

Justice Squeeze

The true picture of our broken legal aid system





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ABOUT LAWTALK

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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DX SP 20202

PRINTING AND DISTRIBUTION

Blue Star, Petone, Wellington

ISSN 0114-989X (Print) · ISSN 2382-0330 (Digital)

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FROM THE LAW SOCIETY | TE KĀHUI TURE

Change, Optimism and Persistence

Tēnā tatou katoa,

This is the last LawTalk of the year. It comes after a hard year for many of the legal profession, particularly in Auckland, the Waikato and Northland, as we faced Delta head on, often through various forms of lockdown.

Let us all look forward in the hope that the New Year brings an easier journey, especially as Aotearoa New Zealand 'opens up' again.

Election of New President

On 15 October, a new President was elected. She is Jacqueline Lethbridge (Jacque), and she'll take up her role as the Law Society's 32nd President in April. Jacque practises in commercial and civil litigation, heading the team in litigation at Martelli McKegg in Auckland. Previously Vice President for Auckland on the New Zealand Law Society Board, Jacque has represented a wide range of clients across demanding litigation - including the recently successful landmark challenge against the nation's MIQ system. She is a passionate advocate for positive change, and I welcome her to the role.

Access to Justice – Campaigning for Improved Legal Aid

The media, public and lawyers seized upon our advocacy for a better system of legal aid, as we launched the results of our Colmar Brunton-commissioned survey. There was widespread coverage, much of which supported the position the Law Society was taking to promote greater equity and much-needed change.

You can read about this survey in this edition of LawTalk. In essence, the survey showed that access to justice, includes access to

lawyers - and that's failing. It said:

- legal aid is vastly overstretched: 20,000 clients have been turned away by legal aid lawyers in twelve months (while at the same time over 80% of the entire legal profession gave legal assistance for free - suggesting pro bono is not the answer)
- on average legal aid lawyers were paid for only half their time on the last legal aid file; and
- a quarter of legal aid lawyers plan to quit the legal aid system or reduce work

The survey achieved a target. We have the attention of the Minister who has publicly said he is concerned about the results of the survey. Our work is not over until Government agrees to invest in legal aid and look to future reform. Only then will access to justice be realised.

An Important Consultation in January: Rule Changes for Transparency

In the minds of ordinary people, trust and confidence rest upon the ability to assure the public matters of concern are being looked in to appropriately.

One of the keenest insights of the 2018 Cartwright Report, in the wake of bitter criticisms of the profession, was that the Law Society could not confirm we had received a complaint. This statutory restraint on information included the Law Society being unable to provide assurances that serious complaints, involving high public interest, were being considered and being able to talk openly to affected parties who may not wish to be complainants.

The constraints of our Legislation, said the Cartwright report, contributed to "concerns about a lack of transparency and accountability".





▲ Being interviewed by TVNZ on our Access to Justice survey

In the 21st century, it's clear that to continue to enjoy the benefits of our profession's leadership in society, the Law Society's complaints system must be more transparent. This requires changes to Rule 188, Disclosure of Information.

We have approached the Minister about the changes we might need. We also asked for tandem amendments to allow for the triaging of frivolous and vexatious complaints to improve efficiency and support the sustainability of the complaints service. He has agreed to us consulting with the profession on these proposed changes.

In January 2022, therefore, we will begin this consultation.

The changes we will put to you will be careful, considered and principled. We will be advocating to improve efficiency, and at the same time for better transparency.

We will articulate in consultation a system:

- Of triaging complaints, so that trivial complaints are moved aside earlier (and do not

occupy the time of Standards Committees);

- That seeks to recognise frivolous or tactical complaints at inception, and dispenses with them; and
- Where it is in the public interest to do so, will confirm receipt of a complaint.

As a member of the Law Society, you will be invited to participate in this consultation.

My strong belief is this: prejudice and poor behaviour are extremely difficult to skewer while they remain hidden. There's a force in allowing sunlight in – with care and consistency – to change our profession for the good.

My strong belief is this: prejudice and poor behaviour are extremely difficult to skewer while they remain hidden

Best Wishes for the Holiday Season

The year is almost gone. I wish you and your whānau the very best for Christmas and the holiday season, and hope to welcome you back in the New Year, refreshed and ready to take on 2022. ■

Ngā manaakitanga,

TIANA EPATI

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ACCESS TO JUSTICE

A true picture of our broken legal aid system

BY **JAMES BARNETT** AND **MORWENNA GRILLS**

In September 2021 the New Zealand Law Society | Te Kāhui Ture o Aotearoa commissioned Colmar Brunton to survey all lawyers to assess the current state of access to justice in Aotearoa New Zealand.

Almost 3,000 lawyers responded making this the largest survey of lawyers on access to justice ever undertaken in Aotearoa. The results confirm what many have been saying for years but are still jarring to see so explicitly laid out – the legal aid system is on life support.

People are struggling to access justice

Half of the lawyers surveyed rated the legal system as poor or very poor at providing everyone in Aotearoa with access to justice.

And that’s no surprise given how many people are being turned away because lawyers don’t have capacity to take on more clients.

50% of lawyers (excluding those working in-house) have turned away clients in the last 12 months, whilst 75% of legal aid lawyers have turned away people seeking legal help. Through figures provided in the survey Colmar Brunton conservatively estimates that in the past 12 months over 20,000 people were turned away from legal aid lawyers.

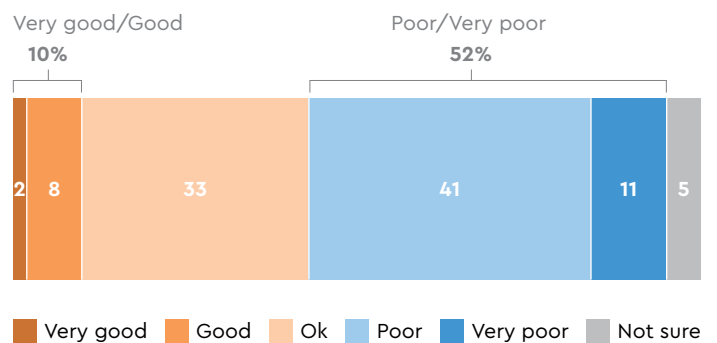
The figures show there simply aren’t enough legal aid lawyers with capacity to help the number of people needing legal help.

Legal aid lawyers are working for free

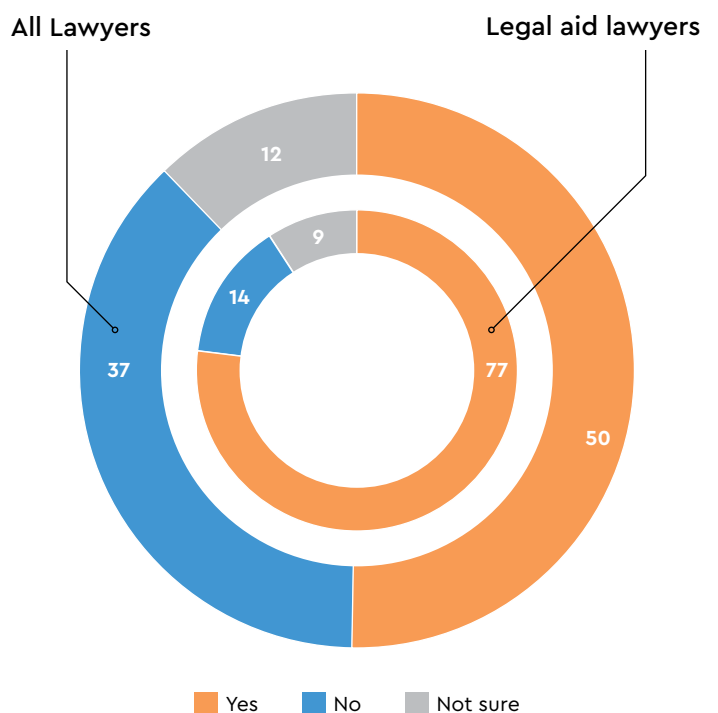
On average legal aid lawyers were not remunerated for half of the hours they spent on their last legal aid case.

Only 15% of legal aid lawyers were fully remunerated for time spent on their last legal aid case,

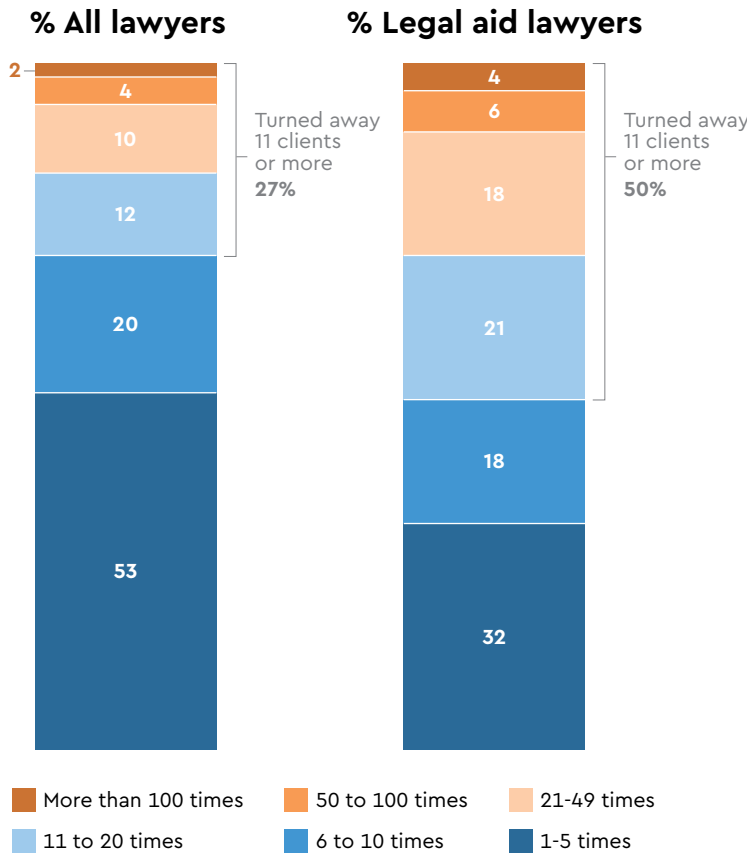
RATING OF THE NZ LEGAL SYSTEM FOR PROVIDING ALL PEOPLE IN AOTEAROA NEW ZEALAND WITH ACCESS TO JUSTICE



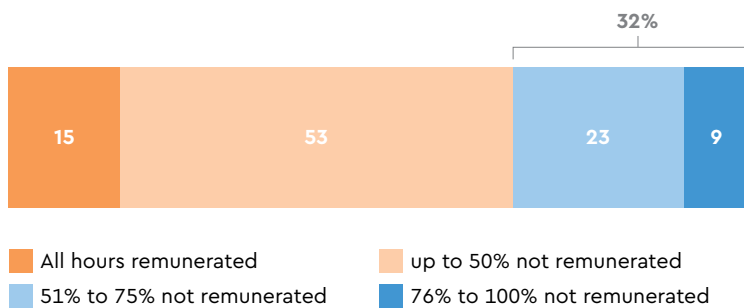
PERCENTAGE OF ALL LAWYERS AND LEGAL AID LAWYERS WHO HAVE TURNED AWAY CLIENTS IN THE LAST 12 MONTHS



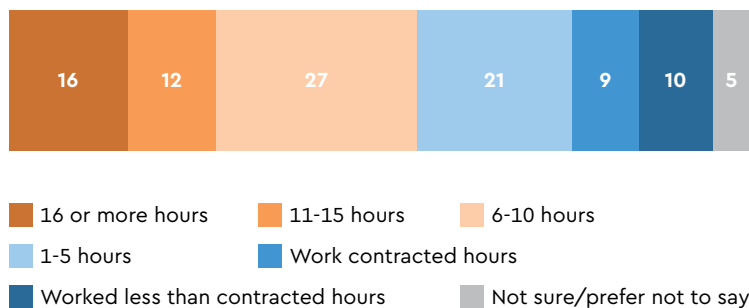
NUMBER OF CLIENTS TURNED AWAY IN THE LAST 12 MONTHS



PERCENTAGE OF LAWYERS TIME NOT BEING REMUNERATED



% NUMBER OF HOURS LEGAL AID LAWYERS ARE WORKING ABOVE CONTRACTED HOURS



while one in three were not remunerated for over half of the time they spent on their last legal aid case.

Lawyers are working long hours in stressful situations

80% of legal aid lawyers agree their job is stressful, whilst 79% agree they regularly work extended hours.

Legal aid lawyers are working 50 hours per week vs 46 hours for those not providing legal aid. On average this is 11 hours more than legal aid lawyers are contracted for.

The following groups of lawyers work more than the legal aid average of 50 hours a week:

- Pacific lawyers (54 hours)
- Directors / Partners (53 hours)
- 20 years or more in profession (52 hours)
- Barrister sole (52 hours)
- Criminal lawyers (52 hours)
- Auckland based (52 hours)

Some lawyers are planning to do less legal aid

Given the low rates of remuneration, long hours and stressful work it's no surprise that 25% of legal aid lawyers tell us they plan to do less legal aid work or stop altogether over the next 12 months.

The primary reason for wanting to do less legal aid work is inadequate remuneration. Secondary reasons include finding the work too stressful or time consuming, the administrative burden involved with undertaking legal aid cases and the complex needs of legal aid clients.

Legal aid remuneration hasn't increased in over a decade, while over the same period, CPI has increased by 18.3%.

From an average legal aid payment of \$124 an hour, after covering typical business administration costs, building rent, salaries and regulatory costs, and taking into account the unremunerated work on legal aid files, a lawyer is likely to have earned just \$13 for their work.

Legal aid is also nowhere near the rate of Crown Prosecutors and independent counsel to assist the court, sitting on average at about half of those rates.

Lawyers are actively helping those in need

The survey identified that lawyers are contributing to access to justice in several ways, but predominantly by reducing their fees or providing free services.

Most lawyers are providing services at a discounted rate or reduced free.

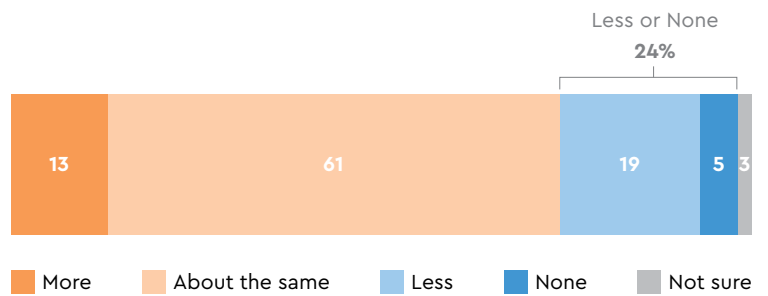
59% have provided legal services at a discounted rate or reduced fee in the last 12 months, and 43% have provided legal assistance at a discounted rate or reduced fee to people who can't afford it.

81% have provided some form of legal assistance for free in the last 12 months and nearly half have provided free legal assistance to individuals who cannot afford to access the legal system.

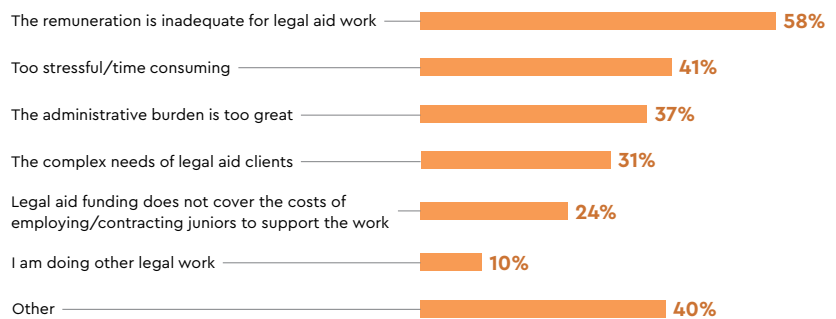
In an average week, lawyers are spending six hours of their time providing free services. They're motivated to do this as they want to give something back and to enable people to get the legal representation they couldn't otherwise afford.

The majority of lawyers plan to keep providing their services for free to those who need them.

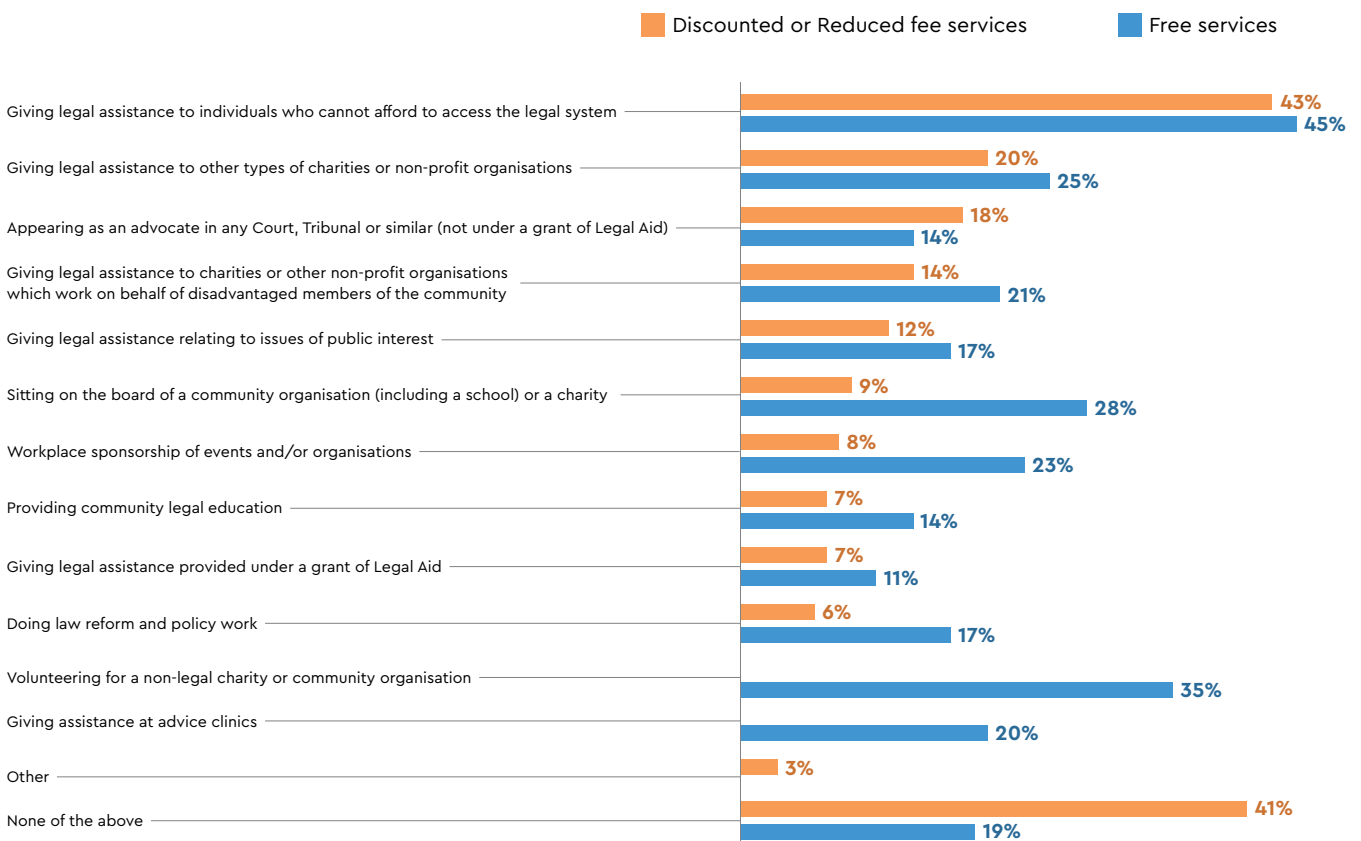
PERCENTAGE OF LAWYERS WHO PLAN TO DO MORE LEGAL AID IN THE FUTURE



THE REASONS SOME LAWYERS WANT TO REDUCE THEIR COMMITMENT



PROVIDING SERVICES AT A DISCOUNTED RATE/REDUCED FEE OR FOR FREE



For those who can't provide free services to vulnerable individuals it's because they are already overstretched and would struggle to take this work on. Many are also in workplaces which don't allow or encourage them to provide free legal assistance to those who need it.

Now is the time for Government to act

The survey results show clearly the problems in the system. They also show that things are likely to get worse. Covid-19 has exposed and deeply exacerbated problems in the justice system. Almost 47,000 court events have been adjourned in this latest lockdown, building up a backlog of more than 3,000 jury trials, roughly a 1000 of which are in the Auckland area.

Last year, a smaller backlog was met largely through the goodwill of legal aid lawyers, who stepped up. More trials in the District Court were held in 2020 than ever before.

This year, faced with an even bigger backlog and an exhausted, overstretched legal aid pool, the goodwill of lawyers has been drained dry. It is very unclear how this mountain of work will be tackled, or by whom.

The Law Society is calling on the Government to bring in a substantial, overall increase in legal aid remuneration. We also want to see more funding for junior lawyers to support legal aid seniors. There's currently no funding for this, compounding the problem because there are no junior lawyers to succeed seniors who are leaving.

Finally, the administrative burden of becoming a legal aid provider and running a file must be dealt with. Many lawyers refer to this as a stand-alone barrier.

Therefore, as the Budget is being set for the next financial year, we are calling on the Government to act quickly. ■

You can read the full report on the Law Society's website lawsociety.org.nz/about-us/significant-reports/access-to-justice-survey-report-2021

ACCESS TO JUSTICE

Access to civil justice a new focus area for the Borrin Foundation

At the Michael and Suzanne Borrin Foundation we believe law is essential to a flourishing society – one that is just, inclusive, tolerant and free. We're here to make a difference to the lives of New Zealanders through the law. We do this by supporting legal research, education and scholarship through effective philanthropy.

Since our inaugural grants in 2018 our strategic focus areas have been the Criminal Justice System and Family Law. With greater attention needed to maintain and improve the civil justice system we have expanded our strategic focus areas to also include *Access to Civil Justice*.

One of the first grants in this new focus area is a project led by Dr Bridgette Toy-Cronin focused on understanding legal need in Aotearoa. The research will examine what type of legal assistance people need when seeking help for legal problems from Citizens Advice Bureau (CAB). The project aims to inform access to justice policy and resource, directing resource to where it is most needed.

CAB plays a vital role in providing free community legal help. For many people, they are the first point of contact when seeking assistance. CAB receive over 100,000 client queries each year.

Dr Toy-Cronin says "This is a rich source of information about the legal needs of people in Aotearoa New Zealand. We will be working with CAB and analysing the data for insights into the types of problems people are experiencing, the help they need, and any barriers they might face to accessing that help."

Dr Toy-Cronin and Research Fellow Kayla Stewart will be carrying out the research, with input from Citizens Advice Bureau. Bridgette is a Senior Lecturer in the Faculty of Law at the University of Otago – Te Whare Wānanga o Ōtākou, where she is also the Director of the Civil Justice Centre and Co-Director of the Otago Centre for Law and Society. ■

For more information on seeking funding from us please visit our website at www.borrinfoundation.nz

ACCESS TO JUSTICE

A focus on Legal Aid and Family Law

BY **MORWENNA GRILLS**

Being able to access legal help can literally change lives. It can mean escape from a violent relationship, access to children and a fair division of property. But not being able to find a lawyer, or not being able to access legal aid can lead to devastating consequences.

This is particularly stark in the area of family law where lawyers are regularly dealing with people at the most difficult time in their lives. Ministry of Justice figures for 2021 show that Family Law has the highest number of approved legal aid providers at 1,248. However, just 758 of those providers are active.

“It’s heart-breaking when you receive another call from someone who you just can’t take on,” says chair of the Law Society’s Family Law Section, Caroline Hickman.

“I hear stories from lawyers all the time about having to turn people away. That’s not why we join the profession – particularly in the family law area. We’re here because we want to help people. We understand how not being able to access a lawyer affects communities who are desperate for legal help.”

Too many people missing out

South Auckland based barrister Stormie Waapu is approached daily by people who are unable to afford legal representation and are not eligible for legal aid. Too often she has to turn people away because of what she describes as the threshold being too high. These are people who are the ‘working poor’. She will sometimes provide pro bono services



▲ Caroline Hickman



▲ Stormie Waapu

or write off any work done, because she knows that in reality, they can’t afford even minimal legal fees.

For Stormie, those people who don’t have the income, and don’t have the resources, often do not get the access to justice that they are entitled to.

She recalls a case of a father who she was representing in a family court dispute. He had a change in income which meant he no longer qualified for legal aid but this left him unable to pay a private fee. Stormie had to withdraw from the case, and the father was left to self-represent in the High Court. Stormie feels like this is a case where the legal aid threshold failed someone



in need, with dire consequences.

“I’m not sure the correct decision was made in the high court. That client had to do it alone. That’s a hard one to swallow, knowing what he ended up going through and what he was up against.”

A more complex area

Based in Hawkes Bay Caroline has been practising in the area of family law and other litigation work for 28 years. Over that time, she’s seen the complexity of the cases she deals with increase, alongside more complex needs of clients.

“The current social and legal aid environment would never have been contemplated when the Family Court commenced as a specialist court 40 years ago. This environment has only become more difficult with the pandemic, and the backlogs in the Family Court flowing from Covid-19 will continue to have an impact, possibly for years to come.

“Legal aid has not kept pace with the increasing complexity. For example, fixed fees in some areas of the law are okay, but in others, such as relationship property they are so far out of line with the time required to do the case professionally that they just don’t represent the cost of doing a professional job.

“I have a client at the moment who I’ve represented for a number of years without being paid. She is now eligible for legal aid. On the last piece of work I did for her it took 7.4 hours and I was paid \$83.78 per hour. That fee is before all of the administrative costs of running a practice so actually will represent a loss, especially when privately paid work could be taken on instead.”

For Caroline, it’s not just the cost that is burdensome but the administrative requirements too.

“Legal aid requires me to go back and explain every time something takes longer than the prescribed steps they use, or requires a different approach.

“With legal aid you get paid a set amount for a set piece of work. There are some wins but more often there are complex cases that require work outside the steps. It’s hard to keep going back to legal aid to ask for more money and to have to constantly explain your actions. It is a huge burden and can lead you to

“The Family Court cannot deliver justice to its people without lawyers providing advice, advocacy, and support. The shortage of family lawyers and the further increase in self-litigants will create a higher cost to government as well as having a higher human cost

”

giving up before you've got anywhere.

“The Law Society's Access to Justice survey provided a stark reality check of the true cost of a poorly resourced legal aid system for court users as well as lawyers. The same concerns apply for remuneration of court appointed counsel.

“The shortage of family lawyers is a direct result of this, and the Family Court cannot deliver justice to its people without lawyers providing advice, advocacy, and support. The shortage of family lawyers and the further increase in self-litigants will create a higher cost to government as well as having a higher human cost.”

Self Representation

People self-representing because they can't find or can't afford a lawyer is something that Stormie is all too familiar with. She sees people all the time who self-represent due to an ineligibility for legal aid. She says they often they break under the pressure and just can't cope.

“There was one father I was dealing with as a Lawyer for Child. I needed him to get involved. He just couldn't deal with the stress. He kept saying 'I just can't cope with this,

I already have so much to deal with'. Even the kids were saying 'we want to see our dad'. It's well known that there's better outcomes for children when both parents are engaged and participating and working towards improving their situation for their children.”

She worries too that the financial strain of those who don't qualify for legal aid, in combination with other underlying personal or health issues, mean that some people simply give up.

“I really feel for them, and what they're going through. As a Lawyer for Child, there are parents I come across that can't afford legal representation and do not qualify for legal aid, and they are trying to do it themselves, and it's a lot of work for the Court and I, trying to help them through the process.”

A concerning future

If nothing changes for legal aid the future for family lawyers looks bleak. Few firms can afford to bring on junior staff and have them doing legal aid work so the next generation of legal aid lawyers are not coming through.

Stormie believes the whole system is broken. It is not serving the vulnerable people who need it most. She also feels that the burnout legal aid lawyers experience from consistently going over their allocated hours is going to drive lawyers away from taking legal aid cases, and away from the profession.

“A lot of us, long term, we're thinking is this really what we want to be involved in? Can we sustain this long term? And the answer is no. If the system doesn't change, doesn't adapt, then for me I'll be looking at other options. I'm not going to burn myself out. I have aroha, I want to help people, but it's emotionally draining.”

For Caroline she has to limit the number of legal aid cases she can work on at any one time due to the low rates and administrative burden. That's not something she wants to do but for her business to survive she has to put those limitations in place. She wants the Government to heed the calls being made by the profession and to increase the funding for legal aid as well as addressing the threshold for eligibility. ■

ACCESS TO JUSTICE

Access to justice - A Te Ao Māori perspective

BY MORWENNA GRILLS

Disturbing but no surprise was the reaction of Te Hunga Rōia Māori o Aotearoa to the findings of the Access to Justice survey.

“The report shows the legal aid system relies on unpaid work from Māori lawyers in particular, that it doesn’t pay for almost half the work done on a particular case, and the rate paid is among the lowest fees lawyers get for any time of work,” said Tumuaki Wahine, Jamie-Lee Tuuta, and Tumuaki Tāne, Baden Vertongen, the society’s co-Presidents.

“We’re especially concerned about the findings in the report of the level of stress and pressure being placed on lawyers, especially Māori lawyers, who are doing legal aid work. This is driving some to breaking point, and that is not good enough.

“The irony is the survey also shows that Māori lawyers want to be doing this work, that we do it because we feel we have an obligation to. Many of us would do more if the system supported us rather than took advantage of us.”

Doing it for my people

Ngaroma Tahana is a Tumuaki (Partner) at Kahui Legal, a specialist law firm working at the forefront of Māori development. Based in Rotorua Ngaroma works predominantly in criminal legal aid.

“I went to law school intent on doing commercial law and helping Māori entities. But after five years at Simpson Grierson I moved home and into criminal law. I spent around a decade working as a Crown Prosecutor before switching to defence as a legal aid lawyer.

“It was a conscious decision to move to criminal law given the over representation of Māori in the

criminal justice system. For me, in whatever I do, I’m always doing it for my people, and it shows.

“Clients are so grateful that I take the time to hear them and advocate for them in a system founded on cultural values so different from our own. The sense of relief and the gratitude I am shown by them hopefully, means I am making a difference. I was raised to serve so I feel I am fulfilling my purpose.”

The unmet need

Ngaroma sees many clients who are repeat offenders and disillusioned from their previous experiences with the justice system.

“For most, the process has happened around them and without understanding the process in a way that is meaningful to them.

“Then there has been limited investment to address why they’re in the system in the first place. Section 27 cultural reports are helping to highlight those needs but many reports make for dim reading. It’s no surprise that people end up in the justice system following the trauma they have been through.”

Ngaroma also finds that clients and their whānau need a whole range of support alongside the legal advice she’s being paid to give.

“I spend too much time, as do

Clients are so grateful that I take the time to hear them and advocate for them in a system founded on cultural values so different from our own

others, being a social worker, finding accommodation, completing D & A referrals etc. If wrap around services were available at court that would make our clients' lives a whole lot better. It would also reduce the amount of work that we are not compensated for."

Cultural connections

Ngaroma gets many referrals and requests from tangata whenua wanting a Māori lawyer. She reflects that sadly this can be for a really basic reason like pronouncing their name correctly.

"When they know I'm their lawyer they feel comfortable dealing with me as we share similar worldviews, and we can connect."

Access through legal aid to Māori lawyers can be hampered by the fact that the funding regime is tied to the provider's location. This makes it challenging for Ngaroma to take on clients outside Rotorua given the administrative burden of trying to get travel costs paid. That's an expense the firm often ends up taking on.

"I recently took on a legal aid client from another city. I wasn't going to answer the phone when I saw the police station calling but then I did, ready to explain to the officer that I was unavailable. I heard this young man speaking over the officer and pleading in Te Reo for me to speak to him. I took the call knowing that Māori speakers doing legal aid are few and far between right across the country."

The big difference that being a Māori lawyer for a Māori client can bring is the inclusion of the whole whānau.

"It's hard to underestimate the impact of whanaungatanga and collective responsibility. There is more that we can draw on from



▲ Ngaroma Tahaha

Te Ao Māori to provide support and guidance to lawyers working with Māori clients."

Raising the next generation of Māori lawyers

Ngaroma is concerned about how difficult it is for young lawyers to gain experience and become legal aid providers. She sees the lack of funding for juniors to work with senior practitioners like her as a real drawback as it stops them from gaining valuable experience.

"I absolutely want to see funding for extra staff to work on legal aid cases come through.

"At Kahui we carry those costs to ensure we're supporting the career development of our staff and meeting the needs of our communities. There is a lot of work that happens that is not compensated for from legal aid.

There is more that we can draw on from Te Ao Māori to provide support and guidance to lawyers working with Māori clients



“Part of the difficulty I have is the gap between seniors and juniors, there is a real shortage of middle tier lawyers. I’d like to encourage more lawyers to consider switching practise areas, to use their experience in new areas. I went from a senior role at a big Auckland firm into a junior role in Rotorua. It was humbling but totally worth it.”

What needs to change

It’s not just the legal aid system that needs to change before we stop seeing the disproportionate number of tangata whenua going through the judicial system.

“There needs to be a multi-pronged, multi-disciplinary approach to address the issues that lead to people being in the system in the first place,” says Ngaroma.

“There needs to be a whole lot of wrap-around services.



▲ Jamie-Lee Tuuta



▲ Baden Vertongen

“I see change starting to happen through initiatives like Te Ao Mārama in the District Court. But more is needed, including legislative change, investment and a focus on rehabilitation.”

For Te Hunga Rōia Māori, they have a clear message for government on legal aid:

“The Crown needs to urgently consider funding the actual work that is done on each case as well the rate lawyers are paid so someone can keep doing this work.

“We have a failing system that is supposed to help some of our country’s most vulnerable citizens to navigate the justice system early, and appropriately. If the system isn’t fixed soon, it will be beyond repair.” ■

ACCESS TO JUSTICE

Improving access to civil justice

BY AIMEE BRYANT

Access to justice is about more than just legal representation, and the procedural rules of the courts can go a long way to supporting this. In fact, the very purpose of those rules is to facilitate the 'just, speedy, and inexpensive dispatch of the business' of the High Court, Court of Appeal and the Supreme Court.

Recently, the Rules Committee has been working on two major initiatives to improve access to civil justice:

- Review of the High Court Rules and District Court Rules, with a view to improving access to civil justice by reducing the costs of bringing a civil matter to court.
- Review of costs for lay-litigants, the current position being the litigants-in-person (i.e. self-represented) are prevented from obtaining a costs award.

Both projects have been open to the public and the profession for multiple rounds of consultation. The work is critical to increasing access to justice, providing fair and equitable treatment of litigants, maintaining fairness between successful and unsuccessful parties, and protecting the integrity of the justice system. The Law Society's input on these important projects has been led by the Civil Litigation and Tribunals Committee.

What is the Rules Committee?

Picture a judicial Jedi High Council.

Established in 1908, the Rules Committee is a statutory body with responsibility for the procedural rules of the Supreme Court, Court of Appeal, High Court, and District Court. It is comprised of the Chief Justice, the Chief High Court Judge, the Chief District Court Judge, two judges of the High Court, a further District Court judge, the Attorney-General, Solicitor-General, Secretary for Justice, as well as two lawyer members nominated by the Law Society Council.

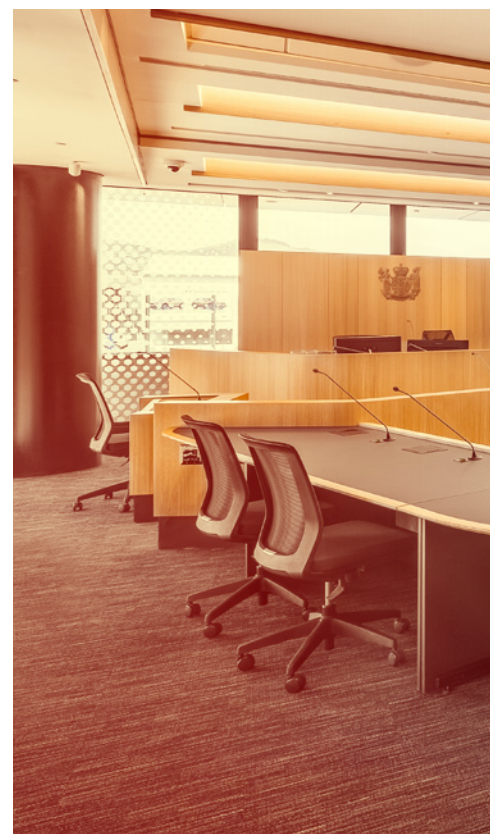
Reducing the costs of civil litigation

In 2019, in response to concern about an increasingly unmet need for civil justice, the Rules Committee embarked on a review of the High Court Rules and District Court Rules. Initial consultation in 2019-20 revealed concern amongst submitters at the numerous barriers citizens encountered when seeking civil justice. Those barriers included the more obvious financial costs associated with legal representation and protracted proceedings, but also the impact of hearing and filing fees, and significant psychological, informational, and cultural barriers.

Following this initial consultation,

the Rules Committee consulted on a series of proposed reforms, extending from rules-making through to legislative amendment. Broadly, the proposals included:

- Expanding the role of the Disputes Tribunal by increasing its jurisdiction to \$50,000, potentially renaming it, and appointing existing investigators as lay members of the Tribunal where appropriate.
- Revitalising the District Court's civil jurisdiction through the creation of a Principal Civil Judge responsible for improving the expertise of the Court's civil registry and ensuring the availability of accessible information about court procedures. In addition, introducing part-time Deputy Judges with suitable civil expertise, and minor revisions to the District Court Rules to allow more inquisitorial and iterative processes, with fewer interlocutories.



- Streamlining procedure in the High Court, so that the existing procedural rules apply only to more complex cases. This would include replacing discovery with disclosure obligations, early issues conferences with substantive engagement by Judges, interlocutories dealt with on the papers, and a streamlined trial process placing much greater weight on the documentary record. Parties would have to justify the need for adopting more onerous obligations in a given case.

The Law Society has supported these proposals, in particular the aims of ensuring a right-sized approach to litigation and reducing both time and cost. It also drew attention to the need for clarity around the proposed ‘duty of candour’.

Litigants-in-person and costs awards

The costs regime can also be a barrier to accessing civil justice, the current position being that a successful litigant-in-person is entitled to recover disbursements, but not costs (the ‘primary rule’).

Putting aside a slight detour by the Court of Appeal in *Joint Action Funding Ltd v Eichbaum* [2018] 2 NZLR 70, the exception to this rule is the litigant-in-person who is also a lawyer: they can recover costs. This has been criticised, and for many there is no principled

- ▼ District Courtroom in the Justice and Emergency Services Precinct, Christchurch



reason for treating lawyer litigants-in-person differently from other unrepresented litigants for costs purposes. While course-correcting later that year in *McGuire v Secretary of Justice* [2018] NZSC 116, the Supreme Court would come to canvass the history of the primary rule, and ultimately criticise its present, ‘invidious’ position.

The Supreme Court stopped short of reform, noting this was more appropriately the role of Parliament or the Rules Committee. The Rules Committee responded, and in 2020 commenced consultation on potential amendments to the High Court Rules and District Court Rules. It asked whether the primary rule ought to be abrogated, and if so, how exactly costs for a litigant-in-person could be determined.

All submitters, including the Law Society, agreed there was no principled reason for treating lawyer litigants-in-person differently from other unrepresented litigants for costs purposes. Submissions differed, however, around the treatment of costs for employed (‘in-house’) lawyers.

Having obtained further advice, the Rules Committee is now consulting again, this time on preliminary decisions that:

- Litigants-in-person will be eligible for costs, and a new rate specified for recovery. It has proposed \$500 per day.
- Lawyer litigants-in-person will be eligible to recover at the new rate, and not the full rate.
- There will be a new daily rate prescribed for in-house lawyers, proposed to be \$1000 per day.

The future of civil litigation

The Rules Committee is currently considering the feedback received on its proposals for procedural change in the Disputes Tribunal, District Court, and High Court.

As for changes to the costs regime, consultation remains open until late January 2022. The Law Society intends to provide feedback on these proposals, ably assisted once more by the Civil Litigation and Tribunals Committee. ■

ACCESS TO JUSTICE

Access to justice – A Pacific perspective

BY **CATHERINE PETERS**

Access to justice is a significant driver for Pacific law students to go into practice. For these students, law is a vocation: they have a moral duty to serve their community.

Pacific lawyers recognise that from time to time, members of the Pacific community have difficulties participating in what can be an overwhelming process and an unfamiliar system.

With that in mind, the Pacific Lawyers Association considers the findings of the Law Society's Access to Justice survey more concerning than surprising.

“Meaningful participation in the justice process requires access to a lawyer, but more than that, access to advice that serves to help parties untangle and ultimately understand complex legal processes” says Co-President Ataga'i Esera

“Yet Pacific lawyers undertaking Legal Aid work, together with Māori practitioners and lawyers in Treaty of Waitangi work, bear the brunt of strain in a Legal Aid system that is near collapse. Together, we carry the heaviest burden of Legal Aid service. There is increasing demand, greater stress, and inadequate remuneration,” says Co-President Joseph Xulue.

The Pacific Lawyers Association were unsurprised that Pacific lawyers who took the survey rated helping those who could not afford legal assistance as an “extremely important” reason for providing Legal Aid (54%: the national average was 40%).

Life as a Legal Aid lawyer in South Auckland

Wanting to help his people is a driving motivation for South Auckland based Barrister Panama Le'au'anae, still practising at 65.

“Very early on in my life I decided I'd like to do work that helped my people. Both my parents



▲ Ataga'i Esera



▲ Joseph Xulue



▲ Panama Le'au'anae

comes as no surprise to the Pacific Lawyers Association or Panama.

Panama regularly works extended hours, helping the defendant and their aiga through the process. The inclusion of aiga is an integral part of a defendant's active involvement in their personal case. In addition, Panama spends much time outside business hours to ensure he can engage in these discussions - most of the time is not claimable. It remains uncompensated in the fixed fee world of legal aid.

The client-lawyer relationship even extends to Panama providing financial assistance for defendants' food and transport costs to enable them attend meetings and participate actively. Sometimes he personally drives clients home after Court appearances. This places pressure on him.

"I would never stop doing legal aid but I have had to streamline my processes and be careful which cases I take on, which has meant that largely I have had to walk away from the PAL 1 and 2 work", he says.

were migrants to Aotearoa from Samoa. As a people we have a strong Christian background which motivates us to help those in need.

"I see many people coming from the Pacific Islands with English as a second language, struggling to understand the nuances of New Zealand society."

Panama has spent his life working mainly in the areas of family and criminal law. He sees communication as a critical issue for many people going through the justice system. English is typically a second language. Defendants from Pasifika backgrounds often need considerable care and diligence to ensure they properly access justice. It requires enormous effort to

ensure they can navigate a system which is alien.

Countless hours of discussion are spent, not just with the defendant but also with their aiga (extended family). This can be in person at offices, their place of residence as well as on the phone, ensuring they fully comprehend the process. This investment of time often results in better engagement and better outcomes for clients.

Making it work as a legal aid lawyer

The survey found that Legal Aid lawyers who identify as Pacific peoples work 54 hours per week on Legal Aid matters, compared with 47 hours for all lawyers. That

“However, I struggle to turn away a Samoan or a PI person wanting my representation in a PAL 1 or 2 assignment. These are opportunities to give something back to my community.”

Supporting the next generation of Pasifika lawyers

When Panama started out in the legal profession there were very few fellow Samoan lawyers. Four decades on, he still hasn't seen the number of Samoan or Pasifika lawyers he would like. This is particularly true in the legal aid space.

“I am concerned about the next generation coming through, most of the lawyers left in the legal aid space are old guys like me. I don't see too many young lawyers coming in,” he says.

“Those we do have we're losing to other areas of the law. They're going into government departments or Commission work. It pays so much better, and brings with it better working conditions, so greater wellbeing.

“Over the past 40 years it has become increasingly difficult to progress junior Pasifika counsel given the hurdles. Obtaining funding for junior lawyers to assist in trials is a significant barrier. It's acutely felt by the Pasifika lawyer community, given the low numbers of Pasifika lawyers reported to remain in practice.”

What needs to change

“I've seen some incredible acts of forgiveness when the parties involved are Pasifika – sometimes even for the most serious of crimes. It is part of our culture to offer forgiveness, to seek an outcome that's not as punitive as the justice



I struggle to turn away a Samoan or a PI person wanting my representation in a PAL 1 or 2 assignment. These are opportunities to give something back to my community



system here seeks.

“In 2018, Sir Peter Gluckmann called for alternative justice processes to ensure greater access to justice. The Chief District Court Judge is pursuing a Te Ao Mārama model of justice which is still being developed. The spotlight could also be on Pasifika culture and views of alternative justice, which could be incorporated and developed. For that to happen, there needs to be more dialogue. I'd welcome being a part of it.

“Pasifika people are reported as being the lowest wage earners in Aotearoa. They're also the highest users of legal aid and the most vulnerable in gaining proper access to justice.

“Pasifika defendants tend to come from multi-generational homes with one income earner, who often works graveyard shifts. It is frequently apparent there's nothing left in the kitty to set aside for legal costs.

“These defendants must protect their livelihoods, and not jeopardise their work. Convictions and disqualifications can have a disproportionately severe impact

on them. Sadly, these people don't manage to obtain discharges without conviction. That is of concern.

“The same defendants often either fail to receive legal aid assistance because of eligibility, or are required to repay costs. This is simply too onerous.

“Better scrutiny of eligibility criteria and thresholds for legal aid applications and grants is needed. It's also vital some assistance is provided to junior counsel, to allow them to participate in trials and progress in the profession. A review of the fixed fee system is way overdue so that access to justice is available to all. That is the mark of a truly democratic and caring society.”

Co-President Joseph Xulue says, “If the current situation continues, the findings of the Law Society's survey suggest that ultimately we may see justice that is inaccessible. The government needs to consider what access to justice means, and more importantly how they can give effect to this fundamental human right, that all under the law may equal before the law and access justice.” ■

ACCESS TO JUSTICE

Crystal Clear

How using plain language can improve access to justice

BY **MIRKA UKKONEN**

From the grass roots to the board room, writing clearly benefits everyone. The art of short and sweet just might save the world – and time and money while doing so.

“Our mission in the world is to create laws that are accessible, fit for purpose, and constitutionally sound. Plain language is critical to all of those things”, says the Chief Parliamentary Counsel, Cassie Nicholson from the Parliamentary Counsel Office.

The Parliamentary Counsel Office (PCO) drafts New Zealand’s laws – and they want to ensure users understand them. If people don’t understand what the law is saying, it’s not that effective.

Winners of Best Plain English Legal Document at the Plain English Awards in 2017, the PCO has embedded clear writing and communications in everything they do. Working together with Write Limited, they created a plain language standard, and have since developed supporting documents and made it part of the peer review process for drafting legislation. It has meant a culture and mindset shift for the government agency, and now they have champions across the organisation.

“We also try to make it fun. We have competitions and often have an article in our office newsletter. We just try to make it a feature and a regular reminder for people and what plain language means for their work”, Cassie says.

Cutting to the chase

Since embarking on the plain English journey, the Parliamentary Counsel Office has done a



▲ Cassie Nicholson

couple of internal audits to see how they’re tracking along. Cassie Nicholson emphasises that they still have areas to work on, so it’s all about continuous improvement.

One of the constant challenges is the tension between what precise legal writing requires versus the best plain language solution. Time is another challenge – working with complex topics, it’s easier to write clearly if you have the time to do so.

Finding the right words and structure requires time and headspace. On the other hand, getting it right can save time in the long run and result in fewer enquiries and less confusion.

On a journey of continuous improvement, peer review has proven to be helpful.

“You slip into bad habits. It’s useful to have people say to you that just cut to the chase, or this is another



▲ Penny de Borst

way of structuring it. I find it really helpful to always have another person read your work and understand it from an external user's perspective – and not just from what you thought you were saying in your head", Cassie says.

Comic contracts – legally binding and easy to understand

Understanding what complex documents say can be challenging even for anyone with a university degree, let alone for people with low literacy, a disability, or English as a second language. This can quickly become an issue for access to justice.

One example comes from the European Union. The EU law requires that member states provide anyone who has been arrested or detained with a written document that explains their rights in simple and accessible language. However, the quality of information provided varies.

In some countries, the letters consist of excerpts taken from complicated national laws. People who have been arrested often don't read these documents or they struggle to understand them. As a result, they may

not know their rights or how to exercise them.

"The concept of access to justice is being looked at across the world", says Lynda Harris, the Chief Executive of Write Limited, the company that champions plain language and helps organisations write clearly.

"One of the most interesting concepts that we have yet to adopt in New Zealand is the idea of comic contracts. These are contracts that are entirely created as a comic strip. The idea is to give people who are illiterate independent means to understand something that is really relevant to them", she explains.

The concept of these visual contracts was developed by Robert de Rooy, a commercial attorney in Cape Town, South Africa. In 2013, he started developing contracts that everyone could understand. In 2016, together with Jincom EHS, a communications company that specialises in illustrating health and safety guidelines, they developed the world's first comic contract.

The award-winning comic contracts are legally binding: the parties are represented by characters, terms of the agreement are captured in comics and the parties sign the comic as their contracts.

Empowering people at the grass roots

At the grass roots in New Zealand, Community Law Centres provide free legal help across Aotearoa. They offer online resources and one-on-one legal help for people who don't have much money or are in vulnerable situations.

One of the online resources is the Community Law Manual, which covers topics ranging from family law, health and disability, criminal and traffic law to immigration and refugees. It also covers jobs, benefits and flats, individual rights and freedoms – all in plain English.

The publications team from the Community Law Wellington and Hutt Valley Centre know the importance of accessible and readable information.

"Part of providing legal information in plain English is giving people the tools to make informed decisions", says Tina Walker-Ferguson, Kaihautū Tānga / Publications Director.

"When I'm editing, the hat I'm wearing is the plain English hat: does this make sense, is my whānau going to understand this?", she continues.

Popular topics that people want information on are housing, accessing benefits or just knowing what your

rights are when your car has been towed.

The publications team also encourage lawyers or firms to get in touch with them if they would like to sponsor a plain English Manual for a certain organisation – or the team at the Community Law Centre can choose it for them.

From sponsoring marae, women's refuges, refugee and migrant support services, the 2021 sponsors have put their power behind the kaupapa. That means working towards a world where communities have better access to the legal system and a clearer understanding of their rights.

“It’s a really important way of ensuring access to justice. It means providing tools written in plain English, a comprehensive set of information for frontline community organisations.”

Why businesses should care – all writing has a cost

Plain language benefits everyone, not just the most vulnerable, reminds Penny de Borst, Head of Brand and Partnerships at Write Limited.

“I’ve been just trying to get a new insurance policy for a car. The advertising is all simple and clear but then you start diving deeper into it. All of a sudden, it gets very hard to untangle”, she says.

Even experts prefer plain language. With a constant stream of online information, emails, notifications and hours of screen time, people just want things to be presented clearly. According to the Nielsen Norman Group usability study with experts in science, technology, and medical fields, even highly educated readers prefer succinct

Nobody has ever complained that something was too easy to understand

Tips for writing in plain language from the Write Plain Language Standard:

- The purpose of the document is clear at the start
- The content supports the purpose of the document
- The structure of the document is clear and logical to the reader
- The headings signal the key content
- The paragraphs are mostly short and focused on one topic
- The sentences are mostly short and straightforward
- The words are precise and familiar
- The tone supports the purpose of the document
- The layout and presentation help the reader absorb the message quickly and easily
- The document is error-free and consistent with your style guide

For more resources, including tips for legal writing check out write.co.nz/resources/free-tools/

information that is easy to scan.

“Nobody has ever complained that something was too easy to understand”, Penny reminds and laughs.

Then there’s also the time and money factor – all writing has a cost. Lynda Harris, the Chief Executive of Write Limited and the author of *Rewrite – How to Overcome Daily Sabotage of Your Brand and Profit* explains why organisations should take plain writing seriously.

“Every single person in an organisation who writes is being paid a salary and they may write efficiently or not. That writing might enhance the organisations reputation or not. If it works, there’s a good return on investment. Where it doesn’t work, is inefficient or works against the organisation, it comes with a cost.”

Whether it’s time, money or the world that needs to be saved – plain language just might be the key to it. ■



WHY I PRACTISE

Karen Chang

BY BELINDA RYAN

Making a difference to the community is a major motivator for the Financial Markets Authority's Head of Enforcement, Karen Chang. "I like to feel like I have an impact and that I can do things that will help protect the people that are vulnerable, who want to invest in the financial markets, and who rely on New Zealand being a trustworthy place to do that."

Starting out in the law

It was her father who inspired Karen to consider studying the law as he had achieved a law degree in Taiwan. But her family were also keen for her to have back up, just in case it didn't work out.

"My family stressed to me "Always have a back-up." They told me, "Accounting is the way!" she laughs.

Karen went on to study honours degrees in Law and Commerce, majoring in accounting and finance, from the University of Auckland.

After graduating she moved to Sydney where she worked for the private law firm Freehill. She worked on the first ever insider trading case taken by the Australian Securities and Investment Commission (ASIC). The case was against Citibank and Karen was on the defence team. The whole thing happened within a year, which is unusual in litigation.

"It was really intense, I was flying around, going down to Melbourne to brief witnesses and occasionally sleeping on the office floor!"

Another case that she worked on was a Royal Commission of Inquiry which investigated her client BHP Billiton for potential breaches of United Nations sanctions over their oil for food programme.

From Australia Karen moved to New York where she worked in commercial litigation for a prestigious firm based in Manhattan. Wall Street was just a stone's throw away. Her clients were banks - many of whom

don't exist anymore after the global financial crisis of 2007-2008. New York Bar admitted attorneys must complete 10 hours of pro bono each year, and Karen said she found the mandatory pro bono really fun.

In 2011, she returned to New Zealand driven by family ties, when her sister - her only sibling - had had two children. "I took a long road home though - I did a course in fashion design in Manhattan so I could get to experience the city, not just working all the time. I also backpacked through South America."

Life at the Financial Markets Authority (FMA)

Karen joined the FMA as Head of Enforcement in 2017. She is responsible for executing the FMA enforcement strategy, leading cases ranging from fair dealing breaches and insider trading, through to AML/CFT contraventions and several fraud cases. In September she was appointed as acting General Counsel through until January 2022, which is when the FMA's new Chief Executive Samantha Barrass starts.

She compares her team's work in enforcement to the stick, where the rest of the FMA is the carrot: "If there weren't any consequences for breaking the law, nobody would bother to obey, because it takes money and time."

Identifying market conduct that poses a risk to investors or consumers

The FMA gathers information from a broad range of sources to identify market conduct that poses a risk to investors or consumers. Tips arrive through the FMA's website, these cover global and domestic scams amongst other things. Karen says "our front-line

function are the ones engaging in the market, they can address any issues they encounter with their own tools, or escalate potential serious misconduct to investigations and enforcement.”

The FMA also receive referrals from the Serious Fraud Office, Commerce Commission and the New Zealand Exchange (NZX) and the Australian Securities and Investment Commission (ASIC). “Self-reports are another interesting source,” she says.

For the FMA, working out the greatest likely harm is quite a structured process. The FMA publishes its strategic risk outlook every three or so years. “We look at what we think will be the greatest areas of risk and harm to fair and efficient financial markets. There are five strategic priority areas we use as the FMA’s compass for when things come through the door. We look at what we can control, and what we can prioritise.”

The next level of assessment are things that are a constant: how serious is this thing, what is the impact or scale, the amount of money or number of people involved, how widespread it is, and the impact on confidence in the market and market integrity.

Karen says that “insider trading is insidious and destructive – that sort of stuff chips away at public confidence, market integrity and New Zealand’s reputation. We’ll look at whether it is deliberate and coordinated, and the potential for future harm and offending. We consider all these factors to determine the most appropriate level of action or response.”

Getting money back for investors

Getting investors’ money back isn’t possible in every case. “Sometimes the money is long



gone, and it’s sad,” Karen says. “We’re really lucky that we have powers to seize assets before court action but it’s quite a big deal to do that, and there is a lot of admin that is required.”

Karen remembers being involved in a prosecution against a fraudster who defrauded many trusting, hard-working New Zealanders of millions of dollars to fund his lavish lifestyle of helicopters and private jets.

“We seized his assets, including his home and jewellery, and we were able to do that before filing charges. It was not an easy case, it took several years, the FMA had to execute search warrants, and he fought us every step of the way.”

Seeking clarity from the law

The FMA doesn’t only take on cases it knows it has a fair chance of winning. Karen says that there could be lots of reasons why the FMA takes on a case, and that it’s unlike a commercial litigant weighing up costs. “One reason could be that we are seeking clarity from the law, which can be good for the market. There can be gaps



“

As a regulator we have to have the courage to test the law. The higher the stakes, the more risk will be involved. People need to understand that the regulator is prepared to take these cases, and this acts as a deterrent in itself

”

and grey areas, so taking cases is the only way to provide clarity. As a regulator we have to have the courage to test the law. The higher the stakes, the more risk will be involved. People need to understand that the regulator is prepared to take these cases, and this acts as a deterrent in itself.”

One significant case that stands out for Karen is a long battle to enable the FMA to engage with eligible investors in Ross Asset Management, so that the investors could determine whether to bring a claim against ANZ.

The Ross Asset Management Ponzi scheme was a major event for New Zealand’s financial markets and had a very significant impact on a large number of investors. Mr Ross went to prison but separate to that, the FMA confidentially investigated how ANZ had handled the money that came from David Ross’s investors.

“The matter raised important market-wide questions around clarifying bankers’ duties to investors, and was intellectually and legally

super-interesting. The FMA wanted to disclose the results of their investigation to the investors who had lost out, so that they could exercise their legal rights against ANZ Bank. We made a determination that disclosure was appropriate, and advised ANZ of that, then ANZ sought judicial review and an injunction. This was fought all the way through the courts against a well-resourced adversary.”

The FMA lost at the High Court but won at the Court of Appeal. ANZ sought leave to apply to the Supreme Court, but this was declined. In the end the FMA were able to disclose to the eligible investors, who pulled together, got a litigation funder and entered into a confidential settlement agreement with ANZ. “Advising the FMA Board and executives on whether to go to the Court of Appeal was neither a straightforward nor an easy decision,” she says.

Toughest career moments

Moments that Karen has found personally hard in her career were when as a prosecutor the occasional trial

that she had done was overturned by the Court of Appeal, especially on procedural grounds. “It’s just so gut-wrenching for the complainants and the victims.”

Karen describes working on a double homicide where the family of the victims came to court every day and camped out. “They were this amazing Māori family. I felt we had a bond over that time. They were just incredible, and I wondered to myself if anyone (apart from maybe my mum and dad, and my sister) would ever camp out for me in the way that they did for their whānau.”

Karen says that in this case there was no doubt that the defendant had committed the murders, but at issue was a plea of insanity. Due to the way expert evidence was handled, the case was retried, (another prosecutor handled the retrial) and the defendant was found not guilty. “Those sorts of things are hard – personally and professionally. I really could see the pain of both families.”

She said that she’s had to make peace with the occasional challenging outcome: “If I support the wider justice system, then I have to take the good with the bad.” For Karen it was a good learning

experience to balance between investing and caring about what you do, but keeping a professional mindset, being able to carry on and rally others. “Don’t ever stop caring. It’s ok to care, to feel disappointment.”

Advice for the legal profession of the future

In 2017 22% of students completing law degrees in New Zealand were Asian New Zealanders. Karen says that earlier in her career she used to shy away from being noticed for looking different, but as she’s grown older she realises the importance of representation, and speaking out.

“I’m really happy to see these sorts of numbers. Representation is important, we need a more reflective demographic in our profession – especially in my areas of practice. I see very few Asian New Zealanders in advocacy, in Crown prosecution, the judiciary, Queen’s Counsel, or leaders in the public service.”

Karen encourages law graduates to consider the whole spectrum of legal work. “Look at what speaks to you. Where are your talents and interests? Don’t be pigeon-holed.” She suggests that young lawyers consider the public sector, as the jobs have so much impact. “We really need high calibre people in the public sector. People who want to make a difference to their community.”

She says that diversity can come in all forms and is not always visible. “Diversity of thought is really important, it’s about the experiences that you bring. I know what it’s like to be around people who are not confident speaking English, or to live with grandparents, or to come from a modest background.”

Her advice to others who may feel that they don’t see people like themselves in the legal profession is not to be put off, and that things are getting easier over time. When she was younger, she used to look at others in the legal world who seemed so connected and wonder how to get in on those conversations. “Don’t be put off. Doors can open. You might just have to knock a little harder.” ■

Diversity of thought is really important, it’s about the experiences that you bring

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HOW WE PRACTISE

Sally Gepp and Madeleine Wright

BY **MORWENNA GRILLS**

With a passion for environmental and resource management law Sally Gepp and Madeleine Wright first worked alongside each other at two environmental NGOs. Now they work together, despite being based more than 800 kilometres apart.

We recently caught up with the two to find out how they make their remote partnership work, with Sally based in Nelson and Madeleine in Auckland.

What's been the key to making remote working a success for you both?

Sally: Part of the reason we've managed to make this work is that we knew each other beforehand. We had worked alongside each other when I was at Forest and Bird and Madeleine at the Environmental Defence Society. We were often involved in the same cases, and working for these NGOs meant we were natural allies, so we were already used to providing collegial support to each other.

I set up as a barrister in 2019 so when Madeleine was looking to make a move last year and approached me there was no question about her joining me. Specialising in environmental and resource management law means we are often called on to work all over the country so it doesn't really matter where we're based.

Madeleine: We have a very similar work ethic so it's been pretty natural sharing the load. Being able to trust the other person is essential when we're not physically together. But we feel really comfortable being open and honest with each other. A lot of people don't even know where we are based!

How does technology help you?

Sally: I've been working remotely since



2010 so I'm used to using remote systems. When I first started at Forest and Bird I worked from Nelson, despite the office being in Wellington.

For me it's been important to have a physical office away from my home. This was especially important when my children were young, I wanted to maintain the separation of work and home. Everything else is just a computer system really.

All our systems are cloud-based software, such as the programmes we use for billing and document storage. We also use Microsoft Teams or Zoom to keep in touch on a daily basis and for more social chats.

It's been interesting to see the rise in remote chambers

like Kate Sheppard Chambers in Wellington. With that set up you get the additional benefits of having that support from a chambers without having to be physically in the building.

Does it get lonely?

Madeleine: We check in with each other on a daily basis, in fact it often feels like she's right here with me given how easy it is to connect digitally.

We're also lucky because the type of law we do is very team based. We're almost always working with technical experts and other parties on cases so we're not locked in a room trawling through documents all the time. Generally during litigation proceedings you constantly have a team around you.

I had meant to get an office but that's been really challenging with Covid-19. I'm generally happy working wherever but around 100 days at home during the current lockdown with no other place to go has been very challenging. I will be looking for office space once Covid-19 restrictions relax.

Covid-19 has also meant that Sally and I haven't managed to catch up in person as much as we would have liked to. We had one great "walking meeting" at Zealandia Eco-Sanctuary in Wellington, but other than that it's all been remote. We catch-up through a combination of scheduled meetings with a purpose but then also just through those casual conversations where you pick up the phone to check something. It's actually not that different from being in a physical office and turning to the person next to you to ask a question.

What are some of the challenges from working remotely?

Sally: This is really a reflection on modern working rather than an experience unique to our working situation, but I find it hard getting emails from early in the morning until late at night. I think society in general is due a reckoning: having embraced flexible working, there are some real drawbacks that we need to be aware of.

The 40-hour working week was a massive step



▲ Sally Gepp

forward for labour rights and for working parents' relationship with their families, but it's been thrown aside to some extent. That's inevitable sometimes due to the nature of our work, but it is becoming the norm to be available at any time. Managing the churn of email correspondence is a drain on so many of us.

Madeleine: It has been a challenge for me being strict about work hours as I pick my daughter up from day care each day at 3pm. I've been strict with myself about not working during that time when I'm with her. But that comes with the pressure later when the emails have piled up.

Being really clear about the boundaries has been good for me and I think remote working does make it easier to have a work life balance with young children.



▲ Madeleine Wright

Tell us more about the work you do.

Madeleine: It's a mix of litigation work and policy advocacy in resource management and environmental law. Resource management law is broad in nature so we end up covering a lot of different aspects. I really enjoy the variety. I find it very rewarding to be able to have a positive impact on the environment through development, as well as through protection of certain areas or values. Generally, people are drawn to this area because they care about the outcomes for our land, freshwater bodies and oceans.

Sally: Working in this area means

we often work for environmental NGOs. But we also work with consent applicants, who generally are wanting to achieve an outcome that is environmentally robust, maintains social licence and builds relationships with tangata whenua. That is just as important, challenging and rewarding.


Why did you decide to go into the law?

Madeleine: Reading and writing were always strong interests for me when I was going through my education. People often think of law as a boring churn through endless pieces of paper, but I've found you get to be creative through problem solving.

My family has a strong ethos of giving back so I wanted to find a career that would allow me to do that in my own way. I have a real passion for the environment as everything that I love doing involves being outdoors. I think about the future generations ahead of us who won't be able to enjoy the outdoors like we can unless society makes careful and sustainable decisions about how and when we use natural resources. I feel this even more now that I have a daughter.

Sally: I was attracted to law because I love languages and the structure and the way in which language can be incredibly powerful. I knew I wanted to work in an area that involved using and analysing language. I was also a baby eco-warrior, giving 50 cents of pocket money to Greenpeace when I was a child, so some kind of environmental job was kind of inevitable!

Like Madeleine I really want to contribute to the world being a better place for those who come after us, including my own kids. ■

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Three to four years of full-time study or six to seven years of part-time study. Complete a thesis demonstrating original and independent research, conducted under supervision, with a maximum length of 100,000 words.

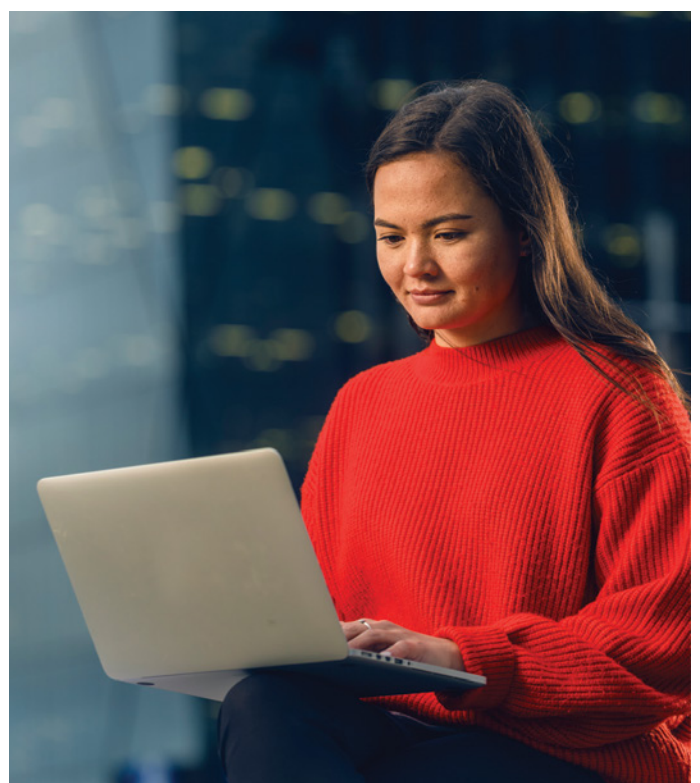
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Snapshot of the Profession 2021

COMPILED BY
**JAMES BARNETT,
MARIANNE BURT AND
NAVNEETH NAIR**

DESIGNED BY
SOPHIE MELLIGAN

This Snapshot draws on information held by the New Zealand Law Society | Te Kāhui Ture o Aotearoa as regulator of the practice of law.

In 2021, there were 15,554 lawyers with a current practising certificate, 14,799 were in New Zealand and 755 were overseas. The remaining figures reflect only the lawyers in New Zealand for the purposes of comparison.

The data highlights the number of lawyers to New Zealanders has steadily increased since the 1970s.

Likewise, the proportion of female lawyers has also increased; currently 53.9% of the profession.

More New Lawyers with 0-7 years post-qualified experience (PQE) are Māori 9.7%, compared to 6.9% of the profession overall. More growth is needed for Māori and Pacific lawyers to be proportional to their communities. Collectively they comprise 10.2% of the profession – compared with the 24.6% of the New Zealand population.

People per lawyer in New Zealand

LAWYERS BASED IN NZ

15,554

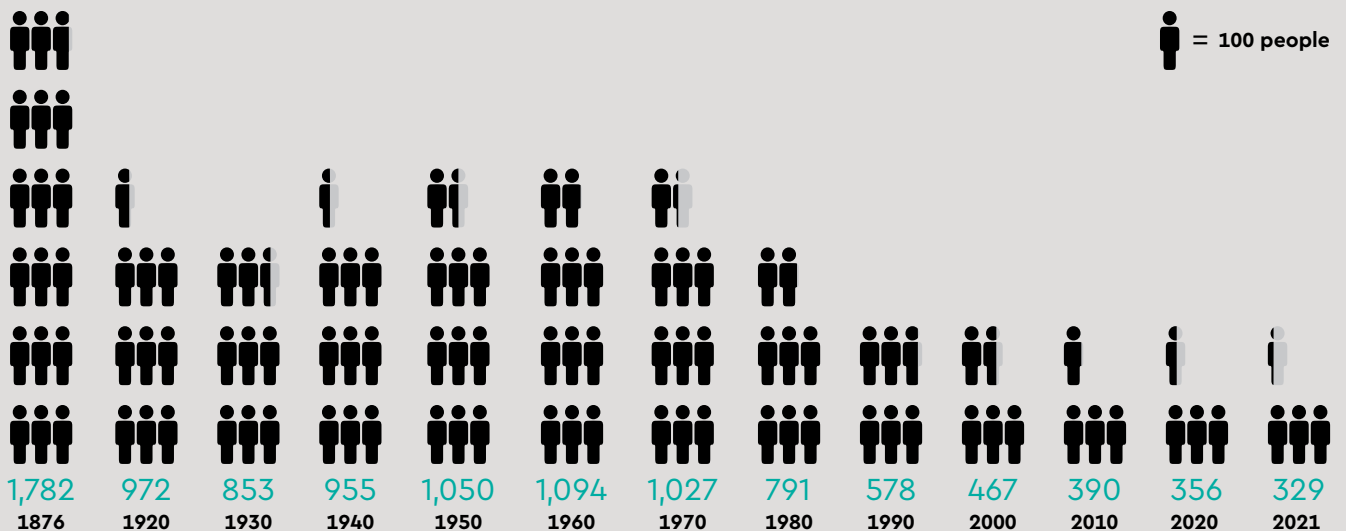
POPULATION

5,122,600

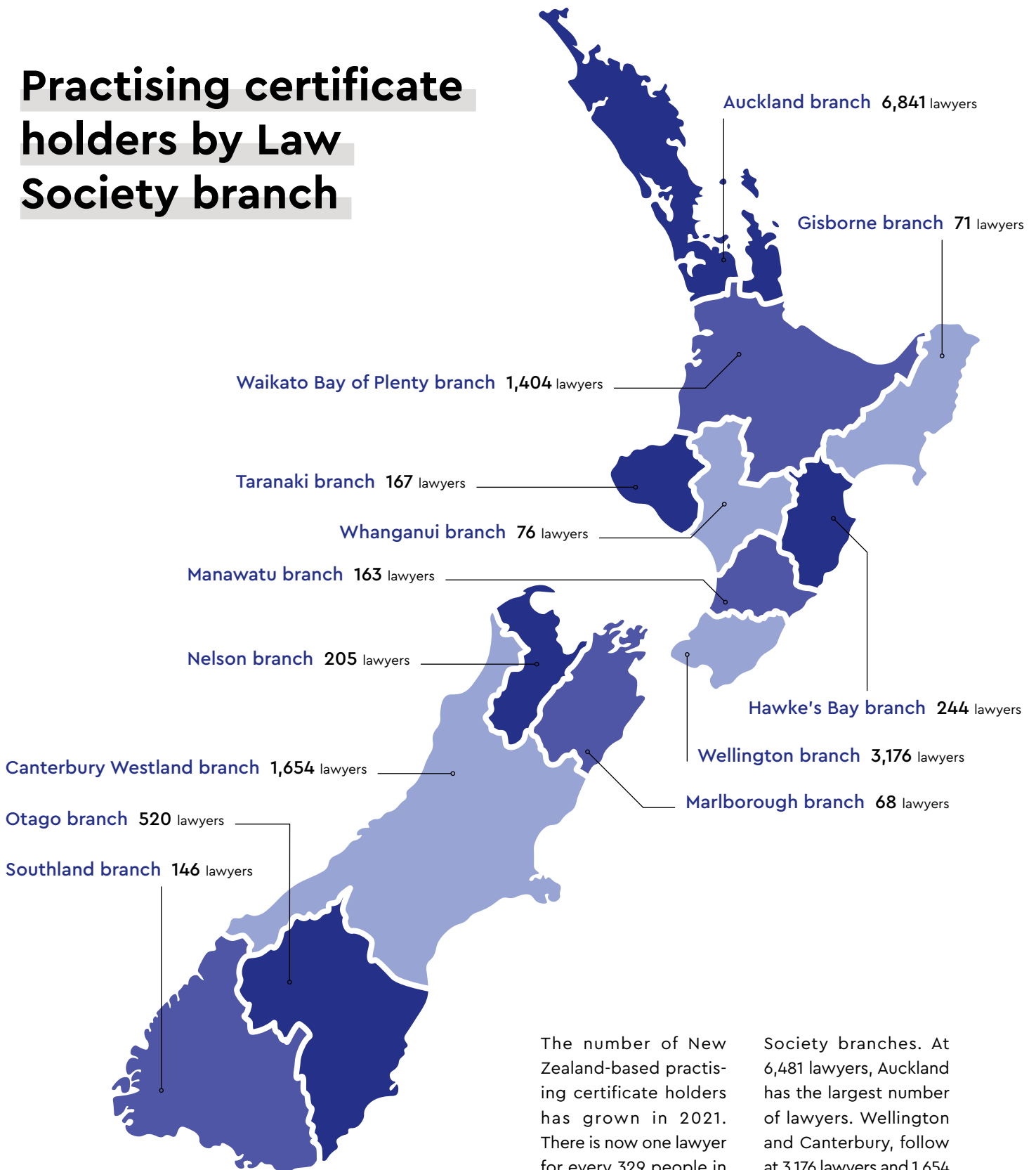
POPULATION PER LAWYER

329:1

PEOPLE PER LAWYER IN NEW ZEALAND



Practising certificate holders by Law Society branch



The number of New Zealand-based practising certificate holders has grown in 2021. There is now one lawyer for every 329 people in New Zealand. Whereas, ten years ago there was one lawyer for every 390 people.

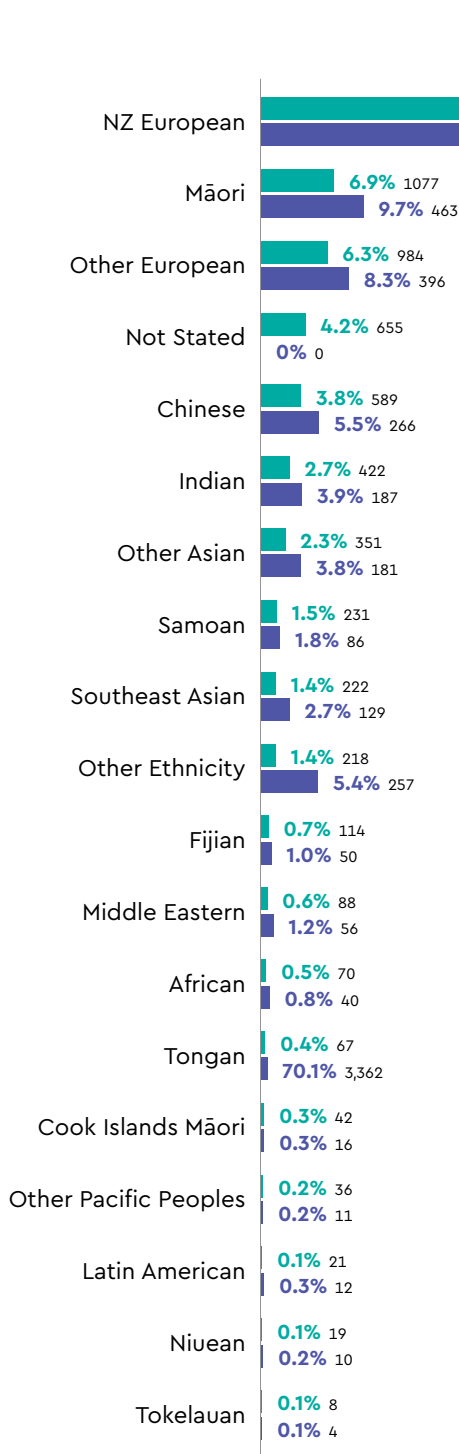
This map organises New Zealand practising certificate holders by Law

Society branches. At 6,481 lawyers, Auckland has the largest number of lawyers. Wellington and Canterbury, follow at 3,176 lawyers and 1,654 lawyers respectively.

Marlborough, Whanganui, and Gisborne have the fewest practising certificate holders at 68 lawyers, 76 lawyers and 71 lawyers respectively.

Ethnicity

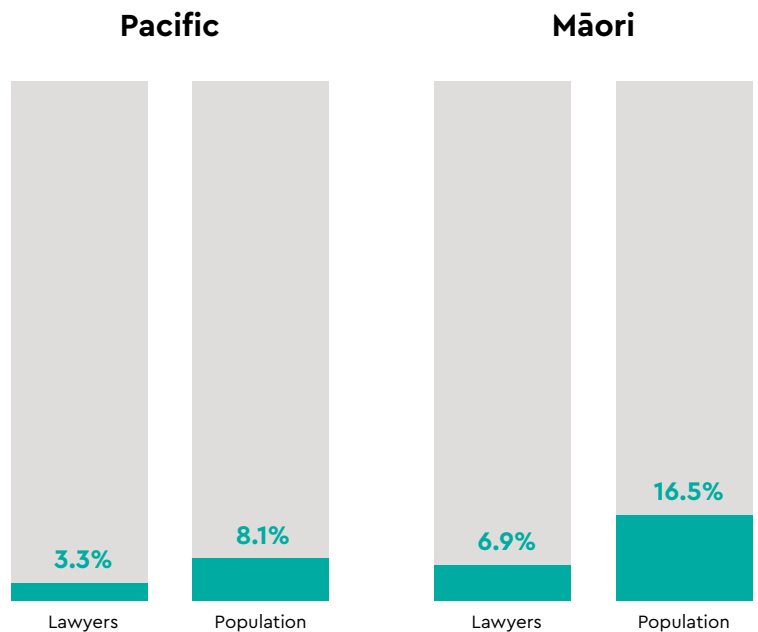
PROPORTION OF ALL LAWYERS AND LAWYERS 0-7 YEARS PQE BY ETHNICITY



The Law Society holds information about lawyers' ethnicity and 95.8% have provided this information to us. They may identify with more than one ethnicity. New Zealand European remains the most represented ethnic group among lawyers at 76.7%. Māori lawyers are the second most represented at 6.9%. There

is now one Māori lawyer for 784.8 Māori people in the population. Pacific lawyers account for 3.3% of the profession. There is one Pacific lawyer for 802.6 Pacific people in society. Asian lawyers account for 10.2% of the profession with one Asian lawyer per 164.9 Asian people in society.

ETHNICITIES AS A PROPORTION OF LAWYERS AND THE NZ POPULATION



802.6:1
Pacific Lawyers as a proportion of the Pacific Population

784.8:1
Māori Lawyers as a proportion of the Māori Population

Gender

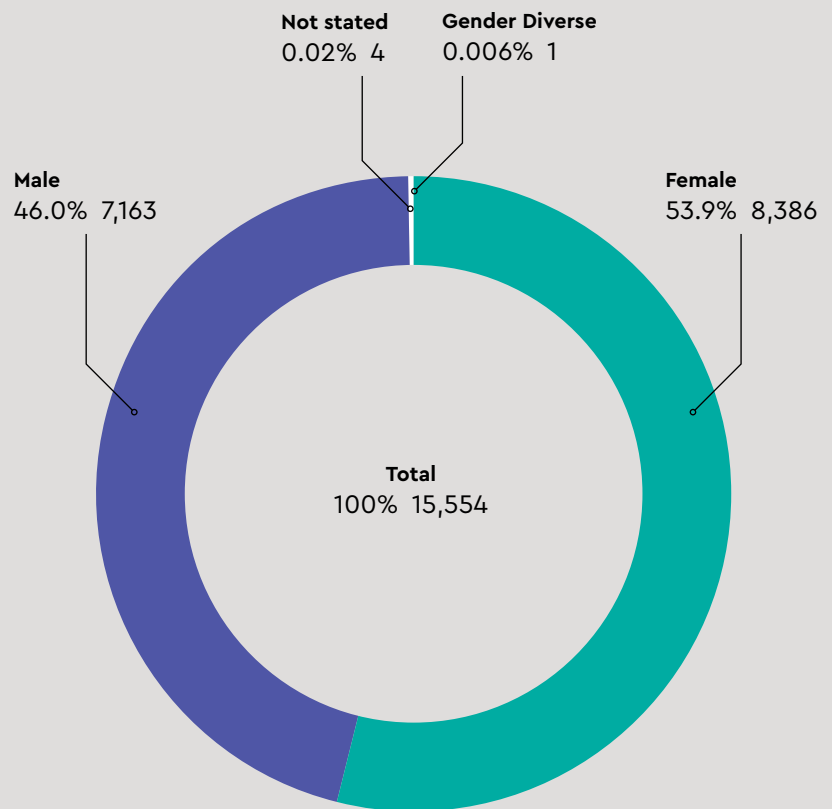
Lawyers can identify their gender as female, male and gender diverse, or they may choose not to state their gender.

There are currently 8,386 female lawyers practising and they make up the majority of the profession at 53.9%. Ten years ago, 43.9% of lawyers were female.

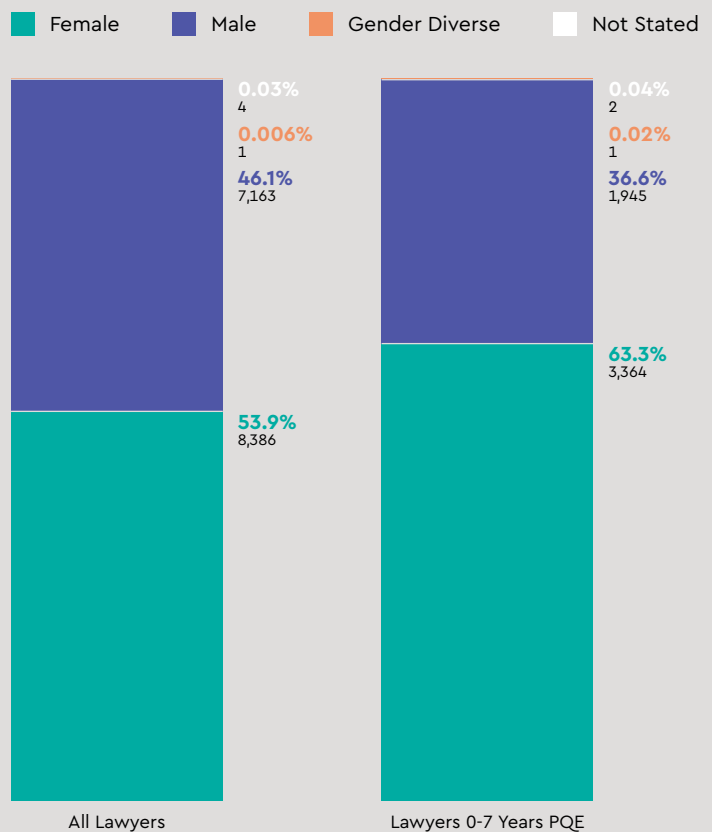
Male lawyers amount to 46.0% of the profession, with 7,163 lawyers being male.

The trend of majority female lawyers will likely continue to increase with 63.3% of all lawyers with 0-7 years of post-qualified experience (0-7 PQE) being female. We also anticipate gender diverse lawyers will increase with time, currently there is one.

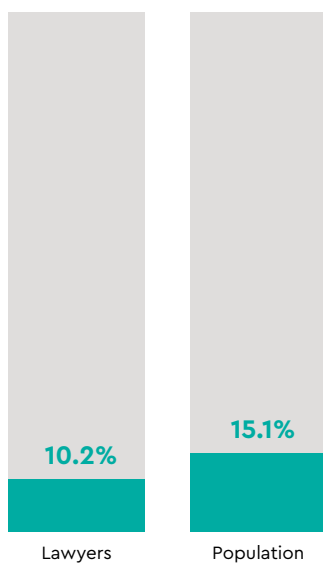
PROPORTION OF ALL LAWYERS BY GENDER



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



Asian



164.9:1

Asian Lawyers as a proportion of the Asian Population

Language

These graphs present the top ten languages spoken by lawyers alongside English.

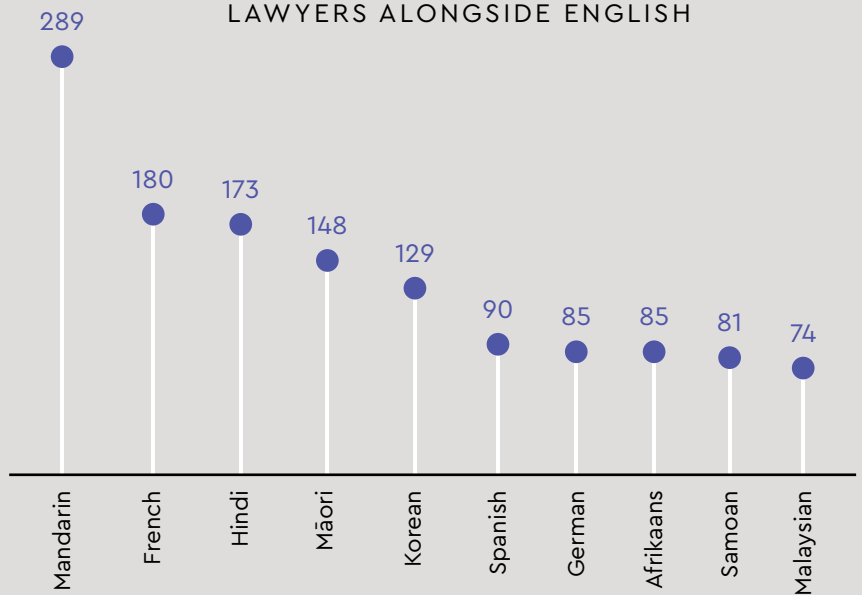
It is inferred that lawyers can speak English. Those who recorded additional languages make up 36.8% of the profession.

Mandarin has the highest number of speakers at 289 lawyers, followed by 180 who speak French and 173 who speak Hindi.

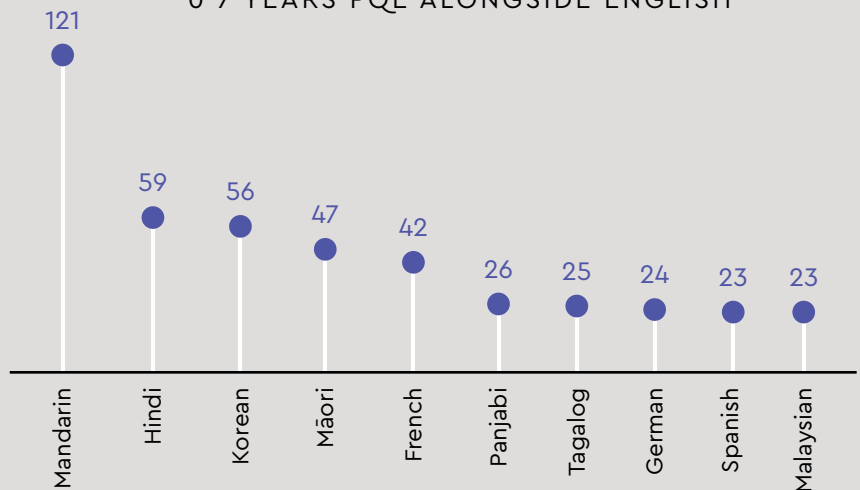
Seven lawyers specified they can speak New Zealand Sign Language (NZSL). With 256,130 people speaking NZSL, there is one lawyer for 35,690 NZSL speakers in New Zealand.

Te reo Māori is the fourth most spoken language specified, spoken by 148 lawyers. This means there is one lawyer per 1,384 te reo speakers in New Zealand.

TOP TEN LANGUAGES SPOKEN BY ALL LAWYERS ALONGSIDE ENGLISH



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



LAWYERS WHO SPEAK NZ SIGN LANGUAGE COMPARED TO THE NZ POPULATION

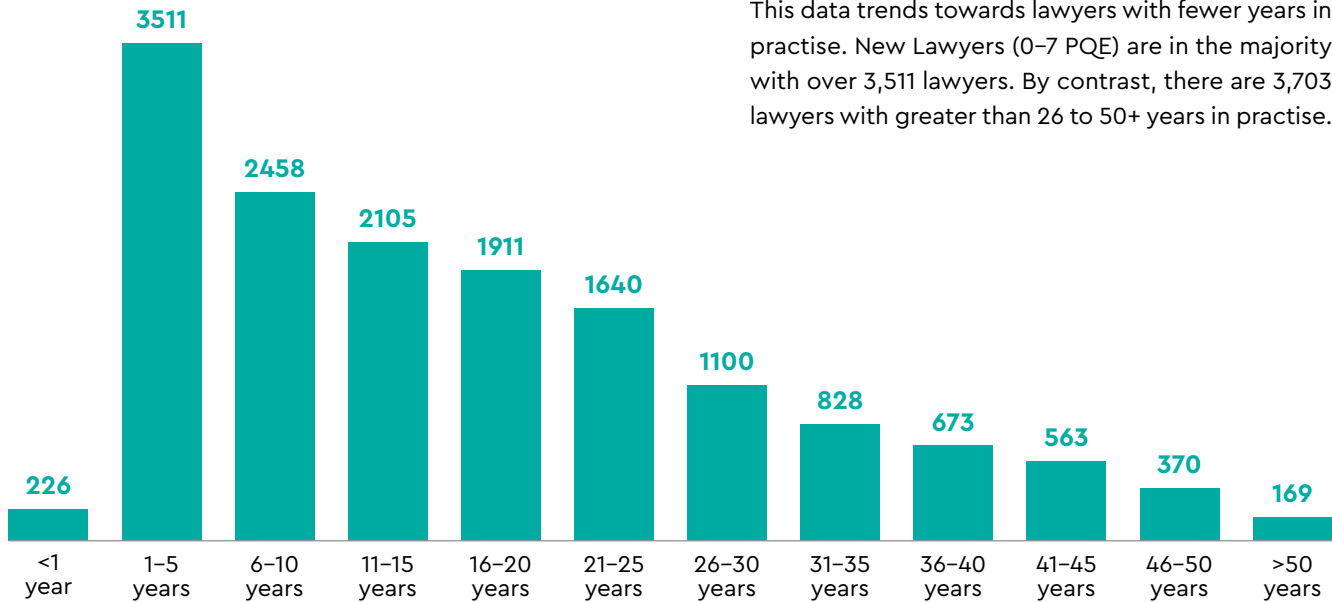
LAWYERS	POPULATION	RATIO
7	256,130	36,590:1

LAWYERS WHO SPEAK MĀORI COMPARED TO THE NZ POPULATION

LAWYERS	POPULATION	RATIO
148	204,904	1,384:1

Time in practise

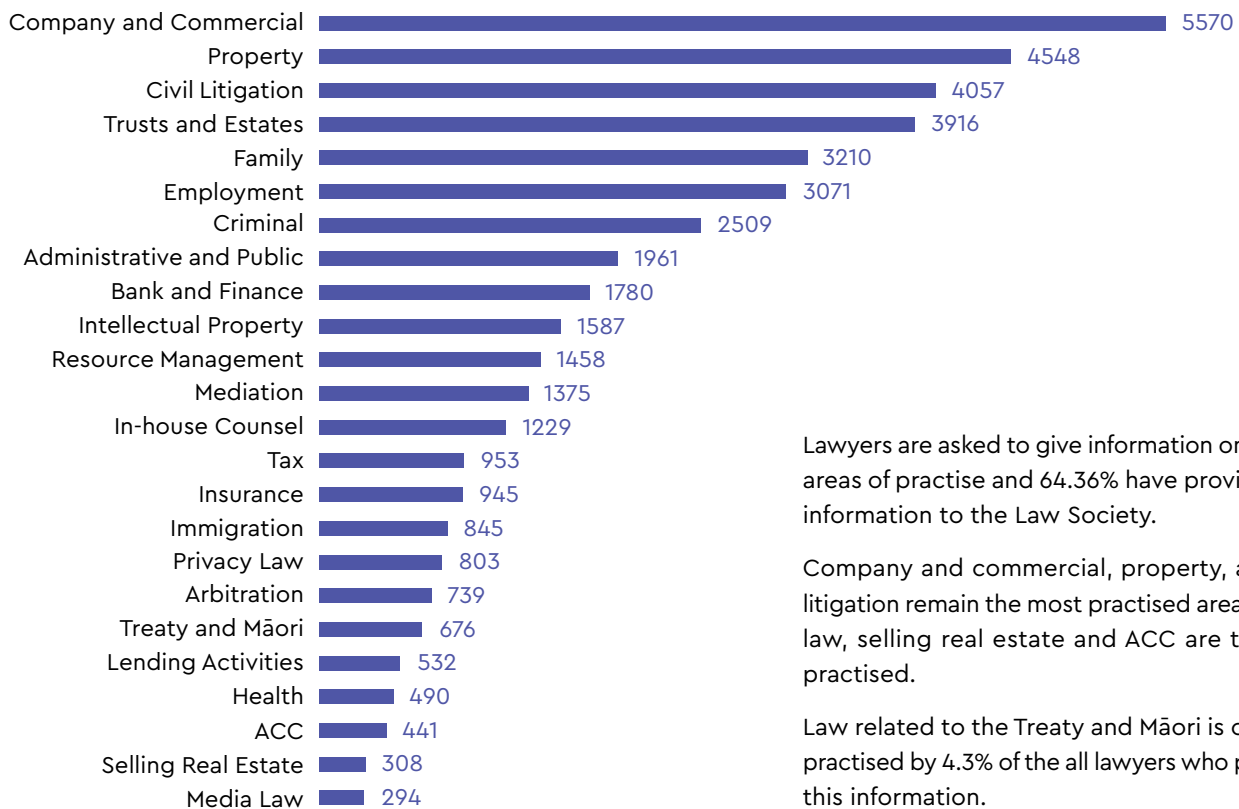
LAWYERS BY YEARS SINCE ADMISSION



The Law Society records years since admission for every registrant lawyer. These figures do not represent years in practise nor account for time when a lawyer does not practise.

This data trends towards lawyers with fewer years in practise. New Lawyers (0-7 PQE) are in the majority with over 3,511 lawyers. By contrast, there are 3,703 lawyers with greater than 26 to 50+ years in practise.

Areas of work



Lawyers are asked to give information on all their areas of practise and 64.36% have provided this information to the Law Society.

Company and commercial, property, and civil litigation remain the most practised areas. Media law, selling real estate and ACC are the least practised.

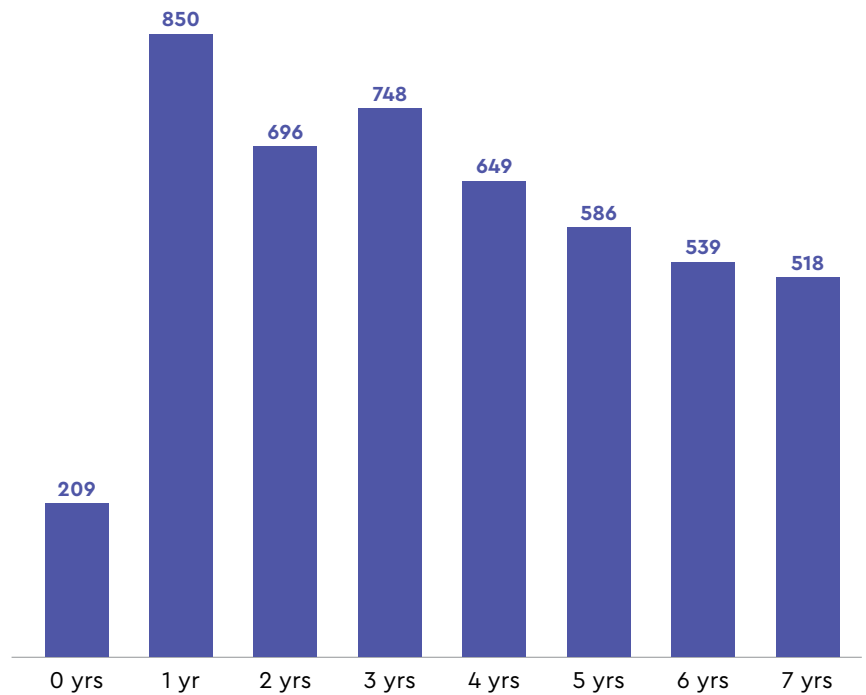
Law related to the Treaty and Māori is currently practised by 4.3% of the all lawyers who provided this information.

New Lawyers

New Lawyers are the proportion of lawyers who have been in the profession up to and including 7 years since admission. There were a total of 4,795 New Lawyers in 2021. Overall, this data reflects an increase in the number of New Lawyers being admitted to the profession. On average, 63.7% of all New Lawyers across 0-7 years since admission are female.

The impact Covid-19 has had on lawyers being admitted remains to be seen. At 209, those for whom it has been less than one year since they were admitted make up the smallest proportion of the New Lawyers group.

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

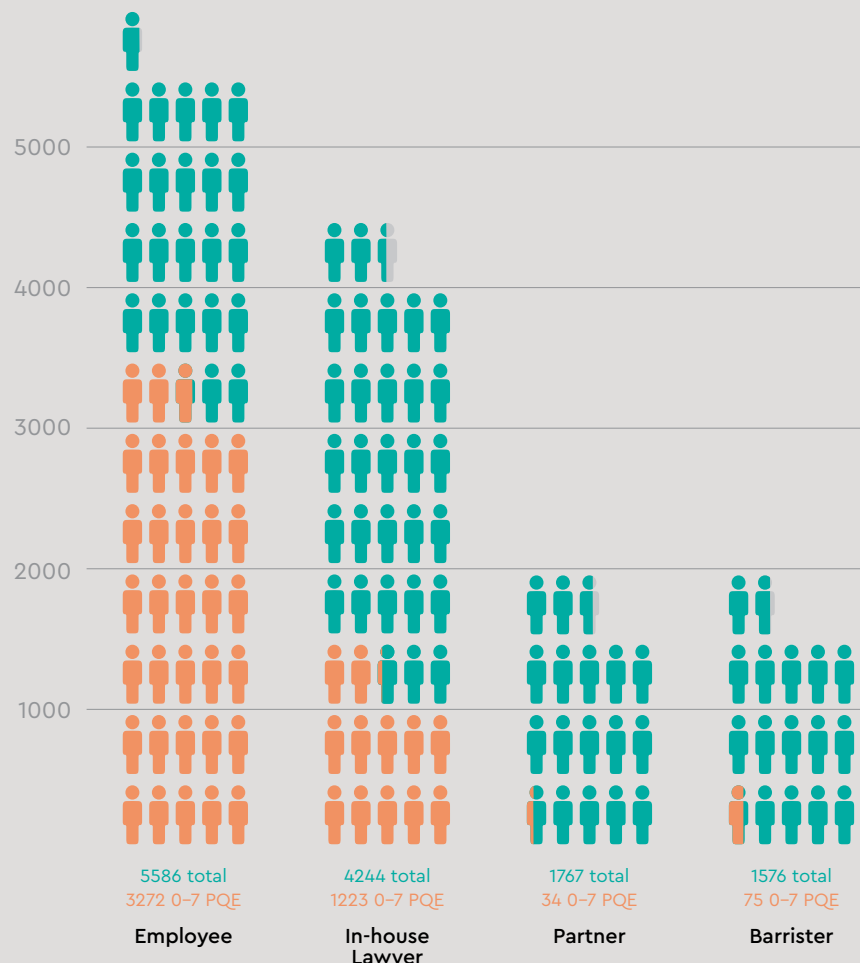


Positions of employment

It is optional for lawyers to disclose their position of employment, and 98.6% of them have provided this information to the Law Society.

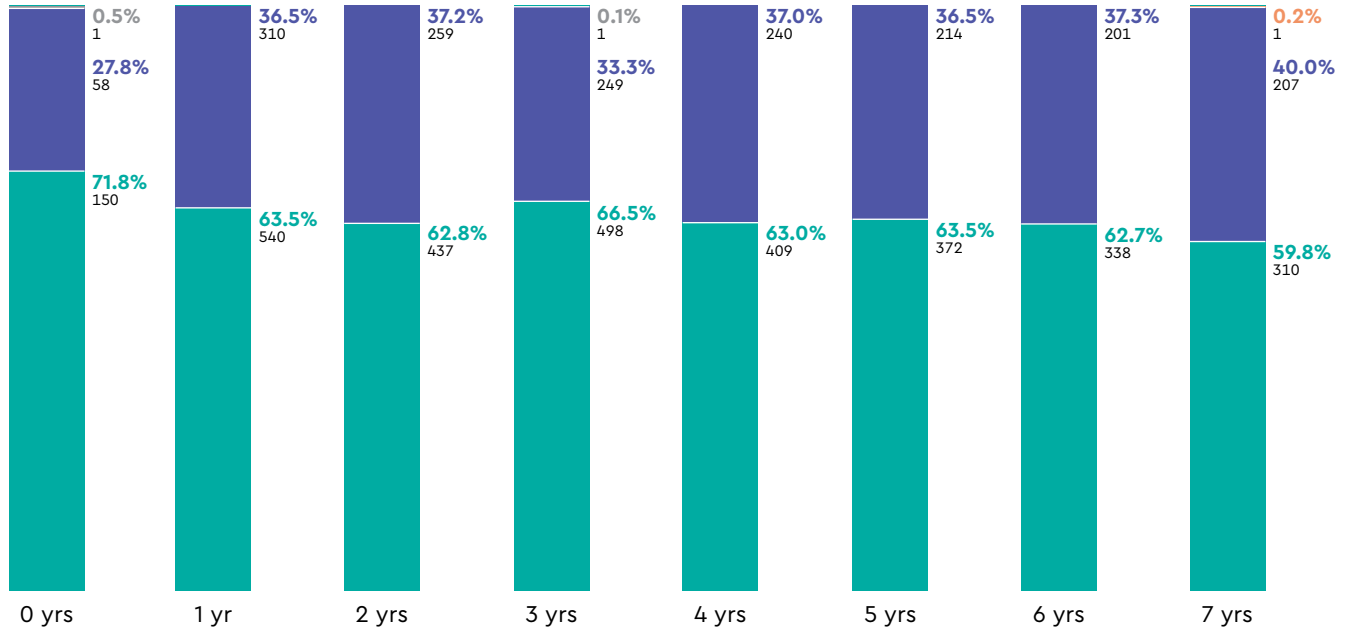
Most lawyers are employees, there were 5,586 lawyers with this position. New Lawyers (0-7 PQE) make up 58.6% of all lawyers in the position of employee.

The second largest proportion are in-house lawyers at 4,244 lawyers. Very few New Lawyers (0-7 PQE) hold positions other than employee and in-house lawyers. There are 34 New Lawyers employed as partners, and 75 New Lawyers employed as barristers.



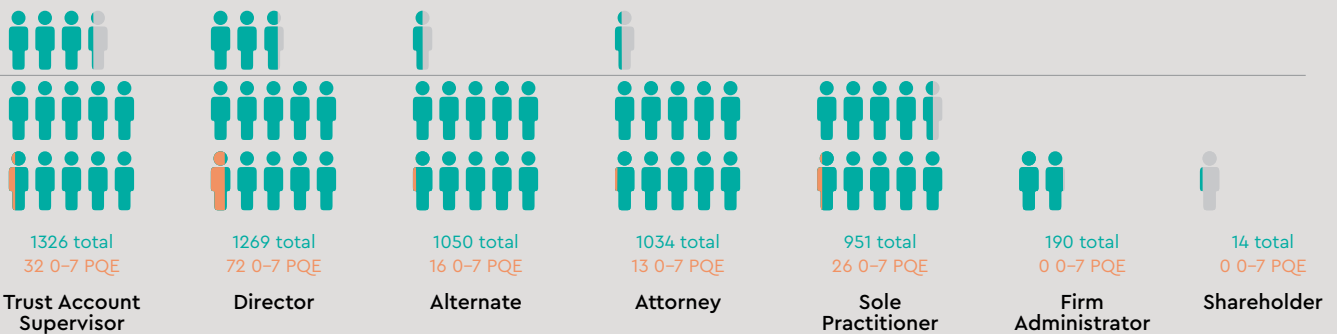
GENDER OF NEW LAWYERS 0-7 YEARS PQE BY YEARS SINCE ADMISSION

Female Male Gender Diverse Not Stated



POSITIONS OF EMPLOYMENT OF LAWYERS AND LAWYERS 0-7 YEARS PQE

= 100 Lawyers = 100 Lawyers 0-7 Years PQE



CENTRES WITH COUNT >50 PQE 0-7 LAWYERS

Main centre	Number
Auckland	1956
Wellington	867
Christchurch	509
Hamilton	203
London UK	190
Tauranga	100
Dunedin	87
Lower Hutt	82

SOLE PRACTICE

New network for sole practitioners

BY **MORWENNA GRILLS**

Covid-19 has impacted every legal workplace and every type of legal practice in this country. But not in the same way. There are big differences depending on the size of the organisation, the type of work and of course the location.

Barrister-sole Jeremy Sutton is based in Tāmaki-Makaurau (Auckland). When Covid-19 arrived in New Zealand and the entire country went into lockdown he realised this would be a hard time for lawyers like him. Specifically, for those in sole-practise or working at small firms. Suddenly running a business, keeping up with legal practise and continuing to make connections with other lawyers was going to get a lot harder.

So, he turned to the online digital platform Slack and together with Law Clerk Isabella Hutchison developed a dedicated network for sole-practitioners and lawyers in small firms to join as paid members.

Setting up Ako Legal

“It was March 2020 when I put together some webinars for people about working from home, covering things like the types of technology they could try. This had a bigger uptake than I’d expected as I’d only invited other family lawyers I knew. But word spread and about 140 people logged in.

“It became apparent that there was a real demand from lawyers wanting to connect with each other for professional and wellbeing reasons.

“I really wanted to help create more of a level playing field in this new restricted environment for those of us working on our own or in really small firms. We didn’t have a lot of support facing this entirely new world, so I started working on an online platform.”

Fast forward to November 2021 and whilst Jeremy is unfortunately back in a lockdown in Auckland, Ako Legal is thriving. The platform provides members with



a safe space to share information, ask questions, discuss recent cases and just catch-up for a chat.

There are a number of channels dedicated to different topics where members can post questions, share updates, discuss legal issues or just post an amusing photo of a furry work colleague.

Trust Law specialist Leonie Reid of Auckland’s Horrocks Hampton Lawyers joined the platform in September this year.

“It’s been really useful for me as a lawyer working in a small firm. I go in there at least once a day to connect with the community. In a way it’s like being part of a much larger law firm.”

A way to connect

Wellington based Emma Gabor set up her own practice last year. Having started her career in a large law firm and then gone in-house at New Zealand’s largest insurance company she knew striking out on her own would be challenging.

“When I decided that I wanted to become



▲ Isabella Hutchison
◀ Jeremy Sutton

a sole-practitioner I set about building up a network of people I could turn to for support and guidance. People have been incredibly generous with their time and expertise.

“The great thing about Ako is that you can ask questions and not feel like you’re intruding or asking too much of people as by helping each other we all benefit.”

Being on your own can be a lonely place. Emma will never forget walking into her office for the first time as she was the first person to let a space in a new floor in an office building in the city.

“Setting myself up in that empty space brought home the reality of the switch I’d made. The great thing about Ako is that at times I feel as if I’m back in a large office just turning to the person next to me to ask them a question.”

Supporting digital networking

Being based in cities Leonie and Emma are used to being able to access events to help build their networks. Emma supports the Independent Practitioners Committee in

“It’s been really useful for me as a lawyer working in a small firm. I go in there at least once a day to connect with the community. In a way it’s like being part of a much larger law firm”

Wellington, helping to organise education and networking opportunities for practitioners.

But for sole practitioners in smaller towns and rural communities the ability to connect face to face is more limited. In some ways, Covid has levelled the playing field removing that option during lockdowns.

Lockdown has presented extra challenges for Leonie, balancing home-schooling, and working from home. “Ako has been of great value through lockdown. It’s been particularly good for keeping up with the changing restrictions.

“What’s also really useful is being able to ask for other’s view on a legal issue, as well as seeing conversations about areas of practise I’m less familiar with.

“And of course, for those of us in extended lockdowns it’s been a place to share our challenges and find support.”

Jeremy says the nearly 50 members currently on the platform cover a broad range of locations and practise areas.

“What’s been particularly good for sole-practitioners in more rural areas is that they can access a range of practitioners with different specialisms on Ako. For lawyers practising in smaller areas, they often need



▲ Leonie Reid



▲ Emma Gabor

to be across several different areas of the law so having a group of fellow practitioners on hand to ask questions of is really useful.

“Those lawyers are often inundated because they may be the only one in that area so making time to get to courses for CPD or events for networking is also more challenging. But it’s important that we all take time to look after ourselves, and connecting with others, even digitally definitely helps do that.

“For example, we had someone on the platform who had a very difficult client they were dealing with. Other members were able to suggest ways to deal with the behaviour, as well as encouragement to take action.”

Supporting lawyers to look after themselves

For Jeremy one of his core motivations for setting up Ako Legal was to help level the playing field for sole practitioners.

“I could see there was a real need for this, and it is really satisfying when people benefit from the platform. It was a challenge to set it up because there are a lot of components but I felt I had something to contribute to the profession and so I wanted to share this information and share my experiences of what I had gone through.

“I often see sole practitioners taking on far too much work. I think it’s important to be checking in with each other to ask how we’re doing.

“I specialise in divorce work so most of my clients can be pretty unhappy! It’s been good having a support network through Ako and being able to help other lawyers.”

What's next for Ako Legal?

Having grown to just under 50 members Jeremy is keen to keep the community relatively small. Users like Leonie agree that having a tight network of regular contributors helps build trust and friendship among the users of Ako Legal.

“I have to confess that I don’t actually want the network to grow too big,” Leonie says. “I really like the intimacy of the small group. Particularly through lockdown I’ve really got to know people. I haven’t felt isolated or alone as a lawyer through this most recent lockdown.”

Isabella and Jeremy have both been working on offering more CPD on the site and webinars, some of which are open to non-members for a small fee. ■

Applications to join Ako Legal can be made via the website akolegal.co.nz.

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Vocational Rehabilitation
NZST Volunteers
Resource Centre

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CONTINUING PROFESSIONAL DEVELOPMENT

Reflecting on the CPD year that was

BY HELEN COMRIE-THOMSON

Over the past two years all of us have been on a learning journey – learning to work in an entirely remote environment, learning to operate new systems and just learning how to survive during a pandemic.

That learning journey probably happened at pace, informally and was not really under your control. What is under your control when it comes to learning is fulfilling the continuing professional development (CPD) requirements that form a really important part of what it means to be a practising lawyer.

As the end of the current CPD year approaches (31 March 2022), it's a good time to think critically about what you've learned over the last year and to start planning your next learning and development steps.

It's also a good time to reflect on the challenges that the legal profession may face in the future and how planning and education can be used to mitigate those.

A movement to online learning

The last two years have seen unprecedented change. The adoption of digital solutions has been accelerated. Our audit data reflects this change in the way lawyers are participating in continuing professional development, with webinars, e-learning, and hybrid activities (a combination of online learning and in person learning) becoming more prevalent. Our changing environment, travel restrictions and snap lockdowns have made online learning a more reliable, and sometimes only available, option. While our physical world may have become smaller over the past two years, our virtual world has continued to expand,



Helen Comrie-Thomson

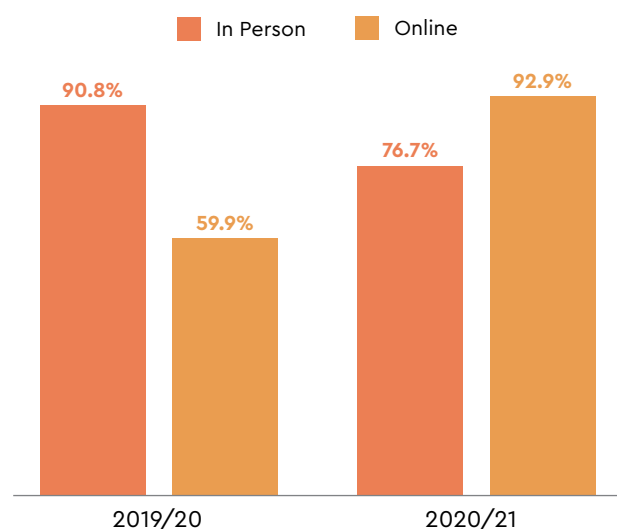
offering us opportunities to participate in, contribute to, and attend CPD activities all over the globe.

Covid-19: a transformative learning experience

Transformative learning is a term coined by Jack Mezirow who defined it as, “the process of becoming critically aware of how and why our assumptions have come to constrain the way we perceive.” He calls on us to question our understanding and feelings about the world to reformulate these assumptions. In doing so we can develop a more inclusive, discriminating, permeable and integrative perspective.

Mezirow's transformative learning process consists of ten phases, taking us from a 'disorienting dilemma,' through to the development of a new perspective. It is a critically reflective exercise which can lead to fundamentally changing what we do and why we do it. Reflecting in this way can help us to reframe; to take a fresh look at problems

IN PERSON AND ONLINE CPD ACTIVITIES AS PER YTD AUDIT AS AT 31 OCTOBER 2021



and investigate them from different angles.

Mezirow's phases:

1. Disorienting dilemma
2. Self-examination
3. Sense of alienation
4. Relating discontent to others
5. Explaining options of new behaviour
6. Building confidence in new ways
7. Planning a course of action
8. Knowledge to implement plans
9. Experimenting with new roles
10. Reintegration.

If we consider the Covid-19 pandemic as our 'disorienting dilemma', by working our way through Mezirow's phases we can move from our initial shock to being able to move forward into our new normal because our perspective has changed.

A good example has been learning to work from home which perhaps pre-Covid you hadn't considered was possible.

The many opportunities CPD offers

The great thing about our CPD scheme is that its intention is to develop lawyers holistically. It recognises that while it's important that lawyers are upskilling in their understanding of the law and the legal frameworks within which they work, this doesn't need to be a lawyer's sole professional development focus.

Many lawyers over the last two years will have spent time learning or perfecting the necessary expertise to be able to engage effectively in online learning and remote working. Through using these new skills, while building competence and confidence you may also identify further learning needs.

But it's not just through your own learning that you can achieve CPD hours. You can also gain those through teaching others. For example, you may wish to develop your IT skills as well as your communication skills by creating and presenting a webinar for your team. As long as the webinar aligns with your learning needs and meets the definition of activities in the Lawyers and Conveyancers Act (Lawyers: Ongoing Legal Education-Continuing Professional Development) Rules

2013, then it might be able to count towards your CPD requirements.

Developing learning needs through reflection

Reflection is a powerful tool. It allows us to consider the way that things are and the way that we want them to be, and to connect the dots. As we look forward to the 2022/23 CPD year, it's a good opportunity to reflect, and to start developing your plan and record (CPDPR) by deciding on your learning needs for the coming CPD year.

Reflecting on your previous year's CPDPR and considering the further learning needs you thought you could take, or the gaps that remained following your learning activities is one way you might identify new learning needs.

Reflecting on your professional path, where you would like to be in a year, five years, or ten years' time, and how you get there is another way to develop learning needs. Thinking about the steps that are needed to achieve your goals can allow you to identify the skills and knowledge you need to develop to meet your career targets. This knowledge and skill acquisition could then form part of your learning needs for your CPDPR.

Learning needs could also be developed by reflecting on what is pertinent in relation to the profession at this time - what amendments or changes have been made to the law within which you practise? How might the changing environment over the next year, as we continue to navigate the impacts of Covid-19, affect you and your practise?

Your continuing professional development journey is unique, it's an opportunity to develop yourself, your skills, and your knowledge. Taking the time to critically reflect will help you to get the most out of your professional development investment.

The current CPD year will end on 31 March 2022, and CPD declarations are due within five working days of that date. You can make your CPD declaration online at any time once you have met your requirements. The final day to make your 2021/22 CPD declaration on time is 7 April 2022. ■

Helen Comrie-Thomson is an educator and the Law Society's CPD Manager. She provides guidance to lawyers in relation to their requirements under the CPD Rules and the development of their CPD plan and record (CPDPR), and also manages the Law Society's CPD audit process.

PROFESSIONAL STANDARDS

Designing anti-bullying and harassment policies for law practices

BY **BELINDA RYAN**

Almost six months on since the amended Rules of Conduct and Client Care came into force, the holiday season is a timely reminder for all law practices about the new requirements.

One of the key changes impacting every law firm, including sole practitioners, is the requirement to have anti-bullying and harassment policies. Evidence of these policies will need to be provided to the Law Society as part of the annual declarations by 30 June 2022.

"Lots of law practices have done some great work on this already. But for others, now is a good time to check if you are complying before the 30 June 2022 deadline for annual reporting," says General Manager Professional Standards, Katie Rusbatch.

Requirement to have policies and systems in place

Having an anti-bullying, discrimination, and harassment policy at your law practice is required under Rule 11.2 of the Conduct and Client Care Rules. There are also wider workplace obligations to manage health and safety risks as far as practically possible. Rule 11.2 has been in force since 1 July this year.

By 30 June 2022 designated lawyers from each law practice (including sole practitioners) will need to certify that their practice is meeting their obligations under the Rules. This will include declaring that their law practice has policies and procedures in

place to prevent and protect from bullying, harassment, discrimination and violence.

Many law practices will have different circumstances and will need to tailor their policies to their circumstances. For example, a sole practitioner may wish to have a process where any complaints are referred to another lawyer to investigate.

Policy guidance is available

To help law practices to design policies for their specific situations, the Law Society partnered with WorkSafe New Zealand to run a free webinar on designing bullying and harassment policies for law firms. Held on 10 Nov 2021 and presented by WorkSafe's Dr John Fitzgerald and barrister Paul Collins, a recording of the webinar is available on the NZLS CLE website.

There's also a wealth of guidance on the WorkSafe and Employment New Zealand websites.

WorkSafe describes bullying and harassment as a serious and common work risk. Under the Health and Safety at Work Act 2015 (HSWA) businesses are expected to manage health and safety risks arising from their work as far as is reasonably practicable.

Paul Collins says that lawyers need to be focussed on the formulation of a policy, rather than just downloading a document and allowing it to gather dust. "It's important that you give thoughtful consideration to the requirements."

Sole practitioners and small practices

Sole practitioners and small law practices are encouraged to tailor their policy to their specific circumstances. "Even if you don't have any employees, you still need a policy in place. But it can be quite brief, and tailored to your limited exposure to these issues," says Paul.



He recommends a statement of intent and a few guidelines, but adds that larger law practices will need something more sophisticated.

Mentally healthy workplaces involve more than just policies on paper

Dr John Fitzgerald is the lead on Mentally Healthy Work at WorkSafe New Zealand. Dr Fitzgerald emphasises that "policies are only as good as the practice that they inform and facilitate.

"Health and safety at work is everybody's responsibility. Mentally healthy work is where risks to people's mental health are eliminated or minimised, and their mental wellbeing is prioritised."

Dr Fitzgerald says that having a positive culture is about more than social activities like shared lunches or quiz teams. "Healthy workplaces are safe – both physically and mentally.

"Bullying, harassment, discrimination and violence are health and safety risks. As a business owner or office holder, the onus is on you to identify and manage this risk as far as practically possible."

Culture key to prevention

Dr Fitzgerald describes psychological safety as being where everyone feels safe to stand up and say "what's happening here is not OK".

Policy essentials

Introductory statement

Expectation of standards of compliance with:

- Lawyers and Conveyancers Act 2006 including *Conduct and Client Care Rules*;
- Human Rights Act 1993;
- Health and Safety at Work Act 2015;

Statement of prohibited behaviours, listing each category in r.11.2 with reference to the definitions in r.1.2.

Workplace conduct: include off-site/social/professional development activities.

Identify persons to whom the policy applies, including term of employment agreement where possible and acceptance by contractors regularly on premises.

Refer to reporting requirements under rr.2.8, 2.9 and 11.4.

Identify designated lawyer and describe responsibilities including reporting and certification and ensuring the policy is kept up-to-date.

Describe complaints procedures including investigation and determination:

- Compliance with rules of natural justice.
- Strict confidentiality.
- Availability of support person

Requirement to have a person in charge at social and off-site events, to remain until the end of event.

If sole practitioner or small firm, designate an independent person to receive and investigate complaints.

Provide notice of the policy to all principals, employees and persons working at premises.

He says that to reduce the risk of bullying and harassment, law practices should:

- Create a workplace culture that encourages people to support one another.
- Set house rules. Put how you'll tackle bullying in your policies and procedures. To follow the rules, your workers must know them. Put your policy where staff can find it.
- Have an anti-bullying and harassment policy that every employee is aware of when they sign their employment agreement.
- Educate workers and managers about bullying.
- Make sure your workers know how to report unreasonable behaviour.

Off-site activity and social activity

The idea of regulated professional conduct relating only to legal work at the office or in Court is outdated. Your policy needs to cover all forms of workplace conduct. This includes any conduct while working within the law practice's premises, conduct away from the firm's premises including at clients' premises, mediation meetings or education or professional development events.

Off-site firm social events and any incidental activities are also covered. A responsible and senior lawyer should supervise off-site and social workplace activities.

Communication and commitment

Aotearoa Legal Workers Union (ALWU) Co-President Tess Upperton says that communication around the policies is equally important. "Employees need to know that there are effective accountability mechanisms so that they feel safe and empowered coming forward when there are issues. Employees will not come forward if they feel that nothing will be done."

Ms Upperton also recommends that employers consult with their employees when forming a policy. "ALWU has often

received feedback from members that employees have policies dropped on them from above as a done deal. Consultation on the formation of the policy itself, for example, drafting it with a steering group that includes employee representatives lets employees shape the policy from the beginning and feed in any concerns directly."

Ms Upperton says that once the policy is finalised, it is essential that everyone in the workplace is made aware of the policy and gives it life: "Just uploading it to

the intranet is not enough. The policy needs to become embedded within the culture of the workplace through training so that it actually effects positive change and is not just aspirational."

Dr Fitzgerald says that often leadership can talk a good game on their commitment to anti-bullying, harassment and discrimination policies. "What's important is management. Make sure that it filters down, and that managers are supported and trained to do it properly." ■

Resources

Preventing and responding to bullying, harassment and discrimination:

Preventing and responding to bullying at work: worksafe.govt.nz/topic-and-industry/bullying

Sexual harassment: worksafe.govt.nz/topic-and-industry/sexual-harassment

Employment New Zealand: employment.govt.nz/resolving-problems/types-of-problems/bullying-harassment-and-discrimination

How to write health and safety documents:

worksafe.govt.nz/the-toolshed/tools/writing-health-and-safety-documents-for-your-workplace

Global standard on managing psychosocial health and safety in the workplace

ISO 45003:2021

ISO 45003 is the first global standard giving practical guidance on managing psychological health and safety in the workplace published as a full International Standard on 8th June 2021.

Organizations are using ISO 45003 to help protect and support workers from mental ill-health arising within the workplace.

Simply put, it is a "how-to" guide for creating mentally healthy and safe workspaces based on a preventative not reactive approach.

iso.org/standard/64283.html

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NEW LAWYERS

Going digital for admission to the profession

As with so many events this year admission ceremonies in Auckland have gone virtual. In mid-October Auckland High Court started doing admissions using digital technology. Keen to ensure some certainty for those wanting to enter the legal profession this paved the way for them to do so in a manner in keeping with the requirements of Alert Levels 3 and 4.

Three lawyers who went through the experience of virtual admission tell us what it was like.

Rebecca Ong

I never imagined that I would be admitted as a barrister and solicitor from my room, sitting in front of my laptop, with my cat curiously sitting on my desk next to me watching. It is a shame that we never got to experience this once in a lifetime opportunity of being admitted in a courtroom, wearing the traditional legal attire and being sworn into the profession in front of a judge, but if this pandemic has taught me anything, it is to learn to adapt and to count my blessings.

I am so grateful that the High Court made it possible for us to be admitted during this difficult time. With the admission ceremony done remotely, my family, relatives and friends from all over the world - Malaysia, Singapore, and the US could tune in and watch the admission live.

Due to the pandemic and travel restrictions, my family had missed my graduation, so it meant a lot having them be a small part of my admission ceremony. I believe it meant a lot to my family too.

During the whole 20 minutes of the admission ceremony, my family group chat was blowing up with excited messages of congratulations, messages about not being able to find me on the screen, screenshots of when they do find me on the screen, so it really did feel like I had my family with me during this special occasion.

Despite not having a physical ceremony, the remote admission was still nothing short of magical. It is still a day I will look back on and remember and a day my family could excitedly say they were a part of. ■



Shona Squires

It was an honour and a privilege to be admitted to the Bar in a unique private ceremony, in the Dunedin High Court on 23 September 2021.

With my initial 24 August admission plans thwarted by lockdown, and my new business cards collecting dust in my desk drawer, I waited patiently for news from the Otago branch of the Law Society about an alternative future arrangement. However, my primary concern at the time was how long Aucklanders would be locked down, and unable to travel to the South Island. My Auckland-based moving counsel, Phillipa Muir, and Justice Toogood, were to be guests of honour at my admission.

It was important to me that Ms Muir acted as my moving counsel. After working as her PA at Simpson Grierson for eight years in the 1990s, and remaining close since that time, Ms Muir has been an enormous source of inspiration to me, both personally and professionally. In addition, as a surprise, my friend Justice Toogood had arranged to preside over my admission which was a significant honour. Although I was advised that there was a possibility of an alternative admission date once the South Island was at Level 2, Plan B held less appeal if Ms Muir and Justice Toogood could not attend.

Thankfully, Justice Toogood formulated an attractive Plan B that enabled my admission to go ahead with them both “present”. With Justice Toogood presiding at the Auckland High Court and Ms Muir moving my admission, via the High Court AVL system, my private admission ceremony took place in the Dunedin High Court on 23 September. I was fortunate to be able to have 12 people at my ceremony, which included family, friends and my close colleagues from Staley Cardoza Lawyers. It was a moving ceremony, with



▲ Shona Squires on the screen in Dunedin, Phillipa Muir and Justice Toogood in Auckland.

personal and heartfelt speeches conducted by Justice Toogood, Ms Muir and me. It was certainly a great honour, and the next best thing to having them with me in person!

I am thankful for my unique admission experience, especially in times where my counterparts, particularly those in Auckland, have been far more affected by lockdown restrictions. I am grateful for the excellent organisation skills and efficiency of the High Court staff, in both Auckland and Dunedin, who helped Justice Toogood co-ordinate my admission ceremony at short notice. ■

Christiner Chan

My name is Christiner Chan, and I was admitted virtually through Virtual Meeting Room (VMR) on 22 October 2021 due to the Covid-19 Alert Level 3 restrictions. It was a bittersweet experience to say the least.

A month before the ceremony, I had submitted all the required applications to file for my admission. We were at Covid-19 Alert Level 3 facing all kinds of lockdown challenges, causing delays in the Character Certificate being issued and the deadline to file for admission being extended. Nevertheless, thanks to the coordination between the Law Society (Auckland Branch) and Auckland High Court, I was able to file my application for admission. With Covid-19 still lurking about, there was still uncertainty of how and when the admission would happen. I was notified by the High Court two days prior to the ceremony that it would be done on VMR.

On the day of the admission ceremony, I was scheduled for the 2pm virtual admission session. When I logged into the VMR, it felt so surreal. Not long into the ceremony, my name was called, and I had said “I do”. Throughout the ceremony, we had some technical issues. Some moving counsels were cut off halfway through their sentences, some struggled with being heard at all, some moving counsel could not show up for whatever reasons and the candidate had to be allocated another time slot to try again. The ceremony lasted less than 20



minutes. Towards the end, Hon Justice Gault gave a short speech. Briefly, he congratulated us for our hard work, reminded us of our professional obligations to the Court and our clients, and cautioned us to not let our profession consume us.

The ceremony itself was nothing short of a blessing in disguise. It was bitter because it was not an in-person ceremony at the Auckland High Court. It was sweet because the admission was made possible due to the tireless effort and willingness of staff at the Law Society (Auckland Branch), the Auckland High Court and Academic Dress hire. The sweetest part of it all was, my family and friends in Aotearoa and overseas were able to

witness this special occasion from the comfort of their homes.

After the virtual admission, me and my partner drove to the Auckland High Court for an obligatory photo in front of one of the pointed wooden arch doors outlined by the ivory-coloured stone archway.

Finally, I would like to take this opportunity to thank all those who have made this virtual ceremony possible, and to my moving Counsel, Stella Chan, who has been very supportive on my journey into the legal profession since my ultimate year of law school.

Congratulations to my fellow enrolled barristers and solicitors! ■

RECRUITMENT

Employment Matters

Post Covid-19 Realities for Law Firms

BY **MARK SIMPSON**

Like most industries, ensuring staff are coping is a real priority for law firms following the challenges thrown up by the global pandemic. While workloads may have initially dropped off following the 2020 lockdown, this year has seen firms remain busy during lockdowns, and some even looking at record years. So, the work is there, but sustaining staff morale and keeping the team together, motivated and able to work effectively is perhaps an even bigger challenge.

The issues now have their own vernacular. Lockdown fatigue, maintaining energy levels and motivation are common struggles for many people. Supporting employees' emotional, physical and mental wellbeing has become a top priority for legal firms and supporting remedies include care packages, one off bonuses to encourage staff to treat themselves and granting additional time off. Naturally some staff struggle more than others, and the use of the Law Society's Legal Community Counselling Service has been beneficial for some. One less usual response has seen a firm have staff from outside of Auckland send morale boosting personalised care packages to their Auckland counterparts.

The relative impact on senior and junior staff

Senior lawyers, who are used to running their workload fairly autonomously, appear to have managed the best whilst working remotely, and are more likely to be supported by well-equipped home working arrangements.



Mark Simpson

The more junior level lawyers on the other hand seem to have encountered greater challenges. They need more direct supervision, and their learning is often driven by osmosis – listening and watching their more experienced colleagues operate; so, the lack of direct supervision and mentoring while working remotely has impacted both their effectiveness and their ongoing development. Additionally, home working environments of more junior staff can make their workday more challenging because of sharing common spaces and resources.

Hiring trends through lockdowns

The lockdown of 2020 saw recruitment activity stall almost immediately, with a huge amount of uncertainty as the business community navigated uncharted waters. Subsequently, and most notably in Auckland since August this year, a strong volume of work has resulted in the need to maintain adequate staffing levels. This has seen firms move their recruitment operations to virtual overnight, adapting to virtual interviewing, onboarding and induction.

How effective is remote working?

In the 2020 lockdown law firms around the country were forced to embrace remote working, despite previous misgivings by some that working from home wouldn't work. To the surprise of some, they found that working from home was relatively smooth; most firms had in place the necessary technology and systems and were able to quickly move back to remote working when subsequent



lockdowns occurred.

The return to the office after the first 2020 lockdown saw a mixed response from firms – ranging from working from home whenever, to reverting to all staff being back in the office each and every working day; the latter response being more likely from the larger corporate law firms who traditionally have resisted more remote working. Speaking with some of our small to medium law firm clients, remote working continues to work remarkably well. Some have adopted a “one day working from home a week” policy across the board, while others have taken a more nuanced approach, leaving it to individual teams and Partners to make their own determinations. Another more common adaptation we’ve seen has been affording greater freedoms to the more senior staff as they are seen to be better equipped to manage this.

Attraction and Retention

With strong work flows across many of their key teams, firms have faced a range of challenges sourcing quality Solicitors in this post-pandemic legal labour market.

Returning Kiwis and Overseas Candidates

Initially there was a reasonable flow of lawyers returning from offshore when Covid-19 first hit in early 2020. As a result, when the legal market began picking up in the third and fourth quarters of 2020, those returnees initially helped to fill some of the talent gaps. However, lawyers returning from offshore usually tend to be at the more senior end of the scale, which means higher salary expectations and a strong desire to see a clear progression path. Taking on too many seniors can leave firms and teams top heavy, with limited partnership opportunity.

This year we have seen that uncertainty and ongoing issues with MIQ, coupled with an easing of Covid-19 restrictions in places like the UK, leading to a number of Kiwi lawyers deferring their return to NZ (most likely until the tail end of 2022). Having come out of lockdowns in their offshore countries, they can finally look to enjoy living and working in a major European or Asian city again and travelling within their region.

With the rest of the world starting to open up again, many junior lawyers currently working in NZ firms, who had deferred their planned OE last year or earlier this year, are now deciding the time is right to head offshore. So, firms are anticipating having to potentially deal with two or three cohorts of their intermediate lawyers heading off in the same year, probably starting at the end of the first quarter of 2022 (to get two summers if you are heading to the northern hemisphere).



Offshore non-Kiwi lawyers, often from the UK or Australia, are as of writing this, still totally locked out of gaining entry to New Zealand unless it's via a Partnership Visa (ie - they are the partner/spouse of a returning Kiwi). The number of these lawyers coming into the country has never been huge, but it's been pretty much zero now for the last 18 months.

Salaries and Bonuses

Not only are firms currently having to compete for the limited pool of qualified candidates, but they are also looking to do what they can to retain their own staff. We saw a well published, and many would say long overdue, significant rise in graduate salaries early this year. This has rippled through the subsequent year bands. What's more, while the salary bands for each year are being pushed up, we're also aware of several firms introducing special across-the-board additional bonuses for their Solicitors, to reflect market salary movements. So, not only will the next band they move into be higher, they are also being compensated for the current years' band being retrospectively moved as well.

Given the current shortage of qualified lawyers, firms are desperate to hold on to their good performers. It is now almost obligatory for a firm to counteroffer one of their employed solicitors who is looking to resign and move to another role. While boosting salary and bonuses can be an effective tool for both attraction and retention, we are seeing new talent strategies being offered such as additional inducements to stay that include a change in work mix, additional time flexibility and even a job title change / promotion.

Part-time and Flexibility

Covid-19 forced working from home to become a reality for every legal workplace, and that has in turn only increased the expectation from employed lawyers that they will be able to utilize that option more and more as time goes on. Flexibility is something of great appeal to employees, be that around being able to juggle starting and finishing times, to being able to work remotely, or the ability to work something less than full time.

Is this a perfect storm?

Covid-19 has shone a spotlight on the importance of looking after staff wellbeing. Work volumes continue to remain high across most firms, but the difficulty of getting ex-pats home through MIQ, coupled with an anticipated exodus of lower-level lawyers, means there will likely be a continued significant shortage of quality candidates for professional roles in private practice.

Salaries are being driven higher as are candidate expectations around flexibility and remuneration. Covid-19 has only highlighted the importance of looking after staff wellbeing and retaining your good people more than ever. Burnout issues were already a very serious issue to the industry, so perhaps a silver lining to this gloomy Covid-19 cloud is that we will see changes for the positive by law firms as they seek to retain, develop and grow their key staff. ■

Mark Simpson is a Partner at recruitment specialist Convergence Partners. Mark moved into recruitment after 12 years working for large private practice law firms and as an in-house counsel for two of the major trading banks.

GOVERNANCE

How great lawyers can make great directors

BY **CATHERINE PETERS**

Four experienced directors, who are lawyers by training, focus on how to build a director out of a lawyer, from the ground up.

All concur: great lawyers can make great directors, but not for the reasons an observer might think. The skills that are required are broad, deep and liberally topped up with personal and commercial experience.

Get started early, do courses and keep sharpening your skills, they say.

Become a Director? Maybe

Not all lawyers make brilliant directors. Many do, but some don't. If you want to, you can get there. Directorships are as much an art as a science. Opportunities abound.

Not as many lawyers are on New Zealand boards as accountants, says Kirsten Patterson, CEO of Institute of Directors. There's a reticence – and therefore an opportunity, potentially, for lawyers in New Zealand to hone their skills in governance.

"We often say: 'every board in the country will have a chartered accountant, and if they don't they should,'" she says. "But it's not true for lawyers to the same extent."

There are several reasons. First, says Kirsten, is that lawyers have a clear understanding of the growing liability of directorships. "They may be put off by that," she says.

Conflicts of interest are another reason, says Alan Sorrell, a barrister who has served on many boards and chaired several. But while conflicts are real for practising lawyers, he says that often they can be managed. "The term is widely misunderstood. It's about one party's interest perhaps overwhelming their obligations in relation to the enterprise itself," he says, adding that there is a scale of conflicts of interest, from high to low.

Mai Chen, Managing Partner of Chen Palmer and a director herself, says a lawyer makes a choice between



▲ **Kirsten Patterson**, CEO, Institute of Directors; lawyer; Co-deputy Chair of the Global Network of Directors Institutes (GNDI), Chair of the Brian Picot Ethical Leadership advisory board.

the opportunity to advise a client or serve on its board. "For that reason, if you want to be a director, you should consider being one all the time," she says.

The joint and several liability of partnerships is a live issue for lawyers, as it is for accountants.

“A partnership might want to have a say as to whether you become a company director, and if so what kind of company, and what your participation will be,” says Alan. “At one end of the scale is being a director on a public company in the finance sector; at the other is being a board member on a crown enterprise where the state gives you indemnity.”

“Many in the legal profession move into outstanding governance roles and careers as leading directors, at the end of their professional lives,” says Kirsten. But there’s more opportunity than that, she says, which young, practising lawyers should explore.

“Having some exposure to governance by developing directorships through the not-for-profit sector, while you manage the risk appropriately, may be a great way to build your skills. You can apply them later commercially,” she says.

Good at governance

So what skills does a lawyer need to be ‘good at governance’? And how can legal skills be applied in governance? The experts are surprisingly in accord.

You’re not there as general counsel

A lawyer may tick the skills box for those appointing to the board, but that’s not enough. Counterintuitively, perhaps, lawyers should not take a board appointment to give legal advice, though their legal skills are very usable.

“If a board wants legal advice, they buy it. External or in-house legal



▲ **Alan Sorrell**, Barrister; former Chair of the NZ Film Commission, the Arts Board of the Arts Council of New Zealand Toi Aotearoa (Creative NZ); board member – Auckland Film Studios Limited; Dep Chair Tennis NZ Inc.

advice is easy to get. But your job as a director is to add value to the company, to senior management,” says Mai.

“Directors are there to understand and challenge management, to know when external advice is needed and when further research is needed,” says Kirsten. “That’s a real skillset; it’s not expecting the board member to take legal responsibility.”

“I wasn’t brought onto the board because I was a lawyer,” says Liz Longworth (a director on the Financial Markets Authority Board, lawyer by training and with an international career at the UN under her belt). “That being said, I think my law training is extremely helpful. It helps when I’m looking at matters with a regulatory mandate, or looking at them through a policy lens. Having that legal background means you can navigate frameworks and contexts in which the business is operating.”



▲ **Mai Chen**, managing partner, Chen Palmer; independent, non-executive member Bank of NZ; chairs the Superdiversity Institute of Law, Policy and Business.

“Knowledge of the law enables decision-making in a context where risks are identified. The lawyer on the board helps everybody understand the further investigations that may be needed before a decision is made, and the consequences of that decision,” says Alan.

He adds: “Your knowledge of the law is not relevant except when it comes to considering whether the legal advice given to the board stands the test. Don’t roll up your sleeves and do the work yourself. Equally the consequences of being the lawyer on the board is that other members of the board are entitled to get some comfort from your legal knowledge, and rely on it.”

But your legal, critical-thinking skills are vital

“Lawyers are good at problem-solving,” says Mai. “They are customer-focused because they are used to looking after clients; they see the big picture, they can predict the consequences. They can be strategic on the board. They can recognise when an issue is not the battle, but is actually the war and thus requires rapid escalation and effort to solve.”

“Law helps you develop a very analytical mindset. You’re trained to take in large amounts of information, distil it, work out what’s important,” says Liz. “Legal training enables one to weigh up competing factors, and make sense of variables. As a lawyer, you become quite agile when working through a problem or strategy. You never get a simple case, or a simple principle in law. You need that agility on a board, to understand how you weight factors, and cope with variables.”

“Legal ways of thinking help,” says Alan. “As lawyers, we ask ourselves: what is the evidence? Why is this so? Why did they say that? What are the other sides of the matter? What is the counter factual? These are really important questions when reading reports from the operational side of the business.”

“On a board, the ability to recognise things I thought were black and white – and are actually grey – is helpful,” says Mai. “I have found myself saying to other directors: ‘hold on, it might not be this way. This thing might happen.’”

Get ready to do the mahi: read, read, read

All our directors agree: if you want to serve on a board, get ready to spend time. A lot of it: much of it reading.

“Boards take in information through the written word,” says Kirsten. “I don’t think directors really appreciate the amount of work that will be required. They have to consume, apply judgment, decision making and objectivity to large amounts of written information.”



▲ **Liz Longworth**, FMA board member, former lawyer in practice.

Training:

Learn more about governance at the IOD: iod.org.nz/governance-courses/#

Sport NZ also offers an excellent introduction to governance, ideal for not for profits. sportnz.org.nz/resources/new-governance-101-online-training-now-live/

“Governance takes you into the heart of all matters,” says Liz. “You’ll need to understand what you read, and how to interpret it.”

“Number one: do the work, just as you do in a court case,” says Alan. “Read the papers. Learn about the business the enterprise is in.”

Leverage psychology: deploy diplomacy

The sheer variety of human interaction that lawyers encounter stands them in great stead at the board table.

“Lawyers bring people skills,” says Kirsten. “They have an ability to form relationships with people across a broad spectrum. They’re able to challenge, be comfortable being challenged, to listen, to change their view. These are great skills for boards.”

“Lawyers interact with all sorts,” says Liz. “They see a lot of different scenarios. This helps one interpret human reactions, and to read character. You get pretty good at understanding what’s coming at you across the table.”

TOP
DIVERSE.
BOARD-READY
CHAIRS &
DIRECTORS



TOP
DIVERSE.
BOARD-READY
CHAIRS &
DIRECTORS



▲ The changing faces of Board Members, the Superdiversity and the Ministry for Ethnic Communities recent list of Top Diverse Board-Ready Directors.

“To be a great lawyer, and a great director, you need to be a great psychologist,” says Mai. “Most lawyers have to get people to do what they do not want to do. So, you have to understand what motivates them and what they value. Given that hard conversations are sometimes required on a Board when things are not going right, it is critical to be able to catch senior management “doing things right” when you can. Praise what you can. These soft skills are very important for succeeding in governance.”

Polish your knowledge

All board members must have a wide understanding of the world, and keep up to date.

“Directors need to be able to consume large amounts of information from a range of sources: international, national,” says Kirsten. “Things they agree with, and things they don’t. They need to be curious, and great curators of trends, reports, news, what’s happening. Every issue is a board issue – equal pay, diversity, takeovers – the range of issues a board has to be over requires intellectual agility.”

“It’s good to be forced to keep yourself up to date so you continue to be at the top of your game with relevant expertise and insights to contribute,” says Mai. “Stand back and take a broad view. It’s good to think about all sorts of things like anti-slavery, Covid-19, vulnerable

customers, climate change. You can’t rest on your laurels.”

“Diversity has real benefits, not just ethnic diversity around the board table,” says Alan. “I’m talking about diversity in skill sets, life and work experience. It means you’re less likely to end up with collective group thinking. You’ll hear new ways of approaching problems, doing things, new systems for running the enterprise and dealing with problems. Evidence proves diversity brings more profit.”

“Being a director is quite an art,” says Liz. “You have to bring a broader lens than a lawyer, a broader world view. But you also can see a lot as a lawyer, if you have your eyes open, and bring it to the table.” ■

TECHNOLOGY

Continuing to evolve tech adoption in the legal profession

BY **ANDREW KING**

All of us have seen the acceleration of technology adoption since the first lockdown of March 2020, particularly in the legal profession.

Overnight everyone had to work differently, as traditional practices adapted just to survive. Technology became our lifeline, our only way to connect and our only way to work.

Barriers to change quickly disappeared as many were forced to make changes in weeks that may have previously taken years to implement.

The past few months have moved very quickly. Now as we emerge, we have the opportunity to take more time to consider how different technologies can be incorporated into our organisations. Now is a great time to take stock of what you are doing, and what technology is available to ensure your organisation is best prepared to adapt and thrive going forward.

But before looking ahead to some technology trends for 2022, I want to focus on some other fundamental aspects of your business alongside technology.

People, Process and then technology

For me it has always been people, process and then comes the technology. Too often we can get caught up in innovation being just about embracing technology, believing it will solve the problem. Technology is simply



Andrew King

an enabler – not a solution in itself.

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

Consider how well placed your organisation is for innovation before adopting new technology – work to build a culture that will embrace change where people are curious and open to trying new things.

Everyone will be at different stages of their innovation journey. For some this may be simply building on the experience of working from home with zoom and other technology. Technology adoption does not need to be complicated or daunting, and in a truly short time many have experienced first-hand how technology can be utilised to greatly enhance how they operate.

Do not get disheartened with your technology journey as not everything works first time! It is important that we learn from this, adapt and improve. An incremental approach may be the solution, continually making small changes to how you operate.

Always continue to ask *how can we do this better?*

What comes next?

As far as technology trends in 2022, it will be more continual change – taking advantage of the strides made since that initial lockdown.

Legal tech has become integral to the delivery of legal



has been the drive of the legal profession to embrace and use cloud technology. Some turned to zoom, whilst others recognised the necessity to have access to all their systems and documents through the power of the cloud no matter where they are physically located.

The cloud has made technology a lot more accessible, scalable and secure to a wider audience. For many it has taken the impacts of Covid-19 to appreciate the value of cloud enabled technology.

Cloud adoption will continue to increase further as we move into 2022 and beyond.

The rise of artificial intelligence

I also expect to see more use of artificial intelligence (AI) as the advantages become clearer.

services, as it enables lawyers to do things better, cheaper and faster. And, there will be further automation of administrative tasks that are repetitive, time consuming and costly - all through the assistance of technology, freeing up lawyers to spend more time working with their clients to create better outcomes.

How you access case law, research, manage documents, dictate, bill and communicate is all changing. Technology continues to be a game changer for conveyancing, research, wills, Mergers & Acquisitions (M&A) and company searches, together with using data to help make better business decisions for you and your clients.

At the heart of the continual change will be the role of the cloud and artificial intelligence, enabling a more client centric approach.

Cloud adoption

One of the lasting impacts of Covid-19

Traditionally, the legal profession has been slow to adopt new technologies, let alone AI. One notable exception has been the adoption and success of AI that's used to improve the discovery process.

You can no longer justify eyeballing every document, nor is it possible in most cases. The skill is to come up with methods and leverage the use of technology to get rid of what you don't need so that you can devote your energies at only looking at what matters most. AI has enabled this dramatic shift to a process that has traditionally been a costly and time-consuming exercise.

AI is no longer just a thing of the future to be feared, or the central villain in a sci-fi flick. It's all around us already. Look at Netflix, Spotify and Amazon - they all give you recommendations based on your previous choices. We all use Google which is based on an algorithm that continues to learn from our internet behaviour.

So why not embrace these tools to help the practise of law?

Client centric innovation

Throughout 2022 we will continue to see legal professionals be more client-centric in how legal services are delivered, particularly as clients' expectations change.

Greater business innovation will help to deliver more affordable legal services for a wider community. Leveraging technology can also help provide greater access to justice for those who may not always seek legal services due to cost. This is starting to be provided by non-traditional sources, which include ‘robo-advice’ and ‘chat-bots’ for straightforward legal problems.

More legal services will continue to be commoditised, whilst others will explore new business models and pricing structures to help their organisations practise law more effectively. A greater number of legal products and services are being sold online, helping to create new revenue streams.

Keeping abreast of the technology

Just as we have moved fast to embrace technology, we cannot stand still as technology continues to race ahead. Keeping up to date with what’s possible and how it can benefit you is an increasingly important skill for any business owner.

Even if you are content with your existing technology, it is crucial to continue to explore what else is out there, and how it may be able to help you deliver legal services to your clients.

Today there are significantly more technology options available to the legal profession, even compared to just five years ago. At the same time, there has been considerable growth in the number of local legal technology providers, with many of the New Zealand start-ups emerging in the past few years.

These include (and of course are not limited to) the likes of *LawVu*, *Actionstep*, *Vxt*, *LawHawk*, *Cloudcheck*, *First AML*, *LawHawk*, *APLYiD* and *Spinika* emerge to provide solutions. Even though these start-ups have New Zealand origins, a number now provide their solutions globally.

Many of these start-up solutions have been lawyer-led, or led by people who have worked inside legal organisations that are

intimately aware of pain points for lawyers and their clients. They have developed solutions to meet these problems – ultimately making lawyers more efficient and to better meet the demands of their clients.

As we move into 2022 and beyond, there will be more technology options available to help with how legal services can be delivered.

It is important to remain curious and open to change, constantly evaluating the technology that is available to help us adapt how we work. We are already starting to see organisations investing in innovation or business transformation roles as they see the importance of continuing to innovate and leverage technology. These roles will continue to evolve further as organisations look to better meet the needs of their clients.

Making the most of 2022

Covid-19 has demonstrated that the legal profession can adapt and work differently. As we move forward, we can continue these great strides to innovate through leveraging technology, to deliver more efficient legal services.

2022 may be the year we can finally settle back into more normal routines, but the changes we have lived through will continue to influence how we work. We now know that it’s possible to lose access to your office overnight. Your office needs to be accessible and with you at all times.

Make 2022 the year to address that question about how you can do things better, ensuring that technology is at the heart of the answer whilst not being the only answer. ■

It is important to remain curious and open to change, constantly evaluating the technology that is available to help us adapt how we work

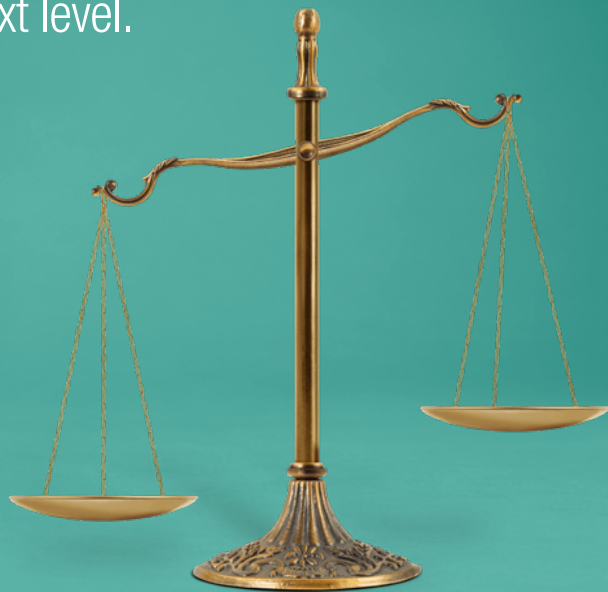
Andrew King is the founder of **Legal Innovate** (legalinnovate.nz). He helps lawyers and organisations innovate through leveraging technology to help improve the way they deliver legal services. Legal Innovate includes **LawFest** (lawfest.nz), **LegalTech Hub** (legaltech.nz) and **E-Discovery Consulting**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

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OBITUARY

A life spent in service to the law

Farewell to Sir Noel Anderson QC

BY HELEN WINKELMANN, CHIEF JUSTICE

Retired judge of the Supreme Court of New Zealand, Sir Noel Anderson QC, passed away on Wednesday, 6 October 2021, aged 77. At the time I wrote a short tribute to him, but with the intention to write more on his legacy—as a judge, a friend and a colleague.

Sir Noel was a proud Westie (West Auckland). He grew up in poverty and knew hardship in his early life. He had a disrupted childhood—attending many different schools and living in a succession of state houses—before becoming the first person in his family to go to university.

He studied law at the University of Auckland, graduating in 1966. Sir Noel rose to prominence as a barrister, acting as counsel in many leading cases, and in some of the epoch-defining Royal Commissions such as the Erebus inquiry and the Royal Commission on Contraception, Sterilisation, and Abortion. His appointment as silk in 1986 recognised that he was a leader at the bar.

The following year, at the age of 43, he accepted appointment as a High Court judge, sitting first in Hamilton and then in Auckland. He was appointed to the Court of Appeal in 2001, as President of the Court of Appeal in 2004, and to the Supreme Court in 2006. Although he retired in 2008, he continued as an Acting Judge of the Supreme Court until 2014.

As a judge, Sir Noel brought intellect and a strong sense of fairness to his work. He was a man of great humility. He understood the complexity of people's lives and worked



Helen Winkelmann

hard to ensure that all who came into his courtroom were treated with dignity and respect. Lawyers knew him as a judge who was good humoured and who would listen carefully to what they had to say. They also knew him as a judge who would exercise the power conferred upon him by judicial office with the greatest care. Throughout 27 years of sitting in judgment upon others Sir Noel never lost his interest in people, or his concern for the vulnerable in our society.

There is another aspect of Sir Noel's character that must be added to the mix if this description of him is to be accurate. Outside court he was a high energy human being—almost a perpetual motion machine. In court he kept this under control by engaging with interest in the argument and in the people before him. He was endlessly interested and interesting.

Sir Noel believed that New Zealand needed to develop law that met its unique circumstances – its peoples, its customs and its history. These concerns and beliefs found expression in the way he conducted hearings and in the many significant judgments he delivered during his judicial career. Sir Noel presided over a number of high-profile and difficult cases in both the criminal and civil jurisdictions. His judgments were of significance to the development of New Zealand's law and New Zealand society (for example, in exploring important issues arising from the New Zealand Bill of Rights Act in cases such as *Hansen v R* [2007] NZSC 7 and *Attorney General v Chapman* [2011] NZSC 110, and deciding the judicial review of the Winebox Commission of Inquiry, *Peters v Davison* [1999] 3 NZLR 744). He wrote intelligently and lucidly. His judgments continue to help shape the direction of New Zealand law through their citation in decisions of the courts.



▲ Sir Noel Anderson QC

Sir Noel was appointed President of the Court of Appeal at a critical time for that Court—the setting up of the Supreme Court earlier that year had resulted in the appointment of the four senior members of the Court to the Supreme Court. This was a substantial loss of experience. The new President had the task of re-establishing the Court and setting its direction within a new appellate structure. He also had to take on not only the administrative and leadership responsibilities of an extremely busy court, but also the wider role in the administration of justice in the senior courts. The former Chief Justice, Dame Sian Elias, has acknowledged the burden carried at this time by Sir Noel in relation to judicial administration.

The President was also required to oversee a rebuilding of the court building to allow better accommodation of an expanded court. The inscriptions on the glass around the court building of statements about law taken from both our indigenous and inherited history are a reminder of the values and the good Sir Noel saw in the law and the expectations of justice the community is entitled to have.

Lawyers knew him as a judge who was good humoured and who would listen carefully to what they had to say

The legacy created by those inscriptions is perhaps greater than Sir Noel could have expected, provoking not just admiration, but also discussion amongst passers-by, law students and lawyers about the important concepts memorialised there.

Sir Noel was appointed a Judge of the Supreme Court in 2006. He brought to the Court not only vast experience as a judge, but also his personal qualities of courtesy, modesty and fearlessness in judging. He was a valued colleague to those on the Court and his humour, his knowledge of history and poetry, and his rather quirky enthusiasms (for machinery, pens, obscure words, and much more) were greatly appreciated by them and often defused the inevitable tensions in such an institution. Sir Noel retired in 2008 but continued as an Acting Judge of the Supreme Court, sitting as required, until 2014. In retirement, he took great pride and personal pleasure in working with Tūhoe in their Treaty settlement negotiations with the Crown.

Although Sir Noel loved the law, it was not the whole of his life. He was a devoted husband to his wife Winnie, a loving father to his children, Janet and Andrew, and a proud koro to his grandchildren and great grandchildren. Janet, a lawyer herself, describes her father in this way:

“Dad was so passionate about the law, he just loved it—it was never just a job to him, he lived and breathed it. However, he did also like doing practical things like fishing, working on car engines and building decks. He was a lovely person and a great dad, and his death has left a massive hole in our lives.”

I pay tribute to a life spent in service to the law, to the judiciary and in pursuit of a just society.

Haere e te tōtara o te ture, haere atu rā ■

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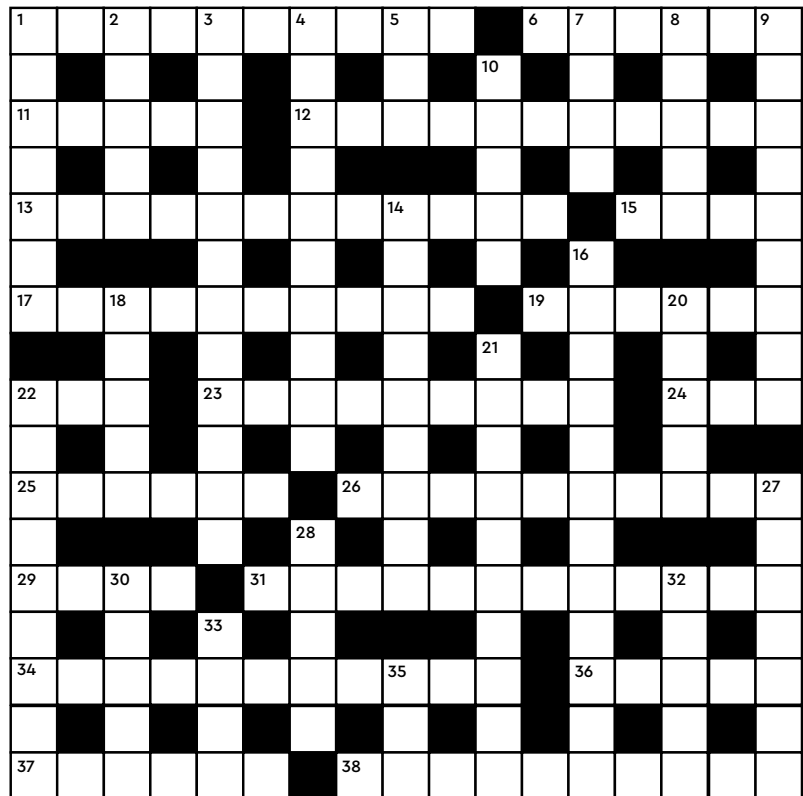
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A New Zealand Legal Crossword

SET BY MĀYĀ



Across

- 1/38** New president is Lady Grey, holding decadent clique by forgetful river crossing, say (10,10)
- 6** Peter's fallen for Meryl (6)
- 11** Fly back, before I weep! (5)
- 12** Almost drop and scorch remainder – could be a tort (5,6)
- 13** Apparently well's tending to limit crossing river (12)
- 15** See 2 Down
- 17/7** What you're looking at is OK over remoter route being diverted (6,2,2,4)
- 19** 33 Catherine, sadly departed, remarked "it ain't 'alf difficult!" (6)
- 22** The sequel to E.T.? (3)
- 23** Edgar Allan Poe kicking Glad about – see how she flies! (9)
- 24** Equality for Catherine, say (3)
- 25** Summary of article for each copper (6)
- 26** Ale's drunk outside, drunk young man inside – that's pretty cryptic (10)
- 29** Barry's 33 – there is nothing like this one! (4)
- 31** Bird holding Bible studies by river crossing can (say) be a 33 (4,2,6)
- 34** An unexpected accompaniment to Bill held by Whip Queen, a 33 (5,6)
- 36** Beast's cry of triumph about need (5)

- 37** Old-fashioned solver has rotating gear for Supersonic Chuck (6)

38 See 1

Down

- 1** Hotel losing resistance to cold for a personal 23 (3,4)
- 2/15** I rock out, embracing unaffiliated 33 (5,4)
- 3** Earnestness claimed to be without this irrelevance? (12)
- 4** A song from alien forms? (4,2,4)
- 5** Zero Armstrong losing energy (3)
- 7** See 17 Across
- 8** Fragrance of timelessness, in retrospect (5)
- 9** Joint oven mitt? (9)
- 10** Instruction to stroke something not directed at grand jury? (5)

- 14** Article describing mine uprising, for starters (9)
- 16** Verbally aggressive person to sack the rest (12)
- 18** Union with Gadget Man, or return to American game? (8)
- 20** Was picture featuring jelly? (5)
- 21** Tracked down, as lightning often did? (3,2,5)
- 22** Frighten off square with drug in seed (5,4)
- 27** Drool at what follows the Secure Data Storage Era? (7)
- 28** Greeting carp on the walk (5)
- 30** 33 Glavish is no opera (5)
- 32** Change when afternoon starts? (5)
- 33** Pantomime stalwart 32 (no no!) with heel over head (4)
- 35** Type of chart found in plunder once traitor ousted (3)

Answers from LawTalk 947, Spring 2021

Across: 6 Pandora, 7 Court, 9 Line, 10 Baked beans, 11 Gramercy, 13 Mochas, 15 Opti, 17 Omega, 18 Able, 19 Kosher, 20 Defatted, 23 Short-range, 26 Rare, 27 Tilde, 28 Cuckoos.

Down: 1 Unheimlich, 2 Jobber, 3 Talk, 4 Academia, 5 Duke, 6 Prior, 8 Ten-ball, 12 Yield, 14 Chatterbox, 16 Prophet, 17 Orreries, 21 French, 22 Earls, 24 Rule, 25 Nice.



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