The Family Advocate

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Family Advocate is the quarterly magazine of the Family Law Section of the New Zealand Law Society. Celebrating its 15th year anniversary in 2015, *Family Advocate* has been produced continuously since 1998.

We welcome articles from readers and those involved in family law. These can be sent to the editor at the address below.

The closing date for the next issue is **28 October 2022.**

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FROM THE CHAIR

BY **CAROLINE HICKMAN**

E NGĀ MANA, E NGĀ REO, E RAU RANGATIRA ma, tēnā koutou katoa

The Family Court is the second biggest court in New Zealand. It processes over 60,000 cases per year. That translates as a huge number of distressed adults and children needing help when they are possibly at the lowest point of their lives. It is a credit to the commitment and resilience of the Family Court bar, as well as the hard-working court registry staff that Family Court matters are continuing to be progressed as they are, and backlogs are not increasing.

The Family Law Section is busier than ever with our highest ever membership of 1,113. Our regional representatives are continuing to provide support, education, and collegial events around the motu. It is great to hear of all of the face-to-face events now happening again. Thank you very much to all of our regional representatives who play an important and unseen role at a local level, ironing out issues with the courts to make things go more smoothly for all.

Thanks also to the FLS executive, FLS advisory group members and other FLS members who have been involved in writing submissions or papers recently. Since our last *Advocate* was published, we have filed submissions on the Improving Arrangements for Surrogacy Bill. We have written a paper for the Ministry of Justice on resources and information for its care of children project; submissions on the Family Court Associates Legislation Bill, which has now had its first reading, as well as earlier submissions on scoping proposals. We have also provided feedback to the Department of Internal Affairs on proposals for gender self-identification on birth certificates and written a submission to Legal Aid Services on legal aid audits. Submissions are currently being drafted to the Ministry of Justice on a new adoption system for Aotearoa New Zealand and the independent review of the Law Society structure. We are also awaiting the due date for submissions on the Family Court Associates Bill, which we are likely to be advised of by the end of August. Family Court Associates will provide another tier of high level professionals in the Family Court to undertake administrative work and progress cases more efficiently and we hope this legislation will be passed.

An exciting recent development in family law is the decision of *Newton*[1] from the Court of Appeal. The case makes for excellent reading for all family lawyers and is compulsory reading for lawyers for children especially. The Law Society was granted leave in these proceedings as intervenors. We thank our counsel Antonia Fisher QC and Kirsty Swadling who provided excellent representation and submissions to the Court of Appeal which we believe assisted greatly in the final outcome.

Many of us were lucky to attend the long overdue Advanced Lawyers for the Child forum held in Wellington. It was good to meet in person again and hear thought provoking and educational papers from a stellar line up of presenters. No small thanks to Susie Houghton for chairing this forum and putting together this rich and interesting day.

We plan to bring you some new webinars to see you through to Raumati (Summer): Cultural competency/safety; e-duty and applying without notice in the Family Court; how to introduce psychological evidence without the need for a section 133 report; Family Dispute Resolution (hosted by FLS and FairWay), and a panel discussion about the *Newton* case. These are all dependent on our presenters having time and health to get these underway.

Why have I greeted you in te reo Māori at the start of this column? He pākehā tonu ahau (yes, I am still Pākehā, and still wondering if I put tonu in the right place). I hope I am not being disrespectful; I hope I am not claiming ownership of a taonga that is not mine; I hope I am not being exclusive of Pākehā. I am on my own learning journey which I believe is important (as well as a privilege). It is a humbling and depressingly slow journey at times.

What does te reo Māori have to do with being a family lawyer? Actually, everything if you have been listening to the kōrero in recent years. Learning te reo Māori and using correct pronunciation is respectful and inclusive, traits family lawyers should have. Learning te reo Māori provides a window into culture and tikanga. Some knowledge of te reo Māori and tikanga will be necessary for us so that we can fully participate in Te Ao Mārama which will be a court more responsive to the needs of all tāngata we serve, not just some.

Additionally, Te Wiki o te Reo Māori is coming up from 12 to18 Mahuru (September). Last time the FLS laid down the wero to use te reo to introduce yourself in court it was 2020, and we know what happened that year. Kia kaha for this year!

I acknowledge many of you are under a lot of pressure. Please contact your local FLS regional representative or the executive (via our manager Kath Moran) if there is anything we can do to support you. Wishing you good health for the upcoming Kōanga (Spring).

Noho ora mai. ■

1. *Newton v Family Court at Auckland and others* [2022] NZCA 207.

FROM THE EDITOR

BY **EMILY STANNARD**

TĒNĀ KOUTOU KATOA, NAU MAI KI TE TĀNGA kōanga o *Te Advocate*.

Once again there has been great writing from our authors on a variety of topics. The lead up to this edition has seen a lot of interesting and important cases coming through. Perhaps the most notable is *Newton v Family Court at Auckland*.[1] This decision addressed whether children's views must be obtained for every step under COCA, judicial review in interlocutory decisions under COCA and whether there can be judicial review of a decision made by lawyer for child. There is now an application for leave to appeal to the Supreme Court on this decision, and the Court of Appeal decision has been stayed.

The most recent decision in the *Almarzooqi v Salih*[2] line of cases provides a valuable discussion of conflict of laws in the relationship property space, particularly when considering a marriage entered into under Sharia law. Ellen Lellman's case note provides a very useful summary of the decision.

Another recent case with an international aspect is *Cresswell v Roberts*.[3] The successful appeal from a Family Court decision ordering the children's return discusses the intolerable situation defence. It highlights the importance of psychological evidence in these types of cases.

Closer to home, and a personal highlight for me this edition, was our interview with Kerrie Heasyman who was admitted to the bar in 1972 and is celebrating 50 years in practice. It was wonderful to catch up with her and hear how times have changed. She has had an interesting and varied career. One of the changes Kerrie spoke about was cultural competency. She has taken up learning te reo Māori.

As we enter into te wiki o te reo Māori (te reo Māori language week) I thought I would share an update on my te reo journey. For those of you who can remember (probably none since you don't go around memorising / reading the editorial, thank goodness) I spoke about my reasons for learning te reo in the (kōanga) spring edition last year. The short version is that I started because I realised how unwittingly racist I was, how mispronouncing te reo Māori was not okay, and how colonisation has created so many problems, so I decided I should learn. I was not really expecting to enjoy it, but I ended up loving my te reo classes, the waiata and the karakia, the noho marae, and most importantly the friends I made.

I have backslid quite a lot since I decided not to do te reo classes for a while. I am using te reo sentences occasionally in emails, and even less frequently with a few clients, but not in any other situations. My pronunciation has deteriorated, and I have to slow down and sound out kupu (words) that used to just roll off my tongue without a second thought. However, there has been one positive, court introductions. At the end of the year, we had a new judge start at my local court. When I first appeared in front of her, she did a brief mihi to introduce herself. After a long, awkward moment I decided I would have a go at doing a full te reo Māori introduction which I stammered my way through. Panicked I then realised I needed to introduce my summer clerk. My vocabulary in te reo is nothing to write home about and certainly did not include "summer clerk" at that stage but switching back to te reo Pākehā (English) would be a cop out. So, I introduced her as my hoamahi (colleague) and sat down, relieved and embarrassed.

While that was terrifying at the time, I came back to the office fizzing because it was my first non-scripted te reo conversation outside of a te reo class, albeit a very stilted one

To my complete terror the judge then looked at me and said "he rōia ia?" (Is she a lawyer?). I then added another long pause to my terrible first impression and the judge repeated the question in te reo Māori. It took a while to click that she was speaking te reo Māori and I stammered "Kāo, he summer clerk ia" (no, she is a summer clerk). The judge nodded and moved on to the next counsel.

While that was terrifying at the time, I came back to the office fizzing because it was my first non-scripted te reo conversation outside of a te reo class, albeit a very stilted one. I am very grateful that the judge was patient with me, and that I sucked it up and gave it a go.

As we head into te wiki o te reo Māori, I encourage all of you to have a go at introducing yourselves in te reo Māori. We have included an article on introductions in court and using te reo Māori in the office.

I hope you enjoy this edition, and thank you again to everyone who contributed.

Noho ora mai,

Emily ■

1. *Newton v Family Court at Auckland* [2022] NZCA 207.
2. *Almarzooqi v Salih* [2022] NZHC 1170.
3. *Creswell v Roberts* [2022] NZHC 1265.

New FLS executive member

Colin Abernethy — Canterbury/Westland

Tēnā koutou katoa

I have specialised in family law since I was admitted to the bar in 2007. I am very fortunate to have an excellent firm behind me – Harmans Lawyers in Christchurch, where I started my legal career as a summer clerk in 2005 and am now a partner leading our family law team. My practice focusses on Relationship Property, Care of Children Act and Family Violence Act disputes. I receive appointments from the Family Court as lawyer for child and lawyer to assist and I am also a legal aid provider.

I was thrilled to be appointed to the Family Law Section executive in June 2022. From my perspective the FLS has always been a beacon of family law in New Zealand, not only providing invaluable guidance to family lawyers, but also an acclaimed expert group that has provided skilled contribution in a number of areas including law reform, wellness and education. I am grateful for having had the opportunity to contribute at the local Canterbury-Westland level, having served over 10 years on the NZLS Canterbury-Westland family law committee (serving a term as convenor) and the Christchurch Family Courts Association (serving a term as chairperson). A real highlight was being involved in the design and running of family lawyers' advocacy skills workshops in 2016 and 2019. I am now looking forward to the challenge of contributing at a national level to one of the many important tasks the FLS is currently undertaking.

My wife and I have two young children (aged 3 and 1), so when I am not immersed in family law, my whānau brings balance and keeps me grounded (on my toes!). ■

Regional representative

Alicia Matthews — Whanganui

Alicia was born and bred in Auckland but took the advice of her lecturer and branched out to the provinces so that she could practice in an area of law that she particularly enjoys, being family law. Alicia has worked at Armstrong Barton in Whanganui since October 2019 practicing solely in family law including relationship property, family violence, child care, adoption and a few PPPR applications. The majority of her work is legal aid work which has been both fulfilling and provided a fantastic amount of experience. She is on the board of Community Law Centre Whanganui and has volunteered as solicitor for a local sustainable charitable trust. ■

Kerrie Heaysman

Kerrie Heaysman has recently achieved 50 years practising law. We spoke to her about her experiences.

Where did you grow up?

I was born in the United Kingdom on 18 March 1950. My family immigrated to New Zealand in 1952 and settled in Christchurch.

Where did you go to school?

I attended St Mark's Anglican Church School in Christchurch from 1955 until 1962 and then to Burnside High School in Christchurch until 1967. I was 16 when I started at Canterbury University in 1967. I completed my law degree at Canterbury University in 1971 and was admitted to the Bar as a Barrister and Solicitor in 1972.

Why did you want to be a lawyer?

I did not want to stay at school. My father suggested I could either work in a shop or go to university. I decided to go to university and practise law.

The reason for wanting to be a lawyer was because I liked watching Perry Mason on TV and thought that being a crime solving lawyer would be interesting. No one in our family had studied law. My father was a builder.

My father wanted my sister and I to be independent, and not be forced to stay in bad relationships. He believed in equal pay and education for women. My sister obtained a Bachelor of Science Degree and I myself an LLB.

I did not realise I would be entering into a world that did not always share my father's views.

What was law school like?

There were only five female students out of approximately 100 male students in my class at Canterbury University. I was fortunate to complete my studies at the old University Buildings, which are now the Art Centre.

One male student expressed surprise I had attended a state co-educational school and was female, but my classmates were very supportive and I still attend "the class of 71" reunions.

How was it when you first practiced?

When I attended my first job interview in Christchurch, one of the partners advised there had never been a female applicant, and the partners were concerned I might get pregnant. I told him that I did not know if I could get pregnant. I was offered employment at that firm.

When I was Junior Counsel in a jury trial, the Judge asked to see Counsel over lunch break. I was very nervous. At the lunch, the Judge asked why I had chosen law as a profession, as it was unusual for a woman to be a lawyer.

Some male practitioners were quite unpleasant and found difficulty in dealing with a female practitioner. I also found that female secretaries also found it difficult to deal with a female lawyer.

There was a serious pay inequality when I started my legal career. Law did not travel well.

In Australia (where I was working and admitted as a Barrister and Solicitor in 1974) I was paid the same as first year graduate despite the fact I had practised for 2 years in New Zealand.

The same happened when I was working in the United Kingdom. I mentioned to my employer about the poor pay for women compared to my male colleagues. I was told I should not complain as this was just pin money for me as I had a husband.

What have been some of the biggest changes from when you started?

There are now many women practising law.

We did not have computers or Google when I started, so that has been a big change.

The pay gap has lessened.

I used to wear a wig and gown in the Family Court. Divorces were held in the High Court.

When I started working in family law, the issues were domestic violence, gambling and drink. Now drugs are a serious issue together with the other problems.

There have been many changes to legal aid. Lawyers used to get paid for the work that was completed, and now with the fixed fees it is not the case. The result has been clients who should have representation they need, are unable to do so due to lawyers not wishing to offer legal aid in their practice, or some of those who obtain legal aid are unable to access experienced practitioners.

There has been a positive change in recognising cultural diversity.

What areas have you practiced in during your career?

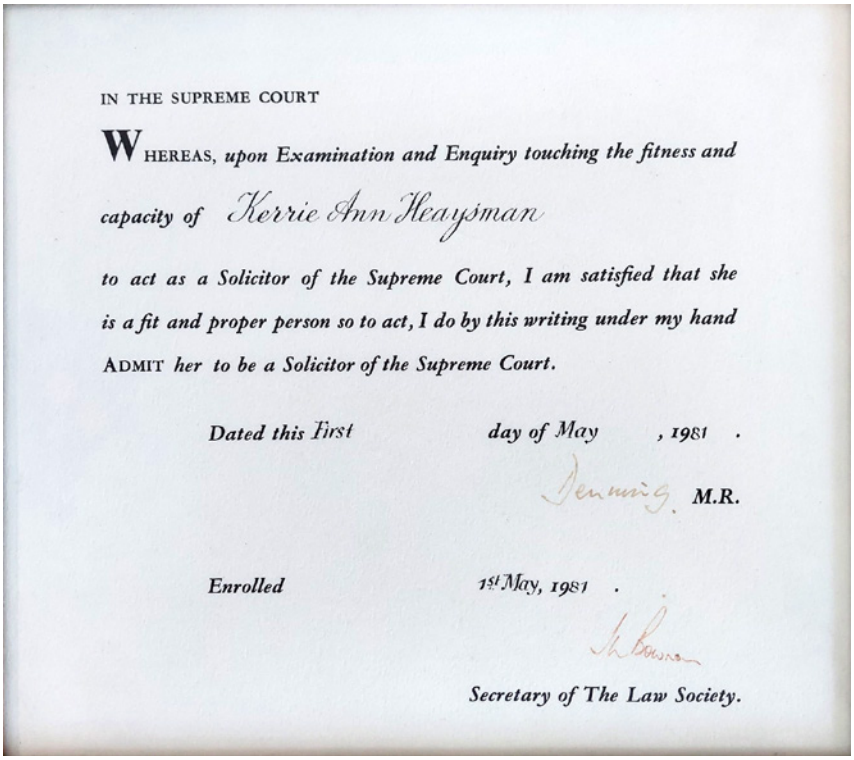
In New Zealand I have practiced family law, civil litigation, employment law, ACC and some criminal work, together with general practice. In 2002 I was appointed as Lawyer for Child.

In Australia, my work was mostly family and criminal work.

In the United Kingdom, where I was admitted as a Solicitor in 1980 I worked for two firms specializing in personal injury litigation.

What have been some of the best parts of your career?

The best part has been practising as Lawyer for Child and the privilege of acting in the welfare and best interest of children.



IN THE SUPREME COURT

WHEREAS, *upon Examination and Enquiry touching the fitness and capacity of* Kerrie Ann Heaysman *to act as a Solicitor of the Supreme Court, I am satisfied that she is a fit and proper person so to act, I do by this writing under my hand* ADMIT *her to be a Solicitor of the Supreme Court.*

Dated this First day of May , 1981 .

Denning M.R.

Enrolled 1st May, 1981 .

Secretary of The Law Society.

I was admitted to the Bar as a Barrister and Solicitor at the Supreme Court in Christchurch in 1972. It was a very important day for myself and family.

I was admitted as a solicitor in London in 1980. When I attended the ceremony, I was congratulated by Lord Denning and he shook my hand. I also have a certificate signed by Lord Denning.

When I have been told by clients that my work on their behalf has had a positive effect for them.

Setting up my own practice in 2003 and being self-employed for 15 years.

I am currently employed by Grantham Law in Taupō. In recognition of my 50 years in practice, Grantham Law paid for myself and my sister to travel and be accommodated in Queenstown for a holiday. This recognition was very special.

What have been some of the most challenging parts?

The unpleasant treatment to me at times in the early years because I was female was very difficult.

I had little practical experience once I had obtained my degree. It was not easy having no other female to communicate with about legal practice and court work.

Managing ongoing stress.

What advice would you give to young lawyers starting out?

Most people don't know everything, and you can't be expected to know everything. It is important to know where to look something up. See if you can find someone to be a mentor for you.

It has been helpful for me to have a supervisor. I would recommend it. It is helpful to learn sympathetic and reflective listening, and how to manage challenging clients.

As there is now an emphasis on cultural diversity, I believe it is important to research and learn about this aspect and be culturally competent. I have started Te Reo classes.

What do you do in your spare time?

I walk my dog. Animal welfare is important to me. Music and singing have been a major part of my life together with amateur dramatics. I spend a lot of time with my grandson aged four years old. I like to spend time with my friends and family. ■

Improving Arrangements for Surrogacy bill

BY **KESIA DENHARDT**

A snapshot

The private member's bill, Improving Arrangements for Surrogacy, was introduced into Parliament by Labour MP Tāmati Coffey on 23 September 2021. It proposes to amend some aspects of our existing framework, pending the outcome of the Law Commission's comprehensive review, by bringing us one step closer to fortifying the rights of the surrogates, intending parents and children at the centre of surrogacy arrangements.

The bill has conjured a divided response. Some support it as welcome "stop gap measure", whilst others regard it as an inadequate ad hoc response to a complex area of law.

Genesis of the bill

Its creation was deep-rooted in the necessity to remodel the way in which we approach and deal with surrogacy in New Zealand.

It is well established that presently our laws, regulation and practice of surrogacy are archaic and outmoded. Whilst surrogacy has become an increasingly common way to create a family in our country, our domestic legislation has been widely criticised for failing to keep pace with contemporary circumstances and realities, or to adequately recognise the rights of those involved.

Reforms have therefore been long awaited by many, and the Law Commission's research into all aspects of surrogacy in New Zealand has recently been completed, though a popular view has been that some modifications simply cannot wait for the complete overhaul which may (or may not) result from that project. That sentiment has given rise to this bill.

Purpose

The bill aims to simplify surrogacy arrangements, ensure completeness of birth certificate information, and provide a mechanism for enforcing surrogacy arrangements.

Its explanatory note provides:

New Zealand law does not currently afford any automatic rights to the intending parents of a child born via surrogacy. At the time of birth, the child's legal parents are the surrogate mother and partner, and a formal adoption process is required to complete the arrangement. This Bill affirms the intending parents' automatic legal status at the point that custody of the child is transferred. It also enforces the legal obligations of intending parents if they refuse to take custody by making them liable for child support, even if they do not have custody of the child.

The United Nations Convention on the Rights of the Child (UNCROC), ratified by New Zealand in 1993, committed New Zealand to implementing the rights set out in the Convention. These include a child's right from birth to know their parents and to be cared for by them (Article 7.1) and the right to seek and receive information of all kinds (Article 13(1)). This Bill requires the Registrar to also register information about the identity of the surrogate and any person who donated an embryo or cells for the pregnancy. In this way, the Bill recognises the rights of children to know their genetic origins.

Its creation was deep-rooted in the necessity to remodel the way in which we approach and deal with surrogacy in New Zealand

How?

The bill seeks to amend five statutes and two sets of regulations. More specifically, this legislation, and the corresponding changes the bill proposes to make to same, can be summarised as follows:

1. Human Assisted Reproductive Technology Act 2004 ("HART") (Part 1) – Whilst surrogacy arrangements generally remain unenforceable, a surrogacy order (below) can be enforced under this statute. Although it remains an offence to give or receive valuable consideration for participation in a surrogacy arrangement, that does not include payments for the "actual and reasonable expenses" incurred in doing those things. Further, this Part provides for the appointment of a Surrogacy Registrar, administered through the Ministry of Health, whose primary function is to establish a register for the purpose of facilitating surrogacy

arrangements by enabling women who are willing to become surrogates to be matched with intending parents.

2. Care of Children Act 2004 (COCA) (Part 2) – In advance of a baby being born, the parties to a surrogacy arrangement may agree to the terms and conditions of a "surrogacy order" under proposed section 124C. The Court may make a surrogacy order if it is satisfied that both parties consent and the Ethics Committee on Assisted Reproductive Technology (ECART) has provided its approval under HART. Such an order may then be enforced under COCA as if it were a parenting order. Its effect is that at the time of birth, legal parentage of the child moves to that of the intending parents.
3. Status of Children Act 1969 (SOCA) (Part 3) – If a surrogacy order is in place, from birth, the intending parents automatically become the legal parents of the child (and the surrogate ceases to be a parent).
4. Child Support Act 1991 (Part 4) – A person named as an intending parent under a surrogacy order made is a parent for the purposes of this Act and thus may be liable to pay child support.
5. Births, Deaths, Marriages, and Relationships Registration Act 1995 (Part 5) – If a surrogacy order is not in place, and the intending parents take custody of the child within two days of their birth, the intending parents (and not the surrogate and her partner) have the duty to notify the Registrar of the birth. The Registrar is then required to register information about the identity of the surrogate.
6. Births, Deaths, Marriages, and Relationships Registration (Prescribed Information) Regulations 1995 (Part 6) – Certain information about a surrogate must be included on the birth certificate and when notifying a birth to the Registrar.
7. Social Security (Exemptions under Section 105) Regulations 1998 (Part 7) – Any surrogate who is a beneficiary may apply for an exemption from some or all of her work test obligations under the Social Security Act 1964 if she is at least 27 weeks pregnant or is suffering from complications arising from the pregnancy.

Plainly, the bill seeks to significantly change the current landscape in myriad ways.

Journey through Parliament thus far

The bill unanimously passed its first reading (on 13 April and 18 May 2022), at which time it was agreed that the bill be referred to the Heath Committee (though it was postulated that it may be more appropriately considered by the Justice Committee). It is at its third stage (of seven) of being passed into law, so it is early days. The Committee is due to report on 18 November 2022.

The Hansard reports makes for interesting reading. Coffey stated that currently we do not have a mana-enhancing system, but rather, various laws cobbled together to try and solve the issues that we face in the world of surrogacy. He said that the bill is a move towards making modern laws for modern families and that he wanted to dedicate the bill to all our surrogates (kōpū whāngai in te reo Māori). He welcomed the Law Commission's review (not available at the time of the first reading) and acknowledged that it may "absolutely supersede" his bill.

For the National Party, Hon Paul Goldsmith expressed the view that the bill was "quite complicated" and required "significant work" to carefully consider all permeations of the proposed changes. It was suggested that full consideration be given to the pending review from the Law Commission, which may require an extended timeframe for consideration and submissions to be made.

On behalf of the Green Party, Jan Logie regarded the bill as "an opportunity to speed the implementation of what [the Law Commission] may recommend, if the timing aligns with this bill... there are parts of this bill that go

beyond what they were looking at that can be fruitfully examined."

Law Commission's review

The Law Commission is recommending changes for a second time, after its first attempt was shelved in 2005. In its review, published and presented to Parliament on 27 May 2022, it makes 63 recommendations to keep step with the needs and expectations of New Zealanders, including:

1. Introducing an administrative pathway for recognising intended parents as the legal parents of a surrogate-born child that bypasses the Court process, where the surrogacy arrangement was approved by ECART and the surrogate gives her consent.
2. Providing a separate Court pathway for recognising intended parents as the legal parents of a surrogate-born child in situations when the administrative pathway does not apply.
3. Giving effect to children's rights to identity by establishing a national surrogacy birth register to preserve access to information by surrogate-born people about their genetic and gestational origins and whakapapa.
4. Clarifying the law to allow payments to surrogates for "reasonable costs" incurred in relation to a surrogacy arrangement, including compensation for loss of income.
5. Changes to the ECART approval process to improve its operation and to enable ECART to approve traditional surrogacy arrangements.
6. Commissioning Māori-led research to provide a better understanding of tikanga Māori and surrogacy and Māori perspectives on surrogacy.
7. Accommodating international surrogacy arrangements (where intended parents live in New Zealand and the surrogate lives overseas) within the court pathway of the new legal framework in order to promote the best interests of the child.

The Law Commission further recommends that there is a separate comprehensive review of the birth registration system.

It remains to be seen whether the Government will accept or reject the Commission's recommendations. If they are rejected, the Government is required to present a response to Parliament within 120 working days (by early November 2022).

Submissions

A total of 35 submissions have been made to date.

The New Zealand Law Society ("NZLS") has expressed its position that whilst the bill is well intentioned, it should not proceed, noting that it has been overtaken by two events: the release of the Law Commission's report and the publication of the "Verona Principle" (the "international gold standard" designed to provide guidance on legislative, policy and practical reform to uphold the rights of children born through surrogacy). Instead, HART and the SOCA should be amended in accordance with the Law Commission's recommendations; in particular, recommendation 17 (which provides for the amendment of the SOCA to include specific provisions for determining the legal parenthood of a surrogate-born child).

The NZLS regards the bill as having a "narrow focus" and notes various limitations embedded in the bill as it stands. It also echoes the view of the Law Commission that implementing a surrogacy register would extend beyond the state's role to provide a safe and effective regulatory framework for surrogacy arrangements, and that improvements to the issues of access to and availability of surrogates can be achieved in other ways.

On behalf of the Office of the Privacy Commissioner, it is recommended that the either the bill is withdrawn and replaced by a Government bill, or adopted as a Government bill, so that a comprehensive framework can be enacted, drawing from the Law Commission's recommendations. Concerns about the privacy implications of a surrogacy register are raised, and any changes that would result in an individual's birth certificate recording that they were born as a result of surrogacy are resisted (on the basis that birth certificates are commonly used to establish identity and some surrogate-born people may not wish to disclose this).

Fertility New Zealand has supported the bill but notes that it primarily relates to gestational surrogacy and further work will need to be done in the case of traditional surrogacy. It also regards the proposed surrogacy register as a "viable option" but encourages robust guidelines in its application to protect all parties.

Coffee has endorsed the Law Commission's review and expects that legislation will follow but has expressed disappointment in its opposition to the creation of a surrogacy register. ■

Te Reo Māori in Court and at the office

BY **EMILY STANNARD**

This article was first published in Advocate for Māori Language Week 2021. We have included it again to provide some tips for using te reo around the office and in court as Māori Language Week approaches again.

AS TE WIKI O REO MĀORI (MĀORI LANGUAGE week) approaches, the FLS executive is encouraging its members to step up to the challenge to increase their use of te reo Māori. This article gives a very brief guide to pronunciation, some vocabulary and a few phrases. I am not an expert by any means, and this article is intended to be a general guide only. Most of following pronunciation tips and phrases are taken from: *Kia kākano rua te ture, a te reo Māori handbook for the law* by Alana Thomas and Corrin Merrick, and The Maori Dictionary Online, Te Aka. All errors are mine.

Pronunciation: Long and short vowel sounds

Long vowels sounds are shown by macrons over the vowel, or by a double vowel. The following table gives some examples of the sounds:[1]

		Short	Long
A	As in	Up	Bar
E	As in	Egg	Bed
I	As in	Eat	Peep
O	As in	Ordinary	Your
U	As in	To	Boot

A common example is tangata (person) has all short vowel sounds, while tāngata (people) has a long vowel sound with the first "a".

Pronunciation: diphthongs

There are several diphthongs or glides in te reo Māori. Some diphthongs and their approximate pronunciation are set out in the following table. These are my estimate pronunciation comparisons only. The best way to learn these is by listening to fluent te reo Māori speakers.

Ae	As in	Eye
Ai	As in	Tie
Ao	As in	Owl
Au	As in	Window
Ei	As in	Bay
Oi	As in	Oy
Oe	As in	Weigh
Ou	As in	Toe

Other vowel combinations are the distinct sounds of the two singular vowels together. One example of this is "ua" the "u" and "a" keep their distinct sounds.[2] For example, the word "rua" has two syllables whereas the word "rau" has one syllable.[3]

Pronunciation – consonants and digraphs

Most consonants are pronounced the largely same as English. Two exceptions are "T" which is softer, and closer to a "D" sound, and "R" which is rolled, if it is difficult to roll an "R", aim for the "D" sound in "puddle".[4]

There are two digraphs "Wh" as in the "F" in "Feather" and "Ng" as in "singer".[5]

Pronounciation – Dialects

Different regions have different dialects. This article is by no means a comprehensive guide, but, in Ngāi Tahu, the "ng" sound is pronounced and spelled with "k". In Whanganui, the "Wh" sound is pronounced "W". In the East Coast of the North Island (Te Ika-a-Māui) the "Ng" is pronounced "N".

Pronouns

Te reo Māori has different pronouns to English. A list of some is below:[6]

Ahau, au	I
Koe	you (singular)
Ia	she / he / it
Tāua	we (you and I)
Tātou	we (three or more, includes the listener)
Māua	we (two people, excluding the listener)
Mātou	us (three or more, excluding the listener)
Kōrua	you (two)
Koutou	you (three or more)
Rāua	they (two)
Rātou	them (three or more)

Important Kupu (Words)

Below are some kupu Māori (Māori words) which a lawyer might come across in his or her day-to-day work. There are many useful lists for specific situations in *Kia kākano rua te ture.*

- Affidavit – Kōrero taurangi
- Air conditioning – whāhauhau
- Aunt – Whāea Kēkē
- Barrister – Rōia Tūtahi
- Bookshelf – Paenga pukapuka
- Child – Tamaiti
- Children – Tamariki
- Client – Kiritaki
- Coffee – Kawhe
- Colleague – Hoamahi
- Computer – Rorohiko
- Dictaphone – Pūere āhukareo
- Dictation – Āhukareo
- Family Court – Te Kōti ā-Whānau/ Kōti Whānau
- Father – Matua / Pāpā
- File – Kōnae
- Grandchild/ grandchildren – Mokopuna
- Grandfather – Koroua (koro)
- Grandmother – Kuia tūpuna wahine

- Judge – Kaiwhakawā
- Lawyer – Rōia / Poutoko ture
- Library – Whare pukapuka
- Lift – Ararewa
- Meeting room – Rūma hui
- Mother – Whāea / Māmā
- Office – Tari
- Parents – Mātua
- Photocopier – Mīhini whakaahua
- Printer- Pūeretā
- Receptionist – Kiripaepae
- Registrar – Kairēhita
- Secretary – Hēkeretari
- Student – Tauira
- Submissions – Tāpaetanga
- Support person – Kaiāwhina
- Toilet – Wharepaku
- Uncle – Matua Kēkē
- USB Stick – Rākau pūmahara
- Whiteboard – Papa mā
- Wifi – Ahukore
- Worker – Kaimahi

Greetings and sign offs

Some more formal greetings, appropriate for court, or letters are below:

Tēnā koe	hello/ greetings to one person (formal)
Tēnā kōrua	hello / greetings to two people (formal)
Tēnā koutou	hello / greetings to three or more people (formal)
Tēnā Tātou	hello / greetings to us all (including the speaker) (formal)

For less formal greetings "kia ora" can be used in place of "tēnā" followed by the same pronouns above.

Some written sign offs that are appropriate for more formal emails and letters are:

Ngā mihi	kind regards / thank you
Nāku iti noa, nā	yours sincerely
Nāku nā	yours faithfully

More informal sign offs that can be written or verbal include:

Noho ora mai	take care
Mā te wā	see you later/ in due time
Ka kite	see you later
E noho rā	see you later, good-bye (said to someone who is staying)

Out of office

One way to promote the use of te reo Māori even if you're away that week, is to use the following template in your out of office auto-response.[7]

Greetings, I am away from the office and will be returning on [date].	Tēnā koe. Kei wāhi kē atu i te tari au i tēnei wā. Ka hoki ahau ki te mahi hei te [date]
While I am away, [name] is taking care of my clients.	Ka tamō ana au, kei te tiakina aku kiritaki e [name]
If your matter is urgent, please call [phone number]	Mēnā he take, kōhukihuki tāu, tēnā waea atu ki [phone number]

Introductions in court and at FGCs

A way to promote te reo Māori is to use the following template to introduce ourselves in Court. Most of the words should be familiar from earlier on in this article. Below are several phrases that could be useful in court, as with English, there are several correct ways to structure sentences, and the list below is just one way.[8]

Greetings, your Honour	Tēnā, e te Kaiwhakawā
Counsel's name is	Ko [name] tōku ingoa
I am the lawyer for [name]	Ko au te rōia mō [name]
I am the caregiver's lawyer	Ko au te rōia mō te kaitiaki
I am the lawyer for the children / child	Ko au te rōia mō ngā tamariki / te tamaiti
I am the lawyer for Oranga Tamariki	He rōia ahau nō Oranga Tamariki
As the court pleases	Nōu te mana, e te kōti

I hope this article has been of some assistance as we head into te reo Māori week. Kia kaha tātou! ■

1. Alana Thomas and Corrin Merrick, *Kia kākano rua te ture, a te reo Māori handbook for the law* (LexisNexis, Wellington, 2019) at 2.
2. Peter Keegan, "Māori Phonology", (9 March 2021) Māori Langue Information, *http://www.maorilanguage.info/mao_phon_desc1.html*, accessed 7 August 2021.
3. "Rua" means "two", "rau" means "thousand".
4. Alana Thomas and Corrin Merrick, *Kia kākano rua te ture, a te reo Māori handbook for the law* (LexisNexis, Wellington, 2019) at 3.
5. Alana Thomas and Corrin Merrick, *Kia kākano rua te ture, a te reo Māori handbook for the law* (LexisNexis, Wellington, 2019) at 4.
6. Alana Thomas and Corrin Merrick, *Kia kākano rua te ture, a te reo Māori handbook for the law* (LexisNexis, Wellington, 2019) at 4 – 5.
7. Alana Thomas and Corrin Merrick, *Kia kākano rua te ture, a te reo Māori handbook for the law* (LexisNexis, Wellington, 2019) at 148.
8. Alana Thomas and Corrin Merrick, *Kia kākano rua te ture, a te reo Māori handbook for the law* (LexisNexis, Wellington, 2019) at 24 – 25, 149.

Can a Mahr be payable in Aotearoa New Zealand Courts?

Almarzooqi v Salih

BY **ELLEN LELLMAN**

Background

Almarzooqi involved a successful claim by Ms Almarzooqi proving a breach by Mr Salih of an obligation to pay Mahr in the High Court under the law of contract.[1] The parties, who are both Muslim, had formally married in Dubai in December 2013 and the marriage was conducted in accordance with Muslim tradition and UAE law, which is sourced in sharia. The parties travelled to the UAE from their respective homes for the purposes of marrying, however, were divorced at the time of the claim to the High Court. Ms Almarzooqi is a citizen of the United Arab Emirates (UAE) and Mr Salih is a New Zealand citizen.

Under the marriage contract, Mr Salih was to pay a dower (or Mahr) to Ms Almarzooqi at the start of their marriage and in the case of a divorce. This is a traditional component within Muslim marriage ceremonies that is paid by a husband to a wife with the Mahr becoming the wife's property. The contract between the parties here provided for immediate payment and a deferred payment payable on death of the husband or at the occurrence of irreconcilable divorce. The marriage also took the normal Nikah form, and the payments required under this are not uncommon.

Unfortunately, the marriage broke down soon after the parties' return to New Zealand from Dubai. There were mutual denied allegations of violence, protection order applications under the Family Court and police involvement at various times, leading to Ms Almarzooqi seeking a divorce through the UAE court. Granting the divorce, the Court ordered payment of the deferred Mahr and short-term maintenance. In response, Mr Salih applied for and obtained an order for dissolution from the Family Court in New Zealand. However, Ms Almarzooqi unsuccessfully sought to enforce the monetary order aspect of the UAE judgment in New Zealand.[2]

Issues for Determination

In 2019, Ms Almarzooqi filed a claim to the High Court in Wellington asking for enforcement of the judgment in the UAE to recover the deferred Mahr sum that Mr Salih had not paid. The issues to be decided were whether the proper law of the contract is that of the UAE or New Zealand; whatever the proper law, whether the Mahr has become payable; and whether the Court should reduce the quantum payable on public policy grounds.

There was no challenge to the formation of the contract or its validity or that the marriage was ended by a divorce decree. Mr Salih contended however that a New Zealand Court, while recognising the legality of the divorce, cannot rely on the Dubai Court's factual findings on fault stating that these must be proved in a New Zealand Court with regard to the contract in order for the deferred Mahr to be payable.

As the determination of the proper law of the contract was considered not without complexity, Simon France J analysed the claim under both UAE and New Zealand laws. The Court heard from three witnesses who are practitioners in UAE law and Sharia principles, which are universally applied in Sharia-based legal systems. It was noted that the relevant law to the divorce was the Personal Status Law (Federal Law No (28) of 2005 on Personal Status (UAE)), and the divorce processes under that require in every case an attempt at reconciliation and a mediator appointed to facilitate that.

Importantly, this is the first time a New Zealand court has considered the payment of a dower set out in a marriage contract under sharia law. It was not argued, but Simon France J acknowledged in obiter that, the issue could have been analysed through a wider lens such as the law concerning marriage, divorce and relationship property (at [6]). Thus, similar issues to those in *Almarzooqi* arising in future could conceivably be brought before the Family Court.

Decision

The court held that the proper law of the contract was that of the UAE and sharia. This was found following consideration of particular facts surrounding the formation of the contract, including that:

- the couple travelled specifically to Dubai, and that jurisdiction, for the marriage to be married in accordance with that particular tradition;
- the contract was formed using a UAE court document under the authority of the Dubai Personal Status Court;
- the contract had been filed with that Court;
- the contract was in Arabic; and
- the contract provided for payment in dirhams.

Simon France J noted that the universality of the contract lessens the significance of the particular jurisdiction where the contract arose but does not eliminate it.[3] The contractual obligation to pay the Mahr was also unaffected by the parties' place of residence. He therefore held that

the deferred Mahr was payable on divorce under UAE law. Although not enforceable in New Zealand,[4] that the initial judgment of the Dubai Court ordered payment of the Mahr was evidence that Court considered the divorce triggered the Mahr obligation. Thus, the Mahr had been payable since 1 November 2016 as the proper law of the contract was UAE law.

Simon France J noted in addition that the issues within the case were wider than the material presented by Mr Salih appeared to acknowledge and in these circumstances witnesses with the proper authority to assist the Court are to be expected. Simon France J nevertheless did not think it necessary to consider the law on when a contract might be varied for public policy reasons as there was no disadvantage to Mr Salih as was submitted. Mr Salih was therefore in breach of the marriage contract and had an obligation to pay Ms Almarzooqi the Mahr. The date the obligation to pay arose was fixed as the date of the divorce decree (1 November 2016) and the obligation sum of 500,000 dirhams was to be assessed in NZD as applicable on 1 November 2016 with interest payable from that date. Ultimately, this case provides an important discussion on conflict of laws in relationship property and divorce matters and may be helpful guidance to practitioners working within these spaces in future. ■

1. *Almarzooqi v Salih* [2022] NZHC 1170.
2. *Almarzooqi v Salih* [2021] NZCA 330, [2021] NZFLR 501.
3. Above n 1 at [22].
4. See above n 2.

Mana Tamaiti, how to navigate the placement of a Māori child in a Tauiwi family

BY **DR ALLAN COOKE**

I HAVE ALWAYS BEEN INTERESTED in the workings of the OT Act and have had an interest in permanency, as indicated by articles in the NZFLJ and presentations at conferences and roadshows. I have acted for a number of caregivers, many of whom have obtained orders for special guardianship. I saw the framework as being a proper one for many of the clients for whom I was acting. This was because of the need (as underpinned the policy framework supporting the introduction of special guardianship) for a new type permanency order, and not being adoption as such, that allowed caregivers to make necessary decisions without undue/unnecessary interference from birth parents, but which did not sever, as an adoption order does, the connection between the child and his birth parents and therefore as well from her extended family/whānau/hapū or iwi. I suspect that like a number of others, I was overly focussed on that specific aspect of a child's wellbeing.

As occurs, one always learns and there is a realisation that positions previously taken and argued are not necessarily as they seem to be. The law relating to special guardianship as we now understand it to be, and with specific regard to Māori children has been the subject of rigorous and justified analysis. Such orders are now seen as being largely antithetical when they concern a Māori child who is placed outside of whānau. See *Chief Executive of Oranga Tamariki v BH*.[1]

I have a personal view that it will soon be a very rare occurrence for any Māori child to be placed outside of her whānau and a belief that this should not occur (and should not have occurred in the past). However, such placements have been made and some Māori children have been with non-kin (and often Pākehā) caregivers for significant periods of their lives. This raises the existential issue of how are the rights of the child to be met – on the one hand, in terms of "attachment" to caregiver parents and possibly siblings in that family group and, on the other, those rights of whakapapa, whanaungatanga and to mana tamaiti, as now enshrined in section 5 – and of the application of te Titiri o Waitangi.

These are matters that I am now having to address in my remaining cases seeking special guardianship. However, it is my thesis here that these are equally applicable issues to be confronted even when the

intended permanency framework is COCA.

For many years, until the introduction of special guardianship as a permanency framework, the only real option for caregivers was to have COCA orders made for additional guardianship and for day-to-day care. (It was and is rare for adoption to be the pathway or for the Court to deprive a natural guardian of his/her guardianship and with the new caregivers being the child's only guardians.)

With the advent of the 2017 amendments – bringing in section 7AA – a new emphasis rightly was placed by that section on the Chief Executive to ensure that policies and practices were in compliance with section 5 – as it was contemporaneously amended to include its references to te Tiriti o Waitangi, UNCROC (which in turn has a compliance requirement for indigenous children) and then specifically the child's rights to whakapapa, whanaungatanga and to mana tamaiti.

The Family Court has grappled with this and in a number of decisions have attempted to address the issue. (Some of which are reported and others not – see *Chief Executive of Oranga Tamariki v BH*[2] and *Re WH*[3]).

The recent decision of Doogue J in *McHugh*[4] has clarified where the competing nuances lie. It is tolerably clear now what the lie of the land is.

This leaves the question of the legal framework required for a COCA case within the permanency paradigm. Conceptually it is straightforward. There must be an application to discharge the existing OT orders. This occurs via sections 125, 126 (the caregivers if they are the applicants would not have an issue with leave) and 127. Filed at the same time will be an application for the desired COCA orders and a supporting affidavit.

Irrespective of whether the permanency applications are for special guardianship or COCA, the Court must first discharge (and sometimes just vary) the existing OT Act orders and then, once satisfied that this should occur, make others- either relating to special guardianship or COCA as the case may be. When it is a special guardianship order, the applications can more easily be dealt with as "one". However, there is no reason why this should not occur with COCA – as the evidence will be the same and the issues for the child the same – how are those necessary connections to be sustained?

In COCA instance, before the COCA orders can be made, the Court must discharge to OT Act orders. This requires the Court to consider the applicable statutory principles – to be satisfied under section 4A that discharge should occur. The Court to be satisfied that the principles of ss5 and 13 are met – which include, in the case of a Māori child (in particular for present purposes) who is placed outside of whānau, that the prerequisites as to whakapapa, whanaungatanga and mana tamaiti are established – evidentially. Both the Chief Executive and the caregivers must specifically address this requirement. Lawyer for child must also be satisfied that discharge is in the wellbeing and best interests of the child.

It is only by following this process that the Court can ensure that where a Māori child is permanently placed and the caregivers want COCA orders, supported by the Chief Executive, the fundamental issues of whakapapa, whanaungatanga and mana tamaiti have been addressed. This is because the statutory obligations imposed on the Chief Executive (and then on the Court) directly arise under the OT Act.

The Court cannot proceed on the basis that in a "combined" OT discharge/COCA application, it need only look in a cursory way at the legal principles to be addressed on the discharge application and focus on the COCA application and specific COCA focussed evidence that would go to satisfy the Court that it is proper to make the orders.

It is to be imagined that if the Court is satisfied on a proper basis that discharge should occur, that it will then, on looking at the welfare and best interests test under sections 4 and 5 of COCA, determine that the orders sought should be made. However, as *Kacim v Bashir*[5] makes clear, the Court will have to address those COCA principles as well.

The same process must therefore be followed in all permanency cases – irrespective of whether special guardianship or COCA.

(I gratefully acknowledge the always sage advice of Justeen Davies in clarifying my thinking on this (and other) issues. ■

It is only following this process that the Court can ensure that where a Māori child is permanently placed and that the caregivers want COCA orders, supported by the Chief Executive, the fundamental issues of whakapapa, whanaungatanga and mana tamaiti have been addressed

1. *Chief Executive of Oranga Tamariki v BH* [2021] NZFC 210, [2021] NZFLR 201.
2. Above at n 1 at [24].
3. *Re WH* [2021] NZFC 4090, [2021] NZFLR 216.
4. *McHugh* [2022] NZHC 1174.
5. *Kacem v Bashir* [2010] NZSC 112.

Newton v Family Court at Auckland

BY **EMILY STANNARD**

On 24 May 2022 the Court of Appeal handed down its decision in *Newton v Family Court at Auckland*.[1] The underlying Family Court proceedings concern an application for contact with two children, then aged six and nine, made by their maternal grandmother in June 2017, following the sudden death of the children's mother in January 2016. The application is opposed by the children's father and stepmother (the Newtons). As the Court of Appeal recorded, no progress has been made towards a substantive determination of that application because the parties have been embroiled in litigation in the Family Court, in the High Court, and in the Court of Appeal about whether a psychological report in respect of the children should be obtained under s 133 of COCA.

The Court of Appeal's decision determined the consolidated appeals against two High Court decisions in judicial review proceedings, and contains valuable guidance for practitioners on the use of judicial review proceedings to challenge interlocutory decisions in the Family Court, the reviewability of the reports (and/or conduct) of Lawyer for Child (LFC) and the approach to be taken by LFC, and the Court, in ascertaining children's views in proceedings affecting them.

Background

In November 2017, His Honour Judge de Jong directed that a s 133 report be obtained in respect of the children. The Newtons filed proceedings in the High Court, seeking judicial review of Judge de Jong's decision to order a s 133 report without Lawyer for Child (LFC) having obtained the children's views. The application was successful (*AA*).[2] Courtney J found that a fair-minded lay observer would have concluded that the issue had been pre-determined, and that s 133(7) required the views of the children be obtained before a s 133 report could be sought.

The matter was returned to the Family Court and came before His Honour Judge Burns. LFC had, by this stage, met with the children and filed two reports. The Newtons argued that a s 133 report could not be ordered without LFC having specifically obtained the children's views on whether there should be a s 133 report. Judge Burns did not consider that was the effect of Courtney J's judgment. He directed that a s 133 report be obtained.

The Newtons filed a second application for judicial review in the High Court, this time in respect of Judge Burns' decision. LFC was joined as a respondent and the second cause of action pleaded that LFC's report was "ultra vires" and an irrelevant consideration taken into account by Judge Burns. The matter was heard in two parts before Duffy J. Duffy J issued an interim judgment determining the first cause of action on 19 February 2020.[3] Duffy J held that Judge Burns had erred because he was bound by Courtney J's judgment and remitted the matter to the Family Court. A resumed hearing on the second and third causes of action took place over two days in May 2020. Duffy J's decision was delivered on 1 December 2020 (*DN(3)*).[4] Duffy J held that LFC's report was not amenable to judicial review, and nor could it be considered an irrelevant consideration. Duffy J appeared to leave open, however, the possibility that the actions of LFC may be amenable to review in another case. The third cause of action, breach of natural justice, was also dismissed.

The Newtons appealed *DN(3)*. The Family Court successfully sought leave to appeal Courtney J's decision in *AA* out of time. The two appeals were consolidated, with the New Zealand Law Society and the Attorney-General intervening.

Court of Appeal decision

The Family Court's appeal against *AA* was allowed. The Court held that s 133 does not require the Family Court Judge to have the children's views on whether or not a report should be ordered. Whether it is appropriate to ascertain the child's views and the specific issues in respect of which their views should be obtained are matters for the judgment of LFC and for the Family Court judge to determine, having regard to ss 4 and 6 of COCA and the circumstances of the case. The Court confirmed that a child who is the subject of an application for a parenting order is not a "party" to the proceedings and s 133(7) does not require the court to ascertain the child's views. The Court reiterated that ensuring children are supported to exercise the right to express their own, authentic views on matters that affect them is "*an essentially corollary of treating their welfare and best interests as a paramount consideration*." It did not, however, consider that translates into a "blanket requirement" that a child's views must be sought on every procedural step under COCA.

Whilst the Court of Appeal held that judicial review of an interlocutory decision made under COCA is, in principle, available, it held

that such a decision will only be set aside where such relief is consistent with the scheme of the legislation, including the carefully structured appeal rights set out in s 143 of COCA. The Court emphasised that judicial review is intended to ensure fidelity to the statutory scheme, not to undermine it. In light of the express exclusion of any appeal right against a s 133 order, the Court held it would be inconsistent with the statutory scheme for relief to be granted in judicial review proceedings in respect of a decision under s 133 except in a very clear case of fundamental error. The Court suggested the circumstances in which judicial review of a s 133 order may be granted would be rare and confirmed that a s 133 order cannot be challenged in judicial review proceedings on the basis that the child's views were not obtained before the order was made.

The Court of Appeal also overturned Courtney J's decision that His Honour Judge de Jong had pre-determined the making of the first s 133 order, holding that the Judge's careful approach to ordering the s 133 report was "beyond reproach".

The Newtons' appeal against *DN(3)* was dismissed. The Court held that a report prepared by LFC is not amenable to judicial review and that the claim in judicial review against LFC was "wholly misconceived". The Court said LFC is not exercising a statutory power of decision, or any other form of statutory power, when preparing a report. Nor did the Court consider there was any basis for judicial review of an LFC's report at common law. The Court held that LFC's report is simply a submission of facts and law made by the LFC to the court on behalf of the child, and that it "decides nothing". The Court considered that judicial review is neither necessary nor appropriate to ensure proper performance by an LFC of their statutory and professional responsibilities. The Court described the appellants' attempt to describe LFC's report as ultra vires as "conceptually incoherent" and held that attempting to make a judge's decision the subject of a collateral attack dressed up as an application for judicial review of the LFC's report is an abuse of process.

Whilst Duffy J had appeared to leave open the possibility that there may be occasions when the LFC performs their statutory function in a manner amenable to review, the Court of Appeal said it could not identify any context in which that might be the case. Even anticipating that there might be a case it had not anticipated where judicial review of LFC would be available and appropriate, the Court considered it "very plain" this was not such a case. The Court went on to comment that LFC had acted entirely appropriately in this case.

The appeal against Duffy J's decision on the third cause of action was likewise dismissed. The Court declined the Newtons' request for the removal of documents from the Family Court file, holding that it was not necessary to avoid improper influence on future decision-makers. It suggested that the Family Court may give directions that certain challenged material on the court file should not be provided to future report writers where that material would not assist the report writer, and might lead them off course.

Although the effect of the Court's decision was to overturn Courtney J's decision setting aside the first s 133 order made by Judge de Jong in November 2017, given the amount of time that had passed and the subsequent steps taken, the Court considered it would be inappropriate to simply restore the original s 133 order made. The Court therefore remitted the matter back to the Family Court to determine whether a s 133 report should be ordered, taking into account its judgment.

An application for leave to appeal to the Supreme Court was filed by the Newtons on 20 June 2022 and an interim stay of execution of the Court of Appeal's decision was granted by the Supreme Court on 29 July 2022.[5] ■

1. *Newton v Family Court at Auckland* [2022] NZCA 207.
2. *AA v Family Court at Auckland* [2018] NZHC 1638, [2018] NZAR 1101 (*AA*).
3. *DN v Family Court at Auckland* [2020] NZHC 210, [2020] NZFLR 15 (*DN(2)*).
4. *DN v Family Court at Auckland* [2020] NZHC 3165 (*DN(3)*).
5. *Newton v Family Court at Auckland* [2022] NZSC 92.

Forensic accountants and how they can help your practice

BY **BARBARA RELPH**

FAMILY LAWYERS FREQUENTLY HAVE recourse to specialists outside of law, including forensic accountants. I spoke with Jay Shaw, partner at Grant Thornton New Zealand about changes and new trends in his industry and how that might affect family lawyers.

What do forensic accountants do?

The work undertaken by New Zealand forensic accountants falls into three general categories. The first, and most common instruction for forensic accountants, is the valuation of shares in unlisted companies or businesses. In the commercial sphere this may be where business partners have triggered the share transfer clauses in an ownership agreement. In the relationship property field, it might be to establish the value of assets for distribution, or in relation to the compensatory provisions in the Property (Relationships) Act, including s 9A concerning contributions to separate property.

The second category is quantifying economic loss or lost profits, and the balance of the work of forensic accountants is the broad range of accounting and financial matters where an expert opinion is needed.

What do family lawyers want from forensic accountants?

The recent relationship property survey, conducted by Grant Thornton in collaboration with the Family Law Section of the NZLS, showed a shift in the core attributes family law practitioners demand from their forensic accountant.

The research showed the most highly prized attribute is a good knowledge of relationship property law. "It's critical a forensic accountant understands the legal processes, the use of evidence in court, and the gathering and presenting of evidence. Forensic accountants are not lawyers and should not express opinions on the law, but it is a distinct advantage if a forensic accountant understands the law and legal processes," says Shaw.

The survey findings show that, increasingly, practitioners value the independence of the forensic accountant. Shaw says that this finding strongly suggests most relationship property lawyers are rightly not interested in a "hired gun" but an expert who will consider the issues on their merits and is mindful of their overriding duty to the court.

Working with a forensic accountant

Almost all work requiring the opinion of a forensic accountant originates from lawyers and it is essential to establish a close working relationship with open and ongoing communication. "This ensures both lawyer and accountant have a common understanding of how the matter is proceeding. This will help the lawyer understand the strengths and weaknesses of their case," says Shaw.

An aspect of communication is the need for barristers to clearly set out the terms of reference and instructions to the forensic accountant. Shaw notes, however, part of the role of a good forensic accountant can sometimes be helping clarify the questions to be answered. "In certain cases, a forensic accountant will have a greater depth of knowledge of the matter, especially during the early research phase."

As with other professional relationships, when you work well together, the communication flows easily and client outcomes are improved. If you have a preferred forensic accountant, it is wise to move early to engage them when a new matter arrives in your office – they are busy, like you!

What's new for forensic accountants?

A significant reason forensic accountants are busy is the incremental but vast increase in volume of information they are presented with when undertaking instructions. Shaw explains, "When I first started out in this area in the early 2000's, a 'large' assignment may have meant reviewing a dozen or so folders of documents. These days, it is relatively common to review thousands, if not hundreds of thousands, of pages of documents or data." This change stimulated the need for forensic accountants to invest in data analytics technology and investigative tools which assist in assimilating the information and presenting it in a usable format.

Another big change is the increase in international elements to many forensic accounting investigations. This could entail assets being held outside New Zealand or funds flowing over multiple jurisdictions, relevant to many relationship property cases. Where this has occurred, it is important to ensure that the expert has the international reach and the tools to deal with it.

Impact of the economic environment

We are all very aware of how the economic environment has impacted property valuations in the last two years, but business valuations also require consideration of the general economic and industry risks

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at the date of valuation.

Shaw says, "The last two years have been a very interesting time to be a business valuer. Business valuation is by its nature a forward-looking exercise and so is uncertain at the best of times, but that uncertainty has been amplified in the last two years. In the early stages of Covid-19 many businesses were struggling to predict what would happen to their business in the following week or month, let alone the following years, with any degree of confidence. This in turn made valuation very challenging and many possible scenarios needed to be considered. Thankfully, as the world has responded to the pandemic, for many businesses that uncertainty has now reduced or returned to close to pre-Covid levels which in turn reduces valuation uncertainty."

Jay Shaw's practice at Grant Thornton focuses on forensic accounting services in a wide range of matters including shareholder disputes, financial investigations, and relationship property proceedings. He has presented expert evidence in the High Court, Family Court and other dispute resolution forums; he is on the Business Valuation Board of the International Valuation Standards Council, a leading independent body in setting valuation standards globally. ■

Barbara Relph is a writer, editor and proof-reader – *www.barbararelph.com*

Discharge of adoption orders under the Adoption Act 1955

BY **CALINA TATARU**

THERE IS CONSENSUS AMONG FAMILY lawyers, parties to proceedings, and now the Government that the Adoption Act 1955 is outdated and does not reflect the current social attitudes towards adoption in New Zealand. The proposed law reform is currently at consultation stage, and in the meantime we must comply with the 1955 Act as the current legislative instrument in force.

A rare, but important, application that can be made under the current legislation is the application to discharge an adoption order made by a Court. The threshold to discharge an adoption order is very high in order to protect the integrity of the adoption process and any resulting court order.

In a recent decision, *Re M*[1] the Court granted a discharge of an adoption order made in 1957, thus restoring the applicant's dignity and acknowledging the trauma and hurt suffered as a result of the making of the order.

Discharging an adoption order

Applications to discharge adoption orders have been made for various reasons. The most common reason is because the adoptive parents turned out not to be quite the fit and proper prospective parents they held themselves out to be.

The first step in the process is to obtain the approval of the Attorney General to bring the application to discharge the adoption order.

Once an applicant has passed this hurdle, they will need to persuade the Court that:

(a) the adoption order was made by mistake as to a material fact or in consequence of a material misrepresentation to the Court or to any person concerned; or
(b) the discharge is expressly authorised by another section of the Act, for example if the birth parents' agreement to the adoption was obtained by fraud, deception or force.

The Court has a wide discretion to vary or discharge adoption orders, including adoption orders made overseas if the adopted person and the adoptive parents live in New Zealand.

Once an adoption order is discharged, the legal relationships between the adopted person, the adoptive parents and the natural parents will be determined as if the adoption order had never taken place. The Court has a wide discretion to make the order subject to such terms and conditions as it thinks fit, including conferring a new name on the person who had been adopted.

Grounds for discharge

The grounds for discharge of adoption order are unduly narrow particularly in light of the treatment some of the applicants have suffered at the hands of their adopters.

From a review of the cases that have come before the Court, it is apparent that some of the adoptions made for the purposes of creating a family unit and removing the stigma of a child's illegitimacy were not successful at all. The adult applicants seeking to discharge or vary their adoption orders described struggling with their identity, and being resentful at having effectively a stranger or their abuser listed as their parent on their birth certificate.

While a court may be sympathetic to the plight of the adoptees, the legislation is highly restrictive. Proving the narrow ground of material mistake of fact requires significant investigation of the facts at the time of the adoption was made.

Recent decision *Re M*

In this recent decision of the Family Court at Hamilton, Judge Paul stated "discharging an adoption order is a serious act, and one of the most serious the Family Court can undertake". The Court accepted that the applicant was the subject of bullying, intimidation (including of a sexual nature), physical threats and physical abuse at the hands of his adoptive father. However there was no specific evidence that the adoptive father, despite his later behaviour, misled the Court at the time of making the adoption order.

The Court referred to the previous decisions *Edwards v Houghton* and *SFD v GEL* (discussed below) and accepted the submissions made on behalf of the applicant that the adoptive father's representations were inconsistent with his later actions when carrying out parental responsibilities. The adoption order was discharged accordingly, and the applicant was given the name he could have been given at birth in the absence of the adoption order. In addition, the applicant filed an application under the Status of Children Act for a paternity order in respect of his biological father, now deceased, and this was made accordingly.

The applicant was 70 by the time the adoption order was discharged and had been through the journey of applying to have his adoption order discharged for over 10 years, starting with an application to inspect his adoption file in 2012. While the events that occurred cannot be undone, Judge Paul acknowledging the decision has come late in the applicant's life. Her Honour hoped that the Family Court lifted some of the weight of the past from the applicant.

Previous decisions

A decision that is frequently referred to is *SFD v JEL*,[2] where Judge Moss had to consider the issue of whether the adoption order was made as a consequence of a mistake as to a material fact or material misrepresentation from the Court. The applicant alleged that he was sexually abused by his stepfather for a number of years in his childhood.

The adoption order was made when the applicant was seven months old, and it was unlikely that the abuse had occurred prior to the adoption. Her Honour held:

> "while there has not been any information withheld from the Court in making the adoption order, there had been a misrepresentation to the Court as to the adoptive father's ability to care for a child, bearing in mind his later actions. The adoptive father's actions were inconsistent with his written representations; he permitted a material misrepresentation to occur as to his ability to care for the applicant. In my opinion this is sufficient to meet the ground of section 20(3)".

Further, even if the grounds of section 20(3) have been met, the Court must consider whether to exercise its discretion as "an order of adoption should not be discharged lightly"[3]. The seriousness of the mistake together with the change in the society's attitude to adoption and abuse supported the exercise of the discretion in this case.

In *Edwards v Houghton*[4], the adoption order was discharged in a situation where the adoptive father was imprisoned for sexual offending against the applicants. The Court held that, had the Court known his propensity for violence and sexual offending, there is no question that the adoption order would not be made.

The issue with many cases is that the Court is being asked to work backwards based on events post-adoption. Judge Geoghegan in *SOD v RMP*[5] cautioned against considering post adoption conduct as sufficient to amount to a material representation justifying the discharge of an adoption order. His Honour did not consider that the purpose of section 20 is to permit applicants to seek a discharge of an adoption order where the behaviour complained of was not engaged in before, at the time or immediately subsequent to the making of an adoption order. Such an approach runs the risk of interpreting the section in a way not intended by Parliament, and the misrepresentation must clearly be a misrepresentation of the circumstances surrounding the making of this order.

Other reasons for adoption orders being discharged are the child being declared to be Māori when he was not, and the mother's preference for him to be raised in the Presbyterian faith not being followed[6], and a person finding out at the age of 17 that she was adopted despite not being told of the application or consulted about it at all.[7]

Reform

The current adoption discussion document "Adoption in Aotearoa New Zealand"[8] suggests three options of discharge grounds:

(a) The relationship between the adoptive parent and child has completely broken down;
(b) The child, their parents and adoptive parents all agree to discharge the adoption order;
(c) The Court believes it is in the child's best interest. This would provide the Court with additional flexibility.

Until such time as the law is changed, judges are regularly faced with applications where the adoption order was clearly not in the child's best interest, but the narrow scope of section 20 may prevent the granting of a discharge order. ■

1. *Re M* [2022] NZFC 3051.
2. *FD v JEL* (2005) NZFLR 1057.
3. *Re H (An Infant)* (1965) 11 MCD 438.
4. *Edwards v Houghton* [2018] NZFC 2716.
5. *SOD v RMP* FAM-2008-070-1603.
6. *ROK v VHH* [2003] NZFLR 625.
7. *Re E* [1992] NZFLR 216.
8. Ministry of Justice Discussion Document, June 2021.

When mediation is not suitable – cases which don't fit the mould

BY **WILL STORY**

The question of whether a matter is suitable for mediation is often grappled with by those working in the family justice system. Family Dispute Resolution (FDR) mediation is mandatory for families seeking to air their parenting disputes in Court unless the matter is deemed "inappropriate" for mediation. What is deemed appropriate often depends on the judgment call of one individual. Whether it be an FDR co-ordinator, mediator, Family Court registrar, Kaiārahi, Family Lawyer or Family Court Judge, all and any of these individuals can and do change the course of one family's journey through the family justice system.

Within the FDR space, we most often see exemptions issued because one of the parents is unwilling to participate or has refused to engage in mediation. Based on their past experiences, parties expect it will be a waste of time and money. These cases are a shame, as it is a lost opportunity to learn to communicate differently and develop a more functional co-parenting relationship. Do we exempt too quickly? I think that there is more that we can do to support these parties to understand what supports are available to them, what to expect, and what's possible moving forward as they will be in each other's lives for many years to come.

In other instances, a decision is made that a case is unsuitable as there is evidence of family violence or some other situation which quickly leads one to deem participation in FDR inappropriate. In my opinion, too often families are exempted from participating in FDR. It is hard to argue otherwise looking at the numbers of Court cases versus FDR cases on an annual basis. The existence of some form of family violence or identification of a power imbalance in the relationship commonly results in lawyers advising their clients that the matter is not appropriate for mediation. In *some* instances, those matters are not suited for mediation, but there are others where exemptions are treated as the "golden ticket". And it is often these cases where families miss the opportunity to take ownership of their decisions, build bridges and behave as mature adults.

In this article, I discuss a couple of cases which very nearly missed the mediation boat. Cases which were very close to being rendered inappropriate for mediation, but cases which ultimately reached appropriate and enduring resolutions through mediation. If there is a learning from this, it is that a matter should not be assumed inappropriate for mediation just because certain indicators exist, such as a history of family violence. With the appropriate safeguards in place, mediation can and does offer a most appropriate process.

Consider this further. If matters are deemed inappropriate for mediation, the obvious inference is that they are "appropriate" for Court. I have no issue with the ability or expertise of our wise and able judiciary to impose decisions on disputed matters for families where power and control and/or family violence dynamics exist, but I do find intriguing the lack of recognition given to the fact that when the Court file closes the co-parenting relationship between the parties, power and control and/or family violence dynamics or no such dynamics, must survive in some form until the children are at least 18 years old. While the parties may have successfully navigated the Court process without having to have direct dialogue with one another (having Counsel as their mouthpiece), these circumstances are artificial and do not survive the constructs of the adversarial Court process.

While the parties may have successfully navigated the Court process without having to have direct dialogue with one another (having counsel as their mouthpiece), these circumstances are artificial and do not survive the constructs of the adversarial process

We have been involved in a number of FDR mediations where a parent was in prison. On paper, these are cases that could easily have been exempted. One could easily assume that the parent in prison could not participate in the process, or

due to their convictions, once again conclude that FDR was unsuitable. In cases like this, we ensure the FDR request goes through a rigorous assessment. We are vigilant about safety and signs of abuse. If we decide the case is suitable to proceed to mediation, we appoint a senior mediator to work with the parents and the prison to conduct the mediation process safely.

When a person goes to prison, they can obviously no longer be an active parent in the day-to-day care sense. However, this does not mean that they give up their rights and responsibilities as parent. We have mediated cases where a parent in prison has wanted to be involved in making the big parenting decisions for their child, where plans for the financial support and care of the children were needed to be worked through with wider whānau, where the parents needed to create a plan for how they their children would stay in contact during their time incarcerated, and how they would reintegrate into their child's life upon release. These were challenging conversations but ones which really benefited from independent assistance and ultimately were extremely rewarding for all involved. Another situation where cases may be considered for exemption is where there are mental health issues. The reality is that nearly half the population will meet the criteria for a mental illness diagnosis at some stage during their lives, and one in five of us will experience mental health issues in any given year. If the presence or a history of mental health or wellbeing concerns were to preclude parties from engaging in FDR, a huge proportion of our population would miss out on the opportunity. Like cases involving parents in prison, the key is undertaking a robust assessment and if suitable, creating a safe process for everyone.

One case which came through FDR involved a father who had lost his job and suffered a major mental health breakdown and depression as a result. Our mediator recognised the need for this parent to have support. They agreed for a close friend to be involved and support him through the process. They also discussed the professional and medical help he was getting, as well as what the mediator could do to help at mediation. The mediator got the father's permission to discuss some of this with the mother, so that everyone was aware and on board with the process that this mediation would require.

During the joint mediation session, the mother shared her concerns about the father's ability to cope with the children for a long period and how this could impact on the children. She wanted him to be involved in the children's lives but wanted it to be safe for everyone. The parents then discussed his mental health and the treatment he was receiving. They made plans for what they would do if he was unable to care for the children because he was having a bad day, or if he needed to bring them home earlier. They also discussed safety and how they both would communicate with each other going forward. They agreed that he would meet with the children at a family member's house with another adult family member present. Importantly, the parents were able to explore the potential impact that the father's depression could have on the care arrangements and come up with realistic, practical and safe alternatives.

The judgment around whether a matter is suitable for mediation is best left to the mediator. Mediation is an art, not a science. Much magic is done in mediation. The FDR provider will best know whether or not the matter is "appropriate" for them to mediate which largely hinges on whether or not he or she has the tools in their toolbelt. ■

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Does intestacy give rise to a caveatable interest?

BY **CATHERINE BRYANT**

Sometimes when a person dies intestate, it can be necessary to take quick action to protect the assets of the estate. However, the next-of-kin may find it difficult to do so until after the grant of letters of administration. A recent High Court case, *Bell v Bell*, considered whether next-of-kin have standing to lodge a caveat to protect the deceased's interest in land.[1]

Background

Jeffery Bell died intestate in August 2021. For 15 years, he lived on a property with his father, Reginald, which was owned by a trust of which Reginald, Jeffery, and his sisters were beneficiaries. During that time, Jeffery made significant improvements to the trust property, including building a house and a large shed on it. In September 2021, Jeffery's children lodged a caveat over the property alleging that Jeffery had an institutional constructive trust over the property arising from his contributions to the property over the period he lived there. After lodging the caveat, Jeffery's son, William, applied for letters of administration, which were granted in February 2022. Jeffery's children filed an application that the caveat not lapse, which was opposed by the trustees.

Principles for sustaining a caveat

The basic principles for sustaining a caveat are found in the Court of Appeal's judgment in *Philpott v Noble Investments Limited*:[2]

(a) The onus is on the applicants to demonstrate that they hold an interest in the land that is sufficient to support the caveat, but they need not establish that definitively;
(b) It is enough if the applicants put forward a reasonably arguable case to support the interest they claim;
(c) The summary procedures involved in applications of this nature are not suited to the determination of disputed questions of fact. An order for the removal of a caveat will only be made if it is patently clear that the caveat cannot be maintained – either because there is no valid ground for lodging it in the first place, or because such a ground no longer exists; and
(d) When an applicant has discharged the burden upon it, the Court retains discretion to remove the caveat which it exercises on a cautious basis. Before it does so the Court must be satisfied that the caveator's legitimate interest would not be prejudiced by removal.

In order to lodge a caveat, a caveatable interest must exist at the time it was lodged and must continue to exist at the time of the hearing.[3] The trustees claimed that Jeffery's children, as his next-of-kin, did not have an interest in his property before the grant of letters of administration, which meant that they did not have standing to lodge the caveat in September 2021.

> In order to lodge a caveat, a caveatable interest must exist at the time it was lodged and must continue to exist at the time of the hearing

Intestacy and property interests

When a person dies intestate, the next-of-kin do not have a caveatable interest in the deceased's property before the grant of letters of administration.[4] Section 22 of the Administration Act 1969 provides that the estate of a person who dies intestate vests in the Crown until administration is granted. However, section 24 of the Administration Act 1969 states:

1. Immediately upon the grant of administration of the estate of any deceased person, all the estate then unadministered of that person, whether held by him or her beneficially or held by him or her in trust, shall vest in the administrator to whom the administration is granted for all the estate therein of that person: provided that nothing in this section shall affect the earlier vesting in an executor by operation of law.
2. The title of every administrator to any part of the estate of a deceased person, whether he or she has died before or after the commencement of this Act, shall relate back to and be deemed to have arisen immediately upon the death of the deceased person, as if there had been no interval of time between the death and the grant of administration.
3. If there are concurrently more administrators than 1 of any part of the estate that part shall vest in them

as joint tenants.

At the time that Jeffery's children lodged the caveat, they did not have a caveatable interest in the trust property, only a future or potential interest. The issue before the Court was whether s 24 operated retrospectively to cure any deficiency in their standing. The Court held that it did.[5] The Court distinguished *Wakenshaw v Wakenshaw* on the basis that the applicants in that case had never applied for letters of administration for the estate, so s 24 did not apply. The Court referred to *Rika v Westpac Banking Corporation* where the wife executed a mortgage over her husband's land after he died intestate and before administration was granted. When she later challenged her ability to execute the mortgage, the Court held that the subsequent grant of letters of administration retrospectively authorised the signing of the mortgage by virtue of s 24(2) of the Administration Act 1969.[6]

Conclusion

The Court upheld that caveat on the grounds that the applicants had established a reasonably arguable case that Jeffery's work on the trust property was grounds for a constructive trust. This case is interesting because it suggests that the next-of-kin of an intestate deceased can immediately deal with the deceased's estate, provided that they subsequently obtain letters of administration. However, practitioners should advise against this unless it is necessary for the protection of estate assets. ■

1. *Bell v Bell* [2022] NZHC 1388.
2. *Philpott v Noble Investments Ltd* [2015] NZCA 342 at [26].
3. *Zambuto v Kensington Park Holdings Ltd* (2011) NZCPR 395 (HC) at [19] and *Murphys Park Development LP v Green City Developments Ltd* [2020] NZHC 813 at [24].
4. *Wakenshaw v Wakenshaw* [2017] NZCA 252 at [32].
5. *Bell v Bell*, above n 1, at [32].
6. *Rika v Westpac Banking Corporation* HC Rotorua CP198/88, 21 March 1989 at 14.

Compelling mediation in trust disputes

BY **CATHERINE BRYANT**

When the Trusts Act 2019 took effect, the courts, for the first time, had the power to direct parties in a trust dispute to attend mediation, even if they are unwilling. Since then, there have only been two cases where the court has been asked to order an unwilling party to mediation. In the first case, *S v N*, the Court refused to order mediation,[1] but in the latest case, *Wright v Pitfield* the High Court decided differently.[2]

Background

In *Wright v Pitfield*[3] The parties separated in 2018 after 26 years of marriage. There was a family trust, settled in 1999, of which they were both trustees, together with a third, independent trustee. Following separation, the parties agreed that there should be a 50:50 division of property but were unable to agree on the administration of the trust or the division of trust assets. Ms Wright brought proceedings seeking the removal of Mr Wright as trustee. He opposed and counterclaimed for removal of Ms Wright. Mr Wright sought an order submitting the matter to a judicial settlement conference, or alternatively, for an order for mediation. Ms Wright opposed the application.

Judicial settlement conference

The Court refused to order a judicial settlement conference, as it had already declined one application for a settlement conference and held it was not appropriate to revisit that decision. The Court commented that judicial settlement conferences are most useful where a judge can assist parties with their legal issues. As the key issues between the parties were "factual and practical rather than legal,"[4] the Court considered that mediation would be more useful to the parties.

Power to order alternative dispute resolution (ADR)

Under the High Court Rules, the courts need the agreement of the parties before they can direct them to use ADR to try and settle their dispute. However, if the dispute is an internal trust matter, the court has the power under s 145 of the Trusts Act 2019 to order the parties to submit the matter to an ADR process. Section 145 provides:

1. The court may, at the request of a trustee or a beneficiary or on its own motion,–
   (a) enforce any provision in the terms of a trust that requires a matter to be subject to an ADR process; or
   (b) otherwise submit any matter to an ADR process (except if the terms of the trust indicate a contrary intention).
2. In exercising the power, the court may make any of the following orders:
   (a) an order requiring each party to the matter, or specified

parties, to participate in the ADR process in person or by a representative:

(b) an order that the costs of the ADR process, or a specified portion of those costs, be paid out of the trust property:

(c) an order appointing a particular person to act as a mediator, an arbitrator, or any other facilitator of the ADR process.

3. This section applies in relation to internal matters only.

An "internal matter" is defined as a matter where the parties are "a trustee and 1 or more beneficiaries, or a trustee and 1 or more other trustees, of the trust".[5]

Exercising discretion when one party is unwilling

The Court accepted that the dispute concerning the family trust was an internal matter, so it had the power to order the parties to attend mediation. The key issue for the Court was whether it should exercise its discretion to order mediation when Ms Wright was opposed. In *S v N*, the only previous case to consider s 145, the Court stated that matters relevant to the exercise of its discretion included "cost, confidentiality, speed, the seriousness and complexity of the matter, the suitability of the proposed mediator, the wishes of the parties, the wishes of the settlor if known, finality, and enforceability."[6]

The Court considered that the real issue between the parties was the control and sale of the trust assets, and if that could be resolved, the proceedings to remove trustees would fall away. The Court acknowledged that the parties' wishes were a relevant consideration, and that Ms Wright was reluctant to attend mediation. However, it pointed out that Parliament had expressly given the Court the power to require a trustee to attend ADR, so the parties' wishes were not definitive. The Court distinguished *S v N*, where the Court had refused to order mediation against the wife's wishes, noting that in that case, independent trustees with orders to distribute the trust assets into two new trusts had already been appointed. In addition, the wife had a protection order against the husband and there was a total absence of goodwill between the parties, meaning that nothing would be achieved through mediation.[7]

The Court acknowledged the concerns around 'forced' mediation but quoted Lord Phillips, the Lord Chief Justice of England and Wales, who stated that:

> Statistics show that settlement rates in relation to parties who have been compelled to mediate are just about as high as they are in the case of those who resort to mediation of their own volition.[8]

The Court disagreed with Ms Wright's submission that requiring her to attend mediation would deny her access to justice, as the matter had been set down for hearing and the fixture would remain in place if the parties failed to settle. Moreover, resolving the current proceedings would, at best, result in the removal of Mr Wright or Ms Wright or both as trustees, but would not resolve the issues between them around control and division of trust property. Attending mediation gave them the chance to resolve the entire trust dispute. Accordingly, the Court ordered the parties to participate in a mediation process in person, which ultimately resulted in them settling all issues between them.

Increase in mediation orders?

This case demonstrates the significant evolution in the attitude of the courts towards mediation. Although the High Court acknowledged potential difficulties in ordering an unwilling party to mediation, it was still willing to order mediation, considering that a dispute between trustees about control of the trust and trust assets was "the type of case Parliament had in mind when providing jurisdiction for the Court to require parties to attend mediation."[9] Now that there is a precedent for the Court exercising its s 145 power against an unwilling party, we are likely to see an increased readiness for the courts to order mediation in internal trust disputes. ■

1. *S v N* [2021] NZHC 2860.
2. *Wright v Pitfield* [2022] NZHC 385.
3. *Wright v Pitfield* [2022] NZHC 385.
4. *Wright v Pitfield*, above n 2 at [10].
5. Trusts Act 2019, s 142.
6. *S v N*, above n 1, at [29].
7. *Wright v Pitfield*, above n 2 at [33]-[34].
8. Lord Phillips of Worth Matravers, Lord Chief Justice of England and Wales "Alternative Dispute Resolution: an English Viewpoint" (India, 29 March 2008).
9. *Wright v Pitfield*, above n 2 at [41].

Persistent difficulties in particularising economic disparity claims

BY **OLIVIA MORGAN** AND **REBEKAH VERCOE**

Introduction

When the Supreme Court granted Ms Scott leave to appeal the Court of Appeal's decision on calculating economic disparity in *Scott v Williams*[1], lawyers were hopeful that this would resolve difficulties in advising clients on the likelihood and quantum of successful claims. Although the new approach is now routinely adopted by counsel and judges alike, it appears the reasoning of the Supreme Court has failed to trickle down and affect the quality of applications or justifications given by applicants seeking awards under s 15 of the Property (Relationships) Act 1976 (PRA). Applicants and their lawyers are left guessing as to how long a period of compensation should last for. If a respondent accepts that an award should or is likely to be made, how is such an award to be limited? In the author's own practice, an opposing solicitor and their expert suggested that compensation for over 25 years would be appropriate (in the context of a relationship that was substantially shorter than that period of time).

Scott v Williams

Scott v Williams was a landmark decision, with the Supreme Court establishing a new calculation method to determine the quantum of an award for economic disparity.[2] Before *Scott v Williams*, the leading authority was *X v X* which held that, while there was no set formula for the quantification of an award, an appropriate methodology included:[3]

(a) Calculating a figure that represented the present difference between the income which the plaintiff could have earned but for the relationship, and their current income.
(b) Making allowances for future uncertainty, the time value of money and for the chances of non-collection of future income.
(c) Halving the resulting sum to reflect the joint nature of the decision.

While the majority in *Scott v Williams* set out a new calculation method to be used, all five Supreme Court Justices issued their own judgments, each taking a slightly different approach to the calculation. The final quantum awarded by the Supreme Court differed from every preceding judgment of the lower courts. Leading academics have commented that the "*disparate results on economic disparity at different levels of the judicial hierarchy are testament to the unfortunate fluidity of the concept*".[4]

In considering quantum, Justice Arnold held that the Court should consider:[5]

(b) "…for how long the disparity should be compensated. It should not be assumed that this period will be the same as the potential working life of either partner. This is because:
(i) in the ordinary course, the non-career partner will be expected to undertake income-earning activities; and
(ii) the career partner's personal autonomy must be recognised – he or she must be left with the ability to move on with his or her life."

It is also relevant to consider how long it might take the non-career partner to re-train or up-skill. This will be affected by matters such as whether or not he or she has responsibility for the daily care of minor or dependent children of the relationship.

Approach since *Scott v Williams*

Since *Scott v Williams*, there has been a lack of consistency amongst the lower courts in deciding the length of the compensation period. In recent cases, the period sought by applicants has ranged from four to seven years.[6] In other cases, applicants have not sought compensation for a specified period of time, but rather have sought a lump sum as a percentage of the relationship property.[7] This approach reflects the Supreme Court's comments in *X v X* that the formula method is not the only approach to calculating an award for economic disparity given a "*judge is required to make judgements on matters which are inherently imprecise*".[8]

The inconsistencies in approaches to determining the length of the compensation period makes it difficult for lawyers to advise clients on their likelihood of success, and quantum, in a section 15 claim. This often results in applicants seeking an arbitrary compensation period, which can be detrimental to their case. These issues are reflective of the broader difficulties facing practitioners when dealing with section 15 claims. In the Law Commission's report on PRA reform, their proposal involves repealing section 15 altogether, alongside the maintenance provisions in the Family Protection Act 1980. These would instead be replaced by a new income sharing

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framework to deal with the economic disadvantages that arise out of the ending of a relationship.

Proposal

Regardless of whether the government chooses to repeal s 15, guidance is clearly needed on how long the compensation period should be. Without a clear and consistent approach, the difficulties in advising clients on s 15 claims will remain. Given the time, money, and stress often involved in these claims, it is in the interests of justice to adopt a more consistent approach. One possibility could be that the period of compensation sought should reflect the time it would take the applicant to reach their full earning capacity, taking into account the period of time they were out of the workforce due to the separation of duties within the relationship. This will often reflect the length of the relationship in question. We will need to wait and see what develops when the higher courts recognise and plug this gap. ■

1. *Scott v Williams* [2016] NZCA 356.
2. *Scott v Williams* [2017] NZSC 185.
3. *X v X* [2010] 1 NZLR 601.
4. Bill Atkin *Relationship Property in New Zealand* (3rd ed, LexisNexis, Wellington, 2018) at 121.
5. *Scott v Williams* [2017] NZSC 185 at [326] of the judgment of Arnold J.
6. For example, see *Domazet v Domazet* [2019] NZFC 3476, *Preston v Preston* [2019] NZHC 3389, *Gosbee v Gosbee* [2020] NZHC 1001 and *Little v Little* [2022] NZHC 601.
7. For example, see *Dina v Nevin* [2020] NZFLR 841.
8. *X v X* [2009] NZCA 399, [2010] 1 NZLR 601; A similar approach had been used in earlier cases including *V v V* [2002] NZFLR 1105 (FC); *McGregor v McGregor (No 2)* [2003] NZFLR 596 (FC); *P v P* [2005] NZFLR 689 (HC); *T v T [Economic disparity]* [2007] NZFLR 754 (FC); and *W v W* FC Auckland FAM 2007-004-663 12 December 2007.

Final parenting orders when a party has a recurring mental illness

BY **EMILY STANNARD**

There are times when a parent may suffer from a recurring mental illness that results in them temporarily being unable to care for a child. This is particularly true if the illness is cyclic and recurs every two to three years. This can unfortunately result in court proceedings being brought each time the parent becomes unwell.

There have been at least two cases whether the court has been prepared to make a final order allowing for a parent's care with a child to be suspended when the parent is admitted into a mental health ward.

In *A v T*[1] the mother was an excellent parent when well, but suffered from bipolar disorder. There had been two sets of previous proceedings before the court. In the third set of proceedings, the parties wanted to future proof the arrangement if the mother became unwell again. There was agreement on a shared care arrangement between the parents. The Court made an order directing that if the mother was admitted to the mental health unit:

- her care of the child under a shared care arrangement would be suspended;
- when she was released from the unit, her contact would be supervised by the maternal grandmother or another person agreed to between the parties in writing;
- the shared care arrangement would resume when the mother:
  - provided a letter from her psychiatrist saying the mother was stable and consistently taking her medication; and
  - the maternal grandmother (or another person agreed to between the parties in writing) advised the father in writing that it was safe for the shared care arrangement to resume.

In *L v M*[2] the mother had been admitted to the mental health unit. After she had made progress, there was agreement to transition the child back into the mother's care. The court made a similar order to provide for any future admissions to the mental health unit. The order provided that if the mother was admitted to the mental health unit, the mother's day-to-day care would be suspended, and her contact would be supervised by the maternal great grandmother, or if she was not available, then the mother's friend. The care arrangement would resume once the maternal great grandmother or the mother and the mother's psychiatrist agreed in writing that that it would be safe for the contact to resume.

This option can be effective in helping parties to avoid recurring litigation due to a parent's mental health. It does require there to be family support for the parent with the illness who can also work with the other parent to ensure that the arrangement can work. It is also difficult to provide for situations where the parent might be unwell, but not unwell enough to be admitted to a mental health unit. In that situation, it may be that a further application to the court would need to be made if the child was at risk. ■

1. *A v T* FC Hastings FAM 2015-020-291 25 January 2021.
2. *L v M* FC Napier FAM 2020-041-267 24 November 2021.

Where to go for counselling?

BY **JAMES PAUL**

MANY OF YOU MIGHT HAVE READ STUFF report Nadine Porter's piece on the "faceless parents" who feel lost "in a family court system" – it makes for devastating reading.

It is also probably an all too familiar story for some reading this publication; a parent or client whose mental health continues to deteriorate as they navigate an extremely protracted, combative, and exhaustive legal process.

The grief, sense of estrangement, and rejection – felt strongly by both parents, children, and whānau grappling with the Family Court system – need not win out.

The role of the Kaiārihi, or Family Court 'navigators', should provide guidance and information about the resolution/support options available to parents, caregivers and whānau who are considering applying to the Family Court.

Last year, Manager of Justice Services – Family, Robert Loo, said these navigators would "improve family justice outcomes for parents, whānau and tamariki by empowering families to make informed decisions on appropriate justice pathways and how to access them."

But it might be just as beneficial for people applying to the Family Court that they – and by extension, their lawyers – understand potential mental health support avenues.

NZ Association of Counselling member, Mariama Tolo, admits it can be extremely difficult to get counselling through the court unless the judge signs off on it – which then might not occur until after the case has concluded.

Therefore, the first port of call for counselling support, if they're employed, should be through their EAP scheme (if one is available).

While each employee assistance programme is different with differing criteria, it provides someone with a certain amount of free therapist support.

Be wary, however, that these sessions are limited usually to about three – not nearly enough time to unpack and address any longstanding mental health issues or relationship problems, Miriama says.

Another avenue for people to try, is reaching out to their local Citizen's Advice Bureau. Miriama says branches should have, or will have access to, a list of local counsellors.

And finally, going through one's GP or the local Primary Health Organisation is another method. But Miriama cautions people about utilising this service due to unprecedented demand and an under-resourced workforce.

Nevertheless, it is useful to seek counselling support through these avenues as they are free. Each PHO will have some criteria to adhere to, Miriama says, but those should be easily found on their websites.

"Tū Ora Compass Health" in the greater Wellington region, there is free youth counselling if you're aged between 12 and 24. You can check out your PHO's criteria just by going on the website or discussing it with your GP," Miriama says.

For those with enough financial resources, Miriama recommends paying for counselling. "If you can afford to pay for your own therapeutic process, it is by far the best option for anyone seeking mental health support."

"I would always check the NZ Association of Counsellors website, or a similarly professional body, for a list of experts and their details, many of whom specialise in couple or relationship work."

"Doing your own research on such website ensures there is an added layer of safety for the consumer of counselling, because anyone on the NZAC website is a fully qualified, registered accredited counsellor."

"That means they've completed their due diligence to be able to safely practice in their role. So, it will always be my first port call if I was looking for a therapist, and that's the one that I usually tell people to do."

Negotiating the price of sessions with a counsellor of your choosing is not frowned upon, as well as the potential number of sessions required.

At the end of the day, with mental health problems on the rise among many New Zealanders, seeking professional mental health support earlier should always be the preferred option. ■

The New Zealand Association of Counsellors

The New Zealand Association of Counsellors (NZAC) is the largest professional organisation representing counsellors in New Zealand, with approximately 3,000 members.

Membership of NZAC is achieved through a robust process, including an interview. All members require an Annual Practising Certificate, which requires sign-off by an independent supervisor of regular supervision, and participation in professional development.

NZAC members must abide by the Association's strict Code of Ethics and are expected to be in regular supervision to ensure their ongoing professionalism and adherence to best practice guidelines.

If you wish to discuss counselling with a representative of the NZAC, email President Christine Macfarlane *president@nzac.org.nz* or call (04) 471–0307.

The division of Kiwisaver in a relationship property split

BY **ADRIAN SHARMA**

We participate in savings schemes in order to prepare ourselves financially for the future, generally for retirement or to make investments, such as purchasing a home. But what happens to these funds when going through a separation? Under the Property (Relationships) Act[1] KiwiSaver funds form part of relationship property and as such, are taken into consideration when dividing assets in the event of a separation.

If you've been in a marriage, civil union or de facto relationship for longer than three years, then KiwiSaver funds accumulated during the relationship are generally considered part of relationship property and as such are taken into consideration when dividing assets in the event of a separation. This includes funds paid in by yourself, your employer and the government, as well as any retirement funds held in other countries. While this can be quite confronting, especially if you are expecting to fall back on your KiwiSaver funds after retirement, it is important to note that only contributions made to the scheme during the course of the relationship are considered relationship property while any contributions made outside the scope of the relationship are considered separate property and do not form part of the relationship property pool.

So how are the divisions made? What if one person has significantly more money in their scheme than the other? The answer to this lies within the time frame of the relationship and the contributions made within that time. For example, if one person invested in the scheme prior to the relationship and then whilst in that relationship, only the funds invested after the relationship started (and any gains made on those investments) will form part of the relationship property. The eligible amount of funds are put into a 'pool' and divided 50:50 between the two parties.

If both parties have been in a relationship (de facto or otherwise) for less than three years, then the division of the KiwiSaver funds will generally be based on the contribution each party made, rather than split evenly. As can be expected, at times there are extenuating circumstances which mean these assets are not divided equally even when the relationship has surpassed the three-year mark. These circumstances can include, but are not limited to, situations where there are children present and also when one partner has made a significantly higher contribution to their scheme than the other.

As can be expected, at times there are extenuating circumstances which mean these assets are not divided equally even when the relationship has surpassed the three-year mark

The Fluctuating Value

As KiwiSaver is a savings scheme that is made up of a mixture of investments such as shares on international stock markets and interest-bearing bonds, the value of KiwiSaver funds tend to fluctuate. When a separation occurs, the value of KiwiSaver funds is generally taken from the date of separation and includes the invested amount, plus growth, of any money contributed while in the relationship. If the division happens soon after the separation, this is generally not considered problematic as there is likely to be little change in the value of KiwiSaver over a short period of time.

However, if the relationship property is divided a significant time after the separation has happened, the value of KiwiSaver is more likely to have fluctuated and affected the KiwiSaver balances of the respective parties.

Are there other options?

Some couples may decide during separation that they do not wish to divide their KiwiSaver balances, especially if one person has a higher balance than the other. Another option available is for one party to keep their KiwiSaver funds but in the interest of fairness, deal with any difference through other assets, such as by allowing the other party to keep items like a car which

may be of equivalent value. They can also opt to pay out the difference in cash. Importantly, these arrangements need to be agreed on by both parties. It is worth noting that both must have a signed and witnessed relationship property agreement in order for this to be binding.

An alternative option is to include your KiwiSaver balance in a pre-nuptial agreement (also known as a "contracting out" agreement in New Zealand). This is a written and witnessed agreement where both parties decide how their property should be distributed in the event of a separation. This ensures that if a relationship fails then you both maintain the entirety of your investment into the KiwiSaver scheme. While this is best done at the beginning of a relationship, it can be done at any point as long as each party has an independent lawyer advising them.

Given the unpredictable nature of separation, it is safe to assume that there will be instances in which both parties are unable to come to an agreement regarding the division of assets. The FDR Centre has developed a specialist private dispute resolution service for parties to relationship property disputes (and other Family Law matters) that is robust and certain, yet innovative in its common-sense approach to resolving disputes promptly and cost-effectively. It has recognised and established procedural rules to achieve consistency and certainty. The services provided by the FDR Centre are private and confidential.

One of the relationship property dispute resolution options offered by the FDR Centre is Mediation, which enables the parties to negotiate flexible and creative solutions no matter how simple or complex the issues may be. The FDR Centre has fixed fee options available for low complexity relationship property mediations and has a well-defined fee structure for high complexity-relationship property matters. More information about the various services offered by the FDR Centre can be found on *www.fdrc.co.nz* ■

Adrian Sharma is originally from Fiji where he successfully prosecuted a wide range of complex fraud and corruption cases. He now leads the ADR Centre's Knowledge Management Team as Head of Knowledge Management.

1. Section 8 (1)(i) of the Property (Relationships) Act 1976.

Deng v Zheng – Cultural evidence in contractual disputes

BY **EMILY STANNARD**

A recent Supreme Court decision, *Deng v Zheng*[1] considered whether Mr Deng and Mr Zheng were in a partnership. In particular, the case addressed what approaches could be taken when cultural matters are at play. Although not a family law case, it provides helpful guidance on interpreting documents like trust deeds or contracting out agreements that arise where there are cultural considerations involved.

Factual background

The factual background was relatively complex. A simple overview is that the parties had a working relationship from the late 1990s until 2015. The primary dispute was whether their business relationship from 2010 until 2015 was a partnership or not or whether the projects were carried out through companies in which the parties had interests in. The High Court held there was no partnership, whereas the Court of Appeal held that there was.

The case centered on the interpretation of documents translated from Mandarin to English.

There was a document of 31 March 2010 which was titled "Orient Construction Group 10th Reconciliation (Zheng Deng)". There were bi-monthly accounts which the Supreme Court described as recording "the amalgamated asset position of what appears to be a single enterprise, a running account of the contributions each made to and their drawings against that amalgamated asset position and the expenses and revenue for all current projects".[2] Mr Zheng's sister initially did the accounts and from 2013 Mr Deng's spouse was responsible from them.

The business relationship came under strain following a difficult development. In June 2015 Mr Zheng sent a document titled "Principles in Separation" to Mr Deng. There were annotations made on each side, but it was not signed. Mr Deng claimed there was agreement in principle and Mr Zheng said agreement was unable to be reached. The Principles of Separation document largely sought to provide equal allocation to the parties for benefits and burdens of their projects.

> It held that it would be wrong to attribute any legal significance to translations without specific evidence as to whether the term had any corresponding significance in the original language

High Court decision

Various claims were made in the High Court by Mr Zheng, by the time of the Supreme Court decision, the only issues in dispute were whether there was a partnership or joint venture and for orders for inquiries and the taking of accounts.

The High Court held that there was no partnership. The High Court placed weight on the language used (often based on translations) in contemporaneous documents, particularly using the companies by name or the use of "company" as an adjective. The High Court also noted that the external accounts of the companies gave no indication of an overarching partnership. The High Court also noted the inconsistency between what Mr Zheng said and the true arrangement between him and Mr Deng and the way it was presented to outsiders. It also rejected the relevance of the internal accounts, and if those accounts showed an intention ot split profits and maintain equal investments, this did not necessarily establish the existence of a partnership. The Court also preferred the evidence of Mr Deng and found inconsistency between the partnership and the statutory landscape around the companies.[3]

Court of Appeal decision

The Court of Appeal noted that most of the documents relied on had been translated from Mandarin to English and there was no evidence from the translators as to why certain terms were used over others. The Court referred to the term used to refer to the parties' business relationship, 公司 could be translated as "company", "firm", or "enterprise". It held that it would be wrong to attribute any legal significance to translations without specific evidence as to whether the term had any corresponding significance in the original language.[4]

The Court of Appeal pointed out that language is used in a broader linguistic and cultural setting which the Court may not understand. It cited an article by Mai Chen[5] noting that Chinese people are less likely to conduct business by a formal contract but by a "handshake" as it would appear distrusting to ask for

a written contract from a friend, family member or acquaintance, and that contracts, when drafted, are normally brief.[6]

The Court of Appeal did not have expert evidence on the specific parties, but was sensitive to the importance of social and cultural context and focused on the substance of the parties' arrangements revealed by their conduct over time. It was cautious not to draw inferences about the normal or appropriate way of structuring business dealings.[7] It held that the parties carried out a number of projects where they were equal contributors with entitlement to equal profit and losses.[8] The internal accounts would not have been necessary if the parties' relationship had been confined to their respective shareholdings.[9] This provided conclusive evidence of a partnership. The term 公司 could refer to a partnership rather than a company with a separate legal personality. The lack of a formal partnership agreement, absence of GST registration and separate bank accounts were not material.[10]

Supreme Court decision

Mr Deng appealed. One ground, that the Court of Appeal should not have relied on dictionary translations was rejected with the Supreme Court stating the Court of Appeal was entitled to do this under s 128(2) of the Evidence Act 2006.[11]

In granting leave to appeal, the Supreme Court noted that language is used in a broader cultural and linguistic sense that courts may not be aware of and that courts must be sensitive to social and cultural context.[12] It invited the Law Society to intervene.

The Supreme Court held that the 31 March 2010 reconciliation document and the subsequent bi-monthly accounts signified a new partnership taking over with the ventures recorded in the accounts.[13] It held the internal accounts were authentic and Mr Deng's assertion that he did not have any input into the internal accounts was implausible given his spouse's role in their preparation.[14] The Supreme Court considered the internal accounts were authentic and represented the true nature of the venture.[15]

The Supreme Court noted that the contemporaneous documents were inconsistent with Mr Deng's evidence. This was not addressed in the High Court, presumably because of the trial judge's concern with the internal accounts and the finding in the High Court that the Principles in Separation document had not been discovered by Mr Zheng.[16]

The Supreme Court also considered the word 关系 (guānxi) which can be understood as "interpersonal connections" or "social capital" or "set of personal connections which an individual may draw upon to secure resources or advantage when doing business or in the course of social life".[17] An understanding of 关系 (guānxi) provided some support for Mr Zheng's case but it was not of critical importance for the Supreme Court as there was sufficient evidence from contemporaneous documents to make determinations.[18]

The Supreme Court made some general observations:[19]

- Cases where one or more parties have a cultural background which differs from that of the judge are common in Aotearoa New Zealand and are likely to become more so in the future.
- Judges should be alert (develop a mental red flag) to any cultural dimension that might be present and consider what should be done about it.
- In such cases, assessing credibility and plausibility on the basis of judicial assumption as to normal practice will be unsafe if that practice is specific to a culture not shared by the parties.
- Cultural and social evidence is not necessary in all such cases as other methods to assess credibility such as consistency of narrative over time and contemporaneous documents remain.

The Supreme Court made further observations in cases where it is appropriate to receive evidence as to the social and cultural framework.[20]

- It is open to witnesses to explain their own conduct by reference ot their own social and cultural background. Either of the parties here could have referred to 关系 (guānxi) by way of their own actions.
- Parties may explain the way in which the relationship played out by reference to the social and cultural framework in which they operated.
- There can be no objection to such evidence being supported by expert evidence or ss 128 and 129 of the Evidence Act which allow judges to regard sources of information of unquestionable accuracy and admit reliable published documents in relation to matters of public history, literature, science or art.
- If a witness wants to introduce social and cultural framework information to explain the conduct of another party rather than their own, there will likely need to be information as to cultural background.

The Supreme Court also commented that it would be inappropriate to assume parties have behaved in ways that are said to be characteristic of their ethnicity or culture.[21] People of a cultural or ethnic background should not be seen as a homogenous group.[22] The more generalised the evidence and the less it is tied to details of what happened, the greater risk of stereotyping.

The Supreme Court dismissed the appeal.

This case will be useful for family law practitioners who have cases where cultural elements are in play. It will be particularly helpful in assessing agreements and arrangements in disputes regarding trusts, companies and partnerships. It may be relevant in cases considering s 21H of the Property (Relationships) Act 1976. ■

1. *Deng v Zheng* [2022] NZSC 76.
2. *Deng v Zheng* above at n 1 at [19].
3. These factors are listed at [32] of *Deng v Zheng* above at n 1.
4. *Zheng v Deng* [2020] NZCA 614 at [87].
5. Mai Chen *Culturally and Linguistically Diverse Parties in the Courts: A Chinese Case Study* (Superdiversity Institute for Law, Policy and Business, November 2019).
6. *Deng v Zheng* above at n 1 at [88].
7. *Zheng v Deng* [2020] NZCA 614 at [89].
8. *Zheng v Deng* [2020] NZCA 614 at [97].
9. *Zheng v Deng* [2020] NZCA 614 at [90]-[100].
10. *Zheng v Deng* [2020] NZCA 614 at [105] and [108] – [109].
11. *Deng v Zheng* above at n 1 at [50].
12. *Deng v Zheng* [2022] NZSC 43 (footnotes omitted) at [1]-[2].
13. *Deng v Zheng* above at n 1 at [57].
14. *Deng v Zheng* above at n 1 at [59].
15. *Deng v Zheng* above at n 1 at [60].
16. *Deng v Zheng* above at n 1 at [72].
17. *Deng v Zheng* above at n 1 at [76].
18. *Deng v Zheng* above at n 1 at [76]-[77].
19. *Deng v Zheng* above at n 1 at [78].
20. *Deng v Zheng* above at n 1 at [79].
21. *Deng v Zheng* above at n 1 at [80].
22. *Deng v Zheng* above at n 1 at [81].

Casenotes

These cases contain publication restrictions: in accordance with section 125 of the Domestic Violence Act 1995, section 169 of the Family Proceedings Act 1980 and section 139 of the Care of Children Act 2004. Any report of these proceedings must comply with sections 11B to 11D of the Family Court Act 1980

CARE OF CHILDREN

H v Family Court at Whangārei

H v Family Court at Whangārei [2022] NZHC 1779, High Court, Whangarei, Harvey J, 22/7/2022

Administrative law – Judicial review – Grounds – Procedural fairness

Family law – Care of children – Parenting – Orders

Family law – Care of children – Parenting – Welfare and best interests of the child

Unsuccessful application by H for judicial review of FC decision as to care arrangements of 13 year old daughter (F); H and F's mother (M) separated when F was 10 months old; long history of court proceedings between H and M as to F's care; previously FC acknowledged H and M loved and cherished F and wished to be actively involved in her life; arrangement for shared care broke down between parents; H applied to have week-about arrangements resume in accordance with F's views; following year as school term resumed arrangement broke down again and warrant issued; F expressed preference to spend more time with M during term time but happy to spend time with H during school holidays; H claimed there had been parental alienation by M; FC did not agree M was sole cause of F resisting week-about care; FC did not find evidence of parental alienation by M; FC decided 'significant weight' should be given to F's views; views taken in context of what was in her welfare and best interests; FC made final parenting orders F should spend every second weekend with H during term time and week-about during school holidays; no warrant issued; on application for judicial review H argued FC decision (a) left 'a reasonable thinking person confused as to the merits of the matter and their application to the law', (b) made errors of fact in finding F was enjoying school and doing well, (c) acted ultra vires in concluding, without proper qualification, that M was not alienating F from her father, (d) breached natural justice, (e) showed pre-determination and bias by so heavily relying on views of F, (f) gave insufficient weight to some and incorrectly applied other provisions, (g) showed "Wednesbury" unreasonableness and (h) as a whole was flawed and without merit. Held, in essence H wished Court to reach different conclusion on what was best for F; that was question for appeal rather than judicial review; H had right to appeal but had chosen not to exercise it; no reviewable error in FC's decision; decision was reasonable and well explained; weight of evidence was matter for trial Judge; discretion and application of legislative provisions were questions for appeal; FC chose to give weight to F's views in their discretion; FC did not act ultra vires when commenting on H's argument F was being alienated; no breach of natural justice; no basis on which fair-minded lay observer would perceive pre-determination or bias; Care of Children Act 2004 (COCA) was a code; 2011 review of FC showed significant reliance on court professionals which had resulted in delays, damaging best interests of child and escalating costs; s 133 of the COCA imposed statutory threshold; if criteria met and Court knew parties wished to obtain report, in appropriate cases Court could order a report; reports were not default; parties encouraged to agree to appropriate parenting arrangements for sake of family and F's future; application declined.

Nichols v Mackie

Nicholas v Mackie [2022] NZHC 1334, High Court, Auckland, Hinton J, 10/6/2022

Civil procedure – Appeals – Determination

Family law – Care of children – Parenting – Orders – Final

Family law – Care of children – Parenting – Shared care

Unsuccessful appeal by N against Family Court (FC) judgment which made final parenting orders for child (A); A turned five not long before FC decision; FC made orders as to number of days A was to spend in care of her father, N; FC addressed whether there should be increase in time, what time A should spend with N during school holidays, management of handovers and whether continued use of supervisor/facilitator was necessary; A to spend five nights per fortnight with N and half time in school holidays; overall A would spend 39 per cent of her time in N's care; before FC N argued these arrangements should only be in place while A was five; N submitted there should be week-about care arrangement when A turned six; FC declined to make that order; long history of discord and court applications between couple who had had brief three month relationship in 2015; on appeal N argued FC (a) failed to give sufficient weight to N's evidence when it applied ss 4, 5 and 6 of the Care of Children Act 2004 (COCA) in determining whether 50:50 care arrangement would promote A's welfare and best interests, (b) did not indicate which s 5 COCA principles they gave weight to when dismissing N's proposal, (c) did not take into account evidence from parties, report writers and earlier judgments, (d) was overly influenced by views of one particular report writer, (e) was wrong to refer to M's conduct as gatekeeping and control, (f) was wrong to find order made would

allow parties to meaningfully contribute to A's care and (g) erred in law when lawyer to assist was not appointed; N submitted he had taken significant steps to ensure he was available for week-about shared care.
Held, in all circumstances it was appropriate that there was no lawyer to assist appointed; it would have made no difference to outcome of proceedings; with 39 per cent of A's care N was well placed to make meaningful contribution to her life; FC factored any concern regarding gatekeeping and control into orders made; FC correctly sought to ensure A was happy and comfortable with care arrangements; FC did not abdicate any responsibility to any particular report writer; FC carefully considered all s 5 principles; weight attached to evidence was matter for trial Judge to decide; FC would have been well aware of any changes N made to his lifestyle in order to better care for A; key issue remained best interests of A regardless of sacrifices either parent made; appeal dismissed.

FAMILY VIOLENCE

Logan v Paul

Logan v Paul [2022] NZHC 1729, High Court, Auckland, Muir J, 19/7/2022

Evidence – Application – To adduce further evidence

Family law – Domestic violence – Protection order

Family law – Domestic violence – Psychological abuse

Successful application by P to adduce further evidence on appeal; P and L were in brief domestic relationship P obtained protection order (PO) against L which she was said to have breached several times; L applied for PO against P and for PO against her to be discharged; Family Court (FC) declined L's application for PO and dismissed application for discharge of PO; L appealed, after the decision the sister of P's current partner received a message from L warning her about P's addiction to drugs and "incredibly dangerous" behaviour, L claimed her phone had been hacked by P who manufactured messages to bolster his claims.
Held, discretion exists to admit evidence which is "fresh, cogent and credible"; FC required to consider likelihood of future family violence including psychological abuse; psychological abuse includes communications with third parties comprising defamatory material that undermines the applicant's standing within family or community; evidence fresh post-dating decision of FC and credible from high profile third party; L previously messaged P's parents and other third parties so relevant to pattern of abuse; no evidence provided for hacking theory from MS; application granted.

Mitchell v R

Mitchell v R [2022] NZSC 89, Supreme Court of New Zealand, Glazebrook J, ORegan J, Kós J, 21/7/2022

Family law – Criminal law – Offences – Family violence (formerly Domestic violence) – Breach of order

Criminal procedure – Appeals – Leave to appeal – Supreme Court

Unsuccessful application by M for leave to appeal Court of Appeal (CA) decision; CA dismissed M's appeal against conviction and sentence on two charges of breaching a protection order and three charges of attempting to breach a protection order; M sought leave to appeal challenging (a) decisions of the Family Court making the protection order in favour of the victim and extending that order to include his wife, (b) admissibility of evidence relating to the transmission of relevant letter correspondence to the victim and his wife, production of the protection order in evidence and admission of propensity evidence and (c) verdicts on the basis of consent to contact by the victim; sought leave to appeal sentence on grounds that (a) Judge failed to take into account ss 8(g), 10A and 83 to 85 of the Sentencing Act 2002 (SA), (b) warnings should have been given to her that s 8(d) of the SA was being considered and (c) 'Minimum Period of Imprisonment and/or Cumulative Sentencing options were being sought by the Crown'.
Held, grounds intensely fact-specific and matters raised particular to M's case; nothing of general or public importance arose; application declined.

HAGUE CONVENTION

Cresswell v Roberts

Cresswell v Roberts [2022] NZHC 1265, High Court, Christchurch, Doogue J, 1/6/2022

Family law – Child abduction – Hague Convention

Family law – Child abduction – Return of child – Whether return of child would cause grave emotional or psychological harm

Family law – Domestic violence

Family law – Family proceedings – Appeals

Successful appeal by mother C and NZ citizen, against Family Court (FC) decision ordering return of six-year-old A and five-year-old B to France, their country of habitual residence, under s 105 of the Care of Children Act 2004 (COCA); C and father R, a French citizen, married in 2014 and settled in France; family lived half year in chateau in central France, where R ran business and C looked after A and B and

half year in south of France; C decided to seek divorce in March 2019, claiming R physically and psychologically abused her; A and B left France in August 2020 with C to visit NZ; C tried to return to France with A and B in April 2021, but were prevented from flying because they did not have negative COVID-19 test for A; C was unable to rebook, became tearful and stressed and returned to Christchurch to re-evaluate her position; in July 2021 FC in Perpignan, France issued interim judgment establishing A and B's habitual residence as France and granting care of children to R for 44 weeks of year; proceedings remained before FC in France; R sought to have interim French FC decision upheld under Hague Convention and orders implemented to ensure A and B's prompt return to France; C conceded jurisdictional grounds for return order under COCA made out but claimed A and B at grave risk of psychological harm, or otherwise placed in intolerable situation, if returned to France; C claimed A and B (a) were at grave risk of psychological harm through separation from her as their primary carer, (b) would be impacted by decline in C's wellbeing due to situation to which she and A and B would be returning, including domestic violence by R and (c) would be cared for primarily by extended family and not either parent for at least five months every year in France due to R's business commitments, despite R being awarded majority of A and B's care by French Courts; FC not satisfied that order for return would result in grave risk that would expose children to psychological harm or place them in an intolerable situation.

Held, affirmative defences under s 106(1)(c)(ii) of the COCA as essential to effective operation of Hague Convention as jurisdictional grounds based on assumption that return to child's habitual residence was in their best interests; no independent corroborative evidence of many allegations made by parties; Court would examine evidence to assess (a) any commonality, (b) appropriately qualified expert evidence (c) consistency/inconsistency and (d) inherent probabilities/improbabilities; Court had benefit of expert evidence from experienced psychologist, Mr Kelly (K), who had reviewed all relevant documents, interviewed both parties and spoken with A and B; K concluded up until October 2020 A and B had attachment bonds to both parents, C was primary carer responsible for most day-to-day care and A and B most likely to want to live with C as she had provided 'safe haven'; requiring A and B to be in R's care without ongoing contact with C likely to be distressing for A and B; FC Judge erred in underestimating importance of A and B's likely distress in being separated from C as primary carer and in assuming R would put protective measures in place to ensure A and B were in C's primary care on return to France; A and B had shown resilience to repeated separations from R but likely to be distressed by separation from C; FC Judge undertook no independent analysis of likely effect of R's absence for five months; sufficient evidence before Court that R engaged in pattern of physical violence and belittling conduct affecting C's mental health; expert evidence indicated C's PTSD likely to be triggered by return to France; appeal allowed.

ORANGA TAMARIKI

McHugh v McHugh

McHugh v McHugh [2022] NZHC 1174 High Court, Christchurch, Doogue J, 1/6/2022

Civil procedure – Appeals – Question of law

Family law – Guardianship – Special guardian

Family law – Guardianship – Specialist reports

Successful appeal by Ms, maternal grandfather and step-grandmother of child C, against Family Court (FC) decision declining special guardianship application; C's whakapapa, through Mr M and mother, was Waikato-Tainui and Ngāti Kahungunu; father's identity unknown; Oranga Tamariki (OT) involved in C's care since birth and Ms were granted interim custody order; C's mother made abuse and domestic violence allegations against parents, had history with Child Youth and Family Services, was described as immature and ambivalent about parenting and failed to address behavioural issues during residential supported parenting programme; C's mother had no contact since 2016 and C came into Ms' care in 2017; FC declined Ms' special guardianship application on grounds of concern that C's paternity was not established, impacting on her ability to give effect to 'whole child and respect the concept of mana tamaiti' under ss 5 and 7A of the Oranga Tamariki Act 1989 (OTA); FC Judge also concerned that limited access rights (twice per year) for mother and lack of practical support for access could be 'death knell' for relationship between mother and C and that, lacking cultural report, FC could fail obligations to ensure order aligned with tikanga Māori, mana tamaiti and te Tiriti o Waitangi principles; FC Judge concluded Ms could use other pathways for appointment as permanent caregivers/resolution of conflict over C's needs.

Held, appeal by way of rehearing; special guardianship protected parents from destabilisation of otherwise secure placement by obstruction, disruption, or refusal to engage; high threshold for applicants; s 113A of the OTA factors conditions precedent to Court's exercise of discretion but not definitive; establishing substantive grounds required identifying and evaluating all relevant facts, regarding subject child's best interests under ss 4 and 4A of the OTA, principles in ss 5 and 13 of the OTA and effect of order under s 113B of the OTA; appropriate applicable test re tamariki Māori saw guardianship as collective responsibility of whānau, hapū and iwi; 'least intrusive' guardianship order meeting needs of child should be made, usually under Care of Children Act 2004 (COCA); no difference in practical permanent caregiver support via special guardianship or COCA orders; OT Māori Design Group following Waitangi Tribunal OT inquiry found special guardianship provisions inconsistent with s 7AA of the OTA; tensions between legal status afforded by special guardianship, limiting role of others and OTA principles re tikanga Māori weighed heavily against special guardianship orders for tamariki

Māori but did not render one unavailable if in child's best interests on subjective evaluation of circumstances; language of OTA weighted toward honouring child's place in whānau and mandated Court and OT to take active steps to promote mana tamaiti, whanaungatanga and whakapapa in well-being and best interests of tamariki Māori; FC Judge entitled to find inadequate research undertaken to identify C's whakapapa; OT should have followed up information to establish paternity and ensure best efforts made to promote C's long term sense of identity and whakapapa; case remitted to FC to obtain cultural report and reconsider in light of report and current judgment; appeal allowed.

RELATIONSHIP PROPERTY

Little v Little

Little v Little [2022] NZHC 601 High Court, Auckland, Fitzgerald J, 29/3/2022

Civil procedure – Appeals – Determination

Family law – Relationship property – Contributions – Compensation for contributions made after separation

Family law – Relationship property – Economic disparity – Effects of the division of functions within the relationship

Partially successful appeal by JL against Family Court (FC) determination of dispute with CL re division of relationship property; unsuccessful application by JL to admit new evidence; JL and CL both had children from previous marriages and established careers before beginning de facto relationship in 2002 and marrying in 2003; parties had two further children; parties signed contracting out agreement in 2005 defining CL's home, in which family resided, as separate property; parties separated in 2011, reconciled in 2013 and finally separated in 2015; parties' marriage dissolved in 2018 and contracting-out agreement set aside; at date of hearing JL was 57, CL was 65 and their children were aged 17 and 14; FC Judge made awards in JL's favour under ss 15, 18B and 18C of the Property (Relationships) Act 1976 (PRA); JL claimed s 15 PRA award should have been higher as FC Judge erred in (a) calculating disparity, in halving it and in using percentage approach to reflect disparity only partly result of functions division during marriage, (b) failing to consider JL's contribution to CL's work during marriage by assisting him to prepare writer reports and (c) not reflecting ongoing benefits from work and superannuation schemes; JL claimed s 18B PRA award decision in error because it (a) failed to consider post-separation disadvantages to JL, (b) granted interest regarding interim distribution to JL but not on remainder of her share of property held undivided by CL, (c) did not reflect four-month gap for hearing to date of FC Judge's decision and (d) did not reflect CL's post separation retention of Kiwisaver and retirement schemes for which disclosure deducted; JL also alleged FC Judge failed to make orders requiring CL to provide verified evidence of income and assets and judgment included unnecessary sensitive information.

Held, while JL's new evidence regarding percentage increase in house prices was fresh, it was hearsay and not relevant to assessment of disparity, which was to be made at separation; JL's s 15 PRA claim only extended from separation to 2019 or July 2020; credibility matters were FC Judge's domain; on face of materials no obviously sinister aspects justified fresh inquiry into CL's income; CL did not suggest there was no disparity in parties' living and income standards at separation, or FC Judge's adoption of JL's assessment of that disparity; FC Judge correctly concluded parties' relationship not traditional as (a) both parties had established careers and earned similar incomes at start of relationship, (b) JL continued working as occupational therapist in both full time and part time capacities and (c) JL continued occupational therapy work after separation despite primary care of parties' children; however FC Judge erred in overestimating degree of disparity resulting from factors unrelated to division of roles; 15 per cent figure too small given JL's change to contract work was shared decision, JL carried main burden of childcare and not looking to make significant changes in working arrangements was reasonable immediately after separation; compensating disparity until June 2020 was appropriate; increase of $12,000 to FC award reflected JL's post-marriage income was significantly influenced by factors other than division of marriage functions and she had significantly longer period of working life than CL; FC Judge entitled to base s 18B PRA award on compensation for occupational rent and calculate award to date of hearing; experienced FC Judge was plainly satisfied she had appropriate information to make orders; appeal allowed in part.

This case contains publication restrictions: in accordance with s 35A of the Property (Relationships) Act 1976 any report of this proceeding must comply with ss 11B to 11D Family Court Act 1980.

Smith v Endean

Smith v Endean [2022] NZHC 1246, High Court, Auckland, Gardiner Associate Judge, 9/6/2022

Equity – Remedies – Constructive trust

Family law – Relationship property – Family home

Property – Real – Encumbrances – Caveats – Removal – By order

Wills, probate and administration – Executors and administrators

Unsuccessful application by S for order that caveat lodged against The Glebe, Cockle Bay, Auckland, not lapse; S and her late husband, Mr S, owned half shares in The Glebe as tenants in common and lived there for 45 years; Ss' relationship became difficult in later years, parties agreed to transfer property from joint tenancy to tenancy in common in equal shares and Mr and Mrs S moved out of The Glebe; Mr S established Fazakerly Trust (FT), with Ss' daughter and son-in-law as trustees and instructed E as his executor to prepare relationship property agreement; S received copy of proposed agreement but decided not to sign; Ss moved back to The Glebe after Mr S became ill; Mr S altered FT deed to make E sole trustee; Mr S died

shortly after making new will; Mr S's half share transferred to E as his executor; in new will Mr S specified residual estate, including his half share in The Glebe, to be transferred into FT for grandchildren's benefit; Mr S intended to make codicil leaving his half share to S in return for a sum of money, but was too ill to sign; E intended to sell The Glebe and transfer Mr S's half share of net profits to trust in accordance with Mr S's will; S did not agree to sale and wished to continue living in The Glebe, in which she claimed a life interest; E sought to apply to Court for order under the Property Law Act 2007; S lodged caveat to protect her interests and applied for order that it not lapse, opposed by E; S did not pursue claim against the estate under the Wills Act 2007 to validate codicil, or under the Family Protection Act 1955 (FPA), Property (Relationships) Act 1976 (PRA) or in equity as she did not want to deprive grandchildren; S thought status as discretionary beneficiary of FT would enable her to keep living at The Glebe; S lodged caveat after E informed her that if she did not agree to purchase estate's share or sell her own he would apply for sale order; grandchildren expressed support for S remaining in property for as long as she wished.

Held, only possible basis for sustaining caveat was under constructive trust; Ss were married at all relevant times and The Glebe was relationship property to be dealt with under the PRA not equitable principles; contributions S made were transactions between spouses in respect of property under s 4(1) of the PRA; contributions S made to preservation/enhancement of The Glebe were not contributions to Mr S's assets giving rise to constructive trust in her favour but to jointly owned relationship property; S's evidence of contributions to property unspecific but she had established arguable case she made more than minor contribution to maintenance of value of whole property, including Mr S's half share; even if S did expect Mr S to yield an interest in his share of The Glebe to her, this ran counter to reality of events and correspondence concerning separation and division of property; S acknowledged she was not beneficiary of FT and made no claims over its funds; idea of life interest appeared to have been suggested by S's solicitors; evidence pointed to Ss having agreed that property would be sold and net proceeds divide equally between them; order made that caveat lapse; application declined.

WILLS, PROBATE AND ADMINISTRATION

Kain v Public Trust

Kain v Public Trust [2022] NZSC 65, Supreme Court of New Zealand, O'Regan J, France J, Williams J, 24/5/2022

Civil procedure – Appeals – Leave to appeal – Supreme Court

Trusts – Administration – Applications to Court – Directions

Trusts – Classification – Express trusts – Family trusts

Trusts – Creation – Settlors – Intention

Unsuccessful applications by JK, Georgina Kain (GK) and others for leave to appeal Court of Appeal (CA) amendments to High Court (HC) directions concerning two discretionary trusts, Waitaha Trust (WT) and Middle Road Block Trust; both trusts formed part of Couper-Kain (C-K) network of trusts, companies and assets; PT appointed as trustee after HC directed original trustees were removed; beneficiaries were Mary Hutton, née Kain and her grandchildren, who benefited from WT and all K siblings and grandchildren, who benefited from both trusts; directions re WT concerned PT's recognition of principle of equality in trust deed, as far as reasonably able to do so consistently with duties as trustee; directions relating to both trusts indicated PT not obliged to consider what beneficiaries received from other C-K group trusts; further directions concerned consideration of wishes of settlor, Tom Couper; proposed grounds of appeal that CA erred in failing to remove proviso to equality principle and provision PT not obliged to consider what beneficiaries received from other C-K group trusts.

Held, all matters raised considered by CA and turned on particular facts and factual matters to be considered by P; while scope and meaning of s 21 Trusts Act 2019 might raise question of general or public importance, present case did not raise them; applications declined.

Ridley v Mulholland

Ridley v Mulholland [2022] NZHC 1007, High Court, Auckland, Gordon J, 12/5/2022

Property – Real – Possession

Property – Real – Valuation

Wills, probate and administration – Executors and administrators – Refusal

Wills, probate and administration – Executors and

My defence

When charged at birth with original sin,
I hired a lawyer to help me win.
My affidavit refuted the lie:
"I have no knowledge and therefore deny."

From that day to this, I've remained quite dumb;
lacking in knowledge is my rule of thumb,
my smartest move upon which I rely:
"I have no knowledge and therefore deny."

Those I encounter who'd bring me to book
are rightly repulsed by my innocent look.
Does Monday follow Sunday? I reply:
"I have no knowledge and therefore deny."

Whatever cause of action at me is flung,
I counter and respond in a civil tongue;
every allegation I flatly defy:
"I have no knowledge and therefore deny."

administrators – Rights, powers and duties

Successful application by R for orders to remove her brother M as co-administrator of estate of their mother, Jocelyn Mulholland (JM), and for vacant possession; JM left will appointing R and M as executives and trustees of her estate and providing for any residue to be divided between R, M and their brother Stephen Mulholland; main asset of estate was JM's home in Manurewa where M lived rent-free with JM before her death; JM signed reverse mortgage to Heartland Bank before death which was overdue for repayment, which R claimed could only realistically be repaid from property's sale; M acknowledged he had lived in property after JM's death without paying rent to estate; R sought orders, claiming M refused to co-operate in sale process; M opposed application.

Held, M's living rent-free in property breached obligations to beneficiaries as administrator and terms of reverse mortgage; reverse mortgage interest continued, compounding, while property remained unsold and M continued living there; beneficiaries entitled both to increase in capital value and rental income pending sale of property; as parties unable to agree fair value sale on open market, where M could make offer, only option; at best M's defence was that R did not respond to request for list and valuation of chattels stored in boxes at her home, although he knew contents of boxes and helped pack them; M appeared to act solely in own interest and effectively hold other beneficiaries to ransom; R's evidence indicated she would take all reasonable steps herself to wind up estate in orderly way; suitability, practicality and efficiency considerations supported granting removal application; vacant possession order appropriate; application granted. ■

CPD *Calendar*

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New Zealand Law Society

PROGRAMME	PRESENTERS	CONTENT	WHERE	WHEN
FAMILY				
PARTNERSHIPS BEFORE AND AFTER DEATH *1 CPD hour*	*Alice Nunn*	As each year passes, estate planning and administration seems to become more complex and litigious, and partnerships are often overlooked in the process. This webinar will enable you to identify and deal with partnerships during succession planning and estate administration. It will also help ensure that you understand the legal implications of a partnership in these situations and provide examples of how to address partnership issues following death.	Webinar	1 Sep
NO WILL – AN INTESTATE ESTATE *2 CPD hours*	*Theresa Donnelly* *Henry Stokes*	The death of a family member is an extremely stressful time, and this stress can be compounded when the deceased has died without a will. Even when there is a will, if gifts fail, there may be an intestacy or partial intestacy. The presenters will bring the subject matter to life with real world examples and discussion and will supply you with practical tools such as templates and checklists. They will adopt a practical approach that will help ensure that you are able to effectively guide your clients through the process of an intestate deceased estate.	Auckland Live Web Stream	15 Sep 15 Sep
RELATIONSHIP PROPERTY AGREEMENTS *1.5 CPD hours*	*Jodi Ryan* *Frances Williams*	Whether practitioners are advising a client before or during a relationship on a s 21 Contracting Out Agreement or advising them on a s 21A Settlement Agreement at the end of the relationship, personalised advice needs to be tailored to the client's situation. This presentation builds on a session first presented at the Wellington General Practitioner CPD Day in February this year. This webinar will take a practical approach in considering the do's and don'ts of drafting these agreements and help ensure that you are able to provide your client with robust advice.	Webinar	19 Sep
WILLS & ESTATES *2 CPD hours*	*Catherine Atchison* *Stephen McCarthy QC*	When clients are contemplating making their wills, the distribution of assets may make perfect sense to them, but issues can quickly emerge upon death. This seminar will take a practical approach in helping you make sense of the changing landscape and some of the key issues in this complex area.	Auckland Live Web Stream	29 Sep 29 Sep
RETIREMENT VILLAGE LIFE *1 CPD hour*	*Peter Carr* *Troy Churton* *Nigel Matthews*	AgedAdvisor New Zealand has dedicated the last seven years to helping thousands of prospective and existing residents navigate village life. The presenters will provide legal, village sector and resident-led experiences to enhance your ability to serve your clients. This webinar will adopt a practical approach in including consideration of, the four stages of village life; the key differences in village operators; what to look for in Occupation Right Agreements; and what residents wish their lawyers had told them.	Webinar	12 Oct
INTRODUCTION TO FAMILY LAW ADVOCACY AND PRACTICE *13 CPD hours*	*Judge John Adams* *Judge Hana Ellis* *Usha Patel*	"Connect the Pieces" – how to run a family violence/ interim parenting case from go to whoa. This is just the sort of case you are likely to handle now. In following through the case you will learn how to master the core tasks, methods, strategies and documentary and non-documentary procedures you need to know if you are to represent your client in a competent and professional manner. Put the jigsaw together and get the total picture. Through precedents, videos, a book of materials, and performance critique, this course, recommended by the Ministry of Justice, is sound, participatory and proven.	Auckland Wellington Christchurch	17-18 Oct 20-21 Oct 25-26 Oct