Update on the Solicitors’ Benevolent Fund

There have been no recent requests for financial assistance from the Solicitors’ Benevolent Fund, but a new series of claims would necessitate another concerted fund-raising drive, Benevolent Fund trustee Wayne Chapman says. He was responding to a question asked at the Wellington Branch’s annual general meeting in June about the current status of the fund.

Mr Chapman said the fact that there had been no recent claims is in one sense a good thing as long as that does not suggest that the fund has been forgotten.

“Readers are reminded that if they know anybody who needs assistance please get in touch with the fund through Wellington Branch Manager Annelies Windmill in the first instance – wellington@lawsociety.org.nz.”

“While there is around $307,000 in the fund at present, it is not enough to generate any meaningful income and in the event of any successful claims it would involve diminishing the trust’s capital.”

“In the past most claims originated from very senior practitioners, who were historically aware of the fund, referring other practitioners. Few claims or references came from current practitioners. One assumes that people continue to think about the fund and would refer people who fit the criteria.”

Mr Chapman said that not many contributions were being made at present. “Donations on the Givealittle page have tailed off and more contributions via regular giving would be very useful.”

“I am disappointed that some of the major firms have not included the Benevolent Fund as part of their annual giving programmes,” he said.

Anyone who wishes to support the work of the Trust, can make donations via the Givealittle page: https://givealittle.co.nz/org/Solicitors

Donations over $5 are tax deductible and will be receipted by the Trust.

New Council member

New Wairarapa representative

ADAM PARKER is the new Wairarapa representative on the Wellington Branch Council, taking over from Gretchen Freeman.

Adam grew up in Brisbane and came to New Zealand in 1994 to live in Wellington, and studied law at Victoria University. His mother still lives near Brisbane and he and his family visit there frequently.

He graduated LLB in 1996 and went to work at the Commerce Commission in Wellington where he spent the following six years involved in competition law, Fair Trading Act prosecutions and the like. He moved to Auckland in 1999 and spent seven years with A J Park doing intellectual property work.

He came to the Wairarapa in 2006 and says he very much enjoys the relaxed lifestyle. While working mostly as a litigator earlier in his career, the Gawith Burridge partner is now a general practice lawyer involved in property transactions, farm sales and other commercial work.

With three children and a busy practice Adam says he has little spare time for out-of-work activities, apart from ferrying the kids from place to place!

High Court library offers introductory training sessions in Lexis Advance

The first two introductions to Lexis Advance will be two evening sessions at 5.30 pm presented by Peter Adamson of LexisNexis NZ introducing Lexis Advance to library users. The sessions are on Thursday 9 August and Tuesday 14 August for the second/alternative date.

Please register your interest by emailing robin.anderson@lawsoociety.org.nz.

The last 12 months

If you visited the Library in July last year and in June this year, you will have noticed huge transformations. Back in July 2017, as the result of the Kaikoura earthquake, we were an empty shell – more a potential library than an actual one. The floor was carpeted and just a small area had ceiling and lights. Almost no bookshelves remained and just a small collection of books, mainly our closed reserve volumes which had been stored with the furniture rather than the rest of our collections.

By Christmas 2017, things were much better. We had bookshelves at last, and they were properly earthquake braced too. The books took a bit longer to turn up but by February this year they were on the shelves. That is when the fine-tuning began. Many of the books have been moved at least once since then as the layout of our new one-floor library was improved. The former robing room area now houses all the superseded and old editions. We are about to start working on signage. All the rows of shelves are numbered and there are lists of what is on them too. More navigation aids are to come.

Continued page 2
Branch Library computers

These should all be upgraded by the end of August so that both the Westlaw and the new Lexis Advance will work well on the computers. At the same time the Wellington Librarian Robin Anderson will be doing training, as will the LexisNexis trainers.

Email robin.anderson@lawsoociety.org.nz for more information.

Internet news

NZLII has added some interesting new resources including the reported judgments published by the Industrial & Arbitration Courts from 1976 to 1990 as the NZICJ, NZACJ and NZILR series. There are also many of the Legal Research Foundation papers from 1967 to 1995 which are another useful resource. There are also constitutional materials for those interested in the constitutional creation and development of New Zealand. Go to http://www.nzlii.org/ to see all this.

NZLII has added more new databases.

Employment Court training workshop

THE Employment Court, with the support of the Employment Law Committee of the Wellington Branch of NZLS, is conducting a workshop for less experienced practitioners, both lawyers and advocates.

It will focus on basic principles of procedure, rules relevant to the conduct of a hearing, and issues of etiquette.

The workshop will be held at the Wellington Employment Court, at 4:30 pm on 24 August 2018 and will be led by Judge Corkill, assisted by senior members of the Wellington Employment Law Bar.

The Chief Judge will also be present, to talk with attendees.

Attendance will qualify for 1.5 hours CPD. It will be followed by an opportunity to socialise.

Less experienced practitioners wishing to attend should register their interest by email sent to Joseph.Buckton@justice.govt.nz by 22 August 2018.

Wellington Branch Diary August

Thursday 2 August
Parole Law Committee

Monday 6 August
Young Lawyers Committee

Thursday 9 August
Courts, Tribunals & ADR Committee

Property Transactions - GST, In Short + Live Web Stream, www.lawyerseducation.co.nz

Monday 13 August

Criminal Law Committee

Tuesday 14 August

Ministry of Justice triennial review of legal aid and policy settings opportunity to discuss issues. Legal aid to criminal legal aid lawyers to discuss issues.

Level 8 Boardroom, Law Society Building. Civil/Family 10.30am-12.30pm; Criminal 3.30-5.30pm. https://bookwhen.com/wellington-branch

Wednesday 15 August

Wellington Branch Council meeting

Thursday 16 August


Tuesday 21 August

Family Law Committee

Public Claims, In Short + Live Web Stream. www.lawyerseducation.co.nz

Thursday 23 August

Employment Law Committee


Crossword Solutions

From page 7

Cryptic Solutions

Across

Down

Quick Solutions

Across

Down


MADeSIGN

Answers for puzzles from page 7

1. (a) The others are prime numbers (7 + 11 + 19).

(b) Carbon: The others are metals.

(c) Milk: the others are made from it.

(d) Cracker: The others are made from it.

(e) Numbers (7 x 17 = 119).

2. 1 Rc1+ Kd4 2 Qc2#
Family court practitioners hear about initiatives in Family Dispute Resolution

By Keri Morris and Shelley Stevenson

WITH long delays for hearing time in the Family Court it was timely to learn about the initiative from FairWay Resolution and Family Works to provide on-the-spot Family Dispute Resolution (FDR) in the Wellington, Porirua and Hutt Valley Family Courts at the Wellington Family Courts Association July meeting.

FDR is now being offered in seven courts nationwide and is aimed at increasing awareness of its availability and understanding of what FDR is about. FDR is a formal representation, usually a resolution coordinator or mediator, to be present at the Family Court on the scheduled family list days to arrange FDR quickly.

Keri Morris from FairWay advised that FDR is time-limited even though most FDR cases reach agreement and FDR providers are highly trained and available to undertake mediations within two to three weeks. She pointed out that it’s a positive and cost-effective option for parties looking to resolve Care of Children Act 2004 (COCA) disputes. As Bryan King mentioned in his article, “Family Dispute Resolution v Round Table Meetings” the key word here is “resolve”. FDR provides parties with an opportunity to resolve their issues and find a way to learn to work together for the sake of their children. They can provide parties with an opportunity to reach a settlement.

Most of us only really consider FDR as an option prior to Family Court proceedings, but a key message from the joint presentation by FairWay’s Keri Morris and Family Work’s Julia Hennessy was to consider situations where a Judge deems FDR appropriate under section 46F(2) of COCA, after proceedings have started. We were reminded that a Judge can direct parties to FDR if they have already had pre-Court FDR within the last 12 months as long as the parties agree (s46F(3)(b)(ii)).

Lawyer for Child can be directed to attend the FDR mediation. Gone are the delays that we experienced at the beginning of 2014. The FDR process can get underway quickly as the FDR representative can liaise with the parties, lawyer for child, and lawyers at the court, and arrange to conduct FDR within a short space of time. Parties are contacted by their mediator within 48 hours and the cases are mediated within three weeks. Keri Morris talked about an unexpected FDR success in a relocation case and about a mediation held in a cow shed. Clients can also go and see the FDR representatives at court on list days even if their matter is not on the list.

The aim is to reduce pressure on the courts, by directing appropriate cases through to FDR. The FDR representative can answer any questions either party or counsel may have, helping the parties to move forward with FDR and in turn, freeing up more time for the court. Once a Mediated Agreement is reached, it can be returned to the court to be made into a Memorandum of Consent. If only partial agreement is reached, the Judge then considers what has been agreed and determines the next steps.

Changes from 1 July mean all disputes are now eligible for 12 hours of FDR services, so preparation for mediation is accessible to everyone. This valuable service not only makes a difference to the outcome of the mediation, it also provides an opportunity for parties to really prepare for their mediation by giving them skills to regulate powerful emotions and engage in discussion without entering into the attack-defend cycle.

Judges O’Dwyer and Black attended the presentation and Judge Black strongly encouraged lawyers to consider current cases that they could direct to FDR given the delays in getting long cause fixture time.

For more information please contact keri.morris@fairwayresolution.com or Julia.Hennessy@psc.org.nz

Well-attended Ethics Committee seminar

By Paul Barnett and Peter Bennett

The Chief Ombudsman, Judge Peter Bosher, spoke at a seminar on the evening of 27 June organised by the Wellington Branch Ethics Committee and hosted by Chapman Tripp.

The theme of the evening was ethical behaviour in the legal and business community, with specific emphasis on the importance of appropriate role modelling and the role of the Ombudsman’s office.

The function was well attended, and a relaxed and interactive/conversational approach was the order of the day. Not unexpectedly, given the topicality of the subject matter and other recently well-publicised circumstances affecting the legal profession, the discussion was fairly free ranging and uninhibited.

It covered such themes as the difference between ethics and morality, what good “ethical” behaviour entailled to the extent that it was broader than customary notions of legal ethics, the importance of these issues to the legal profession and broader society, and to what extent the legal profession had an onus to model good behaviours in these regards.

Judge Peter Bosher explained the role of the Office, and why the Ombudsman’s approach, as it intersected with, influenced or was influenced by, these questions.

Special aspects of ethics and their interface with what might be considered the obligations of morality were discussed in more length in the context of trials in sexual abuse cases.

Feedback provided by attendees to the Committee indicated the seminar was relevant and of considerable interest.

Review of the Property (Relationships) Act 1976

The Law Commission has signalled that the next step in its review of the Property (Relationships) Act 1976 will be publication of a Preferred Approach paper, available on 16 October on the Commission’s website www.lawcom.govt.nz.

The paper will outline recommendations likely to be included in the Commission’s final report, which is due in April 2019.

The Law Commission is keen to hear feedback from practitioners about features of the proposed approach that they agree or disagree with, and why. Practitioners will be able to provide feedback by email or telephone. The Law Commission would be happy to meet practitioners at its office in Wellington.

J ohn Pennington Gatley, who died on 31 May 2018, came to the law relatively late after an eight-year career as an army officer.

He was born on 31 January 1934 and grew up in Palmerston North. He was a proud old boy of Palmerston North Boys’ High School where he played hockey and cricket and enjoyed debating. When he left school he went to Victoria University to study first year law, but soon realised that his parents were not in a position to support him through university, so looked for an alternative and saw the army as an opportunity.

Army service

In December 1952 at Trentham military camp he took part in the exciting five-day “ROSB” (Regular Officer Selection Board) in which candidates were put through an arcane selection of tasks designed to select the best talent to be trained as officers. John was one of six selected out of many unsuccessful applicants and in February 1953 set off to Royal Military College Duntroon, Canberra, for the first year of a four-year officer-training course. John and Ken Gordon (Major General Ken Gordon [Retired]), both eighteen at the time, started together and became good friends.

Ken Gordon says the four years were stimulating and hard work. “About half the time was spent on non-military subjects and John would have come out with about half an arts degree,” he said. “We came home just once a year at Christmas, sailing on the MS Wanganella.”

Back in New Zealand early in 1957 John was posted to Burnham military camp. For about 18 months he worked as a junior officer and instructor with compulsory military training, young men just a few years younger than himself. He was then posted to a territorial unit in Invercargill where he was commissioned into the artillery and went on to become adjutant of the unit.

In 1959 he spent nine months in Malaya during the Malayan Emergency—a guerrilla war fought in pre- and post-independence Federation of Malaya—working at a base in the Perak area in the north of the country.

On return from Malaya he was posted to army headquarters in Wellington and was involved in a number of staff jobs including working in the secretariat for the Chief of Staff. He was a good administrator and became familiar with aspects of the law as it affected the military. In fact, he had never lost interest in the law and when his wife Marjorie saw an advertisement for the position of administrative assistant to the Dean of the Law at Victoria University, they agreed that this position would make it possible for him to leave the army and study law at the same time, and that’s what he did.

Back to law study

He left the army as a captain in December 1964 and went back to Victoria University. He worked towards his law degree, while at the same time utilising his army-honed administration skills in the law faculty office. He graduated LLB at the end of 1967 and was admitted to the bar on 23 February 1968.

Initially, he went to work as a staff solicitor at Chapman Tripp in Wellington and might well have stayed there, but through a friend heard of a position at the Gisborne firm of Woodward Iles and Furness. John and Marjorie Moore had married in 1961 and by now had two young children, Adam and Julia. They talked it over and both felt that a move to Gisborne would provide a good opportunity for an outdoors lifestyle ideal for bringing up children. John applied and was successful, and the outdoors lifestyle came to pass — the family enjoyed a happy decade in Gisborne with a full social life and lots of golf, tennis, swimming and barbecues. John became a partner at Woodward Iles and Furness on 1 November 1969.

Leading conveyancer

Over his time in Gisborne John Gatley developed the reputation as a leading conveyancer and in 1980 was recruited by Chapman Tripp in Wellington, where he became a partner on 1 April 1980. In that year Chapman Tripp moved from Brandon Street to premises in Grey Street, where a “shop-front” office was instituted on the ground floor. Ross Crotty, also a partner at that time, says he and John, and others, “... constituted some of the ‘street-front’ law practice of the firm, doing conveyancing and commercial work, from the ground floor next to the corner windows.” For Chapman Tripp John handled predominantly commercial and domestic conveyancing and some commercial leasing work.

John Greenwood, who was also there at the time, recalls that Chapman Tripp then had a large conveyancing team. “We had around 300 open files at that time — remembering that the contract was just one page then. There was a high turnover of properties at the time.”

John Gatley was appointed as a District Court judge and chairman of the Liquor Licensing Tribunal in 1985, positions in which he served until he retired from the District Court bench in February 2001. The liquor licensing work took up most of his time although he occasionally sat in the District Court. He travelled widely throughout New Zealand with tribunal work, as well as to a number of overseas conferences.

He and Marjorie had moved to Taupo in 2000 from where he was appointed as an Acting District Court judge in October 2001 and then again in May 2002. He was appointed as the sole member of the Student Allowance Appeal Authority in December 2003.

Love of sports particularly golf

John Gatley enjoyed most sports and followed the New Zealand cricket team with great interest. His great love though was golf which he had never lost interest in the law and when his wife Marjorie saw an advertisement for the position of administrative assistant to the Dean of the Law at Victoria University, they agreed that this position would make it possible for him to leave the army and study law at the same time, and that’s what he did.

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Chairman of the Devil’s Own trust board, knew John very well and played with him at the Devil’s Own many times. “He was a great company and enjoyed the ‘weekend’ [while] he was not the greatest golfer ... it was a big weekend for him ... particularly in his later years after being made a judge it did mean he could relax and let his guard down.”

The ‘Gatley Section’

John suffered from ill health in his later years and golf was a struggle for him. Richard says the trust board set up a special round for golfers like John whose age and health mitigated against the rigours of regular match play. “We aptly named it the ‘Gatley Section’.” John was rather bemused, if not embarrassed, by this, but being a very good natured person he simply went with the flow.”

Among those contacted for this obituary, John Gatley has been universally described in the most positive terms: “a gentleman first, last and always”, “a true gentleman”, “he dressed and conducted himself in a manner befitting an army officer”, “John was a real gentleman”, “a gentleman, a very gracious man, a nice guy”.

Similar qualities were emphasised at his funeral — a kind, generous, loyal and highly ethical person, who maintained good and enduring friendships.

Devil’s Own golf tournament

The 84th Devil’s Own golf tournament will be held at Hokowhitu golf course, Palmerston North, from Friday 28 September to Sunday 30 September 2018.

Mark your diaries now!

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From the army to the law – John Pennington Gatley

By Chris Ryan

Council Brief September 2018 Deadline

Monday 20 August 2018

Booking for Law Society events

Most events presented by NZLS Wellington Branch are on a user-pays basis. It is very helpful if bookings are made as soon as possible so that the viability of the event can be assured and catering can be accurately estimated. Members are able to book for most events at:

http://bookwhen.com/wellington-branch

Obituary

COUNCIL BRIEF, AUGUST 2018
In a recent seminar organised by the Wellington Branch Courts Committee, His Honour Judge Tuohy, the Civil Liaison Judge for the Wellington Judicial Region, spoke to practitioners about the parameters of preparing and presenting a case in the District Court in the civil jurisdiction.

Judge Tuohy began with a fundamental principle, which he was to reiterate a number of times during the presentation, that from the very start the practitioner should identify and develop a clear and viable theory of claim or defence. “If you do that, it is likely to lead to a well-presented case when you get to court, if you don’t, the ambiguities, the contradictions, and lack of a clear position from the start will inevitably continue and will mar the presentation of your case or even cripple it…”

Be honest with clients

“At the beginning you must apply your legal skills of analysis to assemble the unfiltered pile of irrelevant and relevant papers, facts, opinions, speculation and downright nonsense and at that time start to construct a viable legal claim or defence.”

Judge Tuohy told the group to be completely honest with themselves about the prospects of success of a given case. “Use cold-blooded analysis and then be ruthlessly honest with your client about the weaknesses in the case. It is hard at times to tell a client their case is weak or even non-existent but it has to be done. You are not a psychotherapist or social worker, you are their lawyer. . . . And it is also a matter of self-interest . . . it will come back to bite you – maybe a lot later with the case collapses, your new ex-client faces large order of costs to the other side, and you are left with a large unpaid bill by an unsatisfied client. I do urge you, from the start be analytical and ruthless.”

Once the practitioner has done the careful analysis, and honestly faced the realities of the case, they should be in a secure position to prepare a foundation document for the case, a statement of claim or defence. “This is the foundation for presentation of a coherent case when you face the judge at a judicial settlement conference or a trial . . . not a bundle of illthought out hopes or complaints that won’t withstand cold-blooded scrutiny.

“Those basic pleadings are extremely important to the presentation of your case and they need to be clear and concise; if not you’ll be on the back foot with the judge.”

“The statement of claim should recite only the essential facts which are relied upon to establish the cause of action . . . The essential facts should be set out in logical order, generally chronological, and following the elements of the cause of action . . . Always clearly indicate what the cause or causes of action are, either in the headings to the relevant sections of the statement of claim, or at the conclusion of a logical series of paragraphs asserting the various elements of it . . . put yourself in the judge’s position, that is what they are trying to find out.”

Judge Tuohy said that these basic rules are often ignored in the District Court. “Very often what is filed with litigants in person – a statement of claim is just a rambling narrative . . . an array of unnecessary facts, or worse, opinions, sometimes like a brief of the litigant’s evidence, with paragraph numbers randomly shoehorned in here and there.”

“That is extremely unhelpful for a judge trying to work out what the case is about; it also tells the judge that the person drafting the document has not thought out their case, or has not got the legal ability . . . and puts the case in doubt.”

Judge Tuohy said if there are counter-claims they should be stated straight away. “So often, extra cost is incurred for everyone because a defendant decides they have a counter-claim halfway through a case.” Similarly, if joining third parties, this should be determined early on. “If the legal basis of the client’s position has been well thought out from the beginning, all this should naturally follow, he said.”

A statement of defence is a lot harder when a plaintiff’s case is poorly pleaded, Judge Tuohy said. “When it contains a lot of unnecessary assertions which if anywhere should be in a brief of evidence. Claims from unrepresented litigants can be a nightmare to respond to.”

Judge Tuohy reminded the audience that an overriding principle of the District Court is to provide just, speedy and inexpensive determination of proceedings and advised practitioners to avoid interlocutory processes as much as possible. “Clear and concise pleadings force the lawyers and through them the clients to face the reality of the strength of their case or otherwise and thus result in quicker and cheaper resolution whether by settlement or by court decision.”

Judge Tuohy said that where it was in the defendant’s economic interest in delay and the lawyer indulges in interlocutory processes for that purpose, the judge is likely to recognise this and may impose costs on the client.

Judicial Settlement Conferences

With Judicial Settlement Conferences, Judge Tuohy recommended compliance with DR rule 7.3(3) which sets out what documents should be filed beforehand. “Common experience is that often only one side does so. Although a judge can’t impose a decision at the JSC, my experience is that inferior compliance on one side is often a symptom of the lack of merit in the party’s case, likely to be exposed by the judge at the JSC.”

The same arguments apply at the hearing – sound legal analysis at the start, carried forward to clear and concise pleadings almost always translates into submissions and briefs of the evidence that address the relevant issues.

Submissions should be concise. “Their quality and persuasiveness do not depend on their length, in fact the reverse is true – the more concisely you can argue your case the better.”

Judge Tuohy suggests a maximum of five pages as a guide. “If you cannot do that maybe you have not yet clearly identified to yourself the theory of your case.”

The judge mentioned the question of damages, saying that submissions often provide a good indication of liability, but not so much on the level of damages. Sometimes a figure of damages is specified with little indication on how it is justified. “It is often the hardest part of a case for the judge. Liability is often fairly clear from submissions but the level of damages not so much.” Judge Tuohy suggests clarifying what you are asking for in submissions with as much precision as possible. He suggests that a separate sheet setting out details of compensation or loss is very helpful.

Judge Tuohy noted that the bundles of documents brought to court in support of cases are getting larger and more and more unwieldy. District Court judges have limited reserve time, he says, and are unlikely to find the time to read all of the material. “Please be realistic and ruthless,” he says. “Only include what is absolutely essential.”

Similarly, he said, bulky bundles of authorities are also often included. “You don’t usually need hard copy, just a list of references will do unless they are crucial to the case.”

A suggestion to help resolve this problem was to print just the pages containing relevant quotes and include the full text on a memory stick which could be perused later if necessary.

In relation to the bundle problem, Judge Tuohy referred to ‘Sedley’s Law of Documents’ which is listed below.

This seminar was part of the Court’s Committee’s ongoing liaison between the Wellington profession and the courts. Committee convener Paul Michalik thanked Judge Tuohy and said the committee was very grateful for his informative address.

**‘Sedley’s Laws of Documents’**

British lawyer and judge Sir Stephen Sedley expressed his frustration at document overload in court with “Sedley’s Laws of Documents”.

First Law: Documents may be assembled in any order, provided it is not chronological, numerical or alphabetical.

Second Law: Documents shall in no circumstances be paginated continuously.

Third Law: No two copies of any bundle shall have the same pagination.

Fourth Law: Every document shall carry at least 3 numbers in different places.

Fifth Law: Any important documents shall be omitted.

Sixth Law: At least 10 per cent of the documents shall appear more than once in the bundle.

Seventh Law: As many photocopies as practicable shall be illegible, truncated or cropped.

Eighth Law: Significant passages shall be marked with a highlighter which goes black when photocopied.

Ninth Law: (a) At least 80 per cent of the documents shall be irrelevant. (b) Counsel shall refer in Court to no more than 5 per cent of the documents, but these may include as many irrelevant ones as counsel or solicitor deems appropriate.

Tenth Law: Only one side of any double-sided document shall be reproduced.

Eleventh Law: Transcriptions of manuscript documents and translations of foreign documents shall bear as little relation as reasonably practicable to the original.

Twelfth Law: Documents shall be held together, in the absolute discretion of the solicitor assembling them, by: a steel pin sharp enough to injure the reader; a staple too short to penetrate the full thickness of the bundle; tape binding so stitched that the bundle cannot be fully opened; or a ring or arch-binder, so damaged that the arcs do not meet.
DNA Testing: I know it’s accurate – I saw it on CSI Miami

By Vladimir Samoylov, Community Lawyer/Roia Hapori

Most of us, even if not fans per se, have caught at least a scene or two of a forensics crime show such as NCIS or CSI, so my recollection of the following observances should sound familiar:

“Lieutenant Horatio Caine arrives late at a crime scene and almost immediately spots a suspicious looking substance (of course, nobody from the twenty or so professionals already on scene could see the substance). Caine scoops the substance into an evidence bag and, after looking intently at it, hands the bag over to some less central character. He glances back, takes a quick look at the casts in the room, and nonchalanceely walking away.

“Fast forward 20 minutes – after doing a bunch of forensic testing the results reveal that the substance is, in fact, three different types of organic material. One of those materials is human DNA, which the forensic scientists are able to successfully extract and isolate for further testing. That testing proves that human DNA matches the episode’s culprit.”

Although most would say they understand that shows like CSI Miami exaggerate the capabilities of forensic science, a phenomenon by the name of the ‘CSI effect’ would suggest otherwise. The ‘CSI effect’ describes unrealistic expectations of forensic science that are attributable to portrayals in popular fiction. Such expectations have been observed among non-expert groups (such as juries) involved in the criminal justice process.

It is also likely that popular fiction leads to unrealistic expectations of forensic science beyond the criminal justice sphere, for example, with biological relatedness testing. In fact, you can help put this theory to the test by answering the following question:

“What is the furthest degree of biological separation between relatives which can be reliably determined via DNA testing?”

This was a question I learned the answer to when I was assigned a refugee family reunification case in which the DNA of half-cousins was tested. Perhaps being an unknowing victim of the ‘CSI effect’, I was surprised to learn that the reliability of DNA testing is substantially reduced once the degree of biological separation is beyond that of siblings. In fact, some reputable companies will not test for biological relatedness between relatives as close as first cousins.

DNA testing for refugee family reunification

Immigration New Zealand often uses DNA testing to determine relatedness between distant relatives in refugee family reunification cases. The reason for this is that refugees typically lack the necessary identification documents, usually because extremely dire circumstances have forced them to flee their homes in a rush and leave most, if not all, their possessions behind. In such situations, DNA testing may appear to be the only viable way to confirm relatedness between alleged family members.

In the case of the half-cousins mentioned above, four separate experts looked at the negative DNA results we received and provided written comments. All four experts were of the opinion that half-cousins are outside the scope of reliable DNA testing. Inconclusive or faulty results can cause immense distress for already highly distressed refugee families and, more concerning, family reunification applications are potentially being declined based on such results.

DNA testing for biological relatedness is not always reliable. In fact, there is significant room for doubt once the degree of separation between tested relatives is beyond that of siblings. So, think twice before scratching that guy you were so sure was your cousin off the family dinner guest list. CSI Miami may be, as it turns out, slightly exaggerated, and that DNA test you and your not-cousin underwent may not be as reliable as you thought.

Footnotes
2 See for example https://www.ibdna.co.nz/tests/cousin-dna-test/

Law graduate CV scheme

WELLINGTON Branch runs a scheme to assist law graduates into work.

Graduates seeking employment leave their CVs with the Branch. These are then made available to potential employers looking for staff.

Employment offers need not be permanent – any work in a law office will give graduates valuable experience.

And the scheme does work! A graduate recently emailed us: “I’ve been meaning to email to say a big ‘Thank you’ to the CV scheme folks. Last year my CV got passed on to a firm in Palmerston North, and I’ve been working there since late January. So, many thanks for having me in the CV scheme, it made all the difference. I am now in employment.”

Contact the Branch: email wellington@lawsociety.org.nz or phone 04 463 2925.

Participate – join a committee!

Our special interest groups or “committees” play an extremely important part in the life of the Wellington Branch. Amongst other activities, they provide a place for people who work in the same area of law to meet; share information and common areas of concern; feed into the NZLS national Law Reform Committee submissions; organise relevant and timely CPD events; provide a forum for lawyers in private and in-house practice to meet; and give newly-admitted lawyers the benefit from the experience of those who have been in practice for many years.

How to join a Committee

A “call for committees” goes out in the middle of May, at which point conveners will receive the forms to allow existing members to re-enrol; forms for new members will be available through E-brief and in the June issue of Council Brief. Existing and intending members of committees are invited to register their interest by completing a form which they send to the Branch by 30 June. You can join a committee at any time during the year, however, by emailing wellington@lawsociety.org.nz.

Information on Committees in June issue of Council Brief

The Solicitors’ Benevolent Fund – ways to donate

Donations to the Solicitors Benevolent Fund can be made through:

• “Give a Little” http://www.givealittle.co.nz/org/Solicitors, which will be automatically receipted, or
• by Direct debit: Bank of New Zealand: 02-0506-0101108-097.

All donations go directly to the capital reserve. The Solicitors’ Benevolent Fund Trust is registered as a charitable trust (number CC48709) and has tax deductible status.

If a receipt is required when making a direct debit, please email wellington@lawsociety.org.nz with your name, the amount deposited and a contact number to ensure a receipt is issued and sent to the correct place.

Deadline Council Brief September

Monday 20 August 2018
New Zealand Law Foundation National Young Lawyers’ Mooting Competition - National Final

THE National Final for the Young Lawyers’ Mooting Competition will be held on 1 August at 6pm at the Old High Court.

The moot will be between the Wellington regional winners from Reid’s Family Law and the Hamilton regional winners from Norris Ward McKinnon. Practitioners and the public are welcome to attend. The Moot will be presided over by three Supreme Court Judges.

An after function will be held at Stout Street Chambers. For catering purposes please RSVP by 31 July to c.kenworthy@barristerscomm.com.

Council Brief Crossword

You can use this diagram for either the Quick or Cryptic Clues, but the answers in each case are different. This month’s solutions are on page 2.

ACROSS
1. Spheres or balls lose everything (4)
2. He does his running on the quiet (8)
3. Organise a gay reel with zest (7)
4. Copy wrongly (5)
5. Inauspicious (12)
6. Chanted (7)
7. Bawl (4)
8. Recompense (12)
9. Lines, we hear, of eggs (4)
10. Lethal (5)
11. How detectives may collaborate to catch counterfeiters? (7,5)
12. Way in (8)
13. Modern (6)
14. Useless, until changed inside that is (7)
15. Abrate (6)
16. Type of biscuit (5-7)
17. Joint description of Eve’s origin (5,3)
18. Animal in hardship popularly as a princess (5)
19. Elegant style in which ice cream is served (4)
20. Flap on aircraft wing (7)
21. Chop with knife and fork (5)
22. At one time (4)
23. To a doctor it’s grave (4)

DOWN
1. Engaging applause (8)
2. Elevates (5)
3. Showed that one’s judgement as a producer had become clouded? (8)
4. It’s a crime when he has a number (4,2,3,3)
5. In a collection, determine which item is the odd one out:
   (a) 119, 911, 919, 991
   (b) Copper, Iron, Carbon, Aluminium
   (c) Butter, Cheese, Milk, Yoghurt
   (d) Reid’s Family Law
   (e) Time, Point, Circle, Ball
6. One takes something for it (7)
7. There’s a lot to be said for having it (12)
8. It will be a blow to take this test - and fail! (12)
9. It’s a crime when he has a number (4)
10. Lethal (5)
11. Censorious (12)
12. Way in (8)
13. Modern (6)
14. Useless, until changed inside that is (7)
15. Abrate (6)
16. Type of biscuit (5-7)
17. Joint description of Eve’s origin (5,3)
18. Animal in hardship popularly as a princess (5)
19. Elegant style in which ice cream is served (4)
20. Flap on aircraft wing (7)
21. Chop with knife and fork (5)
22. At one time (4)
23. To a doctor it’s grave (4)

Quick Clues

ACROS
1. Vend (4)
2. Ripeness (8)
3. Inauspicious (7)
4. Censorious (12)
5. Modern (6)
6. Abrate (6)
7. Type of biscuit (5-7)
8. Boredom (5)
9. Chop with knife and fork (5)
10. Lethal (5)
11. 119, 911, 919, 991
12. Time, Point, Circle, Ball
13. Copper, Iron, Carbon, Aluminium
14. Butter, Cheese, Milk, Yoghurt
15. Reid’s Family Law
16. Time, Point, Circle, Ball
17. Joint description of Eve’s origin (5,3)
18. Animal in hardship popularly as a princess (5)
19. Elegant style in which ice cream is served (4)
20. Flap on aircraft wing (7)
21. Chop with knife and fork (5)
22. At one time (4)

DOWN
1. Defames (8)
2. Elevates (5)
3. Dress (6)
4. Insult (7)
5. Inauspicious (12)
6. Chanted (7)
7. Bawl (4)
8. Recompense (12)
9. Snowman (4)
10. In a collection, determine which item is the odd one out:
   (a) 119, 911, 919, 991
   (b) Copper, Iron, Carbon, Aluminium
   (c) Butter, Cheese, Milk, Yoghurt
   (d) Reid’s Family Law
   (e) Time, Point, Circle, Ball
11. In a collection, determine which item is the odd one out:
   (a) 119, 911, 919, 991
   (b) Copper, Iron, Carbon, Aluminium
   (c) Butter, Cheese, Milk, Yoghurt
   (d) Reid’s Family Law
   (e) Time, Point, Circle, Ball
12. In a collection, determine which item is the odd one out:
   (a) 119, 911, 919, 991
   (b) Copper, Iron, Carbon, Aluminium
   (c) Butter, Cheese, Milk, Yoghurt
   (d) Reid’s Family Law
   (e) Time, Point, Circle, Ball
13. In a collection, determine which item is the odd one out:
   (a) 119, 911, 919, 991
   (b) Copper, Iron, Carbon, Aluminium
   (c) Butter, Cheese, Milk, Yoghurt
   (d) Reid’s Family Law
   (e) Time, Point, Circle, Ball
14. In a collection, determine which item is the odd one out:
   (a) 119, 911, 919, 991
   (b) Copper, Iron, Carbon, Aluminium
   (c) Butter, Cheese, Milk, Yoghurt
   (d) Reid’s Family Law
   (e) Time, Point, Circle, Ball
15. In a collection, determine which item is the odd one out:
   (a) 119, 911, 919, 991
   (b) Copper, Iron, Carbon, Aluminium
   (c) Butter, Cheese, Milk, Yoghurt
   (d) Reid’s Family Law
   (e) Time, Point, Circle, Ball
16. In a collection, determine which item is the odd one out:
   (a) 119, 911, 919, 991
   (b) Copper, Iron, Carbon, Aluminium
   (c) Butter, Cheese, Milk, Yoghurt
   (d) Reid’s Family Law
   (e) Time, Point, Circle, Ball
17. In a collection, determine which item is the odd one out:
   (a) 119, 911, 919, 991
   (b) Copper, Iron, Carbon, Aluminium
   (c) Butter, Cheese, Milk, Yoghurt
   (d) Reid’s Family Law
   (e) Time, Point, Circle, Ball
18. In a collection, determine which item is the odd one out:
   (a) 119, 911, 919, 991
   (b) Copper, Iron, Carbon, Aluminium
   (c) Butter, Cheese, Milk, Yoghurt
   (d) Reid’s Family Law
   (e) Time, Point, Circle, Ball
19. In a collection, determine which item is the odd one out:
   (a) 119, 911, 919, 991
   (b) Copper, Iron, Carbon, Aluminium
   (c) Butter, Cheese, Milk, Yoghurt
   (d) Reid’s Family Law
   (e) Time, Point, Circle, Ball
20. In a collection, determine which item is the odd one out:
   (a) 119, 911, 919, 991
   (b) Copper, Iron, Carbon, Aluminium
   (c) Butter, Cheese, Milk, Yoghurt
   (d) Reid’s Family Law
   (e) Time, Point, Circle, Ball
21. In a collection, determine which item is the odd one out:
   (a) 119, 911, 919, 991
   (b) Copper, Iron, Carbon, Aluminium
   (c) Butter, Cheese, Milk, Yoghurt
   (d) Reid’s Family Law
   (e) Time, Point, Circle, Ball
22. In a collection, determine which item is the odd one out:
   (a) 119, 911, 919, 991
   (b) Copper, Iron, Carbon, Aluminium
   (c) Butter, Cheese, Milk, Yoghurt
   (d) Reid’s Family Law
   (e) Time, Point, Circle, Ball
23. In a collection, determine which item is the odd one out:
   (a) 119, 911, 919, 991
   (b) Copper, Iron, Carbon, Aluminium
   (c) Butter, Cheese, Milk, Yoghurt
   (d) Reid’s Family Law
   (e) Time, Point, Circle, Ball

Opinions expressed do not necessarily reflect those of the NZ Law Society Wellington Branch or the Editor.

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**The Shirley Smith Address: human rights in the age of mass migration**

THE annual Shirley Smith Address, presented in honour of the pioneering New Zealand lawyer Shirley Smith is to take place on 23 August 2018.

This year’s Address will be delivered by Professor Gillian Triggs, the former President of the Australian Human Rights Commission.

In her address, entitled “The Movement of Peoples and Asylum Seekers in the Asia Pacific: a Human Rights Approach”, Professor Triggs will discuss broad questions relating to immigration, refugees and human rights, and more specifically those related to the Asia Pacific region, including Australia’s mandatory detention of asylum seekers and refugees.

The United Nations High Commissioner for Refugees estimates that there are 3.5 million refugees, 1.9 million internally displaced people and 1.4 million stateless people in the Asia Pacific region.

Issues of the treatment of refugees and asylum seekers were a major focus of Professor Triggs’ work as president of the Australian Human Rights Commission. During her tenure she launched the National Inquiry into Children in Immigration Detention and published a report which set the standards for the humane treatment of people held in immigration detention. The Commission periodically inspects and investigates complaints into the conditions at detention facilities.

She was also deeply concerned with the implementation in Australian law of the human rights treaties to which Australia is a party, and to work with nations in the Asia Pacific region on practical approaches to human rights. Professor Triggs is a strong advocate of an Australian bill of rights.

Professor Triggs has had a varied and esteemed career in international law. She has held many significant academic positions, including director of the British Institute for International and Comparative Law (2005-2007), and dean of the faculty of law at the University of Sydney (2007-2012) where she was also Challis Professor of International Law. Professor Triggs is a former barrister at Seven Wentworth Chambers and a consultant on International Law to King & Wood Mallesons.

She is the author of many books and papers on international law, including *International Law, Contemporary Principles and Practices* (2nd Edition, 2011). This October Professor Triggs will publish a memoir, *Speaking Up*, described as “passionate … an irresistible call to everyone who yearns for a fairer world.”

As chair of Justice Connect, an Australian non-profit dedicated to connecting people locked out of the justice system, Professor Triggs has continued to pursue a commitment that she shares with Shirley Smith: ensuring that all people have a fair chance to access justice.

The Shirley Smith Address is organised by the Women in Law Committee of the Wellington Branch NZ Law Society.

The Shirley Smith Address 2018 will take place on Thursday 23 August at 5.30pm, at Lecture Theatre 1, Rutherford House, Pipitea Campus, Victoria University of Wellington.

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**Young Lawyers’ Committee runs effective and inspiring ‘Meet the QCs’ event**

The Young Lawyers’ Committee organised a “Meet the QCs” networking and panel event in late June. Despite being the shortest day of the year, many young juniors braced the cold to meet senior practitioners and learn vital lessons from their experiences.

The QCs on the panel were:
- Les Taylor, QC
- Paul Radich, QC
- Robert Lithgow, QC
- Victoria Casey, QC

The focus of the event was to help younger lawyers interact and make links with prominent practitioners and to provide an opportunity for those practitioners to share their own stories of career challenges and successes. The QCs answered difficult questions, including the biggest difficulty they faced as a junior, the lack of female silks and how to support women wishing to take silk, questions, including the biggest difficulty they faced as a junior, the lack of female silks and how to support women wishing to take silk, career challenges and successes.

We have received outstanding feedback from attendees who left this event feeling inspired and connected. Thanks go to the fantastic QCs who gave up their precious time to speak to us, DLA Piper for hosting us, and the Young Lawyers’ Committee members who made this event happen.

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**‘Moral injury’, a new paradigm of mental injury**

THE Wellington Medico Legal Society was privileged to host an address from Dr Paul Neals, a serving military officer and Chief Medical Officer of the New Zealand Defence Force on 26 June at the Wellington Club.

Dr Neals’ address discussed Moral Injury, a new paradigm of mental injury that has become increasingly recognised in recent years, particularly for veterans returning from conflict. As Dr Neals explained, moral injury is a recognised subset of mental injury, that can occur when a person perpetrates, fails to prevent, or bears witness to acts that transgress their deeply held moral beliefs and expectations, and it is often strongly associated with feelings or experiences of betrayal by people in authority (including commanding officers, but also politicians and other leaders).

Dr Neals spoke of the link between moral injury and the drastic changes in the nature of conflict in recent years. He explained how compared to conflicts in the past (such as World War 1) there was more moral ambiguity in recent conflicts, particularly as the media was more willing to analyse and test the moral justifications for going to war in real time. Other changes included the fact that the idea of a ‘front line’ had diminished and soldiers were now left without a truly safe space to retreat to and decompress within, for long periods while on their tours on duty.

For the lawyers in the room, probably the most fascinating and challenging part of the address was Dr Neals’ comment that the same sorts of moral injuries could well occur in the legal profession, as our Codes and Rules mean that we face similar moral dilemmas, where decisions we are forced to make in real time and to follow our set rules, may not always match up with our more deeply held moral convictions.

The Wellington Medico Legal Society is a membership-based society for professionals interested in the intersection of law and medicine, and the ethical and practical considerations that arise. We aim to host addresses that explore current medico-legal issues 8-10 times a year. Our AGM is coming up on 22 August, and new members are always welcome.

For more information please see our website: https://www.wellingtonmedicolegalsociety.co.nz or contact secretary Holly Hedley at holly.hedley@buddlefindlay.com.

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**Wellington Medico-Legal Society**

The Wellington Medico-Legal Society is an amalgam of practising lawyers and doctors, and students with an interest in medical law. Regular meetings are held featuring speakers with particular expertise in areas that affect medical law. If you are interested in joining the Society please contact either of the below email addresses:

- Jenny Gibson: jgibson@legalchambers.co.nz
- Caroline Cheetam: caroline@legalchambers.co.nz

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**Issues with legal aid?**

The Ministry of Justice is undertaking its triennial review of legal aid. The Ministry would like to hear from Civil/Family and Criminal legal aid lawyers on the issues being experienced with legal aid and how they could be addressed to help inform an issues paper and to scope options that will form the basis of a report to the Minister of Justice.

Tuesday 14 August, Level 8 Boardroom, Law Society Building. Civil/Family 10.30am-12.30pm; Criminal 3.30-5.30pm.

To book a place go to https://bookwhen.com/wellington-branch

Written feedback to the NZ Law Society via amanda.frank@lawociety.org.nz, or Judith Pryor, Principal Advisor, Access to Justice, Judith.Pryor@justice.govt.nz