

# NZ | LAWYER

nzlawyermagazine.co

Issue 8.1



## AUCKLAND CITY REPORT

Auckland housing: a  
crisis for some,  
bonanza for lawyers

## BACK TO LAW SCHOOL

Postgraduate  
options for new  
lawyers

## JACK OF ALL TRADES

General counsel  
interview with  
CTU's Jeff  
Sissons

# RETURN TO THE TOP

Police and Corrections Minister  
Judith Collins on life, law and politics



# Put it on our desk.

Estate duties can be rewarding but can also be hard work. Public Trust Executor Assist is designed to take on as much or as little work as you need to free you up for other things. You can trust our specialist team to get the job done quickly and efficiently, while you retain your existing client relationships, and lower your admin costs. Visit [publictrust.co.nz/executorassist](http://publictrust.co.nz/executorassist)



**Executor Assist**  
Everything in order

ISSUE 8.1

# CONTENTS

CONNECT WITH US

Got a story, suggestion or just want to find out some more information?

 @NZ\_Lawyer

 [plus.google.com/+nzlawyer](https://plus.google.com/+nzlawyer)

 [facebook.com/NewZealandLawyer](https://facebook.com/NewZealandLawyer)



**COVER STORY**  
**WHERE THERE'S A WILL, THERE'S A WAY**  
Police and Corrections Minister Judith Collins discusses her life in the law and the beast that is the political arena



**FEATURES**  
**GOLDEN ERA OF CONSTRUCTION**  
Top construction lawyers explain the key drivers of work in the booming industry



**FEATURES**  
**AUCKLAND CITY REPORT**  
Auckland housing – a crisis for some, bonanza for the legal industry



**FEATURES**  
**EDUCATION REVOLUTION**  
New approaches are transforming the way lawyers study

- UPFRONT**  
**04 Legal insight**  
Lawyering in New Zealand  
**06 News analysis**  
The trials and tribulations of the Trans-Pacific Partnership agreement  
**10 Appointments**  
**12 Deals round-up**
- FEATURES**  
**46 A global flavour**  
New Zealander Barton Hoggard discusses what it's like to work in Dubai
- PEOPLE**  
**16 Jack of all trades**  
The Council of Trade Unions' general counsel discusses what it's like to work within the New Zealand union sector  
**32 Championing change**  
Community law CEO Elizabeth Tennet discusses advocating for the most vulnerable in society

[NZLAWYERMAGAZINE.CO.NZ](http://NZLAWYERMAGAZINE.CO.NZ)

CHECK IT OUT ONLINE 



Sasha Borissenko

# Ahoy, 2016

Greetings! I would like to take this opportunity to introduce myself as the new editor of *NZLawyer*. Although I chose a career in journalism, law has always been my mistress, and I'm so excited to take up this opportunity.

Albeit unintentional, there's a political flavour to this issue, and one could nonetheless argue there's a certain synergy that is created with law, politics and 'the fourth estate'.

For a taste of this synergy, take a look at our cover story on page 28, where newly reappointed corrections minister Judith Collins discusses her life as a lawyer, the beast that is the political arena and her thoughts around the name, 'the Crusher'.

Meanwhile, for those who want a little more of a 'centre left' take on politics and the law, take a look at our general counsel interview with the Council of Trade Unions' Jeff Sissons on page 16, and our human interest story on page 32, where former Labour MP and community law CEO Elizabeth Tennet explains her plight against the discrimination of women.

Albeit unintentional, there's a political flavour to this issue, and one could nonetheless argue there's a certain synergy that is created with law, politics and 'the fourth estate'

Highlighting these characters from different political camps is, of course, an attempt to foster the idea of objectivity – something of the past, journalists of yesteryear might say. If you, too, were gobsmacked at how the throwing of phallic objects towards cabinet ministers could overshadow any legal/media analysis around the Trans-Pacific Partnership agreement, see page six. Otherwise, there's the Auckland city report on page 20, what's happening in the construction industry on page 42 and, if you're wanting something more future orientated and 'hopeful', check out our postgraduate feature on page 36.

So, to conclude, this edition is somewhat all-encompassing – a stab in the dark, if you will. Enjoy!

Sasha Borissenko, editor, *NZLawyer*

EDITORIAL	SALES & MARKETING
Editor Sasha Borissenko	Sales Manager Paul Ferris
Production Editors Moirra Daniels Hayley Barnett	Marketing and Communications Manager Lisa Narroay
CONTRIBUTORS	Traffic Coordinator Lou Gonzales
Samantha Woodhill Hannah Norton Sean McCabe Antony Kitchener	CORPORATE
	Chief Executive Officer Mike Shipley
	Chief Operating Officer George Walmsley
ART & PRODUCTION	Managing Director Justin Kennedy
Design Manager Daniel Williams	Chief Information Officer Colin Chan
Designer Kat Vargas Lea Valenzuela	Human Resources Manager Julia Bookallil

EDITORIAL ENQUIRIES  
+64 9 889 0124  
sasha.borissenko@keymedia.com.au

SUBSCRIPTION ENQUIRIES  
subscriptions@keymedia.com.au

ADVERTISING ENQUIRIES  
+61 2 8437 4703  
paul.ferris@keymedia.com.au



Key Media  
www.keymedia.com.au  
Key Media Pty Ltd, regional head office,  
Level 10, 1-9 Chandos St, St Leonards, NSW 2065, Australia  
tel: +61 2 8437 4700  
fax: +61 2 9439 4599

Offices in Auckland, Sydney, Denver, Toronto, Manila

NZLawyer is part of an international family  
of B2B publications and websites for the legal industry

NZLAWYER  
sasha.borissenko@keymedia.co.nz  
T +64 9 889 0124

samantha.woodhill@keymedia.com.au  
T +61 2 8437 4704

AUSTRALASIAN LAWYER  
sasha.borissenko@keymedia.co.nz  
T +64 9 889 0124

samantha.woodhill@keymedia.com.au  
T +61 2 8437 4704

Copyright is reserved throughout. No part of this publication can be reproduced in whole or part without the express permission of the editor. Contributions are invited, but copies of work should be kept, as NZLawyer magazine can accept no responsibility for loss



## Introducing new Dragon Legal NZ speech recognition with first-ever NZ legal corpus.

Dragon Legal NZ is built around a New Zealand legal corpus for highly accurate speech recognition. Dragon Legal NZ gives you access to thousands of NZ-specific legal terms, statutes, law firms, place names and government entities provides a great productivity booster that allows you to get up and going with Dragon even faster than previously.

Dragon Legal NZ helps New Zealand legal professionals in five ways:

- Instant document turnaround:** Talk and your words appear on the screen via highly accurate speech recognition developed specifically for New Zealand legal documents.
- Talk as long you want:** Dragon Legal is Windows-based computer speech recognition that keeps up with you with no time limits on how long you can dictate – unlike mobile apps and other PC speech recognition programs.
- Dictate documents on the go:** Transcribe dictation recorded on your mobile phone or digital recorder. Make file notes when meetings are fresh in your mind for later transcription.
- Avoid outsourcing charges and issues** with instant, accurate turnaround on documents – because you write them using your voice – and also ensure that intellectual property remains secure.
- Increase efficiency** of support staff and solicitors by freeing up their time for more valuable tasks and removing delays in document processing.

Get started with your Dragon Legal Best Practice Bundle. We make it easy with our no obligation two-week trial.

Sound Business Systems will install and train you professionally so that you'll see a boost in productivity from the moment you starting using Dragon Legal NZ – that's our promise. If you're not completely satisfied, we'll refund the software price in full.

Dragon Legal NZ provides instant document turnaround, continuous speech recognition for long documents, savings on outsourcing charges and increased security for intellectual property. Your whole practice will benefit.

For more information about the Best Practice Bundle, our two week trial offer, or upgrading from your existing Dragon visit [campaignconsole.com/dnslglnz](http://campaignconsole.com/dnslglnz) or phone Mike Kelly from Sound Business Solutions on 021 542 746.

\* Conditions apply

STATISTICS

# THE NEW ZEALAND LEGAL MARKET: A SALARY GUIDE

A report conducted by Hays and The New Zealand Law Society provides a guide to salaries and recruiting trends for the legal profession

**THE INAUGURAL** New Zealand Law Society & Hays Legal Salary Guide 2015 was completed by more than 1,900 members of the society in 2015 – almost seven years following the GFC.

With high levels of construction and investment, and a buoyant property market, the legal industry has seen increasing amounts of transactional work and, consequently, high demand for commercial and commercial property

solicitors at all levels, Hays team leader Joshua Chapman says.

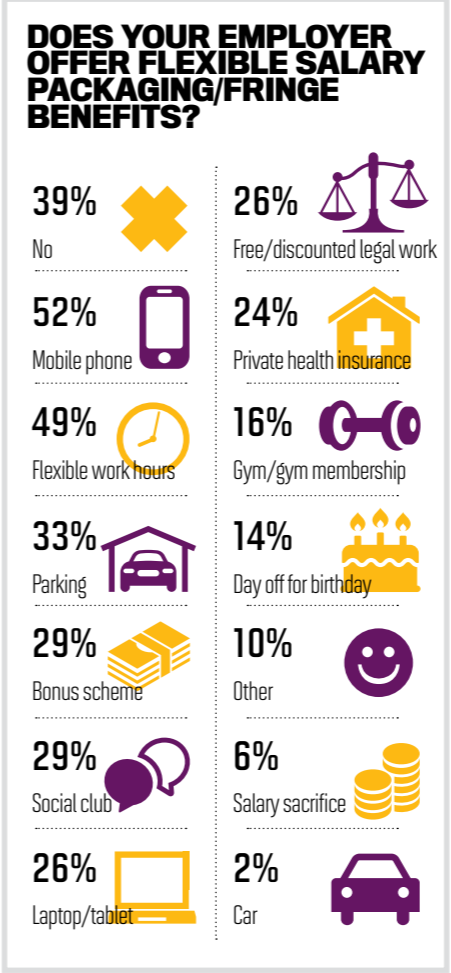
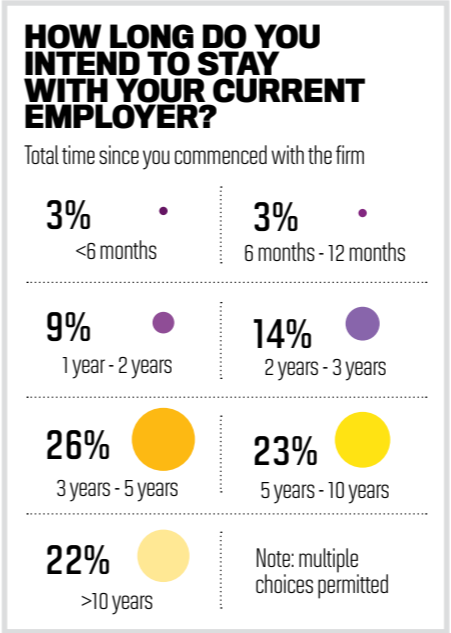
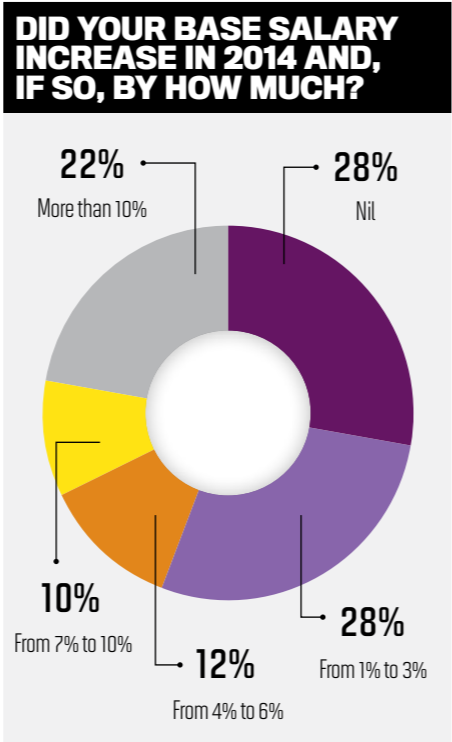
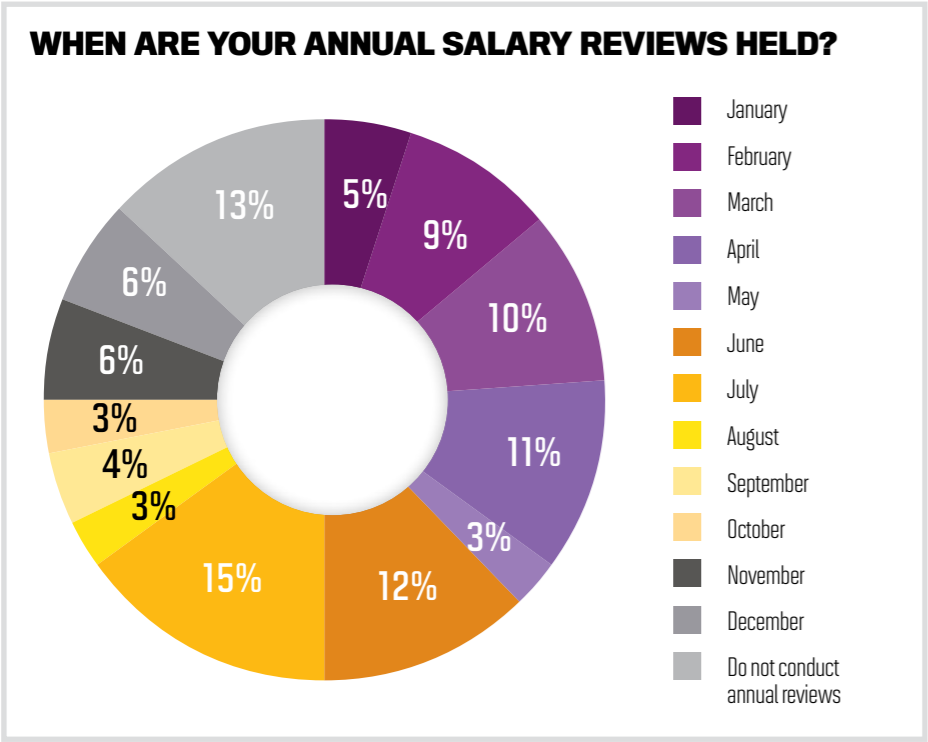
“Off the back of high activity, we have continued to see demand in litigation as well as insurance, which are usually counter cyclical. Overall, the demand in most areas of law has placed upward pressure on salary expectations.

“Salary freezes are now a thing of the past for most legal roles, and many employers have turned their attention to staff attraction

and retention.”

In the survey, one third of respondents said they will look for new roles, which highlights the need for employers to look at staff retention not only from a salary perspective, but also in terms of the benefits on offer, such as flexible working hours and bonus schemes, Chapman says.

The Salary Guide provides employers with the insight they need to set competitive salaries for their staff.



### PRIVATE PRACTICE

Law firm greater than 20 solicitors

LOCATION	0-1 YEAR PQE	2 YEARS PQE	3 YEARS PQE	4 YEARS PQE	5 YEARS PQE
ALL NEW ZEALAND	49,000 35,000 - 68,000	62,000 42,000 - 92,000	75,000 50,000 - 116,000	80,000 60,000 - 120,000	87,000 67,000 - 121,000
AUCKLAND	51,000 41,000 - 68,000	64,000 50,000 - 92,000	78,000 55,000 - 116,000	80,000 68,000 - 120,000	95,000 69,000 - 120,000
CHRISTCHURCH	45,000 38,000 - 59,000	55,000 42,000 - 67,000	69,000 50,000 - 93,000	70,000 60,000 - 75,000	83,000 75,000 - 95,000
WELLINGTON	52,000 40,000 - 45,000	66,000 52,000 - 86,000	82,000 62,000 - 105,000	86,000 60,000 - 110,000	98,000 80,000 - 121,000
HAMILTON, TAURANGA & OTHER NORTH ISLAND	41,000 35,000 - 45,000	47,000 42,000 - 55,000	60,000 55,000 - 72,000	77,000 68,000 - 95,000	84,000 67,000 - 95,000
DUNEDIN AND OTHER SOUTH ISLAND	40,000 35,000 - 45,000	50,000 45,000 - 55,000	59,000 53,000 - 63,000	68,000 67,000 - 70,000	76,000 70,000 - 93,000

LOCATION	6 YEAR PQE	7 YEARS PQE	8 YEARS PQE	9 YEARS PQE	10+ YEARS PQE
ALL NEW ZEALAND	101,000 65,000 - 130,000	115,000 87,000 - 146,000	117,000 85,000 - 175,000	121,000 90,000 - 175,000	144,000 65,000 - 250,000+
AUCKLAND	101,000 65,000 - 125,000	118,000 101,000 - 146,000	126,000 85,000 - 175,000	128,000 100,000 - 145,000	141,000 65,000 - 250,000+
CHRISTCHURCH	87,000 85,000 - 95,000	90,000 87,000 - 95,000	100,000 91,000 - 123,000	113,000 95,000 - 127,000	127,000 80,000 - 163,000
WELLINGTON	113,000 90,000 - 130,000	123,000 87,000 - 160,000	N/A	147,000 90,000 - 190,000	167,000 103,000 - 250,000+
HAMILTON, TAURANGA & OTHER NORTH ISLAND	91,000 87,000 - 95,000	98,000 90,000 - 120,000	N/A	97,000 90,000 - 100,000	115,000 97,000 - 175,000
DUNEDIN AND OTHER SOUTH ISLAND	77,000 70,000 - 125,000	91,000 89,000 - 92,000	N/A	N/A	N/A

### IN-HOUSE

Corporate

LOCATION	0-1 YEAR PQE	2 YEARS PQE	3 YEARS PQE	4 YEARS PQE	5 YEARS PQE
ALL NEW ZEALAND	56,000 42,000 - 72,000	60,000 47,000 - 75,000	72,000 48,000 - 108,000	81,000 58,000 - 118,000	88,000 49,000 - 149,000
AUCKLAND	57,000 42,000 - 65,000	63,000 48,000 - 75,000	69,000 48,000 - 100,000	85,000 62,000 - 118,000	91,000 75,000 - 149,000
CHRISTCHURCH	N/A	N/A	N/A	N/A	75,000 49,000 - 83,000
WELLINGTON	58,000 47,000 - 72,000	59,000 47,000 - 67,000	72,000 61,000 - 98,000	77,000 58,000 - 105,000	88,000 65,000 - 110,000
OTHER	49,000 45,000 - 52,000	N/A	74,000 52,000 - 108,000	N/A	82,000 55,000 - 104,000

LOCATION	6 YEAR PQE	7 YEARS PQE	8 YEARS PQE	9 YEARS PQE	10+ YEARS PQE
ALL NEW ZEALAND	94,000 55,000 - 160,000	105,000 60,000 - 190,000	113,000 58,000 - 195,000	120,000 65,000 - 200,000	145,000 53,000 - 250,000
AUCKLAND	95,000 77,000 - 130,000	110,000 60,000 - 140,000	121,000 66,000 - 195,000	125,000 65,000 - 200,000	163,000 58,000 - 250,000+
CHRISTCHURCH	87,000 74,000 - 160,000	N/A	116,000 95,000 - 140,000	120,000 91,000 - 140,000	128,000 55,000 - 209,000
WELLINGTON	88,000 55,000 - 114,000	108,000 79,000 - 190,000	111,000 58,000 - 158,000	118,000 86,000 - 175,000	139,000 53,000 - 250,000+
OTHER	86,000 55,000 - 135,000	96,000 87,000 - 116,000	103,000 73,000 - 125,000	103,000 80,000 - 140,000	113,000 60,000 - 200,000

### Government & Public Defence Service

LOCATION	0-1 YEAR PQE	2 YEARS PQE	3 YEARS PQE	4 YEARS PQE	5 YEARS PQE
ALL LOCATIONS	43,000 40,000 - 50,000	47,000 40,000 - 57,000	65,000 45,000 - 93,000	67,000 48,000 - 110,000	67,000 50,000 - 86,000

LOCATION	6 YEAR PQE	7 YEARS PQE	8 YEARS PQE	9 YEARS PQE	10+ YEARS PQE
ALL LOCATIONS	69,000 58,000 - 86,000	81,000 80,000 - 100,000	89,000 84,000 - 93,000	130,000 89,000 - 155,000	132,000 61,000 - 250,000+

# TRIALS AND TRIBULATIONS OF THE TPPA

Tens of thousands of anti-TPPA protesters gathered across the country on 4 February as 12 ministers from around the world met at Auckland’s Skycity to sign the international trade agreement that’s taken almost eight years to get off the ground. So, why the backlash? **Sasha Borissenko** reports

**THE TRANS-PACIFIC** Partnership Agreement (TPPA), a free trade agreement (FTA) between New Zealand and 11 other Pacific-rim countries (Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, Singapore, the United States, and Vietnam) was signed in Auckland last month.

Minister of Trade Todd McClay says these 12 countries account for 36 per cent of the global economy and over 40 per cent of New Zealand’s exports.

The TPP is New Zealand’s first FTA



relationship with the United States, Japan, Canada, Mexico and Peru. TPP countries give New Zealand exporters access to 800 million customers including the biggest economy in the world (US) and the third biggest (Japan), he says.

The reasons for New Zealand becoming a party to TPP are both economic and strategic, he says.

“Trade is critical to New Zealand’s continued growth and prosperity, as with a population of just over 4 million, we will never get wealthy selling to ourselves. Removing or

reducing barriers to trade and investment will drive economic growth regionally and nationally. This means jobs and prosperity.”

TPP will see total tariff savings of around \$274m a year on goods exports, and around half of that will be realised when the agreement enters into force. The agreement will add \$2.7bn to New Zealand’s GDP each year by 2030, he says.

McClay says there is a small and vocal opposition to this agreement – despite its similarities to other agreements signed under the previous government – but much of the

dissent is misinformed.

“Some who oppose [the TPPA] are just anti-trade, and others are anti-government. We respect their right to protest but their arguments don’t stack up.”

“As previous Prime Minister Helen Clark stated, it is simply unthinkable that New Zealand not be part of it.”

**What’s the problem then?**

Meanwhile, Building and Woodworkers’ International (BWI) Asia-Pacific regional campaigns officer Edward Miller was one of

those “small and vocal groups in opposition”, having formerly worked as the spokesperson and coordinator of the It’s Our Future campaign – an umbrella grouping that organised opposition to the TPPA. The LLM with first class honours graduate worked with academics, economists, trade unions, and environmental, development and public health groups to raise TPPA awareness.

A lot of the backlash, he says, has been around the abject secrecy under which the deal was negotiated.

There were six years with little to no public

consultation, where very little information beyond a set of bland powerpoints that told people very little was distributed, he says.

“When the final agreement came out the kind of things that It’s Our Future had been talking about over the previous years almost all came true [and] despite the criticism we had received.”

There is very little to be gained economically from the agreement and “people feel like they’ve been sold out”, he says.

The rosier economic projections of those benefits suggest that by 1 January 2030 the TPPA will lift New Zealand’s GDP by 0.9%, which is a target that would be reached three months later regardless, he says.

**“Some who oppose [the TPPA] are just anti-trade, and others are anti-government. We respect their right to protest but their arguments don’t stack up”**

Todd McClay, TRADE MINISTER

The modelling that underlies the predictions have been heavily criticised in the Law Foundation-funded Expert Paper, which also suggests that it will be hard for New Zealand producers to capture the benefit of tariff reductions. A recent paper by Tufts University also predicts a 1.45% decrease in the labour share of total income of GDP by 2025 (i.e. increased inequality) and increased unemployment.

“In other words, there may be some small benefits, but how does this compare to the risks, and what are those risks?”

The Investor-state dispute settlement (ISDS) provisions are said to undermine New Zealand’s sovereignty and democracy, he says.

In his view, ISDS provisions allow foreign investors to sue governments in secretive offshore proceedings where they feel that a law, regulation or other government action has negatively affected their profits or stock value.

“These are not new provisions, however the frequency, scope and magnitude of these decisions is becoming increasingly alarming, as investors are increasingly using these provisions to challenge legitimate public policy decisions.”

“In other words, there may be some small benefits, but how does this compare to the risks, and what are those risks?”

Edward Miller, BUILDING AND WOODWORKERS’ INTERNATIONAL

Ultimately, decisions tend to favour investors, conflicts of interest remain (international lawyers may act for clients one week and as arbitrators the next), they lack proper judicial processes and there is no right of appeal.

Furthermore, they are very expensive cases to argue – the OECD estimates the average cost of a defence is US\$8m (the cost of Australia’s defence against Philip Morris was over A\$50m), and that says nothing for the damages awarded if the case is lost, he says.

“These threats create a powerful chilling effect on democracy, to deter governments from taking action on important issues by putting a set of financial handbrakes on democratic policy-making. And what’s worse, hedge funds are now financing new claims on a no-win no-fee basis.”

For example, Germany was sued for \$5.7bn by Swedish investor Vattenfall for the decision to phase out nuclear transition, Egypt was sued for \$120m for raising their public sector minimum wage, Canada was sued for \$250m by Lone Pine Resources for imposing a moratorium on fracking and they were also sued for a \$500m claim by Eli Lilly

for evidential rules for pharmaceuticals.

TPPA hugely important

Meanwhile, Gary Born, who heads the international arbitration and litigation practices at a transatlantic law firm, and has written textbooks on the subject, argues that the TPPA is hugely important in global economic terms.

In essence, it’s a very important development for the Asia-Pacific region where there’s obviously the trade element, but it’s also an agreement that seeks to develop common environmental and labour standards, he says.

Like McClay, Born says ultimately with any negotiated agreement, trade deals involve trade-offs. Some concessions must be made to secure gains and it’s the value of those concessions, weighed against any potential gains, which causes debate.

Like Miller, Born says much of the debate in New Zealand has focused on the ISDS provisions, which in his experience is unusual.

The basic aim of ISDS provisions is to provide investors from one country, when investing in another, a way to enforce their rights to things like fair, non-discriminatory and non-arbitrary treatment. These are very basic protections, which are fundamental to any developed legal system, he says.

“Without the ISDS provisions and the ability to seek settlement through arbitration, investors would be forced to go to the local courts of the country in which they’re investing. These courts aren’t always as independent and reliable as, say, New Zealand courts.”

The ISDS protections in the TPPA are neither new or unusual, he says.

The paradigm for investment arbitration institutions, ICSID, was set up under the

auspices of the World Bank in the 1960s. Most modern trade and investment deals contain very similar provisions. In fact, there are some 2,800 trade agreements with these provisions. They’re infrequently used – and it’s rarer still that an investor is able to succeed in a claim against a state, he says.

“In my view, ISDS resolves international disputes in accordance with natural justice and with a history of jurisprudence to draw on. It promotes the rule of law consistently and transparently across the jurisdictions of all the TPPA partners.”

New Zealand is already party to quite a few trade agreements with ISDS protections but has never been sued under them, which Born says is unsurprising, as countries with governments like New Zealand’s do not tend to engage in the sort of conduct which will fall afoul of these treaties.

“Of course, it is right to point out that international agreements like TTPA involve limitations on sovereignty. Fortunately, the limitations on sovereignty involved in ISDS really only prevent New Zealand from doing things that it already doesn’t do.

“In any case, the thresholds for finding a breach are high, whether investors like it or not. In my experience, tribunals give countries a significant amount of latitude when asked to assess their decisions.”

Tribunals are particularly circumspect about finding breaches of investment protections where the decision challenged is one that has been reached after a careful and even-handed process, he says.

“Importantly, these provisions apply to the other countries too, which means New Zealand investors also have the benefit of these dispute settlement methods for their work in partner countries.”

Other legal ramifications

Born says the quality of international arbitral tribunals and the awards they render is generally quite high.

“I think there are opportunities for greater reliance on international arbitration to resolve purely commercial cross-border disputes between businesses. Unfortunately

“In my view, ISDS resolves international disputes in accordance with natural justice and with a history of jurisprudence to draw on. It promotes the rule of law consistently and transparently across the jurisdictions of all the TPPA partners”

Gary Born, INTERNATIONAL ARBITRATION PRACTICE GROUP

there are many states around the world where foreign investors and traders have legitimate concerns, not just about competence and judicial experience with commercial transactions, but also unfortunately integrity.”

Even where countries have reputable and experienced judiciaries, bilateral arbitration treaties would prevent the not uncommon situation which currently occurs where a dispute leads to parallel proceedings in both jurisdictions, doubling up on legal fees and resulting in inconsistent judgments, neither of which is enforceable in the other country, he says.

This “unhappy situation” was recently experienced by a New Zealand honey exporter in relation to a dispute with a Singaporean distributor where the New Zealand as well as the Singaporean High Court both assumed jurisdiction of the dispute.

“Thus, the current reality of cross border litigation produces serious risks of parallel proceedings and enforcement difficulties.”

Otherwise, now that the TPPA has been signed there will need to be enacting legislation drafted and passed in accordance with the terms of the agreement, he says.

“From what I can see, it won’t involve an overhaul so much as adjustments here and there. For example, New Zealand will need to remove any tariffs it imposes on imports from TPPA countries that it has not already removed as a result of previous trade deals or policy decisions.”

New Zealand is already party to a number of similar trade deals, which also contain provisions that ban things like expropriation

without compensation, for example. The TPPA will extend the protections given to investors under those existing treaties (for example, with China) to a new category of investors from other countries.

Born says New Zealand lawyers should bear the TPPA in mind when advising New Zealand companies with investments in other TPPA countries, or companies which plan to make such investments.

The TPPA will provide these companies legal protection from, among other things, unfair and discriminatory treatment by the foreign government. The T PPA should also be borne in mind, of course, when advising foreign investors in New Zealand about their rights in New Zealand.

The TPPA will also have relevance for those lawyers working in government roles – whether they be involved in implementing the trade liberalisation measures, or advising ministers on proposed government action, he says. **NZL**

OTHER FACTORS OF TPPA

Union representative Edward Miller says there are also concerning rules around access to biologic medicines, intellectual property restrictions that will raise costs for accessing copyrighted materials and restrictions on how state-owned enterprises can operate.

Meanwhile, international arbitrator Gary Born says there are also questions about preserving New Zealand’s way of doing things – in particular, how the state manages the purchase of pharmaceuticals, and the Crown’s commitments to Maori under the Treaty of Waitangi.

“New Zealanders are quite right to be asking about the consequences of the TPPA in these and other areas.”

But Trade Minister Todd McClay says nothing in TPP will prevent the Crown from meeting its obligations to Maori under the Treaty of Waitangi.

“It could be argued that Maori business will be big winners – the Maori asset base is now over NZ\$40bn, with significant ownership in key export sectors such as red meat, dairy, kiwifruit, forestry and seafood.

“The other argument opponents put up is New Zealand has ‘given away its sovereignty’. However, there is nothing in TPP that prevents the New Zealand Government from regulating for legitimate public policy purposes.

“TPP will also not affect health. It does not change the PHARMAC model and there will be no additional costs to the consumer for medicines.”

The National Interest Analysis (NIA) concludes there will be very limited impact on New Zealand – around \$1m per year – from the patent term extension in TPP because New Zealand practices are already very efficient.

“And TPP does not pose any greater risk of an Investor State Dispute Settlement (ISDS) being taken. None has ever been taken against New Zealand despite ISDS being in other FTAS going back 27 years and the risk remains low.”

There is also a provision in TPP that allows New Zealand to rule out ISDS challenges over tobacco control measures, he says.



MARKET MOVEMENTS

APPOINTMENTS

LATERAL PARTNER APPOINTMENTS			
NAME	PRACTICE AREA	LEAVING	GOING TO
Lisa Jacobs	Management	From COO (Anthony Harper)	To CEO (Anthony Harper)
Alistair Law	Property	Chapman Tripp (senior associate)	Anthony Harper (partner)
Caroline Laband	Insurance	Russell McVeagh	DLA Piper New Zealand



■ BALDWIN'S WELCOMES SEAN BROGAN TO THEIR TEAM OF IP SPECIALISTS

Sean Brogan has joined Baldwins intellectual property as head of commercial. Brogan is an experienced commercial solicitor whose practice covers a broad range of commercial, corporate, IP and IT law matters.

He has experience advising on the commercialisation of intellectual property, drafting and negotiating commercial documentation and agreements, advising on business formation and structuring, asset sales and purchases, general corporate governance counsel – including advising on directors duties, internal company administration and shareholder disputes, and assisting in the negotiation and settlement of contractual disputes.

Before joining Baldwins, Brogan worked in the commercial and corporate department of a well-known boutique firm in Sydney, after which he spent several years in one of the UK's leading technology and outsourcing law firms.

“I am excited to join Baldwins. I have spent the last couple of years advising on deals at the forefront of the UK's technology sector and look forward to sharing this expertise with New Zealand's wider business and legal communities,” he said.

At Baldwins, Brogan assists private and public sector bodies to structure their business and operations in order to protect, commercialise and otherwise best utilise their assets.

PARTNER PROMOTIONS	
FIRM	LAWYERS PROMOTED
Chapman Tripp	Luke Hinchey, Tim Smith, Ben Williams, Fiona Bennett
Minter Ellison Rudd Watts	Steve Gallagher
Russell McVeagh	Tom Hunt, David Raudkivi

SENIOR ASSOCIATE APPOINTMENTS	
FIRM	LAWYERS PROMOTED OR LATERALLY APPOINTED
Anthony Harper	Chloe Jolliffe, Lisa Taylor, Tim Bunker
Bell Gully	Natasha Garvan, Lisa McLennan, Kate Venning, Gemma Wills, Kristin Wilson
Chapman Tripp	Kate Fairbrother, Mieke Upton
Chen Palmer	Kate Broadhurst
Minter Ellison Rudd Watts	Andrew Suggate, Duncan MacKenzie, Anna Davison, Iain Stephenson, Kate Anderson, Matt Toulmin
Russell McVeagh	Anna Crosbie, Ian Beaumont
Simpson Grierson	Mark Allen, Natalie Miller, Sarah Mitchell, Rob O'Connor



■ RUSSELL MCVEAGH WELCOMES NEW PARTNERS

Russell McVeagh welcomes the promotion of Tom Hunt and David Raudkivi to the partnership.

Hunt's practice specialises in debt capital markets and financial services regulation. Raudkivi will continue to focus on equity capital markets, mergers and acquisitions, private equity and other corporate transactions.

In addition to their partner promotions, the Russell McVeagh Board are pleased to announce all of their 2015 senior promotions, which include senior associates Anna Crosbie in their property group and Ian Beaumont in their corporate advisory team.

Russell McVeagh CEO Gary McDiarmid said, “These promotions are another important step in our firm's continued progression and growth.”

OTHER		
NAME	FIRM/COMPANY	TITLE
Sean Brogan	Baldwins	Intellectual property head of commercial
Brendan Cash	Bell Gully	Special counsel
Liz Lim	Bell Gully	Special counsel
Alex Cumming	Chen Palmer	Intermediate associate
Victoria Knell	DLA Piper New Zealand	Senior solicitor (healthcare)
Emma Sweet	DLA Piper New Zealand	Senior solicitor (litigation and employment)
Jemma Cooper	DLA Piper New Zealand	Solicitor (property)
Ekta Raniga	DLA Piper New Zealand	Solicitor (property)
Jeremy Thomson	DLA Piper New Zealand	Law clerk (corporate)
Jennifer Wilson	Minter Ellison Rudd Watts	Special counsel
Sacha Oudyn	Minter Ellison Rudd Watts	Special counsel

ALMAO • AD • DOUCH

BARRISTERS AND SOLICITORS

The Crown Solicitor at Hamilton has vacancies for Senior and Intermediate Crown Prosecutors.

The positions involve the conduct of jury trials in the High and District Courts together with attendances in relation to other aspects of the litigation practice conducted on behalf of the Crown and other clients.

The Hamilton warrant covers the area from Northern Waikato to the King Country and includes the Coromandel Peninsula with the consequence that a significant volume of cases at all levels of seriousness are undertaken.

The proximity of Hamilton to Raglan, the Coromandel Peninsula, the beaches of the Western Bay of Plenty and the central North Island ski fields allows for a significant range of outdoor pursuits while living in a large city which is still affordable.

In each case the terms of employment will be negotiated to reflect the experience and ability of the successful applicant.

Applications accompanied by a CV should be addressed to:

**Almao Douch**  
**PO Box 19173**  
**HAMILTON 3240**

Attention: **R G Douch**

By email: **asm@almaodouch.co.nz**

DEALS ROUND-UP

MAKE SURE YOUR FIRM'S WORK IS RECOGNISED

To ensure your firm and its lawyers get the recognition they deserve for their fantastic work, send all your deal details to [sasha.borissenko@keymedia.co.nz](mailto:sasha.borissenko@keymedia.co.nz)

**Powershop's agreement with UK-based electricity generator and supplier npower**

Wellington-based power company Powershop (a subsidiary of Meridian Energy) has signed on with UK-based electricity generator and supplier npower.

Led by Powershop's general counsel Monique Greene, the legal team constructed a deal that will see Powershop commercialise its IP by providing a new retail platform for npower. npower is one of the UK's 'Big Six' energy retailers, which captures about 10% of the UK's domestic electricity market.

Monique was supported by Tom Maasland, who heads up Russell McVeagh's Auckland information communications and technology team, and senior associate Dominic Rowe.

Transaction	Value (NZ\$)	Adviser	Client	Lead lawyer(s)	Additional firms involved
Fletcher Building's acquisition of Higgins Group Holdings	\$315m	Bell Gully	Fletcher Building	Brynn Gilbertson, James Cooney, Jennifer Coote	Chapman Tripp
Fastway sale to Aramex New Zealand Holdings	\$125m	Bell Gully	Fastway Limited	Glenn Joblin	Russell McVeagh
Funding for the purchase of GE's NZ personal loans and consumer finance book	\$1.2bn	Bell Gully	BNZ Commonwealth Bank of Australia, Westpac, Bank of America	Murray King, Liz Lim, Graham Murray	Mayne Wetherell, Ashurst, Herbert Smith Freehills
Funding for the purchase of GE's NZ personal loans and consumer finance book	\$1.2bn	Bell Gully	Credit Suisse Asset Management	Rachel Paris	Mayne Wetherell, Ashurst, Herbert Smith Freehills
Diversified NZ Property Fund's acquisition of shopping centres in Lower Hutt and Hamilton	\$445m	Bell Gully	Stride Property Limited	Jane Holland	
REIT Host Hotels & Resorts' sale of the Novotel Queenstown	\$91m	Bell Gully	REIT Host Hospitality	David Chisnall, Karl Anderson, Andrew Petersen, Jarrod Walker	Buddle Findlay, Beca & Co
ACE Limited merger with The Chubb Corporation	\$42.4bn	Bell Gully	ACE Insurance	Haydn Wong	
First State Investments' acquisition of Maui gas pipeline	\$335m	Bell Gully	First State Investments	Dean Alderton, Garry Downs, Rachel Paris	
Contact Energy retail bond	\$150m	Bell Gully	Contact Energy Limited	Amon Nunns	Chapman Tripp
First State Investments' acquisition of Vector Gas from Vector	\$952.5m	Bell Gully	First State Investments	Garry Downs, Dean Alderton, Rachel Paris, Andrew Petersen	Chapman Tripp
Fisher & Paykel Appliances sale of Fisher & Paykel Finance to FlexiGroup	\$315m	Bell Gully	Fisher & Paykel Appliances Holdings Limited	Brynn Gilbertson	Mayne Wetherell, Ashurst, KWM

Transaction	Value (NZ\$)	Adviser	Client	Lead lawyer(s)	Additional firms involved
Advising UBS New Zealand Limited and Forsyth Barr Group Limited as joint lead managers on the initial public offering of CBL Corporation Limited	\$125m	Bell Gully	UBS New Zealand Limited/Forsyth Barr Group Limited	Toby Sharpe, James Gibson	Minter Ellison Rudd Watts, Minter Ellison (Australia)
Stride Property \$115m underwritten share placement and \$15m share purchase plan	\$130m	Bell Gully	Stride Property Limited	Amon Nunns	Minter Ellison Rudd Watts
Stride Property's acquisition of Antipodean Supermarkets portfolio and related bank financing	\$287m	Bell Gully	Stride Property Limited	Jane Holland, Tom Bennett, Hugh Kettle	Chapman Tripp
Property For Industry Limited renounceable rights issue	\$49.5m	Bell Gully	Forsyth Barr Group Limited (underwriter)	Anna Buchly	Chapman Tripp
SKYCITY Entertainment Group offer of NZ\$125m of seven-year bonds	\$125m	Bell Gully	SKYCITY Entertainment Group Limited	Brynn Gilbertson, James Cooney, David McPherson	Russell McVeagh
GUD Holdings' acquisition of Brown & Watson International	\$216m	Bell Gully	GUD Holdings Limited	Brynn Gilbertson	Herbert Smith Freehills
Fiskars' acquisition of holding company of WWRD (owner of the Waterford, Wedgewood, Royal Albert and Royal Doulton brands)	\$656m	Bell Gully	Fiskars Corporation	Haydn Wong	
Archer Capital's acquisition of Australian, New Zealand business of Dun & Bradstreet	\$237m	Bell Gully	Archer Capital Pty Limited	Haydn Wong	Minter Ellison, Johnson Winter & Slattery
Sell-down by Infratil and the New Zealand Superannuation Fund in Z Energy Limited	\$713m	Bell Gully	Deutsche Bank and Deutsche Craigs	James Gibson, Chris Goddard	Russell McVeagh
EBOS Group's acquisition of Red Seal Natural Health	\$80m	Chapman Tripp	EBOS Group	Alister McDonald	Bell Gully
Sumitomo's acquisition of 30,000 hectares of pine forest from Tasman Bay Forests Company	\$381m	Chapman Tripp	Sumitomo	John Strowger	Russell McVeagh

**Macpac joins CHAMP Ventures**

Simpson Grierson's James Hawes and Michael Pollard are advising private equity fund CHAMP Ventures on its acquisition of a majority stake in iconic New Zealand company Macpac.

Macpac was founded in Christchurch in 1973 and has grown to become a high profile outdoor clothing and equipment brand. CHAMP Ventures is a long-running Australasian private equity fund. It has also invested in sportswear brand Lorna Jane, among other businesses.

The deal is said to be worth approximately \$70m.

Michael Pollard says, "It is fantastic to be involved in this deal that will enhance the future of an iconic New Zealand company."

TRANSACTIONS



**Acquisition of Diligent Corporation by Insight Venture Partners**

Diligent Corporation is being acquired by Insight Venture Partners for \$7.39 per share, valuing Diligent at \$941m and representing a 31% premium to the pre-announcement share price of \$5.64 per share. The board unanimously approved the transaction and will recommend that shareholders vote in favour of the deal.

Minter Ellison Rudd Watts' Cathy Quinn, Igor Drinkovic and Peter Rowe led the deal.

For Diligent and its management and directors, this deal is the culmination of some nine years of work since Diligent's IPO on NZX. At a 30% premium it also represents a significant win for shareholders in a particularly difficult economic environment.

The transaction is novel. There is no other company that did an IPO in New Zealand and listed on NZX, which is incorporated in the US.

Transaction	Value (NZ\$)	Adviser	Client	Lead lawyer(s)	Additional firms involved
Wellard Group IPO and ASX Listing	\$360m	Chapman Tripp	Wellard Group	Rachel Dunne	Corrs and Herbert Smith Freehills
Spark's acquisition of Computer Concepts Ltd (CCL)	\$50m	Chapman Tripp	Spark	Tim Tubman	
Scheme of arrangement by JBS Australia to acquire a controlling stake in Scott Technology (NZX: SCT)	Value yet to be determined (but approx \$52m)	Minter Ellison Rudd Watts	JBS Australia Pty Limited	Silvana Schenone	Galloway Cook Allan
Panasonic Corporation acquiring Hussmann Parent, Inc	\$2.4bn total of the global transaction	Minter Ellison Rudd Watts – for NZ law matters	Panasonic Corporation	Mark Forman	White & Case (Tokyo), Minter Ellison (Sydney)
Acquisition by Intueri Education Group Limited of all the shares in New Zealand Institute of Sport Limited	Approximately \$19.25m	Minter Ellison Rudd Watts	Intueri Education Group Limited	Mark Forman	Chapman Tripp
Pfizer/Allergan	\$240bn	Russell McVeagh (NZ)	Pfizer	Sarah Keene, Christopher Graf	Clifford Chance (EU)
Dell/EMC	\$100bn	Russell McVeagh (NZ)	Dell	Sarah Keene, Troy Pilkington	Axinn (US)
Spark/Craig Wireless	\$9m	Russell McVeagh	Spark	Sarah Keene, Troy Pilkington	Buddle Findlay (acting for Craig)
Dow/DuPont	\$194bn	Russell McVeagh	Dow/DuPont	Sarah Keene, Mei Fern Johnson, Troy Pilkington, Dominic Rowe	Skadden, Arps, Slate, Meagher & Flom LLP, Cleary Gottlieb Steen & Hamilton LLP
WPP/STW Communications	\$410m	Russell McVeagh	WPP	Sarah Keene, Mei Fern Johnson, Troy Pilkington, Dominic Rowe	Norton Rose Fulbright (Australia)
Sale of Macpac shares to CHAMP Ventures	\$70m (approx)	Simpson Grierson	CHAMP Ventures	James Hawes and Michael Pollard	Bell Gully

Challenge yourself

Victoria Law | Postgraduate courses 2016

Continue your professional development at Victoria University of Wellington's Faculty of Law — New Zealand's leading centre for legal research. Learn from faculty members who are leaders in their field.

Our courses cover the issues of the day to keep you at the forefront of the international legal stage.

Courses are tailored to meet your needs as a practising lawyer, policy professional, public servant or professional in the private sector. They can be stand alone or part of a Master of Laws or a Graduate Certificate in Law.

Email law-enquiries@vuw.ac.nz for a copy of our new postgraduate prospectus.

Find out more about why you should choose Victoria Law at www.victoria.ac.nz

# JACK OF ALL TRADES

**Jeff Sissons**, general counsel at the Council of Trade Unions, talks to Samantha Woodhill about his fulfilling career with the unions



“Working without the billable hours’ treadmill allows me to use my judgement as to how best to resolve situations without worrying about whether my client can pay my bill”

**HAVING A** grandmother who worked in the Tailors’ and Tailoresses’ Union in the 1930s and a mother who worked for various unions in the 1980s, Jeff Sissons says he’s got unionism in his genes. But Sissons’ passion for justice is what led him to a career as an in-house lawyer. Working in-house has also rid him of the “dreaded billable hour”.

“Working without the billable hours’ treadmill allows me to use my judgement as to how best to resolve situations without worrying about whether my client can pay my bill,” he says.

“Because employment law is such an interpersonal, relational field, the best

“At heart, I’m a utilitarian and I don’t believe our current industrial relations system is delivering the greatest good for the greatest number of people”

outcomes aren’t necessarily the ones that lead to a payout at the end.”

**An introduction to workers’ rights**

Sissons began his legal career while still at law school, helping to found the Workers’ Rights Service – a free advice and advocacy service – before heading to a role in private

practice at an employment law firm in 2003.

“Right off the bat I got to do advocacy and case work through that and this introduced me to the intensely rewarding nature of employment law in general and individual casework, in particular,” Sissons says. “I’ve focused on industrial law and employment law for pretty much my whole career to date.”

After a stint at Cullen – The Employment Law Firm, Sissons put his legal career on hold to work as a caseworker.

“For the next eight years, I undertook a variety of roles for doctors’ and nurses’ unions in New Zealand and the United Kingdom, including case work, campaigning, bargaining and organising roles,” he says.

Sissons began to practise as a lawyer again after he joined the CTU in 2012.

**The CTU**

Working at the CTU, Sissons focuses on employment law and legislative change, while undertaking some research into human rights.

“At heart, I’m a utilitarian and I don’t believe our current industrial relations system is delivering the greatest good for the greatest number of people,” Sissons says.

“I feel very lucky in my job that my politics and my role align closely.”

**Workers in New Zealand**

For Sissons, workers remain systematically disenfranchised and disempowered, but he says he’d like to work on a new deal for working New Zealanders.

“I believe that working people in New Zealand have a right to be respected and happy in their work, to receive a fair wage for it and to come home safely to their families

## OUTSIDE THE LAW

Having studied psychology and English literature, along with film and theatre, as well as law, Sissons has always had a keen interest in the arts.

“The latest challenge for 2016 is that I’ve just been appointed to the film and literature review, which reviews the decisions of the censor,” Sissons says.

“I’ve recently become an accredited mediator as an associate of the Arbitrators’ and Mediators’ Institute of New Zealand.”

2016 will be a busy year and Sissons looks forward to new challenges, he says.



with enough free time to actually spend with their loved ones and participate in society,” Sissons says.

According to US researchers, a third of the growth of income inequality has been put down to the decline of unions.

“In the 1980s and 1990s, the [NZ] government and employers went to war with workers and unions in the hope that de-regulation and attacks on unions would unleash a massive jump in our productivity and wealth as a country,” he says.

“These results never eventuated and we’ve been left with a hostile, low-trust, low-productivity employment environment when the evidence shows that trust is the most important factor in safe, happy, high-performing workplaces.”

According to Sissons, unionism is the only way to combat income inequality.

“Unions haven’t been perfect, but they perform a necessary and important part of society and social progress that has been lost in many areas,” he says.

**From private practice**

“It was something I grew up around and

# JEFF SISSONS

“Unions haven’t been perfect, but they perform a necessary and important part of society and social progress that has been lost in many areas”

always knew a little bit about and was interested in,” Sissons says of his gravitation to a role where he could utilise his passion for unionism.

Despite having different ambitions from many of his law school peers, Sissons says he’s grateful for the time he spent in private practice.

“I’m really proud,” says Sissons. “I worked with some great lawyers and I learnt a lot about working hard and working efficiently, but relationships matter in employment law and it’s really nice to get away from the hired gun mentality and build up a series of long-term relationships. **NZL**”

## THE RISE AND FALL OF UNIONS IN THE US

In October 2015, a paper by the US National Bureau of Economic Research found a link between the power of unions and the income mobility between generations.

Specifically, researchers Richard Freeman, Eunice Han, David Madland and Brendan V. Duke found that the decline of unionism contributes to the shrinking middle class.

The researchers investigated the correlation between parents’ union status and the incomes of their children. Using federal income tax data, the research found that the offspring of union parents have higher incomes than the offspring of otherwise comparable non-union parents, and that offspring from communities with higher union density have higher average incomes.

“These findings show a strong,

though not necessarily causal, link between unions, the middle class, and intergenerational mobility,” the findings said.

“If there is a causal component to the strong correlations we have found, the natural implication is that the US will find it harder to address the problem of the diminishing middle-income group than if trade unions were as strong and viable as they were 30, 40 or 50 years ago.

“A strong union movement is not simply sufficient for high levels of intergenerational mobility and middle-class membership, but it could be necessary.”



## MEMBERSHIP TRENDS 2008-2013

	2008	2009	2010	2011	2012	2013
Union membership	373,327	387,959	379,649	384,644	379,185	371,613
% Total employed labour force	17.4	17.9	17.4	17.4	17	16.6
% Wage/salary earners		21.5	20.9	20.9	20.5	20.1
% Change in union membership	-0.9	+3.9	-2.1	+1.3	-1.4	-2.0
% Change in employment force	-0.2	+1.9	-0.1	+1.8	+0.7	+0.3

CAREER TIMELINE

2012 – present

General counsel,  
New Zealand Council  
of Trade Unions

2010 – 2012

Organiser/  
campaigns advisor,  
New Zealand Nurses  
Organisation

2008 – 2010

Senior employment  
advisor, British  
Medical Association

2006 – 2008

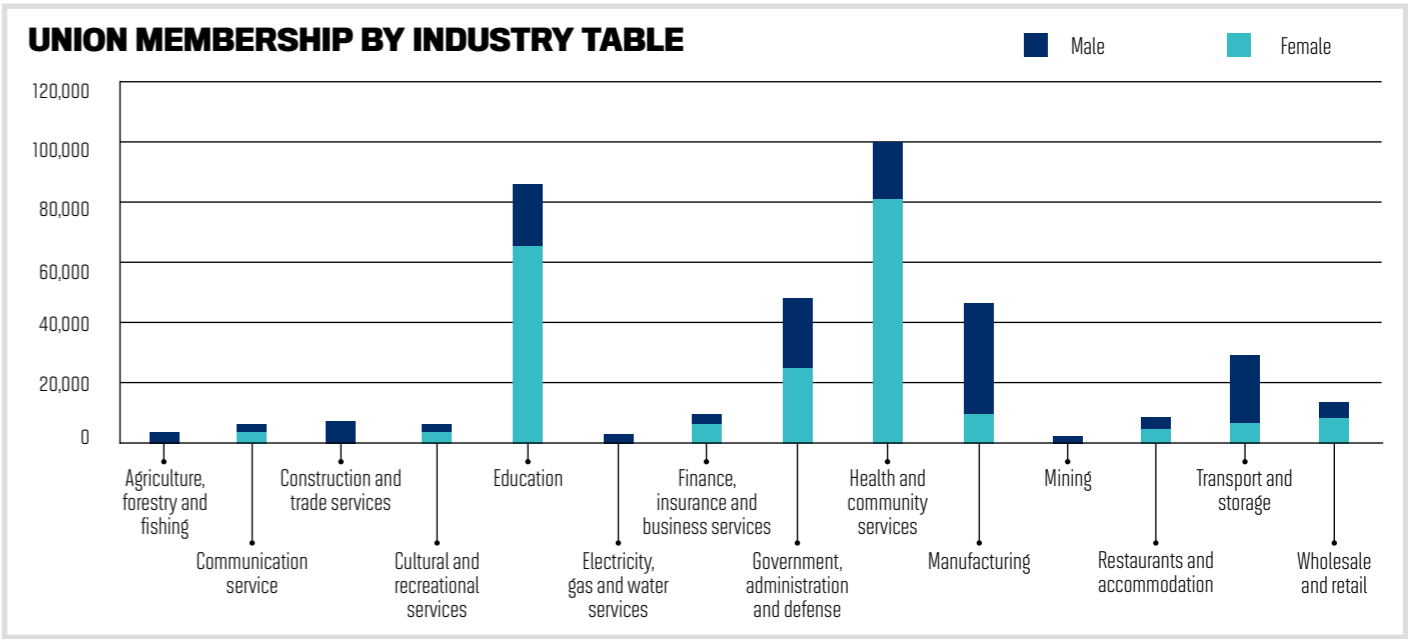
Industrial officer,  
Association of  
Salaried Medical  
Specialists

2004 – 2006

Individual case  
organiser, New  
Zealand Nurses  
Organisation

2003 – 2004

Solicitor, Cullen –  
The Employment  
Law Firm



NEW PARTNER.

After joining the firm from abroad in 2014, Mark Godfrey has been appointed partner. Mark, 42, is an expert in construction contracts, infrastructure and Public Private Partnerships, recognised for his work in the United Kingdom and Middle East. He has an MSc in Construction Law and Arbitration from the University of London. Mark’s appointment brings our firm to 27 partners and 103 lawyers. We’re one of New Zealand’s largest and most successful full-service law firms. We’re the experts in more than 23 practice areas across every aspect of the law. Auckland. Wellington. Give us a call.

MC.CO.NZ

MEREDITH CONNELL  
THE LAW FIRM.

# AUCKLAND HOUSING: A CRISIS FOR SOME, BONANZA FOR OTHERS

The Reserve Bank, in its most recent Financial Stability Report, warned that the “increasingly stretched Auckland market is at risk of a damaging correction, especially if economic conditions deteriorate. House prices now exceed nine times gross income in Auckland, placing it among the most expensive cities in the world”. But how is the situation impacting Auckland’s legal industry? **Sasha Borissenko** reports

**CHAPMAN TRIPP** commercial property partner Bill Sandston says it’s not a case of lack of political will from a local and governmental level, but rather residents refusing to accept that they’ll have to give up their dream of a white picket fence.

“In theory, intensification and high-density housing will solve the problem, but not when all the residents say, ‘Not in my backyard, thanks very much’. That’s how we’ve got this ‘democratic deficit’.”

Add the sprawling and limited infrastructure, foreign investment, an influx in population and a boutique building industry, and you’ve got yourself a situation that is a crisis for buyers, a bonanza for sellers, he says.

## WHAT'S THE PROBLEM? ACCORDING TO URBAN DESIGN EXPERT PATRICK REYNOLDS



Transportblog.co.nz blogger and University of Auckland School of Architecture tutor Patrick Reynolds says the housing saga is primarily the result of city success plus regulatory failure.

According to the demographic data, the recent changes to the net migratory flows have largely been driven by an absence of the usual numbers of Aucklanders leaving for overseas, in particular to Australia. This is most likely for two reasons, he says.

On the one hand, the city has recently and fairly become substantially “better” as a place to live for those with options, particularly younger people.

“This is to say, there is a new-found diversity and sophistication here that levels the experiential difference between Auckland and Australian cities, especially for young people. Auckland has come of age as a city.

“And secondly, the Australian economy has retreated from the mining boom years, so the pull factors too are lower.”

However, restrictive planning regulations, such as low building heights, minimum parking regulations, mandatory balconies, minimum apartment sizes, building setbacks, low density and otherwise restrictive zoning, are hugely constraining supply in areas that people wish to live, he says.

“Furthermore, the infrastructure

investment priorities from the sprawl era – disproportionate spending on motorways and other driving amenities, for example – are only incentivising dwelling supply in the wrong places, served by the wrong mode.”

This investment prioritises and enforces a sprawling urban form, he says. The dwelling price spread shows that new boxes at the end of the motorway are not desirable, even in a housing supply crisis.

Additionally, New Zealand’s tax regime incentivises investment in residential property. While that might be expected to promote a supply in private rentals to the market, when combined with the planning regulations that enforce low density investors, they are instead incentivised to building big single dwellings instead of market-meeting multiple smaller dwellings.

“[It’s a] double-down on regulatory failure at both national and local level.”

But Auckland has huge potential as it comes of age, he says.

“[Auckland] is at least a city and requires city-shaped thinking and investment. And this may prove politically fraught, not only in a nation of provincial towns, but because of its own largely suburban nature. I expect to see the urban/suburban spirit to become more polarised in the years ahead, especially on a purely emotional level. Like the Unitary Plan ‘debate’”

# AUCKLAND REPORT

## RESPONSE FROM ACC CHIEF ECONOMIST CHRIS PARKER

Auckland City Council chief economist Chris Parker says the Auckland property crisis is an important issue, so much so that it's a key focus for the council and for the government.

"Some call it one of the great issues of our times," he says.

In his report, *Housing Supply, Choice and Affordability*, released last year, Parker deduced that many of the issues stem from a lack of supply of houses, rather than demand. While the council doesn't itself build homes, it bears a lot of the burden where supply is concerned, he says.

“What we need is to support market-led competitive development of housing at scale. That is the only way that I can realistically see (in a market economy) major cost reductions in the building sector that could be developed and passed on to end consumers”

As a result, the council is now focusing on housing policy issues, namely the single-planning framework for the city – the Unitary Plan.

"We also plan to support outward expansion into greenfield areas, but exactly how to fund and finance that is still being worked through. As such, we are still working closely with the government to understand issues more fundamentally, and to create innovative solutions for growth generally."

Otherwise, there are modest changes being made to increase accountability of who's buying. There are no barriers to foreigners buying land in New Zealand, he says, yet sales volumes have decreased significantly. What's more, house prices have started levelling off very recently, although insufficient time has passed to determine whether this is a trend.

On a further positive note, the council has had a continual increase in the number of building consents issued.

"That is a good trend, although the level is still well short of desired. A key change in wider society (rather than the market) has been recognition of the seriousness of the housing affordability problem and that intensification is one key part of a package of solutions."

Parker's greatest concern is whether landowners have the incentive to make their land available for development or redevelopment.

When land prices are escalating at a rate that is so much higher than interest rates, then that has to suppress a lot of otherwise profitable development, he says. The challenge is to allow cheaper greenfield land to discipline the high prices of land within the urban market. The key to that is to figure out how to sustain non-contiguous land development to use competition as a force to get prices down.

Another challenge is that New Zealand has a cottage industry for housing construction that is not generally productively efficient, he says.

"What we need is to support market-led competitive development of housing at scale. That is the only way that I can realistically see (in a market economy) major cost reductions in the building sector that could be developed and passed on to end consumers."

"At present the urban policy system does not support this, which is why we need to look at models overseas from affordable high-growth cities to learn how they fund, finance and oversee new subdivision growth."

"[But] I'm optimistic that we can solve housing affordability. There are affordable high growth and prosperous cities overseas, such as in Texas. We just need to learn from them – how to grow efficiently and sustainably. Housing unaffordability is a failure of the urban policy system, but such a system can be fixed. The biggest challenge will be overcoming the interests of people that already own land to allow the fixes to occur."



“As with any property bubble, it dies eventually. I’ve been in the business almost 40 years and I’ve come to see nearly four of these cycles. I’m definitely starting to see the levelling of the playing field, and legislation and regulations are speeding up the process”

Bill Sandston, CHAPMAN TRIPP

It used to be the case that buying up in New Zealand (whether local or international) was an attractive enterprise given the free market in property and liberal taxes. But this is no longer the case with recent changes to income tax laws, foreign purchasing and capital gains.

"As with any property bubble, it dies eventually. I've been in the business almost 40 years and I've come to see nearly four of these cycles. I'm definitely starting to see the levelling of the playing field, and legislation and regulations are speeding up the process."

Take the changes to the Resources Management Act, for example, which may remove appeal rights and speed up the consent-making process, he says.

"But, say more consents are fast-tracked, the infrastructure is improved and builders are trained up quickly, the fear of course is that the last time New Zealand tried to build large quantities of houses, it ended in disaster, with many leaky homes cases still going through the courts today, dating back to the 1980s."

There is also a real concern that infrastructure, especially transport, will not be upgraded to cope with increased intensity, he says.

Regardless, the housing bubble has meant the legal industry has been inundated with work and this will continue for many years, he says.

Everyone in the property industry is flat out – be it lawyers, consultants, engineers, builders, councils, and architects.

Even with all the legislative changes, the property industry lags behind because of its inherently slow and beurocratic nature, he says.

Like Sandston, Bell Gully property and real estate partner Andrew Petersen says the Auckland housing crisis has created a lot of work for the legal industry.

"2015 was a very busy year for property lawyers generally and we saw excellent interest from offshore clients wanting to invest in New Zealand property. There was also a steady supply of large development and infrastructure projects and property portfolio transactions, and these appear to be keeping the legal industry busy overall."

On a practical level, applications are far more complex to prepare and require a higher level of input from lawyers acting for both the seller and the buyer. The Overseas Investment Act is becoming a significant issue for many transactions involving international investors, for example.

"Unfortunately, the Act captures a number of transactions that the general public would not necessarily expect (eg, a commercial lease of premises next to a reserve). We think

## Partnership.

Buddle Findlay is proud to announce four new partners.

BUDDLE FINDLAY  
NEW ZEALAND LAWYERS



Aidan Prebble, Christchurch  
Environment and resource  
management, and local government



Amy Ryburn, Wellington  
Technology, media and  
telecommunications



Miriam Andrews, Auckland  
Banking and financial services



Nick Bragg, Auckland  
Corporate and commercial

www.buddlefindlay.com

# AUCKLAND REPORT

there is room for the foreign investment regime to be more targeted at assets that are truly sensitive (eg. operating farms, not just non-urban land that might be more than five hectares). That would assist with the resourcing issues currently being faced by the Overseas Investment Office.”

### Key trends and developments

Petersen says one key trend is the tight construction market in New Zealand, which is having an impact on projects generally. “Construction costs continue to rise and this is causing issues for some developments where revenue from pre-sales is often set a long time before construction gets underway. Sourcing land for development at a reasonable price continues to be a challenge.

“Our sense is that margins on residential developments will come under pressure if land and construction costs continue to increase and selling prices start to stagnate.”

Large commercial and infrastructure projects, such as the new Auckland, Wellington and Christchurch convention centres, the various Public Private Partnerships (PPPs), the City Rail Link project and the numerous apartment developments, are adding to the pressure on the construction sector in Auckland, he says.

Overall, Petersen expects Bell Gully’s national property team to be busy, particularly on portfolio transactions, commercial developments and infrastructure projects, land subdivisions, social housing projects, dairy farm transactions and acting for overseas investors with an interest in New Zealand property.

Otherwise, resourcing is likely to be the biggest challenge for Auckland law firms in 2016, he says.

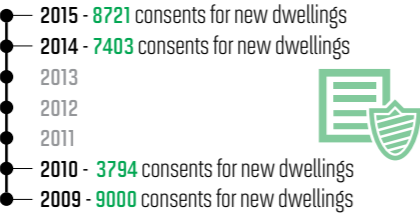
“The market for junior and intermediate property lawyers has become tight again with the international legal markets heating up and a greater number of in-house roles available to lawyers at all levels.” **NZL**

### HOUSING AVAILABILITY STATISTICS

According to the 2015 State of the Nation report, conducted by The Salvation Army Social Policy & Parliamentary Unit, “Rising house prices are a godsend for owner-occupiers and investors, but most likely bad news for tenants and young families aspiring to home ownership”.

“The hidden side to this house price bonanza is increasing household debt, which has now almost reached a level last seen just before the global financial crisis in 2008.”

#### Number of consents issued:



#### Population growth:



Net migration to of Aucklanders to other parts of New Zealand in 2015 is estimated to be about **8,000** people, which is around 2,000 more than the previous four years.

Net migration to Auckland during 2015 was relatively constant at around **14,000** people.

But international migration in Auckland during 2015 was at **36,400** people, up nearly 1/3, whereas 2014 there was a net **27,600** people from overseas.

#### Auckland housing supply deficit



Overall, the housing deficit is estimated to be just over **15,000** dwellings.

#### Paying off houses:

December 2010 – it took **nine years** of the average salary to pay for the median price house in Auckland

December 2014 – **11.7 years**

2015 – **12.9 years**



#### Housing affordability

2015  
Auckland house prices increased at an annual average rate of **26.6%**, outside of Auckland housing prices rose on average just **7.2%** in 2015.

Between December 2010 and 2015 the median sale price of a house in Auckland rose **\$300,000** or by **75%** from **\$465,000** to **\$765,000**.

#### House debt:

Average per household debt has risen to just under **\$135,000** – **4% higher than 2014** and **7% higher than in 2010**

Typically **90-91%** of this household debt is housing related.



# Leaders in Law

## Meet our new Faculty Members



Warren Swain, Chris Noonan, Anna Hood, Andrew Erueti, An Hertogen and Craig Elliffe have recently been appointed Faculty members at the Auckland Law School. Their appointments add to our strengths in Public and International Law and in Corporate and Commercial Law.

The Auckland Law School has the largest faculty and offers the widest range of undergraduate and postgraduate law courses in New Zealand. It has the highest entry standards, an extensive study abroad programme, and provides a wealth of opportunities for students to participate in international competitions, community placements, and the Equal Justice Project.

**The Auckland Law School is ranked the best law school in New Zealand and one of the best law schools in the world.** (QS World University Rankings in Law)



For more information visit:  
[law.auckland.ac.nz/leaders](http://law.auckland.ac.nz/leaders)  
or visit us on Facebook:  
[facebook.com/akllawschool](https://www.facebook.com/akllawschool)

**AUCKLAND  
LAW SCHOOL**

# AUCKLAND REPORT

## LEGISLATIVE DEVELOPMENTS, ACCORDING TO CHAPMAN TRIPP'S BILL SANDSTON

### Productivity Commission

The final 'Using land for housing' report was published on 21 October 2015. The Productivity Commission is now undertaking a 'blue skies review' of urban planning. The Productivity Commission will be considering how it would undertake urban planning, if it were starting from scratch.

### Resource Legislation Amendment Bill

This bill – which has been referred to Select Committee and submissions are due mid-March – addresses some of the matters identified in 'Using land for housing', including:

- Requiring councils to ensure there is sufficient residential and business land available for development
- A new (permanent) fast-track planning process (akin to the temporary Auckland and Christchurch planning processes)
- A new power to make regulations that permit particular land uses or prohibit specific rules.

### Other key amendments relating to housing include:

- Requiring councils to follow national planning templates (once such templates are available) with standardised provisions across the country
- A consent exemption for 'boundary activities', where the affected neighbour gives written approval
- Further restrictions on notification, especially for subdivision and residential activities
- Removal of appeal rights, especially for boundary activities and subdivision
- Repeal of the financial contributions regime.

### National Policy Statement

The Ministry for the Environment is also developing National Policy Statement on Urban Development, which will provide objective and policy guidance on housing and other urban matters. Initial consultation has occurred. Public consultation on a draft NPS is expected mid-2016.

### Auckland Unitary Plan

The Independent Hearings Panel is on track to complete the Auckland Unitary Plan hearings by the end of April 2016. The panel has to release its recommendations by 22 July 2016 and the council has to notify its decisions on those recommendations by 19 August 2016 (unless an extension is granted).

In late 2015, the Auckland Council released new zoning maps, which would 'up-zone' many areas to provide for more intensification. Many of those proposals are 'outside the scope of submissions', so landowners have not had an opportunity to submit on the changes. The Panel may make recommendations that are outside the scope of submissions, but if the council accepts such a recommendation, persons who are 'unduly prejudiced' may appeal to the Environment Court.

### Special Housing Areas

The process for establishing Special Housing Areas will be repealed on 16 September 2016. Auckland Council recently announced the final tranche of SHAs and is no longer accepting requests for SHAs.

The remainder of the Housing Accords and Special Housing Areas Act 2013 will not be repealed until 16 September 2016, so plan changes and resource consents for SHAs can continue to be processed.



 **AUSTRALASIAN  
LAW AWARDS** 2016

**SAVE THE DATE**  
Thursday 19 May 2016 | The Star Sydney

## JUDITH COLLINS

# WHERE THERE'S A WILL, THERE'S A WAY

Partner and principal, business owner, lecturer, backbencher, mother, student, farmer, justice minister – there's little newly appointed Police and Corrections Minister Judith Collins can't do. And that's a fact. Sasha Borissenko reports



**YOU'D THINK** an appointment at 9am – in this case an interview – would kick off the day for most individuals, but not so for freshly re-appointed cabinet minister Judith Collins, who is about to celebrate her 14th year in politics. Instead, she was traipsing through fields in the dark and digging holes to commemorate the opening of a new school in her electorate of Papakura at 6am. And between having to shoot home to change (thanks to the wet grass), the traffic, phoning the police commissioner and waiting on a call from the prime minister, she managed to fit in an interview with *NZLawyer*.

love of history, public speaking and English that meant she was well suited for a career in law, and later politics, she says.

Studying at both Canterbury and Auckland University, Collins says there were a lot more men than women doing law in those days, but it didn't affect her as "it's always good to be a slight outsider," she says.

#### Judith Collins & Associates

After successfully graduating in 1981, Collins worked in residential and commercial property for a number of top-tier commercial law firms, before being headhunted to be partner for a smaller firm in Takapuna.

**"I do what I do because I love it. The day I don't find it interesting or exciting is the day I won't bother anymore. I say, 'If you're not excited, look for something else, or decide to be excited by what you're doing'"**

But the morning was nothing out of the ordinary, she says, because if she's not meeting with her community, she's going to parliament and doing the very regular 6.45am to 10pm work days, which was the case the day prior to the interview.

"I do what I do because I love it. The day I don't find it interesting or exciting is the day I won't bother anymore. I say, 'If you're not excited, look for something else, or decide to be excited by what you're doing.' Rather than becoming complacent, why not take every opportunity you have? Change the paradigm!"

#### Life before politics

But life hasn't always been so busy for Collins, who hails from Walton in the rural Waikato. Being the youngest of five children, Collins says she takes after her mother, who was extremely competitive, going so far as to have her own herd that she would raise in competition with the rest of the family's cows.

And while competing in calf club days "sparked a competitive nature" in Collins herself, it was this competitive nature, her

Thereafter, she was headhunted again to set up a tax unit in a firm on Queen Street, which later led to the completion of a Master's degree in tax. Before long, Collins had set up her own legal practice, Judith Collins & Associates in 1990.

"[Starting the firm] was more fun because I like being the boss. I decided that it was fine working for everyone else, but I wanted to have a baby, to finish my thesis, and I got asked to help set up a business school, so it made sense to set up my own practice.

"While there were many upsides to having your own practice, before the practice grew it could be a very lonely environment. Even when it did grow I learned a lot about being a good employer. I'm most hard on myself, apparently. I was always working all sorts of hours and trying to do all sorts of things, which could be no good in a lot of ways."

Setting up a practice meant that she could dictate her own agenda, and it was throughout this time she made great relationships with the New Zealand Law Society and the Auckland District Law Society, to which she served as president and vice president in the 1990s.

JUDITH COLLINS

Serving on the executive for both the New Zealand Law Society and the Auckland District Law Society meant she got to interact with a number of politicians and appreciate political issues.

Although Collins had friends and connections in all the political parties, including former Prime Minister Helen Clark, she aligned herself with the national party because it is “the party of freedom”, she says. And so it was.

The Beehive, and beyond

Forced to resign from her post as justice minister amid allegations of dirty tactics in 2014, Collins was cleared of all allegations and is now overjoyed to be back in cabinet and in her old stomping ground with the corrections and police portfolios.

“It feels great to be back in cabinet and in ministries I really like and appreciate. I also don’t have to muck around with niceties – there’s not the downtime of having to get to know everyone. They all know me, they’ve seen me. We respect each other.

“It was a real lowlight having to resign [as justice minister prior to the 2014 election], but I knew I would be back as I hadn’t done what I was accused of. The key is to keep moving and keep on keeping on. Don’t be downcast as being negative gets you nowhere.”

Even so, being a backbencher was fun, she says.

“I was free to do what I wanted to do. I needed a bit of convincing to write for the *Sunday Star Times* as I felt somewhat battered. But I took the opportunity to explore what I cared about and it was good for me. Then there was the *Paul Henry Show*, which was heaps of fun. Annette [King], Paul [Henry] and I get on so well. But now I have to be more focused.”

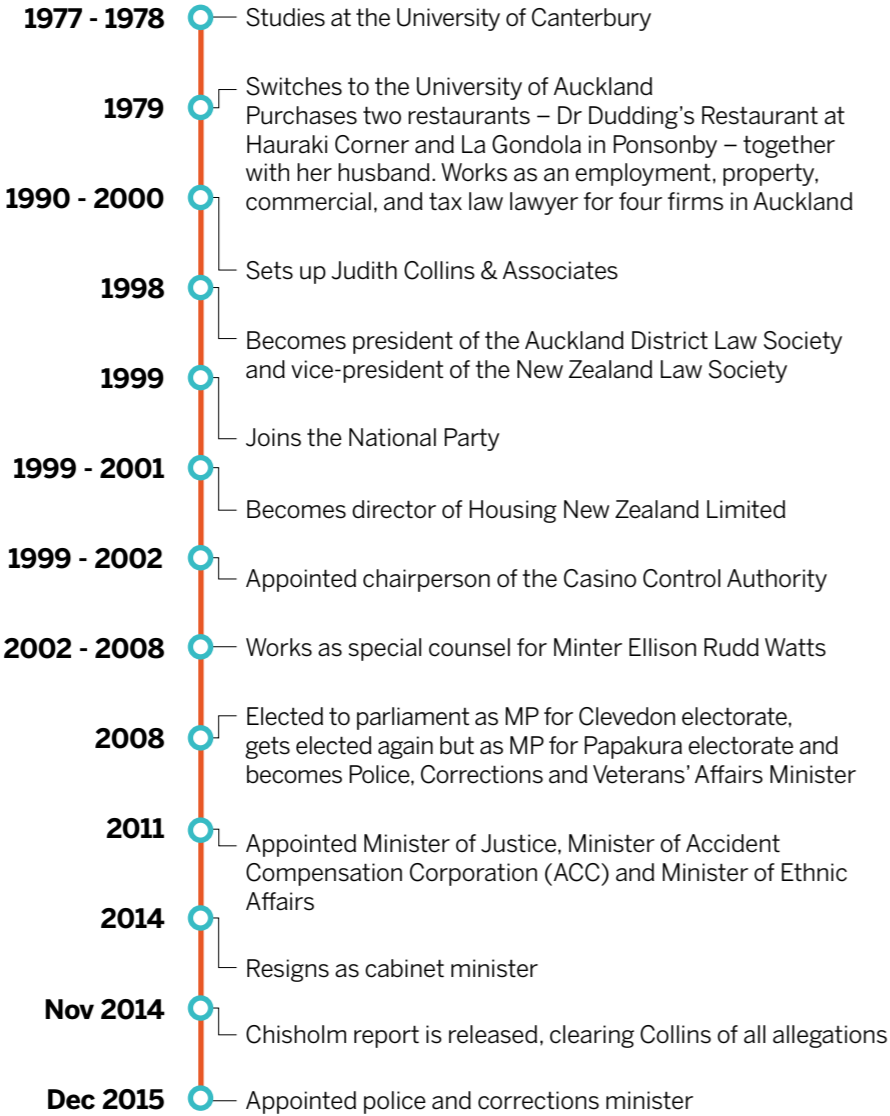
**‘Crusher Collins’**

Take The Vehicle Confiscation and Seizure Bill that was passed in 2009, for example, which gives courts the power to send cars owned by repeat offenders to the crusher.

“It’s been hugely successful. I told police to look outside the square. It came about after shots were fired at a policeman in

“It was a real lowlight having to resign [as justice minister prior to the 2014 election], but I knew I would be back as I hadn’t done what I was accused of. The key is to keep moving and keep on keeping on. Don’t be downcast as being negative gets you nowhere”

CAREER TIMELINE



“People – journalists – can be particularly vicious. Being determined is treated as being ostensibly hard. Strength is treated as a negative, whereas the same couldn’t be said for how men are treated in the media. Mind you, you can worry about it or just get on and do your job well”

Christchurch amid a crowd of 200, who were engaging in illegal street racing. I was so annoyed I thought, ‘We need to think about what is going on. Why is it happening and how do we prevent it? What is it that these characters care about most? Their cars, of course.’

“Fines clearly weren’t working. So I had to go to the source and often it would be the case where once parents or finance companies get involved the chain is broken.

“My legal background contributed to the law. I knew finance companies often owned many of these cars and naturally they’d be very interested to know what was happening. Many people often don’t think about legal ownership and funding, for example.”

And so it was, the name Crusher Collins hit the media – which has been both

advantageous and disadvantageous to her brand, she says.

It doesn’t fit within the model where Collins tries to find innovative ways to help mothers and babies in prison units for example, whereas it does help in the sense that “if people don’t know your name, it’s a problem”.

“People take me seriously so that when I want to do something, I can just go ahead and do it. [Nonetheless] I didn’t give myself that name and I certainly don’t use it.”

Women generally are treated very differently in politics to men, she says, so it is good to be taken seriously.

“People – journalists – can be particularly vicious. Being determined is treated as being ostensibly hard. Strength is treated as a negative, whereas the same couldn’t be said

for how men are treated in the media. Mind you, you can worry about it or just get on and do your job well.”

But, one has to be strong in politics, she says.

“Electoralates choose their own MPs. They will not choose women if they’re not seen as strong – the same could be said for men. If you’re not prepared to advocate for yourself then you can’t advocate for others. It’s a case of how much you want it. If you want to do this job, you need to stand up for yourself.”

**Law and politics**

Collins likens her work to that of being a lawyer, but on a pro bono basis, she says.

“People come into my office, I take in their problems and try and fix them.”

Unlike most politicians who are pragmatic and follow public opinion, Collins takes a legalistic approach to her politics.

“It can certainly be disadvantageous to not go with the “vibe” of public opinion but, then again, it’s sound and you can actually explain your reasoning.”

In fact, Collins believes lawyers are particularly suited for politics, more so than perhaps other professions.

“It makes sense, really. You’re making laws all day long. If you have the training to look at lots of paper, to legally analyse what the ramifications of certain actions might be for example, it makes sense that lawyers are an ideal pick.”

Outside of politics and the law, Collins insists on taking one day off every week, which is increasingly harder given her promotion back into cabinet, she says.

“I suppose I cope with the workload because I keep myself pretty grounded. I like to do the shopping. I enjoy cooking at home. Socially, I’m not very good at going out, but that’s probably because I’m a bit of a home body.”

And to avoid burnout Collins enjoys walking and bustling around parliament, she says.

“I see a lot of people – politicians and lawyers – who try to deal with the pressures differently. If I feel my energy is lacking, I’ll go for a 6km walk. It’s very good.” **NZL**

ELIZABETH TENNET

CHAMPIONING CHANGE

Where once pay equity was a thing of fairy tales, it's now officially recognised by the New Zealand courts. **Sasha Borissenko** talks to the Community Law CEO who's spent her life dedicated to the cause

**FORMER LABOUR** MP and Community Law Centres o Aotearoa CEO Elizabeth Tennet grew up on a farm in Fielding. Her thirst for politics came as a result of being “radicalised and infuriated” by the crimes against humanity and scaremongering by the US during the Vietnam War.

“My parents were always barking about politics at the dinner table. It's no wonder I had an interest. I was the first in my family to go to university and I thank my mother greatly because she pushed me off there at 17 years of age.”

After completing her studies in economics, politics and geography, Tennet began her career working as a researcher for the industrial commission. Her research focused on the implementation of The Equal Pay Act, and it fell at that time during the Muldoon years when wage freezes also had to be policed.

“I absolutely loved it and I've always felt an affinity for working people, especially people who were struggling for decent wages.”

Before long, Tennet took up a role as a factory inspector for what was then the Labour Department. There, in the late 1970s, she brought the very first case before the Industrial Court (what is now the Employment Court) concerning pay equity

among a group of female office workers.

“The case was thrown out, and very wrongly in my view. The judge at the time looked me straight in the eye and said it was a case of Alice in Wonderland. I was naturally furious.”

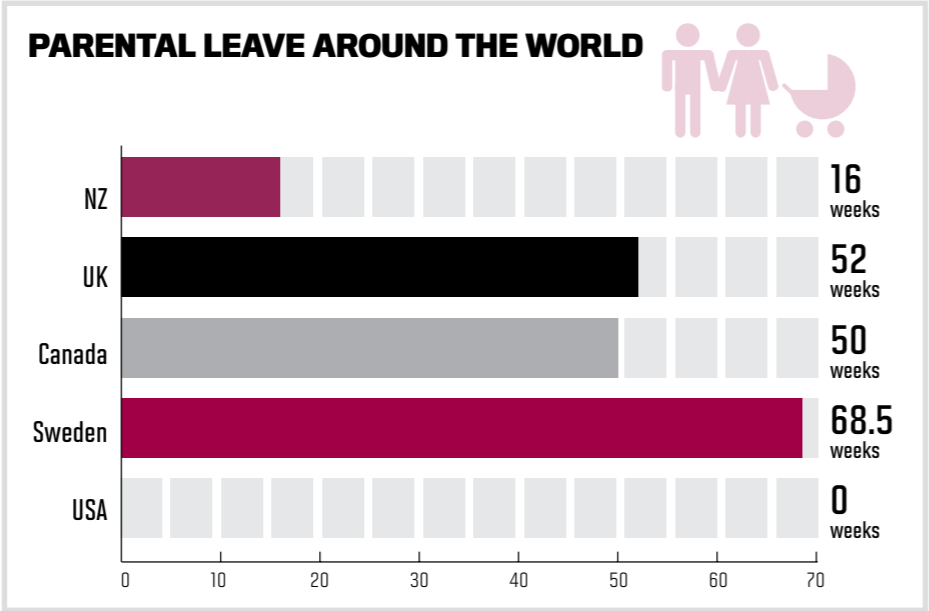
After years of ensuring people were being paid correctly and policing The Equal Pay Act, Tennet became the secretary for the Clerical Workers Union and stayed in the role for 10 years.

Tennet advocated and won cases that ensured female office workers were entitled to sick leave, holiday pay, wage increases and protection against sexual harassment.

Political career

It was only a matter of time before Tennet fell into the political arena, winning the Island Bay seat for the Labour Party in 1987.

“It was during the period of the David Lange government, which was very exciting,



“The case [that I brought before the court around pay equity] was thrown out, and very wrongly in my view. The judge at the time looked me straight in the eye and said it was a case of Alice in Wonderland. I was naturally furious”

# ELIZABETH TENNET

with great advances made such as New Zealand becoming nuclear free. There were huge economic changes, however, which caused tensions within the party and which ultimately led to the government’s demise.”

Despite Rogernomics, Tennet, together with a strong group of female MPs, achieved early childcare funding, which is still enjoyed today, she says.

Tennet was the first to raise the issue of parental leave in the Parliamentary Chamber, which “was so radical and off the wall in those days”.

What’s more, Tennet recalls storming into caucus demanding that if the Government didn’t put in a childcare centre instead of a “sauna for the blokes”, she was “going to blow it out of the water and take it to the papers”.

## Tennet recalls storming into caucus demanding that if the Government didn’t put in a childcare centre instead of a “sauna for the blokes”, she was “going to blow it out of the water and take it to the papers”

She said the nursery, titled The Playhouse, is still running today.

“It’s also said there’s more order in The Playhouse than in the Parliamentary Chamber,” she chuckles.

But, being only the third MP to have a child while in parliament, and with the long hours and limited support, Tennet decided her priorities had changed and she retired from politics in 1996 to spend more time with her six-year-old boy.

“Parental leave is pathetic in this country – even after it’s been extended from 14 to 16 weeks.

“It comes down to many women having to make a choice [over] whether they want to have a career or a family. What’s more, it seems horribly inefficient – we’ve got thousands of highly educated, productive

women coming through who, if they decide to have children, leave the workforce. All that brainpower, training and labour gets lost.

“It’s only once these infrastructural barriers are overcome that we can start thinking about equality on a social level.”

Following her political career, Tennet and her husband opted to buy in the Wairarapa and renovate a 16-acre property that housed an 1880 homestead.

### Community law

Between being a shepherdess, a bed and breakfast owner and tourism operator, serving as a board member on Tourism New Zealand and later working for New Zealand Trade and Enterprise before serving as CEO of Textiles New Zealand, Tennet finally

landed the job as CEO of Community Law Centres o Aotearoa.

Despite not having any legal training, her whole life has been around the law, she says.

“I’ve always been interested in the law, promoting social justice and working with and advocating for vulnerable people. I’ve spent my career working and coming up against lawyers in various courts and I’ve had the fortune of beating them on many occasions to do with employment law”.

Tennet was attracted to community law because the movement aims to protect and advocate for the most vulnerable in society, and much of her work – whether it be labour rights and pay equity, or the promotion of women and children, for example – fits within that model, she says.

Take pay equity, for example, which deals

## TERRANOVA CASE

2012

Kristine Bartlett lodged application with the Employment Relations Authority (ERA) that she was not receiving equal pay as per Equal Pay Act 1972

Nov 2012

ERA agreed it should go direct to the Employment Court Stakeholders, all agreed that important questions of law should be examined before substantive case was heard

Jun 2013

Employment Court Bartlett/SFWU v Terranova

Aug 2013

Employment Court supported Kristine’s argument centred around s 3(1)(b) of the Equal Pay Act

Jan 2014

The aged care provider Terranova appeals the August decision

Feb 2014

Court of Appeal; decision reserved

Nov 2014

Court of Appeal upholds the Employment Court decision

Dec 2014

Supreme Court declines employer’s leave to appeal

Oct 2015

The Government and union groups establish “A Joint Working Group” that aims to pursue pay equity principles in workplaces

with poverty statistics that predominantly affect single parent households headed by women.

“If the decisions around the TerraNova case are upheld, and the government doesn’t try to legislate against the Court of Appeal decision that gives women the right to bring pay equity claims, it means tens of thousands of households across the country will get a pay increase,” she says.

“Pay equity is a basic right. The legislation [The Equal Pay Act 1972] hasn’t changed, it’s just that now the courts are interpreting it correctly. Most New Zealanders think we have achieved equal pay but we’ve never had the opportunity to truly value the

occupations that are filled predominantly by women, such as rest home and disability workers, teacher aides, midwives, etc. The right for women to make pay equity claims must be preserved.”

### Day in the life

A typical day for the national community law advocate involves working with the Ministry of Justice, and other government departments, negotiating with funding providers and the private sector to promote corporate responsibility towards low income families, meeting with community groups and justice panels and overall delivering a legal service that is a fundamental human

right to low income clients, she says.

With 24 centres around the country delivering legal services to more than 58,000 clients annually who could otherwise not afford access to justice, Tennet says community law is a hugely valuable part of New Zealand’s justice system.

“There’s a misconception that community law takes work from lawyers, but this is not the case. These clients most often would never have the financial means to afford legal services generally. In fact, we enjoy a very productive relationship with the legal fraternity, with 1,200 lawyers a year volunteering at community law centres.” **NZL**

## GENDER PAY GAP ACCORDING TO FIGURES RELEASED BY THE STATE SERVICES COMMISSION

Elizabeth Tennet isn’t one to promote her success, rather it’s about being passionate and fighting for what you believe in, she says.

“How is it that no country in the world has yet overcome the gender pay gap? How is it that even law – which is considered progressive and equitable in many ways – has institutions like Crown Law where the gender pay gap is 33%?”

Gender pay gap (year to 30 June 2015)

Department	2015	2014	2013
Crown Law Office	33%	33%	39%
Justice	19%	18%	18%
Land Information New Zealand	16%	17%	16%
Serious Fraud Office	19%	18%	11%
Public Service Average	14%	14%	14%



# LAW SCHOOL - BUT NOT AS YOU KNOW IT

Working long hours and think you don't have time to get that LLM? Think again. Law schools around New Zealand talk to **Hannah Norton** about how they're making it easier for lawyers to study

**GONE** are the days where there was a distinct divide between legal academia and legal practice. With increased flexibility around post-graduate offerings, more and more lawyers are opting to increase their tertiary study arsenal.

"Once you've graduated and been admitted, you often take a few years to get into the rhythm of practice and then you may start to think about how you present yourself to the market, your areas of specialisation and points of difference – and the LLM can help you make sense of that," says Professor Mark Hickford, Pro Vice-Chancellor and dean of law at Victoria University.

"It can be a good way for practitioners to make sense of what their point of difference is in terms of their portfolio. A lot of practitioners these days are thinking about how their portfolio of experience presents to the outside world."

Hickford is a case study in point. He joined the Faculty of Law in mid-May 2015 after a range of senior management and leadership roles in the public and private sectors, including being on the Prime Minister's Policy Advisory Group in the Department of the Prime Minister and cabinet, eight years as crown counsel at the Crown Law Office, as well as working at both Chapman Tripp and Chen Palmer.

Some of Mark's key points of difference include a doctorate from the University of Oxford and an extensive research and publishing record, having published on Aboriginal title and customary rights, as well as issues related to the Treaty of Waitangi.

And he has come to the helm of the faculty at an exciting time. In 2014, the Faculty of Law revamped its LLM and now offers intensive postgraduate short courses.

# POSTGRADUATE REPORT

## Q&A WITH OTAGO FACULTY OF LAW DEAN MARK HENAGHAN

### How did you come to be the dean?

I started as the dean of law in 2000, having been an academic in the law faculty since 1978. I was asked by my colleagues to be the dean and I was honoured to take on the role.

### What drives you professionally?

What drives me is that the law is an essential component for a fair and decent society and I really want to ensure we are producing graduates who want to contribute to that quest. The same applies to our research. There is so much to be done to improve the law so that each citizen has their chance to have their say and have their interests listened too and taken account of.

We can never take the law for granted. It is continuous vigilance that ensures we live in a society where the rule of law and the principles of fairness and democracy underpin everything that we try to achieve as a country. We still have a long way to go. I have a passion for instilling in my students a love of the law and a desire to make sure it is working as well as it can for our citizens.

### What areas of interest are you particularly passionate about?



My primary field of research is family law and I have been very fortunate to work in an area that has a major impact on many people. There is constant striving to improve the law and the way it operates so that the minimum harm is done to families going through what is often the worst period of their lives.

I also have a deep interest in criminal law in terms of where the line should be drawn, what moral behaviour should the law criminalise and how we should deal with those who do infringe the law.

I also enjoy studying and reading about the system as a whole. Are we really delivering justice in the way we carry out our processes. Can we do it better and in ways that everyone feels they have been heard, and that the costs are not so immense that only a few can fully vindicate their interests through legal processes.

The courses will be introduced this year, and – given his specialty in public law – of particular interest to Hickford are: Water Law and Policy; Public Law: State, Power and Accountability; and Legislative Design, Drafting and Law-Making.

Water Law and Policy is a five-day course with Professor Lee Godden from Melbourne University law school, being held in September, which will examine the changing area of water law, driven in part by claims for indigenous rights to water.

Other courses rolled out this year cover subjects such as: Changes in trademark law (Trademark Law and Unfair Competition); Security, Government and the Law; today’s issues in law and politics (Public Law: State, Power and Accountability); and influencing the legislative process (Legislative Design, Drafting and Law-

Making), to name a few.

The concentrated ‘pick and mix’ courses are available to both practising lawyers and other professionals, and can be taken as stand-alone or towards a LLM or GCertLaw. The LLM requires 120 points at 500 level, while the GCertLaw requires a student to complete 60 points, although these can include 200- and 300-level courses.

“In essence, what we are providing is a myriad of delivery options, some of which are more customised towards the professional market, while maintaining the rigorous standards of our Masters-level programme,” Hickford says.

Because it’s a new approach to the programme, the law school has been talking to law firms and has been informed by qualitative feedback in structuring the courses, Hickford says.

Some of the courses are not only targeted at practitioners, but professionals in the public services sector as well.

“Victoria University is well-positioned with proximity to government facilities, as well as the senior appellate courts,” Hickford says.

Some of the courses would also suit those in the private sector, such as those on regulatory agencies, including the Financial Markets Authority (FMA) or state sector entities with regulatory functions,” Hickford says.

In Markets, Competition and Regulation, a leading Wellington professional, Dr James Every-Palmer from Stout Street Chambers, will examine the challenges presented by globalisation and new technologies.

“Private sector agencies also do need to know how to deal with what makes those agencies [such as the FMA] tick, so to speak.”

As for practitioners, Hickford would like to see the courses as “part of a suite that they have available to them in terms of continued professional development (CPD), that complements the [New Zealand] Law Society’s already extensive offerings”.

The courses might appeal to lawyers “thinking about shifting their focus or wishing to differentiate themselves in the market,” Hickford says.

“Some of these people may have already completed postgraduate study offshore.”

The Faculty of Law, which had 65 postgraduate students last year, 42 of which were part time, aims to one day grow this suite of offerings – but for now, the next two years will be a time of “testing the waters”.

“We don’t want to flood the market. This will be a process for the market to learn about us and vice versa.”

**Law school in the big city**

The only other law school with a similar offering is the University of Auckland.

The University of Auckland’s law school associate dean (postgraduate), Professor Treasa Dunworth, says the faculty offers postgraduate study that is both challenging

and rewarding, and which offers maximum flexibility.

“The school has the largest law postgraduate program in the country, with more than 100 students currently enrolled in our various programs – and nearly 170 on our books.

“By far, the largest program is our Master of Laws (LLM), which accounts for approximately half of our student count. We also offer a Postgraduate Certificate in Law (PGCertLaw), which is essentially half of an LLM, and beginning this year, a Master of Taxation Studies.

In addition to these postgraduate programs, the school has a growing number of PhD candidates, she says.

Like Victoria University’s new short courses, the courses are taught intensively over a few days, or classes are held early



“A lot of practitioners these days are thinking about how their portfolio of experience presents to the outside world”

Professor Mark Hickford, VICTORIA UNIVERSITY

evening across the semester.

“We offer 30-point courses (requiring 36 contact hours) or 15-point courses (requiring 18 contact hours) – so students have a lot of flexibility in making up the 120 points required for the LLM or 60 points for the PGCertLaw.”

Flexibility is really important because many of the students are studying part time and need to fit their study commitments into their existing work obligations, Dunworth says.

“This coming year we are not only offering

courses on a block-basis on weekdays, and early evening courses across the semester, but we are also trialling a few courses to include Saturdays to see if that format appeals to the legal profession.”

The students come from a wide range of backgrounds and experiences, Dunworth says.

“We have recent graduates, legal practitioners who are working locally, and increasing numbers of international students attracted by the opportunity to undertake advanced legal studies in an English-



## Develop your expertise with a postgraduate degree from Otago

Take the next step in your legal career with a postgraduate degree from the Faculty of Law at the University of Otago, New Zealand’s leader in research performance in the subject of law.\*

- Maintain total flexibility; start your LLM or PhD anytime, study part-time or full-time and by distance\*\*
- Specialise in a growing area of importance, with our taught Master of Emerging Technologies Law (METL)
- Study alongside world-class legal academics

For further information, contact: [postgraduate.law@otago.ac.nz](mailto:postgraduate.law@otago.ac.nz)

[otago.ac.nz/law](http://otago.ac.nz/law)

\* Based on the Government’s PBRF assessment  
\*\* Conditions apply

### POSTGRADUATE



# POSTGRADUATE REPORT

speaking, common law jurisdiction.”

Last year, 21 courses were offered in diverse subjects ranging from corporate and commercial law, environmental law, public law, human rights and dispute resolution, and international law.

“In 2016, we are offering 27 courses, including those in the Master of Taxation Studies. Students can choose to specialise in one of six areas: corporate and commercial law; human rights law; international law; dispute resolution; environmental law or public law.”

Dunworth echoes Hickford’s sentiments when discussing why lawyers might opt for



“Differentiating yourself from other job seekers is a key factor in employment success – and postgraduate study can help give you the edge”

Professor Treasa Dunworth, UNIVERSITY OF AUCKLAND

postgraduate study.

“Postgraduate study in law builds on your success. It is increasingly important in our globalised world, where graduates are competing for roles in an international market. Differentiating yourself from other job seekers is a key factor in employment success – and postgraduate study can help give you the edge.”

Lawyers in practice are also wanting to “upskill”, both to respond to changes in the law in their own particular specialisation, but also to ensure that over a career, they are able to build expertise in different areas of the law, or get a sense of an emerging field, Dunworth says.

“The structure of our LLM, with intensive courses, allows us to bring to Auckland experts in various areas of law.

“In the next few months, we will be welcoming Professor Marc Moore from the University of Cambridge to teach Corporate Governance, Professor Christina Voight from Oslo to teach climate change law, and Professor Nigel Gravells from the

University of Nottingham.”

### Down the line

Professor Mark Henaghan, the dean of the Faculty of Law of the University of Otago, has a similar argument as to why practitioners should consider postgraduate education.

“A postgraduate qualification empowers those who do it with greater depth of knowledge and mastery of the law in the areas they have studied.

“This enhances their confidence and their skills, particularly their research and writing skills.”

It also leads to a deeper understanding

and appreciation of the complexities of the law in the modern world, Henaghan says.

“It may lead to a new career or a change in direction within the lawyer’s existing career.

“Where a lawyer continues practising in the same area as before, the postgraduate study is likely to give the lawyer a deeper understanding of issues in their area of practice, and a wider appreciation of the field in general. It contributes to a stronger legal profession and it also gives the opportunity to reflect on the underlying theories upon which our law is based.”

The University of Otago’s law faculty offers a PhD, LLM, Masters in Emerging Technology Law (METL) and, in conjunction with the Otago Bioethics Centre, a Masters in Bioethics and Health Law.

“The PhD and the LLM are fully research-based, which encourages greater collegiality between the students and with Faculty members.”

In December 2015, the faculty graduated six PhDs in Law, who were from Iran,

Malaysia and New Zealand. The law school currently has 10 PhDs in progress and three LLMs by thesis in progress. The MBHL attracts approximately 20 students each year, Henaghan says.

“The METL is a new program, which we expect will be attractive to practising lawyers throughout the country looking

### HOW DO AUSTRALIAN AND NEW ZEALAND LAW SCHOOLS RATE INTERNATIONALLY?

8	University of Melbourne
13	University of Sydney
15	University of New South Wales
16	Australian National University
22	Monash University
33	University of Auckland
45	Victoria University of Wellington
49	University of Queensland
51-100	Griffith University, University of Adelaide, University of Canterbury, University of Otago, University of Western Australia
101-150	Macquarie University, Queensland University of Technology, University of Waikato, University of Technology Sydney
151-200	Deakin University, La Trobe University, University of Newcastle, University of South Australia, University of Tasmania

**N/A:** Auckland University of Technology, Australian Catholic University, Bond University, Central Queensland University, Charles Darwin University, Curtin University, Edith Cowan University, Flinders University, James Cook University, Murdoch University, RMIT University, Southern Cross University, University of Canberra, University of New England, University of Notre Dame, University of Southern Queensland, University of the Sunshine Coast, University of Wollongong, Victoria University, Western Sydney University.



“Postgraduate study is likely to give the lawyer a deeper understanding of issues in their area of practice, and a wider appreciation of the field in general”

Professor Mark Henaghan, UNIVERSITY OF OTAGO

to do some further study part time in the area of law and new technologies. This course is a taught course with a research paper component.”

The students come from a wide range of legal roles and practice areas, Henaghan says.

“We have students completing LLMs and PhDs in domestic and international public law topics, commercial law, private law and family law.

“The METL and MBHL students

have often already shown an interest in emerging technology or health law, either by choosing papers in those areas in their undergraduate degree or through work experience. But these degrees are equally attractive to students wanting to develop a new area of interest.”

Most of the current postgraduate students are doing their degrees part time, usually alongside their job and many of them study by distance study from around New Zealand,

Henaghan says.

“They have regular contact with their supervisors and visit the Otago campus once or twice a year. Our full-time postgraduate students usually base themselves in Dunedin and have office space within the faculty.”

Lawyers do postgraduate study for a range of reasons, he says.


“Some undertake postgraduate study because of an interest in the topic arising from their work in practice.

“A PhD or LLM gives them an opportunity to do in-depth thinking on their chosen topic. For others, postgraduate study will provide an opportunity to add new areas of expertise to their practice.

“And for those who wish to pursue an academic career, a postgraduate qualification is essential nowadays.” **NZL**

## STAND OUT WITH AN LLM


The Auckland Law School's postgraduate programme has been structured to ensure maximum flexibility. You can start your courses at any time during the academic year. Courses are offered both in 30 point format (36 teaching hours and 12,500 word research paper for assessment) and in 15 point format (essentially half the workload). We schedule courses in a variety of ways – early evenings, intensive 3 or 5 day courses, and some scheduled on Saturdays.



Enrolments now open for 2016.

Climate Change Law 30 points	Corporate Governance 30 points
Counterterrorism and Constitutionalism 15 points	Torture and Disappearances in International Human Rights Law and Practice 30 points
International & Comparative Copyright Law 30 points	Selected Topics in Law of Evidence and Criminal Procedure 15 points
Data Privacy and the Law 15 points	WTO Dispute Resolution 30 points
Iwi Governance 30 points	Equality and Anti-Discrimination 15 points

For more information visit:  
[www.law.auckland.ac.nz/2016lawcourses](http://www.law.auckland.ac.nz/2016lawcourses)  
or email:  
[postgradlaw@auckland.ac.nz](mailto:postgradlaw@auckland.ac.nz)  
or visit us on Facebook:  
[www.facebook.com/akllawschool](http://www.facebook.com/akllawschool)



## CONSTRUCTION

# GOLDEN ERA OF CONSTRUCTION

Some of New Zealand's top construction lawyers talk to **Hannah Norton** about the key drivers of work in the booming industry

**IN 2014**, Building and Housing Minister Dr Nick Smith predicted “the biggest construction boom this country has seen in decades”, with a projected total value of \$100 billion over the next three years.

His comments came off the back of a Government-commissioned National Construction Pipeline report – and, according to New Zealand's construction lawyers, they are proving to be true.

“We have certainly noticed this and we believe the key factor driving this boom is New Zealand's economic and political stability over the past years, especially when compared to Australia,” says Joe Biddles, director at Thompson Blackie Biddles.

“We believe this has resulted in local businesses feeling confident to build and foreign investment being attracted to invest. This is coupled with council's investment in infrastructure.”

Russell McVeagh's construction practice had a very busy 2015 working on several large construction contracts, with construction prices of hundreds of millions of dollars, partner Ed Crook says.

“There is a high level of confidence within the private sector, with many areas of New Zealand's economy enjoying good

growth,” says Crook. “This has supported the development of new CBD offices, retail and industrial developments.”

There seems to be confidence that the economy generally, and tourism specifically, will support the New Zealand International Convention Centre once complete in 2019, Crook says.



**“There is increased construction activity generally, but in particular for projects where clients are using external legal advisors... usually because of the high value of the project”**

Tom Bennett, BELL GULLY

“There also continues to be a number of large infrastructure projects, particularly around Auckland, to support Auckland's transport requirements.”

Bell Gully partner Tom Bennett echoes these sentiments.

“There is increased construction activity generally, but in particular for projects where clients are using external legal advisors,” he

says. “This is usually because of the high value of the project – either in terms of contract price or commercial importance to the client – or complexity of the project. Increased construction activity is across all areas – residential, commercial and infrastructure projects.”

Anthony Harper property partner, Edward

Dunphy, believes the boom is being fuelled by both the private and public sector.

“From the private sector, we are seeing that the timeframes for responding to tenders is getting shorter as private clients are keen to get started on projects as soon as possible in order to get products to market before it slows down,” explains Dunphy.

“The public sector drivers appear to

be driven by a number of factors: the Christchurch rebuild is still going strong; there is also a sense that spending on large infrastructure projects is a good way to keep the economy stable; there seems to be a concerted effort by central government to have a clear and consistent pipeline of work; and some of the recent decisions by the public sector seem to have been made with a view to encouraging and supporting private development.”

## Key drivers of work

The work undertaken by Russell McVeagh's property team is predominantly with private sector developers, Crook says.

“[This] has included Precinct's developments at the Downtown Shopping Centre and Wynyard Quarter, Goodman's developments in the Wynyard Precinct, and the ongoing development by Auckland Airport of its terminal buildings and business park.”

Minter Ellison Rudd Watts has experienced a number of drivers of work in both the contentious/disputes side of construction, as well as the non-contentious/contract and project advisory side, partners say.

Minter Ellison Rudd Watts partner Janine Stewart observes “an increasing willingness



**“In Auckland, as land supply continues to be unlocked, there has been considerable activity in the development of bare land into residential lots/subdivisions”**

Joe Biddles, THOMPSON BLACKIE BIDDLES

to get lawyers involved in disputes more than ever before – not litigation but also other forms of dispute resolution, and even proactive ‘pre-litigation’ strategy and preparation to seek to avoid disputes, or seek to make claims or positions as ‘litigation-proof’ as possible.

“The reasons for it include the larger projects, and therefore sums involved, as well as more personnel or companies from more litigious jurisdictions coming into the sector.”

There are also project disputes and disputes around latent defects in completed works, which she describes as “an ongoing legacy of changes in the industry”.

“These include changes in building laws, materials, methods, and training.”

Fellow Minter Ellison Rudd Watts partner Mark Crosbie lists some key drivers of work

as: the Christchurch rebuild – “particularly the anchor projects”; the convention centres in Auckland, Queenstown and Christchurch; the public sector's release of PPP projects to the market; the Auckland office market expansion with new office buildings, and the retail sector with shopping centre developments and expansions; and the Auckland residential market, particularly new apartment buildings.

“This, in addition to a good level of corporate requirements – offices, factories, warehouses, etc – reflects the relatively buoyant economy.”

These drivers have meant the firm has noticed a clear construction boom, Crosbie adds.

“There is a foreseeable pipeline of forward construction work as well, on the basis of those factors alone.

# CONSTRUCTION

“For the front end lawyers, a lot of the work takes place early on – before the physical work on the project starts, and so our role has finished on a lot of the projects that the public is now seeing underway, and we are working on the next projects that are yet to get underway,” says Crosbie.

Bell Gully’s Bennett emphasises the importance of the state of the economy in the construction space, particularly for the private sector.

“Clients respond by either building new facilities or enhancing existing facilities, or undertaking commercial or residential development,” he says.

“Examples of recent work in Auckland include the Northwest shopping centre, Britomart precinct, 125 Queen Street redevelopment and the Commercial Bay/City Rail Link development.”

Public sector projects Bell Gully has worked on have included the Auckland City Rail Link, the Government’s continued Public-Private Partnership (PPP) programme and the identification and development of Special Housing Areas.

Biddles notes activity in the construction sector in both Christchurch and Auckland.

“The continued activity in Christchurch in undertaking the rebuild has seen high levels of construction activity resulting in several development projects.

“In Auckland, as land supply continues to be unlocked, there has been considerable activity in the development of bare land into residential lots/subdivisions. Residential conversions of CBD and CBD fringe buildings have also been a feature, alongside commercial office construction in the Auckland CBD.”

Dunphy says work is being driven by a mix of things – “the volume of work that is out in the market place, the complexity of the contracts, and the way risk is being allocated”.

His Anthony Harper colleague, partner Karen Kemp, says that, in the disputes space, clients are thinking more commercially about their potential claims, and are using the efficient mechanisms under the Construction Contracts Act for quick, practical results.

## WHAT ARE YOUR PREDICTIONS FOR THE CONSTRUCTION SECTOR IN THE YEAR AHEAD?



### Russell McVeagh partner Ed Crook

“As many of the construction contracts entered into last year are for developments – which will be completed over a three- to four-year timeframe – those projects will be continuing for the balance of the year. There are also a number of infrastructure projects that are underway and will continue through the year. There remain lots of new projects, which are being talked about, and may commence this year. “It is notable that many of the large projects for which construction contracts were entered into last year were the result of many years of planning and preparation. I am not aware of any similar projects, at least in Auckland, that are currently at the pre-construction stage. “There are a large number of consented residential developments, which may well provide an opportunity for developers and contractors in that sector this year.”



### Minter Ellison Rudd Watts partner Mark Crosbie

“[It’s a] good time for the construction sector generally, with work for all, with the sector constraints and the continuing forward work stream. It seems inevitable for cost increases to occur, and the potential for disputes to increase also. The industry seems to be trying to address this itself, and through government programmes and support. There is an inevitable lag, though, with the initiatives.”



### Thompson Blackie Biddles director Joe Biddles

“We anticipate an extremely busy sector with continued growth and pricing pressure due to growing development activity levels.”



### Bell Gully partner Tom Bennett

“It has been a reasonably busy start to the year in the construction space. The likely pipeline of projects looks set to result in a good level of activity for the construction industry for the rest of 2016 and into 2017.”



### Anthony Harper partner Ed Dunphy

“We think we are going to see a lot of pressure coming on projects stemming from the fact that the subcontractor market is going to be very stretched this year, and for the next few years. There is a concern that the contractual obligations, which are becoming increasingly more onerous, that are being passed on to subcontractors are not fully understood and/or priced.”

### Legislative changes

It has been a relatively intensive period of legislative reform for the construction sector, Russell McVeagh partner Polly Pope says.

“We have noticed particular engagement from our clients in the substantial reforms to health and safety laws.”

Wide-ranging reforms to the Construction Contracts Act were also passed in 2015, she says.

“One area that has perhaps received less focus is the requirement to hold retentions on trust. There are a number of issues that will need to be worked through in practice, in particular in the insolvency of the party holding retentions.”

Dunphy also believes this is having a potentially large impact on the industry.

“It is expected that some more details around the holding of retentions on trust will come via regulations during the year, so quite how it will impact the industry remains to be seen,” says Dunphy.

Biddles notes the amendments to the Construction Contracts Act and Health and Safety legislation, adding reforms/changes include new and significant consumer protection measures under the Building Act, which came into effect in January 2015.

“These changes have driven up compliance costs but also lead to a more positively regulated industry,” Biddles explains.

Bell Gully’s Bennett says the industry does appear “to be taking these reforms in its stride, although the new framework for retentions may result in market changes”.

### Challenges in the construction sector

The key challenges, at least around the Auckland area, are continuing upward pressure on materials’ pricing and a lack of capacity and resources within the sector, and, in particular, among subcontractors and suppliers, Crook says.

“On some occasions, we have seen difficulty with developers being able to progress a competitive tender process to include a fixed price or good manufacturing practice (GMP), because contractors are already busy and are not prepared to commit

time and cost to pursuing an opportunity in a competitive environment.”

One solution for this has been for developers to tender on a margin and P&G (preliminary and general) basis and for sub-trades to be procured on a transparent basis, Crook says.

“This means that the developer takes the risk on sub-trade pricing and so may not be suitable for some developments. High pricing has also meant that some projects are no longer feasible.”



## “No one involved in a project wants the distraction of a dispute or to be on the wrong side of a contract issue”

Karen Kemp, ANTHONY HARPER

Crosbie says there are two conversations around challenges that the team is hearing on projects at present.

“The first is in the procurement of a project team (consultants and contractors) and with some price certainty – there are a limited number of consultant practices and construction companies that are geared up for large projects and with so much work on the demand is exceeding or at least stretching supply,” says Crosbie.

“Even those companies have a limited number of senior people with the experience and expertise to lead a large project. This is thus limiting options for owners/developers and leading to necessary consideration of alternative procurement (such as off-shore contractors).”

The second, and somewhat related, issue is the size of the supply chain – the suppliers and subcontractors that supply the materials or do the trade-work on the project, Crosbie says.

“That pool was relatively limited coming out of the GFC, and was then hit hard by the likes of the Mainzeal collapse, which caused failure or stress for many such companies.

“So the limited capacity of this supply chain to actually meet the demand of this increasing amount of work is also giving rise to concerns about impacts to projects for both the owner/

developer, as well as for the head contractor.”

Again, off-shore supply of both materials and labour is a consideration, but comes with a further set of risks that need to be managed, or that make the theory of such a solution impracticable in some instances, Crosbie says.

“The outcome of all this can lead to, or exacerbate, delays, cost increases, and/or quality outcomes, all of which in turn can lead to dispute.

“Whilst referred to in the context of large projects, we are starting to see the same

issues arising – at least in Auckland – in relation to the medium-scale projects, as well as with the consultants and contractors that service those projects.”

Stewart adds that, in addition to Crosbie’s comments, the firm is seeing parties rush into the next project without properly allocated risk and structuring the project.

Kemp believes the main challenge for the sector will continue to be keeping projects on track, managing the time pressures that the boom will create, and ensuring clear contractual arrangements are put in place with appropriate risk allocation.

“No one involved in a project wants the distraction of a dispute, or to be on the wrong side of a contract issue,” says Kemp.

Another key challenge for firms is recruiting and retaining quality and experienced construction lawyers, Bennett says.

“This is because of the cyclical nature of the construction industry and the current high levels of construction activity in Auckland and throughout New Zealand,” says Bennett. “Good, skilled people are, quite rightly, in demand.”

And, as the golden era of construction continues, this is likely to be an ongoing trend. **NZL**

# A GLOBAL FLAVOUR

**Barton Hoggard** of Clyde & Co tells Samantha Woodhill what lawyering is like in Dubai

**WHAT WAS** a two-year plan turned into an eight-year one, after Barton Hoggard had a taste of working in the United Arab Emirates. He headed back to New Zealand after a five-year stint in London, only before quickly setting his sights on the Middle East. “I arrived towards the end of [a] busy time where property prices were skyrocketing and then there was obviously the global financial crisis and things slowed down quite a bit,” Hoggard says of his 2008 arrival in the UAE. “At that time, property prices halved in value overnight – it was a huge bubble. But Dubai has rebounded since then, [where] prices came back towards the end of 2012.”

**The legal world**  
The UAE legal market is extremely competitive, with more than 75 international firms and a number of local ones in play. It’s so competitive that offices that are struggling will try to undercut other firms on price, just to keep their people busy, says Hoggard. “It isn’t a sustainable business model and it causes issues in the market.”

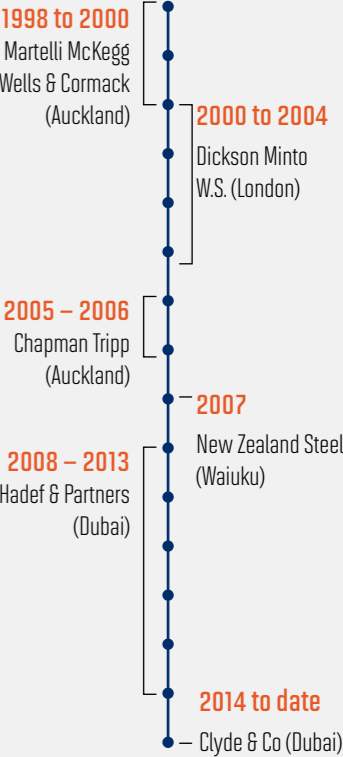
“A number of those offices are like satellite offices, servicing their UK or US headquarters. “Firms need to be able to distinguish themselves on the quality of the service, rather than cost, to be able to create a sustainable business model.”

Being the largest international law firm in the region, Clyde & Co is well placed to differentiate itself in the marketplace because it’s the only international firm with a full-service offering.

Regulatory changes in the healthcare sector have kept Hoggard busy as a number of companies are looking to consolidate. For small players, compliance requirements have become increasingly more onerous, which is making it more difficult to remain profitable.

“There’s been a significant consolidation of the healthcare market – with a lot of the bigger operators buying the smaller ones who are struggling in a more competitive and highly regulated sector. And because there is a dearth of good healthcare assets for sale, the valuations for the quality healthcare facilities are huge,” he says.

## CAREER TIMELINE



### A land of opportunity

“There are a huge number of exciting projects here,” says Hoggard of his Middle Eastern legal career.

“There’s a lot of opportunity to get involved in very interesting and complex transactions, in particular in the healthcare, education, development and infrastructure sectors.”

Whereas there were limited opportunities for cross-border work in New Zealand, he says.

As an emerging market, Dubai attracts companies that are struggling in their home market.

“Foreign companies see the UAE and this region as a great opportunity to expand and build their businesses, which they perhaps can’t do in their home market.

“As a result of that, there’s quite a lot of legal work.

“There [are] a lot of cash-rich companies here that are not only looking to invest in the

BARTON HOGGARD



Iran opening its borders, following the delisting of EU sanctions, will have a major impact on the legal market in the region, as companies scramble to infiltrate what was previously an untapped market.

“There are thousands of companies that are wanting to expand or establish businesses in Iran because it’s an untapped market that has been in isolation for four decades,” Hoggard explains. “There is a large young and highly educated population in Iran, which represents a massive potential market for foreign companies.

“We are receiving a huge number of enquiries about how to acquire companies in Iran, or to set up businesses there. At the moment, the main issue is getting cash in and out of Iran through the banking system, because a number of banks have, in the past, been hit with millions and billions of dollars of fines for breaching sanctions, and they are a little reluctant to re-engage in facilitating business in Iran as certain sanctions are still in place.”

### SLOWING OIL PRICES

The low price of oil has caused much privatisation as governments in the region look to slow spending as revenue decreases, despite huge cash reserves.

“Abu Dhabi has huge cash reserves and the second largest sovereign wealth fund in the world,” Hoggard says.

“They are still in a pretty good position, but revenue has definitely decreased and, as a result of that, they are looking at ways they can reduce their expenditure, and privatisation is one of those means.

“They’ve got massive budgets but the oil price has fallen dramatically below USD30 a barrel and, with that, their revenue has decreased.”

But it’s not all about revenue.

“The government here is not only the legislator but, in a number of instances, they’re also the developer and the investor,” Hoggard says.

“[What] they’re wanting to do is transition into simply being the regulator, so they are wanting to privatise a number of their functions.”

region, but also outside of it.

“You see a lot of situations where UAE, Qatari or Saudi companies are looking to make acquisitions in Europe, the US and even further afield. By way of example, the largest local UAE courier company recently acquired Fastways Couriers in New Zealand.”



“At that time, property prices halved in value overnight – it was a huge bubble. But Dubai has rebounded since then, [where] prices came back towards the end of 2012”

**The legislative landscape**

The legal system in Dubai is quite different to New Zealand’s, he says.

The government authorities do not always follow the black letter of the law, for example.

“As a lawyer practising here, you need to know not only what the law is but also what the current practice is, because you won’t be giving clients the most appropriate advice if you are simply citing what the law says.”

The UAE has a number of Free Zones, which is a major attraction for businesses because it means that many tax

considerations of other jurisdictions are non-existent there. But each of these zones have their own regulations, and understanding the different licensing and regulatory regimes can be difficult.

“We assist companies navigating their way through that,” says Hoggard.

“The attraction of Free Zones is that a foreigner can come in and own 100% of the share capital of a company in a Free Zone, whereas on the mainland you have to have a UAE national registered as the owner of 51% of the share capital.

“It can take a little bit to get your head around the licensing and regulatory regime.

“[We’re] mostly acting for foreign companies that are looking to do business here, whether that be setting up, joint ventures or acquisitions.” **NZL**

PRODUCT REVIEW

# Dragon Legal NZ product review

by Hannah Norton

**REDUCING DOCUMENTATION**

turnaround time and the cost of transcription are the two goals behind the company launching Dragon Legal New Zealand edition speech recognition software for PC – and my view is they have achieved just that.

Dragon Legal was installed on my computer and within the hour I was dictating emails and Word documents. The programme rapidly learned my voice and any initial mistakes in the copy were due to human error – generally when I wasn’t overly clear with my speaking.

This means it quickly recognises legal terms, and – for instance – would identify statutes I was referring to and capitalise the words.

This is a small, but time-saving action when you are writing 2000-word pieces.

I also found it a very handy tool for dictating emails, which you can write and send without even touching your keyboard.

The supplier, Sound Business Systems, is an Auckland-based, wholly New Zealand-owned company, whose director, Mike Kelly, has worked closely with Nuance Communications to make Dragon Legal

“Dragon helps to streamline workflow processes and ease workloads overall, in turn making staff more productive and able to focus on more billable duties”

A day later, once Dragon and I were used to one another, the copy was completely clean and error free.

This enabled me to explore some of the software’s other functions. With Dragon Legal, you aren’t just limited to the transcription of documents, the programme also allows you to send and manage email, and generally control your computer by voice, at a rate three times faster than most people type.

The software comes preloaded with legal terminology and is New Zealand-specific.

NZ a reality.

Kelly told *NZLawyer* he was also impressed with the accuracy of the software, which included an expanded Corpus containing thousands of New Zealand specific legal terms, statutes, law firms, place names and government entities.

Another benefit is the fact Dragon will suit your practice’s workflow, and lawyers who are already dictating documents for others to transcribe can continue to do so. The software is integrated with the most widely used digital dictation systems used within the

New Zealand market, including WinScribe, Phillips SpeechExec and Olympus.

This allows the flexibility of back-end (completely transparent to lawyers) or front-end (lawyers’ self-correct) speech recognition workflow, or a combination of the two.

With front-end speech recognition, lawyers can create their own documents inside – or independent to dictation software – using digital recorders, speechMikes or headset microphones, with documents then edited.

Back-end speech recognition on the other hand can be completely transparent to the author – they need not even know speech recognition is being utilised. Dictation is transcribed in the background and the typist is presented with a draft transcribed document, ready for correction.

All these excellent functions mean Dragon helps to streamline workflow processes and ease workloads overall, in turn making staff more productive and able to focus on more billable duties.

I would highly recommend the software to all law firms – from top tier to boutique. I anticipate the software one day being readily accepted by the corporate world in general as a handy tool for business and overall efficiency.



CORPORATE RETREATS

# Are corporate retreats worth it?

**Nikki Fogden-Moore** explains why strategic escapes are essential for creativity, performance and leadership

**THERE'S A** shift occurring in the business world that is happening outside the office – conferences and retreats are becoming the norm. The agenda is shifting from bar voucher to spa voucher, from boardrooms indoors to holding meetings outdoors – even on surfboards. So, is this working?

Despite a backlash in the US many years ago about lavish retreats (when AIG executives reportedly spent more than \$400,000 on a corporate getaway after receiving government bailout money in 2008), corporate retreats are back in vogue – and rightly so, for they can provide a crucial, authentic timeout for leaders and key teams to reconnect, assess productivity and build shared purpose at even the most challenging times.

The corporate retreat is a vital part of the strategic year for companies that value their team as much as their bottom line.

The trick is to ensure you plan your retreat as you would your business. Who should be there, what is your budget, and do you have your purpose? With the right team running this with you, an annual break away for body and mind could be the perfect formula to keep your team healthy, wealthy and wise. After more than a decade of running corporate and boardroom retreats worldwide, I can give you three reasons why the well-executed ones work.

**1 Creativity** Creativity requires space to think and environments that can inspire. Providing a digital detox and fresh perspective for your team can get the brain off autopilot and



into fifth gear with energy and vision. Like the saying goes, keep doing the same thing, and you'll get the same results. So instead of repainting the office walls and moving some plants around, plan in creative breaks during your strategic corporate retreats that truly allow time to reflect, think and indulge in ideas, as well as space to offer feedback.

If you want to see changes in the level

of creative thinking, initiative and a fresh approach to corporate challenges, then the best thing to do is create a real opportunity for people to switch off and have time to think, talk, create and engage. Choose your location based around this thinking – get back to the ocean or nature spots. Think about the use of space and where you will stay. The creativity starts the moment you arrive.

Close the laptops and bring out large sheets of paper. The cognitive connection to thinking and writing is incredible – it allows a flow and a dynamism that cannot often be captured by tapping away at a keypad. Bring your team back to basics by making idea generation and problem-solving larger than life on big sheets of paper that hold opportunities, concerns and challenges. Bring it out into the open, and tackle each area with transparency and shared purpose.

Allow the conversation to continue over dinner or lunch, and be open to the idea that an agenda can flow when people are given the opportunity to open up and share ideas without a stopwatch. Take notes at lunch or dinner – and add those to the ones from the more official creative brainstorming sessions. Carry this through and identify how you will share these ideas when back in the office.

**2 Performance** Part of the purpose of a retreat is to help recharge mental and physical batteries, not deplete them any further. Integrate a yoga or fresh-air session in the morning, with a mid-afternoon session outdoors, or doing something that gets people moving. Engage in earlier drinks before choosing healthy, inspiring dinners at venues that understand delicious, fresh, high-quality ingredients. Encourage 'homework' or calibration time in the evenings, and embrace the value of sleep.

View the retreat as time to share the value of bringing personal and business vitality to life and how this can be integrated seamlessly back at the office. Bring in speakers and facilitators who understand the importance of both personal and business acumen – it can make a world of difference in teaching your leadership team how to take all areas up to the next level.

If you're the CEO or the leader of this retreat, then set the scene upfront. Time out in strategy sessions, combined with fresh air, fresh food and a fresh perspective, can create an incredible shift in old-style, work-hard-play-hard thinking. Bring balance into the day, and watch this philosophy find its way

back to the office as well.

Create tangible milestones for KPIs and performance during the retreat that you all agree to continue in the office. Most of all, if you're going to take away your findings and apply agreed-upon accountability measures, make them official, and show that ideas generated on retreat can be swiftly implemented back at work.

**Corporate retreats are back in vogue – and rightly so, for they can provide a crucial, authentic timeout for leaders and key teams to reconnect, assess productivity and build shared purpose at even the most challenging times**

**3 Leadership** I always say there are three pillars of true leadership:

- leading from within
- leading by example
- leading others.

Corporate retreats are an ideal opportunity for executive teams to test elements and roll them out for a period of time before sharing with the broader teams. It may be a four-week implementation period post-retreat that requires a regroup before rolling out. By leading by example and practicing what you preach, the element of authenticity and trust is improved, creating a real engagement with leaders across divisions as well.

Often retreats are an opportunity to see other skills, characteristics and ideas from those around you – a forum where problem-solving and collaboration can show leadership in a different light. Most important, leadership teams and executive-level management have an opportunity to explore the core commercial elements on the agenda, as well as their own personal well-being and goals, in a safe and constructive environment.

Increasing personal connection can greatly improve the collaboration and work ethic

inside a company – it's essential for our increasingly virtual world. This all improves productivity and accountability.

Finally, whatever you do, keep it relevant and efficient, and forget about the fad gadgets and gimmicks, or signature flashlights and backpacks. The best place to spend your budget is on the right location and the people hosting the retreat for you.

You don't want your leadership team coming back into the office on Monday, exhausted from late nights of too many drinks and not too sure about what the next steps are. This is about lifting your corporate sessions up a notch and getting engagement from the get-go. It's the conversation, the quality connections, and well-organised time and content that allow a perfect blend of relaxation, connection and strategic thinking. Corporate retreats, if executed well, efficiently and with purpose, are a powerful tool to reignite shared purpose, engagement and a passion for performance in business and in life.

Run your retreats like you do your business. Have a purpose, and define who needs to be there and what value you want in return. At the end of the day, building a culture that is healthy, wealthy and wise is the winning trifecta, and corporate retreats are an ideal place to benchmark those three elements together. **NZL**

Nikki Fogden-Moore specialises in coaching high achievers to bring business and personal vitality to life. Her new book, *VITALITY*, is available internationally.



LISTINGS

BUILDING CONSENT & CONSTRUCTION



**Maynard Marks Limited**  
Are your clients involved in construction or property-related disputes and need a reliable expert witness? Are they involved in commercial property acquisition, leaseholding or development and need technical due diligence or other professional advice? We offer a nationwide service through our Auckland, Wellington and Christchurch offices. Please call us to discuss how we can help your clients with their property-related needs.  
**Auckland 09 912 2550**  
**Wellington 04 282 0650**  
**Christchurch 03 379 1773**  
**E: office@maynardmarks.co.nz**  
**www.maynardmarks.co.nz**



**McGunnigle Hodge Building Consultants**  
We are a boutique firm of building consultants that is capable of providing expert technical building performance advice to you and your clients. Our team of professionals excel in their specific fields (including defect identifications, expert witness representation, repairs, acquisitions and disposals), allowing unparalleled expertise in the building performance sector.  
**T: 09 360 3255**  
**E: info@mhbc.co.nz**  
**www.mhbc.co.nz**



**Prendos New Zealand Limited**  
Prendos are leading consultants to the property and construction industry. With more than 25 years' experience across all building types and market sectors,

we deliver independent, expert advice through a network of offices across New Zealand. Our thorough knowledge and extensive experience in the preparation and presentation of independent expert evidence assists clients who anticipate legal action in the District Court, High Court and Weathertight Homes Tribunal. We also provide dispute resolution services of mediation, adjudication, and arbitration. Prendos has an Expert Witness panel that spans key construction industry disciplines, consisting of building surveyors, quantity surveyors, structural engineers, fire engineers, architects, valuers, adjudicators, arbitrators and mediators.  
**Auckland | Christchurch | Tauranga | Wellington | Whangarei**  
**T: 0800 PRENDOS (773 636)**  
**E: prendos@prendos.co.nz**  
**www.prendos.co.nz**

FINANCIAL SERVICES



**Business Appraisals Ltd**  
**Clyth MacLeod**  
Clear, accurate and affordable business valuations for partnership splits, property relationship, litigation support, estate planning and buy/sell decisions. Independent, practical, and experienced expert witness.  
**T: 09 630 9491**  
**E: clyth@businessappraisals.co.nz**  
**www.businessappraisals.co.nz**

**Business Valuation and Forensic Accounting Limited**  
**Charles Purcell**  
Business and share valuations, relationship property matters, shareholder disputes, financial investigations, forensic accounting, and the provision of expert witness evidence to various courts.  
**T: 04 473 8900**  
**E: cpurcell@businessvaluation.co.nz**



**www.businessvaluation.co.nz**  
**Grant Thornton New Zealand Ltd**  
**Tony Davis**  
Business and shares evaluation, loss of profits and damage claims, relationship property, and forensic accounting, including providing expert witness evidence.  
**T: Tony 09 300 5804, Bill 09 300 5803**  
**E: tony.davis@nz.gt.com, billapps@nz.gt.com**  
**www.grantthornton.co.nz**



**Hussey & Co.**  
**Shane Hussey**  
20 years specialising in business valuation, assessment of economic loss, relationship property matters, financial investigations/forensic accounting, including providing expert witness evidence.  
**T: 09 300 5480**  
**E: shane@hco.co.nz**  
**www.hco.co.nz**



**ECOVIS KGA Limited**  
**Keith Goodall, Wade Glass & Clive Bish**  
Business and share valuations, shareholder/partner disputes, litigation support and expert evidence, damages claims and forensic accounting/investigations.  
**T: 09 921 4630**  
**E: keith.goodall@ecoviskga.co.nz**  
**wade.glass@ecoviskga.co.nz**  
**clive.bish@ecoviskga.co.nz**  
**www.ecoviskga.co.nz**



**Lazelle Associates Ltd**  
**Murray Lazelle**  
Forensic accounting and litigation support: damages/loss

assessment, relationship property issues including valuations, reckless trading and 'phoenix' company issues; Commerce Act and Fair Trading Act issues; beneficiary/trustee disputes.  
**T: 09 300 7220**  
**E: murray@lazelle.co.nz**  
**www.lazelle.co.nz**



**Lyne Davis Opinion Ltd**  
A boutique practice which focuses solely on financial valuations and expert evidence. Benefits include deep specialisation, combined 60 years' experience, and a sound theoretical and practical background for the solving of important forensic issues. Work includes investigating accountant reports; business, company and IP valuations; IFRS valuations; expert determination; shareholder disputes; loss of profits; insurance loss and relationship property.  
**T: 09 379 4393**  
**E: brendan.lyne@lynedavis.com**  
**E: tony.davis@lynedavis.com**  
**www.lynedavis.com**



**nsaTax**  
**Bruce Watt**  
Business valuations, loss or damages quantification, and litigation support.  
**T: 09 309 6505**  
**E: brucew@nsatax.co.nz**  
**www.nsatax.co.nz**



**Staples Rodway Ltd**  
**Kevin Pitfield**  
Specialist in valuations, loss quantification and damages area.  
**T: 09 309 0463, 027 458 2553**  
**E: kevin.pitfield@staplesrodway.com**  
**www.staplesrodway.com**

**Staples Rodway Ltd**  
**David Searle**  
Expert witness for fraud investigation and financial reporting.  
**T: 09 373 1128**  
**E: david.searle@staplesrodway.com**  
**www.staplesrodway.com**

INSOLVENT & SOLVENT LIQUIDATIONS & BUSINESS RECOVERY



**Gerry Rea Partners**  
Simon Dalton, Paul Sargison, John Leonard. Specialists in liquidations, receiverships, creditors compromises, business valuations, economic loss assessment, forensic accounting, litigation support.  
**T: 09 377 3099**  
**F: 09 377 3098**  
**www.gerryrea.co.nz**



**Translegal**  
Licensed private investigations and process servers national and international. Operating for over 25 years, Translegal Services NZ Ltd is a leading investigation and processing service company providing a national and international service.  
**T: 09 827 0096**  
**E: legalagents@translegal.co.nz**  
**www.translegal.co.nz**

List your business here. Contact **Paul Ferris** at **paul.ferris@keymedia.com.au** or **+61 2 8437 4703** for more information.

NZ Lawyer Magazine is New Zealand's only independent legal magazine written for and targeted purely at law professionals and top decision makers

- Aspirational cover stories
- In-depth features and analysis
- High-level case studies
- Interviews with domestic and international industry leaders



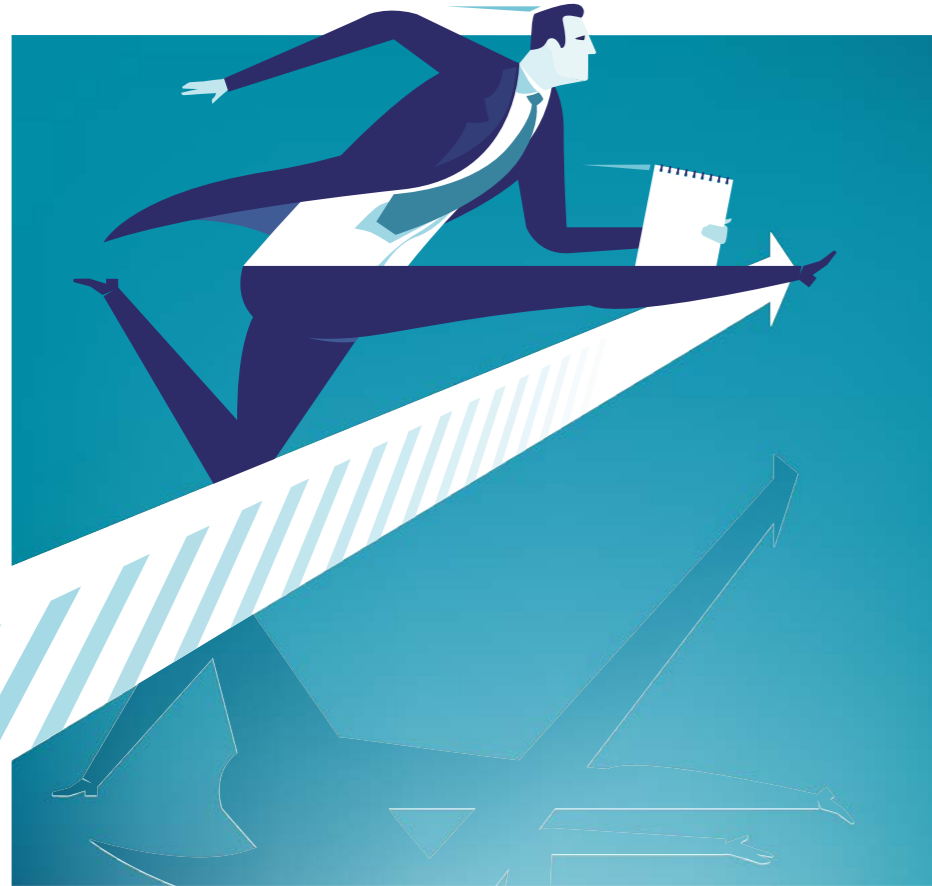
NZ LAWYER

Visit [www.nzlawyermagazine.co.nz](http://www.nzlawyermagazine.co.nz) and click on the subscription page

## PERFORMANCE

# UNDERSTANDING PERSONALITY AND ITS ROLE IN PERFORMANCE

When it comes to performance – a topic that is constantly on the agenda of most modern businesses – there are a number of different approaches, explains behavioural strategist **Warren Kennaugh**



**THE FIRST** approach is to focus on the talent – we are told that if we are serious about improving performance, we need to find and keep talented individuals who will somehow elevate everyone else around them.

As a strategy, however, this is not very effective. Enron is an example of a company that took the talent solution to heart, and look what happened to them. Plus, this approach is expensive, time consuming and divisive. It puts a huge amount of pressure on the individual who is supposed to single-handedly turn things around and, at the same time, alienates the rest of the workforce who are clearly viewed as second-class citizens.

The alternative approach is to focus on team performance on the understanding that if everyone lifts their game just a little then, collectively, performance improvements will materialise. Teams may even be sent on teambuilding or training programs to help facilitate this outcome.

## Polarities, not problems

What we first need to appreciate is that individual performance and team performance are not separate problems to

be solved but, according to consultant Barry Johnson, they are polarities to be managed. Polarities are ongoing, chronic issues that are unavoidable and unsolvable. And often, attempting to address them with traditional problem-solving skills only makes things worse. Team versus individual performance is a classic example of a polarity.

When faced with performance problems, most business leaders will plump for one type of intervention over the other – hire more talent or invest in teambuilding. The reality, however, is that elevated performance is dependent on individual contribution and collective effort, not one or the other.

Too much focus on individual performance may drive greater individual initiative, creativity, as well as fewer and shorter meetings, but it may also simultaneously activate the downside of individual focus – operating in silos, increased internal competition and no shared goals or synergy.

Too much focus on team performance may create more cohesive units, but, at the same time, decrease innovation, increase conformity and slow down decision-making. By seeing team and individual performance as two separate problems, we engage in the ‘polarity two step’ – we recruit expensive, talented individuals to solve the individual performance issue, only to inadvertently impair team performance by doing so. And when we ‘solve’ team performance by facilitating greater cooperation and cohesion, we can inadvertently stifle the high performers in the team.

This endless swing from individual to collective focus and back again is time consuming and costly. And perhaps, most importantly, it continues to ignore the importance of personality on performance.

## Personality and performance

When we look at individuals, we see a seemingly infinite array of complex and unpredictable thoughts, emotions and behaviours. This apparent randomness is often so daunting and confusing that personality is considered fodder for the ‘too hard basket’. So it’s little wonder that everyone sticks with performance improvement theories that are based around

individual or collective behaviour.

However, behaviour is massively influenced by personality. Sure, if you want to get people to do different things or get them to do those things better, you can occasionally alter that behaviour through rewards, incentives or threats but it’s usually unsustainable. When no one is looking, or the bonus cheque has been banked, they will go back to doing what comes naturally to them based on their own unique personality.

When we uncover specific personality markers, namely ‘inside’, ‘bright side’ and ‘dark side’, we give ourselves the power to orchestrate fit. Fit is the key to elevated

everyone else is that a high performer knows what their bespoke behaviours are, or simply deploys them innately at the right time and in the right place most of the time. Whereas an average or inconsistent performer is not aware of exactly what those behaviours are, so they are either deployed inconsistently or deployed in a role or environment that doesn’t need or value those particular behaviours.

As a result, performance is often down to chance or which way the wind is blowing. This is why sport is so littered with superstitions. In the absence of any real insight into what makes the player good or bad, they fall back on their lucky socks and

**Elevated performance is dependent on individual contribution and collective effort, not one or the other**

consistent performance. The more our natural strengths, characteristics, skill set and values fit with what is required in the role, and fit with the culture and organisation itself, the higher the performance will be.

‘Inside’ personality characteristics help to identify what naturally motivates and inspires us. Clearly, if what we are required to do in our role is something we are already motivated by or value, incentives or threats are unnecessary.

‘Bright side’ personality characteristics describe us on our best days. These are our natural strengths and dispositions that can indicate behavioural strengths. And our ‘dark side’ characteristics are the behaviours that show up when we are under pressure or stressed and they can easily derail our career unless you know about them and take steps to mitigate their impact.

What I’ve found across more than 3,000 profiles of elite performers, and by working in this area for over 23 years, is that everyone has four or five behaviours that evolve as a result of their unique personality. These patterns of behaviours are the way we have learned to ‘get along’, ‘get ahead’ and ‘make meaning’ in the world, and we will then use those same four or five behaviours consistently. The only difference between a high performer and

quirky pre-match routines.

What we so often fail to appreciate is that behaviour is behaviour and it rarely changes. Whether that behaviour manifests as a value-adding asset or a career-limiting liability largely depends on how and where it’s used and therefore whether we achieve fit or not.

High performance is not so much about what you do, it’s about how you do what you do, why you do what you do and where you do what you do. In fact, the only important consideration regarding what you do is what you do to screw things up.

We don’t need performance coaches to foster talent in every separate area of our life. What we need is a genuine awareness and understanding of our ‘inside’, ‘bright side’ and ‘dark side’ so we can match the best of who we already are to a role and environment that already values that contribution. When we do that, the result is consistent, repeatable high performance. **NZL**

Warren Kennaugh is a Behavioural Strategist who works with elite corporate leaders, gifted professional athletes and world-leading teams. He is a speaker, researcher and consultant who is the author of *FIT: When Talent and Intelligence Just Won't Cut It* (Wiley). See why the elite work with him at [www.warrenkennaugh.com](http://www.warrenkennaugh.com) or contact him at [wk@warrenkennaugh.com](mailto:wk@warrenkennaugh.com)



## CALDERGLEN ASSOCIATES CONSTRUCTING THE BOOK

Calderglen Associates is not your typical small to medium business

Calderglen Associate's Peter Degerholm has his work cut out for him. As well as being a dispute resolution specialist and independent advisor to New Zealand's construction industry, he is also one of the country's leading industry advisors on the Construction Contracts Act 2002.

Peter was involved in bringing about the Act in 2003 in a bid to help end the days when sub-contractors were left out in the cold by ambitious developers. Since then it's become a cornerstone of New Zealand's construction sector.

Peter is also the author of the popular industry publication "Managing Contractors' Cashflow," designed to help contractors and subcontractors to understand and use the new Act. So when, after more than a decade, the Act was amended, Peter decided it was time for a new book entitled "CCA Handbook – Making the Construction Contracts Act work".

*This printer and the support provided is spot on for SMBs*

Peter's office is a constant hive of activity – especially recently, spurred on by Auckland's housing boom and Christchurch's rebuild. But with the added workload of updating his book, clarifying the Act's new clauses, cross checking and proofing, his office went into overdrive.

So Peter needed the right business support and tools to help him meet his many deadlines, without creating any downtime.

"With a book to rewrite, proof and publish, on top of existing client needs, I needed business tools and support I could rely on. I needed to print multiple drafts of 196 pages and see the words on paper. I simply couldn't afford any delays," he explains.

Peter was in the market for a print solution which could not only handle his increased workload, but would ensure he also had reliable, ongoing support.

Recognising the unique demands on small to medium business owners, and how time poor they can be, Brother has introduced a range of printers with ongoing service and support – designed with companies like Peter's in mind.

Besides being developed to optimise key business needs around cost efficiencies, speed, reliability and quality, Brother has gone one step further with this range to offer bespoke delivery, set up and recycling of old machines – all for free.



This offer is an extension of Brother's positioning as a partner to Kiwi business owners, helping them to run a seamless operation and provide peace of mind when it comes to responding to their printer needs.

Peter says the free delivery and set up was so simple he barely remembers it. One minute he'd ordered the new printer, the next it was effortlessly and up-and-running.

"Brother has been a real support to my business in ways I hadn't realised I needed. This printer manages heavy workloads with ease, and has saved me money on running costs, which has been great for my bottom-line. This printer and the support provided is spot on for SMBs."

Brother's SMB machines are designed to save customers running costs as the cost per page is so much lower given the machines' efficiencies and higher-yield toner cartridges, Brother Chief Operating Officer, Matthew Stroud, says.

"But it's our service for small and medium businesses that we're particularly proud of. From day one we're at your side to ensure there's no downtime and no tricky technical processes to deal with. We manage all of that, allowing you to concentrate on the day-to-day running of your business."

Brother's business customers are also covered by its 3-year onsite warranty\*, meaning if they can't solve an issue by phone, they'll send a technician out to take a look. A Kiwi helpdesk also runs 7 days a week.

"The whole package has been carefully tailored for small to medium business owners' needs," Matthew says.

As for Peter, when we spoke to him, his book was taking shape; he'd proofed version after version – printed double-sided so it looked as close to the published version as possible; and he was as busy as ever sorting through the problems of the country's construction industry.

Brother Small to Medium business machines can be purchased from these retailers: Warehouse Stationery, Office Max, Harvey Norman and Noel Leeming. They have experts on hand to help you make the right decision for your business.

Peter purchased the MFCL8850CDW, RRP \$1,199.95.

You can visit [www.brother.co.nz](http://www.brother.co.nz) for more information or call us on 0800 329 111

**brother**  
at your side

\*when you use genuine inks and toners.

# NZ | LAWYER

NZ Lawyer is New Zealand's only independent legal magazine.



- Profiles and high-level case studies
- Interviews with industry leaders
- Special reports
- Business strategy content

Find out more and subscribe at [nzlawyermagazine.co.nz](http://nzlawyermagazine.co.nz)



# NEVER DROP THE BALL AGAIN.

Lexis® Draft does it all for you:

- Eagle Eye for legal proofreading
- Reviews and compiles citations
- Links to deeper research
- PDF converter
- Collaboration and information-sharing tools
- Keep track of authorities with pinned items

Lexis® Draft is part of the SmartOffice® Suite,  
giving you back more time to do what matters most to you.

Contact our team today on **0800 800 986**.

Go to [www.lexisnexis.co.nz/drafting](http://www.lexisnexis.co.nz/drafting) for more information.

**beEXCEPTIONAL**  
content | solutions | productivity

 LexisNexis®