



City of Sydney Law Society



A Regional Society of the Law Society of NSW

May-June 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

- 25 May: Special Tax Seminar: How to make a successful unprompted voluntary disclosure to the ATO & Highlights and Learnings from the 05/06 Compliance Program
- 31 May: Growth and Profit Strategies for Legal Practices
- 7 June: Civil Local Court callovers - Save time & money
- 14 June: Small Firms Practice Forum
- 21 June: The coming Tort Reform
- 28 June: Mediation - helping you and your client

SPECIAL OFFER TO NON-MEMBERS OF CSLS

For May-June if you pay \$77 for the price of membership to CSLS, you can attend the Special Taxation Seminar and ALL four (4) Spot Talks free, a saving of at least \$108. Just fill in the enclosed form. Join now and SAVE your cash.

Spot Talks are FREE to members. Non-members of CSLS can still attend our Spot Talks and seminars. Spot Talks cost \$25 for a Law Society of NSW member and \$35 for non-members. The Tax and Tort Reform seminars cost \$44 each 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

SPECIAL TAX SEMINAR

***How to make a successful, unprompted, voluntary disclosure to the ATO
&
The Deputy Commissioner on Highlights & Learnings from the
05/06 Compliance Program***

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

Where: Abbott Tout Solicitors, Lvl 14, Australia Square, George St, Syd

Speakers:

MICHAEL INGLIS

Tax Barrister

MICHAEL CRANSTON

Acting Deputy Commissioner (Case Leadership), Large to Medium Businesses

- Everyone deserves a second chance

- What is an unprompted voluntary disclosure?
- Why is an unprompted voluntary disclosure such an important option in 2006?
- The 10 keys to successfully making an unprompted voluntary disclosure
- 16 action steps for handling a tax office compliance enquiry, review or audit

The Deputy Commissioner will elaborate on how the ATO are managing initiatives such as:

- Tax avoidance
- The small/medium enterprise market and private groups including high wealth individuals
- Service Trust Governance
- Lodgement obligations
- Tax Risk decision making

It's tax time - whether from a small or large firm - don't miss this essential information!

Chair: Anthony Restuccia, CSLS President & Dennis Bluth, former 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, Absolute Business Solutions Pty Ltd

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

SAVE TIME: SAVE MONEY AT CALLOVERS IN THE CIVIL LOCAL COURT

When: Wednesday 7 June 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: CRAIG NORMAN, Deputy Registrar, Downing Centre Local Civil Court

Craig Norman daily conducts the callovers, practical reviews, subpoenas and Motions in the Downing Centre, Local Civil Court, the largest Civil Court in Australia.

Understand the Registrar's views on subrogation, delegated powers, the right Rules, the limitations of the Uniform Rules, case management requirements/trends. Seek clarification.

Chair: Anthony Restuccia, CSLS President

A SPECIAL SMALL FIRMS PRACTICE FORUM with The Challenge of Solicitors Chambers

When: Wednesday 14 June 2006, 5:30pm to 7:15pm

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

Speaker: STEPHEN BELL, Sole Practitioner

Because of the June Public Holiday, we will have a Small Firms Practice Forum combined

with a Spot Talk on The Challenge of practising in Solicitors Chambers. Led by STEPHEN BELL, who has been in a diversified Solicitors Chamber Practice for 11 years. Similar operations have failed. Why? What is the key to his successful operation?

These forum meetings have proved very successful. The discussion is informed and relevant. Its all about ensuring survival. Last month we talked about LawCover, the Legal Fees Review Panel Report on Costs (just released), the Government "beat-up" and smoke alarms legislation. Members attending set the agenda. Experienced practitioners offer their views.

Note: The new Legal Profession (Amendment) Bill of May 2006 - on Costs - will be discussed.

Chair: Anthony Restuccia, CSLS President

SPECIAL JUNE SEMINAR ON THE COMING TORTS REFORM

When: Wednesday 21 June 2006, 5:30pm to 7:15 pm

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

Speakers: Rev. Hon. Dr GORDON MOYES, MLC.

Mr Moyes is the Chair of the Legislative Council Committee which examined the present Personal Injury Compensation legislation. Also participating will be **JUNE McPHIE**, President of the Law Society of NSW and a Senior Counsel experienced in this field. An insurance spokesperson has been invited, as has Australian Lawyers Alliance.

The Parliamentary Report was released on 8/12/2005. **It offered 26 recommendations to improve the legislation** (see Inquiry Report on www.parliament.nsw.gov.au).

Some recommendations are crucial, eg. the increase in the 10% WPI threshold, discontinuance of the MAA guidelines, a new personal injury compensation authority be established, a new medical service to provide independent medical assessment of injuries, amend the cap on legal costs recovery, to overturn the Plant Fisheries v La Rosa decision.

The Government has been asked to respond to the Report by 8 June 2006. The Government is responding. What is coming?

Chair: Anthony Restuccia, CSLS President

A GUIDE TO THE MEDIATION PROCESS - WHEN SHOULD YOUR CLIENTS MEDIATE?

When: Wednesday 28 June 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: Mr BRUCE SELICK, Regional Coordinator for Community Justice Centres, Sydney Region

Mr Sellick will provide an overview of mediation and how it can assist your business and your client's individual needs. When is Mediation really beneficial?

Chair: Anthony Restuccia, CSLS President

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

- Tax seminar - 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.
- Callovers in the Civil Local Court - Wed 7 June '06
CSLS Memb: Free; Law Soc Memb: \$25; Non Memb: \$35.
- Small Firms Practice Forum - Wed 14 June '06.
CSLS Memb & Non-members: FREE.
- The coming Tort Reform - Wed 21 June '06.
CSLS Memb: \$44; Law Soc Memb: \$55; Non Memb: \$66.
- Mediation - Wed 28 June '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 for 2006-2007.

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

Mob. 0419 698 753, Fax 9438 5143

Vice President: John Newton johnnewton@tars.com.au

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

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

Secretariat: PO Box 268, Belrose West NSW 2085 Ph 9453 3511 Fax 9453 3522 Email
csls@optusnet.com.au

Presidents Message

Lord Steyn, Chairman of Justice (UK) recently delivered the Attlee Foundation Lecture for 2006. Reflecting on history, he concluded that majority rule in Parliament by itself and legality on its own are insufficient to guarantee a civil or just society. "Even totalitarian states" he believes "mostly act according to the laws of their countries. They demonstrate the dangers of uncontrolled executive power. They also show how it is impossible to maintain true judicial independence in the contaminated moral environment of an authoritarian state".

He quoted Lord Hailshaw describing the Westminster System in 1978 as "an Executive dictatorship". Will the sovereignty of Parliament in theory becoming more the sovereignty of the House of Commons and like all absolute rulers, having more and more to do and in consequence less and less time within which to do it, becoming more and more the tool of its professional advisers, more and more intolerant of criticism, and less and less in control of the detail of what is done in its name accelerating to become a more presidential system these days.

"The public," Lord Steyn argues "is now increasingly looking not to Parliament but to the Judges to protect their rights....stand up for individuals against the government....the need for Judges to protect the rule of law."

The Modern United Kingdom legislation to be reviewed must conform to rights under the

European Convention on Human Rights.

The old English principle of absolute legislative sovereignty of Parliament has now been qualified, so that in exceptional circumstances the rule of law will protect a constitutional fundamental.

Australia has no overarching standards to protect the fundamental rights of the individual or a fundamental disturbance to the constitution.

Is there an absolutist trend in Australia? With refugees such as the Papuan refugees, the Australian Wheat Board Inquiry, the Hydro Electric Authority sale, Seasprite Helicopters, the Sydney Cross City Tunnel and R.T.A., Civil Liability Legislation, even the Luna Park Protection Act.

In Australia the rule of Law has less influence less powers than it has in the UK. Australian/NSW citizens need fundamental and transparent rights legislation to guide parliamentarians.

I extend the Society's thanks to our recent guest speaker Phillip O'Grady, Alastair Dunn, Greg Livermore and Tony Fairbairn for giving their time and knowledge so generously at recent meetings.

I look forward to seeing you at our coming special talks and seminars for May & June.

With every best wish,
Anthony Restuccia
President

FOR YOUR INFORMATION

Legal Profession Amendment Bill, 2006 (yet another!)

Was introduced by the NSW Attorney General on 5 April, 2006 and introduced into the upper house on 4 May, 2006. Debate not completed.

The explanatory notes provide an overview of the Bill, which includes:

- increase maximum penalty for offences relating to advertising
- disclosure of rate of interest payable on unpaid legal costs made by reference Reserve Bank Base Rate Target plus 2%
- expand categories of clients exempted from initial cost disclosure
- at end of complaint procedure, in suitable cases, provide for condition on practising certificate
- enable complainants in disciplinary matters to apply for compensation
- provide for setting aside of unreasonable/unfair costs agreement in whole/part

For discussion. Attend our Small Firms Practice Forum on 14 June 2006.

Professional Indemnity.....

Do you have views about PI insurance and its impact on your practice. Email to the President: A_j_restuccia@yahoo.com.au

Professional Service Entity and Tax

The ATO guidance document on "Your Service Entity Arrangements" – a guide to help ensure your business is claiming only deductible service fees and charges for your service entity arrangements has been released. See what it means for you by visiting the ATO site and obtaining a copy (28 pages). Booklet covers:

- comparable and indicative service fees for certain service arrangements (higher rates can be acceptable, comparable market rates, calculating mark-up)

- case studies (labour hire, rental arrangements, expense payment arrangements)

Our Special Tax Seminar on 25 May 2006. Be there.

Legal Fees Review Panel

The report dated December, 2006 was published on 2 May, 2006 and can be found on the www.lawlink. Homepage. The Attorney General issued a press release on 27 April 2006 Headed "Government moves to end legal billing rorts".

"Dodgy lawyers and rapacious legal firms have been put on notice that the days of outrageous billing practices are over. A report into legal fees commissioned by the NSW Attorney General has identified current system system of fees and charges as a significant contribution to the rising cost of legal services. The report has called for a culture change in the legal profession that will see improved communication and transparency between lawyers and their clients and has called for an end to the domination of time billing. The report provides a blueprint for the introduction of significant consumer protections". Many hard working people fear the prospect of engaging legal advice or services and ending up with an enormous bill. The practice of time billing, the equivalent of a running meter, on long and complex matters can see legal bills blow out....."

See also the Law Society Response.

There are 37 recommendations including:

4. requirement to disclose existence and nature of any relationship between the practitioner, the practitioners firm and any service provider proposed to be retained for which the client will be charged
5. no practitioner, or practitioners firm should be permitted directly or indirectly to profit from disbursements
11. disclosure in plain English, inadequate disclosure of costs will result in financial penalties, loss of 20% of legal costs
10. solicitors who do not pursue party-party costs from the other side should not be able to recover their own costs from their client
14. if a costs assessor is of the view a practitioner has failed to comply with disclosure requirements, cost assessor should refer the matter to the LSO
- 30/31 lawyers to provide final bill no later than six months after completion of a matter, and should not be able to charge interest
37. Independent research capacity established in the Office of LSO to examine/public discuss issues of law firm economics, legal practice management, economic impacts on legal and justice systems.

For further discussion, attend our Small Firms Practice Forum on 14 June 2006.

UK Costs Forum

The UK Civil Justice Council has moved to extend the predictable costs regime for small road traffic cases to similar employers' and public liability cases. Present at the Costs Forum were Court of Appeal Judges, solicitors representing insurers and claimants. A Pre action protocol was mooted that would encourage insurers to make early admissions of liability following a basic initial letter before claimants solicitors begin to rack up costs. Evidence from the road traffic scheme, with predictable costs for cases that settle

pre issue for less than \$10,000 has worked well bringing down the length of cases and improving cash flow for claimant solicitors. There was support for extending the scheme into employer's liability cases. Interest was also expressed in the creation of a Costs Council to provide advice to the judiciary on hourly rates, fixed fee levels and related issues. Court controlled contingency fees, as exist in the Canadian province of Ontario were also considered.

Source: UK Law Gazette, 9 March, 2006 at www.lawgazette.co.uk/news/breaking/view+newsarticle.law?GAZETTENEWS...

LMS Financial Benchmarking Survey, 2005 - UK

The UK LS Law Management Section (LMS) undertakes in-depth research. The 2005 Benchmark is based on the response from 176 firms (10%). The survey seeks to identify and measure new trends and covers such things as experience with money laundering regulations, changes in accounting practices. Key findings:

Fee income:

median annual fee income per fee earner is \$101,328 (8.2% up from 2004). Median fee income per partner is \$434,640 (down 7.5% from 2004). One third of fee income is accounted for by fee earner costs. For every fee earner there is at least one support staff member

Net Profitability:

Median profit for individual equity partner is \$114,089. Partners at Greater London Firms were outperformed by Midlands Firms. On Average one quarter of a firms total income is profit. Medium time cash "locked" between bill and cash collection – 154 days

Full report costs \$85 pounds from LS (UK) 113 Chancery Lane, London WC2A 1PL (or DX 56 London/Chancery Lane) or use UK Law Society e-shop.

Human Rights:

A Victorian Charter of Human Rights & Responsibilities Act, 2006 was introduced into Parliament by the Attorney General Rob Hulls. Substantive debate on the Charter will take place around June, 2006 in the Victorian Parliament, with an expectation it will come into force on 1 January, 2007. PIAC, NSW Civil Liberties Union and Council of Social Services NSW all support such a Bill for NSW. The Attorney General Mr Debus supports a Charter of ARights to protect basic freedom.

Single Expert Supreme Court!!

The Judicial Commission has produced a complete guide to Single Expert Evidence, on DVD for \$25. The DVD covers, how to proceed in concurrent evidence, and a discussion. Case management of cases suitable for concurrent expert evidence or a single expert, will have Court Directions at an early stage to ascertain what is agreed between the parties.

Courtlink NSW eServices - May 2007

eServices anticipated to commence in May, 2007 will include the following services

eFiling

ecmCourt: (like an internet bulletin board)

eListing (parties can select from available listing dates)

eInformation – view details of the case record, electronic documents lodged

eTranscripts (order, pay and download a transcript)

Tort Law – Victory in Tasmania

The Labor Government of Tasmania as part of its re election campaign promised a formal review of the workers compensation system, including an analysis of the 30% whole person impairment threshold, within the first three months of the next parliament term.

The Background Briefing Paper, February 2006 "injured workers denied fair compensation" points out that the Tasmanian Government introduced changes based on unsubstantiated assertions by insurance companies (at p.3)

(ref: Law Council of Australia 16.3.2006: State Government's Workers Compensation Promise a Victory for Tasmanians)

State of the NSW Legal Profession as at 3 April, 2006

Type	Number	Percentage
All Solicitors	20,825	100%
Male Solicitors	12,079	58%
Female	8,746	42%
Private Practice	13,654	65.6%
Government	2,221	10.7%
Corporate	3,115	15.0%
Other*	1,835	8.8%

(source: *LS Information for Solicitors at NSW Statistics*)

*other includes: Solicitor Corporations, Foreign & Interstate Firms & Unemployed

Welcome to New CSLS Members

New members from the firms Abigail's, Amin Anthony Moussa Solicitor, Calvin Nelson & Co, Clayton Utz, David Leung, Deborah G Marriott Solicitor, Mark Wilson Solicitors, Gordon & Johnstone, Gregory McInnes Consultant, Inner West Legal, K M Harkness & Co, K. O'Malley Jones & Williamson, Northside Law, Peter Murphy & Associates, Building & Construction Law, Premiers Department, Remington & Co Solicitors, Rocco Mimmo Lawyer, Spirefive Legal LP, Steven Taleski, Truman Hoyle Lawyers, Turnbull Bowles Lawyers

Who's Making Decisions – and Where

An increasing number of issues are referred to Tribunals where "members" do not have life tenure.

The Administrative Decisions Tribunal, for example has jurisdiction over Guardianship & Protected Estates, Community Services, Revenue, Legal Services, Equal Opportunity and Retail Leases. There is President and one Deputy President Full Time, together with 4 part time Deputy Presidents and 56 "judicial members" and 81 "non judicial members" as at 30 June, 2004

(source: www.lawlink.nsw.gov.au/lawlink/adt_list_of_members)

The Motor Accident Authority, CARS assessors, as at July, 2005 include 6 senior assessors and 40 Assessors, and 3 internal assessors – making 49 in all.

The Consumer Trader & Tenancy Tribunal has a Chairperson, 2 Deputy Chairpersons, 7 Senior Members, 16 full time members and 73 Part Time members

(source: <http://www.fairtrading.nsw.gov.au/cttt/corporate/tribunalmembers.html>)

The Workers Compensation Commission, in addition to the President and Deputy President has 64 arbitrators and 37 mediators.

New Legislation:

Motor Accidents (Lifetime Care & Support) Bill 2006

The Bill was introduced on 9 March, 2006 and was sent to the Governor on 8.5.2006. A Proclamation is expected shortly. Briefly the Bill applies to persons who suffer catastrophic injuries in motor accidents, and extends to injured persons at fault, and to motor accidents for which no person is at fault. Participation in the Scheme will either be

- life time participant, or
- interim participant lasting 2 years, or until acceptance as a lifetime participant.

An application for participation in the Scheme can be made by or on behalf of the injured person, or by an insurer of a motor accident claim in respect of the injury, s.8(1).

An application by an insurer (to participate in the Scheme) does not require consent of the person s.8(2). Moreover the MAA may direct the insurer of a claim made by a person in respect of an injury to make an application for the person to become a participant in the scheme s.8(3).

A person will not be eligible to participate in the Scheme if the person has been awarded common law damages for their treatment and care needs, and participation in the Scheme will disentitle a person to recover damages for treatment and care needs.

Funding of the Scheme is by way of a special levy to be paid by persons to whom third party policies are issued (to be collected by licenses insurers).

New Cases of Interest

Probate: *In the Estate of Edith Lillian Rogers Deceased* [2006] EWHC 753 (Ch). Salaried partners who carry out grants of probate could be in breach of the terms of a will. A testator cited a firm as executor, hence the grant should only be carried out by profit sharing partner "not merely a salaried partner" or a person "held out" to be a partner. Hence firms need to think about the status of the person taking the grant. Should partnership agreements be re drafted to give salaried partners the profit – by introducing fixed equity partners?

Solicitors Lien: *Blanda v Kemp Strang Lawyers* [2006] NSW SC 48, Justice James J Solicitor costs, whether former solicitors entitled to lien. If entitled to lien, conditions subject to which Order under s.728 LPA 2004 should be made

Litigation: *Witnesses AMP Services v Manning* [2006] FAC 256 (24.3.06) Justice Finkelstein criticised the adversarial system as failing to adduce all relevant evidence, as the parties choose which issues to litigate, and to call evidence they feel will resolve those issues. Lawyers seek to advance clients interests rather than discover the truth are symptomatic of the flaws in the adversarial system.

Professional Conduct: *Law Society v Cornwell* [2006] NSWADT 72 Breaches of s.61, s.62. Application 2.II.2005 by LS Council under s.155A to have information filed dismissed on ground that solicitor retired from practice, together with undertaking not to re apply for practising certificate or became an associate within s.48K for five years
Held: retirement from practice is not a ground under s.155(2) to dismiss a complaint. In respect to the application to exercise discretion in s.155A, the Law Society failed to provide evidence that would enable the Tribunal to consider the facts to enable it to exercise or decline to exercise discretion in s.155A(3). Matter listed for directions for hearing under s.167(2) in respect to each of the allegations in the information.

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

Your Regional Law Society serves you, Support your Regional Law Society

Email us your ideas and opinions
Attend our functions
Invite others to join

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