ADLSI
Independent Voice of Law

LAWNEWS THIS ISSUE:

Law as a healing agent – therapeutic jurisprudence
What happens when things go wrong with the Cloud?
Can an unlawful DNA sample = unreasonable search and seizure?

LAWNEWS

ISSUE 40 13 NOVEMBER 2015

www.adls.org.nz

+ Law and jurisprudence

THERAPEUTIC JURISPRUDENCE – NOT JUST FOR SPECIALIST COURTS?

Therapeutic jurisprudence is a term that is getting more and more air time as the legal profession looks at how courts can operate more effectively, how law can be used as a "healing agent" and how cycles of offending can be broken.

Part of a wider "comprehensive" or "collaborative" law movement (including restorative justice), therapeutic jurisprudence is a concept you may hear in conjunction with specialist courts or forums such as the Alcohol and Other Drug Treatment Court (AODTC). Where you may not have expected the idea to crop up, however, is in more mainstream courts and areas of practice. But that is exactly where many proponents of therapeutic jurisprudence see it heading, arguing that its concepts can be applied more broadly.

Law News recently had the opportunity to speak with Professor Warren Brookbanks of Auckland University's Faculty of Law (and General Editor of recently published title *Therapeutic Jurisprudence: New Zealand Perspectives*) about how the legal profession should be thinking about these questions and where else therapeutic jurisprudence methodologies could be brought into play.

The book's discussion ranges from the use of therapeutic jurisprudence in employment dispute resolution to therapeutic judging in civil and commercial litigation. While the book notes that these "appear to represent an eclectic range of subjects", they also "reflect the heterogeneous reach that therapeutic jurisprudence has now acquired as its approach continues to explore the outer parameters of the discipline of law … [and that] no area of law is beyond the scope of the inquisitive therapeutic jurisprudence lens".

Professor Brookbanks considers that all players within the legal system have a role to play as part of changing the dynamic of how our courts operate to place more emphasis on healing and resolution. The book suggests that "the behaviour of lawyers and judges" is an important part of this process, and that "treating litigants with respect, aiming to be more transparent in decision-making and providing more effective assistance to litigants in person, might enhance judging practices and produce greater litigant satisfaction".

"Therapeutic jurisprudence is about bringing about outcomes which are more psychologically beneficial," says Professor Brookbanks. "Litigation can be very destructive or corrosive in terms of people's relationships and even their mental health, but therapeutic jurisprudence argues that it does not need to be – it can be about producing helpful outcomes."

Mainstreaming – civil/commercial litigation

He goes on, "While it can be more difficult to apply in a general court setting, increasingly there is a focus on mainstreaming therapeutic jurisprudence principles and bringing them into the general court structure," and indeed this is one of the book's main themes.

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Wrapping up ADLSI's Lawyers' Lunch series for the year was a new event in the series – the Central West Auckland Lawyers' Lunch, which took place in New Lynn. Pictured here are Sylvia Ding, Courtney Henley-Smith and Katrina McIntosh. For more, turn to page 4.

THERAPEUTIC JURISPRUDENCE – NOT JUST FOR SPECIALIST COURTS?

Continued from page 1

Chapter 11 (written by Jane Glover) suggests ways in which therapeutic jurisprudence theory can be applied to civil and commercial litigation and non-criminal judicial contexts, and how current judicial practices might be enhanced by the application of therapeutic jurisprudence principles, "through the medium of active listening and the use of emotional intelligence, … treating litigants with respect, aiming to be more transparent in decision-making and providing more effective assistance to litigants in person".

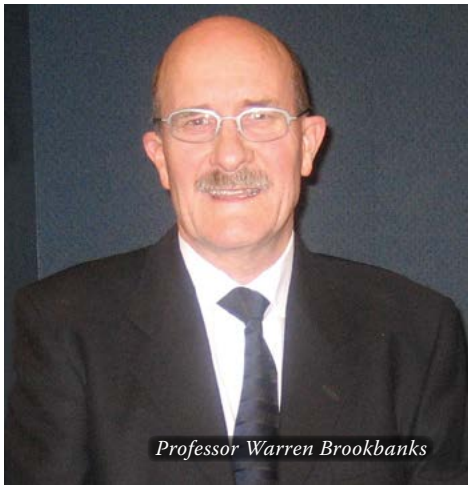
Professor Brookbanks notes that there is also a growing emphasis on the role of apology in many different litigation contexts: "If someone is willing to apologise to me, in some kinds of litigation, it may be that that is what I am really seeking (along with reassurance that the issue will be resolved and it won't happen again)."

He acknowledges that, obviously, in some areas, an adversarial approach will and should prevail (for example taxation disputes or complex commercial litigation), where the issues at stake "are not primarily about relationship but have to do with the application of a defined policy or a clear statutory mandate". But in areas such as employment, family, or environmental law, he considers that there may be "deeply personal issues involved, and more scope for models which are consciously therapeutic".

Corrections

Going beyond the immediate court system, another area where therapeutic jurisprudence principles can have relevance is in deciding how notions of care and protection can be given effect in corrections environments. The bleakness of such environments, where it is nevertheless expected that offenders rehabilitate and prepare for ultimate release, can lead to questions as to how hope can be restored and some kind of restoration achieved. As Professor Brookbanks comments:

"A challenge is to operationalise a notion of care to ensure that prisons remain, as they were intended to be, as places *of* punishment, not *for* punishment. The practice of therapeutic jurisprudence in this context would be aimed at minimising the conditions of stress on inmates, caused by the hostile prison environment, and facilitating programmes and activities designed to improve mental health and well-being, and offering a measure of hope for future re-connection with mainstream society."



Professor Warren Brookbanks

"Lawyers who are well-informed and who understand that there may be other issues going on (whether relational or psychological) certainly have a role to play under the therapeutic jurisprudence approach. It's already happening in certain areas – it is really just feeding into the pattern of behaviour that engagement with the law should benefit people rather than leaving them feeling disenfranchised."

Interestingly, those comments were written before the recent furore surrounding the management of Mount Eden prison, and Professor Brookbanks stands by his words in light of those revelations.

"We have to ensure the safety and security of prison inmates in a humane environment. Prisons can be described as a 'petri-dish of mental dysfunction', with very vulnerable people at risk of further harm in an environment that is harsh, unforgiving and where everyone is 'out for themselves'. The punishment for a crime is the loss of liberty that being locked up in prison entails – prisoners should not be subject to further punishment within the prison environment in the form of assault or abuse."

Professor Brookbanks sees therapeutic jurisprudence as having a real role to play here – both in terms of rehabilitation inside prisons and how the release of prisoners back into the community is managed.

"Other jurisdictions have established 're-entry courts' – problem-solving courts that differ from parole boards in that they work with offenders due to be released into the community – an active and positive attempt to address their needs and provide appropriate support and assistance in a structured environment. Some great work is already being done in some prison units, but such initiatives require resourcing and upskilling of prison officers to operate in a changed corrections environment."

He is keen to stress that in this context, as elsewhere, therapeutic jurisprudence is not a "magic bullet" – rather, it can "assist in enabling us to re-vision the ways in which socio-legal problems can be approached".

Where do lawyers fit in?

While some models drawing on therapeutic jurisprudence-type principles may anticipate a "reconstituted role for lawyers" (for example, the conscious attempts to "take lawyers out of the picture a bit" in the Family Dispute Resolution context), Professor Brookbanks does not consider that reducing lawyers' roles is conducive, as a general rule, to effective justice, and would be loath to be seen as implying that lawyers should be removed from the scene of conflict altogether.

"While lawyers' roles in areas like collaborative law, restorative justice and employment mediation may call for new skill sets and different emotional dispositions to conflict resolution, getting rid of lawyers is not generally

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LAWNEWS

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Cloud computing – access and lock-ins

By Lloyd Gallagher, Director/Arbitrator/ Mediator, Gallagher & Co Consultants Ltd

Continuing the recent series of articles on Cloud computing which has appeared in *Law News* over recent weeks (see Issue 27, 14 August 2015, Issue 32, 18 September 2015 and Issue 37, 23 October 2015), this article looks at issues of outages and lock-ins – what happens when things go wrong with the Cloud.

Outages are becoming somewhat commonplace as New Zealand and other countries upgrade their infrastructure, resulting in increasing internet congestion. Improperly prepared backups can see data lost, resulting in failure to access documents that need to be delivered to court and possible disaster for clients. All this means that backup plans need to be considered carefully before moving to the Cloud.

Lock-ins can also pose substantial problems for document recovery when you choose to move to the Cloud, especially when proprietary formats are not compatible with the applications or formats of the new provider. This article provides some insights into how to mitigate these problems.

Outages and access

The internet can be a minefield. Upgrades are increasing internet congestion and "network latency" as internet providers scramble to increase bandwidth backplanes. "Network latency" is a technical term used to describe the length of time it takes for a "packet" (i.e. the data being broken down into multiple parts for transmission across the internet, which is then put back together on the receiver's end to reform the data) to reach its destination.

Such latency, on average, now exists at peak times between 150ms to 1900ms or higher, resulting in data transmission errors or timeout on routing devices which have much lower timeout thresholds than computers. The root cause is packets being broken down into multiple parts for quicker transmission across multiple paths to the source, which then recombines the packets to reform the data.

Accordingly, when a packet is not received in a certain time (or worse, is received out of order), the receiver drops the packet and asks for re-transmission in the right order causing websites to report "site not found" or, as with video, issues of pause or "stutter" or, as with text communications, duplication. These types of outages are not as severe as when the transmission line (such as ADSL or fibre) simply stops working or starts to drop packets repeatedly due to high congestion that can see connection interrupted and data having to be reacquired.

Accordingly, when looking at Cloud computing, firms need to consider how they will deal with outages and congestion, for example, how to get paperwork to court on time if unable to access the network or Cloud service.

Lloyd Gallagher

Of course, the easy answer is not to leave things to the last minute, but we all know that the realities of legal work do not always allow for this. It is therefore important to investigate what redundancies the Cloud service provider has in place, as well as your own redundancies and the costs of maintaining them.

Two examples below illustrate good practice for local redundancy and for Cloud service redundancy respectively.

Example 1: Local redundancy– small firm rural access to internet

Firm A has a small practice in rural New Zealand with moderate ADSL broadband and cellphone coverage. The broadband service is resold through Spark, so no matter who is chosen for provisioning of service, they connect back to the same ADSL DSLAM, which provides little redundancy if the network fails or gets congested.

Solution: In order to provide redundancy, Firm A will have to implement a single ADSL line for day-to-day operations and use the cellphone network and the phones' internal hotspot connection software to gain access to the documents needed to complete the Court filing deadline. At the time of writing, rural broadband may also provide an option; however, I have found that costs simply make this option unrealistic for a long-term solution.

As this example shows, for a small outlay, a basic level of redundancy can be implemented to prevent failures. Firms in non-rural areas have a greater level of redundancy options with multiple fibre lines being available from multiple suppliers. With the implementation of low-cost "multiwan" (also known as "loadbalancing") routers, service reliability can be increased across multiple suppliers, resulting in reduced latency.

Before choosing an option, however, it is important to know the delivery path for your area, as many New Zealand companies simply resell other service providers. Therefore, while it may look like you have separate connections, your outage, congestion and latency issues may not be resolved through a connection to what looks like a separate supplier.

However, what happens when Cloud data is missing or the Cloud service is offline? As with any server technology, failures do occur, and I discuss next what to check before adopting off-site services. When choosing a Cloud service provider, it is important to ask what redundancies that provider has in place for data retention, recovery, service access, power loss, network failure and network intrusion.

Example 2: Cloud provisioning – how I protect our infrastructure in Canada

I host a service that provides Cloud technology and video conferencing for alternative dispute resolution that is used by us and by clients in the UK, Canada and other parts of the world. We need to be up 24 hours a day, 7 days a week, due to the time zone differences and client usage. We had to make sure that the service was "war-proof" and had redundancy in case of a catastrophic failure.

Solution: The datacentre I chose was designed to withstand a nuclear blast with multiple generators and has its own dedicated fibre cables. These fibre cables run through Canada, the US, the UK and Europe with multi-homing connections to guarantee uptime. The servers providing the systems are connected via "raid array", which has "hot swappable drives", preventing data loss. In effect, if one drive fails, the others take over and rebuild the array data when a replacement is put in place, resulting in recovery without loss of data access. The servers are set up with redundancy so that if the server fails its duplicate takes over. In addition, the whole system is duplicated into a second datacentre located in another country, which comes online if the main datacentre is ever offline for more than 10 minutes. I myself use multiple connection redundancies to make sure we are always online.

This type of solution is paramount for a datacentre to maintain security and access to data for client information as and when needed. As a customer, your supplier should have no less than this minimum standard in place for your Cloud service. Most upscale providers provide this form of redundancy – however, they do not usually provide security level infrastructure unless requested, so keep in mind the questions from the privacy and security article earlier in this series (see Issue 37, 23 October 2015).

To obtain low cost access to this kind of service, careful planning and a review of your current systems is needed to make sure you are not over-purchasing what you will not use. Remember that the Cloud is "scalable" up, down and on demand to get the most cost-effective solution all

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+ ADLSI event review

Central West Auckland Lawyers' Lunch

Practitioners from Central West Auckland met up together at Bricklane Restaurant and Bar in New Lynn on Thursday 29 October 2015 for a new addition to ADLSI's Lawyers' Lunch calendar for 2015 – the Central West Auckland Lawyers' Lunch.

Guests enjoyed an afternoon of mingling and networking with fellow Central West Auckland practitioners. A lovely meal was followed by short presentations from ADLSI and sponsor JLT.

Thank you to JLT for sponsoring this event.

Michael Molloy, Sacha Jugum and Jandy Thomson

Patrick Molloy, Matthew Riddle and John Eichelbaum

Jonelle Lee, Donald Thomas and Peter Jacobson

Mary Anne Shanahan

+ News from the profession

South Island law expands to meet northern demand

South Island employment and health and safety law firm Janet Copeland Law is changing its name to Copeland Ashcroft Law, with the appointment of Kate Ashcroft as a principal in Tauranga.

Kate Ashcroft

Janet Copeland remains as a principal of the firm, with Copeland Ashcroft Law now employing a total of six lawyers in Invercargill, Dunedin, Queenstown and Tauranga.

Ms Copeland says the North Island has seen particularly strong demand for specialist expertise in employment and health and safety legal matters.

"Kate has specialised in employment and health and safety throughout her career and is a strong and learned provider of commercially pragmatic and tailored results that meet client needs.

"We are honoured she accepted the role as a principal of the firm and has decided to move back to the sunny Bay of Plenty to help accommodate our growing client base there and in the rest of the North Island."

In 2015, Kate Ashcroft was recognised by the international legal directory Asia Law as a leading lawyer in New Zealand. Her recent experience includes work with a large top-tier national law firm, an award-winning national employment law boutique firm and on secondment in-house in both the private and public sectors.

Ms Ashcroft is a member of ADLSI's Employment Law Committee and of the Institute of Directors. She is also a Trustee of the Make-A-Wish Foundation of New Zealand Trust.

+ Case summary

Liston-Lloyd v The Commissioner of Police [2015] NZHC 2614 (Mallon J)

Prepared by Sacha Jugum, Editor of ADLSI's Bulletin

***Judicature Amendment Act 1972 – Criminal Investigations (Bodily Samples) Act 1995* – [second part of] application for judicial review – whether applicant should receive damages for unlawful taking of a buccal [oral] DNA sample – whether breach of *New Zealand Bill of Rights Act 1990* – whether unreasonable search and seizure and/or unreasonable detention - whether alleged breach is technical - whether declaration is sufficient to remedy alleged breach – consideration of content of written notice given to applicant – background circumstances – applicable principles – declaration made that DNA sample obtained in breach of right under section 21 *New Zealand Bill of Rights Act* [unreasonable search and seizure] – applicant awarded damages of $2,500 – costs reserved.**

L was convicted of selling a Class C drug, and, in a "good faith" decision, the Police interpreted the law to mean that this was a "relevant [qualifying] offence" for which the Police were entitled to obtain a DNA buccal [oral] sample – a compulsion notice was issued to this effect and L had legal advice, however the notice expired and so a new notice was issued – the Police attended at L's family home to obtain the DNA sample – L gave them the sample while with the Police in the lounge of the family home after some discussion, which the Police maintained was "business-like" but L argued was "threatening" – L received documentation relating to the process from the Police at the visit – L subsequently applied for judicial review around issues of whether her rights under the *New Zealand Bill of Rights Act 1990* had been breached and whether she should receive damages for any such breach.

By consent, L's application for judicial review was heard in two parts – in the hearing of the first part L's sample was held to have been unlawfully obtained, because her original conviction was not a "relevant [or qualifying] offence" for which a databank compulsion notice could be issued – destruction of the DNA sample was ordered, and carried out – the second part of L's application for judicial review then proceeded as to whether there had been a breach of L's rights under the *New Zealand Bill of Rights Act* and whether any such breach could be remedied simply by a declaration, or whether L should be awarded damages – whether any such breach was "technical" – whether L had been subject to unreasonable search/seizure and/or unreasonable detention – applicable principles – consideration of case law and quantum of damages [if these were awarded].

Held: [after consideration of policy arguments and case law] a good faith error in issuing the notice "made because the law was difficult" is not a technical error of the kind contemplated [by case law] – the error was material – DNA sample obtained by compulsion when there was no lawful basis for doing so – [however an error in the description of the particular drug was held to be minor] – no unreasonable detention as Police were in L's home by agreement, L had previously received legal advice and was provided with documentation by the Police at her home – L's right to be secure from an unreasonable search and seizure was breached – declaration made that DNA sample obtained in breach of right under section 21 of the *New Zealand Bill of Rights Act* – "restrained" award of damages of $2,500 – costs reserved.

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

+ News from the Courts

Text message reminder service goes live in District Courts

A new text message reminder service is now available for those appearing in court, offering defendants the option to receive an automated text message the day before their district court hearing, reminding them of the date, time and location.

"Text reminders are commonplace for many sorts of appointments, from hospital to hairdressers, and this new service should help defendants by prompting them the day before they are due in court," says Justice Minister Amy Adams.

"District courts deal with hundreds of thousands of cases every year. While we've made significant strides in improving the scheduling of appearances and using judges' time and court facilities efficiently, it's pointless if defendants miss their appearances.

"Many criminal cases are cancelled because the defendant simply doesn't show up. This wastes the time of everyone in court, including the judge, lawyers, witnesses and victims, and draws out the time it takes for the case to be resolved. In addition to being inefficient, this increases stress on victims."

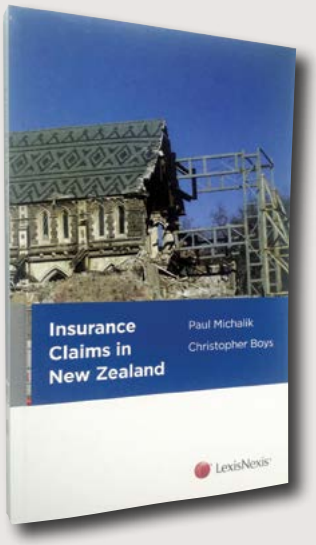
Currently there is a four to six per cent "no show" rate in case review, sentencing and judge-alone trial events. This results in more than 3500 court events being re-scheduled each year alongside the issue of 3500 arrest warrants for those who fail to attend court.

The new service is part of a wider strategy to modernise the courts and speed up the time taken for district court cases to reach a conclusion. It will initially be offered to criminal defendants with the intention to extend it to family and civil court users and disputes tribunal users in the near future.

Defendants can sign up for the text service at: http://www.justice.govt.nz/courts/district-court/text-message-reminders, by calling 0800 268 787 or in person at their nearest courthouse. LN

+ New book

Insurance Claims in New Zealand



Authors: Paul Michalik and Christopher Boys

Insurance Claims in New Zealand is a rigorous and complete presentation of the law relating to how insurance claims are made and assessed in New Zealand.

The authors examine issues arising at every level in the process, from determining the validity of the policy and resolving issues of coverage and exclusion, to assessing the quantum of the loss or damage to be paid.

This text is an indispensable resource for those working with and advising on insurance claims.

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 this book, 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.

Continued from page 2, "Therapeutic jurisprudence – not just for specialist courts?"

a solution to legal problems," he says.

"Lawyers who are well-informed and who understand that there may be other issues going on (whether relational or psychological) certainly have a role to play under the therapeutic jurisprudence approach – in working with clients, negotiating with officials in the legal system, and being part of any solution. It is more about 'co-collaborating' with clients to find a solution – rather than the lawyer simply taking the client's instructions and the client sitting there passively receiving advice.

"It's already happening in certain areas – therapeutic jurisprudence is really just feeding into the pattern of behaviour that engagement with the law should benefit people rather than leaving them feeling disenfranchised."

In the case of the much-discussed (and somewhat thorny) issue of self-represented litigants, Professor Brookbanks suggests that therapeutic jurisprudence can lend some insights to this "very difficult issue". "A great deal of grace and goodwill are needed in dealing with such litigants – the ability to represent yourself is a necessary right and if you choose to exercise it, so be it. However, it is not always done very well and we need to look at more effective mechanisms for managing it."

While no clear solution to this problem has emerged either in New Zealand or elsewhere, he again considers that a reduced role for lawyers is not the answer: "[It] may prove to be both counter-productive and anti-therapeutic and involve the creation of new sets of inefficiencies and stresses for justice officials to manage."

Moving forward

There is clearly a need for "realism" when considering how therapeutic jurisprudence methodologies and insights can impact on legal problem-solving in the various areas canvassed, and what kind of legal safeguards may be needed to ensure its appropriate operation within our legal system.

"Certainly the therapeutic jurisprudence model has been subject to critique," says Professor Brookbanks. He cites amongst the common concerns raised about therapeutic jurisprudence that it compromises the notion of the separation of powers, leads judges to become too proactive, and (in the case of problem-solving courts especially) that it can involve an element of coercion (for example if a guilty plea is required before an offender can be admitted to a court's therapeutic programme).

"You are always going to get the critics, and such criticisms do need to be seriously addressed," he says. "The point to remember about therapeutic jurisprudence though is that it is not a 'cure-all' – it is a 'menu of conceptual tools'. We want to educate people not to see this sort of thing as a threat. Therapeutic jurisprudence doesn't aim to subvert the rule of law or trump normative values but to supplement them, bringing to bear the best insights of social science and translate these to the legal system. It is feeding into a wider paradigm of experimentation within the legal system – looking at better options to achieve better results. It won't be appropriate in all domains but, even in those areas where we want a full adversarial process to operate, there may be room for more dialogue to be incorporated."

Therapeutic Jurisprudence: New Zealand Perspectives *was published in September 2015 by Thomson Reuters New Zealand (RRP: $86.00 + GST, ISBN: 9780864729521). It is available in paperback and also as an e-book. For more information, please visit the Thomson Reuters website at http://www.thomsonreuters.co.nz/therapeutic-jurisprudence-new-zealand-perspectives/productdetail/124519.* LN

Continued from page 3, "Cloud computing – access and lock-ins"

the time, so firms need to feel comfortable with reducing loads when appropriate, as much as they are with increasing them when needed.

Transferring Cloud providers – unwanted detention (lock-ins)

What happens when you need to move your data to another provider? A lack of industry standards has resulted in difficulties with "lock-ins" when transferring services from one Cloud service provider to another. Lock-ins can be boiled down to three main types, as follows :

- legal lock-ins, where the customer has signed up to a minimum-term contract which includes the provider's ability to increase prices (for a full discussion of contractual issues see Andrew Easterbrook's article in the 2014 special Technology & Law edition of *Law News*, Issue 25, 1 August 2014);
- proprietary lock-ins, where the system or functionality makes it difficult to move to a competing provider; and
- psychological lock-ins, where people feel that changing the provider will create problems. In this case, it is important to look at the migration terms – does the provider undertake to assist with migration and what charge is involved?

Each of these issues must be considered carefully when looking into a move to the Cloud and if proper time is taken to review these issues the firm can protect against problems later on.

Some packages have internal applications that are not open standard, resulting in difficulties of sharing information outside the provider's own Cloud service (for example such as Office 365's Outlook application). The lack of adoption of open standard platforms by many providers, not just Microsoft, causes considerable concern to Cloud service deployment, as "APIs" (application program interfaces) are usually proprietary and prevent easy transfer across platforms or mobile devices. This results in data being locked-in to the chosen Cloud service provider and software. Further, if a service is discontinued, firms may be unable to access the data at all.

Therefore, firms need to consider carefully if they will go with an open source standard for their Cloud provisioning which will largely depend on the software currently used within the firm and whether that software should be replaced if not compatible.

Once compatibility questions have been answered, the Cloud service provider's framework and what standard they provide can be evaluated.

These questions become even more important as we move into an age where sharing data to a mobile device has become almost a necessity for most businesses, so checking if your handheld devices can connect becomes an important consideration when choosing your Cloud service.

Other considerations include security and business continuity, including backup arrangements and knowing where your data resides, as these affect your rights and compliance obligations, as discussed in previous articles in this series.

Look out for the final article in this series, coming up in December. LN

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ADLSI CPD
Experts in accessible relevant legal learning

Featured CPD

Monday
16 November
2015
4pm – 6.15pm

2 CPD HOURS

Seminar Live stream

Buildings: Earthquake & Environmental Risk and Liability

This seminar will address: the Building (Earthquake-prone Buildings) Amendment Bill; legal and engineering perspectives on strengthening vs demolishing; and due diligence in respect of buildings.

Learning Outcomes:

- 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 buildings 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

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Tuesday
24 November
2015
4pm – 6.15pm

2 CPD HOURS

Seminar Live stream

Privilege: Boundaries and Beyond

Issues surrounding privilege can arise at any time, in any legal context, and even for the most experienced of practitioners. This seminar will provide greater clarity about this complex area, highlight the potential pitfalls and offer practical guidance for attendees.

Learning Outcomes:

- Gain a better understanding of the legislative context and its boundaries.
- From a review of recent case on law on the subject, gain a deeper understanding of legal advice privilege, litigation privilege and settlement negotiation privilege.
- Learn more about how privilege may be lost and acquire tips for preserving it.

Who should attend?

Litigators, general practitioners and in-house counsel of all levels of experience. Mediators and members of disciplinary tribunals may also benefit from attending.

Presenters: **Angela Goodwin**, Director, Goodwin Yallop; **Polly Pope**, Partner, Russell McVeagh

Chair: **The Honourable Justice Gilbert**

Wednesday
18 November
2015
12pm – 1pm

1 CPD HOUR

Webinar

Costs in Civil Cases: Maximising Recovery

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, with a focus on recent developments.

Learning Outcomes:

- Receive a refresher on the core principles regarding costs.
- Gain a deeper understanding of key issues in this area, such as security for costs, *Calderbank* offers and other grounds for increased costs awards, recovery of large disbursements including expert and electronic discovery invoices and the enforcement of contractual indemnity costs provisions.
- Become better apprised about how to approach these issues when seeking, or opposing, costs orders.

Who should attend?

Civil litigators, and commercial lawyers and in-house counsel who draft clauses regarding costs in the event of a dispute.

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

Thursday
26 November
2015
4.15pm – 6.30pm

2 CPD HOURS

Seminar Live stream

Voidable Preferences: Developments and Consequences

The insolvency industry and many lawyers were taken by surprise by a recent Supreme Court decision in the area of insolvent transactions. This seminar will address principles and policy, and provide perspectives and practical guidance.

Learning Outcomes:

- Gain a better understanding of the principles and policy behind the regime.
- Receive insight into key recent cases in this area, including *Hiway Stabilizers*, *Ross Asset Management*, *Timberworld* and *BB2*.
- Understand the issues for and challenges faced by receivers/liquidators, building contractors and other creditors.
- Become better equipped for advising clients who become, or might become, embroiled in insolvent transactions.

Who should attend?

Commercial litigators and transactional lawyers, general practitioners and in-house counsel at intermediate to senior level. Accountants, credit controllers, receivers/liquidators, and personnel in industries like construction may also benefit from attending.

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

CPD in Brief

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

Wednesday 2 December 2015, 12pm – 1pm

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. This webinar will be of interest to lawyers using, disputing or enforcing such clauses.

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

Webinar

Demystifying the Cloud: What It Means to You and Your Clients – 1 CPD hr

Wednesday 10 February 2016, 12pm – 1pm

Many businesses are, or are considering, procuring services that are offered "in the cloud". This webinar will assist lawyers who are intending to use cloud services within their own firms, and those with clients seeking advice on cloud services, to understand some of the key issues relating to the use of cloud services and their associated terms and conditions of use.

Presenters: **Edwin Lim**, Partner, Hudson Gavin Martin; **Anchali Anandanayagam**, Senior Associate, Hudson Gavin Martin

Webinar

Commercial Law Series: Shareholders' Agreements – A Shag for Every Purpose – 1 CPD hr

Wednesday 24 February 2016, 12pm – 1pm

When it comes to shareholders' agreements, one size does not fit all. There are several situations where shareholders' agreements are used, for different purposes and requiring different features. This webinar will compare and contrast the different types of agreement.

Presenters: **Andrew Simmonds**, Partner, Simmonds Stewart; **Julie Fowler**, Partner, Simmonds Stewart

Webinar

Preserving Assets: A Litigator's Armoury for Interim Relief – 2 CPD hrs

Tuesday 8 March 2016, 4pm – 6.15pm

There are various litigation measures available for preserving assets. This seminar will address those, including looking at how they interrelate and their respective advantages.

Presenters: **Seb Bisley**, Partner, Buddle Findlay; **James Nolen**, Partner, Lowndes

Seminar Live stream

CPD On Demand

Rural Law Series: The Ins and Outs of Rural Syndications – 1 CPD hr

As farms have grown in size, value and complexity, there has been a clear move away from family-owned enterprises to syndicated agricultural entities. Syndication has obvious advantages for farmers and investors alike but the process is complex and needs to be handled with care from start to finish. This On Demand webinar will discuss why farmers may want to syndicate in the first place and how the syndication process is managed.

Presenter: **Brett Gould**, Partner, Gibson Sheat

On Demand

Bankruptcy: Uses and Abuses – 1 CPD hr

Bankruptcy is a tool available to both debtors and creditors but it needs to be used carefully for the parties to obtain any real benefit. This On Demand webinar explores some of the key issues when advising debtors and creditors on bankruptcy, as well the Official Assignee's role in the proceedings.

Presenters: **Gareth Neil**, Partner, Meredith Connell; **Nick Moffatt**, Senior Associate, Bell Gully

On Demand

Commercial Law Series: Takeovers Code – Refresher & Update – 1 CPD hr

This On Demand webinar will equip you with information about key takeover issues.

Presenters: **Andrew Matthews**, Senior Associate, Simpson Grierson; **Joshua Pringle**, Senior Associate, Chapman Tripp

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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Please refer to deeds clerk. Please check your records and advise ADLSI if you hold a will or testamentary disposition for any of the following persons. If you do not reply within three weeks it will be assumed that you do not hold or have never held such a document.

Edwin Donald AMUNDSEN, late of 6 Cottonwood Place, Kawakawa Bay, Aged 57 (Died 15'10'2015)

Christopher Stephen DONAHOE, late of 17 Elam Street, Parnell, Auckland, Company Director, Aged 52 (Died 23'10'2015)

Belinda Kate EDWARDS, late of Auckland, Aged 43 (Died 20'09'2015)

Tracey Anne HUTTON, late of 19 Park Estate Road, Papakura, Auckland, Aged 51 (Died 12'09'2015)

Ronald David PEAKE, late of 5 Mirage Place, Beachhaven, Auckland, Retired, Aged 73 (Died 01'05'2015)

Akenese Vaoesea PEREIRA, late of 38 Dillon Crescent, Manukau, Auckland, Superannuitant, Aged 72 (Died 01'09'2007)

John Piuis PEREIRA, late of 38 Dillon Crescent, Manukau, Auckland, Superannuitant, Aged 83 (Died 20'01'2014)

Emma Adi Kosoluva ROBERTS, late of 459 Palmerston Road, Gisborne, Aged 68 (Died 01'10'2015)

Joseph SATHIASOTHY, late of 25 Court Crescent, Panmure, Auckland, Retired, Aged 67 (Died between 23'05'2015 and 24'05'2015)

Elena Catalina SIHLEANU, late of 3B Portage Road, Otahuhu, Auckland, Aged 45 (Died 09'03'2015)

Mervyn Te Whawhanga WILLIAMS, late of Whare Aroha Care, 1092 Hinemaru Street, Rotorua, Aged 57 (Died 11'06'2015)