

ReSolution: In Brief

Judges Appointed

Attorney-General Christopher Finlayson announced the appointment of two High Court Judges on 10 August 2016. Auckland lawyers Sally Fitzgerald and Mathew Downs have been appointed Judges of the High Court, and will both sit in Auckland. Justice Fitzgerald comes from a specialised background in complex commercial dispute resolution, while Justice Downs has a longstanding history in Crown law, working as a Crown Counsel and more recently as Senior Crown Counsel.

In July 2016, the Attorney General also announced the appointment of two Acting District Court Judges who will hold Family Court warrants, and the appointment of a Principal Youth Court Judge. John Brandts-Giesen has been appointed an Acting District Court Judge in Invercargill, while Catriona Doyle has been appointed an Acting District Court Judge in Wellington. Further, Wellington District Court Judge John Walker has been appointed Principal Youth Court Judge.

International Mediation Guide – 2nd Edition

In light of growing recourse to mediation due to increasing desire for businesses to reduce litigation costs, and growing strain on the courts due to high case volumes, Clifford Chance has released the Second Edition of its International Mediation Guide, which presents the most comprehensive summary of the current ins and outs of mediation worldwide. The Guide explores over 45 jurisdictions in six continents, and has been compiled by a strong team of local and global counsel from a range of jurisdictions. Please click [here](#) to download the Second Edition Guide.

UK considers fixed costs for claims ≤ £250,000

Tasked with designing the civil costs regime in the UK, Lord Justice Jackson has proposed a controversial fixed costs regime for all claims up to £250,000. While Lord Jackson believes this will avoid lengthy negotiations and promote accelerated settlement, his proposal has been met by strong opposition from

industry groups and the Law Society. While most accept that fixed costs may be appropriate for low value and non-complex cases, opposing parties argue Lord Jackson's proposal would have a detrimental impact on access to justice and could prejudice deserving claimants. Discussion and consultation is set to continue throughout the year over the extent to which Lord Jackson's proposal might be implemented. However, it is clear that despite controversy, the UK Government recognises that changes need to be made.

Supreme Court Decision on Mobil Oil Tenancy Obligations

On 20 July 2016, the Supreme Court released its decision on *Mobil New Zealand v Development Auckland Limited*. The Court considered the interpretation of "clean and tidy" conditions under tenancy agreements, specifically regarding whether Mobil was liable to pay remediation costs for the former oil storage site in Auckland's Wynyard Quarter when the lease ended. The Supreme Court upheld Katz J's decision in the High Court that Mobil is not required to pay clean up costs. On the issue of interpretation, the Court held that Mobil's interpretation was more consistent with the natural and ordinary meaning of the words used in the clean and tidy condition, which did not impose a remediation obligation as contended by Development Auckland. Click [here](#) to read the full decision.

UNCITRAL Guide on the New York Convention

UNCITRAL has enlisted the help of two experts, Professor Emmanuel Gaillard and Professor George Bermann, to prepare a Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York) (the New York Convention). Presented to the Commission in July, the Guide aims to promote uniform and effective interpretation and application of the New York Convention, and to limit the impact individual State practice may have on its application. The Guide is also supplemented by an online public platform, which hosts case law implementing

aims to promote uniform and effective interpretation and application of the New York Convention, and to limit the impact individual State practice may have on its application. The Guide is also supplemented by an online public platform, which hosts case law implementing the New York Convention from various jurisdictions, legislation and procedures put in place to enforce awards under the New York Convention and general information about the New York Convention. Click here to access the online forum.

Supreme Court – Limitation Uncertainty for Product Suppliers

The Supreme Court recently released its decision in *Carter Holt Harvey Ltd v Minister of Education* [2016] NZSC 95, an appeal by Carter Holt Harvey against the Court of Appeal's refusal to strike out actions against it in negligence for manufacturing allegedly defective "Shadowclad" sheet and cladding systems installed in various New Zealand schools.

The Court's decision centred around operation of section 393 of the Building Act 2004 (Longstop) and the doctrine of "reasonable discoverability" – specifically whether reasonable discoverability is the applicable limitation test when the Longstop does not apply. The High Court and Court of Appeal had found that the manufacture and supply of cladding sheets did not amount to "building work" and therefore the Longstop provision under the Building Act was not applicable. In its decision, the Supreme Court suggests that reasonable discoverability is not confined to proceedings related to "building work" (but can also relate to manufacture and supply of defective products). At paragraph [125] the Court stated: *The fact that the product has been used in the construction of a building does not mean that the civil proceedings against the manufacturer/supplier are proceedings relating to building work. They are proceedings relating to negligent manufacture and the supply of defective products, to which the usual rules that limitation periods arise on discoverability apply.* The Supreme Court's decision signifies a

departure from the existing authority, *Murray v Morel* [2007] NZSC 27, which confined the application of reasonable discoverability to latent building defect cases.

AMINZ Council Election

AMINZ recently announced the re-election of three sitting councillors to their positions. Mediators Nicola Hartfield, from Hawke's Bay, and Mark Kelly, along with another fellow Auckland, arbitrator Mark Colthart, were re-elected. They join President John Walton, Vice President Royden Hindle and councillor Jenny Leith. We strive to ensure that we work with the best in the field, and accordingly it is particularly pleasing to see all AMINZ council members are also FDR, NZDRC, BDT and/or NZIAC panellists.