THIS WEEK'S ARTICLES

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ADLS
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LawNews

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THE COURTS/DIVERSITY

What makes a top judicial leader?

By Jenni McManus

After its first attempt to stage a conference in Auckland 12 months ago was thwarted by Covid-19, the International Association of Women Judges finally got its event off the ground last weekend.

The compromise was virtual, rather than face-to-face, participation for about 1000 international attendees and speakers from some 90 jurisdictions, while several hundred New Zealand judges, senior members of the profession and selected law students gathered in Auckland for the event.

In one of the keynote sessions, Family Court Judge Mary O'Dwyer led a question-and-answer segment where five senior judges were asked about the obstacles they'd encountered on their way to the top, and how they were championing diversity on their respective benches.

Each, Judge O'Dwyer said, was a trailblazer for women in her profession and had served on the highest court in her jurisdiction.

Photo by Art Wolfe / Getty Images

Leaders need courage and the ability to create a vision

Can you tell us about your personal journey and the barriers you faced?

Baroness Brenda Hale: former President of the Supreme Court of the United Kingdom

I come from a common law jurisdiction where the higher judiciary are appointed after they've done something else with their legal lives. Usually, they've been barristers but I wasn't a barrister for any length of time; I was an academic lawyer and then a law reformer. So, it was something of a surprise when I became a High Court judge. I was the first, I think, to have made my career in that way, rather than as a top advocate.

So that was a challenge – not only to do the job but also to persuade people that I could do the job. Then I moved on from the High Court to the Court of Appeal and to what was then the top court in the United Kingdom, the House of Lords, which was a very weird experience because this was a committee in the upper house of our Parliament rather than a separate court and it was full of all sorts of formalities and strange procedures that no other court would have to put up with.

And, of course, we were surrounded by parliamentarians which didn't feel quite right for

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A leader must create a vision for the court. They must show there is hope for change – and I think that's an essential and different element for a leader. They must give people the belief that change is possible

What makes a top judicial leader?

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a court. So, I was only too delighted when they decided to set up a separate Supreme Court of the United Kingdom and we could get into our own building and start behaving like a proper court.

Chief Justice Dame Helen Winkelmann: Chief Justice of New Zealand

I moved very swiftly to the role of partner in a commercial law firm. I was partner by the age of 25 so in some ways I don't feel that I am a trailblazer because it's obvious that other people had laid the pathway before me.

Here I must name-check Dame Augusta Wallace (the first woman District Court judge), Dame Silvia Cartwright (first woman Chief District Court judge and first woman to the High Court), Dame Sian Elias (former Chief Justice) and Dame Judith Potter (first woman President of the NZ Law Society). So, I feel that they paved the way for me and it was a reasonably easy pathway in that regard.

From my first time in a law firm, I began studying the leadership habits of people because I found it interesting. It seemed to me that a lot of men made their way to leadership roles simply because they were managing, rather than leading. When I went to the judiciary, I observed the same kind of behaviours.

I view this question as being about leadership rather than my own journey so I want to reflect on a few things about leadership now that I've been a judicial leader in one form or another for a fair part of my life.

I think a lot of the characteristics that make a good judicial leader are also the characteristics you need to be a good judge. You need the courage to do the right thing and for the right reason. There really isn't any room for narcissism in that decision-making process. It's quite easy to get narcissism mixed up into it and that's not right.

You need a concept of leadership through service, and I also think a point of difference between leadership and judicial service is that a leader must create a vision for the court. They must show that there is hope for change – and I think that's an essential and different element for a leader. They must give people the belief that change is possible.

I think I got picked out for leadership roles because I was always the awkward person in the room, and I also have a tendency to question why things are as they are. And when it comes to the judiciary, I think most of us have that initial reaction… and I think people should retain their faculties of questioning and challenge.

> I had a good understanding by the time I came into the law about what it was to exist on the margins of society and what it was to be economically powerless and knowledge-deficient to engage with the levers of power

Justice Mandisa Maya: President of the Supreme Court of South Africa

I was born in South Africa to poor but hard-working schoolteachers with meagre salaries…. The challenges along the way are the same I think for all women – the discrimination, being slighted and your views not given due weight until they are expressed by a male counterpart, and I was not only a woman but also black.

Those challenges followed on from student days to the profession as a practitioner and then to the bench… [but] if you stand your ground and do your work diligently and produce good results … your detractors will have no choice but to recognise your efforts.

Judge Anna Blackburne-Rigsby: Chief Judge of the District of Columbia Court of Appeal

I was born in Washington DC in the early 1960s and at that time Washington DC was legally segregated – in other words, by law black Americans did not have equal access or equal rights. You couldn't go to certain parts of the town, you couldn't go into stores to try on clothes, you couldn't eat in certain restaurants by law. So, legalised discrimination based on race was still alive and well in the United States at the time that I was born.

That has shaped so much of who I am and why the law is so important to me. My mother grew up in North Carolina, a southern state that had legalised discrimination laws which prohibited certain actions and opportunities for black people. My father's family emigrated to the US from Jamaica and those two forces shaped the lives of my sisters and me because my parents were very active in the US civil rights movement in the late 1950s and early 1960s that changed the laws in the United States and ended some of the legalised discrimination based on race.

My sisters and I were taught that education, service to the community and giving back, working equally for all people in the United States and ensuring the US lived up to its promise of equal justice under law [were] the forces that prompted me to want to be a lawyer first, and ultimately led me to the bench.

After law school, I worked at a large corporate law firm where, out of 350 attorneys, I was one of only four black attorneys. After that I worked in the Attorney-General's office in the District of Columbia, then went to the bench at the fairly young age of 35 to become a magistrate judge. I then became an associate judge, or a full trial judge. In the District of Columbia, as it is not a state, the judges are appointed by the President of the United States and confirmed by the Senate. So, I was confirmed by a Democratic President to the trial court and when I joined our appellate court (our highest local court) I was nominated by a Republican judge.

I've been in my current position for 15 years and have just started by second term as chief judge.

Faith, family and fortitude – I call those my 'three Fs' – are the things that have sustained me. By fortitude, I mean 'grit'. Challenges along the way, as

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LawNews

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LITIGATION/CIVIL PROCEDURE/THE COURTS

Rules Committee proposes major civil court reform

By Justice Francis Cooke

After extensive consultation, and as part of its 'once-in-a-generation' review of the rules of the court, the Rules Committee has released a further consultation document, outlining sweeping reforms designed to improve access to civil justice.

The proposals respond to concerns expressed by more than 40 submitters, including ADLS, to an initial consultation paper in 2020 and were foreshadowed by **Chief Justice Dame Helen Winkelmann** in her remarks at an ADLS breakfast on 18 March.

Submitters shared the committee's concern that a justice gap has been slow-burning for at least a generation. This was seen to stem, in part, from the costs associated with complying with procedural requirements. Many submitters felt these were disproportionate in many proceedings.

The Principal Judge will be charged with restoring the civil registry expertise of the District Court, seen by submitters as having been lost since 2009

Submitters also identified a "maximalist" culture among litigators. This means counsel do not take advantage of the existing potential to tailor procedures to the requirements of justice. Submitters were clear that without culture change, rules reform will do little to close the justice gap.

The committee believes these deeply entrenched problems call for responses that go beyond rules-making. The proposals set out in the paper are therefore much broader than those consulted upon previously. They also address matters that will require legislative reform and additional funding.

An approach that looks beyond the court rules is most obvious in the committee's recommendations for District Court reform. It says the District Court Rules 2014, adopted off the back of the unsuccessful 2009 reforms, remain fit for purpose. The challenge in that court, it says, is to restore the profession's lost confidence in the District Court's institutional capacity to deal efficiently and justly with civil disputes.

To that end, the committee's provisional proposal is to recommend to government that a Principal Civil List Judge position be created for the District Court. The Principal Judge will be charged with restoring the civil registry expertise of the District Court, seen by submitters as having been lost since 2009.

It is also proposed that deputy judges/recorders be appointed from the senior ranks of the profession to deal with civil cases in that court.

These changes are intended to allow the District Court to actively engage with proceedings from an early stage, taking advantage of the potential for flexibility in the 2014 rules to dispose of each case only as expensively as justice requires.

The proposals for rules reform are most substantive where the High Court is concerned. The committee proposes that a far more streamlined procedure apply by default in all High Court proceedings, with parties having to justify any request for more onerous obligations.

The committee believes this will help counteract the current maximalist litigation culture. While the committee acknowledges the rules must still aim at doing "justice" in each case, it considers the current absolute prioritisation

Submitters were clear that without culture change, rules reform will do little to close the justice gap

of that goal is unsustainable because of the ever-widening justice gap. Inaccessible justice is no justice at all.

This streamlined proposal also responds to submissions calling for earlier engagement with the merits of proceedings by judges. At an issues conference, to be convened shortly after the filing of pleadings, the parties will outline their cases and the evidence on which their claims or denials are based. That evidential basis will come from the operation of initial and ongoing disclosure rules that will replace the discovery process.

Having heard the parties, the judge will identify the key issues in dispute, then work with the parties to tailor a procedure calculated to do justice in the case in a proportionally expensive manner. Any interlocutories will presumptively be dealt with on the papers.

At trial, documents in the bundle will be admissible as to the truth of their contents, and witnesses will not be expected to address the chronology of events revealed by the documents. Evidence-in-chief will be given by way of affidavit, with additional viva voce evidence-in-chief permitted only in respect of the key contentious issues.

The requirement that affidavits be in witnesses' own words, and be non-argumentative, will be more strictly policed than at present. Overall, much greater importance will be attached to documentary evidence.

These proposals reflect feedback indicating limited support for adopting a fully inquisitorial approach in the District Court and High Court.

The committee believes these deeply entrenched problems call for responses going beyond rules-making

Nonetheless, the committee believes a more inquisitorial approach can allow civil justice to be done less expensively but also "justly". However, rather than radically changing the nature of District and High Court proceedings, the committee considers it preferable to harness the existing expertise of the Disputes Tribunal in delivering civil justice on a quasi-inquisitorial footing in smaller disputes.

So, the committee proposes increasing the Disputes Tribunal's jurisdiction to at least $50,000 while rechristening it as New Zealand's primary civil trial court as the "Small Claims" or "Community Court".

Together with the proposed reforms in the District Court and High Court, the committee believes this change will create a tiered range of forums for the proportionately expensive and just resolution of disputes.

The above is a high-level summary of what is proposed, and the committee echoes the Chief Justice's challenge to the profession to engage with the detail of this opportunity for reform.

The full consultation paper is available **on the committee's website**. Submissions close on 2 July.

Justice Cooke is chairman of the Rules Committee

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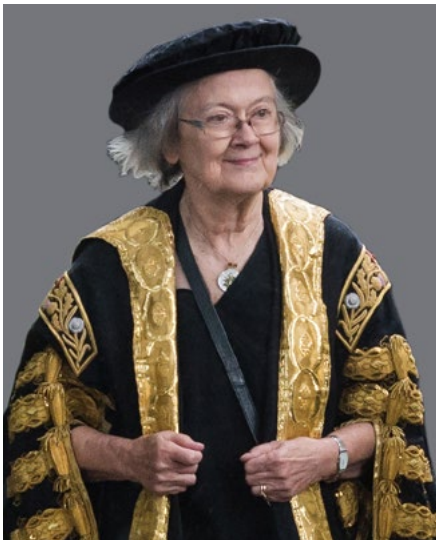
a woman and as a black woman: sometimes your voice just isn't heard initially. Even as a judge, I may say something and then a male colleague says the same thing and what I said isn't heard but when a male colleague says it, it is heard and lauded. I have learned different strategies – not to get angry or confrontational but to reclaim my own words and ideas and to own them and to try to stand firmly in my belief in the importance of equal justice. And we're still realising that goal in our country.

Just one challenge I'll mention: the events of this global pandemic colliding last summer with the renewal of racial unrest in our country has exposed a fault-line that have always existed across poverty and race. As judicial leaders, judges across our country are starting to call these issues out and that has been unprecedented; judges were always reticent about doing that before.

Chief Justice Dame Helen Winkelmann



Baroness Brenda Hale

Photo by Nur Photo / Getty Images

How have you used your experiences to champion diversity, particularly in the judiciary?

Justice Winkelmann

I was born into a family that was dealing with adversity. Before I got to school, we were welfare-dependent and were welfare-dependent for the rest of my childhood. We also had a household that was living with severe disability.

So, I had a good understanding by the time I came into the law about what it was to exist on the margins of society and what it was to be economically powerless and knowledge-deficient to engage with the levers of power. I think that's the thing I have carried throughout my career in the law, in terms of shaping my agendas as to what I wanted to do in the law, and as to what I wanted to do in the judiciary and as to what I wanted to achieve in judicial leadership.

Key to that is achieving diversity in the judiciary. Unless you have some understanding from having walked that path through your life or engaged with it in your professional life, working for those who are really marginalised, it is hard to understand how the law operates on those people – or doesn't operate. It comes down on them, but it doesn't tend to lift them up because they can't engage with it.

So, to me, diversity is critical. Gender diversity is obviously a key objective – in New Zealand, we've done very well but we can never relax. We've claimed the geographical territory pretty well for women.... [but] women aren't necessarily going to speak for those who are marginalised... so that's one of the reasons this organisation is very important because it reminds us of that service, that ethos of service in the role women have to play in the judiciary.

But beyond that I think it's really critical that we view diversity in the judiciary with a broader lens than just gender. We need to have a mindset of socioeconomic diversity, work experience diversity, disability, ethnicity – we need to try to get a judiciary that reflects the whole of society.

Obviously, we're not looking for a perfect statistical mirror but we're looking at something where our society can look at our judiciary and think 'yes they bear some relationship to me'. So that's the representative nature of it. We also have to think about the knowledge the judiciary brings to decision-making.

Judge Maya

Diversity in the judiciary is critical, especially in a country such as South Africa where the majority of citizens were excluded from all active public and profitable life for generations. In terms of our persecution, a diverse judiciary is imperative... [along with the need] for women to support one another.

> There is still in my country a tendency to think that only the top advocates are qualified to be the top judges and it's an assumption which we ought to challenge

These experiences are the basis of my crusade to mentor women law students, encourage women lawyers and create opportunities for them to take up judicial appointments and mentor and assist them once they are appointed

Judge Blackburne-Rigsby

Diversity in the judiciary is critical to maintaining public trust and confidence in the judiciary and the courts. We can't under-estimate how critical that is. Also on the appellate court, where judicial decisions are made collegially by a panel of judges, diversity is very important.... Gender diversity, racial and ethnic diversity – and also professional diversity. We should not have a judiciary that is full of just prosecutors or defence attorneys. You need diverse professional backgrounds.

Baroness Hale

There were always expectations [in the UK], as there are in many places around the world, about the sort of lives women would lead. And we will lead them in the sense that we want to have families and we want to have children. When I was a child, women were expected to choose between having a career and having a family. We no longer are, and so we have to try and find ways of making the profession work for people who have families.

The legal profession in my country is doing something towards challenging the long-hours culture, the presenteeism, the jacket-on-the-back-of-the-chair syndrome that means people have to spend a lot of time in the office, even though they're not necessarily doing anything very productive there.

There is a lot more work to be done in challenging those sorts of assumptions about how professional life is led. It may be a benefit from the pandemic that people are now having to learn to work in different ways. Some of this is to women's disadvantage but some of it is very much potentially to their advantage.

On the issue of diversity, I agree with everything that has been said: democratic legitimacy, better decision-making and no small group of people laying down the law for the great majority of people. People must feel that the courts are there for them.

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But the best way to have a diverse judiciary is to have a genuinely open and transparent merit-based appointment system. I say that knowing this is not the case in many countries. There are many other ways of appointing judges, but I am convinced that the way to get diversity is to do that. And to encourage women from all walks of legal life to think of themselves as potential judges and to encourage them, mentor them and bring them on.

The other side of that is to encourage the appointing bodies to recognise merit in all walks of legal life.... because there is still in my country a tendency [to think] that only the top advocates are qualified to be the top judges and it's an assumption which we ought to challenge.

We ought to look for potential, merit, legal ability – and all the other qualities of a good judge – rather than what somebody has been doing before. The best advocates do not necessarily make the best judges and that's one of the routes to improved diversity. We're making quite a lot of progress in the United Kingdom but we've still got quite a long way to go.

And I will go on banging on about it. This has been called by one of my judicial colleagues in one of his diaries 'Brenda's Agenda'. I am going to go on pushing Brenda's Agenda for as long as anyone will listen to me.

What are the advantages and disadvantages of making decisions with several other colleagues?

Justice Irene Mambilima: Chief Justice of Zambia

Having a collegial court means you have to manage different views.

We have about 10 members of the Supreme Court and we discuss all the matters before we sit in court and assess the merits and demerits of the case. This means we put our heads together but if we do not agree, then it becomes a bit tricky. Those who feel strongly [and disagree] will have to write a dissenting judgment.

Justice Winkelmann

When I first came onto an appellate court, I was surprised by how confronting group decision-making actually is. It's a very intimate thing because when you hear how your colleagues see exactly the same set of facts, analysed against exactly the same legal framework, [you wonder how] they could come to such different views.

You really do see how people's experiences – the values that they have brought with them – play out in that forum. I think to have a successful appellate court, your colleagues and you need to show great respect to care for the points of view of others. You have to make sure you don't allow your ego to occupy the space that your opinions occupy so it doesn't become a personal thing.

Our Supreme Court was created with the vision that it would allow a law that was fit for New Zealand to develop... and I've found since I came to the Supreme Court how hard it is to do that because you want to respond to the circumstances in New Zealand, you want to allow the law to change but you need to do [it] so the law is clear enough and simple enough so it's accessible for others.

> We should not have a judiciary that is full of just prosecutors or defence attorneys. You need diverse professional backgrounds

The difficulty of that is when you get five or six very active minds in a group trying to work that out it's very easy for opinions to splinter and for the law to suddenly become complex. I think that's the great challenge. So, it's so important that you don't see it as a personal contest and that your point of view must win, and engage with the points calmly and respectfully.

Judge Blackburne-Rigsby

Our court at full strength would be nine judges; currently we have seven and four of us are women. We typically sit in panels of three to hear cases and each panel's decision is precedential and becomes the law of the jurisdiction. The only way to overturn a decision of the three-judge panel is if we sit as the full court.

When we're deliberating in these cases, we usually have a brief conference before the hearing and we have a lengthy meeting after the oral argument. Then the judge who is assigned the primary role of writing that decision, based on how our discussions have gone, will circulate a draft for the other judges to review and hopefully join.

That process of commenting and circulating and sharing comments is very robust. I've been a judge for 26 years and my first 11 years on a trial court were very different, where you are a single judge, deciding a case and issuing an order and you're done. The first time I sat as an appellate judge I remember thinking that the opinion I had written was so perfect I sent it directly to our clerks' office for publication and issuance – and boy, did I hear an earful from my other two colleagues who hadn't had the opportunity to comment.

That process of being open to hearing the views of others and holding strong views of your own and having the ability to give and take makes it much more difficult than I ever would have imagined. To do it in a collegial way is very hard. But I think our court does it well and to me it's a model for civil discourse. Our terms are 15 years and I think that helps because you may disagree with a colleague on one issue, but you've got a long time and many cases so you might be aligned on another issue.

The advent of technology has changed how we do business, and we have to be very careful about that. I'm talking about emails because what used to be face-to-face conversations, where you could read the expressions of your colleagues, have now become email exchanges. We have to be very careful about civility because sometimes when an email, particularly one you've sent quickly, is received, the tone you may not have realised you've included in the email may be offensive to the other person.

Baroness Hale

We have to bear in mind that the theory of appellate courts is that three minds are better than one in the Court of Appeal, and in the Supreme Court four minds are better than the three in the Court of Appeal.

So that being the theory, it's our job, especially as judicial leaders, to make it true and to make it work. I found that the greatest challenge for new justices in the Supreme Court was to realise that they were allowed to develop the law because in the Court of Appeal, they were mostly having to follow [previous decisions]. Often, they had a lot of trouble working out what they were and what they meant and reconciling them all.

> Legalised discrimination based on race was still alive and well in the United States at the time that I was born

But we have the luxury of being, on the whole, able to make our own decisions without having to follow the Court of Appeal. We can also depart from our own previous decisions, but we don't do that very frequently.

But, of course, if the possibility exists of developing the law, you've got to do it responsibly, carefully – so, being creative but not too creative. That itself is a huge challenge and some of our colleagues are more creative than others.

So, the idea is to steer a middle course between the people who don't want to change anything and the people who want to change too much – and to do it with everybody staying good friends. You may disagree on one occasion, but the odds are very strong that on another occasion you're going to agree.

I like to say that we're none of us too predictable. It would be a very bad thing if the general public or the lawyers could inevitably predict which way any individual judge was going to decide a difficult question of law. In our court, we always try to maintain a sense of mystery.

ADLS EVENT

Stay connected, Judge Beck tells ADLS dinner

Sold out weeks in advance, ADLS' annual employment law dinner was this year held at the Park Hyatt hotel in Auckland's Wynyard Quarter where guests were treated to an address by the Employment Court's newest judge, Kathryn Beck.

Judge Beck, who prior to her appointment practised at the employment bar for more than 30 years, told guests it was "taking a bit of time" to get used to her new role but she had been made very welcome and felt really supported as the new kid on the block. "And, after 30 years, to be the new kid anywhere is a very strange sensation," she said.

"I don't have any stories about accidentally leaving the courtroom via a cupboard and waiting there until the courtroom cleared or locking myself in a judicial loo and waiting for hours to be rescued or rolling back on my gown and trapping it in the workings of the chair and being unable to stand up and leave at the time of the adjournment or fiddling with the chair and slowly descending beneath the bench in front of a bewildered courtroom of people."

It wasn't that she was any smarter than her predecessors who suffered those ignominies and bravely shared them at events such as these, Judge Beck said. It was simply that she'd learned from her predecessors and decided to check out her courtrooms before she used them.

"That said, I haven't been in the role for a year yet and I suspect that if we wait a bit longer, I will have my own story to add to the list of judicial bloopers."

The remainder of her remarks were about collegiality and the need for lawyers to support each other and stay in touch.

"The law is a wonderful and collegial profession," Judge Beck said. "It has its moments but on a good day the support, mentoring, stimulation and friendship that it offers are actually hard to beat. We learn from each other, we lean on each other and that's what makes a tough job doable.

"Yes, it is incredibly fulfilling to solve problems for our clients and make a difference for people but that can be exhausting if you don't have good company. We all need people to laugh with, tell terrible stories to, run ideas past and sometimes get help from.

"I have reflected on this many times in the past few years and particularly in the past 18 months as we locked down from those people that we would normally have coffee or a wine with or stick our head in the office and have a little chat.

"It was a very isolating time and while I appreciate that was the point, it was hard. A lot of us were frantically busy, it was stressful and everyone was under pressure. The networkers out there set up the Zoom meetings and coffees and we adjusted. But it's not the same and it will have taken its toll on some more than others.

"The point is: keep in touch. The employment law bar is excellent at collegiality. The fact that this dinner is sold out is a testament to that. So, keep it going. Tell more stories. Drink wine, drink coffee, moan about judges – whatever – but keep connected. ...It's all really important and it's part of a really inclusive profession." – *Jenni McManus*

Also see photos on page 7

ADLS EVENT

ADLS employment law dinner

Vicki Campbell, Harry Waalkens QC, Philip Skelton QC and Heather Skelton

Emma Moss, Michael O'Brien and Georgia Bates

Catherine Stewart, Peter Kiely, Chief Judge Christina Inglis, ADLS President Marie Dyhrberg QC, David France, Dr Bill Hodge, Graeme Colgan, Judge Kathryn Beck and Penny Swarbrick

Kate Webster, Aimee Elia, Claire Mansell, Kate Tennant and Tom Sanders

Judge Kathryn Beck, ADLS Employment Law Committee Convenor Catherine Stewart and Chris Eggleston

Featured CPD

The Art of Communication – Be a Powerful Advocate – FINAL NOTICE

As Spandau Ballet put it, "Communication let me down." How often have you thought that you could, or should, have slowed down when addressing a room, used more eye contact, or come across as more confident? This workshop, led by an experienced advocate and an accomplished teacher/director, will arm you with the skills for developing the art of communication for your role as an advocate – so you won't let yourself down, or your clients on behalf of whom you speak. *Very limited spaces available.*

Feedback from the previous sessions included the following comments:

- "Interesting, lively workshop – well presented."
- "Great anecdotes, relevant stories and examples."
- "The presentation was relaxed, informative and encouraging."

Learning outcomes:

- Through self-evaluation, gain insights into the opportunities available for, and underlying threats to, your communication skills – and in turn, your career.
- Expand your awareness, and experience your potential power in communication.
- Garner a range of presentation techniques to help enhance your communication, including proper breathing, voice modulation and body language.
- Receive a 'tools of the trade' checklist for effective communication.

Workshop
CPD 3 hrs
Sat, 22 May
9am – 12.15pm
Presenters
Marie Dyhrberg QC
Isabel Fish, Director, Producer and Educator

Statutory Demands: Tricks and Traps for Both Sides of the Fence – FINAL NOTICE

The statutory demand process is widely used for collecting debts – but getting it wrong can be costly both in terms of money and time. Lawyers can be liable for issuing a demand, even when it is the client who signs the demand. The area is complicated by needing to take into account a number of different rules in the Companies Act and the High Court Rules, as well as unwritten rules which emerge from the case law. This seminar will provide practical guidance for lawyers advising creditors and/or debtors involved with statutory demands, with a focus on the requirements for a demand, the consequences of errors, and the process for applying to set aside a demand.

Learning outcomes:

- Identify the requirements associated with issuing a statutory demand, including professional obligations on lawyers.
- Appreciate the costs consequences of issuing a defective demand.
- Understand the obligations on a company receiving a demand, including options for challenging a demand and the consequences of failing to do so.

Webinar
CPD 1 hr
Wed, 26 May
12pm – 1pm
Presenters
Kevin Glover, Barrister, Shortland Chambers
Yvonne Wang, Barrister, Shortland Chambers

Excellence in Legal Writing

Legal writing is the "bread and butter" of a lawyer's practice. Writing well is harder than it looks, though. For years, we've been told that we should "write like Katherine Mansfield". But how? This workshop will introduce you to three simple hacks to improve your written work: writing concretely; writing actively; and writing less. It builds on the work of linguistic experts, notably Helen Sword and Steven Pinker. But never fear: the words "subordinate clause" will not feature. We'll also deploy a fourth tool – "point-first advocacy" – to structure arguments for maximum impact. This learn-by-doing workshop will help you achieve writing excellence.

Hamilton | Thursday 3 June | 10.00 am – 1.15 pm
Palmerston North | Tuesday 6 July | 11.00 am – 2.15 pm
Wellington | Monday 9 August | 11.00 am – 2.15 pm
Queenstown | Monday 6 September | 11.00 am – 2.15 pm
Nelson | Monday 20 September | 11.00 am – 2.15 pm
Auckland | Monday 18 October | 9.00 am – 12.15 pm

Workshop
CPD 3 hrs
Presenter
Andrea Ewing, Crown Counsel, Crown Law Office (Criminal Team)

The Art of Will Drafting: Complex Wills Workshop

Many people are re-considering Trusts in their asset planning post the Trusts Act 2019 "go-live". As a result, the focus has gone back on wills as the primary asset planning document. For too long, wills have been an add-on or freebie with conveyancing or other legal work. A will is not an ordering-up exercise, too much focus on what the client says they want, and not what they need, can create a world of pain for executors. *#nofrieswiththat*

It is time to shift our focus to the value add of a good will. It is the last best thing a person can do for their loved ones. We need to be putting the time and attention into wills that they deserve, and unapologetically drafting (and appropriately charging) for Comprehensive, Complex and Bespoke Wills. *#yesitisworthit*

What does a good will look like? And how do you know? The acid test of a good will is after the will maker has died; does it work? Hindsight is 20:20 and this session is about a focus on foresight. Drafting practical wills that are fit for purpose and with an eye to ease of administration. *#platinumwills*

Led by two facilitators who are immersed in wills and asset planning as part of their daily bread (there isn't much they haven't seen) and who are known for their practical focus and examples-based development, this workshop will introduce you to practical tips on what to look out for in complex wills and how to draft fit-for-purpose wills that will stand up when they are needed. This learn-by-doing workshop will help you achieve platinum wills excellence, and give you the confidence to deliver this real and appreciable value to your clients. *Places are limited. Register now to avoid missing out.*

Learning outcomes:

- Learn the features of a complex will.
- Discussion of hidden pitfalls – how to recognise them and address them.
- Learn the hallmarks of good will drafting.
- Confidence in drafting complex wills and providing the advisory aspects that go with that.
- Develop your skills in the value-add of a good will.

Workshop
CPD 2.5 hrs
Wed, 2 Jun
10am – 12.45pm
Facilitators
Henry Stokes, General Counsel, Perpetual Guardian
Theresa Donnelly, Legal Services Manager, Perpetual Guardian

CPD in Brief

Leading in Law Workshop - Leading Yourself

Workshop
CPD 4 hrs
Thu, 10 Jun
9am – 1.15pm

This distilled leadership development programme provides participants with a range of practical leadership insights, behaviours and tools. Framed in contemporary leadership best-practice, where the primary role of a leader is to empower people to perform and grow, this is an engaging, sometimes challenging, leadership development experience.
Places are limited. Register now to avoid missing out.
Facilitator: Tony Gardner, Managing Director, Archetype Leadership + Teams

Remedies: Expectation Damages & Damages for Misrepresentations

Seminar
Livestream
CPD 1.5 hrs
Tue, 15 Jun
4pm – 5.30pm

In Person | Live Stream
Cases are often won on liability but lost on remedy. A sound knowledge of the remedies available to litigants in civil matters and the general principles which guide the courts in assessing the appropriate relief, is critical for all lawyers. Clients are less interested in the cause of action and most interested in the result that can be achieved! The first in a two-part series on Remedies, this seminar discusses expectation damages, and damages for claims of misrepresentation under the Fair Trading Act, Contractual Remedies Act and in tort.
Presenters: Suzanne Robertson QC, Bankside Chambers; Peter Wright, Barrister, Shortland Chambers

Business Interruption Insurance and COVID: Update on recent overseas cases & the implications for NZ

Webinar
CPD 1 hr
Thu, 17 Jun
12pm – 1pm

The UK Supreme Court and the NSW Court of Appeal have recently ruled on the application of business interruption (BI) policies to losses caused by COVID-19. In this webinar, we explore the scope of the two decisions, and consider the potential implications for New Zealand (where exclusions for pandemics such as COVID-19 are common). Both overseas decisions address a number of fundamental principles relating to BI claims, including policy interpretation, causation, and trends clauses. The webinar is therefore relevant not only in respect of claims for COVID-19, but is also relevant more generally to all BI claims.
Presenters: David Friar, Partner, Bell Gully; Sam Hiebendaal, Senior Associate, Bell Gully

Name Suppression: Privacy, Reputation and Fair Trial

Seminar
Livestream
CPD 1.75 hrs
Tue, 22 Jun
4pm – 6pm

In Person | Live Stream
With Media and Criminal law perspectives and throwing the spotlight on recent case law and key issues, this seminar will be of interest to those practising in criminal law and civil litigation, those wishing to protect reputational and due process rights of clients, and anyone else with an interest in this compelling area of law.
Presenters: Bruce Gray QC; Rachael Reed QC

The AML/CFT Workshop 2021 (Auckland)

Workshop
CPD 2 hrs
Wed, 23 Jun
2pm – 4pm

Another year under the belt and first audits are tucked away. But it's not the time to become complacent. A compliant programme requires ongoing review and updating and it is especially important to address any issues raised in your audit and to keep up to date with supervisor expectations and legislative changes. This year's workshops will continue to focus on issues that practitioners have raised, as well as developments in the law and NZ regime, including: meeting obligations in relation to politically exposed persons (PEPs); drilling down to the beneficial owner; transaction and activity monitoring; updated regulations and review of legislation; FATF Mutual Evaluation and what it means for reporting entities; recent warnings and prosecutions and supervisor powers. *Numbers strictly limited.*
Facilitator: Fiona Hall, Barrister and Solicitor

CPD Pricing

Delivery Method	Member	Non-Member
Webinar (1 hour)	$80 + GST	$115 + GST
Webinar (1.25 hour)	$90 + GST	$130 + GST
Seminar (2 hour in person)	$130 + GST	$185 + GST
Seminar (2 hour live stream)	$130 + GST	$185 + GST
On Demand (1 hour recording)	$90 + GST	$130 + GST
On Demand (2 hour recording)	$145 + GST	$205 + GST

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Tuesday 22 June | In Person & Live Steam | 1.75 CPD hours

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FAMILY LAW

Vaccinating children: who makes the call?

By Calina Tataru

Debate about vaccinating children has increased in recent years, resulting in some parents choosing not to vaccinate for various reasons.

It is not mandatory and sometimes parents or guardians will have different views.

When both parents agree not to vaccinate a child, their decision is unlikely to come to public attention because it will be made within the household. Whether educational providers will take issue with the decision is a separate matter.

But what happens if parents have different opinions, and may also be separated? Or where additional guardians have been appointed, such as the chief executive of Oranga Tamariki, and the various parties do not agree on whether the child should receive a vaccine?

Current case law

Guardians must act jointly and agree on decisions relating to a child, including the decision on whether the child should receive medical treatment. If guardians are unable to reach agreement, the Family Court has jurisdiction to resolve disputes.

A court will make an order that the child be immunised in cases where there is no medical evidence to support the contention that a child should not receive a vaccine

There are several Family Court decisions where one parent or guardian has sought a court order seeking to have a child immunised against the wishes of another parent/guardian.

The theme emerging from these decisions is that a court will make an order that the child be immunised in cases where there is no medical evidence to support the contention that a child should not receive a vaccine.

However, the courts have emphasised that immunisation decisions must be made on an individualised basis, taking into account the circumstances of the particular child.

Calina Tataru

In one case, the court noted that it is not a matter of simply applying the blanket immunisation schedule in the Ministry of Health Guidelines to all children (*GF v Chief Executive of Oranga Tamariki – Ministry of Children* [2020] NZFC 8449).

In another case, the court directed an independent medical report under the Care of Children Act 2004 to examine specific issues relating to the risks and benefits to the particular child (*Lawson v Pugh* [2010] NZFC 5092).

The court obtained a report from a New Zealand expert when a guardian who opposed immunisation asked it to admit expert evidence from overseas medical professionals. The other guardians questioned the relevance and reliability of the overseas evidence (*Reid v Graham* [2019] NZFC 900).

In most cases, the court will be guided by publications and official recommendations from the Ministry of Health but will make an assessment for that particular child and, if necessary, will seek input from experts in the medical field.

Covid-19 vaccines

People under the age of 16 are not included in the Ministry of Health's vaccine program but this may change, depending on the different types of vaccines available.

Disputes between guardians may still arise for those aged between 16 and 18 (or younger, if the age guidelines change), unless guardianship rights are at an end by operation of law. The guardians can have the matter decided by the Family Court as discussed above.

Because children at the age of 16 are increasingly encouraged to make their own decisions and become independent, a child could apply to the Family Court to review a guardianship decision if he or she disagrees with it – for example, if someone aged 16 or 17 wants to have the Covid-19 vaccine and one or more of their guardians disagree.

Having a dispute on vaccines decided by a court does not mean the child will automatically be directed to be vaccinated

It is likely a court would take into account the vaccine information available from the ministry while making an individualised assessment of the child's circumstances.

If the program is extended to children under 16, then these issues will be relevant to more children.

Reviewing guardians' decisions

If a child aged 16 or older decides to seek a review of the guardians' decisions, he or she can ask to have a litigation guardian appointed or can act in his or her own name if the court is satisfied that the child is capable of making his or her own decisions.

A child may be able to call witnesses and cross-examine the parent or guardian.

In deciding on an application by a minor, the court will need to consider it reasonable in all circumstances to review the challenged decision or the parent/guardian's refusal to consent. The judge must treat the welfare and best interests of the child as paramount.

While the likelihood of a child applying to the court to have such a decision reviewed might be low, it is important for young people to know they are encouraged to participate in decisions made about them from the age of 16 and even younger, depending on their level of maturity and understanding.

Conclusion

Parents and guardians must consult and attempt to agree on important matters relating to a child, including decisions about immunisation.

Having a dispute on vaccines decided by a court does not mean the child will automatically be directed to be vaccinated. The court will consider the welfare and best interests of the child in that child's particular circumstances, and whether the proposed vaccine is suitable for him or her.

Calina Tataru is a senior associate at Simpson Grierson, specialising in family law

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Wills

Please refer to deeds clerk. Please check your records and advise ADLS if you hold a will or testamentary disposition for any of the following people. If you do not reply within three weeks it will be assumed you do not hold or have never held such a document.

David Cyril HAIGH, Late of 10 Hellyers Street, Birkdale, Auckland 0626, widowed, cabinet maker and engineer, aged 75 (died 17'03'21)

Jonathan Michael HENDRIKS, Late of Mangonui, Northland (died 29'04'21)

Kuinimere Tagaloa Lauititi HUTCHISON, Late of Auckland, married, teacher, aged 84 (died 26'09'20)

Pramod David REGONAYAK, Late of 188E Huia Road, Titirangi, Auckland, head of business finance with the Bank of New Zealand, aged 42 (died 28'04'21)

Michael Roy ROBERTS, Late of Mount Albert, Auckland, retired, aged 73 (died 02'05'21)

Eva Elizabeth Rex SIONO, Late of 2/4 Slim Place, Manurewa, Auckland, widow, beneficiary, aged 63 (died 01'07'18)

Nigel Huirama TE HIKO, Late of Tokoroa, historian, aged 54 (died 15'09'20)

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