Rt Hon Dame Helen Winkelmann, Chief Justice of New Zealand

Address to the New Zealand Law Society

Auckland, Thursday 15 May 2025

Tēnei te mihi

Ki Ngāti Whātua Ōrākei

Ki ngā mate o te wā, haere, haere, haere atu rā

Ki a koutou, te hunga ora, e huihui mai nei

Ngā manu arataki i te Kāhui Ture o Aotearoa

Tēnā tātou katoa.

Thank you for getting up early for this breakfast.

I value this opportunity to speak to the profession. We — that is, the judiciary and the profession — have a lot in common. Most fundamentally we share a concern that our law and our institutions serve our society. Every day we work together in court hearings, to see justice done. We work together in a variety of other forums, discussing operational challenges for the courts and the profession, and making plans to address those challenges and generally to secure the just and efficient operation of our courts.

I thank the New Zealand Law Society | Te Kāhui Ture o Aotearoa for the support they provide for this collaborative enterprise. I thank them for organising this breakfast. I hope to make it a yearly event — a chance for me to talk to you about the courts, the profession, and how I see the issues and opportunities for us. I read yesterday that Chief Justice John Roberts had been speaking about the rule of law. This is something that occupies the minds of all judicial leaders. It is a good place for me to start.

It is the constitutional duty of the judicial branch of government to uphold the rule of law, through the administration of justice. My starting point is that a society cannot be fair if all are not equally subject to the law and equally entitled to its benefit. Strong, independent courts are necessary to secure that condition. If people do not have access to independent courts, the rule of law is replaced by the rule of the strong over the economically weak and the vulnerable.

I conceptualise the rule of law as an ideal. That is because few, if any, societies have achieved that state where all have equal access to the protection of the law. We know that inequality of means, of geographic location, inequality of access to legal information and assistance, and disability — I will speak more on this shortly — all tilt the playing field when it comes to obtaining the protection of the law.

Yet, armed with the knowledge that we fall short, we continue to strive toward the ideal of the rule of law.

Why do we do that?

I believe it is simply this — the commitment of our institutions to this ideal best demonstrates our nation's commitment, our institutions' commitment, to a fair society.

It takes emotional resource to continue to work toward an ideal which can never be finally secured. I find it is necessary to retain a level of realistic optimism. For that reason, I begin with some good news. Compared to most other countries, New Zealand does well with the rule of law.

We are ranked sixth in the World Justice Project's Rule of Law Index, ahead of many wealthier countries.[1] This index weighs, amongst other considerations, ease and quality of access to civil and criminal justice. For civil justice, the index focuses upon accessibility and affordability of civil justice, and also the absence of corruption, discrimination, and delay.

So, we are doing something right. As people working within the system, we know that the rule of law is served well in this country by a skilled legal profession, which has a commitment to access to justice as a defining characteristic of excellence. This is a profession which supports and values justice-focused organisations such as Community Law and its associates, Aotearoa Disability Law and YouthLaw Aotearoa. We know too that we have independent courts, made up of judges with high levels of skill and integrity.

Having struck an optimistic note about the rule of law in New Zealand, I enter two significant reservations into the record. First, there is no room for complacency. Worldwide, the rule of law is in decline. Public confidence in institutions is eroding, and that confidence is key to the rule of law. That is a warning signal. In some countries there are attacks on the independence of the judiciary, and that strikes at the heart of the rule of law.

It is because access to independent courts can check the abuse of power, whether it is economic or political power, that courts are often the target of those who resist such constraint. I am going to read you a quote about that:[2]

> The legal system we have and the rule of law are far more responsible for our traditional liberties than any system of one man one vote. Any country or government which wants to proceed towards tyranny starts to undermine legal rights and undermine the law.

Those of you who think and read about the rule of law may think that the quote was from Lord Bingham. But you might be surprised to know that that was Margaret Thatcher, speaking to the Conservative Party Conference in Blackpool in 1966. She was speaking at the time of, and in the context of, the cold war.

Her words have resonance for this era. Attacks on the rule of law may not be a new phenomenon, but in each generation, and in each place, they have their own flavour.

The second reservation I enter is that, although the independence of the judiciary is not under serious or sustained attack in New Zealand, there are nevertheless "work on" areas for New Zealand — as there are in every society. I know that the Law Society has been studying threats to the rule of law in this country. This is important work, and I look forward to its findings.

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1 World Justice Project "WJP Rule of Law Index" <https://worldjusticeproject.org>.

2 Margaret Thatcher "Speech to Conservative Party Conference" (Winter Gardens, Blackpool, 12 October 1966).

As you might expect, I maintain a keen interest in ensuring judicial independence and access to justice through the courts.

I am concerned that cost acts as a significant barrier to accessing the courts. The cost of legal representation is one concern. I have spoken often about the need for a better funded legal aid system. I am pleased to see there is a first-principles review of the legal aid system and I hope that results in better funding. But there are other cost barriers — filing and hearing fees. The judiciary does not set these court fees — that is done by regulation.

In 2014 I gave a speech about the substantial barrier to justice that filing and hearing fees pose — and how it is wrong to take too far a cost recovery model when setting court fees.[3] The situation has not improved since then. Last year the Government announced substantial lifts to court fees — for civil courts and tribunals the increase has been up to 30 per cent.

For those who do access the courts, there can also be barriers to full participation in proceedings.

The judiciary must always be concerned about how fit-for-purpose our processes and systems are. In 2019 the Rules Committee | Te Komiti mō ngā Tikanga Kooti began a major piece of work focusing on the role that rules of court play in enabling access to cost-efficient and timely justice. After a lengthy consultation process (extended by the Covid-19 pandemic) the Committee, under the chairmanship of Justice Francis Cooke, produced its *Improving Access to Civil Justice* report.[4] This recommended significant changes to reduce the cost and burden of procedure in the High Court.

The new rules come into effect on 1 January 2026. They will require a change in culture as to how civil litigation is conducted and managed in the High Court — on the part of the profession and judges alike. I acknowledge that this will bring significant change for the profession. The judiciary is however working with the Law Society to provide seminars and written material to guide practitioners through these important changes. The seminars are expected to be run in October this year.

Rule changes are not enough, however. For many our courts remain an intimidating and difficult place to seek justice. In particular, there is still a lot of work to be done to improve access for disabled people and the Deaf community.

Last year the final report of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions, *Whanaketia — Through pain and trauma, from darkness to light*, was released.[5] It records how many of the victims of abuse were made particularly vulnerable through disability. It describes the barriers survivors faced when seeking justice, including inadequate support to navigate court processes, and the retraumatising effects of being in court in our adversarial system.

As Chief Justice I acknowledge the courts' role in the systemic failures, and resulting injustice, described in the report.

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3 Helen Winkelmann, Chief High Court Judge "Access to Justice — Who Needs Lawyers?" (Ethel Benjamin Address, Dunedin, 7 November 2014).

4 Rules Committee | Te Komiti mō ngā Tikanga Kooti *Improving Access to Civil Justice* (November 2022).

5 Royal Commission of Inquiry into Abuse in Care *Whanaketia — Through pain and trauma, from darkness to light* (June 2024).

Fairness and justice require that our courts do a better job of supporting disabled and Deaf communities. We know that disabled people suffer much higher levels of victimisation than the general population.[6] They have greater levels of civil justice need because of vulnerability to exploitation. We also know that the defendant population carries very high levels of disability — almost all people in prison (91 per cent) have a lifetime diagnosable mental illness or substance abuse disorder, often existing with other conditions such as FASD and traumatic brain injuries.[7]

In 2022 the United Nations reported with concern the overrepresentation of disabled people in adverse justice markers in New Zealand.[8]

It is as simple as this — supporting access by members of the disabled and Deaf communities should be seen as part of the core work of the courts.

The judiciary has these communities in mind as it works to build knowledge within the judiciary and the profession about the barriers that disabled people and the Deaf community experience when they try to access courts. The *Kia Mana te Tangata — Judging in Context* handbook is an important resource for judges that is being developed under the leadership of Justice Ellen France. It provides information on how to better accommodate disability and thereby support full participation for disabled people and members of the Deaf community in court proceedings. There is a need for the profession to also be educated on this. I am pleased to say that the *Kia Mana te Tangata* handbook will be published at the end of this year, and I encourage you to make use of it.

The District Court's Te Ao Mārama model is already utilising this information to support registries and judges facilitating participation.

The judiciary's Tomo Mai Committee is also leading judicial work on diversity and inclusion in the courts, with a strong focus on improving access to justice for Deaf and disabled court participants. It has had tremendous assistance from Aotearoa Disability Law in identifying some of the existing barriers. These include the lack of clear guidance for parties and lawyers on how to apply for accommodation supports in court. Forms are not available online, and information is not presented in one place. And if getting to court is hard, then being in court is harder.

As Chief Justice I do not have the control needed to deliver improvements in these areas — the resourcing for registries lies within the remit of the Ministry of Justice | Te Tāhū o te Ture. I have however asked the Ministry of Justice to support two initiatives in this area. The first, to improve the online information available. The second, to create centres of knowledge and expertise in registries about how to support these communities in accessing the courts and fully participating in their processes.

In my role I must also be concerned about delay, and its impact on access to justice. Judicial leadership has statutory responsibility for the orderly and efficient conduct of the business of courts. Those of you who work in the District Court will be aware of the Court's drive to reduce

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6 Ministry of Justice | Tāhū o te Ture *NZCVS key results 2024 (Cycle 7)* (February 2025) at 13.

7 Ian Lambie *What were they thinking? A discussion paper on brain and behaviour in relation to the justice system in New Zealand* (Office of the Prime Minister's Chief Science Advisor | Kaitohutohu Mātanga Pūtaiao Matua ki te Pirimia, 29 January 2020) at [4] and [15].

8 Committee on the Rights of Persons with Disabilities *Concluding observations on the combined second and third periodic reports of New Zealand* UN Doc CRPD/C/NZL/CO/2-3 (26 September 2022) at [23(a)].

delay, particularly in the family and criminal jurisdictions. I thank you for the cooperation that has been offered by the profession to support these efforts. I know that this drive has placed heavy demands on some, particularly those at the criminal bar.

Although considerable efforts have been made to reduce delay, the judiciary does not hold all the levers necessary to eliminate it. There are significant systemic constraints in play. There are limits in terms of judicial resourcing — a need for more judges in the District Court, High Court, and Court of Appeal. For example, the statutorily imposed limit on the number of judges that can be appointed to the High Court and Court of Appeal has not been raised since 2004. Courtroom availability in some centres is also a real issue. For the High Court, factors such as these mean that, in some centres, time to trial is longer than it ought to be. This also means that the Court is seldom able to take on any criminal trials outside of the homicide trials it must hear (at present these make up about 80 per cent of the Court's criminal trial workload). This has the effect of pushing criminal work down onto the District Court, which is itself struggling with judicial resourcing.

The operation of the system is also constrained by the number of lawyers able to handle senior level criminal defence work — again an issue connected to our legal aid system.

I acknowledge that these issues have been years in the making, but the cost of delay in addressing them is to be measured in human terms — it is the human cost of delay for the victims, the defendants, and the families caught up in the system.

Stepping back to the usual day-to-day of court work and judicial administration, there are projects with transformational potential for the courts that I would like to briefly outline.

Te Au Reka is a major project for the courts. Te Au Reka is the new digital case and court management system being developed jointly by the judiciary and the Ministry of Justice. This will replace our existing paper-based operational system — New Zealand is one of a small number of countries to retain a paper-based operating model.

It will become operational in the Family Court, region by region, from July 2026. It will then be made operational in the civil and criminal jurisdictions of the District and High Courts through 2027 and 2028.

Te Au Reka is identified in the *Digital Strategy for Courts and Tribunals* as one of the judiciary's four highest priority technology initiatives.[9] It has the potential to radically reduce the informational and procedural barriers to accessing tribunals and courts. It will fundamentally change how litigants and the profession engage with the courts, including how files are created and accessed by the profession, the registry, and judges.

With any transformation comes not only opportunity but also risk. In other countries, that risk has been realised in digital systems that are not user-friendly and do not operate well.

The risk of any major digital change programme goes beyond development failure. There has been a tendency, in other jurisdictions, to bank savings which may be created by shifting from paper to digital, before they can reasonably be achieved. This has resulted in significant under-funding of the court system.

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[9] Chief Justice of New Zealand | Te Tumu Whakawā o Aotearoa *Digital Strategy for Courts and Tribunals* (Office of the Chief Justice | Te Tari Toko i te Tumu Whakawā, March 2023) at 23.

The judiciary and the Ministry of Justice are alive to these risks. I am in no doubt that the Secretary for Justice is committed to developing a platform which has access to justice at its heart.

So, there is opportunity for us, if we make good decisions. I am very grateful to the members of the profession who are working with the judiciary on the conceptual and detailed design phases, and to the Law Society for facilitating this. Working together in this way is vital if we are to avoid the poor outcomes that have occurred in some other jurisdictions and realise the full promise of this major initiative.

Some of you will also be aware of work to create protocols to regulate remote participation in courts, as these have been the subject of consultation with the profession. In March the judiciary issued the Family Court protocol and the District Court and High Court civil protocols.[10] Draft District Court and High Court criminal protocols are in the process of finalisation.

How remote technology is employed in our courts is an issue of vital importance for the judiciary and for the courts. It has the potential to fundamentally reshape how justice is delivered here. The judiciary is supportive of the use of technology to allow remote participation. But the judiciary also considers that sometimes remote participation is not appropriate because it is not consistent with the interests of justice for some kinds of hearings, and for some people. It is not generally appropriate for hearings where substantive decisions are being made about significant rights. It may not be appropriate in other situations such as where a defendant is vulnerable because of youth or disability and needs to be present in the courtroom in person to understand what is happening and to participate effectively.

The protocols have been prepared to provide guidance about when remote participation will be the default — default in the sense that it will be used subject to judicial direction to the contrary — and when its use is not generally appropriate. The protocols also set minimum standards for remote appearances, including minimum procedural support that must be provided when a defendant is participating from a remote location such as a police station or prison.

As Chief Justice, I regard the level of judicial control set out in the protocols, and the level of procedural protections, as being non-negotiable. They are non-negotiable because the right to a fair hearing is non-negotiable.

The Government has signalled a review of the legislative settings for remote participation. It is possible that ultimately legislation will displace these protocols, but I do not expect that the thinking the judiciary and profession has done in preparing them will be lost.

The last topic I address is an area of judicially-led innovation — the creation of the Auckland Commercial List. Although aimed at commercial disputes, this is an access to justice initiative. The intention is to enable earlier hearing times and earlier settlements in commercial matters. It will involve a reprioritisation of judicial resource, but I see that as justified. Society needs courts to decide commercial cases — we need this because it is only in this way that the commercial law develops to keep pace with economies as they grow and evolve.

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[10] These are accessible at: https://www.courtsofnz.govt.nz/going-to-court/practice-directions/protocols-for-remote-participation-in-court.

The commercial list is modelled on the New South Wales Supreme Court's Commercial List. Commercial list proceedings will be on a list managed by two judges, who will determine any interlocutory applications and will also conduct the substantive hearing. The commercial list judges will be freed up from the usual roster to enable this to occur. Over time, the list will be expanded as needed.

We have been greatly assisted in the creation of the list by senior members of the profession — again a model of the cooperation that occurs across the nation between the profession and judiciary as we work to secure a just and efficient court system.

The benefit of an annual event is the opportunity it provides to reflect on all the work that has been achieved together. There is much for me to thank you for — the work you do every day to support the rule of law, and the time you give to working with us to improve access to justice and the operation of the courts. And as Chief Justice, I would like to acknowledge the role that the profession plays in explaining and defending the importance of an independent judiciary.

Thank you for your time, and thank you to the New Zealand Law Society for hosting this event. I am happy to take questions.