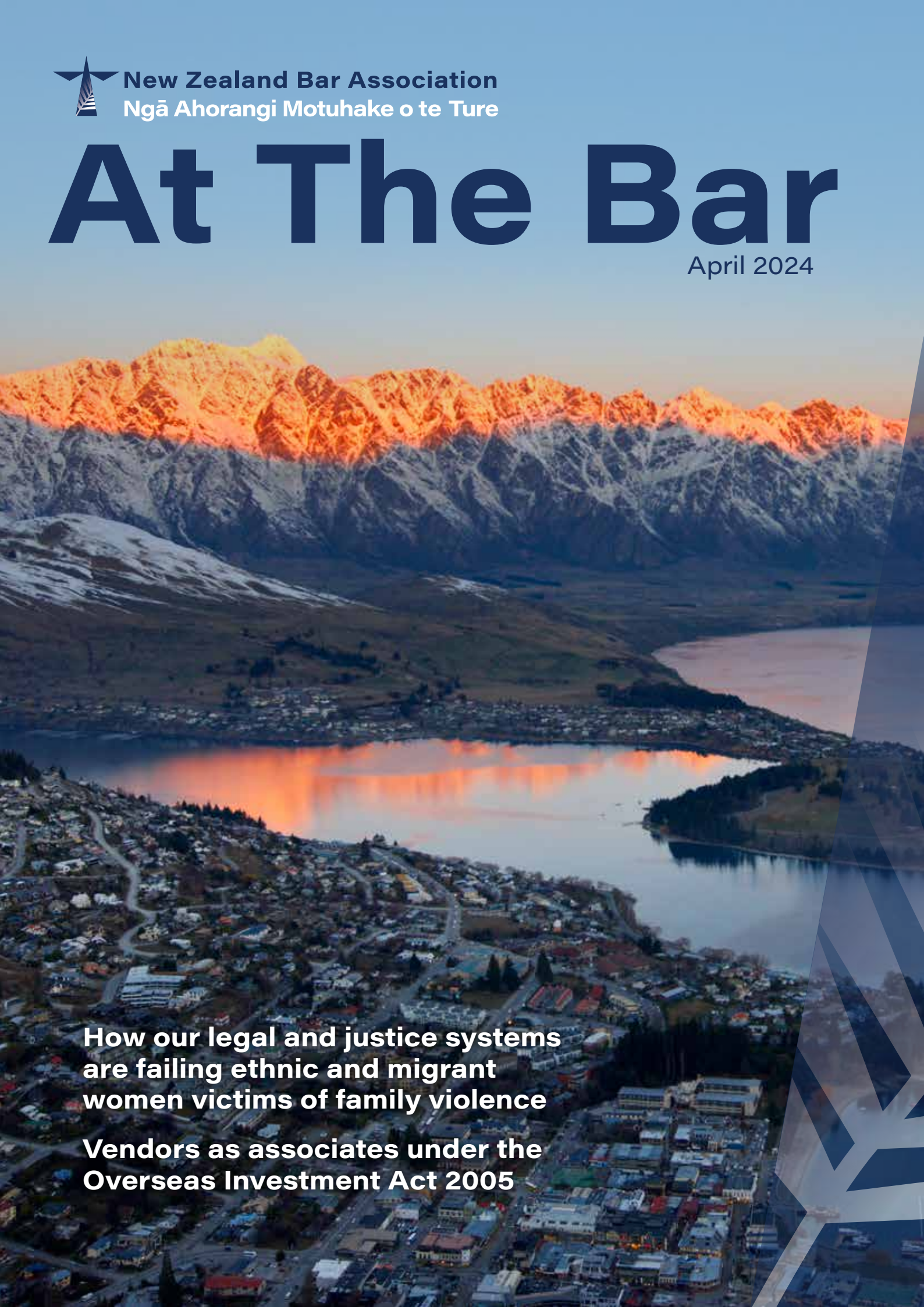
New Zealand Bar Association
Ngā Ahorangi Motuhake o te Ture

At The Bar

April 2024



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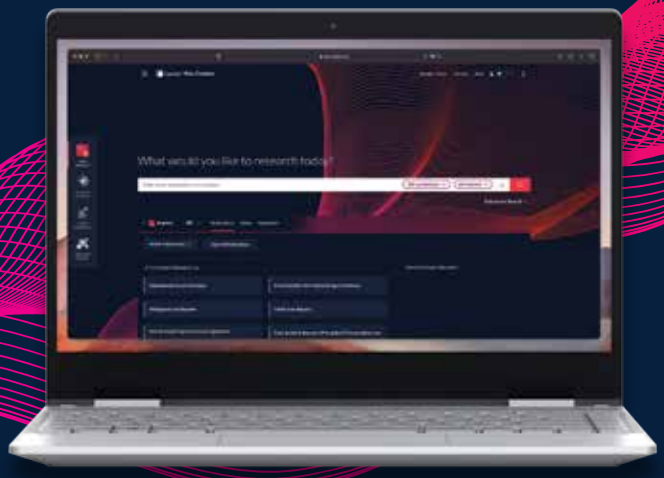

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New Zealand Bar Association
Ngā Ahorangi Motuhake o te Ture

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LEGAL MATTERS

PRACTICE AND LIFESTYLE

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From the President

Maria Dew KC*

Nau mai haere mai | Welcome,

I am very pleased to welcome you to this first edition of "At the Bar" for 2024.

Everyone I speak with at the bar, is reporting a busy start to this year. There is no doubt that a new government and new Minister of Justice, are stimulating plenty of work for the legal profession.

In many respects, we all want the same outcomes; courts resourced to work efficiently and lawyers able to provide effective representation. The means to get there, is the source of some healthy debate. The Bar Association Council and Committees are working hard already to keep on top of the issues that matter for the bar. More on that is outlined below, but first I wanted to focus on two highlights; one to come and one just been.

Our Bar Conference | Queenstown | 16-17 August

Our Annual Conference is a time to meet up with colleagues from across the country and this time from across the Tasman. Over two days, delegates will hear from our leading experts on some of the most pressing legal challenges from our leading judges, practitioners, and academics.

Sessions will cover recent climate change litigation, the role of the courts in our democracies, comparative approaches to indigenous issues, prosecutorial and police conduct, civil remedies, and more. We are delighted to announce that our keynote speakers will include:

- Hon. Justice Sir Stephen Kós, Supreme Court | Te Kōti Mana Nui o Aotearoa
- Hon. Justice O'Meara, Supreme Court of Victoria
- Hon. Justice Goddard, Court of Appeal | Te Kōti Pīra o Aotearoa
- Hon. Justice Isac, High Court of New Zealand | Te Kōti Matua o Aotearoa
- Hon. Judith Collins KC, Attorney-General of New Zealand
- Una Jagose KC, Solicitor-General of New Zealand

This is a rare opportunity to hear from some of our thought leaders in the law. They will no doubt stimulate debate and challenge us to think about our own areas of practice in different ways. The cross pollination of ideas between the bar and bench, is what makes this conference special, particularly this year with the Australian bar and bench joining us.

Celebrating 35 years of female silks

In 1988, New Zealand's first women silks were appointed. They were Dame Sian Elias KC and Dame Lowell Goddard KC. Thirty-five years later, it is appropriate to acknowledge and celebrate what has been achieved in a relatively short period of 35 years, given the rank of King's Counsel has been in existence since 1907.

Antonia Fisher KC kindly agreed to arrange a very special evening for female silks in late March, to dine together to mark the 35 years of appointments. It is a first time so many of our female silks have been together in a room. We had thirty together under one roof, out of our total of 53 female silks.

The comparatively recent advent of female silks is highlighted by the fact that all but one of our number remain alive. We took the opportunity to acknowledge Helen Aikman KC, who sadly passed away in 2012. She was a much-loved member of the Wellington bar, who made silk in 2005.

Female silks now make up 26% of the total Kings Counsel current appointments. When you consider female barristers now make up 43% of the bar, there is still a way to go.

However, I believe we now have the benefit of being able to see a much broader view of life and leadership at the bar, after this first 35 years. I want to acknowledge the important role of male King's Counsel who have supported this growth in gender diversity at the bar. I look forward to seeing what the next 35 years will bring and the growth in the ethnic diversity of our bar, which is also a work in progress.

Update on some of our recent work.

Meeting with Minister Paul Goldsmith

On 27 February, Paul David KC and I met with the Minister and his officials. We provided the Minister with a briefing on the role of the Bar Association and our areas of focus.

The Minister expressed that in this term of government he is focused on efficiency in the Courts. The Government will not be tackling the reform of the New Zealand Law Society in this term, so the Law Society Independent Review recommendations will not progress in any regulatory sense. This will leave the NZLS with more certainty to make its own changes, but without regulatory separation of representative and regulatory functions.

The Minister was positive about engagement with the profession and invited the Bar Association to arrange quarterly meetings with him. We have offered to arrange a meeting with barristers from around the regions and from different practice areas for him to hear about the day-to-day challenges on the front line of Courts.

Overall, this was a positive meeting, in which we aimed to offer the Bar Association's assistance. We also noted that, at times, our Association, in the interests of members, will challenge the government, but that we aim to do so in a politically neutral way, as we have with all previous governments.

Bar Association Intervention on role of counsel assisting

In March this year, the Bar Association was invited by the High Court in Auckland to intervene in an appeal from the Family Court, that will review the jurisdiction of the Family Court to appoint counsel to assist the court. This has become a material issue for family court barristers, where self-represented litigants are on the rise and as a result the appropriate appointment of counsel to assist, requires clarification.

Many thanks go to Lynda Kearns KC and our Family Bar Committee who are supporting this work, and Vivienne Crawshaw KC who is appearing as counsel for the Bar Association on this case. We are also working jointly with NZLS and the Law Association on this intervention.

Judicial directions in sexual violence trials

Late last year, the Bar Association wrote to Justice Palmer, Chair of the Institute of Judicial Studies | Te Kura Kaiwhakawā. The Bar Association raised concerns over the new example directions for judges in criminal jury trials when responding to misconceptions about sexual offending.

Since then, a working group has been formed to address the concerns raised and meetings are being held with the profession. Some immediate changes have been made to the example directions. We are pleased that there has been such constructive co-operation to review the directions to ensure fair trial rights are maintained.

Gender Diversity Research

Our Diversity and Inclusion Committee has begun work on one of its 2024 projects, reviewing the gender of counsel in cases before the Court of Appeal and Supreme Courts over a period of 12 months in 2023. The 2021 Bar Association Report confirmed only 27% of appeals in the Court of Appeal were led by females. We look forward to the results of our updated research later this year, which will build on the previous research we conducted with the Law Foundation in 2018 and 2021. The hope is that we will see improvement between 2018 and 2023. If not, we will have to examine what further we can do to improve this, given that females have made up 40% of the bar for some years.

I would particularly like to acknowledge the work of this Committee, its Co-Chairs Ish Jayanandan and Genevieve Haszard and Nura Taefi and Kelly Quinn, both members of the Committee who are leading this research.

Recent Submissions

Our Criminal Law Committee has worked under some time pressure to develop responses to proposed legislative changes. We recently submitted on rule of law and Bill of Rights issues in the Gangs Legislation Amendment Bill and Firearms Prohibition Orders Legislation Amendment Bill. We also commented on the Courts (Remote Participation) Amendment Bill. In terms of the latter, we made a number of suggestions to improve both procedure and protection of fair trial rights.

Your support of the Bar Association allows us to continue this work for the bar, so thank you. If there are issues that you believe we should be working on, please don't hesitate to get in touch with us.

Ngā mihi nui,
Maria Dew KC
President

TRANS-TASMAN CONFERENCE 2024

The Australian Bar Association and the New Zealand Bar Association | Ngā Ahorangi Motuhake o te Ture are delighted jointly to host the second Trans-Tasman conference in Tāhuna Queenstown.

We live in an age in which we are inundated with information, but not necessarily insight or wisdom. This year's Trans-Tasman conference will focus on these timeless values. Over two days, delegates will hear and can engage in robust discussion on some of the most pressing legal topics with leading judges, practitioners and academics from around Australia and New Zealand.

The programme includes keynote addresses and panel sessions on:

- Role of judges in representative democracies
- Institutional child sex abuse claims – Getting the right policy settings
- Navigating the New Frontier: Legal Ethics in the Digital Age
- LGBTIQA+ inclusion, language, and diversity
- Judicial responses to misconduct by prosecutors and the police
- Mental health at the bench and bar
- Climate change litigation
- Comparative indigenous issues
- Civil remedies

Your conference registration includes attendance at the welcome function at Red's Bar and the Formal Dinner at the Winehouse in Gibbston Valley.

Tickets are limited so register today!
https://www.nzbar.org.nz/node/54734

Kōrero: Chambers News

Bankside Chambers

Bankside Chambers is pleased to welcome **Josie Butcher** to Bankside Chambers. Josie is a junior barrister employed by Simon Foote KC, Brian Dickey, and Jeremy Johnson. Having graduated from Te Waipapa Taumata Rau | the University of Auckland with a Bachelor of Laws (Honours) and a Bachelor of Science, Josie was admitted to the bar in October 2021.

Before joining Bankside, Josie worked as a solicitor at Meredith Connell in the commercial litigation team and subsequently as a clerk to Chief Justice Winkelmann at Te Kooti Mana Nui o Aotearoa | the Supreme Court of New Zealand.

Bowen Chambers

In January 2024, **Kirsten Hagan, Tom Powell** and **Rebecca Harvey-Lane** announced the launch of Bowen Chambers. Bowen Chambers is primarily a public law chambers whose members have experience acting in high profile litigation, advising government departments and other public bodies on public law issues, and conducting complex investigations and reviews. Bowen Chambers also provides services to other senior counsel, including litigation, advisory, investigative and research services.

Kirsten Hagan

Tom Powell

Rebecca Harvey-Lane

Jamie Ferguson joins Kōkiri Chambers

Jamie Ferguson joined the Kōkiri Chambers whānau in January 2024. Jamie has had an extensive career in the law, most recently as the co-founding partner of Kāhui Legal. Having been in practice for over 30 years, Jamie is an expert in Treaty settlement negotiations, environmental law, public law, and litigation, including proceedings involving the recognition of tikanga. He has been involved as legal counsel in several Treaty settlements, including those relating to the Waikato River, Te Awa Tupua (Whanganui River) and Taranaki Maunga. He has a particular interest and expertise in settlement arrangements relating to natural resources. Jamie's unique skills and perspective are a welcome addition to the Kōkiri Chambers whare.

Jamie joins Bernadette Roka Arapere, Rohario Murray and Matewai Tukapua in the kaupapa Māori, virtual barristers chambers, which was established in February 2022. Kōkiri Chambers' barristers have expertise in Public and Administrative Law, litigation and dispute resolution, Te Tiriti o Waitangi, Māori Legal Matters and Environmental Law.

The virtual nature of Kōkiri Chambers allows their barristers to stay connected and available to assist their clients with their legal matters wherever they may be located.

Ai ua, ai hau, ai marangai. Kōkiri!
Withstand the rain, the wind, the storms. Go forth!

Princes Chambers

Matthew Casey KC and **Anna Casey** have joined Princes Chambers. Matt is a senior and experienced litigator and has argued leading cases in resource management, public law, property and valuation disputes. He is available for arbitrations, mediations and as an RMA Commissioner. Anna is a civil litigator with a particular interest in Public Works Act matters as well as land and property disputes. She previously worked for top firms in New Zealand and London and held a regulatory advisory role with Vector before joining the bar in 2016. Anna is available for instructions both as sole and junior counsel. For more details about Matt and Anna, see www.casey.co.nz

Spring Street Chambers

Spring Street Chambers opened 7 March 2024 at Level 1, 27 Spring Street, Tauranga.

It is one of the largest chambers in the Bay of Plenty and specialises in criminal law. Founding members Duncan McWilliam, Catherine Harold, Ben Smith, Caitlin Gentleman, and Sefton Revell collectively have nearly a hundred years of criminal practice experience.

Spring Street Chambers are pleased to host the NZ Bar Association's function on 9 May 2024. NZ Bar Association President Maria Dew KC will be in attendance. The purpose of this function is a catch-up for the local profession and an update on the work of the NZ Bar Association.

Family, Trusts and Estates Committee

I am delighted to introduce you to our revamped Family, Trusts and Estates Committee, chaired by Lynda Kearns KC. This Committee is designed to offer direct support for barristers that work principally in the Family and higher courts, where we know there is significant pressure on clients and court systems and consequentially on the lawyers that work in this area. At our last Bar Conference, we heard from barristers who practice in this area that more support is needed and the opportunity to advocate on issues particular to the family bar. We are excited that this revamped committee will provide this. The Family Court ran the pilot for the Ministry of Justice's Te Au Reka court digitisation project, and this is certainly an area where our committee can contribute its expertise.

Maria Dew KC

Lynda Kearns KC (Chair)

Lynda has over 30 years of experience specialising in all aspects of family law but now primarily relationship and trust property. She has represented family law clients at both Chapman Tripp, Wellington, and Simpson Grierson, Auckland before joining the specialist family law firm Gubb & Partners as a partner in 1994. Nine years later she commenced practice as a barrister sole in 2004. She has regularly presented seminars on relationship property and trust related issues, but her area of expertise encompasses all aspects of family law. She is a member of the International Academy of Family Lawyers and has chaired and served on numerous Law Society Committees.

Lynda was appointed as King's Counsel in June 2021.

Vivienne Crawshaw KC

Vivienne Crawshaw KC specialises solely in family law with a particular focus on relationship property/ trust matters, in addition to cases involving children. She was admitted to the bar in 1988.

She appears as counsel in relationship property and children's cases at Family Court and appellate level and has led two significant cases to Supreme Court level. Vivienne has presented papers to the International Bar Association Conference, the NZ Family Law Conference and to members of the NZ Law Society throughout the country. She is the Director of the Litigation Skills programme in 2024. Vivienne was appointed as Queen's Counsel in November 2018 (now King's Counsel).

Genevieve Haszard

Genevieve is a barrister based in Tauranga and a member of Kate Sheppard Chambers. She is one of the elected area representatives on the New Zealand Bar Association | Ngā Ahorangi Motuhake o te Ture Council and one of the Association's four Vice-Presidents.

Genevieve is an experienced criminal and civil barrister and undertakes family, trust and estate litigation. She is part way through her LLM studies researching the role of Lawyer for Child.

Genevieve is also a contributor to the New Zealand Bar Association | Ngā Ahorangi Motuhake o te Ture publication *At the Bar*.

Josephine (Jo) Hosking

Jo is an experienced family lawyer who works in the areas of relationship property, estates and children's law. She updates *Fisher on Relationship Property* (relationship property and trusts chapters) and has presented a number of papers at NZLS and Legalwise seminars.

She practices in Rotorua where she has lived for the past 22 years.

Stephanie Marsden

Stephanie Marsden has practiced as a lawyer since 1989.

Stephanie is experienced in all aspects of family law; but her practice is now almost exclusively in resolution of relationship property disputes involving complex asset ownership structures (including trusts); and estate claims. Much of her work involves farms and related businesses in the primary sector.

Stephanie is a member of the New Zealand Law Society Family Law Section Advisory Panel making submissions on law reform, the Counsel of Law Reporting and a member of the Academic Review Board of the New Zealand Women's Law Journal. She regularly presents continuing legal education seminars for the New Zealand Law Society.

She is a trustee of Moneytime NZ Foundation, a charitable trust receiving donations to fund a financial

literacy program in schools, for children aged 10 – 14, free of charge.

Stephanie is a former trustee of the Court Theatre and with another practitioner, founded the Canterbury-Westland District Law Society law choir. Stephanie is married to a lawyer and has adult children. In her spare time, she enjoys travel, entertaining friends, theatre, music, running, reading, and gardening.

Stephen McCarthy KC

Stephen McCarthy graduated with an LLB from Auckland University in 1981 and was admitted to the bar the same year. He worked as a litigation solicitor at Sellar Bone & Partners from 1980 to 1983 and at Sheffield Young & Ellis from 1983 to 1984. He moved to Price Voulk Brabant & Hogan (later Price Voulk McCarthy) in 1984 and became a partner the following year. Between 1991 and 1998 he taught a Master's Degree course in Immigration Law through the Department of Commercial Law at Auckland University. Since 2006 Stephen has been a barrister sole at Cavendish Chambers in Manukau, specialising in family law, trusts and estates. He is a member of the New Zealand Bar Association, the NZLS Family Law Section and the NZLS Property Law Section.

Jacinda Rennie

Jacinda is a barrister practising family law in the greater Wellington area. She specialises in relationship property. Jacinda is also a volunteer with the Mothers Project, helping mothers in prison with their family law issues, and trying to help them to maintain meaningful connections with their children.

Jennifer Wademan

Jennifer is an experienced litigator and family law expert with an extensive international family law practice. In recent years she has successfully litigated cases on novel issues in international surrogacy and inter-country adoption, led cases in Hague Convention matters, complex relationship property and estate law, and advised clients and counsel around the world on conflicts of laws issues.

Jennifer began her career as the Judge's Clerk to the Principal Family Court Judge and has been practising family law for more than a decade. In addition to her private practice, she is regularly appointed as lawyer for the child and counsel to assist the court across the Wellington region.

New Members

Valeria Benjamin	NORTHLAND
Olivia Boersma	AUCKLAND
Connor Browne	AUCKLAND
Alistair Burns	BAY OF PLENTY
Josie Butcher	AUCKLAND
Haomin (Melissa) Cai	AUCKLAND
Timothy (Tim) Clarke	AUCKLAND
Charles (Charlie) Cox	AUCKLAND
John (JD) Dallas	WELLINGTON
Dusan Delic	WAIKATO
Crystal (Kesia) Denhardt	AUCKLAND
Jamie Dierick	AUCKLAND
Shareen Evans	AUCKLAND
James (Jamie) Ferguson	WELLINGTON
Stefan Fox	UNITED KINGDOM
David Friar	AUCKLAND
Robert Gapes	AUCKLAND
Jessica Grobbelaar	AUCKLAND
Matthew Hall	AUCKLAND
Nicola (Nicki) Hansen	CANTERBURY
Vanessa (Renee) Harley	BAY OF PLENTY
Mel Hikuroa	AUCKLAND
Levi Jackson	AUCKLAND
Belinda Johns	AUCKLAND
Guneesh Jubal	AUCKLAND
Susannah Keith	AUCKLAND
Anna Kissick	CANTERBURY
Samuel (Sam) Lethbridge Teppett	AUCKLAND
Susan Martell	AUCKLAND
Eden (Jedi) McCarthy	AUCKLAND
Liam McNeely	AUCKLAND
Rebecca Mogey	AUCKLAND
Hazel Nicholl	CANTERBURY
Phillip (Phil) Osborne	AUCKLAND
Jacob Parry	AUCKLAND
John (Jack) Philip	CANTERBURY
Wenura (Hansaka) Ranaweera	WELLINGTON
Hannah Rawnsley	AUCKLAND
Miles Rollason	WAIKATO
Wiremu Rhodes	AUCKLAND
Rebecca Scott	CANTERBURY
John (Jack) Seton	AUCKLAND
Jennifer (Jenny) Stevens	WELLINGTON
Isabella Stevenson	AUCKLAND
Jay Tausi	AUCKLAND
Joanne Verbiesen	WELLINGTON
Hine Watts	AUCKLAND
Peter Woods	CANTERBURY
Lucy Wright	AUCKLAND
Lion Yang	AUCKLAND

How our legal and justice systems are failing ethnic and migrant women victims of family violence in Aotearoa New Zealand

Dhilum Nightingale*

Family violence and sexual violence (FVSV) are significantly under-reported, under-investigated and under-prosecuted in Aotearoa New Zealand.[1] FVSV transcends communities, ethnicities and social classes, and has widespread intra- and inter-generational effects. Research estimates[2] there are 204,000 sexual assault offences yearly,[3] with the police receiving on average one FVSV-related call every three minutes,[4] and Women's Refuge receiving an average of 50,000 referrals a year.[5] FVSV response is estimated to cost New Zealand between $4.1 and $7 billion annually.[6]

FVSV prevention and response is notably absent from the Government's coalition agreements, its 100-day plan or any other information publicly available about current policy priorities. Nor was the writer able to find any statements from the Government acknowledging its support for *Te Aorerekura*, the National Strategy and Action Plan launched in 2021 and aimed at eliminating FVSV.[7] When he was in opposition, Christopher Luxon criticised Labour for failing to implement measures that have a tangible impact on FVSV statistics.[8] It is hoped that these issues and an impactful policy response moves quickly onto the coalition Government's agenda.

This article summarises some of the critical barriers ethnic and migrant women face when trying to leave a violent relationship. The article also discusses some of the specific ways in which immigration policy intersects with other jurisdictions to suppress help-seeking behaviour by victims and deter them from leaving abusive relationships. The article draws on the writer's experience working through Community Law Wellington & Hutt Valley with ethnic and migrant victim survivors of FVSV and also victims of migrant workplace exploitation where cultural-based power dynamics are also observed but in the context of employment relationships. While the focus in this article is FVSV, the writer has observed that in both contexts, (FVSV and migrant exploitation):

(a) immigration policy is failing vulnerable people in migrant and ethnic communities;

(b) structural, bureaucratic and other barriers are furthering victims' entrapment, preventing them from accessing support, and failing to hold perpetrators to account; and

(c) there are gaps in understanding intersectional barriers and challenges, and decisions in one domain such as employment, social welfare or criminal or family jurisdictions are often made with seemingly little awareness of either cultural factors or immigration-related consequences, and this can have devastating impacts on victim-survivors of violence.

Family violence and sexual violence in ethnic and migrant communities in Aotearoa New Zealand

Ethnic communities make up around 20% of Aotearoa's population.[9] The latest migration data records approximately 585,000 migrants in Aotearoa with almost 200,000 on work visas, 325,000 who have recently been granted residency status and 65,000 on student visas.[10] Research indicates that FVSV in ethnic and migrant communities is largely hidden and significantly under-reported.[11] It can take particular forms[12] and affect culturally and linguistically diverse (CALD) women[13] in specific ways due to cultural norms and beliefs about gender roles, attitudes and structural inequalities in the country of origin, control dynamics within families, the relegation of women to a marginalised status within households, and traditions that enforce patriarchal dominance and the suppression of a woman's autonomy.[14]

The drivers for violence and barriers to disclosure are often intersectional in CALD communities and include immigration-related stressors, social isolation and disconnection from community, integration trauma, lack of knowledge of, and access to, support systems, financial dependence, economic instability, mistrust of authorities, fear of community reprisal, language barriers, and cultural taboos and stigma around discussing family and/or sexual violence.[15]

Our legislative and policy framework is sometimes aware and responsive to specific forms of culture-based abuse. For example, dowry-related violence is identified as family violence in section 9(4) of the

Family Violence Act 2018. However, in the writer's experience, our legal and justice systems are generally blind to the barriers ethnic and migrant women FVSV victim-survivors face, particularly when immigration issues intersect with family and criminal law, employment, social welfare and other issues.

Te Aorerekura affirms a strong commitment to doing more to meet the safety needs of migrant women in line with New Zealand's commitments under the Convention for the Elimination of All Forms of Discrimination Against Women and other international and domestic legal and moral commitments. Our legal and justice systems, and practitioners working within these systems, need to better understand the immigration context and the barriers ethnic and migrant victim-survivors face in seeking help and leaving abusive relationships. Increased empathy and cultural sensitivity by advocates and decision-makers across jurisdictions will, in turn, support the safety of women and children. There is a direct relationship: the more effective the response and support network, then the more likely it is that women will disclose violence and seek help.

Immigration issues and FVSV: Barriers to victims seeking help and leaving abusive relationships

Immigration issues play a significant role in the lives of CALD women experiencing FVSV. Partnership-based visas require a person to stay living in a relationship with their partner as a criterion of the visa. Typically, in CALD migrant communities, the man will be the 'principal applicant' and the holder of the visa, a label which of itself perpetuates a patriarchal paradigm. The man's partner will usually be in New Zealand on either a partnership visitor visa (which does not allow her to work)[16] or, if he earns at least twice the median wage (currently some $59 an hour) or his job is on the 'LC green list',[17] she can apply for a partnership-based open work visa, which will allow her to work for any employer.[18]

A man who is abusive can use the woman's immigration status as a tactic of power and control.[19] Her visa is connected to his, so if she leaves the relationship, she also loses her right to be in New Zealand. This could also mean separation from her children, as the Family Court may not allow their removal from New Zealand. This fear is a frightening and overwhelming obstacle for women seeking to leave a violent relationship. Returning to her home country could mean returning to a country where she and her children are at risk of poverty, ostracism, extreme stigma, discrimination and further violence.[20] The fear of being forced to return home is a real and significant barrier to a woman leaving her abusive partner.

Other barriers include social stigma surrounding separation, language barriers, engrained cultural norms that prevent women from acting independently of their husbands or another male in the household, isolation from support networks, fear of losing culture and community, lack of access to welfare support[21], legal advice[22] and accommodation, dependence on a partner for income and lack of job opportunities and work rights. These factors compound to make leaving a violent situation incredibly difficult, so much so that many women either remain living with, or return to, their abuser.

Victims of family violence visa (VFV visa)

A work visa is available for women in New Zealand who have experienced FVSV and whose partner is a New Zealand resident or on a temporary work visa.[23] A residence visa is also available if a number of additional criteria are met[24], including that the woman's (ex) partner is a New Zealand resident or citizen, she can prove she had intended to seek residence with her partner and she can prove that she is 'unable to return' to her country of origin due to a risk of abuse or exclusion, or a complete lack of financial means. The VFV visa criteria are strict, and this is reflected in the very low number of residence visas that have been granted. Over the past 12 months, only 54 resident visas and 93 work visas were granted under the VFV visa category.[25] 95% of applicants were women.[26]

To obtain either the work or residency visa, a woman needs to show that either her partner was convicted or provide a letter from New Zealand police stating that she experienced violence (police call out reports are not sufficient). Police are often reluctant to provide a letter where charges have not been laid. Other evidence Immigration NZ will accept is a final protection order (which could take well over a year or more to obtain if a defended hearing is held), or two statutory declarations by professionals stating that in their opinion, the woman experienced FVSV.[27] The immigration rules state that only certain people can provide declarations, for example counsellors who have full registration with the NZ Association of Counsellors. Family violence first responders such as paramedics cannot provide evidence, nor can social workers who are not registered with the Social Workers Board.

There are often huge wait lists to see the professionals who can provide declarations. GPs are sometimes unwilling to write declarations because they are uncertain of what effect the declaration will have (for instance, will they be required to give evidence in Court), or whether medical insurers will raise issues. Often, GPs ask for a fee ($250 seems to be a recurring figure), which the woman is frequently unable to pay.

Even where a woman is able to obtain evidence of FVSV, she faces further barriers. A perpetrator may contact Immigration NZ and say that the relationship never existed or that the victim fabricated incidents of violence to obtain the visa. This is extremely daunting and stressful for someone who may already be fearful of and unaccustomed to dealing with government officials. Unless she has had medicals and a chest x-ray taken in the past three years, a woman will need

to obtain these at a cost of around $600 – $700. These costs are not feasible for many women, and legal aid is not available to cover costs. She will also need a police certificate from every country she has been in for 12 months or more, and these can also be costly to obtain, if they are even available. Some women have reported that their husband has 'used influence' offshore (such as bribes to officials and police) to prevent them from providing a police clearance. In this situation, a woman may be able to provide a statutory declaration in lieu of a police certificate but she will need to explain why she cannot obtain one and this can be difficult to prove.

A VFV work visa, if granted, is only current for six months. Women have reported that it is difficult to obtain employment when a visa has such a short duration. The work visa can be extended for six to nine months if the woman applies for residence under the VFV visa category. To do this, she needs to establish that she would face a risk of abuse or exclusion due to stigma if she returned to her home country, or she would be unable to support herself financially.[28] The 'inability to return' requirement has been criticised as a high evidential threshold, akin to establishing refugee status.[29] Decisions of the Immigration and Protection Tribunal have found that the visa is generally unavailable to people from European countries. Even where a woman is from a place where gender-based discrimination and social stigma from separation is well-known, a woman will usually require assistance to present evidence-based country research supporting their application. There are no accessible, culturally appropriate guides to the visa process in English, let alone in other languages.

English may be a second or third language for CALD women, and yet they are asked to navigate the challenging visa application process while potentially facing homelessness, poverty and worrying about their children and pending Family Court applications filed by the perpetrator. It is common for perpetrators to argue in the Family Court that their ex-partner fabricated allegations of violence only to apply for the VFV visa. It is hoped that the woman's family lawyer and the Family Court are aware of the stringent visa criteria, evidentiary requirements and relevant cultural considerations[30], but the writer doubts whether this information is presented to the Court. This is an example of how immigration matters are raised in a specialist jurisdiction without a clear understanding of either immigration policy or cultural context.

Immigration officials can take many, many months to process a VFV residence visa application. Even in countries such as Pakistan, where the safety risks for separated or divorced women are well-documented,[31] Immigration NZ has taken an inordinate amount of time to determine whether a woman would face stigma or discrimination if she had to return. It is the writer's experience that women from the Middle East, rural China, Pakistan and other countries are required to complete a National Security Clearance check.[32] This involves Immigration NZ liaising with counterpart officials in the woman's home country and is a notoriously slow process. In one example, a woman's residency application took 18 months to determine largely, it seems, because of delays with her National Security Clearance check. Over this entire time, she faced immense uncertainty about her immigration status and had to continually apply to renew her work visa application, all while trying to reassure an employer of her continuing right to work in New Zealand.

The low number of women currently on the VFV residence visa (compared to the known high rates of FVSV in ethnic communities) is a strong indication that the visa is generally inaccessible and overly difficult to obtain. The writer would add that the visa is virtually impossible to obtain for women who do not have the support of a lawyer, advocate or social services agency, such as Women's Refuge or Shama Ethnic Women's Trust, supporting them. As legal aid is not available, women wanting to access the visa may seek help from a Community Law Centre. Knowing this, recently, some perpetrators have sought advice on how to prevent their partner from obtaining the visa, thereby creating a conflict situation preventing the victim from obtaining help from Community Law.

A 2020 review of the visa scheme[33] identified a range of policy issues and Immigration NZ operational and processing issues that present barriers to migrant victims obtaining VFV visas. Reform was on the table under the previous government. In July 2023, New Zealand's Ninth Periodic Report to the United Nations Committee on the Elimination of Discrimination against Women said a review of the VFV visa would be scoped and consideration given to how immigration settings could be "culturally appropriate and represent international best practice".[34] Similarly in 2022, *Te Mahere Whai Mahi Wāhine – Women's Employment Action Plan* included a "scoping action" to review the immigration settings for migrants in New Zealand who experience FVSV, to ensure that appropriate support is available.[35] The 2022 Education and Workforce Committee Inquiry into migrant exploitation[36] also recommended changes to immigration settings to better support victims of FVSV, including considering the eligibility criteria for the VFV visa to enable more migrants to access it. Unfortunately, a review into the VFV visa did not progress and there are no indications so far that it is a priority for the current administration.[37]

Most of the deficiencies with the VFV visa policy, including the short duration of the work visa, the strict 'unable to return' criteria, the narrow list of acceptable evidence and visa officers' inability to take into consideration the needs of dependent children, were remedied in Jan Logie's members' bill – the Protecting Migrant Victims of Family Violence Bill[38] – but this did not progress from the members' bill ballot box. Importantly, many of the changes needed can be

made at the policy level, so legislative change is not in fact required, but Ms Logie's bill was an attempt (and a robust and impactful one) at expediting the changes required. The bill would provide officials advising on law reform with a useful guide to the policy changes needed.

With appropriate legal and cultural support, many victim-survivors do successfully navigate immigration processes to gain financial and immigration independence from abusive partners. But the current policy settings present significant barriers to the safety and well-being of women and children. Advocates, advisors and practitioners need to understand the particular vulnerabilities faced by CALD victim-survivors of FVSV and the factors that support disclosure of violence and the factors that prevent or create barriers to that. Our legal and justice system has an important role in this, but it can, as the examples below show, operate to prevent CALD victims of FVSV from disclosing abuse and leaving violent relationships.

Access to benefits

If a woman obtains a VFV work visa, she is entitled to a Special Programme Payment for Victims of Family Violence.[39] The benefit is set at the Jobseeker rate but is difficult to obtain. Little information is available about the benefit and frequently, in the writer's experience, Work and Income officers do not know about the payment. Even where a woman can access it, she is required to 'phone in' weekly to a Work and Income office, and sometimes even report in person to a branch, before the payment for the upcoming week will be processed. One woman, who was living with her child in campgrounds and in different acquaintances' homes, sometimes far away from a city, was not able to visit a Work and Income branch and the payment stopped. She had no means of financially supporting herself and her child and returned to live with her abuser. Work and Income seemed, in this situation, to have little awareness of the complex, intersectional challenges this woman faced, including language barriers, her lack of familiarity navigating bureaucratic processes, inability to access stable housing and feelings of isolation and shame. Increased support and cultural sensitivity may have resulted in a different, victim-centred outcome.

Safety, care and protection of children used as a bargaining tool

Women have told the writer of how they have felt pressured by either their own family lawyer or the perpetrator's lawyer to accept an undertaking instead of pursuing a protection order application. They have not been aware that an undertaking is not enforceable and that it is not accepted as evidence for the purposes of a VFV visa (unlike a final Protection Order). If a woman agrees to the undertaking, this has been used subsequently by perpetrators to argue that her safety was never really in question, and she fabricated allegations of violence (otherwise, why else would she agree to drop the Protection Order application?).

Another common example in a CALD women's context is when a woman applies for residency and includes her children in her application. The immigration rules require her to prove she has "the statutory right to *custody*"[40] which is generally an outdated term that is no longer used in Family Court proceedings. While Immigration NZ will accept a care and protection order from the Family Court as evidence of a mother's 'custody', they also require a signed statement from the other parent, agreeing to allow the child to live in New Zealand if the residency application is approved. This is the case even though both parents may be living here. The writer has seen perpetrators use these immigration rules as a way of continuing to exert coercive control. They have refused to give consent unless the woman or her parents pay a large sum of money or unless she discontinues the protection order application. If a woman has no means to pay or if she refuses to bargain her safety in this way, her only option is to go through an expensive guardianship proceeding. Legal aid is available for a guardianship application, but it is increasingly difficult to find a family lawyer willing to take on these cases at the low rates offered by legal aid.[41] To instruct a lawyer outside of legal aid potentially costs around $20,000 – $30,000 or more and so is likely to be cost prohibitive for most women applying for a family violence visa.

This is an area fraught with injustice. It is unfair that a woman can only seek immigration security for her children if she can afford to pay a private lawyer.

Problematic intersections between immigration policy and other jurisdictions

Immigration policy can intersect with other jurisdictions in ways that further marginalise and even threaten FVSV victim survivors, preventing them from disclosing violence and even leaving them with little option but to return to their abuser.

For example, perpetrators have raised immigration consequences as relevant matters in an application for a discharge without conviction of sexual or physical assault charges.[42] Immigration NZ and the Minister of Immigration have a broad discretion to grant character waivers and issue special directions, but dangerous consequences can ensue where the Courts make immigration-related decisions in the context of FVSV. They may have only limited information before them and yet allow a perpetrator of violence to have their conviction quashed so that they can apply for a visa to re-enter New Zealand to see their children, even where a protection order is final, and a care and protection order does not allow in-person contact. Granting a discharge without conviction for assault due to "immigration reasons" is incredibly fraught in circumstances of physical and sexual assault and where a Court may not have a complete picture before it.

Another problematic intersection between legal issues and immigration policy occurred in 2021 when the Chief Ombudsman issued a case note[43] concluding that Immigration NZ's blanket policy of not providing alleged perpetrators of family violence notice of, and an opportunity to comment on, a VFV visa application by their former partner breached natural justice requirements. Where a person obtains a VFV residence visa, their ex-partner, the alleged perpetrator of abuse is unable to sponsor future partners on partnership-based visas. Some men who were impacted by this complained to the Ombudsman on the basis that they were denied the opportunity to comment on their ex-partner's allegations of violence before Immigration NZ granted the visa. The complainants advised the Ombudsman that they would have disputed the allegations of family violence if the opportunity had been provided. They stated that the women's allegations were untested and 'not verified' through any court or formal process.

The Ombudsman concluded that Immigration NZ's blanket approach of not advising alleged perpetrators of violence of their ex-partner's VFV visa application did not meet natural justice requirements and a case-by-case assessment may be justified, taking into account safety and privacy risks to the visa applicant. It is unknown what type of information an immigration officer would need to have to ascertain whether a woman's safety or privacy is at risk but in the writer's view, Immigration NZ officers do not have the training or skills to make such assessments. Officers can waive character requirements in subsequent applications and allow alleged perpetrators to sponsor future partners. This is where the case-by-case assessment should occur. The Ombudsman's decision is worrying as it potentially allows a perpetrator of violence to influence a VFV visa applicant's immigration status by allowing them to comment on allegations of family violence, even where access to the visa requires evidence of professionals or a final protection order or letter from the Police. The Ombudsman's finding, with respect, reinforces the power and control often inherent in relationships of violence and could jeopardise a woman's access to the visa and increase safety risks.

The above examples illustrate just some of the ways in which our legal and justice systems fail to be culturally responsive and support the needs of vulnerable victims of FVSV. An overhaul is needed of immigration policy to ensure the VFV visa is more accessible, women and children's needs are prioritised, and they are appropriately supported by our legal systems. Practitioners and those working within the system need to question whether structural, information or other barriers may be furthering victims' entrapment and preventing them from leaving situations of violence. There are clear gaps in understanding between jurisdictions such as family, criminal, social welfare and immigration. Empathy, sensitivity and a greater understanding of the cultural context and consequences is required before decisions in these specialist jurisdictions are made that may impact the immigration status of FVSV victims. Failing to understand and address these gaps does not support victims' safety needs and their ability to seek help and leave abusive relationships.

The writer is undertaking a research project, sponsored by Shama Ethnic Women's Trust and funded by Borrin Foundation, into the experiences of CALD women who report violence and go through a Family Court proceeding such as a protection order application or care and protection of children application. The research is interview-based and will assess the insights of FVSV victim-survivors in ethnic and migrant communities as well as advocates and others working within the Family Court system to see whether our systems present safety, disclosure or other barriers to CALD women who disclose violence.

If readers of this article are interested in discussing the research, being interviewed or know of people impacted who may be interested in being interviewed, they are welcome to contact the writer at the email address below. It is hoped that the research will recommend meaningful and practical changes within the Family Court system to improve cultural sensitivity and awareness and support disclosure of violence and the safety of vulnerable people in Aotearoa's ethnic and migrant communities.

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[1] Family violence and sexual violence in New Zealand have been described as an epidemic and two of our nation's greatest shames: NZ's shame: The regions where family violence is highest | Newshub
[2] It is widely accepted that these figures are underreported. The New Zealand Violence Against Women Study found that 87% of women who had experienced physical and/or sexual violence from a partner had not reported the violence to Police. See also The New Zealand Crime and Victims Survey, Cycle 5 Report, June 2023, page 35, Cycle-5-key-findings-report-v3.0-FIN.pdf (justice.govt.nz)
[3] The New Zealand Crime and Victims Survey, Cycle 5 Report, June 2023, page 35, Cycle-5-key-findings-report-v3.0-FIN.pdf (justice.govt.nz).
[4] Hatton, E "Police responding to a family violence all every three minutes", Newsroom, 13 November 2022, Police responding to a family violence call every three minutes (newsroom.co.nz).
[5] Women's Refuge, Briefing for Incoming Ministers 2024, page 2, 20240306-BIM.pdf (womensrefuge.org.nz).

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[7] https://tepunaaonui.govt.nz/assets/National-strategy/Finals-translations-alt-formats/Te-Aorerekura-National-Strategy-final.pdf.

[8] Hendry-Tennent, I; Wells I, Newshub, "Christopher Luxon slams Primate Minister after revelations support scheme helping more alleged perpetrators than victims", Newshub, 2 November 2022.

[9] The Ministry for Ethnic Communities defines ethnic communities as Asian, African, Continental European, Latin American and Middle Eastern, Ethnic Communities in New Zealand | Ministry for Ethnic Communities. In the 2018 census, more than 700,000 people identified their ethnicity as Asian and 100,000 as Middle Eastern, Latin American or African; 2018 Census ethnic group summaries | Stats NZ. There are over 200 ethnicities in Aotearoa, https://tepunaaonui.govt.nz/assets/National-strategy/Finals-translations-alt-formats/Te-Aorerekura-National-Strategy-final.pdf, page 20.

[10] MBIE, Migration Data Explorer, https://mbienz.shinyapps.io/migration_data_explorer/

[11] Simon-Kumar, R (2019), *Ethnic Perspectives on family violence in Aotearoa New Zealand*, Issues Paper 14, Auckland, New Zealand: New Zealand Family Violence Clearinghouse, University of Auckland, page 8, NZFVC-issues-paper-14-ethnic-perspectives.pdf. See also Ayallo, I (2021), "Intersections of Immigration Law and Family Violence: Exploring Barriers for Ethnic Migrant and Refugee Background Women," Aotearoa New Zealand Social Work, 33, no. 4, 55-64.

[12] Family violence in ethnic communities can include, among other things, intimate partner violence and abuse, forced and/or underage marriage, in-law abuse, dowry-related abuse, so called 'honour-based' violence, immigration related abuse, transnational marriage abandonment and abuse, see Te Puna Aonui, Ministry of Social Development and Shakti, *Our Culture, Our Pride* (2023), https://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/initiatives/family-and-sexual-violence/msd-our-culture-our-pride-no-excuse-fo-abuse-english-2023.pdf, pages 2-3.

[13] In this article, the writer refers to victims of family and/or sexual violence as being ethnic and migrant 'women', and perpetrators as 'men'. The writer is aware this is gendered language, but this reflects the dominant gender dynamic of the cases she has been involved with – in fact it reflects 100% of the cases the writer has personally advised on. This terminology is in no way intended to diminish the experiences of victims of other genders or others who experience marginalisation and discrimination including Aotearoa's rainbow communities.

[14] For a more comprehensive discussion, see Simon-Kumar, R (2019), *Ethnic Perspectives on family violence in Aotearoa New Zealand,* Issues Paper 14, Auckland, New Zealand: New Zealand Family Violence Clearinghouse, University of Auckland, page 8, NZFVC-issues-paper-14-ethnic-perspectives.pdf.

[15] Te Puna Aonui, Ministry of Social Development and Shakti, *Our Culture, Our Pride* (2023), https://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/initiatives/family-and-sexual-violence/msd-our-culture-our-pride-no-excuse-fo-abuse-english-2023.pdf, pages 2-3.

[16] This immigration policy traps women in abusive relationships, as being unable to work denies victims the ability to secure financial independence from their abuser.

[17] The Green List occupations are 'in-demand' roles and are listed in Appendix 13 of the Operational Manual.

[18] Immigration NZ, Operational Manual, WF3.1.5, https://www.immigration.govt.nz/opsmanual/#45667.htm. This work visa policy has been described as overly restrictive with the potential to perpetuate entrapment (see Rights and needs of migrant victim-survivors of family violence within immigration policies and practices | New Zealand Family Violence Clearinghouse (nzfvc.org.nz)). In the writer's experience, very few clients seeking advice from Community Law centres are eligible for a partnership-based open work visa. The other option available for women is to secure their own Accredited Employer Work Visa which is itself cumbersome and restrictive for many vulnerable migrant women.

[19] Sarah Croskery-Hewitt writes in her compelling paper *Fighting or Facilitating Family Violence? Immigration Policy and Family Violence in New Zealand* (The Michael and Suzanne Borrin Foundation, Wellington 2023) that uncertain immigration status can make women particularly vulnerable to abuse by men who exploit that uncertainty as a tactic of power and control over them.

[20] The impacts on many ethnic women who return to their home country following a 'failed marriage' were discussed in a recent RNZ interview: "Advocates call for family violence visa to be made easier", 7 March 2024, https://www.rnz.co.nz/national/programmes/ninetonoon/audio/2018929083/advocates-call-for-family-violence-visa-to-be-made-easier

[21] Generally, social welfare benefits are not available to women on temporary visas.

[22] Legal aid is generally not available for immigration matters other than refugee or protected person status claims.

[23] Immigration NZ, Operational Manual, https://www.immigration.govt.nz/opsmanual/#34469.htm

[24] Immigration NZ, Operational Manual, https://www.immigration.govt.nz/opsmanual/#42635.htm

[25] MBIE, Migration Data Explorer, https://mbienz.shinyapps.io/migration_data_explorer/

[26] MBIE, Migration Data Explorer, https://mbienz.shinyapps.io/migration_data_explorer/

[27] Immigration NZ Operational Manual, W17.5.

[28] Immigration NZ Operational Manual, S4.5.2.

[29] Croskery-Hewitt, S. *Fighting or Facilitating Family Violence? Immigration Policy and Family Violence in New Zealand* (The Michael and Suzanne Borrin Foundation, Wellington 2023), page 21.

[30] As discussed earlier in the article, these include factors such as language barriers, control dynamics, patriarchal values that suppress a woman's autonomy, isolation, feelings of shame and disconnection from community post-separation, economic instability, lack of knowledge of, and access to, support systems, and immigration-related stressors.

[31] A 1999 decision of the UK House of Lords held that separated women in Pakistan who were victims of family violence could qualify as members of a particular social group under the Geneva Convention and therefore attain refugee status on the basis that they had a well-founded fear of being flogged or stoned to death if they returned and the State gave them no adequate protection as they perceived them as not being entitled to the same human rights as men; *Islam (AP) v Secretary of State for the Home Department, Regina v Immigration Appeal Tribunal and Another Ex Parte Shah* (AP) [1999] All ER 545.

[32] All visa applicants are required to meet character requirements, including establishing that they do not pose a potential security risk (A5.1, INZ Operations Manual). Information on the Immigration NZ website says that New Zealand Security Intelligence Service (NZSIS) provides assessment to help INZ make decisions and conducts national security checks in line with INZ's priorities, National security checks for visa applicants | Immigration New Zealand.

[33] Croskery-Hewitt, S *Fighting or Facilitating Family Violence? Immigration Policy and Family Violence in New Zealand* (The Michael and Suzanne Borrin Foundation, Wellington 2023). See also MBIE, Recent Migrant Victims of Family Violence Project 2019: Final Report, pages 29-30, https://www.mbie.govt.nz/dmsdocument/12138-recent-migrant-victims-of-family-violence-project-2019-final-report.

[34] https://www.women.govt.nz/sites/default/files/2023-07/FINAL%20Ninth%20Periodic%20NZ%20CEDAW%20Report.pdf, para 411-412.

[35] https://www.women.govt.nz/sites/default/files/2022-07/Te%20Mahere%20Whai%20Mahi%20W%C4%81hine%20Women%E2%80%99s%20Employment%20Action%20Plan%202022.pdf, page 6.

[36] https://www.parliament.nz/resource/en-NZ/SCR_125899/b38c368cb1991c41be926b576384e2467f8def4d at page 27.

[37] See the introductory paragraphs to this article.

[38] https://www.parliament.nz/media/8557/protecting-migrant-victims-of-family-violence-bill.pdf

[39] https://www.workandincome.govt.nz/map/income-support/extra-help/special-needs-grant/eligibility-to-the-family-violence-programme.html

[40] R1.2.45, Immigration Instructions.

[41] The problems with accessing legal aid for complex family law matters are acute. Clients have repeatedly advised that very junior lawyers are assigned to their files who lack cultural sensitivity or awareness of the complexities of their case; see https://www.rnz.co.nz/news/is-this-justice/453369/legal-aid-system-broken-and-may-collapse-chief-justice

[42] In *Sok v R* [2021] NZCA 252 at [53] the Court of Appeal held that immigration issues can be "frequently helpful" when considering an application for a discharge without conviction.

[43] *Ombudsman, Unreasonable approach by INZ to the removal of the ability to support a Partnership Category visa for deemed perpetrators of family violence"*, Case numbers 483973, 499243, 510042, 510292, 514753, 518775, https://www.ombudsman.parliament.nz/resources/unreasonable-approach-inz-removal-ability-support-partnership-category-visa-deemed

On the case
– A selection of recent noteworthy family law cases at a glance

Kesia Denhardt*

Recently a number of interesting cases have come before our Courts which have dealt with a wide range of family law issues. A short selection of such cases follows.

R v R[1] serves as a good reminder of the test to be applied when determining habitual residence. In this case, the appellant Kiwi mother unsuccessfully attempted to overturn the Family Court's decision to order the return of the parties' child to the United Kingdom (UK) under section 105 of the Care of Children Act 2004 (COCA).

The factual matrix included that when the child was born in 2017, the appellant and the Italian respondent father lived in the UK. The family moved to Italy in 2021, returned to the UK in 2022 and remained there until a month or so later, at which time they travelled to New Zealand (on tickets set to return to the UK in early 2023). It was subsequently agreed that the appellant and child would slightly extend their stay in New Zealand, whilst the respondent returned to the UK as planned. However, the appellant then unilaterally decided to remain in New Zealand with the child.[2]

The appellant disputed that the UK was the child's habitual residence and argued that the child did not in fact have one, on account of the family's *"nomadic and international lifestyle."*[3]

That argument was rejected by the High Court. With reference to other applicable cases, Jagose J stated that the test for habitual residence is a factual one, dependent on the combination of circumstances in the particular case. This may be determined by reference to particular concepts or principles; important among them is a 'settled purpose'[4] to reside in a particular state, coupled with a meaningful period of actual residence.[5]

In dismissing the appeal, it was held that there had been no error in the Family Court judge concluding that the child's habitual residence indeed continued to be the UK. Jagose J stated that *"None of the facts individually or in combination is determinative of that conclusion, which is the exercise of the Judge's overall assessment."*[6] Factors of particular relevance in this case were that notwithstanding their extensive travel, the family's movements (up until the child's retention) were all from and to the UK, the parents' continuing connection to the UK and the family's actual and intended return there following their relocation to Italy, and the child's residence immediately before their retention.[7]

The Court plainly (and in my view properly) made an objective assessment on all the evidence, rather than giving any particular weight to the parents' subjective expression of intention.[8]

Moving to an entirely different situation, in an unprecedented move, Judge Moss appointed a sperm donor as a guardian in order to meet the cultural identity needs of the subject child, in the Family Court case of ***Rangi v Mable***.[9]

The parties had entered into an agreement for conception by donor insemination prior to the pregnancy,[10] which confirmed that the respondent Pākehā mother would have care of the child, but anticipated that the applicant Māori sperm donor would have some involvement in their life and *"have the opportunity to contribute a middle name"* (among other matters).[11] However, the relationship between the parties deteriorated soon after the child's birth, which gave rise to the applicant seeking orders defining his contact and appointing him as a guardian under COCA.[12]

Those applications were vigorously defended by the respondent. Judge Moss considered that she *"struggled with the applicant's strongly expressed need to introduce [the child] to his whānau"*; finding that her case focussed on the need to protect the child from the irregularity in the applicant's visits and his lack of insight into the impact on her.[13] Conversely, the applicant excused his inconsistency on the basis of work demands and contended that the child's identity had not been adequately considered; tendering evidence from two senior members of his whānau in support of his position.[14]

In assessing the (lack of) parental relationship between the applicant and child under the Status of Children Act 1969 (SOCA),[15] Judge Moss examined the difference between the theoretical underpinning of that Act and COCA. Her Honour considered that whilst the

former legislation is concerned with adult liability and responsibility, focuses on legal (and not biological) relationships, and is *"adult-focussed"*, the latter is fundamentally concerned with a child's identity.[16] Her Honour considered that *"the word 'parent' needs to be considered in light of [COCA] rather than in light of the [SOCA]...from a child's point of view."*[17] Her Honour stated that:

[14] *[The child's] identity includes social and psychological aspects, but also genetic ones. Thus, the concept of identity is unduly limited if considered only in terms of legal relationships.*

[21] *In interpreting matters related to best interests and identity for a Māori child, I consider that it is necessary for the Court to ensure proper consideration of familial, community, and cultural matters which are inherent in the development of the identity of a Māori child. These considerations are different from those for a Pākehā child.*

[25] *This obligation arises from the application of Te Tiriti o Waitangi. Application of matters of tikanga are relevant to the application of legal principles, just as much as interpretation of statute. Application of statute to the rights and identity of children is incomplete without application of the principles of tikanga.*

In terms of the signed agreement, Judge Moss held that its provisions as to contact were insufficiently clear to be enforceable, or to be converted to a parenting order without further examination, but found that it was clear when it came to the issue of the child's name.[18]

Ultimately, Judge Moss determined that the appointment of the applicant as a guardian would be in the child's welfare and best interests and, in so doing, found that this would honour the partnership, and enable the equivalence in participation, of two cultures,[19] ensuring *"a legally recognised pathway to development of the broad features of [the child's] identity."*[20] Her Honour also ordered that the applicant's chosen middle name be added to the child's birth certificate and that his surname be added as a *"third name"*, finding that to change her surname at that time would be *"too great a new imposition"* on her.[21] The applicant was also granted contact every three weeks.[22]

In another interesting case, ***Salih v Almarzooqi***,[23] the Court of Appeal was required, for the first time, to consider the question of enforceability of a nikah. As it was described by Courtney J, a nikah is an Islamic marriage contract, under which the husband is required to provide a gift (mahr) to the wife. The mahr is usually of monetary value and is given in part before the marriage (the 'prompt' mahr), with the balance being given on the earlier of death or divorce (the 'deferred' mahr).[24]

The appellant husband successfully appealed against the High Court decision that the proper law of the nikah was United Arab Emirates (UAE) law, and that under UAE law, the mahr became payable upon the fact of divorce, regardless of the ground on which it was granted. It also held that if New Zealand law applied, the nikah would be similarly enforceable and the mahr therefore payable.[25]

UAE law applied, and it was found that New Zealand had the closest and most real connection with the nikah.[26] It was also held that:

(a) The nikah was enforceable under New Zealand law (and not unenforceable by reason of the Domestic Actions Act 1975, the Property (Relationships) Act 1976 (PRA), and/or public policy considerations) and that expert evidence as to the cultural context in which the nikah was entered into may be relied on to interpret its meaning;[27] and

(b) In enforcing the nikah, the respondent wife is not entitled to rely on the factual findings of the Dubai Court (as the determination that the appellant had not submitted to the jurisdiction of that Court could not be challenged).[28]

The judgment given by Courtney, J noted the expectation that the outcome of the case would be significant not only to the parties, but also to wider Muslim communities in New Zealand.[29]

The case was remitted back to the High Court to interpret the nikah in order to determine whether the appellant was obligated to pay the mahr.

Lastly, whilst ***[N] v R***[30] is in fact a criminal case, it may be of interest to family lawyers where criminal proceedings, in response to family violence incidents, coincide with litigation in the Family Court. There, the respondent faced six charges arising out of events that took place in 2022.[31]

The Crown wished to call propensity evidence concerning events which occurred in 2011 and resulted in the respondent being convicted of two charges of male assaults female (involving two different complainants).[32]

This was ruled as inadmissible by the District Court, with Judge Neave finding that the prejudice that would arise from its admission would be high, and there would be *"no counterweight from significant probative value."*[33] Whilst similarities existed, significant differences between the two sets of events made it difficult to discern a clear pattern, and there was nothing in the proposed propensity evidence which made the complainant's account more likely to be true.[34] However, His Honour added a 'caveat' in which he stated that conclusion was dependent upon there not being an attack on the complainant's character; meaning that if there was, the evidence would be admissible.[35]

As summarised by Cooper, J Judge Neave's approach was that *"if [the respondent] proposed to maintain the stance he had taken in his evidential video interview that [the complainant] was the aggressor and that he was the subject of her violence, the position would be "rather different." In those circumstances, there would be a clear attack on the complainant's character which would put the defendant's own character in issue. This would make the previous convictions for violence directly relevant"* [36] (in assessing which version of events was more likely).

The respondent sought leave to appeal against that part of the judgment setting forth the 'caveat.' He argued that the judge had correctly analysed the admissibility of the evidence[37] and properly concluded that the evidence was inadmissible as propensity evidence. The Crown did not seek to cross-appeal.[38]

The Court of Appeal found that if, as Judge Neave determined, the proposed propensity evidence had virtually no probative value in relation to the event on which the prosecution was based, that must be the end of any argument that it is admissible as propensity evidence. It was not then possible for it to be resurrected in response to any defence that the respondent sought to advance.[39] As it was put by Cooper J:

[21] *[I]t happens in virtually every criminal trial in which the Crown calls a complainant as a witness that the defence relies on a different account of the facts than that put forward by the complainant. A challenge to the complainant's account of the relevant events is not in and of itself an attack on character. And it is not an attack on veracity unless it is based on matters other than the facts in issue. Short of that, the trial is a simple contest about what happened.*

[23] *It may amount to an assertion that B is lying about the index offending, but that is not the same thing as an assertion that she has a disposition to lie. In the circumstances there was no proper basis for the Judge's conclusion that the foreshadowed defence would amount to an attack on B's character, and consequently, no proper basis for the caveat.*

Ultimately, the appeal (and leave to appeal) was allowed, with an order being made that the events that occurred in 2011 were not admissible at trial.

There has also been the case of ***Alalääkkölä v Palmer***,[40] in which the Court of Appeal determined that the copyrights in original artworks created by the appellant were 'property' for the purposes of the PRA. The appellant has sought leave to appeal to the Supreme Court.

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[5] At [7]
[6] At [19] – [22] and [25]
[7] See [16] – [25]
[8] At [23]
[9] [2023] NZFC 10811 (7 November 2023; Judge Moss)
[10] Pursuant to section 41 of COCA
[11] Various, including at [1] and [81]
[12] Various, including at [2] and [3]
[13] At [2], [43] and [53]
[14] At [54], [59] and [66]
[15] Pursuant to section 21
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[17] At [16]. Judge Moss thus considered that the pathway to appointment as a guardian for a father may be available under section 19 of COCA, though the application before the Court in this case was made under section 27 (at [36])
[18] At [38] and [39]
[19] At [69]
[20] At [72]
[21] At [86]
[22] With supervised contact continuing to occur each fortnight until the child turned six – at [78] and [79]
[23] [2023] NZCA 645 (14 December 2023; Courtney, Collins and Thomas JJ)
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[26] See [56] – [68]
[27] See [103] – [109]
[28] At [113]
[29] At [13]
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Vendors as associates under the Overseas Investment Act 2005 – a door left ajar?

Nic Lawrence*

Introduction

The Overseas Investment Act 2005 **(OIA)** recognises "it is a privilege for overseas persons to own or control sensitive New Zealand assets".[1] As such, conditions are imposed on overseas investment.

One such condition is the requirement for Overseas Investment Office **(OIO)** consent for overseas investment in sensitive New Zealand assets.[2] New Zealand has decided that not only does it wish to prevent overseas persons owning sensitive New Zealand assets, it also wishes to prevent overseas persons from attempting to circumvent the rule by using "proxies" or fiduciaries who are New Zealand residents but hold assets on behalf of or for the benefit of overseas persons who would otherwise require consent. In order to prevent overseas persons using third parties to circumvent the Act, "associates" of overseas persons are captured by the OIA as well.[3]

The definition of associate under s 8 of the OIA potentially posed an issue for vendors selling properties to overseas persons who required consent. Could a vendor who sold a property to an overseas person be considered an "associate" if the property was sold to an overseas person, simply by virtue of being the vendor? Even if they did so innocently or on the understanding that the purchaser had obtained consent?

This potential issue was identified briefly by Rebecca Rose in 2016 in her article *Too clever by half – Court's first Overseas Investment Act penalties decision warns against circumvention attempts* [2016] NZLJ 213. This article builds on the issue of associates touched on in Ms Rose's article.

The issue was recently considered in *Future Sustainable Development Limited v Wenjing Liu*.[4] If vendors are captured by the associate definition, the OIA obligations to obtain consent would shift from purchaser to vendor. Vendors would have the burden of determining whether a purchaser was an overseas person and thus whether obligations under the OIA arise – a considerable burden for vendors in arm's-length transactions such as that in *Future Sustainable Development Limited v Wenjing Liu*.

The core issue in *Future Sustainable Development Limited v Wenjing Liu* was whether the purchaser could unilaterally waive a clause which made the sale and purchase agreement conditional on the purchaser obtaining consent under the OIA.[5] A party can waive a condition that is solely for their benefit and severable.[6] Thus, this issue turns on whether such a clause is for the sole benefit of the purchaser, or whether it is also, in part, for the benefit of the vendor. This is a novel question. Whether the vendor also benefits from the clause hinges on whether vendors fall within the OIA's definition of "associate".

In the High Court, Justice Jagose cautiously suggested a vendor could be an associate under the OIA. As a result, he held the clause benefited both parties so could not be unilaterally waived by the purchaser. This was overturned by the Court of Appeal.

This article will briefly discuss the decision in *Future Sustainable Development Limited v Wenjing Liu* and whether vendors can be associates under the OIA.

What is an associate under the OIA?

To give context to the judgments in *Future Sustainable Development Ltd v Liu* it is necessary to understand

how one can breach the OIA by being an associate.

Consent is required for overseas investment in sensitive New Zealand assets, including sensitive land.[7] An overseas investment in sensitive land is where an overseas person[8] or their associate[9] acquires an interest in sensitive land.[10] Schedule one of the OIA indicates which land is classified as sensitive land. Sensitive land includes an interest in residential land.

Associate is defined at s 8 of the OIA. A New Zealand person will be an associate where they:

a. Are controlled by or subject to the direction of an overseas person;[11] or

b. Are an overseas person's agent, trustee or representative or act on behalf of the overseas person;[12] or

c. Are subject to an overseas person's direction, control or influence in relation to the investment in question;[13] or

d. Act jointly or in concert with an overseas person in relation to the overseas investment;[14] or

e. Participate "in the overseas investment or the other matter as a consequence of any arrangement or understanding with" the overseas person.[15]

The relationship between the associate and the overseas person can be direct or indirect, general or specific, legally enforceable or not.[16]

The breadth of the associate definition is consistent with the OIA's policy.[17] The rules relating to associates aim to curb the use of third parties to bypass the Act.

The facts in *Future Sustainable Development Ltd v Liu*

In *Future Sustainable* Ms Liu was the vendor of a residential property and FSD the purchaser.[18] Ms Hou, a New Zealand citizen, was the sole director and shareholder of FSD.[19] No party was an overseas person.[20] They negotiated an arm's length commercial deal for FSD to purchase a residential property owned by Ms Liu.

However, during negotiations, FSD requested the agreement be conditional on obtaining consent under the OIA as it was in discussions with an overseas person who may acquire the property via FSD's ability to nominate the purchaser under the agreement for sale and purchase.[21] Consequently, a special clause was added to the sale and purchase agreement making it conditional, inter alia, on FSD obtaining OIA consent.[22] A further special clause was added so if the OIA condition was not satisfied by a particular date, either party was entitled to cancel the agreement.[23]

The agreement named FSD "and/or nominee" as purchaser. FSD could either "take title itself, or it might nominate another person to take title under the transfer".[24] Even where it nominated a third party as transferee, FSD remained liable for purchaser's obligations under clause 1.5(2).[25] As such, FSD was not an agent of an overseas principal.[26]

Prior to the date by which the OIA condition had to be fulfilled FSD notified the vendor that it was waiving the OIA condition and would settle the purchase itself. Remember, FSD was a New Zealand company that did not require OIO consent.

The vendor did not accept the waiver. She claimed, amongst other things, that FSD could not unilaterally waive the OIA condition because the condition was not for FSD's sole benefit. She then purported to cancel the agreement based on FSD's failure to satisfy the condition.[27]

FSD registered a caveat against the property to protect its interests. Ms Liu applied to have the caveat set aside and a declaration that she had validly cancelled the sale and purchase agreement. FSD counterclaimed for declaration the cancellation was invalid and orders maintaining the caveat until Ms Liu performed the agreement.

The High Court decision

Despite expressing some doubts, the High Court ultimately found for Ms Liu on the issue of whether or not a vendor of an arm's length transaction could be an associate under s 8 of the OIA by refusing to rule it out and then finding that the particular terms of the contract meant that Ms Liu did, in fact, derive benefit from the OIA condition clause.[28]

The reasoning of the High Court on what was the most crucial issue in the case was surprisingly short and difficult to follow. While it correctly identified that there may be some circumstances in which a vendor is also an "associate" under s 8 of the OIA, it misinterpreted the effect and meanings of the specific terms of the agreement in this case where the parties were engaging in an arm's length commercial transaction and there was nothing else to suggest that the vendor was anything other than that (i.e. nothing else suggesting it was an "associate" trying to assist the purchaser circumvent the OIA).

Ultimately, the effect of the High Court judgment was to find that vendors in arm's length commercial transactions could be found to be associates under s 8 of the OIA simply by virtue of being vendors.

The Court of Appeal decision

FSD appealed the High Court decision to the Court of Appeal. Its primary argument was that the OIA condition clause was inserted solely for its benefit

because Ms Liu could not, as a matter of law, be an "associate" under s 8 of the OIA purely by way of being the vendor to an agreement for sale and purchase, there being no other facts or circumstances in the case which gave rise to a risk to Ms Liu that she would be deemed to be an associate under s 8 of the OIA.

In its judgment released in late 2022 the Court of Appeal reversed the High Court decision by finding that the OIA condition was for FSD's sole benefit and making clear statements that vendors could not be associates under s 8 of the OIA simply by being vendors in an arm's length commercial contract.

It agreed with the High Court when it decided that while it was possible for a vendor to be found to be an associate under s 8 if there were other circumstances in which the vendor was involved which caused them to be an associate (e.g. vendor financing an overseas purchaser's purchase),[29] s 8 of the OIA was not intended capture as an associate a vendor in an arm's length transaction purely via its contractual relationship as vendor selling a sensitive asset.

At [43] of the Court of Appeal judgment it stated:

> We do not exclude the possibility that there may be circumstances in which a vendor makes an investment in sensitive land as an associate of the purchaser. But on the evidence Ms Liu's role was that of a vendor only. She was not making an overseas investment as an associate of FSD; and that being so, she did not attract an obligation to seek consent under s 22.

There was no evidence in the case that the vendor, Ms Liu, was anything other than an arm's length party to the sale and purchase agreement. Accordingly, she could not be at risk of breaching the associate rules under s 8 of the OIA because the Act did not put an obligation on vendors in that situation to ensure compliance.

Effect of the Court of Appeal Judgment

The Court of Appeal judgment should come as a relief to vendors in New Zealand.

The effect of the High Court decision in *Future Sustainable* was to leave open the possibility that vendors in arm's length transactions could be found to be associates under s 8 of the OIA. If correct this would in turn have triggered a requirement by vendors to inquire with purchasers to the extent necessary to satisfy themselves that the purchaser was not an overseas person so that they could not be deemed an associate.

It would have also left vendors open to possible breaches of the OIA without their knowing it. An example would be if the purchaser chose to nominate an overseas person as the purchaser at the last minute, which the author submits would be likely to throw conveyancing practices in New Zealand into a tailspin as they figured out how to protect against that risk.

The Court of Appeal ruled this risk out by finding that vendors in arm's length commercial transactions cannot be associates simply by being a vendor. That does not mean that a vendor can never be an associate; there are a multitude of other ways that a vendor can be caught by the associate rule, but simply being a vendor is not one of them.

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Prior to becoming a Barrister, Nic was a Senior Associate in the Dispute Resolution team at Wynn Williams.

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Phillip James Recordon
3 April 1948 – 21 March 2024

After a long illness, former District Court Judge Philip Recordon passed away on 21 March 2024. His Honour was a beloved and highly respected member of the District Court Bench, and many practitioners, particularly in South Auckland, mourn his passing. The Bar Association offers their sympathies to Judge Recordon's family, friends and colleagues.

Before his appointment to the bench in 2003, Judge Recordon had been in practice for over 30 years, joining the independent bar in 2001. In general practice, he helped people in criminal, family and civil litigation, immigration, tenancy, and tribunal work, with a special focus on youth law. In an interview in 2023, he described his approach as being very much about the underdog and working for people who needed help.[1]

He is more widely famous for his challenge to the New Zealand Rugby Union's decision to send the All Blacks to South Africa in 1985. Together with his co-plaintiff Patrick Finnigan and a formidable team behind them, they obtained an injunction six days before the team were due to leave on tour. The team was grounded, and the tour was cancelled.

Judge Recordon became involved in the case because he was both a rugby player and a lawyer. He was playing social rugby for Eastern Bays in Auckland. That changed after the proceedings were filed, as approximately half of his teammates would no longer play with him. Recordon moved to another club to avoid disrupting the team. He said of this time: "They thought that I was anti-rugby; they couldn't see that you could love rugby and hate what was going on over there and that this could be a way of helping." He lost friends over the case, some for good. Over 35 years later, a well-known former All Black still refused to play golf with him.[2]

His Honour was involved in several community organisations, including the New Zealand Lawyers for Nuclear Disarmament (Founder and First President), the Auckland Council for Civil Liberties, Lifeline, Richmond Fellowship, The Right Track.

The judge served as trustee on several mental health and Māori health trusts. These organisations include Wings Trust, Eduk8 Charitable Trust (Chairman), Safe Man Safe Family Charitable Trust, Te Papapa School, Tufuga Creative Arts (Mental Health) Trust, Otara Māori Wardens, and Tāmaki Makaurau Pacific Wardens Trust.

Judge Recordon's commitment to help people carried through to his time on the bench. He had become involved in mental health and disability organisations at an early stage, including being a District Inspector for Mental Health from 1987 until his appointment to the bench.

This influenced his later views as a judge, and translated into his support and respect for judicial initiative such as te Whare Whakapiki Wairua (The house that lifts the spirit) – Alcohol and Other Drug Treatment Court, driven by Judge Lisa Tremewan and Judge Ema Aitken, Judge Tony Fitzgerald's work on a court for the homeless Te Kooti o Timatanga Hou (The Court of New Beginnings), and Te Ao Mārama, which is the Chief District Court Judge's work to ensure courts can effectively deal with those who access them.

Practitioners also noticed his approach wherever he sat. A Tauranga barrister noted that he would sit from time to time in Tauranga and it was always a pleasure appearing before him as he was considered and thoughtful in his approach.

Another practitioner notes that His Honour always treated defendants appearing before him with dignity and respect. He understood the person behind the defendant and dispensed justice in a thoughtful, fair and kind manner. He had great insight and understanding of the pressures that are the drivers of offending and a strong belief that rehabilitation was more effective than incarceration.

The comments on social media confirmed these views, stressing his compassion. Journalist Jeremy Rose, who interviewed him, said "He was a remarkably compassionate, thoughtful and unorthodox judge". A well-known criminal barrister said His Honour was a "compassionate Judge, a humble man and an eternal optimist who served our community to the end, what an honour to have known him."

In 2022, Judge Recordon was recognised by his alma mater, Saint Kentigern College with a Distinguished Alumni Award. He had attended Saint Kentigern Boys' School from 1959-1960 and Saint Kentigern College from 1961-1965.

Chief Judge Taumaunu spoke at a special sitting of the Manukau District Court, and acknowledged Judge Recordon's contribution to the bench and the community. The Chief Judge said:

> "Judge Recordon, you have left a lasting impression upon me and many others on our bench. You have strived to ensure that all people who come to court to seek justice are treated in a respectful manner that is both fair and just. "This approach lies at the heart of the 'Te Ao Mārama – Enhancing Justice For All' kaupapa for the District Court. It is an approach that you have adopted throughout your whole career in the law."

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How much do you need to retire?

Jules Riley*

Three big questions stand between you and the answer to how much you need in retirement.

How long will you live? What kind of lifestyle do you want? How much are you prepared to save to get there?

How long will you live?

If you're like most people, thinking about your own mortality is too uncomfortable to dwell on for long. But your lifespan is one of the biggest unknowns when it comes to ensuring you'll have enough to last as long as you do.

According to the New Zealand Society of Actuaries, a 65-year-old woman is expected to have a median lifespan of about 90 years with one in five living until at least 95 years. Men are expected to live about 2 to 3 years less, with a median lifespan of around 87 years and one in five living until at least 93 years.

So, if you retire at 65, you might have 30 years in retirement. That's almost one-third of your life.

What kind of lifestyle do you want?

Funding 30 years of retirement spending requires a decent-sized nest egg. Thankfully, NZ Super does some of the heavy lifting. It provides an after-tax income of about $26,000 each year for a single person or around $40,000 for a couple. It's also indexed to the average wage, which means that most of the time it grows faster than inflation (as measured by CPI).

While NZ Super provides a good base of inflation-protected income, for many it won't be enough. Massey University reckons that a couple living in Auckland and Wellington regional council areas or Christchurch City need an additional $11,000 each year on top of NZ Super for a basic 'no frills' retirement, or an additional $47,000 per year for a comfortable retirement with 'choices'.

To fund these lifestyles, the Massey research suggests a couple living in the above regions would need to save a nest egg of around $235,000 for a basic retirement or $969,000 for a more comfortable retirement.

If you're on track to hitting these numbers, well done. If not, then how can you get there?

KiwiSaver can help but may not be enough

What you save in your KiwiSaver or superannuation account will probably help you some of the way to achieving your retirement goal. But contributing the standard 3% of your salary likely won't be enough if you want a better than basic retirement.

To illustrate, imagine we have a 35-year-old couple earning $120,000 each. They've both just made first home withdrawals, so they have very little in their KiwiSaver accounts. Contributing 3% of their salaries into growth funds for the next 30 years is expected to give them around $662,000* by age 65, after adjusting for inflation. So, even though this household earns $240,000 each year, which is more than double the average household income in New Zealand, they will be around $307,000 short of the amount needed to fund a comfortable retirement.

The obvious solution to bridge this gap is simply to suggest that this couple increases their KiwiSaver contribution rates from 3% to 6%, which would enable them to achieve their goal. However, saving beyond a certain rate into a KiwiSaver scheme isn't necessarily optimal. This is because you typically can't access your money until the age of eligibility for NZ Super (unless you make a first home withdrawal). Also, the main benefits being Government contributions and matching employer contributions, can get maxed out at relatively low personal contribution rates, for example 3% for most Kiwis. So, saving more, but doing so outside of KiwiSaver, can help you both to achieve your retirement savings goal and retain access to your money.

Other ways to invest for retirement

One such way to do this is by saving additional sums in an unlocked managed fund, like MAS Investment Funds. Our couple could save an additional $581 per month in a growth fund and together with their KiwiSaver savings, could expect to meet their goal of around $969,000 by age 65.

There are two major advantages of this approach when compared to a retirement plan based on investing in residential property. The first is that managed funds are typically very liquid, meaning you can withdraw some or all of your savings relatively quickly. Having easy access to your savings is a hedge against life's ability to occasionally deliver painful surprises that you can't prepare for like illness, injury and redundancy. Liquidity also enables you to easily switch funds to ensure your investments remain aligned to your risk tolerance, which may change over time as you approach retirement. For example, our hypothetical couple might wish to invest in a growth fund until age 55, a balanced fund from age 55 to 60, a moderate fund from 60 to 65, and be in a conservative fund in retirement.

The second major advantage is that by saving additional contributions into a managed fund, you can easily access a wide range of investments. For example, many of the MAS Investment Funds have exposure to over 1,000 different companies in more than 40 countries. This level of diversification is valuable and can help to de-risk your personal financial situation. If the bulk of your wealth is invested in rental properties and/or your family home, you are vulnerable to specific risks. This means that one particular threat, such as a natural disaster or domestic interest rate hike, can have an outsized impact on your net worth. Luckily, specific risks like these can be mitigated by diversifying your savings into other assets, like shares and bonds, including those listed in other countries.

Is time on your side?

The amount of money you have in retirement ultimately depends on how much you save now and how long you save for. The earlier you save, the more your money will benefit from compound returns and the less you'll need to put aside each pay cheque. The opposite is true if you start saving later in life. But, if time is no longer on your side, there are a few other ways to bridge the gap between the lifestyle you want and what's on offer from NZ Super. These include unlocking equity by downsizing your home, changing your living arrangements, ensuring you're in the right investment fund, and working beyond retirement age.

Whatever your financial situation, MAS is here to help. Our Members have access to our nationwide network of expert MAS Advisers at no additional cost. We can sit down with you and help you understand the standard of living you require in retirement, what you're on track to achieve, and if necessary, how to bridge the gap between your current path and the lifestyle you desire. Get yourself on track today by contacting us at info@mas.co.nz or on 0800 800 627.

Jules Riley
Head of Growth (Investments), MAS

**As projected by the MAS KiwiSaver Retirement Calculator, assuming that a balance of $1,000 is left in the member's KiwiSaver account after their first home withdrawal.*

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Scan here to view MAS Purposeful Retirement webinar

Petrol Heads' Corner

Mercedes GLC coupé 300

David O'Neill*

I picked up the car from the local dealer, Inghams, and took it on my usual test drive to the beach and back. Now that the road has been reinstated over the Kopu–Hikuai, thankfully it is a far shorter journey than it used to be.

The car is a combination of an ordinary motor vehicle and an SUV. It is what I call a crossover vehicle.

It is quite big and when I found out it was the GLC300, I thought to myself (rubbing my hands in anticipation about what I was going to drive) that I was going to get a V6 3 litre wagon with hopefully one or two turbochargers bolted on the side. Then, when I saw it, I thought that this had to be the case because the car was pretty big and, in my mind, I thought that it would need something fairly grunty to push it along. So, I had high hopes of something similar to a fire breathing monster – "yeeha" I said.

I asked the dealer what sort of motor it had in it and he replied that it was a 2 litre 4 cylinder petrol engine with one turbocharger on it. Gawd (says I to myself), how on earth am I even going to be able to get out of the carpark, let alone charge off to the Coromandel.

I thought that I would be lucky to pull the skin off a rice pudding with such a small motor in such a large vehicle.

Well, silly old me. Notwithstanding my initial thoughts, I was pleasantly surprised. This thing can get up and go way better than I thought it would.

From a technical point of view, these are the specs:

- Motor: 2 litre 4 cylinders–petrol
- Power: 190 kW (258 hp)
- Transmission: automatic
- Acceleration: (0–100kph) 6.3 seconds
- Price: Standard, $125,900

Apparently, this car has a mild hybrid system with 48 volt technology which works in tandem with the petrol motor. This gives it an over boost feature which pumps an extra 17 kW and 200 Nm into the power train.

I have to say that 207 kW and 600 Nm of torque is a helluva lot of grunt for a little motor coupled with a mild hybrid.

What does it go like?

The car had a touch sensitive screen for virtually all functions within the car. Everything you needed to do to the car had to be done by touch or haptic switch (this is a switch that you push or touch and it doesn't move but things happen). There were hardly any buttons to turn or poke.

Anyway, once I put it in sport mode, it lived up to its promise. If you gave it some welly, it really lifted up its skirts and took off. The 0-100kpm time of 6.3 seconds (as reported by MB) is more than a little respectable for a vehicle of this size with a motor of such a small capacity.

I know that the car manufacturers are all putting small motors into big wagons these days, but this came as a pleasant surprise.

The handling is pretty good as well. It is a big car, and it is heavy (2.5 tonnes-gross laden weight).

The list of extras is quite long and the car I drove had the DPP+ package (that's how it's described). This comprised an improved sound system, driving assistance packages, heat and noise insulating acoustic glass and "augmented" reality for navigation (whatever that was). It was probably the most expensive extras package to put in the car. The standard equipment list was fairly lengthy anyway.
My car had the extras package of $6,900 worth of goodies in the car together with the white metallic paint job which was an extra $1,500. This took the value of the vehicle (off the showroom floor) to $134,300.

When you hopped in at night, it felt like you were sitting in the Starship Enterprise. Soft ambient lighting surrounded you. It was like sitting in a cockpit and it had a ton of pockets here, there and everywhere to store stuff in. The only criticism was that we both had drink bottles with us which continuously fell over because unless you used the central cup holders, there was nowhere else to store them.

The boot (which opened and closed automatically) was large. Because we had no kids with us, we were able to indulge ourselves and drop the backseats down which gave us a huge amount of space. The amount of space available with the seats down was in excess of 1500 litres.

I have always said that all of the luxury car makers do a pretty good job all-round in various packages, but this is the first time I have driven what was a large car with a tiny motor and I have to say I came away very impressed. I am a self-confessed car nut and have always been like that and I like V8s. It really is as simple as that.

However, driving a vehicle like this which can get up and go with plenty of grunt in it is quite a revelation and although I'm not going to be persuaded from giving up my V8, if I had to change to something like this, then, given the amount of power that it puts down to the wheels, it's not too bad after all.

It's not a cheap wagon at $134,000. But it does give you stylish looks, a lot of boot space, and pretty good economy. Our trip back from the beach (including the Kopu-Hikuai hill), averaged out at well under 9 litres per 100 km and that was with keeping the transmission in sports mode for most of the way. Consequently, I have to say that, all said and done, bang for your buck, this is pretty good.

If there was any criticism of the car it was that the seats didn't really fold round you, and they were a little uncomfortable but that is probably because my own car has fairly wrap-around seats which support you in the corners. This one didn't quite do the same job as my car.

The other thing was the view out the back was miniscule. The combination of a sloping tail and small window made for minimal visibility to the rear.

Despite that I still liked the car.

** David O'Neill is a Hamilton barrister, who is happy to review a petrol car again, albeit a small one which only slurps a little of the dinosaur juice.*

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