Leases – a review of repair and reinstatement obligations

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ISSUE 14 13 MAY 2016

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REPAIR AND REINSTATEMENT IN STANDARD FORM LEASES

By Janine Stewart, Partner, and Emma Kurtovich, Senior Solicitor, Minter Ellison Rudd Watts

Forewarned is forearmed when it comes to a lessee’s obligations in relation to the condition of a premises – both during and at the conclusion of a lease.

Lessees have numerous obligations with regard to the maintenance, repair and reinstatement of leased premises. These obligations depend on the express wording in the parties’ agreement to lease and can differ substantially between leases. However, often both parties misunderstand what their obligations mean and the standard that is required of them.

Today, the standard form leases tend to cover off the majority of contentious issues regarding maintenance, repair and reinstatement obligations. However, if the parties’ obligations are not expressly addressed in the lease, then the common law position may apply. On that basis, the parties should be wary of any tags or amendments to the standard form leases.

This article will examine key, and often misunderstood, obligations with reference to two of New Zealand’s most common standard form leases – the Auckland District Law Society Inc. deed of lease sixth edition (ADLSI Lease) and the Property Council New Zealand Retail Property Lease (PCNZ Lease) – as well as the common law position. In particular, this article will address:

- the standard of maintenance or repair required during and at the conclusion of the lease;
- the lessee’s liability for the cost of repairs when the lessor will suffer no damage, for example when the lessor is going to demolish the premises in any event; and
- whether the lessee can be liable for structural repairs or latent defects.

Many of the lessee’s obligations are ongoing

Clause 8.1(a) of the ADLSI Lease and clause 5 of the PCNZ Lease provide that the lessee is required to keep the premises maintained throughout the term of the lease, as well as to yield the premises up on lease expiry with regard to the condition of the premises at the commencement date.

In addition, both the ADLSI Lease and the PCNZ Lease place an ongoing obligation on the lessee to repair damage to the premises

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throughout the term of the lease.

In contrast, the reinstatement obligation typically only arises at the expiry of the lease term or its earlier determination.

Clause 20.1 of the ADLSI Lease and 5.7.1 of the PCNZ Lease provide that the lessee is required to remove any alterations or additions prior to expiry and reinstate the premises (this will include making good any damage).

The standard of maintenance or repair required

Maintenance

As a starting point, the standard of repair that is required during the term of the lease and following its expiry will depend on the express wording of the lease itself. Absent express wording, the implied covenants that are contained at Schedules 2 and 3 of the Property Law Act 2007 (PLA) will also be relevant. These implied covenants tend to be mirrored in the standard form leases.

Both the ADLSI Lease and the PCNZ Lease include an obligation to maintain and yield up the premises with regard to “the condition of the premises at the commencement of the lease”. Therefore, records evidencing the standard of the premises at commencement of the lease term are crucial (preferably from a reputable building surveyor). However, there is a key difference in the standard of repair required in these leases, because the ADLSI Lease excludes fair wear and tear from the obligation to maintain.

Pursuant to clause 8.1(a) of the ADLSI Lease, the lessee is obliged to keep and maintain the interior of the premises in the same clean order repair and condition as it was in at the commencement date, but is not liable for fair wear and tear arising from reasonable use.

However, the PCNZ Lease does not contain a fair wear and tear exception, but rather requires the lessee to hand over the premises in the same first class condition (having regard to the condition of the premises at commencement). The PCNZ Lease also excludes the implied covenants contained in the PLA.

The exclusion or inclusion of the fair wear and tear exception is a material consideration for any party considering entering into a commercial lease – particularly a long-term lease.

Note, however, that where the fair wear and tear exception does apply, this only releases the lessee from liability to repair. It does not necessarily create an obligation for the lessor to repair fair wear and tear damage or deterioration (see, for example, Collins v Winter [1924] NZLR 449). It simply makes such repairs a matter of commercial negotiation between the parties.

Repair

Issues around the standard of repair required arise when the lease does not refer back to an objective standard of repair or to the commencement date (although reference to the commencement date may be implied on the words of the lease – see Anstruther-Gough-Calhtorpe v McOscar [1924] 1 KB 716, Proudfoot v Hart (1890) 25 QB 42 and New Zealand Insurance Co Ltd v Keesing [1953] NZLR 7). This was the position in Auckland Waterfront Development Agency Limited v Mobil Oil New Zealand Limited [2015] NZCA 390.

In that case, the Court of Appeal held that, based on the wording of the lease, the lessee’s obligation to reinstate extended beyond the state of repair of the land as at the date of commencement of the 1985 tenancy. This placed an increased burden on the lessee over and above what it expected to be responsible for at the commencement of the tenancy.

The parties excluded the implied obligation that regard must be had to the condition of the premises at commencement of their 1985 tenancy. At clause 9, the parties included a term that upon termination the land and improvements should be left in good and tenantable repair and condition and clean and tidy to the reasonable satisfaction of the lessor. Accordingly, the Court of Appeal had to decide what was meant by delivering the land in good order and clean and tidy.

Citing Brew Brothers Ltd v Snax (Ross) Ltd [1970] 1 QB 612 (CA), the Court noted that “the question is whether on a fair interpretation of the tenancies the remediation work required of the tenant can be considered reasonable”. The Court held that:

• The lessee’s obligations extended to the subsurface of the land and Mobil was required to remEDIATE hydrocarbon contamination of the land caused by Mobil NZ and its predecessor companies in the Mobil Group since their occupation began in 1925 (i.e. before the 1985 tenancy in question). The Court noted that a new lease does not excuse a tenant from liability for past breaches; and

• The remediation was only required to be to an industrial standard given that residential and light commercial use was not reasonably in prospect at the date of commencement of the lease.

We note that this has been appealed to the Supreme Court and a decision is anticipated later this year. However, what can be taken from this case is that parties need to expressly consider their respective obligations with regards to maintenance, repair and reinstatement at the outset of the lease and ensure that the lease agreement reflects their respective understandings as to the extent of their obligations. To this end, it is worth noting that an
obligation to “repair” can extend to an obligation to renew or replace if repair is not possible, as was noted in the case of New Zealand Insurance Co Ltd v Keessing.

**Liability for reinstatement when there is no damage**

Both the ADLSI Lease and PCNZ Lease include obligations on the lessee to remove any alterations or additions and reinstate the premises if required by the lessor.

The obligation to reinstate makes sense if the lessor intends to re-let the premises. However, it is not unusual at the end of the current lease for the lessor to demolish the premises to make way for a new development, or undertake repairs that will make the lessee’s reinstatement work redundant. In that instance, if the lessee failed to undertake reinstatement works, a potential issue is whether or not the lessee will remain liable for that work, or damages associated with the failure to reinstate.

Clause 20.1 of the ADLSI Lease contemplates three possible reinstatement scenarios:

- The lessee removes its alterations and additions, either prior to expiry of the lease or later with the permission of the lessor, and pays for reinstatement; or
- The lessee removes its alterations and additions, either prior to expiry of the lease or later with the permission of the lessor, but fails to reinstate the premises. In this case, the lessor can recover the costs incurred in reinstating the premises from the lessee; or
- The lessee does not remove its alterations and additions. Ownership of those alterations or additions then vests in the lessor. To the extent that the lessor then chooses to remove those alterations or additions, the lessor can recover the costs incurred of doing so from the tenant.

(emphasis added)

Arguably, a lessee under the ADLSI Lease has no right to claim compensation for anything other than the actual incurred costs of reinstatement. This means that, if the lessee does not remove its alterations or additions, or removes the alterations or additions but fails to reinstate, it will only be liable for the costs of reinstatement if the lessor does in fact reinstate.

This position appears to be consistent with clause 5.7.2 of the PCNZ Lease, which also refers to the costs and expenses incurred by the lessor. However, a lessee’s obligation of reinstatement will ultimately depend on the wording of the lease and, unlike in the United Kingdom, there is no statutory protection for a lessee in the event that the lessor demands reinstatement costs where it does not intend to carry out the work (see section 18(1) of the Landlord and Tenant Act 1927). This means that in New Zealand, a lessee may be liable for the cost of reinstatement if the parties entered into an agreement that simply referred to costs, or to quotes or estimates prepared for the reinstatement work, regardless of whether that work has been undertaken. This will be a particular risk where the parties have drafted their own bespoke lease agreement.

### Liability for structural repairs or latent defects

Lessees should be wary of their potential liability for structural repairs, which can prove to be a significant obligation.

Ultimately, the question of who is liable for structural defects under a lease will be a matter of interpreting the particular clause and will depend on the facts and circumstances of the case.

The Court of Appeal considered a lessee’s liability for structural repair in the case of Weatherhead v Deka New Zealand Limited [2000] 1 NZLR 23. In that case, the lease required the lessee to “well and sufficiently repair maintain amend cleanse and keep the premises ... in good and substantial repair with regard to the condition of the premises at commencement”. The lessor claimed that the lessee was responsible for the repair of the structural concrete bands running through the walls (which were made of a material that naturally broke down over time), and of the mortar between the bricks in the walls, which had begun to deteriorate and erode.

The Court of Appeal noted the importance of the reference in the repair obligation back to the condition of the premises at commencement of the lease, referring to this as a “benchmark” which “provides a ceiling on the lessee’s obligation”.

The Court ultimately held that “the inherent defects at the time of commencement, the structural character of the work required, and the nature and extent of the of the work necessary to remedy those defects are all factors pointing strongly to the conclusion that the words in [the clause] giving rise to the lessee’s obligation were not appropriate to describe the work required”. In other words, repairs of a substantial and structural nature did not fit within the wording of the repair obligation.

Although there is no express exclusion for structural repairs in the ADLSI Lease, helpful, clause 8.1(a) of the Second Schedule of the ADLSI Lease limits the lessee’s maintenance obligations to the interior of the premises. The ADLSI Lease can be contrasted with triple net leases where structural repairs are expressly the responsibility of the lessee who also pays all outgoings.

### Conclusion

Many of the contentious issues which arise during the term of the lease, or upon its expiry, are now expressly addressed by the standard form leases. However, often parties do not take the time to understand those obligations or long-term financial implications of them (particularly where the expiry of the lease is not for some years). Accordingly, despite the attention now paid to these issues in current standard forms, it is important for parties to be aware of the effect and desirability of these obligations so that they are not surprised by unexpected maintenance, repair and reinstatement costs.

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### Update from the Commerce Commission

Commission recoups money for New Zealand trade mark holders

Further to the item from the Commerce Commission on “Trade mark holders warned about letters requesting payment” included in Law News Issue 12 (29 April 2016), the Commission has now reached an interim agreement with TM Publisher, an overseas company which sent invoices for unsolicited services to New Zealand trade mark holders.

Under the interim court-enforceable undertakings, TM Publisher has agreed that anyone who paid the invoice from 6 April 2016 will be refunded directly by ANZ bank.

TM Publisher’s bank account was frozen in March 2016. It contained over $200,000 in payments from New Zealand businesses. The invoice relates to an overseas, web-based trade mark publication service. It is not connected to the Intellectual Property Office of New Zealand (IPONZ). The invoice does not make clear that the recipient does not have to pay for the services.

Commerce Commission Head of Investigations Ritchie Hutton says that the Commission has worked quickly to secure a refund for consumers.

"Many of the businesses that we have spoken with have not realised that they had paid for an online publication for their trade mark. They have also been misled because they thought they were required to pay the invoice. We urge companies to come forward if they were mistaken over what the payment was for and want a refund."

The Commission is still in negotiations with TM Publisher about payments received before 6 April 2016. If your business paid this invoice before this date, the Commission would like to hear from you on 0800 943 600.

Source: www.comcom.govt.nz
The Health and Safety at Work Act 2015 is only a month old, having come into effect on 4 April 2016. The new ADLSI Health and Safety Law Committee is only slightly older than that, having held its inaugural meeting in January 2016.

Whilst historically health and safety law has sat primarily within the remit of ADLSI’s Employment Law Committee, with the advent of the new Act, the Council considered that the time was right to create a specialised Health and Safety Law Committee to provide expert and practical advice for our members.

The Committee is made up of senior practitioners with extensive health and safety law experience, namely:

- Fletcher Pilditch (Richmond Chambers) (Convenor);
- Hazel Armstrong (Hazel Armstrong Law);
- Rob Coltman (Duncan Cotterill);
- Garth Gallaway (Chapman Tripp);
- Michael Hargreaves (WorkSafe);
- Brett Harris (Quay Chambers);
- Petra Lucioli (Delta Insurance);
- Dr Heather McKenzie (Raymond Donnelly);
- Timothy Mackenzie (Canterbury Chambers);
- Lucy Moffitt (WorkSafe);
- Samuel Moore (soon to be a member of Chancery Street Chambers);
- Grant Nicholson (Kensington Swan);
- Kane Patena (Wellington City Council);
- Sue Petricevic (WorkSafe);
- John Rooney (Simpson Grierson);
- Jeff Sissons (NZCTU);
- David Snelling (Argosy Property Ltd);
- Paul White (Quay Chambers); and
- Ross Wilson (Deputy Chair, WorkSafe).

As can be seen, the Committee members collectively represent a number of diverse points of view, whether as lawyers acting for clients in health

Continued on page 5
and safety matters, insurers (who play a significant part in the health and safety landscape), the regulatory entity responsible for management and enforcement of the Act, practitioners who represent victims in health and safety tragedies, as well as other industry stakeholders. While its composition reflects a wide range of interests, which from time to time can come into conflict in this unique and emerging field of law, it is a testament to the strength of the Committee that these competing interests are all represented and have a voice.

To mark the coming into force of the new Act and to introduce itself to practitioners, judges and other stakeholders, the Health and Safety Law Committee recently hosted a launch party (photos from the evening can be seen below and opposite). At the launch event, Committee Convenor Fletcher Pilditch said:

“The purpose of the Act is to ‘provide a balanced framework to secure health and safety’. Whenever, as lawyers, we see the word ‘balanced’ it is recognition that not everyone’s interests are the same and interests can and do diverge.

“When a ‘balance’ is required, lawyers will invariably be in the epicentre of that exercise by providing advice, strategy, dispute resolution, engagement with the regulator, advocating the interests of clients, and ultimately as officers of the court, assisting the Court to navigate this new world.”

The Committee will be observing, monitoring unfolding case law, collating information and providing comment and feedback on these to both the regulator and the Government. It will endeavour to assist the Courts and raise awareness of key health and safety law issues amongst the profession, which will play an integral and key part in the development of this new legislation.

This is an opportunity to help to create good law that serves our clients and the wider community – watch this space for more from the Health and Safety Law Committee over the coming months.

*Continued from page 4*

**New book**

Health and Safety at Work Act: A Practical Guide

**Author:** Dr Heather McKenzie

*Health and Safety at Work Act: A Practical Guide* is a rapid response guide to the new Act, and is an all-in-one resource summarising key concepts of the Act including duties, worker participation and representation, notification, offences, penalties and legal proceedings.

The book’s aim is to provide a concise, quick reference guide to operating under the Act for people in many organisations including corporate officers, persons conducting businesses or undertakings, workers, unions, regulators, the courts and legal practitioners.

(Author Dr Heather McKenzie is a member of ADLSI’s newly-established Health and Safety Law Committee.)

**Price:** $65.22 plus GST ($75.00 incl. GST)*

**Price for ADLSI Members:** $58.70 plus GST ($67.50 incl. GST)*

(* + Postage and packaging)

To purchase this book, please visit www.adls.org.nz or contact the ADLSI bookstore by phone: 09 306 5740, fax: 09 306 5741 or email: thestore@adls.org.nz.
Trans-Pacific Partnership Agreement – chill wind or hot air?

By John Walton, Arbitrator, Adjudicator and Commercial Mediator, Bankside Chambers

An Arbitrators’ and Mediators’ Institute of New Zealand (AMINZ) event in Auckland on 2 June 2016 will centre on concern over investor-state dispute settlement (ISDS) under the Trans-Pacific Partnership Agreement (TPPA) and other ways to settle international commercial disputes.

With the increase in global trade, and cross-border investment over the last 20 years in particular, it has become critical for parties to develop a means of settling disputes and for lawyers to be able to advise them. International arbitration has provided a reliable and effective means of ensuring disputes are dealt with under the rule of law – it is an accepted means for parties to settle commercial disputes, and the only effective means for dispute resolution in cross-border disputes. The alternative would require one party to submit to the jurisdiction of the courts of the other. In practical terms, that would constrain most inward investment from the First World into the developing world.

This is where much of the criticism of ISDS is centred.

For private parties, agreeing to settle disputes by arbitration is the natural choice. The 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards, signed by 24 states and adopted by 156, is proof of the success of international arbitration.

Investor-state dispute resolution is just another form of arbitration, providing protection to businesses investing in other states as a normal part of international trade. Granted, ISDS is different from private arbitration in that it enables a private party to initiate arbitral proceedings against a state for breaching the provisions of the underlying investment treaty, but it is still arbitration.

By definition, States compromise their sovereign rights when they enter into treaties; that is, after all, the very nature of any bargain. What is different about ISDS is that it enables a private party to seek compensation for breaches of treaties directly, rather than through the more cumbersome state-on-state procedures through the WTO or International Court of Justice (which can only be instituted by consent of both parties). We should be under no illusion that if a state breaches its treaty obligations, it is still exposed to litigation as the recent, and prolonged, apples dispute with Australia illustrates.

ISDS is nothing new. New Zealand is already signatory to eight bilateral investment treaties dating back over 20 years; all but the agreement with Australia (with whom we have bilateral enforcement of court decisions) contain ISDS provisions.

The oft-repeated criticism that arbitrators comprise an unaccountable cabal is, it has to be said, a cheap shot. The reality is more prosaic – the parties have the choice of whom they select, and typically they are highly qualified and experienced arbitrators. Conversely, the selection of a judge is hardly transparent.

Similarly, the allegation of being secretive does not stand scrutiny. Investment treaty disputes are generally not confidential – in a recent arbitration in North Africa the proceedings were live-streamed live. In the case of the TPPA, except in limited circumstances, all proceedings, including the award, will be publicly available.

ISDS under the TPPA

The ISDS provisions in chapter 9 of the TPPA have been negotiated with the benefit of those earlier treaties – they are in the main conservative and more favourable to the member states than to investors.

The core protections are that the investments will not be expropriated without compensation (article 9.7) and that investors will get fair and equitable treatment (FET) (article 9.6).

The obligation not to expropriate without compensation has been part of international law for decades. As a principle, it is fundamental to any mature economy. It does not restrain sovereignty – a state can expropriate, but if it does it must pay "fair" compensation.

Fair and equitable treatment is not a standard that can be defined precisely for all circumstances, but under the TPPA it is pegged to the standard imposed by customary international law standard (article 9.6(2)).

More critically for New Zealand, there is a general exception, applicable to all treaty protections, for regulations designed to ensure that investment activity is undertaken in a manner sensitive to environmental, health or other regulatory objectives (article 9.16). Investment treaty jurisprudence has interpreted similar clauses to provide states with a wide discretion to deal with genuine public welfare measures.

Additional general exceptions deal with the Treaty of Waitangi (article 29.6), other measures favourable to Māori, Overseas Investment Approval and numerous New Zealand-specific regulations and statutory regimes are carved out from the anti-discrimination protections (MFN and National Treatment).

Dispute settlement procedures

A claimant has the choice between ICSID and UNCITRAL arbitration rules – both emanate from highly respected international institutions (the World Bank and United Nations respectively).

Moreover, the TPPA incorporates its own non-negotiable procedures that apply in addition to, or instead of, the ICSID and UNCITRAL rules. These often deal with issues of public concern (e.g. transparency of proceedings). The procedures limit the time and manner in which investor claims can be heard.

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Settling International Commercial Disputes

TPP, WTO, Diplomacy and More

2 June 2016, 9.00am – 1.00pm

An essential event for lawyers needing to advise clients about resolving international disputes

Panel Discussion led by Sean Plunket

Presenters include:

David A R Williams QC, Simon Foote, Daniel Kalderimis, Charles Finny & Stephanie Honey

Offered in association with the International Chamber of Commerce

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For more information and to register:

www.aminz.org.nz

0800 426 469
ADLSI wishes to invite Waikato practitioners and practice managers to be our guests at a special cocktail function in Hamilton on Wednesday 25 May 2016. The cocktail function will commence at 5.30pm, and is being held at The Verandah Function Centre. Hosted by ADLSI President Brian Keene QC and CEO Sue Keppel, the evening will be a chance for us to learn more from you about the ways in which ADLSI may be able to provide support to the legal profession in the Waikato.

Time & date: 5.30pm, Wednesday 25 May 2016
Venue: The Verandah Function Centre, Rotoroa Drive, Hamilton
Dress code: Business attire
Register by Friday 20 May 2016 to secure your place, subject to availability. Visit www.adls.org.nz to register online; alternatively, contact us by email at adls.events@adls.org.nz or by phone on (09) 303 5287.

New Zealand is a good international citizen, governed by the rule of law, and we expect our trading partners to behave accordingly. The ISDS jurisprudence to date has been over state action which falls well short of the standards to which we hold ourselves (for example the Government of Zimbabwe validating the expropriation of farm investments).

The investor protections present nothing alien to the world of investment arbitration – they are plainly drafted to meet the criticism that such treaties favour investors and can become instruments of influence over government regulation.

John Walton is an arbitrator, adjudicator and commercial mediator practising at Bankside Chambers in Auckland. He is also President of the Arbitrators’ and Mediators’ Institute of New Zealand (AMINZ). Mr Walton would like to acknowledge the assistance of Simon Foote in the preparation of this article.

ADLSI, in association with the Waikato University Law Students Association (WULSA), invites interested young lawyers to the launch of the Young Lawyer & Student Buddy Programme in the Waikato, and to consider becoming a mentor to a law student who is about to embark on his or her career in the law.

Mentoring is one of the most significant ways that a young lawyer can help a law student prepare for their entry into the profession. A small time commitment can turn into a very rewarding experience for both mentor and student.

Simply spending as little as an hour together once every month or two for a catch up over coffee can be an instrumental support to students as they face important choices that may influence the rest of their legal career.

If you are interested in participating in this event and becoming a mentor, ADLSI and the WULSA will make contact with you to match you with a student, who you will then meet on the night over drinks and canapés. We will also provide you with a brief overview on mentoring, to support you in building your mentoring relationship.

The law students from the WULSA would really appreciate your participation in this initiative.

Time & date: 5.30pm, Tuesday 24 May 2016
Venue: Playhouse Foyer, Gallagher Academy of Performing Arts, University of Waikato, Hamilton
Parking: Gate 2B (opposite May Street)
If you would like to find out more, please contact us by emailing adls.events@adls.org.nz or phoning (09) 303 5287 by Friday 20 May 2016.

ADLSI will also be hosting a cocktail evening in Tauranga on Thursday 26 May 2016. Tauranga practitioners and practice managers are invited to this event, which is taking place from 5.30pm at The Tauranga Club.

Again, the evening will be hosted by ADLSI President Brian Keene QC and CEO Sue Keppel, and we would like to learn more from the legal profession in Tauranga about how ADLSI may be able to provide support to it.

Time & date: 5.30pm, Thursday 26 May 2016
Venue: The Tauranga Club, 72 Devonport Road, Tauranga
Dress code: Business attire
Register by Friday 20 May 2016 to secure your place, subject to availability. Visit www.adls.org.nz to register online; alternatively, contact us by email at adls.events@adls.org.nz or by phone on (09) 303 5287.
Selected CPD

To view all ADLSI CPD & register: www.adls.org.nz/cpd
Email us: cpd@adls.org.nz | Phone us: 09 303 5278

Featured CPD

Online Visa Applications: Practical Tips for the Best Outcomes
It is vital to learn how to maximise the opportunities online visa application offers, especially as it will become the norm in the future. This webinar, presented by an immigration lawyer and an Immigration New Zealand manager, will provide insights and practical tips on how to make best use of the online tools.

Learning Outcomes:
- Become more familiar with the online application process itself and how to use the facility more efficiently.
- Understand better the expectations of Immigration New Zealand when dealing with online visa applications and how to make the process as seamless as possible from their point of view, and also the changes and developments likely to occur shortly.
- Gain insights into how best to add value for clients when making online applications on their behalf.
- Receive best practice tips on making applications including login protocols and dealing with documents.

Who should attend?
Immigration lawyers and advisors, and general practitioners wanting to learn more about the use of the facility in practice.

Presenters: Corisha Hitchcock, Immigration Manager, Visa Service, Immigration New Zealand; Michael Kim, Principal, MK Law Barristers and Solicitors

Employment and Privacy: Easing the Relationship
The interface between privacy and employment law is often a difficult one. Technology, the choice of forum and the disclosure of information are all relevant. This webinar will look at a variety of problematic situations where these areas of law meet and will offer pragmatic advice on dealing with those situations.

Learning Outcomes:
- Gain a better understanding of how employment matters involving privacy breaches may be dealt with.
- Learn more about the requirements of disclosure in terms of ss 4(1B)-(1D) of the Employment Relations Act 2000.
- Receive insights into practical issues facing employers and employees in regard to the use of technology in the workplace and how best to guard against privacy breaches.

Who should attend?
All employment lawyers and those dealing with employment matters from time to time

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

Coffee Doesn’t Scale! How Lawyers Can Use Digital Marketing to Win New Clients
Digital marketing provides great opportunities for the profession, particularly to firms with growth aspirations who are willing to be nimble and embrace new ways of working. At the same time, digital marketing is also a potential threat because it is a key tool for businesses seeking to disrupt the legal industry. This webinar is brought to you by two of the partners of a small boutique law firm with New Zealand’s most visited law firm website (measured by Alexa Rank).

Learning Outcomes:
- Learn the basic elements of a digital marketing strategy and how to use digital marketing to lasting effect.
- Learn about tools to measure the success of your strategy and to analyse your competitors’ performance.
- Learn about the differences between organic and paid search strategies.

Who should attend?
All lawyers as well as marketing and practice managers and technical solutions providers wishing to use, or enhance their use of, digital marketing. Other professionals such as accountants would also benefit from attending.

Presenters: Andrew Simmonds, Partner, Simmonds Stewart; Victoria Stewart, CEO, Simmonds Stewart

Summary Judgment Toolkit
Often perceived as a fast-track procedure, summary judgment does provide such an opportunity but sometimes with challenges and at a substantial cost. Providing both judicial insights and those of counsel, this seminar will address the application process, the need for sufficient evidence, the relevant legal tests and key case law, how to respond to an application, strategic considerations including alternative approaches, best practice and costs. Upgrade your toolkit to improve your practice in this unique area.

Learning Outcomes:
- Benefit from the experiences of a judge and solicitor, both very familiar with the summary judgement procedure.
- Become more familiar with the parameters of, and with drafting the relevant documents for, summary judgement.
- Receive guidance on best practice to enhance your effectiveness when advising and representing clients in this area.

Who should attend?
Litigators at junior to intermediate level or those seeking a refresher on this topic.

Presenters: Her Honour Judge Sharp, Mark Broad, Senior Associate, Kensington Swan
Chair: Maxine Pitch, Barrister & Solicitor
**Selected CPD**

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

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Keep up-to-date without overloading your schedule. ADLSI's CPD On Demand provides flexibility plus CPD hours. Visit www.adls.org.nz/cpd for more information.
Criminal law, family violence

Judges making bail decisions getting more background information

A pilot to support judges to make better informed family violence bail decisions expands to Wellington, Wairarapa and Northland.

The pilot programme gives judges making bail decisions in family violence cases more information about the risks defendants pose.

Under the initiative, judges and registrars receive a summary report for every family violence bail application. It details whether Police have previously received calls for service in relation to family violence incidents involving the defendant, and signals if they are subject to any police safety orders or protection orders, or have breached such orders.

“Initiatives like this have the potential to improve how the justice sector keeps victims safe, manages offenders and holds them to account, and breaks cycles of violence,” says Justice Minister Amy Adams.

The pilot was announced in September 2015 by Ms Adams and members of the judiciary, and has been running in the Porirua and Christchurch District Courts.

From 1 May 2016, several district courts in the Wellington and Northland regions (Wellington, Hutt Valley, Masterton, Whangarei, Kaikohe and Kaitaia) will also trial the initiative for six months. The pilot will be evaluated to inform decisions about national roll-out.

“Under the initiative, Justice and Police are working closely together to provide relevant, timely and consistent information to judges and registrars for every family violence bail application,” says Ms Adams.

“Before the pilot began, the information judges received depended on whether bail was opposed or not. It did not always detail whether a defendant’s previous offences were family violence related, and the information may not always have been available to the judge when the case was first called.”

“Access to this information has been requested by the judiciary. Family violence is a complex crime and it is vital that Judges and Registrars are provided with timely and complete information when making bail decisions in order to assess the cumulative pattern of harm in each case. Almost half of all serious assaults and homicides in New Zealand are related to family violence and it is imperative that we do all we can to keep victims safe,” says Police Minister Judith Collins.

“Extending the pilot will provide more information so we can make sure the process works as well as possible and understand how it affects workloads and remand prisoner numbers.”

+ Criminal law, family violence

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+ Wills

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

Stephen Tighe ASTON, Late of 278 Frankley Road, New Plymouth, Aged 87 (Died 27’04’16)
Millicent Joyce FREADSON, Late of Glenfield, Auckland, Formerly of Beach Haven, Auckland, Retired, Aged 87 (Died 29’04’16)
Janet Kim HOME (previously known as Janet Kim TIOPIRA), Late of 9 Achilles Crescent, Devonport, Auckland, Divorced, Aged 57 (Died 14’11’15)
Durham West offices operates in refurbished premises in Queen Street (close to the District Court) sharing a floor (with separate areas) with Hussey & Co., a forensic and general accounting firm.

The offices are presently occupied by four legal firms/barristers and a personnel recruitment firm. A further lawyer/barrister is sought. The six tenants share a separate dedicated meeting room. If required, internet access, telephone, photocopier and other services are also available.

The room available is approximately 14m² at a cost of $260 per week plus overheads of approximately $100 per month, plus GST, with no long term commitment required. The room will be available from 1 June.

Photographs of the chambers can be viewed at www.hco.co.nz/gallery

For further details:
Contact: Shane Hussey
E: shane@hco.co.nz  T: 09 300 5481

**Secretary needed**

**Voluntary position with iconic New Zealand charity NFP**

The Keep New Zealand Beautiful Society is the only national, non-governmental organisation in New Zealand focusing on a comprehensive range of social and environmental issues including civic and national pride, litter abatement, graffiti removal, environmental education, and beautification. KNZB employs a collaborative approach to achieve its strategic outcomes, and partners with central and local government, iwi, community funders, corporates, schools, and community organisations to realise shared objectives.

Our programmes have grown over the years to not only addressing litter abatement, but to also tackling broader environmental objectives such as tree planting, stream restoration efforts, graffiti removal, and environmental education programmes designed to inspire children’s interest in their environment and to motivate the nation to actively participate in the restoration, care, and protection of their local and national environment.

To assist the organisation in its next phase, we are seeking expressions of interest from experienced directors.

In addition to significant governance experience that includes commercial and community entities, we are seeking a Treasurer and Secretary who possess the following skillsets:

- Treasurer – strong financial acumen, experience with not for profits and commercial partnerships. Responsible for ensuring that the Board understands the financial affairs and resources of KNZB.
- Secretary - legal background, responsible for documenting the work of the board. This includes the recording of minutes or notes of meetings, the recording of board policies, maintaining a list of current board members, issuing notices of meetings and board correspondence.

*These are voluntary pro-bono positions.

Expressions of interest are sought by 27 May 2016. Emails will be electronically acknowledged and further correspondence may be by email.

Applications to Heather Saunderson: heather@knzb.org.nz

**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.

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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.

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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
You be the judge

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Avanti Finance is a specialist lending and mortgage lending organisation looking for new professional partnerships with like-minded law firms. Our philosophy is all about flexibility and assisting you to continue to offer mortgage solutions to your clients.

To talk about professional partnership opportunities, call Mark Mountcastle (CEO) on 09 970 4733, or email mortgages@avantifinance.co.nz to receive an Information Memorandum on Avanti Finance and our mortgage offering.

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For those who have enjoyed the love and companionship of an animal during their lifetime, leaving a gift to SPCA Auckland in their will is a fitting way to honour that special relationship.

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