

## CHAIR



### **Dr Andrew Butler, Partner, Russell McVeagh, Wellington**

Andrew obtained his BCL from University College Dublin, his LLM from Osgoode Hall, Toronto and PHD from the European University Institute, Florence. When he first arrived in New Zealand, Andrew taught in the Law Faculty at Victoria University, specialising in equity, trusts, restitution, human rights and public law. From 1999-2005 he was Crown Counsel working in the Human Rights Team at the Crown Law Office. Andrew has written extensively here and abroad on human rights and public law, and is the general editor of *Equity and Trusts in New Zealand* (2nd ed, Brookers, Wellington 2009).

## SPEAKERS



### **Vanessa Bruton, Partner, TGT Legal, Auckland**

Vanessa leads the litigation team at Taylor Grant Tesiram, a boutique trust firm, which she was invited to join in March 2011 as a result of increasing demand for advice in contentious trust matters. She was previously a general litigation partner at Brookfields Lawyers for 7 years. Vanessa now practises almost exclusively in trust and estate disputes, including relationship property disputes where trusts are involved. Her practice includes both domestic and international trust disputes where there is a New Zealand law or jurisdiction aspect. Vanessa is a member of STEP (Society for Trust and Estate Practitioners) and a frequent speaker at NZLS, ADLS and other seminars.



### **Helen Dervan, Faculty of Law, AUT University, Auckland**

Helen has recently returned to New Zealand after living in London for over 20 years. She is a senior lecturer at AUT University and teaches courses in commercial equity and the law of trusts, and civil litigation. Helen is a graduate of the University of Auckland and the University of Oxford and has practised at a large national firm and large international firm in the City of London, specialising in banking and international finance litigation and general chancery litigation.



### **Theresa Donnelly, Ministry of Social Development, Auckland**

Theresa provides specialist advice to the Ministry on residential care subsidy, loan matters and deprivation cases as well as other operational legal and policy issues. She graduated from Auckland University in 1991, was admitted in 1992 and has worked in several private practice litigation areas as well as in-house counsel within the public sector. Theresa was a solicitor with Land Information New Zealand before taking employment as a senior solicitor for the Ministry of Social Policy in 2000 (subsequently MSD).



### **Deborah Hollings Chambers QC, Auckland**

Deborah specialises in domestic property disputes, trusts and structures. Her practice particularly includes more complex cases, often including company and family trust interests. She has appeared as counsel in numerous reported decisions in this area, including as leading counsel for the wife in *Z v Z* and *B v M*. Deborah is the co-author of *For Richer or Poorer* (CCH 2001), the best-selling handbook on domestic property and estate law, and has written numerous articles on these issues. She has presented seminars for NZLS CLE, the ADLS and other organisations and has delivered papers at numerous conferences.

## SPEAKERS



### **Lloyd Kavanagh, Partner, Minter Ellison Rudd Watts, Auckland**

Lloyd is a banking and financial services lawyer with a particular focus on governance, managed funds, and financial services regulation. He leads Minter Ellison Rudd Watts' financial services practice and has extensive experience in a wide range of investment products including equity and debt offerings, unit trusts, Kiwisaver and superannuation schemes, and securities and companies law advice. Lloyd advises clients with respect to both the current AML/CFT regime and the upcoming changes to New Zealand's AML/CFT regime, following the passage of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009. He has presented seminars and spoken at conferences on AML/CFT in New Zealand and Australia.



### **Chris Kelly, Greg Kelly Law Ltd, Wellington**

Chris has 30 years' experience as a lawyer specialising in trust and estate work. He is a co-author of the leading New Zealand legal text book on trusts: *Garrow and Kelly Law of Trusts and Trustees* (6th edition). Chris has also co-authored a number of other legal texts and publications and has presented a number of papers at NZLS CLE conferences over the years. He is one of the authors of the recent 5th edition of *Dobbie's Probate and Administration Practice*. Chris is a barrister and solicitor of the High Court of New Zealand and a member of the Society of Trust and Estate Practitioners.



### **Greg Kelly, Greg Kelly Law Ltd, Wellington**

Greg has 30 years' experience in the wills, trusts and estate area. He is a member of the Wills and Trusts Committee of the NZLS Property Law Section, and of STEP and chaired the NZLS CLE Trusts Conference in 2009 and 2011. Greg is a contributor to *Butterworth's Law of Trusts, probate and administration* author for *McGechan on Procedure*, co-author of *Garrow and Kelly Law of Trusts and Trustees* (6th edition) and of *Dobbie's Probate and Administration Practice* (5th edition).



### **Jeff Kenny, Partner, Wynn Williams, Christchurch**

Jeff has 26 years' experience in trust law. He is a member of the Wills and Trusts Committee and a member of the Trusts Law Review Working Group of the NZLS Property Law Section. Jeff is also a co-convenor of the Canterbury/Westland Branch of the NZICA Trusts Special Interests Group and a member of STEP. He is a contributing author of *New Zealand Conveyancing Law and Practice* published by CCH New Zealand and a contributing author of *Equity and Trusts in New Zealand* published by Brookers. Jeff is a previous presenter at the NZLS CLE Trusts Conference.



### **Prof Geoff McLay, Law Commission, Wellington**

Geoff taught at Victoria University's Faculty of Law since completing an LLM at the University of Michigan in 1994. He was appointed a professor with effect from 1 January 2011. He is currently on leave from the University during his term at the Law Commission. Geoff also has a BA and LLB (Hons) (First Class) from Victoria University of Wellington. In 2006, he was a visiting professor at the University of Iowa College of Law teaching torts and advanced torts and product liability. Geoff has also taught advanced torts at the University of Western Ontario (Winter 2002). Together with Sir Grant Hammond, Geoff is one of the Commissioners responsible for its trusts programme. He has published or edited a wide range of articles, papers and books.

## SPEAKERS



### **Denham Martin, Denham Martin Lawyer, Auckland**

Denham is a very experienced and popular presenter for both NZICA and NZLS. He regularly presents at the Auckland Branch Trust SIG, the NZICA Tax Conference, and has published extensively on technical tax, trust and commercial law issues both here and overseas. Denham is a lawyer specialising in advice on all aspects of tax and trust law. Formerly a tax and commercial law partner with Chapman Tripp, and now principal of his own specialist tax and trust law practice, he has had over 25 years' experience helping clients with trust, tax and legal problems.



### **Juliet Moses, Partner, TGT Legal, Auckland**

Juliet is a partner at Taylor Grant Tesiram. She specialises in trusts, personal asset planning and superannuation and is a regular presenter of seminars on issues arising in those areas, including at the NZLS CLE Trusts Conference in 2011 and the NZLS CLE Death and the Law Intensive in 2012. She also published a chapter in the CCH 2011 edition of the Master Trusts Guide on the Termination and Insolvency of Trusts.



### **Jared Ormsby, Partner, Wynn Williams, Christchurch**

Jared is a partner at Wynn Williams. He practises in the areas of trust and commercial litigation. Jared was counsel in the Supreme Court and Court of Appeal in *Kain v Hutton* and *Chirnside v Fay*. He acted for Save Our Arts Centre in the dispute surrounding the Christchurch Arts Centre and for Church Property Trustees in the dispute about demolishing the Christchurch Cathedral. Jared is a member of STEP and is deputy convener of the Litigation Committee of the Canterbury Branch of the NZLS. He is a contributing author of *Equity and Trusts in New Zealand* published by Brookers.



### **Jessica Palmer, Faculty of Law, University of Otago, Dunedin**

Jessica is a senior lecturer at Otago University and teaches courses in contract, equity and commercial law. She has published articles and essays on issues of equity and restitution and is an author of *Equity and Trusts in New Zealand* (Butler (ed), 2nd ed, Thomson Brookers, 2009). Jessica is a graduate of Auckland and Cambridge Universities and has worked at a large national law firm and as a judges' clerk.



### **Bill Patterson, Partner, Patterson Hopkins, Auckland**

Bill has an extensive trust, commercial and equity litigation practice. He has presented many papers for NZLS, ADLS Inc and the Institute of Chartered Accountants, including all six of the 1999 to 2009 NZLS CLE Trusts Conferences, three of them as chair. Bill also does regular topics for the ICANZ's Trusts Special Interest Group.

## **SPEAKERS**



### **Prof Charles Rickett, University of South Australia, Australia**

Professor Rickett was Sir Gerard Brennan Professor of Law at The University of Queensland from 2003 to 2010, where he was also Dean of Law from 2003 to 2007. He has held teaching appointments at University College London, the University of Cambridge (where he was a Fellow of Emmanuel College), Victoria University of Wellington and Massey University, and has had visiting appointments at The University of Melbourne and the University of Otago. Professor Rickett has spoken at numerous international conferences, and has also conducted seminars for the NZLS CLE, the ADLS and many of New Zealand's major law firms.



### **Ingrid Taylor, Partner, Taylor Shaw, Christchurch**

Ingrid, who was admitted to the legal profession in 1993, leads the Taylor Shaw team as her father and grandfather did before her. She has significant experience in property and business acquisitions, asset protection structures, and succession planning for private individuals and businesses. Ingrid is a member of the Trusts and Wills sub-committee of the NZLS, a member of the Institute of Directors and currently sits on the Board of Manchester Unity Friendly Society. She also acts as a trustee for a number of charitable societies, organisations and individuals and brings to all of these functions considerable experience in general corporate matters including governance, directors' duties and shareholder disputes.



### **Pravir Tesiram, Partner, TGT Legal, Auckland**

Pravir specialises in trusts, personal and tax planning, succession and related areas.



### **Simon Weil, Partner, Morrison Kent, Auckland**

Simon first started in the law in 1981 and has practised in the specialist trust law and asset-protection planning field internationally and in New Zealand for almost 20 years. He has broad international practice experience in the property, company and commercial fields. Simon is a member of STEP and the Estate and Taxation Planning Council of New Zealand and has presented seminars and a webinar for NZLS CLE.

# CONTENTS

## In session order

Law Commission Review of Law of Trusts: final report .....	1
<i>Prof Geoff McLay</i>	
Succession planning objectives .....	7
<i>Ingrid Taylor</i>	
Succession planning objectives .....	19
<i>Simon Weil</i>	
Trustee companies .....	27
<i>Pravir Tesiram</i>	
Drafting mistakes and issues – and how to fix them .....	43
<i>Chris Kelly and Greg Kelly</i>	
Terminating trusts .....	67
<i>Jeff Kenny and Jared Ormsby</i>	
Trusts can survive a relationship breakdown – myth or reality? .....	99
<i>Vanessa Bruton</i>	
Hunger Games – weapons for a game of trusts .....	123
<i>Deborah Hollings Chambers QC</i>	
Residential care subsidies – problems and puzzles .....	133
<i>Bill Patterson</i>	
Residential care subsidies – problems and puzzles: commentary .....	159
<i>Theresa Donnelly</i>	
An introduction to the AML and CFT Act 2009.....	173
<i>Lloyd Kavanagh</i>	

Disclosure of information to beneficiaries .....	207
<i>Denham Martin</i>	
Exercising trustee powers .....	227
<i>Jessica Palmer and Pravir Tesiram</i>	
Trustee indemnity and trustee liability .....	241
<i>Helen Dervan</i>	
Navigating the post gift duty minefield .....	261
<i>Juliet Moses</i>	

# CONTENTS

Alphabetical by author/presenter

<b>Author</b>		<b>Title</b>	<b>Page</b>
<b>Bruton</b>	Vanessa	Trusts can survive a relationship breakdown – myth or reality?	99
<b>Dervan</b>	Helen	Trustee indemnity and trustee liability	241
<b>Donnelly</b>	Theresa	Residential care subsidies – problems and puzzles: commentary	159
<b>Hollings Chambers QC</b>	Deborah	Hunger Games – weapons for a game of trusts	123
<b>Kavanagh</b>	Lloyd	An introduction to the AML and CFT Act 2009	173
<b>Kelly</b>	Chris	Drafting mistakes and issues – and how to fix them	43
<b>Kelly</b>	Greg	Drafting mistakes and issues – and how to fix them	43
<b>Kenny</b>	Jeff	Terminating trusts	67
<b>McLay</b>	Geoff	Law Commission Review of Law of Trusts: final report	1
<b>Martin</b>	Denham	Disclosure of information to beneficiaries	207
<b>Moses</b>	Juliet	Navigating the post gift duty minefield	261
<b>Ormsby</b>	Jared	Terminating trusts	67
<b>Palmer</b>	Jessica	Exercising trustee powers	227

<b>Patterson</b>	Bill	Residential care subsidies – problems and puzzles	133
<b>Taylor</b>	Ingrid	Succession planning objectives	7
<b>Tesiram</b>	Pravir	Trustee companies	27
<b>Weil</b>	Simon	Succession planning objectives	19