ADLSI
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LAWNEWS THIS ISSUE:

Financial institutions' experience of arbitration
ADLSI's new "Newly Suited" young lawyers' Committee
Associate Minister of Justice speaks at ADLSI breakfast in Tauranga

LAWNEWS

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+ *Arbitration*

NEW ICC REPORT ON FINANCIAL INSTITUTIONS AND ARBITRATION OF INTEREST TO NEW ZEALAND

Last week, ADLSI hosted a breakfast for the legal profession in Tauranga at which the Associate Minister of Justice, Hon Simon Bridges, was the guest speaker. Mr Bridges is pictured here with ADLSI President Brian Keene QC and Vice-President Joanna Pidgeon. For more photos from this event, please turn to page 6 within.

On 9 November 2016, the International Chamber of Commerce (ICC) Commission on Arbitration released its multidisciplinary report "Financial Institutions and Arbitration" (the Report). The Report addresses how banks, financial institutions and their clients, who have historically resorted to traditional litigation to resolve disputes arising out of their dealings, can use arbitration for efficient and effective resolution of what can be complex disputes. Lowndes Jordan litigator ***Tim Lindsay*** *was one of the leaders of the Task Force, and comments on why the Report will be of interest to banks and financial institutions in New Zealand.*

Background

Internationally, commercial arbitration is the predominant means by which commercial parties resolve their disputes. Banks and financial institutions have appeared to resist this trend, however, historically reverting to national courts to resolve disputes with their clients and each other. Whether there is aversion to change, "stickiness" of boilerplate dispute resolution clauses in financing documents or misconceptions around the arbitration process, in recent years there has been increasing use of arbitration by financial institutions.

Against this background, the ICC recognised the need to study financial institutions' perceptions and experience of arbitration and how arbitration procedures can be used and adapted to meet their needs.

The Report

The Report's findings and recommendations are based on input from approximately 50 financial institutions and banking counsel, data from 13 arbitral institutions, arbitral awards, relevant literature, and lawyers experienced in banking and finance disputes. The Task Force examined a wide range of banking and financial activities, whether by licensed banks or by funds, including lending activities, derivatives, sovereign lending, regulatory matters, international financing, trade finance, Islamic finance, advisory matters, asset management and interbank disputes. Based on this research, the Report addresses usage of arbitration by financial institutions, the potential benefits of commercial arbitration for banks and financial institutions (e.g. efficiency, expert decision-makers, global enforceability of arbitral awards, confidentiality, finality) and some common misconceptions about the process.

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NEW ICC REPORT ON FINANCIAL INSTITUTIONS AND ARBITRATION OF INTEREST TO NEW ZEALAND

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The Task Force's recommendations

Important from a practical perspective, the Report also includes a series of recommendations banks and financial institutions should consider in tailoring the arbitration procedure to their needs. These include:

- **Enforcement:** If a client and its assets may be located outside New Zealand, then parties may wish to opt for arbitration to benefit from easier enforcement of the arbitral award under the New York Convention.
- **Interim measures:** Under most institutional arbitral rules and domestic arbitration legislation (including the *Arbitration Act 1996*) parties can, prior to the constitution of an arbitral tribunal, seek interim relief from national courts. Once the tribunal is in place, it has the same powers as a court to order interim relief.
- **Summary judgment and dispositive rulings:** While, in this writer's view, arbitral tribunals have the inherent power to award summary judgment and make dispositive rulings (provided they have given all parties the opportunity to be heard), parties can avoid any ambiguity by specifically providing for such procedures in their arbitration agreement. Some arbitral institutions (such as the Singapore International Arbitration Centre or SIAC) have included this express power in their rules.
- **Emergency arbitrators:** Under many institutional arbitration rules, in urgent cases parties can, prior to the constitution of the arbitral tribunal, seek emergency orders for interim relief from an emergency arbitrator. This avoids the need to resort to separate proceedings before the very courts that parties, through their agreement to arbitrate, are trying to avoid. New Zealand recently amended the *Arbitration Act 1996* to confirm that orders made by emergency arbitrators are enforceable in the same way as awards made by arbitral tribunals proper.

Tim Lindsay

Planning for disputes at the time of contracting is essential to managing the risks associated with any contract or transaction, as well as ensuring any disputes that arise are dealt with efficiently.

- **Expertise of arbitrators:** One advantage of arbitration is the ability for parties to appoint the tribunal, or otherwise specify the qualifications and expertise of the arbitrator(s). Familiarity with financial instruments is regularly of concern to banks and financial institutions, particularly in jurisdictions without specialised commercial and/or financial courts (such as New Zealand).
- **Confidentiality:** Arbitration is private, but not necessarily confidential. If confidentiality of the existence and conduct of the arbitral proceedings and the arbitral award is of concern, parties should make specific provision in their arbitration agreement. This is often a relevant consideration for banks and financial institutions, principally for reputation and precedent reasons.
- **Consolidation and joinder:** Many institutional arbitration rules permit consolidation of two or more arbitrations in certain circumstances. Consolidation will also be possible where two or more arbitration agreements themselves (say in related financing documents, such as a loan, a swap and a guarantee) provide expressly for consolidation of disputes arising under two or more of those instruments. Careful drafting is required to ensure that consolidation is in fact possible, practicable and the resulting award is valid (likewise for the possible joinder of third parties).
- **Availability of appeal:** International arbitration rules typically exclude the availability of appeals on questions of fact and law, providing finality to disputes. Given the predominance of international arbitration as the means for resolving cross-border disputes, commercial parties globally have clearly voted with their feet in favouring this approach. In New Zealand domestic arbitrations, however, parties need to opt-out of appeal procedures. Opting-out is to be recommended. Parties considering retaining appeal rights should carefully assess whether such procedures are proportionate and provide the so-called "right answer" sought.
- **Precedent:** Whilst arbitral awards cannot usually be published publicly, some arbitral rules permit anonymised publication. Parties themselves can likewise provide for the same in their arbitration agreement.

As the Report makes clear, these points (and various other important practical matters) need to be considered in the circumstances in each case.

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LAWNEWS

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There is a regular practice of photographing people at collegial events and some of those photos are published in *Law News*. If you are attending such an event and you do not wish to have your photograph taken, please tell the photographer and your request will be respected.

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+ ADLSI Committees update

"Newly Suited" and ready to go – ADLSI's new Committee gets off the ground

With three successful meetings already under its belt, the ADLSI "Newly Suited" Committee for young lawyers is pleased to announce it is fully in the swing of Committee work and is keen for feedback and ideas from the wider newly suited ADLSI membership.

Fittingly, the members of the Committee are all new to the profession, ranging from recent graduates through to those with five years' PQE. Members are drawn from a diverse range of firms and practice areas – from graduate students to junior barristers, and solicitors at large firms and those at small private practices. The Committee is not limited to Auckland and has attracted members from Palmerston North and Hamilton.

The Committee intends to build on the legacy left by the Recently Admitted Members (fondly known as RAMS) Committee to support and mentor lawyers as they enter the profession, providing a monthly forum to raise and discuss matters of concern and interest.

Committee members pictured from left to right: Richard Chen, Theresa von Dadelszen, Alexandra Franks, Alasdair Long, Ellen Harbidge (Convenor), Alex Sheehan, Georgina Woods-Child, Emma Caughey, Tom Gilchrist and Lucy Carruthers. Not pictured: Alexandra Smith, Holly Swadel and Greg Thomas.

Committee members

The Committee is being convened by Ellen Harbidge of Smith & Partners (who is also a member of ADLSI's Family Law Committee). Other current Committee members are:

- Lucy Carruthers (Buddle Findlay);
- Emma Caughey (Lawler & Co);
- Richard Chen (Hesketh Henry);
- Alexandra Franks (Junior barrister to Andrew Brown QC);
- Tom Gilchrist (McVeagh Fleming);
- Alasdair Long (Knight Coldicutt);
- Alex Sheehan (Pidgeon Law);
- Alexandra Smith (Cooper Rapley Lawyers, Palmerston North);
- Holly Swadel (Lane Neave);
- Greg Thomas (Harkness Henry, Hamilton);
- Theresa von Dadelszen (Langton Hudson Butcher); and
- Georgina Woods-Child (formerly of Meredith Connell and currently studying towards her PhD).

Look out for upcoming events …

Committee members intend to promote and create opportunities and events to foster networking, mentoring and collegiality, and also hope to assist with existing ADLSI programmes (such as the Young Lawyer & Student Buddy Programme and ADLSI's law student work experience schemes).

Excitingly, the Committee is currently making plans for a "Meet the QCs" event to complement ADLSI's very popular "Meet the Judiciary" event.

We want to hear from you!

Another key focus for the Committee is the encouragement and facilitation of discussion and involvement from other lawyers who are new to the profession so, with this in mind, it invites all ideas and suggestions from the newly-admitted all around New Zealand.

In particular, the Committee would be interested in any feedback on topics of interest that it could address in a speakers' series or panel discussion, and any professional issues on which newly-admitted lawyers would like information and guidance.

If you have feedback or suggestions, or would like further information on the Committee, please contact Jodi Libbey at jodi.libbey@adls.org.nz. LN

+ Trusts, notice to practitioners

Submissions sought on draft Trusts Bill

Lawyers are being encouraged to have their say on a draft Trusts Bill, which will update the law governing trusts in New Zealand.

The Ministry of Justice is currently conducting consultation on the draft Bill, which generally reflects the recommendations from the Law Commission's 2013 report into trust law.

The draft Bill responds to problems with the current legal framework, including that it is complex, hard to navigate and outdated.

The Bill largely restates existing law (from the *Trustee Act 1956* and common law) in plain language, rather than introducing fundamental changes. The proposed reforms include:

- a description of a trust's key features;
- a statement of mandatory and default trustee duties;
- rules about how trustees should manage and provide information to beneficiaries;
- flexible trustee powers;
- provisions to make trust administration more cost-effective (such as clearer processes for varying, resettling and revoking trusts); and
- more options for removing and appointing trustees without having to go to court.

Feedback will help inform the final Bill before it is introduced into Parliament next year.

The draft Bill, a consultation document and information about how to make a submission are available at https://consultations.justice.govt.nz/policy/trusts-bill-exposure-draft. Submissions close at 5pm on Wednesday 21 December. LN

+ Criminal justice, overseas perspectives

Canada's "zombie laws" finally bite

By Peter Sankoff, Professor of Law, University of Alberta, Canada

The recent Travis Vader murder verdict offered a vivid illustration of some of the best and worst features of Canadian criminal justice.

In Germany, on a research sabbatical from the University of Alberta, I marvelled at the fact that for the first time I was able to watch a Canadian murder decision delivered online, in real time. The verdict was read by Judge Denny Thomas, who in allowing cameras into the courtroom showed a keen awareness of the trial's importance to Albertans and a sensitivity to Canadians' growing desire to obtain a better understanding of the workings of the justice system.

But my excitement gave way to shock, followed quickly by horror, as I heard the judge declare Vader guilty of second-degree murder. It wasn't the verdict itself that shook me, as the conclusion certainly seemed possible in light of the evidence. What made my jaw drop was that Judge Thomas convicted Vader of murder under section 230 of the Criminal Code. That section provides that if a person commits a killing during the course of another crime — robbery in this case — and meets a few other requirements, what would otherwise be the lesser offence of manslaughter can be elevated to murder, which packs a much heavier penalty.

Vader's actions, as described by Judge Thomas, certainly seemed to fit the bill. But there was just one insurmountable problem: section 230 no longer exists. On September 13 1990, almost exactly 26 years ago to the day, the Supreme Court of Canada struck down the clause for being in conflict with the Charter of Rights and Freedoms. Why then would the experienced veteran of the Alberta court have cited it at all?

The only explanation I can think of is that he accidentally excerpted it directly from the online version of the Criminal Code. After all, the Supreme Court can strike down a law, but it has no legislative power to repeal it. Since Parliament has never seen fit to do so, section 230 has been faithfully reproduced in every physical and online version of the code since 1990. Though legally inert, it sits on the books like some sort of "zombie" clause, waiting to trap the unfortunate or unwary. And in this case it struck, jeopardising a gruelling, complex murder trial in the process. To explain the magnitude of the judge's error as succinctly as I can: it is impossible to convict someone of a crime that doesn't exist.

The ultimate result of the *Vader* case remains unclear, but I do not believe the murder conviction will stand. A best-case scenario for the prosecution at this stage is a manslaughter conviction or a new trial for murder at some point. Inevitably, there will be multiple rounds of legal wrangling over the impact of this error — an error so basic and fundamental that I'm still struggling to believe that it actually happened.

Canadian criminal justice has many positive elements. But it also has its flaws, and the state of the Criminal Code is at the top of the list. It is an open secret within the criminal justice community that the current version of the code is a bloated, unwieldy beast littered with at least 20 "zombie clauses", archaic language and an array of confusing and contradictory provisions. Canada remains the only major common law country without a devoted law reform commission tasked with updating and modernising its Code, and we are increasingly paying the price for this failure.

Undoubtedly, fingers will be pointed at Judge Thomas, whose brave decision to televise the reading of the verdict rebounded so unfortunately. Without question, he must shoulder some of the blame, as this should not have happened. Every criminal law textbook and annotated Criminal Code makes plain in bold text that section 230, despite its continued appearance, no longer has any force or effect.

But the judge does not bear all of the responsibility here. After all, when a victim falls prey to a zombie on television or in the movies, we might start by chiding the person for having blundered into a herd of mindless, stumbling creatures. At some point however, focus has to turn to the zombies themselves, or, more importantly, to whatever created them.

In this case, that's the federal government, which also bears responsibility for this debacle. For decades, a united chorus of academics, judges and lawyers has warned Parliament that its failure to eradicate the detritus of constitutional challenges past from the Criminal Code would eventually have consequences. Just six years ago, the British Columbia Court of Appeal considered whether to order a new murder trial after the trial judge left a written copy of a related "zombie clause" with the jury, but made up for it through impeccable oral instructions on the law.

Ultimately deciding that a new trial was unnecessary, Justice Edward Chiasson nonetheless issued a prescient warning: "I cannot leave these reasons without wondering why steps have not been taken to amend the code to conform to the now 20-year-old decision of the Supreme Court of Canada. The law that is recorded in the statute, on which every citizen is entitled to rely, is not the law of the land. An issue such as arose in this case should not occur. It creates the risk of a miscarriage of justice and the potential need to incur significant costs addressing an error in an appellate court with the possible costs of a new trial, assuming one is practical."

Canadian criminal justice has many positive elements. But it also has its flaws, and the state of the Criminal Code is at the top of the list. It is an open secret within the criminal justice community that the current version of the code is a bloated, unwieldy beast littered with at least 20 "zombie clauses", archaic language and an array of confusing and contradictory provisions. Canada remains the only major common law country without a devoted law reform commission tasked with updating and modernising its Code, and we are increasingly paying the price for this failure.

Every federal government of the past quarter-century has come into power promising reforms

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+ *Law and technology*

Voice biometrics and banks – will your money be safe?

By Lloyd Gallagher, Director/Arbitrator/ Mediator, Gallagher & Co Consultants Ltd

Speaker recognition (commonly called "voice biometrics") offers fast, convenient security, but how secure is it?

Scammers today are using a range of clever techniques to gain access to information, including voice recording using Voice over Internet Protocol (VOIP) technology (also known as "voice phishing"), to gain access to personal information. This form of "sampling technology" is likely to see a rise in scammers overrunning voice biometric security using your actual voice and information in playback in order to fool banks.

Despite this, banks are moving quickly to implement voice biometrics to verify the identity of a caller when accessing bank-related information. Banks advise that this new security feature is more secure than fingerprints, but serious concerns exist due to the increase of modern technological techniques such as those mentioned above.

Banks appear to be making the move to voice biometrics largely based on the assumption that everyone's voice is unique, but research on this is based only on a small sample (as most quantitative research is), leaving open the question as to whether everyone actually does have a unique voice signature. Further, these assumptions have been developed from a misguided idea that the sample is clean, pure and not open to interference. However, the FBI notes that voice recognition is not perfect and should be only one of the steps in a multiple-step security procedure (see Further reading section below).

The ability of scammers to use VOIP technology to record information gives rise to two problems. First, it allows scammers, even with low technical expertise, to simply replay the recording for bank authentication and thereby gain access. Second, voice recordings are able to be manipulated by more sophisticated scammers

Lloyd Gallagher

in a reproduction of their choice and thus to fool all manner of authentication systems.

The dangers involved in banks and other institutions using new voice biometrics technologies are clear, but we are only just beginning to understand how much harm can be caused when the technology is misappropriated. So why have banks been so quick to accept it as the only form of phone authentication?

In an article from the BBC (see further reading section below), the CEO of Barclays Bank, Steven Cooper, claimed it was to reduce frustration of forgetting passwords and the ability to speed up the process. Further, James Daley, founder of consumer website Fairer Finance, said anything that speeds up the security process would be welcomed by customers. But would this be true if customers were aware of the potential security flaws?

Legally, questions arise as to liability if things go wrong with this type of technology. UK banks appear to have considered this, making comments such as: "Banks will need to be ready to reassure people that this new technology is genuinely secure. New security processes can make customers nervous – and it is important that this does not lead to any loss of confidence in bank security" and "In reality, consumers should have little to fear, as banks are still liable for any fraud unless they can prove that a customer was negligent. So if this technology does lead to any increase in fraud, it will be the banks that have to pick up the bill, and not customers" (see Further reading section below).

But when push comes to shove, will banks really accept such liability? The onus will be on the customer to prove it was not he or she who authenticated the call. The burden of evidence in this case will be high and is likely to rest on questions of location, activity at the time of the call and any witness to the customer's activities. I see significant issues with the burden of proof and the difficulties with proving the authentication was forged.

These issues do not appear to have been given full consideration. New Zealand banks would do well to think carefully about how they adopt voice recognition authentication methods so as to minimise risk for customers.

Further reading:

- *http://www.actionfraud.police.uk/news/alert-fraudsters-are-recording-phone-calls-and-gaining-access-to-victim-bank-accounts-mar16*
- *http://www.newsweek.com/science-voice-recognition-fingerprints-barcleys-511561*
- *http://www.dailymail.co.uk/sciencetech/article-3736338/Is-human-voice-fingerprint-really-unique-Experts-suggest-features-not-reliable-overriding-court-evidence-security-systems.html*
- *https://www.fbi.gov/services/cjis/fingerprints-and-other-biometrics/biometric-center-of-excellence/modalities*
- *https://www.fbi.gov/file-repository/about-us-cjis-fingerprints_biometrics-biometric-center-of-excellences-speaker-recognition.pdf/view*
- *http://www.biometricupdate.com/201509/uab-researchers-find-that-automated-voice-imitation-can-spoof-voice-authentication-systems*
- *www.bbc.com/news/business-36939709* LN

+ *Update from ADLSI's Environment and Resource Management Law Committee*

Auckland Unitary Plan update

Following Auckland Council's decision on the proposed Auckland Unitary Plan (AUP), over 100 appeals have been lodged with either the High Court or Environment Court.

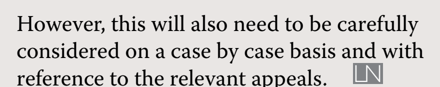
The High Court has scheduled priority hearings in November and February for certain matters where it considers a High Court decision will assist the Environment Court appeal process.

Those parts of the AUP that are under appeal are not currently operative, meaning that certain activities will still require consent under the legacy District and Regional Plans, as well as under the AUP.

Those provisions which are not subject to challenge have now been made operative as of 8am on 15 November 2016 (http://unitaryplan.aucklandcouncil.govt.nz/pages/plan/Book.aspx?exhibit=AucklandUnitaryPlan_Print).

Council has annotated the AUP Operative in Part to indicate its assessment of which provisions are subject to appeal and therefore not operative.

Those annotations are a good starting point for assessing which activities may require consent under more than one plan.



However, this will also need to be carefully considered on a case by case basis and with reference to the relevant appeals. LN

+ ADLSI event review

Breakfast in Tauranga with the Associate Minister of Justice

Guest speaker at ADLSI's recent breakfast for the profession at The Tauranga Club in Tauranga, the Associate Minister of Justice, Hon Simon Bridges, treated attendees to some informative, and at times entertaining, insights into his life in politics and some of the areas he is working on at present.

As a practising lawyer prior to entering the world of politics, Mr Bridges is well able to understand and relate to the issues facing the profession. The Minister noted the strong bar which exists in Tauranga and also acknowledged the benefits (both for lawyers and for the justice sector more broadly) of ADLSI's efforts in tackling important issues, such as the recent work of Joanna Pidgeon and others in relation to Unit Titles.

Mr Bridges said that while his transition from lawyer to politician has involved some changes and the learning of new skills, there are still many similarities with his past life in the law, such as the need to pay attention to detail, the element of public service and the ability to quickly "master the brief" (which has been especially crucial in his transport portfolio).

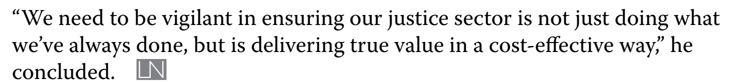
As Associate Justice Minister, Mr Bridges works closely with the Minister of Justice, Hon Amy Adams, and has been particularly involved with areas such as anti-money laundering, community law centres and the legal aid regime.

Mr Bridges also handles things such as the appointment of Justices of the Peace, and encouraged lawyers from New Zealand's provinces to come forward (or nominate others) for these kinds of non-judicial and quasi-judicial roles, as well as from bigger centres such as Auckland and Wellington.

The Minister spent some time reflecting on the question of access to justice, particularly for those lower on the socio-economic scale – a topic which has been occupying the legal profession over recent times. Mr Bridges described access to justice as "a hallmark of how we judge a society" and noted that the Government has put additional funding into the legal aid system to assist those who most need it. The aim has been to try and make the service sustainable, and much consideration has also been given to the criminal fees schedule and civil legal aid eligibility rules.

Mr Bridges acknowledged the huge amount of paper and work generated by the courts these days, but encouraged the profession to constantly re-evaluate the way it does things, such as giving consideration to different ways of billing (e.g. on the basis of value and focussing on the most important issues with a view to what level of costs a case will bear).

"We need to be vigilant in ensuring our justice sector is not just doing what we've always done, but is delivering true value in a cost-effective way," he concluded.



Associate Minister of Justice, Hon Simon Bridges

Gregory Hollister-Jones, Brian Keene QC and Gerald McArthur

Helen Young, his Honour Judge Stephen Coyle and Sue Keppel

Tina McLennan and Will McKenzie

Auckland-wide Legal Personnel salary survey 2016

By Judith Eller, Director, Legal Personnel

The Auckland-wide Legal Personnel salary survey is out now. Each year, Legal Personnel surveys mid-tier, small firms through to sole practitioners, from in the central city and out to the wider Auckland area.

The survey also delves into how firms are finding this market when it comes to attracting and retaining talent.

This year, 53 firms participated in the survey, with 462 individuals, 220 solicitors and 242 legal support salaries.

Staffing

Some highlights from this year's survey included the following:

- The majority of firms are looking to retain or grow the number of people they employ.
- 52% of firms were looking to keep the number of solicitors employed and 48% of firms were looking to increase the number employed.
- 70% of firms were looking to keep the same support staff numbers and 26% were looking to increase the number employed.
- 54% of firms indicated a low to no turnover of professional people with 34% indicating an average turnover.
- 68% of firms indicated a low to no turnover of legal support people with 28% indicating an average turnover.

No firm indicated that they were looking to decrease solicitor numbers and only a very small 4% were looking to decrease legal support numbers employed. It is a very positive outlook for both firms and people employed with firms looking to grow overall numbers employed. A measure of people's "happiness in their work" is the turnover and with a very low level of turnover, although there is a marginally higher interest from solicitors to move this year, by and large firms and people have got it right – which is good news!

With law firms still looking to recruit, the question that comes to mind is – where is the next talented individual going to come from? There is no doubt a shortage of good calibre individuals in most areas of law now, be it legal support or solicitors. It is particularly tight in the three to five/six years of experience level for solicitors. The most effective and cost-effective level of recruitment for many firms is the three to five/six years of experience segment because, at that level, solicitors know enough to do the job and, cost-wise, the salary level fits the work.

Traditional career tracks, as we have known them, for many positions are being eroded. An example of this is the legal secretarial position. There is very little training of new potential legal secretaries. The career stepping stones of office assistant, reception and search clerk are all in decline and technology is changing the nature of the way in which legal secretaries work. There has been a suggestion that a new role may be emerging known as a "legal assistant".

Judith Eller

The increase in the recruitment of graduates that we experienced last year has continued into this year. An interesting development is the interest of firms to recruit graduates into legal secretarial roles with a clear path, most times, to a solicitor's position in 12 months' time. In fact, the move through has often been as quick as three months.

The demand for property solicitors both residential and commercial, specialists in trusts and private client law, corporate commercial law, banking and finance, resource management, construction (front- and back-end) and employment law remains very steady to high. Positions in family and criminal law are becoming less evident in law firms as the changes by government with the PDS and the focus on taking the lawyer out of family law have an impact. There are very few career track opportunities for younger solicitors in these areas in private practice.

More so in this market, both people looking for that next role and the law firms recruiting are putting an emphasis on the need to find that "right fit". Both are prepared to take their time to get it right. Employment branding is well established now around a firm's reputation in the market as "a good place to work".

KiwiSaver

The majority of firms are paying the KiwiSaver employer contribution in addition to the base salary. The candidate market is sensitive to how KiwiSaver is presented at the point of offering a position. They prefer the offer to be presented as salary plus KiwiSaver and view less favourably an offer that is inclusive of KiwiSaver.

So, if you were to give a salary increase, what would it be?

This year we asked the above question around salary increases. Most firms are looking at, or have given, an increase of up to 3%, closely followed by 4-5%. There is a strong correlation between inflation and salaries. With inflation running at 0.4%, a 3% increase looks good. We are noticing that, for stand-out candidates – those who come with great credentials and reputation – there is potentially more salary to gain on a move.

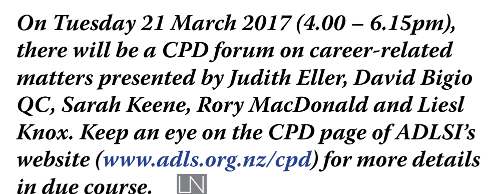
So what are the benefits and incentives?

The survey has indicated that benefits are increasingly being used in addition to salaries to attract and retain people. Over half of the respondents reported including incentives in solicitors' and support staff's packages. Benefits being given to employees include bonus schemes, medical insurance subsidies, 'flu vaccines, supporting further study, mobile phones and plans, carparks, gym subsidies, newspaper subscriptions, travel insurance, company vehicles, home internet provision and laptops or tablets. Salaried partners' packages included (in addition to the above) wine allowances, additional annual leave, Koru Club membership, PI insurance and covering vehicle expenses.

The market continues in its positive outlook to an increase in the flow of work and opportunities for those who want to work. Contracting has been identified as an area of work that is becoming more favourable for people looking for opportunities who want to work in a flexible way. Firms are showing more interest in engaging legal contractors to cover resourcing in different teams and areas of law.

With developments in technology, every aspect of legal work is constantly transforming the way it is done and delivered to clients. There are some strong trends developing in the way law is practised that will have a significant impact on the way we will work in the future.

A copy of the salary survey is available at a special price of $75 plus GST (50% saving) by emailing info@legalpersonnel.co.nz.


On Tuesday 21 March 2017 (4.00 – 6.15pm), there will be a CPD forum on career-related matters presented by Judith Eller, David Bigio QC, Sarah Keene, Rory MacDonald and Liesl Knox. Keep an eye on the CPD page of ADLSI's website (www.adls.org.nz/cpd) for more details in due course. LN

Selected CPD

ADLSI CPD

To view all ADLSI CPD & register: www.adls.org.nz/cpd

Email us: cpd@adls.org.nz | Phone us: 09 303 5278

Featured CPD

Thursday
8 December 2016
12pm – 1pm

1 CPD HOUR

Webinar

Self-Represented Persons & Community Groups in the Environment Court

With increasing numbers of self-represented persons and community groups appearing in the Environment Court, having diverse (and potentially conflicting) interests and often limited budgets, accommodating and managing them is becoming increasingly important. This webinar will provide judicial and counsel perspectives and insights.

Learning Outcomes in relation to self-represented persons and community groups in the Environment Court:

- Gain insights into the various challenges encountered by the judiciary and by counsel when dealing with self-represented persons and community groups, including balancing the interests at play and making good use of funding.
- Become apprised of the practical steps counsel can take to promote their clients' interests while facilitating the proper administration of justice and enhancing the Court's efficiency.

Who should attend?

Environment & Resource Managemanmt lawyers as well as general practitioners who do this work. Self-represented persons and members of NGOs and community groups may also benefit from attending.

Presenters: **His Honour Judge Newhook**; **Rob Enright**, Barrister

Chair & Commentator: **John Burns**, Consultant, Kirkland Morrison O'Callahan & Ho Limited

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Wednesday
15 February 2017
12pm – 1pm

1 CPD HOUR

Webinar

Business Sales – Insurance Risks Refresher

Insurance is an important but often poorly understood consideration in the sale and purchase of a business. Concentrating on sale of assets transactions, this webinar will take a pragmatic 'whole of life' approach and focus on several key insurance points.

Learning Outcomes in respect of insurance risks in the business sale and purchase (assets) context:

- Gain a better understanding of the role of business and insurance brokers, the types of cover businesses often hold, and the impact of business type on applicable insurances.
- From the vendor's perspective, improve your knowledge of how insurance issues can affect a sale, and the risks that can arise after settlement which may be protected by insurance.
- From the purchaser's perspective, benefit from a deeper comprehension of insurance issues to consider during due diligence, and the safeguards available whether in the agreement or elsewhere.

Who should attend?

Commercial (especially M&A) lawyers, litigators, insurance lawyers and general practitioners who act in the sale/purchase of businesses (especially at junior to intermediate level but those more experienced will find this useful as a refresher). Accountants, financial advisers and business brokers would also benefit from attending.

Presenters: **Chris Lee**, Partner, Hesketh Henry; **Nick Gillies**, Partner, Hesketh Henry

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Wednesday
22 February 2017
12pm – 1pm

1 CPD HOUR

Webinar

In-House Counsel – Who Is Your New Client?

The range of entities which In-House Counsel can advise and represent has widened under the Shared Services Rule Change, but it is still important for them to take care. How does the change affect you and for whom can you now provide services?

Learning Outcomes:

- Gain a better understanding of the Shared Services Rule Change.
- Learn more about the impact of the Shared Services Rule Change and how to implement the changes.
- Receive practical insights into how the Shared Services Rule Change affects Crown entities as well as the private sector.
- Gain insight into how the concept of professional privilege affects In-House Counsel.

Who should attend?

Public sector lawyers working in Government departments, and Crown entities and agencies, local Government and regulatory agencies as well as private sector legal counsel working in both public and private companies.

Presenters: **Saar Cohen-Ronen**, Crown Counsel; **John Blair**, General Counsel, Air New Zealand Ltd

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Thursday
23 February 2017
4pm – 6.15pm

2 CPD HOURS

Seminar

Live stream

Representing Refugees in the Immigration and Protection Tribunal

Representing refugees at the Immigration and Protection Tribunal is complex and demanding and these appeals require a different skill-set from other matters before the Tribunal. This seminar will provide practical guidance on how to best represent a client from initial meetings through to appearing at a hearing.

Learning Outcomes:

- Learn more about what needs to be discussed at interviews with clients to prepare their cases and how to deal with the vulnerabilities that often apply in refugee situations.
- Gain insights into case preparation; how to prepare for pre-hearing telephone conferences including what evidence may be relevant and the importance of supporting documentation, the availability of witnesses and the use of experts.
- Receive guidance on the preparation of clients for the hearing itself, how to best present your client's case and the importance of written submissions and oral closing submissions.

Presenters: **John McBride**, Barrister; **Deborah Manning**, Barrister

Chair: **Martin Treadwell**, Deputy Chair, Immigration and Protection Tribunal

CPD In Brief

Property Law Half-Day Conference 2017 – 4 CPD hrs
Tuesday 21 February 2017, 12.30pm – 5pm

The Half-Day Conference will again provide practically focused sessions on a range of pertinent and interesting property law topics presented by experts in their fields. It will be of value to all those practising in the area of property law.

Presenters: **Justin March**, Partner, DLA Piper; **Michelle Hill**, Senior Associate, Kensington Swan; **Thomas Gibbons**, Director, McCaw Lewis; **Ian Jespersen**, Senior Associate, Burton Partners; **Eugen Trombitas**, Partner, PwC

Chair: **Joanna Pidgeon**, Principal, Pidgeon Law

Practical Commentary on Running Employment Cases – 2 CPD hrs
Thursday 16 March 2017, 4pm – 6.15pm

Running employment requires a range of litigation skills given that practitioners may appear in both the Employment Relations Authority and the Employment Court and that each of these has their own rules and approaches. This seminar, presented by an Employment Court Judge, Chief of the ERA and a barrister specialising in Employment Law, will provide practical insights and advice on representing your client in court and tips on the advocacy skills necessary to obtain the best outcome for them.

Presenters: **Her Honour Judge Inglis**, Employment Court; **James Crichton**, Chief of the Employment Relations Authority; **Catherine Stewart**, Barrister

Running an Effective Jury Trial – 6.75 CPD HOURS – Early bird pricing ends 26 February
Saturday 18 March 2017, 9am – 5pm

Jury trials require a specific set of advocacy skills. Given the serious nature of cases heard in a jury trial setting, 'getting it wrong' can have significant implications for the accused – and for defence counsel. Aptitude in preparation and presentation is key.

During this intensive day and in a collaborative environment, attendees will receive guidance on jury trial advocacy skills, through presentations, demonstrations and commentary, from five highly experienced and well-regarded presenters. Attendees will also receive useful materials which will reinforce the practical application of the content.

Presenters: **His Honour Judge Sharp**; **Paul Dacre QC**; **Marie Dyhrberg QC**; **Steve Bonnar QC**; **Simon Lance**, Barrister

Chair: **His Honour Judge Sharp**

CPD On Demand

When an IP Disaster Strikes: Managing Intellectual Property Disputes – 1 CPD hr

Infringement of a client's intellectual property rights often requires immediate action. The client could face significant loss or have its entire business threatened if delays occur. The lawyer is often faced with a number of possible causes of action and procedural options. Making the best choices at the outset can strongly enhance the prospects of a favourable outcome for the client, whether through a negotiated resolution or litigation. This On Demand webinar will provide guidance in this important area.

Presenter: **Kevin Glover**, Barrister, Shortland Chambers

To Pay or Not to Pay? Practical Guidance on the Residential Land Withholding Tax – 1.25 CPD hrs

The new Residential Land Withholding Tax which came into effect on 1 July 2016 will present a number challenges to property lawyers and conveyancers. This On Demand webinar, presented by a technical advisor from the IRD, a taxation expert and a senior property lawyer, provides timely guidance on the effect of the Act on property transactions and suggests practical solutions to common problems that may arise.

Presenters: **Keiran Kennedy**, Senior Technical Advisor Policy & Strategy, Inland Revenue; **Joanna Pidgeon**, Principal, Pidgeon Law; **Tony Wilkinson**, Partner, Buddle Findlay

CPD Pricing

Delivery Method	Member Pricing	Non-Member Pricing
Webinar (1 hr)	$75.00 + GST (= $86.25 incl. GST)	$95.00 + GST (= $109.25 incl. GST)
Seminar (in person)	$125.00 + GST (= $143.75 incl. GST)	$180.00 + GST (= $207.00 incl. GST)
Seminar (live stream)	$125.00 + GST (= $143.75 incl. GST)	$180.00 + GST (= $207.00 incl. GST)
On Demand (1-hour recording)	$85.00 + GST (= $97.75 incl. GST)	$110.00 + GST (= $126.50 incl. GST)
On Demand (2-hour recording)	$125.00 + GST (= $143.75 incl. GST)	$180.00 + GST (= $207.00 incl. GST)

For group bookings for webinars & CPD On Demand, see the ADLSI website at: www.adls.org.nz/cpd/help-and-faqs/group-bookings/.

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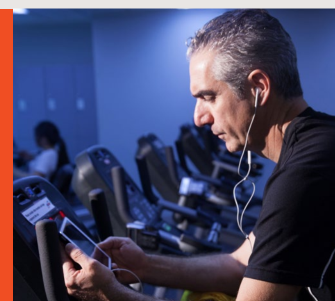


Continued from page 2, "New ICC report on financial institutions and arbitration of interest to New Zealand"

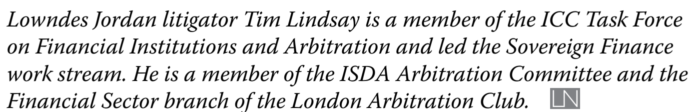
Careful drafting of arbitration agreements is critical

Planning for disputes at the time of contracting is essential to managing the risks associated with any contract or transaction, as well as ensuring any disputes that arise are dealt with efficiently.

The Report, the International Swaps and Derivatives Association (ISDA) Arbitration Guide and the work of P.R.I.M.E. Finance (the Panel of Recognized Market Experts in Finance) and the London Arbitration Club provide an excellent toolbox for in-house counsel at banks and financial institutions in assessing whether arbitration is the appropriate form of dispute resolution for any given transaction. However, in each case careful drafting of arbitration agreements is critical. Particular care is required around complexities common to domestic and international banking and finance, such as expertise and appointment of the arbitral tribunal, multi-party and multi-contract scenarios, joinder of third parties, consolidation of disputes arising under related financing documents (e.g. loans, swaps, guarantees), emergency arbitrator powers and interim relief, dispositive motions and summary judgment, confidentiality, costs, appellate procedures etc.

Whilst receiving advice on these matters can be critical to the enforcement of rights, it often only takes a quick phone call or email to ensure an arbitration agreement is drafted correctly.

Lowndes Jordan litigator Tim Lindsay is a member of the ICC Task Force on Financial Institutions and Arbitration and led the Sovereign Finance work stream. He is a member of the ISDA Arbitration Committee and the Financial Sector branch of the London Arbitration Club. LN



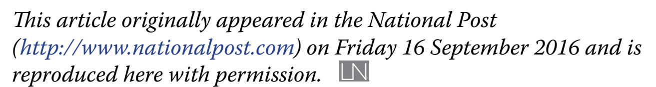
Continued from page 4, "Canada's "zombie laws" finally bite"

to make our criminal justice system better. Not one has undertaken the most non-controversial reform one could imagine: repealing provisions of the code that are no longer legal.

This is 2016 and anyone can easily locate the law with a swish of the finger. Why should any version of this law contain prohibitions that have been invalidated by our highest court? Surely, Parliament can do more to repair our most important criminal law statute, and killing off dead clauses would be an obvious place to start. Even better would be a dedicated effort to revamping the entire code — a process that hasn't occurred since 1955.

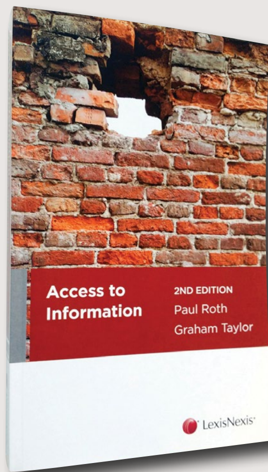
The *Vader* verdict reveals the perils of failing to give our criminal justice framework the care and attention it needs. When the stakes are at their highest, it is essential that the possibility for error be reduced by making the applicable law as clear as it can be. After all, as any horror genre fan knows, when zombies start to lurk in your backyard, it's the entire community that ultimately ends up suffering.

This article originally appeared in the National Post (http://www.nationalpost.com) on Friday 16 September 2016 and is reproduced here with permission. LN



+ New book

Access to Information, 2nd Edition



Authors: Paul Roth and Graham Taylor

This book provides comprehensive guidance on the access to information regime in New Zealand, including access to information under the *Official Information Act 1982*, the *Local Government Official Information and Meetings Act 1987* and the *Privacy Act 1993*. The authors aim to provide clear, concise and practical guidance on how to respond appropriately to information requests.

This second edition covers the general principles and concepts of the access to information regime, practice and procedure in seeking access to information, justifications for withholding information, reasons for decisions, correction of personal information and remedies for denying access.

The book also includes legislative extracts, checklists and comparative tables to assist those dealing with the access to information regime in New Zealand.

Price: $95.65 plus GST ($110.00 incl. GST)*

Price for ADLSI Members: $86.09 plus GST ($99.00 incl. GST)*

(+ Postage and packaging)*

To purchase this book, please visit www.adls.org.nz; alternatively, contact the ADLSI bookstore by phone: 09 306 5740, fax: 09 306 5741 or email: thestore@adls.org.nz.

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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.

Patricia BEVERLEY, Late of St Andrews Hospital, 207 Riddell Road, Glendowie, Auckland, Aged 84 (Died 24'08'16)

Rewi Arthur BROWNE, Late of Te Puru, Thames, Aged 68 (Died 12'09'2016)

Iain Alexander Angus NICOLL, Late of 20A South Lynn Road, Titirangi, Auckland, Aged 44 (Died 02'11'16)

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If you wish to apply for this position please email melanie.quintal@mcelroys.co.nz

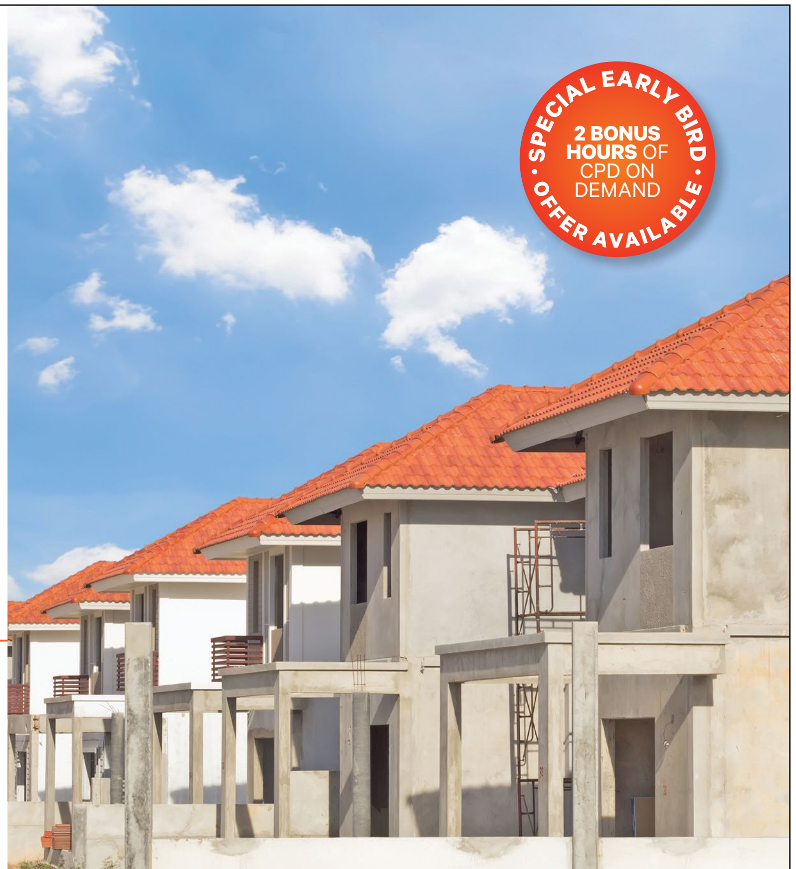
Applications should include a covering letter detailing relevant experience, CV and academic transcripts.

McELROYS
LITIGATION LAWYERS

Property Law Half-Day Conference

4 CPD HOURS

Tuesday, 21 February 2017, 12.30pm - 5pm
Ellerslie Event Centre, Auckland
Also available via live stream



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For more information contact Kathryn Cross on (09) 354 3543 or submit your CV and cover letter in strictest confidence to kathryn.cross@artemisnz.com

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- **Auckland CBD location.**

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If you like solving problems and enjoy working in a collaborative team environment, then we would love to hear from you.

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- Relevant experience in the Employment Relations Authority Court.
- A good 'people person' with the ability and empathy to interact confidently with a range of clients.
- A team player who has a genuine interest in law and enjoys helping people.

This is an excellent role for someone who enjoys an interesting range of work with the support of our specialist litigation, business law and property teams. We have a highly engaged team of talented professionals and offer a collaborative and supportive environment.

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