



# **NEW ZEALAND LAW SOCIETY**

**108th Annual Report  
& Statement of Accounts**  
*for the year ended 30 November 2004*

# New Zealand Law Society Council & Board 2004-2005



*Back row, from left: Ron Pol (CLANZ), David Clarke (Wellington DLS Executive Director), Jonathan Temm (NZLS Board), Stuart Webster (NZLS Vice-President), Frank Freeman (Nelson), Stuart Rose (NZLS Board), Rob Goldsbury (Wanganui), John Marshall (NZLS Vice-President), Alan Ritchie (NZLS Executive Director), John Brandts-Giesen (NZLS Board), Raynor Asher QC (NZLS Vice-President), Benedict Ryan (Waikato Bay of Plenty DLS Executive Officer).*

*Middle row, from left: Emma Smith (Taranaki), Sue Styants (NZLS Board), Pam Davidson (Wellington), Denys Barry (Gisborne), Pamela Andrews (Wellington), Len Andersen (Otago), Margaret Wellwood (for Chris Moore, Property Law Section), Keith Berman (Auckland), Kate Davenport (NZLS Board), Stephen Bryers (Auckland), Kevin Kilgour (NZLS Board), Geoff Brodie (Canterbury).*

*Front row, from left: Jacqui Gray (NZLS Board), Chris Corry (Wellington), Brian Fletcher (Marlborough), John Young (for Richard Russell, Southland), Chris Darlow (NZLS President), Tom Weston QC (Canterbury), Bill Wilson QC (NZLS Board), Warwick Deuchrass (NZLS Vice-President), David Burns (Family Law Section Chair).*

*Absent: Liz Jamieson (Waikato Bay of Plenty), Chris Moore (Property Law Section Chair), Gordon Paine (Manawatu), Warren Pyke (Waikato Bay of Plenty), Richard Russell (Southland), Anne Stevens (Otago), Tony Sullivan (Westland).*

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President Chris Darlow

Large international law conferences may not be to everyone's liking but I must say there was something special about being part of the gathering of thousands of participants at the International Bar Association's conference in Auckland in October 2004.

The conference spotlight was rightly on the regulation of lawyers and, particularly, on concern over the erosion of **lawyer regulation** by lawyers themselves. A good example was a major session devoted to the review of legal services in England and Wales led by Sir David Clementi, a former deputy governor of the Bank of England. His report was published towards the end of 2004. Among other things, it concluded that rule-makers need to be separated from advocates for the profession, that complaints should be heard by an independent body, that lawyers should be free to involve outside investors in their practices and that a Legal Services Board (controlled by non-lawyers) should be established to oversee the regulatory system. The Clementi Report is being regarded very seriously by law societies and bar associations across the developed world.

Our long-awaited **Lawyers and Conveyancers Bill** may have its faults in the eyes of some commentators but compared with many overseas developments, proposals and threats, it is set to provide an excellent long-term co-regulatory regime in a spirit of cooperation between the profession and the Government. The bill has survived testing public scrutiny during the select committee process. It sits high on the Parliamentary Order Paper awaiting its remaining stages. Politicians from the Prime Minister down have been making reassuring comments about imminent progress but enactment can't come fast enough as far as I'm concerned.

On 1 July 2004, I was privileged to attend the ceremonial sitting of the new **Supreme Court**. It was an auspicious occasion but, as I said in my address, the controversy surrounding the court's establishment and the appointment of its judges genuinely troubled me. I couldn't help but reflect on the ease with which constitutional values can be eroded. Included in the mix of important issues are judicial independence, improved criminal and civil justice procedures, adequate legal aid, the openness of the justice system and limits on court fees set by the state.

We dare not drop our guard on any of these things. Certainly I felt obliged to make public comment on several of them during 2004 and our various special committees have kept careful watch. As a profession we have a duty, I think, to ensure as far as we can that everyone has an educated understanding of the role of the judiciary, the relationship between the courts and other organs of government, and an understanding of the courts and other processes.

On the specific issue of **increases in civil court fees**, the NZLS (jointly with the New Zealand Bar Association) complained to the Parliamentary Regulations Review Committee about various regulations amending court fees for the Supreme Court, High Court, District Courts and other specialist courts and tribunals. Our complaint was that the fee increases had the effect of rationing access to the courts. We feel vindicated by the Regulations Review Committee's report published in February 2005, which has recommended that the Government undertake a review of the increases to alleviate concern that the fees are impeding access to the courts. We were particularly gratified by the committee's view that *... access to justice is so fundamental that a move to use fees to ration access would require explicit legislative authority. Delegated legislation would be an inappropriate instrument for implementing a policy of rationing access to justice.* It remains to be seen what the Government's response will be, but let's hope it's favourable. The fee increases for civil courts should be cut back in the appropriate cases identified by the committee.

The Law Commission's report, ***Delivering Justice For All: A Vision For New Zealand Courts and Tribunals***, was one of 2004's very significant publications. Various NZLS committees, sections and groups studied it and, following a meeting of conveners, their views were drawn together into one submission. This was the law society working at its best, with competent people making intelligent, sensible contributions and arriving at a coherent outcome. There was a realistic appreciation of what was achievable politically. As noted elsewhere in this report, the society's response did not support proposed structural changes but agreed with many of the Law Commission's proposals to address issues of efficiency and access to justice.

We were called upon once again to mount some spirited resistance to a threatened watering down of **privilege** for the clients of lawyers. The particular threats were in relation to the possible loss or limitation of privilege in the tax area and to whether non-lawyer tax advisers should be in the same position as lawyers when advising on tax matters. The Minister of Revenue's announcement in October that legal professional privilege would continue in its traditional way was a cause for satisfaction. Accountants will have a limited form of protection from disclosure whereby opinions they give on tax issues will not need to be disclosed. There will, however, be no protection from disclosure in relation to facts their clients provide.

And finally, a word of **appreciation**. As with 2003, the matters I have touched on in this review are weighted towards the court side of our profession but a glance at the various reports of our committees, sections and groups will confirm, once again, the wide range of the NZLS operations, aided by hundreds of committed volunteer practitioners, including within district societies and on the NZLS Council and Board. This invaluable contribution, combined with our polished and professional secretariat, adds a stamp of quality to our endeavours. I sense a growing respect throughout the community for the reasoned and dignified approach the society takes to issues. My grateful thanks to all who have helped in this way.

Chris Darlow

## HONOURS

**Distinguished Companion of the New Zealand Order of Merit (DCNZM):** Justice Noel Anderson, Auckland; Justice Peter Blanchard, Wellington.

**Companion of the New Zealand Order of Merit (CNZM):** Jim Guthrie, Dunedin; Justice Peter Salmon, Auckland.

**Companion of the Queen's Service Order for Community Service (QSO):** Alister James, Christchurch.

**Companions of the Queen's Service Order for Public Services (QSO):** Glen Evans, Lower Hutt; Winifred Hoadley, Takapuna.

**Officer of the New Zealand Order of Merit (ONZM):** Anne Todd-Lambie, Nelson.

**Member of the New Zealand Order of Merit (MNZM):** Richard Cathie, Wellington.

**Queen's Service Medal for Community Service (QSM):** Grant Kerr, New Plymouth.

**Queen's Service Medal for Public Services (QSM):** Alan Horner, Hawera.

## JUDICIARY

### Appointments

**Supreme Court:** Rt Hon Sir Thomas Eichellbaum, Rt Hon John Henry, Rt Hon Sir Ivor Richardson, Rt Hon Ted Thomas (*all acting judges*).

**High Court:** Hon Justice Randerson (*as Chief High Court Judge*); Hon Justice Allan, Hon Justice Cooper, Hon Justice Courtney, Hon Justice Simon France, Hon Justice MacKenzie, Hon Justice Miller, Hon Justice Winkelmann.

**District Courts:** Judge D R W Barry, Judge G F Hikaka, Judge T R Ingram, Judge R J Murfitt, Judge E Smith, Judge L Tremewan, Judge J H Walker.

### Cessations

**High Court:** Hon Justice Fisher, Hon Justice Nicholson, Hon Sir Peter Quilliam (died).

**District Courts:** Judge J Cadenhead, Judge R M Kean, Judge B J Kendall, Judge M H W Lance, Judge D A Ongley.

## QUEEN'S COUNSEL APPOINTMENTS 2004

Francis Cooke, Wellington; Miriam Dean, Auckland; Michael Ring, Auckland; Harry Waalkens, Auckland.

## NZLS SCHOLARSHIPS 2004

**Cleary Memorial Prize:** Alyssa Phillips, Wellington.

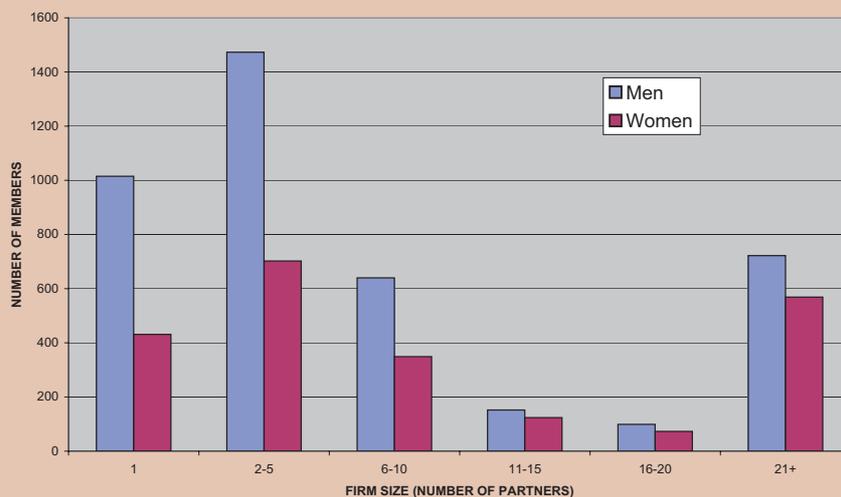
**NZLS Centennial Scholarship:** Belinda Clarke, Wellington.

**NZLS Centennial Maori Scholarships:** Meshweyla Macdonald, Waikato University; Desiree Mahy, Otago University; Aroha Rangiwai, Waikato University.

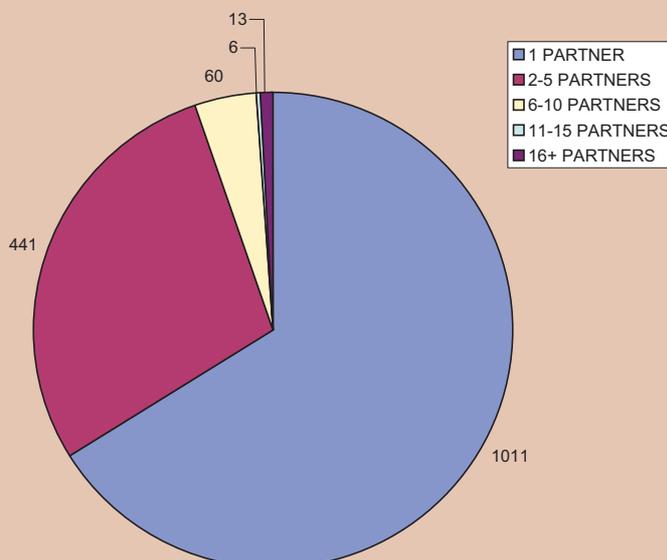
	PRACTISING CERTIFICATES ISSUED*						ADMISSIONS			2003 Total
	Total 2004	Total 2003	Principals 2004	2003	Barristers sole 2004	2003	2004 male	2004 female	2004 Total	
Auckland	4,213	3,832	1,297	1,251	598	590	140	184	324	260
Canterbury	996	943	405	403	79	73	40	54	94	78
Gisborne	46	44	30	29	6	5	2	3	5	0
Hawke's Bay	197	192	100	101	13	12	1	2	3	3
Manawatu	130	125	65	65	16	16	1	1	2	1
Marlborough	49	47	24	25	2	1	0	0	0	1
Nelson	137	123	66	68	10	8	0	1	1	1
Otago	341	300	144	135	32	32	19	34	53	63
Southland	127	128	71	74	0	0	0	1	1	2
Taranaki	139	131	68	67	3	2	0	2	2	3
Waikato/BOP	844	793	341	346	113	106	25	48	73	82
Wanganui	66	66	45	39	5	5	0	1	1	1
Wellington	2,412	2,313	524	532	241	241	125	165	290	285
Westland	24	20	15	15	1	1	0	0	0	0
<b>TOTAL</b>	<b>9,721</b>	<b>9,057</b>	<b>3,195</b>	<b>3,150</b>	<b>1,119</b>	<b>1,092</b>	<b>353</b>	<b>496</b>	<b>849</b>	<b>780</b>
<b>% incr/(decr)</b>	<b>7.3</b>	<b>0.5</b>	<b>1.4</b>	<b>0.5</b>	<b>2.5</b>	<b>12.0</b>			<b>8.8</b>	<b>-5.1</b>
<b>Gender %</b>										
Male	62	63	83	84	68	70	-	-	42	41
Female	38	37	17	16	32	30	-	-	58	59

\*NB: The certificates issued during 2004 do not necessarily represent actual members as at 30/11/04.

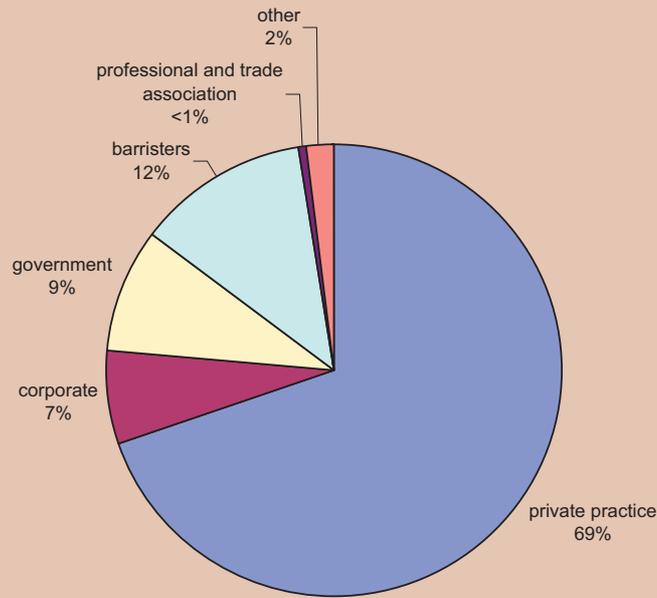
## MEMBERS BY SIZE OF FIRM



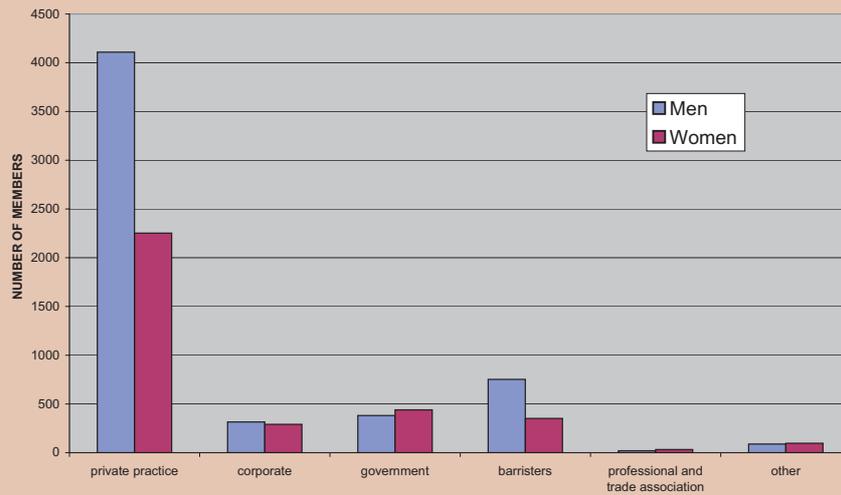
## SIZE OF LAW FIRMS IN NEW ZEALAND



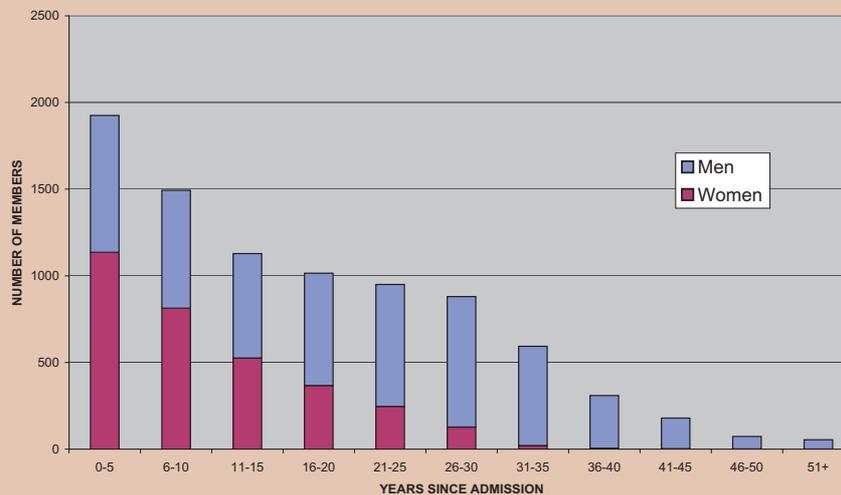
## MEMBERS BY OCCUPATION TYPE



## MEMBERS BY OCCUPATION TYPE AND GENDER



## EXPERIENCE OF MEMBERS BY GENDER



# NZLS SECTIONS, GROUPS AND COMMITTEES



Nicolas Short

**Corporate Lawyers Association of New Zealand (CLANZ) Committee:** Nicolas Short (President), Auckland; Philip Griffiths (Vice-President), Auckland; Jennifer Lynch (Vice-President), Wellington; Hamish Woods, (Secretary), Wellington; Rob Wells (Treasurer), Wellington; Ron Pol (Immediate Past President), Wellington; Cathryn Bridge, Wellington; David Collins, Christchurch; David Dunbar, Wellington; Genevieve Hancock, Wellington; Merrin Loft, Hamilton; Helen Mackay, Wellington; Annelies McClure, Wellington; Bruce Northey, Auckland; James Radcliffe, Auckland; Jennie Vickers, Auckland; Lloyd Wong, Auckland.



David Burns

**Family Law Section Executive Committee:** David Burns (Chair), Auckland; Simon Maude (Deputy Chair), Wellington; Barbara Collis (Treasurer), Opotiki; John Chadwick, Rotorua (*co-opted to 10/04*); Jeremy Daley, Christchurch; Justeen Davies, Manukau City (*co-opted from 10/04*); Murray Earl, Hamilton (*co-opted as Editor, The Family Advocate*); Simon Jefferson, Auckland; Kevin Kilgour, Auckland (*President's Nominee*); Fiona Mackenzie, Tauranga; Usha Patel, Auckland; Emma Smith, New Plymouth (*co-opted to 11/04*); Nicola Williams, Dunedin.



Chris Moore

**Property Law Section Executive Committee:** Chris Moore (Chair), Auckland; Margaret Wellwood (Deputy Chair), Hastings; Andrew Logan (Treasurer), Christchurch; Ferne Bradley, Christchurch; Richard Cross, Napier; Nola Dangen, Auckland; Barry Gunson, Hamilton; Ian Haynes, Auckland (*President's Nominee*); Lindsay Lloyd, Christchurch; Philip Shannon, Paraparaumu.



Elisabeth McDonald

**Women's Consultative Group:** Elisabeth McDonald (Co-Convener), Wellington; Vicki Thorpe (Co-Convener), Gisborne; Sandra Alofiavae, Manukau City; Sandra Heney, Nelson; Anne McMurtrie, Christchurch; Usha Patel, Auckland; Jacinta Ruru, Dunedin.



Vicki Thorpe

## BUSINESS

**Commercial & Business Law Committee:** Simon McArley (Convener), Auckland; Gavin Adlam, Wellington (*co-opted*); Cameron Fleming, Auckland; Kirk Hope, Wellington; John Horner, Wellington; Steve Nightingale, Wellington.



Simon McArley

**Electronic Commerce Subcommittee:** Ross Johnston (Convener), Wellington; Gavin Adlam, Wellington; Clive Elliott, Auckland; Fraser Goldsmith, Dunedin; Peter Leonard, Sydney; Chris Linton, Auckland; Sarah-Jane Weir, Dunedin; Michael Wigley, Wellington; Henry Wolfe, Dunedin.



Ross Johnston

**Personal Property Securities Act Subcommittee:** Simon McArley (Convener), Auckland; Steve Flynn, Wellington; Rob McInnes, Wellington; Laurie Mayne, Auckland; Matthew Yarnell, Wellington. *Committee disbanded 11/04.*



Paul Sumpter

**Intellectual Property Working Party:** Paul Sumpter (Co-Convener), Auckland; Clive Elliot (Co-Convener), Auckland; Doug Calhoun, Wellington; John Glengarry, Auckland; Ken Moon, Auckland.



Clive Elliott

**Contract & Consumer Law Reform Committee:** Stephen Ward (Convener), Wellington; Bob Dugan, Wellington; Andrew Lawson, Auckland; Rae Nield, Auckland.



Stephen Ward

# NZLS SECTIONS, GROUPS AND COMMITTEES



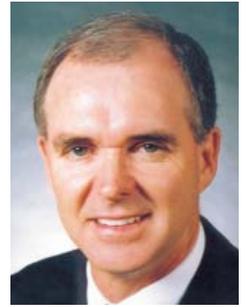
Peter Churchman

**Employment Law Committee:** Peter Churchman (Convener), Wellington; Kathryn Beck, Auckland; Janie Kilkelly, Dunedin; Paul Roth, Dunedin; Michael Sharp, Tauranga; Kerry Smith, Christchurch.

**Environmental Law Committee:** Derek Nolan (Convener), Auckland; John Burns, Auckland; Ann Callaghan, Wellington; Camilla Owen, Nelson; Paul Rogers, Christchurch; Mark von Dadelszen, Hastings.

**Joint Insolvency Committee:** *NZLS members:* Michael Webb (Joint Convener), Auckland; Peter Barker, Wellington; Scott Barker, Wellington; David Brown, Wellington; Murray Tingey, Auckland. *Institute of Chartered Accountants of NZ members:* Michael Stiasney (Joint Convener), Auckland; Richard Agnew, Auckland; David Crichton, Christchurch; Keith Palmer, Wellington; Gary Traveller, Wellington (to 11/04); John Vague, Auckland.

**Taxation Committee:** Richard Scoular (Convener), Auckland; Andrew Beck, Wellington; Bruce Bernacchi, Auckland (*co-opted from 11/04*); Craig Elliffe, Auckland (*co-opted*); Marian Hinde, Auckland; Joanne Hodge, Auckland; Jan James, Auckland; Casey Plunket, Auckland; Neil Russ, Auckland; Grant Sidnam, Auckland; Stephen Tomlinson, Christchurch.



Derek Nolan



Michael Webb



Richard Scoular

## COURT-RELATED & LEGAL SERVICES

**Civil Litigation & Tribunals Committee:** Ken Johnston, (Convener), Wellington; Geoff Brodie, Christchurch; Ailsa Duffy QC, Auckland; David Hurd, Auckland (*co-opted*); Christopher Littlewood, Christchurch; Willie Palmer, Christchurch; Ed Wylie QC, Christchurch.

**Criminal Law Committee:** Philip Morgan QC (Convener), Hamilton; Rachael Adams, Tauranga; Liz Bulger, Christchurch; Richard Earwaker, Auckland; Greg King, Wellington; Jonathan Krebs, Napier; Antony Shaw, Wellington (*co-opted*); Peter Winter, Auckland (*co-opted to represent Criminal Bar Association*).

**Dispute Resolution Committee:** John Marshall (Convener), Wellington; Ferne Bradley, Christchurch; Carol Powell, Auckland; Geoff Sharp, Wellington.

**Evidence Law Reform Committee:** Grant Burston (Convener), Wellington; Helen Cull QC, Wellington; Nick Davidson QC, Christchurch; Gary Gotlieb, Auckland; Peter Whiteside, Christchurch.

**Legal Services Committee:** Tom Broadmore (Convener to 04/04), Wellington; James Wilding (Convener from 05/04), Christchurch; Len Andersen, Dunedin; Roger Chambers, Auckland; Kathryn Crooks, Wanganui; Gary Gotlieb, Auckland; David More, Dunedin; Nyleen Wood, Rotorua.

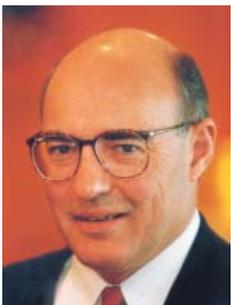
**Youth Justice Committee:** James Johnston (Convener to 12/04), Wellington; Lance Rowe, (Convener from 12/04), Wanganui; Sonja Cooper, Wellington; Neil Johnstone, Christchurch; Louise Sziranyi, Lower Hutt; Geoff Wells, Auckland.



Ken Johnston



Philip Morgan QC



John Marshall



Grant Burston



James Wilding



James Johnston

## OTHER



Don Rennie

**Accident Compensation Committee:** Don Rennie (Convener), Wellington; Hazel Armstrong, Wellington; Kate Davenport, Auckland (to 12/04); Nicola Drayton-Glesti, Wellington; John Miller, Wellington; Phil Schmidt, Auckland.

**Biological & Medical Issues Committee:** Wendy Brandon (Convener), Wellington; Marie Bismark, USA; Warren Brookbanks, Auckland; David Collins QC, Wellington; Philippa Cunningham, Auckland; Alison Douglass, Wellington; Nicolette Levy, Wellington.

**Human Rights Committee:** Bernard Banks (Convener), Wellington; Andrew Butler, Wellington; Stuart Dalzell, Wellington; Paul Hunt, England; Karun Lakshman, Wellington; Helen McQueen, Wellington; Jane Meares, Wellington; Marilyn Wallace, Wellington.

**International Committee:** Christine Grice (Convener), Hamilton (*LAWASIA Councillor*); David Abbott, Auckland; Tavake Afeaki, Auckland; John Brandts-Giesen, Rangiora; Anita Chan, Dunedin; Wendy London, Hawera; Sally McKechnie, Wellington; Bruce Slane, Auckland (*IBA Councillor*).

**Legislation Committee:** Paul Rishworth (Convener), Auckland; Joanne Appleyard, Christchurch; Michael Bate, Hastings; Janine Bonifant, Nelson; Karen Clark, Wellington; Rachel Dunningham, Christchurch; Geoffrey Fuller, Wellington; David Jones, Auckland; Alastair Logan, Dunedin; John Pike, Wellington; Michael Webb, Auckland.



Bernard Banks



Wendy Brandon



Christine Grice

## LEGAL EDUCATION

**NZLS Continuing Legal Education Board:** Christine Grice (Chair), Hamilton; Annette Black (*NZLS Executive Director's Nominee*), Wellington; Anita Chan, Dunedin; Tim Jones, Auckland; Andrew Skelton, Wellington. *Non-voting members:* Associate Justice Gendall, Wellington; David Goddard QC, Wellington; Julie Maxton, Auckland; Judge Walker, Wellington.

**Legal Executive Course Committee:** Gerard Richardson (Convener), Christchurch; Bruce Davidson, Auckland; Sally Mountfort, Christchurch (*for Institute of Legal Executives*); Cordelia Thomas, Lower Hutt (*Course Director*).

**Law in Schools Committee:** Melanie Harland (Convener), Hamilton; Anne Darroch, Auckland.



Paul Rishworth



Gerard Richardson



Melanie Harland



Kevin Kilgour

## REGULATORY SERVICES

**Admissions & Credentials Committee:** Kevin Kilgour (Convener), Auckland; Andrew Butler, Wellington; Colin Eason, Christchurch (*from 04/04*); Allen Mazengarb, New Plymouth; Sally Mountfort, Christchurch (*NZ Institute of Legal Executives, co-opted*).

**Ethics Committee:** Nicholas Till (Convener), Christchurch; Helen Cull QC, Wellington; Christine French, Invercargill; Andrew Gilchrist, Auckland; Lisa Hansen, Wellington; Lindsay Lloyd, Christchurch; Duncan Webb, Christchurch.

**Joint Audit Board:** *NZLS members:* Bruce Davidson (Convener), Auckland; David Murphy, Wellington; Richard Perry, Wellington. *ICANZ members:* Bill Heritage, Auckland; Brent Kennerley, Wellington; Peter Schumacher, Wellington.

**Associate Membership Applications Committee and Section 97A Committee:** Raynor Asher QC, Auckland; Warwick Deuchrass, Dunedin; John Marshall, Wellington; Stuart Webster, Napier (*all NZLS Vice-Presidents*).



Nicholas Till



Bruce Davidson

# REPORT FROM THE SECRETARIAT

This report gives a general overview of the activities of the NZLS sections, committees and groups. The detail has already been covered in LawTalk and other publications but further information is available to members on request.

## Law reform

The NZLS meets its statutory functions of assisting in and promoting reform of the law in various ways. The **Legislation Committee** has the primary responsibility for checking bills as they are introduced to Parliament and preparing submissions on them. In 2004, the NZLS filed 33 separate sets of submissions. Once the submissions are available publicly, they are posted on the NZLS website at [www.lawyers.org.nz/hmsubmissions.asp](http://www.lawyers.org.nz/hmsubmissions.asp). This year saw long-standing Legislation Committee member Peter Woodhouse QC stand down after eight years of sterling service, the last three providing outstanding leadership as convener.

Law reform work also involves the special committees, sections and groups working with various government departments and bodies such as the Law Commission, Commerce Commission and Securities Commission. The time given for responses or submissions is often short and the society thanks those who have provided comment and contributions.

## Criminal law

Proposed legislation kept the **Criminal Law Committee** busy in 2004, with comment provided to the **Legislation Committee** on the Criminal Procedure Bill, which proposes exceptions to the rule proscribing double jeopardy and abolishing depositions; the Crimes Amendment Bill (No 2), which substitutes gender neutral definitions of some sexual crimes; and the Prisoners' and Victims' Claims Bill, which it believes is misconceived and should not proceed. Also, the Law Commission consulted the committee about pre-trial procedure and the defence of provocation.

In the youth justice area, the **Youth Justice Committee** made comments on relevant aspects of the Children, Young Persons and Their Families Amendment Bill (No 4), and it continues to consult with Child Youth and Family about proposed changes to timeframes for court-ordered family group conferences.

Also, this committee assisted the Whitioreia Community Law Centre in challenging police policy of taking fingerprints of young people. The committee believes this should not be done as a matter of course because young people are vulnerable and possibly unable to give truly informed consent. Pleasingly, the combined efforts have resulted in a review of the policy.

There are some encouraging trends in efforts to see a reduction in the time young people spend on remand in secure care or, of greater concern, in police cells, with the committee monitoring the situation through its representation on CYF's Long Remands Working Party.

## Legal aid

A survey of legal aid providers was commissioned by the **Legal Services** and **Criminal Law Committees** and **Family Law Section** in 2004, with the intention of moving beyond anecdote to quantitative and qualitative data. The draft results (to be finalised in 2005) indicate a decline in the number of practitioners willing or able to provide legally-aided services, primarily due to low remuneration rates and high compliance costs.

Issues of remuneration rates are inextricably linked to the Legal Services Agency's prescribed steps in criminal cases. Both committees have been pressing for a review of the steps, which they consider is long overdue. The **Legal Services Committee** has also discussed with the LSA the correct categorisation of sexual violation offences, currently category 3 matters. Practitioners agree that these are often among the most complex of criminal cases and the committee has argued that they should be considered category 4, if only because a sentence of preventive detention is available upon conviction. Categorisation of serious fraud offences is another anomaly.

Throughout 2004, the **Legal Services Committee** maintained a sound working relationship with the LSA management team, enabling direct and frank communication. The committee has pushed for more effective streamlining of legal aid procedures and has begun an approach for a review of remuneration rates. Rates have remained unchanged since 1998 (when they were decreased), and the committee's position is that they must be raised. The committee is finalising a paper arguing for an increase based on the long-established principle of equality of arms. The **Criminal Law Committee** is also finalising analysis of changes to criminal law and procedure that have increased the onus on defence counsel – another issue the LSA needs to recognise.

Both the **Criminal Law** and **Legal Services Committees** have monitored closely the establishment of the Public Defence Service. This pilot programme operates in Auckland and Manukau and was established by the Legal Services Agency pursuant to Part 4 of the Legal Services Act 2000. The committees have been concerned to see that the PDS operates in a transparent manner that complies with the act's provisions and that it is fairly and accurately evaluated. In particular, aspects of the pilot prevent the PDS and private profession from operating on a level playing field, which the committees believe must be taken into account.

The **Civil Litigation & Tribunals** and **Criminal Law Committees** provided comments to the **Legal Services Committee** on an LSA proposal for listing criteria for the Supreme Court. They agreed that the criteria were unnecessarily restrictive as the skills needed for appellate work were not necessarily related to trial experience. This also raised the issue of listing for the Court of Appeal.

These two committees and the **Family Law Section** also provided comments to assist with the **Legal Services Committee** response to proposals for changing the eligibility for legal aid, which are expected to result in legislation in 2005.

The **Accident Compensation Committee** informed the **Legal Services Committee** of the legal aid issues surrounding ACC appeals. The two committees will continue to work together to identify and improve issues specific to ACC.

## Courts and judiciary

Court procedure came under review in 2004 in various ways. Conveners from the society's common law committees collaborated on a response to the Law Commission Report 85 *Delivering Justice for All*. The report recommended, among other things, the creation of a new court structure, with the District

Court being replaced by a community court, plus primary civil and criminal courts. The resulting society response, released in July, did not support the proposed structural changes but agreed with many of the Law Commission's proposals to address issues of efficiency and access to justice.

The same committees drafted submissions on the public consultation paper *Appointing Judges: A Judicial Appointments Commission for New Zealand?* for the NZLS Board to consider in reaching its position on the paper's proposals.

Further increases in civil court fees were greeted with concern and even outrage and the **Civil Litigation & Tribunals Committee** and **Environmental Law Committee** contributed to the society's complaint on the matter to Parliament's Regulations Review Committee. Evidence presented to the RRC included the results of a survey of practitioners on the effect of the fees on their clients, an economic analysis, and comment on the constitutional role of the courts and the undermining of access to them. The Environment Court fees await the passage of the Resource Management Electricity Legislation Amendment Bill since they cannot be introduced without the power of waiver contained in that bill. The RRC has now recommended that the Government review the civil court fee regulations, taking into account concern that the increased fees are impeding access to the courts.

The **Accident Compensation Committee** assisted Chief District Court Judge Carruthers with drafting an amended practice note for ACC appeals. The committee has responded to Dispute Resolution Services Ltd on its guidelines for setting hearings and adjournments.

Proposals to change various court rules saw the **Civil Litigation & Tribunals Committee** comment to the Rules Committee on the Court Of Appeal (Civil) Rules 2004 and Court Of Appeal (Criminal) Amendment Rules 2004, a proposal to revise District Court claims, District Court Amendment Rules (No 3) and (No 4) 2004, Draft Supreme Court Rules 2004, and costs and the daily recovery rates. Where appropriate, other committees had input. The committee also made comments to the Rules Committee on the changes to discovery (including electronic discovery) Part IV, payment in procedures and skeleton arguments.

The committee convener and a **Criminal Law Committee** representative met quarterly with the High Court Management Committee, which is chaired by a high court judge and consists of judicial officers and departmental officials. It takes a national perspective and overview of workload and case management in the civil and criminal jurisdictions of the High Court.

The Ministry of Justice has endeavoured to simplify and accelerate some of the High Court's processes and the **Civil Litigation & Tribunals Committee** has provided comments on these initiatives, including the short notice list, changes to judicial settlement conferences and the jurisdiction of associate judges.

Representatives of the **Criminal Law and Civil Litigation & Tribunals Committees** met quarterly with the Ministry of Justice's Higher Courts Management Group. This involves registrars of the stand-alone High Courts, the Court of Appeal and Supreme Court as well as head office staff. It provides the opportunity to discuss practical issues raised by the profession and have changes made to registry practices (usually to achieve consistency), and for the profession to learn about areas the registrars consider practitioners can help improve.

At the instigation of the **Criminal Law and Civil Litigation & Tribunals Committees**, the Court of Appeal clarified its position of requiring practitioners to travel to Wellington the night before an appearance: in the court's view, travelling the day before the scheduled hearing reduces the chances of counsel failing to appear through travel arrangements being disrupted by weather.

The **Civil Litigation & Tribunals Committee** provided comments on the New Zealand Sign Language Bill and the Terrorism Suppression Act for submissions prepared by the **Legislation Committee**.

The **Disputes Resolution Committee** asked the Government to consider adopting a pledge committing all ministries to using alternative dispute resolution (ADR) in all suitable cases wherever the other party accepts it. The request was based on a similar pledge the UK Government has adopted and which has proved effective in settling disputes.

Regular meetings between the **Environmental Law Committee** and the Principal Environment Judge and Environment Court Registrar mean the committee is well informed on reductions in the court's caseload, brought about by improvements in evidence recording, the registries and case management. Judge Bollard consulted the committee on the practice note establishing case tracks and on one that will amend the case management note as well as govern the use of mediation and expert witnesses in resource management cases.

The committee also presented a paper to the Environment Court suggesting a scale of costs be established in that court and how the scale could be determined. This would help provide certainty and alleviate flaws that would be exacerbated by the proposed new court fees.

## Business law

Comments and submissions prepared by the **Commercial & Business Law Committee** included those on a review of the Financial Reporting Act 1993, a review of special partnerships, disclosure by finance companies, information sharing by the Commerce Commission, the Reserve Bank's policy for systemically important banks, amendments to the Takeovers Code and a discussion paper on financial intermediaries. The committee also helped prepare the society's submissions on the Securities Legislation Bill.

Its various specialist subcommittees continued their monitoring roles, with the **Intellectual Property Working Party** also preparing comments on the exposure drafts of the Patents Bill and the **Electronic Commerce Subcommittee** making comments on the Domain Names Commissioner's proposal to establish a dispute resolution process for the .nz domain name space. As the Personal Property Securities Act has been in force for over two years, the **PPSA Subcommittee** was disbanded in November and the main committee will deal with PPSA-related issues in future.

The **Joint Insolvency Committee**, which comprises both NZLS and Institute of Chartered Accountants members, prepared comments on the draft Insolvency Bill and continued liaising with the Ministry of Economic Development over the ongoing insolvency review. The committee is frustrated by the delay in introducing legislation.

# REPORT FROM THE SECRETARIAT

It was a busy year for the **Taxation Committee**, which prepared over 20 sets of comments or submissions, including those on: the Taxation (Annual Rates, Venture Capital and Miscellaneous Provisions) Bill, presented to the Finance & Expenditure Committee by the convener; the Taxation (Base Maintenance and Miscellaneous Provisions) Bill; the Inland Revenue Disputes Process; Taxing Securities Lending Transactions; and Tax Agent Strategic Advice.

The **Employment Law Committee** made a substantial contribution to the NZLS submissions on the Employment Relations Law Reform Bill and the convener appeared on them in front of the Transport & Industrial Relations Committee. He also provided comment on the bill to the Department of Labour. The committee made brief written submissions on the Holidays Amendment Bill.

The **Contract & Consumer Law Reform Committee** and representatives from the **Commercial & Business Law Committee** had input into regulations made under the Consumer Contracts and Credit Finance Act.

**Environmental Law Committee** members put considerable time into the consultation leading to the Resource Management and Electricity Legislation Amendment Bill and then into submissions on the bill. The committee feels the consultation process was rushed and that many making comments on the need for change did not appreciate how much improvement there had been in Environment Court timeliness over the last couple of years. It believes the proposed changes to the council hearing process and consequent changes in the Environment Court are counterproductive and will increase costs and decrease efficiency – contrary to the bill's stated intent.

## Human rights

Activities for the **Human Rights Committee** this year included drafting submissions on the Government Administration Committee's inquiry into hate speech and contributing to the society's submissions on the Parole (Extended Supervision) and Sentencing Amendment Bill. It also monitors advice to the Attorney-General on Bill of Rights implications of legislation to ensure that the issues are picked up in NZLS submissions.

The committee has been involved in the Human Rights Commission's development of a national plan of action to review New Zealand's human rights record. Its aim is to construct strategies intended to strengthen the promotion and protection of human rights in New Zealand.

In its continued push for consistent policies in the accident compensation area, the **Accident Compensation Committee** has focused on the Code of Claimant's Rights and ACC assessments in terminal cases. Committee members are appointees to two ACC advisory groups reporting to the Minister.

A key task for the **Biological & Medical Issues Committee** was making submissions to the National Ethics Committee on Assisted Human Reproduction on proposed *Guidelines for the Practice of Embryo Donation for Reproductive Purposes* and *Guidelines for Preimplantation Genetic Diagnosis in New Zealand*.

## International

With the **International Committee** serving as a liaison point

with the international bodies to which the NZLS belongs (the International Bar Association, LAWASIA and the Commonwealth Lawyers' Association), some committee members, including Bruce Slane, were involved in the host committee for the very successful IBA conference held in Auckland in October 2004.

## Women

With information indicating that women continue to face barriers to advancement within the legal profession in relation to pay rates, partnership opportunities and the balancing act associated with work and family demands, the **Women's Consultative Group** has been seeking different ways to educate the profession on these matters. It has collated statistics on the last 10 years of judicial appointments and analysed the data on a gender basis. It also assisted the Equal Employment Commissioner with a census on women in business, which showed that women hold 14.2% of the partnerships in law firms of 10 or more partners.

Other work for the group this year has been asking the Law Commission to review the processes involved in sexual offence trials. Although some aspects are likely to be reformed when the Evidence Code is passed, timing of that is uncertain. The group received support for this initiative from other interested bodies but the commission has not yet stated its position.

The group also contributed to the **Family Law Section's** submissions on the Law Commission's Parental Status Project and comments were made to the **Legislation Committee** on the Crimes Amendment Bill No 2, which seeks to provide for gender neutrality for sex crimes.

## Sections

The NZLS has three specialist sections that enable practitioners in particular fields of practice to share knowledge and promote their interests.

All lawyers who work outside private practice (as in-house counsel for corporates, in government, local government and for organisations) have automatic membership of the **Corporate Lawyers Association of New Zealand**.

In 2004, the annual **CLANZ** conference was held in Napier for the first time. Whether it was the setting, the high calibre of speakers (from New Zealand and abroad) or the wide range of engaging topics and activities, it attracted a record attendance, including some representatives from similar associations overseas.

The new committee voted in at the associated annual general meeting has updated the strategy plan, a copy of which is on the website ([www.clanz.org](http://www.clanz.org)). This has been the basis for various initiatives (new and old) undertaken during the year.

Once again, in conjunction with its principal sponsor, **CLANZ** offered the CLANZ–Bell Gully Corporate Lawyers' Scholarship and Law Students' Prize – this year won by Andrea Jane (in-house counsel at Air New Zealand) and Stacey Lulham (5<sup>th</sup> year law student at Canterbury University) respectively. Air New Zealand's in-house legal team was prominent in awards for the year with General Counsel John Blair being awarded the Corporate Lawyer of the Year Award at the annual conference.

It was a big year for upgrading the look and content of the website – with significantly more useful resources being added. This will become an ever more important resource for members. Certainly

putting the results of the Hughes Castell in-house counsel salary survey on the site helped increase its number of hits.

This year also saw more dialogue between **CLANZ** and similar associations overseas, with a growing trend towards formalising stronger relationships and information sharing. **CLANZ** has found these associations have as much to gain from the New Zealand body's experience as **CLANZ** has from theirs – and that, as an association, **CLANZ** is able to “punch above its weight”.

Considerable work was done by the **Family Law Section's** Executive Committee and its 12 standing committees in 2004, the bulk of it, as usual, consisting of law reform. In addition to making submissions to Parliament, this included liaison with the Ministry of Justice, other government agencies, the Law Commission and the judiciary on various issues.

Membership was a record 800 in 2004. The Executive Committee is ever mindful of the need for effective communication, both ways, between it and members. Methods of communication include the section's quarterly journal, *The Family Advocate*, regular reports in *LawTalk*, the deputy chair's monthly email bulletin and the website ([www.familylaw.org.nz](http://www.familylaw.org.nz)). Executive committee members and the section's regional representatives liaise regularly with district law society family law committees and there has been direct consultation with members this year on whether there should be a change to the legislation (s59, Crimes Act 1961), which allows a parent to use justified force to correct a child.

While the Executive Committee would ordinarily be responsible for making decisions on the membership's behalf on such an issue, it believed that members should have the opportunity to express their views individually. Members were given a comprehensive collection of research documents, information outlining arguments for and against the status quo, and a section discussion paper. Meetings were held around the country and the results of the consultation greatly narrowed the focus of the debate for the Executive Committee, which expects to reach a final position shortly.

This was the section's first year as a stakeholder in the NZLS Continuing Legal Education programme. The closer links will benefit both the section and the NZLS. While there was no family law conference in 2004 (they are held biennially), family law topics featured in the general CLE programme.

Socially, most members were able to attend one of nine dinners the section hosted in different centres to welcome the new Principal Family Court Judge, Peter Boshier. Judge Boshier spent considerable time meeting Family Court staff and practitioners to discuss his ideas for improving operation of the Family Courts.

Regular meetings continue between the Executive Committee and the judge, as established by his predecessor Judge Mahony. Judge Boshier is working to complete many of the projects Judge Mahony initiated, including updating and issuing practice notes and reviewing the operational aspects of some legislation, such as the Protection of Personal and Property Rights Act 1988.

The judge's appointment has coincided with a time of change for the Family Court. The Care of Children Act (which comes into force in July 2005), signals a new era for laws about children and the section has contributed significantly to its development over several years. Submissions on the bill, both written and oral, have been a major focus.

In 2004, the section made its second supplementary submission on the Care of Children Bill, submissions on other high-profile new legislation such as the Civil Union Bill, the Relationships (Statutory References) Bill and changes to the Children, Young Persons and Their Families Act 1989. Considerable time and effort was also spent on working with the Legal Services Agency and the Ministry of Justice on legal aid, including responding in detail to a series of consultation papers related to the Ministry's review of legal aid eligibility.

Also, the section prepared a response to the Law Commission preliminary paper *New Issues in Legal Parenthood*, incorporating comment from the **Biological & Medical Issues Committee** and the **Women's Consultative Group**.

Media interest in the Family Court has been intense over the last year. David Burns, in his second year as chair, and other executive committee members, spent a lot of time speaking to reporters, benefiting the section's media profile and educating the public.

In 2004, the **Property Law Section's** membership grew to 1,267. Chris Moore was re-elected chair, with Margaret Wellwood serving another term as deputy chair and Andrew Logan as treasurer.

A highlight of the year was the biennial Property Law Conference, held in August with a total attendance of 350. Regional meetings enabled members of the Executive Committee to tell section members and non-members about the section's work and to obtain feedback.

There was a strong promotional focus throughout the year in response to member requests to promote the practice of property law to the public generally. The section ran its banner advertisement alongside several property-related newspaper features and it has a nationwide advertisement in the Yellow Pages with a toll free number for the public.

A notable development has been the section's endorsement of *e-dealing*. The likelihood of *e-dealing* becoming mandatory and imminent deregulation of aspects of property law work were important factors in this decision. At the end of 2004, the NZLS Board approved the appointment of an NZLS *e-dealing* consultant to assist lawyers with the professional conveyancing issues and concern surrounding electronic registration.

The section's **Land Titles Committee** was again involved in LINZ's fees and charges consultation. The section expressed dissatisfaction to LINZ with regard to what it believed was an inequitable allocation of residual costs, which had the effect of title registration subsidising survey lodgement. LINZ conveyed the section's view to Cabinet and undertook to simplify the 2005 fees review process. Section representatives participated in the prioritisation process for enhancements in future upgrades to Landonline.

The **Property Transactions Committee** is working closely with the banks on matters affecting property law practitioners, after a recommendation from the NZ Bankers Association that the committee deal with its member banks individually. There has been consultation about security and loan documentation with one major bank, and discussions have begun on settlement protocols and systems for the future. The section's quarterly publication, *The Property Lawyer*, published an article in which banks answered questions pertaining to property law.

# REPORT FROM THE SECRETARIAT

Draft reverse mortgage guidelines that the section developed during the year have proved useful to many practitioners advising clients in this field. In keeping with the promotional theme and due to the upsurge in media and public interest in reverse mortgages, the section advertised in *Positive Living* (newsletter of Age Concern) and the *RSA Review*.

The number of e-bulletins sent to members in 2004 more than doubled and drew favourable comments as to their relevance and frequency. They supplement longer articles in *The Property Lawyer*, reports in *LawTalk* and information on the website ([www.propertylawyers.org.nz](http://www.propertylawyers.org.nz)).

A demand for more information for property lawyers in the rural sector saw the formation of a **Rural Transactions Committee**. It has developed a standard form clause for the transfer of Fonterra shares at the sale and purchase of dairy farms.

The **Public Sector & Resource Management Committee** contributed to NZLS submissions on the Overseas Investment (Queen's Chain Extension) Amendment Bill and the Overseas Investment Bill. The section also contributed to the Public Records Bill submission.

The section formed working parties to respond to government consultation on reviews of the Unit Titles Act, Residential Tenancies Act and the Property Law Act. Unfortunately, the Ministry of Justice decided to postpone the Property Law Act review until 2005, in spite of the section's plea for it to press ahead due to significant defects in this legislation. However, progress on the other two reviews is encouraging. Each working party has had a pleasing mix of members who are not otherwise associated with the section's structure and those who have served the section and the society well on property law matters previously. Website discussion forums were used to obtain members' comments on these reviews and working party responses have been posted on the website for members to read.

## Continuing legal education

This year saw CLE operating as a self-supporting cost and activity centre for the first time. Under the guidance of a nine-person board (five full and four non-voting members) headed by Christine Grice, the programme exceeded its budgetary targets. With 9,464 registrants clocking up more than 63,000 hours of CLE at 190 venues around the country, some 46% of the profession attended one or more of the 19 standard seminars, six entry-level programmes, eight workshops, six intensives or conferences, and two advocacy programmes on offer.

Overall, the programme was very well received with almost all courses at least meeting, and frequently exceeding, participants' expectations. The many highlights included the seminar on the Credit Contracts and Consumer Finance Act 2003 and, in particular, the comprehensive booklet written by Rob McInnes and Stuart Walker, currently the leading text on the new act. Again the biennial Employment Law Conference was a sell-out success, with priority given to society members, while the biennial Criminal Law Symposium also achieved a record attendance. In addition, the launch of the Company Law Entry Level Workshop completed the suite of six two-day small group intensive courses especially designed for practitioners in their first three years.

Mention must also be made of the Property Law Conference, jointly presented by CLE and the Property Law Section (which, along with the Family Law Section, is a CLE stakeholder). The

conference followed the multiple stream format successfully pioneered at the Family Law Conference the previous year. This was very popular with the 305 registrants and will set the pattern for the future.

Other achievements included the successful introduction of credit card payments (although not online); all new signage that recognises the new entity and the two stakeholding sections; and the expanded use of Telecom's videoconferencing link. Up to 11 centres were joined at a time – a first for Telecom, with the technology being stretched to its limit and beyond. Telecom is confident it has ironed out the initial teething problems and some eight seminars will be offered via this facility in 2005.

The society also separately provides training for legal executives through the six-paper NZLS Legal Executive Certificate. In 2004, 890 candidates sat 1,650 examinations and 139 candidates will graduate from the course this year.

## Marketing and information for members

The *Law Awareness* pamphlet series continues to be popular with the public and with lawyers who use them as part of their marketing. In 2004, over 71,000 were supplied to lawyers and nearly 52,000 supplied free to the public, mainly through community law centres and citizens advice bureaux.

*LawTalk* remains the main medium of communication with members, though increasingly it is backed up by the website ([www.lawyers.org.nz](http://www.lawyers.org.nz)). In 2004, there was a further increase in advertising in *LawTalk* driven largely by classified advertising, which is probably a reflection of the competitive employment market. The increased advertising revenue saw *LawTalk* show an overall surplus of \$313,000 (\$209,000 in 2003) for the year, before indirect costs are taken into account.

As ever, the media continues to seek comment on many legal matters and the secretariat thanks those committee conveners and members who handle such requests, often at short notice and unsociable hours.

## Regulatory services

This department is responsible for delivering regulatory functions aimed at maintaining standards within the profession. These include promoting and encouraging proper conduct among members, suppressing illegal, dishonourable or improper practices, and preserving and maintaining the integrity and status of the profession.

The **Admissions & Credentials Committee** considered 71 overseas applications for admission from overseas practitioners. The highest number (22) was from England, followed by the USA (14). Society staff responded to more than 400 admissions-related inquiries. The committee also dealt with 11 applications for review. One matter was referred to the NZLS Board for consideration and the committee's decision was confirmed.

In the year to 30 November, 145 applications for certificates of standing were processed.

The **Ethics Committee** considered matters such as barristers' fees, retainers, the intervention rule, practitioner relations with third parties, relations between practitioners, practitioners' duty to court and the use by firms of terms such as "special counsel".

# REPORT FROM THE SECRETARIAT

It recommended, and the NZLS Council approved, the addition to the Rules of Professional Conduct of a new rule 7.05 – solicitor's letters of demand using threats (refer *LawTalk* 624, 17 May 2004). A new commentary 5 to rule 6.08 (*LawTalk* 624, 17 May 2004) clarified the committee's ruling 1/03, 9 September 2003, regarding an instructing solicitor's responsibilities to a barrister for recovery of the barrister's fees. New commentary 10 to rule 8.01 covered the need for involved practitioners, their partners and employees to avoid contact with jurors during and post-trial (*LawTalk* 624, 17 May 2004).

On the committee's recommendation, the NZLS Council resolved to delete Appendix I (Alibis) along with consequential amendments (*LawTalk* 638, 31 January 2005).

An article on the committee's initiative, "Barrister/solicitor instructions on being a postbox" (*LawTalk* 637, 6 December 2004) clarified the rules governing the relationship between barristers and solicitors (Chapter 11, ROPC).

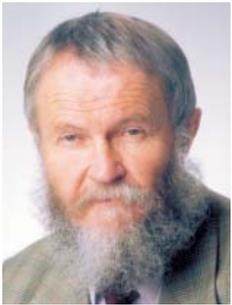
In 2004, the **Inspectorate**, whose work is overseen by the

**Joint Audit Board**, made 426 visits (355 in 2003); comprising 39 (71) new practice inspections, 360 (256) inspections and 27 (28) investigations and interventions. Attendance at the Trust Account Partner course was 110 for the full course (90) and 112 for the modified course (introduced for the first time in 2004). The seminar for trust account administrators attracted 138 participants at seven venues (2003 – 2004 at 11 venues).

## Complaints

Complaints about lawyers' conduct are investigated by district law societies. Complainants who are not satisfied with the way a district has handled a complaint can refer the matter to a Lay Observer who may make recommendations to the district society. Under s97A of the Law Practitioners Act, a Lay Observer who is not satisfied with the district's response may request it to refer the report or recommendation to the NZLS for review. The **Section 97A Committee**, which comprises the society's vice-presidents, dealt with three reviews during 2004, none of which had been completed at year's end.

## NEW ZEALAND LAW PRACTITIONERS DISCIPLINARY TRIBUNAL



Nigel Hampton QC

**Tribunal members:** Nigel Hampton QC (Chair), Christchurch; John Rowan QC (Deputy Chair), Wanganui; Dr Bill Black, Nelson (*Lay Member*); Wayne Chapman, Wellington (*from 12/04*); Laurence Cooney, Ashburton; Stuart Gaze, Auckland (*to 10/04*); Anne Hinton QC, Auckland; Judith Medlicott, Dunedin; Peter Radich, Blenheim; Jim Rowe, Featherston (*Lay Member*); Shelley Sage, Auckland; Denis Sheard, Auckland; Allan Spence, Auckland (*Lay Member*); John Upton QC, Wellington; Ben Vanderkolk, Palmerston North; Owen Vaughan, Manukau City.

## Report from the Chair

The tribunal has had another busy year with six sittings dealing with 16 matters, which have been reported to the profession during the year in *LawTalk*. The secretariat staff (particularly Jock Nicolson and his right-hand person Wyn Rankin) have been extraordinarily busy administering the tribunal as well as they have - my thanks.

Tribunal membership has been maintained at its maximum level (12 practitioners, three lay members). Practitioner member Stuart Gaze of Auckland resigned during the year. He has given sterling service over many a year and brought a refreshing, no-nonsense attitude to the tribunal. His successor is Wayne Chapman of Wellington and I welcome the appointment of someone as experienced and expert in his own fields of practice as Wayne, and expect a valuable contribution from him.

This marks the end of my third, and last, year as chair. I have enjoyed the role but the demands are intense and, perhaps more importantly from a busy practice's point of view, time consuming. However, I intend to continue as a member, probably until the new act comes into force, and I hope that I can still contribute in some significant way to the workings of the tribunal.

I thank all members for their assistance over the past year and especially John Rowan for his able work as deputy chair. I particularly note that 10 members in all have served beyond the usual six-year term (some well over), pending the new disciplinary regime coming into effect.

I regret the loss of control of disciplinary processes that will follow under the new regime, with the statutory appointment of a chair who is not a practising lawyer. That seems to me to be a retrograde step and allows something of a diminution and weakening of one of the defining characteristics of a profession - the ability to regulate and discipline its own members.

*Nigel Hampton QC*

## TRIBUNAL DECISIONS

Detailed reports of decisions relating to practitioners and employees of practitioners who have appeared before the tribunal are published in LawTalk during the year so the following is a brief summary only.

### Struck off

**Nigel Joseph Cook, former barrister & solicitor of Auckland** – struck off on 9 February 2004 after admitting that being convicted of an offence punishable by imprisonment reflected on his fitness to practise and tended to bring the profession into disrepute; ordered to pay costs of \$2,248.75 to the Auckland District Law Society and \$1,070.20 to the NZLS.

**George William Couttie, barrister & solicitor of Auckland** – struck off on 10 February 2004 after being found guilty of eight charges of misconduct in his professional capacity; ordered to pay costs of \$16,364.25 to the Auckland District Law Society and \$2,950.20 to the NZLS.

**Murray David Edwards, barrister & solicitor of Auckland** – struck off on 10 June 2004 after admitting that being convicted of offences punishable by imprisonment reflected on his fitness to practise and tended to bring the profession into disrepute; ordered to pay costs of \$1,000 to each of the Auckland District Law Society and NZLS.

**David Maxwell Lynn, former barrister & solicitor of Paraparaumu** – struck off on 9 February 2004 after admitting that being convicted of an offence punishable by imprisonment reflected on his fitness to practise and tended to bring the profession into disrepute; ordered to pay costs of \$2,154 to the Auckland District Law Society and \$1,070.20 to the NZLS.

**Paul Barry Thompson, barrister & solicitor of Wellington** – struck off on 24 March 2004 after admitting that being convicted of offences punishable by imprisonment reflected on his fitness to practise and tended to bring the profession into disrepute; ordered to pay costs of \$1,014.70 to the Wellington District Law Society and \$1,185.50 to the NZLS.

### Suspended from practice

**Mark Simon Hornabrook, barrister & solicitor of Auckland** – suspended from practice for four months from 17 June 2004 after admitting a charge of professional misconduct; ordered to pay costs of \$2,875 to the Auckland District Law Society and \$2,880.75 to the NZLS.

### Censured and fined

**Fraser Donaldson, barrister, formerly of Motueka and now of Christchurch** – censured and fined \$500 on each of two charges of misconduct in his professional capacity; ordered to make his practice available for inspection by the Canterbury District Law Society and to make reports on his practice to that society for two years from 26 March 2004; also ordered to pay costs of \$6,796.47 to the Nelson District Law Society and \$3,729.75 to the NZLS.

### Restriction on practice

**Jalalu Din Mohammed Kasim Khan Maqbool, barrister & solicitor of Auckland** – censured and ordered not to practise as a solicitor on his own account, whether in partnership or otherwise, until authorised by the tribunal to do so, after being found guilty of conduct unbecoming a barrister and solicitor; ordered to pay costs of \$3,000 to the Auckland District Law Society and \$5,351.75 to the NZLS.

**Mark Llewellyn Francis Saunders, barrister & solicitor of Auckland** – censured and ordered not to practise as a solicitor on his own account, whether in partnership or otherwise, until authorised by the tribunal to do so, after admitting two charges of professional misconduct; ordered to pay costs of \$8,112 to the Auckland District Law Society and \$2,009.80 to the NZLS.

**Michael John Todd, barrister of Auckland** – ordered not to practise as a solicitor on his own account, whether in partnership or otherwise, until authorised by the tribunal to do so, after being found guilty of professional misconduct; ordered to pay costs of \$7,000 to the Auckland District Law Society and \$5,000 to the NZLS.

### Not to be employed

**Shelley van Mourik, former legal employee of Auckland** – order made under s114 of the Law Practitioners Act 1982 that, as she was guilty of conduct (stealing law firm client funds) that would render a practitioner liable to being struck off, she is not to be employed in connection with a practitioner's practice so long as the order remains in force; ordered to pay costs of \$1,689.50 to the Auckland District Law Society and \$1,070.20 to the NZLS.

### Application for practising certificate

**Steven Marychurch Spackman, barrister of Hamilton** – the tribunal directed that the Waikato Bay of Plenty District Law Society issue Mr Spackman with a practising certificate, the district council having referred his application for a certificate to the tribunal.

### Restoration of name

**Christopher William Gilbert, formerly of Rotorua, now of Christchurch** – granted restoration of his name to the roll of barristers and solicitors (having been struck off in 1992), on condition that he not practise as a solicitor on his own account, whether in partnership or otherwise, until authorised by the tribunal to do so and that he give his solicitor's undertaking in writing that he not be employed as a solicitor other than by the Christchurch City Council without the tribunal's leave; ordered to pay costs of \$4,088.49 to the NZLS, with a decision as to costs

to be paid to the Waikato Bay of Plenty District Law Society reserved.

## Sanction to employ

**Murray David Edwards, former barrister & solicitor of Auckland** – although struck off (see above), the tribunal sanctioned his employment as a law clerk, on strict conditions.

**Michael James Wehipeihana, legal employee of Auckland** – although having previously been found guilty of conduct that would render a practitioner liable to be struck off and ordered not to be employed in connection with any legal practice, the tribunal gave consent under s114(2)(c) that he could continue his employment with his solicitor employer on certain conditions;

ordered to pay costs of \$7,254.25 to the Auckland District Law Society and \$4,121.20 to the NZLS.

## Appeal

**Peter Andrew Nee-Harland, barrister of Havelock North** – the High Court lifted name suppression which had been granted pending his appeal, which was dismissed, against a 2002 tribunal finding him guilty of six charges of professional misconduct and suspending him from practice for two years from 6 November 2002; appeal as to costs allowed so that costs to the Hawke's Bay District Law Society and NZLS were limited to \$50 each, Mr Nee-Harland being on legal aid at the time of the tribunal hearing.

## FINANCE



Warwick Deuchrass

**Management Committee - Solicitors' Fidelity Guarantee Fund:** Nola Dangen (Convener), Auckland; Bill Armitage, Dunedin; Mike Chapman, Mt Maunganui; Warwick Deuchrass, NZLS Treasurer; Ted Graham, Tauranga; David Murphy, Wellington; Peter Whiteside, Christchurch.

It is satisfying that at the end of January 2005, the total number of claims under consideration (including four possible claims and a contingency item) was 18. This figure is the lowest since the Renshaw Edwards debacle and possibly even earlier. Also, during the year the committee settled the final claim in Part A of the fund. The management committee takes heart in the present position.

**Management Committee – NZLS Special Fund:** Warwick Deuchrass (Convener), NZLS Treasurer; Raynor Asher QC, Auckland; Chris Darlow, NZLS President; John Marshall, Wellington.

**Finance & Administration Committee:** Warwick Deuchrass (Convener), NZLS Treasurer; Raynor Asher QC, Auckland; Chris Darlow, NZLS President; John Marshall, Wellington.

The society's sound financial position was improved further in 2004 and practising fee levels were able to be held for 2005, notwithstanding the significant expenditure the society can expect to incur on Lawyers and Conveyancers Bill implementation.

Continuing Legal Education operated for the first time as a separate activity with its own set of financial statements. It recorded a surplus of \$324,000, before tax and an establishment grant.



Nola Dangen

# STATEMENT OF ACCOUNTS

## NEW ZEALAND LAW SOCIETY SUMMARY STATEMENT OF FINANCIAL POSITION as at 30 November 2004

	2004 \$000	2003 \$000
<b>Current assets</b>		
Cash and deposits at bank	7,754	6,925
Debtors	<u>602</u> 8,356	<u>615</u> 7,540
<b>Non-current assets</b>	<u>742</u>	<u>725</u>
<b>Total assets</b>	9,098	8,265
<b>Current liabilities</b>	<u>(592)</u>	<u>(886)</u>
<b>Net assets</b>	<u>8,506</u>	<u>7,379</u>
<b>Represented by:</b>		
General funds	6,008	5,308
Accumulated funds	<u>2,498</u>	<u>2,071</u>
	<u>8,506</u>	<u>7,379</u>

## SUMMARY STATEMENT OF CASH FLOWS for the year ended 30 November 2004

Net cash inflow from operating activities	1,004	996
Net cash outflow from investing activities	<u>(175)</u>	<u>(151)</u>
Net increase in cash held	829	845
Cash at beginning of year	<u>6,925</u>	<u>6,080</u>
Cash at year end	<u>7,754</u>	<u>6,925</u>

Approved on behalf of the Board as at 11 February 2005.



**W Deuchrass, Treasurer**



**A D Ritchie, Executive Director**

## NEW ZEALAND LAW SOCIETY SUMMARY STATEMENT OF FINANCIAL PERFORMANCE for the year ended 30 November 2004

	2004 \$000	2003 \$000
<b>General Operating Account</b>		
<b>Operating revenue</b>		
Practising and membership fees	4,531	4,211
Professional development courses	-	2,839
<i>LawTalk</i>	619	505
Interest	449	453
Service fees and other	<u>656</u>	<u>244</u>
	<u>6,255</u>	<u>8,252</u>
<b>Operating expenses</b>		
Administration	3,764	3,767
Professional development - direct expenses	-	1,688
Committees	346	355
<i>LawTalk</i> - direct expenses	306	296
Information	110	92
Disciplinary - after recoveries	<u>274</u>	<u>52</u>
	<u>4,800</u>	<u>6,250</u>
<b>Operating surplus before income tax</b>	1,455	2,002
Income tax expense	(173)	(263)
Transfer of assets to new Continuing Legal Education entity	-	(854)
<b>Net surplus transferred to accumulated funds</b>	<u>1,282</u>	<u>885</u>
<b>Building Operating Account</b>		
<b>Operating revenue</b>	49	50
<b>Operating expenses</b>	<u>204</u>	<u>203</u>
<b>Operating deficit</b>	<u>(155)</u>	<u>(153)</u>
<b>ACCUMULATED FUNDS</b>		
Opening balance	2,071	2,539
Less: Transfer to general fund	(700)	(1,200)
Less: Deficit from building operating account	(155)	(153)
Plus: Surplus from statement of financial performance	<u>1,282</u>	<u>885</u>
Closing balance	<u>2,498</u>	<u>2,071</u>
<b>General Funds</b>		
Opening balance	5,308	4,108
Plus: Transfer in	700	1,200
Closing balance	<u>6,008</u>	<u>5,308</u>

The financial reporting summaries have been taken from the full audited financial reports of the New Zealand Law Society, Continuing Legal Education, the Centennial Maori Scholarship Fund, the Centennial Scholarship Fund, the Cleary Memorial Prize Fund, the Legal Conference Fund, the Inspectorate and the Solicitors' Fidelity Guarantee Fund for the year ended 30 November 2004 for which an unqualified audit opinion was issued on 11 February 2005. The audited financial reports were authorised for issue by the Board on 11 February 2005. These financial reporting summaries cannot be expected to provide as complete an understanding as provided by the full financial reports of the financial performance, financial position and cash flows (where applicable) of the financial reports referred to above. The full financial reports are available at [www.lawyers.org.nz/memaboutus.asp](http://www.lawyers.org.nz/memaboutus.asp) or as a hard copy on request.

# STATEMENT OF ACCOUNTS

## SOLICITORS' FIDELITY GUARANTEE FUND

### Part A SUMMARY STATEMENT OF FINANCIAL POSITION as at 30 November 2004

	2004	2003
	\$000	\$000
Opening balance	5,730	5,436
Revenue	441	316
Expenses	(59)	(22)
Closing balance	<u>6,112</u>	<u>5,730</u>
<b>Represented by:</b>		
Current assets	6,112	5,755
Current liabilities	-	(25)
	<u>6,112</u>	<u>5,730</u>

### SUMMARY STATEMENT OF CASH FLOWS for the year ended 30 November 2004

Net cash inflow from operating activities	<u>193</u>	<u>97</u>
Net increase in cash held	193	97
Cash at beginning of year	5,687	5,590
Cash at year end	<u>5,880</u>	<u>5,687</u>

### Part B SUMMARY STATEMENT OF FINANCIAL POSITION as at 30 November 2004

Opening balance	4,099	3,904
Revenue	1,543	1,382
Expenses	(1,052)	(1,187)
Closing balance	<u>4,590</u>	<u>4,099</u>
<b>Represented by:</b>		
Current assets	4,849	4,202
Current liabilities	(259)	(103)
	<u>4,590</u>	<u>4,099</u>

### SUMMARY STATEMENT OF CASH FLOWS for the year ended 30 November 2004

Net cash inflow from operating activities	<u>618</u>	<u>93</u>
Net increase in cash held	618	93
Cash at beginning of year	4,043	3,950
Cash at year end	<u>4,661</u>	<u>4,043</u>

## NEW ZEALAND LAW SOCIETY INSPECTORATE

### SUMMARY STATEMENT OF FINANCIAL POSITION as at 30 November 2004

	2004	2003
	\$000	\$000
<b>Current assets</b>	572	531
<b>Current liabilities</b>	(159)	(162)
<b>Net assets</b>	<u>413</u>	<u>369</u>
<b>Represented by:</b>		
Accumulated funds	<u>413</u>	<u>369</u>

### SUMMARY STATEMENT OF FINANCIAL PERFORMANCE for the year ended 30 November 2004

<b>Operating revenue</b>		
Annual contributions	1,032	1,040
Compliance review costs recovered	140	149
Other	176	154
	<u>1,348</u>	<u>1,343</u>
<b>Operating expenses</b>		
Inspectors' salaries, travel and other	909	908
Compliance review costs	136	157
Administration and other	259	246
	<u>1,304</u>	<u>1,311</u>
<b>Operating surplus</b>	<u>44</u>	<u>32</u>

### SUMMARY STATEMENT OF CASH FLOWS for the year ended 30 November 2004

Net cash inflow from operating activities	<u>50</u>	<u>73</u>
Net increase in cash held	50	73
Cash at beginning of year	423	350
Cash at end of year	<u>473</u>	<u>423</u>

# STATEMENT OF ACCOUNTS

## NEW ZEALAND LAW SOCIETY CONTINUING LEGAL EDUCATION SUMMARY STATEMENT OF FINANCIAL POSITION as at 30 November 2004

	2004	
	\$000	
<b>Current assets</b>		
Cash and deposits at bank	1,210	
Debtors	<u>201</u>	1,411
<b>Non-current assets</b>		<u>117</u>
<b>Total assets</b>		1,528
<b>Current liabilities</b>		<u>(470)</u>
<b>Net assets</b>		<u>1,058</u>
<b>Represented by:</b>		
Accumulated funds		<u>1,058</u>

## SUMMARY STATEMENT OF CASH FLOWS for the year ended 30 November 2004

Net cash inflow from operating activities	509
Net cash outflow from investing activities	(49)
Net cash inflow from financing activities	<u>750</u>
Net increase in cash held	1,210
Cash at beginning of year	-
Cash at year end	<u>1,210</u>

## NEW ZEALAND LAW SOCIETY CONTINUING LEGAL EDUCATION SUMMARY STATEMENT OF FINANCIAL PERFORMANCE for the year ended 30 November 2004

	2004
	\$000
<b>General Operating Account</b>	
<b>Operating revenue</b>	
Professional development courses	2,890
Interest	<u>80</u>
	<u>2,970</u>
<b>Operating expenses</b>	
Administration	825
Contribution to stakeholders	40
Professional development courses - direct expenses	<u>1,781</u>
	<u>2,646</u>
<b>Operating surplus before income tax</b>	324
Income tax expense	(120)
NZLS establishment grant	<u>854</u>
<b>Net surplus transferred to accumulated funds</b>	<u>1,058</u>

### ACCUMULATED FUNDS

Opening balance	-
Plus: Surplus from statement of financial performance	1,058
Closing balance	<u>1,058</u>

## SCHOLARSHIP AND OTHER FUNDS

### SUMMARY STATEMENT OF FINANCIAL POSITION

as at 30 November 2004

	Centennial Maori		Centennial		Cleary Memorial		Legal Conference	
	2004 \$000	2003 \$000	2004 \$000	2003 \$000	2004 \$000	2003 \$000	2004 \$000	2003 \$000
Opening balance	26	26	25	25	19	19	610	402
Revenue	2	2	2	2	2	2	236	217
Expenses	(2)	(2)	(2)	(2)	(2)	(2)	(13)	(9)
Closing balance	<u>26</u>	<u>26</u>	<u>25</u>	<u>25</u>	<u>19</u>	<u>19</u>	<u>833</u>	<u>610</u>
<b>Represented by:</b>								
Current assets	26	26	27	27	19	19	836	612
Current liabilities	-	-	(2)	(2)	-	-	(3)	(2)
	<u>26</u>	<u>26</u>	<u>25</u>	<u>25</u>	<u>19</u>	<u>19</u>	<u>833</u>	<u>610</u>



#### AUDIT REPORT

##### To the Members of the New Zealand Law Society

The abridged financial statements of the New Zealand Law Society, Solicitors' Fidelity Guarantee Fund, New Zealand Law Society Inspectorate, Continuing Legal Education, Legal Conference Fund, Cleary Memorial Prize Fund, Centennial Maori Scholarship Fund and the Centennial Scholarship Fund (the "Society") have been extracted from audited financial statements for the year ended 30 November 2004 on which we expressed unqualified opinions dated 11 February 2005.

##### Board's Responsibilities

The Board is responsible for preparing the abridged financial statements and determining their form and content.

##### Auditor's Responsibilities

We are responsible for reporting whether the information contained in the abridged financial statements has been correctly extracted from audited financial statements.

##### Basis of Opinion on the Abridged Financial Statements

We have undertaken procedures to provide reasonable assurance that the amounts set out in the abridged financial statements have been correctly taken from the audited financial statements of the Society for the year ended 30 November 2004. We have no relationship with or interests in the Society other than in our capacity as auditors.

##### Unqualified Opinion on the Abridged Financial Statements

In our opinion the amounts set out in the abridged financial statements for the year ended 30 November 2004 have been correctly taken from the audited financial statements of the Society from which they were extracted.

For a better understanding of the scope of our audit for the Society's financial statements and of the Society's financial position, financial performance and cash flows for the year ended 30 November 2004, this report should be read in conjunction with the Society's audited financial statements for that period.

Our examination of the abridged financial statements was completed on 11 February 2005 and our unqualified opinion is expressed as at that date.

Chartered Accountants  
Wellington, New Zealand

# OTHER NZLS REPRESENTATIVES

## Nominees to statutory bodies

**Council of Legal Education:** David Collins QC, Wellington; Chris Darlow, Auckland (*from 9/04*); Christine Grice, Hamilton; Robert Osborne, Christchurch; John Walker, Dunedin (*to 9/04*); Richard Worth MP, Auckland.

**NZ Council of Law Reporting:** Chris Darlow (*ex officio as NZLS President*); Peter Jenkin QC, Wellington; Chris McVeigh QC, Christchurch; Trevor Shiels, Dunedin; Graham Taylor, Wellington.

## Court-related

**Ministry of Justice's Courthouse Design, Property & Security Committee:** Dick Edwards, NZLS Director of Legal Affairs.

**Chief Justice's Criminal Practice Committee:** Judith Ablett Kerr QC, Dunedin; Richard Earwaker, Auckland; Philip Morgan QC, Hamilton (*from 12/04*); Gary Turkington, Wellington (*to 12/04*).

**Maori Land Court Consultative Committee:** Russell Feist, Wellington.

**Maori Land Court Rules Committee:** John Stevens, Wellington.

**Rules Committee:** Chris Finlayson, Wellington; Tom Weston QC, Christchurch.

## International

**International Bar Association:** Bruce Slane, Auckland (*IBA Councillor*).

**LAWASIA:** Christine Grice, Hamilton (*NZ Councillor*); Bernard Banks, Wellington (*alternate NZ Councillor*); Ian Haynes, Auckland (*Executive Committee Member*).

## Charitable

**New Zealand Law Foundation:** Gray Cameron (Chair), Auckland; Annette Black, Wellington (*Lay Member*); Warwick Deuchrass, Dunedin; John Gallie, Te Awamutu; Chris Hart, Auckland; James Johnston, Wellington; Daphne Rawstone, Upper Hutt (*Lay Member*).



NEW ZEALAND  
LAW SOCIETY

## OFFICERS AND DIRECTORS

### Officers

<i>President</i>	Chris Darlow
<i>Vice Presidents</i>	Raynor Asher QC (for Auckland) John Marshall (for Wellington) Stuart Webster (for rest of North Island) Warwick Deuchrass (for South Island)
<i>Treasurer</i>	Warwick Deuchrass

### Directors

<i>Executive Director</i>	Alan Ritchie
<i>Deputy Executive Director &amp; Director of Education</i>	Annette Black
<i>Senior Director</i>	Margaret Bryson
<i>Director of Finance</i>	Grant Caradus
<i>Director of Legal Affairs</i>	Dick Edwards
<i>Director of Regulatory Services</i>	Rae Mazengarb
<i>Director of Communications</i>	Sue Ewart