

Literature Review On Culture and Change in the Legal Profession

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1.0 Introduction

This section provides the context, purpose, and scope of this document, as well as providing definitions for terms used throughout.

1.1 Context

The culture of the legal profession in New Zealand has been under increasing scrutiny after a number of high profile misconduct allegations came to light in early 2018. The New Zealand Law Society has identified the need to create a strategy to build a healthy, safe, respectful, and inclusive legal community. To support this work the Law Society has put together a group of approximately 20 legal professionals as a volunteer task force to support the development of this strategy. This literature review will be used to inform this ongoing work.

1.2 Purpose of this document

This review discusses literature on the prevalent traits in the legal profession. It also describes the harmful behaviours associated with these traits and policies and interventions to reduce these behaviours. The review identifies case studies of culture change in communities, and highlights the contributors to culture in the legal profession. Finally, the review identifies areas in which further research is required.

1.3 Definitions used throughout this document

This subsection defines culture, the dimensions of culture, and cultural traits.

1.3.1 Culture

For the purposes of this review, culture is defined as the culmination of ideas and ways of working typical for groups of people that influence the way groups behave.¹

1.3.2 Dimensions of culture

In 1980, Edgar Schein developed a model to understand the three dimensions of culture:²

1. artefacts and symbols – the visible elements of a culture including strategies and mission statements;
2. espoused values – how artefacts are expressed, standards and rules of conduct;
3. underlying assumptions – experienced as self-evident and unconscious behaviour.

The complexity of these three dimensions offer an explanation as to why culture can be pervasive and enduring, even when change is attempted. One of the reasons changing culture is

difficult is the need to address underlying assumptions, which can be hard to recognise and change.

1.3.3 Cultural traits

While culture is complex, it can be broken down into identifiable traits. According to E. Adamson Hoebel, a trait is an irreducible unit of learned behaviour or material product thereof.³

Cultural traits are not inherently positive or negative. They may be positive and serve a purpose in some circumstances and have a negative impact in other circumstances. For example, competitiveness can be a helpful trait when a lawyer is advocating for their client, but it can also create unhealthy competition between colleagues that may produce harmful behaviours, such as bullying and harassment. When discussing 'harmful' or 'negative' cultures, it is often due to the harmful effects of a cultural trait in a specific context. The need to change a culture often originates in one or more traits of that culture not serving the group in all situations.

1.4 Scope of the research

This review references 151 primary sources, consisting of primarily of scholarly articles. Where appropriate references also include a number of web sources, and non-peer reviewed reports.

1.4.1 Structure of this document

In addition to this introduction, this document has seven sections as follows:

- Section 2.0, 'Prevalent cultural traits in the legal profession', describes literature findings on four prevalent traits that define the culture of the legal profession: competition, financial motivation, power imbalance, and conformity.
- Section 3.0, 'Harmful behaviours resulting from prevalent cultural traits', describes three harmful behaviours the literature links to the prevalent cultural traits: overwork, bullying, and sexual misconduct. For each harmful behaviour, this section provides a definition and summarises literature on prevalence, impact, link to cultural traits, and other drivers.
- Section 4.0, 'Policies and interventions to reduce harmful behaviours', summarises the literature on the range methods and strategies employed to reduce harmful behaviour. It also provides literature findings on the effectiveness of these methods and strategies.
- Section 5.0, 'Contributors to culture in the legal profession', summarises literature review findings about the key contributors to culture in the legal profession: legal education, the business models of legal firms, and the impact of working with clients.

- Section 6.0 , 'Case studies of culture change in communities', provides a summary of case studies of culture change within communities that can be linked to the interventions and policies set out in section 5.0.
- Section 7.0, 'Further research', describes the gaps in available literature.
- Section 8.0, 'Conclusion', provides an overall evaluation of the findings.

2.0 Prevalent cultural traits in the legal profession

This section describes literature findings on four prevalent traits that define the culture of the legal profession: competition, financial motivation, power imbalance, and conformity.

Mire and Owens stated that given the diversity of working arrangements across the legal profession, it is difficult to generalise about the way lawyers work.⁴ This section draws on a breadth of research, and while the findings may not apply to all organisations employing legal professionals, it summarises literature on the culture of the legal profession as a whole.

2.1 Competition

The literature indicates that competition engrained in students at law school, discussed in section 5.0, continues into their working lives as lawyers.

Law graduates face tough competition in applying for clerkships or for other roles. On the 'Occupation Outlook' website for Lawyers, the New Zealand Ministry for Business, Innovation and Employment states:

*With a very large number of law students graduating each year, and a limited number of entry-level lawyer positions, it is difficult for a new graduate to get work as a lawyer. Many recent graduates are getting jobs in other industries instead.*⁵

Once individuals join a law firm, the partnership model typical of many law firms can exacerbate the cultural trait of competition. Partnerships typically operate a pyramid structure, with a small number of equity (and sometimes non-equity) partners at the top, a moderate number of senior employees in the middle, and a large number of junior employees at the bottom. This model encourages competition in that there are generally a smaller number of roles above an employee's current position available for promotion. In an effect not dissimilar to the second year law restriction described in section 5.0, this structure engenders what Mire and Owens described as a "tournament for promotion to partnership".⁶

Competition in the profession is closely tied to not only the arrangements of firms, but also the fundamental arrangements of the judicial system. Mire and Owens argued that the judicial system drives a competitive culture, by in most cases "[pitting] parties and their lawyers against each other".⁷ They noted that this fundamentally confrontational setup engenders a competitive and adversarial environment that flows in to the profession more broadly.

2.2 Financial motivation

Profit is used by most law firms as an overall determinant of success, and financial motivation is a prevalent cultural trait. Where firm success is measured on profit, and profit is driven by generating revenue (billing), firms will reward employees who bill the most hours. While this is a

gross simplification of reward structures, and acknowledging that firms are increasingly shifting towards more holistic approaches, this approach is often applied across the global legal profession.

Strum and Gunier argued that methods of measuring success (or failure) in law school are intrinsically linked with the way success is (generally) perceived or measured in the practice of law – making money.⁸

Many members of the legal profession are motivated by the financial security it can offer. In 1990, 75% of American law students stated that “being very well off financially” was “very important” to them when considering a career.⁹ This was almost double the proportion of students who felt this way in 1970.¹⁰

Schiltz’s view is that the emphasis on profit, and therefore billable hours, and the financial motivation of individuals is a reinforcing cycle. As the financial demands of legal professionals increase, for example when starting salaries for the best graduates get more competitive, law firms can either put up their rates (putting them at a potential competitive disadvantage) or increase the required number of billing hours. Increasing the number of billing hours in a year does not affect clients, and leads to a bigger return on investment for the higher salaries required to attract and retain the best talent. This leads to even greater emphasis on the financial motivation trait and increases pressure on individuals.

2.3 Power imbalance

The literature indicates that the power imbalance law students experience at law school, as discussed in section 5.0, continues in their working life as lawyers.

Law firms are typically arranged in hierarchical partnerships. Kirkland observed that the power in law firms is centred in the partnership, and “understanding what those above you want is crucial for promotion”.¹¹

An example of the power partners hold over the careers of their staff is how they distribute work. In many firms, partners determine which junior employees they will work with and how work will be distributed among them. The desire to be allocated ‘good’ work (often work that will attract promotion attention) sees junior employees seeking mentorship or sponsorship from these partners.¹² The desire for good work is driven by the view that promotion is only available to the few and will be based on the judgements of senior partners.¹³

The need for ‘good’ work which is likely to result in promotion can create a stated or implicit requirement for more junior staff to be available to partners at all times. Kirkland found this was

reinforced by those in power, "When asked how associates succeed, an equity partner said, 'You have to be available. You can't say no.'"¹⁴

2.4 Conformity

David Raynor argued that the legal profession is conformist because the law itself is conformist.¹⁵ He refers to the notion of precedent in the legal field as exacerbating a "this is the way it is always done" culture, by referring to past actions as determinants of future actions.

Griffin contends that typical performance structures in the profession incentivise conformity by setting out a cookie cutter mould of what success looks like.¹⁶

Noury, Gand and Sardas contend that the partnership and promotion structures of law (and other professional services) firms breed conformity through the reward and promotions systems.¹⁷ Typically revenue and productivity are the key measures for both performance and promotion.

Banes wrote that conformity requires that you do what is expected from you by a group, and this is demonstrated in law firms from the way lawyers dress to the way they treat their colleagues.¹⁸

3.0 Harmful behaviours associated with prevalent cultural traits

This section describes three harmful behaviours the literature links to the prevalent cultural traits of competition, financial motivation, power imbalance, and conformity. The three harmful behaviours are overwork, bullying, and sexual misconduct. For each harmful behaviour, this section provides a definition and summarises literature on prevalence, impact, link to cultural traits, and other drivers.

3.1 Overwork

This section provides a definition of overwork together with a summary of the literature on its prevalence, link to cultural traits, and other drivers.

3.1.1 Definition of overwork

According to Cha and Weeden, overwork is defined as employees spending more than 50 hours per week on the job, regardless of whether those hours are related to standard or non-standard employment.¹⁹

3.1.2 Prevalence of overwork

The legal profession is characterised by overwork as evidenced by long hours and heavy workloads. A national survey of lawyers in Australia found that 52% of female and 70% of male lawyers worked over a standard working week of 40 hours.²⁰ According to Cha and Weeden's threshold 15% of female and 27% of male lawyers are overworking.

The prevalence of overwork is highlighted in a speech made by Tom Poulton, former Managing Partner of Allens Arthur Robinson, when accepting the award for Best Large Law Firm in Australia in 2005:

We don't run this place as a holiday camp. We expect our people to treat the client as if they were God and to put themselves out for clients. You don't say, 'Sorry I can't do it, I'm playing cricket on the weekend' ... You don't have a right to any free time. ²¹

Referencing this event, Mire and Owens argued that it is plausible that law firms operate in an environment where excessive work and stress are "part of the scene, rather than something that requires intervention".²² A 2013 study by Bergin and Jimmieson supports this argument, finding that 75% of lawyers were unable to create a work-life balance, but only 28% indicated that they were dissatisfied with their job.²³ This indicates that either work-life balance has little correlation with job satisfaction, or that lawyers are habituated to overwork.

Two law firms in Australia are being investigated by Victoria's state safety regulator for potential breaches of the Occupational Health and Safety Act for overworking staff.²⁴ The investigations were instigated after complaints of junior staff who were exposed to "gruelling conditions" which saw junior staff choosing to sleep in the firms Melbourne office overnight rather than returning home. Day and night shifts were allocated to staff to ensure that work could continue around the clock.

3.1.3 Impact of overwork

The literature finds that overwork in the legal profession can lead to poor health outcomes and high levels of turnover.²⁵ Findings also include that overwork can increase the risk of legal malpractice and bullying.

3.1.3.1 Poor health outcomes

The literature suggests that overwork can lead to stress and burnout in legal professionals.²⁶ Eric Sugurdson stated that jobs in the legal profession are "chronically stressful and involve long hours. A lot rides on our success and behaviour, and this pressure only increases as lawyers rise in their profession".²⁷ A study in the Journal of Health and Social behaviour noted that chronic stressors like overwork and work-life imbalance are the key contributors to above average prevalence of mental health issues in the legal profession.²⁸

One study of the legal profession in the United States found that 61% of respondents experienced anxiety and 46% reported concerns regarding depression at some time in their career.²⁹ A similar 2007 study in Australia highlighted an elevated rate of depressive symptoms in lawyers working in law firms, particularly when compared to other professions.³⁰

According to a study by Cohen et al., stress has been found to negatively affect a wide range physical health outcomes including cardiovascular disease, respiratory illnesses, and autoimmune diseases, as well mental health issues.³¹

The literature also finds stigma associated with mental health in the profession. A repeat of the 2007 Australian study in 2011 found that although progress had been made since 2007, there was still limited support for colleagues experiencing depression.³² The 2011 study found that lawyers felt that their places of work were unlikely to help an individual seek treatment. While the legal profession reported the highest levels of mental health training compared to other professions, this study suggests that lawyers may be concerned that being open about their health issues may be detrimental to their careers.

Trevor Edmond links the limited support for mental health issues to the historically competitive and adversarial nature of legal practice, stating that "an admission that you have high levels of

stress or depression could be seen as a sign of weakness, allowing others to use that adversarially against you".³³

3.1.3.2 High levels of turnover

Turnover is generally viewed to be a negative outcome for organisations. High levels of turnover are concerning for organisations due to the cost of replacing employees, and potential loss of institutional knowledge. Gallup found that the cost of employee turnover can be up to 150% of the salary of the individual, especially in knowledge-based roles like the legal profession.³⁴

Some research suggests that not all turnover should be avoided. Turnover of high performing employees is definitely a poor outcome, but in some cases turnover of disgruntled or under-performing employees can save organisations more than the cost to replace them.³⁵ What is clear is that there is no 'ideal' level of turnover, it can be a negative and a positive outcome.

The literature suggests that turnover is linked to overwork. Thornton found that a typical response to the long-hours culture and a desire to improve work-life balance was to move out of private practice.³⁶ The link between high levels of turnover and overwork is particularly strong for junior lawyers.³⁷ Thornton stated that a social Darwinist concept of 'survival of the fittest' seems to be widely accepted across the profession and is used as a justification for not taking preventative action.

The issue of overwork leading to turnover is not unique to the legal profession, and is an issue faced by professional services more generally.

Studies of turnover and overwork in other industries note the connection to stressful working environments. An investigation into the role of stress in turnover in the technology industry found that turnover is a direct outcome of high workload, long hours and exhaustion.³⁸ Cropanzano and Byrne found a positive relationship between stress and intention to leave, concluding that a stressed employee was much more likely to quit their job than other employees.³⁹ They commented on the link between not only stress and turnover, but also the reduction in participation in what they refer to as organisational citizenship – efforts 'beyond the job' that contribute to culture and the overall success of an organisation.

3.1.3.3 Increased risk of malpractice

Fortney stated that long work hours and stress increase the likelihood of professional malpractice and discipline, especially in work environments in which junior lawyers' work is not properly supervised because senior lawyers are occupied with their own billable hours.⁴⁰

3.1.3.4 Increased risk of bullying

Stress and high workloads have been associated with increased reporting of bullying incidents. This may be partly due to stress and overwork decreasing job satisfaction and reducing the aggression threshold for individuals, and partly due to overwork decreasing available time for collaborative problem solving.⁴¹

3.1.4 Links between overwork and prevalent cultural traits

The literature links overwork to the four prevalent cultural traits discussed in section 2.0.

3.1.4.1 Competition and financial motivation

A competitive culture in the legal profession drives employees to compete against each other for promotion in part based on working longer hours than each other in order to have better billable hours metrics.

A study by Campbell and Charlesworth discussed the relationship between long hours worked by salaried employees the financial motivation of law firms.⁴²

They suggested that while law firms may have flexible working policies, from a profit perspective it is not necessarily in their best interests to promote and support their adoption. Profit is used by most law firms as a determinant of success, and as a cultural trait it is a major contributor to negative outcomes for the legal profession.⁴³ The flow on effect of using profitability as a success measure is that employees of a law firm, and indeed partners, are measured based on their contribution to the profitability of the firm. In most cases, this takes the form of billable hours. Thornton describes the billable hours profit formula as a mechanism that leads to overwork, and propagates stress and depression in the legal profession have been propagated.⁴⁴

Barret provided a detailed example of how a hypothetical mid-level associate might overwork in response to the financial motivation found in law firms:

A mid-level associate is expected to bill 2000 hours per year. At \$500 per hour, this would generate \$1 million in revenue while costing \$250,000 (or less) in salary. The ambitious associate, however, would try to bill 2500 hours in the hope of attaining partner. The technology thereby encourages self-reliant individuals to discipline themselves by working ever harder and longer in order to enable the firm to maximise the surplus value that it is able to extract from associates' labour. In this way, the logic and instruments of financial accounting operate to incentivise performance, which encourage associates to bill more than the minimum. Associates do not need to receive training to quickly absorb the norm that they should be 'racking up hours' and feeling guilty when devoting time to themselves, friends or family.⁴⁵

This reward structure pressures employees to bill as many hours as possible, which in many cases leads to excessive working hours and high levels of stress.⁴⁶

3.1.4.2 Power imbalance

Kirkland suggested that incentive structures in the legal profession can contribute to an environment in which junior staff feel obliged to be available to partners at all hours.⁴⁷

This pressure to overwork can be overt as mentioned above, or can be implicit, as it is the behaviour that is rewarded by those in power. Kirkland observed that “the ‘go to’ associates never said no to an assignment. These were the people who were first in, in the morning, and last out at night.”

3.1.4.3 Conformity

The impact of conformity, and the pressure to work long hours can be evidenced when a new employee starts at a law firm. If their entire team works overtime, they are also likely to do so in order to fit in. Baner wrote that conformity requires that you do what is expected from you by a group, and this is seen demonstrated in law firms from the way lawyers dress, to the way they treat their colleagues, and the hours they spend in the office.⁴⁸

3.1.5 Other drivers of overwork

The literature describes technology and an oversupply of trained lawyers as other drivers of overwork.

3.1.5.1 Technology

Thornton argued that technology aids and abets the long-hours culture, in that it is now easier than ever to work effectively outside of the office.⁴⁹

3.1.5.2 Oversupply of trained lawyers

Thornton also argued that the “proliferation of law graduates waiting in the wings who are keen to take the place of the recently departed” creates ‘disposable worker’ attitude, where the oversupply of trained lawyers leads to an attitude of simply replacing workers who leave or burn out.⁵⁰

3.2 Bullying

This subsection provides a definition of bullying together with a summary of the literature on its prevalence, link to cultural traits, and other drivers.

3.2.1 Definition of bullying

Worksafe New Zealand defines bullying as repeated and unreasonable behaviour directed towards a worker or a group of workers that can lead to physical or psychological harm.⁵¹ For the

purposes of this section, discrimination (including racial, sexual and other discrimination types) is discussed as a subset of bullying behaviours.

3.2.2 Prevalence of bullying

A study by the New Zealand Law Society found that over half of lawyers in New Zealand have experienced bullying to some degree in their career.⁵² In a similar study by the Law Council of Australia, 50% of female and 38% of male lawyers reported that they had been victims of bullying or intimidation in the workplace.⁵³

According to Mire and Owens, a generally poor understanding of workplace bullying makes its prevalence difficult to judge. They argue that reports on the prevalence of bullying should be considered critically because definition confusion can lead to either under or over reporting.⁵⁴ They also stated that it is likely that bullying in the workplace is under-reported.

Not only definition confusion but also variance in the way data is collected, measured and evaluated can make it difficult to compare levels of bullying across different professions and workplaces. However, the literature finds a higher prevalence of bullying in the legal profession than in the general population.⁵⁵ Michalak wrote that lawyers are much more likely than other professionals to be exposed to negative interpersonal behaviours, including but not limited to bullying.⁵⁶

There are three key categories of bullying discussed in the literature: work related, person related, and physical intimidation. The 2018 New Zealand Law Society Workplace Environment Survey identifies the most common sub-types under these three categories. According to the report, the top work related bullying incidents are being ordered to do work below competence level; being exposed to an unmanageable workload; and withholding information affecting performance.⁵⁷ The most common person related bullying include being ignored or excluded; being humiliated or ridiculed; and spreading gossip or rumours. Physical intimidation included being shouted at; experiencing intimidating behaviour; and threats of violence or actual abuse.

Kish-Gephart, Harrison and Treviño examined harmful behaviours and unethical choices in the workplace in their 2010 article in the Journal of Applied Psychology. They refer to three antecedents of this behaviour:

- 'Bad apples', individuals prone to engage in unethical behaviour;
- 'Bad cases', interactions where the ethical dimensions are likely to be overlooked or ignored;
- 'Bad barrels', organisations that are organised and conducted in ways that maximise the likelihood of unethical conduct.⁵⁸

Their study indicated that unethical behaviour will increase in the presence of each of these phenomena. Mire and Owens refer to this study as it relates to the legal profession in their article 'A Propitious Moment?'⁵⁹ They argue that it is unlikely that bullying in the legal profession is the case of 'bad apples' – for if this was the case, bullying incidents would be anomalies, rather than ubiquitous in the profession.

Vega and Comer also echoed the 'bad barrels' theory, writing that "there is evidence that certain workplace cultures can 'set the scene' for bullying behaviours."⁶⁰

The results of a 2018 survey by the Women's Bar Association of Massachusetts on Workplace Conduct and Behaviours in Law Firms reflected the 'normalisation' of bullying, with respondents reporting that when hearing negative or inappropriate comments "It seemed like it was expected and 'normal'."⁶¹

3.2.3 Impact of bullying

The literature finds that the impacts of bullying, and of discrimination as a subset of bullying behaviour, can include poor health outcomes, lost productivity, increased risk of malpractice, high turnover and damage to a firm's brand. Each is discussed below.

3.2.3.1 *Reduced engagement*

Triana et al. found that bullying in the form of discrimination in the workplace resulted in decreased employee engagement.⁶² This is also linked to a possible loss of productivity as discussed in 3.2.3.3 below.

3.2.3.2 *Poor health outcomes*

Empirical studies associate bullying with depression, anxiety, aggression, insomnia, psychosomatic effects, stress, and general physical and mental ill health.⁶³ A 2015 longitudinal study indicated workplace bullying is a significant predictor for subsequent mental health problems, including post-traumatic stress disorder and other stress induced psychological issues.⁶⁴ Deitch et al. found that incidents of everyday discrimination lead to dysfunctional psychological outcomes for minorities.⁶⁵ The same study found that discrimination affects both psychological and physiological responses in individuals who had experienced discrimination.

3.2.3.3 *Increased risk of lost productivity*

Impacts to business can include lost productivity, in part based on time spent managing incidents and the negative brand perception associated with public cases of misconduct. A 2010 report by the Australian Government Productivity Commission estimated the annual cost to productivity of workplace bullying nationwide at that time to be from A\$6 billion at the lower end to upwards of A\$36 billion per year at the upper limit.⁶⁶

Cox found that discrimination has detrimental effects on both the employee and the organisation through reduced productivity.⁶⁷

3.2.3.4 Increased risk of malpractice

In some cases, firms are at risk of malpractice. In late 2018, a junior lawyer in the United Kingdom was found to have faked legal documents over a 17-month period to cover a mistake she had made, because she was too terrified to admit that she had made it.⁶⁸ The culture at the firm she worked for was described at the time as being toxic and vile by senior lawyers. The lawyer concerned has since been disbarred.

3.2.3.5 Brand damage

Salin found that when an organisation explicitly or implicitly condones workplace bullying, this will result in increased employee turnover. The turnover, in turn, will communicate the organisational issues to the wider community.⁶⁹

A review by Heames and Harvey suggests that if an organisation does not address bullying, its corporate reputation can suffer. This can result in difficulties attracting or retaining staff.⁷⁰

3.2.4 Links between bullying and prevalent cultural traits

The literature links bullying to three prevalent cultural traits: competition, financial motivation, and power imbalance. Each link is discussed below.

3.2.4.1 Competition

Salin's 2003 study found that motivating structures for bullying include high internal competition, reward systems, and benefits for the perpetrator.⁷¹

Omari et al. and Salin commented that heightened levels of competition can cause a workplace to change from a positive environment to a toxic environment that is a breeding ground for ill feeling, resentment, and incivility.⁷² They stated that incidents of bullying and abusive conduct in such environments are the result of the pressures of competition and a climate of survival of the fittest. This reference to a Darwinist environment echoes the sentiment of Thornton referring to the 'tournament' for partnership.⁷³

Thornton also argued that high pressure environments lead to heightened levels of incivility within law firms and contribute to the prevalence of harmful behaviours, including but not limited to bullying.⁷⁴

In organisations such as legal firms where performance is judged on quantity of work, this can result in bullying of colleagues who are perceived to be violating established norms and 'raising the bar' for others.⁷⁵

3.2.4.2 Financial motivation

Financial motivation contributes to what is often referred to as a 'culture of silence', whereby partners (or staff) who generate large profits for the firm may be seen as immune to policies and consequences for demonstrating harmful behaviour.⁷⁶ Omari and Paull suggested that this is evidence that a focus on profit drives law firms towards deliberate inaction, tolerance, and tacit acceptance of harmful behaviour such as bullying.⁷⁷

Bullying can be used by those in a position of power to deal with perceived poor performance. This is particularly true when a superior's performance is judged on the basis of the performance of their team. Because the poor performance of a staff member can have reward implications for the manager, the manager may hope that bullying will lead the staff member to leave their department, or the organisation.⁷⁸

3.2.4.3 Power imbalance

In her Independent Review of Russell McVeagh, Dame Margaret Bazley discusses the power imbalance which led to bullying, sexual harassment and assault, stating that:

*...there is a link between the conditions which create a culture where sexual harassment and assault can occur and occurrences of general bad behaviour. At Russell McVeagh these conditions include the firm's gender imbalance at partnership level, and the enormous power imbalance between partners (the majority of whom are men) and junior staff, which means that junior staff feel unable to speak up and raise concerns.*⁷⁹

In a 2010 report, Omari describes hierarchical settings and highly competitive environments as "breeding grounds" for bullying behaviour.⁸⁰ In a survey conducted by Paull and Omari in a separate study, one respondent wrote the following about an incident of bullying: "I believe the culture of perfectionism and competition and the unbalanced focus on workplace achievement in the firm led to this circumstance occurring."⁸¹

According to the 2018 New Zealand Law Society Workplace Environment Survey Report, 65% of the time the perpetrators of bullying are more senior co-workers, including managers and partners. Judges were the perpetrator in 15% of incidents, but for lawyers working in criminal law this proportion was much higher (44%), similarly for those working as sole barristers (50%). This incidence of judicial bullying is one indication that bullying is by no means only an issue within firms, but within the wider legal system as a whole.

Salin found that managers make up a majority of bullies or instigators of incivility.⁸² This pattern held across multiple jurisdictions. The same paper goes on to find that power imbalances in the workplace are often connected with broader societal power imbalances and overlap with related phenomena such as sexism in the workplace.⁸³

Hoel and Cooper's 2000 study associated bullying with more negative management styles including autocracy often associated with hierarchical organisations.⁸⁴

3.2.5 Other drivers of bullying

Omari argued that the intensity of work volume at both extremes (high and low) contributes to the frequency of bullying incidents.⁸⁵ Because the profession values long work hours and high productivity, staff can bully each other to compete for work when demand for services is low and staff who are less busy feel vulnerable to criticism.⁸⁶

3.3 Sexual misconduct

Below is a definition of sexual misconduct together with a summary of the literature on its prevalence, link to cultural traits, and other drivers.

3.3.1 Definition of sexual misconduct

Sexual misconduct includes both sexual harassment and sexual violence, and each is defined below.

The NZ Human Rights Commission defines sexual harassment as follows:

*Any unwelcome or offensive sexual behaviour that is repeated, or is serious enough to have a harmful effect, or which contains an implied or overt promise of preferential treatment or an implicit or overt threat of detrimental treatment. Sexual harassment can involve spoken or written material, images, digital material, or a physical act.*⁸⁷

The World Health Organisation defines sexual violence (including sexual assault) as follows:

*Any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work.*⁸⁸

3.3.2 Prevalence of sexual misconduct

Similar to bullying, confusion about the definition of sexual misconduct can lead to under or over reporting on prevalence, and the literature suggests a high likelihood of under-reporting. A study by the New Zealand Law Society found that a number of victims, according to the definition of harassment, did not consider the acts to be so.⁸⁹ In the same study, 88% of victims did not

formally report an incident or make a complaint to their employer. This suggests that any record of 'reported' incidents is substantially lower than the actual number of incidents occurring.

Sexual harassment in the NZ legal profession were first quantified in 1982. The 1982 study showed that 23% of female lawyers had been sexually harassed in the workplace.⁹⁰ Later studies in the early 1990s indicated that over 30% of women lawyers had been sexually harassed in the workplace. In 2012, a survey of lawyers by Natalya King found that the prevalence of sexual harassment was almost the same as it was in 1992.⁹¹ The New Zealand Law Society's 2018 Workplace Survey found that 31% of women had experienced harassment in a legal working environment.⁹²

In 88% of cases of harassment in the New Zealand legal environment, the perpetrator is male.⁹³ In the 8% of reported incidents where the victim is male, the perpetrator is more likely to be female.

Workplace sexual misconduct is not unique to the New Zealand legal profession, with similar rates of sexual misconduct faced by legal communities across the world within firms and perpetrated the judiciary.⁹⁴ Instances of sexual misconduct can also be found across almost any profession.⁹⁵

3.3.3 Impact of sexual misconduct

The literature finds that the impacts of sexual misconduct can include poor health outcomes, increased turnover, absenteeism, productivity loss, and brand damage. Each is discussed in this subsection.

3.3.3.1 Poor health outcomes

Shneider, Swan and Fitzgerald wrote that "sexual harassment in the workplace is increasingly recognised as a stressor with serious consequences for employees and organisations alike".⁹⁶ They point to serious deterioration of emotional and physical conditions as outcomes of sexual harassment and violence. Similarly, the New Zealand Law Society Workplace Environment survey found that 39% of lawyers who had experienced sexual misconduct experienced a negative impact to their emotional and mental wellbeing.⁹⁷

3.3.3.2 Turnover

A study of sexual harassment in the United States federal workplace in 1994 found that employee turnover as a result of sexual harassment conservatively cost US\$24.7 million over the 1992-1994 period.⁹⁸

3.3.3.3 Absenteeism

The United States federal study found that eight percent of those who had experienced sexual harassment used sick leave as a result of the harassment. The cost of sick leave taken as a result of sexual misconduct for the federal employee population was approximated to be US\$14.9 million over two years.⁹⁹

3.3.3.4 Productivity loss

The same study found that sexual harassment caused a drop in individual and group productivity.¹⁰⁰ This can be reflected in the amount of work done or the standard to which work is completed. While only a small proportion of those harassed reported a drop in productivity, the cost implications are great. The study estimated the productivity drop in two years, including individual and group productivity was US\$193.8 million.

Taking into account the costs of turnover, absenteeism, and productivity loss, the federal study found the total cost of sexual harassment perpetrated against federal employees in two years to be US\$327.1 million.

3.3.3.5 Brand damage

A study published in the Harvard Business Review in the wake of the #metoo movement found that a single claim of sexual harassment can have a dramatic impact on public perceptions of gender equity in the entire organisation.¹⁰¹ Organisations that had a claim of sexual harassment levelled at them were perceived as less equitable than not only those who had no claims against them, but also less equitable than those organisations who had claims of a different transgression made (e.g. financial misconduct).

The study highlighted the public's view of sexual harassment as a culture problem rather than as 'one bad apple'.

3.3.4 Links between sexual misconduct and prevalent cultural traits

The literature links bullying to the prevalent cultural traits discussed in section 2.0. Each is discussed below.

3.3.4.1 Competition

Thornton argues that a high pressure environment leads to heightened levels of incivility within law firms and contributes to the prevalence of harmful behaviours, including but not limited to sexual misconduct.¹⁰²

3.3.4.2 Financial motivation

As discussed in section 3.2.4.2, financial motivation can contribute to a 'culture of silence' where firms are unwilling to hold those partners or staff who generate large profits to account for harmful behaviours.

3.3.4.3 Power imbalance

The Women's Bar Association of Massachusetts found in their Survey of Workplace Conduct and Behaviour in Law Firms that power imbalance "serves as the foundation for and perpetuation of negative and inappropriate behaviours in the workplace."¹⁰³ This survey found that the power imbalance in law firms resulted in significant under-reporting of incidents. A typical respondent did not report incidents because "I was an intern, I wanted a job or a good recommendation."¹⁰⁴

The survey found that victims of sexual misconduct, male and female, are predominantly employee lawyers, clerks, and interns, making up 71% of cases. Perpetrators are much more likely to be in positions of power, with 78% reported as being in a senior position to the victim.¹⁰⁵ It is widely accepted that power imbalance (skewed in favour of the perpetrator) is a driver of harassment (sexual and non-sexual). Sepler argued that holding a position of power can lead to individuals believing that they do not need to comply with the rules that govern other people within the organisation.¹⁰⁶

Felblum and Lipnic argued that a lack of discipline or consequence for offenders in a position in power accentuates this perception.¹⁰⁷ Positions of power in the legal profession are more likely to be held by men, and men are the most common perpetrators of sexual harassment and violence. Junior staff are most common victims of sexual harassment and violence. The risk factors of diversity, power imbalance and a young workforce described by the Equal Employment Opportunities Commission (see section 3.3.5 below) are present in the legal profession.

3.3.4.4 Conformity

Conformity can become detrimental when the behaviours being conformed to are harmful. In a study into harmful behaviour in the Real Estate industry, one participant noted:

From my perception, many people think sexual harassment is an action, but in truth, it is also words. Defining sexual harassment and giving examples would help because most people don't even know they are doing it, especially when they think they're just mimicking their senior associates.¹⁰⁸

When harassment is present in an organisation or profession where conformity is prevalent, these behaviours can become normalised.

3.3.5 Other drivers of sexual misconduct

The United States Commission for Equal Employment Opportunity identifies a number of prominent risk factors, which have been adapted by Worksafe New Zealand to assess the risk of sexual harassment or violence occurring in the workplace.¹⁰⁹ They include low levels of diversity, a young workforce, and tolerance or encouragement of alcohol consumption. Each is discussed below in relation to the legal profession.

3.3.5.1 *Low levels of diversity*

The literature finds that diversity, particularly as it relates to gender, is an issue for the profession, but not at all levels. At law firms generally, women are relatively well represented at junior levels, where according to a study by McKinsey & Company, they account for approximately 46% of the workforce.¹¹⁰ This representation declines sharply as roles become more senior, with only 19% of equity partners being women.

According to the study, this decline in diversity is even more pronounced for women belonging to minority groups who represent only 3% of equity partners. 46% of women in the study believed that their gender has played a role in missing out on a raise, promotion, or chance to get ahead. This may be one contributing factor to the low representation of women as equity partners.

Diversity is important to organisations to ensure access to a broad range of talent and to reflect the communities within which they operate. McKinsey & Company has shown that organisations with higher levels of racial and ethnic diversity have above median financial performance.¹¹¹ The same study found organisations with lower levels of diversity are statistically less likely to achieve above-average financial returns. This correlation is caused by diverse organisations being better able to attract top talent and improve their customer orientation, employee engagement and decision making.

Diversity is important to the legal profession in particular to support improved access to services, effective administration of justice and high standards.¹¹² A United Kingdom review found that having a workforce in the legal profession that reflects society is important to achieve fair outcomes and improve trust in the legal system.¹¹³

It should be noted that initiatives to increase diversity (hiring people from minority groups) without a corresponding focus on inclusivity (retaining people from minority groups) are unlikely to result in the benefits listed above. The American Bar Association found that lawyers in minority groups leave law firms at higher rates than the general population, undermining diversity initiatives.¹¹⁴

3.3.5.2 Tolerance or encouragement of alcohol consumption

Tolerance or encouragement of alcohol consumption is also a characteristic of the legal profession. A report in the *Journal of Addiction Medicine* in 2016 concluded that legal professionals experience problematic drinking at a rate much higher than other populations.¹¹⁵ The authors commented that the “ubiquity of alcohol in the legal professional culture certainly demonstrates both its ready availability and social acceptability”, and link high levels of consumption to the high prevalence of mental health issues in the profession.

Bazley’s Independent Review of Russell McVeagh stated that a culture that enabled habitual drinking to excess contributed to events of sexual misconduct.¹¹⁶

The Butler Center for Research in 2012 linked substance abuse in the profession more broadly to high levels of stress, long work hours, and heavy workloads.¹¹⁷ Other research suggests that workplace culture in its broadest sense influences the susceptibility of individuals to alcohol abuse.¹¹⁸

4.0 Policies and interventions to reduce harmful behaviours

This section summarises the literature on the range methods and strategies employed to reduce harmful behaviour. It also provides literature findings on the effectiveness of these methods and strategies.

4.1 Definitions of policies and interventions

According to Michie, van Stralen, and West it is important to distinguish between policies and interventions, both of which can be used to reduce harmful behaviour.¹¹⁹ They describe interventions as activities aimed at changing behaviours and policies as actions on the part of responsible authorities that enable or support interventions.

In this section, policy to reduce harmful behaviours will be discussed in general terms, and interventions will be discussed specifically under the nine categories defined by Michie, van Stralen and West:

1. Education interventions;
2. Persuasion interventions;
3. Incentivisation interventions;
4. Coercion interventions;
5. Training interventions;
6. Restriction interventions;
7. Environmental restructuring;
8. Modelling interventions;
9. Enablement interventions.

4.2 Discussion of policy in literature

This subsection discusses the application of policy to reduce harmful behaviour under two categories: organisational policy and regulatory policy. It also discusses potential issues with these types of policy as described in the literature.

4.2.1 Organisational policy

Organisational policies are sets of rules or principles set out by an organisation to be followed in particular situations.¹²⁰

4.2.1.1 Application of organisational policy in a single organisation

Schneyer described organisational policy as fundamental 'ethical infrastructure' (a term for a set of formal and informal systems related to ethical issues).¹²¹ He noted that where basic guidelines or other foundational ethical infrastructure do not already exist, they should be developed as a starting point.¹²² The Ministry of Business, Innovation and Employment writes that policies help to ensure all parties within an organisation are clear on the expectations and obligations of the employment relationship.¹²³ Where policy regarding a particular behaviour or practice does not exist, it can be difficult for organisations to manage that behaviour or practice without clear expectations.

The Bazley report noted a lack of policy in critical areas such as behaviour at social events and intimate relations between staff as a key concern.¹²⁴ It found that this lack of fundamental ethical infrastructure contributed to an environment where harmful behaviours could occur.

4.2.1.1 Application of organisational policy across organisations

The literature identifies one example of establishing mutually agreed policy across multiple employers. In 2018, three of the United Kingdom's biggest banks and eight of its top law firms joined together in an alliance to change avoidable working practices that are known drivers of poor mental health and wellbeing.¹²⁵ All of the signatories have committed to principles centred on improved communication, respect for rest periods and considerate delegation of tasks. Performance against this policy is monitored as part of relationship review meetings. The alliance is based on the idea that legal advisers as a professional service are an extension of the banks' organisations and cultures, and they should meet the same expectations. Given the recency of this initiative, there are no quantitative results available yet on its effectiveness.

4.2.1.2 The limits of organisational policy

The most commonly held view by the literature is that policy alone is not effective to reduce harmful behaviour.

According to Vega and Comer, to make actual meaningful impact, policies need to be complemented by leaders modelling expected behaviour.¹²⁶ The authors found that coupled with top-down action from leadership, policy can help to enact behavioural change. On this topic, Briton and Mclean wrote that it:

...is important that law firms have policies and procedures that explicitly promote compliance with ethical standards. It's even more important, however, because policies and procedures can be as honoured in the breach as the observance, that law firms have an ethical workplace culture.¹²⁷

While the Bazley Report noted the absence of policy in key areas, it also noted that where guidelines did exist, including their “Harassment in the Workplace Policy”, these were not always followed. This lack of adherence to established policy contributed to a poor handling of the situation.

McKinsey & Company found that law firms have more policies aimed at work-life balance than other non-legal organisation in the same country.¹²⁸ Despite this, McKinsey & Company found that 60% of female and 40% of male lawyers felt that they could not be a successful attorney and have a full personal life. The same study found that despite the existence of flexible working policies, 45% of women and 31% of men felt as though if they were perceived to be prioritising life over work, their success in the firm would be jeopardised.

Thornton suggests this gap between the existence of policy and its uptake is a product of neoliberalism because the fundamental incentive structures and competition of the legal profession encourage long hours.¹²⁹ As long as success is measured by billable hours and profit, employees at law firms will be incentivised to work long hours at the expense of work-life balance. Actually taking up flexible working may be perceived to be detrimental to an employee’s career progression under such a model. Whether these barriers are real or otherwise is moot, the effect is the same – employees are unlikely to engage in these programmes.

While it is common for organisations to have guideline policies relating to bullying, sexual harassment, and sexual violence, studies have shown that many of these policies are too indirect to be effective.¹³⁰ In a survey of HR professionals only 3% had anti-bullying policies at their organisation that actually used the word “bullying”.¹³¹

Fundamental distrust in policy and associated processes can reduce the likelihood of compliance. This distrust may contribute to failures of policy or guidelines to reduce incidents of bullying and sexual harassment. Mire and Owens suggested that many incidents go unreported because of a belief held by victims that doing so will not make a positive difference.¹³²

4.2.2 Regulatory policy

Regulatory policies are established rules or principles of behaviour established by a governing body.¹³³ Regulatory policy can be enacted by central or local government through legislation and by other governing bodies (such as industry associations or societies) through rules and codes of practice.

4.2.2.1 Application of regulation

Mire and Owens discuss the role of regulation in reducing harmful behaviours in the legal profession¹³⁴. They refer to the work of the Queensland Legal Services Commissioner in

developing professional standards for incorporated law firms, and they report it has led to the improvement of ethical infrastructure in many instances.¹³⁵

The standards include expectations to implement appropriate management systems and to take all reasonable action to ensure that employees are safe. It also introduces a concept that “promises to drag the regulation of the profession into a new era”: compliance auditing. The regulation gives the Legal Services Commission the right to proactively review workplaces at any time, whether or not a complaint has been made. A similar programme in New South Wales has reportedly reduced client complaints.¹³⁶

4.2.2.2 The limits of regulatory policy

Mire and Owens provided a critique of the process by which lawyers are given the authority to practice law.¹³⁷ They argued that the regulatory policy that focuses on the educational and character requirements suggests in theory that ‘bad apples’ can be excluded from the profession. In practice, they suggest that this system succeeds in highlighting past criminal convictions, charges and acquittals, acts of bankruptcy, and academic misconduct, but it fails to reveal behavioural misconduct such as bullying where these behaviours are unlikely to result in criminal charges.

They also recognise a failure in the design of the admission process in that it is a ‘look back’ process. Regulation of ongoing behaviour across the legal profession is reactive in that it relies on reporting of past incidents, rather than proactively monitoring ongoing behaviour.

4.3 Discussion of interventions in literature

This subsection describes examples of Michie, van Stralen, and West’s interventions to address harmful behaviour. Where applicable, this subsection also discusses potential issues with these interventions as described in the literature.

4.3.1 Education interventions

Education interventions are those which increase knowledge or understanding of a particular behaviour.¹³⁸

4.3.1.1 Example of an education intervention

In recent years, organisations have often implemented unconscious bias training in a bid to increase awareness of the importance of diversity and inclusion. This was highlighted recently when Starbucks recently closed its 8,000 stores in the United States to provide unconscious bias education for its 175,000 employees.¹³⁹ The intent of this education was to combat unconscious biases in customer service.

4.3.1.2 Discussion of education interventions in the literature

The literature suggests that education interventions can be a successful way of reducing harmful behaviour, but may not be appropriate in all instances.

There is evidence in literature to suggest that education interventions focused on harassment and bullying can increase reporting, improve the response of bystanders, and reduce victim-blaming.¹⁴⁰ Education can also be beneficial for perpetrators of bullying or sexual misconduct in increasing awareness that their behaviour is causing harm, as well as in clarifying what is acceptable behaviour. This benefit is closely tied to the definition confusion described in section 3.0.

While the potential benefits of education are clear, some academics, including Morrow, are critical of the onus these interventions put on individuals, rather than addressing the wider system issues that are the root causes of harmful behaviour.¹⁴¹ She commented that education at some firms is an example of management hypocrisy: do as I say not as I do. She argued that organisational behaviour will continue to be modelled leadership behaviour, and the underlying culture will prevail regardless of the education provided. She uses education in the New Zealand profession on stress and burnout as a demonstration of this, stating that it is:

A classic example of an externally generated articulation of the problem and solutions. Someone outside the organisation defines what stress is, what causes it and how individuals and groups should cope with it.

A 2011 study by Beyond Blue is also critical of the impact of education interventions. They found that despite an increase in education interventions focused on mental health, the legal profession continues to have high prevalence of mental health issues, suggesting that these interventions may not have been effective.¹⁴²

4.3.2 Persuasion interventions

Persuasion interventions involve using communication to induce positive or negative feelings or to stimulate action.¹⁴³

4.3.2.1 Example of a persuasion intervention

Bentley et al. identify the importance of communication as a primary prevention strategy for workplace bullying. This may involve changing values, attitudes, verbal expressions, and acceptable ways of interacting. This communication is intended to positively reinforce to employees appropriate behaviour and stimulate employees to take action when bullying behaviour is observed.¹⁴⁴

4.3.2.2 Discussion of persuasion interventions in the literature

Literature on this topic highlights the potential effectiveness of persuasion intervention, but it notes that it is only effective when words are put into action.

Harvard Business Review research indicated that when leaders communicate zero tolerance for sexual harassment, it reduces the incidence and acknowledges “it is organisational climate that best predicts the occurrence of sexual harassment.”¹⁴⁵ This research found that the way leaders communicate shapes peoples’ attitudes toward sexual harassment, and that while words need to be followed up with actions, clear communication is an important first step in setting climactic conditions.

Further research suggests that it is not listening to, but participation in, conversations that affects persuasion. Research by Kelly Reardon indicated that if people are involved in discussing views different to their own they are much more likely to be receptive to a change of mind.¹⁴⁶

Other research identifies potential pitfalls of a persuasion approach, noting that the communication in and of itself is not enough, and that it has to be validated through action. Cha and Edmondson commented on the dangers of hypocrisy in leadership, arguing that if leaders’ words and actions are misaligned, then the words will have no effect.¹⁴⁷ They go on to suggest that not only does hypocritical behaviour undermine persuasion interventions, it can also produce disenchantment, loss of trust, disappointment, and anger.

4.3.3 Incentivisation interventions

Incentivisation interventions create expectations of reward, for example using prize draws to encourage quitting smoking.¹⁴⁸

4.3.3.1 Example of an incentivisation intervention

The incentive structures for the legal profession currently support overwork, with rewards primarily linked to billable hours or winning client work. To prevent incentivising overwork, Nick Byrd found that firms need to move to a more nuanced reward structure.¹⁴⁹ This involves placing constraints on the levels of productivity that are rewarded, for example by weighting reward to a reasonable amount of productivity, but significantly reducing any additional reward for productivity beyond a certain level.

4.3.3.2 Discussion of incentivisation interventions in the literature

Literature on this topic discusses the various scenarios in which incentives are, and are not, successful in reducing harmful behaviour. The literature focuses on the ways to incentivise good behaviour, but there is limited discussion on incentives to reduce harmful behaviour.

Gneezy, Meier, and Rey-Biel commented that incentives are beneficial when set up correctly in that they act to prevent behaviour from occurring in the first instance.¹⁵⁰ The authors emphasise that the design of incentivisation interventions are paramount to their success and warn against the unintended consequences that can arise when they are designed poorly.

4.3.4 Coercion intervention

Coercion interventions create expectations of punishment or some form of cost.¹⁵¹

4.3.4.1 Example of a coercion intervention

The New Zealand Law Society has a regulatory role to investigate and censure members of the profession for conduct issues.¹⁵² This includes cases of sexual harassment and bullying in the workplace. Measures imposed by the Society include censure, fines, suspension from practicing and disbarment.

4.3.4.2 Discussion of coercion interventions in the literature

While sexual misconduct is against the law in many jurisdictions, it is known that reporting of incidents is low. Research suggests that fear of retaliation is one of the factors that prevents victims taking formal action.¹⁵³ Indeed, according to the U.S. Equal Employment Opportunities Commission, 71% of charges of sexual harassment raised in 2017 included a charge of retaliation.¹⁵⁴

Sexual harassment is unlawful in employment under section 62 of the Human Rights Act 2003. It is also grounds for a personal grievance under section 108 of the Employment Relations Act 2000. The Courts have taken a very hard line when it comes to sexual harassment, Chief Judge Goddard in *Z v Y Ltd* and *A* observed that:

"...sexual harassment poisons the atmosphere in the workplace. It is wholly unacceptable and entirely devoid of any redeeming features. It follows that its occurrence can never be met with matters of justification, excuse, or mitigation. It is an attack on the basic human right that all persons must be supposed to have to pursue their economic well-being in conditions of freedom and dignity."

Despite this, the reporting of incidents continues to be low with only 12% of those affected by sexual harassment formally reporting it, according to the New Zealand Law Society study.¹⁵⁵

4.3.5 Training intervention

Training interventions, different to education, involve imparting skills.¹⁵⁶

4.3.5.1 *Example of a training intervention*

The bystander effect, popularised by social psychologists Latané and Darley in the 1960s, describes the combination of diffusion of responsibility and social influence.¹⁵⁷ Training to counter the bystander effect has been piloted with the United States Army, with successful results.¹⁵⁸ Compared to those who had not participated in the training, soldiers who had participated were much more likely to take action when they witnessed sexual assault.

4.3.5.2 *Discussion of training interventions in the literature*

While there are examples, such as the one provided above, where training can demonstrate positive outcomes, there is research to suggest it is not always an effective intervention.

León-Pérez et al evaluated the effectiveness of a training program designed to prevent workplace bullying.¹⁵⁹ The study suggested that the training was effective in creating high levels of satisfaction from participants, as well as indications that they had increased their skills in managing conflict. Although these are positive indicators, from a quantitative perspective there was a statistically insignificant change in the levels of bullying reported.

Similar results were found in a 2018 study on the effectiveness of unconscious bias training. Atewologun, Cornish, and Tresh found that while training can increase awareness, there is limited evidence as to its ability to actually change the underlying behaviour.¹⁶⁰

Similar to her criticism of education interventions, Morrow is critical of training interventions in that they often focus on changing the behaviour of individuals, rather than focusing on addressing wider systemic problems.¹⁶¹

Bisom-Rapp in 2001 raised concerns that sexual harassment training in the legal profession does not prevent or curb harassment and therefore should not be considered relevant to employer liability for compensatory damages in discrimination proceedings.¹⁶² Similarly, Justine Tinkler found that training on sexual harassment can reinforce gender stereotypes, at least in the short term, because it portrays men as powerful and women as vulnerable.¹⁶³ Training has been found to be least effective for those people who equate masculinity with power (i.e. those who are most likely to be perpetrators).¹⁶⁴

4.3.6 *Restriction interventions*

Restriction interventions involve the use of rules to limit opportunities to engage in behaviour, for example, restricting alcohol consumption at work events.¹⁶⁵

4.3.6.1 Example of a restriction intervention

The New Zealand Defence Force heavily restricted induction rituals after it was found they were linked to workplace bullying. At the same time, the force reviewed its Host Responsibility practices for the supply of alcohol to members on camps and bases.¹⁶⁶

4.3.6.2 Discussion of restriction interventions in the literature

Boyd discusses the effectiveness of banning workplace romances in an effort to deter sexual harassment.¹⁶⁷ The article examined why at first sight the ethics of dating bans balances the need to protect female employees from harassment against employee rights to privacy and freedom of association. However, the author goes on to suggest that workplace romance bans are more concerned with protecting employers from sexual harassment liability than concern for women in the workplace.

McDonald, writing on the same topic, observed that banning relationships is likely to be ineffective and may result in lower staff engagement, secrecy and resentment by employees.¹⁶⁸ She observed that most sexual harassment cases are not linked to the breakdown of a former consensual relationship.

4.3.7 Environmental restructuring interventions

Environmental restructuring interventions change the physical or social context.¹⁶⁹

4.3.2.1 Example of an environmental restructuring intervention

The literature identifies the billable hours profit formula and its use in individual performance evaluation as an environmental contributor to harmful behaviour. Rather than abolishing this model, Whealing suggests that firms put in place reasonable expectations on their employees.¹⁷⁰ Some firms have shifted towards a full value billing model, scrapping timesheets altogether in an effort to reduce overwork.¹⁷¹

4.3.7.2 Discussion of environmental restructuring interventions in the literature

Much of the research points to elements of the working environment as contributors to the prevalence of harmful behaviour. The research also suggests that restructuring the work environment can change behaviour in the workplace.

Einarsen et al. refer to changing factors in the working environment in order to reduce the likelihood that harm occurs as 'primary prevention'.¹⁷² They argued that environmental interventions are key to reducing harmful behaviours as they are formulated to reduce the traits that enable them at the source.

4.3.8 Modelling interventions

Modelling interventions provide an exemplar of behaviour for imitation, this could be leaders modelling behaviour, or case study examples of appropriate conduct.¹⁷³

4.3.8.1 Example of a modelling intervention

As part of a campaign to encourage staff to focus on work-life balance, PepsiCo's Chief Executive asks his executive team to leave loudly.¹⁷⁴ This is intended to encourage everyone in the organisation to use available flexible working initiatives, and to prevent overwork. Furthermore, after work emails from leaders are discouraged.

4.3.8.2 Discussion of modelling interventions in the literature

Modelling interventions use the propensity to imitate as a behavioural motivation tool, and to be successful requires the managers, the leaders, and the organisation itself to be perceived as committed.¹⁷⁵

Findings in the literature suggest that modelling interventions can encourage positive workplace behaviour but do not address systemic issues that encourage harmful behaviours.

Westpac found that while the majority of employees have access to flexible working practices, only one in four feel comfortable 'leaving loudly' during normal work hours.¹⁷⁶ This implies there is more work to be done to encourage employees to take up flexible working initiatives.

In the same way that modelling good behaviours is likely to instil good behaviours in others, the reverse is also true. In a study on the prevalence of sexual harassment and discrimination in the real estate industry, a respondent noted that junior staff might not know that they are harassing their colleagues, "they think they're just mimicking their senior associates".¹⁷⁷

4.3.9 Enablement interventions

Enablement interventions reduce barriers to increasing capability or opportunity.¹⁷⁸

4.3.9.1 Example of an enablement intervention

Stagg and Sheridan studied cognitive rehearsal as an enabling intervention for responding to bullying behaviour in a hospital situation.¹⁷⁹ Cognitive rehearsal involved practicing the responses to possible bullying scenarios beforehand. This was found to increase nurses' self-rated adequacy in bullying situations.

4.3.9.2 Discussion of enablement interventions in the literature

A common example of an enablement intervention is a complaints-based system where one party alleges they are a victim of another party's behaviour.¹⁸⁰ This is a common component of many organisations bullying and harassment policies. Schneyer argued that this system based on complaints is an inadequate response to the issues of bullying and sexual misconduct because there is a number of barriers that reduce the likelihood of a complaint being made, including fear of the consequences for the victim. This stance is validated in other studies including those of the New Zealand Law Society.

In their Workplace Environment Survey, the Law Society reported that 65% of lawyers who had been sexually harassed did not report the incident in their workplace because they feared the consequences.¹⁸¹ The top reasons cited for not reporting were concern about the potential impact to individuals' careers (49%) and that reporting the incident would make things worse (38%).

Another potential issue of a complaints-based enablement intervention is that the person receiving the complaint may also be the perpetrator. In many incidences of sexual harassment, a more senior person in the organisation is the perpetrator, including in some cases, a direct manager or supervisor. In the Law Society survey, 10% of respondents who did not report an incident cited this issue as the reason.

4.4 Holistic culture change programmes

The research summarised in this section shows that there are multiple types of policies and interventions that can be used to change harmful behaviours. As changing harmful behaviours associated with cultural traits requires action on all three dimensions of culture defined by Schein, this will generally require a combination of policies and interventions to be successful.¹⁸²

A survey on culture and change management by the Katzenbach Center found that a holistic approach to change is required, taking account of the enduring nature of culture.¹⁸³ One framework for holistic change that could be considered useful is Kotter's Eight Step Change Model, detailed below:¹⁸⁴

1. Create a sense of urgency: Help others see the need for change through a bold, aspirational opportunity statement that communicates the importance of acting immediately.
2. Build a guiding coalition: A volunteer army needs a coalition of effective people – born of its own ranks – to guide it, coordinate it, and communicate its activities.
3. Form a strategic vision and initiatives: Clarify how the future will be different from the past and how you can make that future a reality through initiatives linked directly to the vision.

4. Enlist a volunteer army: Large-scale change can only occur when massive numbers of people rally around a common opportunity. They must be bought-in and urgent to drive change – moving in the same direction.
5. Enable action by removing barriers: Removing barriers provides the freedom necessary to work across silos and generate real impact.
6. Generate short-term wins: Wins are the molecules of results. They must be recognized, collected and communicated – early and often – to track progress and energize volunteers to persist.
7. Sustain acceleration: Press harder after the first successes. Your increasing credibility can improve systems, structures and policies. Be relentless with initiating change after change until the vision is a reality.
8. Institute change: Articulate the connections between the new behaviours and success, making sure they continue until they become strong enough to replace old habits.

This framework includes a focus on understanding the intrinsic motivators of the need for change within individuals involved in the change, and appealing to their 'hearts and minds'. The emphasis of the model is on preparing for change, with the first four steps focused on the need and vision for change.

John Kotter, in speaking about change states¹⁸⁵

The problem is that you can't go at culture directly. It's not like it's Silly Putty in the wrong shape, and you have to make it in the right shape, so you grab it and push it and shove it. Culture isn't like that. It's invisible; you can't grab it.

When considering culture change, he explains:

The way cultures change fundamentally—and this is what the really smart social anthropologists will tell you—is that you get a group of people to behave in a new way, and if that new way works by producing benefits for them, and if it works long enough, then it begins to kind of seep into the bloodstream...You start by getting enough of a sense of urgency among the relevant people that you have to do something. You get together the right team of people who have the skills and the clout to make something happen.

The framework can be used as a basis for a comprehensive change programme to address harmful behaviours that includes multiple policies and interventions, ensuring each action reinforces the others and mitigates for any unintended consequences of policies or interventions, as discussed earlier in this section.

5.0 Contributors to culture in the legal profession

This section summarises literature review findings about the key contributors to culture in the legal profession: legal education, the business models of legal firms, and the impact of working with clients.

5.1 Educational models for the legal profession

5.1.1 A culture of competition and power imbalance

A legal education is designed and structured to create competition and power imbalance before students arrive at law school.

One element of this design and structure is the Socratic Method, which is widely used in law schools for core papers. The Socratic Method of teaching is described by the Dean of Victoria University of Wellington as “interactive” and “conversational”.¹⁸⁶ A student magazine at the same university reflected on the “humiliation and suffering wrought by lecturers” using this method.¹⁸⁷ While almost undoubtedly tongue in cheek, these comments are not far removed from scholarly writing on the subject. Marina Angel commented that the method subjects students who provide incorrect responses to “ridicule and torture”; Ciampi argued that the method “plays an important role in the dehumanisation process [of law students]”; and Suzanne Dallimore described the “severely negative psychological impact” the method can cause.¹⁸⁸ Even among students who are not called on to speak, the possibility that they may be called upon can prove incapacitating.¹⁸⁹ Critics argue that this method creates an adversarial relationship between the student and lecturer, emphasising the power imbalance with the lecturer in the position of interrogator.¹⁹⁰

Another element of the design and structure of legal education is limited access to recognition and opportunities.¹⁹¹ Sturm and Gunier argued that law schools in the United States “breed a culture of competition”, explaining that the adversarial nature of law promulgated in mainstream legal education is reinforced by success measures that rank students based on performance.¹⁹²

Law students are told that being successful requires being in the top percentage of their class, being invited to join law review, and getting prestigious summer or graduate jobs. These rewards are based almost entirely on cognitive performance demonstrated through academic results and are only ever available to a limited number of students.¹⁹³ Bridget Maloney found the fear of failure for law students is a contributing factor to the climate of competition felt by law students.¹⁹⁴

In New Zealand, entrance to the second year of an undergraduate law degree is restricted to top academic performers in all but one university (The University of Waikato).¹⁹⁵ In 2017, 772 students were enrolled in Victoria University of Wellington’s first year law programme. This

cohort competed against one another for 330 spaces available in the second year of the programme.¹⁹⁶ This means that 57% of the first year students in 2017 were not accepted into the second year of the course in 2018 because they were outcompeted for those spots.

5.1.2 A culture of conformity

Susan Sturm and Lani Guinier, writing in the *Vanderbilt Law Review*, asserted that the legal education system creates a culture not only of competition, but also of conformity.¹⁹⁷ Students are rewarded for academic and logic-based reasoning, often in an adversarial environment, and this creates a desire among students to conform to this successful form of thinking, and to learn to “think like a lawyer”.¹⁹⁸

The authors also noted that those individuals who are successfully appointed to a summer internship or graduate position are often advised to focus on their academic achievement and relevant work history, downplaying those aspects of their experience or curriculum vitae that are ‘outside the norm’. This advice can create a perception that conformity is required to be successful in the legal profession.

5.1.3 Impact of a legal education on student mental health

The competition for a limited number of positions is a likely contributor to poor mental health outcomes due to the pressure for high performance. In 2015, the first longitudinal study of law students in New Zealand found that students enrolled in universities that restricted entry to second year based on performance were more likely to feel stressed and have low levels of confidence.¹⁹⁹ The study also noted that general well-being of students in their second year were lowest at law schools with limited entry into the second year.

Since the 1980s, there have been a number of studies showing that rates of psychiatric distress in law students is higher than in the general population in a range of areas including anxiety, interpersonal sensitivity, and social alienation and isolation. In one study, these rates are higher than those experienced by medical students.²⁰⁰ This study suggested a number of reasons, including that law school appears to be less nurturing of students than medical school.

A further study by the same authors attempted to determine whether the levels of distress in law students were caused by the law school environment or are a feature of the population who choose to attend law school.²⁰¹ This study found that prior to law school, students had the same levels of distress as those reported by the general population. During law school, the levels of distress increased significantly when compared to the general population. This suggests that the stress and anxiety reported by law students may not be inherent in their population, and may be caused by the law school environment.

Hurst Floyd observed that the culture of law schools is intolerant of fear, vulnerability, and mistakes.²⁰² This can cause students to hide self-doubt and develop masks of assuredness, or even arrogance. This hidden self-doubt can create feelings of isolation for those in the legal profession and increase the pressure individuals place on themselves as they feel mistakes will not be tolerated.

5.2 Business models in the legal profession

The discussion below highlights the effects of three characteristics of the law firm business model and their impact on culture, particular. For the purposes of this review, the discussion will focus on business models of private law firms. Given the diversity of practice models across the profession, it is impractical to discuss each in depth.

Johnson, Christensen, and Kagermann define the term 'business model' as the combination of an organisation's profit formula, customer value proposition, and key resources.²⁰³ The combination of these elements create and deliver value.

The authors define each as follows: ²⁰⁴

1. Profit formula – an organisation's revenue model, cost structure, margin model, and resource velocity.
2. Customer value proposition - the way in which a business solves a problem or issue for its customers.
3. Key resources – the crucial elements that are required to deliver the value proposition to the targeted customer.

5.2.2 Profit formula

At a high level, there are two common profit formulae that law firms typically apply: the billable hours framework and the value-billing model.²⁰⁵ It is important to note that for the purposes of this discussion, these models have been simplified, and there are many variations that are applied in everyday practice.

In the billable hours profit formula, firms charge clients for the time spent by employees or partners in delivering legal services.²⁰⁶ Billable hours is historically the most popular revenue model, and the associated cost structure is driven primarily by personnel costs. The margin is based on charge out rates, which are typically assigned by staff or partner seniority. Resource velocity is the utilisation of assets (in this case people) to drive profit, and under the billable hours profit formula, profitability is optimised by maximising the time spent on billable activities.

Under the value-billing profit formula, a price is agreed up front based on the 'value' to be delivered. The price does not change based on time expended, which opens up the opportunity

to increase the profit margin, but runs the risk that if too much time is expended the cost to deliver might outweigh the revenue generated.

Similar to the billable hours profit formula, the cost structure under value billing is primarily based on personnel. Under this profit formula, resource velocity is slightly different to the billable hours formula because the incentive is to minimise the time a resource spends on any particular job, but maximise the number of jobs completed. Any time spent not working on client delivery is not productive time, but spending less time on a given job means that the margin will be higher.

The billable hours profit formula can reinforce the financial motivation trait dominant in the legal profession. There is a perception that hours worked (and billed) equates to performance, and the most successful individuals are those who have billed (and therefore worked) the longest. This is also linked to the competition trait, as individuals feel they are competing with their peers for better performance (as measured by billable hours). In this circumstance, these traits can cause harmful effects such as overwork as noted in section 3.0.

5.2.3 Customer value proposition

The simplistic and historically popular value proposition of a law firm is that customers have access to specialist legal counsel and expertise and/or representation before the judiciary. This customer value is enhanced when the law firm knows and understands a client's needs, understands their history, and is aware of other legal actions they may have taken. One of the key markers of value for customers of a law firm is experience and institutional knowledge, particularly with long established firms.

5.2.4 Key resources

The key resources in the legal profession generally are people and technology.

For the traditional partnership model, staff and partners are the products being sold. They are explicitly linked to the service being paid for, particularly in a scenario where a client is being represented in a courtroom.²⁰⁷ In this sense, people are paramount to the traditional law firm value proposition and profit model; without them, legal services cannot be provided to the clients, and revenue cannot be generated.

As a resource, a firm's partners and employees hold a considerable amount of intellectual capital, meaning the retention of staff is a key matter. Client relationships are also a key part of the human capital asset for law firms, particularly at a partnership level, and there is a risk that clients will leave with partners or staff, taking revenue with them.²⁰⁸

The effect of the law firms' reliance on people as key resources can exacerbate power imbalance. It can also result in instances where an individual may be less likely to raise incidents of harassment or bullying by a senior person. This is due to the perception that key individuals who perpetrate harmful behaviour may be protected for their value as a resource for the firm.²⁰⁹

5.2.4.1 Alternative resourcing models

In recent years there has been an increase in innovative models of legal resourcing. There are many examples of innovative legal start-ups challenging the business model status quo, but almost no scholarly literature on the matter. Therefore, there is very limited research on the impacts that these alternative models have on culture, both inside individual firms or within the wider profession.

In 2015, Australian firm McInnes Wilson Lawyers backed the introduction of Lexvoco, an 'on-call' legal service, across Australia and New Zealand.²¹⁰ This company delivers to the needs of clients who require legal advice but do not have the resources to employ them in-house. Clients can access Lexvoco lawyers as and when required, in-house or on a flexible basis. Managing Director of the New Zealand office describes the flexibility of the model for both parties as one of the biggest drawcards, stating,

Clients are enthusiastic about it, and lawyers are crying out for it. Bringing them together, not just as a resourcing solution but with a broader focus on using strategy, continuous improvement and technology to help organisations achieve better outcomes from legal services, just makes good sense, and is very fulfilling.

This innovative business model goes hand in hand with other practices that challenge the status quo. The firm has no set hours for staff, nor does it operate a billable hour profit formula.²¹¹ While the benefits of operating such a model seem clear from available sources, there is little information available as to potential disadvantages of this model.

LawPath is an example of an Australian legal services provider focuses on delivering value to customers online.²¹² Its value proposition is delivering technology enabled legal services using fixed price legal service product packages, such as the 'Investment Package', that bundles services such as capital raises, shareholders agreements, and convertible notes into one product. This model moves away from a focus on billable hours to a value-billing formula. If there is further uptake of this model, it may encourage the wider legal profession to reconsider the emphasis on working hours and billable time, and to value work another way.

LegalVision is another disruptor in the legal profession. Founded in 2012, the company started out as an online marketplace connecting customers with independent legal support.²¹³ In 2014, they incorporated as a legal practice, enabling them to provide legal services to customers

directly rather than through a third party. They state in their company mission that they “believe the way traditional law firms work is not the best way.”

5.2.4.2 The impact of technology on resource models

Technology is both an asset and a risk to the legal profession. Richard Marcus, in his 2008 Northwestern University Law review article wrote that technology has profoundly altered the way that lawyers work, and to some extent, what they do. From the simplification of record keeping, to research and communication, technology has made the legal profession more effective and efficient.

There is much debate in the literature the effects automation and artificial intelligence will have on the legal profession, from completely apocalyptic to idealistic.²¹⁴ Like many professional services, there are elements of day-to-day operations that meet the conditions for automation.²¹⁵ Similarly, there are elements that require a degree of judgement and creativity that seem (at this point in time) to be likely to remain in human hands. Pasquale and Cashwell question whether software will substitute lawyers, or increase their earning power.²¹⁶

Automation is likely to challenge some of the key cultural traits of the legal profession, as technology encourages more agile work practices. Automating key processes typically done by junior staff may impact the fundamental ‘shape’ (the balance of levels of employees) of the law firm. Similarly, the ability to work from anywhere may be a blessing and a curse, creating more flexibility for legal professionals, but potentially raising expectations regarding working hours.

5.3 Client relationship models in the legal profession

There is limited academic writing on the impact of the lawyer-client relationship on the legal profession. Much of the writing that exists focuses on the duties of the lawyer in this relationship rather than on the effects of the relationship on the legal professional. There are similarly a range of articles discussing various ethical issues that can arise in the lawyer-client relationship.

There has been some research concerning the need to ensure lawyers are equipped with not only the analytical skills and technical expertise to provide quality advice to their clients, but also with the ‘soft skills’ required to build effective client relationships. Dr Sanford Portnoy, in his book and when in discussion with Professor Marjorie Silver and Professor Jean Koy Peters, noted the increase in stress levels in lawyers caused by having to deal with the demand of clients who are highly emotional and who may be displaying poor behaviours.²¹⁷

Further, Professor Peters pointed out that lawyers may be exposed to trauma through their work with clients. Working with traumatized clients can create vicarious trauma for the lawyer, especially where this is repeated with multiple clients over a long career. In their article in the

Touro Law Review, Silver, Portnoy, and Peters described the demands and expectations of clients as one of the key drivers of workload stress in the legal profession.²¹⁸

Peter Glenn found that some of the factors contributing to the stress for lawyers were the requirement to “act under terrible time pressures, often deal with unreasonable clients, nasty opponents, and indifferent bureaucrats”.²¹⁹ Compounding this, the lawyer’s personal and economic needs may conflict with the needs of their clients and they are expected to zealously champion causes for the clients which they may have little sympathy for. All of this can contribute to overwork as noted in section 3.0.

The client relationship demonstrates one way the power imbalance discussed in section 2.0 can manifest in the legal profession. This focus on ‘winning’ for their clients can also reinforce the competition felt by lawyers, so they are competing between firms and within firms.

6.0 Case studies of culture change in communities

This section provides a summary of case studies of culture change within communities that can be linked to the interventions and policies set out in section 4.0. While the topic of culture change within organisations is well researched, there are far fewer scholarly examples of culture change at a community level. This scarcity may in part be due to the lack of funding for research into community initiatives undertaken by non-governmental organisations who themselves have limited funding.

6.1 Culture change in a school community

In their 2005 article, Morrison, Blood, and Thorsborne discussed the challenges of culture change in school communities.²²⁰ They describes a fundamental shift from the traditional punishment model that characterises justice in the education system to the adoption of restorative justice practices in schools to address incidents of serious misconduct and harmful behaviour.

Morrison, Blood, and Thorsborne highlighted the challenges posed by this culture shift, noting that it is often difficult for communities to recognise cultural cues that suggest a practice or behaviour is detrimental, particularly when practices are deeply embedded. To enact change and to challenge the culture of a system, Schein's model requires the underlying assumptions of the system need to be challenged.²²¹ The authors stress the importance of leadership in communicating and creating culture change, demonstrations of persuasion and modelling interventions. Even the smallest interactions with leadership influence culture through communicating the values of the community.

As a part of their research, Morrison, Blood, and Thorsborne recommend a five stage process for schools communities implementing culture change:

- Gaining commitment - identifying the need for change and learning gaps, challenging the current state, debunking myths, and establishing buy-in.
- Developing a shared vision - inspiring a shared vision, defining outcomes and a common language, and building a framework for implementation.
- Developing responsive and effective practice - designing a range of responses to influence change (such as training), and establishing a framework to measure success.
- Developing a whole school approach - the development of new policy in line with revised practice, as well as managing the transition from current to future.
- Professional relationships - focuses on walking the talk, ensuring that the culture change is driven by leadership.

Managing the transition from current culture to future culture is a challenging process that should not be underestimated. The authors noted that a long term strategic approach is crucial, but having short-term and medium-term outcomes is also important.

6.2 Culture change in a nursing home community

Mary Kohen describes culture change as it relates to health care institutions in her 2010 article in *Health Affairs*.²²² Specifically, her article discusses the culture change in the nursing home community, from impersonal institutions to a person-centred offering of long term-care. This cultural shift occurred over three decades and involved a wide range of stakeholder groups.

Kohen describes three elements that acted as barriers to culture change: the workforce, regulation, and the reimbursement framework. She noted that effective culture change requires dedicated leadership, a stable workforce, and buy-in across the community - three parameters that fell short in this instance. She describes the regulatory model as reinforcing the workforce model, and the reimbursement structure as a factor that encouraged a bottom line approach to nursing home management.

Despite of these challenges, Kohen described seven key contributors to changing the culture of the community. Direct engagement of stakeholders in the process is one of these contributors. She wrote that actively involving key stakeholders from the outset is a critical driver of successful change. She also cited a number of Michie, van Stralen, and West's intervention categories (as discussed in section 4.0) as effective responses, including incentivisation interventions.

6.3 Culture change in rural communities

Tiakina ō Tātou Tamariki is a community-led development project run by Te Ora Hou Aotearoa, based in Kaiti (Gisborne) and Gonville (Whanganui) aimed at improving neighbourhood culture, increasing social connectedness, and creating communities that care.²²³ The drivers for change include high levels of child maltreatment, youth offending and family and street violence. Similar to Kohen's case study, this example cited the collaboration between stakeholder groups as one of the key success factors in culture change. The change programme focuses on changing community norms through activities that facilitate manaakitanga and reciprocity. Examples of the activities set up under the programme include the development of a local fruit forest and public art projects.

Since the implementation of the programme there has been a 31% reduction in crime, and an increase in resident satisfaction levels from 67% to 100%. The programme has an inclusive approach to shifting cultural norms, by assigning responsibility to every resident to positively contribute to the programme. The introduction of accountability at every level of the community

increased buy-in and the effectiveness of initiatives. This is an example of Michie, van Stralen and West's 'enablement' intervention category.

The Maori and Pacific Education Initiative (MPEI) has also demonstrated effective change at a community level.²²⁴ MPEI set out to increase educational success for Maori and Pacific students, and has achieved significant improvement in some communities. Before one of their programmes was introduced at Sylvia Park School fewer than 60% of Year Three students were achieving at or above reading standards for that level. Since the programme has started this has increased to 95%. Success factors for the cultural shift they engaged in include:

- unity of diverse groups around a common cause;
- education interventions with the community;
- taking the time to get the foundations right;
- adopting a long term strategic approach;
- investing in evaluation.

6.4 Culture change in a Rugby League community

Sports teams and sporting codes have had to deal with harmful behaviours and the need to address cultural issues in recent years. Sporting codes face similar challenges when considering culture change, as they are required to influence behaviour across a number of diverse organisations rather than a single workplace or location.

Counties Manukau Rugby League (CMRL) has 12 clubs with 8,000 registered members. Following a number of incidents of violence, alcohol use, and intimidation, the CMRL created the "It's not OK" campaign to address these negative behaviours.²²⁵ The CMRL believed that the harmful behaviours evident were a result of home environments, but acknowledged that it had a part to play in influencing familial and social environments that affected players.

The campaign involved the following initiatives:

- Awareness raising - through billboards, branded whistles and other resources, uniform signage and public speaking. This may be seen as a policy under Michie, van Stralen and West's categories.
- Codes of conduct - the codes of conduct for each club were amended to include violence-free policies and side-line behaviour policies. This is an organisational policy.
- Side-line abuse strategies - whereby individuals are given the responsibility for ensuring appropriate side-line behaviour by their club, and the same is done for opponents. This is a coercion intervention according to Michie, van Stralen and West.

- Sharing stories of change, which included presentations of lived experiences, resulting in a non-violence pledge.
- Early childhood care, the provision of care for those with a rugby league affiliation aiming to engage high-risk families. This is an example of Michie, van Stralen and West's 'environmental restructuring' interventions.

The CMRL stress that the impact of these initiatives has been incremental and often occurred on a small scale. However, there is agreement that there has been a qualitative shift in attitudes and behaviours since the project began. The positive effects from the campaign include:

- Increased awareness – reporting from clubs indicated that there was increased awareness of family violence among club families.
- Decreased antisocial behaviours – participants reported a decrease in player violence, intimidation, side-line abuse and alcohol and drug use.
- Changes in wider community culture – schools and community groups reported positive impacts to those not directly affected by the clubs.
- Community ownership – there was a reported decrease in violence within the home environment.
- Statutory intervention – police reported that fewer CMRL families with a history of violence had contact with the police in the two years following the campaign rollout.

These communities are different in many ways to the legal community, but their experiences demonstrate how successful culture change can be initiated and sustained. The key theme across these exemplars of change is that involving stakeholders is a critical success factor, and that culture shifts take time. Policies and artefacts need to be accompanied by engagement within the population to ensure that underlying assumptions and professed values are addressed by culture change initiatives.

7.0 Further research

This section describes where our research has identified a number of gaps in available evidence regarding the culture of the legal profession, harmful behaviours arising out of cultural traits, and what can be done to address these.

To enable greater confidence in conclusions and evidence-based actions, further research is required in the following areas:

7.1 Drivers of culture of the legal profession

There are many examples to be found online of innovative legal start-ups challenging the business model status quo, but almost no scholarly literature on the matter. Therefore, there is very limited research on the impacts that alternative law firm models have on culture, both inside the individual firms or within the wider profession.

7.2 Cultural traits of the legal profession

There are a number of peer-reviewed articles available regarding the definition of culture and the cultural traits that give rise to harmful behaviours in the legal profession. Similarly, there are a peer-reviewed articles available regarding the impact of the legal education system and legal business models on the culture and cultural traits of the legal profession.

There is less evidence available regarding the impact of the lawyer-client relationship on the culture of the profession. The focus of the writing on the lawyer-client relationship is on enhancing the relationship, and the importance of ensuring lawyers have the 'soft skills' to be able to build effective relationships with their clients.

7.3 Harmful behaviours arising from cultural traits

There is significant research into the prevalence of sexual misconduct towards young women, but there is little research available comparing the prevalence between women of different ages, controlling for other factors such as power imbalance and seniority within an organisation.

7.4 Efficacy of policies and interventions

There is limited research which specifically pairs policies and interventions with the three antecedents of unethical behaviour: 'bad apples', 'bad cases' and 'bad barrels'.

There is little writing on the topic of methods for reducing intra-firm competition, other than to suggest that a more collaborative environment generally improves employee engagement and retention, and increases instances of creativity and innovation.

While there is a large volume of writing on the types of interventions and policies that may facilitate behaviour and culture change, there is little evidence as to the quantifiable success of these interventions and policies in specific environments. This gap in the literature is driven in part by the fact that many of the initiatives described are recent and that their application in specific cases has not been studied.

7.5 Culture change in communities

Another area lacking robust evidence was regarding culture change in communities. While, we are aware there has been a focus on changing the culture in communities, there is little published research on the initiatives used, and the efficacy of these. This gap in the research may be due in part to the lack of funding for research into community initiatives, as many of these initiatives are led by non-governmental organisations, who may not have the funding required to commission research. As such, some of the studies cited in the culture change in communities section are self-published and may not have been peer-reviewed.

An opportunity exists for additional quantifiable analysis into the efficacy of culture change initiatives in the legal profession, particularly in response to the harmful behaviours highlighted in this review.

8.0 Conclusion

Overall, our evaluation of the available research on the culture of the legal profession found that:

- Culture and cultural traits are not inherently positive or negative. Cultural trait can result in harmful behaviours in certain contexts.
- The predominant culture traits are linked to harmful behaviours of overwork, bullying and sexual harassment in certain contexts.
- Overwork is prevalent in the legal profession and can result in poor health outcomes, increased employee turnover, malpractice, and bullying. Technology and an oversupply of legal professionals can also drive overworking behaviours.
- Over half of lawyers in New Zealand have experienced bullying in their career. This is consistent with international findings. Bullying can result in poor health outcomes, lost productivity, malpractice, and brand damage.
- Rates of sexual misconduct have been prevalent in the legal profession in New Zealand in the last 30 years. Sexual misconduct can result in poor health outcomes, increased employee turnover, absenteeism, loss of productivity, and brand damage. Low levels of diversity, a young workforce, and workplace alcohol consumption can also drive rates of sexual misconduct.
- Initiatives to reduce harmful behaviours arising out of cultural traits can include policy and interventions.
- Policy (including organisational policy and regulatory policy) is a commonly used tool to reduce or prevent harmful behaviours; however, it is seldom effective on its own. Policy must be accompanied by intervention to effect behavioural change.
- Interventions can have mixed results. The most effective way of changing behaviours is to use policies and interventions in combination.
- The predominant culture traits of competition, financial motivation, power imbalance and conformity are linked to the legal education system, the business models of law firms, and the lawyer-client relationship dynamic.
- Robust, quantifiable evidence of culture change in communities is limited. This evidence could provide additional information on effective interventions when attempting to influence change in populations where a central agency has limited direct control.
- There are a number of key gaps in the research regarding the culture of the legal profession, harmful behaviours arising out of cultural traits, and what can be done to address these.

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