20th Anniversary of Family Law Section

On Friday, 16 March a dinner was held at Hagley Oval Pavilion to mark the 20th anniversary of the establishment of the Family Law Section. Siobhan McNulty was the MC for the evening which included a tribute to Murray Earl who has retired from 20 years of editing the Section’s magazine – The Family Advocate. Chair of Family Law Section, Kirsty Swadling gave the mihi and Jeremy Daley proposed the toast. A polished and soulful performance by the Law Choir was followed by speeches by Judge Collin, Stephen van Bohemen and Craig Ruane reflecting on the challenging and colourful practice of family law, the significant reform of the family justice system over past years, and pondering the question of how a Labour-led government review might further impact the role of the family lawyer. A great night had by all.
President’s Column

By Craig Ruane

Family Law Section 20th anniversary

The New Zealand Law Society established a national Family Law committee in 1987 to advise on matters relating to family law and the Family Court. In October 1996 the committee asked the Law Society board to establish a Family Law Section to raise the profile of family law within the profession, recognise the development of family law and the advancements for family lawyers, provide an opportunity for a greater flow of information about family law issues amongst members, and to allow more members to have a direct involvement in the section’s activities.

The Law Society agreed to the proposal and a Family Law Section was established in December 1997. The then President of the New Zealand Law Society, Austin Forbes QC, said he would be disappointed if there were not 250 members of the section within a year or so. Today there are about a thousand members including practitioners, legal academics, judges, legal executives and government employees.

Building on the foundations of the Family Law Section, the Law Society now has two additional sections, the Property Law Section, and ILANZ for in-house lawyers.

The Family Law Section has had a strong voice within the profession and government. This was particularly the case in respect of the significant changes (not necessarily reforms) made to the Family Court in 2014. Representatives have also appeared in Geneva to present submissions to the UN Committee on the Rights of the Child, to ensure our government is upholding the rights of children in New Zealand in respect of the United Nations Convention on the Rights of the Child, which New Zealand ratified in 1993.

The 20th anniversary of the establishment of the Family Law Section was marked by a very well attended dinner at the Hagley Oval on 16 March. The principal speaker was the former long standing chair of the Family Law Section, Judge Garry Collin. He spoke of the extensive negotiations with the then minister and her staff over the proposed changes. Other speakers praised Judge Collin and recognised the very significant work done over trying period to maintain and enhance the integrity of the Family Court system.

Gender Equality Charter

On 12 April the New Zealand Law Society Gender Equality Charter was launched at Parliament. You will no doubt have seen reports about the Charter in LawTalk and other publications. If you have not done so already I strongly urge you to review the Charter, and see how it could be incorporated in your practice. It is not simply a box-ticking exercise, and compliance with the aims of the Charter are not particularly onerous.

As an aside, I attended the launch in the Great Hall at Parliament before the New Zealand Law Society Council meeting the following day. The last time I had been in Parliament was in a form 2 school trip. This was a visit to Wellington from Christchurch, and transport included the train from Christchurch railway station to Lyttelton, and the overnight ferry Rangatira, to Wellington and return.

Since then the main buildings at Parliament have been extensively refurbished, and all in all it is a very impressive building. If you have a couple of hours free when you are next in Wellington I suggest a guided visit would be well worthwhile.

Biennial general meeting

The biennial general meeting of the Canterbury Westland branch will be held on Tuesday, 19 June at 4pm at the branch office at Durham Street. Nominations for positions as president, vice president and seven council members are now open, and close on 18 May. I would encourage members to put their names forward, if not for the council then for the various committees and subcommittees which do such valuable work for the branch and the New Zealand Law Society in general.

Grant Tyrrell with: “Can we fix it?”
Comings &
Goings

Information for this column must 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 or practitioners to canterbury-westland@lawsociety.org.nz or susan.newman@lawsociety.org.nz.

Stephanie Grieve – commenced practice as a barrister sole specialising in civil litigation and insurance (previously of Duncan Cottenll). New details:
+64 274777923
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PO Box 22047
Christchurch 8011
www.stephaniegrieve.nz

...Comings and Goings continued below

Update from The New Zealand Institute of Legal Executives,
Canterbury Westland Branch

By Pam Harliwich

Seminar news
The branch held a seminar on 18 April. The topic was Christchurch City Council LIMs presented by Robert Carlisle from the Council. It was well attended with over 100 attendees.

It was an informative seminar covering common questions received from law firms, the new district plan, natural hazard modelling, sourcing information from the Council’s website, information on the Building Act, decisions on consents, swimming pool compliance and much more. Robert has some very useful tips of what to look for in some sections of the LIM which can often be overlooked.

Social
On 19 April the branch held a wine evening at Trevino’s Restaurant & Bar in Riccarton. It was attended by 19 members and was a great catch up.

Coming up, on 17 May, we will be going to the Escape Room. An invitation was sent out to members in late April.

The Legal Executive Graduation to be hosted by the Canterbury Westland Branch of NZLS and NZILE Canterbury Westland Branch will now be held on 24 May, not 10 May as stated in last month’s issue. The date has been moved due to the unavailability of one of the speakers on 10 May. The graduation is being held at the Lone Star at Bush Inn and will be the last in this format as the New Zealand Law Society has had to relinquish its role as the syllabus setter and examiner due to changes mandated by the New Zealand Qualifications Authority following a review of the qualification in 2013-2014 (see page 19 LawTalk Issue 915, March 2018 for more information).

Taylor Shaw are pleased to announce the promotion of Amy Kennerley and Sam Hider to Senior Solicitors as of 1 April 2018.

Craig Ruane is now practising from Te Pōhue Chambers. Level 1, 164 St Asaph Street, Christchurch (Above IBM). Phone numbers and contact details are:
PO Box 13-257
Armagh
Christchurch 8141
Phone 03 420-7778
Cell 027 372 1731

Karen Feltham is now practising from Te Pōhue Chambers. Level 1, 164 St Asaph Street, Christchurch (Above IBM). Phone numbers and contact details are:
PO Box 196,
Christchurch 8140
Phone 03-420-7778
Cell 021-805088

Sam Maling, Barrister, from 1 May 2018 relocating to;
Level 1, Awly Building, 293 Durham Street, Christchurch 8013

Comings and Goings continued...
How to be healthier, happier and more productive

By Andrew Nuttall

A key part of my role as an adviser is to help my clients identify their goals and aspirations. While these are many and varied, they are frequently about being happier, healthier and more productive at work.

If you were to rate yourself on a scale of 1-10 on the above big three, how would you score?

I am sure most of us would agree that we all have room for improvement.

Daniel Pink, in his recent book *When: The Scientific Secrets of Perfect Timing*, provides some suggestions on how to more effectively use the 16 hours we are awake each day.

Research has found that our daily fluctuations in function and performance are, in part, influenced by what are termed circadian rhythms (really, our sleep/wake cycles). These rhythms set our diurnal activity patterns and influence most, if not all, bodily functions and cognitive processes. Our circadian rhythms are tied to the day/night cycle.

There are specialised cells in our retinas that respond to daylight (intrinsically photosensitive retinal ganglion cells, or ipRGCs). These are separate to the cells that give us vision, which are called photoreceptors. The ipRGCs send signals to the brain when they detect light, and these signals are processed by the brain, meaning neural and hormonal systems are activated that essentially tell the body it is time to get “going”.

Many tissues in the body show circadian fluctuations in function, and the ‘master’ regulator of these tissue “clocks” is in the brain, with light detection by those ipRGCs triggering the brain into action.

There is emerging scientific evidence regarding the importance of circadian rhythms, not just for normal physiological function, but also in pathophysiological processes. For example, disturbed sleep is implicated in many mental health disorders, and even when you eat in relation to where you are in your circadian cycle may affect your metabolism and, therefore, weight control. In addition, a number of electronic devices emit blue light from their screens and the ipRGCs are most sensitive to blue light. It is not surprising that circadian rhythms can impact your cognitive abilities.

Our cognitive abilities don’t remain static during the day and change in regular and foreseeable patterns. We are smarter, faster and more creative in some parts of the day than others. These daily fluctuations can explain 20% of the variance in human performance on cognitive undertakings.

We are more effective at some tasks early in the day and other tasks later in the day. Apparently, most of us generally experience the day in three acts: a peak, a trough and a rebound.

The peak is usually mid to late morning when we are vigilant and our focus is at its best. The peak will be your best time to undertake analysis, and write a legal brief.

The trough is usually early to mid-afternoon. This is the best time to undertake administrative tasks such as answering emails, filing papers and completing timesheets.

The rebound is often late afternoon and early evening. It appears that we are frequently in a better mood during this time following the trough. The rebound is the time to complete tasks that require creative rather than algorithmic thinking, for example brainstorming.

Bringing your tasks (analytical, administrative or insight) and your time (is it early, mid-day or later) into alignment will help you be more effective at work.

Next month’s article will provide suggestions to help you exercise more effectively and be happier by making use of your natural time periods.

Many thanks to Newcastle University Associate Professor Dr Doug Smith for his input.

Andrew Nuttall is an Authorised Financial Adviser with Cambridge Partners. He has worked with members of the legal profession for over 25 years. His disclosure statement is available on demand and free of charge. Telephone 364 9119. www.cambridgepartners.co.nz
NZLS Canterbury Westland Young Lawyers

The Canterbury Westland Young Lawyers’ Committee AGM on 15 March saw a mix of new and less-new faces, with three existing members re-elected and eight new members brought on board. We have been quick to get to work, with our first free seminar due to take place before this edition of Canterbury Tales goes to print. Keep an eye out in the Weekly Branch Notices for details of our upcoming events – including Race Night, wellbeing seminars and mooting – all aimed for junior practitioners (<7 years PQE). We look forward to seeing you there!

Mark Russell now practises as a commercial barrister at Canterbury Chambers. Mark is available to provide independent, expert advice in:
- company law issues
- shareholder disputes
- corporate governance
- banking and financing law
- company insolvency
- corporate structuring
- joint ventures
- securities law
- commercial contracts and disputes

Mark is also available to accept appointments as a commercial mediator and arbitrator.

Phone: (03) 260 3100
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Closing Down or Selling a Law Firm — Part Two

Continued from Part One featured in Canterbury Tales issue 24-3

Client Files and Deeds
The practitioner must consider client confidentiality and authority at all times when transferring client files, monies or storing files. Archiving closed files is a cost of closure and you need to manage any archiving services to ensure that closed files are archived and destroyed appropriately.

It is recommended that a detailed record be kept of which files and deeds are transferred, and that the NZLS Registry is advised of where the documentation is held so that any future queries can be answered. Client authority is needed to transfer files and deeds to another lawyer.

For guidance regarding what documents should be retained and for how long after the instruction to act has ceased, please refer to lawsociety.org.nz/__data/assets/pdf_file/0003/2883/opinion-ownership-retention-of-records.pdf.

Professional Indemnity Insurance
Insurers or brokers need to be promptly informed in relation to any Professional Indemnity Insurance policy. Consideration should be given to the amount of runoff insurance (provides liability coverage against firms that have closed, merged or been sold) that may be appropriate.

The practitioner needs to remain clear over what matters remain covered and when the period of cover ceases.

Post Closure
If you have surrendered your practising certificate, you must take care not to practise in the areas of law reserved for lawyers or call yourself a lawyer while tying up loose ends. Submitting an application for registration or a request for reinstatement must be made to the NZLS Registry in relation to one’s practising certificate. In the case of a practising certificate and licence (Regulations 2008), the request for reinstatement must include the titles restricted under s 21 of the LCA; and

Ensure that you do not call yourself any of the titles restricted under s 21 of the LCA; and

Notify all parties involved and inform them that you will no longer be undertaking the work as a lawyer and the consequences of that; and

Explain to all parties the effects of ceasing to be a practising lawyer, particularly the position regarding professional indemnity, and charging as a professional trustee or executor.

Trust Accounts
Whether closing a practice with a trust account or just closing down the trust account, it is important you undertake several key steps in order to comply with the Lawyers and Conveyancers Act (Trust Account) Regulations 2008 (Trust Account Regulations) and the Lawyers and Conveyancers Act (Lawyers: Practice Rules) Regulations 2008.

The responsibility falls to you to advise the New Zealand Law Society. This must happen within two weeks of the event occurring; but earlier notification is encouraged.

You must:

» Notify the NZLS Registry via email (see below) with the intended date of closure (Regulation 18 (1) (d) of the Trust Account Regulations).

» Reconcile the trust account and any interest bearing deposit (IBD) accounts up to the date of closure.

» Complete a full back up of the accounting records at that date.

» Effect closure of all trust bank accounts and IBD accounts at the due date and issue final RWI certificates as required.

» Refund credit balances to clients.

» Destroy any unused trust account cheques or return them to the bank, keeping a note of the numbers.

» Provide to the NZLS Inspectorate a letter from the bank confirming the date that the trust account was closed.

Regulation 15 (1) of the Trust Account Regulations requires that if a practice ceases to provide regulated services the practice must immediately:

Deliver all unused trust account receipt forms relating to the practice to the relevant society or dispose of them as directed by that society; and

Ensure all trust accounts are closed and all money in them is paid to persons entitled; and

If it generates receipt forms electronically, take appropriate steps to ensure that no further trust account receipts are generated.

Even if there is a nil balance, there may be a requirement for the trust bank account to be held open for a period of time to collect debtor monies payable by automatic direct credit (only). In these circumstances the practitioner must continue in the role of the Trust Account Supervisor. You may wish to approach the bank to change the designation to a normal practice account or

...continued on page 8
to advise clients of a change of bank account number for continuing payments.

Monthly/quarterly trust account certifi-
cates will need to continue to be filed. A
final monthly/quarterly certification should
still be submitted for any part month when
the trust account is closed. Notification
should be given to the Law Society when
the account is finally closed.

Any dormant or stale client balances
remaining must not be taken as fees.

Ensure client authorities exist or are
obtained to disburse monies from the trust
account. Disburse all client funds to the rele-
vant clients, or if unable to locate the clients,
remit the funds to the IRD, under s 337 LCA,
as unclaimed monies after appropriate and
exhaustive inquiries have been made.

Unclaimed Monies
Inland Revenue Department
PO Box 38 222
Wellington Mail Centre

Trust Account Records
Regulation 11(5) of the Trust Account Regu-
lations requires that all trust account records
are to be retained for a period of at least
six years from the date of the last recorded
transaction in the trust account.

Exit Review
The Law Society Inspectorate must be
advised of the decision to close the trust
account and will need to carry out an exit
review. The Inspectorate will decide whether
an exit review is required in person at the
firm’s premises or completed through rel-
evant records being provided.

Practitioners need to ensure all prime
records are complete and up to date.

In Summary
This Practice Briefing has provided some
guidance to assist in the closing down or
selling of a law firm to make the process
smoother for the firm, the public and other
members of the profession. If you have
any queries regarding this information,
contact the Law Society Registry via email
at registry@lawsociety.org.nz or phone
Registry on 0800 22 30 30 during normal
office hours.

Wynn Williams established the University of Canterbury Torts
Prize in 1993 and the Resource Management Law Prize in 2009,
and each year the firm continues to celebrate the achievements
of the two winners at its annual prize-giving ceremony. The prizes
are awarded annually on the recommendation of the Faculty of
Law to the top students in Torts/Resource Management Law. This
year’s winners were Max Beckert who received the Prize in Resource
Management Law and Will Chambers who received the Prize in Torts.

The 2018 event was held on Thursday, 8 March with the firm’s
partners and other Wynn Williams staff welcoming the winners,
their families and law faculty staff to help celebrate the recipients’
success. Chief Operating Officer, Matthew Jones said: “It is always a
pleasure to invite the winners and their families to the prize-giving
ceremony in recognition of their hard work. The prizes encourage
students to excel in their chosen field, and the firm is proud to
continue to support the university with this initiative each year.”

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Shannon-Leigh Litt and Trudi Aickin — Barristers running in the Northburn 100 Miler

The rocky Central Otago mountain race, was held in mid-March with frost, fog and freezing night temperatures.

The 100 Miler is, as it says on the tin, a 100 mile (161km) race but there is also a 100km event, as well as races over 50km and the Marathon distance.

Shannon-Leigh Litt, a New Zealand ultra-runner and a title holder, raced the 100km event for the third time. Fellow barrister Trudi Aickin also ran the 100km event.

Shannon said: “I had a good build up leading into the Northburn 100km race and started off fast, I wanted to get the first 50km done while still feeling good at halfway, which I did. I changed my upper clothing at 70km. I didn’t stay long at the aid stations, I was in and out.

“In the last 25km I teamed up with another competitor, with super navigational skills, whereas my skills are suited to pushing hard when it hurts and keeping a consistent pace, so we complemented well to run to the finish in site of each other’s head lamps.

“I enjoy meeting people in these races as team-work helps. While running is an individual sport I believe helping others through gives me purpose.

“MY next race is the 100km National road champs on 6 May and I’m looking forward to the competition. If I could qualify for the World Champs that would be amazing and I’ll be helping other women with the same goal. I did qualify for the 100km World Champs in 2013 and 2016. A PB on the course would be great. I’m thrilled with what I achieved over the last few years and I am now putting my knowledge into action in a fitness business.”

Trudi Aickin told Canterbury Tales about the experience:

How important is the preparation for an event, such as Northburn?

It took me months of hard training to prepare for Northburn. Fear was a great motivator, as I really didn’t want my body to fall to bits in the middle of the night up there in the mountains. I have a great group of like-minded running friends who I regularly hit the trails with, which made the training pretty enjoyable (most of the time).

What did you do to prepare in terms of equipment, hydration and nutrition?

As for equipment, food and hydration – I knew what I needed to do in that regard as I have run some long races before. A lot of my training on my long runs has been teaching my body to tolerate different foods as you have to be able to eat at least 200 calories an hour to get through an ultra-marathon. I made sure I had a good variety of running snacks in my pack as I tend to get sick of eating the same things after a few hours of running. My friends and I often trade food on the trails to keep things cheerful. I’ve heard it said that these events are eating and drinking competitions as much as anything as if you can keep looking after yourself when things get grim, you will generally do ok.

Do you have a favourite race distance?

Not sure I have a favourite running distance yet, I still feel a bit of a novice at ultra-running. If I had to pick a distance, though, I would probably say anywhere between 50 and 80km as I find I can cover the ground at a reasonable speed over that distance and recover pretty well afterwards. That’s not to say I won’t be back for more Northburn action – it’s such a beautiful place to suffer and you get such a long time out on the course! Seriously, though, in my book there’s nothing quite like running in the mountains under the stars in the middle of the night – it’s a great antidote to the things we criminal barristers have to deal with during the working week.
Judge Orchard – Swearing in Ceremony

Judge Deidre Orchard is settling into her new role as a District Court Judge with a jury warrant in Whangarei. She was sworn in on December 13 2017 at the Christchurch Justice Precinct – the first swearing in ceremony to be held in the new Christchurch Court Building.

Judge Orchard had spent 40 years in legal practice in Christchurch, firstly as a barrister and solicitor from 1976, then a barrister from 1986 and finally from 2004 as a Crown Prosecutor at Raymond Donnelly & Co. In her speech she paid tribute to her late husband, Professor Gerald Orchard whom she married in 1977. Sadly, he died of a brain tumour in 2003. She said he was “unfailingly kind, courteous and friendly, he was one of the good guys and a lawyer to his fingertips”. She went on to say she will try her best to remember the lessons she learnt from him and others in her new role. Their son, Matthew, attended the ceremony.

Mark Zarifeh, Crown Prosecutor at Raymond Donnelly and Co and Pip Hall QC both spoke at the ceremony and their speeches follow:

Speech given by Mark Zarifeh at Judge Orchard’s swearing in ceremony:

It gives me great pleasure to speak today at this swearing in of Her Honour Judge Orchard.

As one of Her Honour’s former employers at Raymond Donnelly I can tell you that her departure from the firm is the end of an era at Raymond Donnelly. We have lost the matriarch of a firm which prides itself on being a family. Deidre or Dids, DJO, Mrs O, GOD (or good old Deidre) or the Poor Widow Woman, as she sometimes self-deprecatingly would refer to herself – all of these people were with the firm for more than 13 1/2 years. We will sorely miss Her Honour’s consummate skills as an advocate, her sharp wit and constant upbeat banter as she regaled us with stories in the tearoom and corridors, her incredible kindness and warmth to all and her loud Kookaburra laugh resounding throughout the building.

I first met Her Honour when she was at the Defence Bar in Christchurch and we occasionally crossed swords. She was always a formidable opponent, whether arguing before a judge or skilfully creating a more than reasonable doubt with a jury. The then Crown Solicitor, Brent Stanaway, had also noticed Deidre’s considerable advocacy skills and set about trying to lure her across to the Crown.

But Deidre resisted his efforts, twice in fact. Fortunately Brent persisted and finally won Deidre over.

I think it is fair to say that after Deidre’s beloved husband Gerry had passed away Raymond Donnelly offered her a social reprieve from the sometimes lonely life at the Bar. I like to think that that was realised. Certainly the lives of the others in the firm have been the richer for having Deidre amongst us.

Her Honour would cheerfully toil at the Assizes – as she would say – without complaint (well not too often). And her toil was met with much success over those years. This was due to her innate skill as an advocate – she has a great nose for a case and can quickly sniff out a tall tale from the witness box or an over-egged Police case. Many a marginal case was sheeted home thanks to her quick mind and silver tongue. I don’t think that Deidre Orchard in full flight could be bettered.

Another important character strength necessary for an effective prosecutor (and, I would suggest, also for a Judge) is empathy. Her Honour has this in spades. Last year all of Her Honour’s repertoire of skills were called upon in a multiple defendant murder trial she ended up prosecuting single handedly, having to contend with not just one defence lawyer but three – all from the illustrious Bridgeside Chambers.

Deidre also had to deal with that awful confusion that can be 66 – parties – with defence counsel taking every point they could for their clients. As well she had to deal with a very upset and needy family of the victim throughout the trial. She managed to do so with considerable empathy and without missing a beat in what was a very successful prosecution.

As well as empathy, Her Honour has a keen sense of fairness and justice and always plays with a straight bat – necessary traits in a prosecutor and also a Judge.

Another skill Her Honour possessed was as a mentor to junior counsel. This is not an easy task but it is one which comes naturally to her. Many a junior prosecutor in the last 13 years has learned their practical advocacy skills at Deidre’s side. Mind you, Deidre is also not one to suffer fools, as a certain young...
Speech given by Pip Hall QC at Judge Orchard’s swearing in ceremony

Chief District Court Judge; Judges of the District Court past and present; Judges of the Superior Courts – past and present; members of the profession, Your Honour Judge Orchard and Matt Orchard, your family, friends and colleagues.

What a day! Mrs Scorch appointed to the District Court bench and having the unique privilege of being the first Judge to be sworn in in this magnificent Courthouse, or Justice Precinct as Nigel Hampton would have it. The only piece of the jigsaw missing is the presence of the late and great Professor Emeritus Gerald Orchard who would have been bursting with pride by Your Honour’s achievement. I well remember he always placed a few dollars each way on a pacer known as “Deidre’s Delight” or something similar. Well she came in today in spades Gerry!

A slice of history – I came to know Her Honour when she was still a student at Canterbury University when Gerry and I had a social and professional association. I consulted him often when the going got tough in criminal cases I was involved in. Incongruously he appeared as my junior as defence counsel in some homicide cases. As a result, I met Her Honour regularly – and she was and is great company.

After Her Honour graduated she was employed as a staff solicitor at Weston Ward and Lascelles when the partners included Justice Fogarty, Judges Erber and Holderness and other luminaries of the bar such as David Palmer, Gerald Lascelles, Craig Ruane and the list goes on. Your Honour took to Court work like a duck to water and was daily in the criminal, civil and family Courts of Christchurch, not to mention the nearby coffee shops. Her Honour was at Weston Ward and ...

...continued on page 12
Lascelles for some years before deciding to enter the ranks of the independent bar in 1986 when she joined Star Chambers which then comprised Brian McClelland QC, Barrie Atkinson QC and Chris McVeigh (later to become a QC).

I instructed Her Honour in one of her first briefs at the bar which was a matrimonial property case. I acted for the husband and the only issue to be resolved was the division of matrimonial property which was limited to their joint chattels and a pet dog – a doodle you may think. The Judge was Judge Noel Bradford. The chattels were divided by agreement which required about half an hour of hearing time. However, the dog fight over Rufus, the Great Dane, waged for the next two days. An exhausted Mrs Orchard reported to me and thanked me profusely for the massive hospital pass that I had tossed in her direction. I said "Such is life at the bar Dids" which was no consolation at all but our friendship survived.

After Her Honour’s stint at the Bar she became a very successful senior Crown Prosecutor at Raymond Donnelly until her appointment. The staff at Raydon will miss you I am sure.

I have often wondered what the essential attributes are for a distinguished judicial career. I am certain that your life experiences, including your Court experiences, are vital components to the overall effectiveness of a District Court Judge who deals day in and day out with the problems of our citizens without fear or favour.

Her Honour I believe had an experience which taught her an object lesson in judicial reasoning some 20 or so years ago. Her Honour was driving her car to Christchurch from down south. Somewhere near Burnham Military Camp she was startled when the engine sounded as though it was failing seriously. It also developed an alarming shudder. This continued for some little time. Her Honour was so concerned that she pulled off to the side of the road and immediately turned off the ignition. She then made arrangements for urgent mechanical assistance. Whether this was from the local garage or the AA I no longer remember. In any event, after an hour or so a breakdown truck arrived and the mechanic set about examining Her Honour’s car and the engine in particular. He started it up and looked under the bonnet. A very short time later he declared that there was nothing wrong with the motor at all and said “If you ask me what the problem was, I reckon you were driving with your wheels on the rumble lines”. Her Honour’s response was most unbecoming and unrepeatable on this august occasion. Nevertheless one basic legal principle was laid bare – Never jump to conclusions before evaluating all of the evidence and that your own opinions and inferences might be many miles off the mark.

The old fox Winny Churchill knew a thing or two about principles. He is alleged to have quipped “Never stand so high upon a principle that you cannot lower it to suit the circumstances” and “It is always more easy to discover and proclaim general principles than to apply them”.

Our very warmest of congratulations Your Honour. Canterbury’s loss is Northland’s gain. I am certain that your legal acuity, humour, patience and industry will be much appreciated in the far North. You leave with our best wishes and your appointment has not only been well deserved but also an acknowledgment of your dedication to the law and a testament to your good character and sound judgment.
Administration of Justice

By John Burn

Many years ago I spoke at a NZ Law Conference in Dunedin, and my topic was the then slow and inefficient use of typewriters to take down the evidence in the Courts. I remember referring to the polite police witnesses who would wait until the question was typed out, and then give their careful answer. For if you moved too fast with your questions, the Judge would ask you to show some consideration for the Associate, battling away with her old Underwood. The only other speakers were Sir Victor Windeyer from Melbourne and Lord Denning. Both agreed with my thesis and spoke of their own systems. I had calculated the cost of running a court, based on the salaries and time each day, and had found the speed times of typing as against shorthand from the Justice Department, thus calculating the increased cost of the old Underwood. John White, then Solicitor General, later drew me aside and took notes himself, indicating that he also thought that something should be done.

But the Justice Department administrators were too much for him, and no change was made for many years. And I can see that these civil servants are still in control, having come across Section 9 (2) of the Sentencing Act. This entitles the Court to take into account a plea of guilty and when it was made. The effect of this subsection is that a plea made at the onset of proceedings may be treated as an ameliorating factor, and thus to reduce the sentence. But if it is not made until the judge and jury are all set to go, then it may be treated as a reason to increase the sentence, by limiting the concession otherwise to be made. And it is this secondary effect which I find unacceptable in the eyes of justice.

For the only effect of a late plea which the system dislikes is the need to reschedule what was expected to be a trial (probably with a jury) so that jurors and witnesses now have to be sent away. This no doubt causes anger in the heart of the careful administrator, but it surely should have no effect on the fixing of the sentence. Particularly because the late plea now results in a higher sentence for the accused – although it is not itself a crime, nor does it make the crime charged any the worse.

The Courts have, I am told, sought to say that a late plea shows no remorse, and would have been given earlier if true remorse was the governing factor. That is all very well if this could be established, but there are many other reasons why a late plea may have nothing to do with remorse. An accused may be dealing with an inexperienced or incompetent lawyer, who postpones any final advice until a decision is forced upon him. An accused might be under the impression that he has a good defence at law, until his lawyer changes his mind, or is replaced by another less bold. An accused may not obtain proper advice until the last moment – the reasons may be many, but none of them make the delay, and the delay alone, a proper cause for extra imprisonment, quite often indeed of some years.

The real reason is that the administrators have had their careful system disrupted, and have persuaded the legislators to insert a penalty to minimise this. But they are not judges, despite too often applying a steering hand to the wheel. Probation services too, we know, have been warned by the administration not to recommend prison too often (because of the great expense to the State of keeping another person in gaol). They have also equipped all Courts with a constant recording system (quite apart from the recording of evidence equipment) so that every word may be monitored should the need for an administrative enquiry arise. It is hard to see this enlarging of departmental interest as other than (even in spirit) impinging on the jurisdiction of the judges. Which is after all the sole and essential reason that we have courts in a modern society.
Fahey v R

Unsuccessful appeal against conviction for murder – procedural issue of dual capacity when counsel acted as standby counsel and amicus curiae – appellant alleged trial judge forced counsel upon him although he had elected to represent himself – complained that counsel did not advance his preferred defence (causation) but argued lack of murderous intent instead – appeal raised important questions about the role of counsel appointed by courts to assist in criminal trials in which defendant was self-represented – judgment intended to guide trial judges in the exercise of their discretion to appoint counsel who serve as amicus curiae to assist the court, or as standby counsel to assist the self-represented defendant as and when the defendant requested – background – appellant and victim were friends who were unemployed and frequently homeless – Crown case was that appellant attacked victim with a knife in Myers Park and left the scene – incident was observed by eyewitnesses and captured on CCTV – victim died in hospital from his injuries – appellant advanced following principal grounds of appeal: (a) when he elected to represent himself the Court ought to have obtained a psychological report to ensure appellant was capable of doing so; (b) Mr D was briefed to assist appellant, but he did not want help; and – (c) in the resulting confusion appellant did not adequately present his own case – existing law implied power to appoint standby counsel extended to cases in which the defendant dismissed his or her own counsel to secure an adjournment or was thought likely to cause disruption by dismissing counsel at trial – counsel's role should be recorded and dependent, and it might evolve during the trial – counsel's role should be recorded and clearly explained to the defendant and the jury – although appointed by the court, standby counsel took instructions from the defendant – the duties that counsel owed the court did not differ in principle from those owed by defence counsel, except that standby counsel must obtain the court's approval for costs and expenses – power to appoint standby counsel extended to cases in which the defendant dismissed his or her own counsel to secure an adjournment or was thought likely to cause disruption by dismissing counsel at trial – care should be taken to balance various interests affected when deciding whether to adjourn, so the defendant might brief new counsel of his or her own, or to press on with or without standby counsel – rarely if ever should a defendant's former counsel be appointed amicus – former counsel should not normally be appointed standby counsel either – if withdrawal or dismissal as defence counsel disrupted the court's business, as an incident of appointment did counsel assist the court itself – Court expected that standby counsel appointments should be exceptional – a defendant’s decision to self-represent must be respected and in ordinary cases a fair trial should be possible without standby counsel – role of standby counsel was necessarily flexible and case dependent, and it might evolve during the trial – counsel’s role should be recorded and clearly explained to the defendant and the jury – although appointed by the court, standby counsel took instructions from the defendant – the duties that counsel owed the court did not differ in principle from those owed by defence counsel, except that standby counsel must obtain the court’s approval for costs and expenses – power to appoint standby counsel extended to cases in which the defendant dismissed his or her own counsel to secure an adjournment or was thought likely to cause disruption by dismissing counsel at trial – care should be taken to balance various interests affected when deciding whether to adjourn, so the defendant might brief new counsel of his or her own, or to press on with or without standby counsel – rarely if ever should a defendant’s former counsel be appointed amicus – former counsel should not normally be appointed standby counsel either – if withdrawal or dismissal as defence counsel disrupted the court’s business,
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the court might inquire about the reasons for withdrawal, without requiring disclosure of privileged information – if counsel cited ethical reasons the court should not inquire further – former counsel should not be appointed in a standby role if the court accepted that counsel’s relationship with the defendant had broken down – only if satisfied that there was no conflict of duty and counsel could satisfactorily discharge the responsibilities of standby counsel should the court contemplate appointing former counsel – in this case Mr D’s appointment did not deny appellant his right to waive counsel and represent himself – Mr D served as standby counsel, a role compatible with self-representation – Mr D questioned witnesses, advanced argument and delivered addresses but he did this with appellant’s approval – record showed appellant understood he was in charge of his defence and free to conduct it – there had been no miscarriage of justice – appeal dismissed.

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The celebrations to be held in October this year are progressing well. Members of the profession and judiciary are invited to save the dates: Thursday, 25 October 2018 for the formal dinner and Saturday, 27 October for the Gala Ball.

Canterbury Tales talked to Malcolm Ellis, NZLS Canterbury Westland Branch Manager, on his years working in the legal profession both in the courts and with the New Zealand Law Society.

The Canterbury District Law Society celebrated its 125-year anniversary back in 1993. Where were you working that year?

I was working in the Christchurch High Court.

What year did you start work at the Christchurch Courts?

1968 – it was my first job after I had been invited to leave school.

When did you begin working for New Zealand Law Society?

In 1994 I was appointed Canterbury District Law Society Branch Manager and following the 2006 Lawyers and Conveyancers Act and subsequent national amalgamation of the branches, I became the NZLS Canterbury Westland Branch Manager.

You have been working within the legal profession for 50 years this year. What do you see as the major changes within the legal profession in that time?

I saw reasonable stability for the first 20 years or so, then rapid change ever since over almost every aspect of the delivery of justice – most of which has not always been for the better. When I started with the Law Society in 1994 we had 650 lawyers in our Canterbury parish. We now have 1,450 members and the “legal pie” hasn’t gotten any bigger. In fact it is smaller with other ad hoc groups permitted by legislation to play in the legal services sand pit.

The 150-year celebration, which is to take place in October this year, is a significant milestone. What is your involvement with this event and what are you hoping will result from the celebrations?

My involvement is to assist both the organising committee and local council with the planning of this event. I see it as not just a celebration for the legal profession. It importantly celebrates the role the legal profession has played in the birth and growth and development of Christchurch and the Canterbury province for the benefit of Cantabrians. I hope that everyone who participates in the events leaves with a feeling of pride in both the profession and the region.

Where do you see the legal profession in the next 50 years?

Heaven knows! I personally would like to see greater access to justice for all our citizens so that no woman or man is denied that human right by dollars alone. Naïve I know, but one can only dream.