



NEWS BRIEF AUTUMN 2010

NEW QUEENSTOWN OFFICES

After 23 years of practice from offices in O'Connells Pavilion in Queenstown, **MACTODD** will move to the new Ballarat Holdings building in Church Street, Queenstown as from late May.

When **MACTODD** first opened in the O'Connells Pavilion premises, the firm occupied a little over 150m² of office space. The original move to O'Connells had been influenced by the fact that the firm's then Shotover Street premises were not of sufficient size to house the solicitors and support staff of the practice. The continual growth of the firm has been a constant theme over the past 20 years and the O'Connells offices have grown from those first 150m² to close to 450m² with 35 members of the firm accommodated.

The new offices in the new Ballarat Holdings building at 11-17 Church Street Queenstown are located on the top floor and provide 800m² of office space that has been designed to meet the existing and future requirements of the firm. The arrangements with the new landlord are extremely favourable to **MACTODD** and allow it to have fully fitted out premises provided by the landlords. Despite the increased area of floor space and the fit out provided, market conditions have allowed

for favourable rent terms similar to those payable in the existing premises.

The partners of **MACTODD** see the new premises as a natural and logical progression of the growth of the firm and of importance in terms of remaining in the centre of the central business district of Queenstown in close proximity to other professional practices of lawyers, accountants, surveyors, insurance and investment brokers, bankers and the like. The new premises are complimented by the on site underground Church Street car park which will provide convenience and ease of access for our clients.

The new offices will open in the new Church Street premises as at 8.30 a.m. on Monday 31 May 2010. All of the **MACTODD** contact details remain unchanged. The only change is the physical address of 3rd floor, 11-17 Church Street, Queenstown 9300. We look forward to welcoming all of our existing and new clients in our new premises.

IN THIS ISSUE

New Queenstown Offices	1
New Unit Titles Legislation	2
Art 2 Wear	2
New Retirement Visas	3
Notice of Appointment of Notary Public	3
Personal Property Securities Register	4
Breastfeeding Facilities	5
Limited Licence	6
Gibbston Valley Winery	7
Recent Arrivals	8





NEW UNIT TITLES LEGISLATION

The Unit Titles Act 1972 currently governs the creation and management of developments such as apartment blocks. Due to major changes in the number, scale and nature of unit title developments since the 1970s, the need arose for the legislation to be reviewed.

The Unit Titles Act 1972 received the Royal Assent on 19 April 2010. Whilst this Act has now been passed into law, its commencement date will not be determined until the new Unit Title regulations have been promulgated. It is anticipated that those regulations will not be settled until later this year. At that time the new legislation will repeal and replace the 1972 Act and its regulations. Notable changes will be:

- The voting threshold for certain decisions which previously required a unanimous resolution is lowered to a 75% threshold;
- Disclosure regimes are introduced. Sellers must provide disclosure statements to prospective buyers both before an Agreement for Sale & Purchase is entered into and before settlement. If these obligations are not met, the buyer may postpone settlement or cancel the agreement. The original owner of a unit title development is also subject to disclosure obligations, being required to disclose information to the body corporate once the original owner no

longer has control over the votes of the body corporate; and

- The Tenancy Tribunal's jurisdiction will be extended to include most disputes relating to unit titles.

While these changes are significant, the full effect of the legislation will not be known until the regulations contemplated by the new Act are drafted. These include the regulations which will prescribe the default body corporate rules, and also the form and content of the various disclosure statements required. These regulations could be a significant change for buyers, sellers, real estate agents and lawyers alike.

It is hoped that the new legislation will provide for more effective management of unit title developments in the future.

For further information on the new Unit Title legislation contact **Jacqui Haar** of our Queenstown office. Jacqui is a commercial/property lawyer and part of **MACTODD's** specialist property team. Her direct dial number is (03) 441-0358.



ART 2 WEAR

WOW, what another fantastic Arrowtown Autumn Festival. This year **MACTODD** were the very proud sponsors of the inaugural Art 2 Wear show. The talent out there is truly remarkable and the "art" just resplendent. The evening was a night to remember, starting with delicious pre-show nibbles and a glass of bubbly (or two), followed by a special performance titled "metamorphosis" by the Arrowtown preschool children - young designers in the making!

What then followed was a superbly choreographed display of colour and flair where imaginations had clearly been let loose

with all manner of creations ranging from walking trees, swaying cupcakes, a garden hose as you have never seen it before, a fab pav, a jimmies pie and bronzed bare bodies. The task for the judging panel was momentous with so many wonderful creations, but there could only be one winner on the day. The winning cupcake creation looked life like and delicious. Well done to Sharon Gilchrist who designed "The Magic of Cupcakes" and who took out 1st prize.

The show was a great hit. With so much talent out there we are bound to see Art 2 Wear as part of next years line up.



NEW RETIREMENT VISAS AND CHANGES TO INVESTOR VISAS FOR OVERSEAS PERSONS

Overseas Persons requiring visitor visas to enter New Zealand now have two new retirement visas available to them. Additionally, the two investor visa categories have also been amended. These new changes to the immigration visas took effect on 29 March 2010.

The retirement visas allow applicants to obtain a two year visitor visa under a 'temporary retirement' category or permanent residence under a 'parent retirement' category. The applicant must show that they can satisfy the minimum investment requirements for each visa. The retirement visas supplement last year's changes to investor visas that grant residence to applicants willing to invest between \$1.5-\$10 million in qualifying 'acceptable investments' as set out in government policy.

These changes may assist overseas persons in purchasing land that is considered sensitive

for the purposes of the Overseas Investment Act ("OIA"). A person will not require consent under the OIA if they can establish that they are 'ordinarily resident' in New Zealand. 'Ordinarily resident' means that they hold a residence permit (including one granted under the parent retirement or investor categories) and are either domiciled in New Zealand or have been physically present in New Zealand for 183 days in the 12 months preceding the date that the overseas person buys land that would otherwise require consent under the OIA.

There is also scope under the temporary retirement category for Overseas Persons to

satisfy the OIA requirements and buy 'sensitive land' if they can establish that they will be intending to reside in New Zealand indefinitely. The Overseas Investment Office can only assess the bona fides of an individual's intention to reside indefinitely on a case-by-case basis.

For further information on any matter relating to immigration please contact **Elliot Goldman** of our Queenstown office on DDI (03) 441-0211. Elliot is an associate of **MACTODD** and acts in relation to all aspects of immigration law, including business visas and residency applications.

NOTICE OF APPOINTMENT NOTARY PUBLIC

Partner Graeme Todd was earlier this year sworn in as a Notary Public having received his Notarial appointment from the Archbishop of Canterbury. Graeme is to hold the position for the whole of the South Island.

The office of Notary Public allows Graeme to verify the execution of documents that are required to be used overseas and with the large number of overseas visitors to and citizens resident in Central Otago there is a high demand for the services of a Notary.

Graeme joins the firm's founder Alan Macalister who has held the appointment of Notary Public for a number of years as one of about 50 Notaries in the South Island.

Graeme took his oath of office before his former James Hargest High School and University of Otago class mate Justice Christine French who now sits as a High Court Judge in Christchurch.





WHY SHOULD A LESSOR REGISTER THEIR INTEREST ON THE PERSONAL PROPERTY SECURITIES REGISTER (PPSR) WHEN THEY ALREADY OWN THE GOODS?

The owners of leased personal property (as distinguished from real property) should carefully consider whether their leases are deemed security interests under the Personal Property Security Act (PPSA) and therefore require registration of their interest on the PPSR. A lease for more than 12 months is deemed a security interest that should be registered to achieve superior priority over all other claimed security interests in those goods.

*Waller and Ors v New Zealand Bloodstock Limited and Ors*¹ illustrates this point. NZ Bloodstock leased a horse to Glenmorgan Farms while retaining legal ownership. The lease term exceeded a year. Bloodstock's interest as lessor and owner was not registered on the PPSR. Glenmorgan Farms (the lessee) defaulted under the lease. Bloodstock terminated the lease and repossessed the horse. At the same time Glenmorgan Farms defaulted to its financiers and a receiver was appointed. The financiers had registered their security agreement in the PPSR. The receiver claimed its right under the PPSA to take possession of the horse and its sale pursuant to the security agreement.

The court found that the financiers registered security agreement gave rights to the receiver ahead of the owner (NZ Bloodstock), even though Glenmorgan Farms did not own the horse. Further, terminating the lease and repossessing the horse did not improve Bloodstock's position.

In summary, a secured party's registered security interest in personal property takes priority ahead of the true owner's interest in that property if the owner's interest is not registered (or registered subsequent to other interests) on the PPSR. Ownership of the leased goods will not give the owner a better claim against a registered interest unless the lessor registers its security interest first in priority to other interests.

Our advice is to always register a lessor's interest on the PPSR.

Should you require further information on the PPSR or in relation to general commercial law matters please contact **Clark Pirie** a partner in **MACTODD's** Queenstown office on DDI (03) 441-0221. Clark specialises in the commercial property area where he acts for commercial property and business owners, purchasers and property developers.

¹ [2005] 2NZLR549

EMPLOYMENT – BREASTFEEDING FACILITIES AND BREAKS FOR EMPLOYEES

Amendments to the Employment Relations Act (the “Act”) passed on 1 April 2009 require an employer to provide employees who wish to breastfeed and/or express milk during work hours with breastfeeding facilities and breaks. This obligation is not defined but requires employers to provide breaks and facilities as is reasonable and practicable in the circumstances. A new Code of Employment Practice on Infant Feeding (the “Code”) offers guidance on how employers can best meet their obligations under the Act. However, while the Code offers guidance on the law, it is not an authoritative interpretation of the law.

Determining what is reasonable and practicable in the circumstances

When assessing what is reasonable and practicable the Code directs employers to consider:

- Positive and negative impacts to the business;
- Potential limitations stemming from the business environment and resources; and
- The employee’s needs.

Further guidance on how to determine what is reasonable and practicable is available in the Code.

Breaks

The Code notes that the timing and frequency of breastfeeding breaks will differ depending on the needs of mother and baby. These needs will also change over time as baby develops. An employer should also have regard to the length of the work period (the working day) when determining the timing and frequency of breastfeeding breaks. Appropriate breaks should be long enough to allow sufficient time to breastfeed.

Breastfeeding breaks are additional to meal and rest breaks unless the employer and employee agree otherwise. The Department of Labour guide on workplace breastfeeding suggests a number of arrangements which could be adopted instead of providing additional breaks during the work period. These include allowing an employee to start work late or finish early to allow time for breastfeeding or to use an existing break for breastfeeding.

The Act and the Code state that breastfeeding breaks are not paid breaks unless otherwise agreed by the employer and employee.

Facilities

The Code states that breastfeeding employees need a private, clean and warm space with a low comfortable chair. The space should be large enough to change a nappy.

Other items that employees expressing breast milk may need access to include:

- A lockable door;
- A wash basin;
- A fridge (this may be communal); and
- A small storage space.

Toilets are not an appropriate space for breastfeeding.

The Department of Labour has published some suggestions for those smaller business which struggle to provide a separate room for breastfeeding.

Further information and guidance

The above provides a short overview of the Code.

The Code can be accessed online at www.ers.dol.govt.nz/publications/pdfs/cep-infant-feeding.pdf. The Department of Labour has published further guidance on employers’ obligations under the Act, the Department’s guide for employers is available at www.ers.dol.govt.nz/publications/pdfs/breastfeeding.pdf.

This summary of the Infant Feeding Code was prepared by **Kate Logan** who is part of **MACTODD’s** litigation and employment law team based in Queenstown. Please contact Kate on DDI (03) 450-2321 should you require further information on employment matters.





LIMITED LICENCE

As of 1 November 2009 two important changes were made to the Land Transport legislation:

- The police now have the power to require a suspected drugged driver to undergo a Compulsory Impairment Test. If a person does not complete the impairment test in a manner satisfactory to the trained officer, a blood test can be required which will be analysed for the presence of both controlled and prescription drugs. The penalties for offending are the same as for excess breath/blood alcohol offences, namely:
 - three months' imprisonment or a fine not exceeding \$4,500 for a first or second offence, and the Court **MUST** disqualify the driver for a period of six months or more; and
 - two years' imprisonment or a fine not exceeding \$6,000 for a third or subsequent offence and the Court **MUST** disqualify the driver for a period in excess of one year.
- The use of mobile phones while driving is now prohibited. This includes making, receiving or terminating telephone calls, texts, emails or video messages unless the driver does not have to hold or manipulate the phone to activate (i.e. completely voice-activated) or the phone is secured to a mounting fixed to the vehicle and if the driver

manipulates or looks at the phone, only does so infrequently and briefly. The penalty for offending in this regard is an infringement fee of \$80 plus 20 demerit points.

If you accumulate in excess of 100 demerit points within any two year period, you will be subject to a three month suspension of your driving licence.

Road Safety is Everyone's Responsibility

If you have been disqualified or suspended from driving but need to be able to drive for work purposes, **MACTODD** may be able to help you.

If driving is a part of your job, or you need to be able to drive to work each day, you may be eligible to apply for a limited driver's licence. A limited driver's licence will enable you to drive solely for the purposes of either carrying out your work, or getting to your work. If a consequence of your being disqualified or suspended from driving for a period of time means that you will be unable to carry out your work, thus putting your employment in jeopardy and causing you financial hardship, **MACTODD** may be able to help you obtain a limited driver's licence. Matters of road and public safety will always be of primary importance. **MACTODD** can advise you on these matters.

What you need to know:

- You must observe a mandatory 28 day disqualification period if you have been disqualified from driving by a Court;
- There is an application fee of \$150;
- The application must be filed in the Court in which you were disqualified;
- Queenstown Court generally sits every fortnight;
- The application must be filed no later than 7 days before the Court hearing;
- You need to make a written application and support this with sworn written affidavit evidence; and
- We may require your employer to support this application.

What we need to know:

- Specific vehicles, days, hours and routes you wish to be able to drive on.

*The above is only intended as a brief summary of the law. You are advised to contact us for full advice pertaining to your particular situation.

For further information on the recent changes to the Land Transport legislation please contact **Nyssa Willcocks** of our Queenstown office on DDI (03) 441-0354. Nyssa practises in the litigation areas of criminal and family law as well as employment law.



GIBBSTON VALLEY WINERY AND ALAN BRADY "A TASTE OF HISTORY"

As honorary solicitors for the Gibbston Valley Community Association, **MACTODD** have already done a considerable amount of pro bono legal work to ensure that easements for new Gibbston Valley Walking Trail are securely in place. However the **MACTODD** partners simply could not resist the opportunity at the Gibbston Valley Community Fundraiser Event to successfully bid for a dinner to be hosted by the legendary Alan Brady at the Gibbston Valley Winery.

The evening began at the Winery's tasting rooms where we were fortunate enough to be able to taste the 2008 Reisling and the Gewurztraminer made by the current young wine maker at Gibbston Valley Winery, Mr Christopher Keys and the 2009 Wild Irishman Rose of Tralee, named of course after Mr Brady.

All were magnificent and were accompanied by Alan's anecdotes of how he planted the first vines on the site some thirty years ago and the trials and tribulations of making quality wine over that period. It is little wonder that Alan is affectionately known as the "grandfather" of the Central Otago Wine Industry or why Gibbston Valley Wineries have a 2007 Pinot Noir known as "Le Maitre" featuring Alan's visage on the label.

Partner Graeme Todd who started practice in Queenstown at about the time Alan first planted grapes in the Gibbston Valley commented that everyone in town at that time thought Alan had a screw slightly loose.

We then adjourned to the famous Gibbston Valley Winery Cave where Alan chose a number of his "geriatrics" from the Winery's library including a Gibbston Valley 1987 Pinot Gris, 1987 Reisling, 1988 Gewurztraminer, and a 1990 Chard Farm chardonnay.

Alan informed us that some of the wines tasted that night were literally the last bottles in the world, so it was with some trepidation that we tasted the same and watched to see who else along the table would surreptitiously pour out their glass into the waste buckets provided. It was an absolute privilege to share in Alan's wine memories as he revisited wines that, in some instances he hadn't tasted for over a decade.

The cave was a magnificent candlelit setting for the tastings, Alan and Christopher's insightful theories on the qualities or otherwise of those ancient wines and all the while accompanied by a procession of Chef Mark Sage's tasty dishes. Mark has been the Chef at Gibbston Valley Winery for 16 years (which is surely a record for

a chef in the Queenstown area) and although he confessed he had doubts that he would be able to match his dishes to the unknown quality of "geriatrics" there were certainly no complaints from any of the diners in the group.

Three hours later and we had progressed through the 90's (Reisling, Pinot Gris and Pinot Noir including the Gibbston Valley Reserve Pinot Noir which was their first major trophy winner) and into the modern era which included award winning Gibbston Valley Pinot Noir and Alan's current label, a 2001 Mount Edward Pinot Noir, which he gleefully told us had been served at Buckingham Palace. It has to be said that it was with regret that we dragged ourselves away from the Winery around midnight enriched with Alan's tales of wine making and grape growing, excellent wine and delicious food.

For giving us a most memorable night we extend our heartfelt thanks to Alan Brady, Christopher Keys, Mark Sage and the team at Gibbston Valley Winery. It was an experience not to be missed.

Now, as pro bono solicitors for the Wakatipu Trails Trust, **MACTODD** wonder if they might contemplate a fund raising event involving more vineyards in their area....???????

RECENT ARRIVALS

JEANNIE BAYLY

Jeannie has recently joined **MACTODD** having practiced in New Zealand and Australia for just short of 20 years. Jeannie graduated from the University of Otago with a Bachelor of Laws in 1991 and has a background in general commercial and commercial property law.

Jeannie will be providing support to the commercial law partners in particular managing partner John Troon.

She has specialised in construction law and medical law having worked in house at two District Health Boards for a total of 9 years. Jeannie was/is the project lawyer for the construction of the Christchurch Womens Hospital and Day Surgery Unit, the upgrade of Burwood Hospital in Christchurch and the new Emergency Department and Theatre Block at Hutt Hospital. She also has an interest in medico-legal matters such as Health and Disability Commissioner Complaints, ACC medical misadventure claims and privacy matters.

Jeannie has extensive experience in tendering and tendering processes including a 'hands



on' understanding of the probity requirements of local and central government.

In 2005 Jeannie was appointed a Senior Associate of Blake Dawson in Western Australia. Jeannie was part of the Construction Law team in Perth, negotiating and drafting construction contracts for large infrastructure and resources projects particularly relating to mining and power generation.

Jeannie is a keen traveller, an outdoor enthusiast, an amateur art collector and enjoys participating in activities with her young daughter.

Kate Logan joined **MACTODD** in November of 2009 after being admitted to the bar earlier that year.

Kate completed a Bachelor of Laws and a Bachelor of Arts (Honours) in history at the University of Otago. During her studies, Kate worked part-time at local law firms. She later moved into a tutoring and research role at the university.

Kate works in the litigation team at **MACTODD** specialising in civil litigation. Her other areas of practice include immigration and charities law. Kate is also a competent French speaker. During her studies, she spent a year studying and working in France. Kate completed a Diploma of Language in French and has translation experience with the Tenancy and Disputes Tribunals.

Outside of work, Kate enjoys catching up with friends and family. She likes to spend time travelling and exploring the Queenstown area. Kate is looking forward to hitting the slopes during the 2010 ski season.

KATE LOGAN



Partners

Bryce Jack
Clark Pirie
Dale Lloyd
Graeme Todd
Jayne Macdonald
John Troon
Richard Cunliffe

Associates

Elliot Goldman
Maxine Knowler
Ray Blake
Tony Ray

Consultant

Alan Macalister

Chief Executive

Andrea Lambie-Shaw

Professional Staff

Emma Davidson
Hannah Mason
Jacqui Haar
Kate Logan
Lani Kennedy-Arnott
Lauren Barnett
Nyssa Willcocks
Paul Kerridge
Phena Byrne
Ros Ecclestone
Tanya Surrey
Jeannie Bayly

Queenstown Office

11-17 Church Street, Queenstown 9300
30 Camp Street, Queenstown 9300
PO Box 653, Queenstown 9348
P +64 3 441 0125, **F** +64 3 442 8116
queenstown@mactodd.co.nz

Wanaka Office

80 Ardmore Street, Wanaka 9305
PO Box 392, Wanaka 9343
P +64 3 443 0040, **F** +64 3 443 0030
wanaka@mactodd.co.nz

Cromwell Office

1 The Mall, Cromwell 9310
PO Box 197, Cromwell 9342
P +64 3 445 3027, **F** +64 3 445 3029
cromwell@mactodd.co.nz

Christchurch

Unit 1, Regent Court
75 Gloucester St, Christchurch 8013
P +64 3 374 4125, **F** +64 3 374 4129
christchurch@mactodd.co.nz

Lyttelton

Unit 4, 44 London Street, Lyttelton 8082
P.O. Box 113, Lyttelton 8841
P +64 3 328 9992, **F** +64 3 328 9981
lyttelton@mactodd.co.nz

www.mactodd.co.nz

skype: Mactodd.queenstown

Disclaimer

The information and comments contained in this News Brief, while intended to be accurate, are of necessity of a general nature. It is not intended that the newsletter provide legal advice and it is strongly suggested that, where appropriate, specific legal advice is sought on matters of concern. The Editor does, however, welcome comments. These should be addressed to:

The Editor

Macalister Todd Phillips News Brief,
P.O. Box 653, Queenstown, New Zealand
or newsletter@mactodd.co.nz