Closing date for applications is Friday 10 November 2017.

All applications will be treated as confidential.

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**Construction law essay competition**

ENTRIES are now open for the NZ Society of Construction Law 2018 essay competition.

Now is its seventh year, the SCL(NZ) essay competition is modelled on essay prizes offered by other societies of construction law, such as the Hudson Prize offered by the UK Society.

The competition is designed to encourage interest in construction law amongst undergraduate or recently graduated students.

Essays are to be a maximum of 5000 words with an emphasis placed on contribution to the study or practice of construction law or to the application of construction law in the industry.

Proposed topics should be submitted for approval by Friday 10 November 2017, with an essay closing date of 31 March 2018.

Conditions of entry and entry form available at: http://constructionlaw.org.nz/

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**Mind the gap – how your mind works**

By Andrew Nuttall

DURING a recent meeting I had with a lawyer who acts as a managing partner, and a high performance sports coach, both mentioned that their greatest challenges involved managing expectations and helping people deal with depression.

There have been recent examples of depression among high profile sports stars, and a growing awareness of the prevalence of mental illness in the legal profession.

Following this meeting I gave them both a copy of the book The Gap written by Dan Sullivan, a world-renowned business coach. My colleagues found this book insightful and suggested its message be passed on.

Many people may feel disillusioned because they are not able to meet their own expectations. There seems to be a constant “gap” between where someone is currently and where they think they should be.

Sullivan has found ways of working around this “gap”, and suggests that even just having an understanding of how our brains work can help us to be happier and more effective.

Sullivan states that our minds will always project forward to create a picture of future desirable or ideal events. While this mental construct helps us to deal with the future it does not actually exist outside of our minds and nor is it achievable. He suggests that this ‘ideal’ is similar to the horizon, something we can see but never reach.

How does this affect lawyers and other ambitious and successful people? In the diagram below, Actual 1 represents our current situation and circumstances. Actual 2 is where we are at a future date. The problem for many people is once they have reached Actual 2 they compare themselves or measure against the unobtainable and imaginary ideal. This can result in a continual sense of “missing the mark” no matter how great their achievements are. If we measure against the ideal we will always come up short and feel deficient which can cause a sense of failure, frustration and disappointment with ourselves and others around us.

On sharing this concept of “the gap” both the lawyer and the coach acknowledged that they had frequently witnessed colleagues being too tough on themselves and others around them, because they could never measure up. They mentioned examples where people had developed a sense of guilt for not living their ideal lives which had led to relationship breakdowns and depression.

Sullivan recommends that we take time to consider and measure our progress on having reached Actual 2 rather than operating in “the gap” between Actual 2 and our ideal. We cannot ignore the ideal as it is ingrained in our consciousness, made up of aspirations to become better human beings. We all think this way but if we constantly measure our achievements against them it can be counter-productive.

Sullivan suggests that if we measure our achievements (Actual 2) against where we have come from (Actual 1) we will create a sense of progress resulting in greater satisfaction and an increase in capability and confidence.

Sullivan says that understanding the proper role of the ideal is life’s single most crucial lesson. Once it is learned, it becomes possible to avoid forming a habit called “thinking in the gap” which is a principal source of unhappiness for a great number of people – especially those who are most talented, ambitious, and successful. Lawyers and high-performance athletes need to take real care to measure their progress and reflect on their achievements rather than compare themselves against something imaginary.

Our minds constantly project forward to create a picture of future desirable events. Visualisation can be an effective tool for goal-setting, but this ideal version of the future is actually imaginary. It is a bit like trying to get to the horizon, and finding it is always out of reach.

Dan Sullivan says it is in human nature to think this way, and we can use our ideals to set and pursue goals. What really counts though, is how were act when we arrive at a point in the future (Actual 2) which will never equate with what we imagined as our ideal outcome. Type A thinkers will always compare with the ideal, while Type B thinkers will reflect on where they have come from and what they have achieved since their starting point (Actual 1). According to Mr Sullivan, both A and B thinkers can be successful but the Bs will be happier and will enjoy a sense of progress and success, while the As are more likely to lead to greater satisfaction and an increase in capability and confidence.

We all want to be happy as well as successful, but all too often high-performing people are high achievers and succumb to “the gap”.

Dan Sullivan suggests we may have picked up the habit of fixating on the ideal from our parents, but there are wider influences at play. Often religions, education systems and even national cultures encourage us to measure success by reference to an ideal. In these situations people are expected to feel guilty when they fail to achieve perfection. None of us are totally A or B thinkers and life is never perfect, but you can move into the positive zone by more frequently measuring against Actual 1. If you want to improve your success and happiness then try the following:

- Develop a habit of looking both forward and backwards.
- At the end of every day sit down and reflect on the three wins you have had during that day.
- Take time to notice and acknowledge the good work you have accomplished as well as the achievements of those around you.
- Educate colleagues and friends about the Gap concept, and ask them to alert you when they notice that you are in the Gap.
- Focus on incremental improvement.

For more information, look for Dan Sullivan on YouTube, in particular “The Three Wins”.

Andrew Nuttall is an authorised financial adviser and founder of Bradley Nuttall Ltd, in Christchurch. The firm has recently merged with IQ-Private Wealth to form Cambridge Partners Ltd. Andrew has worked with members of the legal fraternity for over 25 years.

www.cambridgepartners.co.nz

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