

Kōrero Mō te Ture

LAWTALK



Mahi a Atua

Using stories to fulfil big
dreams of systemic change



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ABOUT LAWTALK

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FROM THE LAW SOCIETY | TE KĀHUI TURE

Manaaki Tāngata | Supporting each other

I am really pleased we can once again work with our friends and colleagues at Te Hunga Rōia Māori o Aotearoa to produce this edition of Kōrero Mō te Ture. Te Hunga Rōia has gone from strength to strength over the past three decades and I am heartened to see us working together on so many things. It was a pleasure and privilege to speak at the Hui-ā-Tau in Ōtautahi in July and kōrero with many of the people who have contributed to this magazine.

Since my last LawTalk update, the New Zealand Law Society | Te Kāhui Ture o Aotearoa has again responded swiftly to the changing Covid-19 Alert Levels. We pivoted to respond to queries, work with justice sector stakeholders to resolve issues and keep lawyers up to date with relevant information which included essential travel, court protocols, property, family, and employment matters.

Working on systematic changes

We also finalised the Terms of Reference for the Independent Review following wide consultation with the legal profession and other key stakeholders. One of the key goals in establishing the Independent Review is to ensure the statutory framework is up to date and fit for purpose.

We are doing everything we can to improve the efficiency and effectiveness of the Lawyers Complaints Service (LCS) within the existing co-regulatory framework. This includes the rule changes which came into force on 1 July this year and adopting more modern regulatory practices. While the Independent Review will look at what changes are needed to the overall statutory



framework, we understand any legislative changes are years away.

That is why at my recent meeting with the Minister of Justice we discussed short term amendments to the Lawyers and Conveyancers Act. These interim 'tweaks' would enable our complaints service to operate in a more efficient and transparent manner, for both consumers and the legal profession, until broader legislative change can be achieved through the Independent Review.

“It really is ok to ask for help. I would encourage anyone in the legal profession to use this free and confidential service if you need to talk and have someone listen. While we need to take care of each other, we need to make sure we take care of ourselves first.”

At my meeting with the Minister, we also discussed the need to improve access to justice, in particular the legal aid system, a subject I hear a lot about from lawyers. It is good to see initiatives like Te Ara Ture (the online pro-bono clearing house) being launched to support more lawyers to offer pro bono services, but we have a long way to go to meet the unmet legal needs in this country.

We will shortly be publishing the results of our access to justice survey which covers legal aid, pro bono and low bono services. The survey is a first for the Law Society and will paint a national picture of the state of access to justice in Aotearoa New Zealand. This is a step change in the way the Law Society traditionally advocates for improvements to the legal aid system.

Prioritising wellbeing

Prioritising our wellbeing is vital as we continue to face uncertain times and connecting with each other is an important part of that. That is one of the reasons why

the Law Society opened expressions of interest for its first National New Lawyers Group in August. This is an exciting opportunity to connect and make a real difference to those joining the profession both now and in the future. And our National Mentoring Programme, which is a free way to connect with other lawyers, continues to grow. I encourage everyone to think about participating in this programme either as a mentor or mentee, or both!

For anyone who is struggling with any aspect of working in the legal profession I can strongly recommend using the Law Society's Legal Community Counselling Service provided by Vitae. Recently, the Board of the Law Society made the decision to double the number of free sessions available from three to six.

I have sought professional help a couple of times in my legal career when I was going through big life and career changes. The most recent occasion was as President where I was managing a difficult pregnancy, the demands of the role and a Covid-19 resurgence. On both occasions I needed more than just three sessions and I was greatly assisted by a professional who could help to talk things through, manage stress and give me the tools to move forward.

It really is ok to ask for help. I would encourage anyone in the legal profession to use this free and confidential service if you need to talk and have someone listen. While we need to take care of each other, we need to make sure we take care of ourselves first. ■

Ka mua ka muri

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Tena koutou katoa,

2021 has been another challenging year for us all and as I write this editorial for our second co-edited LawTalk publication along side the New Zealand Law Society, I would like to mihi to all our extended whanau in the legal profession for what has been a challenging few weeks responding to the unexpected snap lockdown in August 2021. *Kei kona kei a koutou nga whakairo.*

Since our last edition, Te Hunga Roia Māori o Aotearoa were able to meet kanohi ki te kanohi (face to face) for our annual hui-a-tau hosted at Te Whare Wananga o Waitaha. After not being able to meet due to Covid-19 in 2020, our Executive worked hard to ensure this could take place so we as a roopu could come together, be reminded of our purpose, be challenged, learn and move forward together as we face yet another



year of uncertainties and challenges. The theme of our hui was gifted by Matua Moana Jackson and was titled Lawyers as Mana Based Change Makers. Around 350 people attended a 3-day hui. Our participants spent their time getting to know each other through whaka-whanaungatanga, listening to korero which focussed on our responsibility of Lawyers as Mana Based Change Makers and using the time to wananga on our future as a roopu. All those who attended left with their *annual mauri boost*, their kete of knowledge full and with excitement to face the year ahead.

Our theme for this year's co-edited Kōrero Mō te Ture (LawTalk) magazine is grounded in the whakatauki:

☞ Ka mua ka muri ☞
Back to the future.

As we go forward, we have an eye on

the past. This is particularly the case in our feature article on Mark and Diana Kopua. Mark and Diana are rangatira within our community. They are leading transformational change of collectives through-out Aotearoa. Their kaupapa, Mahi a Atua, is grounded in korero from our tipuna which can help reconnect us with knowledge that was lost during colonisation and help guide us as we become change makers within all aspects for our lives. Their experience of providing change in the health system has significant cross overs with the system challenges we face in the justice system. The knowledge that they share and the skills they help you develop are vital for anyone working in a system which struggles to truly

serve who they are designed to work for. I was fortunate to attend their Mataora training in April 2021. It was a challenging week but one of the most rewarding experiences yet in my life. I thank Mark and Diana Kopua for being open and willing to share their experiences with the legal profession.

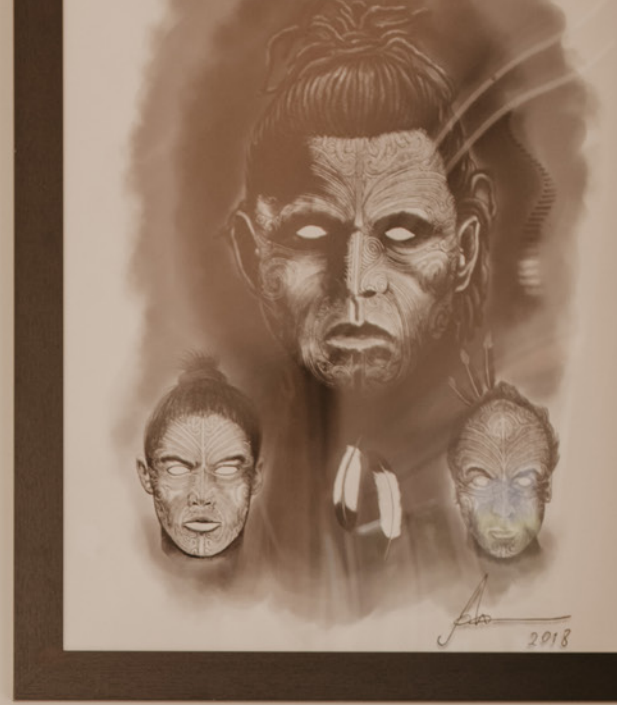
We are incredibly grateful to our members and our Māori community who have contributed to this issue. We wanted to showcase some of the mahi which is happening within our roopu as well as provide an insight into the influence and work that our community is currently doing that is having a positive impact on the legal profession. This mahi is also providing a pathway to reshape many systems we have in our country to ensure that they are truly fit for purpose as well as responds and cares for all of those they are designed to serve.

This edition features many of the incredibly talented members of our roopu. They are changemakers and leaders within our profession. We hope they inspire and challenge you as you continue to work and serve our communities. ■

Nga manaakitanga,
Jamie-Lee Tuuta



Photo by Zara Staples



KA MUA KA MURI

Mahi a Atua

Using stories to fulfil big dreams of systemic change

NĀ **BELINDA RYAN**

How justice is delivered is changing all the time. Tikanga was the first law of the land. Then came the British system, imposing their system of law with an attempt to co-opt certain parts of tikanga into that system. We have seen calls over the past centuries for a complete overhaul of our justice system. These calls remain the same today. The justice system continues to operate in ways that disadvantage Māori and the consequences of colonisation are still taking a negative toll on tangata whenua.

Understanding what those impacts of colonisation mean for individuals is at the heart of a different

approach to supporting Māori that's been developed within clinical mental health environments. The Mahi a Atua approach designed by husband and wife team Dr Diana Kopua and Mark Kopua, promotes a positive identity for indigenous communities by celebrating the power of Māori deities, narratives, and healing practices that were marginalised and suppressed by the forces of colonisation.

Could Mahi a Atua hold lessons for integrating tikanga into the law? Te Hunga Rōia Māori o Aotearoa tumuaki wahine (female co-president) Jamie-Lee Tuuta travelled to Te Tairāwhiti to talk with psychiatrist Dr Diana Kopua, and historian,

whakairo and Tā Moko expert Mark Kopua.

Sitting in Di and Mark's home Jamie-Lee (Ngāi Tahu, Ngāti Toa Rangatira me Ngāti Mutunga o Wharekauri) reflects on her own journey as a lawyer.

"We're at something of a crossroads within the legal profession. We're still working out how to integrate tikanga into the law. Or whether in fact that this should happen at all. As a Māori lawyer I feel it's a bit of a nervous space."

The Christchurch barrister is a qualified Mataora or change-maker, courtesy of Di and Mark's immersive training experience.

She says she found that the Mahi a Atua approach has enhanced her perspective and helped her to continue to focus on her clients as people and product of a system of colonisation, rather than simply trying to find the quickest and tidiest solution to their legal issue.

“We need to help whānau at the same time as having systemic change.”

Mahi a Atua

Mahi a Atua is an approach that encourages practitioners to actively engage in Māori interventions that draw from the Māori creation and custom stories known as pūrākau to understand how Māori ancestors understood and made sense of their realities.

Mahi a Atua allows people to examine their feelings and actions against the attributes, trials and tribulations of the different Atua (Māori gods). This sparks motivation to respond differently to obstacles and challenges in life. “It’s by Māori for all, rather than a kaupapa Māori for Māori by Māori. And that was never really known in mental health before, but we did it.”

Developed by Di and Mark over a number of years, the Mahi a Atua approach is about building a foundation so that organisations are culturally safe and connected to history. Mahi a Atua teaches the critical awareness to understand the cultural, historical and social context of the individual. “Treating everyone the same will restrict a practitioner’s ability to grow. Growth occurs when we as practitioners explore our individual and collective contribution to how and why things go wrong”

Mahi a Atua operates with three core values: oranga whakapapa – keep our stories and genealogical





◀ This image is reflective of stories relating to some of the ailments and sicknesses that afflict us and are known to kill mankind, and how Rongo is called upon in his capacity as the God of well being and health to revive us back to good health.

ties alive, Tatai Hono – prioritising engagement and everyone’s relationships, and whakangahau -levity, having fun, embracing creativity. The guiding principles are: Tēnei te po, nau mai te ao – to indigenise our space, Ka mā te ariki, ka mā te taura – be an active learner, and Hongihongi te wheiwheia – to embrace feedback.

The beginning of Mahi a Atua: from reggae to psychiatry

Of Ngāti Porou descent and raised in Porirua under the umbrella of Ngāti Toa, Di’s journey towards becoming a psychiatrist began with leaving a nine-piece reggae band to undertake nursing training. Te Reo Māori became an official language in 1987, and Di says she feels like she piggy-backed off that, becoming the first Māori mental health nurse in Porirua in 1992. “I was trying to promote being Māori, while still learning about what that meant for me” she explains.

Di took a year out to learn Te Reo Māori, and developed Mahi a Atua in the mid-90s. Di would work with troubled teenagers and tell them pūrākau (stories) of various atua. She used Māori creation stories as a form of healing, connecting alienated Māori to their whakapapa.

Determined to bring about real and meaningful change within the mental health system, Di began studying medicine at the University of Otago in 2002. In 2014 she completed her specialist training in psychiatry and spent several years as a Consultant Psychiatrist and Head of Department at Hauora Tairāwhiti.

“I was in a pocket of New Zealand society rich in culture, rich in knowledge and arts. Māori were 50 % of the population, but at one point were 77% of the consumers of mental health services, with coerced care rates among the highest in the world. So I had lots of statistics to support the development of an indigenous framework inside a mainstream service.”

As Head of Department for Hauora Tairāwhiti, Di led the ground-breaking development of Gisborne’s Te Kūwatawata service which tripled the walk-in rate for Māori. In addition to this the Māori access rate was doubled, coercive care rates were reduced, as were youth admissions. “What we know about suicide is that people don’t come in to get help – they would rather suffer than come into a system that makes them feel worse.”

She says that their understanding about what was needed in services changed, as the statistics changed. “We reduced

the need for crisis workers to work at night. You'd think you'd need to fund an overnight 24-hour service as people frequently present during the night. But they present at pretty good hours of the day when it's a service worth coming into."

Another service developed while Dr Di was the Head of Department was Te Hiringa Matua. Formal evaluation of this programme by Malatest International showed that Mahi a Atua was getting positive results. Numbers of completed care and interventions in Te Tairāwhiti began to outstrip other areas such as Hawkes Bay, and the Far North. Despite the success of both services in Gisborne, Di became frustrated as she saw American programmes being imported and applied in New Zealand. "The national roll out of the Integrated Primary Mental Health and Addiction programme was funded without evidence that it addressed Māori inequity." Di believes this is a case in point of how racism is perpetuated.

With a vision to grow, nurture and sustain mātauranga Māori (māori knowledge) approaches outside of government institutions, Di moved out of the District Health Board system and her company Te Kurahuna won contracts for service development in Wellington and then more recently in the Waikato. With Di as the Lead and Mahi a Atua as the cornerstone philosophy, services such as Te Kūwatawata ki Hauraki (under Te Korowai Hauora o Hauraki) aimed to improve Māori outcomes and address institutional racism. A recent report highlighted that since their organisation transformed their mental health and addiction services to 'Mahi a Atua' Māori referrals doubled, Māori self-referrals increased by over 200%, Māori youth referrals more than doubled and staff morale improved significantly.

Di continues to lead change through her collaboration with her husband Mark and together they are growing a collective of Mataora (change agents who are trained in Mahi a Atua) who work to indigenise their respective communities of practice. Their company Te Kurahuna has 11 employees, all of whom earn the same salary, from personal assistants to the chief executive.

A master artist and tohunga

Ta moko practitioner Mark hails from Mangatuna, north of Tolaga Bay, where

he was raised by his grandparents. He affiliates to Te Aitanga a Hauiti, Ngāti Ira and Ngāti Porou.

Mark was the master carver for a number of meeting houses on the East Coast and lower North Island. For many years he was on the board of national Māori art advocacy organisation Toi Māori Aotearoa. A professional artist, he now runs Te Kurahuna with Di "well she runs. I walk!" he jokes.

His gallery space in Gisborne showcases his art and that of other represented artists such as Turumakina Duley, the walls filled with intricate and colourful depictions of atua. The gallery is also a living and active space where ta moko (traditional Māori tattooing) and whakairo (traditional Maori carving) are performed and taught. Even on a quiet Monday morning, there are two tattoo artists working, accompanied by the buzz of the tattoo gun, as skin becomes living art.

A skilled storyteller and keeper of ancient Māori knowledge and whakapapa, Mark is reflective, each carefully chosen word landing like a smooth stone on still water. "In real life, tikanga is the law. In the court, it's something to use in a circumstance...."

Lessons for legal practice

As our courts and universities develop ways to incorporate tikanga Māori, the success of Mahi a Atua within mental health may have something to offer practitioners. Di observes that both fields have different institutions, but some of the same systemic issues which reinforce inequity.

She tells a story of receiving a phone call from a lawyer to get a bail address for a family member who has physically abused his ex-partner. The lawyer's focus on extracting the address information omitted the crucial role of talking to whanau. "All you care about is where he's going to go, but you're not going to sit in the problem with me or ask me how I'm feeling about this - and I feel stink!" she says. "Why couldn't she say 'that man

With Di as the Lead and Mahi a Atua as the cornerstone philosophy, services such as Te Kūwatawata ki Hauraki (under Te Korowai Hauora o Hauraki) aimed to improve Māori outcomes and address institutional racism



needs a pathway to support him to shine like the moon? I needed that lawyer to work with me as whānau. The best relationships come when there is a fracture, and you work through it.”

For Jamie-Lee working as a barrister, she says that we need to help whānau at the same time as having systemic change. Working in the Justice system, “we’re not taught to talk to whānau”. She says that becoming a Mataora (changemaker) has flipped her perspective and made her look at things differently. “When someone walks into my office, I now focus on understanding who they are before exploring their legal issue.”

Di says that bringing real engagement into the system is key. “Lawyers come in with big hearts and wanting to make a difference, but the system is such a stuck beast. Even your goodwill will keep that going.” She suggests asking clients for feedback “was there anything that I said that made you angry?” or acknowledging the unspoken truth in the room is key: “I’ve been assigned to you, even if I’m not the right fit, how do we work together?”

“The real challenge for us as lawyers is how can we make change, in our everyday practice and to ensure of system changes to reflect who it should serve.” says Jamie-Lee. She believes that the

Mahi a Atua approach provides a foundation of knowledge and tools that will support all lawyers, Māori and non-Māori, to be the best lawyers they can be and to ensure we create a system appropriate for our communities in New Zealand. ■

To learn more about Mahi a Atua: www.mahiaatua.com

Resources

Pūrākau: Maori Myths Retold by Māori Writers, Ed. Witi Ihimaera and Whiti Hereaka, May 2019.

Navigating the Stars by Witi Ihimaera, October 2020.

Atua Māori Gods and Heroes by Gavin Bishop, August 2021

KA MUA KA MURI

Te Reo Māori and the Legal Profession

NĀ NERYS UDY

With Mahuru Māori and Te Wiki o Te Reo Māori just around the corner it is timely for the legal profession to stop and reflect on the role te reo Māori plays in all of our lives. For me, any kōrero about te reo Māori always starts with my Taua (grandmother). My Taua was a beautiful Ngāi Tahu woman, who loved our reo. She reclaimed her language as an adult and later became a te reo Māori teacher, teaching te reo to women in prisons.

I often think about her path as I continue my own te reo journey and as I begin my journey in the law. My desire to learn te reo is innate in my whakapapa, but it was immediately inspired by the ideal set by my Taua. Her ability to learn te reo and subsequently teach it is reflective of the fact that she was a highly intelligent woman, despite never being afforded the opportunity to attend university. It gives me cause to reflect on the privilege of my tertiary education, which opened both te reo and the law to me.

Relationship between the law and te reo Māori

My Taua's role as a kaiako reo in prisons reminds me that there is a relationship between the law and te reo Māori, intersecting in both negative and positive ways.



Nerys Udy

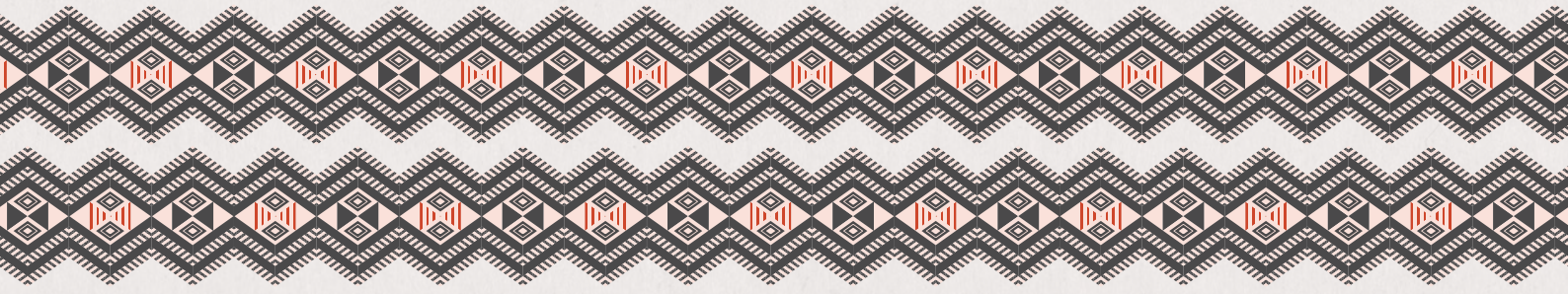
At the same time, the healing power of te reo Māori to restitch the severed connections to whakapapa and tikanga is potent. More and more, te reo is becoming relevant in all areas of the law and legal practice

As others have noted, it is a tragedy that for some, their first introduction to te reo Māori is in a carceral institution and reflects the fact that Māori are still overrepresented in our criminal justice system. At the same time, the healing power of te reo Māori to restitch the severed connections to whakapapa and tikanga is potent. More and more, te reo is becoming relevant in all areas of the law and legal practice. It is this relationship between te reo Māori and the legal world that I wish to explore, with reference to some of my own recent experiences.

It is important to first note that te reo Māori and law have been intrinsically intertwined since the arrival of humans to these islands. Te reo is fundamental to the legal system that subsists within tikanga. One could say that te reo and tikanga are inseparable. After all, it is no accident that one often hears the common phrase 'te reo me ōna tikanga' – the language and its law and customs.

With the arrival of Europeans to Aotearoa, the common law system has been both a companion of and combatant against te reo Māori. In the first common law forums of Aotearoa New Zealand, te reo Māori was the primary language of the courts. Although the judges were invariably Pākehā, both they and the Māori participants who engaged with the courts spoke te reo Māori.

Later however, the common law system played a significant role in the suppression of te reo, by entrenching English as the primary language and sitting alongside the numerous policies that suppressed various aspects of Te Ao Māori, in which te reo is intrinsically entwined. During the 'Māori renaissance'



of the late 20th century, the law also aided the revitalisation of te reo with the passage of the Māori Language Act 1987 and subsequent legislation. Of course, such legislation was merely a tool and the true progress is thanks to the countless te reo Māori advocates who have worked tirelessly for the revitalisation of te reo.

Revitalising te reo Māori in legal settings

Now, te reo Māori is finding its way back into courtrooms through initiatives such as the Rangatahi Courts and the soon to be implemented Te Ao Mārama district court model. These innovations draw on the healing power of te reo Māori, which I believe my grandmother understood in choosing to teach te reo. And yet, the need for te reo in these spaces again speaks to the overrepresentation of Māori in the justice system, as both offenders and victims.

So it is clear that te reo and law have a relationship, stronger or weaker depending on the law one is talking about. That relationship has a tangible effect and is relevant to everyone in the legal profession. Quite simply, te reo is a language of the law.

For myself, I have found te reo has been a constant companion in my first steps into the legal profession.

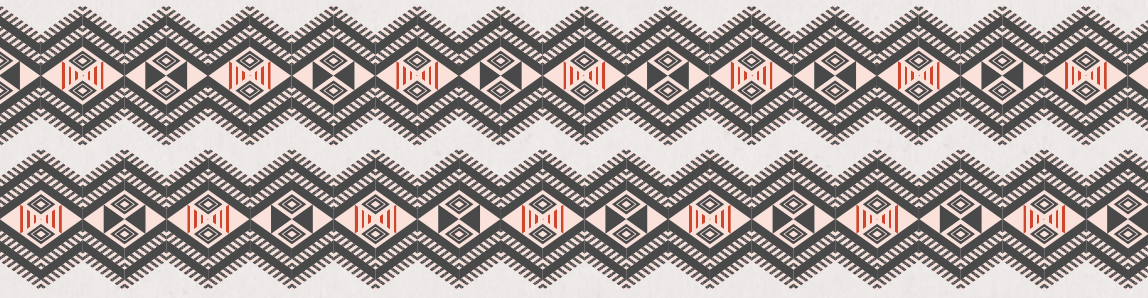
My language has grounded me in my identity as I enter new spaces, but it has also been a hugely beneficial practical tool and has added unique value to my work

My language has grounded me in my identity as I enter new spaces, but it has also been a hugely beneficial practical tool and has added unique value to my work. On several occasions I have found myself with research tasks where my te reo has been a critical tool, allowing me to access Māori language sources, most of which are not available in English. This includes the vast number of historical newspapers written in te reo Māori, native land court minute books and contemporary writings in te reo Māori.

As Justice Joe Williams pointed out in a recent lecture on tikanga in legal education, many of these te reo Māori sources are significant records of tikanga as it was being practised, as *law*. They contain debates about land, whānau, taonga, and practices such as rāhui, all according to tikanga. To ignore such sources is to ignore a vast resource of historical and legal information. For some contexts, English can only present an incomplete picture. So, in giving me access, my te reo Māori has allowed me to produce legal research of a more nuanced, deeper quality than I could have otherwise.

The growing role of te reo Māori in the workplace

This experience has been a realisation for me about the significance of te reo for the legal workplace. I feel privileged to have found myself in spaces where I have been able to use te reo in this way. I use the word privilege because the value of te reo Māori in a workplace is often viewed tokenistically, if it is welcome at all. Māori staff, whether they are confident speakers or not, are often expected to provide mihi and karakia on demand, despite not being hired for that purpose. The burden can be particularly heavy for those who have attained fluency and excellence. These expectations can also be a traumatic experience for those who have not yet found the opportunity to reclaim their reo, bringing up emotions around generational dispossession and the struggle for identity.



“Practitioners may find te reo an indispensable tool if they wish to truly engage with their clients and find the best solutions for them, whether those solutions lie in the common law system or in tikanga”

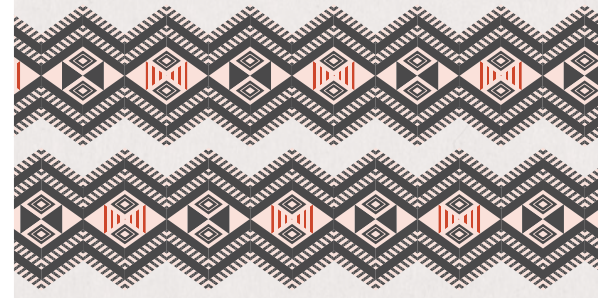
In the face of these issues, my experience has demonstrated to me that holding te reo can bring deeper value to the legal profession beyond such surface level window-dressing. It is a personal treasure and it is also tangible skillset for the legal workplace. As a language of the law, it is becoming an important part of a lawyer's skillset because it is simply not possible to understand the law within tikanga without te reo Māori. I envisage that this value will only become more significant as the relationship between tikanga Māori and the mainstream legal system continues to evolve, in one way or another. This value must be recognised by employers.

And te reo is more and more becoming an important part of the professional world in other ways. In recent projects I have been involved with, te reo Māori has been the dominant language,

further highlighting that te reo is both a language of the personal realm and a language of business. I could not have engaged fully in those spaces without te reo. It seems evident that te reo will be further entrenched as a language of legal practice, especially as the Māori economy develops further, as iwi governance entities grow and as the tradition of Māori innovation continues. A growing number of Māori will be seeking legal services in an array of different practice areas. Practitioners may find te reo an indispensable tool if they wish to truly engage with their clients and find the best solutions for them, whether those solutions lie in the common law system or in tikanga.

Reflecting on my recent experiences, I am grateful for the privilege to have access both to te reo and to legal education. I am by no means an expert in either space





and I still have a lot to learn. But as my journey continues it is exciting to see that points of confluence are emerging. There are many fantastic initiatives occurring and Te Hunga Rōia Māori is leading the way, with amazing role models setting the example and sharing their time and knowledge of te reo with others. I encourage all te reo Māori speakers, especially those new to the workforce, to embrace the unique value you bring to legal spaces, through your reo and the worldview that goes with it. I encourage legal workplaces to recognise that value and support those in the profession taking steps on their own reo journey, wherever they may be on that pathway. Kia kaha te reo Māori! ■

He uri tēnei nō Ngāi Tahu, Ngāti Māmoe, Waitaha. **Nerys Udy** is a recent graduate of the University of Otago and is now working as a Judges' Clerk at the Supreme Court of New Zealand. She was formerly the Tumukaki (President) of Te Roopū Whai Pūtake (the Otago Māori Law Students Association). Nerys has a strong interest in the interconnections between indigenous knowledge, law and history

KA MUA KA MURI

Eugene Ryder

Carving a new path to the law

NĀ MORWENNA GRILLS

It's easy to spot Eugene sitting in the university café. Among the young crowd he clearly stands out as not being your average law student for Victoria University of Wellington. In fact, there's nothing average at all about Eugene. He is a man who has led an incredible life and continues to do so.

Raised in a challenging environment he entered state care at a young age. He describes how the people around him so often told him he was going to amount to nothing that that became a goal. He joined the Black Power gang when he was 15 and has stayed in that environment until today.

So why take on a law degree?

"The thing I tell people is that I spent half my life breaking the law, so now I'm going to spend the next half trying to fix it," he says with a wry smile.

"The funny thing is that when I was young my

father told everyone I would be the lawyer of the family, which is ironic as I went in the total opposite direction. I have been in court a number of times but not as a lawyer!"

Eugene's relationship with the law started young, at 16 he went to prison for bank robbery. He went on to have several interactions with the law before meeting his hoā wahine. They raised two tamariki in a community dominated by negative influences. Years later they had two more tamariki, choosing to make better lives for themselves and their whānau. It's that ethos that is really behind why Eugene is studying law.

"One of the biggest drivers are my tamariki.

"At my daughter's 21st we had a family dinner and my son, who was nine, said to me "Pāpā can I get a patch when I get older?". Not only did our table freeze to hear the answer but the whole restaurant did. And I said, "Yes you can son, as soon as you get a law degree". He looks at me and says "law degree, sweet"





and went back to eating.

“So, I thought I ducked that one,” laughs Eugene.

“But in all seriousness, I don’t want my children to be part of the negativity of gangs.”

Skip ahead a few years and Eugene’s son is at college. Choosing his courses he has some questions for his father.

“He says to me, what do I have to study for that law degree? I thought shit it’s still on his mind, and I said you’ve got to study everything!

“I realised that he didn’t know anyone who was a lawyer or had a law degree to ask or aspire to. So, I decided that I would do law. I said I’m doing this law degree for you son, I want to create a path that you can follow. I know because of my background and experience my path will be a lot rougher than his so I want to smooth it out for him.”

Carving a path

Eugene is someone who has defied the odds. He no longer wears a patch but is still involved with gangs. They are part of his whānau and his world, but they don’t define him.

“People say you’re in a gang, and I say no I’m not, but I am Black Power. Black Power is part of who I am. A lot of people in our community think they will forever be clients of lawyers. No one ever sees themselves as a lawyer or a judge even.

“I know a lot of the community are watching me. Some want me to trip over, to say see I told you they won’t accept you. But others



want me to succeed so they can take their first step.”

Looking across the road Eugene eyes the law school that is housed in Government Buildings.

“The funny thing is this world of the law is as closed as the world that I was brought up in. For similar reasons. To keep it unique and exclusive.

“The law is a big scary thing, and it happens in a big scary building. Our community relate this building to the old high court so it’s a place



that we don't feel comfortable in. So, when I walk in there I feel like I'm walking in a place that we weren't welcome in.

"When I thought about studying law, I picked the place I didn't want to do it. I picked the place that would be the biggest challenge. I wanted to not only be challenged but to challenge - I know my presence can be challenging.

"As much as I'm challenged by the environment, I meet people who are challenged by what I bring into this environment."

Bringing a different perspective

What Eugene brings is genuine life experience of the

▲ Eugene Ryder
and his whānau

other side of the law.

"I have reflected a lot on my own experience. I have lived the life being discussed in the cases we look at in class and I know that not many students have that experience.


"I talk to some fellow students about my experiences with the law. We had a scenario about a young person being pulled up by the police with a blade. And that happened to me once! I said this and someone looked very surprised.

"One of my biggest learnings that has really shocked me is that doing the right thing and doing something legal are not the same thing. You can do something legal that isn't right. We looked at the case of a male who was charged with restraining a female. But he did it to stop her from driving drunk with their baby but the legal case was on him for restraining her. But what he did in my mind is right, but illegal."


That different perspective is one that Eugene hopes his fellow law students will remember upon graduation and take out with them into the legal profession.

"I would like more lawyers to be open to having people that challenge their thinking on who should be a lawyer. Sometimes there is knowledge and expertise that can come from innate experience. Sometimes clients know what is right.

"When I went to jail I technically shouldn't have been allowed to go. I was sentenced in the High Court as an 18 year old, as no one believed I was only 16. On my 18th birthday my lawyer rang me and



I think I came in at the right time where there is a focus on Te ao Māori which I am a lot more comfortable learning about. I know that I'm walking in a white world but I know that this world is wanting to be more open and more bi-cultural



said we found your birth certificate and we're going to appeal your sentence. I was two years into my sentence then and I didn't want to appeal as that meant going back on remand and losing the privileges I had built up. I had earned that position in prison, it sounds terrible to think about but by appealing I was going to lose it all at a risk of nothing changing. She couldn't understand why I wouldn't appeal and kept telling me that I didn't understand. But I did.

"It's the same for judges. I was in the Youth Court in Wellington one day when Judge John Walker was sitting. He said to a young person "my role is to keep you out of gangs, keep you away from gangs". And I said, excuse me my honour, mind if I say something? And I said what you said and what he heard

were two different things. What he heard is that your role is to keep him away from dad because his dad is a patch member and is a president of the gang that you want to keep him away from. What you should have said is that my role is to keep him away from crime, even his mum and dad will agree. Sometimes what people say and what they hear are different."

Te ao Māori and justice

Eugene has a complex relationship with his iwi due to his challenging upbringing. It wasn't until he met his wahina toa that he discovered the important role iwi and hapū can play in providing a loving and nurturing environment for whānau.

His willingness to speak so openly about his past and his journey reconnecting with his iwi has seen Eugene travel the motu with 'Te Korimako' to train community how to best navigate the court system.

Given the focus on incorporating more tikanga and Te ao Māori perspectives into judicial practises it looks to be good timing for Eugene to be studying for a law degree.

► Eugene Ryder
and his whānau

“I think I came in at the right time where there is a focus on Te ao Māori which I am a lot more comfortable learning about. I know that I’m walking in a white world but I know that this world is wanting to be more open and more bi-cultural.

“But the more I learn about the justice system the more I can see that it’s the foundation of our laws come from a racist point of view. They are steeped in English history going back to the crusades.

“So, whilst we have people like Justice Joe Williams and Judge Taumaunu trying to weave Te ao Māori and tikanga into the law I worry that it is built on a foundation that doesn’t work for Māori. So why would we continue to build on a foundation that doesn’t work for Māori?”

It’s a good question – but it’s also a challenging question that cuts to heart of our bi-cultural society. It’s also a question that is likely to be asked more openly and frequently as more people bring mātauranga Māori into the lecture theatres and our workplaces.

I think I came in at the right time where there is a focus on Te ao Māori which I am a lot more comfortable learning about. I know that I’m walking in a white world but I know that this world is wanting to be more open and more bi-cultural



Looking ahead

For Eugene the next few years are focussed on completing his degree. His warm personality and incredibly positive view of the world radiates a man who has left his struggles behind him. But studying for a law degree when you left school at 13 years of age isn’t easy.

“I acknowledge it is hard. People ask how my study is going and I say it’s hard. When I did my Social Work degree at the Wānanga it didn’t fully immerse me into the education world that I had left. This really is.

“I couldn’t do this without my whānau. My wife especially is incredibly supportive. She gives me the space to study, and she knows that I’m helping pave a new future for people from our community.” ■

KA MUA KA MURI

Changing the narrative

Recognising mana Māori in the workplace

He whakamāramatanga

“ Mehemea ka moemoeā ahau ko ahau anake, mehemea ka moemoeā a tātou, ka taea tātou. ”

If I dream, I dream alone. If we dream as a collective, we can achieve our dream.

This whakatauki from Te Paea Herangi, an ancestral leader from Tainui, reflects the coming together of three wāhine Māori who are among the few rōia Māori practising employment law. Despite never actually

working together and living in different areas of the motu, they do not see each other as competition in te ture. Rather, they lift each other up and encourage each other to continue working toward the kaupapa of achieving better outcomes and creating better systems and processes for our people within te ture, particularly in the employment space. This reflects the kaupapa of Te Hunga Rōia Māori o Aotearoa, the Māori Law Society, more generally and is an approach these wāhine encourage others in the profession to adopt.



Employment today

NĀ **ALICE ANDERSON**

The Employment Relations Act 2000 confirms that an employment relationship is underpinned by a mutual duty of good faith. This requires the parties, among other things, to be active and communicative and not to mislead or deceive the other.

However, Chief Judge Inglis of the Employment Court has highlighted the ambiguity of the current state of the duty of good faith. In her 2019 kōrero *'Defining good faith (... and Mona Lisa's smile)'*, she said that Parliament's vision for the concept of good faith has "yet to be fully realised".

The Chief Judge went further to say that employment law "must keep pace with society's contemporary needs, standards and values as they evolve". She noted that "... there is now a growing recognition that tikanga Māori (and other aspects of the Māori world view) have a legitimate place in the law of New Zealand". As such, consideration of and engagement with cultural values arguably form part of the good faith duty.

When a dispute arises in the workplace, section 103A(2) of the Act confirms the test of justification being, "whether the employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred".

An assessment of the case law confirms that there will be times when consideration of tikanga and te ao Māori will be relevant to the assessment of the fairness and reasonableness of an employer's actions.

The Court recognised the validity of tikanga Māori in the workplace as early as 1996 when it considered whether a Kōhanga Reo had unjustifiably dismissed two employees in *Te Whānau a Takiwira Te Kōhanga Reo v Tito* 2 ERNZ 656.

The Kōhanga operated a policy requiring decisions to be made by consensus of the whānau during wānanga. The Court said

An assessment of the case law confirms that there will be times when consideration of tikanga and te ao Māori will be relevant to the assessment of the fairness and reasonableness of an employer's actions



wānanga was no more than a process, like any other process an employer may choose when considering termination of employment. It went further to say that there was nothing to prevent it from giving recognition to concepts of tikanga and te ao Māori that may underpin the employer's kaupapa and decision-making processes.

The Court was however, still required to assess whether that process was fair and reasonable. On this occasion it found the Kōhanga had not acted consistently with its own policy, rendering the dismissal of its employees unjustified. The point remains, however, that tikanga-based processes are entirely legitimate in the employment context.

In 2002, in *Good Health Wanganui v Burberry* [2002] EmpC 668 the Court considered whether Ms Burberry, a wahine Māori working in Māori mental health services, had been unjustifiably dismissed. Ms

Burberry had allegedly taken leave without approval, after her manager declined her request for leave to attend a kapa haka festival that she had attended (with approval from Good Health Wanganui) for the previous 17 years.

The Court found Ms Burberry's dismissal was both substantively and procedurally unjustified, but went further to say:

"The fact an employee was Māori and working in a Māori setting should have been sufficient to have alerted [the employer] to a need for an appropriate procedure. The onus should not have been on the employee to have asserted her mana Māori or to plead for her cultural identity to be recognised".

Judge Shaw's findings in *Burberry* indicate that the responsibility sits with an employer to engage with te ao Māori authentically in the workplace, and that a failure to adopt culturally appropriate processes could in and of itself be enough to render a dismissal unjustified.

Despite all of this, and 20 years on from *Burberry*, workplaces, practitioners, and the Courts are still grappling with the role of tikanga Māori and values of te ao Māori in the workplace.

Alice Anderson, Kāi Tahu, Kāti Māmoe, Waitaha, is an Associate at Dundas Street Employment Law in Te Whanganui a Tara.

Our wero to practitioners – cultural safety

NĀ **SHELLEY KOPU**

As rōia Māori in the employment space, we acknowledge that our industry has taken considerable steps towards cultural competency through the integration of te reo Māori and tikanga Māori in our Courts and practices. Cultural competence is a commendable start, however our wero to our friends in the law is the exploration of cultural safety, primarily in respect of their Māori kaimahi (employees).

What is the difference?

Professor David Tipene-Leach, states that cultural competence is about *"having skills and knowledge to work with people from different cultural backgrounds"*. Cultural competence encompasses cultural diversity, the acknowledgment and understanding of Te Ao Māori in order to understand who we are as Māori to create effective and respectful engagement.

In contrast, cultural safety focusses on whether the firm's values, customs and practices create a culturally safe environment for Māori kaimahi. In addition, it is consistent with obligations of kaitiakitanga which is fundamental in a functioning employment relationship.

Why cultural safety?

So why take steps in this direction? When we continue to struggle to attract and retain roia Māori in the commercial world, a natural enquiry should be whether the environment is one where our roia Māori are culturally safe. With Māori businesses requiring those that they engage with to be competent in te ao Māori, an ability to evidence cultural safety in alignment with competency, speaks



“The commitment to cultural safety is, as with cultural competence, a journey for the firm, and therefore you should not rely on your Māori kaimahi to carry the load of driving cultural initiatives or taking on cultural responsibility for the firm”

volumes to a genuine partnership. The ongoing issue of access to justice for Māori will be addressed to some degree by an increase in roia Māori. Finally, if firms are sincerely seeking to create an environment of cultural competency and cultural safety for its kiritaki (clients), then it cannot possibly do so if it fosters an environment that is not first culturally safe for its kaimahi.

Integration

To create a culturally safe environment, rōia must be prepared to critique the power structures that have been in place for some time, challenging their own cultural systems rather than prioritising becoming ‘competent’ in the cultures of others. It will require the firm to:

- Examine itself and the potential impact of the firm’s culture on its interactions with Māori;
- Commit to leaders undertaking ongoing self-reflection and self-awareness and hold themselves accountable to provide culturally safe work environments; a definition of which is determined not by them, but by

their Māori kaimahi and their communities.

- Be committed to providing development of all kaimahi in a way that maintains their personal, social and cultural identity.

Importantly, there is not a “one size fits all approach”. Many Māori kaimahi bring with them their own journey of te ao Māori. For example, calling Māori to lead a mihi whakatau or powhiri, when they are at the commencement of reclaiming their te reo Māori may in fact create significant whakamā (shame) for them. Additionally, the commitment to cultural safety is, as with cultural competence, a journey for the firm, and therefore you should not rely on your Māori kaimahi to carry the load of driving cultural initiatives or taking on cultural responsibility for the firm.

Given the requirement of self-assessment and awareness, the journey to the creation of a culturally safe environment may be a vulnerable one. It will likely require the practitioner to learn and embrace the effects of colonialism, the generational trauma through injustice and displacement and the appreciation of the struggle in reclaiming lost taonga such as the ability to exercise tikanga and speak te reo Māori. However, the outcome is an environment that creates true safety for all rōia, not only Māori, and moves us towards rewarding and enduring employment relationships.

Shelley Kopu, Te Atiawa, is a Principal at Shelley Kopu Law in Tāmaki Makaurau.

The future of employment in Aotearoa

NĀ ANI BENNETT

What could this mean for employers who wish to be successful in the 21st century? Embracing and applying tikanga Māori could be key. Values that focus on the importance of relationships, peoples' dignity and obligation to care for one's own, such as:

- Whanaungatanga, or the source of the rights and obligations of kinship;
- Mana, or the source of rights and obligations of leadership, and from that, manaakitanga, and the obligations around how we treat others;
- Tapu, as both a social control on behaviour and evidence of the indivisibility of divine and profane;
- Utu, or the obligation to give and the right (and sometimes the obligation) to receive constant reciprocity; and
- Kaitiakitanga, or the obligation to care for one's own.

So why should employer's care about values and how they treat kaimahi? Because kaimahi are about to become extremely valuable. Baby boomers are retiring, skilled kaimahi will be in increasingly short supply and Covid-19 is exacerbating the issue. By 2030, experts predict that labour planning will become more important than financial planning.

Where have all the workers gone?

We are currently in the midst of a massive shift in the worldwide labour force. The baby boomers started retiring in 2012, this begins en-masse from 2020. Around 20% of the Aotearoa workforce is forecast to disappear.

According to the Ministry of Social Development, it



is projected that 22% of Aotearoa's population will be 65-plus in 2036, and 25% will be 65-plus in 2056. By the end of this decade, Professor Paul Spoonley says that Aotearoa will be an "old dominant population" with the over 65's being the biggest part of our population, for the first time in our history.

It is also expected that international competition for skilled kaimahi and the attraction of overseas work for Kiwis will increase. International Human Resources Expert, Senior Partner and Managing Director at the Boston Consulting Group, Rainer Strack, predicts that "By 2030, we will face a global workforce crisis in most of our largest economies".

The automation of jobs (e.g. robots and big data) is unlikely to solve this problem. Technology will replace a lot of jobs, but we will also see a lot of new jobs and skills on the horizon, meaning technology will worsen our overall skill mismatch. Ultimately, there will always be a need for people in the workforce.

In Aotearoa, there is also the factor that the Māori population remains

comparatively youthful to non-Māori, and by 2026 it is projected that Māori will account for 15 % of the total population, and 14% of the working age population. For the younger working aged population (15–29 years), Māori are projected to comprise nearly 20%.

So, many of the kaimahi that employers will need in the future will be Māori.

Attracting and retaining kaimahi

In 2014, Rainer Strack’s group carried out a global survey among more than 200,000 job seekers from 189 countries. It explored participants preferences and what they were looking for at work.

The results revealed that out of a list of 26 topics, salary was only number eight in terms of importance to the participants. The top four topics are all centred around workplace culture, specifically:

- Having a great relationship with the boss;
- Enjoying a great work-life balance;
- Having a great relationship with colleagues; and
- The top priority worldwide – being appreciated for your work.

If workplace culture is the top priority, then the global workforce crisis becomes very personal. Workplaces that value and appreciate their employees are more likely to attract and retain skilled kaimahi. Workplaces are likely going to need to make changes to achieve this, and values within tikanga Māori are an obvious place to start, and could attract the large

and significant proportion of the working age population who will be Māori.

The value of tikanga Māori to employers

In 1999, when talking about the future of Māori economic development, Professor Mason Durie said, “the greatest asset Māori have is the approximately 500,000 Māori people”. Today that figure is around 850,000, and growing.

If workplaces in Aotearoa wish to prioritise workplace culture to retain and attract kaimahi, tikanga-based values could be a powerful tool to achieve that. It could also ensure employers are effectively engaging with their Māori employees and recognising mana Māori in the workplace.

He whakamutunga

The law has been telling us for some time that tikanga Māori and kaupapa Māori values have a valid place in the workplace and in employment law. Society is telling us that Māori are still disadvantaged in many aspects

of employment and given the future prediction that a significant portion of Aotearoa’s workforce will be Māori, workplaces need to improve their culture and engagement with Māori in the workplace. As rōia in this space, we all have a responsibility to be leading from the front to understand what cultural competence and cultural safety in the workplace truly looks like if we are ever going to effect change. Our dream for the future is for our fellow practitioners to join us and start giving effect to what Judge Shaw said in *Burberry* and recognising mana Māori for our people in their mahi. ■

Ani Bennett, Ngāti Ranginui and Te Whānau-ā-Apanui, is a Director and Barrister at Bennett Employment Law Ltd in Tauranga.

If workplaces in Aotearoa wish to prioritise workplace culture to retain and attract kaimahi, tikanga-based values could be a powerful tool to achieve that

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KA MUA KA MURI

Te Hunga Rōia Māori o Aotearoa partnering with Kiwibank

Ehara taku toa I te toa takitahi engari he toa takimano

My strength is not that of an individual but that of the collective

In April this year Te Hunga Rōia Māori o Aotearoa and Kiwibank signed an agreement to support both organisations to deliver better outcomes for Māori and in turn all communities across Aotearoa.

Both organisations are committed to encouraging whānau, hapū, and iwi initiatives; as well as responding to, and engaging with Te Ao Māori. The agreement signed between Te Hunga and Kiwibank will strengthen work across the legal and finance industries.

The agreement envisages that the two organisations share skills, expertise and ideas in order to deliver on their respective strategies and joint aspirations. It has also seen Kiwibank provide sponsorship to assist Te Hunga Rōia to deliver its annual conference Te Hui-a-tau where.

At the recent conference Kiwibank Head of Māori Advisory, Teahooterangi Pihama, and Chief Legal Officer, Mike Hendriksen, shared examples of how decisions in the banking industry have impacted Māori access to capital and how this has compounded over time much like the concept of “interest”.

The wero laid down was to continue addressing the large kaupapa but remembering the small kaupapa also has an impact.

Review of Māori access to capital

The banking industry led by Te Pūtea Matua – The Reserve Bank of New Zealand and Treasury are undertaking a review into Māori access to capital with a focus on bank lending to Māori small and medium-sized enterprises. Te Hunga Rōia Māori is going to play a critical role in supporting Kiwibank as the bank works to understand the wider picture including policy and legislative impacts.

The tautoko being provided by

Kiwibank is also supporting the society’s other objectives, including responding to the legal needs of Te Ao Māori.

Kiwibank Head of Māori Advisory, Teaho Pihama sees real value for Kiwibank in the agreement. “The Māori Law Society is a thought leader in the relationship between Te Ao Māori, the law, and corporate Aotearoa. This relationship will help to ensure that Kiwibank is taking a proactive approach to keeping up to date on what’s important in the legal system and to Māori.”

Jamie-Lee Tuuta, Tumuaki Wahine of Te Hunga Rōia, sees the partnership as an important way to work with an organisation with shared values. “We can see that Kiwibank is taking steps to demonstrate a commitment to Te Tiriti o Waitangi and Te Ao Māori. We are very pleased to partner with Kiwibank to support the vision of Te Hunga Rōia: Mā te ture, mō te Iwi – By the law, for the people.” ■

KA MUA KA MURI

Wearing taonga with pride in court

Earlier this year the Chief Justice released interim guidance on the wearing of culturally significant decorative taonga as part of business attire for counsel appearing in all proceedings in all courts.

The decision marked an important move towards creating a more inclusive environment in the courts to better reflect Aotearoa New Zealand's bi-cultural nation.

There was an overwhelmingly positive reaction from the legal profession with hundreds of lawyers supporting the wearing of taonga in court. Two lawyers who quickly took the opportunity to wear taonga told LawTalk what it meant to them.



Mana Taumaunu

**Barrister and Solicitor
Rawhiti Legal, Gisborne**

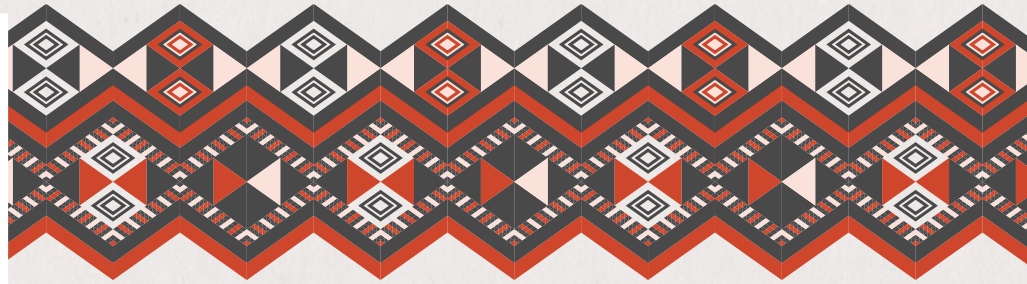
I was sitting at home having breakfast with my whānau and watching the morning news the day that Māori Party co-leader, Rawiri Waititi, had fought and won the right to wear his taonga in Parliament. The things he said about his taonga being a tie to his people and his mana motukuhake really resonated with me and got me thinking, we should be able to wear our taonga in Court too.

That morning I ironed my favourite shirt, buffed my shoes and swapped my neck tie for the taonga my wife had gifted me on our wedding day. Although I brought a spare tie with me in case my plan didn't work, at the time I thought it was pretty

straight forward, I just had to ask the Judge.

So I arrived at Court early, had a quick korero with the registrar before the list started and she passed on my request to the presiding Judge, who granted me permission to wear my taonga for the day. But he said if I wanted to continue, I would have to take it up with higher judicial authority.

In the end, I did not need to because I ran into Tiana. She took a photo and asked if she could do a social media post to gauge reaction. As President of the New Zealand Law Society, she went on to take it up for all lawyers and we have now been granted permission to wear taonga in every Court in Aotearoa. I haven't worn a tie since!!



▲ Carlos with District Court Judge Broek



▲ Carlos with his tamariki

Carlos Hamon

Associate Lance Lawson Rotorua

In 2012, I was admitted as a Barrister and Solicitor of the High Court at Rotorua High Court by Justice Woolford.

For many reasons it was a special day for myself and the whānau as many of us can relate. My father's brother, (Uncle) Ralph Hamon gifted me with a taonga that he had designed and made for this very occasion. He told me the taonga represented myself and my two young boys RiQco and Ridge who would've been 4 and 2 years old at that time.

Prior to the ceremony I tucked the taonga underneath my white collar

shirt and tie! For obvious reasons.

Fast forward to that day where the Chief Judge provided an update and informed the world that our taonga could be worn in court in place of a necktie, WOW! What a shock! How special!

On Monday 31 May 2021, I was due to appear in a full day hearing. I felt much more relaxed and there was a sense of calmness, strength with wearing the taonga in the Court room. The annoying neck tie stayed in my desk drawer.

During the lunchbreak of that hearing, I inadvertently bumped into the Judge who was presiding over the hearing. I took this opportunity to ask the Judge whether I could capture the moment with a photo after the conclusion of the hearing. She kindly said yes.

Immediately after the hearing, I showed my uncle the photo of the Judge and the taonga via FB & IG (haha) as he resides in Brisbane and I explained how this happened and the reasons. He was very proud!

For my whānau, it is special knowing that I can walk into the family court and have the two boys with me.



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For some it may not seem like a big thing. But for others, including me, the ability to appear in court and wear taonga in place of a necktie is significant. I have long worn different pieces given to me by whānau and friends, with my godfather gifting me my first bone carving shortly after birth. In my private life I will often display taonga outside my clothing. Until this year these have always been worn under my clothing when appearing in court. So it was with a great deal of joy that I watched the steps taken by Mana Taumaunu and others from the Gisborne bar as they pushed for change on this issue (after Rawiri Waititi raised it in Parliament).

Not long after the Chief Justice's media statement regarding the wearing of taonga in courts was issued, I had a hearing before the Court of Appeal. Not a forum I frequent often. And because of this the occasions are always special. With the timing of the change enabling taonga to be worn in place of neckties, I decided to wear a very special piece for the first time whilst in the Court of Appeal.

My grandmother Harata Te Maro passed away 10 years ago. My father has a large number of siblings and my "Nanny Ma" was the matriarch who held everyone together. She was also a deeply spiritual person, known for her love of whānau and her healing mirimiri. Before she passed, and before I was a lawyer, she gifted me a manaia carved from bone. I



think this taonga was actually gifted to her by another one of my whanaunga who carved it himself. It is one of my most treasured possessions.

The manaia has the head of a bird, the tail of a fish and the body of a man. Covering earth, air and water, it provides protection no matter where I am. My cousin Pearl Beattie talks about how our grandmother would breathe aroha, mauri and karakia into any taonga that she gave to us grandchildren. When I wear my manaia I feel cloaked in some of her life force.

The change was another step in making Māori culture more visible in our courts, and valued as Tiriti partners and tangata whenua. For me this first time wearing my manaia was also about having one of my tipuna with me to draw strength from in a challenging forum (and it wasn't just me, one of the lawyers for the appellant, Katy Barker, wore pounamu at our hearing).

Ki toku Tipuna Kōkā, he mihi aroha ki a koe. Moe mai ra, moe mai ra, okioki ai. ■

Te Reo Māori for the Courtroom

The New Zealand Law Society | Te Kāhui Ture o Aotearoa has worked with lawyer and te reo Māori advocate Alana Thomas and the Māori professional services consultancy Haemata to develop resources to support any lawyer wishing to speak te reo in court.

On our website you will find a poster and some flash cards to print out with common phrases used during court proceedings. There is also an audio version of each phrase to help with pronunciation.

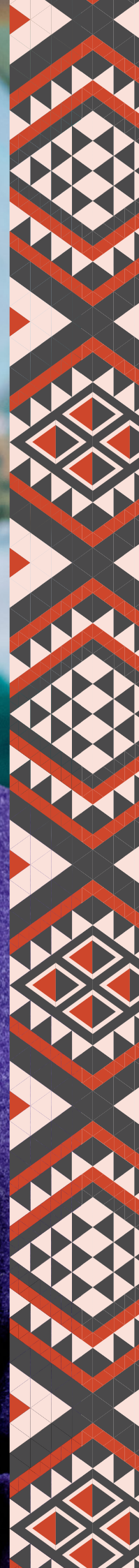


So this Te Wiki o Te Reo Māori, and every wiki, try using some of these phrases when in court.



From: Thomas, A. and Merrick, C.
Kia Kākano Rua Te Ture: A Te Reo Māori Handbook for the Law.
Scan the QR code to get a copy of the handbook.

lawsociety.org.nz/courtroomtereo



KA MUA KA MURI

Transforming the lawyers of tomorrow

Khylee Quince

NĀ JAMES BARNETT

Associate Professor Khylee Quince, of Te Roroa/Ngāpuhi and Ngāti Porou became the first Māori Dean of Law in Aotearoa New Zealand when she was appointed as interim Dean of Law at Auckland University of Technology earlier this year. Khylee shares her perspective on different kinds of diversity and the exciting work she's doing to decolonise legal education and make training as a lawyer less elitist and more accessible.

Barriers to legal education – not everyone gets the same start

Tertiary education, particularly in the field of law, is very challenging for students, but sometimes peoples' circumstances can create additional barriers. "Covid-19 really laid bare the inequality in our student community. So we had huge issues in terms of the digital divide," says Khylee.

"We're the University of Technology and we discovered that one in five of our students didn't have access to the internet."

Some of the experiences of Khylee's students during heightened alert levels, included people who lacked access to technology that were trying to participate in workshops online who needed to sit outside the library to get access to Wi-Fi. She adds "they had been moved on by police because they were breaching lockdown rules by being outside." Another student asked a local petrol station if he could sit inside for five hours while he sat his exam, but he didn't have any money to buy anything.

To address this issue the university has purchased or leased thousands of laptops, modems and data packages for students in

need. "You don't realise what a leveller things like being able to come and study at the library are. Having somewhere quiet where you have space and time are not a given," Khylee says.

Making legal education more accessible

The law has a connotation of being a flashy profession, but it doesn't need to be that way and if it is to truly represent people in the community, it shouldn't aspire to be elitist. Khylee explains that legal education and professional education more broadly have also been inaccessible.

"The way we used to operate was that students live somewhere else and they came into the city to get their education. It's an out-of-community experience. You leave your home to go somewhere else to do it."

In recent years AUT has established a law programme at their Manukau Campus which Khylee has embraced wholeheartedly. This has benefited students who don't live close to the city. "Obviously less advantaged people live further away from the central city. It's hours away, we have people coming in from Weymouth, Pukekohe, going right down to Waikato University's catchment.

In terms of law, Khylee has been advocating that

the legal issues and the curriculum that AUT delivers also be reflective of issues that matter for communities near its South Campus and their aspirations as students in the law, which can be quite different to the cohort at its City Campus. She explains it's not about diminishing anybody else's aspirations but rather to be accommodating of diversity.

Decolonising legal education

For a long time, the kind of legal education in law schools was the same. About 30 years ago Waikato University started offering a bi-cultural legal education while other universities also attempted to be more inclusive of Te Ao Māori and tikanga Māori. That has been the extent of reflecting Māori views in legal education. Khylee says that's all changing, "Now there's a real impetus to change that to be more authentic, to educate people differently. I think every law school in the country provides a really good legal education, but we could all be better in terms of cultural education, particularly in reference to the Treaty."

But it's not always easy to effect change, Khylee laments, "Resourcing is a particular issue, there are the same number of Māori legal academics today as there were 25 years ago.

"One of the reasons for that is that our communities need lawyers. So to be an academic is a privileged position, one in which you're not doing Treaty work or in the Māori Land Court, you're teaching other people, so it's still a service but it's quite different."

It can be difficult being Māori at university, "For long periods of my career I've been the only Māori in the building and it's incredibly



For long periods of my career I've been the only Māori in the building and it's incredibly lonely. There's no one else that thinks like you

lonely. There's no one else that thinks like you, and they're lovely people but they don't have the same worldview or outlook that you do or you have to translate or codeswitch to communicate, or be a particular way," says Khylee.

It's also a challenge for students. "To be a Māori in a law school can be quite hard going, it's a very lonely thing to do. So we need to shift the way we do that, by being more collaborative between law schools to bring in people from the community and the profession."

Khylee is working as one of the lead researchers for the Borrin Foundation "Indigenising Legal Education" project which is exploring a bilingual, bijural and bicultural legal education. She says it has helped being recently appointed as interim Dean, as she's the first Māori Dean of law and other contributors to the project are senior members of the Māori academic community. "It just makes it an easier sell if you're at the helm of the waka,



to be able to bring people in and be a conduit between the research group, iwi Māori and the Māori community and the Council of Legal Education.”

She sees that her role of connecting and fostering the relationships with those groups is helping AUT to be a leader in that space. “They’re all my relations, my colleagues at the other universities and on the research team, and being Dean gives you a seat at the Council of Legal Education, it puts you amongst the other law deans. And those are quite important spaces for us to have representation,” Khylee says.

Khylee says of the Council of Legal Education’s recent decision to make learning Tikanga compulsory for law students, that it’s going to be transformational and particularly welcome at AUT. “It’s a pretty exciting time really, and it requires a pretty big mind shift for people who have been doing the same thing for a really long time,” she says.

Why we still don't have equality in legal workplace representation

While inequities exist within the profession, Khylee says students spread themselves relatively evenly across the sub-disciplines of law. So she doesn’t see the lack of diversity as a legal education problem, rather it’s when people attempt to enter the profession that representation drops.

At AUT company law is compulsory, so all students have a fairly strong grounding in commercial law. But when it comes to the coal face, Khylee observes often diverse people are not employed in those jobs.

Khylee says “The concern from our end is equality of opportunity. So people choose what they want to choose, but the profession doesn’t necessarily respond to them and their aspirations there.”

Khylee acknowledges that the profession has been doing more in this space in recent years. Since Treaty policies and protocols were starting to be drafted 25 years ago up to more recent additions such as, diversity and inclusion policies. Khylee is encouraged by this.

“You know when something is being strongly embedded when it gets truncated to an acronym, so everybody knows what you’re talking about when you say D&I.”

Something promising that Khylee has observed is that diversity and inclusion on certain variables has improved, particularly around ethnic and cultural diversity. It will get there, but it won’t happen overnight.

Increasing representation starts with understanding “the hidden curriculum”

In a recent column for Stuff, Khylee wrote about what she calls “the hidden curriculum”. According to Khylee, every context has a hidden curriculum – it’s the unspoken rules about behaviour, about speech, about dress. “It’s like a code, but you need to know what the code is,” says Khylee.

At university the barriers can be as simple as not knowing what to wear to class for students who are the first in their family to go to university. “I had a student this year who missed three weeks of classes and when I rang her up and asked what was going on and she apologised and told me she couldn’t come to class yet because her suit hadn’t arrived.” The student had believed that lawyers needed to wear suits, but hadn’t realised this didn’t apply to the classroom context.

It’s not just dress though, Khylee clarifies, it can also be how to speak, how to address people. These are barriers that she hopes that people in firms and in the sector become more aware of.

Authenticity means being Māori first

A bigger issue Khylee highlights is that people from diverse communities should feel that they are welcome for who they are – not what they are – so that they can be their authentic selves. But she doesn’t think this is how people feel in legal environments currently.

Khylee says “I’ve heard others describe it as a dance – the first step is inviting someone to your dance, the second step is welcoming them inside, and the third step is they should be able to dance in any way they like. People should be able to show up and be who they are, not just be welcome in your space to do things in the way that you do them.”

Relating the analogy back to law, Khylee explains in the first iteration of diversity and inclusion a person is invited to become a lawyer. But in this example, actually they are doing things in the same way the law firm has always done them and that’s not enough.

She says “From a Māori perspective we say it’s our ways



of thinking, being and doing. So when clients come in to see you it’s how you engage with them – do you offer them kai, do you have a karakia, do you just do things the way you would just naturally do them?”

The way Khylee tries to educate her students, is to be Māori lawyers, not lawyers who are Māori. “There’s a difference. A Māori lawyer is Māori first and they just happen to be legally trained. Whereas, for lawyers who are Māori, the Māori takes the back seat, you leave that at home, you put on your suit and when you get to the office you be a lawyer like everybody else,” she says.

Khylee is mindful to not deny other people’s experiences, but encourages people to be their

authentic self. And that goes for other people too – people from other faiths and cultures or diverse backgrounds. Just be yourself.

“We need to ask – how can firms bring all these rich perspectives together without becoming this monolithic kind of lawyer? It’s such a big challenge but it’s important we solve this because good lawyers and good advocates are people that can be reflective and connect properly with their communities and clients. Clients are diverse so lawyers should be diverse too. So it’s actually good for business, that’s the bottom line,” says Khylee.

Where more inroads could be made

While gains have been made in some areas, an issue that AUT sees that hasn’t shifted is age diversity. Khylee sees age as the biggest barrier to employment. Khylee says working with mature students can bring challenges due to the additional life commitments they can need to juggle.

Often they are parents, people that have to work for a living, second chance learners (people that left school with no qualification that are coming back to study), and people looking to change their career.

“We get all sorts of people – I currently have an optometrist, a vet, truck drivers. These people bring with them this incredible wealth of life experience and pragmatism to their learning,” says Khylee.

“But one of the things we worry about is where are they going to go afterwards because for firms, diversity and inclusion policies seem to be quite focused on cultural, ethnic and rainbow diversity, but age diversity doesn’t seem to be a consideration.

“Room needs to be made for older people.

If a 50-year-old is willing and able to start in an entry level position, we should make room for them. There’s more work to be done there I think.”

People shouldn't change, the system needs to change

In the last five years Khylee has seen rapid change to bring the legal profession and community to be closer together and normalising practices that are common from a Māori perspective. This has meant the law schools need to keep up with shifting expectations, but Khylee views this as a good thing as it signals progress is being made.

Khylee points to the work happening across the legal sector running in parallel to judicial appointments and Judge Heemi Taumaunu’s Te Ao Mārama workstream in the District Court. Khylee points to the Ellis case as an example of where a coalescence of some of the big kaupapa have come together. “That was really quite inspirational and important for our students and colleagues to see – look here’s the Supreme Court dealing with core issues of tikanga Māori in relation to a pākehā man,” she says.

“In the Ellis case there are lawyers behaving in a completely different way to the norms of their education and our profession – having a pre-hearing wānanga together for example.

“These are great examples for students, to see that having cultural knowledge and behaving in ways that differ from traditional legal conduct can contribute to a real collaborative ethos and better legal processes and outcomes.”

Khylee thinks experiences like those get people to think differently and that’s driving change to a good end. People start to realise lawyers can work that way and those are the kinds of issues that they could debate. “A key question is whether our lawyers are fit to represent and advocate for our populations? The worst thing that could happen is that legal education and practice doesn’t change while our population changes rapidly and then they can’t connect to one another.”

The face of Aotearoa New Zealand is changing, more than half of the Auckland population wasn’t born here. This means people speak different languages, have diverse backgrounds and different aspirations for what they want for themselves and their families. For lawyers there’s the added challenge that they also have different ways of resolving disputes. Lawyers need to move with the times to help these people appropriately. ■

KA MUA KA MURI

Māori Transformational Leadership

A Journey as an Agent of Change

Juliet Tainui-Hernandez, of Ngāi Tahu and Te Whakatohea descent, is back in Aotearoa after two decades, bringing her career full circle as a non-executive director on the board of Ngāi Tahu Holdings.

“Ngāi Tahu Holdings was the entity I had always imagined getting involved with on my return to Aotearoa,” says Ms Tainui-Hernandez, “but I knew that I would also need to find a full time role if I was to relocate my whole whānau back home from London.”

At the same time Ms Tainui-Hernandez was looking to come back to Aotearoa and take up a position at Ngāi Tahu Holdings, Te Pūtea Matua – Reserve Bank of New Zealand was looking for a new Assistant Governor and General Manager of Transformation and People. The head-hunter interviewing her for the Ngāi Tahu director role asked if she would be interested in talking to Governor Adrian Orr.

“I have to confess that having been away for two decades, I didn’t really know much about Adrian Orr and thought that the Bank just set the Official Cash Rate – how would that fit in with my interests and values? However, I was a little intrigued when I saw the role specification and as I started to do some research, I got more and more interested.”

Ms Tainui-Hernandez found the Bank’s *Statement of Intent* incredible reading, saying “the Bank’s purpose being ‘to enable the economic wellbeing and prosperity of all New Zealanders’ spoke to my heart. It covered sustainability, financial inclusion and it recognised the



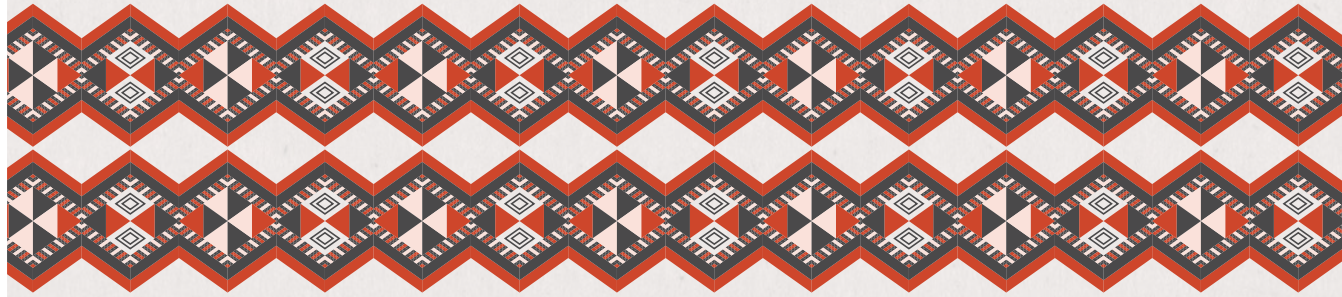
important role of Te Ao Māori to our society. I realised that despite my initial lack of awareness, this was my next move!”

Career Journey

Ms Tainui-Hernandez’s career began with her attending Canterbury University, which she says happened a bit by chance.

“I decided last minute to go to University. I was the first person in my whānau to attend, so I was unsure as to whether University was a place for me.”

Her father helped her enrol at Canterbury University and she choose to study law alongside Te Reo Māori, Japanese and Information



Technology first year classes.

There weren't many Māori law students there, says Ms Tainui-Hernandez, but we found each other, and we campaigned for a study room where we could all hang out. That's how Te Putairiki, the Canterbury University Māori Law Students society was born.

Ms Tainui-Hernandez reflects that it was the support and whaka-whanaungatanga that this whānau provided that got her through law school.

But in the early nineties, it was quite controversial

to have a separate Māori rōpū.

“I remember a group of Pākehā students complaining about us having our own room; and at its worst there were sometimes racist comments left on posters on the door over our Te Putairiki sign.”

There were comments made about special treatment and unfair quotas to get a law school place which meant other people missed out, says Ms Tainui-Hernandez. In reality, Canterbury struggled to fill even 10 annual quota places in those days, and Ms Tainui-Hernandez was the sole law student who graduated in the Māori graduation in her year group.

Ngāi Tahu and Bell Gully

During her studies, Ms Tainui-Hernandez worked an array of jobs to help fund University. A two-week-long research project for Ngāi Tahu turned into a whole summer, which ended up with Ms Tainui-Hernandez accepting a part-time role in the strategy and legal team, right when Ngāi Tahu was in the throes of settlement negotiations with the Crown.

“That was awesome mahi as a law student – I helped with research, report-writing and proof-reading, down to making cups of tea for the legal team and the negotiators (a highlight given the wisdom and knowledge of those kaumātua).”

From her part-time role with Ngāi Tahu, Ms Tainui-Hernandez moved into a summer clerking role with Bell Gully in Pōneke Wellington, which offered her a full-time Law Clerk position when she had completed her studies.

Bell Gully were working on commercial and property work for Ngāi Tahu, as well as the Treaty of Waitangi Fisheries Settlement litigation. “The litigation work lured me in.

“At Bell Gully, I was lucky enough to be one of four wāhine Māori there at the time. We have kept our close friendship today.”

Ms Tainui-Hernandez describes these wāhine as purpose-driven, intelligent women with incredible humanity.

“They have given back to their people in so many ways which I have come to realise is a super power of Māori. It's a gift born from the values we grow up with and which surround



us by virtue of our whānau, our Taua and Poua (grandmother and grandfather), and the wide and supportive kinship networks and ways of doing things which are a part of Te Ao Māori.”

And so, when one of these women made the move to Australia, Ms Tainui-Hernandez followed suit. “I only stayed a year though, as I just couldn’t really bear the harsh Australian law firm environment and the commercial work I was doing that had no real heart to it.”

Ms Tainui-Hernandez found herself at a crossroads, wondering if she should return back to Aotearoa or head over to the United Kingdom. Eventually, she opted to spread her wings and build her skills and

experience overseas, knowing that this would make her more useful to her iwi when she returned home.

Mahi in London

In London, Ms Tainui-Hernandez worked at a number of international law firms, starting out as an in-house lawyer in their central legal, risk and compliance functions, often managing significant cross-border issues arising around client conflicts, professional conduct and regulations, negligence, money laundering, bribery and corruption, terrorist-financing, economic and trade sanctions issues. This work was “simultaneously exciting and stressful,” she says.

“This work appealed greatly to my

▲ Juliet and her whānau at Punakaiki

▶ (Top) Juliet and her whānau with Governor Adrian Orr at the powhiri for Juliet’s appointment as Assistant Governor at Te Pūtea Matua, the Reserve Bank

▶ (Bottom) Juliet and her whānau at Akaroa

interest in ethics and conduct and doing the right thing by clients over profit – a concept I think comes from the way we grow up with our unique Māori values and different ways of measuring success.

“Sometimes there would be partners with potential multi-million pound deals that needed to be

“ This work appealed greatly to my interest in ethics and conduct and doing the right thing by clients over profit – a concept I think comes from the way we grow up with our unique Māori values and different ways of measuring success ”



stopped due to illegality, bribery or suspected money laundering, for example. That could be hard to navigate but my strong view on values kept me standing my ground!”

Ms Tainui-Hernandez’s ‘planned short OE’ in London turned into her spending 19 years growing from an in-house regulatory lawyer into the Chief Compliance Officer of a large international firm and with responsibility for regulatory change projects around the world.

In Ms Tainui-Hernandez’s last decade in the UK, she also joined the management teams of her law firms. Following one of the firm’s period of huge growth in its combination with other large firms in the US, Canada, South Africa and Australia (growing from 26 to 58 offices), she took on a number of projects to assist with integration of the firms and with transforming central business operations. This mahi saw her take on a role as their Business Transformation Director and establish the firm’s first Transformation team, who ran strategic reviews, oversaw outsourcing arrangements, shifted operations to a central innovation hub, and ran a portfolio of programmes aimed at improving organisational effectiveness (including organisational design, process improvement and automation).

Her firm was also doing innovative work in designing and building legal tech products to deliver integrated legal and technological solutions to complicated large scale issues such as the Libor transition and it was also focused on applying technology to bring



efficiency and effectiveness to its operations. Ms Tainui-Hernandez reflects: “I was involved in designing and delivering technology solutions including automation to improve processes, strengthen internal controls and find ways to reduce administration, save cost, and make life easier for our lawyers and staff.”

Ms Tainui-Hernandez notes that legal technology and innovation is an area that is going through massive growth at the moment – in the UK it is a big industry already, but it is still emerging here in Aotearoa and this is somewhere she thinks Māori could do really well.

“Our unique ways of problem solving combined with natural creativity and ability to see issues from more than one perspective can create real value in this space. If I was starting my career again, this may be the way I would jump!”

Despite all the excitement within her transformation mahi in London, Ms Tainui-Hernandez was a Māori girl from Akaroa at heart. “After the arrival of my two Tamariki, I knew that time in the UK was limited and I would need to bring them home. I wanted to make sure they felt strong in their identity and knew where their whakapapa came from.”

The big move home

Ms Tainui-Hernandez is back in Aotearoa, working as Assistant Governor/General Manager of Transformation and People at Te Pūtea Matua and contributing as a non-executive director on the Board of Ngāi Tahu holdings.

The opportunity to return to New Zealand and support two organisations whose work was close to her heart provided the impetus to take the plunge and relocate her family.

“I was interested in supporting Governor Adrian Orr in leading the transformation and modernisation of this historic institution, so that it lives up to its full purpose and mandate. I am passionate about helping it better reflect the society we serve by bringing in more diverse people and viewpoints. And helping to seep Te Ao Māori into the Bank’s bones to bring to life the bicultural basis of our modern country and Te Tiriti o Waitangi in a beautiful way where people can recognise the greater combined value we have as a

country through that partnership.”

In relation to her support of the Ngāi Tahu Holdings board, she explains “It has always been a personal imperative that the time would come whereby I could contribute back my skills to support our iwi vision for the future wellbeing of our people and the restoration of an intergenerational legacy that was lost. Mō tātou, ā, mō kā uri ā muri ake nei – For us and our children after us.”

Transformation at Te Pūtea Matua

Ms Tainui-Hernandez oversees the Transformation work at Te Pūtea Matua – a significant programme that encompasses a portfolio of major organisational change projects, which will enable the Bank to evolve into a more modern, accountable and effective central bank. Ms Tainui-Hernandez notes that the Bank expects this to be a long-term transformative journey with development and implementation to span a number of years until the changes are fully embedded.

Coinciding with the Transformation work, is the nascent Te Ao Māori strategy, launched in 2018 when Adrian Orr took up his role as Governor.

“We want to realise our vision of Matangirua ki Matangireia by partnering with Māori to influence the long-term economic well-being of Aotearoa,” she says.

The Te Ao Māori strategy weaves together several existing threads within the Bank as they navigate how to apply the Māori world view to our work.

“We breathe life into our Te Ao Māori strategy through three key work programmes: policy transformation, advocacy building and cultural uplift.”

Our unique ways of problem solving combined with natural creativity and ability to see issues from more than one perspective can create real value in this space



“We are working hard on integrating tikanga and te reo Māori into the daily life at Te Pūtea Matua, we offer staff free te reo lessons and we are looking at how we can educate our staff on Māori culture and build their cultural capability.” Ms Tainui-Hernandez also oversees the People and Culture function at Te Pūtea Matua which oversees the internal Te Ao Māori work programme.

Te Pūtea Matua are also broadening their strategic relationships with iwi, rūnanga, Māori-owned businesses, government agencies, central banks and other Māori organisations which will help broaden the Bank’s knowledge of Māori businesses.

This has been helped significantly by the recently published Te Ōhanga Māori 2018 report, which Te Pūtea Matua commissioned Berl to produce.

“The report sits at the very heart of our Policy Transformation, which focuses on understanding Māori access to capital in

▲ Juliet taking the stage at a recent entrepreneurship panel speaking event – called ‘Bold Conversations’ by Veuve Cliquot

the New Zealand economy.”

Māori Access to Capital is a current major work programme, to help deepen the Bank’s insights taken from Te Ōhanga Māori report, and focus on bank lending to Māori small and medium-sized enterprises.

“Building a better understanding of barriers to financial and economic inclusion, consideration of distributional issues, and exploring the impacts and consequences of our policies across demographic groups not only helps us to assess the strength of the economy, but also helps us determine the appropriate policy response to fully meet our purpose and mandates. Toitū te Ōhanga, Toitū te Oranga!”

This is linked to what is most important to Ms Tainui-Hernandez:

“Meeting our purpose of enabling the economic prosperity and wellbeing of *all* New Zealanders, through growing and sustaining a diverse and inclusive workforce that reflects the people of Aotearoa.”

In addition she says, “I feel strongly that diverse teams lead to better institutional culture, which in turn will help Te Pūtea Matua effectively respond to changing environments. Creating a culture in which diverse points of view and a wide range of skills are valued is essential – not just to redress current imbalances we have, but also to safeguard the quality of decisions and ensure we can always meet our purpose.

“As part of this, I’m passionate about encouraging more Māori to join Te Pūtea Matua. This is an active area of focus for us. For all of this purpose-driven mahi and opportunity, we still don’t have enough Māori in our organisation. Law is proving a great background for a successful career at Te Pūtea Matua, but we also welcome people of all diverse backgrounds for our many roles. Matangirua ki Matangireia!” ■

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COURTS

Administering justice in a different way at the Young Adult List Court in Porirua

BY MICHAEL JOHNSON

Walking into a sitting of the Young Adult List at Porirua District Court it's clear from the outset that this is not your usual courtroom.

It is lined with a series of carvings gifted by Ngāti Toa Rangatira. Taurapa Kōrure, the carving that greets everyone who enters Porirua District Court, talks about changing direction. Carvings around the walls of Courtroom 1 tell the story of Porirua City, from when Kupe discovered Porirua, through to the now multi-cultural nature of Porirua.

It's not surprising that this court has been the setting for a unique trial in Aotearoa New Zealand aimed at better supporting young people into a pathway away from repeated interactions with the law.

The Young Adult List Court sits in Porirua every Friday and the city's resident Judge, Judge James Johnston, primarily presides over the hearings. However as the person who led the YAL's development, the Principal Youth Court Judge, Judge John Walker also takes a turn on the Bench from time to time. The pilot for those aged 18- to 25 is designed to ensure young adult defendants can be seen, heard, understood, and meaningfully participate in the courtroom process.

Learnings from the Youth Court

From his years of sitting in the Youth Court Judge Walker sees the patterns amongst

defendants, the shared life experiences and the sometimes subtle but impactful barriers they face to effectively engaging in the court process.

"We are seeing many of our young people coming into the Youth Court with a neuro-disability of some description," says Judge Walker. "And I'm including within that, such things as autism, acquired brain injury, foetal alcohol spectrum disorder, and dyslexia.

"There is a high prevalence of mental illness and exposure to trauma, including sexual abuse, and exposure to family violence.

"We now know that those matters are not just a pre-cursor to some learned behaviour or acceptance that violence is okay in a relationship, but it also has an effect on brain development."

Young people being seen in the Youth Court with these barriers to participation often have other compounding issues such as alcohol and other drug dependency and dislocation from education.

"In the Youth Court, we have become very alert to these issues that our young people may be experiencing," says Judge Walker. "An important thing to remember is that their brains are still developing at this stage so it's not surprising that these young people have difficulties understanding what is happening in the court and communicating their contribution to the process."

Turning 18

When a young person transitions from the Youth Court to the District Court, they still have issues that may have been identified in the Youth Court, but are now treated as a fully functioning adult, without the accommodations and support of a Youth Court environment.

“Many of my colleagues, who sit in both courts, will have had the experience of seeing a young person who they know, either from care and protection jurisdiction or from the Youth Court, who has significant barriers to participation in the court process,” says Judge Walker.

“They have seen them appear in the District Court with everybody around them, including lawyers, unaware of that history.”

“It would only be by chance that the Judge might say, ‘hang on, last year, in the Youth Court, this person was found unfit to stand trial,’ for example. Or there were serious

▼ Principal Youth Court Judge,
Judge John Walker



issues around their cognition, or they have foetal alcohol spectrum disorder.”

Material from the Family Court and the Youth Court does not automatically follow a person into the District Court. Judges must request any relevant files and information from the judges in those other courts.

High prevalence of neuro-disability

Taking account of the fact that young people up to the age of 25 still have developing brains is an important part of the court process for Judge Walker. But he says the high prevalence of neuro-disabilities among young people entering the judicial system points to the need to change the process.

A prevalence study matching parts of the Integrated Data Infrastructure (IDI) of those who had been to hospital for concussion or brain injury, those who made an ACC claim, and those who went to court, shows that nearly 42 percent of people coming into the District Court have an acquired brain injury. For the prison population, the figure is about 60 percent.

“We know that not everyone in our court goes to hospital after being knocked out or makes an ACC claim, so it would be fair to say that it would be closer to 50 percent,” says Judge Walker.

“So, half of the people you see are going to have an acquired brain injury. This will have an effect on cognition and behaviour and will be part of the underlying reason for their offending behaviour.”

The Young Adult List Court pilot

The first thing the pilot did was separate out the 18- to 25-year-olds as a group in the court’s lists and put them into a separate day.

“We started with that, so at least we knew we were in that court on a day, where, more likely than not, there would be something at play which is a barrier to participation,” says Judge Walker. “We educated everybody in the court about those barriers, so we were all alert.”

Renee Higgison, Service Manager at Porirua District court says another important step was the establishment of a protocol to identify if the young adult has a history in the Youth or Family Court system.

“When charges get filed for an 18- to 25-year-old, we look to see if they have any relevant history. If they do,



◀ Renee Higgison,
Service Manager at
Porirua District court

▼ Louise Brown, Duty
Lawyer Supervisor at
Porirua District court

we let the judge know, so they can request the Youth Court file from the Youth Court judge or Family Court file from the Family Court judge.”

“If they have been in the Youth Court, we can find out what happened there and any underlying issues that were dealt with,” says Judge Walker.

“Often, sitting on those files are AOD assessments, psychological reports, psychiatric reports, and cultural reports. A wealth of information that helps us understand the young person and the issues they may have. That information cannot be used to the detriment of the young adult.”

Screening for underlying issues

Alcohol and other drug (AOD) screening happens in the court and always has done while Judge Walker has been sitting at Porirua court. While the AOD screener looks for dependency issues, it can also throw up mental health issues and also dyslexia. A simple technique used by the screener is to ask a defendant to fill in their name and address on the form.

If they don't want to do this that can be an important signal, giving the team a heads up in a non-threatening way that there may be reading and writing issues. It shows that giving this person a bail form or a written direction could be problematic.



Use plain language and check for understanding

To help everyone in the courtroom understand what is going on, those involved in the Youth Adult List Court avoid using legal jargon.

To get input from young people who had experienced the court system, Judge Walker went to Rimutaka Prison to talk to 18- to 25-year-olds to see what they thought about the court process. One of the participants in the group said, “it would be good if you just talked normal.”

“It is really easy for our profession to drop into



jargon,” says Judge Walker. “We say things that trip off our tongue like “you are remanded to... and here are your bail conditions... you are to reside... you are not to consume alcohol... you are not to associate... you are not to offer violence... When you think about those phrases, what do they actually mean to the young people in court?”

“We expect young people to comply with bail conditions that they don’t understand, and when they don’t, they come to court on a breach. Then we impose them again and maybe add a bit more complicated language around it,” says Judge Walker.

Louise Brown, Duty Lawyer Supervisor at Porirua District court has seen the benefits of using plain English when talking with her clients.

“When I talk to my clients, I talk about bail conditions as the rules,” says Louise.

“Talking about breach of bail conditions is not always understood, but people do understand talking

about not breaking the rules. For young adults, we have seen much less breaching of bail conditions, now we use simple plain language and check for understanding.”

Changes in the courtroom

Alongside information sharing, plain language and separating the cohort out, the Young Adult List Court also includes specialised services that assist judges and lawyers to operate in a solution-focused way.

A specialist prosecutor, with an understanding of these concepts and what the court might be dealing with, was part of the development of the court from the very beginning.

The lawyers who regularly appear at Porirua Court have been part of the development for more than two years, having been part of discussions at lunchtime workshops about the goals and aims of the Young Adult List.

The very dedicated Duty Lawyer Supervisor, Louise Brown, has been

there from the very beginning and drives a lot of the work and education of other lawyers.

Service Manager, Renee Higgison, has also been involved right from the outset, managing changes to the court setting, teaching and promoting the purpose of the Young Adult List.

Something as simple as where the lawyer sits in the courtroom

A small change has been made to the architecture in the courtroom. The defence always takes the seat closest to the defendant rather than previously finding one anywhere that was available.

“Defendants have told us that standing in the dock is scary,” says Judge Walker. “They felt really isolated. So, now we put the lawyer right next to them.”

As a result of this small but significant move, Judge Walker has observed that a discourse is now often taking place, with the lawyer checking on things with the defendant.



“That is a really simple thing. Nothing very revolutionary about that. It is just responding to what people have said to us in focus groups.”

Keeping whānau involved

The Young Adult Court also brings whānau into the process. It would be typical for a lawyer in the Porirua court to say, “I appear for Mr Smith, and he is supported in court here today by his aunty and his mum.”

“As the judge I can acknowledge them, welcome them and let them know that if there is anything they want to add, the court will hear from them,” says Judge Walker. “And sometimes that can be really helpful. Whānau often raise really important and helpful things.”

Judge Walker talks about a young man he was imposing some bail conditions on which included not to drive a motor vehicle. His mother stood up and said, “Can I say something?” And because she

had been invited to add something, she felt comfortable doing so. She said, “he’s just got an apprenticeship as a builder, and he needs to drive to get to the worksite.

“If she hadn’t said that the bail condition would have essentially stopped the apprenticeship. So, all that had to be done was to say except for the purposes of driving to and from work,” explains Judge Walker.

“The lawyer didn’t know it, but mum knew. So, bringing whānau into the conversation can be really important.”

Whānau provide support when interventions are put in place and assist the young person to meet their obligations and help make sure things happen.

Blessed by having a community that provides services in the court

Porirua District Court was chosen for the Young Adult List Pilot, because as a former resident judge at Porirua, Judge Walker

and the team at the District Court had already developed an ethos of community engagement and solution-focused judging, inspired by the Redhook Community Justice Centre in New York and modelled on examples such as the Neighbourhood Justice Centre in Melbourne, where multi-disciplinary teams collaborate for those coming to court.

Porirua District Court has specifically engaged with the community and brought the community and community services into the courtroom. There has been consultation with Mana Whenua, Ngāti Toa, and open days have been held, inviting the community into the courts.

“Our Mana Whenua, Ngāti Toa Rangatira were open to working with us,” says Renee.

“We no longer wanted to be the court that stands above and apart from the community. We wanted to work together for better outcomes for our young people and our community.”

As a result of this engagement, door-knocking on service provider

doors and the support of community services, the Porirua Court has many wrap-around services.

Representatives from the Social Sector sit in the court. Services like MSD’s Community Link, which provides access to services like health, housing, Inland Revenue, driver licensing, Limited Service Volunteer (LSV) programmes, finding employment, and getting people on the right benefit; and The Howard League for Penal Reform, which provides driver licence assistance.

“The agencies helping with AOD, or trying to find a house for bail conditions, weave and connect together,” says Renee. “Our agencies supporting us in court are really working well together and have evolved into a real team.”

Putting a plan in place

If a defendant pleads guilty to an offence, a plan is created by the court to help the young adult grow and develop and keep them away from reoffending.

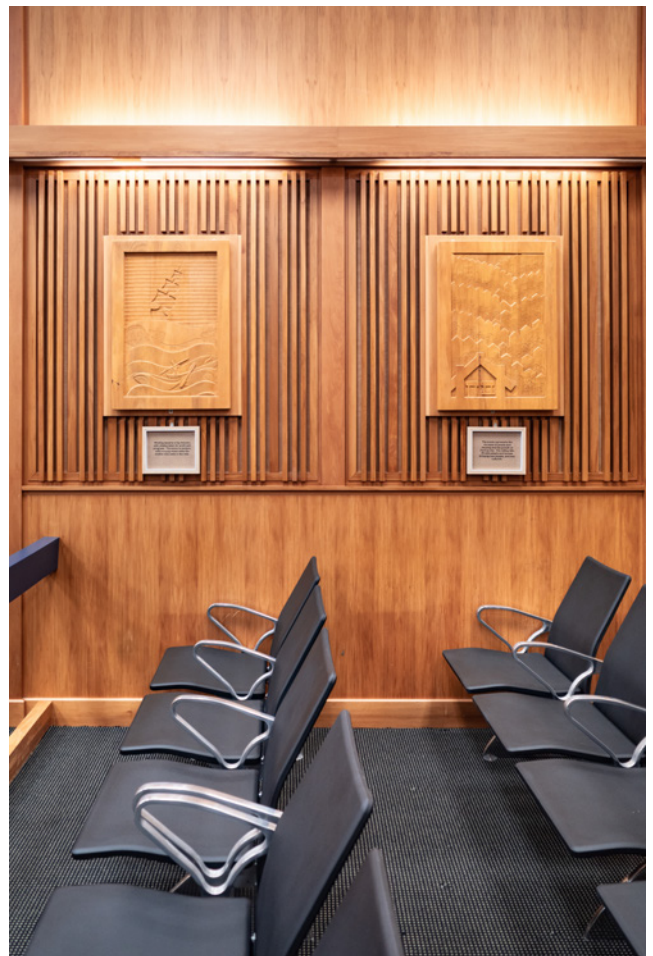
The three things that both the defence and prosecution focus on when developing a plan are rehabilitation and training, deterrence and contribution to community, and growth and development. They often see things differently, but by working together and coming to an agreement on the different aspects of the plan, they are achieving the best they can for that person and the community.

Duty Lawyer Supervisor, Louise explains, “If it wasn’t for Karen (the prosecutor) and I having such a good relationship to talk (sometimes argue) things out, I don’t think a lot of the development of the plans would have happened.

“We can go back and forth, but ultimately, we come to an agreement. Sometimes it goes in front of the judge to decide, but then it’s done, and we move on and help the young person succeed with the plan.”

The court connects them with the services and support they need to undertake the activities in the plan. Plans can involve a few required actions and it can potentially be overwhelming.

“We will help the young adult break down



▲ Carvings around the walls of Courtroom 1, gifted by Ngāti Toa Rangatira, tell the story of Porirua City, from when Kupe discovered Porirua, through to the now multi-cultural nature of Porirua.

the plan,” explains Louise. “A needs to be done before B and C, so we ask them to concentrate on getting A done. And to do A, this is the person you need to work with. Our team supports the person though the whole plan.”

The court continues to monitor progress through to completion of the plan. At that point the young person comes back before the court for disposition, which may or may not include a conviction and a penalty.

In any case, whether they are convicted or not, when a young adult completes the plan, the judge takes the opportunity to congratulate the young person for their achievements. Judge Walker observes “Often it is the first time any achievement by that person has been formally recognised and there is real power in this in changing behaviour”.

It's about fairness

Judge Walker says the Young Adult List Court is essentially about procedural fairness, and it is substantive fairness, because of the desire to get to know about the person in order to fashion an appropriate response.

“We don’t knowingly send somebody off on a programme which involves bookwork if they have dyslexia. In the Youth Court and the Young Adult List Court, if there is breaching behaviour, we ask why is that happening?”

“This is a much more complicated thing than just knowing what happened and responding to the breach. If we don’t get underneath and work out and try to address the ‘why’, then this will just continue. We will just get more and more breaches and less respect of the process, and more offending on a trajectory that is quite hard to stop.”

Call for lawyers to be aware of barriers to participation

Judge Walker encourages lawyers to be sensitive about what might be at play with their clients. He hopes they look more at the person than at the offence.

“Understanding the offence, the section they are charged under, what the summary of facts discloses is the simple bit,” says Judge Walker. “Why did that happen is much more complicated.”

Lawyers need to have a regard to the prevalence of barriers to participation. Judge Walker suggests proceeding on the basis, that it is more likely than not that the person they are representing has a barrier to participation and possibly has a neuro-disability, of some nature.

“For the most part the lawyers can join the multi-disciplinary team in looking for a solution that is in the best interests of their client, which is to deal with the underlying cause of the offending and reduce the risk of them having to come back to court. If the lawyer can see their role through that lens, then they will be comfortable operating in the Young Adult Court.”

A mainstream process

Now that the pilot has been running for 18 months and an evaluation is due to be published by the Ministry of Justice, Judge Walker suggests it is time to mainstream this process.

“Everyone should have access to the same accommodation. There is an inherent unfairness to postcode justice, where service is dependent on where the specialist court is. This is where you get this accommodation, assistance, and help, but down the road at the other court you don’t. In a country of 5 million people, we can’t justify uneven approaches like that.

Judge Walker explains that the Young Adult List Court 25-year-old cut off is arbitrary, and he would like to think that eventually the processes in place there will be available to all defendants.

“You can be a 60-year-old with an intellectual disability or brain injury. That is not going to go away just because you get to 25 either.

“In due course, we may be able to develop screening tools that will give us a more accurate picture so we can ascertain which cases we need to be really careful with and understand if a person is likely to have a disability.”

Elements of the Young Adult Court are already being incorporated into Te Ao Mārama which is being trialled in the Hamilton and Gisborne District Courts. At the end of the day, both are seeking the same outcome, to have participants leave the courtroom feeling like they have been seen, heard and understood.

If every defendant can meaningfully participate in the judicial process the hope is the outcomes for them will be far more positive and return visits to court will be, at least, reduced. ■

It's okay to ask for help

Anyone in a legal workplace can access six free counselling sessions through the Vitae Legal Community Counselling Service.



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BORRIN FOUNDATION

Encouraging Māori postgraduate scholarship in law

At this year's Hui-a-Tau for Te Hunga Rōia Māori o Aotearoa, the Michael and Suzanne Borrin Foundation announced a new scholarship to contribute to increasing Māori postgraduate scholarship in law.

Established in 2018 through a \$38 million bequest by the late Judge Ian Borrin, the Borrin Foundation is a philanthropic organisation which supports legal research, education, and scholarship.

During his lifetime Judge Borrin was passionate about supporting people to develop themselves. This latest scholarship will be added to the suite of fellowships, scholarships, and grants for individuals offered by the Borrin Foundation.

The scholarship is offered in partnership with Ngā Pae o te Māramatanga, Aotearoa New Zealand's Māori Centre of Research Excellence. The Borrin Foundation - Ngā Pae o te Māramatanga Scholarship is for Māori law graduates who wish to obtain a post-graduate degree in law overseas or domestically.

The Māori Centre of Research Excellence will provide support and manaakitanga to the successful candidate including via Te Kupenga o MAI, the Māori and Indigenous scholar network. The initiative was co-developed by Professor Jacinta Ruru, former co-Director of Ngā Pae o te Māramatanga.

Professor Jacinta Ruru said that the scholarship was a game changer for Māori legal scholarship, "This significant investment comes at a super exciting time in law where Māori knowledge and ideas are being more and more heard. We are incredibly proud of this partnership."

Co-Director of Ngā Pae o te Māramatanga Professor Kukutai said that Ngā Pae o te Māramatanga was so pleased to work with

Borrin Foundation to offer this scholarship, given their mutual vision of a socially just and flourishing Aotearoa. "We have so many stellar Māori legal scholars that are already demonstrating leadership in their own communities, and this opportunity will stretch their impact even further," said Professor Kukutai.

Justice David Goddard, Chair of Borrin's Grants and Scholarships Committee welcomed the opportunity to support Māori scholars who are future leaders in the legal world. "The scholarship reflects the Borrin Foundation's vision of an Aotearoa New Zealand that is just, inclusive, tolerant and free, where everyone understands the role and value of the law, and everyone enjoys the protection and opportunity that it provides," said Justice Goddard.

A pool of \$80,000 will be available annually which may be awarded to one scholar or split between two individuals. The first round of applications closed earlier this month. The next round of applications for this scholarship will open in August 2022.

The aim of the scholarship is to support a Māori scholar to pursue a post-graduate degree in law at a New Zealand university or at an overseas institution (any jurisdiction) including multi-year degree programmes.

Funding can be used for costs such as course fees, living expenses, and airfares.

More information about the scholarship and other fellowships and awards offered by the Borrin Foundation can be found on their website www.borrinfoundation.nz/fellowshipsawards.

The scholarship is offered in partnership with Ngā Pae o te Māramatanga, Aotearoa New Zealand's Māori Centre of Research Excellence



WHY WE PRACTISE

Kamil and Karun Lakshman

BY **MORWENNA GRILLS**

Kamil and Karun Lakshman came separately from Fiji to Aotearoa New Zealand. Both came for education. For Karun his pathway into the law was already in motion when he arrived in Wellington. For Kamil it would be a bit more time before she entered the legal profession. Both help others through their community involvement and their work, with Kamil having a particular focus on supporting migrants and refugees.

Our journey into the legal profession in New Zealand

Kamil: I grew up in Suva and came to New Zealand to go to boarding school. From there I went to university and have been here ever since. I actually started studying law but didn't finish it until much later. I switched to a Bachelor of Arts degree majoring in education and psychology.

After graduating I went to work for the Ministry of Education, a position I obtained after doing a two week stint in their file management team which was chaotic as the then Department of Education had been restructured to become a Ministry. In my exit interview I voiced the chaotic nature of the setup and how it could be solved which, probably now thinking back, sounded like music to the Manager's ears (a lovely woman). I was instantly offered a project position after which a permanent full time Executive Officer position was created in the Ministerial Unit and there launched my career in a completely different path from what I had set out to do.

The Ministry of Education was a

wonderful employer and good to me for which I am ever so grateful. I was encouraged to undertake management qualifications including an MBA and within three years I was in middle management appointed as an Administration Manager with a large portfolio including overseeing the district offices just before I went on maternity leave with our first born.

It soon became apparent to everyone that I had reached my maximum output, the place was running smoothly and there were no challenges left. So, what next?

The first time I did Law I didn't really understand much, it was like a foreign and alien language. So I thought it was unfinished business and I should at least give it another shot. I was allowed study-leave to undertake some papers as by then the Law School had shifted down from Kelburn to the old government building and the Ministry of Education had moved up to Pipetea Street. It was all very convenient and when I think retrospectively, interconnected. As a mature student it was much easier, and it all made sense.

After finishing Law and armed with the package of experience and worldly experience that was uniquely mine, I did not want a 9-5 job with a large firm. I wanted to find my path

where my heart sang. That was difficult because it was a world of unknowns. I went to work for a protégée of Karun's in Masterton as she gave me flexibility and mentorship. I would drive up the hill three times a week, a chore!

During one of those drives I stopped the car to vomit. I was pregnant! Our second son was eventually born. I did not know what to do because I wanted to spend time with him as he was a precious gift. There is an eight year age gap between the two boys.

I opened my consultancy which I called Idesi. It was named after my grandfather, C P Bidesi with the B dropped. He was a politician, one of the longest standing city councillors of Suva after Fiji gained its independence, then a Senator and a Deputy Mayor of Suva and a people's advocate who never shied away from being a voice for individuals who were not being heard. He had no fear. It seemed like the most appropriate name because it conveyed the sentiments and the ethos that was to follow with the commencement of Idesi Legal.

The obsession with undertaking and completing a law degree was because my father, Ravindra Nath was a lawyer, but I had never had the chance to know him as he passed away prematurely when I was just three months old. He was only 29 years of age, a Christchurch law graduate having commenced his own practice in Nadi with two other

branch offices. I didn't know how to connect with him, so I thought maybe this is the way to do it. I wore his gown to my admission ceremony which was incredibly special. Karun now wears the gown when he appears in court.

Karun: I was born in Suva and grew up in Labasa and returned to Suva for high school. I obtained a full boarding scholarship at the University of the South Pacific (USP) where I did preliminary law papers and spent two of the best years of my life. I then came to Victoria University of Wellington where I did my undergraduate degree, my professionals and a Masters degree.

While doing my professionals I worked as a law clerk for Russell Buchanan who had started his own common law practice - what we now call litigation. I knew then that that was my preferred area of practice. After I was admitted to the bar I worked for Russell as a staff solicitor.

I went back to Fiji in 1986 and was fortunate to get a job with the well-known firm Munro Leys & Co in Suva.

I returned to New Zealand in 1988, after the military coup in Fiji in 1987. I managed to get a job with Goddard Oakley Carter & Moran at their Lower Hutt office. Eventually I re-joined Russell Buchanan, in partnership as Buchanan Lakshman. From there I moved to the bar.

I will always be grateful to Russell for the opportunity and help he gave me.

Our meeting in Wellington

Karun: I spent all my university

years at the university's original hostel Weir House. I became a deputy warden and enjoyed my time there very much.

Kamil: He's being very modest - he was such a good member of the team there that he was made a life member of the Weir House Residents' Association. Not many people ever got that!

The hostel is where we met. Although not long after meeting, Karun went back to Fiji so we were in different countries for a while. He actually proposed over the phone! The coup had occurred. I went over and we got married before coming back here and setting up our life here together.

Even though we are both from Fiji we may never have met in Fiji and so it is rather ironic.

Sharing a passion for helping others

Kamil: One of the reasons I established Idesi was after working with migrant women through a voluntary organisation I set up when I returned to Law School called Mamta. This was an Asian Women's Support Group and was set up following a suggestion by Karun.

Karun: I started getting male clients from the migrant ethnic communities who were charged with domestic violence offences. Whether my clients were guilty or not, it was obvious that there were underlying problems in the marital relationship and that the wives had little if any help and support. I could not help the wives as they were the complainants. So I mentioned this to Kamil.

Kamil: I could see the social issues



▲ Kamil Lakshman – Lawyer Principal, Idesi Legal Ltd specialising in Immigration and Refugee Law

▶ Karun Lakshman – Barrister (civil and criminal)



underlying those complaints and could understand the challenges these women were going through having moved from very different societies to New Zealand. The value system was different, in western countries like New Zealand we operate from a rights base paradigm whereas most of the countries these

ladies came from were from a role base paradigm.

Many issues existed – identity crisis, management of expectations and just the stress associated with moving and coming to a country where the culture and ways of doing things are not understood. It was not that the services were not available, the issue was access to the services, that is where the

gap was. We were able to speak to those women and put them in touch with services they didn't even know existed.

Although it was a woman's group, they always came to ask for help for their husbands! One of them was an immigration case – he had syphilis and couldn't get a visa. I took it on, and I got him the visa. His wife said, you're very good

at this, why don't you do it for a living!

Another lady – her husband had issues with his boss not paying enough, now coined migrant exploitation. I took that case to mediation with a successful outcome.

So Idesi was founded, at first as a consultancy and then later on as a law practise based on those two areas of the law, Immigration and Employment, although it was really the Immigration practice that took off and then Refugee Law was added even though in Masterton I dealt with a very long running and complex Refugee case which was won, in fact it was my first case. I am a legal aid provider for Refugee and Residence Deportation cases.

Over the years Karun and I have had clients that have crossed over and we've been able to help them in different ways. That has been very rewarding.

Using the law as a force for good

Kamil: Immigration and Refugee work overlap. It is a very satisfying and meaningful field. It is not a case that for one to win the other has to lose. The most challenging and rewarding work is to overturn a declined decision or legalise an overstayer. It is solving a problem and finding the solution by understanding the history of the case. What went wrong and why. Then to develop a strategy to solve it. In some cases people have been very unfairly treated or circumstances and timing has not been their friend.

The motto is to keep going until someone will listen to the humanitarian circumstances that exist. The pen is the tool. It cannot be billed on a time basis otherwise you can't



do everything. So fixed fees give the clients a sense of certainty and for us we can spend as much time as possible without having to worry about the clock and pursue all avenues.

The humanitarian cases are the most satisfying as the voice needs to be heard and you are facilitating that.

To give you an example and I can give you many. I was sitting in my Auckland office that I had just opened and nobody really knew me. I got this phone call from a very young girl saying her grandmother was in the cells due

to be deported and asking if I could help. I rang the compliance officer about the case and she said thank god you've called, she really needs help. They had rung around most of the immigration lawyers but nobody wanted to take it. I took it on and got it through. That lady is now a happy kiwi resident. She'd been here for 31 years mostly as an overstayer. That was a good feeling to help her.

There is a whole group of people that you never hear about living their lives in Aotearoa but without valid visas. Some of them have been here for decades. I've got a recent case where the client has

been here for 30 years. He's just been picked up as he was going into hospital and needed to show his passport and of course it was discovered he did not have a passport.

These are really good people, they're in a very difficult situation. Sometimes you don't know how you're going to help them. But we have had many successes. Where you can help people who really need you – that means a lot.

Recently we were able to facilitate assisting an Afghanistan national get a visa after his cultural arranged visa had been declined and a day or two later the Taliban invaded.

Our refugee asylum seeker claimants are vulnerable and displaced so that is rewarding work particularly if it is failed Asylum claim and you able to turn it around and win at the Appeal stage.

Karun: For me my most important work was the writs of habeas corpus after the military coup in Fiji in 1987. Despite that being at the start of my career, it remains the pinnacle of my career.

The coup happened in May 1987. The firm I worked for, Munro Leys, had clients which included the Fiji Times newspaper and the University of the South Pacific. A number of people who challenged the military were taken into military custody. They included academics and journalists and Munro Leys was called upon to assist. Some lawyers including the president of the Fiji Law Society were also detained.

Fiji, like New Zealand and several other Commonwealth countries, had always had an independent legal profession and judiciary, based on that of the former colonial master – including appeals to the Privy Council. Fortunately, the military government did not immediately dismiss the judges after the coup; that happened later.

Fiji's civil procedure was based on the (UK) White Book, so although we were in novel territory, it was a matter of following the rules, which required an ex – parte application and at least one affidavit in support – obviously from someone other than the detained person. I had to brief the evidence and prepare the papers in a hurry. I filed the papers in person. The registrar personally dealt with the matter. He was a fine person, committed to the rule of law but also a pragmatic and resourceful person.

I remember the first hearing well. It was a chambers hearing. The judge was understandably cautious,

because he also was dealing with a novel situation. He asked me to go through the application and the law. When he was satisfied that the grounds had been made out, he issued the writ.

That was the easy part. The writ now had to be served on the military authorities. The writ commanded them to show just cause for the detention. If the military authorities ignored the writ, they would be in contempt of court and liable to be arrested. It fell to the registrar as the sheriff to serve the writ.

Fortunately for all concerned, at that point the registrar was able to take a pragmatic approach to the matter. He told me that he had personal contacts in the military and he asked me if he could first contact them to explain the legal situation and persuade them to release the prisoner without serving the writ. Thankfully I had the presence of mind to agree. The situation was resolved in that manner. A potential constitutional sub-crisis was thereby avoided. The same happened with the others who were detained.

I finally understood what the rule of law meant – until then an esoteric concept that I had not quite grasped despite being taught it by no less than the late Prof. Quentin-Baxter, the late Prof. Gordon Orr and Prof. Ken Keith (as Sir Kenneth then was).

This short period of my legal career was an incredible experience, especially when I was still a junior lawyer at the start of my career.

Maintaining connections with Fiji

Karun: Before the COVID-19 virus struck, we went back regularly to Fiji. We have family members there.

▲ Kamil Lakshman is seen wearing her Father's gown taken with Fiji's former Chief Justice His Lordship Anthony Gates at the admission ceremony to the Fiji bar on 24 October 2017.

CONTINUED FROM PAGE 65

While there were similarities between Fiji and New Zealand which made it possible for me to fit into New Zealand society when I first came here, there were of course cultural differences. Now there is a strong Fiji community in Wellington, with fairly regular events.

Kamil: I have also been admitted to the Fiji bar as I wanted to use my father's gown and be admitted where he would have been. That was special. I undertake volunteer work when natural disaster strikes Fiji. In the last 10 years many containers of goods have been sent to Fiji thanks to the generosity of the New Zealand people. In fact, in the last Appeal because it received media attention we were able to send five containers and had to stop because the container company said they could not supply us anymore.

Our children are first generation kiwis who have roots in Fiji but were born here – like many other children like them. It captures a whole host of identities! Our two children, Prashant 28 years old is a medical doctor and Siddhant 19 years old is currently studying.

In my opinion, I am an Indian, I am a Fijian, I am a kiwi and we all are human and spiritual beings! I think we need to focus on unity instead of the divisiveness that culture, religion, race brings. The law is the safekeeper and needs to ensure that there is no unconscious bias imbedded into our policies and our systems. We are the watchdog of the down-trodden otherwise who will be, that is the service as a profession we bring. We have to be mindful and vigilant of the narrative, of the stories we tell. ■

PRO-BONO

New Zealand's pro bono clearinghouse opens for business

BY MORWENNA GRILLS

It's been ten years in the making but in July 2021 New Zealand's first pro-bono portal opened for business. Supported by funding from the Ministry of Justice, Te Ara Ture connects volunteer lawyers to people who need legal help.

"It's an incredible feeling to finally have this off the ground," says Te Ara Ture Director Darryn Aitchison who piloted the model at the Auckland Community Law Centre before its national launch.

"Te Ara Ture exists because we know pro bono has the power to transform lives. Most legal problems are experienced by just a small number of New Zealanders. Their problems are often serious – resulting in significant social, economic and personal harm.

"Many of these people don't

know where to turn for help so Te Ara Ture will act as a bridge between lawyers and those in need."

How does Te ara Ture work?

"Finding good, meaningful matters is one of the main challenges for lawyers wanting to do more pro bono work" says Darryn. "Te Ara Ture gets referrals from its community networks, and uses a secure online portal to match legal matters with pro bono providers."

The software behind the portal was developed by Justice Connect in Australia and has been rolled out to three other jurisdictions including Aotearoa New Zealand.

"The tool is designed to remove many of the barriers currently in place for lawyers wanting to do pro bono work," says Darryn.

“We know from other clearinghouses that our approach and the portal works. I am confident that we will grow this into a large network of pro bono lawyers and provide many quality pro bono experiences”

“As a lawyer signing up to the tool you tell us what areas of the law you can offer help in, the amount of time you have and the level of work that you want to take on. We can then filter through the requests that come in to match you with the right person.

“We find cases based on your expertise, screen for eligibility, reduce risk, package the work into manageable bundles and communicate with you via the online platform.”

How many lawyers have signed up?

About 200 lawyers have registered to receive referrals so far. They come from a mix of law firms, sole-practitioners and barristers.

“It’s quite a tricky stage that we’re at,” explains Darryn.

“We need to balance the number of matters coming in with the number of lawyers registered with us.

“We’re starting to get more cases coming through from Community Law Centres around the country as well as more lawyers signing up.

“There is plenty of enthusiasm from the profession. I would simply ask that anyone wanting to volunteer is patient at this stage whilst we’re increasing the number of cases we have!

“We know from other clearinghouses that our approach and the portal works. I am confident that we will grow this into a large

network of pro bono lawyers and provide many quality pro bono experiences.”

What sort of cases are coming into Te ara Ture?

“It’s been a real mix. The first matter we had was an RMA. We’ve had several other public law matters, private contractual matters, and employment matters. It really can be any area of the law that people need help.”

The types of services needed across the different areas of the law include merits assessments, advice, one-off advocacy or appearances, and help with dispute resolution.

Who can do pro bono work through Te Ara Ture?

At this stage, only lawyers practicing on their own account or firms can accept legal work through Te Ara Ture. Employees of those organisations can also do work through Te Ara Ture, provided the employer registers for referrals.

“But there are other ways you can help,” says Darryn.

“Any lawyer can do pro bono work directly through a community law centre or Citizens Advice Bureau. And firms can get involved in other ways too.

“We are a two-person team at the moment with a limited ability to do all the things that need to be done to make this a success. We’ve had some good support from larger law firms in the past with things like IT help but we always need more across a whole range of corporate functions like finance and communications.” ■

For more information and to sign up visit www.tearature.co.nz

PACIFIC LAWYERS

Meet the Presidents of the Pacific Lawyers Association

BY MORWENNA GRILLS

The Pacific Lawyers Association celebrates its 20th anniversary in October this year. It was established to promote and respond to matters relevant to Pacific lawyers and to Pacific peoples and has members spanning law students and graduates, lawyers and members of the Judiciary. In October last year the PLA became a permanent member of the New Zealand Law Society Council.

Recently Kōrero Mō Te Ture | LawTalk caught up with the new co-Presidents, Ataga'i Esera and Joseph Xulue, to hear what they have planned for the Association and what drives them in the legal profession.

Tell us about your journey into the legal profession

Joseph: Bozu sē (greetings) I'm an indigenous Kanak from New Caledonia. I was born in the capital city Nouméa and my family moved to Aotearoa, New Zealand in 1998. I grew up in Papatoetoe in South Auckland and I studied Law and Commerce at the University of Auckland. I was admitted to the bar in 2017 and became the first indigenous Kanak person to do so. I started practising in 2017 initially in the Auckland Public Defence Service office. After that I moved into prosecutions joining the Office of the Crown Solicitor at Manukau – Kayes Fletcher Walker, where I have worked as a Crown Prosecutor for 3 ½ years. The firm is based in South Auckland, only about a 10 minute drive from where I grew up. It's a firm that is focussed on reflecting the South Auckland community it serves, prosecuting crime in a firm but fair way and doing publicly important work to a high standard.

One of the key reasons I pursued a career in law was to help indigenous Kanaks in New Caledonia. Kanaks have wanted independence from the French Republic for decades so I saw law as a conduit to help fight for Kanak independence – that is – it would provide me



with the necessary skill set, knowledge and qualifications to be an advocate for Kanak people. Growing up in South Auckland has meant that my reasons for pursuing a career in law also expanded to include the want to reform our criminal justice system to reduce the harm it causes to Māori and Pasifika families and communities.

Ata: I was born in Whanganui, my mother of NZ European descent and my father of Samoan descent. My parents have both been amazing role models in terms of being people who have chased their dreams and served their communities. My journey into the legal profession was not what you would call conventional. Law School was a place where I landed, more by default than design,



▲ Joseph Xulue, new Pacific Lawyers Association co-President

◀ Ataga'i Esera, new Pacific Lawyers Association co-President

at a time when admission was restricted. At that time, my brother was completing his law degree, and would be the first to tell you that I didn't necessarily apply myself as well as I could have. The profession was not one to which I was naturally drawn, nor one into which I saw myself fitting. I completed my undergraduate degree in accounting. I then took up an opportunity to teach English in Oita, Japan, an experience which I cannot recommend highly enough.

Upon returning to NZ I practised as a financial accountant, only to find that similar to my first round of law school, it was not something that motivated me to get up in the morning. In 2009, with some encouragement from my grandfather and my brother, I made the decision to return to Law School and was admitted in 2010.

Over the past decade I have predominantly practised in the area of Family Law in Porirua, apart from a brief stint in South Auckland. I am currently a Director at Family Law Specialists in Porirua and the Family Law Section representative for Porirua. A large part of my practice is acting as Lawyer for Child and I truly consider it a privilege to advocate for some of the most vulnerable.

Does having a shared cultural understanding make a difference?

Ata: A shared cultural understanding does make a difference, to clients, to those engaging with lawyers and with the justice system, and to our community at large. Pacific lawyers are still rare, making up approximately 6% of the profession.

Across the Pacific the notion of communal responsibility is something which is more of a 'norm' for us. When we succeed, we do so on the shoulders of the giants before us. When we meet other Pacific people in our professional capacity, whether they are other lawyers, parties to proceedings, professionals or others engaged in and around the process, there is an immediate sense of connection. There is a sense of mutual appreciation and respect for each other and each other's culture.

The responsibility lies across the profession, to do what we can as a collective to endeavour to be part of a profession that reflects the community that it serves.

Joseph: I agree that a shared cultural understanding makes a difference, and especially when that cultural understanding supports and brings about change to publicly-important institutions. At a Crown Solicitor's office (for example), where you have a real responsibility to the community you serve (many of whom are of Māori or Pasifika descent), I believe this cultural understanding is particularly important. Having Māori or Pasifika lawyers in a Crown Solicitor's office, offers a really important and nuanced perspective to the decisions that ultimately affect those in the community, decisions relating to aspects such as charging decisions, appraising matters personal to defendants at the sentencing stage or even how we proceed with a matter. Within the Crown Law network there aren't really many Māori or Pasifika prosecutors so we're very lucky in my office to have a relatively diverse representation of Māori and Pasifika solicitors in a publicly-focused institution, in South Auckland. I hope this representation will increase across the country as it's critical to making a criminal justice system that is about the people who are really affected by the decisions that we make as lawyers.

On becoming co-presidents of the Pacific Lawyers Association

We are in a very fortunate position. The combined effect of having both Tania Sharkey as an impactful former PLA President and Tiana Epati as a trailblazing current Law Society President, the PLA has a much more pronounced presence within the legal community. This means we can now offer more opportunities for mentoring, continuing legal education, and collegial events to Pasifika lawyers, university students and high school students. It also means that we can better support other functions of our association, such as research and law reform. We are excited about the prospect of moving into spaces that were previously not as accessible, and continuing to further, and bring needed attention to, the needs of the Pacific legal community and our community as a whole.

A key development is our increasing role in a range of working groups with the Courts, the Ministry of Justice and the Law Commission. We are contacted on a regular basis by a range of organisations both within the legal community and the community at large, seeking our views on issues that impact Pacific communities. The PLA has an Outreach committee with a view to reaching as many local high schools as possible, to speak with students and answer any questions they may have about a career in the law.

What are some of the key pieces of work coming up for the Association?

Ata: Alert Levels permitting, we have our 20th Anniversary Dinner coming up on Friday 1 October 2021



at Okahu, on Auckland's Mission Bay. We also have a backup dinner date of Saturday 6th of November 2021, should alert levels prevent the dinner from proceeding on 1 October.

The PLA is continuing to grow our mentoring programme. This is especially important to connect our practitioners and for senior law students who are preparing to enter the workforce. We have a strong student membership and from the PLAs perspective it's important that students can have the opportunity to engage in mentoring relationships with those in practice to build their confidence.

Joseph: Further examples of some of the PLA's key pieces of work include: the running (and funding) of the annual Pacific Issues Moot at the University of Auckland, and the PLA prize for legal writing which looks to encourage Pasifika students to submit innovative pieces of writing that touch on the issues of Pacific peoples both here in New Zealand and in the South Pacific. We are also in the process of expanding our legal writing competition to our out of Auckland membership. Similarly, we are continuing to visit and engage with high schools and Universities to promote University study and the study of law. Another exciting development this year is a research paper that one of our Executive Members (Litia Tuiburelevu) is conducting called *Pasifika Peoples and the Criminal Justice System in Aotearoa*. That research is being funded by The Michael and Suzanne Borrin Foundation. The PLA recognise the importance of this project and are particularly fortunate to have its head researcher on our executive committee.

What do you know about the Te Ao Mārama model for the District Court and how does that impact on the Pacific community?

Ata: My understanding is that Te Ao Mārama aims to provide, within the Court setting, a much broader perspective of offenders and seeks to work in partnership with local iwi, communities and community leaders. Recognising the intrinsic value in the existing community lead groups and their processes, such as the importance of consulting with kaumatua, matai, church leaders, that will ultimately add value to the justice process and will impact positively on the wider community. In terms of the Pacific community, hopefully Te Ao Mārama will allow for a more meaningful process and one where the community sees itself within it.

Joseph: There is this challenge with the catch all phrase of Pasifika. There are so many unique cultures within the concept of Pasifika. We have similarities amongst those cultures but there are stark and unique differences too. Trying to accommodate those distinctive cultural practices can be difficult. That being said, the PLA recognises that Te Ao Mārama is an important first step in the right direction for the Courts and importantly the access to justice for Māori and Pasifika people.

What are your thoughts for the development of the legal profession and the PLA over the next 20 years?

Ata: What we would like to see of the profession is one which is more representative, from the

bar and bench. We would like the number of Pacific lawyers to grow beyond the current 6%. This would hopefully result in the legal profession and indeed aspects of the justice system, shifting from being perceived as being largely monocultural, to being one which can function together with other cultures, with all cultures making a significant contribution to the legal profession, which may ultimately result in better long-term outcomes for those before the Courts.

Joseph: A particular area of development I would like to see in the law is how we can better incorporate Pacific indigenous praxis into our legal system. An example is how we can incorporate tikanga Māori into the development of law across civil and non-civil law practice. We have seen this practically done in the Supreme Court case of *Ellis* by allowing a deceased person to pursue an appeal where the reasons for doing so included a consideration of the concept of *Mana*. Perhaps over the next 20 years we could see aspects or complete processes of the Court and in particular the criminal justice functions, operated out of a marae or a fale (as we already see in the Youth Court Jurisdiction with the Rangatahi and Pasifika Courts).

Ata: For now, it is a privilege for us to serve our members and our communities, doing our best to continue the work of those before us, in preparation for those to come. ■

To find out more about the Pacific Lawyers Association and how to join visit www.pacificlawyers.org

WILLS MONTH

A whole new way of estate gifting taking off in NZ

BY ELEANOR CATER

We are all familiar with charity giving, whether it be a few coins in a bucket at the train station, regular giving through appeals or leaving a bequest to a favourite charity in a will.

What’s not so understood is the idea of endowment fund giving; an option for clients to make big, strategic gifts for charitable benefit which can be invested in perpetuity, without the need to establish their own charitable trust.



Eleanor Cater

findings confirmed sharp growth in endowment and ‘donor-advised’ funds (DAF).

While the idea of DAF or endowment funds is a relatively new giving concept in New Zealand, our experience shows interest in this form of giving is growing faster than ever before.

Community Foundations (17 across NZ) pool individual endowment funds in communities. They saw their funds grow 33% in the past financial year alone, exhibiting growth being experienced

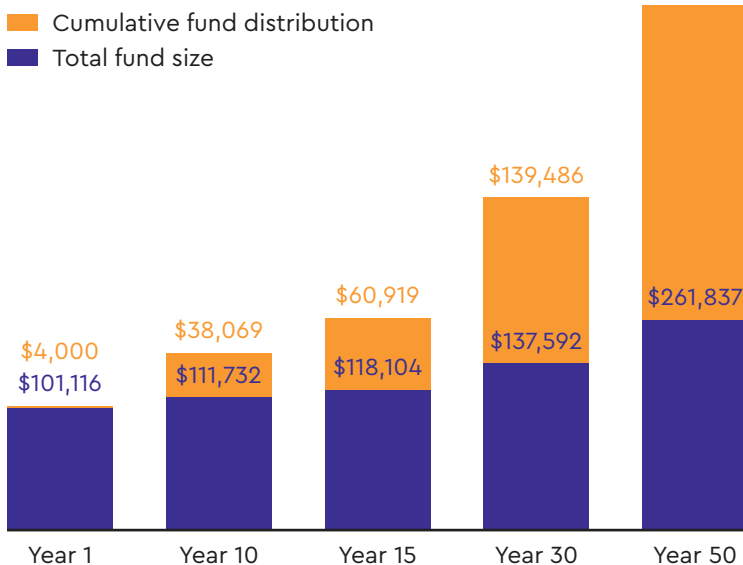
What is an endowment fund?

An endowment fund is established when a donation is invested in perpetuity, with the income from the investment returned to benefit charitable purposes, providing a reliable, ongoing income stream.

With 4% as a guide for distribution, \$1m invested in a not-for-profit structured endowment fund can return an estimated \$40k, each and every year, to a nominated charity, forever.

There are many people who prefer an independent structure and the strategic nature of long-term structured philanthropy over direct charitable giving (or a combination of both). Earlier this year, the US National Philanthropic Trust (NPT) published its 2020 Donor-Advised Fund Report and the

Endowment fund increase over time with a base fund of \$100,000



Estimated 6.5% average investment return and a distribution of 4%

The research across the world is consistent: in the USA, UK and Australia research has shown that the single most significant factor which has helped to increase the incidence of charitable gifts in wills is the mention of charitable giving by a lawyer at the time a will is being prepared

worldwide of what is being labelled ‘the fastest growing form of philanthropy in the world today’.

Will-making across the world

Most people tend to put off estate planning in normal times. However, from a massive longitudinal study in the U.S. we also know when those plans are made and changed.

The typical triggers for planning fall into one of two camps, family structure changes or “death becomes real” events.

Family structure changes include marriage, divorce, birth of first child, birth of a first grandchild, and widowhood. “Death becomes real” includes diagnosis of illness, moving to aged care, or approaching death.

Right now, many people are living the “death becomes real” experience through a global pandemic. Consequently, across the world there has been a major upsurge in will-making, particularly online.

Will- making in New Zealand during Covid-19

Towards the end of 2020 More Strategic carried out a study which showed that 16% of New Zealanders contacted their solicitor to revise their will during the pandemic, whilst a further 54% considered it (but haven’t done it yet).

From the same study, 21% of respondents showed intent to leave a gift in their will to charity, and a further 22% thought ‘maybe they would’.

A lawyer's role is key

We know from research that the charitable component of an estate plan is, for many people, highly fluid.

In one experiment with British lawyers simply asking the question, “Would you like to leave a gift in your will to charity?” this more than *doubled* the number of people

including charitable bequests in their wills.

Even small alterations in the wording used to describe such gifts results in dramatic changes in both charitable intentions and actual will contents. For example, social framing was also shown to be a powerful motivator – almost three times as many people will leave a charitable bequest if their lawyer suggests that it is something other people do.

And the research across the world is consistent: in the USA, UK and Australia research has shown that the single most significant factor that has helped to increase the incidence of charitable gifts in wills is the mention of charitable giving by a lawyer at the time a will is being prepared.

So what can lawyers do at this unique moment in history?

- During the will-making process ask the question: “*Have you considered leaving a gift to a charity or cause you care about in your will?*”, adding “*It’s something other people do*”.
- Find out from your client what they care about and advise them on the options available – direct charitable giving, endowment funds or donor-advised funds managed by an independent structure like Community Foundations, or establishing a separate charitable trust.
- Upskill and empower your staff to have meaningful conversations in philanthropy; you will find it a real, differentiating point of difference in your professional advisory role. ■

Eleanor Cater heads communications and membership services at Community Foundations of NZ, the collective of NZ’s 17 Community Foundations, growing philanthropic funds in communities nationwide. Community Foundations are not-for-profits that pool and invest donations, and direct funding to where it is needed in communities. They specialise in the management of bequests as gifts to communities and have stewarded over 700 of these gifts to be invested for future community transformation. www.communityfoundations.org.nz

PRACTISING WELL

“Overthinking Perfectly”

BY GWENDOLINE SMITH

I occasionally have members of the legal profession in my practice. Not as many as there theoretically ‘should’ be, but the reluctance to seek psychological assistance is of course reflected in the mental health statistics within the profession. Not forgetting taking the award for the most suicides of any profession, toppling the Dentists who held the position for many years. Statistically lawyers are over-represented amongst the professions in the following categories; depression, burn out, anxiety and problematic drinking.

When lawyers do present for help, (which they are cautious of doing in case it appears on their employment records) there are two main themes – Overthinking and Perfectionism.

I’ll never forget a consultation one afternoon. I had just identified for the client the above two cognitive behaviours as problematic.

He (the Lawyer) looked me straight in the eye and said:

“So you’re telling me that you would want to consult with and pay for a lawyer who didn’t overthink and wasn’t striving for perfectionism?”

A challenging question, and one which I will endeavour to answer in this article.

The first group of people who would prefer not to engage with a perfectionistic overthinker are; your spouse, your partner, your family and loved ones.

Because, it is this group that have to live



Gwendoline Smith

The first group of people who would prefer not to engage with a perfectionistic overthinker are; your spouse, your partner, your family and loved ones



STRESS

with your irritability, your fatigue, often heavy drinking and obsessionality. They are the ones that witness the detrimental impact on your health, your mood and your psychological well-being.

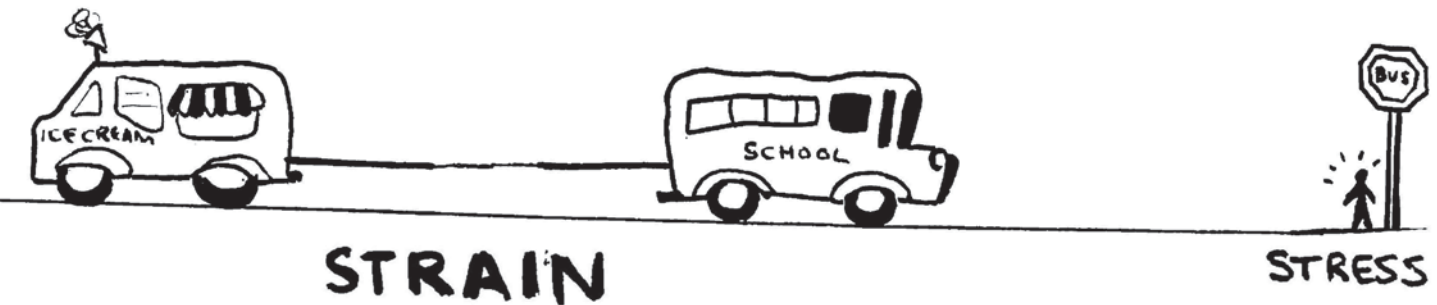
However, you could be thinking *“aren’t these two habits not the making of a good legal professional?”*

The answer is “perhaps in the short-term.”

The impact of stress

I would like to start this discussion with a little educational spiel about the impact of stress and strain on your system and then we’ll focus more directly on how perfectionistic overthinking lubricate this ongoing erosion and breakdown of your psychological, physical and emotional well-being.

There was a debate in the literature for many decades as whether to use the word ‘stress’ or ‘strain’ to describe the above phenomenon. Hans Selye the founder of the science, wanted to name the response of the body to the demands placed on it – Strain. Eventually academics agreed to use the word stress to



mean both stress & strain. I have a soft spot for the word 'strain' and Hans Seyle regretted the use of the word stress. Why? Because stress ended up with a whole lot of subjective interpretations that resulted in misleading judgement calls.

For Example:

- 'Positive' stress is when you do adrenaline sports and you're a hero.
- 'Negative' stress is when you can't cope, feel distress and hence are perceived as weak.

In my opinion this is why, many lawyers do not want to acknowledge that they are burning out or are stressed. Is the fear of being perceived as weak unable to cope and hence not a consideration for promotion or partnership opportunities.

'Strain' on the other hand just is. It is neutral, there are no value judgements.

I use this metaphor to explain. Imagine two very large trucks. Tied on to each tow bar is a piece of rope. They both go in opposite directions and the rope is pulled, and pulled,

and pulled – and because of the force the rope eventually breaks.

This is strain. It's physics.

It is a fact. It just is. No judgements, no weaknesses, just fact. That is what strain is about. When you do things that you enjoy, or when you have to go through emotional experiences for things that you don't enjoy, they all place strain on your system. As a result of strain, your system can shut down.

Your system will shut down eventually with prolonged exposure to strain/stress. The physical response becomes increasingly disabling the longer the 'fight/flight/freeze' survival mechanism is switched on.

The biological system overproduces adrenaline and cortisol the stress hormone. There is abundant research to evidence that excess cortisol will break down the immune system.

Think about the last time you decided to take a holiday because you were overloaded and overwhelmed by work demands. There you are tickets in hand bags packed, decide to sit down for a beverage, and all of a sudden notice

a discomfort in your throat, slight coughing and sniffing. Yes, the beginnings of flu-like symptoms. Instead of champagne in business class, you're grabbing for a nasal spray and throat lozenges.

The reason being is that now that your body has been told that you're going on holiday, the cortisol that was keeping you going stops being produced. Bingo! Payback time.

Your head is attached to your shoulders

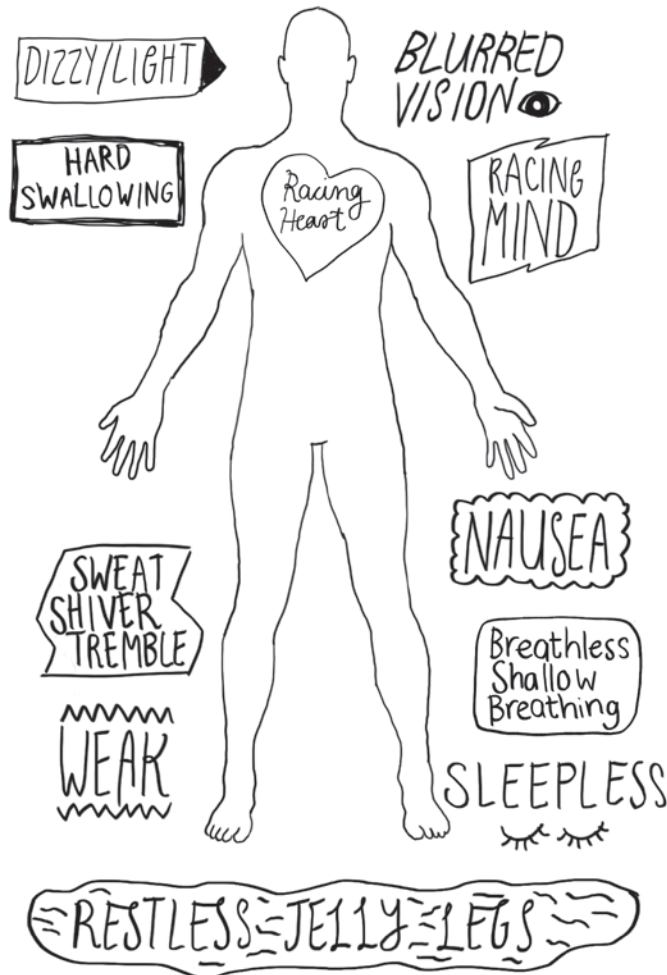
I emphasise this very rudimentary point as what many of you won't realise, is that you can switch on this entire survival response with just ONE thought.

Particularly if the thought is fear-based and negative. Which brings us to the point of discussing the hazards of perfectionism and worrisome overthinking.

You see, perfectionism is based in fear. It is a fear of making mistakes, a fear of failure, a relentless pursuit of the unattainable. For perfectionism is an illusion, it is not a realistic goal. Excellence yes, perfect no.

Perfectionists are the ones that

SURVIVAL RESPONSE



FIGHT/FLIGHT/FREEZE

work and work, check and recheck and are constantly anxious during the pursuit of this deception. The perfectionists are more prone to health problems and burn out. Hence, albeit their goals to be the best, ever lawyer, are foiled by neurotic exhaustion.

The thought processes that accompany perfectionism are consistently turning on the 'fight/flight/freeze' mechanism. Sending fear-based messages to the amygdala

(our survival brain). However, these messages are not life threatening they are to do with perceived catastrophe e.g: making a mistake is not life threatening at most it may cause discomfort.

Discomfort may be uncomfortable, but it won't kill you.

Just Breathe and ride it out.

Which brings me to the subject of "Overthinking"

It is my clinical observation that

'overthinking' is the contemporary phrase for worry. This begs the question, "Is all overthinking problematic?" Clearly 'no'. You may be spending a lot of time thinking about a case. You could be planning a surprise party for partner. This kind of thinking can be pleurably stimulating, even though you may think about the same topic throughout the day and into the night. Overthinking. Yes - but a problem no. This I refer to as positive overthinking. I refer to negative overthinking as worrisome overthinking, and it is this cognitive habit that is responsible for some of today's most common mental health problems such as depression and anxiety.

Should you be concerned about your overthinking - here is the answer.

"Yes, if it is thinking that gets in the way of your ability to function" — Dr. Robert Shieff, Psychiatrist

Let me explain. Worrisome overthinking draws on the definition of worry - "The prediction of negative catastrophic outcomes."

Hence, your brain is constantly involved with forecasting the worst possible outcomes, Pessimism.

The important word here is 'prediction' which is essentially looking into a crystal ball, which at last look, none of us can do.

Here again lawyers are caught in somewhat of a Catch-22.

As pessimism encompasses what can be called a prudent perspective, which you are trained to implement. Caution, scepticism & reality-appreciation are embraced in

“ Caution, scepticism & reality-appreciation are embraced in legal education. However, this type of thinking becomes maladaptive outside of work, and pessimism is shown to be a major risk factor for unhappiness and depression ”

legal education. However, this type of thinking becomes maladaptive outside of work, and pessimism is shown to be a major risk factor for unhappiness and depression. It is not a formula for being a happy human being, parent, partner, manager of people.

Hence the challenge for lawyers is to remain prudent professionally & contain pessimism outside of work. The other issue that comes to mind, is that it is not my understanding that you are taught people skills at law school. Yet, you so often are working with people at their worst, angry, distressed and often vengeful.

This article does not allow for specific strategies and skills to help you with the specific conundrums I have raised. Here are a few tips for legal brain health.


- Set realistic internal goals – based on realistic capabilities and time commitments.
- Accept mistakes – Zero tolerance for mistakes is a fantasy
- Improve prioritizing

- Accept that law is inherently stressful – accept not succumb
- Effective stress management habits – exercise, meditate, socialising etc. etc.
- Do not try to be everything to everybody
- Remember – true professionals know when to ask for help and delegate responsibly.

If you want to learn more about the management of overthinking grab a copy of my book – “The Book of Overthinking” Allen & Unwin

Gwendoline Smith is a psychologist, writer and speaker. Author of *The Book of Overthinking*, *The Book of Angst*, and *The Book of Knowing*.

Strain and Survival Response illustrations by Georgia Arnold and Gabrielle Maffey.

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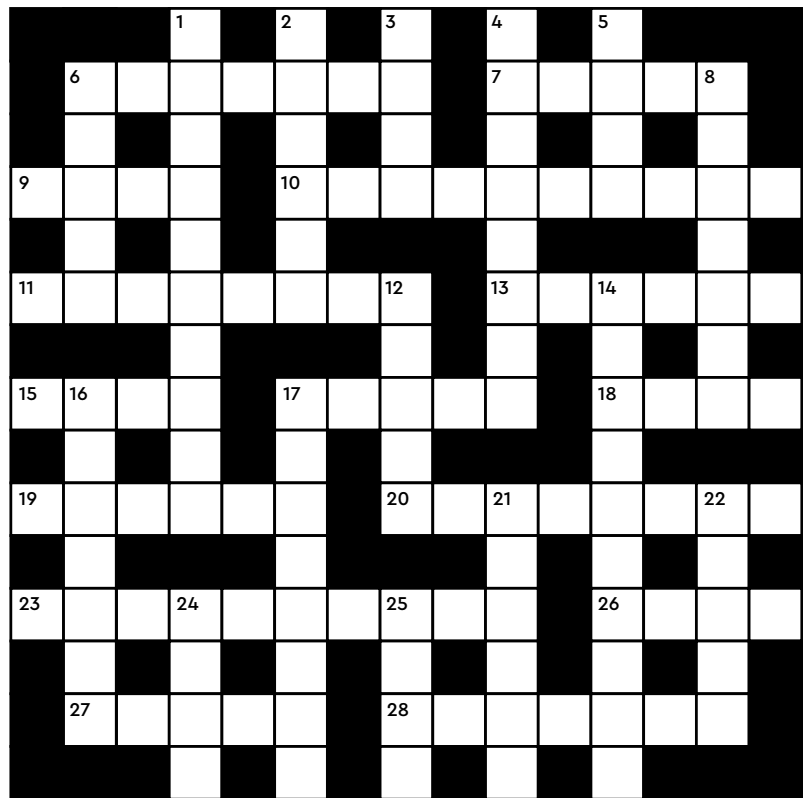
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A New Zealand Legal Crossword

SET BY MĀYĀ



Across

- 6 Roast explorer's box opener (7)
- 7 Henry V's engagement lacking a spirit for Michèle A'? (5)
- 9 51 has a bearing on first half of 2 (4)
- 10 Student staple clues 'e nabs? (5,5)
- 11 Archaic thanks me, being accommodated by odd geriatric – why, you say? (8)
- 13 Drinks from he-men Oscar swapped for a... (6)
- 15 ...learner's dingy (0.1) (4)
- 17 Final letter from Margaret filed in office archives initially (5)
- 18 Can-do type of seaman? (4)
- 19 Judge her authentic (6)
- 20 Removed lard from eft (dated, perhaps) (8)
- 23 A small stove is like some missiles and radios... (5–5)
- 26 ...not often undercooked (4)
- 27 Mark ("approximately") appears in 'Til Death Us Do Part (5)
- 28 Spring heralds Bill's companion taking in leaderless nature spirit, then spiritual leader (7)

Down

- 1 Weird organisation manoeuvre (10)
- 2 16 backing Confederate soldier for middleman (6)
- 3 Pursue headless yak (4)
- 4 Aim to rise after a dishonourable chap gets point of scholarship (8)
- 5 One who 24d a domain, such as Wellington (4)
- 6 Say, Richard the First? (5)
- 8 Bouncer that might be found on a 7 renouncing rising sin for a game of pool (3–4)
- 12 Send up the 21 in amateur work ... give in? (5)
- 14 He 3s a lot about madman on 5 (10)
- 16 Person accompanying hooker, the crook – a 12, we hear? (7)
- 17 Models appearing in The Sun? Vice versa (8)
- 21 25 judge? (6)
- 22 Old form of 5s, also a 7 located in London (5)
- 24 Russia and the 21 may be used to form a straight 9 (4)
- 25 Swell with 99 in second half of 9 (4)

Answers from LawTalk 946, Winter 2021

Across: 8 Ignore, 9 Eva, 11 Income, 12 Stye, 13 Ogilvie, 14 Upon, 15 Assign, 17 Sack, 18 Rebel, 20 Agouti, 21 Thrilled, 24 CPU, 25 Aberrant, 26 Senate, 28 Stole, 30 Loki, 31 Yogurt, 33 View, 34 Drabble, 36 Tank, 37 Sea egg, 37/26 Yul Brynner, 39 Violet.

Down: 1 Egotist, 2 Forefinger, 3 Hero, 4 Devil's Dictionary, 5 Liver, 6 Accuse, 7 Embowered, 10 Advocatus Diaboli, 16 Neural, 19 Brandy, 22 Litigation, 23 Abstainer, 29 Lawyer, 32 Adage, 35 Envy.

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