

CONFERENCE CHAIR



Phillipa Muir, Simpson Grierson, Auckland

Phillipa heads her firm's national employment law group. She is a co-author of Brooker's Employment Law and The Guide to Recruitment and Termination.

KEYNOTE SPEAKERS



Professor Ronald McCallum, Dean of Law, Faculty of Law, University of Sydney

Professor McCallum is the first totally blind person to be appointed Dean of a Law School or to have been appointed a full professorship in any field in any university in Australia or New Zealand. He is the inaugural president of the Australian Labour Law Association and was appointed to the National Academy of Arbitrators (US & Can) in 1982. Ron worked on the NSW Taskforce which led to the drafting of the Industrial Relations Act 1996 (NSW) and the Queensland Taskforce which developed the Industrial Relations Act 1999 (Q). In 1996-7, he chaired a Panel of Review into the Occupational Health and Safety Act 1983 (NSW), which eventually led to the Occupational Health and Safety Act 2000 (NSW). In April 2000, Ron was appointed Chair of the Industrial Relations Taskforce Victoria. Ron has written widely on industrial law, his latest book is Employer Controls Over Private Life, (UNSW Press Nov 1999). Ron acts as a consultant in industrial law with Blake Dawson Waldron.



Trudie McNaughton, Director, Expertise Ltd, Auckland

In her role as the inaugural EEO officer at the University of Auckland and as chief executive of the EEO Trust, Trudie pioneered work to identify the business and social benefits of work/life balance. She has created alliances between diverse partners to help deliver on our widely held belief that New Zealand is a great place to live, work and bring up children. She continues to work in New Zealand and overseas as a social entrepreneur to translate good ideas into action. Her areas of interest include labour, employment, family, education and health.



Philip Bartlett, Bartlett Partners, Wellington

Philip has specialised in employment law for over 20 years, and is a co-author of Brooker's Employment Law, and sole author of two of the works in Brooker's Employment Practice and Procedure library. He has a particular interest in employment law in the health and government sectors.



Christine Batt, Tripe Matthews & Feist, Wellington

Christine started her career working in a variety of roles for ACC in Wellington and other parts of New Zealand. In 1988 she moved to private practice in Nelson, returning to Wellington to take up a litigation/employment law role at Tripe Matthews & Feist in 2002. Employment law forms a significant part of Christine's practice and she regularly advises and represents both employers and employees. Christine has been a member of the WDLS Employment Law Committee for two years.



Kathryn Beck, Haigh Lyon, Auckland

Kathryn leads the employment team at Haigh Lyon. Kathryn has extensive experience in all areas of employment law and industrial relations. She is a member of the NZLS and ADLS Employment Law Committees.



Keith Binnie, Simpson Grierson, Wellington

Keith heads up the Wellington arm of Simpson Grierson's national employment law group. He has had more than 20 years' experience in collective bargaining, acting for a variety of employers and industries. Prior to joining Simpson Grierson he was employed as an advocate by the Wellington Employers Association with responsibility predominantly for collective bargaining in the waterfront, ports and maritime industries.



Derek Broadmore, Broadmore Barnett, Wellington

Derek has specialised in employment law for over 15 years. He has been involved in a number of leading employment law cases, several of which have been to the Court of Appeal.



Lesley Brook, Anderson Lloyd Caudwell, Dunedin

Lesley leads her firm's employment group. She advises on all aspects of employment law, specialising in giving strategic advice to employers.



Charles Chauvel, Minter Ellison Rudd Watts, Wellington

Charles is NZ Head of the Human Resources and Industrial Relations Division of the Minter Ellison Legal Group. He is admitted to practise in both NZ and in New South Wales. His clients include many leading corporates. Charles graduated MJuris (Dist) from the University of Auckland in 1994, and in 2001 was awarded the Diploma in International Labour Standards by the International Training Centre of the ILO. He has written and spoken extensively in New Zealand and Australia on employment law and public law issues, including on greater Australasian harmonisation.



Peter Churchman, Kensington Swan, Wellington

Peter heads his firm's national employment law workgroup. He has written extensively on employment law topics and is a co-author of Brooker's Personal Grievances and an updating author of Brooker's Personal injury in New Zealand. He is convener of the NZLS Employment Law Committee.



Judge Graeme Colgan, Employment Court, Auckland

Judge Colgan was an Auckland practitioner until he was appointed to the Labour Court in 1989. He was appointed to the Employment Court in 1991. He has practised industrial, labour and employment law under four legislative regimes. He also acts as a guest lecturer in employment law at the Universities of Auckland and Waikato and chairs the Labour Law Standing Committee of Lawasia.



Peter Cranney, Oakley Moran, Wellington

Peter Cranney is a partner in the Wellington firm Oakley Moran. He has a trade union background and specialises in employment law, acting for unions and employees. A particular area of interest is collective bargaining law, including the law of strikes and lockouts and the law relating to good faith bargaining.



Anna Fitzgibbon, LawWorks, Auckland

Anna is a partner in LawWorks. She specialises primarily in employment and related areas of law. Anna has had experience representing unions and employers and has appeared in the Labour Court, Employment Tribunal, Employment Court and Court of Appeal. Anna has been involved with a number of professional organisations, notably the Advisory Group to the NZ Government on EEO issues (2001), the ADLS EEO Sub-committee and the NZLS Employment Law Sub-committee which provided submissions to the government on the Employment Relations Act. She is a current member of the ADLS Employment Law Sub-committee and up until this year was a Council member of the ADLS. Anna's current practice requires regular participation in mediations run by the Employment Relations Service and acting for employees/employers in the Employment Relations Authority and Employment Court.



Mary Foley, Scholefield Cockcroft Lloyd, Invercargill

Mary has a strong background in employment law and ACC. She is a contributing author to Brookers's Personal Grievances.



Susan Freeman-Greene, Department of Labour, Wellington

Susan is a Mediator/ Practice Leader with the Department of Labour. She has specialised in dispute resolution for eight years – writing, speaking and training in mediation. She has also practised law in NZ and the UK across a range of areas including employment law.



Christine French, French Burt Partners, Invercargill

Christine has practised in the employment law field since 1984, acting for unions, employers and individual employees. She is a regular presenter for NZLS CLE seminars and conferences, co-author of the Contract title in the Laws of NZ and author of other published articles.



Peter Gunn, Crown Law Office, Wellington

Peter leads an employment team of seven lawyers at the Crown Law Office. He has over 20 years' experience in state sector employment issues, and his practice includes regular appearances before the Court of Appeal, the Employment Court and the Employment Relations Authority.



Dr Rodney Harrison QC, Auckland

Rodney's 1973 doctoral thesis was on employment law, and he has practised under, and given seminars on, every piece of industrial legislation since then. Under the ERA, Rodney has appeared as counsel in leading cases on the duty to bargain collectively in good faith, trade union officials' powers of entry on an employer's premises, and the validity of anti "free-riding" provisions in individual and collective agreements.



Peter Kiely, Kiely Thompson Caisley, Auckland

Peter practises exclusively in industrial relations and employment. He is Adjunct Professor of employment law at Victoria University of Wellington, and serves as chairman or director in a number of companies and organisations.



Stephen Langton, Kiely Thompson Caisley, Auckland

Stephen has a wide range of employment law experience in the public and private sector, and appears frequently in the Employment Relations Authority and the Employment Court. He is a frequent presenter at conferences and lectures, has contributed to various publications, and is a former member of the ADLS Employment Law Committee.



Jane Latimer, Kensington Swan, Auckland

Jane works exclusively in employment law on behalf of both local and international clients and is a partner in the Kensington Swan specialist employment law team.



Don Mackinnon, Simpson Grierson, Auckland

Don is a partner in Simpson Grierson's employment law team and head of its litigation department. He appears regularly in the Employment Relations Authority and Employment Court while maintaining a general employment law practice, acting mainly for employers. Don graduated from the University of Auckland and also has a Master of Laws from the University of London, majoring in International Labour Law. He has recently written the New Zealand chapter for the American text, *Winning Legal Strategies - International Labour and Employment Law*. Don also acts for several sports organisations in their player contract and disciplinary issues and is Deputy Chair of Netball New Zealand.



Simon Mitchell, Gubb & Partners, Auckland

Simon acts for a number of North Island unions and regularly represents union members and other employees in the Employment Relations Authority, Employment Court and Court of Appeal.



Margaret Robins, Barrister, Auckland

Margaret specialises in employment law. She is a member of the ADLS Employment Law Committee, the Employment Law Institute and a part-time member of the Refugee Status Appeals Authority.



Dr Paul Roth, Barrister and Associate Professor of Law, Otago University, Dunedin

Paul teaches law at the University of Otago and practises as a barrister. He is the author of *Privacy Law and Practice*, a co-author of Mazengarb's *Employment Law and Personal Grievances*, and he is on the editorial boards of the *Employment Law Bulletin* and *Privacy Law & Policy Reporter*.



Andrew Scott-Howman, Bell Gully, Wellington

Andrew advises on all aspects of dismissals, redundancy, workplace safety and strikes and lockouts. Andrew is the co-author of Brooker's *Workplace Stress in New Zealand* and the employment law columnist for *The Independent* newspaper. He is also the employment law commentator on *Newstalk ZB's Larry Williams* show.



Penny Swarbrick, Barrister, Auckland

Penny has extensive experience in industrial relations and employment law litigation. She specialises in employment law, predominately in representing and advising employers and is the convener of the ADLS Employment Law Committee.



Kit Toogood QC, Auckland

Kit specialises in employment law, advising major NZ companies, government departments and corporations, as well as acting for employees. He is a co-author of Brooker's *Employment Law and Personal Grievances*.

Dr Chris Walls, Occupational Medicine Specialist, Auckland

Chris has practised as a specialist occupational physician for 12 years in both New Zealand and Australia. His experience has included senior management roles in the Department of Labour (OSH) and clinical experience with the aluminium smelting industry, with the steel industry and as the occupational physician for Auckland Healthcare. He currently works in private practice and as a senior departmental medical practitioner with OSH. In this role Chris assisted in drafting the OSH guidelines on workplace stress. He has published extensively on issues in clinical occupational medicine and is the co-author of Brooker's *Workplace Stress in New Zealand*.

Joanne (Wattie) Watson, Ruby Law, Hamilton

Joanne is a founding partner of the Hamilton firm Ruby Law. Wattie previously worked as a solicitor for the PSA, New Zealand's largest public sector union. Her position with the PSA included litigation and integrating PSA policy and strategies with a range of state sector employers. She was a Cabinet appointed member of the Holidays Act Advisory Group and was involved in the drafting of the State Sector Amendment Act.

James Wilson, Chief of the Employment Relations Authority, Department of Labour, Wellington

After some 30 years in general and employment relations management in the Public Health Sector, James was appointed as a member of the Employment Relations Authority in 2000. He took over as Chief of the Authority in December 2003.



Wayne Wilson, Office of the Privacy Commissioner, Wellington

Wayne advises the Commissioner on legal and policy issues. In previous roles he has managed a legal team in the public service and represented industrial workers in the private sector.

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 conference. 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.

THE PROGRAMME

Day One – Monday 11th October 2004

- 8.30 – 9.00 Registration
- 9.00 – 9.15 Welcome and opening comments
Phillipa Muir
- 9.15 – 10.30 Keynote address – “**Whose life is it anyway?**”
Professor Ron McCallum and Trudie McNaughton
- 10.30 – 11.00 morning tea
- 11.00 – 12.30 **The ERA Amendment Act 2004 – was it broke, and has this fixed it?**
Anna Fitzgibbon, Dr Rodney Harrison QC and Peter Kiely
- 12.30 – 1.30 Lunch
- 1.30 – 3.00 Breakout session 1
- (A) **Collective bargaining – getting the deal done within the cloak of good faith**
Keith Binnie and Peter Cranney
Session Chair: *Kathryn Beck*
- (B) **Managing an employment relationship problem**
Lesley Brook and Susan Freeman-Greene
Session Chair: *Christine Batt*
- (C) **A practitioner’s guide to dealing with the state sector employer**
Peter Gunn and Joanne Watson
Session Chair: *Phillipa Muir*
- (D) **Trans-Tasman labour law – commonality of aim; difference of procedure?**
Professor Ron McCallum and Charles Chauvel
Session Chair: *His Honour Judge Graeme Colgan*
- 3.00 – 3.30 afternoon tea
- 3.30 – 4.00 **The Holidays Act – “The devil’s in the detail”**
Don Mackinnon
- 4.00 – 5.30 **Liability for workplace stress**
Andrew Scott-Howman and Dr Chris Walls
Session Chair: *Philip Bartlett*
- 7.00 Conference dinner

Day Two – Tuesday 12th October 2004

- 9.00 – 10.30 **Reacting fairly to workplace changes – restructuring – practical issues around redundancy**
Simon Mitchell and Penny Swarbrick
Session Chair: *His Honour Judge Barrie Travis*
- 10.30 – 11.00 morning tea
- 11.00 – 12.15 Breakout session 2
(A) Current drafting issues – good practice in drafting employment agreements and policies
Christine Batt and Peter Churchman
Session Chair: *Dr Paul Roth*
(B) Investigations in the Authority – it is not a Court, get over it!
Kathryn Beck, Kit Toogood QC and James Wilson
Session Chair: *Michael Quigg*
(C) Practical tips for dealing with difficult relationship issues – bullying, incompatibility
Derek Broadmore and Margaret Robins
Session Chair: *Kerry Smith*
- 12.15 – 1.15 Lunch
- 1.15 – 2.15 **Privacy issues in the employment life cycle**
Dr Paul Roth and Wayne Wilson
Session Chair: *Her Honour Judge Coral Shaw*
- 2.15 – 3.00 **“The nature of the relationship” – independent contractors and fixed term contracts**
Mary Foley and Jane Latimer
- 3.00 – 3.30 afternoon tea
- 3.30 – 5.00 **Remedies, costs and practical tips on conducting a case in the Authority and the Court**
His Honour Judge Graeme Colgan, Christine French and Stephen Langton
- 5.00 Conference closing

CONTENTS

Whose Life Is It Anyway: Work, Technology, Family And The Challenge To 21st Century Labour Law	1
Professor Ron Mccallum.....	3
The ERA Amendment Act 2004 – Was It Broke And Has This Fixed It?	5
Anna Fitzgibbon, Dr Rodney Harrison QC and Peter Kiely	7
The Collective Bargaining Process	9
Keith Binnie and Peter Cranney	11
Managing An Employment Relationship Problem Successfully At Different Stages	37
Lesley Brook and Susan Freeman-Greene.....	39
A Practitioner’s Guide To Dealing With The State Sector Employer	57
Peter Gunn	59
Is There A Higher Threshold Of Behaviour For Public Sector Employers And Employees?	71
Joanne Watson	71
Trans-Tasman Labour Law – Commonality Of Aim; Difference Of Procedure	77
Charles Chauvel	79
The Holidays Act 2003 – The Devil’s In The Detail	81
Don Mackinnon	83
Liability For Workplace Stress	93
Occupational Stress On Its 1st Birthday	95
Dr Chris Walls	95
Liability For Workplace Stress	103
Andrew Scott-Howman	103
Reacting Fairly To Workplace Changes	107
Simon Mitchell and Penny Swarbrick	109
Current Drafting Issues - Good Practice In Drafting Employment Agreements And Policies	123
Christine Batt and Peter Churchman.....	125
Investigations In The Authority – It’s Not A Court, Get Over It!	151
Kathryn Beck, Kit Toogood QC and James Wilson	153
Practical Tips For Dealing With Difficult Relationship Issues	175
Incompatibility In The Workplace	177
Derek Broadmore.....	177
Workplace Bullying	183
Margaret Robins	183
Privacy Issues In The Employment Life Cycle	197
Dr Paul Roth	199
Privacy Case Notes	219
Wayne Wilson.....	219

The Nature Of The Relationship – Independent Contractors And Fixed Term Contracts.....	249
The Real Nature Of The Relationship – Employee Or Independent Contractor?	251
Jane Latimer.....	251
The Nature Of The Relationship – Fixed Term Agreements.....	259
Mary Foley.....	259
Remedies, Costs And Practical Tips On Conducting A Case In The Employment Relations Authority And Employment Court	277
Practical Tips On Conducting A Case In The Employment Relations Authority And Employment Court	279
Stephen Langton	279
Remedies	289
Christine French.....	289
Costs	297
His Honour Judge Graeme Colgan	297