



# SAUNDERS ROBINSON BROWN

L A W Y E R S

## + WINTER 2009 NEWSLETTER

Welcome to the latest SRB newsletter. We are pleased to introduce our newest partners, Monica Ryan and Peter Phillips, and also bring you up to date with our existing partners' continued commitment to national and local sports organisations.

In this newsletter we also look at issues that are very relevant during the current,

challenging economic climate. For example, there are some guidelines for those clients considering purchasing at mortgagee sales, and we have also provided commentary on securing shareholder advances.

Enjoy this newsletter.  
The Partners

## + A PERFECT FIT

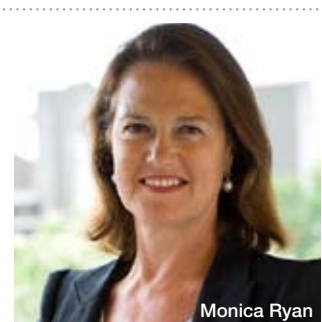
In late 2007, Saunders Robinson merged with Rangiora firm William Brown, boosting the firm's size and increasing the number of partners and staff.

Shortly afterwards, Monica Ryan joined the firm as partner. Having previously practised at Lane Neave for 18 years, Monica has a strong background in commercial property and Trusts and Estates - which means her skills perfectly complement SRB's existing staff and client base. Outside work, Monica is very involved with the arts, and is on the board of the Christchurch Art Gallery. She has two children, James (a former All Black lock) and Mili.

The firm's expansion continued when Peter Phillips joined SRB as a partner. Peter, who has worked at Anthony Harper, has more than 40 years' experience in business advising, commercial property and Trusts, and says, "My move to Saunders Robinson Brown has been a perfect fit with my own clientele. I'm really enjoying the new challenge, as well as the atmosphere and the work ethic of Saunders Robinson Brown." Peter has three children, Tom, Lucy, and

Sophie, and three grandchildren. He is on the national board of the Hohepa Homes Trust, which supports people with intellectual disabilities.

SRB is fortunate to have senior Partners of this quality joining the firm, and the appointments continue the theme of controlled growth.



Monica Ryan



Peter Phillips

### + SECURING SHAREHOLDER ADVANCES

If you are a shareholder in a company and have made an advance to that company, then you need to ask yourself two questions:

1. Have I clearly documented the amount of my shareholder's advance?
2. Do I have security for my shareholder's advance?

In a liquidation, the assets of the company are sold to satisfy the debts and liabilities of the company. The law, however, gives some debts greater priority for payment than other debts.

For example, secured creditors, such as a bank holding a first ranking general security, will be paid before an unsecured creditor, such as a trade supplier who holds no security. Unfortunately, in these circumstances, a shareholder with an unsecured advance falls into the category of unsecured creditors - and if the company goes into administration, receivership or liquidation, he/she will receive nothing

*“Shareholders advancing funds to a company should always ensure these advances are adequately secured,”*  
- Anna Fox, SRB partner

unless all creditors, including unsecured creditors, are repaid in full.

In the absence of appropriate documentation, shareholders can encounter difficulties proving to a liquidator, receiver or administrator the terms of their advance, or that they have made the advance at all.

If you answered “no” to either of the above questions, you should seek legal advice promptly to find out whether it's possible to improve your situation.

Failing to do so may result in you joining a long line of unsecured creditors left high and dry if the company goes into administration, receivership or liquidation. It is important to secure your advances before the company finds itself in financial difficulties because, by then, it may be too late.

### + INCOME FLEXIBILITY IN FAMILY COMPANIES

The High Court has recently found in favour of two Christchurch specialists who chose to structure their professional practices as companies. This case has significant implications, and also applies to situations where a company conducts any trade or activity and pays salaries to shareholders who are also employees.

In essence, salaries were paid to the surgeons that were substantially less than they had earned as sole traders - however, an added benefit flowed through to other shareholders in what is really an effective income splitting scheme.

In the past “personal services attribution rules” have been a block to this type of

arrangement and it has been held they did not apply here.

The High Court decision has been well received by commentators who have described it as “well-reasoned and crafted”. (The case has since been appealed by the IRD.)

It is a positive development for family companies that order their affairs by making salary payments to the shareholders of those companies.

Please contact your tax advisor or your Saunders Robinson Brown Partner if you believe that the case may have some application to your own specific structure.

## + MISSION COMPLETE

*Over the past three years, Geoff Saunders has been using a combination of his legal and negotiation skills, along with his golf knowledge, to reposition the century-old NZ Golf Open*

In 2005 Geoff Saunders was elected to the Board of New Zealand Golf. By the end of his first board meeting it was clear his new role was going to be a demanding one, as he was elected to become chairman of the subcommittee charged with running and reviewing the New Zealand Open.

Prior to 2005, the Open - which was then held at Whangaparaoa's Gulf Harbour - had generated serious losses (well in excess of \$500,000 annually).

Geoff's legal background was valuable in negotiating an exit from a further three years at Gulf Harbour. After completing this with the help of fellow subcommittee members, the next step was to find a new home for the Open. A visit in February 2007 to Michael Hill's private golf course provided a possible solution. After a series of meetings with Michael and

NZ golfer Michael Campbell (US Open winner), a relatively radical proposal was submitted to the Board that the tournament should move to Queenstown.

SRB client Bob Tuohy, of Tuohy & Associates, played a key role in assisting with this - and the end result was a stunningly successful tournament in December 2007 which drew crowds of more than 35,000 golf fans - and ticket sales of more than \$250,000.

The financial surplus that resulted was the first in many years and the success of the tournament has been a source of quiet satisfaction to Geoff and the SRB team. "I was extremely fortunate to have the backing of Saunders Robinson Brown in taking this project on for a three year period" says Geoff. "I now regard the project as being complete and the Tournament has one more year at The Hills scheduled in 2010." Geoff is now back at SRB in his



NZ golfer Michael Campbell (US Open winner), pictured with SRB's Geoff Saunders and Michael Hill, at The Hills in Arrowtown

usual role as a partner, on a full-time basis. He has enjoyed what might be regarded as a challenging, part-time sabbatical from his commercial and sports law practice for the past two years.

## + LEE ROBINSON ON BOARD WITH CANTERBURY TACTIX



Continuing SRB's commitment to sporting and community projects, Lee Robinson was appointed to the Board of the Canterbury Tactix netball franchise last year.

The Tactix is one of five New Zealand teams that compete to play in the prestigious Trans-Tasman Trophy. The new competition has had considerable television exposure and the Canterbury public has supported the team and the games extremely well. The Tactix has recently announced a major naming rights sponsorship from Mercury Energy.

In addition to his role with the Tactix, Lee is also chair of the Canterbury Cricket Foundation Trust which has been established to raised funds to find a permanent home ground for Canterbury Cricket.

The Foundation is working on an exciting proposal that could see Test and Provincial cricket based at Hagley Oval. Christchurch City Council has committed to providing funds to assist with the development. Hagley Oval could become a very picturesque Test venue.

## + MORTGAGEE SALES – BUYER BEWARE

“As the current financial crisis continues, the number of mortgagee sales has risen. While clients may see these sales as potential bargain opportunities, in reality, mortgagee sales can be risky,”  
– Monica Ryan, SRB partner

Clients will be aware that a mortgagee sale occurs when a borrower defaults on their loan and the lender is forced to sell the property to recoup the funds advanced against that property.

In the US, mortgagee sale signs have become commonplace, and although the situation in New Zealand is less dire, an increase in mortgagee sale activity is clearly evident.

Meanwhile, real estate websites are also recording an increase in the number of prospective buyers specifically searching online for mortgagee sales – suggesting that this type of property sale is being viewed as an easy way to snap up a bargain and turn a quick profit. This is not always the case.

As a prospective purchaser, you need to be fully informed if you are considering buying a property that’s on the market because of a mortgagee sale. It is essential to take advice from your solicitor.

This is because:

- The property you are purchasing may not be vacant, and the defaulting mortgagee may still be living in the property when you are obliged to complete the settlement.
- A mortgagee’s power of sale is limited only to the property itself and does not include chattels in



the property. This means there’s nothing to prevent a defaulting (and possibly disgruntled) mortgagor from taking chattels with them (including floor coverings, drapes, appliances, such as stoves etc).

- The mortgagee may attempt to pass the risk of the property onto the purchaser upon acceptance of the agreement or upon the agreement becoming unconditional. In other words, damage done to the property prior to settlement could become your responsibility as purchaser.
- Purchasing at auction often means you do not have the opportunity to enter into a period of due diligence, quite often you are required to purchase the property “site unseen”.

It is vital that your solicitor reviews the sale and purchase agreement prior to signing it, so that you have the maximum protection possible.

Exercise caution when purchasing at mortgagee sales. The assumption that buying a property under these conditions is an easy profit in the offering is not always true.

## + SUPPORT FOR SPORT

SRB has long been committed to supporting sports at a grass roots level. Earlier this year, the firm was pleased to announce the launch of the SRB Golf Academy, which will help support 40 up-and-coming Canterbury golfers.

The Academy provides training sessions in all areas of player development, from sports psychology to nutrition and golf skills. A group is to be selected by Canterbury Golf for the Academy each year.

## LOG ON

Saunders Robinson Brown’s website has had a makeover. Please visit us online, where you can find everything from legal advice on topics like property ownership and power of attorney, to back issues of the newsletter and information on our services, history and staff.

See [www.srbllaw.co.nz](http://www.srbllaw.co.nz) for more

SAUNDERS ROBINSON BROWN

L A W Y E R S

PO Box 39, Christchurch 8140 + Phone: 03 377 4470 + Fax: 03 365 1616  
PO Box 166, Rangiora 7440 + Phone: 03 313 4628 + Fax: 03 313 7646