LOWNDES JORDAN
BARRISTERS & SOLICITORS

Autumn Quarterly – April 2011

The Low Down

Welcome

Welcome to the 2011 **Autumn edition** of the Low Down. In this edition we cover some critical **Law Changes** in force, as well as impending law changes **In the Works**. We also update you as to **Our People**.

LJ NEWS

Rick Shera spoke at the InternetNZ workshop on ISP liability for name suppression on 3 February 2011 in Wellington, see Rick's blog on this at http://bit.ly/g0iRRj. Rick has also just appeared on TVNZ's Media7 program, talking about the proposed Trans Pacific Partnership free trade agreement.

Rick has been reappointed to the Auckland District Law Society's Law and Technology Committee.

Karl Stolberger and Barbara Versfelt, our maritime and transport law experts, recently attended and spoke at the NSW branch of the Maritime Law Association of Australia and New Zealand conference at Katoomba in the Blue Mountains on *"The Personal Property Securities Act – Lessons from New Zealand"* with a particular emphasis on the maritime and shipping sector.

Clients make finals

Lowndes Jordan congratulates its clients, Secured Signing and Pingar on their selection as Finalists in the 2011 NZ High Tech Awards.

Our thoughts are with our clients, colleagues and all those in Christchurch who have been affected by the earthquake.

LAW CHANGES

Discovery

Both practitioners and litigants would agree that the discovery and inspection of documents in litigation can be an expensive and burdensome process. Seeking to improve New Zealand's discovery procedures, the Rules Committee has recently sought submissions regarding its consultation on the discovery regime and particularly, the role of electronic discovery and inspection within that regime.

Key features of the Committee's current proposals include:

- a requirement that litigation parties cooperate with each other in discovery and inspection;
- initial disclosure of the principal documents that a party relies on with the pleadings;
- classification of discovery orders into standard and non-standard types;
- reform of the test for standard discovery from Peruvian Guano (documents which may fairly lead to a train of inquiry which may help or hinder the case) to the narrower test of documents adverse to a party's case;
- a category of non-standard discovery for several defined categories of case;
- a 'menu' of options for non-standard discovery; and
- provision for electronic discovery and inspection processes including:
    - all documents to be exchanged and inspected electronically; and
    - a discovery checklist and a listing and exchange protocol.

We will keep you updated on progress, but should you have any queries in the meantime please contact **Karl Stolberger [kfs@lojo.co.nz]** or **Stephanie Nicolson [sjn@lojo.co.nz]**.

Trustee limitation clauses

Professional trustees should be aware of recent legal developments relating to limitation of liability clauses which seek to limit their liability to "the value of the assets of the trust". In the recent case of *Frimley Estate Ltd v Stonewall Homes Ltd*, the Court highlighted the potential for personal liability to still arise where such clauses are used. Professional trustees should ensure that any contract they sign includes a well drafted clause which must make provision to limit their liability to "the actual value of the assets of the trust" at the time of realisation. For more information contact **Graham Jordan [gcj@lojo.co.nz]** or **Ben Morrison [brm@lojo.co.nz]**.

Unit Titles Act 2010

The Unit Titles Act 2010 has been passed into law and replaces the Unit Titles Act 1972. It is expected to come into force in mid-2011 after supporting regulations have been developed.

The new Unit Titles Act will be the primary legislation relating to multi-unit building developments in which each unit has a separate certificate of title (a unit title). Each unit title will include a beneficial entitlement to the common property in the relevant development, as opposed to a legal share in the common property (as is currently the case). A body corporate, of which the unit owners are compulsory members, will exist with respect to each relevant development and will legally own the common property and generally maintain and administer the building.

Key features of the 2010 Act are as follows:

- Compulsory pre-contractual, post-contractual and pre-settlement disclosure of certain information to prospective purchasers of unit titled properties.
- Lowering of the voting threshold for body corporate decisions from 100% to 75%.
- Legal ownership of common property in each development by the body corporate.
- Streamlined staged development process.
- Cost-effective resolution of lower value disputes by way of mediation or adjudication in the Tenancy Tribunal.

Should you have any queries please contact **Ben Morrison [brm@lojo.co.nz]** or **Stephanie Nicolson [sjn@lojo.co.nz]**.

Copyright Lowndes Jordan 2011 All Rights Reserved

LAW CHANGES Continued

PPSA Australian style

The Australian version of New Zealand's Personal Property Securities Act is slated to come into effect across the Tasman in October this year. Whilst conceptually similar to New Zealand's PPSA, the Australian legislation differs in a number of significant respects. However, as in New Zealand, registration of financing statements to perfect security interests is an important aspect of the new legislation. If you own or have a security interest in any personal property in Australia, have moveable assets (or security over such assets) which may be transferred to that jurisdiction from time to time, or export goods to Australia, then their new PPSA may impact on you or your business. For further information please contact **Karl Stolberger [kfs@lojo.co.nz]** or **Ben Morrison [brm@lojo.co.nz]**.

IN THE WORKS

Consumer law reform. A Consumer Law Reform Bill is expected to be introduced to Parliament later this year. The Bill will replace the seven existing consumer laws with updated and more understandable Consumer Guarantees, Fair Trading and Weights and Measures Acts. It is expected that these changes will reduce costs and confusion and make it easier for consumers and businesses to understand their rights and obligations under consumer laws.

Securities law reform. Cabinet released a paper in February this year proposing sweeping reform of New Zealand's securities laws. It proposes substantial changes to the definition of security, the exemptions from the securities law regime, disclosure requirements for issuers, the governance of collective investment schemes and a range of other matters including the liability regime for breaches of securities law and the public enforcement of directors' duties. The Government intends to issue an exposure draft bill in August for public consultation, and introduce the bill to Parliament by the end of 2011. Copies of the Cabinet Paper can be found at http://bit.ly/hmCCBF. For further information contact **Michael Busch [mwb@lojo.co.nz]**.

OUR PEOPLE

KERRY PUDDLE, LITIGATION SOLICITOR

Kerry specialises in commercial litigation and dispute resolution. Areas of interest include contractual disputes, company law, PPSA disputes, and creditor's remedies.

Kerry graduated at the top of his class from the University of Otago and was admitted to the bar in 2009. Prior to joining Lowndes Jordan in 2010 he was employed as a Judges' Clerk at the Auckland High Court for two years.

CLIENT SUCCESS - Plume

Congratulations to our clients Clyde and Farida Cooper on the stunning rebranding and refurbishment of Plume, their vineyard restaurant at Matakana. Plume is all about fabulous local New Zealand wine and produce and how together they can celebrate culinary diversity. The restaurant and its cellar door, set in an idyllic vineyard setting, provide a wonderful link from vine to table by showcasing great New Zealand wine, including the Coopers' own Runner Duck Estate label. Be sure to visit Plume when you are next in Matakana and in need of some fine dining or fine wine! Plume is situated at 49a Sharp Road, Matakana, Warkworth.

:: Contact

Graham Jordan, Partner
gcj@lojo.co.nz

Rick Shera, Partner
rjs@lojo.co.nz

Michael Busch, Partner
mwb@lojo.co.nz

Michael Morrison, Partner
mhm@lojo.co.nz

Karl Stolberger, Partner
kfs@lojo.co.nz

Ben Morrison, Partner
brm@lojo.co.nz

Barbara Versfelt, Special Counsel
bcv@lojo.co.nz

SOLICITORS

Angela Beros alb@lojo.co.nz
Kerry Puddle kdp@lojo.co.nz
Melinda Whyte msw@lojo.co.nz
Rachael Johnson rtj@lojo.co.nz
Sheena Kirkland smk@lojo.co.nz
Siobhan O'Shea sjo@lojo.co.nz
Stephanie Nicolson sjn@lojo.co.nz

LEGAL EXECUTIVE
Joss Orum jco@lojo.co.nz

LOWNDES JORDAN
Level 22, ANZ Centre
23-29 Albert Street, Auckland
PO Box 5966, Auckland 1141
New Zealand
Ph: +64 9 309 2500
Fax: +64 9 309 1445
Email: mail@lojo.co.nz
Web: www.lojo.co.nz

If your colleagues want to subscribe to, or you want to unsubscribe from, the Low Down, contact mail@lojo.co.nz

Lowndes Jordan – Proud Supporter of Netsafe Inc.

Lowndes Jordan – Shining Star Supporter of KidsCan Charitable Trust

Copyright Lowndes Jordan 2011 All Rights Reserved