



ADLSI

Independent Voice of Law

LAWNEWS THIS ISSUE:

Anti-money laundering – “the devil is in the detail”
Ashburton WINZ case – steps, hazards and barriers
What you need to know when interacting with
Auckland District Courts

LAWNEWS

ISSUE 39 4 NOVEMBER 2016

www.adls.org.nz

+ *Anti-money laundering*

COMING
TO AN
ACCOUNTANT,
LAWYER, AND
REAL ESTATE
AGENT NEAR
YOU ...

*By Craig Fisher, Audit Partner and Chairman,
and Kumar Aravinda, Audit Partner, RSM*

Combatting money laundering and financing of terrorism is an increasingly big issue internationally. As part of the global community this also increasingly impacts New Zealand. Accordingly, our Ministry of Justice is proposing to implement phase two of the *Anti-Money Laundering and Countering Financing of Terrorism Act* regime.

So what is the issue, who will be impacted, and what will this mean in New Zealand?

The issue internationally

Money laundering, the process of allowing criminals to hide or “clean” the proceeds of their illegal activities, and terrorist financing are significant problems worldwide. Money laundering is a scourge on our society and includes the illegal proceeds of crime such as drug trafficking, illegal arms trading, fraud, bribery, extortion, alien smuggling, tax evasion, piracy, forgery, embezzlement etc.

To get an idea of the scale of the issue, and



Practitioners from across the Central West Auckland area had the chance to catch up at ADLSI's Central West Auckland Lawyers' Lunch late last month. For more photos from this event, please turn to page 5.

looking just at money laundering, the International Monetary Fund (IMF) estimates that between three and five per cent of global GDP is laundered annually. That equates to somewhere between US\$2.2 and US\$3.7 trillion – a staggering amount.

In New Zealand, it has been estimated that

money laundering involves somewhere in the region of \$1.5 billion annually. However, given the very nature of money laundering and our limited systems in place to control it, this is just an estimate. It could be significantly more.

New Zealand is one of the 37 member countries
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COMING TO AN ACCOUNTANT, LAWYER, AND REAL ESTATE AGENT NEAR YOU ...

Continued from page 1

of the Financial Action Task Force (FATF) which is an inter-governmental body established in 1989. It sets standards and promotes effective implementation of legal, regulatory and operational measures for combatting money laundering, terrorist financing and other related threats to the integrity of the international financial system. As a result, most member countries now have anti-money laundering/ countering financing of terrorism (AML/CFT) legislation and regimes and this led to our initial AML/CFT legislation being put in place back in 2009.

The current situation in New Zealand

Amongst its peers, New Zealand has been quite slow at coming to this particular party. Phase one of the *Anti-Money Laundering and Countering Financing of Terrorism Act 2009* came into effect in 2013. This placed significant obligations over financial institutions and casinos and tasked various government agencies with overseeing and enforcing the regime and helping businesses comply with it. It also required independent annual auditing of some aspects of an entity's AML/CFT compliance regime – a service which RSM has expertise and provides services in.

What is proposed now?

New Zealand's Ministry of Justice (MoJ) is now proposing to implement phase two of the Act which will extend it to more businesses and professions. There also appears to be significant time pressure now being exerted to get this in place with a target of legislation in place by mid-2017.

Phase two will mean that many businesses will have to put AML/CFT policies and processes in place. These issues need to be taken seriously and as such there is also likely to be a regulatory oversight and monitoring regime put in place.

The entities covered by phase two widen the impact net considerably as it is proposed to include:

- accountants;
- lawyers;
- real estate agents;
- conveyancers;
- some other parts of the gambling sector;
- and



Craig Fisher



Kumar Aravinda

Overseas experiences of similar regimes have shown that this can result in a reasonably considerable increase in compliance for some business activities. One of the biggest issues has been the "getting to know your customers" requirement and obtaining proof that they are who they say they are, as well as verifying the source of funds when conducting what are considered higher risk transactions, and needing to retain appropriate evidence.

- high value goods dealers including auctioneers, bullion dealers, jewellers, motor vehicle and boat dealers, antique and art dealers, pawnbrokers, and any other businesses that accept or provide large amounts of cash.

The Act requires entities covered by it to carry out various measures to deter and detect money laundering and financing of terrorism. These measures are designed to significantly reduce the risk of being unwittingly drawn into criminal activity and, as such, are generally regarded as good business practice. They include:

- developing a risk assessment and compliance programme;
- undertaking customer due diligence (that is, verifying their identification);
- vetting and training staff;
- monitoring accounts;
- monitoring compliance and audit; and
- reporting suspicious transactions of customers to the Police Financial Intelligence Unit.

However, while we concur with this being generally good business practice, the devil is usually in the detail with such requirements. At

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LAWNEWS

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There is a regular practice of photographing people at collegial events and some of those photos are published in *Law News*. If you are attending such an event and you do not wish to have your photograph taken, please tell the photographer and your request will be respected.

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Lessons from the Ashburton WINZ shootings

By David Snelling, General Counsel for Argosy Property Limited and member of ADLSI's Health & Safety Law Committee

Chief Judge Doogue's decision in *WorkSafe New Zealand v Ministry of Social Development* [2016] NZDC 12806 addresses an horrific workplace shooting in an open plan office setting that will seem familiar to many New Zealanders. It also demonstrates that employers are expected to consider any latent potential for workplace violence.

On 1 September 2014, a dissatisfied client entered Work and Income New Zealand's (WINZ) Ashburton office armed with a gun. He shot and killed two WINZ employees, wounded one and narrowly missed another. The shooter was subsequently apprehended and convicted of murder (*R v Tully* [2016] NZHC 1133).

WINZ was a division of the Ministry of Social Development (MSD), and following the shootings MSD was charged with failing to take all practicable steps to ensure that its employees would not be exposed to the hazard of violent clients (under the *Health and Safety in Employment Act 1992*).

WorkSafe alleged six practicable steps that MSD should have taken, which are set out in an appendix to the judgment and labelled (a) to (f). MSD pleaded guilty to practicable steps (b) to (f), which related to training, policies and processes, but disputed practicable step (a).

The disputed "practicable step (a)"

"Practicable step (a)" was described as: "Ensuring that there was no physically unrestricted access by clients to the staff working area." The Court identified the step's core element as some form of physical barrier between employees and clients, to delay the advance of a violent client.

Following Judge Morris's framework in *WorkSafe New Zealand Ltd v Waimea Sawmillers Ltd* [2015] NZDC 21082 (at para [85]), the Court carried out a two-stage assessment to decide whether practicable step (a) was a step that MSD should have taken to ensure the safety of its employees:

- Was there a reasonably predictable hazard?
- If so, was practicable step (a) a practicable step that MSD was required to take?

Reasonably predictable hazard

The Court found that a shooting incident was not reasonably predictable at the time the WINZ shooting occurred. The absence of any similar prior incidents in New Zealand was an important part of this finding.

Instead of focusing on gun violence, the Court found a more general predictable hazard of client-initiated violence including manual assault or use of a weapon other than a firearm. This hazard is quite different to the shooting incident which actually occurred (see also *Waimea Sawmillers Limited v WorkSafe New Zealand Limited* [2016] NZHC 915 at paras [38]-[39]).

In identifying this hazard, the Court referred to an "objective body of knowledge" that MSD knew,



David Snelling

or should have known. The body of knowledge included analysis of MSD's own records, theoretical research and empirical studies, presented to the Court by security experts.

While the 1992 Act holds employers to an objective standard of knowledge, the Court's apparent reliance on security experts seems to extend this standard beyond what a reasonable employer would know. This knowledge-extension is debatable, as it appears inconsistent with the High Court's approach in *Waimea Sawmilling* (at para [37]).

Having found a predictable hazard, the Court proceeded to the second stage of its assessment – was there a practicable step?

Practicable step

The Court considered whether there was a practicable step in the circumstances by weighing the "quantum of risk" generated by the hazard, against the practicability of addressing it, and having regard to the factors set out in section 2A(1) of the 1992 Act.

(a) The nature and severity of the harm that may be suffered if the result is not achieved

The Court found that client-initiated violence could result in injury or death in the absence of firearms. It noted the fatal stabbing of an Accident Compensation Corporation employee in 1999 as an example.

(b)–(c) The current state of knowledge about the likelihood that harm of that nature will be suffered if the result is not achieved, and the current state of knowledge of harm of that nature

The Court also found that several factors made the threat of client-initiated violence more than negligible. These included a security report MSD commissioned in 2012 identifying client-initiated violence as "the most serious and likely physical threat" it faced nationally, and supporting data from MSD's own incident reporting database including incidents of threatened violence in WINZ's Ashburton office.

The likelihood of the harm (more than negligible), weighed together with the severity of the harm (serious injury or death), produced a significant "quantum of risk" against which

practicable step (a) fell to be considered.

(d) The current state of knowledge about the means available to achieve the result, and about the likely efficacy of each of those means

The Court devoted one quarter of its written judgment to expert evidence about practicable step (a). The lengthy discussion seems to reflect WorkSafe's loose description of the step, and the Court's determination that it involved some form of physical barrier. Compounding this difficulty, the Court was uncomfortable with the physical barriers proposed by WorkSafe's experts. WorkSafe's security experts provided conflicting evidence about what sort of physical barrier would be appropriate. One proposed an external barrier at the office entrance, while the other proposed an internal barrier between the reception and the workplace.

The Court found that these barriers would rarely be effective as they would not prevent violence at the point of client-employee contact. It also noted that the barriers could create collateral security problems at the barrier, and may themselves agitate clients and become a cause of client-initiated violence (as suggested by MSD's expert).

Despite evidence from MSD's expert that no physical barrier was necessary, and against the conflicting proposals from WorkSafe's experts, the Court synthesised from the available expert evidence an aesthetic "zoning model". The Court did not consider it helpful or appropriate for the Court to set out the design, but found that it would have involved some form of physical barrier to delay a client who was attempting to assault an employee.


Having crafted a practicable step which MSD could have taken, the Court moved on to consider its cost.

(e) The availability and cost of the means

The Court held that in order for the cost of its practicable step (a) to outweigh the risk of harm, the cost must be "grossly disproportionate" (and noted that the 2015 Act codifies this position).

MSD estimated that the Court's zoning model would cost between \$50,000 to \$180,000 per site, and between \$13.1 million and \$27.3 million nationally. The Court found that these costs were well within the realms of practicability as they had to be seen in the context of MSD's \$400m annual operating budget. Perhaps surprisingly, the Court may have looked at the cost of the practical step differently if MSD were significantly smaller, or had significantly less resources.

What should employers consider?

The *WorkSafe v MSD* decision suggests that employers should identify any interactions by employees with customers that might plausibly spark physical violence, and consider how best to address the potential violence. In considering this issue, they will be expected to have access to an objective (perhaps expert) body of knowledge about security threats, including analysis of their own incident records and any relevant local or international research. 

Communication with the Auckland District Courts

By Jody Foster, Convenor of ADLSI's Civil Litigation Committee

The Family, Civil Litigation and Courthouse Liaison Committees have commenced meetings with Managers responsible for the Service Delivery in these areas in the Auckland District Courts.

The aim of the meetings is to gain a better understanding of how the Auckland District Courts operate and assist in identifying areas that can be improved.

It is also intended that we promulgate information to our members that will assist in their dealings with the Auckland District Courts.

One point that it is important for practitioners to be aware of is that the Case Managers in the Auckland District Courts are not allocated to specific cases in the way that Case Managers are assigned in other courts, for example, the Auckland High Court.

For this reason, practitioners will not be provided with contact details for a specific Case Manager for a specific file.


Emails should be sent to the relevant general email address, depending on the type of proceeding.

For example, an email in relation to a civil matter in any of the Auckland Courts should be directed to auckland_civil_cmt@justice.govt.nz.

If a practitioner needs to escalate his or her enquiry, then this can be directed to an appropriate Manager by email or phone.

For example in relation to civil matters in any of the Auckland Courts, this should be directed to Heidi Schuman by emailing her at heidi.schuman@justice.govt.nz or by contacting her by phone on (09) 374 371 (ext. 63791) or 027 209 8722.

The table on this page sets out other relevant emails and phone numbers.

We hope you find this information helpful. More information will be provided to practitioners as our meetings continue. 



Auckland Civil & Family Services Contacts

Waitakere District Court

Family Case Management Team

Kiri Parker (Escalation CSM) (09) 916 9302 (ext. 59302) kiri.parker@justice.govt.nz
or 027 644 8610

General Family enquiries CCS-WAITAK@justice.govt.nz

North Shore District Court

Family Case Management Team

Craig Walker (Escalation CSM) (09) 916 5733 (ext. 55733) craig.walker@justice.govt.nz
or 027 493 1688

General Family enquiries CCS-NS@justice.govt.nz

Auckland District Court

Family Case Management Team

Jamie Haynes (Escalation CSM) (09) 916 5239 (ext. 55239) jamie.haynes@justice.govt.nz
or 021 592 606

Marilyn Wilson (Escalation CSM) (09) 374 3784 (ext. 63784) marilyn.wilson@justice.govt.nz
or 021 223 1353

Case Management cmt-akld@justice.govt.nz

Family Applications Management Team

Jackson Cutting (Escalation CSM) (09) 307 9986 (ext. 63316) jackson.cutting@justice.govt.nz
or 027 530 0597

Rowena Tyler (Escalation CSM) (09) 374 3786 (ext. 63786) rowena.tyler@justice.govt.nz
or 027 285 4401

Without Notice Substantive Applications AKMetro-withoutnotice@justice.govt.nz

General Applications queries ApplicationsManagement-Team@justice.govt.nz

Copies of Orders CCS-AKLD@justice.govt.nz

Mental Health Act queries AMMH@justice.govt.nz

Civil

Heidi Schuman (Escalation CSM) (09) 374 3791 (ext. 63791) heidi.schuman@justice.govt.nz
or 027 209 8722

General Civil enquiries auckland_civil_cmt@justice.govt.nz

Tenancy enquiries aucklandmetrotenancy@justice.govt.nz

Disputes enquiries disputes_akmetro@justice.govt.nz

Manukau District Court

Family Case Management Team

Tracy Marsh (Escalation CSM) (09) 916 2750 (ext. 52750) tracy.marsh@justice.govt.nz
or 027 200 5414

Esita Teisi (Escalation CSM) (09) 374 3793 (ext. 63793) esitamaki.teisi@justice.govt.nz
or 027 494 8388

Case Management cmt-man@justice.govt.nz

Service Delivery Manager - Civil & Family Services - Auckland Region

Fiona Parkes (09) 916 5756 (ext. 55756) fiona.parkes@justice.govt.nz
or 027 511 3157


Central West Auckland Lawyers' Lunch

The ADLSI Lawyers' Lunch Series is a great opportunity to meet and network with fellow practitioners in your local area, and to provide feedback to ADLSI on ways in which we can further support you in your professional career.

Practitioners from around Central West Auckland recently came together at Bricklane Restaurant & Bar in New Lynn for a relaxed and convivial get-

together and meal, which included a short presentation by Central West Auckland Lawyers' Lunch sponsor OfficeMax.

There was a great turnout of local lawyers who took time out of their busy day and enjoyed catching up with old and new friends.

Thank you to OfficeMax for sponsoring this event. 



John McIntosh, Mary Anne Shanahan and Caroline Reynolds



Douglas Cowan and Callum McLean



Michael Molloy and Lucas Burn



Jeremy Bioletti, Volita Bioletti and Scott Russ



Enjoying the chance to chat over lunch



Simon Bratley and David Jury

CPD Annual Survey 2016 – the results are in!

This year's ADLSI CPD Annual Survey was sent out on 20 September. The replies came back in the thousands, with the survey attracting a record number of responses.

The survey comprised only 11 questions and, generally, respondents completed it in just a few minutes.

Most of the respondents were either partners or principals of law firms, or lawyers employed in law firms, with the majority practising in property, company/commercial or trusts and estates law.

The survey results showed that *Law News* continues to be a popular source of information about upcoming CPD activities, together with the ADLSI Bulletin and our CPD emails, which are always carefully targeted to practitioners' specific areas of practice or interest.

Hitting the mark

Question 7 asked about overall satisfaction with various aspects of our CPD activities, with the majority of respondents answering "very good" or "excellent" across the board. More than ¾ of respondents rated the variety of topics, quality of content and choice of presenters as "very good" or "excellent".

The satisfaction ratings for the technical delivery of our Live Stream CPD and CPD On Demand were also high, although some respondents were still a little unsure about the use of our CPD On Demand and wanted some more information – so here you are!

On Demand – convenient and cost-effective

ADLSI CPD On Demand offers a fully compliant, convenient and cost-effective means of earning CPD hours.

Practitioners can earn their CPD hours by watching edited recordings of webinars and seminars on a PC or compatible smart device. Our CPD On Demand recordings include papers and/or PowerPoints and an interactive Q&A component to consolidate learning. It is possible to pause and rewind throughout the

ADLSI CPD On Demand ... in a nutshell

- A fully compliant and cost-effective means of earning CPD hours
- Convenient and flexible
- Complete CPD requirements anywhere, anytime
- Watching recorded webinars and seminars on your PC or smart device
- Papers and/or PowerPoints included
- Interactive Q&A helps consolidate learning
- Pause and rewind functionality
- No fancy technical requirements – a reasonably modern PC or smart device (with internet connection) are all you need!

recording, offering convenience and flexibility in completing CPD requirements anywhere at any time.

Full details of the technical requirements are available on our website but, essentially, you only require a reasonably modern PC or smart device and an internet connection. It works best on Google Chrome (although other browsers are also supported) and we recommend the use of external speakers or headphones. If you have any questions or concerns our CPD team is always happy to help.

A comprehensive selection of On Demand products is available from our website at <http://www.adls.org.nz/cpd/cpd-on-demand>. This offers an easy-to-navigate page with full details of all the activities, including details of the presenters, a synopsis of the content, the number of CPD hours and the price. Just click to purchase – an email containing a link will give access to the On Demand material which can

be accessed anywhere at any time, provided you have an internet connection.

All ADLSI's CPD On Demand products are fully compliant with the CPD Rules.

Your feedback means a lot to us!

Thank you to everyone who took the time to participate in our survey. The responses to the question as to what we could be doing to better meet your CPD needs raised some interesting and valuable suggestions which we will be considering fully over the coming weeks.

All survey respondents had the chance to win a FitBit Blaze, and this was won by a lucky in-house lawyer based in Wellington.

We greatly value the information you have provided and your responses are vital in helping ADLSI ensure that our CPD maintains the highest standards of excellence.

Member Benefits Programme

A range of offers, available to ADLSI members, from carefully selected suppliers.

To view the latest offers visit www.adls.org.nz



ADLSI
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+ Notice to practitioners

Final sitting for the Hon Justice John Faire

A final sitting for the Hon Justice Faire will take place on Wednesday 30 November 2016 at 4pm at the Auckland High Court.

The dress code for this ceremony is gowns only. No wigs are required.

Light refreshments will be held after the ceremony.

Date & timing: Wednesday 30 November 2016, 4pm

Location: Courtroom 1, Auckland High Court, 24 Waterloo Quadrant, Auckland Central

If you are planning to attend this final sitting, please RSVP to Nana Matenga at nana.matenga@justice.govt.nz. 

+ New book

Workplace Bullying

Authors: Frank Darby and Andrew Scott-Howman

This is a new and ground-breaking book which will be an invaluable reference for lawyers specialising in employment and health and safety law.

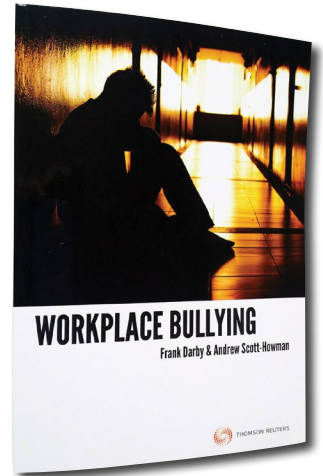
Workplace Bullying deals with bullying and the legal issues surrounding it in New Zealand's workplaces in a way that is both educational and practical.

Price: \$50.00 plus GST* (\$57.50 incl. GST)

Price for ADLSI Members: \$45.00 plus GST (\$51.75 incl. GST)*

(* + Postage and packaging)

To purchase this book, please visit www.adls.org.nz; alternatively, contact the ADLSI bookstore by phone: (09) 306 5740, fax: (09) 306 5741 or email: thestore@adls.org.nz.



+ ADLSI event

Breakfast with the Associate Minister of Justice

ADLSI invites the legal profession to come together at a breakfast in Tauranga with the Associate Minister of Justice, Hon Simon Bridges, to be held at The Tauranga Club on Thursday 24 November 2016.

We would be delighted if you would join us at this event to hear an address from the Minister. The Minister will also be happy to answer questions, following his presentation.

Date: Thursday 24 November 2016

Timing: 7.15am for 7.30am start

Dress code: Business attire

Venue: The Tauranga Club, Level 5, 72 Devonport Road, Tauranga

Tickets: \$35.00 + GST (\$40.25 incl. GST) for ADLSI members and the judiciary;

\$50.00 + GST (\$57.50 incl. GST) for non-members.

To register for this breakfast, please visit www.adls.org; alternatively, contact us at adls.events@adls.org.nz or on (09) 303 5287. Spaces are limited so register before **Friday 18 November 2016** to secure your space, subject to availability. ADLSI's standard cancellation policy applies for this event.



Hon Simon Bridges

+ ADLSI Council

Contact details for ADLSI Council

Here are the contact details for your ADLSI Council. They welcome your queries and suggestions.

Brian Keene QC (President)
Ph. 09 366 0306 E. brian@keene.co.nz

Joanna Pidgeon (Vice-President)
Ph. 09 337 0826 E. joanna@pidgeonlaw.co.nz

Tony Bouchier
Ph. 09 623 1772 E. bouch@xtra.co.nz

Vikki Brannagan
E. vikki.atack@gmail.com

Marie Dyhrberg QC
Ph. 09 360 4550 E. maried@mariedyhrberg.co.nz

John Hagen
Ph. 09 309 1689 or 021 452 326 E. john@hagen.co.nz

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Ph. 09 309 2500 E. sjn@lojo.co.nz

Mary Anne Shanahan
Ph. 09 827 6106 or 09 827 2783
E. mary@shanahanslaw.co.nz

To view all ADLSI CPD & register: www.adls.org.nz/cpd

Email us: cpd@adls.org.nz | Phone us: 09 303 5278

Featured CPD

Thursday
10 November 2016
4pm – 6.15pm

2 CPD HOURS



Seminar



Live stream

Representing Refugees in the Immigration and Protection Tribunal

Representing refugees at the Immigration and Protection Tribunal is complex and demanding and these appeals require a different skill-set from other matters before the Tribunal.

Learning Outcomes:

- Learn more about what needs to be discussed at interviews with clients to prepare their cases and how to deal with the vulnerabilities that often apply in refugee situations.
- Gain insights into case preparation; how to prepare for pre-hearing telephone conferences including what evidence may be relevant and the importance of supporting documentation, the availability of witnesses and the use of experts.
- Receive guidance on the preparation of clients for the hearing itself, how to best present your client's case and the importance of written submissions and oral closing submissions.

Who should attend?

All lawyers representing refugee clients in the Immigration and Protection Tribunal and those who may wish to do so in the future.

Presenters: **John McBride**, Barrister; **Deborah Manning**, Barrister

Chair: **Martin Treadwell**, Deputy Chair, Immigration and Protection Tribunal

Wednesday
16 November 2016
1pm – 2pm

1 CPD HOUR



Webinar

Limited Licences: Advice, Applications & Amendments

With insights from counsel and 'gatekeeper' respectively, this webinar will provide timely coverage of this key (and growing) area for criminal lawyers and general practitioners alike.

Learning Outcomes include:

In respect of limited licences:

- Attain a better understanding of the legal criteria for making an Application, the time restrictions and timeframes involved.
- Receive practical guidance for drafting an Order that the Court is more likely to grant, and gain insights into what happens after a Court Order is made.
- Gain insights into the Police view of such applications, and the basis for any opposition.

Who should attend?

Criminal lawyers and general practitioners who receive instructions on these matters.

Presenters: **Steven Cullen**, Barrister; **Sergeant Ian Horsley**, Senior Prosecutor, Police Prosecution Service, New Zealand Police

Thursday
17 November 2016
4pm – 6.15pm

2 CPD HOURS



Forum



Live stream

Counter-Intuitive Evidence Forum: A Lawyer's Survival Guide

This topical forum will provide context, highlight key case law, look at who should be an expert in this field and consider how to manage counter-intuitive evidence at different stages of a proceeding.

Learning Outcomes:

- Gain a better understanding of what counter-intuitive evidence is, the legal context and the implications of such evidence in the courtroom setting.
- Become better equipped for dealing with counter-intuitive evidence – whether pre-trial or during a trial.
- Gain insights into defence counsel calling witnesses in respect of counter-intuitive evidence.
- Receive information about what's on the landscape in respect of counter-intuitive evidence.

Who should attend?

All lawyers practising in Criminal law who deal with complainants.

Presenters: **Warren Pyke**, Barrister; **Rob Harrison**, Barrister, Inangahua Chambers (Blenheim); **Professor Maryanne Garry**, School of Psychology, Victoria University of Wellington

Chair: **Guyon Foley**, Barrister

Thursday
24 November 2016
4pm – 6.15pm

2 CPD HOURS



Forum



Live stream

Health and Safety Forum: Dealing with Conflicts of Interest

Given the number of defined roles and the differing responsibilities and duties within the new Health and Safety at Work Act 2015 (the Act), the potential for conflicts of interest between parties during a WorkSafe investigation is great. This forum will consider the core ethical considerations and explore the areas where such conflicts are likely to arise, as well as considering WorkSafe's role therein.

Learning Outcomes

- Gain a better understanding of the situations where potential conflicts may arise in terms of the Act and how to distinguish between perceived and actual conflicts of interest.
- Learn more about the ethical and practical considerations to take into account when faced with a conflict of interest.
- Be better informed about how the right against self-incrimination for corporates has changed and how practices used to avoid conflicts need to be made known to the parties involved.

Who should attend?

Lawyers practising in the areas of health and safety, employment and criminal law, general practitioners, commercial lawyers, civil litigators, insurance litigators and those advising on company and governance issues.

Presenters: **Tim Mackenzie**, Barrister; **Sue Petricevic**, Principal Legal Advisor, WorkSafe; **Hazel Armstrong**, Partner, Hazel Armstrong Law; **Garth Gallaway**, Partner, Chapman Tripp

Chair: **Fletcher Pilditch**, Barrister, Richmond Chambers

CPD In Brief

Working with the Harmful Digital Communications Act – 1.25 CPD hrs

Tuesday 15 November 2016, 12pm – 1:15pm

With the civil enforcement component of the Act coming into effect on 21 November, the likelihood of an increase in civil litigation and a number of criminal prosecutions already completed or in progress, this webinar provides a very timely review of the workings of the Harmful Digital Communications Act. Considering the Act's civil and criminal application, it will also provide insight into the safe harbour provisions for online hosts.

Presenter: **Dr David Harvey**, Faculty of Law, Auckland University



Spousal Maintenance: The How, the Why and the Beware For – 1 CPD hr

Wednesday 23 November 2016, 12pm – 1pm

Greater awards of spousal maintenance have become increasingly common. This webinar will look at recent case law, how spousal maintenance is assessed and the factors that need to be considered when determining the overall benefit of a claim for interim maintenance.

Presenters: **Lynda Kearns**, Barrister, Bastion Chambers; **Brian Carter**, Barrister, Bastion Chambers



Criminal & Family Law Interface: Two Worlds Collide – 2 CPD hrs

Tuesday 29 October 2016, 4pm – 6:15pm

When Criminal proceedings involve a Family law matter or vice versa, what might seem to be two parallel worlds converge and sometimes collide. Common scenarios, such as an alleged assault on a family member, can raise numerous issues for those involved, at a time when both tensions and stakes (such as freedom of the person and preservation of family relationships) may be high. This forum aims to address a perceived need for cross-fertilisation of information between Criminal and Family lawyers.

Presenters: **Marie Dyhrberg QC**, **Alissa Bell**, Partner, McVeagh Fleming; **John Hickey**, Principal, Hickey Law

Chair: **His Honour Judge Maude**



CPD On Demand

Commercial Law Series: An Insider's Guide to Commercial Lending & Borrowing – 2 CPD hrs

Take advantage of this opportunity to gain a practical understanding of the corporate financing process. Appreciating the banks' legal, risk and credit requirements ensure you are better placed to advise borrower clients and meet your own practitioner obligations. In this On Demand seminar, watch our experienced panel discuss common documentary and negotiation pitfalls together with outlining practical steps to take in concluding a successful bank funding transaction.

Presenters: **Gerard Souness**, Senior Associate, Chapman Tripp; **Daniel Collins**, Senior Associate, Minter Ellison Rudd Watts

Chair: **Kate Lane**, Partner, Minter Ellison Rudd Watts



Avoiding the Rocks: Advising Overseas Clients on their Obligations under the Overseas Investment Act – 1.25 CPD hrs

Advising a client on their obligations under the Overseas Investment Act 2005 is harder than it looks. The Act contains a number of very complex definitions, and demands a broad understanding of corporate, immigration, and land law. A well-prepared lawyer should be able to navigate these waters well; but increasingly, unprepared lawyers are finding themselves and their clients in rough waters, or even on the rocks.

This On Demand webinar will help you to determine whether your clients require consent under the Act, and assist you with advising them of the consequences of this. It also looks at common mistakes and provides tips on how to avoid them.

Presenters: **Pedro Morgan**, Senior Solicitor – Technical Leader, Overseas Investment Office; **Jenna Reid**, Senior Solicitor – Technical Leader, Overseas Investment Office



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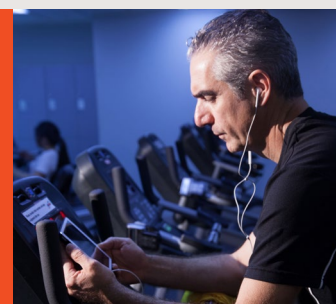


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+ Appointments

A round-up of recent appointments

New partner at Jackson Russell

Israel Vaealiki has joined Jackson Russell to lead its Property and Personal Client team. He has over 14 years' experience in this specialist area and advises clients on trusts, wills, estates, succession planning, matrimonial/relationship property issues and philanthropy. Mr Vaealiki provides advice to families, business owners, entrepreneurs, investors, professionals, directors and senior executives to help them manage risk and preserve family wealth.

Mr Vaealiki is a member of the Society of Trust and Estate Practitioners. Before moving to Jackson Russell, he was a senior associate at a boutique law firm specialising in trusts. He has practised in Auckland for over ten years advising high net worth clients and families on complex trust, estate and succession planning issues. Prior to practising in Auckland, Mr Vaealiki worked overseas as in-house counsel for a trustee company providing trustee services to high net worth clients in the United States of America.




Israel Vaealiki

Real Estate Institute appoints new CEO

The Real Estate Institute of New Zealand (REINZ) has announced the appointment of **Bindi Norwell** as its new Chief Executive. Ms Norwell will join REINZ in early December 2016.

In making the announcement, Chairman Dame Rosanne Meo commented that Ms Norwell brings a strong commercial perspective to the organisation.

"Bindi is an experienced business leader and strategist who has worked in New Zealand, Australia and the UK," said Dame Rosanne. "She has a strong background in digital media and technology and most recently, Executive Director of TNS Global, a customer and marketing insights-based consultancy working with a diverse network of New Zealand companies." 

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+ Wills

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.

Paul ANGELL, Late of West Coast Road, Te Kopuru,
Aged unknown (Date of death unknown)

Craig Lloyd BOLER, Late of 16 Malmo Place, Massey,
Auckland, Aged 57 (Died 07'10'16)

Rosemary Olwyn BOND, Formerly of 16 Layton Road, Manly,
Whangaparaoa and Unit D, 39 Onehunga Mall, Onehunga,
Auckland, Beneficiary, Aged 55 (Died 01'10'16)

Kevin John BRADSHAW, Late of no fixed abode, Aged 64
(Died between 06'10'16 and 07'10'16)

William COLEMAN, Late of SH12 Ruawai-Dargaville, Central,
Aged unknown (Date of death unknown)

William DOOLAN, Late of Tokatoka Road, Tokatoka,
Aged unknown (Date of death unknown)

Arthur Johnston GELSTON, Late of Mititai Road, Mititai,
Aged unknown (Date of death unknown)

Shyam Behari Lal GROVER, Late of 270 Park Road, Palmerston
North, Aged 93 (Died 21'10'13)

Kagan Gerald HINDSHAW, Late of Silverdale, Auckland,
Accountant, Aged 59 (Died 17'10'16)

Edwin Parore MITCHELSON, Late of 512 Aranga Station Road,
Aranga, Aged unknown (Date of death unknown)

John MITCHELSON, Late of 512 Aranga Station Road, Aranga,
Aged unknown (Date of death unknown)

Richard MITCHELSON, Late of 512 Aranga Station Road,
Aranga, Aged unknown (Date of death unknown)

Kevin James RYAN, Late of Eketahuna, Previously of Auckland,
Aged unknown (Died 27'06'16)

William Ellery Channing TOOGOOD, Late of Mititai Road,
Mititai, Aged unknown (Date of death unknown)

Bentha WILSON, Late of 512 Aranga Station Road, Aranga,
Aged unknown (Date of death unknown)



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this stage, the MoJ is still exploring exactly what the detailed requirements should be.

What is the impact likely to be?

Overseas experiences of similar regimes have shown that this can result in a reasonably considerable increase in compliance for some business activities. One of the biggest issues has been the "getting to know your customers" requirement and obtaining proof that they are who they say they are, as well as verifying the source of funds when conducting what are considered higher risk transactions, and needing to retain appropriate evidence.

A practical result can be the request for more information when carrying out business transactions as well as additional time to obtain and process this.

Training and internal monitoring of your AML/CFT systems if these apply to you should also

not be underestimated.

Like any new compliance obligations, implementing this is also likely to equate to increased cost to the business. RSM's initial concern is that this could potentially be quite a large compliance burden and cost. However, until the phase two requirements are better defined and framed by the proposed legislation, it is difficult to be able to estimate this cost impost.

Summary

We can all agree with the clear moral and ethical obligation to ensure appropriate measures are in place to deter and detect money laundering and financing of terrorism.

However, as accountants who will have to implement further systems and compliance, as will many of our client businesses and organisations, we also want to ensure that the

compliance required is pragmatic, consummate with the risk, and that the costs do not outweigh the benefits.

As such, RSM has been feeding into the consultation process with the MoJ and intends to continue to take an active interest in this area, as well as looking to inform clients and contacts of developments.

Anti-money laundering and countering financing of terrorism is another new compliance hurdle coming for many New Zealand businesses and organisations. Best we ensure we implement a balanced and pragmatic regime.

Craig Fisher FCA is an Audit Partner and Chairman of RSM and can be contacted at craig.fisher@rsmnz.co.nz. Kumar Aravinda CA is an Audit Partner of RSM and can be contacted at kumar.aravinda@rsmnz.co.nz. 



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Ross Knight is a Senior Barrister practicing out of Princes Chambers in Auckland's CBD, specialising in relationship property and trust litigation.

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Expressions of interest should be submitted by 18 November 2016 to Ross' Chambers Manager, Maxine Renwick at: maxine@rossknight.co.nz; <http://www.rossknight.co.nz>.

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