

# The New Zealand Law Journal

## Law in the time of COVID-19

One of the first signs of the impact of COVID-19 on the legal system came on 18 March with news of the suspension of jury trials. At that point, the Chief Medical Officer advised that court hearings could still go ahead as long as courthouses took "prudent hygiene precautions". However, Chief Justice Dame Helen Winkelmann took the further step of suspending new jury trials for two months, on the basis that maintaining the high level of precautions was unrealistic for jury trials (Luke Kirkness "Coronavirus: New Zealand jury trials suspended for two months" *The New Zealand Herald* (online ed, Auckland, 18 March 2020)).

On 22 March, in a media statement (The Right Honourable Dame Helen Winkelmann (press release, 22 March 2020)), the Chief Justice said that the courts provide an essential community service, and:

[a]lthough the operating circumstances of the courts may change during COVID-19, the courts will continue to uphold the rule of law, and to ensure that fair trial rights, the right to natural justice and rights under the New Zealand Bill of Rights Act are upheld.

On 25 March, ahead of the alert level 4 lockdown, the Chief Justice sent a letter to the legal profession (Letter from The Right Honourable Dame Helen Winkelmann to the profession "COVID-19—court operations at alert level 4" (25 March 2020)) advising the following:

- Only proceedings that affect liberty or personal safety and well-being of the individual, or that are time-critical, should be heard during alert level 4.
- Courts will use remote participation to the maximum extent possible. Where court attendance is unavoidable, the safety of the public, court staff and members of the legal profession is paramount.
- Courts will not receive in-person filing although for those with no access to email, filings can be by post. Courts will waive filing fees while on alert level 4.
- Courts will exclude from courthouse members of the public whose attendance is not required, except for accredited members of the media.

One of the notable proceedings to take place on day one of the lockdown was the hearing at the High Court in Christchurch in which the Mosque gunman appeared via audiovisual link to plead guilty to 51 charges of murder, 40 charges of attempted murder, and one charge of engaging in a terrorist act (Kurt Bayer and Anna Leask "Christchurch mosque shootings: ... shock guilty plea to murders" *The New Zealand Herald* (online ed, Auckland, 26 March 2020)). The hearing was urgently arranged amidst lockdown preparations after the defendant's counsel indicated he wanted to

change his pleas. Justice Mander convicted the gunman on all charges and remanded him in custody to a nominal date of 1 May. A sentencing date is expected to be set when the current court restrictions are relaxed. In the meantime, Justice Mander has requested a pre-sentence report and victim impact statements which, due to the volume of statements, will presumably take some time.

Outside of the operation of the courts, legal practice continues, albeit remotely and with shifting priorities. On 21 March, Meredith Connell announced it would keep its Auckland and Wellington offices open during the duration of the coronavirus crisis, although most of its staff would work remotely. The firm said that because it is the Office of the Crown Solicitor at Auckland, it had an additional responsibility to maintain its services for the duration of the crisis (Meredith Connell "Meredith Connell offices to remain open for duration" (press release, 20 March 2020)). This announcement was made before the Government-imposed lockdown, and Meredith Connell's offices are now closed except for a very limited number of essential services and they continue to conduct professional services remotely.

In terms of the ability of law practice to continue remotely, COVID-19 will reveal much about the digital preparedness of firms. One suspects there is a spectrum of such readiness with some firms incorporating the use of Artificial Intelligence (AI) and able to continue business without too much interruption and at the other end of the spectrum others may be unable to access important documents. Practices without digital deeds registers may be unable to access wills, for example. A 76 per cent jump in demand for wills has already been noted in the United Kingdom (deVere Group "Demand for wills up 76%: Coronavirus 'collectively focuses minds'" (press release, 31 March 2020)). Of further interest, a recent study in England and Wales investigated AI uptake by law firms (M Sako, J Armour and R Parnham *Lawtech Adoption and Training: Findings from a Survey of Solicitors in England and Wales* (University of Oxford, Oxford, 2020)). The study reported that the three most common contexts in which the respondent solicitors used legal technology were document/knowledge management, accounts/time-recording and document automation/ workflow. But adoption of legal technology which uses AI is low, with 27 per cent of respondents using it for legal research, 16 per cent for due diligence, and 12 per cent for electronic discovery/electronic disclosure/technology-assisted review (TAR) (see the May issue for an article from Christine Gordon and Shukti M Sharma, MinterEllisonRuddWatts, on the use of TAR in preparing discovery).

As the saying goes, necessity is the mother of all invention, and COVID-19 will undoubtedly lead to substantial changes in legal practice, as with most other areas in our lives. □