



The Rise and Rise of In-House Counsel

Explore the in-house legal
team's world in Aotearoa



Contents

THE RISE AND RISE OF IN-HOUSE COUNSEL

- 04** · In-house: more than a legal eagle
- 06** · Who are the "in-housers"?
- 08** · Recruiters' eye-view of in-house legal
- 13** · About ILANZ
- 14** · Bending the arc *by Tiana Epati*
- 16** · Of camaraderie, collegiality and commonality of purpose *by Jacque Lethbridge*
- 18** · What you don't know about... In-house legal mega trends
- 22** · Covid-19: text book crisis lessons for in-house counsel
- 26** · The big ones and the little ones
- 30** · A view from the top: what the board really, really wants
- 32** · To automate or not automate legal in-house? That is the question
- 36** · Te Ao Māori – Perspectives from Iwi General Counsel

REGULATORY

- 40** · Independent Review Panel appointed
- 42** · Lawyers and Conveyancers Act 2006 consultation – results

PROFILE

- 44** · Senior Professional Standards Officer Stephanie Mann: reporting bullying and harassment

REGULATORY

- 48** · Still want to be a lawyer on 1 July 2022? Here's what you need to do



ON THE FRONT COVER

From left to right: In-house Counsel Matt Comery, Kelly Litt, and Sarah Clark at the 33rd annual ILANZ conference in May 2021.

ABOUT LAWTALK

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THE RISE AND RISE OF IN-HOUSE COUNSEL

In-house: more than a legal eagle

An in-house lawyer might be a legal eagle. But he or she tends to soar over broader territory, probing multiple landscapes, oftentimes trailing a team behind.

An in-house lawyer must advise more widely than the average private practice professional, who tends to specialise. But wait. It's not all legal territory that the legal eagle flies over. Nor is it all risk management.

The organisation can ask its chief lawyer to make that commercial decision. He or she is there to support business growth.

It can be lonesome, lawyers tell us. But mostly it's very rewarding.

So what does an in-house legal counsel actually do? What does their day look like? Why have they chosen the in-house life? We go direct and ask for insights from those who know best...



▲ Deborah Marris



▲ Lynda Frew

You've got to begin somewhere

Passionate, invested, absorbed, satisfied. These are the adjectives that in-house lawyers use to describe their roles.

Deborah Marris, General Counsel for Synlait and leading a team of five, says: "I really enjoy being part of the business, being on the executive team and being involved in business decisions."

After a big career in the banking industry, she has loved her new sector and insights into agriculture and dairy processing that it has brought her.

"It's been fascinating," she says, adding that a new directorship has also allowed her 'to get out on the

farm'. "When we have board meetings we walk around the farms when we can. The other directors have a wealth of knowledge in farming and other industries that they are able to share."

Lynda Frew, is Legal Counsel/ Commercial Lead for the Bay of Plenty Regional Council and leads the Council's Commercial Team of four, with the task of improving an entire integrated procurement, and supplier contract management system. She describes her role:

"There's a huge sense of satisfaction that you're part of the business, and you're contributing to the success of the business. It's very rewarding feeling you're making a contribution to an organisation that's doing positive things, making a positive impact."

The two women arrived in these jobs via circuitous paths.

Lynda started her career in private practice and found her feet in-house on an OE in Great Britain, following up with eight years at Scion upon her return to New Zealand.

"I got the job in-house at a UK university which I just loved. While I was there, I started working part-time and flexibly," she says, noting she was able to have children and keep working. "Once you've experienced that kind of role and

flexibility... well I suspect private practice hasn't caught up to what I'd want," she says. "In-house you can really bring so much more of yourself to the role."

Deborah Marris was a tax partner at Minter Ellison. Also qualified in accounting, she went to the ANZ as Head of Tax in New Zealand. Itchy feet took her next to Melbourne as General Counsel, Asia, Pacific, Europe and America in ANZ, responsible for 31 countries' legal operations. Later still, she became a Managing Director with Barclays Bank, India, based in Mumbai.

"I have always loved to travel and living and working offshore is a great way to do that," she says.

Unexpected competencies

Absolutely all in-house legal counsel leaders talk more in terms of the 'soft skills' than the legal skills they deploy. A high level of technical legal skills is a given.

In many ways, softer skills are just as important as legal competency - which, at first glance, seems unexpected.

"Being close to the business means it's not solely about the law," says Deborah. "It's the practicality of running the business. What I've learnt is that you have to be very aware of your audience in order to get your point across. I have had to

learn to present advice differently from when I was a partner in a law firm. You've got to change how you present issues and share information, in order to be effective."

Communication is a key, as in any job. Legal jargon does not cut the mustard.

Deborah continues: "When I was working in banking I'd say: 'this is the issue, this is what we have to do', and it would generally happen. In Synlait, you have to convince people they should be doing something. You have to be influential. If I'm talking to manufacturing staff, there's no point in talking about legal principles as they are busy and are very focused

Who are the "in-housers"?

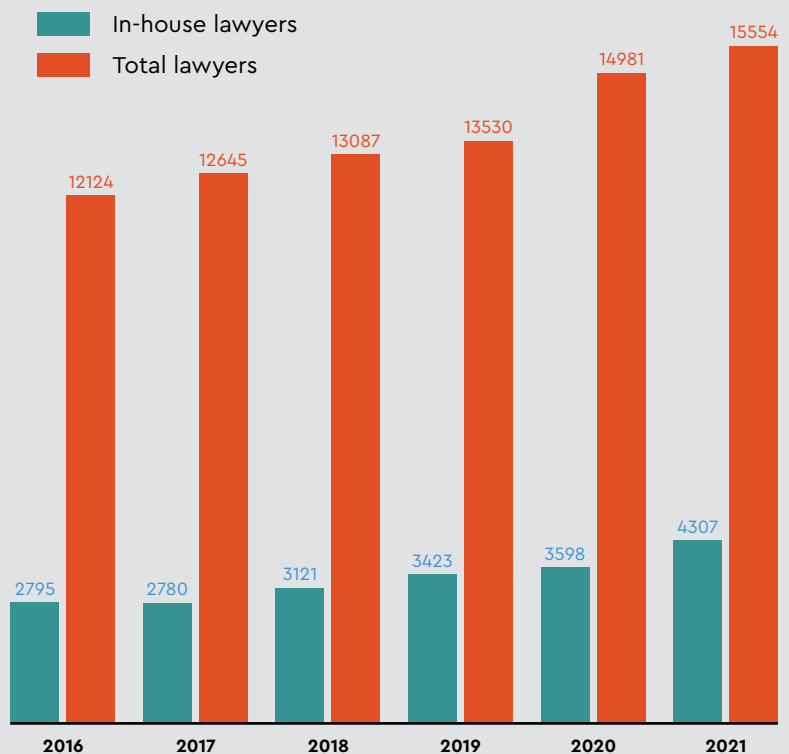
Figures taken from the New Zealand Law Society registry* show significant growth of in-house lawyers over the past few years, with a skew towards more women than men.

As at 31 December 2021, there were 4307 in-house lawyers, 62% of whom were women (compared with 54% of all lawyers being women); 38% were men (compared with 46% of all lawyers).

The number of in-house lawyers now represents nearly 28% of the profession. Numbers and the proportion of the total pool of lawyers have grown annually. (In 2016, in-house lawyers represented 23% of the total legal population with New Zealand practising certificates). This is a higher rate of growth than that of the profession as a whole.

The median age is 40 years.

GROWTH OF IN-HOUSE LAWYER NUMBERS



on manufacturing excellence: I've got to talk about how it will affect them on the floor, and how they'll benefit."

"One of the things you get with in-house roles, apart from the fact it's very intellectually stimulating, very rewarding, is that you use a full skillset. That includes legal, but also communication and risk assessment, and understanding commercial environments," says Lynda. "There's a big people leadership component to the role."

"Leaders need to be good role models," says Deborah. "They need to be very inclusive. As a leader you're only as good as the people around you. We need to be supporting our

people so they are continually developing."

The door of the general counsel or in-house legal counsel is always open, the two lawyers say. In fact, they spend a lot of time listening and talking. It's a "water-cooler" operations management style, that they say adds value by prompting issue identification, and thus improved risk management.

"Before Covid-19 I would do walks through the factory," says Deborah. "So I'm in the manufacturing area at certain times. I can see what's

going on and talk to the manufacturing staff. That's key to me - being on site, being in head office, talking to people. That's how I find out what's going on."

Lynda, who works from home some of the time, and was in lockdown for part of last year, still says that chats matter.

"I do think a big part of my role is about relationships," says Lynda. "There are lots of conversations - building that respected relationship with internal clients so they come to you early."

The greatest proportion (22%) of lawyers practising in-house have 6-10 years' post qualification experience (PQE), and the second largest group (18%) has 11-15 years' PQE.

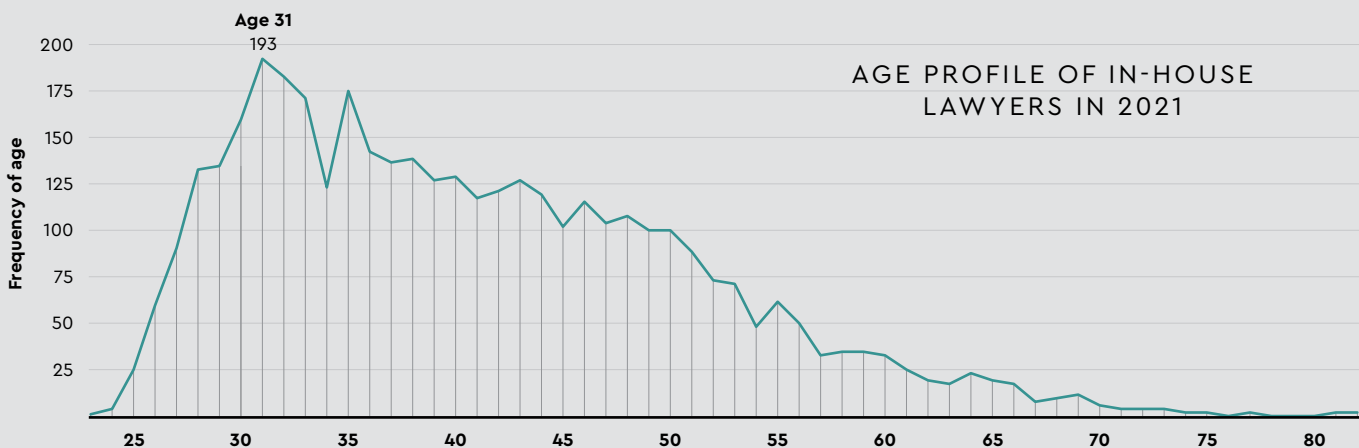
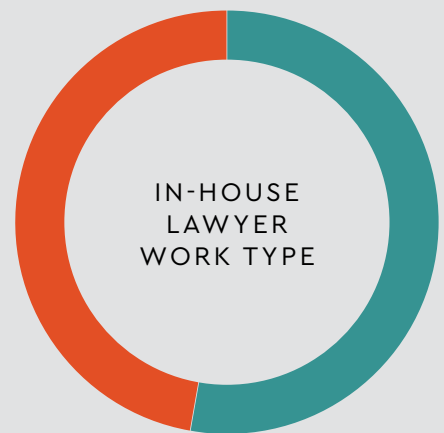
Recruiters have said that, once, most in-house lawyers worked in government or local government organisations - information they gained anecdotally. Now the majority (2276) work in commercial business organisations.

"This growth in the number and proportion of lawyers choosing to work in in-house roles is expected to continue, with many organisations

seeing the value of in-house lawyers and choosing to increase legal expertise and capacity within the organisation," says Grant Pritchard, President of the In-House Lawyers Association of New Zealand.

There is still, however, a pretty even split between Auckland (with 1509 in-house lawyers) and Wellington with 1453 in-house lawyers. Seven hundred and twenty lawyers with practising certificates have identified as overseas lawyers. ■

*The figures represent those lawyers who hold a practising certificate and identify themselves as in-house lawyers.



Another surprise ingredient of the good in-house lawyer is a strong sense of what's going on outside the four walls of an organisation – scanning news sites and being aware of trends.

Each day as it comes

All in-house lawyers say they never know what's going to come up, despite controlling and scheduling as much as they can. There is simply no average day because issues always roll in.

“There is generally not a typical day,” says Deborah. “Most general counsel would say that. If I tried to describe it, it would be turning on the computer and looking at what's coming up, that day, that week – what needs to be done: in three months, six months. Then working on it. Then, there's always something unexpected that comes up. So a typical day is really about what's happening now, and what needs to be done. Then, when there's a gap, planning and working on making improvements.”

“Once you've experienced flexibility in a role.....” reflects Lynda, “...well I think there's a growing number of people who for all sorts of reasons are attracted to working part-time, or flexibly. You want more balance. It's about coming to work, having a really interesting job that you can devote yourself to, then going off and doing something else.”

Lynda organises her day into meetings (face-to-face where possible) and conversations, shuffling the inevitable paper, but also thinking widely. Her work involves the setting up of a new procurement system where she must build in the consideration of all social, economic and environmental benefits that can be achieved.

“It's really looking at wider concerns, and seeing how those can be reflected in the contracts with a supplier,” she says.

Deborah says pragmatism is the underscoring feature of any day and growing the business is her major concern. As the team is small, meetings are on an as needed basis and can be arranged quickly.

“The key for me is not to focus on all the risks and issues, but be very positive and supportive of the business and focus on the strategic agenda, while at the same time addressing key legal risks. Being constructive, solution focused, being supportive – is key to being effective in the role.” ■

Recruiters' Eye-View of In-house Legal

“Thirty years ago,” says Grant Pritchard (in-house lawyer and President of the In-House Lawyers Association of New Zealand ILANZ), “there was a perception of in-house counsel as being second-tier lawyers – as post boxes, shuffling instructions out to external counsel to do the ‘real work.’”

Not any more.

“Gone are the dated stereotypes,” says Grant. “In-house lawyers are at the forefront of legal practice in New Zealand. Our advice and support are helping Kiwi companies and government agencies navigate some of the most complex and challenging issues of our time. And with in-house lawyers making up almost three out of ten lawyers, this is a growing, thriving, and valued part of the profession in New Zealand.”

In-house roles, recruiters say, are in demand. Pay is excellent, and the opportunities for flexibility, promotion and skill development are significant. Travel might even be on the cards (assuming New Zealand can get through the pandemic).

“I think we've seen a massive shift,” says Rosamund More, from Robert Walters specialist legal recruiting team. “Businesses are motivated to



▲ Grant Pritchard



▲ Rosamund More



▲ Lorraine Zencic

The difference between that market and New Zealand is that in-house lawyers there are highly specialised, by industry sector. In New Zealand they're broader roles

bring in general counsel and legal counsel much earlier than before. They see the benefit of in-house counsel, reducing spending on law firms. Also, in-house can help set up processes – work with sales or finance. So as the business grows, it means you're doing everything right.”

Rosamund, herself a qualified lawyer, cut her teeth on legal recruitment in the UK. She came back to New Zealand in 2021, and says the difference between that market and New Zealand is that in-house lawyers there are highly specialised, by industry sector. In New Zealand they're broader roles. Businesses are seeking generalists.

Lorraine Zencic, from Hays Recruitment (which has run a legal recruitment team since 2005), says most organisations recruiting in-house counsel seek lawyers with three to six years' post qualification experience ideally from top law firms, who bring excellent experience and a high-grade point average from university.

“You'll have had exposure to standard commercial transactions such as drafting commercial contracts, sale and purchase agreements, shareholder agreements and be comfortable negotiating supplier agreements for procurement,” she says.

Lorraine says that some organisations do require industry knowledge for in-house roles.

“For instance, IT companies want people who come from an IT background; property companies look for experience with subdivisions, or leasing,” says Lorraine. But the qualities and skillsets that are needed are still very similar.

So what are the competencies needed to move from a law firm to in-house if you're a young lawyer?

Technical skills are a given, both recruiters say, especially in contract development and drafting.

Experiencing a secondment from your law firm into the inside of a business can help. Secondments can lend insights into what an in-house environment is like, and they help a would-be in-house counsel to see what they'll need to succeed.

“One minute in-house, you could be dealing with an employment issue, the next you’re negotiating a contract; half an hour later you’re reviewing the marketing material for intellectual property content,” says Lorraine. “You make a wider contribution to the organisation as a whole and consequently add value.”

The qualities needed are different from those in a law firm.

“An in-house lawyer needs to be someone that’s very approachable, confident, who can converse well with lots of different people within the business. They need the ability to speak legal jargon in a way that people in the business, who aren’t lawyers, will understand. They need to be able to manage risks appropriately,” says Rosamund.

“The organisation is looking for lawyers who have sound judgment and an understanding of their business,” says Lorraine. “You have to have strong stakeholder engagement. How you communicate at all levels is key. So is understanding issues and producing viable and tangible solutions - lawyers who are business enablers, making commercially savvy decisions.”

Both agree that for the right candidates, flexibility is usually the bonus delivered with the job.

“As lawyers get older, more experienced, they often look for more flexibility. Prior to Covid-19, that was seldom available in law firms,” says Lorraine. “Many businesses particularly public sector, are now doing two days from home, three in the office. They may have glide time. There isn’t as much flexibility in private practice although they are working on it.”

“Traditionally, in-house has been seen as better ‘work-life balance,’” says Rosamund. “If you’re working for a business, you go home when your client goes home. If your client goes home at 5.30, you can go too. If you’re in private practice, you’re more at the clients’ whim.”

Working in-house can give lawyers the opportunity to work for an



“In-house lawyers are at the forefront of legal practice in New Zealand... this is a growing, thriving, valued part of the profession”



organisation whose values chime with theirs. Plus, there's generally a clear career path available.

Once a lawyer is in-house, statistics show that few turn round and go back into private practice.

“It's not common,” says Rosamund.

“Seldom happens,” says Lorraine. “Lawyers can find they like being part of the cut and thrust of the commercial world and being part of the final outcome.” ■

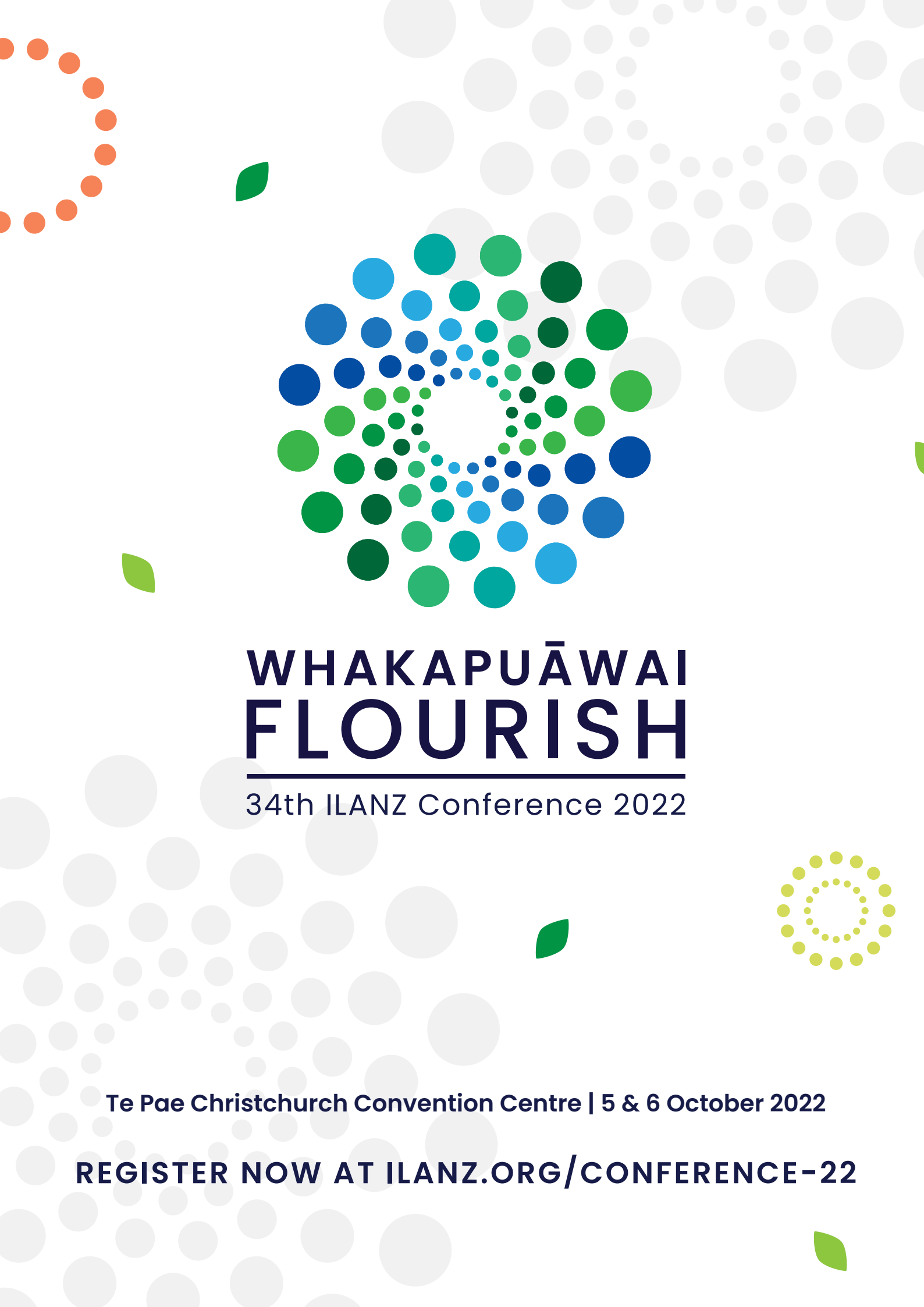
Pay In-house

Pay levels are indicative only, and may vary depending upon experience and other factors.

Legal Counsel (with 3-5 years experience): \$100,000 to \$160,000

Senior Legal Counsel: \$150,000 to \$220,000

General Counsel: \$200,000 to \$500,000 or more with bonuses



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THE RISE AND RISE OF IN-HOUSE COUNSEL

About ILANZ

Thought of joining like-minded professionals in a committed and enthusiastic group of in-house lawyers? ILANZ could be for you.

The In-house Lawyers Association of New Zealand (ILANZ) is a 'section' of the Law Society – a specialist group which focuses on in-house legal counsel in Aotearoa New Zealand.

Once called the Corporate Lawyers Association of New Zealand, it's been around since 1987 and is dedicated to serving in-house lawyers, keeping them up to date with changes and issues.

President of ILANZ is Grant Pritchard, an in-house lawyer himself. He leads a very active committee which plans, undertakes and supports social and learning events, advocates for the interests of in-house lawyers, provides commentary on matters of interest to in-house lawyers and produces the well-known annual ILANZ Conference.

"Our idea is to equip our members to be better lawyers; to prepare them for change in the business, technology and regulatory landscape, and to help them better manage risk in their organisations," he says. "It's also important for us to support one another along that journey, supporting and helping one another where we can."

This year's ILANZ Conference theme is *Whakapuāwai | Flourish* and it will be held in the brand-new Christchurch Te Pae convention centre in October.

"Our conference is about personal development, encouraging you to reach your potential in every way," says Grant. "It's a refresher for you as a practitioner and a person – a chance to learn, connect and share with your in-house peers."

The line-up of speakers and topics is constantly changing, and the collegiality and connection at ILANZ Conference – probably the largest annual gathering of corporate and government in-house lawyers in New Zealand – is always a highlight.

ILANZ also holds strong alliances with corporate counsel organisations round the world including with In-house Counsel Worldwide (ICW) and has a long-standing informal relationship with Association of Corporate Counsel Australia. These connections with associations outside New Zealand help ILANZ to stay connected globally and keep abreast of emerging issues and trends from around the world.



▲ Grant Pritchard, ILANZ President

Purpose and Values

ILANZ is here to connect, support and lead the in-house community through the delivery of services, events and resources that are:

- Member focused;
- Collaborative;
- Quality driven; and
- Innovative.

To see an overview of ILANZ's strategic plan, go to www.ilanz.org/assets/ILANZ-Strategy.pdf. ■

Registering as a member of ILANZ is free (providing you have a current New Zealand practising certificate). For more information go to www.ilanz.org/



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THE RISE AND RISE OF IN-HOUSE COUNSEL

Bending the arc

BY **TIANA EPATI**

Barack Obama once spoke of being inspired by Nelson Mandela as a young college student on the other side of the world to follow an unconventional path, re-examine his own priorities, and consider the small role he might play “in bending the arc of the world towards justice.”

If the past three years as President have taught me anything, it’s been this: purpose is everything. For we as lawyers to understand the role we must play, we must scrape back the patina that coats our institution and look beneath. If need be, re-examine our own priorities, and change. And then change again.

I have learned that our purpose – the purpose of our entire profession – boils down to two elements: firstly, to protect and serve the community; secondly, to protect the rule of law.

Thus, reflecting on these three, fraught, tumultuous, life-changing and wonderful years I have had as President, I find I have this to say about our purpose.

We faced the consequences of the #MeToo movement, soul searched and, most importantly, acted. In this we have been constrained by our own legislation and regulations which we have sought to determinedly address through the long slog and bureaucracy of statutory change.

We have put everything on the table. The Independent Review will be a comprehensive assessment of our structure, legislation, regulatory role and everything else. It will drill into our professional body’s true functionality and therefore into our profession’s fitness and efficacy.

We launched Access to Justice, and advocated for legal aid lawyers when few others, in the media and public arena, did. We’ve stood aghast at the 20,000 people turned away from legal aid last year – ordinary, fellow New Zealanders. We’ve sought a commitment from Government to address this.

We welcomed Te Hunga Rōia Māori o Aotearoa and the Pacific Lawyers

Association to form a much-needed partnership, so, so long delayed.

And throughout most of my Presidency, we have navigated through the perfect storm of Covid-19.

In those three years, almost imperceptibly, the waves of expectation surrounding the profession have advanced up the beach, setting a new tidemark. We have arrived at a new shoreline.

Now, it’s vital we preserve the high tide mark. It should not be our highest point of advancement. We must keep pushing up the beach.

Someone recently said to me (and I paraphrase): “There’s a new expectation of the legal profession and the President. Now, we don’t expect anything less. That’s the new business as usual, Tiana.”

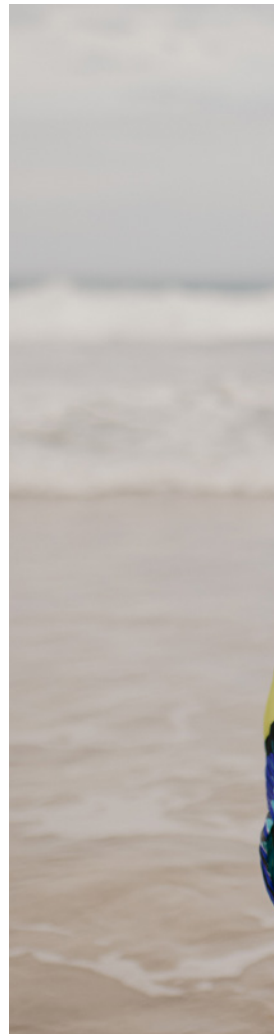
Back in 2018, I entered the Presidency as a lawyer, amidst the turmoil and uproar of a profession under siege. Allegations about the behaviour of some lawyers had emerged and, as hard as it was, I saw this as the opportunity for change.

When I first joined the legal profession, it seemed impossible that a young Samoan woman, living in Tūranganui-a-Kiwa Gisborne, doing largely legal aid work, a mother of two young children, could become the President of the New Zealand Law Society. Yet you voted me in. I still feel deeply humbled and, frankly, astonished by that.

I have strived during my Presidency to bring purpose to our Society. I have been told it has given a new generation of young lawyers hope. They say to me: “You’re all I’ve ever known as President.”

Today there are law students who’ve done almost their entire degree while a first-generation immigrant, and

As Ursula Le Guin once said “what goes too long unchanged, destroys itself”





My grateful thanks go to my entire village of friends and family. I also acknowledge the incredible work of my present Board. But special thanks goes to the original day one crew – Andrew Logan, Herman Visagie and Tim Jones – who supported me in my own becoming in the first place. I could not have done it without you three. And of course, my husband, Matanuku Mahuika. One of the finest and most decent human beings I have ever met. Thank you for always believing in me.

at the half-way mark of my President term, and breast fed her for 15 months.

It was at this time I remember attending a full day hearing in Wairoa. Stuck with nowhere else to go, I spent the hour trying to locate an area and settling in the small tea-room off a hallway with my breast pump for companionship, then continued the entire day hungry, without food, as I cross examined witnesses. When finished, I drove tired and in tears, the one and half hours home to dinner.

woman of colour from the provinces, was the President.

Young lawyers have told me the symbolism of having this role filled by such a person cannot be underestimated. Suddenly, all the maps change.

Still, there's more, much more to do.

My transition from lawyer and litigator to legal politician began almost immediately the day I was voted as President. The role was much harder than I ever thought possible. It still is.

I saw straight away that relationships matter. As President, you must put hard work into building rapport with the profession, the Judiciary, and with government. Trust is vital, but you have to earn it. A president doesn't start with a bank balance of confidence in them. There is no automatic privilege. She or he starts from zero. Sometimes less than zero, in a tumultuous time.

Amid this rapid education about the politics of presidency, my personal circumstances were thrown into chaos. In 2020, I became pregnant – a late, loved but unexpected baby. I had my third child in office, exactly

Why is this part of my story important to the profession's story?

It shows that despite everything we've achieved over three years and before, there's still so much for the Law Society to achieve. The maternity wall is as real today as it was 20 years ago, when I first joined the profession. Why would a woman lawyer want to come back to work after childbirth, if we're sent to the toilet or tea-room to breast pump without a sandwich? That experience was, and remains, humiliating – and eminently fixable.

Our professional body cannot take its foot off the pedal of change for a moment.

So much other work remains unfinished too. The racism and sexism that have haunted the profession, need removal like most scourges – in perpetuity and unwaveringly.

Recently, I opened an email. It said: "You front footed it, Tiana. You navigated the path. Now it's on all of us. It's up to us to walk the talk."

So, as I hand over the reins – confident that the profession is sounder than when I found it, and at least pointed to its true North – the challenge is no longer with me. In fact, it never was.

It is seated most firmly with you – every lawyer who has taken an oath and is privileged to serve the people of Aotearoa New Zealand.

It is in your hands to pick up the rākau whakawaha – the stick that will clear the way.

As our motto says, "be just and fear not". And, in doing so, bend the arc of the world towards justice. ■

THE RISE AND RISE OF IN-HOUSE COUNSEL

Of camaraderie, collegiality and commonality of purpose

BY **JACQUE LETHBRIDGE**

In April 2022, I commence the role of 32nd President of the New Zealand Law Society.

There is much to be optimistic about and celebrate. But there are also new and serious challenges, not only in the way we organise and regulate our profession, but also in how we take care of and represent our profession; and equally in how we defend the rule of law and promote a just society.

These challenges present themselves against a backdrop of extraordinary upheaval not seen since WWII. Western societies are wrestling with economic and social disruption. Demagoguery is on the rise. There is heightened tension between protection of the common good, and defence of individual rights.

Being a lawyer brings privileges and a status which in return requires service to the public good. If this is trite and a truism, it is so for a reason. It remains correct.

Less acknowledged is that we are collegially bound. Professions like ours oblige us to look after one another.

Within this context, what can I best achieve as President? And how can I achieve it on your behalf?

The goals and the challenges

My goals as your next President are grounded – as they have to be – in the dual role that the Law Society is given under Part 4 of the Lawyers and Conveyancers Act 2006 (LCA), its function being to regulate the profession effectively (s 65) and also to do all in its power to represent it (s 66).



I have three overarching objectives on your behalf.

My first objective relates to our need to scrutinise ourselves, and improve our performance.

On the regulatory front, the Law Society must be an excellent regulator. Our fundamental mission must always be to protect the public, for whose benefit our rules and ethics are maintained and our privileges extended. We must do so fairly, promptly and effectively. We must ensure that our profession is a safe and respectful place in which all lawyers can work.

The Law Society has made major progress over the past three years on reviewing our regulatory function. Most recently, we have commissioned an Independent Review investigating how the Law Society is structured, how it should best be governed and whether it should continue as a representative body as well as a regulator. As I write this column, the Independent Review Panel chaired by Professor Ron Paterson commences its work, examining us root and branch.

To this end, then, as President I will ensure that the Independent Review is adequately resourced and timely, that its recommendations are well communicated to the profession and that we provide for proper consultation with the profession. I will also commit to ensuring that where we can (outside legislative change which may be needed), we adopt the Independent Review's recommended changes.

My second objective relates to making sure the Law Society is relevant to members, supports our wellbeing, and is responsive to lawyers in carrying out its representative function.

As President, I'm conscious that I will be standing on others' shoulders. The Law Society has been led by a number of outstanding presidents. Most recently, Tiana Epati has devoted enormous energy and hours to the role. She has made a tremendous contribution to the advancement of our profession, and always with courage, conviction, and wisdom. On behalf of you all I thank her for her service.

It is an exciting time to be resourcing our representative function. Recently, a new wave of lawyers – much more diverse than when I first joined the profession – has catalysed this journey. One example is the National New Lawyers Group. This group is diverse in practice area, gender, ethnicity and geography and is leading initiatives to connect with lawyers in their first five years of practice. Put simply: this new wave of lawyers is challenging us to change the way we do things.

In the same vein, I have seen the Law Society improve the fabric of our profession and improve our legal system by working with the Judiciary and groups like the NZ Bar Association, ADLS Inc, the women's lawyer groups, Te Hunga Rōia Māori o Aotearoa and the Pacific Lawyers Association.

Under my watch, I hope to galvanise these interactions and to broaden them.

I know from my travels campaigning throughout Aotearoa that lawyers want to be better connected with each other, to share a common purpose, to contribute to a greater good, enjoying themselves while they do it. We all have a part to play.

Once the challenges of Covid-19 are largely behind us, I think we can better foster that sense of unity, camaraderie and concern for each other and enlist it in making our profession better.

Finally, I want the Law Society to be better understood for the influential role we play in defending our liberal democracy and shaping law. We achieve significant improvements to the legal system at no cost to the public by submitting annually dozens of considered, authoritative letters and papers to the Executive and Parliament. We're an effective agitator or advocate. We speak out to defend our country's democratic values, and our civil and human rights.

Our independence and mana are dependent upon Parliament

CONTINUED FROM PAGE 17

and the government of the day appreciating that the Law Society and the legal profession it represents are a vital part of our system of government and way of life. We are a trusted, brave and independent voice on the law, with the skills to see when laws or proposals need change and the courage and capability to speak up. It's vital we continue to strive for better access to justice under my Presidency. Being recognised for these achievements and objectives is vital to preserving the Law Society's credibility, influence and independence.

Peering ahead

Where a person comes from, informs his or her approach. In my case, although I've articulated some lofty goals, it is my intention to be as unassuming as I can be. Such are my beginnings.

I come from an unpretentious background, raised in the Rangitikei where I was encouraged to work hard to achieve my goals but also to serve others while doing it. This service ethic undoubtedly came from both of my parents and in particular my father who was confined to a wheelchair at the age of 27 by a diving accident. Having disability in the family taught me profound lessons.

My first, defining role in 2003 was with the Waitangi Tribunal. Hindsight tells me that this was a remarkable learning opportunity, and it remains profoundly relevant to me. Then it was to in-house roles with the Ministry of Social Development and the Public Defence Service pilot for four years before moving into private practice where I have been a partner since 2012 as a commercial litigator. I have loved being a part of this profession in everything that I have done. I believe in the value of law and what it can do for people.

I am guided by practicality built from experience over my 21 year career. I will listen and offer solutions.

It's also my intention to celebrate our individual and collective achievements in our profession, to kindle mutual support, and foster greater diversity still.

I look forward to serving you. ■

THE RISE AND RISE OF IN-HOUSE COUNSEL

What you don't know about...

In-house legal mega trends

What's swerving round the next global corner at legal teams in-house?

Two leading international legal experts make predictions. Are they right? You be the judge.....

Geoff Creighton is the volunteer CEO of InHouse Counsel Worldwide, a global affiliation of national associations representing in-house counsel. A highly experienced former general counsel, with significant independent private practice background on board, Toronto-based Geoff offers true insights and wry, expansive observations.

First of all, he cautions, his predictions must be seen within the framework of a developed democratic country with a robust common law and business system. In other words – if you're outside of this, none of his keen analysis may apply.

Then he plucks some of the huge business and economic changes sweeping the world, and shows how they'll ping not just countries, but in-house legal too – and private law firms (in case you thought they were immune).

There are massive political and economic forces, he says, bearing down on countries. Three of those include: government debt and increasingly interventionist governments; the retreat from globalisation; and the heavy hand of regulation.

“On government debt – my general thinking is: do not

assume that any of this is going to go away soon,” he says.

Concurrently, he says: “There’s a partial pull back from globalisation, a greater stress on domestic self-sufficiency, and domestic capacity – and generally the erecting of trade barriers that had previously been torn down.

“These are not legal trends, but what do they lead to? They lead to the heavy hand of regulation generally, a heavier hand in taxation to fund the debt, and a consequent greater need for expertise on the legal and compliance front to deal with increased regulation.”

He sits back and reflects. “There’s a greater acquiescence – if not acceptance – of government intervention in a lot of areas. One subset of that is trade barriers. There’s going to be a growing need for navigation of those, which again suggests the need for specialised legal expertise.”

The need to navigate regulatory thickets, which most of the world thought it had cast off decades ago, will mean, he says, a greater market for the expertise and focus of in-house counsel.

“It’s often been the case that you’d be accessing your external counsel on a trade issue, to answer a question, when trade barriers weren’t a daily thing,” he says. They are now, and that in his view will justify the hiring of advice in house.

“Any time you lay on greater industry-specific regulation, you’re going to be increasing the opportunities for organisations to realise it’s cheaper to hire someone, than it is to go outside.”



▲ Geoff Creighton

Demand for in-house will be catalysed too, he speculates, by more M&A activity, which is already evident.

“Driven by regulation and compliance, there will be a lot more merger and acquisition activity in the next few years,” ventures Geoff.

DLA Piper’s Global Co-Chair and sponsor of the firm’s comprehensive, free in-house legal resource and network WIN (What In-House Lawyers Need), Andrew Darwin concurs.

“On the in-house agenda, we’re seeing more opportunities for supporting business growth, expanding to new territories, more positive developments,” says London-based Andrew. “It’s no longer just crisis management or retrenchments. This means more corporate restructuring not related to battenning down in the pandemic.”

It’s a non-fungible world

Both Geoff and Andrew, agree these changes (galvanised by Covid-19)



▲ Andrew Darwin

have prompted a ‘movement online’. This is more than just ‘technology’. It’s the widening of a whole new sector.

“Asset tokenisation,” says Andrew, “is hard for many lawyers to understand because we’re not crypto natives. But you’re seeing the increasing adoption by mainstream banks and others of asset tokenisation. Potentially, that will revolutionise a lot of the ways assets are bought, sold and traded. And that will have a big impact on the legal industry as crypto contracts start to become the norm.”

Geoff says that the pandemic caused an explosion of people trading in crypto assets and non fungible tokens, and people talking about Web 3:0 which allows all sorts of trading in crypto assets.

“There are huge movements of money and people working on

these platforms and trading in these esoteric assets. So more businesses will be jumping into the area, because they see it's awash with money. For certain lawyers in-house, it's how to seize those opportunities and the speed and the scope of a new unregulated market," he says. "More and more will have to deal with crypto assets."

Andrew says that a key driver for the legal industry, including in-house legal, is the financial services sector.

"When the financial services sector moves, our sector will often follow," he concludes. "As financial services start to move into Blockchain, so the legal industry goes as well. In-house legal teams will be asked to respond."

"Some banks are already starting to adopt Blockchain as a way of clearing trades. Rather than the shadowy world of crypto coin, clearly there are very good, very efficient applications around crypto assets. They are nascent – but they are potentially quite game changing for a lot of things that lawyers do."

Right behind the crypto opportunists, though, breathe the regulators, uneasy with the lack of domicile of crypto assets and their lack of underlying asset base. Where the regulators go, the in-house lawyers follow.

"The reality is that, at some point, governments are going to work it out and find ways to regulate them," says Geoff. "In Canada, the securities regulators have decided that they'll license crypto exchanges. But that's reliant on those exchanges wanting to be regulated, being willing to submit to such jurisdiction."

The psychology of in-house legal is changing.....

Arguably, say both Andrew and Geoff, the psychology of in-house legal is also facing headwinds of change. They've identified this too, as a trend.

Each expert expresses it differently, but they note similar transformations underway in

how in-house lawyers think and act, and indeed what they act upon.

The first part of this movement relates to the shape of the in-house legal team.

"Legal departments used to be mini-law firms. If you were big enough as a business, you'd hire a lawyer. Then you'd say 'I need a junior'. So you'd hire a junior. You'd build a little law firm within your company," says Geoff. "But now, you're not just a law firm. You have to be part of the business."

This has expanded to disciplining in-house lawyers to expect the same rules as other departments. "I'm thinking of things like budgets," he says. "When pushed for firm budgets, general counsel used to say, 'we can't do that. What if we have a big unbudgeted lawsuit? What if we have an unexpected transaction?'. There's always been pressure to put the numbers in. But now there's this thing called 'legal operations'. The whole idea is to have people whose job is operating efficiency. Now, even if you're general counsel, you're expected to make your department run with the kind of efficiency that's expected of other departments. So it's 'how do we start acting like other business units to be efficient and make sure our operations don't have lost time or money?'"

Not only are organisations pushing for more efficiency, they're pushing for more than law from in-house lawyers. They're pushing for lawyers to be business decision makers and wise business advisers.

"The legal answer is less likely to be the right answer any more," says Geoff. "It's the goalposts you have to stay within. But I'm thinking of the whole world of social media, for instance. Any allegation of anything on social media. It could be an ideologically driven hatchet job or a single disgruntled former employee. The legally correct answers to this may not be the business answer the company should necessarily end up taking."

Every legal decision requires a wider perspective and greater media savvy than ever before.

"In-house lawyers are now being treated as part of the business, and if they want to be treated as part of the business they're going to have to have answers that are more perceptive than 'we should sue them,'" says Geoff. "None of these are skills that are taught to you in law school."



Andrew points to the caretaking by in-house teams of ‘good governance and better corporate values’, which has arrived even faster in the wake of Covid-19.

The surveying that WIN has done has shown that ESG – Environmental, Social and Governance – are now top of mind for teams in-house. Those values are no longer delegated to the PR department but an area in which the in-house team supports the board. They’re no longer ‘softer’ values, either.

“Green washing will be called out legally,” he says. “It will expose boards, and as boards become more focused on that area, legal teams see their priorities moving.”

When lawyers look at themselves, there’s a change too.

“The whole idea of flexible working is seen as a means of retaining and motivating staff,” he says. “It comes across strongly.”

An equally important trend is the demand by in-house lawyers for health and wellbeing. “It’s got to be an ongoing priority for employers.”

And embedding diversity is no longer simply words in the in-house legal world. “How can it be actions?” says Andrew. “There’s recognition that the legal profession has a long way to go. That’s a constant theme – and it’s part of ESG. All of these elements are linked.”

Are they right?

Some of the trends are huge, and some are more subtle. Some of them are about the way business is changing, and its effect on in-house legal; others are about the way in-house legal is seeing itself.

But one thing’s for certain: all of them are easily observed, say both Andrew and Geoff.

Beyond the crisis of the pandemic – from which most countries are now emerging – only time will tell how sustained these changes are. As Geoff puts it: “Never waste a good crisis.” ■

Note: this story was developed prior to the invasion of Ukraine.

THE RISE AND RISE OF IN-HOUSE COUNSEL

Covid-19: text book crisis lessons for in-house counsel

Covid-19 provided the ultimate challenge in crisis management to in-house legal counsel. It was a text book crisis: evolving, changing situations, where there is no certainty, with operations turning reactive, responsive, to get through it.

Yet many in-house counsel had a plan, of sorts; and some in-house counsel now report greater comfort with uncertainty amongst their teams, and amongst their executives. How did they get to that position?

Remember back at the start of Covid-19...

It was February 28, 2020. New Zealand reported its first case of SARS-CoV-2. That case sent a tremor through the community. Numbers continued to escalate through March, and on 19 March New Zealand's borders were closed to all but residents.

The first lockdown began on 25 March 2020. The rest, as they say, is history: in this case, very recent history that is continuing to be created.

In March 2020, though, inside organisations throughout the land, in-house counsel had been very, very busy.

McDonald's New Zealand's General Counsel, Malcolm Swan, takes up the story.

"We'd already established an emergency response team. We'd been going through various other "Levels" at that point, so lockdown wasn't entirely unexpected. Because McDonald's is a global business, we'd seen what our other colleagues had been dealing with around the world, so we had a sort of sense of "not if, but when". What we weren't prepared for was the Government's immediate, strong response which closed borders and essentially our entire business for five weeks. We kind of thought we'd still be able to operate as a drive-through, or contactlessly, as other countries had."

The urgent issues for McDonald's were: what to do with stock, with equipment – some of which was never meant to be turned off. They wondered if it would turn on again at the end of lockdown.

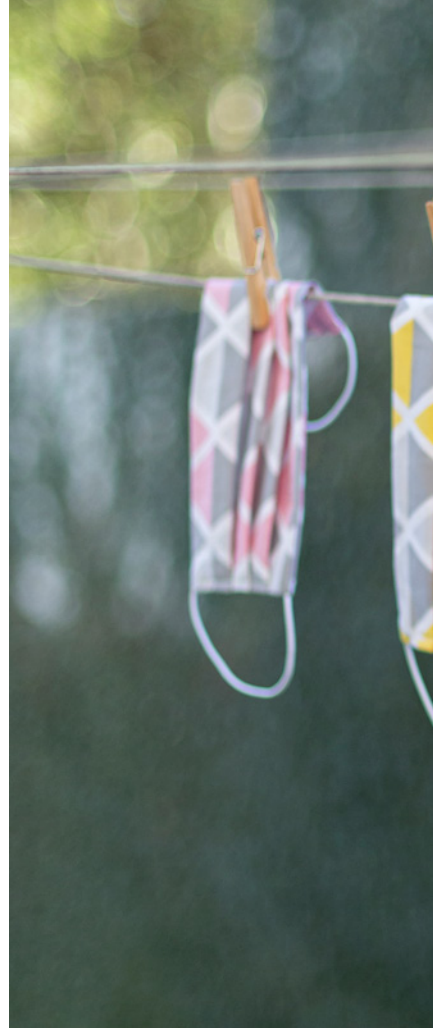
"Most importantly," continues Malcolm, "what about our people? The first thing that came to mind was: if we're not earning, if we've got no revenue, how are we going to pay our staff?"

McDonald's has more than 10,000 staff in New Zealand, so the problem was real. Luckily there was government assistance, and a willingness to do the right thing by their people; and it's important to point out that they have made no-one redundant in two years. But ensuring staff were paid was no easy street, to start with.

"Unfortunately, the rules (around Government assistance) were not that clear to begin with," says Malcolm. "We were working with untested legislation, unclear drafting, and no-one who could give any certainty. We just had to work our way through it and make some best guesses."

Behind the scenes, at McDonald's it was 'all legal hands on deck' to support the crisis management group which had been set up.

"Essentially, we had to drop everything. We had to deal with what





▲ Malcolm Swan



▲ Phil Knipe

was in front of us at that point,” he says. “We were dealing with daily issues: questions from franchisees, questions from the business. Global McDonald’s wanted to know what was happening...”

The problem with perishable stock – massive in a restaurant operation of more than 170 stores – needed fast reaction.

“The whole supply chain was thrown on its head,” he says. “We’ve got some products that have a reasonably long shelf life because they’re frozen. Others – like lettuce and cheese for example – don’t last very long. We gave a lot to food banks, a lot to charity, a lot to Ronald McDonald House.”

Because McDonald’s New Zealand has a “very good logistical partner”, the company found a great deal of understanding from growers and suppliers.

“But, obviously, they had their own problems,” says Malcolm.

For McDonald’s New Zealand, there had been some large building projects underway when the country went into lockdown and that had legal implications.

“If you think about it, we are also a property business,” says Malcolm. “So, any construction that might have been under way, any refurbishments, new restaurants or whatever, had to be put on hold. Work just literally stopped. It was quite unreal, bizarre really.”

Ministry of Health's response team

Meanwhile, in the Ministry of Health, long-term Chief Legal Advisor Phil Knipe had mobilised his team of 11 in Health Legal for what has turned out to be the busiest period in their already very busy working lives.

That team is usually responsible for advice on breaches of health legislation as well as enforcement, and so they were initially



responsible for drafting Section 70 Health Act Notices and Epidemic Preparedness Act advice, which were part of the pandemic response. As the Covid-19 response developed, Crown Law and Parliamentary Counsel came into play, picking up responsibility for drafting various legal instruments.

The legal team began work at the end of January 2020, and went through an evolution for the next month, as the pandemic escalated.

“We had already been heavily involved in supporting the Government and adapting to the new situations as they arose,” he comments, adding: “We had done some planning for the event of a pandemic. We had guidance already to go that we were able to review and apply, which remained appropriate as part of the initial stage of Covid-19 response. Like the rest of the public service, we were agile.”

“I always recognised that as part of my role, there would be a need for a response to public health situations. It was always a possibility. I just hoped ...that the situation would never be as severe and prolonged as the current Covid-19 response has been.”

Notwithstanding that, looking back, Phil says the one change he would have made knowing what he now knows is that he would have prioritised more resource initially, to the pandemic.

“Back in January 2020, there were two of us in the team who dedicated ourselves specifically to Covid-19 work,” he says. That number quickly grew, and they continued to work closely with relevant public health staff, all of them juggling the priorities of a large programme of Government-led legislative, health initiatives and Covid-19 itself.

One great advantage, says Phil, has been the fantastic, talented and dedicated Health Legal team. “They have thrown themselves into addressing the challenges that have come up, often novel and urgent challenges.”

One of the first issues to arise was managing the situation regarding cruise ship passengers returning to New Zealand.

“There were also a lot of travel queries, and issues around eligibility for health services, as well as powers under the Health Act, and how far they extended,” he says.

Hot on the heels of that range of advice, the team also played a significant role in the operation of the Medicines Act and worked alongside MedSafe, for example:

“Dealing with issues around decisions on approval of medicines, prescriptions, when medicines can be dispensed, the on-going application of the Medicines Act to the approval of vaccines, especially when vaccines are new,” he says. “These are approvals that were given in a dynamic environment where there are significant expectations on decision makers.”

Apart from heavy involvement and support from Crown Law, the Health Legal team also used other networks in the Government Legal Network. They shared knowledge, expertise and contacts with other Government lawyers.

“There are weekly Chief Legal Adviser meetings

to keep on top of matters and discuss Covid-19, amongst other things,” he says. “The Government Legal Network has various ‘practice groups’ to share knowledge. It’s worked well. Those connections have been particularly important for building relationships, responding quickly and knowing who to talk to in various agencies.”

As the pandemic continued, the Health Legal team gained greater and greater clarity through the outcome of court decisions too.

“We now have to draw upon that jurisprudence to assist with our advice, and in responding to new issues as they arise,” he says. But the real pillars of decision making were more philosophical.

“Underlying decision making were still the core factors that decisions needed to be lawful and they needed to be reasonable,” says Phil. “We went back to ‘what is the public health imperative?’ ‘what is the medical/scientific evidence to support the actions?’ then ‘what are the other legal considerations underpinning these decisions, including human rights justification?’”

Building confidence in an uncertain world

Back at McDonald’s, Malcolm Swan says the focus of the legal team changed during Covid-19.

“I think we were seen differently,” he says. Initially: “...it felt like a lot of people were looking for legal guidance because a lot of the issues were legal issues. A lot of the issues came out of legislation, health orders or things the Prime Minister said at the time. It was: ‘what does she actually mean?’”

“There were lots of issues around the wage subsidy for example..... part of the job of General Counsel is making the call: ‘well, this is our best guess, this is how we need to proceed’...A lot of it comes down to ‘what’s the right thing to do.’ You can answer: is it legal? is it moral? or is this just the right thing to do? A lot of the call was just a gut

feeling that it’s actually the right thing for our people. If you stick with that I don’t think you could go too far wrong, to be honest.”

He says that in the two years since the first lockdown, the team has become more efficient, more resilient and much stronger.

“It was a shock to begin with. Once everything had settled down, you settle into a rhythm. Then there’ll be another shock; there’ll be another announcement and we’ll have to deal with that; then it’ll settle down. There were peaks and troughs for a while – dealing with crises then going back down into normal routine. (Now)we’re definitely focused on the strategy and the pro-active risk mitigation, rather than day to day stuff that really wasn’t productive,” says Malcolm.

“Nobody likes uncertainty,” he adds. “But what we’ve learnt to do now is just go with the flow a bit more.....I think that’s made it a lot easier knowing we don’t know what’s around the corner.”

In the Ministry of Health, the demand on the team is large and decisions have to be made often at short notice.

“One of the things you’re always looking to do,” says Phil, “is to build public trust and confidence in the Covid-19 response; show that these are hard but informed decisions that are being made, that we’re looking out for the benefit of the population.”

Throughout the response, Phil points to the leadership he’s seen enacted as very helpful to his team, and to himself.

“The modelling of leadership and behaviour is very important,” he says. “One of the advantages for us in the Ministry is (seeing) how that’s been consistently modelled by Dr Ashley Bloomfield, Director General of Health and Una Jagose, the Solicitor-General. It’s useful for staff in terms of always recognising our own behaviour, holding ourselves to account and upholding what’s needed of us as public servants.” ■

A lot of the call was just a gut feeling that it's actually the right thing for our people. If you stick with that, I don't think you could go too far wrong...

THE RISE AND RISE OF IN-HOUSE COUNSEL

The big ones and the little ones

Take two lead in-house legal counsel roles – one with a large team, and one almost sole – and compare them. *LawTalk* did just that...

They couldn't be two more different roles: yet they share similarities. In the one position is Helen Wild, Auckland Council's General Counsel and head of Ngā Ratonga Ture – the Council's 58-strong in-house legal team. In the other post is Senior Legal Counsel at Warren and Mahoney, Charlotte Moll, leading a team of two.

Helen is advanced in her legal career, arguably at the top rung of the in-house ladder, plenty of wisdom on board. Charlotte is beginning the journey of legal lead, excited by what it's teaching her, actively pursuing the wide variety of experience it delivers.

Common to both: they're legal leaders in-house, sought after, looked to; and they absolutely love their jobs.

"I love the variety of work," Charlotte effuses. "Working alongside colleagues who are also clients takes away some of the formality of legal advice. It suits my personality. I find it really rewarding. I'm a natural extrovert and I really enjoy the relationship building."

"It's a big job and I love it. The organisation's values and purpose align strongly with my own," says Helen, and she points to the high calibre of the legal team and diverse range of work at Auckland Council. "I've never worked in an organisation with more hard-working, dedicated and passionate people."

The background

Charlotte started her legal career in the resource management team at a large



▲ Helen Wild



▲ Charlotte Moll

law firm. Two in-house secondments gave her a bird's eye view of in-house – one at Progressive Enterprises, the other at Kiwirail.

"I decided: that's what I want do, that's where I want to head," she says.

Following two permanent jobs in in-house legal teams, she took up the (then) sole in-house legal position at Warren and Mahoney, reporting to a Chief Operating Officer who is a senior lawyer in his own right. She has recruited a team member since.

Warren and Mahoney are esteemed architects, with 400 staff on board and seven 'studios' of designers, architects, consulting services, and information management services. Two of those studios are in Australia, so Charlotte's role has oversight of that, meaning her day begins early and ends late.

"I prioritise New Zealand work before the Australians wake up," she says.

Helen Wild's background was as a senior litigator in a large law firm who became enamoured with media law and media freedoms. She opted to go in-house, initially as Senior Counsel at TVNZ for ten years.

"It was exciting to work in the beating heart of the newsroom and make a difference from the inside," she reflects.

Helen joined Auckland Council in 2016 and is responsible for leading delivery of legal support inside the whole organisation. That extends across the governing body, council committees, local boards, the Mayoral Office, the Chief Executive



▲ Commercial Bay | Te Toki i te Rangi, designed by Warren and Mahoney in association with Woods Bagot and NH Architecture

and the executive leadership team – and all business units.

“We also provide legal support to two Council Controlled Organisations – Auckland Unlimited and Eke Panuku.”

If that doesn't leave you gasping, the range of legal advice provided by the team is divided into four practice areas, each led by a specialist lawyer. It covers off projects and transactions (property and commercial work) including some of the largest construction and development projects in the country; regulatory and enforcement (such as building consents and RMA matters, dog control cases and other regulatory prosecutions); public law (to ensure Council

Helen Wild's tips for building in-house legal teams

- 1 **Capability:** Build and maintain the highest levels of capability, to enable you to respond confidently to the organisation's needs.
- 2 **Continuing Development:** Investing in growth engenders positivity and momentum.
- 3 **Clients.** Take the time to understand the needs and objectives of the client. Strong relationships and good communication are key.
- 4 **Care:** About your people. Listen to them and ensure they are well-supported.
- 5 **Conduct:** Bring to the organisation the highest standards of professionalism, integrity and fairness.
- 6 **Connection:** Spending time together is key to enjoying, rather than enduring, the day. We can share the load and have some fun along the way.
- 7 **Creativity:** Make room for it, in any way it may manifest. Flair and adaptability beat boring and rigid any day.



decisions are lawful and consistent with legislation etc); and litigation and disputes (a diverse portfolio of cases including weathertightness proceedings).

“To lead a large team like ours, you need to be not only an excellent lawyer, critical thinker, and communicator, but in my view you also need to be a thoughtful leader. That means being considered in your approach, and considerate of your people,” says Helen. “It’s vital to care about the team. That’s a big part of the job, and comes naturally to me.”

Yes, but what do they do?

Both in-house practitioners admit to being daunted at times by their respective roles. They reveal they’re constantly challenged, and that

keeps them energised and focused.

“There’s a lot going on at any one time, and quite a bit of competition for my attention,” says Helen. “Every day is different. Having said that, there’s a rhythm of regular meetings across the business, the team, my direct reports. My calendar can get very crammed and colourful!

“It’s easy to get sucked into the daily churn of work. So, I’m very intentional about putting aside time to focus on the bigger picture, advancing our objectives; improving how we do things.”

She also sets time aside to be available for queries and to make space for the team individually and as a group.

Over 80% of Auckland Council’s files are managed in-house. Matters are referred to external legal providers if they are very large, and require extra resource, where specific expertise is needed, or the risk profile or complexity is such that independent advice is appropriate.

The legal team’s purpose is to “empower Auckland Council to do the right thing, the right way, for an Auckland we can all be proud of.”

“We work hard to understand and help the Council deliver on its priorities in the best and most effective way, and to identify and pro-actively manage risk,” she says.

Charlotte’s role is a study in contrasts, as is to be expected. She provides hands-on advice.

Warren and Mahoney has one parent company and six subsidiaries. There are quarterly board meetings for which Charlotte provides governance support. She spends most of the time reviewing contracts and providing advice direct to staff.

The organisation also responds to three or more RFPs a week.



“Every project we do has an associated contract,” she says. “My team member and I review and negotiate all of them. And we do everything in between – every weird, wild and wonderful legal question anyone may think up on any given day.”

“I’m never sure exactly where the day will take me, which is definitely disruptive to non-urgent work. All the in-house teams I’ve worked in have had that same problem.”

There’s a considerable educative element to the work.

“Part of my job is teaching architects about legal risk and what it means, and different scenarios in contracts. How things could play out if they were to go awry,” she says. “To create efficiencies, I have to communicate clearly to different teams – client finance,

marketing. That ensures there’s not a lot of back and forth. I have a list of what I need, when I’m asked a question. Efficiencies are gained through a bit more education on what lawyers do, and how they do it.”

Charlotte admits to a passion for negotiation. She says it can still surprise that a younger woman is the lead in very large contract negotiations.

“I’ve learnt that if you get to the real crux of the issue, what the concerns and worries are, and really delve into that and communicate clearly, what’s at stake, what’s trying to be protected by the other party not budging – you can often find a creative solution to deal exactly with the concern,” she says. “It’s not just accept or decline: it’s – find a solution.”

Despite their individual styles, and very different demands, both agree their roles have enriched them personally.

Charlotte sums up: “A lot of lawyers are influenced by their clients because they have

◀ ▲ Commercial Bay | Te Toki i te Rangi, designed by Warren and Mahoney in association with Woods Bagot and NH Architecture

to get to know the subject matter intimately. I think celebrating creativity has been a discovery for me. I’ve got Warren and Mahoney to thank for that. In a design company, creativity is fundamental to everything they do. I see the world differently now.”

“It’s an honour and a privilege to serve the Council family and the communities they support,” says Helen. ■

THE RISE AND RISE OF IN-HOUSE COUNSEL

A view from the top: what the board really, really wants

Pip Greenwood is a former senior partner in a large law firm, and now serves as a highly experienced director on multiple New Zealand boards, including Westpac NZ; Fisher & Paykel Healthcare; The a2 Milk Company; and Vulcan Steel. She was also previously on the board of Spark.

Before becoming an independent, non-executive director she says she didn't fully appreciate the role of in-house counsel.

"I'd never done a secondment, done a stint, never been in-house counsel," she says. "My visibility and understanding of the role of in-house counsel has increased through being a director."

She says she learnt early on that she was the person on the board receiving legal advice, not giving it, though her legal training gave her insights.

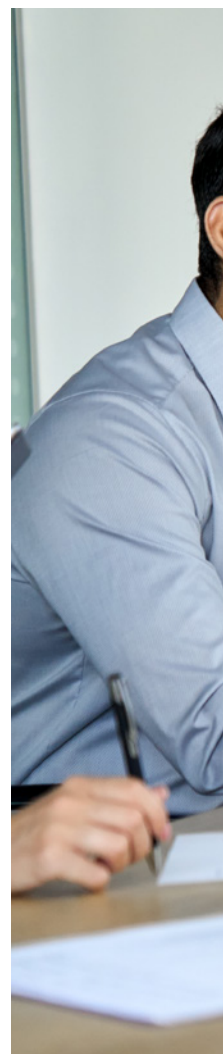
"The value in-house counsel provides is just immense," she adds. "From a board perspective, they're your eyes and ears in terms of legal issues. Obviously, I've got expertise so I can ask questions and I can spot things as well. But in-house counsel really has that lens of understanding the context, and the business context, in which to think about legal issues. That's quite different from asking for external advice on particular issues or points."

Pip says that the in-house team has a view on the risk appetite of the organisation. They ask questions such as: where do things sit on a risk scale? What is the acceptable risk for this organisation? What are the things we should be concerned

about? How much risk are we prepared to live with?

These questions, in turn, help inform the board.

"I had a really good example before Christmas of the value of the General Counsel," she says "We had a particular issue which was very difficult. The General Counsel wrote an excellent two-pager, really summarising it, and then the board put him on the spot. He gave a very good view of his perspective which helped inform the board's conversation and decision making."



Tips for dealing with the board

- ❶ **Who is the client?** It's sometimes necessary to interact with the board, not just the executive – no matter the reporting structure. The board should feel free to ask in-house counsel questions; and they should feel free to respond independently.
- ❷ **The general counsel as influencer.** For this edition of *LawTalk*, many interviewees (general counsel) told us that they led by influencing – to change a board's mind, or to ensure the Board centred on the right issues.
- ❸ **Solution focused.** The board wants more than legal issues raised. It wants solutions offered.
- ❹ **Short papers.** Boards ask increasingly for short, to-the-point papers.
- ❺ **No surprises.** Boards look for in-house counsel to see what's coming over the horizon and prepare. This includes changes to legislation, but also views on "trends" and "risks". Boards need oversight of the big picture as well as insight into the sector.



▲ Pip Greenwood

Pip says that the unvarnished view is often very important, and that's something general counsel needs to have the mettle to provide.

"From the top, you need to rely on the unvarnished truth. Where there are issues, you're relying on the general counsel or internal counsel to point these out," she says. Last year, informed

The value in-house counsel provides is just immense. From a board perspective, they're your eyes and ears in terms of legal issues

of a very difficult regulatory issue, she chose to contact the general counsel ahead of time.

"I had a chat ... just to make sure I understood the context. At the board meeting I was asked for my view. The General Counsel was very appreciative because I could give a view that person couldn't. That was a great example of us working together," she adds.

In highly regulated businesses, such as in financial services or telecommunications, Pip says board members rely heavily on in-house counsel, so they can form a perspective on "where to land" on issues. The requirement for continuous disclosure, for example, in other companies means in-house counsel's advice is likewise sought regularly and intensively by the board.

In-house counsel must also have a lens looking forward, to see what's coming over the horizon.

"That's a role for them to play. If you can get ahead of things, you're in a much better position," she says. ■

THE RISE AND RISE OF IN-HOUSE COUNSEL

To automate or not automate legal in-house? That is the question

When Mike Brooker, General Counsel at Foodstuffs - New Zealand's hundred-year-old, kiwi-founded grocery co-op - began to think of automation of parts of their in-house legal function, it was three years ago. The process has taken quite some time. But it's been worth it. And the journey is not yet done.

The in-house team of seven (four lawyers plus one Juno lawyer) is now on the way to tackling larger parts of the business' legal services, having realised considerable success thus far.

Mike and offsider Julian Benefield, Associate General Counsel, say Foodstuffs realised some time ago that they had "less than perfect systems" for dealing with contracts.

"Foodstuffs deals in a huge number of contracts," says Mike. "Some of them are quite significant in scale."

They looked for a way to streamline and make those activities more efficient.

"We were looking to get the absolute most efficiency out of a legal team," says Mike.

"It was about identifying where a small team can be made more efficient, essentially augmenting our capacity and allowing us to

spend more time on more valuable things," says Julian.

They chose to focus on some of the least complex documents to automate, where there was less requirement for negotiation with third parties, and therefore less need for bespoke solutions. They also looked for documents that were high volume and repeatable in order to realise the benefits.

Non-disclosure agreements provided a simple opportunity, and they seized it.

"It was about focusing on those documents and transactions where there is sufficient volume to justify the work in actually setting up the automatic processes," says Julian.

The result has been that more than 300 non-disclosure agreements have been automated; and (later) over 100 service agreements from the property team have been.

"These agreements are relatively simple and before being automated they would take 30 minutes to an hour or longer of drafting and discussion, when you include the backwards and forwards internally and externally," says Julian. "If you extrapolate that out over 300 - 400 times, it's a significant time saving for the legal team. By automating this, it means we spend that time doing more valuable things."



▲ Mike Brooker



▲ Julian Benefield



Choosing a vendor

While it is technically possible to get off-the-shelf software, Mike says they chose LawHawk, a New Zealand company that they felt would focus on understanding the problem before they found the solution. LawHawk, both Mike and Julian agree, understands legal department needs and legal technology.

For document automation, the team originally looked at HotDocs. They rejected it because it only permitted the legal team to fill in the template, which defeated the purpose of what they wanted to do. In conjunction with LawHawk, they chose U.S. based Cognito Forms.

Essentially, they created their own template form, to be filled in by users who would proceed through a few steps. By restricting fields and what could be changed, by providing instructions and descriptions, users could guide themselves through these simple documents. Foodstuffs had to work out the things within the template that could be changed. They had to develop 'automation flow' on the *Foodies* intranet site, so all questions that should be asked, were asked. The descriptions provided to users, and instructions, had to be framed and thought through. Plain English and user-friendly instructions for business users were a cornerstone. Once the form was completed, and a PDF was generated, the legal department had to provide

instructions on where to send it, and what to do with it when it came back – where to file it so the legal team could find it.

Both agree that it was hard work, but worth it in the end.

“Because the template is pre-approved, and the automation means that business stakeholders can't change anything we don't want changed without coming to the legal team for advice, it's very efficient and we can manage risk appropriately.” Says Julian.

Onto bigger things

The team has also looked at putting in place automation of other contracts and implementing a contract management tool, in terms of holding, managing and scheduling renewals for key contracts – the 'full life cycle of the contract', they say.

In a process Mike says is “all

starting to link together”, they have been moving down the path of electronic approvals, internal approvals, electronic signing. The first leg of that was creating appropriate internal policies and education.

“Over time we’ve put in place processes where contracts go through a number of steps of approval, whether that’s the manager of the contract, their GM, then the CFO, then legal and finally the CEO,” he says. “A lot of that in the past was done in a paper form on the front of the contract and it was walked around the room. With automation and use of legal tech, we can do that electronically. It travels from one party to the next, as soon as approvals are given. If people haven’t signed within a period of time, it sends out reminders and can escalate those. It makes things very efficient.”

“It used to be all paper based,” Mike emphasises. “A lot of (the contracts) hit my desk and I’d literally get a foot deep of paper and have to wade through it physically. Now, it comes to me electronically. I get a message saying: ‘this document has been approved by so-and-so’. I put my electronic signature on it, and it’s off to the next person who has to sign. In Covid-19 times, this has been like we’re all in the same room at the same time. It’s a game-changer.”

The audit trail is worth its weight in gold, and storage of digital documents is space and cost saving.

“It’s safe, and it’s easily retrieved,” says Mike. “The system is reliable. You know when you’re pulling out a document it’s final.”

A strategy for innovation

A key piece of advice from both Mike and Julian is: have a plan to innovate that backs up the legal strategy and that aligns with the company strategy.

“Innovation has helped us become more productive,” says Mike.

Tips for Automation for In-house Law – from the Foodstuffs Team

- 1 **Assess your needs in detail:** what’s the low value work you’re spending time on that’s not delivering efficiencies or productivity in terms of your team? Can this be automated?
- 2 **Get the best vendors:** there are many out there. You need the best solution-focused help you can find to see if your service can be automated effectively.
- 3 **Get started:** to do so, don’t tackle the biggest bits first; tackle it in bite sized chunks. Start with a smaller project. Get momentum. Once you’re successful, you’ve proven to yourself, your team, your leaders that you can innovate and still manage legal risk at the same time.
- 4 **Get other stakeholders on board:** work with the IT team to integrate your project safely and securely into your company network. Use your comms team to communicate it. Find some in-house champions who like what you’ve done and leverage their experience.
- 5 **Money matters – so small is best:** by biting off small chunks of innovation, you don’t stretch the budget. Incremental is the way to go. Prove the success to the business, sell the value, then you can do the next bit.
- 6 **There’s a payoff:** In addition to the productivity gains, it can be good for your brand internally and externally if you automate in this way. It shows you can think outside the square, find ways of improving processes.

LawVu – automating in-house legal from a different angle

LawVu (www.lawvu.com) is a New Zealand-founded company taking a different view of automation for in-house legal teams. The founders Sam Kidd and Tim Boyne approached the management of legal practice in-house first from a project management or matter management perspective, rather than document templating perspective.

Former General Counsel Matt Vaughan worked in-house at Xero and saw how game-changing such a software could be. He is now adviser and investor in LawVu.

“LawVu is a platform designed specifically for in-house legal teams,” he says.

“The day-to-day of a general counsel or an in-house team is a series of asynchronous tasks across a broad spectrum of matters,



▲ Matt Vaughan

some of which that team has never seen before. These can be tasks involving many different countries, and different areas of law. It can be hard to separate what's important from what's not, if that work is coming at you fast from many different angles."

"Funnelling that work into a pipeline can allow you to separate the signal from the noise, so you can work on what's important – that is central to LawVu's platform. It frees the lawyer up to do more of the human stuff – the interaction with the business, getting out into the business, and talking to their stakeholders."

As a platform or pipeline, LawVu has a number of capabilities which allow the team to have oversight and input on any matter they need to consider.

"It has matter management at its core," he says, "which is how, and in what form, the legal team receives instructions from the business. That then connects to a 'single source of truth' for the in-house team's documents, records, contracts, and a way for them to collaborate together, connect to the wider business, and other stakeholders in their world."

“If you're automating your workflow, you give yourself a bird's eye view of your day, your team's day...It gives you the data to see what is a hotspot, and what is not”

Other capabilities include: contract lifecycle management; knowledge management; and proactive 'insights' which give data and reporting analytics to the team.

"All of these capabilities are designed to optimise the team's performance," says Matt.

"Manual, repetitive tasks are removed, such as automating your matter intake, getting rid of the unnecessary back and forth of the business asking the same questions to get to the core of the matter. Automating a contract template removes the manual time to draft it each and every time. Automating reporting and analytics removes the need to ask your team what they're doing because you can see it.

"The future is: automation of numerous manual parts throughout the entire end to end workflow. That's the possibility with a platform like this," he says.

"LawVu also allows in-house teams to instruct and collaborate with an external firm."

A lot of the tech market previously has done this the other way around, he says: "through private practice software looking to connect 'down to their clients'."

"But if you attack the problem from the in-house team's side, they are the bill payer and should be driving how that interaction occurs. Law firms connect into LawVu to receive instruction in their version of LawVu and collaborate on a matter right to the end, when they push their invoice into LawVu."

Matt says that LawVu also gives a picture of risk immediately at hand.

"If you're automating your workflow, you give yourself a bird's eye view," he says, "of your day, your team's day and you have reporting around that. It gives you the data to see what is a hotspot, and what is not."

LawVu is available internationally – and Matt is actually based in the Cayman Islands. Two kiwi users are Airways and the Dunedin City Council.

"In an increasingly global team world, you still have to have connectedness," he says. "What should replace the water cooler? Tech has a critical role to play here: the likes of Zoom and systems of record like LawVu. It's that connectedness that is at the heart of what LawVu does." ■

THE RISE AND RISE OF IN-HOUSE COUNSEL

Te Ao Māori – Perspectives from Iwi General Counsel

Gwendoline Keel describes Tira Hoe, a journey she did with Waikato-Tainui down the Waikato river not long after she was appointed as Punenga a Ture (General Counsel.)

The event was a tribal experience. They started at the mouth of the mighty Waikato, near Taupō, and paddled down the awa (river) together, learning about the stories of history, land and the river itself.

“If I had to describe the highest point of my working for the iwi, I’d pick that journey,” says Gwendoline. “It does alter you as a New Zealander, a person.”

Gwendoline and her counterpart Natasha Strong, General Counsel at Ngāti Whātua Ōrakei, say that the trusts, charities, societies and companies they represent (which are part of a kete (basket) of iwi businesses) see the world differently. They see it through a tribal vision, a long lens measured in decades, centuries even.

“Our organisation has a very long lens,” says Gwendoline. “They are looking a long way into the future, far, far longer than other organisations do. So the tribe talks about mokopuna decisions – how this is going to affect their grandchildren.”

“The tikanga focus – Waikato tikanga (custom, values) – is very important in everything we do. Everything we do is based on a set of values that the tribe has and espouses, and they really live those values out.”

Gwendoline has spent four years developing the in-house legal team at Waikato-Tainui

from ‘greenfields’, inventing the role of General Counsel, and what it looks like within the organisation.

In contrast, Natasha is just beginning that journey at Ngāti Whātua Ōrakei. She has been there two years, and also reflects that working for iwi is completely different from any other in-house role.

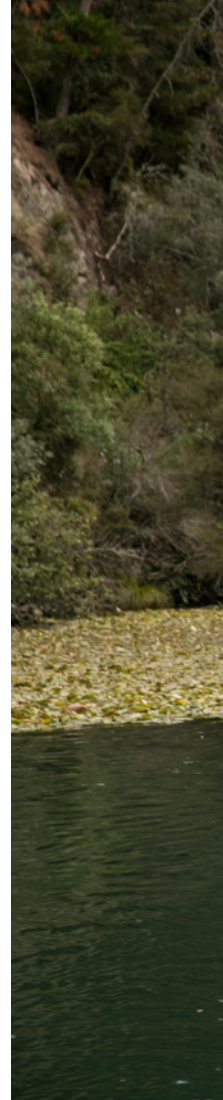
“It’s so purpose-driven,” she says. “Its purpose is to uplift whānau (families) so they can soar and meet their aspirations. That’s at the heart of everything we do. That’s why we exist: for the benefit of whānau members. It’s our sole purpose.”

“So (there’s) a Te Ao Māori lens across everything – a real, long-term lens. The whānau, who all whakapapa back to the common ancestor Tuperiri – those are our members. My CEO describes it as: the mahi (job, work) she does now is for the generations she’ll never meet. We’re thinking about the children, and the children’s children’s children, and making sure that what we do now continues to help those children to live their aspirations.”

The role

Both Natasha and Gwendoline describe their legal work as, on one level, similar to that of any in-house legal team. There are contracts to review and advice to provide. Governance advice is important; as are IP, policies, negotiation, property, leases and so on. But there is also an overlay of Māori legal matters.

Natasha says she provides a lot of advice on Te Tiriti o Waitangi and Crown partnership issues, as does Gwendoline. Because both iwi have trusts,





societies and charitable trusts, there is also the administration of those entities requiring attention.

“Setting up things like basic registers,” says Natasha. “Such as registers of information whānau have requested and of whānau member complaints; setting up a matter management system.....those were basic things that established in-house teams take for granted.”

Both lawyers have had to revise rules and trust deeds - with all the challenges involved. And each points to the on-going, intensive government legislative programme which requires their attention, input and submissions from a Māori world perspective.

Gwendoline is doing a Masters in Information Governance at Auckland University, specifically to understand and address concerns around governance and Māori data sovereignty.

“Data sovereignty is the idea that you, as the data subject, should be the person controlling your data, not Google or Facebook or whoever else,” she says, adding that Māori think of themselves

▲ Gwendoline Keel, second row on the right hand side of the waka, on her Tira Hoe journey.



▲ Natasha Strong

as a collective, not individuals.

“There’s a particular jurisprudence emerging around Māori data sovereignty looking at how Māori ought to be in control of their own data, and what that means for how we interact with Crown or other agencies that might want to hold or use that data,” she says.

Through the legal viewfinder

Looking at iwi goals through their legal viewfinder, the pair find that

Our organisation has a very long lens. They are looking a long way into the future, far, far longer than other organisations do

“ (The organisation's) purpose is to uplift whānau so they can soar and meet their aspirations. That's at the heart of everything we do ”

the way they do their work is different too. It's infused with intent.

“We always bring the law,” says Natasha. “We bring the lawyer's way of thinking about the risks and how to mitigate them; and how to achieve the hapū goals within the legal framework. But it's also about the relationship between tikanga and the law. In health and safety (for instance) we have obligations...to keep everyone safe; but that's also what manaakitanga is about as well... Thinking about those issues with that lens enables us to ensure that our legal advice not only ticks the legal box, but is also fit-for-purpose for the organisation as well.”

“The organisation exists to compensate the descendants of those who suffered the raupatu (confiscation) and the economic, social and cultural recovery process that's underway is such a privilege to be part of. It's so interesting,” says Gwendoline.

As General Counsel, she gets 'embedded' into project teams in a way that, usually, in-house counsel may not.

“We did a housing project here called Te Kaarearea,” says Gwendoline. “I was on the team all the time, making that housing development happen. You're not waiting for

people to come to you. You're embedded in the whole process. I found that a great way to spot issues early on, and to be effective as counsel.”

“You can be proud of that work,” she adds. “If I'm having a frustrating day, I will go out and drive round that development; it always cheers me up. I say: 'Wow. We did that.'”

Both general counsel agree that the best practice model for iwi is not just legal; it's built around tikanga.

“That's around consensus building, collaboration; how you negotiate; how you train people and bring them into the organisation, and the relationships you have with them,” says Gwendoline. “It's quite a different model from a law firm. It feels entirely different to work in.”

Natasha steeped herself in Ngāti Whātua tikanga – and was helped liberally along the way by others. She describes many days as 'hui and kai', building warm relationships alongside legal advice and says that she likes to be very present and visible to whānau and kaumātua (elders).

“Ngāti Whātua is a very values-driven organisation,” says Natasha. “We've got a lot of ngā mātāpono (values). Things like: kaitiakitanga (guardianship); rangatiratanga (leadership); manaakitanga (care, aroha to others). I use those as a lens on how we deliver not just our legal advice, but how we think about issues that come across our desk, and how we get involved.”

Like Gwendoline, Natasha is pākehā, and both women have immersed themselves in learning te reo Māori and te ao Māori.

Carving pathways for the future

One of the key parts of both roles is ensuring there are ways for young people who affiliate to the iwi to participate in the business. It's part of their remit to grow tribal capability.

Gwendoline looks for opportunities to get others 'in the room', creating ways for young lawyers to come into the organisation and look at future opportunities like in-house counsel.

"How can I empower people to get in that room and make a difference?" she asks rhetorically. "I think that's what leadership is about and doing it in a way that's consistent with the values of the organisation.

"So, we've got two lawyers in our team, and a third person at law school who's chosen to go there because she felt really attracted to the kaupapa. We're supporting her through law school. We're developing this really fantastic pathway for our lawyers that wasn't there before."

Natasha, who is still establishing in-house protocols and processes, slowed by the need to get on the tools to meet a wave of demand for legal support, looks forward to the day when she can provide similar opportunities. Meanwhile, like Gwendoline's team, Natasha's team also supports their external legal counsel in training law graduates.

"And over the summer, we employed a young graduate lawyer from Waikato Law School," she says. "He's been helping with contracts and opinions, and he's been fabulous."

A job that changes people

If the mark of a great job is how much it changes a person for the better, each of these lawyers would say they have that role.

"Being purpose-driven is in my DNA," says Natasha. "It's really important to me to do work that makes a difference.....It's the most challenging thing I've had to do....and also very rewarding."

"It's changed my landscape of success," says Gwendoline. "It's changed me in that it's made me realise that there is a very narrow definition of success going on in the legal profession. My definition of success now, is what I'm doing now - purpose-driven mahi. I feel so fortunate. The longer I'm in the role the more fortunate I feel." ■

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Independent Review Panel appointed

Set to look at the framework for legal services in New Zealand

In early March, the New Zealand Law Society | Te Kāhui Ture o Aotearoa was advised of the appointment of a highly experienced panel, convened to conduct the Law Society's flagship Independent Review. This independent panel will examine the statutory framework for lawyers and legal services and whether it is still fit-for-purpose given the changes that have occurred in the legal profession and in regulatory good practice.

Professor Ron Paterson was appointed as Chair of the Independent Review Panel, and Jane Meares and Professor Jacinta Ruru as members.

The panel was appointed following a recommendation by a seven-member Steering Group, led by prominent businessman Whaimutu Dewes.

The Steering Group was, itself, appointed by the Law Society last year. Despite experiencing some delays due to the pandemic, the Steering Group's role was to set the terms of reference for the review, following consultation with the profession. Once these were set, it was tasked with recommending the Independent Review Panel members, who would operate at arm's length from the Law Society. It also recommended the secretariat provider to support the Panel. The Steering Group's role is now complete.

The three-person Independent Review Panel will now identify what changes are needed for modern and well-functioning regulation and representation of the legal profession in Aotearoa. The scope includes whether the Law Society's representative functions

should be separated from some, or all, of its regulatory functions; how unacceptable conduct is prevented and addressed in the profession; how complaints are made and responded to; and which legal services are regulated and by whom.

The Independent Review Panel will deliver its report to the Law Society by the end of 2022. Following receipt of its report and recommendations, the Law Society will provide a response. That response and the Panel's report will be delivered to Government in the first half of 2023.

Background

Under the Lawyers and Conveyancers Act 2006 (the Act), the Law Society is both a regulatory and representative body. As a regulator it governs all lawyers and has dedicated duties and powers focused on monitoring, regulating and enforcing the rules that apply to lawyers to ensure New Zealanders can have confidence in the provision of legal services. It is also a voluntary representative body whose function is to represent and serve the interest of its members.

Dame Silvia Cartwright's 2018 report, following reports of behavioural issues in the profession, made recommendations on a wide number of issues, but the Law Society found that it was constrained by its own legislation in addressing some of those. The government said legislative amendments couldn't proceed at that time.

As a result, the Law Society framed an Independent Review to:

- Consider the ability of the Law Society to be more effective with its complaints system and to deal with a range of unacceptable behaviour, including complaints of sexual harassment and bullying; and
- Ensure the statutory framework is still fit-for-purpose given the changes that have occurred in the

legal profession and in regulatory 'good practice' since the Act came into force.

Law Society acknowledges appointment of panel

"I am delighted we have secured a panel of this calibre to conduct the review. They are each rangatira in their own right. Collectively they bring together all the skills we need to do this work," Law Society President Tiana Epati says.

"This is the most significant independent review of the statutory framework which governs the legal profession in our generation, Ms Epati says.

"It is the opportunity for us to give deep consideration to what change is needed to enable a fit-for-purpose statutory and regulatory environment that provides for a modern, efficient, and high-integrity legal profession for all New Zealanders.

"It lets us look at what is needed to ensure fair competition for legal services, to enable innovation in the profession and to strengthen commitment to Te Tiriti o Waitangi and the diverse multicultural society we live in.

"Over the last year the Law Society has done a great deal of preparation work for this review. The Steering Group has likewise been methodical, careful to ensure the Terms of Reference were right. Through the Law Society, the Steering Group has consulted widely on these. Now it is time for us as a profession to accept the challenge," Ms Epati says.

About the review panel members

Professor Ron Paterson, Chair

Professor Paterson ONZM is Emeritus Professor of Law at the University of Auckland and former Health and Disability Commissioner and Ombudsman. He has chaired several major inquiries in New Zealand and Australia, including the Government Inquiry into Mental Health and Addiction, and brings expertise in the regulation of professions, complaint systems and consumer protection.



▲ Professor Ron Paterson

Jane Meares, Panel Member

Ms Meares is a barrister at Clifton Chambers, Chief Commissioner of the Transport Accident Investigation Commission, Chair of Financial Services Complaints Limited, Deputy Chair of the Electoral Commission and a Member of the LINZ Risk and Assurance Committee. She has extensive experience in legal practice and review and inquiry expertise and is motivated to be part of a significant opportunity for change in the legal profession.



▲ Jane Meares

Professor Jacinta Ruru, Panel Member

Professor Ruru MNZM, FRSNZ (Raukawa, Ngāti Ranginui) is a Professor of Law and University of Otago inaugural Sesquicentennial Distinguished Chair. She is a member of Te Hunga Rōia Māori o Aotearoa the Māori Law Society. Professor Ruru brings an excellent understanding of Te Tiriti o Waitangi and is focused on bringing it to life in the legal profession. She has good experience in high-profile Ministerial reviews, advisory groups and governance boards.

The final Terms of Reference for the Independent Review can be found at www.lawsociety.org.nz/about-us/independent-review/



▲ Professor Jacinta Ruru

Lawyers and Conveyancers Act 2006 consultation – results

In late January the New Zealand Law Society | Te Kāhui Ture o Aotearoa consulted with the profession on four proposed amendments to the Lawyers and Conveyancers Act 2006 (the Act). The Law Society received 740 survey responses, and nine written submissions.

The proposed amendments to the Act would run in parallel to the work of the Independent Review, which may propose more significant legislative reform.

The results of the consultation show strong support for the changes that would improve the efficiency of the lawyers' complaints process while also making it more victim focused.

A fourth amendment that would ensure that conveyancer undertakings are enforceable by a Court in the same manner as undertakings given by lawyers was also strongly supported.

Law Society President Tiana Epati says the feedback demonstrated that the majority of the profession understood and agreed with the rationale behind the proposals.

"I am encouraged by the widespread support for improving the effectiveness and transparency of our complaints process. The legal profession has taken great strides in recent years, particularly in regard to exposing toxic workplaces, sexual harassment and bullying," Ms Epati says.

"We need to keep up that momentum and these changes are a fundamental part of doing that."

Almost 60 per cent of respondents either agreed or strongly agreed with the key transparency change to allow the Law Society to disclose procedural information about the status of a complaint or own-motion investigation.

Some submitters appeared to overestimate the extent of the information that would be allowed to be disclosed. Other concerns related to the reputation of the lawyer concerned, as well as natural justice. The Law Society is confident that these concerns can be addressed with further

consultation on the policy that would guide the disclosure of information.

The proposed ability to triage complaints resulted in 90 per cent of respondents either agreeing or strongly agreeing.

The results have been sent to the Minister of Justice for his consideration. The Minister had agreed to the Law Society consulting on these proposed changes with the purpose of providing him and Ministry of Justice with early feedback and views from the profession.

A summary of results and more information on the proposed amendments are available on the Law Society website. ■



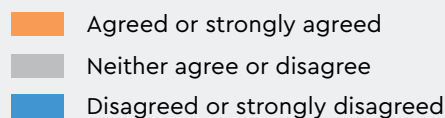
Summary of results

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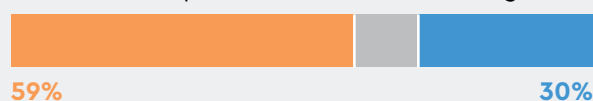
SURVEY RESPONSES

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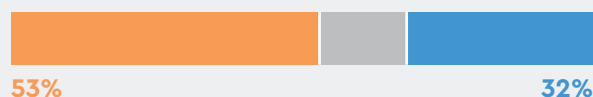
WRITTEN SUBMISSIONS



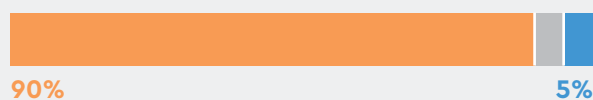
Amending section 188 to allow the Lawyers Complaints Service to disclose procedural information about the status of a complaint or own-motion investigation



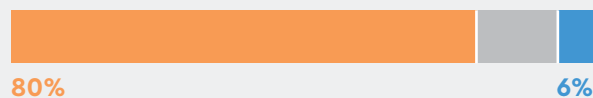
Amending section 188 to allow a Standards Committee to disclose procedural information about the status of a complaint or own-motion investigation



A new section 135A allowing the Lawyers Complaints Service to administratively triage complaints, so that referral to a Standards Committee is not required in every instance

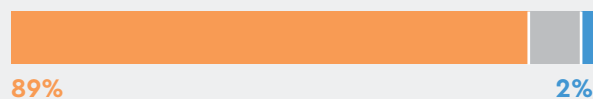


A new provision confirming that employees and officers of the Lawyers Complaints Service and Standards Committee members are not providing regulated services when carrying out their roles



*Additional feedback indicates this is seen as sensible, somewhat 'technical' amendment.

A new amendment providing that an undertaking given by a conveyancing practitioner in the course of practice may be enforced summarily by a court, in the same manner as an undertaking given by a lawyer



*Submitters agreed there was a need to simplify and secure the process for consumers and practitioners and commented that this was a long-awaited change.



PROFILE

Senior Professional Standards Officer Stephanie Mann

Reporting bullying and harassment

Senior Professional Standards Officer Stephanie Mann is often on the other end of the phone or computer when confidential reports come in from the legal community. In her role at the Law Society she also works with complaints about bullying, harassment, discrimination and violence.

Stephanie also receives the Designated Lawyer reports under rule 11.4 of the Conduct and Client Care Rules, which are triggered when there is a written warning or dismissal due to behaviour such as bullying and harassment, or when a person leaves the law practice within 12 months of being advised that they were being investigated about their conduct.

▲ Law Society
Senior Professional Standards Officer
Stephanie Mann,
with her youngest son Albert, aged two.

Recently *Kōrero Mō Te Ture* | LawTalk caught up with Stephanie to hear more about her role with the Lawyers Complaints Service, and the mandatory reporting obligations for lawyers and designated lawyers due to changes to the Conduct and Client Care Rules

You're a Senior Professional Standards Officer with the Law Society. What does that involve?

Professional Standards Officers at the Law Society manage communications between complainants, lawyers and a Standards Committee or Screening Panel. We help gather information and prepare documents.

My role is a little different to the other Professional Standards Officers, as I'm normally dealing with confidential reports (rather than formal complaints). I only deal with complaints when they concern prohibited behaviour, for example bullying, harassment or discrimination.

A big part of confidential reports is talking to people who have made them. Mostly we have discussions about process, whether it is practical for them to remain confidential, if that is something they are interested in, and whether more information is needed before the file goes to the next stage.

I also deal with designated lawyer reports. These are a new type of reporting requirement from 1 July 2021, following the changes to the Conduct and Client Care Rules.

Why did you decide to work in this area?

People are at the heart of this work. I was excited to be a part of a new process aimed at making the initial process of contacting the Law Society easier. Lawyers don't want to report other lawyers and ideally they would never have to. I think it is important to have extra resources to support those that step up and report matters so that they know what to expect. A considered process is especially

When should I make a report?

Under Rules 2.8 and 2.9:

- you must report misconduct, and
- you have a discretion to report unsatisfactory conduct.

Mandatory reporting does not apply to victims of suspected misconduct. In making a report, it does not matter if you are unsure whether the issue is one of misconduct or unsatisfactory conduct. You can make the report under Rule 2.8 and/or Rule 2.9.

important when dealing with sensitive issues that can have a huge impact on people's lives

The Law Society needs to keep working to earn people's trust and confidence, so that they feel comfortable reporting conduct issues to us. This is important as at the end of the day, the reporting process only works effectively when people are aware of their reporting obligations **and** take that step to tell the Law Society about behaviour.

What's your background – what skills and experience do you have that have equipped you for this particular work?

I was previously a civil litigator for close to 11 years, and worked on cases involving insurance, estates, trusts, and health and safety. As a litigator you come across a variety of situations and people from lots of different backgrounds.

Having worked in Christchurch, as well as being Canterbury born and bred, I have seen how much the earthquakes impacted people's lives at the everyday level and years

down the track. Civil litigation is very stressful for clients, just like the reporting process can be for lawyers. However, good communication and empathy can make a hard situation slightly easier.

What is a confidential report, and what does it cover?

A confidential report can be about any breach of the rules. I've had allegations of conflicts of interest, misleading the court, dishonesty, bullying, behaviour that happened at a work event, undertakings gone wrong, and dishonesty regarding a lawyer's interactions with legal aid. The main reason why my front end role was created though was to provide additional resources to those reports that deal with prohibited behaviours.

What is a designated lawyer report?

Designated lawyer reports (r 11.4) deal with the prohibited behaviours as well as theft. Since July 2021 when the Rule changes came into effect, these reports have come in after an investigation or employment process has begun but not

What is a designated lawyer report?

The designated lawyer will:

- notify the Law Society on behalf of the law practice, within 14 days, if there is a written warning or dismissal due to prohibited behaviour such as bullying, discrimination or harassment, and
- fulfil the law practice's annual reporting obligations.

The designated lawyer must also notify the Law Society within 14 days if any person leaves the law practice having been advised within the previous 12 months that the law practice was dissatisfied with, or intended to investigate their conduct in relation to prohibited behaviour.

If an investigation into the alleged behaviour has concluded and there are no reasonable grounds to suspect that the lawyer engaged in misconduct, then no report to the Law Society is required.

finished. We have yet to receive a report which deals with a written warning or dismissal.

So far, most reports come after one employee has raised issues about another, an investigation has been started but the employee resigns. This means when the Law Society gets the report, the conduct has not been investigated and both sides have not had the chance to tell their version of events.

How do reports and complaints come to the Law Society?

A lot of people will ring the Law Society's 0800 line for sensitive complaints (0800 0800 28) to talk about what is needed before sending something in. I have had a couple of phone calls with people who want to talk anonymously through a situation. For instance, someone touched them at a work event, or where they have been

sworn and yelled at and their work insulted in an unconstructive manner. One caller was sworn at and their work compared with a kindergartener. As they were the person affected by the behaviour there was no obligation to report, but they found it useful to talk through their options. Knowing the process and understanding the options can help people work out whether they feel comfortable taking things further.

It is an important part of the rules that the person affected by the behaviour is not obliged to make a report. It would not be appropriate for mandatory reporting obligations to apply to victims. That does make it more important though for other lawyers to be aware of their reporting obligations and if they "see something, say something".

Sometimes these complaints or reports are made by the person who was affected by the prohibited

behaviour. Occasionally the complaint/report may be made by a third party. When this happens, it is important for the Law Society or notifier to try and contact the affected party to establish if and how they want to be involved in a Law Society process. The Law Society does not want people affected by prohibited behaviour to be unaware that a process has begun that concerns them. At the same time, we appreciate that being a part of a process can be difficult and will respect the level of involvement that they are comfortable with.

At some stage all reports or complaints must be in writing, and most get sent in to complaints@lawsociety.org.nz. There are forms on the Law Society website which provide guidance about what to include.

What do you find the most rewarding?

When people thank me for helping them understand, or for listening. Making a report about another lawyer can be a really challenging decision to make. That is especially so when the person has been subjected to bullying, discrimination, harassment or violence.

The whole reporting process is not made easier by the fact that the New Zealand legal community is a small one and no one wants to be seen to rock the boat. That does make it more important for people to identify when their mandatory reporting obligations are triggered and act on it.

What's the biggest challenge you've faced in this role?

Telling people about how a matter can proceed while informing them that our ability to be totally transparent during that process will be limited by legislation. Improving transparency is one of the reasons why the Law Society has proposed changes to the Lawyers and Conveyancers Act: www.lawsociety.org.nz/news/law-society-statements/changes-to-improve-transparency-and-efficiency-of-lawyers-complaints-service/

Being able to be more transparent with those

who are witnesses of behaviour or affected by it, while balancing the rights of the lawyer and natural justice will help people understand that they are a valuable part of the process.

Do you ever receive a report, and think that perhaps the matter could have been avoided if the issue had been properly addressed earlier?

Yes and no. It makes you appreciate that there are often different sides to situations and that there can be stress in someone's life that may cause them to act inappropriately.

If lawyers can recognise when a colleague is becoming isolated and stressed and provide them with support and pull them up when they cross a line, then that may help avoid issues. Often the ability to fix a problem is directly proportionate to someone else knowing about it.

Tell me more about the designated lawyer reports. What are you looking for in those reports?

As always, and with any report, the devil is in the detail. If we are told that Jane regularly bullied Suzie, that does not provide us with any information about what the behaviour is, or how often it happened. The more information people can provide us about the "what, when, where, why and how" the better.

Reports can also be initially provided with some information redacted, such as redacting the names of affected parties or witnesses. It's important that people know that the anonymity of people may not be able to be maintained throughout the process. However, anonymity can give the firm the time to comply with their 14-day reporting obligation and then later speak to the affected person about the report and support them at a time when they might feel vulnerable.

What do you do in your spare time – how do you counteract the stress of dealing with these types of complaints/reports?

Aside from spending time with my husband and two sons (2 years and 4 ½ years, the half is very important to him), I read a lot of fantasy novels. Nothing helps you escape from reality quite like a story with magic and mystical creatures. My current favourite fantasy author is Brandon Sanderson. ■

More information for readers:

Read the Guidance on Professional Standards and Reporting Obligations to make sure you're clear on your obligations before the 1 July 2022 deadline:

www.lawsociety.org.nz/professional-practice/rules-and-maintaining-professional-standards/

To make a report or complaint:

www.lawsociety.org.nz/professional-practice/rules-and-maintaining-professional-standards/mandatory-reporting-obligations/

If you or someone else has been affected by bullying, discrimination, harassment or other forms of prohibited behaviour, there is support and help available:

Vitae Legal Community Counselling service: phone 0508 664 981

You can access up to six free counselling sessions through Vitae. The service is available to anyone in a legal workplace including lawyers and non-lawyers.

- Free phone Vitae on 0508 664 981
- Complete Vitae's online referral form
- Download the Vitae New Zealand app from the App store or Google Play.

Law Care: phone 0800 0800 28

Use this confidential service to discuss sensitive matters with a Law Society staff member. Our specially trained staff can provide a range of options and support services to help you.

National Friends Panel Sensitive List

The National Friends Panel Sensitive List is a list of lawyers who are available to discuss sensitive matters such as workplace bullying and harassment. Contact details for the individual Friends are available on the Law Society website, and you can reach out to them directly.

www.lawsociety.org.nz/professional-practice/practising-well/bullying-and-harassment/assistance-and-support/national-friends-panel-list-sensitive-matters/

If you're the subject of a complaint:

www.lawsociety.org.nz/professional-practice/client-care-and-complaints/complaints-and-discipline/understanding-the-complaints-process/

REGULATORY

Still want to be a lawyer on 1 July 2022?

Here's what you need to do

Every year you need to renew your practising certificate – it's a small amount of admin for the right and privilege to call yourself a lawyer and provide regulated services.

There are a couple of changed requirements this year, so the Law Society is encouraging you to get onto it as soon as possible.

New this year:

You will need to make a non-compliant fit and proper declaration if:

1. You have not completed your CPD obligations
2. You have any outstanding fines or have not complied with your payment plan
3. You practise on your own account and do not have an attorney or alternate in place
4. You are practising on your own account and your practice does not have a designated lawyer appointed in accordance with the obligations under Rule 11.3 of the Conduct and Client Care Rules.

Here's some key dates for your diary. Renew early and avoid last minute stress.

March 2022

CPD: You should be making sure that you have completed your Continuing Professional Development (CPD) requirements for the year.

The CPD year ends on 31 March, but you have until 7 April to make your declaration that you have fulfilled your CPD requirements.

Designated lawyer: If you haven't already, please email registry@lawsociety.org.nz and let the Law Society know the name of your designated lawyer.

Sole practitioners and barristers are automatically the designated lawyer in their law practice. You will need to certify your compliance with the Conduct and Client Care Rules.

New: If you are the designated lawyer for your law practice, you will need to certify your practice's compliance with the Conduct and Client Care Rules, and the Health and Safety at Work Act 2015.

Don't know if you comply? Check the Guidance on Professional Standards and Reporting Obligations. www.lawsociety.org.nz/professional-practice/rules-and-maintaining-professional-standards/guidance-on-professional-standards-and-reporting-obligations/

Trust accounts and s.112 declarations

Not operating a trust account? There's a form for that. You will have received an email from the Law Society on 1 March 2022 reminding you to fill out the certification form and email it to registry@lawsociety.org.nz by 31 March.

I'm out: If you're not going to renew, let us know as soon as possible, and we'll stop emailing you the reminders.

March deadlines:

31 March – CPD year ends. Last day for s.112 trust account declarations.

April 2022

Start preparing to renew your practising certificate. Or let us know if you're not going to renew.

Key dates

✓ 31 March

CPD year ends

Last day for s.112 trust account declarations

✓ 7 April

Last day to make your CPD declaration

✓ 8 April

CPD is now overdue. You will need to make a late declaration to declare your CPD compliance or have received a deferment from the Law Society.

✓ 20 June

Your firm administrator should have made payment to ensure your renewal is processed in time. It is your responsibility to check your payment status with your firm administrator, and to make your fit and proper declaration.

✓ 30 June

Last day to make your fit and proper declaration, and payment.

✓ 31 July

Practising certificates will be issued.

Renewing your practising certificate is subject to:

- No outstanding costs or fines
- Declaring CPD compliance
- Sole Practitioners: need to have an attorney and alternate in place
- Practising on own account: need to file your trust account exemption (s 112)

Firm administrators should start updating their firm's information, and check their firm's records are correct as soon as possible. This will ensure that every lawyer receives notification about renewals and instructions on how to renew.

April deadlines:

7 April – Last day to make your CPD declaration

8 April – CPD is now overdue. You will need to make a late declaration to declare your CPD compliance or have received a deferment from the Law Society.

May 2022

Have you paid any costs or fines?

You will need to make a non-compliant fit and proper declaration if you are not complying with any outstanding costs and fines or have not complied with your payment plan.

Are you a designated lawyer?

Rule 11.4.4 requires the designated lawyer to certify annually the law practice's compliance with:

- the mandatory reporting obligations imposed under the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Amendment Rules 2021; and
- that the law practice has policies and systems in place to prevent and protect persons employed or engaged by the law practice from prohibited behaviour and to comply with its obligations under the Health and Safety at Work Act 2015.

The designated lawyer must also certify annually

that they have complied with the reporting obligations referred to above.

Certification will be completed online and will be part of the annual practising certificate renewals process.

Have you appointed an attorney or alternate?

Section 44 of the Lawyers and Conveyancers Act 2006 requires sole practitioners to appoint an attorney and an alternate which authorises them to conduct their sole practice if you are unable to do so.

It is an offence under s.45 of the Act not to have an attorney in place.

Now is also an opportune time to make contact with your attorney and alternate and update them on all aspects of your practice.

Check your details

Individuals: log in to the Law Society website to check your personal information is still correct.

Firm administrators: log in to the firm account to check the people listed are correct. Make sure you have update your firm's records.

June 2022

Make your fit and proper declaration.

Make payment.

Practising fees and levies are not a membership. They are the cost lawyers need to pay for the profession's regulation.

Please pay and make your fit and proper declaration early to ensure your renewal is seamless.

June deadlines

20 June - Your firm administrator should have made payment to ensure your renewal is processed in time. It is your responsibility to check your payment status with your firm administrator, and to make your fit and proper declaration.



There are a couple of changed requirements to renew your practising certificate this year....Get onto it as soon as possible



30 June - Last day to make your fit and proper declaration, and payment.

Lawyer, or maybe not?

On 1 July 2022 your new practising certificate will be issued.

If you miss the deadline, you'll need to reapply.

Resources to help you

Information about renewing your practising certificate:

www.lawsociety.org.nz/professional-practice/legal-practice/practising-certificates/renewal/

Designated lawyer - see our fact sheet.

www.lawsociety.org.nz/professional-practice/rules-and-maintaining-professional-standards/responsibilities-of-the-designated-lawyer/

Sole practitioners and barristers:

www.lawsociety.org.nz/professional-practice/rules-and-maintaining-professional-standards/sole-practitioners-obligations/

Read the Guidance on Professional Standards and Reporting Obligations.

If you need to create a bullying and harassment policy for your firm, read our previous article in *LawTalk* on designing anti-bullying and harassment policies for law practices.

www.lawsociety.org.nz/news/lawtalk/lawtalk-issue-948/designing-anti-bullying-and-harassment-policies-for-law-practices/ ■

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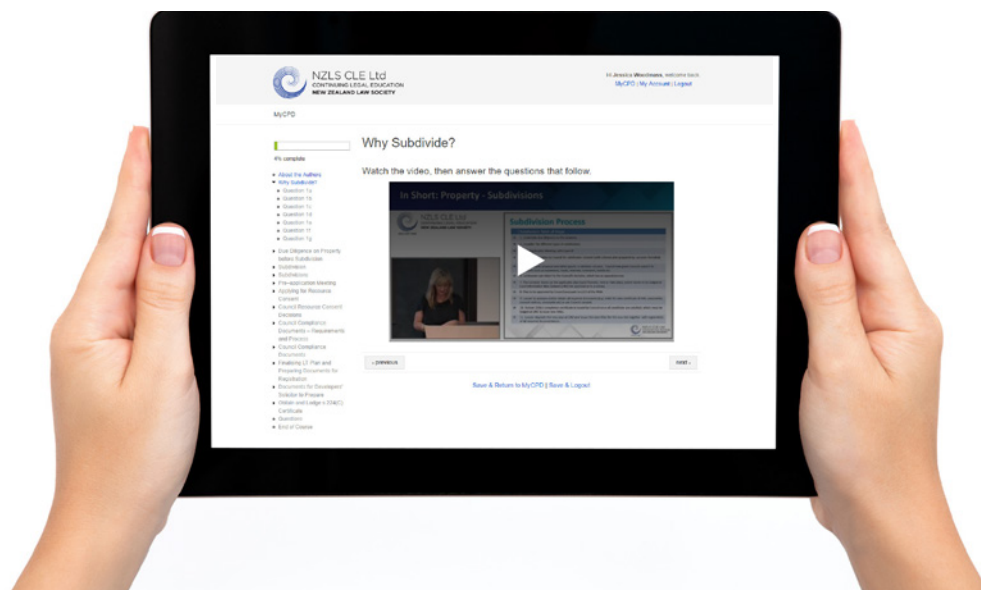
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E: hans.wouters@nzspinaltrust.org.nz T: 03 383 6881

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