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LAWNEWS THIS ISSUE:

LAWNEWS

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+ Technology and the law

CLOUD COMPUTING – PRIVACY AND SECURITY

By Lloyd Gallagher, Director/Arbitrator/Mediator, Gallagher & Co Consultants Ltd, and member of ADLSI's Technology & Law Committee

Continuing the recent series of articles on Cloud computing which has appeared in *Law News* over recent weeks (see Issue 27, 14 August 2015 and Issue 32, 18 September 2015), this article looks at the professional duties imposed on law firms relating to privacy and security when adopting a Cloud-based system.

I have highlighted in the introduction article (Issue 27) that implementation of Cloud infrastructure can lead to significant cost savings in a firm's IT budget for data retention. However, the move to Cloud storage also imposes a number of additional duties on the law firm in order to comply with the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.

The questions of privacy and security raised in this article, if not carefully considered and dealt with, could see a firm face prosecution for non-compliance.

Issues of professional responsibility, privacy, and security (in a nutshell)

Under New Zealand law, lawyers and conveyancers now have specific duties to protect client data that are wider than those provided under the *Privacy Act 1993*. A lawyer's professional responsibility is set out in chapter 8 of the Schedule to the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 and requires the lawyer to protect and hold in strict confidence all information relating to the client and/or its affairs. In addition, r 11.4 requires the lawyer and firm to take all reasonable steps to ensure security of and access to electronic systems.

Cloud computing models open the lawyer and firm up to potential risk for non-compliance with the Rules due to the inherent security issues of the internet. These issues stem from "Transport Layer Security" (TLS) issues (discussed later), as well as inter-operational security within the data centre where the Cloud service is provided. The inter-operational issues stem from how data is stored and retrieved for the Cloud.

For example, most Cloud models provide a pooled set storage medium that is increased on demand through a Cloud service portal. This data is held in the normal way without any encryption and, if hacked, can be read by any other client of the Cloud system or a third party. To try and combat this, some providers suggest that clients requiring high security should implement private Cloud servers that are dedicated to them, with no access by any other party. However, this still provides little protection as the un-encrypted data may still be hacked once the IP and port is discovered by a would-be hacker. Further, such a system still provides an open environment, as data is moved between the server and client as the transport layer is un-encrypted and if a user is hacked, complete access may be obtained to the pool of storage, notes, applications etc.

To combat this, it is recommended to employ "Advanced Encryption Security" (AES). AES is a specification of encryption designed to provide a high-level encryption algorithm in both software and hardware. This encrypts the data on the storage medium, resulting in any access to the physical layer of the Cloud service being worthless due to the time it will take to

Continued on page 2

CLOUD COMPUTING – PRIVACY AND SECURITY

Continued from page 1

decrypt the data. Unfortunately, to date, only a few Cloud suppliers offer AES as the standard for the hardware/software layer in Cloud service deployment and it is therefore important for firms to check carefully if their service provider, or third party reseller, offers this level of protection – otherwise a breach of security allowing a hacker to gain access could result in a breach of professional duty under r 11.4 for not taking reasonable steps to ensure security of data.

The second security issue under r 11.4 relates to data transfer, known as the "transport layer". This data transfer occurs when a user sends or accesses data held on the server either by "http" (standard web browser), "ftp" (file transfer protocol), "SMB" (Server Message Block protocol, mostly used in Windows file shares), "CIFS" (Common Internet File System), "NFS" (network file system) or "AFP" (Apple Filing Protocol (formally AppleTalk), used in Apple devices, iTunes Bonjour and Mac OS X).

Each of these protocols (the list above is not exhaustive but covers the main ones) transmits and receives data across the network by standard "handshaking" with no encryption. The ports they use to gain access are standardised and are well known by hackers and other malicious groups wishing to gain access to information. They do this by "sniffing", a common term for watching network or internet traffic and grabbing "packets" commonly used to capture data being transmitted (such as usernames and passwords), that allow more devious behaviour later, but it is also used to rebuild entire data pools.

The use of handheld devices and laptops increases the risk of un-encrypted transmissions being hacked and opens the argument under r 11.4 as to whether reasonable steps have been taken to ensure security of data. It seems likely that lawyers will have to take ultimate responsibility for a breach of duty under r 11.4 if it is shown that they failed to undertake proper investigation. Just asking a service provider for details of a Cloud service is unlikely to absolve the legal duty as lawyers have a specific responsibility to ensure the security of the electronic systems employed under this rule and professional advice should be obtained in writing.

This issue should be dealt with by an amendment in a service provider's contract, due to the general practice of service providers attempting to absolve themselves from responsibility

Lloyd Gallagher

or being little more than resellers of other providers, whether Cloud computing is used for commercial or personal purposes.

To protect against TLS intrusion, it is suggested that firms confirm that the Cloud supplier is offering a "Secure Socket Layer" (SSL) certificate for implementation on the transport layer. This will encrypt data as it is being transmitted between server and client, preventing easy access. Of course, nothing is fool-proof and hackers may still access the data, but through confirmation of both TLS and AES security at least the requirements of r 11.4 should be satisfied due to the proactive approach of taking all reasonable steps to protect client information stored on the Cloud service.

Jurisdiction

Storing data in an off-site location may seem simple enough but can you confirm that it is still in New Zealand? Many providers are simply reselling other service providers' services with little to no regard for the obligations that law firms have in terms of reliable evidence (as outlined in a previous article in this series, see Issue 32). These other providers may have their servers located in Australia, the US or Asia, where laws may give right to the release of information that would breach duties under the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 to New Zealand clients.

Often, firms will implement Cloud computing with no knowledge of where their data is retained. Further, Cloud providers often provide services in one location, but back-haul large data to cheaper suppliers who may be in another jurisdiction. This creates legal issues surrounding obligations under the Revenue and other Acts as discussed in Issue 32. Further, issues arise with who has legal rights to access data and in what circumstances. This may result in breaches of New Zealand duties when faced with an enactment from another jurisdiction that allows release of the information without consent.

These kinds of questions were raised by the OECD in 2014, in the course of discussions over access by government agencies, national security concerns and access for law enforcement purposes. The OECD considered that while some providers are aware of privacy issues and work to maintain compliance for business, other issues of compliance are not as easily reconciled even by the most attentive Cloud service provider ("Cloud Computing: The Concept, Impacts and the Role of Government Policy", OECD Digital Economy Papers, No. 240, OECD Publishing).

It is therefore important for law firms to consider policies and contractual terms that deal with privacy, security layers, transport security and server/data location. Some points to consider and query include:

- What privacy principles the Cloud service provider has agreed to maintain?
- What professional agreements the provider has with its uplink providers?
- Where data is being retained, backed up and stored?
- What laws will be applicable?
- What data processing policies the provider has?
- Whether the provider is willing to adapt the terms of the contract to suit the firm's specific data protection needs?
- Whether the provider is a reseller and, if so, what are the uplink provider's contractual terms?

Framework standards have been set out in the European Network and Information Security Agency (ENISA) standard for Cloud computing (ENISA "Information Assurance Framework" (2009)) and have a number of relevant questions that should be asked by customers seeking to employ Cloud services. Further reading of this standard is suggested for any firm providing advice to clients on Cloud service deployment.

Continued on page 7

LAWNEWS

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From hostage negotiations to business negotiations with Moty Cristal

"I am glad to be in New Zealand," says renowned hostage negotiator and AMINZ workshop leader, Moty Cristal.

We are doing a group exercise which requires us to explain to each other a fairly complex factual scenario. The point is to show that if talking fails to clearly explain the situation, you may need to resort to writing, drawing or acting it out. "When I run this exercise in Russia," he goes on, "and I ask them what they would do next, they say 'You shoot!'"

Mr Cristal is no stranger to tense situations. From 1994 to 2001, he served in Israeli negotiation teams with Jordan and the Palestinians and was part of the negotiation team during the siege of the Church of the Nativity in Bethlehem in 2002, which he describes as involving a lot of "creative thinking" (for example reframing "deportation" of the Palestinian fighters as them being "sent abroad").

Since then, he has been involved with advising and training top business people and government officials around the world in complex negotiation processes, across sectors and topics as diverse as energy, financial, technological, pharmaceutical, transportation, cross-cultural disputes, union conflicts and national crisis management.

Today, he is translating the knowledge and skills gleaned in such situations (some of which are pretty alien to the average New Zealander) into principles and practices we can all use – whether as part of complex commercial negotiations, employment mediations, or indeed in everyday work and life when compromise or persuasion are called for.

Understanding the context

"There is a significant difference between 'text', 'subtext' and 'context'," says Mr Cristal. The "text" of a conversation is the actual words we use to communicate, but this is not the end of the story. The "context" in which those words are said can obviously greatly affect their meaning and impact, while the underlying "subtext" (the feelings in the room, the social construct in which the parties operate, the balance of power etc) is also perilous to ignore. Reactions to what a party says depend on how listeners interpret all three elements.

"As people of words, we must be careful about the 'text' we use, and, although we cannot control them, we must also be aware of the context and subtext," says Mr Cristal – he personally would prefer to touch on any contextual or subtextual issues rather than leaving them as an elephant in the room.

Negotiating in "low" to "no trust" environments

As will appear from Mr Cristal's CV, his speciality is negotiation in what he describes as "low" to "no trust" environments. His successes in achieving outcomes/agreements in circumstances where there is very little


Moty Cristal

trust between the parties (or even none at all) leads him to seriously question the traditional/Harvardian theory that getting the parties to trust each other is a critical ingredient for a successful negotiation – "It is nice to have but not a prerequisite."

Although perhaps not quite on the same scale as an armed stand-off in Bethlehem, other situations where there can be very little trust between the parties may include business partners going their separate ways, discussions between parties to a divorce or union negotiations. Mr Cristal suggests that in such cases, there are better ways in which a mediator can utilise his or her time and skills than in trying to get the parties to trust each other. Nor does he think the Western concept of trying to achieve a "win/win" outcome is always helpful either – the concept is in fact very difficult or virtually impossible to translate or explain in some cultures (the word for "victory" in Russia, for example actually means "defeat of the other side").

He offers quite a different framework within which to deal with low trust situations, based on three key principles:

- the freedom to be angry – recognising that this is a legitimate way to feel can make parties more willing to come to terms;
- creating trust in the process – if the parties are able to build the process together before substantive issues are dealt with, they have already agreed on some common ground; and
- having respect for each other – this differs from trust, in that it is a responsibility on you to act in a certain way, rather than a requirement that the other side behaves in a trustworthy manner.

"You need to have a track record of being someone who treats their enemies with dignity, especially if you will continue to live in the same neighbourhood as them," he says.

Motivation, interests and "reframing"

One of the first things Mr Cristal says he would try to figure out in a hostage negotiation is whether the hostage-taker is operating under an "instrumental motivation" or an "expressive motivation". In other words, does the hostage-taker want to get something tangible, or are they doing it because they want to be heard, perceive something is unfair, or want to express anger (expressive)?

While the speed at which this is clarified is probably less life-threatening in business negotiations, it is still important to ascertain what the other side really wants and what it is that is most important to them, always making sure that you do not make assumptions about this based on your own value system.

If the person is motivated by instrumental or tangible factors, it means they are in a business mindset, and the way is open to do a deal. However, if they are in an expressive or intangible mindset, the process will be longer because you will first have to allow room for "venting". This is often the pattern in negotiations between an indigenous group and the state – whereas the past and the chance to air feelings and frustrations is intrinsic to the process for the indigenous group, the state may be more focussed on the future and questions of quantification.

The art of "reframing" can be helpful here in clarifying what the "basic deal" is likely to be. Mr Cristal considers that we are "lucky to have the English language" to help us do this, as there are so many ways in which ideas and concepts can be expressed more positively – other languages can be more limited in this regard.

In the case of the Bethlehem siege, negotiators found it helpful to reframe the situation from a religious tinder box (involving as it did a clash of three major religions – Muslim fighters besieged inside the holiest place in Christendom, surrounded by a Jewish military force) into a "military standoff", allowing all parties to focus on resolving it, rather than getting caught up in questions of faith and morality.

The art of persuasion

Mr Cristal also discussed a number of useful persuasive techniques which can form part of your strategic "toolbox" and which can be deployed as appropriate depending on the context – some of which are "rational", some "emotional" and some "operational". Particularly helpful suggestions included the following:

- ***Introduce doubt*** – Many people try to persuade the other side that they are completely wrong and try to show them an alternative truth. However, it is sometimes enough just to introduce a little bit of doubt. People can be very sure/overconfident – just question them a little.

Continued on page 10

+ Update from the Companies Office

Registrar comments on changes to compliance requirements for directors

The Registrar of Companies, Mandy McDonald, discusses work being done by the Companies Office Registries Integrity and Enforcement Team (RIET) to reduce the number of recurring company failures. Ms McDonald also touches on the planned change of language when referring to companies that have been "struck off" the companies register.

Ms McDonald, members of the Companies Office Registries Integrity and Enforcement Team have recently been meeting with insolvency practitioners. What has been the focus of these meetings?

The focus of these meetings has been on encouraging better communication and co-operation. I am looking at how the Companies Office can work with insolvency practitioners to boost the efficiency and effectiveness of our enforcement activities, in particular the power to prohibit directors who have been involved in company failures. When it comes down to it, insolvency practitioners are at the frontline of corporate failures, and have information that RIET needs to identify and minimise the risk of recurring failure. This means we need to work closely with insolvency practitioners.

Does this mean a focus area for you is the reduction of directors having multiple companies that fail?

My focus is on using the power to prohibit directors more effectively, helping to reduce commercial risk. The aim is to build a safer and more trusted market, prohibiting at-risk operators from causing repeated damage.

The reality is that prohibition is often faster and more efficient than criminal proceedings.

Insolvency practitioners deal with the directors and managers of failed companies on a daily basis. This means they are in a position to provide valuable information about the way the companies were managed. We have been developing ways to make it easier for people to get that information to us using a comprehensive questionnaire, thereby minimising the time it takes for practitioners to provide this vital information.

Companies Registrar Mandy McDonald

Does that mean criminal proceedings are off the table?

Definitely not. RIET deals with issues on a case by case basis. If a prosecution would be more appropriate than prohibition, then a prosecution would be initiated.

My mandate is a simple one – to protect the integrity of the Companies Register and to enforce the requirements of the *Companies Act 1993*. This includes making sure those who are directors comply with their duties.

Working with liquidators increases our information base and understanding of what has occurred, which increases the effectiveness of our response.

Was there anything else discussed with insolvency practitioners?

Although the legislation places responsibility for supervision with the Court on application from creditors and other interested parties, I see the Registrar's role as making sure the creditors and other interested parties are informed. We are doing this by focusing our compliance efforts in this area on practitioners' public reporting obligations, to ensure creditors have ready access to information. With better, more timely information, better decisions can be made.

We have also been including insolvency practitioners in the discussion about ways to improve compliance and reporting

You have also signalled that the New Zealand Companies Office will be making a change to the language used when a company has been struck off?

The Companies Office will in the near future be changing the terminology for companies that are no longer registered, status code 80, from "struck off" to "removed".

This change is being made for two reasons: the first is legislation refers to a company being removed rather than struck off, so the change will be consistent with legislative terminology.

Secondly, I am conscious that "struck off" can have negative connotations. The vast majority of companies that are removed from the register do so voluntarily. By changing the language, we hope that any stigma associated with the current terminology will disappear. Feedback has reinforced this view.

+ Notice for practitioners

Auckland High Court Library renovations starting mid-November 2015

The Ministry of Justice is building a new jury-capable courtroom and a conference room on the lower ground floor of the Auckland High Court, utilising part of the present NZLS Library space.

Work will start mid-November 2015 and continue until April 2016. The new design will accommodate the existing library collection, a new bathroom and robing room area, a new area for the library staff and a new lawyers' room.

The Library staff and some of the Library's resources will be relocated to the Auckland District Court, and the Library will operate out of both the High Court and District Court premises. The High Court Library may be closed briefly during this period and parts of the collection may be unavailable for brief periods as they are moved between the High Court and District Court. At the High Court, the bathroom (and robing room) area will not be accessible at this time (bathroom facilities will be available elsewhere in the courthouse during opening hours).

Staff will be available to assist practitioners at the District Court Library between 8:30am and 5pm, Monday to Friday.

For more information as to where various parts of the collection will be held and how to access them during this time, as well as questions about other associated facilities and services, please visit www.lawsociety.org.nz/law-library/auckland-hc-library-move or contact Library staff by email: auckland@nzlslibrary.org.nz or phone: 09 304 1020.

+ Case summary

Williams & Ors v Auckland Council [2015] NZCA 479 (Harrison, French and Mallon JJ)

Prepared by Sacha Jugum, Editor of ADLSI's Bulletin

Appeal against High Court refusal to grant declaratory relief against Council after dispute over land held for a "public work" – Council cross-appealed as to the defences that had been dismissed by the High Court – *Public Works Act 1981* - applicable principles – relevant factors – balancing of interests – procedure – standing of "successors" – whether [the entity now represented by the Council] had a "duty" to offer the disputed land back to the owners – statutory interpretation – whether breach of duty [if one exists] – consideration of outcome if declaratory relief granted – consideration of concept of "windfall" – policy – delay by appellants [in bringing substantive application] – appeal and cross-appeal dismissed.

This case relates to some 75 hectares of "shoreline" land in West Auckland with harbour views – the land remains largely undeveloped and now has a "substantial" potential development value – the land was purchased from seven separate owners from 1949 through to the 1950s for the purpose of a proposed port – the port did not eventuate – the entity that made the purchases is now vested in the Auckland Council through operation of statute – the original land-owners were represented by their descendants but funded by a litigation funder who would be the "principal beneficiary of success" – the *Public Works Act 1981* (PWA) is now relevant to the dispute – in 2005 the descendants argued that upon the advent of the PWA, the Council owed a duty to their families to offer the land back to them, as at that time the land was no longer required for a public work, and that the land should have been offered back to them at a 1982 valuation – the descendants argued that as the "offer back" had not occurred, the Council had breached the duty owed to the families – the descendants sought declaratory relief – the descendants' application for declaratory relief failed on a point of statutory interpretation as the High Court held that the *Auckland Harbour Board and Waitemata City Council (Te Atatu) Empowering Act 1983* ended the obligation of the Council to offer the land back to the families.

The descendants appealed this ruling and the Council cross-appealed on the High Court's failure to accept some of the defences raised by Council – consideration of standing of different descendants and whether they were "successors" as contemplated by the PWA – consideration of public policy issues – valuation dates if land is to be offered back – whether litigation funder would receive a "windfall".

Held: High Court erred in finding that A*uckland Harbour Board and Waitemata City Council (Te Atatu) Empowering Act 1983* excuses the Council from exercising its PWA duty – three groups of descendants do not have standing – four groups of descendants do have standing [see case for statutory interpretation that determines this issue] – breach of duty by Council in relation to four of the seven groups of descendants is established – consideration of whether the Court should exercise its discretion to grant relief [in relation to all seven groups of descendants] – delay by descendants counts against exercise of discretion – valuation issues and potential "windfall" to litigation funder – potential dates of valuation problematic, as is "returning" publicly-held land to private interests – appeal and cross-appeal both dismissed [see case for diagram of affected land, how it has been developed/remained undeveloped, and circumstances and prices for original purchases].

A PDF of this decision is available from the Judicial Decisions Online section of the Ministry of Justice website https://forms.justice.govt.nz/.

+ Update from ADLSI's Criminal Law Committee

New CMM form

A revised case management memorandum (CMM) form for use in case management discussions under the *Criminal Procedure Act 2011* has been issued by the Ministry of Justice.

The form was drafted in consultation with the Criminal Rules Sub-Committee. Feedback on the proposed form was invited by the Sub-Committee from practitioners and comments were provided by the ADLSI Criminal Law Committee.

The revised form will be provided by District Courts to lawyers when a case is progressing to a case review hearing and is available on the Ministry of Justice website:

www.justice.govt.nz/services/service-providers/information-for-legal-professionals/criminal-court-processes/forms-and-documents

+ ADLSI event

Central West Auckland Lawyers' Lunch

ADLSI is continuing its successful Lawyers' Lunch series for 2015. Held regularly across Auckland, these lunches offer lawyers the opportunity to meet and network with fellow practitioners in their local area.

We have a new Lawyers' Lunch coming up in New Lynn on **Thursday 29 October 2015**, at Bricklane Restaurant and Bar. Practitioners from New Lynn and surrounding suburbs across West Auckland are invited to join us for a relaxed lunch and to enjoy a short presentation by ADLSI and Lawyers' Lunch sponsor JLT.

The lunch will be $24.95 (incl. GST) from a set menu, and we are pleased to offer ADLSI members an exclusive Lawyers' Lunch rate of $14.95 (incl. GST). Numbers are limited, so register now to avoid missing out.

Time & date: 12:30-2:30pm, Thursday 29 October 2015

Venue: Bricklane Restaurant and Bar, 5 Clark Street, New Lynn

Registration: $13.00 + GST ($14.95 incl. GST) per person for ADLSI members; $21.70 + GST ($24.95 incl GST) per person for non-members

Register by 9am on 27 October 2015 to secure your spot, subject to availability. Visit www.adls.org.nz to register and pay online; alternatively, contact adls.events@adls.org.nz or 09 303 5287.

ADLSI's standard cancellation policy applies for this event.

ADLSI's Central West Auckland Lawyers' Lunch sponsored by JLT

+ New book

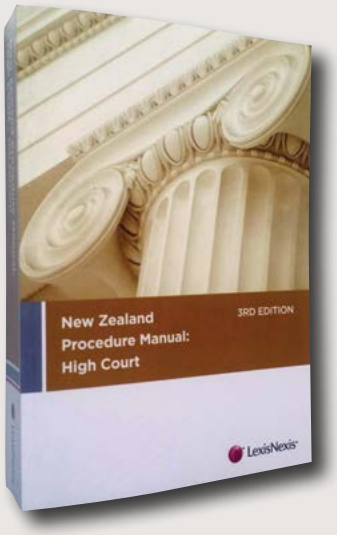
NEW EDITION SPECIAL OFFER – New Zealand Procedure Manual: High Court, 3rd Edition

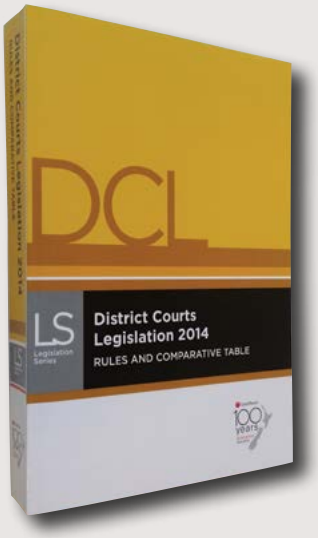
The new, third edition of *New Zealand Procedure Manual: High Court* is designed to provide the busy practitioner with a practical and portable single-volume guide to bringing a civil case in the High Court.

It contains all the High Court Rules and associated commentary, taken from the authoritative looseleaf service *Sim's Court Practice*. The accompanying CD contains all the High Court Rules' Forms under Schedule 1 to the High Court Rules.

SPECIAL OFFER: Readers can take advantage of a special offer to buy the *New Zealand Procedure Manual: High Court, 3rd Edition*, along with a copy of *District Courts Legislation 2014: Rules and Comparative Table*, for a total of $152.17 (plus GST) for both books – a saving of $43 off the normal price for the two books together. The price for ADLSI Members for this special offer is $136.96 (plus GST) – a saving of $39 off the normal Members' price.

District Courts Legislation 2014: Rules and Comparative Table (which came out just last year) contains the District Courts Rules 2014, as well as a helpful comparative table that lists the District Courts Rules 2009 alongside the comparable District Courts Rules 2014 and High Court Rules 2008.





To purchase *New Zealand Procedure Manual: High Court, 3rd Edition* only:

Price: $130.43 plus GST ($150.00 incl. GST)*

Price for ADLSI Members: $117.39 plus GST ($135.00 incl. GST)*

(+ Postage and packaging)*

To purchase both *New Zealand Procedure Manual: High Court, 3rd Edition* and *District Courts Legislation 2014: Rules and Comparative Table*:

Price: $152.17 plus GST ($175.00 incl. GST)*

Price for ADLSI Members: $136.96 plus GST ($157.50 incl. GST)*

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To take advantage of this special offer, please visit www.adls.org.nz or contact the ADLSI bookstore by phone: 09 306 5740, fax: 09 306 5741 or email: thestore@adls.org.nz.

+ ADLSI event

South Auckland Bench & Bar dinner

Current and retired members of the bench and bar are invited to the ADLSI South Auckland Bench & Bar dinner on Friday 6 November 2015.

Set amongst vines at the stunning Villa Maria Estate, join your fellow colleagues for an entertaining evening, enjoy some award winning Villa Maria wines and celebrate the end of another busy year.

Last year this popular dinner sold out and numbers are limited, so register now to secure your spot.

Date: Friday, 6 November 2015

Time: 7.30pm Arrival, drinks & canapés; 8.00pm Dinner

Venue: Villa Maria Estate, 118 Montgomerie Road, Mangere, Manukau

Tickets: $108.70 + GST ($125.00 incl. GST) per person for ADLSI members and the judiciary;

$120.00 + GST ($138.00 incl. GST) per person for non-members.

Ticket price includes arrival bubbly and canapés, two course dinner with a limited beverage package, plus wine tasting on arrival and exclusive one night only discounts on Villa Maria wines and cases.

To register for this dinner, please visit www.adls.org.nz; alternatively contact adls.events@adls.org.nz or 09 303 5287. Spaces are limited, so register before 30 October 2015 to secure your spot.

ADLSI's standard cancelation policy applies for this event.

Continued from page 2, "Cloud computing – privacy and security"

Conclusion

While this discussion provides a useful blueprint to minimum standards needed in data security, it is important to remember that the internet is an open and constantly evolving world where threats, vulnerabilities and the security measures to address them remain in constant flux. It is therefore important to have a proactive policy on risk assessment to reduce risk from these ever-changing threats. This should include, but not be limited to, an active antivirus policy and firewall protection on both the Cloud and the lawyer's method of accessing data so stored. Viruses and firewall intrusion account for large amounts of security breaches and would be considered a breach of the requirements under r 11.4 to maintain security. Policies should detail what is expected of lawyers when they use technology to access client information – for example in relation to laptop use, has the laptop been used for private browsing, to what sites and are those sites at risk of holding malicious software? Other questions may include:

- Is the antivirus protection up to date?
- Should personal computers be allowed or should access be limited to firm-supplied hardware?
- Should limits be placed on the firewall to only allow access from the firm's site, or the firm's approved network supplier?
- Can the IP numbers be limited or controlled for this supply or are they reliant on resale of other providers' networks?
- Does the Cloud service provide sufficient firewall and malware protection?

These questions do not form an exhaustive list but should be considered in the firm's policies, which should be reviewed and updated every six months. Even if firms have no immediate intentions to move to Cloud services, it can be a good idea to address these matters within the policies they already have in place. This kind of proactive approach will help ensure compliance with duties and obligations to clients.

Further reading/useful links:

- Advanced Encryption Security or AES – see Schneier, B. et al "The Twofish Team's Final Comments on AES Selection" (2000).
- "Sniffing" – see Schweitzer, D. *Internet Security made easy for pc users* (Amacom Books, NY, 1997) at 158; WonderHowTo "Hack like a pro: how to use driftnet to see what kind of images your neighbour looks at online" (2014) <http://null-byte.wonderhowto.com/how-to/hack-like-pro-use-driftnet-see-what-kind-images-your-neighbor-looks-online-0154253/>; and Rane, P. "Securing SaaS Applications: A Cloud Security Perspective for Application Providers" (2010) <http://www.infosectoday.com/Articles/Securing_SaaS_Applications.htm>.
- Service providers' contracts – see for example clause 10.2 of the "My Spark Digital Terms and Conditions" <http://www.sparkdigital.co.nz/mysparkdigital-terms/>.
- European Network and Information Security Agency (ENISA) "Information Assurance Framework" (2009) standards <https://www.enisa.europa.eu/activities/risk-management/files/deliverables/cloud-computing-information-assurance-framework> LN

Continued from page 3, "From hostage negotiations to business negotiations with Moty Cristal"

- ***Scenarios ("what if?")*** – Often people can be "tunnel-visioned", but ask them "what would the consequences be if we don't reach agreement?" This helps people understand that not everyone sees the same reality they do.
- ***Window of opportunity*** – This can serve as a strong emotional persuasive tool (for example "last day of the sale!"). People hate to feel like suckers for missing out!
- ***Option A and option B*** – Always give two options (this also works well when trying to get your child to dress themselves in the morning!).
- ***Trade-offs (reciprocity)*** – Mr Cristal says that a hostage negotiator "never gives things away for free", but always asks for the release of a hostage or a phone conversation in return for doing something for the hostage-taker. Educate the other side that there is a quid pro quo and that there is a process to be followed.
- ***Foot in the door*** – Get a little bit now (the "slowly, slowly" approach), even if you can't get the whole deal you were after. This can also help in building a good process.
- ***"Call me back"*** – This technique is commonly used in hostage negotiations to strengthen the hostage-taker's commitment to the process. Don't be like a pushy salesperson or threaten the other side's decision-making authority – instead ask them to "call you back".

***Moty Cristal** visited New Zealand in September 2015 as the guest of the Arbitrators' and Mediators' Institute of New Zealand (AMINZ). He is the founder of NEST group and the CEO of Negotiation Strategies Ltd, a global consulting company which provides complex negotiations and crisis management training, and consulting and operational support to senior executives and governments. He is also a Professor for negotiation systems at SKOLKOVO, Moscow's leading Business School and a lecturer at Tel Aviv University and the Lauder School of Government, Herzelia.* LN

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Featured CPD

Thursday
29 October
2015
4pm – 6.15pm

2 CPD HOURS

Seminar Live stream

Mentally Impaired Clients: Representing the Vulnerable

Using examples of vulnerabilities such as neuro-disability and dual diagnosis, our experts will discuss a variety of skills which can be adapted to fit a range of contexts to assist lawyers representing vulnerable or challenging clients.

Learning Outcomes

- Using practical examples, gain skills to help recognise a client's vulnerabilities and learn how to develop a plan to address them in the court context.
- Become more familiar with forensic court liaison services: what they do and how they can help.
- Identify triggers and strategies for optimum representation of challenging clients.
- Gain a greater awareness of a range of useful resources available.

Who should attend?

Any lawyer who deals with vulnerable or challenging clients in a transactional or litigation context.

Presenters: **His Honour Judge Fitzgerald**; **Professor Kate Diesfeld**, Department of Public Health, AUT; **Kevin Seaton**, Manager, Forensic Court Liaison Services, Waitemata DHB; **Alex Steedman**, Barrister; *Chair:* **Paul Hannah-Jones**, Barrister

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Tuesday
10 November
2015
4pm – 6.15pm

2 CPD HOURS

Seminar Live stream

Courtroom Advocacy – The Essential Skills: Preparing Witnesses for Cross-Examination & Raising Objections

This seminar will be a practical guide to helping your witnesses survive cross-examination, and to using the right to object and to challenge objections effectively.

Learning Outcomes

- Refresh your understanding of some key rules of evidence.
- Understand how to prepare witnesses for cross-examination, and identify the limits on counsel in this regard.
- Learn about when objections should be used – and when they shouldn't.
- Learn about the pre-trial objection process to briefs of evidence.

Who should attend?

Litigators wishing to upskill or receive a refresher. (Attendance at a previous seminar in the series is not a prerequisite.)

Presenters: **Her Honour Judge Mathers**; **Adam Ross**, Barrister, Shortland Chambers; **David Bigio**, Barrister, Shortland Chambers; *Chair:* **Michael Fisher**, Barrister, Erskine Chambers

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Thursday
12 November
2015
4pm – 6.15pm

2 CPD HOURS

Seminar Live stream

DVA: The Interface with CoCA

Domestic violence cases often involve care of children issues. This can make proceedings more complex and can have wide-ranging implications for those involved. This seminar will address current practical matters within this key interface.

Learning Outcomes

- Receive an update on the CoCA safety test for unsupervised contact and the judicial response to DV applications.
- Understand how the interplay between these two aspects of Family law affects practice (e.g. supervision, progression of cases, filing and service) and what happens when findings do not match up, and when holding off filing papers is appropriate.
- Gain insights into the impact psychological abuse can have in this area.

Who should attend?

All lawyers involved in DVA/CoCA matters

Presenters: **Rebecca Holm**, Barrister and Family Mediator, North Shore Legal Chambers; **Lisa La Mantia**, Barrister, O'Connell Chambers; *Chair:* **His Honour Judge de Jong**; *Facilitator:* **John Hickey**, Principal, Hickey Law

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Monday
16 November
2015
4pm – 6.15pm

2 CPD HOURS

Seminar Live stream

Buildings: Earthquake & Environmental Risk and Liability

In today's physical and legal environment, the health and safety of our buildings is under greater scrutiny. This seminar will address three topics: the Building (Earthquake-prone Buildings) Amendment Bill; legal and engineering perspectives on strengthening vs demolishing; and due diligence in respect of buildings.

Learning Outcomes

- Learn about the issues arising in identifying whether buildings are earthquake-prone.
- Understand the new regime for identifying, assessing and remediating earthquake-prone buildings and gain insight into the scope of unresolved issues that are likely to recur.
- Learn from case studies involving the challenges faced with a range of buildings from heritage to relatively modern ones.

Who should attend?

Transactional lawyers engaged in buying, selling or leasing interests in buildings; local and central government legal teams in building regulation; litigators interested in the subject matter.

Presenters: **Brent O'Callahan**, Partner, Kirkland Morrison O'Callahan & Ho Limited; **Stuart Ryan**, Barrister; **Rob Jury**, Senior Technical Director – Structural Engineering, Beca; **Diana Hartley**, Senior Associate, Simpson Grierson;
Panellist: **Stephen Mills QC**; *Chair:* **John Burns**, Consultant, Kirkland Morrison O'Callahan & Ho Limited

CPD in Brief

Costs in Civil Cases: Maximising Recovery – 1 CPD hr

Wednesday 18 November 2015, 12pm – 1pm

A legally successful case can be a Pyrrhic victory for your client if unrecovered legal and expert costs leave it substantially out of pocket. Partial, rather than indemnity, cost recovery as the norm is a deliberate structural feature of the New Zealand civil justice system. This webinar will discuss ways to maximise cost recovery for your clients within that structure, with a focus on recent developments.

Presenter: **Martin Smith**, Partner, Gilbert Walker

Webinar

Property Law Half Day Conference – 4 CPD hrs

Save the date: Tuesday 23 February 2016, 12.30pm – 5pm

Presenters: **Sue Simons**, Partner, Berry Simons; **Dominic Lundon**, Partner, Buddle Findlay; **Tony Wilkinson**, Partner, Buddle Findlay; **Professor Elizabeth Toomey**, Canterbury University; **Joanna Pidgeon**, Principal, Pidgeon Law; **Amy Johns**, Senior Associate, Simpson Grierson

Conference Live stream

Voidable Preferences: Developments and Consequences – 2 CPD hrs

Thursday 26 November 2015, 4.15pm – 6.30pm

The developing law on insolvent transactions can have widespread effect and significant implications for parties even years after services are performed. This seminar will address the legal principles and policy, and provide a variety of perspectives as well as practical guidance.

Presenters: **Brian Keene QC**; **Mike Whale**, Consultant, Lowndes; **Jeff Meltzer**, Partner, Meltzer Mason; **Don Tillbrook**, Contractors' Federation member and Chartered civil engineer; *Chair:* **The Honourable Justice Faire**

Seminar Live stream

Restraints of Trade in Commercial and Employment Contexts – 1 CPD hr

Wednesday 2 December 2015, 12pm – 1pm

Is drafting restraint of trade clauses an exercise in utility or futility? Restraint of trade clauses are used and disputed in various contexts: from employment relationships to independent contractors, to shareholder employees and in commercial transactional areas such as franchises, leases, and the sale and purchase of businesses.

Presenters: **Greg Blanchard**, Barrister, Shortland Chambers; **Maria Dew**, Barrister, Bankside Chambers

Webinar

CPD On Demand

Independent Trustees: Avoiding the Perils of Personal Liability – 1 CPD hr

The role of the independent trustee appears to be increasingly onerous. This session provides practical tips on best practice and how to avoid potential problems when acting as an independent trustee and advising clients taking on this role.

Presenter: **Tammy McLeod**, Director, Davenports Harbour Lawyers

On Demand

Hot Topics in Commercial Leasing: Green Leases and Rent Guarantees – 1 CPD hr

The emphasis on sustainability has seen a rise in the use of green leases. Being able to advise clients on the specific requirements of such leases, as well as the novel way in which operating expenses are dealt with, is an important aspect of any commercial property lawyer's practice. So too is the way in which rent guarantees have evolved recently with consequences for landlords and tenants. This On Demand webinar will look at both developments and provide insights into the particular opportunities and problems they present.

Presenters: **Nick Wilson**, Partner, Burton & Co; **Emma Tonkin**, Senior Associate, Kensington Swan

On Demand

Equity Crowdfunding 101: Innovative Capital-Raising for your Client – 1 CPD hr

Increasingly, small businesses are using crowdfunding as an alternative way to obtain financial support to grow their businesses. Lawyers need to be aware of what crowdfunding is, how it works, its suitability and its risks.

Presenters: **Hayley Buckley**, Partner, Wynn Williams; **Josh Daniell**, Co-Founder/Head of Platform, Snowball Effect

On Demand

CPD Pricing

Delivery Method	Member Pricing	Non-Member Pricing
Webinar	$75.00 + GST (= $86.25 incl. GST)	$95.00 + GST (= $109.25 incl. GST)
Seminar (in person)	$125.00 + GST (= $143.75 incl. GST)	$180.00 + GST (= $207.00 incl. GST)
Seminar (live stream)	$125.00 + GST (= $143.75 incl. GST)	$180.00 + GST (= $207.00 incl. GST)
On Demand (1-hour recording)	$85.00 + GST (= $97.75 incl. GST)	$110.00 + GST (= $126.50 incl. GST)
On Demand (2-hour recording)	$95.00 + GST (= $109.25 incl. GST)	$130.00 + GST (= $149.50 incl. GST)

For group bookings for webinars & CPD On Demand, see the ADLSI website at: www.adls.org.nz/cpd/help-and-faqs/group-bookings/.

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Fossie FALETOLU, late of 5 Shawcross Avenue, Mt Roskill, Auckland, Aged 42 (Died 26'08'2015)

Barbara Ruth KING, late of North Haven Hospital, Whangaparaoa, Single, Aged 63 (Died 20'09'2015)

Brett Alexander John MARSHALL, late of 30B Second Avenue, Whangarei, Aged 51 (Died 04'10'2015)

Uno Junior NIUULA, late of 50B Hillside Road, Mt Wellington, Auckland, Storeman, Aged 29 (Died 03'08'2015)

Danuta Elzbieta POLLARD, late of Radius Taupaki Gables, 116 Taupaki Road, Taupaki, Retired (Psychiatrist), Aged 88 (Died 16'03'2015)

Vincent STEPHENS, late of 21 Quennell Avenue, Favona, Auckland, Driver, Aged 63 (Died 09'07'2015)

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LAW

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Overview of Position
In 2016 the Auckland Law School is introducing a new, compulsory Part II subject: LAW298 Legal Research, Writing and Communication.

The Law School is currently recruiting instructors to teach the legal writing and oral communication components of the workshops. The focus of the course in semester one is on predictive legal writing with particular emphasis on writing answers to problem questions and constructing legal memoranda. In semester two, students will be introduced to persuasive forms of legal writing including essay writing and written court briefs. The oral communication element will involve learning how to undertake legal negotiations.

Time commitment
Instructors will teach four x one hour workshops and one x two hour workshop in semester one, and five x two hour workshops in semester two. They will mark four written assignments and one negotiation exercise for each student in their workshop providing extensive feedback, and provide 90 minutes of oral feedback to each student across the year. There will also be a training session before semester one begins and teaching/marking meetings throughout 2016.

Knowledge, Experience and Capabilities

Essential
- Law degree or currently undertaking LLB (Hons)
- Strong legal writing skills
- Excellent academic record
- An interest in cultivating a supportive environment for learning and enhancing student well-being

Preferred
- Legal experience
- Teaching or tutoring experience
- Availability to teach in both semesters

How to Apply
For more information and how to apply visit
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