Simon Mortlock appointed MNZM

By Tony Herring, Partner, Mortlock McCormack Law

In the 2019 New Year Royal Honours, Simon Mortlock was appointed as a Member of the New Zealand Order of Merit.

Officially, such an honour is “for those persons who in any field of endeavour, have rendered meritorious service to the Crown and nation or who have become distinguished by their eminence, talents, contributions or other merits, to recognise outstanding service to the Crown and people of New Zealand”.

Simon Mortlock MNZM has been a lawyer of impeccable reputation for more than 40 years.

As well as being a lawyer of high calibre and standing within the profession, Simon is one of society’s most dedicated, passionate and caring members.

While he has built a formidable practice through Simon Mortlock Partners and Mortlock McCormack Law, Simon has worked tirelessly in the community and education sectors, truly reflecting the Kiwi characteristic of volunteering.

In Simon’s words, his efforts in that regard “keeps one grounded engaging in new challenges with others, all working for the common good and along the way we are all capable of making a difference”.

Simon conceived and developed the Employment Scholarship Trust in 2000. This trust developed the Launchpad school leavers’ programme. It has helped many hundreds of school leavers into gainful employment and successful careers. The Launchpad programme recognises that the first year out of school is a “golden year” – the first real steps out into the world as an adult. Simon recognised that lacking specific work experience...

...Continued on page 3
VINO FINO

Photo Caption

Each month we have a photo caption competition where we invite you to submit a caption. The winner will receive two bottles of wine sponsored by Vino Fino (www.vinifino.co.nz, 188 Durham Street). Send your entry to the Canterbury Westland Branch New Zealand Law Society, P. O. Box 565, Christchurch. Or email to canterbury-westland@lawsociety.org.nz. All entries must be received by March 15, 2019. The winner will be announced in the next edition of Canterbury Tales.

President’s Column

By Grant Tyrrell

South Canterbury lawyers’ Function

I was fortunate to be able to attend a South Canterbury lawyers’ function in Timaru. It was great to meet so many local practitioners in a social setting. There was an excellent turnout of lawyers for the event with lawyers of all ages and stages. It was great to not only meet senior counsel but see so many juniors – suggesting that the South Canterbury profession is in good health both now and into the future. I am grateful to Anne-Marie McRae for organising the event and all of our South Canterbury colleagues for making me welcome. Photos on pg 6.

Sub-Committees

In the finest Canterbury Westland tradition, a large number of practitioners put their names forward to be considered for the council sub-committees. These committees undertake valuable work on behalf of their colleagues including organising numerous seminars – and the odd social event! As always, the Council is grateful for the countless volunteer hours that are provided through the Law Society for the benefit of the profession as a whole. (Names on pg 9)

QC Special Sitting

A highlight was the Special Sitting of the High Court for the admission of James Rapley and James Wilding as Queen’s Counsel. It is a reflection of the regard that they are held in that the Court was standing room only and, appropriately, a sustained round of applause rounded out the formalities led by Her Honour Chief Justice Elias.

Two very well-deserved appointments their achievements in the law are (not surprisingly) significant. Moreover, both represent the finest traditions of the bar with fearless advocacy, contributions to the wider community and the Law Society. A special occasion for those appointed and their families.

Lighter side

From the seminal legal drama “The Castle”:

Darryl: Oh a QC you’re one of those?
Sal: What’s that?
Darryl: They’re the lawyers rich people use love. I don’t think Denis would be a QC.
Continued from page 1...

and often without qualifications, a school leaver is severely disadvantaged in the job market. These young people are at risk of not reaching their full potential. The options are unemployment or underemployment.

Employers are seeking motivated, dedicated and reliable employees. They often struggle to find experienced staff. They have overlooked taking on young people who may lack that initial work experience, but have the potential to quickly become productive, loyal and valuable employees.

The Launchpad programme, conceived in Simon’s office, identifies the issues facing both young people and employers. The answer – take the risk out of employing a school leaver. Launchpad created a one-year scholarship programme, providing 12 months employment and relevant tertiary education and on the job training. Launchpad become a model of employment and training that meets the needs of school leavers in the business sector. Proof is in the outcomes at the end of the scholarship year. Fifty percent of Launchpad graduates were offered permanent positions with their employer at the completion of their scholarship and frequently the roles have a greater level of responsibility and remuneration. A further 22% moved into full-time tertiary study which for many was an option they would not have considered when leaving school. The remaining 28% were employed in new positions and in many cases were offered more than one of the jobs they applied for.

In addition, for many years Simon chaired the Christchurch Early Intervention Trust in support of the Champion Centre in Christchurch. The Champion Centre provides multi-disciplinary early intervention services to infants and young children with significant disabilities and their families in Canterbury. Simon gave countless hours of support and advice to the organisation and led it through a period of enormous change and success.

Simon has provided selfless voluntary service to organisations such as the Wayne Francis Charitable Trust, a philanthropic family organisation committed to making a positive and lasting contribution to the community, the Rod Donald Banks Peninsula Trust, which facilitates the restoration of Banks Peninsula to its traditional status, and the Governors Bay Jetty Restoration Trust, a Trust committed to restoring the Governors Bay Jetty damaged in the Canterbury earthquakes.

As Chairman or Trustee of these organisations, along with charitable trusts such as the Tomorrow’s Skies Charitable Trust which focused on achieving dark sky reserve status in the McKenzie Basin, and the Josef Langer Charitable Trust which enhances conservation and ecological enhancement of the Banks Peninsula, Simon has devoted his considerable legal, commercial and governance skills over many thousands of hours of unpaid voluntary work. This has benefited countless people, communities and environments.

Simon has truly made a difference to the community in leading works that have directly improved the lives of many hundreds of people and achieving environmental outcomes that have benefited thousands more.

Simon has a heart of gold. He not only talks the talk but he walks the walk when it comes to supporting community organisations. He puts his money where his mouth is.

Appointment as a member of the New Zealand Order of Merit is a well-deserved recognition for Simon and one that the entire profession, particularly here in Christchurch, should rightly be proud of.

The award almost trumps Simon’s crowning glory which was his master-stroke in employing Tony Herring in January 1997.
Leaders Eat Last

By Andrew Nuttall

Last year, Jacob Wolt, my business partner of more than 25 years suggested I read Leaders Eat Last by Simon Sinek. It was very timely, and one of the most interesting best books I have read. I hope this short article will inspire you to listen to his 45-minute YouTube video on the subject or buy the book.

Sinek explains that evolution has provided us with tools to help us survive and there is a biological basis for the feelings that we experience every day. Our bodies employ a system of positive and negative feelings; happiness, pride, joy and anxiety to promote behaviours that will enhance our ability to get things done and co-operate. Sinek discussed five bodily chemicals:

- **Endorphins** – which create the “high” we feel after exercising,
- **Dopamine** – which creates the feeling of satisfaction we get when we accomplish something or achieve a goal e.g. crossing an item off our daily to do list,
- **Serotonin** – which creates a positive feeling of pride and status. Can you recall that feeling when you walked on to the stage at your graduation?
- **Oxytocin** – which produces the feeling we get when we know that the people around us have our back, and
- **Cortisol and adrenalin** – which are the fight/flight chemicals which can cause stress and anxiety and reduce our cognitive capabilities.

In our workplace or team, Sinek maintains that oxytocin is very important. When we look out for each other and co-operate our “circle of safety” becomes stronger. Serotonin and oxytocin reward us with feelings of security, fulfilment, belonging, trust and camaraderie. Our circles of safety also help to reduce stress and the potentially addictive behaviours that can be caused by dopamine which is all about instant gratification. In addition, oxytocin increases our ability to solve problems and pull together.

Sinek states that some workplaces can cause undue stress and anxiety and the production of cortisol because people are too busy trying to protect themselves, meet targets and deadlines. Long-term production of cortisol can result in both physical and mental health issues, but Sinek has a suggestion for us all. We can all be leaders regardless of our rank or position in an organisation. It is a decision and a choice.

All we need to do is to look to the person to our right and our left and decide to serve them. By doing this we can all become leaders and a catalyst in the cycle of oxytocin.

With more oxytocin our work places are likely to be more inspirational, even more successful.

We are all here to serve and help each other. Please remember to search for Leaders Eat Last.

Kane Smith

Kane Smith, a New Zealand Law Society Inspector from the Waikato/Bay of Plenty branch, came to Christchurch on a six month secondment. He started his first Christchurch trust account review in October and now four months into the sojourn and Kane wants to stay. We have lured him with our Noodle markets, Lime scooters and our general vibrancy.

Kane was born and raised in Whangarei and moved to Hamilton in 2005 to complete his Bachelor of Management Studies majoring in Finance and Economics at Waikato University with some extra studies in Sweden. After returning to New Zealand Kane spent the next six years working as a Hidden Economy Investigator at Inland Revenue in the Fraud and Evasion Unit. While working at Inland Revenue Kane completed his accounting requirements for Chartered Accountant New Zealand and Australia.

Kane brings with him his wife and two pre-schoolers. If Kane gets some spare time you might find him running around Hagley Park, hitting the road on his bike or having a game of squash.

Andrew Nuttall is an authorised financial adviser with Cambridge Partners and has worked with members of the legal profession for over 25 years. His disclosure statement is available on demand and free of charge. 364-9119 www.cambridgepartners.co.nz
This year I have reached somewhat of a milestone – 1,000 LinkedIn connections – from both employers and employees within the New Zealand legal profession. Many of you I have meet in person, others via video chats or email. This got me thinking about the importance of relationships in the legal profession.

At some stage in your career you will no doubt realise that legal talent alone will not be enough to achieve optimal success in the profession. At this point you will need to make a decision about whether to strive for a high-income career based on your client relationships or concentrate on firming-up career prospects dependent on a relationship with an employer (who will meet your required salary expectations). Either way building successful relationships is the key.

It is typical for solicitors in their late 20s to early 30s to be in this “relationship building” phase of their career and those who succeed in creating valuable relationships will have a definite career edge. However, at this age the average employee can be very busy both at work and in their home lives. As a result, the young lawyer generally does not spend enough time reaching out to clients or other social and professional contacts.

In fact, it is quite common to doubt that building a relationship now will have any long-term advantages. In reality going out to lunch next week with someone from your cohort will have little immediate financial/career pay-off and so it tends to be put off. On both sides of the relationship there is not much expertise to offer or other benefits to deliver. However, in 10 years (if the relationship has survived) both parties will have much more to offer each other.

Generally, most lawyers have a sizeable list of people they can approach – clients, prospects, mentors, partners – as well as other people who may be a good source of referral work latter on. Many solicitors have significantly increased their client bases through associations made through sports, hobbies or work. Having a common interest makes the initial conversation easy, allowing you to build on that initial connection in the future.

One key thing is to use a tool (such as Outlook or LinkedIn) to regularly maintain and update this list in addition to taking time to send out lunch/meeting/coffee invites. Most of these tasks can be completed in 15 minutes a week. The fact is that most people simply don’t do enough inviting – they fail to see that reaching out more will have major benefits in terms of their future career prospects.

Try not to reason that your inbox will always be full, so there just isn’t any unscheduled time to market yourself. You just have to do it as it will have a positive future benefit in terms of both employment prospects and income.

In a world defined by automation, it’s virtually impossible to overstate the importance of a personal contact. While communicating online is convenient for work, it can often take much longer to build rapport. Whilst you may spend time texting or emailing contacts, the time you actually spend together is usually when your relationship grows.

When applying for a senior position, whether associate or senior associate, you will be asked directly or indirectly about relationship building and if you have a client base. As such the ability to connect and build relationships is a critical part of a senior solicitor’s role.

Leonie Queree can be contacted at leonie@leorecruitment.co.nz or phone 021 205 7342.
South Canterbury lawyers' function
Library News
By Julia Wartmann

The beginning of the year is a great time to polish up on your legal research skills. Contact the Library to arrange an individual or small group research training session. We offer 30 to 50 minute sessions with an experienced researcher who will tailor the content to your area of interest. Email canterbury@nzlslibrary.org.nz to book a time.

Training in Timaru
For those of you based in South Canterbury, research training sessions will be offered in Timaru in May 2019 – so nearer mid-year by then, but still a great opportunity to refresh your research skills. Keep an eye out for details in the branch notices.

UK Law Reports – ICLR online
The Incorporated Council of Law Reporting (ICLR) has published *The Law Reports*, the official series of UK legal authorities since 1865. While we still hold most of these authorities on our shelves, lawyers can now access the complete collection containing 154 years of case law, via the Library’s subscription to *ICLR Online*. The collection includes: *The Law Reports* (1865 to present); *Weekly Law Reports* (1953 to present); *Industrial Cases Reports* (1972 to present); *Business Law Reports* (2007 to present); *Public & Third Sector Law Reports* (2009 to present). *ICLR Online* also offers a case citator, referred to as an “index card”, which gives the case history and subsequent treatment for each report and helpfully links to BAILII when cases cited are unreported. “Court-ready” PDFs, which have the same typeset layout as the printed publication, are provided for nearly all reports on *ICLR online*. You will find ICLR online listed “by publisher” on the Library’s “databases” webpage. Remember you need to be working in the Library or a Lawyers’ Room to access subscription databases such as ICLR Online.

New books
Recent additions to the Library collection include:
» *Carter v Boehm and pre-contractual duties in insurance law: a global perspective after 250 years* by Yong Qiang and Gregory Pynt, 2018;
» *Chitty on contracts* by Hugh Beale (editor) Vols 1 & 2, 33rd edition, 2018;
» *Corporate law in New Zealand* by Susan Watson & Lynne Taylor (editors), 2018;
» *Drafting* by David Emmett, 19th edition, 2018;
» *Expert evidence in civil proceedings* by John Katz, 2018;
» *Good faith and insurance contracts* by Peter MacDonald Eggers & Simon Picken, 4th edition, 2018;
» *Law of privilege* by Bankim Thanki, 3rd edition, 2018;
» *Limitation periods* by Andrew McGee, 8th edition, 2018;
» *MacGillivray on insurance law* by John Birds et al., 14th edition, 2018;
» *Nevill’s law of trusts, wills and administration* by Lindsay Breach, 13th edition, 2018;
» *Smith, Hogan & Ormerod’s criminal law* by David Ormerod and Karl Laird, 15th edition, 2018;
» *The ethical lawyer: legal ethics and professional responsibility* by Richard Scragg, 2018;

See the “New titles” tab on our library catalogue to find more titles recently ordered or added to the Law Society Library collection nationally.

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

Exciting Partnership for Wynn Williams

**Wynn Williams is very excited to announce** its partnership with the New Zealand String Quartet (NZSQ). Partner and Board member, Jeremy Johnson said “this is a fabulous opportunity for the firm to be involved with a charitable organisation which shares values and a culture similar to that of our own”. The partnership will enable Wynn Williams to help support the wonderful work of the NZSQ and the continued delivery of their music to New Zealand and the rest of the world.

As a charitable trust, the NZSQ works with children on specialist string programmes to assist their communities with affecting social change. The Quartet coach outstanding young musicians at their annual Adam Summer School in Nelson, and play a vital role in developing the next generation of string musicians as the Quartet in Residence at Victoria University’s New Zealand School of Music.

Formed in 1987, the NZSQ is New Zealand’s leading chamber ensemble. It is highly respected and popular not just in New Zealand, but also internationally for its versatility and the imagination of its programmes. The Quartet is made up of Helen Pohl (Violin), Monique Lapins (Violin), Gillian Ansell (Viola) and Rolf Gjelsten (Cello). Together they perform over 60 concerts in New Zealand per year, plus international concerts across Europe, North America, and North East Asia.

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The AML/CFT regime and some miscellaneous issues

By Steve Dukeson

Auckland lawyer Steve Dukeson has prepared a third article on the AML/CFT regime and some of the issues which are besetting lawyers. His earlier articles were AML/CFT and the Looking Glass - Retainers, etc and The AML/CFT regime - More on retainers, etc. The New Zealand Law Society does not necessarily endorse Mr Dukeson’s views, but believes his comments are a valuable input into the matters which lawyers are confronting.

Preamble (ramble)

This article is longer than my previous two articles because I want to delve into a number of different issues. I’m no expert. The articles stem from:

» frustration;
» an attempt to seek clarity and certainty;
» an attempt to reach out for informed comment and to share information.

We’re all in the same boat, to one degree or another. Articles like this will hopefully encourage the sharing of information amongst colleagues and encourage them to question legislation or interpretations of it that seem don’t seem to be right.

In relation to sharing information, I would like to thank Neil Russ of Buddle Findlay in particular, who has exchanged information with me and made helpful comments. It shouldn’t be assumed that my views are shared by Neil.

I sympathise with the Department of Internal Affairs (DIA) if it’s under resourced. I also realise that the New Zealand Law Society has been repetitive and too general to be of any real assistance.

I’ve raised several issues with colleagues recently, some of whom have more resources than I. They had no answers. Another colleague, much more expert than I, was sure of a position but when I pressed it, they became more equivocal. Uncertainty in relation to the regime seems to be reasonably rife – it isn’t just me. Far too much time and energy is having to be put into trying to solve basic issues and ultimately, to hunt for ML and TF culprits in relation to a vast number of dealings that won’t involve ML or TF.

In relation to some key issues, I would like to know what the views of the New Zealand Law Society are, as our representative body, and just how hard it’s pressing on issues that need to be tackled. The New Zealand Law Society represents me and other practising lawyers but until I received a reply from the New Zealand Law Society to an email that I sent, I haven’t known what stance it’s taking on issues that need to be resolved. I also wonder what ADLS Incorporated is doing. (See later in this article in relation to matters that the New Zealand Law Society has advised me that it’s negotiating with the DIA).

I’m concerned because I’ve acted responsibly towards the regime and despite inputting much more time and energy than should ever have been required, I still have queries in relation to basis aspects of the regime. I can’t resolve those queries alone. Contracts with colleagues demonstrates that more than just a few are either unaware of the issues that concern me or that they are also uncertain about them. There will be issues other than those that I’ve considered.

In some emails that I’ve had with Neil Russ, Neil expressed the view that the DIA should publish something like an issues log (like the Rewrite Advisory Panel apparently had), or a “WikiAML” where practitioners could post questions, others could give their answers, and DIA could publish their tentative, interim or considered views (which may be useful in terms of two-way information flows, as well as protecting practitioners from potential fines and penalties). I’m not familiar with those tools but it sounds as though something like that would be ideal. Given that we’re required to act as Government watch dogs with legal risk for failing to bark or bark loudly enough, we should be entitled to know what the DIs views are.

I see that the DIA has a FAQ section on its website now, which is useful.

Retainers briefly revisited

From the FAQs on the DIA website, I see that there the DIA doesn’t consider that payment of a retainer in advance on account of legal fees is managing client funds and isn’t caught by the regime. That’s welcome. Presumably, this extends to payment of a retainer in advance on account of barristers’ fees (which have yet to be determined or quantified).

Unfortunately, there’s no sign of any change of view in relation to the disbursement issues referred to in my prior articles. That’s a matter that requires attention, however it be resolved. It’s a nonsense to say that requiring a client to pay disbursements in advance triggers the regime (on the basis of an assertion that this involves managing client funds) when the regime doesn’t apply to the underlying transaction. All the more so where the disbursement is invoiced. This is one matter that the New Zealand Law Society proposes to discuss with the DIA shortly – the New Zealand Law Society disagrees with the DIA view.

Hopefully, common sense will win the day.

Sale or Purchase or Transfer of shares in a company

It’s clear from the Anti-Money Laundering and Countering Funding of Terrorism Act 2009 (the Act) that the sale or purchase of a business is a captured activity for a lawyer
if the lawyer’s services are provided in the ordinary course of their business. It would also seem to be clear that the sale and purchase of all of the shares in a company would be caught. Under para (a) (vi)(D) of the definition of designated non financial business or profession, the Act would apply where a lawyer, acting in the ordinary course of their business engages in a transaction on behalf of any person in relation to the buying, transferring, or selling of a legal person (for example, a company).

But what about the sale and purchase of only some of the shares? That seems to me to be a different matter. As matter of interpretation, I can’t that see this would be caught, even if a controlling interest were to be involved.

If the position were to be otherwise, note that, for example, a transfer of some shares in a company to an existing shareholder pursuant to pre-emptive rights would be caught, if documented by a lawyer.

Full article can be found online at www.lawsociety.org.nz/practice-resources/practice-areas/aml-cft

NZLS Canterbury Westland Committees 2019

Our local committees have been confirmed for 2019/2020.
A big thank you to all convenors and members who are to be part of these committees.
The committees have agreed to look after the interests of practitioners who practise in their respective sphere of work.
The committees will focus on educational needs through local seminars and written articles as well as collegiality needs.
If you have any questions or comments regarding the committees and their areas of work please contact Branch Manager – Malcolm Ellis on 03 366 9184.

Committees and their members:

Employment Law
Scott Wilson (Convenor)
Amy Keir (Council Representative)
Ashley Jane Lodge
Brad McDonald
David Beck
Deborah Hendry
Gareth Abdinor
Glenn Jones
Hannah Martin
James Pullar
Melissa Vandeyar
Tim McGinn

Family Law
Rachel Walsh (Convenor)
Lana Paul (Council Representative)
Aileen Odgers
Claire Finn
Fay Hughes
Maria Roestenburg
Rachelle Boulton

Litigation
Rebecca Scott (Convenor)
Sophie Goodwin (Council Representative)
Andrew McCormick
Anselm Williams
Douglas Brown
Grant Fletcher
Kirsten Graham
Michael McKay

Trust Law
Jared Ormsby (Convenor)

Jannah Stringer (Council Representative)
Catherine Muir
Dr Rhonda Powell
Emma Tomblin
Katherine Ewer
Lois Stone

Property Commercial
Mark Dineen (Convenor)
Charlene Sell (Council Representative)
Alan Prescott
Janna Robinson
Katherine Wilmott
Michael Brennan
Samantha Lawrence
Tandy Gwaze

Young Lawyers
Johanna King (Convenor)
Amy Kennerley
Andrew Logie
Jack Brown
Josh Taylor
Kathryn Evans
Melissa Vandeyar
Michael O’Flaherty
Sam Ruck

The Canterbury Westland Standards Committees are:

Standards Committee 1
Dominic Dravitzki (Convenor)
Hamish Evans (Deputy Convenor)
Anneke Lavery (Lay member)
John Edie (Lay member)
Ingrid Taylor
Kerry Cook
Mike Kerr
Philip Maw
Stephanie Grieve

Standards Committee 2
Bede Rolton (Convenor)
Robyn Loversidge (Deputy Convenor)
Megan Blair (Lay member)
David Coster (Lay member)
David Jackson
James Rapley
Katherine Ewer
Megan Blair
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Tim Twomey

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Megan Blair
Rebecca Scott
Tim Twomey

O...
Guide for Lawyers advising overseas persons investing in New Zealand assets

Introduction

Before investment in significant New Zealand business assets, or the acquisition of certain types of New Zealand land, or fishing quota, overseas persons and entities may need consent under the Overseas Investment Act 2005 (Act). The Act recognises that it is a privilege for overseas investors to own sensitive land in New Zealand or to make significant investments in New Zealand businesses by requiring them to get consent before giving effect to a transaction. It requires the Overseas Investment Office (OIO) to assess whether New Zealand would benefit from the proposed overseas investment.

This Practice Briefing is intended to assist practitioners to identify whether their clients may need to obtain overseas investment consent before acquiring New Zealand land or business assets. For information on fishing quota, see the Fisheries Act 1996.

Who is an overseas person?

‘Overseas person’ means all individuals who are not New Zealand citizens nor ordinarily resident in New Zealand. Foreign nationals who hold a residence class visa must have lived in New Zealand for at least 12 months and show an intention to reside in New Zealand indefinitely before they cease to be an overseas person under the Act.

‘Overseas person’ may also mean companies, trusts, partnerships and other corporate entities as defined in s(7)(2) of the Act. For example, a company will be an ‘overseas person’ if 25% or more of the company is owned or controlled by individuals or companies who are overseas persons.

Associates of overseas persons are also subject to the Act, including New Zealand citizens and those people who ordinarily reside here (refer to the definition of an associate in section 8 of the Act). For instance, an overseas person cannot avoid the requirements of the Act by directing New Zealand business partners to acquire sensitive land or significant business assets on their behalf. Care is also needed where a person buys property with the intention to nominate an overseas person.

The OIO will ‘look behind’ trusts and other business arrangements to understand who has ultimate beneficial ownership or control of an investment.

An overseas person with a New Zealand spouse can purchase sensitive land without consent, provided that the land will be “relationship property” as defined by the Property (Relationships) Act 1976.

Overseas investments in sensitive land

Overseas persons will require consent under the Act before they can acquire interests in sensitive land. The interest could be a legal or equitable interest and includes a leasehold interest over three years.

What is sensitive land?

Sensitive land is defined in Schedule 1, Part 1 of the Act.

For example, sensitive land includes:

- Non-urban land (rural), over 5 hectares in area
- Foreshore and seabed
- Land over 0.4 hectares that is held for conservation purposes under the Conservation Act 1987
- Land over 0.2 hectares that adjoins the foreshore
- Land over 0.4 hectares that adjoins a lake, park or certain reserves, and
- Land on some islands for example Arapawa Island, Great Barrier Island

The above list is not exhaustive. You should refer to Schedule 1 of the Act for a full list of the land that is subject to the Act.

The Overseas Investment Amendment Bill has introduced changes to the OIO to restrict foreign buyers of residential property. The definition of sensitive land under the Act has been extended to include residential and lifestyle land. As of 18 August 2018, these changes have now been passed by Parliament and the new law commences on October 22, 2018. People who hold New Zealand residence-class visas, but don’t live here will be able to apply to the OIO for consent to buy a home. Those who hold temporary visas, such as visitor, student, working holiday, or work visas, generally won’t be able to buy.

Land sensitivity certificates

Applicants and their advisors should conduct a careful examination of the survey plan of the land to be acquired, and all adjoining parcels, to assess whether that land is sensitive land under the Act. The OIO recommends that overseas investors engage an accredited land expert to undertake the assessment. You can find out more on the OIO website about getting an accredited supplier to provide a sensitive land certificate: www.linz.govt.nz/regulatory/overseas-investment/what-you-need-do-if-you-are-selling-new-zealand-assets-oversseas-investors-sensitive-land#land.

Overseas investments in significant New Zealand business assets

Overseas persons and companies may require consent before investing in significant business assets in New Zealand. An overseas investment in significant business assets includes three key types of transaction:

1. The acquisition of rights to or interests in a company (or other corporate entity eg. a trust or limited partnership) with New Zealand assets, if, as a result of the overseas investment, that company will be 25% or more overseas owned or controlled. If the value of the investment, or the value of the New Zealand business assets (including assets of the target’s 25% or more subsidiaries), exceeds NZD $100 million, an overseas investor will require consent. (Note that a higher threshold applies for Australian investors.)

2. The establishment of a business in New Zealand (which is carried on for more than 90 days in a year). If the total amount expected to be spent in establishing the business exceeds NZD $100 million, consent to acquire significant business assets will be required.

3. Acquiring property (including goodwill and other intangible assets) that is used in carrying on business in New Zealand, if that investment exceeds NZD $100 million. ...Continued on page 11
(whether in one transaction or a series of related transactions).
Even if an overseas person’s investment in business assets is less than NZD $100 million, consent will be required if the investment includes ownership or control of sensitive land.

Consent is required before an overseas person acquires any rights in sensitive assets
Any agreement for sale and purchase of sensitive land, or to acquire an interest in business assets, should be made conditional upon the overseas person successfully obtaining overseas investment consent. The agreement must also allow enough time for consent to be obtained.

You can find out more about how to apply for consent and what is required to be included in a consent application from the OIO website: www.linz.govt.nz/regulatory/overseas-investment/applying-for-consent-purchase-new-zealand-assets

What can happen if consent is not obtained?
Failure to get consent can lead to an investor having to sell their interest or having a transaction cancelled. There may also be criminal consequences (up to a year in prison or a fine of $300,000) or civil penalties, which could lead to any profit being stripped.

Conclusion
The process for overseas investors wanting to invest in New Zealand can be a complex and time-consuming process and the consequences for the investor who fails to gain consent can be serious. The further restrictions recently introduced may create a surge in inquiries on the types of issues addressed in this briefing.

Nigel Hampton QC has been elected to sit for a term of four years as a permanent member of the Disciplinary Board for counsel of the International Criminal Court, commencing on 8 December 2018.

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

Christchurch
March 2019
» 5 March – Webinar – Sale and Purchase of Apartments – key issues
» 6 March – Webinar – Privacy Landscape – key developments
» 7 March – webinar – Business insolvency update
» 11-12 March – Intro to Company Law
» 13 March – Webinar – Health and Safety Recent Developments
» 14 March – Webinar – Parole Board Hearings – the lawyers role
» 18 March – Webinar – Estate Challenges
» 21 March – Webinar - PRA Key Recent Issues
» 27 March – Webinar – Litigation Issues for In House Counsel
» 28 March – Employment – Investigations in the #metoo Era
» 9 May – Webinar – Caveat Update

Out of Christchurch
» 7-9 March – Auck – Stepping up
» 8 March Wgtn – Duty Lawyer
» 11 March – Auck A window into becoming a District and/or Family Court Judge
» 12 March – Auck – Warranties – post closing claims in sale & purchase agreements
» 19 March – Napier, 20 Mar Wgtn, 21 March Nelson – Trust Account Administrators
» 20-22 March – Wgtn – Lawyer for Child
» 26 March – Auck – Valuation and Expert Financial Evidence in PRA Cases
» 5 April – Auck Duty Lawyer
» 11 April – Auck Expert Witnesses – important issues
» 15 April – Wgtn Window into becoming a District and/or Family Court Judge
» 16 April – Auck - S 21 – Crystal Ball Gazing
» 17 April – Dunedin – Window into becoming a District and/or Family Court Judge
» 29 April – Wgtn 30 April Auck – Effecting Culture Change Workshop
» 2 May – Auck – Property - Conflict of interest
» 6-7 May – Wgtn – Intro to Criminal Law Practice
» 6 May – Wgtn 7 May Auck – Education Law Conference
» 7 May – Wgtn, 8 May Auck – Human Rights Law New Frontiers
» 13-14 May – Dun, 27-28 May Auck – Intro to Civil Litigation Skills
» 16 May – Auck – Employment – Redundancy
» 29 May – Wgtn, 30 May Auck – Intensive Elder Law
The 2019 Hunter Cup was held on Monday, 11 February at the Pegasus Golf Course. Monday dawned “bright and beautiful” which made for an outstanding day for practitioners and their guest accountants. Lawyers were playing for the historic Hunter Cup.

A barbecue lunch was available on arrival which gave everyone time to “eye up their opponents”.

The afternoon of play was full of good banter and exceptional golf. Evening prizegiving and dinner was the time to discuss the best and worst of shots!

Congratulations to the winner of the Cup – Ben Leggat from Saunders & Co. The photo above shows both Ben and his cup along with the perfect weather conditions on the day.

Thank you to the sponsors – ANZ, Cambridge Partners, Eliot Sinclair & Partners, Ford Baker and CSG.

Look out for this event next year. It is open to all levels of players and is a great opportunity for collegiality as well as friendly competitiveness.