

CHAIR



Simon Jefferson QC, Trinity Chambers, Auckland

Simon has had more than 37 years' legal experience specialising almost exclusively in family law since 1983. After 20 years as a partner with Shieff England (where he led a family law team renowned for its ability and from which has emerged many leading family law practitioners), he left to practice at the independent bar in June 2006. He was elevated to the status of Queen's Counsel in 2013. Simon has appeared in the Family Court, the High Court and the Court of Appeal.

SPEAKERS



Grant Allan, Mediator, Masterton

Grant is a full-time mediator on the Advanced Panel of the Resolution Institute and has mediated hundreds of relationship property & related trust disputes. He was named "2018 Mediator of the Year" at the New Zealand Law Awards.



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 Brookers *Equity and Trusts in New Zealand* (2nd edition).



Vanessa Bruton QC, TEP, O'Connell Chambers, Auckland

Vanessa is a litigator, practising almost exclusively in trust and estate disputes, including where relationship property is involved. She has been counsel in a number of the leading cases over recent years. She went to the independent bar in 2014 and took silk in 2016. For more about Vanessa see: www.trust-litigation.co.nz.



Lady Deborah Chambers QC, Bankside Chambers, Auckland

Lady Deborah practices in the area of complex relationship property, family trusts and fiduciary relationships.

SPEAKERS



Angela Corry, Clarendon Chambers, Christchurch

Angela is an experienced and efficient advocate who has practised as a barrister since 1992, with increasing specialisation in family law. She has argued cases in the Family Court, District Court and High Court at first instance and in the High Court, Court of Appeal and Supreme Court on appeal.



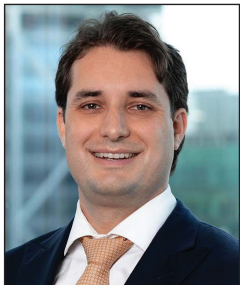
Philippa Fee, Fee Langstone, Auckland

Philippa is a litigation and dispute resolution lawyer. Her principal specialist area is the representation of professionals in connection with claims for negligence and disciplinary complaints.



The Honourable Paul Heath QC, Bankside Chambers, Auckland

Paul is a former High Court Judge. Between 2003 and 2016 he was assigned to sit, on occasion, in the Civil and Criminal Appeal Divisions of the Court of Appeal. Paul also sat as a Judge of the Court of Appeal of Vanuatu in 2011. He retired from the High Court Bench in 2018 and is now engaged in dispute resolution, primarily arbitration. Recently, Paul was appointed as President of the Court of Appeal of the Pitcairn Islands.



Isaac Hikaka, 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.



Lynda Kearns, Bastion Chambers, Auckland

Lynda is an experienced barrister specialising in all aspects of family law but with a particular interest in complex relationship and trust litigation. She has successfully represented her clients at numerous mediations. Lynda is a member of the Arbitrators' and Mediators' Institute of New Zealand.



Professor Nicola Peart, University of Otago, Dunedin

Nicola teaches property law, wills & trusts and, in the past, advanced family property law. Her research focuses on family property and succession law and she is a member of the New Zealand Law Commission's Expert Advisory Groups on the review of the Property (Relationships) Act and the review of Succession Law.

CONTENTS

In session order

Advocacy – Getting your point across

Advocacy – Getting your point across 1

Hon Paul Heath QC

Launching a Successful Mediation

Mediating relationship property cases 9

Grant Allan and Lynda Kearns

Inexpensive, Simple and Speedy: Chasing the enigma

Efficiency efficacious expedient 23

Angela Corry

Levelling the Playing Field During Litigation

Levelling the Playing Field During Litigation 35

Lady Deborah Chambers QC

What are Insurers Seeing?

What are Insurers Seeing? 55

Philippa Fee

Death and PRA: Options other than heaven and hell

Death and the Property (Relationships) Act 1976 – Options other than heaven
and hell 71

Professor Nicola Peart

Race Across the World – Resolution of relationship property disputes with an international/trans-tasman connection

Race Across the World – Resolution of relationship property disputes with an
international/trans-tasman connection 89

Isaac Hikaka (author) and Simon Jefferson QC (co-presenter)

The Dream is Over – Resolving relationship property disputes to best advantage where trusts are involved

The Dream is Over – Resolving relationship property disputes to best advantage where trusts are involved 105

Vanessa Bruton QC and Dr Andrew Butler

CONTENTS

Alphabetical by author/presenter

Author		Title	Page
Allan	Grant	Launching a Successful Mediation <i>Joint paper with Lynda Kearns</i>	9
Butler	Dr Andrew	The Dream is Over – Resolving relationship property disputes to best advantage where trusts are involved <i>Joint paper with Vanessa Bruton QC</i>	105
Bruton QC	Vanessa	The Dream is Over – Resolving relationship property disputes to best advantage where trusts are involved <i>Joint paper with Dr Andrew Butler</i>	105
Chambers QC	Lady Deborah	Levelling the Playing Field During Litigation	35
Corry	Angela	Inexpensive, Simple and Speedy: Chasing the enigma	23
Fee	Philippa	What are Insurers Seeing?	55
Heath QC	Hon Paul	Advocacy – Getting your point across	1
Hikaka	Isaac	Race Across the World – Resolution of relationship property disputes with an international/trans-tasman connection	89
Jefferson QC	Simon	Race Across the World – Resolution of relationship property disputes with an international/trans-tasman connection <i>Co-presenter with Isaac Hikaka</i>	89
Kearns	Lynda	Launching a Successful Mediation <i>Joint paper with Grant Allan</i>	9

Peart

Professor
Nicola

Death and PRA: Options other than heaven
and hell

71

CONTENTS

ADVOCACY – GETTING YOUR POINT ACROSS	1
INTRODUCTION	3
WHAT IS ADVOCACY?	3
THE FOUNDATION STONE: THE FISHER PRECEPTS	4
PROPORTIONALITY OF COSTS	7
MEDIATING RELATIONSHIP PROPERTY CASES	9
PRELIMINARY COMMENTS ON THE IMPACT OF COVID-19 ON MEDIATION PRACTICE.....	11
THE MEDIATION ENVIRONMENT	12
SETTING UP OF THE MEDIATION	15
PREPARATION FOR THE MEDIATION.....	16
THE MEDIATION	18
CONCLUSION.....	20
EFFICIENCY EFFICACIOUS EXPEDIENT	23
INTRODUCTION	25
THE IDEAL.....	26
THE REALITY.....	26
PLAN PLAN PLAN.....	26
FORGING AHEAD WITH WHAT YOU HAVE	28
DO THE LEG WORK	28
OPPOSING JOINDERS.....	29
TRANSFERS TO THE HIGH COURT.....	30
HOW TO FILE YOUR CASE	30
USING THE COURT TO BEST ADVANTAGE.....	32
CONCLUSION.....	34
LEVELLING THE PLAYING FIELD DURING LITIGATION	35
NEW ZEALAND RELATIONSHIP PROPERTY SURVEY 2019	37
WHY ARE WE SO FAR AWAY FROM A LEVEL PLAYING FIELD?.....	37
AUSTRALIA VS NEW ZEALAND – KANGAROO COURTS RULE	38
SECTION 40 COSTS ORDERS	39
MORE RECENT CASES ON S 40 ORDERS	41
INTERIM DISTRIBUTIONS	45
DISCOVERY	50
WHAT ARE INSURERS SEEING?	55
INTRODUCTION	57
OUTLINE OF PAPER.....	58
PART ONE: THE DUTIES OWED BY A LAWYER IN RELATION TO THE PRA.....	58
PART TWO: COMPLAINTS.....	65
PART THREE: BEST PRACTICE TIPS.....	69
DEATH AND THE PROPERTY (RELATIONSHIPS) ACT 1976 – OPTIONS OTHER THAN HEAVEN AND HELL.....	71
INTRODUCTION	73
THE PRA DEATH PROVISIONS	74
CONCEPTUAL AND PRACTICAL DIFFICULTIES WITH THE DEATH PROVISIONS	84
REFORM.....	87
CONCLUSION.....	88
RACE ACROSS THE WORLD – RESOLUTION OF RELATIONSHIP PROPERTY DISPUTES WITH AN INTERNATIONAL / TRANS-TASMAN CONNECTION	89
INTRODUCTION	91
PART ONE – THE NEW ZEALAND FRAMEWORK.....	91
PART TWO – ACTING FOR AN APPLICANT	96
PART THREE – ACTING FOR A RESPONDENT	101
PART FOUR – POTENTIAL FOR REFORM.....	103

THE DREAM IS OVER – RESOLVING RELATIONSHIP PROPERTY DISPUTES TO BEST ADVANTAGE WHERE TRUSTS ARE INVOLVED 105

COVID 107

CORONA..... 107

OVERVIEW 108

ACTING FOR THE WIFE/*DE FACTO* WIFE..... 109

AT THE OUTSET 109

DEVELOPMENTS SINCE 2016 110

THE IMPORTANCE OF A “CLAYTON’S TRUST” ANALYSIS 110

WHERE CLAIMANT IS BENEFICIARY OF THE TRUST 113

SECTION 182 FAMILY PROCEEDINGS ACT 1980 116

LAW COMMISSION PROPOSALS FOR REFORM..... 129

HOW SHOULD THE TRUSTEES RESPOND? 130

CONCLUSION..... 131

APPENDIX ONE 132