

LawTalk

KŌRERO MŌ TE TURE

Adapting to the
'New Normal'

SUMMER 2022

SPECIAL FEATURE:

2022 Snapshot of the Profession

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David Lang, Partner
Saunders & Co



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ABOUT LAWTALK

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DISCLAIMER

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Do you have a suggestion for a story idea you think would be interesting for an upcoming issue of *LawTalk*? Email: publications@lawsociety.org.nz

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Embracing our 'New Normal'

BY **FRAZER BARTON**

Perhaps Einstein meant, when he said “the true sign of intelligence is not knowledge but imagination,” that it is more than just thoughts but ideas and action that matter. There is no doubt that the legal profession and the Law Society itself has grabbed the opportunity to imagine a better future, and begin to explore what can be done to build that future.

The Independent Review Panel is due to report back shortly with its recommendations following extensive consultation with the profession and key stakeholders. It has been a substantial piece of work and I want to acknowledge Professor Ron Paterson, Jane Meares and Professor Jacinta Ruru for their thoughtful and invaluable contributions over the last 12 months. We expect that the Panel’s proposals will offer us the chance to improve the way we regulate and provide services. After we’ve received that report, I look forward to working alongside you to implement the changes we need to make us a fit-for-now and fit-for-the-future regulator and profession.

In a similar vein, this ‘New Normal’ edition of *LawTalk* doesn’t explore our emergence from COVID-19

as a lot of other publications and thought pieces have done.

It discloses the work across our profession and the legal world to embrace and take the opportunities that technology, new ways of thinking, and changes to the workplace environment have given us.

One favourite article each year is our annual Snapshot of the Profession. As you will read, while progress is happening, it is slower than we would all want. We can take heart that the indicators are moving in the right way to establish a more diverse profession that looks like New Zealand. A key priority of the Law Society is to ensure we get more voices and diversity across the legal community, and that means starting far earlier in the cycle to ensure we bring in people who come from different backgrounds, communities and experiences. Initiatives like the National New Lawyers Group are part of a wider piece of work the Law Society is doing to understand what we need to do better and drive performance at all levels.

Likewise, Workplace Relations and Safety Minister Hon Michael Wood shares with us the challenges global labour shortages are having

on New Zealand more acutely, and the need for businesses to look for new ways of increasing productivity rather than lowering the cost of labour. Recent changes to employment legislation to allow sectors to initiate fair pay agreements is a dramatic shift in the way our workplaces bargain and negotiate.

The Law Society’s Annual Report shows an organisation taking every opportunity to explore and utilise the new normal. The theme of the annual report – Transforming for the Future – is more than just a slogan. It is a call to action for the entire organisation. We have achieved much change at both governance and operational levels which we can be proud of.

The legal profession is changing at pace and the Law Society is making good progress to do the same.

Key highlights from the Annual Report include:

- The Independent Review Panel was formed and the Review itself





to improve access to justice whilst maintaining the integrity of the institutions which are so important to the rule of law and to democracy.

There are a myriad of other exciting articles to explore in this final edition for 2022. We ask some leaders who are at the forefront of legal innovation to share some of the big achievements they have seen in the last year. There is something in here for everyone, and I suspect might spark some of that imagination Einstein talked about, for how we all can embrace the 'New Normal'.

Finally, becoming the 33rd president isn't a role defined by one person - it is a role which brings together the entire profession and represents them and their interests. I intend to speak with as many members of the wider legal community as possible about the issues that matter to them and the issues of focus for the Law Society as we move into 2023 and beyond.

Again, thanks to each and every one of you for your ongoing contribution to the Law Society. As a practitioner myself, I know a lot of the work we do doesn't see the light of day. But we are fortunate to have such a highly skilled and motivated profession which does the necessary work the rule of law demands of us all.

From the entire team at the Law Society, I want to wish you and your families a very happy Christmas. I hope you take the opportunity over the summer to enjoy the company of your friends and family, rest up for a big year ahead, and use the opportunities we have with the 'New Normal' to imagine new prospects for yourselves and our wider profession. ■

was conducted. While we await the outcome of the Independent Review Panel's final recommendations, we can be heartened by the widespread engagement of the legal profession on shaping the future of our workforce;

- The implementation of the Regulatory Strategy, and work towards our Representative Strategy and Organisation Strategy is well underway;
- Increased support for legal aid was championed by the Law Society and the Government provided a small increase in Budget 2022;
- Implemented changes to Conduct and Client Care Rules including mandatory reporting of bullying, harassment and discrimination, and consultation on proposed Lawyers and Conveyancers Act 2006 amendments completed and reported to the Minister of Justice;
- Building on our membership successes by launching a

National New Lawyers Group and enhancing relationships across different legal communities;

- Approved the establishment of a Climate Change Law Reform Committee;
- Achieved an 82 per cent response rate to survey of eligible Gender Equality Charter signatories; and
- Sixty-four Bills and 91 discussion documents reviewed, and 26 Bills and 47 Discussion documents were submitted on.

There is always more for us to achieve, and we are not done with becoming a fit-for-now and fit-for-the-future regulator, but we are absolutely certain that we are Transforming for the Future in ways which the legal profession and the wider public can have trust and confidence.

LawTalk takes a look at the international environment when it comes to legal innovation, and what other comparable jurisdictions are doing

Snapshot of the Profession 2022

COMPILED BY
**LOUISE BROOKS AND
MARIANNE BURT**

DESIGNED BY
SOPHIE MELLIGAN

The data shared in this snapshot is derived from registry data held by the New Zealand Law Society Te Kāhui Ture o Aotearoa, the regulatory body for legal practice in New Zealand.

The insights shared provide information about demographic trends, diversity within the profession, and the regional dispersal of lawyers throughout New Zealand.

As of 30 June 2022, 16,401 lawyers held a practising certificate, 867 of whom were practising overseas. The number of practising certificates held by lawyers marks the continuation of a steady upward trajectory since the 1970s. The number of lawyers per head of population has increased slightly, with the ratio now at one lawyer per 326 people.

In the same period, there were 1,917 barrister practising certificates. This means barristers

represent 11.7% of practising lawyers and just 0.036% of the New Zealand population.

Also continuing an upward trend is the number of female lawyers in the profession. Fifty-four per cent of all practising lawyers have responded as being female. It is expected that this figure will continue to increase as the proportion of lawyers in the 0-7 PQE group that responded as female is much higher than the average, at 63.5%.

The pattern of ethnic diversity in the profession still points to a continued need for an increase in Māori and Pasifika lawyers to improve representation within these communities. The most significant increase in ethnic diversity is amongst Asian lawyers. Representation in this community has increased by 8.9% since the last snapshot.

People per lawyer in New Zealand

LAWYERS BASED IN NZ

15,593

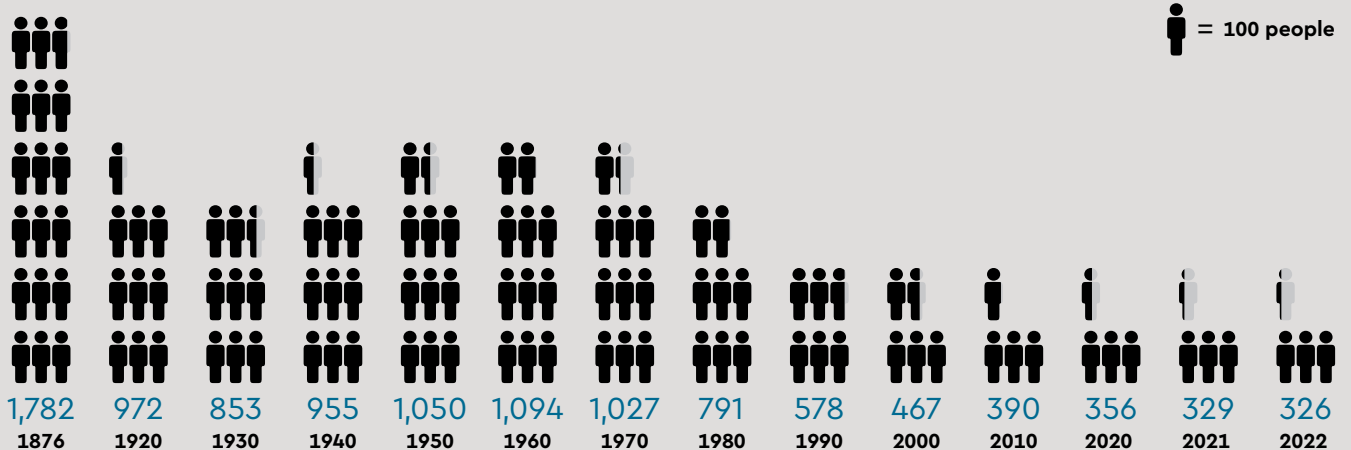
POPULATION

5,124,100

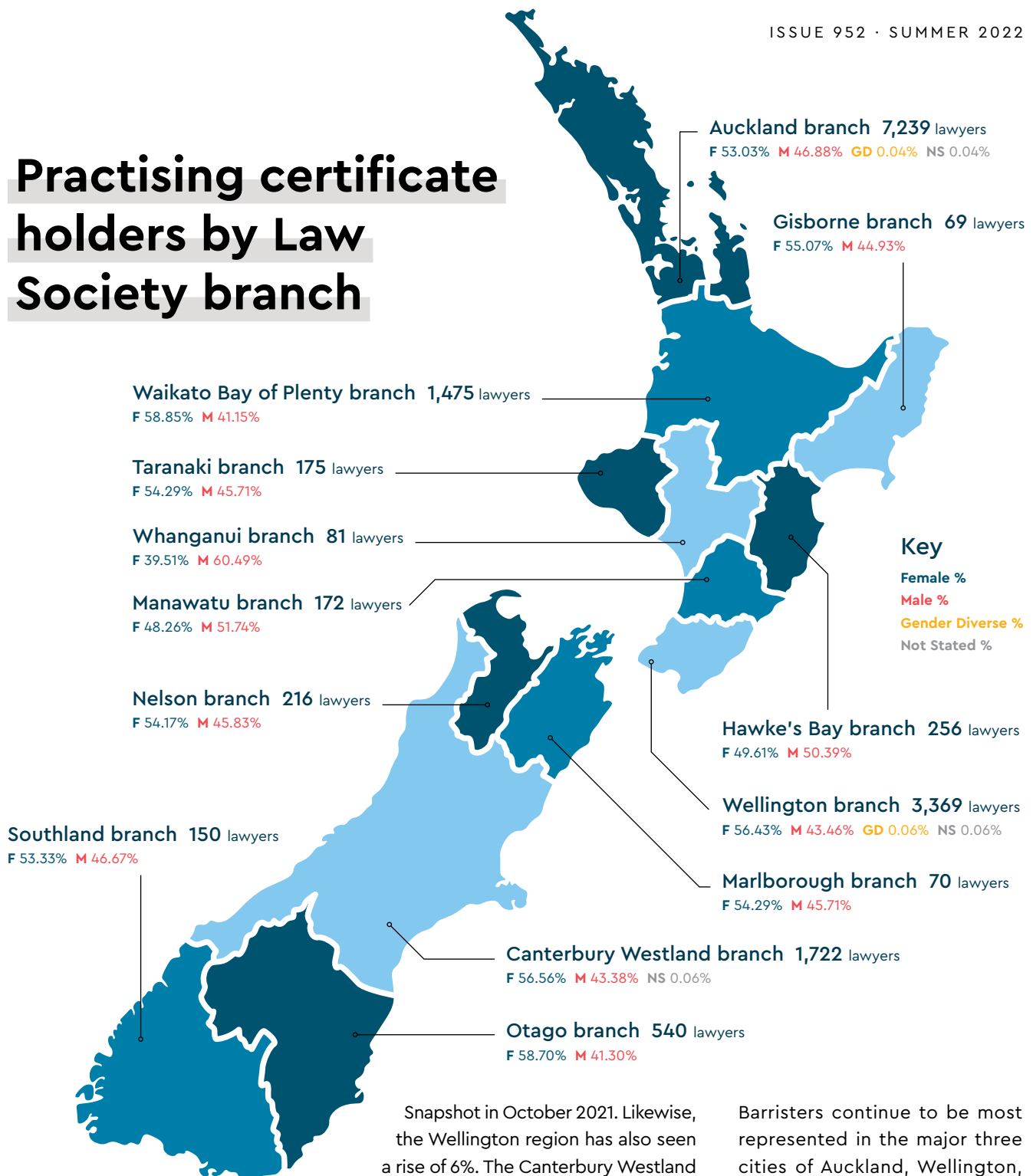
POPULATION PER LAWYER

326:1

PEOPLE PER LAWYER IN NEW ZEALAND



Practising certificate holders by Law Society branch



The number of New Zealand-based practising certificate holders grew by 5.4% to the year-end 30 June 2022. This was marginally greater than the increase in population.

The map illustrated is a regional representation of practising certificate holders by Law Society branches. The Auckland region, including Northland, has the highest number of lawyers and reported an increase of 6% since the last

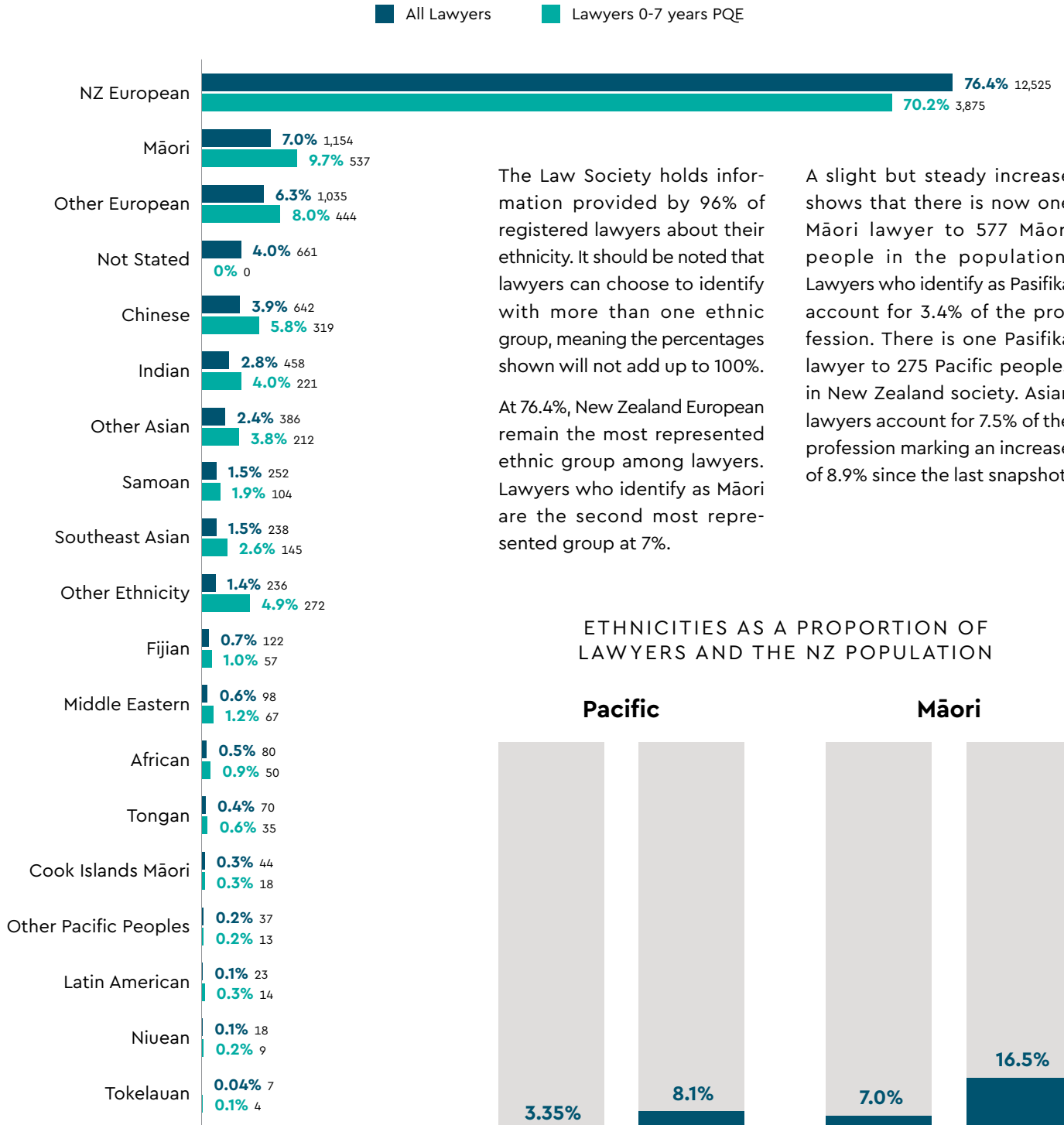
Snapshot in October 2021. Likewise, the Wellington region has also seen a rise of 6%. The Canterbury Westland region has also enjoyed an increase in practising lawyers of 4%. The Whanganui region showed the highest growth of 6.5% meaning an additional five lawyers in the region. Meanwhile, Gisborne showed a decrease of 3%, or two lawyers.

This demonstrates the continued need for promoting regional dispersal of practising lawyers. The Gisborne example highlights the challenges being faced to achieve access to justice for vulnerable communities, both regional and demographical. The proportion of overseas-based lawyers also increased by 7%.

Barristers continue to be most represented in the major three cities of Auckland, Wellington, and Christchurch with 974, 251 and 177 barristers, respectively. Eleven regions record barrister representation in the single digits with Southland being the most underrepresented with just one practising barrister in the region. This is another example of the issue of access to justice in the regions. Geographically, a number of these regions are remote or rural with socio-demographic profiles that represent some of the country's most vulnerable communities.

Ethnicity

PROPORTION OF ALL LAWYERS AND LAWYERS 0-7 YEARS PQE BY ETHNICITY

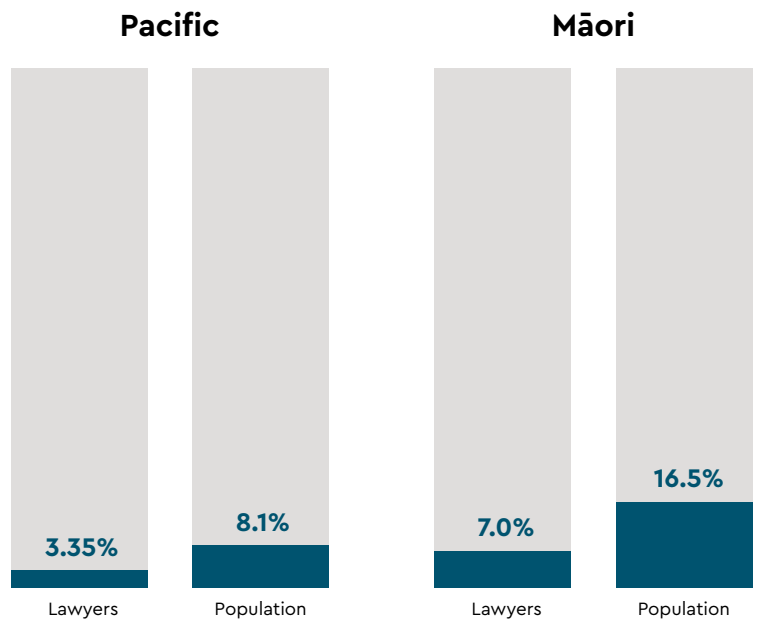


The Law Society holds information provided by 96% of registered lawyers about their ethnicity. It should be noted that lawyers can choose to identify with more than one ethnic group, meaning the percentages shown will not add up to 100%.

At 76.4%, New Zealand European remain the most represented ethnic group among lawyers. Lawyers who identify as Māori are the second most represented group at 7%.

A slight but steady increase shows that there is now one Māori lawyer to 577 Māori people in the population. Lawyers who identify as Pasifika account for 3.4% of the profession. There is one Pasifika lawyer to 275 Pacific peoples in New Zealand society. Asian lawyers account for 7.5% of the profession marking an increase of 8.9% since the last snapshot.

ETHNICITIES AS A PROPORTION OF LAWYERS AND THE NZ POPULATION



754.4:1

Pacific Lawyers as a proportion of the Pacific Population

784.8:1

Māori Lawyers as a proportion of the Māori Population

Gender

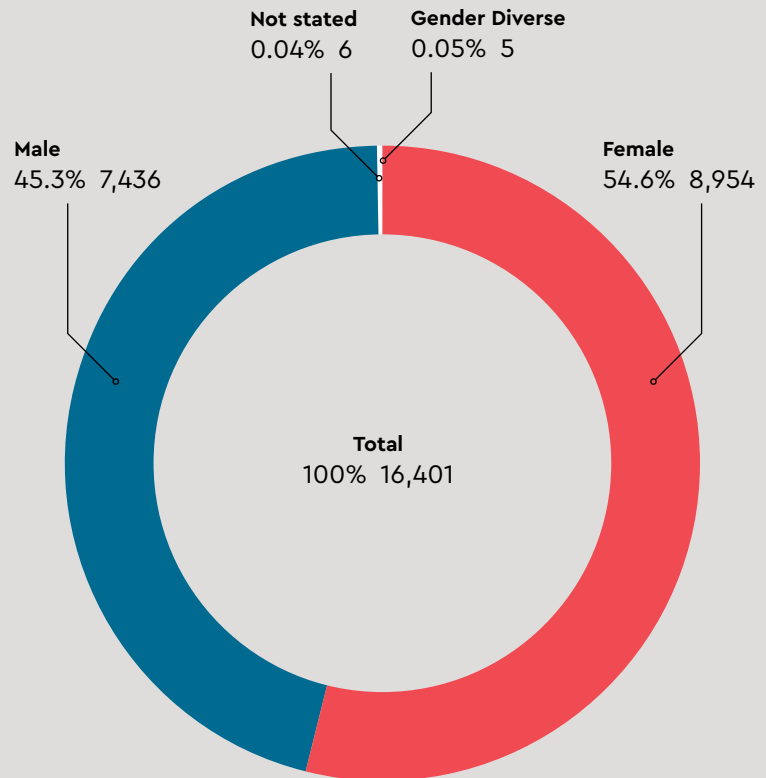
Of the total registered lawyers in New Zealand, 8,954 identify as female. This represents 54.6% of the profession. Comparatively, 45.3% of lawyers responded as male. The 2022 data reported an increase in the number of respondents identifying as gender diverse or declining to state a gender. The respondents in these groups jumped from 1-5 and 4-6, respectively.

An upward trajectory of females entering the profession continued through to 30 June 2022. The highest proportional increase is in PQE 0-7 years responding as 63.5% female, 36.3% male and 0.07% gender diverse.

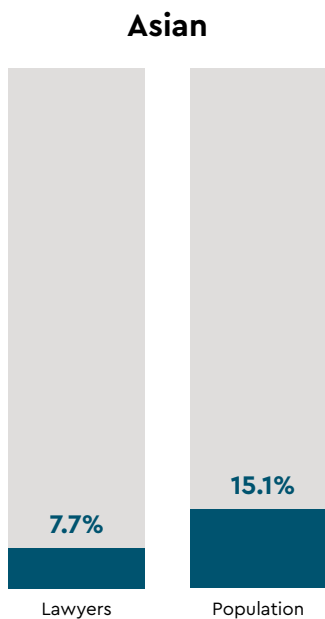
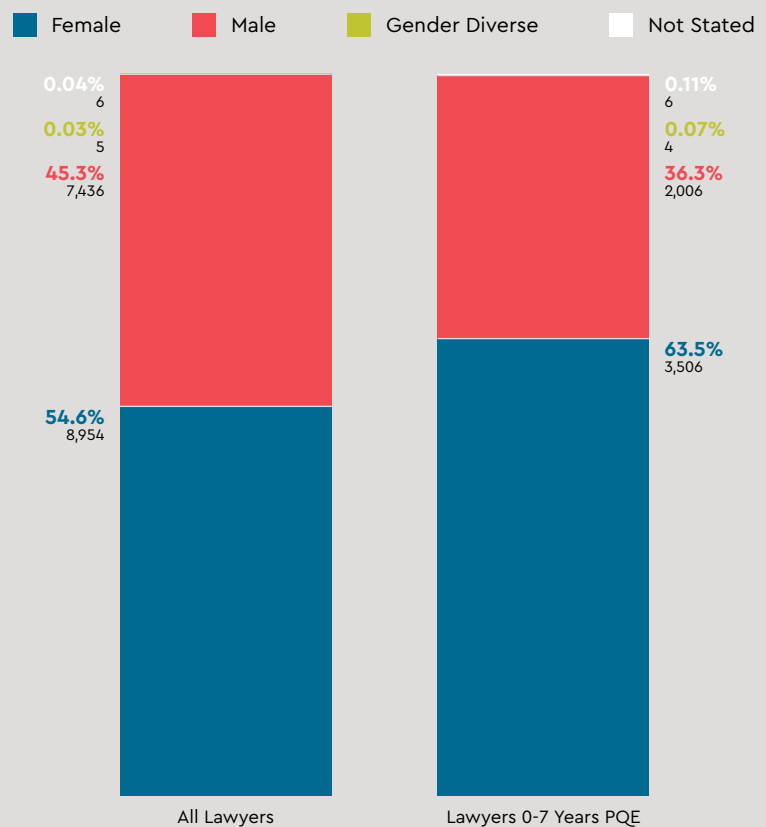
Female barristers account for 43.6% of all barristers with a practising certificate which represents an increase over the past two years of around 4%.

Over the past two years, there has been an increase of 3% in female representation of King's Counsel with women making up a total of 26% of all King's Counsel.

PROPORTION OF ALL LAWYERS BY GENDER



PROPORTION OF ALL LAWYERS BY GENDER COMPARED TO LAWYERS 0-7 YEARS PQE

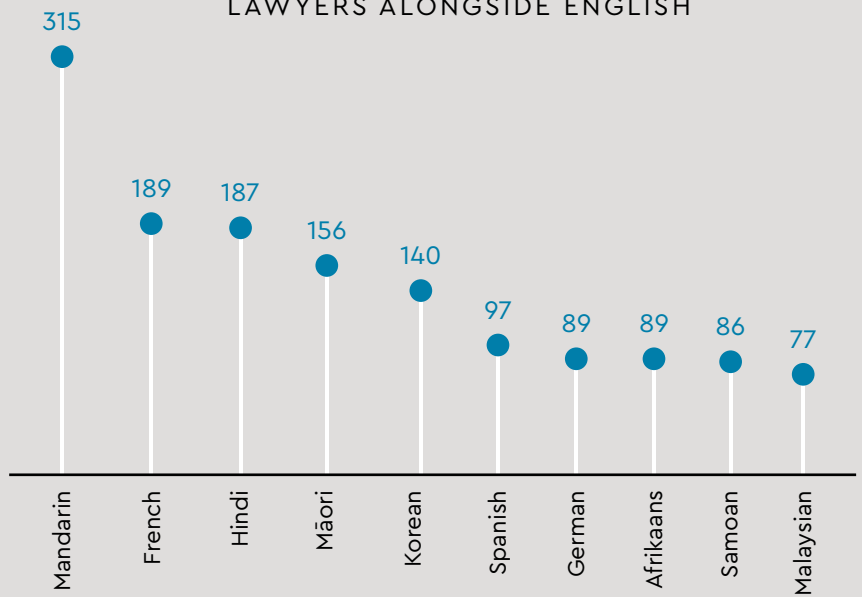


303.1:1
Asian Lawyers as a proportion of the Asian Population

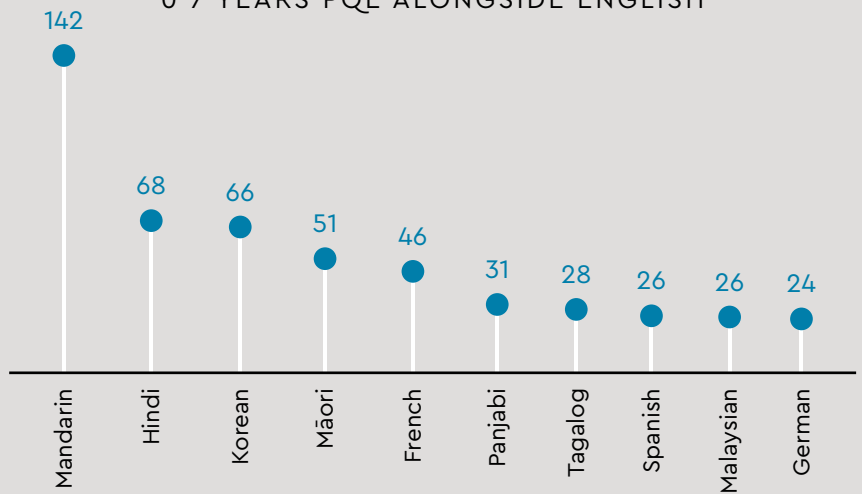
Language

These graphs depict the top ten languages spoken by lawyers alongside English. Those who recorded languages additional to English make up 10% of the profession. Mandarin has the highest number of speakers at 315 lawyers, followed by 189 who speak French and 187 who speak Hindi. Te Reo Māori is the fourth most spoken language specified, spoken by 156 lawyers. Eight lawyers specified they could communicate in New Zealand Sign Language (NZSL). A total of 256,130 New Zealanders know NZSL, and there is one lawyer for 35,690 New Zealanders who communicate in NZSL.

TOP TEN LANGUAGES SPOKEN BY ALL LAWYERS ALONGSIDE ENGLISH



TOP TEN LANGUAGES SPOKEN BY LAWYERS 0-7 YEARS PQE ALONGSIDE ENGLISH



LAWYERS WHO SPEAK TE REO MĀORI COMPARED TO THE NZ POPULATION OF TE REO MĀORI SPEAKERS

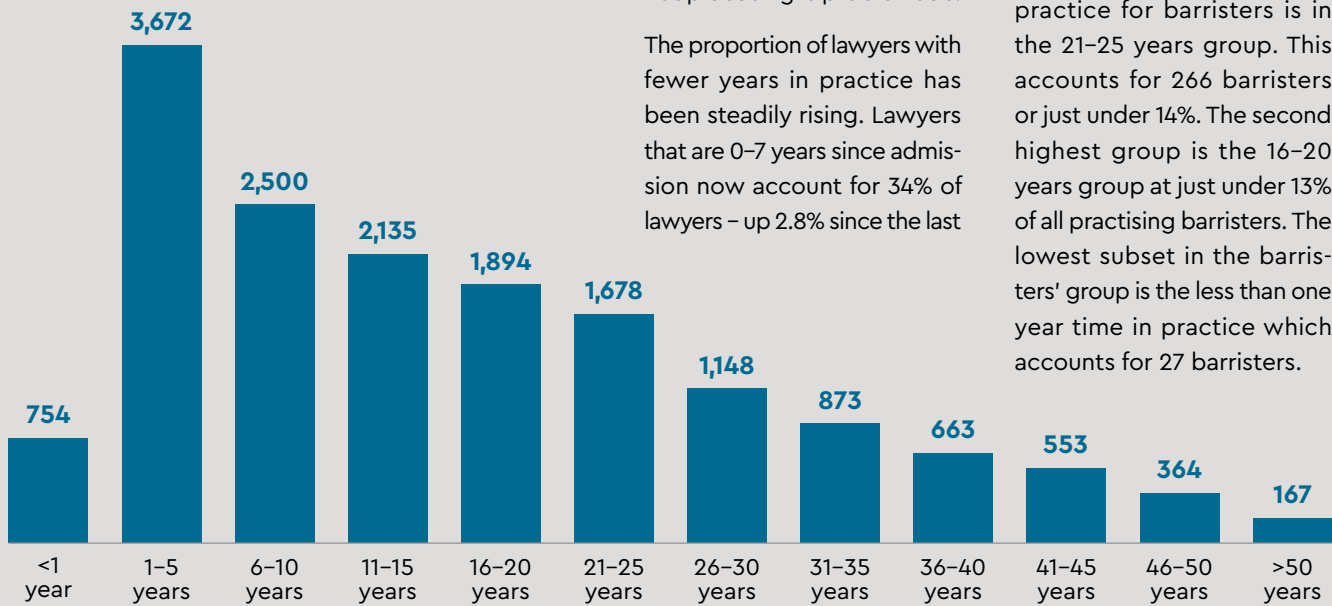
LAWYERS	POPULATION	RATIO
156	204,904	1,313:1

LAWYERS WHO USE NZ SIGN LANGUAGE COMPARED TO THE POPULATION OF NZ WHO COMMUNICATE IN NZ SIGN LANGUAGE

LAWYERS	POPULATION	RATIO
8	256,130	35,690:1

Time in practice

LAWYERS BY YEARS SINCE ADMISSION



The Law Society records years since admission for every lawyer. These figures do not necessarily represent worked years in practice, as accounting for time when a lawyer may be intermittently not practising is problematic.

The proportion of lawyers with fewer years in practice has been steadily rising. Lawyers that are 0-7 years since admission now account for 34% of lawyers – up 2.8% since the last

Snapshot. By contrast, at the other end of the experience continuum, 23% of lawyers have 26 to 50+ years since admission; a 0.8% decrease since the last Snapshot.

The largest subset of time in practice for barristers is in the 21-25 years group. This accounts for 266 barristers or just under 14%. The second highest group is the 16-20 years group at just under 13% of all practising barristers. The lowest subset in the barristers' group is the less than one year time in practice which accounts for 27 barristers.

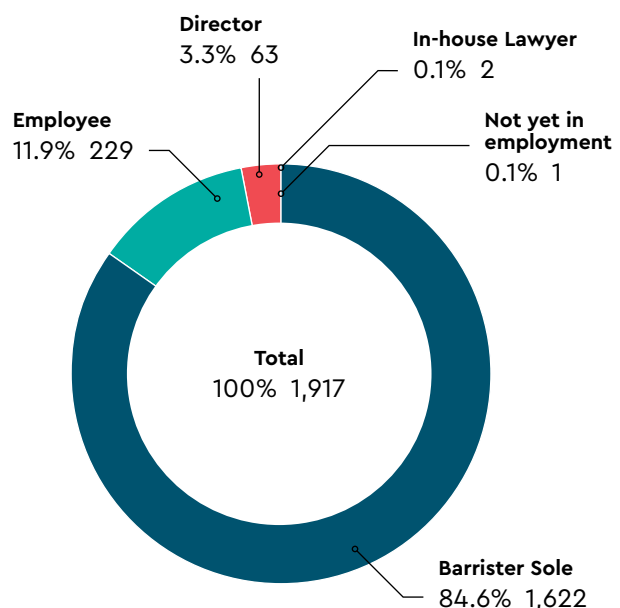
Types of practice

Lawyers may practise in three different ways: as barristers and solicitors (providing services to the public), as barristers sole and as in-house lawyers (providing services to firms).

Barristers

On 30 June, there were 1,917 lawyers practising as barristers. This figure represented 11.7% of New Zealand-based lawyers. Proportionally, this figure remains unchanged from two years ago. On 30 June 1,622 barristers sole made up 84.6% of practising barristers. The number of barristers recorded as employees was 229. This represents just under 12% of all barristers, while just two barristers practised as in-house lawyers.

PROPORTION OF POSITIONS OF EMPLOYMENT OF BARRISTERS



BARRISTERS COMPARED TO NEW ZEALAND BASED LAWYERS

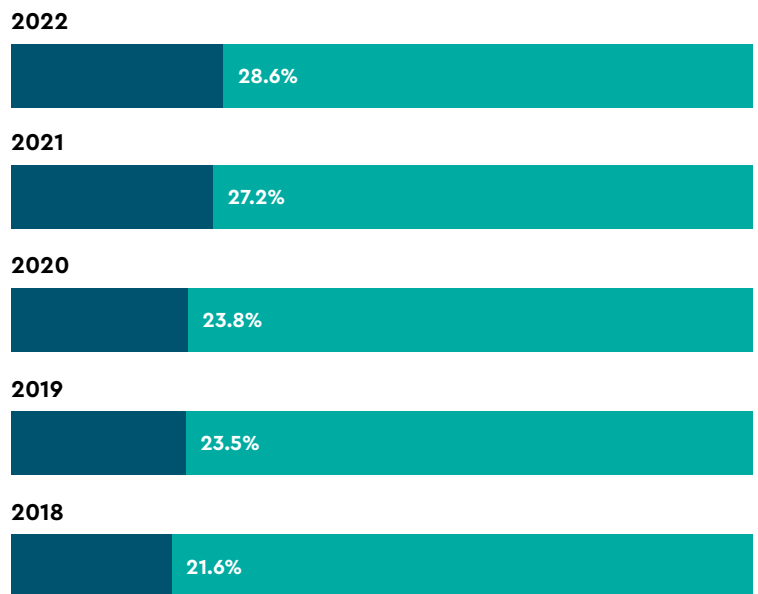
11.7%

Types of practice continued

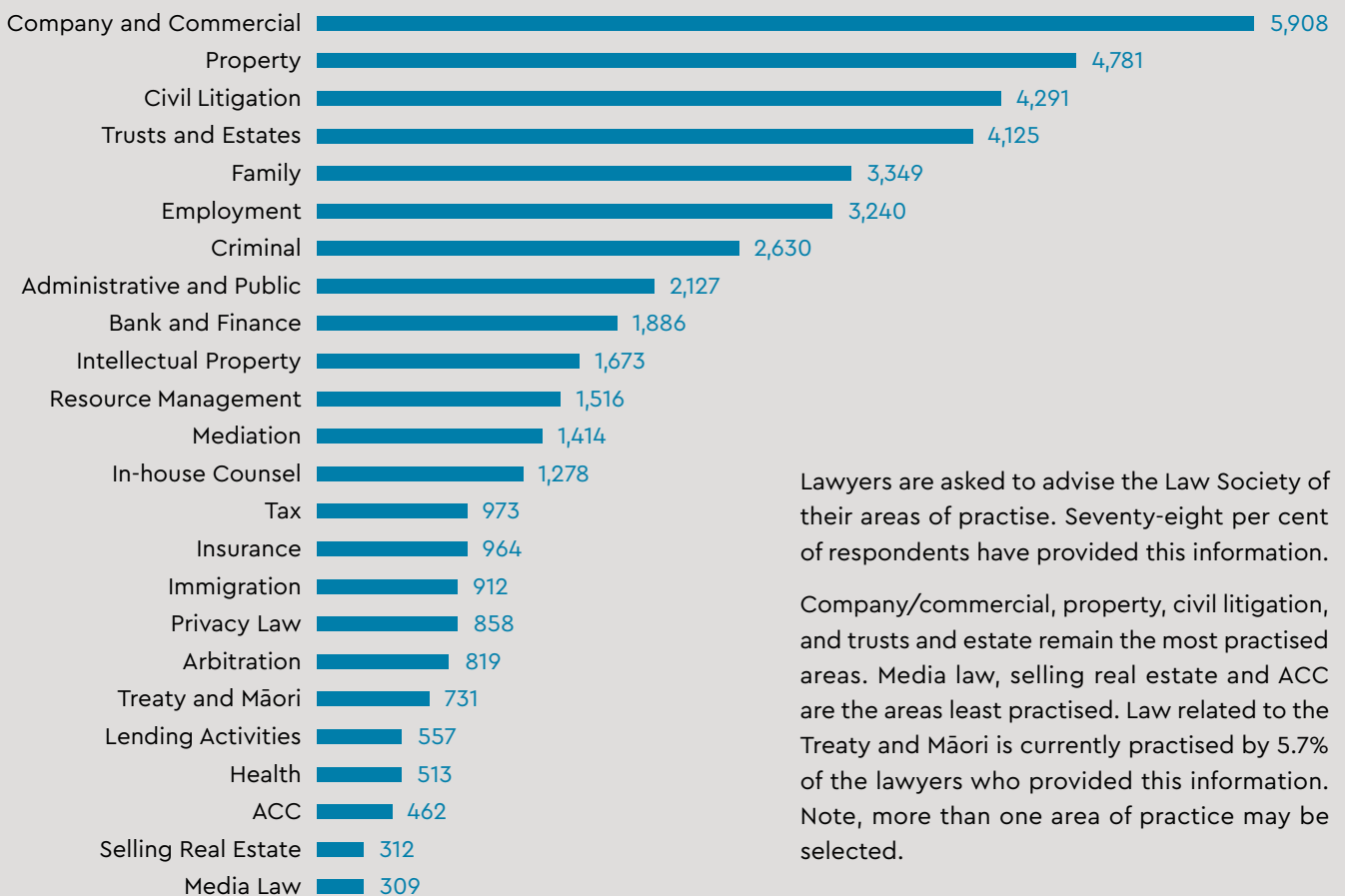
In-house lawyers

Over the past two years, the proportion of lawyers who practise as in-house lawyers has been rising steadily with a 5% increase over this period. In-house lawyers now account for 28.6% of the practising profession.

PROPORTION OF LAWYERS THAT PRACTISE AS IN-HOUSE LAWYERS



Areas of practice



Lawyers are asked to advise the Law Society of their areas of practise. Seventy-eight per cent of respondents have provided this information.

Company/commercial, property, civil litigation, and trusts and estate remain the most practised areas. Media law, selling real estate and ACC are the areas least practised. Law related to the Treaty and Māori is currently practised by 5.7% of the lawyers who provided this information. Note, more than one area of practice may be selected.

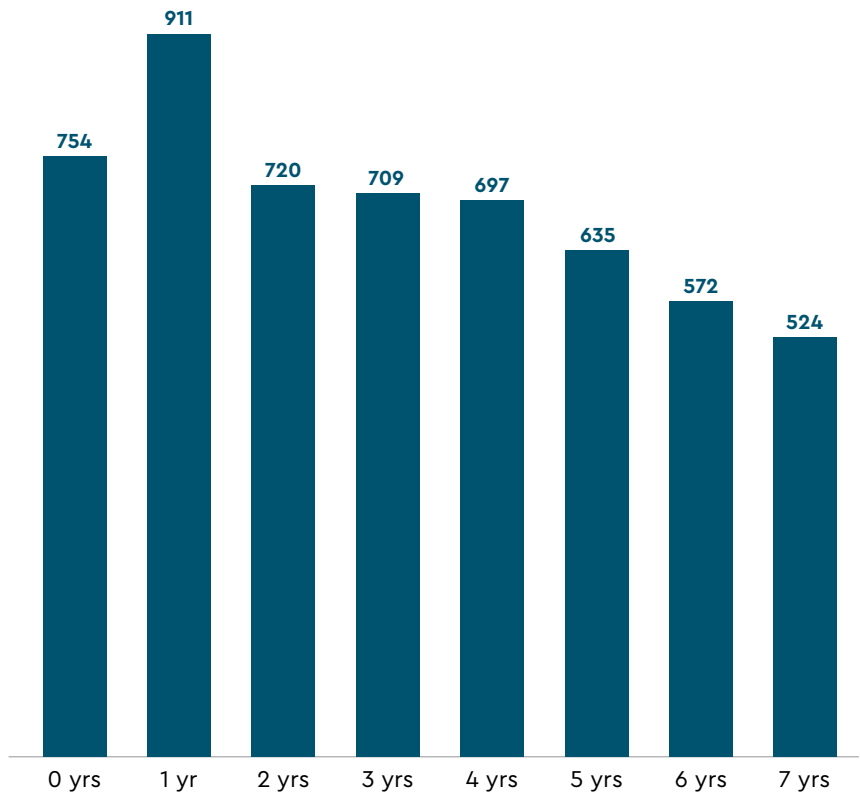
New lawyers

At the year ending 30 June 2022, the New Lawyers category comprised 5,522 lawyers of which 63.5% were female. The largest subset of the New Lawyers group was in the one-year PQE with a total of 911 lawyers. New lawyer admissions in the zero to one-year PQE group was 754.

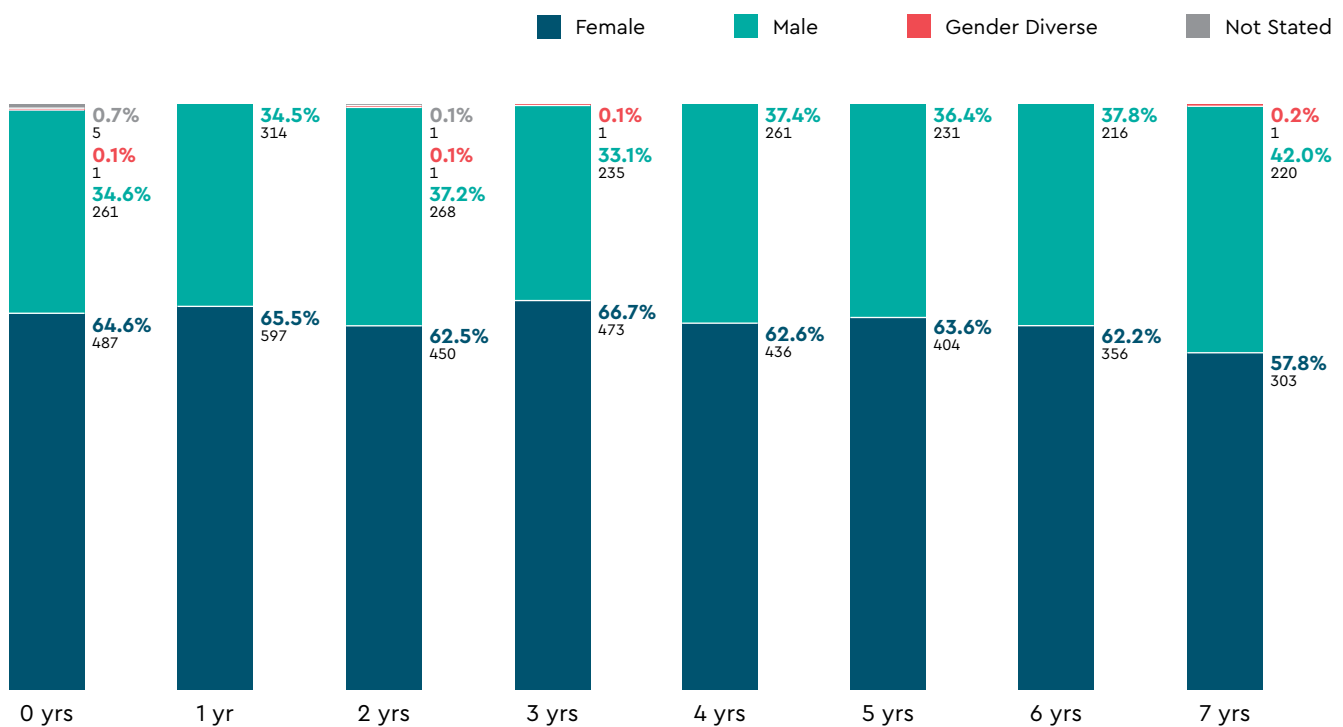
CENTRES WITH COUNT >50 PQE 0-7 LAWYERS

Main centre	Number
Auckland	2,247
Wellington	988
Christchurch	561
Hamilton	233
London UK	207
Tauranga	129
Dunedin	90
Lower Hutt	80

PROPORTION OF LAWYERS 0-7 YEARS PQE BY YEARS SINCE ADMISSION



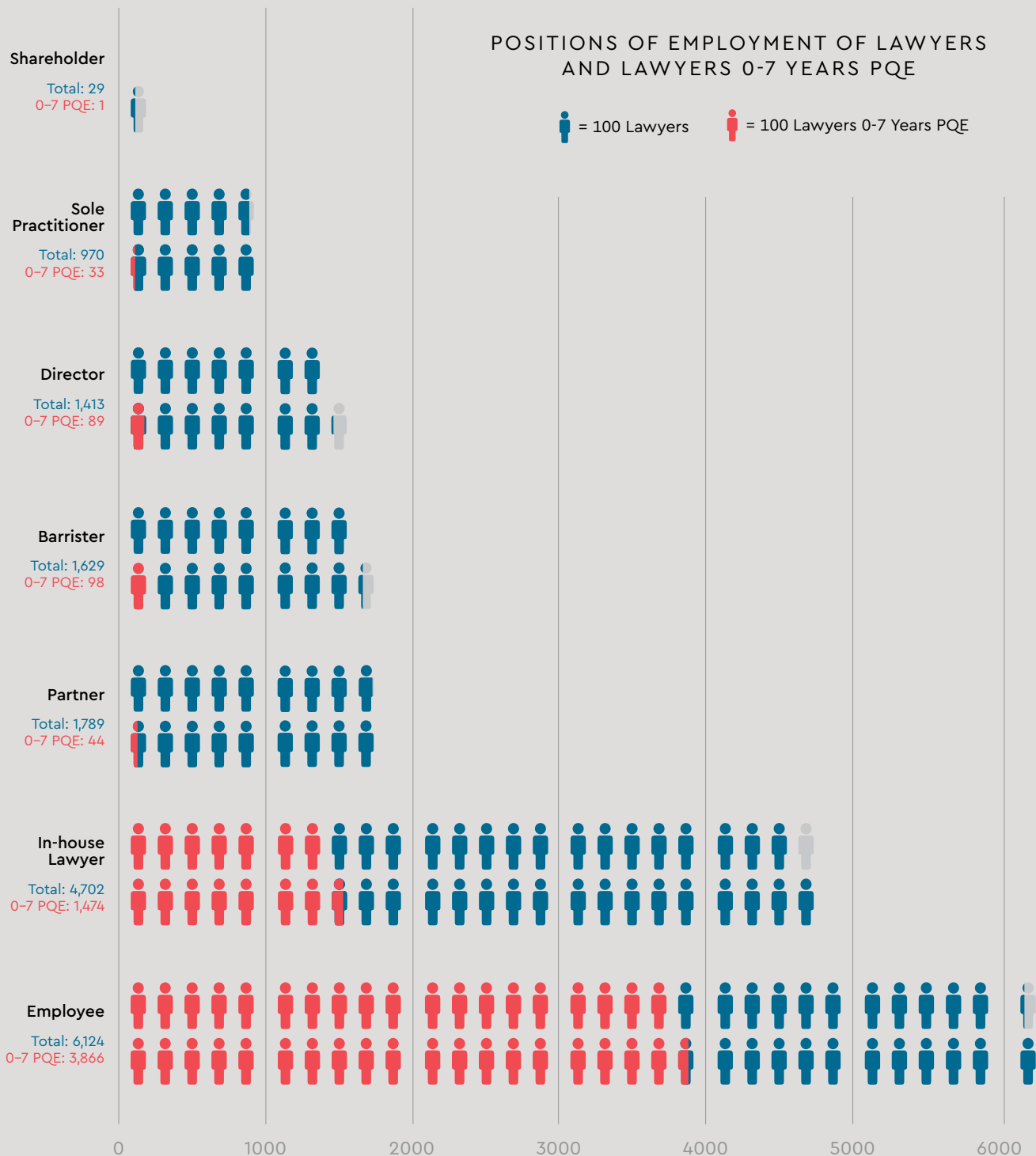
GENDER OF NEW LAWYERS 0-7 YEARS PQE BY YEARS SINCE ADMISSION



Positions of employment

Over 99 per cent of respondents chose to share information about their positions of employment. The position that makes up the largest group of the profession is 'employees' at 6,124 lawyers. This is a 9.6 % increase in number from the previous Snapshot in October 2021. The group with

the most significant growth is in the position of Shareholders. This group went from 14 to 29 lawyers representing a 107% increase from the Snapshot last year. There are 44 New Lawyers employed as partners and 98 New Lawyers employed as barristers.



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

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Supporting
Positive
Futures

“Having the Trust there to help navigate those first few weeks or even the first few months was just incredible, because it’s extremely overwhelming.”

More certainty and fairness in workplaces

BY **HON MICHAEL WOOD**

Hon Michael Wood is the Minister for Workplace Relations and Safety.

Now that New Zealand has moved out of the Covid Emergency period, we see a 'new normal' being established in many areas including how we manage health, our use of technology, and the way that workplaces organise themselves. The same goes for our Workplace Relations system. While there are many strengths in the system, and much goodwill between parties, the pandemic shone a light on a range of weaknesses and inequities that have persisted for decades. Consistent with our electoral mandate, the government is moving forward with reforms that aim to address these issues and to build workplaces that are fair, safe, and productive.

It has been a busy period. Over the last year, we have increased the minimum wage, parental leave entitlements and working for families tax credits. We have introduced legislation to end migrant exploitation, and have taken steps to improve conditions for our RSE workers and bus drivers. We have restored access to collective bargaining for screen industry workers, and we have now legislated the biggest change to New Zealand's employment law in over thirty years.

The introduction of Fair Pay Agreements (FPAs) will improve employment conditions, by enabling employers and employees to bargain collectively for industry or occupation-wide minimum employment terms.

For too long, New Zealanders working in critical roles like cleaners and bus drivers, whose work kept our country going during the pandemic, have lacked bargaining power to seek better wages and conditions. This has been shown in aggregate data which demonstrates declining returns to wage and salary earners since the radical labour market deregulation of 1991, and in sectors like bus driving where entrenched low pay and conditions have led to a workforce collapse.

Māori, Pacific peoples, young people, and people with disabilities have been disproportionately affected, and conversely will likely be over-represented in occupations which will benefit from a Fair Pay Agreement.

FPAs will improve wages and conditions for employees, encourage businesses to invest in training, and level the playing field so that employers who are trying hard to offer fair terms don't get undercut

and disadvantaged. As opposed to some international models which utilise a tribunal model in the first instance, we have drawn on the strengths of the collective bargaining process as the primary means to set FPA conditions. Employers and unions who know their own sectors are well placed to problem solve together, and to agree fair, relevant conditions.

These negotiated, sector-specific minimum standards can take into account the costs and opportunities businesses have while ensuring more workers receive higher wages and better employment terms and conditions. FPAs will be a long-term, stable framework with Agreements being for 3-5 years, meaning that employer associations and unions can identify the most critical issues in their sector and then negotiate a staged approach to making improvements across the sector or occupational group. Some employers have told me that this will be an important tool to help solve long-running issues such as labour shortages caused by low pay.

FPAs also signal the end of New Zealand's 30-year failed experiment with a low-cost labour model. Over this period, many workers,





LEFT: Hon Michael Wood, Minister for Workplace Relations and Safety

have suffered through a ‘race to the bottom’, but, equally, our rates of labour productivity have been amongst the worst in the world. There is increasing international interest in re-establishing sector based bargaining as a means of addressing entrenched inequalities. We see this in the current Australian IR reforms, the commitment of the UK Labour Party to an FPA model, and developments in California.

There are other important changes afoot too.

The long, unwieldy Holidays Act has been the cause of many headaches over the years. The current Act has a high degree of ambiguity that has made it difficult to understand and implement for employers, and confusing for employees to understand their entitlements.

The Government established the Holidays Act Taskforce to suggest improvements to the Holidays Act, following a joint request from unions and employers.

The Taskforce included employer, worker and government representatives, and was chaired by Gordon Anderson, a law professor at Victoria University with extensive experience in employment law.

The Taskforce was asked to make recommendations on options for a clear and transparent set of rules for providing entitlements to, and payment for, holidays and leave.

In total, the Taskforce made 22 recommendations, all of which we have accepted.

The recommendations revise the system for determining, calculating and paying employees’ statutory leave entitlements. The recommendations also include some changes to employees’ leave entitlements and introduce greater transparency to ensure employees are fully informed about their leave entitlements.

MBIE is currently progressing with the detailed policy design work to implement the recommendations. We are determined to get this right and stress test the draft legislation from each perspective in the system to ensure that the policy works as intended. MBIE has brought together a range of stakeholders from across government, business and unions to help with the detailed design work. The team includes people with skills in policy, Holidays Act enforcement and compliance, payroll system provision, payroll practice across a range of employment environments,

business analysis, and drafting legislation. I expect to introduce legislation into the house next year.

It is also time to carefully consider questions around the status of work and how we determine the boundary between employment and contracting. Legitimate contracting arrangements have an important role in our labour market, but there is also clear evidence of misclassification to the detriment of vulnerable workers.

Following feedback received from public consultation in 2020, we established a Tripartite Working Group, comprising of representatives from government, BusinessNZ, the New Zealand Council of Trade Unions, and chaired by Doug Martin, to recommend a set of policy changes to improve how regulatory protections apply to working arrangements at the intersection of “employment” and “contracting”.

The Working Group has recommended a set of changes, to help clarify or ‘test’ when a contractor is an employee, which we are currently considering.

Over time the nature of work has evolved and will continue to do so. As change occurs we need a Workplace Relations system that fairly balances different interests, keeps people safe and well, and builds on the strengths of both business and workers to drive a productive economy for the benefit of all. New Zealand’s success in managing the COVID-19 crisis was built on a high level of inclusion, co-operation, and social solidarity. These same principles will serve our Workplace Relations system well as we build a new normal in an uncertain world. ■

RIGHT: Owen O'Sullivan, William Fry
Ireland Managing Partner

‘World View’ – Innovation – What could New Zealand adopt?

It took a global pandemic to show us that we are not that different. Sure, some things set us apart, notably New Zealand's isolation which compounded things like the labour market and supply chain issues. Some may have grappled a little harder, in rural and remote areas with limited bandwidth for the omnipresent online meetings and consults, but our issues were also shared by our counterparts across the globe.

If we consider “necessity to be the mother of invention,” the past two years served as a time that needed rapid adaptation and innovation.

In this article, we look to innovators and innovations in the legal profession overseas and share insights on innovative practices borne out of the global pandemic. Are there learnings for New Zealand or did our ‘Number 8 Wire’ culture that so encapsulates the spirit of Kiwi ingenuity serve the needs of our business and clients in a time of immense uncertainty?

Three themes that resounded the loudest to the challenges that led to adaptation and innovation are:

1. People
2. Processes
3. Technology

These elements came together in a novel way as businesses navigated through and beyond the global pandemic.

Maintaining professional standards while sharing your new work environment with home-schooling teens or other working family members while beaming yourself to colleagues and the world from the privacy of your own home presented a unique challenge.

Information technology (IT) and compliance providers managed security and governance that enabled virtual networks to be used from anywhere by anyone and everyone in the organisation. Fly-in-fly-out meetings were replaced with virtual encounters that connected clients and colleagues worldwide.

So, are our newfound practices here to stay? Did we really see the rise of innovations across the legal sector or did a global pandemic just accelerate innovations already underway and force the profession to take a giant leap forward?

The rise of the virtual lawyer

When it was no longer possible to meet in person with your lawyer

or come by the office to sign documents, technology became the saviour of our daily practice and livelihoods. The year 2020 would mark a point when resistance to change would be futile and commercially fatal.

The challenge of change, how lawyers worked and how client services were managed, was met by leading Irish law firm William Fry with two exceptional innovations launched in September 2021.

Designed to solve ‘people puzzles,’ ‘William Fry Connect’ and ‘PeopleBridge’ have been lauded for their solutions to offer fully flexible working to senior lawyers and to address resource-strapped clients’ specialist skills shortages. At only one-year old, both initiatives were shortlisted for the Financial Times Innovative Lawyer Europe Awards in London on 13 October 2022.

Being ‘first mover,’ William Fry is the only top tier law firm in Ireland and the UK to offer both solutions. Under ‘William Fry Connect,’ partners and senior lawyers who have their own client following, have an opportunity to join William Fry and to practice on fully flexible terms with all the support and resources that come with such a leading firm.



“We have helped keep skilled lawyers in the profession and encouraged those who left to return. We have given back personal autonomy to live and work where suits and, in doing so, hopefully empowered and encouraged skilled lawyers to stay within the profession”

‘PeopleBridge’ on the other hand offers clients a short-medium term solution to meet the shortage of skilled and specialist in-house lawyers. William Fry has built up a panel of lawyers and matches their specialist skills to clients’ specific needs.

William Fry Managing Partner Owen O’Sullivan says both initiatives “have helped to smooth out some of the disruption of Covid-19.

“We have helped keep skilled lawyers in the profession and encouraged those who left to return. We have given back personal autonomy to live and work where suits and, in doing so, hopefully empowered and encouraged skilled lawyers to stay within the profession.”

Having completed more than 20 current ‘PeopleBridge’ lawyer and client care meetings during November, “the feedback from both clients and lawyers has only been positive,” according to Richard

Breen, one of the partners leading the projects along with corporate partner and London office head, Ivor Banim, and Linda Morris, the PeopleBridge Manager.

“Clients are taking comfort that they’re getting the right skilled lawyers for their specific needs and the lawyers appreciate the flexible nature of the mandates. Having assigned ‘partner contacts,’ and the full resources of William Fry behind them, it’s a ‘win-win’ for everyone,” Banim said.

“Since New Zealand is similarly a common law system with both the solicitor and barrister branches to the profession, there is no reason our models would not work there – it just takes the courage of being the first mover,” according to Morris.

The William Fry models extend the scope and specialist capability beyond practitioners simply moving from desk to home and pave the way for a future that connects client and

specialist in a meaningful way. With over 460 staff across three countries and five locations, William Fry has been in business for 175 years and attributes adaptation, innovation and people to its longevity and ongoing success.

Is innovation only about technology?

Canadian legal innovation and legal project management professional, Arthur Wilson (Art), says, “innovation does not need to be linked to technology, though technology is often a part of the equation.”

Art points to three elements as being crucial to Innovation in the legal profession:

1. Legal project management
2. Legal process improvement
3. Technology

Legal Project Management (“LPM”)

Skilled in both ‘Six Sigma’ and ‘Lean’ business process improvement methodologies, Art believes that legal project management is vastly underrated as an innovation tool. “Outside of law, project management across professional services has been *de rigueur* for 50+ years and is critical to improving client service.”

However, law firms offer a unique set of challenges around project management. The adversarial nature of some aspects of business, together with a highly fluid and often unknown set of variables, can lead the best-planned project down one or many paths. Despite this, the following core principles apply:

1. Understand what the work is and ensure your client shares that understanding.
2. Reach a common understanding with your client about the estimated costs of the work.

3. Manage communication both with your client and internally with your team.
4. Manage the team.

The other challenge with embracing legal project management as best practice within legal firms is “quite simply, the human will to do it”, says Art. With efficiency as a “collateral benefit” of project management, this can often be counter-intuitive to the mindset around traditional legal billing models.

Art encourages firms to look at their write-offs and write-downs because better LPM can help bring these numbers down without impacting actual revenue. He also asks any firm that has clients “complaining about their bills” to stop, take stock and reconsider their approach to project management within the legal framework, because “unhappy clients are often a red-flag for poor LPM within the firm”.

Outside of the time-plus-materials billing model, there are obvious incentives to work efficiently. Good project management does not adversely affect the bottom line and has positive add-ons. Some of these benefits include inclusivity among teams, employee well-being, and improved client service.

Plus project management can enhance the bottom line with something as simple as a road map redirecting work to lower-cost regional offices or resources within the office.

Legal process improvement

Art explains how the pandemic forced us to follow innovative paths, most of which were just inherently relevant to follow. One such approach was how to be meaningful to our business, ourselves, colleagues, and clients whilst remote.



This required wholesale and rapid revision of traditional legal processes and administrative protocols. “Look, for example, at our earlier approach to video conferencing. We gathered people from multiple floors of the building and put them in one big room that housed all this specialist technology.” Such formal and often protracted arrangements have now given way to more spontaneous meeting formats where we freely “jump on” a zoom call, often at short notice. Art points to the hunger for virtual interaction when a physical presence was curtailed as helping drive the rapid transition to online meeting platforms and talk technology.

“Anecdotally, I sense that a once email-heavy profession has seen a reduction in traffic due to the familiarity and favour of an online catch-up to resolve issues with one comparatively quick meeting.”

What started as a process shift has now become a workplace norm

“The best benefits are when the targeted application of technology leads to Innovation... Whoever would have thought that 5-10 years ago that paperless merger and acquisition deals could be possible?”

LEFT: Arthur Wilson, LeanSix Legal Founder/President

and goes with a suite of changes to workplace processes and preferences.

Legal process improvement can enable firms to work more efficiently across the board. This delivers better value to clients through effective scoping, pricing, and allocation of work. This could include creating simple new processes like fixed price models for specific pieces of work that can use document assembly technology.

Technology

In considering the role of technology through the pandemic, Art believes that it spurred progress in an area that was happening already.

Whilst technological advancements tailored to the legal profession were well underway, the temptation to take on the newest offering still needs to be well considered.

The first question Art always wants to ask of the business is, “What do we need tech to do?” When looking

at a new piece of technology where you’ll likely use only 50% of its capacity across 20% of your practice, that should at least be a yellow flag for your purchase decision.

The following checkpoints are helpful starting points when it comes to assessing technology:

1. What do we need tech to do? What functionality is needed?
2. Acknowledge the problem we are trying to solve and then look for the solution to that problem. Too often, tech is touted as a “solution,” but do we know what we are trying to solve?
3. Talk with the lawyers and other legal professionals right across the organisation. Get direct input on what their problems are.

The best benefits are when the targeted application of technology leads to Innovation. An example is the smart use of quality templates for lawyers and legal secretaries.

Thomson Reuters’ ‘Contract Express’ is a simple and effective way to cut down on drafting time as well as on proofreading that reduces the editing cycle. Legal transaction management software, ‘Closing Folders,’ is another popular piece of kit. Software like this came to the fore during the pandemic when in-person signing was not possible. “Whoever would have thought 5 - 10 years ago that paperless merger and acquisition deals could be possible?”

Art was in fact initially not a big proponent of Closing Folders. But after completing a current state process review with a client’s M&A department it was clear that using the application could eliminate more than a dozen pain-points in the deal process.

“Anything that can help you pull 18 pink [pain point] stickies off the wall is great news,” says Art.

Which takes us back to Art’s assertion that it’s important to know

RIGHT: Stephen So, Lander & Rogers
Head of Analytics

what your problems are, in some detail, *before* you make the technology purchase decision.

Across the Tasman

Melbourne-based award-winning legal innovators Lander & Rogers are an excellent example of a multi-disciplined approach to legal innovation. With over 600 people, including 85 partners, Lander & Rogers pool global insights and trends while staying true to their Australian values. Their two key technologies; LawTech and iHub.

The LawTech Hub fosters innovation by supporting start-up businesses. A shining example of this is Stephen Foley's 'eBrief-Ready', which has now become the leading briefing solution of the Victorian Bar. Here the challenge was to recreate the briefing experience digitally and then enhance it. Lander & Rogers Head of Analytics Stephen So explains that supporting "bright ideas across the legal tech sector through the LawTech Hub programme enables us to transform not only ourselves but also clients, communities and ultimately the profession at large."

Stephen points to different drivers for innovation. "Take, for example, 'Project Zero,' a paper-reducing innovation driven by environmental goals. Covid came along and lit a fire under this. The result was a rapid acceleration of its rollout to bridge the paper-to-person gap."

The iHub is the innovation team from Lander & Rogers aimed at business transformation through improved legal processes. Founded in 2018, the iHub's benefits were quickly realised when Covid-19 hit.

Likewise, embedded Cloud services enabled the organisation to move swiftly off physical hardware and surfaces, including "people's desks," quips Stephen.

At a time that required high levels of agility and rapid adoption of new technologies and processes, Stephen regards the following three adoptions as making the most significant impact on workflow and practices:

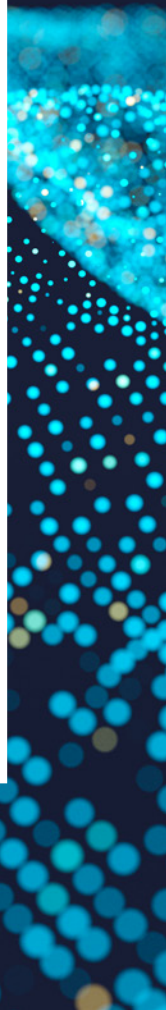
1. Collaboration tools such as Teams and Zoom. To see Zoom used for court events was groundbreaking;
2. Cloud access and infrastructure.

Remote access enabled a smooth transition for organisations with an established, underlying, invisible infrastructure;

3. Transition to mobile-ready platforms. This has also led to rising expectations that may now become a future challenge as we manage the human element of heightened accessibility.

Speaking on the role of technology across the legal profession, Stephen describes it as the "engine that runs beneath." Powering processes and people, technology can transform the client experience while increasing efficiency for the organisation. The





outcome should be adding higher value for the client through better fees, client experience, and value.

Moving toward tomorrow, Stephen says there is scope and opportunity within the legal sector to look and learn from the numbers-driven banking and finance sector. Notably, Stephen sees the enhanced use of data as the next step. “The ability to provide contextual and analytical information across our sector will benefit the profession greatly in terms of efficiencies and identifying trends and insights.” Stephen points to the global pooling of information and the ability to

sync the various strands of data as key to this process.

With innovation being core to the Lander & Rogers identity, the firm is also working toward a future where innovation affects change for the better. Alignment of priorities to environmental goals and the principles of the UN Global Compact are the firm’s focus on its innovation trajectory.

Common challenges with differing approaches

While there is a commonality of challenge, there is equally a difference to approach as the legal

profession resolved a unique set of challenges presented by the past two years. These include making use of existing but under-utilised tools. This pandemic period also served as a catalyst for legal innovators to come to the fore. An admirable constant throughout the most uncertain of times has been sharing information and problem-solving across the global community. Emerging from this are learnings and opportunities for all. For some, this may validate a current path or position. With innovation has also come an increased awareness of support structures that are very much within the grasp of the collective. ■

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Developments in Legal Aid Services over the past two years

BY **TRACEY BAGULEY**

Tracey Baguley is the Legal Services Commissioner at the Ministry of Justice.

It has been over 18 months since I started acting as the Legal Services Commissioner (LSC). Now that my role as LSC has been made permanent, it is timely to reflect on what we have achieved over that time and the changes still to come.

Firstly, I'd like to acknowledge that the past few years have been challenging for everyone due to Covid-19. I am very proud of how Legal Aid Services was able to respond during that time, acting quickly to make changes to current policy and practices to allow providers to continue to work safely and remotely where needed. We also focused on paying invoices and processing applications as quickly as we could to ensure minimal delays to our participants. I want to take this opportunity to share my appreciation of our providers for their continued commitment to providing legal services over that period.

Despite these challenges, there have been significant improvements to the legal aid scheme over the past two years. We worked with you to advocate for improvements and as a result we received increased funding

through Budget 2022, which has seen a further investment of \$148.7 million over the next four years.

This investment included an increase to hourly rates and hearing and waiting time fixed fees for providers, which have already been implemented. The Ministry of Justice (the Ministry) will also implement changes to key policy settings from 1 January 2023, including increasing repayment thresholds, removing the user charge for civil and family cases, and making legal aid debt interest-free. The eligibility thresholds are also being increased over the next three years to further enable access to justice for those who cannot afford a lawyer. I acknowledge that there are concerns about the fixed fee schedules which were not reviewed as part of this budget initiative. However, we will be starting a review of the fixed fee schedules next year. I will be engaging with you once this work gets underway.

In addition, we have also made several operational changes to improve the legal aid service. We reviewed and updated our

Protection of Personal Property Rights Act 1988 policy, enabling access to legal aid for simple applications made under this Act. We introduced a limited civil approval for lawyers with refugee experience to enable them to act in Warrant of Committal proceedings. We have also increased the number of hours that are initially granted to prepare for these hearings to reduce the administrative burden on lawyers at the early stages of the case. My hope is that we will increase the number of experienced legal aid lawyers available to represent refugees and protected persons in these hearings. We will continue to work with the Ministry of Business, Innovation and Employment to improve the availability of counsel for these proceedings following this year's release of an independent review by Victoria Casey KC into the detention of people seeking asylum.

We have worked to streamline the provider complaint management process to uphold public confidence in the service and we have also made improvements to our provider approval process and audit



framework. I am heartened by the feedback I have received to date, but I acknowledge that we're not there yet and there is more work to do in this area. We will be making further improvements over the next year.

Earlier in the year I was involved in Whakatika ki Runga (Kaupapa Inquiry), the Waitangi Tribunal inquiry into funding for claimants. As a follow-up from this inquiry, I will be engaging with Waitangi providers in the new year to better understand what improvements could be made to ensure Waitangi Tribunal claimants have timely access to legal aid.

Looking forward to the year ahead, there are a couple of key focus areas for me. For example assessing the current and projected future state of legal aid provider coverage across Aotearoa New Zealand. We will work closely with you to identify how we can improve the coverage of representation, to ensure we have a sustainable and effective legal aid scheme now and into the future.

We will also continue work to refresh and update existing aspects

“How we manage and communicate with clients may sometimes look different to clients’ experiences with bigger firms, but this is also part of the charm that comes with working in a community and for ourselves”

of our service. We have begun work to improve the administration of the Duty Lawyer Service. Earlier this month we worked with the Public Defence Service to move the rostering of all duty lawyers and the Police Detention Legal Assistance scheme to a single team within the Ministry. Making this change will provide us with more visibility and identify areas where changes are required to ensure this service is fit for purpose. This will include a review of the entire Duty Lawyer Service.

We have a big year ahead of us and I look forward to working with you to continue to make improvements to ensure continued access to justice for the people of Aotearoa. ■

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Continuing to adapt and innovate

BY **ANDREW KING**

Andrew King is the founder of Legal Innovate (legalinnovate.nz). He helps lawyers and organisations innovate through leveraging technology to help improve the way they deliver legal services. Legal Innovate includes LawFest (lawfest.nz), LegalTech Hub (legaltech.nz) and E-Discovery Consulting (e-discovery.co.nz).

The legal profession has come a long way as we have moved from asking why we need to innovate and leverage technology to asking how we go about it. However, we are still only starting to take advantage of the opportunities that many other industries have embraced for many years.

Most law firms are facing greater pressures from their clients to reduce costs, whilst delivering faster and better legal services.

There is greater competition from firms that are leveraging technology to provide a more cost-effective offering to their clients - including new sources of competition, with

professional services firms, technology companies and alternative legal providers moving into the legal market.

The competition may no longer be what it has traditionally been!

Changes were already happening before COVID-19 - the experience has just brought more along for the ride. The necessity of the pandemic demonstrated that the legal profession could adapt and work differently if they have to. Barriers to change quickly disappeared as many were forced to make changes to traditional practices in weeks that may have previously taken years to implement.

“Those that are open to innovation and embracing technology will be the ones that lead the way. The ones that choose not to, could be left behind”

Adapting legal services to be more accessible, convenient and valuable for clients is crucial. This may include taking advantage of collaborative platforms to work together to solve client problems.

Continuing to adapt and innovate

As we embrace a new normal, the way the legal profession is working will continue to evolve, and with it so will the need to continually look at new ways of working and innovating how legal services are delivered.

We are not there yet!

In this age of disruption, you simply cannot stand still, as everything moves so quickly – your requirements change, your clients’ requirements change, whilst your technology and processes can quickly become obsolete. It is important to keep abreast of what is available, what others are doing and what is around the corner – to find the right path to suit you!

We should continue to ask – how can we do this better? All to deliver legal services that are more efficient, profitable, whilst providing greater value and outcomes for clients.

Those that are open to innovation and embracing technology will be the ones that lead the way. The ones that choose not to, could be left behind by an increasingly competitive market. ■

As we move forward to help the legal profession innovate through the 21st century, the following innovations will continue to be essential.

Prioritising People, Process and then Technology

Innovation starts with people, process and then comes the technology. Too often we can get caught up in innovation being just about embracing technology, believing it will solve the problem. Technology is simply an enabler – not a solution in itself.

Before considering any new technology be clear about what you need to achieve to meet your business goals – and if technology can enable you to do this.

More important is building the right culture inside organisations to enable innovation, facilitating a culture that is adaptable, curious and open to change.

Moving from internal focussed innovation to client centric innovation

For a long time when we talk about legal innovation, the primary focus has been on internal efficiencies.

There have been some great internal improvements as many repetitive and time-consuming administrative tasks can now be performed more efficiently through technology. This frees up lawyers to spend more time working with their clients to create better outcomes.

As we move forward, there will be further tasks that can be improved. These internal efficiencies are great, but we can go further and put client needs at the centre of innovation.

This means continually thinking how things are done from the client perspective. Clients are changing, so too are their needs and expectations – it is important the legal profession continually adapt legal services to meet these changes.

Law Reform and Advocacy – the year in review

The Law Society plays an important role in law reform and has a reputation for high-quality and impartial contributions to law reform, access to justice, and the rule of law. This is done on behalf of the legal profession and in the public interest – it is a core regulatory function under the Lawyers and Conveyancers Act 2006.

This work is made possible by the contributions of over 160 volunteers, who sit on 18 law reform committees covering the full spectrum of practice areas.

This year has seen our volunteers and in-house team submit on 28 Bills and 50 discussion documents. We have continued to advocate on issues relating to access to justice, including legal aid; barriers to accessing civil justice; and the effects of Covid-19 on the courts and clients in custody.

We also established the Climate Change Law Subcommittee, in response to this fast-growing area of practise and the increasing number of legislative and policy initiatives. Interest in joining was considerable: our inaugural convenor is Natasha Garvan, a partner at Bell Gully, and the subcommittee is made up of experienced practitioners with an interest and background in climate

change law. Their work will begin in earnest in 2023 – we are expecting work to progress on the Climate Adaptation Act, as part of the continuing reform of New Zealand’s resource management regime.

Notable law reform this year

The law reform committees contributed to a number of significant legislative and policy reform proposals this year:

- *Three Strikes Legislation Repeal Bill*: The Law Society opposed introduction of the ‘Three Strikes’ regime and had long advocated for its repeal, on the basis that it fettered judicial discretion, precluded fair and proportionate sentencing, and risked breaching the New Zealand Bill of Rights Act 1990. The Law Society submitted in support of this Bill and recommended transitional arrangements for those already sentenced under the regime. In August 2022, the regime was repealed.
- *Russia Sanctions Bill*: Following Russia’s invasion of Ukraine in February 2022, this Bill was introduced and passed under urgency to enable sanctions to be placed on designated persons. The Public and Administrative Law Reform

Committee responded at short notice to review and comment on a draft copy of the Bill.

- *Fair Pay Agreements Bill*: This bill seeks to introduce a framework for collective bargaining for fair pay agreements across entire industries or occupations. While commending the intention of the Bill, the Law Society has noted that this significant development in employment law will introduce a number of complex and onerous processes.
- Led by the Family Law Section, the Law Society submitted on two major bills relating to Oranga Tamariki’s primary legislation (including partial repeal of the subsequent child provisions) and its oversight regime: the *Oranga Tamariki Amendment Bill* and *Oranga Tamariki System and Children and Young People’s Commission Bill*.
- *Review of Standing Orders*: This review, undertaken by the Standing Orders Committee, occurs each term of Parliament. The Law Society has contributed to the review, recommending a series of processes and ‘trigger points’ for a system of post-legislative scrutiny of legislation, particularly where bills have been passed under urgency.

“An initial increase in hourly rates (including the hearing time component of fixed fees) has been achieved, and the Law Society will continue to advocate for increased investment in the legal aid regime”

- *Modern slavery and worker exploitation:* In June, the Ministry of Business, Innovation and Employment (MBIE) consulted on a potential legislative response to modern slavery and worker exploitation. This substantial submission – which supported the introduction of a legislative regime – necessitated the input of the Employment Law, Human Rights and Privacy Law, and Immigration and Refugee Law Committees.
- *A NZ Income Insurance Scheme:* In April, MBIE consulted on a proposed Income Insurance Scheme, a major policy initiative that would operate to support workers with 80 per cent of their income, where they lose employment through redundancy. This submission was a team effort, involving the Accident Compensation, Employment Law, Public and Administrative Law, and Tax Law Committees.
- *Accident Compensation Law:* Our Accident Compensation Committee made a submission on the *Accident Compensation (Maternal Birth Injury and Other Matters) Amendment Bill*, and provided feedback on proposed changes to the *Accident*

Compensation (Review Costs and Appeals) Regulations 2002, the Accident Insurance (Occupational Hearing Assessment Procedures) Regulations 1999 and the ACA Practice Guidelines. Committee members also worked with NZLS CLE to present the ACC – the essentials webinar for lawyers representing ACC claimants.

Access to justice

Improving access to justice is central to the Law Society’s law reform work and is a key focus in our advocacy efforts. In 2022, both civil and criminal justice were the focus of proposals for improvement:

- *Legal aid:* Following on from the 2021 Access to Justice Survey, the Law Society continued to advocate for Budget 2022 to include increases to remuneration for legal aid work. An initial increase in hourly rates (including the hearing time component of fixed fees) has been achieved, and the Law Society will continue to advocate for increased investment in the legal aid regime.
- *Costs for litigants-in-person:* We made a submission on the Rules Committee’s second *Costs for Self-Represented Litigants* consultation paper, with input from

the Law Society’s Professional Standards Group, the Civil Litigation & Tribunals Committee, Employment Law Committee, and the In-house Lawyers Association. Our submission included feedback on proposed daily recovery rates and the relevance of the indemnity principle to determining costs.

- *Law Commission’s review of class actions:* In March, the Law Society provided further feedback on the Law Commission’s project on Class Actions and Litigation Funding. The Commission has now published its final report, which recommends developing a new Class Actions Act to improve access to justice and efficiency in litigation. We now expect the Government to consider the report and respond to the Commission’s recommendations.
- *Wayfinding for civil justice* draft national strategy: In June, we provided initial feedback on a draft national strategy which seeks to “provide a framework to guide the journey towards improved access to justice”. We recently provided further feedback on a revised version of the draft strategy, which reflected the feedback we had provided earlier in the year.

“The Law Society’s advocacy in 2022 continued to have a strong focus on the implications of Covid-19 on court proceedings, access to clients in custody, and practitioner wellbeing”

- *Digital Strategy for Courts and Tribunals*: Covid-19 has accelerated learnings around the use of technology in court proceedings. In September, the judiciary consulted on a draft Digital Strategy for Courts and Tribunals, which sets out objectives and guiding principles for the use of digital technology in supporting the administration of justice. The Law Society submitted on this draft strategy and will remain involved as work to modernise court practice continues.

Advocacy

The Law Society’s advocacy in 2022 continued to have a strong focus on the implications of Covid-19 on court proceedings, access to clients in custody, and practitioner wellbeing. This involved regularly raising issues with the judiciary and Heads of Bench, working on the courts’ Covid-19 protocols to ensure safety and workability, and engaging with the Department of Corrections to improve contact with clients in custody. The Criminal Law Committee, Legal Services Committee, and Youth Justice Committee, alongside the Family Law Section and Property Law Section, have frequently worked within tight timeframes to ensure proceedings can, as far as possible, continue safely and with minimal delay.

As noted above, the Law Society

continues to advocate strongly for evidence-based improvements to the legal aid system, including remuneration. This work will progress in 2023, as we look to ensure continued investment and improvements to administrative requirements.

The law reform committees continue to provide advice and feedback on various initiatives arising from the Criminal Practice Improvement Programme, a judicially led cross-agency programme of work aimed at devising, testing, and implementing best practice court processes.

Interventions

Occasionally the Law Society intervenes as a public interest intervenor in cases raising significant public interest issues, or issues that may impact widely on the profession. Most often, the Law Society will intervene when the Court itself asks it to do so, because the Court has identified issues of considerable public importance it wishes to address. The Law Reform Committees are involved in providing advice on whether the Law Society should seek to intervene in a case and – if leave is sought to intervene and granted – they may also contribute to the Law Society’s submissions.

In 2022, the Law Society intervened in three cases:

- *Hanara v the Queen*: This appeal, currently awaiting judgment, centres on when a defendant in a criminal trial should be found unfit to stand trial under the Criminal Procedure (Mentally Impaired Persons) Act 2003. The Law Society’s submissions supported the court undertaking a wider inquiry when considering a defendant’s fitness, including the existence of any cultural, age-related, or other factors that may impact the defendant’s ability to effectively participate in the proceedings.
- *Health New Zealand / Maaka-Wanahi v Attorney General*: These ongoing proceedings were initiated by the former Waikato District Health Board, which seeks various declarations to the effect that it is not required to comply with Court orders directing a ‘health assessor’ to prepare a report under s 38 of the Criminal Procedure (Mentally Impaired Persons) Act 2003.
- *Newton v Family Court at Auckland* [2022] NZSC 112: This intervention, led by the Family Law Section, involved issues as to the reviewability of reports from Lawyer for Child, and whether a Judge is required to obtain the views of children before ordering reports pursuant to section 133 of the Care of Children Act. ■

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New Landonline

Dealings application goes live in November

BY **ANDREA WATSON**

Andrea Watson is the Consulting Solicitor in the Modernising Landonline programme at Toitū Te Whenua Land Information New Zealand.



Toitū Te Whenua Land Information New Zealand (LINZ) is modernising Landonline, New Zealand’s property rights platform, to ensure it remains world-class and that information about land in Aotearoa continues to be trusted and becomes more accessible.

LINZ’s Consulting Solicitor, Andrea Watson, says the products delivered to date have added significant value to customers.

People and businesses who transact with land and property rights, and who secure funding through loans against property, rely on services Toitū Te Whenua provides through Landonline to:

- know the physical extent of their property
- register interests in land
- transfer property
- adjust property boundaries
- have confidence in the Crown guarantee of issued title.

Andrea explains that New Zealand is one of the easiest places in the world to register property thanks to

Landonline, our technology platform, which was introduced in 2000.

“Despite being more than 20 years old, Legacy Landonline is still recognised globally as a world-class property system and is a critical enabler of our economy.

“We’re future-proofing the technology and strengthening security to ensure we can continue to meet customers’ expectations.

“Starting in April 2019, this multi-year Modernising Landonline programme involves designing and building with our customers – they’re truly at the heart of this mahi.

“We’re also modernising how we work by building New Landonline in-house. We’re growing our capability to ensure New Landonline products continue to be enhanced and updated to meet the needs of our customers,” says Andrea.

New products

New products we’ve delivered have a wide customer reach, including legal practitioners, surveyors, real estate agents, councils, banks, and the public.

“Despite being more than 20 years old, Legacy Landonline is still recognised globally as a world-class property system and is a critical enabler of our economy”

Public Land Record Search

Our public Land Record Search (LRS) enables members of the public – in New Zealand and most overseas countries – to search for and buy property records such as titles, survey plans or registered instruments direct from Toitū Te Whenua, without using a third party. Orders cost \$6 each and are delivered almost instantly via email.

More than 125,000 property records were ordered through this service in the last financial year.

Notice of Change of Ownership

Our automated Notice of Change of Ownership (NoC) service is an example of how great outcomes for our customers can be achieved through collaboration between local and central government.

Notice of Change facilitates the legal process that’s required to update a relevant council’s rating database when property changes ownership.

“We’ve now largely automated that process through Landonline so councils are notified overnight following any land title registration.

As at October 2022, 50 of the 67 councils (or territorial authorities, TAs) in New Zealand have gone live with this service and both councils and legal practitioners are experiencing the benefits. These include improved data accuracy, less manual re-work and significant time savings (estimated by users as up to 10 minutes per transaction).

With an estimated 200,000 ownership changes taking place every year in New Zealand, the time savings – for legal practitioners and councils – are substantial.

“Ongoing transparent and trusted relationships are critical to how we partner with TAs to work through the complexities of the data sharing agreements required to enable this service. These are often compounded by ensuring the data for each TA is formatted in a way that complements our system,” says Andrea.

Data sharing agreements also enable government to have access to TA data, which is useful for decision making.

Web Search

“Our Web Search functionality makes it easy for registered Landonline ‘search only’ customers to search and order land records from any device without needing to purchase a Digital Certificate (a two-factor authentication security product otherwise required for registered Landonline customers).

“This year, customers ordered more than 1.1 million products using Web Search.”

We’re adding new functionality and enhancements to Web Search and LRS, along with more search tools in the future.

New Landonline – Dealings application launching in November

The first phase of the New Landonline – Dealings application will be available to registered Landonline users from November 2022.

This means registered Landonline users will be able to complete almost all sale and purchase and re-financing transactions in the new web-based application.

“We started piloting the new application in July 2021 and we now have more than 400 participants.

“When we go-live in November, we’ll have all the key features needed to process most transactions involving simple Discharge of Mortgage, Transfer and Mortgage instruments. Remaining functionality and enhancements will continue to be added over time.

“We’re using an Agile approach for our design, build and release phases. What that means is we incrementally release functionality, enabling legal practitioners to use it earlier and provide feedback, which informs the balance of our build.

“Until we’ve built all existing functionality in the new application, and are in a position to switch off Legacy Landonline, customers will be able to work interchangeably in either Landonline system (Legacy or New), as both systems will be fully compatible and integrated,” says Andrea.

Contact us

We’re keen to hear from anyone who wants to find out more. Please email us at modernisinglandonline@linz.govt.nz. ■

RIGHT: Olivia Fitzgerald and Madeleine Henderson

FAR RIGHT: Archie the dog

Practising in the regions

A view from the scenic south



“How we manage and communicate with clients may sometimes look different to clients’ experiences with bigger firms, but this is also part of the charm that comes with working in a community and for ourselves”

When Olivia Fitzgerald and Madeleine Henderson decided to set up a new practice amid a global pandemic, their peers reacted cautiously. Fast forward 18 months, and not only have they shown it can be done successfully but in a way that rewards and enriches their own lives and those around them.

The Coleridge Law story is a new one with firm foundations in family and community. For these two rural Cantabrians, the establishment of their Methven practice is the culmination of a long-held belief that there was a growing market for a law practice based permanently in the town.

Madeleine is quick to point out that since taking a “leap of faith,” their former colleagues and cohorts have

been exceptionally generous in their support of Coleridge Law.

Being “it” has both advantages and drawbacks, says Madeleine. “Clients enjoy having a direct line to the person doing the work and that one-on-one relationship.” It does mean that tasks such as research and documentation also need to be fulfilled by that same person. The duo considers this a small price to pay for the flexibility and enviable work-life balance they have managed to achieve in their business. “How we manage and communicate with clients may sometimes look different to clients’ experiences with bigger firms, but this is also part of the charm that comes with working in a community and for ourselves,” says Olivia.

While Madeleine is the “early morning person” and Olivia the



“night owl,” the Coleridge Law service manages to span a substantive workday. True to the spirit of the special place that is the backdrop to their work, Madeleine quickly points out that the workday might look a little different on a “bluebird day.” On these days, their clients may also be found carving an early morning run on the slopes of Mount Hutt. Balancing work with lifestyle and family is the *raison d’être* of Coleridge Law, who are not bound by the traditional 9 - 5 workday.

At Coleridge Law, the office takes the “new normal” hybrid model to new heights. With dedicated workspaces for both partners at their respective homes, Coleridge Law conducts meetings during “office hours” at a hired space in town, including one hour a week where locals have a place and time for document signing

and “to pop in” in lieu of a reception. Coleridge Law conducts business when and where it suits the clients outside of these venues. While there is much talk about how a global pandemic has shaped the workplace and habits, starting a business during a global pandemic meant that what is the “new normal” for others is the “only normal” Coleridge Law has operated in.

Keen adopters of time-saving technologies, Madeleine and Olivia have also found plenty of scope to be squeezed from existing and formerly under-utilised platforms. These include social and conversational channels such as WhatsApp. Likewise, online meetings became the norm that launched Coleridge Law. Efficiencies are stepped up using Cloud-based technologies, with the phone being the most

“overused” piece of equipment in the business.

Olivia says starting when they did meant no major adaptation was required. “We simply started in that environment and have continued with what works best for us and our clients.”

Since starting Coleridge Law, Madeleine and Olivia continue to be surprised at both the volume and range of work in the local area. There was a sense of intrigue about the number of international transactions that came their way due to Methven being a tourist hotspot, and local agents continue to be an excellent source of property referrals. Olivia comments that for some colleagues in the profession, there may be a perception that work in the regions can be limiting, both in scope and



value. “This is not the case. We enjoy a great range of work and have been pleasantly surprised at the value of this work.” While there is a more “general practice” element to Coleridge Law, both Olivia and Madeleine have found that there is demand for their specialty skills within the region. “We still get to do really good deals.”

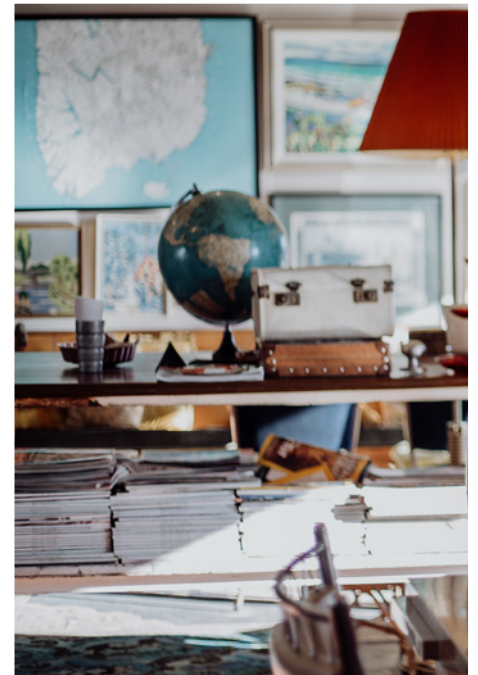
Some of the work undertaken is distinctly rural such as succession work for family farms. Madeleine believes that the way legal services have been delivered in the rural sector can be made to work better for both lawyers and clients. Pointing to how rural banking and insurance companies conduct their business, Madeleine has paved the way in her community to deliver legal services quite literally to the farm gate.

Describing Coleridge Law as a “modern practice with classical

values,” Madeleine speaks warmly of the “collegiality” that comes with being the “local lawyers.” Community is at the heart of Coleridge Law, so it is no surprise that giving back to the community by supporting local schools, groups and events is central to the Coleridge Law ethos.

Olivia says that while their work practices are modern, marketing in a local and largely rural community is very much about networking, and that takes on an organic approach. A monthly ad placement in the local newspaper prompts a spike of enquiries, but it is mainly about human and day-to-day connections.

Madeleine and Olivia are strong advocates for colleagues in the profession looking to make a move to the regions. Madeleine points to regional professional development and regulatory programmes, such as



‘Stepping Up’, being held online in a webinar format as hugely helpful to getting Coleridge Law up and running.

“It has been a very satisfying career move,” says Olivia, who believes the Coleridge Law model that they have established is most likely the only way that she can combine rural living, family commitments and continuing to work in a profession for which there is an evident passion. ■

Is your trust accounting system fit for purpose in 2022?

“In recent decades practice management systems have become steadily more cost-efficient whilst providing increasing functionality and usually becoming easier to use”

The term ‘trust accounting software’ is very much an anachronism now. For some time, software providers have been designing their offerings as practice management systems – including wider functionality such as time recording, debtor management, GST accrual and file management.

Part of the pitch of these systems is that they enable authors and staff to optimise their productivity and enable them to complete their complex tasks with less likelihood of missing anything. If these systems were the equivalent of motor vehicles, they would be safer, smoother, more reliable and more fuel-efficient than the old clunkers we drove around in 20 or 30 years ago. Does anyone have any fond memories of Hillman Hunters, or Morris Marinas?

In the same manner that cars have become improved and made cheaper, in recent decades practice management systems have become steadily more cost-efficient whilst providing increasing functionality and usually becoming easier to use. Fewer key strokes are required and operation is more intuitive.

Prior to COVID-19, the Law Society Inspectorate (the Inspectorate) had introduced a ‘desktop’ review

that enabled our supervision of trust accounts without the need for on-site visits. This desktop approach has been used to good effect as a means of accommodating lockdowns and related COVID-19 disruptions and yet still securing some assurance of the handling of client monies by the profession.

Many practitioners will have experienced the ‘desktop’ approach and a number have given us positive feedback that the review was relatively easy to accommodate; bearing in mind the profession has been exceedingly busy across the board in the last two years.

Many lawyers have learned the hard won lessons of the Christchurch bar of working from home, the value of having good backups and enjoying remote access – often largely thanks to their investment in capable software.

Not all firms operate software that meets the needs of remote inspection. In the past there was a generous degree of tolerance and latitude for firms that operated older systems or manual arrangements especially if that system was not overburdened. As Trust Account Guideline 1.3 states:

“Most practices operate computerised trust accounting systems. A manual system is appropriate only for a low volume user”.

One indicator an inspector looks for to demark a high from a low volume user is whether the firm holds an e-dealing licence. Property law, as a general rule, is transactional.

In the past the Inspectorate has been able to work with firms that operate more rudimentary systems and tease out the numbers, in some instances even adding things up manually.

The major part of the Inspectorate’s activities are met by the practising certificate fees paid by all solicitors who operate trust accounts. It is fair to say that whilst all these lawyers contribute, some lawyers have enjoyed or consumed more than their share of the Inspectorate’s attention. The Inspectorate has always had the ability to recover costs from practices, but this has rarely been invoked in the past. Where cost recovery might be sought (usually due to poor record keeping) there is often also a referral to the Complaints Service and a fine is often imposed by a Standards Committee so there is potential for double jeopardy.

It has been recognised by the Inspectorate that the light-handed and accommodating approach of the past which extended to firms that operate inappropriate systems cannot continue. Part of this recognition is the value and relative scarcity of Inspector resource, part is the need to continue to do at least some of our work remotely and we are also cognisant that the cost of modern software has relatively speaking, reduced considerably.

There is statutory authority for this revision of policy: Regulation 11:

Trust account records

(1) It is the duty of every practice required by section 112(1) of the Act to keep records in respect of trust accounts to do so in such a manner as to enable them to be conveniently and properly reviewed by the inspectorate.

(2) Trust account records must be up to date, clearly show the amount of the trust money held for each client, and as far as practicable be secure against retrospective alteration or deletion.

Older (usually) and more rudimentary systems fail one or both legs of this regulation i.e i) capable of convenient and proper review by the Inspectorate and ii) as far as practicable be secure against retrospective alteration or deletion.

The purpose of this article is to declare to those practices operating aged and/or unduly rudimentary systems that the Inspectorate is likely to impose cost recovery and/or refer Reg 11 non-compliance in future. A related objective is to prompt such firms to investigate transitioning to more ‘fit for purpose’ accounting systems sooner rather than later.

Examples of what the Inspectorate expects are:

- End of month reconciliation collations that evidence all the salients (ref LTAG 9.3)*
- Evidence of authority and payee bank details for payments made readily retrievable
- Evidence of authority for inter-entity journals again readily retrievable

- Evidence of authority for fees deducted – readily retrievable
- Evidence of client care being sent to clients – readily retrievable
- Evidence of reporting on balances over 12 months old – readily retrievable
- Transaction reports capable of being exported to .xls or .csv format.

The Inspectorate is not funded or resourced to wade through disorganised hard copy files in some firms, when most firms can readily retrieve what is sought usually electronically.

LTAG 9.3 amplifies the regulation’s references to ‘reconciliations’ and inexhaustively include:

- bank reconciliation
- control account summary (aka cashbook)





“Firms that have not had feedback or attention from the Inspectorate in recent years are urged to consider their systems... lawyers may well be unaware of the various features to be enjoyed with modern systems and the false economies they may have been labouring under without such tools”

- list of client balances (trial balance).

And if relevant, for the IBD account:

- bank reconciliation / Control account summary
- copy of month-end firm’s software listing
- copy of month-end bank detailed listing.
- a stale balance report – credits only older than 6 months
- a journal transaction report (if you have staff administering the trust account)
- a printout of the firm’s interest in trust ledger (if applicable).

This policy is unlikely to affect the majority of practices who operate contemporary software and have had no difficulty furnishing the reports and retrieving evidence

required by the Inspectorate in the recent past. Firms that have not had feedback or attention from the Inspectorate in recent years are urged to consider their systems. As well as questioning whether they will meet the requirement of convenient and proper review by the Inspectorate, lawyers may well be unaware of the various features to be enjoyed with modern systems and the false economies they may have been labouring under without such tools. Lawyers are encouraged to discuss modern software with their colleagues, and many may be pleasantly surprised at how much easier practice can be when availing themselves of these aids.

The Inspectorate intends to apply this policy with greater force as this year progresses i.e. allowing firms a window to review whether their software is ‘fit for purpose’. ■

In pursuit of plain English

BY **KRISTY MCDONALD KC**

Kristy McDonald is a King's Counsel based in Wellington with an extensive government and public law practice.

We now have new legislation – The Plain Language Act 2022 – to police how government agencies communicate.

Great. I've been waiting on this for some time in the hope it may rid us of Wellington's penchant for jargon-filled, meaningless sentences, and often impenetrable documents that say nothing.

That is often the point, of course. Bureaucrats have made an art form out of intentionally not communicating clearly, while at the same time creating the impression something is being done.

As someone who spends much of my working life wading through impenetrable jargon, my expectations for this legislation were high. Sadly, I was disappointed.

The legislation is supposed to improve the effectiveness and accountability of the public service. It requires communications to be clear, concise, well-organised, and appropriate for the intended audience.

It is said that the Act will make for a more inclusive democracy, particularly for people who speak English as a second language, people with disabilities, and those with lower levels of education. Few will argue with the intention, although it is sad that we need an Act of Parliament to make the public service communicate clearly.

But how will the new law work?

The Act requires government agencies to appoint "plain language officers" to ensure there is compliance with the legislation and deal with complaints or requests from the public. Agencies have to provide regular reports to the Public Service Commissioner to tell them how well they've done.

Some would argue that these measures introduce an unnecessary layer of bureaucracy and do nothing but increase cost and create inefficiency. It might have been easier if agencies simply instructed staff to write simply and clearly and to not use the word "journey" unless they were going on holiday.

Moreover, it is hard to understand what this additional layer of bureaucracy will be able to achieve because the Act does not include any enforcement mechanisms. The public will not be able to seek any remedy if they find documents difficult to understand.

The need to communicate in plain language has never been more important. People don't trust spin or gobbledygook. In a time of increasing mis- and disinformation, where it is often difficult to discern what is true and what is false, clear, honest, intelligible communication is what any Government and public service should aspire to.

But where does all this sit with "new speak"? Will the Ministry of Education refer to "cognitive injustice" or to attempts to "decolonise the physics curriculum"?

Given that New Zealand's Act is closely modeled on America's 2010 Plain Writing Act, it is useful to consider the law's impact there. After it was passed, plain language advocates in the US were initially unimpressed by its impact.

However, the Center for Plain Language, a non-governmental organisation that reports on writing quality in government agency documents, noted significant improvements between 2013 and 2021.

Let's hope the New Zealand experience is the same. It would be good to see government bureaucrats communicating in clear, direct language that we can all understand. ■

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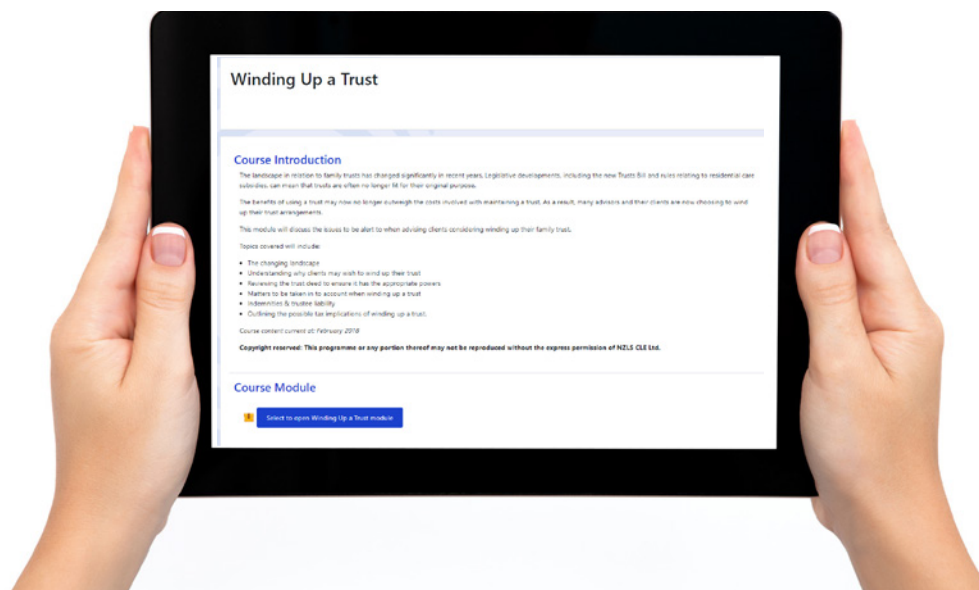
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