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Te Kāhui Ture o Aotearoa

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Regulations Review Committee
By email: regulations.review@parliament.govt.nz

Tēnā koutou, e te komiti

Re: Complaint about Professional Examination in Law (Tikanga Māori Requirements) Amendment Regulations 2022

The New Zealand Law Society Te Kāhui Ture o Aotearoa (Law Society) thanks the Regulations Review Committee (the Committee) for its letter of 22 May 2024. The Law Society is grateful for the opportunity to be heard on the complaint about the Professional Examination in Law (Tikanga Māori Requirements) Amendment Regulations 2022 (the Regulations).

This letter addresses the following matters:

1. The Law Society's role and interest in the complaint
2. The regulation-making role of the New Zealand Council of Legal Education (the Council)
3. Tikanga Māori as a part of the law
4. The complaint and Standing Order 327(2)(b)
5. The complaint and Standing Order 327(2)(c)

The Law Society's position is that the Regulations are a legitimate use of the Council's regulation-making powers under section 278(1) of the Lawyers and Conveyancers Act 2006 (LCA). They do not trespass unduly on the personal rights and liberties of individuals. Nor are they an unusual or unexpected use of the powers conferred under that section. Aspects of tikanga Māori have informed the law for many years now, across a broad range of practice areas and it is an appropriate and relevant compulsory subject for those seeking to practise law.

The Law Society's role and interest in this complaint

The Law Society has statutory regulatory and representative functions under the LCA, both of which are relevant to the Council's decision and the subsequent complaint.

Regulatory functions

Section 65(a) to (c) of the LCA provides that the Law Society's regulatory functions are:

a) to control and regulate the practice in New Zealand by barristers and by barristers and solicitors of the profession of the law:
b) to uphold the fundamental obligations imposed on lawyers who provide regulated services in New Zealand:
c) to monitor and enforce the provisions of this Act, and of any regulations and rules made under it, that relate to the regulation of lawyers:

The primary purpose of these functions is to ensure the competent provision of legal services, through the monitoring, regulation, and enforcement of the LCA and other associated rules and regulations.

Lawyers must 'always act competently,' and they have a duty to take reasonable care in the provision of legal services.[1] The regulatory framework, including the educational requirements for admission as a barrister and solicitor, is designed to ensure consumers can be confident in the legal services they receive.

An understanding of tikanga within various legal contexts is relevant to the competent provision of legal services, even if only to assist a lawyer in identifying when tikanga may be relevant to a client's circumstances and therefore when they may need to seek appropriate expert advice. The range of circumstances in which this might arise is discussed further below.

Representative function

Pursuant to section 66 of the LCA, the representative functions of the Law Society are to represent its members and serve their interests.

The complainant says that feedback to his complaint has largely been positive. This is understandably an anecdotal observation. Similarly, the Law Society can only offer anecdotal observations. Since the complaint was made public, the Law Society has been contacted by a range of lawyers, law firms, and representative organisations, all expressing concern at the sentiments expressed and the prospect of the Regulations being disallowed.

There will, of course, be differences of opinion amongst the profession about the place of tikanga in legal education, just as there might be when debating the relevance of some of the existing compulsory subjects. What is much clearer is that those directly affected by the Regulations – law students – strongly support the relevance of tikanga in their study.

The Council's role in making regulations

Section 274(a) and (b) of the LCA provides it is the function of the Council to:

> *(a) subject to this Act, to set the qualification and educational requirements for candidates for admission as barristers and solicitors of the High Court:*
> *(b) subject to this Act, to define, prescribe, and approve, from time to time and as it thinks fit, the courses of study required to be undertaken by candidates for admission as barristers and solicitors*

Pursuant to section 278(1)(a) and (b), the Council has the power, by resolution, to '*make, alter, or revoke any regulations not inconsistent with this Act that are necessary or expedient in respect of—*

> *(a) any course of study and the practical training and experience of candidates for admission as barristers and solicitors of the court:*
> *(b) any matters that by this Act are required or permitted to be prescribed, or with respect to which regulations are necessary or expedient for giving effect to the provisions of this Act, in relation to legal education.*

[1] See Chapter 3, Conduct and Client Care Rules 2008.

We anticipate the Council will outline the background to the Regulations and the process followed.

The complaint suggests the Regulations amend the core subject requirements of the LLB (though it omits reference to Legal Ethics, which is one of these). In fact, the content of the LLB degree is the role of universities. The Council does not regulate the content of an LLB; it regulates the study, training and experience of candidates for admission as barristers and solicitors of the High Court. Those seeking admission as barristers and solicitors will need to complete an LLB but also must ensure their LLB includes the Council-prescribed courses.

This is an important distinction. The compulsory education and training requirements are focused on ensuring a foundational knowledge of the New Zealand legal system, so that those who come to practise law can do so competently. It is important to note that what is proposed is the teaching of tikanga as it pertains to law. It is not a compulsory requirement to study tikanga more generally, nor is it intended to '*inculcate beliefs and values.*'

Consultation by the Council

The Law Society was consulted by the Council about the proposed amendments on two occasions.

The first consultation in July 2021 related to prescribing the inclusion of 'Te Ao Māori concepts, including tikanga Māori…' in each of the core subjects. The Law Society supported these proposed amendments and encouraged the Council to work with the universities to ensure an appropriate timeframe for implementation.

The second consultation in June 2022 invited further comments on the proposed changes and outlined the additional proposal to specify a new compulsory subject of Māori law/Tikanga Māori. The Law Society supported this additional proposal and welcomed the extended timeframe for implementation.

On each occasion, the Law Society's feedback was provided through the lens of its regulatory function. As discussed further below, the Law Society considers these subjects to be relevant to the competent provision of legal services.

Tikanga Māori is a part of Aotearoa New Zealand's law

To the extent that the complainant's views on tikanga underpin the complaint, it is necessary to briefly address the suggestion that tikanga is not law and that it was therefore wrong for the Supreme Court in *Ellis v R* to affirm that it is.

The Law Society is aware that Te Hunga Rōia Māori o Aotearoa intends to make submissions to the Committee, which provide an explanation of the nature and role of tikanga in regulating normative behaviour and legal disputes. The Law Society refers the Committee to those submissions.

Irrespective of the complainant's views as to whether it *should* be, the fact is that tikanga is a part of our law. Tikanga and its place in law have an extensive history, both in common law and in statute. The Law Commission's 2023 Study Paper, *He Poutama*, traces this history,[2] and

[2] Law Commission *He Poutama* NZLC SP24 (2023). In particular, chapters 5 to 7.

responds comprehensively to the suggestion that tikanga is indeterminate or uncertain and cannot be a part of our law:[3]

> *While it may fairly be observed that tikanga is more sensitive to context than the common law, this does not mean that tikanga itself is indeterminate or uncertain. As explained in Part One of this Study Paper, tikanga is a coherent body of connected principles that, when properly applied to facts, delivers determinate and consistent outcomes. Those outcomes are appropriate to their context because the principles are applied in a way that is sensitive to that context. The same can be said of the common law.*

By way of example, tikanga has arisen in a broad range of areas of law, including:

- Environmental law, including customary title[4]
- Crown-Māori relations and settlement processes[5]
- Employment law[6]
- Dispute resolution[7]
- Public law, including local government law[8]
- Māori land law[9]
- Trusts and other entities[10]
- Commercial agreements[11]
- Family law[12]
- Succession law[13]

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[3] Above, n 2, at 8.24.

[4] The Resource Management Act 1991 (RMA) contains provisions which require individuals to act in accordance with tikanga Māori. Also see *Trans-Tasman Resources Ltd v Taranaki Whanganui Conservation Board* [2021] NZSC 127, *Hart v Director-General of Conservation* [2023] 3 NZLR 42; *Ngāi Te Hapū Inc v Bay of Plenty Regional Council* [2017] NZEnvC 73, *Ngāti Maru Trust v Ngāti Whātua Ōrākei Whaia Maia Ltd* [2021] 3 NZLR 352. Case law in this area is extensive, see Chapters 5 and 7of *He Poutama*, above, n 2.

[5] For example, see the Treaty settlement acts and Treaty settlement negotiations processes, and associated cases like *Ngāti Whātua Ōrākei Trust v Attorney General and ors* [2018] NZSC 84.

[6] For example, see *GF v Comptroller of Customs* [2023] NZEmpC 101; *Pact Group v Robinson* [2023] NZEmpC 173.

[7] For example, the Farm Debt Mediation Scheme under the Farm Debt Mediation Act 2019, Te Ture Whenua Māori (Succession, Dispute Resolution, and Related Matters) Amendment Act 2020. Tikanga-informed dispute resolution processes are also used in a variety of settings, including employment law. See also *Ngāti Whātua Ōrākei Trust v Attorney-General* (No 4) [2022] NZHC 843, [2022] 3 NZLR 601.

[8] For example, *New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513 (PC); *Attorney-General v Ngāti Apa* [2003] 3 NZLR 643 (CA); *Sweeney v Prison Manager, Spring Hill Corrections Facility* [2021] NZHC 181, *Hart v Director-General of Conservation* above, n 4. In addition, the Local Government Act 2002, Fisheries Act 1996 (protection of information).

[9] For example, Te Ture Whenua Māori Act 1993, Marine and Coastal Area (Takutai Moana) Act 2011, *Attorney-General v Ngāti Apa* [2003] 3 NZLR 643 (CA); *Bell v Churton* (2019) 410 Aotea MB 244, *Trans-Tasman Resources Ltd v Taranaki Whanganui Conservation Board*, above n 4. Case law in this area is also extensive, see Chapters 5 and 7 of *He Poutama*, above, n 2.

[10] For example, *Doney v Adlam* (No 2) [2023] NZHC 363, *Kusabs v Staite* [2019] NZCA 420, Māori Trust Boards Act 1955.

[11] For example, *Bamber v Official Assignee* [2023] NZCCLR 4, commercial agreements with post settlement governance entities or Māori trusts.

[12] For example, *Barton-Scott v Director-General of Social Welfare* (1997) 15 FRNZ 501, *Re Bartha* [2016] NZFC 7039, *Chief Executive of Oranga Tamariki v BH JA* [2021] NZFC 210, *Hall v Hall* [2023] NZFLR 147.

[13] For example, *Public Trustee v Loasby* (1908) 27 NZLR 801 (SC) (overruled by *Ellis*), *Huakina Development Trust v Waikato Valley Authority* [1987] 2 NZLR 188 (HC), *Re Edwards (dec'd)* [2022] NZHC 2644, *Clarke v Takamore* [2013] 2 NZLR 733.

- Criminal justice and court procedure[14]
- Intellectual property[15]
- Governance[16]

Aotearoa New Zealand is a common law jurisdiction in which the common law is incrementally developed by the courts. Many well-known areas of law developed in this way including aspects of tort law (including duty of care, negligence, personal injury, trespass, nuisance), contract law, and the law of equity. Even if subsequent case law or legislative amendment were to alter the manner or extent to which tikanga influences these areas of law, that would be a legal development of which lawyers should be aware.

In *Ellis v R* the Supreme Court affirmed the place of tikanga in New Zealand law. The complaint is essentially a sustained criticism of this decision. The Law Society does not consider these criticisms are justified, but the larger point is that the Court's judgment is the law of the land. There will be further cases in which the role of tikanga is explored in specific contexts.

The Law Society disagrees with the suggestion that the majority judges in *Ellis* have dispensed with the requirement that law has *'certainty, consistency, generality, reasonableness, and not [be] repugnant to justice and morality'*. Williams J describes a '*tikanga-as-an-ingredient approach*', which will ensure the common law '*develops along a path that is mindful of both legal traditions*.'[17] Glazebrook J, for her part, observes:[18]

> *… Further development will be gradual as cases arise. Certainty, consistency and accessibility are strong values in our legal system. Precedent will still bind as it does conventionally, unless distinguishable. This is why the common law method is generally for the law to develop incrementally as it will continue to do with regard to the application of tikanga in the common law.*

As noted by the Law Commission, Glazebrook and Williams JJ both stated in *Ellis* that the common law cannot give effect to tikanga that is contrary to statute or fundamental principles of the law.[19]

The Law Society reiterates that even if a lawyer disagrees with the Supreme Court's judgment in *Ellis*, or any of the cases in which tikanga has informed the decision, these remain the judgments of our courts. Understanding this jurisprudence is as relevant for those arguing against the relevance of tikanga in any given case, as it is for those arguing in favour of it. Against this background it is entirely understandable that the Council made the Amended Regulations requiring a study of tikanga to form part of the compulsory subjects for admission to practice.

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[14] For example, *Ellis v R* [2022] NZSC 114, *R v Mason* [2012] NZHC 1361, *R v Iti* [2008] 1 NZLR 587, *Henare v R* [2020] NZSC 96, provisions of the Coroners Act 2006 and Sentencing Act 2002.
[15] For example, Plant Variety Rights Act 2022, Trade Marks Act 2002.
[16] For example, Local Government Act 2002 (regarding CCO appointments). Also see provisions of the Incorporated Societies Act 2022.
[17] Above, n 4, at [269].
[18] Above, n 4, at [127].
[19] Above, n citing *Ellis v R (Continuance)* [2022] NZSC 114, [2022] 1 NZLR 239 at [117] per Glazebrook J and [265] per Williams J.

The question is whether there are any grounds for the Committee's drawing the Amended Regulations to the attention of the House, as the complaint suggests. The Law Society now addresses the particular grounds on which the Committee sought submissions.

Standing Order 327(2)(b) – do the Regulations trespass unduly on personal rights and liberties?

The premise of the complaint on this point is that students 'should not be compelled to learn about something which is not law.' That is a difficult premise to defend given the Supreme Court's affirmation that tikanga is part of New Zealand law, and the long provenance of tikanga in our law.

The reference in SO 327(2)(b) to 'personal rights and liberties' has appropriately been read broadly by the Committee, extending beyond the civil and political rights set out in the New Zealand Bill of Rights Act 1990. That said, it is difficult to see that the Regulations trespass on 'personal rights and liberties' at all, much less unduly. They simply prescribe what must be included in a relevant course of study, augmenting the existing list of required legal subjects.[20] It is unlikely that students who go on to practice law will practise in each of the prescribed areas, yet there does not appear to be a suggestion that the existing educational requirements unduly infringe any personal rights or liberties.

"Personal rights and liberties"

The starting point is that there is no 'personal right' for an intending professional to be immune from curriculum prescriptions lawfully prescribed for the relevant profession. If the Regulations are within the powers delegated to the Council, as they are, there can be no question of trespassing on personal rights and liberties. Subject matter prescriptions are inherent in professional qualifications and, indeed, in university courses generally.

"**Freedom of thought, conscience, religion, and belief" in the Bill of Rights**

The complaint contends that the Regulations 'directly trench upon s 13 of the Bill of Rights' which affirms the right of an individual to freedom of thought, conscience, religion and belief, and to hold opinions without interference. The Law Society does not agree.

A requirement that a student learn about a particular topic as part of one's legal education is not an infringement of section 13. The prescription of 'general laws and practices of tikanga Māori / Māori law and philosophy' cannot be regarded as an 'inculcation of beliefs and values' affecting a student's freedom of thought, conscience, belief or opinion. Law students are not in any sense coerced by the Regulations to adopt any prescribed beliefs or opinions, nor to depart from their own beliefs. They are simply to learn about a prescribed subject related to law.

The rights protected by section 13 would be infringed only by measures that amount to coercing persons to adopt or change a belief or to adopt particular opinions. Nothing in the Regulations can be read to have such effect. They do not require students to adopt any particular attitudes or make any personal commitment to tikanga or Māori philosophy. Learning about the place of

[20] Already prescribed by the Professional Examination in Law Regulations 2008 are the following subjects: the legal system; law of contracts; law of torts; criminal law; public law; property law which may be taken as subjects of land law, and equity and the law of succession; legal ethics.

tikanga in the New Zealand legal system is simply the acquisition of information and skills; it involves no interference with the fundamental values in section 13.

The same can be said of all the prescribed subjects in the LLB degree, and of university education more generally. Importantly, the development of critical thinking is very much a part of university education. Nothing in the Council's prescription of subjects for admission prevents students from thinking critically. The Regulations are written against the background that law is a university discipline. Critical thinking about tikanga can be expected just as for any other component of the law degree.

The Committee might be assisted by the comments of Ellis J in the High Court, who considered section 13 of the Bill of Rights in *New Zealand Health Professionals Alliance Inc v Attorney-General*.[21] The plaintiff in that case claimed that the freedom of religion of some religious health practitioners was infringed by the new form of conscientious exemption allowed to health practitioners under the 2020 abortion law reforms. This requires health practitioners to refer a person seeking an abortion to a provider who performs abortions, as opposed to being able to simply indicate that they themselves do not undertake abortions (which was the previous law). Justice Ellis rejected the claim that this new requirement infringed section 13 for practitioners with a religious objection to abortion.

Referring to article 18 of the International Covenant on Civil and Political Rights, which sections 13 and 15 of the Bill of Rights implement in Aotearoa New Zealand, Ellis J observed that '*section 13 absolutely protects only internal thought processes and s 15 protects, in a qualified way, deliberate action or inaction that is actuated by religious belief or by conscience*.'[22] Ellis J held that section 13 was not involved at all, as the internal thought processes of practitioners were not targeted or affected by the law.[23]

As applied to the Regulations the salient point is this: learning about tikanga is not designed to and nor will it affect internal thought processes of students in the manner that section 13 is intended to protect. Learning about tikanga is simply an aspect of a university education and one that, in company with all the other Council-prescribed subjects in the LLB, is to be required for admission to the profession.

In the Law Society's view, the rights and liberties in section 13 of the Bill of Rights are not implicated, much less unduly infringed, by the Regulations.

Standing Order 327(2)(c) – unusual or unexpected use of power

The complaint does not detail why it is considered the Regulations are an unusual or unexpected use of the Council's regulation-making power. The Law Society has proceeded on the basis that this claim relates to the complainant's view that tikanga is not law.

[21] [2021] NZHC 2510.
[22] Above, n 21, at [86].
[23] Rather, the claim was properly made only under section 15: the objection was to the law's requirement that they must make an abortion referral – which, on their religious view, was a wrongful act. This claim was also rejected, on the basis that refusing to provide the name of an abortion provider could not be said to constitute a manifestation of the belief that abortion was wrong, and in any event, it would not be a material or significant interference with that belief.

A prescribed educational requirement is not unusual

When considering this ground of complaint, the Law Society considers the starting point is to determine whether the regulation-making powers have been used consistently with the intent or policy of the LCA. It is both the function of the Council and the purpose of the Council's regulation-making powers to prescribe the qualification and educational requirements, including practical training, for admission as a barrister and solicitor. The Council's regulation-making power under section 278(1)(a) of the LCA extends beyond education to experience of candidates for admission as barristers and solicitors. Even if the Committee disagreed with the body of common law noted above (as to the place of tikanga in our law), the Council's regulation-making power is not limited to prescribing education or experience that is legal in character. In this regard, it differs significantly from the complaints considered by the Committee in 2011 regarding the Plumbers, Gasfitters and Drainlayers Board, whose regulation-making power in respect of training requirements was subject to a series of mandatory guiding principles.[24]

The legal profession, and admission to it, is similarly regulated in jurisdictions comparable to our own, and this includes educational requirements. From 2029, indigenous law, theories and methodologies will be a compulsory requirement for bar admission in Canada, alongside an additional requirement for the applicant to '*demonstrate an understanding of the context and history of all forms of colonialism in Canada*.'[25] A range of Canadian law schools had already prescribed mandatory indigenous law papers within their law degrees.[26] Melbourne Law School is currently reviewing its compulsory curriculum to increase representation of Indigenous knowledge and perspectives.

The Law Society is of the view that the Regulations fall precisely within what is contemplated by section 278 of the LCA.[27] Use of the power to prescribe an educational requirement related to a continuously developing area of law – for those who wish to practise law – cannot reasonably be considered unusual or unexpected. It sits within a regulatory framework that seeks to ensure the competence of lawyers, for both consumer protection and the integrity of the legal system. The expectation that lawyers will have current and comprehensive knowledge, and be capable of competently advising clients throughout legal change and development, is supplemented by the requirement to undertake continuing education and professional development (rule 3.9).

Under section 274(1)(b) of the LCA, the Council has the function to define, prescribe, and approve, *from time to time and as it thinks fit,* the courses of study required to be undertaken by candidates for admission as barristers and solicitors. As the Council is empowered to make

[24] Regulations Review Committee "Complaints Regarding Three Notices Issued by the Plumbers, Gasfitters and Drainlayers Board on March 2010 and the Plumbers, Gasfitters and Drainlayers Board (Fees) Notice 2010" (15 February 2011). The four notices were subject to an unsuccessful motion of disallowance (notices of motion given on 15 February 2011 and 15 March 2011).
[25] Federation of Law Societies of Canada, National Requirement, approved 12 March 2024.
[26] For example, the University of British Colombia, Lakehead University, York University, University of Manitoba.
[27] We note that at the time the Justice and Electoral Select Committee reported to the House on the Lawyers and Conveyancers Bill, some members expressed concern that '*issues of policy such as compulsory legal education… are left to rule-making powers. Not only is there a proposal that the Minister approve such rules but under clause 9 it was proposed that the Minister might amend such rules. National is not aware of comparable powers held by a Minister of State in respect of other professional organisations. It is not to be assumed that the Minister will have any better view than the New Zealand Law Society on rule-making issues nor that he or she will be better able to strike a balance between the interests of the legal profession and the interests of the consumer.*' See page 20.

regulations under section 278, Parliament itself has recognised that there is a need to have an independent and expert body to determine these matters, with considerable discretion and as circumstances change, subject to the approval of the Minister.

Finally, we note that a 2023 survey of law students showed that 85% of current law students think Te Ao Māori and Tikanga Māori play an important part in their degrees.[28] The list of lawyer representative organisations that have since reiterated their support for the Regulations is extensive: Te Hunga Rōia Māori o Aotearoa, Pacific Lawyers Association, the New Zealand Bar Association Ngā Ahorangi Motuhake o te Ture, Criminal Bar Association, Defence Lawyers Association of New Zealand Te Matakahi, Arbitrators' and Mediators' Institute of New Zealand, Asian Legal Network, Auckland Women Lawyers' Association, Otago Women Lawyers' Association, Wellington Women Lawyers' Association, the New Zealand Law Students' Association Te Roopū Tauira Ture o Aotearoa, and Equal Justice Project.

The Law Society is aware that some of these organisations intend to make submissions to the Committee and, in particular, draws the Committee's attention to the submissions of Te Hunga Rōia Māori o Aotearoa.

Competence and the obligations of lawyers

The obligations of lawyers under the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (Conduct and Client Care Rules) require that lawyers:

- always act competently (rule 3)
- provide objective advice to the client based on the lawyer's understanding of the law (rule 5.3)
- protect and promote the interests of their clients (rule 6)
- put all relevant and significant law before the court (rule 13.11)

These are regulatory responsibilities that must be met by all lawyers, in the interests of their clients. They are not an aspirational or 'ideal' standard of legal practice. If tikanga is relevant to a client's legal problem, the advice they receive should identify this and address it or consider the extent to which expert advice may be required – irrespective of the lawyer's personal beliefs.

To the extent that tikanga must also be incorporated into the existing core subjects of examination, there are good reasons why this is considered appropriate. As noted above, tikanga has impacted a broad range of practice areas, within each of these subjects. It would be highly unusual for the teaching of any legal subject to omit relevant statutory and case law developments.

Given the common law and legislative heritage of tikanga in law, including decisions by our highest court, and the relevance of tikanga to a broad range of legal practice, the Regulations are an expected use of the Council's power. The Law Society considers it would in fact be unusual *not* to have such educational requirements.

The Regulations will address the very concerns that the complaint raises with respect to uncertainty. As the Law Commission has noted:[29]

[28] New Zealand Law Students' Association and College of Law, 2023 Student Wellbeing Survey. Available here: https://nzlsa.com/nzlsa-x-college-of-law-education-wellbeing-survey-2023/
[29] Above, n 2, at 8.26.

… the greater the legal profession's understanding of tikanga, the lower the risk of incoherence, inconsistency and uncertainty resulting from inadvertent misapplication or overstepping of boundaries.

Complainant's supplementary submissions

The Law Society has received a copy of supplementary submissions made by the complainant, dated 3 June 2024. While the Law Society appreciates having been provided a copy for the purposes of its response, the submissions do not appear to raise anything of substance or relevance to the complaint or that relate to the Standing Order grounds by which the regulations are measured.

The purpose and effect of the Regulations, as set out above, is not connected to the matters raised in the supplementary submissions. It should be noted that Te Tiriti o Waitangi Treaty of Waitangi has been a feature of the legal curriculum for some time now.

The Law Society disagrees that Parliament must disallow the Regulations in order to prove it does not endorse them. Disallowance is the ultimate means of control of secondary legislation and is used where Parliament considers that the maker has gone beyond what it intended to delegate. For this reason, it is rarely used. These are regulations made by a regulatory body separate to the executive, in respect of the requirements for admittance to the independent legal profession. They were made in accordance with procedure and within the confines of their empowering provision, do not impinge on any personal rights and are an entirely usual and expected use of powers. Disallowance would therefore be an inappropriate and disproportionate measure of control.

Conclusion

To summarise the Law Society's position on this matter:

1. The Law Society supports the Regulations.
    a. From a regulatory perspective, they are relevant to ensure the ongoing competence of lawyers and their ability to appropriately advise clients and the courts on legal matters.
    b. From a representative perspective, almost all lawyer representative organisations have confirmed their support for the Regulations, and the Law Society has received concerns about the complaint made to the Committee (and surrounding dialogue). It cannot be said that opposition to the Regulations is widespread.
2. Tikanga is a part of Aotearoa New Zealand's law. Irrespective of individual lawyers' views as to whether (or to what extent) it should be, the fact remains that it is.
3. The Council's regulation making power under section 278 of the LCA is intended to prescribe educational, practical, or experiential requirements for those seeking admission as a barrister and/or solicitor.
4. That power is intended to ensure that all practising lawyers have a sufficient understanding of the law and legal system, such that they can competently advise clients and the court.
5. Given the broad range of practice areas in which tikanga has been considered and is relevant, it is appropriate that this understanding of the law and legal system includes

teaching of tikanga in the law. This proposition is widely supported by current law students and legal representative organisations.

6. It cannot, therefore, be considered an unusual or unexpected use of the Council's regulation making power.
7. Finally, receiving education about tikanga and law is not the same as to suggest pressure or compulsion to accept a belief system. The right protected by section 13 of the Bill of Rights is not infringed, much less unduly so.

The Law Society is grateful to the Committee for the opportunity to be heard on this complaint. Should the Committee have any questions or wish to discuss aspects of this further, please contact Bronwyn Jones, General Manager Policy, Courts and Government (Bronwyn.Jones@lawsociety.org.nz).

Naku nōa, nā

Frazer Barton
President