
Auckland Medico-Legal Society President's Address 2012
"A call to Arms"
Antonia Fisher

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Opening comments

1. I am delighted to be addressing you this evening as the Society's President for 2012 and it is lovely to see you here in such numbers. (NB Particularly nice to see Pat Towle who together with Charles Blackie brought me to my first meeting in 1985 – dare I admit it 27 years ago).
2. Before I begin my address, I would like to thank the Society's immediate past president, Dr Tony Baird, for his leadership in the past year. Tony presided over the Society during a year of challenge following the earthquake in Christchurch. Most memorable was the fund raising dinner where two of the doctors involved, spoke about their harrowing experiences. Tony, we thank you for the commitment and leadership that you brought to the Society this past year.
3. Which brings me to this year's Committee. One of the most exciting things about being President for 2012 is the opportunity to work closely with such a dedicated team. Our Committee members will be well known to you but I would like to formally recognise them this evening. In addition to Tony they are:
 - Haemish Crawford – our president-elect and an eminent paediatric orthopaedic surgeon.
 - Kate Davenport – our treasurer and a litigator with expertise with disciplinary tribunals.
 - Hilary Blacklock - our editor of transactions and a consultant haematologist.

- Stewart Germann – an experienced commercial lawyer. We are losing Stewart as our secretary after 4 years – he has done a sterling job for the society.
 - Andrew Love – a specialist anaesthetist.
 - Christine Gordon – a partner at Meredith Connell and one of our crown prosecutors.
 - Anna Adams – also a partner at Meredith Connell specialising in litigation and health law.
 - David Galler – a specialist intensivist at Auckland Hospital
 - And welcome to two new committee members Her Honour Judge Jane Lovell-Smith and Katherine Miller from Buddle Findlay specialising in health law.
4. In recent weeks we have been finalising the year's programme and I am confident we will bring you a line-up of challenging and informative speakers.

A Call to Arms - Introduction

5. The title to my address to you this evening, "*A Call to Arms*" is deliberately dramatic. This is because I believe the time has come to ask some serious questions about whether our medico-legal society should do more to influence the course of important issues or events.
6. Presidents before me have chosen academic topics for their addresses. This is not such a paper and does not pretend to be
7. My purpose tonight instead is to challenge you to think about whether the time has come for us to engage directly in important issues beyond the security of our comfort zones.
8. I suggest that our medico-legal is a formidable resource of knowledge and experience, and we should step forward, lift our heads above the parapet and make a direct contribution to the issues of the day.

Our Medico-legal Society

9. Looking back, this Society was formed in 1953 to promote free and frank communication between the two professions at a time when personal injury litigation was thriving.
10. Following the introduction of Accident Compensation, the benefit of maintaining close contact within the two professions was recognised and, as our website says, the Society has continued to flourish.

11. Our Rules describe our objects as being “the promotion of medico-legal knowledge in all its aspects. And this is to be attained by holding meetings and by such other means as the committee shall approve – a wide mandate.
12. As we are nearing the Society’s 60th year, we should ask whether we are content to leave the discussion of medico-legal issues to our meetings or are we ready to take a bold step and publicly contribute to the ongoing debates of our time?

Other Societies

13. Some research reveals that other medico-legal societies deliberately renounce their society advancing particular positions.
14. The NSW Medico-Legal Society, for example, explicitly states on its website:

We do not produce position statements or determine policy.

15. I have to question whether such a position can be justified in this day and age. Law and medicine raise both highly topical and emotional issues, relevant to everyone. If we aspire to be relevant as a Society, we should actively engage with the issues of the day as and when they emerge. We could perhaps take our lead from the American College of Legal Medicine which is positively robust in making its voice heard.

Its website says:

The ACLM advances the administration of justice, influences health policy, improves health care, promotes research and scholarship, and facilitates peer group interaction.

16. While that may be taking things too far for us, it is interesting to look at the approach of the South African Medico Legal Society, which while acknowledging it is not a pressure group notes on its website that:

The Society has in the past acted to promote the rights and interests of society at large flowing from the Constitution of South Africa, and the Society intends to do so in the future.

17. Many of the Canadian medico-legal societies are similar to our own. The Toronto society for example was formed in 1950, to promote medical, legal and scientific knowledge, and understanding between the professions. Recently that Society for the first time made submissions on civil justice reform commenting in particular on the role of medical experts.
18. Dealing with expert bias, the following passage is noted

“In simple terms, both professions can and must do better. Failure to do so will have profound implications for access to justice and future health care funding”

19. A concession about their own imperfections sets a sound platform for introducing the reforms which are proposed and which are being considered by the justice system in Toronto.
20. What then are the issues relevant to us? I thought I would give you some recent examples of such issues to demonstrate areas where comment might be made by our society.

Recent articles and headlines

21. Consider these issues in last month’s leading magazines and the newspaper:
 - **How medical specialists are making a killing: With elective surgery prices nearly doubling in the past eight years, Donna Chisholm discovers some private specialists are on an \$850 million a year insurance gravy train and asks what’s being done to slow it down.**

North and South March 2012
 - **In Surgeons We Trust: But should we?**

Metro Magazine March 2012
 - **Corrupt lawyers swindling system – up to 80% of legal aid lawyers at Manukau are gaming the system.**
NZ Herald November 2009
 - **Law change stops lawyers’ big payouts– Radical changes will put an end to defence lawyers being paid up to \$900,000 from the public purse.**

NZ Herald December 2010
22. I am sure that many of us will have felt frustrated and indignant about some if not all those headlines. The problem is that it can be futile for individuals to express a contrary view. Even our own professional associations, when they do comment, risk being judged as not being objective and/or ‘protecting their own’. This Society, however, could be a powerful voice and provide informed, collective comment to inject some balance into current issues being publicly debated.
23. We need to be prepared to debate issues at short notice. If we are not able to join the debate when it is taking place, it will be too late and the issue will pass us by. It may already be too late to comment on the magazine articles. We need to formulate responses and be ready to dispatch them promptly. Email allows us to confer almost immediately. I am not suggesting ill-considered or intemperate commentary – rather that we should make use of the formidable and combined

intellect and experience of our membership, to develop responses that are persuasive, considered and succinct. Above all, we must be credible.

Public and legislative policy

24. The Society could also be pro-active in countering the increasing tendency of knee-jerk politically driven responses to a particular event or series of events.
25. An example is the hasty repeal of the defence of provocation following the Clayton Weatherston trial. Weatherston was convicted on 22 July 2009. On 3 August 2009, less than 2 weeks after the verdict, the government announced that the provocation defence was to be abolished, much to the chagrin of many of the defence lawyers in this room.
26. Likewise, with bail laws:
 - **Bail laws stole our daughter NZ Herald again**
27. Within 2 weeks of that headline, the government announced there would be a review and likely changes to the bail laws.
28. Similarly, constant changes to ACC over the years has resulted in a system which bears little comparison to the original scheme, yet we have allowed these changes to creep in over time, with little effective debate on the whittling away of rights both for those practicing medicine at the coal face, and those who need adequate compensation.
29. Likewise with alcohol and the lowering of the drinking age to 18.
 - **Toxic tide of booze takes deadly toll – NZ Herald article**
30. This is a crucial issue, particularly when we are told that 80% of those in jail have alcohol and other drug addictions. The cost to the country of alcohol related issues is enormous. What were we thinking!
31. These issues are all topics upon which the Society could have commented. To do this, we do not necessarily need to advance a particular position but we can provide balanced and informed comment from both a medical and legal perspective.
32. Whilst we each have our own professional associations, this Society has a unique voice given that it is comprised of members of both professions. A further

point of difference is that while our professional associations represent all levels of practitioners, our Society is primarily made up of highly experienced doctors and lawyers. Although we are trying to attract younger members, in the meantime we can and should play to our strengths.

A new objective

33. The first challenge is to answer the fundamental question – do we, as a society, want to take this step? If so, how do we move forward to achieve this new objective? If this call to arms is answered affirmatively by the society, the Committee can formulate a detailed plan of how we could proceed.

The mechanics for change

34. Some ideas include:
- (a) We agree which issues are important to the Society and which are best avoided. An obvious example would be to steer clear of the latest and hottest individual “cause celebre” involving someone wronged by either the medical or legal system. We should not be commenting upon what we think of David Bain or David Tamihere. We may, however, want to offer comment about allegations of corruption or overcharging by lawyers or doctors. The headlines I have mentioned relating to medical specialists and lawyers are examples of situations where we could provide a balance to sensational headlines.
 - (b) In terms of mechanics, we need to empower a small sub-committee of say 4-6 members (two or three from each profession) to prepare press releases about short term issues and /or policy statements for more complex issues.
 - (c) That sub-committee could develop a “position” on key issues, which could be shared via email for immediate feedback. Other members with specific expertise could be co-opted for comment on a particular topic. Initially, I suggest, we would need to proceed cautiously by choosing only one or two topics.
35. I realise that much of what I am proposing will involve a shift in our focus.. Some of you may be of the mind-set *if it's not broke - why fix it*. I am not suggesting that there is anything wrong with what we do, but I think we can do more.

36. When I look around this room I am struck by the wealth of experience and expertise within this Society. Our membership contains many leading practitioners in both fields of endeavour. Among you are a large number from the judiciary; professors and consultants, Queen's Counsel and senior members of both professions. Few organisations in this country could claim such a wealth of expertise and eminence. It is surely a waste of our combined talents not to harness the collective skill and wisdom of the members of our Society and use that huge resource, to make a meaningful contribution to the issues facing us.
37. As an extension of this we could develop relationships with other medico-legal associations so that we can share experiences and learn from other jurisdictions. Most commonwealth countries have medico-legal societies which are similar to ours. If there is an issue that is of particular interest a joint-conference might be an excellent way to share views and experiences.
38. In summary, my proposal or "call to arms" is therefore threefold:
- (a) We agree in principle to comment publicly on certain issues.
 - (b) We form a dedicated sub-committee charged with formulating policy on key issues and communicating that policy.
 - (c) We confer and liaise with other Medico-Legal Societies to share ideas and learning.

Concluding comments

39. We have changed tonight's format to have the speech before dinner in the hope that you might discuss the ideas proposed over your meal. The Committee and I look forward to hearing any comments or ideas you might have either tonight or in the coming days.
40. I hope you all enjoy your evening.