

## Supreme Court decision in Deng v Zheng: Guidance on bringing relevant social and cultural information to the Court's attention



Webinar, 2 August 2022

Presenters:

**Hon Justice David Goddard, Mai Chen,  
Jacque Lethbridge and Paul Radich KC (Chair)**

CPD Questions and Answers Paper

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**New Zealand Bar Association | Ngā Ahorangi Motuhake o te Ture**

2 August 2022

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## Introduction

These questions accompany the video of NZ Asian Lawyers, the New Zealand Law Society | Te Kāhui Ture o Aotearoa and the New Zealand Bar Association | Ngā Ahorangi Motuhake o te Ture, in association with Buddle Findlay, recording of the live stream seminar on the relevance of social and cultural considerations in legal relations between parties, and how to bring that to the attention of the Court held on 2 August 2022.

The NZLS Guidelines for the Lawyers and Conveyancers Act (Lawyers: Ongoing Legal Education – Continuing Professional Development) Rules 2013 specify that the viewing of non-interactive audio-visual materials in whatever format is **not** eligible to be a CPD activity. There must be an opportunity for interaction and feedback, e.g., the ability to ask questions or the completion of a quiz or an assessment component at the end of the course or at intervals throughout.

This paper contains a quiz for you to complete after you have viewed the video. The answers follow the questions. You do **not** need to return the quiz to us but should keep a copy for your CPD records.

### Recording

The webinar recording can be accessed at <https://vimeo.com/manage/videos/756614273/ece4b81631>

You do not need a password for this recording.

**Please note that this recording and any accompanying material is subject to copyright**

If you have any questions, please contact [nzbar@nzbar.org.nz](mailto:nzbar@nzbar.org.nz)

**New Zealand Bar Association | Ngā Ahorangi Motuhake o te Ture**  
2 August 2022

## The Presenters

### Hon Justice David Goddard

Justice David Goddard was appointed as a judge of the High Court and Court of Appeal in 2019. Before his appointment he had a wide-ranging practice with a particular focus on appellate litigation. He also had an extensive involvement in law reform in New Zealand and overseas, advising ministers and government agencies, representing New Zealand in bilateral and multilateral negotiations, and drafting legislation and international agreements.

Justice Goddard spent the 2018-19 academic year at the New York University Law School as a Senior Global Fellow from Practice and Government, writing a book about the legal design process. His book *Making Laws that work* (Hart Publishing, Oxford ISBN: 9781509955374) was released in 2022.

Justice Goddard is the chair of the New Zealand judiciary's Legislation and Law Reform Committee, and of the joint Judiciary/Ministry of Justice Information Governance Committee and Pandemic Online Courts Committees.

### Mai Chen

Mai is one of NZ's top constitutional and administrative law experts, specialising in central and local Government policy and legislation, and litigating major public law cases. Mai also specialises in evidential issues concerning cultural and linguistically diverse litigants. Mai was one of the counsel who appeared on behalf of the Law Society as intervener in *Deng v Zheng*. She is the author of *Culturally and Linguistically Diverse Parties in the Court: A Chinese Case Study* (Superdiversity Institute of Law, Policy and Business, November 2019) cited in the Court of Appeal and Supreme Court judgments.

Mai has very recently moved to the independent bar and founded Public Law Toolbox Chambers. Before that, she was the founder and principal of well-known law firm, Chen Palmer. She chairs the Superdiversity Institute and is President of New Zealand Asian lawyers.

### Jacque Lethbridge

Jacque Lethbridge is a litigation partner at Martelli McKegg Lawyers in Auckland and, at the time of this presentation, was President of the Law Society. Ms Lethbridge was the third consecutive woman elected to be President and the 32nd person to fill the role in the 152-year history of the Law Society.

Ms Lethbridge started her career at the Waitangi Tribunal before moving into litigation; firstly, in criminal law with the Public Defence Service before transferring to civil litigation where she has been the first woman partner in two law firms.

Ms Lethbridge has held various voluntary board positions and trusteeships across a range of areas including as Chair of the Auckland Committee Law Centre Board for 10 years, co-founding Chair of Women in Restructuring and Insolvency and in 2021 was recognised by NZ Lawyer in both the 25 Most Influential Lawyers 2021 list and Elite Women Lawyers list 2021.

### Paul Radich KC

Paul joined the independent bar in 2012 and was appointed Queen's Counsel in 2014. He conducts cases mainly in the commercial and public law areas. He has represented government departments, public sector organisations and corporate entities in Royal commissions of inquiry and in government inquiries.

Paul has been involved in a good deal of work relating to Te Tiriti o Waitangi, including the negotiation of Treaty settlements and appearances in the Waitangi Tribunal and in our courts on Treaty issues.

In addition to his role as President of the New Zealand Bar Association, Paul is Chair of the Legal Aid Performance Review Committee, an immediate past board member of te Kura Kaiwhakawā / the Institute of Judicial Studies, and a past Convener of the New Zealand Law Society's Continuing Legal Education Committee.

## CPD Questions

1. True or False: the webinar considered the role of tikanga in the law.
  - a. True.
  - b. False.
2. Which of the following statements is *not* correct?
  - a. Before the Court of Appeal, there was significant consideration of language issues and cultural context.
  - b. The evidence had been assessed through the lens of usual New Zealand commercial practices and what one might expect to see in a typical New Zealand business partnership.
  - c. Partnerships can take many forms, and the presence or absence of particular factual patterns is not decisive as to their existence.
3. Which of the following statements is correct?
  - a. All the relevant communications and most documents were in English, with some Mandarin contemporaneous documents.
  - b. All the relevant communications and contemporaneous documents were in English.
  - c. All the relevant communications and all the contemporaneous documents were in Mandarin.
4. Who said that “Translation is not a matter of words only: it is a matter of making intelligible a whole culture”?
  - a. Umberto Eco.
  - b. Anthony Burgess.
  - c. Voltaire.
5. Guanxi:
  - a. Governs the Chinese way of doing business.
  - b. Is a religious faith followed by many Chinese across the world.
  - c. Is the word for corporate entity in Mandarin Chinese.
6. What two things did Justice Goddard suggest that counsel and judges need to do?
  - a. Put aside your own preconceptions about “how things are done”, and second, have the curiosity and patience and put in the time and effort to gain some level of understanding of how others do those same things.
  - b. Not be misled by subjective assessments of the thinking of others, and second, remain objective about cultural issues.

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- c. Rely on your initial intuitive response to an issue, and second, look for factors that back this up.
  7. Counsel can help the court in similar cases by:
    - a. Providing evidence about what the parties were really saying and doing.
    - b. Include reference to relevant cultural and linguistic matters in the submissions.
    - c. Both of the above.
    - d. None of the above,
  8. True or False. The Supreme Court said that Judges should not enquire of the parties for additional information as to social or cultural evidence.
    - a. True.
    - b. False.
  9. Which Judge, in commenting on a suggestion that evidence of a custom could be found on the internet, said that the Court was not disposed to google its way past the inadequacies of the plaintiff's proof to find the answer?
    - a. Goddard J.
    - b. Winkelmann CJ.
    - c. Toogood J.
  10. True or False: The Supreme Court stated that in all cases with a cultural dimension, the parties are required to call social and cultural evidence, notwithstanding the costs of doing so.
    - a. True.
    - b. False.
  11. The Court said that judges needed to be aware that the normal rules of thumb for assessing credibility:
    - a. Should be strictly adhered to in all cases.
    - b. Might be unsafe or of limited utility in cases where that practice is not shared by the parties.
    - c. Should be completely abandoned.
  12. Rule 9.36 of the High Court Rules (and the equivalent District Court Rule) permits experts to be appointed. According to Professor Holden a cultural expert should *not*:
    - a. Be independent
    - b. Be procedurally neutral.
    - c. advocate for a particular position.

## CPD Answers

1. True or False: the webinar considered the role of tikanga in the law.
  - b. False.
2. Which of the following statements is *not* correct?
  - c. Before the Court of Appeal, there was significant consideration of language issues and cultural context.
3. Which of the following statements is correct?
  - c. All the relevant communications and all the contemporaneous documents were in Mandarin.
4. Who said that “Translation is not a matter of words only: it is a matter of making intelligible a whole culture”?
  - b. Anthony Burgess.
5. Guanxi:
  - a. Governs the Chinese way of doing business.
6. What two things did Justice Goddard suggest that counsel and judges need to do?
  - a. Put aside your own preconceptions about “how things are done”, and second, have the curiosity and patience and put in the time and effort to gain some level of understanding of how others do those same things.
7. Counsel can help the court in similar cases by:
  - c. Both of the above.
8. True or False. The Supreme Court said that Judges should not enquire of the parties for additional information as to social or cultural evidence.
  - b. False.
9. Which Judge, in commenting on a suggestion that evidence of a custom could be found on the internet, said that the Court was not disposed to google its way past the inadequacies of the plaintiff’s proof to find the answer?
  - c. Toogood J.
10. True or False: The Supreme Court stated that in all cases with a and cultural dimension, the parties are required to call social and cultural evidence, notwithstanding the costs of doing so.
  - b. False.
11. The Court said that judges needed to be aware that the normal rules of thumb for assessing credibility:
  - b. Might be unsafe or of limited utility in cases where that practice is not shared by the parties.

12. Rule 9.36 of the High Court Rules (and the equivalent District Court Rule) permits experts to be appointed. According to Professor Holden a cultural expert should *not*:

- c. advocate for a particular position.

## CPD Verification and Recording

We have estimated that watching this webinar, reading the paper, and completing the questions, will potentially take most practitioners **one and a half hours (1.5 hrs)**. However, this may not equate to the actual amount of time that you have spent in completing this module. The onus is on the practitioner to decide whether learning that is relevant to his or her identified learning needs has occurred and, if so, to count the time spent towards the required hours of activities.

We remind you that you are required to reflect on the CPD activities you have undertaken. Take a minute to think about the activity you have just finished. Then answer the following questions.

**Please keep this form for verification purposes.**

### Name of Learning Activity:

Supreme Court decision in *Deng v Zheng*: Guidance on bringing relevant social and cultural information to the Court's attention

### Possible Learning Objectives:

- Understanding the relevance of cultural and societal considerations
- Developing an instinct or red flag awareness of potential cultural issues in a case
- Knowledge of mechanisms for introducing cultural factor evidence
- Ways of ensuring adequate evidence and expert evidence is adduced

What knowledge/skills/insights etc did you gain from this activity? List the points:

a) .....

b) .....

c) .....

2. How might you implement what you have learned in your practice?

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3. Comment on the ways in which the activity achieved the proposed outcomes and any gaps or areas of confusion that may remain.

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4. What else do you need to learn to improve your practice in this area and how might you achieve this?

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