



## Community Law

Where rubber meets the road

*The case for tikanga Māori*

*A shocking, life-changing  
incident drives safety advocacy*

# LIFTING *the human spirit*

**A readiness to give lifts the human spirit in many ways, often unspoken.**

A bequest to St Vincent de Paul is an act of generosity that will make a lasting difference to the most disadvantaged and needy in our community.

**If you would like to discuss a Bequest with us, please give us a call, or send us an email...**

**Society of St Vincent de Paul**  
Freepost 992, PO Box 10-815,  
Wellington 6143  
Phone: **04 499 5070**  
Email: [national@svdp.org.nz](mailto:national@svdp.org.nz)

The St Vincent de Paul Society has a nationwide network of workers and helpers who provide practical assistance every day to people in desperate situations. The Society in New Zealand is an international Catholic social services agency which has been doing this vital work for more than 150 years. Help is offered to all, regardless of origin, cultural background or religious belief.

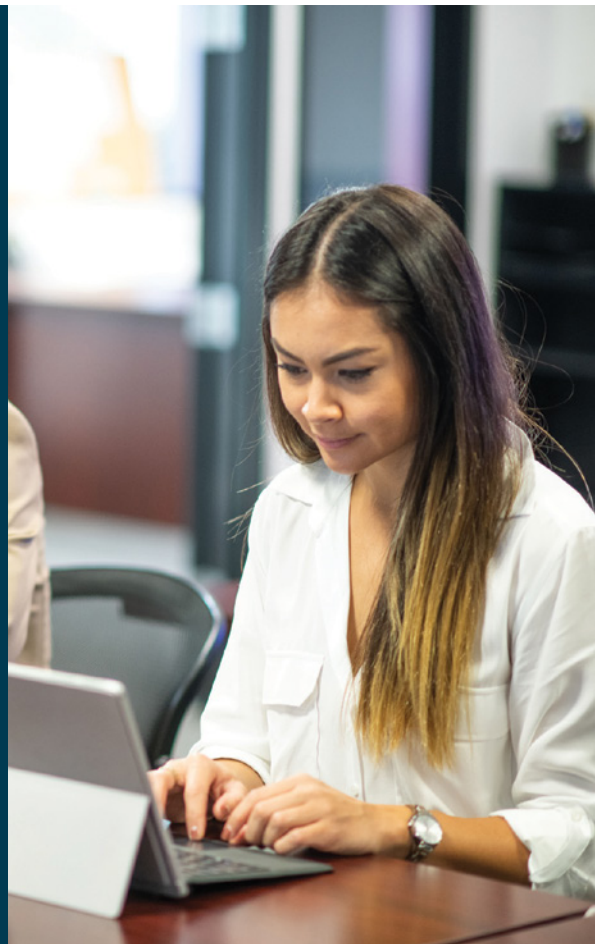


[www.svdp.org.nz](http://www.svdp.org.nz)

## Beyond books

The Law Society Library services extend well beyond books. Gown hire, locker hire, database training, research services and more.

[lawsociety.org.nz/library-services](http://lawsociety.org.nz/library-services)





# Contents

---

Stronger together <i>by Frazer Barton</i> .....	04
Firms value membership .....	08
Community Law – Where the rubber meets the road .....	10
Te Ara Ture – A bridge to law .....	16
A shocking, life-changing incident drives safety advocacy <i>by Brintyn Smith</i> .....	18
The case for tikanga Māori – The LLB degree curriculum in a contemporary context .....	24
Law reform and advocacy update .....	33
Behind the scenes of the Standards Committees .....	36
Douglas Wilson Advocacy Scholarship Trust – A legacy to benefit practitioners .....	40

## 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.

## DISCLAIMER

Unless it is clearly indicated, the views expressed in *LawTalk* are not to be taken as those of, or endorsed by the New Zealand Law Society Te Kāhui Ture o Aotearoa. No responsibility whatsoever is accepted by the Law Society for any opinion, information, or advertisement contained in *LawTalk*.

## CONTACT DETAILS

✉ [publications@lawsociety.org.nz](mailto:publications@lawsociety.org.nz)  
📍 PO Box 5041, Wellington 6140, New Zealand  
DX SP 20202

## ADVERTISING

For advertising placement:  
✉ [advertising@lawsociety.org.nz](mailto:advertising@lawsociety.org.nz)

## PRINTING AND DISTRIBUTION

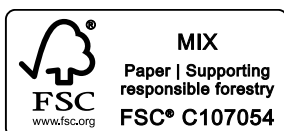
Blue Star, Petone, Wellington  
ISSN 0114-989X (Print) · ISSN 2382-0330 (Digital)

## PEOPLE

**Frazer Barton**, President  
**David Campbell**, Vice President Auckland  
**Jesse Savage**, Vice President  
Central North Island  
**Ataga'i Esera**, Vice President Wellington  
**Taryn Gudmanz**, Vice President South Island  
**Katie Rusbatch**, Chief Executive Officer

## STORY SUGGESTIONS

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



# Stronger together

BY **FRAZER BARTON**

**G**etting on the road in Aotearoa New Zealand is one of the true pleasures in life. In recent months I've been lucky enough as the President of the Law Society to travel the length and breadth of the motu, from the bottom of the South Island to the North, meeting with the profession. Chief Executive of the Law Society Katie Rusbatch and I have attended more than 24 question and answer sessions and functions, with a few more to come.

It's been an amazing opportunity to hear what matters to lawyers, find out what they want to talk about, and shape the future direction of the Law Society. It's also been a great chance to provide detailed updates on the Law Society's key strategic priorities and let everyone know about the work we are doing on their behalf.

In Autumn we launched our updated membership offering to lawyers. The refreshed offer means lawyers will get the same great service with even more value. The Law Society is a strong voice and trusted advocate for access to justice and the rule of law across the country. With 13 branches nationwide, we know that the support and services those branches offer is deeply valued.

There are common themes around the country about the challenges lawyers are dealing with; things

like legal aid and duty lawyer shortages, a lack of family lawyers and criminal lawyers in general, particularly in the regions, and increasing costs of practice. There are challenges with recruitment, stressed lawyers, mental health, and wellbeing issues as well.

We're not there to tell people what should be done. We're there to listen and collectively come up with solutions. We need to work together to ensure the sustainability of our profession and the representative side of the Law Society will play a big role in that.

## **A strong, national voice**

We are stronger together, there is no doubt about that. But that means being courageous and raising awareness of issues that may not always have bi-partisan support. Personally, 2024 has been a busy one for me as President of the Law Society. Media interviews have come thick and fast as our advocacy has struck a chord with mainstream New Zealand.

Tikanga has been topical, and the Law Society recently wrote to the Regulations Review Committee



**“We’re there to listen and collectively come up with solutions. We need to work together to ensure the sustainability of our profession and the representative side of the Law Society will play a big role in that”**



LEFT: Frazer and Law Society Chief Executive Katie Rusbatch outside the Canterbury question and answer session.

asking to be heard if it considers any complaints about regulations issued by the New Zealand Council of Legal Education (the Council). In 2021 and 2022, the Council consulted on its resolutions that Te Ao Māori concepts would be taught in each of the core law subjects within the Bachelor of Laws, alongside a standalone compulsory tikanga Māori | Māori Laws and Philosophy subject. The Law Society supported the proposal then and continues to support it now. For those new to this issue, I refer you to the article in this issue of *LawTalk*. Many organisations have indicated their support for the Council's tikanga Māori regulations: Te Hunga Roia Māori o Aotearoa, Pacific Lawyers Association, NZBA, Asian Legal Network, the Auckland Women Lawyers' Association, the New

Zealand Law Students' Association, Equal Justice Project, the Arbitrators' and Mediators' Institute of New Zealand, the Wellington Women Lawyers' Association, Otago Women's Law Society, the Criminal Bar Association and the Defence Lawyers Association to name a few.

At Parliament, members of our law reform committees have been making submissions on important legislation before the House. Our law reform role was front and centre as the Law Society recommended to Select Committee that the Parole (Mandatory Completion of Rehabilitative Programmes) Amendment Bill did not proceed. Our submissions detailed that the amendments risk operating as a bar to parole eligibility in circumstances over which prisoners

have no control. Power would be inappropriately moved from the Parole Board to staff at the Department of Corrections, who may not be best placed to identify appropriate rehabilitation pathways. Resourcing constraints would mean prisoners are likely unable to access programmes they must complete in order to be considered for parole.

The rights of those in our most vulnerable communities should always be advocated for if we are to back up and support all our communities.

### Legal aid and cost of practice

Legal aid and access to it continues to be a key priority for the Law Society. In March, we released the Cost of Practice report, which showed that in the past three years alone the operational costs of running a legal practice increased by 15.3% each year. The report includes findings specific to legal aid providers, and really does shine a light on administrative requirements and how client needs are being impacted by the amount of time that legal aid lawyers can spend on billable hours. These are lawyers who are already experiencing significant increases in operational costs and who are not being fairly remunerated. We continue to seek progress in the remuneration of legal aid of course, but this report highlights other pressures that must also be addressed.

The report also showed that law firms are facing significant challenges attracting and retaining good



RIGHT: Frazer presenting at the Auckland question and answer session.

staff. Legal practices also reported sizable increases to the cost of professional indemnity insurance.

There was a huge amount of work that went into the Cost of Practice report, including from members of the profession. This will pay dividends in due course, as it gives us the evidence that we need to advocate strongly for improvements.

### Advocating for lawyers on AML/CFT

With 14% of Cost of Practice survey respondents reporting regulatory and compliance burdens as their main operational challenge, many mentioned AML/CFT. Already, we have written to Associate Minister of Justice Nicole McKee, urging reform in several key areas that will relieve some of the AML/CFT compliance burden, without undermining the regime.

### A trusted advisor on law reform

We at the Law Society are even-handed, it doesn't matter who's in government. If there are issues of law that are unworkable, unconstitutional, or undermine access to justice, then we will be vocal. The legal profession has a strong history of advocating for all communities across New Zealand to receive fair representation and support. At its core, this advocacy aims to uphold the fundamental need for access to justice for all.

With the new Government being elected on the back of a promise to be tough on crime, it is not a

surprise that a raft of criminal bills have been hot topic issues with the public, in the media and within the legal profession itself.

The Law Society's Youth Justice Committee convenor Dale Lloyd told the Justice Select Committee that criminalising ram raid offending by children and young people was inconsistent with children's rights. Elsewhere, the much-publicised Gangs Legislation Amendment Bill has taken some of the spotlight. Submissions from The Law Society's law reform committees made 16 recommendations. While agreeing with the Attorney-General that the Bill unjustifiably infringes rights to freedom of peaceful assembly, association and expression, the Law Society believes these rights infringements have been understated. The Law Society maintains there is insufficient evidence to suggest the new measures will be effective and hopes to see these recommendations taken into account.

The legal profession's concerns were heard loud and clear over the Government's announcement that it would withdraw funding for 'section 27 reports' in sentencing. With funding for these reports removed, the only way a person facing sentence will be able to access them is by paying privately. Those who can afford this would then have a greater level of representation in Court than those receiving legal aid. That is a breach of fundamental rights. Even where policy promises have been made during an election, we expect to see robust policy work supporting their development and

the consideration of alternatives, alongside consideration of the wider implications of legislative change.

It's not just criminal law, either – our law reform function covers all areas of law. On the high-profile Fast-Track Approvals Bill, Environment Law Committee convenor Vicki Morrison-Shaw told the Environment Select Committee of the Law Society's concerns about the powers created by the Bill, and recommended improvements to drafting. In the area of company law, deputy-convenor of the Law Reform Committee Jonathan Orpin-Dowell appeared before Select Committee to raise practical concerns about the Companies (Address Information) Amendment Bill, recommending that work instead progress on a director identification number system.

We've got 17 committees plus the Family Law, In-house Lawyers, and





**“Even where policy promises have been made during an election, we expect to see robust policy work supporting their development and the consideration of alternatives, alongside consideration of the wider implications of legislative change”**

Property Law sections, so that’s hundreds of volunteers. That’s thousands of hours. It is an enormous contribution and when I meet with members of the Government and members of the Opposition, they all speak highly of our input.

Communities across Aotearoa are diverse and culturally rich; we mustn’t forget or abandon any one of those communities when working on new laws and in our representation of them.

Sometimes, it is the judiciary for whom we must speak up and support. With the backing of Maria Dew, President of the New Zealand Bar Association, I felt compelled to pen an opinion piece on the subject which ran across *The Press*, *The Dominion Post* and the *Waikato Times*. The piece called out the growing attacks on our judiciary. In the name of democracy, it’s important that decisions can be analysed and

debated, but personalised attacks on the judiciary like we have seen must be curtailed.

This is an important point, because this is about our constitution and our democracy. Our judiciary are an independent branch of government; they can’t speak for themselves.

### Supporting lawyers in tough times

I was buoyed to see that young family lawyer Brintyn Smith was keen to work with the Law Society’s communications team to tell his story of his recovery after being attacked at the Whangārei courthouse more than a year ago. For Brintyn, the road to recovery has been long and painful. He didn’t need to tell his story, but he felt that others should know what happened and what needs to be done to ensure the safety of lawyers. Like all of us, he is worried about financial cuts

to the sector and worried about the growing intimidation of lawyers who are fundamentally just trying to do the best job then can. Reading Brintyn’s story in this edition of *LawTalk* and watching the accompanying video interview he did is both harrowing and yet heart-warming; if Brintyn can stand up and be strong in the face of what he went through, then so can we all.

I know Brintyn received a high level of support from both the Family Law Section and from wider colleagues and support networks; we are stronger together, and I hope that Brintyn will go from strength-to-strength.

Threats and real attacks against lawyers and other public facing professionals have become something of a trend, unfortunately. It is something we need to be conscious of and it’s getting worse. Times have changed, and we must adapt and stay strong and united. ■



## Firms value membership

**T**heir motivations may have been different, but for two law firms it was an easy choice to retain Law Society membership for all the lawyers in their respective firms.

Claire Tyler, Partner at Wellington-based firm Rainey Collins Lawyers, said membership was a good investment in the firm's staff.

"Membership gives our staff access to personal and professional support, discounts on products, services and CPD events and complimentary section membership," she said.

Werner van Harselaar, Partner at Dunedin firm Wilkinson Rodgers, said being part of the profession meant that membership was essential.

"The term 'professional' is critical to us and we need the institution of a

robust society to continually promote that prestigious role," he said.

"In order to give and support the profession of law we must have a healthy and robust Law Society," said Werner. "The small membership fee gives us staffing to allow busy lawyers to maintain connectivity, training and relevance."

Werner said the fabric of the Law Society is the collegiality that came from membership.

"We have ready access to a local branch manager who provides a human perspective to the dealings of law. Local contact is critical to engagement of the members," he said. "The social events are some of the only opportunities to engage with lawyers outside of your specialist area."

It's a sentiment echoed by Claire who said that, not only would membership help support and bolster what they were doing internally, but it would also help with collegiality amongst the profession.

"Membership reinforces to both clients and potential employees that the firm has a close association with the Law Society," said Claire.

Werner said membership meant more than the benefits members received.

"It's about doing the right thing and not just about what is in it for us," he said.

"The profession of law is a pillar of democracy. We live in a world where democratic processes are challenged and trusted sources are becoming scarcer," said Werner. "We need to be



BELOW: Claire Tyler, Partner at Wellington-based firm Rainey Collins Lawyers



stronger and not allow ourselves to be splintered through apathy.”

Werner said if membership fell to the point of reduced services, then all the profession would suffer. ■

Rainey Collins Lawyers and Wilkinson Rodgers are just two of several firms that have chosen to retain membership for all their lawyers. Leading law firms Dentons Kensington Swan and Anderson Lloyd say they support the national membership body and cloud accounting firm Xero is also renewing membership for all its NZ-qualified in-house lawyers, and says they see great value in continuing to receive the Law Society's services. [lawsociety.org.nz/news/newsroom/leading-law-firms-endorse-law-society-membership/](https://lawsociety.org.nz/news/newsroom/leading-law-firms-endorse-law-society-membership/)

## Partner Programme detail available

**Y**ou can find more information about how the Law Society's Partner Programme can save you money from 1 July.

The Partner Programme offers a range of savings on both personal and professional services. It includes everything from reduced mortgage rates from ANZ through to savings on retail products such as clothing and books. There are also many savings on professional services including office products, software and freight. You can also find savings on travel including accommodation and fuel discounts.

The Partner Programme is one of the new benefits we're offering members from the start of the 24/25 membership year. More information about all our offers can be found on our Partner Programme web pages.

**From 1 July, you will be able to access the deals with ease through our app. Check out what you'll be able to save: [lawsociety.org.nz/membership/partner-programme](https://lawsociety.org.nz/membership/partner-programme)**

RIGHT: Sue Moroney, Community Law Centres Aotearoa Chief Executive

# Community Law

## *Where the rubber meets the road*

**C**ommunity Law Centres Aotearoa, (CLCA) Chief Executive Sue Moroney says, “Lawyers working either on a paid or voluntary basis in the community law sector often do so as for many it resonates with the reason they embarked on a legal career; and that is to make a difference.”

With a network of 24 centres across the motu, the Community Law network claims the position as New Zealand’s largest law firm and for those who work in it, arguably the most important too.

Funded by the Special Fund through the Ministry of Justice, Community Law Centres deliver free legal advice to our most vulnerable communities that includes the lowest 20 percentile income earners in Aotearoa. Sue says for the vast majority of their clients the Community Law Centre offers the only avenue for access to justice, that whilst a right for all, is a right that is out of reach for the people seen in Community Law Centres.

With a national body that has been formed as an incorporated society, the work of CLCA extends beyond the coal face of working in communities to advocating for our most vulnerable people which Sue describes as a privilege that carries a “special responsibility.” This important advocacy work also includes being a strong voice in the law

reform space. Two recent examples of this have included advocating for victims of family violence in exiting tenancies safely and quickly which resulted in changes to the Residential Tenancies Amendment Act 2020. Recent work has also included convincing the Ministry of Social Development to develop standards for emergency housing in an effort to improve living conditions. The immigration space is another area that community law has advocated in, particularly during the COVID-19 period in remedying the unlawful cessation of family reunification visas.

Community Law is where the “rubber meets the road,” and works to protect the most vulnerable in our society,” says Sue.

### **New Zealand's largest law firm**

Five areas of law stand out as being the most in demand at community law centres: employment, family – including care of children – tenancy, immigration and consumer. Work is also undertaken to facilitate the witnessing of documents, advice and referral on criminal matters and advising on adult relationships.

“Across all areas of work, Community Law is in growth mode which enables us to continually improve access to justice for our most vulnerable.” says Sue, adding

that even in growth mode, there is always an “ambition to do more.” This extends to advocating for the lawyers who work in community law. Following 18 months’ work to improve the salaries of our lawyers, “we proudly delivered the first multi-employer collective agreement for our staff,” says Sue.

Improved salaries together with a flexible, whānau-friendly work environment hope to encourage more lawyers to consider a career in community law.

Of the 240 employees of Community Law throughout the country, around half are lawyers. This team is supported by around 1200 volunteers who serve our communities from 24 dedicated centres. If the numbers are startling, it is because this is a large scale organisation or as Sue says, “New Zealand’s largest law firm and in our view, the most important law firm in the country!”







### The kaupapa of community law

Community Law is building on its experiences of delivering kaupapa Māori legal services throughout the country. A three-year pilot is underway that aims to establish kaupapa Māori services across 15 centres with the view to improving access to

justice for Māori. As a Treaty-based organisation, Community Law Centres Aotearoa holds a special responsibility to tangata whenua who currently make up around 18 percent of Community Law Centres Aotearoa client base and who also over-represent the lowest 20 percent of income earners.

In developing this kaupapa, Community Law Centres Aotearoa has undergone constitutional change which was agreed at the organisations’ Annual General Meeting in 2023. From 1 July 2024, Community Law Centres Aotearoa will be co-governed through a 50 percent representation of tangata whenua on the CLCA Board, including the establishment of a Tangata Whenua caucus and a Tangata Tiriti caucus.

Sue says the move represents a “significant growth journey for Community Law and is one that the organisation hopes will serve to attract more Māori lawyers into the community law space.”

A growth trajectory that reflects a kaupapa Māori approach together with people who are passionate about their purpose in this area of law is a vision that Sue says is shared throughout the community of volunteers and lawyers who deliver this important service. ■

**Community Law by numbers**

In the financial year ending June 2023 business as usual for Community Law Centres Aotearoa members produced some impressive outcomes which are reflected in the volume of caseloads as well as informing, advising and educating.

- Managed 43,500 case work clients
- Advised on 52,300 legal matters
- Held 1200 law-related courses in communities to 24,000 participants
- Clocked 1.36 million individual users to the Community Law Centres Aotearoa website that hosts the online Community Law Manual.

## A lawyer's journey – from Kaawhia to community law

BY **MARREE KERERU (NGĀTI MAHUTA, NGĀTI RAUKAWA)**

**B**orn and raised in the small coastal township of Kaawhia in the heart of the King Country on the West Coast of the North Island, Marree Kereru took her first step toward a legal career at just seven years of age when she announced to her mother that she wanted to be a lawyer. This also set the course for Marree to become the first of her whaanau to attend university. Her mother took on the youngster's challenge, pushing her hard with school studies; effort was rewarded with academic certificates throughout Marree's early education.

### Early inspiration

One of six siblings, Marree credits her koro (grandfather) Tata Keepa as being an early inspiration to dare her younger self to dream big. "My koro took me along to many hui including land hui where I would quietly listen in on sacred kōrero and even at a young age, I could also hear a lot of hurt in the kōrero of these hui."

"While I may have just looked like the young girl busy with her drawings, my attendance left an indelible mark and galvanised my determination to pursue a legal career to further the ambition of Maaori."

### The road to Dunedin via Napier

A short stint at local Ōtorohanga College was followed by a major move away from home and whaanau to board at St Joseph's Maaori Girls' College in Napier.

Under the guidance of college principal, Ms Georgina Kingi, Marree recalls submitting her end of college application for scholarships for further education to hospitality school. This reflected a stark realisation that perhaps university was beyond Marree's means. But seeing a potential that could and should find a way, principal Kingi tore up the application telling Marree to return with a "double degree application."

Scholarships were duly submitted for Otago University, but financial shortfalls presented a major hurdle still to be overcome. "My mother was so determined to make this dream a reality, she did whatever she could to pull together the money for me to go. Even getting the petrol money together was a mission. I know Mum and Dad went without kai themselves, instead making kai and selling it at local markets to support my education."

Embarking on a conjoint LLB/BCom, Marree found Otago an isolating experience as one of only a few Maaori law students. A degree change to LLB / BA saw Marree immersing herself in a double major that included Te Reo Maaori and Tikanga with a minor in Environmental Law.

Returning to be closer to whaanau, Marree completed her degree and graduated in 2015 with First-Class Honours from the University of Waikato Te Whare Wānanga o Waikato. At Waikato, Marree credits her "staunch" Maaori lecturers; Matiu Dickson, Linda Te Aho and Dr Robert Joseph as really pushing their Maaori students.

### The Maaori Land Court

On completion of her 'Profs,' Marree worked as a clerk in the Maaori Land Court for two years in Christchurch. During this time she was introduced to Community Law as a volunteer. From Christchurch Marree transferred with the Maaori Land Court to Hastings in the Hawkes Bay. In this transition, Marree credits the generous mentoring of Justices Reeves and Harvey in encouraging her to expand her legal career. With this came Marree's admittance to the bar





in the Hamilton High Court in 2017; a ceremony that Marree describes as being very emotional and supported with haka and karakia.

### Gisborne bound

Now officially a lawyer, Marree joined Gisborne firm, Woodward Chrisp where she could put to good use her experience in the workings of the Maaori Land Court. At Woodward Chrisp, Marree applied herself to the craft of writing good legal opinions and assisting in a wide range of matters. Here, Marree credits Ross Revington and Partner, Ellie FitzGerald as being excellent mentors in this stage of her career.

From private practice Marree saw the need and challenges of Maaori, many of whom did not have the means to pursue their legal matters, particularly in the area of Maaori land. “For some of our Maaori whaanau just navigating forms is a challenge, let alone mounting a legal campaign. For some it was as simple as Nanny coming to ask how to write a will, but even then relatively modest fees became a

barrier to completing such requests.”

### A calling to community law

Seeing this need was to see a community need and led Marree back to Community Law. At the Tairāwhiti Community Law Centre, Marree found her calling, this time as a fully-fledged lawyer leading the Maaori Legal team. Here Marree was able to work in a way that aligned with Te Ao Maaori and her personal values and worked with mana whenua, hapuu and iwi from Raupunga to Potaka. It was huge for many to just take that first step and come in to ask for help. For Marree, the opportunity to advise and help her Community Law clients

for free was the reward. This also offered an opportunity to impart the law in a more holistic way that could also accommodate the obligations that come with being a Maaori lawyer to law and tikanga. In many cases this meant litigation really was a last resort with early resolution and mediation the preferred and often more appropriate course of action.

The Community Law experience also enabled Marree to guide Maaori through community-led initiatives such as ‘kaumatua day’ which saw up to 190 kaumatua attending marae-based educational sessions on topics such as Maaori land, wills and enduring powers of attorney. “The opportunity to empower whaanau through legal education sessions and talk about their rights is gold,” says Marree.

To this end Marree considers it “a privilege to advise whaanau for free and that privilege is not ever lost on me.”

In the wake of a successful few years of practising law and honing in on her experience, Marree was able to use her skills to secure funding from Te Puni Kookiri. This enabled her and her family to establish a nine-house Papakaainga development on her

# Christian Lawyers Conference

He Whakapono i Te Ao Hurihuri

Faith in an Ever Changing World

E te whanau o ngā roia Karaitiana - nau mai haere mai Christian Lawyers of Aotearoa New Zealand are pleased to announce an upcoming day-long conference on **Friday 20 September in Auckland**. Join us? Information about the topics and speakers are at [christianlawyers.nz](http://christianlawyers.nz)

Solicitor: \$245  
Early bird before  
30 June- \$195

Student: \$49  
Early bird- \$29

Tickets now available at: [christianlawyers.nz](http://christianlawyers.nz)  
Contact Steven with any questions: [stevenmoe@parryfield.com](mailto:stevenmoe@parryfield.com)

whaanau land at Tahaaroa. “Being able to use my legal skills to help my whaanau move home to their turangawaewae will always be the pinnacle of my career.”

Marree also talks fondly of Maaori Caucus which she co-chairs alongside Stacey O’Neill (Ngā Puhī). Maaori Caucus was created by Maaori for Maaori with the intention of providing a safe and supportive network for Maaori staff and governance members within Community Law. For Marree, it has served as a pillar of support for her

during her time with Community Law with the Maaori Caucus annual hui a highlight she looks forward to every year.

When asked “what’s next?”, Marree does not have to search for words that may also serve as some sage advice for others: “When you find your home in a values-based organisation that fits with you as a person and speaks so strongly as to why you studied law in the first place, you stay! Waking up and feeling like I am making a difference to those who need it most and who

put their trust in you every day is the greatest reward of all.” ■

Marree is currently the Kaupapa Maaori Lawyer at the Tairaawhiti Community Law Centre, the current Co-Interim Kaitakawaenga for Community Law Centres Aotearoa, Co-Chair of Nga Kaiaawhina Hapori Maaori o te Ture (Maaori Caucus) and Co-East Coast Representative for Te Hunga Rooia Maaori o Aotearoa (The Maaori Law Society).

Note: We have retained double vowel spelling in this article to respect iwi preference.

## What it means to volunteer with Community Law

BY AIMEE BRYANT

I’ve been volunteering with Community Law Wellington and Hutt Valley for around three years now, on the Refugee and Immigration Legal Advice Service (RILAS). At RILAS, the team provides initial advice and support to migrants and refugees. I also have several long-term clients, who we are assisting with family reunification applications. Recently I’ve had the honour of joining the Board as a Riu Tauwiwi Trustee. Preparing to be interviewed for that role, I reflected on how I had come to volunteer at Community Law and why I want to become more involved in the strategic direction of the organisation.

Prior to joining the Law Society as Law Reform and Advocacy Manager, I worked with the Ombudsman.

The role I held meant I couldn’t volunteer with Community Law, but I repeatedly saw the very real benefits of the kaupapa. Time and time again I saw what it means for someone to be equipped with the knowledge and support they need to access their legal rights or resolve issues. The first thing I did after accepting my role at the Law Society was put my name down to volunteer. I’ve been there since.

While I’ve taken a slightly alternative legal path, my work with Community Law brings me right back to what first drew me to the law, and it allows me to use my skills in service of the



community. The staff and volunteers are dedicated, respectful, and deeply committed to enhancing the mana of their clients. Inside that building is a vibrant and accepting community, driven by an ethic of service, and it is a community I am immensely proud to be a part of. ■

Aimee Bryant is the Manager, Law Reform and Advocacy for the New Zealand Law Society Te Kāhui Ture o Aotearoa.



Law Society membership  
*saves you money.*

Introducing  
our new  
*Partner  
Programme.*

Members enjoy discounts  
and savings on major brands  
across banking, retail, travel  
and more.

Available for the 2024-25 membership year  
starting 1 July.

*Learn more at*  
[lawsociety.org.nz/membership/partner-programme](https://lawsociety.org.nz/membership/partner-programme)



RIGHT: Sabrina Muck,  
Director of Te Ara  
Ture

## Te Ara Ture – A bridge to law



**“As the name suggests, we aim to bridge the gap in terms of access to justice by enlisting the pro bono support of registered lawyers. Having access to legal advice and representation makes a significant difference to the outcome on a matter”**

**S**abrina Muck is Director of Te Ara Ture, a nationwide service within Community Law Centres Aotearoa. She speaks with *LawTalk* about how Te Ara Ture works with the profession in delivering access to justice to those in need.

Sabrina describes the function of Te Ara Ture (“A Bridge to Law”) as being a pro bono clearing house serving Community Law Centres Aotearoa and the clients they support, who are often the most vulnerable and disadvantaged in our communities.

Te Ara Ture connects lawyers who have registered with the programme to deliver expert legal advice pro bono to disadvantaged clients. “As the name suggests, we aim to bridge the gap in terms of access to justice by enlisting the pro bono support of registered lawyers. Having access to legal advice and representation makes a significant difference to the outcome on a matter. Te Ara Ture also works really well for lawyers wishing to engage in pro bono services in a highly targeted and managed way,” says Sabrina.

### Delivering pro bono services in a triaged way

With a database pool of over 100 legal practices, that is managed through a bespoke password-protected portal, participating lawyers benefit from the flexibility to accept or decline cases and in doing so relieve some of the pressure they may otherwise face managing pro bono work directly at a local level.

Sabrina describes the process as “very structured and supports a triaged way to deliver pro bono services.” The work of Te Ara Ture is supported by Lee Difilippo, Referrals Manager.

Pro bono opportunities are regularly published to the Te Ara Ture portal, and circulated to lawyers registered with Te Ara Ture via email bulletin every Tuesday morning at 8.30am. There is no obligation to take on any of the matters circulated but for lawyers who do heed the call with capacity to assist, Te Ara Ture then sets about partnering the pro bono client with





an interested lawyer, via a simple introductory email. It is then for the lawyer to carry out their usual client engagement process.

Te Ara Ture appreciates the support it receives from the profession, and welcomes registrations from new lawyers, particularly in regional and rural practices, and those delivering legal advice to Māori. “We accept referrals from all 24 Community Law Centres nationally, and so we know that, despite the incredible work that Community Law Centres do, there remains real unmet legal need across Aotearoa.”

Sabrina’s own foray into community law came through a corporate career route culminating in nearly a decade with Chapman Tripp. Sabrina was drawn to the community space firstly as a Board Member for not-for-profit organisations and then as a senior / supervising lawyer for six years in a community law centre before taking on the role of director at Te Ara Ture. “I have long held a deep passion for community spaces. The opportunity to provide legal advice at a grass roots level to community law clients who are often the most

marginalised and disadvantaged people in our society, is a real privilege that carries a strong sense of purpose. Through this work, we are able to walk alongside clients who would otherwise have nowhere else to go, with the aim of providing access to justice to those who need it most.”


**How to help?**

Lawyers wishing to register for Te Ara Ture can do so here: For Lawyers – Te Ara Ture [www.terature.co.nz/for-lawyers](http://www.terature.co.nz/for-lawyers) ■

**PhD in Law**

Delve deeper and exercise your curiosity.

- The faculty’s core research areas are:
- Constitutional, Administrative and Public Law
  - Contract, Torts, Equity and Private Law
  - Corporate and Commercial Law
  - Criminal Law and Justice
  - Environmental and natural resources law
  - Human Rights Law
  - Indigenous Peoples and the Law
  - Intellectual Property
  - International and Comparative Law
  - Property and Land Law
  - Law and IT
  - Legal History and Theory
  - Litigation, Dispute Resolution, Family and Relationships Law

 Peruse a PhD in law at New Zealand’s top-ranked law school.





# A shocking, life-changing incident drives safety advocacy

*My story*

BY **BRINTYN SMITH**

**T**hey say a life-changing event leads to reflection. So, why did I become a lawyer? For several reasons is perhaps the answer.

Firstly, at school, I was relentlessly bullied, and so were my friends. I found myself advocating not just for them but also for myself. I felt compelled to advocate for those who were the underdog.

I was also always attracted to responsibility and the privilege that comes with it. Being a lawyer, you get to speak for people who often end up sitting there silent – they trust you. That’s a real privilege.

I ultimately chose law and studied at Te Piringa, Faculty of Law at the University of Waikato.

My first legal job was as a prosecutor for the Ministry of Social Development. I soon moved into the care and protection team, which at the time was part of the Ministry of







Social Development's shared legal service. As it turned out, my journey into family law had just begun.

Being a family lawyer requires kindness, empathy, and good judgement. You need to trust your gut in this area of work. You must be able to relate to people because often you're dealing with them at their lowest. They may have just suffered a breakup; they might feel shame. They may have been called out on behaviour, and that's embarrassing and has a range of emotions. It really is an emotionally driven and charged space. When people are dealing with their children, they are extremely sensitive. So, it requires you to be firm but kind and empathetic.

Before 9 March 2023, I had a busy and broad family law practice. I undertook private and legal aid parenting and private relationship property work. I was available to accept Lawyer for Child and Lawyer to Assist appointments. I had three Chambers (Whangārei, Grey Lynn, and Warkworth) and employed two lawyers and two personal assistants.

I recall the 9th vividly. I think I always will for the rest of my life. It was a fairly run-of-the-mill morning. I had a coffee, left my home (in Rodney) and travelled to Whangārei. I pulled over on the way, did a routine call-over, and later made my way to Court.

I arrived at the Court just before 10:00 am. The matter I was to appear on was upstairs on level one. I entered the building, spoke with another lawyer, and, as I have routinely done, I took the lift to level one.

The lift ride turned out to be anything but routine. I was attacked by a party in the proceedings as

I went to exit the lift. I ended up back inside the lift, with the doors closed, pinned under him on the floor. My head was being relentlessly beaten. I recall the blood and fear I felt as I lay face down. The more I shouted for help, the harder the blows to my head felt, the more I was beaten. I felt like it just made the situation worse. I pretended to be dead to try and get him to stop. The attack went on for what felt like a lifetime.

The lift was called to the bottom floor again, where people were able to help me. I remember people shouting at him, commotion, and the dread that filled my body as someone was tapping on my shoulder, trying to get me to stay awake while on the phone.

Fire and Emergency, Police and St John's were quickly in attendance, and the Court was, I understand, in lockdown. Media quickly circled.

Once I was in the safety of the ambulance, I remember reassuring the ambulance officers that I wouldn't hurt them. I did this as I was grabbing at things around me. I wanted them to know they wouldn't get hurt doing their job. I was transported to the Whangārei Emergency Department in Status 2 condition.

I spent the remainder of the day in hospital and was later discharged to the care of my family.

I suffered several injuries (all a matter of public record) - fractured thyroid cartilage, extensive bruising, and cuts. For me, though, the two most significant injuries (in terms of impact on my life and practice) were the head (concussion) and mental injuries I sustained (PTSD).

**“I have received support locally, nationally and internationally, some from unexpected places, some for specific purposes, some for all of my journey to date. I am so humbled and grateful”**



The concussion took quite some time to recover from. I never fully appreciated how complex a concussion can be. It impacts everything in your life, including parenting. PTSD is equally complex. I continue to receive assistance.

The days and weeks following were sore, blurred and very odd. The first month was in hindsight, overwhelming. There were several meetings and several medical appointments, and it felt like my life just became driven by them and the District Court process that was running in tandem. I had to deal with other people's reactions and emotions while also trying to process it myself. So, that first month – that's particularly blurry for me. At the time, I said that I was going to take it day-by-day, and, in hindsight, that was the best strategy.

I have received support locally, nationally and internationally, some from unexpected places, some for

specific purposes, some for all of my journey to date. I am so humbled and grateful.

My team, work mums and aunties, work dads and uncles, all stepped in. They took over my practice and gave me time to heal. My Chambers colleague in Whangārei was in charge of reassigning all my matters. My team rallied to support me. I owe them a lot – in my view, my life. It was a very difficult time and without that support, without the friendships that were built and ultimately strengthened through that time, I don't know what would have happened to me.

The Family Law Section (FLS) of the New Zealand Law Society supported me tremendously. I had the Chair at the time, members of the executive and members throughout the country constantly reaching out. I remember quite fondly the call and messages from Caroline Hickman, now her

Honour Judge Hickman – those were really reassuring at that time. The Family Law Section did a fundraising appeal for me, and about a month later, I received a very generous donation that my family and I were most grateful for.

The Law Association, Te Hunga Rōia, and several other organisations also helped me. Decent human beings who just so happen to be lawyers all came out and rallied.

All this support benefited me because I was given time to heal. With no choice, I stepped right back from practice for some months.

Initially, I did not see a return to the Family Court and most certainly didn't see a return to lawyer for child work. It was too scary. Within just a few minutes in that lift, I had lost everything.

With time, healing, wise counsel, and the guidance of some good people I reconsidered this. I decided





that I would return, albeit in a slightly different way. I guess there has been an element of advocacy for myself to come back: I'm not going to be bullied.

In many ways, working towards the NZLS CLE Family Law Conference 2023 was one of the key things that kept me going. I was part of the planning committee for the conference. It turned out to be a wonderful event. To be recognised and acknowledged in such a bold way was humbling and incredibly validating. It empowered me, to be honest. I had worried that I would simply become another story and be known as the 'Whangārei incident' and that tangible real change wouldn't occur. The conference showed me that this may well not be the case, and I felt a responsibility to use the position I am now in for the better.

What happened has obviously impacted me and will continue to

do so throughout the rest of my career and lifetime. It's important to remember that I wasn't the only victim on that day. The reality is that there were people who were really scared of what happened to me. The attack has, however, provided me with an opportunity to really reevaluate my space in the family law area.

So, where to from here and what lessons have I learnt?

In terms of my work, I have returned to my former role, albeit with much less capacity. Time heals, they say. I am going to turn down the volume on it, though, and I won't be doing as much of the old as I intend on doing the new. In this respect, I plan to build a much stronger mediation and collaborative law practice because I'm really passionate now about doing work that involves much less conflict. Doing law differently and in a much kinder way if you like.

I feel a responsibility and strong desire to advocate for change and better safety for people who attend Courts.

I have been invited to sit on a panel of like-minded individuals who want to improve our Court safety. I will be frank with my views of what needs to change. I think that it's good to have someone who has experienced it to be the 'sniffer dog for crap' if you like.

My thoughts on immediate improvements are:

**Court security presence:** I think it is essential to have security on all floors, at all times, in all Courts. Using the example of the New Zealand Police, they obviously get out into troublesome areas and have a visual presence. They do drive-bys - they walk the beat. The reality is that there has to be a positive impact, or they wouldn't be doing it. And the same effect happens when Court security is walking around the Court just letting their presence be known. It's both reassuring, and I suspect that it's also quite dampening on tensions.

Currently, there's no expectation that a security officer will always be available while the Family Court is sitting. It's an exception to the rule to have security there. You must request it specifically. We should request that security is *not there*, not the other way around. I accept and anticipate this is a resourcing issue.

Given we need more security officers, we need more funding. The Government needs to provide it.

**Better information sharing:** I think we need to get better at information sharing. I have always



**“The Law Society’s FLS are a source of advice and support for family lawyers. The FLS Friends Panel, the Immediate Issues Team, members of the FLS executive and the FLS regional representatives are available to help lawyers”**

been concerned with the silos of information that exist. I’ll give you one example. Court security is really good at removing weapons at screening. Several items seem to feature commonly: meth pipes, knuckle dusters and credit card knives. The latter, I understand, is frequently taken from people at entry. I was told that in one particular Court the knife is surrendered, and the person granted entry with no names being taken. Judges, counsel, and parties on the day are certainly not being told of the nature of any confiscation.

Aside from being concerned that someone would bring a weapon to a Court, my second biggest concern is that the information is not being routinely shared. We need to do so much better here as, in the current framework, it is conceivable that somebody could turn up at Court on five separate occasions with a credit card knife, have it confiscated, and nobody in that matter would ever know. We would, I suggest, probably find out when somebody was

stabbed outside of the Court. Why are we even in this situation?

We need better information sharing. I see no reason why this shouldn’t be implemented immediately.

**Security cameras, including in lifts:** We now have frosting on meeting room windows which is being altered so that people and cameras (to some extent) can see through. That has been one of the really good things that has come as a result of my attack. But, we need cameras in lifts; it’s a blind spot in courthouse buildings. The lift, as I know, is a risky location. Despite what happened to me, it shocks me that it’s still a matter that has not been addressed.

Why are we even in a situation where this still needs to be advocated? This should have been addressed months ago and needs to happen.

**Better support for lawyers for children (or any Court-appointed person):** Lawyer for child work is undertaken as an independent

contractor. We go out in the community and do the important work ultimately to assist the Family Court and to get good outcomes for children. However, the issue is that this is without any safety support being provided by the Ministry. In a climate where lawyers are increasingly concerned for their safety (rightly, in my view), I identify this as a major problem. That is because lawyers won’t get good outcomes for children if they’re operating in a climate of fear or concern for their own personal well-being.

We need to do better here, and I would welcome the opportunity to meet with the Ministry of Justice to discuss further my concerns.

I don’t want to see my colleagues hurt in any way. I certainly don’t want to see any person go to Court and not be able to go back to work, or, in the worst-case scenario, somebody die. The stakes are really high here, and we have to do better. I am willing and able to help in any way I can to advocate for change. I am not going away.

## Ministry of Justice investigation

In the immediate aftermath of the attack on Brintyn, the Ministry of Justice initiated an incident cause analysis method (ICAM) investigation. This process includes gathering comments and feedback from the judiciary, Court staff and others involved, to identify what is working well and what is not. An ICAM investigation was also triggered following the serious assault that occurred on a defendant in the Napier courthouse in September 2023. Both investigations identified factors that contributed to the incidents and prompted work to incorporate the lessons learned. This work has included:

- Reviewing and updating the training of Court security officers, Court security managers, and site managers.
- Reviewing Court security patrols, and the level of security required, at all sites.
- Developing a process to improve information sharing.
- Initiating work on an memorandum of understanding with the judiciary, covering health, safety, and security arrangements.
- Reviewing the training and education available to all staff and refreshing the site security induction programme. Lawyers can schedule a security induction by contacting local court security staff.
- Commencing a nationwide site security assessment programme.

The Law Society and FLS also engaged with the profession to

identify safety concerns in courthouses across the country. This register of issues was provided to the Ministry of Justice, which has since met regularly with the Law Society to identify what can be done within the constraints of both budget and building structures. This has included actions like the alteration of frosting on meeting room windows and ensuring the availability of duress alarms.

## Family Law Section advice

FLS Chair Lauren Pegg says that the FLS was shocked and appalled by the vicious attack on Brintyn. “We are acutely aware that family lawyers receive threats of violence on a regular basis. Violence or threats of violence are never OK.”

The Law Society’s FLS is a source of advice and support for family lawyers. The FLS Friends Panel, the Immediate Issues Team, members of the FLS executive and the FLS regional representatives are available to help lawyers. Following the assault on Brintyn, the FLS advocated for free training on managing abusive and threatening behaviour

which was funded and provided by the Ministry of Justice.

While there was nothing Brintyn could have done to prevent the attack, Ms Pegg issued an email bulletin to FLS members, encouraging them to review their files with fresh eyes and look for any flags that might raise safety concerns. She shared the following safety tips:

- Speak to your local Court security officers about any concerns or assistance you require. You can let them know if anything you think may become a safety risk.
- Duress alarms are available to borrow if you are concerned for your own safety in a particular situation.
- Attend a safety induction at the Court in which you work that your regional representatives will organise.

Most importantly, she said that lawyers are a part of a collegial profession. “There is always someone you can discuss your concerns with.”

Please contact the Law Society if you would like to talk to a senior practitioner or want to raise local or national health and safety issues. ■

## Moriarty Associates

Expert Valuations | Forensic Accounting

Paul Moriarty BSc FCA FFin MInstD  
T 09 363 3700  
M 022 107 5787  
moriartyassociates.co.nz



Business and Share Valuations



Relationship Property Matters



Commercial Disputes



Forensic Accounting

Expertise • Experience • Independence

CA Business Valuation Specialist





# The case for tikanga Māori

## *The LLB degree curriculum in a contemporary context*

**I**n 2025, a new generation of law students will embark on a journey that each lawyer recalls with varying degrees of fondness. Amongst the courses they must take if they wish to seek admission to the High Court of New Zealand will be a new subject – tikanga Māori, Māori laws and philosophy.

This new educational requirement was introduced by the Professional Examinations in Law (Tikanga Māori Requirements) Amendment Regulations (the Regulations).<sup>1</sup>

A recent complaint to the Regulations Review Committee about the Regulations has sparked debate about the place of tikanga as a compulsory educational requirement. The complaint relates to the procedure followed by the New Zealand Council of Legal Education, and also suggests the Regulations may infringe rights and liberties and be an unusual use of the Council's regulation-making power. It seeks for the Regulations to be disallowed.

This edition, *LawTalk* has engaged in a kōrero with our educators and members of the profession, who share in their own words why the

new requirements not only make sense but also show there is nothing that new about tikanga Māori walking alongside the general law in Aotearoa New Zealand.

Our contributors, some of whom have successfully represented clients where tikanga Māori has been considered by our senior courts, share their knowledge of tikanga being part of law of Aotearoa New Zealand as part of the evolutionary process of our modern society.

### Law Society position and process that led to a curriculum change

The Law Society reaffirms its support of tikanga becoming a compulsory subject paper in the LLB degree curriculum effective 2025.

The New Zealand Council of Legal Education (Council) consulted in 2021 on its resolution that Te Ao Māori concepts, including tikanga Māori, would be taught in each university as a core law subject within the Bachelor of Laws. This consultation involved the judiciary, law schools, professional associations, and student associations.



ABOVE: Tai Ahu (Waikato-Tainui, Ngāri Kahu (Te Paatu))

Following that consultation, the Council resolved that Māori law and tikanga should be a compulsory subject and further consulted on this in 2022. The Law Society supported the proposal, and the Council reported 'almost universal' support for the key proposal.

The Law Society wrote to the Regulations Review Committee asking to be heard should the Committee consider a complaint. The Law Society has been asked by the Committee to respond to the matters raised by the complaint.



**“We see tikanga in our everyday settings. It is all around us and has provided a framework of regulations, principles, and customs of social order for centuries pre-dating colonisation”**

## Tai Ahu

Waikato-Tainui, Ngāri Kahu (Te Paatu)

Tumuaki Tāne o Te Hunga Rōia Māori o Aotearoa

Tumuaki Whāia Legal

“On the issue of tikanga being made a compulsory subject in our law schools from 2025, it has been so encouraging to see how this issue has galvanised and unified the profession. Not just representative bodies of law practitioners, but most importantly from those who want to learn the law including the NZ Law Students Association. The student voice across the motu is one that very much wants to increase their knowledge of tikanga to better prepare themselves for the modern legal workplace.<sup>2</sup>

As our society develops and transforms into a modern, multicultural nation, there is a need to ground our

vision of law in something transcendental that unifies and speaks to all of us.

## Contemporary legal context

An Anglocentric view of what law is, is myopic in a contemporary context and does not serve our local circumstances all of the time. Consistency and predictability in application is an essential element in the law, and tikanga delivers on both of these elements. As a source of law, tikanga is well established to improve and develop the law in Aotearoa.

At the heart of tikanga is that it provides legitimate responses to current circumstances. To take one example in tikanga, there is the well-known and accepted practice of rāhui. When a rāhui is placed on say a body of water, it is to protect and preserve supply of fish stocks or serve some other protectionary or practical purpose. People increasingly know and respect this. It does not always require the explicit sanction of state law. They understand it and adhere to the rules of the rāhui because the purpose is reasonable, legitimate and widely accepted response to an issue.

## Tikanga in everyday settings

In such examples we see tikanga in our everyday settings. It is all around us and has provided a framework of regulations, principles, and customs of social order for centuries pre-dating colonisation.





With such an established structure, tikanga has a deserving place in our law as a source for consideration alongside English law. Importantly, whether and how tikanga applies is contextual. An example of this is *Doney v Adlam* [2023] NZHC 363 (HC) where Harvey J considered that tikanga also emphasised personal responsibility and accountability of the respondent, which is well supported by the principles of tikanga. Such cases help determine the application of tikanga and offer the guidance of our senior courts to help reconcile what can at times be a clash between the laws of Kupe and Cook.

Tikanga is being further explored and applied to a number of areas of the law, notably in employment law. Here we see an area of law that is based on principles of good faith, fairness and being reasonable. Such

principles are also found in tikanga which has much to do with being fair and reasonable.

To this end, tikanga already has secured its place in the practice and application of the law. Drawing on the analogy referenced by our own Honourable Justice Joseph Williams, law may be seen as a fabric or tapestry.

Viewing law as a tapestry requires us to look closer at the threads that make up the tapestry. Some parts will fray, some will start to get tattered. The fabric will be used for different purposes that will change over time. As a tapestry that morphs over time and circumstance, so too does our law. Just as English law is subject to the circumstances of the day, so too is tikanga.

The development of climate change law using tikanga as a source can be



most recently seen in *Smith v Fonterra* where tikanga principles helped frame a potential new tort.<sup>3</sup>

### A meeting of ways

Working in partnership with the general law, the consideration and relevant application of tikanga provides New Zealand with a unique framework to develop the common law and the considerations around it that better meet the needs of our people and place.”

---

## John Billington KC

Barrister, Shortland Chambers

“My view of teaching tikanga as a compulsory subject is that it is embedded in New Zealand law,





not only by reason of judgments of the superior courts, but also because it is frequently referred to in legislation. For these reasons law schools would be failing if they did not require it as part of the degree course. Not every subject taught at law schools is later used in practice, but that does not mean it should not form part of the basic understanding of a student aspiring to join the legal profession. For barristers, both in civil and criminal practice, knowledge of tikanga

is, and will be, an essential part of their knowledge base.”

## Kingi Snelgar

Ngāpuhi, Ngāti Whakaue, Te Whakatōhea and Ngāi Tahu

### Barrister

“As the first law of Aotearoa, the application of tikanga in colonial Aotearoa has seen chequered success over time, that has mostly reflected the social mores of the day.

While consistent application and understanding of tikanga still has some way to go, we have made exceptional headway with the guidance of our senior courts.

FAR LEFT: John Billington KC

LEFT: Kingi Snelgar (Ngāpuhi, Ngāti Whakaue, Te Whakatōhea and Ngāi Tahu) with wife Chloe Manga

## Reconciling the application of tikanga

In reconciling certainty as to when tikanga may apply within, or alongside, the common law, we already have a number of practices and protocols in place to assist with the interpretation and application of tikanga. One such resource is the 2023 study paper from Te Aka Matua o te Ture Law Commission on tikanga. The paper maps tikanga as a system of law and looks at the interface between tikanga Māori and the common law with a view to providing a framework for engagement. Other avenues in the pursuit of reconciling the clash of values systems in New Zealand’s legal duopoly include the Māori Appellant Court which is encouraged to look toward where there is uncertainty as to the application of tikanga.

It is also important to understand that Aotearoa New Zealand is not the only country grappling with the interface of indigenous or first nation laws in colonial systems. Canada is another example of a Commonwealth country that is

also evolving its legal framework in this regard.

In considering the application of tikanga I do urge the profession to seek out the knowledge and counsel of tikanga experts, of which there are many throughout the country. This not only provides the required knowledge for considering when and where tikanga should be applied in law, but also protects the taonga that is tikanga under Article Two of the Treaty of Waitangi.

## Upholding the integrity of tikanga

There is also a cautionary tale to the carte blanche application of tikanga in so much as this has the potential to lead to the misappropriation of culture and in doing so jeopardise the authenticity and mana that is at the heart of tikanga. This is why it is so important to bring the teachings of tikanga into modern legal studies throughout our law schools. Greater understanding and knowledge is an essential part of our journey as a progressive and multicultural nation.

# NATIONWIDE PROCESS SERVING

New Zealand’s largest team of process servers



**PROSERVE**  
NEW ZEALAND’S LEADING PROCESS SERVERS

**CONTACT US TODAY!** [proserve.nz](https://proserve.nz)

0800 717 007 / [operations@proserve.nz](mailto:operations@proserve.nz)



Special  
rates for NZ  
Law Society  
members!

RIGHT: Paul Beverley

FAR RIGHT: Isaac Hikaka

## The growing Māori economy

There is also a commercial driver as the Māori economy continues to grow and with it the exponential growth of the consideration and willingness to apply tikanga to a range of legal matters. With this in mind, upskilling our law students and new lawyers on tikanga serves to future-proof the profession in an increasingly diverse and multi-cultural Aotearoa.

This also flows into the areas of law that tikanga and Te Ao Māori apply. No longer just the domain of the likes of land laws and resource management issues, tikanga is now a consideration across many areas of the law including employment, estates and family law. This highlights the importance for the teaching of tikanga in our law schools to better equip practitioners across the spectrum of the profession in diligently representing clients on matters that may necessitate an understanding of tikanga.

With tikanga pre-dating colonial law by some six hundred years, it is fair to say that tikanga is a well-established system and remains intrinsically woven into the values of Aotearoa. In keeping with evolving social norms, tikanga already forms aspects of interpretation of New Zealand law that we see in our common law.

As a profession we are becoming more adept in the application of tikanga through knowledge and recognising expertise in this area.

Therefore, it is in keeping with the development of the profession that our new lawyers enter the profession with the relevant knowledge to serve the clients and communities they engage with.”

---

## Paul Beverley

Partner and Māori Law Practice Lead, Buddle Findlay

“Our Māori law practice is very important to us at Buddle Findlay and clearly an understanding of tikanga Māori is central to that practice. We primarily support the Crown and Crown entities, local government and businesses that are seeking to build strong and enduring partnerships with Māori. Our experience in the large law firm environment is that an understanding of tikanga Māori is also a key competency for many other areas of our legal practice, including environmental, property, employment, commercial, litigation, and public law.

## Not just a nice to have

The ability to understand and respect tikanga Māori is not a ‘nice to have’ but is critical for all of our lawyers. Strong and effective partnerships with Māori are a key driver for many of our clients and they expect our lawyers to be able to support them to work successfully through those processes. That is not to say our lawyers are expected to be experts in tikanga Māori (clearly we won’t be). We should know enough to respect tikanga Māori, to pause

**“Developing an understanding of tikanga Māori and the ability to work effectively with Māori is a critical skill for all lawyers to have in our contemporary legal environment”**

and ask the right question, to be aware of what we don’t know and where to go for that expertise.

I believe that developing an understanding of tikanga Māori and the ability to work effectively with Māori is a critical skill for all lawyers to have in our contemporary legal environment, in the same way as the necessary skills in public, contract or property law. We have observed the importance of that recently in our work on large commercial and property transactions, law reform processes and in environmental and public law litigation, where tikanga Māori has been central to those processes.

## A dynamic period to be practising law

We are in a highly dynamic period in terms of tikanga Māori, te Tiriti o Waitangi, customary law and our constitutional arrangements, including the significant developments





on tikanga Māori emanating from our senior Courts. We need our future lawyers to leave law school equipped with the tools to succeed in this evolving constitutional and legal landscape.”

---

## Isaac Hikaka

**Barrister, Mills Lane Chambers**

I consider myself as fundamentally a ‘black letter’ lawyer, and the recognition of the place of tikanga Māori in our law is wholly consistent with that approach. As has been recognised by multiple cases, tikanga Māori has been in our society and legal system for a very long time and has a long history of being considered in law. It is not foreign to the common law method, nor is there anything radical about the rise of tikanga Māori, and bringing consideration of tikanga Māori, into judgments.

To some extent the recognition of the role of tikanga is similar to the ways in which the common law over time has recognised the remedies and influence of equity, or of human rights. To my thinking, the teaching of tikanga recognises that development of the law and will without doubt produce better lawyers. A baseline paper that teaches the principles of tikanga will serve to empower students by equipping them with a wider range of tools to advance client interests, and with knowledge of how to appropriately use those tools. The more you have at your disposal as a lawyer, the better you will be at advocating outcomes for your client whilst retaining the integrity of the rule of law.

If all law students have a baseline understanding of tikanga, they will be better equipped to ensure that tikanga (and thus the law) is not misused. Tikanga is not to be considered with a ‘one size fits all’

approach. Concepts that underlie tikanga may be superficially appealing in a range of cases, but they will actually only be properly applicable in a more narrow band. Just as compulsory papers addressing equity highlight to students that the ‘clean hands doctrine’ does not mean anyone who has done an arguable wrong must be denied a remedy, addressing tikanga in law school could prevent the superficial attraction of, say, whanaungatanga being deployed in a similar way.

It is also worth remembering that recognition of customary systems in the common law is not unique to New Zealand. In my practice I act in cases throughout the Pacific where the application of similar concepts is very much a part of the legal system. In the Cook Islands akono’anga Māori operates consistently with the rest of statute and common law. So too does the fa’a Samoa in Samoa. From trust disputes, fiduciary duty questions, electoral

RIGHT: Māmari Stephens (Te Rarawa)

law, environmental assessments and more the recognition of customary practices such as tikanga means the tapestry of the law is woven in richer colours, for results that promote better justice.

Fundamentally, there is more that unites us than divides us as peoples across the world. The development of the recognition of tikanga Māori as a living and active part of the law should not be viewed as a threat to anyone. Rather it will assist all those who are subject to and seek the protection of the rule of law – from individuals to larger entities – and follows a long history of development of the common law.”

---

## The voice of students

New Zealand Law Students’ Association (NZLSA) President Tom Simmonds issued a supporting statement on the topic of compulsory inclusion of Tikanga Māori in legal education. The Association represents the interests of over 9,000 law students and draws on the NZLSA 2023 National Education and Wellbeing survey conducted in collaboration with the College of Law. Survey results confirmed 85% of law students agree that Te Ao Māori and Tikanga Māori play an important role in their (law) degree.

NZLSA states, “Tikanga Māori has been recognised as part of New Zealand law by the Supreme Court and is frequently referred to in Acts of Parliament. Tikanga Māori also

routinely informs modern legal procedure, including in dispute resolution. Given its importance across our legal system, law students need to have a firm grounding in tikanga to be best prepared for legal practice.”

---

## Māmari Stephens

Te Rarawa

Associate Professor of Law,  
Victoria University

“Since 2021 Te Herenga Waka Victoria University has integrated

elements of tikanga Māori law into its teachings to first year law students. Where relevant, tikanga teachings have added a local dimension and context to our law students’ journey. From next year, Te Herenga Waka will deliver the NZCLE directive for law students from Te Kawa a Māui faculty of Māori Studies who hold mana in this sphere.

The objective of including the teachings of tikanga in the LLB curriculum is not to create tikanga experts from law students, far from it, but rather to engage in the development of the





## “Our challenge as educators is to teach our law students with integrity, how to work with tikanga Māori and in a way that does not interfere with the natural process of development of tikanga nor exploit its vulnerability”

curriculum just as our law, society and indeed tikanga develops over time. It is important that our law students be able to adapt to the circumstances that they will find themselves in out of law school. Our job as educators is to equip them with a set of skills to enable them to solve problems. It is not about making content experts out of our students; it is about their learning being relevant to the changing world they will find themselves in.

### Normalising tikanga

This evolutionary process is nothing new to society and Aotearoa New Zealand. We only have to look to the revitalisation of te reo Māori. As a part of that revitalisation te reo Māori is becoming normalised throughout the New Zealand vernacular and also has a clear presence in legislation.

Positive as this trajectory may sound, it is important that our enthusiasm is applied with some caution that protects against distortion, be it of language or in the application of the principles of tikanga. Just as legal English is specialised when compared to English used in the community, so local and regional nuances are

also in play when it comes to te reo Māori and tikanga principles and practices. This enables communities to be left alone to develop their own systems and content in accordance with rangatiratanga.

Just as te reo Māori is becoming normalised across business, organisational, educational and social spheres, Māori law has some facets that have already become normalised in contemporary Aotearoa. A very visible example is the modern and widespread practice of rāhui; incorporating the principles such as mana and tapu. We can understand what a rāhui is and how we should respond to it without having to exploit the hāpu-specific mātauranga used in establishing that rāhui.

### Managing a renaissance

To this effect, we could rightly say tikanga Māori is a system to regulate behaviours and society is experiencing a renaissance like that of te reo Māori. Our challenge as educators is to teach our law students with integrity, how to work with tikanga Māori and in a way that does not interfere with the natural process of development of tikanga nor exploit its vulnerability.

Rāhui also offers an example of where tikanga intersects with contemporary law in Aotearoa through legislation such as the Fisheries Act. There is already a place for Māori law and the general legal system to operate in simpatico and this is what I would describe as a ‘net positive’ for Māori.

### A spiritual base

Like every legal system worth its salt, there is a way of dealing with proportionality, reasonableness and certainty of the law. Tikanga is no exception to holding these attributes. In addition, if you scratch the surface of any legal system, you will also find a spiritual base of connection; the most familiar of which might be the law of negligence whose neighbour principle is straight out of the New Testament. We might also look to the development of human rights law that assumes the inherent value of a human soul.

What we are seeing with the development of tikanga as a dedicated, core subject within the LLB degree curriculum is a continuation of our learning journey along the same lines as the recent changes to the secondary school history curriculum.

## The recognition of equity

What this move does not do is in any way threaten the unitary state, but rather, develop equity as a mediator of the common law. This is already being recognised by our senior courts with the most notable example being in *Ellis*<sup>4</sup> where the concept of mana was explored and held as being a value for all of New Zealand. Likewise, we already see the exercise of mana in employment law where the very principle of contracting a good faith relationship means upholding the mana of each party and respecting the tapu of individuals.

## A vision for the future

Ultimately, I would want to see Māori becoming more confident and the use of our legal systems being implemented across the network of 1500 marae sites throughout the country. This dares us to imagine a future legal environment that integrates tikanga Māori as being normal, practical and functional in its process. The work being done now is laying the building blocks of our future.”

## The Bar Association

The New Zealand Bar Association | Ngā Ahorangi Motuhake o te Ture, supports legal education for law students and lawyers in Te Ao Māori, including tikanga.

In July 2021, our Association was consulted by the New Zealand

Council of Legal Education on the inclusion of teaching on Tikanga Māori in the legal education curriculum. We expressed our support for this at the time. We continue to do so.

We also support the views of Te Hunga Rōia Māori o Aotearoa | The Māori Law Society, about the necessity for this addition to law students’ legal education.

Graduates of our law schools need to have a firm grounding in the statutory frameworks and case law that incorporate tikanga. Tikanga is also recognised as an important area of continuing professional development for lawyers in practice and this training is well attended.

We encourage interested lawyers and members of the public to read the September 2023 Study Paper He Poutama (NZLC SP24) from the Law Commission, Te Aka Matua o te Ture, produced under the leadership of the Hon Justice Whata, Commissioner of the Law Commission.

## The final word

Ko te manu e kai ana i te miro, nōna te ngahere.

Ko te manu e kai ana i te mātauranga, nōna te ao.

*The bird that eats the miro berry owns the forest.*

*The bird that feasts on knowledge owns the world. ■*

1. The Regulations, made by the New Zealand Council of Legal Education (the Council) under section 278 of the Lawyers and Conveyancers Act 2006, will apply from 1 January 2025.
2. New Zealand Law Students Association 2023 National Education and Wellbeing Survey - 85% of law students consider the study of Te Ao Māori and Tikanga Māori to play an important role in their degree.
3. [188] So, to return to the starting point, whatever the cause of action, the trial court will need to grapple with the fact that Mr Smith purports to bring proceedings not merely as an alleged proprietor who has suffered loss, but as a kaitiaki acting on behalf of the whenua, wai and moana-distinct entities in their own right. And it must consider some tikanga conceptions of loss that are neither physical nor economic. In other words, addressing and assessing matters of tikanga simply cannot be avoided.
4. *Ellis v R* [2022] NZSC 114

## Supporting organisations

The following organisations have publicly expressed support for tikanga as a compulsory subject:

- Arbitrators' and Mediators' Institute of New Zealand (AMINZ)
- Asian Legal Network
- Auckland Women Lawyers' Association
- Criminal Bar Association
- Defence Lawyers Association of New Zealand
- Equal Justice Project
- New Zealand Bar Association | Ngā Ahorangi Motuhake o te Ture (NZBA)
- New Zealand Law Society Te Kāhui Ture o Aotearoa
- New Zealand Law Students' Association
- Otago Women's Law Society
- Pacific Lawyers Association
- Te Hunga Rōia o Aotearoa
- Wellington Women Lawyers' Association



# Law reform and advocacy update

A steady rhythm of bills and policy consultations has returned, following the 2023 election and first 100 days of the new Government, during which time there were few opportunities for consultation. The Law Society, assisted by its law reform committees and sections, has submitted on several high-profile bills and appeared before a number of select committees.

Criminal law reform has been a primary feature of the legislative agenda in recent months. The Law Society's Criminal Law Committee members have given significant time and expertise to assist with the preparation of objective and reasoned submissions, in an effort to address serious concerns about this legislation. Submissions have included:

- The Firearms Prohibitions Orders Legislation Amendment Bill. This Bill will amend the existing Firearm Prohibitions Orders (FPO) regime, extending the groups of persons to whom an FPO may be applied, and introducing broad warrantless search powers for Police to check compliance with an FPO. That search power requires only that Police suspect a person is subject to an FPO; it does not require reasonable grounds to believe that an FPO is being breached. It also permits the warrantless search of any premises where that individual is. The Law Society has recommended further evidence on the operation of the existing regime is sought before proceeding with the Bill, as it is not yet known whether FPOs have proven effective.
- A member's bill, the Parole (Mandatory Completion of Rehabilitative Programmes) Amendment Bill. This Bill would require that individuals in a corrections facility complete rehabilitation programmes identified in their management plan before they can be considered for parole. The Law Society has recommended the Bill does not proceed, noting that, in practice, it is already the case that an offender will not be released if suitable rehabilitative programmes have not been completed. The Bill would allow no discretion for the Parole Board, and there is no obligation on the Department of Corrections to ensure the timely availability of rehabilitative programmes. The Law Society has also raised concerns about the significant power this gives Corrections staff who prepare the management plan, not all of whom are best-placed to make such decisions. There is not currently adequate access to such programmes across the prison estate, and the Bill is likely to result in extended prison sentences.
- The Gangs Legislation Amendment Bill, which proposes to introduce dispersal notices, non-consorting orders, a ban on gang patches in public, and gang membership as an aggravating factor in sentencing. The Law Society considers this Bill should not proceed, and has raised numerous concerns, including the extent to which the Bill infringes on rights protected by the New Zealand Bill of Rights Act 1990, and evidence from Australian examples suggesting such measures are ineffective.

## Fast-track Approvals Bill

The Law Society was also one of over 8000 submitters on the Fast-track Approvals Bill, which proposes a fast-track process for the consenting of projects of national and regional significance. In a clause-by-clause analysis, the Law Society offered recommendations to improve the clarity of drafting. However, concerns were also raised about the Bill's disregard for good regulatory practice and inconsistency with constitutional norms. The process set out in the Bill concentrates significant power in three Ministers who, despite appointing an Expert Panel to consider the application, are not required to follow the recommendations of that panel. The process also takes precedence over

## “The Cost of Practice report shows that in the past three years alone, the operational costs of running a legal practice have increased by 15.3% each year”

existing legislative and regulatory requirements, such as those under the Resource Management Act and Conservation Act. Public consultation is not required, despite projects being, by definition, of national and regional significance. The Law Society has made recommendations to address these concerns.

In addition, the Law Society has submitted on a range of non-legislative consultations, including:

- A Ministry of Justice consultation on the use of legislative clauses exempting classes of information from the jurisdiction of the Official Information Act 1982.
- The Draft Voluntary Code of Conduct for Political Lobbyists, developed by the Ministry of Justice. The Law Society has noted that defining a political lobbyist as “anyone trying to influence government policy, process or law” is so broad as to potentially capture students writing to their local MP.
- A draft Biometrics Code developed by the Office of the Privacy Commissioner, which proposes new rules for agencies that collect or use biometric information for biometric processing.
- Contributing to the OECD’s fourth phase of monitoring the implementation of the OECD

Anti-Bribery Convention in New Zealand.

- A draft revision of the Solicitor General’s Prosecution Guidelines.

### Advocacy

#### Courthouse health and safety

We continue to engage with the Ministry of Justice on issues and concerns about courthouses across the country and work underway to renovate or replace certain courthouse buildings. The Law Society regularly liaises with the Ministry of Justice about health, safety and security concerns relating to specific courts, and has recently engaged on the content of health and safety inductions. Courthouse issues can be raised with the Law Society either via your local branch, or by contacting the Law Reform and Advocacy Advisor responsible for the Courthouse Committee. Details are available on our website.

#### Advising primary caregiver clients facing custodial sentences

In 2023, driven by concern about the impacts of parental incarceration and the risk associated with incarceration of a sole caregiver, the judiciary established a working group alongside members of the profession and relevant government agencies.

Her Honour Justice Susan Thomas, Fiona Guy Kidd KC and Stacey Shorthall subsequently presented a webinar on the ‘Impact of Parental Incarceration on Children.’ The webinar aimed to increase lawyers’ understanding of the effects of parental incarceration, and how this can be raised throughout the process from charge through to sentencing.

To further understanding, the Department of Corrections has provided the Law Society with a copy of its practice guidance, *Working with Caregivers of Dependent Children or Vulnerable Adults at the PAC Stage*. This practice guidance sets out Corrections’ role in obtaining information about dependent children and providing it to the Court, and the points at which a report of concern *must* be made to Oranga Tamariki.

At the helpful suggestion of senior defence counsel, the Law Society has pulled together these resources to set out key points for the consideration of defence counsel, and how this might affect the advice given to clients. This information, as well as a copy of the Corrections practice guidance and a link to a recording of the webinar, can be found in the Practice Briefings section of the Law Society’s website.

#### Cost of Practice report released

In March, the Law Society released its report on the costs of practising

law in Aotearoa New Zealand today. Undertaken with KPMG, the report outlines the operational costs and challenges associated with running a legal practice, as well as the costs and challenges specific to legal aid providers. The report is based on financial data provided by practices, across a range of practice sizes and types, for the past three years.

The report shows that in the past three years alone, the operational costs of running a legal practice have increased by 15.3% each year. The ratio of billable to non-billable hours has reduced, and practices are facing increasing insurance, technology and compliance costs, as well as facing significant challenges in attracting and retaining suitably qualified and experienced staff.

Legal aid-specific results show that administration and client needs – in conjunction with inadequate remuneration and higher overheads – are reducing the productivity of legal aid lawyers and exacerbating operational challenges. Non-legal aid providers recover 61% of their time, on average 1,031 hours per year. For

legal aid providers this drops to 53.3% and 807 hours per year.

The research will be used to support the Law Society's ongoing advocacy. Already, the Law Society has raised the legal aid findings with the Legal Services Commissioner. The report raises several areas of improvement that would be meaningful to legal aid providers, and which should be capable of progression irrespective of budgetary constraints.

The Law Society has also raised with the Ministry of Justice the evidence outlining compliance challenges. Around 14% of practices reported regulatory compliance as their primary operational challenge, with the majority of those citing AML/CFT. The impact of AML/CFT was also raised more generally by respondents throughout the survey, including when asked what could make the biggest difference to the operation of their practice. The Law Society has commenced work to advocate for changes that can maintain the integrity of the scheme while reducing the burden on practices.

## The Law Society as Public Interest Intervenor

The Law Society is currently intervening in three proceedings:

- *Spiga v MW*, in the Employment Court. This case relates to the application of non-publication orders, where there has been a breach of settlement agreement. The Law Society is jointly intervening with the New Zealand Bar Association (NZBA), as the case is likely to address non-publication orders more broadly in the employment jurisdiction.
- *Hawkins v Te Hei*, in the Court of Appeal. This case concerns the award of exemplary damages, and damages for emotional harm and/or bereavement, to an immediate family member of a person who dies because of an intentional tort.
- A joint intervention with the NZBA and Law Association, in a High Court case relating to the Family Court's power to appoint standby counsel and counsel to assist. ■



- Latest immigration updates
- Support for immigration lawyers and advisers
- Immigration Reference Group (IRG). Regular clarification on policy questions
- CPD
- Join now
- [www.nzami.co.nz](http://www.nzami.co.nz)



# Behind the scenes of the Standards Committees

**I**n the 2022/23 year, the Law Society’s Lawyers Complaints Service (LCS) received approximately 950 complaints about lawyers, law firms and non-lawyer employees. Working with LCS staff as a key part of the complaints process are over 170 lawyers and lay members who volunteer hours of their time each month as members of Lawyers’ Standards Committees (Committees).

Independent of the Law Society, Committees are the decision makers of complaints (or own motion investigations). Their members tirelessly devote their time, expertise and experience to uphold the reputation and credibility of the profession.

The lawyer members’ understanding of the law, the pressures faced by lawyers and the application of the Lawyers and Conveyancers Act 2006, and associated rules, in their own practice contribute to the decision-making process.

To shine a light on this typically unseen group of volunteers, *LawTalk* talks to three Committee lawyer members; Isaac Hikaka, Lynne Van and Marion Anderson-Ulu, and the author of the Standards Committees Practice Note and former Committee member, Paul Collins.

## Accurate analysis of the facts blended with humanity

An experienced lawyer in professional discipline and regulation within the legal profession, Paul Collins served on a Committee for the full nine-year tenure. Paul was instrumental in compiling the Practice Note on the functions and operations of Standards Committees.

“An informed perspective of Standards Committees and the work they do involves respect for the law, the institutions of justice, and the need to maintain professional standards and credibility with clients and other consumers of legal services.

“One of the key purposes of Standards Committees is to give credibility and confidence to the profession and the public.

“The Standards Committees achieve that by making decisions which reflect thorough and accurate analysis of the facts, the legal issues, and the applicable rules or principles of professional responsibility, all blended with common sense, balance, and humanity,” Paul says.

Although occasionally Committees can be seen as the interfering police officer, Paul thinks it is more a reflection of the discomfort or distress at being investigated.

“In my experience, people serving on Standards Committees are hard-working, committed, and motivated to serve the profession and the public.

“It will immensely assist in achieving the best outcome if the lawyer under investigation has able representation, ensuring objectivity and sound knowledge of the jurisdiction.”

## An understanding from the other side

For family lawyer Marion Anderson-Ulu who joined a Committee in May last year, her personal experience has given her an understanding from the other side.

“I was working at a law firm at the time when a disgruntled client complained about the outcome and fees to my supervisor. Even though the complaint was resolved internally and ended amicably, going through it was stressful and daunting.

“However, I’ve since worked to not create any potential for complaints where possible. For example, if you find yourself in the heat of the moment or in an email war, pause and think first to ensure your conduct and communications do not bring the profession into disrepute. We are in a privileged situation, and



we've got to take the responsibility seriously."

Marion would like to encourage lawyers to take heart in the process and be reassured that Committees act neutrally and appreciate the pressure.

"The experience has given me compassion and understanding as a Standards Committee member. It's likely that we've all been complained about, whether it's done formally or informally at some point in our career.

"The Standards Committees are here to look at the situation from a neutral standpoint to understand if there is any real substance in the complaint. Ultimately, it's a process, and if lawyers can respond to it promptly, it will make the process much easier and smoother."

### Common themes and a learning approach to complaints

A commercial litigator at Anthony Harper, Lynne Van is in her second

term on a Committee. She echoes that the likelihood of a lawyer never receiving any form of complaint is pretty slim if they've practised long enough.

"As a lawyer, you automatically sign up to the complaint process as part of the job. Even if you think you've done nothing wrong, it's important to respect the process and cooperate.

"Yes, it can be extremely difficult to navigate. Nevertheless, if you see everything as a learning process, it stops becoming a reason to be nervous about. You are then able to turn it into an opportunity to understand things through a different lens."

Being on a Committee has brought Lynne a real revelation about the common themes in complaints.

"Often the complaints we see at the Standards Committee level can be grouped into three categories – service and carriage of the file that may involve the technical aspects and legal knowledge applied; conduct and behaviour of the practitioner (which may also include complaints

LEFT: Paul Collins

ABOVE: Marion Anderson-Ulu

about conflicts of interest and commonly, communication); and fees.

"On occasion, there may be elements in the complaint that may warrant further investigation, even if it's not the initial focus, to ensure the assessment is fair, accurate and balanced.

"It has been eye-opening to see the range of complaints coming through. Inherently, you know what best practices look like, but it's a constant reminder of the standards that we collectively uphold as a profession."

### A privilege justified by responsibility

Having been a Committee member for three years, civil litigator Isaac Hikaka says that Committees play a vital role in both the profession and society.

"The work of the Standards Committees is directly connected to

RIGHT: Isaac Hikaka

FAR RIGHT: Lynne Van

how people view lawyers, and thus how people view the law, so people can have confidence in the rule of law and those who give it effect.

“Lawyers hold a very privileged position because we know how the system operates. One of the ways we can justify that privilege is by working to make sure the system works as well as it can.

“Unfortunately, you can’t avoid complaints; that is one of the realities of the legal profession. People needing legal services, especially for litigation matters, often have to deal with an unfamiliar system under stress. Sometimes the lawyer can bear the brunt of that as we provide the interface between the system and the people using that system.

“A lot of complaints stem from clients feeling a lack of communication or care. The more a lawyer can do to enhance transparency and make the client feel well supported, the better.”

### Preparation and discussion behind the scenes

Committees meet regularly from fortnightly to six-weekly to consider complaints. Members are required to complete some reading and preparation prior to each meeting, sometimes with bundles of more than 1,000 pages to go through before a meeting.

For Isaac, it’s important that he reads all the pages, not just the ones he may have been assigned to take the lead on, so he’s able to have input on all matters. “I don’t take short cuts.

Complaints can have a significant impact on both a lawyer’s practice and the complainant. They both deserve me reading the whole file.”

“Sometimes what appears to be really concerning on the initial reading of the complaint turns out not to be as concerning in full context, but it can also work the other way,” Isaac adds. “The discussion process is collegial and robust. Standards Committee members tend to independently come to the same or similar views about matters. I think that speaks to the shared values and belief in the rules of professional conduct and the standards of the profession.”

It’s not unusual that a discussion can develop into debate, but the different views are always discussed collectively. The togetherness in the working process has given Marion comfort in knowing that she’s not on her own.

“If there are any bumps in the meeting, we massage it out by discussion collectively. You are not judged when raising opposing views,” Marion says. “No one is an island, and nothing is solely rested on your shoulder. There is a strong sense of togetherness in our collaboration.”

The involvement of lay members is also invaluable in bridging the gaps between both worlds. Each Committee comprises up to seven lawyer members and two lay



members from the public with good standing in the community.

Lynne has found lay members’ contribution very useful, “Through lay members’ perspectives, we are able to better understand how the public and consumers might perceive things which sometimes can be the missing piece in the picture.”

### Rewarding and stimulating

Despite the time commitment, it’s unanimously agreed that the work of Committees is incredibly rewarding and stimulating.

Paul recalls, “One of the most rewarding aspects of working on a Standards Committee was the breadth of subject matter, both in terms of legal areas but also the infinitely interesting field of human behaviour. Unless the Standards Committee is designated to a particular area of the law, or category of complaint, you can expect to





**“Being on the Committee exposes you to how the law operates in a vast range of areas that you might not otherwise encounter. The more you can see the law operating, the more tools you have in your toolbox”**

encounter anything that the law covers – every aspect of human and institutional endeavour.”

The ability to give back to the profession and the people it serves has been a driving force for Isaac, Lynne and Marion. While volunteering may appear to only benefit others on the surface, it also has a positive influence on your professional development and practice in general.

“Being on the Committee exposes you to how the law operates in a vast range of areas that you might not otherwise encounter. The more you can see the law operating, the more tools you have in your toolbox that you can apply to your own practice to provide advice to your own clients.” Isaac says.

Prior to Lynne’s involvement with the Committee, she was appointed as a cost assessor to assist a Committee in looking into a complaint on fees. It was a one-off voluntary role, but it gave her a glimpse of the nature of work. Practising in a large law firm, Lynne would highly recommend senior associates who are looking to step up in their career to not shy away

from putting themselves forward. “Joining a Standards Committee is a great way to understand the realities of business practice and how to be a better lawyer.”

As a relatively new Committee member, Marion understands that putting yourself out may not be easy at first but one thing she knows for sure, “I haven’t regretted it, and actually I’ve enjoyed being part of it.” Marion welcomes the opportunities to chat about the work of the Committees with anyone who may be interested.

### Joining a Standards Committee

There are 22 Committees including two Early Resolution Service Committees across the country that work hard for the preservation and advancement of the profession. The Early Resolution Service Committees manage complaints which are unlikely to require a formal disciplinary response.

The Law Society advertises vacancies when they become available. Under r 15(1) of the Lawyers and Conveyancers Act (Lawyers:

Complaints Service and Standards Committees) Regulations, a potential lawyer candidate needs to have a current practising certificate and have practised for a period (or periods) aggregating five years or more.

An essential facet of the selection process is making sure that the Committees are dynamic and encompass diversity of thinking, practice areas, and backgrounds.

“There is a real danger of narrow or ill-informed thinking if the entire Committee comes from the same practice area and cultural profile, not reflecting the community from which the issues are drawn.

“Serving on a Standards Committee is a way any reasonably experienced lawyer can contribute to the quality and standing of the profession. If a problem is perceived in this area, joining a Standards Committee makes you a part of the solution.”

If you’d like to express interest in being a Committee member or would like to know more about how you can get involved, please email [complaints@lawsociety.org.nz](mailto:complaints@lawsociety.org.nz) ■

RIGHT: Douglas Wilson

FAR RIGHT: Sir Terence Arnold KC

# Douglas Wilson Advocacy Scholarship Trust

## *A legacy to benefit practitioners*

As shared with *LawTalk* by friend and former colleague Sir Terence Arnold KC

### Litigation skills training

Traditionally, litigators were expected to learn their skills “on the job” – by observing experienced litigators, by trial and error in running cases and so on. While that produced some excellent litigators, it was haphazard, stressful and did not give everyone the opportunity to reach their potential.

In 1971, the National Institute of Trial Lawyers in the US (NITA) developed a rigorous “learning by doing” method of enabling lawyers to learn trial skills. That method involved practising specific skills in a realistic setting with immediate constructive feedback.

The New Zealand Litigation Skills Programme utilises the NITA method. In this article, I will explain the origin of the Programme and describe the Douglas Wilson Advocacy Scholarship Trust (‘the Trust’) and its work. This is against the background that the Trust is seeking further financial support to enable it to continue to help practitioners seeking to improve their skills.

### The beginning

I first met Doug Wilson when I joined Chapman Tripp as a litigation solicitor in September 1982. Doug, also a litigator, had started at the firm the previous year. We soon became friends as well as colleagues.

In late 1984, Doug participated in a NITA course in Denver, Colorado. This was a residential course which ran for a week or so. Participants in the course were given case files and were required to perform as they would in court – to present opening and closing submissions, to lead evidence, and to cross-examine. Their performances were critiqued by NITA-trained faculty members, all experienced litigators, in a way that was focussed, example-based and, most importantly, constructive. Their performances were also videotaped, both for further review and for future reference. The course ended with mock trials, in which the participants acted as counsel.

The theory underlying the NITA method is that litigation skills are similar to, say, sporting skills. No-one would expect to become proficient at playing tennis or golf simply by watching other people play, or by going out onto the court or course and “giving it a go”.

Rather, it requires learning the fundamentals and then practising regularly, desirably under the guidance of a sympathetic coach. The same is true of litigation skills – they can be developed and improved through an understanding of the fundamentals and practising the skills under the guidance of sympathetic coaches.

At that time I had taken six months leave from Chapman Tripp and was a Visiting Professor at the University of Calgary Law School. My main task was to run a Criminal Practicum. But I was also required to be part of the faculty for a week-long skills-based trial advocacy programme for final year students, which was run along NITA lines. For me, that was an intense learning experience.

After Doug had completed the NITA course in Colorado, he and Ann Louise visited us in Calgary for a few days. One evening, Doug and I began to share our impressions of the NITA teaching method and discuss establishing a NITA-type programme in New Zealand. While we both thought it would be a great idea, I was doubtful that it would ever happen – that turned out to be a serious under-estimate of Doug’s determination!



When I returned to Chapman Tripp from Calgary in May 1985, Doug was well underway with planning. I found myself committed to two projects. One was to help Doug prepare and present a New Zealand Law Society “roadshow” on basic civil advocacy – “How to present a plaintiff’s case in the District Court”. This was a four-hour workshop utilising the “learning by doing” technique. We ultimately presented the seminar in a dozen centres round the country in mid-1986, as well as in Fiji. Overall, the response was excellent, and the course materials were subsequently included in the procedure section of Butterworths *District Courts Practice*.

The other project was to be involved in establishing and running a week-long NITA-based litigation skills programme. Doug had convinced Annette Black of the course’s value, and she helped persuade the Law Society to support it. She became heavily involved in the planning of the programme and gave invaluable assistance. Grant Macdonald and the late Greg Everard, both of whom had undertaken NITA courses in the US, agreed to be involved.

### The New Zealand Law Society Litigation Skills Programme

The project came to fruition in August 1986, when the first New Zealand Law Society Litigation Skills programme was held at the Porirua Police College. There were 48 participants and 21 faculty.

We were fortunate that Joe Jaudon, one of NITA’s regional directors, agreed to come to New Zealand to direct that first programme. In the weekend before the course got underway, Joe explained the NITA technique to faculty members and trained them in its use. He was truly inspirational. Sir Thomas Eichelbaum, then a High Court Judge, and Sir Anand Satyanand, then a District Court Judge, took on the role of team leaders. This boosted the credibility of the programme, as did the quality of the practitioners who agreed to be faculty members. Sir Robin Cooke was one of the judges for the end-of-course mock trials.

Although the course was hard work for everyone involved, it was well received and was judged a success.

Over the ensuing years, the course has evolved and improved, and the number of participants per course has increased. But the essential formula remains, and that is what makes the course successful.

### A New Zealand advocacy text

Besides the case materials, we needed a basic text dealing with trial preparation and advocacy for the participants to use. At the time, there was no New Zealand text, so we used the Canadian edition of an American text – Mauet’s *Fundamentals of Trial Techniques*. Although that text was useful, we decided that we really needed a text with a New Zealand focus. After much correspondence with Judge Mauet and the publishers, Doug obtained the necessary agreements, and we began work on a New Zealand edition of *Mauet*. Sir Thomas Eichelbaum agreed to be the editor-in-chief, with Doug and me as co-editors.

We were fortunate to gather an excellent group of contributors, and it was very satisfying (and



a great relief) to see the book published in 1989. Subsequently, in 2000, the Law Society took over the publication of a wholly New Zealand book, *Introduction to Advocacy*, with Hon J Bruce Robertson as Editor-in-Chief.

### The Douglas Wilson Advocacy Scholarship Trust

Residential litigation skills courses have many benefits, but they are expensive to run. This means that participants must pay significant course fees. While many participants were supported by their firms, we were concerned that the cost of the course would be beyond the means of some deserving young lawyers. Doug took the initiative in the establishment of what was originally called the New Zealand Law Society Advocacy Scholarship Trust. The idea was to provide scholarship assistance to young lawyers who could not otherwise afford to attend programmes like this.

The Trust was established in 1987. Initially, funding came from firms and barristers, particularly senior barristers. However, when the New Zealand edition of *Mauet* was published, the contributors' royalties were paid to the Law Society and ultimately became part of the Trust's income stream.

Doug died from leukaemia on 14 September 1990, aged 38. That was a great loss to the New Zealand legal community; for me, it was the loss as well of a close colleague and great friend. After Doug's death, the name of the Trust was changed to the Douglas Wilson Advocacy Scholarship Trust.

### Looking to the future

For the last 37 years, the Trust has provided financial support to participants in the Litigation Skills Programme and other courses supporting more than 600 lawyers with over \$700,000 in grants (with records only going back to 2009 an estimate has been made on the previous 20 years). This financial assistance enables participants to develop their practical skills and increase their understanding so that they can better serve the interests of their clients and communities.

The Trustees consider a range of matters in making grants. Obviously, the financial position of the applicant is a critical consideration. The Trust expects practitioners to invest in the development of their skills personally if that is feasible. Equally, the Trust expects employers to meet the costs involved of enhancing the skills of their employees where possible. But within these and other parameters, there are many deserving applications, and the Trustees often face difficult choices.

The need for skills-based training courses continues. The Litigation Skills Programme and similar courses provide opportunities for less experienced practitioners to enhance their skills and expertise in settings that are realistic, constructive, and supportive. The Trust has been important in enabling practitioners who do not have access to the necessary financial resources, whether personally or through their employers, to participate in such training programmes. In doing this, the

Trustees believe that the Trust has been an important force for good.

While the Law Society has been generous in providing administrative support and assistance and the Trust has had the benefit of the royalties from *Introduction to Advocacy*, the Trust now needs further funding to enable its work to continue. We are seeking support from those in the legal community in mid to large-size law firms who receive tremendous benefit from well trained staff who attend the litigation skills courses as well as senior members of the Bar who have an interest in the development of junior counsel. ■

To make a donation: [givealittle.co.nz/org/dwast](http://givealittle.co.nz/org/dwast)

The Law Society was one of the original capital contributors when the Trust was established in 1987. The Law Society has an ongoing power to appoint (and remove) trustees of the Trust.

To make a tax-deductible donation please contact the Douglas Wilson Board Secretary [dwast@lawsociety.org.nz](mailto:dwast@lawsociety.org.nz) with your name, company name (if applicable), address, and donation amount to receive payment instructions, and a tax invoice receipt (to be issued on receipt of payment).

As a responsible organisation we advise you to be aware of the risk of possible scams; any communication will come from this specific email address only.

We will never ask for personal details by phone or email.

# Online CPD – *learning on demand*

## You choose from **3** easy options

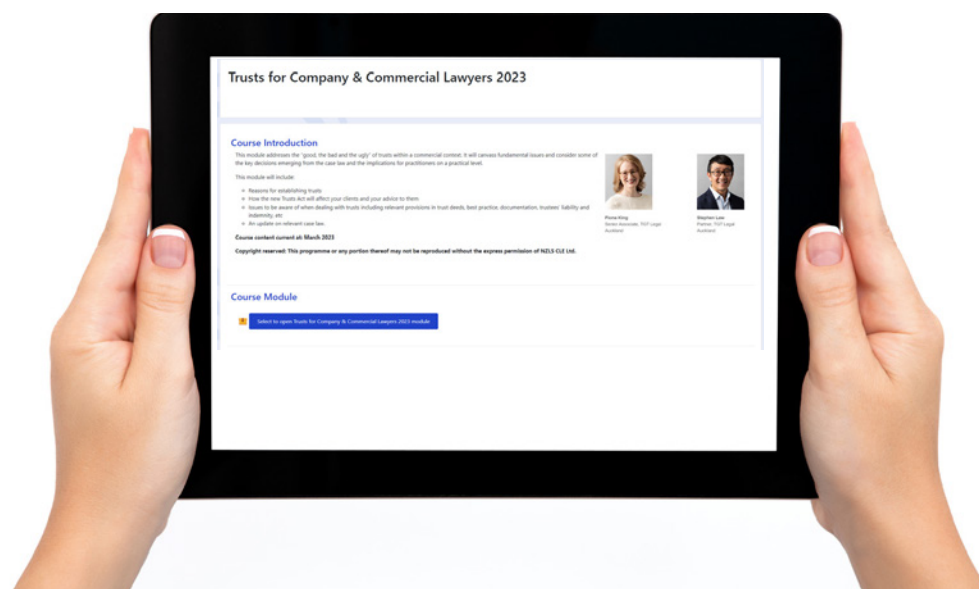
- Instant access modules
- Pre-selected packages
- Pick 'N' mix packages – your choice

## Then enjoy **5** great benefits

- Presented by subject matter experts
- Extensive range of practice areas
- Convenient 24/7 access – you choose when and where
- Learn at your own pace
- Bonus electronic booklet & powerpoints

## Get your CPD points now!

By visiting [www.lawyerseducation.co.nz](http://www.lawyerseducation.co.nz)



# Take control of your KiwiSaver investments

With the KiwiWRAP KiwiSaver Scheme you can work with your adviser to invest in shares and managed funds from around the world. Choose from over **400 investment options**, including Apple, Vanguard, Tesla, index funds, ETFs and so many more.

It's time to get advice and treat your KiwiSaver as an investment.

**Now you can.**



Find an accredited adviser at [www.kiwiwrap.co.nz](http://www.kiwiwrap.co.nz)



[www.kiwiwrap.co.nz](http://www.kiwiwrap.co.nz) | 0800 KIWI WRAP (0800 5494 9727)

Designed for investors with a balance of \$50,000 and above.

Available only through a KiwiWRAP accredited adviser.

Consilium NZ Limited is the issuer and manager of the KiwiWRAP KiwiSaver Scheme. The Product Disclosure Statement and a full list of investment options for the KiwiWRAP KiwiSaver Scheme is available at [www.kiwiwrap.co.nz](http://www.kiwiwrap.co.nz).  
\*KiwiSaver Market Review 2023 (Melville Jessup Weaver).

**KiwiWRAP**  
KiwiSaver Scheme