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**Open or Opaque Justice: Do our Courthouses Reflect a
Commitment to Open Justice?**

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Abstract

Courthouses are an important symbol of our justice system. They speak to the priorities of the judicial system and can influence public perceptions. One important way this is done is through how open the buildings appear. This influences whether the public feels they can visit the courts and exercise their right to watch court proceedings. In newer builds, such as the Christchurch Justice Precinct, there is an increasing commitment to creating open buildings. This trend should be continued. It is important courts do appear open, as without this it is hard to say the judicial system really is committed to open justice.

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Subjects and Topics

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I Introduction

The walls of courthouses can talk. In fact, the whole building tells a story.¹ Everything from the number of windows to how easy the buildings are to get to speak to the priorities of our judicial system.²

Usually, it is easy to spot a court. Courthouses stick out from other buildings.³ They are often prominent, imposing buildings.⁴ Courthouses are an important symbol of our judicial system.⁵ The design of courts, including their exterior and interior, can influence public perceptions of the courts and whether they welcome public attendance.⁶

Openness in the courts is an important part of our judicial system. It is embodied in the idea of open justice, which enables the public to see if justice is being done and to act as a check on the courts. This promotes trust in the courts.⁷ It is therefore useful to see if the physical courthouses promote open justice.

In particular, I focus on one important aspect of open justice: the right of the public to attend courts. In most courts, the public has the right to attend hearings and be a part of the trial. However, this is hard to reconcile with the fact that courthouses are often unwelcoming spaces. Although the judiciary may want public spectators, the design of our courthouses does not invite the public into these spaces.

¹ See for example all items: Linda Mulcahy “Architects of Justice: The Politics of Courtroom Design” 16(3) *Social and Legal Studies* 383 at 384; Matthew Thomas Watson “Representing Justice: Architecture and the New Zealand Supreme Court” (MArch Dissertation, Victoria University of Wellington, 2012); and Linda Mulcahy and Emma Rowden *The Democratic Courthouse: A Modern History of Design, Due Process and Dignity* (Routledge, Oxfordshire, 2020); and Law Commission *Delivering Justice for All: A Vision for New Zealand Courts and Tribunals* (NZLC R85, 2004).

² See for example Mulcahy, above n 1 at 384; Watson, above n 1; and Mulcahy and Rowden, above n 1.

³ Law Reform Commission of Western Australia *Project 92: Review of the criminal and civil justice system in Western Australia* (2012) at 306.

⁴ At 306; Mulcahy and Rowden, above n 1, at 384.

⁵ At 1.

⁶ Marilyn Warren, Chief Justice of Victoria “The Politics of Court Architecture” (Third Justice Environments Conference, University of Western Sydney, Sydney, 21 May 2010).

⁷ Judge Sanjay Patel “Suppression orders — balancing individual and public interests” <www.districtcourts.govt.nz>.

For many, the courts are a scary place to visit. This paper was inspired by my own discomfort visiting the courts. When I have attended court hearings, I have often been confused: where is the court I want to watch? What do I need to wear? What am I allowed or not allowed to do? For a large part, the court system is confusing and tricky to navigate, even for someone with a legal education.

I use the physical buildings as a tool for assessing how open the judiciary appears. The physical buildings have the power to influence what members of the public think about the activities going on inside. If you think about a building with no windows, it immediately creates the perception that this is not an open building.⁸ By comparison, a building that is filled with glass which members of the street walking past can see inside suggests this is an open space where members of the public are welcome. I look at where on this spectrum courthouses fall.

Where the buildings are located, the courtrooms and the broader design of the building can all influence how open the courts appear. From this, you can begin to get a sense of how inviting these spaces seem and whether they are being designed in a way that encourages members of the public into these spaces. The fact these spaces are not always inviting means that the principle of open justice is not perfectly upheld.

I focused on Wellington as a source of inspiration, looking at the Wellington District Court, Wellington High Court, the Court of Appeal and Supreme Court as key case studies. Where relevant, references are also made to other courts throughout Aotearoa New Zealand and overseas. Through my research, I find for the most part newer court buildings better enable open justice, and this seems to be a deliberate goal of the designers. However, some older buildings, such as the Wellington High Court are not as well placed to enable open justice. As policy makers face choices between restoring old courts or building new ones, they should think carefully about how open the current spaces feel to the public. Where the openness could be improved, newer courthouses should be built.

At the time of writing this, Aotearoa New Zealand is tackling the COVID-19 pandemic. There have been questions raised about the extent to which open justice can be enabled when courtrooms are often shut to many members of the public.⁹ However, there are also

⁸ See Law Reform Commission of Western Australia, above n 3, at 306.

⁹ Yvette Tinsley and Nessa Lynch “Remote justice? Criminal proceedings in a pandemic” *Newsroom* (online ed, New Zealand, 21 May 2020) < www.newsroom.co.nz>.

questions about how open courts were even before the pandemic. Even when restrictions are lifted and people can visit all courts, would the buildings really invite you in?

The courts were shut to the public for part of the time I was writing this paper which limited my ability to visit the courts. I was therefore unable to capture as much of the smell, the feel and the true essence of what it is like to be in a courthouse as I initially hoped. This meant I had to use more secondary research, such as photos, to form the opinions I came to. Whilst this is a limitation, it is not as limiting as it may seem. Ultimately, most citizens will never enter a courtroom. Instead, they will form their viewpoint based on photos or videos from the courtrooms accessed through the media. Equally, viewpoints are likely to be formed by members of the public as they walk past the courts.

Throughout this paper, I argue there is room for improvement if courthouses are to truly uphold open justice and welcome public visitors. To an extent, this paper is just my reflection of how open the courts seem. I would encourage readers who have visited a court to think about their own experiences and how the buildings have made them feel. For those who have not, why is that? Have the courts felt like a place you are not welcome as a public spectator? You may have different experiences in courts, especially if your experience has been in courtrooms outside the ones I visited for this project. The goal of this paper is not to describe every way that courthouse design does not uphold open justice or to provide a definitive answer to how courts could appear open. Rather, I draw attention to some key ways in which the courts are not enabling open justice, showing this an area where further discussion and research needs to occur.

II The Importance of Court Architecture

Courthouse design is an expression of “judicial aspirations”.¹⁰ The physical courts tell us what ideals the courts are committed to.¹¹ Courthouses should promote the principles the judiciary claims to be committed to. These include ideas like “openness, transparency and access in the judicial system”.¹² However, these principles are not always reflected in the final product.¹³

¹⁰ See Watson, above n 1, at 21.

¹¹ At 21.

¹² At 6.

¹³ See generally Watson, above n 1, at 178.

One important aspiration of the judiciary is open justice, which is the idea the public should be able to watch justice being done. How open the buildings appear, both externally and internally influences how well open justice can be achieved. For true open justice, the “physical structures” such as the courtroom should “enable transparency, scrutiny and public accountability.”¹⁴ Buildings that shut out the public, for example through appearing unwelcoming, are a violation of open justice.¹⁵

There has been some examination of the courthouses I focus on (the courts in Wellington CBD). Matthew Thomas Watson has written about New Zealand Supreme Court Complex (the new Supreme Court and old Supreme Court), comparing the briefing process with the finished buildings.¹⁶ Dr Jane Adams has written more generally about the “development of courthouse architecture in New Zealand”, looking at how changes in courthouse design have helped or hindered access to justice.¹⁷ However, courthouse design in Aotearoa New Zealand is certainly not an area with extensive literature.¹⁸

Even worldwide, there has not been that much examination of how courthouse design influences whether justice is done and seen to be done.¹⁹ This is because the way law is taught at law school often ignores the impact of physical settings.²⁰ Instead, in teaching cases, it is often assumed that should the same facts come before the courts, there will be the same result regardless of what court the case is held in.²¹ This treats the “judicial space as neutral” and as having no bearing over how justice is carried out.²² In reality, how the courts look and where they are located can impact the results of cases and whether justice is seen to be done.²³ How courts are designed can have a strong influence on how citizens

¹⁴ Jeremy Bentham *Panopticon; or the Inspection House* (1791, London) as cited in Jane Johnston “Three phases of courts’ publicity: reconfiguring Bentham’s open justice in the twenty-first century” 2018 14(4) *Int. J.L.C* 525 at 527.

¹⁵ See Law Reform Commission of Western Australia, above n 3, at 306.

¹⁶ Watson, above n 1, at 5.

¹⁷ Jane Adams “Majesty and modernity” (2018) *NZLJ* at 99.

¹⁸ Watson, above n 1, at 72.

¹⁹ Mulcahy, above n 1, at 385.

²⁰ At 384.

²¹ At 384.

²² At 384.

²³ See Derrick Bryson Taylor “Virginia Judge Won’t Try Black Man in Courtroom Lined With White Portraits” *New York Times* (online ed, New York, 2 January 2021).

perceive the space and their broader views of the effectiveness of the judicial system.²⁴ Through their “monumental size” and “limited window areas”, courts can give off the impression that “the law is closed and inaccessible”.²⁵ Given the judiciary claims to be committed to open justice,²⁶ features like this are problematic.

This paper focuses exclusively on how courthouses in Wellington influence public attendance in court cases. This is an important tenet of open justice. It is important that justice is not only done, but also be *seen* to be done.²⁷ This helps to maintain public confidence in the courts.²⁸ Where justice occurs behind “closed doors”, this prevents the public from knowing why a decision was reached and whether the reasoning was valid.²⁹ The public could understandably have many questions about if the judiciary were following the law if they felt courts do not want public spectators. At a time where there is already increasing scepticism about the judicial system and whether it can meet future demands, like climate change,³⁰ efforts must be made to retain public trust in the judiciary. Having buildings that are open and invite public scrutiny can help with promoting public trust.³¹

Another important reason for open justice is that it enables the public to scrutinise the judiciary.³² Public scrutiny can discourage the court from “behaving improperly”, for example by not following the law.³³ Judges have the power to completely change people’s lives, for example by sending them to prison, so this power should be exercised in a way that aligns with public values. The principle of open justice also “serves an educative function”,³⁴ enabling the public to see how cases are decided and learn about our legal system.

²⁴ See Mulcahy and Rowden, above n 1, at 3; Law Reform Commission of Western Australia, above n 3, at 34; and see also Watson, above n 1.

²⁵ Law Reform Commission of Western Australia, above n 3, at 306.

²⁶ Courts of New Zealand “Statement of Principles” <www.courtsofnz.govt.nz>.

²⁷ *Rex v Sussex Justices ex parte McCarthy* [1924] 1 KB 256 as cited in Mulcahy and Rowden, above n 1, at 260.

²⁸ Judge Sanjay Patel, above n 7.

²⁹ See Judge Sanjay Patel, above n 7.

³⁰ Helen Winkelmann, Chief Justice of New Zealand “Renovating the House of Law” (Keynote speech to Te Hūnga Rōia Māori o Aotearoa (Māori Law Society), Wellington, 29 August 2019).

³¹ See Judge Sanjay Patel, above n 7.

³² Law Commission, above n 1, at 300.

³³ See Gilead Cooper “Open (in)justice: privacy, open justice and human rights” 25(7) *Trusts & Trustees* 712 at 715.

³⁴ Law Commission, above n 1, at 300.

There are numerous sources for the principle of open justice. For example, it is “reflected in international instruments to which New Zealand is a party” including the International Convention on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights.³⁵ The principle of open justice can also be found in s 25 of the New Zealand Bill of Rights Act 1990, which is the right to a public and fair hearing.³⁶ For “civil cases, there is an established presumption of openness.”³⁷ Although the principle of open justice often invokes ideas of the public’s right to be in the courts, it also includes other ways in which the public can find out information about court proceedings.³⁸ These include the “right of the media to report court proceedings, and the right of the public to access court records.”³⁹ However, in this paper, I focus exclusively on the effect of courthouses on people physically visiting the courts.

It is important to point out that open justice is not absolute.⁴⁰ For example, sometimes court hearings are closed to the public. Open justice must be balanced against other concerns.⁴¹ For example, the courts have a role in keeping defendants, witnesses, victims and children safe.⁴² Where there is concern about their safety, courts can grant suppression orders, keeping their identity a secret.⁴³ In some courts, there has been a deliberate choice to move away from open justice. For example, the public cannot attend the Youth Court.⁴⁴ Decisions from this Court can only be published with the Judge’s permission and must ensure they do not identify the young person in question.⁴⁵ However, unless there is some reason for the trial not to be open, the public should be able to attend.

It is worth noting that openness is not the only useful angle by which courtrooms should be examined. For example, courthouse design can be assessed by whether the design enables access to justice and for which groups.⁴⁶ However, I have focused exclusively on

³⁵ The International Convention on Civil and Political Rights 1996, art 14(1); Universal Declaration of Human Rights 1948 both as cited in Law Commission, above n 1, at 300.

³⁶ New Zealand Bill of Rights Act 1990; and see also Law Commission, above n 1, at 300.

³⁷ Law Commission, above n 1, at 300.

³⁸ See for example Emma Cunliffe “Open Justice: Concepts and Judicial Approaches” (2012) 40 FL Rev 385 at 389.

³⁹ Law Commission, above n 1, at 300.

⁴⁰ Judge Sanjay Patel, above n 7.

⁴¹ Judge Sanjay Patel, above n 7.

⁴² Judge Sanjay Patel, above n 7.

⁴³ Judge Sanjay Patel, above n 7.

⁴⁴ The District Court of New Zealand “About the Youth Court” < www.districtcourts.govt.nz >.

⁴⁵ The District Court of New Zealand, above n 44.

⁴⁶ See generally Adams, above n 17.

the role of court spaces in enabling open justice. Courts that appear unwelcoming suggest that the public are not wanted in these spaces which can be seen as an infringement on the principle of open justice. Therefore, a close examination of the physical courts and how open they are is needed.

III Looking at the Courthouses: Do They Appear Open?

There has been some fantastic work on the impact of court architecture on enabling open justice by Emma Rowden and Linda Mulcahy who focus on the English and Welsh courts.⁴⁷ However, there is limited literature about the design of courthouses in New Zealand,⁴⁸ meaning there has been little exploration of how the physical court buildings enable or hinder open justice.

I chose Wellington CBD as my key focus area. I looked at the courts that form our main court system: the Wellington District Court, the Wellington High Court, the Court of Appeal and the Supreme Court. Other courts and bodies, like the Employment Relations Authority, the Employment Court, the Environment Court, the Māori Land Court, the Māori Appellate Court, the Waitangi Tribunal, the Coroners Court and the Courts Martial Appeal Court were all outside the scope of this paper.

Wellington CBD is where our two highest courts are. The Supreme Court is permanently located in Wellington, and this is the main location for the Court of Appeal. These courts can make especially significant decisions that can affect the lives of many New Zealanders. It is therefore crucial to see if the courthouses where this power is exercised feel open to the public. I have also included in my methodology the Wellington High Court and District Court. For those who do interact with the courts, the District Court and High Court are the most likely places this will occur, given only cases which are appealed make it the Court of Appeal and Supreme Court. In 2016, 2.6% of District court cases took place in the Wellington District Court.⁴⁹ 11.6% of High court cases were held in the Wellington High Court.⁵⁰ These courts therefore represent a reasonable proportion of our nationwide cases. However, should further research take place, it would be good to extend beyond just

⁴⁷ See Mulcahy and Rowden, above n 1.

⁴⁸ See Watson, above n 1, at 49.

⁴⁹ Geoff Adlam “How do our courthouses measure up” *LawTalk* (online ed, New Zealand, February 2018) at 51.

⁵⁰ At 51.

Wellington to courts like the Auckland High Court, which in 2016 held 42.1% of High Court cases.⁵¹

Wellington CBD is the heart of where democracy takes place, with the Beehive and many ministries located in this area. In an area where we are so focused on democracy and transparency, it is crucial to look at whether the courts are upholding similar ideas of open, transparent justice that the public is invited to be a part of.

The other reason for selecting Wellington CBD for my focus location is that during times this year where travel was discouraged due to COVID-19, it was easier to visit courts in my local area rather than visiting courts in different suburbs or cities. Since the most recent lockdown in August, visiting the District Court and High Court as a public spectator has been discouraged, which also made it easier to write on courts I had previously been to. As there are differences in courthouses throughout the country, it must be noted that the Wellington courts cannot speak to how open *all* courthouses in New Zealand appear. Instead, reflecting on what could make the Wellington courts appear more open can provide some useful tips for future courthouse design across the country, which can be supplemented by looking at other courts.

The other building I focused on is the Christchurch Justice & Emergency Services Precinct. This newly built court opened in September 2017 and cost \$300 million.⁵² This court represents a new way forward, for how courthouses could be built,⁵³ so is a useful comparison to the Wellington CBD courts. There have been concerns raised about the Christchurch Justice Precinct housing the courts, various Ministries and organisations, including the New Zealand Police and the Department of Correction.⁵⁴ Although the goal of having all these organisations in one building is to “provide better public services through innovation and new ways of collaborating”,⁵⁵ there have been some questions about the appropriateness of having both the judiciary and executive in the same building.⁵⁶ It has been questioned if having these bodies in the same building allows for separation of powers.⁵⁷ However, this is outside the scope of this paper, which has a primary focus on

⁵¹ At 47.

⁵² Ministry of Justice “Christchurch Justice & Emergency Services Precinct” (16 March 2020) <www.justice.govt.nz>.

⁵³ Adams, above n 17, at 99.

⁵⁴ Sacha McMeeking *The Justice and Emergency Services Precinct Narrative* at 8.

⁵⁵ Ministry of Justice, above n 52.

⁵⁶ McMeeking, above n 54, at 8.

⁵⁷ Sacha McMeeking *The Justice and Emergency Services Precinct Narrative* at 8.

open justice. I will focus mainly on how the courts have been designed within this building. Much of the design of this building could be replicated in another city, without having other bodies like the Police located there, so this is not a huge element of concern for this paper. I therefore only focus on the part of the Christchurch Justice & Emergency Services Precinct which houses the judiciary, which I will from now on refer to as the Christchurch Justice Precinct.

A Can the Public Visit the Courts?

1 The Right to Attend

In measuring how open the courts are, it is important to look at what rights members of the public have to be in court hearings. In Aotearoa New Zealand, for most hearings, the public have the right to attend court hearings.⁵⁸ There are some exceptions to this, for example in trials about sexual offending, when the complainant is giving evidence, the public do not have a right to watch.⁵⁹

Although the public generally have a right to attend court proceedings, this is not true of all courts. Some of the courts in New Zealand do not welcome public spectators. For example, the Family Court and Youth Court are closed to public spectators.⁶⁰ However, the media are usually able to visit Youth Court and Family Court hearings.⁶¹ At both courts, there are “more reporting restrictions apply than is typical in other divisions of the District Court.”⁶² Although this minimises the ability of the public to engage with these courts, this is likely justified. The Family Court deals with “sensitive and deeply personal matters and involves vulnerable participants - especially children”.⁶³ For the Youth Court, the

⁵⁸ Ministry of Justice “Going to court: Appearing in court - what you need to know” (22 September 2021) <www.justice.govt.nz/courts>.

⁵⁹ Interview with Ursula Cheer, dean at Canterbury’s School of Law as cited in Dean Kozanic “Law experts question judge’s call to eject media from Mama Hooch drugging case” *Stuff* (online ed, New Zealand, 8 July 2020).

⁶⁰ Ministry of Justice “About Family Court: What to expect at Family Court” <www.justice.govt.nz>; and The District Court of New Zealand, above n 44.

⁶¹ Lawrence Ryan *A Guide for Media Reporting in the Family Court* (Ministry of Justice, 14 August 2017); and Oranga Tamariki Act 1989, s 329(1)(l) as cited in John Walker *Media and Reporting Protocol in the Youth Court* (Ministry of Justice, 21 August 2019).

⁶² Ryan, above n 61; and Walker, above n 61.

⁶³ Ryan, above n 61.

defendants are young people, who are likely to already find the situation of being in court confusing and confronting enough without public spectators. Although the Youth Court and Family Court fall under the District Court,⁶⁴ I will not be speaking to these courts. It is not a useful exercise to see how open these courts appear to the public if they are not intended to appear open. Instead, this paper explores whether the courts which are striving to this idea of open justice are meeting this objective.

An interesting point around the right to visit is looking at the ability to visit the courts when they are not sitting. For the District Court and High Court, the courts are generally sitting every day, so for someone wanting to go in and visit, they could. At higher alert levels of COVID-19, the courts restrict access to the courts but aside from these times, it is quite easy for people to visit the courts and have a look around. At the Court of Appeal this is not the case, and the courtrooms cannot be visited unless there is a case on. This restricts access from those who are wanting to see how the courts operate. At the Supreme Court, there seems to have been recognition that there is something special in letting the public in the space and claiming it as their own. Even when the Supreme Court is not operating, it is still possible to visit the court and have a look around and there are videos in the foyer that discuss the building. There are also free guided tours available⁶⁵ which explain the court's history and use, enabling those interested in the building and its role to find out more about it. This helps to bring people into the Supreme Court and claim it as their own. It would be interesting if similar ideas could be implemented at the Court of Appeal, even if it was just a brochure explaining the history of the court and how it operates. This could be a step in helping the public feel like this is a space they can visit.

2 *Ease of Getting to the Courts*

There may be a right to visit most of the courts. However, the next question is: how easily people can get there? A right to attend the courts is quite superficial if they are far away, meaning the public are unlikely to visit them. The location of courts is therefore of significance.⁶⁶ As an example, if someone had to drive several hours to the nearest court, or if there was no public transport to get there, it is unlikely they would be able to get the time off work or their other commitments and be able to find a way of getting there. Even if they could get there, it is unlikely that they would be willing to do so.

⁶⁴ Courts of New Zealand “Structure of the court system” <www.courtsofnz.govt.nz>.

⁶⁵ Courts of New Zealand “Visiting the Supreme Court” <www.courtsofnz.govt.nz>.

⁶⁶ National Centre on State Courts “Site Selection” <www.ncsc.org>.

In New Zealand, it seems there has been a deliberate effort to enable open justice through the placement of the courts. Looking at our key appellate courts, the Supreme Court and Court of Appeal, these are based in Wellington. As Wellington is in the middle of the country, with a domestic airport and good public transport options, this makes these courts reasonably easy to access.

Alongside this, the Court of Appeal also travels throughout the country. During the permanent court (“three Judges, usually all permanent members of the Court”⁶⁷), the court “almost always [sits] in Wellington”.⁶⁸ However, it does have a hearing centre in Auckland.⁶⁹ During the divisional court (“three Judges, usually one permanent member and two [appropriately qualified] High Court Judges”)⁷⁰, the court also travels around the country, sitting in Auckland, Wellington, Christchurch and Dunedin.⁷¹ In England and Wales, the equivalent court (their Court of Appeal) is based in London at the Royal Courts of Justice.⁷² They only have “occasional sittings elsewhere in England and Wales”.⁷³ Through travelling, the New Zealand Court of Appeal makes it easier for those based out of Wellington to watch court cases without being required to travel to Wellington.

In my focus area of Wellington CBD, all the courts are based in the heart of the city. The Supreme Court, Court of Appeal, Wellington High Court and Wellington District Court are all located near major bus routes, making it relatively easy to get to these courts. This is likely to increase visitors to the courts, by reducing difficulties associated with getting there. There is also strong symbolic value by having courts in the heart of city centres.⁷⁴ It suggests the courts welcome public scrutiny and have made it as easy as possible for those who wish to do so to visit the courts and see justice being delivered. It would likely create public scrutiny and distrust if courts were placed away from public centres in hard to reach locations, as this would suggest that courts had made deliberate efforts to discourage public scrutiny. This in turn would suggest they were in some way fearful of public scrutiny, perhaps because they had something to hide.

⁶⁷ Courts of New Zealand “How cases are heard” <www.courtsofnz.govt.nz>.

⁶⁸ Courts of New Zealand, above n 67.

⁶⁹ Ministry of Justice “Court of Appeal” (22 September 2021) <www.justice.govt.nz>.

⁷⁰ Courts of New Zealand, above n 67.

⁷¹ Courts of New Zealand, above n 67.

⁷² “Court of Appeal Civil Division” <www.gov.uk>.

⁷³ Courts and Tribunals Judiciary “Court of Appeal Judges” <www.judiciary.uk>.

⁷⁴ Mulcahy and Rowden, above n 1, at 83.

The placement of the Supreme Court is particularly unique. It is on a Lambton Quay, a street bustling with many workers.⁷⁵ There is even a bus stop right outside the Supreme Court.⁷⁶ This makes this court especially easy to visit. There is also something very special about people being able to walk past major institutions, normalising these institutions and making them feel part of the city.⁷⁷

As my focus area is on Wellington CBD, I did not focus on the accessibility of all courts in Aotearoa New Zealand. However, it is worth noting there are many courts in Aotearoa, suggesting an effort to put the courts in the communities they serve.⁷⁸ There is a total of 58 District Courts,⁷⁹ and a further 19 High Courts across the country.⁸⁰ In 2018, there was “65 buildings which operate as courthouses or hearing centres”⁸¹ These are well dispersed across the country. There are courts as far North as Kaitaia⁸² and as far south as Invercargill.⁸³ There are courts even in towns and regions with smaller populations. For example, the Chatham Islands, which only had a population of around 700 people in 2018, still has a District Court based on the Island.⁸⁴ This court operates on a “[a]s required basis”⁸⁵ and those “[a]ll of those involved fly out from Wellington on Monday afternoon, with the court hearing being held the following day.”⁸⁶ Sessions in this court occur every three months,⁸⁷ and “[t]he Judge, registrar, duty solicitor, prosecutor and a probation officer all head off on the same plane, as can any police witnesses.”⁸⁸ This shows a commitment to enabling open justice for all regions, as expecting those in the Chatham Islands to travel

⁷⁵ Rebecca Thomson “Streetwise History: Lambton Quay” *Stuff* (online ed, New Zealand, 28 August 2013) <www.stuff.co.nz>.

⁷⁶ Watson, above n 1, at 103.

⁷⁷ At 103.

See Law Commission *Seeking Solutions: Options for Change to the New Zealand Court System: Have Your Say, Part 2* (NZLC PP52, 2002) at 65.

⁷⁹ The District Court of New Zealand “Nau mai, haere mai, ki te pae tukutuku o Te Kōti ā Rohe o Aotearoa. Welcome to the website of the District Court of New Zealand.” (22 September 2021) <www.districtcourts.govt.nz>.

⁸⁰ Ministry of Justice “High Court” (22 September 2021) <www.justice.govt.nz/courts/high-court/>.

⁸¹ Adlam, above n 49, at 46.

⁸² Ministry of Justice “Find us: Kaitaia District Court” <www.justice.govt.nz>.

⁸³ Ministry of Justice “Find us: Invercargill District Court” <www.justice.govt.nz>.

⁸⁴ See population statistics on Statistics New Zealand “Chatham Islands Territory” (2018) <www.stats.govt.nz>; and information about the court on Ministry of Justice “Find us: Chatham Islands District Court” <www.justice.govt.nz>.

⁸⁵ Ministry of Justice, above n 84.

⁸⁶ “Court on the Chathams” *LawTalk* (online ed, New Zealand, 31 March 2017).

⁸⁷ “Court on the Chathams”, above n 86.

⁸⁸ “Court on the Chathams”, above n 86.

outside this region to see how the courts operated would be unreasonable. However, it will still be quite hard for those in the Chatham Islands to watch cases outside this court, unless they can do so by live stream.

Another way the judiciary has been able to justify having courts in smaller areas is by having the District Court and High Court situated in the same building in some towns.⁸⁹ This is likely to enable courts to be placed in many cities and towns, whilst still making this an affordable venture.

It is worth noting, there will still of course be barriers to accessing the courts, particularly for those with less disposable income who may be less willing or able to spend this on transport to the courtrooms. This is an important aspect of enabling open justice, but outside the focus of this paper which focuses primarily on the physical building.

Another useful question would be to see how physically accessible courts are for people with disabilities.⁹⁰ The court have some ability to provide for those with disabilities. For example, the courts can help by “provid[ing] documents in other formats (such as Braille or bigger type)” or “giv[ing] you a seat near the witness or judge or get sound reinforcement if you have a hearing problem”.⁹¹ It is necessary to give the courts at least 5 working days’ notice so that they can make such accommodations.⁹² With limited ability to visit the courts, it was hard to delve into how well the physical courts are currently designed for New Zealanders with disabilities. However, it is worth pointing out that going forward, it is important court designers ensure the buildings are open for all New Zealanders.

3 Ability of Courts to Have all Interested Parties in the Courtroom

Where members of the public do want to visit the courts, is there the capacity to seat them? The level of capacity influences how the public can engage with the space. If people feel invited in but cannot fit in the court, this does not create a space that facilitates open justice.⁹³ Typically, the courts are generally not built for large crowds. This is

⁸⁹ See generally Adlam, above n 49, at 46.

⁹⁰ Law Reform Commission of Western Australia, above n 3, at 305; and Law Commission, above n 78, at 48 and following.

⁹¹ Ministry of Justice, above n 58.

⁹² Ministry of Justice, above n 58.

⁹³ See generally Law Reform Commission of Western Australia, above n 3, at 304.

understandable when nowadays most people access information about the courts through the media, rather than physically visiting them.⁹⁴ However, there are also questions about whether the courts can fit all interested parties if a case does attract a larger audience.

The Supreme Court is best placed to deal with large crowds, with over 50 public seats provided at the back. The court also can live stream into the foyer for particularly large crowds, enabling much larger audiences to view the case. This provides a good balance between not having excessively large courtrooms that are a waste of space, whilst still enabling open justice and parties to see what is occurring during the courts.⁹⁵ Other courts, such as the Wellington High Court, can also stream court cases. For example, the case of *Borrowdale v Director-General of Health* was streamed to three law schools.⁹⁶ This was a judicial review case questioning the legality of the nationwide lockdown imposed in March 2020,⁹⁷ so of considerable public interest.

Although live streaming may be a necessary compromise in enabling the most efficient use of space, not having the public physically in the court is arguably a loss. In cases where there is a large audience, having everyone in the courtroom may require the judge to confront why so public members are there and what the case means to them. For example, it may be that the public consider the defendant to have committed a particularly egregious crime, something the judge may want to consider in making their decisions about what should happen to the defendant. Members of the public may also want to be in the space where the case is taking place and feel a part of the proceeding, rather than just watch it online. When designing courts and deciding how many seats should be in the court, designers should be consulting with communities about how important physically attending the court is to them.

An alternative option would be to hold cases outside the traditional court buildings. The Environment Court, one of the specialist courts of Aotearoa New Zealand, has registries in Wellington, Auckland and Christchurch and can sit elsewhere if necessary.⁹⁸ The aim is

⁹⁴ See for example Mulcahy, above n 1, at 384–385.

⁹⁵ Phone call with Nick Warring, Principal Architect to Emma Westbrooke (author) regarding the Christchurch Justice & Emergency Justice (27 October 2021).

⁹⁶ “Coronavirus: High Court to hear lockdown legal ins and outs” *Stuff* (online ed, New Zealand, 24 July 2020).

⁹⁷ *Borrowdale v Director-General of Health* [2020] NZHC 2090; and Jenni McManus “Borrowdale v D-G of Health: a win for the rule of law” (21 August 2020) <<https://adls.org.nz>>.

⁹⁸ Environment Court of New Zealand “About the Environment Court: Jurisdiction of the Environment Court” (7 September 2016) <<https://environmentcourt.govt.nz>>.

for the court to “hear matters as close as possible to the location of the issues in dispute.”⁹⁹ This ability to sit in different locations also enables it to sit in large locations, like hotels, meaning all interested parties can attend, better enabling open justice. However, there is also a strong symbolic value of being in a courthouse, so this is something which must be weighed up against this.¹⁰⁰

Whatever approach is taken - be it live streaming court cases, sitting in different venues, or ensuring courts have sufficiently large public galleries - courts need to ensure that those who want to watch court cases can do so. For cases that are open to the public, there should not be times where someone is unable to watch a case because the facilities do not allow for this.

B Would the Public Want to Visit the Courts?

Whilst it is useful to have courts that, for the most part, are easy to access and can fit all interested parties, there is still a question of whether members of the public would want to visit the spaces or if the buildings seem too unwelcoming? There are many reasons why members of the public may have no interest in watching court proceedings.¹⁰¹ Legal proceedings are filled with confusing terminology, follow processes that are unique to law, and it is generally difficult for a citizen without legal training to follow what is going on. However, courthouses can also influence the likelihood of the public visiting courts by how welcoming they appear.¹⁰² In this section, I look at whether the exterior and interior of courthouses in Wellington appear as open spaces and therefore uphold open justice.

1 The Exterior of the Courts

The exterior of the building has an important role in symbolising open justice.¹⁰³

As the most visible representation of the legal system in the civic sphere, the exteriors

⁹⁹ Environment Court of New Zealand, above n 98.

¹⁰⁰ Emma Rowden “Distributed Courts and Legitimacy: What do we Lose When we Lose the Courthouse?” (2018) 14(2) *Law, Culture and the Humanities* 263 at 272 and following.

¹⁰¹ Mulcahy, above n 1, at 384-385.

¹⁰² At 384-385.

¹⁰³ Mulcahy and Rowden, above n 1, at 79.

of courthouses have often been called upon to do the job of symbolising justice for those who enter as well as for those who do not and never will.

The images below show the various courts and how they appear from the street.

Figure 1: Wellington Courts from the Outside¹⁰⁴

Top row (left to right): Supreme Court, Court of Appeal (Wellington).

Bottom row: Wellington High Court, Wellington District Court (undergoing renovation).



The main way the buildings seem to have created a sense of openness from the outside is through clear signage that these are courts and through using of glass. Glass can be used in courts as a “powerful metaphor about the transparency of justice”.¹⁰⁵ This is used to

¹⁰⁴ Images taken by myself on 3 October 2021.

¹⁰⁵ Mulcahy, above n 1, at 399.

symbolise open justice in the sense that any member of the public walking past would feel that they could see in and know what was happening. In Germany after the atrocities of the Nazi regime, the Federal Constitutional Court was built using a lot of glass to show the space was open to public scrutiny.¹⁰⁶ In the newest courthouse in Wellington’s CBD, the Supreme Court, there has been a deliberate effort to include glass to create openness:¹⁰⁷

In keeping with the concept of an open and transparent court, a window in the wall opposite the judges’ bench facing onto Lambton Quay allows the public to literally see justice being done.

It is unusual for a courtroom to not be “fully enclosed and isolated”.¹⁰⁸ The ability to see into the Supreme Court creates a strong sense of symbolism, that those in power are open to public scrutiny and encourage the public wandering past to look into the court. However, there is still recognition that occasionally the courts will need to keep proceeding confidential, so the glass into the courtroom can be made opaque if necessary. This creates an inviting court, that could welcome the public in.

Placing the Supreme Court entrance “next to a major city busy stop” creates a unique “relationship between the exalted and the quotidian, in observing justice being done at its highest level while carrying on one’s daily routine.”¹⁰⁹ There is strong symbolism associated with “idea of standing at the bus stop and observing justice in the making”.¹¹⁰ This “connection” was deliberate.¹¹¹ However, this is “compromised by the layers of glass obscuring the view”,¹¹² meaning it is quite difficult for onlookers to see into the courtroom. This may have been a necessary design choice for security reasons,¹¹³ but still undermines the openness that could have been created from having a court you could easily see into from the street. The use of a screen around the Supreme Court also erodes some of the openness created by using glass.¹¹⁴ As a screen is typically used to “protect[] against

¹⁰⁶ Bürklin, T. (2004) *The Federal Constitutional Court of Germany: Architecture and Jurisdiction*. Basel: Burkhäuser as cited in Mulcahy, above n 1, at 384.

¹⁰⁷ Warren and Mahoney “The Supreme Court of New Zealand” <<https://warrenandmahoney.com>>.

¹⁰⁸ Watson, above n 1, at 103.

¹⁰⁹ At 103.

¹¹⁰ Gerald Blunt “Natural Justice” *Architecture New Zealand* (online ed, New Zealand, 2010) at 60.

¹¹¹ Watson, above n 1, at 103.

¹¹² Blunt, above n 110, at 60.

¹¹³ Watson, above n 1, at 103.

¹¹⁴ Blunt, above n 110, at 58.

observation or recognition”¹¹⁵ this goes against the very goal of trying to create an open building.¹¹⁶ Instead, it suggests justice may not be so “transparent” after all.¹¹⁷

Whilst the Supreme Court may not be perfect in creating an open atmosphere, it is at least better than the other Wellington Courts. In the Court of Appeal and Wellington High Court, although there is use of glass in the foyer to symbolise openness in the courts, you cannot see into the courtrooms at all. This glass is therefore quite tokenistic in creating openness, as none of the courtrooms or judges’ chambers are made publicly visible.¹¹⁸

Although having a large glass foyer can suggest the building is open to the public, this can backfire in terms of creating an open space. Using glass in public spaces can subject the public to additional scrutiny as they can feel they are being watched by those walking past on the street.¹¹⁹ This can undermine open justice, by making it an uncomfortable space for spectators to be in.¹²⁰ Spectators might be left wondering if those walking by are judging them for being here? If they wondering what they have done to need to be in a court? This can create an unease associated with watching court hearings. Whilst glass may serve as a powerful metaphor, it can be argued it is unfair to subject the public to this additional scrutiny, whilst protecting the spaces where power is exercised (like the courtroom) from this same scrutiny.¹²¹ Courthouse designers should think carefully about how glass is used so that it creates a sense of openness, without making court users feel like they can constantly be watched.¹²² Having public spaces inside the court that cannot be seen from outside the building could be one way of achieving this.

For the Wellington High Court, although glass is used, all you can see from the outside is the security screening. This hardly suggests the court is an open, welcoming space. The Wellington District Court is even less open. There is little glass used and the building is not very clearly signposted. Instead, it looks quite similar to other multi-storey office buildings in the area, which are not usually open to the public. The fact the District Court and High Court are less open could be explained by their functions. These courts are generally not deciding on matters of such public significance as the Supreme Court. It may

¹¹⁵ At 58-60.

¹¹⁶ At 58-60.

¹¹⁷ At 58-60.

¹¹⁸ Mulcahy, above n 1, 399.

¹¹⁹ At 399.

¹²⁰ At 399.

¹²¹ At 399.

¹²² At 399.

be understandable they do not want to subject court participants to not only the intensity of a court proceeding but also scrutiny from members of the public walking past. However, for the High Court especially, the court does hold judicial reviews and serious criminal offending cases, both of which can be of considerable public interest so the court should still be promoting open justice.

In the Christchurch Justice Precinct, which has the Christchurch District Court and High Court, there seems to have been a more deliberate focus on creating openness. There was a lot of glass used around the whole building, creating an aura of openness and transparency.¹²³ However, you cannot see into the courts.¹²⁴ This may be a necessary security feature and enable courts to remain closed to the public when confidentiality is needed. However, it does beg the question: does this glass create a feeling of openness or does this instead just unfairly subject court users to public observation?¹²⁵ What the effect of using glass in public foyers of courts is could only be answered with intensive research about court users and their experience, something that is beyond this paper's scope. However, it is important court designers are not just simply selecting glass for public foyers without considering how this will affect court users.¹²⁶ Perhaps court designers should be exploring ways that make the court inviting from the outside without relying so heavily on using glass in major public lobbies.

2 *The Interior of the Courts*

Much like the exterior of the building, the interior of the building and the atmosphere it creates also influence public perceptions about the courts. Every aspect of the building, from the colours used on the walls to how comfortable the seats are can change how you feel in the space. In this section, I have picked out some key considerations, although there plenty of other factors that could be considered.

Courts are generally very foreign, scary buildings which can put people off visiting the courts. From the second you step into a court, you are often subject to security. In the Wellington District Court and Wellington High Court, security screening is a routine part

¹²³ Will Harvie "Going inside: the Christchurch Justice Precinct revealed" *Stuff* (online ed, New Zealand, 30 October 2015).

¹²⁴ Phone call with Nick Warring, above n 95.

¹²⁵ Mulcahy, above n 1, 399.

¹²⁶ See at 399.

of the process whereas the Supreme court only screens when there is a case being heard. Interestingly, there is no screening process for the Court of Appeal. On one hand, having sufficient security can ensure papers feel safe in the space.¹²⁷ However, it can also be quite confronting and make you feel as though you are not welcome there.¹²⁸

Clever design can minimise how confronting security is. For example, in the Supreme Court, there are lots of cameras, meaning that when the court is not sitting, there can still be a level of security without needing any obvious screening at the start. In the Christchurch Justice Precinct, there was a design choice made to avoid security screening when you first enter the building.¹²⁹ Instead of having to pass through security from the second you wander through the court, the “[s]ecurity starts at the new level”, where the courts and judges’ chambers are housed.¹³⁰ This means members of the public can “wander in for a cup of coffee” without needing to pass through security.¹³¹ It may be possible for future courts to take inspiration from this, allowing court users to enter without that initial confrontation. From the outside, this could also make the building appear more open, especially if the security screening is not visible from the street. Whether this is possible in new builds will also have to be weighed up against security concerns and the intended function of the building. In the Justice Precinct, the Precinct is not dedicated just to courts, enabling there to be a café on site, but this may not necessarily be possible or desirable in purpose built courthouses.

What the public can see from the back of the gallery is another important aspect of how open the court appears.¹³² As put by Mulcahy, “[a] public gallery with poor views of principal actors does little to render justice open”.¹³³ How much the public can see speaks to how valued their presence in the room is.¹³⁴ In some of the courtrooms, for example in the Wellington High Court, there is glass dividing the public from those involved in the trial. In the Christchurch Justice Precinct, some of the courtrooms just have a barrier separating the space between court participants and the public gallery (pictured below).¹³⁵ This serves as a symbolic separation of where the public are, rather than a security

¹²⁷ Mulcahy, above n 1, at 103.

¹²⁸ At 103.

¹²⁹ Harvie, above n 123.

¹³⁰ Harvie, above n 123.

¹³¹ Interview with Andrew Barclay, Architect of Warren and Mahoney as in Harvie, above n 123.

¹³² See Mulcahy and Rowden, above n 1, at 241.

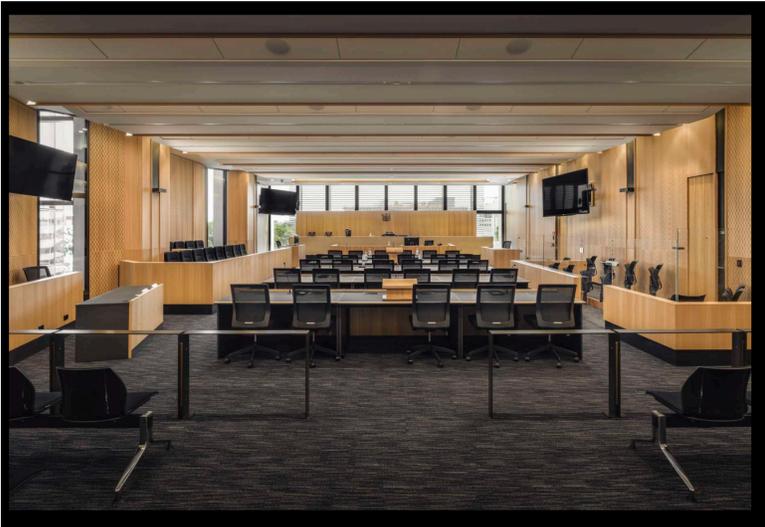
¹³³ At 241.

¹³⁴ At 241.

¹³⁵ Phone call with Nick Warring, above n 95.

feature.¹³⁶ To an extent, this could be seen as better enabling open justice, as it provides the public with a better view of the proceedings than where this is blocked by glass.¹³⁷ Efforts are made to keep this as transparent as possible.¹³⁸ In some instances, this could even make members of the public feel safer and more likely to watch court cases. Therefore, what is appropriate will depend on the nature of the court, as courts dealing with serious criminal proceedings are more likely to need glass separating the proceedings. So long as this still enables a good view of the court, this in some instances will be justified to enable safety of court participants.

Figure 2: A Court Within the Christchurch Justice Precinct showing Minimal Separation Between Court Participants and the Public Gallery¹³⁹



The public, at the back of the courtroom, have quite a limited view of the proceedings and can end up staring at the back of everyone's heads.¹⁴⁰ Different styles of courts, such as a circular courtroom where the public sit around the court on the outside, could better enable open justice.¹⁴¹ This alternative model is not without criticism, and some critics have raised

¹³⁶ Phone call with Nick Warring, above n 95.

¹³⁷ See generally Mulcahy and Rowden, above n 1, at 19.

¹³⁸ Phone call with Nick Warring, above n 95.

¹³⁹ Image from Warren and Mahoney "Christchurch Justice & Emergency Services Precinct, Te Omeka" <<https://warrenandmahoney.com>>.

¹⁴⁰ See generally Mulcahy and Rowden, above n 1, at 19 and 241.

¹⁴¹ At 242.

concerns that these do not create an obvious separation between the public and those involved in the trial.¹⁴² However, this could be one way of enabling a gallery that is more open for public spectators.¹⁴³

Courts can also be especially unwelcoming for certain communities in Aotearoa New Zealand, such as Māori. Through primarily reflecting English-sourced ideas about justice, the physical courts can create an atmosphere that these are not spaces designed to serve Māori.¹⁴⁴ The courts have been described as an “isolating place” for Māori.¹⁴⁵

To use Moana Jackson’s words, the courts have “monocultural myopia”, meaning “the New Zealand legal system has adopt[ed] almost all aspects of the British system and almost entirely ignored the other founding culture of Aotearoa New Zealand.”¹⁴⁶ This is evident when looking at most of our courts, where the design primarily reflects British court design. Even in the Supreme Court, which aimed to include aspects of Māori design, although it “represent[s] an evolved version of the traditional courthouse, it still embodies an overwhelmingly English lineage in its design”.¹⁴⁷ Using Watson’s words:¹⁴⁸

No one considering the Supreme Court could reasonably hold a view that the building has at its heart and heritage anything other than the inherited English courthouse model, albeit updated for the 21st century.

This is true of the other courts in Wellington, which are also very traditional courthouses modelled off English ideas of justice. This can make the space unwelcoming for Māori. Having physical buildings that incorporate Māori design elements could be one part of creating a space that feels more open and inviting of scrutiny.¹⁴⁹ However, of course, the

¹⁴² Allan Greenberg ““Selecting a courtroom design” (1976) 59(9) *Judicature* 422 as cited in Mulcahy and Rowden, above n 1.

¹⁴³ At 242–243.

¹⁴⁴ Watson, above n 1, at 153.

¹⁴⁵ Law Commission, above n 78, at 30; and see also Adams, above n 17, at 102.

¹⁴⁶ Moana Jackson *The Māori and the Criminal Justice System A New Perspective: He Whaipanga Hou* (Department of Justice, Study Series 18, November 1988) as cited Heemi Taumaunu, Chief District Court Judge “Norris Ward McKinnon Annual Lecture 2020” (Waikato University, 11 November 2020).

¹⁴⁷ Watson, above n 1, at 152; and see also Adams, above n 17, at 102.

¹⁴⁸ At 152.

¹⁴⁹ See generally Khylee Quince “Rangatahi Courts” in Deckert A and Sarre R (eds) *The Palgrave Handbook of Australian and New Zealand Criminology, Crime and Justice* (Palgrave Macmillan, Cham, 2017).

physical building cannot be the only solution in resolving any discomfort felt within the courts. Instead, there will need to be much broader changes that enable our legal system as a whole to better serve Māori.¹⁵⁰

C How Open is the Design Process?

The physical courts, rather than the design process, was the focus of this paper. However, it is worth briefly mentioning that the design process is an important aspect of creating a public court. There could also be critiques made of the design process and that is not as open as it perhaps should be. The body tasked with overseeing courthouse design is the Standing Committee on Courthouse Design.¹⁵¹ This committee was formed in 1993.¹⁵² Members of the committee include “the judiciary, Law Society and administrators”.¹⁵³ The committee’s role is to “define and refine design-standards for courthouses”.¹⁵⁴ The committee also has a role in supporting architects designing new courts.¹⁵⁵

There is some ability to get information about the Committee. Information including the Committee’s “reports, minutes and correspondence” can be accessed through “access[ed] through Archives New Zealand’s Wellington office, and through Official Information Act 1992 requests to the Ministry of Justice.”¹⁵⁶ However, the design standards, which regulate how courts should generally be designed are not publicly available.¹⁵⁷ This differs from other jurisdictions.¹⁵⁸ For example, in the United States of America, the design standards were “first published in 1973”.¹⁵⁹ In 2004, England and Wales published their design standards.¹⁶⁰ The absence of public design standards makes it much harder to find out information about the Committee’s aspirations in designing the courts. For many,

¹⁵⁰ See generally Quince, above n 149.

¹⁵¹ Courts of New Zealand “Judicial Committees” <www.courtsofnz.govt.nz>.

¹⁵² Courts of New Zealand, above n 151.

¹⁵³ Courts of New Zealand, above n 151.

¹⁵⁴ Courts of New Zealand, above n 151.

¹⁵⁵ Courts of New Zealand, above n 151.

¹⁵⁶ Courts of New Zealand, above n 151.

¹⁵⁷ Adams, above n 17, at 102.

¹⁵⁸ At 102.

¹⁵⁹ University of Michigan Law School, A Benjamin Handler, American Bar Association and the American Institute of Architects Joint Committee on the Design of Courtrooms and Court Facilities *The American Courthouse: Planning and Design for the Judicial Process* (Institute of Continuing Education, Michigan, US, 1973)) as in Adams, above n 17, at 102.

¹⁶⁰ Adams, above n 17, at 102.

navigating Archives New Zealand is confusing and some of the resources they have are in the ‘restricted category’ so not readily available to the public. The Official Information Act process can be time consuming, as ministries often take a while to respond. Therefore, whilst there may be information available about the court design standards, they are certainly not as accessible as England and Wales where they can be located with a quick internet search. It would be good if the Committee considered publishing their standards online.

To create a court that is open and serves the community, there also needs to be public consultation. How this consultation should occur is outside the ambit of this paper, but it is worth pointing out that a courtroom that is developed without public input is unlikely to serve the public well.¹⁶¹

IV Moving to More Open Courthouses

As I have pointed out, newer courtroom builds such as the Christchurch Justice Precinct have made a more deliberate effort to enable open justice. By choosing locations that are easily accessible and making the building less intimidating, court designers can help to facilitate open justice and encourage people to visit the courtrooms.

The courts are “at something of a crossroads”.¹⁶² Going forward, there will need to be decisions about whether to renovate old courthouses or build newer, more modern courthouses.¹⁶³ In the past, there has been a focus on preserving and improving old courthouses.¹⁶⁴ However, these courts may not be able to enable open justice in the way that new builds can. Although improvements may be able to be made to the interior, ultimately the skeleton of the building will need to be retained. Issues such as courts appearing archaic and unwelcoming from the outside, for example because there is little glass used, will be hard to address in renovation. This suggests going forward there should be prioritisation of new builds. What ends up happening with new courts will ultimately be subject to many factors, including what is the most prudent use of public money. However, whether it is through improving existing courthouses or building new courthouses, efforts should continue to be made to emphasise open justice.

¹⁶¹ See Mulcahy, above n 1, at 30 and following.

¹⁶² At 103.

¹⁶³ At 103.

¹⁶⁴ At 103.

There are many considerations that will inform those future courthouse designs, but one important factor should be open justice. Future builds should be designed in a way that ensures buildings appear open from the outside and makes those who enter feel comfortable enough to watch proceedings. Naturally, open justice must be balanced against other aims of the courts, for example the need for punitive treatment of those who have committed wrongs. However, open justice remains an important principle we should remain dedicated to and should be represented in our court design.

It would be good if information about the court design, including the Design Standards produced by the Standing Committee on Courthouse Design were publicly produced. Publishing this online would make it easier to find the information, rather than having to request it or visit Archives. This would make it easier for those interested to know what the Committee views as priorities in courthouse design and would ultimately make the process feel more open.

In the future, there may be greater exploration of other models of courtrooms. For example, different types of courthouses, such as Rangatahi courts may be used throughout more of the judicial system.¹⁶⁵ Currently, these courts are only used as part of the Youth court, so deal with “criminal offending by children and young people that is too serious to be dealt with by the police in the community.”¹⁶⁶ Rangatahi courts sit on a marae and follow some tikanga protocol.¹⁶⁷ There are a total of 15 Rangatahi Courts across the country.¹⁶⁸ I did not examine the level of openness that these courts create, because as part of the Youth Court, these courts are closed to the public. Therefore, these courts are not designed for open justice but rather to serve other objectives. However, ideas from the spaces could be used in other courts to create courthouses that are more open and welcoming for Māori. However, this will need to be coupled with broader changes that prevent Māori from having worse outcomes under the judicial system.¹⁶⁹ Simply changing the physical building will not be enough.¹⁷⁰

¹⁶⁵ Adams, above n 17, at 104.

¹⁶⁶ Ministry of Justice “Youth Court” <<https://youthcourt.govt.nz/home-2>>.

¹⁶⁷ The District Court of New Zealand “Rangatahi and Pasifika Youth Courts” <www.districtcourts.govt.nz>.

¹⁶⁸ The District Court of New Zealand, above n 167.

¹⁶⁹ Heemi Taumaunu, above n 146.

¹⁷⁰ Heemi Taumaunu, above n 146.

Alongside changes to physical court, there is the potential for courts that have no physical setting at all. Changes such as online courts and audio-visual technologies could completely change how open justice is facilitated in these courts since it would be impossible to physically visit such courts.¹⁷¹ It may be that as these changes take place, the ability to physically visit the court as a spectator becomes increasingly redundant. Instead, there may be changes towards enabling open justice in other ways beyond just physical access to the courts.

V A Broader Conception of Open Justice

Open justice encapsulates more than just *physically* visiting the courts. Instead, open justice also encapsulates all things that make it easier for people to learn about what is going on in the courts.¹⁷² For example, the media plays an important role in enabling open justice by allowing the public to hear about court proceedings through news articles and form opinions about them without physically visiting the courts.¹⁷³

In the middle of a pandemic, this is an especially important time to be exploring how open justice can be facilitated through means other than just physically visiting the courtroom. As public spectators entering the courts ultimately does bring with it some health risk, the courts have at times (particularly during higher alert levels) understandably limited public access to the buildings. Even at the time of writing this, at Alert Level 2, when there were no known cases in the Wellington, access to the courts was still very limited.¹⁷⁴ Currently, at the District Court and High Court “[m]embers of the public ... whose presence is not required at court” must get permission by the presiding judge.”¹⁷⁵

As public access to the courts is currently considerably restricted, this reduces how “transparent and open” the courts appear.¹⁷⁶ However, the District Court and High Court have not ignored open justice altogether. “Accredited news media” are still permitted to visit the courts to “report court proceedings” and to “ensure [there is] continued open and

¹⁷¹ Adams, above n 17, at 104; and see Rowden, above n 100, at 278–279.

¹⁷² Johnston, above n 14.

¹⁷³ At 278–279; and see Johnston, above n 14, at 528 and following.

¹⁷⁴ The District Court of New Zealand “District Court Protocol - COVID-19 Alert Level 2” (9 September 2021) <www.districtcourts.govt.nz> at 4.

¹⁷⁵ At 6.

¹⁷⁶ Tinsley and Lynch, above n 9.

transparent justice”.¹⁷⁷ This recognises that open justice can be facilitated in other ways beyond just the public physically visiting the courts.

At the Supreme Court, access is only restricted to the public at Alert Levels 3 and 4.¹⁷⁸ Also, in “recognis[ing] that interested parties who wish to observe the hearing” may not want to “attend in person” at Alert Level 2, “the [Supreme] Court will make arrangements for such parties to observe the hearing remotely, using an audio-visual link”, where this is possible.¹⁷⁹ This again recognises how open justice does not need to rely solely on the public entering the courthouse.

Where courts are restricting public access, it is important that they are still sufficiently providing for open justice in other ways. Whether the current measures are enough to do this is outside this paper’s scope. However, it shows that in a global pandemic, we may need to be creative in the ways we are enabling open justice, and not just rely on the public physically accessing the courts.

This is something that the Supreme Court does seem to be aware of. In April 2021, the Law Society noted that there may be changes to the Supreme Court processes to better enable public engagement.¹⁸⁰ These includes uploading transcripts of most cases and uploading audio recordings of hearing.¹⁸¹ This would be a good way of enabling those interested but who were unable to attend to read or hear all the dialogue from the trial. Another option the Supreme Court is considering is “[I] livestreaming of some or all Supreme Court appeal hearings”, “using overseas models (in the UK and Canada) as a guide.”¹⁸² However, the courts do not have sufficient technology at the moment for this, so this would be a “longer term” change.¹⁸³ The courts are also planning to implement “a new process for delivering judgments having high media interest, involving release of an embargoed advance copy to counsel and media who have agreed to abide by the embargo”.¹⁸⁴ “ This will allow counsel

¹⁷⁷ The District Court of New Zealand, above n 174.

¹⁷⁸ Chief Justice Helen Winkelmann “Supreme Court: Current COVID-19 Protocol” (30 August 2021) The Courts of New Zealand <www.courtsofnz.govt.nz> at 14.

¹⁷⁹ Chief Justice Helen Winkelmann, above n 178, at 5.

¹⁸⁰ New Zealand Law Society “Proposed changes to increase public access and understanding of Supreme Court hearings – feedback sought” (15 April 2021) <www.lawsociety.org.nz>.

¹⁸¹ New Zealand Law Society, above n 180.

¹⁸² New Zealand Law Society, above n 180.

¹⁸³ New Zealand Law Society, above n 180.

¹⁸⁴ New Zealand Law Society, above n 180.

to advise clients and to prepare for media inquiries following delivery of the judgment.”¹⁸⁵ It will be interesting to see the extent to which these changes are adopted, and also if there is any rollout of these changes to lower courts. If there is, this could mean physical access to the courts becomes increasingly less important.

It would be great for future research to take place outside the COVID-19 pandemic context when members of the public are more likely to visit the courts. It would be easier to see the extent to which parties are exercising their right of physical attendance. It may be possible that if changes like those suggested by the Supreme Court are adopted, there may be increasingly less need for members of the public to physically attend the buildings and for courts to design for this. However, many elements of this paper, including how open the buildings appear from the outside, are still likely to influence public perceptions of the judicial system. We can therefore expect court designers will still need to create buildings that appear open.

VI Conclusion

Open justice is a crucial part of maintaining an effective and democratic judicial system. It ensures citizens can act on a check on the courts, ensuring that justice is done and seen to be done.¹⁸⁶ The physical spaces of the courts have a powerful role in influencing the extent to which people see these spaces as open and whether they feel welcome in these spaces.

In my paper, I looked at the extent to which courthouses enable open justice by looking at the courts in the Wellington CBD and the Christchurch Justice Precinct. I found that although members of the public generally have a right to attend the courts, the physical buildings do not always give off the impression that the public are welcome.

From the outside, where there is little glass used, this suggests that the building is not free to enter. Even where there is glass used, this generally does not let you see into the courtroom so does not create true openness. On the inside, courthouses can be intimidating and scary. From the second you enter most courts, you are expected to pass through security, which can place you at edge.¹⁸⁷ Courts can be confusing places that are difficult to navigate and do not create a welcoming atmosphere for public spectators.

¹⁸⁵ New Zealand Law Society, above n 180.

¹⁸⁶ See Judge Sanjay Patel, above n 7.

¹⁸⁷ See Adams, above n 17 at 103.

Newer builds, like the Supreme Court and the Christchurch Justice Precinct reflect more obvious attempts to create buildings that appear open and welcome members of the public in. This is achieved through large use of glass, clever security choices and more modern designs. This trend of promoting open justice through courthouse design should be continued.

It is possible that in the future public audiences in the courts may not exist. There may be changes that enable open justice through alternative means, for example through live streaming of proceedings. This would mean the public could find out information about courts and whether justice is being done without physically visiting the courts.¹⁸⁸ This would make it less important that physical buildings enable open justice. In the civil sphere, there could also be changes that greater prioritise the privacy of the parties by keeping their names anonymous and not having public trials.¹⁸⁹ It remains to be seen whether changes of this kind will go ahead and what the impact will be on the number of spectators. Although we may expect less spectators, the public may still want to visit courtrooms and this right should be protected. Furthermore, unless such changes are rolled out nationally and across all levels of courts, the public's right to attend court hearings is unlikely to become redundant. Court designers and architects will therefore still need to continue design buildings or conduct renovations in a way that makes them appear open and welcoming.

When designing new courtrooms, designers must be conscious of how the building will be seen by the public. Every little detail must have careful attention. Courts should ideally be in the heart of the city with good transport options to get there. The courts should appear open both from the outside and within. Courts should not be quite as imposing as they were in the past, but instead there should be efforts to make spectators feel comfortable.

There are plenty of other aspects of the building beyond those I discuss which would also have an impact on open justice. For example, features like how comfortable the seats are the lighting in the room, the smell and the temperature all impact the ambience of the space.¹⁹⁰ As access to the courts was limited at many times this year because of COVID-19, I was not able to explore these features of the building. These will remain other important considerations for courthouse designers in creating an open space. This goes to

¹⁸⁸ See Rowden, above n 100, at 79.

¹⁸⁹ See Cooper, above n 33, at 716.

¹⁹⁰ See for example Law Reform Commission of Western Australia, above n 3, at 303–304.

show how complicated it is to get courtrooms right and that there are endless considerations.

It must be remembered open justice is not the only consideration court designers must think of when designing courts. For example, designers must also be very conscious of the right to protect victims, which may in some instances require court hearings to appear in private. Ideally, court designers should design buildings that appear as open as possible, whilst still providing measures for dealing with those scenarios as they arrive. The Supreme Court is a great example of this. Rather than permanently using misted glass, instead the designers used a clear glass that could be made opaque should the proceeding require this. As a result, unless a case requires confidentiality, those walking past on the street can look in, creating an open atmosphere. I would encourage other creative approaches like this so that the courts appear open to the public.

At the courts where it counts most - the Court of Appeal and Supreme Court, there have been some efforts to make the buildings open. Both courts are in Wellington, so placed around the middle of the country, making the easier to access. In the Court of Appeal, there is no security to pass through, and the building is very easy to navigate. For the Supreme Court, there have been obvious efforts to make this buildings appear open, including the use of glass into the building. Whilst the High Court and District Court may not reflect such a strong focus on open justice, this is less concerning. The Court of Appeal and Supreme Court deals with cases that will affect more New Zealanders. They also do not have to serve the same punitive function as lower courts, which deal with criminal offending and have the defendants in the courtroom. However, there is still room for improvement across all these courts - particularly in making the courts welcoming for *all* New Zealanders. Any replacement or renovation of the courts should be mindful of this.

Although court architecture is important, it is not the only part of creating a welcoming, inclusive environment in the courts. Everything from having court staff who can help you find the relevant courts to encouraging the use of plain English in court proceedings so spectators can follow will help improve the experience of public members interacting with the courts. Certainly, court architecture can have a role in influencing how citizens think about the space. However, I also suspect many people walk past courts in Wellington without considering the significance of the building. That is understandable. Court architecture plays a role in shaping court public perceptions of the judicial system, but many people will be more influenced by the actual content of the law and how it affects them. Whilst it is important to have good courthouses, ultimately communities will not feel

welcome if the law applied inside does not benefit them. The buildings are an important aspect of enabling open justice, but improvements in the buildings are likely to be just one page in a much larger story. Nonetheless, so long as we remain committed to open justice, this should be reflected in our court design. The Christchurch Justice Precinct represents a positive shift for the future of courts. Although this building is not perfect, and there are valid questions about having the Police and the Courts in the same precinct for example, as a whole the building does appear quite open. New builds should place a similar emphasis on open justice.

Chief Justice Winkelmann has admitted the house of law needs renovating.¹⁹¹ Whilst she used this as a metaphor for improving our legal system, perhaps it is time we gave our actual houses of law - our courthouses - a well-needed makeover.¹⁹² Without this, we cannot claim to be truly committed to open justice.

¹⁹¹ Helen Winkelmann, above n 30.

¹⁹² Helen Winkelmann, above n 30.

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