**The rule of law in Aotearoa New Zealand**

One of the Law Society’s statutory roles, and a [key strategic priority](https://www.lawsociety.org.nz/about-us/our-strategy/), is to advocate for and promote the rule of law.

In its simplest expression, the rule of law is the principle that the law applies equally to everyone – both the government and its citizens. It is the basic idea that governors, officials and citizens alike should comply with the law, and that ministers, officials and public bodies must follow law when executing their functions.[[1]](#footnote-1) This is reflected in a series of interrelated principles, which aim to ensure the fair and equal treatment of all.

This resource sets out what the rule of law means in Aotearoa New Zealand, and the Law Society’s work to uphold and promote this fundamental constitutional principle.

*What is the rule of law?*

Over the decades, many scholars have attempted to define this constitutional principle.

The Rt. Hon Lord Bingham of Cornhill KG commented on “the extreme difficulty of formulating a succinct and accurate definition suitable for inclusion in a statute”.[[2]](#footnote-2)

The 19th century jurist AV Dicey considered the doctrine of the rule of law to mean:[[3]](#footnote-3)

1. A person can only be penalised for breaching the law, and any public authority imposing a penalty or punishment for such a breach must be able to refer to the relevant statute or common law authorising that action;
2. No one is above the law, and everyone, including politicians, officials, private citizens and institutions, have a duty to obey the law; and
3. Civil rights and liberties are not defined and guaranteed by the State’s constitution – rather, they are secured by ordinary public or private law remedies awarded in the ordinary course of litigation.

Drawing on this definition, Lord Bingham observed:[[4]](#footnote-4)

“The core of the existing principle is … that all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly made, taking effect (generally) in the future and publicly administered in the courts.”

In addition, Lord Bingham believed the rule of law embodied the following ‘sub-rules’:[[5]](#footnote-5)

1. The law must be accessible, and so far as possible, intelligible, clear and predictable.
2. Questions of legal right and liability should ordinarily be resolved by application of the law and not the exercise of discretion.
3. The laws of the land should apply equally to all, except to the extent that objective differences justify differentiation.
4. The law must afford adequate protection of fundamental human rights.
5. There must be means for resolving civil disputes without prohibitive cost or inordinate delay.
6. Ministers and public officers at all levels must exercise the powers conferred on them reasonably, in good faith, for the purpose for which the powers were conferred and without exceeding the limits of those powers.
7. Adjudicative procedures provided by the state should be fair.
8. States must comply with their obligations under international law derived from treaties, and international customs and practices.

The United Nations has adopted a meaning which largely aligns with this. It defines the rule of law as:

*a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.[[6]](#footnote-6)*

The doctrine of the rule of law applies in Aotearoa New Zealand as it does in England, in Europe and throughout the common law world.[[7]](#footnote-7) In Aotearoa New Zealand, the Legislation Design and Advisory Committee (LDAC) considers the following principles to be at the heart of the doctrine of the rule of law:[[8]](#footnote-8)

* Everyone is subject to the law, including the Government;
* The law should be clear, and clearly enforceable;
* There should be an independent, impartial judiciary; and
* There should be effective access to justice and redress for individuals.

*What does the rule of law look like in Aotearoa New Zealand?*

The rule of law is not an abstract concept. It can be seen in many of our legal and constitutional arrangements, and in mechanisms designed to ensure the fair and just application of the law. For example:

* Individuals are presumed innocent until proven guilty and are not deprived of their liberty without the opportunity for a fair hearing before an impartial court or tribunal.
* Natural justice, for example the procedural requirements of criminal law, the provision of legal aid to those who cannot afford legal representation, and the protection of confidential communications between a lawyer and client.
* The protection of human rights and institutions such as the Human Rights Commission, which provides citizens access to redress in the event of discrimination.
* An independent and impartial judiciary. In Aotearoa New Zealand, Judges are independent from Government, and also independent from all other judges. This enables them to make decisions free from influence or direction.
* Citizens can openly and freely criticise the law and its administration.
* Respect for property, with a fair and rigorous process where it is to be taken from a citizen, or its use restricted in some way.
* Aotearoa has a strong and independent legal profession, equipped to advise citizens on their rights and freedoms, and assist them in availing themselves of these rights, without fear of repercussion.

**The Law Society’s role**

The Lawyers and Conveyancers Act 2006, and the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, impose a fundamental obligation on all lawyers in Aotearoa New Zealand to uphold the rule of law.[[9]](#footnote-9) This requires lawyers to comply with the law, and to hold themselves, and their clients, accountable to the law. Importantly, it requires lawyers to act in a manner that is consistent with the core principles of the rule of law, and to highlight incidents or behaviours which undermine the rule of law.

Separately to the obligations of individual lawyers, the Law Society has a statutory obligation under the LCA to “assist and promote, for the purpose of upholding the rule of law and facilitating the administration of justice in New Zealand, the reform of the law”.[[10]](#footnote-10)

The Law Society does this in several ways:

* review and comment on bills before Select Committee, as well as bills proceeding under urgency or with truncated consultation periods.
* intervene in court proceedings which raise rule of law issues.
* engagement with government departments undertaking formal and informal consultation, including participation on working groups.
* engagement with stakeholders (including Ministers and government departments) on law reform proposals or rule of law concerns
* publicly comment on matters which impact access to justice, fundamental rights and freedoms, and the administration of justice, and ultimately undermine the rule of law.
* development of resources for the public and the legal profession.

The rule of law is relevant to the work that each of our specialist law reform committees undertakes, but is a specific and primary focus of the [Public Law Committee](https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/public-law-committee/#:~:text=The%20Public%20Law%20Committee%20was,The%20Rule%20of%20Law.).

**Further Resources**

Useful references for those who wish to read more about the rule of law include:

* Professor Philip Joseph’s book, *Joseph on Constitutional and Administrative Law,* published by Thomson Reuters.
* Tom Bingham’s2011 book, *The Rule of Law*, published by Penguin Books.
* [Chapter 4](https://www.ldac.org.nz/guidelines/legislation-guidelines-2021-edition/constitutional-issues-and-recognising-rights-2/chapter-4/) of the Legislative and Design Committee’s Legislation Guidelines (2021).
* The [Rule of Law Education Centre](https://www.ruleoflaw.org.au/) in Australia.
* The Venice Commission’s (a part of the Council of Europe) [Rule of Law Checklist](https://www.venice.coe.int/images/SITE%20IMAGES/Publications/Rule_of_Law_Check_List.pdf) (note: this is prepared for assessing the rule of law in European states).
* [Bingham Centre for the Rule of Law](https://binghamcentre.biicl.org/), established in 2010 by the British Institute of International and Comparative Law.

1. This is sometimes called a ‘thin conception’ of the rule of law. See: Matthew SR Palmer and Dean R Knight *The Constitution of New Zealand: A Contextual Analysis* (1st ed, Bloomsbury Publishing, 2022) at 138. [↑](#footnote-ref-1)
2. Lord Bingham “The Rule of Law” (2007) 66 CLJ 67. [↑](#footnote-ref-2)
3. AV Dicey *Introduction to the Study of the Law of the Constitution* (10th ed, Macmillan & Co, London,

   1959), referenced in *A to Z of NZ Law - Constitutional Law* at 17.8.5. [↑](#footnote-ref-3)
4. Lord Bingham “The Rule of Law” (2007) 66 CLJ 67. [↑](#footnote-ref-4)
5. Lord Bingham “The Rule of Law” (2007) 66 CLJ 67. [↑](#footnote-ref-5)
6. See <https://www.un.org/ruleoflaw/what-is-the-rule-of-law/>. [↑](#footnote-ref-6)
7. *R v Liddell*, HC Rotorua CRI-2005-070-5963 at [5]. [↑](#footnote-ref-7)
8. Legislation Design and Advisory Committee *Legislation Guidelines* (2021), at 4.1. [↑](#footnote-ref-8)
9. Section 4(a) of the Act, and rule 2 of the Rules of Conduct and Client Care. [↑](#footnote-ref-9)
10. Section 65(e). [↑](#footnote-ref-10)