

PRESENTERS



Allison Ferguson, Partner, Wilson Harle, Auckland

Allison is a founding partner of specialist litigation firm Wilson Harle. She has acted for clients across a wide range of civil and commercial disputes. Allison has appeared as counsel in the courts at all levels. Her experience includes acting for and advising clients in respect of breach of contract, negligence, insurance, construction, shareholder disputes, media, Fair Trading Act and Commerce Act issues, public law and regulatory matters.



Guy Tompkins, Partner, Wilson Harle, Auckland

Guy acts for and advises clients on all types of civil and commercial disputes. In addition to representing clients in litigation, he provides expert advice focused on early resolution or avoiding dispute altogether. Guy has a particular focus on contractual issues, insurance, financial services, media and privacy law, regulatory investigations, restructuring and insolvency, and company law. He is an experienced counsel before the District Court and High Court on both civil and criminal matters.

The statements and conclusions contained in this presentation are those of the author(s) only and not those of the New Zealand Law Society. This presentation 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

| | |
|---|-----------|
| UPDATE ON EVIDENCE ACT FOR CIVIL LITIGATORS..... | 1 |
| INTRODUCTION | 1 |
| BACKGROUND – THE EVIDENCE ACT 2006 | 1 |
| <i>Periodic review</i> | 1 |
| <i>The future of periodic review?</i> | 3 |
| SCOPE OF THE ACT – EVIDENCE IN TRIBUNALS | 3 |
| <i>Proceedings</i> | 3 |
| <i>Case note – A Professional Conduct Committee of the Nursing Council of NZ v Health Practitioners Disciplinary Tribunal [2020] NZCA 435; (2020) 25 PRNZ 571</i> | 4 |
| ADMISSIBILITY – BRIEFS OF EVIDENCE..... | 7 |
| <i>Fundamental concepts</i> | 7 |
| <i>Recent case law</i> | 8 |
| <i>Procedural reform? – 2021 rules committee proposals</i> | 14 |
| <i>An alternative approach – English reforms</i> | 15 |
| EXPERT OPINION EVIDENCE..... | 18 |
| <i>Admissibility</i> | 18 |
| <i>Test for admissibility</i> | 19 |
| <i>Substantially helpful</i> | 20 |
| <i>Non-compliance with Code of Conduct</i> | 21 |
| <i>Recent case law</i> | 21 |
| <i>Impartiality & litigation privilege – Ngāti Whātua Ōrākei Trust v Attorney-General [2021] NZHC 88</i> | 24 |
| <i>Lawyer involvement in preparation of expert briefs</i> | 26 |
| PRIVILEGE..... | 27 |
| <i>Legal professional privilege</i> | 27 |
| <i>Legal professional privilege – trusts and trust disputes</i> | 27 |
| <i>Lambie Trustee Ltd v Addleman [2021] NZSC 54</i> | 28 |
| <i>Lavrentiadis v Wintrust New Zealand Limited [2022] NZHC 326</i> | 31 |
| <i>Section 57 Privilege of settlement negotiations – interests of justice exception</i> | 32 |
| <i>Smith v Shaw [2020] NZHC 238</i> | 33 |
| <i>Gibbs v Windmeyer [2021] NZHC 2582</i> | 34 |
| <i>Smith v Claims Resolution Service [2021] NZHC 3424</i> | 35 |
| <i>Litigation privilege – does it end with the litigation?</i> | 36 |
| <i>Policy considerations</i> | 37 |
| <i>Overseas (Canadian) position</i> | 37 |
| <i>Judicial indications in New Zealand</i> | 38 |
| <i>Law Commission view</i> | 40 |
| <i>Statutory interpretation?</i> | 40 |
| POWERPOINTS..... | 43 |