



City of Sydney Law Society



Seminars

A Regional Society of the Law Society of NSW

May 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

8 May: Small Firms Practice Forum

10 May: The New Challenges to Trust Moneys, Controlled Moneys and Accounting Requirements

17 May: Opportunities for Lawyers in Strata Title

25 May: Taxation Issues from the Inside

31 May: Growth and Profit Strategies for Legal Practices

The meetings on 10, 17 & 31 May 2006 are SPOT TALKS and FREE to members of CSLS. They are held each Wednesday at 5:30pm for an hour.

Membership gives instant savings. Why not fill in the enclosed form, join now 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 tax seminar costs \$44 to CSLS members, \$55 to Law Society of NSW members and \$66 to non-members. The Small Firms Practice Forum is FREE to all legal practitioners.

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

MAY '06

Small Firms Practice Forum

When: Monday 8 May 2006, 5:30pm to 7:15pm

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

These meetings have proved very successful. The discussion is informal and relevant. We all have to make decisions about our practices, eg. new premises? Software upgrades? Costs control? Incorporation? The type of structure - Chambers a possibility? Marketing? Experienced practitioners chair the meeting. It is no cost. It helps practitioners. Join us.

Chair: Anthony Restuccia, CSLS President

New L.P. Act changes for Trust Moneys, Controlled Moneys and the Accounting Requirements

When: Wednesday 10 May 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)

Speakers: GREG LIVERMORE AND TONY FAIRBAIRN

Both from the Inspectorate of the Law Society of NSW will discuss the aspects of the

Legal Profession Act and Regulations relating to trust moneys, controlled money, accounting requirements and reporting. Changes have occurred. Be there. Ask questions. You will be expected to change to suit the new Act.

Chair: Anthony Restuccia, CSLS President

Opportunities for Lawyers in Strata Title

When: Wednesday 17 May 2006, 5:30pm to 6:30pm - **Spot talk**

Where: Law Society of NSW, 170 Phillip Street, Sydney

Speaker: Alistair Dunn

A very experienced Strata Manager and the former President of the NSW Institute of Strata Title Management. What do we know about the opportunities in the expanding field of strata title management? Join us.

SPECIAL TAX SEMINAR

How to Safely Handle ATO Compliance Activities in 2006 and

What are the Current Tax Issues for Solicitors

an ATO perspective on

- Real Estate
- Litigation
- Wills & Estates
- Family Law

When: Thursday 25 May 2006, 5:30pm to 7:15pm

Where: Abbott Tout Solicitors, Lvl 14, Australia Square, George Street, Sydney

Speaker: MICHAEL INGLIS

Tax Barrister with extensive experience in assisting tax payers and their advisers with eg. prudential audits, voluntary disclosures, compliance requirements.

We will also have a Senior official from the Australian Taxation Office to discuss with Mr Inglis and attendees the current tax issues relating to our legal practice.

Opportunities to ask questions. This should be another excellent seminar. Register today to secure your place.

Chair: Anthony Restuccia, CSLS President

Growth and Profit Strategies for Legal Practices.

When: Wednesday 31 May 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: Kevin Currie, of Absolute Business Solutions Pty Ltd

A presentation by an experienced Business Consultant to the legal profession. Improving our practices is the aim.

OTHER SEMINARS TO NOTE:

Church Law Forum - Industrial Relations Law Alternatives?

When: Thursday 18 May 2006, 5.30pm

Where: Wesley Mission, 220 Pitt Street, Sydney

- What changes will affect the Churches?
- What are our rights and responsibilities as employers?
- How will this law affect our current work practices?

Register directly to Bryce Bridges, ph 9263 5555, email bryce.bridges@wesleymission.org.au

Public Defenders Annual Criminal Law Conference

When: 20-21 May 2006

Where: ANZ Conservation Theatre, Taronga Zoo, Mosman

Register directly with Ruth Heazlewood ruth_heazlewood@agd.nsw.gov.au

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

Small Firms Forum - Mon 8 May '06.

CSLS Memb & Non-members: Free

Trust Moneys - Wed 10 May '06.

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

Strata Title Opportunities - Wed 17 May '06.

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

Taxation Issues - Thu 25 May '06.

CSLS Memb: \$44; Law Soc Memb: \$55; Non Memb: \$66.

Growth and Profit strategies - Wed 31 May '06.

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

NEW MEMBER. I wish to take up immediate membership of CSLS and include the membership fee of \$77.00 (Group discounts available, contact us for details). My membership will be valid until 30 June 2006, 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, 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: _____

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

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

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csls@optusnet.com.au

Presidents Message

Recently our NSW Attorney General Mr. R. Debus indicated that a NSW Bill of Rights was "on the agenda for discussion". The Victorian Government last December accepted the

central recommendation of a Human Rights Consultation Panel and will legislate for a charter of human rights and responsibilities. **"Australia" he stated "is the only western democracy with no clear human rights protection"**. In 2004, the A.C.T. passed a Human Rights Act. Tasmania is investigating its position. When raised in 2001 the then NSW Premier Bob Carr opposed a Bill of Rights! The Law Society supports a Bill of Rights.

It is over 50 years since the universally accepted Universal Declaration of Human Rights (1948), proclaimed the fundamental human rights of all, rights so precious and crucial they "should be protected by the rule of law" (Preamble). Many nations have done just that, but not N.S.W. or Australia. Genuine worries about "terrorism" here have created the challenge to the maintaining of human rights. In Europe (with the UK) Thomas Hammarberg, the Chief Human Rights Envoy for the Council of Europe, which have long had a Convention on Human Rights operating, warns that the "protection of human rights is very endangered when governments take action against "terrorism".

These concerns were echoed in Australia and NSW recently with very wide powers being given to ASIO of arrest, detention and interrogation and for covert search warrants in NSW. The conferring of the LEPR powers on the police; and the Cronulla amendments are over time likely to create divisions and unrest in the community rather than the community co-operation which police need as an essential ingredient in the prevention of crime and protection of the community.

The public find police injustice/corruption easy to remember. The police would be wise to review their powers (and excessive equipment) enforce community policing to serve the public, support fundamental human rights into law and as Inquiries have recommended, withdraw completely from the prosecuting of offenders they have arrested, evidenced and charged. It is independent lawyers, not trained police who should be involved in the prosecuting of offenders, and the protection of the innocent.

I thank all speakers who recently have so generously donated their time and effort to the CSLS and its members, given the Commonwealth Games and Law Week were interposed. A special thanks to Justice Tricia Kavanagh, Judge Michael Finnane and Michael Buettner for their contribution to a successful Law Week Breakfast. Special thanks also to Michael Slattery QC, President of the Bar Association, Peter Punch of Carroll & O'Dea, Chris Ronald's SC, Len Attard, Kerry Donohoe and members of the CSLS Executive Committee and our Executive Officer who contributed so much to help fellow lawyers.

Best wishes,
Anthony Restuccia
President

For Your Information

Australian Taxation Office Notice Served on Queensland Law Society - Legal Profession (including Judiciary) Data Matching Project.

The ATO served notice on the Law Society to provide information in accord with s.264 Income Tax Assessment Act, s.128 Fringe Benefits Tax Assessment, s.22 Superannuation Guarantee (Administration) Act, 1992 and s.65, 353-10 Taxation Administration Act, 1953. A similar notice has been served on the NSW Law Society.

The noticed required the Queensland LS to provide information on each person who holds a current practising certificate thus:

- . full name (surname, first and middle names)
- . date of birth
- . date of admission
- . residential address
- . residential telephone number
- . business name

- . business street address
- . business telephone number
- . occupation, title, classification or employment notice

In addition to provision of ABN's and listing of those refused practising certificate, had a certificate revoked in the last five years.

The ATO published an notice of this data matching program in the Commonwealth of Australia Gazette (GN1) on 11 January, 2006 at page 64 which advised the ATO would be electronically matching names/addresses from State and Territory legal practitioner registers and lists of the judiciary from the Attorney General with certain section of the ATO's data holdings to reveal compliance with lodgement and payment obligations under taxation law.

A full copy of the Data Matching - Program - Legal Profession Data Matching Australian Taxation Office, dated 5 October, 2005 (16 pages) can be downloaded at www.qls.com.au (on front page of www site)

A tax seminar is being held on 25 May 2006, see details above.

Arbitration Figures District Court (NSW)

Referrals to arbitration historically:

2002	6,700
2003	3,800
2004	680
2005	384
2006	220 *

(* Projected: 220. Referral for Arbitration in February, 2006 - 23.

Conveyancing - reduced deposit clauses. An important decision.

Luong Dinh Luu v Sovereign Developments [2006] NSWCA 40

Facts: amount of deposit stated on front page of contract was substantially less than 10% of purchase price. Special condition 5 read:

"in the event the purchaser pays less than 10% of the purchase price as deposit then if the purchaser commits a default hereunder the whole of the 10% deposit shall become due and payable notwithstanding that this contract is not completed. This clause shall not merge on completion and the vendor shall be entitled to sue for recovery of so much of the 10% deposit as remains outstanding as a debt due by the purchaser to the vendor"

Held by Court of Appeal:

Reference in special condition 5 to payment of 10% as deposit was a misdescription and the provision for further payment on default was void as a penalty.

Mobile Phones - recycle

How many outdated and old mobiles do you have lying around ?

The circuit boards on mobiles contain precious metals - gold silver, nickel, copper steel and plastics - can be recycled into jewellery, power tool products, low grade stainless steel items and fence posts!. There is 1 kg of gold in 50,000 mobiles.

The Australian Mobile Telecommunications Associations collects handsets for recycling under the banner "MobileMuster". It is estimated there are 12 million unused mobiles - with 90% of the mobile recycle that's a lot of waste! There are now 1,000 collection points for recycling at mobile phone retail stores Australia wide, all marked with the MobileMuster logo. For details of closest MobileMuster location see at mobilemuster.com.au.

CLE - Accreditation of Courses for CLE Points

The QLS is advertising a Conference in Paris to coincide with the Rugby World Cup in October 2007. QLS President is reported in the Weekend Australia 25/26 March 2006 at p.10:

"The cost of flying international speakers to Queensland would mean the conference (if run in Queensland) would run at a loss"

The Victorian AG said CLE must be "relevant and real and benefit the community". Mr Hull's comments were made after the Victorian Bar Association announced a plan for a conference, "Access to Justice" How much is too much" in Tuscany, in June 2006.

Concerns have been raised as to the extent of tax deductions claimed by lawyers for the so called "junkets" taken under the guise of professional development training. Victorian Attorney General Rob Hulls to launch an inquiry into legal education.

The Victorian AG, has commenced a Review of Legal Education Services. The review is to be conducted by Ms Susan Campbell, formerly Professional Fellow in Legal Practice at Monash University, assisted by an Advisory Committee whose members are to contribute national educational and professional perspectives and experience. The members are:

- . George Beaton (Beaton Consulting)
- . John Cain, (Victorian Government Solicitor, designate)
- . Professor George Hampel (Monash University)
- . Professor Ainslie Lamb (University of Wollongong)
- . Mr Michael Lavarch (Qld, University of Technology)

The Terms of Reference, include

- . objectives of legal education
- . post graduate (pre admission) legal education and training
- . post admission legal education and training
 - . what bodies would be appropriate to provide and/or oversee CLE
- . whether there should be mandatory components eg ethics
 - And professional conduct
- . how CLE applies to practitioners who specialise in an area of law,
 - Including government lawyers
- . funding/governance of bodies providing/overseeing legal education/training
- . whether the functions and powers of the various bodies that oversee CLE and training programmes and admission are adequate and/or appropriate

Recommendations are to be provided to the Victorian AG by July, 2006.

See at www.justive.vic.gov.au.

Workplace Relations Regulations 2006

The Regulations were released on 19.3.2006 and operate in conjunction with the Workplace Relations Act. Post reform workplace agreements specify pursuant to the Regulations, that prohibited content cannot be included in work placement agreements for example any provision which

- . restricts use of independent contractors, or labour hire workers
- . dealing with or facilitating deductions from pay for union dues
- . dealing with employees receiving leave to attend trade union training or paid Leave to attend trade union meetings
- . prescribing re negotiation of a work placement agreement or restricting use of AWA's
- . giving rights to unions to enter the premises of an employer

There are fines for parties lodging agreements that contain prohibited content. The Regulations also impose obligations on employers to maintain records for employees, including start/finish times, remuneration, incentive based payments, penalty rates, termination details.

Medical Indemnity Policy Review

The Minister for Health & Aging chairs the Medical Indemnity Policy Review Panel, which will consider developments since 2003, relating to:

- . reform to State based tort law
- ; proposals for establishing a long term care scheme

- . the handling of clinical disputes
- . improvements in claims handling
- . the development of improved professional standards

Terms of Reference can be seen at:

www.health.gov.au/internet/ministers/publishing.nsf/Content/health-mediarel-yr2005-ta-abb144.htm?OpenDocument&yr=2005&mth=37

Victoria: Legal Services Board

Victoria Marles was appointed CEO of the Victorian Legal Services Board on 12 December, 2005. The Board which deals with all matters in respect to regulation of our profession, must hold its next elections by 31 May, 2006.

LS England & Wales - new CEO

The Regulation Board of the LS has announced the appointment of its new Chief Executive Officer, Antony Townsend. Mr Townsend was CEO of the General Dental Council from 2001 and prior to that held senior roles at the General Medical Council, including Director of Standards & Education, Head of Conduct.

UK News: Consumer Complaints Board

The New Board, with Professor Shamit Saggat as Chair, has a lay majority, and aims to fast track serial offenders against client care rules to the Solicitors Disciplinary Tribunal. Professor Saggat is professor of political science of Sussex University. Prof. Saggat aims to trail blaze issuing consumer warnings, allowing affected third parties to complain (eg. beneficiaries to a will where the executor being allowed to make complaints, pay compensation for small claim.

Cases of Interest:

**LPA 1987: Certification under s.198L(2)
Groth v Audet [2006] NSW CA 48**

Held: s.198L and 198M restrict commencement defence of proceedings by a barrister/solicitor where are no reasonable prospects of success. The consequences of a breach of s.198L(2) fall on the responsible legal practitioner NOT their client. The section is to regulate the legal profession and not for the benefit/detriment of parties to litigation. A breach of s.198L(2) does not invalidate proceedings or render them a nullity and liable to be struck out on that account alone, although if default continues after it is brought to the attention of default it may be.

**Discipline & Legal Professional Privilege - Court of Final Appeal HK
A Solicitor v Law Society of Hong Kong**

**Lord Woolf - UK sat on the Court of Appeal
FACV 23/2005 (delivered 23.3.06)**

Issues: challenge to legislation - incompatible with the right to confidential legal advice

How statutory powers (of LS inspectors) to be exercised

(Judgment refers to UK and European Court of Human Rights, decision)

Jurisdiction - Conflict of Laws - MAA & TAC

Sweedman v Transport Accident Commission [2006] HCA 8 (9.3.06)

MVA NSW between vehicle registered in Victoria and driven by Victorian resident and a vehicle registered in NSW and driven by NSW resident. Accident due to negligence of NSW driver. Victorian driver/passenger obtained compensation from Transport Accident Commission. TAC sued the NSW driver in the Country Court of Victoria exercising federal jurisdiction for indemnity pursuant to TAC legislation. Alternative avenue of redress available to the Victorian residents under MAA (NSW).

Issues: whether MAA supplanted TAC

Whether identification of law of Victoria as applicable law by virtue of common

Law choice of law rules and operation of Judiciary Act, 1903 (C'th) would be inconsistent with the Constitution.

Held: Victorian Transport Accident Commission to be indemnified by a NSW driver for a 1996 motor vehicle accident in NSW.

CARS - Attendant care services/statutory Threshold

Richards v Richards [2006] NSWSC 140

Zang v Gold Eagle International Trading P/L [2006] NSWCA

Held: calculation of damages, assessment of life expectancy - Court make estimation on the basis of the best information available. Projected tables would be a more accurate assessment of future trends than the historical tables.

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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