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Ensuring Pacific Island lawyers can take on the world

BY **NICK BUTCHER**

"NEW ZEALAND LAWYERS HAVE BENEFITED for 30 years from attending trial skills enhancement programmes devised here. The learning by doing method under tuition of experienced lawyers and judges has been shown to markedly improve lawyers' confidence in conducting aspects of trial work more effectively be it leading evidence, cross examination, and addressing judges and juries. In more recent times the New Zealand Crown Law Office has led the development of a special programme aimed at lawyers practising in courts in Pacific Island countries. The number who have now attended the programmes with similar results being registered is substantial." - **Sir Anand Satyanand.**

Imagine if a large container ship similar to the *Rena* grounded near a Pacific nation and the subsequent effect it would have on natural resources, the backbone of that nation's economy.

The *Rena* grounded on the Astrolabe Reef, off Tauranga, over five years ago, spilling catastrophic amounts of oil into the ocean and becoming New Zealand's

worst maritime environmental disaster. It resulted in cases being taken to criminal and environment courts.

Would a Pacific nation's legal sector have the ability to deal with such a goliath problem?

A New Zealand Government aid-funded education project targeting Pacific Island lawyers has been arming practitioners in remote island areas with the right skills to take on potentially major legal cases. Crown Law contributes significant resources in organising and running the programmes and New Zealand Law Society Continuing Legal Education provides the course materials.

Eleven courses since 1996

The Pacific Island Law Officers Network (PILON) litigation skills courses have been held 11 times since 1996, assisting government lawyers in areas including the Cook Islands, Kiribati and Tuvalu along with large island states like Papua New Guinea.

In addition, there is an Advanced Litigation Skills programme aimed at lawyers with 6-10

years' of criminal law experience.

The first of these was held in 2012 and the second one in November 2016 in Wellington. Seventeen senior practitioners from 13 different nations participated in the 2016 course.

The advanced five-day programme takes lawyers through a practical and skills based course using a complex case scenario, through opening addresses, case analysis (theory of the case), examination-in-chief, cross-examination, and re-examination and closing addresses. A major focus of the advanced programme is dealing with expert witnesses and technical evidence, which is a challenge for some practitioners from nations where, although English is commonly spoken, lawyers speak the native language and often the local dialect too.

NZLS CLE Ltd also provides the course materials, including the *World Oil Company v Northeast Shipbuilding Inc & Toiler Salvage Co* case file.

The programme director, Robert Lithgow QC, has a long history with the Pacific Island legal sector, even before the PILON

project got underway.

In the early days, Mr Lithgow and the late Helen Aikman QC would travel to the then Pacific Island Law Officers Meeting (PILOM) which followed the forum meeting where the prime ministers of all countries of the independent states get together.

"The PILOM meeting included representatives of senior law offices and Crown law offices," he says.

"They'd talk about practical matters including a lack of resources so they'd be offered research facilities but it became clear that their lawyers, of whom many at that time had graduated in either New Zealand or Australia, wanted access to similar sorts of post-practice programmes similar to the ones we have such as the New Zealand Law Society litigation skills programme."

Joint venture

A joint venture with the Ministry of Foreign Affairs and Trade, New Zealand Law Society and Crown Law Office was set up to run the litigation skills project with the faculty largely made up of judges, Crown Solicitors and senior members of the profession, both from within New Zealand and from Pacific nations.

The PILON litigation skills course was first run in New Zealand, followed by Fiji at the University of the South Pacific Campus, and then the Campus in Vanuatu. In 2015 it was held at the Law Courts in Apia, Samoa.

"Many of the graduates have gone on to become Attorney-Generals, Solicitor-Generals or principal legal officers in their own jurisdiction," Mr Lithgow says.

And the faculty members clearly derive a great deal of satisfaction from delivering the litigation skills programmes.

"As faculty, it is very rewarding being involved in the PILON programme knowing we are able to impart some of our knowledge and experience to senior Pacific Island colleagues who may not otherwise get the opportunity for much post-admission training," says faculty member Brent Stanaway.

"Having to prepare for the

programme requires us to think about why we do certain things in certain ways — things we just intuitively know when and how to do — and then be able to put that into words."

Intensive courses

There is no doubt that the participants are challenged, as the courses are intensive.

"People are losing a lot of sleep doing this but when they get to the end of it, the lawyers realise their skills are as good as anyone else's and it's a real confidence boost," Mr Lithgow says.

While dealing with a major legal issue such as a ship grounding near an island state could be done, it would probably need the expertise of overseas lawyers, and as Mr Lithgow is quick to point out, they're expensive.

That's arguably one of the reasons why the PILON project is so vital to the region.

"The level of the advanced litigation skills course is exactly the same as in the United States where I've taught it, here in New Zealand and there's also something similar being taught at Oxford University for London barristers. So lawyers in the Pacific Islands are getting international level training and there are many advantages in that it strengthens the whole Pacific Island network," he says.

Common threads

There are common threads in the legal issues that Pacific nations face including an obvious lack of resources, big foreign companies operating within their area and the large number of conventions nations have agreed to at a political level with limited legal resources to draw from.

"So, the PILON project is a significant way of helping government lawyers, but not on a political basis. I've never been made aware of any reciprocity required. It's simply to help them capacity build and give them confidence that they can tackle these issues themselves rather than use overseas lawyers," Mr Lithgow says.

Up-skilling lawyers throughout the Pacific Islands also creates a network which is essential when lawyer numbers are small and underpaid Government lawyers are often swallowed up by the private sector.

So how do you measure success with the PILON programme participants?

The feedback Crown Law receives from both participants and their supervisors is overwhelmingly positive.

"Watching the confidence of the participants grow from the beginning through to the end of the course is fascinating," says Programme Coordinator and Crown Counsel Jacki Cole.

Strong network

"They truly appreciate the quality of teaching, from the calibre of the faculty to the standard of the course materials, as well as the professional and efficient manner in which the courses are organised and run. They leave the courses not only with higher learning but also having formed a strong network of Pacific Island

colleagues they can call or email to share experiences with and seek advice from."

Robert Lithgow says probably their most famous in-house story involves a woman who had only been a practising lawyer for nine months.

"She was prosecuting in a very complicated murder case where there were multiple people accused of the crime. She was up against the public defender who was a very experienced Australian criminal lawyer on secondment.

"That lawyer asked her what she had learned on the PILON course and she said she had learnt to have only a theory of the case and to only ask questions that supported the theory and to work through the problem in a logical way. The lawyer sarcastically said to her that he was scared, but after that court case, he was scared."

Mr Lithgow says it was a classic example of being able to keep up in a court situation that could easily have overwhelmed her.

"She could have felt intimidated by his credentials but that didn't happen," he says.

Faculty members

As well as programme director Robert Lithgow QC, the faculty that took part in this year's PILON Advanced Litigation Skills course included:

- Rt Hon Sir Anand Satyanand,
- Sir Graham Panckhurst QC,
- Kieran Raftery QC,
- Judge Coral Shaw (former member of the United Nations Dispute Tribunal),
- Judge Chris Tuohy (former judge of the Supreme Court of Vanuatu),
- Brent Stanaway,
- Jacki Cole from Crown Law (Programme Coordinator).

If you are a senior practitioner with Pasifika connections and have an interest in being involved as a faculty member on future PILON litigation skills programmes, contact Jacki Cole at Crown Law by emailing jacki.cole@crownlaw.govt.nz.