



# ADLSI

Independent Voice of Law

LAWNEWS THIS ISSUE:

A wind of change for women lawyers?  
Working out "workable competition"  
So how do you deal with tricky colleagues?

# LAWNEWS

ISSUE 04 28 FEBRUARY 2014

[www.adls.org.nz](http://www.adls.org.nz)

## + *Women and the law*

# CHILL WIND STILL BUFFETS WOMEN LAWYERS

By Rod Vaughan

**When Ethel Benjamin enrolled for a law degree at Otago University in 1893 she did not know whether she would ever be allowed to practise law.**

At the time New Zealand women were still some months away from getting the vote with men dominating every facet of the young colony. But despite this Ethel clung to the belief that "a colony so liberal as our own would not long tolerate such purely artificial barriers".

"I therefore entered on my studies with a light heart, feeling sure that I should not long be debarred from the use of any degree I might obtain".

In the event, her confidence was not misplaced and, thanks to the *Female Law Practitioners Act* of 1896, she became the first woman to enter the hallowed ranks of barristers and solicitors, practising law in Dunedin and then Wellington.

Since then, women have made an indelible mark on the legal profession with more than 50 per cent of law graduates now being female. Not only that, three of the four Heads of Bench are women as well as the Minister of Justice, suggesting that much has been achieved since the trailblazing days of Ethel Benjamin.

But in reality it has been a long, hard slog for women to get to where they are today and it is far from over. They are still conspicuous by their absence in the higher levels of the profession, as well as among those who take Silk with just 15 per cent of Queen's Counsel (QCs) being women.



Chief Justice Dame Sian Elias was unavailable to speak with *Law News*, but in a 2008 speech to the Australian Women Lawyers' conference she recalled how she went on the bench to "practise law" because she was not getting the instructions in cases she aspired to lead.

"And for those in practice, my impression is that they still feel the chill that buffeted Ethel Benjamin. Only those who cannot seem to attract work know how it gnaws at self-esteem. And for many able women, those are still the conditions under which they practice.

"It is not surprising that women in the legal profession continue to exhibit the restlessness shown by Ethel Benjamin. Her movements in and out of the profession, her attempts to regroup and change direction, are still familiar patterns today."

So given Dame Sian's concerns it is no wonder that various women's legal groups around the country have been pressuring the political and legal hierarchy to remedy this situation.

The Auckland Women Lawyers' Association (AWLA) for one has applied itself to the issue and last year it commissioned AUT University's Gender & Diversity Research Group to investigate the reasons behind the scarcity of women partners in Auckland's larger law firms. The project aimed to determine whether barriers to the advancement of women exist, or are perceived to exist, within large law firms.

Taking part in the study have been male and female practitioners and partners at 11 law firms – namely Bell Gully, Brookfields, Buddle Findlay, Chapman Tripp, DLA Phillips Fox, Hesketh Henry, Kensington Swan, Meredith Connell, Minter Ellison Rudd Watts, Russell McVeagh and Simpson Grierson. Participants took part in an anonymous survey as well as voluntary interviews in which they were questioned about their in-depth perceptions and experiences of working in a large law firm.

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# CHILL WIND STILL BUFFETS WOMEN LAWYERS

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Additionally, AUT University undertook a review of worldwide literature on the topic in order to put the New Zealand findings in context. Not surprisingly, the results of all of this make for interesting reading and indicate that AWLA's misgivings about gender imbalance in the legal profession are not unfounded.

Contractual obligations meant AWLA president Angela Hansen was not able to disclose the findings (formally released on 27 February 2014) to *Law News* at the time this publication went to press but she was able to give us a flavour of what they showed.

She noted there were some very interesting differences of opinion between legal staff in the law firms and the managing partners: "In many cases they had completely opposite views about what the issues relating to women lawyers are, and seemed to be talking at cross-purposes if I could put it that way."

Ms Hansen says there is no doubt the firms have very good career structures but "they are not really meeting the needs of women nowadays".

"The unfortunate reality is that your key years for advancing your career are in your 30s and today that seems to coincide when women are mostly likely to have children. So the effect of that is women end up having to compromise and a lot of them are saying that maybe it's impossible to pursue a career and bring up a family," she says.

Ms Hansen commented that maybe law firms need to start thinking about appointing more part-time partners in order to give women raising families a chance to enter the higher echelons of the profession. Asked whether the report found any evidence of an "old boy's" network influencing legal appointments she said: "That's an interesting question. Yes and no apparently. The staff say yes but the partners say no."

One of the first two women to become a QC and join the High Court bench shares some of Ms Hansen's sentiments. Justice Lowell Goddard took Silk in 1988 along with her good friend Dame Sian Elias.

"When Sian and I became QCs I think it pole-axed a number of the men who saw it as some sort of affirmative action and sort of debasing the currency or some-such," she told *Law News*.

"We were 38 at the time and I'm quite sure there were also people who were shocked at how young we were. But we had both been practising law since

*"You think twice about [applying for Silk] because nobody wants to apply and then fail and yes, it is a daunting process trying to portray yourself in way that shows your expertise and your commitment to the bar and your leadership. I actually found it quite difficult to do, not because I hadn't done those things but found it difficult to write about them in a way that wasn't embarrassing."*

*Kate Davenport QC*

we were in our early 20s and had proved ourselves, so I think we had well and truly earned it."

Justice Goddard says there was "a long drought" after 1988 with no other women taking Silk until 1995 when Judith Ablett-Kerr received the accolade. "There has been some momentum in more recent years but not a lot and the numbers are still skinny. I'm not a social scientist and don't have all answers as to why this situation exists but it could be, in part, due to choices women are making."

"I see younger generations of women in the law like my daughter and others younger than her who would choose not to go on the bench because they have a different view on what really matters to them. They've had their children later so they have a more considered approach and they realise they're balancing their family responsibilities with their careers and with their partners' careers, and they seem to work it all out in a more balanced way," she says.

Justice Goddard says women lawyers of her generation were not faced with the dilemma of raising young children and trying to climb the legal ladder.

"Sian and I were young when we had our children and most people did then. By the time we took Silk the children were at university and by the time we went on the bench they were well

and truly adults – I mean my daughter was a practising lawyer by then," she notes.

Justice Goddard says being on the High Court bench is a demanding experience for women and men who have school age children. She contends more could be done to strike a balance so that talented people are not deterred from seeking high office: "There are ways of doing more and what is currently being looked at are part-time Judges on the High Court bench. This will allow women to advance their careers and still have a work-life balance like women who are in their 40s with school-age children."

However, she says women vying to become partners in big law firms may have a harder road to hoe.

"The reality with big law firms is that they are commercial operations and they are all trying to meet their fees targets so you are talking about a very commercial environment. It may well be harder for a woman to rise up through the ranks of a major law firm and become a partner than become a part-time Judge," she suggests.

As one of the country's newest female QCs Kate Davenport, who took Silk last year, believes some women are their own worst enemies when it comes to advancing their careers such as applying to become a QC.

"Yes, I do think so. Some people think they haven't got it in them because they are not good enough and I can understand that. They are put off by the application process because it requires you to present a lot of your cases and talk a lot about your position in the profession, how you're perceived and what you've done etc. And I think because of family commitments many women haven't done the cases or feel that they don't qualify on those grounds."

Ms Davenport says despite being a lawyer for 30 years even she found the application process daunting: "You think twice about it because nobody wants to apply and then fail and yes, it is a daunting process trying to portray yourself in a way that shows your expertise and your commitment to the bar and your leadership and all those sorts of things. I actually found it quite difficult to do, not because I hadn't done those things but found it difficult to write about them in a way that wasn't embarrassing."

So fear of failure and inborn diffidence may account in part for the disproportionately small number of female QCs if Ms Davenport is correct. But in her case she got lucky: "I'm very fortunate that I'm in a big set of chambers and there are lots

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## LAWNEWS

LAW NEWS is an official publication of Auckland District Law Society Inc. (ADLSI).

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*Law News* is published weekly (with the exception of a small period over the Christmas holiday break) and is available free

of charge to members of ADLSI, and available by subscription to non-members for \$130 plus GST per year. If you wish to subscribe please email [reception@adls.org.nz](mailto:reception@adls.org.nz)

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## Working with “workable competition”

By Andy Glenie, Senior Associate, Bell Gully

In December 2013, the High Court released an important decision about the regulation of natural monopolies under Part 4 of the Commerce Act 1986 (the Act) (see *Wellington International Airport Ltd v Commerce Commission* [2013] NZHC 3289). In a judgment running to 661 pages, the Court dismissed a number of appeals brought by regulated businesses against input methodologies set by the Commerce Commission (the Commission).

In doing so, the Court made some useful observations in relation to a key concept in the Act – that of “workable competition”.

### Context

As section 52 explains, Part 4 of the Act provides for the regulation of markets where there is little or no competition and little or no likelihood of a substantial increase in competition. The purpose of Part 4 is set out in section 52A:

#### 52A Purpose of Part

- (1) The purpose of this Part is to promote the long-term benefit of consumers in markets referred to in section 52 by promoting outcomes that are consistent with outcomes produced in competitive markets such that suppliers of regulated goods or services—
  - (a) have incentives to innovate and to invest, including in replacement, upgraded, and new assets; and
  - (b) have incentives to improve efficiency and provide services at a quality that reflects consumer demands; and
  - (c) share with consumers the benefits of efficiency gains in the supply of the regulated goods or services, including through lower prices; and
  - (d) are limited in their ability to extract excessive profits.

The idea of competition thus underpins Part 4, as it does the rest of the Act. Crucially, section 3(1) provides that “in this Act competition means workable or effective competition”.

In carrying out its duties under Part 4, the Commission issued a number of “input methodologies” which are important ingredients in the regulation of airport, electricity and gas businesses. Dissatisfied, those businesses appealed



Andy Glenie

*The Court itself notes that the reference to workable competition in section 3(1) may just be a recognition that perfectly competitive markets do not exist in reality. If that is so, it may not be helpful to try to understand exactly what is meant by “workable competition” – it may be better simply to acknowledge that markets demonstrate varying levels of workable competition.*

to the Court. In essence, they asked the Court to determine whether their proposed alternative approaches would be “materially better” in achieving the aims of Part 4 than those adopted by the Commission.

This required the Court to consider carefully the purpose of Part 4, and so the meaning of “workable or effective competition”.

### Court’s analysis

The following propositions can be distilled from the Court’s reasoning in relation to those words:

- The theoretical ideal of perfect competition is unattainable in reality.
- In practice, markets demonstrate varying levels of competition. The outcomes produced by a more competitive market (including productive efficiency, allocative efficiency, and dynamic efficiency) are better for society than those produced by a less competitive market.
- A strongly competitive market is one where prices reflect efficient costs, and firms earn no more than a normal rate of return.
- A workably competitive market is one that produces outcomes that are reasonably close to those found in strongly competitive markets. In a workably competitive market, no firm has significant market power. The tendencies are thus towards cost-reflective prices and normal rates of return (although those outcomes may never in fact be achieved).
- Ultimately, whether a market is workably competitive is a judgment to be made in light of all of the available information.

This logic led the Court to conclude that the purpose of regulation under Part 4 is to promote the outcomes in section 52A(1)(a)-(d), consistent with the outcomes that would occur in a workably competitive market.

The Court then sought to apply that touchstone in determining the issues presented by the appeals.

For instance, one of the key issues in the appeals concerned the appropriate regulatory asset base (the greater that asset valuation, the higher the regulated prices that could be charged in the future).

According to the appellants, that valuation should have been calculated by reference to the costs a hypothetical new entrant would face.

The Court concluded that such an approach was not mandated by the reference in section 52A to promoting outcomes consistent with those produced in workably competitive markets.

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# Difficult personalities and the practice of law

By *Emily Morrow, Executive Consultant*

**When initially meeting with a client, I will frequently say “Tell me about the people with whom you work”. The client will often say: “I work in a practice group of five people. I get along well with four of them, but have problems with one person who is really difficult”. Usually I say, “Tell me more about that difficult individual. What is it about that person and the way you two interact that causes you to say s/he is a difficult personality?” The client then usually describes the individual in minute detail, focusing on behaviours that s/he perceives to be unpleasant or difficult.**

I expect you have experienced “difficult personalities” in your law practice. How can you handle those relationships to minimise, if not eliminate, the problem? Clearly, getting along with all kinds of people, including “difficult personalities”, is a critical skill for lawyers. As a lawyer, you must interact with professional colleagues in and outside of your office, your existing and prospective clients, referral sources and other community members. If you can manage your professional relationships optimally, you will be a better lawyer, have more work, improve your chances for advancement and so forth. How do you achieve this?

## The “truisms”

When I listen to a client describing a “difficult person” in painful detail, here is what I think to myself:

- No one wakes up in the morning, gets out of bed and says to him/herself: “Today I am going to work with the intention of being a difficult personality.” If someone is difficult, it is likely to be done unknowingly and unintentionally.
- If someone does something that does not make sense to you, it’s because you don’t know enough about that person and how s/he perceives the world and his/her place in it.
- How you choose to manage yourself around other people can minimise problems, even with difficult personalities.
- You typically cannot change someone else’s behaviour, but you can change how you manage yourself around other people. This will predictably impact how other people interact with you.

With this in mind, I will often enquire:

- “To what extent do you think your colleague intends to be a difficult person with whom to work?”
- “What might you ask your colleague about him/herself that would help you better understand his/ her behaviour?”
- “How might you better manage yourself around your colleague to minimise friction?”
- “If you managed yourself better around your colleague, how might your colleague better manage him/herself around you?”

In essence, I encourage clients to look at themselves and their own behaviour, rather than fixating on the other’s behaviour. As Jackie Stead, former



*No one wakes up in the morning, gets out of bed and says to him/herself: “Today I am going to work with the intention of being a difficult personality.” If someone is difficult, it is likely to be done unknowingly and unintentionally.*

National HR Director for Russell McVeagh and now HR Consultant, so aptly puts it: “You can’t give someone a ‘personality transplant’. However, by thinking differently about how you interact with a ‘difficult’ person, and managing your own behaviour, you will probably find benefits occur for both parties.” Although, in the short run, this may be less “satisfying” than vilifying the other, in the long run, it’s a better strategy.

That said, there are two particular skills that can minimise problems with people whom you experience as being difficult. These are the ability to influence effectively and the development of a basic understanding of temperament.

## Influencing

Influencing (as opposed to the exercise of authority) is the ability to lead others outside your control so they make better decisions affecting you and your work. By influencing, you avoid “bumping up” against other people and reduce the likelihood of eliciting “difficult behaviour”. Instead, others will be more inclined to adopt your ideas willingly. Skillful influencing encourages collaborative and cooperative behaviour.

For example, Jane, a partner in a mid-sized firm, complained to me about Bill, a “difficult associate”, who failed to complete work in a timely and professional way. When I spoke with Bill, he reported that Jane delegated work “on the fly”

without giving sufficient information, and that she never gave him feedback. Later on, I asked Jane how she could enhance her delegation skills and how she might influence Bill to do his best work for her. We discussed optimal delegation techniques, including how she could give Bill constructive criticism so he would learn from his mistakes. Jane started changing her own delegation style and soon found that both the quality of Bill’s work and her relationship with him improved. Jane no longer perceived Bill as being a “difficult personality”.

## Temperament

If you understand your own and other people’s temperamental preferences and tailor your behaviour accordingly, you will encounter fewer difficult personalities in your practice. You might think that others should tailor their behaviour to accommodate you. In fact, the most successful (and influential) lawyers tailor their own behaviour to bring out the best in others and reduce the likelihood of difficult professional interactions. They do not cater to other people, but they do take into account differences in the way people work, think, communicate and interact, and they do so to great advantage.

For example, let us assume you work in a focused, industrious, methodical and well-organised way and that the solicitor who reports to you is a big picture, conceptual, innovative and digressive thinker. You could perceive your colleague as being a difficult personality. Conversely, if you consider your colleague’s behavior and how his/her approach might complement yours and tailor your interactions accordingly, the outcome will be predictably better.

Further, the most robust and successful teams are diverse teams. Some members are introverts, others are extroverts; some are analytical, others are more emotive; some focus on the big picture and others on the details; some will enjoy opening options while others will want to bring closure to things; and so forth. To reduce the potential for difficult interactions occurring within a diverse team, try using influence and taking into account your own and other people’s temperamental preferences.

If you think someone is a difficult person, try not to focus on how you might “fix” or “change” that person. Instead, focus on understanding the other person, rather than on being understood by the other. If you do so, predictably the number of difficult personalities in your professional life (and perhaps personal life as well), will diminish noticeably. Try it. It really works and it makes life and the practice of law a lot easier and more enjoyable.

*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, Emily 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 the like. *

## + ADLSI Family Law Committee update

# Feedback sought on Family Court service delivery

**Law News has received the following letter, dated 19 February 2014, from Stuart Cummings on behalf of ADLSI's Family Law Committee (the Committee) seeking feedback on the Family Court's service delivery. Members and readers practising in the area of family law are asked to read and respond to the Committee accordingly:**

The Committee is focusing in the early part of this year on what is seen as a significant impediment to the practice of Family Lawyers in the Auckland region – service delivery under the “spoke and hub” format introduced last

year. The Committee wants to work with the Ministry of Justice in identifying accurately the breakdowns in service delivery that are most heavily impacting on practitioners and their clients.

To assist in identifying the deficiencies in service delivery in the Family Courts in the Auckland region and providing a conduit for suggestions for improvement, the Committee asks that family lawyers take a few minutes to review their experiences and provide us with details of those areas that are failing, together with any suggestions for improvement. It would

be useful to record the extent of the failings and the consequences for the practitioners and clients that flow therefrom.

At this stage the Committee is not seeking any identifying information as it is acknowledged that this raises issues that can be burdensome to overcome.

Yours faithfully

Stuart Cummings, Barrister & Mediator, Surrey Chambers

E-mail: [cummings@surreychambers.co.nz](mailto:cummings@surreychambers.co.nz) 

## + Event notice

# AWLA “On Board” seminar, 13 March 2014

**AWLA is holding a seminar on 13 March 2014 aimed at providing guidance on securing governance positions and achieving success in the boardroom. Attendees will learn about directors' role and essential skills, how legal skills can be applied in a governance context, and the differences between commercial and not-for-profit boards. Two CPD hour credits are available to seminar attendees.**

The evening features a stellar line up of experienced and passionate directors with significant governance experience, including:

### **Anita Killeen, Barrister Quay Chambers**

Anita Killeen is a barrister at Quay Chambers specialising in financial crime and fraud, civil and criminal litigation, and governance and decision-making. She is the former Chief Prosecutor of the Serious Fraud Office New Zealand and holds a variety of governance roles in the legal, financial, local government, education, health and not-for-profit sectors. She established and is the chair of the Pro-Bono Panel of Prosecutors for the SPCA Auckland and in 2012 was awarded the Queen's Diamond Jubilee SPCA Volunteer Medal from the Governor-General for her meritorious service to animals.

### **Elizabeth Coutts, BMS, CA**

Liz is a director of EBOS Group Ltd, Skellerup Holdings Ltd, Ravensdown Fertiliser Cooperative Ltd, Yellow Pages Group, Ports of Auckland Ltd, Sanford Ltd and Tennis Auckland Region Inc. She is also chair of

Urwin & Co Ltd, a member of the Marsh New Zealand Advisory Board and trustee of Youthline Auckland Charitable Trust. She has previously been the chief executive of Caxton Group, chair and director of a number of public and private companies, and commissioner and/or member of a number of government bodies. Liz is an accredited fellow of the IoD, Chair of the Auckland Branch committee and an IoD councillor.

### **Michael Stiassny, Senior Partner, KordaMentha**

Michael is vice-president and a fellow of the IoD, chartered accountant, lawyer and senior partner of KordaMentha, leading New Zealand specialist independent corporate advisory and turnaround firm. In addition to a significant public profile resulting from his role as receiver in some of New Zealand's largest insolvencies, Michael is a director of a number of private and public companies including chairman of Vector Ltd, Chairman of Ngāti Whātua Ōrākei Whai Rawa and a founding member of the 25 Per Cent Group which is targeting board diversity as a means of improving corporate performance.

### **Karen Sherry, Partner, Bell-Booth Sherry**

Karen is a partner in Bell-Booth Sherry, Barristers and Solicitors who specialises in commercial and trust law. Karen has nearly 20 years' experience in corporate governance and is currently a director of Vector Ltd, a Trustee of the Auckland Energy Consumer Trust, chair of Energy Trusts of New Zealand, a trustee

of Auckland Healthy Houses Trust and a former trustee of Challenge Trust and a former director of Mercury Energy.

### **Christine Grice CNZM, FIoD, NZLS Executive Director**

Christine is our chair for the evening. She is a former chair of Radio New Zealand and Te Pou, the National Centre of Mental Health Research, Information and Workforce Development. She also chaired the Perry Group Ltd, a widely diversified group of commercial companies based in the Waikato, and is director of a number of law related companies. Christine lectures in law at post-graduate level and trains board members on behalf of New Zealand's Institute of Directors. She is the executive director of the NZLS. As Justice Grice she presides on both the High Court and the Court of Appeal of the Cook Islands.

**Date and time:** 5-7:30pm, Thursday  
13 March 2014  
(includes drinks and nibbles)

**Venue:** The Northern Club,  
19 Princes Street,  
Auckland Central

**Tickets:** AWLA Members \$50, IoD  
Members \$60, guests  
(non-members) \$75

**RSVP:** email [awla@xtra.co.nz](mailto:awla@xtra.co.nz)  
before 3 March 2014  
(space is limited) 



# ADLSI | CPD

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	Content	Presenters	Cost
<p>Tuesday, 11 March 2014, 4pm-6.15pm (Auckland CBD venue to be confirmed)</p> <p><b>2</b> CPD HOURS</p>	<p><b>Unfair Contract Terms: Revisiting Consumer Contracts</b></p> <p>The Consumer Law Reform Bill represents the biggest reform of consumer law in New Zealand in the last twenty years. This seminar focuses on the new unfair contract terms law. Businesses and professionals will need to ensure their contracts and practices comply with the new law, as it will be an offence for standard form consumer contracts to include an unfair term.</p> <p>The purpose of this seminar is to explain:</p> <ul style="list-style-type: none"> <li>• how our legislation has developed and differs from Australia's;</li> <li>• the types of standard form contracts the new law covers;</li> <li>• how the unfair contract terms law works;</li> <li>• the types of clauses that are likely to be unfair;</li> <li>• how the legislation is likely to be enforced.</li> </ul> <p><b>Learning outcomes</b></p> <p>At this seminar you will learn:</p> <ul style="list-style-type: none"> <li>• how the proposed reforms will apply to contractual terms;</li> <li>• how the proposed reforms will apply to representations;</li> <li>• how the existing case law in this area is likely to be applied;</li> <li>• the implications of Commerce Commission investigations.</li> </ul> <p><b>Who should attend?</b></p> <p>Commercial and transactional lawyers, litigators, in-house lawyers.</p>	<p><b>Associate Professor Alex Sims</b>, Department of Commercial Law, University of Auckland</p> <p><b>Antony Holmes</b>, Barrister</p> <p><b>Chair: Paul David</b>, Barrister</p>	<p><b>Members:</b> \$125.00 + GST (\$143.75 incl. GST);</p> <p><b>Non-members:</b> \$180.00 + GST (\$207.00 incl. GST)</p>
<p>Thursday, 13 March 2014, 4pm-6.15pm (Auckland CBD venue to be confirmed)</p> <p><b>2</b> CPD HOURS</p>	<p><b>Commercial Leasing – Emerging Trends and Risks</b></p> <p>This seminar will explain the latest trends and developments in commercial leasing. From new liabilities and risks to development leasing opportunities, you will hear about topics including:</p> <ul style="list-style-type: none"> <li>• the impact of earthquake strengthening policy and seismic rating on lessor and lessee relationships;</li> <li>• insurance issues in commercial leasing;</li> <li>• liability and insurance issues surrounding landlord negligence;</li> <li>• risks and challenges for landlords in development leasing.</li> </ul> <p><b>Learning objectives</b></p> <p>At this seminar you will learn about:</p> <ul style="list-style-type: none"> <li>• how to allocate risks in commercial leasing;</li> <li>• express provisions now being used by landlords to limit liability;</li> <li>• the liability of landlords for servants and agents;</li> <li>• recent earthquake strengthening policy decisions;</li> <li>• interfaces between agreements to lease, construction contracts and consultancy agreements;</li> <li>• tips about what matters to commercial tenant clients.</li> </ul> <p><b>Who should attend?</b></p> <p>Property lawyers, commercial lawyers, building &amp; construction lawyers.</p>	<p><b>Bruce Patterson</b>, Partner, Duncan Cotterill</p> <p><b>Bridget Cameron</b>, Senior Solicitor, Duncan Cotterill</p> <p><b>Alistair Law</b>, Senior Associate, Chapman Tripp</p> <p><b>Chair: Michael Fisher</b>, Barrister</p>	<p><b>Members:</b> \$125.00 + GST (\$143.75 incl. GST);</p> <p><b>Non-members:</b> \$180.00 + GST (\$207.00 incl. GST)</p>

Calendar of  
UPCOMING  
CPD  
ACTIVITIES

**Immigration Law Series – Visas, Applications and Pathways to Residence – 2 CPD hrs**

4 March 2014, 4pm-6.15pm **Venue:** Auckland CBD to be confirmed

**Presenters:** Simon Laurent, Peter Moses **Chair:** Darsan Singh

**Charity begins at ... Developing Perspectives on Charity – Law 2 CPD hrs**

**Venues:** Wellington: 1 April 2014, 4pm-6.15pm (provisional); Auckland: 3 April 2014, 4pm-6.15pm

**Presenters:** Dr Donald Poirier, Sue Barker, Craig Fisher, Geoff Clews

# Upcoming CPD Activities

To register online – [www.adls.org.nz/cpd](http://www.adls.org.nz/cpd)

EMAIL: [cpd@adls.org.nz](mailto:cpd@adls.org.nz)

PHONE: 09 303 5278

FAX: 09 309 3726

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	Content	Presenters	Cost
<p>Tuesday, 18 March 2014, 4pm-6:15pm (Auckland CBD venue to be confirmed)</p> <p><b>2</b> CPD HOURS</p>	<p><b>Insolvency Law – Essential Issues</b></p> <p>Insolvency law is one of the most rapidly developing areas of New Zealand jurisprudence. At this seminar you will hear about a liquidator’s armoury – useful for whether you’re behind or in front of the ramparts. Additionally, find out more about:</p> <ul style="list-style-type: none"> <li>• hive downs and phoenix companies;</li> <li>• prejudicial dispositions;</li> <li>• funding options and preferential status;</li> <li>• insolvent transactions and interlocking directorships.</li> </ul> <p><b>Learning objectives</b></p> <p>At this seminar you will learn:</p> <ul style="list-style-type: none"> <li>• practical, proactive creditor tips to avoid the liquidator’s net;</li> <li>• best strategic use and the ambit of liquidator examination notices;</li> <li>• legitimate ways to hive down businesses;</li> <li>• more about the underutilised but powerful prejudicial disposition remedy;</li> <li>• how to transition directors into phoenix companies without tripping up.</li> </ul> <p><b>Who should attend?</b></p> <p>Those working for creditors and insolvency practitioners, in-house counsel, commercial and litigation lawyers.</p>	<p><b>Kalev Crossland,</b> Partner, Shieff Angland,</p> <p><b>Bret Gustafson,</b> Barrister</p>	<p><b>Members:</b> \$125.00 + GST (\$143.75 incl. GST);</p> <p><b>Non-members:</b> \$180.00 + GST (\$207.00 incl. GST)</p>
<p>Wednesday, 19 March 2014, 12 – 1pm (at your desk or on your portable device)</p> <p><b>1</b> CPD HOUR</p>	<p><b>Financial Markets Conduct Act – New Approaches and Opportunities</b></p> <p>The first tranche of the Financial Markets Conduct Act (FMC Act) comes into effect on 1 April, and will introduce significant changes to the regulation of New Zealand’s financial markets. The reforms aim to build the trust that is essential to facilitate capital market activity, help businesses grow, and provide individuals with opportunities to develop their personal wealth.</p> <p>This webinar will provide useful guidance to ensure you are ready for the new regime. After providing context with a brief overview of the FMC Act, the webinar will focus on:</p> <ul style="list-style-type: none"> <li>• licencing, who must apply for a licence and ongoing supervision;</li> <li>• fair conduct and dealing provisions – what’s new;</li> <li>• new ways to raise capital – crowd funding and peer to peer lending;</li> <li>• the latest developments on the draft regulations;</li> <li>• FMA update on its consultations and proposed guidance notes.</li> </ul> <p>This is an excellent opportunity to receive pragmatic and practical insights and commentary on these reforms from a senior Financial Markets Authority executive. Participants are encouraged to submit any questions they may have in advance, by emailing <a href="mailto:cpd@adls.org.nz">cpd@adls.org.nz</a>.</p> <p><b>Who should attend?</b></p> <p>Commercial lawyers, banking and finance lawyers with entry level experience, general practitioners and in-house lawyers where the FMC Act is relevant to their work.</p>	<p><b>Sue Brown,</b> Head of Strategy, Innovation &amp; Engagement, Financial Markets Authority</p>	<p><b>Members:</b> \$75.00 + GST (\$86.25 incl. GST);</p> <p><b>Non-members:</b> \$95.00 + GST (\$109.25 incl. GST)</p>

Calendar of  
UPCOMING  
CPD  
ACTIVITIES

**Fitness to Stand Trial – Current Issues – 2 CPD hrs** 15 April 2014, 4pm-6:15pm  
**Venue:** Auckland CBD to be confirmed **Presenters:** Professor Warren Brookbanks, Paul Guar, Gary Wyatt, Dr Jeremy Skipworth

To register: [www.adls.org.nz/cpd](http://www.adls.org.nz/cpd) Email: [cpd@adls.org.nz](mailto:cpd@adls.org.nz)

+ *New book*

## The Law of Liability Insurance, 3rd Edition – Volumes 1 and 2

**Authors:** D Derrington, R Ashton

**Publisher:** LexisNexis

**Format:** Hardcover

**ISBN:** 9780409334098

**Published:** October, 2013

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+ *ADLSI CPD seminar*

## Beyond Defamation – New Media Law

ADLSI held a seminar entitled “Beyond Defamation - New Media Law” on Thursday 20 February 2014.

The high level of attendance at the seminar indicated the increasing relevance of this subject area.

Attendees had the benefit of hearing from practitioners with expertise in this complex and topical area of law, which can affect not only the business lives, but also the personal lives, of both lawyers and clients.

Topics included the opportunities and risks posed by an online presence, managing online reputations (including ways of dealing with objectionable content), liability issues and some recent cases and examples.

An on demand, recorded version of this seminar will be available soon, with an interactive component so that participants can gain CPD hours. Watch out for it on our webpage [www.adls.org.nz/cpd/cpd-on-demand/](http://www.adls.org.nz/cpd/cpd-on-demand/). 

*Pictured at ADLSI's recent “Beyond Defamation – New Media Law” seminar at the Crowne Plaza in Auckland are (from left to right) presenters Josh McBride, Barrister and Clive Elliott QC with chair Stephen Mills QC.*



## + ADLSI event

# Christchurch Cocktail Function

**Christchurch practitioners and members of the judiciary are invited to a special cocktail function hosted by ADLSI in order to learn more about the ways in which ADLSI may be able to provide support to the legal profession in Canterbury.**

Since becoming a national organisation in 2012, ADLSI has engaged in a process of seeking information from, and listening to, the legal profession in Canterbury with a view to ascertaining what benefits ADLSI might be able to bring to it.

Through a close working relationship with a number of Canterbury practitioners ADLSI has achieved a range of relevant and successful outcomes, including: the formation of the Christchurch Property Law Interest Group which contributed to revisions being made to the Commercial Deed of Lease; the delivery of key CPD activities within Christchurch; and the launch of an online CPD Plan and Record system available to Christchurch practitioners via the ADLSI website.

**Date:** Wednesday, 26 March 2014  
**Time:** 5.30pm (for drinks and canapés)  
**Dress code:** Normal business attire  
**Venue:** The George, 50 Park Terrace, Christchurch  
**Registration:** RSVP before 19 March 2014 to secure your space, subject to availability.

To register visit [www.adls.org.nz](http://www.adls.org.nz) or contact [adls.events@adls.org.nz](mailto:adls.events@adls.org.nz).

## + Movers and shakers

# Rounding up some recent appointments in the profession

**Jackson Russell has appointed three new partners – Caroline Harris in the litigation team and Kelly Seabourne and James Wilkinson in the property and personal client area.**

**Caroline Harris** has been with Jackson Russell for over 10 years and has recently become a partner in the Litigation and Dispute Resolution team. She represents corporate and personal clients in a variety of issues involving commercial disputes, corporate insolvency, commercial leases and trusts.

**Kelly Seabourne** joined Jackson Russell in 2011 and has recently been appointed as a partner in the Property and Personal Client team. She specialises in a wide range of property law matters including commercial and residential property transactions, leasing, financing, subdivisions and development project work. She also advises on trust and private client matters including wills,

enduring powers of attorney, retirement village occupation licences, and general commercial law matters.

**James Wilkinson** joined Jackson Russell recently as a partner in the Property and Personal Client team. His areas of expertise are private client work, specifically residential property, trusts, wills, powers of attorney and estate administration, and commercial property work including sales and purchases, financing, leasing and developments.

**Bell Gully has appointed three new partners – two commercial litigators, Rachael Brown and Sophie East, and tax specialist Jarrod Walker.**

**Rachael Brown** is an experienced litigator with expertise in a broad range of areas. She specialises in public law, Maori legal issues and all aspects of employment law, including health and safety issues. Rachael builds strong

relationships with clients and is a trusted advisor to organisations in both the public and private sector, together with a number of iwi.

**Sophie East** has extensive litigation experience in both New Zealand and the US. She joined Bell Gully's litigation team in 2009 after four years as an associate in the New York office of White & Case LLP. She has particular expertise acting for corporate clients in commercial litigation and arbitration, including complex contractual disputes and disputes involving company and securities law.

**Jarrod Walker** is part of our leading national tax team. He advises on all aspects of corporate tax for financial institutions and public and private companies including their transactional work. Prior to joining Bell Gully, Jarrod spent eight years at leading law firms, Clifford Chance and Allen & Overy where he advised a wide range of global financial institutions. 



Caroline Harris



Kelly Seabourne



James Wilkinson



Rachael Brown



Sophie East



Jarrod Walker

of mentors who are helpful and encouraging. For me Sir Ian Barker was just fantastic. He read my application and was very helpful giving me great positive encouragement to make me do it."

Other role models include Dame Sian Elias and Lowell Goddard. "As a relatively junior lawyer it was a big deal for me when they were appointed; suddenly I could see just what was possible," she says.

Like others in this story Ms Davenport says it is very hard for a woman raising a family to get to the top of the legal profession.

"It's a hard job and it's stressful and it's difficult to maintain a normal life let alone a family life when you are required to work as hard as you have to.

"My husband is a doctor and what strikes me about the difference between medicine and the law is that he works very hard all day but when he gets home at night the work stops. No one has told him that he needs to prepare a paper and hand it in, say on a Tuesday, unlike litigation where sometimes the hours in the day and the work to be done bear absolutely no resemblance to each other."

So how has she changed in the relatively short period since taking Silk?

"Basically I'm still the same person but the label gives you a different or better type of work. I mean you can't let yourself believe your own press. The minute you do that then you don't do a good job so you have to do your best and not think you know all the answers because nobody has got all the answers."

Clearly Ms Davenport QC is held in high regard

by people in high places with Attorney-General Christopher Finlayson telling *Law News* that she was one of several "excellent candidates" that he appointed last year. He says the "most obvious reason" for the comparatively low number of women QC is that very few females apply.

"That fact doesn't reflect the many very capable women at the bar in my opinion. I have been talking with a number of women in the profession to see what can be done to encourage more women to put themselves forward. I think the Bar Association and women lawyers groups have a responsibility to their members to ensure the best people are putting themselves forward for recognition."

All of which should be of some comfort to barrister Karen Feint who is a member of NZLS's Wellington branch "Women in Law" Committee. After making an *Official Information Act* request she was shocked to find that of the 116 barristers nationwide who applied to become QCs last year only 16 were women, with none from Wellington. And of the 26 who were ultimately successful in becoming Silks, just 4 were females.

Given that 36 per cent of barristers are women it is no wonder Ms Feint believes the time is long overdue to rectify the imbalance.

"Is it because there just aren't that many senior women barristers out there or is there some truth to the adage that women won't apply for something unless they believe they meet all the criteria, whereas men are more likely to be more confident about their own ability?" she asks.

"The reality is probably a complex combination of factors, but our sense was that to some extent it is true to say that women tend to be backwards

about coming forwards and won't apply unless they think they are well qualified whereas the perception is that men are more willing to take a punt."

Despite her concerns about the gender imbalance Ms Feint says she "loves" being a barrister: "Going to the bar was the best thing I ever did. The fantastic part is that you have so much flexibility and can do whatever interests you professionally as well as work whatever hours suit with no budgets to worry about and no boss telling you what to do. This flexibility was really important, especially early on when my children were very young."

Unlike Ms Feint and the other women who have appeared in this story Ethel Benjamin's groundbreaking foray into law did not have a happy ending. She found herself frozen out from conventional work and resorted to placing advertisements for work in the Law Society newsletter.

Disillusioned and depressed, she eventually gave up law and opened a restaurant before turning her back on New Zealand and going to live in the United Kingdom where she died during World War II. Adding insult to injury is the fact that her harrowing story was largely ignored by the legal profession until the 1980s when Otago Women Lawyers championed her cause.

*Note: Attorney General Chris Finlayson says an appointment round for Queen's Counsel will take place this year. Applications close on March 14 2014 and it is expected that appointments will be made in May. For more information refer to Law News Issue 2 (14 February 2014) or [www.beehive.govt.nz](http://www.beehive.govt.nz).*

## Comments

Several observations may be made:

- The Court itself notes in passing that the reference to workable competition in section 3(1) may just be a recognition that perfectly competitive markets do not exist in reality. If that is so, then it may not be helpful to try to understand exactly what is meant by "workable competition".
- It may be better simply to acknowledge that markets demonstrate varying levels of workable competition (unless they are characterised by little or no competition, such as markets which require regulation under Part 4). In the context of Part 4, the focus would fall instead on the outcomes in section 52A(1)(a)-(d).
- Although section 3(1) in fact refers to "workable or effective competition", the Court does not consider in detail the meaning of "effective competition". The inference seems to be that "effective" adds nothing to "workable" in section 3(1).
- Given that the phrase "effective competition" was used in sections 2A and 21 of the

*Commerce Act 1975*, and that the Courts are usually reluctant to conclude that a statute includes redundant words, that inference may not be entirely safe.

- As noted above, section 3(1) is not specific to Part 4. The concept of "competition" underpins the entire Act (such as the section 27 prohibition on agreements which have the purpose or effect of substantially lessening competition in a market). The Court's reasoning may therefore be relevant in other contexts. For instance, the Supreme Court has already established that determining whether a party has taken advantage of its substantial degree of market power under section 36 involves asking whether a defendant would have acted as it did in a workably competitive market (*Commerce Commission v Telecom Corporation of New Zealand Ltd* [2011] 1 NZLR 577 at [34]).

Perhaps the key point is that, even 28 years after the current *Commerce Act* was passed, there remains real uncertainty about the meaning of "workable competition". It may be hoped that the appellate courts will have an opportunity to consider this fundamental issue soon. [LN](#)

## + ADLSI notice

# Notice of Annual General Meeting

The AGM of members of the Auckland District Law Society Incorporated will be held on Thursday, 6 March 2014, 6th Floor, Norman Shieff Room, Chancery Chambers at 5:30pm

### AGM Business

- Report on the ADLSI
- Confirmation of President for 2014
- Declaration of Council members for 2014 and 2015
- Announcement of Appointed Lawyer Councillor and Appointed Councillor(s)
- Appointment of auditors
- Notices of motion
- General business

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## + wills

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Christine GALLICHAN, late of 52 Parakiwai Quarry Road, Whangamata, Horticulturalist, Aged 63, (Died 14'11'2013)

Michael THOROWGOOD, late of 175 Foster Road, RD 1, Kumeu 0891, Company Director, Aged 72, (Died 04'01'2014)

Tokoruakore Terematangi TUAINIITI, aka Toko TUAINIITI, late of 8 Kinloch Avenue, Mt Roskill, Auckland, Freezing Worker, Aged 65, (Died 17'12'2013)

Karel Louis VAN BERGEN, late of Adelgunden Strasse 5 80535 Munich, Germany, Beneficiary, Aged 56, (Died 29'08'2013)

Emsie Mary Dorothy WALTERS, late of 51 Howe Street, Howick, Auckland, Aged 69, (Died between 17'11'2013 & 19'11'2013)

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The ADLSI Friends Panel is a group of senior practitioners who provide a confidential support service to lawyers who wish to discuss professional matters outside of their office environment. This service has, for many years, provided an outlet to those members of the profession who require support on any matter that may be impacting their day to day practice.

To download the schedule that provides information of whom is on the panel, their phone number and their specialist areas, please visit [www.adls.org.nz](http://www.adls.org.nz).

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