



City of Sydney Law Society



Seminars

A Regional Society of the Law Society of NSW

July-August 2006

Seminars

The CSLS presents quality seminars and talks on subjects relevant to your practice at modest (sometimes free) prices. Refreshments provided and opportunities to meet like minded professionals.

Our Coming Seminars

19 July: Food Law - New Opportunities for Lawyers
26 July: Strata Disputes in the Consumer, Trader and Tenancy Tribunal
9 August: Expert Evidence in Commercial Litigation
14 August: Small Firms Practice Forum

The meetings on 19 July, 26 July and 9 August are SPOT TALKS and FREE to members. These are generally held on Wednesdays at 5.30pm for an hour.

Membership gives instant savings. Why not fill in the enclosed form, join now for the coming 12 months and SAVE. Non-members of CSLS can also attend our Spot Talks and seminars. Spot Talks cost \$25 for a Law Society of NSW member and \$35 for non-members. The monthly Small Firms Practice Forum held 2nd Monday of each month at 5.30pm, is FREE to all legal practitioners.

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

JULY '06

FOOD LAW - NEW OPPORTUNITIES FOR LAWYERS

When: Wednesday 19 July 2006, 5.30pm to 6:30pm - **Spot talk**

Where: Sydney Mechanics School of Arts, Lvl 1, 280 Pitt Street, Sydney (b/w Park & Bathurst)

Speaker: DES SIBRAA

Our speaker is an expert in Food Law, a very experienced barrister, formerly the Chief Food Inspector for NSW and currently the Editor of the practice book on "Food Law".

Chair: Anthony Restuccia, CSLS President

STRATA DISPUTES IN THE CONSUMER TRADER AND TENANCY TRIBUNAL

When: Wednesday 26 July 2006, 5:30pm to 6:30 pm - **Spot talk**

Where: Sydney Mechanics School of Arts, Lvl 1, 280 Pitt Street, Sydney (b/w Park & Bathurst)

Speaker: SUZIE BROOME, of Suzie Broome & Company

A Solicitor conducting her own practice, very experienced in the field of Strata Law and a mentor of the Institute of Strata Management.

Chair: Ken Harkness, CSLS Committee

EXPERT EVIDENCE IN COMMERCIAL LITIGATION

When: Wednesday 9 August 2006, 5:30pm to 6:30pm - Spot talk

Where: Sydney Mechanics School of Arts, Lvl 1, 280 Pitt Street, Sydney (b/w Park & Bathurst)

Speaker: DORAN COOK, Barrister, 6th floor, Wentworth Chambers

An experienced Barrister in an important legal field advising us about a critical issue.

Chair: Ken Harkness, CSLS Committee

SMALL FIRMS PRACTICE FORUM

When: Monday 14 August 2006, 5:30pm to 7:15 pm

Where: Sydney Mechanics School of Arts, Lvl 1, 280 Pitt Street, Sydney (b/w Park & Bathurst)

These meetings have proved very successful. Some members have asked they be more focused, so this meeting is the NEWEST Costs Act 2006. There will still be an issues workshop to help deal with your issues of concern.

Chair: Anthony Restuccia, CSLS President

OTHER EVENTS TO NOTE

CHURCH LAW FORUM: THE CHURCH'S RESPONSIBILITIES TO THE AGED

When: Thursday 17 August 2006, 5:30pm

Where: Wesley Mission, 220 Pitt Street, Sydney

- Decision making capacity - Wills, Powers of Attorney and Guardianship
- Functions of Guardianship Tribunal
- Elder abuse

Attendance is free.

Please register directly to Mr Bryce Bridges bryce.bridges@wesleymission.org.au

Sydney East Lawyers Dinner

When: Wednesday 19 July 2006, 6:00pm

Where: Randwick Rugby Club, Coogee

Cost: \$75pp

Guest Speaker: Andrew Rider, Barrister on taxation

Enquiries: Eleanor Murphy, Tel 9389 9999

Anglo-Australian Lawyers Society Mid-Winter Dinner

When: Friday 21 July 2006, 7:00pm

Where: The Union Club, 25 Bent Street, Sydney

Cost: \$95pp

Guest Speaker: Hon Justice Annabelle Bennett, Federal Court of Australia

Enquiries: Malcolm Longstaff, Tel 9988 3563

The Law Society of NSW is holding a Cocktail Reception for Mr Mark Richardson, the recently retired CEO of the Law Society of NSW

When: Friday 21 July 2006, 4:30pm

Cost: \$30pp

Enquiries: Law Society of NSW 9926 0333

REGISTER HERE

Send an email to Marianne Atherton on 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

Food Law - Wed 19 July '06.

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

Strata Disputes - Wed 26 July '06.

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

Commercial Litigation - Wed 9 August '06

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

Small Firms Practice Forum - Mon 14 August '06.

CSLS Memb & Non-members: FREE.

MEMBERSHIP for year to 30 June 2007* (See membership form below)

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 / MEMBERSHIP RENEWAL
add details below:**

Full name: _____

Firm: _____

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: _____ Fax: _____

Email: _____ Mobile: _____

Signature: _____

*Membership subscription City of Sydney Law Society for year to 1/7/07:

[] 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

Please return this form with payment to :
City of Sydney Law Society,
PO Box 268 Belrose West 2085. Phone 9453 3511. Fax 9453 3522 Email
csls@optusnet.com.au

Register early, seating limited. Did you include a membership application?

Newsletter

President: Anthony (Rusty) Restuccia a_j_restuccia@yahoo.com.au

Mob. 0419 698 753, Fax 9438 5143

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Treasurer & CLE Convener: Nea Goodman nea.goodman@community.nsw.gov.au

Secretary: Vonette Cornu vonette.cornu@sbs.com.au

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csls@optusnet.com.au

Presidents Message

A Fair Trial

The June 2006 issue of the Law Society Journal published an excellent article of special importance to the community and the criminal justice system in NSW on the obligation of Prosecutors to fully disclose to the defence all material known to the prosecutor which is relevant to, or could be relevant in the critical and restricted field of sexual assault.

The article reminds us that this principle extends to all criminal trials (not excluding the Local Court) and its disregarding strikes at the fundamental principle for the accused of a fair trial. The obligation to disclose is recognised in D.P.P., Bar Council and Law Society guidelines.

It has been recognised by the High Court in *Whitehorn v The Queen* (1983) 152 CLR 657 and *Grey V.R.* (2001) 75 ALJR 1708. It has been neatly said "...the fruits of the investigation which are in possession of...the Gown are not the property of the Crown for use in securing a conviction but the property of the public to be used to ensure that justice is done" (*R.V. Stinchcombe* (1991) 68 CCC [1@7](#)).

The police prosecutors cannot be excused from this obligation particularly because their knowledge of police operations and police culture should place a greater responsibility upon them to ask the right questions and seek information e.g. on CCTV operations, scientific and expert evidence, and the diaries of senior officers. Sadly, police prosecutors are not independent of the Police Service. Excellent prosecutors are stained by those who fight even the non-fishing subpoena and by police corruption.

The Prosecutor has no duty to convict an accused, but a duty to assist the Court to arrive at the truth and do justice according to law and the dictates of fairness. The prosecutor must always act impartially and fairly according to law.

Our Information section which follows is very important this month.

I thank all speakers who have so generously donated their time and expertise to provide excellent discussions with the CSLS and its members during the past month - Michael Inglis, Barrister and Michael Cranston, Acting Deputy Tax Commissioner; Kevin Currie of Absolute Business Solutions; Craig Norman, Deputy Registrar at Downing Centre Civil Court; Stephen Bell, Solicitor (on Chambers) and CSLS Member; Bruce Sellick, Regional Coordinator for Community Justice Centres (Sydney). Much appreciated.

Join us in CSLS activities. Make suggestions of what you want from this, your Local Law Society. Express your views.

Best wishes,
Anthony Restuccia
President

FOR YOUR INFORMATION

Personal Injury Compensation: Legislative Council: General Purpose Standing Committee No. 1 Enquiry

The Committee released its report on 8 December 2005, making a series of recommendations proposing changes to civil liability, workers compensation, motor accident compensation legislation. The Government published its response on 8 June 2006 (29 pages) download www.parliament.nsw.gov.au (under Government Responses). The Government is of the view (p.6)

"reasonable balance has been achieved through the personal injury compensation laws currently in operation in NSW. Implementing the Committee's recommendations would destabilise that balance with the only obvious benefit being to those with minor injuries. Furthermore, it is noted that the fundamental concept underpinning the

Committee's model being the creation of a new personal injury compensation tribunal is not supported by either the NSW Law Society or the NSW Bar Association.

The Government sees merit in keeping certain aspects of its reforms such as the duty of care provisions under review. It is, however, too early for this to occur given the limited number of cases which have been determined under the new provisions."

Professional Bodies Response

The Bar Association and Law Society issued a joint response on 8th June, 2006, see at www.nswbar.asn.au/database/show-mediarelease.php?id=164

The Bar President said that the Committee's recommendations require urgent attention, including the abolition of the harsh "whole person impairment" assessment (WPI). Further, the sweeping changes to workers compensation, motor accidents and civil liability legislation in 1999-2002 were driven by panic over rising insurance premiums and unavailability of insurance. Insurers have been the sole beneficiaries of massive reductions on personal injury payments to those injured through no fault of their own. **Express your views.**

UK: Compensation Bill [Bill 155-EN] - House of Lords 27 March, 2006, Debate 8 June, 2006 - Second reading Speech.

The UK Compensation Bill contains provisions relating to the law on negligence and breach of statutory duty, and the regulation of claims management services (claims farmers). Interestingly there is NO reference to caps, thresholds, sliding scales --

The Bill, sets at Part 1, **clause 1: Deterrent effect of potential liability:**

"A court considering a claim in negligence or breach of statutory duty may in determining whether the defendant should have taken particular steps to meet a standard of care (whether by taking precautions against a risk or otherwise), having regard to whether a requirement to take those steps might -
a) *prevent a desirable activity from being undertaken at all, to a particular extent or in a particular way, or*
b) *discourage persons from undertaking functions in connections with a desirable activity*

This provision reflects existing English law and approach of the courts as expressed in recent judgements of the higher courts.

clause 2: Apologies, offers of treatment or other redress

An apology, an offer of treatment or other redress, shall not of itself amount to an admission of negligence or breach of statutory duty.

Explanatory Notes to the Compensation Bill (13 pages) can be downloaded at www.publications.parliament.uk/pa/cm200506/cmbills/155/en/06155x--.htm Reference is made the Better Regulation Task Force (BRTF) report: Better Routes to Redress, May 2004 that found the "compensation culture" is a myth but that it is a damaging myth that needs to be tackled.

The second reading speech and following debate took place on 8 June, 2006, and can be downloaded at

www.publications.parliament.uk/pa/cm200506/cmhansrd/cm060608/debtext/602...

MORE Cost Amendments: Legal Profession Amendment Act 2006

The Cost amendments commenced on 2 June, 2006, including:

- Maximum uplift fee of 25% only applies in litigious matters (section 324)
- Interest charges - maximum rate is 9% and after 1 July 2006, is Cash Rate Target (see Reserve Banks website www.rba.gov.au under Statistics) plus 22% interest can be charged 30 days after a delivery of a lump sum bill, even if the client requested an itemised bill (section 321(5))
- If a conditional costs agreement with uplift fee is held void, the uplift fee must be paid back.
- Categories of exemptions under s.321 have been increased.

GST: Real Property Settlement Adjustment - Taxable supplies

GST Determination 2006/3 Goods and Services Tax are settlement adjustments taken into accounts to determine the consideration for the supply or acquisition of real property?

The ATO determination released on 26 April 2006, considers GST treatment of settlement adjustments - these relate to the supply of property and are to be taken into account when determining the considerations for that supply. Consideration paid under the contract include:

- price shown on the contract, plus
- any payments by the purchaser to the vendor in respect of an adjustment for rates, land taxes or other expenditure incurred by the vendor prior to settlement; less
- any payments by the vendor to the purchaser in respect of an adjustment for rates, land taxes or other expenditure paid by the purchaser subsequent to settlement

Also of interest is the exposure draft released on 11 April 2006: Goods and Services Tax Treatment of Residential Properties. The amendments are to clarify the GST to ensure that post *Marana Holdings v Commissioner of Taxation* [2004] FCAFC 307 supplies of certain types of real property are input taxed.

Justices of the Peace Renewal of Registration Due

Justices of the Peace are now re appointed every five years and anyone who took on the role prior to 8 December 2003 is required to reapply by 31 August 2006. JP's who extend their term will be asked to nominate a telephone number to be included in an online register at www.lawlink.nsw.gov.au/ip. The Justice of the Peace Act 2002 abolished lifetime appointments of JP's. Reappointment forms can be downloaded at www.lawlink.nsw.gov.au/ip - applications must demonstrate an employment or community need for them to continue as a JP.

Electronic Conveyancing NSW - Changes

Not all existing 74 registrable dealings and instrument types in NSW will be available in electronic conveyancing, however two new dealing types are likely to be required and introduced under the electronic regime:

Simplified caveat - to allow purchasers to protect their interest when Certificates of Title are no longer issued for encumbered properties. This is similar to priority and settlement notices used in other jurisdictions to notify imminent transfers.

Instrument to allow mortgages to give consent for third party instruments to be registered when a CT has not been issued (this will replace the current production-delivery to LPI) of CT by mortgagees consenting to a third party dealing being registered, eg. a second mortgage over the same property. (Source: Electronic Conveyancing in NSW Newsletter no 15 June 2006)

To subscribe to Electronic Conveyancing in NSW Newsletter published by Department of Lands, email www.lands.nsw.gov.au/LPServices/ElectronicConveyancing

Call for comment: Litigation Funding

A Discussion Paper on Litigation Funding (19 pages) was released by the Standing Committee of Attorney's General on 16 June 2006. Comments are sought by 14 September 2006. The Paper can be downloaded from www.lawlink.nsw.gov.au "latest news". Results of consultation and forthcoming High Court decisions on litigation funding will be used to formulate any regulatory proposal. Issues include:

- should laws against maintenance and champerty be repeated in jurisdictions where the tort or crime continues to exist (eg. W.A., LD, TAS and NT)
- should a direct contractual agreement between the solicitor and the plaintiff be required in all funded actions
- should criteria for legally acceptable funding agreements be formalised
- if so, should this be in the form of either or both: list relevant criteria and/or

set out required terms
- should LFC be subject to prudential regulation
- should LFCs be subject to mandatory disclosure requirements
- should explicit measures to ensure independence of lawyers from LFCs be introduced?
Express your views.

Case of interest

Koroitamana v Commonwealth of Australia [2006] HCA 28 (14 June 2006)
Concerned children born in Australia to parents who were neither Australian citizens nor permanent residents. Considered "aliens" within s.51(xix) of the Constitution.

Legal Profession Profile

Statistics as at 1 June 2006 issued by the Law Society reveal that 5.20% of holders of NSW practising certificates are "interstate or overseas". The number of PC holders unemployed or under employed is not published.

Professional Indemnity Insurance

The NSW Bar Association has several providers: Aon, Marsh, Suncorp and Willis. The NSW Bar Association publishes a quick comparison of the policies in table form. Worth a look?

DISCOUNTED 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

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Attend our functions
Invite others to join

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