



# Canterbury *tales*

Canterbury Westland Branch New Zealand Law Society

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## LEGAL AID FUNDING

# No fat and little meat on this “gravy train”

**By Karen Feltham**  
**Editor**

As a profession, we have had to put up with manifold slurs (particularly from that “perky” lot that we elect every three years) about the increase in legal aid funding.

The media has uplifted with great glee the comments made by various Ministers of Justice (et al) that the common lawyers who are assigned or who have managed to negotiate their way through the paperwork minefield of obtaining a grant in the first place are on “the legal aid gravy train”.

For the vast majority of barristers and solicitors who are socially and financially moved to tread the legal aid trail, it is a well-known fact (and has been for about the last 15 years) that there is no fat and little meat in a practice that encompasses legal aid let alone the alleged and allegorical gravy.

The decrease in legal aid family and civil hourly rates (in 1995 for a level three solicitor (nine years + experience) it was \$150 GST inclusive but then lowered to \$140 GST inclusive; then in June 2008 it was raised for 12 months to \$154 but was knocked back down to \$143 in July 2009) has been farcical. It would not have been tolerated within the private sector.

There has been a sop thrown by the Legal Services Agency in that hearing preparation

times have been extended which goes to assuage some of the pro bono work done on a file but, in the main, it has not rectified the major issues of receiving a paltry remuneration for the various matters for which a client might be eligible for a grant.

Criminal legal aid rates are just that: criminal. All duty solicitors, irrespective of their experience and/or seniority now receive an hourly rate of \$99 GST inclusive. This had been increased in June 2008 from the \$88 that all ageing practitioners can recall as being the rate when Simon Power was still in diapers.

We have been told of major blowouts in the legal aid budget and that Canterbury is one of the greater consumers of legal aid in New Zealand. We also have some of the busiest criminal and family courts by volume in New Zealand. So go figure!

We are never given the figures for recoveries of costs for legal aid recouped from applicants either by way of their weekly payments or charges over properties or funds received.

Perhaps the stated blowout is a gross figure that does not include the crediting of the recoveries. Does that gross figure include the GST and income tax that is paid by us from our fees? Are the disbursements to valuers, accountants and specialists also included within that gross figure?

The answers to these and other questions are not ascertained readily from the 260-page report on the Legal Services Agency website.

The cost of the administration of legal aid has spiralled since the days that our Legal Aid Committee sat in the High Court office’s meeting room so that the processing of each application costs about 30 times more than

when volunteer committees processed the applications according to Kate Wilkinson when she addressed the Criminal Bar in 2007.

Now there is a bureaucracy in place requiring a significant annual sum to support its offices and salaries rather than the High Court staff completing the administration as in the volunteer days.

However, not only are we, as a profession, squeezed at the initial stage of seeking the grant but the payment problems have not gone away at all. In fact there are now lengthy delays in receiving payment once your bill has been submitted.

A further compounding of the initial delay is where a query is raised by the Agency for which they require a response. When your response is received it is then put back to the bottom of the pile. If there are further queries made of you then the matter can be delayed by many months, which is not satisfactory when your regular outgoings are being paid but your income stream is being dammed.

David Bunce recently wrote to the Christchurch Branch of the Legal Services Agency noting the lengthening of time for the payment of an account. He stated:

“From a situation where all invoices were paid within a week or two of being submitted, the situation is now being reached, as at the date of this letter (12 October 2009) where invoices submitted approximately six weeks previously have not been paid.

“A recent Legal Services Agency newsletter has indicated that the introduction of a new computerised LSMS system may result in yet further delays in the payment of invoices.

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# Book Review

By Philip Strang

In my travels around Canterbury-Westland practices I have a variety of discussions with practitioners and to be honest sometimes the topic drifts away from trust accounting.

I am of course observant and frequently see photos, plaques or similar memorabilia of what the lawyer does outside his "day job".

Music and tramping are frequent alter ego appearances, but one that appears with surprising frequency is motorcycling.

Perhaps it is the lure of the open road, the

camaraderie of leather-clad kinship or the freedom from usual constraints, a PhD thesis awaits to explain. It is perhaps no coincidence that a motorcycle has attributes besides superb acceleration and handling.

Such pluses are in fact absences such as no telephone contact, no provision for children or back-seaters or spousal conversation and no front number plate for speed camera identification. Indeed, a potent mix for fun.

I delight in the adage that only motorcyclists know why a dog puts its head out the window. I have recently enjoyed not just one book but two written by Christchurch author Mike Hyde. These books chronicle his circumnavigation of Australia and, the second, his touring the 60 states of the USA in just 60 days.

The beauty of these two books is that they are

not dry or confined to technical type petrol-head detail. The travel and motorcycling is merely a conduit to a witty narrative of anecdotes full of colour, irony and self-deprecating humour. To anyone who has enjoyed Bill Bryson's writing, Hyde is a welcome rival.

With Christmas looming these books are likely to appeal to anyone with any combination of a sense of humour, an interest in travel and a resting pulse. A passion for motorcycling is not essential.

***Twisting Throttle America: A Kiwi's Hilarious Trip Around America On The Smell Of An Oily Rag*, by Mike Hyde** — Harper Collins.

***Twisting Throttle Australia*, by Mike Hyde** — Harper Collins.

*Philip Strang rides a small motorbike when he can and it is unlikely to rain. He rides a small bike as he would rather push it to the nearest garage than change a tyre. He is distressed about the recently signaled ACC levy increases.*

## A Tale of Two Years

By Jacob Wolt

With apologies to Dickens, it has been the worst of times and the best of times for investors. In fact the raw, unpredictable nature of markets has rarely been more evident than in the past two years, and for that matter over the last ten years.

Neither has volatility ever been so pronounced, at least in the investing lifetimes of most of us. Large daily swings, particularly during the worst of the crisis over the last year, became almost commonplace at one stage.

To highlight the extremes of 2008 and 2009, we have compiled the table below of the top two monthly gains and the top two monthly losses for a number of Bradley Nuttall's International and Australian Equity strategies.

	Top 3 Monthly Gain		Top 3 Monthly Losses	
<b>Global Small</b>	Apr 2009	15.6%	Oct 2008	-10.1%
	Mar 2006	13.1%	Feb 2009	-9.1%
<b>Global Value</b>	Apr 2009	19.4%	Oct 2008	-13.1%
	Mar 2006	11.3%	Feb 2009	-11.9%
<b>Global Large</b>	Apr 2009	11.1%	Sept 2002	-10.8%
	Mar 2006	10.8%	Aug 2001	-10.01%
<b>Emerging Markets</b>	Apr 2009	16.1%	Oct 2008	-15.2%
	Apr 2003	12.4%	May 2006	-11.4%
<b>Australian Small</b>	Apr 2009	19.8%	Oct 2008	-24.9%
	Jul 2009	11.5%	Sept 2008	-15.4%
<b>Australian Large</b>	Apr 2009	11.4%	Oct 2008	-14.4%
	Apr 2008	8.8%	Sept 2008	-12.7%
<b>Australian Value</b>	Apr 2009	14.0%	Oct 2008	-16.2%
	Jul 2009	12.5%	Feb 2000	-11.0%

What is remarkable is how so many of the top monthly gains have been posted in 2009 and how many of the worst losses were registered in 2008. This is the case even for our most well-established strategies, with track records of around a decade.

In many cases, the worst months came within months of the best months. Our Global Value strategy for instance, suffered a negative return of 13.1% in October last year, its worst month since inception. Six months later, in April 2009, it posted its best ever month with a gain of 15.6%.

For those who still claim some ability to time markets, this makes for sobering reading. Even those who managed to get out before the carnage of 2008 still had to know how to finesse their re-entry in such a way as to enjoy the best of these concentrated gains. That is a very, very big ask.

For sure, some analysts were saying back in February that the markets were oversold. But not many of them, if any, were on record as saying that major world indices would rebound by between 40 and 60% within six months.

Now, it is never advisable to get overly focused on short-term returns, particularly from month-to-month or even quarter-to-quarter. But this illustration does provide an emphatic reminder that markets are unpredictable. Sometimes, as many discovered, they can be very scary.

But over time, markets deliver a positive return. And the only know reliable way of securing that return is by exercising patience and discipline and staying invested.

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