Dame Helen Winkelmann, Chief Justice of New Zealand

"It's Complicated": Judicial Leadership in the 21st Century

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Tuia te rangi e tū nei

Bind the sky above

Tuia te papa e takoto nei

Bind the land below

Tuia Te Tai o Rehua e hono nei i a tātou katoa

Bind the Tasman sea that connects us

Tuia ngā mate o te wā, haere, haere, haere atu rā

Bind the recently departed

Ki ngā mana whenua o Tāmaki Makaurau,

To the mana whenua of the Auckland region

Ki te marae o Waipapa,

To the Waipapa marae

Ki ngā kaiwhakawā, ki ngā pou o te ture, kua huihui mai nei

To the judges and leaders of the law who have gathered here today

Tēnā koutou, tēnā koutou, tēnā tātou katoa.

Greetings to us all.

It is my honour to deliver the Australasian Institute of Judicial Administration (AIJA) Oration for 2025.

I acknowledge the President of the Institute, the Hon Justice Murray Aldridge, members of the Board and Council, including the Hon Justice Julie Ward, President of the New South Wales Court of Appeal, and the Hon Justice Susan Thomas of our own Court of Appeal.

I acknowledge all those gathered here tonight and those many watching online. Thank you for spending your Friday night with me.

I have chosen to speak about the topic of judicial leadership, drawing on my experiences both as the Chief High Court Judge and, over the last six years, as Chief Justice.

During my time as a leader, courts in New Zealand have maintained operations in the face of natural disasters and a pandemic. Today I lead the New Zealand judiciary at a time when, internationally and at home, societal change is underway that is of profound significance for the courts. There is increasing polarisation of opinion within society as to what is true about important events and issues. Meanwhile digital technology has the potential to reshape the basic operating model of courts, and the artificial intelligence (AI) revolution to undermine the notion of an evidence-based search for the truth — the very stuff in trade of the courts.

This is the context in which judicial leaders are operating throughout the world. I have chosen this topic for tonight because judicial leadership is not often written about as a discipline. If it is reflected upon at all, it tends to be in memoir form. Having no plans to write a memoir, I offer those reflections now and with the benefit of my experiences of spending many years in what has, at times, felt like a leadership bootcamp.

I believe examination of this role is warranted because of the importance of the courts as an institution and of the judiciary as a branch of government. And because a leadership perspective provides a fresh perspective on the path ahead for the courts.

I am first going to give some necessary context about judicial leadership: the extent of the responsibility for judicial leaders, the constraints that operate upon them, and how they must lead. I then dig a little more deeply into three aspects of the responsibility:

(1) looking after the courts as an institution;
(2) looking after the courts as a centre of justice; and
(3) looking after the people.

I address these issues from a New Zealand perspective, but it is my expectation that much of what I say is true in other jurisdictions, arising as it does from the fundamental nature of the courts as an institution.

The nature of judicial leadership

The extent of the responsibility

Judicial leaders are very distinctive in leadership terms: they have great responsibility but are significantly constrained in the levers they have to discharge those responsibilities.

The role description for a judicial leader is not typically written down in one place. It is made up of a mix of both statutory responsibilities and historical understanding as to the role a judicial leader will play.

In New Zealand, the Senior Courts Act 2016 tells us that "[t]he Chief Justice is the head of the New Zealand judiciary" and is responsible for the orderly and efficient conduct of the Supreme Court's business.[1] Each head of jurisdiction has the latter responsibility for their court.[2]

The orderly and efficient conduct of the business of a court in itself entails a lot — the basic functioning of the court, the rostering and scheduling of judges — but also, and as we have learned recently, responding to events that derail that basic functioning. In New Zealand, this has meant dealing with earthquakes, floods, protests and pandemics.

But still more is required of judicial leaders than that. Just what that extra bit is in large part flows out of the nature of the institution.

The judiciary is one of the three branches of government. It was famously described as the weakest branch by Alexander Hamilton because it is without purse or sword.[3]

Without "purse" — that is, a source of revenue for its operation — the judiciary must look to the other branches of government for the means to carry out its work. By necessity, and now by convention, judicial leaders work to ensure the judiciary has sufficient means to function. This entails dealing with the executive branch of government.

In New Zealand there is an additional aspect to this relationship which arises because of our mixed model of judicial administration. By a "mixed model" I mean that in New Zealand we depend upon the executive for operational support. The executive not only decides how much money is devoted to the courts, but also has the final say on how that money is spent. Translated into concrete terms, the Ministry of Justice | Te Tāhū o te Ture, in consultation with the judiciary, runs the operating model for the courts.

Alexander Hamilton's reference to the judiciary being without "sword" was intended to convey that the judiciary does not have force of arms to compel compliance with its judgments and orders or, in a worst-case scenario, to defend itself from physical attack (and in some countries it has come to that).

Without this, the judicial branch of government depends upon public respect for the institution to see its judgments complied with and orders carried out. It also depends upon that respect when it looks to public opinion to act as a check on those who would attack the independence of the judiciary.

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1 Sections 89–90.

2 See, for example, Senior Courts Act 2016, ss 91–92; and District Court Act 2016, s 24.

3 Alexander Hamilton "The Federalist No 78: The Judiciary Department" in Alexander Hamilton, James Madison and John Jay *The Federalist Papers* (Ian Shapiro (ed), Yale University Press, New Haven (Conn), 2009) 391 at 392.

In the legal world, that public confidence is spoken of as judicial legitimacy. I see the legitimacy of the judicial branch of government as resting upon the reality and perception that judges are independent, impartial, diligent, knowledgeable and skilled.

Judicial leaders work to ensure that the judiciary maintains its legitimacy. Public confidence in the judiciary depends upon the quality of the work that judges do, and how we do it. It depends upon what the public understands of that work. It also depends upon what the public understands of who we, the judiciary, are, both in and outside the courtroom — are we a self-entitled elite, or are we a group of hard-working individuals whose motivating purpose is to serve our community?

The constraints that operate upon judicial leaders

The absence of control of funding for the courts is one constraint upon judicial leaders. But there are others to be weighed. First, by constitutional necessity, judicial leaders do not have control over those they lead — that is, the judges. That is because every judge must have decisional independence. A judicial leader must not impinge upon that independence by creating systems that constrain that independence. Nor may they give even the impression that they wish to constrain that independence.

Moreover, as the courts are made up of the judges, each judge has an equally legitimate interest in actions and decisions which fundamentally affect that court. Heads of jurisdiction and Chief Justices are therefore referred to as, and are, "first among equals".

A style of judicial leadership typically flows out of this reality. A feature of judicial leadership is that it is based on building a consensus. Judicial leaders do not have, and cannot exercise, a command-and-control style of leadership.

The second significant constraint is that judicial leaders are judges. They are not politicians. The legitimacy of the judiciary depends on the judiciary staying well clear of the political sphere. Of course, judgments can be the subject of public and even political controversy. But there are the structures of appeal that allow controversial judgments to be tested and, if necessary, corrected. Public utterances by judges outside the courtroom can also be picked up in political conversation and controversy. These are conversations and controversy it is seldom wise for a judicial leader to continue. For this and other reasons, in recent times judicial leaders have typically been restrained in their public statements.

It was not always so. We inherited, and for many years looked to, an English system in which people moved relatively freely between the branches of government.[4] Until the passage of

[4] See Lady Carr, Lady Chief Justice of England and Wales "Judges — On and Off the Bench" (Lowry Lecture, Belfast, 4 September 2024); and Patrick O'Brien "Judges and Politics: The Parliamentary Contributions of the Law Lords 1876–2009" (2016) 79 MLR 786.

the Disqualification Act 1870 in New Zealand, judges could and did sit in Parliament. Sir George Arney, Chief Justice from 1858 to 1875, regularly sat in the Legislative Council.[5]

Judges had also often gained deep connection in the political world prior to their appointment. New Zealand's fourth Chief Justice, Sir Robert Stout, was appointed to that role in 1899, only one year after retiring from an at times controversial political career. His was a political career spanning over 20 years that included time as Premier. After appointment Sir Robert continued to speak publicly and forcefully on public and moral issues.[6] He was a pugilistic character. Indeed, he once convened a court for the sole purpose of allowing the profession and judges to inveigh against the arrogance and wrong-headedness displayed by the Privy Council in allowing an appeal from the New Zealand Court of Appeal. The proceedings were later reported under the heading "a protest of bench and bar".[7]

The membrane between the judicial and other branches of government was, without question, at one time more permeable. In the absence of historical research, we can only imagine the extent to which, in that earlier time, the necessary exchanges between the branches of government occurred, not in the formal way that they do today, but rather through casual conversation and through the working of connections between these men of common background and experience. This was a judiciary administered by people much more imbued with politics.

How judicial leaders lead

For all these reasons, today's judicial leaders lead without levers of the kind that leaders of other major organisations expect and indeed depend upon. Several years ago, I attended a course in Australia for judicial leaders. Invited to speak and then to participate throughout the course of the day was a titan of Australian industry — someone well recognised as a great leader. He gave a stirring speech — something along the lines of, "If in charge take charge, work out what is important, measure it, and deal with non-performance." Through the course of the day, as he learned about the constraints operating on judicial leaders, he became increasingly perplexed — "You don't control all the aspects of your business! You can't tell people in your team what to do!" His bewilderment grew.

And yet, there are commonalities. Just as in business and politics, leaders in the judiciary must work to identify that which threatens and that which will strengthen their institution. They must take action to address the threats and build on the opportunities. Absent an ability to control the level of funding for courts or to direct their judges, or the freedom to engage in public discussion and debate, they depend upon an ability to articulate the issues clearly and

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5 Jeremy Finn "Achieving Judicial Independence — New Zealand Style" in John Burrows and Jeremy Finn (eds) *Challenge and Change: Judging in Aotearoa New Zealand* (LexisNexis, Wellington, 2022) 91 at 106.

6 ILM Richardson "Sir Robert Stout" in Robin Cooke (ed) *Portrait of a Profession: The Centennial Book of the New Zealand Law Society* (AH & AW Reed, Wellington, 1969) 44 at 46.

7 *Wallis v Solicitor-General: Protest of Bench and Bar* (1903) NZPCC 730.

to communicate and indeed inspire the required action. In other words, they must operate as consensus-builders, using the ability to persuade rather than command cooperation.

I now turn to the three areas of responsibility I examine more closely tonight: looking after the courts as an institution, looking after the courts as a centre of justice and looking after the people.

Looking after the courts as an institution

Judicial leaders are primarily stewards of their courts. The courts they lead existed before them and will continue long after they have gone. During the time that a judicial leader leads a court, they must look to its day-to-day operational needs and to the needs of the judges, but they must also work to ensure that their court remains able to administer justice in the longer term.

It seldom falls to Chief Justices or heads of jurisdiction to lead radical change — and nor are they likely to be able to build a consensus in support of that.

I do not see this feature of judicial leadership as problematic, but rather as essential. One of the fundamental roles the rule of law plays in society — the rule of law that the judiciary is charged with upholding — is supporting a stable society. The strength of public institutions is typically found in the stability of their fundamental structures, if not their output. While change is inevitable and necessary, in the case of public institutions carrying a heavy structural load in society, that change should be incremental. An incremental approach avoids the risk of making irreversible and ill-advised change. More importantly it avoids the risk of creating instability.

Even so, at times decisive and even radical action may be required to preserve the operations of the institution and, it is conceivable, to preserve the institution itself. The response to the pandemic is a good example of radical action taken by judicial leaders to preserve the ability of the courts to operate.[8] Judicial leaders across the world had to create entirely new ways of working so that the courts could operate in a society where movement was significantly constrained.

Articulating the role of the judiciary and the courts is a task for all judges, but an important responsibility for judicial leaders. Experience has taught me that if the public is to value the judiciary as a public institution, then the public must have easy access to information about the role the judiciary and the courts play in supporting a stable, peaceful and prosperous society. Easy access to this information is necessary because if this role and the conditions required for performance of it are not well understood, then they are easily eroded.

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[8] See Helen Winkelmann "Challenge and Change: Courts in a time of Pandemic" in John Burrows and Jeremy Finn (eds) *Challenge and Change: Judging in Aotearoa New Zealand* (LexisNexis, Wellington, 2022) 199.

The role of the courts and the judiciary is a topic little written or spoken about in New Zealand. Perhaps due to the absence of a written constitution the topic does not often come to court and so is seldom the subject of judicial discussion.[9] I contrast this with Australia, where Chapter III of the Constitution vests judicial power in the judiciary. This aspect of the Australian Constitution has given rise to judgments in which the nature of judicial power is discussed and in which there is analysis as to whether legislation or administrative action improperly trenches upon the judicial role.[10]

Most New Zealand lawyers would define the role of the judicial branch of government as upholding the rule of law through the administration of justice. That is true and important but as a definition it perhaps raises as many questions as it answers.

A methodological taxonomy is more helpful. On a methodological classification, the judiciary performs the role of deciding issues submitted to the courts for resolution — resolution being by means of independent judges applying the law to the facts as they find them and using fair process.

A subject-matter taxonomy casts still more light, taking us further down the road to a comprehensive definition. Adopting a subject-matter definition, the role of courts is to:

- supervise the lawfulness of the exercise of public power;
- administer criminal justice in accordance with law, including making decisions in relation to bail, criminal culpability and sentencing;
- resolve civil disputes in accordance with law and supervise enforcement of legal obligations; and
- in the context of proceedings, clarify and declare the law.[11]

Each of these definitions is helpful in identifying the conditions necessary for the courts to fulfil their core role in society.

It is well discussed that the conditions necessary for a judiciary to be able to fulfil its role in society include having sufficient control of the conduct of proceedings. This ensures both independence and fair process. It is for this reason that the judiciary must have responsibility for the setting down of hearings, and the allocation of individual proceedings to individual judges. It is why the judiciary must have sufficient control of how proceedings are conducted

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9 The topic has arisen on occasion: see, for example, *Attorney-General v Taylor* [2018] NZSC 104, [2019] 1 NZLR 213 at [52]–[67].

10 See generally Michelle Foster "The Separation of Judicial Power" in Cheryl Saunders and Adrienne Stone (eds) *The Oxford Handbook of the Australian Constitution* (Oxford University Press, Oxford, 2018) 672. Indeed, much of what New Zealanders would regard as human rights issues is litigated in Australia in connection with Chapter III: see, as recent examples, *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] HCA 37, (2023) 415 ALR 254; and *ASF17 v Commonwealth* [2024] HCA 19, (2024) 418 ALR 382.

11 Noting the important context that the legislative branch is then free to legislate to change the law as clarified or declared.

to achieve a fair hearing. It is why rules of court are typically under judicial control[12] — in New Zealand, why they should require judicial concurrence.[13]

One of the tasks for judicial leaders is vigilance to ensure that these basic preconditions are observed and protected. Today, this role extends to understanding the implications of new systems, or changes to systems, that support the conduct of hearings. This requirement has come into particular focus with the introduction of digital technology and, as part of that, the rapid evolution of AI. Both have great transformative potential for courts. Together they have the potential to change where we conduct proceedings, the processes, arguments and evidence supporting hearings and judgment, and even, perhaps, the nature of the decision-maker.

Courts have certainly dealt with new technology in the past, but not technology with this great a transformative potential. Changes are already being made, especially in the use of technology for remote hearings, that are reshaping the model of justice. It is for judicial leaders to understand the implications of that change, thinking not just about the present, but also plotting the trajectories along which it may take us. We do this so that the choices we make today about technology do not in the longer term remove or undermine the ability of the courts to fulfil their constitutional role.

Conceptualising the core role of the courts and the necessary conditions for the performance of that role is, I suggest, both helpful and necessary as we guide and shape this transformation. New Zealand released its *Digital Strategy for Courts and Tribunals* in 2023 as an early attempt to do just this.[14]

Today we are also beginning to deal with AI and its implications for the courts. We can be confident in predicting that AI will have profound significance for the role of the courts as a forum for settling the truth. I will not embark upon the epistemological discussion that this issue temptingly invites. But I do think it worth tagging for future thought the impact of AI on the role of judges as finders of fact.

As mentioned above, the impartial finding of fact by human judges, following fair process, lies at the heart of the judicial role. By reliably and fairly finding facts in this way, disputes are quelled. What if the fact-finding process is undermined by artificially generated evidence?

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12 The rules of the Federal Court and High Court of Australia, for example, are made by the judges of those courts (or by a majority of them): see Federal Court of Australia Act 1976 (Cth), s 59; Judiciary Act 1903 (Cth), s 86; and High Court of Australia Act 1979 (Cth), s 48.

13 Senior Courts Act, s 148(2); and District Court Act, s 228(2). This is in large part achieved through the Rules Committee, a statutory body: see Senior Courts Act, s 155. There have been some departures from this position — for example the Family Court Rules are not, at present, made through the Rules Committee. Judicial concurrence should be an invariable requirement for rules of court — to ensure that the constitutional role of the courts is not undermined, but also because this requirement is effective in achieving workable and efficient rules.

14 Chief Justice of New Zealand | Te Tumu Whakawā o Aotearoa *Digital Strategy for Courts and Tribunals* (Te Tari Toko i te Tumu Whakawā | The Office of the Chief Justice, March 2023).

Judiciaries, working collaboratively, have already issued guidelines which confront and address the problem of artificially generated legal argument and its impact upon the development of the law.[15] Far more complex issues lie ahead for us in the area of evidence.

Under the heading of looking after the courts as an institution, I also place the role of acting as a spokesperson for and defender of the judiciary. After a level of volubility in the early part of the 20th century, by the mid-century judges had become more reticent in their public statements.[16] They had all but fallen silent. The promulgation in Britain of what became known as the Kilmuir rules accelerated the trend.[17] The British Lord Chancellor of the day, Lord Kilmuir, issued an edict prohibiting judges from engaging with the media without his consent.[18] This was issued in the context of refusing permission for judges to take part in a radio programme about famous judges in English history — a rather tame topic. The rules were only abolished in 1987 when Lord Mackay declared them inconsistent with judicial independence.[19] Although never formally adopted in New Zealand, the Kilmuir rules seem to have been applied here in practice.[20]

Today, judicial silence will no longer do, not in light of the erosion of public confidence in institutions, which is a phenomenon observed worldwide.[21] And not in the face of the reduced coverage of the day-to-day work of the courts by mainstream media. There are particular challenges for the judiciary in this regard. The critical role of the courts in maintaining a liberal democracy is little understood. Just how judicial independence supports our democracy and secures personal liberty is not a subject engaged with in mainstream discourse. Nor is there much in the way of public discussion or awareness of just how easily that independence is eroded.

There is, by way of contrast, a great deal of public interest in issues of criminal justice and, in that context, the outcomes of high-profile cases. And yet there is little enthusiasm for engaging with the reasons that sit behind those outcomes or understanding the sheer scale or complexity of the work that judges do day in and day out in our courts. Decisions resolving complex or difficult matters are easily misunderstood. They can also be mischaracterised by those who see advantage in such mischaracterisation.

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15 See, in New Zealand, Courts of New Zealand | Ngā Kōti o Aotearoa *Guidelines for Use of Generative Artificial Intelligence in Courts and Tribunals: Lawyers* (7 December 2023).

16 See Katherine Sanders "Away from the Familiar — Judges in Public Debate and as Commissioners" in John Burrows and Jeremy Finn (eds) *Challenge and Change: Judging in Aotearoa New Zealand* (LexisNexis, Wellington, 2022) 219 at 223–227.

17 See Gerry R Rubin "Judicial Free Speech versus Judicial Neutrality in Mid-Twentieth Century England: The Last Hurrah for the Ancien Regime?" (2009) 27 LHR 373 for a detailed exposition of the Kilmuir rules and their impact in the United Kingdom.

18 At 385–386.

19 At 402.

20 Grant Hammond "Judges and free speech in New Zealand" in HP Lee (ed) *Judiciaries in Comparative Perspectives* (Cambridge University Press, Cambridge, 2011) 195 at 196.

21 See, for example, Edelman Trust Institute *2025 Edelman Trust Barometer: Global Report* (2025).

Communication is now one of the principal responsibilities for judicial leaders. Caution undoubtedly remains about engaging with controversy — because, as earlier noted, it is seldom wise or appropriate for a judge to engage fully in the toing and froing of ongoing public debate. But communication and communication strategies are nevertheless essential. They are needed to support understanding of the role of the judicial branch of government, understanding of how judges work and the constraints upon them, and to support access to and understanding of judicial decisions.

This is a development in New Zealand that was apparent by the time of Sir Thomas Eichelbaum, New Zealand's 11th Chief Justice. By the 1980s the cultural overhang of the Kilmuir rules had substantially receded. Sir Thomas spoke publicly of his concerns as to the absence of informed discussion on the role of the courts and the judgments they hand down.[22] He was active in speaking about issues of judicial administration and the importance of judicial independence. He commenced the issue of annual reports by the judiciary and appointed New Zealand's first judicial communications advisor.[23]

The 12th Chief Justice, Dame Sian Elias, spoke of advice Sir Geoffrey Palmer gave her, the same advice he has given me, of the necessity to speak about the judiciary on every possible occasion because of the absence of public education as to its role.[24] And so Dame Sian did this — as she said, delivering talks "from Winton to Warkworth, to farmers, and justices of the peace, Rotarians, lawyers, and all-comers".[25]

Looking after the courts as a centre of justice

The next area of stewardship I address is looking after the courts as a centre of justice. Courts should be, and should be understood to be, a place where justice is done. The administration of justice is, after all, the work the judiciary does in society. An understanding that people can seek and expect justice to be done before independent courts is one of the great stabilising forces in our society. And a popular understanding that the great public institutions work hard to serve their communities is one of the best antidotes to populism.

Miscarriages of justice arise from many causes, many of those falling outside the responsibility of the courts. Nevertheless, courts have an institutional responsibility to ensure that they do not wreak injustice, and in individual cases they have a statutory responsibility to address miscarriages of justice. This work is primarily the responsibility of individual judges. Doing justice is the core task of a judge. We all take very seriously the judicial oath we swear to "do right to all manner of people"; the opportunity to support a just society through the administration of justice is the reason we take the job.

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22 Thomas Eichelbaum "The Inaugural Neil Williamson Memorial Lecture: Judicial Independence Revisited" (1997) 6 Canta LR 421 at 422 and 426.

23 At 426.

24 Sian Elias "'The Next Revisit': Judicial Independence Seven Years On" (2004) 10 Canta LR 217 at 217.

25 At 217.

But courts are systems, and it is at the systemic level that judicial leaders can and, I believe, must play a role to support just process and minimise the risk of miscarriages of justice. And so, as judicial leaders we should be concerned if we receive information that justice is not being done in our courts.

The reports of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions, the final instalment of which was released last year, did just that. The reports record how many victims of abuse were made particularly vulnerable through disability.[26] They describe the barriers survivors faced when seeking justice, including inadequate support to navigate court processes and an inability to make themselves heard and understood.[27]

As Chief Justice I have acknowledged the courts' role in the systemic failures and resulting injustice described in the reports. But it is not enough to acknowledge failure and move on. Self-evidently, change is needed, and steps must be taken to address the issues identified.

Judicial leaders must be vigilant in identifying and responding to the emerging needs of the community. This may indicate a need to adapt or change their processes so that the court can meet the particular justice needs of the people involved in a case. The courts in New Zealand did that in respect of the cases flowing out of the Christchurch earthquakes.[28] If we used those techniques in the area of property interests, there is no reason we cannot do this in the area of claims arising out of historical abuse. We have therefore established a list to respond to existing and new claims arising out of abuse in state and faith-based care. The list utilises case management, meeting the distinctive needs of the litigants, to better support just outcomes.

I cite this as an example only. The issue is broader. Court systems should be fit to be engaged with by the communities they serve. I see it as a key role of judicial leaders to identify, highlight and lead change to address the risk of injustice arising from our processes and systems. At times this will involve supporting or leading innovation.

The weight of this task only increases as we understand more about the needs of those we serve — about the high incidence of disability and disadvantage in those who come or are

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26 See, for example, Royal Commission of Inquiry into Abuse in Care *Whanaketia — Through pain and trauma, from darkness to light* (June 2024) pt 6 at [120]–[121].

27 See Royal Commission of Inquiry into Abuse in Care *He Purapura Ora, he Māra Tipu: From Redress to Puretumu Torowhānui* (December 2021) vol 1 at ch 2; and Royal Commission of Inquiry into Abuse in Care *Stolen Lives, Marked Souls: Te whakatewhatewhatanga o te Kāhui o ngā Parata o Hato Hoani o te Atua i te kura o Marylands me te Tarati o Hebron | The inquiry into the Order of the Brothers of St John of God at Marylands School and Hebron Trust* (July 2023) at ch 5.

28 See Helen Winkelmann and Jeremy Finn "Judicial Leadership and Innovation in Times of Crisis: The Canterbury Earthquakes" in John Burrows and Jeremy Finn (eds) *Challenge and Change: Judging in Aotearoa New Zealand* (LexisNexis, Wellington, 2022) 179 at 191–195.

brought before the court.[29] It is a weight that increases also as the numbers of those unrepresented in both the criminal and civil jurisdictions increase.

The therapeutic court model, familiar in Australia and New Zealand, is an example of innovation within the existing structures of the courts that shapes systems to enable better outcomes. In New Zealand, Te Ao Mārama is a model of justice operating in the District Court which supports better understanding and participation in proceedings by those affected by them.[30] It has been developed in response to information that the criminal justice system is trapping offenders in an offending way of life — that it is harming whānau and communities. Deploying the use of simpler processes and screening tools, it aims to support better participation so that people — complainants, witnesses and defendants — have a fair opportunity to give their evidence and a proper opportunity to understand the proceedings as they affect them. This is incremental but important change. It also involves the community, particularly tribal communities, in finding the solutions and in weaving back together communities and families.

Judicial education is another relatively new responsibility for judicial leadership and is aimed squarely at improving the quality of justice administered through the courts. The systematic provision of judicial education is a relatively recent innovation. Te Kura Kaiwhakawā | The Institute of Judicial Studies is approaching only its 30th anniversary in New Zealand.

Educational programmes and institutions were not developed earlier because of concerns they would interfere with judicial independence. It is true that education is powerful. Considerations of pedagogy and judicial independence require that education be offered with care as to the accuracy and reliability of its content, with great attention to balance in emerging areas of knowledge. But the introduction and ongoing development of judicial education reflects a recognition that the methodological skills of judging can be worked at and improved. It is recognition also that judges require a wider range of knowledge to do their work than any one judge is likely to have acquired in their working lives. Judicial education is therefore one of the vital supports we provide to judges to enable them to do justice. And while not compulsory, because of considerations of judicial independence, today judicial education is seen as an obligation that judges have so that they can live up to the important ideals of the judicial oath.

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29 See Ian Binnie *Access to Justice: 2023 Legal Needs Survey* (Ministry of Justice | Tāhū o te Ture, 29 October 2024) at 9.

30 See District Court of New Zealand | Te Kōti-ā-Rohe o Aotearoa *Te Ao Mārama Best Practice Framework* (20 December 2023).

Looking after the people

The last area of stewardship I address is the responsibility to look after the people. In referring to the people I include witnesses, complainants, defendants and parties. We must afford all procedural care, and in particular the human dignity and courtesy implicit in a fair hearing. I have already addressed aspects of the role that judicial leaders can play in supporting this ideal for which the judiciary constantly strives.

I also include within this protective concern the lawyers, who work in a collaborative enterprise with the judges to support the administration of justice, and the court staff, without whom the courts simply could not function. In multiple ways, and in multiple forums, judicial leaders work with the Ministry of Justice and the profession to ensure that courthouses are safe places for lawyers and court staff to work, and places in which they are treated with dignity and respect.[31]

Judicial leaders must also, however, look after the judges who make up the judicial branch of government and the courts. Everybody, including judges, has the right to work in a safe workplace — safe from physical and psychological harm. Moreover, a stressed and overworked judiciary is one more prone to error and less able to achieve the very high standards, including of conduct, required of judges.

In recent times physical safety has been a focus, as the number of attacks occurring in and around courthouses has grown. This concern for courthouse security is not, however, my focus tonight. Rather I refer to judges' mental well-being.

Judges carry heavy and relentless workloads. They deal with highly contentious issues and, at times, highly distressing material. In our part of the world, the issue of judicial well-being was first brought to the fore by the Hon Justice Michael Kirby.[32] Australia has continued to lead the way in this area and in this part of the world, with in-depth qualitative study.

One study published last year found that over 30 per cent of judges who completed the part of the study relating to the Secondary Traumatic Stress Scale warranted an assessment for post-traumatic stress disorder.[33] A related study identified recurrent themes.[34] Increasing and unsustainable workload was identified as a key stressor, with judges expressing the view that case volume and legal and evidential complexity were all increasing.[35] Associated with

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31 These are very real concerns. Over the years members of the public, lawyers, court staff and judges have been the victim of serious physical attacks in and around courthouses, with those attacks increasing in recent years.

32 See Michael Kirby "Judicial Stress" (1994) 2 TJR 199 for an early example of his treatment of the subject.

33 C Schrever and others "Preliminary findings from a large-scale national study measuring judicial officers' psychological reactions to their work and workplace" (2024) 36 JOB 53 at 57.

34 Carly Schrever, Carol Hulbert and Tania Sourdin "The privilege and the pressure: judges' and magistrates' reflections on the sources and impacts of stress in judicial work" (2024) 31 Psychiatry, Psychology and Law 327.

35 At 342–343.

that was a sense that judges could not take the time to deal with cases as carefully and as flexibly as the subject matter might justify, and further associated with that was the fear that they might be doing injustice.[36] Of course this is a source of stress for judges because, as I have highlighted, all judges wish to do justice.

We do not have an equivalent study in New Zealand. But we know that the stressors identified in the Australian study are very likely to be replicated in any similar New Zealand study. Judicial leaders know this from working within the system — they are, after all, judges themselves. They know it from speaking to their judges. They know it from observing the steady growth of workload and complexity with no matching growth in resources.

Judicial well-being is a focus for judicial leaders, and judicial well-being programmes and support are offered. But that is not enough. It is not enough when the key stressor is workload. It is not enough given the associated risk of injustice that an overwhelming workload brings. For this reason, judicial resourcing is, and is likely to remain, a focus for the modern judicial leader.

Sharing the load

I expect it will be apparent by now that judicial leadership carries a heavy workload. Most judicial leaders are also sitting judges. It is important that we continue to sit so that we maintain an understanding of the issues confronting the courts and its judges. But maintaining work as a sitting judge reduces the time we can, humanly, devote to judicial leadership tasks.

We are fortunately not alone. We can and do call on other sitting judges who willingly take on tasks of judicial administration, on top of their busy day jobs. We have judicial administrators to assist. Most Chief Justices now have a small office to provide support. The Office of the Chief Justice | Te Tari Toko i te Tumu Whakawā provides vital support for judicial administration throughout the judiciary.

In New Zealand we work closely with the profession as we take on the workload challenge, addressing day-to-day irritations and problems, and planning longer-term systemic solutions. We also depend upon the profession as knowledgeable and active defenders of judicial independence. The contribution that professional organisations make is simply extraordinary.

Academics are also important in the world of judicial leaders. An example is the research in relation to judicial stress I referred to. Research like this, and across a wide range of topics, enables judicial leaders to better understand and respond to the forces at work in these core areas of judicial administration I have outlined. The academy also plays an important role in explaining in public discourse the role of the judiciary and explaining its work. Sometimes the

[36] At 344–345.

judiciary must also rely on legal academics to enter public controversies in connection with high-profile judgments to secure fair and accurate reporting.

A more recent development has been the extent of cooperation between judiciaries of different nations. It is fair to say that there has been some level of cooperation between judiciaries in this region for quite some time. For example, the Council of Chief Justices of Australia and New Zealand, which meets twice a year, was established in 1993.[37] The Chief Justices of the immediate Pacific region have been meeting regularly since 1972!

Project-based cooperation is, however, a more recent and important development — as the extent of systemic challenges and responsibilities has increased. There is recognition that many of the challenges faced by national judiciaries are the same — that we can learn a lot from each other and reduce the load through the sharing of tasks. For example, New Zealand benefited from the experience of other judicial leaders in the creation of its *Digital Strategy*[38] — in particular from our discussions with Australia, Singapore and the United Kingdom. New Zealand then took the lead in developing guidelines for appropriate use of AI in developing submissions in court.[39] That draft has been drawn upon around the common law world. Singapore is taking the lead in sandboxing the use of AI on the judicial side of the fence — concluding that at present AI is most effective at summarising voluminous submissions and evidence. Sandboxing of course does not imply use by the judiciary, but this research being undertaken is a very good model of the judicial leadership we need — the plotting of future pathways or the trajectories I spoke about earlier. There is also significant cooperation in the development and, even sharing, of judicial education. New Zealand judges are pleased to be able to attend courses offered by the AIJA and by the National Judicial College of Australia.

I end my discussion of this subject with this reflection. Judicial leadership is, as the title of tonight's oration suggests, complicated. But it is as important as it is complicated. Judicial leadership is and will continue to be vital as the courts and the judiciary address changes and challenges within society that require a systemic focus and response. Given the increasingly significant role that judicial leadership plays, I believe it is deserving of thoughtful analysis. I hope I have assisted with that tonight.

Finally, I take this opportunity to acknowledge the AIJA, and the work that it does, as a precious taonga or treasure. I had the privilege of serving on the Council and then the Board of the Institute for many years, and I saw its work at first hand. It is unique in this region in that it brings together judges, lawyers, academics and the broader justice sector, from across New Zealand and Australia, to work towards excellence in the administration of justice.

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37 The Council of Chief Justices of Australia and New Zealand comprises the Chief Justice of the High Court of Australia, the Chief Justice of New Zealand, the Chief Justices of the Federal and Family Courts, and the Chief Justice of each Australian state and territory.

38 See Chief Justice of New Zealand | Te Tumu Whakawā o Aotearoa, above n 14.

39 See Courts of New Zealand | Ngā Kōti o Aotearoa, above n 15.

Through the research it funds, and the education and discussions it facilitates, it supports a more just and more effective and efficient court system.

Thank you.