



# ADLSI

Independent Voice of Law

LAWNEWS THIS ISSUE:

Could doctors teach lawyers how to handle long hours?  
What's happening in the world of resource management?  
Political apologies – do numbers count?

# LAWNEWS

ISSUE 16 30 MAY 2014

[www.adls.org.nz](http://www.adls.org.nz)

## + Legal practice

# GENDER, LAWYERS AND “LEGAL THROUGHPUT” – SOME HERETICAL THINKING

By Emily Morrow, Executive Consultant

In his book, *Undaunted Courage*, about the Lewis & Clark Expedition (the first expedition to cross the United States by land in 1804), Stephen Ambrose wrote:

*“A critical factor in the world of 1801 was that nothing moved faster than the speed of a horse. No human being, no manufactured items, no bushel of wheat, no side of beef, no letter, no information, no idea, order or instruction of any kind moved faster. Nothing moved any faster and, as far as Jefferson’s contemporaries were able to tell, nothing ever would.”*

In 1977, when I began practising law, no original, copy or image of a document moved faster than the speed of a FedEx jet plane. No typed document was prepared or edited faster than the speed of a secretary’s fingers. When a lawyer left his or her office, the only way to reach that person was on a land line telephone. Opening the hard copy mail every morning took time because that was how you received information. If you rang someone on the telephone and they weren’t there, you either tried again later or left a message with another human being, as there was no voicemail. If you were working on an international matter, you communicated



*Recently ADLSI’s rooftop terrace was put to a novel use. The groom-to-be worked hard to set up a romantic surprise for his lady love, with this picturesque result. As evening fell and the city lit up, he popped the question. Luckily, we understand that the response was affirmative, and we wish the happy couple well.*

via airmail letters, with an occasional very brief phone call because international phone calls were exorbitantly expensive. There were no computers, no internet, no email, no scanners, and legal research involved walking around libraries and opening books.

### “Legal throughput”

When I think of technological changes, I think of them in the context of “legal throughput” – that is, the continuous flow of information, ideas and communication needed to keep things functioning in the practice of law. Legal throughput can occur either relatively slowly, or with incredible velocity and intensity as it does now. In 1977, legal throughput was a lot faster than it was in 1801, but not anything like it is today.

As lawyers, we are directly impacted by the

speed of legal throughput. In 1977, I had to work hard to keep current as a lawyer and meet the demands of clients and senior partners. However, deals closed more slowly, documents were drafted and revised at a more leisurely pace, more communication occurred face-to-face and when I left the office in the evening, my work was done for the day in most cases. We worked hard, but we worked at a more human and humane pace.

### Legal throughput, stress and gender

All of which leads me to the issue of why women are leaving the practice of law in droves and what can be done about it. There has been good research done on this and interesting articles have been written about it. It’s a hot topic for obvious reasons.

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# GENDER, LAWYERS AND “LEGAL THROUGHPUT” - SOME HERETICAL THINKING

*Continued from page 1*

That said, however, I am going to say something that may be somewhat heretical. Although there are gender specific challenges women face in the practice of law (because we bear and raise children and often do more than our fair share of work around the home etc), there is a bigger issue here. I believe both men and women are under increasingly unsustainable workplace stress due to the technologically accelerating pace of legal throughput. The pace is no longer human or humane and we are all becoming symptomatic as a result.

It's not that women are symptomatic and men aren't, but rather that the symptoms are often different for each. Women typically respond by leaving the practice early in their careers, taking time off to be with family, working part-time and failing to achieve their full professional potential. This is not a new issue, of course. Women left the practice of law back in 1977, but it was less obvious because we represented such a small portion of the lawyers and managing family demands was somewhat easier in an environment of slower legal throughput. It wasn't "easy" to do it all, but it was somewhat easier.

Men are equally symptomatic, but their symptoms can be more subtle, pernicious and potentially more damaging. They can experience physical or psychological problems (including depression), substance abuse, premature mortality, burnout, marital or other familial problems and so forth. Men stay with the practice of law, but sometimes pay a high personal price for doing so. Occasionally, I find myself thinking that the way women are responding makes more sense than the way the men are.

If the increasing velocity and intensity of legal throughput is not good for human beings, regardless of gender, then the issues and the solutions go well beyond part-time work, better daycare and flexible hours for mothers. The legal throughput "Pandora" is out of her box and I do not think there is any chance of putting her back in anytime soon. I am a realist, and I fully endorse the improvements that technology has brought to the practice of law. I don't look back wistfully on the "good old days" when things moved more slowly in the practice of law. It's not about that.

If one thinks making the practice of law sustainable is a "human issue", rather than



Emily Morrow

*[In one] company, the CEO announced that henceforth, 50% of each senior manager's annual bonus would be contingent on what he or she had done to develop his or her own immediate subordinates during the past year. In each quarter, the CEO would ask each senior manager what he or she had done and hold them personally accountable for their own success. One might think that the bonus was the primary incentive, but far more important was the fact that they had to report regularly on what they were doing. Personnel development [was considered] to be a critical KPI for managers.*

uniquely a "women's issue", one will likely consider different solutions. Conversely, so long as the issue is defined primarily as a women's issue, the solutions are likely to be inadequate, "bolt-on" solutions at best.

## Legal "on call"

If faster legal throughput is here to stay and if it is creating unhealthy stress for all lawyers, then innovative, adaptive approaches to how we practise law may make good sense. We lawyers, as a group, are a pretty traditional bunch and we don't always welcome change. However, the costs of not changing may become so prohibitive that the costs of changing seem modest in comparison.

So, that said, here's an idea. My husband is a physician and has been through arduous medical training, including working in intensive care units (ICUs). ICUs specialise in the treatment of very sick patients with complex and often long term medical problems. In some ways, an ICU resembles a legal team working on a complicated, lengthy piece of client work. ICUs provide sophisticated care 24/7 and it is critical that they do so professionally and consistently. If they "stuff it up", patients die.

To provide such care while making it possible for medical personnel to have more manageable lives, ICUs (and other medical practices) use the "on call system". Doctors are "on call" periodically, and when they are "off call", they know they leave the medical work to others, except in real emergencies. To make the "on call" system work, despite changing staffing coverage, medical personnel use "chart notes" and "rounds". Medical personnel are trained to document or chart a patient's progress and developments, either manually or electronically. Everything that is important is noted down so that when others are on call, they will know what to do. "Rounds" consist of doctors who are going "off call" going around and checking in with each patient accompanied by the doctors who are coming "on call" so that there is minimal slippage in communication or treatment plan. Although these systems are not foolproof, they work pretty well most of the time.

In today's highly technological, global legal practice, lawyers are available and often work 24/7. It's 8:00 a.m. somewhere in the world all the time. I wonder whether the medical "on

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## LAWNEWS

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# Rounding up some recent key developments in Resource Management

**ADLSI's Environment and Resource Management Committee, convened by John Burns, has brought together and commented on some recent cases and developments of interest of which practitioners in this area should be aware.**

## *Kiwi Property Holdings and NZ Historic Places Trust v Auckland Council (the "Britomart case")*

In its recent decision in *Kiwi Property Holdings and NZ Historic Places Trust v Auckland Council* (2013 NZEnvC 303), the Environment Court (Court) has upheld the re-zoning of the site of the Seafarers Building at Quay Street in the Britomart Quarter to enable buildings of up to 55 metres in height. Opponents had sought that the height be restricted to 24 metres.

The Court noted that no one was arguing that the Seafarers Building itself had any particular historic or architectural merit, or should be retained. The issue was whether a comparatively tall replacement building would necessarily diminish the value of the other existing heritage buildings in the Britomart Quarter, simply on account of its size.

The Court held that, provided any new building was designed to suitably high architectural standards, a resource consent application for it was subject to close scrutiny by the Council (including review by the Council's Urban Design Panel), and the NZ Historic Places Trust was recognised as an affected party on the application, then effects on surrounding heritage values should be capable of being avoided, remedied or mitigated in accordance with the *Resource Management Act* (RMA). The Court commented that if they cannot, through the particular design proposed, then consent could be refused.

The case supports the proposition that good design, rather than just size, is a key component to CBD development in Auckland, and may have relevance when the new proposed Auckland Unitary Plan provisions are considered by the Council Hearing Panel later this year.

## **Local Government Amendment Bill (No. 3) - Development Contributions**

A 2013 government review of development contributions identified difficulties associated with the current legislative framework and how it is being implemented by councils. For example, the review noted that development contributions are being used to fund types of infrastructure that may be better funded from general revenue sources, and that the degree of transparency in the apportionment of the costs and benefits of infrastructure is variable. The review also identified that there are limited mechanisms for resolving challenges to development contributions charges, and opportunities to encourage greater private provision of infrastructure.

To address these matters, the Local Government

Amendment Bill (No. 3) provides a new purpose for development contributions, and principles to direct and guide how they are used by councils. Secondly, there are provisions that clarify and narrow the range of infrastructure that can be financed by development contributions. Thirdly, the Bill introduces a development contribution objection process, with decisions to be made by independent commissioners. In addition, the Bill encourages greater private provision of infrastructure through the use of development agreements, and includes provisions to improve the transparency of councils' development contributions policies.

Submissions closed in February 2014 and the Select Committee is now meeting with some urgency. We expect the Bill to find its way back to the House quickly, with the Bill enacted by mid-year.

## **Local Authority Amalgamation – Local Government Act 2002 Amendment Act 2012**

The process for reorganising local authorities was significantly changed by the *Local Government Act 2002 Amendment Act 2012*, allowing for a streamlined process.

Anyone can now make an application to the Local Government Commission (Commission) requesting a reorganisation. The Commission checks that the application contains all the information it is required to and considers whether there is community support for change. If the Commission is satisfied the application meets these requirements, it then notifies it to allow for alternative applications to be made.

After considering submissions it may then issue a final proposal. If a final proposal is issued, a poll on the proposal may be requested by 10% of the electors in any one of the affected districts. If a proposal is supported by a poll, or if there is no poll, a reorganisation scheme giving effect to the proposal is prepared and implemented by Order in Council.

Currently there are three areas undergoing this process: Northland, the Hawkes' Bay and Wellington. In both Northland and the Hawkes' Bay, public submissions have just closed on the Commission's preferred option. Interestingly, both looked very similar to the Auckland Council model of local government.

We expect the Commission's final proposals to be out later this year – perhaps after the national elections – when we may see the establishment of two new Unitary Councils.

## **Auckland Unitary Plan – summary of submissions and further submissions stage**

Submissions on the Auckland Unitary Plan closed on 28 February 2014, with tens of thousands of submissions made. The Auckland Council is now beginning the process of considering those submissions, with the first step being preparation of a "Summary of Submissions".

Following release of the Summary of Submissions, certain persons may make further submissions. They include any person representing a relevant aspect of the public interest, any person that has an interest in the Auckland Unitary Plan greater than the interest that the general public has, and the Council itself. Further submissions must be limited to a matter in support of or in opposition to the relevant original submission.

It is likely the further submission process will take until about mid-year, following which the "hearings" phase will begin for submitters who have asked to be heard in support of their written submissions.

## **"Future Milford"**

The Environment Court has approved, in an interim decision, a modified Plan Change 34 sought by Milford Centre Limited to the Auckland Council District Plan (North Shore Section) 2009.

At issue was balancing or integrating the objectives of residential intensification and of maintaining or enhancing the amenity and character of Milford. The development will proceed with:

- a reduction to the building heights of three of the highest buildings; and
- intensification set at 100-200 residential units.

Building heights are all less than those in the Auckland Unitary Plan which the Court considered but gave little weight to, noting the provisions may change after the Auckland Unitary Plan process. Readers wanting further information should visit <http://milford2020.co.nz/>.

## **Planet Kids Limited v Auckland Council**

Planet Kids Limited operated a childcare centre from premises leased from the Auckland Council. The Council wished to use the land for a roading project and sought to acquire the lease under the *Public Works Act 1981*. On 3 June 2010, Planet Kids and the Council entered into an agreement said to be in full and final settlement of any claim for compensation under the *Public Works Act*.

Before the settlement date of the agreement, the premises were destroyed by a deliberately lit fire. Both parties accepted that, under the terms of the lease agreement, this caused the lease to terminate.

The Council's position was that this event brought the settlement agreement to an end through the doctrine of frustration. Planet Kids' position was that the settlement agreement subsists and is enforceable.

Planet Kids initiated proceedings seeking judgment for the amount outstanding under

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# Theorising the Political Apology

By Dr Stephen Winter, Chair, Auckland Branch of the New Zealand Society for Legal and Social Philosophy

In March, New Zealand apologised to Ngāti Raukawa as part of a Treaty of Waitangi Settlement agreement. Such Crown apologies are a standard component in a Waitangi Settlement and part of a global practice of responding to past wrongdoing that includes the Australian apology to the Stolen Generations (2008), among many others. Although apology is a political commonplace, there is, however, little agreement as to how we should understand political apologies and what makes them better or worse. These disagreements are important because political apologies are important and, consequently, agents and observers need to know what they should be looking for.

In a talk given on 1 May 2014 on themes from my book *Transitional Justice in Established Democracies* (Palgrave Macmillan 2014), I argued that the disagreement can, at least in part, be attributed to differences over who is apologising. Political apologies are, invariably, offered by representatives. But who do these representatives represent? People generally answer that question in one of three ways – they either understand the apology as: (1) issued on behalf of an aggregate of individuals; (2) provided on behalf of a group such as a nation; or (3) conveyed by a political institution. But not every opinion is equal. There are good reasons to reject the individualist and collective accounts and good reasons to endorse the institutional.

After offering some criticisms of the individualist and group-based accounts, I set out the case for the institutional. Institutional accounts treat state agencies, such as the Crown, as burdened by illegitimising wrongdoing with a responsibility to make amends. As a response to these burdens, apologies strengthen the political legitimacy of state institutions by



Dr Stephen Winter

*The Australian “Sorry Books” and the 2000 Sydney Bridge Walk are good examples of mass participation [in an apology]. However, New Zealand’s apologies do not tend to involve large numbers of people. Does this make New Zealand’s apologies inferior? I argue that we should judge each apology as an apology and treat mass participation as realising other important values.*

discharging their liabilities. This approach ties our understanding of political apologies into larger discussions of Crown liability. It also explains why political apologies tend to respond to state wrongdoings and not individual ill-treatment or the harmful habits of a national group. Further, the institutional approach recognises the institutional character of modern politics. The state is a set of institutions that creates law and the best account of state acts (such as an apology) will reflect that reality.

The talk concluded with some reflections on weaknesses in the institutional account. For example, it is clear that when we look around the world people think apologies are made better when they involve large sections of the society. The Australian “Sorry Books” and the 2000 Sydney Bridge Walk are good examples of mass participation. However, New Zealand’s apologies do not tend to involve large numbers of people. Does this make New Zealand’s apologies inferior? If so, then the institutional account framing of the apology as discharging liability comes under some pressure. However, in response, I argue that we should judge each apology as an apology and treat mass participation as realising other important values.

*The New Zealand Society for Legal and Social Philosophy hosts regular meetings in both Auckland and Wellington. For details of our activities, please visit our website at: <http://nzlsp.wordpress.com/>.*

*The Auckland Branch of the New Zealand Society for Legal and Social Philosophy will host its next meeting at 3pm on Friday 27 June 2014. The seminar will be held in the Federation of Graduate Women’s Suite, Old Government House, University of Auckland and will be given by Professor Allan Beever of the University of South Australia. Entitled “The Nature and Justification of Property”, the seminar will discuss questions around property rights and the justification for their recognition in law. LN*

## + ADLSI event

# ADLSI Law Dinner to honour the retirement of The Hon Justice Hansen, 13 June 2014

**Members of the legal profession are invited to come together to honour The Hon Justice Hansen at the Northern Club on Friday 13 June 2014.**

Justice Hansen’s career and contribution to the legal profession as a lawyer and judge are well known and ADLSI wishes to acknowledge his recent retirement from the High Court. We hope you can join ADLSI in honouring the distinguished career of Justice Hansen.

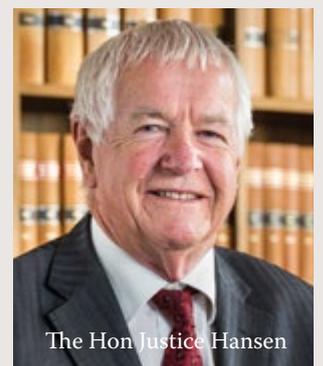
**Date:** Friday, 13 June 2014  
**Timing:** 7.00pm Arrival and drinks; 7.30pm Dinner  
**Dress code:** Smart business attire  
**Venue:** Northern Club,  
19 Princes Street, Auckland

**Tickets:** \$105.00+GST (\$120.75 incl. GST) for ADLSI members and the judiciary, current & retired;

\$130.00+GST (\$149.50 incl. GST) for non-members

**Registration:** Register before 5 June 2014 to secure your space, subject to availability. To register and pay for this dinner online visit [www.adls.org.nz](http://www.adls.org.nz); alternatively contact [adls.events@adls.org.nz](mailto:adls.events@adls.org.nz) or (09) 303 5287.

*ADLSI’s standard cancellation policy applies for this event.*



The Hon Justice Hansen

## + Judicial appointments

# New District Court Judges appointed to serve in New Plymouth, Auckland and Palmerston North

**Attorney-General Christopher Finlayson has announced the appointment of three new District Court Judges.**

Wellington lawyer **Chris Sygrove** has been appointed as a District Court Judge with jury and Family Court warrants to serve in New Plymouth.

Mr Sygrove was a partner of McCulloch & Sygrove from 1979 to 1996. During that time he conducted several jury trials in the District and High Courts as well as extensive summary jurisdiction and Family Court litigation. He became a sole practitioner in 1996 dealing with a wide range of legal issues with an emphasis on Family Court matters, with particular emphasis on relationship property.

Judge Sygrove will be sworn in on 4 July 2014 in Wellington.

**David Sharp**, barrister and solicitor of Gisborne, has been appointed a District Court Judge with a jury warrant to serve in Auckland.

Mr Sharp has been a partner in Burnard Bull & Co in Gisborne since 1989. He has extensive litigation experience including a large number of jury trials and frequent appearances in the summary jurisdiction. Outside his criminal practice he has appeared in civil cases in the District Court, High Court and Court of Appeal and has also appeared in the Environment Court, Employment Relations Authority, Family Court, Maori Land Court and the Waitangi Tribunal.

Judge Sharp will be sworn in on 27 June 2014 in Gisborne.

Wellington-based Crown Counsel **Stephanie Edwards** has been appointed a District Court Judge with a jury warrant to serve in Palmerston North.



Chris Sygrove



David Sharp

A graduate of the University of Otago, she started her legal career as a staff solicitor and then associate for two Whanganui firms, where she gained experience in criminal and family law and civil litigation (1993-97). She then managed the Public Prisons Service Legal Services Team at Corrections from 1997-2005, where she was responsible for managing civil litigation and other proceedings involving prisons and for providing legal advice to head office and prison management. Ms Edwards is presently Crown Counsel in the Criminal Team at Crown Law. She has extensive appellate advocacy experience and more recently led the office's project to implement the *Criminal Procedure Act 2011* for Crown and departmental prosecutors.

She was a member of the NZLS Legal Services Committee for two years while in private practice in Whanganui, and was on the committee of the Wellington Women Lawyers Association from 2009-2013.



Stephanie Edwards

Judge Edwards will be sworn in on 13 June 2014 in Wellington.

Source: [www.beehive.govt.nz](http://www.beehive.govt.nz)

## + Appointments

# A round-up of recent appointments

Specialist family and relationship lawyer, **Janice Harland**, has joined the team at Quadrant Chambers in Manukau City as a barrister. Formerly a partner of Brookfields Lawyers based at Manukau, Ms Harland has over 25 years of experience assisting clients with family and relationship law issues. An expert in negotiation and litigation, she is well known to communities in and around Auckland for her work in this area of the law.

Schnauer and Co Limited is pleased to announce the appointment of **Nick Kearney** as Director. Mr Kearney has a particular focus in property law, including subdivisions, residential conveyancing, commercial property transactions and leasing issues. He also contributes articles to the *Butterworths Conveyancing Bulletin* and teaches the Residential Property Workshop for legal executives and newly-admitted solicitors each year. 



Janice Harland



Nick Kearney



# ADLSI | CPD

Experts in accessible relevant legal learning

Content	Presenters	Cost
<p>Thursday, 19 June 2014 4pm – 6pm (with drinks and nibbles to follow) Venue: Simpson Grierson, Auckland CBD</p> <p><b>2</b> CPD HOURS</p>	<p><b>Employment Law Forum: Burning Issues and Cutting Commentary</b> Return to the Burning Issues cauldron, where the hot employment law topics of the day are carved up for your education and entertainment.</p> <p>The sizzling selection:</p> <ul style="list-style-type: none"> <li>• True to form, members of the judiciary and Authority will bring you the latest combustible topics and issues from the coalfaces.</li> <li>• We will examine the smouldering remains of information disclosure, slice at the relationship between the Privacy Act/Official Information Act and the Employment Relations Act, and hack apart the proposed changes in the Employment Relations Amendment Bill.</li> <li>• Finally, we will stoke the embers of the WorkSafe bullying guidelines, and slice and dice the relationship between the guidelines and current case law.</li> </ul> <p><b>Who should attend?</b> All employment lawyers.</p>	<p>A range of presenters will creatively carve the content – details coming soon.</p> <p><b>Members:</b> \$50.00 + GST (\$57.50 incl. GST) <b>Non-members:</b> \$70.00 + GST (\$80.50 incl. GST)</p>
<p>Tuesday, 17 June 2014 4pm – 6.15pm Venue: Auckland CBD</p> <p><b>2</b> CPD HOURS</p>	<p><b>Construction Law Series: Current Issues</b> The first in this year's seminar series on construction law offers more than foundation and reinforcing. The following topics will be included in this jamb-packed session:</p> <ul style="list-style-type: none"> <li>• the Building Practitioners Board: drill down into its appellate and disciplinary functions, penalties, jurisdiction and processes;</li> <li>• the nuts and bolts of Consumer Protection: pending regulations prescribing a residential builder's disclosure obligations and minimum contractual terms;</li> <li>• the Construction Contracts Amendment Bill's significant improvements, key rationales, changes and issues;</li> <li>• security for retentions: cement your knowledge about current Government proposals for protecting contractors' and subcontractors' retentions;</li> <li>• the suitability of the new NZS contracts for particular situations: insulate yourself against errors by learning which of the array of contracts to use when;</li> <li>• <i>The Minister of Education v Carter Holt Harvey Limited</i>: get the measure of this case and its potential implications.</li> </ul> <p><b>Who should attend?</b> Commercial and construction lawyers. Members of organisations involved in the building and construction industry will also find it useful. Galvanise yourself into action and register now.</p>	<p><b>Geoff Hardy</b> Principal, Madison Hardy</p> <p><b>Stephen Price</b> Partner, Minter Ellison Rudd Watts</p> <p><b>Jo-Anne Knight</b> Senior Associate, Simpson Grierson</p> <p><b>Dennis Jenkin</b> Barrister</p> <p><b>Members:</b> \$125.00 + GST (\$143.75 incl. GST) <b>Non-members:</b> \$180.00 + GST (\$207.00 incl. GST)</p>

Calendar of  
UPCOMING  
CPD  
ACTIVITIES

**WEBINAR: Introducing the ADLSI Companies Suite of Precedents I: The Shareholders' Agreement (1 CPD hour)** Wednesday 25 June 2014, 12pm-1pm

**Presenters:** Chris Bradley, Director, Carson Fox; Bruce Patterson, Partner, Duncan Cotterill **Venue:** At your desk or on your portable device

**WEBINAR: Judicial Review - an update (1 CPD hour)** Wednesday 23 July 2014, 12pm-1pm

**Presenter:** Mary Scholtens QC **Venue:** At your desk or on your portable device

# Upcoming CPD Activities

To register online – [www.adls.org.nz/cpd](http://www.adls.org.nz/cpd)

EMAIL: [cpd@adls.org.nz](mailto:cpd@adls.org.nz)

PHONE: 09 303 5278

FAX: 09 309 3726

PO Box 58, Shortland Street,  
Auckland 1140, DX CP24001

Content	Presenters	Cost
<p>Thursday, 26 June 2014 12pm – 1pm Venue: At your desk or on your portable device</p> <p><b>1</b> CPD HOUR</p> <p><b>Meaningful LinkedIn for Lawyers</b> LinkedIn is the largest networking site for professionals which, late last year, attracted its millionth user in New Zealand. Lawyers are increasingly recognising the potential of LinkedIn but few use it purposefully, which is key if LinkedIn is to help you grow your legal practice. If you want to understand how LinkedIn works and how you can use it to best effect then you'll want to attend this webinar.</p> <p><b>Learning Outcomes</b></p> <ul style="list-style-type: none"> <li>• Acquire strategies to help you craft a powerful profile and grow your practice.</li> <li>• Discover new ways to stay top-of-mind with existing clients so they call YOU when they have a need.</li> <li>• Learn how to find new prospects and referrers and to position yourself with them.</li> <li>• Learn how to move relationships formed via LinkedIn beyond this medium.</li> <li>• Discover how to measure the effectiveness of your efforts.</li> </ul> <p><b>Who should attend?</b> All lawyers interested in developing their profile and/or practice. Both those who are on LinkedIn but want to know how they could be using it more effectively and those who are thinking about using LinkedIn will benefit from this webinar.</p>	<p><b>Kirsten Hodgson</b> Professional Services Marketing and Business Development Consultant, KScope Marketing</p>	<p><b>Members:</b> \$75.00 + GST (\$86.25 incl.GST)</p> <p><b>Non-members:</b> \$95.00 + GST (\$109.25 incl.GST)</p>
<p>Thursday, 5 June 2014 4pm – 6.15pm Venue: Auckland CBD</p> <p><b>2</b> CPD HOURS</p> <p><b>Immigration Law Series: Business Visas and the Raised Bar</b> Business visas are an important part of any immigration lawyer's own business. However, these visa requirements can be more technical and complex. Requirements also change; the bar for entrepreneurs has been raised significantly recently. We are fortunate to have the management team from Immigration New Zealand's Business Migration Branch and Operational Policy providing insights into those changes and also good strategies for business visa applications generally. Two experienced practitioners will also explain the various business visa options and how to help clients navigate the application process.</p> <p><b>Learning Outcomes</b></p> <ul style="list-style-type: none"> <li>• Gain an overview of the different types of business visas.</li> <li>• Find out where to find critical information on the Immigration New Zealand website.</li> <li>• Become familiar with the new entrepreneur visa category.</li> <li>• Learn strategies for making successful business visa applications.</li> <li>• Acquire skills to help you manage clients through the application process.</li> <li>• Learn about the lessons case law can teach us.</li> </ul> <p><b>Who should attend?</b> All intermediate level immigration lawyers and above and licensed immigration advisers should attend this seminar as well as those seeking a greater understanding of the practical aspects of immigration law. Attendees should familiarise themselves with the entrepreneur visa category webpage, the application form and guide.</p>	<p><b>Jonathan Maitland</b> Immigration Manager, Business Migration Branch, Immigration New Zealand</p> <p><b>Jackie Owens</b> Senior Business Analyst, Immigration New Zealand</p> <p><b>Darsan Singh</b> Senior Associate, Shean Singh</p> <p><b>Peter Moses</b> Barrister</p> <p><b>Chair:</b> <b>Peter Moses</b> Barrister</p>	<p><b>Members:</b> \$125.00 + GST (\$143.75 incl. GST)</p> <p><b>Non-members:</b> \$180.00 + GST (\$207.00 incl. GST)</p>

Calendar of  
UPCOMING  
CPD  
ACTIVITIES

**WEBINAR: Pro bono for professionals: A strategic approach to establishing an effective policy and practice (1 CPD hour)** Tuesday 1 July 2014, 12pm-1pm **Presenters:** **Ralph Simpson**, Partner, Bell Gully; **Darryn Aitchison**, Senior Solicitor, Auckland Community Law Centre **Venue:** At your desk or on your portable device

**WEBINAR: Uncle Sam Comes to Town – FATCA and the new Tax Obligations for Lawyers and their Clients (1 CPD hour)** Thursday 12 June 2014 (date provisional), 12pm-1pm **Presenter:** **Denham Martin**, Barrister **Venue:** At your desk or on your portable device

+ **New CD**

# Dobbie's Probate and Administration Practice – Revised Forms 2013 CD



**Author:** John Earles  
**Publisher:** Lexis Nexis  
**Format:** Compact Disc  
**ISBN:** 9781927227770

This week we bring you a Compact Disc rather than the usual book!

*Dobbie's Probate and Administration Practice – Revised Forms 2013 CD* contains updates to the existing forms which are necessitated by legislation changes since the last revision in 2011. Legislation changes include changes to the High Court Rules, as well as centralisation of probate work to the Wellington registry.

Produced and updated by John Earles (a Registrar of the High Court of New Zealand and Specialist Technical Advisor at the High Court, Wellington), this collection of 94 precedent forms is a must-have for all probate specialists, practitioners, legal executives and legal secretaries.

Forms included on the CD are in PDF, Word and HTML formats.

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+ **Law and the community**

## Top business leaders up for auction

**Entrepreneurs, company CEOs and one law firm chairman are amongst 12 New Zealand business leaders taking part in a unique charity auction for ChildFund New Zealand.**

The participants will put their time and business experience up for auction, giving Kiwis the rare opportunity to learn from and network with the leader of their choice during a one-on-one business lunch.

All proceeds from the winning bids will go towards ChildFund's Livelihoods Appeal in Sri Lanka, which provides micro-loans and business mentoring to families living in extreme poverty. The project currently involves 26 communities and is designed to be self-sustaining, with the long-term goal set to create thriving family-business initiatives that have the potential to expand and continue to benefit the entire community. Following a successful pilot, the project is now being implemented across 3,000 families – all fully funded by New Zealanders.

Those being "auctioned off" include:

Barbara Chapman (ASB); Dame Trelise Cooper (Trelise Cooper Group); Alastair de Raadt (Cadbury); Paul Fitzgerald (Coca-Cola); Craig Heatley (founder of Sky); Paul Herrod (KPMG); Jacqueline Ireland (Colmar Brunton); Christopher Luxon (Air New Zealand); Don Lyon (Beca); Roger Partridge (Bell Gully); Mark Powell (The Warehouse); and Geoff Ross (founder of 42 Below).

Auction winners will have the rare chance to get first-hand business insights from the decision makers at the top of some of New Zealand's most-renowned businesses.

"Bidders will have the satisfaction of knowing that their winning bids go towards giving a hand up to vulnerable families in Sri Lanka, while they will have an opportunity to be given their own hand up," says Paul Brown, CEO of ChildFund New Zealand.

Alastair de Raadt, Managing Director of Cadbury and a ChildFund New Zealand Board member, says he is thrilled to be involved in the initiative and implores others in his position to be

generous in sharing knowledge with emerging leaders: "If any of my experiences can be of value to others then I'm happy to share them; simple as that. We should all be the same."

Jacqueline Ireland, CEO of Colmar Brunton, agrees that knowledge sharing should be encouraged and is a vital element of success in any industry: "I am a firm believer in the importance of support and mentoring for new and start-up businesses. Passion will take you a long way, but working with someone who has experienced the ups and downs of running a business is so valuable, and saves a lot of wasted time and effort."

All funds raised from the auction will be multiplied three times through the New Zealand Aid Programme.

*The auctions run from Monday 26 May to Friday 6 June 2014. To bid, visit <http://trade.me/childfund>. For more information, visit: [www.childfund.org.nz/share-my-knowledge](http://www.childfund.org.nz/share-my-knowledge). *

+ **ADLSI Council**

## Contact details for ADLSI Council

Here are the contact details for your ADLSI Council. They welcome your queries and suggestions.

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**William Spring**  
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call" approach might have some application in the practice of law. Unlike doctors, lawyers, for financial and other "political" reasons, often want to retain sole control over a client relationship. However, at least in many legal practices, teams of lawyers work on client matters. Would it be possible to make their professional lives more sustainable through a structured call schedule including chart notes and rounds? Maybe partners could even be encouraged to be "off call" and share client relationships (and credit for legal fees) with their colleagues. A lawyer can still bill plenty of billable hours working "sustainable hours", and clients will likely be better served by lawyers who are not chronically exhausted.

Toxic (as opposed to stimulating or positive) workplace stress typically occurs when people have a lot of responsibility and not much control over the conditions in which they work. Lawyers often have a lot of responsibility and are expected to work long hours over which they have little control. If lawyers, whether they be male or female, knew that they were going to be "on call" to work late on certain days, but "off call" other days, this would likely make the practice more sustainable. Although the speed of legal throughput would not be any slower, the individual lawyers might be less "symptomatic".

Clearly, the medical "on call" model would need some fine-tuning to make it work in the practice of law. However, I think there could be some real benefit to looking at this model more closely.

#### **Making cultivation and retention of younger lawyers a critical KPI**

Much "lip service" is given to the importance of supporting the success of younger lawyers, particularly women, so they will stay in practice long term. However, as a practical matter, many senior level lawyers give it relatively

short shrift because lawyers put primary focus on the billable hour. Especially with faster legal throughput, developing talent can take a back seat in the practice of law.

If a company really cares about identifying, cultivating and retaining high potential employees, senior management will need to build this concern into its reward system and set up a consistent way of monitoring progress. In *Organizational Culture and Leadership*, Edgar H. Schein, a leading organisational psychologist, described a company in which the CEO announced that henceforth, 50% of each senior manager's annual bonus would be contingent on what he or she had done to develop his or her own immediate subordinates during the past year. The CEO added that he himself had no specific programme to do so in mind, but that in each quarter, he would ask each senior manager what he or she had done and hold them personally accountable for their own success. Schein writes, "One might think that the bonus was the primary incentive for the senior managers to launch programs, but far more important was the fact that they had to report regularly on what they were doing. Senior managers launched a whole series of different activities, many of them pulled together from work that was already going on piecemeal in the organization." By consistently paying attention to the issue, the CEO clearly signaled that he considered personnel development to be a critical "Key Performance Indicator" or KPI for managers.

What would happen if law firms and corporations began to hold their partners and senior managers equally accountable for the development of more junior lawyers? I know of a firm that uses a similar approach in their partner review system, and it has generally worked well. The firm's CEO is "walking the

talk" and following through on this and the partners are mostly supporting it. Although this approach required a significant mindset change for everyone, some interesting developments occurred in the firm. Young lawyer retention rates (for men and women) increased, sick leave claims dropped and subjectively reported "satisfaction" levels went up. A few partners left in protest, but most either support, or at least accept, this new approach.

So, yes, the legal profession should and must accommodate the unique needs of women and their families. Admirable though that may be, in a world of accelerating legal throughput and increasing stress, this may not be sufficient for either men or women. More basic structural changes in how lawyers practise may be needed to make the practice of law sustainable in a human and humane way.

I've suggested a couple of ideas in this article and I would welcome any thoughts, comments, and other approaches that occur to you. Please do feel free to contact me; you can reach me at [www.emilymorrow.com](http://www.emilymorrow.com). You can also send Letters to the Editor to [lisa.clark@adls.org.nz](mailto:lisa.clark@adls.org.nz).

*Emily Morrow BA (Hons), JD (Hons, Juris Doctor), was a lawyer and senior partner with a large firm in Vermont, where she built a premier trusts, estates and tax practice. Having lived and worked in Sydney and Vermont, Emily now resides in Auckland and provides tailored consulting services for lawyers, barristers, in-house counsel, law firms and barristers' chambers focusing on non-technical skills that correlate with professional success; business development, communication, delegation, self-presentation, leadership, team building/management and the like.* 

## + Event

# Key issues in the design of capital gains tax regimes conference

**This conference (being held at the University of Auckland) aims to compare the ways in which selected jurisdictions tax capital gains to determine what might be learned from each jurisdiction's experience as to the best approach to take.**

Speakers include:

- Professor Reuven S Avi-Yonah (Irwin I Cohn Professor of Law, Law School, University of Michigan);
- Philip Baker QC (Gray's InnTax Chambers, London);
- Shaun Connolly (Tax Partner, Russell McVeagh);

- Professor David Duff (Faculty of Law, University of British Columbia);
- Professor Craig Elliffe (Professor of Taxation Law and Policy, University of Auckland);
- Associate Professor Shelley Griffiths (Faculty of Law, University of Otago);
- Professor Ann O'Connell (Law School, University of Melbourne; Special Counsel at Allens);
- Aaron Quintal (Tax Partner, Ernst & Young);
- Professor Jennifer Roeveland (Professor of Taxation, University of Cape Town);
- Adjunct Associate Professor Peter Vial (Leader NZ Tax, New Zealand

Institute of Chartered Accountants); and

- Dr David White (Associate Professor (Taxation), Victoria University of Wellington).

**Date and time:** Friday 18 July 2014, 11.30am-6.30pm

**Venue:** The University of Auckland Business School, Level 0, Owen G Glenn Building, 12 Grafton Road, Auckland

**Cost:** Student - \$50 plus GST, Non-student - \$195 plus GST

*Please register by Thursday 17 July 2014. For more information please contact Pam Kam on 923 1286 or [p.kam@auckland.ac.nz](mailto:p.kam@auckland.ac.nz).*

the agreement.

The High Court held that the settlement agreement was frustrated. This decision was upheld in the Court of Appeal. Leave was granted to appeal to the Supreme Court.

The Supreme Court held that the fire did not render performance of the settlement agreement impossible (*Planet Kids Limited v Auckland Council* (SC 5/2013) [2013] NZSC 147). Therefore the agreement was not frustrated. The only obligation that could not be performed by Planet Kids was the delivery at settlement of the physical property. Furthermore as the Council was not buying Planet Kids' business, the chattels were not fundamental to the Council's exercise of powers under the *Public Works Act*. Planet Kids' lease would be terminated and compensation was payable for the consequential closure of Planet Kids' business under the *Public Works Act*. That was the purpose of the agreement – that purpose was not frustrated by the fire.

The Supreme Court declared the settlement stands.

#### ***Environmental Defence Society Incorporated v Otorohanga District Council***

In this recent decision of the Environment Court ([2014] NZEnvC 70 (27 March 2014)), Judge Kirkpatrick considered whether the proposed outcome agreed to by the parties to the appeals and expressed in draft consent documentation was within the scope of the proposed plan as publicly notified or as sought to be amended by an appellant's submission on it [paragraph 7].

The jurisdictional issue was raised by Federated Farmers, following a mediation where it had agreed (together with the other parties) to resolve the appeals by way of consent. The

relief sought by Federated Farmers in its submission on the proposed district plan is set out at paragraph 24 on pages 9-10 of the decision. The relief sought was "that only natural features and natural landscapes that have demonstrable outstanding and natural qualities are identified and mapped; and that correct RMA terminology is used through the Plan, and that the term Outstanding Landscapes is replaced with Outstanding Natural Landscapes".

The Court considered whether there was jurisdiction through the Federated Farmers' submission on the proposed plan, and its subsequent appeal, for further areas of outstanding natural landscape (ONL) to be included in the planning maps in the proposed district plan, when those areas were not so mapped in the notified version of the proposed district plan. Federated Farmers submitted that its submission and notice of appeal were limited to the ONLs as identified in the proposed district plan as notified. Emphasis was laid on the principle identified in *Countdown Properties (Northland)* that the Council cannot grant relief beyond the scope of the submission lodged in relation to the proposed district plan, and the focus must be on the submission rather than on the notice of appeal [paragraph 33].

The Council submitted that Federated Farmers entered into mediation and an agreement arising out of mediation. Judge Kirkpatrick stated at paragraph 35: "In my view, any such agreement is not relevant to the issue before the Court. The jurisdiction of the Court to make an order authorising changes to a statutory planning document cannot be conferred by agreement. The Court's jurisdiction is established by the Act."

There is a full discussion in paragraphs 45-51, and the Judge stated: "In terms of the relief

sought, the use of the word 'only' indicates a submission that the maps as notified may have included areas that did not warrant such identification rather than that there were areas that should have been identified and were not ... In my opinion, adding outstanding landscapes that have not previously been shown either on the planning maps as notified nor identified or otherwise referred to in submissions is not within the scope of the submission by Federated Farmers."

The Judge concluded at paragraph 51: "The Court does not have jurisdiction to approve any consent order seeking to include new areas of outstanding natural landscapes or outstanding natural features beyond those shown on the planning maps in the decisions version of the Otorohanga proposed District Plan." The Council was directed to revise the consent documentation to amend the maps so that they no longer showed new areas of outstanding natural landscapes or outstanding natural features or landscapes of high amenity value that were outside the areas shown in the decisions version of the proposed district plan.

#### **Upcoming changes to the Resource Management Act**

Lastly, the Environment and Resource Management Committee notes the recent announcement from the National Party that any changes to the *Resource Management Act* are on hold until after the election. The proposed changes were intended to speed up the approval of subdivisions and consents for home alterations and extensions, but also affect parts of the Act dealing with use, development and protection of natural and physical resources. Watch this space for more information post-election. 

## + News

# Simpson Grierson awards employment law prize

### **Maria Bialostocki is the winner of this year's Simpson Grierson Employment Law Prize.**

The prize is awarded annually to the student with the best overall mark in the University of Auckland's employment law classes.

Simpson Grierson partner, Phillipa Muir, presented the \$1,500 cheque to Ms Bialostocki at an awards ceremony in Auckland on 21 May 2014. She says: "It's wonderful to recognise talented students like Maria and make a contribution towards their study and future. Every year we are impressed by their extraordinary level of achievement."

Ms Bialostocki is currently working as a Judges' Clerk at the Employment Court while also completing her honours dissertation and professional. She developed her interest in employment law during her studies. She says: "The New Zealand employment law framework is fascinating. It is constantly being tweaked in order to strike the right balance between protecting the rights of employees through minimum legislative standards and respecting the autonomy of parties to enter into contractual relations."

Simpson Grierson has been sponsoring the University of Auckland's Employment Law Prize since 2004. 



*Maria Bialostocki receives the Employment Law Prize from Phillipa Muir*

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