

The Practice Management System Revolution

BY FRANK NEILL

Practice management systems (PMS) for law firms are currently going through a huge period of change.

"We are seeing a massive revolution in what these systems can do today in comparison with what they could do," says consultant Ashley Balls. Mr Balls is a principal of Law Management Group.

The PMS of the past and the PMS of today are "chalk and cheese", he says. It is like "comparing a typewriter with a desktop computer".

"The traditional role and function of the PMS is developing rapidly to become the cornerstone of all working activity within a law firm or a legal department.

"Things have moved on and firms demand significant increases in power. They want document management. They want case management. They want online library access. And they want it all on one platform."

The importance of having an effective PMS is underscored by other experts, too.

"Having an IT system that meets your needs must be at the very top of your list," says Paul Marsh, president of the Law Society of England and Wales, in the society's publication *A Guide to Integrated Practice Management Software*.

"There was once a time when IT systems, together with a proficiency in IT skills, were viewed as a useful, but not entirely essential, skill for solicitors. Those days, like the days of the non-competitive practice, are gone."

Because IT is a substantial investment, it is important to get it right, Mr Marsh says.

"Extraordinarily sophisticated technology is not an add-on. It is an essential part of the infrastructure necessary to provide an efficient service to clients."

Currently, around 1,400 New Zealand law firms have a PMS. That compares with a total of just under 2,000 firms in the country.

Of these, around 500 firms are what Mr Balls describes as "kitchen table law firms". They are run by a lawyer with a practising certificate, but are part-time. These 500 are probably not looking at a PMS.

For the other 1,400+ firms, there is the question of planning when to upgrade or, indeed, when to change provider.

What, then, do practices need to take into account when evaluating a PMS?

In speaking with the experts, *LawTalk*

identified five areas that emerged as important to consider.

The first is, can the PMS do what you want it to do today, including what you don't yet know you want, and what you want tomorrow?

"People have to say, 'what do I need to future-proof my business?' A PMS is part of that answer," Mr Balls says.

To assist law firms to consider the factors that prudent professionals should consider when approaching a PMS and/or an IT upgrade, Mr Balls has developed a list of 26 questions, available on the Law Management Group website, www.lawmanagementgroup.com.

"Having an IT system that meets your needs must be at the very top of your list."

—
Paul Marsh

The second main question to consider is: how effective is the PMS at leaving lawyers free to focus on lawyering and, in the case of partners and sole practitioners, to focus on the higher-level management activity?

The third question is: will it benefit my clients and allow me to provide them similar, or even enhanced value for a similar or lower cost?

When lawyers really know what they want and integrate it with research, it can allow them to lower the cost of sales, Mr Balls says.

He gives as a simple example developing a family trust, which using traditional methodology would cost the lawyer \$2,300. With a margin of \$700, that gives a cost to the client of \$3,000.

With a "really sophisticated" PMS that could replicate files cleverly so that they were also tailored to the client, a family trust could be produced at a cost of around \$800 to the lawyer.

Even with the same mark-up of \$700, that translates to half price for the client – \$1,500.

"A good PMS will allow you to build your own core precedents that are replicable. This is the sort of stuff that people have missed out on as they have clung onto old

systems and held onto old ideas. Now the market is much more competitive."

A fourth question is: can you move, or threaten to move, if the PMS is not meeting your needs and can you afford to do so?

"You should expect better products for less outlay as the legal IT market consolidates," says Rupert White, features and commissioning editor of the *Law Society Gazette*, magazine of the Law Society of England and Wales. Mr White was writing in *A Guide to Integrated Practice Management Software*.

"You should get better customer service. And you should be prepared to threaten to move if your IT firm isn't coming up with new ideas about how you can be more efficient and more profitable."

A fifth question is: how does the PMS help to disaster-proof your organisation?

Both these last two questions tend to lead in the direction of a cloud-based rather than an on-site solution.

"I'm saying to people 'get it out of the building', if only because of Christchurch," Mr Balls says.

"The impact that the earthquake had on firms in Christchurch was almost catastrophic." Some firms had everything on site in computers. Their offices were in the red zone and they were denied access.

The 1931 Napier earthquake resulted in similar losses for lawyers, as did Hurricane Katrina in the United States. Fires have also resulted in major or total losses of records.

"Having the hardware on site and having the software on site is not, in my view, a 21st century solution," Mr Balls says.

One factor that is holding back off-site solutions is fears around security. With 64-bit encryption, these solutions actually offer more security, along with greater sophistication, Mr Balls says.

"Our esteemed government has been using cloud computing services for a long time, including Inland Revenue, so I don't see it as a problem. In fact, I see cloud computing as enhancing security, rather than the reverse."

Events will soon overtake security, Mr Balls predicts. The main factor will be fiscal, in that it will cost less for a solution that is also fully customisable and gives a firm what it wants.

And that neatly brings us back to the first question: which is around the PMS giving you what you want. **lt**

What's on the New Zealand market?

LawTalk went to the market seeking Practice Management Systems (PMSs) that are being marketed to New Zealand practitioners.

We asked each provider we found to give us a short description of their system, noting its advantages. These descriptions are shown below. We also asked them to list some specific features of the PMS and this information is provided in the table on the next two pages.

The aim of this presentation is not to provide any evaluation of the various PMSs, but simply to provide a description.

Some pointers to help people choose have been given to *LawTalk* by Hesketh Henry general manager Justin Cox.

"Ensure software you select has a large client base. Unless you are

highly specialised you will need a fairly generalised legal software solution that is designed to fit in a variety of environments," Mr Cox says.

"Nothing is forever. While selecting software that is tried and true, do also check on its future development programme.

"Mobility is essential, so look for software that is truly mobile and provides for modern mobility (smart phones, tablets etc).

"Look for software that can be hosted by data centres. This may not be essential today but without doubt it is coming.

"I find the best way to select software is to talk to other users. They are very open with feedback and any vendor who is not prepared to allow you to talk to their clients should be avoided," Mr Cox says.

Junior Partner

Created by New Zealand lawyers for New Zealand lawyers and constantly developed in response to user suggestions for the last 20 years. Almost 1,000 lawyers and support staff use jP every day. Updates are freely available to users with a current maintenance and support contract. NZLS inspections are quick and hassle-free. NZLS Inspectors have their own login code that presents them with a menu containing all the audit reports they require. Distributed, installed, trained and supported by Thomson Reuters. Testimonials available on website.

Action Step

A fully-integrated practice management system with a workflow DNA. ActionStep replaces the cost and complexity of in-house technology and significantly boosts productivity. The software is built on the latest technologies and maintained by the manufacturer.

Lexis Affinity

Simple to use and improves your mid to large business by: embedding our LexisNexis content into the Affinity practice management system; systemising repetitive tasks with workflows allowing you to retire your third party software, for example concencing and trusts; easily customise any management or financial reports so you can analyse trends quickly and effortlessly; streamline existing processes and procedures into a single system for ease of use, training and learning; enable disaster recovery contingency and business continuity; capture time and accurate billing of customers.

PCLAW

An affordable way to manage your boutique or small firm. PCLaw software is more than just a back office account and billing system, it's an all-in-one and easy-to-use solution that enables you to increase your efficiency, cash flow and profits. A flexible tool fine-tuned for New Zealand law professionals, it is the world's most widely used practice management software with over 30,000 small law firms.

Legal E

Legal-E spends time assessing a clients' business process and systems before installing or converting to legal office software. Legal-E team clients have been hands-on in product development. Quick response time to client enquiries. Tailored solutions. An easy-to-use interface. Easy data entry and fast information retrieval so time can be spent working for clients rather than navigating systems. Streamlined processing means data is entered only once and managed within the system, with a full audit and accountability trail. Legal-E is at the beginning of its lifecycle.

Infinitylaw

Authors have strong time recovery through the author dashboard and rapid access to information to minimise lost time. Good billing. Partners receive efficient accounting in the trust and firm ledgers, retain star staff through providing good working tools. Maintains good client service and client relationship management. Risk is minimised through task management. Grow fees and market base through marketing tools. It has high time recovery and good cash collection. Easily operated trust ledger and effective cash management.



legal editing that's just plain right!

Tania McAnearney, New Zealand's only dedicated plain legal-language consultant offers:

- editing
- writing
- training
- document reviewing.

Find out more at:
www.plainright.co.nz
tania@plainright.co.nz

| | Legal E | Junior Partner | Action Step |
|------------------------------------|--|--|---|
| Price | \$1,800 per user | From \$1,600 (for one user). New pricing model to be introduced early in 2012. | \$60 per month per user. No minimum contract term. |
| Technical requirements | Microsoft Windows 2000, SBS2003, XP, Vista, SBS2008, Windows 7 (32 & 64 bit). Linux. All fairly recent Linux distributions with glibc 2.3. | Windows (any version). Also available in the cloud. Data can be imported from most other practice management systems. | ActionStep is delivered via a Software-as-a-Service (SaaS) model so no onsite installation is required. All that is needed is an Internet connection and a browser. |
| Front and back office tasks | Trust accounting; debtor management; mortgage management; general ledger and creditors; document management; performance management; address and phone record sharing; automatic payment; processing; online billing and bill production; bank reconciliations; GST; tax management; certificates and reporting; mortgagor and mortgagee precedents; profit and loss statements. | Diaries and task lists; document management; accounting; trust accounts; office accounts; debtor management; legal aid invoices; client care letters; ID validation; Client Relationship Management features integrating MS Word and Outlook undocumented fraud traps; mortgage module; email partner; electronic filing cabinet; FileCenter from Lucion for deeds; integration with Fuji Xerox's solution builder software; integration with conveypartner to establish a paperless office. | Matter files; document management and assembly; time-billing; disbursements; trust accounting; contacts; calendar; email; smart help; fee-earner budgets; matter budgets; executive dashboard; reports; bank reconciliation; integrated trust and business; accounting; general ledger; debtors; creditors; GST; budgets; financial reports; trust reports. |
| Software compatibility | ODBC compliant database allows direct connections to third party program that supports ODBC, for example, MS Office, Open Office. | Compatible with and exports data to MS Word, MS Outlook, MS Excel, MYOB, CashManager, BestBooks, QuickBooks (in development), KeyTrack, FileCenter from Lucion Technology, FujiXerox SmartConnect – Solution Builder, PaperCut MF. | Works on any computer (PC, Mac, iPad) provided it has an Internet connection and a browser. |
| Mobile access | iPad and Android hand-held app in development. | Mobile application and data hosting, allowing users to connect to their jP data from any computer will be available early 2012. | Yes. |
| Technical support | 24/7 helpline. | Technical and software support during office hours free for maintenance and support contract holders. Office hours phone, fax and e-mail. | 8am - 5pm weekdays. Email, screen-sharing, telephone. |
| Installation time | Client specific. | Installation around 10-15 minutes per computer. | No onsite installation required. System is configured to clients' needs ahead of go-live date. The time required for this varies from client to client but typically takes somewhere between 2-6 weeks. |
| Training time | Client specific. | Approximately two hours per module. | Two hours group training and then two one-hour individual training sessions for each user. |
| Contact and website details | Stephen Hart, 06 378 8437 steve@legal-e.co.nz www.legal-e.co.nz | Graeme Ramsay 09 445 4476 www.jpartner.co.nz/ Thomson Reuters 0800 10 60 60 contacts Lee-Ann Kritos or Jan Mellor. | Ted Jordan 09 379 3939 ted@actionstep.com www.actionstep.com http://vimeo.com/31823267 |

| Lexis Affinity | PCLaw | Infinitylaw |
|---|---|--|
| Varies per site based on number of users. | Varies per site based on number of users. | Detailed indicative cost including installation, training, and ongoing support provided on request. |
| Varies with the number of uses. Server details below for up to 32 concurrent users. Full operating system. Configuration requirements document are available upon request. Dedicated Oracle server; dual core 1.60 Ghz ; 6 Gigabyte RAM; 2 x 146 GB; Most Windows XP 32-bit operating systems; LAN minimum 100 Mbps; dual core; Windows XP professional. | Pentium II; MS Windows XP – 256 MB; MS Windows Vista – 512 MB; MS Windows 7 – 512 MB, Most Windows XP 32-bit; 10 Base-T Ethernet. | MS Windows and SQL Server. Full details available on request. Can be run in the cloud or on your own network. |
| Billing and fees; trust accounting and general ledger; time recording and management reporting; matter and document management; phonebook and database – client relationship management; reporting and financial statements; GST; calendar; to do's, tasks and deadline; cheques, receipts and bank deposits; collection and payment plans; creditors and debtors; disbursements; conflict of interest checker; advanced marketing capabilities; safe custody register; workflow tools; research integration, precedents and document automation. | Billing and account receivables; trust accounting; time recording / management; matter and document management; client and contact management; reporting and financial statements; calendar, to do's, tasks and deadlines; GST reporting; cheques, receipts and bank deposits; creditors and debtors; disbursements; conflict of interest checker; safe custody register. | Name directory; client profile; time recording – desktop and iPhone; online billing; automatic to do list and task management; client, matter and deed information; document management; precedents and document assembly; telephone system with caller recognition; workflow management; client relationship management; extranet for client internet access; trust accounting; debtor management; precedent management; client trust management; mortgage ledger; practice accounting. |
| MS Word 2003 (with all patches) or higher. Full Extended MAPI (provided by MS Outlook 2003 and higher). | Internet Explorer 6.0 with all critical updates. Adobe Acrobat Reader 4.0 or higher is required to view the help files and manual. MS Word 97 or higher is required for integration. Corel WordPerfect 10 or higher is required for integration. | MS Gold Certified Partner. |
| Yes. | Yes. | Mobile time recording on iPhone. |
| Technical phone support is available from Monday to Friday. | Technical phone support is available from Monday to Friday. | Business hours on business days. |
| Varies per site based on number of users. On average six week lead time. | Varies per site based on number of users. On average 2-3 days' lead time. | Dependant on customer needs. |
| Customised one-on-one or group training is available from our experienced in-house training team and our external authorised consultants. Generally one week of training is recommended. | Customised one-on-one or group training is available from our experienced in-house training team, and our external authorised consultants. | Dependant on customer needs. |
| 0800 800 986 affinity@lexisnexis.co.nz www.lexisnexis.co.nz/affinity | 0800 800 986 practice.management@lexisnexis.co.nz www.lexisnexis.co.nz/pclaw | sandi.coppins@nz.fujitsu.com www.fujitsu.com/nz |



Cloud computing – the way forward

BY HANNAH GRANT

Many data-loss horror stories have emerged from Christchurch post-earthquakes. Due to not being allowed back into a quake-stricken building, some law firms lost all of their files and others were only lucky enough to snatch a crucial USB upon escape.

In a world becoming increasingly fraught with natural disasters, information disaster recovery plans should be high on every business's agenda, yet many of us still keep our important information bound to only physical locations.

In order to decrease the vulnerability of important data in situations such as the above, a business would ideally need to divorce itself completely from having to be at the office to access its information.

Enter cloud computing stage right.

Cloud computing is a relatively new IT system model that enables "convenient, on-demand network access to a shared pool of configurable computing resources (for example, networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction" (UK Institute of Standards and Technology (NIST) definition of Cloud computing v15).

In other words, cloud computing involves outsourcing data storage or processing to a provider's mass data storage location/s which contracts to provide these services through the internet. For example, I am writing this article in part of Google's cloud – its "Documents" service.

Traditional server environments for practice management systems can pose several challenges according to many in the IT world, who cite cloud computing as the way forward. High labour and capital costs, long development and deployment cycles and quality risks are frequently associated with in-house practice

management processes.

Warwick Wilson, director of consultancy services at IT managed service provider Lantech Limited, says some businesses in Christchurch were hit with a "double whammy" of document loss.

"When people in Christchurch weren't allowed back into their buildings they were stuffed. They had data physically on their computers as well as the server.

"If your business is fully operating in the cloud then you wouldn't have to worry about anything like that," he says.

In this respect, some companies are yet to learn from these times of misfortune, having not made any changes since the earthquakes, Mr Wilson says.

"We have had an increase since [the] Christchurch [earthquakes] of people using cloud services but not as many as we thought there might be. There are many companies who are still not backing up off site. They have not learnt anything and are still vulnerable," he says.

Moving into the "cloud" has been met with some hesitation by New Zealand law firms. Whether it is scepticism of trust with a service provider, or general angst about virtual infrastructure being somehow less safe, or the worry that client confidentiality may be compromised, security concerns are the main factors creating uncertainty in transitioning to cloud-based services.

Mr Wilson explains though that due to high levels of data encryption, virtual storage is considered safer than documents sent by email, or stored on a company's local computers with limited protection.

"All files stored in our servers are encrypted end to end. No one company can see any other company in the cloud.

"Some of the beauties of cloud computing is that it is all enterprise-level security. There are several layers of physical security

before you get to the layers of software security," he says.

Lawyer Jonathan Flaws says security is a key area for his business First Mortgage Services which uses its own cloud software to make real estate deals.

"Security is a really significant issue for both banks and lawyers. Being able to get documents quickly from the banks to the lawyers, from the lawyer back to the bank. The best way to do that is through the cloud," he says.

First Mortgage Service's processing system is run in an IBM cloud and Paul Douglas, business manager, IBM Integrated Technology Services, says that a key proposition around cloud computing or hosted infrastructure is that clouds often have high levels of service and complex security systems which are shared across many clients.

"We have built a hybrid cloud that sits in the middle of the private/public spectrum which is your virtual data centre. It is private but the physical infrastructure is shared. You get the economies of scale of sharing that infrastructure, but you get the privacy and security that you would expect from a private cloud.

"The key principle here is that you are shifting from having just physical security, to physical and virtual. This level of security is now affordable for big and small businesses as you are sharing that cost and capability."

Cloud computing can be conceptualised as a bespoke service catered to the individual/business. You choose your level of security and can tick a box saying you want Disaster Recovery capabilities and, according to Mr Douglas, this control is one of the beauties of a cloud service.

"The cloud is driven by every client's needs. You pay for what you need. No more, no less. The higher the security, the higher the

› costs,” he says.

Paul Barnett of BarnettLaw says that when their inhouse processor came to the end of its life, they decided to operate their systems in the cloud.

“Our inhouse processor could go bang at any moment and if we didn’t have good backup we could have been out of action for some while.

“We costed cloud against the cost of replacing our inhouse server. It has worked out to be cost effective. There are benefits like upgrades of special packages and general applications which our service provider bears the cost of. The cost of these is ultimately shared amongst all users of the service.

“We were satisfied that none of our client information would be accessible to any third party – certainly not easily. We decided if someone wanted to break into our physical premises to access our processor then on balance we weren’t moving to any lesser security.

Mr Barnett says he knows a number of law firms that have got into trouble when

they have not upgraded their processing facilities and have been caught out when things suddenly go bad, because of “passed use by date” technology .

“We have immediate availability to technical people who are familiar with where our data is resident.

“The worry about budgeting and planning an upgrade is no longer there because that is the responsibility of the outsourced provider and we take the benefit of smooth and readily accessible access to our data,” he says.

At the heart of any business decision lies money.

Whether your firm is big or small, a cost effective-system for practice management is essential.

Cloud computing’s fans assert many significant cost savings and efficiency benefits achieved through the use of cloud services.

“[When using cloud services] the biggest advantage is that you have taken your CAPEX and turned it into OPEX,” says Mr Wilson.

“With CAPEX you have to buy software and equipment and these sit on your capital expenditure on your business books. But if you are using a subscription model like an office in the cloud you a paying OPEX, a monthly continuity payment, and that is tax deductible.

“There is an enormous difference in the two models. It’s far more manageable and significantly reduces your overall tax pay-out,” he says.

Mr Wilson and Mr Douglas both stress that they advise against entering a cloud service that would allow your data to cross international borders.

A recent Law Commission report considered the extent to which the transfer of personal information outside New Zealand may dilute or reduce privacy safeguards for that information.

It stated that accountability in areas of cloud computing should be clarified, which would include measures to improve cross-border enforcement cooperation between the New Zealand Privacy Commissioner and his or her overseas counterparts to facilitate cross-border complaints. [lt](#)

Law Firms can't expect to get paid quickly – Myth or Reality?

BY LANCE WICKMAN*

Q: What do lawyers hate more than recording time and billing clients?

A: Collecting overdue receivables.

Q: Why do lawyers think that the business of providing legal services is different to any other business when it comes to billing and collection of fees?

A: Good question.

Q: And as an industry, why are the average debtor days for many law firms so much higher than in other sectors?

A: Read on...

Let’s skip the current rhetoric on how the economic climate is impacting business, particularly when it comes to collections. We all know it’s not good. The focus of this discussion is more systemic. The impact of the economic downturn is simply exacerbating the existing underlying issues. Why is it that law firms so often struggle to get paid in a timely manner? Why do they settle for this apparent lack of respect and poor payment performance? Perhaps at the heart of the issue lies a long held set of, well, lies!

Myth 1: We can’t possibly chase our

clients for money – it might damage the relationship.

Reality: Unless your client never intended to pay you at all, and provided your collections procedures are professional and courteous, then there should be no reason for them to be offended. [Most] human beings actually want to do the right thing. But we are good at procrastinating on many things in life, particularly if we don’t think anyone is watching. So don’t be shy about asking. Every customer contact is a potential relationship building opportunity.

Myth 2: If we contact them about payment, they might raise issues about the fees and perhaps even seek a discount.

Reality: If the client sees the value, and their expectations are met, then they should have no issue paying your fees. If they don’t see the value, this means that you have either done a poor job with your proposition, or perhaps you really aren’t delivering good value. Either way, something needs to change.

Myth 3: Collecting overdue payments can be confrontational.

Reality: If the client has a legitimate reason

for not paying, it is much better for both parties to identify the issue early in time, so it can be addressed, the anxiety reduced, and the barrier to getting paid removed. If you are dealing with a “professional debtor” then early contact to establish that there is no basis for dispute will reduce their opportunity to delay, particularly if you press them for a commit to pay date.

Myth 4: We will get paid eventually.

Reality: Everyone knows that lawyers and accountants are soft touches! You have done a great job over the years to train your clients not to worry about paying expediently. Not setting clear expectations about payment terms from day one, and habitually failing to follow up overdues in a timely and consistent manner further reinforces this view. If your new client is unhappy with your terms or is unwilling to sign a letter of engagement, better to find out on day one, rather than discover this after you’ve done the work and they are not paying as expected.

Myth 5: My clients are [all] different. We can’t have a single centralised or [semi] automated collections process that works for everyone. [CNTD. PAGE 18 >](#)

CNTD. FROMPAGE 4 >

Reality: Perhaps not everyone is on the same terms of trade. Maybe there are occasional exceptions where circumstances dictate a non-standard approach. However, even if you provide different service lines that involve international engagements or other third party expertise such as intellectual property and insurance, it is still possible and extremely desirable to develop largely standardised procedures that will allow a consistent, effective and efficient approach to collections.

Myth 6: It's not worth chasing small or very old receivables.

Reality: It's certainly true that the cost of chasing a small debt is no less than the cost of following up a large amount. The long tail of smaller accounts is often neglected because of the lack of time [resources] to do it the old fashioned way – manually. And as delinquencies get older, the probability of payment declines. Write offs are commonplace. Let's say you are running an average 50% profit margin. Then for every \$1,000 not collected, you would have to generate a further \$2,000 of new business to cover the original costs, plus the new business costs, and still distribute the

same profit to the partners. The best option would be to collect it in the first place.

Myth 7: The collections process requires the personal touch and can't be automated.

Reality: Sophisticated AR management and communications systems have been developed that can significantly increase the level of personalised communications and reduce the costs associated with bill presentation and collections follow up. A good system will allow high levels of customisation to ensure different clients can be treated in a personalised manner.

Myth 8: It's really not an area of the business that requires any urgent attention. It's always been this way.

Reality: Intuitively, everyone knows it's desirable to get the money in as soon as possible. But often the amount of pain slow payers are causing isn't always clear until it's quantified. For every 10-day reduction in debtor days on every \$10 million turnover, around \$274,000 will be released back into cash flow. At 9.5% cost of capital, that equates to \$26,000 a year straight out of your pockets. With the development of new AR management and communication systems, significant reductions in debtor

days can be achieved in a matter of months.

Myth 9: We are in the same boat as everyone else.

Reality: It's during times of adversity that the smart operators take the opportunity to review critical areas of their operation and seek more efficient, effective and responsive ways of doing business. While a lot of effort has gone into sales and service delivery through the use of better Practice Management and CRM systems, little has changed in the way firms present their invoices and collect their fees. New developments in this traditionally very manual and menial area of the business are set to dramatically change the way businesses engage with their clients, enhancing the customer service experience, reducing costs, and helping them to get paid sooner.

Law firms can't expect to get paid quickly. Myth or Reality? Well that depends on what you decide to do next.

Lance Wickman is CEO of PayTorque Limited. For more information, including a free copy of the guide 10 Ways to Get Paid Sooner, go to www.paytorque.com. **lt*

LAWYERS COMPLAINTS SERVICE

Incorrect advice led to conviction and six weeks' jail for client

An Auckland criminal lawyer, Wendy Matthews, was fined \$5,000 by a Lawyers Standards Committee after her inadequate advice led to her client, Mr A, pleading guilty to breaching his parole despite having a strong defence. As a result, Mr A spent six further weeks in custody. The Legal Complaints Review Officer (LCRO) confirmed the fine and the committee's order for full publication.

Mr A had breached the curfew conditions of his parole, and was taken back into custody pending a Parole Board decision on an application to recall him to prison. He was also charged under the Parole Act 2002 with breaching his parole conditions.

Ms Matthews was Mr A's assigned legal aid lawyer. Mr A instructed her to enter a not guilty plea to the Parole Act charge. He told her he had a reasonable excuse for the curfew breach, having lost his house key.

However the prosecutor later told Ms Matthews that if her client pleaded guilty the Probation Service would seek only a conviction and discharge. Mr A changed his plea, was convicted and discharged, but was kept in prison awaiting the outcome of the recall application. Six weeks later the Parole Board rejected the application and Mr A was released.

Mr A successfully appealed his conviction to the High Court on the grounds of inadequate advice from his lawyer. The appeal judge remarked that Ms Matthews' representation had been "casual to the point of neglect". Ms Matthews told the High Court she did not give advice to her clients because that was not her role. Against this, the judge noted the Court of Appeal's view that "counsel have a duty to advise a client as best they can as to courses to adopt in defending, or not, as the case may be, criminal charges" (R v Merrilees [2009] NZCA 59).

A standards committee began an own-motion investigation after the Law Society received a minute from the appeal judge. The committee found that Ms Matthews' advice had been flawed and inadequate, and that she hadn't properly considered what the consequences of a conviction would be for the recall application. The committee found Ms Matthews guilty of unsatisfactory conduct, censured her, fined her \$5,000 and ordered her to pay \$750 costs to the Law Society. It also ordered full publication. Before it made the orders, the committee took into account the fact that Ms Matthews had expressed remorse.

Ms Matthews applied to the LCRO,

challenging the level of the fine and, in particular, the publication order.

The LCRO saw no reason to adjust the \$5,000 fine. He noted that this was only one third of the \$15,000 maximum and that the lawyer's incorrect advice had had serious consequences for the client. He also ordered her to pay \$600 to the Law Society towards the costs of the review.

Ms Matthews said that publication would have serious consequences for her legal practice and career path. She argued that she was a responsible and very hard-working defence lawyer. At the LCRO's invitation, she also provided references from former clients which were very favourable.

The LCRO agreed with the Standards Committee that the public interest in publication outweighed the consequences for Ms Matthews of her identity being made public. He said it was very much a matter of public interest if a lawyer's shortcomings resulted in someone being deprived of their freedom. Publication would also recognise the purposes of the Lawyers and Conveyancers Act 2006, which include maintaining public confidence in the legal profession and protecting the consumers of legal services. **lt**