ENVOY

LEGAL EXECUTIVES NEW ZEALAND
RĀNGAI HĀPAI TURE O AOTEAROA

AUTUMN 2023



NZLS CLE Ltd Legal Executives Conference

Christchurch, 21-22 August 2023

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PRESIDENT: Carmen Franich
TREASURER: Jill Forde
EXECUTIVE OFFICER: Jo Buckton
EDITOR: Adrienne Olsen, Adroite Communications adrienne@adroite.co.nz
WRITERS: Catriona MacLennan and Adrienne Olsen
ASSEMBLED BY: Shout Creative
PRINTER: Bays Print Management Ltd

New Zealand Institute of Legal Executives Inc
PO Box 38094, Howick
Auckland 2145

Level 2, 22 Picton Street
Howick, Auckland 2014
T: 09 250 1630
E: envoy@nzile.org.nz
W: www.nzile.org.nz

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FROM THE PRESIDENT



Tēnā koutou katoa

Summer – what summer?

We are now well into autumn; I hope you managed to have a relaxing summer break. Here in the north, it was not much of a summer at all; we hope for some extended fine weather during the autumn. I gather that Wellington and the South Island had a wonderful summer. Whatever the weather was where you are, I hope you had some well-deserved relaxation before going back to work for the year.

After the recent devastation from ex-Cyclone Hale and Cyclone Gabrielle, my mind turned to the communities and people who suffered greatly. It was heart-breaking to see people in the north, central and east of the North Island lose lives, pets, homes, possessions and their livelihoods. On behalf of the National Council, I sincerely hope that you and your whānau managed to stay safe.

LENZ activity
LENZ has certainly been busy in these last few months. Amongst other matters in February, Jo Buckton and I attended a couple of full-day New Zealand Law Society meetings.

Also in February, we welcomed branch presidents and members of branch committees to a training day held at our National Office in Howick; this was led by Jo. It was great to meet committee members from all over New Zealand in an inclusive and collaborative environment, and to share the knowledge and information that will help them to continue supporting their members. It was a valuable face-to-face event. I very much enjoyed meeting and spending time with all who attended.

Biennial conference: 21-22 August
I am very excited to confirm the date for the NZLS CLE Ltd Legal Executives Conference. The planning committee met with NZLS CLE Ltd in early March to start developing the programme. The conference will be held at the new Te Pae Christchurch Convention Centre.

Many of you will be looking forward to attending the two-day conference. It is worth every cent; it is an event that I know many of us like to attend. Upskilling ourselves on many topics over the two days is extremely valuable, as is the opportunity to network with each other. With the way we work now, in busy environments and/or remotely, the opportunity to all meet in one room greatly benefits learning and collegiality. (At the branch committees' training day in February, branch members very much valued being able to talk with peers from around New Zealand.)

I look forward to my time as your new President, and hope that I can meet and talk with most of you. I am sure this year will race by (like most other years!), but please make sure you take time to take care of yourselves and be safe.

Me mahi tahi tātou mo te oranga o te katoa – working together as one for the wellbeing of everyone.



Carmen Franich



Duke of Marlborough Hotel, Russell

Northland

Well, 2023 certainly started with a bang. Those of you in the North Island who were hit by Cyclone Gabrielle, please know that we are all thinking of you and sending you our best wishes.

Up here in Northland we have definitely felt the effects of the wet summer - and the slow-down in the conveyancing field. Hopefully autumn gives us some of the sunshine we missed over the summer, and the slowdown is short-lived.

Education
Our branch committee has been planning this year's seminars and education opportunities for members.

We were due to hold a webinar on turnkey purchases/off the plan builds at the end of 2022. This was postponed due to the heavy workloads we all faced at the end of the year. Now, due to the current downturn in property transactions, we have changed the topic slightly to focus on what can and does go wrong with off the plan builds. We will provide members with a date for that webinar as soon as possible.

We hope to hold a webinar on subdivisions and have been in contact with some of the best presenters to arrange that. More details will follow.

Please do not hesitate to contact us with your topic suggestions or improvements on the way we present our seminars and webinars. We always appreciate the input.

Social events
We held our second Brain Box catch-up in early March. Members who were unable to attend in person were able to join via video link. These sessions provide a great opportunity to catch up with other members in an informal setting and to discuss anything interesting that we have come across in our practice.

We are planning more social activities across the region; branch members should look out for invitations in your inbox.

Our committee would love to hold more social events for Kaipara and Far North members. If you would like to arrange something in your area, please contact us to discuss. Any social events arranged will be subsidised by Northland Branch.

Branch committee
Thank you very much to our committee members for the time and effort they give to keeping our branch running smoothly. It's very much a collaborative effort and it's great knowing that we can all help where needed.

We are dedicated to helping and supporting branch members, providing you with informative webinars and seminars, and holding social functions that everyone can enjoy. We are always here to help, so please feel free to contact us at any time.

If you would like to become a committee member or to know more about what we do, please get in touch. Our email address is northland@nzile.org.nz.



Jennette Overton
Northland Branch President

Auckland Waikato

Hello from Auckland Waikato.

Branch meetings
We had our first branch meeting of the year in February, via Zoom but were able to meet in person in March. We aim to have more face-to-face meetings this year as it certainly makes things easier when trying to organise seminars and social functions.

We lost a valuable committee member at our AGM last year. Karen Lloyd was with us for some years; thank you Karen for your contribution to the committee. The upside, however, is that we have a new committee member; I welcome Radha Ranga and thank her for stepping forward. Auckland Waikato is the largest of the six branches, but our committee is small. We would certainly love members to think about joining the committee at the next AGM. The more we have on the team, the more we can do for our members.

Seminars
In March, we held our first webinar for the year; the topic was enduring powers of attorney. We have plans for more webinars in the pipeline. We are, of course, excited about the next NZLS CLE Ltd Legal Executives Conference to be held on 21-22 August in Christchurch.

We are always open to suggestions for seminars and webinars so please don't hesitate to contact us at aucklandwaikato@nzile.org.nz with your suggestions.

Social
We are in the process of organising our 2023 social programme; we hope that the weather and Covid allow us to proceed as planned this year!



Michelle Way
Auckland Waikato Branch President



Waikato River in autumn



Mount Ruapehu (Photo credit: Cathy Punter)

Bay of Plenty Gisborne

I trust you all had an enjoyable break over the summer and managed to recharge your batteries after a very busy few years.

The start to 2023 was not a good one for many in the North Island, with torrential rain causing flooding and Cyclone Gabrielle devastating many areas. The clean-up took quite some time and is continuing for some. Our hearts go out to all those who have lost so much. The repercussions were felt by many around New Zealand; insurance companies are already making more in-depth enquiries when asked to insure a property in an area where there has been rain or cyclone damage.

The property market has slowed remarkably this year in response to higher interest rates and the looming election. This has given us all some time to catch our breath from the flurry of conveyancing work over the last few years.

LENZ training day

A very well-attended training day for committee members from all the LENZ branches was held at the National Office in February. I think we all got something from it - whether we were new to a committee or not. The training day provides an excellent opportunity to connect with others from around New Zealand and to share our experiences. It will be wonderful to catch up with everyone at conference in August and make even more connections.

Local news

The branch committee is busy planning the year ahead. Our social events in Tauranga, Rotorua, Taupō, Whakatāne and Gisborne continue to be well attended, with a mix of Registered Legal Executives, legal executives in training and administrative staff attending.

These events are a great way to get to know the person 'on the other end of the phone' and to 'put a face to the name.' If you haven't attended a social event yet, I encourage you to go to the next one in your region to get to know the people you deal with on a daily basis.

Please feel free to contact the branch with suggestions for seminars or events in your area. Our branch email is bopgisborne@nzile.org.nz.

I hope the autumn and winter months treat us more kindly than the summer did.



Cathy Punter
Bay of Plenty Gisborne Branch President

Wellington Central Districts

We hope you all had an enjoyable Christmas/New Year break, although our summer in Hawke's Bay wasn't the greatest.

Gabrielle's unwelcome visit
February 2023 was not the best month for our Hawke's Bay members; our hearts go out to all members and their whānau who have been affected by Cyclone Gabrielle. As the Hawke's Bay representative on the branch committee, the devastation in our district, amongst many others, is unfathomable.

Although we have been faced with challenges of looting and raiding here in Hawke's Bay (as shown in the news), we locals have also experienced quite the opposite. We have seen communities coming together to ensure that everyone around them is safe and looked after, especially the elderly whose families could not communicate with them or reach them by road. Many shops and centres were inundated with people dropping off supplies of food, clothing and blankets for those in need, as well as setting up Givealittle pages for those who have lost loved ones. It has been great to hear about local people labelled as heroes who drove into the dangerous flood waters to rescue people, such as two on kneeboards in Puketapu and another three (whom the media called 'three local boys') who, at 4.00am, took their dinghy out to rescue people in the ravaged area of Eskdale.

The people of Napier and the greater Hastings district proved to be very resilient as some were without power for six days. Most, if not all, law firms in these areas closed from Tuesday, 14 February; a limited number re-opened on Monday, 20 February.

The compassion shown by most firms and their clients, in relation to those who had settlements and condition dates due within that period, was heart-warming.

Social events
On to some brighter news for our branch, at the time of writing, our regional representatives are organising social events for their members. We will be in touch to let members know where and when these will take place.

Seminars
Locally, there was a planned presentation by the Overseas Investment Office due to take place at a Napier firm on 14 February. This was postponed due to the impending cyclone; Hawke's Bay members will be notified of the new date in due course.

Until the Winter issue, keep safe and look out for one another.

Ngā mihi mahana kia kautou katoa; warm thanks and greetings to you all

(Branch President, Stephanie Bishop, was on extended leave at the time branch presidents were preparing their reports. Branch Vice President, Sallyanne Belmont, kindly reported on the branch for this issue.)



Sallyanne Belmont
Wellington Central Districts Branch Vice President



Whanganui River



Marlborough grape vines

Nelson Marlborough

Happy New Year everyone. I hope you all had a lovely summer break. Sadly, summer seemed to pass too quickly and we are now well into autumn. In our region it has been wetter than usual for this time of year; however, we have nothing to complain about compared with what our fellow New Zealanders have had to face up north. Our hearts go out to everyone affected by the recent weather events up there.

Social events

We are looking to arrange our next social event. If you have suggestions for events (for either Nelson or Blenheim) please don't hesitate to get in touch. All suggestions are welcome. It's always great to catch up in person at these events.

Education

Land Information New Zealand Toitu Te Whenua (LINZ) is keen to assist Landonline users with the migration to the New Landonline – Dealings, the new web-based dealings application. We will be contacting branch members to gauge interest in a seminar.

Branch committee roles

At our inaugural meeting following the branch AGM, committee roles were elected as follows:

- President: Rachael Cooke
- Secretary: Cindy Thom (also our Marlborough liaison person)
- Treasurer: Jo Bruning
- Membership: Diane Bennett
- Newsletter/Publicity: Jenna French (assisted by Robert Cant)
- Education: Sophie Ennor (assisted by Robert Cant)
- Social: Jane Quinton



Rachael Cooke
Nelson Marlborough Branch President

Canterbury Southern Districts

Autumn has rolled around far too quickly, and I wasn't ready to say goodbye to summer! As I write this and look outside, it is blowing a gale and pouring with rain.

I hope everyone had a fun, relaxing Christmas break and summer holiday. My family and I spent time on the West Coast where the weather was absolutely stunning almost every day. We all had a lot of time out on the water and I even learnt to wakeboard! I must admit coming back into the office was a struggle after three weeks off!

Residential conveyancing seemed to slow down over January and February for most of us. It has been good to use that time to get other things completed and finalised, and admin jobs tidied up around the office.

New committee

At the 2022 AGM, we welcomed new members onto our branch committee: Gaylene Campbell, Jess Craighead, Shelly O'Connor and Nikki Riach. There has also been a change to office holders this year:

- Vice President: Andrea Murchland
- Treasurer: Nikki Riach
- Secretary: Jess Craighead.

We are, however, still looking for area representatives for Timaru and Oamaru. If you think this could be you, please get in touch: canterburysouthern@nzile.org.nz

Seminar

We held a seminar on New Landonline - Dealings on 22 March; this was also available to branch members outside of Christchurch via Zoom. It was a popular topic!

I am happy to hear that members are catching up with each other for social events. It is pleasing that the uncertainty of Covid seems to be lifting and people are feeling better about getting out and about.

Please get in touch if you have any queries/concerns/ suggestions for seminar topics or social events, or if you need any assistance. On behalf of the branch committee, thank you for your ongoing support. ■



Jo Langton
Canterbury Southern Districts Branch President



Naseby, Central Otago

CASES UPDATE



Estates

Dispute between parents and partner over funeral arrangements and death certificate dealt with by High Court

In *Clark v Williams* [2022] NZHC 3205, William Clark was killed in a car crash in September 2021 at the age of 29. Mr Clark had been in a relationship with Monique Selfe before his death and, subsequently, there were issues between his parents and Ms Selfe as to what funeral arrangements would be appropriate and what should be on Mr Clark's death certificate.

In October 2021, Mr Clark's father filed a statement of claim for the grant of letters of administration and, on an on notice basis, an application for an injunction so that appropriate arrangements could be made for the funeral.

After a conference with the parties, Justice Nation issued a draft judgment setting out orders intended to record agreed funeral arrangements. Following further discussions, the High Court made orders by consent recording the settlement reached between the parties, including that they had agreed on a plaque for Mr Clark's burial plot and the wording on that plaque. The parties also agreed on the lawyer to be appointed as administrator of Mr Clark's estate and that Ms Selfe would not be referred to or named as Mr Clark's next of kin on his final death certificate.

Professional conduct

Lawyer disciplined for actions as EPA attorney

A Standards Committee has disciplined a lawyer, Mr B, who acted as an attorney for an elderly client for several years under an enduring power of attorney (EPA) in relation to property that came into effect while she was still mentally capable.

The lawyer had acted for Mr and Mrs C for many years and, under an EPA, Mrs C appointed Mr C to be her attorney in relation to property, with Mr B as Mr C's successor. Less than two years after Mrs C granted the EPA to Mr C and, not long after they had moved to another part of the country, Mr C died.

Mr B was contacted by several sources who were aware of his status as successor attorney. They advised him that Mrs C was having difficulty in managing her affairs. The retirement village in which Mrs C lived provided a note of consultation with a doctor, which referred to dementia. Based on that note, Mr B decided to begin acting as Mrs C's attorney under the EPA. He assumed responsibility for her finances, but did not contact her directly.

Mr B acted for Mrs C for more than three years, during which time he kept in contact with the retirement village management and 'others', but did not communicate directly with Mrs C. Mrs C later instructed a local lawyer as she wanted to replace Mr B with someone nearby. Mr B's firm sought to deduct fees from Mrs C's funds in the firm's trust account. Mrs C complained about that and about Mr B's conduct, particularly his lack of communication with her. She also sought a full refund of the fees.

Mr B told the Standards Committee that he had been entitled to rely on the information received from the retirement village management and also noted that Mrs C had not

Continued on page 10 ...

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communicated with him at all, asked about her finances or expressed any dissatisfaction with his actions. Mr B argued that he had been entitled to rely on Mrs C's silence as confirmation that she was not able to deal with her own affairs and was content for him to do so.

The Standards Committee said, however, that while Mrs C did not have to lose mental capacity before Mr B could act as her property attorney, best practice would have been for him to meet with Mrs C. They could have discussed the possibility of him managing her affairs on her behalf or to obtain a medical certificate as to her capacity.

The committee noted that Mr B had taken neither of those steps, but had instead relied on 'anecdotal evidence from third persons, two of whom were not registered medical practitioners.' The lack of direct communication with Mrs C meant that Mr B had breached Rules 3 (competence), 3.4 and 3.5 (provision of client care information) and Rule 7 (disclosure and communication of information to clients) of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.

Further, by failing to issue regular statements to Mrs C every 12 months, Mr B was in breach of Regulation 12(7) of the Trust Account Regulations. The committee concluded that Mr B's fees were not excessive, but said that his firm was not entitled to deduct his final fee from the money held on trust as there was no specific authority to do so and his authority as an attorney had been revoked by that time.

The committee determined that Mr B's breaches amounted to unsatisfactory conduct. He was ordered to apologise to Mrs C and to pay $500 in costs to the New Zealand Law Society.

Property

High Court upholds almost $100,000 fine for contaminant discharges by farmer

Colin Boyd was the sole director of Miles Square Farms Ltd that owned a 480 hectare property farmed as a dairy farm. The Mangatengehu Stream and a tributary flowed through the farm, with the tributary having large bends and pools within it that harboured a riparian margin with vegetation on its banks.

In *Boyd v Taranaki Regional Council* [2022] NZHC 3451, earthworks were carried out on the property to reclaim part of the bed of the tributary. There was a discharge of sediment into the tributary because the silt and sediment controls were ineffective, resulting in a complaint that the tributary below the earthworks was discoloured.

Over a five-month period, a number of site inspections were undertaken by Taranaki Regional Council officers; abatement notices were served on Mr Boyd requiring him to cease earthworks and sediment discharges, and to install silt and sediment controls. Mr Boyd failed to comply with the notices and was charged under the Resource Management Act 1991 with discharging contaminants, reclaiming the tributary and breaching an abatement notice.

Mr Boyd was convicted and fined a total of $95,750. He challenged the decision of the District Court arising out of a disputed facts hearing and appealed against the fine imposed.

Justice Grice held that there was ample evidence from three experts called for the council upon which the District Court judge could reach conclusions as to the significant detrimental effects caused by the diversion. In addition, the judge had a cultural impact statement concerning the potentially significant and long-lasting adverse effects of the diversion on the relationship, culture and traditions of Pukerangiora and Te Āti Awa.

Justice Grice said that the District Court had been correct to conclude that the environmental and cultural effects of the offending were serious. The judge in the lower court had not made any errors in her assessment of the evidence.

Further, the starting point adopted by the District Court in setting the fine had been correct and the appropriate deductions and uplifts had been made. The appeal was dismissed.

Wills

Draft will validated by High Court

In *Estate of Honetana* [2022] NZHC 3424, Kitty Honetana provided her lawyers with instructions for a will on 7 July 2022. A will was subsequently prepared.

Mrs Honetana advised that she was happy with the will and would attend at the law firm on 18 August to sign the document.

However, Mrs Honetana's health deteriorated rapidly and she did not keep her appointment. She died on 21 August.

Mrs Honetana's sister, Crystal Bristow, applied without notice to the High Court for an order declaring the document a valid will. The deceased had been a widow and the only people other than Ms Bristow who might have had an interest in the estate were the deceased's three adult daughters.

All of them consented to the application.

Justice Brewer noted that the estate was modest, with a value of no more than $100,000. His Honour said that, in those circumstances, there was no point in directing service of the application.

Justice Brewer observed that his jurisdiction was governed by section 14 of the Wills Act 2007. His Honour was satisfied that the document appeared to be a will; that it did not comply with the Act as it had not been signed or witnessed; and that it had come into existence in New Zealand.

The court was satisfied that the document expressed the testamentary intentions of the deceased. Orders would accordingly be made that the application could be made without notice and the unsigned document was declared to be a valid will.

When a beneficiary cannot be found

The case of *Re Estate of Doak* [2022] NZHC 31111 involved the death of Edith Doak in July 2015. Her son Kieron Doak was the executor of Mrs Doak's estate. He sought an order under section 136 of the Trusts Act 2019 allowing distribution of the estate disregarding the share of his brother Arthur Wayne Doak (known as Wayne), who was the only other beneficiary under the will.

The application was supported by affidavits from Mr Doak and from Verdi Van Beek, a private investigator. Mr Doak and his brother had been separated from a young age, when his brother went to live with another family at the age of 13. In 1968, he moved to Australia. It was understood by Mr Doak that his brother's move was permanent and there was little subsequent contact between the siblings.

When Mr Doak senior died in 1995, attempts to contact the brother were unsuccessful. Under Mrs Doak's will, Mr Doak junior was to be given all of her furniture and other personal effects, and he and his brother were to divide other property equally. The net assets were valued at approximately $250,000.

Enquiries as to the brother's whereabouts had been made in 2016, with two private investigator firms being instructed in 2017. The New Zealand Customs Service confirmed that the brother had not returned to New Zealand since 1995.

The private investigators reported that there had also been no trace of the brother in Australia, including no record of death, no notation on any public record, and no traces of him on commercial or licensing databases, property or rental databases, court or correctional databases, or on the internet or social network sites.

There was also no record of him receiving pension or state benefits in New Zealand or Australia. Mr Doak deposed that he did not know whether his brother was dead or alive and, if he was alive, did not know where he was living. He considered it was likely that his brother was living in a country other than Australia or New Zealand. It was unlikely that he had died as that would probably have been reported to the family.

Justice Cooke said that section 136 of the Trusts Act 2019 provided for trustees to apply to the court to allow distribution of missing beneficiaries' property. His Honour said that one of the important changes introduced by section 136 was that there was no longer a need to follow a formulaic approach involving public advertising.

Rather, what was required was the taking of reasonable measures. The court's assessment of the measures taken should focus on practical considerations, including the size of the beneficial interest involved. The court accepted it was unlikely that the brother was in either New Zealand or Australia. "This is a case where, literally, it cannot be known where in the world Wayne is."

An order would be made allowing Mr Doak to distribute the estate disregarding his brother's share. ■

Legal Executives New Zealand
RĀNGAI HĀPAI TURE O AOTEAROA

Clarification regarding Registered Legal Executive signatures following our rebrand to *Legal Executives New Zealand*

As part of their signature, many Registered Legal Executives will have a variation of:

- *ANZILE* (Affiliates and Associates) or *FNZILE* (Fellows)
- *[Membership level] NZILE*, ie: 'Affiliate NZILE', or
- *NZILE [membership level]*, ie: 'NZILE Affiliate'.

Fellows will also have *Fellow New Zealand Institute of Legal Executives Inc* on the stamps they affix to statutory declarations.

'The New Zealand Institute of Legal Executives Incorporated' remains our legal name and your signature does **not** need to be changed to refer to "LENZ".



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To access New Landonline – Dealings, go to **www.linz.govt.nz/products-services/landonline** and select 'Dealings login'.

Introducing new National President

Carmen Franich



It would be fair to say that new National President, Carmen Franich, has had a long 'apprenticeship' for her role. A long-time LENZ office holder, Carmen joined the Auckland Waikato branch committee in 2014; she was elected branch president for 2016-19. At the national AGM that year, Carmen was elected vice president of the National Council and, again, did the maximum four-year term in that role. Now, her tenure as national president has begun, taking over from Necia Parker.

Acknowledging Necia's presidency, Carmen applauds her high standard of professionalism. "Necia has been an excellent mentor to me, giving me confidence in my new role as president. The future of LENZ is very dear to her heart, and I will endeavour to carry on her excellent work."

Carmen is particularly appreciative of how Necia (and Jo Buckton) dealt with the challenges of Covid and, amongst other things, the inability for members to have much face-to-face contact, chairing a virtual legal executives' conference in 2021 and dealing with recent catastrophic weather events. "They have both kept the LENZ ship very steady, for the betterment of our members. Thank you, Necia for your strong commitment to LENZ, and for your continued service on the National Council and to our membership."

Looking ahead

When *Envoy* talked with Carmen in February, she fully endorsed the Council's goal to continue advancing the recognition and respect that Registered Legal Executives have in New Zealand's legal profession.

Carmen says that after a tough three years of Covid and its ramifications she wants to focus on a few key matters, one being the wellbeing of LENZ members. "We would like each member to be connected to others in some way or other that will generate and grow a stronger support network. A couple of years ago, LENZ established its Kaiārahi service. One of my goals is to encourage our members to use this more. New Registered Legal Executives (RLEs), in particular, would benefit from talking with a mentor. Our Kaiārahi service is designed to help give confidence and support not only those new to our profession and LENZ, but also members who may need a sympathetic ear from an approachable 'experienced hand.'

"From a National Council perspective, I want to see LENZ offer more to our members through the enhancement of our website and additional CPD opportunities. Another significant goal is to encourage all eligible legal executives to be registered. There are unregistered legal executives (and their employers) who would benefit greatly not only from our CPD programme, but also would value our RLE community. In addition, now the impact of Covid has receded somewhat, I would like to see more face-to-face contact by myself and other councillors with members throughout the country."

Long career as an RLE

Carmen's 30+ years in the legal profession is well-suited to her role; she has 27 years' experience in the private sector, and in the last three years she has worked in the public service. "I started as a receptionist in a law firm. I was very impressed and inspired by watching the way legal executives worked. One of the firm's partners mentored me, and it has – as you can see – had a significant impact on my career.

"Three years ago, I moved to Kāinga Ora - Homes & Communities where I lead the subdivisions team, that comprises mainly legal executives. Kāinga Ora is most encouraging of these legal executives and is also very supportive of my new role as president of Legal Executives New Zealand," she explains.

Enjoying being a grandmother

On the home front, Carmen loves spending time with her two-year-old grandson, Cooper. "I'm besotted really! He gives us so much joy. My partner and I have a house at One Tree Point that we escape to, and we also enjoy travel around New Zealand. But then we miss Cooper and can't wait to return home to spend time with him." ■

New Bay of Plenty Gisborne Branch President

Cathy Punter

At its 2022 AGM, Bay of Plenty Gisborne Branch elected Cathy Punter as its new Branch President. At the Wellington Central Districts AGM, Stephanie Bishop was elected to the same role.

We introduce Cathy to Envoy *readers in this edition and will feature Stephanie in the Winter issue.*



New Bay of Plenty Gisborne Branch President, Cathy Punter, says she has huge shoes to fill after Ally McEldowney stepped down from the role last November. "Ally has been an amazing branch president and has been unfailingly helpful and a great guide to Branch President 101! Our branch members collectively thank her for her excellent leadership over the past three years."

Early working years

Cathy spent her early legal career in Adelaide, starting in a secretarial role in a lawyers' chambers, moving to a large firm and then a smaller legal practice before heading back to New Zealand. With small children, Cathy said the pull of home to be closer to her family in Rotorua was very strong.

Working in a law firm in Rotorua, Cathy studied for her legal executive qualification as she upskilled, moving around various legal specialties. She was the top student in her year in Bay of Plenty Gisborne Branch. In 2015, Cathy moved to Taupō's Cargill Stent Clarke, commuting from Rotorua for eight years until December 2022 when she moved to Rotorua firm, Matthew Shaw Legal. "It sounds horrendous commuting that distance, but it was mitigated by the fact my parents live in Taupō and I could stay a few nights with them each week, not to mention crewing on my father's trailer sailer for Taupō's Wednesday night races," admits Cathy.

Branch President focus

Cathy said that Ally suggested a few years ago that she stand for election as branch president, so it was almost a natural progression into the role in November last year. "I attended a training day in Auckland, which gave me some framework for the position, I was branch secretary in 2021-22 and Taupō Social Convenor for a number of years – mostly because I needed to meet people as I actually lived in Rotorua!"

Cathy will continue Ally's focus of fostering collegiality within the branch. "It's a geographically challenged region as we also include Gisborne and our major towns are quite a distance from each other. I want to encourage more legal executives to become registered and join LENZ. The benefits of membership are significant. We meet and bounce ideas off each other, and it's always good to have someone in the branch with whom you can discuss a knotty problem without broaching client confidentiality."

Coastguard master skipper

Unbeknownst to many LENZ members, Cathy is a master skipper who volunteers with the Coastguard Rotorua Lakes unit; it covers Rotorua's 14 lakes and a portion of the Waikato River.

Cathy sailed with her father at the Howick Sailing Club from around nine years old; her father-in-law and husband regularly fish on the Rotorua lakes or out at sea, so she is no maritime rookie. "I got friendly with someone involved in Coastguard and realised that by being involved it was not only a way of continuing to enjoy being out on the water, but also to contribute to the community and learn some new skills," explains Cathy. "Coastguard has become a very big part of my life." ■

High Court Rules provide avenue to evict unlawful property occupiers

Two recent cases show how this can arise

The fact that legal ownership of a property is clear does not always mean that it is easy to obtain vacant possession of a home when people have lived there for many years. However, one avenue to obtain vacant possession of premises from unlawful occupiers is an application to the High Court under Parts 12 and 13 of the High Court Rules.

Under Part 12, a successful application for summary judgment can be made 'if the plaintiff satisfies the court that the defendant has no defence to a cause of action in the statement of claim or to a particular part of any such cause of action.'

Part 13 applies to every proceeding in which the plaintiff claims recovery of land that is occupied solely by one or more unlawful occupiers.

It provides that an unlawful occupier is a person who occupies or continues to occupy the plaintiff's land without the licence or consent of the plaintiff or the plaintiff's predecessor in title, and is not a tenant or sub-tenant holding over after the termination of a tenancy or sub-tenancy. The court has the power to make an order for possession of the property and, by virtue of Rule 13.9, an order to enforce the judgment can be issued three months later.

So how does this work in practice ? Two recent cases provide examples of the situations that can arise.

Property owned by an estate

In *Bennett & Henderson v O'Meara & O'Meara* [2022] NZHC 3519 an Auckland property was owned by the estate of David Bennett who had died in July 2020. Darryn Bennett, Susan Henderson and Kim O'Meara, the first defendant, were appointed as executors and trustees of the estate. Darryn Bennett and Kim O'Meara were the two children of the deceased and his late wife. The will provided that the pair were to share equally in the remainder of their father's will.

Kim and Jon O'Meara had lived at the property since 2000. Although they paid rent for some time, they had not paid anything towards the property since at least the time of Mr Bennett's death.

From March 2021, Darryn Bennett and Susan Henderson attempted to engage with the O'Mearas regarding them vacating the property and it being readied for marketing and sale. Between March and December 2021, Kim O'Meara responded twice, stating that the property would be vacated and readied for sale, but noting that personal issues and the Covid lockdowns had impeded progress.

Darryn Bennett and Susan Henderson considered that Kim O'Meara had either refused or failed to act in accordance with her duty under the will to realise the residue of the estate and to have that residue distributed equally between herself and her brother, Darryn Bennett.

The estate had continued to pay rates and insurance on the property. The plaintiffs were also of the view that, given market forces, the property would have declined in value since March 2021.

The administration of the estate liabilities concluded in February 2022 and the balance of the estate assets was ready for realisation and distribution to the beneficiaries. As a result, the executors' role was complete and they held the residue of the estate as trustees for the beneficiaries.

In March 2022, the plaintiffs' lawyers sent Kim O'Meara notice of her removal as a trustee pursuant to the Trusts Act 2019. As Kim O'Meara took no steps to object, her removal took effect 20 working days after the notice. On 23 May 2022, the plaintiffs completed an e-dealing transfer by which Kim O'Meara's trustee interest in the property was transferred to and vested in the plaintiffs.

On 13 July, a notice to vacate the property within 28 days was delivered to the defendants. The defendants did not comply with the notice and remained in the property. The plaintiffs brought an application to the High Court for summary judgment, seeking immediate possession of the property.

The proceedings were served on the defendants, who took no steps. Following a memorandum by the plaintiffs' lawyer to the court, Justice Gault determined that he could deal with the matter on the papers.

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In his judgment, His Honour observed that it is well-established that a registered proprietor – including the executor/trustee of an estate – is entitled to obtain an order for possession of property against a person who is occupying the property without the consent of the registered proprietor. Justice Gault said he was satisfied that the defendants had no defence to the claim. The defendants were occupying the property without the consent of the plaintiffs, who were the registered proprietors. Any licence or consent of the deceased for the defendants to continue occupying the property had expired under the terms of the will.

His Honour noted that there was no tenancy or sub-tenancy which would provide for the defendants' continued occupation, and therefore the Residential Tenancies Act 1986 did not apply. Justice Gault said that, even allowing for difficulties during earlier Covid lockdowns, the plaintiffs had provided ample notice to the defendants to vacate the property and the defendants had either failed or refused to leave. The plaintiffs had sought possession within three working days of service of the High Court order but His Honour held that, given that it was the week before Christmas, five working days would be more appropriate. An order was made that the defendants vacate the property within five working days of service.

Bringing High Court proceedings is an expensive and time-consuming way to resolve a situation.

Friendship goes belly up when one refuses to vacate

A summary judgment application to the High Court for an order for possession of a property was also made in a second case in which the occupants refused to leave a property.

In *Washikita v Smith* [2022] NZHC 3524, Mr Washikita and Mr Smith became acquainted when Mr Smith visited Japan in 1991. Mr Washikita travelled to New Zealand in 1992 and Mr Smith, who was a builder and constructing a house in Auckland, offered to sell the property to Mr Washikita for $250,000. Mr Smith described the price as involving no profit due to the men's friendship, the fact that the house was incomplete and the possibility there were future business opportunities between them.

Mr Smith provided a breakdown recording that the $250,000 figure was made up of a mortgage of $190,000, chattels of $25,000 and his labour of $35,000. There were no details of the land and building costs and neither was there a valuation of the property. In a document prepared before the sale and provided to Mr Washikita, Mr Smith stated 'Simone and myself to remain in the premises until the new house is completed, or until further notice by yourselves.'

Mr and Mrs Washikita entered into a sale and purchase agreement to buy the property from Mr Smith's company and settlement took place in December 1992. The property appeared to be intended as a holiday or retirement home for the Washikitas, but they did not visit New Zealand after 2004.

Mr Smith, his partners and children lived in the house and did not pay rent, although for a long period they paid rates, insurance and other outgoings. Mr Smith got into financial difficulties and, in 2003, asked Mr Washikita to lend him $110,000 for a month. The money was never repaid in full, although part-payments were made towards the loan and interest over the years. Mr Smith was declared bankrupt in 2007.

In correspondence between Mr Smith and Mr Washikita, Mr Smith referred to work he had carried out at the property, but did not seek approval from the Washikitas to do that work.

In February 2020, Mr Washikita wrote and asked Mr Smith to vacate the property by the end of that year. Later that year, the Washikitas' son advised that his parents wanted to sell the property.

Mr Washikita was diagnosed with dementia and was unable to take any further part in the matter. Mrs Washikita asked whether Mr Smith wanted to buy the property and a valuation was obtained. Mr Smith said he would buy the property but that the outgoings he had paid over the years and the value of the work he had done exceeded the value of the property, and the Washikitas should pay him $31,000 as well as transferring title to him.



Mr Smith was subsequently given notice to vacate but did not do so; Mrs Washikita began proceedings seeking an order for possession by way of summary judgment. Associate Judge Paulsen said that, to succeed, Mrs Washikita must prove that she had an entitlement to immediate possession of the property and that Mr Smith had no such right.

His Honour said that Mrs Washikita was a registered proprietor of the property as a joint tenant along with Mr Washikita. As a joint tenant, there was a unity of possession so that she was entitled to occupy, use and enjoy the whole property. As a registered proprietor, Mrs Washikita was also entitled to possession of the property against someone occupying it without her consent.

The evidence was that Mr Smith had been given permission to occupy the property until such time as he was required to vacate. A personal right or licence to occupy land could be terminated at the will of the landowner. Mrs Washikita had established that Mr Smith's contractual licence to occupy the property terminated on 28 February 2022 and she was entitled to possession of the house.

Mr Smith argued that he had a right of first refusal to buy the property and that he had an equitable interest in the property based on his contributions, The court, however, held that the evidence did not support those claims. Mr Smith did not have an interest in the property on the basis of a constructive trust, because he did not in fact have an expectation of an interest in the property and the existence of such an expectation would not have been reasonable in the circumstances.

The application for summary judgment was successful and there was an order that the defendants were to forthwith deliver up possession of the property.

Important to record agreements in writing

Both these cases once again illustrate the importance of parties being clear about agreements relating to property, and recording those agreements in writing.

The two judgments also illustrate the dangers of allowing situations to run on when parties may have different expectations about their interests in a property, or when circumstances have changed.

Bringing High Court proceedings is an expensive and time-consuming way to resolve a situation. The better option is not to allow circumstances to become entrenched. Parties should discuss their expectations and understandings and, if they are not in agreement, the situation should be rectified speedily. ■

Legal Executives New Zealand
RĀNGAI HĀPAI TURE O AOTEAROA

Kaiārahi service



The term *kaiārahi* means 'someone who guides; leader, mentor, counsellor.'

LENZ has long acknowledged the importance of providing a support network for its members in both professional and personal capacities. We are pleased to have a national Kaiārahi service to supplement the ongoing informal support offered through our branches via their networking events and seminars.

Whilst our members can access the professional counselling service provided by the New Zealand Law Society, we also saw a need for LENZ to provide members with direct and personal support on every level.

We have senior members who are approachable and empathetic, and members who have specific technical knowledge that they are prepared to share.

If you would like to talk with a kaiārahi, please look at the contact list in the members' section of our website, or contact the National Office.

Resource management changes to progress in 2023

Long-awaited new resource management laws will continue their progress through Parliament in 2023, bringing with them the biggest changes to environmental laws in more than three decades. They will have profound implications for planning, house construction and the environment.

First readings for two bills

The Natural and Built Environment Bill and the Spatial Planning Bill had their first readings in the House in November 2022. The bills were then referred to Parliament's Environment Committee. Submissions were invited from the public, with a closing date of 5 February 2023.

Environment Minister, the Hon David Parker, said that the aim of the law changes was to better protect the environment while cutting red tape, lowering costs, and shortening the time taken to approve new homes and key infrastructure projects.

"The current system is broken. It takes too long, costs too much and has not adequately provided for development, nor protected the environment. The existing system has made housing more expensive and contributed to a shortage of homes. It needs to be faster, cheaper and better."

Mr Parker said that there was clear evidence that resource consenting had become more costly, with council fees for notified consents more than doubling between 2015 and 2019. Costs for mid-sized projects were up 70% in the same period.

"New Zealand developers' consenting costs of 5.5% of total project costs are at the extreme end compared with the UK and the EU, where consenting costs are between 0.1% and 5%."

The Minister said that the time taken to process consents had also skyrocketed between 2010-14 and 2015-19, increasing by 150%.

"The new resource management system will deliver economic and environmental benefits. For every $1 spent, the new system is expected to deliver $2.58 to $4.90 in benefits. On a conservative estimate, costs to users will fall by 19% a year, or $149 million, equal to more than $10 billion in cost savings over 30 years."

More than 100 resource management plans would be reduced to just 15 regional-level plans across the country. The time taken to prepare them would fall from 10 years under the current system, to a maximum of four years. Mr Parker also said that off-the-shelf standards for housing and infrastructure projects would remove the need for bespoke specifications for each project, making future Transmission Gully-type projects easier and cheaper to consent.

The third piece of the government's reforms in this area will be the Climate Adaptation Bill, that will be introduced to Parliament at a future date. The government aims to pass both the Natural and Built Environment Bill and the Spatial Planning Bill before the general election in mid-October.

Legislation to increase housing supply

In December 2021, Parliament passed the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act; this is designed to increase housing supply in urban areas by bringing forward and strengthening the National Policy Statement on Urban Development.

The new law requires medium density residential standards for specified urban areas to enable a greater variety of housing. It mandates councils in the greater urban areas of Auckland, Hamilton, Tauranga, Wellington, Christchurch and Rotorua Lakes District to apply the medium density residential standards to most of their existing residential areas as part of their plans from August 2022. Other councils experiencing acute housing needs may also be required to include the standards in their plans.

The standards allow the development of up to three dwellings of up to three storeys on each site, without the requirement for a resource consent. ■

High bar set by courts to establish undue influence

Undue influence is a legal doctrine covering situations in which people are pressured to sign documents favouring the person exerting the pressure. If undue influence is established, the agreement can be set aside by the court.

Most commonly arises with wills

Allegations of undue influence most commonly arise in relation to wills, when elderly people may have been coerced into leaving property to people who care for them or have power over their circumstances. The person alleging undue influence has the burden of establishing it, on a balance of probabilities.

In many cases there will be no direct evidence, so the court will consider the surrounding circumstances. However, not all influences on a will-maker will comprise undue influence. Gratitude for care or services, or concern about a relation's financial situation, are accepted and fair issues for will-makers to consider in disposing of their property.

Undue influence sets transaction aside

One example in which undue influence was established is a 2017 case, *Round v Round* (2017] NZHC 428, in which an elderly blind man, whose son was living with him, transferred ownership of his home to the son in circumstances calling for an explanation.

At the time, the son was caring for his father and being paid $300 per week to look after him.

Although a lawyer was present to draw up the papers and explain the transaction, the lawyer did not realise that the man was blind and could not read the papers. The High Court held that the son had told the father that, unless he signed the documents, he would cease caring for him. The transfer had accordingly been the result of undue influence, rather than an independent decision taken by the father.

The transaction was an unconscionable bargain and was accordingly set aside.

Unsuccessful claim

In a 2022 case, an unsuccessful claim of undue influence was made in relation to the making of a will by a 91-year-old man. He had been largely estranged from two of his three children later in his life, but had a close relationship with a grandson who provided him a great deal of emotional and practical support.

The man left $1,000 to each of his children, the contents of the family home to the third child, and the balance of the estate to the grandson. The two estranged children brought proceedings alleging undue influence.

The High Court, however, dismissed the claim, holding that they had failed to discharge the onus of establishing on the balance of probabilities that the will was the product of undue influence.

While the will-maker had been frail, he was mentally alert and had testamentary capacity, and he had been determined to benefit his grandson. Detailed legal advice had been provided and the lawyer had seen nothing to indicate that the man was being influenced to make a will that did not represent his wishes.

Principles of undue influence in CA case

The Court of Appeal has also discussed the principles relating to undue influence in a recent case, arising from circumstances other than a will.

This judgment is a good example of the care with which the courts treat claims of undue influence. Circumstances that, at first sight might appear to show that a person's will has been overborne, may be explained in an alternative way when the events are analysed in more detail.

Hingston v Hingston [2022] NZCA 568 involved a dispute between a father and son over a property in Tauranga. The home was designed and built by Keith Hingston, who had a strong attachment to it and wished to remain living there for the rest of his life. In 2007, Keith, who was then in his early 70s, separated from his second wife and was required to pay her $306,000 or else sell the house and pay her entitlement out of the sale proceeds.

Keith was unable to borrow money to pay out his wife, and turned to his son, David. David considered that the consent order made by the Family Court was unfair and took steps to have it set aside. Keith authorised David to act on his

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behalf and signed enduring powers of attorney relating to both property and personal care and welfare to enable that to happen.

The house was valued at $530,000 in September 2008, with a further valuation in March 2009 assigning it a market value of $505,000 and a forced sale value of $430,000.

The Family Court varied the consent order, directing Keith to pay $295,000 to his wife, but Keith continued to be unable to raise funds to make the payment. It was accordingly agreed that David would assist Keith by purchasing the house, with the proceeds from the sale being used to make the payment.

David settled a trust with the principal discretionary beneficiaries being himself, his wife and their daughter. In October 2009, Keith and the trust executed three documents:

1. An agreement for the sale of the house to the trust for $375,000
2. An agreement for Keith to continue occupying the house, and
3. A deed of acknowledgment of debt said to represent consideration for Keith's occupation of the house during his lifetime.

The documents also provided for the sale of specified assets owned by Keith and the transfer of the resulting proceeds to the trust, as well as the transfer of his current and future superannuation entitlements to the trust.

In the meantime, Keith had reconciled with his first wife and she also signed an agreement to occupy, with consideration for the right to occupy being provided by a payment of $158,989 from her to the trust. The payment was discharged by setting off a debt owed by David to her.

Keith and his first wife separated again in 2010 and she moved out of the house. David considered that the breakdown of the relationship and the moving into the house of Keith's new partner were a breach of the agreement to occupy. The parties became embroiled in a dispute and David later handed Keith an eviction notice.

Keith and his partner moved out of the house and into a rental property. The trust sold chattels previously owned by Keith and then sold the house for $610,000. The trust had received $9,986 of Keith's superannuation before he cancelled payments to the trust. Keith commenced proceedings against David and the High Court held that the 2009 transaction was a result of David's undue influence over Keith and that David and the trust had breached its terms. David appealed to the Court of Appeal.

The Court of Appeal's judgment was delivered by Justice French. Her Honour said that the principles applicable to an undue influence claim had been set out in the case of *Green v Green.* These were that the person asserting undue influence must show that the alleged influence led to the making of the impugned transaction and that the influence was undue in the sense that the transaction was not the result of the free exercise of independent will. The question of whether a transaction was brought about by undue influence was a question of fact and could be established either directly by proving actual undue influence or by recourse to an evidential presumption.

Justice French noted that there was no challenge to the High Court judge's finding that Keith had placed trust and confidence in David. The focus of the appeal was on the judge's determination that the October 2009 transaction called for an explanation and that David had been unable to discharge the evidential onus to show that the transaction was not the result of undue influence.

The Court of Appeal concluded that the transaction appeared completely one-sided and in favour of the trust, and clearly called for an explanation. Although the house had been sold to the trust at an undervalue, however, the price had been fixed by reference to the forced sale valuation and the distressed state of the market, as well as Keith's desire to retain the property. Those factors went some way towards rebutting the presumption that the sale at an undervalue was the result of undue influence.

Justice French also noted that when it was explained that the transfer of the assets and the superannuation payments had been used to reduce the debt owed by Keith, the transaction was cast in a different light and an alternative explanation to undue influence was provided.

The court canvassed the legal advice received by Keith and also noted that, while he was 87 at the time of the hearing, he was alert and presented with full cognition. There was evidence that he understood the transaction and exercised his independent will to proceed.

The Court of Appeal concluded that David had produced sufficient evidence to show that the transaction had not resulted from undue influence. Although the transaction was not fully explained and there were features which appeared to favour David at Keith's expense, overall the circumstances did not show Keith's will being overborne or undue influence being brought to bear on him to sign the documents.

The appeal was allowed and the judgment on the undue influence cause of action was set aside. ■

CONVEYANCING UPDATE



Significant business assets threshold for Australian investors in New Zealand increased from January 2023

Australian non-government and government investments in significant business assets are exempt from the requirement to obtain prior consent from the Overseas Investment Office if the transactions are under specified thresholds.

The thresholds are required to be adjusted each year if calculations made in accordance with formulae set out in Regulations 99(3) and 101(3) of the Overseas Investment Regulations 2005 produce an amount greater than the previous year's amount.

From 1 January 2023, the thresholds for the current year were increased to NZ$586 million if the investor is an Australian non-government investor; and NZ$123 million if the investor is an Australian government investor.

Court of Appeal dismisses attempt to overturn specific performance property sale direction

In *Xieyan Mao v Hargun Singh* [2022] NZCA 390 the Court of Appeal dismissed an appeal against a High Court judgment ordering specific performance of an agreement for sale and purchase of land in Auckland.

Under the terms of the agreement executed in August 2020, Xieyan Mao was to sell a property to Hargun Singh with vacant possession. However, the property was subject to a 12-month fixed-term tenancy due to end in July 2021.

Ms Mao insisted that Mr Singh had to take the property subject to the tenancy and she would not complete the sale on any other basis. On the settlement date, Ms Mao issued a settlement notice and later purported to cancel the agreement on the basis that Mr Singh had not tendered settlement. Despite her breach of the agreement by not providing vacant possession, she insisted that her settlement notice was valid and the cancellation of the agreement was effective.

Proceedings were brought and the High Court ordered specific performance of the agreement. Ms Mao appealed to the Court of Appeal. The judgment was delivered by Justice Cooper. His Honour said that the High Court had been correct to conclude that the facts of the case demonstrated futility.

On the settlement date the property was tenanted and Ms Mao was both unable to comply with her agreement to provide vacant possession and, in any case, unwilling to do so. Mr Singh was accordingly not in breach of the agreement by failing to tender settlement. The position adopted by Ms Mao was entrenched and there was every indication that she would not change her mind.

Mr Singh was entitled to seek specific performance and it was appropriate that it be granted.

Close to 2,000 users for new Landonline Dealings application by end of 2022

More than 1,900 registered Landonline users were using Toitū Te Whenua Land Information New Zealand's new Dealings application by December 2022. The application is designed to make Dealings transactions easier and faster. By the end of last year, users could use it for discharge mortgage, title and mortgage dealings end-to-end, as well as for settlement day activities for almost all dealing types, including certifying and signing, releasing and submitting.

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Automated Notice of Change service expanded

Waipa and Matamata-Piako District Councils have been addded to the Notice of Change of Ownership automated service; by December 2022 it was being used by 59 out of 67 councils.

Māori freehold land notifications

Land Information New Zealand's web search and public land record search customers are now automatically notified if the property they search is identified as Māori freehold land.

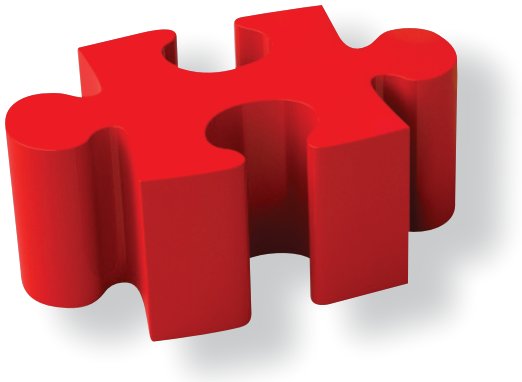
The notifications began in November 2022 and may include a direct link to Māori Land Online, enabling customers to easily find out more about the land.

Two new entities sign up to Notice to Mortgagee service

Resimac Home Loans Ltd and Squirrel P2P Trustee Ltd are now using the automated Notice to Mortgagee service. This simultaneously informs financial institutions and the acting lawyer that a mortgage has been registered against a record of title.

There are now 13 institutions using the service, including Westpac, Bank of New Zealand, Southland Building Society and Taranaki Savings Bank. ■

SOURCES: Land Information New Zealand; Overseas Investment Office; Judicial Decisions Online.



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What is a CPDPR?

All Registered Legal Executives are required to maintain a CPD Plan and Record (CPDPR).

To prepare your CPDPR you need to:

1. **Identify your areas of practice.** They may include, for example:
   - Residential conveyancing
   - Estate administration
   - Trusts
   - Retirement villages.
2. **Reflect on what you do well and what could be improved,** in terms of:
   - Your knowledge, eg: the areas of law that you work in
   - Your skills, eg: drafting documents, letter writing
   - Professionalism, eg: awareness of changes to legislation, and the rules and regulations relating to legal practice
   - 'Practice management', eg: time recording, file management
   - Professional conduct and personal wellness, eg: awareness of issues of conduct and professional responsibilities, self-care.
3. **Review your needs** against the needs of the firm in consultation with your supervising lawyer, and identify your two or three most important learning needs for the coming year.
4. **Identify learning outcomes that will meet your learning needs.** These outcomes will be actions, for example:
   - "To understand and be able to apply new legislation relating to . . . "
   - "To implement a system and develop habits that will improve my time . . . recording".
5. **Choose three or four learning outcomes to focus on** for the coming year.
6. **Identify CPD activities that will help to achieve those learning outcomes,** for example:
   - "Attend webinar on changes to the XY Act"
   - "Attend in-house seminar on effective use of time-recording software".

CPDPR format

We recommend that you use the same format for your CPD plan as the lawyers and any other Registered Legal Executives in your firm.

Alternatively, there is a template in the members' only section of our website and both NZLS and ADLS have online CPDPRs for their registered users.

Your plan should include space to reflect on each CPD activity:

- Did the activity expand your knowledge and/or skills?
- What did you learn, and what will you do differently from here?
- How can you implement the new knowledge or skills in your work?
- Did the activity help you meet your learning outcomes? How did it do that?
- Has the activity identified further learning needs?

Eligible CPD activities

Your CPD activities need to:

- Be planned and structured, with a stated purpose and outcomes
- Be related to the learning needs that you have identified for the year
- Be verifiable, with supporting documentation
- Provide for interaction and feedback
- Not be part of your daily work.

Essentially, if an activity is something that a lawyer can count towards their CPD, then so can you.

Seminars (both in-house and external), conferences, study groups, webinars and interactive 'on demand' CPD such as that offered online by NZLS CLE Ltd and ADLS may all be eligible activities.

Please note that not all online learning activities are eligible — you need to check when registering. For example, if you are unable to attend a webinar 'live' and watch it later by yourself, it may not meet the criteria. (However, if you watch with colleagues, discuss it, make notes, and have your attendance verified, it may be able to be included.)

At least one hour and up to 1.5 hours of your annual CPD must focus on wellbeing and/or professional conduct.

Verification of attendance

Verification of your attendance at an event or successful completion of an on demand CPD activity must be attached to your CPDPR if you wish to include it in your CPDPR.

CPD audit

If you are randomly selected for a CPD compliance audit, you need to provide your CPDPR for the selected period, by the date given. Your attendance verifications must be included.

Queries?

For any queries about your CPDPR, please contact Jo Buckton at: jo.buckton@nzile.org.nz

Balancing property owners' rights against essential infrastructure requirements

Landowners expect that they should be able to decide what happens on their properties and refuse entry to those they do not wish to be present on their land. However, those expectations can conflict with the public interest in providing utilities and infrastructure to the broader population.

Easements

Easements provide for electricity, telecommunications, gas and water companies to run lines or pipes over private land, and to enter onto that land to inspect infrastructure and carry out repairs. When the parties disagree about the terms of such access, however, disputes can prove lengthy and costly.

It is therefore essential that legal executives make clients fully aware of all easements on properties they intend to purchase, and the full extent of the disruption that may be caused when companies exercise rights under those easements. This is particularly an issue in rural areas, where views and the enjoyment of land may be affected by tall lines, by the noise of repair work, or by heavy machinery operating.

Legal executives should also be aware that rights for utility companies to access property are provided for by a number of pieces of legislation. These include the Petroleum Act 1937, the Resource Management Act 1991 and the Public Works Act 1981.

Gibbs case and gas pipeline

In *Gibbs & Ors v First Gas Ltd* [2022] NZCA 627 First Gas owned and operated the Maui Pipeline, which runs 299 km north from New Plymouth to South Auckland. The plaintiffs' picturesque coastal property, which they and their predecessors had owned for more than 100 years, is one of the properties through which the pipeline passes. The Petroleum Act 1937 provides for pipeline authorisations, and two easements had been issued under the legislation to allow the pipeline to traverse the plaintiffs' property.

The pipeline easement certificates apply to different parts of the property but are essentially in the same form. Both were issued under section 70A, which stated that after any pipeline authorisation had been granted, the Governor-General could issue a proclamation defining the middle line of the pipeline. As soon as practicable after construction had been completed, the pipeline's owner was to undertake a survey of the actual position of the pipeline 'showing the strip of land not exceeding 20 metres in width under, upon or over which the pipeline passes.' The survey was to be presented to the relevant minister, who was to issue to the owner the necessary pipeline easement certificates.

In 2018, a serious defect was identified in a five-metre section of the pipeline on the plaintiffs' property. The defect placed the pipeline at risk of failure and a remediation programme was developed that involved the construction of a bypass pipeline, followed by replacement of the damaged section and reconnection to the gas supply.

The bypass pipeline ran for 800 metres above ground, outside the 12-metre strip of land identified in the easements and was the subject of negotiations between First Gas and the plaintiffs. However, in January 2021 when First Gas tried to obtain access through the plaintiffs' land to begin replacement of the damaged pipe, the company was blocked from entering. The plaintiffs said that access would not be permitted other than on terms and conditions which the parties were unable to agree on.

In April 2021, First Gas filed proceedings, including an application for an interim injunction preventing the plaintiffs from restricting access to their property for repairs. The High Court granted an interim injunction and First Gas planned to begin preliminary investigative work. The company notified the plaintiffs but, when a surveyor and other workers arrived, each was served with a trespass notice. The plaintiffs also used two vehicles to block access down a track used by First Gas and its predecessors for almost 40 years.

The High Court made declarations that First Gas be authorised to enter onto the land with machinery as required to inspect and repair the pipeline and to deliver and store the machinery next to the pipeline while the work was carried out. A permanent injunction was also

issued prohibiting the plaintiffs from restricting First Gas in the exercise of its rights.

The plaintiffs appealed to the Court of Appeal, arguing that First Gas's rights were restricted to a 12-metre wide strip, six metres either side of the pipe's centre line. They also submitted that, since vehicular access along the length of the strip was not possible, any access to their land for maintenance purposes must be the subject of negotiation and agreement.

The Court of Appeal's decision was delivered by Justice Muir. His Honour said that the easements were unequivocal in their wording and did not limit First Gas's rights to the 12-metre wide easement strip. Clause 4 stated that the easement holders should have a right of entry onto the land for the purpose of exercising the rights conferred on them by the Act and by the pipeline authorisation.

A determination that the easement holders' rights were confined to the strip would be in direct conflict with Clause 4 and with section 70(6) of the Act. The Court of Appeal also rejected the plaintiffs' argument that the permanent injunction granted by the High Court was a 'mallet to crush a nut.' Justice Muir said that the history between the parties demonstrated a pattern of unreasonable interference by the plaintiffs with the rights of First Gas. There was a significant risk that this would occur again in future. Accordingly, there was a 'resulting premium on ensuring that the [plaintiffs] were restrained by appropriate court order.' That was particularly so given the importance of ensuring that an item of nationally significant infrastructure was properly maintained and operated.

The appeal was dismissed.

Proposed construction of electricity line

A second example of the types of disputes that can arise between utility companies and landowners is *Shane Dromgool & Ors v Minister for Land Information* [2022] NZSC 157. In that case, Top Energy Ltd is the electricity lines company in the Far North. It initiated a project involving the construction of a new 110kV line between Kaikohe and Kaitaia, designed to upgrade its network to meet increased demand, and ensure security and reliability of supply.

The proposed new line would cross land owned by the appellants. The appellants did not agree to grant the necessary easements; Top Energy accordingly applied to the Minister for Land Information under section 186 of

Continued on page 26 ...

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CHANGING THE CULTURE OF A PROFESSION

...Continued from page 25

the Resource Management Act 1991 to initiate compulsory acquisition of easements over the land under Part 2 of the Public Works Act 1981 (PWA).

In August 2016, the minister agreed and directed officials to begin the PWA process. Negotiations took place with the landowners but no agreement was reached. In June 2017, the minister accordingly executed three notices of intention to take easements in relation to their land under section 23 of the PWA.

The appellants filed notices of objection with the Environment Court, which upheld the minister's position. The appellants appealed to the High Court and were successful in part, with the report of the Environment Court being set aside. The Court of Appeal, however, reversed the High Court decision and confirmed the Environment Court report.

The appellants were granted leave to appeal to the Supreme Court on the issue of whether the Court of Appeal had correctly interpreted the role of the minister in deciding an application under section 186(1) of the Resource Management Act and, in particular, whether the minister must be satisfied that the proposed taking was fair, sound and reasonably necessary.

The majority decision of the Supreme Court was delivered by Justice O'Regan. His Honour noted that the purpose of section 186 of the Resource Management Act was to provide a mechanism for a network utility operator that was not a central government or local government entity to engage in a process providing for the compulsory acquisition of land required for a particular project or work.

There was no dispute that Top Energy was a network utility operator and was also a requiring authority, as it had applied for and been granted that status under section 167 of the Resource Management Act. Justice O'Regan observed that the compulsory acquisition process was undertaken by a minister with public accountability, not by the requiring authority, as the latter would in some cases be a privately-owned entity.

The Supreme Court said that the minister must exercise the power under section 186 reasonably and in accordance with the statutory scheme. The minister must have regard to section 24 of the PWA and be satisfied that alternatives had been duly considered.

"The minister must be satisfied, on the information then available, that there is sufficient indication that the requiring authority has articulated its objectives in relation to the proposed work; has given adequate consideration to the alternatives to meet those objectives; and that the compulsory acquisition of the land, should that occur, would be fair, sound and reasonably necessary to meet those objectives to justify setting in train the process in Part 2 of the PWA."

The appeal was dismissed. ■

JobSeeker - What is it?

JobSeeker sits alongside our JobLink service

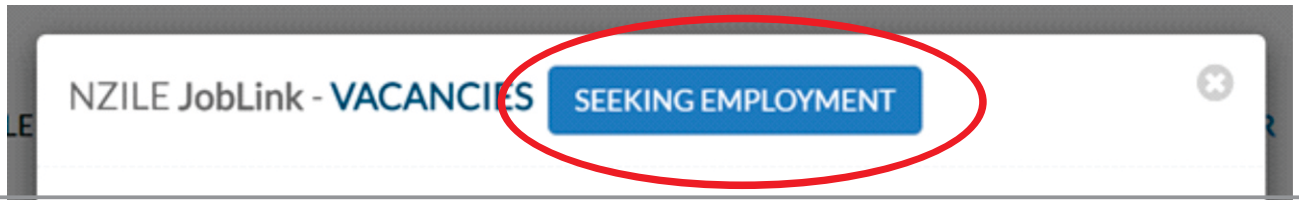
Where JobLink lets members know about employment opportunities throughout New Zealand, if you're looking for new employment, JobSeeker is your opportunity to promote yourself.

How does it work?
Log into the members' only area of our website and click on the 'JobLink' button to open a pop up screen – see below. There are two tabs – VACANCIES (the default setting) and SEEKING EMPLOYMENT.

If you would like to send us an 'advertisement', either with your contact information or anonymised, we can add it to the SEEKING EMPLOYMENT tab and include it (or reference to it) in the next JobLink email to members.

If you would prefer to be anonymous, we can pass on your contact details to any members or firms that contact us (joblink@nzile.org.nz).

There is currently no charge for members to use this service.







Te Pae Christchurch Convention Centre: venue for the NZLS CLE Ltd Legal Executives Conference, 21-22 August 2023.

Legal Executives New Zealand
RĀNGAI HĀPAI TURE O AOTEAROA

JobLink – FAQs

What is JobLink?
JobLink is a members-only service. Its purpose is to assist our members with finding employment as Registered Legal Executives. JobLink is available to all members and their employers.

How does it work?
Prospective employers email their advertisement (as a PDF or in Word format please) to LENZ's National Office (see details below). Employers have the following options:

- List the vacancy on our website, or
- List the vacancy on the website and have the advertisement emailed to members, providing direct and effective distribution. Very few members have chosen not to receive JobLink notifications. Emails are usually sent weekly, on Thursdays.

What are the charges for JobLink?
Website
There is no charge for an employer to list their vacancy on our website. Job advertisements are listed for three weeks, or until the closing date for applications.
Email
There is a fee of $75 + GST for email distribution to LENZ members across New Zealand.
Members
There is no charge for members to receive JobLink emails and/or view job advertisements on the website.

However, members need to have registered on the website to access members-only information.

What positions can be advertised on JobLink?
JobLink is only for Registered Legal Executive positions or roles that will help junior members into legal executive positions. We do not assist with filling secretarial positions or other roles.

How do I register for JobLink?
All members are automatically added to the JobLink database using the email address on their application form. Please contact us if you would prefer to use a different address for JobLink emails.

If you would like to stop receiving JobLink notifications please email joblink@nzile.org.nz with 'JobLink - Unsubscribe' in the subject line.

What information should be included in the job advertisement?
- The firm's logo
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Feel free to add some personality to your advertisement, describe your team or workplace, and who your ideal candidate may be.

If you have any further questions regarding JobLink, please contact us on (09) 250 1630, or email: joblink@nzile.org.nz

Have you tried New Landonline?

Hints and tips on how to use the new functionality

Andrea Watson, Consulting Solicitor, Toitū Te Whenua Land Information New Zealand

Toitū Te Whenua Land Information New Zealand (LINZ) is regularly releasing new functionality into the New Landonline – Dealings application, following its launch in November 2022.

In the new Dealings application, users can now process most simple dealings containing Discharge of Mortgage, Transfer and/or Mortgage instruments end to end. In addition, users can complete their certify & sign, release and submit tasks for almost all dealing types.

LINZ Consulting Solicitor, Andrea Watson, says Toitū Te Whenua is now regularly releasing new functionality into the new application.

"Customers in more than 84% of firms have already tried the new Dealings application.



Andrea Watson, Consulting Solicitor, Modernising Landonline.

"Common feedback is that users find it well worth doing a handful of dealings in the new application to get used to the new look and feel. They enjoy how easy it is to enter information and navigate around their dealings.

"We've received many great ideas on improvements. These help us understand what's top of mind for our customers. In response, we've enhanced the landing page, making it easier to locate and view the details for a dealing.

"We've also increased the 'certify & sign' functionality to allow for signing where there are multiple representatives for a role," says Andrea.

Presenting at LENZ regional events

Toitū Te Whenua has been working with LENZ branches to set up events around New Zealand to demonstrate the new application.

"These events have been fantastic. We've loved meeting Registered Legal Executives and hearing about their experience with our new application.

"Sometimes people are a little apprehensive to get started but once they've been taken through one of our step-by-step demos, they're happy to give it a go themselves.

"It's such a privilege to work with our customers directly, to hear their stories and to help make the process easier for them," says Andrea.

Hints and tips to access and use new functionality

The following tips will help users get the most from their work in the new application, saving their firm time and money.

Customise the order and size of columns
You can do this on the 'My Dealings' and 'Firm Dealings' pages, based on the reference fields that are the most relevant for the particular matter.

Your browser will remember the changes.

View full Dealings Details summary
Users can do this by clicking anywhere along the dealing row (except the dealing number hyperlink itself), on their 'My Dealings' or 'Firm Dealings' pages.

The first iteration provided a condensed summary of a dealing, but feedback indicated users wanted the more fulsome 'Dealing Details' summary from the landing page for a quick update on where their dealing is at.

The more comprehensive slide out contains the full suite of information that has been used from Legacy Landonline, such as the status of each instrument: signed, released, draft – for example.

Note: there is no custom print function, but you can use an alternative printing method, such as 'ctrl+p.'

Check the status of Notice of Change (NoC)
There are now more prompts about the status of a NoC. This is in response to feedback that draft NoCs can be forgotten in Legacy Landonline (if the party responsible forgets to mark it as 'Ready to Send').

Users can check the status by clicking into the 'Notice of Change' page (from the left-hand Dealing navigation bar or from within the instrument's 'Prepare' page).

Users will also see the status reported on the 'Release' page.

Populate fields faster
Simply start typing any part of a Primary Contact (PC) or Conveyancing Professional's (CP's) name or user ID, when linking them to an instrument role. Possible results will start to appear, and users can select the correct name as soon as they see it.

Similarly, when preparing a mortgage, the names of the most common mortgagees will appear when users start typing their name. The selected mortgagee's associated Memorandums of Mortgage will also be pinned to the top of the list in the following field.

> "It's such a privilege to work with our customers directly, to hear their stories and to help make the process easier for them."

Quickly populate affected titles or default PC and CP
Copy across any affected titles users have already added to the dealing by clicking the icon with three horizontal lines and a plus sign (by the 'Add titles' field).

Clicking the people icon (at the end of each row in the 'Roles' section) populates that role with a user's default PC and CP (if set).

Note: this behaviour is different from Legacy Landonline.

Use in-app navigation to release dealing locks
Note: Dealing locks work a little differently in the new application.

To ensure a user's dealing lock is released, we recommend using the stylised blue back arrow (next to the dealing number near the top right) to exit a dealing.

Please don't use the browser 'back arrow'. Alternatively, logging out of the application via the main menu will also release the dealing lock.

Simply closing the browser window will currently result in a user's Dealing being locked for 20 minutes. LINZ is looking into how to mitigate this.

In the meantime, if users see a pencil icon next to a dealing in their 'My Dealings' or 'Firm Dealings' tabs on their landing page, this means it is still in edit mode. Open the dealing and use the blue back arrow to release it.

Further help

To learn more about what is supported and how to get the most from the new functionality, the full suite of reference material for the new Dealings application can be found in the Guidance section of the LINZ website www.linz.govt.nz/node/10317/

Stay up to date with recent changes to the Dealings app on the LINZ website: www.linz.govt.nz/whats-new-in-dealings.

Get in touch

If you would like more information about the new Dealings application, please email engagement@linz.govt.nz. ■

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New year promotions

Congratulations to Norris Ward McKinnon (NWM) Registered Legal Executive, **Jenny Barns**, who was promoted to Associate at NWM in the new year.



A member of the firm's corporate commercial team, Jenny's work focusses on property development, subdivisions, commercial property transactions and related financing matters.

"I particularly enjoy working on subdivisions – the more complex the better," explains Jenny. "It's like looking at a huge puzzle and getting every piece in its proper place and with the correct procedure behind it. I guess I'm a problem solver deep down!"

Working as a member of a close-knit team, Jenny says she relishes her contact with clients. "I see it as a strength to have good relationships with our clients. It makes the project or matter go more smoothly, and it makes it more enjoyable too."

And living in Hamilton? "I know the city gets a bad rap sometimes, but we enjoy all that is has to offer. We like hiking and bush walks, and that's all pretty much on our doorstep. Our family moved back to Hamilton in 2015, although we'd done a stint some years before, and we have found it easy to make friends. It's a great place to bring up a family."



Hamilton Gardens

We also congratulate newly promoted Norris Ward McKinnon Associate and former LENZ member, **Tania Frederiks.**

To read more about Tania's career and her journey from Registered Legal Executive to lawyer, read the Winter 2021 edition of *Envoy* (page 12). ■

RECENT NEW AND UPGRADED MEMBERS

...Continued from back cover

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Emma Taylor	Auckland
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Jacinda Leigh Ward	Christchurch
Tina May White	Auckland
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Randy Buckley	New Plymouth
Qingyun (Cici) Du	Auckland
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Emma Kate Herbert	Rotorua
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Legal Executives New Zealand
RĀNGAI HĀPAI TURE O AOTEAROA

President:
Carmen Franich
Kāinga Ora, Auckland
E: carmen.franich@kainga ora.govt.nz
M: 021 629 278

Vice President:
Ally McEldowney
Holland Beckett Law, Tauranga
E: ally.mceldowney@hobec.co.nz
T: 07 571 3836

Treasurer:
Jill Forde
Linwood Law, Christchurch
E: jill@linwoodlaw.co.nz
T: 03 389 2121

Immediate Past-President:
Necia Parker
Richard Lewis Law, Palmerston North
E: necia@rllaw.nz
T: 06 354 4162

Executive Officer:
Jo Buckton
LENZ, Auckland
E: jo.buckton@nzile.org.nz
T: 09 250 1630

BRANCH REPRESENTATIVES
Northland:
Nicky Dreadon
Henderson Reeves
Whangārei
E: nickydreadon@hendersonreeves.co.nz
T: 09 430 4348

Auckland Waikato:
Michelle Way
Beattie Rickman Legal, Hamilton
E: mway@brlegal.co.nz
T: 07 838 7455

Bay of Plenty Gisborne:
Cathy Punter
Matthew Shaw Legal Ltd
E: cathy@mslegal.co.nz
T: 07 347 0079

Wellington Central Districts:
Stephanie Bishop
Horsley Christie, Whanganui
E: stephanieb@horsleychristie.co.nz
T: 06 349 0090

Nelson Marlborough:
Rachael Cooke
Richmond Law, Richmond
E: rachael@richmondlaw.co.nz
T: 03 544 7949

Canterbury Southern Districts:
Jo Langton
Hill Lee & Scott, Christchurch
E: jlangton@hlslegal.co.nz
T: 03 379 7780

INDEPENDENT COUNCILLORS
Robyn Dewson
C & F Legal Ltd, Nelson
E: robyn@cflegal.co.nz
T: 03 545 8080

Pam Harliwich
Ryman Healthcare Ltd, Christchurch
E: pam.harliwich@rymanhealthcare.com
T: 03 336 0330

Ian Jespersen
Burton Partners, Auckland
Email: ian.jespersen@burtonpartners.nz
T: 09 913 1772

Carla Rule
Norris Ward McKinnon, Hamilton
E: carla.rule@nwm.co.nz
T: 07 834 6071

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