CHAIR



Greg Kelly, Principal, Greg Kelly Law, Wellington

Greg has 40 years' experience in the wills, trusts and estate area. He is a member of the New Zealand Law Society Property Law and Family Law Sections, of Society of Trust and Estate Practitioners, and chaired the NZLS CLE Trust Conferences in 2009, 2011, 2015, 2017 and 2019. Greg is a contributor to Butterworth's *Law of Trusts*, probate and administration author for *McGechan on Procedure*, co-author of *Garrow and Kelly's Law of Trusts and Trustees* (6th and 7th editions) and of *Dobbies' Probate and Administration Practice* (5th and 6th editions).

KEYNOTE SPEAKERS



Professor Jessica Palmer, Pro-Vice-Chancellor, Humanities, University of Otago, Dunedin

Professor Jessica Palmer is the Pro-Vice-Chancellor of the Division of Humanities (of which the Law Faculty is a part) at the University of Otago. She also teaches and researches in contract, trusts and commercial law. Before joining the Otago Law Faculty in 2005, Jessica served as a Judges' Clerk in the High Court in Auckland and worked in a national commercial law firm.



The Honourable Justice Sir Joe Williams, Supreme Court Wellington

Justice Williams has an LLB from the Victoria University of Wellington and an LLM (Hons) from the University of British Colombia. He became a partner at Kensington Swan in 1992 and went on to co-found Walters Williams & Co in 1994. In 1999 he became Chief Judge of the Māori Land Court and was appointed Deputy Chairperson of the Waitangi Tribunal shortly after in 2000. He was made Chairperson of the Waitangi Tribunal in 2004. Justice Williams was appointed a judge of the High Court in September 2008, a judge of the Court of Appeal in February 2018, and a judge of the Supreme Court in May 2019.

Justice Williams' iwi are Ngati Pūkenga, Waitaha and Tapuika.



Dr Andrew Butler, Thorndon Chambers, Wellington

Andrew is a seasoned advocate with extensive experience before New Zealand's superior courts. His practice focuses on commercial, trusts and public law. Andrew is co-author of the leading textbook on the New Zealand Bill of Rights Act 1990 and is the general editor of Thomson Reuters' *Equity and Trusts in New Zealand* (2nd edition).



Natalie Coates, Kāhui Legal, Rotorua

Natalie is a Tumuaki | Partner at Kāhui Legal. Prior to joining the firm, she was a lecturer and taught papers on the Treaty of Waitangi, jurispurdence, tikanga and the law, legal ethics and law and society at the University of Auckland, Faculty of Law.



Isaac Hikaka, Partner, LeeSalmonLong, Auckland

Isaac has particular expertise in complex relationship property and international trust disputes. He appears in cases in New Zealand and the Pacific Islands, including as lead counsel before the Privy Council.



Jeremy Johnson, Bankside Chambers, Auckland

Jeremy is an experienced litigator and dispute resolution specialist with expertise in commercial, insolvency, relationship property, arbitrations, equity and trust law. He is a STEP member and holds a STEP Advanced Certificate in Trust Disputes, and a Fellow of the Arbitrators' and Mediators' Institute of New Zealand.



Chris Kelly, Greg Kelly Law, Wellington

Chris has over 40 years' experience specialising in trusts. He is co-author of the new 8th and previous editions of *Garrow & Kelly Law of Trusts*.



Jeff Kenny, Partner, Saunders Robinson Brown, Christchurch

Jeff has over 30 years' experience in trust law. He is a member of STEP and 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 Thomson Reuters. He has also been involved in a number of committees dealing with the reform of New Zealand trust law.



Kimberly Lawrence, Greg Kelly Law, Wellington

Kimberly provides strategic advice to clients dealing with difficult trust and estate problems, and acts in relation to trust and estate litigation of all kinds.



Colette Mackenzie, Greg Kelly Law, Wellington

Colette has extensive experience in all aspects of trust law, advising clients on the use of trusts and wills in the context of asset planning, with particular expertise in dealing with attacks on the division of trust property.



Juliet Moses, Partner, TGT Legal, Auckland

Juliet specialises in trusts, personal asset planning and succession. She is Chair of the STEP Education Committee and a contributing author and tutor of the Trusts and Estates Diploma (NZ).



Tim Mullins, Partner, LeeSalmonLong, Auckland

Tim primarily practices civil litigation, and regulatory law and intellectual property. He regularly advises on legal professional/regulatory matters and lectured Legal Ethics for several years.



Jared Ormsby, Plymouth Chambers, Christchurch

Jared specialises in trusts and commercial litigation. He advised the Minister of Justice on the Trust Reference Group, is a STEP member and a contributing author to Thomson Reuters' *Equity and Trusts in New Zealand*.



Bill Patterson, Patterson Hopkins, Auckland

Bill has an extensive trust, commercial and equity litigation practice. He is the author of *The Law of Family Protection and Testamentary Promises*, Nexis Lexis, now in its 5th edition.



Emerita Professor, Nicola Peart, University of Otago, Dunedin

Nicola is a retired professor of law at the University of Otago, still doing research on trusts, relationship property and succession law. She was a member of the Law Commission's Expert Advisory Group on their reviews of trust law, relationship (property) law and now succession law.



Rebecca Rose, Bankside Chambers, Auckland

Rebecca specialises in general civil, corporate/commercial and public law. Her practice spans a broad field of areas, including wills, trusts, and property. Rebecca has acted as counsel in all of New Zealand's higher courts and in numerous leading cases.



James Scullin, Trust Adviser, Todd Family Office, Wellington

James joined the Todd Family Office in 2014. He specialises in trusts and estate planning.



Tanya Speight, Senior Associate, Saunders Robinson Brown, Christchurch

Tanya is a senior member of Saunders Robinson Brown's specialist trusts and estates team. She is a member of STEP and advises clients on all aspects of trust law, particularly complex trust and estate reviews and re-structures.



Stephen Tomlinson, Tomlinson Law, Christchurch

Stephen advises clients (including law firms and accounting firms) on a wide range of taxation and trust law issues. He is a member of the NZLS Taxation Committee and the ADLS Trust Law Committee.



Andrew Watkins, Wynn Williams, Christchurch

Andrew is a specialist in family law, particularly the resolution of complex relationship property and estate claims. He has conducted over 80 successful mediations and has completed courses in advanced negotiation and advanced mediation at Harvard.



Katrina Wood, Associate, Saunders Robinson Brown, Christchurch

Katrina is a commercial and trust lawyer and works closely with Saunders Robinson Brown's trusts and estates team. Katrina is a member of the ADLS Documents and Precedents Committee and has been involved in redrafting standard form trust documents as a result of the Trusts Act. She advises clients on company and trust structuring.

CONTENTS

DEALING WITH EXCESSIVE RESERVED POWERS	3
INTRODUCTION: THE ISSUE	5
THE LEADING CASES IN BRIEF	
CONSTRUING POWERS	
EVALUATING THE RESPONSES TO EXCESSIVE CONTROL	
HOW TO LIMIT YOUR OBLIGATIONS AND STILL GET PAID	
Limiting liability, discharging professional obligations under the Trusts Act 2019,	
AND STILL GETTING PAID: IS IT POSSIBLE?	
MODIFYING DEFAULT DUTIES – THE OBLIGATIONS OF THE PROFESSIONAL ADVISER	21
LIMITATION OF LIABILITY AND INDEMNITY CLAUSES — THE OBLIGATIONS OF THE PROFESSIONAL ADVISER	27
PROFESSIONAL ADVISERS AND PROFESSIONAL TRUSTEES	
SETTLORS AS PRIMARY BENEFICIARIES – USING THE TRUSTS ACT 2019 TO MEET TRUSTEES'	
OBLIGATIONS TO OTHER BENEFICIARIES	31
PROTECTORS/GUARDIANS AND COMPANY TRUSTEES	35
COMPANY TRUSTEES.	37
Protectors/guardians	
Powers generally	
INTERPRETING POWERS	
ANNEXURE 1 – DRAFTING CHECK LIST	
THE LAWYER AS TRUSTEE – OBLIGATIONS, EXPOSURE AND ETHICS	
· · · · · · · · · · · · · · · · · · ·	
INTRODUCTION: A SOLICITOR WHO IS A TRUSTEE OR A "SOLICITOR TRUSTEE"? DRAWING A LINE: WHAT CAN BE SUBJECT TO PROFESSIONAL DISCIPLINE?	81 82
DRAWING A DIVE: WHAT CAN BE SUBJECT TO THOT ESSIONAL DISCH LINE: DRAWING ANOTHER LINE: LIABILITIES MORE GENERALLY	
AT THE BEGINNING: SETTING UP THE TRUST/ACCEPTING TRUSTEESHIP	91
THE LAWYER TRUSTEE'S FIRM ACTING FOR THE TRUSTEES	
WHAT CAN BE DONE ABOUT ALL THIS?	
LESSONS FROM FAMILY OFFICES	101
WHAT IS A FAMILY OFFICE?	103
WHAT ARE THE DIFFERENT TYPES OF FAMILY OFFICES?	
WHAT TYPES OF SERVICES DO FAMILY OFFICES PROVIDE?	
WHAT ARE SOME OF THE BENEFITS?	
GUIDE TO THE PROFESSIONAL FAMILY OFFICE	
DISCLOSURE OF TRUST INFORMATION AND CURRENT ISSUES	
Introduction	
LAW PRIOR TO THE TRUSTS ACT 2019	
ACADEMIC COMMENTARY IN PRINCIPAL COMMONWEALTH JURISIDCTIONS	
HAS THE TRUSTS ACT CHANGED THE LAW?	120
REQUEST DISCLOSURE	
CONCLUSION ON REQUEST DISCLOSURE	
Drafting response to disclosure concerns	
THE TRANSMOGRIFICATION OF TRUSTS	
Introduction	
IS THERE A VALID TRUST? – CHALLENGING THE TRUST	
CLAIMS UNDER THE PROPERTY (RELATIONSHIPS) ACT 1976	
Comment of the French Comment of the	1.44

Section 44F	147
SECTION 182 OF THE FAMILY PROCEEDINGS ACT 1980	148
CONSTRUCTIVE TRUSTS	157
CONCLUSION	159
APPENDIX A – FACTUAL SCENARIO CASE STUDY	161
APPENDIX B – TRUST DEED FOR THE KEVIN SMITH FAMILY TRUST	165
APPENDIX C – CONTRACTING OUT AGREEMENT	181
MĀORI TRUSTS (There is no paper for this session)	189
TIKANGA AND TRUSTS	191
Introduction	193
THE NATURE OF TRUSTS AND TIKANGA	193
APPROACH OF THE COURTS	197
WHERE MAY THE FUTURE LIE?	199
REFORMING SUCCESSION LAW	205
Introduction	207
GOOD SUCCESSION LAW	208
RELATIONSHIP PROPERTY ON DEATH	
Family Provision	217
CONTRIBUTION CLAIMS	223
ANTI-AVOIDANCE MECHANISMS	228
Priorities	234
Intestacy	235
Conclusion	243
CREDITORS, BENEFICIARIES, AND TRUSTEES ACCESSING THE TRUST PROPERTY	<i>I</i> –
PLUNDERING OR ENFORCEMENT?	245
CREDITORS, INSOLVENT TRUSTEES, AND LIQUIDATORS	247
BANKRUPT BENEFICIARIES – WHAT CAN CREDITORS DO?	
TRUSTS, TAX PLANNING AND THE 39% TAX RATE	273
Introduction	275
IMPACT OF THE INCREASE IN THE TOP PERSONAL TAX RATE ON TRUST STRUCTURES	
NEW TAX REPORTING REQUIREMENTS FOR TRUSTS	285
APPENDIX—CASE STUDY: INCORPORATING A PROFESSIONAL SERVICES FIRM	
CASE LAW UPDATE	293
A ROUND UP OF RECENT TRUST CASES	295
RECENT INTERNATIONAL CASES	
TRUSTEE AND PROTECTOR REMOVALS & RETIREMENTS	
TRUSTS AS A FINANCIAL RESOURCE: SPOUSE AND CREDITOR CLAIMS	
EXCHANGE OF INFORMATION REQUESTS	
KNOWING RECEIPT, DISHONEST ASSISTANCE, GROSS NEGLIGENCE & DISHONESTY PLEADINGS	
CONFLICTS/SELF-DEALING & BLESSING DECISIONS	
Costs in Trusts Proceedings	
THE BEDDOE JURISDICTION	
BENJAMIN ORDERS	324
MEMORANDA OF WISHES	326