

## PRESENTERS



### **Juliet Moses, Partner, TGT Legal, Auckland**

Juliet is a partner at TGT Legal, a boutique trust and private client law firm based in Auckland. She specialises in trusts, personal asset planning and superannuation and is a regular presenter of seminars and author of articles on issues arising in those areas. Juliet has spoken at several NZLS CLE conferences and short seminars, ADLS conferences, and at STEP (Society of Trust and Estate Practitioners) and NZICA events. She is the chair of the STEP education committee and also published a chapter in the CCH 2011 edition of the *New Zealand Master Trusts Guide* on the “Termination and Insolvency of Trusts”.



### **Rebecca Rose, Barrister, Bankside Chambers, Auckland**

Rebecca specialises in general civil and commercial litigation and dispute resolution. Her work for individual and corporate clients in the public and private sectors spans a broad range of areas and industries. Rebecca has litigated trust cases in all of New Zealand’s higher courts. She is of Dutch and Te Atiawa (Ngāti Te Whiti and Ngāti Tawhirikura) descent. Rebecca is a full (TEP) member of STEP, the international Society of Trust Estate Practitioners as well as a permanent member of the Cook Islands bar. She has written numerous articles in her areas of interest, and regularly speaks at seminars and conferences in New Zealand and abroad. Rebecca is also a contributing author of *Gault on Commercial Law*.

*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>1. INTRODUCTION.....</b>	<b>1</b>
<b>2. WHAT IS CAPACITY? .....</b>	<b>3</b>
<b>3. WHEN DOES A TRUSTEE OR APPOINTOR LOSE CAPACITY?.....</b>	<b>5</b>
<b>4. ETHICAL ISSUES WHEN ACTING FOR TRUSTEE/APPOINTOR OF QUESTIONABLE COMPETENCE? .....</b>	<b>7</b>
<b>5. THE ROLE OF HEALTH PROFESSIONALS .....</b>	<b>9</b>
<b>6. THE NEED TO REMOVE A TRUSTEE OF QUESTIONABLE COMPETENCE AND THE RISKS OF NOT DOING SO.....</b>	<b>13</b>
<b>7. WHAT TO DO .....</b>	<b>17</b>
POWER TO REMOVE WITHOUT COURT ASSISTANCE.....	17
POWER TO APPOINT AND REMOVE WITH COURT ASSISTANCE – s 51(1) TRUSTEE ACT.....	21
VESTING ORDERS – s 52.....	22
<b>8. HOW CAN YOU GET AROUND THESE PITFALLS?.....</b>	<b>25</b>
<b>9. CONCLUSION.....</b>	<b>27</b>