Editor's Introduction

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Welcome to the second issue of the fourth volume of the new series of *Amicus Curiae*. We are grateful to contributors, readers and others for supporting the progress that the new series of the journal is making.

The contribution by Hon Dame Justice Susan Glazebrook, with an introduction by Mai Chen, is based on her presentation at a seminar held last year entitled 'Tikanga and Culture in the Supreme Court: *Ellis v R* and *Deng v Zheng*'. The presentation concerned issues in Māori culture that had been considered recently in the Supreme Court of New Zealand and offered comments on the cases *Ellis v R* (role of tikanga in the law of New Zealand) and *Deng v Zheng* (aspects of Chinese culture) in which the courts examined dimensions of indigenous law and culture and gave guidance on questions of diversity of culture. The two cases shared issues in common but were also very different. Even though tikanga is a normative system embedded in Māori society and culture, the majority judges in *Ellis*—including Justice Glazebrook—accepted that tikanga was the first law of New Zealand.

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If you would like to contribute an Article or short Note to a future issue, please visit the Amicus Curiae webpages to view the Style Guide and submission information.

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New Series Volume 4

4.3 (spring):
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But the question to then be addressed is when does such an indigenous culture become jural? Justice Glazebrook introduces the background to these cases, their findings and offers comments. She also links these recent developments with other judicial-led projects in addressing issues of culture and law.

The article contributed by Daniel Beresford and Jens H Krebs entitled 'Augmented Legal Services: Enhancing the Provision of Legal Services by Use of LegalTech' examines the possibilities of greater use of technology and software to provide better legal services and give greater support to the legal industry. The authors assess the long-term benefits of commoditizing legal services and the progress that has been made in achieving this goal. Additionally, their paper examines the factors preventing the sector and individual firms from taking advantage of technological advancements such as connected systems and LegalTech providers. The authors argue that this reluctance to embrace modern technology also carries with it significant risks related to stasis. Fortunately, there are incentives which could help further the adoption of LegalTech. To take full advantage of these opportunities though, firms need to invest both time and resources into understanding how modern technology can benefit them and to train staff appropriately so they can benefit from these capabilities efficiently.

The article contributed by Benedict Okay Agu ('Institutional Approach to Preventing and Countering Violent Extremism in Nigeria—National Human Rights Commission in Perspective') examines how Nigeria's National Human Rights Commission might best take a preventative and proactive approach to addressing the problems of violent extremism. Drawing from both primary and secondary sources, the contribution demonstrates the destructive effects that Boko Haram, armed bandits, kidnappers and other extremist groups have had on ordinary citizens' human rights as well as peace, security, social stability and economic development in Nigeria. In order to counter such extremism, the article makes a number of recommendations, including reorienting citizens with new values of respect for life, property and human dignity as well as encouraging a greater sense of patriotism.

There follow several contributions that are part of a larger study on issues and developments in alternative dispute resolution (ADR), with some essays already published (see Amicus Curiae Vol 4, No 1) and others to be published in the next issue of *Amicus Curiae* (Vol 4, No 3). In her contributed article entitled 'Pre-Action Protocols and Pre-Action

Dispute Resolution Processes: Horizons Near and Far' Dr Victoria McCloud analyses the role of 'alternative' dispute resolution in the light of the release of Part 1 of the Civil Justice Council (CJC) *Review of Pre-Action Protocols*. The author was herself part of this review. The contribution also considers the manner in which the CJC Report and Master of the Rolls' vision for digital justice interconnect. Moreover, it explores salient details of the Report's suggestions, such as a mandate for dispute resolution engagement, utilization of digital portals to manage pre-action steps and data collection, as well as an approach to punishing alleged cases that fail to comply with these protocols. Lastly, the article examines further improvements that technology and data gathered by artificial intelligence processes may bring in the near, medium and distant future.

Lesley A Allport's contributed essay, entitled 'Mediation and Cultural Change', explores the most significant legislative developments in England and Wales over the past 25 years that have sought to advance mediation as a means of resolving disputes. It notes that one of the common themes running through efforts at reform is the view of mediation as a process by means of which a culture transformation in the way that disputes are handled might be achieved. The essay identifies the shifting dynamics between adjudication and mediation, where mediation is seen as the preferred process due to its informality and individual responsibility, while adjudication remains an option of last resort. Despite efforts to encourage greater use of mediation, however, take-up of mediation has been low and debates about whether it should be mandatory persist. As a result, there continues to be a lack of clarity around how best to meet the needs of individuals in dispute, public sector funders and government agencies. This presents substantial challenges for those involved in mediating disputes.

The Arbitration Act has been a cornerstone of English arbitration law since it was adopted in 1996. However, after two decades of operation, reform of the Act is now being considered by the Law Commission as part of its review process. The aim of the paper entitled 'Reviewing the Arbitration Act 1996: A Difficult Exercise?' contributed by Myriam Gicquello is to explore and analyse some of the changes proposed by the Commission's Consultation Paper released in September 2022. The essay shows that some of the issues that are currently being examined by the Law Commission are actually not new but, rather, were identified by the Departmental Advisory Committee on Arbitration prior to the introduction of the Arbitration Act 1996—these include questions

such as whether there should be an 'opt-out' clause from arbitral proceedings; and how best to ensure fairness when dealing with multiple parties or complex cases. The Law Commission is attempting to address these issues by means of an updated Arbitration Act which reflects recent developments in arbitral practice and is better equipped (though not always fully equipped) to tackle contemporary challenges such as climate change and technological advances.

The UK Government has long sought to promote consumer ADR as a process for handling and resolving consumer disputes. This is reflected in the Consumer Rights Act 2015, which requires all businesses selling goods and services over the internet or by phone to provide details of an approved ADR provider when a customer complaint cannot be resolved. The Government also publishes official guidance on its website which provides further information on how to handle complaints effectively and access free help from accredited ADR providers. Cosmo Graham's contribution examines two problematic issues which continue to limit the effectiveness of the system. First, the institutional framework for consumer policy. The essay maintains that there are shortcomings in its institutional arrangements that need addressing. Secondly, there are issues surrounding the use of relevant information publicly available. Currently, while there is some useful information obtainable to assess the performance of consumer ADR as a whole, such information is not readily accessible and is not used by aggrieved consumers very much. As a result, it is difficult to assess the effectiveness of consumer ADR accurately and to build appropriate policies.

Roger Mallalieu and Colin Campbell then turn to the matter of costs in their article entitled 'Resolving the Costs of the Action by Mediation not Litigation'. In civil proceedings, the costs of litigation can sometimes become a source of dispute in themselves. In England and Wales, under the Civil Procedure Rules 1998 (CPR), when such disputes arise, an application is made to a court for 'detailed assessment'—a process whereby a judge assesses the amount of costs payable by one party to another. When compared with detailed assessment under CPR, mediation offers a number of benefits, and the authors point to the savings of time and costs, and to the value of informality and privacy which resolution other than going to court is able to provide. The essay also considers whether making mediation in costs mandatory would benefit parties who pay and receive costs, and whether such a development will likely emerge in due course.

The link between trauma and crime is an important issue given that the majority of those who offend in the UK have experienced abuse, neglect and/or other forms of trauma in childhood or adult life. It is important to understand the root causes of an individual's conduct, so that effective interventions can be provided which will address the needs of the individual concerned, and trauma practice seeks to take into account the psychological, emotional, physical, and spiritual impact of trauma on individuals. A key component of this approach is to build relationships with those affected by trauma in order to provide them with emotional support and resources that will help them to heal. The authors Adnan Mouhiddin and Jack Adams, in their paper entitled 'Restorative Justice, Desistance, and Trauma-Informed Practice in the Youth Justice System', argue that it is important for trauma-informed practice to be implemented in the justice system as this may well assist offenders who have suffered trauma, and thereby reduce crime. Their contribution explores key principles around restorative justice and examines the manner in which trauma-informed practice that implements a restorative approach may tackle issues around the wellbeing of young offenders and also their victims. It reviews the evidence on how restorative justice and trauma-informed practices may work together to prevent re-offending, reduce recidivism and provide support for victims. It also considers potential areas of improvement that could be made to ensure effective implementation of these combined approaches.

In Notes & Other Matters, the Note contributed by Tochukwu Onyiuke, entitled 'A Critique of the Nigerian Proceeds of Crime (Recovery & Management) Act 2022', examines the effectiveness of Nigeria's recent legislative response to problems of recovery of financial assets gained from crime. The 2022 Act forms a central part of new anti-money laundering and counter-terrorism financing policies in Nigeria. Although the authorities have made considerable efforts over the years to deal with the problems, results have not been impressive. The new Act provides a legal and institutional framework so as better to target, manage, and recover proceeds of crime within and outside Nigeria—it primarily governs the recovery of assets from criminal activities and establishes a clear legal framework for asset forfeiture. The intention is to pursue recovery though civil rather than criminal proceedings, as the burden of proof is less robust. The author argues that in order to make the law more effective, however, other reforms should be considered such as placing the burden of proof on the defendant and adjusting the presumption of innocence of an accused.

Also in that section, Mátyás Bódig responds to Geoffrey Samuel's article 'Can Doctrinal Legal Scholarship Be Defended?' (*Amicus Curiae*, Series 2, Vol 4, No 1, Autumn 2022, 43-70).

In the Reviews section, Jessica Mant analyses the new publication *Justice in a Time of Austerity* by Jon Robins and Daniel Newman.

Finally, in 'Visual Law', Barrie Nathan contributes a short essay on 'Dickens and the Law'.

The Editor also thanks Eliza Boudier, Narayana Harave, Amy Kellam, Maria Federica Moscati, Patricia Ng, Simon Palmer and Marie Selwood, for their kind efforts in making this issue possible.