25 years at the Bar

On 24 December 2012, the Minister of Maori Affairs, Hon Dr Pita Sharples, issued a press release in which, in addition to wishing everyone a very Happy Christmas, he announced that Nicholas Davidson had been appointed to the Waitangi Tribunal.

Lawtalk subsequently confirmed that the said Mr Davidson is a Christchurch QC. This has put Nicholas Davidson QC in the happy position that he can both appear as counsel in the Waitangi Tribunal and then issue a decision in the same case, always a useful tool for an advocate.

It is certainly beyond doubt that Nick is a very senior and important member of the Canterbury legal profession. He established Clarendon Chambers with Sir Justice William Young (as he now is) in 1988 and then Canterbury Chambers in 2007. He has served as a member of the Canterbury District Law Society Council and as Chair of the Canterbury-Westland Disciplinary Tribunal.

Nick's standing as a barrister in New Zealand is obvious when one looks at the positions of responsibility he occupies in a wide range of areas. I will give a few examples. There are many.

Since 1996, the same year he was appointed Queens Counsel, he has been a member of the Serious Fraud Prosecution Panel. In this role, he has carried out major prosecutions including those of directors of Capital and Merchant Finance which resulted in convictions. For the sake of completeness I should also cite an article about one of his prosecutions in the Dominion Post on 7 October 2008 which was entitled ‘Silence in court:’

Serious Fraud Office lawyer Nicholas Davidson’s cellphone broke silence in the court when a loud, dance tune shrilled from it. After the first interruption, Mr Davidson apologised and people in the court believed he had turned the phone off. Moments later, as Judge Ongley began summing up, it burst into life again...

Nick has held quasi-judicial roles in rugby, cricket and football. This includes being a SANZAR judicial officer in which he has had occasion to scrutinise the conduct of, amongst others, the Australian rugby player Quade Cooper.

He is on the International Cricket Council Code of Conduct Commission and has been a Commissioner for New Zealand cricket since 1995.

On 27 March 2007, the Manawatu Standard reported the case of Andre Adams who, having enticed Bevan Griggs to nick the ball to the slips approached him and pushed the grill of his helmet, resulting in a cut to the inside of his mouth. The article said that:

‘Evidence was given before Commissioner Nicholas Davidson QC of an angry reaction by Griggs followed by an apology from Adams. Mr Davidson noted that Andre Adams said he had no intention of hurting the batsman and, in fact, said to him at the time that, “If I was trying to hurt you I would have punched you.”’

Commissioner Davidson dealt with the matter with some leniency.

Nick has also taken on very significant resource management cases, one of which involved the Rangitata River. He acted for those in support of a water race which would impact the river. His involvement was extensively reported in the Timaru Herald and this shows that he spared no energy in pursuing his client’s objectives. The Herald reported:

“The psychology of birds came under close scrutiny yesterday during the hearing. Nicholas Davidson (QC) wanted clarification of evidence presented by scientist Paul Mosley. Mr Davidson asked if he believed birds preferred to nest on islands. Mr Mosley replied he was unsure whether they had the intelligence to seek out an island. Mr Davidson persisted saying, leaving out bird psychology, do you know whether birds prefer to nest on the islands or elsewhere.”

When Nick was finished with birds, he moved on to salmon. The Herald reported:

“Mr Davidson asked whether the photos showing not enough flow to support migrating salmon were taken in the deepest part of the river and how had the measurement been taken. Spokesperson Grant Ivey said they were taken in the deepest part. He had gauged the deepest part when his knee got wet.”

It emerged that all the witness wanted was a safe passage for all fish, surely a laudable goal.

This, and many other cases, not the least of which was the Wine Box Inquiry, show Nick’s incredible capacity to master complex and esoteric facts.
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.vinifinoco.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 May 9 2013. The winner will be announced in the next edition of Canterbury Tales.

The winning entry for last month’s picture (below) was submitted by Rachelle Boulton.

“Sorry I haven’t returned your call sooner, I have been flat out”

President’s Column

I recently had the pleasure of attending a function hosted by Canterbury Chambers to celebrate Nick Davidson QC’s 25 years at the independent bar.

The attendees at that function comprised a huge cross section of the legal profession and the judiciary, reflecting the wide range of people who Nick has had contact with in his professional life, whether in the course of representing and advising clients, in quasi-judicial positions, or serving in organisations such as the Law Society.

Nick’s career, like that of many barristers he has been in chambers with, represents the best of what an independent bar can provide, and it is timely to consider the role of the independent bar as the New Zealand Law Society reviews the Intervention Rule. This is an issue on which lawyers are clearly divided. The New Zealand Bar Association quite firmly continues to favour retention of the Intervention Rule. However, the NZLS Family Law Section and a large number of barristers dealing with low level criminal matters, favour abolition, although with the qualification that barristers should not be able to deal with client money.

Put in the simplest terms, the options being debated are to:

a) retain the Intervention Rule;

b) to revoke the Intervention Rule but allow barristers to “opt in” where it is thought more appropriate to act through an instructing solicitor; or

c) to adopt an “opt out” proposal, where the Intervention Rule remains on foot, but where exceptions are provided for which allow the barrister to accept instructions direct from lay clients.

The reasons for the Intervention Rule are cogently expressed in an opinion by Jim Farmer QC on the knowledge centre of the New Zealand Bar Association website. However, the contrary arguments for an “opt in” approach to the Intervention Rule, is equally well explained in a paper by Ian Haynes and Alan Ritchie on the New Zealand Law Society website. Intellectually, I accept the purpose of (and have seen the benefit of), the Intervention Rule in practice. Equally though, I have briefed barristers (or been “reverse briefed” by barristers) where my role has been negligible, and I have not charged the client, because that was the most efficient and cost-effective approach for the client.

I therefore appreciate the practical considerations which are driving review of the Intervention Rule. However, I also think that once it is eroded, there will be no turning back, and I expect that with it could go the benefits of a true independent bar.

Perhaps one answer is to have two distinct categories of barrister: some who are identified as members of the independent bar, to whom the Intervention Rule applies, and then a separate category of barrister sole who can be instructed directly by lay persons but who does not operate a trust account.

While providing appropriate service and representation to the client is, of course, the primary driver of either retention or revocation of the Rule, a secondary, but still important consideration, is the benefit to litigation solicitors in firms having the opportunity to work with, and learn from, specialist barristers. It is often through that interchange, that some of those solicitors will learn the skills which they eventually take to the independent bar themselves.

I certainly hope that, whatever the outcome of the review, the core of an independent bar, which serves rather than competes with law firms, and is available for any solicitor to instruct, remains, and solicitors like me can work with barristers like Nick Davidson QC for the benefit of both my client and my own professional development.

Rachel Dunningham

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Downhill ride to success

Mountain biking and practising law might seem a strange combination, but not to New Zealand titleholder and senior solicitor, Amy Laird.

The 31-year-old, who picked up her first national downhill title in Rotorua’s Whakarewarewa Forest in February, sees no incongruity.

“It’s true, mountain bikers often can’t believe I’m a lawyer, and people I’m associated with at work or clients, can’t believe I race downhill.

“But they aren’t really too different. I think to be good at both you have to be determined; attention to detail is important and you need to be able to analyse risk.”

The clothes change makes it credible for most, she says. “At work, in work attire, I look so much different to what I do in my downhill attire!”

For the past six years, Amy has been with Duncan Cotterill Lawyers, as a senior solicitor primarily working for Paul Dorrance as a member of the company’s corporate/commercial legal team.

Amy freely admits that without supportive seniors she could never have achieved the cycling success she has.

“Having a very accommodating employer in Duncan Cotterill, and an equally accommodating Partner in Paul Dorrance, has made it all possible. They allow me three months annual leave a year, and without that I wouldn’t have been able to compete in New Zealand and internationally, like I have.”

But using the time and expending the effort hasn’t always brought victory.

“For downhill, winning has been a bit frustrating for me. I’ve had a lot of second places at a national level, and once at a race in the United States I was second by 0.1 of a second. So I guess the national championships win in February was even sweeter after lots of second and third places:”

Travelling fast has been part of Amy’s life since she was nine.

“It was great winning those races, but I didn’t enjoy the training or racing as much as downhill, so I swapped back soon after and also moved into some enduro racing.”

Since 2012 she has been racing enduro overseas and enduro and downhill in New Zealand. Her fiancé Cam Cole races downhill professionally, based in Europe for four or five months a year.

“So when I head overseas we travel together with his team, which makes the logistics of international racing a whole lot easier.”

The inexplicable feeling she gets when she rides a track fast, or jumps a jump or a drop, for the first time is part of the pull.

“Maybe it’s the adrenalin, but it means you just want to do the same thing over and over.”

The downhill community is like a big family in New Zealand and overseas, she says. “So when you race and ride you are catching up with like-minded people. How can you not enjoy it!”

Canterbury Tales is the official newsletter of the Canterbury Westland Branch New Zealand Law Society.

Publications Committee: Karen Feltham (editor), Brendan Callaghan, Aliza Eveleigh, Zylpha Kovacs and Kate Dougherty.

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SALE OF LAND — CONTRACT — MISREPRESENTATION

Successful appeal from HC finding that respondents were entitled to cancel agreements for sale and purchase of apartments in complex in Queenstown - (1) whether purchasers had repudiated agreements without justification - (2) whether appellant developer was ready, willing and able to settle - (3) effect of representation that purchasers would not be required to complete settlement - respondents were purchasers of individual apartments under agreements for sale and purchase (agreements) entered into in May 2006 - agreements provided for purchase of apartment to be built in accordance with plans and specifications and settlement five working days after latest of date of issue of unit titles, practical completion or code compliance certificate (CCC) - "practical completion" defined as substantial completion of works so that the property was capable of being used for purposes for which it was intended without material inconvenience notwithstanding items requiring finishing of comparatively minor nature - "sunset" clause entitled either party to cancel the agreement if the vendor was not ready willing and able to settle before 20 Dec 2007 (extended to 13 Mar 2009) - "gazump" clause gave vendor right to cancel without notice at any time - additional contract terms agreed concerned payment of fee of 1% of purchase price for signing agreements, provision of furniture and arrangement of management contract for all apartments - respondents alleged pre-contract representation that the agreements were underwrite agreements to enable appellant to satisfy requirements of principal lender and that they would not be required to settle the purchases because appellant intended to sell the entire complex to single purchaser on completion - construction of complex substantially complete in mid 2008 - appellant wrote to respondents concerning settlement advising its efforts to sell the completed development had been unsuccessful in depressed property market - respondents who were surprised to discover they were being required to settle purchases obtained valuations which showed substantially lower current value of units than purchase prices in agreements - following issue of titles and CCC from Aug 2008 appellant's solicitors required respondents to settle - PCC was issued by project quantity surveyors instead of designated architect as required by agreements - HC finding that respondents refused or were not prepared to settle transactions - appellant's application for specific performance by way of summary judgment declined in Dec 2009 on basis respondents had arguable defence based on pre-contractual misrepresentation under the Fair Trading Act 1986 (FTA) - appellant had been placed into receivership in Apr 2009 - following dismissal of summary judgment application appellant's solicitors advised respondents' solicitors that they would be treated as having repudiated agreements if respondents did not settle agreements - appellants then cancelled the agreements in Apr 2010 respecting right to recover damages - in substantive judgment of Jun 2010 HC held: - (i) additional terms were terms in overall agreement (side agreements) - (ii) gazump clause could only be exercised if vendor received offer from third party for same price or greater price with profit shared with relevant respondents - (iii) time for settlement had never arrived because the PCC issued did not comply with the contract; - (iv) appellant had repudiated the agreements by requiring the respondents to settle before contractual settlement date; - (v) appellant was never ready willing and able to settle since it was unable to fulfil its obligations under the side agreements; - (vi) appellant's breach of side agreements was material and substantial; - (vii) cancellation of the agreements by respondents was justifiable for appellant's breach as well as repudiation; - (viii) remedies would have been granted to 1st respondents affirmative defence based on pre-contractual representations - in CA no dispute that side agreements constituted contractual terms, PCC did not conform to that required by agreements and time for settlement did not arrive before the agreements were cancelled - HC did not make factual finding as to whether in substance construction of apartments was complete because of focus on technical issue of whether PCC complied with contract requirements - focus of argument in CA on repudiatory conduct of the respondents - appellant argued: - (i) respondents repudiated contracts by their conduct between Jul and Oct 2008 demonstrating they did not intend to complete agreements; - (ii) respondents had no justification for repudiating because appellant was not in material breach of agreements or side agreements; - (iii) apartments were as matter of fact practically complete by mid 2008; - (iv) appellant was at relevant times ready willing and able to settle (or would have done so if validity of PCC and alleged breaches of side agreements had been drawn to its attention or relied on by respondents at time they refused to settle); - (v) appellant was entitled to cancel for repudiation and recover damages; - (vi) no basis in fact or law for conclusion in favour of 1st respondents on affirmative defence - CA factual findings that apartments were substantially complete no later than mid Jul 2008 and that all respondents repudiated the agreement by: - (i) (1st respondents) refusing to recognise obligation to settle and offering to buy apartment at much reduced figure; - (ii) (2nd respondent) communications indicating unwillingness to proceed to complete the transaction and purporting to rescind the contract; - (iii) (3rd respondents) communications demonstrating they had no intention of completing agreements even if some allowance was made for matters of complaint relating to 1% fee and furniture package - Court also rejected that matters the respondents claimed justified the refusal to proceed, namely the PCC issue, 1% fee, furniture package and management agreement - HELD: (1) appellant entitled to cancel transactions for repudiation - none of matters relied on as justifying the respondents' refusal to proceed with the agreements whether taken singly or together constituted material or substantial breach justifying them not proceeding; - (2) appellant was ready willing and able to proceed with the transactions and sunset clause could not be triggered - appellant's actions from Jul 2008 indicated it
Library News

By Julia de Friez
Librarian

Finally — the good news we’ve all been waiting for! The Law Society Library will be back in the Courts complex by early June (touch wood).

The Library is on track to return to the Courts Building in Durham Street just after Queens Birthday weekend. The failure of Mainzeal set our planned return back slightly, but since Fletcher Construction took over the Courts building project a few weeks ago, excellent progress has been made.

Changes
As we have mentioned before in Canterbury Tales you will notice a few changes when the Library returns. We have relinquished a small amount of space (34m²), which is the alcove area under the mezzanine, where the Canadian and Australian materials were shelved. Due to the loss of shelf space the layout of shelving has been completely revised. But while the main floor may look quite different at first, we are confident that the collection will be more user friendly.

Swipe card access — 24/7
You will need a swipe card to access the Library. The after-hours door (inside the Library) will now be the main entrance for both business

This photo, taken by Malcolm Ellis, of the Cuningham Taylor team at the Sports Day in February could not be included in the coverage of the event last month. However, we thought it deserved an airing, if only because of the team uniform, something all firms could aspire to at next year’s Sports Day. The quartet from left are Georgina McIntosh, Nathan Lines, Jess Babe, and Campbell Trewin.
The future is already here — it’s just not evenly distributed.

We have been involved with some tremendous successes by innovative lawyers, even as others struggle to maintain their practices, affirming William Gibson’s observation that “the future is already here — it’s just not evenly distributed”.

At one end of the spectrum colleagues report lawyers struggling with the impact of an incredible pace of change in a constrained market, and those experiencing whole areas of work evaporating - typically legal aid and government work.

But this is only part of a complex and rapidly evolving market. Certainly, many lawyers’ practices have been hard hit, yet we’ve worked with others that identified how best to adapt - admittedly often sometimes in challenging ways — and are proving extremely successful. For example, one well-known firm is transitioning from having been perceived as expensive to being increasingly seen as delivering more client value and cost effectiveness, whilst profitability and revenue have increased.

These ‘perfect confluences’ are achievable; especially in a changing market. The combination of more value for clients and improved profitability provides a sustainable framework for mutually profitable relationships;

yet the frameworks and systems that help deliver these results remain ‘unevenly distributed’ as many of our colleagues struggle to maintain traditional models.

Unbundle to meet market pressures

In other areas the ‘uneven distribution’ is global in nature. Legal aid constraints are common in many jurisdictions, yet anecdotally the New Zealand profession seems not to have developed some of the more nuanced approaches developing elsewhere.

Lawyers are one of the last remaining businesses typically providing a full service, so when legal aid cuts mean that lawyers can’t profitably provide the usual complete “charge to acquittal or sentence” service, many responded simply by dropping the service — sometimes accompanied by passionate protestations about the process or its impact on lawyers’ businesses and access to justice.

Yet this has not been a universal response. For example, English lawyers facing similar cuts have been encouraged to maintain sustainable practices by ‘unbundling’ legal work. Instead of conducting all of a case or none of it, they agree with the client which parts the client or other specialist providers should perform, and lawyers conduct elements where they add most value to the client.

Although this raises some regulatory and insurance issues, the English Law Society is actively supporting and encouraging lawyers to adapt practices to meet the changing environment.

Much like the win-win client development experiences we’ve seen in New Zealand, English lawyers can benefit from focusing on

Totally modern ?????????

Can you spot one of our esteemed colleagues in the above 1970s photo, looking gorgeous in the fashion of the day? Here is a clue. She is a current council member. All winning entries will go into a draw for a bottle of wine. Send your answer to zylpha.kovacs@lawsociety.org.nz by 16th May.

By Ron Pol
The future of law: Unbundling, pricing innovations and the new client perspective

The success of the Public Defence Service, increasing constraints on legal aid and continuing economic pressures have reportedly forced some lawyers to leave the market or move away from the main centres because of reduced workloads. Legal services consultant and legal futurist Ron Pol shares his observations on recent market changes.

Disillusioned some general counsel. And when firms offered genuinely innovative options with demonstrable benefits, rejection by ‘safety conscious’ clients (often government agencies) disillusioned many firms.

Several have since quietly resolved only to offer better value frameworks for clients actively seeking them; further entrenching traditional models unchanged for decades even as the value proposition is changing elsewhere – putting New Zealand increasingly out of step with international best practices.

The implication from these corporate and government leaders is that lawyers are regarded less as legal strategists actively helping grow businesses than merely responsive legal technicians documenting transactions. Again it’s too early to identify trends, but anecdotal evidence is mounting. Most recently, one of New Zealand’s most experienced and senior chief executives — with a long history of dealing with lawyers from the biggest firms and well resourced legal departments — observed that “lawyers do transactional work, and the best do this exceptionally well... [but] I’ve never actually known a lawyer to be strategic in the sense of proactively helping grow or improve our business in any material way.”

If this view is more widely held it serves as a chilling proposition for the future of legal services in New Zealand, yet that future remains largely in the profession’s own hands. Lawyers are capable of delivering, and many do provide, enormous value to their clients. But if we fail to innovate, and don’t effectively demonstrate that value in ways meaningful to the emerging new client needs and changing environment, or if New Zealand’s regulatory environment inadvertently constrains lawyers from delivering the most valuable services to corporate, government and personal clients alike, the business of law will continue to be increasingly constrictive for many lawyers, irrespective of international advances.

Personally, however, I’m optimistic that the law firms and legal departments we know that are quietly building and implementing genuinely innovative solutions to modern market conditions ultimately help lead the way to a brighter future for the legal profession and clients.

About the author: Team Factors’ Ron Pol participates in the legal market from all sides, with fresh insights from a unique multi-faceted perspective. He works with corporate and government agencies on the client side of the equation to help improve the effectiveness of the legal function, and performs acting general counsel roles in the public and private sectors. He also works with firms coming to grips with innovative service delivery and pricing models. And his international work provides a global context for areas in which New Zealand lawyers lead international best practices, and areas in which the local profession currently lags - exposing opportunities for innovative lawyers. Mr Pol can be contacted at team@teamfactors.com.

Reprinted from Council Brief
The front page February Canterbury Tales article that honoured the quake heroes at Saunders & Co has given rise to a meeting where David Lang was thanked by Glenys Ryan for coming to her rescue.

On the day of the earthquake Glenys was working for the Education Review Office (ERO) in the PGC building. Her window looked across to the windows at Saunders & Co. She had often seen David Lang but never knew what his name was or who he worked for. When her building collapsed she was one of the lucky ones that did walk away from the building, notwithstanding that it involved climbing over collapsed walls and through clouds of dust.

David and his staff helped with the rescue of five ERO staff members, but of course asking for her helper’s name was not high on the priority list during that harrowing exit.

Fast-forward to February 2013 and Glenys, who as well as working for the ERO also cleans the Canterbury Westland Law Society offices, saw the photo of David Lang on the front page of Canterbury Tales and finally knew who her “neighbour” and rescue hero was!

They met at the Law Society offices and the lovely photo (left) was taken. Glenys is very thankful for David’s courageous assistance on 22nd February 2011 and was so pleased that she had the opportunity to thank him personally.

In August 2013 the New Zealand Law Students Association Conference (NZLSAC) is to be held in Christchurch. My name is Ashleigh May and I am the NZLSA Conference Convener for 2013.

The conference is an annual event and this year it will be hosted by the University of Canterbury. As a Christchurch girl I am absolutely thrilled to have the opportunity to bring people back into the Garden City.

The conference will run from Tuesday 27 August to Sunday 1 September. By night the students will enjoy a range of social events, including the infamous Kensington Swan Break Night and Russell McVeagh Final Night Dinner. However, by day the students battle it out in their respective competitions to take the winning title.

The students will be travelling to Christchurch from all over New Zealand to compete in the Russell McVeagh Client Interviewing, Buddle Findlay Negotiation, Minter Ellison Rudd Watts Witness Examination and Bell Gully Mooting.

The preliminary rounds for the competitions will be held on the 28 and 29 August at Canterbury University. We are looking for practitioners to assist with the judging at the competitions. If you are interested in being involved on the judging panel then please email me at convener.nzlsa@gmail.com.

Your expertise and knowledge will be immensely appreciated by all those involved in the conference. If you have any further questions in relation to either the conference or the competitions then please don’t hesitate to ask.

With the range of events planned and the high calibre of students attending thus far, this year’s conference is shaping up to be one of the best yet. Watch this space!
50 years at the Bar

As a result of these and other skills, Nick has appeared in all courts in New Zealand and in a number of reported decisions, the full details of which can be examined at the reader’s leisure. However, for students of advocacy, the transcript of the hearing in the Property Ventures Investment against Regalwood Holdings appeal in the Supreme Court has something for everyone.

Barristers do not lose cases although we have all acted in many cases in which the client does not succeed. Unfortunately for Nick, this was such a case. On the other hand, barristers do win cases, and there are many reported decisions of cases Nick has won. Nevertheless, a reading of the transcript in the Property Ventures case in the Supreme Court shows an advocate at the height of his powers. As counsel for the respondent he begins by obviously abandoning his prepared notes to focus right away on the issues which the judges were interested in to that point as demonstrated by their questioning of counsel for the appellant, Austin Forbes QC.

He then engages with the Supreme Court judges who direct many probing questions to him on issues of cancellation, misdescription, equitable compensation, abatement and much more. He deals with this questioning with poise and clearly maintains the respect of the court even where the mood was against him, making concessions when necessary but holding his ground as well.

There is charm in an exchange with the Chief Justice when he says, ‘I was being seduced off to a position that I couldn’t see the answer to Your Honour. I can now.’

Some of you will be fans of the fictional Australian lawyer Dennis Denuto who starred in the movie The Castle. He stood up in the Federal Court and, in response to a question about why his submissions had merit, said it was ‘the vibe.’

Nicholas Davidson QC is, as far as I can ascertain, the only lawyer who has stood before the Supreme Court of this country and said, ‘It’s got that feeling to it Your Honour, it’s got the vibe.’ You can check the court transcript for that on page 67.

Nick is a confidante to members of the profession and those in Canterbury Chambers. He is a leader of the profession and has displayed leadership, in particular following the earthquakes. For all the stresses he is under and the burdens he has borne, he never seems to be flustered. Sometimes he is stern, which can be fearsome in itself, but never angry.

Above all however it is his clients and instructing solicitors who can give the best indication of the regard in which he is held. For that, I will refer to a particularly special group of clients: the families of those who died in the Pike River Mine explosion.

Colin Smith was Nick’s instructing solicitor. He could not attend the function for Nick, but very kindly provided some comments to be read out:

“I feel it is of the utmost importance that others are aware of what Nick has given to the Coast over the years and that the affection Nick has for the Coast is reciprocated by many here on the Coast. During the Pike River Royal Commission Nick displayed his considerable affection for the West Coast and West Coasters supporting the Pike Families through the sometimes tortuous process, providing wise counsel and sage advice and at all times displaying considerable empathy towards those affected by the tragedy.

During the Commission process there is no doubt in my mind that Nick went well beyond his duty as lead counsel and became a friend and mentor to those who sought his much needed guidance. What made him so effective in his role was that he took a very genuine personal interest in the plight of the families and continues to do so well beyond the end of the crown engagement.”

Colin concluded by saying, “I, like the Pike River families, have at all times very much appreciated Nick’s assistance, wise counsel and friendship and count the times I have had working with him amongst the highlights of my legal career.”

On behalf of the Canterbury profession, I congratulate Nick Davidson on his achievements during 25 years at the Bar.

Comings & Goings

Joined firm/organisation

Daniel Beker (Corcoran French), Radoslaw Dajer (Suburban Law), Vivienne Heward (Anderson Lloyd, from Anderson Lloyd Dunedin), Tania Hutchinson (Hamans, from Gascoigne Wicks, Blenheim) Todd Nicholls (MOJ Public Defence, from Marsden Woods Inskip & Smith, Whangarei), Shanti Niven (Papprills), Rebecca Saunders (Lane Neave), Korina Stronach (Cunningham Taylor), Naahi Taiaroa (Simon Stock Lawyers), Janice Williams (Aoraki Legal Ltd to Heartland Law Ltd), Saima Zafar (Linwood Law).

Moved

Alexandra Millen (Michael Starling, barrister to Shannon-Leigh Litt, barrister), Nicola Pointer (Corcoran French to MOJ Public Defence Service), Patrick Butler (barrister to MOJ Public Defence Service).

New barrister/sole practitioner/firm

Petrie Mayman Clark has merged with Bradley West to form Aoraki Legal Limited as from 1.4.13. Mark Clark (Director), Russell List (Director) Michael Mayman, Nina MacKay and Vaughn at Timaru office, Bernadette Hill at branch office in Geraldine. Timaru office details: 153 Stafford St, Timaru, PO Box 803, Timaru 7940, phone (03) 687-9480, fax 688-9749. Baldwins Law Limited, Angela Searle partner (previously Trade Mark Intelligence) as from 1.4.13. 1107 Two Chain Road, Swannanoa, RDS Rangiora 7475, PO Box 1617, phone (03) 312-0934, email angela.searle@baldwins.com.

Change of status

Katherine Ewer has retired from the partnership of MDS Law, to remain as consultant.

Change of details

Case summary
Continued from Page 4

did not intend to honour the side agreements - however side agreements were entirely ancillary to principal obligation and could have been fulfilled or otherwise satisfied if the respondents had been willing to proceed - appellant was at all relevant times ready willing and able to fulfil primary obligation to transfer the completed apartments in exchange for the price - given respondents' repudiation appellant was entitled to cancel the contracts immediately or to keep them on foot and cancel later in face of continued repudiation - appellant not obliged prior to cancellation to meet its obligations under the side agreements if to do so would be futile - respondents had made it clear they did not intend to complete the transactions for reasons unrelated to side agreements and there was no point in fulfilling the side agreements at that stage - appellant entitled to cancel for repudiation and to recover damages for losses with appropriate allowance for failure to pay 1% fee, furniture and management contract; - (3) no basis to support HC obiter finding concerning representation to 1st respondents - no claim under the FTA on basis of misleading or deceptive conduct - no evidence that appellant's agent did not genuinely believe in correctness of what he said - no representation of present fact but statement of future intention which agent genuinely believed to be true - defence based on alleged oral term not available - agent's statement that 1st respondents would not be required to settle under any circumstances clearly negated appellant's right to cancel at any time under gazump clause - oral representation contradicted clause and could not give rise to affirmative defence under the Contractual Remedies Act 1979 or otherwise; - (4) appeal allowed - declaration that appellant was entitled to cancel the transactions on grounds of repudiation by respondents - case remitted to HC for determination of damages - respondents jointly and severally to pay costs as for standard appeal on band A basis with usual disbursements - second counsel certified.
Situation Vacant

To Lease

One medium-sized room (4m by 3.65m) to let in premises for law practice (fully consented) at 356 Memorial Avenue, Christchurch. Possible shared use of meeting room, printer and other facilities. Please phone David Wilding, 358-9988 or email dave@wildinglaw.co.nz.

Practice Notice

MORTLOCK MCCORMACK LAW
Senior Associate - Kent Yeoman, LLB, BSc

The partners of Mortlock McCormack Law are pleased to announce the appointment of Commercial Lawyer, Kent Yeoman, (previously an Associate) to be a Senior Associate with effect 1 April 2013. Kent has been with the firm for four years, after a period in the UK. Kent has grown a significant reputation amongst our clients across the Commercial Sector and considers Business Transactions, Commercial Property, and Contractual Advice as key areas of expertise.

Court Jester

On their way to get married, a young Catholic couple is involved in a fatal car accident. They find themselves sitting outside the Pearly Gates waiting for St. Peter to process them into Heaven.

While waiting, they begin to wonder: Could they possibly get married in Heaven?

When St. Peter finally showed up, they asked him.

St. Peter said, I don’t know. This is the first time anyone has asked. Let me go find out, and he leaves them sitting at the Gate. The couple sat and waited, and waited. Two months passed and the couple are still waiting. After yet another month, St. Peter finally returns, looking somewhat bedraggled. Yes, he informs the couple, you can get married in Heaven.

Great! said the couple. “But we were just wondering, what if things don’t work out? Could we also get a divorce in Heaven?”

Jesus Christ! says St. Peter, red-faced with anger, slamming his clipboard on the ground.

What’s wrong? asked the frightened couple.

OH, COME ON! St. Peter shouted. “It took me three months to find a priest up here. Do you have any idea how long it’ll take me to find a lawyer?”

It costs approximately $8000 per day to run the City Mission’s services. A bequest arranged today could really help secure their future. If you have a client who may be interested in providing assistance please make email contact via info@citymission.org.nz, or visit the website www.chchcitymission.org.nz.

REACHING THOSE WHO CAN’T REACH OUT

Anglican Care provides critical services in the Canterbury area: The City Mission Anglican Aged Care Family & Community Anglican Care South Canterbury

We do this vital non-denominational work with financial support from the community. This includes bequests.

Can your clients help us to help others and leave a lasting legacy?
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The annual Hunter Cup golf day was held under grey skies at the Waitakiri Golf Club on Friday 12 April. Thankfully the weather held and the day was most enjoyable.

After being fed and watered by the team from Bradley Nuttall who (along with SBS Bank) were marking 20 years as sponsors of the event, the players were sent to their respective starting tees and play got underway on the stroke of 12 noon.

On-course refreshments were supplied by the team from SBS and the players were never sad to see the John Deere drinks cart approaching from time to time. When the scores were tallied, the Hunter Cup was awarded jointly to Stephen Jeffery and Glenn Jones, both from Lane Neave. Congratulations to you both.

In addition to the Hunter Cup the E A Lee Trophy was also at stake. The team from the Ministry of Justice was determined to recapture what they consider to be rightly theirs and they even resorted to playing in carts to give themselves a competitive edge. I wonder if the appropriate medical certificates and clearances were given to the organizers.

The team from Justice were not confident in their performance but the random selection of lawyers who formed the team tasked with defending the trophy were not up to the mark and so the trophy now sits back in the Durham Street Courthouse.

Also being contested this year was a new trophy between the Lawyers and the Accountants. Another team of randomly selected lawyers did enough to hold off the fast-finishing accountants. The Society’s trophy cabinet will not be barren after all.

Perhaps the most disappointing aspect of the day was the slightly lower than normal turnout by the profession. It seems that this is not a new phenomenon, but it is still disappointing. The day is one of collegiality and relaxation. Members are encouraged to attend next year. The day is well run by an experienced committee, there are plenty of prizes and lawyers should never miss a chance to meet with their colleagues in a social setting. Golfing ability is not an essential requirement for those of you who might be thinking “it’s not for me”. Finally, thanks to the committee for organising the day. To the sponsors — SBS Bank, Bradley Nuttall, Eliot Sinclair Ltd, Colliers International and Konica Minolta. Without their support the event would not be possible. To the staff and members of the Waitakiri Golf Club, thank you for allowing us to have use of your course and the bar and catering staff, who provided a superb buffet dinner and kept the fluids up post golf.

Right, joint Hunter Cup winners Stephen Jeffery and Glenn Jones, below other pictures from the day.