



NZLS CLE Ltd
Continuing Legal Education
New Zealand Law Society



INTENSIVE PRA – KEEPING AHEAD OF THE PACK

June 2022

**The “must attend” event
for PRA lawyers**

COMMENTS FROM PAST ATTENDEES:

*“This was the best intensive I’ve ever attended.
Each and every component was excellent...”*

*“This was an excellent day. All of the presenters
provided me with new and highly relevant
information for my work.”*

PRA – KEEPING AHEAD OF THE PACK

FROM THE CHAIR

6.5
CPD hours



Tēnā koutou

46 years have passed since the Property (Relationships) Act 1976 was enacted and it is 20 years since its provisions were extended to those living together as couples (but not married). It was, at its inception, much lauded as a new sort of “social legislation” both reflective of contemporary society and responsive to its fluidity. The essential scheme for the division of relationship property is now well-embedded in New Zealand’s social DNA – equal division of property reflecting the equal contribution of parties to a relationship. Yet around the edges of that broad and simple proposition legal battles continue to rage and the whole area of relationship property litigation continues, it seems, to expand exponentially (at least for those with the money to pursue the arguments that they regard as important). The initial flurry around compensation for economic disparity (s 15) may have passed and, in theory at least, the Supreme Court has had the last word on just where s 182 Family Proceedings Act 1980 fits in.

Yet still there is dissatisfaction and dispute. It would seem that the social equity goals underlying the Act are not being met. Hence the latest Law Commission review. And society continues to evolve so that, for example, the Supreme Court is now being asked to grapple with the issue of whether or not the Act was designed to extend to polyamorous relationships (and not merely confined to coupledness). I doubt that polyamory even crossed the mind of the legislators when crafting, and then refining, the statute.

In addition, problems associated with civil litigation have now firmly attached themselves to litigation under the Act, undeterred by the statutory admonition in s 1N of the Act to the effect that disputes should be resolved as inexpensively, simply and speedily as is consistent with justice. The chronic systemic delays in the Family Court are a further compounding issue.

The purpose of this programme is to highlight some of the contemporary issues and to provide, from practitioners of some note, insights and assistance.

Ngā mihi

Simon Jefferson QC

PROGRAMME

8.00-8.30

REGISTRATION

8.30-8.35

INTRODUCTION TO THE DAY: Chair – Simon Jefferson QC

8.35-9.35

SESSION 1: SECTION 182 CASES

A practical guide to running cases under s 182 of the Family Proceedings Act 1980 having regard to *Preston v Preston*. In this session, we will examine: the legal principles; the 3-stage process adopted by the Supreme Court; persuading the Court how to exercise its discretion (strategy and evidence); running the claim together with other proceedings; and the form of any orders.

Presenter

Stephanie Marsden

9.35-10.15

SESSION 2: LAW COMMISSION'S PROPOSAL TO REPLACE S 15 WITH FISAs

For better or worse? What are the implications of swapping discretions for a formulaic approach? Contracting out and issues practitioners need to be aware of.

Presenter

Jo Hosking

10.15-10.40

MORNING TEA

10.40-11.20

SESSION 3: REMEMBER WHEN PARLIAMENT ENACTED S 26?

A general exploration of the benefits of s 26 as an arrow in your quiver. This session will take you on the briefest of trips down memory lane back to the enactment of s 26, reflect on its utilisation/under-utilisation since that time, and consider why this ought to be an important aspect of relationship property resolution.

Presenter

Johan Niemand

11.20-12.20

SESSION 4: SETTING ASIDE AGREEMENTS - STILL TOO EASY?

This session will include an examination of the grounds for setting aside agreements entered into under the Property (Relationships) Act 1976, recent case law, and how best to protect your own agreements from such a fate.

Presenter

Jennie Hawker

12.20-1.05

LUNCH

1.05-2.05

SESSION 5: RELATIONSHIP PROPERTY AND CONTRACT LAW

Contracting out agreements are given special recognition in the Property (Relationships) Act 1976. But they are “agreements” and subject to ordinary contract law principles. This session will explore the interface between those general contract law principles and the special rules that apply to contracting out agreements under the PRA.

Presenter

Tim Rainey

2.05-3.05

SESSION 6: DISCOVERY, INTERLOCUTORY APPLICATIONS AND USE OF WITHOUT NOTICE PROCEDURES

A masterclass audience will already know most of the good and bad aspects of discovery in the Family Court but taking things from here towards reform, what would we change? Stephen will discuss existing problems with discovery in the Family Court and suggest how things might work in the interim before there is good reform. He will also discuss other interlocutory matters (“unless orders” anyone?) within the scope of discovery and with a wider view of what is needed in PRA cases.

Presenter

Stephen McCarthy QC

3.05-3.30

AFTERNOON TEA

3.30-4.25

SESSION 7: TWO PERSPECTIVES ON *REGAL CASTINGS*

In this session, Jan and John will strategically revisit *Regal Castings v Lightbody (Regal Castings)*, a case involving a debtor/creditor relationship where Jan was counsel for the successful appellant.

Perspective 1 - John Billington QC

John will argue that since *Ryan v Unkovich*, the courts have been misapplying *Regal Castings* when interpreting and applying s 44 of the PRA.

Perspective 2 - Jan McCartney QC

Jan will critique John's paper, focusing on the elements of the test for dispositions with intent to defeat, as identified in *Regal Castings*. She will discuss how the test applies to domestic relationships when there is a s 44 PRA application.

Presenters

John Billington QC

Jan McCartney QC

4.25-4.30

SUMMARY OF THE DAY - CHAIR: SIMON JEFFERSON QC

LEARNING OBJECTIVES

In this intensive you will be:

- Updated on topical issues, legislation and case law.
- Able to apply this knowledge in your practice.

WHO SHOULD ATTEND

Family and property practitioners at all levels of experience will benefit from attending. Commercial/trust lawyers of all levels who wish to upskill will also benefit from attending.

CHAIR



Simon Jefferson QC, Trinity Chambers, Auckland

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

PRESENTERS



John Billington QC, Shortland Chambers, Auckland

John has a very wide experience in all forms of litigation, and in particular, in trial work where he has acted as senior counsel in a number of nationally significant cases. He first commenced practice in a mid-sized litigation firm in Wellington where he later became the Senior Common Law Partner. John joined the independent Bar in 1989 and took silk in 1996.



Jennie Hawker, Haigh Lyon, Auckland

Jennie is a partner at Haigh Lyon and leads the firm's thriving and specialist family law team together with Amanda Donovan. Jennie has experience in all family law matters but now focuses her practice on relationship property matters. She is a contributing author to the Westlaw commentary on the Property (Relationships) Act 1976 and family law procedure.



Jo Hosking, Lakes Chambers, Rotorua

Jo has been in family law practice since 1999. Her work includes cases involving relationship property, deceased estates, PPPR and child law, including as Lawyer for Child.



Stephanie Marsden, Canterbury Chambers, Christchurch

Stephanie acts in relationship and trust property disputes involving complex asset ownership structures, and estate claims.

PRESENTERS



Stephen McCarthy QC, Barrister, Auckland

Stephen practises in family and civil litigation. He has a particular interest in property and estate disputes. Stephen has practised as a barrister since early 2006 and prior to that was a litigation partner in a Manukau City firm for over 20 years. He was convener of the ADLS Mental Health and Disability Law Committee 1991-1995 and Family Law Committee 2001-2003. Stephen has presented NZLS CLE seminars and conference papers on mental health, family and property law topics.



Jan McCartney QC, Barrister, Auckland

Jan has a practice in the areas of deception in commercial relationships, trust law and relationship property. She was counsel in a number of leading cases in these areas in the Supreme Court, Court of Appeal and High Court.



Johan Niemand, Niemand Peebles Hoult, Hamilton

Johan has practised predominantly in family law since his admission in 2005. He has particular interest in Family Court practice and procedure and is on the Executive Committee of the NZLS Family Law Section.



Tim Rainey, FortyEight Shortland Barristers, Auckland

Tim is an experienced commercial litigator who has a significant practice advising and representing parties and trust disputes, relationship property and related issues in the Family Court, High Court, and Court of Appeal.

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