

## PRESENTERS



### **Paul Collins, Barrister, Auckland**

Paul is a barrister practising at Shortland Chambers. He has wide experience in areas of professional discipline and regulation in the legal profession. Paul has prosecuted numerous cases in the Disciplinary Tribunal and has also appeared in the High Court and Court of Appeal in cases relating to professional discipline and other aspects of regulation of the legal profession. He is a convenor of the National Standards Committee and has been extensively involved in Standards Committee training since the outset of the LCA. Paul is the author of the Practice Note concerning the functions and operations of lawyers' Standards Committees and was the consulting editor for *The Laws of New Zealand: Lawyers and Conveyancers*.



### **Grant Illingworth QC, Auckland**

Practising from Southern Cross Chambers, Grant has over 30 years' experience in a wide range of cases. He has an LLM (Hons) from Auckland University, where he was also awarded the Fowlds Memorial Prize in Law. In 2003 Grant was appointed Queen's Counsel. His areas of expertise are criminal law, constitutional law, administrative law, professional ethics and civil litigation. He has conducted a wide range of litigation at all levels of the New Zealand legal system. He is one of the authors of *Adams on Criminal Law*, contributing mainly in relation to constitutional and administrative issues, and is a current member of the Rule of Law Committee of the NZLS. Grant is a member of the prosecution panel for the NZLS and has acted in numerous professional disciplinary proceedings for law societies and for practitioners accused of misconduct. He has also acted for judges in situations where their professional conduct has been in issue including a former Chief Justice of Fiji who was accused of misbehaviour in office.

*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

<b>COMPLAINTS AND DISCIPLINE IN THE LEGAL PROFESSION – KEY CONCEPTS AND INSTITUTIONS.....</b>	<b>1</b>
THE NEED FOR REFORM.....	1
SOME STATISTICS AND TRENDS .....	2
THE LAWYERS COMPLAINTS SERVICE .....	3
STANDARDS COMMITTEES .....	4
LEGAL COMPLAINTS REVIEW OFFICER.....	4
NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL .....	5
UNSATISFACTORY CONDUCT .....	6
<b>RESPONDING TO A COMPLAINT – LAWYERS’ DUTIES – WHAT TO DO AND WHAT NOT TO DO.....</b>	<b>7</b>
STANDARDS COMMITTEES – POWERS OF COMPULSION .....	7
THE DUTY TO CO-OPERATE .....	8
<b>NIPPING A COMPLAINT IN THE BUD – EFFECTIVE USE OF RULE 3.8 COMPLAINTS MECHANISMS .....</b>	<b>13</b>
<b>CATEGORIES OF TRICKY ISSUES.....</b>	<b>15</b>
OVERCHARGING AND COMPLAINTS ABOUT FEES .....	15
<i>The basic concepts</i> .....	15
<i>The provision of fee information as an important concept of consumer protection and lawyer protection</i> .....	15
<i>Exceeded fee estimates</i> .....	16
<i>Over-emphasis on time costing</i> .....	17
<i>Fee invoices less than \$2,000</i> .....	17
<i>Deducting fees from trust money</i> .....	17
<i>Conditional fee agreements</i> .....	18
TRUST ACCOUNTING ISSUES.....	20
<i>Corporate responsibility for trust accounting matters</i> .....	20
<i>The duty to keep accurate and accessible trust accounting records</i> .....	20
<i>Dealing with dormant balances</i> .....	20
<i>Some other trust accounting perils</i> .....	21
CONFLICTS OF INTEREST.....	21
PROFESSIONAL UNDERTAKINGS .....	24
KNOWING RECEIPT AND ASSISTANCE .....	28
INTERACTIONS WITH WITNESSES .....	29
FREEDOM OF EXPRESSION .....	31
<b>APPENDIX 1.....</b>	<b>33</b>
<b>APPENDIX 2.....</b>	<b>37</b>
<b>APPENDIX 3.....</b>	<b>39</b>