

## PRESENTERS



### **Chris Kelly, Greg Kelly Law Ltd, Wellington**

Chris has over 30 years' experience as a lawyer specialising in trust and estate work. He is a co-author of the leading New Zealand legal text book on trusts: *Garrow and Kelly Law of Trusts and Trustees* (7th edition). Chris has also co-authored a number of other legal texts and publications and has presented a number of papers at NZLS CLE conferences over the years. He is one of the authors of the recent 5th edition of *Dobbie's Probate and Administration Practice*. Chris is a barrister and solicitor of the High Court of New Zealand and a member of the Society of Trust and Estate Practitioners.



### **Greg Kelly, Greg Kelly Law Ltd, Wellington**

Greg has over 30 years' experience in the wills, trusts and estate area. He is a member of the Wills and Trusts Committee of the NZLS Property Law Section, and of STEP and chaired the NZLS CLE Trusts Conference in 2009 and 2011. Greg is a contributor to *Butterworth's Law of Trusts*, probate and administration author for *McGechan on Procedure*, co-author of *Garrow and Kelly Law of Trusts and Trustees* (7th edition) and of *Dobbie's Probate and Administration Practice* (5th edition).

*The statements and conclusions contained in this booklet are those of the author(s) only and not those of the New Zealand Law Society. This booklet has been prepared for the purpose of a Continuing Legal Education course. It is not intended to be a comprehensive statement of the law or practice, and should not be relied upon as such. If advice on the law is required, it should be sought on a formal, professional basis.*

# CONTENTS

<b>1.</b>	<b>THE IMPLICATIONS OF <i>B V MINISTRY OF SOCIAL DEVELOPMENT</i></b> .....	<b>1</b>
	<i>Introduction</i> .....	1
<b>2.</b>	<b>GIFTING ARRANGEMENTS – THE LEGISLATION</b> .....	<b>3</b>
	<i>Giftling limits</i> .....	4
	<i>Gift duty</i> .....	4
	<i>What is a couple?</i> .....	4
	<i>Trust reversal</i> .....	5
	<i>Deprivation of income</i> .....	5
<b>3.</b>	<b>THE COURT OF APPEAL DECISION</b> .....	<b>7</b>
	<i>Legislative provisions</i> .....	7
	<i>Arguments by the applicant</i> .....	8
	<i>Retrospective legislation?</i> .....	8
<b>4.</b>	<b>DIFFERENT CIRCUMSTANCES, DIFFERENT OUTCOMES</b> .....	<b>11</b>
	<i>Scenario 1</i> .....	11
	<i>Scenario 2</i> .....	11
	<i>Scenario 3</i> .....	12
	<i>Parallel trusts</i> .....	13
	<i>Estates and wills</i> .....	13
<b>5.</b>	<b>LAWYERS’ POTENTIAL LIABILITY</b> .....	<b>15</b>
	<i>What advice was given?</i> .....	15
	<i>Will your clients be affected?</i> .....	16
	<i>Has there been any actual loss?</i> .....	16
<b>6.</b>	<b>WHAT SHOULD YOU DO NOW?</b> .....	<b>19</b>
	<i>Review your files</i> .....	19
	<i>Send out a standard letter to clients who are affected</i> .....	19
	<i>Should you notify your insurer?</i> .....	20
	<i>How do you advise clients in future?</i> .....	20
<b>7.</b>	<b>CONCLUSION</b> .....	<b>21</b>