

NZ

nzlawyermagazine.co.nz

LAWYER

Issue 8.2



NO HORSEING AROUND

General counsel
interview with Lion's
Tom Lane

INSURANCE LAW

Beyond natural
disasters

DESIGNING DISASTER LAWS

International interview
with Asia-Pacific
disaster law coordinator
Gabrielle Emery

DAVID MCLEAN

From lawyer to Westpac New Zealand CEO

HOTLIST

INSPIRING LAWYERS MAKING
THEIR MARK ON THE INDUSTRY



Put it on our desk.

Estate duties can be rewarding but can also be hard work. Public Trust Executor Assist is designed to take on as much or as little work as you need to free you up for other things. You can trust our specialist team to get the job done quickly and efficiently, while you retain your existing client relationships, and lower your admin costs. Visit publictrust.co.nz/executorassist



Executor Assist
Everything in order

ISSUE 8.2

CONTENTS

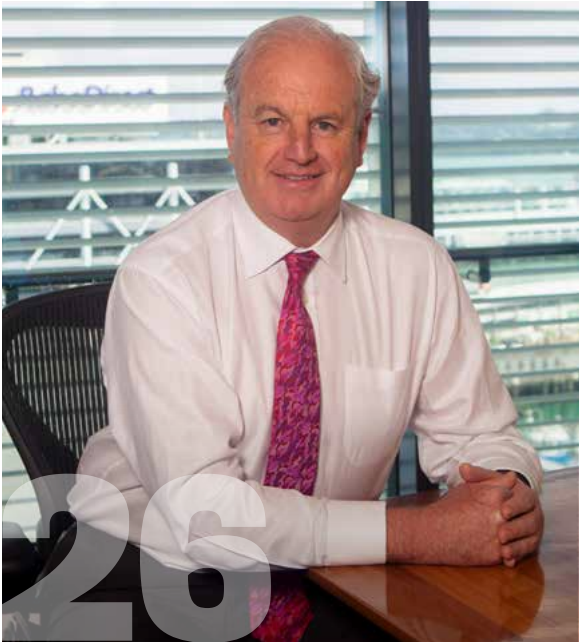
CONNECT WITH US

Got a story, suggestion or just want to find out some more information?

 @NZ_Lawyer

 plus.google.com/+nzlawyer

 facebook.com/NewZealandLawyer



COVER STORY
MAKING THE MOST OF EVERY OPPORTUNITY
Westpac New Zealand CEO David McLean on how he transitioned from law to banking



FEATURES
HITTING HIS STRIDE
Tom Lane, general counsel at Lion, on what it's like balancing law and play



FEATURES
THE HOT LIST
Inspiring lawyers making their mark on the industry



FEATURES
INSURANCE LAW
Beyond natural disasters

UPFRONT

- 04 Legal insight**
The New Zealand legal market: a snapshot
- 06 News analysis**
A new era of witness performance
- 08 Appointments**
- 10 Deals round-up**

FEATURES

- 32 Dynamite TMT sector**
The country's top telecommunications, media and technology lawyers explain why it's an exciting time for the space
- 50 Shooting the messenger**
Top defamation lawyers explain how the traditional legal tests and remedies are becoming less useful
- 54 Business strategy**
Balancing data and gut instincts in decision-making

PEOPLE

- 36 Legal ducks in a row**
Harvard Law School student Andrew Row on reveling in the law
- 44 Designing disaster laws**
Kuala Lumpur-based disaster lawyer Gabrielle Emery on working for the Red Cross and more

NZLAWYERMAGAZINE.CO.NZ
CHECK IT OUT ONLINE 



Sasha Borissenko

Taking the bull by the horns

Kia ora,

This issue of *NZLawyer* has an interesting mix of profiles. For a taste of lawyers who've decided to use their legal training for a variety of areas, see page 26 where we sat down to talk to Westpac New Zealand CEO David McLean. His mantra is to make the most of every opportunity, which, of course, led him into the world of banking.

Then there's the charming story of 24-year-old Andrew Row on page 36. Despite scraping through English at high school, he's now off to Harvard, and it seems he's left quite the legacy at Otago University School of Law.

Meanwhile, Samantha Woodhill chats to Kuala Lumpur-based Gabrielle Emery on page 44, whose career has centred around managing international responses to disasters in developing countries.

Speaking of disasters, Hannah Norton talks to leading partners in the insurance sector (page 40) who say the industry is still grappling with the aftermath of the Christchurch earthquakes. And yet lawyers, who are characteristically bright and driven, are finding innovative ways to tackle these challenges.

The same sentiment could be said for the industry as a whole. Digby Livingston looks at a new gap in the market in the shape of witness familiarisation on page six, and how this might be increasing in popularity in New Zealand, for example.

To top off this list of interesting tales, we pay homage to more than 30 inspiring lawyers making their mark on the industry in The Hot List on page 16. Each firm provided their own nominations, who were chosen not according to their age or status, but because they've led fantastic initiatives within and outside their respective firms. Congratulations to all the movers and shakers who've made the list.

Enjoy.

Sasha Borissenko, editor, *NZLawyer*

NZ | LAWYER

www.nzlawyermagazine.co.nz

MAY 2016

EDITORIAL	SALES & MARKETING
Editor Sasha Borissenko	Sales Manager Paul Ferris
Production Editors Hayley Barnett	Marketing and Communications Manager Lisa Narroway
CONTRIBUTORS	Traffic Coordinator Lou Gonzales
Hannah Norton Samantha Woodhill Digby Livingston Stephanie Jones Nick Russell	CORPORATE
	Chief Executive Officer Mike Shipley
	Chief Operating Officer George Walmsley
	Managing Director Justin Kennedy
	Chief Information Officer Colin Chan
	Human Resources Manager Julia Bookallil
ART & PRODUCTION	
Design Manager Daniel Williams	
Designer Kat Vargas	

EDITORIAL ENQUIRIES
+64 9 889 0124
sasha.borissenko@keymedia.com.au

SUBSCRIPTION ENQUIRIES
subscriptions@keymedia.com.au

ADVERTISING ENQUIRIES
+61 2 8437 4703
paul.ferris@keymedia.com.au



Key Media
www.keymedia.com.au
Key Media Pty Ltd, regional head office,
Level 10, 1-9 Chandos St, St Leonards, NSW 2065, Australia
tel: +61 2 8437 4700
fax: +61 2 9439 4599

Offices in Auckland, Sydney, Denver, Toronto, Manila

**NZLawyer is part of an international family
of B2B publications and websites for the legal industry**

NZLAWYER

sasha.borissenko@keymedia.co.nz
T +64 9 889 0124

samantha.woodhill@keymedia.com.au
T +61 2 8437 4704

AUSTRALASIAN LAWYER

sasha.borissenko@keymedia.co.nz
T +64 9 889 0124

samantha.woodhill@keymedia.com.au
T +61 2 8437 4704

Copyright is reserved throughout. No part of this publication can be reproduced in whole or part without the express permission of the editor. Contributions are invited, but copies of work should be kept, as NZLawyer magazine can accept no responsibility for loss

Where experts go for expert advice.

Congratulations to all
Australasian Law Awards 2016 nominees
on behalf of FTI Consulting!

The FTI Consulting team includes experts in accounting, finance, damages, valuation, investigations, forensic technology, e-discovery, restructuring and strategic communications. Each experts in our own right – with 3,500 experts in 28 countries on six continents we have a unique ability to surround any complex issue. Whatever business challenge you're facing, we have the intellectual firepower to give you the advantage in your dispute, investigation, transaction or restructuring. In today's complex world, it's not what you know; it's who you know and what they know that counts.

www.fticonsulting.com



CRITICAL THINKING AT THE CRITICAL TIME™

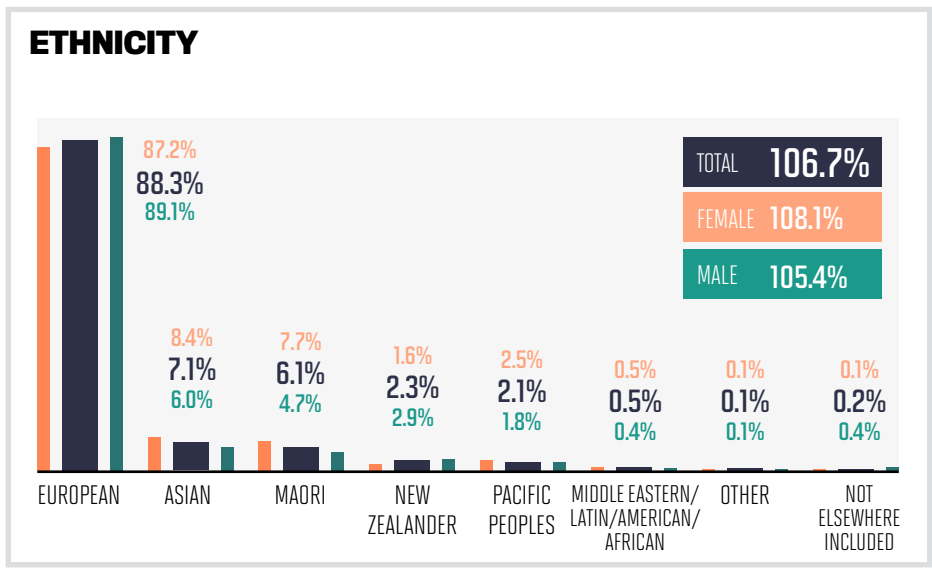
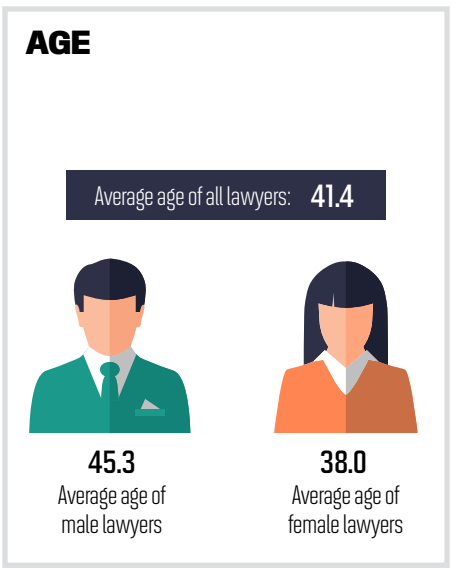
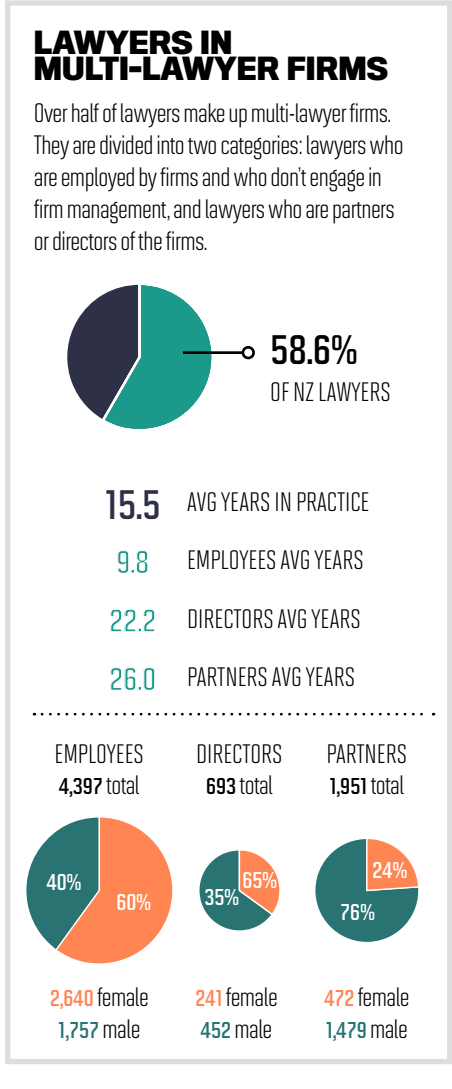
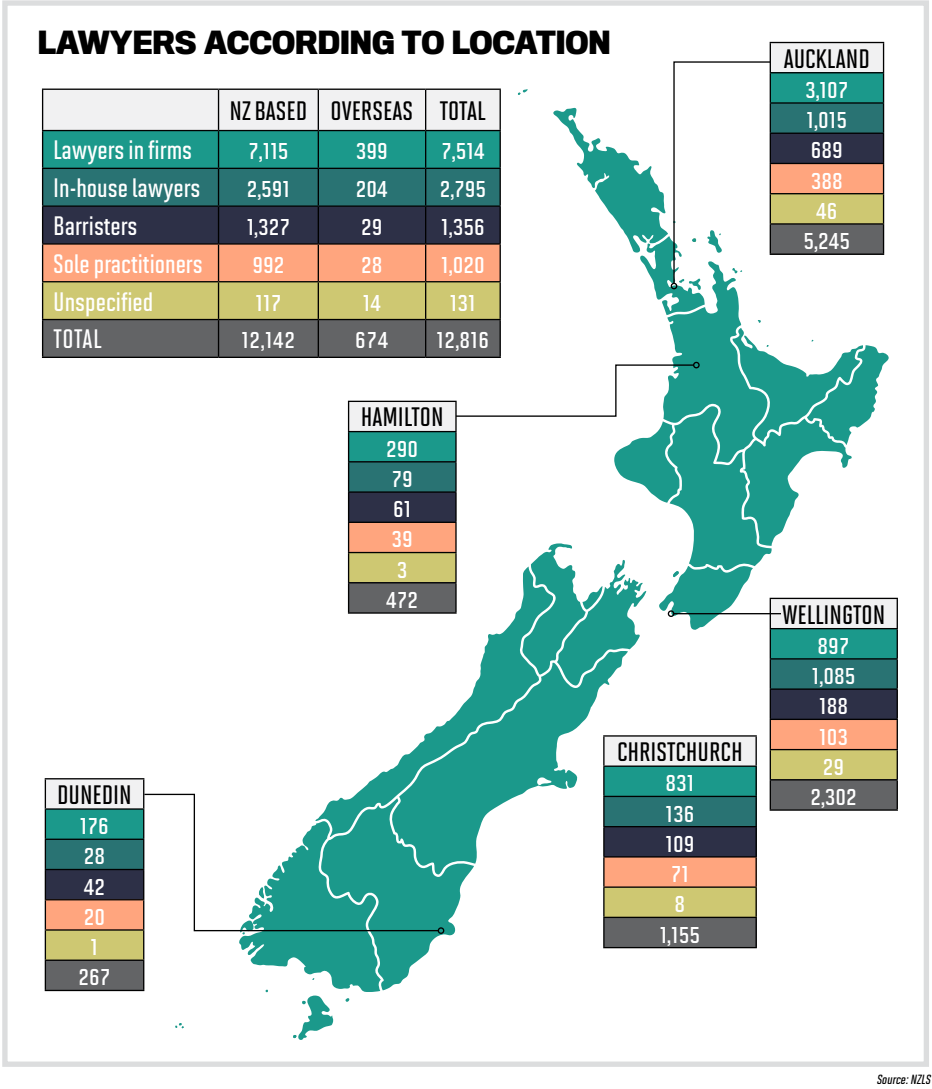
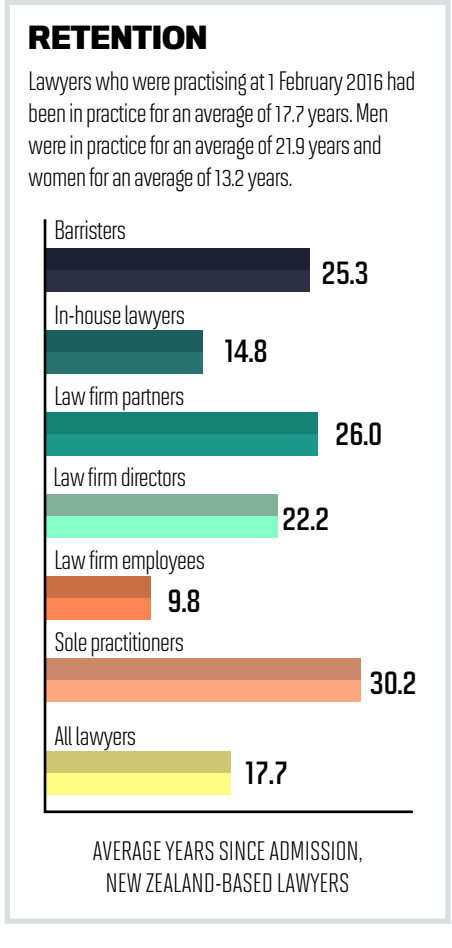
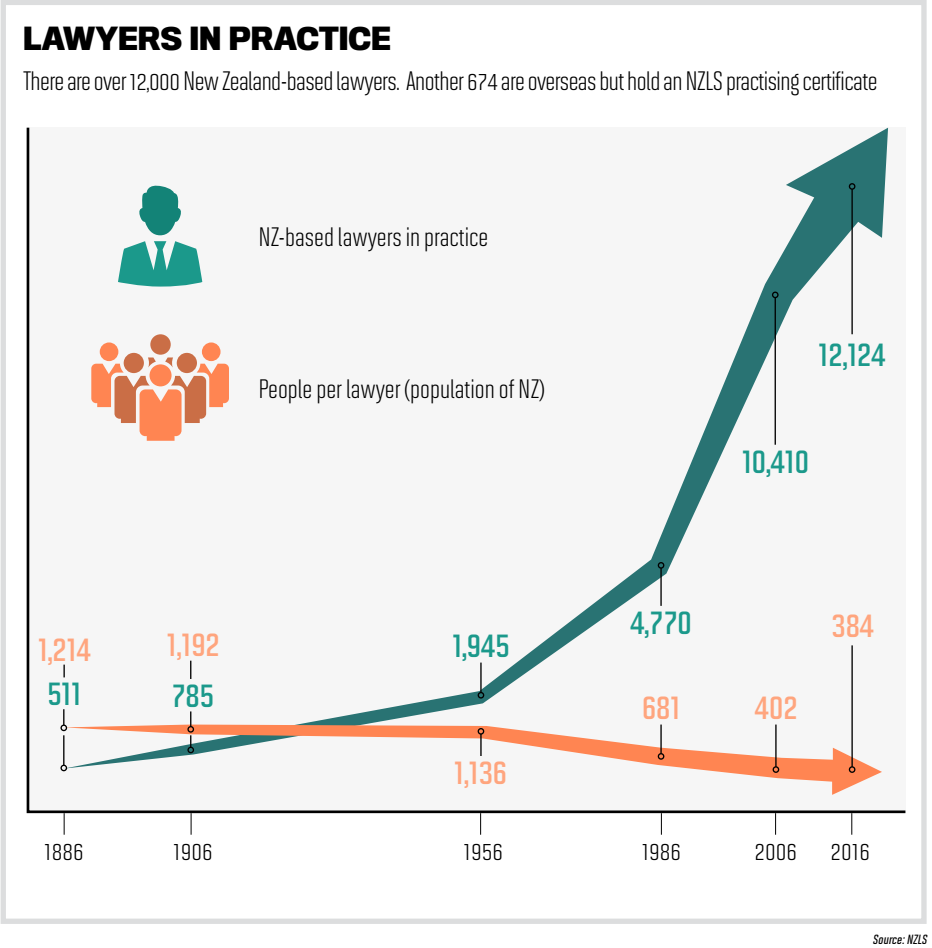
THE NEW ZEALAND LEGAL MARKET: A SNAPSHOT

A report conducted by The New Zealand Law Society provides the latest snapshot of the New Zealand legal profession

THE NEW Zealand Law Society has published an annual round-up of information on the New Zealand legal profession since 2011. The information is obtained from a number of sources, including practising certificates issued by the New Zealand Law Society. The objective is to give an idea of the make-up of New Zealand's lawyers at a point in time. Care

is taken to avoid publishing any identifying particulars, says compiler and Law Society communications manager Geoff Adlam.

Just over 20% of the lawyers currently practising have been admitted since their first Snapshot was published in April 2011. This year's Snapshot highlights some of the changes (or lack of changes) over the past five years.



A NEW ERA OF WITNESS PERFORMANCE

Lawyers are not permitted to influence the evidence of their witnesses, yet witnesses are significantly disadvantaged without training. Consequently, independent professionals are taking advantage of this gap in the market. Digby Livingston reports



THE CONDUCT and Client Care Rules for lawyers state “a lawyer must not, during the conduct of a proceedings, engage in any relationship with a witness that may have the effect or appear to have the effect of interfering with the fair disposition of the proceeding”. “A lawyer must not suggest to a witness or potential witness, whether expressly or impliedly, that false or misleading evidence ought to be given or that evidence should be suppressed.”

Case examples

Lawyers may recall American judge and professor Irving Younger reciting Max Steuer’s cross examination of the prosecution witness who gave damning testimony of the Triangle Shirtwaist Factory fire, which killed 146 people in 1911. In the story, Steuer has the witness retell her testimony three times. The witness gives three identical speeches, word



“Even in the most complex disputes, the result often comes down simply to who the judge believes at the end of the day. A poor performance in the witness box can undermine a witness’ confidence, damage the credibility of their evidence, and lose the case”

Nikki Pender, LEGAL EMPOWERMENT

for word, except for a single word in the third retelling. Steuer has the witness confess this was indeed a derivation from a memorised script provided by the prosecution lawyers. The owners responsible for the fire were subsequently acquitted.

Fast forward to 2012 when Russian billionaire Roman Abramovich faced

a £3.5 billion claim by his former business partner Boris Berezovsky. It was no secret that Abramovich had been well prepared by a witness familiarisation course run by the United Kingdom firm Bond Solon. Berezovsky argued that this was a cynical manipulation of the trial process. The trial judge did not agree. He went

so far as to say that “there was a marked contrast between the manner in which Mr Berezovsky gave his evidence and that in which Mr Abramovich did”.

The judge observed that “Mr Abramovich gave careful and thoughtful answers, which were focused on the specific issues about which he was being questioned... Where he had relevant knowledge, he was able to give full and detailed answers; he took care to distinguish between his own knowledge, reconstructed assumptions and speculation”.

Conversely, the judge found Berezovsky to be “an unimpressive, and inherently unreliable witness, who regarded truth as a transitory, flexible concept, which could be moulded to suit his current purposes”.

Familiarisation vs coaching

The key difference between the ethically ambiguous preparation of the Triangle

Shirtwaist Factory fire witness and the preparation of Abramovich was that the Bond Solon trainer was independent – she was not involved in the case, had no material knowledge of the issues and no investment in the outcome.

Pender says a delivery hampered by nerves or inexperience can, unfairly, affect the credibility of witnesses and how they are perceived in court. “Even in the most complex disputes, the result often comes down simply to who the judge believes at



“The courtroom is an entirely alien environment... Even the most successful and high profile business people can do themselves a complete disservice if they are unprepared for a style of questioning that they come across in no other part of their business life”

Mark Solon, BOND SOLON

The United Kingdom Court of Appeal case of R v Momodou is the seminal decision on the bounds of witness preparation. In that decision, Lord Justice Judge drew a dramatic distinction between witness coaching and witness familiarisation. Coaching was prohibited on the basis that discussions between witnesses should not take place as one witness may tailor their evidence in light of what another witness has said. Whereas familiarisation with the layout of the court, the likely sequence of events when the witness is giving evidence, and a balanced appraisal of the different responsibilities of the various participants were preparations welcomed by the Court.

A developing market

Franks Ogilvie principal Nikki Pender is the first in New Zealand to employ independent witness training. Outside of her practice, she has secured an exclusive licence to offer Bond Solon’s witness training programmes in New Zealand and Australia. Her witness familiarisation company, Legal Empowerment, plans to follow the path set by Bond Solon in the UK by drawing on the experience of local litigators to develop a formidable panel of trainers available to deliver these programmes.

the end of the day. A poor performance in the witness box can undermine a witness’ confidence, damage the credibility of their evidence, and lose the case.”

Bond Solon founder Mark Solon says: “The courtroom is an entirely alien environment... Even the most successful and high profile business people can do themselves a complete disservice if they are unprepared for a style of questioning that they come across in no other part of their business life.”

Witness training is increasing in popularity as a result. In the United Kingdom over 70 of the FTSE 100 companies engage Bond Solon to run witness familiarisation sessions in house. Their mandate is to go beyond familiarisation to include improving a witness’ communication skills and set them up for cross examination. Bond Solon itself now engages 45 barristers delivering in excess of 3500 courses a year.

New Zealand is yet to have a definitive decision on the bounds of witness coaching and witness familiarisation. That decision may not eventuate if the witness familiarisation market services are successful. The developing market will hopefully raise awareness that witness familiarisation can be beneficial to all parties and reduce the risk of coaching. **NZL**

MARKET MOVEMENTS

APPOINTMENTS



■ **DUNCAN COTTERILL EXPANDS AUCKLAND PRESENCE WITH ACCOMPLISHED PARTNER TRIO**

Duncan Cotterill has welcomed three new partners to its growing Auckland office. Partners Paul Smith, Rob Coltman and Geoff Turner join Duncan Cotterill from Fortune Manning, bringing with them an 11-strong team that specialises in insurance litigation. Paul, Rob and Geoff’s arrival follows the recent internal promotion of four new partners to the firm, including Aaron Sherriff to the litigation team.

Duncan Cotterill’s current premises in the CPO Building in Britomart will host the expanded team until the whole office relocates to the historic Australis Nathan Building in October.

LATERAL PARTNER APPOINTMENTS			
NAME	PRACTICE AREA	LEAVING	GOING TO
Paul Smith	Litigation, Insurance	Fortune Manning	Duncan Cotterill
Rob Coltman	Litigation, Insurance	Fortune Manning	Duncan Cotterill
Geoff Turner	Litigation, Insurance	Fortune Manning	Duncan Cotterill
Helen Smith	Dispute resolution		Simpson Grierson

OTHER LATERAL APPOINTMENTS			
NAME	PRACTICE AREA	LEAVING	GOING TO
Rick Hargreaves, Special Counsel	Litigation, Insurance	Fortune Manning	Duncan Cotterill
Oliver Collette-Moxon, Special Counsel	Litigation, Insurance	Fortune Manning	Duncan Cotterill
Simon Connolly, Associate	Litigation, Insurance	Fortune Manning	Duncan Cotterill
Myriam Mitchell, Associate	Litigation, Insurance	Fortune Manning	Duncan Cotterill
Jason Mackie, Associate	Litigation, Insurance	Fortune Manning	Duncan Cotterill

PARTNER PROMOTIONS	
FIRM	LAWYERS PROMOTED
Duncan Cotterill	Sarah Watson, Sarah Townsend, Aaron Sherriff, Andrew Oh
Simpson Grierson	Matt Conway
Simpson Grierson	Stuart Evans
Simpson Grierson	Andrew Matthews
Russell McVeagh	Kylie Dunn

SENIOR ASSOCIATE APPOINTMENTS	
FIRM	LAWYERS PROMOTED
Anderson Lloyd	Andrew Orme
Buddle Findlay	Andrew Comer
Chapman Tripp	Rachael Irvine-Shanks
Chen Palmer Partners	Kate Broadhurst
MinterEllisonRuddWatts	Paige Howard-Smith
MinterEllisonRuddWatts	Kelly Mahood
MinterEllisonRuddWatts	Lauren Castle
MinterEllisonRuddWatts	Emma Wilkins
Simpson Grierson	Luis Cunha



■ **BUDDLE FINDLAY WELCOMES SENIOR ASSOCIATE**

Andrew Comer has joined Buddle Findlay’s Auckland office as a senior associate in the corporate and commercial team. Andrew advises on mergers and acquisitions, joint ventures, consumer law, capital markets, corporate governance and company administration. Prior to joining Buddle Findlay, Andrew worked in the corporate advisory teams at a major New Zealand commercial law firm and an international law firm based in London.



Employment Law Solicitor (Associate level or similar)

SBM Legal is one of the pre-eminent employment law practices in the country, with an outstanding client base, top quality partners and staff and a culture that successfully blends excellence and work/life balance.

We are looking for a talented employment lawyer to join our expanding team. The successful applicant will need at least 3 years’ employment law experience, be confident in front of clients and have excellent writing and strong advocacy skills.

The team at SBM is engaged in a wide cross section of employment related work and a high level of client contact is assured. The successful candidate may also have the opportunity to become involved in sport and/or medico legal litigation.

If you are interested in joining us, please email our Office Manager, Deborah Jensen, at deborah@sbmlegal.co.nz, or write to PO Box 7120, Wellesley St, Auckland 1141.

DEALS ROUND-UP

MAKE SURE YOUR FIRM'S WORK IS RECOGNISED

To ensure your firm and its lawyers get the recognition they deserve for their fantastic work, send all your deal details to sasha.borissenko@keymedia.co.nz

DLA Piper advises Greater Wellington Regional Council on rail partner-ing contract

Transdev Wellington Ltd has been awarded the metro rail contract by transport authority GWRC – the first performance-based partnering contract in Wellington under the new Public Transport Operating Model. It is expected to take effect in July 2016.

Transdev is a world leader in the operation of passenger transport services in Europe, North America, Asia and the Pacific. It currently operates Auckland's train services, ferries in Brisbane, ferries, light rail and buses in Sydney, and buses in Melbourne and Perth.

Hyundai Rotem, the manufacturer of Wellington's Matangi trains, will partner with Transdev for the maintenance of the rolling stock.

The Trans-Tasman DLA Piper team was led by Asia Pacific transport sector head Alex Guy in Brisbane, with support from partners Peter Leman in Wellington and Brendan Meech in Auckland.



Transaction	Value (NZ\$)	Adviser	Client	Lead lawyer(s)	Additional firms involved
Hilton Haulage	\$95m	Bell Gully	Ngai Tahu Capital	Haydn Wong	Anthony Harper
Tainui Group Holdings sale of The Base	\$192.5m	Bell Gully	Tainui Group Holdings	Haydn Wong, Jane Holland	
Nuplex acquisition by Allnex	\$1b	Bell Gully	Nuplex Industries Limited	Gavin Macdonald, James Cooney	Allens Linklaters, Allen & Overy, Russell McVeagh
KfW Kauri bonds	\$200m	Bell Gully	KfW	David Craig, Kerry Beaumont	King & Wood Mallesons
Establishment of an asset-backed securitisation programme for The Warehouse	\$225m	Bell Gully	Public Trust	Murray King	Mayne Wetherell, Chapman Tripp
Ferrovial's takeover of Broadspectrum	\$785m (circa)	Chapman Tripp	Ferrovial	Tim Tubman, Ye Miao	Allens
Qube Consortium's takeover of Asciano	\$9.9bn (circa)	Chapman Tripp	Qube Consortium	Tim Tubman, Adrien Hunter	Allens, King & Wood Mallesons
Chorus NZ retail bond offer	\$400m	Chapman Tripp	Chorus Limited	Mark Reese, Alan Lester	Simpson Grierson
Capital raising and majority shareholder sell down	\$15.8m	Duncan Cotterill	Cooks Global Foods Limited	Matt Yates	
NXT listing	\$17m	Duncan Cotterill	Oceania Natural Limited	Matt Yates	
Takeover of Pulse Energy Limited by Buller Electricity Limited	\$47m	Duncan Cotterill	Pulse Energy Limited	Matt Yates	Mark Russell
Restaurant Brands New Zealand Limited's acquisition of 100% of shares in QSR Pty Limited (the largest KFC franchisee in New South Wales, Australia)	\$88.5m	Harmos Horton Lusk Limited	Restaurant Brands New Zealand Limited	Nathanael Starrenburg, Wook Jin Lee	Corrs Chambers Westgarth, Thomson Geer, Bell Gully

Transaction	Value (NZ\$)	Adviser	Client	Lead lawyer(s)	Additional firms involved
Sale of the Run The Red business to Modica Group by Pushpay Holdings Limited	\$4.5m	Harmos Horton Lusk Limited	Pushpay Holdings Limited	Nathanael Starrenburg	Duncan Cotterill
Australian law scheme of arrangement by Iron Mountain, Inc (NYSE: IRM) to acquire all of the shares in Recall Holdings Limited (ASX: REC)	Enterprise value of approx \$3.6 billion	Minter Ellison Rudd Watts	Iron Mountain, Inc (through Minter Ellison Australia)	Cathy Quinn, Peter Stansfield	Minter Ellison, Allens
Acquisition by Insight Venture Partners of Diligent Corporation	\$941m on announcement of deal	Minter Ellison Rudd Watts	Diligent Corporation	Cathy Quinn	Lowenstein Sandler, Quigg Partners and Willkie, Farr & Gallagher
Sale of Wairarapa Retirement Village by Metlifecare	\$6m	Minter Ellison Rudd Watts	Metlifecare Limited	Mark Forman	Edmund Lawler & Associates
Scheme of arrangement by JBS Australia to acquire a controlling stake in Scott Technology (NZX: SCT)	JBS investment worth approx \$52m	Minter Ellison Rudd Watts	JBS Australia Pty Limited	Silvana Schenone	Gallaway Cook Allan
New Zealand Local Government Funding Agency's bond listing	\$5.4bn	Russell McVeagh	New Zealand Local Government Funding Agency	Deemle Budhia, Tom Hunt	
Acquisition of Wrightspeed fuel-agnostic hybrid technology	\$30m	Russell McVeagh	New Zealand Bus	Mei Fern Johnson	
Advised on ~25% stake in Vista Group International Limited (NZX and ASX listed).	\$110m	Russell McVeagh	Macquarie Capital (New Zealand) Limited	David Raudkivi, Pip Greenwood	Simpson Grierson, Chapman Tripp.
Block trade sale of Vista Group	\$108m	Simpson Grierson	Vista Group Holdings Limited	Michael Pollard, Andrew Matthews	Russell McVeagh, Chapman Tripp
Sale of Tasman Farms	\$300m	Simpson Grierson	Taranaki Investment Management Limited	Peter Hinton, James Hawes	K & L Gates, Clayton Utz



Russell McVeagh completes \$110m deal using 'game changing' exemption

Partners David Raudkivi and Pip Greenwood led the team advising Macquarie on the transaction that saw the selling of a 25% stake in Vista Group International Limited.

Completing the deal quickly in reliance on the new quoted financial products exemption in the Financial Markets Conduct Act, Raudkivi says it allows companies that are already listed to raise capital or large shareholders to sell down without a product disclosure statement, by confirming that the issuer's current NZX disclosure is in order.

TOM LANE

HITTING HIS STRIDE

Whether it's advocating for sustainable resources or representing New Zealand in equestrian, Lion chief legal counsel Tom Lane isn't horsing around. **Sasha Borissenko** reports

LION'S CHIEF legal counsel, Tom Lane, originally took up horse riding because his grandparents' farm near Tinopai, on the Kaipara Harbour, was near a well-known Kauri museum, but not much else, he says.

"The only way to get out of the kitchen with my grandmother and onto the farm was to get a pony. Of course, I opted for the horse. It started with chasing sheep and cows and went from there."

After captaining the New Zealand under-21 Inter-Pacific team, he turned two weeks of training with the Canadian Eventing team coach into two years of training and competing successfully on the international stage.

Returning to New Zealand, Waikato University seemed an obvious choice given its proximity to equestrian facilities. Receiving a New Zealand Energy Law Association scholarship, the Prime Minister's scholarship, the Sir Edmund Hillary scholarship, School of Law Graduate Scholarship and Waikato University Masters Scholarship was, of course, a great bonus.

"I loved competing and it was a real passion, but it is an expensive sport. I was also looking for an academic challenge so university seemed an obvious next step."

"I've always enjoyed the challenge of law. It's like a jigsaw – you have all the pieces and know what the picture should look like at the end – but the fun bit is figuring out how they all go together."

Environmentally friendly

Tom originally had his heart set on a career in the energy resources sector, focusing his Master's thesis on sustainability and emissions trading.

"My interest in how people interact with the natural world came from my rural background. My grandfather had a very strong view that farmers were land stewards rather than landowners, and that they had a responsibility to look after the land for future generations."

"I loved competing and it was a real passion, but it is an expensive sport. I was also looking for an academic challenge so university seemed an obvious next step"

But, at the same time, Tom believed strongly in sustainability as a concept that promoted growth and development.

"There's no argument that the world is facing serious environmental challenges, but we're going to tackle these through innovation rather than punitive regulation – the use of market mechanisms to incentivise innovation reflects this."

He was originally attracted to Chapman Tripp because of the firm's strong resource management practice. After a year in that team, Tom moved to the firm's commercial team and discovered competition law, an area

that Tom considers a great foundation for in-house lawyering. After being introduced to in-house life during a secondment to Fonterra, Tom was approached by Lion and has never looked back.

Going in-house

"I jumped at the opportunity. While there's a tendency to compare an in-house career with life in private practice, in reality they are divergent career paths. As an in-house lawyer you are part of the business, from the formulation of strategy through to project delivery."

The role of a private practice lawyer in providing specific expertise on a discrete question of law is quite different to the privileged position of an in-house lawyer where you touch every part of the business from commercial relationships with customers, to relationships with employees and suppliers, the way the business interacts with the market, and how the business complies with regulation, he says.

"When I started at Lion, the in-house role was primarily reactive to requests from the business for contracting and compliance support. Over the last three years this has grown to focus on the strategic value that the in-house position can add. A member of the

senior leadership team, I work closely with the directors to identify and exploit opportunities and mitigate risk."

Tom's success in the role was recognised late last year when he won the Anthony Harper Young In-House Lawyer of the Year category at the 2015 NZ Law Awards.

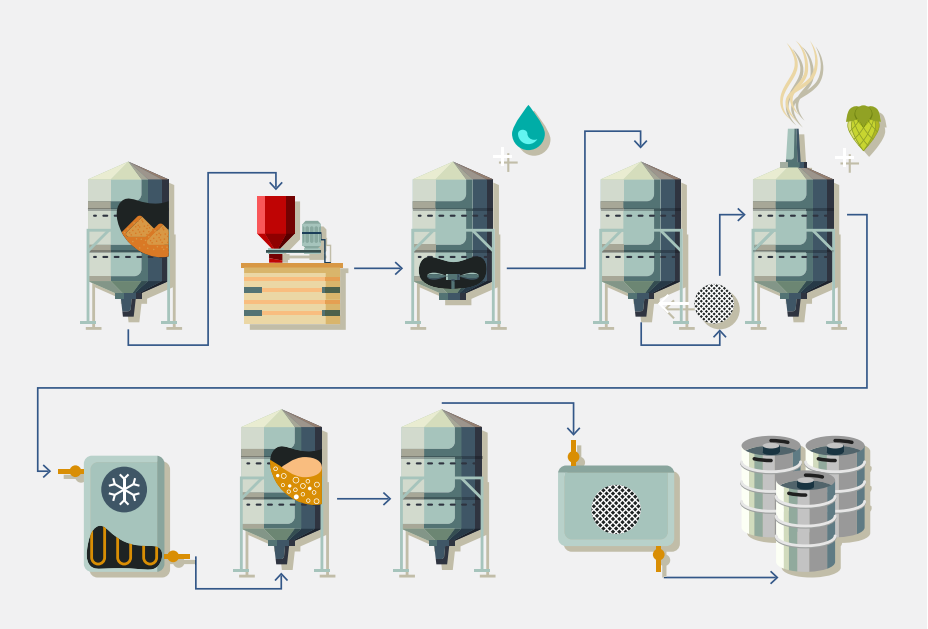
The nature of Tom's job means one day he might be in Marlborough looking at land to acquire to support Lion's growth aspirations in wine, and the next he may be attending a meeting in his capacity as a director of Super Liquor Holdings, or negotiating a distribution agreement with an



"There's no argument that the world is facing serious environmental challenges, but we're going to tackle these through innovation rather than punitive regulation – the use of market mechanisms to incentivise innovation reflects this"

TOM LANE

LION, A HISTORY BY PAUL GOLDSMITH



In 1868, Sir Douglas Myers' great great uncle, Louis Ehrenfried, a German-Jewish immigrant, established the Phoenix Brewery in Thames.

The brewery prospered but the ambitious Ehrenfried decided to chase the larger Auckland market. In 1885, he bought the Albert Brewery in Queen Street and many hotels followed.

By 1895 Ehrenfried's young nephew Arthur Myers was effectively managing the enterprise. He engineered the 1897 merger of Ehrenfried Brothers with John Logan Campbell's liquor and hotel interests to form Campbell & Ehrenfried Ltd.

Louis Ehrenfried died in February 1897, bequeathing his fortune largely to Arthur. Arthur and his manager, Alfred Bankart, were primary movers in the formation of New Zealand Breweries in 1923, a new public company which combined more than a dozen breweries across the country. Campbell & Ehrenfried's brewery assets were folded into the new enterprise.

In 1933, Arthur's son Kenneth Myers took the helm of Campbell & Ehrenfried, which continued to import liquor and manage a chain of hotels. Under Kenneth's stewardship, over the next three decades the family business remained substantial, but it steadily became less profitable.

Kenneth's son, Douglas, was born in 1938.

In 1971, Douglas sold most of the company's hotels to New Zealand Breweries (later renamed Lion Breweries) and focused the company's efforts on New Zealand Wines and Spirits, a joint venture with New Zealand Breweries. The following year Myers took full control of Campbell & Ehrenfried by buying all the shares from his relatives, the John Logan Campbell Estate and some former employees. Myers transformed his half share in New Zealand Wines and Spirits into a controlling stake of Lion Breweries, then one of the country's 10 largest businesses.

In 1988, Myers merged Lion Breweries with LD Nathan, a supermarket, general retailing and property conglomerate, to form Lion Nathan Ltd.

By the time Myers sold his shareholding to the Japanese brewer Kirin in 1998, just prior to his 60th birthday, Lion Nathan was established as Australasia's number two brewery and was an early pioneer in China. Myers retired as chairman in 2001, and was knighted in 2010.

international brand partner.

Perks of the job

And the job certainly has its perks, with its open bar being open every evening, he says.

Yet surprisingly, Tom drinks less working for Lion than he did at Chapman Tripp, he says.

"The Christmas parties at Chapman Tripp were legendary. Having heard about Lion's Christmas party taking over the Crown Casino and featuring Jimmy Barnes, I thought the social side of working at a brewery would be another level again. But while the social side is great, perhaps because drinks are readily available, I just have less

"The Christmas parties at Chapman Tripp were legendary. Having heard about Lion's Christmas party taking over the Crown Casino and featuring Jimmy Barnes, I thought the social side of working at a brewery would be another level again"

desire to indulge.

"Lion also champions a responsible drinking and moderation culture. Aside from the obvious ethical considerations, promoting excessive or irresponsible consumption in such a regulated industry would be the quickest way to go out of business. Instead, the company really promotes a healthy balance and positive drinking culture focused on quality over quantity."

He does, however, recall his first week on

the job where he came to the company bar after work to find Richie McCaw and a school of All Blacks serving drinks behind the bar.

"That was pretty epic."

As for the negative sides to the job, although Tom's no longer a slave to the billable hour, he does find reviewing external bills to be equally as tedious, he says.

"In any event, I suppose most people would find the administrative side of law to be annoying."

Human element

More seriously, it's the human aspect that Tom finds can be the hardest part of the job.

"It's tough when a customer gets themselves into a difficult position, especially a smaller customer. While there's an academic challenge in dealing with a distressed party, you can't lose sight of the human element. The smaller businesses are often people's livelihoods and they put their heart and soul into them.

"It's tough when a customer gets themselves into a difficult position, especially a smaller customer. While there's an academic challenge in dealing with a distressed party, you can't lose sight of the human element"

While Lion isn't a charity, we have to act with integrity and authenticity."

Working closely with the company has been more hands on than his experiences in the private legal sector, he says.

"While there aren't as many all-nighters, the in-house role is uniquely all-consuming. It's goes beyond making a note to discuss a new product or trend seen on the weekend with the NPD team, or picking up on a questionable advertising campaign from the competition."

Working for a company such as Lion, that's been around for more than 150 years, is quite something, he says.

"It's part of the fabric of New Zealand. Whether it's seeing a rural community rally around a local club supported by Lion Red, cheering on the Steinlager-sponsored All Blacks to bring back the World Cup, watching the enhancement of the Rarangi wetlands under Wither Hill's stewardship programme, or even just volunteering at the local CAB, front of mind that you are a steward for the company, its brands, and its place in the community." **NZL**



Legal Counsel - Building Better, Together

Fletcher Building is one of New Zealand's largest listed companies and New Zealand's leading civil and commercial construction contractor.

Its centralised legal team enjoy challenging and diverse work. They are a cohesive, collaborative, high performing team.

Due to strong market conditions, they have created two new roles. They seek two motivated, commercially savvy lawyers who have a passion for contributing to business success.

Legal Counsel – Construction

Provide strategic legal advice on material construction transactions, including tenders and disputes. Build high functioning relationships with internal stakeholders and external counsel. 8- 10 years PQE ideal, including intermediate/senior level front-end construction law exp. Construction disputes and some broader property experience adv. No previous in-house experience reqd. Great mentoring and support await you.

Legal Counsel – Projects

Provide dedicated ongoing legal support during the project delivery stage of major construction projects. Your excellent commercial contracts experience, strong relationship building skills and timely strategic advice will maximise efficiencies and optimise delivery. Minimum 8 years PQE reqd. Prior construction law or project management experience adv. Previous in-house experience preferred.

Could one of these roles be yours? Apply now!

For more information contact Kathryn Cross on (09) 354 3543 or submit your CV and cover letter in strictest confidence to kathryn.cross@artemisnz.com

Applications close: 31 May 2016

HOT LIST 2016

THE LEGAL
INDUSTRY'SHOT
LIST

NZLawyer reveals
2016's hottest
private practice
lawyers working in
the New Zealand
legal market

THIS FEATURE seeks to profile lawyers who have stood out among their peers in some way. It's not all about deals. All manner of achievements were considered. These include non-transaction areas, pro bono work, involvement in landmark cases or judgments, or a result that defied the odds.

Lawyers featured here could also have simply been water-cooler talk – a result of having been involved in something that, from an industry standpoint, was nothing other than interesting or amusing.

Of course, being included in a list such as this is a significant achievement, but we should also remember that, for one reason or another, many commendable lawyers never receive such accolades. Thus, *NZLawyer's* Hot List does not purport to be an exhaustive listing of meritorious achievement.

Lawyers were selected for this feature based on submissions received from firms.

PAULA BROSNAHAN**Chapman Tripp partner**

Paula Brosnahan specialises in environmental, planning and resource management law. She has extensive experience in the management of large-scale developments, including advising on all levels of resource consenting and designation processes. Brosnahan has advised the New Zealand Transport Agency on many of its roading projects, including as legal manager of the Further North Alliance on the Puhoi to Warkworth motorway. She is also assisting the Transport Agency with its consideration of an Additional Waitemata Harbour Crossing.

**DEEMPLE BUDHIA****Russell McVeagh partner**

Deemle Budhia is one of New Zealand's leading experts in regulatory capital, having acted for ASB and CBA on New Zealand's first retail convertible Tier 2 bond issue. She is also a securitisation and covered bonds expert.

In 2015, Budhia acted on the largest listing in New Zealand history, acting for New Zealand Local Government Funding Agency on its \$5.56bn bond listing on the NZX Debt Market. She is a leader in the development of new law and practice arising out of the Financial Markets Conduct Act, playing a key role in advocating and negotiating the new wholesale debt capital markets \$750,000 class exemption.

**ANNA BUCHLY****Bell Gully partner**

Anna Buchly stands out for her work on New Zealand's biggest deals, including acting for blue chip clients, such as Air New Zealand and Crown Fibre Holdings, as well as world-leading private equity clients investing in New Zealand. She has recently advised Blackstone on the \$805m acquisition of Orica's Australasian chemicals business, as well as Crown Fibre Holdings on its various contracts to the New Zealand government's \$1.5bn Ultra-Fast Broadband project.

Buchly's strategic thinking and problem-solving skills are incredibly valuable to the firm, with her clients describing her as an "excellent lawyer" who has "an extremely strong work ethic". Anna was appointed to the Bell Gully board in January 2015 and is also on the firm's international strategy committee.

JENNIFER CALDWELL**Buddle Findlay partner**

After five years in the Middle East Jennifer Caldwell returned to partnership at Buddle Findlay in 2013, via a short stint in-house at Auckland Council where she led the creation of a collaborative panel of advisors to provide legal oversight of the Unitary Plan drafting process. Since notification of the Proposed Auckland Unitary Plan, Caldwell has been one of the principal advisors to the council across a range of hearing topics before the Independent Hearings Panel (2014-2016). She and her team are highly regarded by many participants in that process for their pragmatic and constructive working style.



HOT LIST 2016



MAI CHEN

Chen Palmer managing partner

Mai Chen has consistently blazed a trail in the law, co-founding New Zealand's first public law specialist firms, writing the best-selling Public Law Toolbox, and arguing ground-breaking public law cases. Most recently Chen represented the Problem Gambling Foundation in a landmark judicial review that successfully challenged government procurement processes. She is now acting for all midwives in a sex discrimination high court case against the Ministry of Health.

Chen has also been a social entrepreneur, founding and chairing New Zealand Asian Leaders, the Superdiversity Centre for Law, Policy and Business, publishing the Superdiversity Stocktake (downloaded more than 90,000 times since its launch on 3 November 2015), and establishing My Bucket List, which took fiduciary services online.

Chen is a director of the Bank of New Zealand, adjunct professor at the University of Auckland School of Law, and is a regular media commentator on her specialist areas.



SOPHIE EAST

Bell Gully partner

Sophie East is a commercial litigator with considerable experience in class action proceedings. She is currently representing the former directors of Feltex Carpets in the first class action brought in New Zealand and the largest prospectus liability claim. She is also representing a major retail bank in a class action over fees on deposit accounts and credit cards. While working in New York in a leading international arbitration practice, East advised a European bank in defence of a class action that followed the collapse of Enron.

East has acted as counsel in several other high profile proceedings, including acting for Pernod Ricard in a successful claim against Lion Nathan relating to the sale of Montana, Lindauer and other wine brands. She also acted for Air New Zealand in the Commerce Commission proceedings alleging price fixing in the air cargo market.



PIP GREENWOOD

Russell McVeagh senior partner and board member

Pip Greenwood is recognised as a leading figure in the business community and also in the move towards greater diversity, through her dedication and involvement in seminars, speaker engagements and acting as a mentor for women. She was nominated as a finalist in Westpac's Women of Influence Awards 2015, which recognises and celebrates women who truly make a difference.

Greenwood consistently advises on significant transactions taking place in the New Zealand market, including on over 10 major transactions last year with an aggregate value of approximately US\$15b. Two such transactions are finalists for this year's Australasian Law Awards Equity Market Deal of the Year, and two other transactions are finalists for this year's INFINZ Equity Market Transaction of the Year.

JEN CRAWFORD

Anderson Lloyd partner

Jen Crawford contributes to the community as chair of the Arts Centre of Christchurch Trust Board (with her contribution acknowledged as a finalist in the 2015 Women of Influence Awards in the Arts and Culture category). She is a leading advisor on urban renewal and post-earthquake heritage issues, and in April was appointed to the Board of Regenerate Christchurch to work with the community in partnership with the crown and council to stimulate regeneration across the city.

Crawford's voluntary commitment to the rebuild and recovery of Christchurch, on top of her work as a legal partner and juggling family responsibilities, is seen as immense by the firm.



MICHAEL GARTSHORE

Webb Henderson partner

In addition to acting on a range of high value and complex merger and acquisition transactions and infrastructure projects, Michael Gartshore also pro-bono advised Future Generation Global on the New Zealand elements of its IPO – (Future Generation donates 1% of its assets annually to Australian mental health charities). Furthermore, he advised Fulton Hogan on the \$1b Puhoi to Warkworth PPP and IAG on its \$1.8b acquisition of Lumley.

The young partner (a 2015 Young Lawyer of the Year finalist), together with the firm, are delivering astute commercial and legal advice in small, senior-weighted teams in a space traditionally dominated by large, full service firms. It's paying off – the firm was Boutique Law Firm of the Year 2014 and 2015, a finalist in the M&A Deal Team of the Year 2015 and Gartshore was named as an Up and Comer in Chambers & Partners.

JOHN HACKETT

AJ Park chairman of partners

John Hackett is a trademark strategist with experience managing trademark portfolios and advising on branding strategies for a wide range of clients, including Les Mills International, Manuka Health Company, Time Warner, Lacoste and L'Oréal.

Hackett was named 2016 international trademark lawyer of the year by Who's Who Legal. Over the past three years, Hackett has played a lead role in helping AJ Park develop its business in Australia and the Greater China region.



Learn from the best

Victoria Law | Professional courses for top legal issues

- WATER LAW AND POLICY** 50 CPD points
Professor Lee Godden, University of Melbourne Law School
Water law is rapidly changing—get on top of water law reform in Australia and New Zealand.
- PATENT LAW AND INNOVATION** 24+ CPD points
Professor Susy Frankel
Deepen your knowledge of New Zealand and Australian patent law and how it operates globally.
- ADVANCED MEDIATION** 32+ CPD points
Annabel Shaw and Geoff Sharp
Practical skills of advanced mediation for both mediators and advocates in mediation.

Enrol now

victoria.ac.nz/law
Email law-postgraduate@vuw.ac.nz
Phone +64-4-463 6356
Faculty of Law | Te Kauhanganui Tātai Ture

Capital thinking. Globally minded.



HOT LIST 2016



MARK HARGREAVES

AJ Park partner

Mark Hargreaves advises clients on a wide range of corporate and commercial matters, with an emphasis on technology. His clients include major listed companies, government, research institutes, SMEs, and start-ups. Hargreaves has recently worked with government agencies on high profile projects, including the replacement of New Zealand’s core tax systems, the upgrade of its banknotes, and the referendum process to change the flag. Recognising his expertise in IP strategy and commercialisation, Hargreaves was named in the 2016 Intellectual Asset Management (IAM) Strategy 300, which ranks the top 300 IP strategy practitioners in the world.



ASH HILL

Wynn Williams partner

Ash Hill is a partner in the firm’s Auckland-based corporate and finance team and was appointed to the board this year. Hill recently led the firm’s M&A team on a number of significant transactions, including advising SKY TV on its Series A investment in 90 Seconds and advising Cedenco on its acquisition of aquaculture and mussel farming assets from Sealord, including a 50% stake in North Island Mussels Limited.



DAVID HOLDEN

Anderson Lloyd partner

David Holden has acted for the successful sponsor consortium on four of the first five completed New Zealand PPPs in the past 12 months. Holden advised the successful bidding consortia to close the \$280m Schools 2 PPP and the \$353m Auckland Prison PPP, and recently acted for the Northern Express Group on their bid for Puhoi to Warkworth Motorway PPP. Outside of PPPs, Holden’s practice has been equally strong, with major ongoing roles in the social housing, irrigation and energy areas.



TIM JONES

Glaister Ennor partner

Tim Jones leads the land development and property law team, and has been a partner with the firm for over 30 years. Jones is a property law expert, with particular expertise in residential and commercial property transactions and land development. He was recently elected the vice-president of the New Zealand Law Society and a contributing member of the government advisory group assisting the DBH on the redrafting of the Unit Titles Act 2010 and its regulation. When not advising clients, Jones is also an active member of several organisations on unit title (strata title) matters. He recently presented a paper in Australia at the Australian College of Community Lawyers and has just joined the new New Zealand chapter of Strata Community Association.

LLOYD KAVANAGH

Minter Ellison Rudd Watts partner and board member

In 2016, Lloyd Kavanagh and his team were ranked Band 1 for investment funds by Chambers – the first year the sector has been included for New Zealand. This reflected an impressive number of ‘firsts’ by his team under the new Financial Markets Conduct Act last year, including first MIS licence, first PDS offer, first NBDT transition and first KiwiSaver transition. Kavanagh is also a thought leader in governance, securities and AML/CFT law, and was recognised for his law reform work when he was made a Fellow of INFINZ. He earned a certificate in corporate governance from INSEAD in 2015.



GUS HAZEL

James & Wells partner

As head of the firm’s Auckland litigation division and a registered patent attorney, Gus Hazel specialises in litigation and contentious matters concerning intellectual property. Educated and trained in Australia, his work experience includes time as associate to the chief justice of the Federal Court of Australia, and as a lecturer at Monash University Law School in Melbourne. While working at the Melbourne office of an international law firm Hazel co-ordinated a team of 60 lawyers providing pro-bono legal services to the homeless. His practice includes local and international clients and has provided him with the opportunity to lead his team in landmark intellectual property cases in both New Zealand and Australia. Recent highlights include acting in the leading case on trade mark genericism in New Zealand, test cases on border protection measures under the Copyright Act, and the first cases in Australia under the major “Raising the Bar” Patents Act reforms.



DAN HUGHES

Anthony Harper partner

Dan Hughes’ career is marked by ‘firsts’ – a partner at 29, his name graces many leading international directories including the Asia Pacific Legal 500 and Chambers and Partners. Hughes’ reputation in commercial litigation, particularly in insolvency, was cemented by his work in uncharted areas for New Zealand law, including being the first to apply and successfully obtain recognition of a US bankruptcy in New Zealand and additionally having New Zealand liquidators recognised in Australia. He has been lead counsel in a number of novel cross border insolvency cases. Hughes recently succeeded in the Supreme Court in the highly publicised decision of Fences v Kerbs, a case that brought considerable clarity to the law surrounding voidable transactions.



JOHN KNIGHT

Chapman Tripp partner

John Knight is an experienced commercial and civil litigator with a strong insurance law practice, advising national and international clients on insurance legislation and regulation. He is a key advisor to New Zealand’s statutory natural disaster insurer the Earthquake Commission (EQC), advising on all aspects of EQC’s statutory scheme since the late 1990s, including EQC’s multi-billion dollar response to the Canterbury earthquakes. He has represented EQC in numerous High Court and Court of Appeal proceedings concerning insurance entitlements for natural disaster events.

LUCY DE LATOUR

Wynn Williams senior associate

Lucy de Latour is a specialist local government and resource management lawyer. For the past year she has been on secondment as acting general counsel for the largest regional council in New Zealand, Environment Canterbury. During that time she was involved in advising the council on its significant land and water planning programmes, a range of earthquake recovery issues, public transport and the myriad of other matters regional councils have regulatory responsibility for. Now back in the fold at Wynn Williams, de Latour continues to advise Environment Canterbury on a range of issues, particularly in relation to the implementation of the groundbreaking Canterbury Water Management Strategy and the National Policy Statement for Freshwater Management.



HOT LIST 2016

TIM MITCHELSON
Harmos Horton Lusk Limited director
Prior to becoming a director of the firm in 2015, Tim Mitchelson worked at Freshfields Bruckhaus Deringer in London and at Russell McVeagh in Auckland.
Mitchelson has broad experience in advising on a range of corporate transactions, and is one of New Zealand's up-and-coming M&A and capital markets lawyers. He has particular expertise in private M&A and capital raising transactions, and has advised domestic and international private equity and venture capital firms on numerous leveraged buyouts and growth investments. He recently advised AFT Pharmaceuticals on the initial public offering of its shares on the NZX Main Board and ASX, which resulted in an initial market capitalisation of AFT on listing of approximately \$310m. He also advised AFT on its pre-IPO fund raising rounds, the first of which featured investment from Milford Asset Management and US-based healthcare fund CRG, and was nominated for the Mid-Market Deal of the Year at the 2015 NZ Law Awards.





SALLY MORRIS
TGT Legal senior associate
Sally Morris returned to New Zealand in 2014 after representing Samsung in its dispute against Apple. Morris joined TGT Legal to lead the dispute resolution team and focus on contentious trust and estate matters. Her reputation in this field is growing, with articles published in New Zealand and international journals and presentations to industry conferences.
Acting as counsel, Morris recently made a significant pro bono contribution to the Neurological Foundation, successfully seeing off a High Court challenge to a bequest received under a will. Morris is admitted in New South Wales and New York and has an LLM from Columbia University.

RAEWYN LOVETT ONZM
Duncan Cotterill partner
Raewyn Lovett has been instrumental in the growth of Duncan Cotterill and has held significant leadership roles within the firm, including chair of the board.
Lovett holds a number of significant board roles, particularly in relation to sport and wellbeing. She chairs Aktive – Auckland Sport and Recreation, Quotable Value Limited, and Dunedin Venues Management Limited. She is also a trustee of Medicine Mondiale Trust, chair of the Elite Selection Commission of Triathlon New Zealand and a trustee of CHT Healthcare Trust.
In 2015, Lovett was honoured as an Officer of the New Zealand Order of Merit for services to netball, recognising her seven years as chair, during which time she lead changes in Netball New Zealand and played a key role in the establishment of Netball's trans-Tasman ANZ Championship.






JULIET MOSES
TGT Legal partner
Juliet Moses is sought out for her expertise and experience in the fast-moving niche area of trusts by clients and other practitioners. She is regularly called on to provide commentary on developments and guidance on how practices should evolve.
Moses otherwise chairs the committee that developed the STEP Diploma in Trusts and Estates, offered through Auckland University of Technology.




MICHAEL MOYES
Anthony Harper partner
In the past year Michael Moyes was ranked by Chambers and Partners, the Asia Pacific Legal 500 and won a prestigious award at the NZ Law Awards. He has grown Anthony Harper's IP and TMT practices from the ground up, and it is his 'commercial and pragmatic advice' that has not only won his team a place in the international directories but as a trusted advisor for the national and international companies he works with.



TERENCE NG
DLA Piper partner
Banking and Finance partner Terence Ng specialises in China business. Since he was promoted to partnership in July 2013, the firm's China practice has experienced magnificent growth. In fact, 11% of Ng's clients are in the firm's top 100. Recent work includes instructing a Chinese dairy corporation on its acquisition of land and construction of milk processing plant, advising a Chinese state-owned corporation on its joint venture wind farm investment, and advising a Chinese corporation on its various funding facilities with a New Zealand bank.

GARTH SINCLAIR
Webb Henderson senior partner
Garth Sinclair founded the corporate arm of the firm in 2011, which provides astute commercial and legal advice delivered by highly-focused senior-weighted teams for clients on their most important assignments. The firm was Boutique Law Firm of the Year 2014 and 2015, a finalist in the M&A Deal Team of the Year 2015 and Sinclair was New Zealand Dealmaker of the Year finalist in 2015 and 2016.
In the past year, Sinclair's deals have included Apollo's acquisition of Ventia, SKYCITY's New Zealand International Convention Centre deal with the Crown and related hotel, confidential P hoi to Warkworth PPP, confidential sale of industrial property portfolio and building materials business, IAG's placement to Berkshire Hathaway, IAG restructure of its New Zealand businesses.



Shape the future

With a career in corporate governance

ENROL NOW FOR SEMESTER TWO 2016

Step on board our post-graduate pathway and make 2016 the year to accelerate your governance career!

Develop the skills, knowledge and resources to equip you in your role as a senior governance professional.

Module exemptions may be available for those working in the legal or finance professions. Contact us now to enquire.

- Portable and internationally recognised qualification – reciprocity with many countries globally including the UK and Australia
- Career development - play an influential role in an organisation's strategic direction and performance
- Enhanced career opportunities – professional credibility associated with a chartered qualification
- Access to ongoing courses, resources and professional support

ENERGIZE YOUR CAREER
ENROL NOW FOR SEMESTER TWO 2016
www.governancenz.org • 0800 242 669 • info@governancenz.org
Incorporating Women on Boards

**Governance New Zealand**
The Corporate Conscience™

HOT LIST 2016

CATHY QUINN

Minter Ellison Rudd Watts interim managing partner and chair

One of New Zealand’s most sought after M&A lawyers, Cathy Quinn has in the past year led teams on major deals and IPO’s for clients, such as Diligent, CBL, JBS, VINCI Construction and Iron Mountain. Quinn is an executive board member of the New Zealand China Council and co-leader of the Prime Minister’s business delegation to China in April 2016. Quinn is the only female chair of a large New Zealand firm. In addition, for the past eight months she has performed the managing partner role while leading the global search for a replacement. Quinn is a member of the Commercial Advisory Board to the New Zealand Treasury.



NATHANAEL STARRENBURG

Harmos Horton Lusk Limited director

Nathanael Starrenburg has over 13 years of experience as a corporate lawyer and advises on a wide range of corporate transactions, including M&A and capital raisings. He has particular expertise in takeovers under the Takeovers Code. Starrenburg also advises on corporate advisory matters, including secondary market compliance matters, corporate governance and foreign investment into New Zealand. Starrenburg has been recognised as a leading lawyer by the major international legal rankings publications, including Chambers Global, Legal 500, IFLR 1000 and AsiaLaw Profiles. In addition to his work for clients, Starrenburg has presented for the New Zealand Law Society on takeovers and financial markets regulation.



REUBEN WOODS

DLA Piper partner

Reuben Woods is recognised by Chambers Asia-Pacific 2016 as a leading corporate lawyer with clients describing him as an “efficient, technically very sound, very commercially astute partner who gets things moving and gets transactions done”.

Woods advises on M&A transactions, private equity transactions (including acting for US PE fund Sun Capital on the acquisition of Elldex Packaging from NZX listed Hellaby Holdings), equity capital markets (including acting for Vista, dual listed on the NZX and ASX), and W&I matters (acting for underwriters, including recently acting for AIG on the largest policy it has underwritten in New Zealand). Woods’ clients include Foodstuffs, Liquorland, Bell Tea & Coffee, TVNZ and Metlifecare. Woods is proudly of Ngai Tahu descent.



MATT YATES

Duncan Cotterill partner

Corporate and commercial specialist Matt Yates continues to take a leading role acting for growth-focused companies on major acquisitions, capital raising, and NZX listings.

Yates specialises in high growth companies from their establishment phase through to private and public capital raises and stock exchange listings or M&A exits. Yates was instrumental in the recent listing of food supplements company Oceania Natural Limited, the third company to list on the NXT, and is working on several other listings with clients.

Yates advised Pulse Energy Limited in relation to its full takeover by Buller Electricity Limited (having advised Pulse since working on its NZAX listing back in 2008). Yates has also been the legal adviser to NZX listed Bethunes Investments Limited on its recent asset disposal programme and rights issue.



The ANU College of Law
Australia’s National Law School

Ranked among the world’s top 20 law schools*, the ANU College of Law has a reputation for excellence in education and research.

Balancing global outlook with local focus, we seek to:

- shape and influence public policy, placing an emphasis on the values of law reform and social justice;
- use our position to help understand and address the major legal, social and political challenges of the 21st century; and
- remain a leader in legal education and research, with the outstanding calibre of our graduates as a key measure of success.

Across undergraduate, postgraduate and research degrees, the ANU College of Law provides a unique understanding of current law and policy, with our alumni working not only as lawyers, but as agents for social change, improving public policy and enhancing global diplomacy.

And while our capital city location links us with the nation’s key law-making and legislative bodies, our commitment to innovation in legal education – including the first fully online Juris Doctor from a Group of Eight law school – is allowing more Australians to study with us, regardless of their location.

- > Bachelor of Laws (Honours)
- > ANU Juris Doctor (Online)
- > ANU Juris Doctor (On-Campus)
- > Graduate Certificate of Law
- > Master of Laws
- > Graduate Diploma of Legal Practice
- > Master of Legal Practice
- > Graduate Certificate in Australian Migration Law & Practice
- > Higher Degree Research

The advanced legal qualification that allows students to pursue specific interests or specialise in areas such as International Law, Environmental Law, Government & Regulation and Migration Law.

Find out more at law.anu.edu.au

AUSTRALIA’S
2020
LAW SCHOOL

The ANU College of Law is Australia’s only 20/20 Law School—a top 20 law school at a top 20 university*.

TIMES HIGHER EDUCATION
#1
GLOBAL EMPLOYABILITY RANKING

Graduates from ANU have been named the most employable of any university in Australia for the third year running**.

ANU LAW
17,160
ALUMNI

In Australia and abroad, our alumni continue to make substantial contributions in and outside of law.

*QS World University Rankings—2015/16
**Global Employability University Rankings—2015

DAVID MCLEAN

MAKING THE MOST OF EVERY OPPORTUNITY

It was by chance that Westpac New Zealand CEO David McLean found himself filling in for his banker colleague, only to find he had changed occupations altogether. The former private practice and in-house lawyer tells **Sasha Borissenko** about his rise to the top

HAILING FROM a farm in the Bay of Plenty, David McLean finds it hard to put his finger on why he decided to pursue a career in law. “I was probably not smart enough to be a scientist, and accounting or engineering seemed a little stale for me. Although the arts were interesting, it didn’t seem to lead

training ground, he says. “Litigation seemed quite glamorous, but I was thrown into the deep end – the District Court and the Children’s Court. “I found I didn’t like the fact there was always a random element to litigation. No matter how much preparation, there’s always

“I found I didn’t like the fact there was always a random element to litigation. No matter how much preparation, there’s always a chance that the outcome can be outside of your control”

to a career at that time so it came down to a process of elimination.” He went into private practice for three years after university, which made for a good

a chance that the outcome can be outside of your control. Say it’s your client not telling you the whole story or the other side throwing a curveball.”



Instead, David found commercial to be more enjoyable insofar as he enjoyed the process of working with both parties to make a deal happen in a way that serves all interests. It was, then, no surprise that David decided to move in-house.

“When I look back I guess you can plan your career as much as you like, but you should also be prepared to take opportunities when they come to you”

“I suppose I found it logical to then work more directly with a client. You get to see beyond the transaction, and being part of business strategy was more interesting.” But it’s not a case of whether in-house or private practice is better, David insists, as each is important in its own right. “It’s very important for any large corporation to have a strong in-house team because they live and breathe the company strategy, which an external team can’t be expected to do. Having said that I don’t think the right model is to have an in-house team doing everything. The reason for that is there’s an attraction that the cost of having in-house may seem lower than the rates you get quoted from external. But that’s superficial long term.” There’s less flexibility and optionality with all in-house lawyers and it’s very important for the corporation to get the best person for the job, he says. “No matter how well you hire, there will always be occasions where you want a specialist. I think balance can be obtained

DAVID MCLEAN

by cleverly using the best of external lawyers, as well as building good relationships.”

But in-house lawyering isn’t for everyone, he says.

“Private practice is arguably a more pure form of the law. But if you’re wanting greater client exposure and to drive deeper into their issues, the possibilities in the corporate environment are great.

“No matter how well you hire, there will always be occasions where you want a specialist. I think balance can be obtained by cleverly using the best of external lawyers, as well as building good relationships”

From lawyer to banker

After practising as an in-house lawyer for six or so years David made the transition almost accidentally from in-house lawyer in a bank, to being a banker, which eventually led him to secure the position of Westpac New Zealand CEO.

“I’d often be in meetings as the in-house lawyer with clients and bankers, and one day a banker couldn’t come so I filled in last minute. Then I found myself doing the negotiations during the next meeting and so on.

“When I look back I guess you can plan your career as much as you like, but you should also be prepared to take opportunities when they come to you.

“I do miss the law on occasion. I keep my practising certificate current, mostly for sentimental reasons. The camaraderie in the law is wonderful. But now I only use it very rarely – to admit my children’s friends to the bar.”

After working for various national and international banks he took up a job at Westpac in 1999. In mid-2014 he was asked to come back from New York to be acting CEO for six months, and in February 2015 he took up the role in a permanent capacity.

“I’d been working for Westpac for 16 years and throughout that time I sat around forming a view of what I’d do if I was in charge and now I’ve got my dream job where I’m doing just that.

“The interesting thing about the banking world is that digital technology and innovation have the power now to disrupt traditional models of how we operate. We have to change

and adapt. We have to grasp this opportunity to improve the quality of the customer experience. We have to do everything to a high standard, and as efficiently as possible.”

Benefits of the job

“It’s great being the captain of a diverse team whose job it is to set the strategy and run every aspect of the bank. I enjoy steering the team in the right direction and it’s important to ensure we’re working closely together.”

A typical day for David involves getting to work around 7am with a coffee, where he plans out what’s in store, whether that’s meeting with internal and external parties, meeting customers, staff, regulators or external counter parties.

“There’s definitely plenty of variety. It’s all set out months in advance, which helps things.

“It’s a 24/7 job – well, at least you’re always on call. The role of a bank is to keep the machinery of the economy moving along so it’s important to be available, because if things go wrong there are very widespread effects.”

But David does enjoy his downtime, whether that’s spending time with his family, reading a book or walking along the beach

CAREER TIMELINE

- 1982 - 1985**
Solicitor at Macalister Mazengarb
- 1985 - 1988**
Company secretary at Natwest NZ
- 1988 - 1994**
Capital markets at Southpac
- 1994 - 1998**
New Zealand branch manager at Deutsche Bank
- 1999 - 2010**
MD NZ for Westpac New Zealand Limited
- 2010 - 2012**
General manager for Private, Wealth and Insurance, and Institutional Banking at Westpac New Zealand Limited
- 2012 - 2014**
Head of the Americas for Westpac Institutional Bank
- June 2014 - Jan 2015**
acting CEO of Westpac New Zealand Limited
- February 2015 - present**
Westpac New Zealand Limited

with his dog, for example.

It’s the interaction with people, whether they’re clients or customers, that’s kept him enthused throughout his career.

“I’ve always liked trying to understand people’s needs and to determine whether, as a service provider, we are meeting them. I suppose it’s now frustrating that I don’t have as much time to do that in person.”

Catering to customer needs is something that he thinks he developed thanks to working in the legal sector.

“Training in the law made me a better banker. You’re used to clients’ interests being paramount and, as a banker, customer interests are paramount. So that came naturally to me when I moved [into banking].” **NZL**

FROM BANKING TO TACKLING CHILD POVERTY

“I think the thing I’m passionate about is New Zealand and New Zealand’s economy progressing. I feel that the banks have an important role to play in that.”

Outside of the workplace, David hopes to improve the situation for Kiwi children.

“I want New Zealand to grow. It’s shocking to think some kids are being born who may never have the chance to succeed. It’s embarrassing to think kids have third world diseases, or can’t read or write. Everyone needs a fair chance at the bottom end.”

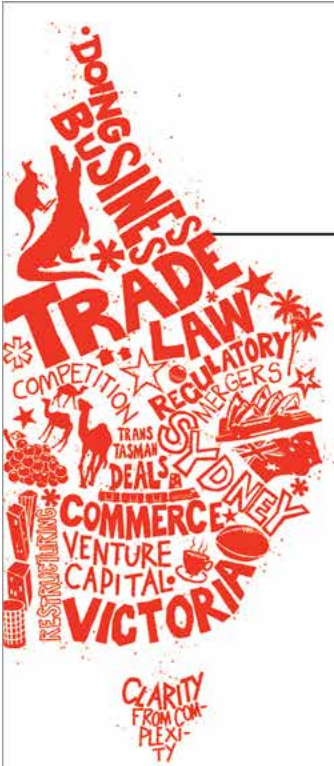
As a result, Westpac are supporting a pilot campaign with The Middlemore Foundation for Health Innovation that aims to bring together the three elements of education, health and tackling issues in the home.

“We are still at the beginning stages but we want to help to set these kids up for success, otherwise

they have no chance to have a good education, a good job and will be condemned to terrible outcomes.”

By working with schools and students’ homes it is expected truancy rates will be reduced, NCEA pass rates will improve and the early detection and prevention of illnesses will contribute to better child health.

The three-year pilot will be independently evaluated by Victoria University and currently involves six schools and 1,700 students in Papakura, one of New Zealand’s poorer communities. If successful, the aim is to roll the programme, known as Mana-ā-riki, across the country.



Well connected

We have strong relationships on both sides of the Tasman.

Through our connections we can provide you with superior service in New Zealand and around the world.

www.simpsongrierson.com



CASE STUDY - THE COMPLETE TURNAROUND TALE

A complex case, riddled with possible conflicts was enough reason for lawyer Niamh McMahon to engage Public Trust’s Executor Assist service. At the time she was both sole executor and trustee in the estate which had the potential to go badly.



BEING ABLE to work with the technically experienced Executor Assist team who understood the intricacies of estate law “worked a treat”. Niamh considers them peers “it wasn’t a question of bringing someone up to speed. You could talk the talk together and work through what the issues were from a very sound knowledge base.”

“Law firms are not geared up to do this work operationally. How our hourly rates work doesn’t lend itself to doing it and to be honest, I don’t think we’ve got the skills either,” says Niamh, who is also the Honorary Consul General for Ireland.

Another valuable draw card was having the estates accounts professionally managed, with tax returns processed and financial reporting provided for family members. The brief wasn’t easy and involved different beneficiaries with different entitlements, with and without interest rates, for loans made during the lifetime of the deceased.

Access to Public Trust’s financial

modelling templates was another attraction, along with fair billing rates commensurate with the job. This, compared to a lawyer on a high charge-out rate trying to do work that didn’t deserve to be invoiced at that hourly fee made using Public Trust very cost effective.

“What we were able to do was buy the expertise of Public Trust and have confidence in its system so that the numbers produced in the end were bulletproof.”

Niamh admits going through that exercise herself would’ve taken far longer and been more expensive for the beneficiaries. “I’m sure I would’ve been criticised if I’d gone down that path whereas this was far more cost effective.”

During this difficult case Niamh found the Executor Assist team were both communicative and accessible. “When problems occurred, someone was always available on the end of the phone. Public Trust really comes into its own in cases that are a bit more complicated that need an

extra layer of assistance.”

While straight forward estate cases will remain with Niamh’s firm, the complicated ones are now handed to Public Trust for assistance. “Everybody is a winner because it’s more of a partnership and we’re working together as a team.”

Niamh admits her initial approach had been made with a little fear and trepidation, she was wary after being in practice during a time when Public Trust didn’t enjoy the reputation she says they now deserve.

“Back in the old days there was a lot of criticism that it was an old government department on glide time – whenever you rang it was a different person you spoke too.”

But, after using Public Trust over a number of years, Niamh’s completely changed her view. “My expectations were low and they were exceeded – mightily exceeded.

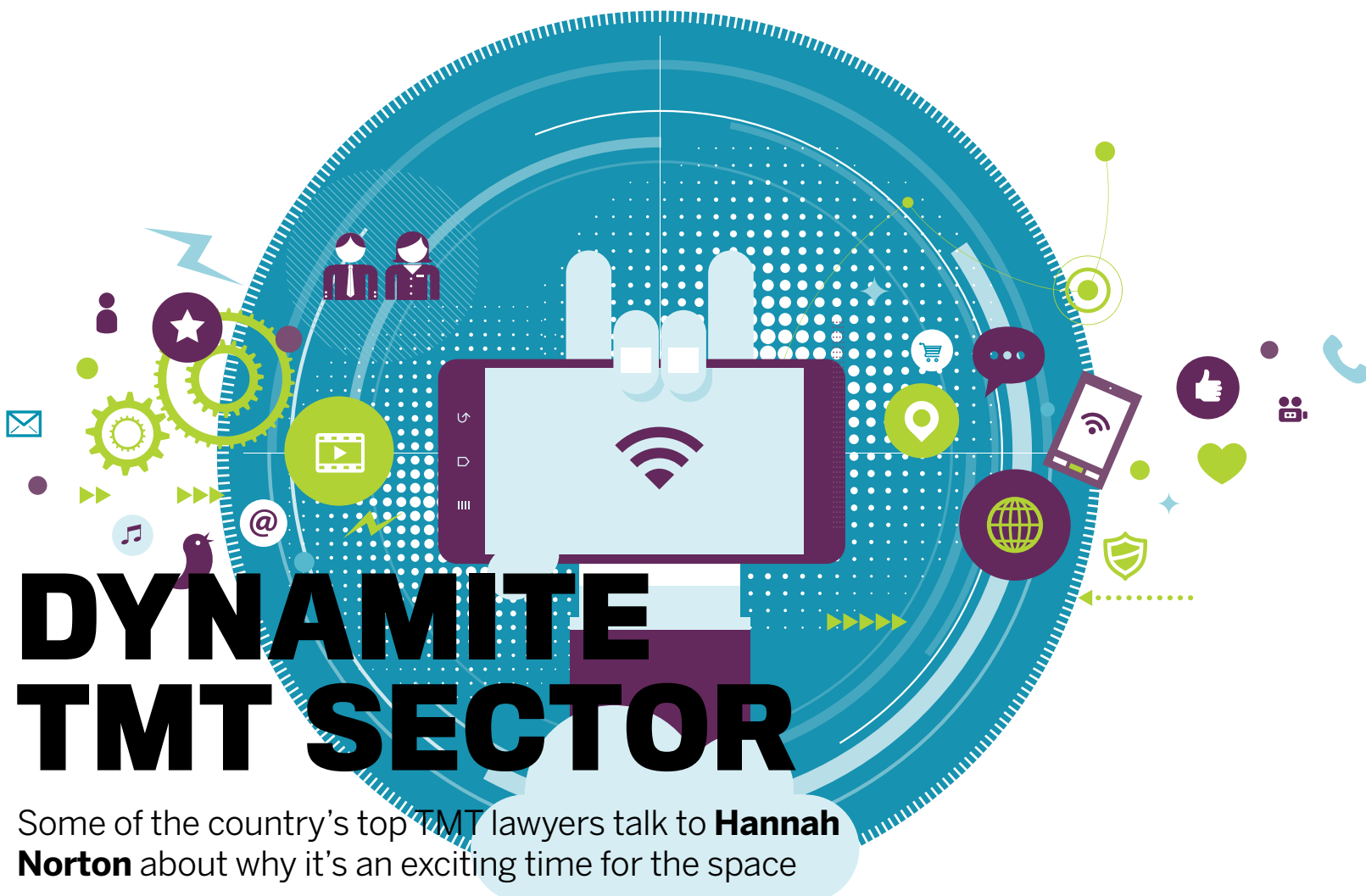
While a lot of people have criticised Public Trust, I’ve stood up for them – and I want to make that point” she says.

NZ | LAWYER

NZ Lawyer is New Zealand’s only independent legal magazine.



- Profiles and high-level case studies
- Interviews with industry leaders
- Special reports
- Business strategy content



WITH RAPID advancement in all three areas of Technology, Media and Telecommunications (TMT), the legal work in this space is growing at an unprecedented rate.

“The key driver of work for our TMT practice continues to be Information Communications Technology (ICT) procurement,” says Chapman Tripp partner Kelly McFadzien.

“Whether advising on procurement processes, negotiating procurement, licensing and implementation agreements, or advising on managing ICT suppliers and risk, ICT procurement drives a wide range of work for our team.”

Chapman Tripp’s TMT team also advises a number of clients on technology issues in an increasingly regulated environment,



“One of the key challenges is drafting a contract that can go out with a Request for Proposal (RFP), but which is adaptable enough to work for the range of ICT project models that a customer organisation is open to considering”

Amy Ryburn, BUDDLE FINDLAY

McFadzien says.

“We work closely with our colleagues in financial services regulation, and finance and financial markets regulation, to assist businesses to effectively use and

develop solutions using new technologies and services.”

Buddle Findlay partner Amy Ryburn echoes her sentiments.

“We are currently advising on a number of

large-scale, interesting ICT projects and there doesn’t seem to be any slow down in these,” Ryburn says.

“In the last year our litigation team has also been involved in resolving several significant disputes relating to ICT project failures. Large ICT project failures seem to be a continuing problem in the sector.”

Perhaps as a result of heightened concern about project failure, the firm has seen a real emphasis on making sure the initial procurement process improves the prospect of identifying the right supplier for the job, Ryburn says.

“We have been working with clients on designing and running these processes through to vendor selection and contract.

“One of the key challenges is drafting a contract that can go out with a Request for Proposal (RFP), but which is adaptable enough to work for the range of ICT project models that a customer organisation is open to considering, for example, cloud versus on-premise solutions or agile development. There is no easy answer but there are options.”

Privacy and data protection continues to be a key concern for many businesses, McFadzien says.

“Solution providers often require advice to ensure a workable ‘privacy by design’ approach to solution development, and technology customers are always concerned to ensure that applications and platforms collect, manage and process personal information in ways which match the customer’s privacy commitments and business drivers.”

“We’ve also noticed that clients are looking more carefully at ways to limit the risk of project failure, such as proof of concepts and trials, breaking up projects into small pieces, and an increased focus on governance, ongoing contract management and stage gates,” Ryburn adds.

Challenges

TMT practices must keep reinventing themselves, McFadzien says.

“The last 10 years has seen a huge amount of change in work type, how businesses

procure technology, and business’ appetite for risk in the TMT area.

“ICT is very much business as usual for clients and, at a certain level, solutions are highly commoditised.”

Many businesses have ICT decisions made, and solutions provided, offshore, requiring little to no New Zealand legal advice, McFadzien says.



“The last 10 years has seen a huge amount of change in work type, how businesses procure technology, and business’ appetite for risk in the TMT area”

Kelly McFadzien, CHAPMAN TRIPP

“And, like many areas of law, expanded in-house counsel teams increasingly include highly-qualified and experienced TMT lawyers in-house who don’t necessarily need as much support from external counsel. That said, the sector’s constant change also creates new opportunities. TMT lawyers embrace those opportunities to use their skills to stay relevant to their clients facing new and different environments.”

Ryburn says one key challenge her TMT team seem to be encountering regularly is the problem of how organisations can move their data into the cloud with confidence so that it is safe from security threats and from the risk of supplier failure.

“Organisations often want certainty about where their data will be and who will have access to it but getting that information, let alone obtaining contractual commitments about this, can be a challenge, particularly with some of the big off-shore cloud providers.

“A number of the potential solutions to the risk of supplier failure – for example, regular customer back-ups, continuity guarantees from third party hosting providers, cloud escrow – can be reasonably costly and can reduce the operational/technical and cost

benefits of moving to the cloud. We expect to see more developments in this area.”

Legislative changes

Financial services and financial markets reform has indirectly had quite an impact on the sector, McFadzien says.

“Massive technology change and increased capability, combined with a raft of regulatory

reform, means a constant focus on ensuring that new and old technologies allow clients to meet their regulatory requirements.

“The Reserve Bank’s consultation on BS11 will, as it progresses, impact how regulated entities procure and structure ICT services.”

Over the longer term, the Government’s Convergence review will have a broad-ranging impact across a variety of TMT sector participants, McFadzien says.

“Most immediately, changes to copyright and patent laws will impact content creators, innovators and entrepreneurs, content distributors and consumers.

“The recent consultation on the Trans-Pacific Partnership intellectual property chapter, for example, could impact content distributors and the creative sector, particularly those that use technological protection measures to facilitate digital innovation and foster markets for that innovation.”

And in August last year, the Minister for Communications and Minister of Broadcasting, Amy Adams, released a discussion paper announcing the launch of a cross-government work programme to assess the ‘fitness for purpose’ of New

EXPLORE WHAT'S AHEAD IN TECHNOLOGY, MEDIA, AND TELECOMS



The Internet of Things really is things, not people



Drones: high profile and niche



3D printing is a revolution, just not the revolution you think



Click and collect booms in Europe



Smartphone batteries: better but no breakthrough



Nanosats take off, but they don't take over



The enterprisation of IT



Short form video: a future, but not the future of television



The 'generation that won't spend' is spending a lot on media content



Print is alive and well... at least for books



One billion smartphone upgrades



The connectivity chasms deepen: the growing gap in broadband speeds



Contactless mobile payments (finally) gain momentum

Zealand's laws in the telecommunications, information technology, media and entertainment sectors.

The discussion paper – *Exploring Digital Convergence: Issues for Policy and Legislation* – considered regulatory issues arising from the phenomenon of 'digital convergence'.

“And, like many areas of law, expanded in-house counsel teams increasingly include highly-qualified and experienced TMT lawyers in-house who don't necessarily need as much support from external counsel”

Kelly McFadzien, CHAPMAN TRIPP

A regulatory update, released by Russell McVeagh at the time of the announcement, discussed the move.

“The fast-paced evolution of technology, and the digital disruption that is being increasingly felt in every industry (think taxis, accommodation and retail shopping, to name but a few), stress the importance of modernising laws and regulations designed

for old technology.

“The proposed cross-government programme is laudable for the scope of issues it is seeking to tackle, and its attempt at cutting through the scale and complexity of the issues by adopting a multi-faceted approach involving different

Governmental bodies.

“That said, care will need to be taken to remember we are only partway through a never-ending process of technological evolution, so that in updating regulatory frameworks designed for old technology, sufficient flexibility is built in to avoid creating barriers for emerging technology.

“In addition, to meaningfully grapple

with digital convergence, the current programme will need to confront head on the issue that the 2008 Review ultimately shied away from – whether there is compelling logic for maintaining separate regulatory regimes for broadcasting and telecommunications.”

Looking ahead

“While the full impact won't be felt immediately in 2016, blockchain, smart contracts, automation and Artificial Intelligence will continue to build momentum,” McFadzien says.

“TMT practices will need to be across these new technologies, both in terms of the legal and regulatory impacts for clients and the impact on our own profession.

“Based on some predictions, we won't exist to answer these questions in five years' time.”

A lot has been said and written on the tech impact of blockchain – a distributed database that maintains a continuously-growing list of data records hardened against tampering and revision, for example, but comparatively little so far on the legal implications and concerns, she says.

“Fintech is an obvious example of where

“Organisations often want certainty about where their data will be and who will have access to it, but getting that information let alone obtaining contractual commitments about this can be a challenge, particularly with some of the big off-shore cloud providers”

Amy Ryburn, BUDDLE FINDLAY

these emerging technologies have concentrated impact and these themes will be picked up at this year's Banking and Financial Services Law Association (BFSLA) conference, for example, which is timely. Cyber security and data protection continue to be issues deserving of business attention and focus.”

Ryburn anticipates some of the customer trends Buddle Findlay has seen develop over the past few years will continue.

“Such as the move to cloud computing solutions and a greater willingness to consider off-shore cloud options; the creation of multi-vendor environments using 'best-of-breed' approaches; a focus on using COTS solutions where possible, even if this means having to amend existing business processes; and the use of more collaborative methodologies such as agile development.”

On the supplier side, the firm expects to

see cloud offerings mature and the continued development of utility model TMT services, Ryburn says.

“Cyber security issues will continue to get a lot of attention and are increasingly becoming a key concern of many boards.

“We're also seeing more interest in exciting global tech trends, such as blockchain, data analytics and machine learning – particularly amongst our start-up clients.” NZL



POSTGRADUATE



UNIVERSITY OF OTAGO
Te Whare Wānanga o Ōtago
NEW ZEALAND

Develop your expertise with a Master of Emerging Technologies Law from Otago

Take the next step in your legal career with our taught Master of Emerging Technologies Law from Otago.

- Ideal for legal practitioners to investigate an area of law with growing international importance.
- Complement your practice with the latest research and legal responses.
- Maintain flexibility and study to suit your lifestyle. Courses are taught by distance with some residential components. Experience innovative delivery styles with podcasts available.

To find out more, contact:
postgraduate.law@otago.ac.nz
otago.ac.nz/law

ANDREW ROW

LEGAL DUCKS IN A ROW

Twenty-four-year-old Andrew Row talks to **Sasha Borissenko** about his journey from scraping through high school English to tackling all things law-related

SINCE REGULARLY topping law school at university, Andrew Row has clerked for Russell McVeagh and the Supreme Court, he’s volunteered on death row, and now he’s off to Harvard Law School - all of which is a very far cry from the 16-year-old who failed Sixth Form English.

a significant stutter – which still occasionally rears its ugly head in group situations, over the phone, or, more disconcertingly, in moots – I had a rather uneventful childhood growing up in the United States and New Zealand.” Thanks to a spare slot in his timetable while studying a Bachelor of Commerce

“Given I benefited from earlier people’s notes, it was only fair I gave mine to others”

“I went through school as an average student,” says Row. “I was more inclined to the sciences (biology) and social sciences at school (geography and business). Law school was never even on my radar. In fact, it was the opposite of what I thought I wanted to do. “Other than the fact that my oratory skills were significantly hindered due to

at Otago University, he decided to take LAWS101. “Despite my English track record at school, and to the disbelief of my parents, I signed up. With that, I stumbled into law school.” It was while residing at his hall of residence, Knox College, where he developed

“The United States criminal justice system illustrates a system that, for the most part, ignores the human ability for redemption, lacks forgiveness, and is hell-bent on punishing individuals”



ANDREW ROW

an appetite for hard work.

“Knox was quite a shock. Here I was surrounded by large numbers of head prefects and duxes. As a student with average high school grades and almost failing Year 13 English, I felt like an imposter. This, in turn, led me to knuckle down in my law studies.”

And so it was. He found his niche with

“All the ugly issues with the American criminal justice system rear their head in the context of the imposition of the death penalty – systemic racism, issues with indigent defence, wrongful convictions...”

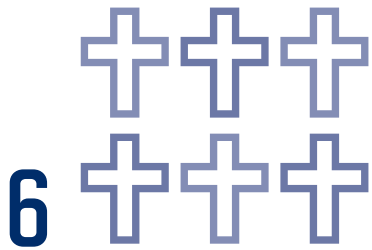
the Otago Law Faculty, the law library in particular, which “ended up being [my] second, and sometimes primary, home”.

His hard work culminated in him coming top of his class in first year law. Andrew would go on to gain 12 academic awards, eight for coming top or top equal in a course, and would receive the Otago District Law Society Prize, a prize reserved for the top two students in the graduating class.

Golden notes

But he didn’t keep his hard work to himself. Years later, hoards of random students from

DEATH ROW NUMBERS



In Texas, six people have been executed this year already



While Texas has less inmates on death row than California and Florida, it is by far the leader in executing people. Since 1976, it has killed 537 people. Coming up in second is Oklahoma at 112



In the United States, 1435 people have been executed since 1976



Another eight are scheduled for this year [in Texas]



In Texas, executing an individual costs an average of \$2.3 million in legal fees, about three times the cost of imprisoning someone in a single cell at the highest security level for 40 years



Since 1976, 156 people have been exonerated from death row

“Here I was surrounded by large numbers of head prefects and duxes. As a student with average high school grades and almost failing Year 13 English, I felt like an imposter. This, in turn, led me to knuckle down in my law studies”

various universities continue to message him over social media asking for his notes.

“I often gave them to my closest friends, who would then give them to others. They eventually diffused throughout the law school.

“With notes, the true value is in the process, rather than the product. However, if they are helpful to others, then so be it. Given I benefited from earlier people’s notes, it was only fair I gave mine to others.”

With their distinctive colourful cartoon characters and bold quotes on the front, Andrew recalls seeing around 30 people in his property exam using them, he jokes.

Young professional

Andrew set off to work at Russell McVeagh as part of the scholarship programme one summer, before completing his honours year, which focused on search engine liability for defamatory web pages.

Following university, an opportunity came up to clerk with Supreme Court Judge Hon. Justice Dame Susan Glazebrook, and being his dream job he couldn’t refuse.

“While it was extremely daunting initially, working one-on-one with one of the pre-eminent legal minds was an absolutely fascinating and rewarding experience,” he says.

It was the high level, and often cross-jurisdictional, legal research that spiked an

interest in working and studying overseas.

Across borders

Having a six-month gap between finishing his tenure at the Supreme Court and starting his postgraduate study at Harvard, Andrew thought this would be a perfect opportunity to do something entirely different.

“[After two years] I wanted to contrast my high-level academic research and work at the Supreme Court with legal work at the ground level/coalface.”

He was drawn to volunteering for University of Houston Professor David Dow, founder of the Texas Innocence Network, which campaigns to spare lives of prisoners on death row.

“All the ugly issues with the American criminal justice system rear their head in the context of the imposition of the death penalty – systemic racism, issues with indigent defence, wrongful convictions, mental health issues of defendants, and elected judges who often get elected on their promise of being extremely tough or merciless on crime.

“From the imposition of extremely punitive drug laws to the fact that the death penalty still exists, the United States criminal justice system illustrates a system that, for the most part, ignores the human ability for redemption, lacks forgiveness, and is hell-bent on punishing individuals.”

Andrew is aware that the unequal treatment of people in the United States criminal justice system is a serious issue.

“One area where this issue is particularly prevalent is the US death penalty,” he tells. “Among other egregious issues, it is disproportionately meted out against racial and ethnic minorities.

“As one United States Law Professor said to me, the United States is currently undergoing a second civil rights movement whereby harms against minorities that are often latent, committed under the guise of ‘neutral’ laws and sometimes perpetuated through unconscious behaviour, are rightly being confronted and challenged.”

Coming to the end of his volunteering, Andrew has come away from Texas “truly believing, to use the words of Bryan Stevenson, that “[e]ach of us is more than the worst thing we’ve ever done”.

Harvard

Now, he’s set to begin studying towards a Master of Laws at Harvard Law School in August.

“Harvard Law School is a crucible of legal thought and I’m looking forward to getting involved with everything it has to offer.”

With an aim to focus on constitutional law, criminal law, and legal theory classes, he hopes his experiences in both the United States and New Zealand legal system will give him a unique perspective in analysing the constitutional structures and criminal justice systems of both countries.

“I’m also looking forward to experiencing the US college experience. Given Harvard Law School has done away with traditional grades in the hope of reducing competitiveness and stress, I’m to make the most of this, and explore New England and the East Coast of the United States.” **NZL**

CATASTROPHIC CHANGES

Natural disasters are still front of mind for many of New Zealand’s insurance lawyers – but other areas are starting to shine



A BUOYANT global economy and a flurry of legislative activity mean New Zealand’s insurance lawyers remain busy, despite the number of Christchurch cases ramping down.

“Although the first Canterbury earthquake occurred nearly six years ago, the 2010 and 2011 earthquakes continue to be a key driver of work for our insurance law practice,” says DLA Piper New Zealand partner Veronica Cress.

“However, the volume of this work is steadily decreasing.”

DLA Piper partners and clients around the world are also a key driver of insurance sector work for the firm in New Zealand, Cress says.

“As a global firm, we are frequently asked to advise international insurance industry participants across multiple jurisdictions and we regularly collaborate across borders for this purpose.

“[Also] a global increase in corporate merger and acquisition activity and the increased use of representation and warranty insurance in these transactions have been key drivers of work for both our insurance law and corporate law specialists.”

Locally, legislative change and new entrants in the market are also creating work in the insurance law space.

“New entrants to the New Zealand insurance market have been a key driver of work for our insurance regulation and policy wording specialists.

“Legislative and regulatory changes



“Although the first Canterbury earthquake occurred nearly six years ago, the 2010 and 2011 earthquakes continue to be a key driver of work for our insurance law practice”

Veronica Cress, DLA PIPER NEW ZEALAND

in New Zealand, impacting directly on insurance industry participants and impacting indirectly on liability insurers, have been a continuing driver of work in the insurance law space.”

Legislative change

On 1 January 2016, a revised Fair Insurance Code came into effect, Cress says.

“The Code applies to all general insurers who are members of the Insurance Council of New Zealand. It sets a higher benchmark for self-regulation than the previous code and includes a commitment by insurers to act reasonably in response to non-disclosure.”

There have also been legislative reforms impacting indirectly on liability insurers, she says.

“On 1 March 2016, the Food Act 2014 came into force.

“The Act regulates food businesses according to their level of food safety risk. Penalties for failing to comply with the Act include suspension, fines of up to \$500,000, and imprisonment for up to five years for individuals at the highest level of offending.”

On 4 April 2016, the Health and Safety at Work Act 2015 came into effect and replaced the Health and Safety in Employment Act 1992, she adds.

“The new Act imposes duties on those with the ability to influence and control workplace risks to eliminate or minimise those risks and also to ensure compliance with the Act. Non-compliance exposes both individuals and businesses to significantly increased penalties.”

The Reserve Bank of New Zealand

(RBNZ) also announced in April that it is to review the operation of the Insurance (Prudential Supervision) Act 2010 and the associated regulations.

The Bank aims to release an issues paper for consultation at the end of this year, with recommended changes for further consultation released in 2017, with a view to introduce legislation, subject to cabinet approval, in 2018 at the earliest.

A release from insurance and commercial litigation firm Jones & Co discussed why such a review is advantageous.

“The Insurance (Prudential Supervision) Act was first contemplated 10 years ago and has been in force during the most turbulent time in the industry’s history,” the release said.

“A review is timely. It will be interesting to see how much input there is from public interest groups, as the New Zealand public has had a lot to say about the standards that it expects from its insurers in some recent high-profile complaints and litigation.”

The International Monetary Fund will look at the Reserve Bank’s oversight of the insurance and banking sectors, an RBNZ release said.

Key challenges

Two global insurance sector trends are creating challenges in the insurance law space – geographical regionalisation and local consolidation, Cress says.

“Many international insurance industry participants have been reducing or withdrawing claim management operations from New Zealand to manage major insurance claims on a regional basis out of

Australia or elsewhere in the Asia Pacific region,” she says.

“This geographical distance from our clients creates a number of challenges [including] an increasing need to travel out of New Zealand to meet with clients, and an increased risk that foreign lawyers will compete for work on New Zealand matters.”

Local consolidation is also a key concern.

“Within New Zealand, we have recently been through a period of consolidation as major insurance companies and insurance brokers have merged with, or been acquired by, other companies in the same market.

“One consequence of this industry consolidation is that the number of entities operating in the market is reduced. This can be challenging in a relatively small insurance law market like New Zealand.”

According to PwC’s latest report – *Exploring the insurance industry’s top risks: A New Zealand perspective* – the



Source: PwC 2015 Report: Exploring the insurance industry's top risks: A New Zealand perspective

INSURANCE LAW

top five risks for insurers, in order, are natural catastrophes, change management, distribution channels, cyber risk and reputation.

PwC insurance sector leader Karl Deutschle says the industry is at the tipping point as it grapples with the impact of new technology, new distribution models, changing customer behaviour and more exacting local and global regulations.

These findings also echoes the sentiment of last year’s PwC Global CEO Survey where insurance industry leaders across the world spoke of their businesses facing disruption.

“For some businesses, technology developments are a potential source of disruption and yet for others, change offers competitive advantage. Technology is one of the driving forces behind competitive advantage for new and non-traditional entrants, enabling their ability to quickly respond to customer demands.

“Customers want insurers to offer them the same kind of accessibility, understanding of their needs, and products that fit their requirements that they’ve become accustomed to from online retailers and other highly customer-centric sectors. Digital developments offer part of the answer by enabling insurers to deliver anytime, anywhere convenience, streamline operations, and reach untapped segments.”

Natural catastrophe risks again topped the list, as it did two years ago, Deutschle says.

Recently this risk has increased further with a rise in both the intensity and frequency of weather-related events. Many insurers are looking at how they can settle claims more quickly and effectively in the event of a natural catastrophe, says Deutschle.

Looking ahead

Cyber insurance will continue to be a hot topic in the coming year, Cress says.

“A number of law reform initiatives are also likely to progress over the next year.

“Financial services reform will impact on the insurance sector as insurance is a financial

INSURANCE AT A GLANCE ACCORDING TO RUSSELL MCVEAGH PARTNERS TOM HUNT AND GUY LETHBRIDGE



Guy Lethbridge



Tom Hunt

What have been the key drivers of work for your firm/practice in the insurance space?

A key piece of work for us over the last few months has been acting for IAG Australia on a proposed offer of convertible subordinated notes to New Zealand investors, which was announced on 2 May 2016. The offer is for up to \$250 million

of subordinated notes (plus up to \$100 million of oversubscriptions) and will be made under the Financial Markets Conduct Act 2013. It will be the first quoted convertible security under the FMC Act and the first of these types of regulatory capital instruments by a licensed insurer.

In recent months, we have also seen an increase in licensed insurers seeking regulatory advice on their obligations across a wide range of financial services legislation.

What are some of the key challenges you are encountering in the sector?

The legislative reforms described in more detail below are certainly presenting some challenges (and opportunities) for insurers in the New Zealand market. Like all participants in the financial services industry, insurers are facing a higher level of regulation, and the challenges they face include keeping abreast of developments and managing their businesses accordingly.

What are your predictions for the sector in the year ahead?

In the coming year, the review of the Insurance (Prudential Supervision) Act 2010 (described in more detail below) will certainly be of interest for licensed insurers.

Have there been any legislative reforms or changes lately that affect the sector?

There are a number of recent legislative reforms (some already enacted, others in the early stages of development) which are relevant to the insurance sector to varying degrees. These include:

- a) The current review by MBIE of the Financial Advisers Act 2008. A key focus of that review has been on the regulation of financial advisers in the insurance sector, and any changes have the potential to significantly impact the distribution models used by insurers. Submissions on the latest Options Paper closed in February and MBIE’s recommendations to the Minister of Commerce and Consumer Affairs are due by 1 July 2016.
- b) The enactment of the Financial Markets Conduct Act 2013 has broadened the options available for insurance companies looking to raise funding in the capital markets. The IAG bond referred to above is a current example of an insurer raising debt using FMCA compliant offer documents.

The RBNZ announced in April that it will review the Insurance (Prudential Supervision) Act 2010 over 2016 and 2017. When it was enacted IPSA provided the first comprehensive framework for the prudential regulation and supervision of insurers in New Zealand. Although the review is at a very early stage (formal public consultation is expected to commence with the release of an Issues Paper in quarter 4 of 2016), it will certainly be a key area of focus for all insurers in the New Zealand market.

“Legislative and regulatory changes in New Zealand, impacting directly on insurance industry participants and impacting indirectly on liability insurers, have been a continuing driver of work in the insurance law space”

Veronica Cress, DLA PIPER NEW ZEALAND

product under the current statutory regime. The Ministry of Commerce and Consumer Affairs is currently considering submissions it received on a recent options paper and is due to make reform recommendations to the Minister by 1 July 2016.”

And, although no formal announcements have yet been made, the Minister of

Commerce and Consumer Affairs has recently indicated informally that insurance contract law reform will progress during 2017, Cress says.

There are also set to be changes around the Earthquake Commission, she says.

“New Zealand has a national disaster insurance scheme established by the

Earthquake Commission Act. A review of the scheme was announced in 2012 and the government is currently considering submissions it received in 2015.”

A bill is expected to be introduced into Parliament during the first half of 2016, Cress says.

“[Meanwhile} the Fire Service is currently funded by a levy collected through building, contents and motor insurance policies. In May 2015, the Government released a discussion document calling for submissions on a review of the Fire Service.

“On 29 April 2016, the Minister announced the levy will from July 2018 be payable over a wider range of insurance policies. Draft legislation is expected to be introduced during 2016.” **NZL**

NEW PARTNER.

After joining the firm from abroad in 2014, Mark Godfrey has been appointed partner. Mark, 42, is an expert in construction contracts, infrastructure and Public Private Partnerships, recognised for his work in the United Kingdom and Middle East. He has an MSc in Construction Law and Arbitration from the University of London. Mark’s appointment brings our firm to 27 partners and 103 lawyers. We’re one of New Zealand’s largest and most successful full-service law firms. We’re the experts in more than 23 practice areas across every aspect of the law. Auckland. Wellington. Give us a call.

MC.CO.NZ

MEREDITH CONNELL
THE LAW FIRM.



DESIGNING DISASTER LAWS

Asia Pacific disaster law coordinator Gabrielle Emery talks to **Samantha Woodhill** about her role managing international response to disasters in developing countries

GABRIELLE EMERY is the Asia Pacific disaster law coordinator for the International Federation of Red Cross and Red Crescent Societies. She advises governments on policies for disaster response, but with no international treaty, she certainly has her work cut out for her.

She looks at contingency plans, where the local legal obstacles lie and how international response to disasters can be improved. And she's truly inspired, she says.

"Of course [it's] difficult, but 'disasters' in many ways bring about the best in people too and it is humbling to see just how resilient humans can be in some pretty dire circumstances," she says.

GABRIELLE EMERY

LEGALLY TRAINED



Despite admitting she'd originally wanted to study Japanese, but was convinced to study law in the hope of better job prospects, Emery says her law degree has led her to a career she never even knew existed.

"I think law gives you a really good grounding to undertake a lot, to be able to understand government settings and government strategies and how policy and law developments are made in a country. So that has been, obviously, a really good base," she says.

"You don't have to be too narrowly focused in your law degree. I think there are many different areas that you can use a law degree and it might not be the most traditional things that you've ever thought about."

In love with disaster law

Gabrielle first noticed an absence of an international legal framework for disaster response when she worked with the New Zealand government at the UN. Now, with two young children by her side, Gabrielle lives in Kuala Lumpur, travelling through Asia working with the disaster law program for the Red Cross.

"It was here that my interest in this area was first sparked," she says.

"I became involved in the multilateral discussions and negotiations on the international humanitarian system and on global disaster response mechanisms.



“The absence of an international legal framework guiding how to work together and coordinate in times of disaster can often lead to tensions and confusions in emergency situations”

"The absence of an international legal framework guiding how to work together and coordinate in times of disaster can often lead to tensions and confusions in emergency situations."

With a Master's in International Human Rights Law under her belt, Gabrielle took up a job running the law and government relations for the New Zealand Red Cross, a job she stepped into right before the 2011 earthquakes in Christchurch.

Since then, she has provided secondary support to victims of the 2015 Vanuatu cyclone, trained a government lawyer to support in developing legal and policy

guidance for an international response to the cyclone, advised the Nepalese government and other humanitarian actors on international disaster policies following the Nepal earthquake in 2015, and worked with governments and Red

Cross societies in Mongolia, Bangladesh, Malaysia, China and North Korea on laws for disaster management.

"Strong laws and governance frameworks for disaster risk management are essential and provide the underlying framework on which to build an effective and well-coordinated disaster management system," Gabrielle says.

"Most countries in Asia Pacific are not adequately prepared to manage these kinds of disasters – and it's important to have clear and articulated domestic laws and policies in place so that the international and domestic response systems can be complementary."

LIFE IN KL



"It's an interesting place to live," Emery says of life in KL.

"Life is pretty easy and pretty comfortable, I suppose. Compared to other parts of Asia, it's fairly well-developed. It's very hot at the moment."

Though she's based in KL, she's rarely actually working there.

"Very little of my work personally is done in Malaysia because we cover 37

countries so I do quite a lot of work in South Asia – Bangladesh and Nepal – and in East Asia – China and Mongolia," she says.

"It's a good base to be able to operate from.

"I have two young children who keep me and my husband on our toes, but we enjoying travelling around Asia and having lots of adventures."

“For disaster laws, the ultimate goal is to increase safety of the people, save lives and reduce the vulnerability of society and infrastructure from disasters”

She says that governments tend to focus on emergency response rather than realising the importance of better preparedness and ensuring the risk is minimised. Now, the International Federation of Red Cross and Red Crescent society disaster law program has been operating in the Asia Pacific for over a decade.

A local comparison

Following the Canterbury earthquakes, Gabrielle says the interest in disaster law spiked dramatically.

"A lot of the law reforms actually happened in New Zealand following the earthquake experience," Emery says.

"[It's] an interesting model for a lot of the things around some of the land and housing and forced displacement issues that happened in Christchurch so I think it's an interesting time to be working in this area in New Zealand as well."

Establishing a program

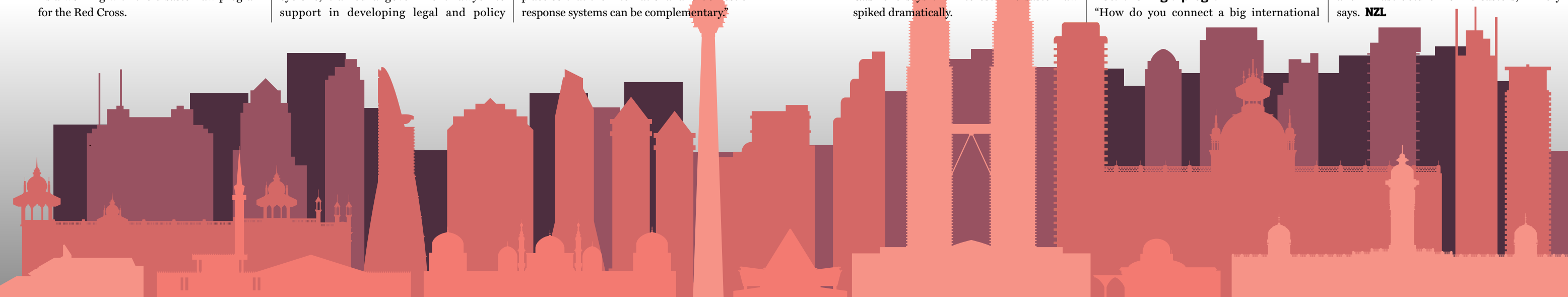
"How do you connect a big international

humanitarian response system and the domestic system in times of a major disaster response?" Gabrielle asks.

The International Federation of Red Cross and Red Crescent Societies begin by looking at the legal preparedness of international disaster assistance.

"We found that there were a lot of legal and regulatory issues that were really playing out and maybe stopping some of that lifesaving assistance coming into a country. So there were these issues around visas and customs – customs issues always seem to play out in these major disaster response settings.

"For disaster laws, the ultimate goal is to increase safety of the people, save lives and reduce the vulnerability of society and infrastructure from disasters," Emery says. **NZL**



SHOOTING THE MESSENGER

Defamation in the 21st century is a difficult creature. In a digital age, it is inevitable that defamatory statements are made not in person or in a hard copy publication, but rather posted on the internet or social media. The sting may be just as damaging, the audience significantly larger, and yet the traditional legal tests and remedies are becoming less useful,

Nick Russell writes

THE CLASSIC approach when a person is defamed is to sue the statement maker. However, this is not always practical when it comes to publication on the internet – that individual may be unidentifiable, in a different jurisdiction, or the type of person who will relish litigation and use the public forum of the court to continue their attack. Most potential plaintiffs merely want the statement to go away, but that can be difficult or even impossible to achieve in many cases.

The test for injunctive relief in defamation proceedings is particularly onerous, and even if an injunction is granted and the material is taken down by the statement

maker, it is unlikely to disappear from the internet completely.

Increasingly, potential plaintiffs are looking to sue not the statement maker but third party publishers – such as internet search engines – to force them to stop publishing defamatory pages in search requests. Removing defamatory pages from search results does not remove that material from the internet altogether, but it does make the defamatory statement much harder to find – and for many plaintiffs that will be enough. Whether such a remedy is achievable in defamation, however, has been far from settled.

Breakdown of the law

The question of search engine liability in defamation has only been considered once in New Zealand, in the 2012 decision in *A v Google NZ Ltd*. A had asked Google NZ on numerous occasions to block access to foreign websites containing allegedly defamatory material – requests that were referred to Google Inc but only partially actioned. A applied for summary judgment on the basis that the material was clearly defamatory and Google NZ was aware that it was available in its search results.

The court found that Google NZ was not the correct defendant because it did not have

“Increasingly, potential plaintiffs are looking to sue not the statement maker but third party publishers – such as internet search engines – to force them to stop publishing defamatory pages in search requests”

sufficient control over the publication of the allegedly defamatory material. It was not in a position to prevent continued publication, nor to take the material down, and “merely forwarding a request for removal to

[Google Inc]” was not sufficient to make it a publisher. More generally, however, the Court did not rule out the possibility that a search engine could be a publisher where there is some “stamp of human intervention” on the

publication of the search results including the defamatory material.

The Court has taken a similar approach with regard to social media. In the 2014 decision of *Murray v Wishart*, the Court of Appeal considered whether the host of a Facebook group could be liable for defamatory statements posted by other group members. This type of case is distinct from those involving Google, because the host has the ability to delete the offending material from the page permanently, rather than just making it more difficult to access. The court concluded that a host is only a publisher when they have actual knowledge

DEFAMATION

of the defamatory material published on the group page “and fail to remove it within a reasonable time in circumstances that give rise to an inference that they are taking responsibility for it”. It rejected the High Court’s suggestion of an ‘ought to know’ test on policy grounds.

Duffy v Google Inc

While defamation law remains underdeveloped in New Zealand, though, two decisions of Australian Supreme Courts have shed some light on a possible way forward. In *Duffy v Google Inc*, Duffy had entered into extended correspondence with several online psychics over the course of two years, seeking predictions about her relationship. In 2009, she became aware of a number of articles online which referred to her as a “psychic stalker” and made a range of other defamatory comments.

When her name was searched on Google, the results would include extracts from and hyperlinks to those articles. She subsequently discovered that Google’s autocomplete tool, when users searched her name, would autocomplete it to “Janice Duffy psychic stalker”. She notified Google Inc of these issues on numerous occasions, but it declined to take action on the basis that there was nothing it could do to remove the content without the cooperation of the sites’ webmasters. After Duffy issued proceedings against both Google Inc and Google Australia, Google Inc did remove some of the material, but only from Google Australia search results.

What makes the Duffy decision unusual is the fact that Duffy was successful in her claim. The Court was satisfied that the material complained of contained defamatory imputations and all of Google Inc’s defences failed. Duffy was awarded \$100,000 damages and indemnity costs.

Who is the defendant?

In an earlier application for injunctive relief, Duffy named Google Australia and Google Inc as parties. The orders sought against Google Australia were declined based on the lack of evidence that it exercised any control over – or was able to remove material from – search results. This confirms that issuing proceedings against the local subsidiary is likely to lead to a successful application for summary judgment on the subsidiary’s part. The parent, Google Inc, is the correct defendant.

“Removing defamatory pages from search results does not remove that material from the internet altogether, but it does make the defamatory statement much harder to find – and for many plaintiffs that will be enough”

Who is a publisher?

In *Duffy*, as in *A*, Google Inc argued that it was not a publisher of the defamatory material, which consisted of the paragraphs displayed in the search results, the content of the external website itself, and autocomplete/related search terms. Equally, as in *A*, the court considered that this question should be determined by reference to the extent of Google Inc’s participation in each publication.

It found that the paragraphs were located on the Google website, of which Google Inc was the sole operator and controller, and that Google Inc played a “critical role” in generating and communicating them to the user. After notification by Duffy, their continued existence was “the direct result of human action or inaction rather than

merely the result of machine operation”. The material published on the external websites was also published by Google Inc because of the critical role that Google Inc played in communicating their content to users. The snippet published in the search results provided a summary of the material on the website, and the results were programmed to redirect the user to the website when they click on the hyperlink. However, the Court commented that posting the URL on its own, either with or without creating a hyperlink, would not make Google Inc a publisher of

the material on that site. In each case, that failure to remove the defamatory material after notification meant that from that point on, Google Inc was deemed to have intended to publish it to the user.

The overall result was that Google Inc would only be deemed a publisher after notification by Duffy and after a reasonable time had elapsed for it to remove the relevant material. Based on the time it took for Google Inc to respond to Duffy’s initial requests (one month), the court concluded that one month amounted to a reasonable time. Google Inc, therefore, became a publisher of the defamatory material one month after Duffy alerted it to its existence.

Of course, for Google Inc to be a publisher, there must also be a person to whom the material was published. The Court

INNOCENT DISSEMINATION



The defence of innocent dissemination exists in both Australia and New Zealand, although the Australian version is narrower, only capturing publication that the defendant, as a “subordinate distributor”, “neither knew, nor ought reasonably to have known” was defamatory. In New Zealand, only the first limb exists.

Wishart canvassed international case law on innocent dissemination and concluded that the facts were most analogous to those in *Byrne v Dean*, a UK decision concerning an anonymous notice posted on the wall of a golf club, which the owners of the club did not remove after being alerted to it. That failure gave rise to an inference that the defendants had assumed responsibility for its continued presence.

In *Duffy*, the Court accepted that Google Inc was a subordinate distributor. However, Duffy’s notification to Google Inc meant that it knew of the defamatory material, and that knowledge precluded reliance on the defence.

Innocent dissemination in New Zealand, under section 21 of the Defamation Act 1992, has not been updated to reflect developing technology – unlike the Defamation Act 2013 (UK), which includes a section governing liability for “operators of websites” – and it is possible that a search engine would not fall within the existing definitions of “processors or distributors” to which the section applies. This point was noted in *Wishart*, and is likely to become increasingly important if litigation of this nature becomes more common.

found that during the relevant period there had been at least 300 searches monthly for “Janice Duffy” and “Dr Janice Duffy”. The defamatory paragraphs were published in these search results, and a significant number of users would have noticed them, read them, and clicked on the hyperlink for elaboration. Google Inc had therefore published that material to a substantial number of users.

“What makes the Duffy decision unusual is the fact that Duffy was successful in her claim”

The court concluded that the strict actual knowledge requirement it imposed was not available in Australia due to existing precedent, which stated that a person could also be a publisher if they reasonably ought to have known that the material was defamatory. However, had Duffy been heard in New Zealand, the outcome would have been the same, because in this case Google Inc did have actual knowledge of the defamatory material due to Duffy putting it on notice.

Whether this decision will be adopted in other jurisdictions, and any long-term impact such a trend may have on the way that search engines provide their services to the public, remains to be seen, but Duffy has paved the way for liability in this sphere, and hers is unlikely to be an isolated case. Equivalent proceedings could well arise in New Zealand, except now that potential plaintiff has a blueprint on how to sue Google – and succeed. **NZL**

LISTINGS

BUILDING CONSENT & CONSTRUCTION



Maynard Marks Limited
Are your clients involved in construction or property-related disputes and need a reliable expert witness? Are they involved in commercial property acquisition, leaseholding or development, and need technical due diligence or other professional advice? We offer a nationwide service through our Auckland, Wellington and Christchurch offices. Please call us to discuss how we can help your clients with their property-related needs.
Auckland 09 912 2550
Wellington 04 282 0650
Christchurch 03 379 1773
E: office@maynardmarks.co.nz
www.maynardmarks.co.nz



McGunnigle Hodge Building Consultants
We are a boutique firm of building consultants that is capable of providing expert technical building performance advice to you and your clients. Our team of professionals excel in their specific fields (including defect identifications, expert witness representation, repairs, acquisitions and disposals), allowing unparalleled expertise in the building performance sector.
T: 09 360 3255
E: info@mhbc.co.nz
www.mhbc.co.nz



Prendos New Zealand Limited
Prendos are leading consultants to the property and construction industry. With more than 25 years' experience across all building types and market sectors, we deliver independent, expert advice through a network of offices across New Zealand. Our thorough

knowledge and extensive experience in the preparation and presentation of independent expert evidence assists clients who anticipate legal action in the District Court, High Court and Weathertight Homes Tribunal. We also provide dispute resolution services of mediation, adjudication, and arbitration. Prendos has an Expert Witness panel that spans key construction industry disciplines, consisting of building surveyors, quantity surveyors, structural engineers, fire engineers, architects, valuers, adjudicators, arbitrators and mediators.
Auckland | Christchurch | Tauranga | Wellington | Whangarei
T: 0800 PRENDOS (773 636)
E: prendos@prendos.co.nz
www.prendos.co.nz

FINANCIAL SERVICES



BDO Christchurch
Andrew Grace
Financial Litigation Support – including business and share valuation services for shareholder and relationship property disputes, loss of profit and damages claims. Significant valuation, transaction, forensic and expert witness experience.
T: 03 372 0307
E: andrew.grace@bdo.co.nz
www.bdo.co.nz



Business Appraisals Ltd
Clyth MacLeod
Clear, accurate and affordable business valuations for partnership splits, property relationship, litigation support, estate planning and buy/sell decisions. Independent, practical, and experienced expert witness.
T: 09 630 9491
E: clyth@businessappraisals.co.nz
www.businessappraisals.co.nz

Business Valuation and Forensic Accounting Limited
Charles Purcell
Business and share valuations, relationship property matters, shareholder disputes, financial investigations, forensic accounting, and the provision of expert witness evidence to various courts.
T: 04 473 8900
E: cpurcell@businessvaluation.co.nz
www.businessvaluation.co.nz



Grant Thornton New Zealand Ltd
Tony Davis
Business and shares evaluation, loss of profits and damage claims, relationship property, and forensic accounting, including providing expert witness evidence.
T: Tony 09 300 5804, Bill 09 300 5803
E: tony.davis@nz.gt.com, billapps@nz.gt.com
www.grantthornton.co.nz



Hussey & Co.
Shane Hussey
Twenty years specialising in business valuation, assessment of economic loss, relationship property matters, financial investigations/forensic accounting, including providing expert witness evidence.
T: 09 300 5480
E: shane@hco.co.nz
www.hco.co.nz



ECOVIS KGA Limited
Keith Goodall, Wade Glass & Clive Bish
Business and share valuations, shareholder/partner disputes, litigation support and expert evidence, damages claims and forensic accounting/investigations.
T: 09 921 4630
E: keith.goodall@ecoviskga.co.nz
wade.glass@ecoviskga.co.nz

clive.bish@ecoviskga.co.nz
www.ecoviskga.co.nz



Lazelle Associates Ltd
Murray Lazelle
Forensic accounting and litigation support: damages/loss assessment, relationship property issues including valuations, reckless trading and 'phoenix' company issues; Commerce Act and Fair Trading Act issues; beneficiary/trustee disputes.
T: 09 300 7220
E: murray@lazelle.co.nz
www.lazelle.co.nz



Lyne Davis Opinion Ltd
A boutique practice which focuses solely on financial valuations and expert evidence. Benefits include deep specialisation, combined 60 years' experience, and a sound theoretical and practical background for the solving of important forensic issues. Work includes investigating accountant reports; business, company and IP valuations; IFRS valuations; expert determination; shareholder disputes; loss of profits; insurance loss and relationship property.
T: 09 379 4393
E: brendan.lyne@lynedavis.com
E: tony.davis@lynedavis.com
www.lynedavis.com



nsaTax
Bruce Watt
Business valuations, loss or damages quantification, and litigation support.
T: 09 309 6505
E: brucew@nsatax.co.nz
www.nsatax.co.nz



Staples Rodway Ltd
Kevin Pitfield
Specialist in valuations, loss quantification and damages area.
T: 09 309 0463, 027 458 2553
E: kevin.pitfield@staplesrodway.com
www.staplesrodway.com

INSOLVENT & SOLVENT LIQUIDATIONS & BUSINESS RECOVERY



Gerry Rea Partners
Simon Dalton, Paul Sargison, John Leonard
Specialists in liquidations, receiverships, creditors compromises, business valuations, economic loss assessment, forensic accounting, litigation support.
T: 09 377 3099
F: 09 377 3098
www.gerryrea.co.nz



Staples Rodway Ltd
Tony Maginness
Specialist in business recovery, turnaround and liquidations.
T: 09 968 9165
E: tony.maginness@staplesrodway.com
www.staplesrodway.com

List your business here.
Contact **Paul Ferris** at
paul.ferris@keymedia.com.au
or **+61 2 8437 4703**
for more information.

NZ Lawyer Magazine is New Zealand's only independent legal magazine written for and targeted purely at law professionals and top decision makers

- Aspirational cover stories
- In-depth features and analysis
- High-level case studies
- Interviews with domestic and international industry leaders



1 YEAR SUBSCRIPTION FOR ONLY \$29.95

NZ LAWYER

Visit www.nzlawyermagazine.co.nz and click on the subscription page

PERFORMANCE

BALANCING DATA AND GUT INSTINCTS IN DECISION-MAKING

When it comes to making decisions on a new hire, many experts will say that gut instinct should be left out of recruitment. But **Christine Khor** explains that balancing that innate instinct with cold, hard facts has many benefits

GUT INSTINCT or intuition is thought of as dangerous ground as it can, and often has, led to a discriminatory selection process. Using intuition by itself may lead to situations where we only hire people who we know or like, people who we don't feel threatened by, that remind us of ourselves, that are exactly the same as the other people in our team, etc. In other words, your gut instinct, if not combined with more scientific data, is likely to result in hiring the person you can see yourself having a drink with or inviting to a barbeque – not necessarily the person who is the best for the job.

Though you should be wary, it is important to note that the role of gut instinct and intuition should not be completely ignored. Instinct plays a vital role in how we make decisions and prevents us from falling into the dangerous territory of groupthink and over-analysis.

The role of the gut

Instinct is a biological function that helps us to determine danger. It is a natural subconscious response. Think of a time when you've met someone you just didn't feel comfortable around and then you later found out that person had a shady past. Your intuition was confirmed by evidence.

Think of a time when you felt a little off in someone's house, only to find out later that your host had only just had a heated argument with their partner before you arrived. This is your brain taking the temperature of a room, feeling the underlying tension and responding to it by eliciting your fight or flight instinct. When it comes to business decisions, it is usually our expertise, experience and knowledge that allow us to read a situation and respond to it instinctually.

So, why are we ignoring our instincts in business today?

Analysis paralysis

When it comes to business decisions, the fear of failure mindset has permeated organisations at all levels and in all industries as a not-so-surprising side effect of having gone through a global financial crisis. It makes sense that after a period of economic instability, businesses will be cautious in their strategy and business leaders will be apprehensive when making decisions. However, we all know that this kind of fear-based thinking is the major obstacle to innovation and can have a major impact on the hiring decisions of a business.

Because of this fear, businesses are relying heavily on groupthink and committees. Management will call meetings, send group emails, request more research and stall for more time, rather than taking the perceived risk of making a decision. Many executives don't want to be the one to make the final call in case things go pear-shaped. We like to call this analysis paralysis and it has become rampant in the recruitment industry.

Increasingly, recruitment within businesses is being stalled by elongated processes that include numerous rounds of interviews, background checks, psychometric assess-

When it comes to business decisions, the fear of failure mindset has permeated organisations at all levels and in all industries as a not-so-surprising side effect of having gone through a global financial crisis

ments, case studies, an increasing amount of reference checks and then a long waiting game, where all the data is analysed but a final decision is still not made. While this is happening, the talented prospects that went through this arduous process have gone on to find other opportunities.

While it is absolutely necessary to gather evidence-based data on the skills, experience and cultural fit of a prospective employee, this process has to be as streamlined as possible and not become excessive. Three references are the standard to get a general consensus on how well a person did their prior jobs, however, we've been asked at times to do six! While it is often necessary to do a second round interview or have the person meet

additional people within the team, a process of four interviews is excessive. If a manager cannot make a decision based on two rounds of interviews, three reference checks and perhaps one psychometric test, then it is usually their gut instinct telling them that the candidate is not the right person for the job. If instinct were listened to at this point, then a lot of time and money would be saved.

Searching for a unicorn

The heavy reliance on group consensus and box-ticking not only takes the humanity out of the hiring process, but it also supports the fallacy that there is a perfect person for the job in question – someone that has all the experience, all the skills, does not require training, has

a high intellect but won't get bored easily, will work for a salary lower than market rate, and will be satisfied doing a job they have already done before. Basically a unicorn!

Of course, unicorns don't exist.

But people with the potential to grow and learn do.

Your best candidate may not tick all the boxes and in actual fact, shouldn't! If they did, they would have nothing to learn or gain from working at your company and would therefore be a flight risk.

In other words, decision is risk, but in some stage of the recruitment process, a decision has to be made.

The balancing act

The key to making a good hire is to combine data-based evidence with instinctual responses. What it comes down to is that gut instinct should never trump evidence in the making of a decision, but it shouldn't be ignored if it is sounding alarm bells. Our advice is to pay attention to your instinct when it is telling you not to hire someone, but disregard your instinct if it is telling you to hire someone in spite of the evidence gleaned from interviews and reference checks. It is most likely personal preference at work here.

Secondly, make sure you qualify your gut instinct with objective reasoning. Are you an expert in the area in question? Have you had a similar experience before and was your instinct correct at that time? Do other people agree with your instinct? Are you sure that you are not engaging in any form of bias or discrimination?

By removing the fear of risk mentality that may have taken residence in your management team, you give them permission to use their expertise, experience and wealth of knowledge to navigate decision-making. Provided data-based evidence is not ignored, the instincts of your management team can be a valuable asset to your organisation. **NZL**

Christine Khor is the managing director of Chorus Executive, a talent management company focusing on the recruitment, coaching and personal branding of executives. Her book, *Hire Love: How to Hire Passionate People to Make Greater Profit*, is now available on Amazon.com





Dragon Legal NZ Best Practice

- First release of Dragon Legal NZ
- 12 months NZ support
- 12 months software maintenance
- Training and installation

SAVE 25%*

Introducing new Dragon Legal NZ speech recognition with first-ever NZ legal corpus.

Dragon Legal NZ is built around a New Zealand legal corpus for highly accurate speech recognition. Dragon Legal NZ gives you access to thousands of NZ-specific legal terms, statutes, law firms, place names and government entities provides a great productivity booster that allows you to get up and going with Dragon even faster than previously.

Dragon Legal NZ helps New Zealand legal professionals in five ways:

1. **Instant document turnaround:** Talk and your words appear on the screen via highly accurate speech recognition developed specifically for New Zealand legal documents.
2. **Talk as long you want:** Dragon Legal is Windows-based computer speech recognition that keeps up with you with no time limits on how long you can dictate – unlike mobile apps and other PC speech recognition programs.
3. **Dictate documents on the go:** Transcribe dictation recorded on your mobile phone or digital recorder. Make file notes when meetings are fresh in your mind for later transcription.
4. **Avoid outsourcing charges and issues** with instant, accurate turnaround on documents – because you write them using your voice – and also ensure that intellectual property remains secure.
5. **Increase efficiency** of support staff and solicitors by freeing up their time for more valuable tasks and removing delays in document processing.

Get started with your Dragon Legal Best Practice Bundle. We make it easy with our no obligation two-week trial.

Sound Business Systems will install and train you professionally so that you'll see a boost in productivity from the moment you starting using Dragon Legal NZ – that's our promise. If you're not completely satisfied, we'll refund the software price in full.

Dragon Legal NZ provides instant document turnaround, continuous speech recognition for long documents, savings on outsourcing charges and increased security for intellectual property. Your whole practice will benefit.

For more information about the Best Practice Bundle, our two week trial offer, or upgrading from your existing Dragon visit campaignconsole.com/dnslglnz or phone Mike Kelly from Sound Business Solutions on 021 542 746.

* Conditions apply

Make this your Year

CRAIG MULHOLLAND
ANZ BANK NEW ZEALAND
IN-HOUSE LAWYER OF THE YEAR 2015

THURSDAY 17 NOVEMBER 2016 | THE LANGHAM AUCKLAND

www.lawawards.co.nz

Event partner

Award sponsors

Official publication



Anthony Harper



NZ | LAWYER



RUSSELL McVEAGH

Organised by





2016 INSIGHTS ROADSHOW

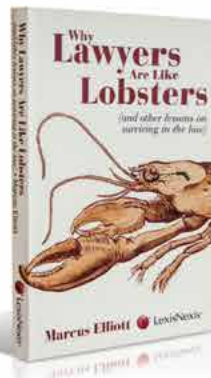
Powered by **Lexis Advance**

WHAT ARE YOUR CUSTOMERS REALLY SAYING?

Join us at this year's **Insights Roadshow** which will explore and present the latest research findings on what your customers think of the New Zealand legal industry. This is the follow up to last year's successful Trends & Challenges in Law Roadshow.

An enjoyable social evening with live entertainment, great food and drinks.

Each attendee will receive one of our best sellers, **Why Lawyers are like Lobsters** by Marcus Elliott.



Register now at
www.lexisnexis.co.nz/roadshow2016

THIS IS A COMPLIMENTARY EVENT, SPACES ARE LIMITED. DON'T MISS OUT.



DOWNLOAD YOUR **FREE COPY** OF THE MUCH ANTICIPATED **TRENDS & CHALLENGES IN LAW WHITEPAPER** FROM OUR SUCCESSFUL ROADSHOW LAST YEAR.

beEXCEPTIONAL
content • solutions • productivity



LexisNexis®