

THE INFLUENCE OF CORPORATE PURPOSE ON DIRECTORS' INTERPRETATIONS OF THEIR DUTY TO ACT IN GOOD FAITH AND IN THE BEST INTERESTS OF THE COMPANY

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Does a corporation's purpose influence its directors' interpretations of their duty to act in good faith and in the best interests of the company? To consider this question, this article explores interview data generated with 22 professional directors sitting on private sector boards in Aotearoa New Zealand. These professional directors held board roles across 92 private sector companies, 24 of which are NZX/ASX-listed and 49 defined as large under the Financial Reporting Act 2013. The interview findings reveal that director interpretations of the duty are often influenced by their understanding of their corporation's purpose. This insight may have meaningful implications for the implementation of corporate purpose, given that the duty is fundamental and operates ex ante when directors are making business decisions.

I INTRODUCTION

Questions on corporate purpose centre on the role of companies as responsible corporate citizens in the pursuit of broader societal objectives (as opposed to a more narrow focus solely on the maximisation of returns for current shareholders).¹ The classic statement of the Business Roundtable

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1 See for example Frank Bold "The Purpose of the Corporation Project" <www.purposeofcorporation.org>; Colin Mayer *Prosperity: Better Business Makes the Greater Good* (Oxford University Press, Oxford, 2018); and Alex Edmans *Grow the Pie: How Great Companies Deliver Both Purpose and Profit* (Cambridge University Press, Cambridge, 2020). On the question of whether companies should even have a purpose, see Jill E Fisch and Steven Davidoff Solomon "Should Corporations Have a Purpose?" (2021) 99 Tex L Rev 1309.

on the purpose of the corporation includes, for instance, delivering value for customers, fairly compensating employees, dealing ethically with suppliers, supporting communities, protecting the environment and generating long-term value for shareholders.²

Discussions on corporate purpose sit within a broader context of the push towards reshaping company law and governance for more socially and environmentally responsible companies.³ For instance, increasing attention is being paid to companies' social licence to operate,⁴ mandatory ESG (environmental, social and governance) reporting⁵ and so on.⁶ Such legal and regulatory pressures

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- 2 Business Roundtable *Statement on the Purpose of a Corporation* (19 August 2019). Compare Lucian A Bebchuk and Roberto Tallarita "The Illusory Promise of Stakeholder Governance" (2020) 106 *Cornell L Rev* 91. Indeed, BlackRock CEO Larry Fink's 2022 letter has been described as a small dialling back of this position: Matt Levine "BlackRock Still Likes Capitalism" (19 January 2022) Bloomberg <www.bloomberg.com>. See also Larry Fink "The Power of Capitalism" BlackRock (19 January 2022) <www.blackrock.com>. The most recent reflection by the Business Roundtable on its 2019 statement is available at Business Roundtable "Five Years On: Corporate Purpose and Profit" (16 August 2024) <www.businessroundtable.org>.
 - 3 See Thomas Clarke "The Greening of the Corporation" in Thomas Clarke, Justin O'Brien and Charles RT O'Kelley (eds) *The Oxford Handbook of the Corporation* (Oxford University Press, Oxford, 2019) 589. Indeed, such developments also sit within an even broader context of calls for new economic models such as inclusive capitalism, social foundations within planetary boundaries, degrowth and so on: James D Robinson III "The Case for Inclusive Capitalism" *The International Economy* (United States, Winter 2013). See also Council for Inclusive Capitalism "Council for Inclusive Capitalism" <www.inclusivecapitalism.com>; Kate Raworth *Doughnut Economics: Seven Ways to Think Like a 21st-Century Economist* (Cornerstone, London, 2018); Kate Raworth *A Safe and Just Space for Humanity: Can we Live within the Doughnut?* (Oxfam Discussion Paper, February 2012); Melissa Leach, Kate Raworth and Johan Rockström "Between social and planetary boundaries: Navigating pathways in the safe and just space for humanity" in ISSC and UNESCO *World Social Science Report 2013: Changing Global Environments* (OECD Publishing and UNESCO Publishing, Paris, 2013) 84; and Jason Hickel "Is it possible to achieve a good life for all within planetary boundaries?" (2019) 40 *Third World Quarterly* 18.
 - 4 Social licence theory recognises the public role of companies (beyond solely economic institutions) given that their existence is permitted, and legitimised, by relevant communities and stakeholders: see for example Hillary A Sale "The Corporate Purpose of Social License" (2021) 94 *S Cal L Rev* 785; and Geert Demuijnck and Björn Fasterling "The Social License to Operate" (2016) 136 *J Bus Ethics* 675.
 - 5 In Aotearoa New Zealand, mandatory reporting has been introduced for climate-related reporting entities. The Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 requires around 200 of the largest financial market participants to disclose and act on climate-related risks and opportunities. The updated NZX Corporate Governance Code, which operates on a comply-or-explain basis, also recommends non-financial disclosure at least annually: NZX *NZX Corporate Governance Code* (January 2025) at 26; and see NZX *Guidance Note: NZX ESG Guidance* (24 May 2024) at 3.
 - 6 See generally Beate Sjøfjell and Christopher M Bruner (eds) *The Cambridge Handbook of Corporate Law, Corporate Governance and Sustainability* (Cambridge University Press, Cambridge, 2020). In Aotearoa New Zealand, ongoing work is being conducted by independent Crown entities (such as the External Reporting Board and the Climate Change Commission), voluntary initiatives (such as The Aotearoa Circle and its Sustainable Finance Forum) and professional bodies (such as the Institute of Directors).

play a crucial role in the adoption of corporate governance mechanisms that integrate social and environmental issues.⁷

Common policy proposals to promote corporate purpose include adopting voluntary purpose statements, introducing mandatory purpose clauses in company constitutions, promoting shareholder voting on corporate purpose and offering different forms of business vehicle to facilitate social enterprise. At times overlooked, however, is the relationship of corporate purpose to the duty of directors to act in good faith and in the best interests of the company.⁸ In particular, empirical data on this question are lacking.

This article seeks to shed light on the relationship between corporate purpose and the duty of directors to act in good faith and in the best interests of the company. To do so, it draws on interview data generated with professional directors sitting on private sector boards in Aotearoa New Zealand. The contribution of this article lies in its insight derived from these interviews with directors on how their understanding of their corporation's purpose informs their interpretation of their duty to act in good faith and in the best interests of the company.

The next part sets out the duty of directors to act in good faith and in the best interests of their company. Part III then outlines the research design, including participant recruitment and data analysis. Part IV reports the interview findings. The findings provide insight as to how directors conceptualise the company, how they interpret their duty to act in good faith in its best interests, and

7 Marco Minciullo *Corporate Governance and Sustainability: The Role of the Board of Directors* (Palgrave Macmillan, Cham, 2019) at 176. In the absence of such developments, Sjäffjell and Richardson argue that, as company law does not specify the societal purpose of companies, a vacuum has been created, resulting in company law that facilitates business decision-making which privileges short-term returns for shareholders to the exclusion of other considerations, such as environmental sustainability: Beate Sjäffjell and others "Shareholder primacy: the main barrier to sustainable companies" in Beate Sjäffjell and Benjamin J Richardson (eds) *Company Law and Sustainability: Legal Barriers and Opportunities* (Cambridge University Press, Cambridge, 2015) 79.

8 For discussions on the role of the board and the duties of its directors in the context of responsible business, see Mervyn King and others "Call to Action on Sustainable Corporate Governance" (9 March 2021) Harvard Law School Forum on Corporate Governance <www.corpgov.law.harvard.edu>; Beate Sjäffjell "Realising the Potential of the Board for Corporate Sustainability" in Beate Sjäffjell and Christopher M Bruner (eds) *The Cambridge Handbook of Corporate Law, Corporate Governance and Sustainability* (Cambridge University Press, Cambridge, 2020) 696; Susan Watson "What More can a Poor Board Do? Entity Primacy in the 21st Century" (2017) 23 NZBLQ 142; and Thomas Clarke "The Widening Scope of Directors' Duties: The Increasing Impact of Corporate Social and Environmental Responsibility" (2016) 39 Seattle UL Rev 531. More specifically for our purposes, see I Esser and JJ du Plessis "The Stakeholder Debate and Directors' Fiduciary Duties" (2007) 19 SA Merc LJ 346; Rosemary Teele Langford "Social Licence to Operate and Directors' Duties: Is There a Need for Change?" (2019) 37 C&SLJ 200; Susan Watson "Moving beyond Virtue Signalling: Corporate Sustainability for New Zealand" in Beate Sjäffjell and Christopher M Bruner (eds) *The Cambridge Handbook of Corporate Law, Corporate Governance and Sustainability* (Cambridge University Press, Cambridge, 2020) 176; and Beate Sjäffjell and Jukka Mähönen "Corporate Purpose and the Misleading Shareholder v Stakeholder Dichotomy" (2024) 34 Bond LR 69.

the relationship of the duty to broader questions around company purpose and strategy. In particular, the findings illustrate that directors' interpretations of the duty are often influenced by their understanding of their corporation's purpose. Further, directors reported that board decisions are also shaped by questions of the company's best interests and its purpose.

Part V discusses these findings and their implications both for the best interests duty and corporate purpose. First, it argues that when directors view their corporation's purpose as encompassing broader societal or environmental concerns, they may prioritise decisions that further such objectives, believing them to be in the best interests of their company. Secondly, this part queries whether the influence of corporate purpose on the best interests duty could help to settle the longstanding debate at the heart of company law and governance as to what constitutes the company's interests. Thirdly, it argues that the relationship between corporate purpose and the duty of directors to act in good faith and in the best interests of the company should be taken seriously as an avenue to operationalise corporate purpose. This insight may have meaningful implications for the implementation of corporate purpose, given that the duty is fundamental and operates *ex ante* when directors are making business decisions.

II DIRECTORS' DUTY TO ACT IN GOOD FAITH AND IN THE BEST INTERESTS OF THE COMPANY

In Aotearoa New Zealand, directors are subject to a fundamental duty of loyalty, the statutory statement of which is set out in s 131(1) of the Companies Act 1993.⁹ This provision requires directors to act in good faith and in what they believe to be the best interests of their company.¹⁰ For example, in *Morgenstern v Jeffreys*, a transaction with the company for the personal benefit of the company's sole director and shareholder, to repay their overdrawn current account with the company, was a clear breach of the duty.¹¹

9 This duty is also long established at common law. For instance, Venning J in *Ilion Technology Corp v Johannink* HC Auckland CIV-2004-404-3358, 3 February 2006 at [70] cited *Pascoe Ltd (in liq) v DFC Overseas Investments Ltd* [1994] 3 NZLR 627 (HC) at 635 with approval:

At common law it is well settled that directors of companies owe fiduciary duties to the company of which they are directors including an obligation to act bona fide in the interests of the company as a whole[.]

10 For a detailed discussion of the duty, see Susan Watson "Duties of Directors – Good Faith and the Best Interests of the Company" in Susan Watson and Lynne Taylor (eds) *Corporate Law in New Zealand* (Thomson Reuters, Wellington, 2018) 515; and Peter Watts, Neil Campbell and Christopher Hare *Company Law in New Zealand* (2nd ed, LexisNexis, Wellington, 2016) at ch 13.

11 *Morgenstern v Jeffreys* [2014] NZCA 449.

The language of s 131(1) provides that:¹²

... a director of a company, when exercising powers or performing duties, must act in good faith and in what the director believes to be the best interests of the company.

As this wording suggests, the duty is owed to the company (not to shareholders),¹³ and the test is generally subjective, focusing on a director's belief.¹⁴

The Supreme Court in *Madsen-Ries v Cooper (Debut Homes)* identified what some have called qualifications or exceptions to the subjective test, for instance, where there is a conflict of interest or a director's decisions are irrational.¹⁵ The Court also made clear that where a director has failed to actually consider their company's best interests or, where required, the interests of creditors,¹⁶ they cannot subjectively believe they are acting in the interests of the company.¹⁷ Generally, however, the test for breach of the duty is subjective; a director will likely comply with s 131(1) if their primary motivation is to "act in a manner that the director genuinely believes to be in the best interests of the company".¹⁸

There is no definitive articulation as to what constitutes the company's best interests in this jurisdiction, in part due to the duty's subjective formulation and the complexity of such an undertaking.¹⁹ The theoretical debate concerning the best interests of the company offers a multitude

12 Companies Act 1993, s 131(1). Subsections (2)–(4) provide exceptions for the prioritisation of the interests of a parent company or joint venture partner in certain circumstances. Section 138A creates a criminal offence for serious breach of s 131.

13 Companies Act, s 169(3)(d). See also Companies Act, s 15; and *Sojourner v Robb* [2008] 1 NZLR 751 (CA).

14 *Madsen-Ries (as liquidators of Debut Homes Ltd (in liq)) v Cooper* [2020] NZSC 100, [2021] 1 NZLR 43 [*Debut Homes*] at [109]–[113].

15 At [113]–[115].

16 See also *BTI 2014 LLC v Sequana SA* [2022] UKSC 25, [2024] AC 211; *Yan v Mainzeal Property and Construction Ltd (in liq)* [2023] NZSC 113, [2023] 1 NZLR 296; *Sojourner v Robb* [2007] NZCA 493, [2008] 1 NZLR 751; and *Nicholson v Permakraft (NZ) Ltd* [1985] 1 NZLR 242 (CA).

17 *Debut Homes*, above n 14, at [113]–[115].

18 Susan Watson "Almost codified almost 20 years on: the effect of the Companies Act 1993 on the development of directors' duties in New Zealand" in Adolfo Paolini (ed) *Research Handbook on Directors' Duties* (Edward Elgar Publishing, Cheltenham, 2014) 105 at 109. Watson notes that this is an adoption of the approach of the English Court of Appeal in *Re Smith and Fawcett Ltd* [1942] Ch 304 (CA) at 108. This is now subject to *Debut Homes*, above n 14, at [113]–[115].

19 For discussion of the best interests of the company in the context of Aotearoa New Zealand, see Francis Dawson "Acting in the Best Interests of the Company—For Whom Are Directors 'Trustees'?" (1984) 11 NZULR 68; Susan Glazebrook "Meeting the challenge of corporate governance in the 21st century" (2019) 34 Aust Jnl of Corp Law 106; Daniel Kalderimis and Nicola Swan *Sustainable Finance Forum: Legal Opinion 2019* (The Aotearoa Circle, 30 October 2019) at [82]–[89]; Peter Watts "To whom should directors owe legal

of approaches, such as those advocating for a focus on the interests of shareholders,²⁰ stakeholders,²¹ the entity itself,²² or even a combination of these perspectives.²³ The Supreme Court in *Debut Homes* acknowledged the "competing models of corporate governance" but opted not to reach a conclusion as to which approach is correct.²⁴

Some clarification of the company's best interests is provided by s 131(5) which recognises the ability of directors to consider matters other than the maximisation of profit when acting in the best interests of their company.²⁵ This subsection, added by the Companies (Directors' Duties) Amendment Act 2023, reads:²⁶

duties in exercising their discretion? – a response to Mr Rob Everett" [2019] CSLB 49; Susan Watson and others "Reimagining the Company in Aotearoa New Zealand" (2023) 30 NZULR 473.

- 20 Henry Hansmann and Reinier Kraakman "The End of History for Corporate Law" (2001) 89 Geo LJ 439; Stephen M Bainbridge *The Profit Motive: Defending Shareholder Value Maximization* (Cambridge University Press, Cambridge, 2023) at ch 10; and Thomas Clarke "The impact of financialisation on international corporate governance: the role of agency theory and maximising shareholder value" (2014) 8 LFM 39.
- 21 R Edward Freeman *Strategic Management: A Stakeholder Approach* (Pitman, Boston, 1984). See also Robert Phillips, R Edward Freeman and Andrew C Wicks "What Stakeholder Theory is Not" (2003) 13 Business Ethics Quarterly 479; Thomas Donaldson and Lee E Preston "The Stakeholder Theory of the Corporation: Concepts, Evidence, and Implications" (1995) 20 Academy of Management Review 65; and R Edward Freeman, Andrew C Wicks and Bidhan Parmar "Stakeholder Theory and 'The Corporate Objective Revisited'" (2004) 15 Organization Science 364.
- 22 Esser and du Plessis, above n 8; Andrew Keay "Ascertaining The Corporate Objective: An Entity Maximisation and Sustainability Model" (2008) 71 MLR 663; Watson "Moving beyond Virtue Signalling", above n 8; and Luh Luh Lan and Loizos Heracleous "Rethinking Agency Theory: The View from Law" (2010) 35 Academy of Management Review 294.
- 23 For instance, proponents of enlightened shareholder value argue that increasing shareholder wealth via firm performance will result in the advancement of overall social welfare, given that companies have a pecuniary interest in ensuring that corporate transactions will also benefit those parties who deal with the firm: see John Armour and others "What Is Corporate Law?" in Reinier Kraakman and others *The Anatomy of Corporate Law: A Comparative and Functional Approach* (3rd ed, Oxford University Press, Oxford, 2017) 1 at 23; and Company Law Review Steering Group *Modern Company Law For a Competitive Economy: The Strategic Framework* (Department of Trade and Industry (UK), DTI/Pub 3955/6k/2/99/NP, February 1999).
- 24 *Debut Homes*, above n 14, at [28]–[31].
- 25 This amendment has been earmarked for repeal in 2025 as part of a reform package for the Companies Act and related corporate governance legislation: Cabinet paper "Modernising the Companies Act 1993 and making other improvements for business" (31 July 2024) at [18]. See also Lynn Buckley and Peter Underwood "NZ took the lead on director duties reform. Why are we set on giving it up?" (13 September 2024) Newsroom <www.newsroom.co.nz>.
- 26 Companies Act, s 131(5).

To avoid doubt, in considering the best interests of a company or holding company for the purposes of this section, a director may consider matters other than the maximisation of profit (for example, environmental, social, and governance matters).

As a result, what constitutes the best interests of the company remains an open question in Aotearoa New Zealand.²⁷ Directors are not required to focus solely on shareholders²⁸ or stakeholders.²⁹ Rather, "the words should be interpreted as meaning what they say, with the focus being on the company itself".³⁰

Here is where corporate purpose becomes relevant to the discussion. The emphasis on a director's subjective belief as to their company's best interests, the focus on the interests of the company itself, and the general deference shown by courts to a director's business judgement result in much scope for interpretation. Therefore, the relevant question for our purposes is: does the concept of corporate purpose inform directors' interpretations of their duty to act in good faith and in the best interests of the company? This is the question to which we now turn our attention.

III RESEARCH DESIGN

An interpretivist lens guided interviews with directors for this study.³¹ This interpretivist approach focuses on generating understanding based on individuals' subjective experiences to gain insight into a phenomenon.³² In other words, the directors interviewed were the individuals whose subjective experiences were examined, with their duty to act in good faith in the best interests of the company the phenomenon about which insight was generated.

27 Lynn Buckley "Directors' duty of loyalty and ESG considerations: Aotearoa New Zealand's controversial 'Companies (Directors' Duties) Amendment Act 2023'" (2024) 39 Aust Jnl of Corp Law 323.

28 Watts, above n 19, at 49.

29 Selwyn Gordon Coles "The Companies (Directors Duties) Amendment Bill" [2022] NZLJ 99 at 103.

30 Glazebrook, above n 19, at 106. See also Glazebrook, above n 19, at 109, citing Watson "What More can a Poor Board Do?", above n 8. The company is a separate legal entity recognised in law as a legal person that exists independently of its members and other natural persons with whom it interacts: Lynn Stout and others "Statement on Company Law" (2016) The Modern Corporation <www.themoderncorporation.wordpress.com> at [1]. See also Susan Watson "How the Company Became an Entity: A New Understanding of Corporate Law" [2015] JBL 120.

31 This study also adopted a constructionist ontology and a relativist and intersubjective epistemology. Further reporting from this study is available in Lynn Buckley "My Responsibility Is to the Company, It's Actually Not to Shareholders': Director Interpretations of Their Duty to Act in Good Faith and in the Best Interests of the Company" (2024) 31 NZULR 29.

32 See Erica Hallebone and Jan Priest *Business and Management Research: Paradigms & Practices* (Palgrave MacMillan, Basingstoke, 2009) at 45–47.

Individual interviews were conducted by the author with 22 current professional directors sitting on private sector boards in Aotearoa New Zealand between January and March 2021.³³ As professional directors tend to have a board portfolio comprising multiple companies, where participants also sat on a board in the public sector, such as a not-for-profit or a state-owned enterprise, the conversation focused on their duties as a director in their private sector board role(s) under the Companies Act and under relevant common law.

Purposeful sampling via the Companies Register was used to invite potential participants for an interview.³⁴ Participant recruitment was further supported by the Institute of Directors, who shared the invitation with members of their Auckland branch, and by snowball sampling, where directors recommended other potential participants who had expertise relevant to the research. Regardless of the recruitment method, an opt-in approach was used to obtain the free and informed consent of participants.³⁵

Of the 22 directors interviewed, 12 identified as male and 10 as female. At the time the interviews were conducted, participants' average age was 61 years with an average of 18 years' board experience. The 22 directors held a total of 98 board roles between them in their capacity as professional directors on private sector boards – an average of 4.45 board roles per director.³⁶ Some participants sat on the board of the same company. As such, the 98 board roles were across 92 companies. Of these 92 companies, 24 were listed on the NZX, ASX or both. Additionally, 49 of the companies are defined as large according to s 45(1) of the Financial Reporting Act 2013. Thus, these 49 companies either had assets in excess of \$60 million, or total revenue exceeding \$30 million, in two of the preceding accounting periods.

Each interview was semi-structured, allowing for consistency in terms of the topics explored and flexibility for questions to be refined. Each interview lasted approximately one hour, beginning with an explanation of the research and requirements of participation via a participant information sheet and consent form. In particular, it was explained to the directors that there was no right or wrong

33 Professional directors are generally defined as independent directors whose sole career is serving on one or more boards. This definition is common in the literature on professional directors: see for example Melvin Aron Eisenberg "Legal Models of Management Structure in the Modern Corporation: Officers, Directors, and Accountants" (1975) 63 CLR 375; and Robert C Pozen "The Big Idea: The Case for Professional Boards" *Harvard Business Review* (United States, December 2010).

34 Purposeful sampling is particularly suited to interpretative research as it helps to ensure the quality of participants interviewed as appropriate to the study. In this way, purposeful sampling helps to ensure trustworthiness: Sonali K Shah and Kevin G Corley "Building Better Theory by Bridging the Quantitative–Qualitative Divide" (2006) 43 *Journal of Management Studies* 1821 at 1830.

35 Ethical approval was granted by the University of Auckland Human Participants Ethics Committee (023677).

36 This figure is representative of current private sector board roles in participants' board portfolios only. It excludes any roles on companies that do not operate in the private sector and participants' previous board roles.

answer to interview questions as the focus was on their subjective experience (in keeping with the study's interpretivist lens). Open-ended non-leading questions were also used to support rigour in data generation.³⁷ Each interview was recorded and transcribed to support data analysis. Participants were provided with the transcript of their interview and given the option to amend or withdraw their data if they wished. The data were analysed using Braun and Clarke's reflexive thematic analysis process.³⁸ The next part of this article reports the findings, or themes, regarding corporate purpose which were generated from this analysis of the interview data.

A final point to note is that interviews such as those in this study employ an idiographic methodology. This is a subjective, individual-centred approach where the focus is on the experience of individuals, rather than trying to draw generalisable conclusions from the data. As such, although the number of directors who participated in this study is a reasonably large sample,³⁹ the data cannot be said to be representative of the views of the entire population of current professional directors sitting on private sector boards in Aotearoa New Zealand. Indeed, generalisability is not the purpose of this interpretivist study. Rather, the aim is to gain insight from the subjective experiences of the directors interviewed about how they interpret their duty to act in good faith and in the best interests of the company – and, as is the aim of this article, to explore the role of corporate purpose in this context.

IV THE INFLUENCE OF CORPORATE PURPOSE ON DIRECTOR INTERPRETATIONS OF THEIR DUTY TO ACT IN GOOD FAITH AND IN THE BEST INTERESTS OF THE COMPANY

As discussed in Part II, what constitutes the best interests of the company remains an open question in Aotearoa New Zealand. Yet, there was a consensus among the directors interviewed that they adopt a broad interpretation of their duty to act in good faith and in the best interests of their

37 See Sarah J Tracy "Qualitative Quality: Eight 'Big-Tent' Criteria for Excellent Qualitative Research" (2010) 16 *Qualitative Inquiry* 837 at 841.

38 Braun and Clarke's reflexive thematic analysis process was originally outlined in their seminal work: Virginia Braun and Victoria Clarke "Using thematic analysis in psychology" (2006) 3 *Qualitative Research in Psychology* 77. They maintained this approach in their later work while adding additional explanations and illustrations: see Virginia Braun and Victoria Clarke "Thematic Analysis" in Harris Cooper (ed) *APA Handbook of Research Methods in Psychology, Volume 2: Research Designs: Quantitative, Qualitative, Neuropsychological, and Biological* (2nd ed, American Psychological Association, Washington, 2012) 57; Virginia Braun and Victoria Clarke *Successful Qualitative Research: A practical guide for beginners* (Sage Publications, London, 2013); Virginia Braun, Victoria Clarke and Gareth Terry "Thematic Analysis" in Poul Rohleder and Antonia C Lyons (eds) *Qualitative Research in Clinical and Health Psychology* (Palgrave MacMillan, Basingstoke, 2015) 95; and Virginia Braun and Victoria Clarke *Thematic Analysis: A Practical Guide* (Sage Publications, London, 2022).

39 Morse also mentions a reasonably large sample as being over 20 interviews: Janice M Morse "Data Were Saturated ..." (2015) 25 *Qualitative Health Research* 587 at 588.

company.⁴⁰ In this way, the directors recognised not only shareholders' interests, but also other stakeholder interests, as forming part of the duty. We can see this broad understanding evidenced in the comments of one director who holds board roles on a number of large companies, both private and listed:

Simply, if you say "are we acting in the company's best interests?", that's a good guiding principle. But people used to think about that in quite a simplistic way, in that "was it financially in the company's best interest? That's what we should do". But I think most people accept today it's broader than that. In order to act in the company's best interest, you have got to protect its reputation, you have got to look after your staff, you have got to look after your customers, you have got to look after the communities you operate in, you have got to have good relations with government, all that stuff. It's very broad.

Directors with this broad interpretation, where the interests of the company encompass stakeholder considerations, were also clear in their descriptions that this understanding of the duty extended to consideration of social and environmental impacts. For instance, one director, when speaking about their duty to act in good faith in the company's best interests, noted it is "about our responsibility to community, environment, et cetera". They explained, "our best interests for the organisation has to be interpreted through the fact that we are not an isolated island". They concluded, "best interests have to be taking account of stakeholders, and the ripple effect, or the domino effect, that we [the organisation] have".

Relatedly, the directors' responses revealed, implicitly or explicitly, a distinction between the interests of the company as an entity and the interests of its shareholders.⁴¹ In other words, these concepts are not synonymous.⁴² For example, one director described their most important duty as the "duty to the long-term wellbeing of the company. So that can set you at odds with shareholders and you have to be really clear". They later emphasised, "the shareholders' interests are subservient to the company's interests". Likewise, another director whose board roles include multiple large listed companies observed:

And, you know, there's the interests of the company versus the interests of shareholders ... Sometimes what shareholders want may not be in the interests of the company. And so that long-term sustainable profitable growth [goes] to the purpose of the company, and the survival of the company, you know, shareholders may want a 100 per cent dividend pay-out, shareholders may want short-term payment now in dividends. I see my duty as to the company as an entity.

40 Of the directors interviewed, 72.7 per cent adopted this broad interpretation of the best interests duty, recognising a range of stakeholder interests. For more on this finding, see Buckley, above n 31.

41 For more, see Buckley, above n 31, at 42–43.

42 Of course, such interests will often coincide, particularly when a long-term view is taken. The point is that they are not synonymous.

So, how is it that most of the directors, in determining the best interests of their companies, came to adopt a broad interpretation of the entity's interests, including shareholder and other stakeholder considerations? The answer may lie in the influence of corporate purpose.

This broad interpretation of the best interests duty and how it is influenced by corporate purpose is evident in the explanation of a director whose board roles include multiple large listed companies. When asked to define the duty to act in good faith and in the best interests of the company, they replied:

The duty is to this organisation that has been created as well, this abstract entity that has been created for a purpose. You know, it should be run on certain principles and have certain priorities.

They summarised, "So I suppose then, the duty is to the purpose of the organisation".

Another director, when speaking about the best interests of the company, similarly explained:

My foremost duty is to the sustainability of the company. So that's number one. That's an important one for me. I'm very much about changing the world and the purpose of the company.

The comments of one director who sits on multiple large dual-listed companies again illustrate this link between corporate purpose and the best interests duty: "... when you are thinking about interests of the company, you have got to come back to what that articulated strategy and purpose is". This director also went on to explain how this understanding of a company's interests and purpose can have considerable influence on corporate decisions. They gave a summary of their company's purpose statement (not detailed here to protect the identity of the company and participant), adding:

... so that overriding sentence and framework [referring to the purpose statement] kind of sets what we believe is in the company's interests. And so everything else sort of hinges off that.

They then provided an example of how this understanding influences this large dual-listed company's behaviour:

And that philosophy is very strong within the company. They will take, for example, longer to produce a product and release it to market until they are absolutely convinced that it is an improvement on what the previous product is doing in terms of [customers]. And that does have financial consequences because, for example, [company name], they will invest more than some other companies might in research and development to develop the next product that they think is an improvement.

Directors commonly referenced the purpose statements of their companies in interviews. For instance, one director had a printed copy of their company's purpose statement to hand. When asked how they conceptualise the company and its interests, they read from this statement, explaining, "So ours is to [redacted purpose statement] ... So that's how I think of the company".

A company's purpose and strategy are discussed here as being linked, given that a company's strategy should be compatible with its purpose. One director of a number of large privately held

companies described the relationship between corporate purpose and strategy: "... your key role then is determining the purpose of the organisation and the strategy required to achieve that purpose".

As we have seen, when speaking about their company's purpose and strategy, participants often related these concepts back to the interests of the company. This thinking can again be seen in the comments of one director, who remarked: "... is it in the best interests of the company? Does it meet the strategic direction of the company? Which I guess is the same thing". This relationship between a company's interests, purpose and strategy is also evident in the opinions of another director, who commented:

And I take viability to mean its [the company's] commercial, environmental and social purpose and performance. So acting in the interests of the company is to do what we think is best for the company and what it has been set up to do.

Another director, who sits on the boards of multiple large dual-listed companies, explained that "you [the company] have lost your purpose" if you do not have a strategy to achieve what is in the best interests of the company. They explained:

... there's one thing I haven't talked about [regarding the company's best interests], and in many respects it is the most important thing: the company needs to have an executable strategy. And it comes back to, are we going to protect and enhance the value of this company, and what's the strategy to do that? And that's the fundamental interaction.

Given the relationship between the best interests duty and corporate purpose, it is perhaps unsurprising that directors reported that these concepts influence board decision-making. This influence on decision-making may be expected, as the duty to act in good faith and in the best interests of the company operates *ex ante* as an overarching⁴³ and positive duty guiding directors when they exercise their powers and perform their duties.⁴⁴ One director explained how their company's strategic direction and purpose guides board discussions:

Well, when I'm chairing, I will actually ask people what they want and why they think that is an appropriate thing given the context of the company, and what the company is about, and what the strategic direction is, and its purpose, and what we want to achieve with the company.

43 There is no hierarchy of directors' duties – this suggestion by the Law Commission was not adopted – but the duty to act in good faith and in the best interests of the company remains fundamental: Law Commission *Company Law Reform: Transition and Revision* (NZLC R16, 1990) at [55]. See also *Yan*, above n 16, at [117].

44 Watson, above n 10, at [18.3.2]. See also Rosemary Teele Langford "Best Interests: Multifaceted but Not Unbounded" (2016) 75 CLJ 505; and Susan Watson and Lynn Buckley "Directors' positive duty to act in the interests of the entity: shareholders' interests bounded by corporate purpose" (2024) 24 JCLS 233.

As another example, a director of a large private company explained that when they are deliberating on a decision, the "first level is decisions about the framework. So this is fundamentally around the reason the company exists and the strategy to get there".

As such, we can conclude that the interview findings illustrate how a director's understanding of their corporation's purpose can inform their interpretation of their duty to act in good faith and in the best interests of the company. In doing so, the duty is interpreted broadly with the entity's interests encompassing shareholder and other stakeholder considerations. Directors also reported that both of these concepts subsequently play a part in shaping board decisions.

V DISCUSSION

What might be the significance of these interview findings, both for the duty of directors to act in good faith in the best interests of the company and for the concept of corporate purpose? This part considers some tentative implications.

First, if directors, when exercising their powers and performing their duties, must do so in good faith and in the best interests of their company, and if their interpretation of that duty is shaped by their corporation's purpose, a consequence may be more socially responsible behaviour on the part of businesses. When directors view their corporation's purpose as encompassing broader societal or environmental concerns, they may prioritise decisions that further such objectives, believing them to be in the best interests of their company.

For instance, many boards in Aotearoa New Zealand grappled with the decision of whether their company should repay the COVID-19 wage subsidy received from the government during the pandemic.⁴⁵ At the time, there was mounting pressure on companies recording record profits (for example, The Warehouse Group) and paying out significant dividends (for example, Briscoe Group) to repay the wage subsidy.⁴⁶ A number of directors interviewed discussed repayment of the COVID-19 wage subsidy. One director gave an example relating to their role on a large listed company and how the board considered the company's interests when trying to make a decision regarding repayment of the subsidy. They explained how considering the company's interests required consideration of shareholders, debt holders, employees, customers and the wider community. They concluded:

So it's actually quite a pressing example of the sorts of processes you have to go through if you take this [the company's interests] seriously. Because if you were Milton Friedman you'd say, "well, the law hasn't

45 David Williams "Top 10 employers asked to repay wage subsidies" (14 November 2021) Newsroom <www.newsroom.co.nz>.

46 Anuja Nadkarni "Companies repay \$536m of the Covid-19 wage subsidy" (30 December 2020) Stuff <www.stuff.co.nz>. See also Aimee Shaw "Trade Me says it won't pay back \$4.1 million wage subsidy despite bumper trading periods" *The New Zealand Herald* (online ed, Auckland, 29 January 2021); and RNZ "Coca-Cola Amatil NZ to repay millions from Covid-19 wage subsidy" (25 January 2021) <www.rnz.co.nz>.

told you to pay that back. Keep going, guys. Pay a dividend at the end of the year, everyone will be happy".
So we're clearly not.

While of course many factors ultimately influenced whether each company repaid the subsidy, this example illustrates anecdotally how a director's understanding of their company's best interests may have considerable influence on the decision-making of the board.⁴⁷ The point is that perhaps more decisions which promote broader societal objectives, as opposed to a more narrow focus solely on maximising returns for current shareholders, will result if directors' interpretations of the duty are shaped by their corporation's purpose.

Secondly, could the influence of corporate purpose on the best interests duty help to settle the longstanding debate in company law and governance as to what constitutes the company's interests?⁴⁸

For example, the connection between the duty and climate-related financial risk is gradually being realised,⁴⁹ although this connection has been described as "unorthodox".⁵⁰ In the United Kingdom, a shareholder of Shell plc, an environmental law organisation called ClientEarth, sought to bring a derivative action against Shell's entire board of directors contending that Shell's failure to adopt a strategy consistent with the Paris Climate Agreement was, amongst other things, in breach of their

47 In a Canadian context, after *BCE Inc v 1976 Debentureholders* 2008 SCC 69, [2008] 3 SCR 560, see Bryce C Tingle and Eldon Spackman "Do Corporate Fiduciary Duties Matter?" (2019) 4 *Annals of Corporate Governance* 272. Contrast Carol Liao "A Canadian Model of Corporate Governance" (2014) 37 *Dal LJ* 559 at 573.

48 See for example Dawson, above n 19; Andrew Keay "Tackling the Issue of the Corporate Objective: An Analysis of the United Kingdom's 'Enlightened Shareholder Value Approach'" (2007) 29 *Syd LR* 577; Esser and du Plessis, above n 8; and Langford, above n 8.

49 See for example in Aotearoa New Zealand, Kalderimis and Swan, above n 19, at 19–20; in Canada, Janis Sarra and Cynthia Williams *Directors' Liability and Climate Risk: Canada - Country Paper* (Commonwealth Climate and Law Initiative, April 2018) at 9–11; and in the United Kingdom, Lord Sales, Justice of the Supreme Court of the United Kingdom "Directors' duties and climate change: Keeping pace with environmental challenges" (Anglo-Australasian Law Society, Sydney, 27 August 2019), at 5–10. Such arguments are generally justified on the basis of financial risk and are limited to impacts of climate change: Kalderimis and Swan, above n 19, at 19–20; Sarra and Williams, above n 49, at 9–11; and Lord Sales, above n 49, at 5–10.

50 Sarah Barker "Directors' Duties in the Anthropocene: Liability for Corporate Harm Due to Inaction on Climate Change" (December 2013) at 56–58.

duty to promote the success of the company under s 172 of the Companies Act 2006 (UK).⁵¹ Leave to bring the derivative action was refused⁵² and a subsequent appeal of that decision was dismissed.⁵³

This case centred on the United Kingdom's version of the duty, which unequivocally adopts an enlightened shareholder value position equating the interests of the company with the interests of its members as a whole.⁵⁴ As discussed at the outset, the position in Aotearoa New Zealand as to what constitutes the company's interests remains unsettled, with directors simply required to act in what they believe to be the best interests of the company.⁵⁵ Indeed, s 131(2)–(4) provides exceptions for directors to act in the interests of wholly- or partly-owned subsidiaries or joint venture partners, implying that the company's interests are not synonymous with those of its shareholders.⁵⁶ Further, s 131(5) makes clear that matters other than the maximisation of profit may be considered when acting in the best interests of the company.⁵⁷ All of this raises the question: if the relationship between corporate purpose and the best interests of the company came to be realised, what might be the outcome if a similar case arose in this jurisdiction?

The third and final point to consider in light of the interview findings is an implication for operationalising corporate purpose. We have seen that directors reported not only how corporate purpose shapes their interpretation of their best interests duty but also, relatedly, their decision-making.

Yet, prominent proposals to implement corporate purpose often include, for example, embracing alternative business forms (such as benefit corporations) or purpose clauses (via the company's

51 See Damien Gayle "Shell directors sued for 'failing to prepare company for net zero'" *The Guardian* (online ed, London, 15 March 2022); and Camilla Hodgson and Tom Wilson "Climate group prepares legal action against Shell directors" *Financial Times* (online ed, London, 15 March 2022).

52 *ClientEarth v Shell plc* [2023] EWHC 1137 (Ch). ClientEarth sought to have the decision reconsidered, at which point the claim was again dismissed: *ClientEarth v Shell plc* [2023] EWHC 1897 (Ch).

53 ClientEarth "Court fails to engage with key climate risk arguments in Shell directors case dismissal" (press release, 15 November 2023).

54 Companies Act 2006 (UK), s 172.

55 *Debut Homes*, above n 14, at [28]–[31].

56 Companies Act, s 131(2)–(4). Compare Watts, Campbell and Hare, above n 10, at 382–385.

57 As mentioned at above n 25, this amendment may be repealed as part of a forthcoming reform package. The reasoning offered for the repeal is that "The law already allows directors to take into account ESG factors and this new subsection is therefore redundant": Office of the Minister for Commerce and Consumer Affairs, above n 25, at [18]. Setting aside the question of whether the amendment was redundant, it is largely agreed that s 131(5) simply clarified, rather than changed, the law: Buckley, above n 27; and Coles, above n 29. Indeed, clarification of the law was the purpose of the amendment: Companies (Directors Duties) Amendment Bill 2021 (75-2) (select committee report) at 2.

constitution).⁵⁸ The findings of this study suggest that the relationship between corporate purpose and a director's duty to act in good faith and in the best interests of the company should also be taken seriously as an avenue to operationalise corporate purpose. Hence, the power of corporate purpose to shape directors' interpretations of their best interests duty should not be overlooked – particularly considering how the duty operates *ex ante* as a fundamental and positive duty guiding directors when they exercise their powers and perform their duties.⁵⁹

VI CONCLUSION

This article asked whether a corporation's purpose influences its directors' interpretations of their duty to act in good faith and in the best interests of the company. To explore this question, it drew on interview data generated with professional directors who hold private sector board roles in Aotearoa New Zealand.

The findings from these interviews illustrate how a director's understanding of their corporation's purpose can inform their interpretation of their duty to act in good faith and in the best interests of the company. In keeping with this finding, directors also reported interpreting the duty broadly, with the entity's interests encompassing shareholder and other stakeholder considerations. Additionally, they reported that both the duty and corporate purpose subsequently play a part in shaping board decisions.

This article then turned to a discussion of these insights. First, it suggested that when directors view their corporation's purpose as encompassing broader societal or environmental concerns, they may prioritise decisions that further such objectives, believing them to be in the best interests of their company. Secondly, it queried whether the influence of corporate purpose on the best interests duty might help to settle the longstanding debate at the heart of company law and governance as to what constitutes the company's interests. Thirdly, it argued that the relationship between corporate purpose and the duty of directors to act in good faith and in the best interests of the company should be taken seriously as an avenue to operationalise corporate purpose. This insight may have meaningful implications for the implementation of corporate purpose, given that the duty is fundamental and operates *ex ante* when directors are making business decisions.

58 For instance, see Mayer, above n 1, at 225 and 232. Contrast Paul L Davies "Shareholder Voice and Corporate Purpose: The Purposelessness of Mandatory Corporate Purpose Statements" (ECGI Law Working Paper 666/2022, May 2023).

59 Above n 43 and n 44.