

## Chair



### **Barbara Collis, Barrister, Opotiki**

A barrister sole since 1999, Barbara was formerly a partner in Potts & Hodgson Solicitors. She specialises in criminal and family law, taking a particular interest in issues that affect children and young people. Since 1986 she has been appointed as counsel for child, and counsel to assist, and as youth advocate from 1989. She is on the Executive Committee of the Family Law Section.

## Keynote Speakers



### **Mark Henaghan, Professor of Law and Dean of the Law Faculty, University of Otago**

Mark is the joint author of *Family Law Policy in New Zealand* (2002), *Family Law in New Zealand* (2004), and Butterworths *Family Law Service* (Butterworths LexisNexis). He is co-author of the titles *Relationship Property* (Brookers 2001) and *Relationship Property on Death* (Brookers 2004). His most recent book, *Relationship Property on Death* co-authored with Nicola Peart and Margaret Briggs, won the 2005 JF Northey Memorial Award for the best published legal book. Mark has written the first book on the new Care of Children Act – *Care of Children* (LexisNexis 2005) and has also published a wide range of articles nationally and internationally with a strong emphasis on children's position in relation to the law. Mark has presented NZLS programmes on *Relocation*, *Children's Rights* and *Counsel for the Child*. He is the lead investigator of a major research project sponsored by the New Zealand Law Foundation to look into the regulatory implications of human genome based technologies.



### **Professor Ian Pool, Professor of Demography, University of Waikato**

Professor Pool has either taught or worked in a research capacity in Australia, Ghana, England, Canada, United States, and New Zealand. He has had consulting missions for the United Nations and bi-lateral agencies across Africa, Asia and the Pacific, and most recently, in early 2005, for the United Nations Population Fund in Namibia. He has also held positions with the Scientific Committee on Age Structures and Policy, the International Union for the Scientific Study of Population; as the Honorary Scientific Consultant, Comite international pour la cooperation des centres de recherche demographique; and on a Panel on Scientific Capacities, International Council on Science. He has published in excess of 140 scientific books, monographs, papers and chapters in academic works; and more than 20 research/consulting reports. He currently has a co-authored book on the history of the New Zealand family under editorial consideration.

## Overseas Speaker



### **Dr Ian Freckelton, Barrister, Melbourne**

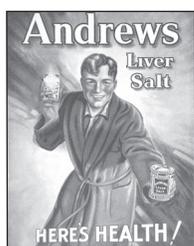
Ian specialises in medico-legal cases, criminal law, compensation law and administrative law. He holds honorary appointments as a professor at Monash University in law, forensic medicine and forensic psychology. Ian is the lawyer member of Victoria's Medical Practitioners Board and Psychologists Registration Board, as well as being a member of Victoria's Mental Health Review Board and Teachers Disciplinary Board. He is the Vice-President of the International Institute of Forensic Studies and a board member of the Australian Institute of Public Health Law and of the Australian and New Zealand Institute of Health Law and Ethics. He is currently a consultant to the Australian and Victorian Law Reform Commissions which are reviewing Australia's evidence laws. Ian was awarded life membership of the Australian and New Zealand Association of Psychiatry, Psychology and Law of which he was the President between 1991 and 1997. He is the co-author of *Expert Evidence: Law, Practice, Procedure and Advocacy* (Thomson, 2005) and is the editor of the *Journal of Law and Medicine* and the *Journal of Psychiatry, Psychology and Law*. He is an international editor of the *New Zealand Journal of Family Law*. Ian is the author of some 30 books on health law, evidence law, criminal law, coronial law, policing, causation, sentencing and therapeutic jurisprudence.

## Speakers



### **Janina Adamiak, Clinical Psychologist, Auckland**

Janina graduated from Auckland University in 1989 and works in private practice in Auckland. Janina's clinical experience includes adult mental health; child, adolescent and family therapy; care and protection assessments and interventions; head injury rehabilitation and Family Court assessments. She also provides supervision and training for other professionals on a regular basis. Over recent years Janina has noticed an increasing demand by Family Court lawyers wanting to improve their skill base in the areas of interviewing children and the interpretation of psychological data. Consequently, she has begun to focus her practice on the emerging importance of the interface between psychology and the law, especially in light of the increasing demands upon all Family Court professionals to be "psychologically minded". This is a very exciting area of research and practice which Janina intends to work in, with a range of Family Court professionals.



### **Bruce Andrews, Bruce Andrews Lawyers, Palmerston North**

Bruce has practised in Palmerston North for the last 33 years. He has five children (now spread far and wide) and two grandsons. He specialises in family law and was a founding member of the NZLS Family Law Committee (as it then was). He enjoys tramping, land yachting, doing up his 1970 trailbike and travelling, especially to India.



**The Hon Justice Raynor Asher QC, Auckland**

Raynor has practised, published and presented in all areas of civil litigation and family law. He has been on a number of related Auckland and national committees, and is a former President of the New Zealand Bar Association and the ADLS. He is frequently involved in appeals from the Family Court.



**Bill Atkin, Reader (Associate Professor), Faculty of Law, Victoria University of Wellington**

Bill has written extensively in family law, including *Living Together without Marriage: The Law in New Zealand* and *Relationship Property in New Zealand*. He is co-editor of *Family Law Policy in New Zealand*, contributing editor of Butterworths *Family Law Service*, and *Fisher on Matrimonial and Relationship Property*, as well as an author for the *Laws of New Zealand* and the *International Encyclopaedia of Laws*. He is the editor and a contributor to the International Society on Family Law's *International Survey of Family Law*. He was a member of the Justice Department Working Group whose 1988 report on *Matrimonial Property and Family Protection* recommended many of the changes in the 2001 property and inheritance reforms. In 1990 he chaired the Ministerial Adoption Practices Review Committee and was one of two members of the Ministerial Committee on Assisted Reproductive Technologies, which reported to the Minister of Justice in 1994. The Human Assisted Reproductive Technology Act 2004 is in part based on recommendations in the Committee's report.



**Stewart Bartlett, Senior Legal Advisor, Department of Child Youth and Family**

Stewart has worked as a lawyer for Child, Youth and Family since 1990. He is presently the senior legal adviser for the Department. Not surprisingly, he specialises in child-related law, especially the CYPF Act 1989. He has presented papers on wardship, trans-Tasman co-operation, and the CYPF Act itself at various conferences in New Zealand and at the World Congress.



**Inger Blackford, McVeagh Fleming, Auckland**

Inger has been in practice for more than 11 years and specialises in all areas of family law, with experience both here and in the UK. Inger has a particular interest in relationship property with an international aspect. Inger is a member of the NZLS FLS Standing Committee on International Family Law Issues, and is the New Zealand representative on the LAWASIA Family Law and Family Rights Committee.



### **His Hon Principal Family Court Judge Peter Boshier**

Judge Peter Boshier is the Principal Family Court Judge of New Zealand. He was a litigation lawyer in Wellington before being appointed to the District Court Bench specialising in Family Court in 1988. In 1997 he was also appointed as a Youth Court Judge. He has worked extensively in the area of child offending and also management of the Family Courts. In 2002 he was seconded as a Judicial Fellow to the Pacific Judicial Education Programme based in Suva and upon returning from that position in December 2003 was appointed Principal Judge of the New Zealand Family Court. Judge Boshier has a strong interest in judicial education and is committed to ensuring an efficient and accessible Family Court.



### **Margaret Briggs, Senior Lecturer in Law, University of Otago**

Margaret has taught in the law faculty at the University of Otago since 1989. She teaches in criminal and family property law. Her research interests are in the same fields. She is the editor of the Otago Law Review and is a regular contributor to the criminal law section of the *New Zealand Law Review*. She is a co-author and general editor of *Relationship Property on Death* (Brookers, 2004) and *Relationship Property: Consolidated Legislation and Analysis* (Brookers, 2001).



### **Gray Cameron, Barrister, Auckland**

Gray commenced practice as a barrister sole in 1999. He is a past council member and vice-president of the ADLS and a former NZLS council and executive board member. He was the founding chairman of the NZLS Family Law Committee and a member of the Foundation Executive Committee of the Family Law Section. He was a member of the NZ Law Foundation from 1994 to 2005, and chairman from 1998 until early 2005. Gray is a member of the Family Law Section, and of the Family Law Section of the Law Council of Australia. In 2000 he was elected by invitation as a Fellow of the International Academy of Matrimonial Lawyers and in 2002 he became a Governor at Large of the Academy. He co-presented the NZLS seminar *Case Management in the Family Court* in 1993. He has also presented at the Australian Law Conference in 1989, at the Sixth National Family Law Conference in Adelaide in 1994 on *The Hague Convention on the Civil Aspects of International Child Abduction – Order or Chaos?* and at the NZLS Family Law Conference in 1995.



### **Anita Chan, Barrister, Dunedin**

Anita is a family law barrister based in Dunedin. She graduated from Otago University and has over 20 years' experience. Anita is a former chair of the NZLS Family Law Section. She is currently a member of the NZLS CLE board. Anita is a regular guest lecturer in family law at the University of Otago.



### **Vivienne Crawshaw, Gubb Mitchell Crawshaw, Auckland**

Vivienne has focused primarily on family law in the last eight years. She is on the Counsel for Child Panel and has appeared as counsel in recent high profile cases in both the High and Family Courts involving interpretation of the Guardianship Act. Vivienne has made presentations to the Institute of Judicial Studies and for LexisNexis and she is a contributor to the ADLS *Legal Practice Manual*, updating the relationship property section. She is a Member of the ADLS Family Law Sub-Committee and was part of the working party for the Family Law Section on the Care of Children Bill. Vivienne is a regular columnist for the NZ Herald, presenting articles to the public on family law issues. She co-presented the NZLS seminar *Without Notice Applications in the Family Court* in 2004 and in the same year presented a paper to the 2004 IBA Conference entitled *Children for Same Sex Couples*. Vivienne's practice includes seven years working for community law centres in Auckland, the remainder being spent in private practice. She is now the family law partner at her firm.

### **His Hon Judge Paul Geoghegan, Rotorua**

Judge Geoghegan was a partner in the firm of Norris Ward in Hamilton for 16 years prior to his appointment to the Bench in 2003. He practised in the areas of family, employment and civil litigation, was a member of the Counsel for Child Panel and a member of the Waikato / Bay of Plenty District Law Society Disciplinary Committee. He is married to Denise and has two sons Finn 15, and Liam 11. His favourite hobbies are bog snorkelling and cheese rolling.



### **Lope Ginnen (nee Heath), Barrister, Auckland**

Lope commenced practice as a barrister at Halcyon Chambers in April 2005. She was a partner at KAM Legal (formerly King Alofivae Malosi) and before then worked both in private practice and at the Grey Lynn neighbourhood law office (a community law centre). Her practice comprises mainly family law and, in particular, counsel for child work. Lope is currently a director of Housing New Zealand and a member of the Executive Committees of Preventing Violence in the Home and the Pacific Lawyers Association. She is a past member of the Auckland Women Lawyer's Association Executive and the ADLS EEO Sub-Committee and was part of the working party for the Family Law Section on the Care of Children Bill. Lope is of Samoan and New Zealand Pakeha descent. She and her husband have two children and she has a teenage stepdaughter in England.



### **His Hon Judge Gregory Hikaka, Rotorua**

Greg was appointed to the Family Court Bench in November 2004. Prior to his appointment to the Bench a significant focus of his practice was counsel for child and youth advocacy work. Before entering private practice Greg was a police legal adviser closely involved in inter-departmental negotiations concerning the CYPF Act and the development of police policy and training.



**Deborah Hollings, Barrister, Auckland**

Deborah specialises in domestic property disputes and structures. Her practice particularly entails more complex cases, often including company and family trust interests. She has appeared as counsel in numerous reported decisions in this area, including as leading counsel for the wife in *Z v Z*. Deborah is the author of *For Richer or Poorer* (CCH 2001) the best selling handbook on domestic property and estate law, and has written numerous articles. She has presented seminars for the NZLS, the ADLS and other organisations and has delivered papers at numerous conferences.



**Acting Chair: Simon Jefferson, Shieff Angland, Auckland**

Simon heads the Shieff Angland family law team and has extensive experience in all areas of family law. He is a seasoned presenter of seminars and conference papers for the NZLS.



**Lynda Kearns, Barrister, Auckland**

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



**Greg Kelly, Gillespie Young Watson, Lower Hutt**

Greg is a partner in his firm and has 25 years of experience in the wills, trusts and estate area. He is a member of the Wills and Trusts Technical Committee of the NZLS Property Law Section, a contributor to *Butterworths Law of Trusts* and co-author of the 6th Edition of *Garrow and Kelly's Law of Trusts and Trustees*. He has presented papers at many NZLS seminars and conferences and for other organisations.



**Nigel Latta, Clinical Psychologist, Dunedin**

Nigel is a clinical psychologist who has worked for a number of years as a specialist report writer. He has particular expertise in the area of forensic psychology and the assessment and management of risk. He currently works in private practice based in Dunedin and consults with a range of statutory organisations from throughout the country including the Family Court, CY&FS, and the Police.



**Kathryn Lellman, Ronayne Hollister-Jones Lellman, Tauranga**

Kathryn has a busy and specialist family law practice with a particular emphasis on relationship property, counsel for the child and Hague Convention work. She has been a member of the Waikato/Bay of Plenty Family Law Committee for a number of years.

**Her Hon Judge Jane McMeeken, Christchurch**

Judge McMeeken was appointed a Family and Youth Court Judge in 1999. Prior to that she was a partner in a Nelson law firm practising in family and criminal law.



**Dugald Matheson, Gifford Devine, Napier**

With 25 years' experience, Dugald has practised in the Family Court since its birth. He has a special interest in child care matters. He has been a member of a number of child-focused community organisations. A long time member of the NZLS Continuing Legal Education Committee (as it was then), he is currently convener of the Family Law Section Legal Education Sub-Committee. He was a co-presenter of the NZLS seminar *Relocation Cases* (June 2000).



**The Hon Justice John Priestley, Auckland**

John Priestley was appointed to the High Court Bench in 2000. He took silk in 1994. At appointment he was the Chair of the NZLS Family Law Section Executive. His appointment to the Bench curtailed a 28 year commitment to family law which commenced when he attained a doctorate in the matrimonial property area from the University of Virginia. A graduate of the University of Auckland and Cambridge, he was at various stages the Chair of the Deportation Review Tribunal, Deputy Chair of the Refugee Status Appeals Authority and a Chair of the Film Censorship Board of Review. Justice Priestley is a strong supporter of the Section and one of its initiators and founding members. He has been a strong advocate of improving the status of the Family Court and family law generally.



**Gabrielle Wagner, Barrister, Auckland**

Gabrielle has practised family law for 17 years, as a barrister for the past five. She has received counsel for child appointments for nine years. Gabrielle has been a member of the ADLS Family Law Sub-Committee and an executive member of the Family Courts Association and Domestic Violence Centre.

# CONTENTS

## In session order

### Opening address

Principal Family Court Judge Peter Boshier (*Attached as Appendix 1 at page 347*)

### Family vulnerability: The relative effects of external and engogenous factors on family functions

Professor Ian Pool (*Attached as Appendix 2 at page 355*)

### **Dos and don'ts in the Family Court..... 1**

His Hon Judge Paul Geoghegan and Her Hon Judge Jane McMeeken (*Additional paper handed out on the day, attached as Appendix 3 at page 371*)

### **To have and to hold (onto) – Keeping separate property separate ..... 7**

Bruce Andrews

### **To have and to hold (onto) – Keeping separate property separate ..... 19**

Anita Chan

### **Strategies for financial support ..... 35**

Kathryn Lellman and Gabrielle Wagner

### **In trusts we trust or do we? ..... 83**

Deborah Hollings

### **In trusts we trust ..... 117**

Greg Kelly

### **International property issues ..... 131**

Inger Blackford and Gray Cameron

### **What are your options when the judge gets it wrong? ..... 163**

The Hon Justice Raynor Asher QC

### **The High Court's appellate role and appellate advocacy ..... 173**

The Hon Justice John Priestley

<b>The Property (Relationships) Act 1976 and death – “The dangers of dying”</b> .....	185
Margaret Briggs and Lynda Kearns	
<b>The disparity in economic disparity – The need for a full-scale overhaul of ss 15 and 15A and maintenance</b> .....	207
Bill Atkin	
<b>The impact of the Care of Children Act 2004 on family law practice</b> .....	227
Mark Henaghan	
<b>Risk assessment</b>	
<i>No papers</i>	
<b>Involving children in the Family Court</b> .....	263
Janina Adamiak	
<b>Involving children in the Family Court</b> .....	269
His Hon Principal Family Court Judge Peter Boshier	
<b>Some observations on acting for parents where Child Youth and Family is concerned</b> .....	283
Stewart Bartlett	
<b>Role of counsel for parties in care and protection cases</b> .....	293
His Hon Judge Gregory Hikaka	
<b>The role of lawyer for the child – Expectations, confusions and shibboleths</b> .....	303
Simon Jefferson	
<b>Lawyer for the child – Who am I?</b> .....	317
Dugald Matheson	
<b>The shape of families in the new era</b> .....	325
Vivienne Crawshaw and Lope Ginnen (nee Heath)	
<b>Appendix 1</b>	
<b>Opening address</b> .....	347
Principal Family Court Judge Peter Boshier	

<b>Appendix 2</b>	
<b>Family vulnerability: The relative effects of external and endogenous factors on family functions.....</b>	<b>355</b>
Professor Ian Pool	

<b>Appendix 3</b>	
<b>Dos and don'ts in the Family Court.....</b>	<b>371</b>
His Hon Judge Paul Geoghegan and Her Hon Judge Jane McMeeken	

# TABLE OF CONTENTS

## Alphabetical by author

Author		Title	Page
<b>Adamiak</b>	Janina	Involving children in the Family Court	263
<b>Andrews</b>	Bruce	To have and to hold (onto) – Keeping separate property separate	7
<b>Asher QC</b>	The Hon Justice Raynor	What are your options when the judge gets it wrong?	163
<b>Atkin</b>	Bill	The disparity in economic disparity – The need for a full-scale overhaul of ss 15 and 15A and maintenance	207
<b>Bartlett</b>	Stewart	Some observations on acting for parents where Child Youth and Family is concerned	283
<b>Blackford</b>	Inger	International property issues <i>(Joint paper with Gray Cameron)</i>	131
<b>Boshier</b>	His Hon Judge Peter	Involving children in the Family Court	269
		Opening address <i>(Attached as Appendix 1)</i>	347
<b>Briggs</b>	Margaret	The Property (Relationships) Act 1976 and death – “The dangers of dying” <i>(Joint paper with Lynda Kearns)</i>	185
<b>Cameron</b>	Gray	International property issues <i>(Joint paper with Inger Blackford)</i>	131
<b>Chan</b>	Anita	To have and to hold (onto) – Keeping separate property separate	19
<b>Crawshaw</b>	Vivienne	The shape of families in the new era <i>(Joint paper with Lope Ginnen)</i>	325
<b>Geoghegan</b>	His Hon Judge Paul	Dos and don'ts in the Family Court <i>(Joint paper with Her Hon Judge Jane McMeeken)</i>	1
		<i>(Additional paper attached as Appendix 3)</i>	371

<b>Author</b>		<b>Title</b>	<b>Page</b>
<b>Ginnen</b> (nee Heath)	Lope	The shape of families in the new era <i>(Joint paper with Vivienne Crawshaw)</i>	325
<b>Henaghan</b>	Prof Mark	The impact of the Care of Children Act 2004 on family law practice	227
<b>Hikaka</b>	His Hon Judge Gregory	Role of counsel for parties in care and protection cases	293
<b>Hollings</b>	Deborah	In trusts we trust or do we?	83
<b>Jefferson</b>	Simon	The role of lawyer for the child – Expectations, confusions and shibboleths	303
<b>Kearns</b>	Lynda	The Property (Relationships) Act 1976 and death – “The dangers of dying” <i>(Joint paper with Margaret Briggs)</i>	185
<b>Kelly</b>	Greg	In trusts we trust	117
<b>Lellman</b>	Kathryn	Strategies for financial support <i>(Joint paper with Gabrielle Wagner)</i>	35
<b>McMeeken</b>	Her Hon Judge Jane	Dos and don’ts in the Family Court <i>(Joint paper with His Hon Judge Paul Geoghegan)</i>	1
		<i>(Additional paper attached as Appendix 3)</i>	371
<b>Matheson</b>	Dugald	Lawyer for the child – Who am I?	317
<b>Pool</b>	Prof Ian	Family vulnerability: The relative effects of external and endogenous factors on family functions <i>(Attached as Appendix 2)</i>	355
<b>Priestley</b>	The Hon Justice John	The High Court’s appellate role and appellate advocacy	173
<b>Wagner</b>	Gabrielle	Strategies for financial support <i>(Joint paper with Kathryn Lellman)</i>	35