



# ADLSI

Independent Voice of Law

LAWNEWS THIS ISSUE:

ADLSI's new President is keen for its voice to be heard

Damages – “cost of reinstatement” versus

“diminution in value”

Is a scanned will good enough? Think before you shred ...

# LAWNEWS

ISSUE 14 16 MAY 2014

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

## + Update from ADLSI President Brian Keene QC

## ADLSI – A VOICE FOR MEMBERS AND BEYOND

**“ADLSI at its most basic level is a member benefit organisation – we want to do our best for our members. If we assist them to provide better service and value to the public, then that is the most important thing, and in turn it will benefit the public. We can do this through providing services which help members and the wider profession to meet public needs by education (CPD), expert submissions and by other inputs,” says recently elected ADLSI President Brian Keene QC.**

This “wider reach” to the profession and then to the public is an important part of ADLSI’s *raison d’être*. An example is ADLSI’s recent work assisting in lobbying the government on various issues. That is “work that is for the benefit of the law itself – if you look at the bigger picture, it is very important that those things take place and that someone makes them happen”, he says.

Mr Keene QC was first spurred on to join ADLSI’s Council by such “bigger picture” issues – he felt that he could not simply write and speak about important issues (such as his concerns about professional regulation – more on this below) without “putting his back to the wheel to make them happen”.

Although not initially keen to be President (no pun intended!), being content to let others take the lead, he has assumed the leadership of the organisation in a time when huge strides are being made towards bringing it “up-to-date”. Members saw him as the ideal person to steer ADLSI through the next



*Brian Keene QC took over the reins of ADLSI’s Council earlier in the year.*

phase and so, unopposed, he took office.

He discusses below his thoughts on the unique role and voice that ADLSI continues to have in the New Zealand legal environment.

### Choosing to remain independent

To understand Brian Keene QC’s vision and aspirations for ADLSI in the next few years, we need to retrace some of the organisation’s history and how it came to be the one remaining “district” law society in New Zealand, when others around the country elected to come under the umbrella of the New Zealand Law Society (NZLS).

As is well known, the legal scene changed markedly in 2008 with the move from separate district law societies to one centralised regulatory body for the legal profession. What was then the Auckland District Law Society was the biggest of those separate bodies, representing over half of New Zealand’s lawyers. With such

size comes specialisation and more lawyers who work with “leading edge issues”. So the most important ingredient of ADLSI’s business, skilled and enthusiastic members, was already present.

The Auckland District Law Society was also a well-resourced business entity with considerable assets and had “the most lively learning offerings” in the professional and CPD field.

At the time it had (and indeed still has) a very good relationship with the profession in Christchurch, borne (most likely) out of the fact that Auckland and Christchurch were the “commercial centres” of the North and South Islands respectively. This natural affinity continues to this day and is part of the reason why ADLSI’s outreach to other centres started in Christchurch.

After considerable debate about the best course of action to take, by 2009 the view prevailed

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# ADLSI – A VOICE FOR MEMBERS AND BEYOND

## Continued from page 1

that the Auckland District Law Society should incorporate as its own entity – the Auckland District Law Society Inc. (ADLSI) – rather than it (and its assets) being subsumed into NZLS.

ADLSI then started a new life as a member-centric body and shed its former regulatory role in accordance with the legislation passed. This is not to say, however, that there was not “an ongoing desire to positively explore how we could work in with/alongside the NZLS structure”.

### ADLSI’s “independent voice”

When the issue of independent incorporation versus merger was put to the vote, Mr Keene QC spoke and wrote in praise of “plurality”. That is to say that two heads are often better than one. He still thinks that the more views out there, the better: “Why cut down the prospect of two voices having their say?”

“There needs to be another organisation [other than NZLS] that puts its hand up on behalf of the profession – it is important that the profession has its interests understood and advanced, resulting in everyone’s good,” he says. He considers this “independent voice” to be especially relevant given NZLS’s statutory role of profession discipline.

“We are seen as moderate by government people. We have had opportunities to confer with the judiciary and with the Ministry of Justice and are starting to confer more with other ministries. We are now being treated as ‘go-to’ people in a different way to how we were seen two years ago. We can perform in a different way to NZLS and other legal organisations.”

ADLSI’s voice has weighed in on recent debates on key issues, such as the treatment of fixed fees for legal aid. ADLSI took the view that someone ought to challenge the Government’s seemingly contradictory position that justice should be accessible to all, but at the same time setting up a system whereby there were economic incentives on lawyers to plead guilty, as the rate of fees on not guilty pleas are widely considered to be not financially viable. “Everyone should get access to justice, to be able to say what they want to say,” says Mr Keene QC.

Mr Keene QC is aware of the views of some in the profession that “it doesn’t look good to

*“There needs to be another organisation that puts its hand up on behalf of the profession – it is important that the profession has its interests understood and advanced, resulting in everyone’s good.”*

ADLSI President Brian Keene QC

the public to have a divided legal profession”. However, for these reasons, he sees the benefits as more apparent than real disadvantage.

### Changing the face of ADLSI

Able assisted by ADLSI’s Council and its management (especially Sue Keppel, its CEO), Mr Keene QC has put a lot of work into revamping ADLSI’s constitution and business structure to modernise the organisation going forward. He cites three key changes in the revised constitution:

- any lawyer, from anywhere in the country, can now become a full voting member of ADLSI – the organisation is now “non-geographic”;
- ADLSI’s Council can appoint additional councillors (including non-lawyers) to bring in relevant additional skills or experience. Hence the appointment of John Hagen and Vikki Brannagan as non lawyer Council Members (with experience in accountancy and governance respectively), along with a senior Christchurch practitioner, John Brandts-Giesen, who, in addition to his broad role as counsellor, specifically focuses ADLSI on Christchurch interests; and
- people who have a legitimate interest in the law, but who might not be practising lawyers, have the right to apply to Council for admission as members in the organisation (for example academics, retired judges

and students of the law). While such additions will not form a large part of ADLSI’s membership, there is a desire to see the organisation become more inclusive.

ADLSI is also keen to engage with younger legal professionals to ensure their voice is heard – an example being the appointment of new Council Member Stephanie Nicolson, who brings a younger perspective to Council.


ADLSI is looking at other ways to involve younger people (including law students) on some of its committees, so they can be given the chance to understand the challenges and rewards of law practice and how the work of ADLSI’s committees can help influence and shape the law.

Increasingly, ADLSI is reaching beyond its traditional Auckland-centric focus and is metamorphosing into a truly “New Zealand” law society (out of its total of approximately 2700 total members, some 600 are from outside Auckland).

Mr Keene QC considers ADLSI is definitely on the right track in this regard, and anticipates increasing numbers will be drawn from other national centres, where people want ADLSI seminars to travel to their centres. “They know they will be getting top-notch presenters (a good example being the recent Cradle to Grave conference which was held in both Auckland and Christchurch). They also want collegial functions,” he says.

“Law dinners and collegial functions are something we do better than anyone else. These are even more needed nowadays to bring together like people to blunt the negative effects of the increasing trend of ‘electronic separation’. We need to get people thinking about how to engage. These are important first steps in making the links and connections to enable this kind of communication to happen,” Mr Keene QC says.

### “So is ADLSI still ‘relevant’?”

Brian Keene QC’s answer to this oft-asked question is “yes”: “We are doing things for you, the members and for lawyers and for the public. We are providing value rather than just ‘being relevant’. You can be relevant but boring.” And you can bet that “boring” is certainly not what ADLSI will be under his leadership. 

## LAWNEWS

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# Counting the cost – why the cost of reinstatement is an appropriate measure of loss in many circumstances

By Janine Stewart, Partner, Riaia Donald, Senior Solicitor, and Helena Hallagan, Solicitor, Minter Ellison Rudd Watts Lawyers

**What is the measure of loss for breach of contract? This is an important question, particularly in the construction and building industry where claims against contractors for breach of contract are frequent.**

The fundamental objective of an award of damages is to put the innocent party in the position it would have been in had the contract been performed correctly. What loss is caused by the breach, and how that loss is to be measured, are questions that are addressed on a case by case basis with reference to the purpose of the contract and considerations of reasonableness.

The two principal measures of loss for breach of contract are “cost of reinstatement” (the cost of curing the breach) and “diminution in value” (the difference in value between what was promised and what was supplied or what in fact occurred). Cost of reinstatement has been the traditional measure in contract claims and diminution in value is usually applied when a tortious duty has been breached, but these rules are not inflexible.

As Tipping J noted in *Marlborough District Council v Altimarloch Joint Venture Ltd* [2012] 2 NZLR 726, there are no absolute rules and what measure of loss is appropriate is a question of fact.

The Supreme Court decision in *Altimarloch* considered the differences between the two measures in the context of the sale and purchase of land where the purchaser did not receive water rights represented to it during the transaction. The difference in value of the land without the water rights was \$400,000 whereas the cost of remedying the vendor’s failure to supply the represented water rights was \$1,055,907.

The majority (3:2) of the Supreme Court found that, in light of the purpose of the contract and in order to adequately compensate the purchaser, the cost of reinstatement was the appropriate measure. The purchaser was awarded the cost of constructing a dam to store water as this was the only way to put the purchaser “in the position it would have been in had the representations about the water rights been true.”

Although the majority judges differed in emphasis, their conclusion was based on the purpose of the contract, namely, to plant a vineyard, and the purchaser could not do this without cost of reinstatement damages.

The *Altimarloch* decision is a shift away from the emphasis on proportionality in *Ruxley Electronics Ltd v Forsyth* [1996] 1 AC 344 (HL). The approach in *Ruxley* requires consideration of whether the cost of reinstatement would be disproportionate to



Janine Stewart



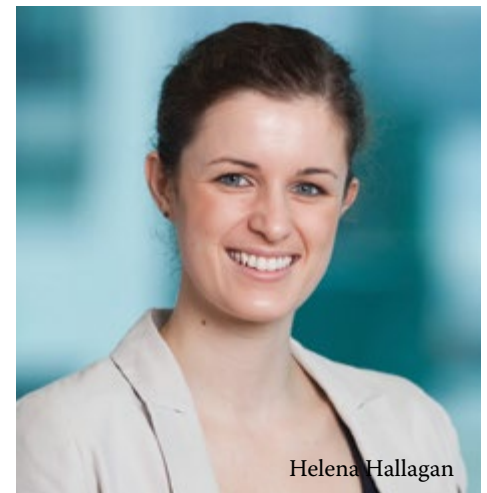
Riaia Donald

*Whilst advocates of diminution in value may argue that the innocent party is entitled to no more than the cost of the cheapest remedy for the damage caused, cases such as Stevenson and Altimarloch encourage the Court to consider awarding the cost of reinstatement (usually the more expensive measure) if this gives effect to the purpose of the contract.*

the benefit obtained by the innocent party. *Ruxley* favours diminution in value where cost of reinstatement is an “unreasonable” measure of the actual loss suffered.

In *Ruxley*, the diminution in value of the pool was nil (it was still functional despite being a foot shallower than specified), whereas the cost of reinstatement was £21,560. The House of Lords held that where the contractual objective has been achieved to a substantial extent (as it had in the circumstances), the cost of reinstatement to satisfy personal preference may be disproportionate and unreasonable. The pool owner received a nominal award for breach of contract and loss of amenity.

“Reasonableness” remains an essential component of an assessment of the measure of loss. However, *Altimarloch* is authority for the proposition that if the diminution in value measure does not provide satisfactory compensation to the innocent party, then the cost of reinstatement is the reasonable



Helena Hallagan

measure and the differences between the two measures should not factor into the decision. The emphasis is on the purpose of the contract.

In the decision of *Stevenson Precast Systems Ltd v Kelland* (High Court, Auckland Registry, CP303-SD01, 9 August 2001), the High Court gave effect to the purpose of the contract when awarding damages. The High Court considered whether it was reasonable to require the contractor for a dwelling on Waiheke to meet the cost of replacing defective/cracked panels with new panels (\$414,800) when they could be repaired at substantially less cost (between \$20,000-\$50,000).

In this case, the owner had a significant interest in architecture and had spent considerable effort designing the property in a particular style that left no room for imperfection in the architectural finish.

The Court considered that replacing the defective panels was the only reasonable solution as it was not satisfied that any patch repair job would meet the standard

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# To scan or not to scan ... scanned will sufficient for probate?

By Vicki Ammundsen, Partner, Ayres Legal

**In this article, Vicki Ammundsen considers the use of scanned copies of wills and whether these are sufficient for a probate application.**

The electronic age is upon us. More and more legal offices are attempting paperless environments. This progression is assisted by sections 25 and 32 of the *Electronic Transactions Act 2002*, which provide that:

## **25 Legal requirement to retain document or information that is in paper or other non-electronic form**

- (1) A legal requirement to retain information that is in paper or other non-electronic form is met by retaining an electronic form of the information if –
- (a) the electronic form provides a reliable means of assuring the maintenance of the integrity of the information; and
  - (b) the information is readily accessible so as to be usable for subsequent reference.

## **32 Originals**

A legal requirement to compare a document with an original document may be met by comparing that document with an electronic form of the original document if the electronic form reliably assures the maintenance of the integrity of the document.

However, it is important to appreciate that there are practical limitations to the extent to which the obligation to retain original documents can be dispensed with.

This is usefully demonstrated in the recent decision in *Re Crawford (Deceased)* [2014] NZHC 609, which relates to an application for probate of the will of Mr Crawford. It was originally believed that probate of Mr Crawford's will would not be required. It later transpired that this was not the case. By the time it was established that a probate application would be necessary Mr Crawford's will had been scanned and shredded. However, as a scanned copy still existed, probate was sought for a scanned copy of the will.

The Registrar who reviewed the probate application denied probate of the scanned copy of the will, issuing a minute that concluded:

"... The Registrar in considering an application for probate has to be provided with an original will, and if that is not forthcoming then the appropriate application is one of 'lost (or destroyed) will', in so doing meeting the criteria which is set out in *Dobbie (5th ed)* at Chapter 10.

For that reason I am not prepared to consider this application, and am of the opinion counsel should make a new application in accordance with Chapter 10 *Dobbie*."

The solicitor who had submitted the application



*In the context of a will the original must be retained. It is not sufficient to produce a copy ... It cannot be presumed that the integrity of a will can be determined without the original document. The concluding words of the decision in Re Crawford (Deceased) do not rule out the possibility of scanned wills in the future. However, for now the message is clearly one of hold onto the paper copy.*

for probate challenged this decision and then filed an application for review.

The review decision, which upheld the Registrar's decision, raised some useful considerations regarding the interplay of the High Court Rules, the *Wills Act 2007* and the *Electronic Transactions Act*:

- Rule 1.3 of the High Court Rules defines the word "document", when used in the rules, as including information electronically recorded or stored, and information derived from that information;
- The relevant rules in Part 27 of the High Court Rules regarding probate do not use the word "document". They refer to a "will". That word is defined in rule 27.2, by reference to the definition in section 8 of the *Wills Act*. That definition uses the word "document";

- The context of the *Wills Act* makes it clear that the document referred to is the original document;
- Rule 1.3 of the High Court Rules cannot be invoked to extend the *Wills Act* definition to an electronically stored copy of the original document. The definition in rule 1.3 does not have the effect of deeming information about the contents of the will which is electronically recorded or stored to be a "will" for the purposes of Part 27;
- Section 25 of the *Electronic Transactions Act*, which provides that a legal requirement to retain information that is in paper form is met by retaining an electronic form of the information, has certain provisos.

Section 32 of the *Electronic Transactions Act* provides that a legal requirement to compare a document with an original document may be met by comparing that document with an electronic form of the original document, if the electronic form reliably assures the maintenance of the integrity of the document.

However, in the context of a will the original must be retained. It is not sufficient to produce a copy. Importantly, safe custody of a will does not entail the retention of information that is in electronic form. It is useful to consider the context of a probate application by reference to section 25 of the *Electronic Transactions Act* and the need to be able to determine the integrity of the information.

When a probate application is made, the original document is required to allow (amongst other things):

- inspection of the signature; and
- consideration of the condition of the will itself to establish whether, for example, pages may have been removed or added, or that there may have been something attached to the will.

It cannot be presumed that the integrity of a will can be determined without the original document. The concluding words of the decision in *Re Crawford (Deceased)* do not rule out the possibility of scanned wills in the future. However, for now the message is clearly one of hold onto the paper copy, Mackenzie J noting at [17] that:

"Preservation of the integrity of the original will is at the heart of probate practice. Its importance is such that technological developments have not reached a point where probate practice should be adapted to treat a copy of a will made by electronic means as the equivalent of the original will. It would be unwise to speculate whether technological developments will ever do so."

**Vicki Ammundsen blogs on all things trusts at [www.mattersoftrust.wordpress.com](http://www.mattersoftrust.wordpress.com).** 

# CPD across the Commonwealth – a comparative view

**Following on from compulsory CPD coming into force for New Zealand practitioners in April this year, *Law News* continues its series speaking to lawyers across the Commonwealth about their experience with continuing legal education.**

## CANADA

Sean Caragata is the Director for Legal Services with Cisco Systems, with responsibility for legal support for the company's worldwide services sales and Cloud services business. He has been in practice for 21 years, 13 with his current employer, and has spent time in London, England as well as in Canada.

As a member of the Law Society of Upper Canada (Ontario), Mr Caragata is required to complete 12 hours of CPD each year, of which three hours must be accredited Professionalism (ethics) content and the remaining nine hours must be substantive content.

Mr Caragata says that it is relatively easy to accumulate the required amount of CPD hours by planning ahead. In particular, in Ontario there is no accreditation requirement for the substantive content. The Law Society there accepts a variety of eligible education activities and seminars inside and outside of Ontario, including those offered by educational providers, law firms, legal associations, and in-house corporate or government law departments.

Content may be in person or via online or webinar. On demand or recorded content is acceptable, provided it is viewed or listened to with a colleague. A variety of alternative activities also qualify for the substantive CPD, such as teaching, acting as an articling principal, or mentoring.

He considers that the professionalism element is a bit more challenging because this content must be accredited by the Law Society: "There is a fair amount out there, but much less than the substantive content, so you need to plan."

In terms of planning his required CPD activity, Mr Caragata says he tries to do this as early in the year as possible – "to avoid end of year panic!"


He tracks his progress towards achieving CPD requirements quarterly and plans accordingly. He tries to keep abreast of new seminars and programmes as they are announced, and to anticipate regular training opportunities that occur annually. He uses Microsoft Outlook to help him plan and keep track of CPD, and notes that the Law Society in Ontario also has a pretty good online tool that tracks CPD activity and lists accredited CPD programmes.

Mr Caragata says he is aided in his efforts to complete CPD requirements by three things:

"First, I work in Toronto, where most of the large law firms, the Association of Corporate Counsel, and the Ontario Bar Association offer regular CPD programmes, ranging from full day conferences on a variety of topics to quick one-hour seminars or webinars. I was based in London, England for 4 years and enjoyed similar programmes offered by the large firms there, even before CPD was mandatory in Ontario. These are also a great way to network.

"Secondly, Cisco has a large legal department with an excellent internal professional development focus, which we call Cisco Legal University (CLU). CLU provides quarterly WebEx training sessions presented by subject matter experts in the Legal department, other areas of the business, or outside counsel. Recent CLU topics have covered Intellectual Property, US Patent Reform, Privacy, and Cloud Computing. We also hold an annual Legal "All Hands" meeting, which includes a rich mix of business and legal content.

"Thirdly, Cisco has a corporate membership with the Practising Law Institute (PLI). PLI offers a wealth of seminars and webinars, many of which are accredited."

In terms of the type of CPD activities Mr Caragata finds most beneficial, he says that short breakfast sessions or webinars are easier to fit into his busy schedule. He also usually teaches three or four seminars each year: "I learn a lot when I am preparing for a lecture, and the Law Society lets you multiply the actual teaching time by three times to account for the preparation time (up to a maximum of six hours)." 



Sean Caragata

*"I am fortunate to work in Toronto, where most of the large law firms, the Association of Corporate Counsel, and the Ontario Bar Association offer regular CPD programmes, ranging from full day conferences on a variety of topics to quick one-hour seminars or webinars. These are also a great way to network."*

*Sean Caragata, Canadian in-house lawyer*

## + 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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# ADLSI | CPD

Experts in accessible relevant legal learning

	Content	Presenters	Cost
<p>Wednesday, 28 May 2014 12pm – 1pm Venue: At your desk or on your portable device</p> <p><b>1</b> CPD HOUR</p>	<p><b>WEBINAR: Preparing Clients for Consumer Law Reform</b></p> <p>The majority of changes to consumer law come into effect in June. The changes are intended to strengthen consumer rights and ensure consumer protections are clear and accessible. Penalties will increase, the Commerce Commission will gain new powers and consumer legislation will extend into new areas.</p> <p>This webinar will provide practical guidance so lawyers can prepare clients for key changes, such as:</p> <ul style="list-style-type: none"> <li>• unsubstantiated representations and extended warranties;</li> <li>• business to business contracting out;</li> <li>• goods sold by auction and auctioneer registration;</li> <li>• product safety;</li> <li>• increases in penalties;</li> <li>• the new powers of the Commerce Commission; and</li> <li>• the interface between the Commerce Commission and the FMA.</li> </ul> <p>This is an excellent opportunity to receive practical insights into this legislation from two perspectives: that of a highly experienced prosecutor and that of a senior Commerce Commission lawyer.</p> <p><b>Who should attend?</b></p> <p>This webinar is essential for commercial lawyers, general practitioners who are likely to receive consumer law instructions, in-house lawyers in consumer-related industries and government departments which engage with consumers.</p>	<p><b>Brett Carter</b> Principal Counsel Competition, Commerce Commission</p> <p><b>John Dixon</b> Partner, Meredith Connell</p>	<p><b>Members:</b> \$75 + GST (\$86.25 incl. GST)</p> <p><b>Non Members:</b> \$95.00 + GST (\$109.25 incl. GST)</p>
<p>Wednesday, 18 June 2014 12pm – 1pm Venue: At your desk or on your portable device</p> <p><b>1</b> CPD HOUR</p>	<p><b>Pro bono for professionals: A strategic approach to establishing an effective policy and practice</b></p> <p>Lawyers with an astute approach can make a significant difference to a worthy individual or cause through pro bono services. They can even enhance their own wellbeing, business and profile in the process. This session will inspire and energise those seeking greater satisfaction in their professional lives.</p> <p><b>Learning Outcomes</b></p> <ul style="list-style-type: none"> <li>• Become inspired by a strategic model providing an intelligent approach to pro bono work.</li> <li>• Develop an informed pro bono policy that fits your skill base and altruistic objectives.</li> <li>• Plan how to manage pro bono workloads and risk effectively.</li> <li>• Learn how to derive incidental benefits from your pro bono work, such as an enhanced profile and meeting the expectations of clients, staff and the community.</li> <li>• Understand the workings and dynamics of community law centres and how you might interact with them as part of your pro bono initiative.</li> </ul> <p><b>Who should attend?</b></p> <p>This topic will potentially interest all lawyers.</p> <p><i>In the spirit of giving back to the profession/community, ADLSI is making this webinar available to all lawyers free of charge.</i></p>	<p><b>Ralph Simpson</b> Partner, Bell Gully</p> <p><b>Darryn Aitchison</b> Senior Solicitor, Auckland Community Law Centre</p> <p><b>Chair: David McGregor</b> Barrister &amp; Solicitor</p>	<p><b>Free of charge</b></p>

Calendar of  
UPCOMING  
CPD  
ACTIVITIES

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

**Introducing the ADLSI Companies Suite Precedents I: The Shareholders' Agreement (1 CPD hour)** 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

# 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>Tuesday, 27 May 2014 4pm – 6.15pm Venue: Auckland CBD</p> <p><b>2</b> CPD HOURS</p>	<p><b>The GP's Practice Management Toolkit: Rainmaking, IT, Insurance</b></p> <p>This seminar offers solutions to some of the many pressures facing legal practices today. It focuses on three key aspects of legal practice management; how to make your firm a 'go-to' practice; professional indemnity insurance; and technology.</p> <p>Emily Morrow is a lawyer with extensive experience in advising other lawyers about how to raise their profiles and become more successful. Beverly Massey-George, our second presenter, specialises in PI insurance for lawyers. Don Thomas has practised law since 1971 as a sole practitioner and in small-sized firms. He has successfully embraced IT and made it work for him.</p> <p><b>Learning Outcomes</b></p> <ul style="list-style-type: none"> <li>Learn how to 'rain make' and network most effectively when time and money are limited.</li> <li>Gain a non-partisan understanding of various current issues in professional indemnity insurance: claims-made and run-off insurance; separation of defence costs; merging firms; the pitfalls of certain policies; and retroactive policies.</li> <li>Gain insights into a range of software that can free up time so that lawyers can earn more fees.</li> </ul> <p><b>Who should attend?</b> Sole practitioners, practice managers and partners of small to medium-sized firms.</p>	<p><b>Emily Morrow</b> Executive Consultant</p> <p><b>Beverly Massey-George</b> Principal, Marsh</p> <p><b>Don Thomas</b> Principal, Thomas &amp; Co</p> <p><b>Chair: Tracey Edmonds,</b> Edmonds Law</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>
<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></p> <p>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

**Construction Law Series: Current Issues (2 CPD hours)** 17 June 2014, 4pm – 6.15pm  
**Venue:** Auckland CBD **Presenters:** **Geoff Hardy**, Principal, Madison Hardy; **Stephen Price**, Partner, Minter Ellison Rudd Watts; **Jo-Anne Knight**, Senior Associate, Simpson Grierson; **Dennis Jenkin**, Barrister

**Employment Law Forum: Burning Issues & Cutting Commentary (2 CPD hours)**  
19 June 2014, 4pm – 6.00pm **Venue:** Auckland CBD

+ **New book**

# Relationship Dissolution, 2nd Edition

**Authors:** Bill Atkin, John Caldwell, Geoff Harrison, David Hicks, Bill Patterson and Kirsty Swadling

**Publisher:** LexisNexis

**Format:** Paperback

**ISBN:** 9781927227930

Just published in March this year, *Relationship Dissolution, 2nd Edition* contains all the information a practitioner needs to know when advising a client dealing with a relationship break-up.

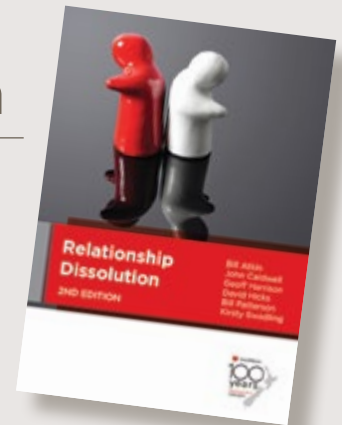
Whether a marriage or de facto relationship, this text contains information on the law relating to:

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- economic disparity;
- debts;

- changes in assets and liabilities after separation;
- division of property on death of one partner;
- maintenance;
- child support;
- international aspects of property;
- child support and spousal maintenance;
- proceedings under the *Property (Relationships) Act 1976*.

The content of this book is taken from the highly popular LexisNexis looseleaf service *Fisher on Matrimonial and Relationship Property and Family Law*.

It contains comprehensive coverage of a wide range of topics and includes the most relevant and recent case law, as well as detailed discussion of the issues and references to other publications, case law and statutes.



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## + 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

## + ADLSI event report

# West Auckland Lawyers' Lunch

**Over 50 practitioners from across West Auckland converged on The Falls Restaurant in Henderson on Wednesday 7 May 2014 for the ADLSI West Auckland Lawyers' Lunch.**

Guests enjoyed an afternoon of mingling and networking with fellow West Auckland practitioners and listened to short presentations from ADLSI and sponsor Actionstep.

Thank you to Actionstep for sponsoring these events.



*Sarah Armstrong, Graeme Jespersen and Prashant Prasad at the West Auckland Lawyers' Lunch.*



*The Falls Restaurant in Henderson was a lovely setting.*



*Lawyers get the opportunity to chat and network over lunch.*

of quality required by the contract.

This raises the issue of the intention of the innocent party and whether it has a genuine interest in having the contract performed. It is clear that if the reinstatement or replacement work will never be done, this counts against the cost of reinstatement measure being "reasonable" (*Bellgrove v Eldridge* (1954) 90 CLR 613).


The innocent party must therefore have a genuine and serious intention of expending any damages on remedying the breach. This is more likely to be the case in construction projects that require a high standard of quality, a particular finish or design, or projects that involve materials that are difficult to substitute.

Whilst advocates of the diminution in value measure may argue that the innocent party is entitled to no more than the cost of the

cheapest remedy for the damage caused, cases such as *Stevenson* and *Altmarloch* encourage the Court to consider awarding the cost of reinstatement (which is usually the more expensive measure) if this gives effect to the purpose of the contract. This requires consideration of the project as a whole.

Arguably, if a contractor breaches a building contract, it cannot subsequently deny liability for remedying that breach because the cost of reinstatement is expensive. The cost of reinstatement would not be necessary if the contractor had fulfilled its obligations in the first instance. The argument that this would result in the apparently inequitable position that the contractor is initially paid a reasonable sum to carry out the work, and is later liable for a considerably greater sum when it fails to carry out that work properly, is countered by an

alternative finding that no contract for building work could ever be effective. The contractor could try its best (or not) and never be liable for the failure of the entire purpose of the contract.

On balance, it would defeat the purpose of contract law (to provide certainty in commercial relationships) to allow contractors to escape their obligations, particularly specialist contractors whose very purpose of engagement is to produce a particular result. The reasonable expectations of the innocent party in having that result achieved point towards cost of reinstatement as the appropriate measure of loss in particular circumstances. Moreover, the contractors' overheads in building contracts would normally include the cost of insurance, which should cover a damages award of cost of reinstatement in the event of breach. 

## + Consultation

# Legal Aid Supervised Provider Policy

**In response to issues raised by legal aid providers, the Ministry of Justice is reviewing the supervised provider policy in the Legal Aid Granting Decisions Manual. As part of this review, responses are being sought to proposed changes to the Legal Aid Supervised Provider Policy.**

In brief, the proposed changes are that:

- Supervision is now more clearly defined.
- The proposed revised policy provides guidance on roles and responsibilities, without being overly prescriptive.
- Instead of listing the "minor matters" that a supervised provider may deal with, the


lead provider will have discretion to decide the level of supervision required for different matters.

- The proposed revised policy introduces a table of "substantive appearances" that require direct supervision, clearly indicating the jurisdictions for each hearing.

For copies of the relevant material (i.e. the current Legal Aid Supervised Provider Policy and the proposed revised policy) and to participate in this consultation, please contact [legalaidsupervised@justice.govt.nz](mailto:legalaidsupervised@justice.govt.nz). Responses should be submitted to that email address by **Wednesday 30 May 2014**, with the subject line "Consultation - Revised

Legal Aid Supervised Provider Policy".

The Ministry is particularly interested in feedback on: how clear the proposed revised policy is; whether it will ensure the provision of good quality legal aid services; any concerns or suggested changes to the proposed revised policy; and preferences for the number of supervised providers that a lead provider may supervise at one time.

Any other queries can be directed to Penny Hoy-Mack, Team Leader, Legal Aid Provider Services on (04) 495 5966 or Alison Hill, General Manager, Provider and Community Services, Ministry of Justice on (04) 495 5920. 

## + Appointments

# A round-up of recent appointments

**Law Commission President The Honourable Justice Sir Grant Hammond has been reappointed as President for a further two years' term from 15 May 2014.**

Sir Grant was appointed a Judge of the High Court in 1992 and of the Court of Appeal in January 2004 before taking up his role as President of the Law Commission in late 2010.

**Anna Rawlings has been appointed to the Commerce Commission, beginning in early June 2014.**

Ms Rawlings is a partner at Minter Ellison Rudd Watts in Auckland. She has a strong background in cross-disciplinary competition and regulatory law with a


practice specialising in industry regulation, consumer protection and marketing law.

"Her appointment is particularly timely given changes to consumer legislation which the Commission will be implementing," says Commerce Minister Craig Foss.

**Shelley Cave and Murray Jack have been reappointed to the Financial Markets Authority (FMA), with Dr Arthur Grimes also moving from associate to member.**

"They have been with the FMA since its establishment in 2011, and I am pleased that the Governor-General concurred with my recommendation for their reappointment," says Commerce Minister Craig Foss.

**Wellington lawyer Michael Stephens has been elected President of the Italian Chamber of Commerce in New Zealand Inc (ICCNZ).**

Incorporated in 2000, ICCNZ promotes bilateral trade, investment and opportunities between New Zealand and Italy and provides information and support to companies in international trade, including with such matters as trade mark registration and litigation. Mr Stephens was previously the organisation's Vice President. He has been the honorary legal adviser to ICCNZ since it was established in 2000 and is the principal of Stephens Lawyers. 

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### + Wills

Please refer to deeds clerk. Please check your records and advise ADLSI if you hold a will or testamentary disposition for any of the following persons. If you do not reply within three weeks it will be assumed that you do not hold or have never held such a document.

Charlie Tewe CLARK, late of 17C Wingrove Road,  
Rotorua, Tutor, Aged 52 (Died 06'03'2014)

Te Raungaiti TAYLOR, late of 2/19 Cleek Road, Mangere  
East, Auckland, Truck Driver, Aged 51 (Died 23'03'2014)

Motu VAOGA aka Peter Joseph VAOGA aka Peter  
VAOGA, late of 128 Cobham Crescent, Kelston,  
Auckland, Aged 58 (Died 20'04'2013)

Kwan Tim Katie WONG, late of 8 Belsomet Place, Golflands,  
Manukau, Auckland, Housewife, Aged 64 (Died 24'03'2014)

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To download the schedule that provides information of whom is on the panel, their phone number and their specialist areas, please visit [www.adls.org.nz](http://www.adls.org.nz).

Please note that this service is completely confidential. The Friends Panel is only designed to provide collegial support and is not intended to dispense free legal advice nor legal service such as professional expertise. ADLSI is not party to any information in relation to the calls made or the subject matter discussed.



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Ref: 1591107

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