



City of Sydney Law Society



A Regional Society of the Law Society of NSW

February-April 2007

At the outset on behalf of the City of Sydney Law Society, I wish all members, their families and our friends and supporters a joyful and successful New Year - a year also for promoting the service of the law, the seeking of justice and the maintaining of the independence of the law.

## Seminars

**FREE**

**LEGAL SEMINARS CONTINUE**

This offer is for members of CSLS only

Non Members - join NOW

Non-members can join, but you must be a financial member prior to attending a seminar. Members save a minimum of \$44 per seminar. Fill in the application form enclosed now and **SAVE** on ALL our coming seminars to the end of the financial year.

Non-members of CSLS can also attend our seminars, but at a cost of \$55 if a Law Society of NSW member and \$66 for non-members (unless otherwise specified). Refreshments provided and opportunities to meet like minded professionals.

**JOIN TODAY - REGISTER TODAY**

Gain your MCLE points by 31/3/07 with your Society

### Our coming seminars

12 March '07: Small Firms Practice Forum

14 March '07: Tips on Marketing a Legal Practice

21 March '07: National Stock Exchange

26 March '07: LAW WEEK BREAKFAST: Significant Changes in Mental Health

4 April '07: The Role of Lawyers in the Guardianship Tribunal

16 April '07: Small Firms Practice Forum

Registration form can be found at the end of the seminar notices.

[A message from our Sponsor:](#)

# C O R P O R A T E



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We are excited to be the new sponsors of the City of Sydney Law Society.

Firstly, just to dispel any misunderstandings about our name; we provide Incorporations, Corporate Secretarial and ASIC Compliance Services.

Corporate Express is a dynamic, focused and progressive team that has partnered with Australian business, large and small for almost twenty years, in meeting their incorporation and corporate compliance challenges.

Our experience in business has made us aware of the value of being able to access reliable resources in these vital areas and the role that business partnership has in achieving excellence.

We intend to be a 'participating' sponsor of the City of Sydney Law Society. We plan to share with you a combination of our own extensive resources, as well as expertise from some of our business partners in areas such as Business Succession, Systems Building and Profitability.

As has always been our practice, we will provide the most relevant information and contacts for your business. To this end, we need your input as to what you want to hear from us.

So what is your greatest challenge?

Maybe you've got a few! Drop us an email at [admin@corporateexpress.com.au](mailto:admin@corporateexpress.com.au) with the ideas or issues facing your business/market at the moment and in upcoming newsletters and seminars we present, we'll work together to provide you with some possible solutions. In the meantime, click here [www.corporateexpress.com.au](http://www.corporateexpress.com.au) today to learn more about our team and the services we provide. Alternatively, you can call us on 9261 2100.

## MARCH '07

### Small Firms Practice Forum

**When: Monday 12 March 2007, 5:30pm to 7:15pm**

**Where: Sydney Mechanics School of Arts, Lvl 1, 280 Pitt St, Syd.**

These meetings have proved very helpful. We have discussed topics of interest to us as practising lawyers. Recent media reports, the push for a national legal profession, Law Society election policy statement, tort law reform campaign etc. a cause of concern or not? Discuss your issues with helpful lawyers. This meeting is FREE to all legal practitioners.

Chair: Anthony Restuccia, CSLS President

### Tips on Marketing a Legal Practice

**When: Wednesday 14 March 2007**, 5:30pm to 7:15pm  
**Where: Sydney Mechanics School of Arts**, Lvl 1, 280 Pitt St, Syd.  
**Speaker: SUE-ELLA PRODONOVICH** of PTB Consulting.

Our speaker is a specialist in marketing and business development for professional services firms. She works with a number of legal and accounting firms including top tier, next tier and niche practices. Sue-Ella has been instrumental in designing and implementing local, national and international projects which address 'best practices' in marketing and business mix analysis, fee and client analysis, target account strategies, client relationship management, brand development and market positioning. Join us and benefit from this seminar presented especially for legal practices.

Chair: Ken Harkness, CSLS Secretary

### **National Stock Exchange**

**When: Wednesday 21 March 2007**, 5:30pm to 7:15pm  
**Where: Sydney Mechanics School of Arts**, Lvl 1, 280 Pitt St, Syd.  
**Speakers: RAY WHITTEN & ANDREW WHITTEN** of Whittens Lawyers & Consultants.

Ray & Andrew Whitten are Nominated Advisers to the National Stock Exchange of Australia (NSX).

Small to medium firms should not miss this talk - which includes:

- How to ensure growth, development and regulatory compliance
- Restructure your business to make it suitable for a listing on NSX
- Which service providers are necessary to get you listed?

Chair: Anthony Restuccia, CSLS President

### **Law Week Breakfast 2007 - Significant Changes in Mental Health**

**When: Monday 26 March 2007**, 7:30am  
**Where: Wesley Centre Lyceum**, 220 Pitt Street, Sydney  
**Speakers:**  
**Professor IAN HICKIE AM**, Executive Director, Brain & Mind Institute at the University of Sydney, Professor of Psychiatry at University of Sydney  
&  
**Justice PETER JOHNSON**, Judge of the Supreme Court of NSW and a co-editor of NSW Criminal Law Practice

Major political forces propose to improve mental health services.

- What is missing in the services?
- Support services?
- Prevention?
- How can the legal justice system be improved?
- Section 32 Mental Health - changes

Don't miss out - book your place today!

Cost: CSLS Members \$40, Law Society of NSW members \$49, Non-members \$55.

**APRIL '07**

## The Role of Lawyers in the Guardianship Tribunal

**When: Wednesday 4 April 2007, 5:30pm to 6:30pm**

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

**Speaker: Michelle Fraser, experienced Barrister, Frederick Jordan Chambers**

Chair: Ken Harkness, CSLS Secretary

### REGISTER HERE

Send an email to Marianne Atherton on [csls@optusnet.com.au](mailto:csls@optusnet.com.au) or print this page, complete the form and post or fax to the below address.

A tax invoice will be sent to you.

### REGISTRATION FORM

Small Firms Forum - Mon 12 Mar '07.

Free to members & non-members.

Tips on Marketing a Legal Practice - Wed 14 Mar '07.

CSLS Memb: Free; Law Soc Memb: \$25; Non Memb: \$35.

National Stock Exchange - Wed 21 Mar '07.

CSLS Memb: Free; Law Soc Memb: \$25; Non-Memb: \$35.

LAW WEEK BREAKFAST - Mon 26 Mar '07.

CSLS Memb: \$40; Law Soc Memb: \$49; Non-members \$55.

The Role of Lawyers in the Guardianship Tribunal - Wed 4 Apr '07.

CSLS Memb: Free; Law Soc Memb: \$25; Non Memb: \$35.

NEW MEMBER. I wish to take up immediate membership of CSLS and include my completed application form and the membership fee of \$80.00 (Group discounts available, contact us for details). My membership will be valid until 30 June 2007, when a renewal notice will be sent to all members.

I ATTACH A LIST OF NAMES OF ALL THOSE INCLUDED ON THIS REGISTRATION FORM  
Prices are inclusive of GST. A tax invoice/receipt will be sent to you.

Payment method:

Visa

Mastercard

Bankcard

Cheque (payable to City of Sydney Law Society)

I enclose payment of \$\_\_\_\_\_

Credit card No: \_\_\_\_\_

Expires: \_\_\_\_ / \_\_\_\_

Cardholder name: \_\_\_\_\_

Cardholder signature: \_\_\_\_\_

Name: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

**NEW MEMBERSHIP APPLICATION/RENEWAL OF MEMBERSHIP, add details below:**

Full name: \_\_\_\_\_

Practicing[ ] Non-practicing[ ]

Law Society of NSW member? Yes[ ] No[ ]

Date of admission as legal Practitioner: \_\_\_\_\_

Practicing as: Solicitor[ ] Barrister[ ] Judicial officer[ ]

Private address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Mobile: \_\_\_\_\_

Signature: \_\_\_\_\_

Email: \_\_\_\_\_

[ ] **Individual Membership \$80**

[ ] **Group discount 10%** (applicable when 3 or more solicitors from the same firm join together)

[ ] **Newly admitted Solicitor (1-2 years) \$40**

[ ] **Newly admitted Solicitor (3-4 years) \$60**

[ ] Cheque herewith OR [ ] Credit card details completed above

**Please return this form with payment to :**  
**City of Sydney Law Society,**  
**GPO Box 1907 Sydney 2001. Phone 9453 3511.**  
**Fax 9453 3522 Email [cls@optusnet.com.au](mailto:cls@optusnet.com.au)**  
Register early, seating limited. Did you include a membership application?

## Newsletter

**President:** Anthony (Rusty) Restuccia [a\\_j\\_restuccia@yahoo.com.au](mailto:a_j_restuccia@yahoo.com.au)

Mob. 0419 698 753, Fax 9438 5143

**Vice President:** Denis Mockler [dmockler@scm.com.au](mailto:dmockler@scm.com.au)

**Treasurer & CLE Convener:** Nea Goodman [nea.goodman@community.nsw.gov.au](mailto:nea.goodman@community.nsw.gov.au)

**Secretary:** Ken Harkness [k.harkness@kmhc.com.au](mailto:k.harkness@kmhc.com.au)

**Secretariat:** GPO Box 1907, Sydney 2001 Ph 9453 3511

Fax 9453 3522 Email [cls@optusnet.com.au](mailto:cls@optusnet.com.au)

***Presidents Message - More Progress in CBD in 2007***

At the outset, I must sadly record the very recent passing of Russell Wilkins, a barrister of noted integrity and compassion, and the husband of our Treasurer and long standing member and office bearer - Nea Goodman. To Nea and her children we extend our condolences. Many of our members attended the funeral service at St. James Church, King Street, Sydney. With our prayers, may he rest in peace.

Whilst sadness opened our year, there was also a little sunshine, with Marianne Atherton, our Executive officer giving birth to a healthy baby girl - Catrine - both mother and baby are fine.

I apologise for the delayed Newsletter. Your Society was represented at the Opening Term Church Services and the Regional Presidents Meeting on 2/3/07.

### ***Office Bearers and Council***

The office bearers elected late last year unopposed at our successful and informative AGM (an AGM reporting progress and forward thinking) were:

President: Anthony (Rusty) Restuccia

Vice President: Denis Mockler

Secretary: Ken Harkness

Treasurer: Nea Goodman

Vonette Cornu and John Newton former office bearers did not stand for office. We thank them for their particular service to the Society. Denis Mockler and Ken Harkness are the new office bearers. We are also pleased to announce that the new Council this year contains the following 5 new Councillors: Stephen Bell, Victor Bizannes, Romano Di Donato, Gerard Dupal and Peter Kelso. The other Councillors are Victor Berger, Prof David Barker, Mahrukh Batliwalla, Bryce Bridges, Wendy Fisher, Maurice May, John Newton, Stephen Pallavicini, Josephine Pignataro, Paul Power, Peter Rosier.

### ***Sponsorship***

This coming year we have at least one sponsor on board - CORPORATE EXPRESS, a company engaged in the incorporation of companies, shelf companies, setting up trusts and super funds and company secretarial services. We thank them for their generous support. We hope to announce further sponsorship shortly. If you know someone who would like to benefit from sponsorship with our Society, ring Anthony Restuccia tel: 0419 698 753, or Victor Berger tel: 9264 3877 or Ken Harkness tel: 9232 7966.

### ***Our Program - 2007***

This will include monthly seminars on topics members request, monthly Small Firms Practice Forum for small firms to debate issues of relevance to their practice and the opportunity to have the issues brought to the Law Society supported by CSLS. Our MCLE seminars will continue to be cost effective.

We will hold special events, eg. The Law Week Breakfast, a special Cocktail gathering for all practitioners, a Dinner, a Special MAA Assessors/WCC Arbitrators function.

We are actively supporting the Tort Law Reform Campaign as every Solicitor/Barrister should - not from self interest, but because it is morally right and possibly as unfair as David Hicks detention. No law should be permitted to act in a civilised society with absolute discrimination against persons injured through no fault of their own. Law reform is for the common good of the community not to feed greedy insurance companies and their executives. Ask insurance companies their attitude to Tort Reform. If not, change and recommend change for all your insurance needs.

### ***Recognition***

It is proposed to recognise the contribution of senior practising solicitors to the profession and the community.

### ***A National Profession***

Many small firms see no benefits emerging to their practice by establishing a national profession and a powerful, expanded Australian Law Council. Would it mean the termination of the Legal Services Commission and a new federal regulatory body? Would it facilitate the channelling into Australia of overseas trained lawyers as

appears likely in England? There are benefits to the large operating interstate or the border practitioner. What benefits come to the small firms. We will be holding a special seminar on this topic. Ring me or write to CSLS.

### **Accreditation**

The CSLS is looking at appropriate small firm accreditation at a reasonable cost. Interested? Come to our monthly forum for a discussion.

### **NSW Election 2007 - support change**

Contact your candidates in your electorate and ask directly their attitude to new Tort Law Reform. Confirm it in writing. The present law must be changed. It does not benefit the legal profession nor the community. For information, brochures etc, ring the Law Society, Sarah Gordon Campaign Co-ordinator on tel. 9926 0129. Email [projects@lawsocnsw.asn.au](mailto:projects@lawsocnsw.asn.au) or Patrick McCarthy of A.L.A. 0407 039 817 or the Bar Association, tel: 9232 4055. The Bar Association and Law Society have issued Election Policy, you can ring them and get a copy.

**Police Prosecutors?** - An Election question? The W.A. Police Commissioner Karl O'Callagher has ordered an independent review of police prosecutorial functions. He has stated that, "I would like to see the police eventually out of prosecuting."

### **Law Society Constitution - Improving the Law Society**

The Law Society Constitution is to be amended this year. Your view is important. The CSLS will be active, advise me of your views.

### **Renewals - urgent**

Some members have forgotten to renew their subscriptions for the current year. Please renew NOW, form attached. The benefits are yours - and the year ahead offers more with your involvement. Join our activities in March 2007.

Best wishes,

**Anthony Restuccia**  
**President**

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### **For Your Information**

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### **Electronic Conveyancing One Step Closer**

The issue of practitioners authority from their clients to sign and lodge instruments electronically on their behalf is currently being addressed. Authorisation will be obtained by practitioners when they receive instructions to act. The authorisation will utilise a standard electronic template, printed off for certifying and hand signing by the practitioner, client and independent witness. A copy of the signed authorisation will be given to the client and the original retained by the practitioner. Similar authorisation are already in use in electronic conveyancing in New Zealand and Canada. Examples can be viewed at: <http://www.lawyers.org.nz/PDFs/edeal-glines-200204.pdf> (appendix 1)

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### **Incorporation of Legal Practices**

s140(3) and 670 Legal Profession Act 2004 provide that the Legal Services Commissioner has the role of auditing ILPS to ensure compliance with the LPA, the Regulations and the legal profession Rules. The test for compliance is in s. 140(5) LPA 2004 which stipulates that it is capable of being professional misconduct if a practitioner director does not ensure "appropriate management systems" are implemented and maintained by the ILP to ensure services are provided in accord with the LPS,

## Regulations and Legal Profession Rules.

The Law Society home page has downloads of information in relation to appropriate management systems, ten areas to be addressed to demonstrate compliance with appropriate management systems and a self assessment document. A template for suggestions concerning the elements of "appropriate management systems for ILP in NSW is available on the Law Society webpage. The CSLS will be continuing its discussion on incorporation in April and May 2007.

## Odd Exclusions

### **Queensland LS Professional Indemnity Insurance Master Policy 2006/2007**

At paragraph 5 General Exclusions

*5(c)(vi) directly or indirectly caused by or contributed to by, or arising from ionizing radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof directly occasioned by pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds...*

(see at LS QLD homepage)

## News from UK

### **UK Law Society & Society of Indian Law Firms Agreement**

The UK LS and Society of Indian Law Firms signed an historical accord on 18 January 2007. The agreement allows access to the big emerging legal market to open to foreign entrants. The scope whilst currently limited to exchanges of information, annual seminars is thought to be the prelude to the big bang about to happen on deregulation. Foreign lawyers have been barred from India since the late 1990s that they could neither appear in court nor offer legal advice. The US and India have a working group on legal market deregulation highlighting ambitions of leading firms.

Source: The Australian 21.1.2007 at p. 21

### **UK LS Fast & Fair Justice for personal injury victims**

The UK LS Fast & Fair small claims proposal was launched on 13.10.2006 aiming to improve the claims system for thousands of victims who suffer injury through somebody else's negligence - simple, quicker and cheaper justice. Currently small claims limit prevents those with P1 cases worth less than 1000 UK pounds claiming their legal costs from the losing side. Plans to raise the limit to 2500 UK pounds would leave thousands of victims to take on insurers alone and navigate a complicated legal process without any legal assistance.

The UK LS CEO said:

*"An increase to the small claims limit would leave most victims at the mercy of big insurers whose director must be popping champagne corks at the prospect. A MORI survey found that just one in three people would have the confidence to bring a claim without a legal advice inevitably people suffering broken bones, severed fingers and scarring would be left without the compensation they deserve... It is in the grip of a US style compensation culture, in fact, the number of personal injury claims over the last five years has dropped. Last year there were 674,422 personal injury claims in England and Wales. Approximately two thirds of them were under 2500 pounds in value. In the past five years there has been a 5% fall in the number of personal injury claims."*

Source:

<http://www.lawsociety.org.uk/newsandevents/pressreleases> or go to LS of England and Wales, News from the LS at press releases 13.10.2006 Fast and Fair justice for personal injury victims.

## Free Movement of Lawyers in European Union

Language tests hold barrier to free trade movement. Directive 98/5 enables lawyers

qualified in one member state to establish themselves on a permanent basis in any other EU member state and provide services. The Directive is to facilitate the free movement of lawyers through the EU. See Case c-506/04 *Graham Wilson v Luxembourg Bar* (see LS of UK, joint Brussels Office (Brussels Agenda October 2006) or email [brussels@lawsociety.org.uk](mailto:brussels@lawsociety.org.uk)).

### **Professional Conduct/Ethics**

***NSW Bar Association v Meakes*** {2006} NSWCA 340 (Tobias, Bryson, Basten - 6.12.2006)

Appeal by Bar Association from ADT. Held overcharging, failure to conform with Legal Profession Act 1987, Misconduct established Publicly reprimanded.

### **CCBE Charter of core principles of the European Legal Profession**

The Council of Bars and Law Societies of Europe (CCBE) representing over 700,000 lawyers adopted at its Plenary Session on 24/25 November 2006 a Charter of *core principles of the European Legal Profession*. Ten principles were identified as common to the whole European Legal Profession: independence, confidentiality, avoidance of conflicts of interest, principles recognised by the European Court of Justice in the *Wouters Case* (C-309/99) - which apply domestically and cross border. The Charter reflects move to harmonisation of the ethical codes of the European legal profession, bringing with it greater unity essential to the proper administration of justice, access to justice and the right to a fair trial. Obtain from homepage [www.ccbe.org](http://www.ccbe.org) .

### **R v Griffiths & Pattis (Lexis Nexus at 2155) UK - solicitor money laundering**

UK Criminal Court of Appeal reduced sentence of a solicitor to 15 months imprisonment for failing to disclose to the authorities that he knew or suspected that a money laundering offence was taking place, Conveyance of property at a significant undervalue.

### **Trainee Solicitors Minimum Salary**

The Law Society Regulation Board (UK) (known as Solicitors Regulation Authority from 1.1.2007) is currently consulting as to whether it should continue to play a role in the regulation of trainee solicitors' salaries. A copy of the paper can be obtained from [trainingconsultations@lawsociety.org.uk](mailto:trainingconsultations@lawsociety.org.uk) .

### **Cases of interest**

#### ***Time, Weights & Measures***

***Westfarmers Kleenheat Gas Pty Ltd v Elgammal [2006] NSWSC 1248***  
(17.11.2006)

***Equity: Hamilton J***

Computation of time generally - general principle - number of days of period - general principle - number of days to be reckoned exclusively of the first and inclusively of the last day.

#### ***Damages against solicitor failure to make contracts for sale of real estate interdependent***

*Di Sisto v Sleyworld & Ors* (Mr Hearn Solicitor 4th Def) [2006] NSWSC 1182 (Equity Associate Justice Macready) 13 November 2006

Solicitor acted for plaintiff in conveyancing. Purchaser subsequently liquidated. Claim for \$780,000 loss incurred on resale, advertising/agent's commission on resale, legal costs on resale, interest on unpaid purchase price and additional council rates. Held: 4th Def. liable for \$780,005 - non-receipt of balance of purchase monies, interest at contract rate of 10% pursuant to clause 7 of contract to date of resale.

#### ***Superannuation Complaints Tribunal***

Suicide and pre existing mental illness exclusion (D06-07/013)

Tribunal held no definite medical evidence deceased member was suicidal at time of his death and that persons with a psychiatric history cannot be assumed to have taken their own lives because they die. No evidence that he died as a result of pre existing health

condition (bi polar disorder) - all that was known was that he died after being hit by a speeding train. No evidence that he put himself in that position because of his pre existing health condition. Hence his condition did not "result" his death.

***Pre existing conditions and heroin use (D06-07/048)***

Cause of death of member was toxicity to heroin - Trustee held death as a direct consequence of a pre existing condition. Tribune held taking heroin without more does not constitute a medical condition. Held Deceased member was addicted (ie. had a medical condition) from 1996-2001 as he was receiving treatment for the condition. But no evidence he regularly took heroin when he joined the Fund in September 2002. (see at Superannuation Complaints Tribunal Quarterly Bulletin 1.7.2006-30.9.2006: Issue 45)

**URGENT:**  
**Downing Centre Local Court. Pro Bono Duty Solicitor Roster**  
Solicitors invited to join the Roster and attend once a month.

Inquiries: Anthony Restuccia Tel 0419 698 753

**CONTRACTS FOR SALE OF LAND**  
**are available from CSLS at discounted prices.**  
Contact Marianne Atherton on 9453 3511 or the President Anthony Restuccia.  
Email: [csls@optusnet.com.au](mailto:csls@optusnet.com.au)

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**Support your Regional Law Society**  
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