

SPEAKERS



Dr Andrew Butler, Russell McVeagh, Wellington

Andrew has recently joined Russell McVeagh in Wellington. From May 1999 to May 2005 he was Crown Counsel at the Crown Law office in Wellington. Prior to 1999 he was a senior lecturer at Victoria University of Wellington, specialising in equity, trusts, restitution, human rights and public law. He has written extensively here and abroad on human rights and public law and is the general editor of *Equity and Trusts in New Zealand* (Brookers, Wellington, 2003). In 2004 he tutored in Equity and Trusts at the University of Durham, England.



Margaret Casey, Barrister, Auckland

A family law specialist, Margaret is a former Chair of the Family Law Section. She is a contributor to *Trapski's Family Law* and the author of the "Relationship Property" section of the ADLS Legal Practice Manual. Margaret has presented numerous papers and workshops for the NZLS.



Helen Cull QC, Wellington

Helen was admitted in 1978, practised as a common law partner from 1983 to 1990 and has been a barrister sole since 1990. She was appointed Queen's Counsel in 1997. Helen has a wide practice in all areas of civil litigation including property, trust and testamentary litigation. She has co-presented NZLS seminars on *Injunctions and Other Emergency Relief* and *Claims to Estates of Family Members*, as well as presenting a paper at the NZLS 2001 Trusts Conference.



Andra Glyn-Jones, Partner, Deloitte Touche Tohmatsu, Auckland

Andra is a tax partner at Deloitte, a global professional services firm. She became a partner in 1996 and has nearly 18 years' experience in New Zealand tax. She specialises in international tax including transfer pricing and international assignment services. She has co-authored works on financial arrangements and GST and is the editor of the only transfer pricing book published in New Zealand. She is also the chairperson of the ICANZ local branch tax committee in Auckland.



David Ireland, Partner, Kensington Swan, Wellington

David's principal area of practice is financial services, specialising in advising on the establishment and operation of trusts as vehicles for attaining private and commercial goals. The founder-convener of the Institute of Chartered Accountants Wellington Branch trusts special interest group, David is a seasoned presenter on trust-related issues and is a co-author of *A Guide to Setting Up Trusts*.

SPEAKERS



Lynda Kearns, Barrister, Auckland

Lynda has specialised in family law including property matters for the past 20 years. She edits the Relationship Property Agreements section of Butterworths *New Zealand Forms & Precedents*, and has presented various seminars on relationship property and trusts. She acted for the plaintiff in *Glass v Hughey*.



Chris Kelly, Senior Legal Counsel, NZ Guardian Trust, Wellington

Chris has over 25 years' legal experience as an estates and trust lawyer, including five years as a family trusts specialist. As the senior legal counsel at Guardian Trust he is now responsible for developing in-house legal services. Chris has contributed to several legal texts, including two of the titles in Butterworths *New Zealand Forms and Precedents*.



Greg Kelly, Partner, Gillespie Young Watson, Lower Hutt

Greg has over 20 years of experience in the wills, trusts and estate area. He is a member of the Wills and Trusts Technical Committee of the NZLS Property Law Section, a member of STEP and a contributor to Butterworths *Law of Trusts*. He has presented at a number of seminars and conferences.



Julie Maxton, Professor of Law and Dean of the Law School, University of Auckland

A regular presenter for the NZLS, Julie has written and lectured extensively on equity, property law, commercial law, evidence and jurisprudence. She is currently a member of the NZLS CLE Board, the Council of Legal Education, the Legal Research Foundation and the Legislation Advisory Committee. Julie has just finished a period as Acting Deputy Vice Chancellor at the University of Auckland.



Joanne McCrae, Partner, Deloitte Touche Tohmatsu, Auckland

Joanne McCrae is a NZ corporate tax partner with Deloitte and has been based in Sydney since 2002 on the NZ Tax Desk specialising in advising Australian-based multi-national companies on trans-Tasman tax issues. She has previously been a member of the ICANZ National Tax Committee and has presented many papers and workshops on trans-Tasman tax issues.

SPEAKERS



Bill Patterson, Partner, Patterson Hopkins, Auckland

Bill has an extensive trust, commercial and equity litigation practice. He has presented many seminar papers for the NZLS, ADLS and the Institute of Chartered Accountants, including most recently the 1999, 2001 and 2003 Trusts Conferences of the New Zealand Law Society, regular topics for the Institute's Trusts Special Interest Group and papers for the Accountants' Trusts Conferences of 2001 and 2004.



Nicola Peart, Associate Professor of Law, University of Otago

Nicola was appointed to the Law Faculty at the University of Otago in 1987, where her research has focused on family property and medical law. She is the principal author of *Relationship Property on Death* published by Brookers in 2004 and she co-presented the 2002 NZLS seminar *Claims to Estates of Family Members*.



Pravir Tesiram, Partner, Taylor Grant Tesiram, Auckland

Pravir specialises in trusts, personal and tax planning and superannuation.



Stephen Tomlinson, Partner, Tomlinson Paull, Christchurch

Stephen advises on taxation and trust matters. Prior to co-founding Tomlinson Paull, he lectured in taxation, finance and business law at the University of Canterbury and is a well known presenter of taxation and trust seminars. Stephen is a co-author of the New Zealand chapter of *The International Guide to the Taxation of Trusts*.



Mark Vickerman, Barrister, Auckland

Mark was research officer to the Royal Commission on the Courts, responsible for the establishment of the Family Court. Following 12 years as a litigation partner in an Auckland law firm he went to the bar where he is practising in civil litigation and relationship property. He has appeared in many relationship property cases at all levels, including in *de Malmanche*, and has presented NZLS and ADLS papers on procedure and discovery in relationship property proceedings.

SPEAKERS



Simon Weil, Partner, Morrison Kent, Auckland

Simon has practised in the specialist trust law and asset-protection planning field internationally and in New Zealand for more than a decade. He also has broad international practice experience in the property, company and commercial fields. Simon is a member of STEP and the Estate and Taxation Planning Council of New Zealand.

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.

CONTENTS

COVERING UP: LIABILITY INSURANCE AND THE PROFESSIONAL TRUSTEE	1
David Ireland	
THE WAYS IN WHICH THE PROPERTY (RELATIONSHIPS) ACT AFFECTS TRUSTS: A GUIDE FOR TRUST LAWYERS	13
Margaret Casey	
WHEN THE TRUST'S GONE – SHARING THE FRUITS OF THE RELATIONSHIP	23
Mark Vickerman	
DEATH AND BEYOND – ADMINISTERING AN ESTATE	39
Nicola Peart	
ASSET PLANNING AND TRUST STRUCTURING	63
Simon Weil	
TRUSTS THE SECOND TIME AROUND – A SURVEY FROM A PRACTICAL PERSPECTIVE	77
Bill Patterson	
TRUST AND WILL DRAFTING – KNOW YOUR DOCUMENT	89
Chris Kelly and Greg Kelly	
TAX ISSUES	125
Stephen Tomlinson	
MOVING TRANS-TASMAN – PITFALLS FOR TRUSTEES	141
Andra Glyn-Jones and Jo McCrae	
CONTRACTING AS A TRUSTEE - LIABILITY TO CREDITORS / PRIVATE TRUST COMPANIES	155
Pravir Tesiram	
A SPURIOUS IMITATION - SHAM OR ALTER EGO TRUSTS	171
Lynda Kearns	
ASPECTS OF RESPONSIBLE TRUST ADMINISTRATION	185
Andrew Butler and Julie Maxton	

TABLE OF CONTENTS

Alphabetical by author

Author		Title	Page
Butler	Dr Andrew	Aspects of responsible trusts administration	185
Casey	Margaret	The ways in which the property (relationships) act affects trusts: a guide for trust lawyers	13
Glyn-Jones	Andra	Moving trans-tasman – pitfalls for trustees	141
Ireland	David	Covering up: liability insurance and the professional trustee	1
Kearns	Lynda	A spurious imitation – sham or alter ego trusts	171
Kelly	Chris	Trust and will drafting – know your document	89
Kelly	Greg	Trust and will drafting – know your document	89
Maxton	Julie	Aspects of responsible trust administration	185
McCrae	Joanne	Moving trans-tasman – pitfalls for trustees	141
Patterson	Bill	Trusts the second time around – a survey from a practical perspective	77
Peart	Nicola	Death and beyond – administering an estate	39
Tesiram	Pravir	Contracting as a trustee - liability to creditors/private trust companies	155
Tomlinson	Stephen	Tax issues	125
Vickerman	Mark	When the trust's gone – sharing the fruits of the relationship	23
Weil	Simon	Asset planning and trust structuring	63