



Inder Lynch

L A W Y E R S

THE LAW REPORT

SUMMER 2009 / 2010

# SEASONS GREETINGS



Toni Norwood  
at Addison –  
March 2009



New Premises at Papakura

2009 has been a busy year for us. Certainly the economic climate has been a challenge both for our clients and ourselves. We are hopeful that 2010 will bring all of us better times.

Some of our recent activities have been:

- The completion of building work on the ground floor of our Papakura premises;
- Presentation at Acacia Cove Retirement Village, Wattle Downs by Paul Maskell and Sharon Nicholson;
- Participation at the Addison Residential Development Open Days (at Porchester Road, Takanini) by Toni Norwood, Sharon Nicholson, Marj Phillips and Chris Lynch;
- Wills, Trusts and Enduring Powers of Attorney Seminar presented by Craig Inder, Sharon Nicholson and Paul Maskell;
- Property Investment Seminars by Chris Lynch and Toni Norwood;
- NZ Herald article on John Foliaki and his achievements with coaching at the Te Papapa Rugby Club;
- Our Managing Partner Paul Maskell being re-elected to a further three year term with the New Zealand Law Society Family Law Section Executive as well as being re-elected for a third year as Chairperson of the Section;
- Participation in the South Auckland Hospice "House" project at Karaka Harbourside; and
- Attendances to present the Inder Lynch Achievement Awards at Alfriston College by Julian Airey, at James Cook High School by Greg Stringer, at Manurewa High School by Paul Maskell, at Papakura High School and Rosehill College by Angela Pope.

We were proud to be able to continue this year with our \$10,000 contribution to our community by way of our Inder Lynch Achievement Awards. The ten successful candidates are pictured on page 4 of this edition. Full profiles can be viewed on our web site. We congratulate all of the candidates on their hard work and commitment to succeed.

Wishing you a Merry Christmas and a prosperous New Year. 🌐



John Foliaki



Sharon Nicholson at  
Addison – November 2009

## Christmas / New Year operating hours

Our offices will close for the Xmas/ New Year vacation on 23rd December 2009, with a partial re-opening on 6th January 2010 and a full re-opening on 18th January 2010.

# RADICAL CHANGES TO PROCEEDINGS IN THE DISTRICT COURT



**By Julian Airey**

*Julian is a Partner of our firm specialising in Commercial Litigation.*

On 1 November 2009, the District Courts Rules 2009 came into force. The new rules represent a fundamental change to the litigation process for the majority of civil cases in the District Court.

## Commencement of Proceedings

Previously proceedings in the District Court were commenced by filing and service of a Statement of Claim and Notice of Proceeding. Under the new rules, these documents are replaced with a single document called a Notice of Claim, which is filed in the Court and served on the Defendant. The Defendant has 30 working days to serve a Notice of Response, which replaces the Statement of Defence that was filed under the previous rules. If no Notice of Response is served, the plaintiff may obtain judgment by default.

Once a Notice of Response has been served, the parties then exchange "Information Capsules" at 30 working day intervals.

By the time Information Capsules have been exchanged, the parties are likely to have been provided with sufficient information to enable them to make a reasonable assessment of the strengths and weaknesses of their respective cases. This should assist the parties to settle the matter. If, however, they are unable to reach settlement, the Plaintiff will then file in Court a copy of the Notice of Response together with copies of the Information Capsules and a Notice of Pursuit of Claim. These documents will be placed either before a District Court Judge or Registrar who will determine whether the claim is to be allocated a Short Trial or a Judicial Settlement Conference.

## Short Trials

Short Trials are intended to cover simple cases anticipated to take less than one

day and involving few witnesses.

## Judicial Settlement Conferences

If the matter is not allocated a Short Trial, it will be allocated a 90 minute Judicial Settlement Conference to take place within 30 working days of it being allocated. A Judicial Settlement Conference is essentially a meeting between the parties and their representatives in the presence of a District Court Judge who will endeavour to assist the parties to come to their own resolution. If, however, the Judge forms the view that the matter is not going to be resolved in a 90 minute Judicial Settlement Conference, the Judge will then immediately convene a Directions Conference at which time the Judge will allocate the matter to one of three modes of trial:-

- A "Simplified Trial"
- A Summary Judgment Hearing or
- A Full Trial

## Simplified Trials

The Simplified Trial process is designed to cover cases involving one or two issues. It is intended that the Simplified Trial process will apply to the majority of claims that are not resolved at the Judicial Settlement Conference.

## Summary Judgment

The Summary Judgment process is an abbreviated form of proceeding whereby a plaintiff who is able to prove that the defendant does not have an arguable defence can obtain Judgment at an early stage. Under the new regime, Summary Judgment Applications may only be brought after the Judicial Settlement Conference.

## Full Trial

If it is decided that the case is not suitable for a Simplified Trial or the Summary Judgment procedure, it will be allocated a Full Trial at which time the

witnesses will give their evidence orally and be cross-examined. The procedure for such Trials will be identical to the procedures in the High Court.

## Practical Implications of the New Regime

The new regime is intended to:

- Identify at an early stage those cases that can be resolved without the Courts' intervention;
- Identify at an early stage those cases that are likely to be resolved at a Judicial Settlement Conference and arrange such a conference.
- Ensure that the factual and legal issues in a particular case are identified at an early stage.
- Give cases that are relatively straightforward but which are not able to be settled nevertheless receive an early and straightforward hearing in the form of either a Short Trial or a Simplified Trial.
- Simplify the steps required to bring a matter to a hearing and reduce the "procedural warfare" that could and often did result under the old rules.

## Conclusions

What is clear is that the new rules represent a fundamental change to the way in which litigation in the District Court is conducted. It is certainly likely to result in litigants having to turn their minds to the strengths and weaknesses of their and their opponents' cases and consider meaningful settlement discussions at a much earlier stage than was the case previously.

The consequence for Plaintiffs and Defendants who fail to comply with their obligations under the new regime will often be the dismissal of their claim/defence. Therefore, whilst the new regime is intended to simplify the processes involved in litigation, it nevertheless remains important that litigants seek advice and assistance at an early stage from advisors who are familiar with the new processes. We can assist in that regard. 🌐

*This is an abridged version of the full article which can be viewed at [www.inderylnc.co.nz](http://www.inderylnc.co.nz).*

## TRUSTEE EMBARRASSMENT

If your Trust is to enter into any contract or propose an action involving its assets avoid embarrassment by first involving all Trustees in the proposal.

Almost all Family and Trading Trusts require the unanimous consent of all Trustees.

Should one or more Trustees decline to consent to the proposal it is best to find out before making a commitment which the Trust does not have the legal authority to follow through on.

## RELATIONSHIP PROPERTY AND THE RICH

### Could this happen here?

When Ingrid Myerson, the wife of 26 years of Brian Myerson, a South African financier who once enjoyed a generally favourable reputation in London's financial centre as an activist investor, filed for divorce last year, Mr. Myerson's estate was valued at 25.8 million. Mrs. Myerson elected to receive 11 million in cash and some properties, while Mr. Myerson laid claim to 14 million in shares of the publicly traded investment fund he runs, Principle Capital Investment Trust.

Initially, Mr. Myerson was pleased with his deal. But when Principle Capital shares plunged 90 percent last fall, Mr. Myerson shocked legal circles by petitioning an appeals court not only to absolve him of his remaining financial obligations, but also to compel his ex-wife to return the 11 million she had already been paid.

His petition was rejected.

In the United States, the lawyer Steven Simkin fell victim to a similar downturn after his divorce, only his was caused

by Bernard L. Madoff. In 2006, Mr. Simkin and his estranged wife, Laura Blank, agreed to split evenly the \$5.4 million in an account they had with Madoff Securities, according to a suit that Mr. Simkin filed in February in New York. Mr. Simkin gave Ms. Blank \$2.7 million in cash, according to the suit, and held onto the account.

When Mr. Madoff's Ponzi scheme was uncovered, the account was worthless and Mr. Simkin petitioned the court to get back the cash he had paid his ex-wife for her share.

How sad.

Reprinted from "The Family Advocate" Winter 2009 edition with the kind permission of the NZLS Family Law Section.

## GET OUR NEW FREE BROCHURE

### Debt Collection



L A W Y E R S

## QUESTIONS ANSWERED

- What is an Agreement for sale and purchase?
- What is a condition?
- What are Vendors' Warranties?
- What is a Cash-out clause?
- What happens on settlement day?
- What is the difference between joint ownership and tenancy in common?
- Do I need a written agreement regarding the ownership of the property?
- What is a LIM?
- What is a Building Inspection Report?
- What do I need to know about auctions?

together with many more answers in our new brochure

### Buying & Selling Residential Property



For our free brochure on  
**Buying & Selling  
Residential Property**

Call Marj Phillips:  
Ph 09 299 8550 or email  
m.phillips@inderlynch.co.nz

Call Marj Phillips Ph 09 299 8550  
or email [m.phillips@inderlynch.co.nz](mailto:m.phillips@inderlynch.co.nz)

# INDER LYNCH ACHIEVEMENT AWARDS 2009 WINNERS

## Papakura High School



◀ Blaire Kimberley

Jonathan Fuller ▶



## Rosehill College



◀ Anna Kerr

Matthew Mudford ▶



## Manurewa High School



◀ Stephanie Wass

Jordan Ormsby ▶



## James Cook High School



◀ Laree Khamis

Sharlin Krishna ▶



## Alfriston College



◀ Sonia Henry

Uai Liu ▶



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### Partners:

Phil Saunders LLB  
Paul Maskell LLB (Notary Public, Mediator)  
Chris Lynch LLB  
Craig Inder LLB  
Greg Stringer LLB  
Sarah Bush LLB (Hons) BA (Hons)  
Julian Airey LLB

### Consultants:

Brian Lynch LLB  
Kantilal Balu LLB (Notary Public)

### Associate:

Angela Pope LLB

### Solicitors:

Amy Chesnutt LLB BA  
Malcolm Dreaneen LLB BA  
John Foliaki LLB  
Josephine Munro LLB BCom

### Legal Executives:

Robyn Dickie ANZILE  
Sharon Nicholson Fellow NZILE  
Toni Norwood Fellow NZILE  
Carmel Stewart Fellow NZILE  
Vanessa King

### Administrators

Peter Vujcich  
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For full profiles of all the winners, you are invited to visit our Web Site:

[www.inderlynch.co.nz](http://www.inderlynch.co.nz)