THIS WEEK'S ARTICLES

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ANTI-MONEY LAUNDERING LAW

Lawyers lagging in AML compliance

By Diana Clement

Lawyers are dragging their heels on anti-money laundering (AML) compliance, risking penalties of up to $5 million, reputational damage and full-scale police investigations when the regulator begins its inspections towards the end of this year.

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More than $1 billion of dirty money is laundered through New Zealand each year

Also in the regulator's sights are real estate agents, who have been required to be compliant since January and have six months' grace before the regulator comes knocking. And, from August, dealers in high-value goods such as art, precious metals and gems, and top-end motor vehicles will be brought into the AML framework.

In the meantime, the regulator – the Department of Internal Affairs (DIA) – has trebled its staff numbers for monitoring AML compliance. Where it finds breaches, DIA is warning it will pass its findings onto the police and other law enforcers.

According to the NZ Financial Intelligence Unit, more than $1 billion – the proceeds from drug dealing and other crime – is laundered locally each year. Added to this is the dirty overseas money being laundered here, some of which is finding its way into property transactions, according to evidence from the DIA.

If you ask them, most law firms will say they have AML under control, says Jenine Colmore-Williams, executive director of Dimension GRC, an AML software and service provider. But the reality is quite different

"To say that all lawyers are compliant would be a massive exaggeration," says Colmore-Williams. While the big tier one firms know the risks and have largely put robust systems in place, tier two – the mid-sized firms is floundering.

"We have significant intel from the market. [Tier two firms] are going at it with the best of intentions, albeit through the lens of frustration."

They will hunt for the lawyers first

The need to get a client on board and billable in the shortest possible time is driving their behaviour, says Colmore-Williams. Without compliance, the client cannot be billed so many firms are doing the bare minimum and taking shortcuts. "What happens when you do that is you are not compliant," she says.

Richard Manthel, director at AML Solutions, says from his experience around one-third of lawyers are still in learning mode, but real estate agents appear to have made a better start.

The Anti-Money Laundering and Counter Terrorism Financing [AML/CFT] Act 2009 places the onus on businesses to do client due diligence (CDD) and ongoing monitoring to make it harder for criminals to profit from and fund illegal activity.

The penalties set out in sections 90, 100, and 105 of the AML/CFT Act range up to $5m.

Colmore-Williams, who offers a one-stop-shop for risk assessment, ongoing compliance and monitoring, and audit, says her firm can onboard a client in about 15 minutes and a mid-size firm or SME can be made compliant in a couple of weeks.

New territory

It's a new experience for real estate agents to verify the identity of clients in line with the legislation and, where necessary, to establish the source of funds for the transaction and wealth. This becomes more difficult where there are trusts, or shell/nominee companies.

The next issue is that smaller firms often manage

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ANTI-MONEY LAUNDERING LAW

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compliance manually, Colmore-Williams says.

"When you have to verify somebody's passport and that passport is issued in China, how are you doing that? Most are not. They are falling way short of the mark. The law says you must be able to identify the person and understand the risk they pose to your business."

Matching a face to a passport that might be fake isn't enough. Even clients domiciled in New Zealand may have multiple names they're known by in different languages and their passports may use a variety of scripts including cyrillic, abjad, hànzì and others.

"We are in a global economy. If you think you can look at someone's passport and [AML] is done and dusted, you are falling way short of the legislation.

"In December the DIA is going to come hunting," says Colmore-Williams. "They will hunt for the lawyers first."

The regulator isn't out to hang every lawyer and agent who makes a mistake or doesn't try hard enough. There is a big difference between cutting corners, and failing to educate oneself or deliberately breaking the law.

Chapman Tripp partner Penny Sheerin says the DIA has a range of levers it can use when genuine mistakes are made. Those include feedback, guidance, warnings and announcements designed to affect reputation. Only the most egregious cases will end up in proceedings, says Sheerin.

Cutting corners

Inevitably the lure of billings and commissions will encourage a minority of lawyers and agents to cut corners, turn a blind eye or worse. Those who think they can operate under the radar, however, are mistaken. AML regulators have teeth and are willing to use them

If the experience of financial institutions, under the AML umbrella for five years now, is an indicator, the DIA will find breaches.

So far, two court proceedings under the AML/CFT Act have been concluded, the DIA says. Ping An Finance was hit with a $5.29m penalty plus costs, and Qian DuoDuo Limited had to pay $356,000 plus costs.

Richard Manthel

Penny Sheerin

Jenine Colmore-Williams

We are not whinging. The industry is very well aware of the potential implications if they don't comply

The Financial Markets Authority (FMA), which regulates the financial sector, has lost patience.

Liam Mason, FMA director of regulation, says even after five years under the AML regime the sector isn't compliant across the board.

The FMA plans to step up its desk-based and on-site monitoring, and will increase its focus on reviewing independent audit reports. "We expect to see more mature policies, procedures and controls in place," says Mason.

Costly exercise

Both agents and lawyers complain about the cost of compliance and fear honest customers will defect to a less-stringent competitor.

Bindi Norwell, chief executive of the Real Estate Institute of New Zealand (REINZ), says CDD is proving laborious for agents.

"[Clients] think it is very invasive," she says. "They ask, 'Why should you know all that about me?' You might spend hours with us, doing your homework. They can then turn around and say 'I am going with someone else'. That is hard."

"We are not whinging. The industry is very well aware of the potential implications if they don't comply," says Norwell.

Like lawyers, agents who deal with many overseas-domiciled clients are finding AML compliance most taxing, thanks to the need for enhanced CDD.

Doing it manually can take hours and is subjective, says Colmore-Williams. It takes three seconds using Dow Jones data checks that report on politically-exposed people, relatives and close associations, international government sanction lists and watch lists, and those linked to high-profile crime, she says.

Electronic databases such as Dow Jones are a far cry from assigning an administrator to trawl through Google and hope they get it right, she says.

"There are a whole bunch of [lawyers and agents] out there doing the best they can with what they have interpreted the legislation to be [but] they are not being compliant."

With no centralised system such as RealMe to help reporting entities in meeting their obligations, many have turned to third parties such as Dimension and AML Solutions to perform CDD. Smaller businesses with their own in-house systems and under-resourced staff are open to risk.

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COPYRIGHT LAW

Big issues face drafters of new copyright law

By Frith Tweedie & Grace Abbott

Kiwis love to create, access and share content on social media platforms, streaming services and in other ways on the internet.

Many of those services didn't exist when New Zealand's Copyright Act 1994 was last reviewed more than a decade ago.

Since then, digital developments have created a range of new opportunities to share and access copyright works. Developments in artificial intelligence, data collection, augmented and virtual reality and 3D printing all raise new challenges for copyright law.

This makes the Ministry of Business, Innovation and Employment's (MBIE) current issues paper reviewing copyright law a welcome development. The review is designed to ensure New Zealand's copyright regime remains robust and flexible in our digital world.

Submissions closed on 5 April 2019. But there will be more opportunities for public input, including public consultation on an options paper and the ability to make submissions on a new draft Copyright Bill.

Copyright isn't relevant only to a select few, like writers and artists. According to Kris Faafoi, the Minister of Commerce and Consumer Affairs, "copyright affects all New Zealanders. We create copyright works when we take a photograph, record a video, or write an email, and we use copyright works by watching a sports broadcast, streaming a movie, listening to music, or reading a book."

If we want to make the most of new and emerging digital opportunities we need a clear, robust and forward-looking legal framework for the ownership of intellectual property rights. Copyright law is a key part of this picture because it incentivises and protects the commercial exploitation of creative works.

Key issues

Who owns copyright in AI-generated works?

As artificial intelligence (AI) becomes increasingly embedded in business operations, the question of who owns the output of AI will become more pressing.

Unlike the copyright laws of most countries, New Zealand's Copyright Act expressly recognises that copyright works may be computer-generated.

But in spite of this forward-looking approach, it's not clear who in practice will own the copyright in an AI-generated work – that is, who has the exclusive right to stop others from commercially exploiting it.

The author of a computer-generated work is the person who "makes the arrangements necessary for the creation of the work" (section 5(2)(a)).

But exactly who can be said to have made those "necessary" arrangements? Is it the developer or programmer of the relevant code(s) – and, if so, which one(s)?

Frith Tweedie

Copyright isn't relevant only to a select few, like writers and artists

There are likely to be several people involved. Is it the customer who is using the AI tool and who might configure it or add different inputs? For example, a bank configuring a "digital assistant" to answer customer queries specific to its products and services.

What about individuals who collect and collate data into meaningful, usable datasets to power the AI tool? Could the AI tool even be interpreted as a "person" in this context?

These questions get even harder in a machine learning (ML) context.

ML is a subset of AI that enables algorithms to automatically learn and improve from experience without being explicitly programmed by a human.

The Act currently assumes whenever a "computer" generates a copyright work, a human must have been responsible for making the "arrangements" enabling that to happen.

But while that might have been a valid assumption in 1994 when the Act was last updated, ML techniques now mean there may be no human input beyond the development of the original code.

How, then, are we meant to determine whether human "arrangements" were, in fact, "necessary" for the AI's creation of the work?

This lack of legal certainty could inhibit commercial exploitation of AI. Why invest in these technologies if your ownership rights are unclear?

Who owns the data?

We all know data is "new oil" that greases the digital economy. And there's plenty of discussion in the business world about who "owns" data – and even who "owns the customer".

Yet New Zealand law is largely silent when it comes to specific enforceable intellectual property rights in data.

The closest we've got is copyright in a "compilation", which could be used to stop third parties copying or distributing a database you've created unless they have got your permission (see the definition of "literary work" in section 2(1)).

But copyright in a compilation will exist only if your database is sufficiently "original" and you can demonstrate you've expended sufficient time, skill, labour or investment in producing the compilation.

But what happens when sophisticated software, rather than a human's "sweat of the brow", is used to compile information into databases?

Rather than looking at how much effort and creativity went into compiling a database, is it time to explicitly recognise special rights in data and/or databases under copyright law?

Contracts are often used to plug existing intellectual property law gaps. Contracting parties will often agree who "owns" certain data as between the parties to the contract. But those rights will generally apply only between the parties to the contract and not further afield, making it difficult to stop random third parties from copying your database.

Ideally the Act would provide greater legal certainty on database ownership to help facilitate the continued growth of New Zealand's data-driven ecosystem.

Protecting taonga

Based on the Waitangi Tribunal's recommendations in the Wai 262 report, MBIE is also seeking submissions on a new, unique regime for "taonga works" or expressions of mātauranga Māori (Māori knowledge).

If implemented, this would be a powerful vehicle for Māori economic self-determination.

Based on the Waitangi Tribunal's recommendations, MBIE is proposing to create a new legal regime that includes:

- a prohibition on commercial exploitation of taonga works without first consulting with, or obtaining the consent of, kaitiaki (ie, individuals with a special fiduciary relationship towards the work);
- allowing such kaitiaki to object to any "derogatory or offensive" use of taonga works; and
- establishing an expert commission to administer those new objection processes, maintain a register of kaitiaki and their taonga works and

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LETTER TO THE EDITOR

I'm so vain, I think that quote is about me

In your fifth edition, *LawNews* 8 March, you had an entertaining article boldly titled *New law slams the door on shonky liquidators*.

Damien Grant

Headline – grabbing stuff. It is always nice to see insolvency law covered by your publication, and even nicer to see that I was quoted extensively for my submission to the select committee.

My libertarian views on the inability of regulation to prevent shonky practices in the insolvency industry, or indeed any industry, have been consistently expressed over many years.

Yet, it has been brought to my attention by several of your alert readers that you took the opportunity to throw some shade with this sentence:

"*LawNews* knows of at least two prominent liquidators who are practising in spite of serious dishonesty convictions – one for fraud and the other for tax evasion."

I'm so vain, I think that quote is about me.

Now, I've so far managed to evade a conviction for tax evasion but my conviction and subsequent imprisonment for fraud back in the 1990s is well known.

Allan Hawkins

In fact, at this point I am probably the highest-profile ex-con who remains commercially active, although fans of Allan Hawkins may choose to dispute this.

It isn't a mantle I've sought but nor am I seeking to deny my past or live under a rock. I expect my competitors to mention my indiscretions at every opportunity, and rest assured they do, but the snide comment above tells only half the story.

I've been open about my past failings. Writing about my sins in the *NBR*, and for both the *Herald on Sunday* and for the *Sunday Star Times*, two national newspapers that have employed me as a columnist. *LawNews* probably knows about my history only by reading stories I've written about it.

Many members of the legal profession have taken the opportunity to bring my past to the attention of numerous High Court and Court of Appeal judges in a vain attempt to dissuade the judiciary from appointing me as a liquidator.

There are those who choose not to deal with me. That is their right and I do not complain about this.

Equally, those who do make the decision to engage with me do so knowing my previous sins. Perhaps some do because of it; I do not seek a window into the soul of my customers.

But other facts matter. In my short decade in insolvency I've racked up more judgments against directors for reckless trading and related breaches than any other practitioner, other than David Levin.

Mine is the only insolvency practice to employ lawyers to uphold the rights of creditors.

I've been appointed by the High Court more times than Theresa May has had sleepless nights. I've been recommended to clients by lawyers, appointed as a receiver by banks, and have retained my charm and good looks despite the endless sniping of more respectable but less competent rivals.

I am probably the highest-profile ex-con who remains commercially active, although fans of Allan Hawkins may choose to dispute this

The only charge that can be honestly laid at my feet is I have, on occasion, been rebuked by the judiciary for minor infractions.

I do not resile from this. The only way to avoid negative judicial comment is to avoid going to court, a practice employed by almost the entire insolvency industry.

Indeed, there are senior members of the profession who have been taking appointments for decades who remain unknown to Westlaw, while my own precedents can be found in the text or footnotes of every major insolvency judgment.

I do not seek to be a poster-child for rehabilitation. It isn't what I want on my tombstone. "He stopped being a thief after we let him out of prison" isn't the most aspirational of epitaphs, but if you believe in the concept then here I am.

If you prefer to think, however, that a person is forever tainted by their original sin, then I invite you to continue to hold your position that people like me should always be treated with the disdain and contempt that your above sentence clearly intended.

I do not begrudge you holding that view and if I have failed to convince you that I am today an honest person then you are entitled to remain sceptical.

It's a perfectly valid position to hold and we still, despite the inactivity of the law society to defend the encroachments of individual liberties over recent decades, remain a free society.

I am fortunate, however, that there are sufficient members of the wider commercial community who value the work that I do, appreciate the economic recovery that I provide to creditors, and are able to assess me on a wider set of parameters than my moral and ethical failings three decades past.

I wish you and your readers a good day.

Damien Grant

LawNews and the Easter break

Your *LawNews* has arrived a day early this week so you can enjoy your copy over the Easter holiday.

We won't be publishing next week (26 April).

The first post-Easter issue of *LawNews* will be published on Friday 3 May.

We wish you all a safe and relaxing break.

TRUST LAW

Access to the law should not be as hard as this

By Anthony Grant

In my last article (*LawNews* 29 March) I said it seemed strange that a court could grant an occupation order of a trust-owned house in favour of a non-beneficiary.

The case to which I referred was appealed from the Family Court to the High Court and I relied on what the appellate judge, Justice Graham Lang, said about the trust since I could not get my hands on a copy of the Family Court's decision.

Since that article was written I have finally obtained a copy of the Family Court decision: *Bell v Sutton* [2017] NZFC 5741 (more on this later) and I can now give a fuller description of the facts of that case.

Sutton owned a house before he began to co-habit with Bell.

When they began living in the property, it presumably changed its status from Sutton's separate property to relationship property.

Not long after they got together he transferred the property to a trust of which he and a corporate trustee were its two trustees.

Sutton was the settlor, a trustee, a discretionary beneficiary and a holder of powers.

The trust had a non-self-benefit clause ("if there is only one trustee of the trust and that trustee is also a discretionary beneficiary, that trustee will have no power to [appropriate any part of the trust fund"]).

Bell had been a beneficiary of the trust while she lived with Sutton but she ceased to be so on their separation.

She stayed on in the house and refused to leave. The Family Court held an occupation order could be made in her favour under the Property Relationships Act (PRA), even though she was not a beneficiary.

This is the legal pathway the court adopted:

- When the parties began to live in the house together, the house became relationship property.
- When the property was transferred to a trust, Sutton retained several powers which the court considered gave him effective control of the property.
- In accordance with the Bundle of Rights theory as expressed by the Supreme Court in *Clayton v Clayton (Vaughan Road Property Trust)* [2016] 1 NZLR 551, Sutton's powers became items of relationship property for the purposes of the PRA.

Anthony Grant

I think a well-drafted agreement could have prevented Bell from being able to gain occupation of the trust-owned asset

- The powers being relationship property, Bell was a co-owner of them and had a property interest in the house.

There are two obvious lessons from this case.

The first is the importance of a couple having a pre-nuptial agreement. Notwithstanding the possibility of unravelling a pre-nuptial agreement on the grounds it was unfair at the outset or that it became unfair subsequently, I think a well-drafted agreement could have prevented Bell from being able to gain occupation of the trust-owned asset.

Second, the non-self-dealing clause and the presence of a corporate trustee didn't protect the trust.

This is because there was said to be a pathway Sutton could take that would enable him to take the trust assets for himself.

This involved the following actions:

- he could transfer his power of appointment to a sole corporate trustee of which he would be the sole director and shareholder;
- with his control of the corporate trustee he could appoint himself a final beneficiary;
- he could bring forward the vesting date and then settle the assets on himself.

It appears there was no suggestion these actions would constitute a breach of fiduciary duty.

This seems a little surprising since the non-self-benefit clause was presumably put in the trust deed for the express purpose of preventing Sutton from being able to intercept the trust's assets for himself and it might be implied he should not be able to circumvent that clause so easily.

If the suggested course of action would have been a breach of Sutton's fiduciary obligations, his powers of appointment would probably not have constituted relationship property since they would not have enabled him to take the assets of the trust.

The case highlights the desirability for deeds of trust to be drafted so a person cannot arrange to appropriate trust assets for him/herself.

One way to defeat this form of reasoning is for a trust deed to record that various powers are fiduciary in nature.

This ought, of itself, prevent a court faced with a *Bell v Sutton* set of facts from being able to grant an occupation order in favour of a non-beneficiary.

I conclude with some comments about the availability of judgments from the Family Court.

The court did not like my statement in the previous article – that it had refused to give me a copy of the *Bell v Sutton* judgment and I was sent what might be described as a "Please Explain" letter.

I made that comment because when inquiries were made about getting a copy of the judgment, it was reported to me that I was not allowed to have it.

I was subsequently informed that if I wanted a copy, I would have to make a formal application to the court and give a convincing explanation for why I should be permitted to see it.

I made a request and, after more than two weeks had passed, the court accepted my explanation.

I have subsequently told the court several readers of this article are likely to want to read Judge Ian McHardy's decision, and I have asked what I should say to those of you who want it.

At the time of going to press, I have not received an answer from the court.

I therefore assume if readers want to read the decision, each of you will need to make a formal application to the Family Court since I don't want to be held in contempt of court for sending you a copy of the decision which was made available to me only because the court was satisfied with my explanation for wanting to see it.

Access to the law should not be as hard as this.

Anthony Grant is a barrister specialising in trusts & estates

ADLS BUDDY PROGRAMME

AUT Buddy Evening

On Wednesday 20 March, 32 pairs of Newly Suited lawyers and AUT's senior law students met on the rooftop terrace of Chancery Chambers for the opportunity to learn and grow.

The ADLS & AUTLSS Newly Suited Lawyer & Student Buddy Evening was the first in 2019 under the ADLS Buddy Programme initiative and a pilot buddy event for AUT. Announced in February, the event was booked out in only two weeks, a reflection of Auckland's Newly Suited lawyers' eagerness to pay it forward by sharing their knowledge of the profession.

Lawyers and students were matched, based on a common area of interest in law. Everyone enjoyed a light beverage and platters as they introduced themselves and got to learn about their buddy.

Brenna Jacobs, Ninotschka Mesquita, Sian Kilgour

David Graham, Kiran Kanchan, Deloris Fruean

Recently-elected ADLS council member and Newly Suited committee convener, Ellen Snedden, made the opening remarks, with the main takeaway being that students should seize this opportunity to ask as many questions as possible and keep in contact with their mentors. Emily Kyle, President of the AUT Law Students' Society, expressed her gratitude to ADLS on behalf of the students who took part.

ADLS would like to thank Ellen and Emily for their time and support. A special mention to Peter Lycett from MAS for kindly sponsoring the event.

ADLS EVENT

University of Waikato Buddy Evening

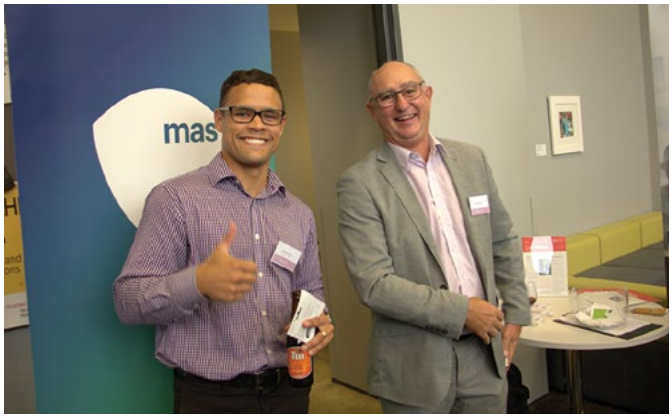
Returning for the fourth year running, ADLS headed to the University of Waikato law faculty for the ADLS & WULSA Newly Suited Lawyer & Student Buddy Evening on Thursday 28 March.

Fifteen sets of mentors and mentees met to discuss their common interests in the legal profession, ask questions and share advice while enjoying a range of gourmet platters and a glass of wine.

Helen Radinovich from Tompkins Wake, President of WULSA, Ben Wilkins, and Larry Keane from MAS spoke about the importance of relationships fostered in the room and of maintaining those connections into your professional career.

Feedback after the event was positive and mentees were keen to meet with their mentors again at a follow-up event, with the date still to be determined.

ADLS would like to offer special thanks to Helen Radinovich, Ben Wilkins, and MAS for their ongoing support, and to everyone who attended on the night.



Joshua Nyika, Larry Keane - MAS

Jonathon Russell, Emma Thomson, Megan Mcdonald, Abdallah Ali

LAW & SOCIETY

It's Easter – take care out there on our roads

By Rod Vaughan

In a horror week, 26 people died on our roads in the first few days of April.

Amid all the hand-wringing and muddled thinking, there remains one unpalatable and inconvenient truth: New Zealand has some of the worst roads in the developed world.

At this point in our history there should be, at the very least, a six-lane motorway between Whangarei and Wellington. Ditto Christchurch and Dunedin, not to mention a network of four-lane highways linking regional cities.

Instead we have a patchwork of good, bad and downright dangerous roads, mainly two-lane, thanks to years of procrastination by our politicians.

For example, a fully-completed motorway between Auckland and Whangarei is long overdue and vital for Northland's economic survival.

But there still remains a large body of naysayers implacably opposed to such a proposal, disparagingly referring to it as a holiday highway for the well-heeled.

As a result, the carnage continues on notorious black spots like Dome Valley where emergency services are constantly extricating dead or dying people from mangled vehicles.

Police now refer to this stretch of highway as the "killing fields".

The human cost is immeasurable yet we do nothing meaningful about addressing some of the most dangerous roads in regional New Zealand.

Instead, we have band-aid remedial measures that fail miserably to address the root cause of the problem – a singular lack of four-lane highways with median barriers.

If anything sums up the penny-pinching and blinkered political thinking on our highways it's Wellington's Transmission Gully motorway.

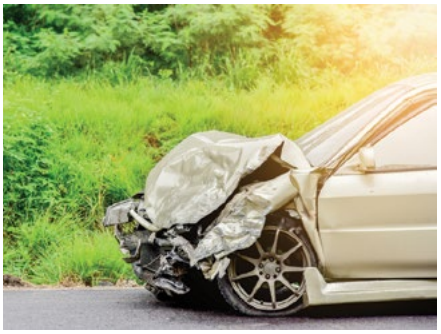
It could, and should, have been built 70 years ago but only now is it under construction.

In so many areas New Zealanders show vision, enterprise and an admirable can-do attitude.

State Highway One north of Kaikoura, wiped out in a major earthquake in 2016, was rebuilt in just 13 months, a massive engineering feat and a great example of what we can do when we put our minds to it.

But regrettably this was an exception. So often we come up woefully short when it comes to developing our roading infrastructure.

This became apparent to me a year or two ago during a road trip the length and breadth of Croatia, a country with much in common with New Zealand in terms of topography and population.



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Though caught up in a bloody war of independence between 1991 and 1995, Croatia now boasts a network of extremely well-engineered motorways and road tunnels that would be the envy of any country.

Driving there was a pleasure and yes, there were tolls to be paid on most of the main highways. But they weren't extortionate and, in my view, were a small price to pay for the comfort, safety and speed they afforded.

I lost count of the number of tunnels that I drove through, some of considerable length, and it left me wondering why we haven't embraced them in a similarly mountainous country like New Zealand.

Road tunnels through the Kaimais and Remutakas, for example, are no-brainers and it almost defies belief that they weren't incorporated with the rail tunnels drilled through both ranges all those years ago.

As a result, here we are in 2019, still expecting motorists and truckers to negotiate tortuous, time-consuming and dangerous mountain passes all over the country because we don't want to spend the money bringing New Zealand into the 21st century.

There's no question that tunnels are seriously big-ticket items but we should be far more proactive in encouraging public/private partnerships for such ventures.

Bottom line, most New Zealanders are not averse to paying tolls if they can drive to destinations in a safe and timely manner.

But here's the thing – there is actually a large pot of money for addressing many of these issues.

Last year Transport Minister Phil Twyford announced a record $16.9 billion investment in land transport over a three-year period, of which regional roads will receive $5.8b.

On the face of it this is seriously good news but that's not how it's seen by those living in regions that have some of our most dangerous roads.

As far as Andrew Hollis, founder of Tauranga lobby group Fix the Bloody Roads, is concerned, the government has its priorities completely wrong.

"If it was about safety, then surely the most dangerous road in New Zealand would be sorted out first and State Highway Two, from Tauranga to Katikati, is demonstrably the most dangerous road in New Zealand," he says.

Instead of a $520 million upgrade to a modern four-lane highway with median barriers, as promised by National before it lost the last election, it will now get safety improvements over five years costing $87.1m.

In other words, more rumble strips, shoulder widening, and sticks and wires down the middle of a road that, by any stretch of the imagination, is an absolute death-trap.

As someone rather crudely but aptly pointed out to me, "All they are doing is pi**ing around the edges."

To put this into context, the Western Bay of Plenty has experienced explosive growth in recent years with Tauranga now eclipsing Dunedin as New Zealand's fifth largest city.

As part of the so-called Golden Triangle, which also includes Auckland and Hamilton, Tauranga and its booming port is a pivotal part of New Zealand's economy.

But two out of its three principal gateways are no longer fit for purpose, groaning under huge volumes of vehicles of all shapes and sizes, and posing major safety concerns.

Ironically the one bearing the least amount of traffic, the so-called Tauranga Eastern Link, was transformed into a magnificent four lane highway a few years ago at a cost of $500m.

As Americans would say, go figure.

In the meantime the key entry point, State Highway 2 from Waihi to Tauranga, remains a shambles and is not fit for purpose.

I know this from personal experience, having moved from Auckland to the Western Bay a few years ago.

It is no exaggeration to say that driving along it is like traversing a war zone.

According to Andrew Hollis, motorists are eight times more likely to die on some sections of it than on any other highway in New Zealand.

And caught in the middle of this minefield are little country towns like Katikati which has to contend with 30,000 cars and 1000 trucks rumbling through its choked main street every day.

Such is the congestion that traffic is sometimes backed up for 20 kilometres on either side of the town.

Continued on page 10

Featured CPD

Employment Processes: Dealing with Mental Health Issues – FINAL NOTICE

The case of *FGH v RST* highlights the complex issues that arise in respect of mental health considerations and employment law. This webinar will explore the judgment and highlight the difficulties that are faced by both employer and employee where mental health is a factor in internal employment procedures. *Please note that this webinar was previously presented as part of the Burning Issues Forum 2018.*

Learning Outcomes

- Understand better what the legislative definition meaning of mental health covers and how employers may learn about an employee's mental health issues and their obligations to gain further knowledge.
- Learn more about how formal and informal employment procedures, including disciplinary action, need to be adapted to accommodate an employee's mental health condition.
- Gain insights into the judgment of *FGH v RST* and what lessons may be learnt from it in respect of how mental health issues should be dealt with.

Webinar
CPD 1 hr
Wed, 1 May
12pm – 1pm
Presenter
Jim Roberts, Partner, Hesketh Henry

Cradle to Grave™ Conference 2019

For those lawyers working at the interface between trust, property and family law, our annual Cradle to Grave™ Conference is back again in 2019. With a great range of pertinent and interesting topics presented by leading lawyers and other professionals, it promises to be another outstanding event.

Topics and Presenters:

- The Practicalities of Assessing Testamentary Capacity – **Anthony Grant**, **Dr Jane Casey**
- Trusts and Relationship Property – Launching Pads, New Directions and Pole Positions – **Vanessa Bruton QC**, **Vivienne Crawshaw QC**
- Contracting-out Agreements, Problems and Possible Solutions – **Brian Carter**
- Challenges to Wills in Practice – **Vicki Ammundsen**
- Gifting and its Effect on Wills – **Alison Gilbert**
- Ethical Duties: Capacity and Dealing with the Families of Clients – **Kathryn Dalziel**
- The New Trust Legislation: What to Look Out For – **Chris Kelly**, **Greg Kelly**
- Current Tax Considerations for Trust Lawyers – **Denham Martin**
- The Parameters of Trustee Discretions – **Jeff Kenny**

Early bird rates available until 19 April 2019

Conference
CPD 7 hrs
Christchurch, Mon, 6 May
8.50am – 5pm
Auckland, Thu, 9 May
8.50am – 5pm
Chair
Bill Patterson

Running an Effective Jury Trial (in-person intensive)

Jury trials require a specific set of advocacy skills. Given the serious nature of cases heard in a jury trial setting, 'getting it wrong' can have significant implications for the accused – and for defence counsel. Aptitude in preparation and presentation is key. During this intensive day and in a collaborative environment, attendees will receive guidance on jury trial advocacy skills, through presentations, demonstrations and commentary, from a panel of highly experienced and well-regarded presenters. (This intensive will be followed by a mix and mingle with the panelists)

Learning Outcomes:

At this intensive you will learn:

- How to develop a theory of the case.
- How to deal with pre-trial applications and admissibility of evidence.
- Fundamentals of trial preparation.
- Basic trial procedure.
- How to prepare for and structure examination and cross-examination of witnesses.
- Techniques for effective examination and cross-examination of witnesses, including dealing with hostile witnesses.
- How to structure and effectively present opening and closing addresses.
- How to recognise some common ethical problems in criminal jury trials.

Early bird rates available until 26 April 2019

Intensive
CPD 7.25 hrs
Sat, 11 May
9am – 5.30pm
Presenters
Paul Dacre QC
Marie Dyhrberg QC
Simon Lance
Julie-Anne Kincade
Guyon Foley
Denise Wallwork
Annabel Maxwell-Scott
Maxine Pitch
Chair
His Honour Judge McNaughton

The AML/ CFT Workshop (Hamilton)

The AML/CFT regime is now a reality. The implementation of compliance programmes is likely to have been a steep learning curve for practitioners with numerous issues, both practical and interpretative, arising and answers to problems not always easy to find. With numbers strictly limited, this workshop will provide a great opportunity for lawyers and compliance officers to raise their problems and to discuss potential solutions with an AML/CFT expert. It will also focus on other practical issues that have been noted anecdotally and by the DIA which lawyers will need to consider in order to meet their obligations under the legislation.

Learning outcomes

- Be provided with an opportunity to raise issues relating to AML/CFT compliance experienced in your own practice and discuss possible solutions.
- Gain a better understanding of some other potential problems that have arisen in the context of the regime in legal practice and learn how to resolve or avoid these.
- Receive insights into some of the ethical questions, such as privilege and termination of retainers, which may arise now that practitioners are complying with the requirements of the AML/CFT.

Workshop
CPD 2 hrs
Fri, 17 May
10.30am – 12.45pm
Presenter
Fiona Hall, Barrister and Solicitor

CPD in Brief

Civil Litigation Series: The Middle Stages – Proceedings to Trial

Navigating litigation can be a minefield and your charted course may not prove smooth sailing. Following the filing of pleadings, there are many issues, options and consequences – and whether to take certain steps requires an assessment of the big picture including risk, delay, cost and ultimate benefit to your client. To that end, litigators should also be mindful of achieving the aim of legal and commercial efficiency. Against the context of some common case scenarios, this seminar will explore a range of potential steps and pitfalls along the way to a hearing and offer insights and advice.

Presenters: The Honourable Rhys Harrison QC; **Davey Salmon**, Partner, LeeSalmonLong

Seminar Livestream
CPD 2 hrs
Tue, 21 May
4pm – 6.15pm

The Art of Communication – Be a Powerful Advocate

As Spandau Ballet put it, "Communication let me down". How often have you thought that you could, or should, have slowed down when addressing a room, used more eye contact, or come across as more confident? This workshop, led by an experienced advocate and an accomplished teacher/director, will arm you with the skills for developing the art of communication for your role as an advocate – so you won't let yourself down, or your clients on behalf of whom you speak. *Limited places available.*

Presenters: Marie Dyhrberg QC; **Isabel Fish**, Director, Producer and Educator

Workshop
CPD 3 hrs
Sat, 25 May
9am – 12.15pm

Leading Your Career – exclusively for women lawyers with 6+ years' PQE

Thursday 30 May 2019, 8.45am – 5.00pm (Hamilton), Thursday 13 June 2019, 8.45am – 5.00pm (Auckland), Thursday 15 August 2019, 8.45am – 5.00pm (Wellington)

Take charge of your career and realise your underlying potential. This practical, interactive one-day workshop, led by one of New Zealand's top female lawyers and one of New Zealand's top leadership experts, will arm you with resources, self-confidence and focus to apply immediately to your role and to enhance your future career.

Places are limited. Register now to avoid missing out.

Presenters: Miriam Dean QC; **Liz Riversdale**, Director, Catapult

Workshop
CPD 8 hrs

Youth Justice and Changes to the Oranga Tamariki Act

Substantial changes to the Oranga Tamariki Act 1989 will come into effect on 1 July of this year. The changes will have far-reaching effects on Youth Justice in New Zealand and provide those involved with greater opportunities and options to represent their clients more effectively.

Presenters: Associate Professor Khylee Quince, School of Law, AUT; **Maria Pecotic**, Barrister and Youth Advocate; **Anthony Dickson**, Regional Litigation Manager, Oranga Tamariki

Chair: His Honour Judge Fitzgerald

Seminar Livestream
CPD 2 hrs
Tue, 11 Jun
4pm – 6.15pm

Commercial Law Series: When M&A Goes Wrong – Lessons Learned and how to avoid the pitfalls

From the smallest deal to the largest, M&A by its nature involves entire businesses and is always complex. In this session, Cameron Taylor and Ben Jacobs will draw on their combined four decades of experience buying and selling businesses to draw out where they have seen transactions go wrong, what can be learned from those experiences and how to avoid similar issues recurring on your own deals.

Presenters: Cameron Taylor, Partner, MinterEllisonRuddWatts; **Benjamin Jacobs**, Special Counsel, MinterEllisonRuddWatts

Seminar Livestream
CPD 2 hrs
Thu, 20 Jun
4pm – 6.15pm

CPD Pricing

	Delivery Method	Member	Non-Member
	Webinar (1 hour)	$80 + GST	$115 + GST
	Webinar (1.25 hour)	$90 + GST	$130 + GST
	Seminar (2 hour in person)	$130 + GST	$185 + GST
	Seminar (2 hour live stream)	$130 + GST	$185 + GST
	On Demand (1 hour recording)	$90 + GST	$130 + GST
	On Demand (2 hour recording)	$145 + GST	$205 + GST

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Continued from page 3, "Big issues face drafters of new copyright law"

publish best-practice guidelines for the use, care, protection, and custody of such works.

Should NZ follow the EU approach?

The European Parliament recently passed significant changes to its copyright laws to "protect creativity in the digital age".

The European Union Directive on Copyright in the Digital Single Market is designed to limit the sharing of copyright-protected content on online platforms. If implemented in its current state, the direction would impose liability on online platforms for copyright infringement, including for user-generated content.

It would also require online news aggregators like Google News to pay publishers for showing snippets of their news stories – the so-called "link tax".

The legislation applies only to countries in the European Union, unlike the General Data Protection Regulation, which has extra-territorial effect.

But it is likely to have a much wider impact. US "Big Tech" companies like Google and Facebook will be affected by the legislation in their European operations.

Should New Zealand follow suit to keep up with global developments or is the European approach a step too far?

Frith Tweedie leads the digital law practice at EY New Zealand and Grace Abbott is a senior solicitor. This column was first published in cio.co.nz

Continued from page 7, "It's Easter – take care out there"

All of which is making it almost impossible for emergency services to attend, in a timely manner, the many serious accidents that regularly occur along the highway.

In the past eight years there've been 26 deaths and 52 serious injuries so believe me it's not a road for the faint-hearted.

By any yardstick upgrading the road into a modern four lane highway with a median barrier should be a top priority.

But thanks to Twyford's priority list this isn't going to happen anytime soon.

Clearly he had more important priorities, and these included earmarking $3.7b for a controversial tram service to Auckland airport along Dominion Rd.

The merits are highly contentious with a growing body of influential people believing a train service to the airport would be a cheaper and more efficient alternative.

They warn the debacle in Sydney about a light rail network has parallels with Auckland. This was a pet project of the new Federal government but infrastructure experts warned against it, saying it would be a disaster.

It now faces massive cost blow-outs; the company building it is on the verge of collapse.

Many businesses along the route, which has carved up inner city roads for years, have gone broke and government compensation has been paid out to more than 50 others.

Edinburgh has also learnt the hard way about the economic perils of such pet projects.

Its problem-plagued tram system, including a line from the city centre to the airport, finally opened three years behind schedule, more than two times over budget and limited to a network half the size of what was planned.

Roads in the Edinburgh city centre were dug up for the best part of seven years, causing congestion, inconvenience and financial harm to businesses.

The chairman of Transport Edinburgh branded the project "hell on wheels", while the city council's chief executive described it as a "shambles."

You might think all of this would ring alarm bells for Twyford but it seems he's oblivious to the costly debacle that could well lie ahead.

Whatever the pros and cons of the Auckland airport tramway, the substantive argument is whether Twyford has his priorities right.

What is more important – saving lives on deadly regional highways or spending up large on an ideologically-driven project that risks becoming a white elephant?

To many people the answer would seem obvious but not, it seems, to the minister.

Which begs the question: what price does the government put on human lives?

The $3.7b set aside for the tramway could build six or seven state-of-the-art four-lane highways similar in length to the one proposed between Tauranga and Katikati.

And then, of course, there's Regional Economic Development Minister Shane Jones dispensing $3b worth of largesse on some very questionable projects.

Imagine if this sum of money were set aside for what the regions need most - four-lane highways with median barriers - and what this would mean in terms of saving lives and increasing productivity.

In the meantime, ordinary New Zealanders at the sharp end of this debate, like those behind the Fix The Bloody Road campaign, must resort to raising money on Givealittle pages to publicise the ongoing carnage on their killer roads.

Rod Vaughan is a freelance journalist based in Katikati

Continued from page 2, "Lawyers lagging in AML compliance"

To beat anyone up after three months, however, would be really unfair, says Manthel. "Phase one has been going five years and some of those guys haven't got it right yet."

Happening here

While many Kiwi lawyers and agents would like the public to think money laundering doesn't happen here, it does.

The spectre of homes bought with suitcases of money was raised by more than one interviewee for this article. The possible use of cryptocurrencies to launder money through property is likely only to rise.

Real estate is one of those high-value assets targeted by criminals who can use an agent or lawyer to provide a veil of legitimacy. Not all agents play by the rules, as anyone who reads a newspaper or the Real Estate Authority database knows.

"Every industry has a bad apple," said Carolyn Cody, training, liaison and compliance manager, Financial Intelligence Unit, in a training webinar for lawyers.

In a report published earlier this year, Transparency International Canada found widespread opacity in the real estate market, suggesting evidence of significant money laundering in an economy it called "'la la land' for financial crime."

On March 14 this year, the British regulator raided 50 real estate agencies and imposed a £215,000 fine, the largest ever in the UK for money laundering violations in the real estate market.

Solicitors' firms are also in the gun, with the UK regulator taking 60 cases to the disciplinary tribunal in the past five years. Another 400 of the UK's 7000 law firms are being earmarked for a random audit this year.

Chapman Tripp's Penny Sheerin agrees the real estate sector is vulnerable. "For agents, the challenge will be to understand what money laundering is, how it happens and to be aware of the red flags out there so they can meet their legal obligations and [protect] their reputation," she says. "No business wants to be embroiled in a money laundering situation."

The issue of beneficial trusts was raised by multiple interviewees for this article. The problem, says Sheerin, is beneficial owners can be hidden behind trusts and companies.

"That is when you have to look at the source of funds or wealth of the customer, depending on type of trust you have," she says.

Following the Shewan report into foreign trusts in 2016, 18 of the 19 recommendations were adopted by the government, says Suzanne Snively chair of Transparency International New Zealand.

That was a step in the right direction, with requirements brought in for registering beneficial ownership for foreign trusts. There are still loopholes in our legislation and room for improvement, says Snively. "The issue is you are unable to follow an audit trail to see who really owns something."

If the agent or lawyer's search determines the funds come through a shell company, the risk to your business is higher and the CDD needs to be escalated to enhanced level.

Manthel says for lawyers and real estate agencies concerned about compliance, the AML/CFT Compliance Officer is the most important position in their business.

That person must receive good training and have sufficient AML knowledge to maintain the program, receive good support from senior management, have the confidence and knowledge to provide guidance and make good judgments calls, and have a good system for record-keeping and data management.

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For further information in confidence, please contact Kathryn Cross LLB BMus kathryn.cross@artemisnz.com, 09 354 3543 quoting reference number 833008.

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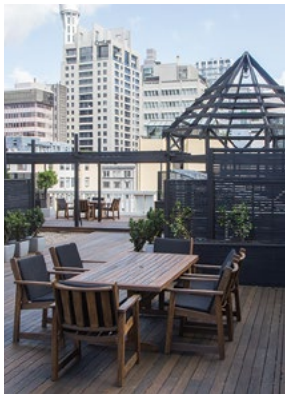

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Wills

Please refer to deeds clerk. Please check your records and advise ADLS if you hold a will or testamentary disposition for any of the following people. If you do not reply within three weeks it will be assumed you do not hold or have never held such a document.

Ralph John CIESLIK, Late of 42 Hope Farm Avenue, Pakuranga, Auckland, Aged 58 (Died 12'02'19)

Gaylene Rose COOPER, Late of 35 Wallace Road, Mangere Bridge, Retired, Aged 62 (Died 22'02'19)

Peter Bernard FAIRGRAY, Late of 30 Laxon Road, Whatawhata, Hamilton, Mechanic, Aged 61 (Died 05'12'17)

Ronald Montague MEADOWS, (Died approximately 11'12'18)