

## Newsletter – April 2014



President - Terry Hoskins

### Building Momentum

Thank you for appointing me IMC President at the recent AGM.

My theme this year is to build on the momentum IMC has generated and, in particular, through the initiatives Past President Phil Guerin and Gordon Shaw have led. Here are some of the initiatives you might like to be involved with:

#### **Working with tertiary education organisations**

Our strategic relationship with Victoria University Wellington is progressing very well. Among other things, it represents a great source of learning and a channel for new members. It would be good to start thinking about developing relationships with universities situated in other parts of the country. Please call me if you are interested in working on this initiative.

#### **Online media development**

Our investment in upgrading the IMC website is already paying dividends. It has eased the membership application process considerably and I expect it is also helping to increase our profile. Further investment will be made to enhance our on-line media presence and market IMC, make interacting with us easier and generally add value for members. Please call me if you would like to help build momentum in this area.

## **Marketing**

While upgrading the IMC website and other online-media will assist our marketing efforts considerably, we also need to work on ways to drive attention to it. I would appreciate your ideas on this and letting me know if you can help.

## **Education**

Education is an important member service. There is plenty of scope to add value to this by providing workshops, seminars and courses, some of which could be delivered on-line. Some services could be made available to the public and used to attract membership. Some could also be used to raise revenue. Please let me know if you have education ideas and material we could use. Also, please let me know if you would like to help organise or deliver education services in your area.

## **Boosting membership**

Our organisation needs to scale up by boosting membership at all levels. Scaling up will provide many benefits including enhancing member services and increasing our sphere of influence to increase professionalism in the management consulting market.

I encourage you to approach consultants and consulting firms in your network to seriously consider IMC membership. I suggest you invite prospective members to an IMC meeting as a first step in the recruitment process.

## **International Council of Management Consulting Institutes (ICMCI)**

It is important IMCNZ makes the most of its membership of ICMCI. After all said and done, a portion of your IMCNZ subscriptions goes towards paying for the privilege of ICMCI membership.

ICMCI is a network of the management advisory and consultancy associations and institutes worldwide, who have a common purpose and shared values and goals. The goal of ICMCI is to promote a closer working relationship between all management consulting institutes or organisations primarily dedicated to the registration or certification of individual management consultants. The purpose of this closer working relationship is to accelerate the achievement of mutual goals of the national institutes, particularly to assist them in raising the standards of the profession of management consulting and to create worldwide recognition and acceptance of the CMC (Certified Management Consultant) mark.

You can check out ICMCI on [www.icmci.org](http://www.icmci.org). We are engaged in a number of ICMCI activities. Please call me if you would like to get involved with them.

I welcome your calls. You can reach me on [terry.hoskins@approach.co.nz](mailto:terry.hoskins@approach.co.nz) or 0274 80 30 62.

## IMC NZ Fellows Network

Did you know that IMC has 15 Fellows of our Institute? Fellowship of IMC is either conferred on individuals that have made an outstanding contribution to the organisation and the profession and also any CMC that has had 10 years continuous membership can apply for fellowship.

Our fellows based in Auckland and Wellington meet on a regular basis to network and work on various initiatives for IMC.

At a recent meeting over breakfast in Auckland Terry Hoskins met with 4 fellows to discuss how the Fellows can assist with various initiatives including mentoring, CMC assessments and training as well as leveraging contacts in certain organisations.

The Wellington based fellows are meeting in the next month to do the same.

Or thanks to David Taylor and Peter Boyle for taking a coordination role to ensure these gathering occur on a regular basis.

*Gordon Shaw (CMC/Fellow, Past President)*

## New Members

We are pleased to welcome:

- **Will Skeggs** Associate Member
- **INTENT Group** Corporate Affiliate
- **O'Connor Sinclair** Corporate Affiliate

**Daniel Vidal** was awarded Fellow status earlier this year, and received his Certificate at the Auckland regional meeting.



Daniel (left) receives his Certificate from Terry Hoskins.

## Recent Events

### Auckland - February

#### Change Leadership ● Cherri Holland



#### Cherri Holland accepts a token of appreciation

Cherri Holland gave a very enlightening and interactive presentation on change leadership. As consultants it seemed very evident that most had come across the situations she described. Cherri has provided an editorial (below) summarising her presentation:

**Change is life.** When anything living stops changing, it dies. Marcus Aurelius (AD 121-180) put it like this:

**“We shrink from change; yet is there anything that can come into being without it.....?  
Is it possible for any useful thing to be achieved without change?  
Do you not see then, that change in yourself is of the same order.”**

Continuous, iterative, life-sustaining change is how we, and our organisations, stay alive. But unexpected, shocking, threatening, and (perceived) nonsensical change – that is something else. This is all too often experienced by the *normal* (never mind *abnormal!*) human brain as a threat to the very survival of the individual.

The primal brain reacts to perceived threat as if it is spine-tinglingly real, typically unleashing a range of rather disruptive, and potentially life-threatening, behaviours.

Attendees at the Institute of Management Consultants' **“Change Leadership”** event described disruptive behaviours during Change programmes as:

- Irrational
- Whining/whinging
- Withdrawing
- Aggression

- Defensiveness
- Grapevine
- Criticism
- Paranoia (conspiratorial)
- Territorial/protective

Relevant for organisational Change is the fact that the **adaptive** human brain learns survival in another social setting - the nuclear family. The brain in formative years negotiates a daily series of power struggles. Freud called this the battle between superego and id. Berne called the internalized constructs **parent** and **child**, with each state accompanied by a set of typical statements ('scripts') and emotions. People typically become programmed into these two modes explaining many of the bizarre and disruptive behaviours during times of 'imposed' change.

Centralised power, the traditional/military hierarchy with its chain of command, plays right into this **illusion** of **parent** power in organisations, triggering a counter-reaction. **Illusion** because a manager has limited REAL power; REAL power is with the numbers – the masses. What **they** do as a collective has far more impact in areas that are crucial to success.

We looked at typical drivers of Change as being one (or a combination) of these:

1. Financial pressure - profit demands, new ownership, drive for efficiencies, restructuring etc.
2. IT system implementation or new processes
3. External events(including earthquakes, major weather events or pest damage)
4. Market shifts (including GFC, price of coal or loss of a major account)
5. Government/local government policy change (including Super City, legislation and/or policy changes)

The abysmal success record of Change programmes is now well documented. From McKinsey research, only 30% of executives said their Change programme produced a more healthy organisation and only 38% think the organisation performed better after the Change programme. Yet, 57% of Change programmes are to reduce costs and improve efficiency. You can't dictate efficiency to people – they know best where waste is.

In my experience, there are four typical approaches to organisational Change, listed here in the order of success and in reverse order of prevalence.

1. **Team-driven**
2. **Campaign-driven**
3. **Leader-driven**
4. **Change Process-driven**

Most common is number 4: a project manager is appointed to *manage* the change. Typically, they never leave their computer.

A **Leader-driven** approach is having a Pied Piper who is charismatic enough to lead people in a direction no matter how much sense the change makes to them. The issue with this is self-evident; one person cannot create organisation success.

The **Campaign-driven** approach is powerful, drawing on advertising techniques of neuromarketing. It is how the London Olympics team solved the issue of persuading volunteers to keep information about the opening ceremony to themselves. The phrase "Save the Surprise" did much of the persuasion work for leaders.

This still doesn't beat the **Team-driven** approach to Change that is simply a way of life for this type of organisation - an organisation:

- that keeps everyone firmly grounded in trading and financial realities
- where key expectations of various 'sponsors' drives daily focus and overall results
- where each person (and each sub-team) knows they are all on the *same* team and every thought and action ultimately affects everyone for the better or worse.

**Telling it like it is, involving people fully in how things work and expecting everyone to continuously make things work better means that Change is engineered into the foundations of the enterprise.**

This was the first point attendees emphasised from their collective experience of change:

1. Create (BE) a change-ready culture.
2. Communicate (even over-communicate)
3. Understand the audience
4. Plan and clarify accountabilities for the change
5. Build relationships (before, during and after)
6. Use respected influencers (mana)
7. Clarify the rationale

We finished the event with this quote:

*"Change is inevitable. Change for the better is a full-time job."*  
*Adlai E. Stevenson*

**Cherri Holland & Associates**

**Phone: +64 9 303 3884; +64 21 923 318 Email: [cherri@cherriholland.co.nz](mailto:cherri@cherriholland.co.nz)**

**Address: Suite 443, Auckland Heritage, 35 Hobson Street, Auckland**

**[www.cherriholland.com](http://www.cherriholland.com)**

## Handling Challenging Customers

- Craig McFadyen



Craig accepts a token of appreciation

Craig's presentation dovetailed beautifully with Cherri Holland's presentation last month. Why you need to identify the personality types when going into a hostile consulting environment - look out for the smiling assassin.

Craig discussed a number of case studies and situations and gave some very memorable pieces of advice - just a matter of remembering them in the heat of the moment when dealing with one of those proverbial 'challenging customers' ....and having the confidence and diplomatic skills to fire a client whilst retaining your reputation and the feel good factor. The difference between a difficult client, a challenging situation and dealing with a complete nutter.

Some memorable quotes from Craig's presentation:

- The three magic steps
  1. Sorry ...that it happened (no blame taken)
  2. Glad ...you brought it to my attention (no guarantees)
  3. Sure ...there is something we can do
- "if you speak when you're angry you'll make the best speech you'll ever regret"
- "the single biggest problem in communication is the illusion it has taken place", *George Bernard Shaw*

Craig has generously allowed us access to his powerpoint presentation document. If you would like a copy please email [info@imcnz.org](mailto:info@imcnz.org).

**Craig McFadyen**  
Director, Rapid Results & icontact  
Phone 09 447 1994  
Mobile 021 685 593  
[www.rapidresults.co.nz](http://www.rapidresults.co.nz)

## Wellington - March

### Crisis Planning & Management Preparedness • Karen Stephens • John Bishop • Dan Laufer

The topic of the March Wellington meeting was 'Crisis planning and management preparedness'. We were lucky enough to have multiple guest speakers:

- Karen Stephens, Crisis and business continuity preparedness consultant with Kestrel Group
- John Bishop, a communications specialist, and
- Dan Laufer, Head of School, School of Marketing and International Business at Vic.

The original format was for Karen and John to give a joint presentation and then all three speakers would be part of a panel discussion. However, the speakers and the topic were so engaging that the meeting morphed into a panel discussion that had to be cut short 20 minutes after the scheduled finish time for the meeting.

Informal discussions carried on for a further 30 minutes. We had 22 people attending the meeting and in true IMCNZ style it was very interactive.

## Liability Insurance Update

As you may be aware, JLT is our insurance partner and as a result of recent publicity around the Bridgecorp/Steigrad court action they anticipate queries from IMC members about how this affects them and their liability insurance covers.

JLT has provided a special update on the matter and we attach this for your reference on the following 5 pages.

If you have any queries we invite you to contact **Deb Fisher** of JLT directly on

[deborah.fisher@jlt.co.nz](mailto:deborah.fisher@jlt.co.nz)

DDI 09-300-3763 or Mobile 021-902-864



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# JLT Bulletin

January 2014

## Steigrad - Bridgecorp

### Forword

In the judgement issued on 23 December 2013, the Supreme Court of New Zealand delivered what was an unwelcome Christmas present for many directors. The Supreme Court overturned the Court of Appeal judgement in *Steigrad v BFSL 2007 Limited* and restored the position under the High Court judgement.

In effect holding that Mr Steigrad and other directors of Bridgecorp were not entitled to claim on their Directors & Officers Liability Insurance policy for their defence costs in priority to the plaintiffs who were suing them.

The effect will be that the directors of Bridgecorp will have to meet their defence costs out of their own pockets as the investors in Bridgecorp have a prior claim (or a charge with priority) over all insurance moneys payable under Bridgecorp's Directors & Officers Liability Insurance policy. The immediate effect of the Supreme Court decision will be to allow investors in failed finance companies with claims against directors to claim the full amount of all available insurance money.

*“ However the Supreme Court left open whether, in addition to meeting the charge, an Insurer must also pay defence costs, even if that means that the Insurer may be liable for more than the limit of indemnity under the Directors & Officers Liability Insurance policy. ”*

## Background

The decision, *BFSL 2007 Ltd v Steigrad* (2013) NZSC 156, concerns the Bridgecorp Group, which collapsed in July 2007 owing investors nearly \$500 million. Mr Steigrad and his fellow directors were convicted of offences under the Securities Act. The receivers of Bridgecorp brought civil proceedings against Mr Steigrad and two other Bridgecorp directors, seeking damages in excess of \$340 million on the basis that they breached their duties as directors.

Bridgecorp held a Directors & Officers Liability Insurance policy with QBE Insurance (International) Limited with a limit of indemnity of \$20 million. It indemnifies the directors for any liability they may incur to third parties as a result of their actions as directors. It also provided cover for costs incurred in defending civil or criminal proceedings seeking to establish the directors' liability. Bridgecorp also held a Statutory Liability Insurance policy with QBE with had a limit of indemnity of \$2 million. This policy covered directors' defence costs, but not any liability to third party claimants.

By August 2011, all but one of the directors of Bridgecorp had exhausted their entitlements under the Statutory Liability Insurance policy. The directors estimated that they would incur another \$3 million in costs to defend their criminal trial. They sought to claim these costs under the Directors & Officers Liability Insurance policy. They also wished to use the Directors & Officers Liability Insurance money to defend Bridgecorp's civil claim against them.

Bridgecorp therefore asserted a charge under section 9 of the Law Reform Act, and claimed that as a result, it had a claim to the insurance money in priority to the directors. The directors disagreed, and sought a ruling from the High Court.

*“This meant that there was a substantial risk that there would be no insurance money remaining under the Directors & Officers Liability Insurance policy to go to Bridgecorp's investors if the claim against the directors succeeded.”*

## High Court

Section 9 of the Law Reform Act gives a charge over any insurance money that is or may become payable in respect of an Insured's liability to pay damages or compensation. The High Court ruled that because all of the \$20 million of insurance money from the Directors & Officers Liability Insurance policy may become payable to Bridgecorp, Bridgecorp had a charge over the entire sum and that the directors were not able to access that sum to pay their defence costs.

## Court of Appeal

The Court of Appeal overturned the High Court decision. The Court held that under the insurance policies in these cases, the phrases "all sums" (used in the definition of indemnified "loss") recognises two distinct types of payment constituting losses. The primary loss envisaged being payment of damages for compensation in satisfaction of a third party claim, the secondary and discrete loss being defence costs incurred in defending the primary claim.

The Court held that while the two losses might arise from one claim on account of the same wrongful act, the Insured party is independently entitled to indemnity for their defence costs immediately after they are incurred.

The Court said that it was irrelevant in this context that the funds available to meet claims against the directors would be progressively depleted through Insurers' performance of the contractual obligation to reimburse defence costs – that was the necessary consequence of the policy's structure in providing for one sum insured to be available to meet claims for two separate liabilities.

Further, the Court held that the purpose of section 9 was not to rewrite the bargain struck between the insuring and insured parties. Section 9 is largely procedural in nature, and provides a mechanism whereby a third party claimant can access directly funds that an Insurer is liable to pay its Insured to meet the Insured's liability to the third party. Seen that way, section 9 is simply a legal mechanism to divert to a third party funds that would otherwise be available to settle a contractual obligation to indemnify the Insured for liability to the third party.

### Supreme Court

By a majority (Chief Justice Elias, Justice Glazebrook and Justice Anderson), the Supreme Court allowed Bridgecorp's appeal. The majority ruled that there is "strong textual support for the proposition that the charge arises at the time the event giving rise to liability occurs and that it secures whatever the full amount of the liability (if any) to the third party ultimately turns out to be". The majority said that, as a matter of policy, defence costs should not be allowed to deplete the insurance money available to a successful third party, because in substance this would require the claimant to fund the Insurer's unsuccessful defence.

The majority concluded that QBE and the directors of Bridgecorp had "made a poor bargain because the policy has not been properly drawn", as they had overlooked the effect of the statutory charge".

The Supreme Court left open the question as to who should bear the costs of this, the Insurer or the Insured. That is, there is now a possibility that the Insurer may be required to pay the third party claimant the full amount of the charge (up to the limit of indemnity under the policy), as well as the Insured's contractual right to be paid defence costs. The Supreme Court left it for the High Court to determine this point.

*“ Directors, officers and others who are protected by Professional Liability Insurance policies and/ or Directors & Officers Liability Insurance policies may no longer assume that their defence costs will be covered if they are sued for an amount greater than the limit of indemnity under their insurance policy. ”*

### Next Steps

Most Directors & Officers Liability insurance policies (D&O) insure damages and defence costs with an overall single limit of indemnity that is available during an annual period of insurance. This basis of cover is also relatively common in Professional Indemnity insurance policies. Your JLT Account Manager will be able to advise you if the following should be considered by your organisation in respect of its Professional Indemnity insurance.

This overall limit of indemnity is the insurer's maximum liability in the case of any single claim, or multiple of claims up to the limit of indemnity during the period of insurance.

With the Supreme Court ruling in the 'Steigrad case' we believe that doing nothing is not an appropriate solution. Our recommendation is therefore that clients implement one of the following options:

### Purchase an 'additional' limit to cover defence costs only

*Example:* Assume a current D&O limit of indemnity is \$10,000,000.

The solution would be:

Maintain indemnity for Damages only	\$10,000,000
Purchase indemnity for Defence Costs only	\$2,000,000
	<hr/>
Insurer's overall liability	\$12,000,000

In this example it can be expected that an extra premium would apply, as the insurer's exposure has increased.

### Rearrange the 'existing' limit so that part of this applies to defence costs only

*Example:* Assume a current D&O limit of indemnity is \$10,000,000.

The solution would be:

Reduce indemnity for Damages only	\$8,000,000
Assign Indemnity for Defence Costs only	\$2,000,000
	<hr/>
Insurer's overall liability	\$10,000,000

In this example an extra premium would not be expected to apply, as the insurer's exposure has not increased.

### Pro's and Con's

Purchasing an 'additional' limit	
Pro	Con
Retains the directors' full limit for damages	Extra cost expected
'Ring fences' directors' defence costs	Risk of setting incorrect 'defence costs' sum insured

Rearranging the 'existing' limit	
Pro	Con
No extra cost expected	Potentially reduces the indemnity available to directors for damages
	Risk of setting incorrect 'defence costs' sum insured

### Conclusion

The Supreme Court restored the effect of the High Court decision. The Supreme Court's decision is the most significant case concerning liability insurance for many years. Whilst the Supreme Court's decision is a welcome result for investors in Bridgecorp and other finance companies, the decision also has a direct impact on directors, officers and others to pay their defence costs if they are sued.

This may not be the last of the litigation concerning section 9. given the Supreme Court's comments that insurers may be liable for both the amount of the statutory charge and defence costs.

**Auckland**  
PO Box 6743  
Level 5, Tower Centre, 45 Queen Street, 1141  
P: +64 9 379 5 375

**Cambridge**  
PO Box 547  
Cnr Queen & Dick Streets, 3454  
P: +64 7 827 7071

**Wellington**  
PO Box 11 145  
Level 9, Resimac House 45 Johnston Street, 6011  
P: +64 4 495 8210

**Christchurch**  
PO Box 13 501  
Level 1, 31 Dundas Street, 8141  
P: +64 3 366 4866

[info@jlt.co.nz](mailto:info@jlt.co.nz)

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



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### Current Council Members

Terry Hoskins, President (Auckland)	<a href="mailto:terry.hoskins@approach.co.nz">terry.hoskins@approach.co.nz</a>
Phil Guerin, Immediate Past President (Wellington)	<a href="mailto:phil@haque.co.nz">phil@haque.co.nz</a>
Andrew Marr (Auckland)	<a href="mailto:andrew@marr.co.nz">andrew@marr.co.nz</a>
Suzanne Barley, National Secretary (Auckland)	<a href="mailto:info@imcnz.org">info@imcnz.org</a>
Graham Hay (Auckland)	<a href="mailto:graham.hay@appliedsemiotics.co.nz">graham.hay@appliedsemiotics.co.nz</a>
Iain Matheson (Wellington)	<a href="mailto:iain@mathesonassociates.co.nz">iain@mathesonassociates.co.nz</a>
Ian Abrahams (Wellington)	<a href="mailto:ian@ipaconsulting.co.nz">ian@ipaconsulting.co.nz</a>
Jason Price (Wellington)	<a href="mailto:jason@priceperrott.com">jason@priceperrott.com</a>
Lilian Lawrence (Blenheim)	<a href="mailto:catsltd@gmail.com">catsltd@gmail.com</a>
Malcolm Billington (Auckland)	<a href="mailto:malcolm.billington@gmail.com">malcolm.billington@gmail.com</a>