# PRESENTERS



### Geoff Davenport, McBride Davenport James, Wellington

Geoff has specialised in employment law and labour relations since 1993, and acts for a wide range of Government departments, public and private sector employers, unions and employees. He is the author of the text *Good Faith in Collective Bargaining*; and is on the editorial boards of *Mazengarb's Employment Law* and *Mazengarb's Employment Law Bulletin*. Geoff's legal experience includes completing a Masters Degree in Canada in good faith collective bargaining; working for the United Nations in Geneva on drafting labour laws and regulations for various countries; and working for a leading London law firm before returning to New Zealand in 2000.

#### Shan Wilson, Simpson Grierson, Auckland



Shan specialises in employment law and industrial relations, predominately representing and advising employers. Shan is a partner in Simpson Grierson's Employment Law Group. She also practised law in England, specialising in employment law.

## Acknowledgement

*This webinar is sourced from a session delivered at the NZLS CLE Ltd, Employment Law Conference, 8-9 November 2012* 

The statements and conclusions contained in this booklet are those of the author(s) only and not those of the New Zealand Law Society. This booklet has been prepared for the purpose of a Continuing Legal Education course. It is not intended to be a comprehensive statement of the law or practice, and should not be relied upon as such. If advice on the law is required, it should be sought on a formal, professional basis.

# CONTENTS

DISCIPLINARY PROCESSES – THE THORNY ISSUES	1
INTRODUCTION	1
FRAMING UP PROCESS – DIFFERENT FORMS OF INVESTIGATION	1
Decisions to be made when initiating an investigation	1
Investigator selection	
Advantages of using an external investigator	
Disadvantages of using an external investigator	
Scope of investigation	
FRAMING UP ALLEGATIONS	
COMMUNICATIONS, ACTIVE PARTICIPATION, AND RESPONSIVENESS DURING DISCIPLINARY PROCESS	ES 4
Employers failing to properly advise the employee of the issues of concern from the outset of the	1e
investigation	
Employers failing to disclose relevant information during the investigation	8
The information the employer is required to disclose does not extend to irrelevant material	9
The employee's obligation to be communicative and responsive when issues are raised with the	em 9
The employer is not to be a non-communicative "sponge" when conducting the investigation	11
Is there any "right to silence" in a good faith environment?	11
REPRESENTATION	15
SECRET WITNESSES IN A GOOD FAITH ENVIRONMENT	16
RECORDING A MEETING	18
Agreed recording	18
Secret recording	19
DISHONESTY DURING AN INVESTIGATION	20
Dishonesty as a fresh allegation arising during a disciplinary investigation – the relevance of g	good
faith	
REACHING CONCLUSIONS ON ALLEGATIONS	
Apologies	25
REPORTING TO THE POLICE/REGISTRATION BODY	25
WHERE TO FOR THE FUTURE	26