

LawNews

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HUMAN RIGHTS LAW, REFUGEE LAW

Last refuge – the unsustainability of practising refugee law in New Zealand

“Refugee work can be both rewarding and heartbreaking,” says a lawyer practising in this most draining and demanding of areas, encapsulating the frustrating paradox that members of New Zealand’s refugee bar have long been voicing, but which seems to have fallen on deaf ears.

Long-time human rights advocate and Convenor of ADLS’ Immigration and Refugee Law Committee, Deborah Manning, thinks much of the problem stems from the fact that few people really understand the complexity of practising refugee law, the “above and beyond” demands of helping clients with non-legal problems, and its “all or nothing” nature.

“Many people don’t even know what a refugee lawyer does. A good refugee lawyer needs to get to grips with the facts of a case, know and be able to apply the relevant domestic and international laws, and have the skills to manage the case,” she explains.

Deborah Manning has been voicing concerns about the undervaluing and underfunding of human rights work in New Zealand, particularly in the area of refugee law, for some time now. And a recent article by Emma Ryan in Australian publication *Lawyers Weekly* (“Human rights lawyers ‘not valued’ in Aus”, 9 March 2017) suggests that such concerns might not be unique to New Zealand.



Ms Manning and a number of other current and former practitioners in the human rights and refugee law area spoke exclusively to *LawNews* about their experiences over a period of many months, beginning in 2016. Some of those to whom we spoke no longer practise in the area, others are considering leaving. Some were only willing to comment on the condition of anonymity. However, they hope that speaking out will help shed some light on the challenges and rewards of working in this frustrating yet potentially life-changing area of legal practice.

The refugee bar in crisis – an “uphill battle”

“I ended up taking a break and I was intending to go back to it, but when I looked at what I had been doing, it didn’t make any sense to me to go back,” reflects one lawyer who has ceased working in this area. “It’s just not sustainable in the long term because of the toll it takes on you as a person.”

The dwindling numbers of lawyers who are now willing and able to help represent the vulnerable is worrying to say the least – Ms Manning notes that there are less than ten practitioners doing this

work regularly here.

“People are being ground down by the dysfunctional processes and are leaving the refugee bar,” says Ms Manning. “We all blame ourselves – it is easy to tell yourself that if you can’t handle the heat you should get out of the kitchen. But it is a genuine problem that is getting worse not better.”

She told *LawNews* that she has trained five lawyers who have ceased doing this kind of work, and says that it is “gutting” to spend so much time training others only to see them walk away. And unfortunately, another young lawyer also looks likely to move in a different direction, despite a genuine love of the work. “I’ve reached a point where I am so frustrated with the system,” says a junior lawyer who is shortly intending to take a break from refugee work, not knowing whether she will return.

With the varied legal, emotional and psychological nature of the work, and the feeling of constantly

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Last refuge – the unsustainability of practising refugee law in New Zealand

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banging your head against a wall, a day in the life of a refugee lawyer can be pretty rough.

“You go into the office planning to attack X, Y and Z but you end up fighting a whole lot of other fires. I know work can be like that for everyone, but the stakes are higher when there is a threat of someone getting sent back to their home country.”

Ms Manning notes that, in the course of any one day, she could be doing any (or often all) of a number of tasks – meeting with clients, applying for legal aid, drafting statements, preparing for interviews, trying to get interpreters, arranging doctor or psychologist appointments, feeding clients who drop in, helping with their other non-legal needs or attending hearings. And that is just on a good day. She stresses that this level of workload is typical for refugee lawyers who “do it properly” – those who are genuinely committed to helping their clients achieve the best outcome.

And before we get into the “blame game” that refugee lawyers take on too much and bring the stress upon themselves, she and the Committee want to “bust some myths”. While our interviewees all acknowledged that stress is high and work/life balance suffers in any area of legal practice, the unremitting and thankless nature of the refugee lawyer’s daily grind is in a category of its own.

“It’s the incessant combination of all of these things which makes it just too much – there are too many negatives and too few positives,” says one former refugee practitioner.

Further, systemic problems such as unachievable deadlines set by decision-making bodies, translation issues with non-English speakers, lack of funding, the need to be both social worker and lawyer to one’s clients, issues with mental health (of clients and lawyers) all must be grappled with, frequently snowballing into an overall emotional toll verging on burnout.

In spite of the frustrations, those who do this work profess to love it – our interviewees universally cited a passion for social justice over financial reward, which drew them to refugee work “because it’s the right thing to do”. This makes it even sadder that some are effectively being forced to quit for

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other, less all-consuming areas of practice.

Untenable deadlines

One of the first frustrations mentioned was the difficulties of interacting with the primary decision-maker for those seeking refuge in New Zealand, the Refugee Status Branch or RSB. This is the body that hears clients’ claims for refugee status in New Zealand in the first instance, in a seven-hour hearing or “interview” that requires much advance preparation to piece together clients’ stories of persecution and trauma, and the sourcing of evidence and expert reports from here and overseas.

Practitioners told us of administrative demands, “unrealistic” deadlines and a seeming lack of empathy on the part of decision-makers. This, coupled with difficulties with language and more than ordinarily stressed-out clients, sets the stage for a particularly intense environment in which to operate (for both lawyers and clients) than many other hearings-based areas of practice.

ADLS’ Immigration and Refugee Law Committee informally polled a number of lawyers in other practice areas as to how long they are given to prepare for one- to two-day hearings (akin to an RSB refugee interview). Feedback received from employment, family and civil practitioners indicates that, in general, somewhere between three and five months is a usual amount of preparation time (except for urgent matters). However, refugee

lawyers get a mere six to seven weeks to prepare for a substantive refugee interview from the time a claim is filed, during which period they need to seek legal aid, get interpreters and prepare and sense-check the client’s statement.

At the point of finalising this article, it was also disheartening to get notice that the Immigration and Protection Tribunal (IPT or Tribunal) was intending to start setting down matters for hearing without consulting practitioners as to their availability, while also shortening the timeframes for preparation. One lawyer to whom we spoke had received three hearings set down for nine weeks out, which was simply untenable in terms of preparation and other work commitments which had already been scheduled. Fortunately, the refugee bar was able to dialogue with the Tribunal to secure a minimum of 12 weeks’ notice in advance of hearings, with the new approach to be trialled and reviewed in due course.

Ms Manning considers these sorts of pressured timeframes to be unsustainable, especially given the state of semi-urgency which inevitably goes with this territory. She notes that the process of preparing for a refugee status interview is a lot more time- and labour-intensive than many (likely including the decision-makers themselves) may realise. We repeatedly heard that the decision-makers seem focused on setting dates for interviews, meeting targets and clearing backlogs, to the detriment of the best interests of claimants and the well-being of this small group of lawyers.

“There is a lack of understanding as to how long things actually take – we are often told that we will have to go ahead with an interview even though a vital piece of information is missing,” said one interviewee. “Deadlines don’t take account of interpreters’ availability (often only out of hours) or the logistical difficulties in getting evidence from overseas.”

Another lawyer says she has been told that “you don’t need more than two weeks to prepare for an interview”, in spite of the unavoidable limitations which make this amount of preparation time woefully insufficient.

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"There are so many things we have to juggle. For example, if we get asked for an updated doctor's or psychologist's report on a client, this can mean an additional three-month wait on the public system. There is no awareness of this, and even when we obtain reports, chances are they won't be believed."

Even with almost 20 years' experience in refugee law, Ms Manning says that it has taken a long time for her to have the "lightbulb moment" that her inability to cope with the tight timeframes was systemic rather than personal to her.

"Even when I've only had one case on the go, the timeframes have still been unworkable. I had always blamed myself, but that made me realise that there were structural problems – some things just don't fit into those timeframes no matter how hard you try."

Another common theme from interviewees was that RSB officers "start from a position of disbelief or suspicion" when looking at claimants' credibility – their stories, evidence from their country of origin, doctors' reports, etc., and show little sympathy for their present plight and fears for the future.

"There is a tendency to actively look for inconsistencies in a client's story without an understanding that stress and fears about the future can have a big effect on memory. RSB officers are expecting clients to recall dates which ordinary people wouldn't remember, let alone when you have been in fear of your life."

On occasion, lawyers report that they themselves have also been treated disrespectfully when attempting to properly represent their clients, even to the point of being told off in front of clients and interpreters. Comments one: "You get the sense that the RSB sees the lawyers as an obstacle – that it would prefer the clients to be unrepresented – but you're not trying to make things difficult, you are just trying to represent your clients."

Interviewees say that they "rarely complain" about this sort of treatment because they are either too busy trying to meet deadlines or because they do not want to sabotage ongoing interactions with the decision-making body, but that the feeling of being poorly-treated and under-valued is very wearing. Ms Manning notes that you do not want to be "at war" with the decision-makers. She suggests that this is allowed to continue unchecked because refugee proceedings take place behind closed doors without much external scrutiny, unlike other hearings which are held in open court.

Legal aid – little help

Another of the biggest challenges refugee lawyers face is inadequate legal aid allowances. Invariably, refugee claimants have little or no money, which obviously requires practitioners to represent them on legal aid rates, but dealing with legal aid grants is universally described as "a real barrier" and "a constant battle". Interviewees say that they end up doing a lot of pro bono work because the legal aid grants in this area are not realistic.

"Tight deadlines mean that you have to start

preparing the case before you know whether you're going to get paid. If the claim for legal aid is declined, often you feel morally obliged to continue on regardless – one of my colleagues has been known to do entire cases for nothing."

Another practitioner relates a situation where she was still waiting on legal aid and was told by the RSB that an interview would simply proceed without her if she was not ready to front up.

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Simon Laurent, an immigration lawyer who used to also do refugee work, describes the amount of work required just to apply for funding as "really significant". "In return for that, funding would often be declined because they'd already determined that the case was without merit, a decision which you would have to appeal. It was just a nightmare – the remuneration was always lower than what was required, or the full amount of hours was not able to be claimed."

"You can apply for an amendment to the grant, but given the time and paperwork involved, often it is faster just to do the extra work for nothing," says a former practitioner with whom we spoke. "A level of resentment comes in though when this happens a lot." "There is a level of mistrust which means you are starting from behind the eight ball right from the beginning," said another. "It's not like there are vast numbers of people making these applications, but it is still a fight every time."

One lawyer explained that an employed lawyer doing this type of work can, over time, become "dis-incentivised" from representing refugees on legal aid because he or she becomes unable to meet the firm's billing targets. "Thus, their own continued employment or ability to gain promotion is in the balance." Simon Laurent agrees that people truly wanting to continue doing this kind of work would need to "either be working from home with very low overheads or work in a well-heeled firm with partners sympathetic to this kind of work, who were prepared to subsidise the taking of some refugee cases with income from other practice areas".

Deborah Manning says that she prefers not to talk about funding pressures, "because it's not all about that", but notes that the demands of the system mean that refugee lawyers often have to work without knowing whether or not they are going to

get paid. "The RSB and the IPT [Immigration and Protection Tribunal] effectively say it's our problem and in a sense that's right, but not when it's a systemic issue. When it affects the whole system, we all need to talk about it. They wouldn't expect to prepare for and conduct a hearing or interview unpaid, yet we are expected to do just that."

Identity crisis

The problem is exacerbated by the fact that a lot of the work done by refugee lawyers is not covered by legal aid and so is not able to be funded at all. That is because a lack of support for refugee clients in the wider community means that much of the lawyers' work falls outside their "lawyer hat", and comes more within what should be the remit of a social worker or counsellor. Also, as clients tend to be vulnerable and isolated, those with whom we spoke describe a "sense of responsibility" that this engenders in the lawyer, leading to an unavoidable degree of involvement in clients' lives.

One interviewee estimates that, given the additional social work-type tasks she had to do, she was "able to bill about a third of the work that I did". "It is very hard to say no, so you end up doing an enormous amount of work for which you know you are never going to be compensated." "You end up being a one-stop shop for all of their social work needs," agrees another interviewee. "There is no one else who can help them and if you want to present their claim properly, they need to be in the best, most unstressed state possible."

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It's not uncommon for us to feed our clients when they come in to the office or to set up doctors' appointments – how can they instruct us if they haven't got anything to eat or if they are unwell?
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Although there used to be a social worker attached to the RSB, this was deemed surplus to requirements – now, the system expects lawyers to fill the breach. "In the recent past, Immigration New Zealand has asked me to arrange things like baby bottles, client accommodation and WINZ applications," says Ms Manning. "It's not uncommon for us to feed our clients when they come in to the office or to set up doctors' appointments for them. And we have to do it – how will our clients be able to instruct us if they haven't got anywhere to stay or anything to eat or if they are unwell?"

In the final part of this article (which will feature in an upcoming edition), we will look at what, if anything, might be done to mitigate these systemic frustrations and difficulties. ❖

Where did all the statutes go?

The Contract and Commercial Law Act 2017

By Sarah Pilcher, Principal, The Franchise Lawyer

If you need to check the *Contractual Mistakes Act* after 1 September this year to work out whether your client's mistake will help them, you might not find what you are looking for.

Similarly, stop and think before you send off a letter to the "other side" after that date, claiming that your client is clearly entitled to cancel a contract in reliance on section 7(2) of the *Contractual Remedies Act*, because the "other side" may be more up to date than you, and feel the need to point out that perhaps you meant to refer to section 37(1) of the *Contract and Commercial Law Act*.

The new *Contract and Commercial Law Act 2017* (the Act) comes into force on 1 September this year. It will replace a number of existing Acts relating to general contract rules and sale of goods contracts.

This is the first revision Act under Parliament's statute revision programme pursuant to Part 3 of the *Legislation Act 2012*.

The revision programme was introduced to make the law clearer and easier to understand. It is said this will help reduce regulatory costs for individuals and businesses.

A revision involves an update of legislation combining one or more Acts covering related subject matter into a new Act which may have a new title. The update can include omitting redundant provisions, re-numbering sections, correcting grammatical errors and typos, modernising language to achieve consistency with current drafting style and format and generally to better express the spirit and meaning of the law.

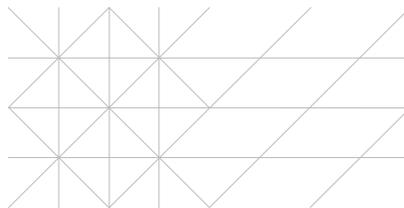
No changes to the law or effect of the law are intended to occur, other than updates of monetary amounts and the making of minor amendments to clarify Parliament's intent or to reconcile inconsistencies between provisions.

Examples of minor amendments which were accepted as clarifying Parliament's intent or reconciling inconsistencies in the *Contract and Commercial Law Act* include:

- ♦ the addition of "carriers by air" as an extension to carriers by land or water; and
- ♦ the replacement of the word "drunkenness" with "intoxication" (which will now include intoxication by drugs).

These changes have the effect of extending application of meaning to recognise modern life. It is interesting that they made it through the drafting process, while a recommended change to add "online advertising" as a method of giving a notice of sale in addition to the existing method of newspaper advertising was not accepted.

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It is an opportunity to read through the new Act and familiarise or remind yourself of less well-known or obscure provisions which you may not have thought to use in the past. It can be surprising what you find.
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The *Contract and Commercial Act* will repeal 11 Acts as listed below, with their substantive provisions being included, consolidated and reorganised in the new Act:

- ♦ the *Carriage of Goods Act 1979*;
- ♦ the *Contracts (Privity) Act 1982*;
- ♦ the *Contractual Mistakes Act 1977*;
- ♦ the *Contractual Remedies Act 1979*;
- ♦ the *Electronic Transactions Act 2002*;
- ♦ the *Frustrated Contracts Act 1944*;
- ♦ the *Illegal Contracts Act 1970*;
- ♦ the *Minors' Contracts Act 1969*;
- ♦ the *Sale of Goods Act 1908*;
- ♦ the *Sale of Goods (United Nations Convention) Act 1994*; and
- ♦ the *Wages Protection and Contractors' Liens Act Repeal Act 1987*.



Sarah Pilcher

Additionally, sections from other statutes are repealed and incorporated into the Act, such as the *Mercantile Law Act 1908* and *Mercantile Law Amendment Act 1922*.

Six of the repealed Acts relate to general contract rules, and the other five are described as commercial Acts containing contract rules that apply to transactions in special contexts.

The repealed Acts are set out in four Parts and sub-parts of the new Act under "Contracts legislation", "Sale of goods", "Electronic transactions" and "Other commercial matters".

There may be other Acts that would seem to complement and fit in with this group (the *Consumer Guarantees Act 1993* comes to mind), but the Justice and Electoral Committee reported that these statutes were chosen for revision because they are quite old and contain out-of-date language and many repealed provisions.

The main impact this revision will have on practitioners is the need to become familiar with the new names, numbers and cross references, and to ensure that their precedents, templates and other materials are updated accordingly.

It is also an opportunity to take the time to read through the new Act and familiarise or remind yourself of some of the less well known or obscure provisions of which you may not have been aware, or thought to use in the past.

It can be surprising what you find – and one day you might be the one who can point out to the "other side" that perhaps its wharf-owning client omitted to consider section 337(2) of the Act when it sold your client's goods without prominently displaying a copy of the notice of sale on its wharf.

As part of the Commercial Law Series, ADLS is holding a seminar on this topic (in person and live streamed) on Tuesday 1 August 2017. Entitled "The Contract and Commercial Law Act 2017 – Old Friends in New Guises", it will explore the content of the new legislation and its impact on commercial contracts. For more details or to register, please see page 9 or visit www.adls.org.nz/cpd. ✦

LEGAL PRACTICE

Coaching lawyers – what can success look like?

By Emily Morrow, Executive Consultant

Frequently, I'm asked to coach a lawyer who is viewed as being a "high potential" professional within a law firm, in-house counsel's office or barrister's chambers.

The unspoken (or not so unspoken) agenda is that, as a result of the coaching relationship, the individual will "change" to better meet the needs of the organisation and I will somehow "fix" the situation. Interestingly, in most such cases, I find there is nothing to "fix". Instead, there may be better ways to think about and approach the status quo. I often say to clients that I only do developmental work and not remedial work. Such engagements cause me to think about "change" in the context of law professionals and the extent to which we are the product of "nature" or "nurture". Research indicates that about fifty percent of human behaviour is nature; that is, our essential temperament hardwired into our DNA. The other fifty percent is nurture, the cumulative, ever-changing result of our many lifetime experiences. Generally, I find the nature part can be enhanced but not fundamentally changed. The nurture part is endlessly malleable, and that is the focus of much of my consulting work.

One of my basic approaches, founded in neurological research, is that if an individual engages in clearer, crisper, better thinking, that will result in more appropriate and enhanced behaviour. It is our behaviour that others experience, so ultimately changing that is what most matters. Typically, "lower quality" thinking occurs when we function in the cerebral subcortex of the brain (the "reptilian brain"), which often happens under stress. When we function in the cerebral cortex of the brain (the "upper brain"), we become more creative, innovative, logical, empathetic and generally more "executive" in our thinking. Invariably, our self-management skills and our overall functioning improve. Coaching involves learning how to identify different levels of cognitive functioning and making intentional choices to engage in higher-level thinking. That said, coaching can be of assistance in many different professional contexts. Consider the following.

Business development skills

Anna is a lawyer with outstanding technical skills and an impressive professional background. She was told she needed to demonstrate the ability to build a partner-level practice before she could be considered for partnership. Despite her diligent networking efforts and strong desire to succeed, Anna was having difficulty cultivating and attracting new clients. She is, by nature, introverted, detail- and goal-oriented, concrete in her thinking, logical and she seeks closure in her work. Anna can present as being somewhat two-dimensional, inflexible, lacking in personal warmth and imagination and uncharismatic. In a candid moment, Anna once told me that she admires those of her professional colleagues who easily "pull other people into their slipstream", even

though these individuals lack her technical skills.

I asked Anna to articulate her long-term vision for her practice. What types of clients did she wish to attract? What kinds of strategies were likely to work for her? What approaches would be best suited to who she is personally and professionally? What might success look like if she were to build such a practice? Anna tends to focus on the trees, rather than the forest, and she found it challenging to articulate a clear strategic vision for her practice. We also discussed her anxieties about engaging in business development activities that were outside of her comfort zone. I encouraged her to tell me about business development initiatives she had undertaken in the past, what was successful and what was less successful. We had several good brainstorming, open-ended discussions about how to best grow her practice. What emerged was the beginnings of a "roadmap" for Anna to follow in building her practice.

Anna articulated that, despite her strong goal orientation, she lacked confidence in her relationship-building skills, without which she would have difficulty attracting and retaining clients. She identified how to enhance her relationship building skills by being more flexible, a better listener, less critical of others, more "fun", and generally lightening up a bit. She also began to ask others with whom she worked to give her feedback on changes they had noticed in their interactions with her. This, coupled with her formidable technical skills, was a "winning combination". Anna's approach to personal/professional development was consistent with her intrinsic nature as a person – focused, concrete, goal-oriented and logical. However, she intentionally nurtured other previously dormant capabilities and encouraged those around her to do the same. The results were clear and quantifiable. Not only did Anna enjoy her work more and experience less stress, but her practice grew and her professional revenues increased. She had effectively created her own tailored slipstream into which others are now being pulled.

Succession planning

John is successful, energetic, in his 60s, and the managing partner of a mid-sized law firm. Realising that succession planning is a critical component of effective leadership, John had given considerable thought to what will happen to the firm when he retires. Nevertheless, John was puzzled by his inability to make any progress in implementing a succession plan. Initially, John engaged me to work with him to design a succession plan and the steps needed to implement it. In discussion, it became clear these objectives were premature, because John needed first to address several existing management and staffing issues within the firm.



Emily Morrow

My subsequent interviews with key employees revealed four major issues: John was not adequately developing the next level of leadership; there were significant inefficiencies in the firm's administrative systems; several personnel changes were required; and John was not mentoring or encouraging others in actively building and maintaining the firm's practice.

In the course of our discussions, John realised that, despite his ostensible interest in retiring and succession planning, he had unresolved concerns about his future after retirement. Further, he worried that others in the firm would not service his clients as well as he had. Both of these concerns were unfounded – John had many interests outside of the law and he practised with extremely capable people. He was able to step back, identify his flawed thinking and replace it with more appropriate attitudes and approaches. Consequently, John has made one of his colleagues a new partner in the firm and is introducing that partner to his client base. He also has initiated necessary personnel changes, the firm is poised to improve its financial performance, and internal systems have been improved resulting in cost savings through increased efficiency. Finally, and perhaps most importantly, the firm is gradually implementing a succession plan under which John can ultimately retire, ownership will be passed to others within the firm, the transition will be seamless for clients, and this successful firm will continue into the future.

Strategic planning capabilities

Eric is a long-time member of the management board in a successful law firm. However, when asked by the firm's managing partner to design and implement a critical new strategic initiative for the firm, he became uncharacteristically indecisive and unable to provide direction and leadership for the project. I was engaged to work with him on personal and professional development issues and to assist in the formulation and implementation of that strategic initiative.

First, Eric and I focused on identifying his personal leadership style and improving his self-confidence and self-presentation skills. Through our discussions, Eric came to realise that the strategic initiative required a level of conceptual thinking that was new to him. When he sought to engage in long-range strategic thinking, he became anxious

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Profiles of newly appointed Queen's Counsel

Law News asked this year's 13 newly appointed Queen's Counsel to answer some brief questions about themselves – some personal, some professional – so our readers can get a glimpse into what makes these silks tick. This week we put the spotlight on Andrew Barker QC of Shortland Chambers in Auckland and Paul Borich QC, also of Auckland.

Andrew Barker QC

Andrew Barker QC is a graduate of the University of Auckland (BA/LLB (Hons) and the University of Toronto (LLM). He was admitted to the Bar in 1995, and started practice as a litigation solicitor at Russell McVeagh. After studying at the University of Toronto, he lectured Tort Law and Civil Procedure at the University of Otago. Mr Barker QC went to the independent bar at the end of 2002. He specialises in commercial litigation and is a member of ADLS.



Andrew Barker QC

What prompted you to get into law?

I am tempted to give the answer Bernard Brown once gave to that question, that he was standing in the wrong queue at enrolment. However, there was probably a level of design involved somewhere. Law Intermediate was just a BA, which appealed more than Commerce. I didn't have the marks for medical school and was not good at science anyway. Once you are in law school, the career path has a momentum of its own.

What gets you excited about your job?

Hearings. I enjoy the challenge of the argument.

Of what achievement are you most proud (personal and/or professional)?

My marriage to Wendy, and three healthy children who all enjoy cricket. But at a professional level, appointment as a QC is pretty special.

What is the greatest challenge presented by your role?

All cases are a challenge. Some are just harder than others. What gives me the most satisfaction is turning the difficult case, in which the arguments and liabilities are unclear, into the easy case for which there is only one answer. I see that as being the challenge of advocacy.

What is the most important lesson you've learned (thus far, in your career/life)?

At a professional level, the most profound lessons are the simple ones. It just takes a while to understand that. At a personal level, don't waste too much time on self-analysis.

What is your favourite legal or political-themed movie/book/TV series of all time?

"Rumpole" is hard to beat, both in book and on the TV. I always enjoyed "The Paper Chase". Thankfully, Professor Coote had stopped channeling Professor Kingsfield (John Houseman) by the time I did first year contract. There are many other legal themed-books. They are a bit of a weakness.

Mr Barker QC will be co-presenting a seminar on negligent misstatement for ADLS on 29 August 2017 – for more information or to register, please see www.adls.org.nz/cpd. ☒

Paul Borich QC

Paul Borich QC graduated with an LLB from the University of Auckland was admitted in 1988. He joined the Auckland firm Rice Craig and became a partner in that firm in 1996. In 2014, Mr Borich joined the independent bar. He specialises in criminal law, including criminal appeals to the Court of Appeal and Supreme Court, and is a member of ADLS.



Paul Borich QC

What prompted you to go into the law?

Whilst still at primary school, I had to do a project on careers. At that stage, I had no idea about a career. I got into trouble with the teacher on a homework matter, who told me, "that I was a smart aleck ... (another "a" word may have been used) ... had a smart answer for everything, and I was as bad as a bloody lawyer!". Although not intended to be as much, I took that as career advice. I did my project on being a lawyer and never looked back.

Of what achievement are you most proud (personal and/or professional)?

My proudest achievements in life (by a very wide margin) are my amazing wife Chris, and my two wonderful children Charlotte and Luka.

As far as my legal career goes, I look back with pride at my time at Rice Craig in Papakura. I was there 25 years, as a law clerk, solicitor, associate and partner. I was supported and encouraged to practise crime the whole time I was there (almost unheard of in a firm). It was difficult to leave a place with such great partners and staff.

What is the most important lessons you have learned thus far in your career?

A couple of things emerge from doing criminal work. Good people can do bad things – equally, bad people can do good things. Also, things may not always be how they appear at a first look.

What is favourite legal themed movie/book/TV series of all time?

"Boston Legal" (in particular Denny Crane, a gem of a man – a reminder to all lawyers that our profession needs to have its characters). ☒

PEOPLE IN THE LAW

Buddle Findlay lawyer receives Fulbright Award

Buddle Findlay solicitor Lottie Boardman has been awarded a Fulbright Science and Innovation Graduate Award. The award will assist her to study towards a Masters of Environmental Management at Yale's School of Forestry & Environmental Studies in Connecticut.

The Fulbright Science and Innovation Graduate Awards are for promising New Zealand graduate students to undertake postgraduate study or research at US institutions in fields related to science and innovation. At least ten awards valued at up to US\$31,000 (plus NZ\$4,000 travel funding) are granted each year, towards one year of study or research in the US.

Originally from Christchurch, Ms Boardman studied at the University of Canterbury, completing a LLB (Hons)/BSc (Biological Sciences and Philosophy) in 2013. As a student, she summer-clerked in Buddle Findlay's

Wellington office and, following her studies, joined the Wellington litigation and insolvency team. While working at Buddle Findlay, she studied part-time at Victoria University of Wellington towards a Master of Laws, focussing on environmental and international law topics.

Ms Boardman's passion for environmental issues led her to attend the United Nations climate talks in Paris in 2015 and in Marrakesh in 2016 as a youth observer, volunteer with Generation Zero's Zero Carbon Act campaign and to be involved with the Green Party at a local level. Her studies at Yale will assist her in helping New Zealand to become a more sustainable country – environmentally,



Lottie Boardman

socially and economically.

Ms Boardman starts her two-year programme at Yale in August 2017. "Learning to live within our planetary boundaries and yet provide fairly for all, in New Zealand and at a global level, is essential to our collective future. I am honoured and privileged to be awarded a Fulbright to study in this important area," she says. ✕

DISPUTE RESOLUTION

Diversity in focus at AMINZ conference

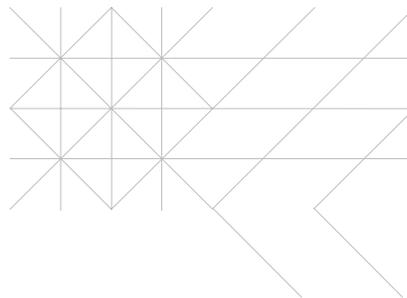
Internationally-noted scholar and barrister Rashda Rana SC has been confirmed as a keynote speaker at the Arbitrators' and Mediators' Institute of New Zealand's (AMINZ) annual national conference in Auckland this month.

This year's three-day event ("Ready Set Grow"), taking place on 17-19 July, highlights issues relating to diversity in the dispute resolution profession. This is in keeping with AMINZ's diversity policy, which seeks to ensure that dispute resolvers can serve a diverse community.

Ms Rana SC has been practicing as an advocate for over 20 years in London, in various states in Australia (primarily in NSW), and in South East Asia, including Malaysia, Singapore, Hong Kong and South Korea. She is the current president of Arbitral Women. She has also held the role of general counsel for Lend Lease Project Management & Construction (formerly known as Bovis Lend Lease), one of the world's leading project management, design and construction companies, operating in more than 30 countries.

"Everything is open to women as it is to men," she says, "but even today the doors are not opening as widely for women as they are for men and when they are allowed into the club, women are not entitled to be paid the same as a man."

It is in such an uneven environment, Ms Rana SC suggests, that the high demand for arbitration services has driven many global law firms to deploy significant resources to meet both traditional and emerging regions — even while the steady growth in more established markets has not been



reflected in the greater participation of more women. Women, especially those who are not white or else young in the law, are not getting the same opportunities as men, regardless of background.

So why is it that the gate to full equality is still firmly shut? Ms Rana SC's keynote address looks at that question and will put forward some creative ways of levelling the playing field, as she looks at the issue of implicit bias.

She will also be a panelist, with the Hon Justice Sally Fitzgerald, Miriam Dean QC and Nicola Hartfield, at a dedicated session on how women in the profession are faring. That session will be led by senior mediator, Deborah Clapshaw.



Rashda Rana SC

Ms Rana SC's inclusion in the conference's determinative session on managing the interface between design and construction will also be of considerable interest. "Management of the interface between the process of design and construction is an essential element of every successful project," she believes.

Construction processes, she says, seem to be striving towards closer integration of those participating in these aspects. More and more responsibility is being directed to main contractors for the management of detailed design, management of construction as well as pre-construction processes. This session will explore the problems contractors face in managing design, the necessity for clarity in the definition of design management and the skills necessary for effective and appropriate design management.

For more information about this month's AMINZ national conference, please visit www.aminz.org.nz. ✕

Featured CPD

Sentencing Refresher - Getting the Best Outcome for Your Client

Sentencing is a key part of the Criminal law process, but just how well prepared are those acting and what could be done better? This seminar will address a range of sentencing-related content, including co-operation with authorities, disputed facts hearings, ss 9 and 28 of the Sentencing Act 2002, victim impact statements, mental health aspects, transport and sex cases, as well as ways in which to help persuade a Judge as to the appropriate sentence.

Learning Outcomes

- Gain insights into co-operating with authorities and disputed facts hearings.
- In respect of the Sentencing Act 2002, gain a deeper understanding of s 9 issues and s 28 reports.
- Become apprised of the content and utility of victim impact statements.
- Become updated on developments with sentencing in transport and sex cases, and where there are mental health considerations.
- Acquire tips for achieving the best outcomes for clients through a range of practical strategies.

Who should attend?

All those practising in Criminal law including youth advocates.

The Disputes Tribunal: Preparing Clients

With more and more matters being referred to the Disputes Tribunal, the likelihood of practitioners having to advise clients on the workings of the Tribunal and assisting them with the preparation of their cases is sure to increase. This webinar, presented by the Principal Disputes Referee and a litigation lawyer, will provide insights into how best to prepare for a hearing at the Tribunal and what to expect when appearing at the hearing itself.

Learning Outcomes

- Gain insights into how the law has been applied in various types of cases, and the format of a typical hearing.
- Learn more about how best to prepare clients for a hearing in the Tribunal and how to deal with jurisdictional issues, the preparation of submissions, settlements, and tips on actually presenting the case without a lawyer present.
- Understand better the processes behind re-hearings and appeals as well as the enforcement of orders made by the referee.

Who should attend?

All lawyers whose clients may seek advice on appearing in the Disputes Tribunal.

Constructive Trusts: A Deconstruction

Constructive trusts in various guises have become increasingly common as a cause of action in litigation and in doing so have created a level of uncertainty in the area of trust law. This seminar will look at what constructive trusts actually are and their uses (and possible abuses) in practice.

Learning Outcomes

- Understand better what constructive trusts actually are, the forms they may take (institutional and remedial), and how they differ from other types of trusts.
- Gain insights into how constructive trusts are employed as a cause of action and the role they may play in relationship (and other) property disputes.
- Learn more about the increasing imposition of constructive trusts over express trusts and the consequences of this for beneficiaries and other interested parties.

Who should attend?

Relationship property and trust litigators, general practitioners, trust and estate planning lawyers, legal executives and all lawyers who act as Professional Trustees

Leading Your Career - Exclusively for Women Lawyers: Wellington

Take charge of your career and realise your underlying potential. This practical, interactive one-day workshop, led by one of New Zealand's top female lawyers and one of New Zealand's top leadership experts, will arm you with resources, self-confidence and focus to apply immediately to your role and to enhance your future career. This workshop is normally only available as an in-house programme for law firms.

Places are limited. Previous workshop was over subscribed. Register now to avoid missing out.

*CPD hours: 7 hours onsite (excluding breaks) plus a preparatory 1 hour online assessment

Learning Outcomes

- Gain a real understanding of your personal values.
- Better understand your behavioural style, how to 'read' others and how to adapt your style to increase your influence.
- Gain insights into how to take responsibility for driving your career and how to challenge undermining self-talk that erodes self-confidence.
- Gain clarity about your career purpose and create a clear career vision.
- Develop your 'brand proposition' - the reputation needed to realise your career vision.

Who should attend?

Women lawyers with 6+ years' PQE.

 **Seminar**  **Livestream**
 CPD 2 hrs

 **Tue, 25 Jul**
 4pm - 6:15pm

Presenters

Kirsten Lummis, Partner,
 Meredith Connell

Jo Scott, Deputy Public Defender,
 Public Defence Service, Northern

Anna Longdill, Barrister

Chair

Her Honour Judge Jelas

Webinar

CPD 1.25 hr

 **Wed, 26 Jul**
 12pm - 1:15pm

Presenters

Anne Darroch,
 Principal Disputes Referee

Daniel Shore, Director,
 McCaw Lewis

 **Seminar**  **Livestream**
 CPD 2 hrs

 **Thu, 27 Jul**
 4pm - 6:15pm

Presenters

Vanessa Bruton QC

Chris Kelly, Consultant,
 Greg Kelly Law Ltd

Chair

The Honourable Justice Hinton

Workshop

CPD 8 hrs

 **Tue, 15 Aug**
 9am - 5pm

Presenters

Miriam Dean QC

Andrea Thompson, Director,
 Catapult Leadership Training

Commercial Law Series in Brief

CLS: The Contract and Commercial Law Act 2017 - Old Friends in New Guises

Taking effect on 1 September, the Contract and Commercial Law Act 2017 (Act) repackages and updates 11 pieces of legislation, including the Contractual Remedies Act 1979, Illegal Contracts Act 1970 and Sale of Goods Act 1908. Given that the Act has 347 sections and six schedules, timely guidance about its contents and effect, for lawyers and their clients, will be invaluable. This is particularly so as the legislation potentially affects all contracts.

Presenters: Mike French, Senior Law Academic – Law School AUT; Kelly McFadzien, Partner, Chapman Tripp

Chair: Geoff Hardy, Partner, Martelli McKeeg.

 **Seminar**
 **Livestream**
CPD 2.25 hrs

 **Tue, 1 Aug**
4pm – 6.30pm

Commercial Law Series: FMCA Exclusions: The Ins and Outs

There are over 15 exclusions to the full regulated offer regime under the Financial Markets Conduct Act 2013 (FMCA) that allow your clients to make offers with limited or no disclosure. How many do you know? The transitional period is now over, so compliance with the FMCA is mandatory. This webinar will provide practical guidance as to how, and when, to apply some of the most common exclusions under the FMCA, as well as providing an overview of the types of offers that fall within, or outside, the scope of the FMCA.

Presenters: Rachel Dunne, Partner, Chapman Tripp; Philip Ascroft, Senior Solicitor, Chapman Tripp

 **Webinar**
CPD 1.25 hrs

 **Wed, 2 Aug**
12pm – 1.15pm

Corporate Governance: New Dimensions, Heightened Expectations?

Today's board of directors does, and probably should, look, feel and act differently from those of even a few years ago. What has brought about this evolution, and why? And what will, and should, the board of tomorrow and beyond be doing to meet the expectations of the company's stakeholders, the New Zealand public and even the global community? Presented by a panel with breadth and depth of expertise and experience in matters of corporate governance, this seminar will provide attendees with practical insights and guidance for advising directors of both small and large companies.

Presenters: John Hagen, Forensic Accountant; Dame Alison Paterson; Professor Susan Watson, Professor of Law, University of Auckland; Michael Webb, Barrister, Princes Chambers

Chair: The Honourable Rodney Hansen CNZM QC

 **Seminar**
 **Livestream**
CPD 2 hrs

 **Thu, 3 Aug**
4pm – 6.15pm

CLS: Shareholders' Toolbox: Unlocking the Breakdown of Shareholder Relationships

The breakdown of shareholder relationships is common. So, what options are available for parties to try and "unlock" these situations? Perhaps more than you might think. Providing insights into a range of possible solutions for shareholders, this webinar will assist practitioners in equipping their clients to try and disentangle themselves from difficult and distressing shareholder relationship breakdowns.

Presenters: Dean Alderton, Partner, Bell Gully; Greg Blanchard QC, Barrister, Shortland Chambers

 **Webinar**
CPD 1.25 hrs

 **Thu, 24 Aug**
1pm – 2.15pm

Negligent Misstatement - Where Are We and Where To From Here?

Negligent misstatement effectively subsumes all types of negligence in New Zealand, and in many cases the defendants are lawyers! Starting with a contextual background, this seminar will focus on recent developments and the road ahead, as well as looking at key concepts and case law, which may assist lawyers to protect themselves and their clients.

Presenters: Andrew Barker QC; Marcus Roberts, Senior Lecturer, University of Auckland

Chair: The Honourable Justice Davison

 **Seminar**
 **Livestream**
CPD 2 hrs

 **Tue, 29 Aug**
4pm – 6.15pm

CPD Pricing

Delivery Method	Member Pricing	Non-Member Pricing
 Webinar (1 hr)	\$75 + GST (= \$86.25 incl. GST)	\$105 + GST (= \$120.75 incl. GST)
 Seminar (in person)	\$125 + GST (= \$143.75 incl. GST)	\$180 + GST (= \$207.00 incl. GST)
 Seminar (livestream)	\$125 + GST (= \$143.75 incl. GST)	\$180 + GST (= \$207.00 incl. GST)
 On Demand (1-hour recording)	\$85 + GST (= \$97.75 incl. GST)	\$120 + GST (= \$138.00 incl. GST)
On Demand (2-hour recording)	\$140 + GST (= \$161.00 incl. GST)	\$200 + GST (= \$230.00 incl. GST)

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Continued from page 5, "Coaching lawyers – what can success look like?"

and uncomfortable. We identified his specific skill deficits, how he wanted to address these and the best ways to do so. Consequently, Eric's personal and professional "presence" improved, his anxiety level diminished, and he began to do his best thinking relative to designing the strategic initiative.

Second, Eric began to articulate a conceptual framework for the strategic initiative – specific actions to be taken, a timeline, staffing, benchmarks, and the other details of implementation. Once he realised the importance of getting buy-in to his proposals from the managing partner and other members of the firm, he focused on his group presentation and relationship building skills to create consensus in regard to the new approach. Eric's self-confidence increased, he improved his self-presentation skills, and he realised that he had significant conceptual thinking capabilities. In addition, his reinvigorated commitment to the firm resulted in his improved ability to manage and grow his own practice. A detailed plan for the strategic initiative has been approved by the managing partner and is now under review by the senior management team, with the expectation that implementation will begin this year

These are just a few examples of outcomes that can result from a successful coaching intervention. Nothing was initially "broken", nothing was "fixed", but real change occurred and individual lawyers and their colleagues experienced the benefits of enhanced thinking and behaviour.

Emily Morrow, BA (Hons), JD (Hons, Juris Doctor), was a lawyer and senior partner with a large firm in Vermont where she built a premier trusts, estates and tax practice. Having lived and worked in Sydney and Vermont, she now resides in Auckland and provides tailored consulting services for lawyers, barristers, in-house counsel, law firms and barristers' chambers focusing on non-technical skills that correlate with professional success; business development, communication, delegation, self-presentation, leadership, team building/management and strategic planning. Emily Morrow is a skilled and experienced retreat facilitator for law practices. She can be reached at www.emilymorrow.com. ☒

ADLS EVENT

North Shore Lawyers' Lunch

ADLS has a Lawyers' Lunch coming up on the North Shore on Tuesday 25 July 2017 at The Commons in Takapuna.

Practitioners from the North Shore and neighbouring suburbs are invited to meet and network with fellow lawyers in the area and to provide feedback to ADLS on how we can support you in your professional career.

The lunch will be \$25.00 (incl. GST) from a set menu. We are pleased to offer ADLS members an exclusive Lawyers' Lunch rate of \$20.00 (incl. GST). Numbers are limited, so register now to avoid missing out.

Time & date: 12.30pm, Tuesday 25 July 2017

Venue: The Commons, 21 Hurstmere Road, Takapuna

Registration: \$17.40 + GST (\$20.00 incl. GST) per person for ADLS members;
\$21.74 + GST (\$25.00 incl GST) per person for non-members

Register before **Thursday 20 July 2017** to secure your spot, subject to availability. Visit www.adls.org.nz to register and pay online; alternatively, email adls.events@adls.org.nz or phone (09) 303 5287. ADLS' standard cancellation policy applies for this event.

The ADLS North Shore Lawyers' Lunch is proudly sponsored by Legal Personnel.



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Dr Rajen Prasad
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Author: John Earles

This 2017 CD contains over 100 probate forms from New Zealand's leading text on probate practice, *Dobbie's Probate and Administration Practice*, as reviewed and updated by expert author John Earles, who is a Registrar and Specialist Technical Advisor of the High Court of New Zealand.



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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 persons. If you do not reply within three weeks it will be assumed that you do not hold or have never held such a document.

Verity Colleen HOLLOWAY, Late of 8 Oranga Street, Marfell, New Plymouth, Teacher Aide, Single, Aged 44 (Died 04/10/2016)

Derek ISARA, Late of 24 Hayman Place, Beach Haven, Auckland, Aged 47 (Died 09/06/2017)

Kenneth Albert JOY, Late 44 Giles Road, Papakura, Auckland, Company Director, Aged 76 (Died 12/06/2017)

Ngatokorua NGATAE (also known as Nga NGATAE), Late of 1/45 Third Avenue, Kingsland, Auckland, Laundry Assistant, Aged 54 (Died 27/01/2011)

Harkissun Mavji PATEL, Late of 118 White Swan Road, Mt Roskill, Auckland, Sales Representative, Aged 65 (Died 16/06/17)

Sefesi TUPOU, Late of 2/49 Browns Road, Manurewa, Auckland, Aged 43 (Died 25/01/2017)

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Some familiarity with Employment law is a must for this role and some travel within New Zealand will be required.

Please email your application to Shama Khan at legal@etu.nz by 5pm, Wednesday 19th July.

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The rooms available include a room of approximately 14m² at a cost of \$260 per week and a 16m² room at a cost of \$280 per week (furnished or unfurnished) plus overheads of approximately \$100 per month, plus GST, with no long term commitment required.

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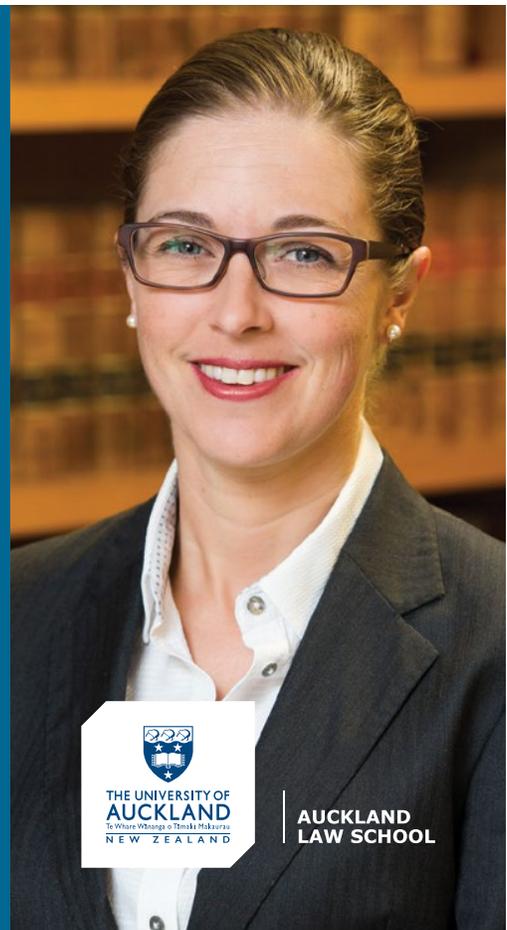
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