



A profession that
looks like modern
Aotearoa New Zealand

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ABOUT LAWTALK

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FROM THE PRESIDENT

An audacious faith in the future

BY **JACQUE LETHBRIDGE**

With the first two months as President now complete, I have a keener eye not only on my goals for the Law Society and wider profession but with a gaze set firmly to our shared future. “We must walk on in the days ahead with an audacious faith in the future” Dr Martin Luther King said in his 1967 speech “Where do we go from here”. Better words I could not think of to define the theme of this LawTalk edition which focuses the lens on celebrating our future and the rich diversity it promises.

Despite being only two months into the President’s role formally, it has been a busy and productive time. From appearing in the Supreme Court for the valedictory sitting of the Honourable Justice William Young, to engaging directly with the now former Minister of Justice and Ministry officials on key Law Society priorities, through to representing and speaking at events on behalf of the Law Society like the Donoghue v Stevenson 90th anniversary conference and the NZ Asian Lawyers event, and engaging directly with practitioners at events across our country. I have taken immense heart at the passion of lawyers across Aotearoa New Zealand and your determination to undertake not only your day-to-day work but the volunteer work necessary to contribute to the profession and our society.

Equality of access to justice is fundamental to upholding the rule of law and no person is immune from contact with the justice system. Before looking forward,

Equality of access to justice is fundamental to upholding the rule of law and no person is immune from contact with the justice system



I want to acknowledge the fruitful work the Law Society has led over recent years which has resulted in the boost in funding for legal aid services delivered in Budget 2022 to the tune of \$190m. It is the most significant boost to the legal aid sector in more than a decade and its impacts will reverberate across our society. New Zealanders from all walks of life will benefit from increased access to justice that this boost will provide. The Law Society, under the leadership of former President Tiana Epati, took a fact based approach in commissioning Colmar Brunton to carry out a survey which showed that over 20,000 Kiwis could not access legal aid representation in 2021.

While there is still more to do, we can be proud of our collective efforts. One particular area that will need addressing is the legal



aid fixed fee rate. This received no change in the increase in funding and remains a point of contention for continued work. Much of the legal aid work undertaken in Aotearoa New Zealand is remunerated through the fixed fee rate so a change to the fixed fee rates is necessary to ensure meaningful change for those practicing in the criminal and family jurisdictions.

A remaining area that must be addressed is civil legal aid and this will be a particular focus of mine as President one that I have begun by attending the hui for Wayfinding for Justice

which is exploring alternatives for our civil jurisdiction. I also attended a hui with Judge David Clark and officials from the Ministry of Justice to discuss initiatives being tested by the judiciary in the District Courts in the Auckland region.

Recognition for the work the Law Society undertakes is one of the '3 R's' that will guide my presidency. The other two - representation and regulation - have been no less important in the past two months.

On the regulatory front, the Minister of Justice has signed

off on an increase to practising fees from the 2022/23 year. The Law Society, like all organisations has had to pivot and absorb the financial impact of Covid-19. In the last two annual reports, the Law Society has outlined to the profession the significant investment that has had to occur in order for modern systems, processes, structure and staff capability to meet the needs of a burgeoning profession. A rigorous Board-driven process has been undertaken to assess what further investment is needed and we advised that the practising certificate fee is increasing by \$150 to \$1290 per annum. There are also some smaller increases to other fees such as those for practicing on own account. Two levies are being reduced.

The increase will allow the Law Society to partially fund the strategic initiatives in the draft budget for 2022/23, including major IT infrastructure and systems upgrades and the once-in-a-generation Independent Review. In addition, we will be utilising capital reserves while also maintaining adequate reserves for future investment. These strategic initiatives allow us to keep tracking forward as a fit-for-the-future regulator while the Independent Review takes place.

But it is representation I want to focus on in this LawTalk. We rightly are showcasing an important portion of our industry - those who enter the profession. It doesn't matter whether you are entering at 24 or 44, New Lawyers make an important contribution to the fabric of our industry.

"The measure of intelligence is the ability to change," Albert Einstein once quipped. His point wasn't that all change is intelligent, more that when you consider that change in our ever-evolving world is

inevitable, it's clear that everyone must become proficient at navigating change, or problems will become as inevitable as change itself.

Change is mostly good. Not just because of the old adage that it keeps us from standing idle, but it presents us with the chance to make things better. Recently, the Independent Review Panel (the Panel) launched their Discussion Document on the future of legal services in Aotearoa New Zealand and the Law Society. Consultation runs until 12 August 2022 and it is a once-in-a-generation opportunity for the profession to influence its future and build the foundations for success. You can read about the Panel's work and the questions they have posed further inside LawTalk. I encourage all lawyers to ensure they read the document and get involved in the many opportunities to consult with the Panel and give submissions to the Panel about their views. Make your voice heard.

But mostly, this edition of LawTalk is all about the next generation – our new and emerging lawyers. Most of who are young, some of who are not so young, but all who are passionate about the profession and about the desire to serve the public and the law.

This edition tells the stories of this new wave of lawyers. It shares experiences and realities from different practices, parts of the country, challenges they have had and opportunities they have grasped. Each and every one of their recounts is important because it paints a picture of what practising in modern Aotearoa New Zealand is like. They all show the terrific potential for aspiring new practitioners entering the profession to thrive in but also poses challenges that all of us collectively have to help solve.

We have made some good progress with diversifying new lawyers

entering the profession but there is still much to do to make sure the legal profession reflects our society in 2022 and that these new lawyers stay. According to our 2021 Snapshot of the Profession, more new lawyers with 0-7 years post-qualified experience (PQE) are Māori at 9.7 per cent, compared to 6.9 per cent of the profession overall. This is a good sign. However, more growth is needed for Māori and Pacific lawyers to be proportional to their communities. Collectively they comprise 10.2 per cent of the profession compared with the 24.6 per cent of the New Zealand population. As Mai Chen points out in her article, only 10 per cent of lawyers are Asian against 15 per cent of New Zealanders who identify as Asian.

To begin to make inroads into improving this, I have begun work with Mai Chen and the New Zealand Asian Lawyers Group. Established in 2013 to connect, their goal is to inspire and grow Asian leaders across New Zealand. Groups like New Zealand Asian Lawyers, Te Hunga Rōia Māori o Aotearoa, the Pacific Lawyers Association and the National New Lawyers Group all play a vital role in ensuring better representation across the profession.

Finally, *Donoghue v Stevenson* was 90 years old on 26 May 2022. It laid the foundation of the modern law of negligence in Common Law jurisdictions across the world.

The conference which travelled around the commonwealth, was opened in Aotearoa first by New Zealand's Chief Justice, Rt Hon Dame Helen Winkelmann, followed by a panel of experts assembled by the Law Society including Professor Geoff McLay, Professor Stephen Todd, Mike French and Andrea Challis. It was a privilege to chair the panel as President on such a historic occasion and be able to showcase the way the law of negligence has developed in Aotearoa New Zealand.

We can all be grateful that throughout this edition of LawTalk, whichever article you read, it is clear practitioners across the motu have grasped the notion that the measure of intelligence is indeed about the ability to change. And indeed, there is clear cause to say we can very much have audacious faith in the future of the profession. ■

This edition of LawTalk is all about the next generation – our new and emerging lawyers. Most of who are young, some of who are not so young, but all who are passionate about the profession and about the desire to serve the public and the law

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FOR
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NEW LAWYERS

A profession that looks like modern Aotearoa New Zealand

Have you ever stopped to wonder whether your organisation's diversity and inclusion policy is merely paying lip-service to a wider societal narrative, or actually making a difference to the profession as a whole?

Much is made of 'diversity and inclusion' in professional firms. Where once it was not a priority for organisations to attract a diverse range of talent from different backgrounds and sections of society, now it is common practice for new roles to espouse how important diversity and inclusion is to their business.

Despite the increased emphasis on diversity and inclusion within the legal field over the past decade or so, the legal profession remains one of the least diverse of any profession. The Law Society's 2021 Snapshot of the Profession shows just that. While 9.7 per cent of new lawyers with 0-7 years post-qualified experience are Māori, 6.9 per cent of the whole profession are against 17 per cent of New Zealanders who self identify as Māori.

More growth is needed for Māori and Pacific lawyers to be proportional to their communities. Collectively Māori and Pacific lawyers comprise 10.2 per cent of the profession, compared with the 24.6 per cent of the New Zealand population. Only 10 per cent of lawyers are Asian against 15 per cent of New Zealanders who identify as Asian.

So what are we as a profession doing to improve these statistics? Why does it matter? And what are we doing to bring in the next wave of practitioners who can better look, sound and advocate for all parts of Aotearoa New Zealand?

Why does it matter?

The age-old conversation about meritocracy and experience versus diversity is a bit of a misnomer.

Leading British firm Alpha Delta Psi uses the science of psychology to help leaders get the best out of diversity in their organisations. They say meritocracy and diversity aren't mutually exclusive. "The notion that meritocracy and diversity cannot go hand in hand suggests that in order to increase diversity some degree of sacrifice on performance or suitability must be made to accommodate this.

The message that is delivered is one that those not in the powerful majority are 'lowering the bar.'

"The need to value employees based on their merit, rather than their gender or race, is essential to the success of any organisation," leading consultancy firm Deloitte found in a 2019 study into diverse work places.

"However, simply applying the label of a 'merit based' process or 'meritocracy', will only devalue merit and encourage complacency."

Vice President and Managing Director of intellectual property at IBM Global Claudia Brind-Woody said, "Inclusivity means not 'just we're allowed to be there,' but we are valued. I've always said: smart teams will do amazing things, but truly diverse teams will do impossible things."

The New Zealand Approach

The flow of diversity in the legal profession has ramifications at both ends of the industry. A more diverse intake of new lawyers means the upper echelons of our profession begin to look and feel like modern Aotearoa New Zealand.





“A diverse judiciary is one which is reflective (in a general sense) of its society,” said Chief Justice Dame Helen Winkelmann.

“It will not then be seen as out of touch with that society, or risk the perception that it serves only one part of that society. The legitimacy of the judiciary rests upon the idea that the judiciary understands and serves all of its society. A diverse judiciary is also able to contribute the breadth of knowledge and experience to the content of the law. This is a collective effort. Each judge brings unique knowledge and insights, but together a diverse judiciary will build a common law equally fit to serve all of society. This is a critical part of the ideal of the rule of law – a law that applies equally to all.

“We serve a far more complex society than in the past – with more complex social relationships, economic relationships, and while our society has always been diverse, that diversity has grown. There is also increased understanding about who is coming into our courts and the disadvantages they have in terms of past trauma, cognitive and linguistic difficulty or cultural background.

“So diversity of experience, reflected in the judicial response to the cases that come before the courts, contributes to the strength and flexibility of judicial reasoning because it means that problems are looked at from more than one point of view.”

If there is going to be a more diverse bench, we need to start

▲ Jane Fasavalu, Maggie Hames, Nancy Vuni. Maggie Hames is the Student Services Director at Auckland Girls' Grammar. The girls are now at Auckland University studying Law. Maggie was pivotal in DLA Piper's relationship with Auckland Girls' Grammar and their connection to Jane and Nancy at the start of the Programme while they were still at school

from the ground up. That means our pool of fresh lawyers needs to be more reflective of wider society. Two of our top law firms have programmes which target bringing a more diverse group of new lawyers into the profession.



Meredith Connell (MC) Chair Brian Dickey says “the legal profession has to reflect the community it serves – and historically it hasn’t, and it still doesn’t today.

“MC has a special responsibility, I think, to lead on making the profession better reflect the people it serves, given our role as Office of the Crown Solicitor at Auckland for more than 100 years.

“Our record over that 100 years is as imperfect as the Crown’s and the profession’s as a whole. But all the people of Tāmaki Makaurau need to be able to see themselves reflected in the MC of the future.”

Increasingly, New Zealand law firms are becoming more proactive towards diversity and inclusion-based outcomes to ensure they are meeting their obligations. Almost 40 per cent of the partners at DLA Piper New Zealand (DLA Piper) are female, and they have a range of initiatives,

resources, targets and goals across their firm to increase diversity and support inclusion in the workplace for underrepresented groups.

“Every employee and partner has their diversity and inclusion ‘performance’ (in terms of their participation and engagement with our initiatives and values) measured as part of their performance review. There is little choice but to be involved in diversity and inclusion initiatives at DLA Piper – because it is a performance metric,” DLA Piper Managing Partner Laura Scampion says.

DLA Piper sets practical targets. “Our Diversity & Inclusion Committee ‘leads’ at DLA Piper review and moderate graduate applicants in order to ensure that those who are shortlisted reflect New Zealand’s diverse culture,” Laura continues.

MC is realistic about the challenges that face law firms in Aotearoa New Zealand.

“The first step is recognising there’s an issue, that it is multi-generational, and that it will take at least another generation to see the change that’s needed,” Brian Dickey notes.

“A good example is that it came as a shock to me to be told I was the first Crown Solicitor in a century to engage with Ngāti Whātua Ōrākei, the mana whenua of where we have had our offices for 100 years.

“And Ngāti Whātua Ōrākei has had good reason to hold grievances against the Crown, and MC as Office the Crown Solicitor – not least because of the events of the early 1950s and, in my lifetime, the late 1970s and early 1980s.

“So you don’t just rock up as the Crown’s lawyer and say “let’s start anew”. You have to accept it will take time – and that’s fine. Within the firm, our People Team have done a magnificent job beginning to recruit a much wider range of



📷 Photos on pages 8-11
 A series of photos from a recent Meredith Connell Te Kuhunga event

Aucklanders and other Kiwis to the firm, and all on merit.

“We’re majority women overall and will be 50 per cent women partners before long. And we are much more diverse in terms of ethnicity, sexuality, gender, socio-economic background and social and political outlook than ever before.”

Increasing the importance of Te Ao Māori and building structures which encourage more diversity are important to breaking down the barriers which exist for traditionally white, male dominated firms.

“Advancement at MC, especially in the Crown Specialist Group, is now dependent on being proficient in basic Te Ao Māori and being committed to becoming much more proficient over time,” Brian Dickey continues.

“We’ve engaged Chris Merrick as a consultant to help with that. All our Crown litigators must be able



▲ Brian Dickey

to stand up in court and introduce themselves in te reo Māori and my goal is to have 30 per cent with the confidence to conduct themselves in court in tikanga and te reo Māori. I think we will be there quicker than you might think.”

Starting at the bottom

To bring about a profession which encourages and brings in new practitioners from all walks of life, major firms are now setting up programmes to diversify their workforce.



▲ Laura Scampion

Both Meredith Connell and DLA Piper have specific scholarship programmes which seek to bring in law students from backgrounds who wouldn’t ordinarily see law as a career option, let alone university.

“We responded to the Chief Justice’s call back in 2019. She said – and of course she’s dead right – that “the judiciary needs diversity of thought and you achieve that by having people from diverse backgrounds,” Brian Dickey said.

Meredith Connell set up their Te Kuhunga programme. Inspired by the Chief Justice, Te Kuhunga is unashamedly targeted at Year 11 to 13 students from decile 1 to 4 secondary schools in MC's Crown warrant area in Auckland. The programme is focused on students who have been identified within their school as having the potential to become lawyers. MC has played a leading role in developing and supporting Te Kuhunga, with generous support from the Hugo Charitable Trust, Gilbert Walker, Stephen Hunter QC, University of Auckland and AUT.

"Ninety four per cent of law, medicine and engineering students come from the wealthiest two-thirds of households and only one out of a hundred from decile one schools. And the scholarships tend to go to people who may meet certain personal criteria but are in fact probably going to get to university and do well anyway."

"So we wanted a "but for" test for Te Kuhunga - to target young people with potential who the stats suggest may very well not end up at Law School let alone a top-tier firm without it.

"We knew it could be a bit controversial, but we therefore unashamedly targeted Te Kuhunga at decile 1-4 schools in the Auckland area - although we are open to being approached by principals in other schools who have talented students who might also meet that "but for" test.

"We trust teachers, principals and students themselves to identify who would benefit."

DLA Piper have a similar programme called Head Start. Its aim is to improve equality of opportunity and break down barriers faced by under-represented groups when entering the legal profession.

"To become a lawyer, the system in New Zealand is all geared towards the privileged. The odds are seriously stacked against anyone from a low socio-economic background. The Head Start programme recognises that the playing field is uneven," Laura Scampion said.



Head Start supports secondary school students during their final year at school then through to university. The programme helps students who may not otherwise have an opportunity to gain meaningful insights into the legal sector. Through paid work experience at the firm during their studies, the students gain experience and form relationships that can assist them to realise their full potential.

"In the inaugural year of the programme in NZ, we targeted this programme at supporting Māori and Pacifica women into the profession given the current under-representation. In partnership with the Prince's Trust, we engaged with Auckland Girls Grammar, a decile 3 school located in central Auckland. The school selected two students for the programme and they have now been with the firm (as Head Start students) for two years, having started university at the beginning of 2022."

High Schools have played an important part of the success of both programmes. "This programme changes lives and the schools acknowledge that," says Laura. Brian is similarly positive. "The schools have all been



fantastic. They see students who are doing very well in languages and economics and history and speech and drama and so forth, but for whom Law School and being a lawyer is beyond their experience. In the end, the most important part is just bridging that gap in expectations, and that is what Te Kuhunga is doing.

“We start in the first half of the year by visiting schools and talking to small groups of students in years 11 to 13 about being a lawyer. I go if I can. But, increasingly, as MC has become more reflective of Tāmaki Makaurau, it is our younger lawyers in their 20s who take the lead. It’s our younger lawyers and support team that really does the heavy lifting for Te Kuhunga.

Increasingly, New Zealand law firms are becoming more proactive towards diversity and inclusion-based outcomes to ensure they are meeting their obligations

“In the end, the students have to do it themselves, but our mentors give them all the help they can to get through Law Intermediate – frankly the way lawyers have always helped their own children at university. This levels the playing field. And the mentoring relationship can go on through the rest of the degree.”

Charting a new course

Whether these programmes will create a major shift in the make up of the profession remains to be seen. More law firms need to engage like DLA Piper and Meredith Connell to ensure the next generation of lawyers are truly representative of Aotearoa New Zealand.

Both firms remain committed to the cause.

“Involvement, engagement and support of diversity and inclusion initiatives is a performance metric for employees and partners. Employees are rewarded for D&I engagement, not just their financial performance. Partners must play a part,” Laura Scampion says.

Meredith Connell’s Brian Dickey wants to see meaningful change. “If I had my way we wouldn’t use the terms “diversity and inclusion”. It’s not about being “diverse” – it is about being of the community we serve,” he says.

“And it is not a stale, pale, heterosexual cis-gender male like me saying “we want to include you”. It is about the fantastic young people we saw in our office the other week being the MC, the legal profession and the judiciary of the next generation.

“Previous Crown Solicitors wouldn’t recognise today’s MC and criminal justice system, and I will only have been successful if I don’t recognise them when I am an old man, retired back to Croatia or the Waikato or wherever, when I pay a visit back to the city.”

One thing is for sure – if the Chief Justice, Laura and Brian get their way, the legal profession will be a much more inclusive place to work and be a part of. ■

NEW LAWYERS

The next generation of practising lawyers

A collective voice to influence positive change for new lawyers nationwide

In November 2021 the New Zealand Law Society | Te Kāhui Ture o Aotearoa launched its National New Lawyers Group to increase support for new lawyers through the early stages of their legal careers.

The Group represents new lawyers with fewer than seven years post-qualified experience.

It's designed to complement the networking and education work already being done by the Law Society's eight regional new lawyer groups.

The National New Lawyers Group (the Group) provides a collective voice for the next generation of lawyers joining the profession to empower, guide, and support new lawyers. The establishment of the Group will encourage better connectivity for new lawyers nationwide, reach out to all new lawyers across the country, and have a voice to influence positive change for new lawyers and within the Law Society.

"New lawyers are the future of our profession," Law Society President Jacque Lethbridge says.

"We know that the demands on new lawyers are ever-changing. Those beginning their careers as new practitioners in the last couple of years have had to deal

with pandemics, working from home – in most cases being quite isolated – and grappling with the 'new normal'.

"My focus is ensuring the profession provides new lawyers with value. This means not only working in a job they enjoy and get benefit from themselves, but that they see a wider purpose and context to being a practitioner.

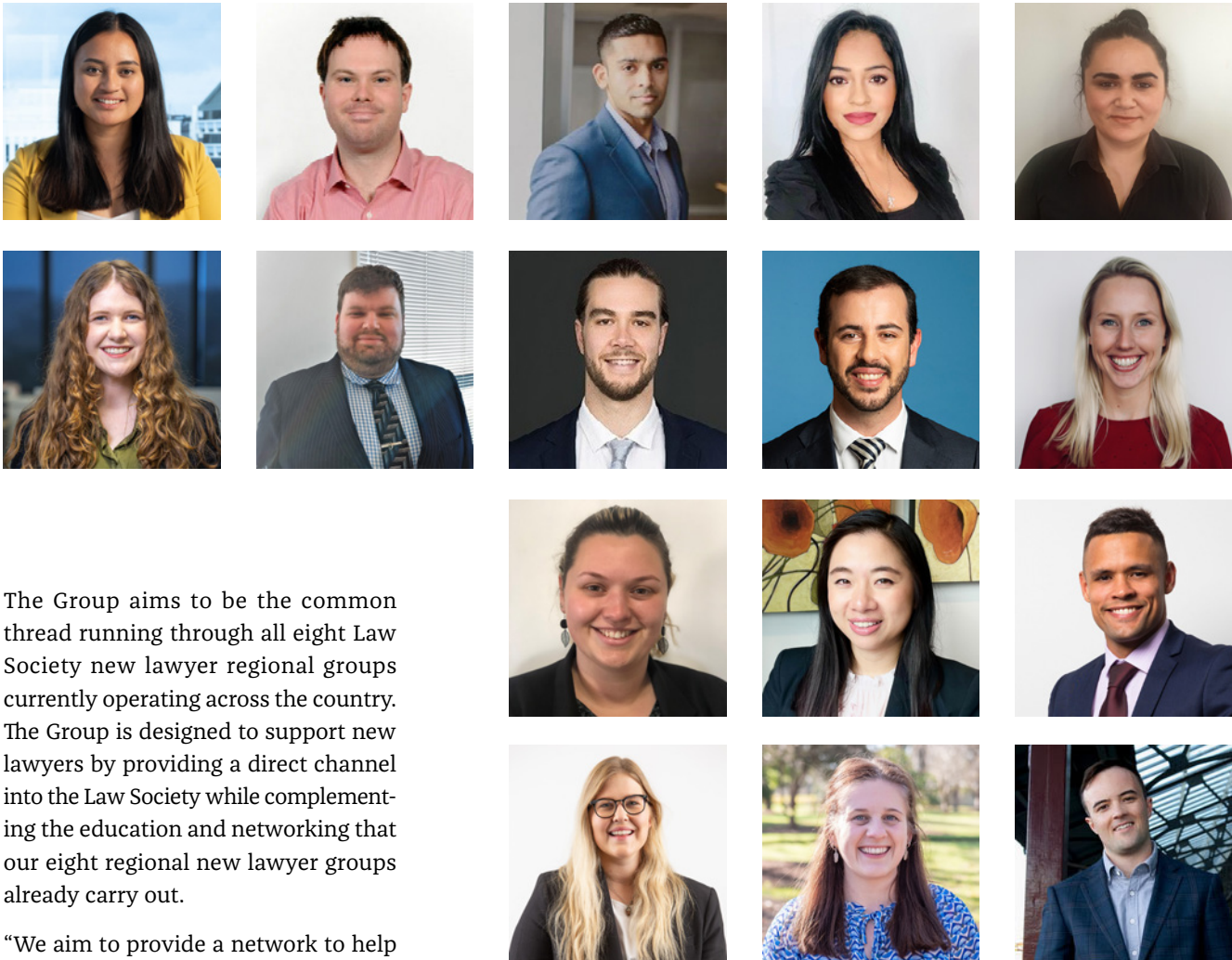
"Practising can be demanding at times and we all collectively have a responsibility to make sure the legal profession is a place where people want to be. The Group is absolutely vital in my mind to tapping into the aspirations of young practitioners and ensuring we meet that responsibility."

Following a call for expressions of interest in August 2021, sixteen new lawyers were appointed to the Group in November. We were particularly pleased to receive applications from right across Aotearoa New Zealand, and from a diverse range of candidates covering multiple practice areas and types of legal workplaces.

The Group has identified several key projects, including diversity, inclusion, cultural competency, health and wellbeing for the profession, connectivity between new lawyers, law reform, and advocacy.

When the committee members were first appointed, we asked them to tell us how the Group could guide and support new lawyers. Ideas and thoughts included that "it can be lonely and isolating when you enter the profession; people seek connection, support, and guidance to thrive in a fast-paced and rapidly changing environment. This is essential when transitioning from being a law student to becoming a lawyer."

"A key focus for the Group is to help shape a more inclusive profession that is reflective of the community that we serve; to promote collegiality between new lawyers and senior lawyers; and foster a fairer, safer, and more diverse working environment for new lawyers," says Glenda Macdonald, General Manager Membership Services for the New Zealand Law Society.



The Group aims to be the common thread running through all eight Law Society new lawyer regional groups currently operating across the country. The Group is designed to support new lawyers by providing a direct channel into the Law Society while complementing the education and networking that our eight regional new lawyer groups already carry out.

“We aim to provide a network to help regional groups meet their objectives and reach more remote areas to reduce the isolation that new lawyers across the country can experience,” says the National New Lawyers Group.

The Group intends to support the great work that regional branches and committees are doing by encouraging increased participation in events, professional development opportunities, and health and wellbeing initiatives led by the Law Society. Facilitating networking and collaboration through these events, alongside the regional groups, will provide a direct avenue to influence new lawyers positively.

The Groups’ formation is ever more significant in light of the once-in-a-generation Independent Review of the statutory framework for legal services in Aotearoa New Zealand.

“As a representative body, considering

our objectives for an enduring and future-ready profession, we will endeavour to work closely during this journey of change, advocating strongly for new lawyers and providing those new to our profession confidence in us,” says the National New Lawyers Group.

The Group looks forward to continuing to progress their work to implement significant change within the profession by taking a cohesive national approach to building community, advocacy, and wellbeing support for new lawyers nationwide.

The list of members who have been appointed are:

- Maria Sopoaga, Wellington

- Callum McPetrie, Hawera
- Jay Rajendram, Hamilton
- Thilini Karunaratne, Hamilton
- Vivian-Lee Schaaf, Auckland
- Bree Munro, Gisborne
- Josh Marshall, Blenheim
- Nick Byrnes, Auckland
- Mathew Martin, Auckland
- Ella Stolwerk, Whangarei
- Kaitlyn White, Christchurch
- Joyce Chiu, Auckland
- Josh Nyika, Hamilton
- Victoria Rea, Wellington
- Georgia Osmond, Masterton
- Edward Dryden, Dunedin

To read more about the members and the Group visit www.lawsociety.org.nz/branches-sections-and-groups/national-new-lawYERS-group/ ■

THE LEGAL PROFESSION

Progress and transformation

Diversity in the judiciary

BY MAI CHEN

Attendees at a recent series of webinars run by New Zealand Asian Lawyers and the New Zealand Law Society (“Law Society”) were privileged to hear some of our top judges’ thoughts about diversity in the judiciary.

The speakers were Chief Justice Helen Winkelmann (“the Chief Justice”), Chief District Court Judge Heemi Taumaunu (“Chief Judge Taumaunu”), Chief Employment Court Judge Christina Inglis (“Chief Judge Inglis”), Chief Māori Land Court Judge Wilson Isaac (“Chief Judge Isaac”), and Judge Te Kani Williams.



▲ Mai Chen

Diversity in the judiciary

The Chief Justice explained that judicial diversity and cultural capability are some of her key priorities, as evidenced through:

- the establishment of Te Awa Tuia Tangata | the Judicial Diversity Committee;
- support for Te Ao Mārama, the District Court’s new operating model;
- judicial outreach efforts, designed to make diverse lawyers aware of the pathways for judicial appointment and what it takes to be a judge; and
- increased judicial education about Te Reo, Tikanga Māori and other non-indigenous cultures.

Chief Judge Taumaunu described the Te Ao Mārama kaupapa as a solution-focused judging approach that identifies and addresses underlying issues or causes of offending or wrongdoing that is intended to be designed and implemented in all District Court locations. Chief Judge Taumaunu noted the similarities between Māori,

Pacific and Asian cultures – collective good outweighing individual benefit; deep respect for elders and care for the young; and strong emphasis on faith and family. With attribution to Manying Ip, Chief Judge Taumaunu described Māori, Pacifica and Asian communities as “natural allies in adversity” – the point of Te Ao Mārama being to ensure that the District Court provides access to justice for all people from all backgrounds, regardless of their ethnicity, religion, language or culture. Te Ao Mārama applies to everyone affected by the business of the court. People should leave court feeling that they have been seen, heard and understood and have been able to meaningfully participate in their own proceedings. The Te Ao Mārama kaupapa will welcome support from local communities and local iwi in all mainstream courtrooms to ensure opportunities for assistance are available to all of those who may need it.

Chief Judge Inglis explained that one of the first tasks of Te Awa Tuia Tangata | the Judicial Diversity Committee was to identify the diversity gaps in the judiciary by assessing its current composition. The first Judicial Diversity Survey (“the Survey”) – published in the Chief Justice’s inaugural Annual Report 2020-2021 (“the Annual Report”) – canvassed a range of diversity indicators, including ethnicity and origins, gender and sexuality, disability, professional background, family background and religion.

The Survey reported a 60:40 ratio of men to women judges, and a judiciary comprising 200 judges of Pākehā descent, 45 of Māori descent, 30 of European descent, and a handful of other ethnicities – including three Asian judges. That represents significant progress, which the Chief Justice attributed

📷 Photos on pages 19-22 Attendees of the Auckland Branch of the Law Society and NZ Asian Lawyers first kanohi ki te kanohi get together event in May 2022.

to “successive Attorneys-General including our current Attorney-General and [her] predecessor Chief Justice [Dame Sian Elias, who] have been committed to improving diversity on the bench”.

As Chief Judge Isaac said, “the Māori Land Court is proud to have grown into a court that reflects quite accurately the community that it serves: we have a total of 13 judges in this specialist jurisdiction consisting of six male judges and seven female judges. Eleven of the judges are of Māori heritage and the majority speak and, or understand Te Reo Māori. Our latest appointments in September 2021 continue in this trend... This current generation signals a huge shift from the Māori Land Court of past generations when most judges were of Pākehā descent and had limited capability in Te Reo Māori”. Chief Judge Taumaunu also said there had been significant change since 2008 when Te Reo was first spoken in the District Court, and there would be ongoing change over the next ten years, especially given the diversity of younger judges, particularly those in the 45-49 year age group.

Despite the progress made, the Chief Justice acknowledged that the Survey showed “serious gaps within the judiciary... for us to target our efforts in striving for diversity”.

The new President of the Law Society, Jacque Lethbridge has also assigned top priority to diversity at



all levels of the profession, including in the judiciary, and will give the next webinar in this series. She has written that “we cannot ignore issues regarding insufficient female and diverse lawyers from diverse backgrounds attaining partnership or senior ranks of the bar. There is a great deal of work to be done”.¹

Why judicial diversity matters

The Chief Justice discussed two main themes which illustrate the importance of judicial diversity:

1. The representative role of the judiciary is the expression of the democratic ideal. Judicial diversity is vital in showing the public that the judiciary is independent and impartial – core concepts in the rule of law. If judges are seen to be drawn from only one area of society they may be seen to only serve that group’s interests.

2. Diversity within the judiciary contributes to the quality of substantive law. The path judges have walked through in life shapes how they can/will develop the law. The law has many tests drawn from community values – for example – what the community regards as reasonable or how reasonable people will react in certain situations. Judges are required to make factual findings and in doing that they take a common sense approach to what happened or did not happen. This common sense approach is shaped by the judge’s experience in life and the pathway they have walked.

The aim, the Chief Justice said, is a judiciary that is reflective, in the general sense, of society and through that, a judiciary that has the benefit of richness of thought, experience and background of the

community as a whole. Diversity in this sense is very broad: it is not just about where you went to school, or what your parents do, it is also about the work you have done prior to being appointed, the clients you have represented and the communities you have been in contact with.

The Chief Justice said the demands on judges today are greater than they have ever been. Judges serve a more diverse society, with more complex social and economic relationships. There is an increased awareness about who it is that is coming before our courts, and the disadvantages they have endured in terms of past trauma, cognitive or linguistic difficulties, or cross-cultural challenges. Of course, greater awareness means there are also higher expectations that the courts will adequately respond to these complexities, to ensure that all who come before the courts are treated with respect and dignity and are able to fully participate and understand court proceedings.

Is there a bamboo ceiling which explains the gap?

One in 9 lawyers in New Zealand identify as Asian,² 1 in 7 people in New Zealand identify as Asian;³ and it is closer to 1 in 3 people identifying as Asian in Auckland.⁴ Yet only 1 in 62 New Zealand judges identify as Asian (three judges identifying as Indian, one identifying as Vietnamese, and one identifying as Māori/Chinese).⁵ Do Asian lawyers lack the intellect, integrity and connection with the community to make it to the senior ranks of the profession and to all levels of the judiciary?

The Chief Justice said this gap was “part[ly]... because Asian lawyers have not been coming through

in the numbers they have until recently. The gap was not so profoundly stark until recent times but it was still sitting there”. The Chief Justice noted that another contributor to this gap may have been that historically there was a greater focus for Asian lawyers to take a commercial law route rather than a litigation or criminal law focus. However, the Chief Justice stressed that regardless of the cause “I have no doubt that our focus on diversity has increased. I also have no doubt that things are going to change as a consequence. Change will be helped by us getting a better line of sight into the Asian legal profession”.

The Chief Justice also emphasised that “...there is a long history of... discrimination against Chinese populations... [including] legalised discrimination. I believe that knowledge of that history is important because that history shapes a people, [and] how people engage with institutions of power, and of course the judiciary is an institution of power. It is important therefore that we educate judges about the values and lives of those from different ethnic communities but that we also provide education about the historical context”.

Another obstacle to judicial diversity identified by the Chief Justice was the trend towards specialisation that developed in the 1990s and 2000s. This is problematic, especially for the High Court, because lawyers who work in only a narrow field of law may not have the grasp of the broad range of principles that a High Court judge needs, and may also have a very narrow client base, and more limited connection with the wider community.

The discussion with Chief Judges Inglis and Isaac and Judge Te Kani Williams noted that for certain cultures, it might not be



the norm to self-promote or to highlight individual merit. Māori say “Kāore te kūmara e kōrero mō tōna ake reka” | “the kūmara doesn’t speak of its own sweetness”. However, judicial selectors need visibility of potential candidates to make appointments. As the Race Relations Commissioner Meng Foon said in a Question and Answer comment to the webinar, “nobody is a mind reader”, and if an Asian lawyer, or any lawyer for that matter, wants to be considered for a judicial appointment, get your CV in order and make yourself visible. The process is confidential, and Chief Judge Inglis urged those concerned about the possibility of rejection “to be brave enough to put yourself out there and be receptive to feedback”.

The need for greater judicial representation from the Asian legal community, in addition to “improving our understanding amongst the existing judiciary [of] those communities, the languages, the cultural context, and the everyday lives of people within them so that those judges who are now serving can serve those communities better” were both highlighted by



the Chief Justice as “pressing” and “priority” matters for the judiciary.

How do you become a judge?

The Attorney-General is responsible for appointments but the judiciary does have a role, for instance in relation to senior court appointments (that being appointments to the High Court, Court of Appeal and Supreme Court), the Attorney-General consults with the Chief Justice about senior court judges. All heads of bench have a role in identifying people who are appropriate for judicial appointment and putting those names forward. They also have a role in encouraging people to seek judicial appointment and explaining the pathways that are helpful in that regard.

The Chief Justice said that the overriding criterion for judicial appointment is excellence as a lawyer exercised in a relevant legal occupation. For High Court judges, this requires a reputation for excellence across a number of areas of the law, while for specialist courts (like the Family Court), specialised experience and expertise is required.

The Chief Justice said that beyond legal excellence and judicial leaders the judiciary needs people with a connection to the community and an ethos of community service. We want people who seek out this role through a desire to serve. Being a judge also takes courage

she said: “You are often having to make decisions in the most fraught circumstances under the full glare of public scrutiny. We want to know people have good judgment and the courage to do what is right – even though the heavens may fall”.

The Chief Justice says that, if you are thinking about judicial appointment, you should seek to develop as a lawyer and have a commitment to be a lifelong learner. If you are interested in senior court appointments, you should seek out a range of legal experience, as well as community involvement. She noted that now a measurement of excellence, and one of the criteria for appointment to QC, is service of access to justice. In addition, while judicial appointees have often been primarily senior barristers, including QCs, there is now opportunity for people who have followed different career paths, including working as in-house counsel.

Judge Te Kani Williams shared that his journey to the Māori Land Court bench in September 2021 was not straightforward as his first expression of interest for the Māori Land Court bench did not translate into an appointment, but he did receive helpful feedback on what he needed to work on, which he addressed and later resulted in his appointment.

All of the judges speaking wanted the following information about judicial appointments, included in this article. See the Crown Law Protocol regarding appointments to higher courts (available at www.crownlaw.govt.nz/assets/uploads/judicial-protocol.pdf), and the District Court’s website regarding appointments to that court (www.districtcourts.govt.nz/about-the-courts/the-district-court-judiciary/judicial-appointments/).



What is New Zealand Asian Lawyers?

New Zealand Asian Lawyers was founded in 2019, after the launch of the Report on *Culturally and Linguistically Diverse Parties in the Court* made more glaring the gap that there was no Asian Lawyers Association. Tiana Epati, the then president of the NZLS, approached Mai Chen with the question “Why is there no Asian Lawyers Association?” There are currently 100 members and more joining every week. www.superdiversity.org/nz-asian-lawyers/. The Law Society is working with us to build *NZ Asian Lawyers*.

NZ Asian Lawyers connects, inspires and grows Asian lawyers, academics, regulators and policy specialists across Aotearoa and provides collegiality, guidance and wisdom to this growing and important part of our legal community. We seek to be a repository of expertise on Asians in the law, to provide feedback to judges and the Law Society on issues concerning Asian lawyers and parties in the courts and to assist all lawyers to have the cultural capability to properly take instructions and advocate for Asian clients. Over the past 12 months, *NZ Asian Lawyers* has been invited to speak to Heads of Bench on Tomo Mai (a Committee set up by Heads of Bench to make recommendations to Heads of Bench on how to make the Court system more inclusive for all participants; to consult and present legal submissions with the New Zealand Law Society as intervener in the Supreme Court hearing in *Deng v Zheng* (SC 5/2021) in August 2021; by the Independent Review Panel to consult on a “once-in-a-generation-review” on the regulation of lawyers and legal services in Aotearoa ■

[Mai Chen](#) is the President of New Zealand Asian Lawyers.

What else is being done to bridge the diversity gap in the judiciary?

Legal education is another priority for the Chief Justice, “because no one person embodies the full diversity of the community or can have sufficient knowledge as they walk into the role of judge to do the work they do to the standard that we now require”. Diversity is not just about having a judiciary that is reflective of society, but also about ensuring judges are lifelong learners who are fit to judge in a diverse society.

Te Kura Kaiwhakawā | the Institute of Judicial Studies has been doing significant work in recent years to increase judicial education about social structures, values and lives of people from all parts of society. Te Reo Māori and Tikanga Māori have been core parts of the curriculum for the past 7-8 years. There is also *Judging in Context*, a handbook that provides judges with guidance to ensure that all those who come into court receive a fair hearing. It provides resources to judges on a range of cultural and linguistic issues to improve their understanding of the full diversity of society. Since 2019, judges have participated in seminars on issues of interpreting cultural and linguistic concepts to assist judges in moving across cultural contexts. This has included, among many other important topics, presentations focused specifically on Chinese and Indian culture.

1. *NZ Lawyer Magazine*, 27 April 2022.
2. See “Snapshot of the Profession”, *LawTalk*, Issue 948, Summer 2021, at pages 36 to 43.
3. www.stats.govt.nz/tools/2018-census-place-summaries/new-zealand#ethnicity-culture-and-identity.
4. www.aucklandcouncil.govt.nz/plans-projects-policies-reports-by-laws/our-plans-strategies/auckland-plan/about-the-auckland-plan/Pages/aucklands-asian-population.aspx
5. Statistical references derived from 4 October 2020 article in *Stuff.co.nz* with some updates: www.stuff.co.nz/national/crime/122897629/diversity-badly-lacking-among-new-zealands-judges#:~:text=There%20has%20never%20been%20a,only%20one%20of%20Asian%20descent.&text=Justice%20Joe%20Williams%2C%20the%20first,appointed%20to%20the%20Supreme%20Court.

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NEW LAWYERS

Taking the path less travelled

Practising in the regions

According to New Zealand Law Society data, the vast majority of lawyers practice in our three major cities. And that is no surprise – almost all of our major firms base their practices out of them and the vast majority of work occurs in them.

Summer clerks flood to Tāmaki Makaurau Auckland and Te Whanganui-a-Tara Wellington in the hopes of nabbing that full time position when they finish studying.

But for some, the draw of the bright lights isn't everything. We speak with new lawyer Stephanie-Anne Ross who graduated in 2021 with her Bachelor of Laws and Bachelor of Arts from the University of Otago and instead of packing her bags and heading north, she went three hours west to Queenstown.

"Beginning the search for a graduate position in the legal industry is a big undertaking. The constant barrage of application deadlines being promoted by universities, the competition from your peers, and the fear of failure can be a recipe for many sleepless nights," Steph says.

Transitioning from university to working as a young professional changes your priorities and the amount of dispensable time you have outside of working hours

"However, that was not my experience. While many of my peers were looking to big city lights in their job search, I was looking to my home region of Otago for a graduate position that was the right fit for me. That's how I found my now employer, RVG Law based in Queenstown."

Growing up in Balclutha and attending South Otago High School, Steph really valued the opportunity to live and work close to family and the community she loves. She also feels she has had greater experience earlier in her career from being in a small, more regional practice.

"Living and working in a regional centre as a solicitor provides many opportunities both inside and outside the workplace, but also a unique set of challenges."

Connectivity with other new professionals is one hurdle that exists, even in Queenstown.

"One of the challenges of working in a regional centre is the smaller population of young people in comparison to a major city. While studying at university we are spoilt for choice, being surrounded by young like-minded people who are keen to strike up friendships and have the spare time to socialise regularly.

"Transitioning from university to working as a young professional changes your priorities and the amount of dispensable time you have outside of working hours. Not only this, but in a regional centre the pool of people your age is a lot smaller than it is on a university campus."

She has some helpful advice for those who might be struggling to put their roots down in regional New Zealand.



“Establishing yourself with a social network can be very challenging, but this can be countered by joining young professionals groups, law society groups, social sports teams or other groups and clubs. The key to developing a positive and engaging environment in a smaller centre is immersing yourself amongst the locals and your peers to build connections and friendships.”

The 'real' first year

Starting your professional career outside university is a daunting and challenging period of time. While law school teaches you critical thinking skills and the fundamental mechanics of the law, the practical elements of the job are taught in the workplace.

“In the beginning, you do not know, what you do not know about practising law. This is a significant barrier to overcome as you start from what feels like square one once again, despite five years of studying,” Steph says.

“The direct contact with partners and other solicitors as you navigate learning on the job

is invaluable and is one of the best parts of the small firm culture. Everyone is a student at some point, and the time invested in junior solicitors’ professional development by more experienced solicitors provides a foundation to the formative years of a graduates’ legal career.”

Experience and exposure

For many entering the legal profession, the initial years can feel a little bit like churning butter. The excitement of the law and the opportunities young practitioners hear about can seem distant at first, particularly in larger firms where progression can take time. However, Steph notes that her experience and involvement in a regional firm has given her more opportunity to get into the thick of it earlier.

“Beginning your professional career can feel like getting dropped in the deep end in many ways, but this is a good way to work out how you see your legal career developing.

“My experience working in a small law firm is that you get a high level of exposure to a variety of work in the early stages of your career that helps



build your understanding of practising law. This allows you to quickly work out what areas spark your interest, what work you enjoy and what work you want to do more of.

Some of my peers at larger firms speak about being “pigeon-holed” into a particular field in the early stages of their career without getting the opportunity to cut their teeth and figure out what aspects of law they would like to pursue a career in.

“When you are finding your feet in the “real world” having the opportunity to see areas of law in practice rather than in course materials or lecture slides is the best way to figure out the area that is the best fit for you.”

The work life balance

A recent survey done by the National New Lawyers Group identified burnout and welfare critical concerns of our next batch of practitioners. Steph thinks it is

There are always challenges regardless of the size of the law firm you work at, or the location it is in, but my first year working in the legal profession has been a positive introduction to the industry that I am eager to continue

important early on to ensure you maintain a good work-life balance and remember what is important in life.

“Prior to the COVID-19 pandemic, the “rat race” was glamourised in many corporate industries and new graduates were resigned to “overworking” being a necessary part of starting a career in the legal industry.

“But if there is one positive that has come out of the pandemic it is the newfound desire and respect for work life balance.

“In a regional centre, especially like Queenstown, the work life balance is second to none. The rush hour commute is minimal, there is a true sense of community, and the pace of life is generally a bit slower compared to the hustle and bustle in major cities. While you may not place a huge emphasis on the hours you spend outside work when you are applying for a job, living somewhere that provides a lifestyle makes any job a lot more satisfying.”

So why regional New Zealand?

Is regional New Zealand the place for you? One thing Steph highlights is all soon-to-be-graduands should keep an open mind about what their future holds.

“Reflecting on the past year or so living and working in Queenstown, I have no regrets about choosing to come to a small firm in a regional centre. What this past year has taught me is that finding a law firm that aligns with your professional goals and value set is integral to enjoying working in the legal industry.

“There are always challenges regardless of the size of the law firm you work at, or the location it is in, but my first year working in the legal profession has been a positive introduction to the industry that I am eager to continue.

“My advice to those seeking a job as a law graduate is, while the allure of the big city atmosphere is tempting, I say give the regional centres a chance. You may be pleasantly surprised with what you find.” ■

THE LEGAL PROFESSION

A step in the right direction

Changes to legal aid funding

After many years of advocacy from the New Zealand Law Society, the wider profession and community advocate groups, the Government delivered some welcome relief to the struggling legal aid system in Budget 2022.

A total of \$190m over four years is being invested to maintain and strengthen the legal aid system, including \$41.5 million over four years to cover the costs of existing demand for legal aid services, based on projections through until 2024/25. Budget 2022 also provides for a one-off 12 per cent increase to the hourly rates for legal aid lawyers. This 12 per cent increase will be available for grants made after 1 July 2022, and for work completed after this date on existing grants.

In addition to the increase in hourly rates, the investment will also allow the Ministry of Justice to implement changes to key policy settings. These changes include:

- Increasing eligibility thresholds by 15% on 1 January 2023 and increasing them by a further 1.9% per year (for three years) so that they keep pace with wage inflation, ensuring that a greater proportion of people will qualify for legal aid.
- Increasing the repayment thresholds by 16.5% on 1 January 2023 and likewise increasing them by a further 1.9% per year for three years thereafter, and

no longer charging interest on legal aid debt. This will mean that more legal aid recipients will have a lesser repayment obligation.

- The removal of the \$50 user charge for civil and family legal aid.

Legal Aid Services' policies, including the grants handbook for providers, will be updated prior to these changes being made on 1 January 2023.

"Eligibility for the scheme has become outdated, while hourly rates for legal aid lawyers have remained static since 2008," the then-Justice Minister Kris Faafoi said.

"Budget 2022 will update legal aid policy settings around eligibility, repayment, and legal aid lawyers' remuneration to improve access to justice, ensuring that the legal aid scheme is resilient into the future.

"It will also make repayments more equitable by reducing repayment requirements for low-income and vulnerable New Zealanders."

Legal Services Commissioner Tracey Bagueley said the investment in Budget 2022 is an "exciting and a huge step in the right direction for the legal aid scheme, one I hope will incentivise experienced legal aid lawyers to continue providing the service and also encourage new lawyers to come on board.

"The Government is investing an additional \$148.7 million over the next four years, which will see much needed changes made to legal aid settings regarding eligibility and repayments, and legal aid lawyer remuneration."

A government-initiated review in 2018 of legal aid settings highlighted a number of barriers to accessing legal aid, including eligibility and repayment thresholds as well as issues with remuneration and the administrative burden legal aid places on lawyers. Many of these issues were reiterated in the Law Society's Access to Justice Survey report in October 2021.

The survey showed that 25 per cent of legal aid lawyers planned to do less legal aid work or stop altogether over the next 12 months – the primary reason being inadequate remuneration. Over 20,000 Kiwis had been turned away from legal aid representation in the last 12 months.

"Over 20,000 Kiwis could not access legal aid representation in 2021. This is an indictment on a system which is supposed to ensure representation for people, irrespective of their status, and is absolutely critical to maintaining the fairness New Zealanders should expect

TABLE 1: HOURLY RATES FOR CRIMINAL LEGAL AID FROM 1 JULY 2022

Criminal Provider Approval Level (PAL)	Other (\$/hour)	Level of experience (\$/hour)		
		Level 1	Level 2	Level 3
PAL 1	-	103	108	119
PAL 2	-	108	134	139
PAL 3	-	130	139	150
PAL 4	-	146	161	178
Court of Appeal/Supreme Court	-	146	161	178
Supervised Providers	103	-	-	-

TABLE 2: HOURLY RATES FOR CIVIL AND FAMILY LEGAL AID FROM 1 JULY 2022

Proceedings category	Other (\$/hour)	Level of experience (\$/hour)		
		Level 1	Level 2	Level 3
FC1 (Other tribunal/judicial authority)	-	103	130	139
FC2 (Family Court, District Court, etc)	-	119	134	150
FC3 (High Court)	-	134	150	167
FC4 (Court of Appeal/Supreme Court)	-	146	161	178
Supervised Providers	103	-	-	-

from their legal system,” Law Society President Jacque Lethbridge said.

“The injection of funding is a victory for the many New Zealanders who will now be able to access legal advice and quality representation irrespective of their circumstances, and something for us all to celebrate as a step in the right direction.

“A lot of legal aid work is funded by fixed fees, which has not received an increase from Budget 2022, so there is still more to be done to bring true equity in the justice system. The Law Society will continue to work with the Ministry of Justice to understand the true impact of these changes. The Law Society will also continue to advocate for further change if the dial has not shifted enough, because having enough lawyers available to undertake this work who are properly remunerated is central to ensuring access to justice for all New Zealanders”.

Tracey Bagueley acknowledges that this investment will not fund any changes to the fixed fee schedules. “A key focus of this investment was on addressing the hourly rates which have not been increased in over 10 years. Significant changes have been made to the fixed fee schedules between 2014-2018 with the last revision in 2016-2018 for criminal fixed fees,” she said.

“Aotearoa New Zealand has a proud history of wanting a justice system that ensures people are legally represented when interfacing with the courts,” Ms Lethbridge said.

“An effective legal aid system ensures that every New Zealander has a fair shot when engaged with that justice system and the role of lawyers in representing them is essential to accessing justice. This boost in funding will contribute to promoting that goal.

“While there is always more to do – and the Law Society will keep advocating for better support and structural change for our legal aid system – this boost in funding will go some way to ensuring fairness and equity return to the legal system New Zealanders must have trust and confidence in.” ■

THE LEGAL PROFESSION

A once-in-a-generation opportunity

BY THE **INDEPENDENT REVIEW PANEL**

A once-in-a-generation opportunity to shape how lawyers and legal services are regulated in Aotearoa New Zealand is under way.

It has the potential to directly impact the work of all providers of legal services – so we’re keen to hear from all quarters.

We – Ron Paterson, Jane Meares and Jacinta Ruru – were appointed earlier this year to undertake an independent review of whether the current arrangements for the regulation and representation of lawyers and legal services are fit for purpose. We published our Discussion Document recently. It seeks views on topics that go to the heart of how lawyers practise and are regulated.

“The Lawyers and Conveyancers Act 2006 was a major reform, but a lot has happened since the Act was implemented,” Panel Chair Ron Paterson says.

“We’ve been given a wide-ranging brief to examine whether the current model is fit-for-purpose in 2022. Key to the success of the review is the widest possible engagement of the legal profession.”

The dual mandate

One of the major issues examined in the paper is whether it is appropriate for the New Zealand Law Society | Te Kāhui Ture o Aotearoa



▲ Ron Paterson



▲ Jane Meares



▲ Jacinta Ruru

to continue with both regulatory and representative functions.

“As a regulator the Law Society has a duty to the public, but as a membership body it has a duty to promote the interests of its members,” Panel member Jane Meares says.

“The conflict of interest inherent in a dual model is unusual in other regulated professions. A number of overseas jurisdictions have created an independent regulator.”

Options put forward for consultation include maintaining the status quo, improving the separation of functions within the Law Society, and establishing a new independent regulator.

Revisiting the scope of regulation

The discussion document asks whether the current scope of regulation under the Lawyers and Conveyancers Act 2006 (the Act) continues to be appropriate. A key focus is whether the current ‘one size fits all’ approach to regulating lawyers continues to be justified.

For example, the vast majority of legal services provided by lawyers can also be provided by non-lawyers, but non-lawyers are not subject to any regulatory oversight or complaints mechanism, leaving consumers poorly protected. Trends overseas indicate that we can expect the use of technology (particularly websites and AI) to continue to grow the market for unregulated legal services.

The question whether regulation should better reflect the risks associated with an activity is also highlighted by the example of in-house lawyers – who comprise nearly 30 per cent of the profession but generate only 4 per cent of complaints.

Key questions that the discussion document raises on the scope of regulation include:

- Which legal services should be regulated?
- Is there a need to revisit some core provisions of the Act, including the purpose statement, how Te Tiriti o Waitangi should be incorporated into the Act, and whether legislation should specify the objectives of the regulator?
- Should law practices be directly regulated?
- Should current restrictions on corporate form be removed to allow for multidisciplinary practices and ownership interests by non-lawyers in law firms?



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Have your say:

The Discussion Document is open for consultation until 12 August 2022, with the Panel required to report to the Board of the Law Society by the end of the year.

Members of the profession and community groups are encouraged to make a submission.

The Discussion Document is available at www.legalframeworkreview.org.nz/consultation. There are two ways to make a submission:

1. Complete a survey at www.surveymonkey.com/r/nzlawreview
2. Email your comments or a submission to secretariat@legalframeworkreview.org.nz

There will also be opportunities to engage with the Panel directly in a series of in-person and virtual engagement events to be scheduled in July and August 2022.

We believe there is much more the legal profession can do to address the significant barriers to admission, progression and retention within the legal profession for many groups

Promoting a positive and diverse culture

The discussion document also seeks feedback on how to further promote an inclusive and welcoming legal profession that reflects the diversity of the community it serves, while encouraging good conduct and supporting the mental health and wellbeing of lawyers.

“We believe there is much more the legal profession can do to address the significant barriers to admission, progression and retention within the legal profession for many groups – most notably women, Māori, Pacific peoples and Asian lawyers,” Panel member Jacinta Ruru says.

The discussion document seeks views on whether the regulator needs additional tools to help improve diversity and a culture of

inclusion, including potential reporting requirements. We're also seeking views on the role of Continuing Professional Development (including whether there is a need for cultural competency training) and options to further encourage pro bono services.

Developing an appropriate complaints model

The current complaints system is also a focus of the Review. Ron Paterson comments, "The current model for investigating complaints about lawyers does not appear to be working well, with both consumers and lawyers reporting frustration with a slow, adversarial process."



The current model for investigating complaints about lawyers does not appear to be working well, with both consumers and lawyers reporting frustration with a slow, adversarial process



At present complaints about lawyers are allocated to 22 Standards Committees around the country, with volunteer lawyers (and a minority of lay members) considering the validity of the complaint. This model is open to criticism that it is not resolving complaints in a timely manner, does not generate consistent outcomes, is not sufficiently independent, and does not encourage restorative approaches, which can appeal to many parties, including Māori and Pacific peoples.

The discussion document seeks feedback on some structural options for change, including the possibility of establishing an independent complaints body. It highlights opportunities to incorporate tikanga principles of dispute resolution through better use of conciliation and mediation.

How to engage with the discussion document

The discussion document is open for consultation until 12 August 2022, with the Panel required to report to the Board of the Law Society by the end of the year. We encourage members of the profession to make a submission and engage with the Panel directly through your sections, branches and interest groups to give feedback. ■

Key complaints statistics

- Complaints are taking, on average, 259 days to resolve
- 88% of complaints that go to a Standards Committee are dismissed
- The dismissal rate varies between 73% and 90% depending on where a complaint is heard
- Of the 1,751 findings of 'unsatisfactory conduct' against a lawyer over the past 10 years, the name of the lawyer was disclosed in 62 instances.
- Of the cases with a finding of 'unsatisfactory conduct' the lawyer involved was required to make an apology in 7% of cases and undertake further training in 9% of cases.

Over one hundred years of helping



The New Zealand Nurses' Memorial Fund was founded in 1917 by fellow nurses as a practical memorial to the 10 nurses who drowned when the *SS Marquette* was torpedoed in the Aegean Sea in October 1915. Do you and your clients know about this fund?

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Bequests and donations are gratefully received and assist in the Fund's ongoing work.

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Please contact nznmfund@gmail.com or PO Box 5363 Dunedin 9054 for more information.

BRIDGESIDE CHAMBERS

BARRISTERS

Bridgeside Chambers is delighted to announce its expansion and formally welcome the following new members:

New Members

Alanya Limmer

Lisa Preston

Matthew Prendergast

Helen Bennett

Associate Member

Helen Coutts

Employed Barrister

Ben Shamy

In addition, it takes this opportunity to welcome door tenants Fiona Guy Kidd QC based in Invercargill, Tiana Epati based in Tairāwhiti Gisborne and Ian Robertson SC based in Adelaide, Australia. Bridgeside Chambers is now situated on both Levels 5 and 6, 77 Hereford Street, Christchurch. For more information on new members and chambers in general, please visit www.bridgesidechambers.co.nz.

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- ▶ Complete an online form at www.vitae.co.nz/contact/counselling-form
- ▶ Download the Vitae New Zealand app



THE LEGAL PROFESSION

Introducing our Board

The New Zealand Law Society | Te Kāhui Ture o Aotearoa is delighted to introduce our new Board.

New Vice-Presidents Ataga'i Esera, Caroline Silk and David Campbell were elected at the Law Society Council meeting in April.

They join returning Vice-President Frazer Barton and new President Jacque Lethbridge who were existing Board members. Collectively their diverse backgrounds, experience, community involvement and legal expertise across different practice areas and firm sizes brings continuing diversity of thought and perspectives to the Board of the Law Society.

Ataga'i Esera Vice-President Wellington

Ataga'i (Ata) is a director in the law firm Family Law Specialists, in Porirua. A firm as explained by its name, specialising in family law, she has been in private practice since 2011. She represents children (Lawyer for Child), elderly people (Lawyer for the Subject Person), parents and whānau in proceedings before the Family Court.

Ata is of Samoan and NZ European descent, and until recently was a co-President of the Pacific Lawyers

Association. Ata is the Porirua Representative on the Family Law Section and an Advisor for the Grants and Scholarships Committee for the Borrin Foundation. Prior to practice Ata was a financial accountant, as well as an English teacher in Oita, Japan. Ata also holds a Bachelor in Accounting and Commercial Law and contributes her knowledge from a background in both law and commerce.

Caroline Silk Vice-President Central North Island

Caroline is a founder of New Plymouth-based firm Legal Plus which also has a joint venture with New Plymouth firm Legal Solutions. She is passionate about addressing the justice gap, and became a lawyer to see justice available for all. A specialist employment lawyer, accredited mediator and criminal defence lawyer, Caroline was previously a partner at Auld Brewer Mazengarb and McEwen. Before that she worked for EMA Central (now Business NZ) and practiced in criminal defence and general civil law. She is the immediate past president of the Taranaki Branch of the Law Society.



▲ Ataga'i Esera



▲ Caroline Silk



▲ David Campbell



▲ Frazer Barton

David Campbell Vice-President Auckland

David is a partner in the dispute resolution team at Dentons Kensington Swan. He manages commercial and civil disputes and focusses particularly on competition law, product liability, liability insurance, and trust disputes. He has been involved in major multi-party litigation including class actions. He has also worked in London. David is a past-President of the Auckland Branch of the Law Society, and was a member of the Women's Advisory Panel.

Frazer Barton Vice-President South Island

Frazer Barton is a Partner at Anderson Lloyd and heads the Otago litigation team. He has been on the Anderson Lloyd Board for the last 16 years and been chairman for eight years. Frazer's litigation experience includes civil, quasi-criminal, insurance (with a

professional indemnity emphasis), insolvency, commercial disputes, Family Protection and estates.

This is Frazer's second term as the South Island Vice-President on the Law Society Board. He is also a member and former chairman of the Board of Presbyterian Support Otago, a former President of the Otago Branch of the Law Society, and a faculty member of the Law Society Litigation Skills Programme. He is a member of the Council of the University of Otago and chairs its Appeals Board and Health and Safety Committee. Frazer is also a member of the New Zealand Insurance Law Association, and the Restructuring Insolvency & Turnaround Association of New Zealand (RITANZ).

The Board is led by President Jacque Lethbridge.

The Law Society expresses its gratitude to the outgoing Vice-Presidents Arti Chand and Herman Visagie for their valuable contribution and service. ■



THE LEGAL PROFESSION

The Honourable Justice William Young

The final sitting of the Honourable Justice William Young was held on 13 April 2022 at the Supreme Court, presided over by Chief Justice Dame Helen Winkelmann.

The ceremonial sitting provided an opportunity to publicly acknowledge Justice William Young's distinguished career as a jurist, and the service he has given to the courts since first being appointed as a Judge of the High Court in 1997.

Addressing the Court was the Attorney General, Hon David Parker, the President of the Law Society,

Jacque Lethbridge, and Maria Dew QC, President-elect of the New Zealand Bar Association. Also in attendance was the President of the Court of Appeal (Justice Stephen Kós), the Chief High Court Judge (Justice Susan Thomas), the Chief Judge of the Employment Court (Judge Christina Inglis), the Chief District Court Judge (Judge Heemi Taumaunu) and Judges of the Court of Appeal and High Court.

Justice William Young graduated from the University of Canterbury in 1974 with an LLB with first class honours and was awarded the

Photo credit Mark Cootes

Gold Medal in Law by the then Canterbury District Law Society for being the top graduating law student in his year.

Justice William Young then completed a PhD at Cambridge University before returning to New Zealand to practise law in Christchurch. He was a partner in the firm RA Young Hunter & Co, before commencing practice as a barrister in 1988. He was appointed as a Queen's Counsel in 1991. He became a High Court Judge in 1997, was appointed to the Court of Appeal in 2004, and became President of that Court in 2006. He was promoted to the Supreme Court in 2010. From April 2019 to November 2020, Justice William Young served as chair of the Royal Commission of Inquiry into the 15 March 2019 terrorist Attack on Christchurch masjidain. ■





NEW LAWYERS

From Kyiv to Auckland

A young Ukrainian lawyer

On the 24th of February 2022, the people of Ukraine woke up to the engines of war rolling across their border. The Russian Federation started an unjust war against the peaceful people of Ukraine.

Since February, there have been millions of refugees fleeing Ukraine for safety, thousands of people have died and countless cities and historical sites are destroyed.

There are many Ukrainians in Aotearoa New Zealand who have strong connections back home. One such person is Viktoriya Pashorina-Nichols, a Ukrainian Senior Solicitor at Simpson Grierson. She spoke exclusively to *LawTalk* about her experience with Simpson Grierson, her career to date and the plight of the Ukrainian people.

“I have wanted to become a lawyer since I was about 12 years old,” started Viktoriya. “My dad introduced me to various individuals in different roles (doctors, stockbrokers, bankers, teachers etc.) in order for me to get an idea of what their day jobs really looked like. And, yes, I picked to be a lawyer after going through the adoption process in New Zealand between the ages of 10 and 12, which resulted in me having a pretty good idea of what lawyers did, and I liked it!”

“During my high school years studying in Spain, I had a weeks

work experience with a New Zealand lawyer who was working in-house within the Alinghi team (yes, the America’s Cup team) who introduced me to the world of commercial law (because it is the most lucrative!) and specifically informed me about studying law at Victoria University of Wellington. About four years later, I started studying towards my joint degrees of Law and Commerce at Victoria University.

“I graduated five years later and was very fortunate to have been offered a Summer Clerk position and then a Law Graduate position with Simpson Grierson.”

Simpson Grierson has given the young Ukrainian some fantastic opportunities. “After having had the wonderful opportunity to experience different team rotations within Simpson Grierson at the start of my legal career, I felt that I could assist in the most meaningful way within our commercial department. Therefore, I have been working in our commercial team for the last six years, and truly enjoying it and feeling like I am making an impact.”

One of the opportunities I am most grateful for is being able to undertake pro bono work relating to the Russian invasion of Ukraine in February 2022. The war in Ukraine has a direct impact on me and my family. I was driven to apply myself (all the way from New Zealand) in the best way I can in order to assist Ukraine and its people.

For anyone with any connection to the conflict, it is a tough and harrowing

I picked to be a lawyer after going through the adoption process in New Zealand between the ages of 10 and 12, which resulted in me having a pretty good idea of what lawyers did, and I liked it

conversation. No one can really appreciate the ordeal that many are experiencing. For Viktoriya, it is much more personal, close and real.

“I wish Russia did not invade Ukraine in February 2022, but here we are. When the attack began, it was critical to act fast to help my own family members and friends located in Ukraine, but also very important to widely advocate for the Ukrainian people.

“I have assisted with the relocation of my grandparents from Ukraine into Poland and then being driven to Italy, where they are now safe. I’ve also been communicating with family and friends in Ukraine and neighbouring countries, offering mental support and providing financial support because people are running out of money and supplies in many regions. In my spare time I have also been working alongside professional and talented volunteers in New Zealand behind the cause “Mahi for Ukraine”, which advocates for immigration, sanctions, humanitarian aid and diplomatic relations in order to help Ukrainian citizens.”

Mahi for Ukraine is a lobbying and advocacy body focused on pushing the Government to take direct action against Russia in support of Ukraine. Their website notes “Ukraine might be far away from the NZ shores, and yet this is not a problem that we, Kiwis, can just ignore.”

“We have lobbied the Government, and one major win was the introduction of the 2022 Special



When the attack began, it was critical to act fast to help my own family members and friends located in Ukraine, but also very important to widely advocate for the Ukrainian people

Ukraine Visa by the Minister of Immigration, which permits Ukrainians with close family already living in New Zealand to relocate to New Zealand.

We worked with Mark Williams (Partner at Lane Neave), Shan Wilson (Partner at Simpson Grierson), Polly Pope (Partner at Russell McVeagh) and their teams, along with a number of other immigration lawyers and specialists, to provide assistance on a pro bono basis to Ukrainian citizens and their New Zealand family with navigating the



immigration process under the new special visa. This included preparing a legal guide on the special visa that is publicly available on the Mahi for Ukraine website www.mahiforukraine.com/special-ukraine-visa and facilitating a training webinar on this visa that was attended by speakers from Immigration New Zealand and Lane Neave as immigration experts.

“We have also been working with a children’s author based in Auckland on a project where we are collecting messages of encouragement, friendship and welcome from children in New Zealand to be collated into a book to gift to Ukrainian children upon their arrival to New Zealand.”

▲ Kyiv, Ukraine. The Ukrainian flag waving in the wind during summer in the Podil neighbourhood.

“The impact of the above on me is that there is a lot of work that had to be done and that still needs to be done going into the future,” says Viktoriya.

“I am most concerned for the team of 45 million in Ukraine who are facing death on a daily basis, and I hope to encourage others to act swiftly in order to help and stand with Ukraine. I am extremely grateful to every single individual who has assisted by putting their hand up to support Ukraine and its people during such difficult and unprecedented times. Every thought, prayer, word, and action of support to Ukraine and its people truly means a lot.” ■

NEW LAWYERS

A pillar of the rule of law

Practising in our Public Defence Service

If you had said twenty years ago that the Public Defence Service (PDS) would become the biggest criminal litigation outfit in New Zealand, many people would have looked at you strangely. But that's exactly what's happened. Since its inception, the PDS has become New Zealand's largest criminal law practice that provides a combination of collegiality and support, as well as career progression and variety that few legal careers can equal.

The PDS was set up in 2004 and now boasts over 150 criminal defence lawyers in 10 offices across New Zealand. Practitioners join both straight from law school and from other practices. For many, it's a great opportunity to get stuck in to litigating and dealing with criminal law matters straight away.

"The opening of the PDS marks a new era in the delivery of legal aid services," said then-Justice Minister Phil Goff.

"The real advantage that the PDS has is the ability to create in one office, a cohesive group of skilled professionals who can share knowledge, support one another and create a positive working environment."

Has the PDS lived up to its lofty goals back in 2004? We decided to speak to some new practitioners who have made the unique jump into the Service, and find out what motivates them day-to-day.

For both Karlena Lawrence and Kaitlyn White, the PDS was a calling.

"The PDS is the perfect place to join as a



▲ Karlena Lawrence



▲ Kaitlyn White

junior lawyer and I jumped at the opportunity," said Kaitlyn.

"We have the benefit of working in a large office environment with colleagues with varying experience levels. I am trusted to manage my own files but have supervision available from my colleagues and supervisors. I also get the opportunity to junior on files. Training and development is also continually offered with in-office trainings and a range of webinars with speakers from New Zealand and abroad."

"I wanted to join PDS because I always wanted to do criminal law when I finished University," said Karlena, based in Dunedin.

"I started in a small commercial firm in Dunedin and was there for 10 months before making the shift to PDS. The PDS was really the only place that was hiring junior criminal lawyers in Dunedin, so when a job opportunity came up, I jumped on it as soon as I could.

"From working briefly in a small firm prior to working for PDS, I knew that my interests' law outside the commercial sector and doing the same work, but in a bigger firm never appealed to me. From what I knew there were no bigger firms hiring criminal lawyers, I always enjoyed criminal law and PDS was just the place for that."

But it wasn't the most obvious career path. For both Karlena and

Kaitlyn, joining the PDS wasn't something they had been encouraged to do at university.

"When I was at university the only kind of advertising that I saw was in relation to the summer internship," said Karlena.

Kaitlyn had a similar experience. "The PDS was not well known when I was at the University of Canterbury but I'm not sure if that was the experience elsewhere. I only heard of it through a friend doing an internship."

But, as Karlena said, the PDS are trying to improve their outreach. "We are working towards being more involved in university and proving more advertising and advice to students about how to get involved with criminal law."

"Our PDS stall at the University of Canterbury law careers expo last year was flooded with people wanting to chat," said Kaitlyn. "There seems to be a real interest from students in PDS and what criminal law work involves."

For Karlena, the opportunities that she has had with the PDS rival other experiences she has had in her other jobs. "The PDS really is the best training ground for young lawyers, you learn so much day to day. You get to work on and help with really interesting files that involve serious charges. This can be anything from researching cases to preparing matters for the upcoming trial."

Kaitlyn has relished the small but significant wins across her case files, particularly those that keep people away from cycles of re-offending. "Wins include every

successful discharge without conviction application or where I am able to convince Police to offer diversion to my clients. These clients are almost always young people. Many have faced significant adversity (beyond what we can imagine) during their life, slipped up and offended, and now there are significant consequences to their employment, mental health and other aspects of their life. Most often, these clients are able to get into counselling or complete a programme to address the underlying causes of their offending.

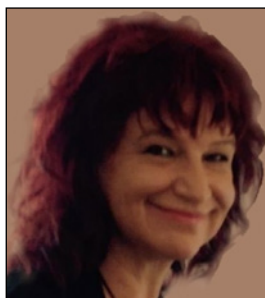
"Clients will call me up from prison to share important milestones. It might be that they got to vote in the election, that they got their Covid-19 vaccine, that they picked up a job at the prison or that they completed a programme. We are trusted with a lot of personal information."

Kaitlyn pushed back on the predominant trope in the non-legal world about the role of defence counsel.

"Often when people (both in and out of the profession) find out what I do, they think my job is to get my clients "off" their charges. I've even had a few rude comments about it. This is not at all what we do.

"Our job is to represent our clients, as is their right to legal representation. More often than not, we are working to ensure the charges are at the appropriate level or to get the best sentencing outcome to ensure our clients get the help they need so they do not come back before the Court. Yes we do defend some matters to trial but it is not our job to get people off their charges.

The PDS really is the best training ground for young lawyers, you learn so much day to day. You get to work on and help with really interesting files that involve serious charges



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Criminal law is the purest form of advocacy... You will be appearing in Court almost every day (usually multiple times a day) and managing your own clients right from the beginning. It is an excellent role to take on to get court experience, develop advocacy and negotiation skills and generally to feel a sense of accomplishment at the end of each day



“It is also really fulfilling to get to work with a range of agencies across the city who can support our clients. Whether that is Community Corrections, our alcohol and drug services, Prisoners Aid and Rehabilitation Society, programme providers, counsellors or kaupapa Maori organisations, they are all doing great work to address the issues many face and to make our communities a better place.”

Is it all plain sailing? Like any job, starting somewhere new can be challenging and overwhelming – particularly when the criminal law is concerned. “Starting out is a huge adjustment to your life, it can be very overwhelming and a lot of the time you feel as though you know very little which can be very confronting,” says Karlena.

“The advice I would give new lawyers is to ride that wave, ask for help when you need it (older lawyers expect you to ask questions and they certainly don’t expect you to know everything). Every day you will learn something new about the law. Take the small wins, like

when you are able to do something without asking for assistance. Most importantly take time for yourself at the end of every day/week to recharge.”

“Criminal law is the purest form of advocacy,” said Kaitlyn.

“You will be appearing in Court almost every day (usually multiple times a day) and managing your own clients right from the beginning. It is an excellent role to take on to get court experience, develop advocacy and negotiation skills and generally to feel a sense of accomplishment at the end of each day.

“Our work is tough, we deal with some difficult matters, but it is incredibly rewarding. It can be daunting taking on your own files but there is a lot of support. Soon it becomes second nature to walk into a client meeting and advise your client on a range of options for them and possible outcomes.”

Both appreciate the culture and network of support that exists at the Public Defence Service. As

Kaitlyn said, “It is an extremely supportive environment and everyone is willing to lend a hand, chew over a tricky issue with you, celebrate the successes and commiserate on the losses.”

“You will be working with a number of people at the same level of experience as you, as well as more experienced lawyers who remember what it was like when they just started! The Christchurch criminal bar has also been really supportive, always willing to whisper something in your ear to help you during a court appearance if you get stuck.”

“The benefits for starting at the PDS is that you get so much training and have access to so many helpful materials and guidance from other lawyers. You definitely feel like you are supported every step of the way,” said Karlena.

“If you are interested in criminal law and have the opportunity to work with the PDS definitely take up that opportunity. It is one you won’t regret.” ■

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