## **PRESENTERS**



## Andrew Watkins, Duncan Cotterill, Christchrch

Andrew has been practising for over 25 years, the last 15 exclusively in the area of relationship property and estate claims. He has a special interest in the division of relationship property after death and the challenges of Trusts. He is a member of the NZLS standing committee on relationship property and has presented a number of seminars and papers throughout New Zealand. Andrew also has an active interest in mediation and has run over 50 successful mediations.



## Simon Weil, 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 over 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.

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**

1. TRUST BUSTING: CLAIMS AGAINST TRUSTS BY FORMER SI PARTNERS	
SECTION 43 /44 / 44C PRA	
Sections 43 and 44	
Intent to defeat	
Effect of provisions	
Section 44C	
Using ss 25 and 33(3)(m) to vary the terms of the Trust Deed in conjunc	
OTHER PROVISIONS OF THE PRA POTENTIALLY AFFECTING PROPERTY HELD I	
SECTION 182 FAMILY PROCEEDINGS ACT 1980	
Features of s 182	
Dynastic trusts settled prior to a particular marriage	11
Summary	
EQUITABLE CLAIMS	
BUNDLE OF RIGHTS	
CONSTRUCTIVE TRUST CLAIMS	
SHAM, ALTER EGO, AND ILLUSORY TRUST CLAIMS	
Alter ego trusts	
Sham trusts	
Illusory trusts	
RESULTING TRUSTS	
Trustee Act 1956	
Application to remove trustees	
An application on behalf of minor or incapacitated beneficiaries under s	
An application to review the acts and decisions of the trustee under s 68	
CONCLUSION	19
2. SCHEDULE	21
A CHECKLIST OF POSSIBLE CLAIMS AGAINST A TRUST BY A FORMER SPOU	SE OR PARTNER
B TIPS TO MAKE TRUSTS LESS SUSCEPTIBLE TO "TRUST BUSTING"	
3. NZLS PROPERTY LAWYERS DILEMMA – HAS THE PRA UND	
CONSTRUCTIVE TRUSTS	27
Prime v Hardie	27
Glass v Hughey	31
Rea v Rea	
Clark v Clark	35
Marshall v Bourneville	
M v M	
Westenra v Westenra	
Murrell v Hamilton – December 2013	
Contracting as a trustee	
Trustee Lighility	