



City of Sydney Law Society



A Regional Society of the Law Society of NSW

October 2006

## IT'S ON NEXT WEEK

**ANTHONY RESTUCCIA**, PRESIDENT, AND THE COMMITTEE OF THE CITY OF SYDNEY LAW SOCIETY with the co-operation of the **Hon JUSTICE R BLANCH, AM**, Chief Judge of the District Court of NSW and **His Honour GRAEME HENSON**, Chief Magistrate of NSW

invites

Judges, Magistrates, Solicitors, Barristers

to a

## Cocktail Celebration

on

Thursday 12 October 2006, 5.30pm

at

The Downing Centre Courts, 143-147 Liverpool Street, Sydney

**REGISTRATION FORM - Book early, limited places available**

- COCKTAIL CELEBRATION - Thu 12 Oct '06. [RSVP 9 Oct. 06](#)
- CSLS Members: \$29.00
- Bar Association of NSW Members: \$29.00
- Law Society of NSW Member only: \$35.00
- Non Members: \$40.00

I ATTACH A LIST OF NAMES OF ALL THOSE INCLUDED ON THIS REGISTRATION FORM  
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**PO Box 268 Belrose West 2085. Phone 9453 3511. Fax 9453 3522 Email**  
**[csls@optusnet.com.au](mailto:csls@optusnet.com.au)**  
Register early, places are limited.

## 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.

### JOIN OUR EXPANDING NETWORK

**Our seminars are cost saving, time conscious and always informative.**

### Our Coming Seminars

9 October '06: Small Firms Practice Forum

12 October '06: COCKTAIL CELEBRATION

18 October '06: Legal Emergencies

25 October '06: Litigation on Death

1 November '06: Pitfalls with Building & Construction Industry Security of Payments Act

The meetings on 18 & 25 October and 1 November are SPOT TALKS and FREE to members. These are held on Wednesdays at 5.30pm for an hour.

**This is the best time for maximum savings - \$80 for 9 months membership with free CLE talks and other benefits, like the Cocktail Celebration.**

**>>>JOIN NOW<<<**

Fill in the enclosed form, join to 30 June next year and SAVE. Non-members of CSLS can also attend our Spot Talks and seminars. The Small Firms Practice Forum (2nd Monday of each month at 5.30pm) is FREE to all legal practitioners and always worth attending. **You can find registration form and any cost requirements after the seminar notices.**

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## **OCTOBER '06**

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### ***SMALL FIRMS PRACTICE FORUM***

**When: Monday 9 October 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 thoughtful and helpful. Recent meetings have focused on LawCover and Judicial Arrogance. This meeting will discuss **INCORPORATION OF PRACTICES - BENEFITS AND PROBLEMS** with **CHRISTINE TURNBULL**, a practitioner who has incorporated. There can still be an issues workshop to help deal with your issues of concern. A member of the [Legal Services Commission](#) will also attend with a legal and tax update.

Chair: Anthony Restuccia, CSLS President

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### ***LEGAL EMERGENCIES - URGENT AND EX PARTE APPLICATIONS IN THE SUPREME COURT***

**When: Wednesday 18 October 2006**, 5:30pm to 6:30 pm - Spot talk

**Where:** Law Society of NSW, 170 Phillip Street, Sydney-**Note different venue**

**Speaker: MURRAY ALDRIDGE S.C.**, a Barrister for over 25 years.

These applications are not rare, but occur often and always unexpectedly, eg. in a landlord-tenant dispute etc. Know the procedure and be ready.

Chair: Ken Harkness, CSLS Committee

1 MCLE point earned

### ***LITIGATION IN DECEASED ESTATES***

**When:** Wednesday 25 October 2006, 5:30pm to 6:30 pm - Spot talk

**Where:** TO BE ADVISED

**Speaker:** ROBERT COLQUHOUN, a Barrister for 28 years and former solicitor who has specialised in contested deceased estate litigation for some years.

This talk will cover the contesting of Wills, rectifying of Wills, circumventing or not, the irregularities to obtaining Probate, testator Competence and Capacity, duress and fraud in wills, costs in Family Provision cases etc.

Chair: Anthony Restuccia, CSLS President

1 MCLE point earned

### **NOVEMBER '06**

### ***PITFALLS WITH THE BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENTS ACT***

**When:** Wednesday 1 November 2006, 5:30pm to 6:30 pm - Spot talk

**Where:** Law Society of NSW, 170 Phillip Street, Sydney - Note different venue

**Speaker:** MARK SOUTHWICK, a very experienced Barrister.

This is an area of law where many unexpected interpretive difficulties have occurred with horrendous financial consequences.

Chair: Ken Harkness, CSLS Committee

1 MCLE point earned

### **OTHER EVENTS TO NOTE**

#### ***LEADR-DINNER SEMINAR***

*Achieving outcomes in Mediation: a Triumph of style over substance*

**When:** 19 October 2006, from 7.00pm

**Where:** Castlereagh Boutique Hotel, 169 Castlereagh Street, Sydney

**Speaker:** Visiting Fellow Joanna Kalowski, Industrial Educator & Senior Mediator

**Cost:** \$88

**Enquiries:** Telephone 9251 3366 or email [leadr@leadr.com.au](mailto:leadr@leadr.com.au)

***ANNUAL GENERAL MEETING AND DINNER OF THE LAW SOCIETY OF NSW***

The Law Society will hold its Annual General Meeting at 4.30pm on 26 October 2006 at the Law Society building, 170 Phillip Street, Sydney. It will be followed by the Law Society Dinner at Dockside, Cockle Bay, from 7pm.

***2006 JUSTICE AWARDS***

**When:** 31 October 2006, 6.00pm

**Where:** Dining Room, Parliament House, Sydney

**Special address:** The Hon Malcolm Fraser A.C.

**M.C:** Maxine McKew of ABC

Presented by the **Law & Justice Foundation**

**Enquiries:** Tel 8227 3203

***SPRING CONTINUAL LEGAL EDUCATION AT PUBLIC DEFENDERS***

**When:** 8 November 2006, 5-7pm

**Where:** Carl Shannon Chambers, lvl 13, 175 Liverpool Street, Sydney

**Cost:** \$40

**Subjects:** Recent developments in Sentencing and Sex Assault Law

**Enquiries:** Susan Lock. Tel 9268 3111

***THE 2006 FORBES LECTURE FOR LEGAL HISTORY***

**When:** 9 November 2006, 5.30pm

**Where:** Bar Association Common Room, 175 Phillip Street, Sydney

**Speaker:** Rosemary Annable

**Enquiries:** Bar Association of NSW [www.nswbar.asn.au](http://www.nswbar.asn.au)

**REGISTER HERE**

Send an email to Marianne Atherton on [cls@optusnet.com.au](mailto:cls@optusnet.com.au) or print this page, complete the form and post or fax it to the below address.  
A tax invoice will be sent to you.

**REGISTRATION FORM - Book early helps catering**

**I wish to attend the following:**

- Small Firms Practice Forum - Mon 9 Oct '06.  
CSLS Memb & Non-members: FREE.
- Legal Emergencies - Wed 18 Oct '06.  
CSLS Memb: Free; Law Soc Memb: \$25; Non-Memb: \$35.
- Litigation in Deceased Estates - Wed 25 Oct '06  
CSLS Memb: Free; Law Soc Memb \$25; Non-Memb: \$35.
- Pitfalls Building & Construction Industry... Wed 1 Nov '06.  
CSLS Memb: Free; Law Soc Memb: \$25; Non Memb: \$35
- MEMBERSHIP for year to 30 June 2007\* (See membership form below)

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**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: \_\_\_\_\_

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

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

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

**Return Registration Form**

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**PO Box 268 Belrose West 2085. Phone 9453 3511. Fax 9453 3522 Email**  
**[csls@optusnet.com.au](mailto: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](mailto:a_j_restuccia@yahoo.com.au)

Mob. 0419 698 753, Fax 9439 5914

**Vice President:** John Newton [johnnewton@tars.com.au](mailto:johnnewton@tars.com.au)

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

**Secretary:** Vonette Cornu [vonette.cornu@sbs.com.au](mailto:vonette.cornu@sbs.com.au)

**Secretariat:** PO Box 268, Belrose West NSW 2085 Ph 9453 3511 Fax 9453 3522 Email [csls@optusnet.com.au](mailto:csls@optusnet.com.au)

## *President's Message*

### **Law Society Election 2006**

Prof David Barker is a long standing Committee member of the CSLS. The Society believes he is deserving of support at these coming elections.

He was admitted in 1993, is immediate past Dean of UTS Law School, member Legal Profession Admission Board, past member of the Bar Association Professional Conduct Committee No. 2 for eight years, Past Chair Council of Australian Law Deans. David has broad experience, understanding and knowledge of practice as a lawyer.

### **Regional Presidents Meeting**

The next Regional President Meeting is scheduled for 26 October 2006. Items members would like me to raise should be sent to me without delay.

### **CSLS Lawcover Working Group**

The CSLS Small Firms Working Group recommended to City of Sydney Law Society the setting up of a LawCoverWorking Group to consider suggestions for improvements and any alternatives to LawCover. The new group was endorsed and approved. For information contact Kerry Donohoe, Donohoes Commercial Lawyers at 9294 7447, or [mail@donohoes.com.au](mailto:mail@donohoes.com.au)

## **A Word of Appreciation**

We continue to enjoy excellent Spot Talks. Our visit to the Judicial Commission on 27 September 2006 was eye opening. An excellent occasion. To Ernest Schmatt, the CEO, we are most grateful. We look forward to a most informative and enjoyable October. We also express appreciation to the Public Trustee in hosting our September Committee Meeting.

## **The Last Word**

On 28 November 2006 it is the Lawyer Sailing Day. See advertisement at back.

Remember our Spot Talks are the best value in town.

**Celebrate with us at the Lawyers Cocktail event of the year. Ensure your attendance - register now. Miss it, you'll regret it.**

Join us in CSLS activities. Suggest improvements. It's your Local Law Society.

Best wishes,

**Anthony Restuccia, President**

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## **FOR YOUR INFORMATION**

### **Judicial Information Research System (JIRS)**

Solicitors are sometimes criticised for not presenting or researching their submissions properly. One way to stop this criticism is to install JIRS, a large computerised database with legally and relevant information on sentencing prepared by the Judicial Commission for Judges and Magistrates. The system is available to barristers and solicitors to use and it is updated weekly online. It's benefits are considerable, but to the sole practitioner/small firm it is expensive at a \$1600 subscription. The CSLS is negotiating for cheaper access. I recommend it.

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## **Law Society Elections**

The Elections are again upon us. At this very challenging time for the profession CSLS

recommends that its members think about the past voting patterns of the Law Society. Traditionally the voluntary vote has been very low, often as low as 15%. This year there are 22 nominations for seven seats on the Council.

Under recent amendments to the Constitution of the Council there are now reserved seats for Corporate, Government, Big Firm, in addition to City, Suburban and Country Member and the President for the time being of the Young Lawyers Section of the Law Society.

From this diverse group our business financial interests, practice rules, complaints are governed as well as the governance of the Law Society of NSW Pty Ltd.

All persons elected will also be directors of the Law Society having duties and responsibilities under the Corporations Law and some will also become directors (with directorship fees of for example, Law Cover and its subsidiaries, College of Law). Some of these directors will also benefit from overseas travel for the Society and from statutory appointments to for example the Legal Profession Advisory Council, Council of Law Reporting for NSW, PILCH, PIAC, Legal Practitioners Admission Board, Law Extension Committee (SAB Board), Motor Accident Council, various court committees. In addition some will be appointed Chair of various in house Law Society committees and all will be members of the Professional Conduct Committees.

Those whom we as members elect to govern us and be directors of our Society bear a heavy responsibility and are accountable. We should vote.

### **Law Council of Australia**

Australia's largest law firms have threatened to withdraw financial support from state and territory law societies unless they hand more power to the peak national legal organisation and fast track introduction of consistent countrywide legislation on the profession. Big firms have become frustrated at the pace of implementation of the laws, and at moves by several state law societies to stall and change aspects of the new regime previously agreed to by the Law Council and state and territory governments.

The big firms want the LCA to be re structured to make it more representative and to provide "one voice" for the national profession. They also support a push to make all Australian lawyers members of the

LCA. They want state law societies to become chapters of the peak national body. Any move by the big firms to withdraw from state and territory law societies would devastate many professional bodies, particularly in NSW where lawyers at national firms make up 40-50% of memberships.

(Source Australian Financial Review Friday 15/9/2006 p.1 Marcus Priest, Legal Editor)

### **Electronic Conveyancing in NSW**

The National Steering Committee advises that at the present rate a green light for implementation will be given by mid 2007. Under the NECS there are three principal roles for users:

**Subscribers** – who are insured users and generally will be a corporation, partnership, government agency, sole trader or the trustee of a business trading as a trust

**Users** – subscriber's employees or contractors working under day to day supervision of the subscriber

**Certifiers** – users who are legal practitioners, licensed conveyancers or specially authorised employees or contractors of the subscribers

Find out more about the future coming soon to NSW at the Electronic Conveyancing Newsletter published by the Lands Department of NSW see at [www.lands.nsw.gov.au](http://www.lands.nsw.gov.au).

### **Interesting Cases**

#### **FOI**

#### **McKinnon v Secretary, Dept of Treasury [2006] HCA 45 (6.9.2006)**

**Concerning an FOI certificate:** The AAT does not make its own assessment as to whether disclosure is contrary to the public interest when reviewing a conclusive certificate. The Tribunal must focus its attention on whether reasonable grounds exist for concluding disclosure is contrary to the public interest.

Callinan & Hedon JJ provided guidance as to what grounds may be considered reasonable in future:

- . need for confidential communication about controversial matters of ongoing sensitivity
- . lack of context for financial data
- . inclusion of technical jargon in a document may not be reasonable grounds for concluding disclosure is contrary to public interest.

#### **Solicitor Sentenced**

#### **Oudomvilay v Regina [2006] NSWCCA 275**

Appeal by solicitor against sentence of six years and nine months with non parole period of four years. Various misappropriation from Trust Account amounting to \$809,350 during the period December 2002 to October, 2003. Full reimbursement to clients by the Fidelity Fund of Law Society. Appeal dismissed.

### **Privilege in briefing Experts**

#### **Hughes & Ano v St Barbara Mines Ltd & An [2006]WASC 145**

Facts: plaintiffs retained expert on valuation reports. Expert prepared two reports which were served on defendant and indicated intent to rely upon them. Letters of instruction were discovered by the plaintiffs who then objected to producing the letters for inspection on the grounds of legal professional privilege. Defendants challenged the claim.

Held: Plaintiffs waived privilege on the letters of instruction to expert following **ASIC v Southcorp** (2003) 46 ACSR I Lingren J.

### **Solicitors Fidelity Fund – loss in Queensland**

#### **Law Society of NSW v Glenorcy & Ors [2006] NSWCA 250**

Solicitor admitted in NSW and Queensland. Living in NSW, office in Queensland. Client from NSW entrusted deposit in Queensland bank. Misappropriated. Question: whether sufficient connection with practice as a NSW Solicitor, whether claim against NSW Fidelity Fund where failure occurred in Queensland

**HELD** s.80(4) does not require the legal practice to be conducted predominantly in or from NSW. Legal practice is not to be equated with the office from which it is primarily conducted. S.80(4) does not require defalcation to occur in NSW. S.80(4) recognise the Fund may be amendable to claims by NSW who practice anywhere in Australia.

### **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

## **An Invitation to the 17th Annual Lawyers' Sailing Day on Sydney Harbour**

**Tuesday 28 November '06**

**All are welcome.**

**It's a friendly social race followed by a picnic at Store beach. A free tender service will be available between your boat and the beach on the day.**

**Prizes will be given and of course bragging rights are available until the following**

year.

Seafood hampers can be pre-arranged.

Keg beer on tap is available as part of the entry fee.

Bring your boat & bring your firm. If you do not have a boat, subject to availability you may be placed as crew on a boat and no skill or experience is necessary.

Alternatively you can charter a boat with or without a skipper for the race.

Enquiries & entry forms are available from Robyn Cross at the Law Society of NSW by telephone on 9926 0253 or by email [mc@lawsocnsw.asn.au](mailto:mc@lawsocnsw.asn.au).

Sponsored by ANZ Private Bank.

**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](mailto:csls@optusnet.com.au)

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Invite others to join

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