I was introduced to the idea of feminist judging by a law lecturer from London who told me about the Northern/Irish Feminist Judgments Project, in which a group of scholars were exploring issues of power and identity through rewriting judicial decisions. The idea is to put yourself in the shoes of the judge and write a decision which could have been handed down at the time, but wasn’t. Same facts, same law, different (and we think, better) reasoning, which may or may not lead to a different outcome.

Feminist judging has taken hold all over the common law world. The New Zealand project, led by my colleague Elisabeth McDonald, Māmari Stephens of Victoria University, Rosemary Hunter of Queen Mary University of London and me, uniquely explored ideas around Māori women’s experiences of the law, as well as a feminist approach to the law more generally. We were fortunate to attract funding from the New Zealand Law Foundation.

One of the most important lessons I learnt through this exercise was just how difficult it is to write a judgment, and my respect for the work of our judiciary has not wavered. Nevertheless, we demonstrated that there are opportunities within our existing legal framework

Continued on page 4
President’s Column

By Craig Ruane

Do unto others ......

The legal profession has had some pretty bad publicity over the last few weeks as a result of the Russell McVeagh affair. This has led to the New Zealand Law Society announcing a series of measures to deal with sexual harassment and other gender issues. These include developing an online portal and dedicated helpline, a webinar on sexual harassment, a review of the National Friends Panel, a survey, a working group, various educational measures and the like. These have already been widely publicised in media releases, Law Talk and Law Points.

A Gender Equality Charter is close to being finalised and is to be formally launched at a lunch to be held at Parliament on 12 April. The Charter can be found on the NZLS website under Law Society Services/ Women in the Legal Profession.

There is no doubt that the Russell McVeagh allegations has shone a bright light on some rather unsavoury and unpleasant practices by some in the profession. There is no doubt that some areas of the profession are less professional and collegial than we would like to think.

Having said all that, the subsequent reports of similar issues arising in the Human Rights Commission (!), and in the youth wing of the Labour Party should make it clear that these are not problems restricted to the legal profession and are unhappily problems reflected in some parts of our society at large.

Close to 20 years ago the New Zealand Defence Force promulgated two Defence Force Orders, one to do with sexual harassment, and the other to do with inappropriate sexual behaviour. These were issued following a number of disciplinary problems that had become apparent, as well as concerns about the role of women in the Defence Force at a time when a number of traditionally male combat roles were being opened up to women.

What I found interesting (and which I think came as something of a shock to the representative from the Ministry of Women’s Affairs who attended the launch), was that the two Defence Force Orders made little or no reference to “men” and “women”. The whole focus was to do with the abuse of power, and the effect that this had on morale, unit cohesion, and discipline, regardless of the sex of the perpetrator and victim. The Defence Force’s view was that this sort of abuse of power undermines combat effectiveness and ultimately leads to loss of life.

The concern of the Defence Force was with senior ranks taking advantage of junior ranks, or those who were not able to give genuine consent.

Good leaders know to treat those over whom they exercise command and control with respect. This might be one of the lessons to be taken from ........Continued on next page

Eliot Sinclair

Your trusted advisors providing total Surveying, Engineering & Planning solutions

03 3794014

www.eliotssinclair.com
Steel & Co, Barristers and Solicitors advise that they have moved from 119 Bealey Avenue to 111 Bealey Avenue, Christchurch. All other details remain the same.

Rachel Boulton, Barrister and her employed Barrister Danielle Mills-Godinet have moved premises to: Above Your Space 177 High Street Level 1, Unit 12 Christchurch All other details remain the same

...Continued from page 2

some of the more recent examples which have made the front pages of The Press and The Dominion Post, and have excited the twitterati. Another lesson to be learned might be the importance of self-discipline, self respect, and self-control. A combination of excessive alcohol and youth seldom ends well, as those of us who practice in the criminal jurisdiction know only too well.

I am firmly of the view that the vast majority of members of the profession treat their colleagues with respect, out of simple human decency. In my experience senior members of the profession are more than willing to help more junior members and I can certainly remember in my days as a young lawyer the advice and help I got from a number of my employers and other senior members of the Bar.

It would be a great pity if we threw the baby out with the bathwater in implementing charters and criteria, and filing more reports to the Law Society to ensure that we are meeting quotas. The fact of the matter is that most people who enter partnerships, particularly in the smaller firms, do so because they want to practice with people with whom they feel they can spend more time than most of us spend with our families. In the past that has led to firms dominated by men. There are also several examples of firms dominated by women, including one which was, I think, the first all-women firm established by one of my contemporaries at university.

The fact of the matter is that, by far the majority of legal graduates in this country are now women, and just over 50% of those holding practising certificates are women. The profession has had to adapt and will have to continue to adapt to take account of different ambitions, long-term goals and expectations of those entering the profession.

I hesitate to preach, but in the Gospel according to St Matthew, Chapter 7 Verse 12 (and this is from the King James version) we find what is sometimes called The Golden Rule: “therefore all things whatsoever ye would that men should do to you, do you even so to them”.

In simpler language, treat others as you would like to be treated yourself.

Canterbury tales

Canterbury tales is the official newsletter of the Canterbury-Westland Branch New Zealand Law Society. Publications Committee: Zylpha Kovacs (convenor), Simon Shamy (editor), Carolyn Browne, Ann Maria Buckley, Daniel Weatherley, Beatrix Chin. All correspondence and photographs should be forwarded to: The Branch Manager, Canterbury-Westland Branch New Zealand Law Society, Level 1, 307 Durham Street, Christchurch. PO Box 565 Christchurch, DX WX 10074. P 03 366-9184 F 03 366-9977 E canterbury-westland@lawsociety.org.nz

Canterbury tales is published 11 times per year.

Advertising

$35 per column/cm exclusive GST.

Contact: Jim Kennedy
E jimkennedy005@gmail.com
P 03 342-5457 M 027 577 7139

Disclaimer: Canterbury tales is published by the Canterbury-Westland branch New Zealand Law Society. The opinions expressed herein may not necessarily be those of the branch and have not been expressly authorised. The branch accepts no responsibility whatsoever for any error, omission or statement.

COMMERCIAL & PROPERTY SENIOR LAWYER

Young Hunter is looking for a senior lawyer to join its commercial team to become part of its succession plan. The position may appeal to a lawyer who already has a practice and is looking for a new opportunity with partnership prospects.

The role will include a development pathway within a well-established Christchurch firm where the successful applicant will work alongside well-regarded lawyers.

Our commercial team offers comprehensive advice in respect of all aspects of commercial and property law, conveyancing, trusts and estate planning from offices based in the Christchurch CBD and Redcliffs.

Please email your application to:
Keely Marbeck at kam@younghunter.co.nz

If you would like more information or to confidentially discuss the role further, please contact Chris Cooper, Keely Marbeck or Michael Toomey ph 03 3793880

www.younghunter.co.nz Level 2, 134 Victoria Street, Christchurch 8013 PO Box 929, Christchurch 8140
for judges to deliver better justice and to actively resist the further perpetuation of existing biases.

For me, this project was an enormous professional undertaking but it also came at an important personal time – I became pregnant close to the start of the project and the majority of the project took place when I was on ‘parental leave’. Whilst in utero, George attended judgment writing training in Wellington, and at the age of three weeks he attended a two-day collaborative workshop in Christchurch. There we were, 25 lawyers and a retired judge, sitting in a square formation discussing my work. And there I was ‘overfilling’ George with breastmilk in an attempt to keep him quiet while I was speaking, only to have it vomited all over my clothes. A shroud of women jumped to the rescue, while others tried to hide their embarrassment. I did editorial work while George was a sleepy newborn and as he grew older, with him beside me on the floor of my home office. I hope that George and his older sister Matilda will grow up to be feminists.

So, in years to come, I will associate this project not only with the exceptional experience of working with an inspiring national collaborative group of women and men, and with the professional relationships I have formed in doing so, but also with George’s babyhood. What are the feminist lessons in that, I wonder?

In what ways might a judgment be ‘feminist’?

We allowed our writers to define feminism in a way that was meaningful to them. Some of the key methods adopted by our feminist judges were:

» Framing the facts in a way that acknowledges the experiences of woman litigants
» Pursuing substantive equality for all (particularly for Māori)
» Challenging existing gender biases such as rape myths
» Applying a feminist theoretical approach such as the ‘ethic of care’
» Setting the context to questions of statutory interpretation so as not to undermine legislative efforts designed to combat inequality or discrimination
Book review

Feminist Judgments of Aotearoa New Zealand

Reviewed by Jeremy Finn

Most potential readers of this important book will look at the title and ask “what is a feminist judgment?” The answer, as is made explicit in the introductory chapters, is a revisiting of decided New Zealand cases – from a wide range of courts and tribunals – so as to examine the factual and legal issues before the original court or tribunal through a different lens, adopting either or both of a feminist perspective and analysis or that of mana whana.

In each case the analysis naturally places much greater weight on issues which may impact women, or tangata whenua, more significantly than have the courts or tribunals before which the original cases were heard. The feminist judgments included in the book are generally written as an additional concurring or dissenting judgment by a hypothetical extra – and feminist – member of the court or tribunal, though a few are alternative judgments. The judgment writers were restricted to the authorities and literature available to judges of the time, should they have chosen to make use of them. There is, therefore, no historical rewriting of the law in the light of later events.

The work is the product of the combined talents and efforts of 58 contributors, almost all of whom are practising lawyers or academics at New Zealand universities, who collaborated in an extensive feminist judgments project between 2015 and 2017, by joint or sole authorship of one of the feminist judgments, or of one of the commentaries on the judgments included as well as involvement in workshops in which draft contributions were critiqued. The methodology of the project draws extensively on previous projects in other countries and has been enhanced by the contribution of Professor Rosemary Hunter of Queen Mary University of London who has been involved in similar projects elsewhere. Although the editors are clearly aware of a possible international audience, the book is an intensively New Zealand work, rooted firmly in local scholarship and exploring aspects of New Zealand law over a significant timespan.

Each of the 24 alternative judgments are accompanied by a commentary explaining the original judgment and setting them in the context of contemporary law and debate. Many of these commentaries are works of the highest quality and should be required reading for any teacher, researcher, judge or lawyer working in the relevant areas.

Given the overall quality, singling out particular contributions risks being unfair to those not listed, but the superlambertaries by Elisabeth McDonald on the cases of R v S [2015] NZHC 801 (on reasonable grounds to believe in consent to sexual activity) and Vuletich v R [2010] NZCA 102 (on propensity to commit violent sexual offending) are masterpieces of analysis and argument, as is Jacinta Ruru’s commentary on Bruce v Edwards [2002] NZCA 294. The alternative judgment by Kerensa Johnston and Mariah Hori Te Pa in the latter case demonstrates the value of this project as it lays bare the weakness of the court’s analysis and its disregard of the interests of local Māori impacted by the decision but not parties to the litigation.

An equally brilliant pairing of commentary (by Yvette Tinsley) and alternative judgment (by Frances Gourlay) is to be found in the final chapter which re-evaluates the assumptions about violent offending underlying the guideline sentencing judgment of R v Taukei [2005] NZCA 174. It is to be hoped that both will be cited to the Court of Appeal in any case where those guidelines may be reconsidered.

Other stimulating reappraisals cover a wide field including employment law, the Bill of Rights Act 1990 and medical and health issues. As is to be expected in any collaborative work, there are some chapters which are less satisfying, such as the discussion of Waipapakura v Hempton (1914) 33 NZLR 1065. The alternative judgment indicates that the landmark 1847 decision in R v Symonds was a decision of the Privy Council (rather than of a full court of the Supreme Court of New Zealand), and the commentary by John Dawson – writing well outside his customary field – unfortunately makes little reference to the very substantial body of extant literature about that case.

A striking feature of the work is how frequently the alternative judgments concur in the results of the original decision but reach the conclusion by a different, and frequently more appealing, route. This emphasises the point that a feminist analysis of law is not some kind of radical rewriting of all our familiar legal principles but rather involves a broader and more careful analysis of the issues which are regarded as vital to the determination of the particular case.

The collective work does not, perhaps, sufficiently emphasise the need for counsel, when framing the issues to be put before the court, to have themselves considered whether there are significant issues which a more traditional, conservative and masculinist approach would not raise at all or which it would de-emphasise to the detriment of the lawyer’s client. Unless lawyers are prepared to do so, the probability is that the current modes of thinking which disadvantage women and Māori – and sometimes other groups – will be perpetuated and equal justice for all will continue to be an empty phrase.

To sum up, this book is a stellar addition to New Zealand’s legal literature. It is a truly provocative work, in the best sense of that word, since it challenges many unconscious assumptions underlying mainstream legal thinking. Its contents should be read and digested thoughtfully by all lawyers, judges, academics and legislators. The editors and contributors deserve no less. Credit must also go to the publishers for the handsome appearance of the book (though an index would have been valuable) and to the New Zealand Law Foundation, the University of Canterbury Law School and Russell McVeagh for supporting the project.
Where to next for you and your firm? Is your workplace as good as it could be?

By Andrew Nuttall

Last year I had the privilege of attending a leadership event sponsored by Cavell Leitch which provided the opportunity to listen to Brad Mooar. Brad is an experienced leader having been a partner of Cavell Leitch and a professional rugby coach. He is currently the assistant coach to the Crusaders.

During his presentation Brad challenged us with the following six questions:

» What are we most proud of at work?
» What are our greatest strengths?
» What do we deeply care about?
» What are our most exciting opportunities?
» What does success look like for owners, staff, families and clients?
» How do we know that we are succeeding?

I found these questions thought-provoking and, during our firm’s recent quarterly review and planning day, they were central. In preparation for this meeting each attendee had to contemplate each question and prepare written responses. Our team has really benefited from this exercise. We found these questions helped further clarify our thinking, stimulate our inspirational juices and set plans and aspirations for the next three years.

If you are a partner, a leader or are enthusiastic about your team take 20 to 30 minutes to answer the six questions. If you are not in a leadership position why not complete the exercise and pass it on to your manager? I’m confident it will help you to make a difference.

Helpful hint: If you initially suffer from writer’s block then just place your pen on a sheet of paper and start to write. The hard part is just getting started.

Take care, as these 20 to 30 minutes might enhance your life.

Andrew Nuttall is an Authorised Financial Adviser with Cambridge Partners. He has been working with members of the legal fraternity for over 25 years. His disclosure statement is available free of charge and on demand. Telephone 364 9119 www.cambridgepartners.co.nz

Contact Details:
Canterbury Chambers
Ph – 03 2603100 Cell – 021 499231
Email mark.russell@canterburychambers.co.nz

Commercial Mediator and Arbitrator
Mark Russell, a commercial barrister with over 30 years’ experience is available as a mediator and arbitrator of disputes relating to:
• Companies and shareholders
• Trusts
• Commercial contracts
Hugh Perry presented, on behalf of the NZLS Canterbury-Westland Branch, the following eulogy at Bernard MacGeorge’s funeral. It was a double funeral as Bernard and his wife Desiree both passed away within a week of each other.

Resting in front of us today is a highly respected lawyer and an extremely supportive wife – she would have to be supportive to put up with being married to a lawyer for some 61 years.

To Desiree and Bernie, if I may address you in that way, in the knowledge that Bernie never placed himself on a high pedestal despite having a very successful legal career.

To Chris, Penelope, Jane, Simon and Richard and your respective children and other family members present today. To all who have come today to celebrate the life of two distinguished community members. The sheer number present is evidence of the high regard in which Bernie and Desiree were held by the community.

You may have heard me mention the word “evidence”. I am Hugh Perry, a senior legal practitioner from Timaru. The Canterbury branch of the New Zealand Law Society has requested me to pay tribute to Bernie’s contribution to the legal profession. The fact the Law Society wished to have a representative to pay tribute to Bernie’s lengthy and successful career is an honour in itself.

Forgive me if any facts are not 100% correct because, at the time Bernie’s career began, I was not born. Bernie was brought up in Christchurch and after leaving Christchurch Boys’ High School was initially considering a scientific career, possibly in chemistry. His aim was to obtain a science degree. Frequently, at that time, lawyers did not have his law degree. He was able to be admitted through his work experience as a solicitor.

In those days Bernie was able to obtain employment in legal related areas coupled with part-time study. His early career was spent in his home town of Christchurch coupled with study at Canterbury College of the University of New Zealand, as it would have then been known.

He sensibly, in my view, opted to commence his career working for the public service. I understand he commenced with the Public Trust. From Public Trust he proceeded to the Ministry of Works and then to Lands and Survey. It was with Lands and Survey that Bernie’s skills began to develop and home in. He exhibited, coupled with his scientific background, considerable skill in dealing with complex and interesting projects. He learned about land tenure, accretion rights, river beds and lake and foreshore issues. He gave opinions on matters under the Pastoral Lands Act and also with regard to local body legislation. He learned to deal with the legal aspects of complex transactions, coupled with politically challenging issues.

Some of his work concerned legislative work relating to the development of the Sugarloaf television tower, and locally the Mt John Observatory. He was a contributor to a white paper on the future of Crown land administration and opinions on general status of lake beds in New Zealand. He gave opinions on matters under the Pastoral Lands Act. He was an invited lecturer to Lincoln University, as it now is, on topics of water and drainage laws in New Zealand.

Bernie was a recipient of the New Zealand Law Writer of the Year Award in the year 2000. He made presentations to the Lands and Agricultural Select Committee regarding proposed changes to the Land Act 1948. In addition, he was counsel for Crown in sundry valuation, land aggregation and mining privilege cases.

One must remember that during Bernie’s early career, coupled with undertaking part-time study, he had a family background. Bernie met Desiree in 1954 and married her in 1956. Their first child was born, I understand, in 1957 followed by a further four children at almost yearly intervals up until 1962. One could say, as he proved in his legal career, that coupled with Desiree they were a very productive team. I am sure Desiree was always present as a guiding and supportive wife throughout Bernie’s career. A total of 61 years together during which time Desiree also developed a successful career in the teaching field.

Going back a stage, to 1967, Bernie through the contacts he had established was able to obtain a position in Samoa as a Magistrate. Something that would not be possible today as at that time Bernie did not have his law degree. He was able to be admitted through his work experience as a solicitor on 25 November 1960 without a degree. However, he was not able to qualify as a barrister until after he obtained his law degree. Frequently, at that time, lawyers were admitted firstly as a solicitor and subsequently as a barrister.

Bernie and Desiree left with their family of five very young children to take up a position in Samoa. A challenging appointment in a completely new...Continued on the next page.
environment. In Samoa, I believe, he was well respected as a Magistrate and was appointed Chief Magistrate of Western Samoa. He also held the appointment of Chief Coroner of Western Samoa. His decisions as a Magistrate were always reasoned and took account of the offending parties' circumstances. Samoans, at least at that time, had a great respect for authority, but Bernie as a Magistrate was able to tell a Samoan civil servant who was facing fraud charges and who went down on his knees before him, that he was not God; he explained to the defendant as a Magistrate he was an ordinary person but charged with a responsible role. I gather he was a very fairminded judge.

His Samoan career was thrown a curveball when he developed hepatitis and had to return to New Zealand. The illness did not get the better of him and he secured a position in Wellington as Office Solicitor to the State Services Commission. That was a responsible role, the State Services Commission being the employer of the majority of civil servants. He was able to sift through complex issues and analyse them into simple terms that were understood by all concerned.

Around 1970 in Wellington he began thinking of his young family and their lifestyle. Bernie and Desiree decided that a rural environment may be better for them and their children. He was able to secure a position in private practice in Waimate as a solicitor to Wilson Waters & Co. He then, as many of us know, remained in Waimate where he pursued his career; subsequently becoming a partner of the established Waimate firm of Wilson Waters & Co.

He graduated with an LLB from Canterbury University in 1973 and as a result was admitted as a barrister as well as a solicitor. The firm of Wilson Waters & Co subsequently became Wilson Waters, Henderson & MacGeorge. Bernie was a partner. Achieving partner status in a private legal firm was then held as being the pinnacle of the establishment of his career in private practice. Bernie particularly enjoyed the law of evidence and the analytical skills required. However, he excelled in compensation cases concerning, in particular, farmers seeking compensation for the taking of land in the early days of the hydro developments.

It was in the rural field of law and particularly in compensation cases that Bernie obtained a name for himself as, with his skills and background in Lands and Survey, he was able to achieve outstanding settlements for his farming clients. A client from further afield, even after Bernie had indicated he was not able to act for him, travelled to Waimate and knocked on his door begging him to act for him, which Bernie then could not refuse.

Following having been a coroner in Western Samoa he was appointed as a coroner to the Waimate area, a field that allowed him to utilise his analytical skills and his background in science. Subsequently, when Edgar Bradley retired as a well-known coroner for the Timaru area, he was appointed as coroner for the entire South Canterbury area until the Coroner's Act 2006 came into force. There were many difficult and interesting cases that Bernie heard as coroner. Some of you will recall, sadly, the case of Erica Beuzenberg, an experienced mountain guide who fell to her death with two of her clients when they were roped together climbing Mt Cook in March 2005. Bernie presided over the hearing which resulted in recommendations by Bernie to the Mountain Safety Council for improvements to be made to the roping techniques, which were generally accepted prior to his recommendations. The recommendations since adopted no doubt may have saved many subsequent lives.

During his years in private practice, Bernie was faced with a challenging and personally worrying case that became widely known in legal circles. The decision having been reported in the 1985 New Zealand Law Reports. The Privy Council case was before five law lords. The case decided that a contract by a person of unsound mind, whose incapacity was unknown to the other party was not able to be set aside by the person of unsound mind on the ground that it was unfair to the party lacking capacity; unless the unfairness amounted to equitable fraud, which would have allowed the agreement to be set aside even if the party was of sound mind. It was held that Bernie’s client was not guilty of any unconscionable conduct and there was no equitable fraud. The client for whom Bernie acted it was held had no means of knowing or cause to suspect that the other party was not able to sell the land. The Law Lords endorsed Bernie’s client had the benefit of the most full and careful advice, from Bernie. The declaration of the Court of Appeal setting aside the contract was over-ruled in favour of Bernie’s client. The law lords thought that it was inappropriate to allow a new ground for appeal to develop on the basis the contract could be set aside as simply being unfair to the party who was lacking capacity. The case developed from Waimate and went all the way to London to the Privy Council. Bernie was the solicitor for the successful party.

Bernie’s life was not without its curveballs. I have already mentioned when in Samoa he developed hepatitis. In 1995 whilst travelling with his then partner, Duncan Walker, to a scheduled meeting in Timaru, they were both involved in an horrific motor car accident. The accident resulted in Bernie having a broken neck and Duncan also being seriously injured with a broken collar bone and broken ribs. It was thought that Bernie might never walk again. Bernie, with his determination, achieved a little bit more movement, every day, during his time in Burwood Hospital. I visited him twice during the period he was in Burwood Hospital and I could see the progress and the determination in Bernie’s face and his attitude that this incident was not going to leave him unable to walk. It did not. He was able to make a substantial recovery from that accident.

Unfortunately the curveballs in Bernie’s life did not stop there. Subsequently, Bernie developed lymphoma which is the ultimate cause of us being gathered today.

Despite the curveballs, Bernie continued with his legal career and as a partner of the firm that was last known as Walker MacGeorge right up until 31 March 2006. I gather Bernie’s partner, Duncan Walker, to his credit assisted with keeping the office functioning at the times Bernie, through his illness, was not able to be there.

It was Bernie’s scientific background coupled with his strength of character and determination that enabled him to substantially recover from the serious motor vehicle accident and to fight off lymphoma for as long as possible. He had a successful career as a local practitioner and one of considerable repute. From an early age of being a Magistrate in Samoa to appointment as Coroner with a warrant for the entire South Canterbury area he developed special skills in rural matters and compensation cases, for which he became widely known. Despite at least three major curveballs Bernie continued his successful career right up until 31 March 2016.

Bernard Andrew MacGeorge, a truly remarkable legal practitioner with a varied and interesting career over many years. His loss is a loss to the legal profession in South Canterbury and further afield.

I am here to honour Bernie as a representative of the Canterbury branch of the New Zealand Law Society. Bernie, may you rest in peace.
Update from the New Zealand Institute of Legal Executives, Canterbury Westland Branch

By Pam Harliwich

Seminar news
The branch held its first seminar on 21 February. The topic was Wellness/Smart Body/ Fit Mind presented by Paul Todd, health and performance coach and David Bennett, executive coach.

David's focus was on the 'mind' and Paul’s focus was on the 'body'. It was well received and attendees participated openly in the group discussions. The main theme from the attendees seemed to be that everyone recognises the need to deal with the challenges and stress of our jobs daily. It was great to hear about what firms are doing to help reduce the stress.

Social
In February the branch held a wine evening at the Polo Bar. It was a lovely evening to sit outside in the courtyard and catch up after the Christmas break (albeit it was already becoming a distant memory).

On 15 March we went to Paint’n’Sip Studio. There are quite a few artistic talents hidden amongst our legal executives. It was a fantastic evening with a lot of laughs.

In May we will be going to the Escape Room. An invitation will be sent out to members in early May.

Has your client considered including a charity in their will?

Please give them the opportunity to leave a legacy to St John that will provide a vital service to benefit their community.

Email fundraising@stjohn.org.nz or call the Legacy Coordinator South Island Region for further information: 03 353 7110 ext 3238
Obiter by Eason

Here are some recent observations –

The Justice Precinct

Such an overbaked topic at the moment. Certainly a privilege to work in – especially to arrive when the cleaners have been. This building is impressive. What message is it giving and to whom is unclear, however. Once inside we are encapsulated by a construction of solid bars (not the refreshment kind), vertical and horizontal through which we can glimpse the life out there and are permitted to wistfully glance at the secret garden in its midst, replete with structural planting and a languid water feature. But alas no one is permitted to enter. Perhaps we all should try and be very good and trustworthy so that we could be rewarded with an hour or so in that exercise yard.

Tattoos

I decided to try something new ... getting my hair cut at a joint named Barbers Ink. First couple of visits I didn’t grasp the full story about this place. One thing I did notice – the water to be dispensed into one’s head in pre-cut prep was contained in whisky bottles – the expensive type.

On a later day, prearranged, I arrived for my haircut and introduced myself. The man said – “Are you here for a haircut or a tattoo?” “Haircut”.

“I thought so”. In that instant of time I realised how easy it would have been to fall into the dark inky world. Why not go all out and get plastered with the stuff? Many clients do, perhaps in an effort to change identity and overcome chronic unemployment and dishonesty. In confidence a client (Pauline Hanson) told me that in her youth she had three hector dolphins tattooed on her mid-regions. Alas, during her first pregnancy they ungracefully transformed themselves into a grey cloud and have remained so ever since.

Is that a bycatch that needs reporting? Or should we just rely on photographic evidence?

Hospitals

Ruined by choices about what to repair next, I was surprised by news from a specialist that ACC had approved another opp for me. Not only that, but this could be done within seven days (what amazing speed ... thought it was going to be done by an e-surgeon). The day arrived so quickly I hadn’t been able to locate any sensible reading material. I reported for the punishment and was instructed to put on the usual victim attire. I was surprised and heartened by the theatre staff that morning. They were dressed in jaunty Jamaican coloured hats and flashy shoes etc. Because I had been given the medical equivalent of a pre-dinner gin and tonic I surprised myself by commenting that if I knew this was going to be a fancy dress affair I would have made more effort. Someone quickly responded, I think it was the anaesthetist, “No Colin, you’ve done well. You’re the only joker in here who’s wearing see-through pants”. I tried to respond but my lips fell silent.

MEETING

DEPUTY DISTRICT INSPECTOR
FOR MENTAL HEALTH

All interested barristers and solicitors are invited to apply for appointment as a Deputy District Inspector

District Inspectors are statutory officers appointed to uphold the rights of patients under the Mental Health (Compulsory Assessment and Treatment) Act 1992 and to ensure that the provisions of this Act are adhered to correctly. District Inspectors may also be appointed to perform additional duties under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 and the Substance Abuse (Compulsory Assessment and Treatment) Act 2017.

You must be a barrister or solicitor with a current practising certificate, and have an interest in the mental health and addiction or disability field.

All applications should include a curriculum vitae and must address the applicant’s suitability to be appointed, based on these key criteria:

• Legal knowledge and experience
• Mental health knowledge, including knowledge of the Mental Health (Compulsory Assessment and Treatment) Act 1992
• Communication skills
• Consumer sensitivity
• Personal attributes such as judgement and common sense
• Cultural awareness, sensitivity and knowledge
• Regional and collegial commitment.

Additionally:

Applications must supply a copy of their practicing certificate and two written references that address the key appointment criteria. These two referees should be available to provide verbal references.

Applications must be received by 5pm Monday 30 April 2018.

Applications should be sent to:
Giles Bollinger, Advisor, Office of the Director of Mental Health and Addiction Services, Ministry of Health, PO Box 5013, Wellington 6145.

If you have any queries, please contact Giles Bollinger at Giles_Bollinger@moh.govt.nz.
On 1 July 2018, lawyers and conveyancers will become reporting entities under the Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) Act 2009. The purpose of the AML/CFT regime reflects New Zealand’s commitment to the international initiative to counter the impact that criminal activity has on people and economies within the global community.

Lawyers who undertake specified activities (‘captured activities’) will need to ensure they have a programme in place to meet AML/CFT requirements. Captured activities are identified as services which are potentially attractive to criminals as a means of laundering money or financing criminal activity. The AML/CFT compliance regime adopts a risk-based approach.

To meet AML/CFT requirements, lawyers need to:

- Appoint a compliance officer.
- Undertake a risk assessment of their business. This will enable lawyers to identify the risk of money laundering in different aspects of their practice. The level of risk identified will determine the particular compliance steps a lawyer must take in relation to a particular client matter.
- Prepare a compliance programme which includes internal procedures, policies and controls to detect and manage the risks of ML/CFT.
- Ensure they know their clients by undertaking customer due diligence (CDD). This includes verifying the identity of their clients and in some cases the sources of client wealth or funding for a transaction. It also includes on-going account monitoring.
- Report suspicious activity through filing a Suspicious Activity Report (SAR) with the Police’s Financial Intelligence Unit (FIU).
- Submit an annual report to the DIA which is the AML/CFT supervisor for the legal profession.
- Arrange a bi-annual independent audit of the firm’s AML/CFT compliance programme.
- Establish a recording keeping system.

New Zealand Law Society resources
The Law Society has produced a bundle of resources about AML/CFT to assist lawyers with these compliance requirements. The following sample documents are available on the NZLS website – for law firms to adapt, in Practice Areas under Practice Resources.

- Risk Assessment
- Compliance programme
- AML/CFT policies
- AML reporting procedure
  - (a) Delayed CDD form
  - (b) Exemption form
  - (c) Matter risk assessment form
  - (d) Full CDD form

Department of Internal Affairs guide
The Department of Internal Affairs has produced a useful guide ‘Guideline Lawyers and Conveyancers – Complying with the Anti-Money Laundering and Countering Financing of Terrorism Act 2009’ which is available on their website. The sample documents referred to above are designed to complement that Guideline.

Law Society Practice Briefings
Practice Briefings provide guidance on issues related to privilege and confidentiality, suspicious activities and continuing to act. All are also available in Practice Areas within Practice Resources.

- A guide to advising your clients on why you need to ask for more information relating to the AML/CFT requirements. (This can be adapted for your firm)
- Privilege, confidentiality and reporting suspicious activities
- Continuing to act after filing suspicious activity reports
- Suspicious transactions and activities

The Law Society will keep lawyers updated on AML/CFT developments via LawPoints and LawTalk.
“Young Lawyers – Start the Way You Mean To Go On” (by avoiding the pitfalls that may lead to a challenging client relationship).

Those “challenging clients” who, for differing reasons, take up a lot more of your time can become a real issue. They may have difficulty understanding the role that their lawyer plays, how and when fees will be charged, expected timeframes for their issue and how and when you will be communicating with them.

As a lawyer new to the profession considering these following points may help you when faced with these challenges or better still help you avoid them all together.

While having empathy is important, being overly sympathetic can lead to complications. If your client expects significant emotional support you should suggest to them that there are organisations and people in the community better equipped to assist them in this area and that your job is to navigate them through their legal issues.

From the outset, especially if the client is new to you and your firm, communicating to them in a manner that they understand is very important. Try not to use an excessive number of legal terms but also be careful not to “dumb it down” too much.

Discuss with them the fee structure and invoicing process so there are no “surprises”. Explaining the terms of the engagement letter may be beneficial. If there has been an estimate and the fees are increasing then ensure this is relayed to the client.

Give a timeline and either keep as close as possible to it or communicate reasons for having to diverge from it.

Ensure that conversations and phone calls are file noted and, where possible, followed up by confirmation to the client via email. This both confirms to your client what is happening and is a clear record for any future issues that may arise.

If you do not know the answer to a question do not “bluff” but clearly state you do not know the answer but will research it and get back to them.

Your client may be pressuring you to act in a manner that you are not comfortable with. Whether this is via bullying tactics or playing on your inexperience, check with a senior partner before you do anything that may be seen as a breach of the Lawyers and Conveyancers Act or Lawyers Conduct and Client Care Rules.

There will be times when your client relationship is still heading down a path that you are not comfortable with. In these situations do not hesitate to discuss all issues with your supervising partner or another senior member of your team. They may be able to attend a client meeting with you to offer support as well as advice on the best strategy heading forward.

Your local New Zealand Law Society branch is also here to help and can be contacted on 03 3669184.

Canterbury-Westland Young Lawyers held their AGM on Thursday, 15 March.

The new committee consists of Johanna King, Jack Brown, Melissa Vandeyar, Sam Ruck, Josie Ganly, Andrew Logie, Michael O’Flaherty, Amy Kennerley, Josh Taylor, Jacob Nutt, and Kate Evans.

We welcome them and look forward to working with them to provide educational, social and networking opportunities for all young lawyers (seven years or less PQE) in the Canterbury-Westland area.

The committee will be supplying informative articles to Canterbury Tales, along with organising the events that they run throughout the year which encourage all young lawyers to network and socialise with their peers (i.e. Meet the Judiciary, Winery Tour, and social get-togethers).
Closing Down or Selling a Law Firm — Part One

Introduction
There are a variety of reasons why a firm might close, merge with another firm, or be sold. These include retirement, incapacity, lifestyle or career change or dissolving of the partnership.

There are some regulatory and procedural requirements when a firm is closing down, merging or being sold. Forward planning will assist with the process. The information in this Practice Briefing is not exhaustive, and we recommend seeking your own legal advice.

Communication with Clients
Communicate your plans to the affected clients promptly so that they can decide whether they wish to stay with any new structure or instruct another firm. In some situations the firm may have to make arrangements for another firm to take on any remaining clients.

Consideration should be given as to whether public notices about a firm closure or merge would be of assistance to the public in local publications and to the profession in NZLS publications such as LawTalk or local branch e-bulletins.

Communication with Staff
All staff should be notified of the intentions as appropriate. Staff entitlements such as unused annual leave, long service leave and redundancy payments may need to be considered. If there is a new employer, new contracts may need to be entered into.

Social Media
Remember to close down any social media presence the firm may have, including the website, and to update any LinkedIn, Twitter or Facebook etc profiles.

Advising the Law Society
Regulation 11 of the Lawyers and Conveyancers Act (Lawyers: Practice Rules) Regulations 2008 (Practice Rules) requires every lawyer to disclose to the Law Society, as soon as practicable, of any changes, so that the Law Society may fulfill its obligation to keep the Register of Lawyers accurate and up to date.

Incorporated Law Firms
If the practice is an incorporated law firm then the Companies Office should be notified of any closure. Provided the firm is not in financial difficulty or insolvent, it can be deregistered through a members’ voluntary winding up or by application for voluntary deregistration.

Advertising the Sale of a Practice
To reach a number of potential purchasers, the sale of the practice may be advertised through local branch e-bulletins, LawTalk or LawPoints. For information regarding this, please email the Law Society Communications Team by emailing: advertising@lawsociety.org.nz

Valuing a Practice
Various accountancy and consultancy firms specialise in the valuation of law firms. Lawyers who may be considering the sale or purchase of a practice are advised to engage a suitably qualified professional.

Some Financial Matters
The following matters should be considered:
» Terminate or retain insurance cover for liabilities after closedown.
» Make arrangements to dispose of unused letterhead, business cards, or compliment slips, etc.
» Review the amount of work in progress (WIP), how and by when it will be completed.
» Invoice all completed WIPs.
» Follow up all overdue accounts for fees.
» Ensure that a full system back-up is undertaken.
» Consider whether any leases have been or need to be varied/terminated where appropriate in relation to office space, communications equipment and computers etc.
» Consider whether the IRD has been notified re GST, PAYE, RWT and FBT.
» Make arrangements to dispose of any assets the firm may have.

» All bank accounts including IBDs should be closed down, or if the account is being retained as a business account then re-designated accordingly.
» Any trust account must have a $0 balance before being closed.
» Update any register of assets.
» Consider staff entitlements

Power of Attorney (Sole Practitioner)
An attorney may step in for a number of reasons as set out in clause 7 (a) – (h) and clause 8 (a) to (h) of Schedule 1 of the Lawyers and Conveyancers Act 2006 (LCA). The power of attorney (POA) does not terminate by reason of death of the donor or by the donor becoming of unsound mind. When active the responsibility for reporting falls to the donee under the power of attorney as required by s 44 of the LCA.

Where the disposal of a practice is as the result of the death of a sole practitioner the donee under the POA should speak to the executors/trustees of the estate to determine how the disposal of the practice should proceed.

The donee’s actions are covered under clause 9(1) of schedule 1 of the LCA.

For more information see sole practitioner powers of attorney guidelines on www.lawsociety.org.nz/__data/assets/pdf_file/0003/47982/SP-PoA-for-website-APRIL-2013.pdf

Practising Certificates
If a lawyer decides to cease practising, they may choose to surrender their practising certificate and apply to the Law Society for a pro-rated refund once the practice is closed. Associate membership may be available for those who wish to remain involved with the legal profession.

Part two will be included in Canterbury Tales issue 24-4
Jarden v Lumley

Unsuccessful appeal against award of costs – claim against respondent insurer for breach of obligations in claim for damage to house in Christchurch earthquakes – appellants sought costs of demolition and rebuild whereas respondent insurer and Earthquake Commission (EQC) considered property was repairable – claim against EQC settled prior to trial – respondent successful in High Court and on appeal – High Court awarded respondent costs on 2B basis with 25% uplift and approved disbursements – findings that respondent was successful overall and uplift justified because appellants pursued arguments that lacked merit and acted frivolously in continuing case – appeal challenged finding that respondent was successful party overall, uplift and failure to reduce costs to reflect respondent’s failure on issues that significantly increased appellants’ costs – appellants sought either: (i) order for costs in their favour on 2B basis reduced by 50% to reflect failure on some issues; (ii) order that costs lie where they fell; (iii) order that costs awarded to respondent be reduced by 50% to reflect its lack of success on some issues – consideration of which party was successful “with respect to a proceeding” in terms of HCR14.2(1)(a) – issues: (i) who was successful party; (ii) was uplift justified – appellants argued they were successful party based on comparison of their position before issuing proceeding and that obtained as result of proceeding which included impacts of settlement achieved with EQC and declarations – Court of Appeal analysis of claim and issues – claim hopelessly misconceived until amendment at trial – limited success as result of amendment – appellants unsuccessful in establishing sole cause of action or obtaining any of relief sought. 

Held: appeal dismissed – High Court did not err in awarding costs – no error in concluding respondent was successful overall – Judge justified in evaluating success by comparing respondent’s position at time of amendment at trial with outcome of judgment – uplift of 25% appropriate – claim as pleaded misconceived – pursuit of claim that house was total loss, persistent refusal to provide evidence and failure to comply with directions added unnecessarily to expense of proceeding – no basis for reducing costs awarded for success in obtaining declarations in respect of some items of damage – appellants to pay costs for standard appeal on band A basis and usual disbursements.

Jarden v Lumley General Insurance (NZ) Ltd, [2018] NZCA 6, 7 February 2018
COSTS – INSURANCE

The partners of Young Hunter are pleased to announce that Simon Graham joins them as a partner in the firm from 1 April 2018.

Simon specialises in immigration and deportation appeals, and employment law.

Level 2, 134 Victoria Street, Christchurch 8013
Phone 03 379 3880 03 379 3632
Email sgg@younghunter.co.nz
Website www.younghunter.co.nz

Reaching those who can’t reach out

Anglican Care provides critical social services in the Canterbury area:

- The City Mission
- Anglican Living (Care of the Aged)
- Community Development
- Anglican Care, South Canterbury

We do this vital non-denominational work with financial support from the community. This includes bequests. Can your clients help us to help others and leave a lasting legacy?

Email or call us for more details.
Phone 03 348 6960
Email reception@anglicanlife.org.nz

Canterbury tales · April · Vol. 24 No. 3
Safe to Talk helpline was launched in Canterbury late March and is scheduled to go live nationwide in late April. Homecare Medical have been contracted by the Ministry of Social Development to run the service as part of the Government’s commitment to better support people affected by sexual harm and to prevent sexual harm.

‘Safe to talk’ is a free, confidential, 24x7 service for survivors and perpetrators, and their family/whanau – who can call or text to speak with an experienced, specialist sexual trauma professional (who can also refer to face to face support).

There is a website (with live webchat) www.safetotalk.nz which has a range of great resources and information about sexual harm. Their contact is 0800 044334.

Alzheimer’s Canterbury Inc has recently changed its name to Dementia Canterbury Inc.

Lawyers in Canterbury or the West Coast who become aware of any bequests to be distributed to Alzheimer’s Canterbury Inc can ring Dementia Canterbury Inc at 0800 444 776 or write to PO Box 20567, Bishopdale, Christchurch 8543.

Safe to Talk helpline

Christchurch

April

» 4 April – Free Webinar – Preventing and Dealing with Harassment and Bullying
» 10 April – Trust Account Administrators
» 12 April – Free Webinar – DIA AML/CFT National Roadshow

May

» 2 May – Webinar – Varying Trust Deeds
» 9 May – Trusts and the PRA
» 10-12 May – Stepping Up
» 15 May – Webinar – Successful Political Lobbying

» 17 May – Webinar – Arbitration 2.0 – Moving beyond Ad Hoc Arbitration Clauses
» 22 May – Webinar – In-House Lawyers: Conflicts of Interest – A Practical Guide
» 24 May – Webinar – PRA – s 44 Claims

Out of Christchurch

» 5 April – Auck – Property – Subdivisions
» 19 April – Auck – Trust Account Supervisor Training
» 19 April – Auck – Trustees – The Challenges of Incapacity
» 1-2 May – Auck – Smart writing – more clarity, less time
» 3 May – Auck – Employment Law – Business Sale & Purchase
» 7 May Auck, 8 May Wgtn – Education Law 2018
» 11-13 May Auck – Mediation for Lawyers part 1
» 15 May – Auck – Gifting and Residential Care Subsidies
» 21-22 May – Auck – Intro to Civil Litigation Skills
» 28 May – Wgtn – Advanced Lawyer for Child
» 30 May Wgtn, Auck 31 May – Elder Law 2018

Canterbury Westland Seminars

» 17th April – Lawyers and surveyors – Cross leases – Look out for flyer in notices
Canterbury Westland Branch 150th Celebrations

The 150th anniversary of the New Zealand Law Society Canterbury-Westland branch occurs in October 2018. The celebrations provide an opportunity for all those who have practised in the Timaru/Westland/Canterbury areas or who sit/have sat in this jurisdiction to gather together, reflect on our history, swap anecdotes and look to raise a glass in salute to the past and the future of legal practice in the region.

The Canterbury District Law Society, which included the Timaru area, was set up in 1868 and the Westland District Law Society followed in 1879. These merged together in 2009 to form the NZLS Canterbury-Westland Branch.

The profession has witnessed many changes and advances over the years especially in recent times, such as:

» Significant amendments to law,
» Changes to the way we practice due to technology advances including, but not limited to, landonline, paperless files, email, AVL in courts,
» Earthquake issues,
» A new Justice Precinct.

It is important that we come together to share stories around these changes and advances and also look to the future of our profession and celebrate this very significant milestone by attending the events planned:

The Law Dinner will be held at Rydges on Thursday, 25 October. This will be a black-tie event where we can hear from those who have served our profession.

The Gala ball which is to be held on Saturday, 27 October is our chance to party and dance the night away as we look to the future. With great bands and entertainment this is a night not to be missed.

We look forward to seeing you all there.

For more information please contact:
Zylpha.Kovacs@lawsociety.org.nz