LawTalk

KŌRERO MŌ TE TURE

The year ahead

AUTUMN 2024

Looking forward to the road ahead

New Zealand Law Society
Te Kāhui Ture o Aotearoa

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LawTalk is published quarterly by the New Zealand Law Society Te Kāhui Ture o Aotearoa for the legal profession. It has been published since 1974 and is available to every New Zealand-based lawyer who holds a current practising certificate.

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ADVERTISING

For advertising placement:

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PRINTING AND DISTRIBUTION

Blue Star, Petone, Wellington
ISSN 0114–989X (Print) · ISSN 2382–0330 (Digital)

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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*

A strong voice for the profession

BY **FRAZER BARTON**

It's been a busy start to the year for all concerned at the Law Society. In this issue of *LawTalk* we examine and focus on the very real issue of mental wellbeing and how we can better support and look after our people.

There are more and more demands on lawyers and there are many clients under a lot of pressure dealing with the array of social issues out there.

It takes longer to get things through the courts and to get the sort of outcomes that clients want. For example, those working in estates have had a particularly frustrating time of it with significantly longer wait times to get probate which means that estates can't be administered, leaving angry clients and exasperated lawyers.

Pressure and delays in our justice system are not just limited to court proceedings. I have written to the Minister of Justice on behalf of the profession seeking the prioritisation of work to address current probate processing delays. Practitioners have stressed the need to increase the threshold at which a grant of probate is required, which has remained at $15,000 for more than a decade.

While the Ministry of Justice has taken steps to improve processing times and clear the backlog, these delays are creating serious difficulties for bereaved families and their lawyers. We have asked that priority is given to this issue.

We know all of these pressures impact on the health and wellbeing of our profession. As you will read in this edition, lawyer wellbeing needs collective effort to be effective according to clinical psychologist, Dr Sarah Anticich. She points out that wellbeing is a team sport, and I couldn't agree more. Meanwhile Emma Clarke, a PhD candidate who also features in our coverage of mental wellbeing says the most important thing is that lawyers feel safe to speak up and that we need to consider the impact of psychological safety on lawyer wellbeing. Healthy and well lawyers mean a healthy, strong and resilient profession.

As the new year commences, we continue with our regular stakeholder meetings with the judiciary, ministers, and officials.

In all our dealings, we will continue to advocate for the profession and be a strong voice promoting and protecting a just and accessible legal system. The Law Society has built a compelling reputation for quality, effective and objective law reform and advocacy. Our voice is highly respected, which enables us to be a strong advocate and to build long-term collegial working relationships with decision makers.

The role of the Law Society is also to work tirelessly in the background on many issues affecting our local lawyers. We work through our branches and nationally on a range of important issues from improving courthouses and health and safety in the courts through to providing support on urgent matters and emergencies. Never more so was this in evidence than a year ago when destructive floods and Cyclone Gabrielle devastated swathes of Auckland, Northland, Tairāwhiti and Hawke's Bay.

As the nation reflected on the anniversary of the cyclone last month, I was reminded of the extensive work in terms of making sure the courts were still able to operate and deliver and that involved working closely

with officials, the judiciary and the profession. We did what we could for the well-being of all practitioners affected, we kept access to library services going and ensured communication and support and access to counselling. We are grateful to all our local lawyers and representatives on the ground who kept the communication flowing and the many who went the extra mile to support colleagues, particularly when power and access to phones were limited. The profession showed once again what we can achieve together to help keep justice and legal services flowing through pandemics, earthquakes and floods.

As well as responding to the initial shock of the extreme weather events, the Law Society's Property Law Section (PLS) has continued to support lawyers working through a series of complicated property cases, some where home buyers were about to settle on properties that after the cyclone no longer existed.

There is an interesting story in this edition of *LawTalk* where we hear from Kristine King, Deputy Chair of the PLS, with a strong buyer beware message and consumer tips on how to be financially safe when contemplating buying property in any of the flood damaged areas.

This year is already shaping up to be a big one for the Law Society. As well as business as usual, work will continue on how best we can operate within our current legal framework and on strengthening our ability to be an effective regulator. It's important for us all to remember that those regulatory efforts are for the benefit of both the profession and consumers of legal services.

There is widespread and strong support in the profession also for impactful representative services for the legal community. The feedback that I receive is that lawyers want this to continue. If we are to do that successfully then the membership subscription is a critical element.

"So far, it's been a great chance to catch up with old faces and meet new ones and really connect and explain our value and worth as a membership organisation"

One of the great things about transformation within our organisation is it gives us an opportunity to take a fresh look at how and what we deliver and the extra services that we can offer to lawyers.

As this magazine goes to print, I'm going to a series of regional hui with our Chief Executive Katie Rusbatch across the motu. So far, it's been a great chance to catch up with old faces and meet new ones and really connect and explain our value and worth as a membership organisation.

Katie and I want to hear about the issues our lawyers are grappling with. Sometimes practitioners feel they are slogging away on their own, and no one else has the same experience and maybe no one understands them. Problems, for the most part, are universal and the strong collegiality aspect of being part of the Law Society is really valued.

It's also rewarding to connect and have enjoyable if sometimes robust conversations! We don't pretend to have all the answers, that's for sure. But that's what these events are about; we're not just coming to deliver speeches, debate is vital, we are all in this together after all, it's a team game. ■

Pre-register for 2024-25 membership

As the New Zealand Law Society Te Kāhui Ture o Aotearoa introduces a paid membership subscription, Chief Executive Katie Rusbatch says the refreshed offer means lawyers will get the same great service with even more value.

Ms Rusbatch is calling on members of the profession to pre-register now to take up the new offer which includes member-only benefits, with more detail on these coming in the next few months.

"The Law Society is a strong voice and trusted advocate for access to justice and rule of law across the motu."

And, in the last year alone, over 10,000 members of the profession participated in events run by the Law Society's 13 branches.

Ms Rusbatch says the Law Society delivers real value to the profession throughout the country.

More than 16,000 lawyers are currently members of the Law Society and receive membership services at no cost (unless they are a member of the Family or Property Law Sections).

"We've already received positive feedback from lawyers who are telling us that they see real value in the services we provide for what they consider is a modest subscription," she says.

Ms Rusbatch notes the money the Law Society receives from practising certificate fees can only be spent on regulatory matters, not on representative services for members.

Section 67(4) of the Lawyers and Conveyancers Act 2006 prohibits any cross-subsidisation, and the Law Society has separate regulatory and representative accounts.

"We are now moving to a model of paid membership to support the delivery of our representative services," she says.

From 1 July, for the 2024/25 year, an annual membership subscription will cost $290 +GST (including complimentary membership to a Law Society Section). Lawyers in their first two years of practising will receive free membership.

Ms Rusbatch says services that are currently funded by regulatory, such as libraries, counselling, and mentoring, will continue to be available to the whole profession, regardless of membership status.

The value of membership

Ms Rusbatch says the Law Society is the only national organisation that represents and advocates for all of the profession.

"We work for the interests of the profession through our advocacy for access to justice and the rule of law," she says. "This can range from providing feedback on proposed law changes to advocating for increased rates for duty lawyers."

The Branches and Sections offer a wide range of opportunities for lawyers to meet, connect, share their experiences, and learn from each other and experts.

"We have 13 Branches from the top of the north to the bottom of the south and we know that the support and services our Branches offer are deeply valued by lawyers," says Ms Rusbatch.

"We also perform a critical role in providing lawyers with the most up-to-date information and advice across all aspects of the law."

Ms Rusbatch says the Law Society offers support, advice and guidance on health and wellbeing, career, complaints, practice area and technical issues.

"We are there for lawyers when it really matters," she says.

Pre-registration for the 2024–25 membership year is now open

Pre-registering now ensures you will continue to receive the same great service, with even more value. You do not need to pre-register if you are already a Section member.

forms.lawsociety.org.nz/Membership/

Member benefits for the 2024–25 membership year

Effective from 1 July 2024

Advocacy for the profession A strong voice and trusted advocate for access to justice and rule of law across the motu	**Complimentary membership to a Section** Gain access to the broad range of services and support offered by our Sections (FLS, PLS, ILANZ) Note that eligibility criteria apply to Section membership	**Member savings on CPD** Enjoy savings with up to 30% off full price NZLS CLE Limited and Law Society education
Networking and learning events Stay connected with events, learning and support via our 13 Branches and Sections	**Local support through our Branch network** A community to turn to when you need help	**Listed on Find a Lawyer** Be discovered with *Find a Lawyer*, a publicly searchable lawyer database
Save money Enjoy member-only offers and discounts through our Partner Programme	**Specialist tools and resources** Access our growing library of tools, resources and guides for your practice and area of law	**Mentoring and career hub** One-stop-shop of tools and resources to support you in your career
Enhance your brand Build confidence with your clients and promote your membership of the Law Society with the use of Law Society and FLS/PLS logo and Law Society Member-only post-nominals	**Member-only bulletins** Stay informed on critical issues related to your area of practice	**Complimentary membership for new lawyers in your first two years of practice** Membership, support, collegiality and resources designed especially for new lawyers in your first two years of practice
Personal, Wellbeing and Professional Support As a member, the Law Society is here to support you through various stages of your professional life, with resources and support in times of need. Support is available to all lawyers on a confidential basis by fellow lawyers on your questions or concerns related to practice issues		

And more coming soon...

The value of Section membership

Membership to the New Zealand Law Society includes membership to a Section, which offers deeper value to members working in particular areas of law.

ILANZ	Family Law Section	Property Law Section
• Member rates bespoke education for in-house lawyers • Events to connect with inhouse lawyers in your region and practice area • Advocating for issues impacting the in-house community • Member rates for posting jobs on *ILANZ Job Hub* • Member price for our annual ILANZ conference and other events • Specialist events for General Counsel • Regular member updates • Access to ILANZ Inhouse Insights reporting	• Family Law reform and advocacy on family law issues • Free and member rates for bespoke education and CPD for family lawyers including Family Law conference • Guidelines and protocols • Events to connect with family law lawyers in your region • Listed on the publicly searchable *Find a Lawyer* database • Support on a confidential basis by fellow lawyers via our FLS Friends Panel, Immediate Issues Team and regional representatives • Member bulletins and *Family Advocate* magazine • Member rates for advertising in member publications • FLS member logo	• Property Law Reform • Property law resources including the PLS Guidelines • *Thinking Property* seminars and other CPD • Advocacy and guidance on property law issues • Member updates and *The Property Lawyer* magazine • Listing on the publicly searchable *Find a Lawyer* database • PLS member logo • PLS Accredited Specialist scheme

Lawyers can join an additional section for $100 plus GST per section.

Our Partner Programme brings you more

We're introducing a Partner Programme and from 1 July you'll be able to save money through member only offers and discounts, including:

- Banking
- Insurance
- Accommodation and travel
- Retail and more

We'll also have special early access offers available so make sure you're following us on social media to get access. We'll provide more information about these offers in the coming months.

LinkedIn: *linkedin.com/new-zealand-law-society*
Instagram: @nzlawsociety

The fine print

Membership can be a great way to access services on offer by the Law Society, but it is voluntary. Lawyers who choose not to remain members will still be able to participate in Branches and Sections. However, members will receive member benefits, discounted pricing for events and education, including up to 30% off full price NZLS CLE Limited and Law Society education, and are able to participate in in the Branch and Section Council governance and elections.

Lawyers in their first two years of practising will receive free membership.

Want to know more?

You can learn more about our 2024-25 membership offer, how to pre-register and read the membership frequently asked questions by visiting our website *lawsociety.org.nz/membership* ■

Law Society membership gives you access to networking and learning events to help you stay connected.

Pre-register now for the 2024-25 membership year

Meet, connect, share *and learn.*

Shaping Aotearoa's legal profession. Together.

New Zealand Law Society
Te Kāhui Ture o Aotearoa

Tribunals Aotearoa

From the desk of Janet Robertshawe, head of the Disputes Tribunal

Janet Robertshawe, Principal Disputes Referee and Deputy Chair of Tribunals Aotearoa, recently sat down with *LawTalk* to discuss the growing role of the Disputes Tribunal, the recent creation of Tribunals Aotearoa and the opportunity that tribunals present for enhancing access to civil justice.

The growth of the Disputes Tribunal

Since 1989, the Disputes Tribunal has been working at the front door of the courts, dealing with the many small claims that arise when everyday dealings do not work out as planned. The Tribunal was designed by important thinkers such as Sir Geoffrey Palmer and disputes resolution expert Jane Chart, Janet Robertshawe said.

"The Disputes Tribunal pilot began for claims of just $1,000.00. The quick and accessible process, the exclusion of legal representation and the mixed model of settlement and adjudication were unique factors in establishing a pragmatic and efficient process that avoided the cost of a lawyer and the time involved in court proceedings."

The success of the model has seen the jurisdiction expand over 35 years to $30,000, with a Rules Committee recommendation to go further – up to $70,000 as of right, or $100,000 by consent. There are approximately 65 Referees throughout the country. The Tribunal handles 12,500 claims a year, about 50% of which are resolved by agreement either before or at a hearing. In 2023, the Tribunal received claims to the value of $106,000,000.00.

The establishment of Tribunals Aotearoa

The Disputes Tribunal is one of an estimated 100 tribunals and authorities operating in New Zealand, managed by a number of different ministries and agencies. They share many issues of common concern, and between them have a considerable pool of knowledge and experience. Last year, Tribunals Aotearoa was established by a collaboration of 36 of the main civil, administrative and professional/licensing bodies, to consider the issues and to benefit from information sharing.

The development of Tribunals Aotearoa comes at a time of

LEFT: Janet Robertshawe in her woolshed in Porirua

significant focus on improving access to civil justice in New Zealand led by the Wayfinding for Civil Justice advisory group chaired by Dr Bridgette Toy-Cronin from the University of Otago Te Whare Wānanga o Otāgo. This work is expected to result in the establishment of a National Civil Justice Observatory later this year.

Janet sees the collaboration by tribunals as an important part of the access to justice work. “Over the last 40 years, tribunals have developed on an ad hoc basis to respond to needs as they have arisen. This leaves the public having to navigate themselves through to the right service, each of which is delivered in a different way. Although these differences reflect the specialist needs of each area, there is a need to ensure we are connecting to the legal needs within the community, to develop a joint work programme, share best practice, and establish a strong joint venture with the courts. We are very grateful to the Chief Justice for her support of this development. An example of the value of the collaboration with the judiciary was the recently issued AI guidelines for courts and tribunals which now apply across almost all adjudication.”

Tribunals Aotearoa is chaired by Trish McConnell, who brings 30 years of tribunal involvement and leadership to the role.

The Disputes Tribunal is the largest tribunal by membership. More importantly, it forms a natural link point between courts and tribunals as it sits in both worlds as a tribunal

that is a division of the District Court. As Principal Disputes Referee, Janet has recently joined the Chief Justice's Heads of Bench Committee to help promote that link.

Janet Robertshawe's career pathway

Janet has been involved in tribunals since 2008. After time spent in the Family Court, she could see the way forward was best achieved through consensus, rather than combat.

After studying law and economics at Otago, Janet began work at the Wellington office of Bell Gully in the banking and finance team. "I thought that was where success would lie. But I found the work did not align with who I was. It was a tough spot to leave after a few years and feel like I had failed." But the universe soon delivered a new pathway. Life took Janet east of Dannevirke to a large sheep and beef station on the Manawatū River. Janet recalls, "The isolation of life on the station, being close to nature, and the rural way of life highlighted the core values of the community around me; of egalitarianism, inventiveness, positivity, humility, courage and the importance of good banter, all informed by the undeniable kinship of all things. I was able to reflect on who I was and reset what I wanted to achieve. I had a love of the law, and I realised I could use it in a different way."

The opportunity to do so came after the devastating Manawatū floods of 2004. This event became a turning point in a difficult decision to leave the land, and an opportunity once again for a new chapter to emerge. This time, when Janet re-entered the legal profession, she knew

"The isolation of life on the station, being close to nature, and the rural way of life highlighted the core values of the community around me; of egalitarianism, inventiveness, positivity, humility, courage and the importance of good banter, all informed by the undeniable kinship of all things"

LEFT: Janet Robertshawe catching up with friends at the local Waitangirua market

exactly where she was headed. After resettling in Invercargill and working in the Family Court and general practice, Janet was to become the adjudicator in both the Tenancy and Disputes Tribunal in Southland for six years. "I loved the disputes work from the very first day. People would come in, on the ferry from Stewart Island, on the road from Monowai, or just from local city life, neighbours, businesses, farmers, contractors, and they could experience a low-cost process that is so simple and accessible but filled with potential to bring out the best of a bad situation."

Now living back on a farm in Porirua, Janet was appointed Principal Disputes Referee in 2021. She could see there was a need to ground the Tribunal in its core purpose, and not lose sight of its informality, flexibility and ability to connect as it grew. "For the next stage of the Tribunal's development, we needed to keep delivering a professional service founded in due process, but also one founded on accessibility, inclusiveness and an attitude of respect and understanding. There is a river that flows beneath every conversation. We have learnt over the life of the Tribunal that the way the interaction is managed, and the tools used to evaluate what has happened, can really impact on how the parties treat each other, and the part of themselves they draw on in their response to the conflict. With the recent transfer of the Tribunal into the Remuneration Authority, we have been able to strengthen the team and offer a legitimate career path in the law from various avenues of dispute resolution, prosecution, academia and civil litigation into the very real opportunity that the Disputes Tribunal presents to enhance community wellbeing."

The way ahead

This year, an extensive Legal Needs Survey is being conducted with the support of MOJ and MBIE, a second strand of the access to justice work that sits alongside the Wayfinding for Civil Justice work.

"Tribunals sit very close to the conversation that takes place between the legal system and the community, and with over 250 judicial officers dealing with more than 100,000 people a year, the availability and quality of these interactions are essential to social cohesion, wellbeing and a fair and just society. We are able to use our independence and flexibility to innovate and adapt. We need to engage with the excellent data currently being produced on legal need and bridge the challenges that people face to find resolution."

By way of example, Janet points to the evidence from Dr Toy-Cronin's work in 2021 with the Citizens Advice Bureau on expressed legal needs, which aligns with her sense that there are difficulties for people navigating the front end of Tribunal systems. Looking at changes already in train, Janet says that Tribunals now generally provide more remote hearings, improving accessibility and reducing time and cost for participants. Also, in the Disputes Tribunal, work is being done to enable more hearings to take place in te reo Māori, and in accordance with tikanga, whenever this would best suit the resolution process for those involved. These are all natural progressions in improving access to justice and the quality of that justice.

In sending a message to those in the law who may be looking for a change of direction, Janet says, "There are many great opportunities now for those wanting to work in the Tribunal sphere, to play their part in working closely with people to solve their differences and to do so in a way that feels like it is the heart centre of justice. There is so much that can be achieved by working directly with people through simple processes, and to use our knowledge as lawyers to really make a difference." ■

See a list of tribunals at *lawsociety.org.nz/news/publications/lawtalk/lawtalk-issue-957/tribunals-aotearoa*

RIGHT: Thilini Karunaratne, Hamilton family lawyer and member of the National New Lawyers Group

FAR RIGHT: Ben Hamlin, experienced Wellington litigator and a Standards Committee member at the Law Society

CPD: Do what you love and dive in

It is a requirement that every lawyer develops and maintains a written Continuing Professional Development (CPD) plan and record (CPDPR) in which they document and reflect on their CPD activities. As the end of the current CPD year approaches, many lawyers are turning their mind to the learning opportunities for the next CPD year. They're considering their strengths and weaknesses, the gaps in their legal knowledge and skills, or where they might like to extend themselves, and the next steps in their career paths. It's a process that can be full of potential, and the promise of progress.

No matter where you are in your legal journey – new to the law, at a mid-career cross-roads perhaps considering practising on own account, or an experienced practitioner who is an expert in their field, every lawyer faces the challenge of how to go about making their CPD plan.

LawTalk has connected with two practitioners who have shared their thoughts on CPD, and their approach to the three stages central to the CPD process – planning, acting, and reflecting.

A good planning process is key to success

As many would agree, a good planning process is key to success, but it may look different depending on your individual circumstances and working habits.

"My planning is definitely an organic process," Hamilton family lawyer Thilini Karunaratne says. A member of the National New Lawyers Group, Thilini was a primary school teacher before pursuing a career in law. While Thilini takes time out at the start of the year or towards the end of the previous year to plan her CPD, it's always evolving as the year marches on.

"I generally bullet point my plan and record at the start of the year, and this is heavily edited as the year goes on. My CPD planning tends to evolve depending on the cases or files I take on, or if I find an interesting area of the law I'd like to learn about but am not necessarily practising in.

"On top of my work goals and areas for improvement, I'm also influenced by my performance review, feedback from supervisors and courses recommended by my peers."

For Ben Hamlin, an experienced Wellington litigator in both the civil and criminal jurisdictions and a Standards Committee member at the Law Society, his approach to planning is two-fold.

"First, in January I reflect on what I want to learn this year, in the sense of building new capability. For example, last year I identified Te Ao Māori as an area where I wanted to learn more. I also try and work out which annual conferences I will attend from relevant industry bodies like the New Zealand Bar Association and Competition Law and Policy Institute of New Zealand.

"Second, every few weeks on an ad hoc basis I tend to check the weekly emails from the Law Society and the New Zealand Bar Association about upcoming training. I then fit them around my upcoming work."

Choosing the most suitable professional development activities

There are a lot of different types of learning opportunities and topics that can be counted towards CPD, and sometimes broad parameters

can make it even harder to decide what to do. Ben's remedy for this is to assess each opportunity with a series of questions to provide direction and clarity.

- Is the topic interesting?
- Does it fill a knowledge gap?
- Is there a commercial opportunity in learning about the topic?
- What is the cost (including direct cost, travel and accommodation, and opportunity cost of the time involved)?
- Is this a good networking opportunity?

"Sometimes I also attend to show support for an organisation, a cause, or a presenter," Ben says.

In the last year, in addition to attending conferences and seminars, he also presented at seminars and published a paper. As practitioners develop their craft it's great to see them giving back to the profession by sharing their knowledge and expertise through writing and presenting. The Lawyers and Conveyancers Act (Lawyers: Ongoing Legal Education–Continuing Professional Development) Rules 2013 (CPD Rules) allow you to count both the time spent in preparation for a presentation as well as the time spent presenting. There's no limit on the number of hours you can count, you just need to be fair and honest in your approach. If you publish a paper, or perhaps a chapter in a book, you can count the time spent in research, writing and editing your work. The editing process allows for interaction and feedback with your publisher or peer reviewer.

"I find all of the activities valuable for different reasons. Conferences have the best networking opportunities and can expose you to a wide range of topics, but they also have the greatest time commitment, and usually the greatest cost," Ben adds. "Seminars are the best for a narrow-but-deep training, or for training that is more akin to listening to a lecture."

Before stepping out to practise on his own account, Ben was Chief Legal Counsel Competition at the Commerce Commission.

"Since moving from an inhouse role to being self-employed, I have much greater opportunity to attend training that is not directly related to my work specialties, and more for my own development.

For those who would like to take your learning beyond our shores, it

is worth noting that international development opportunities that align with your learning needs and meet the definition of activities in the CPD Rules can also be counted towards CPD. This includes overseas conferences, seminars and even university studies.

Your learning style matters

Thilini is currently working towards completing her PhD with a focus on international indigenous children's rights and recognises that there are several factors that may affect her choice of professional development activities, and one of them is her learning style.

"Generally, I keep an eye out for activities that align with the area that I want to focus on, but I prefer interactive activities as they work well for my learning style.

"I also enjoy webinars as these are convenient and don't require physical time away from work, but I found the in-person activities, such as workshops and seminars, the most fulfilling.

"Talking and meeting people in person is an effective way of learning for me as it builds connections and reduces distractions from email notifications – you're forced to concentrate, as opposed to a webinar where your emails may still pop up and it is hard to resist the temptation of checking them!"

Reflecting well means we keep learning and moving forward

Reflecting on the activities you've participated in is arguably the most crucial part of the CPD process. It provides an opportunity for you to consider what you have learnt, whether the learning allowed you to meet your learning need or if there are still gaps that need to be filled, and if so, what future learning needs you might have. Thilini and Ben adopt different approaches to it.

"I write my reflections at the end of each activity using the standard template provided by the Law Society (*lawsociety.org.nz/professional-practice/continuing-professional-development*). It includes my learning outcomes, what I learned and what I would do differently," Thilini says. "It's particularly useful in developing my next year's learning plan when I have identified a gap or a topic that I would like to look further into."

Ben on the other hand writes his reflections, "often some time after," and it's usually based on, "what I now think about the stated learning objectives." Although Ben doesn't use his reflections in the development of his next year's CPD planning, it gives him an opportunity to assess his learning progress in the past year and keep moving forward.

"If I studied a topic in 2023, then I am less likely to want to learn more about it in 2024, and more likely to want to learn about something new that's on offer."

Do what you love and don't be afraid to dive in

If you are just starting out on your CPD journey, or maybe finding the process challenging, Thilini and Ben have offered some advice.

Ben strongly recommends an online CPD Planner. "The Law Society CLE CPD Planner is a Godsend. It makes it much easier to comply with your obligations. It moves with you if you change employers, or move to the bar."

Thilini suggests, "If you're struggling to find a CPD activity that interests you, keep an eye out on the different CLE newsletters for seminars and webinars.

"You can also reach out to senior practitioners or peers and get some recommendations from them about courses or how to plan your CPD. Most importantly, don't be afraid to dive in, because while it may feel difficult, no knowledge is a waste."

Now is a great time to check your plan and record (CPDPR) to ensure that you'll meet your CPD requirements for the 2023/24 CPD year (1 April 2023 to 31 March 2024). This year, the final day to make your CPD declaration is Monday, 8 April 2024.

If you have any questions about CPD or the CPD process you can contact the Law Society's CPD team at *CPDinquiries@lawsociety.org.nz* ■

Find out more about CPD

Check your CPD requirements at *lawsociety.org.nz/professional-practice/continuing-professional-development/cpd-requirements*

View step-by-step guide on how to make your CPD declaration at *lawsociety.org.nz/professional-practice/continuing-professional-development/how-to-make-your-cpd-declaration*

Law reform and advocacy update

December 2023 onwards

Despite the election period meaning fewer bills for review and comment, the Law Society and its law reform committees have had a busy period of advocacy. Here's what we've been up to recently:

Letters to incoming Ministers

The 54th New Zealand Parliament opened on 5 December 2023 and the Law Society wrote to several incoming Ministers, welcoming them to their new roles and setting out some of our key law reform priorities within their portfolios. These letters:

- Emphasised the importance of high-quality reports and advice under section 7 of the New Zealand Bill of Rights Act 1990, and encouraged consideration of how Parliament can respond to these reports during the lawmaking process.
- Advocated for further investment in the courts, to ensure safe and functional spaces for all court users, as well as consultation with the profession.
- Recommended the ongoing review of the Victims of Family Violence Visa, and encouraged consideration of options for the 'reopening' of applications under Tier 2 of the Refugee Family Support Category.
- Noted the need for further work on regulation of lay employment advocates, and a review of the Holidays Act 2003.
- Advocated for a full review of the Accident Compensation Scheme, as well as interim improvements to promote access to justice.
- Promoted the importance of following the Generic Tax Policy Process (or something similar) and good legislative process when developing tax law reform.
- Recommended progressing the review of the Copyright Act 1994, and a full review of the impact of artificial intelligence on intellectual property rights.

The Law Society will continue to meet with Ministers, officials, and other stakeholders to progress these priorities. The Law Society's Law Reform Committees are heavily involved in identifying these priority areas and lead the profession's contributions on resulting reforms.

Probate delays

In 2023, lawyers raised concerns with the Law Society and its Property Law Section about delays in the processing of probate applications. These delays were causing stress for both lawyers and clients and impacting significantly on the handling of estates. Following a call for feedback from the profession, the Law Society formally raised these concerns with the Ministry of Justice and met with officials to discuss the steps that had been taken to improve process and address the backlog of applications.

Further reporting from the Ministry of Justice indicated that these process improvements had seen results; however, it was clear from the profession that this situation would persist while the threshold at which a grant of probate is required remained at $15,000. This figure has been in place for more than a decade, and with it failing to reflect today's economic reality, more applications are having to be made.

In late February, the Law Society wrote to the Minister of Justice urging prioritisation of reform of the probate threshold. The Law Society will keep the profession updated on progress.

Duty Lawyer review

Following the announcement of a 17% increase to the duty lawyer remuneration rate in July 2023, a broad-scope review into the duty lawyer scheme began in September 2023. Duty lawyers are an essential part of a fair and robust criminal justice system. They are critical to ensuring access to justice for those defendants who first appear in court.

> "The Law Society is committed to working with the Ministry of Justice and the judiciary... to ensure we attract and retain duty lawyers and improve the duty lawyer service, enabling access to justice to those who need it most"

The review, commissioned by the Legal Services Commissioner, is being led by an external agency with oversight by an expert advisory group comprising members of the legal profession, the Public Defence Service, the judiciary, and a manager from the District Courts. The Convenor of the Law Society's Access to Justice Committee is on this advisory group. The Ministry of Justice will engage with duty lawyers and other key stakeholders throughout the review process.

The Law Society is committed to working with the Ministry of Justice and the judiciary to look at creative solutions to ensure we attract and retain duty lawyers and improve the duty lawyer service, enabling access to justice to those who need it most. This will be primarily driven through the review but also includes changes to the duty lawyer scheme which are now being piloted in a range of District Courts as part of the Criminal Process Improvement Programme (a judicially led justice-sector initiative to improve access to justice in the District Court by looking at best practice ways to address backlogs and ease pressure on court time).

Reports under section 27 of the Sentencing Act 2002

The Law Society's Criminal Law and Access to Justice committees closely monitored a proposal to remove legal aid funding for reports prepared under section 27 of the Sentencing Act. These reports provide a comprehensive account of relevant personal, family, whānau, community and cultural factors, and the relationship between those factors and offending behaviours. They assist judges in determining fair, reasoned, and individualised sentences. With the removal of funding, only those defendants who can afford to privately commission the reports will benefit from such insights. Defendants receiving legal aid will be disproportionately impacted – a breach of fundamental rights.

The Law Society advocated strongly for the retention of legal aid funding, encouraging the Government to instead proceed with work already underway to review the content and use of the reports, and was disappointed the legislative amendments proceeded under urgency and without a select committee process for public submissions. The Law Society is now working with the Ministry of Justice to understand the implications for lawyers and their clients.

Courthouse facilities and health and safety

Following several serious incidents in courthouses across the country in 2023, the Law Society continues to engage regularly with the Ministry of Justice to improve health and safety for all court users.

Last year, we canvassed feedback from lawyers throughout the country about their safety concerns in the District Courts, High Courts, and the Family Courts. All feedback was provided to the Ministry of Justice, and we've since met regularly to work through this and identify what can be done within the constraints of both budget and building structures.

Some feedback has already been actioned, and some remains under investigation. Where possible, work has taken place to increase visibility in meeting and interview rooms. However, there are some improvements that are not possible within certain courthouses (due to their design and/or historic status), and others that cannot be accommodated within available budget.

The Law Society continues to work with the Ministry and the courts to improve the facilities available to lawyers, for example securing a Lawyers Room in the Taupo District Court and installing Law Society Wi-Fi to enable access to the Law Society library's online resources. ■

Designated lawyers

Meeting your obligations

Since rule amendments came into effect in July 2021, all sole practitioners, barristers, and law firms in New Zealand must have a designated lawyer who reports to the Law Society about certain types of unacceptable conduct by lawyers or employees in a law practice.

The designated lawyer requirements enable the Law Society, in its role as regulator, to better address unacceptable conduct including bullying, harassment, sexual harassment, racism, violence and theft, in New Zealand law practices ("Unacceptable Conduct").

Their introduction followed the Law Society's Independent Working Group Report which made recommendations on regulatory reform to address unacceptable workplace behaviour within the legal profession.

The requirements, which are in addition to lawyers' individual reporting requirements, are just one part of a larger picture focused on improving the wellbeing and culture of the legal profession and making the legal community a safe and healthy place for everyone.

What is a designated lawyer and what do they need to do?

A designated lawyer is the lawyer within a practice responsible for reporting a lawyer or non-lawyer employee's Unacceptable Conduct to the Law Society. The designated lawyer must fulfil the law practice's annual reporting obligations by 30 June each year.

A designated lawyer must be approved to practise on their own account and all firms must nominate one to the Law Society. Sole practitioners and barristers sole automatically become the designated lawyer for their law practice.

Under rules 11.4 and 11.4.1 of the Conduct and Client Care Rules (Rules), the designated lawyer must report to the Law Society within 14 days if:

- someone is issued with a written warning or dismissed for any of the listed types of Unacceptable Conduct (bullying, discrimination, racial, sexual, or general harassment, theft or violence)
- a person leaves their practice within 12 months of being advised by the practice that it was "dissatisfied with, or intended to investigate, their [alleged unacceptable] conduct"

The designated lawyer must also annually certify to the Law Society that:

- the law practice has complied with its mandatory reporting obligations under the Lawyers and Conveyancers Act, and
- the law practice has policies and systems in place as required by the Rules and is complying with

its obligations under the Health and Safety at Work Act, and

- the designated lawyer has complied with the reporting obligations set out above.

As both lawyers and non-lawyers can be the subject of a designated lawyer report, the Law Society encourages practices to make it clear to all their staff that the Law Society has jurisdiction to consider all employees' conduct when required.

It is important to note that, while the obligation is on the designated lawyer to certify annually that the law practice has in place policies and systems as required by the Rules, the obligation to have these policies and systems in place falls on all lawyers practising on own account within the law practice (Rule 11.2).

Why have designated lawyers?

Law Society General Manager Professional Standards (Regulatory), Gareth Smith, says the role of designated lawyers was established to ensure that workplace issues like bullying, discrimination and harassment are bought to the Law Society's attention.

"It gives us a clear picture of the extent and nature of certain types of behaviour in law practices and allows us to take action if required," he says.

Barrister Michael Hodge, who worked with the Law Society on the amendment of the rules, says they also help to keep track of lawyers who might have had issues raised about their conduct but leave a firm before any action is taken, only to secure a job at another firm.

"Before the role of designated lawyer was introduced, this was a gap as the conduct was often not reported to the Law Society," he says.

Mr Hodge says the rules now provide absolute clarity about who has the responsibility to report on unacceptable conduct.

"No one should have any doubt about the need to comply with the obligations," he says.

Mr Hodge says that the rules do not replace the role of the Employment Relations Authority.

"The reporting is concerned with serious and specific conduct and has a very specific scope," he says.

The reporting is not onerous, he says, but it is important and mandatory.

"The role of designated lawyer means that these issues receive the attention they deserve," he says.

Annual certification

The annual designated lawyer certification is due by 30 June each year and is made by the designated lawyer through their personal registry portal. Designated lawyers are encouraged to complete their certification at the same time as they complete their fit and proper person declaration when renewing their practising certificates.

If the law practice has appropriate policies and systems in place and the designated lawyer has met any other reporting obligations that arise during the year, completing the annual certification should only take a couple of minutes.

As the certification is linked to the nominated designated lawyer for the law practice, it is important that firms notify the Law Society promptly if their nominated designated lawyer changes, for instance because the designated lawyer leaves the practice or goes on extended leave.

What reports should contain

No two designated reports are the same; however, designated lawyer reports are often made during or after an employment process within a firm. The circumstances that trigger the obligation to report are specifically set out in rules 11.4 and 11.4.1 (written warning or dismissal or a staff departure preceded by an issue being raised as set out in rule 11.4.1)

Over the past year designated lawyer reports have been received on a range of matters including allegations of sexual harassment, racism, and bullying. The Law Society has received reports with varying amounts of information; some reports have occurred after a lawyer has resigned, others have been received following an internal investigation by the firm, or after a full independent investigation by an external party.

The more information the designated lawyer can provide in their reports about any processes that have been undertaken by the firm as well as who has been impacted by the conduct, the better.

Prior to making a report, general guidance can be sought from Stephanie Mann ((03) 659 0854), a Senior Professional Standards Officer in the Lawyers Complaints Service, or

from the Lawyers Complaints Service Frontline Team (0800 261 801).

Ms Mann can be contacted initially on an anonymous or named basis and can provide guidance on:

- the process that reports go through
- what information may be required
- practicalities of confidentiality and any requested anonymity, and
- how to manage communications with parties, including any vulnerable individuals or affected parties.

Ms Mann says ideally lawyers wouldn't have to make a report; however, it's important that there is a way to do so and that the Law Society has the information they need to consider next steps.

What action is taken on the reports?

A report is not a complaint and, as such, is treated differently by the Law Society. Not all designated lawyer reports will go to a Standards Committee.

With designated lawyer reports it is uncommon for the designated lawyer to also be the person affected by the alleged unacceptable conduct.

Ms Mann says that the Law Society takes the time when the report is first received to establish whether the people who are affected are willing to be involved in a process and to make sure people have the support they need.

"A considered process is especially important when dealing with sensitive issues that can have a huge impact on people's personal and professional lives, both those impacted by unacceptable conduct and those accused of it."

When sufficient information has been received, reports go to a Screening Panel which considers the most appropriate way to resolve a matter. This may involve the allocation of a matter to a Standards Committee for consideration of an own motion investigation under s 130(c) of the Lawyers and Conveyancers Act. Where appropriate, the Panel will also consider educative approaches to resolving matters.

Every situation will need to be considered on its individual circumstances, including the nature of the conduct and the evidence available. If a report raises matters that may constitute Unacceptable Conduct, the witnesses are willing to be a part of a Law Society process and there is a reasonable basis for a Standards Committee to open an own motion investigation, then allocation to a Committee is likely.

Whatever the outcome of a report, supporting those affected or who have witnessed alleged unacceptable conduct is a priority and there are resources available to assist practices with this.

Over the first two reporting years a total of 13 designated lawyer reports were received and processed by the Law Society.

What if I don't report when I should?

All law practices are expected to certify annually that they have met their obligations under the Rules.

Mr Smith says that, to date, the Law Society has taken an educative approach to designated lawyers who do not make this certification. Law practices that have not certified have been reminded to do so.

However, not providing the annual certification (or reporting on matters as they arise) is a breach of the Rules which may itself be considered by a Standards Committee.

Find out more

Visit the Law Society's website at *lawsociety.org.nz/professional-practice/rules-and-maintaining-professional-standards/responsibilities-of-the-designated-lawyer* ■

RIGHT: Dr Sarah Anticich

Lawyer wellbeing

A collective effort

BY **DR SARAH ANTICICH**

Dr Sarah Anticich PhD., PG Dip Clin Psych., M.Sc(Hons), BA(Hons), B.Sc, MNZCCP is an experienced Clinical Psychologist.

The traditional approach to lawyer wellbeing has predominantly concentrated on addressing individual symptoms while often neglecting the profound impact of psychologically unsafe work cultures. Current research underscores the efficacy of a more comprehensive strategy, involving organisational and individual approaches to wellbeing.

Recognising wellbeing as a collective effort is central to cultural change in the field of law as individual endeavours alone cannot satisfactorily meet needs and foster autonomous motivation; the role of workplaces is substantial. As such, collaboration between lawyers, firms and the legal system is crucial to effect positive changes, acknowledging the collective nature of wellbeing. As succinctly stated by Prof. Deborah Rhode, "wellbeing is a team sport."

To cultivate sustainable wellbeing for the legal profession, a holistic approach is indicated, encompassing subjective wellbeing, psychological wellbeing, and various facets such as physical, emotional, and spiritual needs. The integration of positive psychology and organisational scholarship further emphasises the multifaceted nature of wellbeing, highlighting the pursuit of meaningful engagement and personal development.

More specifically, psychological interventions, grounded in values-based methods, play a pivotal role in enhancing autonomous motivation and reaping wellbeing benefits for lawyers. Central to this connection is the ability to meet needs and act with autonomous motivation, as emphasised by Self-Determination Theory (SDT).

SDT is recognised as a valuable framework for promoting lawyer wellbeing and underscores the fulfilment of fundamental psychological needs–relatedness, competence, and autonomy. The application of SDT holds potential for addressing common mental health challenges and associated challenges for the legal profession including mental wellbeing, engagement, turnover, depression, problematic drinking, perfectionism, overcommitment, work-life conflict, procrastination, healthy habit change, intrinsic values, mindfulness, and burnout prevention. By recognising the role of SDT, legal institutions and individual lawyers can collaboratively create environments that foster growth, autonomy, and overall wellbeing, effectively addressing the multifaceted challenges within the legal profession.

Employers play a crucial role by fostering workplace cultures and imparting supervisory behaviours that align with lawyers' SDT needs. Simultaneously, individual lawyers can take proactive steps to fulfil their needs and cultivate autonomous motivation, bridging the gap between their values and behaviours.

"Legal institutions and individual lawyers can collaboratively create environments that foster growth, autonomy, and overall wellbeing, effectively addressing the multifaceted challenges within the legal profession"

Self-Determination Theory

To further enhance wellbeing, law firms can integrate Self-Determination Theory (SDT) into their practices, considering the five pillars of wellbeing: Reflection, Attention, Connection, Motivation (SDT), and Action.

Reflection

Encourage lawyers to reflect on their work experiences, identifying aspects aligned with their values and contributing to autonomy, competence, and relatedness. This reflective practice enhances self-awareness and guides intentional actions for improved wellbeing.

Attention

Foster a culture of mindfulness and attention to individual needs and motivations. Lawyers benefit from paying attention to their inner motivations, values, and the impact of workplace conditions on their wellbeing.

Connection (high-quality relationships)

Emphasise the importance of high-quality relationships within the workplace. SDT highlights the need for relatedness, and positive law firms can facilitate connections through regular meetings, team-building activities, and open communication.

Motivation (SDT)

Ensure that motivational strategies align with SDT principles, focusing on autonomy, competence, and relatedness. Autonomy-supportive supervision significantly contributes to lawyer wellbeing.

Action (intentional daily steps – eat, sleep, move)

Encourage lawyers to take intentional daily steps towards wellbeing, considering factors like sleep, nutrition, and physical activity.

Supporting autonomy in work arrangements empowers lawyers to make choices aligned with their wellbeing goals.

Boosting lawyer wellbeing

In addition, contextual strategies for boosting lawyer wellbeing involve:

Developing effective leaders

Investing in leader development is crucial, as effective leadership significantly influences workplace perceptions, performance, and job satisfaction. Toxic leadership can lead to negative health outcomes, emphasising the need for positive leadership practices.

Cultivating the experience of meaningful work

Leaders play a pivotal role in fostering a sense of meaning and purpose

in the workplace. Positive framing techniques help lawyers view their work as meaningful, contributing to engagement and overall wellbeing.

Expanding lawyers' sense of control and autonomy

Empowering lawyers with control and autonomy is vital for wellbeing. Granting choices and the ability to take action helps lawyers cope with stress, contributing significantly to their overall wellbeing.

Allowing flexibility in work arrangements

Granting flexibility enhances autonomy and job satisfaction. Embracing telecommuting and flexible work arrangements supports lawyers in achieving a better work-life balance, positively influencing their wellbeing and performance.

Building resilience

Lawyers need resilience to thrive. Competencies such as optimism, emotional awareness, and problem-solving contribute to resilience. Integrating resilience-building practices into workplace initiatives further supports lawyers in navigating challenges.

By adopting these holistic approaches, legal organisations can create a positive and supportive work environment that prioritises individual needs, values, and collective growth, ultimately fostering enhanced wellbeing within the legal profession.

Stepping Through and Stepping Forward

The Stepping Through and Stepping Forward interventions were developed specifically to support positive individual and systemic change in lawyer wellbeing by actively fostering psychological and physical health and sustainable high performance. Informed by the principles of Self-Determination Theory (SDT) and guided by the 5 Grow Daily Pillars of Wellbeing, the programmes seek to create a transformative impact on the legal profession.

Key Components

Scientific foundation: The programmes are underpinned by the science of wellbeing, positive psychology, growth mindset, and neuroscience. This robust foundation ensures that the programme's strategies are evidence-based and align with the latest advancements in wellbeing research.

Holistic approach: By incorporating the principles of SDT and the 5 Grow Daily Pillars of Wellbeing, the programme takes a holistic approach. It not only addresses immediate concerns but also actively promotes psychological and physical health. This comprehensive strategy aims to create lasting and meaningful changes in the lives of legal professionals.

> "Through a combination of scientific principles, holistic strategies, and empowerment initiatives, these programmes aspire to create a culture where legal professionals can thrive both personally and professionally"

Actionable steps: The core intention of the programme is to empower members of the legal profession. By providing preventative and proactive wellbeing tools and support, the intervention equips legal professionals with the resources they need to lead more fulfilling and balanced lives.

Preventative: Stepping Forward aims to be a preventative force, addressing potential wellbeing challenges before they escalate. Simultaneously, it adopts a proactive stance by actively promoting wellbeing through intentional practices.

Systemic change: The overarching goal is to lead a positive transformation in the legal profession. This involves not only improving individual wellbeing but also contributing to the broader success of legal organisations.

In essence, the Stepping Through and Stepping Forward interventions are forward-looking and comprehensive wellbeing programmes designed to bring about positive change in the legal profession. Through a combination of scientific principles, holistic strategies, and empowerment initiatives, these programmes aspire to create a culture where legal professionals can thrive both personally and professionally. ■

Sarah is an experienced Clinical Psychologist with specialist experience in the areas of anxiety, trauma and mood disorders in children, adolescents and adults, and has worked in both public and private practice across a range of settings in New Zealand and Australia.

Sarah is also an approved ACC Sensitive Claims provider and provides therapy, and is able to offer Supported Assessments for other therapists.

In 2023 Sarah worked with the New Zealand Law Society to deliver the Stepping Forward and Stepping Through programmes.

In 2023 the Law Society Auckland Branch hosted the Stepping Forward Programme in person for lawyers PQE 6+ years and Canterbury Westland Branch piloted the Stepping Through Programme in person for new lawyers.

Find out more about other wellbeing initiatives and support services offered through the Law Society at *lawsociety.org.nz/professional-practice/practising-well*

The Law Society also hosts a number of wellbeing events and initiatives which can be found at *lawsociety.org.nz/events*

LEFT: Emma Clarke, University of Canterbury PhD Candidate

Feeling safe to speak up

The impact of psychological safety on lawyer wellbeing and turnover in legal practice

BY **EMMA CLARKE**

Emma Clarke is a PhD Candidate at the University of Canterbury.

Although I didn't realise it at the time, I first experienced psychological safety when I was 14 years old. I was in year ten, and was failing mathematics. I always felt so stupid not being able to figure out the answer – I decided I was a complete failure. My mother asked her friend Shirley, a teacher from another school, if she would tutor me. My progress improved surprisingly quickly. Shirley encouraged me to see that getting the final answer wrong doesn't mean I'm a complete failure, after all I was getting most of the preliminary calculations correct! Shirley helped me to feel safe about experimentation and learning, which bolstered my confidence and enhanced the belief in my ability to figure out the correct answer. I now realise that Shirley wasn't just teaching me how to do mathematics, she was enabling me to feel psychologically safe. By the end of year 12, I was among the top students in my class and went on to study statistics and calculus at university.

Amy Edmondson (2004) defined psychological safety as a belief that team members hold regarding the respect and trust they have for each other, affecting their willingness to take intellectual risks, and speak up about issues and mistakes without fear of negative repercussions to themselves or their career[1]. From 2021 to 2022, as part of my PhD research I conducted surveys with 89 lawyers at two timepoints and interviewed 35 law practitioners (21 lawyers and 14 partners) across New Zealand who had previously or are currently working in law firms. My objective was to examine leadership behaviours, psychological safety and employee wellbeing in legal practice, and to identify factors that lead to employees' decisions to leave. Early in my interviews, I found that some female lawyers had resigned from their firms, leading to discussions about their decisions. Interestingly, all participants who had resigned or were considering leaving were women. I also uncovered insights influencing male lawyers too.

High turnover of junior lawyers working in the legal profession, particularly among women, has been reported internationally and in New Zealand for over a decade. Lawyers are unlikely to want to share their true reasons for leaving or their desire to leave due to poor psychological safety which my first study indicated is present in some NZ law firms[2].

Stress and poor wellbeing have also been extensively reported within the legal profession, likely playing a role in high turnover rates. Employee retention should be a high priority for law firms due to the cost of recruiting and training, sometimes exceeding 200% of an employee's annual salary[3].

Key findings

Formal hierarchical structures, billable units and gendered differences when coping with stress

Formal hierarchical work environments are obstructive for some lawyers as they can generate fear, and create a barrier that discourages employees from speaking to their leader about issues and sources of work pressure. Many lawyers described scenarios when they felt unable to 'be themselves' at work, the apprehension they felt about challenging a senior member in the law firm's hierarchy, and when taking intellectual risks. These

"Stress and poor wellbeing have also been extensively reported within the legal profession, likely playing a role in high turnover rates. Employee retention should be a high priority for law firms due to the cost of recruiting and training, sometimes exceeding 200% of an employee's annual salary"

encounters led to a large number of female employees feeling unable to be open and honest about problems that were impacting their work. They either resigned or were contemplating leaving because they believed that expressing themselves openly in the workplace carried substantial risks. These lawyers also believed that it was necessary to not disclose their real reasons for leaving, in order to protect their career prospects.

Alongside hierarchical structures, billable units were identified as one of the main sources of work pressure and a factor contributing to longer working hours. Employees explained that billable units placed enormous pressure on them and in some cases, this led to feeling overworked and stressed. Many female employees interviewed argued that poor work life balance stems from the billable units system and was one of their primary reasons for leaving or for considering leaving. I argue that the billable units system is biased as it rewards those who work and bill longer hours, and disadvantages those who work part-time or who have commitments outside of work such as child care obligations[4]. My research supports previous findings that show when employees are provided with flexible working arrangements, women tend to use this resource to achieve better work life balance, whereas men tend to increase their work commitment, enabling them to work longer hours[5]. When law firms measure performance using billable units, and provide employees with flexible work options, this reinforces a stereotypical pattern of work[6]. As the billable hours system incentivises long hours, this behaviour is rewarded with promotions and bonuses. Men have a comparative advantage because they are able to use time to create more value and are able to complete work at a lower opportunity cost than women.

I also discovered gender differences in the allocation and access to resources at work such as autonomy, leader support and a culture of learning. Resources help lawyers to cope with stress in high-demand environments. Half the leaders in my research evaluated the ability of employees to cope in stressful situations as something that is managed by the individual and considered that "*some people are just better* [at coping]". One interpretation

of this is that employees who were perceived by their leaders as more adept at coping may have had access to particular resources that facilitated better time management, enabling them to cope with stressful situations. Alternatively, perhaps these employees had the ability to distinguish the availability of resources and could easily access them, thereby enhancing their engagement at work, and were more effective at handling stress. Imbalances in the distribution of unpaid work in the home expose women to additional stress in paid employment[7] as they have less time available to complete their work. Male participants said they had considered leaving but stayed due to high pay, feeling trapped in their job as primary breadwinners. Male lawyers also feel more cultural and societal pressures than women to stay working in legal practice and could face social disapproval if they decide to leave[8].

Suggestions for change

Adjusting the billable units system of performance measurement

- Adjusting billable units as the primary measure of performance, is likely to help improve employee wellbeing and retain valuable talent, particularly among early career women. Alternative business models for law firms[9] include project-based models which measure success based on outcomes and provide clients with a fixed price, and subscription based models[10] where the price for legal work is agreed with the client and based on outcomes.
- From an employment perspective, law firms could explore new methods of rewarding employee performance. Such as, the quality and outcome of their work, their contribution to value creation, the cultivation of strong client relationships, and the display of innovation and creativity in their roles.
- Fostering psychological safety will help challenge gender stereotypes within legal practice by enabling employees to feel safe to speak up. Enhancing psychological safety within law firms will also increase awareness of the real origins of work-related pressures and the detrimental effects of the billable units system on lawyers.

Fostering a psychologically safe climate in formal hierarchical workplaces

- Law firm leaders should develop a culture that counteracts the barriers brought on by formal hierarchical structures. When leaders behave in a way that minimises the perceptions of formal and informal hierarchies, this will improve perceptions of psychological safety and positively influence employee wellbeing. Such behaviours will enable more open and honest communication among colleagues, shielding lawyers from stress and burnout.
- Creating an environment of psychological safety in law firms, where errors can have high-stakes consequences, is challenging. Empathetic leaders who foster a learning culture and are able to recognise and respond to their own and others' emotions, while providing support during challenging situations, contribute to improved perceptions of psychological safety. Ultimately, these positive work environments protect lawyers from stressors

RIGHT: Emma and her husband Andy skiing at Mt Ruapehu

and reduce turnover intentions, particularly among women.

Addressing unconscious and gender bias in the allocation and access of resources

- Women may be disadvantaged in the allocation and level of access to valuable resources that support them effectively in the development of their professional career and when coping with stress. This could be due to the informal hierarchy in law firms as well as unconscious and gender biases which are present in legal practice. Law firm leaders should acknowledge that men and women use time differently, and address gender differences in how resources at work are allocated.
- Leadership training in unconscious and gender biases, emotional regulation skills, self-awareness, empathy and recognising when colleagues are struggling is essential. Understanding the different ways in which individuals access resources in order to cope with stress will bring greater awareness of gender differences to law firms. Law firm partners who seek professional development in these areas are likely to have more positive working environments, resulting in improved employee wellbeing and reduced turnover.

Law firms need to reflect societal diversity to stay effective and economically relevant. Achieving a shift in organisational culture in order to build a psychologically safe climate and achieve greater gender diversity requires leadership committed to effecting change over an extended period of time. This is particularly important for law firms and all organisations that operate under a formal hierarchical structure, where employees may not feel safe voicing their concerns. ■

Emma Clarke is a PhD Candidate at the University of Canterbury. Emma is conducting multidisciplinary research across the Schools of Psychology, Business and Law. Her aim is to improve understanding of how law firm leaders and organisations can build psychological safety in high-demand work environments, in order to improve employee wellbeing and reduce turnover. Her PhD will be completed in June 2024.

For further information contact *emma.clarke@pg.canterbury.ac.nz*

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RIGHT: Kristine King, Director at DK Law

A year on from the extreme weather events

BY **KRISTINE KING**

Kristine King is a Director at DK Law in Kingsland, Auckland. She is the deputy chair of the Law Society's Property Law Section and, deputy convenor of the PLS Property Law Reform Panel.

We have now passed the one-year anniversary of the North Island Floods and the impact of Cyclone Gabrielle which saw many areas receive an entire summer rainfall in a few hours. For some locations it was the wettest day in their recorded history. Lives were lost, four in Auckland during the Anniversary Weekend floods and another eleven as Cyclone Gabrielle tracked down the country from Northland causing widespread havoc.

The scars are still visible in our communities. Our daily commutes give stark reminders of the devastation, the stickered houses with overgrown gardens and strewn rubbish, homes dangling precariously over cliffs that still appear raw without their previous covering of vegetation. The marks on the property industry from the weather events are not as obvious to the eye but are permanent. We have new processes, new terminology and perhaps a need to reassess how we approach land transactions.

Insurance / Toka Tū Ake EQCover Claims

Residents in regions hit by the two weather events have lodged a record number of claims, which the Insurance Council tallies at over 115,000.00.[1] By 1 December 2023 it was reported that 87 per cent of private insurance claims had been settled.

Settlement is a relief to the homeowner but triggers a fresh set of issues. Many owners have utilised the funds to undertake the repairs themselves or have had the process managed by their insurer. Following repair some owners are placing the properties for sale where we are seeing inconsistent methods of disclosure of damage. Some owners disclose the damage with a short clause in the Agreement for Sale and Purchase acknowledging that the house was impacted and repaired; however, supply no supporting information. Some have a statement regarding the damage within the marketing materials or the agent's "Disclosure Statement", which is often not provided to the lawyer for review. Other owners simply are not disclosing at all.

For a prospective purchaser this is a troubling situation. They may be buying a property that has been damaged with no knowledge of the scale of damage or scope of repairs undertaken. This is impacting finance and insurance arrangements and we have already encountered purchasers that have been refused insurance on the eve of settlements because of weather claims that have not been disclosed to the purchaser. It is also common for lenders to require, as a pre-condition of drawdown, an undertaking from the solicitor confirming there has been no weather damage, claims

made or pending claims in addition to the usual requirements to disclose all materials aspects affecting the security property.

The vendor warranties in the standard agreement for sale and purchase do not require the vendor to disclose any damage, claims or repairs if these occurred before the agreement is entered into. It is incumbent on the purchaser to investigate and request information. Despite published guidance from the Property Law Section[2] encouraging the inclusion of clauses requiring disclosure of weather damage and insurance availability, there is little to no uptake in agreements. Purchasers seem entirely ignorant of the significant risk that they are exposed to.

Some owners are disgruntled to discover that settlement funds from an insurance payout are first paid to the mortgagee pursuant to Schedule 2 of the Property Law Act 2007.

We do also know that settlement payments aren't always applied towards remediating properties. These decisions have flow on effects, often to the detriment to the purchaser. A subsequent purchaser may only discover a previously settled EQCover claim when they make a future claim themselves and the insurer or EQC queries the status of the matters under the original claim.

The release of the EQC Natural Hazards Portal[3] in August 2023 has been timely. For the first time, in one information source, the public has access to all settled EQCover claims from 1997 onwards on residential properties in the country and can access local and national-level risk information from multiple government agencies, such as council hazard maps. The portal is a useful tool in educating and protecting consumers but is not a complete panacea. It also raises questions for practitioners as to liability if a search of the portal is not recommended to purchasers.

No discussion of the insurance process following the weather events is complete without acknowledging those owners whose claims remain unresolved. For many owners whose houses were rendered unhabitable, the weather events were only the beginning of a nightmare year in temporary accommodation. As per the Insurance Council's figures, 13 per cent of claims by volume and 25 per cent by value had not been settled ten months after the weather events.

Another theme that has come from the weather events has been the limits of land cover and time it can take to resolve land claims. "New Zealand is fortunate that EQCover is the only insurance scheme in the world that covers damage to land. But many people do not realise until

RIGHT: Flooding after a record breaking heavy rain caused chaos in many suburbs in Auckland

after an event that land cover has limits, in both the land area covered and the entitlements," explains Toka Tū Ake EQC Chief Executive Tina Mitchell.

"The governing legislation for the scheme includes well-defined caps on payments for natural hazard damage to properties. The statutory cap is $300,000 for damage to homes. Payments for land are limited to certain areas on the property, as defined by the Earthquake Commission Act 1993, that are damaged and only up to the value of that land. The Act also provides some indemnity cover for insured damaged land structures."

"Homeowners have access to additional, top up cover for their home cover through their private insurance policies, but the private cover does not extend to land."

Ms Mitchell said, as a result, the maximum pay-outs available for land damage may only cover a portion of the repair or reinstatement costs in some cases.

"We acknowledge the process for land claims can be frustrating for customers, as it is a technical piece of insurance cover, and the assessment process often takes longer than a building claim. We have worked alongside insurers to scale for the size of these events and to provide technical claims expertise. We're also continuing to support people to better understand both their natural hazards insurance and the natural hazards risks to their property," says Mitchell. "Our goal is to help people to be better prepared, and to recover more quickly when events do happen."

Land Categorisation

Three risk categories were announced by the New Zealand Government in the update on assessment of affected properties post cyclone and flooding to apply a framework for homes affected by recent extreme weather and residential properties that may be considered high risk in future events. The risk categories below relate to 'intolerable risk to life' from flooding and/or landslides for people in residential properties on the property (not the land):

Category 1, Low Risk – Repair to previous state is the only requirement to manage future severe weather event risk.

Category 2, Managed Risk – Community or property-level interventions will manage future severe weather event risk. This could include the raising of nearby stop banks, improving drainage or raising the property. (Category two is split into three sub-categories, 2A, 2C and 2P)

Category 3, High Risk – Areas in the high-risk category are not safe to live in because of the unacceptable risk to life from future extreme weather.

Many are surprised to learn that the Government's property risk categories do not align with the coloured placards issued after the councils have carried out the rapid or emergency building assessments. When there is a state of emergency or designation in place, the Government's risk categorisation considers future risk at the property, while the councils rapid building assessments consider the immediate risk to life and safety following the storms.

The risk categories will determine what assistance may be available to a homeowner, with some Category 2P property owners offered funding to mitigate the risk to a tolerable level and Category 3 property owners permitted to engage in the buy-back process, co-funded by the councils and the Government.

With Auckland alone predicting an estimated 5,000 individual property risk assessments needed, the process around the country of categorisation will take many more months to complete. Whilst categorisation information will appear in property files for all categories and a Land Information Memorandum (LIM) will note if a property is Category 2 or 3, this information will only be noted once the categorisation process is complete and potentially will be removed once relevant council actions are completed for the property (for example a buy-out), or the scheme otherwise comes to an end.

Buyout process and mitigation

On 1 June 2023, the Government announced a one-off funding opportunity for councils in cyclone and flood affected regions that would support these councils to offer a voluntary buy-out for owners of Category 3 designated residential properties. The funding is known as the Future of Severely Affected Locations (FOSAL) buy-out programme. Under the FOSAL funding arrangement, the Government will contribute 50 per cent of the cost of buying out these properties, and council funds the other 50 per cent. The Government's contribution is contingent on the council contributing. To date, the Government has entered into arrangements with Auckland Council, Central Hawke's Bay District Council, Gisborne District Council, Hastings District Council, Thames-Coromandel District Council, Wairoa District Council, and Hawke's Bay Regional Council.

To determine the starting point for the voluntary buyout offer, a pre-weather event market valuation is used. Auckland Council offers 95 per cent of the value of an insured property, less any insurance payout

The Natural Hazards Insurance Act 2023 will replace the EQC Act 1993 for all damage that occurs to residential properties from 1 July 2024

- The Act incorporates recommendations from the public inquiry into EQC and reflects lessons learned from the experience of Canterbury homeowners.
- The Earthquake Commission will become the Natural Hazards Commission Toka Tū Ake to be better reflect the role its scheme plays in supporting New Zealanders and the range of natural hazards it provides cover for, beyond earthquakes.
- Fundamentally, the scheme remains the same, with key changes, including
  - it makes the rules for mixed and multi-use buildings clearer
  - it clarifies law relating to repairing buildings and land following a landslip or other land damage
  - it simplifies the excesses and calculations for retaining walls, bridges and culverts
  - it introduces a claimant code and a standing dispute resolution service to improve claims management processes and the customer experience.
- Claims lodged under the Natural Hazards Insurance Act 2023 will be known as 'Natural Hazards Cover' or 'NHCover' claims.

LEFT: Aerial photographs show the extent of damage caused by a landslip at Muriwai
NZ Herald/George Heard

(including EQC). For properties that are not insured, Auckland Council offers at least 80 per cent of the value of the property (and up to 95 per cent, the same basis as an insured property). Other councils are following similar processes. Auckland Council has moved forward with the buyout process with the first settlements having completed in December 2023.

Auckland Council's Category 2P Property Risk Mitigation Scheme will provide two grants to each 2P homeowner to complete the mitigation works within two years. The total of the two grants has a maximum value of 25 per cent of the property's capital value (CV) provided for in the council rates database on 26 January 2023. Owners are responsible for managing the work, including finding professional services and tradespeople to complete it. The grants will support homeowners to scope and complete building work to reduce the risk at their property to a tolerable level:

- A design and consent grant to help homeowners get the technical advice and consents they need to confirm the project's feasibility.
- A construction grant supporting the homeowner to complete the consented works.

Kathryn Hickling, Auckland Council's Associate General Counsel (Property) has been part of the team that developed Auckland's Category 3 buyout scheme. She says that being able to settle the first property buyouts prior to Christmas represented a huge milestone in Auckland's recovery and enabled the first of Auckland's storm-affected homeowners to move on.

"The risk framework was only unveiled by the Government in May, and this was followed in June by their funding announcement. Councils in storm affected regions have done a huge amount of work in a very short space of time to develop the Category 3 and Category 2 policy and get the schemes established.

"By the end of January, we had around 60 Category 3 homeowners at various stages of the buyout process, and that number is steadily increasing each week as more risk categories are finalised. We expect there will be upwards of 500 Category 3 homes across the Auckland region.

"Our legal colleagues are critical in helping ensure homeowners understand the categorisation process and make informed decisions about their own individual situations. We'd really appreciate everyone helping to spread the word about categorisation and what it means, so that affected homeowners who have high-risk properties know to contact Auckland Council to get information about the programme."

Moving Forward

The claim statistics from the 2023 weather events are staggering and produced the highest proportion of land claims for any event in New Zealand's history. However, the number of weather-related

insurance claims does not represent the actual number of properties damaged by the two weather events.

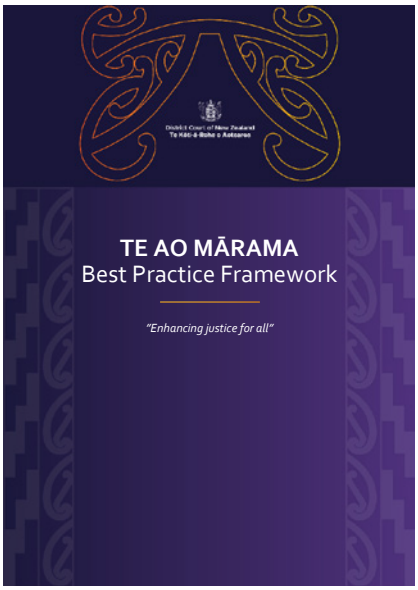
Another aspect to consider is the potential impact of a notice registered against the title of a property under section 36(2) of the Building Act 1991 or section 72 of the Building Act 2004. Often overlooked, these notices can have significant consequences. Both types of notice serve as a public notification that the property is at risk from one or more natural hazards. Property owners who have a notice registered on their title under section 36(2) or section 72 may find themselves without any insurance coverage. Insurance companies have the authority to reject insurance applications for properties if they determine that the hazard risk is unacceptable. Additionally, section 3(d) of Schedule 3 in the Earthquake Commission Act of 1993 states that the EQC has the right to deny a claim if the property's title includes an entry under section 36(2) of the Building Act of 1991 or an entry under section 74 of the Building Act of 2004 (noting that building consent has been granted under section 72 of the Building Act of 2004). Consequently, property owners could find themselves without coverage for both their buildings and the land.

As owners move forward with remediation, it may be determined that the land they own is now compromised and susceptible to one or more natural hazards. Legislation requires councils to assess whether a section 72 notice is required as a condition of issuing a building consent for the required building work, with that notice possibly resulting in the owner having no ability to insure their property and without cover for loss caused by another natural hazard.

Much like the section 36(2) and (72) notices, the land categorisation process will impact the availability of insurance for properties falling under the designations. New Zealand's largest general insurer IAG announced in September 2023 that it would no longer be offering new insurance policies for properties in Category 3 or Category 2, even though some Category 2 homes are considered repairable.[4] IAG also announced that existing policies for Category 3 and some Category 2 properties will not be renewed; however, cover would continue until the properties are either acquired by council under the buyout scheme, or the owners refuse the buyout offer or opt-out of the categorisation scheme. Subject to the extent of damage, existing policies would continue to be renewed for Category 1 and Category 2 properties.

There are potentially hundreds of thousands of properties that have been impacted by the Auckland Anniversary flood and Cyclone Gabrielle. Over time much of the damage caused by the weather events will be repaired; however, many properties will never be free of the impact – their owners finding that they can't secure insurance and finance or they are without cover for future losses from another natural hazard event. ■

1. *www.icnz.org.nz/industry/media-releases/insurers-fully-settled-87-gabrielle-and-auckland-anniversary-claims/*
2. New Zealand Law Society Property Law Section e-bulletin 17 August 2023
3. *www.naturalhazardsportal.govt.nz/s/*
4. *www.thepost.co.nz/business/350075756/countrys-largest-insurer-iag-begins-insurance-retreat-flood-prone-homes*



FAR RIGHT: Chief District Court Judge Heemi Taumaunu

Te Ao Mārama – A new way of working

BY **CHIEF DISTRICT COURT JUDGE HEEMI TAUMAUNU**

Te Ao Mārama is a District Court initiative that has come a long way since it was announced in my 2020 Norris Ward McKinnon Lecture at the University of Waikato. As explained in that lecture, Te Ao Mārama is a judicially led kaupapa that responds to long-standing concerns expressed by defendants, victims, parties to proceedings and wider whānau members that they have found our court processes confusing, alienating, disempowering and retraumatising. Lawyers who appear regularly in our court will be familiar with these concerns.

It is important to emphasise timely justice is a fundamental component of Te Ao Mārama. We are all aware lengthy delays for those who are waiting for their cases to be heard carry a human toll for everyone involved. This toll extends to those responsible for reducing the backlogs, namely the legal profession, judicial officers, court staff and others who play important roles in the justice system. The wellbeing of all involved must be balanced and maintained as we undertake this most important task of reducing delays in our court.

As many of you know, there is no single cause of backlogs. There are multiple contributing factors that cross the whole justice sector. The District Court is committed to addressing backlogs. Over the past year, we have substantially changed the way we roster judges and schedule cases. We are now rostering as many judges as possible to sit in those courts with the largest backlogs. We have referred to this as "priority-based rostering and scheduling". This year we intend to make more improvements as we strive to reduce the time it takes for people to have their cases heard and determined in our court.

Te Ao Mārama recognises that every court appearance must be meaningful. It requires no changes to the law and does not compromise the independence of the judiciary, justice sector agencies or the community. It is not a new court; it is our new way of working in the mainstream District Court and is intended to enhance access to justice for everyone who participates in our court.

Early last month, I was delighted to be able to share with members of the profession the Best Practice Framework we have prepared to support implementing Te Ao Mārama in the family, youth and criminal jurisdictions of the District Court. For those of you who appear regularly in our court, I hope you have had a chance to read the framework.

As you would expect, Te Ao Mārama has developed significantly since 2020 and the framework reflects the many hours we have spent talking with and listening to local communities, judicial officers, court staff, the profession and justice sector stakeholders about what is needed and practicable. The framework contains answers to many of the questions you have been asking about Te Ao Mārama and explains how the kaupapa will be implemented in concrete terms. The framework sets high-level expectations and guidance for everyone who has a role to play in the District Court.

The focus of Te Ao Mārama starts in the Family Court and the Youth Court. Relevant statistics show those children who have been in state care and exposed to family violence have a high risk of being trapped in the 'justice pipeline' from a young age. A 2018 study showed 83% of young people aged 18, 19 and

"It is not a new court; it is our new way of working in the mainstream District Court and is intended to enhance access to justice for everyone who participates in our court"

20 who were in the adult prison system had been in some form of state care when they were children. Other research has shown 50% of the prison population has had some exposure to family violence when they were children. For Māori that figure is 60% and for females it is 70%. Anyone who graduates from state care to youth justice is 15 times more likely to go on to offend as an adult. That same person is then 107 times more likely to be sentenced to a term of imprisonment before turning 21.

Te Ao Mārama will concentrate on improving support for children and families in the Family Court and Youth Court, particularly those who find themselves in state care and/or are exposed to family violence. With this focus in mind, Te Ao Mārama has significant potential to reduce the number of children in care, the number of children who offend in the medium term and the number of children who later enter the adult criminal jurisdiction – all contributing to a long-term and enduring reduction in recidivism and the cost of crime.

A key feature of Te Ao Mārama is it invites the strength of local iwi and communities into the courtroom to help provide wraparound support for court participants who need it most. Although obviously this will be relevant and helpful for Māori, it is not designed only for Māori. To be clear, Te Ao Mārama aims to improve access to justice and outcomes for all New Zealanders regardless of their ethnicity, culture, abilities, who they are or where they are from.

ABOVE: Porirua Youth Court

One powerful way to understand Te Ao Mārama is to see it in action or to hear from those who are involved in delivering it. In the week before Waitangi Day, I travelled to Te Tai Tokerau with the Principal Family Court Judge, Judge Moran, and the Principal Youth Court Judge, Judge Malosi. We met with two community-based service providers who are providing wraparound support for the people who come to court there. We were highly impressed with the work they were doing and the support they were providing those who needed it most.

The introduction of Te Ao Mārama best practice approaches, court lists and processes has been announced in Hamilton, Gisborne and Kaitāia. We have been working closely with several other locations that will be announced soon. The locations we have been working with to date have been selected based on factors such as community, judicial, court and sector readiness.

Although we plan to work closely with the remaining District Court locations in a sequenced manner over coming months and years, there are numerous Te Ao Mārama best practice approaches that may be able to be developed in the more immediate term. As set out in the framework, these are:

- enhancing connections between local courts, local iwi and local communities
- improving the quality of information provided to judicial officers
- improving processes for victims and complainants
- encouraging people to feel heard in the courtroom
- establishing alternative courtroom layouts
- using plain language
- toning down formalities
- adopting solution-focused judging approaches.

By now, the framework has been shared widely. You will see Te Ao Mārama is not a 'one size fits all' kaupapa. Although there are nationally consistent aspects in the framework, each of the District Court's 59 locations is different. This means parts of the framework relevant and appropriate for a particular court because of local circumstances may be irrelevant for another court with different circumstances. I encourage you to engage in discussions with your local bar and stakeholder networks to think about how Te Ao Mārama could be set up in your local court and what it might look like.

In the near future, the New Zealand Law Society will host a webinar about Te Ao Mārama and the Best Practice Framework. I, along with a number of other judges, will participate in the webinar. It will include presenters from courts where the Te Ao Mārama kauapapa is already up and running. ■

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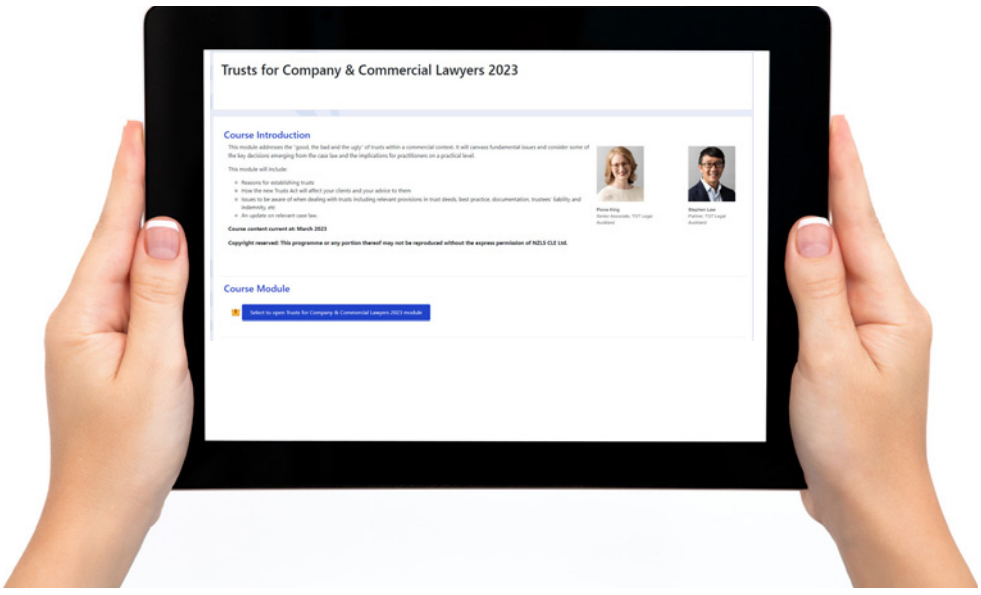

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RIGHT: New Zealand's Acting Chief Legal Adviser Andrew Williams addressing the International Court of Justice

New Zealand active in International Courts and Tribunals

On the interpretation of genocide, climate change and trade access

BY **JANE COLLINS**, **CHARLOTTE SKERTEN** AND **CLAIRE BRIGHTON**

It has been a tumultuous year for international law, and New Zealand has remained in the thick of it.

Last year was an exceptional year for New Zealand in the international dispute settlement arena. In 2023, lawyers from the Ministry of Foreign Affairs and Trade (MFAT) appeared in three different international cases within a period of a few months: in The Hague, Hamburg and Ottawa. Three MFAT lawyers who participated in the litigation – Jane Collins, Charlotte Skerten and Claire Brighton – report on their experience of advocating for New Zealand.

Challenging Russia at the International Court of Justice

It is well known that international courts often lack jurisdiction, especially over powerful countries, as states generally must consent to international dispute settlement. However, sometimes there are surprises.

Two days after Russia launched its invasion, Ukraine filed a claim in the International Court of Justice (ICJ) on grounds that Russia had violated the Genocide Convention by falsely alleging Ukraine was committing genocide as justification for its 'special military operation'. Ukraine was seeking a ruling that no acts of genocide occurred and that Russia had no lawful basis to invade. Ukraine was able to do this, because the Genocide Convention, which both Ukraine and Russia are parties to (along with 151 other countries), contains a compulsory dispute settlement clause for disputes "relating to the interpretation, application, or fulfilment" of the Convention. A month later the ICJ issued a 'provisional measures' order for Russia to withdraw its troops and refrain from actions that might aggravate or extend the dispute until the claim was resolved. Those orders continue to be in place and ignored by Russia today.

New Zealand was the third country to join the case, drawing on our experience of successfully intervening in Australia's Whaling case against Japan in 2010. States are able to intervene in disputes on matters of law provided they are a contracting party to the relevant treaty. The decision to do so is not one taken lightly as intervening states agree to be bound by the ICJ's decision.

From 18-27 September 2023 the Court heard oral arguments on whether a legal dispute under the Genocide Convention exists, and thus whether jurisdiction is conferred on the Court, in order for it to determine the full merits of the case. New Zealand's oral intervention focused on the implications of Russia's refusal to comply with the Court's provisional measure order. We argued that this is relevant both to the ICJ's determination on jurisdiction, as well as being a substantive breach of the Convention

RIGHT: Charlotte Skerten and Victoria Hallum at the Tribunal

itself. We highlighted the duty on states to cooperate and comply with all aspects of the dispute procedure reasonably and in good faith, the critical role provisional measures play in the maintenance of international peace and security, and the broader real world implications of non-compliance.

MFAT's Jane Collins said, "Appearing in the World Court on behalf of New Zealand before a 16 panel bench was an absolute 'pinch me' moment and career highlight. Witnessing litigating states peacefully present their legal views before a range of perspectives highlighted for me the Court's unique and important role in accomplishing the purposes and principles of the United Nations."

On 2 February 2024 the Court found it had jurisdiction to hear Ukraine's case. The ICJ will now move to determining the merits of Ukraine's case.

International Tribunal on the Law of the Sea case on climate change

Also in September, the International Tribunal for the Law of the Sea heard the first in a series of international legal proceedings regarding states' climate change obligations.[1]

This case was an initiative of the Commission of Small Island States on Climate Change and International Law (COSIS), an international organisation spearheaded by Tuvalu together with Antigua and Barbuda. COSIS requested that the Tribunal issue an advisory opinion on how states' obligations under the United Nations Convention on the Law of the Sea (UNCLOS) apply with respect to climate change, including the question of whether greenhouse gases amount to pollution of the marine environment.[2] The case raises important questions around the relationship between UNCLOS, the enduring international legal framework for the oceans, and other international law – not least the United Nations Framework Convention on Climate Change (UNFCCC) and Paris Agreement.

New Zealand was one of 34 states parties to UNCLOS that made written submissions on this question in June 2023, together with a range of international, inter-governmental and non-governmental organisations. We also participated in the oral hearing before the Tribunal in Hamburg, Germany in September.

MFAT's Charlotte Skerten said, "It was a really unique experience to present New Zealand's case to the Tribunal's 21 Judges. While we saw different perspectives on some of the legal questions, the countries appearing before the Tribunal were united in their commitment to UNCLOS and their concern about the impact of climate change."

LEFT: New Zealand's legal team and team of experts at the CPTPP Panel hearing

MIDDLE: MFAT Deputy Secretary Victoria Hallum addressing the International Tribunal for the Law of the Sea

RIGHT: New Zealand's legal team at the International Court of Justice

New Zealand's submissions supported the Tribunal issuing an advisory opinion on the question posed and agreed that states' obligations under UNCLOS with respect to the marine environment apply to anthropogenic greenhouse gas emissions. We encouraged the Tribunal to take a coherent approach to international law that acknowledges the importance of UNFCCC and the Paris Agreement. Our oral submissions focused in particular on the duty of cooperation under customary international law. We argued that meaningful cooperation through the Paris Agreement and other legal frameworks is the most effective way for states to fulfil our collective obligation under UNCLOS to protect and preserve the marine environment.

The Tribunal is expected to issue its advisory opinion in the first half of this year.

Taking Canada to task on dairy in the first dispute case to take place under the CPTPP Free Trade Agreement

Often with trade agreements the devil is in the detail of implementation. Countries need to be prepared to take a stand to ensure that that hard won trade access actually delivers for exporters.

While New Zealand has taken a number of successful cases to the World Trade Organisation (WTO), this was the first dispute brought under one of our free trade agreements. It was also the first dispute to be brought by any Party under CPTPP (a major plurilateral trade agreement that entered into force in 2018). Australia, Japan, Malaysia, Singapore, Mexico and Peru joined as third parties and participated in the proceedings.

The CPTPP agreement allows for tariff-free entry for certain dairy products, up to set volumes, into the Canadian market. New Zealand argued that Canada's administration of these dairy quotas is protectionist, and encourages chronic underfill. New Zealand argued that Canada's use of a system of quota 'pools' impermissibly favours its own domestic dairy industry. By reserving the lion's share of import quota for domestic dairy processors (who produce the same goods that would be imported under the quotas), Canada was effectively making them gatekeepers of their own competition. This was denying importers the opportunity to utilise quotas, and was clearly inconsistent with CPTPP rules.

Canada argued that it had a largely unfettered discretion to choose how it allocated quota, and that in any case the quotas were underfilled because there was no demand for New Zealand dairy products in Canada. Those arguments were not successful.

A two-day hearing was held in Ottawa in June 2023. New Zealand was represented by counsel from the Ministry of Foreign Affairs and Trade, supported by technical experts from the Ministry for Primary Industries. The Panel was chaired by former WTO Appellate Body Member, Jennifer Hillman,

with Petros Mavroidis and Coleen Swords sitting as the other two panellists. MFAT's Claire Brighton described the hearing as 'lively' with robust exchanges between the Panel and Parties. "The hearing was the culmination of a huge amount of work by a great team. To walk away feeling that we had presented our case in a way that did justice to that was an awesome feeling."

The Panel's report was issued in September. It was a decisive win for New Zealand. The Panel found unanimously that Canada was in breach of its obligations under CPTPP. In broad findings, the Panel found that Canada was not allowing importers the opportunity to utilise quota amounts fully, and was impermissibly limiting access to quota to its own domestic dairy processors.

Canada now has until 1 May 2024 (the 'reasonable period of time' agreed between the Parties) to overhaul its quota administration and comply with the Panel's findings. Canada is expected to commence public consultation on its proposed implementation in February. New Zealand has made its expectations regarding implementation clear, and will continue to do so in the lead-up to the 1 May deadline.

New Zealand's dispute sits alongside two disputes brought by the US under the United States, Mexico, Canada free trade agreement (USMCA) challenging Canada's administration of its USMCA dairy quotas. The US won its first dispute in early 2022, but brought a second dispute after Canada failed to comply in a manner that resulted in meaningful market access. The Panel report in the second case was released in December. The US was unsuccessful on all 13 claims it brought. USTR Katherine Tai has expressed her disappointment at the outcome, and stated in response to the decision that the US "will not hesitate to use all available tools to enforce our trade agreements". What that means in practice is yet to be seen.

MFAT's legal team

MFAT is the government's specialist international legal adviser. The division is made up of four units: General International Law (including security, human rights and international criminal law), Environment and Resources Law, Trade Law, and Sanctions. The Ministry maintains a 'lawyer-diplomat' model. This means that the legal division is staffed primarily with rotational foreign policy officers with law degrees, who spend time in the legal division but also work in regional and thematic divisions, as well as taking up diplomatic postings overseas. There are also a handful of specialist non-rotational roles. As well as engaging on international litigation, the division also negotiates treaties, advises on international law compliance and implementation, and analyses policy proposals for international legal risk. ■

Jane Collins joined MFAT in 2020 after practising public litigation law in London for five years. She previously worked at Meredith Connell in Auckland, as a civil litigator and criminal prosecutor. She holds a LLB and BA from Canterbury University and is now New Zealand's Deputy Head of Mission in Tehran.

Charlotte Skerten is MFAT's lead adviser for environment and resources law. She joined MFAT in 2015 after studying law and arts at Otago University and working in corporate law in New Zealand and London. While at MFAT she has also completed a Master of Laws at Columbia University and undertaken a diplomatic posting to Geneva.

Claire Brighton is MFAT's lead adviser in trade law, and is currently managing the trade law team. She joined MFAT after working in commercial litigation in Auckland, and at the International Criminal Court in the Hague. She holds a Master of Laws from the University of Cambridge, and a LLB and BA from the University of Canterbury.

1. Other initiatives include the Vanuatu-led UN General Assembly request for an advisory opinion from the International Court of Justice; an advisory opinion requested from the Inter-American Court of Human Rights by Chile and Colombia; as well as an increase in 'framework cases' before the European Court of Human Rights concerning the design, overall ambition, and adequacy of governments' responses to climate change.
2. While advisory opinions are not legally binding on states, they are generally regarded as highly authoritative interpretations of international law.

Generative AI guidance for lawyers

Balancing the opportunities and risks

As the application of Generative Artificial Intelligence (Gen AI) is now increasingly proficient and prevalent, it is no longer just a hi-tech term in the language of IT specialists. With this technology becoming more readily accessible, the full scale of its impact, positive or negative, remains unpredictable as it continues to evolve. Despite its dynamic nature, we know one thing for sure – users of artificial intelligence technology tools have a responsibility to manage the risks that come with the opportunity.

Many industries have had a glimpse of what AI can offer, and the legal profession is no exception. Gen AI is rapidly emerging as a tool that opens exciting new opportunities for the provision of and access to legal services. However, there are also risks and ethical issues that need to be carefully managed.

In response to the rapid growth of the use of AI in the legal profession, the New Zealand Law Society Te Kāhui Ture o Aotearoa has released its first Gen AI guidance for lawyers, outlining the opportunities, risks and how to balance these while embracing AI's potential in enhancing the delivery of legal services.

Lawyers are ultimately responsible for the services they provide

As smart and intuitive as Gen AI may seem, its limitations are clear – for example, Gen AI cannot understand its output, nor can it validate its accuracy, in the way a human author can.

"While there is no overarching regulation for the use of AI in New Zealand, all lawyers are ultimately responsible for the legal services they provide," Law Society Chief Executive Katie Rusbatch says.

When lawyers use Gen AI tools in their work, "at a minimum, privacy, and fair-trading requirements will apply in addition to obligations under the Lawyers and Conveyancers Act (Conduct and Client Care) Rules 2008 (RCCC)."

The obligation to protect client information and ensure the AI generated content is accurate, factual and valid, sits with lawyers if they choose to utilise Gen AI in a professional setting.

Careful human oversight is vital

One of the risks inherent with Gen AI tools is their ability to create seemingly persuasive but nonsensical or false content.

As concerns arise due to incidents where Gen AI has been misused, tools like citation checkers, are being developed to counter it. However, this does not obviate the importance of careful human oversight to facilitate the process ethically and responsibly.

"To mitigate the risks associated with the use of Gen AI, we're urging lawyers to fact-check outputs and the accuracy and relevance of case citations and source references.

"Furthermore, it's prudent to make sure that supervised staff do not access Gen AI to assist with work tasks unless authorised to do so, and that use of AI is disclosed to their supervisor," Katie says.

Be aware of inputting personal and client information into external AI tools

The use of Gen AI involves inputting data into a tool to create content that matches users' needs. As users enjoy the convenience and other benefits that Gen AI brings, it poses risks in privacy, data protection and cyber security. It can also give rise to questions about who owns the input and output data. Therefore, potential users are at risk of inadvertently infringing intellectual property rights.

"The public service guidance provided by *Digital.govt.nz* recommends against inputting personal and client information into external AI tools. The Courts of New Zealand guidance similarly highlights the real risks of inputting confidential or suppressed information into Gen AI tools," Katie says.

"As we largely operate in an online environment, it's crucial that lawyers familiarise themselves with CERT NZ's cyber security alerts and guidance for businesses.

"To manage privacy, data and cyber protection, and legal risk, lawyers should also take extra care to consider an AI provider's Terms of Service, ensuring contractual provisions do not potentially place a lawyer in breach of professional and legal obligations relating to legally privileged, confidential, or personal information."

The ultimate obligation as a lawyer

Gen AI presents exciting opportunities in the 'Lawtech' space for lawyers to embrace. However, lawyers must be cognisant that they are ultimately accountable for the quality and competence of the work they produce.

"Improper, negligent or incompetent use of Gen AI could lead to a serious breach of the Conduct and Client Care Rules. There are examples of lawyers overseas relying on Gen AI and unwittingly providing false authorities to the Court, with serious disciplinary consequences," Katie says.

The Law Society Gen AI guidance reminds lawyers of their obligations to provide client care and service information, including who will undertake work and the way the services will be provided. A lawyer must also take a proactive approach to make sure that a client understands the nature of the retainer and consults the client about steps taken to implement the client's instructions.

As the use of the technology develops, Katie adds that there may come a time when lawyers need to review their billing practices and the information that is provided to clients at the start of a retainer.

Guidance for Lawyers

Like any evolving technology, opportunities for users are only limited by the imagination. A significant amount of work is happening both in New Zealand and internationally to set out expectations and guidelines to help safeguard users and the wider public from the application of AI.

"We'd like to extend our gratitude to the Law Society of England and Wales for sharing their guidance *Generative AI – the essentials* and allowing the Law Society to draw on and adapt it for the New Zealand context.

"The purpose of our guidance is to assist lawyers in navigating the complex environment of AI while exploring the opportunity to harness its benefits for more administrative tasks, such as engaging with potential clients via chatbots, summarising large quantities of information, generating templates and drafting documentation," Katie says.

For full Gen AI guidance, please visit our website. You can also download the checklist adapted from the Law Society of England and Wales guidance, to view a summary of factors that lawyers should consider from initial exploration, procurement, use and review. ■

New Zealand Law Society 2024 events calendar

Visit lawsociety.org.nz/events for more Law Society events

New Zealand Law Society Otago Southland Conference 2024

CPD: 5 hours

4 May

9:00am to 4.30pm followed by dinner at Larnach Castle 6pm

The 2024 New Zealand Law Society Otago Southland Conference is set to take place at the character-laden venue of St Margarets College on Saturday 4th May in Dunedin. This joint Law Society event is the only one of its kind, with its location alternating annually between the captivating cities of Dunedin, Queenstown, and Invercargill.

Anticipating a gathering of over 100 delegates, the 2024 conference promises a dynamic blend of professional development and networking opportunities. With a fantastic lineup of speakers organised, topics will include the IAWJ's mission to save the Afghan Women Judges, AML & financial crime, employment immigration, property law, neurodiversity & communication, mediation, legaltech & AI, and much more! The conference is exceptional value for money at just $180 + GST for a full day of conferencing. For more information and registration, please email *otago@lawsociety.org.nz.*

Thinking Property Seminar

CPD: 1 hour

9 May, Wellington

20 June, Napier

8 August, Auckland

19 September, Christchurch

21 November, Nelson

We would like to invite you to Thinking Property – an educational session, hosted and facilitated by the Property Law Section executive committee. The 60 minute fast-paced session takes place during lunchtime (catering provided), on the day of the executive committee meeting, and covers a wide range of topics. Discussion and feedback during the session is encouraged. This is an opportunity for you to meet with your colleagues from other local firms, meet your representatives on the executive committee and receive CPD-compatible learning and guidance about a frequently changing range of topical issues facing property practitioners.

36th Annual ILANZ Conference CPD: Up to 10 hours across the 2 days	21 – 23 May Blenheim	From small beginnings over thirty years ago, the conference has grown to be a major event in the in-house community's calendar, attracting more than 400 delegates. Our conference theme, Te Hunga Panoni, acknowledges our members as agents of change within an organisation. Tailored by and for in-house lawyers, the ILANZ Conference unites members for professional and personal growth, delving into a spectrum of pertinent topics – from big picture thinking to practical takeaways, legal to practice management, and soft skills to wellbeing. The conference is an ideal platform for targeted professional development and meeting annual CPD requirements. Beyond education, it fosters valuable networking, offering a chance to reconnect with peers and share insights across three social functions.
Law Society CLE Property Law Conference	10 – 11 June Auckland & Live Stream	The Biennial Law Society CLE Property Law Conference will provide practitioners, at all levels, with the opportunity to update themselves on topics of essential importance and interest in the property law field.
Practising Certificate Renewals	Due by 30 June	To successfully renew, all lawyers must have paid their fees **and** made the fit and proper declaration, by midnight 30 June 2024 (before 1 July 2024). (payment by d/c, funds must be confirmed as received into the Law Society bank account before the cutoff date ie funds received on 1 July onwards will have missed the cutoff).
Law Society CLE Human Rights Law Trans-Tasman Conference	12 – 13 August Queenstown & Live Stream	This two-day case law conference will explore the synergies and differences in the protection of human rights in New Zealand and Australia. Participants will learn how human rights are protected in law, forge valuable connections and share their knowledge in this increasingly expanding dynamic area of law.
Law Society CLE Employment Law Conference	31 October – 1 November Auckland & Live Stream	The biennial Law Society CLE Employment Law Conference will provide practical business sessions on topics of interest delivered by an impressive line-up of speakers together with the usual opportunities to renew acquaintances and network.

Master of Taxation Studies

A programme designed for both law and commerce graduates who intend to pursue a career in tax advocacy or tax consulting. The programme offers the opportunity for graduates to develop, and for practitioners to update and hone, their knowledge of tax law.

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[1]QS World University Rankings 2024 | [2]QS Graduate Employability Ranking 2022 | [3]QS World University Rankings by Subject 2023