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WELLINGTON BRANCH NEWSLETTER

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**New Zealand
Law Society**
Wellington Branch

PRESIDENT'S COLUMN – ĒTAHI WHAKAARO NŌ TE TUMUAKI WITH CHRISTOPHER GRIGGS



That is an ambitious goal and we do not shy away from that. It is a journey of small steps. One of those steps is reflected in our mission statement, which calls upon the Branch Council to advocate to the Council and Board of the New Zealand Law Society on issues of importance to our members. Sometimes that takes a degree of courage. The message is not always entirely welcomed by all parties. But that is the task we have accepted as your Branch Council. The Society's new President, **Jacque Lethbridge**, has asked that I pass on her acknowledgment of the work which is being done by your Branch Council.

I want to tell you about a couple of areas in which the Branch Council has been advocating on your behalf in recent months. The first of those (chronologically) is a proposal to increase transparency within the Society.

This is an excerpt from what we have submitted for consideration by the Council of the Law Society:

Nau mai, haere mai ki tēnei whakaputanga mō tā tātou niupepa. I ngā marama rā, kua hinga ētahi tōtara i Te Waonui a Tāne. Moe mai rā e Tā Wira, moe ma rā e Moana, e ngā rangatira. Nō reira, kia tīmata tātou ki te pānui i tēnei whakataukī nā tērā tōtara kē o te ao Māori, nā Tā Āpirana Ngata:

*E tipu e rea mo ngā rā o tō ao
Ko tō ringa ki ngā rākau ā te Pākehā hei ara mō tō tinana
Ko tō ngākau ki ngā tāonga a ō tīpuna Māori
Hei tikitiki mō tō māhuna
Ko tō wairua ki tō Atua, Nānā nei ngā mea katoa.*

Mehemea he kōrero ā koutou mō Tā Wira, mō Moana rānei, e hiahia ana tātou ki te whakarongo.

If you are one of those members who has been reading this Newsletter since its first edition in September last year, you might remember that I mentioned the Branch's new vision, **To be the leading positive voice for lawyers in Aotearoa.**

A consistent criticism of the Society from members has been that it is not sufficiently transparent and does not engage with them effectively on issues of importance to the profession. The new Wellington Branch Council has discussed this problem and resolved to do what it can at the Branch level to alter this perception by stepping up engagement and communication, listening to our members, and proactively sharing all relevant information, including Branch Council minutes, with all members of the Branch.

The kaupapa underlying this approach is that the Society belongs to its members and each of its members have a legitimate interest in everything the Society does and says, subject to legal and regulatory constraints.

...

It is proposed that the Society proactively releases all information of potential interest to its members, unless there are good reasons to withhold that information.



The Branch Council wants to share this proposal with you in full and I have been in discussions with Ms Lethbridge concerning that, which is why this Newsletter is a little late. The reality is that national office controls our means of communicating with you, so that limits the freedom of the Branch Council in that respect.

In the end, the President has decided that she will support the release of the proposal to you, provided it is accompanied by an extract from the minutes of the NZLS Council meeting at which it was tabled, if that is agreed to by the Council. We will send it to you as soon as we can. I am afraid I think the way in which this issue has played out exemplifies the issue which the proposal is intended to address.

There are however positive signs of change. I think the Society has made a major stride forward with this year's annual report, which is much more fulsome and informative than it has been in previous years. When our proposal was presented to the Council of the Law Society on 8 April, it was agreed that the Board would consider the policy intent underlying it and return to Council with a revised proposal to improve the Society's transparency. I agreed to that approach on your behalf as a compromise option, given the fact that some of the representatives in the Council opposed our proposal as being too broad. We have a new Board, led by new President Jacque Lethbridge, on which Wellington is represented by **Ata Esera**. I look forward to seeing the fruits of their deliberations and I will let you know the outcome.

The second area where we have been active in the advocacy space relates to a matter touching on judicial independence which was brought to the attention of the Society by long-time Wellington practitioner **Dr Tony Ellis** and also by our own Courts Committee, ably led by **Paul Michalik**. On behalf of all of us, I want to thank Tony and the Courts Committee for bringing this matter to our attention.

In short, Oranga Tamariki was a party to a Family Court proceeding. While that proceeding was part-heard, the then Interim Chief Executive of Oranga Tamariki communicated with the presiding Judge's Heads of Bench about the part-heard case.

Opposing counsel were neither informed of nor privy to this communication until the presiding Judge alerted them. It reportedly involved an expression of concern about the conduct of the presiding Judge towards witnesses of or from Oranga Tamariki.

Following this contact, the Heads of Bench sought to engage with the presiding Judge regarding the concerns which had been expressed. His Honour declined that invitation.

This sequence of events has been viewed with some concern by this Branch's Courts Committee and also by the Law Society's Rule of Law Committee, which has prepared a report. This includes a number of recommendations which your Branch Council considers to be well-judged and measured.

Having considered the report of the Rule of Law Committee, our former Law Society President, Tiana Epati stated in November 2021 that:

...the Board remains of the view there are insufficient facts or any factual findings upon which the Law Society could take a firm position, or make public statements, about the events involving [the Judge] and exactly what was said.

The report of the Rule of Law Committee and the relevant minutes of our own Courts Committee are appended with this Newsletter. You will also find there my letter on behalf of the Branch, expressing our concern that the recommendations of the Rule of Law Committee have not been adopted. I encourage you to read these documents for yourselves and draw your own conclusions. There is room for different views on these matters and I look forward to reading yours in future letters to the editor of this Newsletter.

If there are any other matters on which you think the Branch should be taking a stand, the Branch Council wants to hear from you. You will note the Society's announcement that it has appointed an Independent Review Panel. This presages the possibility of root-and-branch reform of the Society of an order we have not seen since the enactment of the Lawyers and Conveyancers Act 2006. I strongly encourage you to seize all opportunities to engage with the review. At the local level, it is important that as many members of this Branch as possible attend the Branch's next AGM, which is scheduled to take place at **4.30pm on Wednesday 15 June 2022**. Whether or not you think the Branch Council is doing the right things to improve the Society's engagement with Wellington members, we need to hear your voices. If you have questions about what the Society is doing and where it is heading, I will try answer them (a bit of prior notice would be good). As it was last year, the AGM will be followed by a quiz and pizza night, which is a fun way to catch up with colleagues and friends and make new ones!

Nā tāu raurau, nā tāku raurau, ka ora ai te iwi.



Christopher Griggs

VICTORIA UNIVERSITY LAW SCHOOL - DEAN'S COLUMN

WITH PETRA BUTLER



Kia ora koutou and welcome to the first Dean's Column of 2022.

After a turbulent start to the academic year Te Kauhanganui Tātai Ture, Faculty of Law, has reopened and is operating again with some semblance of normalcy. We were very lucky not to sustain permanent damage to our historical grounds; with just a few dry patches of lawn which will, eventually, grow back. This is a wonderful metaphor perhaps, as from ash comes new growth that can be nurtured. With that in mind, I would like to share this year's growth so far:

The Faculty has not only welcomed new and returning students but also four new academic colleagues who will enhance our competencies in Māori and Pacific legal systems and jurisprudence. Luke Fitzmaurice, joined us at the end of February and his work focuses on the study of the rights, protection and the study of Aotearoa's tamariki. We also welcome Hai-Yuean Tualima and Morgan Godfery, both of whom have started in April; specialising in traditional knowledge and Māori business law respectively. Dr Mele Tupou Vaitohi currently leads the Borrin Foundation funded inquiry into Improving Pasifika legal education in Aotearoa and will join the faculty at the end of the year. We also added academic accolades to this year's faculty growth: Professor Claudia Geiringer who was recently elected Fellow of the Royal Society Te Apārangi. Professor Geiringer's work is regularly relied on by judges, both in Aotearoa New Zealand and abroad, in developing important public law doctrine. She is also internationally recognised as an expert on our constitutional protection of human rights in the Anglo-Commonwealth. Her work is praised for its rigour, elegance, and its positive impact on both domestic and international law.

Furthermore, Dr Michelle Zang and Luke Fitzmaurice have been awarded support from the Michael and Suzanne Borrin Foundation. Dr Zang received a Justice Fellowship for her research focusing on how the interests of indigenous groups around the world have been impacted under the current international regimes of trade and investment laws and policies. Luke Fitzmaurice received a Borrin Foundation Travel and Learning Award and will travel to his tūrangawaewae in the far north to learn more about his whakapapa and about the tikanga of Te Hiku-o-te-Ika. He plans to build on his research into the history of indigenous intellectual exchange between Aotearoa New Zealand and our Commonwealth cousins in Canada. He will be traveling there later in the year to learn more about Canada's approach to indigenous legal education.

The Faculty is also growing its postgraduate offerings and is inviting the profession to take part in some interesting papers on offer during trimesters two and three of 2022:

LAWS434/534 ST: Law of the Sea (T2)

This course will focus on critical analysis of the public international law of the sea, using selected issues as illustration. Topics include fishing, protection of marine biodiversity, and maritime security.

LAWS439/539 ST: Law of Freshwater Resources (T2)

Exploring the principles and norms that govern the management and protection of transboundary freshwater resources, this course provides comparative perspectives on how national legal frameworks address national and international water related challenges.

LAWS525 ST: International Law and Development (T2)

International law intersects with the development of peoples and economies. The seminar analyses development issues in a global context and explores how institutions shape law, policy, and the extent to which the practice of states, non-state actors and indigenous peoples affects international, regional and national development goals.

LAWS445/545 Land Issues in New Zealand (T3)

Land issues relate to many aspects of individuals lives as well as the public sphere. New Zealand has many statutes relating to land and this course will have an overview of the land law regime. Co-taught with LAWS 545.

In addition to these courses, we are working away behind the scenes on some new events and courses for further education. Wishing you a restful Easter break and we hope to see you all back in person soon.

LAWYERS FOR CLIMATE ACTION NZ INC.

In January this year, Lawyers for Climate Action NZ Inc (LCANZI) wrote to NZLS asking the NZLS Board to pass a resolution to provide support for the profession in developing new essential skills needed to build climate conscious practices.

LCANZI's proposed resolution draws, to a large extent, on a similar resolution passed last year by the Law Society of England and in Wales. LCANZI has asked the board of NZLS to resolve to:

- support NZLS members to be fully informed about the climate crisis and on how they might act to mitigate it;
- urge lawyers, always in a way which is compatible with their professional duties, Te Tiriti o Waitangi and the administration of justice, to engage in climate conscious legal practice (i.e. practice that takes into account the likely impact of any matter upon the climate crisis in a way that is compatible with their professional duties);
- provide guidance to lawyers on how to engage in climate conscious legal practice;
- urge law firms and organisations that support the legal industry to operate in a way which is compatible with restricting the increase in global warming to 1.5°C above pre-industrial levels and with supporting a just transition to a decarbonised society;
- encourage lawyers, law firms and organisations that support the legal industry to take an holistic and proactive approach to mitigating the climate crisis and promoting climate change adaptation by taking action; and
- report on the steps taken to meet these commitments and the outcomes of such steps and share its learning with NZLS members.

LCANZI has also called on NZLS to include supporting climate conscious legal practice in its strategic plan. The Law Society has recently responded. They have confirmed there is work underway so that a climate change policy can be considered in the future.

What is climate conscious legal practice?

The resolution encourages lawyers to engage in climate conscious legal practice, but what does that mean?

First, it means having knowledge about and an awareness of the seriousness of climate change and its implications for clients and for society generally. Secondly, it means a consequent willingness to change behaviour.

Climate conscious legal practice involves an acknowledgement that climate change is relevant to legal advice, and from that a curiosity about both the impact of lawyers' daily decisions on climate change, and the impact of climate change on their decisions and those of their clients. Where that curiosity will lead will vary, in ways that suit the different circumstances, values and capabilities of individuals. Nonetheless, ensuring that lawyers have the awareness they need to make this mind shift is a key step to achieving change and a just transition.

Some would argue that the resolution proposed for adoption by NZLS ought to identify the outcome that is needed to address climate change. The resolution passed by the Law Society of England and Wales does in part. It is more prescriptive than what has been suggested for New Zealand.

But LCANZI judged that it would be premature to attempt to define climate conscious legal practice too precisely. First, we need increased understanding and awareness of the issues and more discussion about the implications for how we practice law in Aotearoa. For this reason the resolution proposed is less prescriptive than that adopted in England and Wales. Instead it asks for guidance and support for practitioners both in developing curiosity around climate change in legal advice, and in understanding how to manage their own practices in a way that is compatible with New Zealand's legislative carbon emissions expectations.

Nonetheless this resolution is important. It signals a notable change in what is considered important to legal practice. If the resolution is passed, this supported awareness of climate change will cause individuals and organisations to modify behaviour. From that will grow a social expectation of climate awareness in decision-making and in the giving of legal advice.

Through-out society, without the awareness that is climate consciousness, little will happen to slow climate change. The social licence needed to undertake the adjustments to how we live, how we move around, how we measure value, how we assess risk simply will not exist and the chances for a just transition will diminish. This resolution is intended to help oil the wheels to enable debate, discussion and understanding. It will enable those discussions to be part of daily business for clients of New Zealand law firms.

How to begin to practice in a climate conscious manner?

As a first step to practicing in a climate conscious manner, lawyers need to understand both the facts about climate change and the existing legal and policy framework.

- Read the Climate Change Response Act 2002 and New Zealand's Nationally Determined Contribution and understand New Zealand's carbon emissions targets (*to reduce net emissions by 50 per cent below gross 2005 levels by 2030 and to be net zero by 2050*).
- Watch this free webinar provided by NZLS CLE Limited on climate change obligations.
- For an overview of the latest international science, read the Summary for Policymakers of the IPCC's Sixth Assessment Report.
- Read the National Climate Change Risk Assessment for New Zealand.
- Read the summary of the Climate Change Commission's advice to government, to understand likely changes in New Zealand.

LCANZI is interested to hear from individual members of the New Zealand Law Society who wish to talk more about the resolution, who might have questions about how it would operate, or how, irrespective of whether the resolution passes, they could develop climate conscious legal practices. If you would like to engage on this, do contact Debra Dorrington either at probono@lawyersforclimateaction.nz or at debra@debradorrington.co.nz.

- Keep an eye out for New Zealand's Emissions Reduction Plan expected to be released in May 2022.

Then accept that, when practicing in a climate conscious manner, asking questions can be as important as knowing the answers. Here are a few examples to get you thinking:

- Ask your bankers what climate change trends they see in how service industries conduct their business, and how the bank's own climate requirements will impact its customers.
- Ask your insurer how climate risk will affect insurances both for your business and those of your clients in the decade to come.
- Ask prospective employees what they think climate conscious legal practice looks like.
- Ask your IT provider what their carbon emission objectives are and how changes they propose will affect you.
- Ask clients how climate change is impacting their business.
- Ask clients whether they want the impact of climate change considered in the giving of your legal advice.
- Ask each other what you are doing as businesses and individuals to mitigate and adapt to the effects of climate change.

The proposed resolution is intended to generate opportunities for lawyers to further their knowledge and develop their practices in ways that are positive for clients and the climate and to ensure they have the support of their professional organisation in finding a way to actively address an issue that might currently feel uncomfortable or overwhelming.





UPDATES AND EVENTS

New Zealand Law Society' President

On 8 April 2022, Jacque Lethbridge became the 32nd president of the Law Society.

Jacque Lethbridge is the third consecutive woman President and fifth woman President in the Law Society's 152 years. Jacque is a partner at Martelli McKegg and the former chair of the Auckland Community Law Centre.

Jacque is passionate about diversity and inclusion in the profession, as well as making the Law Society fit for the future. Jacque's tenure as President will look to enhance the "three Rs" - Regulation, Relevance, and Recognition. Learn more about Jacque and what she wants to achieve [here](#).



New judges appointed

The Chief Justice welcomed the Attorney General's announcement of four senior court appointments – with three existing members of the judiciary appointed to more senior roles, and the appointment of a new High Court Judge.

The new judges include:

- **Justice Stephen Kós** - appointed a Judge of the Supreme Court. Justice Kós's appointment to the Supreme Court follows the retirement of Justice William Young.
- **Justice Mark Cooper** - appointed President of the Court of Appeal, replacing Justice Kós.
- **Justice Sarah Katz** - appointed a Judge of the Court of Appeal.
- **Justice Kiri Tahana**, Te Arawa (Ngāti Pikiao, Ngāti Māhino and Tapuika) - appointed to the High Court.
- **Janey Louise Forrest** - appointed to the District Court.
- **Alexander Rangiheua Henry Laurenson** - appointed to the District Court.
- **Sarah Margaret Morrison** - appointed to the District Court.

YLC Quiz

- Old Bailey.
- Thursday, 16 May - 6pm.

The YLC Quiz is back! Registrations are now open. Last year this event sold out so you'll want to be in quick. Click [here](#) to register.

Tickets are \$20 pp, payable in cash on the night and we can have teams of 6 - 8 persons. There's a mix of topics, including a legal round and games between rounds. Prizes are up for grabs!

Hutt Valley Bar Dinner

- 2 June 2022.
- La Bella Italia, Petone.

Please join us for an evening of collegiality with your Hutt Valley peers and members of the judiciary.

Tickets are \$100 (\$10 surcharge for vegan, keto, or vegetarian) This includes a drink on arrival and wine with your meal. Book your ticket [here](#).

Specialist Areas of Law – An Introduction for General Practitioners

- 12 May 2022, 5.30pm.
- Over Zoom - please email the IPC convenor Emma Gabor at emma.gabor@gaborlaw.co.nz to register.
- 1 CPD point, free.

The Independent Practitioners Committee is bringing three specialist lawyers to talk about military law, Māori law, and public law. This session will cover the current issues, how to understand where best to focus the client's resources, and when specialist advice is needed.

Brigitte Morten, Director at Franks Ogilvie, and political commentator will speak about the current environment for public and administrative law, which have taken on a particular significance since the spread of Covid-19. She will speak about understanding the context in which the government agencies are operating in, the role of the media, and the tools available to lawyers to achieve a good outcome for the client.

Baden Vertongen, Lawyer and Mediator and Co-Chair of Te Hunga Rōia Māori o Aotearoa/the Māori Law Society will discuss the type of legal work required in negotiating Treaty of Waitangi Settlements and co-governance arrangements, and also the post settlement issues faced by Post-Settlement Governance Entities and other Māori organisations.

Matthew Hague, Director at Frontline Law will give an overview of the NZDF military justice system including a description of summary trials and courts martial, with a focus on the differences between the military and civilian criminal systems. Matthew will also talk about avenues of appeal, common issues and challenges, and the future of the military justice system. He will answer questions about the Yardley decision in which the High Court held that the vaccine mandates for Police and NZDF were unlawful. Matthew was the lead counsel in the case.



Listen to [The Limits on lawyers' pro bono work](#) on The Detail.



Support your local Living Wage employers by finding out who they are [here](#).

Let's Get Wellington Moving information webinar

- Monday 16th May, 11am - 12pm.
- Zoom webinar.
- 1 CPD point, free.

You are invited to attend an informative webinar about the Let's Get Wellington Moving project.

Presented by David Dunlop, Major Projects Director WSP and Acting Programme Director Let's Get Wellington Moving.

David Dunlop will give us an update of where the project is at, where it is headed and the impact it is likely to have on Wellingtonians and local businesses. Following his presentation you will be given the opportunity to ask questions.

David is a Major Project Director for WSP. He has a strong understanding of customer expectations and the importance of delivering safe and smart solutions to achieve strong environmental, societal and sustainable outcomes.

David is currently Acting Programme Let's Get Wellington Moving and is responsible for leading one of NZ's largest and most exciting integrated transport and land use projects, with a total value of up to \$7.4bn.

If you want to attend register [here](#).

Environmental Law and Policy Conference 2022

Please join us on 24th May 2022 at the Cordis in Auckland. A livestream option is available if you are unable to attend in person.

If you want to register or learn more about the Conference, please read more [here](#).



Look up [The Chancery Lane Project](#) to start using climate and net zero aligned clauses in your contracts.



If you have missed our previous newsletters, please view them [here](#).

