

# LawNews

adls.org.nz

## LEGAL PRACTICE

# High performance culture in law practices

By Emily Morrow, Executive Consultant

When you watch the All Blacks play, you know you are watching a high performance team with a high performance culture.

The players move seamlessly, interacting with each other in a fluid and highly competent way and communication occurs accurately and in real time. And, of course, the All Blacks win more than their fair share of games so the bottom line is clear.

When you observe a group of lawyers practising together, the presence or absence of a high performance culture is less obvious. In fact, what does it mean to have a high performance culture in a law practice? As with the All Blacks, having a high performance culture can make all the difference in the success of a law practice. Having some understanding of what this means and how to achieve it matters.

I wish I could tell you in one or two sentences exactly what a high performance culture in a law practice means and how to achieve it. Sadly, that is not so simple to do. However, I have noticed certain approaches correlate with very success in the practice of law. The choices the lawyers (and other staff members) make in how they work and interact with each other are the critical factor. In such practices, the right things happen in the right way at the right time and are done by the right people. As with the All Blacks, there is a deceptively simple, seamless fluidity that results from a lot of hard work and consistent focus. I know it when I see it. Such practices have a high performance culture.

The benefits of a high performance culture are, however, obvious – profitable productivity, steady



ADLS held its first “Happy Hour” for young lawyers earlier this month at Meat Fish Wine restaurant at ADLS’ Chancery Chambers premises in Auckland. Pictured here are Ellen Harbidge (left) and Tom Gilchrist (right) of the Newly Suited Committee with Stephanie Cann (centre). The fact that so many young lawyers were willing to brave the rain spurred the Committee to make this event a regular feature over coming months. Additional photos and details of the next event can be found on page 7.

workflow, happy clients, high retention, high morale, successful teams, excellent communication internally and externally, great leadership, a stellar reputation and being an employer of choice, just to name a few. That said, how does a law practice make this happen?

### High performance culture – characteristics and choices

What I have noticed is that, in terms of cultivating and sustaining a high performance culture in a law practice, the lawyers interact with each other consistent with the following choices and attitudes:

♦ **Intention** - Intention is the active commitment to create a high performance culture and the fully conscious decision to choose ways to do so. Intentionality requires a consistent

alignment between what lawyers say and what they do. If, for example, a managing partner extols the virtues of collaboration but micro-manages and undermines solicitors’ self-confidence, this disconnect is inconsistent with the development of a high performance culture.

♦ **Identification** - Assuming there is real intention to create a high performance culture, then everyone must be able to identify what needs to be done to actualise that intention. This does not just happen; it requires discussion about how things will be done, who will do what, necessary resources and so forth. Unfortunately, conversations of this type rarely occur within law practices, if for no other reason than that they involve non-billable time. Firms

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# High performance culture in law practices

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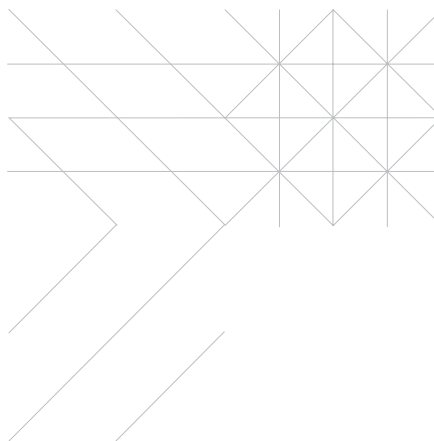
that accurately identify what needs to change to enhance their workplace culture invariably benefit from the process. Such discussions are often best done in the context of a partners' retreat or similar gathering devoted to this topic.

- ◇ **Centrality** - If a law practice commits to creating a high performance culture and has identified what needs to be done to achieve it, then everyone in the firm needs to make this a top priority and act on it. It needs to be a central, organising principle for the practice. Management and the partners will need to articulate a vision for the firm's culture, how that will be actualised and practical next steps.
- ◇ **Recasting** - Even in the most high-performing organisations, things go wrong. Law practices that choose to convert problems into opportunities, and to transform trauma into something important and a source of energy, weather setbacks most successfully. They recast problems into meaningful opportunities. For example, the unexpected death of a partner or a natural disaster can either cause a firm to implode or strengthen the working relationships amongst the partners. It's a choice, and it can make or break a firm.
- ◇ **Flexibility** - Those law practices that choose to approach their work by creating multiple scenarios and being open to new possibilities are more likely to develop a high performance culture. Conversely, rigid, brittle and inflexible thinking (particularly amongst senior lawyers) tends to correlate with low morale, high anxiety and diminished internal firm functioning. A significant "red flag" for me is when partners and management discount what non-partners think unless it aligns with the partners' perspectives. This almost always correlates with a low-performance culture.
- ◇ **Appreciation** - High performance culture correlates with a real focus on expressing appreciation when others do something that contributes to the overall wellbeing of the practice and the individuals within it. At the same time, the praise is honest and realistic, rather than disingenuous flattery. Everyone knows that others are paying attention to what is being achieved and giving constructive



Emily Morrow

✦ Although law practices with a high performance culture invariably do well financially, this tends to be less of a goal and more of a natural outcome. Such firms are employers of choice.



feedback about what is working well and what might need to change.

- ◇ **Generosity** - This is an interesting one. We all give money, time and energy to others, but often with the expectation that we will benefit from having done so. In a high performance culture, individuals are generous with their time, energy, creativity and other capabilities but they do so without an expectation that these actions will necessarily benefit them later. There is a real altruism in the way things happen. People do what will support the success of others because that is an integral part of the culture.
- ◇ **Accountability** - Accountability is the choice to assume full responsibility for your actions, thoughts and feelings and the refusal to blame others for things that are your responsibility. Accountability is important both at the individual level (that is, each individual knows "the buck stops with me in terms of what happens here"), and also at the organisational and leadership levels. However, there is a real difference between being fully accountable and assuming unnecessary blame for something that is not your responsibility. The former is commendable. The latter can be crippling. In a high performance culture, people understand the difference between these two, act accordingly and are more likely to take appropriate risks without the fear of being scapegoated. When things go well, you own that, and when things don't go well, you own that too, but you will have the opportunity to address the problem constructively.
- ◇ **Truthfulness** - Truthfulness is closely related to integrity and acting consistently with one's own personal and professional core values. It requires that individuals be honest with themselves and not engage in denial and self-delusion. As lawyers, we often formulate arguments to support our position in an adversarial context on behalf of our clients. However, if we use that same capability to justify things to ourselves and deny reality, the outcome can be problematic.

Although law practices with a high performance culture invariably do well financially, this tends to be less of a goal and more of a natural outcome.

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## LawNews

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## LAW AND TECHNOLOGY

# Analytics and e-discovery

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

With modern data collection and recording of information has come a dramatic rise in the volumes of documents that are potentially discoverable during trial.

However, the move to electronic data retention has had the unfortunate result of people being less organised in their filing. Even where an organisation has excellent data retention and filing policies, the sheer size of data now maintained can be in the hundreds of thousands of documents. Getting to the necessary evidence, finding the key documents and eliminating the irrelevant ones can be costly, as well as time-consuming.

It is estimated that Fortune 1000 corporations now spend an estimated US\$5-\$10 million annually on e-discovery, with several companies reporting in 2014 that the expenses were as high as US\$30 million. 70 per cent of these costs were attributed directly to the physical review of documents (see 2012 RAND study in further reading section at the end of this article). This equates to approximately US\$1.8 million per case or US\$18,000 a gigabyte.

To combat the financial and time costs, law firms around the globe have approached the problem using different techniques.

Some have tried data analytics to assist in sifting through the volumes of discovery. Using "scan and sort" techniques or collection by e-discovery, firms can approach large data volumes with analytic algorithms to collate and organise information into keywords or data sets based on the search parameters provided.

US companies have trialled a variety of alternatives to the use of outside law firms to mitigate these costs for review tasks, including engaging temporary attorneys or legal process outsourcing with stables of contract attorneys.

Unfortunately, given the rates currently paid to attorneys during such large-scale reviews, this approach has not been sufficient to curb the spending on discovery projects. Another option that has been explored in the US is outsourcing to English-speaking lawyers in countries such as India and the Philippines, with local attorneys to oversee the project. Although an outsourced team can cost much less than US counsel, issues of information security, oversight, maintaining attorney-client privilege and logistics have hampered the cost to benefit analysis of this approach.

The RAND study highlighted other inherent dangers in such approaches, ranging from inconsistency to missing vital information due to inexperience. The old adage seems to apply – no lawyer can know what they do not know and what is relevant until it is relevant. And while we have a range of assumptions that leads us to investigate



Lloyd Gallagher

❖ Machine learning is only as good as the initial set of instructions. The use of inexperienced counsel to set up the templates may result in relevant material being mis-filed.

❖

a particular trail, inexperienced counsel may not see what experienced counsel see, leading to vital information being missed. Furthermore, given the physical limitations of reading and comprehension, better organisation of the documents is not likely to correct the problem unless decisions about individual documents can be applied to dozens or hundreds of similar items on a routine collative basis. And although some document sets may lend themselves to bulk coding, it is unlikely that these techniques would foster significant improvements for most large-scale reviews. Let's face it, human reviewers are simply prone to inconsistency.

#### Is there a better way?

It is being argued in some quarters that predictive coding may have some answers. Predictive coding is a type of computer category review that classifies documents according to how well the document matches concepts and terms in sample documents. Using machine learning techniques to continually refine the computer's classifications with input from users (just as spam filters self-correct to increase the reliability of future decisions about email messages), predictive coding reviews documents to assess their connection to key terms or concepts.

However, before the computer can undertake the test for a given document, humans (i.e. lawyers) must initially examine samples of documents (although much less than the volumes to be assessed) from the review set and make determinations about whether they are relevant, responsive or privileged, and input the categories for the software to record.

Using that input data, the software assigns a score to each document in the review set. This will then be used as a template against which to contrast any future document in the actual review. If a document under review reaches the probability count for match from these desired characteristics, then it will be categorised and placed into the bundle categorised by the template. These can then be reviewed by lawyers as needed.

This approach has the advantage of drastically reducing costs in discovery by having the computer do the initial legwork to get documents in an easier order for litigation review.

#### Pitfalls to watch out for

Machine learning is only as good as the initial set of instructions. The use of inexperienced counsel to set up the templates (as described above) may result in relevant material being misfiled. Therefore, at the outset, experienced counsel must start the template review. It should be kept in mind that human review is still very much in play with predictive coding, and experienced counsel must make the judgement call as to what falls under the categories of relevance, privilege etc. Despite the cost of experienced counsel in this early stage, evidence still suggests that the reduction in person-hours required to review a large-scale document production will be considerable.

Even where experienced counsel are involved in the process, the template creator must be mindful of keywords and other forms of standard document collation. Most of the time, lawyers do not know in advance exactly which documents will be useful to a case. Traditional review strategies during the discovery phase of litigation often entail identifying search terms likely to locate responsive documents in the data set, known as keywords. These keywords are developed after researching the issues at hand and interviewing individuals and, while these keywords can be useful and help frame the review process, they have serious limitations when used alone.

Let us suppose that we suspect that a dishonest officer is expunging documents from a company database. How do we prove such activity? Often, the initial approach is to undertake a keyword search of log files and other reporting documentation, with the keyword search terms of "delete", "erase" or "kill". A search of this type, while it may prove useful at the outset, is limited to those specific terms. If the criminal is devious, erasure will take other forms, and such obvious terms are not the only ones available to remove data. This makes using traditional keyword methods to find the

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**WOMEN IN THE LAW**

# 2017 AWLA President's evening

High Court Judge and former partner at Russell McVeagh, the Hon Justice Sally Fitzgerald, was this year's guest speaker at the AWLA President's function.

The evening is always a popular annual event for women lawyers in Auckland, and was held earlier this month with the support of ADLS on the rooftop of its Chancery Chambers building. Attendees were treated to some insightful, honest and inspirational comments from Justice Fitzgerald based on her experiences and her efforts while in practice towards achieving better gender parity.

Barrister Janna McGuigan, recently appointed as AWLA's President, also spoke outlining AWLA's focus for 2017 – helping each woman lawyer to "Know Her Worth". As part of this, the organisation's goals for 2017 include:

- ◆ Encouraging all firms, large and small, to actively measure pay by gender, and to take steps to ensure that gender bias does not affect salary decision-making. Research shows that the pay gap between men

and women lawyers begins as early as the second year of practice. In response to demand, AWLA will be re-running a session on salary and flexible working negotiations in May 2017.

- ◆ AWLA considers that it is time that the NZBA's equitable briefing policy becomes compulsory. It will therefore be advocating in 2017 for the Government and other large clients to prefer firms which demonstrate a real and measurable commitment to equal opportunities for women, and will look to collaborate on areas where women are traditionally under-represented as advocates, especially commercial litigation.
- ◆ Issuing a report outlining the diversity initiatives implemented by large New Zealand firms. At the end of last year, AWLA had a wonderful response from many large and medium-sized firms about the diversity initiatives they have successfully implemented, and that data is now being prepared and collated into a public report. AWLA wants to establish a data series which can be re-run in future years to measure the success of such initiatives against firms' partnership numbers by gender. AWLA believes this will allow its members to accurately value flexible work and parental leave offers. ❖



Janna McGuigan, the Hon Justice Sally Fitzgerald and Alicia Murray



Stephanie Nicolson, Maria Cole and Barbara Versfelt



Miriam Dean QC and Jenny Cooper



Joanna Pidgeon and Jody Foster



Olivia Manning, Alexandra Lambert and Louise Reed



Alanah Harrison, Rochelle Munro and Kate von Biel

## EMPLOYMENT LAW

# “Zero hour” approaches on new employment standards

By Tony Herring, Partner, Mortlock McCormack Law, Christchurch, member of ADLS' Employment Law Committee and ADLS Council Member

The 2016 *Employment Relations Amendment Act* was a Government response to growing public concern regarding “zero hour contracts”.

These employment agreements did not have to guarantee any hours of work, yet could require employees to be available. The amendments currently apply to all employment agreements signed after 1 April 2016. Agreements signed prior to this date must comply with the amendments by 1 April this year, leaving employers with little time to review their employment agreements and practices. Employers who do not do so risk finding that their employment agreements are unenforceable, potentially resulting in personal grievance claims and heavy fines.

## Availability provisions

Where an employee and an employer agree to a set number of hours, this must be specified in the employee's employment agreement. An availability provision allows for an employee to work additional hours at the employer's request, and must set out how many hours or for what period the employee is required to be available. In order for an availability clause to be enforceable, two requirements must be satisfied:

- ♦ *Genuine reasons on reasonable grounds* - The employer must have genuine reasons based on genuine grounds for including the availability provision, and the number of hours provided for. These genuine reasons may include situations where business demands cannot be performed by the employee without the availability provision. Employers must also have regard to the number of hours an employee must be available and the ratio of guaranteed hours to available hours.
- ♦ *Reasonable compensation* - Availability provisions must also provide for the payment of reasonable compensation to the employee for making themselves available to perform work under the provision. This compensation must be paid whether or not the employer makes work available to the employee. When determining what level of compensation should be offered, employers must have regard to the number of hours an employee is required to be available, the nature of any restrictions on employees that result from ensuring their availability, their salary, and the rate of payment for any additional hours worked.

Where an employer does not provide reasonable compensation in exchange for availability, an employee may refuse any work additional to their guaranteed hours. Employers cannot discriminate against employees who turn down available work. This may place employers who wish to offer promotions, training, or other benefits to employees who commit to additional hours in a difficult legal position.

## Secondary employment and shift cancellation

Clauses which prevent employees from taking up secondary employment are now only valid where their employer has a genuine reason based on reasonable grounds to include the clause. These reasons may relate to the protection of sensitive information, intellectual property rights, commercial reputation, or managing a conflict of interest. They must be set out in the employment agreement. This will require many employers to amend their standard clauses.

Shift workers will also be entitled to new protections from April. Employers must not cancel the shift of an employee unless their employment agreement sets out a reasonable period of notice that must be given. Reasonable compensation must be paid where that reasonable period of notice is not provided.

## Complying with the new standards

The meanings of “reasonable grounds”, “genuine reasons” and “reasonable compensation” are uncertain. A test case between Unite Union and McDonalds is due to be heard by the Employment Court shortly. This relates to whether a clause requiring employees to advise of their availability to be rostered qualifies as an availability provision.

Employers should be advised to review their employment agreements to ensure that any clauses regarding additional hours, secondary employment and shift work are based on genuine reasons, reasonable grounds, and provide for compensation where necessary. As terms of employment cannot be varied unilaterally, employees should be consulted with and approve any alterations.



Tony Herring

## NEW BOOK

# Wrongful Allegations of Sexual and Child Abuse

**Author:** Ros Burnett

*Wrongful Allegations of Sexual and Child Abuse* fills a gap for an authoritative and considered text focused on false accusations of recent or historical abuse, both as a miscarriage of justice and as an ordeal which impairs lives, even when it does not result in criminal charges.

It brings together experts from different disciplinary backgrounds and relevant specialisms to explicate the context, causes and processes that foster erroneous or fabricated allegations and to consider ways of reducing their incidence and the injustices that follow them.

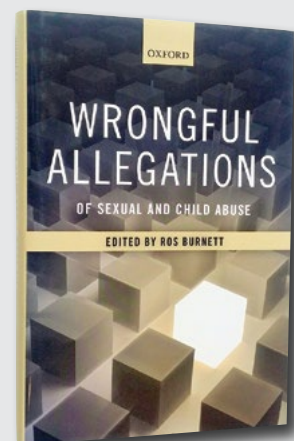
(Please note, this is a UK text and not specific to New Zealand.)

**Price:** \$192.63 plus GST (\$221.52 incl. GST)\*

**Price for ADLS Members:** \$173.37 plus GST (\$199.37 incl. GST)\*

(\* + Postage and packaging)

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CASE SUMMARY

# Clear Whyte Investments Limited v Otis Trustee Limited [2017] NZHC 344 (Heath J)

Prepared by Sacha Jugum, Editor of ADLS' Bulletin

Application to discharge consent order which followed judicial order removing caveat from land - appeal against order removing caveat from land - applicable principles - relevance of a consent order - whether appropriate to disturb consent order - prejudice - interests of justice - consent order set aside on the basis of certain undertakings and arrangements [thus enabling the caveat to be discharged].

(Note some memoranda were filed by the parties post-hearing as referred to in the summary below.)

**Facts:** [in broad summary] C lodged a caveat against land owned by O, framed around a claimed constructive trust - the parties had fallen into dispute and the substantive dispute had a future hearing date - in the meantime, O had applied to remove C's caveat and the Court agreed, finding that C did not have a caveatable interest over the land and could "only hope" for monetary relief if the substantive dispute was resolved in its favour.

C appealed this judgment, however the parties then discussed matters, agreed to seek the Fast Track for the appeal, and agreed that on that basis the caveat would remain in place in the meantime [effectively, by consent, obtaining a judicial order "staying" the judicial order that had been made for removal of the caveat] - the Court did not place the appeal on the Fast Track - this meant that the appeal would be heard after the substantive matter, and so O applied to set aside the consent order - if allowed, this would have the effect of removing the caveat.

Applicable principles - policy around consent orders - consideration of precise orders made - whether O should be permitted to revisit the consent order - jurisdiction - detailed consideration of case law - consideration of potential prejudice to the parties and the background to the dispute - consideration of the interests of justice - judicial commentary on the parties' positions if, for example, they were placed back in the same position they had been in immediately before the consent order - analysis of effects of increases or changes in value of the land in question given the nature of the land and the purpose of the related transactions - consideration of memoranda from the parties [after the hearing, and after discussion] and the terms upon which an arrangement might be consented to.

**Held:** this responsible approach has removed any residual concerns held by [his Honour] about making the order sought - an undertaking is to

be filed as referred to in the memoranda and once that is filed the [stay/consent] order is set aside - when that order is sealed O will be able to take steps to remove the caveat [see case for details of the undertakings and arrangements between the parties] - O awarded costs on a 2B basis.

A PDF of this case is available from the Judicial Decisions Online section of the Ministry of Justice website - <https://forms.justice.govt.nz/jdo/Introduction.jsp> ✕

## ADLS CPD

# Leading Your Career

Exclusively for women lawyers with 6+ years' experience

Wednesday  
12 April 2017  
9.00am - 5.00pm

Norman Shieff Room  
Chancery Chambers

8 CPD hours

New year, new you? Take charge of your career and realise your underlying potential. This practical, interactive one-day workshop, led by one of New Zealand's top female lawyers and one of New Zealand's top leadership experts, will arm you with resources, self-confidence and focus to apply immediately to your role and to enhance your future career.

### Learning outcomes

- Gain a real understanding of your personal values.
- Better understand your behavioural style, how to 'read' others and how to adapt your style to increase your influence.
- Gain insights into how to take responsibility for driving your career and how to challenge undermining self-talk that erodes self-confidence.
- Gain clarity about your career purpose and create a clear career vision.
- Develop your 'brand proposition' - the reputation needed to realise your career vision.

### Facilitators

Miriam Dean QC  
Andrea Thompson, Director,  
Catapult Leadership Training

### Who should attend?

Exclusively for women lawyers with 6+ years' experience

### Resources

Comprehensive DISC, behavioural styles profile, workbook and articles

### Cost

\$725 (excl GST) to include behavioural styles profile and other resources

« I participated in a very similar workshop myself six or seven years ago. It came home to me then how much that workshop would have helped me if I had done it years earlier.

» Miriam Dean QC



Miriam Dean QC

Places are limited - register now to avoid missing out.

To register visit: [adls.org.nz/cpd/cpd-calendar](https://adls.org.nz/cpd/cpd-calendar) • email: [cpd@adls.org.nz](mailto:cpd@adls.org.nz) • ph: 09 303 5278

## TRIBUTE

## Roland Patrick (Pat) Towle

ADLS and *LawNews* are sad to advise that prominent Auckland lawyer, Roland Patrick Towle, died in Auckland on 22 March 2017, aged 92.

Mr Towle was a partner in the old firm Towle and Cooper, which later morphed into the national firm Brandon Brookfield (now Brookfields). Mr Towle was the first Master of the High Court (now called Associate Judges) when he was appointed to the role in the late 1980s. He also had over 15 years in the British Colonial Service in Uganda, before returning to practise in New Zealand in the early 1960s.

Mr Towle's funeral was held on Wednesday 29 March 2017 at St Mark's Anglican Church in Remuera, Auckland. ADLS and *LawNews* extend our sympathies to his family at this time. ❖



## ADLS EVENT REVIEW, YOUNG LAWYERS

## A new reason to get together – ADLS' first “Happy Hour” for young lawyers

ADLS' Young Lawyers' “Happy Hour” event kicked off in style at Meat Fish Wine on Friday 10 March 2017.

Despite the rainy conditions in the Auckland CBD, young practitioners turned out for a sociable, casual evening of networking and nibbles. A prize was also up for grabs of a voucher for a meal at Meat Fish Wine.

“We were very pleased to catch up with many of our newly suited lawyers, despite the horrible weather,” says Ellen Harbidge, Associate at Smith

and Partners and Convenor of ADLS' Newly Suited Committee. “We look forward to making this a regular event.”

Thank you to MAS for sponsoring this event.

*Due to the popularity of this event, ADLS will be holding regular “Happy Hour” evenings throughout the year. See below for details of the next event and keep an eye on our website during the year: [www.adls.org.nz](http://www.adls.org.nz).*



## ADLS EVENT

## Next Young Lawyers' “Happy Hour” at Meat Fish Wine

The ADLS Newly Suited Committee will be hosting another Young Lawyers' “Happy Hour” evening in April at Meat Fish Wine.

Young lawyers in Auckland are invited to join us at Meat Fish Wine (on the ground floor of Chancery Chambers) on **Friday 7 April from 5:30pm-7pm** for discounted beer and wine, \$10 cocktails and some tasty platters. Plus there's a business card draw to win a Meat Fish Wine lunch voucher for two!

Please note this is a cash bar event. Complimentary platters will be provided as part of the evening.

Register by emailing [adls.events@adls.org.nz](mailto:adls.events@adls.org.nz) to confirm your attendance. We look forward to seeing you there. ❖



**Featured CPD**

**Enduring Powers of Attorney: Changes and Expectations - FINAL NOTICE**

Enduring Powers of Attorney are a very useful tool to address issues of management of property and capacity. Yet all too often they do not deliver the anticipated result. This webinar, looking at recent legislative changes and the implications of case law, will provide tips on drafting effective EPAs and insights into the briefing of both the donor and attorney on expectations and behaviour.

**Learning Outcomes:**

- Learn more about the effect of new legislation on the way in which EPAs are drafted and some of the problems that may arise in practice with the online forms as well as requirements for the witnessing of donor signatures, revocation and certificates of capacity.
- Gain a better understanding of how attorneys should conduct themselves, particularly in light of relevant case law and the importance of considered and careful drafting to ensure this.
- Receive insights into how best to advise clients on the appointment of attorneys and how to advise attorneys themselves on their role and responsibilities.

**Who should attend?**

General practitioners, family lawyers and other lawyers and legal executives who prepare EPAs, act as attorneys or who encounter EPAs as part of their practice.

**Mental Health Issues and Sentencing: Options and Dilemmas - FINAL NOTICE**

The complexities of sentencing are only added to when mental health issues are at play. This webinar will consider some of the issues that may arise including the taking of instructions and how lawyers may best represent their clients both in terms of the Sentencing Act 2002 and the Criminal Procedure (Mentally Impaired Persons) Act 2003.

**Learning Outcomes:**

- Learn more about the range of mental disorders that may occur, how these can affect sentencing and what the Courts require from lawyers to establish the existence of these disorders.
- Understand better the relevance to sentencing of youth and culture as well as the involvement of those such as the police, forensic nurses and families in the sentencing process.
- Gain further insights into when it is advisable to proceed in terms of the Criminal Procedure (Mentally Impaired Persons) Act 2003 and the real possibility of a client being detained as a special patient.

**Who should attend?**

All criminal lawyers who may have clients suffering from mental health issues; it may also be of interest to litigators involved with family, immigration and youth matters.

**Non-Party Disclosure: Potentially a Powerful Tool**

Non-party disclosure can be a powerful tool in a Criminal lawyer's armoury, but it is used less often than it could, or should, be. This seminar will explore the ins and outs of the application, including the legal basis, timing, procedure, hearing, outcome, utility and key case law. *With non-party, prosecution and defence perspectives and judicial insights, this session is a must-attend for all Criminal practitioners including youth advocates.*

**Learning Outcomes:**

- Receive guidance on when and how non-party disclosure can be pursued.
- Gain a better understanding of the need for and definition of 'relevance' in relation to an application, and implications for the Court/progression of a case.
- Gain insights into the use of non-party disclosure by the Police and the Crown's position on defence applications.
- Receive practical guidance on how defence can use the information once disclosure is obtained/ implications for case preparation.

**Who should attend?**

All those practising in Criminal law including youth advocates.

**Connecting People and Parliament: How Lawyers Can Engage with the Legislature**

Knowledge of the key stages of the legislative process enables lawyers to better serve their clients and advocate more effectively. Select Committees are parliamentary institutions that play a pivotal role in the passage of legislation, particularly in our unicameral system. They undertake detailed scrutiny work on a range of different matters and report their findings to the House of Representatives. It is the point in the legislative process when lawyers can influence and assist clients by making effective submissions.

**Learning Outcomes:**

By the end of the webinar, participants will be able to:

- Explain the functions of Parliament and the role that select committees play.
- Discuss the Select Committee process and how committees engage with the public.
- Outline the ways people can engage with Parliament and its committees, including how to access information and make effective submissions.
- Identify the various stages of a bill throughout its lifecycle.

**Who should attend?**

A refresher for any lawyer wanting an update on the legislative process and for lawyers who wish to make submissions on or influence the content of legislation.

**Webinar**

CPD 1 hr

**Thur, 6 Apr**

12pm – 1pm

**Presenters**

Mary Joy Simpson,  
Partner, Hesketh Henry

Israel Vaealiki,  
Partner, Jackson Russell

**Webinar**

CPD 1 hr

**Wed, 5 Apr**

1pm – 2pm

**Presenters**

His Honour Judge Recordon

Justin Harder,  
Barrister, Sentinel Chambers

**Seminar @ Livestream**

CPD 2 hrs

**Tue, 11 Apr**

4pm – 6.15pm

**Presenters**

Chris Holdaway, Senior Solicitor,  
Ministry of Social Development

Gareth Kayes, Director,  
Kayes Fletcher Walker Limited

Belinda Sellars, Barrister,  
22 Lorne Chambers

**Chair**

His Honour Judge Hinton

**Webinar**

CPD 1 hr

**Wed, 17 May**

12pm – 1pm

**Presenter**

Wendy Hart, Manager,  
Select Committee Services



## CPD in Brief

### Understanding Fiduciary Relationships

The importance of fiduciary relationships in the legal context cannot be overestimated. They pervade numerous areas of law and yet their exact nature is often misunderstood. The implications of breaching fiduciary duties and obligations and the possible defences available are also not always clear. This webinar will cover these and other aspects of fiduciary relationships with a focus on their relevance to legal practitioners.

**Presenters:** Matthew Atkinson, Partner, Fee Langstone; Tim Mackenzie, Barrister, Canterbury Chambers

#### Webinar

CPD 1.25 hrs

Wed, 24 May

12pm – 1.15pm

### Leading Your Career Workshop - Exclusively for Women Lawyers with 6+ years' PQE

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*This workshop is normally only available as an in-house programme for law firms. Places are limited. Register now to avoid missing out.*

**Presenters:** Miriam Dean QC; Andrea Thompson, Director, Catapult Leadership Training

#### Workshop

CPD 8 hrs

Wed, 12 Apr

9am – 5pm

### Anti-Money Laundering for Lawyers: Time to Get Ready

Anti-money laundering legislation applicable to lawyers is very much a reality. While aspects of the relevant legislation are still to be refined, there is much that practitioners can and should do now to prepare themselves for it. This webinar will provide valuable insights into what is likely to be expected of lawyers under the legislation, why they should make best use of the lead-in period to prepare themselves for it and what can be done now.

**Presenters:** Gary Hughes, Barrister, Akarana Chambers; Fiona Hall, Barrister and Solicitor

#### Webinar

CPD 1.25 hrs

Wed, 31 May

12pm – 1.15pm

## CPD On Demand

### Criminal Law Pot Pourri

For those practising in Criminal law, this On Demand seminar explores four important topics:

- Prosecution disclosure update;
- Regulatory investigations and prosecutions;
- Land Transport Act 1998 sentencing issues (including the forthcoming compulsory Interlock Requirements); and
- Difficulties that can arise with witnesses and evidence.

**Presenters:** Paul Borich, Barrister; James Cairney, Associate, Meredith Connell; Steve Cullen, Barrister; Adam Pell, Principal Prosecutor, New Zealand Police; John Munro, Barrister

**Chair:** Guyon Foley, Barrister

#### On Demand

CPD 2 hrs

### Employment & Privacy: Easing the Relationship

The interface between privacy and employment law is often a difficult one. Technology, the choice of forum and the disclosure of information are all relevant. This On Demand webinar looks at a variety of problematic situations where these areas of law meet and offers pragmatic advice on dealing with those situations.

**Presenters:** Helen Gilbert, Barrister; Katrine Evans, Senior Associate, Hayman Lawyers

#### On Demand

CPD 1 hr

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Webinar (1 hr)	\$75.00 + GST (= \$86.25 incl. GST)	\$95.00 + GST (= \$109.25 incl. GST)
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On Demand (1-hour recording)	\$85.00 + GST (= \$97.75 incl. GST)	\$110.00 + GST (= \$126.50 incl. GST)
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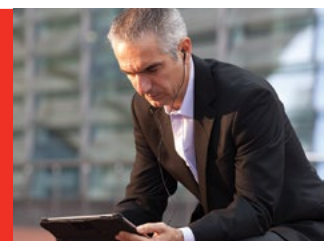


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## Checklist for assessing the suitability of addresses for electronically-monitored bail and home detention

Late last year (see *LawNews* Issue 32, 16 September 2016) ADLS' Criminal Law Committee updated practitioners on recent changes to electronically-monitored bail, caused by undue delays and undesirable adjournments experienced by the courts when electronically-monitored addresses are deemed unsuitable for various reasons. This has meant that applications have to be deferred while the suitability of alternative addresses is explored.

Committee Convenor Marie Dyrberg QC reports that there are ongoing concerns that the checklist below is not being referred to by counsel when applying for electronic monitoring for bail or sentences. The judiciary is accordingly requesting that counsel ensure they use the below checklist to obtain sufficient information for Corrections to check addresses and avoid delays.

Counsel are asked to take full instructions in relation to the property settings and conditions of two potential addresses and indicate the order of preference for the addresses. Counsel can assist clients, the Court and Corrections by taking full instructions on the suitability or otherwise of any addresses provided by clients prior to providing addresses for Corrections.

The checklist below will assist in eliminating, from the outset, any addresses that will inevitably be deemed unsuitable. This will avoid the necessity of remanding clients in custody while sorting out suitable addresses for electronically-monitored bail and sentencing.

Corrections advises there are a number of factors which can affect the suitability of the address. While the previous restriction of 50 kilometres or one hour from a Community Probation site no longer exists, there are a number of other factors which will impact on its decision to recommend an electronically-monitored sentence or bail.

### Checklist

To assess whether a residence is suitable, the following list provides the kind of considerations taken into account in any assessment:

- ◇ What is the address? (Give a description of the residence and property, such as house, apartment, caravan, sleepout, fenced outdoor area.)

- ◇ Does the defendant have their own bedroom? (If community detention, this may be dependent on the time of the curfews.)
- ◇ Does the property have running water, electricity and adequate heating?
- ◇ Are there any significant health or safety problems identified? With home detention, is the residence of the type where a person could reasonably live for a period of time without leaving? (If it is not, such as a caravan, the residence may be deemed unsuitable.)
- ◇ Is the proposed accommodation rented or leased? If so, ascertain the length of the rental period/lease. Request that the occupants confirm that there is nothing in their lease/rental agreement that may preclude the offender from being at the address while subject to home detention.
- ◇ What is the location of the residence in relation to support services, major shopping centres, and public transport? (This is especially relevant if considering home detention for a defendant who intends to reside by themselves as they may require absences to complete grocery shopping.)
- ◇ Is there any other information relevant to the residence that may present a risk in terms of the successful completion of home detention (such as schools, hotels, proximity to victim)? Are there any access issues?
- ◇ Are there any issues regarding the occupants of the address that would compromise home detention?

### Mandatory considerations

Mandatory considerations include that the address must be accessible at all times. A property that requires a 4WD vehicle to access it is not suitable for electronic monitoring. The address must have mobile phone coverage to allow the field officer to call out. This can be ascertained by completing an onsite feasibility check. Any dogs on the property must be secured at all times.

### Addresses with multiple occupants

Addresses with multiple occupants with shared facilities, for example boarding houses and backpackers, are considered unsuitable due to the lack of supervision with close proximity to and transience of the other occupants. Some residences with multiple occupants may be assessed as suitable due to the supervision and oversight provided by the residence and the more stable resident population. A residential treatment facility or rest home may be assessed as suitable in these circumstances.

*The Committee urges counsel to take full instructions and to be prepared to offer Corrections details of suitable addresses prior to making application for electronic monitoring.* ❌

### Continued from page 2, "High performance culture in law practices"

Such firms are employers of choice, regardless of whether they are located in major urban centres or in smaller towns. They routinely get recognised for excellence and innovation. They are the real stars, but they do not take it for granted.

Interestingly, the research on happiness and wellbeing has confirmed that many of the same characteristics and choices associated with happiness also correlate with high performance organisational culture. For example, in the book *How We Choose to be Happy*, Rick Foster and Greg Hicks identify similar choices that the happiest individuals make personally and professionally. It is fair to say that, in addition to being highly profitable and productive, law practices with a high performance culture also are just plain happier places to be. I also suspect that health outcomes in such practices are also likely to be better (in terms of fewer sick days, lower absenteeism, reduced stress-related ailments, less depression, lower substance abuse rates etc). Unsurprisingly, virtue often is its own reward.

Achieving a high performance culture within your law practice is a journey, not

a destination. You never fully arrive but you will know if you are on the right track. An important first step is to have the intention to create such a culture and begin to discuss how your practice might achieve it. If leadership and management have a shared vision for what a high performance culture can mean in the context of a particular practice, they can make it happen. I know – I have seen it happen.

**Emily Morrow**, BA (Hons), JD (Hons, Juris Doctor), was a lawyer and senior partner with a large firm in Vermont where she built a premier trusts, estates and tax practice. Having lived and worked in Sydney and Vermont, she now resides in Auckland and provides tailored consulting services for lawyers, barristers, in-house counsel, law firms and barristers' chambers focusing on non-technical skills that correlate with professional success: business development, communication, delegation, self presentation, leadership, team building/management and strategic planning. Emily Morrow is a skilled and experienced retreat facilitator for law practices. She can be reached at [www.emilymorrow.com](http://www.emilymorrow.com). ❌

**Continued from page 3, "Analytics and e-discovery"**

incriminating pattern in data difficult, if not impossible.

When faced with e-discovery, the difficulties for counsel are increased, as traditional text-based e-discovery searches limit what can be uncovered. For example, in the famous Enron dataset, rich and diverse "white noise" was introduced into datasets. Enron executives used many code words, such as *Star Wars* references, to disguise illegal activities that could have provided attorneys with a range of material for a range of crimes and misdemeanours, if they had known how Enron executives had coded their datasets. But what reasonable attorney would have thought to use "Millennium Falcon" or "Chewbacca" in a keyword search of an energy company's transactions? The use of predictive coding, however, can recognise patterns and alert attorneys to possibly relevant documents, even where there is a seemingly inexplicable and random use of words and phrases.

**Cost of technology and realistic approaches for the small firm**

The cost of technology is no longer a barrier for the small practitioner who sees the big cases as being beyond their reach due to the cost of discovery. New technologies and systems are paving the way for the small firm to compete. The emergence of data analytics and visualisation software and inexpensive VR technology can help lawyers organise and analyse mountains of data in new and different ways. These analysers are designed to reveal trends and focus a legal team's review efforts, creating efficiency in time and effort. A smaller team can now use visualisations and dashboards to accelerate the discovery of key facts in a timely fashion, without a mountain of lawyers wading through paperwork. The benefits of a more level playing field allow litigants greater choice in their representation.

New technologies have a range of positives as we move into the modern world of large datasets and complex litigation. Small and large firms alike will find them a welcome assistant in the new face of litigation and discovery in the future.

**Further reading:**

- ♦ *RAND Study 2012* [http://www.rand.org/content/dam/rand/pubs/monographs/2012/RAND\\_MG1208.pdf](http://www.rand.org/content/dam/rand/pubs/monographs/2012/RAND_MG1208.pdf)
- ♦ *KPMG cost benefit analysis* <https://www.kpmg.com/US/en/IssuesAndInsights/ArticlesPublications/Documents/revolution-in-ediscovery.pdf>
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- ♦ *Analytical software example* <http://www.ftitechnology.com/ringtail-ediscovery-software/visual-analytics>
- ♦ <https://www.7safe.com/digital-investigation-services/ediscovery/relativity>
- ♦ <https://blogs.office.com/2015/05/21/analyze-office-365-data-with-equivio-zoom/> ❌



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**Wills**

Please refer to deeds clerk. Please check your records and advise ADLS 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.

John BOOTH, Late of 14A View Road, Hikurangi, Whangarei, Retired, Aged 75 (Died 13'03'17)

Richard Togiatoa IKINOFO aka Richard Togo IKINOFO, Late of 36 King Street, Grey Lynn, Auckland, Aged 38 (Died 03'06'00)

Kevin John KENNEDY, Late of 24 Rushden Terrace, Red Beach, Auckland, Married, Company Director, Aged 60 (Died 21'02'17).  
(This will may be held with Susan Elizabeth Kennedy's will.)

Dipakbhai Morarbhai PATEL aka Dipak Bhai PATEL aka Dipak PATEL, Late of 423 Don Buck Road, Massey, Auckland, Company Director, Aged 46 (Died 18'02'16)

Bernadette Pare Te Aroha REHA-KAWENGA, Late of 88 Riverpark Crescent, Henderson, Auckland, Caregiver, Aged 51 (Died 07'01'17)

Abhishek SONKESHARIYA, Late of A203/130 Anzac Street, Takapuna, Auckland, Aged 34 (Died 20'03'17)

Henry WALTERS, Late of 63 Buckland Road, Mangere, Auckland, Married, Retired, Aged 80 (Died 15'12'16)

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**Christchurch:**  
Thursday 11 May

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## Topics & Presenters

### How to Make Sense of the Latest Confusion about Trusts

Anthony Grant, Barrister, Radcliffe Chambers

### Navigating the Uncertainties: What is Happening at the Court Coalface?

Vanessa Bruton QC

### The Draft Trusts Bill: The Implications for Drafting and Practice

Greg Kelly, Principal, Greg Kelly Law Ltd

### Guardianship: What Does it Mean?

Brian Carter, Barrister, Bastion Chambers

### PPRA EPOAs: A Practical Approach

Sandra Grant, Barrister, Shortland Chambers

### An Introduction to FATCA and CRS

Henry Brandts-Giesen, Senior Associate, Kensington Swan (Auckland)

### Practical Implications of the New Exchange of Information and Tax Transparency Environment

Denham Martin, Lawyer

### Widows and Stepchildren - Resolving Competing Claims under the PRA and FPA against Surviving Executors

Kevin Muir, Litigation Partner, Morgan Coakle Lawyers

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