



City of Sydney Law Society



A Regional Society of the Law Society of NSW

September-October 2006

SPECIAL ANNOUNCEMENT

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
- Judge, Judicial Officer: GUEST, complimentary attendance
- Magistrate: GUEST, complimentary attendance

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
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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, 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.

TELL A FRIEND: JOIN OUR EXPANDING NETWORK

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

Our Coming Seminars

27 September '06: The Judicial Commission Works for You

4 October '06: The Small Claims Division of Civil Court

9 October '06: Small Firms Practice Forum

12 October '06: COCKTAIL CELEBRATION

18 October '06: Legal Emergencies

The meetings on 27 September, 4 & 18 October 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 10 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 costs after the seminar notices.**

SEPTEMBER '06

>>>URGENT<<<

SPECIAL INVITATION

TO VISIT THE JUDICIAL COMMISSION AND INSPECT JIRS (Judicial Information Research System)

THE JUDICIAL COMMISSION WORKS FOR YOU -

BUT DO YOU USE IT?

When: Wednesday 27 Sept. 2006, 5.30pm to 6:30pm - Spot talk

Where: Judicial Commission Office, lvl 5, Thakral House, 301 George Street, Sydney (above Wynyard Railway Station)

Speaker: ERNEST SCHMATT, PSM, the CEO of the Judicial Commission of New South Wales

The Judicial Commission examines complaints about the conduct of Judicial Officers. It also provides assistance with sentencing and research of the law. It has a very extensive, updated online database helping Judges in decision making. It can be made available to solicitors - to YOU. Mr Schmatt will demonstrate how the System works. This meeting offers new opportunities. This talk is something completely new.

Chair: Anthony Restuccia, CSLS President

1 MCLE point earned

OCTOBER '06

THE SMALL CLAIMS DIVISION OF CIVIL COURT - SAVING TIME & MONEY

When: Wednesday 4 October 2006, 5:30pm to 6:30 pm - Spot talk

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

Speaker: GRAEME ROBERTS, the long time Assessor of the Small Claims Division at the Downing Centre Local Court and former Registrar.

The Division handles a huge volume of litigation to \$10,000. It has a unique jurisdiction. What are the pitfalls? What are the common issues and problems in this Division? Knowledge saves time and money.

Chair: Anthony Restuccia, CSLS President

1 MCLE point earned

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.

Chair: Anthony Restuccia, CSLS President

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

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

OTHER EVENTS TO NOTE

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

REGISTER HERE

Send an email to Marianne Atherton on csls@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

- Judicial Commission - Wed 27 Sept '06.
CSLS Memb: Free; Law Soc Memb: \$25; Non-Memb: \$35.
- Small Claims Division - Wed 8 Oct '06.
CSLS Memb: Free; Law Soc Memb: \$25; Non-Memb: \$35.
- 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

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

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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: _____

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 9439 5914

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

President's Message

Our Cocktail Celebration - 12/10/06

We will be having a Cocktail Celebration on 12 October 2006. It will be a gathering particularly for practitioners at the Downing Centre, John Maddison Tower and the Central Local Court. A rare occasion to meet socially the Judges, Magistrates, Solicitors and Barristers who serve the cause of justice in the largest Court complex in Australia.

Join us at the Downing Centre at 5.30pm on 12 October for a

memorable evening. Register now, have no regrets.

Support a Fair Go for Injured People Campaign.

On 19 September 2006, the peak legal bodies launched a campaign to convince political parties for the overhaul of the personal injury laws dealing with compensation for victims injured on the road and at work. Present legislation precludes 90% of all persons injured in car accidents from obtaining any damages for pain and suffering. In addition, the arbitrary threshold bars any compensation at all. This is totally unfair. The beneficiaries are the insurance companies who get premiums and save on payouts, presently estimated at \$6 billion!

A word of appreciation

Our recent Spot Talks are continuing to be popular. To Charles Cawley, Secretary of the Law Society of NSW, Jerry Tyrrell of Tyrrell Property Inspectors, and Peter Rosier, Costs Assessor, we express our thanks for excellent, informative talks causing practical discussion. We have been very fortunate with the calibre of our speakers - a feature we will continue in the coming weeks with Ernest Schmatt from the Judicial Commission, Graeme Roberts from the Small Claims Division, and with experienced barristers Murray Aldridge, S.C., on "Legal Emergencies".

Rule Against Double Jeopardy

It is believed the State Government is proposing to change the Rule Against Double Jeopardy. This is one of the fundamental principles holding up our common law heritage and criminal justice system. It has been said that with interpretation (see Carroll's Case in the High Court), the Rule is confusing, however, the fundamental principle that an accused should not be charged repeatedly with the **same offence** or that every accused must have **finality** - cannot be opposed. It has a 800 year history.

Science has in recent years moved forward with D.N.A. and handwriting evidence, however, even this evidence can be incorrectly interpreted or manipulated as the eminent and respected Senior Counsel Chester Porter has stated. The "discovery" also of new witnesses is open to abuse by corrupt or over zealous police.

Sadly, bad cases of corruption are still being found against police and some recommendations for improvement have been ignored.

We are privileged to live in a free society not a police state.

Changes to our fundamental principle like this Rule, must be considered most extraordinary. There are no quick fixes to principles. A statutory "solution" can create greater harm to the community than the original one-off problem!

David Hicks

With the Law Society of NSW and other legal bodies, our City of Sydney Law Society has expressed its concerns over the legalities of David Hicks U.S.A. detention.

The Sydney talk on 15 August 2006 by David Hicks' US Military Lawyer Major Michael D Mori is available on a DVD from the Law Society Library. Email requests to library@lawsocnsw.asn.au.

Regional Law Societies Review Following a resolution of the City of Sydney Law Society, a Motion was adopted by the Regional Presidents Conference on 21 July 2006 "That the Law Society of New South Wales carry out a major review of the role, function, powers and funding of the Regional Law Societies, and this review is to be completed within twelve months with progress reports presented at each Regional Presidents Meeting during this period." Send us your suggestions and concerns.

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

Best wishes,

Anthony Restuccia, President

FOR YOUR INFORMATION

Transmission of Business - New Traps

Adjustment of employee entitlements on sale of business is now subject to complex legislative amendments. Entitlements vary depending on an employee's industrial coverage - Awards, enterprise agreements, AWAs and contracts relating to a business should be explored before contracts are entered, and specific conditions relating to offers of continuing employment may be necessary.

Where there is continuing employment Part 11 workplace Relations Act 1996 (C'th) will generally apply to transfer of staff in most sales, but State Legislation or awards may apply. Care should be taken if the parties are corporations. S.602-605 Workplace Relations Act may require compliance in respect to the giving of notice to transferring employees and the Office of the Employment Advocate. Fines may be incurred for failure to give notice within the 28 day time limit.

Leases and GST

The Federal Court handed down joint judgements in relation to the GST transitional provisions - s.13 of A New Tax System (Goods & Services Tax Transition) Act 1999:

Westley Nominees Pty Ltd v Coles Supermarkets [2006] FCAFC 115

C'er of Tax v DB Prefe Funds Management [2005] 218 ALR 144

Issue: whether the lessor liable for GST on supply of a lease, where lease agreement entered into prior to introduction of GST and whether the lessee was entitled to claim input tax credits for the GST. S.13(5) was considered together with "review opportunity."

St James Court Elizabeth Street

St James Local Court will close on 9 November 2006, and its care work will be divided between Parramatta Children's Court (2/3 of work) and Bidura (1/3).

Cases of Interest

Causation: Joint and several liability -v- proportionate liability

Barker v Corus [2006] UKHL 20 and 2 other co joined appeals

Murry v British Shipbuilders (Hydrodynamics Ltd) [2006] NLJR 796

Patterson v Smiths Dock Ltd [2006] 2 WLR 1027

Causation-exposure to asbestos products, etc. Mesothelioma. Recent Judgements of the House of Lords have reversed the onus of proof, and reflect a change in public policy by the UK judiciary. Mesothelioma is a progressive disorder, and each exposure is causative. The House of Lords replaced joint and several liability with proportionate liability. A High Court case is awaited on this point.

Civil Liability Act, s.5B duty of care - risk "not far fetched", "not insignificant"

Drinkwater & Ors v Howard [2006] NSWCA222

Conditional Fee Agreements-UK position

Garrett v Halton Borough Council, and Myatt & Ors v National Coal Board [2006] EWCA Civ 1017 (18 July, 2006) Court of Appeal

The position regarding conditional fee agreements (CFA's) has changed following the above two cases. The decisions remove the protection claimants' solicitors got from the earlier decision in *Hollins v Russell* against minor breaches of the conditional fee regulation having catastrophic consequences. *CF with Legal*

Professional Indemnity Insurance UK

On 17 August 2006, the Law Gazette UK reported "Low rates expected for indemnity insurance. Solicitors look set to reap the benefits of a highly competitive professional indemnity insurance market this year as insurers are likely to offer the same rates as last year despite increases in fee income, brokers predicted.

Steve Holland, director at broker Alexander Forbes Professional said rates have been going down for the past three years. There is a lot of competition, insurance players and new entrants to the market. There are more insurers wanting the business so the prices go down.

The Law Society of UK Annual Conference

The Conference will take place on 13 October at Law Society's Hall in Chancery Lane, London. The Law Society will launch information of security guidelines, and provide views on financial and management experts on alternative business structures.

UK Law Society

Minutes of the UK Law Society, annual general meeting which took place on 13 July, 2006, can be perused on its home page www.lawsociety.org.uk .

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

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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