Opening of the High Court at the Christchurch Justice and Emergency Services Precinct

On Friday, 31 January there was a formal opening of the High Court at the Christchurch Justice and Emergency Services Precinct.

The Chief Justice, Dame Sian Elias, welcomed everybody to the Ceremonial Sitting and introduced the speakers: Justice Sir William Young, Solicitor-General Una Jagose QC, Andrew Logan, Jonathan Eaton QC and Craig Ruane.

As Mr Ruane mentions in his President’s Column on p.2, a theme that ran through the speeches was the importance of Judicial independence in New Zealand. While there have been some reservations regarding the placement of courts, police and emergency services in one complex, the courts have been positioned in a way that both recognises and ensures this independence.

Now that the courts have been utilised for a few months and some of the initial glitches have been ironed out, many will agree that the new “Christchurch Courthouse” is going to successfully meet our Judicial requirements for the foreseeable future.

The photo above was taken after the opening ceremony in the quadrangle at the Justice Precinct.
President’s Column

By Craig Ruane

High Court opening ceremony

The Chief Justice, Dame Sian Elias, presided over the formal opening ceremony of the High Court in the new Courts building on 31 January 2018. The speakers included Justice Sir William Young who spoke of the history of the Supreme Court and High Court buildings in Christchurch.

Jonathon Eaton QC spoke on behalf of the Bar Association and I addressed the Court on behalf of local practitioners.

One theme that ran through the various speeches was the importance of the independence of the courts in our justice system. I, for one, will no longer be referring to the complex as the Christchurch Justice and Emergency Services Precinct but rather to the Christchurch Courthouse. Some commentators have raised constitutional issues of having the Judicial branch and the Executive (Police) in the same building. The reality is that the buildings are separate and distinct, although some facilities are shared. The “custodial participants” occupy a windowless cell block under the quadrangle between the two buildings and are shifted from one to the other by a combination of Police and Corrections staff.

All the courts are up and running in the new building and most of those who have been there (willingly or unwillingly) agree that the physical facilities are vastly more pleasant than in the Durham Street building.

There are a number of teething problems, as there will always be in a project of such complexity, but these are being worked through. The most difficult problem for me is that after 30-odd years of practice I am now having to tell my clients to meet me outside Court 8, or Court 1, for their first appearance.

AML/CFT Compliance

I suspect most of you will have been deluged with offers from various professional development providers to assist with the alphabet soup of anti-money laundering and countering the financing of terrorism compliance. Unfortunately this is not something we can simply ignore and the burden of compliance on small to medium-sized practices is, on the face of it, quite daunting. New Zealand Law Society Continuing Legal Education has run, and will continue to run, a series of seminars and I strongly urge you to enrol for these. If nothing more it will help meet the 10 hours CPD requirement. There is good material on the Law Society website at www.lawsociety.org.nz/practice-resources/practice-areas/aml-cft which will help.

Lawyers and conveyancers will become reporting entities under the legislation on 1 July 2018. Lawyers who undertake specified activities have quite burdensome obligations to conduct risk assessments, and to meet report requirements that will, in some cases, go against the traditional solicitor/client duties of confidentiality.

If you have not already begun the process, I strongly urge you to do so.
Reducing Key Staff Turnover

By Leonie Queree, Leo Recruitment Ltd

Retaining key staff members has always been a top priority in the legal profession. Research by Legal Practice Intelligence (Australia) concluded that, in a relatively stable, modestly-growing economy, the target rate for staff turnover in a “successful” law firm is likely to be between 10 and 15% annually. They also estimated that turnover by role would be: partners 2.5–5%, senior lawyers 7.5–10% and junior lawyers 15–25%.

High staff turnover is expensive on many levels – with an actual impact on the firm’s bottom line. Discontented and departing employees continue to drain resources while working at a sharply decreased level and new employees divert the time of those who must support and train them.

Lowering turnover rates requires both the implementation of better hiring practices and improved staff retention.

There are certain aspects of all potential hires that can be classified as “intangibles” – things excluding education and work experience. Intangibles include emotional intelligence, client service and business development acumen, personal drive, as well as compatibility with the firm’s values.

When selecting new hires, firms should focus more on those intangibles to get a better fit with both practice area and organisational culture.

The most common issues causing high staff turnover are:

» No mechanism for staff to express concerns, or make positive suggestions,
» Teams that don’t work well,
» Inadequate backup assistance for employees temporarily overwhelmed,
» Difficulty in taking leave,
» Solicitors specialising early in their career – this can cause discontent later if they try to move to another area.
» Uncertainty as to career progression, particularly at senior levels. Firms, however, should not assume all senior practitioners want partnership. This is especially true of millennials, who seek both career and life satisfaction.

Being aware of these issues and implementing systems within your practice will greatly assist in retaining key and keeping them motivated.

During uncertain economic times the need to retain proven fee earners becomes even more important. Simply put – firms can lower staff turnover through better hiring practices and placing new hires in roles where they will have the best chance to succeed.

Leonie Queree can be contacted at leonie@leorecruitment.co.nz or phone 021 205 7342.
Recently, a number of partners of law firms have mentioned to me that they are giving much greater attention to the “business side” of their firms. The environment has become more competitive, and they need to be more effective in both attracting and retaining the best people. Partners acknowledged that they are frequently consumed by attending to the demands of their clients, but they realise that to offer their clients the best service they need a team of good people. I hope this short article will stimulate thought and planning to help your teams be even more successful.

Sport can teach us many things about good teams and successful businesses. We need a variety of skills and aptitudes in our teams. The world’s best 11 wicket-keepers would not be a successful cricket team. It’s important to celebrate individual abilities, and build on them.

Pick your team members carefully. Richard Branson once said that if you get a great group of people you can get through the bad times together and enjoy the good times as a team. You have to attract great people who believe in what they are doing.

Train and develop your team. Mr Branson also believes that instead of putting clients first, successful businesses put their staff first. If you take care of your employees they will take care of your clients and ultimately the overall results for the team.

The most important task for each team member is to help their team-mates have a good day. If we all aim to do this, enthusiasm and encouragement will flow through the group. There are times when there are many challenges, and some individuals will need support from others.

Sport is to be enjoyed. It’s meant to be fun. Winning is the most fun, and you have to keep score to know when you have won.

The last few months have been difficult for our team due to our ‘captain’ and CEO being diagnosed with a terminal illness in October. During her three years with us, Phillippa Wilberforce strengthened our team with her superb leadership skills and her vision for our future. She encouraged us all to challenge ourselves and to grow personally. She believed in what we were wanting to achieve, and continued to lead from the front even after she became unwell. Sadly, she was unable to attend the launch of our new firm due to her diagnosis. Phillippa passed away on Monday, 5 February.

Sport and business is full of ups and downs but a good team becomes stronger by overcoming challenges. I wish to take this opportunity to acknowledge Phillippa’s contribution to our team and to thank those of you who passed on condolences and kind words.

Andrew Nuttall is an authorised financial adviser with Cambridge Partners. He has worked with members of the legal fraternity for over 25 years and his Disclosure Statement is available on demand and free of charge. www.cambridgepartners.co.nz telephone 364 9119 andrew.nuttall@cambridgepartners.co.nz

Cameron & Co’s Ilam office will relocate from their current premises at 245 Clyde Road to 322 Riccarton Road on Wednesday the 28th February.
The CPD year ends on 31 March 2018. It is important that you have now completed your CPD requirements and your learning plan and record (CPDPR) is up to date. To refresh your memory on CPD see the resources on the NZLS website – www.lawsociety.org.nz/cpd

Not yet completed your CPD requirements?
You ought to have received an email outlining how to complete this process. Contact ken.trass@lawsociety.org.nz if this is not the case.

The Canterbury Medical Research Foundation has funded more than $20 million in health research in the Canterbury area. The mission of the Foundation is to fund new research that will make a difference to people’s lives, now and for future generations.

Talk to your clients today about creating their legacy, visit www.cmrf.org.nz

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Appeal against decision of Court of Appeal reinstating decision of Family Court Judge

Horsfall v Potter [2017] NZSC 196; (2017) 4 NZTR 27-032

RELATIONSHIP PROPERTY - TRUSTS - RESULTING TRUST

proceeds of sale to 168 Group was for the purpose of defeating the first respondent’s rights – case for appellant was that: (a) the beneficial owner of the property was 168 Group (which seemed to have been the primary submission) or, alternatively, 168 Group along with one, other or both of 88 Riddiford Holdings Ltd and appellant, with the interest of the latter being his separate property; – (b) the legal joint ownership of the property was just a strategic ruse intended to limit the risk of later awkwardness with the Commissioner of Inland Revenue over the profits anticipated when the property came to be resold; and – (c) the property and the proceeds of sale not being relationship property and first respondent thus having no claim on them, the transfer of the proceeds of sale to 168 Group was not for the purpose of defeating first respondent’s rights – first respondent’s claim was upheld by Family Court – Family Court judgment was reversed by High Court but reinstated by Court of Appeal on a further appeal – Court of Appeal relied substantially on Potter v Potter [2003] 3 NZLR 145 (CA) – complicating feature of the case was that 168 Group was not a party to the proceedings in the Family Court – it had subsequently been joined as a party – it was agreed in the Court of Appeal that if first respondent’s appeal was allowed, proceedings should be remitted to the Family Court to permit 168 Group to be heard as to relief – whether Wellington property was relationship property – whether payments were made in order to defeat first respondent’s rights.

HELD: factual findings of Family Court must be restored – when the property was placed in parties joint names there was no resulting (or other) trust in favour of 168 Group or any other party – Family Court found appellant was conscious of the potential rights of first respondent when he transferred the proceeds of sale of the Wellington property to 168 Group and that he must have known that his actions exposed her to the substantial risk in terms of her rights in respect of those proceeds – High Court accepted that on the findings of fact made by Family Court there was a “solid foundation” for the application of s 44 – as Supreme Court had restored Family Court’s critical findings of fact, Court saw no escape from the conclusion that appellant’s actions were for the purpose of defeating first respondent’s claims – Court also noted that they had no doubt that the expression “claims or rights” in s 44(1) encompassed claims which would, but for the disposition, have been available on separation – appeal dismissed.

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What we offer is – we think – something special. We aim to set the standard in the practice of resource management and environmental law. We work on the most interesting cases. We collaborate. And we are committed to helping everyone on our team develop their full potential.

To learn more about us, go to our website, www.adderleyhead.co.nz
Then, contact Paul Rogers on 03 353 1341 or paul.rogers@adderleyhead.co.nz

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Central Christchurch

Premises in Tuam Street, very close to Justice Precinct, now available for lease. Ideal for lawyers/accountants etc with two offices plus reception area, kitchen, bathroom and one onsite carpark.

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021374620
Law Firms Replace Servers with New Zealand Based Local Cloud Computing

When Hamish Taylor, partner at Cuningham Taylor Law, was introduced to the team at vBridge in 2011, it was to talk about replacing traditional servers with cloud based computing, or hosted infrastructure. It would be fair to say that the idea of using cloud computing brought a sense of stepping into the unknown and any engagement would need to be with a reputable company based in New Zealand. Understanding the services, setup and usage with the team at vBridge was easy. Looking back now, it was a conversation Cuningham Taylor would have happily had sooner.

While hosted infrastructure services have been available for a number of years, notably through large global players like Amazon Web Services, adoption in New Zealand only really took off with the arrival of local offerings like those from vBridge, who specialise in customer experience, and who understand local requirements and constraints. Local offerings have proved a hugely successful fit for New Zealand businesses.

In a nutshell, vBridge hosted infrastructure provides the computing power to run applications, store data, and run databases as-a-service. This removes the need to purchase, support, and continually upgrade computing server hardware. The service provides data protection and security features that act like an insurance policy to ensure users can easily recover from data loss or corruption.

The team at vBridge specialise in four key areas of hosted infrastructure:

1. Hosted infrastructure – computing power to run applications, databases, and store data
2. Data protection – customer data is backed up to multiple locations
3. Data Security – network security products that protect from external attack
4. Cloud Connect Backup – Backup onsite servers to a secure remote location

“Our customers reduce the risk of loss of access, loss of data, and data corruption by 80% just by moving their data to hosted infrastructure. That’s because the quality of our datacentres and hosting platform reduce the risk of system failure, natural disasters, fire and theft” – says Director, Hamish Roy.

Hosted infrastructure has quickly become the ‘new normal’ for IT implementations across New Zealand and globally, especially since it helps businesses address some of the data security challenges they face daily. What was once perceived as either too technical, or only for large businesses, is now common place for businesses of all sizes.

vBridge have been working with Cunningham Taylor Law since 2011 along with a number of other Christchurch based law firms. Cuningham Taylor’s experience is a good example of how hosted infrastructure services can be integrated over a period of time. Services can be transitioned to hosted infrastructure when required. It doesn’t need to be an ‘all or nothing’ approach.

“Initially for us, it was an opportunity to review our current performance and storage requirements, and learn a bit more about cloud-based computing”, says Hamish Taylor. “I was aware of cloud-based computing, and we saw this as a great opportunity to understand the range of services available and, importantly, the added security it could provide us and our clients”.

Hamish added, “What I liked about the team at vBridge, is that they have an honest and pragmatic style. They are specialists in the cloud computing field and didn’t try to sell us services we didn’t need. We were able to start small and integrate services as we needed them. For us, cost difference is far outweighed by the knowledge that our data is protected and that our systems are secured by the latest internet security measures. We don’t have to worry about upgrading our hardware either”.

If your current onsite servers are reaching the end of their lifecycles or are requiring an upgrade in capacity or capability, but you aren’t sure where to start your investigations into cloud-computing, the team at vBridge would love to hear from you. They offer a ‘no obligation’ introductory meeting to explore your current services and discuss where hosted infrastructure could benefit you.

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Guidance to lawyers considering acting under a limited retainer

— Part Two

...Continued from Canterbury Tales Vol 24 Issue 1

BENEFITS FOR LAWYERS

Some of the potential benefits of limited retainers for lawyers are:
» Increasing market share while also addressing the legal profession’s commitment to facilitating greater access to justice.
» A potential source of clients who want and are able to handle their legal affairs themselves, but are willing to pay for limited expert guidance.
» Improving the quality of legal services by focusing on efficiency and the client’s core legal needs.
» More affordable and predictably-priced legal services for clients, which tends to increase satisfaction.
» Fewer unpaid legal bills and associated debt recovery.
» Enhanced job satisfaction for lawyers who may not enjoy the full-scope practice model and who want to reduce the demands on their legal practice. Lawyers might be able to work part-time, or from home. This may reduce professional stress.
» A reduction in fee-related complaints. A limited retainer can reduce client dissatisfaction, as consumers know clearly what they are and are not getting. Clients are less likely to blame their lawyer for any disappointment arising from the outcome of their legal issue.
» Greater ability to manage client expectations and enhance clients’ perceptions of value retained and received.

BENEFITS FOR CLIENTS

» Increased access to justice. Many people can afford to pay something, but cannot afford the full representation approach.
» Expert legal assistance that can help a client navigate a system that is often complex and difficult for a lay person to understand.
» Clients are empowered. They have more control over their own legal affairs, and can exercise control over those parts of the file they feel comfortable handling.
» Price predictability.
» Greater ability for a wider section of civil society to access the justice system to resolve their legal disputes or issues.

SOME EXAMPLES

The following is a non-exhaustive list of areas of law where it might be appropriate for a lawyer to offer services under a limited retainer. The list is indicative only, and not intended as a substitute for each lawyer’s own professional judgement. In all cases, the practitioner must consider the appropriateness of unbundling their services by having regard to the circumstances of the case, the client, the complexity of issues involved, and the relative risks and benefits (to the client and lawyer).

» Drafting initial pleadings and affidavits.
» Participating in one-off court appearances, such as: conducting interlocutory applications, appearing in pre-trial or case management conferences.
» Strategic advice regarding a specific stage of the legal process, such as filing an initial application, or statement of defence, or the grounds for and likely success of an appeal.
» Applying for probate.
» Providing one discrete piece of advice within a larger legal matter, for example checking a letter to be sent to an employee in an employment dispute.
» Document review, preparation or filing.
» Factual investigations.
» “Coaching” a client to appear in court on their own behalf, or to present a case to the Disputes Tribunal.

The partners of Harmans are delighted to announce that Jessica Marshall and Deirdre Fell have recently been promoted to Senior Associates of the firm.

Jessica has built a great reputation in the areas of property and commercial law, including residential and commercial conveyancing, business acquisitions and disposals, franchising, hospitality, commercial leasing and commercial contracts.

Deirdre manages our busy Estates team. Her areas of expertise include High Court grants (including complex applications), general estate and life tenancy administration, resealing overseas grants, asset protection, trusts and trust administration, estate planning and wills, and conveyancing.

Deirdre is a Registered Legal Executive, and it is understood that less than 10% of legal executives have been promoted to Associate and even less to Senior Associate level in New Zealand law firms. So a special achievement indeed for Deirdre.

Being appointed Senior Associate at Harmans recognises the experience, ability and quality of service that Jessica and Deirdre each bring to the firm and our clients.

Harmans Lawyers

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Providing guidance on how to independently instruct an expert.

Settlement negotiations and conferences, mediations, or other types of clearly limited dealings with the opposing party.

**RISKS FOR LAWYERS**

Unbundling your legal services for your clients can be risky. Because clients remain “in charge” of their own legal issues, responsible for proceeding their case themselves, there is a risk that they will be required to make decisions about legal matters with which they are unfamiliar. And, as the lawyer’s access to relevant information about the matter depends at least to some extent on the quality of information given to them by the client, there is potential for counsel to make incorrect assumptions about the facts.

Further, there is potential for limited retainers to cause confusion between client and lawyer about the scope of the work to be done, and who is responsible for each discrete element of the wider legal work. Confusion as to responsibility and limits on liability could lead to dissatisfied clients, complaints and potential professional negligence claims.

The risks for lawyers include:

- Allegations of professional negligence, arising from insufficient knowledge of the client’s factual situation.
- Allegations of professional misconduct in relation to client care responsibilities, duties to the court, and possible third parties.
- Confusion, due to failure to fully explain to the client the extent and limitations of the unbundled services being offered.
- Unintentionally creating a full retainer, or a retainer that has greater scope, and attracting the consequent liabilities.
- Non-compliance with professional indemnity insurance terms.
- Complaints.

It is essential that lawyers engaged under limited retainers clearly express what is covered by the contract for legal services and what is not, so there can be no ambiguity or alleged misunderstanding.

Lawyers also have an overarching duty to act in the best interests of their clients. Therefore, a lawyer should not agree to work under a limited retainer in circumstances where, in their professional judgement, it is inappropriate.

**RISK MANAGEMENT**

A limited retainer is not much different from a traditional retainer in terms of the general risk management practices a lawyer should employ. However, one added risk stems from the possibility that the client may not fully understand the limits on the lawyer’s responsibility under the unbundled retainer, and may not be able to competently complete their own tasks.

- Well-documented and clear client communication is the best way to reduce risk. Take the time to properly communicate fees and disbursements, expected outcomes, unexpected contingencies – and actively listen to and ask your client questions.
- Be explicitly clear about who is to be responsible for what particular task and be proactive to ensure that the client is performing their tasks when there are intersecting roles.
- Carefully check all communications about the retainer, especially anything you put in writing (including communication to third parties), with particular attention to the fact that you are not unintentionally extending the scope of the retainer. (See Robert Bax and Associates v Cavenham Pty Ltd [2013] 1 Qd R 476 [490];
- Be clear with the Court and opposing counsel about the capacity in which you are acting. If you are...Continued on page 12
Library News

By Julia de Friez, Librarian.

Lawyers visiting the new library at the Justice Precinct have been pleasantly surprised by how light and open the new location feels. Most are also surprised to find that even with a much reduced floor area, nearly all our collection from the old library at Durham Street has been able to be accommodated at the new site. Be sure to come and see the Library for yourself when you are next at the Precinct, it’s even worth a special trip. Find the B2 sign on Tuam Street and you’ll be right outside the Library entrance.

Two new spaces

Just a reminder that the New Zealand Law Society has two sites available for lawyers’ use within the Precinct:
> NZLS Library – ground floor, Emergency Services Building (Tuam Street, B2 entrance)
> Lawyers’ Room – level 3, Justice Building (A2 entrance).

Library subscription databases are accessible by lawyers working at both sites.

A JESP Lawyers’ access card allows entry to the Lawyers’ Room and the Library, as well as the Justice Precinct interview rooms. If you haven’t applied for an access card already, an application form and more information can be found on the Library website. An intercom is located at the Library entrance if you don’t yet have a card.

Training

If your New Year’s resolution was to brush up on your legal research skills, contact the Library to arrange an individual or small group research training session. We offer 30 to 50 minute sessions with an experienced researcher – to book email: canterbury@nzlslibrary.org.nz.

E-books on 14-day loan – Lexis Red

Lexis Red is a great new resource which allows lawyers to ‘borrow’ a selection of LexisNexis titles on electronic loan for a 14-day loan period. To apply to become a Lexis Red borrower, email wellington@nzlslibrary.org.nz with “E-book borrowing” in the subject line. Provide your name, contact phone number and NZLS Registry number. Once your request has been approved, you will be sent a password with download instructions for the Lexis Red app. You can select from the following titles: Abbott and Thompson District Courts Practice (criminal); Adams’ Land Transfer; Becroft and Hall’s Transport Law; Commercial Law in New Zealand; Cross on Evidence; District Courts Practice (civil); Electronic Business and Technology Law; Environmental and Resource Management Law; Family Law Service; Fisher on Matrimonial and Relationship Property; Garrow and Turkington’s Criminal Law in New Zealand; Hall’s Sentencing; Heath and Whale on Insolvency; Hinde McMorland & Sim Land Law in New Zealand; Intellectual Property Law; Kennedy-Grant and Weatherall on Construction Law; Law of Trusts; Local Government; Mazengarb’s Employment Law; Morrison’s Company & Securities Law; Personal Grievances; Professional Responsibility in New Zealand; Privacy Law and Practice; Sim’s Court Practice; Wills and Succession.

New books

Our recent acquisitions include:
> Bennion on Statutory Interpretation by FAR Bennion et al., 7th edition (2017),
> Competition Law in New Zealand by Chris Noonan (2017),
> Coote on New Zealand Contract Statutes by Brian Coote et al., (2017),
> Environmental and Resource Management Law by Derek Nolan, 6th edition (2018),
> Feminist Judgments of Aotearoa New Zealand – Te Rino: a Two-Stranded Rope by Elizabeth McDonald et al., editors (2017),
> International Human Rights Law in Aotearoa New Zealand by Margaret Bedggood et al., editors (2017),
> The Attorney’s Handbook: Information, Checklists, Precedents and Examples for Attorneys by Philip Dreadon (2017),
> Williams & Kawharu on Arbitration by David AR Williams & Amokura Kawharu, 2nd ed (2017).

Contact us

For further information or for any research or document delivery requests, email canterbury@nzlslibrary.org.nz or phone 377 1852.

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Christchurch

March
- 6 Mar – Webinar - Speaking Your Clients Language
- 7 Mar – Dealing with Difficult People
- 7-8 Mar – Intro to Company Law
- 8 Mar – Webinar – Regulatory Roadblocks – Dealing with the Public Sector
- 8 Mar – Webinar – Rural Law – Economic and Regulatory Issues
- 16 Mar – Update on Contract
- 22 Mar – Webinar – Land Transfer Act – Implications
- 27 Mar – Webinar – Shared Services Agreements
- 28 Mar – Webinar – AML/CFT Act Tool Kit – Due Diligence

April
- 10 April – Trust Account Administrators

Out of Christchurch:
- 1 Mar – Auck - Companies Law –divergent interests
- 8-10 Mar – Auck- Stepping Up
- 14 Mar - Auck - Trust Account Administrators
- 19 Mar – Wgtn – Getting on Top of it all – Working Smarter
- 20 Mar Wgtn, 23 Mar Auck – Communication Miracles at Work
- 21-23 Mar – Wgtn – Lawyer for Child
- 22-23 Mar – Auck – Child Inclusion a working with Children Intensive
- 22-23 Mar Wgtn – Intro to Criminal Law
- 27 Mar – Auck - Retirement Village Option
- 5 April – Auck - Property – Subdivisions
- 19 April – Auck – Trust Account Supervisor Training
- 19 April – Auck – Trustee – Lost Capacity

Canterbury Westland Social Events:
- Hunter Cup Golf Day – Thursday 22 March 2018 – Look out for info in notices

Welcome Phillipa Shaw

The partners of Harmans are delighted to announce that Phillipa Shaw has been appointed to lead our busy Elderly Services and Seniors Law Team as an Associate from December 2017. Phillipa specialises in senior’s law, property and private client matters, and has built a strong following of loyal clients throughout her career.
...Continued from page 9

not counsel on the record ensure this is clear on any documentation you sign.

**BEST PRACTICE**

A lawyer should advise the client honestly and openly about the nature, extent and scope of the services that the lawyer can provide and whether the services can be provided within the financial means of the client. Ensure the client understands that the retainer is limited and understands the associated risks – to the client and the lawyer.

Not all clients are equal. A longstanding, sophisticated corporate client almost always presents very different considerations for unbundling than that of a first-time family law client.

Lawyers should constantly review whether a matter remains suitable for a limited retainer. For example, where there are inadequate or poor quality instructions provided by the client, further clarification from the client should be sought before continuing any assistance.

If clients give further instructions, ensure that a new letter of engagement is provided. Avoid taking on even a little bit more than outlined in your original written limited retainer without providing a new letter of engagement. “Scope creep” can lead to misunderstandings and complaints down the road.

Once a matter is concluded confirm this in writing. A completion letter serves two purposes: (1) to protect you should your client later assert that you were responsible to complete an additional step; and (2) to protect your client by reminding him or her of the responsibility to complete the legal matter from that point or give you further instructions.

**IS IT APPROPRIATE?**

The ideal client for a limited retainer to work effectively is one who is:

- Self-motivated.
- Willing and able to handle paperwork, details and follow through where required.
- Able to gather and analyse information.
- A good communicator.
- Able to make decisions.
- Has sufficient time to perform the delegated tasks.
- Reasonably proficient in written and oral English.
- Not suffering from any emotional or mental health concerns.

Clients who cannot understand the limits of the representation and associated liability, or who may not be able to perform delegated tasks, may not be appropriate clients to whom to offer unbundled services.

Limiting the scope of representation does not mean that a lawyer’s general fiduciary duty is lost. Lawyers cannot contract out of fundamental ethical obligations. Lawyers must still meet a required standard of care, competency and confidentiality. And this remains the case when legal work is undertaken pro bono.

The Law Society Gazette recently reported that Lord Justice Jackson of Minkin fame has urged his colleagues on the bench to back solicitors who want to unbundle services. He said, ‘If you give a solicitor a limited task to do and limited costs for doing it, you can’t then blame the solicitor for not doing something else which is completely different- you can’t have your cake and eat it’ he said (‘We’ve got your back’-Jackson LJ clams unbundling fears Law Society Gazette 16 October 2017)

**WHAT RESOURCES ARE AVAILABLE?**

The Canadian Bar Association and other Canadian legal professional organizations have been undertaking significant work in this area. The British Columbia Courthouse Library has a list of useful resources about unbundled legal services at http://www.courthouselibrary.ca/practice/familylaw/unbundling/.

These resources include a Do’s and Don’ts of Unbundled Legal Services and suggested Terms of Engagement. Any modified terms of engagement in the New Zealand context would need to be consistent with the client care information requirements of the RCCC (see: https://www.lawsociety.org.nz/for-lawyers/regulatory-requirements/client-care).