



Anderson  
Strathern

# **International Conference of Legal Regulators 2019**

## **Building trust through transparency**

**Catriona Watt, Partner and past Chair of the Association of  
Regulatory & Disciplinary Lawyers**

# Trust & Transparency

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## Trust

- Confidence
- Belief
- Faith
- Credence
- Reliance

# Trust & Transparency

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## Transparency:

- Obvious
- Explicit
- Unambiguous
- Straightforward
- Apparent

## Trust & Transparency

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Trust, like the soul, once it's gone never returns

*Pubilius Syrus, 85-43 BC*

## Trust & Transparency

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### Professional regulation – objectives

- Protection of the public
- Maintaining standards in the profession
- Confidence in the regulator
- Protecting the registrant

### Professional regulation – principles

- Proportionality : benefit outweighs burden
- Certainty: predictable, consistent
- Transparency and accountability
- Flexibility
- Capacity: efficient, effective
- Growth/sustainability supporting/doing good
- Durability

# Trust & Transparency in regulation

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What does it look like? What could it look like? What should it look like?

- One example of what it looks like :



- We have an overarching objective of leading legal excellence, and strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public.
- We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's legal profession.
- A statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective legal profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through active engagement with the Scottish and United Kingdom governments, parliaments, wider stakeholders and our membership.

## Trust & Transparency

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As we've seen:

- Some things remain true, even though they were said a long time ago:

*Bolton v the Law Society* [1994] All ER 486

A solicitor who was in breach of the Law Society's rules should expect severe sanctions. The rules served not just to discipline solicitors, **but also to protect the public**. The reputation of a profession is more important than the fortunes of any individual member. Membership of a profession brings benefits, but also costs.

The second purpose is the **most fundamental of all**: to maintain the reputation of the solicitor's profession as one in which every member, of whatever standard, may be **trusted** to the end of the earth.

# Discussion

The background of the slide features a dark purple field with large, flowing, organic shapes in a vibrant red color. These shapes create a sense of movement and depth, with some areas appearing to overlap or recede.



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# Building Trust through Transparency

## Why what and how?

Mary Ollivier, Director Regulatory,  
New Zealand Law Society

ICLR Conference Edinburgh 2019



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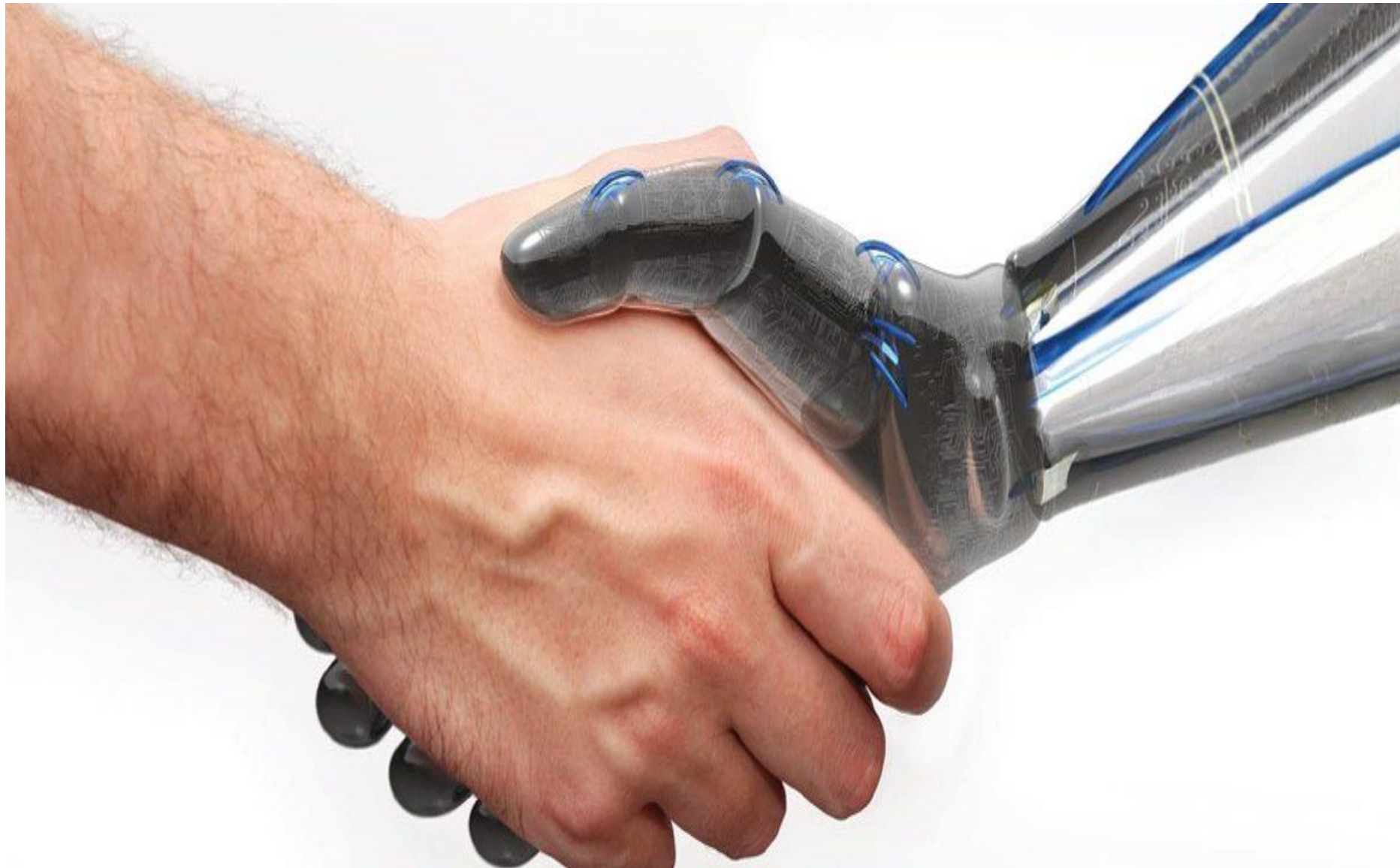
## *The future of trust*

The Future of Trust – New technology  
meets old fashioned values

*March 2019*

*Australia + NZ*







# Survey Methodology

*Aus/NZ survey – 1500 respondents*

Survey incorporated findings from  
Edelman Intelligence – 1000  
respondents augmented with  
interviews with accountants



# What is the Report about?

Trust is at an all time low.

Report points to a way forward – to build or rebuild trust.

Power is enhanced by belonging to professional bodies.



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# What is the Report about?

Concepts of trust, honesty, ethics and integrity are intertwined. Survey shows trust stands out as leading international measure of organisational health



## *4 KEY FINDINGS*

1st

New technology combined with traditional values such as face to face contact can help improve trust.





## *4 KEY FINDINGS*

2nd

As people's trust in many institutions declines, being honest and ethical isn't enough - you need to communicate that commitment too



## 4 KEY FINDINGS

3rd

An association with a brand and purpose *beyond profit* are proven ways to retain and build trust



## *4 KEY FINDINGS*

4th

Trust is critical in any relationship. High levels of trust have significant benefits for businesses and professionals



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## *One constant*

Old fashioned values are the  
new trust





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*Don't judge until.....*







## *2019 Edelman Trust Barometer*

Trust has changed in last year.  
Shifted to relationships within  
control – most notably to  
employers



## *2019 Edelman Trust Barometer*

Primary trust factors for non profit sector

- ✓ Protect private data
- ✓ guardian of fairness and equality
- ✓ Improve quality of life for stakeholders



## *Who do we trust?*

Trust assessment of range of  
professions NZ/Aus

Doctors – first    Political parties – last

Lawyers	NZ	72%
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	Australia	61%
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# Building Trust through Transparency Why what and how?

# QUESTIONS

ICLR Conference Edinburgh 2019

# **ICLR 2019**

## **Workshop ‘Building trust through transparency – why, what and how?’**

Niels Hupkes

The Netherlands Bar

Edinburgh, 5 September 2019

*“For the sake of trust in the legal profession and the legitimacy of the special position of that profession in our rule of law, it is important that lawyers are supervised. This supervision must be independent, uniform, transparent and effective.”*

*“It is considered particularly important that (potential) clients should be able to become acquainted with suspensions and disbarments imposed on lawyers. This contributes to the transparency and integrity of the profession. The knowledge about this can help clients to make a careful choice for a lawyer. Disclosure also serves a consumer interest. Public access to information about antecedents has a purifying effect.”*

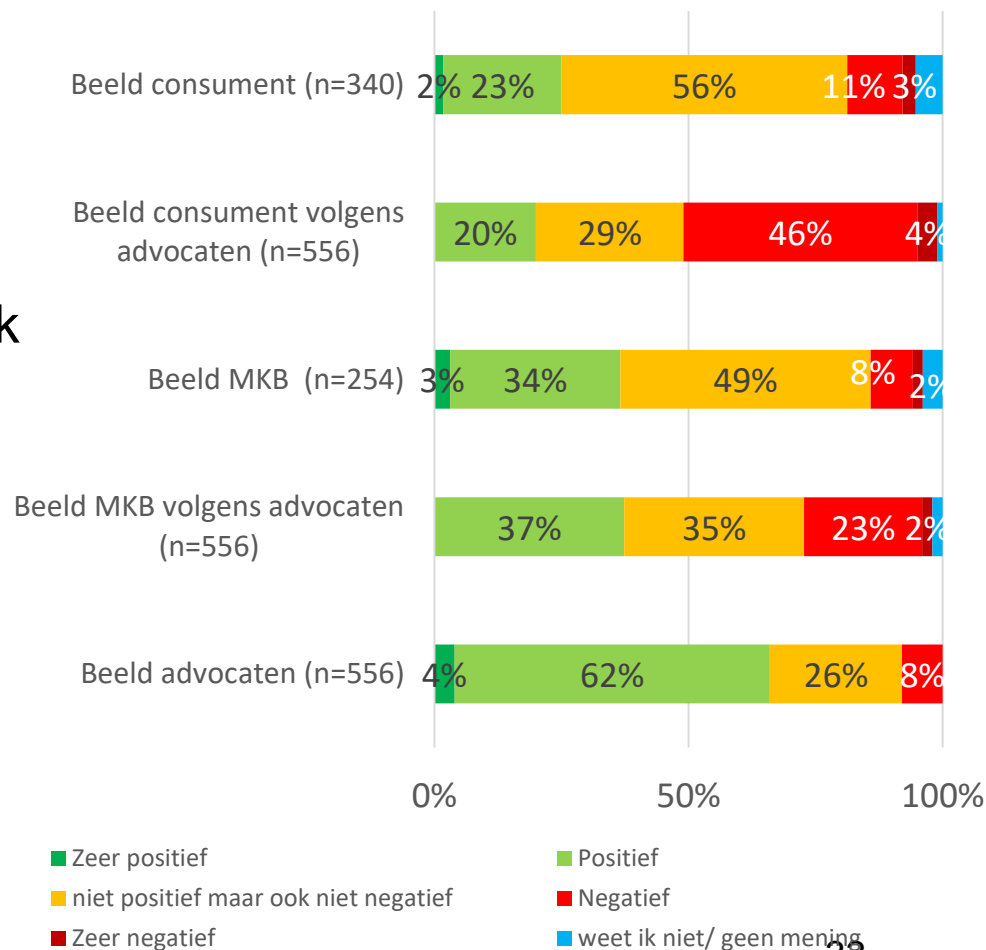
## Trust in lawyers !?

In 2016 in The Netherlands **54%** completely of generally trust lawyers (firefighters: 96%, doctors 89 – 95%, teachers 88%, bankers: 33%, politicians 31%) (source: [GFK international report](#))

In 2017 in The Netherlands lawyers earned a 5<sup>th</sup> place of professions with the highest regard (2006 and 1982 a 9<sup>th</sup> place) (source (in Dutch): [beroeps prestige ladder, p. 74](#)).

In 2018 a report showed that consumers ('consument') and small businesses ('MKB') are less negative about lawyers ('advocaten') than lawyers think they are. (source (in Dutch): [Advocatenblad](#))

Image of advocates



## Aspect for consulting a lawyer

### Consumers:

1. Personal contact (62%)
2. Affordable (61%)
3. Specialism (44%)
4. Cost transparency (37%)
5. No cure no pay

Affordability is more important for consumers without experience with a lawyer than for consumers with experience (64% versus 54%). Consumers with experience consider specialism more important than those without experience (53% versus 39%).

### Small businesses

1. Personal contact (55%)
2. Specialism (44%)
3. Knowledge of sector / organisation (40%)
4. Affordable (39%)
5. Authority (34%)

Affordability is especially important for small businesses without experience with a lawyer (46% versus 29% have experience). Authority is especially important for those who have experience with a lawyer (40% versus 29% no experience).

# What do lawyers do?

- Minimize information asymmetry (blogs, articles)
- (online) Transparency about qualifications, memberships, etc.
- (online) Transparency about fees and different modalities (billing per hour, fixed fees, legal aid, no cure no pay)
- It is mandatory for lawyers acting for one or more clients to announce and publicly disclose (article 7.4(2) bye-law):
  - the individual, group practice or legal entity with which the client will have an agreement;
  - the way in which the replacement has been arranged in principle, unless this is exercised within the firm or by a member of the group practice;
  - whether the lawyer is insured for professional indemnity;
  - the office complaints mechanism (article 6.28(1) bye law);
  - that, if applicable, they cannot receive any client monies because they do not have a client monies foundation;
  - which areas of law the lawyer has registered (article 6.32(2) bye-law).

# What does the Netherlands Bar do?

*In the interest of proper administration of justice, the Netherlands Bar promotes the proper practice of lawyers practice. The Netherlands Bar sets the rules for the legal profession, ensures the professional training of lawyers and promotes the interests of the legal profession and the litigants.*

*The Netherlands Bar contributes to the quality and supervision of the legal profession. The Netherlands strives to play a constructively critical, proactive and independent role in order to ensure the functioning of the rule of law and to guarantee access to justice.*

- Setting the rules and regulations for the legal profession, for instance:
  - Article 7.4 and 7.5 of [the bye-law](#)
  - Article 16 and 17 of [the Code of conduct](#)
- Bar registration
  - Name, adres, other practical information
  - Areas of law a lawyer has registered
  - Decisions of the Disciplinary Board
  - Decisions of the Local Bar President regarding AML
- Publishing the names of disbarred and suspended lawyers on our website.

# Questions? / Discussion?

Niels Hupkes

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