



City of Sydney Law Society



25 September 2005

Seminars

Obtain your CLE points NOW in areas relevant to your practice, keep up to date on Legislation, problem areas and possible solutions, Court of Appeal trends from senior and pre-eminent practitioners.

The CSLS offers CLE as a service to its members at very modest cost recovery prices.
Refreshments provided and opportunities to meet like minded professionals.

Seminars cost \$44 for CSLS members, \$55 for Law Society of NSW members, \$66 for non-members (unless specified otherwise).

[Register here](#) to attend any seminar or event, a tax invoice will be sent to you.

Or contact Marianne on ph 9453 3511, fax 9453 3522, email cls@optusnet.com.au.

Venue for all seminars: Sydney Mechanics School of Arts, Lvl 1, 280 Pitt St. Sydney (b/w Park & Bathurst)

SEPTEMBER '05

State Tax Update

*****Last chance to register*****

When: Tue 27 September, 5:30pm to 7:00 pm

Where: Sydney Mechanics School of Arts, Lvl 1, 280 Pitt Street, Sydney

Speaker: DARREN NICHOLLS, Technical Education Unit, Office of State Revenue

Don't miss this briefing on the State Tax amendments, including:

- Abolition of vendor duty
- Duties concession - refinancing of mortgages
- Other recent Duties amendments
- Land Tax 2006
- Land tax - principal place of residence exemption

Chair: Nea Goodman, CSLS Treasurer

OCTOBER '05

Small Firms Forum

When: Mon 10 October, 5:30pm to 7:00 pm

Where: Sydney Mechanics School of Arts, Lvl 1, 280 Pitt Street, Sydney

Cost: Members \$11, Non-members \$22. Limited places, registration essential.

NOVEMBER '05

Crime: A practical guide: Pleas to sentence in the Local Court

When: Tue 8 November, 5:30pm to 7:00 pm

Where: Sydney Mechanics School of Arts, Lvl 1, 280 Pitt Street, Sydney

Speaker: MAGISTRATE ROGER BROWN

This is your opportunity to find out how to keep the bench interested in your plea, incl.

- Sentencing options
- Reference and written submissions
- Advice to clients before pleading guilty
- s. 21A aggravating and mitigating factors

Chair: Nea Goodman, CSLS Treasurer

Conflict of Interest for Lawyers

When: Tue 15 November, 5:30pm to 7:00 pm

Where: Sydney Mechanics School of Arts, Lvl 1, 280 Pitt Street, Sydney

Speakers: BRUCE McDERMOTT, Law Cover

STEVE MARKS, Legal Services Commissioner

Don't miss this opportunity to hear the latest case law relating to conflict of interest for lawyers.

Background:

Solicitors acting in a "perceived" or "potential" conflict situation was a topic of interest arising out of the HIH Royal Commission. As a result, the Legal Services Commissioner expressed a view that the public's perception of legal practitioners acting in conflict of interest situations was damaging the profession's reputation and perhaps the current principles needed review. A working party met on several occasions and a report was released late last year, and the new principles will be discussed at this seminar, including how it relates to recent case law.

Chair: Nea Goodman, CSLS Treasurer

Annual General Meeting and Dinner

When: Thu 17 November, 5:30pm: AGM, 6:30pm: Pre dinner drinks, 7:30pm: Dinner

Where: City venue. Address to be advised.

Cost: \$85 per person

Guest of Honor: Chief Justice of NSW, The Hon JAMES J SPIGELMAN

Join us for this festive event, where we will honor our Past Presidents.

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Newsletter

President: Victor Berger vberger@legalmdbb.com.au
Vice President: Anthony (Rusty) Restuccia Mob. 0419 698 753
Treasurer & CLE Convener: Nea Goodman nea.goodman@community.nsw.gov.au
Secretary: Brian Maher bmaher@pt.nsw.gov.au

Secretariat: PO Box 523, Forestville NSW 2087 Ph 9453 3511 Fax 9453 3522 Email csls@optusnet.com.au

Presidents Message

Elections

We are pleased to announce that three of our principal members are standing for election to the Council of the Law Society of New South Wales. Namely:

NEA GOODMAN
ANTHONY RESTUCCIA
PAMELA SUTTOR

They are each in their own right well known and respected practitioners and of long standing. More importantly, they have worked long and hard for the profession and have served in the positions of President, Vice President and Treasurer. They are indeed, stalwarts of the City of Sydney Law Society, where they have worked tirelessly to provide services to the profession, seek reform and maintain their commitment to our interests despite the challenges encountered.

In my view our profession has experienced hardships and demands upon operation of practices which are extreme and difficult to comprehend. This is especially difficult to understand when it cannot be denied that the legal system could not function without the quality and dedication of the profession, to say nothing of how much the State Government is saved through the many services provided, either pro bono or at extremely reduced rates.

In voting for the above you can be confident that you will have the optimum of representation of your interests.

Generally, who should we elect? Do we care?

The profession has experienced enormous change and extraordinary challenges. This has resulted in many of our colleagues experiencing great hardships and we are all faced with increasing regulation. This is not a new phenomenon and has been the subject of much complaining, yet the numbers of members who vote is extremely low. Who represent us is in our hands. Make your contribution to protecting your future by asking candidates what they represent and what they propose to do to protect and advance your interests and exercise your vote.

AGM & Annual Dinner

Guest of Honor
CHIEF JUSTICE JAMES J SPIGELMAN

Date: Thursday 17 November 2005
5:30pm Annual General Meeting
6:30pm Pre dinner drinks
7:30pm Dinner

Venue: City. Address to be advised.

Price: \$85 per person

Honoring Past Presidents:

David Castle, Margaret Hole, Ken Brimaud, Pamela Suttor, Maurice May, Pat Fell, Ray Whitten, Nea Goodman, Peter Rosier, Dennis Bluth.

We will be acknowledging the work of past presidents with a presentation to them by His Honour. These persons are to be recognised for their foresight and selfless efforts for the good of our profession.

Matters of interest

We invited you to write to us on experiences you have had in your practice on which you may benefit on the input from colleagues. It has come to our attention that the LPI accepted a transfer of land in favour of a business name; that a lease was being offered by the registered proprietor. These facts give rise to some very troubling issues. We have reported the matter to the Law Society and it will be making representations to the Registrar General.

Victor Berger
President

Forum Report

Small Firms Forum

The forum met on Monday 12 September 2005, at 5:30pm with Nea Goodman, CSLS Treasurer and Rusty Restuccia, CSLS Vice President as co-chairs. A number of motions were passed for forwarding to the CSLS meeting for debate/consideration to forward to the Law Society of NSW. The LawCover discount of 2 1/2% for attendance at Risk Management Courses was again raised in respect to the economic viability of attending such a course during business hours vs the loss of income during that time. Other issues raised included MCLE - the quality of providers and the profit margins; the rapid change of legislation and difficulty in keeping up to date; definition of a small firm; the disclosure and cost provisions of the Legal Profession Act and The National Model. The next meeting will be held on 10 October 2005. All welcome. Email your expression of interest to the CSLS Secretariat on csls@optusnet.com.au.

Amendments to Civil Liability Act, cost regime

The Courts Legislation Amendment Act 2005, Schedule 9 (Amendment of Legal Profession Act 2004, No. 112) provides s.338A

Maximum costs increased by additional amount for personal injury claims heard by the District Court where the amount covered does not exceed \$100,000 that is made by proceedings heard by the District Court....

In respect to arbitration the maximum costs are increased by an additional amount. The Additional amount is 15% of the amount recovered, or \$7,500 whichever is the greater.

Conflict of Interest & Duties of Confidentiality & Disclosure

The NSW Legal Services Commissioner convened a working party on 17 September 2003, to discuss the current rules in relation to conflict of interest and potential changes. A final working party meeting was held on 1 April 2004, and it was anticipated that a Report & Recommendation regarding conflict of interest would be forwarded to the NSW Attorney General by October 2004.

(Source: www.lawlink.nsw.gov.au/lawlink/olsc11_olsc.nsf/vwPreviewActivePages/OLS)

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Contact Kristan at L Rundle & Co on 9299 1828.
Email kmorris@lrundle.com.au

Support your Regional Law Society

Crime - Recent Papers of Note

Appeals from the Local Court to the Supreme Court

CSLS members are referred to an excellent paper by Andrew Haesler SC, Deputy Senior Public Defender published in August 2005 (see the home page of NSW Public Defenders Office: www.lawlink.nsw.gov.au/lawlink/pdo/ll_pdo.nsf/pages?DPO_appealslocalcourtto)

The paper canvasses the latest cases, costs, risks of going to the Supreme Court, choosing the route to appeal, The Supreme Court and prerogative writs, part 5 of the Crimes (Local Courts Appeal & Review) Act, 2001 evidence and time limits.

The Law Enforcement (Powers & Responsibilities) Act

is the subject of another paper by Andre Haesler, Public Defender, published in August 2005 (accessible on Public Defenders Homepage) - the paper considers the Powers of search & entry, powers requiring disclosure of identity, search & seizure powers, personal searches, search & seizure with a warrant, search & entry powers relating to domestic violence, crimes scenes and powers relating to arrest, investigation & questioning.

Motor Accident Authority - New Edition, effective 1 September 2005 Guidelines for Assessment of the Degree of Permanent Impairment

The Guidelines have been amended as from 1 September 2005 and apply to all assessments under s.58(1)(d) of the MAA conducted by a medical assessor on or after the commencement date, and to a further medical assessment of the degree of permanent impairment under s.62 MAA and to a review of an assessment under s.63.

Briefly, the guidelines uses the American Medial Association Guides to the Evaluation of Permanent Impairment (fourth edition), 1995 *aka* AMA 4 Guides, as amended by the "*MAA Guidelines to align them with Australian clinical practice and to better suit them to the purposes of the Act*" (Source: p1 of the Guidelines). Recommended reading for all personal injury lawyers (download at MAA homepage).

Statutory Declarations - Commonwealth Law Matters

A new form for making a Statutory Declaration in respect to a law of the Commonwealth or Australian Capital Territory or Certain other Territories came into effect on 16 November 2004. The Regulations allow either the new form or its predecessor to be used until 31 December 2005 (see Statutory Declarations Regulations 1993, Statutory Rules 1993 No.156 as amended by SR 2004 No.262, per Statutory Declarations Act 1959, Commonwealth).

Legal Aid Fees

The Legal Aid rates to private practitioners in State Criminal Law, Family Law and Mental Health and Commonwealth Criminal Law matters increased as from 5 September 2005 (See homepage for the rates),

New Cases

Willett v Futcher [2005] HCA 47 (7 September 2005)

An appellant suffered brain damage due to the respondent's negligence. The appellant was unable to manage financial affairs. An administrator was appointed to manage the appellant's financial affairs. A head of damages was a sum for reasonable management fees of the administrator. The appeal was allowed and the matter remitted to the Court of Appeal of Queensland to determine the amount of damages for administration.

Trivia

The President of the **Law Society of Western Australia** for 2005 is Celia Seale, employed by Ernst & Young. Ordinary Councillors are from Freehills (x2), Corrs Chambers and the Articled Clerk Representative is from Deacons. There are 21 Councillors plus the Executive Director of the Law Society of WA. The Law Society of WA Council meets monthly on a Monday at 4:30pm, whilst the Law Society Executive usually meets at 7:30am!

The **Law Institute of Victoria**, the LIV, has 18 Councillors, six of whom retire every year (three year terms). The Vice President and the President are elected at the company's annual general meeting. Elections for the Treasurer and fifth executive member are held at a council meeting following the annual general meeting, for a one year term. Councillors currently are from Clayton Utz, Russell Kennedy (x2), Freehills, Mallesons Stephen Jacques, Hunt & Hunt, Herbert Geer & Rundle, Cayside Health, University of Melbourne, Melbourne University Private. The current president Victoria Strong worked with Mallesons and is currently inhouse at WMC Resources. She was elected to the LIV Council in 2002 and is the third femal president of the LIV. A summary of issues discussed at LIV council meetings can be accessed on the LIV homepage (www.liv.asn.au/about/structure/structure-The.html).

Overseas Legal Conferences

The UIA (Union of Internal des Advocates) hosted its annual conference in the first week of September 2005 in Morocco, where about 1,100 delegates attended. In the letters to the Editor of the Law Gazette UK of 8 September 2005 (www.lawgazette.co.uk/opinions/letters/view+letter.law?GAZETTEOPINIONID) an opinion was expressed that the UIA faces a lack of resources, lacks a global network and has failed to attract business lawyers in the UK and USA in any significant numbers. The UIA also suffers from the perception that it is dominated by French lawyers. A comparison was made with the **IBA (International Bar Association)** meeting in Prague with 3,500 expected to attend and prodeedings to be conducted entirely in English.

CSLS Meetings

Meetings are generally held on the third Tuesday of the month. Members are invited to attend and raise issues for discussion. Contact the secretariat for meeting locations.

The CSLS gratefully acknowledges the support of the Commonwealth Bank