## PRESENTERS

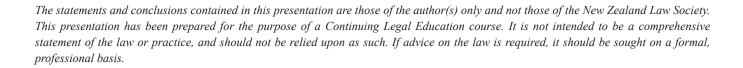


## John Land, Bankside Chambers, Auckland

John is a senior competition law specialist and commercial litigation barrister. Since 2016 he has also been a teaching fellow at the University of Auckland responsible for the teaching of the Auckland Law School undergraduate company law course. Before joining Bankside Chambers in 2012, John was with national law firm Kensington Swan (now Dentons Kensington Swan) for 26 years including 20 years as a partner. He has published frequently in the fields of competition and corporate law.

## Peter Watts KC FRSNZ, Bankside Chambers, Auckland

Peter is a barrister, a Visiting Professor at the University of Oxford and a Senior Research Fellow at Harris Manchester College, Oxford, and was formerly a Professor of Law at the University of Auckland. He is the author of and contributor to books on company law including: *Directors' Powers and Duties* (3rd ed, LexisNexis, 2022); *Company Law in New Zealand* (2nd ed, LexisNexis, 2016) and *Morison's Company and Securities Law* (LexisNexis looseleaf). He is also the General Editor of *Bowstead & Reynolds on Agency* (21st ed, Sweet & Maxwell, 2018) and a contributing author to *Heath & Whale on Insolvency*.



## CONTENTS

1.	SECTION 131 AND SEQUANA	1
	Remedial consequences of \$ 131 being a fiduciary duty	1
	POSITION IN NEW ZEALAND LAW BEFORE SEQUANA	
	SEQUANA	3
	Underpinning of the duty of loyalty to the company	4
	CREDITOR DUTY CONFIRMED	
	WEIGHING OF SHAREHOLDER AND CREDITOR INTERESTS	-
	NEW ZEALAND QUESTIONS FOLLOWING SEQUANA	
	A New Zealand requirement to take account of the interests of creditors	
	When is the appropriate trigger for the creditor duty?	
	What is the meaning of "insolvency" for the purpose of the trigger?	
	Need for knowledge of state of insolvency?	
	What are the "interests of creditors"?	
	The balancing of creditor and shareholder interests	
	When do creditor interests become paramount?	
	Impact on company contracts	
	Ratification and affirmation of voidable contracts	15
	STATUTORY AMENDMENT TO S 131	
	Use of injunctive relief to enforce compliance with s 131	-
	OFFENCE PROVISION ASSOCIATED WITH BREACH OF DUTY TO ACT IN BEST INTERESTS OF COMPANY	20
2.	SECTIONS 135 AND 136 OF THE COMPANIES ACT 1993 – IN THE LIGHT OF	
M	AINZEAL	21
	SECTION 135	21
	SECTION 136	
3.	THE SHAREHOLDER OPPRESSION REMEDY	35
	BUY-OUT OFFER AS A CURE FOR UNFAIRLY PREJUDICIAL CONDUCT	35
	STATUS AS A SHAREHOLDER FOR PURPOSE OF UNFAIR PREJUDICE REMEDY	
4.	COMPANY CONTRACTING	41
5.	PIERCING THE CORPORATE VEIL	45