Wine Options & Quiz Evening

By Val McTurk

Wine Options & Quiz Evening held Wednesday 4 May 2016 St Barnabas Church Hall.

This year’s event on 4 May 2016 (the 19th wine options and quiz evening by my calculations) again proved as successful as ever. Fifteen teams contested the general knowledge and wine options quiz.

The quiz was compered by His Honour, Judge Raoul Neave who as usual did an incredible job. As well as general knowledge questions there were questions relating to music that were played on the night. There was the threat by the compere that the team who could not identify the singer in one of the musical questions (i.e. Frank Sinatra) had to hand in their practising certificates to the Branch Manager, the following day. I’m happy to say that all participants answered the questions correctly and therefore avoided an appearance before “god” the following morning!

Vino Fino’s team was again headed by Rex Ormandy and did their usual superb job of the wine options quiz. Participants of course had the onerous task of sampling the wine before the questions could be answered.

The results of the evening are as follows:

**Overall winner Wine Options and Quiz**
- Young Hunter – “We know our Oenions”
- 1st Prize Quiz
  - Young Hunter – “We know our Oenions”
- 2nd Prize Quiz
  - Christchurch City Council – “Habeas Corkus”
- 1st Prize Wine Options
  - Taylor Shaw “Team Pink”
- Joint runners up Wine Options
  - Christchurch City Council “Habeas Corkus” and Young Hunter – “We know our Oenions”
- Silliest Answer
  - Cameron & Co “Six no Trumps”.

**Best Team Name**
- Harman’s “We’d like to Mt Difficulty but she was playing hard to get”
- Who am I?
  - Christchurch City Council – “Habeas Corkus”

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- RAS 3rd anniversary
- Family Lawyers – Mentor Programme
- Book review
VINO FINO

Photo Caption

Each month we have a photo caption competition where we invite you to submit a caption. The winner will receive two bottles of wine sponsored by Vino Fino (www.vinifino.co.nz, 188 Durham Street). Send your entry to the Canterbury Westland Branch New Zealand Law Society, P. O. Box 565, Christchurch. Or email to canterbury-westland@lawsociety.org.nz. All entries must be received by May 20, 2016. The winner will be announced in the next edition of Canterbury Tales.

President’s column

Criminal Bar Association

After a number of meetings a Canterbury Branch of the Criminal Bar Association of NZ has been formally established.

It is good to see the re-establishment of a criminal bar group to represent the interests of an area of practice which has taken something of a hammering in recent times. Not only have there been significant changes to Legal Aid (and to the Crown Solicitor’s fees regime), but the criminal lawyers tend to bear the brunt of any criticism of the Criminal Justice System.

I think it is significant that the Crown Solicitor’s Office is represented by the Crown Solicitor himself and that the officer holders range from representatives of the Junior Bar to some who might charitably be described a “long in the tooth”.

I endorse the call for those who practise at the Criminal Bar to join and to contribute.

Specialist Groups

The Criminal Bar Association is but one of a number of specialist groups operating either within or alongside the local branch of the NZLS. The work being done by the Family Law Committee, Young Lawyers (previously known as the Junior Prats), Litigation Committee, Property Law Committee, Employment Law Committee, Publication Committee, Trust Committee, Youth Advocates, Hunter Cup-Devils Own Golf Committee and the three Standards Committees all reflect the willingness of members to give back to their specialist areas of practice.

Please keep an eye on the weekly notices which come out by email on Thursday for forthcoming social and educational events organised by these various groups.

Annual General Meeting

By the time you receive this issue nominations for the Branch Council and Office Holders will have closed. Democracy being what it is we may, or may not, require an election. Regardless of that, the Annual General Meeting is to be held on Thursday 23rd June 2016 at 4pm at Canterbury Westland Branch office, 307 Durham Street.

Practitioners Outside Christchurch

As I mentioned in the last column, I took the opportunity of meeting some of the Timaru practitioners when I was down there for a few weeks last month. I am going to try and meet the Ashburton practitioners at their next meeting and hopefully, head over the main divide to Greymouth sometime in the next month or so.

One concern that was raised by the practitioners who attended an informal gathering at a local hostelry was a lack of contact with the Branch and with practitioners in Christchurch. At our last Council meeting we talked about a number of options to try and include the “outlying” practitioners in the activities of the Branch and the various sub-committees.

In the past we have had sterling contributions by practitioners who have made the journey up State Highway 1 or across the mountains and I want to try and encourage this to continue.

High Court Canopy

The fight to save the historic High Court Canopy is continuing. Nigel Hampton has an online petition and many of you will have received an email from him in early May.

Far be it for me to express a view in this matter but it would be a great pity if this link with the past was consigned to the dustbin of history simply because it does not fit the design aesthetic of the new Court building.

Unfortunately the ceiling height of the Ceremonial Court in the new building is, literally, set in concrete and it is highly unlikely that the canopy can be fitted in to any one of the Courts in the new building without major structural alterations. So far as I am aware there was no consultation with the Law Society or any of the legal users before the basic design of the building was finalised.

Having said that, there are other areas of the building where the canopy could be placed as a tangible link with the past. The canopy has been saved once before. I hope it can be saved again.

– Craig Ruane
Thanks again to Rex Ormandy and his team from Vino Fino for their continued support and sponsorship of this event. Without them, the annual wine options and quiz evening would not be a success.

Thank you also to Judge Neave for again putting together his general knowledge questions and giving his time to compete this annual event. It is very much appreciated.

Finally, thank you to all those who stayed back and helped clean up the venue. It is very much appreciated.

We look forward to seeing you all again next year for one of the best social events of the Law Society calendar.

### Quiz Night – Questions

1. a) Why is it appropriate to begin today’s quiz with a Star Wars round?
   b) Who is the Director of the latest edition of the movie franchise?
   c) In what year was the first Star Wars movie released?
   d) Who plays C3PO?
   e) Which movie, later remade by Peter Jackson, provided inspiration for the 
adventures in Middle Earth?

2. a) A Parliament is the collective noun for which animals?
   b) Parliament and its related band Funkadelic was lead by who?
   c) The Parliament of the Isle of Man claims to be the oldest continuous Parliament in the world, what is it called?
   d) The Knesset is the Parliament of which country?
   e) The Parliament of Women also known amongst other titles as the Assemblywoman is a play by whom?

3. a) In what sport did New Zealand win its first gold medal?
   b) Since 1920 when we began competing on our own, there have only been two Olympics in which we failed to win a medal, which years?
   c) 2012 was one of our most successful Olympics in terms of total medals. How many of those medallists did not compete sitting down (sailors count as sitting)?
   d) Name our 2012 gold medallists (actual names not events) – a point for each.
   e) Who are New Zealand’s most successful Olympic medallists (a point for each).

4. a) Four U.S. Presidents were assassinated. Name them and their successors?
   b) How many women have run for Vice-President?
   c) Who was the last U.S. President not to have been a politician before running for President?
   d) Who is the only U.S. President to have been divorced.
   e) Which President is about to have his picture taken off the $20 note, and who is to replace him?

5. a) What is the study of flags?
   b) Two countries share the number for most colours on their flag; how many colours, and which countries?
   c) What is the only flag that does not have four right angles.
   d) The flag of which country has a picture of an AK-47?
   e) What fruit is on the flag of Fiji?

6. a) Which of Shakespeare’s comedies is the only one to be set entirely in England?
   b) Which of his plays is the only one to feature an animal in the title?
   c) What is the only flag that does not have four right angles.
   d) The Parliament of which country claims to be the oldest continuous Parliament in the world?
   e) The Parliament of Women also known amongst other titles as the Assemblywoman is a play by whom?

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8. (Music Questions)
   a) Which famous lawyer was created by Earl Stanley Gardner?
   b) Who lived at 25B Froxbury Court?

9. Time for another Harry Potter round. List the Horcruxes created by Lord Voldemort and the character that destroys each of them.

10. a) Which famous lawyer was created by Earl Stanley Gardner?
    b) Who lived at 25B Froxbury Court?
Dear friends, colleagues and supporters and interested persons,

This is a request for you to add your signature to a petition to save the historic Christchurch Court dais. After the 2010/2011 earthquakes, we lost so much of our cultural heritage, and now one of the few historic legacies that can still be saved is under threat.

Urgent pleas have been made over the past months to ensure that the historic 1860s dais in the present High Court is incorporated into the new Christchurch Court complex, to no avail. Our last chance now to force a rethink is this petition. Please read the attached petition by going to this link: http://www.christchurchcourtdaispetition. website/ If after reading it you agree that the dais is worth saving, you can sign the petition by entering your name, email address and clicking on the signature tab (full details are saved on the website for later verification, but are not visible. Only your first name, and the first letter of your surname is publicly displayed on the site).

Your assistance will be greatly appreciated.

Yours faithfully,

Nigel Hampton QC

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Christchurch Court Dais

Quiz questions continued...

c) How many lawyers are mentioned in Pride and Prejudice?
d) Serjeant Buzfuz and Serjeant Snubbins were the leading Counsel for the parties in a celebrated case involving which famous 19th century fictional character?
e) Billy Flynn was the smooth-tongued and completely cynical lawyer in which Broadway musical?

11. (Music Questions)

12. a) One of the most welcome new additions to our cityscape is the wonderful sculpture in the Avon by Antony Gormley whose most famous work is the Angel of the North which stands above which city?
b) Who is the patron saint of Christchurch?
c) Which band is celebrating the beginning of New Zealand month by performing gigs in the three main centres in one day?
d) Who is the only person to win four acting Oscars?
e) Hayden Paddon just celebrated New Zealand’s first world rally win, driving for which team?
f) Which battle in World War I saw more New Zealanders killed in a single day than any event in our nation’s history since 1840?

Answers to Quiz questions:

1. a) It’s May the Fourth (be with you) (Quiz held on 4th May)
b) J.J. Abrams
c) 1977
d) Anthony Daniels
e) The Dam Busters

2. a) Owls or Rooks
b) George Clinton
c) Tynwald
d) Israel
e) Aristophanes

3. a) Boxing
b) 1948,1980
c) 1, (Valerie Adams)
d) Valerie Adams, Emma Carrington, Mahe Drysdale, Eric Murray and Hamish Bond, Joseph Sullivan and Nathan Cohen, Jo Aleh and Polly Powrie
e) Ian Fergusson, Paul McDonald and Sir Mark Todd

4. a) Abraham Lincoln, Andrew Johnson
b) George Washington, Chester Arthur
William McKinley, Theodore Roosevelt
John Kennedy, Lyndon Johnson
b) 2

5. (Music Questions)

6. a) Vexillogy
b) 6, South Africa, Sudan
c) Nepal
d) Mozambique
e) Banana

7. a) Merry Wives of Windsor
b) The Taming of the Shrew
c) The Winter’s Tale
d) Laurence Olivier (Hamlet)
e) Twelfth Night (Malvolio)

8. (Music Questions)

9. a) The Diary, Harry
b) Gaunt’s Ring, Dumbledore
c) Slytherin’s locket, Ron
d) Hufflepuff’s Cup, Hermione
e) Ravenclaw’s Diadem, Goyle or Crabbe (movie differs from book)
f) Nagini the Snake, Neville
g) Harry Potter, Voldemort

10. a) Perry Mason
b) Rumpole
c) 3
d) Mr Pickwick
e) Chicago

11. (Music Questions)

12. a) Newcastle (UK)
b) John the Baptist
c) Shihad
d) Katherine Hepburn
e) Hyndai
f) Passchendaele
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Thinking beyond money in retirement

By Andrew Nuttall, Director, Bradley Nuttall Ltd

For many lawyers the past five years have been the busiest and most productive of their careers. A number of firms have grown in size, capability and profitability, enabling many lawyers to strengthen their personal balance sheets to such an extent that work is now optional.

This realisation that work might be optional has come as a pleasant surprise to some, but has also created challenges. There still seems to be something missing. If they stop work now, what would they do?

I have recently been working with a partner of a law firm who approached us with some “money worries.” He is a numbers person and found it reassuring to develop a lifetime cash-flow model, as it provided confirmation to a reasonably high probability that he and his wife could live comfortably on the assets they had accumulated.

Once the “numbers” had been clarified other and perhaps more important matters could be considered.

What will retirement be like? What will we do? Will we be happy? What will we become?

Work, for many, is about more than the money. Work provides us with challenges, a sense of achievement and purpose and social contact.

A 2014 Bank of America Merrill Lynch survey of employees over age 50 reported that they would like to continue working in retirement. Much of the desire to stay employed was about personal and professional fulfilment.

For those who have made work optional, the transition from working to not working is a very important phase of life and one worthy of taking time and consideration over. The following steps might be helpful.

Dip your toes into retirement. Take a holiday for four to six weeks instead of going cold turkey. Spend time doing all the things that you will think you will do in retirement to see how it works out. Playing golf four times a week and cleaning the garage might not be sufficient stimulation.

Don’t go it alone. Talk with lawyers who have retired and ask them about how they are living and what they are doing. What are they doing that makes them happy? How fulfilled do they feel?

Ask yourself some of the questions that George Kinder, a Harvard educated financial planner, encourages his clients to explore. If I didn’t have to work, what would I do? How would I live my life? What did I not get to do that I would like to? Am the person that I wanted to become?

We are all different with different aspirations and plans. For many, staying involved and continuing to work might be best for them, and for those close to them.

For others, it might be best to make a transition and explore other opportunities that are now available.

Andrew Nuttall is an Authorised Financial Adviser at Bradley Nuttall Ltd and over the last twenty-five years has taken a special interest in working with members of the legal fraternity.

His disclosure statement is available on demand and free of charge. Andrew can be contacted on 03 364 9119 or andrew@bnl.co.nz

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Andrew Nuttall, Director, Bradley Nuttall Ltd
The 13th Australasian Property Law Teachers Conference was held at the School of Law, University of Canterbury on 14/15 April. We were delighted that our warm autumn delivered two sunny crisp days that enabled the participants to wander around our peaceful campus during the Conference breaks. It really was Christchurch at its best.

We were very grateful for the New Zealand Law Foundation’s generosity. The Foundation funded all the expenses for our keynote speaker from Toronto as well as student scholarships which enabled students from each of the six New Zealand Law Schools to attend.

The eleven students, selected from a competitive pool, added a wonderful dimension to the Conference. We were proud of them all. They conducted themselves splendidly and were not shy in mixing with the other attendees and asking very intelligent questions during the sessions.

The keynote speaker was Ms Audrey Loeb, a partner at Miller Thomson LLP in Toronto – a specialist lawyer on condominium developments in Canada and the related issues of corporate governance and operations. She gave a very instructive and entertaining address that detailed many of the problems that have arisen with high rise inner city developments. Her keen and passionate interest in trying to solve the problems was very evident.

Her speech was highly relevant in today’s housing environment and she interspersed her address with some delightful anecdotes. Her address encouraged lively audience participation during question time and discussion with her continued throughout the conference. She was a very collegial participant and made it clear she thoroughly enjoyed her time here.

As well as the keynote speech, there were twenty two papers presented. The papers covered a diverse range of topics that examined many property law issues: personal property; bitcoins as property; Australia’s emissions reduction fund; the role of equity in properties securities legislation; native title issues; financial elder abuse; the concept of statutory coverage; the Torrens system; shared ownership models; insurance and other fascinating topics.

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Our conference dinner was held at Bamboozle and we were delighted both with the number of attendees who brought partners with them and the excellent turn out from our student representatives. The numbers swelled to 47 and it was a very enjoyable evening.

As Convener of the organising committee, I was extremely grateful to my two co-organisers, Ben France-Hudson and Henry Holderness for helping to make the whole process run so smoothly.

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By Elizabeth Toomey

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Letters to the Editor

TOO MUCH LAW?

I’m not sure John Burn has it right when he invites the Judges to break with precedent ‘in an appropriate case’. Seems to me that if the outcome then is perceived to be unfair added cost will follow as the matter is corrected on appeal.

Nor have I found that hallowed place he talks of where highly paid lawyers stroll down the avenues of argument. Perhaps I’ve missed something.

But if the crux of his concern is unaffordable representation because the system is too inflexible to meet the needs of litigants at the lower end then tailored arbitration at a fixed fee may have something to offer in a number of civil matters including family and trust property disputes.

In such cases my practice is to convene an early conference to explore ways in which time consuming interlocutories can be avoided (ie no discovery as of right, or if there be any then a strictly tailored approach) and to fix a tight time table focussed on an early hearing date, say no more than 6 to 8 weeks out.

As for the hearing itself, my preference would be to give the parties a fixed time within which to present (say 4 hours each) inclusive of the time required for witnesses.

With these parameters around the exercise it should be possible to fix fees both for the Tribunal and for the participants at an early stage and everyone knows where they stand from the start.

Sam Maling
Barrister and Arbitrator
17/05/16

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Information for this column must now be sent directly to the Canterbury Westland branch due to privacy issues. We assume that by the firm supplying the information that the individual people have agreed to their names being published. Please send information regarding changes to firms agreed to their names being published. We assume that by the firm supplying the information that the individual people have privacy issues. We assume that by the firm supplying the information that the individual people have privacy issues. We assume that by the firm supplying the information that the individual people have privacy issues. We assume that by the firm supplying the information that the individual people have privacy issues. We assume that by the firm supplying the information that the individual people have privacy issues. We assume that by the firm supplying the information that the individual people have privacy issues. We assume that by the firm supplying the information that the individual people have privacy issues. We assume that by the firm supplying the information that the individual people have privacy issues. We assume that by the firm supplying the information that the individual people have privacy issues. We assume that by the firm supplying the information that the individual people have privacy issues. We assume that by the firm supplying the information that the individual people have privacy issues. We assume that by the firm supplying the information that the individual people have privacy issues. We assume that by the firm supplying the information that the individual people have privacy issues. We assume that by the firm supplying the information that the individual people have privacy issues. We assume that by the firm supplying the information that the individual people have privacy issues. We assume that by the firm supplying the information that the individual people have privacy issues. We assume that by the firm supplying the information that the individual people have privacy issues. We assume that by the firm supplying the information that the individual people have privacy issues. We assume that by the firm supplying the information that the individual people have privacy issues.

**Comings & Goings**

**Hotchin v New Zealand Guardian Trust Co Ltd**

**Case Summaries**


**TORT — EQUITY — EQUITABLE CONTRIBUTION**

Successful appeal from decisions striking out third party claim for contribution under Law Reform Act 1936 or in equity – (A) appellant director of finance companies in Hanover group which ceased trading in Jul 2008 – proceeding brought against directors by Financial Markets Authority (FMA): – (i) alleged breaches of Securities Act 1978 (1978 Act) relating to untrue statements in prospectuses and directors’ certificates about company liquidity and other impaired debt matters; – (ii) sought compensation for investor losses under s55A and s55G of the 1978 Act – pleaded losses $93.6M or $65.16M (taking into account recovery received by secured investors) – documents distributed between Dec 2007 and Jul 2008 on continuing basis despite progressive worsening in company financial position over relevant period – claim for loss either: – (i) reliance based (issuing and continued distribution of prospectus with untrue statements meant new and rollover investors invested and were locked into securities because there was no market for the securities or early redemption option); – (ii) on “but for” basis (if prospectus had not been issued there would have been no subscription for the securities at all) – FMA proceeding settled following hearing of present appeal on basis of appellant’s denial of liability – (B) respondent was trustee appointed under the 1978 Act for securities issued by one Hanover company – appellant joined respondent as third party and sought contribution to any compensation he was required to pay for benefit of investors – draft amended statement of claim (filed after HC judgment) alleged respondent owed continuous duty of care to investors including existing and prospective investors during whole of relevant period: – (i) to exercise reasonable diligence, care and skill to ascertain whether assets sufficient to discharge amounts owing under debt securities and whether there had been breach of terms of trust deed or offer of securities; – (ii) to take timely and appropriate action in relation to matters of concern – alleged duty based on statutory purpose and scheme and respondent’s approval of section in prospectus setting out trustee duties and containing representations to prospective investors about role and duties of trustee – compensation sought under: – (i) s17(1)(c) Law Reform Act 1936; – (ii) doctrine of equitable contribution – (C) central issue before all courts whether respondent’s liability to FMA and investors was in respect of “same damage” as appellant in terms of s17(1)(c) – secondary issues whether it would be just and equitable to award contribution or whether respondent should be exempted from liability to contribute – HC had struck out third party claim and decision upheld by CA on basis damage resulting from alleged breaches by directors and that resulting from alleged breach of duty by respondent were not the same damage – key lower court findings: – (i) “same damage” test required common or shared obligation giving rise to common liabilities where the nature of the harm resulting was the same or indivisible – commonality of liability required comparison of nature and extent of liability of each party not consequences; – (ii) parties did not share co-ordinate liability to pay compensation for inflicting same harm – liabilities for breaching respective duties not of same nature and to same extent – trustees duties of very different nature from duty owed by appellant – appellant owed duty to make accurate statements in prospectuses and certificates whereas trustees’ duty to protect investors against harm from breach of Hanover obligations under trust deeds; – (iii) trustees could not be liable in respect of investor damage where they did not owe duty to protect them against harm of inaccuracies in directors’ statements – even if trustees ought to have “pulled the plug” sooner, they could not be liable for the loss independently caused by directors; – (iv) claim for equitable contribution failed for similar reasons – (D) in CA common ground that CA should assume investors: – (i) had claim against

**Joined**

- Melissa Sandom – Partner with Williams McKenzie
- Andrew Orme – Senior Associate with Anderson Lloyd
- Steph Gifford – Associate with Anderson Lloyd
- Andy Ogilvie – Associate with Godfreys Law
- Corbin Child, employed Barrister with Jai Moss Barrister, previously with Grand Shand
- Noor Hamid, employed Barrister with Jai Moss Barrister, previously with Grant Shand
- Gary Davis, employed Barrister with Jai Moss Barrister
- Matthew Marshall, has joined White Fox & Jones in their Ashburton office, previously with Tennavendale & Partners.
- Eva Roe has joined Anderson Lloyd – Queenstown office

**Change of Status**

- Daniel Quirk, Director with Layburn Hodgins Ltd
- Chris Boivin, Partner with Saunders Robinson Brown
- Jannah Stringer, Partner with Saunders Robinson Brown
- Tyler Brown, Senior Associate with Saunders Robinson Brown
- Sam Smith, Senior Associate with Saunders Robinson Brown
- Nick Strettell, Senior Associate with Saunders Robinson Brown

**Left**

- Gregory Martin has left White Fox & Jones

**Change of Details**

- Jai Moss Barrister, now at St Asaph Chambers 10/245 St Asaph Street, PO Box 44, Christchurch 8140, all other details remain the same
respondent in tort for not safeguarding investments they made; – (ii) did not have claim against respondent in tort in respect of contents of prospectus – respective claims/breaches contrasted as: – (i) issue by appellant of prospectus with misleading and untrue statements as to financial position and continued distribution in context of worsening position; – (ii) failure of respondent to exercise enforcement powers under trust deed earlier – both claims related to loss in value of investments – extensive review of case law – Royal Brompton Hospital NHS Trust v Hammond discussed (interpreted and applied differently by majority and minority) – comparison with FFSB (formerly known as Fortis Fund Services (Bahamas) v Seward & Kissel LLP – discussion of Marlborough District Council v Altimarloch Joint Venture in relation to equitable compensation – approach of McGrath J (Anderson J concurring) followed by majority – (E) CA split 3:2 in allowing appeals – (1) (majority) Glazebrook J (i) words in s17(1) (c) required only same damage with no added requirement for commonality of liability – words should not be given strained or narrow meaning – interpretation in line with policy of Law Reform Act 1936 which was remedial statute intended to provide broad basis for contribution; – (ii) even if requirement of commonality no meaningful distinction between claims against directors and potential claims against respondent; – (iii) acknowledged that majority approach to equitable contribution not consistent with that of Blanchard and Tipping J J in Altimarloch – as there was no majority agreement on appropriate test, decision not impediment to preferred approach; – (iv) reservation concerning how it could be just and equitable to make order for contribution against respondent even if held negligent in duties; – (Elia CJ) (i) contribution did not turn on cause of action but available whenever liability in respect of “same damage” – question one of fact and degree, whether harm for which claim made was in substance the same; – (ii) harm in present case was same for which parties were liable on claim regarded as tenable by HCl, namely loss of investments made or held because of breaches by directors and trustees – it did not matter that liability not coextensive – overlap only may constitute “same damage” in respect of which compensation available; – (iii) CA wrong to look to basis of liability as determining whether liability in respect of the “same damage”, and in concluding that common or shared liability must be “co-ordinate” in sense of being “of the same nature and to the same extent” incorporating the concepts of equal or comparable culpability and causal significance – whether contribution available ought not to turn on close classification of wrongs or measurement of damages – contribution was equitable principle which priced natural justice in recognising that unjust for burden of meeting loss for which others shared responsibility be borne by one party to benefit of those who escaped liability – obligations need not be identical in source or extent or have same legal character – it was enough that responsibility for harm was shared; – (iv) inquiry directed at substance of matter in particular case – approach of equity in achieving substantive justice in particular case equally applicable in common law claim to contribution; – (v) on strike out application issue whether claim for contribution arguable not apportionment of responsibility between contributors – unless claims not in respect of “same damage” claim to contribution could not be struck out; – (William Young J) (i) appellant had tenable claim for contribution under s17(1) (c) and for equitable compensation – claim for overlap in respect of portion of loss resulting from trustees’ failure to intervene at appropriate time; – (ii) policy underlying s17(1)(c) to avoid arbitrary outcome under Merryweather v Nixon that ultimate financial consequences of loss caused by concurrent tortfeasors depended solely on choice of plaintiff as to who was sued and against whom judgment enforced – where cases genuinely within policy, courts should not be astute to distinguish between harm for which different tortfeasors responsible – present case well within policy because payment by either tortfeasor would directly reduce liability of other, judgment would be concurrent in relation to portion of loss in case brought against both tortfeasors and requiring trustee to contribute to damages payable by directors would not have practical effect of subjecting trustee to liability beyond that imposed by law; – (2) (O’Regan and Arnold JJ, dissenting) (i) HC and CA reasoning broadly supported – approach to assess damage caused by each tortfeasor by reference to claim against it and ask whether tortfeasor against whom contribution sought had common liability with tortfeasor seeking contribution for damage caused by latter; – (ii) common liability touchstone of same damage requirement in Royal Brompton; – (iii) practical consequence of broad approach to “same damage” giving more scope for contribution claims matter of significance; – (iv) requirement for common or coordinate liability applied to both s17(1)(c) and equitable contribution; – (iv) HC and CA correctly interpreted and applied Altimarloch – effect of majority decision to effect change in law from that articulated in Altimarloch in circumstances where no counsel asked for decision to be reviewed – applying coordinate liabilities approach of McGrath J in Altimarloch no coordinate liability between parties – liabilities not of same nature or extent.

HELD: (1) (majority, O’Regan and Arnold JJ dissenting) HC and CA erred in test for “same damage” under s17(1)(c) – words in s17(1)(c) required only same damage and did not import additional requirement of commonality of liability – damage was same damage even if basis of liability different and damage not coextensive – same test applied equally to equitable compensation; – (2) Continued on next page...
RAS 3rd anniversary

By John Goddard, RAS Supervising Solicitor, Community Law Canterbury

On 16 May 2016, RAS (the Residential Advisory Service) turned three. Community Law Canterbury (CLC) has been the sole provider of legal services for RAS since its inception. RAS provides free assistance to Canterbury homeowners to resolve their earthquake claims with EQC and private insurers. RAS has had to evolve over time to meet the demands of increasingly complex earthquake claims and challenging dispute resolution processes.

Some of the greatest challenges have arisen in the following areas:

» Whether damage is “earthquake damage” or “natural disaster damage” in terms of the Earthquake Commission Act 1993 and/ or insurance policies;
» Clarifying the appropriate standard of repair;
» Assessing whether cash settlement offers are fair and reasonable;
» Advising on whether assignments of EQC land claims are justified, or even justifiable;
» Advising on whether EQC land settlement offers are fair and reasonable;
» Quantifying appropriate allowances for professional fees, project management fees and contingencies;
» Advising homeowners in situations where defective earthquake repairs have been carried out;
» Advising on settlements on sites which are suspected to contain contaminated land;
» Advising on settlements on sites where suggested solutions require owners to agree to Hazard Notices being recorded on their property titles; and
» Assisting owners of multi-unit dwellings where there are multiple insurers. Many homeowners have accessed assistance through RAS. The RAS call centre has received more than 14,000 contacts from homeowners. Sometimes, callers are referred to other agencies but any person who qualifies for assistance is assigned a RAS case and a CLC solicitor. Provision of access to justice has been a real strength of the service. Often, and understandably, our clients have lost trust in their insurers. By receiving independent advice and representation from CLC, they have the confidence and willingness to reengage with their insurers, having received the benefit of independent legal advice.

Community Law solicitors have had more than 3,600 initial meetings with our clients. These initial meetings enable us to build trust and confidence with our clients and to identify the issues in dispute. At these meetings, we suggest constructive ways of engaging with insurers and identify next steps for our clients. By doing this, we believe that the experience of managing earthquake claims becomes a lot less overwhelming for homeowners. Our belief is backed up by exit survey results which record that 90 percent of our clients feel listened to and understood after their initial appointment and 70 percent feel confident about taking their next steps.

Since August 2014, RAS has had a fully funded technical panel. The panel has provided a free peer review service and consists of geotechnical and structural engineers, a quantity surveyor and an architect. The technical panel has received more than 460 referrals. The reviews carried out by the panel have formed a body of work which has identified issues where modifications to repair strategies have been necessary. In some cases, they have confirmed that proposed repairs have met minimum building standards. These reviews have been extremely useful in terms of negotiating reasonable settlements of claims. A further benefit has been that our monthly meetings with the Technical Panel engineers have enabled us to develop technical skills in this very complex field, i.e. where there is an overlap between legal and engineering issues.

We have also participated in more than 120 Multi party Meetings (MPMs). MPMs are provided by Fairway Resolution, a government provider of dispute resolution services. In many ways, MPMs resemble mediations. They enable parties to explore possible solutions in a safe environment. They are facilitated by experienced facilitators and are held at neutral venues. Almost 90 percent of MPMs result in settlement agreements.

CLC solicitors have also provided legal information at the In The Know Hub and at a number of clinics. CLC has operated an Earthquake Advisory Service which dealt with more minor issues. Our solicitors have presented at community meetings and to the legal profession on a number of occasions.

In 2016, we appear to be entering a

Hotchin v New Zealand Guardian Trust Co Ltd continued...

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In 2016, we appear to be entering a
transitional phase. Although RAS is accepting more than 20 new clients each week into the service, funding is only guaranteed until 23 December 2016. At some time, the service will stop accepting new clients. We strongly encourage the profession to refer homeowners to RAS while we are still in a position to do so. We will continue to refer our clients out to private practice in appropriate circumstances.

**Standard of Repair**

CLC welcomes the agreement reached by EQC and the EQC Action Group regarding the standard of repair under the Earthquake Commission Act. The joint statement can be found at [http://www.eqcfix.nz/joint-statement](http://www.eqcfix.nz/joint-statement). Clarification of EQC’s interpretation of the standard of repair has been long overdue. CLC applauds Anthony Harper for achieving this significant result and looks forward to assisting EQC customers to ensure that their claims have been settled in accordance with the agreed principles. Indeed, there is potential to apply these principles to overcap claims where insurance policies provide for full replacement cover. CLC welcomes any new client into RAS who would like assistance with detailed reviews of their earthquake claim settlements.

**Limitation**

From 4 September 2016, limitation becomes a live issue for earthquake claimants because it is technically open to both EQC and insurers to plead limitation as a full defence to any litigated claim. This area of law is complex. The 1950 Limitation Act applies to claims arising from the earthquake of 4 September 2010 and 26 December 2010 whereas the 2010 Limitation Act applies to all other major events.

The tests in both Acts are different. For the purposes of the 1950 Act, the limitation clock runs from when a cause of action accrues. It is likely that an earthquake claim accrues from the date of the earthquake based on [Re Earthquake Commission](https://www.findOneLaw.com.au/43722) [2011] 3 NZLR 695 (HC) and [Ridgecrest NZ Ltd v IAG NZ Ltd](https://www.findOneLaw.com.au/43722) [2014] NZSC 129. The limitation period therefore is likely to expire six years after the earthquake.

Under the 2010 Act, the time runs from the act or omission which forms the basis of the cause of action. The primary limitation period is six years but there is a late knowledge period of three years which will apply in some situations. There have been some suggestions that the six year period could only run from the time when a dispute crystallises. CLC considers such suggestions as being overly optimistic. Our preferred view is that the primary limitation period runs from the date of the earthquake although a late knowledge period may commence from a later date. In the case of managed repairs, the ten year longstop period in the Building Act 2004 will be relevant. The 2010 Limitation Act also contains a 15 year longstop period.

At some point, limitation will be raised as a defence against earthquake claims and property owners will require legal advice when assessing their options.

**Conclusion**

Both limitation issues and the standard of repair emphasise the need for property owners to receive well-researched and carefully considered legal advice. Access to justice for claimants requires that a RAS-type service continues to operate until at least the end of 2018. Many of our clients tell us that if they couldn’t come to us, they would have nowhere to go. If funding for Community Law’s involvement in RAS ceases at the end of this year, that fear could become a reality.

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**Family Lawyers – Mentor Programme**

As part of its continuing education for family lawyers and in particular educating young lawyers new to the profession, the Family Law Committee is setting up a programme to provide young lawyers with one on one training. The Family Law committee is in the process of compiling a list of young lawyers who have already indicated their desire to participate in this scheme. Senior family lawyers have also already indicated their availability and willingness to assist in this scheme. Each young lawyer will be paired with a senior lawyer to observe a fixture.

The Committee has set up this scheme with the backing of the Family Court.

This scheme is eligible for CPD points for both the observing lawyer and senior lawyer. If you as a young lawyer wish to participate in the above scheme, please email val.mcturk@lawsociety.org.nz

Family Law Committee

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Book review

Criminal procedure in New Zealand (2nd Edition) by Jeremy Finn and Don Mathias

Reviewed by Todd Nicholls

Jeremy Finn and Don Mathias have produced the second edition in what is rightly regarded as being the essential text on criminal procedure in New Zealand. Taking over from Ron Mansfield, the editors have produced a work that not only considers the pathway of a charge in the New Zealand Legal System but which importantly also takes into consideration the Criminal Procedure Act 2011. As the authors point out in their preface, they have sought to once again provide readers with an approachable but adequately detailed discussion of criminal procedure. They succeed admirably. A strength of both the first and second editions is that it deals with not only the theoretical issues involved in criminal procedure but the practical concerns as well. As an example, at chapter 3.2 the authors review the issue of diversion. While diversion is in itself a Police Prosecution Service-run system, it is useful for practitioners to have a detailed understanding of its workings and the authors provide it.

What I found particularly relevant in this book is the discussion on different topical issues within criminal law. As an example, chapter 16 deals with restorative justice which, as many criminal practitioners will know, is currently something of a thorny issue. At Chapter 16.6 the authors critique restorative justice pointing out that while there has been widespread support for the use of it in criminal justice processes, theoretical objections have also been raised. In this regard the authors not only outline an important part of criminal justice process, but provide theoretical and practical understanding as to the strengths and weaknesses of RJ’s role in the process.

The publisher of this work, Thomson Reuters, should be applauded for not only publishing this work again but designing and producing it in a way that makes it easily accessible for the practitioner. What I liked about both the first and second edition of this work is that the practitioner is able to dip into it and to obtain the information they require to answer any question without undue delay. As a result of this and the comprehensive nature of its contents I would recommend that all criminal practitioners have a copy of this work in their library. I would especially recommend that many experienced practitioners – who know the law and the process and the application of it like the back of their hands – have a copy. This is because the law is of course a continually changing beast and with new legislation coming into effect it is imperative that they remain up to date to ensure that their clients are best served. This excellent edition assists with that process and its authors should be congratulated on what is an outstanding work on the topic.

Todd Nicholls

Todd Nicholls is a criminal lawyer with the Public Defence Service in Christchurch and with a particular interest in media law and sport law as well as criminal law. He is also a writer and a journalist (he has a Diploma in Journalism from Canterbury University). He has written three books.

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