

THE JUSTICE SYSTEM

Diversity central to public confidence in the court

BY **JUDGE JAN-MARIE DOOGUE**

Improving diversity among judges is vital if, as a people's court, the District Court is to remain relevant to the diverse communities it serves, explains Chief District Court Judge Jan-Marie Doogue.

THE CRIMINAL JUSTICE SYSTEM HAS BEEN a topic of intense debate in 2018.

The discussion, brain storming and at times soul searching have occupied a lot of minds and media space, which is welcome. There is plenty to improve on and, it seems, a will to do so.

There has been considerable debate too about the future of the Family Court which is the second biggest jurisdiction of the District Court. It forms part of the civil jurisdiction which accounts for more than a third of the District Court caseload.

For me, the debate has highlighted the richness of the District Court jurisdiction which makes it well placed – if not entirely resourced – to identify underlying causes of offending and family breakdown, and find innovative solutions.

District Court judges can, and do make a difference. The role is demanding, but despite the many frustrations, the potential to deliver transformative justice makes it uniquely fulfilling.

However, as a people's court, integral to achieving its potential for the community is having diversity on the bench. This will become increasingly important as New Zealand's makeup becomes more diverse because, to have legitimacy and maintain public confidence, a court must reflect the communities it serves.

People must feel the judiciary exists to serve all of society, not simply one section of it.

Judicial retirements soon

The District Court bench is entering a stage of renewal in coming months, with some 14 judges due to retire before the end of next year.

More than ever before, future recruitment will be attuned to the need for both gender and ethnic diversity.

However, part of the challenge is encouraging aspirants to not be backward about coming forward.

Long gone are the days of judges being appointed in an opaque and vaguely mysterious process that essentially involved being tapped on the shoulder.

Suitably qualified lawyers who think they might make a good judge can apply for appointment through a robust and independent selection process, not dissimilar to those used in many other senior government appointments, save for the input and final decision of the Attorney-General.

Yet I fear that many good candidates are unnecessarily put off.

As Head of Bench of New Zealand's largest court, the continuing under-representation of women and diverse communities in both the legal profession generally, and particularly on our benches worries me.

It is why earlier this year I surveyed all women District Court judges about their journey to becoming a judge. There was a 98% response rate among the 50 judges surveyed – representing nearly a third of the total District Court bench.

They were asked about their personal



career experiences; mentoring they received while in practice; barriers they faced in getting to the bench; motivations to become a judge; views about the judicial appointment process; and level of support received once appointed.

Certain questions were modified to capture the particular experiences of judges from diverse communities (in the District Court, 18 of all our judges identify as Māori, three as Pasifika and two as Indian).

When it came to applying to be a judge, the single biggest barrier that made the women surveyed hesitant was confidence in their own ability; 43% who indicated they faced barriers singled out self-effacement as being the most significant.

For Māori, and especially Māori women, this is a significant factor given common observance of the tikanga Māori value expressed in the whakatauki, *kāore te kumara e kōrero ana mo tōna ake reka* – the kumara does not speak of its own sweetness.

Another noteworthy barrier cited in the survey was family obligations which were a consideration for 40% of the women judges surveyed.

Discrimination

Alarmingly, 25% indicated that women and people from diverse communities may hesitate to apply for judicial office

because of the discrimination they believe they may face.

Having been part of the judicial appointment process for some ten years now, I do not doubt its fairness. However, how it is perceived by lawyers is pivotal, and the fact that one quarter of our women judges believe it could be deterring some people from applying for judicial positions is worrying to say the least.

There were other concerning results from the survey:

- More than half indicated that they had experienced obstacles to getting to a position where they could be considered for judicial appointment. Of these judges, just under 40% indicated that they had experienced some form of discrimination in their career, be it gender, cultural or other.
- Universities fail to promote judicial office as a viable career option, with 96% saying a judicial career was never presented to them as being a realistic career option. And all indicated that they received no guidance on the appropriate path to take for a judicial career.
- Once in legal practice, nearly half said that they did not receive, or were not provided with the opportunity to receive, strategic support aimed at advancing their careers.
- Only 13% indicated that they received strategic support which included support to apply for leadership roles in professional bodies or committees.
- Of those who indicated that they received some support, most indicated it was in the form of encouragement only, or that it came from people outside of their place of work.

What makes these results all the more disheartening is that things have not changed. Ten years ago, I undertook a similar survey of women judges on behalf of my predecessor Chief Judge Russell Johnson. The results were much the same.

Improving diversity

The latest results have provided extra impetus to drive even harder for improved diversity on the District Court bench.

This year, the board of senior judges who advise me has held two hui on finding practical measures to address the issue and to ensure honouring diversity is about more than fine words. We intend, amongst other actions, to engage with universities to better understand why a judicial career

is not promoted as a realistic career option.

But progress will also require the legal profession to think afresh about the option of taking the path toward a judicial career.

Modern judging in my court is quite a different proposition to the aloof and rarified days focused narrowly on the letter of the law and observing so-called gentlemen's hours.

I would encourage those in the legal profession wondering if the judicial life is for them to not simply wonder about it.

Learn about the work done by judges

Take active steps to learn about the work of a modern District Court judge and encourage your colleagues to join you.

Perhaps find the time to sit in the back of a courtroom and note the wide variety of skills required – from managing the hectic, high-volume list and arrest courts, to the assiduously thorough and methodical sentencing sessions, and to the procedural prowess and communication skills required of a jury trial judge.

The array of Family Court judgments now available online attest to the compassion and insight required to manage the complex nature of those cases where children's best interests and welfare are so often at the heart of proceedings.

Read the future-focused decisions made in the Youth Court, a forum the Principal Youth Court Judge John Walker describes as a place of great hope.

Also consider the wide range of judicially led innovations in the District Court. From the Alcohol and Other Drug Treatment Court, to the courts for the homeless, and marae-based Rangatahi Courts and the Pasifika Courts within the Youth Court, the District Court provides wide scope for judges to work with families and communities to take a holistic solutions-focused approach to administering justice.

None of this is at the expense of judges needing to have a first-rate understanding of the law and an unswerving commitment to interpret and apply it impartially and without fear or favour.

However, the changing nature of the judicial role, as more often judges work closely with communities and social service agencies to deliver transformational justice, underscores the need for the bench to be more inclusive of women and diverse communities.

Apart from anything else, women judges and judges from diverse communities are important role models for people from similar backgrounds. They can inspire law students and practitioners alike to see judicial office as an achievable goal, and not one exclusive to a particular section of society.

Women have formed an integral part of the legal profession since the 1980s, and have been outnumbering men in graduations from law schools and admissions to the Bar since 2000.

In terms of ethnic diversity, appointments to judicial office are not keeping pace with rapid change, especially considering official forecasts showing ethnic diversity in Aotearoa will be exponentially greater in 20 years' time.

The Māori population is projected to surpass 1 million in the mid-2030s; the combined Asian-Indian population is projected to exceed Māori by the early 2020s. By 2038, Pasifika people will account for more than 10% of the population.

Fostering diversity is, therefore, vital if the District Court is to have democratic legitimacy and remain relevant and in touch.

Greater diversity will help equip the court to deliver justice meaningfully, effectively and with dignity.

And that is only fair. ■