An Anatomy of the Practice of Law in Nineteenth-Century Auckland

THE nineteenth century saw the rise in the western world of the professional classes. And in their forefront were lawyers. As commercial services in Britain expanded, so did the demand for legal skills. As early as 1840, according to Sir George Stephen, there was 'scarcely any important transaction in which a merchant can engage that does not more or less require the counsel of his solicitor'.1 During the Age of Victoria the process accelerated enormously.

In the Antipodes over the same period, lawyers became considerable men of affairs. In nineteenth-century New Zealand, politics and administration were thickly peopled by men trained in law. But it was in the world of buying and selling that the qualifications of this profession were at their most marketable. In commerce and conveyancing the arcane skills of solicitors proved indispensable. Indeed so close were the connections of lawyers with banks, with capitalists providing money at interest, and with merchants, that they are rightly to be seen as the great facilitators of colonial business. In this regard they were much more akin to the solicitors of Scotland than to any English counterpart.

This being so, is not our ignorance of the actual workings of early New Zealand legal practices remarkable? Where firms have written of themselves, the accounts have generally been slight, perhaps because they have been put together for in-house consumption.2 Granted, the histories of the New Zealand Law Society — national and district — have been much more substantial.3 But they

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have been limited to those objects to which such a professional group applies itself — standards of conduct (‘no touting!’), elimination of interlopers, qualifications, maintenance of the profession’s monopoly, and so on — or, where not, have tended to be celebratory in tone and anecdotal in emphasis. The image of a nineteenth-century practice one is left with is a somewhat romantic one, of often eccentric partners occupying chambers where Dickensian clerks perch on high stools before sloping desks engrossing parchment deeds in a good round hand. But what provided a legal firm’s bread and butter, to use a favourite phrase of the profession, or what really was the nature of daily dealings between lawyer and client — such matters remain much of a mystery.

Or so it seemed to me when I first embarked on my research into the formative years of the Auckland law firm, Russell McVeagh McKenzie Bartleet, which was founded 125 years ago. My task was complicated because surviving records of the early years of this firm were fragmentary and discontinuous, a not unusual situation among the pioneer practices of a city which has built and rebuilt itself, and is rebuilding yet again today; where the constant shifting of offices, and intractable problems of preservation and storage, have led to a grievous loss of records. But fortunately in the case of this practice, some important records have survived, including 15,000 pages of copy-book pressings of Opinions and Bills of Costs. These I have used in conjunction with certain archives from early firms like Jackson & Russell, McKechnie & Nicholson, and Hesketh & Richmond. Combine what these say with the nineteenth-century minute-book of the council of the district law society and one is able to provide some kind of anatomy of the practice of law in Auckland one hundred years ago.

Logically one should deal first with the city’s lawyers collectively, as a professional class. The formation of the ‘Law Society of the District of Auckland’ on 28 March 1879 is properly to be regarded as simply giving an institutional expression to an already established sense of regional identity and professional unity that was to be found among lawyers in the city. It is known that a Law Society of sorts existed in Auckland in 1861. And the province’s practitioners periodically acted with surprising unanimity in the years thereafter. It would be a mistake to put this down to mere provincial particularism. There was also an undoubted sense of collegiality that must be related to the physical proximity of the main law practices of the town. In Brett’s Auckland Almanac, 1886, 55 lawyers chose to list themselves as practising within the city. Their offices could all be contained within an imaginary circle of 100 metres radius, and these lawyers were entirely confined to five streets: lower Queen Street north of Wyndham Street, which had 17 practitioners; Wyndham Street between

4 Russell McVeagh’s records are in the possession of the firm, already carefully assembled and annotated by C. P. Hutchinson, QC.
5 The nineteenth-century letter-books of Jackson Russell, and the E. A. McKechnie Papers (for McKechnie & Nicholson), MS 178, are in the Auckland Institute Library, and the Edwin Hesketh Papers (for Hesketh & Richmond) are in the Auckland Public Library.
6 Minute-books of Council of Auckland District Law Society (ADLS) are in the office of the ADLS; the help of Miss E. Bowring in utilizing this and other material is gratefully acknowledged.
7 By enactment of the 1878 District Law Societies Act.
8 Dugdale, pp.1–3; C. P. Hutchinson in Portrait of a Profession, pp.224–5.
Queen Street and Albert Street, 11; Shortland Street (once the main business thoroughfare), 10; High Street, 10; and Vulcan Lane, 8. With every fellow-practitioner’s office a brief step away, little wonder the habit developed of lawyers attending on one another in person, and that as a matter of course. They and their staffs also mingled in the nearby Magistrates and Police Courts, the former Wesleyan Chapel on the terrace facing High Street, on which site were also located the Land Transfer Office, Deeds Office, and Stamp Office. (Because the legal fraternity was so indulged by this dimension of convenience, it was inclined to complain that the Supreme Court, at the far end of Waterloo Quadrant, was ‘inconveniently’ remote from the business centre and ‘far from the chambers of all the legal firms’.)

It can be appreciated, therefore, why a sense of neighbourliness and professional solidarity grew up among Auckland lawyers in spite of the adversarial stance which they, through the nature of their calling, were often obliged to assume. This cohesiveness was strengthened by social factors. Practitioners often had links with firms where formerly they had been articled. (What a network extended from the practices of the three Russell brothers — Thomas of Whitaker & Russell, James of Jackson & Russell, and John B. of Russell & Campbell!) Familial links were found in the Whitakers, the Campbells, the Heskeths, the Buddles, the Coopers, the Dignans, the Jacksons, the Brookfields, and others. The interaction of legal and family links is most dramatically illustrated in the relationship of the two brothers, Hugh Campbell and James Palmer Campbell, not only partners in the same firm, but each married to sisters, daughters of a former Resident Magistrate, R. C. Barstow. The links extended beyond the hours of work and into the social field. A number of the lawyers lunched together at the Northern Club, rather fewer of them at the Auckland Club.

Comparing the legal fraternities of the two main commercial centres of 100 years ago, Dunedin and Auckland, one must ascribe to the Otago Law Society the greater moral authority on the national scene, often expressed in the initiatives taken on the profession’s behalf. But, for the reason of propinquity that I have here presented, Auckland lawyers could be regarded as having, perhaps, the stronger sense of corporate identity. No such doubt need attach, however, to the intimacy of connection between Auckland law and Auckland business. Nor to the extent to which those lawyers were integrated within the local business community. Once again it was the physical blending of law offices and commercial concerns that, in the context of Auckland’s emergence as a commercial and financial centre after 1860, was most at work. A narrow strip on either side of the Queen Street valley lying between the Union Bank in Victoria Street and the Customhouse Building (which housed a number of government offices and the Native Land Court as well) contained not only all the main legal firms, and all the government offices to which lawyers would need to refer, but every merchant house, bank, or insurance company with which they would have

9 *Cyclopaedia of New Zealand*, II, Christchurch, 1902, p.272.
10 Information provided by D. Beaglehole of the Dictionary of New Zealand Biography office.
11 Iain Galloway in *Portrait of a Profession*, pp.330-41; Cullen, ch.2, passim.
occasion to deal. Thus every important lawyer became, in effect, friend and neighbour of members of the city's business élite. Indeed it was said of some of Auckland's early commercial lawyers that they were so much in contact with business that they began to capture some of the entrepreneurial flair of their clients. But the contagion could work either way. The most highly speculative of Auckland's businessmen in the last century was in fact a lawyer, Thomas Russell. It was he who infected the merchants, bankers, and company promoters, not they him. He forced the speculative pace.

Let us consider the practicalities of a nineteenth-century law office — the staff, and their function. The nineteenth-century legal profession was hierarchical and male. Practitioners were held in awe by their support staff who invariably called them 'Sir'. They had almost a professional uniform. A century ago, according to Eliot Davis, 'nearly all lawyers [in Auckland] would be known by their high silk hats and morning coats'. And in court counsel were expected to wear a wig and gown, winged collar, a dark coat and bands. Edmund Spenser had remarked centuries before: 'The person that is gowned, is by the gown put in a mind of gravitie.' Though few colonial barristers would have known the quotation, all would have agreed with its sentiment. They also attempted to retain the elaborate punctilio of English Courts. Colleagues were addressed as 'my learned friend'.

A recent history suggests that such a term embodied an ill-justified pretension; that the standard of legal education in Auckland was 'deplorably low'. Even when university classes in law became available, clerks-in-training, we are told, preferred 'the easier law professional examinations to qualify as solicitors'; and after a special 1898 Act solicitors could become barristers by a 'back door principle'. As a blanket judgement this is harsh. Professional examinations were by no means nugatory. And there are instances of men who had no training other than articling who, though largely self-educated, were also extraordinarily well-read, and as barristers had a formidable knowledge of case law. Robert McVeagh was such a man.

Almost until the end of the century the support staff of the office was entirely male. Apart from clerks in training who aspired to practise, there were, in the larger firms, general clerks, book-keepers, a full-time engrosser and a junior or two. E. W. Alison, who became a junior clerk in the 1890s at 8s.0d. per week, spoke of what he had to do. He kept the petty cash, acted as messenger of the chambers for the delivery of documents or mail. He might assist full clerks to file documents at the Courts or at the District Land Registry Office. At the day's end he was expected to copy letters and each bill of costs in the copying press. His job was also regularly to index the copy-books.

Until the mid-nineties all letters and documents were written in a fair round

12 Eliot R. Davis, A Link with the Past, Auckland, 1948, p.205.
13 cit. New Zealand Law Journal, 16 August 1932, p.206; for discussion on barrister's garb in New Zealand, see ibid., pp.205–6; and 5 May 1936, pp.94–95.
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legal hand. The chief, but not sole, responsibility for this was held by the engrosser, who would sit at a large table inscribing, sometimes on parchment, in a special script (almost a minor work of art) that was derived from an ancient court hand. In an emergency, other staff might be called on to engross. Typewriting machines, when first introduced about 1893, were usually operated by male ‘typewriters’, the word used then to describe not the machine but its operator. But before the century was out, women typists were being employed.

In a sense they used this machine to batter a breach in the wall enclosing a male preserve.

Staying with this metaphor, one may say that if there is a majority of women studying in the Faculty of Law of the University of Auckland in 1988, it has been a case of a fortress stormed rather than a boon granted. Carl Norris tells how ‘the advent of the first girl into a law office in Hamilton’ before the First World War ‘produced consternation among the clerks, who seriously considered adopting some more conservative calling’. And at the professional level, where right of entry really counts, women had no place. Before the nineteenth century was out, Dunedin had its first woman barrister, Ethel Benjamin. Not until 1906 was Eliza Ellen Melville enrolled as solicitor in Auckland. In 1907 Geraldine Marian Hemus joined her. Then there is a gap before Rebecca Pallot was enrolled in 1921. There were no further admissions of women as solicitors in Auckland before 1930, by which date no woman had been admitted as yet to the Bar in the Northern Judicial District. These facts tell their own story.

Because legal and commercial offices were so close together in Auckland at that time, it was common for solicitors to attend on clients (or vice versa) in person. It has already been mentioned how there was hand delivery of mail. But perhaps distrust of the postal service was justified. When a client of Russell & Campbell wrote in 1886 to complain that some deeds of dedication had not been returned, the firm initiated its enquiries. ‘We attended at Post Office’, a letter later recorded, ‘where we found deeds and plan had been duly posted, but former had been eaten by rats.’

Telephones came into use in legal offices about 1882. The first time that Russell & Campbell actually charged for a phone consultation was in April 1886. A ‘lengthy attending’ upon a Mr Connell, an agent, by telephone over an

16 In Russell & Campbell, the first typed Bill of Costs was that sent to the executors of the estate of the late J. B. Russell in early 1895. In the early 1900s the amount of typing in Russell & Campbell’s office actually diminished.

17 Alison, pp.157-8. In Alison’s firm the first woman typist was Amy Phillips from Thames. In the new technical school in Auckland (later known as the Seddon Memorial Technical College), by 1906 the numbers of girls were (unexpectedly) swamping the commercial classes. (School records in Auckland Public Library.)

18 H.C.M. Norris, in Portrait of a Profession, p.368. For Ethel Benjamin see Cullen, pp.52-53. Section 2 of the Law Practitioners and New Zealand Law Societies Acts Amendment Act 1896 was inserted to provide precisely for the imminent graduation of Benjamin as an LLB student at the University of Otago. For Auckland enrolments, ‘List of Solicitors in Northern Judicial District up to 1929’, compiled by Samuel Hesketh, ADLS.

19 Costs Copy Book (CCB) 1885-6, pp.682-3, Russell McVeagh Archives (R. McV. Arch.)

20 CCB, 1881-3, p.319, R. McV. Arch.
arbitration matter led to a bill of costs of one guinea.21

Personal delivery of documents could reveal gradations of status. So could consultations. The humbler clients living in the suburbs were expected to come to the practice-office to sign documents or to have a consultation. But with somewhat more important clients, when deeds were to be delivered or signatures obtained, clerks would go to them, by horse-bus, horse-tram, or steam-ferry, and the ticket costs would be included in the bill. Partners consulting well-to-do clients in their own homes would go in private transport or hire a cab, but in view of the importance of the account, generally no claim for travelling expenses would be made.

One clerk recalls that his firm, in order to attract custom, or to flatter a client, would deliberately avoid using public transport, would hire a hansom instead, or even a four-wheeled cab. ‘I always felt’, he wrote wryly, that ‘this was done to impress the client, who either walked or used the horse trams’.22 Here surely was a perfect bit of ‘rain-making’, a century before that piece of legal jargon was ever heard in New Zealand.

I now propose to look at the practice of law first between 1863 and 1885, years of expansion, and then between 1886 and 1895, years of commercial depression. The viewpoint adopted will be that of the firm of John Benjamin Russell. It is not, however, the particularity of this firm which is my concern, but the developing framework of business and law within which that practice operated.

In January 1863, the 26-year-old Russell was admitted, as had become the custom, into the dual profession of barrister and solicitor, becoming one of the 32 lawyers officially enrolled to practise in the Northern Judicial District.23 Shortly after, he went into the register of public notaries, a qualification that soon helped to attract the custom of sea-captains, shipping agencies, the Bank of Australasia next door to his office, and merchants.

His first office was a room above an ironmonger’s shop in the brick building at the corner of Shortland and Queen Streets. The shoreline was, in the 1860s, a short step away, just beyond modern Fort Street. 1863-65 were boom years, during which this young lawyer, as a jack-of-all-trades, built up a busy and prosperous little practice. In January 1865 he confessed to a friend that ‘my practice is so increased... every night is occupied at home until late. When not at work I am wearied of the pen.’24

Two years of business recession followed, and Russell’s fortunes slumped. By 1868, however, the new Thames gold-fields ended the town’s commercial demoralization. Once again, J. B. Russell had much to do, with the surge of conveyancing and company formation taking place about him. Even when the gold-fields fell away in the 1870s, his practice continued to grow, benefiting from the pronounced mercantile character that Auckland — both city and port

21 ibid., 1885-6, p.716, 20 April 1886.
22 Alison, p.160.
24 J.B. Russell to ?, 2 January 1865, de Courcy Papers; private papers of Mr Nevinson de Courcy.
— began to develop in that decade. He acquired a number of clients involved in
the import trade, the most important of whom was A. H. Nathan. His prize
capture, however, was the account of the Auckland Harbour Board, set up in
1871. The port was revolutionized in the 1870s, not by the growth of trade —
though (to be sure) the tonnage passing through the port increased by 50% in
those years — but because of the policy of development based on overseas loans
sanctioned by the general government. 25 With this borrowed money great capital
improvements were made; wharves were extended; and, through reclamation,
hundreds of acres of endowment land came into the Harbour Board’s hands.
Such things involved Russell’s firm in a considerable variety of legal activities:
framing by-laws, prosecuting for breaches of the same, devising a variety of
leaseholds, proceeding to recover unpaid rentals, and the constant providing of
opinions. The expertise in local body work which Russell acquired — he was
also solicitor on retainer to the Auckland City Council — helped him to draw in
the newly-formed Waitemata County Council as client in 1877. But it seems that
with the incorporation of new local bodies, and the confusions of jurisdiction
which followed upon the ending of the provincial system of government in 1876,
even apart from the ambiguities of Pakeha and Maori land titles, all local lawyers
had a field day. This illustrated yet again Bentham’s dictum that ‘the power of
the lawyer is in the uncertainty of the law’.

Growth of business obliged Russell to take on more support staff, and then
successively to take in partners, A. E. T. Devore in 1873, 26 and Theophilus
Cooper in 1878, 27 both men of considerable ability. Russell gave up Bar work and
became the business specialist in the practice. By 1884 ‘his advice’, it was said,
‘is eagerly sought [by clients] on all intricate and difficult matters related to
business pursuits . . . and conveyancing’. 28

The letter-pressing books of ‘Opinions’ and of ‘Bills of Costs’ in Russell
McVeagh’s archives enable us to reconstruct the practice in these crucial years.
What is clear is that the firm was strong in just those elements of economic
activity which were showing sustained growth and promise at that time: maritime
affairs, municipal capital works, timber-milling, financial agency
work, and land speculation — aptly described by J. H. Rose of Jackson Russell
as ‘the great industry of the Auckland Province’ between 1865 and 1885. 29

Russell’s success was not unique. A number of the town’s practices prospered
equally over the same years. Between 1873 and 1883 inflows of public and
private capital created an atmosphere of expansion during which Auckland, no
less than the southern provinces, boomed.

Here should be categorized the main kinds of work carried out by law firms
in the 1870s and early 1880s. 30 First on the list must be conveyance, which
provided most solicitors then, not just with their bread and butter, but with some

26 The New Zealand Herald (NZH), 7, 8 February 1916.
27 ibid., 19 May 1925.
28 ibid., 14 October 1984.
29 Rose, p.19.
30 Paragraph based on Opinions Book, Copybooks of Bills of Costs, R. McV. Arch., also
Hesketh Papers.
of their jam as well. Russell's costs books show that well over half his fees (by value) came from legal services arising out of the buying and selling of land and the processing of mortgages. Transfer work was by no means straightforward in those years. Making a title more secure by bringing a deed under the Torrens system of registration might involve much extra work if the deed proved defective: the requisitioning of a survey, recording declarations by previous owners, searching at the Native Land Court, and so forth. Moreover, because mortgages in those uncertain times were customarily for five years or less, remortgaging came around frequently, and hence there were further calls on the lawyer's services. In the average practice, the majority of clients figure in the Bill Books but once. They were generally people of humble means, for whom the sale, purchase, and/or mortgage of property was perhaps the sole encounter that they would have with a legal firm. But a core of clients appears again and again in the conveyance accounts: the prize clients—banks, local bodies (with leases, covenants, road dedications), land agents, and land speculators. Many legal practices acted as agents for country solicitors as well, carrying out filing, stamping, and registration for them at the District Land Transfer Office or the Supreme Court.

Property work was so central to every practice that the Auckland Law Society was determined to hunt down that perpetual bane of the profession, the unqualified conveyancer who undercut the solicitor's charges. In its early years the Council acted against 'unprofessional persons' doing conveyance work. Here are two instances: there was a Te Aroha land broker who was 'in the habit of preparing transfers and assignments of Business & Residence sites' and, on another occasion, an agent who 'charged certain fees for drawing up two Bills of Sale'. In 1885, the Council decided to prosecute for forgery an agent who 'prepares deeds and does notarial work'.

Lay persons may be surprised, but lawyers probably not, that the professional service most in demand after conveyance was debt-recovery or securing the position of creditors. The received idea we sometimes have, that Victorians did not launch out into business until they could pay their way, is largely a fiction. In pioneer Auckland, few settlers had money-capital behind them. At all levels, the bulk of business was conducted on credit. And since shopkeepers, tradesmen, lessees of hotels, and other 'little men' had a position which could be suddenly imperilled by a business downturn, sickness, or other mishap, constant vigilance was needed by creditors or their attorneys to ensure that debts were paid, promissory notes honoured, and interest instalments met. The steps in the process of debt recovery then were much the same as they are today, so they need not be

31 CCB, Book 9, 106, R. McV.Arch.
32 Typical clients were F.A. Purvis (Tauranga), C.F. Bockett (Opotiki), H. J. Finn (Gisborne), G.N. Brassey (Thames).
33 Council of ADLS Minutes, 23 July 1880. Cullen, pp.56-58, demonstrates that Otago, like Auckland, had trouble with unqualified 'agents' in rural areas, but perhaps even more trouble in gold-mining districts.
34 ADLS Council Minutes, 28 July 1884; 29 April 1891.
35 ibid., 10 July 1885.
spelt out. Norris, in writing of the profession in the Waikato, has suggested that the full weight of the law was then more commonly allowed to fall on defaulters: 'Many more writs per head of solicitors issued than is now the case.' In Auckland perhaps this was so as well.

Certainly some local citizens were pertinaciously litigious. But the preferred goal of Russell & Devore, no matter how vengeful the mood of the client, was to recover what they could of the debt, rather than break the debtor: that latter option must be the policy of the last resort. The firm's feeling was that it was better to anticipate the problem. Where clients approached the firm and voiced concern at some shop-owner or publican getting behind in his payments, Russell & Devore, or Hesketh & Richmond, would move to prepare Bills of Sale over all items of unencumbered stock or personal property or to get the debtor's signature attached to a Deed of Assignment. Where things had deteriorated beyond that, the usual course advised by the firm was not to press for a petition in bankruptcy but to talk the debtor into signing a Deed of Arrangement. In such a case the creditor would at least get something, even if that was no more than having assigned to him such dubious assets as the book debts owed to the insolvent debtor.

Before this account turns to how law firms fared during the depressed years, 1886–95, it is necessary to speak of J. B. Russell once again. Early in 1883, when he was 46, his practice was doing so well and he was in such comfortable circumstances that he bought a fine new Epsom home, planned a world tour for himself and his wife and their seven children, and began reconstructing his firm so that he could phase himself out of it, first by working part-time, then later, by retiring entirely in favour of his son when he turned 21 and had been admitted to practise. In June 1883 he dissolved his partnership with Devore and Cooper and proceeded to take in two new partners, brothers from the Waikato, Hugh and J. P. Campbell. In 1884 he set up in new offices for Russell & Campbell in Wyndham Street, and later in the year, confident that his future was assured, set off with his family on his two-year world tour.

By the time he returned in May 1886 Auckland was revealing yet again why it had earned the name of 'The Grave of Enterprise'. The business community was falling apart. And in the general commercial collapse some of Russell's oldest clients were being swept into bankruptcy. No longer could Russell count on being able to phase himself out of the firm. The reduced earnings of the practice simply did not allow the luxury of a sleeping partner. Thus it was that he had to resume full-time work once again, remaining at his desk until he was mortally stricken a year before his death in 1894.

The later 1880s and early 1890s were years characterized by bankruptcies,
forced sales, the winding up of insolvent concerns, and the efforts of banks, creditors, and surviving companies often ruthlessly to reconstruct their position. Trade statistics showed by the end of 1890 the beginnings of an export-led recovery for the colony. But morale remained low among entrepreneurs. Not until 1896 did Auckland’s business leaders fully recover their confidence.

Stagnant business meant lean times for lawyers, although not immediately for the city’s larger law firms. A commonplace among historians is to speak of 1885–95 as a period of banking crisis. What is less well-known is that this decade was equally a period of crisis for the legal profession. Being a going concern with sound clients, however, the practice of Russell & Campbell did as well as any. But like all legal firms, once the bottom dropped out of the property market, conveyancing fell off dramatically. By 1893, Oliver Nicholson complained that his office was lucky if it handled one land transfer in a week.42

The sheet anchor of J. B. Russell’s practice in these depressed times, however, was legal work for two local body clients, the Auckland Harbour Board and the Waitemata County Council. After 1890 they were joined by Onehunga Borough Council, but financially it was much less significant to the firm. One dwells upon the Harbour Board account because it illustrates how, even with a falling-away of business (in this case a shrinkage of tonnage passing through the ports of Auckland and Onehunga and therefore a loss of revenue), a client could in fact increase his call upon the services of a lawyer during a slump.43 In fair economic weather or foul, breaches of by-laws inevitably continue — ‘furious driving’ by carters on wharves was an occupational failing. But in hard times, litigation is more likely to arise (as happened with the construction of the Calliope Dock over disputed contracts); there is also an added need to pursue the growing number who default on rates or rents, and to consider objections to property valuations or requests for the adjustment of leases signed in more prosperous times.

Most lawyers suffered from the loss of clients: merchants, shop-owners, land-agents, and others who went to the wall. The strengthening of accounts of clients in the liquor trade, in some measure, however, compensated for Russell & Campbell.44 It must be recalled that the 1890s saw the consolidation of the financial base of the main Auckland breweries and wholesale liquor merchants, by merger or by fresh capital infusions, thus enabling them to gather together so many additional ‘tied houses’ that they became substantial hotel owners in their own right.45 Here was much consequential work for lawyers: drawing up agreements over leases, or bills of sale to cover liquor sold on credit to the lessee, quite apart from advising clients on issues arising out of the burgeoning complexities of licensing law. Nor can this strengthening of the relationship between certain of the commercial lawyers of Auckland and the liquor interest be dissociated from the rise of the prohibition movement expressing itself in

42 O. Nicholson to E.A. McKechnie, 16 June 1893, McK. Papers.
43 See e.g. CCB, 1890–2, Bill of Costs dated 19 December 1891.
44 Based on CCB, Books 5, 6, 7, with particular reference to Mr Moss Davis and L.D. Nathan & Co.
fierce local option battles. The firms of Russell & Campbell and Hesketh & Richmond — to name but two — benefited, but even more so did McKechnie & Nicholson who acquired the Hancock & Co. account;\(^{46}\) and advocates skilled in licensing matters such as Thomas Cotter (later a KC) were beneficiaries as well. An aspect of legal business the depression revolutionized was the investment in money entrusted for lending on security. Once banks entered their period of acutest crisis (1889–92), and were curtailing loans without mercy, the scramble of businessmen to get accommodation was greater than ever. But because it was a time of commercial failure and the risk to lenders great, unusually high rates of interest (up to 25%) could be demanded by solicitors.\(^{47}\)

With the stagnation of business in the early 1890s the difficulty lay not in getting in trust money to lend out, but in finding safe avenues in which to invest it. Russell & Campbell simply deposited some of their unutilized trust funds in the Bank of Australasia and paid over the interest to their clients. Oliver Nicholson complained in 1892 that local capitalists were forced by the paralysis of business confidence to place their spare money on fixed deposit in the banks at 5%. He went on to explain to his partner: ‘If suitable investments would only offer I could do business, I could lend out for Walter Scott a £1,000.0.0., Major George has a large sum which he would invest, and I have others with whom I could place smaller amounts. [But] everything appears at a standstill.’\(^{48}\)

This phenomenon incidentally was repeated in the great slump 40 years later. It has been said that between 1903 and 1933 there was seldom less than ‘forty million pounds held on fixed deposit by the banks looking for safe investment’.\(^{49}\) In more than just a financial sense, however, are the early 1890s to be looked upon as years when the profession was under siege. With times hard there is always a search for scapegoats. When the directors of banks and building societies were being damned right and left, why, critics asked, should lawyers be spared? Wyndham Street, on the left-hand side of which were three of the five big practices of the city (including Russell & Campbell) became nicknamed ‘Wind-'em-up Street’;\(^{50}\) their role in winding up bankrupt concerns appearing to cynics as an instance of the way in which lawyers batten on the misfortune of others.

Feeding upon stories of Sir Frederick Whitaker’s poverty at the time of death (December 1891) and of the financial straits of his partner, the expatriate Thomas Russell in London, the rumour began to fly during the winter of 1892 ‘that one of the largest firms in Auckland was in “queer street”’.\(^{51}\) Oliver Nicholson reported further: ‘The firm was referred to as the firm in “Wind-em-up Street” and later as W & R [Whitaker & Russell]. . . . One rumour went as far as to say

\(^{46}\) CCB, 1889–91, p.673.
\(^{47}\) ibid., passim.
\(^{48}\) O. Nicholson to E.A. McKechnie, 3 November 1892, McK. Papers.
\(^{50}\) The Observer, the Auckland weekly gossip-sheet of the 1880s and 1890s, popularized the term, perhaps coined it in the first place.
\(^{51}\) O. Nicholson to E.A. McKechnie, 20 May 1892, McK. Papers.
that "W & R were carrying on under police supervision." At any rate the firm of W & R have had a very unpleasant month and rumours are still afloat. The other large [law] firms have had a similar bad time, clients withdrawing their deeds and money, left in their hands for investment.'

Some weeks later the same young lawyer complained:

how readily the public grasped at the vaguest rumours.... So far as W & R were concerned the rumours were without the slightest foundation. No doubt a large amount of trust money was withdrawn from them, in common with other law firms, and the shaken confidence of some of their clients must have affected them.\(^{52}\)

Symptomatic of the prevailing suspicion of the profession was Sir George Grey's introduction into Parliament in 1892 of the Law Practitioners Bill\(^{53}\) preventing lawyers from 'placing all moneys in one account'. This had led some practitioners, Grey averred, 'to the first step in crime which led afterwards to most disastrous results'.\(^{54}\) After the bill became law, lawyers had to pay all clients' money into a separate trust account at a bank. Shortly after, the integrity of lawyers was questioned in Auckland yet again when the *New Zealand Herald* reported an eminent southern practice to be in difficulties through rash investment of trust moneys.\(^{55}\) Even in Auckland, wrote Oliver Nicholson, the legal profession had suffered 'a great shock', for, he added self-righteously, 'the honest will have to suffer for the dishonest'.\(^{56}\) The dishonest were in fact rarely to be found anywhere in the colony's legal profession. Unwise investment of trust funds generally arose from inexperience rather than turpitude.

The perspective now shifts from the client to lawyer in order to consider how the deepening of the depression is reflected in professional work. Russell & Campbell's records show how clients scrambled to their lawyers to strengthen their position. They sought, for example, to get additional collateral from debtors, or to take action over dishonoured promissory notes or unpaid calls on shares, even to prepare judgment debtor summonses to get debtors to court before they, in the phrase of the day, 'went down the Pacific slope', and 'levanted' on the Sydney or San Francisco steamer.

Another great growth area for lawyers in these depressed years was acting as trustees in bankruptcy. It had long been the view of the Law Society that this work should be done by solicitors alone. As far back as 1882 the Council had written to the Court Registrar, solemnly urging him not to 'facilitate the operations of unauthorised persons' in 'Bankruptcy work'.\(^{57}\) The 'unprofessional persons' (another commonly used term) they wanted to check were clearly accountants, not as yet an officially incorporated society. During the depression, however, the special skills which accountants (some with British qualifications or some with
considerable experience in the offices of the Government Auditor or Official Assignee) brought to the complicated tasks that the supervisor had in winding up insolvent estates, led Official Assignees increasingly to call on them to act rather than lawyers. Sir Geoffrey Heyworth recalls that the accountancy profession in Britain ‘grew to strength in the shadow of the bankruptcy courts and throve on commercial failure even on wrongdoing’. The Auckland experience suggests that this could well have been the case in late nineteenth-century New Zealand, too.

There is evidence that commercial stagnation depressed the fees which lawyers could charge. In 1886 the hourly charge for attending on a client was one guinea, with broken hours calculated in terms of thirds or quarters. By 1891 the fee of 6s.8d. appears so frequently, though reference to an exact time is no longer given, that we may assume this reduced figure had become the hourly rate. Attending on a client in his home ‘for a whole evening’ by 1891–92 carried a bill of only £1.1s.0d. So did ‘all evening engaged preparing a draft assignment’. Charges were obviously down. Winding up a deceased estate usually brought in £3.3s.0d; drawing up a simple will £1.1s.0d.

The gloomy outlook for the profession also seems temporarily to have reduced the number of students studying law. There were no admissions to practise in 1891. Some practising lawyers were themselves having a hard time of it. The Council of the Law Society in the same year lamented that Mr Keetly, ‘one of the oldest members of the Bar practising in Auckland’, was ‘in reduced circumstances’ and unable to pay his Society fees. By 1893 so many solicitors had defaulted in paying practising fees that the Council decided not to institute proceedings against them as ‘the financial position of the Society did not justify such expenditure’.

It is not known what the practice of Russell & Campbell earned in the early 1890s. Those records have not survived. But those of another (though smaller) firm, McKechnie & Nicholson, have. These are informative. The trend of the annual profit and loss accounts of that firm was steadily downwards to a trough in 1894: in that year, after the payment of salaries, there was a net loss of £5.8s.6d. Thereafter, as the economic spell over the colony began to break, the profits of McKechnie and Nicholson picked up. By 1897 there was a full recovery.

Concluding this paper at 1987 creates an artificial disjunction, because the history of a profession is, like all history, a continuum. Likewise the title of the paper embodies a misconception: to attempt to provide an anatomy of the legal profession is to imply that that profession is static, dead like a cadaver on a dissecting table.

The reality is that the profession, like Auckland between 1863 and 1896, was

59 CCB, 1889-91, pp.64–65, 433; ibid., 1891-2, pp.21–22.  
60 Statement of A.E.T. Devore to ADLS Council, recorded in Minutes, 29 April 1891.  
61 ibid.  
62 ibid., 10 November 1893.  
63 Profit and Loss Accounts Book, McK. Papers.
in constant flux. Contrast the rough-hewn settlement of 12,000 European settlers in 1863 with the urban centre of 1896 — nearly 60,000 people living in a city and suburbs with substantial buildings and modern amenities. The world of business had become more recognizably modern, and more complex too, regulated and conditioned by a host of new laws concerned with land tenure, property taxation, bankruptcy, and much else, all undreamt of 30 years before. Lawyers responded to these new needs. Whatever one says of the profession at this time it must never be regarded as inert. Its response and adaptation to changes in colonial business were unceasing. One suspects that such dynamism characterizes the profession of law in Auckland today, no less than it did 100 years ago.

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