Thursday, 16 August 2018 saw a first for the Canterbury Westland Young Lawyers – we finally had the opportunity to admit the Judiciary to the Bar.

In this case that bar was the vibrant Bangalore Polo Club and no certificate of character was required. The Canterbury Westland Young Lawyers Meet the Judiciary event brings together lawyers in the first seven years of their legal careers and members of the Judiciary.

About 40 lawyers from 18 firms picked the brains of nine esteemed members of the Bench over a few craft beers and tapas.

For most of us young lawyers their Honours can appear a little intimidating, so it was great to have the opportunity to engage in both legal discussions and some banter regarding whether the Panhead Supercharger or Little Creatures Pale Ale was a better drop. I made sure to consume both (along with a rosé or two) to make sure the full facts of the matter could be robustly debated.

Thank you to the members of the Judiciary who shared the evening with us and put us all at our ease.

Also, thanks to our sponsor on the evening – MAS (Medical Assurance Society), who covered the food and handed out prizes to a number of lucky winners.

Keep an eye out for future Canterbury Westland Young Lawyers events, including our annual wine tour.
**President’s Column**

By Grant Tyrrell

**150th anniversary**

As this edition goes to print, preparations are well in hand for the 150th branch celebrations. Please register for the formal photo to be held in the courtyard at the precinct on Thursday, 25 October to assist with preparation and planning. Several hundred ball tickets have been sold but there are still a few more available.

**South Canterbury Representative**

I am pleased to advise that Anne-Marie McRae has volunteered to act as a South Canterbury representative to the Branch Council. Anne-Marie’s drive and enthusiasm will be a valuable addition to the work undertaken by the Council.

**Presidential elections**

Kathryn Beck’s term as NZLS President comes to an end in 2019. I think it would be fair to say that Kathryn has more than earned her stripes responding to a number of challenges facing the profession.

An election for the next NZLS President will occur at the end of October with the branches and sections voting.

The Branch Council was pleased to hear from the two excellent candidates – Nerissa Barber and Tiana Epati. It is always pleasing to see talented people prepared to put themselves forward for challenging and important roles.

Both have experience on the NZLS Board and would bring their skills to the role. Canterbury Westland was asked for, and has given, Tiana our nomination believing that she is the best equipped to provide leadership and represent the Law Society. Whichever candidate is successful (assuming the number of accepted nominations remains at two) the Presidency will be in good hands.

**The continuing saga of Courthouse or Police Station annex**

Previous presidents have told me of the rapidity in which columns are due and the challenge of finding something to write. It would appear that the Police and MOJ are conscious of this challenge and are doing their best to provide me with more to write. It’s a challenge that the Branch Council and separation of powers could do without.

Despite assurances from police, following an arrest out of a courthouse interview room where a defendant was consulting with their lawyer, they continue to be arrested within the courthouse.

Where the line should be drawn between police operational requirements and ensuring that the court is not only distinct from police and policing but seen to be distinct is not necessarily easy and will no doubt exercise minds greater than mine for some time. Police will argue that where a person is wanted for arrest and they know they are at court that is an opportune time. Conversely the court must not, in any way, allow the appearance of collusion with police. Certainty where non-urgent arrests interfere with the jurisdiction of the court (such as a defendant being unable to attend a scheduled hearing...)

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**VINOFINO**

**Photo Caption**

Each month we have a photo caption competition where we invite you to submit a caption. The winner will receive two bottles of wine sponsored by Vino Fino (www.vinifino.co.nz, 188 Durham Street). Send your entry to the Canterbury Westland Branch New Zealand Law Society, P. O. Box 565, Christchurch. Or email to canterbury-westland@lawsociety.org.nz. All entries must be received by October 15 2018. The winner will be announced in the next edition of Canterbury Tales.
as they have been arrested at court), that seems to me to be unacceptable and effectively usurping the authority of the court. There can be little doubt, however, that the arrest of a PDS client who was beckoned from the foyer (having been due to meet their counsel prior to sentencing) was unacceptable. In fairness it should be noted that police have (again) accepted that this incident was not appropriate and police too are operating in a physical and policy environment that is not of their making either. This was undoubtedly a distressing incident for our PDS colleagues as well.

To my mind the resounding silence from the Ministry of Justice is of greatest concern. What steps are the MOJ taking to preserve the constitutional separation that underpins our system of justice? The MOJ is entrusted, inter alia, with the running of the courts and PDS. This incident impacted on both. It also highlights the challenge for our PDS colleagues being placed, by the MOJ, ‘behind the wire’. Should clients really be subject to search by court security to see their lawyer or required to wait in an open glass room for their lawyer to maintain the architectural vision of the building? I hasten to add this is not a criticism of the PDS counsel who, in my humble view, do an excellent job but a reflection on some of the challenges that remain unresolved at the “Justice Precinct”.

The Branch Council is active in addressing these issues and is grateful for the support of the New Zealand Law Society as we grapple with these issues many of which have national implications. An excellent, even if symbolic, start could be to name the Christchurch Courthouse exactly that. It should not be a mere part of a facility but a separate and distinct entity.
Are higher excesses right for you?

By Andrew Nuttall

During the year I have had the opportunity to present two workshops to young lawyers. The first covered broad financial planning matters, the second investment principles. During the financial planning workshop, the discussion on insurances generated some interest. Prudent financial management should involve a review of insurances, and there are different needs and options to consider.

Life is not without risk. I encouraged the young lawyers to consider what risks were most relevant to them. Ask yourself what risks you should take or hold on your personal balance sheet. What risks should you transfer to an insurer?

For example: Insuring your income in case you become sick or injured may be more important than a medical insurance policy that covers the cost of doctors’ visits or diagnostic tests. Do you really need to insure for an $80 doctors fee? Is it not better to insure against something that might happen rather than something that will happen? In the case of car insurance this is akin to a policy that pays for replacement car batteries or tyres.

At any stage of life, it is important to regularly review your insurances. Have you considered opting for a higher excess? The table (Fig 1) shows premium savings for a hospital-only type policy with higher excesses.

The same applies for house contents and motor vehicle policies. How many claims have you made in the last few years? Is it worth your time filing a $300 claim for a broken window? Why not consider taking some risk personally and apply a higher excess? (See Fig 2)

Please note the figures in both tables are indicative only and are not intended to be used in place of personal financial advice from an authorised adviser.

Andrew Nuttall is Director and Principal Authorised Financial Adviser of Cambridge Partners. His disclosure statement is available on demand and free of charge. www.cambridgepartners.co.nz phone 3649119.

Figure 1: Hospital Only Medical Insurance Premiums

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Figure 2: General Insurance Premiums

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<td>Contents $100,000</td>
<td>$490</td>
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<tr>
<td>Home $1,100,000</td>
<td>$1,890</td>
<td>$1,660</td>
<td>$1,560</td>
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</table>

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.
Two applications for judicial review – lawyer K sought judicial review of decision of Legal Complaints Review Officer (LCRO) upholding a decision of a Law Society’s Standards Committee (Committee) that K had breached R13.5 Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (Rules) and hence had engaged in unsatisfactory conduct under the Lawyers and Conveyancers Act 2006 – K’s former client sought judicial review of a decision of the LCRO quashing the determination of the Committee that K had breached R13.5.3 of the Rules – K acted for L and Q who brought proceedings against their son’s school after he was badly assaulted there in December 2008 L and Q wrote to K to end their professional relationship on the basis that they were dissatisfied with his performance and considered his fees unreasonable – in March 2009 K and the instructing solicitor, C, filed in C’s name a statement of claim for the balance of K’s unpaid fee, a little over $15,000 – following an unsuccessful complaint by L and Q to the New Zealand Law Society, K success- fully sought default judgment – L and Q applied to set aside the default judgment and for K to cease to act in the proceedings – applications were dismissed at DC but L and Q were successful on appeal on their first ground with HCJ expressing his view that K should not have acted at DC or HC level – L and Q successfully brought a further claim to the NZLS Standards Committee – on review, the LCRO found K had breached R13.5 but not R13.5.3 – both parties sought judicial review – issues: whether R13.5 was infringed by the mere fact a lawyer was seeking, through litigation, to recover his or her own fee – whether the LCRO erred in her assessment of R13.5.3.

HELD: (1) Court determined there was no breach of R13.5 – reasons included: the legal profession could not otherwise exist if lawyers did not get paid; other rules of professional ethics permitted conditional fee arrangements which provided a financial incentive for a lawyer in the outcome of litigation; a lawyer had a financial interest in a case whenever she or he advised a client to continue with it, in the sense that the lawyer benefitted from the payment of ongoing fees and no one had suggested that this, without more, compromised professional independence; and curial interpretation of the sub-rules to R13.5 eschewed absolutism in favour of materiality – accordingly, the LCRO erred in relation to the rule, however the Court noted the conclusion was that the mere fact a lawyer had a financial interest in the outcome of the litigation did not infringe R13.5 but not that a barrister may sue to recover his or her fee, a course specifically precluded by another rule of professional ethics and Atkinson v Pengelly [1995] 3 NZLR 104; – (2) LCRO erred in law because her assessment was narrow when it should have been broad – reasons included: complaint was not at an end at time of appeal to HC; LCRO had little if any regard to events before the appeal; and LCRO attached no apparent significance to circumstances foreshadowing obvious ethical impediment, from inception, to K representing C in the claim for K’s fee – Court declined to remit the R13.5.3 determination to the LCRO because case was old and remission would produce further delays and facts disclosed obvious infrac- tion – result: each application for judicial review granted – both determinations of the Legal Complaints Review Officer quashed – determination of the Standards Committee in relation to R13.5.3 stands – Standards Committee’s unsatisfactory conduct determination; $1,000 fine and costs order of the same amount also stands – Court’s preliminary view was costs should lie where they fell – position very much as it was below – adverse determinations had been swapped.
2 weeks left to book the only Law Ball tickets for the next 25 years.

Let's Make History!

To purchase tickets please go to (bookwhen link) or contact Zylpha Kovacs on 03 3669184 or email Zylpha.kovacs@lawsociety.org.nz
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Email reception@anglicanlife.org.nz
Compulsion of Client Information and Responding to a Search Warrant - Part Two

Disputes about privilege

There are a number of specific statutory mechanisms for dealing with disputes over the assertion and protection of legal professional privilege. For example, under section 160(5) of the CPRA, section 20(5) of the Tax Administration Act and section 24(5) of the SFO Act an application may be made to a District Court Judge for an order determining whether or not a claim of privilege is valid. This application may be made by the person asserting privilege or the entity attempting to compel disclosure.

Police or other law enforcement agency at times secure and take documents in a sealed envelope in respect of which privilege is claimed. This is on the basis that the documents will not be accessed until such time as the question of privilege may be determined. This practice is provided for in section 146 of the SSA. It is recommended that if this occurs the lawyer ensures that the restricted basis on which the documents are taken is clear and preferably recorded in writing.

In general terms, under section 67 of the Evidence Act 2006 a Judge may disallow a claim of privilege under that Act in circumstances when there is a prima facie case that the communication or information was received or compiled for a dishonest purpose or to facilitate an offence. A Judge may also disallow a claim of privilege if the Judge is of the opinion that evidence of communication or information is necessary for the defence of a person in a criminal proceeding. Any information disclosed in accordance with a disallowance of privilege under this provision cannot be used against the privilege holder in any New Zealand proceeding.

Practical steps and assistance

There are some practical steps any lawyer facing a difficult request for disclosure can take. These may assist in providing greater certainty and reduce any potential risk to clients or the lawyer concerned.

In summary, it is recommended that a lawyer takes steps to:

- Clarify the authority on which a request of direction to disclose client information.
- Consider the particular power to compel disclosure and any protection or overriding of privilege. Any Court order or notice should be sighted to check the extent of the disclosure sought and whether there is a ‘non-disclosure’ or ‘tipping-off’ prohibition. This should be clarified with the enforcement agency and legal advice taken if any doubt remains.
- Check whether there is a specific statutory definition which may impact on the scope of protected privilege (for example, is there a ‘privileged communication’ definition or specific exception for documents such as trust accounting records?)
- Advise the client of the request and discuss whether the client wishes to waive privilege and consent to disclosure. This is subject to any legal impediment to disclosure such as a ‘tipping off’ offence created by the particular empowering legislation and the need to provide legal advice on the potential ramifications of disclosure for the client.
- Consider if there is any potential conflict between what the lawyer believes are his or her obligations and the interests of the client. The client may need to be advised to consider seeking independent advice.
- If legally privileged material is not compelling, then care needs to be taken to identify what falls within the privileged category.

A record of any documents taken is made for the client and the basis on which documents are taken is made clear. For example, if the Police take documents in respect of which a claim to privilege is made, the documents should be securely sealed and the restrictions on access recorded (ie, it is made clear that no privilege is waived and the documents must not be accessed until the claim of privilege has been determined).

If in doubt, consider whether there is a statutory mechanism to deal with disputes over privilege. If there is no mechanism, could agreement be reached with the enforcement agency allowing an independent lawyer to review the relevant material to ascertain whether it is privileged?

Ensure that no inadvertent disclosure of information relating to other clients is made (for example, if electronic files or spreadsheets are provided).

If a lawyer remains concerned or uncertain about their ethical obligations and the requirement to disclose, advice should be taken from a senior colleague. A member of the Law Society’s Panel of Friends may also be able to assist.

Legacy

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

Talk to your clients today about creating their legacy, visit www.cmrf.org.nz
On the weekend of 24th August – 26th August NZ Opera performed the hilarious Gilbert and Sullivan’s court room farce – Trial by Jury.

It was held in the High Court of the Old Court Building on Durham Street. Many lawyers who attended felt both nostalgic about the court room that no longer holds “official” trials and thorough enjoyment of a very successful performance.

It was a great success and enjoyed by all who attended.

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NZ Opera

News from the New Zealand Institute of Legal Executives
Canterbury Westland branch

By Jill Forde, President

The branch’s next seminar is on Wednesday, 17 October and a representative from Blakely Body Corporate Services will be presenting on body corporate governance and administration. The seminars are live-streamed to members outside of Christchurch, which includes the Ashburton and Timaru area. This has been very popular with members in the smaller regions and is a good opportunity for those members to get together and network.

Our AGM will be on Monday 15 October. This year the branch is adopting new rules and will be changing our name.

MISSING WILL

Glading, Gunta
Would any lawyer holding a will for the above-named, late of Christchurch, Retired, born on 11 November 1935 who died on 12 July 2018, please contact Georgina Leslie, Ford Sumner Lawyers:

georgina@fs-lawyers.com
04 910 3200
PO Box 25 299, Wellington

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Shoot for the stars: Assuming the mantle

By Philippa Moran

The sixth annual Christchurch Women’s Legal Association (CWLA) Professional Women’s Conference was held on 30 August at the Rydges Latimer Hotel in Christchurch. The theme was “Shoot for the Stars.” The 157 attendees experienced an inspirational afternoon listening to speakers who aimed high and achieved challenging goals.

Professor Ursula Cheer chaired the conference, addressing the speakers and attendees warmly and sharing insights into her own varied career, including recent experiences in her current role as Dean of Law at the University of Canterbury. The Governor-General of New Zealand, Dame Patsy Reddy, opened the conference and was followed with presentations from Justice Ellen France, Kirsten Patterson, Simon Challies, Nikki Kaye MP and Nadia Lim.

Dame Patsy spoke about “moral licensing,” a concept she adopted from Malcom Gladwell’s “Revisionist History” podcast, which involves the tokenistic promotion of one person whilst maintaining underlying discriminatory practices. Throughout her career Dame Patsy has become accustomed to being the only woman around the boardroom table. She inspired conference attendees to embrace the empowerment and momentum of the women and men who achieved women’s suffrage in 1893 to realise greater prospects for women in the future.

Justice Ellen France spoke on the topic of “Others can lighten the load, some reflections.” She provided insights into her personal career path and her unforeseen interest in public and administrative law. Justice Ellen France introduced the theme of mentoring, which was prevalent throughout the day, sharing her experiences under the guidance of Janice Lowe in the law reform division of the Department of Justice, and Sir John McGrath while working at Crown Law. She fondly recounted the historic moment that she joined the all-female sitting in the Court of Appeal and proudly spoke of the current female majority on the Supreme Court bench. She said that women cannot rely on the “trickle up” effect to make a difference but must strive to achieve impetus and change themselves, underpinned with the necessary support.

Diversity and inclusion were the key themes addressed by Kirsten Patterson, or “KP” as she came to be known when working for the New Zealand Rugby Union. Kirsten described herself as a “high functioning introvert” and explained her strategies to overcome challenges necessary to performing duties in her governance roles. She believes there has been a shift in the global environment with the politicisation of gender in 2017. This is evident in the prevalence of women’s marches, the Harvey Weinstein scandal and #metoo, and the emergence of discussions about the relationship between sexual harassment and power. Kirsten explained the business case for diversity and that inclusion opens organisations up to a greater pool of talent and innovative thought. She emphasised that diversity should not just involve considerations of gender but also ethnic and cultural diversity and persons with disabilities (who make up one in four New Zealanders). In her current role as CEO at the Institute of Directors, Kirsten views her leadership as a responsibility rather than an opportunity and strives to do something every day to advance pay equity.

Simon Challies shared his experience of working with women in his role as CEO of Ryman Healthcare, including the “formidable” Ruth Richardson and Judith Collins. His tips for effective leadership include the need to win the hearts and minds of those you lead and the effectiveness of using your power sparingly. Following a diagnosis of Parkinson’s disease shortly after the Christchurch earthquakes, Simon explained that he has come to appreciate the importance of showing vulnerability and taking risks. He believes that these strategies can assist in relating to others. He drew on these qualities in his final years at Ryman and more recently in his involvement with organisations including Kilmarnock Enterprises, Nutrient Rescue and the emergent Canterbury Brain Collective. He told the story of Amber, a young woman diagnosed with breast cancer, who has been recognised by Braveheart Christchurch. This organisation, which Simon co-founded, recognises “bravehearts” from around the city each fortnight. Through this recent work Simon has also come to recognise the power of giving thanks to others.

Nikki Kaye spoke about the influence of her mother in her journey to becoming a Member of Parliament. Her mother inspired her to overcome the obstacles she faced and demonstrated the importance of contributing to the community. She told of
Education Programme

NZLS Continuing Legal Education (CLE Limited) To register and for other information check the CLE website, www.lawyerseducation.co.nz.

Christchurch

September
» 11 Sept – Webinar – AML/CFT – Wire transfers, SARs, privilege and confidentiality
» 26 Sept – Webinar – Trustees – Professional Liability

October
» 9 Oct – Webinar – Changes that affect every Conveyancer – Overseas Investment Regime
» 17 Oct – Land Transfer Act – Nuts and Bolts
» 30 Oct – Injunctions and other Emergency Relief

November
» 12-13 Nov – Reading Accounts and Balance Sheets
» 17 Nov – Evidence and Trial Preparation
» 22 November – Trust Account Supervisor Training Assessment day (40-50 hours prior self-study learning material)
» 28 Nov – Sentencing – In short

Out of Christchurch:
» 11 Oct – Auck – Business Sale and Purchase
» 13 Oct – Auck – Sexual Violence Cases – Best Practice Advocacy
» 15-16 Oct – Wgtn – Intro to Civil Litigation Skills
» 15 Oct Wgtn, 18 Oct Auck – Logic for Lawyers
» 15 Oct Wgtn, 18 Oct Auck – Advanced Logic for Lawyers,
» 18-19 Oct – Auck – Employment Law In a Time of Change
» 23 Oct – Auck – Estate Administration
» 26 Oct – Wgtn – Criminal Law Symposium
» 30-31 Oct Auck – Lawyer as Negotiator

Canterbury Westland Social:
» South Island Devils Own Golf – 2-4 November 2018 – Please look out for flyer

To conclude the conference, Nadia Lim discussed tips on the ingredients vital to achieve energy maximisation, increase immunity to illness and encourage digestive health. She confessed to her childhood idolisation of Jamie Oliver, which led her to follow her successful pathway to a career in ‘Nude Food,’ fresh, natural and everyday ingredients. Nadia explained her “lightbulb” moment when she was working as a dietician for the Auckland District Health Board; she realised that while she could impart knowledge to others, they could not put it into practice if they were not equipped with the right tools. She sees cooking as the link between people’s knowledge and the tools to ensure a healthy lifestyle.

The conference delegates enjoyed the honesty and humility of the speakers in sharing their personal experiences and advice for success. An important theme emphasised by all speakers throughout the day was mentoring. Mentors are invaluable, both in supporting others to achieve as highly as they can, and equally important, fostering new talent to strive for new possibilities.

The CWLA are extremely grateful for the sponsorship and support of Buddle Findlay (Platinum), Craig’s Investment Partners (Gold), Kendons (Gold), Anthony Harper (Gold), Anderson Lloyd (Silver), Leo Legal Recruitment (Silver), Harman’s (Silver) and Thomson Reuters (Bronze), without whose support the conference would not have been possible. The CWLA also thanks the 14 goody bag sponsors, who provided participants with some delightful take-home treats from the event.

NZLS Continuing Legal Education (CLE Limited) To register and for other information check the CLE website, www.lawyerseducation.co.nz.

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Your Branch Council

At the BGM the new Council was declared. Your Council and their details are:

**Grant Tyrrell**  
(President) 
Partner, Weston Ward & Lascelles,  
PO Box 13339 CHCH 8141  
Phone: 379 1740, Email: gpt@wwl.co.nz

**Ferne Bradley**  
(Vice President) 
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**Stuart Rose**

**Commercial mediator**  
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