

valuing our lawyers

The untapped potential of flexible working in the
New Zealand legal profession



Sarah Taylor



ILANZ
IN-HOUSE LAWYERS ASSOCIATION
NEW ZEALAND LAW SOCIETY

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Sarah Taylor



Sarah Taylor was awarded a scholarship in May 2016 by the In-house Lawyers Association of New Zealand (ILANZ), the in-house section of the New Zealand Law Society (NZLS), to undertake research into flexible working in the in-house legal profession in New Zealand.

Sarah has worked as a lawyer since 1998 in various organisations in Wellington, London, and Singapore. She worked for nearly a decade in London on commercial law and major infrastructure projects and since returning to New Zealand has worked at

the Ministry of Economic Development, Ministry of Business, Innovation and Employment, and the Environmental Protection Authority.

In 2016, in a bid for a lifestyle change and more sun, Sarah and her family moved from Wellington to Mapua, a village at the top of the South Island. At the end of 2016, Sarah started working in a newly-created role at the Tasman District Council setting up a new in-house legal function. She is adjusting to life in a small village and learning how to raise chickens and grow hops.

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and

Rolf for feeding the children, the chickens, and me.

"The difficulty lies, not in the new ideas, but in escaping from the old ones."

— John Maynard Keynes

"You have brains in your head. You have feet in your shoes.

You can steer yourself any direction you choose."

— Dr Seuss

foreword

The spark

The spark for this project was lit several years ago over a cup of tea with a chief legal advisor of a large government department legal team. She was lamenting that there were not better ways to get temporary legal support. "We're not resourced for the peaks," she said, "we need efficient resourcing options for the peaks." She wanted experienced lawyers who could hit the ground running when needed. She wanted them quickly without having to pay law firm prices.

Earlier that week I had been at a kids' music class with my two young boys. After the class, I got talking to a group of parents. Some, like me, were working part-time. Others had left their jobs. They had various reasons for not returning to work after having kids, but the general gist was that they struggled to balance work with family life. Their stories echoed others I had heard over the years, particularly from lawyers who were in, or had left, jobs that did not provide them with enough flexibility to balance a demanding career with a busy life outside of work.

It seemed fairly obvious to me at that time that there were some potential gaps to be filled: on one hand, there was a need for agile on-demand legal support, on the other, there was a potential pool of untapped legal talent. Surely these gaps presented some market opportunities. Why was no one connecting the dots?

Life-changing move

A few years passed, during which time my family and I made a life-changing move. We left Wellington and moved to Mapua, a small village near Nelson. After we moved, I continued working in the legal team at the Environmental Protection Authority, a Crown entity based in Wellington. I worked part-time and chose what days and hours I worked, subject to any work needs. I worked mostly from home and commuted to Wellington once a fortnight to spend a few days working in the office.

The ability to work when it suited me, combined with the lack of office distraction, meant that I was able to deal with some tricky legal and strategic issues that I would have struggled to do in a busy office environment. I was able to spend more time with my family and more time outdoors. I was happy and productive and felt I had finally achieved that elusive work/non-work balance. The arrangement was not without its challenges, but overall it felt like a great way of working. Why weren't more people working like this?

ILANZ scholarship

My move prompted me to think about different ways of working, the various challenges facing our profession, the future delivery of legal services, and the role of flexible working in all of that.

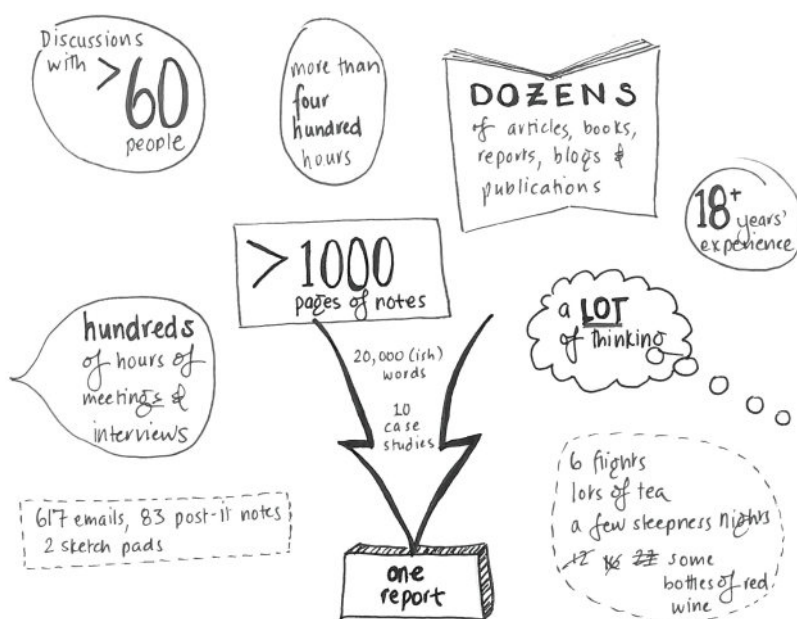
And that lead me to apply for the ILANZ scholarship. As part of my application, I proposed that there may be an underutilised pool of legal talent – lawyers who are keen to work but, for various different reasons, want or need to work on flexible terms. While some of these lawyers are able to find legal work on terms that suit them, others cannot, and are leaving the legal profession. I suggested that if the profession wanted to continue to attract and retain great lawyers, it needed to be more open to flexible working. In conjunction with this, I suggested that there may be new ways for in-house legal teams to obtain agile ad-hoc legal support.

The exploration

As part of my research I met with over 60 people and spent countless hours reading various reports, articles, and publications. I interviewed lawyers, former-lawyers, and non-lawyers. I interviewed men and women from all around New Zealand, some with kids, some without, from a range of positions, areas of expertise, and different levels of experience, in-house lawyers from the public and private sectors, and private practice lawyers.

My project started out focusing on ways to "connect the dots," but as I talked to more people and read more about flexible working, my focus shifted. I already knew about the benefits of flexible working for employees, but I learnt more about the benefits for employers. My project then seemed to divide naturally into two parts: the first part which looks at flexible working in the legal profession, the reasons why lawyers want or need to work flexibly, how prevalent it is, the benefits, the challenges, and how to make it work in practice. And the second part, which looks at various legal services models and creative ways to connect a largely untapped talent pool with the need for it.

My methodology



This is not an academic piece of research, nor was it ever intended to be. I have taken a fairly organic approach to my project, largely applying the grounded theory or a 'bottom-up' approach – using the key issues and topics identified by interviewees to determine which areas to focus my research on, rather than trying to prove or disprove any particular theories.

There is a lot of scope for further research in this area. I realised, probably far too late, that I was never going to be able to talk to everyone I wanted to talk to or read every piece of literature on the subject of flexible working. This report would never have been written if I had. During the course of my research I disappeared down several deep rabbit holes. I am lucky to have emerged from some of them.

An admission

I am biased. I am a big fan of flexible working.

I have worked full-time for most of my career and worked flexibly, in various different forms, since 2011. Flexible working has enabled me to work in some truly great jobs while doing other important and fun things. I cannot say life has always been in balance (in fact, far from it at times), and I probably have not progressed my career in the same way as I might have had I been working full-time, but I am ok with that. I have chosen to work this way and I am happy with my choice.

Not everyone is a fan of flexible working. There is a voice for more traditional ways of working and flexible working has its challenges. These views and challenges are presented in my report.

Future role models

Many of my interviewees talked about the need for new types of role model in our profession – different from the lawyers who are held out as successful because of the long hours they spend in the office or the positions they hold.

I have selected 10 interviewees' stories to share, with their permission, in this report. These people have different backgrounds, situations, and experiences with flexible working. I hope that these stories will provide some inspiration and that these are the sort of people who will be future role models in our profession.

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Contents

Foreword	01
Introduction	05
Executive summary	06
PART 1: FLEXIBLE WORKING IN THE LEGAL PROFESSION	08
Overview	09
What is flexible working?	09
Drivers for flexible working	12
Striking the balance	14
Prevalence of flexible working	16
Benefits of flexible working	19
Challenges of flexible working	23
Various issues	28
Flexible working in practice: keys to success	32
PART 2: INNOVATIVE LEGAL SERVICES MODELS	36
Overview	37
In-house legal needs	37
League of Lawyers	39
Connecting the dots	44
What is happening overseas?	49
What is happening in New Zealand?	51
Regulatory restrictions	52
PART 3: CONCLUSIONS AND FINAL THOUGHTS	54
Conclusions	55
Final thoughts	56
Appendices:	59
1. Lawyers as contractors: Freelance in-house lawyering	59
2. The Law: the Employment Relations Act	62
References and further reading	63

introduction

There are several challenges currently affecting the New Zealand legal profession including financial constraints, the retention and promotion of women lawyers, the attrition of junior lawyers, and some dissatisfaction within the profession, often due to difficulties balancing a demanding career with life outside of work. Combined with this are various drivers increasing the demand for flexible working including changing demographics, technological advancements, globalisation, sustainability, resilience, and economic drivers.

Part 1 of this report explores some of these challenges and drivers in more detail. It outlines the prevalence of flexible working and the main benefits and challenges of flexible working in the legal profession. A number of issues that recurred during interviews are covered, as well as the keys to a successful flexible working arrangement.

Part 2 explores some innovative models for the delivery of agile on-demand legal support. It looks at what is happening overseas and in New Zealand, and touches on the regulatory constraints that prevent certain types of legal businesses setting up here.

The purpose of this report is not to promote flexible working. The purpose is to get people thinking, talking, and experimenting with innovative ways of lawyering. It is also intended to encourage thought about how our profession views success and suggest that it is time for some new types of role model. I am not suggesting that flexible working is the answer to all the challenges facing our profession, but I think it can help.

While a large number of lawyers working, or wanting to work, on flexible terms are women with children, this project is not just about working mums. Flexible working is relevant to men and women of any age, level, role, regardless of whether or not they have children. The primary focus of my project is on the in-house legal profession, but most of my findings are relevant to the profession as a whole.

Executive summary

Autonomy

There are many different reasons why lawyers want or need to work flexibly. For most, flexible working is not about working less hours or less hard, but about having some autonomy over when, where, and how to work.

Striking the balance

One of the major drivers for flexible working is the desire for a better balance between work and life outside of work. Lawyers, in particular, often struggle to achieve a good balance. Failure to do so can lead to a myriad of problems and great lawyers leaving the profession.

Prevalence

Flexible working is on the rise in New Zealand and internationally. There is limited data on the number of lawyers working on flexible terms in New Zealand however research confirms anecdotal evidence that more in-house lawyers work flexibly than private practice lawyers, more female lawyers work flexibly than male, and some parts of the private sector are more open to flexible terms than the public sector. Flexible working in the legal profession is not currently the norm.

Benefits

Flexible working has a lot of well-reported benefits for employees and employers including happier staff, better engagement, higher productivity levels, less absenteeism, greater loyalty and retention, and financial benefits. The legal profession could be tapping into these benefits more than it currently is.

Challenges

There are a range of challenges associated with flexible working. These are generally felt to be surmountable and outweighed by the benefits. Some of the trickier challenges include unconscious bias, presenteeism, the over-use of technology, the need for face-time, lack of trust, and lack of support.

Keys to success

Trust and good communication are essential to a successful flexible working arrangement. Other key factors include support, reciprocity, good technology, and adaptability.

The demand

In-house legal teams need alternative cost effective resourcing options to cope with workload spikes and resourcing gaps.

The supply

There is a pool of untapped talent in the New Zealand legal profession and no obvious hub or on-ramp for lawyers to get into, or back into, the profession on flexible terms. There is value in harnessing this talent pool.

Connecting the dots

There are market opportunities to connect the supply with the demand and numerous different ways this could be done.

Overseas

"Alternative" or "New Law" providers are increasingly common internationally, including many flexible legal service providers. Liberalisation has occurred in England, Australia and other parts of the world, opening up opportunities for new types of legal business model.

New Zealand

New Zealand is still in the start-up phase with alternative legal providers. Flexible legal service providers have recently started setting up and are likely to become more common over time. Liberalisation has not occurred in New Zealand and regulatory constraints prevent certain types of legal business model.

Tool of attraction

In the legal profession flexible terms are primarily used as a retention tool, rather than a tool to attract great talent. Flexibility is not often openly advertised or actively promoted. Offering flexibility can open up a bigger, more diverse talent pool and provide opportunities for lawyers who might otherwise leave the profession.

Culture change

Embracing flexibility is not just about having a flexible working policy but about setting an environment and culture that supports flexible working regardless of gender, age, role, level, or reason. There is a call for new role models in our profession and an expanded value system that recognises the importance of lawyers' lives outside of work.

Untapped potential

There is untapped potential in the legal profession: untapped benefits, untapped talent, and untapped market opportunities.

Valuing our lawyers means valuing their wellbeing and their lives outside of work. Until employers are more open about flexibility and proactively invite applicants on a flexible basis, they will be limiting the pool of talent from which they can draw and there will continue to be wasted talent in our profession.

PART 1:

Flexible working in the legal profession

Overview

Lawyers have a lot of different reasons for wanting or needing to work flexibly. Flexible working is not for everyone, but it has a lot of well-reported benefits for employees and employers. The challenges are less reported, possibly because they are generally felt to be surmountable. This part of my report outlines the various types of flexible working, the drivers for flexibility, and the prevalence of it in the New Zealand legal profession. It covers the main benefits, challenges, and key factors to a successful flexible working arrangement.

What is flexible working?

There are many different definitions of “flexible working”. In this report I use the phrase to mean an arrangement, formal or informal, that enables some form of flexibility over the time and/or place of work.

Flexible working arrangements can take many different forms. The most common types of flexible work within the legal profession are:



Part-time: working less than full-time hours



Remote working: working from home or another location outside of the workplace



Flexi-hours (also flexi-time or flexi-schedule): can take a variety of forms but usually involves working an agreed total number of hours but in a flexible way, such as varying start or finish times or having a compressed work week



Job-sharing: two (or more) people work part-time and share the responsibilities of a full-time role between them



Fixed-term: working for a finite period of time.¹

Flexible working is not just about working reduced hours. A lot of lawyers I interviewed work in full-time permanent positions, but on a flexible basis (e.g. working one day a week from home or starting late on certain days).

Many interviewees emphasised that flexible working, for them, was not about working less hard or less hours but about having some autonomy over when, where or how they work. They did not mind working long hours or sometimes working in the evenings or weekends if it meant they had the ability to balance other important things in their life: to go to piano lessons on a Tuesday morning or pick up their kids from school on Thursday afternoons.

1. Other types of flexible work arrangements include casual employment (an agreement to work on a 'casual' basis, as and when work is available) and paid or unpaid breaks from work such as parental leave, study break, volunteer leave, or a career break/sabbatical for another reason.

Formal or informal

Flexible working arrangements can be formal (included within an employment contract) or informally agreed with a manager. The Solicitor-General, Una Jagose QC, provided a nice summary of the distinction to her staff at the Crown Law Office:

"There are two aspects to flexible working. First, where you want to be a bit flexible but you do not want to change the basic deal between employee/employer as to hours of work, place of work, days of work on a regular basis. Flexibility helps us manage particular things that arise in life, or to take the swings with the roundabouts/the peaks and the troughs etc in work life. We encourage each of you to manage your time and your life – subject of course to work demands being properly placed in the balance and – at the right times – with your manager's ok/approval ... We encourage you to take control of your time when you can and use it flexibly to make sure your life remains in your control.

*The second aspect is where you want to make a permanent – or at least long term – and regular change to the hours you work or where you work from or what days of the week you work. Naturally enough, this type of flexibility requires closer attention – to the proposal, to the impact on the work of the office and to your ability to perform your role. That's where the Flexible Working Policy comes into play and some more formality around the decision to be taken."*²

2. Una Jagose QC, extract from speech to Crown Law Office employees, 2016.

What is agile working?

Agile or smarter working incorporates time and place flexibility, but it also involves doing work differently, i.e. how work is done. Agile working provides the ability to choose what you work on, as well as how, when, and where you perform your work. It has been described as:

*"... a way of working in which an organisation empowers its people to work where, when and how they choose – with maximum flexibility and minimum constraints. It uses communications and information technology to enable people to work in ways which best suit their needs without the traditional limitations of where and when tasks must be performed."*³

3. The Agile Organisation, 2013.

Agile and smarter working generally encompass flexible working practices, but are more focused on encouraging new behaviours, attitudes and approaches to work. It has been said that flexible working is two-dimensional – focusing on time and place – while agile working is multi-dimensional – not just limited to doing the same work in the same way at a different time and place, but more about the complete flexibility of what and how work is done.

Work is an activity we do, not a place we go

Both flexible and agile working embrace the concept that work is an activity we do, not a place we go.

Una's story



Una Jagose QC is the Solicitor-General and the Chief Executive of the Crown Law Office (CLO). There are about 180 staff at CLO and, as the junior law officer of the Crown in New Zealand, Una is also the professional head of more than 800 in-house government lawyers.

Una works full-time but flexibly. "I've always worked hard at not working too hard," Una said. "I like a high level of autonomy in how and where I do my work. I've always been determined not to give my life over to my work. Obviously it's not a 9-5 thing and of course some days I work more than other days – you can't have every day in balance. As a general rule I try to do my job in what I think is a reasonable time. No one has ever said that I'm not doing a good job and should be working more hours," she said.

Soon after stepping into her current role, Una replaced CLO's flexible working policy. "For a policy on flexibility, it was very prescriptive and inflexible," she said. She ran an all-of-office meeting where she explained her ambition to run a "high autonomy, low prescriptive rules" organisation. Una trusts her staff to determine for themselves when and how they want to work (provided they're available when needed). "The sort of work we do tends to allow for flexibility," she said, "we expect people to work very hard for periods of time, so it has to swing the other way too to be fair. It's not like we have a problem with people not doing their work," Una said. "I've said to them 'We know you work long hours – if you need to go for a run in the middle of the afternoon, do it. If you need to rebalance a very busy period with some lesser hours, do it. If something is not working well, we'll tell you.'"

Una said that young people need very strong role models and she models the behaviour she encourages amongst her staff. "It is hard for them [junior lawyers] to believe you mean that they can work flexibly when there is such a focus on time sheets and billing," Una said. "If you focus on the money, you focus on the wrong thing."

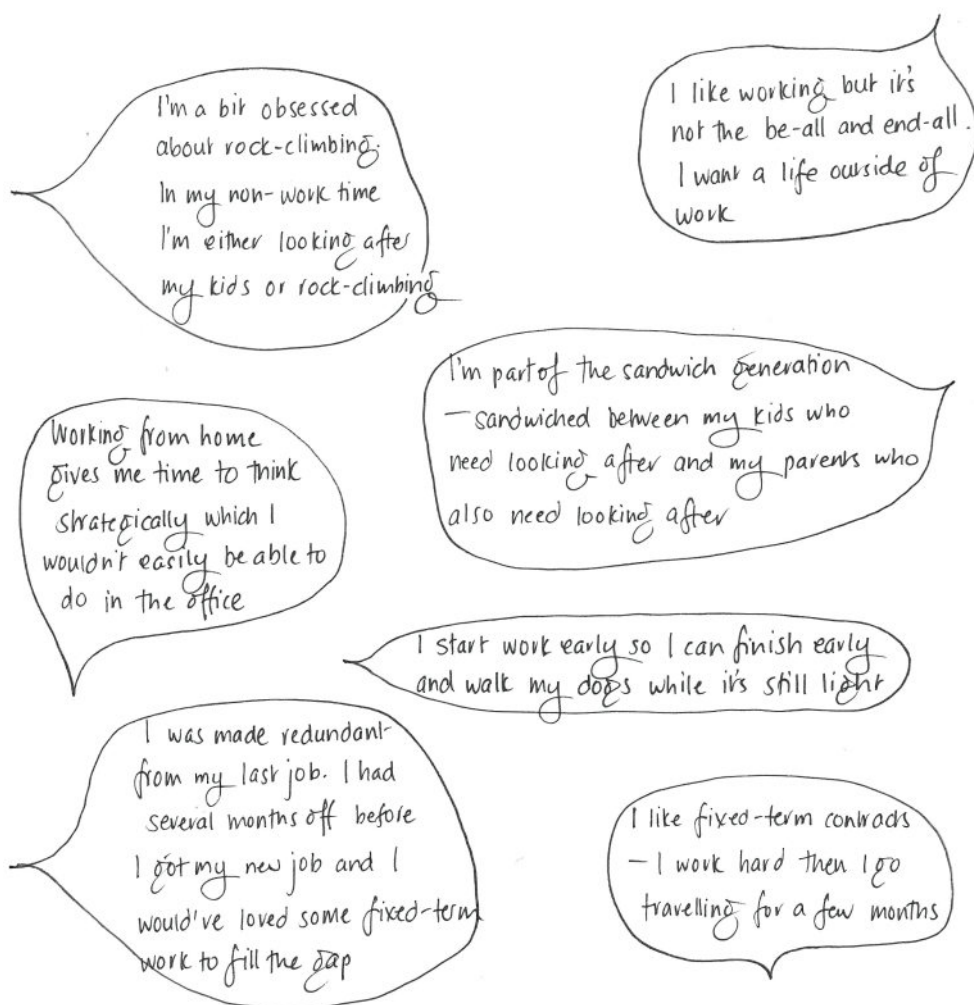
Una said she listens to her body's signals to stop or take a break. "It is important to know yourself," said Una, "to know when it's too much. If I feel my efficiency and attitude going down, I take a break. It could be dangerous if I don't."

Una goes for regular lunchtime runs and she usually starts work a bit late every other Thursday so she can go to piano lessons. "I try not to have set rules," said Una, "sometimes I need to start work early, sometimes I need to go home early. Sometimes I am more efficient working away from the office. It's not always easy keeping the work and non-work in balance, especially as I have become more and more senior. But I feel very strongly that it [flexible working] is the right way to work. You're a better lawyer – and a better leader – you can find innovative solutions and persuasive ways of putting your arguments if you're energised, well-rested ... not exhausted," said Una.

"I feel very strongly that it [flexible working] is the right way to work. You're a better lawyer... if you're energised, well-rested ... not exhausted."

Drivers for flexible working

There are a number of reasons why lawyers want or need to work on flexible terms:



For some lawyers, flexibility it is not a choice but a necessity because of caregiver responsibilities, health reasons, or other obligations outside of work. Recent surveys found that more than 2/3 of New Zealand workers would quit their jobs if offered similar roles with more flexible hours⁴ and that workers would prefer more flexibility in their hours over more holidays.⁵

There are a number of drivers leading to an increased demand for flexible working including:

Demographics

The nature of the workforce in New Zealand is changing. There are increasing numbers of women in the workforce who have primary caregiver responsibilities, an increasing number of working fathers who have caregiver responsibilities, more solo parent families (3/4 of which are women), and an ever-growing ageing workforce.⁶

4. Diversitas and OCG Consulting, *Flexible work design: A strategic imperative in New Zealand Business*, July 2015.

5. Robert Half, *Kiwi CFOs reveal their top priorities and forecasted challenges for 2017: survey*, 2016.

6. New Zealand has one of the highest rates of workforce participation for older workers in the OECD.

Career patterns

Traditional career patterns are changing, particularly amongst Millennials who tend to change jobs frequently.⁷ Flexible working suits the 'portfolio' lifestyles of many people today who see their professional life as one, and not necessarily the most important, component of their life. There is also a trend towards a "gig economy" (see Appendix 1 for more detail).

7. The Law Society of England and Wales reported that "Millennial mobility" is an emerging risk for employers as they face a growing battle to hang on to young legal talent. Source: Law Society of England and Wales, *Rethinking legal career development: How to enhance returns on talent, Career Satisfaction Survey Report 2015*, February 2015.

Cost and efficiency

There are various economic drivers for flexible working, including reduced accommodation costs and commuting time. It is also recognised that flexibility can sometimes lead to increased productivity and that businesses can financially benefit from this (see *Benefits of flexible working* below).

Technology

Technology is changing and advancing all the time. All the tools exist to enable people to work remotely and quickly connect with colleagues and clients at any time from wherever they are.

Legislative changes

A recent amendment to the Employment Relations Act 2000 means that any employee, not just those with caregiver responsibilities, can ask for a flexible working arrangement.⁸ A summary of the relevant statutory provisions is set out in Appendix 2.

8. Prior to the 2015 amendment employees could only request a variation to their employment conditions if they had caregiver responsibilities and only after they had been in service with the same employer for at least six months.

Sustainability

Cars and offices are big carbon emitters. Various international studies have tracked reductions in carbon emissions when employees work from home and some organisations are encouraging remote working for environmental reasons.

Resilience

Many organisations are now enabling (and in some cases requiring) employees to have the ability to work from home in the event that offices are not operational. The Canterbury earthquakes in 2010 and 2011 and the Kaikoura earthquake in November 2016 demonstrated more than ever the need for organisations to have good business continuity plans in place to enable employees to work remotely if workplaces are closed.

Well-being and balance

Another key driver for flexibility is a desire for improved well-being and a better balance between work and life outside of work. There has been considerable focus recently in the New Zealand legal profession on improving lawyers' wellbeing and helping lawyers achieve a better balance.⁹ Given the importance of this driver to lawyers, it is discussed further below.

9. See for example NZLS's Practising Well initiative featured in *LawTalk* and on the NZLS website.

Striking the balance

Many interviewees talked about the importance of, and difficulties with, striking a good balance between work and life outside of work.

There is limited data on levels of work satisfaction (or dissatisfaction) amongst New Zealand lawyers or their ability to balance work with other things in their life. However several recent studies in the UK indicate that lawyers often struggle to achieve a good balance. These studies found:

- approximately 30% of lawyers felt they were not able to strike the right balance between their work and home life¹⁰
- more women than men found it harder to achieve work-life balance¹¹
- over 67% of lawyer respondents thought working as a lawyer was more stressful than any other profession¹²
- 38% of respondents wanted greater flexibility in their career¹³
- a significant number of lawyers would not choose to be lawyers if they were given a second chance.¹⁴

10. Law Society of England and Wales, refer 7 above, p 12.

11. Ibid.

12. Keystone Law, *The Lawyer Happiness Survey*, October 2016.

13. Ibid.

14. *The Lawyer Salary Survey 2016 (UK)*.

The *NZLS & Hays Legal Salary Guide 2016* indicated that in-house lawyers in New Zealand rate work-life balance as the main reason for wanting to stay with their current employer and that of those considering a new role, 24% were considering a change for work-life balance reasons.¹⁵

15. *New Zealand Law Society & Hays Legal Salary Guide 2016*, pp 13-14.

Various international studies have shown that achieving a good balance is particularly important for Generation X and Millennials and this has been supported in New Zealand by findings from Josh Pemberton's research into the experiences of junior lawyers.¹⁶ Pemberton found that 19.5% of respondents were dissatisfied with their work-life balance, 19% were dissatisfied with access to flexible working arrangements, and 15.2% were dissatisfied with their hours of work.¹⁷

16. Pemberton, Josh, *First Steps: The Experiences and Retention of New Zealand's Junior Lawyers*, The Law Foundation NZ, 2016. Pemberton reported that work-life balance was among the aspects of work satisfaction most frequently mentioned in interviews p 23.

17. Refer 16 above, pp 24, 31, 59, table A21.

Striking a good balance is important because a failure to do so can lead to unhappiness, stress and other health problems, issues with alcohol and drugs, decreased productivity, and lawyers leaving the profession.¹⁸

*"The challenge is to ensure solicitors are not over-worked to the detriment of their wellbeing. Failure to address this could ultimately see some of the best, most hard-working talent going out of the door."*¹⁹

18. The legal profession has higher rates of depression, alcoholism, drug-use, and suicide than most. Refer *LawTalk* 732, 29 June 2009 "Lifting the veil of secrecy - depression in our profession", *LawTalk*, 734, 3 August 2009 "Depression in the profession".

19. Law Society of England and Wales, refer 7 above, p 12.

Sarah's story



Sarah Bartlett is the Head of Legal – Dispute Resolution at BNZ. Sarah has been at BNZ since 2008 and, for some of that time, has been job-sharing her role.

Sarah and a colleague proposed the job-sharing arrangement to their manager when Sarah was due to return to work following a period of parental leave. "We suggested that we would each work three days, with a day in the middle for handover," said Sarah.

Sarah said that BNZ has a flexible working policy that is actively promoted as being available to all staff. As well as job-sharing, Sarah has sometimes worked flexi-hours and worked from home. These arrangements have enabled her to keep working in a job she enjoys while juggling a busy family life.

Sarah identified several key factors to making a job-share work effectively:

- **The right person:** "It's all about finding the right person to share the job with," said Sarah. "While you might not do things exactly the same way, you've got to know that you have a similar approach to issues and are working to achieve the same standard."
- **Keeping up to speed:** Sarah and her colleague each took the lead on different files but kept each other in the loop through emails, handover notes, and by having regular catch-ups on Wednesdays, their cross-over day. Sarah emphasised that the crossover day was essential to ensuring that the other person was up to speed and could easily pick up a matter when needed.
- **Trust:** "You've got to be able to trust the other person and allow them to do things their way," said Sarah.
- **Setting boundaries but being flexible:** Sarah recommends setting boundaries, but also being flexible when required. "There will be times on your days off when you need to take a call or turn around comments because of the commercial dynamics of a particular matter," said Sarah. "Striking a balance is a challenge for everyone who works part-time."
- **A supportive manager:** "It [a job-share] couldn't work unless your manager supported it and had your back. I was lucky to have that in my case," said Sarah. "This type of arrangement had not been used in Legal before so we had to outline how it would work and the benefits for the organisation," she said.

Sarah recognises that job-sharing is not without its challenges, particularly when managing a team on a shared part-time basis. "It can be a challenge to be across everything that you need to be – team members' workloads as well as your own," said Sarah. "It is also not always easy to manage a team when you are not always there." However with the right person to share the job with, a supportive manager, and a commitment to making it work, Sarah said it can be a very effective way of maintaining (and progressing) a career while having a life outside of work.

Prevalence of flexible working

Flexible working around the world is on the rise and New Zealand is following the international trend. Statistics New Zealand has reported that:

- 1/3 of New Zealand workers are in "non-standard" work, in that that they are either self-employed or have temporary or part-time work
- almost 1/2 of all employees have flexible hours at least sometimes, i.e. they can start and finish work at different times if they want to
- almost 1/3 of employees spend some time working from home over a four week period.²⁰

*"The next five years (2014–2019) will see more than a third (39%) of New Zealand employees hired on flexible working arrangements, to attract, engage and retain the best talent for their business."*²¹

20. Statistics New Zealand, *Flexibility and security in employment: Findings from the 2012 Survey of Working Life*, March 2014.

21. Ibid.

New Zealand legal profession

There is limited data on the number of New Zealand lawyers who have flexible work arrangements. Various reports indicate, perhaps unsurprisingly, that:

- more in-house lawyers work flexibly than private practice lawyers
- the number of women lawyers working flexibly significantly outnumbers men
- the ability of organisations to offer flexible work arrangements is generally dependent on total resourcing, i.e. the bigger the team and the bigger the budget, the more likely it is that flexible working is offered.

The *NZLS & Hays Legal Salary Guide 2016* reported that 19% of in-house lawyers work part-time and 15% of private practice lawyers work part-time.²² Of the part-time in-house lawyers who responded, 90% were female and 10% male.

22. Refer 15 above, pp 6, 12.

The *2015 Benchmarks and Leading Practices Report* (the *Benchmarks Report*) reported that:

- 91% of organisations have staff on flexible work arrangements
- 47% of the respondents use flexible work arrangements as a means to help manage resources and costs
- 27% of respondents indicated that are planning to implement the practice in the next two years as a tool to help manage or reduce costs
- by 2017, 74% of organisations are likely to be using it as a tool to help manage resources and costs.²³

23. Australian Corporate Lawyers Association and Corporate Lawyers Association of New Zealand, *2015 Benchmarks and Leading Practices Report*, 2016, pp IV, 11, 72, 110, 172–174. The report did not include data on the numbers of lawyers on flexible terms or the types of flexible working arrangements.

At the 2016 Lawyers in Government Conference, I undertook a rough survey of all attendees (approximately 300 in-house lawyers from Government and Crown entities) and asked how many had some form of flexible arrangement at work, either formal or informal.²⁴ Approximately 1/3 of attendees indicated they had some flexibility and a further 40% indicated they would like some. I do not know whether these figures are indicative of numbers across the in-house profession, but I suspect they may be.

24. The survey was an interactive exercise, very unscientific, no accurate counting.

Public vs private sector

The public sector has traditionally been seen as being more open to flexible working terms than the private sector, but the impression I got from interviews is that this may no longer be so true. This impression is supported by research data which indicates that the industry leaders of flexible working in New Zealand are financial services, ahead of the public sector, closely followed by IT and telco companies.²⁵ Several in-house lawyers from private sector organisations, particularly banks, talked about their organisations proactively promoting and encouraging flexible working. Most interviewees from the public sector indicated that while flexible working was allowed, it was not generally promoted or encouraged in their organisations.

25. Refer 4 above, p 6. Male-dominated industries generally have lower levels of flexibility.

I read a number of flexible working policies from different organisations which varied hugely in approach. Some policies were very prescriptive and process-driven, while others, usually from the private sector, were more focused on changing culture, mindsets, and biases, moving away from valuing and rewarding presenteeism with a greater emphasis on delivery, outputs, and job satisfaction. Some organisations appear to be box-ticking while others are committed to mainstreaming flexibility, to make it an accepted norm.

A more formal survey is needed to determine how prevalent flexible working is in the legal profession and understand variances between the public and private in-house sectors, and private practice, as well as gathering data on different types of arrangements, gender, age, role, level, and reason.

John's story



John Buick-Constable is the manager of the legal team within the Government Procurement and Property team at the Ministry of Business, Innovation and Employment. His team won the ILANZ in-house legal team of the year in 2016.

John works full-time but has some informally-agreed flexibility over the hours he works. He finishes early on Thursdays so he can help out at home and pick-up his two daughters from school and kindy and he starts a bit late on Mondays and Wednesdays after dropping his girls at school and kindy. If his daughters are sick or there is another reason why he needs to be at home, he works from home.

John thinks his flexible working arrangement works well for two key reasons:

- **A high-performing team:** "It is my team that really make this work best," John said. "If things are pressing and I am not able to be present, I know I can delegate things to them and they will exercise good judgement."
- **A highly-valued team:** John said that the business understands and appreciates the value that the team brings. "As long as we deliver (which we do), no one questions anyone's absence," he said, "because we are known as a team that works hard and to a high standard."

John said that technology also helps. "While far from being perfect, the ability to conference call into meetings and access emails and documents on my mobile means that I don't need to be physically present in the office to contribute," said John.

John always makes himself available to his team and said it is recognised that when the heat is on, one or more of the team will be available for as long as is needed. "Presenteeism is not a practice I endorse nor do I encourage it from my team," John said. "There are enough times when we will be in the office working very hard for very long periods that the downtimes can, and should, be more flexible."

John previously worked in private practice. "I know what hard work is," said John, "I have worked colossally hard over the years." John described his 16–18 hour working days in a London law firm, how he would sleep in a cab to and from work, and how he and his (then) girlfriend (now wife) went for three months without seeing each other because he was either working or sleeping. John said that the desire to spend more time with his daughters was part of his move into an in-house role.

"Presenteeism is not a practice I endorse nor do I encourage it from my team."

John said he has never looked at the actual number of hours he now works but knows he does more than what he is contracted to do. He sometimes works into the evenings, on his afternoons off, and in weekends. "I'm never off duty," said John, "but the big benefit [of this arrangement] is that I get to engage with my kids more. This wouldn't happen in private practice. The culture of presenteeism prevents this."

Benefits of flexible working

Flexible working has a lot of benefits for lawyers and their employers. While flexible working has traditionally been seen as being for the sole benefit for the employee at a cost to the employer, this view is changing and numerous studies have shown that organisations can benefit from flexible working practices. Research has shown that flexible working arrangements can lead to happier and more engaged employees, less absenteeism, increased productivity, greater staff retention, and cost savings. The findings from some of these studies are summarised below.

The main benefits mentioned by interviewees are:



Increased productivity

*"[R]esearch shows that workers with flexibility are the most productive. Almost half of 'super achievers' indicate that they have a lot of flexibility in their role."*²⁶

26. The EY Australian Productivity Pulse, 2013.

A number of studies in the UK, Europe and the US have been undertaken into productivity levels of employees who work flexibly and many large companies track and report the efficiencies and benefits they gain from remote work policies. Some companies attribute much of their commercial success to their agile work policies.

Research into productivity levels of remote workers found that at-home workers are happier, less likely to quit, and were 13.5% more productive than those in the office and companies that allow employees to work remotely at least three times per month were more likely to report revenue growth of 10% or more, compared to firms without such policies.²⁷ Another study found that employees estimated they could gain about five productive hours per week through better ways of working (e.g. less commuting, less office distractions) and the research also found a direct relationship between flexible working and overall organisational performance.²⁸

27. Harvard Business Review, *Let employees choose when where and how to work*, November 2014; *To raise productivity, let more employees work from home*, February 2014. While a small-scale study, it found that employees who worked at home quit at 1/2 the rate of people in the office.

Higher productivity levels are largely due to employees:

- working in a quieter environment and having less distraction
- working longer hours – no commuting means they usually start earlier, finish later, and take shorter breaks²⁹
- taking less sick days.

28. RSA and Vodafone, *Flex Factor Report*, July 2013.

29. However longer hours may also lead to some not so positive consequences – see *Challenges* and *Various issues* below.

There has not been any detailed research undertaken in the New Zealand legal profession about the efficiency and productivity levels of lawyers who work flexibly, or any data on how it impacts an organisation's overall performance or cost savings. However a lot of interviewees talked about the efficiency of lawyers who work flexibly.

"I haven't seen anyone who works part-time who doesn't work really hard."

Manager, Public Sector legal team

"There is a lot to be said for being optimum. I can achieve more in a couple of hours in an optimum state than [I can] in two days in the office. If we're using billable hours, what makes more money? Longer unproductive hours... it's madness. There is a perverse disincentive to be efficient."

Partner, Law firm

"I always get good work out of part-timers – they're so efficient ... they don't spend time standing around gabbing."

Chief Executive, Government Department

"I was paid to work part-time but I produced just as much as the full-timers because there was no mucking around time."

Intermediate solicitor, Public Sector legal team

Cost savings

As well as tapping into increased productivity levels and efficiencies, there are cost savings that organisations can make from less absenteeism, decreased recruitment, and reduced property costs. The traditional office environment is expensive and several organisations are choosing not to carry such overheads and have staff work from home or cheaper environments.

"Office trappings are seen as benefit, but the savvy consumer realises they are a sunken cost and that they are subsidising these costs."

Partner, Virtual law firm

Attraction and retention

The ability to attract and retain great lawyers is critical to the success of any in-house legal team or law firm. The cost of recruiting, training and developing lawyers is significant. Flexible terms are often used as a retention tool as it is easier and cheaper than recruiting someone new.

"If you have good staff you want to retain, and if a more flexible approach to working arrangements does the trick, then that's better than having to replace and train new staff."

Manager, Public Sector legal team

Interestingly, while several managers talking about agreeing to flexible terms as a way to retain good lawyers, not many mentioned the use of flexibility as a tool to attract good talent (see *Final thoughts* in Part 3).

Dave's story



Dave Whiteridge is the Chief Legal Counsel at the New Zealand Transport Agency (NZTA). Dave has been in the role since 2006 and manages a team of 24 people who are spread throughout New Zealand. Dave is based in Wellington.

Dave said he takes a very people-focused approach to managing his team. "My theory has always been that if you treat people really well," said Dave, "and respect the things that are important to them, then when things need to be done urgently or out of normal work hours, they won't mind spending a bit of time to help out their customers/colleagues."

Dave has several team members who work part-time and he role models flexible behaviour himself – he works from home one day a week and has taken parental leave twice. Dave wants others to see that flexible working is do-able and supported. "My colleagues know they can get hold of me if needed," said Dave. "If they [colleagues] know you're accessible and responsive, then not being physically present in the office is not a barrier."

Dave initially took parental leave in 2011 and again in 2014. While arranging cover for his leave the second time, he noticed a change in attitude. "It was a bit of a punt the first time," said Dave. "Being in Wellington [at NZTA's head office] was seen as essential." The second time around, in 2014, his role was performed remotely by one of his team leaders based in Dunedin for half of that time. "It worked really well," said Dave. "There was more acceptance that you don't need to be physically present all of the time. And the tools were better to enable flexible working. But it did require a few more trips to Wellington to attend management meetings, etc."

In terms of resourcing, Dave said his team (like every other legal team I talked to) is resourced well below the peak. Project work and additional 'surge' work are outsourced. Other resourcing gaps, such as parental leave cover, are usually filled by fixed-term employees or secondees from law firms. Like every other manager I talked to in the public sector, Dave said state sector FTE caps sometimes prevented him from getting fixed-term or casual employees to fill the gaps, even though this was often the more cost efficient option.

Dave encourages his team to consider flexible working and said that the extra administration associated with having part-timers is not an issue. "What is more of an issue with part-timers is ensuring coverage and continuity on particular files," said Dave, "which can be exacerbated by my team's geographical spread."

"Flexible working environment benefits everyone," said Dave. "You have a more engaged team because people are able to prioritise family and other interests when they need to – knowing you trust them to get the job done. People are happier."

"Flexible working benefits everyone. You have a more engaged team because people are able to prioritise family and other interests when they need to."

Challenges of flexible working

Interviewees mentioned a range of challenges associated with different aspects of flexible working. However no one felt that they were insurmountable. It was generally felt that the benefits of flexible working outweighed the effort involved in resolving or managing the challenges.

"Nothing is insurmountable if everyone is committed to make it work. When it [a flexible arrangement] works, it works so well."

Manager, Public Sector legal team

The main challenges mentioned by interviewees are:

For Employers	For Lawyers
<p>Face-time</p> <p><i>"We have the tools to enable remote working but there is no replacement for face-to-face contact ... when the clients wander in, they want someone there."</i></p> <p>Manager, Public Sector legal team</p> <p><i>"The lawyers need to be there when the Chief Executive comes out of his office wanting advice."</i></p> <p>Chief legal advisor, Public Sector legal team</p>	<p>Presenteeism</p> <p>The need to be seen in the office and a perception that if someone is physically present, they are working and productive.</p> <p><i>"My manager was more concerned about my presence in the office (or absence from it) than what I was delivering. It was very much a 'bums-on-seats' mentality."</i></p> <p>Intermediate solicitor, Public Sector legal team</p>
<p>Fairness and equality</p> <p><i>"I don't want to be seen to give some people 'special treatment'."</i></p> <p>Manager, Public Sector legal team</p> <p><i>"It is a privilege to work on flexible terms. The reality is that others have to pick up the slack. If someone comes in [seeking advice] at a time when the part-timers aren't there, it is the full-timers who pick the matter up, especially with the super-reactive stuff... because they're there, they're visible."</i></p> <p>Chief legal advisor, Public Sector legal team</p>	<p>Unconscious bias</p> <p>Bias against those working flexibly leading to a negative impact on:</p> <ul style="list-style-type: none"> • quality of work received • professional development • career progression • networking opportunities • assumptions about commitment to the role.

For Employers

Lack of trust

"It [remote working] is fine with people I trust, but there are some people I just don't trust to work from home."

Manager, Public Sector legal team

For Lawyers

Building trust

Harder to build trust without face-to-face contact.

"I sometimes feel like my reputation is on a knife's-edge. All you've got [when working remotely] is email, phone, and output. You can't smooth things over in person, you can't give elevator pitches, or use your personality at the water cooler."

Senior lawyer, Private Sector legal team

Work demands

"There is too much work. I need full-timers."

Manager, Public Sector legal team

Workload, pressure to perform, stress

Working part-time does not always mean a reduced workload.

"I previously worked part-time, but found I was actually doing a full-time job for part-time wages. So I moved to full-time ... my workload didn't really change but I had more time to do it in."

Senior solicitor, Public Sector legal team

"I felt like I had to work extra hard to deliver, to prove myself... to not let anyone down. I did not want anyone to think I was failing because I was part-time."

Intermediate solicitor, Private Sector legal team

Unsupportive culture

Flexible working policy, but no senior buy-in to it.

"The Chief Executive said that as he is paying for the desks, they should be used."

Manager, Public Sector legal team

Unsupportive manager or colleagues

"I was made to feel that they [my manager, my employer] were doing me a favour by letting me work part-time."

Senior solicitor, Public sector legal team

"My manager had to know where I was every minute of the day ... I always did more than my hours but I felt like I always had to justify it [when I wasn't in the office] to my colleagues."

Intermediate lawyer, Public Sector legal team

For Employers	For Lawyers
<p>Budget and headcount</p> <p>Concerns about headcount caps and losing their budget for an FTE if take on a part-timer.</p> <p>Issues with part-timers who subsequently want to increase their hours.</p>	<p>Well-being of remote workers</p> <p>Failure to take regular breaks, lack of collegial support, working longer hours, lack of separation between home/work, and the knock-on effects to mental and physical health.</p>
<p>Extra administration</p> <p>Additional administration (e.g. staff management, performance reviews, leave requests) associated with having more part-timers.</p> <p>Difficulties scheduling team meetings for when everyone is in the office and harder to keep track of everyone's whereabouts.</p> <p>Harder to find desk space for everyone.</p>	<p>Guilt</p> <p>Feeling guilty for various reasons, including leaving the office when colleagues are still working, relying on others to pick up matters, being torn between competing priorities.</p> <p><i>"I feel guilty because I'm not fully at work and I'm not fully at home. It's a constant juggle and I'm often stretched too thin ... I feel like I'm not doing a good enough job as a lawyer or a mum."</i></p> <p>Senior lawyer, Public Sector legal team</p>
<p>Health, safety, confidentiality and security</p> <p>Concerns about health and safety requirements applying to all homes and remote work locations and issues about confidentiality and security of data taken or accessed outside of the office environment.</p>	<p>Health and safety concerns</p> <p><i>"I was told I couldn't work from home one afternoon a week because of health and safety concerns."</i></p> <p>Regulatory advisor, Public Sector team</p>
<p>Precedent-setting, opening the floodgates</p> <p>Fear that everyone will want to do it.</p>	<p>Misperceptions</p> <p>Sometimes seen as unsociable or not a "team player" because don't "chat at the watercooler" or attend evening networking events.</p> <p>Assumption that only women with kids want to work flexibly.</p>

For Employers	For Lawyers
<p>Team development</p> <p>Harder for team-building, developing a culture, professional development, knowledge-sharing, mentoring, collaborative working.</p> <p>Do not want to invest in upskilling or increasing knowledge of fixed-term employees if they are just gap-filling and going to move on.</p>	<p>Role models</p> <p>Lack of suitable role models.</p> <p><i>"The women lawyers who are promoted as successful are the ones who have worked all hours. We should be learning from those who are able to balance work with other things ... and talking to the ones who have left [the profession]."</i></p> <p>Senior lawyer, Public Sector in-house team</p>
<p>Nature of the work</p> <p>A belief that certain types of work are not well-suited to flexible working.</p>	<p>Openness, honesty, transparency</p> <p>Lack of openness (by individuals and managers) about flexible work arrangements.</p> <p><i>"Even now I admit to a degree of trepidation in being totally frank about the flexible way in which I work ... [I have a] small knot in my stomach that tells me honesty may come at a price. That someone somewhere will question my commitment because my constant days of long, gruelling hours at my office desk are done."</i></p> <p>Partner, Law firm</p>

Some of these issues are explored in further detail below. Several companies have produced toolkits and guides and offer advisory services to assist with managing the challenges associated with flexible working.

Hayley's story

Hayley Campbell* has been an in-house lawyer for about nine years. She started working part-time at an early stage in her career after having her first child. She has progressed in her career while working part-time and is currently working 30 hours a week at a government department while looking after her family and completing a Master's degree.

Over the years Hayley has had varying experiences working part-time and feels that the success (or not) of it largely comes down to the attitude of one's manager. When she came back to work after having her first child, she had a very supportive manager. "My manager was open to me coming back to work part-time," said Hayley, "I was pleasantly surprised it was that easy." Hayley sometimes took time out during the working day to feed her baby. "I would always do my hours," said Hayley. "My manager was fine about it. He was the sort of person who cared more about the quality of your work than where you were." Over time, Hayley increased her hours and worked an additional four hours a week from home. "That worked really well," said Hayley, "my clients were happy, I was happy, the team was happy."

However she had a different experience returning to work after having her second child. "There was a restructuring ... I came back to a different environment, a different culture," said Hayley. "I was still working part-time but I had a new manager and instead of having the flexibility to pop out and feed my baby when needed, my senior colleagues constantly questioned me about where I was and why I was working late or away from the office."

Hayley found it was easier to work part-time as a junior or intermediate solicitor, rather than as a more senior lawyer. "The more experienced I became, the more I was promoted or took on more responsibility, the more pressure there was for me to work full-time," said Hayley. "When you're a junior lawyer, you're judged on the quality of your work. However the more senior you are, the more you need to be there, to act as a mentor to others. Also the work is more complex, so it is more complicated to work part-time."

Hayley found that it was sometimes hard to progress to more senior positions on a part-time basis because some managers were worried about losing their FTE budget if they took on a part-timer. However Hayley believes that it is possible to progress your career while working part-time. "It is slower, but you absolutely can," said Hayley. "It is short-sighted if people are not open to flexibility. It encourages loyalty and organisations don't lose important institutional knowledge."

*Not her real name

"It is short-sighted if people are not open to flexibility. It encourages loyalty and organisations don't lose important institutional knowledge."

Various issues

Various issues recurred during meetings and interviews that are worth touching on further. Some of these topics warrant an entire research study of their own.

Unconscious bias and presenteeism

Unconscious bias refers to a bias that we are unaware of, which happens automatically outside of our control. Some people may be committed to equality and fairness and work hard to act without prejudice, yet still have underlying negative prejudices or stereotypes that affect their behaviour or actions.

Some interviewees talked about being, or feeling, prejudiced or disadvantaged because of their flexible working arrangements, particularly in terms of quality of work received or opportunities for career progression or professional development. Research has shown that unconscious bias exists, favouring full-time workers over others.³⁰

This bias plays out equally for women and men, but it can sometimes be seen as a gender bias because more women work flexibly than men. Flexible workers can be prejudiced, for example by receiving less interesting or challenging work, not because of their gender, but because they are simply not there. Some managers talked about allocating work to those who were present in the office and therefore 'front of mind'. Employees who were not in the office e.g. part-timers or remote workers, were sometimes overlooked when work was allocated or other opportunities offered.

Presenteeism can also present challenges to flexible workers. Presenteeism has several different meanings, but in the context of flexible working, it is about a need to be seen in the office and a perception that if an employee is physically present at a workplace, then they are working and productive. Remote workers may perform well but can be prejudiced because of such an unconscious perception.

Many organisations are recognising the role that unconscious bias can play in inhibiting the uptake of flexible working and are challenging traditional mindsets and biases by proactively promoting flexible working arrangements, ensuring flexibility is available to all staff (regardless of gender, role, level, or reason), focusing on rewarding performance and outputs (rather than hours spent in the office) and ensuring flexibility does not act as a barrier to career progression or receiving quality work. Many public and private sector organisations, including law firms, are introducing compulsory unconscious bias training for all staff.

Many organisations are recognising the role that unconscious bias can play in inhibiting the uptake of flexible working

30. A study by Symmetra found evidence of unconscious bias in the minds of the respondents, favouring full-time workers over flexible workers. Symmetra, *The Conundrum of Workplace Flexibility: Why do leaders advocate flexible work and then scorn those who use it?*, 2014. The research was not specific to the legal profession.

Nature of the work

There is more scope for flexible working with some types of legal work than others, but most areas have some scope for agility. Litigation was regularly mentioned, usually by non-litigators, as being an area particularly unsuitable for flexible working. Yet several lawyers I talked to have been undertaking litigation work while working flexibly for many years. These lawyers acknowledged that there needed to be some reciprocity – they sometimes needed to be available outside their normal work hours to write submissions, prepare evidence, brief witnesses, and attend hearings. But they did not think that litigation, per se, was a bar to flexible working or that it presented any additional challenges than other types of legal work, such as commercial, legislative, or compliance work, that also have deadlines and require face-to-face contact at times.

It was also recognised by many people I talked to that it is possible, and actually very sensible, to disaggregate or 'disbundle' cases or large projects or complex pieces of work and that a lot of it can be, and is sometimes better, done remotely and/or out of usual work hours.

Remote working

Remote working is the most commonly requested form of flexible work arrangement in New Zealand.³¹ Statistics New Zealand reported that 35% of employees in New Zealand have remote working options in their job, and 65% say it gives them greater job satisfaction.³²

31. Refer 4 above.

32. Refer 20 above.

It is not known what percentage of lawyers in New Zealand work remotely but a lot of interviewees had informal arrangements with their managers to work from home, either on a regular basis (e.g. one afternoon a week) or on an ad-hoc, as-needed basis. A lot of lawyers talked about the need for "quiet time" away from the office to read big documents, get their head around complex issues, or undertake strategic work. Some lawyers, such as "follow-the-sun" lawyers, work remotely most or all of the time and some law firms are choosing not to carry expensive office overheads and operate virtually or remotely.

Some employers require their employees to have the ability to work remotely, whether due to accommodation squeezes, as part of business continuity planning, or to reap the benefits of increased productivity. While the benefits of remote working are well reported (see *Benefits* above), the challenges associated with remote working are less reported. However several interviewees talked about the personal toll that remote working can sometimes have – the extra pressure to perform, the need to "prove" themselves more than if they were in the office, the failure to take regular breaks, the feeling of isolation, and the difficulties in drawing the line between work and home life.

Not everyone wants, or is disciplined enough, to work remotely. However it can open up a lot of work opportunities. As one interviewee from a small town said, "Imagine if the Wellington and Auckland job markets were opened up to us."

Use of technology

"We live in a technology-based internet society," said Daniel Susskind at the ILANZ Conference in May 2016. A lot of speakers at the 2016 ILANZ Conference spoke about the increasing role of technology in the delivery of legal services. It has not been within the scope of my project to explore all the technological solutions available to assist with flexible working, needless to say there are countless different solutions and new technology is being created every day to enable better, faster, easier, more reliable connections and data-sharing across the world.³³

Several people I met talked about technology being a "double-edged sword". As one interviewee put it, "we're given devices to enable us to work from anywhere, anytime, but it means we're available *all* the time." Una Jagose QC touched on this "dark side" in a speech to Crown Law Office employees:

Smart
phones
can make
for dumb
people

*"The 'always on' nature of our devices is a gift for flexible working. But we must control the devices and not let them control us. Smart phones can make for dumb people if we always leave them on and never switch off, never take time away from the office. So look out for the dark side of flexible working too."*³⁴

Career progression

I talked to a lot of people about whether it was possible to progress a legal career while working flexibly. I got a range of answers: "it's possible, but it's slower," "yes, but it's very hard," and the least common answer: "no." There were also mixed views about whether it was easier to work flexibly as a junior lawyer or as a more senior lawyer.

Josh Pemberton questioned junior lawyers about their views on career progression and reported that having and raising children (or even the perceived possibility of it) can impede career progression.³⁵

I talked to several legal managers, chief legal advisors, principal advisors, and a chief executive who have all advanced their legal careers while working flexibly.

Barriers to requesting flexible work

There are many reasons why flexible working arrangements are not adopted by employees or employers. Some of the barriers inhibiting the uptake of flexible work are:

- unconscious bias within the organisation
- a culture of presenteeism
- a fear of negative career consequences (sometimes seen as "career suicide" to ask for flexible terms because of a fear that it will lead to lack of promotion, less quality work, less development opportunities)
- fear of excessive workload
- lack of trust or support from managers or colleagues
- guilt, stigma, lack of confidence.

33. *LawTalk* has had several features in the last year on the use of technology in the legal profession, see for example *LawTalk* 893, 29 July 2016, keeping up with technology; law education responding to technology; *LawTalk* 896, 26 August 2016, Online Lawyering; and *LawTalk* 899, 21 October 2016, How Technology can make you more successful.

34. Una Jagose QC, extract from a speech to Crown Law Office staff, 2016.

35. Refer 16 above, pp 41-42.

Bridget's story



Bridget Miller is an in-house lawyer for an international management consulting firm. Bridget started working for her employer in London in 2005 and when her family moved back to New Zealand in 2007, Bridget continued working for them, remotely, from her home in a small village in the South Island.

Bridget undertakes commercial and contract work. Her manager is based in London, the rest of her team are in the UK, Europe, the USA and Wellington, and her clients are all over the world. Bridget works full-time, mainly school hours plus several hours in the evenings to talk to colleagues, clients, and other lawyers in various parts of the world.

Bridget's situation is still relatively rare, even in the private sector internationally. She says that her US clients are often amazed that she is lawyering from New Zealand and can turn things around while they are sleeping. Bridget talked about some of the benefits of working remotely:

- **For her:** "I'm able to do a big city job while living in the provinces," said Bridget. "I get good work and I have time to think strategically and write or review large contracts, which I wouldn't easily be able to do in an office. I don't have to commute and mornings are a pleasure as I'm not rushing to get everyone out the door and off to school and work."
- **For her employer:** Bridget said her employer gets a happy and productive employee and benefits from cost savings as it is cheaper to employ a lawyer in New Zealand than in the UK or US. "It would cost at least £10k a year for them to provide a desk for me in London," said Bridget. "My manager couldn't care less where I am and in exactly which hour of the day or night I do it, as long as I do the work."
- **For her clients:** Her clients have the benefit of having a lawyer available at times when UK or US lawyers are not available. "A lot of my clients are off-site all day consulting, so it is good for them to be able to talk to me in their evenings," said Bridget. "My clients don't care whether someone is in the office as they're all off-site as well. They just need to know that they can get hold of their lawyers when they need them."

Bridget also talked about some of the challenges of remote working:

- **Vulnerabilities:** "I feel I have to prove myself more and I am more vulnerable because I am not there in person," said Bridget. "I have to work harder [than if in an office] and I go to great lengths to deliver, even if it is inconvenient to me because I never want to let anyone down. I never want people to think I'm not doing such a great job because I'm not there in person."
- **Well-being:** Bridget said that it is very easy to get drawn into a task and because there are none of the usual distractions as in an office environment, it is easy to plow on and not take a break. "No one can see how busy and stressed I am – it's up to me to phone or email my colleagues during those times and ask for help which can be difficult when you are in that [stressful] situation." Also without the physical separation between work and home Bridget said it can be easy to slip back into work-mode. "I sometimes think I'll do 'just one more' task," said Bridget, "which I do at the expense of time with my family and exercise."
- **Attitudes:** Bridget has encountered some old-fashioned attitudes about her way of working. "Someone recently said to me, 'What do you mean you're busy – you work from home.' It would be very different if I was working in an office."

Bridget thinks the critical factors to successful remote working are trust, a supportive manager, and good technology. "It [technology] needs to be good enough so it makes no difference to my clients that I'm not there in person," said Bridget. Overall she thinks her current working situation is ideal. "I enjoy it and it works for me and my family at the moment," says Bridget. "Remote working is not a barrier to good work."

Flexible working in practice: keys to success

Interviewees identified the following key factors to a successful flexible working arrangement:



trust



reciprocity



good communication



good technology



support



adaptability

Trust trust trust

Every interviewee said that trust between an employee and his or her manager was critical to having a successful flexible working arrangement.

Trust is more easily established with longevity, once someone has been at an organisation long enough to establish credibility and for people to know they will get the job done regardless of when or where they work. Several interviewees said it was difficult to ask for flexible working terms when applying for a new job as that trust had not yet been built. "I can't ask to work part-time – I haven't earned my stripes yet," said one interviewee. Where trust is lacking, a flexible working arrangement will be more challenging and it can have negative effects on working relationships, motivation and performance.

Good communication

Good communication is the other essential factor mentioned by interviewees, not only between an employee and his/her manager but with all team members and colleagues/clients. Interviewees said that clarity is vital and that it is essential to have up-front open conversations about priorities, expectations, availability, and the practical details about how the arrangement is going to work.

"Setting a good foundation is essential. Then everything else falls into place."

Manager, Public Sector legal team

"Communication and trust are key to flexibility. It is the practical conversations that go along with working flexibly that have proven to be vital. We have trained our managers to have the conversation about the practical things: what hours are people going to work, what days of the week they plan to be in the office and the timing impacts of childcare pickups and drop-offs. One of the things that surprised us was in the training so many of the male managers had thought that it would inappropriate to have those conversations."³⁶

Michelle Dixon, Partner and CEO at Australian law firm Maddocks

36. Michelle Dixon, *Effective strategies to encourage progression of women in senior roles*, 2016.

Support

Interviewees said it was essential to have strong support from their manager and colleagues, a supportive workplace environment, and support at home.

Supportive manager: Many interviewees felt that the level of support from one's direct manager could make or break a flexible working arrangement. Managerial support was seen as being more important than having a supportive workplace environment. More than one interviewee talked about situations where they had a great flexible arrangement, but when their manager changed, the arrangement did not work so well (which led to them leaving their job).³⁷

Supportive colleagues: Several interviewees talked about having a buddy or support person within their organisation who "had their back" and who could cover for them when they were not available (and vice versa).

Supportive culture: Some interviewees said their organisations actively promoted and supported flexible working, others talked about a culture that focused more on time and attendance than results and performance.

Support at home: Many interviewees said they would not be able to balance work with family and other important things in their life without having support outside of the workplace from their partner, family members, or friends.

37. When exploring this situation further, it was felt that no one should assume that things are going to continue as before without having those up-front conversations again and re-setting expectations.

Reciprocity (two-way flexibility)

Both lawyers and managers talked about the need for flexibility to swing both ways. If employers provide flexible terms, then the quid pro quo is that employees need to be flexible in return (e.g. be available at times when they would not normally be working). All the lawyers I talked to recognised this and said that while it was important to set boundaries, they accepted that there would always be times when they might need to be available outside their normal work hours.

Good technology

An essential factor to working remotely is good technology, not only a reliable internet connection but a system that ensures confidentiality and security of data. Several lawyers with geographically-spread teams talked about the usefulness of systems that enabled them to 'chat' with colleagues based elsewhere.

Adaptability

An arrangement that works well at a particular point in time, may not work continue to work when circumstances change. There is no 'one-size-fits-all' approach to flexible working and some experimentation may be needed to find what works best for the individual, manager, team, and organisation.

"Nothing is set in stone. Find a solution that works for that particular period of time. If it no longer works, change it."

Manager, Public Sector legal team

Sarah's story



Sarah McKenzie is a manager in the New Zealand Police Legal Services team. She manages a team of five lawyers based in different locations, four of whom have flexible working arrangements. Sarah works four days a week and is expecting her fifth child in early 2017.

Over the last 10 years Sarah has worked full-time and part-time in Police and elsewhere. While it hasn't been without its challenges, Sarah says there are a number of things she has learned that have enabled her to balance work with a busy family life:

- **Be flexible:** Sarah said that the quid pro quo of flexible working is that she needs to be flexible too, working on her days off when required or changing her work hours for a period of time to meet the needs of her job.
- **Be unapologetic about other demands:** Sarah said she has learned not to apologise to colleagues about her other responsibilities and their impact upon office availability. "A perception still exists among some people that flexibility in work arrangements is abnormal," said Sarah, "that employees with flexible work arrangements are receiving a 'favour' and are less valuable employees. I don't think that is true. Apologising for flexible work arrangements feeds into that view so I try hard not to do it."
- **Find your allies:** Sarah said that mutual support and good relationships are key to successful flexible working. "I've had fantastic support from colleagues over the years," said Sarah. "What has been particularly helpful has been developing strong relationships with support staff and with colleagues in similar situations: if you are quick to step up when your colleague needs someone to cover for them, you tend to get the same support in return."
- **Correct wrong assumptions:** Sarah said that it is sometimes assumed that flexible workers won't want to take on secondments or big pieces of work which might conflict with their work schedules. "If you want to continue developing your career while working flexibly and are prepared to adjust your work arrangements for a period of time," said Sarah, "make sure your manager is aware of that."

Sarah said that her experience of flexible working has been very positive and Police have been particularly supportive in accommodating her flexible work arrangements. However she has noted that sometimes organisations can unwittingly make life more difficult for those working flexibly, for example by regularly scheduling meetings at school drop-off or pick-up times.

Sarah believes there is still real resistance, much of it unfounded, to flexibility in the wider legal profession. She thinks a greater willingness to adopt flexibility in the workplace would be beneficial for the profession.

Sarah said she has noted the conversations and numerous articles about improving the participation of women in the legal profession, particular in senior roles. "I've been struck by how often these conversations seem to start from the premise that the problem lies with women: we haven't figured out how to successfully develop our careers, we lack ambition or a willingness to push ourselves forward," said Sarah. "I've attended seminars where I've been told how to stand, how to dress. I've listened to and read profiles about 'successful' women lawyers outlining their path to success, paths that as a mother of four children I could never and would never choose to replicate."

Sarah said she has enormous respect for all the women and members of other marginalised groups within the legal profession who have successfully forged their way up the legal ladder but she thinks it's time the conversations were broadened. "As a profession we have adopted an extraordinarily conservative view of what a good lawyer looks like and what progress through the legal profession looks like," said Sarah. "We all know that it [working all hours] is unsustainable and the effect on retention of staff and on mental and physical health is really detrimental. It seems to me that the profession would be doing itself a favour if it turned to the growing group of women lawyers who have been quietly working to forge a different kind of successful legal career, one that values a balance with life outside of work, and asked 'how did you achieve success?'"

"As a profession we have adopted an extraordinarily conservative view of what a good lawyer looks like and what progress through the legal profession looks like."

PART 2:

Innovative legal services models

Overview

In this part of my report I explore new ways for in-house legal teams to obtain on-demand legal support, particularly options that harness a largely untapped talent pool: the *League of Lawyers*. I explore what is happening overseas, look at various types of "alternative" legal service provider, and outline some regulatory constraints that prevent certain types of legal business establishing in New Zealand.

In-house legal needs

The more-for-less challenge

In-house legal teams (and the organisations they are part of) are under increasing pressure to deliver more value with less money. Richard and Daniel Susskind refer to this as the "more-for-less challenge".³⁸ Many legal managers talked about this challenge and the strain in managing tight budgets and limited headcounts while dealing with an ever-increasing workload.

38. Susskind, Richard and Daniel, *The Future of the Professions*, Oxford University Press, England, 2015.

All legal teams face peaks and troughs in workloads. Not a single team I talked to is resourced for the peaks, yet they are all expected to effectively manage workload spikes and resourcing gaps while continuing to deliver high quality legal services and proactively improve service delivery.

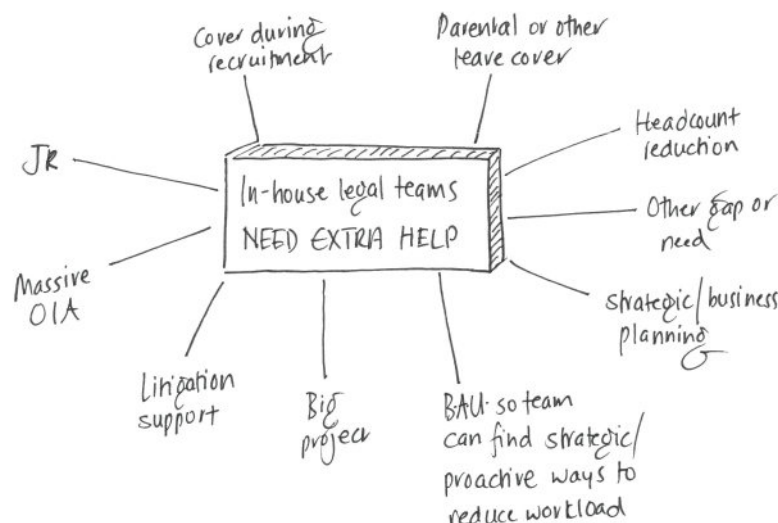
The *Benchmarks Report* found that workload and lack of time to undertake it is the most significant area of pressure for in-house counsel affecting almost 80% of teams.³⁹ Workload issues can be addressed if resources can be thrown at it however the study found that legal functions are increasingly under pressure over resources, with the majority of legal functions being under "high to extreme pressure" due to resource and budget limitations, as well as pressure to reduce external spend, attract, retain and motivate good lawyers, and a constant pressure to demonstrate value.⁴⁰ And it is not going to get any easier, with 77% of legal functions predicting workflow to increase over the next two years.⁴¹

39. Refer 23 above, pp IV, 11, 110.

40. Refer 23 above, pp IV, 11, 110.

41. Refer 23 above, p 103.

It is not just in-house legal teams that face these challenges. Organisations without an in-house lawyer, particularly small businesses and start-ups, have similar challenges. It is an issue affecting public and private sector teams and it has a knock-on effect to law firms.

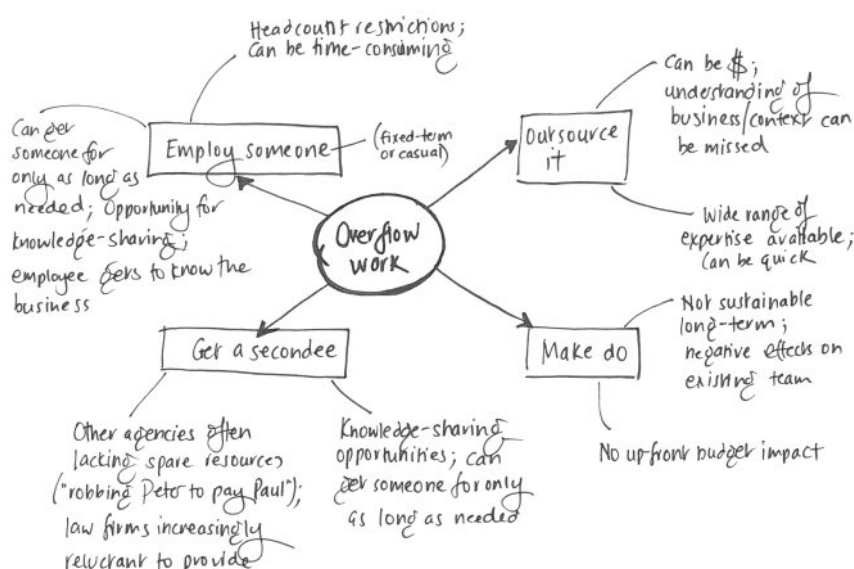


Current options

The main options for in-house legal teams to obtain ad-hoc legal support are to:

- engage a law firm or barrister
- obtain a secondeed from a law firm or another agency
- employ someone under a fixed-term or casual employment contract
- make do, push through with the resources available.⁴²

While all of these options have benefits, they are not always quick, affordable, practicable or sustainable.



42. These are not the only options but they are the main options used by those I talked to. Less commonly used options include obtaining paralegal or legal executive support, or the use of shared services in accordance with rule 15.2 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.

The *Benchmarks Report* showed that since 2012, there has been a shift of financial resources with greater focus on internal resources and less spend externally.⁴³ It showed that 89% of in-house teams' external spend is allocated to law firms and the remaining 11% is spent on barristers, legal process outsourcers (LPOs), information services and specialist software, and "other legal services providers."⁴⁴

43. Refer 23 above, p 39.

44. Refer 23 above, p 34.

The use of LPOs and other legal service providers (i.e. other than law firms and barristers) is less common in New Zealand than Australia, England and other parts of the world where regulatory restrictions have been relaxed to enable alternative types of legal business (see *What is happening overseas?* and *Regulatory restrictions* below).

Alternative options for in-house legal teams to obtain ad-hoc legal support in New Zealand are currently fairly limited. Managers I talked to want experienced lawyers who can hit the ground running. They want "lawyers-on-tap" quickly, when needed, for only as long as is needed, at reasonable cost.

There are a number of ways lawyers-on-tap could be provided, but one of the aims of my project has been to look at ways to harness a largely untapped talent pool: the *League of Lawyers*.

League of Lawyers

At the 2016 Lawyers in Government Conference I talked about the number of lawyers in New Zealand who want or need, for various different reasons, to work on flexible terms. I used the phrase "League of Lawyers" to describe this group. The League of Lawyers does not actually exist as a group – it is a name used to represent a disparate mix of individuals – a pool of legal talent that is not currently being harnessed or tapped into to its full potential.

The League of Lawyers is made up of lawyers and former lawyers of all ages, genders, levels of experience, and skill-sets from the public and private sectors and from private practice. These lawyers may be in permanent positions and want a change, or they may be working on suitable flexible terms on a temporary finite basis. Or they may not be able to find law work on suitable terms and have left, or are thinking of leaving, the profession.

These lawyers are not just women with children, although a large number of them are likely to be. They are also Millennials and Baby Boomers – those who are approaching retirement but are not ready to fully finish working – and all ages and stages in between. These lawyers all have their own reasons for wanting or needing to work flexibly.



A number of lawyers, men and women, young and not-so-young, have told me that they are, or could one day see themselves being, part of the League of Lawyers. I have not attempted to prove that the League of Lawyers exists. I have assumed there are a lot of lawyers in New Zealand who fall into one or more of the above categories. My assumption has been supported to some extent by the fact that Lexvoco, a new legal business which started recruiting casual ad-hoc lawyers in July 2016, has, at the time of writing, more than 85 lawyers on its books.⁴⁵

45. See *Connecting the dots* below for more information about Lexvoco.

No hub

I talked to several lawyers who are keen to get back into lawyering on some form of flexible terms after having kids, after returning to New Zealand from overseas, and after being made redundant. I also talked to lawyers who were keen to find new roles on more flexible terms. They all indicated that there is no obvious 'on-ramp' or route into (or back into) the profession on a flexible basis. While there are recruitment agents and various types of networks, there are not any that are specifically set up for or targeted at lawyers who want to work flexibly. "There is no central hub," said one interviewee. More than one interviewee said that recruitment agents had told them that they would not be able to get part-time legal work, and some felt they had no choice but to take full-time roles with little or no flexibility.

I talked to lawyers, who, out of desire for greater flexibility or autonomy, moved from private practice into in-house roles. Perhaps more surprisingly, some moved from in-house into private practice. Others set up their own business, becoming sole practitioners, or joined with others to create their own firm. Some moved into other legal-related roles (e.g. legal consultancy), others left the profession altogether.

The in-house legal profession is often seen as the place to get work on flexible terms. But it is not always easy to do so. It is still relatively rare to see part-time legal jobs advertised, let alone ones that offer other types of flexibility (other than fixed-term leave cover). A lot of lawyers, men and women, want more flexibility than is currently being offered in the legal market.

In New Zealand, there are two main ways to work as an in-house lawyer: as an employee of a non-lawyer organisation or as a contractor. It is not possible for a lawyer to work as a freelance in-house contractor unless she or he is entitled to set up on her or his own account. Lawyers who want to work in-house but who have not set up on their own account, must either be employed by an organisation or work in a different (non-lawyer) capacity. Appendix 1 explores these options and freelance in-house lawyering in more detail.

Value in harnessing

There is value in harnessing the League of Lawyers, in providing a one-stop shop or a central hub (or hubs) for the benefit of lawyers wanting in-house legal work on flexible terms and for in-house legal teams that need them.

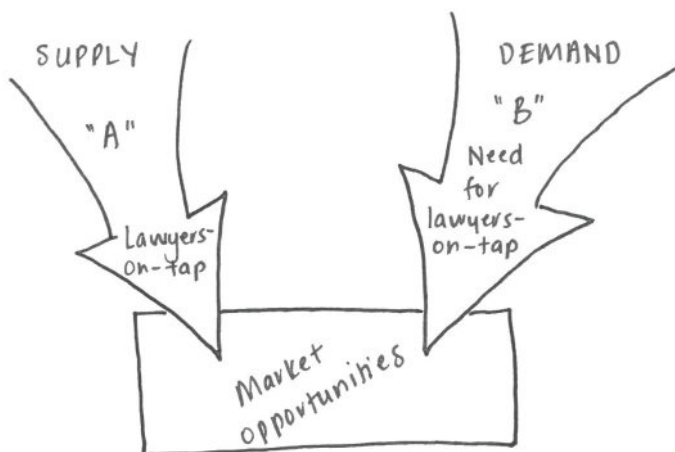
Obviously not all lawyers wanting flexible legal work will be content with temporary arrangements, some want permanent in-house roles. However this part of my report is about exploring innovative ways to connect:

the supply of lawyers-on-tap ("A")

with

the demand for lawyers-on-tap ("B")

The lawyers-on-tap could be available on a full-time, part-time, fixed-term or flexible basis to cover employee gaps or help with big projects or overflow work. They could work on-site, like a secondment, as part of an in-house team or they could work remotely, on-call, to provide extra capacity as and when needed. A flexible legal service would enable in-house legal teams to be more elastic and expand and shrink as the work demands.



Daniel's story

Daniel Thomas* is in his 60s and has been a partner at a large law firm for about 25 years. Daniel stepped down as partner a few years ago and has since worked at the firm as a consultant with about half a full partner practice. While the consultancy arrangement has been working well for both him and the firm, and while he could continue to extend it, Daniel is ready for something new. "It would really be more of the same," said Daniel. "It would be good to have new opportunities. I would like a different environment, different people, different flexibility," he said.

Daniel said that while his current consultancy arrangement offers some flexibility (once he meets his fees budget), it does not enable him to take decent periods of time off. "I would like more flexibility," he said. "Ideally I'd like to work on three to six month contracts then take a few months off to travel ... to go and see my family who are living overseas."

Daniel has been exploring the possibility of working in-house in the public sector. He recognises that such a change would be a bit of a steep learning curve at first, but that a lot of the skills he has developed over the years in private practice would be transferable to an in-house role. "There are some different disciplines around working in the public sector or in-house," said Daniel, "but this is part of the challenge. I think I'd find that really energising."

Daniel said that a lot of lawyers at his age and stage are looking for new challenges. Some are finding these new challenges through directorships or teaching or other avenues, however Daniel feels there are probably a good number of lawyers who are looking to continue practicing law, but in a different way from the way they have for the last 25–30 years.

*Not his real name

"It would be good to have new opportunities. I would like a different environment, different people, different flexibility."

Jean's story

Jean Tempest* has worked as a lawyer for about 11 years, including several years in London at an investment bank and the London Stock Exchange, before returning to New Zealand in 2010. She has written several books and has three children.

When I talked to Jean, she had a gap between writing projects and was keen to find some legal work, particularly on a part-time or fixed-term basis. "A leading recruitment agent told me 'the law profession doesn't really do part-time,'" said Jean, "and that because I had been out of law for so long, it would be difficult to pick up contract work." These messages mirror what other interviewees have been told by recruitment agents.

"There is so much self-doubt out there."

"I've been out of the law for a few years but my brain isn't mush," Jean said. "I've written books, I've studied neurology and I've learnt a lot of new skills since having kids – negotiation, logistics ... but these skills aren't necessarily recognised."

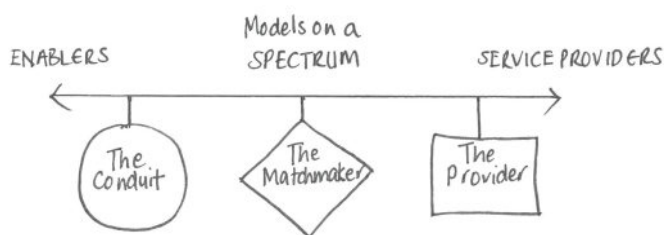
Like a lot of other interviewees, Jean said her family is a priority and that while work is important, it is not her life. "I'm not prepared to work all hours," said Jean, "I'm not lazy. I'm happy to do extra hours, but not all the time."

Jean said she knows a lot of women who are in a similar situation. "I know a lot of mothers, previously successful career women, who now want to go back to work," said Jean, "but they're lacking confidence. There is so much self-doubt out there."

*Not her real name

Connecting the dots

I explored numerous different types of business model to connect "A" with "B" and filtered them down to three main types:



The Conduit: a network or platform that enables A and B to connect with each other

The Matchmaker: an agency that connects A with B

The Provider: a business that provides A, as a service, to B

I have made assumptions about how these models could work and have presented them on a spectrum as variations and hybrids of all of them are possible.

Assumptions

These models are primarily designed for the provision of flexible on-demand legal services to in-house legal teams. However they may also be used for other purposes, such as recruiting permanent team members or providing support to law firms or organisations without an in-house lawyer. They are not designed for the provision of legal services to individuals or the general public.

The models are intended for the provision of regulated services by lawyers, but they could also be used for other types of legal support from non-lawyers, such as paralegal, legal executive, or legal consultancy services, provided they are not undertaking reserved areas of work.⁴⁶ Regardless of the type of model used or service provided, steps would need to be taken to ensure compliance with the Lawyers and Conveyancers Act 2006 and relevant rules and regulations.

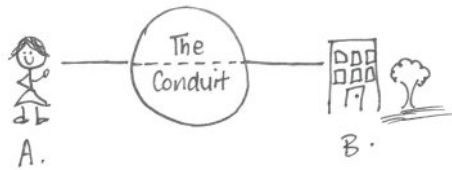
These models could be run by the private sector for private and public sector use. It is also possible that some of the models, or variations of them, could be run by a centralised public sector agency for other entities within the agency's network or scope (if within its statutory powers to do so).

The lawyers may be engaged by the client organisations as employees, on a fixed-term or casual employment basis, or as contractors under contracts for services if they are practising on their own account (see Appendix 1 for further detail about lawyers as contractors).

⁴⁶ Legal services, legal work, regulated services, and reserved areas of work are all defined in s 6 of the Lawyers and Conveyancers Act 2006. Reserved areas of work may only be undertaken by lawyers or incorporated law firms (s 24).

The Conduit

The Conduit is a network or platform that enables A and B to connect with each other. The Conduit is an enabler, rather than a service provider. It provides a central hub for lawyers to go when they want flexible work and for organisations to go when they need ad-hoc legal support. The Conduit would not undertake any recruitment or vetting, and unlike the Matchmaker and the Provider, the Conduit would not find or match the right lawyer to the need.



Of the three models, it would be the simplest to set up and run. It could be entirely technology-based, like Upwork, but focused on legal work.⁴⁷ It could include a review and rating system, like Avvo, operating like TripAdvisor for lawyers. It could even be a phone app (a "Lawyers-on-tap app"), like Uber, but for lawyers.

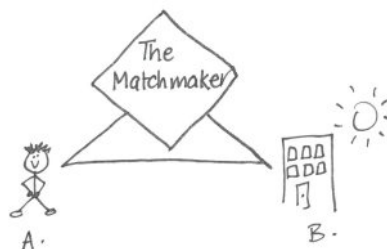
⁴⁷. Upwork (formerly e-lance) is an online platform where companies connect with freelance web developers, designers, writers, consultants.

One example of such a model operating in New Zealand is the Savvy Network which was set up at the end of 2016 to provide a platform for people, particularly working mothers, looking for flexible work. The Savvy Network is not specifically focussed on legal work, although it has some legal jobs on its books.

The Matchmaker

The Matchmaker is an agency that connects A with B. It undertakes initial recruitment and vetting, including reference checks, and has lawyers of a high standard 'on its books'. Client organisations that need ad-hoc support approach the Matchmaker with their needs and the Matchmaker puts forward suitable candidates. Client organisations select the best lawyer(s) for their needs.⁴⁸

The Matchmaker could operate in the same manner as a normal recruitment or placement agency but with a specialty focus on lawyers who want flexible work and clients who need interim support – a dating-agency for lawyers and client organisations.



⁴⁸. Any provider of recruitment-type services to Government agencies may need to consider the impact of the All of Government external recruitment services panel.

The Matchmaker is distinct from the Provider as it does not engage its lawyers and is not responsible for any overheads (e.g. insurance, practising certificates) nor does it provide any ongoing support, supervision, management, training or development.

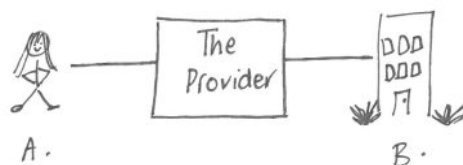
Careering Options is an example of an agency that connects employers, generally in the public sector, with professionals who want the flexibility of contracting. Its founders recognised that there were many highly skilled women who wanted to return to work and utilise their skills while raising families but found little opportunity in an employment environment constructed around full time permanent work. While Careering Options may have some law jobs and lawyers on its books, it does not specialise in legal recruitment.

Variations of this model include a "panel" or a "pool" of lawyers-on-tap which could be run by a centralised agency in a similar manner to the All of Government External Legal Services Panel⁴⁹ or MBIE's Commercial Pool of procurement expertise.

The Provider

The Provider is a business that provides A, as a service, to B. The Provider engages its lawyers through employment contracts or contracts for services and provides lawyers to client organisations that need them.

The Provider may or may not be a law firm.⁵⁰ The Provider is designed to be more cost effective than a traditional outsourcing model. It is different from the other models because it engages its lawyers and may provide support, training, development, and cover overheads such as insurance and practising certificates.



There are numerous examples of law firms and businesses overseas that have adopted this type of model (see *What is happening overseas?* below). And there are some new legal businesses in New Zealand operating, or soon to be operating, this type of model (see *What is happening in New Zealand?* below).

Lexvoco is an example of such a business. Lexvoco set up in New Zealand in June 2016 and is the first flexible legal service provider of its type in New Zealand.⁵¹ Amongst other services, Lexvoco provides lawyers on-call when in-house or private practice legal teams are under-resourced or there is a skill gap. At the time of writing, Lexvoco was not operating as a law firm in New Zealand, although it expects to become one in mid-2017 to complement the in-house resourcing services it provides.

49. The AoG Legal Panel is an agreement for the supply of external legal services to government departments and other agencies. Participating agencies have access to a panel of 40 law firms with pre-agreed terms. It is an example of a hybrid between the Conduit and the Matchmaker models. While MBIE has set up and administers the panel, it does undertake any 'matchmaking' between law firms and clients.

50. In certain situations the Provider must operate as a law firm and be subject to the regulatory requirements placed on law firms.

51. The Lexvoco group also has offices throughout Australia, where it has been operating since early 2015.

Benefits and challenges

All the models have different benefits and challenges. The benefits of all of them are that they provide a central hub for organisations to go when they need agile legal support and for lawyers to go to when they are looking for temporary flexible legal work.

The lawyers are able to work on terms that suit them and are able to work at a range of different organisations, leveraging off the experience and sharing the knowledge they gain at each place. Organisations have the benefit of only needing to engage the lawyers for as long as needed without ongoing overheads or costs when the demand is not there.

A challenge with the Conduit and the Matchmaker models is that the client organisation would need to employ the lawyer-on-tap unless the lawyer is practising on his or her own account (see Appendix 1 for more detail). Many managers noted that employing interim legal support, even on a fixed-term or casual employment basis, is often problematic because of headcount restrictions and employment freezes. Another challenge is to ensure that the administration (recruitment, procurement, negotiating contract terms, overheads) does not become onerous to the point that it outweighs the benefits. There would be less administration with some of the models (e.g. where there is a 'panel' or 'pool' of lawyers available with pre-agreed contractual terms) or where the lawyers are employed by a law firm or where they can be engaged under contracts for services.

A downside for the lawyers is that they would have no guarantee of ongoing work, no security of tenure and potential issues with professional development and career progression.⁵²

52. The lawyers would need to keep NZLS updated of their primary employer.

Potential implications

Could law firms lose business as a result of any of these models?

It seems unlikely. These models are not designed to replace or be in direct competition to law firms. Law firms will always have their place, e.g. for specialist expert advice. If the market establishes there is a demand for lawyers-on-tap, then law firms could also tap into the demand. Many of the flexible service providers overseas have been set up by law firms.

Could organisations get rid of their in-house legal teams?

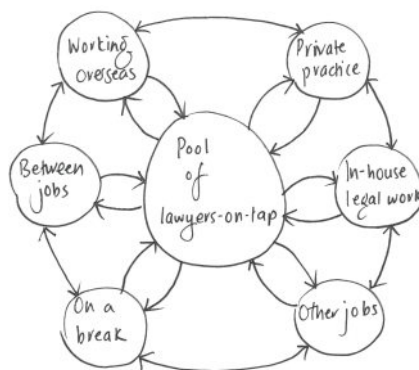
These models are not designed to replace in-house legal teams, but are intended to enhance and support in-house teams when needed. Their success (or otherwise) will depend to an extent on good in-house management, having an in-house lawyer or team that can identify the need for additional support and effectively manage it.

Could the lawyers-on-tap join organisations on a permanent basis?

This is possible. It would be a great outcome if the lawyers-on-tap were able to get permanent in-house work on terms that suited them.

Won't this deplete the pool of temps available?

It is unlikely that the pool will be permanently depleted as it will be continuously re-filled from other sources (e.g. lawyers wanting a change in job or a change in terms, lawyers returning from overseas, those approaching retirement, lawyers returning to work after having children, those who have been made redundant).



Why isn't anyone already providing flexible legal services?

They are. Flexible legal providers have been running successfully overseas for a number of years and they are now starting to establish themselves here (see *What is happening overseas?* and *What is happening in New Zealand?* below).

Which model is best?

All the models have different benefits and challenges. Their success (or otherwise) will depend on how well they are developed, marketed, managed, operated, and the individuals involved. Ultimately the market will determine which will succeed or not.

What is happening overseas?

Over the last few decades, a number of "alternative" or "New Law" legal services providers have been setting up. "New Law" is a phrase that describes new businesses in the legal services market that do not operate under the traditional law firm ("Big Law") partnership model. New Law providers are also known as alternative legal service providers (ALSPs) or alternative structured legal businesses (ASLBs).

There are various types of New Law providers including:

- **Legal process outsourcers (LPOs)** – providers that use technology, process and wage arbitrage to more efficiently and cost effectively undertake discovery, due diligence and bulk contracts work⁵³
- **Virtual law firms** – firms that do not have a central office. Employees work from home or remotely or at clients' offices⁵⁴
- **On-line platforms** – platforms that connect lawyers and clients in virtual marketplaces⁵⁵
- **Alternative fee providers** – firms that do not charge on an hourly rate but use alternative billing methods
- **Flexible legal service providers** – providers of flexible legal services (see below).

53. For example Integreon and Novus Law.

54. For example Evolution Lawyers.

55. For example LawHawk, CODR, LegalBeagle.

To look at all the various types of New Law providers throughout the world would be a project in itself. For the purposes of this project, it is the last type of provider that I am interested in.

Flexible legal service providers

There are a lot of flexible legal service providers in the UK, Australia and Asia. A lot of these providers have been established by law firms. Some of the longest-running and best known of these are Lawyers on Demand, Halebury, Delegatus, and Axiom:

Lawyers on Demand (LOD): LOD provides flexible legal services to in-house legal teams and law firms. LOD launched in London in 2007 and claim to be the "original New Law pioneer". LOD states that over the past decade they have transformed the way in which lawyers and legal teams work. LOD was originally a spin-off from Berwin Leighton Paisner but became an independent entity in 2012. Between 2010 – 2015 LOD grew by 700% and in October 2016 LOD merged with AdventBalance (a firm providing similar services in Australia and Asia) to create one of the world's largest flexible lawyer businesses. At the date of writing, LOD has over 650 lawyers working for it in eight locations around the world.

Halebury: Halebury was also founded in 2007 in the UK. Halebury's strapline is "Your external in-house lawyers." Halebury offers to map their experienced senior in-house lawyers to clients' requirements: "a fully flexible placement service which provides full-time, part-time, onsite or remote resource to suit your specific business needs."

Delegatus: Delegatus was founded in 2005 in Canada with a view to "reinventing the structure of law firms." To that end, Delegatus's founder has two objectives: to enable businesses to substantially reduce their legal service costs without compromising the quality of the services they receive, by employing a different business model; and by offering lawyers a more stimulating and flexible practice as well as a workload that is suited to their personal objectives.

Axiom: Axiom was founded in the UK in 2000 and now has over 1,500 employees across 3 continents, including 900 lawyers, solution architects, and technology and process experts. Axiom claim to help clients create "perfectly elastic teams... whether it's from a workload spike, headcount reduction, a request to service a new business line, or one of about one hundred other things."

Other flexible legal service providers in England and Australia include:

- **Agile** established by Eversheds
- **Flex** established by Minter Ellison
- **Legal Edge**
- **Lexvoco** established by McInnes Wilson Lawyers
- **Orbit** established by Corrs Chambers Westgarth
- **Peerpoint** established by Allen & Overy
- **Vario** established by Pinsent Masons.

What is happening in New Zealand?

Some commentators have said that the start-up phase of New Law providers is over. While this may be true in England, Australia and other parts of the world, I think New Zealand is still in the start-up phase. New Zealand may have been a bit slower than other parts of the world to establish or embrace alternative providers, but I think the market is now ready for new types of legal business.

Some New Law providers in New Zealand include LawHawk, Complete Online Dispute Resolution (CODR), LegalBeagle, Evolution Lawyers, Statera Legal, Lexvoco, Avid.Legal, and there are several others in the making.

Flexible legal service providers in New Zealand

When I applied for the ILANZ scholarship in April 2016, there were no flexible legal service providers in New Zealand. In the first six months of my research, several new businesses set up, or were in the process of doing so, to provide some form of on-demand legal support to in-house teams including Lexvoco, The Bench, Statera Legal, Arthur Noble, and Juno Legal.

At the time of writing I am not aware of any of the major law firms following the trend of their overseas counterparts to set up their own flexible legal service offering, but several firms indicated it was an option being considered.

Why not before now?

I can only speculate as to why flexible legal service providers have not set up in New Zealand before now. There may be a belief that the New Zealand legal market is not big enough or mature enough. Some businesses may have been put off because of regulatory constraints (see below). Others may believe that there is no demand for such a service or that it is too hard to break into the entrenched relationships that many organisations have with law firms.

Over time, I think we will see more firms and businesses providing flexible legal services.

Regulatory restrictions

Regulatory reform and liberalisation of legal services has been occurring in various parts of the world for over a decade.⁵⁶ Such liberalisation has opened up opportunities for new types of legal businesses to develop. New Zealand's current regulatory environment does not enable certain types of legal businesses, well-established elsewhere in the world, to establish here.

It has not been within the scope of my project to review New Zealand's regulatory regime or consider what reforms could be made to enable other types of legal service businesses. However what is happening in other parts of the world is of interest and provides insight as to what could occur here. I touch on some of some of these developments below.

England and Wales

A review of the regulatory framework in England and Wales in 2004 led to the liberalisation of the laws governing the types of businesses that can provide legal services. The Legal Services Act 2007, implemented in 2011, enables "alternative business structures" (ABSs) to be licensed by the Solicitors Regulation Authority.

The ABS model allows lawyers and non-lawyers to partner in a professional, ownership or management role. An ABS may be a law firm that offers services other than legal services or a retailer expanding to provide legal services, such as the Co-op Bank in England which offers legal services from its bank branches. British Telecom and the AA Motoring Association also offer legal services. The reforms mean that, unlike New Zealand, non-lawyers can own and run legal businesses. Reforms have also enabled investment (e.g. private equity or venture capital) into legal businesses by external investors. Richard Susskind noted that such liberalisation led to an "unprecedented entrepreneurial spirit in the legal market in the UK."⁵⁷

Australia

The liberalisation of regulations in Australia in the early 2000s were designed to foster greater competition, liberalise legal services, and adjust lawyer-liability mechanisms. Law firms in Australia are able to form multi-disciplinary partnerships with non-lawyers and have non-lawyer ownership. They can float on public stock exchanges and take in external investment. Publicly-traded law firms can operate in multiple Australian jurisdictions.

Elsewhere

Other jurisdictions including Canada, parts of Europe, and Asia are, or are on the cusp of, making similar regulatory changes. The USA is not.

New Zealand

Liberalisation has not occurred in New Zealand. There is currently no scope for ABSs, multi-disciplinary practices, or for law firms to have external or foreign investors. The Lawyers and Conveyancers Act 2006 prohibits income-sharing between lawyers and non-lawyers in relation to the provision of regulated services.⁵⁸ Such income sharing amounts to misconduct.⁵⁹

NZLS has indicated that it continues to monitor developments in other jurisdictions and participates regularly in discussions with overseas counterparts about how ABS models and other recent regulatory changes are working in practice, including whether there is any impact on consumer protection.

56. 'Liberalisation' in this context means a relaxation of the laws that govern who can offer professional services and from what types of organisations and businesses. It is very different from deregulation. Most supporters of liberalisation still want some form of regulation.

57. Susskind, Richard, *Tomorrow's Lawyers*, Oxford University Press, England, 2013, p 8.

58. Section 7(3) Lawyers and Conveyancers Act 2006.

59. There is a statutory exception to this in respect of patent attorneys. Lawyers must also take care to ensure they comply with rule 5.9 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 which prevents lawyers receiving any collateral rewards from third parties and rules 5.5, 5.5.1, and 11.1.

Shaan's story



Shaan Ross is the founder of Statera Legal, a newly-launched business which provides online legal assistant services to lawyers. Shaan was a solicitor in private practice for over five years before going on parental leave with her first child. Four years and another child later, she was ready to return to work but found the idea of returning to a position in a law firm difficult to entertain given her desire to balance work with her role as a mother.

"Since having children I have had countless conversations with other females who have either struggled to balance their legal career with their family life or have left the profession altogether," said Shaan. "It [leaving the profession] is an option that I have seriously considered."

Shaan was previously based in Wellington but moved to Dunedin at the end of 2015. She said that finding a job that enabled her to balance legal work with a family may have been easier in Wellington, with in-house legal roles more abundant there, however it was harder in Dunedin, where in-house roles are more scarce. "It wasn't until recently that I thought to myself that it seems like such a waste of my study, my experience and my expertise to simply leave the profession and that I can still give back," said Shaan.

This motivation drove Shaan to establish her own business. Shaan wanted to provide a platform for people, like her, who want to remain actively involved in the profession while balancing family life and other commitments. Statera Legal provides law clerk and paralegal services to in-house practitioners and law firms when they need additional support. "Contractors can decide how much they work in any given week," said Shaan. "They can have school holidays off, they don't have to be in office during set hours, they can work at night if they want to. There will still be deadlines to meet but how those deadlines are met is up to the contractor."

"There are a lot of people, particularly women, who haven't been able to find life balance as lawyers," said Shaan, "and they will walk away from the profession if they cannot find work on terms that suit them. It is such a waste ... such a loss of knowledge and skills."

"They will walk away from the profession if they cannot find work on terms that suit them. It is such a waste."

PART 3:

Conclusions and final thoughts

conclusions

There is untapped potential in the legal profession:

Untapped benefits: flexible working can lead to happier, more engaged, more productive, loyal lawyers and financial benefits for organisations. Offering flexible terms could provide a competitive advantage in recruitment and retention.

Untapped talent: a lot of lawyers want or need more flexibility than is currently available. Offering flexibility could open up a bigger, more diverse talent pool and provide opportunities for lawyers who might otherwise leave the profession.

Untapped market opportunities: there is a demand for alternative cost effective legal resourcing solutions and a number of innovative ways such support could be provided.

Valuing our lawyers means valuing their wellbeing and their lives outside of work. Until employers are more open about flexibility and proactively invite applicants on a flexible basis, they will be limiting the pool of talent from which they can draw and there will continue to be wasted talent in our profession.

I believe the challenges and gaps identified in this report present a number of opportunities for the legal profession to:

- help improve the wellbeing of lawyers and enable them to better balance their careers with their lives outside of work
- attract and retain a greater diversity of lawyers by encouraging and supporting flexibility
- harness a largely-untapped talent pool and explore innovative ways of providing flexible legal support to in-house teams
- be world-leading in mainstreaming flexibility; make flexible lawyering the norm, not the exception.

final thoughts

Tool of attraction

I have worked part-time in the last four jobs I have had. Three of them were advertised as full-time positions but I applied anyway. My employers were happy to employ me on a part-time basis despite there being no indication of any flexibility in the job ads. My current job was not only advertised as part-time but the ad said "We're flexible about what days and hours you work." I have been monitoring legal job ads for several years and have only seen this a few times. It was like pollen to a bee.

In the legal profession flexible terms are primarily used as a retention tool, rather than a tool to attract great talent. Flexibility is not often openly advertised or actively promoted. Some people would not consider applying for a full-time position or have the confidence to ask whether flexible terms were possible.

I do not know why more organisations are not using flexibility as a tool to attract a more diverse range of talent. In England and Australia, flexibility is more commonly used as a lure. Australian law firms and organisations sometimes compete to offer the most favourable flexible terms and parts of the public sector actively encourage flexible working on a "if not, why not?" basis.⁶⁰

I do not know why more organisations are not using flexibility as a tool to attract a more diverse range of talent

Stacey Shortall, a partner at Minter Ellison Rudd Watts, told me about a recruitment campaign her firm ran a few years ago. "A standard job ad was initially used," said Stacey, "but we did not get many bites." Stacey knew there were lawyers and former lawyers who were keen to return to work after having kids and that flexible working terms were attractive to them. A new job ad was prepared that talked openly about flexibility. "We got a LOT of responses," Stacey said, "not just from women, but from men. And not just from people at home, but from lawyers in other firms." By targeting those who were interested in flexible working, the firm was able to hire high quality lawyers who either were not going to go back into the profession, or may not have lasted if they had.

60. In early 2016, in a bid to encourage more women into senior public service roles, the New South Wales Premier announced that all public sector jobs in NSW would be flexible by 2019. "We have to change the culture in our workforce; we have to ensure that everyone understands that flexibility is the key to driving diversity," he said.

Having a policy isn't enough

Embracing flexibility is not just about having a flexible working policy but about setting an environment and culture that supports flexible working regardless of gender, age, role, level, or reason. It is about having new role models and champions, different from those who have traditionally been held out as successful because of the positions they have attained or the long hours they have worked. Several

interviewees suggested it is time for a paradigm shift – to change our view of a “successful lawyer” and expand our value system to one that recognises the importance of lawyers’ lives outside of work and the value that can bring to their role.

There is a culture of presenteeism in our profession and pay and reward systems are usually based on the number of hours worked.⁶¹ Flexible and agile working recognises that people should be valued for their performance and that the focus should be on outputs, rather than when and where those outputs are achieved. Organisations that embrace flexible and agile working are more likely to have performance-based or output-focused systems, rather than focusing on ‘time in the seat’. A challenge for our profession is to find practical ways to move to more performance/output-based pay and reward systems.

61. “Although this charging model [hourly billing] can reward the indolent and the inefficient while penalising the speedy and the productive, it has proven remarkably resilient since the mid-1970s.”, Susskinds, refer 38 above, p 137.

I do not have all the answers. Lawyers do not like admitting this. But I never set out on this journey to solve all the challenges facing our profession or all the challenges associated with flexible working. One of the key things I have learned is that there is no one-size-fits-all solution. Challenges require a spirit of experimentation and there are often several different “right” answers.

A whiff of zeitgeist

I have no doubt there is a need for lawyers-on-tap to assist in-house legal teams in times of need. I saw this need when I worked in a team of 65 lawyers, and I can see it now in a team of one. Law firms will always have their place – I could not do my job without them – but there are some matters that, for various different reasons, I do not want to outsource in the traditional way and would like to give to an in-house temp, a lawyer-on-tap. I would not care where that lawyer was based or what hours they worked, provided the work was done well, at a good price, and in the time needed.

I am not the only one who has become aware of this gap in the market. I have been surprised at the number of flexible legal service

providers that have set up in New Zealand since I started this project. I think they will increase in number once the early pioneers establish themselves as legitimate players in the market.

Liberalisation is occurring around the world. It may be time to explore some of the constraints that prevent innovative lawyering solutions in New Zealand. For example why not allow some non-lawyer involvement in legal businesses? As the Susskinds said, “If we leave it to the professionals themselves to reinvent their workplace, are we asking the rabbits to guard the lettuce?”⁶²

There is no one-size-fits-all solution. Challenges require a spirit of experimentation

62. Refer 38 above, p 32.

For a small country, New Zealand likes to stand out, to punch above its weight, to be the world-leader. This has not been the case with innovative changes in the legal profession, but it could be. I think New Zealand could be on the cusp of some exciting changes in the legal market.

I am not a futurist, but I think...

- flexible working is the way of the future. It is not currently the norm, but I think it will become more so over time
- flexibility will be increasingly used as a tool to improve diversity and attract and retain great legal talent
- the number of "alternative" or "disruptor" legal service providers will increase
- technology will continue to improve the ability to work from anywhere, anytime and we will need to become even more disciplined about its use to ensure it does not take over
- there will continue to be a focus on improving lawyers' well-being and valuing their lives outside of work and flexible working will have a starring role in this.

"The best way to predict the future is to create it."

– Peter Drucker

APPENDIX 1

Lawyers as contractors: Freelance in-house lawyering

A brief history

Until the late 1980s contracting was not very common in New Zealand. Most workers were employed on a full time permanent basis and contractors were generally only brought in on an ad-hoc basis to cover workers on leave. The global equity crash in the late 1980s led to a rise in unemployment and an increase in contracting. The global financial crisis in 2007/8 led to another rise in the number of contractors in New Zealand and internationally.

Today it is a lot more common for people to work as contractors as a career choice, rather than out of necessity. According to some commentators, a trend towards a "gig economy" has begun. A gig economy is an environment in which temporary positions are common and organisations engage independent contractors for short-term "gigs".

According to the *Contingent Workforce Index* which, amongst other things, looks at regulatory restrictions over contingent work, New Zealand ranks number one in the world for the most favourable regulatory environment for contractors.⁶³

63. *Contingent Workforce Index*, Manpower Group, 2016.

In the legal profession

In New Zealand there are two main ways to work as an in-house lawyer:

- as an employee of a non-lawyer organisation under a contract of service (an employment contract); or
- as a contractor under a contract for services.⁶⁴

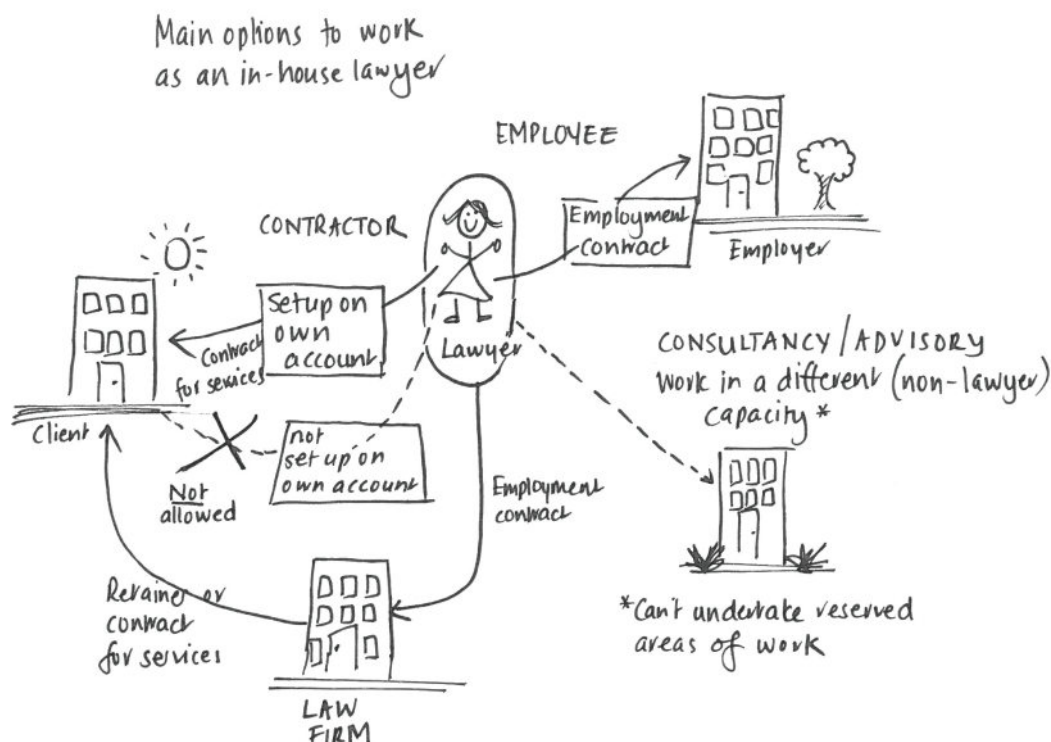
64. Rule 15.1.1 of the *Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008* (the Rules).

It is not possible for lawyers to provide regulated services as independent contractors (i.e. to be engaged by non-lawyer organisations as freelance lawyers under contracts for services) unless they are entitled to practice on their own account in accordance with the *Lawyers and Conveyancers Act 2006*.⁶⁵

65. Rule 15.1.3 of the Rules.

Therefore lawyers who want to provide in-house legal services to organisations but who have not set up on their own account must either be employed by that organisation or work in a different (non-lawyer) capacity.⁶⁶ Several interviewees noted that employing interim legal support, even on a fixed-term or casual employment basis, is often problematic because of headcount caps.

66. For example consultancy, advisory, paralegal, or legal executive services that do not require a practising certificate or involve the provision of reserved areas of work.



Benefits of engaging a contractor

Engaging a freelance lawyer under a contract for services (rather than employing someone) to provide interim legal support to in-house teams has several benefits:

- they are only engaged for as long as needed
- different expertise can be called on as/when needed
- headcount caps or employment freezes do not apply
- there are less employment-related overheads and administration.

Some hurdles

Several interviewees expressed the desire to work as freelance in-house lawyers but said that they found the requirement to set up on one's own account a barrier that they were not prepared, or not able, to scale. There have been a number of legislative changes since the implementation of the Lawyers and Conveyancers Act in 2008, including the introduction of training requirements for all lawyers intending to practise on own account. The Stepping Up course is designed to deal with matters such as running a business and relevant ethical matters that are not part of the general training that lawyers undertake.

Other interviewees noted that even if they did set up on their own account, the All of Government External Legal Services Panel presented a further potential hurdle to getting in-house legal work because Government departments and other participating agencies are required, subject to exceptions, to use law firms on the panel and it is not currently possible for newly-created firms to join the panel.⁶⁷

⁶⁷ The Panel is due to be refreshed in 2017 and the rules may be different. Barristers can be engaged "off-panel" and some people indicated that this was a factor, amongst others, that contributed to their decision to set up as a barrister sole, rather than as a solicitor/barrister.

Across the Tasman

The situation differs in certain states in Australia. In Queensland, for example, lawyers who are entitled to an unrestricted practising certificate may work in-house under contracts for services and hold an employee practising certificate, rather than a principal's unrestricted practising certificate.

The distinction arises because such lawyers are treated as employees (for practising certificate purposes) even though they are not employed by the corporate entity they are providing legal services to.⁶⁸ If the lawyers are not employees or contractors of the corporation they provide services to, and are actually engaging in business as a sole practitioner, then they must obtain an unrestricted principal's practising certificate (if they are not being supervised by another practitioner), undertake the practice management course (if required), hold professional indemnity insurance, and comply with other regulatory requirements in relation to cost agreements and trust accounts.

68. The definition of "employee" in the Legal Profession Act 2007 (QLD) is wide and includes a person who is employed or engaged under a contract of service or contract for services. The same definition appears in NSW legislation.

The Australian approach is interesting but it may not get around several of the issues identified by managers, for example, if the true nature of such an arrangement is that of employer/employee then it seems unlikely to help resolve issues with headcount restrictions, hiring freezes, or employment overheads.

I am not suggesting that New Zealand should follow the Australian approach or that it solves all the issues that have been identified, but given the number of interviewees who mentioned the hurdles to working as a freelance in-house lawyer in New Zealand, it may be an area worth exploring further.

APPENDIX 2

The Law: The Employment Relations Act

Statutory right

The Employment Relations Act 2000, as amended by the Employment Relations (Flexible Working Arrangements) Amendment Act 2007 and the Employment Relations Amendment Act 2014, provides employees with a statutory right to request a flexible working arrangement.⁶⁹

69. Part 6AA of the Employment Relations Act 2000.

Prior to the 2014 Amendment Act (which came into force on 6 March 2015), employees could only make a request if they had caregiver responsibilities and only after they had been in service with the same employer for at least six months and had not made a request in the previous 12 months.

Since 6 March 2015, employees can request a variation of their working arrangements:

- at any time
- for any reason
- as many times as they want.⁷⁰

70. Sections 69AA, 69AAB.

"Working arrangements" means one or more of the following:

- hours of work
- days of work
- place of work.⁷¹

71. Section 69AAA.

A request must be writing and must specify certain matters including the details of the variation requested and the changes that the employee thinks may need to make to the employer's arrangements if the request is approved.⁷²

72. Section 69AAC.

Employer's duty

An employer must deal with a request as soon as possible but not later than one month after receiving the request.⁷³ An employer may refuse a request only if the employer determines that the request cannot be accommodated on one or more of the following grounds:

73. Section 69AAE.

- inability to reorganise work among existing staff
- inability to recruit additional staff
- detrimental impact on quality
- detrimental impact on performance
- insufficiency of work during the periods the employee proposes to work
- planned structural changes
- burden of additional costs
- detrimental effect on ability to meet customer demand.⁷⁴

74. Section 69AAF.

Many organisations have a flexible working policy which sets out the process for making requests and a template application form. There are also several templates and toolkits available online. If an employer does not deal with a request in accordance with the specified process, the matter may be referred to a Labour Inspector, then to mediation, and then to the Employment Relations Authority.

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