

Judicial Independence in Aotearoa New Zealand: Current Challenges

Justice Susan Glazebrook¹

Tena koutou katoa. Greetings to you all. Thank you for inviting me to speak at this important gathering and on such an important topic: the independence of the judiciary and the independent bar.

I will cover (briefly) two related challenges in Aotearoa New Zealand: access to justice and the weakening of faith in institutions, including the courts.

Challenges relating to access to justice include not only the costs involved but also the increasing complexity of trials, both civil and criminal, and delays, which have been exacerbated by the COVID-19 pandemic. A subset of this problem is the long-term underfunding of legal aid, both for criminal and civil cases. This has led to a reducing workforce of overstressed and aging practitioners, who are opting out of providing legal aid services, but without a new generation of experienced practitioners ready to step in. This causes stress to the system generally and is not limited to those practitioners who do legal aid work. The workforce issues also cause wellbeing issues for judges and lawyers.

Of particular concern are the major human rights issues for defendants and victims caused by delays in criminal justice. But delays in civil cases also affect the rights of litigants and they may lead to increasing use of alternative dispute resolution mechanisms in preference to courts. This can be a positive step for many but may lead to a further potential problem: routine recourse to dispute resolution processes outside the courts in civil cases has the potential to undermine the development of the common law.

Further, there are some people for whom formal dispute resolution processes, either through the courts or other mechanisms, are not available at all. Their needs will remain unmet.

¹ Judge of Te Kōti Mana Nui o Aotearoa | the Supreme Court of New Zealand and immediate past president of the International Association of Women Judges (IAWJ). These remarks were given on Friday 17 May 2024 as part of a roundtable discussion at the 2024 World Bar Conference in Belfast. The discussion featured senior Judges from a number of jurisdictions, who provided perspectives on judicial independence and the importance of an independent bar.

The willingness of the profession to take cases pro bono is a major plank in ensuring access to justice² but cannot replace a properly functioning legal aid system.

A related issue is the loss of faith in state institutions, again possibly exacerbated by the COVID-19 crisis. This has resulted in criticism of court decisions and of judges that goes beyond reasonable debate and becomes personal, viral and uninformed. There are obvious implications for security in our courts for litigants, counsel, judges, court staff and the public,³ as well as for public trust in the courts, a vital ingredient of the rule of law. In this regard, the willingness of the legal profession to educate the public on issues related to judicial independence and the role of the courts is vital.⁴

It would be remiss to talk just about the problems and not the initiatives underway to address some of the issues. These include measures designed to make our courts more responsive and inclusive. One initiative is particularly wide ranging: Te Ao Mārama, meaning the world of light. Te Ao Mārama is an ambitious, new, solutions-based and restorative model of justice, which operates in the District Court of New Zealand | Te Kōti-ā-Rohe o Aotearoa primarily in care-of-children cases and family violence cases, as well as in the criminal jurisdiction.⁵ There are also efforts to increase diversity, both in bench and bar, to make the courts more reflective of and responsive to the communities they serve.⁶

And, of course, there are continuing efforts to clear backlogs without compromising the quality of justice, including through appropriate use of technology.⁷ Initiatives in the civil jurisdiction include measures to improve the civil justice system through simplifying procedures,⁸ as well as by increasing the jurisdiction of the Disputes Tribunal, a body which provides a less formal model

² See for example “Te Ara Ture – a bridge to law” <<https://tearature.co.nz/>>. This is a clearing house designed to connect legal need to volunteer lawyers.

³ See for example interview with Maria Dew KC, New Zealand Bar Association president (Corin Dann, Morning Report, Radio New Zealand, 9 February 2024).

⁴ See for a recent example Frazer Barton “Attacks on judges risk weakening the justice system” (19 April 2024) New Zealand Law Society | Te Kāhui Ture o Aotearoa <<https://www.lawsociety.org.nz/>>.

⁵ Ministry of Justice | Te Tāhū o te Ture “Te Ao Mārama — Enhancing Justice for All” <<https://www.justice.govt.nz/>>.

⁶ See Ngā Kōti o Aotearoa | Courts of New Zealand “How is a judge appointed?” <<https://www.courtsofnz.govt.nz/>>.

⁷ See Chief Justice of New Zealand | Te Tumu Whakawā o Aotearoa *Digital Strategy for Courts and Tribunals* (Office of the Chief Justice | Te Tari Toki i te Tumu Whakawā, 29 March 2023).

⁸ See Ngā Kōti o Aotearoa | Courts of New Zealand “Improving Access to Civil Justice” <<https://www.courtsofnz.govt.nz/>>.

of justice presided over by a referee and with no lawyers.⁹ Finally, effort is being put into addressing wellbeing issues for judges and lawyers.¹⁰

⁹ See Ministry of Justice | Te Tāhū o te Ture “Disputes Tribunal of New Zealand: About the Tribunal” <<https://disputestribunal.govt.nz/>>.

¹⁰ See memorandum from Helen Winkelmann (Chief Justice of New Zealand | Te Tumu Whakawā o Aotearoa) to Judith Collins (Attorney-General of New Zealand) regarding the courts and the judiciary (29 November 2023), and see in particular at [55]–[56] dealing with judicial wellbeing; New Zealand Law Society | Te Kāhui Ture o Aotearoa “Practising Well” (19 September 2024) <<https://www.lawsociety.org.nz/>>; and letter from Susan Thomas (Chief High Court Judge) and Heemi Taumaunu (Chief District Court Judge) to leaders of the profession regarding the wellbeing of the profession (26 July 2023).