Australian human rights luminary to present 2018 Shirley Smith Address on asylum seekers in Asia-Pacific

By Eve Bain

Emeritus Professor Gillian Triggs, former President of the Australian Human Rights Commission (2012-2017), will give the 2018 Shirley Smith Address.

Professor Triggs has confirmed that the title of her address is “The Movement of Peoples and Asylum Seekers in the Asia Pacific: a Human Rights Approach.”

Questions relating to immigration, refugees and human rights have come to the fore in recent years, notably with the ongoing humanitarian crisis in the European Union, but also closer to home; we have seen New Zealanders detained in Australian immigration centres and in August last year over 700,000 Rohingya people fled persecution in Myanmar to travel to neighbouring Bangladesh. 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.

In particular, Australia’s policy of mandatory detention has been the subject of considerable controversy. The offshore processing centre on Manus Island in Papua New Guinea has faced criticism from the United Nations and New Zealand. Professor Triggs has questioned how these wide discretionary powers to detain asylum seekers undermine the basic tenet of law that no person can be indefinitely detained without judicial process. Reopened in 2012, the Manus Island detention centre has seen violence, hunger strikes, and damning reports of the physical and mental health of asylum seekers. Ruled unconstitutional by the Papua New Guinea Supreme Court, the detention centre closed amidst protests on 31 October 2017, but not before the Australian Government settled a class action for $70 million in compensation for detainees earlier that year.

Professor Triggs is well-placed to speak on human rights issues in this context, not least because this formed a significant focus of her 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.

Professor Triggs is also a strong advocate of an Australian bill of rights. She is now chair of Justice Connect, an Australian non-profit dedicated to connecting people locked out of the justice system through offering free legal help and advocating for law reform. Fitting with Shirley Smith’s commitment to social justice, the questions raised by Professor Triggs’ address ultimately challenge citizens to push their governments to show compassion, care for the most vulnerable, and welcome those fleeing persecution.

The Women in Law Committee organise this annual address in honour of pioneering New Zealand woman lawyer, Shirley Smith. Previous addresses can be found on the Shirley Smith Address website: https://shirleysmithaddress.org/past-addresses/

NZLS President addresses Branch AGM

The NZ Law Society President Kathryn Beck spoke to Wellington Branch members at their AGM on 20 June, focusing on the issue of harassment and bullying in the legal workplace.

She discussed the results of the recent survey of members commissioned by the Law Society, saying that its findings caused an “awful time of realisation, that the problem is endemic ... It became obvious that we have to own it ... We have been transparent, and acknowledged that we have not done enough ... the conduct is disgraceful.”

Ms Beck talked about her letter recently sent to every Law Society member, saying that there had been a range of responses, some negative. “But overwhelmingly the response has been positive and constructive. [The letter] was a call to action ... There is real hope for the future, 90 percent of people were saying ‘What can I do? Let’s get on with it.’”

The Society’s call for expressions of interest from lawyers to work on a taskforce to drive and guide systems and culture change within the profession, has drawn 76 “amazing” responses.

“It is humbling to see the high quality of people willing to put themselves forward to contribute to the culture change that we need,” she said.

The taskforce is to be supported by an expert in cultural and organisational change, and an independent chair. Ms Beck said it was down to every member to work together to make legal workplaces respectful, inclusive, and safe.

“We can do this – it is aspirational but it is realistic. The responses we have had fill me with hope and pride ... we can be a profession that we will be proud to see on the front pages of our newspapers and proud for our young people to come into.”

2018 Shirley Smith Address

The Movement of Peoples and Asylum Seekers in the Asia Pacific: a Human Rights Approach

To be presented by

Professor Gillian Triggs
Former President of the Australian Human Rights Commission

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When: Thursday 23 August 2018

Where: Old Government Lecture Theatre 1, School of Law, Victoria University, Pipitea Campus

Light refreshments follow the Address on the mezzanine floor, Rutherford House

CPF compatible
This is a free public address

This event has been made possible thanks to the generous sponsorship of

WELLINGTON NEW ZEALAND LAW SOCIETY

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Annual Report 2
Melton Prosser 4
Buying first home 5
Thin scraping of jam 6

INSIDE:

New Zealand Law Society President Kathryn Beck spoke to Wellington Branch members at the Branch AGM on 20 June. Also pictured are Branch President David Dunbar and the two Branch Vice Presidents, Steph Dyhrberg, far left, and Annette Gray, far right.

2018 Shirley Smith Address

The Women in Law Committee of the Wellington branch NZLS invite you to the 2018 Shirley Smith Address

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THORNDON CHAMBERS

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Hon Justice Peter Churchman Hon Justice Pherozeh Jassani Hon Justice Gerard van Bohemen
Hon Justice Christine Grice Assoc Judge Kenneth Johnston Branch Committees
Over the 2017/18 year, the Wellington Branch committees continued to make an invaluable contribution. Increasingly our Committees are structuring their meetings so members obtain CPD hours. I thank our Convenors for all the work they and the members of their Committees undertake to support the work of the Branch and our professional. The work Convenors and Committees lead is essential in our creating the first line of belonging for lawyers, and the importance of being part of a profession.

Gender Equality Charter
A key initiative for the New Zealand Law Society in the last year was the development of the Gender Equality Charter, aimed at improving the retention and advancement of women in the legal profession. The Wellington Branch Council provided a detailed submission and while the final charter did not include some of our suggestions, many were picked up. We are pleased to see a clear purpose statement and a revised legal system has been introduced to make clear the key elements of the Charter: leading from the top, making plans and taking action, and measuring progress.

Branch Events
A list of the extensive calendar of committee meetings, affordable CPD offerings and collegial events operated by the Branch was appended to AGM documents.

The highlights included:

- The 65th annual Wairarapa Dinner, in July, was another great success. It was a privilege to hear from guest speaker, Dame Lowel Goddard QC. Her thoughtful account, both of individual cases and of her key involvement in major systemic inquiries, fascinated us all.

- The Annual Branch Dinner, took place in September with Her Honour Helen Cull responding very thoughtfully and insightfully to the toast to the judiciary. Notable was the number of young lawyers attending, many of whom having been encouraged and sponsored by their senior partners to attend. My thanks go out to those firms for that support and their acknowledgment of the value of the wider Branch collegial contact. Another noticeable change at the dinner was a move away from the formality ‘black tie’ wear, hopefully making it more accessible for all. The Council will continue to keep the format of the annual dinner under review to ensure that it remains a popular and valuable event for Branch members.

- The Women in Law Committee, with the generous support of Thorndon Chambers, brought us the 10th annual Shirley Smith address.

MADE IN* Answers for puzzles from page 7

1. (a) 18: each term increases by 3
(b) 24: the terms increase alternately as follows: 3, 6, 3, 6 and so on
(c) 65: each term increases by the last term times 2 then minus 1
(d) 82: each term increases by the last term minus 2 then times 2
(e) 982 Ked (or Ked) 2 Q6 (Gettysburg 1861)

Crossword Solutions From page 7

Cryptic Solutions
Across: 1 Nightingale, 9 Top, 10 Plate rose, 11 Entry, 13 Negretti, 14 Latent, 16 Reuter, 18 Justice, 19 Ultras, 20 Crime wave, 21 Ever, 22 Best sellers.
Down: 12 Imp, 13 Hippo, 14 Same, 15 junta, 16 Turn, 17 Ancestor, 21 European, 22 Brandi, 23 Exempts, 24 Ex滓, 25 Dwelt, 21 Eur.

Quick Solutions
Across: 1 Leggadyn, 9 Ric, 10 Negotiate, 11 Dogs, 12 Kob, 14 Snow, 16 Urn, 18 Artemis, 19 Royer, 20 Car and 21 Ed, 22 New York, 1 Chap.
Down: 2 Door, 3 Eats, 4 Digest, 5 Male, 6 Imaginary, 7 Oxidizer, 8 Leading role, 12 Freesia, 13 Elapse, 17 Retina, 18 Hens, 21 Era.

NB Please confirm the dates of committee meetings with convenors.

As a profession we serve the rule of law, access to justice and strive to advance reforms. But the question I asked last year, bears repeating:

But are we a culture that embraces diversity? That allows each of us, irrespective of gender or other characteristic, to find value in our profession to our fullest potential. That responds to those who struggle in health and circumstances? Are we a culture - I hope we are – that addresses (including at all levels) issues of bullying and harassment? Are we a culture of inclusion? Are we a culture for the future?

The Council and I remain committed to taking a lead role in the Branch to breathe life into the Charter. The Wellington Branch will hold a presentation to Council – having practitioners and make it easier for all legal employers to sign up to and implement the Charter. That is a key workstream for the Council.

We also address serious issues. While matters of bullying and harassment are not addressed in the Charter, we will also look for ways to address those serious issues. The Council looks forward to continuing to work with you, our members to address these issues.

Acknowledgements
My grateful thanks to our Council members for their commitment and hard work. I appreciate how hard each member has worked for the benefit of our profession.

With the Council now on a two-year term, we have no retirements of ordinary members, but we do farewell tonight our representative on the Council from the Wairarapa bar.

Thank you to Gretchen Freeman, and welcome to Adam Parker.

Other Acknowledgements

Over my term I had outstanding support from Vice Presidents Annalies Gray and Stephen Dyhrberg. In addition to sound and wise advice, they have willingly stepped up when I could not be available, and have each taken a major role in Council activity and events.

I would also like to acknowledge and thank Kathryn Beck NZLS President, and NZLS Acting Executive Director, Mary Olivier and her team at the NZ Law Society.

And finally the Branch team: Annelies Windmill, who along with Jacque Shailer has truly kept the Branch going. The Council and I are wonderfully supported by Annelies and Jacque and I know that they are well respected by the Branch membership.
Making law a safe space?

A joint initiative by WWLA and WLC Wellington

By Diana Tam

The Wellington Women Lawyers’ Association and Women in Law Committee Branch (NZLS Wellington Branch) have joined together to run a series of workshops and discussion panels focused on workplace harassment and bias in the legal profession, and focussed on generating practical solutions to reduce workplace harassment and support those who are affected by it. We are currently working on the possible implementation of some of the solutions (including law change), and sharing the proposed solutions with appropriate organisations and working groups in a position to make a difference.

We welcome suggestions and offers of help from anyone with something to contribute. It has been encouraging to see many of our male colleagues at the panels and workshops.

All told, it has been a tumultuous time and a much-needed wake up call for the profession. We have been forced to confront an issue that was, for many years, a taboo topic (both for WWLA and WLC Wellington are committed to ensuring the conversation continues.

Our thanks to the New Zealand Law Society, Ma’s Brew Bar, NZ Women’s Law Journal – Te Aho Kawe Kaupapa Ture a nga Wāhine, the Human Rights Commission and AV Media for their generous support.

Library News

Lexis Advance now linked to all kiosks

By Robin Anderson, Librarian, Wellington

LEXIS Advance is coming to the NZLS Library. Many law firms have had this for a while now, but the Library has been waiting to get a special link to that will work on all the kiosks. This has now been done and we will put a link to Lexis Advance on to that will work on all the kiosks. This has now been done and we will put a link to Lexis Advance on to that will work on all the kiosks.

New titles

A practical guide to the Land Transfer Act, Wellington : LexisNexis NZ Ltd 2018 KN72.3.L1 GIB


Bowstead and Reynolds on agency, London : Thomson Reuters 21st edition 2017 KN27.3.L1 BRO

Chalmers and Guest on bills of exchange, cheques and promissory notes, London : Sweet & Maxwell 18th edition 2017

Clerk & Lindsell on torts, London : Thomson Reuters 22nd ed. 2018


Guide to competition law, Wellington : LexisNexis 2018 KN84.L1 KEN


Kennedy-Grant and Weatherall on construction law : the underlying law : contract, torts and legislation, Wellington : LexisNexis 2018 KN84.L1 KEN

New Zealand employment law guide Auckland / CCH 2018 edition


Relationship property in New Zealand, Wellington : LexisNexis NZ Ltd 3rd ed. 2018 KN58.2.L1 ATK


The Whakatātea mandate Inquiry report, Lower Hutt : Legislation Direct 2018

Take control of your own career rather than waiting for others

ON 25 May 2018, WWLA hosted a lunchtime speaker event at the New Zealand Law Society, with former lawyer and now SIS Director-General of Security, Rebecca Kitteridge.

Rebecca spoke honestly of her experiences in both law and change-making, canvassing a diverse career across private and public sectors. She emphasised the importance of mentorship and representation at the senior management level, and that different leadership styles should be embraced.

Rebecca’s message that “no one is coming”, that we need to take control of our own careers rather than wait for others to guide us, resonated with the audience.

She urged us not to give into “imposter syndrome” and challenged us to take on new roles, even if we may doubt ourselves. Rebecca also highlighted the importance of finding joy in our work.

Rebecca was firm in her belief that one person can make a difference, and as a stellar example of that herself, we are inclined to believe her.

WWLA thanks Rebecca for kindly giving up her time to speak to members about her interesting career and the Law Society for providing the venue.

St Thomas More Society, Wellington – mass and dinner, 5 July 2018

THE St Thomas More Society’s annual mass and dinner is an opportunity for members of the Wellington legal community to gather and celebrate the feast day of the patron saint of lawyers.

This year, mass will take place at 6pm at St Mary of the Angels Church, Boulcott Street. Drinks and dinner will follow at the Wellington Club from about 7.15pm.

Our guest speaker this year is Joy Cowley ONZ.

If you are interested in attending and would like more information please email: thomasmoresoc@gmail.com

High Court annual review

THE Chief High Court Judge’s 2017 High Court Annual Review has been published on the Courts of New Zealand website at:

http://www.courts.govt.nz/publications/judicial-reports
Melton James Prosser – 8 July 1931-12 May 2018

By Chris Ryan

Melton Prosser, who died recently aged 86, was one of those lawyers who just seemed to keep on going. In his early eighties he was still serving the clients who had followed him for decades. Four years ago, in a typically self-deprecating remark, Melton told Council Brief: “There’s nothing remarkable in it. I have been a lawyer for over 60 years and I’ve made all the mistakes – but fortunately I’ve only made them once!”

That comment exemplified Melton – he liked to laugh and did not take life too seriously. But about his work he was decidedly serious, hard-working and conscientious – deeply concerned with the welfare of his clients.

Melton was born in Wellington on 8 July 1931, the only child of Leonard and May Prosser. For most of his childhood he was brought up solely by May, who worked as a machinist in her mid-seventies.

He grew up in Wadestown and at school he was known for his prowess in tennis and swimming. After secondary education at Wellington College he made an early start to his work in the legal profession, joining the firm of E A R Jones and Vickerman straight out of school. He spent the next nine years learning the basics of conveyancing, company law, taxation and estate planning under the watchful eye of partner Brian Vickerman who Melton recalled as “wonderfully helpful and friendly”.

Melton met his future wife Jeanette while they were both still at school. They played tennis together in the same Wadestown tennis club and belonged to the same circle of friends. They married in their early twenties while Melton was still studying law part-time at Victoria University. He finished his degree at the end of 1957 and was admitted to the bar in February 1958, the same year in which he was made a partner at Jones and Vickerman.

In the early 1950s the firm had opened a branch office in Wainuiomata, over the hill from the Hutt Valley. The suburb was then beginning a period of rapid development as an area of affordable housing. It is an indication of the esteem in which he was held by the firm’s partners that he was given the responsibility for opening and maintaining this branch office while still a young and unqualified lawyer.

Speaking four years ago, Melton said that he drove over the hill to the new suburb once a week and brought back dozens of files, a practice he was to continue for over 30 years. “Wainuiomata was a huge development at the time. Most of the properties were bought through cheap State Advances Corporation loans, the government’s capitalised family benefit scheme and deferred payment licences for sections. I probably did 90 percent of the subdivision work over there.”

“Of course, everything was different – the property contract was just one page, we had no building reports, no council consents. But you know, there were no leaky buildings. “I had a great time over there. I wouldn’t have missed it for anything.”

Melton joined Jones and Vickerman in 1982 and joined Castle Pope, which became Castle Pope Prosser and Lynn, and he continued his commercial and general practice. The partnership ended in 1990 and Melton joined the then firm of Morrison Morpeth as a consultant. He went out on his own as a sole practitioner in 1992, working from his Wilton home until retiring in his 84th year in 2014.

Amidst this relatively conventional career Melton did something rather unusual. While he was in Wainuiomata he met a German engineer named Frank Brugger, a clever and enterprising man who had emigrated to New Zealand in the early 1950s and started his own business. The decades of the 1950s and 1960s were the heyday of manufacturing in New Zealand including the car assembly industry with companies such as General Motors in Petone, Ford at Seaview and Todd Motors in Porirua producing many models of popular cars. Brugger took advantage of this and manufactured a range of automobile components such as car seats, door panels and reclining mechanisms. The company was also the first manufacturer of the Pyroclastic wood stove.

Melton and Frank Brugger hit it off and they became close associates, to the extent that Melton became part-owner of the Brugger Industries factory in Wainuiomata, and the firm’s export manager. He remained a part-owner for 36 years until the company was sold in 1986. During that time he visited many parts of the world on behalf of the firm, including Japan, Australia, Singapore, UK, Samoa and Switzerland. “I must have gone to every motor company in Japan, New Zealand and Australia,” he said in 2014, “including General Motors, Ford and Toyota. I liaised with some Japanese and can still speak a bit and we still have Japanese friends. It was great fun.”

He was still practising as a lawyer during this time and he worked most nights and weekends to keep up. “My partner Brian Vickerman was a lovely man, very helpful, and he carried the can when I was away. It was usually only for a day or two, though once we were stranded in Osaka for three weeks when the crash firemen there went on strike.”

Brugger Industries was part-owned by Toyota, an Australian company based in Melbourne and Melton, as liaison director, visited the city many times. “Apart from the work, my wife and I had the good fortune to see Kiwi’s devastating run up the home stretch to win the Melbourne Cup in 1983 and I went to one or two champagne breakfasts at the Grand Final of Australian Rules football at the Melbourne Cricket Ground – the first time I went there were 103,000 people there.”

Brugger Industries had established a small factory in Western Samoa in the 1950s making car mufflers and Melton travelled there several times a year. As a result of friendships made and the respect in which he was held he was made a non-executive chairman of the company based in Melbourne on the Brugger Industries board. In 1994 he was held honorary matai with the name Lauli. At Melton’s funeral his son David related a story concerning the ‘fue’, a ceremonial fly whisk carried by tulalae – high chiefs. “He told me a story that on one of his trips when he arrived off the plane in Samoa they asked him to open his bags. As soon as they saw this [the fly whisk] in his luggage case closed his bag immediately and apologised and let him continue. No one holds up a chief!”

He loved working with Brugger Industries. “It was such an exciting time,” he said. “I think the Brugger Industries experience helped me as a lawyer to better understand people and commercial situations, and to develop a broader view of the world outside the ‘legal bubble’. Melton was a man who lived life to the full. In the early 1950s he and Jeannette built their own house in Cecil Road in Wadestown. The family shared pictures of Melton behind a shovel or a wheelbarrow, knee deep in dirt, with various toddlers perched in the wheelbarrow or on a dirty pile. He loved music, often singing at the top of his voice around the house, in the shower and in the car. “He would tell us with great passion how brilliant ABBA or Boney M or Phantom of the Opera or, probably his favourite, the Chess soundtrack …”

He probably should have been on the stage.”

He enjoyed cars as well. “He was probably the original boy racer of Warwick Street. Every car had to be a big grumbly, noisy V8 that also had to be big enough to fit us all in.”

He gave a lot of his time and money to charities of various kinds. “He’d give money away left right and centre – sometimes to a fault. He worked on produce stalls at school fairs, on committees and boards, and officiated at sports days. He painted blackboards at Sacred Heart School and even cleaned the toilets when necessary.”

Melton Prosser was an endearing and ebullient man, deeply involved in all aspects of his life. He loved his family which was the centre of his existence, and his connection to his clients was sincere and personal.

He is survived by Jeannette, his wife of 62 years, five children and four grandchildren.

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!
Funding your child into their first home

By John Greenwood

any families in New Zealand face the prospect of assisting their child (and often their child’s partner) in buying their first home. This is given the restriction over the amount of deposit required through the LVR (loan to value ratio) scheme. Banks generally consider that any loan on a property of over 80 percent of the property’s value is high risk. With first home prices in areas like Auckland demanding a price tag of between $450,000 and $600,000, the benchmark is finding over $100,000 in equity presents real challenges.

Young persons, a number saddled with student loans, find it almost impossible to even contemplate acquiring a first home. Renting may be their only option, not only during their first years at work but as a lifetime option, common in the northern hemisphere.

Anecdotal evidence suggests many families contribute by way of gifting or entering into a debt arrangement of sometimes $100,000 or more to their child and/or their child’s partner. Also, there are now cases emerging where parents fund the entire purchase. This then presents a conundrum on what issues practitioners should be aware of when advising parents who are arranging the funds, whether by way of their own cash and/or mortgage funds secured against their own property or secured against the property being purchased by their child and/or their child’s partner. Further, what advice should the child get by way of independent legal advice? The question is: what is the best way of managing the issues when advising parents guaranteeing their child and their child’s partner’s own bank loans.

Typical structures where parents fund the entire purchase involve setting up a company, a partnership, or entering into a special Deed of Trust or simple Deed of Arrangement, with parents taking on the role of a bare trustee. Whatever structure is chosen, the same legal and practical issues need to be addressed. A compulsory review (documenting required is opportunous and can be difficult for a layperson to understand)

be wary of housing where ‘cut and fill’ or former contaminated lead is involved. There should also be an assessment of whether a (scientifically reliable) methamphetamine test is required.

Should the child acquire an apartment, existing dwelling or new build as a first home purchase? There are different considerations such as working out what type of dwelling or apartment would produce the best return in the shortest time. Part of that question is: can you add value to the property under purchase? We all know the rule of “locality, locality, locality”. But is it affordable?

The parents should probably have a right to inspect the property on at least an annual basis. It would also be important to take many photos of the property at the time of purchase in order to review any breach of care of the property such as washing down the exterior, carrying out repainting, decorating and landscaping.

If a total funding situation is involved, there is likely to be a mix of cash and mortgage funding. Putting together a Deed of Arrangement is a good choice (rather than setting up a Deed of Trust) in a situation when your child is in a relationship with a partner. They may already have their own child involved as well. One or both parents can take title to the property as trustee for the child and hold the property as bare trustee for them. The reverse situation (of the child and their partner taking title, with a trust deed back to the parents for the entire debt of purchase), may not be the best incentive or sound approach from the parent’s perspective.

If mortgage funds are arranged through the parents (against the parent’s security) then way of a mortgage over the parent’s property, or mort-gage over the property under purchase), then the expectation will be that the child should pay off the mortgage debt. Over time, the child’s own equity will increase and in time see the property transferred to the child’s name once sufficient equity is built up by way of reducing the mortgage debt.

The parents will need to make a decision on whether or not any cash provided is a gift, or whether it forms part of the debt arrangement. The debt arrangement would need to include the mortgage debt which is the responsibility of the child to pay.

I have never been a believer in table mortgages which favour banks rather than the consumer. A table mortgage has the negative impact of the borrower paying very little principal off a 25 year mortgage in the first 5-7 years. A better approach is to enter into a fixed interest-only mortgage, with the ability to pay back, say, at the end of each year a principal debt amount of $5,000.00 or more. Much of course will depend on the earning capacity of the child to reduce the mortgage debt.

It will be prudent, as it was back in the 1970s and 1980s, for mortgage repayment insurance to be taken out as a safety valve.

In any arrangement, the child needs to take on board payment of insurance (life, contents, insurance and any capital gain, land tax or stamp duty (if imposed by the existing or a future government)), in respect of home properties.

It will be important to document that the property being purchased will be used as a residential home and not rented out, in order to safeguard the residential home mortgage arrangements and protect against any capital gain or other such tax possibility (assuming residential homes are exempt in the future).

What advice would you give to a home held by a parent as bare trustee for their child beneficiaries to reside in liable for capital gains tax, as the home is not an investment proposition?

Would there need to be covenants from the child to take full care of the property including fair wear and tear, and to improve the property on the basis that they pay for improvements and reap all the gain on a property once the property is sold?

A situation where the child separates from a de-facto partner or spouse would need to be covered off, perhaps on the basis that if separation eventuated, the property would be sold and any gain split depending on any contrary agreement as between the child and their partner living in the property.

Another pitfall through a Deed of Arrangement would be to cover off, perhaps on the basis that if separation eventuated, the property would be sold and any gain split depending on any contrary agreement as between the child and their partner living in the property.

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ACC – a thinner scraping of jam for all

By John Burn

OUR ACC scheme was as everyone knows, established by the Woodhouse Commission in 1967. It was brutalised as an enquiry into Worker’ Compensation, and barely acknowledged was the fact that that system was thought to be excessively expensive (42 percent went on the costs of administration, which is why the government established the Commission).

But when Sir Owen Woodhouse and his Commissioners wrote their findings, the enquiry seemed to morph into an attack on actions for negligence – “the negligence action is a form of lottery”, and continued to lay out the present scheme (described by a member of the Victoria University Law School, who helped prepare a submission on University Law School, who helped prepare a submission on how to protect for some years), plus business – councils and building owners covered by Public Liability policies. Then there was the Workers’ Compensation Act – intended to be the true topic of the enquiry – where basic wages loss was available to injured workers; the Social Security Act, for those with no remedy and the Criminal Injuries Compensation scheme.

However, as we know Sir Owen went to town and swept it all aside for the Accident Compensation scheme – unknown elsewhere in the world, except, I seem to recall, in some Canadian province.

All readers know what ACC provides – up to 80 percent of lost wages due to any accident plus medical costs (which themselves were there already under Social Security. But no damages for loss of opportunity, livelihood or enjoyment of life. Someone who cuts themselves while cooking the evening meal, a worker who is cut by a machine and a bursar who cuts himself by breaking a window – all are welcome to compensation. But I should perhaps not say “welcome”.

As a retired lawyer I am too often being asked for friendly (and obviously unpaid) advice on ACC claims, and my observation is that a very tight rein is kept on payments and costs. One must of course acknowledge that these payments are available to all injured citizens, but when one realises that these payments are not available to non-workers, the retired and children, then this is hardly a horn of plenty. Lost is the common law right of damages – admittedly itself only available in the past to those who could establish negligence – mainly employers, motorists, owners of premises open to the public, or councils or occupiers who have been careless as to the safety of the public.

It could be thus said that a philosophical decision has been made to spread the jam more thinly so that more people get a scraping – or that some whose lives have been ruined will now have to put up with a low income for life – less than they were earning before their injury. But the insurers are now doing pretty well – lower premiums, of course, but all blue sky ahead.

Having practised at the Sydney Bar in common law cases for much of the last 20 years, my attention has always been attracted by our ACC, but never more than at the moment. In recent weeks we have seen the loss of an eye for a young man due to hospital carelessness (his ACC I would think only medical costs) and the consequences of the collapse of the CTV building in Christchurch – due to negligence in design, construction and several issues of council approval, the last even after the first dangerous shock when unqualified council staff put a “safe” sticker on, just before it collapsed and killed 180 people. A big fuss followed about no criminal prosecution being available (because the election-obsessed legislators were not keeping the Crimes Act up to date) but I can only think of the remedies, available at common law everywhere else in the world, to the grieving families – at the very least $52 million per family. And for the lad with one eye – the best part of $1 million.

And in every other injury situation which occurs every day throughout the country our people go uncompensated and uncomplaining. But the real reason which strikes me so sharply at the moment is: laissez faire attitude of the institutions who should be caring for their clients or visitors. Last month the Christchurch City Council scattered earth full of asbestos fibres along a beach path – can it not be painfully clear that the council, like the hospital board and the CTV developers, are coasting blissfully along without thought of their actions ever causing injury or death? I can assure you that were there still a common law action available in our courts, those bodies would be acting with much more care, if only because their negligent insurers would increase their premiums with the constant vigilance which they exercise in other countries. And we would have fewer deaths and injuries – that is undeniable.

But as taxpayers we now fund such compensation as Sir Owen has left to us – the organisations and individuals who cause the injuries contribute no more than the rest of us, with some contributions from industry groups. No longer any financial cause to be careful. We are certainly an uncomplaining race.

John Burn is a retired barrister with over 20 years at the Christchurch Bar and then over 20 years at the New South Wales Bar, now living back in Christchurch.
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Wellington West Citizens Advice Bureau – volunteer lawyers required

WE are looking for lawyers who might like to volunteer some of their time to a service we provide at the Wellington West Citizens Advice Bureau in Karori on Tuesday evenings.

Wellington West CAB has been able to offer free clinics to the community for a number of years now thanks to a group of lawyers who are happy to volunteer once every few weeks. We would really like to hear from any lawyers who might be interested in providing this service.

The legal clinic runs every Tuesday (by appointment) from 6.00pm – 7.00pm and each session with a client is around 15 minutes.

For more information please do not hesitate to contact Julian on 04 476 4460 or 04 476 4595 or email Karori@cab.org.nz

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.

### Cryptic Clues

**ACROSS**

1. They have been worn by men in retirement (11)
2. It is white's turn to move. What should white do? (5,5)
3. Part of the tide of lawlessness? (5,4)
4. It contains a variety of provisions (6)
5. Some kind of put down for a talent (5,4)
6. Women haven’t the face to use them! (6)
7. It’s clear I’d be involved in whatever occurred (7)
8. It's true and you don’t have to worry (5)
9. Get in an unusual profit (3,4)
10. Does it provide wood for building or furniture? (4)
11. Takes off (5)
12. Abandon (4,5)
13. Get in an unusual profit (3,4)
14. Performer (7)
15. Live well on five hundred (5)
16. Stress (6)
17. Part of the eye (6)
18. In fairness, it’s simply very cold water (7)
19. Part of the audit totalled up to the same (5)
20. Evict a sailor and look the other way (4,5)
21. Epoch (3)
22. Epoch (11)

**DOWN**

1. The French description of Malta, perhaps (4)
2. Sheep (3)
3. Pleased to be lucky (5)
4. Scream (6)
5. Summary (6)
6. Sea-eagles (5)
7. Sheep (3)
8. Should you have been involved in whatever occurred? (5)
9. Be up in a local tax and get discount (6)
10. Complete the tide of lawlessness? (5,4)
11. Performer (7)
12. Summary (6)
13. Summary (6)
14. Transact (9)
15. Takes off (5)
16. Summary (6)
17. Sailor (7)
18. Consecrate (5)
19. Fancied (9)
20. Starring part (7,4)
21. Put down for a talent (5,4)
22. Starring part (7,4)

Answers: See page 2

### Quick Clues

**ACROSS**

1. Sleigh of hand (11)
2. Sheep (3)
3. Anticipation (9)
4. Summary (6)
5. Sailor (7)
6. Sailor (5)
7. Sacked, no doubt! (2,3,3)
8. Put down for a talent (5,4)
9. Summary (6)
10. Summary (6)
11. Fancied (9)
12. Starring part (7,4)
13. Anticipation (9)
14. Rapture (7)
15. Part of the eye (6)
16. Christ (3)
17. Erect a sailor and look the other way (4,5)
18. Put down for a talent (5,4)
19. Complete the tide of lawlessness? (5,4)
20. Starring part (7,4)
21. Complete the tide of lawlessness? (5,4)
22. Summary (6)

**DOWN**

1. It is white’s turn to move. What should white do? (5,5)
2. Sheep (3)
3. Sheep (5)
4. Sheep (3)
5. Sheep (5)
6. Sheep (3)
7. Sheep (5)
8. Sheep (3)
9. Sheep (5)
10. Sheep (3)
11. Sheep (5)
12. Sheep (3)
13. Sheep (5)
14. Sheep (3)
15. Sheep (5)
16. Sheep (3)
17. Sheep (5)
18. Sheep (3)
19. Sheep (5)
20. Sheep (3)
21. Sheep (5)
22. Sheep (3)
Merger of Law Firms
The law firms Strachan O’Connor and P. B. R. Knvyett will merge from 30 June 2018
The new firm will be known as:
Strachan O’Connor
Address: 18 Moorfield Road, Johnsonville and 21 Princes Street, Upper Hutt
Partners: Phyllis Raewyn Strachan
Consultant: Peter B. R. Knvyett
Contacts: Tel (04) 939 2234
Email: enq@justlaw.co.nz

Notices
Burnard Bull & Co are pleased to welcome Amanda Courtney as a partner of our firm effective from 1 May 2018. Amanda joined the firm as a senior solicitor in April 2017 having relocated from Wellington, and highly recommends the relocation to others considering the move.

Vacancy – Commercial Solicitor: Partnership Opportunity
We are also looking for an experienced commercial solicitor preferably with 3-5 years’ PQE to work in property (residential, commercial, rural and agricultural), ideally also trust and estate planning, company and elder law. Partnership opportunity at a good pace for the right person as the senior partner is wanting to actively mentor the development and succession of a new partner in our practice.
On-site parking and amazing location with the beach a mere 2 minute drive. Why not follow Amanda in making the gratifying relocation to Gisborne!

Please email your CV with covering letter to christopher.p@burnardbull.co.nz

Community Law Centre

F rom its humble beginnings in the 1980s as a loose-leaf resource in a ring-bound folder, the Community Law Manual has grown and transformed into a glossy-covered, one thousand page book setting out complex legal information in clear language.
Accessed by hundreds of people every day, the Manual is comprehensive yet accessible, offering real-life examples to help everyday New Zealanders understand the practical application of the law.
We know from our statistics that the Manual is accessed online by over a million users every year and we also sell hundreds of hard copies. The demand for the Manual is evidence of its value, yet for all of that the Community Law Manual remains staunchly committed to its founding principles and is completely free online to everyone who needs it.
Funds generated from the sale of the hard-copy volume are channelled straight back into production costs for the next year so that each year the Manual can be updated, refreshed and improved. Here is a glimpse of what’s new in the 2018/19 edition.

What’s in this edition that wasn’t in the last one?
❑ New disability rights chapter
This year, Community Law has collaborated with individuals and organisations from the Disabled and Deaf community to produce a new chapter on Disability rights. This includes all the topics in the old “Health and disability” chapter, but is much broader and more practical. It covers things like supported decision-making, discrimination in employment, a person’s right to use New Zealand Sign Language, reasonable accommodation, and access to special education services.
❑ Domestic violence
The Domestic violence chapter has been rewritten to make it more accessible and relevant to people experiencing domestic violence. There is also a new section on preparing to leave a relationship, a new pop-out guide to protection orders and new content added to the “other resources” section at the end of the chapter.
❑ Immigration and refugees
We’ve split up the Immigration and refugees chapter into two chapters: “Immigration” and “Refugees”, and updated the entire chapter for changes to policy over the last year. We’ve also added new content about citizenship and community organisation refugee sponsorship schemes.
❑ Begging, busking and sleeping rough
Our “Neighbourhood life” chapter has been refreshed and now includes some other aspects of living in the community, including laws around begging, busking and sleeping rough. Our “Driving and traffic” chapter also explains the laws about dodging bus and train fares (“fare evasion”).
❑ Specific law changes
As we always do, we’ve updated the Community Law Manual to include the various specific law changes that happen every year—for example:
• “Dealing with Work and Income” covers the Ardern government’s Families Package passed in December 2017, including the new Best Start and Winter Energy payments.
• We’ve updated the “Employment conditions and protections” chapter to include the new parental leave entitlements, which increased from 18 to 22 weeks on 1 July 2018.
• We’ve explained a change in ACC about whether you’re covered if you break a tooth on a small stone or other foreign object that has got into your food (the bad news is you’re not covered anymore).
• We’re also steadily including more examples from real cases to help show what the law can mean in real life, and to give a better idea of what it is like trying to enforce your rights. We talk about how courts and judges have been interpreting and applying the laws we’ve explained in the Manual. For example, in the “Wills” chapter (under “Making a will”), we’ve summarised some cases showing how judges have taken a liberal approach to deciding whether informal notes like emails and text messages can be a legally valid will in some situations. Online readers who want to delve into the details of these cases can find useful comparisons to their own situations to follow the case lines we’ve included.
Every year the Community Law Manual evolves, changes and grows. With a combination of support from volunteers, funders and like-minded organisations, Community Law is able to respond to changes in the law, keeping pace with developments in society and technology in order to provide a legal resource that supports the most vulnerable in the community. At nearly one thousand pages long, it is a far cry from the ring-bound resource of its earliest iterations. But in the most critical way it hasn’t deviated at all. The Community Law Manual exists to make our justice system fairer and more accessible to all.
By buying a copy of the Manual you are not only getting a hard copy to keep within arm’s reach, you’re also directly improving the chances that others in the community will be able to do the same. Together, we can continue to improve and refresh the Manual, next year and beyond.
You can order your Community Law Manual 2018–2019 now:
Email: info@wclc.org.nz