

# The Family Advocate

Autumn 2026  
VOLUME 27 ISSUE 3



AUTUMN 2026

VOLUME 27 ISSUE 3

ISSN 2324-5085



ABOVE: Te Awamutu Courthouse

📷 Emily Stannard

*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 **17th April 2026**

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# From the Chair

BY RICHARD SMITH

**K**ia ora, as I write this, 2026 is well underway. I trust you have all had the opportunity to take a well-earned break, to relax and spend time with family and friends and at least a few days of summer sunshine! 2026 promises to be another relentless year for family lawyers around the country. Te Au Reka is due to be implemented in the Family Court this year, and the number of legislative changes that have either come into force, are coming into force, or are on the horizon in 2026 is significant.

The Evidence (Giving Family Violence Evidence in Family Court Proceedings) Amendment Act 2025 will come into force on 26 February 2026, amending the Evidence Act 2006 to provide additional protections for vulnerable witnesses, particularly those giving evidence about family violence. In addition, on 17 February 2026 the Victims of Family Violence (Strengthening Legal Protection) Legislation Act 2025 came into force, aiming to strengthen the Court's statutory powers to protect victims of litigants' abuse in Family Court proceedings. CLE presented a webinar on 3 February in respect to these two updates and if you missed it, it is still available to purchase on the CLE website [lawyerseducation.co.nz/shop/On+Demand+CPD/Evidence+and+Family+Violence+What+Practitioners+Need+to+Know+2026++On+Demand.html](http://lawyerseducation.co.nz/shop/On+Demand+CPD/Evidence+and+Family+Violence+What+Practitioners+Need+to+Know+2026++On+Demand.html)

Also expected to be enacted this year are the new Mental Health Act, the new Surrogacy Act and the extension of Family Court Associates' jurisdiction.

The Family Law Section has some good seminars and webinars coming up over the next few months, in particular a webinar on the use of the Family Court Rules presented by Judge Catriona Doyle, FCA Rachel Lohrey and myself on 26 February, and a three-session webinar series on professional supervision in your practice by Tyson Walters and Nazmeen Rasheed on 17 March, 29 April and 26 May. The article



in this edition on professional supervision and family law: an invitation to think differently, is an excellent read!

The executive has just attended its first meeting of the year in Christchurch. This was the last executive meeting for our deputy, Andrew Finnie, who has served two three-year terms on the executive. Andrew has been on the executive since 2020. His efforts over this time have been significant and all of us on the executive will miss him. Most importantly, who is going to criticise the way I dress and bring the requisite level of doom to a conversation?!

Nominations for the three vacancies on the executive on 31 March opened on 5 February and will close on 27 February. If more than three nominations are received, an election will be held, with those results being available on 30 March. The new executive will meet on 10 April in Wellington.

At our meeting in Christchurch, the executive has updated guidance for those FLS members who volunteer to be our representatives on the appointment and review panels for court-appointed counsel and we will be circulating that to those members shortly.

We have all noticed the unwillingness of the Family Court to fund more than a few sessions of professionally supervised contact, resulting in more emphasis on finding whānau or friends to supervise contact of a child. Executive members have drafted some guidance and a brief agreement for a lay person who is asked to provide supervised contact. We will be discussing this at our next meeting with the Principal Family Court Judge and hoping to make that information available shortly.

The executive has also contracted Kathryn Dalziel to provide a legal opinion on what court-appointed counsel can do with information they receive from Police, Oranga Tamariki and other agencies or third parties in respect of any privacy obligations. We have asked for this advice as we are aware that variable practice has developed among (mainly) lawyer for child around the country as to what they do with the information they receive. Some summarise that information in their report to the court, others attach a copy of the information to their report, some ask counsel for the parties whether the information they hold can be put before the court by consent, and others send a copy to the lawyers for the parties seeking an undertaking from those lawyers that they will hold that information privately. We have also asked Kathryn Dalziel to review and update the opinion (if required) she provided to us some time ago on disclosure of lawyer for child files. Following receipt of this opinion, we hope to offer any updates to members via a webinar.

In our last edition we included the winning article of our essay competition. In this edition, second place, Charlotte Love's, essay is included. Nice work Charlotte and see you tomorrow at work.

I hope all of you have got back into the swing of things for the year and take care to look after yourself and your colleagues. ■

# From the Editor

BY EMILY STANNARD

**N**gā mihi o te tau hau. Nau mai, haere mai ki te tānga ngahuru ki *Te Advocate*. Welcome to 2026, and I hope everyone had a restful break. In this edition, our featured interviewee is Beth Bowden. It was awesome talking with her about her very interesting career, particularly babysitting the suffragette petition!

As happens almost (every) February, any wellbeing goals have very much been replaced by too much caffeine and not enough sleep and wondering why I am so wired all the time. Speaking with Hannah Reuben, Regional Manager at Oranga Tamariki about practising well was a good opportunity to focus on what is most important. Speaking of very important things, this edition includes photos of the Family Law Conference dinner! The costumes as always, were impressive. The North Shore and South Auckland family bars also shared photos of their Christmas functions.

In our last edition, we featured the winning essay from the inaugural FLS essay competition. There were so many great essays that we could not just print one. In this edition, we have the runner up, Charlotte Love's, article on communication assistance in the Family Court. It is definitely worth a read.

Our February FLS executive meeting was Andrew Finnie's last. Andrew has been on the exec since 2020, and it has been

wonderful working with him during that time. I have really appreciated his encouragement over the years. Nominations are open for the FLS executive, and if there are more than three nominations, an election will be held. A recent bulletin was released setting out the nomination process.

The FLS advisory panel is a core group of the FLS who give up their time to provide advice and write submissions (often at very short notice). We have included their biographies.

There have been several interesting cases in the last few months. The PLS provided a thorough summary of the Court of Appeal decision in *Walter v Rimmer*<sup>1</sup>, which we have included in this edition. Leave to appeal has been granted by the Supreme Court and the NZLS has been granted leave to intervene. The FLS and PLS are working on the submissions for this. In *B v S*<sup>2</sup> the High Court allowed an appeal against a decision allowing a mother to relocate with the child. The Family Court decision focused on the benefit to the parent in moving. The High Court noted that the proposal to move lacked detail and was imbalanced in its focus on the needs of one parent. The case is a good reminder of the need for thoroughness in proposals to relocate and keeping ss 4-6 of COCA at the forefront. *C v Family Court at North Shore*<sup>3</sup> has procedural implications for our practice. The High Court



considered an application for judicial review of a direction that a self-represented party read a s 132 report at the registry. The High Court held that the reports were to either be released to a self-represented party, or counsel to assist be appointed to take the party through the report. In *Selak v Goodwin*<sup>4</sup> the High Court provided a thorough discussion on the requirements needed in an application that a caveat not lapse.

The FLS will shortly be presenting a webinar on the benefits of professional supervision. We have included an article setting out the different functions of professional supervision. It is a great way to enrich practising in family law.

I hope you all enjoy this edition, and that 2026 has started well for you. Thank you again to everyone who contributed to this edition.

Noho ora mai,  
Emily ■

1. *Walter v Rimmer* [2025] NZCA 374.
2. *B v S* [2025] NZHC 1221.
3. *C v Family Court at North Shore* [2025] NZHC 4011.
4. *Selak v Goodwin* [2025] NZHC 3203.

## Section membership brings you *more*.

Membership to one Section is included within your annual subscription.  
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## Plain Language Awards



**T**he FLS and Moretalk Communication Assistance were finalists in the Plain Language Awards for Best Plain Language Technical Communicator. These were nominated for the Easy Read resources which explained the role of lawyer for child and section 101 custody orders. These were done as part of the FLS's effort to make family law information clearer and more accessible. The FLS Chair, Richard Smith attended the awards ceremony at Parliament on 30 October and it was a privilege to celebrate among other advocates for plain, inclusive communication. Congratulations to the winners and all other finalists for their outstanding work in promoting plain language across Aotearoa. The FLS was honoured to be recognised among such talent! ■



## A South Auckland Christmas

**O**n 21 November 2025, the South Auckland FLS hosted an end of year social event at Broadway Lounge in Papakura. South Auckland Judge's, Judge Goodwin, Judge Wagner, Judge Sharkey and Judge Laurenson were in attendance along with many members of the local bar. In true South Auckland fashion, the evening involved good food and beverages, a great atmosphere and lots of laughter. It was an excellent reminder of the collegial and supportive South Auckland family law community. FLS executive member Paul Muller spoke on behalf of the FLS and wished everyone a merry Christmas and safe holiday. The evening was the perfect send off from a busy year for the South Auckland bar. ■



# Education Advisory Panel Biographies



Vanessa Curac

## **Vanessa Curac** *Auckland*

Vanessa has been practising for 24 years, and currently works in the Family, Youth and District Courts in South Auckland. Vanessa has employed a junior barrister for the last two years, and this year, a law clerk. She has enjoyed teaching and mentoring them, as well as providing work experience and observations to some final year law students in her practice.



Theresa Donnelly

## **Theresa Donnelly** *Auckland*

Head of Legal, Perpetual Guardian. Theresa has over 30 years' experience in law across private practice, government law, policy and legislation and the trustee industry. Theresa has experience as an official in advising select committees, instructing Parliamentary Counsel Office and in Elder Law (advising Senior Citizens and Older People's Policy).

Theresa is a recognised expert in Elder Law (in addition to Trusts, Wills and Estates) and regularly presents for the New Zealand Law Society, TLANZ, CCH, Legalwise and other professional organisations. Theresa has been a member of the Expert Advisory Group for the Law Commission and is a member of TLANZ Committees and is called to assist with Property Law Section panels (advising on modification orders during Covid and more recently the changes to probate thresholds).

Theresa is responsible for oversight of the independent appointments that Perpetual Guardian holds (over 100 property manager appointments at any one time). Theresa is a mother of two wonderful girls and gives back via He Ira Wahine (the University of Auckland mentor programme).

## **Adele Dubarry** *Palmerston North*

Adele is a barrister by profession, having been admitted to the Bar in the UK in 1995, and in Australia in 2003. Upon her return

to Aotearoa New Zealand in 2019 she was admitted to the New Zealand High Court pursuant to the TTMRA 1977 and became an Accredited Family Dispute Resolution Provider in July of that year.

She has considerable experience in family law matters, having practised almost exclusively in family law throughout her legal career. Her work consisted of both children's issues and property division matters for private clients. She was also preferred counsel for the Legal Services Commission (Legal aid Adelaide Australia) in the role of Independent Children's Lawyer, as well as for private clients for the Commission.

She was a member of the Professional Development Focus Group for Resolution Institute in 2021 and 2022. She has some experience as a board member, having sat on the Board for Central and Eastern Districts Domestic Violence Service (Adelaide) for two years, and was a Board Member for Artist Open Studios Whanganui for two years.

In her other life, Adele has an art practice, painting abstracted landscapes in oils, charcoals and pastels. She is currently the President of the Marton Arts and Crafts Society where she gets to indulge in all things artistic and bask in the glow of some very talented local creatives.

## **Caitlin Fidler-Smith** *Otago*

I am a junior barrister based out of Princes Chambers in Ōtepoti. I practise family, mental health and criminal law, and provide contracting legal services to local senior barristers. I have a particular interest in how the law responds to disability and illness, and I look forward to being a part of the FLS education advisory panel.

## **Andrew Finnie** *Auckland*

Originally from the South Island, I have practised in both the provincial South and North Islands prior to many years



Adele Dubarry



Caitlin Fidler-Smith

practising in South Auckland. Now based in central Auckland, I work between my office and back yard to maintain good work life balance.

I have a broad practice including both party based and court-appointed work with a special interest in the field of at risk adults. I act as lawyer for subject person, lawyer for care recipient, lawyer to assist, mental health lawyer and act as counsel under the Substance Addiction (Compulsory Assessment and Treatment) Act. I previously also acted as lawyer for child for many years. I have an extensive private practice within the elder law arena and receive regular instructions from the health sector. I have presented at various health sector seminars and other conferences including the advanced lawyer for child course and have presented at seminars relating to mental health and protection of personal and property rights matters.

I was elected to the FLS executive in 2020 and have completed a 6-year term on the executive.

### **Taina Henderson** *Auckland*

Taina is a family lawyer specialising in relationship property and spousal maintenance. She returned to Henderson Reeves to set up their Auckland office in 2016 after cutting her teeth working at Chapman Tripp, Masons UK in Dublin, and then stepping into child rearing and Playcentre in Auckland.

Taina loves demystifying, detangling and detoxing the legal processes following a separation, and started podcast Divorce Café to help people going through a separation, and because she really wanted to hear the war stories of her hero lawyers, judges and mediators, as inspiration to keep on battling.

Taina loves travel and speaks French, Spanish, Italian and some te reo Māori. She lives with her family and various animals on a lifestyle block in Muriwai.

### **Deb Inder** *Central Otago*

Dr. Deborah (Deb) Inder is a highly respected professional in the field of family law and mediation. With over two decades of experience, she has made significant contributions to the New Zealand family justice system. Deb is an accredited NZLS Family Specialist Mediator and a member of the FLS. Her expertise in mediation lies in child-focused mediation, where she deals with issues surrounding the care of children and guardianship disputes. Deb also undertakes private relationship property mediation. Deb has contributed to the academic field through her publications for the New Zealand Family Law Journal and the *Family Advocate*. She is a frequent face at seminars, conferences and online webinars having presented numerous times both nationally and internationally to lawyers, mediators and the judiciary.

Deb conducted the child participation stocktake for the Ministry of Justice in 2002: a report that evaluated children's participation practices within the New Zealand family justice system, making recommendations that led to the development of the role of Child Specialists in FDR.

Deb has recently spent a year as Principal Advisor on Judicial Education working at Te Kura Kaiwhakawā | The Institute of Judicial Studies within the Office of the Chief Justice. Her specialist areas were Youth and Family Court, and she was responsible for working closely with the judiciary and judicial education committees advising on curriculum content development and design for judicial educational programs.

### **Simon Jefferson KC** *Auckland*

Simon Jefferson KC is a family law specialist with more than 40 years' experience who graduated from the University of Auckland, spending several years working overseas before returning in 1981. He is enrolled as a solicitor in England and



Andrew Finnie



Taina Henderson



Deb Inder



Simon Jefferson KC



Angela Kershaw



Jochebed Mabazza



Colette Mackenzie



Brigid Mclean

Wales. In New Zealand he joined Shieff Angland Lawyers where he spent 24 years, 21 of those as a partner. Simon joined the independent bar in 2006 and became a Queen’s Counsel (now King’s Counsel) in 2013. He retired from active practice in June 2024. He has had extensive involvement with Law Society’s legal education programmes and the FLS, including terms on the FLS executive. He was made a life member of the FLS in 2024.

**Angela Kershaw**  
*Whakatāne*

Angela is a Director of Hamertons Lawyers Ltd, a mid-sized provincial law firm based in the Eastern Bay of Plenty. Angela has specialised in family law for over 20 years. Angela is a member of the New Zealand Law Society Panel of Mediators, a FLS regional representative and is on the FLS Law Reform Advisory Panel. As well as having a special interest in complex relationship property, trust and estate disputes, Angela is a senior lawyer for child, lawyer for subject person, and lawyer to assist, and receives appointments from the NZ Central Authority pursuant to the Hague Convention on International Child Abduction.

**Jochebed Mabazza**  
*Auckland*

Jochebed is a proud Filipino migrant who serves her community everyday as a practitioner at the Auckland Community Law Centre. She comes from a family of educators and understands the power and impact of learning. Outside of her interests in family, immigration and employment law, Jochebed is also a legal educator in her team. She is passionate about making her knowledge and experience accessible to the wider community and does so by providing Auckland organisations and individuals opportunities to attend free legal education sessions. Jochebed is honoured to work with this panel to assist the FLS in delivering education for its members and is excited for the opportunity to contribute to the profession.

**Colette Mackenzie**  
*Wellington*

Colette Mackenzie is a director at Greg Kelly Trust Law in Wellington. She has extensive experience in all aspects of trust law, advising clients on the use of trusts and wills in the context of asset planning. She has particular expertise in dealing with the treatment of trust property on the division of relationship property. Colette is also a contributing author to the 8th edition of Garrow and Kelly’s Law of Trusts and Trustees and Thomson Reuters’ NZ Guide to Trusts.

**Brigid Mclean**  
*Palmerston North*

Brigid has more than 25 years’ experience as a litigator mainly in the family law area. She finished a law degree from Victoria University and worked in private practice for several years in the Family Court and the Criminal jurisdiction. She is an accredited FDR mediator, lawyer for child, lawyer for subject person, lawyer to assist the Court and also works as a Voice of Child for FDR mediations. This type of work has always held strong interest for Brigid, and she was for many years a senior solicitor at Oranga Tamariki specialising in the area of child protection. Brigid’s working life has been about her commitment to her clients, helping them by reaching resolution whether by negotiation or through litigation. She has appeared in District, Family, Youth and High Court proceedings and has a special interest in providing legal education and mentoring other lawyers.

**Vicki Nathan**  
*Hutt Valley*

Vicki Nathan is a director of Nathan Law Ltd and has resided in Lower Hutt for over three decades, raising her five children. All her children are grown and independent, with two children living in Perth and two of her 6 grandchildren, the remainder living in New Zealand, with a third daughter also moving to Perth this year. Vicki travels annually to Perth to ensure she remains as active as she can with her children and grandchildren

living abroad. Embarking on the journey of tertiary studies came later in life for Vicki, who completed her LLB in her early forties. Following graduation, Vicki worked in Lower Hutt with a strong focus on family law. Vicki has practised in Lower Hutt since admission in 2005, representing parties as well as being an approved lawyer for child, lawyer to assist and legal aid provider. Vicki specialises in all areas of family law, including care of children, family violence, Oranga Tamariki and relationship property.

Vicki is the Lower Hutt representative on the Wellington Branch of the Law Society, also sits on the Legal Aid selection committee and is the lawyer representative attending LFJSN meetings. As the Hutt Valley representative for the Law Society's Wellington branch, Vicki feels lucky that this role allows her the ability to ensure that the Hutt Bar experiences collegiality through organising events, including well supported Bar dinners. Vicki is looking forward to this new role as a member of the FLS Education Advisory Panel.

### **Usha Patel** *Auckland*

Usha is a family law practitioner with over 35 years' experience. She practises as a barrister covering all areas of family law and a mediator. Usha is a former member of Auckland Women's Lawyers Association. She also served on the FLS executive committee for many years and has been on several committees for the ADLS. She is a faculty member of litigation skills and has been a long-standing co-presenter on the well-known CLE course - Introduction to family law advocacy.

### **Nicola Peart** *Otago*

Nicola Peart ONZM is a professor emerita of law at Otago University. Since her formal retirement in 2020, she has remained actively engaged in research in the areas of family property law, succession law and trusts. She has published widely in these areas and is the principal author and editor of *Brookers Family Property*, published by

Thomson Reuters, which includes regularly updated commentary on the PRA, Trusts and the succession statutes. She was also a member of the expert advisory groups to the Law Commission for its reviews of the Property (Relationships) Act, Succession Law and Trusts. She presents regularly at conferences to the legal profession.

### **Nazmeen Rasheed** *Auckland*

I have been practising family law for 17 years. I was born and bred in Auckland and am of Indo-Fijian ethnicity.

I am a barrister at Halcyon Chambers in Auckland and practice in all areas of family law with a particular interest in COCA, FV and relationship property. I regularly appear as lawyer for child, lawyer to assist the court, particularly in cases involving intricate legal and cultural issues. I am on the panel of Hague lawyers and am a current legal aid provider.

I have served on the FLS executive for five years: appointed for two years to the diversity seat before being elected until March 2028. Before this, I was a FLS representative for the Auckland Central region for five years. My particular area of focus on the executive has been on education for family lawyers, and I am pleased to have been appointed as part of the FLS education advisory panel.

### **Josh Smith** *Nelson*

Josh Smith is a solicitor at Glasgow Harley, specialising in all areas of family law. An Otago University graduate, he adopts a collaborative and resolution-focused approach, with extensive experience working on legally aided matters and complex, sensitive cases. Josh has a keen interest in professional education and the development of practical skills that enable family lawyers to practise with confidence and effectiveness. Outside of work, Josh is actively engaged in the local hockey community, coaching the Federal Premier Men's team in Nelson, and enjoys spending time with his family.



Vicki Nathan



Usha Patel



Nicola Peart



Nazmeen Rasheed



Josh Smith



Richard Smith



Gabrielle Thompson



Jennifer Wademan

### **Richard Smith** *Invercargill*

I am a barrister based in Invercargill. I was admitted to the bar in 2005 and practised as a lawyer in a wide range of areas until becoming a family and criminal barrister in 2018. I am an approved and active lawyer for child and a youth advocate. I have been a council member and President of the Southland Branch of the New Zealand Law Society for six years. I am an executive member of the Family Law Section and currently chair of the FLS.

### **Gabrielle Thompson** *Auckland*

Gabrielle is a Senior Associate at Lane Neave specialising in family litigation. She has experience across all areas of family law, with particular expertise in complex relationship property matters and litigation involving trusts and estates. She has been privileged to learn from exceptional lawyers throughout her career and looks forward to contributing to the profession wherever she can.

### **Jennifer Wademan** *Wellington*

Jennifer is an experienced litigator and family law expert with an extensive international family law practice. Jennifer began her career as the Judges' Clerk to the Principal Family Court Judge, before advising the New Zealand Government in anticipation of its United Nations examination on the implementation of the UN Convention on the Rights of the Child. For more than a decade she has been a practising family lawyer and has successfully led cases in all areas of family law from international relocations, surrogacies and adoptions to complex relationship property and estate cases. She has appeared in courts at various levels throughout New Zealand and is regularly appointed as lawyer for child.

### **Janine Williams** *Auckland*

Janine Williams is a family law barrister based in Pukekohe and admitted to the Bar in 2001. She obtained her LLM degree with First Class Honours from the University

of Auckland in 2024, focussing on family law research around relocation law, mandatory mediation in relationship property disputes, and without notice Family Court procedures. Janine's practise areas focus on the Care of Children Act, Oranga Tamariki Act, Family Violence Act, and the Property (Relationships) Act. She acts as lawyer for child and lawyer to assist and continues to represent both legally aided and privately funded clients, particularly those facing vulnerability or mental health challenges. Janine contributes to the legal profession as a volunteer with the New Zealand Law Society, assisting with approvals for lawyers practising on their own account and enjoys supporting younger colleagues and strengthening the practice of family law through education and mentorship.

### **Jane Zohrab** *Auckland*

Jane Zohrab is the principal of Jane Zohrab Family Law and a Base Lawyer at Base Law. Jane has significant experience in working as a family lawyer in both New Zealand and Australia. She has diverse experience including working in family violence within a specialist community-based centre in Melbourne, Australia, and teaching legal skills at the National University of Singapore from 2014-2016. Jane is dedicated to promoting equity and access within family law. She is one of the volunteer Tupu Ora lawyers for the North Shore Family Court legal advice service. She is deeply interested in enhancing family law practice, including through collaborative approaches, and on how technology and artificial intelligence are shaping the legal field. Jane served on the committee for Collaborative Resolution on NZ during 2022 and 2023. She is a current member of the Law Association, the NZ Law Society, Family Law Section, AWLA, Collaborative Resolution on NZ, the International Association of Collaborative Practice (IACP), and the Aotearoa Divorce and Separation Institute (Affiliate Member).

### **Robyn Zwaan** *Wellington*

Robyn works in family, criminal law, and the Waitangi Tribunal and has experience

in civil matters. She is also a lawyer for child, youth advocate and lawyer to assist. She has experience in a number of different types of matters across the areas she practises in and works with a wide range of clients. Robyn is a legal aid provider in Waitangi Tribunal, civil, family, and criminal (PAL 1). She studied at Victoria University of Wellington and grew up in Thames, Coromandel, and has Dutch ancestry. Robyn uses she and her pronouns. ■



Janine Williams



Jane Zohrab



Robyn Zwaan

## North Shore Christmas Function

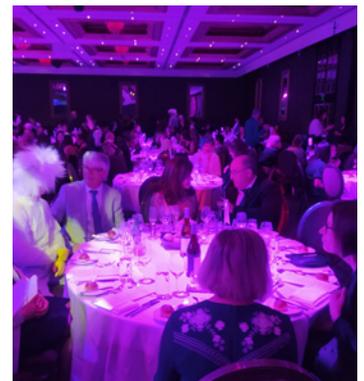
BY JADE COOKSON

**O**ur North Shore Family Court brought the end of last year to a close with drinks and nibbles at Fantail & Turtle in Takapuna at their Christmas celebration. Her Honour Judge Partridge’s speech, thanking everyone for another great year with a special shoutout to the Court registry, was warm and heartfelt. Looking forward to getting back into the swing of things in 2026! ■



## Family Law Conference

**T**he 2025 Family Law Conference was held in Tāmaki Makaurau Auckland from 15-17 October. The conference was extremely well attended, with around 450 attending in person and another 60 attending online. Particular highlights included presentations on drug testing from Dr Anna Sandiford and the changes coming with Te Au Reka from Judges Black and Pidwell. The keynote presentation by Dr Julie McFarlane on the 21<sup>st</sup> Century Family Law Client - Challenges and Opportunities was extremely useful for practice. The breakout sessions covered a wide range of topics from mediation to appeals to tikanga, to spousal maintenance and the Hague Convention. Having law students attend the conference was wonderful. The conference dinner, as always, was very, very fun. The theme was Back to the Future and the costumes were out of this world. ■



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MCLAREN STREET. IF  
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SECURITY TO  
ALLOW ENTRY.

# Beth Bowden

Beth has had a varied and interesting career. She has worked at the Court of Appeal and was the manager of the District Court at Tauranga Moana. She also was instrumental in establishing Baywide Community Law. She shares some highlights of her career with us.

## Where did you grow up?

I grew up in Tauranga in Te Puna. I went to school there until I was about 9, and then I went to Tauranga Primary School, then onto Tauranga intermediate. I then rejoined my Te Puna cohort and attended Otumoetai College.

## You've had a really interesting career, where did you study?

Left Otumoetai and went down to Victoria University in Wellington. I did a conjoint degree in English and History. I left university intending to be a teacher and did a year of teacher college training, but at the end of that year I decided teaching was not for me. I bumped into Simon Arnold at the end of the terrace and said I need a job. I decided to enroll for a law degree because the kind of degree I have had taught me to read and write and even 5-year-olds can do that, so I thought I needed some technical skills. He said go and see the graduate liaison officer who said to go and see the Treasury because they are always keen on people with your sort of degree, or the State Services Commission is also keen.

## Where was your first job?

I went to both places, and the State Services Commission, in those days, was in the Reserve Bank Building which was a lot more glamorous than the grimy, post war, Stout Street environs of the Treasury, so I opted for the State Services Commission, which at that stage managed the private lives of public servants. In the course of that exercise, where I was assigned as a

Specialty Area the legal occupational class but I didn't ever really get to grips with it because a job at parliament came up. Within 6 months I had become the first woman clerk of the journals and records in the clerks office at parliament, which was extrinsic to the public service. It was a prerogative department, called the legislative department. Another woman had made it to the clerks office ahead of me, Adrienne von Tunzelmann, who has become a lifelong friend

I remember feeling that this is a very good place for me, I felt at home, I was intrigued, I was fascinated by the history, I loved being the clerk of the journals and the records, I had the cellars of parliament as my domain, I would look around in the stacks down there and look at old papers. I had the women's suffrage petition in a box under my desk for years, because, before I arrived at parliament, we had lent it to the Waikato museum for a display, and I suspect it got bundled up in brown paper and string and they sent it back in a beautiful purpose-built box. I was very fearful that if it went back into the cellars no one would know what it was, so I kept it under my desk for years until we reorganised the cellars and we got an accession list going.

Adrienne and I could not resist having a look at it, so we unscrewed the lid and took it into the chamber, and unrolled it on the floor, which is very much a replication of what they did the first time around, so we had a little peek at the last few pages of the petition to see what it was like.

## Did you have any other jobs before you went to the Court of Appeal?

I work it by babies. My first child, Eleanor, was parliament baby, and then I left there and got a job at Consumer. I had completed my law degree at this stage and done my professionals, which meant, because I did it in small bites, I did law with almost everybody in town, because it went on and on and on.

I worked for a couple of years at Consumer Magazine, writing and researching, and then I got shoulder tapped writing speeches for Geoffrey Palmer, in that Labour Government. Then I got a wonderful job that I really enjoyed at the government printing office, it was called Manager Official Publishing. It was basically the other side of being clerk of the journals. Instead of keeping things in cellars, I was getting official publications out to the world at large, it was a marketing job. When the government printing office was put up for sale, everyone was taken aback and uncertain as to their future, but a job came up back at parliament. The legislative department had been reformed under Geoffrey's stern gaze, and the office of the clerk had been separated out from a new invention called the parliamentary service. I applied for and got a job as Deputy General Manager at the Parliamentary Service. I crossed again across Molesworth St and headed back into the halls of power.

I had parliament baby, Anne, through then. I finished working there in 1997 when Anne was nine years old.

### What did you do next

After a period of looking for a job, I got a job at the Court of Appeal. I was registrar, which was very different from being deputy general manager of Parliament, because running the Court of Appeal was like changing an orchestra for a string ensemble. There was 7 of everything, 7 judges, 7 judge's associates, 7 judge's clerks and 7 office staff

I was at the Court of Appeal until 2002 when a job at the Tauranga District Court came up. My parents were not getting any younger, they were still living in our farmhouse but on a much diminished piece of the farm and they were running out of money and needed support. So after a FGC I suppose you'd call it, I applied for the job at the District Court and moved back up to Te Puna with my youngest daughter Anne and she went to school at Otumoetai College. We settled in a "tree house" in the garden. The "tree house" was big enough to include snooker room! Anne and I lived there while she went to school and I went to work. My husband and I bought half the property, that helped my mum and dad's financial situation, and everybody adjusted accordingly. I had the fun stuff of changing the string ensemble of the Court of Appeal to the opera house of the District Court. It is exactly like an opera house, there are the divas, the chorus line, the people who construct the set, the audience, the public, the critics, the people who clap on requirement, the registry staff, the clerks.

### Highlights of each courts?

The Court of Appeal was very attractive because it was a cloister, it was like working in an Oxford College, it was quiet, it was dry, it was quite intellectual, you had the sense of intellectual energy circulating around which I really enjoyed. You can get institutionalised, it was good to swap it for the hurly burly of the District Court. What I liked about the District Court was that day to day you never knew quite what to expect. I have to say, I had started to feel quite confined at the Court of Appeal, it was a small, constrained atmosphere. I much preferred the larger scale of parliament

**“The Court of Appeal was very attractive because it was a cloister, it was like working in an Oxford College, it was quiet, it was dry, it was quite intellectual, you had the sense of intellectual energy circulating around which I really enjoyed”**

and the District Court. You're in the city and very much part of the public gaze in a small town, which is quite different from the public gaze in a national institution because there are always places to hide, but not so much in Tauranga.

### You also managed Baywide Community Law, what was that like?

I'd taken no interest in Tauranga for 30 years while I lived in Wellington. I loved Te Puna and have always loved Te Puna, but Tauranga was just a place to get the groceries. Coming back here, I knew everything about the town provided it happened 30 years ago, and I had to learn the new place. I was very astonished to discover that a modern, developing fast growing city didn't have a community law centre. I decided that this would not do. Jane Greenhill, who was the Family Court Coordinator at the Court, said she was fed up not getting lawyers for family violence cases and we need to do something about it. She and I formed a working committee with Atiria Armstrong, the manager of the women's refuge centre. Atiria thought there had been earlier efforts to develop a law centre. Two previous efforts had failed because the emphasis on funding for the law centres was on lower decile areas than Tauranga was perceived to be.

Because I had relearned Tauranga because I'd been 30 years out of it, I knew there were areas of deprivation in Tauranga that were masked by spurious glamour. I spoke with the person who administered the funds for the Community Law Centre. They said okay Tauranga can have a law centre but you get married to Whakatāne, our policy has been focused on the Eastern Bay of Plenty for a very long time. Because I was running the District Court, Whakatāne was part of my rohe, and it actually fell into place relatively easily.

That's one of the reasons why it was called Baywide. We joined up with CAB here and in Whakatāne, and wove together a trust, the personnel of which came from both ends of the bay, and it is still functioning. I certainly was able to get the thing up and running, but I could not have done it without all those other people, and I have not mentioned all the names, the people in the CAB. I bumped into one at a concert a few months ago and we fell into each other's arms, we are all enormously proud of it. It has had the usual struggles that all community law centres seem to have, poorly funded, overworked, but it's a cherished jewel in my time in Tauranga's crown.

At one point, after I retired from the court, they had a gap in their management structure, so I managed the organisation for 6 months on contract.

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

I don't have a best part, I liked the manner of leaving it. I had been given the job I'd wanted, which was to be the good witch of an organisation. After restructuring, it meant the Ministry of Justice decided I was not the kind of court manager they wanted in their organisation. I negotiated a position, at a pleasant to have salary, as National Technical Advisor, and that was how I spent the last 2 years of my time in the Ministry with 3 other colleagues who we clicked with and were a very fun team and very capable and very knowledgeable and the national technical advisors became the go to place for an astonishing range

and type of enquiries that counter staff had faith in us. They would ring us up and say we've got a one of these, or here's this woman who says she wants to get married in NZ but told me she's already married to a member of a hill tribe on the border of Burma and Laoe and doesn't have the papers, and we four colleagues knitted our brows about this because it was an ethical issue as to what you do with information about bigamous marriage that has no evidence. I'll leave it to the family lawyers reading this article to work out what they would do in such circumstances.

### What have been some of the most challenging parts?

Some of the most challenging parts were dealing with injustice of one kind or another. That's in some cases the ordinary micro-brutalisms of working in bureaucracies and that is something you just have to come to terms with, but it doesn't mean you have to like it.

The second thing was watching, and this was more of a privilege than a challenge but also had its moments, watching the way power is administered. I was lucky to see the way legislative power was exercised in my time at Parliament, and then by accident of timing I would be at the Court of Appeal and see laws that were passed during my time at Parliament being minutely considered by the clever fellows on the Court of Appeal. This was before the Supreme Court, so it was a definitive examination of the way that power was exercised, and Sir Ivor Richardson and his colleagues had a completely different

kind of power that they had to exercise. Sometimes you had to think, I don't know that that was what was meant at all. It was an interesting thing to be an observer of, not a participant in.

### What are you doing at the moment?

The Wheel of Karma has turned, and I am heavily involved in being the volunteer committee clerk for the People's Select Committee on Pay Equity.

I was horrified in the way the measure was put through, and when I heard that Marilyn Waring was convening a committee I was extremely eager that it should be the sort of committee that I thought and knew that she wanted, it needed to be something recognisable in terms of process and capacity as a select committee. The fact that it is a self-selected committee was, you can't deny, but in every other respect the 10 former MPs she assembled to work on this issue have all adhered to the standing orders and processes of the house, striving for consensus in the select committee. There are disagreements, which is what standing orders and speaker's rulings are for, but when there are such issues to resolve, that is where they are prepared to look. It is not just making it up as you go along. So, I brushed up my McGee on Procedure in the New Zealand parliament, and have been taking part, once again as a committee clerk, as an observer in the hearings, at the moment we are in the deliberation stage. In due course a report will be created and released to the public. My last public act. After this I will retire and be the kind of

literary lady that I wanted to be all along. I've got a history of the Te Puna Quarry to write, and I'm editing the blog for the Tauranga Historical Society.

### What do you do in your spare time?

I write a history of the Te Puna Quarry and edit the Tauranga Historical Society blog. I'm on the building committee for the Te Puna Rugby Sports and Cultural Club. I'm also trying to be conscientious, but ultimately I'm unsuccessful in that, but I am the Te Puna community archivist, looking after and looking out for collections of papers relating to Te Puna. We have a tiny room in the corner of the Te Puna Memorial Hall which is dedicated to keeping these records safe.

You have a choice in historical thinking, and this is not my thought, it is Paul Davis' thought, he wrote *The History of Poland* in two volumes and in his introduction he said, a history can be written on the back of a matchbox or in 10 volumes, I have chosen 2. And that's true. I think I'm the sort of historical thinker that likes world systems, and large questions to follow. I'm very fond of Fernand Braudel's writing and I'm currently reading a wonderful book called *The Dawn of Everything* by David Wengrow and David Graeber, they are large scale historians. Since I have not the scholarship, nor the time, nor the inclination to write big fat books, I specialise in the tiny little wedge of country that lies between the Wairoa River on the East and the Te Puna River on the West and that's why I think of myself as a historian of Te Puna. ■

## FLS Essay Competition Runners Up

In our last edition we published the winning essay from the inaugural FLS essay competition. There were so many great entries, that we could not just publish one so, in this edition, we have the essay from Charlotte Love, first runner up. Her essay on communication assistants was

well structured, insightful and very easy to read. It is a good reminder for us to turn our mind to communication assistants. I hope you enjoyed reading it as much as I did! ■

1. *Mead v Paul* [2023] NZSC 70.

# Improving Access to Justice: The Case for communication Assistance in the Family Court

BY CHARLOTTE LOVE

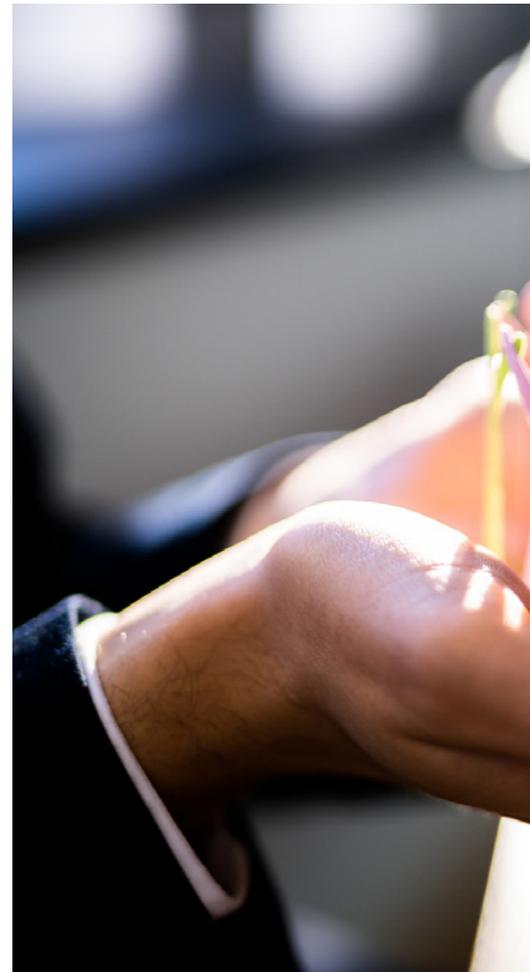
This article was one of the runners up in the FLS essay competition. It provides an important discussion about how access to justice can be improved.

Despite the Family Court's aim to provide fairness and access to justice, many vulnerable parties, such as those with language difficulties, disabilities or trauma, face significant barriers in understanding and participating in proceedings. Expanding the use of communication assistance is essential to uphold procedural fairness and ensure equitable outcomes. Proceedings would be more efficient if counsel could focus on their legal duties rather than having to take on a specialised role of communication assistant which requires distinct expertise. This essay will focus on the injustice that results from communication assistance not being utilised within the Family Court jurisdiction. It will highlight the benefits evident in the Criminal Court and Youth Court that utilise this key resource and compare New Zealand's approach to other jurisdictions internationally.

Communication assistance is a new and emerging role within the judiciary that was established to support complainants, witnesses and defendants who are identified with communication needs and was derived from the intermediary role utilised

in England and Wales courts.<sup>1</sup> The role and provision of communication assistance in New Zealand courts is governed by the Evidence Act 2006. Communication assistance is defined in the Act as "any assistance (for example, oral or written interpretation of a language, written assistance or technological assistance) that enables or facilitates communication with a person who for any reason requires assistance to understand court proceedings or give evidence."<sup>2</sup> Pursuant to s80 of the Act, defendants and witnesses are entitled to communication assistance to ensure they understand the proceedings and are able to give evidence.<sup>3</sup> Although the formal utilisation of communication assistance in New Zealand is relatively recent, the underlying concern that vulnerable parties may require additional support to ensure equal access to justice has been evident for some time. For decades leading up to the enactment of the current legislation, concerns were growing about the vulnerability and treatment of witnesses, especially children.<sup>4</sup> A role was implemented in law reforms during the late 1980s and 1990s, creating section 23E(4) of the Evidence

Act 1908, permitting questions to be put to specific witnesses through an approved person.<sup>5</sup> These specific witnesses were often children or 'mentally handicapped' individuals. The provision recognised that some witnesses, specifically children and those with communication difficulties might be distressed, intimidated or unable to understand effectively and respond to questioning in the courtroom. The purpose of allowing an approved person to ask the questions, was to reduce trauma, improve the quality of evidence and ensure that such witnesses could participate in proceedings. For many years there was continued discussion about how an expansion on the role implemented through section 23E(4) could address the growing concerns about vulnerable parties within the justice system. The current legislation such as section 80 of the Evidence Act 2006 was originally intended for non-English speaking individuals, those with hearing loss or a speech impairment.<sup>6</sup> However, in the absence of an alternative, communication assistants have become part of the criminal justice system as a result of the initiative of professionals utilising existing provisions,





those that were drafted widely enough for their inclusion.<sup>7</sup> *R v Hetherington* [2015] is recognised as the first New Zealand court case to adopt the role of communication assistant. The case involved a sexual violation of a 13-year-old girl with Down's Syndrome and at the first trial she gave her evidence with the assistance of her teacher aide, appointed as communication assistant pursuant to s80.<sup>8</sup> Since then, the role of communication assistant has continued to be implemented within the youth justice and criminal justice systems, ensuring equal access to justice for defendants and witnesses. Although there is no legal provision prohibiting the use of communication assistance in the Family Court, there is likewise no case law or statutory framework indicating that such assistance has been employed within this jurisdiction. This essay contends that specific legislative provisions should be enacted within the Family Court framework to expressly authorise and regulate the use of communication assistance in the Family Court jurisdiction.

The Family Court's failure to utilise communication assistance as a resource

significantly undermines the rights of people with disabilities, infringing upon fundamental principles of equality, natural justice and access to justice. Extensive research demonstrates the heightened vulnerability of people with communication difficulties, alongside the high incidence of abuse, crime and rights violations they experience.<sup>9</sup> Furthermore, people with communication difficulties often experience serious barriers when attempting to access the justice system.<sup>10</sup> Difficulties arise for those with disabilities because whilst some are easily observable, such as a person being unable to speak, others may have no physical symptoms, such as someone who has had a minor stroke but can no longer comprehend language.<sup>11</sup> In New Zealand, people with disabilities are entitled to the same fundamental rights as all other citizens and must therefore be guaranteed equal access to the justice system. Communication assistance not being implemented in the Family Court is impeding on these rights of individuals with disabilities. The Convention on the Rights of Persons with Disabilities was ratified by New Zealand in 2008.<sup>12</sup> Article 13

of the Convention provides that all "states parties shall ensure effective access to justice for persons with disabilities on an equal basis with others."<sup>13</sup> Section 21(1)(h) of the Human Rights Act 1993 prohibits discrimination on the grounds of disability.<sup>14</sup> NZBORA provides rights such as freedom from discrimination and right to equal justice.<sup>15</sup> The rights listed above are being adversely affected by New Zealand Family Court's failure to implement communication assistance. The omission significantly impedes the fair and equitable access to justice for those vulnerable individuals living with disabilities. In order to ensure every citizen has their rights protected and are able to equally participate in the justice system, the role of communication assistant needs to be extended to cover all jurisdictions.

Ms A is a woman who has been a victim of domestic violence and is now involved in Family Court proceedings as a respondent to an application for unsupervised contact. She suffers from post-traumatic stress disorder, which significantly affects her ability to process information, communicate clearly and respond to questioning in high-stress environments. Due to the absence of communication assistance, her lawyer is compelled to assume the dual role of legal advocate and communication assistant. This dual responsibility places considerable strain on the lawyer, divides their attention and limits Ms A's ability to participate fully in the proceedings. This fact scenario is one that is constantly occurring within the Family Court jurisdiction, highlighting the practical challenges and potential injustice faced by vulnerable parties in the current system. While lawyers are professionally trained to provide legal advice, advocate on behalf of clients and navigate court procedures, communication assistants are trained to support individuals with communication difficulties and ensure they understand the information they are receiving whilst also helping them communicate back effectively. The functions of a communication assistant differ substantially from the skill set of legal practitioners. As a result, when

lawyers are required to perform the role of communication assistant in addition to their legal duties, they are placed under considerable strain, which can compromise both the quality of legal advocacy and the client's ability to participate effectively in the proceedings. In Canada, Communication Assistants are referred to as Communication Intermediaries and are trained speech-language pathologists.<sup>16</sup> For this role they are required to have a minimum of a Master's degree in Speech-Language Pathology, at least two years of clinical speech-language pathology experience and have attended specific trainings.<sup>17</sup> If such extensive training is required to qualify as a communication intermediary in Canada, it is unreasonable to expect lawyers working in the New Zealand Family Court to assume this specialised role alongside their legal duties without equivalent training. In *Poihipi v R*, the Court of Appeal commented on the potential need for communication assistance in order to properly obtain instructions and if counsel had concerns about the defendant's ability to understand proceedings and instruct counsel then an application should be made pursuant to s80.<sup>18</sup> If the recognised need for communication assistance in the Criminal Court is grounded in ensuring fairness for all individuals, then the same principle must apply to the Family Court, where parties often face comparable, if not greater, barriers to effective participation. The current system is failing to meet the needs of many vulnerable individuals involved in Family Court proceedings. Despite the aim to provide fairness and access to justice, many vulnerable parties face significant barriers in understanding and participating in proceedings. Broadening the availability of communication assistance to the Family Court is necessary to safeguard procedural fairness and ensure people like Ms A have the same access to justice and fairness as anybody else.

The apparent benefits evident from the use of communication assistance in other jurisdictions provide a compelling justification for extending its availability to

## “The apparent benefits evident from the use of communication assistance in other jurisdictions provide a compelling justification for extending its availability to proceedings within the Family Court jurisdiction”

proceedings within the Family Court jurisdiction. Studies in New Zealand and overseas have been conducted to understand individuals and their experiences within the justice system. In particular, one study interviewed 28 professionals who had either worked as or with a communication assistant and a young person.<sup>19</sup> The study found that communication assistance was viewed as a help to participate effectively in the youth justice system and make youth friendly communication a priority.<sup>20</sup> The professionals in the study acknowledged the importance of individuals being able to understand and express themselves in court and communication assistance was viewed as the means of achieving this by providing specialised help.<sup>21</sup> In the study, communication assistance was understood as a catalyst for systemic change, as it not only supports individuals in specific cases but also provides feedback to professionals, influencing and improving their future practice with others. One communication assistant stated, “I would hope that our involvement with each lawyer is affecting their practice for other clients as well.”<sup>22</sup> Concerns have been raised all over the world at the barriers children and vulnerable adults can experience when engaging with justice systems and communication assistants are identified as playing a crucial

role in between the individual and the legal profession.<sup>23</sup> Internationally, communication assistants are often referred to as ‘intermediaries’ and serve as a ‘go-between’ working between the vulnerable individual and all professionals working in the justice system.<sup>24</sup> One systematic review on the role of the intermediary in the justice system addressed three research questions on an international basis. The stakeholders highlighted the unique knowledge and understanding that intermediaries bring to the justice system in respect to communication methods and perceived the role as one that benefits the whole justice system, for example improvements in interviewing and questioning practices.<sup>25</sup> The review examined how the role could be advanced, stakeholders highlighted the unequal access to the role in some jurisdictions and that access to the role should extend to all parties at all stages of the legal process in all jurisdictions.<sup>26</sup> Ultimately, the demonstrated benefits of communication assistants in other jurisdictions and worldwide provide a compelling argument for its adoption in the Family Court, where the need for equal access to justice is equally pressing.

The New Zealand Family Court lags significantly behind comparable jurisdictions in implementing communication

assistance, the established practice of its use within the United Kingdom's Family Courts provides a persuasive argument for adopting similar measures domestically. In the United Kingdom, Parliament introduced the Family Procedure Rules 2010 Pt 3A and FDR PD 3AA to ensure the needs of vulnerable individuals were being met as well as meeting the demands of the system.<sup>27</sup> One of the earliest cases to address the use of intermediaries was *re X (A Child: Evidence)*, where Theis J acknowledged the omission of an intermediary scheme in family proceedings led to 'real obstacles.'<sup>28</sup> The most recent appeal that highlighted the importance of intermediary assistance in the Family Court was *M (A Child: Intermediaries)*, which discussed that the test for appointing an intermediary is whether one is necessary to achieve a fair hearing.<sup>29</sup> The successful appeal arose after the refusal of a mother's application for intermediary assistance in care proceedings, despite the mother being diagnosed with ADHD, anxiety, depression, presenting with cognitive difficulties and being recognised as a vulnerable individual.<sup>30</sup> Case law has highlighted the important role that intermediaries play at ensuring vulnerable individuals can participate equally in proceedings. The case of *West Northamptonshire Council* referred extensively to a criminal appeal that discussed the use and appointment of intermediaries stating that "although there are obvious and important differences between Family Court cases and those involving criminal charges, the reasons for the appointment of intermediaries and their function in assisting those with communication difficulties facing important litigation, are essentially the same. Intermediaries are appointed, whether in criminal or family cases, to ensure that the individual in question can participate in the proceedings so that their fair trial rights are protected."<sup>31</sup> Given that other jurisdictions have recognised the need for communication assistance in the Family Court, on the basis that their functions mirror that in criminal proceedings, it follows that the New Zealand Family Court should likewise adapt and implement their

use, a position reinforced by UK case law.

In conclusion, despite the Family Court's aim to provide fairness and access to justice, many vulnerable parties, such as those with language difficulties, disabilities or trauma, face significant barriers in understanding and participating equally in proceedings. Expanding the use of communication assistance is essential to uphold procedural fairness and ensure equitable outcomes. Proceedings would be more efficient if counsel could focus on their legal duties rather than having to take on a specialised role of communication assistant which requires distinct expertise. This essay focused on the injustice that results from communication assistance not being utilised within the Family Court jurisdiction. It highlighted the benefits evident in the Criminal Court and Youth Court that utilise this key resource and compared New Zealand's approach to other jurisdictions internationally.

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# Practising Well – Our Stories

## *Hannah Reuben*

Hannah Reuben is the regional legal manager at Oranga Tamariki in Ōtautahi Christchurch. She spoke to us about her career, particularly her time at Oranga Tamariki, wellbeing tips and advice to new lawyers.

### **Can you give us an overview of your career, and what brought you to working with Oranga Tamariki?**

I have been a lawyer for over 10 years now. I was admitted in July 2015, and I started practice in Christchurch. I was originally hired to primarily do conveyancing work, but at the same time, my boss hired a family lawyer, and I quickly became involved in family law that way. At university, I did not want to be a family lawyer. My parents separated when I was 7 years old. I did not feel a particular connection to working in that field because I felt I was too personally invested. I thought it would be too emotionally challenging and that I would not be able to separate my personal experience.

The more I worked in that space, the more I loved it. I felt a real sense of being able to help people. You don't always feel like you achieve what everyone wants you to. I felt a real purpose of coming to work. For the first four years in my career, I worked in private practice. I primarily did legal aid work. I loved doing legal aid work.

I did a lot of Care of Children Act work and some Domestic Violence Act work, did a bit of Oranga Tamariki (OT) work but not much and did not feel I had a handle on the Oranga Tamariki Act (the OTA).

I joined OT on 15 July 2019. I remember that day very clearly because I had signed the contract, and between working out my notice period and starting, there was the Hastings Baby Uplift. I had a real sense of panic about what I was going into. It was really confronting to see that footage, to watch social workers enter into a hospital room and present documents to a child who had just given birth. It was overwhelming and worrying. I've been at OT since then, it's over 6 years now.

I have to be honest that sometimes I felt in private practice, that the children's voices weren't always necessarily heard. I was not lawyer for child (L4C), I was

always representing parties. I had a desire to advocate more for children. Part of my thinking about coming to OT was that drive to try to put children always at the centre of my advocacy. Part of me was thinking the long-term goal is to be L4C. I did not feel I could advocate for children properly in the OTA space. Those were my two driving desires to come to OT. The OTA felt very big and very hard to navigate. When I was in private practice, I always had this fear I wasn't doing my clients justice because I never seemed to be able to understand how I could get traction in challenging OT decisions. After all, the legislation is in a lot of ways very heavily weighted towards the Crown; of course it gives the Crown a lot of power, I see a lot of avenues for whānau to be able to challenge the system. That was my primary reason at the time for coming to OT. I've stayed and it's the



## “When I was a junior lawyer, I found the legal profession quite hierarchical, there was this expectation that you worked hard to get further along in your legal career, but that had to be at the sacrifice of your own wellbeing at times”

longest legal role that I've held because I really enjoy being here.

### What is your current role at OT?

I am the regional legal manager. Our legal services team is a fairly flat structure. We have six regional teams around the country. I manage the most southern team, all of the South Island apart from Nelson and Blenheim. My role is to be a people manager primarily; I support 14 lawyers. We are quite geographically spread out; we have lawyers in Nelson, Christchurch, Ashburton, Dunedin and Invercargill in my team. If there is any risk that my team believe is present for the Chief Executive, their role is to engage with me, and I tend to help work with risk matters with them or escalate it further up the food chain if there is a risk, media risk, litigation risk, or risk to the children that isn't being mitigated. We hold responsibility for 750 court files that are ongoing. The children will have constant reviews in the Family Court; the files don't shut. We are responsible for providing most of the legal advice to our frontline legal workers, and site staff. We have 13 social worker sites in our region.

### What are some particular wellbeing challenges being an OT lawyer?

One of the things that immediately became obvious to me was that there were care and protection concerns that I didn't know even existed in society. I grew up really sheltered from a lot of the challenges that our whānau face on an everyday basis. One of the hard things was reading through all of the really difficult things not only to the children that we worked with, but when you look at their parents, just how

difficult most of their lives have been as well. It was really confronting seeing what our whānau go through on a daily basis, the naivety that I had as well as people in the community have. That was really hard for me personally. It is also really challenging trying to resolve that. There is not always an easy resolution for the problems that we do see. The ideal goal is that all children in Aotearoa live in a loving home, most do regardless of whether there are care and protection concerns, but a safe home where they can grow up as children and be supported as a whānau to live. Quite often, there's not an easy solution to fix that. I always want to problem-solve. It's quite emotionally draining when you're working with this whānau, and there isn't help available that they might need or there's no way to remedy the situation.

Another thing for me, that I wasn't expecting, was the challenge of being the face of a Ministry. I was used to being a lawyer, and you'd have your client and their instructions. It was widely accepted that sometimes you'd be presenting instructions and they might not fit nicely with the law, and you might have adverse findings, but people would understand you were acting on your client's instructions. It's quite different being a lawyer for OT. You receive a lot of feedback, and it seems quite personal a lot of the time. It's not the same, people see you as the face of OT.

### How do you look after your own wellbeing?

That was something that took me a long time to figure out. When I was a junior lawyer, I found the legal profession quite hierarchical, there was this expectation that you worked hard to get further along

in your legal career, but that had to be at the sacrifice of your own wellbeing at times. I worked with Caroline McCarthy in Blenheim. She always spoke about being able to have the clear boundary between work and home. She would walk into my office at 5pm and said I needed to go home; it helped me set boundaries. I found it really hard. I found I would be 2 people, at work Hannah and at home Hannah.

Moving to OT has taught me about my wellbeing in a lot of ways. I feel like it's okay to bring myself to work now. As a lawyer for OT, there is a lot more opportunity to bring your own life experiences to work and who you are as a person. I am Māori. Before coming to the government, I would have worried about being Māori and working for the Crown and whether that fitted nicely together. I can be myself and that helps as I don't have to pretend to be someone I am not. I do try to keep those boundaries, to leave my work at work and stick to my working hours as much as possible. The last 2-3 years I've committed to a really consistent exercise regime. I've joined this new gym, which is quite holistic, there is breath work practice which I'm really enjoying. It's helping me switch off much better as well as meditation, yoga and another big thing in our team is we like to practice gratitude, that helps to find moments of joy instead of constantly living in a negative space. I find in family law, you're always dealing with really confronting information. We often learn in OT about vicarious trauma. It's really important for us to have something to look forward to or look for the positive moments because our work life can be really challenging and really busy. Spending time in the sun and time with my whānau. I make a conscious

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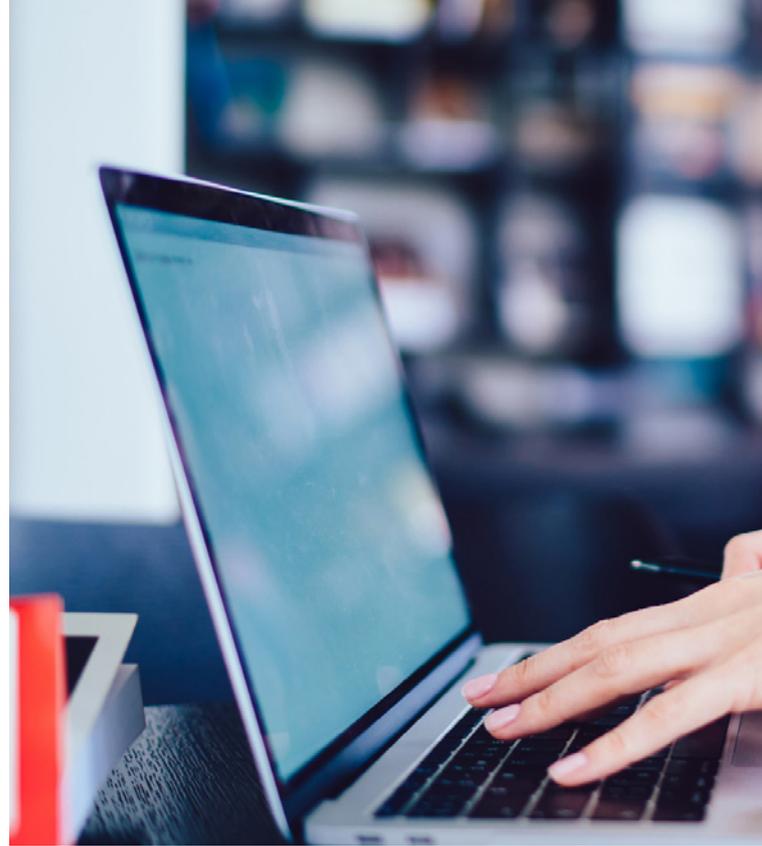
effort to make my wellbeing a priority. I know you have to look after your wellbeing and that's how you survive as a family lawyer, it's become a priority now rather than knowing I should do it.

### Do you have any advice to new lawyers?

It's really important to look after yourself. It's really important to have good mechanisms to look after yourself. It's important to be in workplaces that work for you. The younger lawyers coming through at the moment are so self-aware of their wellbeing, it's wonderful. I've learned a lot from more junior lawyers about the boundaries they put in place to look after themselves, I think the legal profession can learn a lot from the younger generation about how they are prepared to look after themselves. Ask questions, find people who support you and there are lot of wonderful and generous people who work in family law. I would not still be here practising in this space if I was not surrounded by supportive family lawyers. You spend most of your waking time at work. I think there are a lot of people who will look after you. It's about finding people who support you and want to see you grow.

### Is there anything else you want to add?

Take opportunities offered to you, I have used the law society counselling sessions in my place and at OT we have EAP as well. I see it as a real strength to engage with those services really early before those things become overwhelming to support this really tough work and making sure as well that you're having regular breaks. I take the opportunity to have good periods of annual leave across the year to make sure I don't become too frazzled and nearing burnout. I have been in burnout before and it's very hard to get out of that once you're there. I work hard to take regular breaks. I also try to take rest when I'm sick. I am an active relaxer, and I don't rest, but I'm learning the art of resting, I give myself permission to have a day when I do nothing. I have these constant thoughts "you're being so lazy Hannah". I am learning the benefits of doing nothing. ■



## Family Law Insights: Research Tools & Judgments

*Louise Hall, Law Library  
Manager, New Zealand Law  
Society Library*

Family law research presents unique challenges within the practice of legal research, particularly when conducting case searching. This article provides an overview as to why there are low publication numbers of Family Court judgments. It then highlights how the New Zealand Law Society Library can assist with family law research through either lawyers accessing the extensive library collections themselves or through using fee-based research services offered by the library.



**F**amily law is one of the largest and most active sectors of the New Zealand legal market. The New Zealand Law Society's 2025 Snapshot of the Profession in Aotearoa New Zealand recorded over 3,370 lawyers practicing in family law, making it the fifth largest practice area in New Zealand. The Family Court is the second busiest Court in the country. Historically, it has managed approximately 67,000 applications annually. In 2024, there were 26,796 active Family Court applications and an additional 61,890 new cases and applications. [Source: <https://www.districtcourts.govt.nz/reports-publications-and-statistics/statistics/2024-statistics>].

Family law is one of the most requested areas of law for the Law Society Library's research team, however, it can be one of the more difficult areas to research given the lack of published judgments. This can make it challenging to locate and supply relevant materials.

In New Zealand, only a small fraction of Family Court judgments are published compared to other court proceedings. This is primarily due to strict statutory privacy protections which apply to Family Court cases. Any published document "must not contain identifying information about someone if either of the following are true:

- the case involves someone who is under 18 years old; or
- a vulnerable person is involved in the case.

[Source: <https://www.justice.govt.nz/>]

**“Family law is one of the most requested areas of law for the Law Society Library’s research team, however, it can be one of the more difficult areas to research given the lack of published judgments”**

*family/family-court/after-the-family-court/restrictions-on-publishing-information/*

In 2025, only 63 Family Court decisions were released by the Ministry of Justice; this compares to 67 decisions released in 2023 and 58 in 2024. While this appears relatively limited in comparison to the output of other courts, there are periods that are even more sparse for the Family Court. In the 1990s, for example, very little was officially released, and what was published was in paper format, making it even more challenging to locate for many lawyers. There was also a significant gap in coverage between 2013–2019 where publication numbers were very low.

Publication of reports of proceedings, other than for professional purposes, requires the leave of the Court. [Source:

Family Law in New Zealand, 22nd ed, LexisNexis] The majority of published Family Court judgments are subject to suppression, given the confidential and sensitive nature of the information held within the judgment.

Compliance with suppression orders is fundamental when publishing these judgments, however, there have been a number of breaches over the last few years. In 2025, the Ministry of Justice had to conduct a full review of their publication processes due to breaches; this resulted in the removal of judgments from the District Court website while they did so. Subsequently the Ministry of Justice has moved publication of any Family Court judgments to Judicial Decisions Online [link - <https://www.justice.govt.nz/courts/decisions/jdo/>].

Due to suppression requirements in the 1990s, judgments were only released to a very small group of recipients, including the Law Society Library. Any judgments received from this period have been digitised by the library; these are not publicly available, however, lawyers can request supply of these through the Library.

Over time, these initiatives should lead to a greater collection of published family court cases.

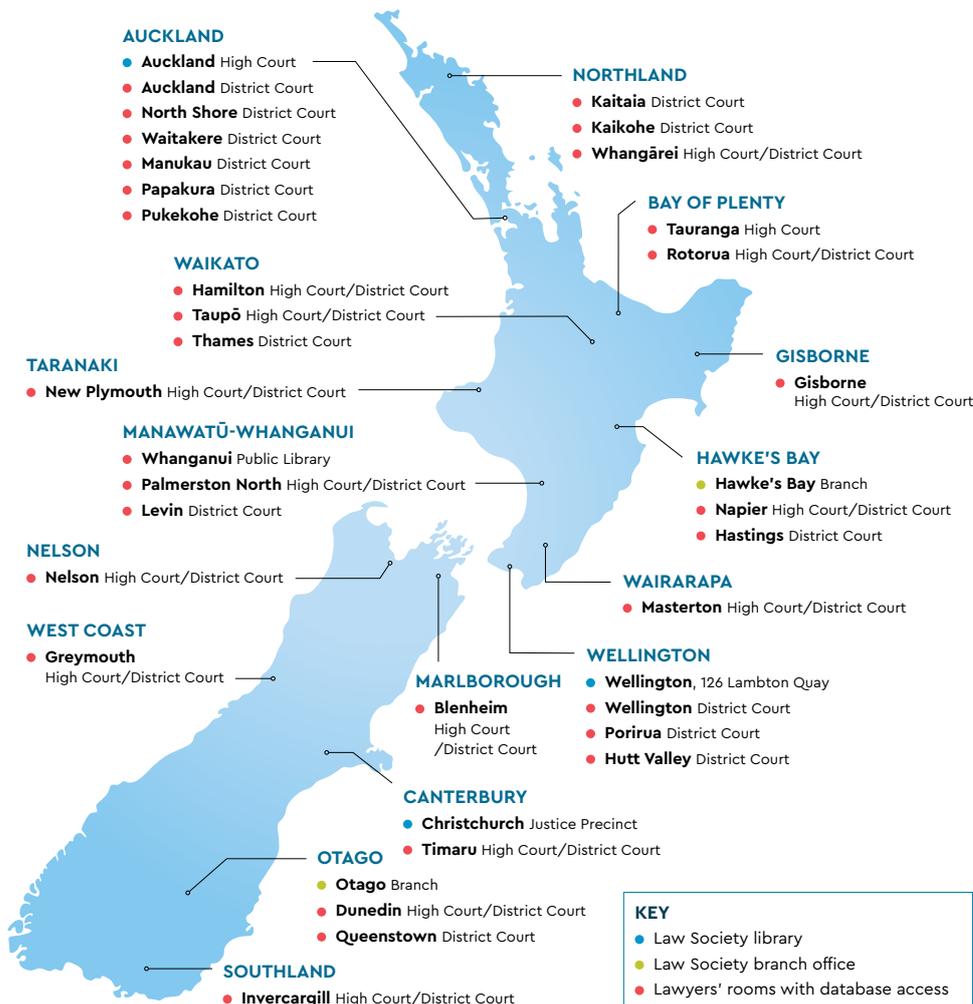
As a lawyer, you can contact the relevant court registry to request a copy of a judgment. Relevant registry details can be found on the Ministry of Justice website [<https://www.justice.govt.nz/contact-us/find-us/>]. There is also a form that can be downloaded and emailed in support of your request: *Application for access to court documents* [link - <https://www.courtsofnz.govt.nz/going-to-court/media/finding-out-about-a-case>].

It is worth noting that this can be a lengthy process, and in some instances the request for publication will be unsuccessful.

### Using the New Zealand Law Society Library for Family Law Research: DIY and Request Service

After considering the challenges involved in researching family law, what options are available to lawyers?

The New Zealand Law Society Library



assists lawyers in the area of family law research through both providing access to published information and through their expert research team.

The Library has a comprehensive family law collection including subscriptions to legal databases from both LexisNexis and Thomson Reuters (Westlaw NZ), providing access to family law commentary, cases, reports, and journal literature. There are several key primary and secondary sources for researching family law in New Zealand, all which are held by the Law Society Library.

LexisNexis' platform, Lexis+, provides access to:

- The Family Law Service;
- Fisher on Relationship Property;
- New Zealand Family Law Reports;
- the New Zealand Family Law Journal; and

- the practical guidance module on family law.

Thomson Reuters' platform, Westlaw New Zealand, provides commentary on:

- adult relationships;
- child law;
- family procedure;
- family property;
- incapacity; and
- mental health.

Both platforms offer access to extensive case law.

The Library can also provide lawyers with access to an additional LexisNexis resource, LexisRed. LexisRed is an ebook platform that can be downloaded to lawyers' local device (laptop, phone) providing anywhere access to a selection of LexisNexis e-titles, including the specialist family law titles: Family Law Service and Fisher on Matrimonial and Relationship Property.

Please contact the Library [[library@lawsociety.org.nz](mailto:library@lawsociety.org.nz)] to register for this service.

The Law Society Library website provides more information and links to useful publications within this practice area [<https://www.lawsociety.org.nz/professional-practice/law-library/databases/family/>]

All practitioners can access Lexis+ and Westlaw NZ in Law Society libraries and lawyers' rooms in 33 courts throughout New Zealand.

Alternatively, you can contact the Library team [[library@lawsociety.org.nz](mailto:library@lawsociety.org.nz)] to request judgments and/or research. The staff are highly experienced in legal research and can save you time and effort in locating relevant legal information [<https://www.lawsociety.org.nz/professional-practice/law-library/using-the-library/research-services/>]

### Tips for research and judgment requests

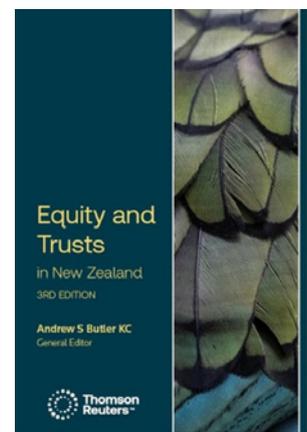
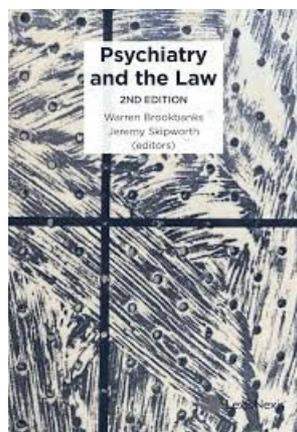
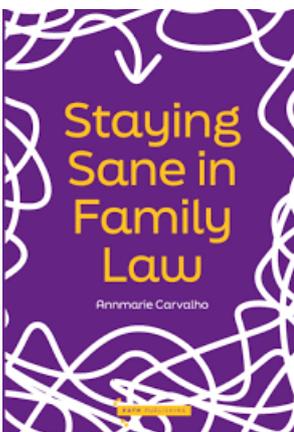
When requesting research and/or judgments from the Library team:

- allow as much time as you can, the more time the team have to work on your query the more comprehensive the research can be;
- factor in the urgency of your request. The Library offers an urgent service for both research and document delivery;
- provide as much detail as possible. Where judgments are concerned, all details are useful including date, judge and location. At one stage, judgments were suppressed to initials or single letters which can be complicated to find in a sea of S v S, for example; and
- mention what resources you have already checked, if any, and it also can be helpful to indicate where your citation/reference is sourced from, including if it is from AI. There is an additional service offered verifying AI generated citations and content.

The Library has a comprehensive collection of family law resources available for use along with a team dedicated to helping you find that elusive judgment, give pointers on best resources, or get that research completed for you! ■

## New Family Law Books

Staying current is essential in legal practice. Explore these newly received family law titles, available to view from your local Law Society Library. Please click the title link to our library catalogue for further information or contact [library@lawsociety.org.nz](mailto:library@lawsociety.org.nz)



### Staying Sane in Family Law

- Annmarie Carvalho
- Bath Publishing, Sept 2025
- **Format:** Print
- **Law Library:** Wellington

*Staying Sane in Family Law* gives the practitioner the essential tools to preserve their own mental well-being and find contentment in their work. Includes real-life case studies on subjects such as attachment/co-dependency, addiction, mental health disorders and neurodiversity as well as sanity saving tools to help you stay grounded in this topsy turvy world of family law.

### Psychiatry and the law

- Warren Brookbanks & Jeremy Skipworth.
- LexisNexis. 2<sup>nd</sup> ed, 2026.
- **Format:** Print
- **Law Library:** Auckland, Canterbury, Wellington

This updated edition examines issues around intellectually disabled and

mentally impaired defendants, including fitness to plead, insanity, sentencing, disposition, and services for mentally impaired defendants.

### Family Law Conference – the future is here

- New Zealand Law Society, CLE. October 2025.
- **Format:** Print
- **Law Library:** Auckland, Canterbury, Otago, Wellington

Conference proceedings from the 2025 Family Law Conference – Topics include: The 21st century family law client; Te Au Reka: a digital court; Mediation; Relationship property; Harmful sexual behaviour (HSB); Filing appeals; Drug and alcohol testing; The Hague Convention and family violence; AI; Neurodiversity, Tikanga and dispute resolution; Insights into fathers' experience after separation; Spousal maintenance; Building emotional intelligence; Kindness; Appellate advocacy in the senior courts

### Equity and Trusts in New Zealand

- Andrew Butler KC
- Thomson Reuters. 3<sup>rd</sup> ed, 2026
- **Format:** Digital ebook (Westlaw)
- **Library:** Law Libraries and Court Kiosks

The Third edition of this authoritative text on the law relating to equity and trusts in New Zealand, includes new chapters on the Trusts Act 2019, Conflict of Laws, and Taxation of Trusts, and incorporates extensive developments since the second edition was published in 2009. ■

# Contracting in, Contracting out, and Shaking it all About!

BY KEVIN LENAHAN AND KIMBERLY LAWRENCE

This article was initially published in *The Property Lawyer*, volume 26, issue 2. The Supreme Court has granted leave to appeal the Court of Appeal judgement in *Rimmer v Walton*: [2025] NZSC 150. The New Zealand Law Society has since been granted leave to intervene in the Supreme Court proceedings. The Law Society's Family and Property Law Sections are supporting this work.

**T**he Court of Appeal judgment in *Rimmer v Walton* [2025] NZCA 374 has upended what were thought to be firm pillars of property law and estate planning. The decision is an absolute must-read for all property and private client lawyers in New Zealand.

Where a couple has a contracting out agreement under the Property (Relationships) Act 1976,<sup>1</sup> that agreement will now be at the forefront of all estate planning; the starting point for everything that happens after the death of one member of the couple - irrespective of whether the survivor elects Option A (to apply for a division of relationship property) or Option B (to inherit under the will or on intestacy).

In addition to all aspects of estate planning and estate administration the *Rimmer* decision has the potential to affect all manner of *inter vivos* transactions. It is critical that lawyers understand *Rimmer's* implications, and how to manage the associated risks.

## Factual background

David Rimmer passed away in March 2016. He died intestate, leaving a de facto partner and two adult children from a previous relationship. His de facto partner, Ms Wilton, elected Option B, obtained a grant of administration, and ultimately distributed the cash assets, which were less than the prescribed amount of \$155,000, to herself. She transferred his half of the



Kevin Lenahan



Kimberly Lawrence

family home into her name as administrator. Following the property's sale she made no distributions to Mr Rimmer's adult children.

Ms Wilton relied on a contracting out agreement which provided (among other things) that:

*In the event of the death of one party, the remaining party shall have the right to lifetime occupancy and use of all relationship property. The right of occupancy shall be extinguished in the event of the death of the survivor.*

Ms Wilton contended that she was entitled to act as she did because the home was relationship property and she had the right to lifetime use of its sale proceeds, including the estate's share.

The key issue was whether, having elected Option B, Ms Wilton was entitled to take both her entitlements under a contracting out agreement, made under section 21 of the Property (Relationships) Act 1976, and her entitlement on Mr Rimmer's intestacy, or whether she was only able to take her intestacy entitlement.

## Decision

The Court of Appeal found that the contracting out agreement did not prevent Ms Wilton from taking her intestacy entitlement. However the more significant aspect of the judgment was the Court of Appeal's conclusion that Ms Wilton was entitled to enforce her contractual rights

to lifetime occupancy and use of the couple's relationship property (including sale proceeds of their home) under the contracting out agreement, in addition to her intestacy entitlements, despite having elected Option B after Mr Rimmer's death.

The Court made some interesting comments:

- The Part 8 provisions are structured to ensure that a section 21 agreement will be given effect (unless challenged) on the death of a spouse or partner, irrespective of whether Option A or B is chosen.<sup>2</sup>
- Option A should not usually be selected if there is a section 21 agreement, unless the surviving partner intends to challenge the agreement. Otherwise, if they choose Option A, they will forfeit entitlements under a will or intestacy and be bound by their agreement.<sup>3</sup>
- If Option B is elected, the surviving partner cannot apply to divide the relationship property under the PRA, but they do not need to, because they can rely on the contracting out agreement for the division of their relationship property. They can also receive their entitlements under the will or intestacy.<sup>4</sup>
- The practical effect of this is that either way the contracting out agreement applies to the division of relationship property after death. Option B will be elected if the deceased spouse or partner has made provision for the surviving spouse or partner in their estate or if there is no will. The contracting out agreement governs what part of the relationship property forms part of the deceased's estate. If the couple do not wish to make provision for each other from their estate, they need to make a will gifting their property to other beneficiaries.<sup>5</sup>

The key aspect of the decision is the Court of Appeal's conclusion that *either way*, whether Option A or Option B are elected, the contracting out agreement will apply to the division of a couple's property on death, and therefore what property is available for distribution from the estate to the beneficiaries (or claimants) whether from a will or on intestacy.



### Contracting out agreements on death

Many couples wish to ensure that Option A is not elected on death, and to guarantee that certain minimum provision will be made in their wills for the survivor. Both objectives are often achieved in a contracting out agreement, while the couple is also free to sign wills which might leave more generous provision to the survivor of them.

A contracting out agreement is not an ordinary contract; it is a creature of the Property (Relationships) Act 1976, which is a code. Section 21 provides that parties to a relationship may:

...for the purpose of contracting out of the provisions of this Act, make any agreement they think fit with respect to the status, ownership, and division of their property (including future property).

And:

An agreement made under this section may relate to the status, ownership, and division of property in either or both of the following circumstances:

- (a) during the joint lives of the spouses or partners;
- (b) when one of the spouses or partners dies.

It is also worth noting that section 61 provides, in relation to Options A and B, that:

*Option A is to elect to make an application under this Act for a **division of the relationship property**.*

Option B is as follows:

- (a) to elect not to make an application under this Act for a division of the relationship property; and
- (b) if the surviving spouse or partner is a beneficiary under the will of the deceased spouse or partner, to receive that property; and

- (c) if the surviving spouse or partner is entitled to a beneficial interest on the intestacy or partial intestacy of the deceased spouse or partner, to receive that interest.

Section 21 agreements can apply to three things, being the status, ownership or division of property, including on death. Option A relates only to an application for the division of relationship property. Option B excludes any application for the division of relationship property but is silent about other matters which might be contained in a section 21 agreement.

These provisions are very clear: the division of relationship property is the realm of Option A only, and is excluded by Option B.

On the face of the sections, there may be room for a contracting out agreement to contain provisions which apply on death and which relate to the *status or ownership* of property, but which do not relate to the *division* of relationship property. If so, then a contracting out agreement might be able to include provisions which are intended to apply on death, but outside of the Option A process. However, it is not clear whether, or the extent to which, this is the case.<sup>6</sup>

Due to that uncertainty, it is usually safest for parties who enter a contracting out agreement to specify that they intend to sign a separate agreement as to the minimum provision which will be made on death. In that separate agreement any life interests in property, or similar devices, are created. This avoids any question about whether those additional provisions remain valid if Option B is elected.

However, as a matter of practice,<sup>7</sup> it is extremely common for contracting out agreements to deal with all these matters. Contracting out agreements routinely



provide:

- (a) For the classification of separate property;
- (b) For the division of relationship property;
- (c) That a survivor will not elect Option A on death; and
- (d) For specific provision to be made for a survivor on death (often this might be minimum provision to be made in a will, which is clearly intended to apply in conjunction with a will and Option B, or for a life interest in certain property).

To the extent that the Court of Appeal found that Ms Wilton was entitled to retain and use Mr Rimmer's half share of the relationship property and its sale proceeds, it is the author's view that the decision was probably correct.

Ms Wilton did not elect Option A, and no *division* of the relationship property took place – nor could it have with her acting in two capacities. The contracting out agreement gave certain property owned by Mr Rimmer's estate the *status* of relationship property and created a life interest in relation to it. Ms Wilton was entitled to enjoy that life interest under Option B.

There may be technical arguments about the extent to which that life interest should have been contained in a contracting out agreement, as opposed to a separate agreement. However, it seems that the couple intended the life interest to be minimum provision made on death for each other, and it is common practice for a contracting out agreement to contain that kind of provision.

The Court of Appeal also found that the contracting out agreement did not expressly or impliedly contract out of intestacy entitlements (which it could

have done). The agreement was “in full and final settlement of all claims which [Mr Rimmer and Ms Wilton] may have against the other under any statute whatsoever or at common law or at equity”, but it did not directly address wills or additional testamentary provision.<sup>8</sup>

The Court found that succeeding under the intestacy rules was an entitlement, not a claim, and so the clause settling claims did not preclude Ms Wilton from receiving her intestacy entitlements in addition to any other provision made under the agreement.

Again, in the author's view and in the absence of any other information, this was likely correct. The full text of the contracting out agreement was not annexed to the judgment. We do not know what advice the couple were given when it was signed, or whether it actually reflected their intentions.

### The Court of Appeal's other comments

More problematic is the Court of Appeal's comment at [40] that on death, even under Option B, a contracting out agreement will govern what part of the relationship property forms part of the deceased's estate.

Determining which part of the relationship property forms part of an estate will very often involve the division of relationship property. While parties can reach agreement in relation to the division of property outside the Court process, if there are any disputes, they will need to make an application for the division of relationship property in accordance with the contracting out agreement. However, it is only Option A which deals with an application for the division of relationship property; this exercise is excluded by Option B.

The Court of Appeal said at [39] that:

- (a) Option A should not be selected if there is a s 21 agreement because the surviving partner is not able to apply for a division of the relationship property under the PRA (unless they are or will be challenging the agreement). This is because they have contracted out of the PRA provisions for division and the division instead proceeds in accordance with the s 21 agreement. If Option A is nevertheless elected, s 21 is one of the provisions that continues to apply. In this event the surviving spouse or partner will be bound by their agreement and, pursuant to s 76, they cannot receive any gift under the will or receive any entitlement under the Administration Act.
- (b) If Option B is elected, the surviving partner cannot make an application for division of the relationship property under the Act, nor does the surviving partner need to do so, because they can rely on the agreement they have made under s 21 for the division of the relationship property. The surviving partner is also able to receive their entitlements under a will or on an intestacy.

For the reasons set out above, this does not appear to be correct. The concept of relationship property is a creation of the Property (Relationships) Act 1976. Its division can only take place under the Act, whether under the default rules, or under a section 21 agreement. On death, the division of relationship property takes place under Option A (only).

Further, Court approval is required whenever an agreement is signed under section 21B of the Act, between a surviving spouse or partner as executor, and them



in their personal capacity.<sup>9</sup>

Section 21 agreements are a creature of the Act, which is a code. Section 21 agreements can only cover the matters specified in the Act, being the status, division, and ownership of property, including on death. While any division of relationship property will proceed in accordance with the section 21 agreement on death, the section 21 agreement exists only under the Act (not outside it), and within the scope of the Act it clearly only takes place if Option A is elected.

For the same reasons, the surviving spouse or partner cannot rely on a section 21 agreement to divide relationship property outside the parameters of the Act. Indeed, nor can a personal representative who requires leave under section 88(2) of the Act to apply for orders under section 25(1)(a) or (b). Those orders include:

- determining the respective shares of each spouse or partner in the **relationship property** or any part of that property;
- **dividing the relationship property** or any part of that property between the spouses or partners: and
- any other order the Court is empowered to make under the Act.

The Court of Appeal acknowledged in a footnote that, in its recent review of the Property (Relationships) Act 1976, the Law Commission took the view that Option A was required to pursue a division of relationship property in accordance with a section 21 agreement. The Court of Appeal chose to take its own view,<sup>10</sup> in part at least because the Law Commission cited no authority for its proposition. However, as outlined below, history shows that dividing relationship property was intended to be an entirely separate path to inheriting

under a will or intestacy.

While it seems the interplay between death and contracting out agreements was given little thought by the legislature, it is very clear that the division of relationship or matrimonial property was always a separate path to inheriting under a will or intestacy. There is no clear rationale for changing this in the case of contracting out agreements.

### Historical analysis

When the Property (Relationships) Amendment Act 2001 introduced the current section 61 framework, Parliament's aims included simplifying and clarifying how a surviving spouse or partner made choices on death, ensuring that there was no "double-dipping", and also ensuring that couples who were content with provision from a will or on intestacy were not forced to engage in compulsory property division.<sup>11</sup>

Perhaps most significantly, the division of property on death, under Option A, was intended to ensure that a partner whose relationship ended on death would not be worse off than if their relationship ended by separation.<sup>12</sup> Surviving spouses or partners were advantaged by some provisions in Part 8, but broadly speaking, a division of property on death was treated essentially the same way as on separation.<sup>13</sup>

The legislation followed many years of law reform and recommendations

A Working Group established in 1988 made many recommendations which were broadly followed in the eventual legislation. In particular, it was clear that survivors would be required to choose between a division of matrimonial property (in the same way as it would have taken place in the event of separation) or their ordinary succession entitlements.<sup>14</sup> They thought that forcing couples to divide matrimonial property would complicate estate administration unnecessarily, and they did not want to force survivors to pursue that more "dramatic" path if a matrimonial property division was not needed.<sup>15</sup> There were two very distinct paths, and this was reflected in the later legislation.

In the late nineties, the Law Commission undertook a comprehensive review of succession law, releasing a Preliminary Paper in 1996 and a Report on Succession Law and Draft Act in 1997.<sup>16</sup> The Commission

proposed giving widowed spouses the right to apply for an equal division of matrimonial property. As with the Working Group, the Commission recommended that survivors should choose between taking what they received from deceased's estate or from the matrimonial property division.<sup>17</sup> There was never any suggestion that the matrimonial property division would take place *as well as* a survivor inheriting under a will or intestacy, unless the Court made an order directing that, under what is now section 77 of the Property (Relationships) Act 1976.

This "either [dividing the relationship property] - or [taking under a will / intestacy], but not both" approach is consistent with what Parliament intended.

Irrespective of whether there is room for contracting out agreements to operate within the scope of Option B (to the extent they deal with matters other than the division of relationship property), it does not follow that the existence of a contracting out agreement necessitates a relationship property division *before* a will or intestacy can proceed. Those have historically been considered separate and distinct paths represented by Option A (if a relationship property division is elected) and Option B (if it is not).

In this author's view, the legislature did not contemplate contracting out agreements being the "starting point" for determining what assets fall into the estate and what assets remain the property of the survivor, on death, as the Court of Appeal has determined. Option B leaves no room for the division of relationship property.

### Counterarguments

In saying that, there is at least some rationale for the conclusion reached in *Rimmer v Wilton*. To exercise rights under the Property (Relationships) Act 1976, couples are required to take independent legal advice. Their solicitors must certify that advice has been given before the rights are exercised. This is a significant protection for couples wishing to depart from the default position. Where that protection is not in place, individuals will not generally be bound by earlier statements or representations, even if their partner relied on those statements or representations to their later disadvantage.<sup>18</sup>

One rationale would therefore appear to

be that parties, once “inside” the realm of contracting out of the default provisions of the Property (Relationships) Act 1976, require the same level of advice and protection if they wish to “exit” that realm. They cannot inadvertently exit using wills or property transactions, even if they are aware of the effect of those arrangements and believe them to override their earlier agreement under the Act. This is consistent with recent case law and with the overall scheme of the Act.

Unfortunately, as this is not how the majority of practitioners (or the Law Commission) have historically understood the relevance of contracting out agreements to Options A and B, the decision is likely to have a myriad of unintended consequences, most of which were not considered by the Court of Appeal.

### Practical implications

It is understandable that a contracting out agreement might have the effect of conferring a greater benefit on the surviving spouse or partner than if they had only inherited under a will or on intestacy. That is what happened in *Rimmer v Wilton*. It is common for parties to make additional provision for each other on death, which does not form part of the process of dividing their relationship property (although as outlined above, it may be safer for this to take place in a separate agreement).

However, the implications of the Court of Appeal’s view that a contracting out agreement is the starting point under Option A and Option B, to determine what falls into an estate and what remains property of the survivor, do not appear to have been considered.

It is common for a couple to have a historical contracting out agreement, in relation to which they were given much less robust independent advice than they would expect to receive now. Those agreements are often extremely one-sided and do not always even provide for the creation of a pool of relationship property.

We will consider the example of a couple who have agreed by way of contracting out agreement that their family home is

**“This may cause practical problems where the surviving spouse or partner is the executor or administrator and the only living party with knowledge of the existence of the contracting out agreement”**

relationship property and will be divided equally on separation or death. Many decades later, they decide it is time to purchase a new family home which they own as joint tenants. The joint tenancy may be entirely intentional with survivorship the principal method of succession planning. The deceased’s will might not even provide for their spouse or partner, because it was known that the family home would pass by survivorship.

Under Option B, in normal circumstances, they would take the home by survivorship.

However, if the Court of Appeal is correct that the contracting out agreement is the starting point to decide what relationship property falls into the estate and what remains owned by the survivor, the joint tenancy will be overridden. The survivor will either need to elect Option A to challenge the contracting out agreement, with the risk of being unsuccessful but still stuck with Option A (presumptively losing their entitlements under a will or intestacy) or else bring a claim under the Family Protection Act 1955.

The couple’s estate planning, which was done without reference to the contracting out agreement, because property law principles were considered to take precedence under Option B, will be undermined by the existence and unanticipated effect of the contracting out agreement.

There is also a practical problem in that

contracting out agreements are usually prepared by family lawyers with separation principally in mind. Death is usually an afterthought. Unless estate planning lawyers are involved at an early stage, contracting out agreements do not usually speak easily to wills. The Court of Appeal decision may require improvements in professional practice, because lawyers in different practice areas will need to collaborate – but it will also increase cost.

There will also be other problems.

Personal representatives will presumably need to enforce contracting out agreements now, whenever they exist, and even if that means taking steps against the couple’s estate planning wishes to disadvantage a surviving spouse or partner.

This may cause practical problems where the surviving spouse or partner is the executor or administrator and the only living party with knowledge of the existence of the contracting out agreement. If nobody else knows about the contracting out agreement they may ignore it and retain benefits they would not otherwise have had if they were required to enforce the agreement against themselves. It may also cause issues if the surviving partner is required to take steps as executor or administrator which are personally disadvantageous.

A further issue is whether personal representatives can take steps to enforce a contracting out agreement without leave from the Court. As outlined above, personal representatives require leave to apply for a division of relationship property under section 88(2) of the Property (Relationships) Act 1976 and the threshold required is “serious injustice”. They may be able to rely on section 88(3)<sup>19</sup>, which relates to matters other than the division of relationship property and which does not require leave, but there is limited case law as to the application of that section.

The Court of Appeal’s comments appear likely to cause problems for estate planning, property transactions, and estate administration.

When taking conveyancing instructions, practitioners will likely need to ask about

the existence of a contracting out agreement in every case and to explicitly advise that if there is a contracting out agreement it might have the effect of overriding survivorship (or even tenancies in common) on death.

Whenever taking will instructions, practitioners will also need to ask about the existence of a contracting out agreement, and explicitly advise that if there is a contracting out agreement which is not incorporated into estate planning, the couple's intentions may not be given effect. It may be worth considering whether wills should include clauses which gift property in the event it is brought back into an estate under a contracting out agreement.

When administering an estate, and if there is thought (or known) to be a contracting out agreement, practitioners may need to insist that surviving spouses or partners take independent legal advice before obtaining a grant of probate or administration. Surviving spouses or partners will need to fully understand the implications of applying for a grant when they might later have to progress a division of property under a contracting out agreement with themselves in another capacity, before the estate administration can be carried out. Prospective claimants and family members may engage in litigation to appoint independent executors or administrators whenever there is, or there is thought to be, a contracting out agreement.

## Conclusion

In the author's view, the *Rimmer* decision was probably correct on its facts (although without further information about what advice the couple received in relation to death, and what "full and final settlement of all claims" was intended to mean, this conclusion is necessarily limited). The contracting out agreement conferred additional rights on Ms Wilton in the event of Mr Rimmer's death, which did not require the couple's relationship property to be divided, and which she was found to be entitled to enjoy in addition to her intestacy entitlements.

However, the Court of Appeal was wrong, in the author's view, to say that:

*[40] The practical effect of these provisions is that either way the s 21 agreement applies to the division of the relationship property. Option B will be elected if the deceased spouse or partner has made provision for the surviving spouse or partner in their estate or if there is no will. The s 21 agreement governs what part of the relationship property forms part of the deceased spouse or partner's estate ...*

If Option A is not elected then there is no process of dividing relationship property on death, according to a contracting out agreement, or otherwise.

However, the Court of Appeal's comments run contrary to this. They appear to mean that wherever there is a contracting out agreement, the process of dividing relationship property must take place on death to determine what property is retained by the survivor, and what forms part of the estate and is then subject to the provisions of a will or an intestacy.

This decision is likely to be a significant disruption to existing property transactions, estate planning, and estate administration. While it may lead to more robust professional practice, and there is arguably some underlying policy reason for the decision, it will require lawyers to be very vigilant about the possibility of historical contracting out agreements disrupting existing practices and assumptions.

The decision will also require lawyers to be crystal clear about what is intended to happen on death, and the intended interplay between a contracting out agreement and wills or other arrangements, or unintended consequences appear inevitable. ■

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**Note:** Leave to appeal the decision has been granted: *Rimmer v Walton* [2025] NZSC 150.

1. Or a "section 21 agreement"; these will be referred to interchangeably.
2. At [39].
3. At [39].
4. At [39].
5. At [40].
6. It would also sit uneasily with section 95.
7. Albeit, irrespective of whether this is best practice.
8. Interestingly, in two other cases dealing with post-separation contracting out agreements, similar clauses were found to exclude a surviving spouse's right to inherit under the intestacy provisions. However, the context of a post separation settlement and a contracting out agreement signed during an ongoing relationship are very different, and perhaps rightly affected the outcomes. See *O'Donoghue v Comia* [2023] NHZC 2735, and *Warrender v Warrender* [2013] NZHC 787.
9. Section 21B(3) of the Property (Relationships) Act 1976.
10. At footnote 28.
11. This is described in the Law Commission report *Review of Succession Law: rights to a person's property on death* (NZLC R145,2021) at 4.9 – 4.12.
12. New Zealand Law Commission *Review of Succession Law: rights to a person's property on death* (NZLC R145,2021) at 4.10.
13. Part 8 of the Property (Relationships) Act 1976 provide some presumptions which favour a surviving spouse, and it permits a surviving spouse to take actions as of right for which an estate requires leave.
14. Department of Justice Report of the Working Group on Matrimonial Property and Family Protection (October 1988) at 44-45.
15. Department of Justice Report of the Working Group on Matrimonial Property and Family Protection (October 1988) at 45.
16. Law Commission *Succession Law: Testamentary Claims* (NZLC PP24, 1996); Law Commission *Succession Law: A Succession (Adjustment) Act* (NZLC R39, 1997).
17. Both the 1996 Preliminary Paper (from [87] onwards) and the 1997 Report made this recommendation (from [52] onwards, and [C36] at page 59).
18. In *Sutton v Bell* [2023] NZSC 65, Ms Bell encouraged her partner to set up a trust to protect his home from later becoming at risk on separation. The disposition was found to be vulnerable under section 44 of the Property (Relationships) Act 1976 despite her express agreement at the time to it being made for the purpose of protecting against her future claims. The Supreme Court at [97] noted that Ms Bell had not entered into a contracting out agreement, with the benefit of legal advice, when making that statement.
19. The following persons may apply for an order under section 25(1)(b) or an order or declaration under section 25(3):
  - (a) the personal representative of the deceased spouse or partner;
  - (b) the Official Assignee in bankruptcy of the property of either spouse or partner;
  - (c) an appointee (within the meaning of section 378(1) of the Insolvency Act 2006) in whom the estate of a deceased spouse or partner vests on an order being made under section 379 of that Act.

# The Conversion Practices Prohibition Legislation Act 2022

*Where does the Family Court fit in?*

BY PETER MCKENZIE CNZM KC

The views in this article are those of the author not necessarily of the FLS.

The Conversion Practices Prohibition Legislation Act 2022, (Conversion Practices Act), although it moved rapidly through the House of Representatives with scarcely any dissent, was none the less one of the most controversial pieces of legislation in our recent history. It attracted a large number of submissions, the highest number in New Zealand’s legislative history.

When the Bill was introduced into the House of Representatives, it was the subject of spirited debate. The Bill was immediately challenged by Hon Simon Bridges, National, Tauranga, who called for an amendment to exempt parents from the application of the new law, as otherwise “good parenting would be compromised”. To illustrate his concern Mr Bridges referred to an English High Court decision, *Keira Bell v Tavistock*, which is discussed later in this article. Hon Louise Upston, National, Taupō, then supported this view and said that although National supported the intent of the Bill, she was opposed to the exposure of parents to prosecution, and was concerned that a child or young person under the age of 18 years could seek to act in complete isolation of their family, and parents who reacted to this situation were concerned as to what they might do without facing the risk of prosecution. “We are talking here about medical procedures. Are you seriously saying as a parent, when a young person under the age of 18 is considering a medical procedure, that as a parent, you as a parent, shouldn’t engage support, provide advice,

get external advice? Obviously not...”.

In the course of this debate no one seems to have given thought to whether the Family Court might not have jurisdiction to hear and deal with the concerns of parents and guardians regarding possible medical treatment for their child or young person. It is the purpose of this article to show that the provisions of the Family legislation stand alongside the Conversion Practices Act and are not excluded by that Act, notwithstanding that the Act intersects into what could be expected to plainly be the Family Court’s area of expertise and jurisdiction, the welfare of the child or young person.<sup>1</sup> The Act’s focus is on the human rights of LGBTQ+ persons and it is not without significance that the Act in s13 states that complaints under the Act are to be made under the Human Rights Act 1993.

## The impact of s 8 of the Conversion Practices Act

Section 8 of the Act creates an offence of performing a conversion practice on persons under the age of 18 years or persons lacking decision-making capacity. Section 8(b) refers expressly to “a person who lacks the capacity to understand the nature, and to foresee the consequences of, decisions relating to their health and welfare”. These words replicate words in s 6(1) of the Protection of Personal and Property Rights Act 1988 and envisage any persons (including persons over the age of 18 years) for whom the Family Court has jurisdiction under that Act to make a Protection Order in relation to health and welfare.

Section 8 (1)(a) which concerns children and young persons under the age of 18 years, and s8(1)(b) which concerns persons who lack capacity to make decision on their health and welfare, intersect with the detailed provisions on the welfare of the child and young person in the Care of Children Act 2004, and with the provisions of the PPPR Act in relation to persons under s8(1)(b).

The Care of Children Act in s 3 sets out the purpose of the Act which in subsection (1) states that the purpose of this Act is to –

- (a) Promote children’s welfare and best interest, and facilitates their development by helping to ensure that appropriate arrangements are in place for their guardianship and care; and
- (b) Recognises certain rights of children.”

The next section, s 4, under the heading “Child’s welfare and best interests to be paramount” states in subsection (1):

“The welfare and interests of the child in his or her particular circumstances must be the first and paramount consideration-

- (a) In the administration and application of this Act, for example in proceedings under this Act; and
- (b) In **any** other proceedings involving the guardianship of, or the role of providing day to day care for or contact with a child.” (emphasis added).

“Guardianship” is defined very broadly in s 15 in terms that clearly cover matters affecting the child or young person under the provision of the Conversion Practices Act. A “child” is defined in s 3 as meaning a person under the age of 18 years.



Detailed provisions follow including a statement of Principles relating to a child's welfare and best interests in s 5. In this respect the provisions of paragraph (b) of this section are significant. The Principle stated in this paragraph is that:

“(b) a child's care, development and upbringing should be primarily the responsibility of his or her parents or guardians”

Significant provisions follow to promote the welfare of the child. These include detailed provisions on guardianship including the role of parents, court appointed guardians, consent to medical procedures (s 36), resolution of family disputes and provision of counselling, appointment of a lawyer to assist the court (including a lawyer for the child (ss 7 and 130).

The court which has jurisdiction under the Care of Children Act is the Family Court. Section 125 is directive. Subsection (1) states “Proceedings under this Act must be heard and determined in the Family Court unless – (a) the proceedings are criminal proceedings in which case the Family Court does not have jurisdiction in respect of them; or (b) under (certain stated provisions) of the Act.

The Family Court has comparable jurisdiction under the Protection of Personal and Property Rights Act 1988 (the PPPR Act) in relation to persons who lack wholly or partly, capacity to understand the nature and foresee the consequences of decisions in relation to their health and welfare. Under s 12 the Court may appoint a Welfare Guardian. The powers of Welfare Guardians are set out in s 18 and include

in s 18(1)(c) power to refuse to consent to the administering to a person of any standard medical treatment or procedure intended to save that person's life or to prevent serious damage to that person's health, in sub para(d) power to consent to the administering to any person of electro-convulsive treatment, or in para (e) power to consent to the performance on that person of any surgery or other treatment designed to destroy any part of the brain or any brain function for the purpose of changing that person's behaviour. A safeguard on the integrity of the person is provided by subsection (3) which provides that in exercising those powers the first and paramount consideration of the welfare guardian shall be the promotion of the welfare and best interests of the person for whom the welfare guardian is acting, while seeking at all times to encourage that person to develop and exercise such capacity as that person has to understand the nature and consequences of decisions relating to the personal care and welfare of that person, and to communicate such decisions. In some respects, these provisions anticipate the more damaging forms of conversion therapy, as well as making provision for the court to deal with areas of contention over medical treatment which can cover the administration of therapies designed to advance gender change.

When regard is had to the detailed regime, and the way in which the law and Parliament over the last 50 years has recognised the special jurisdiction of the Family Court and its expertise in matters affecting

the welfare of the child, it is surprising that such a heated set of exchanges could take place in Parliament without any apparent recognition that family law in New Zealand already provides an appropriate and expert forum for dealing with concerns relating to the welfare of the child and younger person and the role of parents and guardians.

### What is the present position under the Conversion Practices Act as it stands?

What then is the present position in relation to the application of the Care of Children Act 2004 and the PPPR Act and the jurisdiction of the Family Court if there are parental or welfare concerns under the Conversion Practices Act?

It is my view that the Conversion Practices Act must be read together with the Family statutes as providing supplementary provisions for determining matters affecting the welfare of children, or persons coming under the PPPR Act, and on the other hand the provisions of the Conversion Practices Act, that penalise conduct that amounts to a conversion practice and is penalised by the new offences under the Conversion Practices Act. There is no necessary inconsistency between the Conversion Practices Act, which prohibits conversion practices and creates offences in relation to persons who breach its provisions, and the provisions of the Family legislation protecting the rights of and promoting the welfare of the child and family and the rights of parents and guardians of the child or young person, or persons coming under the PPPR Act. The two sets of statutes can be read side by side, in the same way as the provisions of the so-called anti-smacking law (s 59, as amended in 2007 of the Crimes Act 1961). The Family legislation provides express processes for application to be made to the Family Court to determine matters affecting the welfare of the child, or which may affect parental rights in so far as the guardianship of the child is concerned, including medical treatment for the child (s1(2)(c)) or the person in need of protection under the PPPR Act which are interfered with by the Conversion Practices Act. For

example a parent or guardian of a child could apply to the Family Court to have it determined whether the parent was properly exercising his or her statutory rights as guardian under the Care of Children Act, or the parent or guardian could seek an order from the Family Court to determine whether proposed medical treatment, such as puberty blockers or surgery designed to advance gender change, was in the best interests or welfare of the child or the person in need of protection. The processes of the Family legislation would apply including appointment of counsel for the child.

It has not, to my knowledge, been suggested that the Care of Children Act does not apply to safeguard the child, who is the subject of hitting or other excessive discipline, by reason of there being a criminal provision, over which the Family Court has no jurisdiction, which criminalises certain conduct which the law holds is harmful to the child.

Another example of jurisdiction being exercised by the Family Court which cuts across the provisions of the Conversion Practices Act, is in relation to the issue which surfaced in many submissions before the Select Committee on the Conversion Practices Act, namely that this Act may make it an offence for a parent or guardian to attempt to oppose any medical treatment or counselling which a therapist or school counsellor has proposed that the child undertake to advance the child's gender identity or gender expression. An opposing parent could seek the assistance of the Family Court for the issue of an order to restrain such treatment or counselling on the ground that it is contrary to the best future interests and welfare of the child.

If the processes of the Family Court have been ousted by the later statute then these parental or guardianship rights would have been repealed in so far as the offences under the Conversion Practices Act are concerned. However, in my view an argument of that kind cannot be sustained here. And the two statutes must be read together.

An old principle of statutory

interpretation cited by Maxwell on the Interpretation of Statutes states that if two statutory provisions are totally inconsistent with each other, so that they cannot stand together, the later in time impliedly repeals the earlier<sup>2</sup>. In my view there are major difficulties in arguing for an implied repeal of the otherwise applicable family legislation in the present case. The leading case on which Maxwell relies for his statement of the principle of construction, states that the provisions of the later enactment should be “so inconsistent with or repugnant” to the provisions of an earlier enactment that the two cannot stand together.<sup>3</sup> These are strong words and indicate that the two statutes must be completely irreconcilable if there is to be an implied repeal, otherwise they must be read together. In the present case the two statutes can readily be read together. Section 125(a) of the Care of Children Act denies the Family Court jurisdiction in the case of criminal offences. The offences in ss 8 and 9 of the Conversion Practices Act can properly be described as criminal offences. These offences each carry a significant term of imprisonment (3 years and 5 years respectively). What s12 describes as a “prosecution” for these offences, requires the consent of the Attorney General. This section indicates the serious nature of these offences, and that caution must be exercised in prosecuting them. There are reasonable grounds for arguing that the Family Court's jurisdiction to deal with these offences is expressly excluded under s125(a) of the Care of Children Act. The exclusion of the Family Court's jurisdiction to deal with these offences, however, only applies to “criminal proceedings”. It does not exclude the Family Court's primary jurisdiction in relation to family proceedings. The Family Court's power to determine applications in relation to the welfare of the child and in relation to the guardianship rights of parents or a guardian in relation to ss 33 to 38 of the Care of Children Act, and also under the PPPR Act, is in no way affected and those provisions may be read as standing alongside the provisions of the Conversion

Practices Act. Obscurities remain such as the extent to which the provisions of the Conversion Practices Act, and in particular s 8, create inroads into the way in which the Family Court is required to regard the welfare of the child as paramount. That is a matter which would have to be determined by the Family Court. In my view it must be doubtful, having regard to the wide and fundamental statement in s 4 of the Care of Children Act, whether a form of treatment or guidance given to a child in relation to gender transition must yield, without reservation, to the policy of the Conversion Practices Act, but this must await the Family Court's determination.

### The Tavistock Centre Case

The courts in England have already grappled with this question, with differing views being expressed by the 3 judges in the Administrative Division of the High Court from the approach taken on appeal to the Court of Appeal, by another 3 judges in that Court<sup>4</sup>.

The courts were asked the question whether puberty blockers could be prescribed for children and young persons under the age of 18 years who were experiencing gender dysphoria. The case was initially brought by the mother of a 15 year old who sought from an early age to transition to female. Some months later Quincy (or Keira) Bell, a young woman in her early 20's, replaced the initial plaintiff and gave her name then to the proceeding. She had been prescribed puberty blockers at age 16 to assist in her transitioning to a male, but later in her 20's regretted the transition, and joined the initial plaintiff in alleging that the hormone therapy was experimental and that there was robust medical evidence to show that there were long lasting medical detrimental effects from such therapy. It was reported at the time that lawyers were besieged with clients wishing to join the proceeding, and one lawyer claimed that “1,000 clients may join the gender identity clinic claim.”<sup>5</sup>

The various clinics which had prescribed such treatment, and were defendants in this case, claimed that their practice had

been to obtain consent in every case. The Divisional Court considered that the issue at the heart of the case was whether informed consent could be given by children and young persons to the kind of treatment prescribed in this case. Were children and young persons competent to give such consent to treatment of this kind? The Court spent time in its judgment considering the impact on the case of the House of Lords decision in *Gillick v West Norfolk and Wisbech Health Authority*.<sup>6</sup> In that case a mother sought the Court's intervention when her daughter was prescribed contraceptive tablets without the mother's consent. The House of Lords determined that minors would be able to consent to treatment if, in the words of Lord Scarman, "they demonstrate sufficient understanding and intelligence to understand fully what is proposed". The Court considered that parental authority diminishes over time as the child matures and acquires growing understanding and maturity. This is now called "Gillick competence". The Divisional Court in Bell's case rejected the application of the Gillick competence test on the facts of that case. The Judge relied on evidence given by a Professor of Cognitive Neuroscience who stated that *"given the risk of puberty blocking treatment, and the fact that these will have irreversible effects, that have life-long consequences, it is my view that even if the risks are well explained, that in the light of the scientific literature, that it is very possible for an adolescent to be unable to fully grasp the implications of puberty blocking treatment"*.

The Court therefore declined to apply the Gillick test to any of the plaintiffs and instead provided "guidance" for the future in a series of propositions dealing with the differing situation of children and young persons at various stages of maturity. The effect of that guidance was to require that in virtually all cases the consent of the Court would be required before any child or young person could be given such hormone treatment.

The Divisional Court's judgment provoked a strong reaction from the media and

**"The Court considered that parental authority diminishes over time as the child matures and acquires growing understanding and maturity. This is now called "Gillick competence"."**

from clinics across Britain, and the case was appealed to the Court of Appeal. This Court allowed Tavistock's appeal. The court took a narrow view of the basis on which the proceedings were brought before the Divisional Court and held that the Courts were not being asked to determine whether treatment for gender dysphoria is wise or unwise. Such policy decisions are for the National Health Service, the medical profession and its regulators and Government and Parliament. The Court of Appeal saw in the *Gillick* judgment an authority for holding that it was for doctors, not judges, to decide on the capacity of under 16's to consent to medical treatment. Further, the Court of Appeal considered that disputed fact, expert evidence and medical opinion were not suitable for determination in judicial review proceedings and there were great dangers in a court grappling with issues which were divorced from the factual context that required their determination. "The court should not be used as a general advice centre".

For those reasons the Court rejected the Divisional Court' approach of setting guidelines for future determination by the courts and held bluntly that it was for clinicians and not the courts to decide on competence to consent. The Court expressed disquiet at the quality of the evidence before the Divisional Court which it considered argumentative and adversarial. It would appear that the court had got caught in the wasteland of differences between the

views of the judges in the 2 courts over morality and judicial propriety.

It is very doubtful, in my view, that the Family Court, if faced with questions such as those faced by the English courts, would arrive at the same stalemate. The family legislation in New Zealand is more comprehensive and directive than that in England. The New Zealand Care of Children Act 2004, for example has specific provisions conferring jurisdiction on the Family Court in relation to medical treatment and the child. Section 5 sets out broad "Principles relating to Child's welfare and best interests" which provide broadly for the Family Court to determine matters relating to the child's welfare and best interests. Section 16, which deals with the exercise of Guardianship, states expressly in subsection (2)(c) that "important matters affecting the child" include medical treatment for the child (if that medical treatment is not routine in nature). Section 36 deals expressly with consent to procedures generally and applies to the Court's consent or refusal of consent to a donation of blood, or to any medical, surgical or dental treatment or procedure (including a blood transfusion) to be carried out on a child under the age of 16 years who is not married or in a civil union or living with a de facto partner and has no guardian. Where there is no guardian of an underage or unmarried child, subsection (3) confers jurisdiction on a District Court Judge to give consent. Section 46 concerns more generally the case where consent is required under any enactment and confers jurisdiction to consent on a Family Court Judge. Under s 46C, children (defined as being up to 18 years of age) may, if the child is over the age of 16 years, seek review by a Family Court Judge of a parent's or guardian's refusal to give consent "in an important matter".

The Family Dispute Resolution Act 2013 confers wide jurisdiction on a Family Court Judge to deal with applications to resolve a family dispute. There can be little doubt that in cases affecting gender transitioning, and any relevant treatment a Family Court Judge would, in New Zealand, have jurisdiction to determine questions of consent to medical treatment or other matters in

dispute. It is unlikely that the Family Court judge, although receiving and assessing relevant medical evidence, would take the approach taken by the Court of Appeal in England that it is for doctors and not judges to determine whether the child in question had the needed capacity to make the decisions in question.

### Conclusion

There are therefore, in my view, good grounds for considering that the Conversion Practices Act does not oust the jurisdiction of the Family Court in relation to children

and young people but must defer to the processes of the Family Law statutes and the fundamental statement in the Care of Children Act 2004, in relation to matters affecting the child or young person, that the welfare of the child or young person and their best interest is paramount. There are good grounds for considering that a parent or guardian is still able to apply to the Family Court for its determination, in any particular case, what is in the best interests and welfare of the child or young person and to restrain actions that are contrary to this. ■

1. The Conversion Practices Prohibition Bill was introduced into the New Zealand Parliament on 30 July 2021, well after the date on which the High Court of England and Wales (Administrative Division) delivered a controversial judgment dated 1 December 2020, which aroused a great deal of publicity in the UK, and is discussed later in this article. That judgment was appealed to the Court of Appeal which reversed the High Court judgment in a number of respects and is also discussed later. That judgment is dated 17 September 2021. The New Zealand Act had its third reading and was passed on 15 February 2022, well after the date on which the UK Court of Appeal decision was delivered.
2. Burrows and Carter, *Statutory Law in New Zealand*, 5th ed. 453, citing Maxwell on the Interpretation of Statutes, 12th ed 1969, p193.
3. Kutnerv Phillips [1891] 2 QB267, 272.
4. *The Bell v Tavistock and Portman NHS Foundation Trust* [2020] (WLR (D) 655; [2020] EWHC 3274 (Admin 1 December 2020)).
5. The Law Society Gazette, [law.gazette.co.uk/news/firm-predicts-1,000-client-last](http://law.gazette.co.uk/news/firm-predicts-1,000-client-last) consulted 3/11/2022.
6. [1986] AC 112, HL.

## Professional Supervision & Family Law: An Invitation to Think Differently

BY TYSON WALTERS

Is professional supervision something to comply with, a box to tick, or an organisational requirement to satisfy? For many years, the Family Law Section's Best Practice Guidelines for Lawyer for Child have a requirement for practitioners to have suitable arrangements in place for regular professional supervision. Recently the Family Law Section introduced the same requirement for lawyers for subject persons, and a great many practitioners are trying to understand what that means. But what if we've been asking the wrong question, and is there perhaps another way to view it? Instead of adopting the stance of "Why do I have to engage in supervision?" a suggested reframe or more useful consideration might be:

### How could professional supervision strengthen and support me, my clients and my practice over the course of my career?

In family law where the work is complex, relational, and emotionally charged, professional supervision provides a variety of

benefits. It offers a way for practitioners to think more clearly and learn from their experiences, practise more ethically and competently, and remain grounded in work that is rarely simple and never neutral. And not only that, but it also attends to well-being considerations for lawyers who are often overly exposed to stress and indirect trauma through their work. Are you curious to learn more?

**K**ia ora! Welcome to the beginning of a combined webinar and article series which is focused on professional supervision and how it can provide support for family lawyers in practice. My name is Tyson Walters and I'll be journeying along with you in presenting, writing, and exploring more about professional supervision.

I work as a professional supervisor supporting practitioners working in complex and high-pressure environments. I hold a Master's degree in Professional Supervision from the University of Auckland, and my independent research focused specifically on lawyers exploring how professional supervision can support best practice and

wellbeing over the course of a legal career. I am the founder of InCourage Supervision which I created to offer the highest quality of professional supervision for working professionals in New Zealand. I'm based in Auckland and provide supervision in person and online to meet the needs of practitioners anywhere in the country.

In designing this series, the aim is to provide practising family lawyers with information on professional supervision and to do so in such a way that it can be accessible and inclusive. There will be three different presentations each anchored in various formats to support different learning styles. This will include webinars where I will present information, personal anecdotes and stories from your colleagues across New Zealand, and supporting written articles that tie it all together. Each webinar will also feature time for a Q&A where I'll do my best to answer any questions on the presented material on the day, and of course, the webinars and articles will be archived for your future reference if you want to revisit the content. Additionally, please feel free to reach out to me if you

have any questions or need anything related to professional supervision.

This series is being split into three parts, and here is an overview of what you can expect to learn. I'd very much encourage your attendance at all three webinars as it will provide you a great perspective that can improve your engagement with professional supervision.

### Part One: What Is Professional Supervision – and Why Does It Matter?

The first session begins with the basics, but not in a simplistic way. Professional supervision is often poorly defined, inconsistently practised, and tangled up in confusing language. We'll unpack what supervision actually is, how it differs from mentoring, therapy, performance management, or peer support, and why vocabulary matters more than we often realise.

We'll explore the three core functions of professional supervision:

- Normative: supporting ethical, accountable, and legally sound practice.
- Formative: developing skill, judgment, and professional identity.
- Restorative: supporting wellbeing, resilience, and sustainability.

Together, these functions create a space that is reflective, structured, and purposeful. The art of supervision lies in attending to all three areas consistently over time.

We'll also look at what typically happens in a supervision session, what frequency of supervision works best, and what the evidence tells us about its benefits.

### Part Two: Getting the Most Out of Supervision

One of the most important ideas in this series is that supervision is not something that simply "happens to you." It is an active professional skill where what you put into it is correlated with the benefits you can expect to receive from it.

In this session we shift the focus to the role of the supervisee and what helps supervision genuinely add value. Drawing on the work of Michael Carroll and Maria Gilbert, we'll explore skills such as learning from experience, reflective practice, realistic self-evaluation, emotional awareness, and constructive dialogue. These are not abstract concepts, they are practical capacities that strengthen judgment, decision-making, and professional confidence.

We'll also discuss how to choose a qualified supervisor, why contracting and regular reviews matter, and the importance of fit and choice in the supervisory relationship. Supervision works best when it is intentional, transparent, and grounded in mutual expectations.

### Part Three: Supervision, Wellbeing, and Indirect Trauma

The final session focuses squarely on wellbeing, and why it matters in family law. Through my research with New Zealand lawyers a clear picture emerged which demonstrated that exposure to others' trauma is not incidental in this field, it is built into the work as the clients we are in service to are often in crisis.

We'll explore indirect trauma including vicarious trauma, secondary traumatic stress, and compassion fatigue, and how these can show up in legal practice over time. This isn't about labelling or diagnosing, but about understanding patterns that many lawyers recognise in themselves or colleagues such as emotional numbing, irritability, exhaustion, reduced empathy, or a creeping sense of disengagement.

Professional supervision, particularly through its restorative function, offers a structured and ethically sound way to notice, name, and respond to these impacts. We'll clarify what "trauma-informed" does and does not mean, and how trauma informed supervision can support legal practice without turning supervision into therapy.

### An Invitation

This series is not about telling lawyers how to practise law, it is about supporting the people who practise it through the adoption of professional supervision. Whether you are curious, sceptical, or already engaged with supervision in some form, these webinars are designed to be practical, grounded, and relevant to the realities of family law.

My hope is that they offer not only information, but a shift in perspective and a clearer sense of how professional supervision can support ethical practice, professional growth, and long-term wellbeing for lawyers working in family law. I look forward to the conversations ahead. ■

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**Tyson Walters**

Professional Supervisor

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# Relationship Property and FDR

BY WILL STORY

## How do they fit together?

As many readers will know, Family Dispute Resolution (FDR) is primarily focussed on the resolution of parenting and guardianship disputes under the Care of Children Act 2004. Thanks to the Ministry of Justice, FDR is now free for all families regardless of their income and dependencies.

While for many, family justice has become much more accessible now that the funding barrier to FDR has been completely removed, what about relationship property? After all, many parties who have been unable to reach their own agreement around care of children matters are similarly stuck when it comes to sorting out how the family home and chattels are to be divided.

While unfortunately there is no government funding for relationship property mediation, at Fair Way we recognise that there is a need to provide parties with a cost-effective and timely way to resolve their relationship property disputes. For that reason, Fair Way's relationship property service has been designed as an add-on paid service to complement the FDR process, for families who have a positive experience of resolving issues through FDR and who therefore wish to continue with mediation to resolve relationship property matters.

Sometimes, the two are closely linked and outstanding relationship property matters are the barrier to parties fully and freely reaching a robust agreement around the children. For example, it might not be possible for parties to commit to a proposed childcare regime without having certainty of financial positions. For many cases, there are strong merits in parties having a separate relationship property



mediation run simultaneously or sometimes even before FDR.

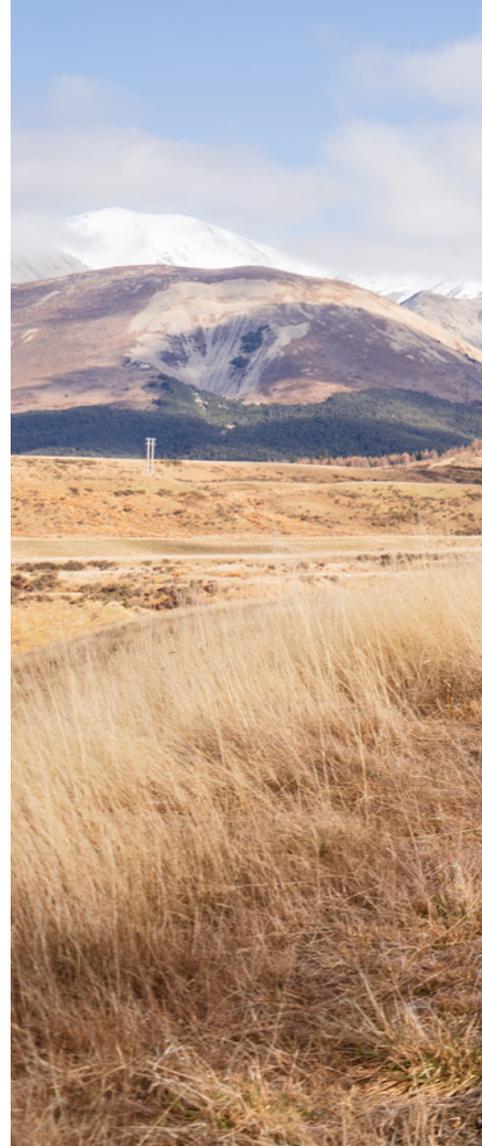
## So why should your clients use mediation to resolve relationship property issues?

Mediation can help parties get to the negotiating point much quicker. The conventional process of lawyer letter-writing backwards and forwards can drag on for months, if not years, before the parties are encouraged to sit around a table for a facilitated discussion. This of course traditionally comes at great expense to both parties (often eating into what is a modest property pool) and exacerbates tensions around co-parenting matters. As a previous practicing relationship property lawyer, I found myself questioning the value of drawn-out disclosure processes where all that was often required was getting the parties and their lawyers together in a room so that months' worth of exchange could be fast-forwarded and a clear plan agreed to. The beauty of having this conversation facilitated by a mediator is that not only do they bring relationship property

knowledge and expertise, they bring a level of objectivity and creative thinking that can be difficult for Counsel as advocates to reconstruct.

We recently had a case involving a couple who had been attempting to work through financial matters via their lawyers for nearly two years. Communication had become difficult and progress was limited. Through mediation, we were able to resolve the outstanding issues within four hours. The feedback from both parties was extremely positive, particularly about how straightforward and manageable the process felt compared to their previous experience.

It's also worth noting that our relationship property mediators come from not only a legal background but also are highly trained and experienced in conflict management. That combination can sometimes make it easier to work directly with parties, helping them communicate more effectively and reach practical agreements without the need for prolonged legal processes or court involvement.





**“We recognise that one-size-does-not-fit-all. Our process is therefore tailored to the needs of each family in their particular circumstances, recognising the overall depth of the relationship property pool”**

### **What if they cannot afford it?**

At Fair Way we recognise that one-size-does-not-fit-all. Our process is therefore tailored to the needs of each family in their particular circumstances, recognising the overall depth of the relationship property pool. Overall, the cost of a relationship property mediation through Fair Way is quite affordable in contrast to many private relationship property mediators.

As a mediation supplier, we offer payment options to parties (recognising that many parties are cash poor but asset rich). It is important also that parties talk to their lawyers about what other funding options may be available (for example, legal aid). The growing presence of litigation funders (who don't just fund litigation) in New Zealand is also an option that is becoming more readily accessible and well worth exploring.

### **Are people using mediation to resolve relationship property much?**

As the nationwide supplier of funded FDR, we have seen a significant increase

in the number of parties inquiring as to the viability of mediation to resolve relationship property. This is a good reflection of both the increasing awareness of Alternative Dispute Resolution (ADR) as an effective tool, and of the practical and sound legal advice being provided by legal representatives.

It is important to highlight too that the number of relationship property lawyers now ascribing to collaborative practice has coincided with the growth of ADR as a means of resolving relationship property matters in New Zealand. The future is positive!

### **How are lawyers involved?**

There are obviously legal requirements that need to be met when parties enter into relationship property settlement agreements.

In the past, many lawyers have seen it as critical that they sit at the mediation table with their clients to ensure they are sufficiently represented during the facilitated negotiation process. Now more than ever, perhaps as legal advice



process, while those with complex assets are given cost expectations for a full mediation. These parents were eligible for legal aid, so based on their needs we provided a fixed-price in order for them to obtain a legal aid disbursement for these costs.

The parties then obtained independent legal advice and participated in coaching to prepare for mediation. The appointed mediator had significant expertise in Property (Relationships) Act 1976 matters. The mediator met each party separately to understand their goals and concerns, then facilitated a joint session focused on practical solutions to support financial stability for their children. This led to an agreement that allowed both parents to maintain homes in the same community and strengthened communication around their children’s needs while considering the financial resources available to the parents.

The mediator drafted an agreement which the parties finalised with their lawyers and certified under section 21 of the Act. With clarity about their financial positions, they then returned to FDR to complete their parenting agreement. By having both FDR and relationship property mediation run in parallel, the parents reached a fair, practical resolution on both fronts that supported both them and their children. ■

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becomes more quickly accessible through phone or video conference, it is equally common for parties to be empowered by their lawyers to enter into free and full discussions without their lawyer being their mouthpiece, but rather with their lawyers being consulted in breakaway sessions or involved in pulling together the finer detail of the agreement prior to being signed by both parties.

Either way, legal advice is a critical component of robust agreements, and we work with parties to ensure that the process reflects their needs – wherever they may prefer for their lawyer to be involved.

### Case study

A separated couple struggling to communicate and resolve their relationship property issues sought help from Fair Way. Their concerns about supporting their children made it difficult to make progress on their own.

We guided them into the relationship property mediation process, helping them complete full financial disclosure, including identifying, classifying, and valuing all assets and debts. Based on this information, Fair Way provided a realistic cost estimate. Families with lower-value property could use a simpler facilitation



## Family matters?

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## Case notes

Full copies of judgments summarised in this service are available through Westlaw NZ. These cases may contain publication restrictions. Any report of these proceedings must comply with ss 11B to 11D Family Court Act 1980.

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### CARE OF CHILDREN

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#### B v S

*B v S* [2025] NZHC 1221, High Court, Auckland,

Becroft J, 19/12/2025

Family law – Care of children –

Parenting – Relocation

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

Family law – Family proceedings – Appeals

Successful appeal by MB to set aside Family Court’s (FC) decision allowing relocation of TS with their son, S; MB and TS separated when S very young and co-parented well, MB lived on farm with parents and worked shifts which often affected care arrangements; TS had no family support, limited financial means and wanted to move two and a half hours away to be closer to family and job opportunities, MB argued FC put undue weight on interests of TS as opposed to S’s interests and views.

**Held**, need for detailed assessment of relocation on S, whether it is in his best interests and consideration of his views; FC seemed to approach decision as evening up scales for TS as had been imbalanced towards MB; TS’s proposal lacked sufficient detail and certainty re living arrangements and S’s schooling; S’s views not properly engaged with in FC decision; S against relocation and his behaviour now settled after difficult start at school; relocation not in S’s best interests as it would disrupt his stable environment and relationship with MB and paternal grandparents; parenting orders in place before FC decision reinstated; appeal allowed.

#### C v Family Court at North Shore

*C v Family Court at North Shore* [2025] NZHC 4011,

High Court, Auckland, Andrew J, 16/12/2025

Family Law – Care of Children Act – Specialist

Reports

Administrative law – Judicial review

Family Law – Parties –

Representation – Self-representation

Judgment of Andrew J regarding application by C for judicial review of decision by Family Court (FC) Judge directing C to read s 132 Care of Children Act 2004 (COCA) report at registry; C self-represented litigant in FC proceedings about care arrangements for his two children; social worker’s report prepared under s 132 COCA, FC Judge directed that C could only read the report at court registry and could not receive a copy; C argued that the Judge lacked jurisdiction to impose such a restriction and that, if there were safety concerns court should instead have appointed counsel to assist him under s 130 COCA.

**Held**, s 134 COCA provides a complete and exhaustive code governing the release of ss 132 and 133 reports; only two lawful outcomes: either (1) the self-represented party receives a copy of the report, or (2) if releasing it would pose a risk of physical, sexual, or psychological abuse to a child or another person, the court must withhold the report and appoint counsel to assist to explain its contents; FC not empowered to require a litigant to attend the registry to read the report; Judge’s direction exceeded jurisdiction; also found FC had not expressly applied the statutory risk test under s 134(3) COCA; although concerns about the sensitive content of the

report were noted, they did not justify creating an intermediate procedure not provided by statute; direction quashed and matter remitted back to FC, orders accordingly.

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### GUARDIANSHIP OF THE COURT

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#### Possible v Chief Executive of Oranga Tamariki – Ministry for Children

*Possible v CE of OT* [2025] NZCA 668, Court of Appeal,

Whata, Robinson and Eaton JJ, 16/12/2025

Family law – Child abduction – Habeas corpus

Family law – Guardianship – Guardianship of the Court

Court

Unsuccessful appeal by P against High Court (HC) decision declining habeas corpus writ re P’s daughter Roxanne (R), under Family Court guardianship; P claimed HC Judge failed to consider whether R’s guardianship order lawful or operative.

**Held**, P already had recourse to HC’s supervisory jurisdiction challenging guardianship arrangements on two occasions; Court had no doubt about legality of present guardianship order given HC’s careful scrutiny and current FC review; no evidence habeas corpus appropriate and present appeal was collateral challenge to previous HC decisions and ongoing FC process; review of guardianship arrangements, as anticipated by HC, recommended as soon as practicable; appeal dismissed.

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## RELATIONSHIP PROPERTY

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### Cooper v Smithie

*Cooper v Smithie* [2025] NZHC 3957, High Court, Auckland, Johnstone J, 15/12/2025  
 Family law – De facto relationships  
 Family law – Family proceedings – Appeals  
 Family law – Relationship property – Division – Extraordinary circumstances  
 Family law – Relationship property – Division – Unequal sharing

Successful appeal by C against Family Court’s (FC) decision awarding him 15 per cent share of family home, parties began dating around December 2001; C imprisoned from mid-2002 till end of 2006 for serious criminal offence; parties kept in contact; S purchased Panmure property in 2005 using her own and loaned funds; C and S began living together full-time in February 2009 after the birth of their first child; parties lived together rental property in Manurewa for one year and nine months; C did some work on Panmure property; couple split up in November 2010; S lived with two children in Panmure property; C and S lived in Panmure property with their three children from November 2013 until June 2022; S contended that relationship ended in March 2018 following an assault by C against her; argued FC correctly found extraordinary circumstances justifying unequal sharing due to her significant financial contributions and C’s acts of violence; C argued that the de facto relationship continued until June 2022 albeit strained; C asserted FC erred in its assessment of the relationship’s duration and the circumstances justifying unequal sharing; C claimed relationship characterised by mutual commitment to their children despite lack of financial interdependence. **Held**, found that the parties lived together

as a couple for a total of ten years and four months, including eight years and seven months in Panmure home, concentrated on parties’ shared care and support of their children and conscious decision to cohabit until 2022; found no extraordinary circumstances making equal sharing of the property repugnant to justice; lack of evidence of grossly unequal contributions to the relationship; concluded that FC’s reasoning did not meet the stringent test for extraordinary circumstances, parties entitled to equal shares in the family home, appeal allowed.

### Rimmer v Wilton

*Rimmer v Wilton* [2025] NZSC 150, Supreme Court of New Zealand, Ellen France and Kos JJ, 31/10/2025  
 Civil procedure – Appeals – Leave to appeal – Supreme Court  
 Family law – Relationship property – Agreements – Contracting out  
 Wills, probate and administration – Executors and administrators – Administration – Intestacy

Successful application by the Rs for leave to appeal against a determination that a contracting out agreement between their father and his de facto partner did not affect the partner’s entitlements after the father died intestate.

**Held**, the approved question was whether the Court of Appeal had been correct to dismiss the Rs’ appeal; submissions should address whether a surviving partner could receive entitlements under Option B of s 61 of the Property (Relationships) Act 1976 while also relying on a contracting out agreement; application granted.

### Selak v Goodwin

*Selak v Goodwin* [2025] NZHC 3203, High Court Auckland, Associate Judge Taylor, 30/10/2025  
 Family law – Relationship property – Division  
 Family law – Relationship property – Trusts  
 Property – Real – Encumbrances – Caveats – Notice

Successful application by S for orders that notice of claim (Notice) not lapse; S and G were in 10-year de facto relationship and S sought division of relationship property under the Property (Relationships) Act 1976 (PRA) in Family Court (FC); S lodged Notice over eight properties (Properties) owned by G or trusts associated with him and sought order that Notice remain on title of Properties protecting her substantive claim until it was determined in FC; S claimed, as she had no transparency around parties’ assets or finances, she could not determine whether she had an interest in Properties until forensic accountant examined financial records.

**Held**, notice of claim had same effect as caveat lodged under the Land Transfer Act 2017 (LTA); onus of proof lay on S to establish she had sufficient interest in Properties to support notice; Court could not be satisfied S’s interests would not be prejudiced by removal of notice before forensic accountant’s report, indicating whether G had intermingled relationship property with Properties owned by trusts and other Properties in which he had a personal interest, was available; s 42 PRA notice intended to give PRA claim more protection than caveat; FC proceedings at early stage and S had offered to remove notice over particular Properties in which G demonstrated she had no interest; no prejudice to G arose; application granted.

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## SPOUSAL MAINTENANCE

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### H v C

*H v C* [2025] NZCA 547, Court of Appeal, Hinton and Whata JJ, 17/10/2025  
 Evidence – Application – To adduce further evidence  
 Family law – Spousal maintenance

Successful application by C to adduce further evidence and partially successful application by H to adduce evidence in reply; High Court ordered H to pay interim spousal maintenance to C; primary assets of relationship held in trusts, C applied to adduce financial statements of one of trusts, documents related to the sale of a property and an affidavit by H regarding funds received from the trusts; C argued documents demonstrated H's ability to liquidate assets and control trust resources which was relevant to the maintenance proceedings; H applied to adduce further evidence in reply, including affidavits by himself and his accountant, to address the loan's purpose and status.

**Held**, found financial statements credible and cogent despite not being fresh; sale documents and the October 2024 affidavit also allowed as were fresh and relevant to appeal; H's application to adduce further evidence granted in part, allowing affidavit of his accountant as his evidence deemed relevant to the interrelationship between H and the trusts; application granted; application partially granted.

## WILLS, PROBATE AND ADMINISTRATION

### Twaites v Brackenbury-Twaites

*Twaites v Brackenbury-Twaites* [2025] NZHC 3997, High Court, Palmerston North, Cull J, 16/12/2025

Family law – Family Protection – Claim by adult child

*Wills estates and administration – Family Protection Act*

Judgment of Cull J regarding claim by AKT for breach of moral duty by his father, Alan Twaites (Alan) and proposed removal of FBT and Clair Marshall (CM) as executors of Alan's estate; Alan died in 2021 providing little beyond some spoons and photographs for AKT in his will; AKT one of Alan's three estranged children from his first marriage, AKT sought further provision under Family Protection Act 1955 and challenged several substantial lifetime payments made by Alan to his daughters from his second marriage, FBT and CM; AKT argued that payments amounting to \$200,000, \$400,000 (twice), and additional smaller sums were loans, conditional gifts,

or the product of undue influence, and therefore should be treated as part of Alan's estate; AKT also sought removal of FBT and CM as executors, alleging misconduct and conflicts of interest.

**Held**, evidence established that \$200,000 advanced to FBT in 2017 was loan that was not forgiven and therefore formed part of Alan's estate; found that two \$400,000 transfers to FBT and CM, along with \$100,000 investments for grandchildren and \$29,275 spent on home improvements were inter vivos gifts, not loans or donatio mortis causa; AKT's allegations of undue influence rejected; evidence showed Alan had capacity, acted deliberately, and had long intended to benefit his second-marriage family over his first; executors' disclosure failures were serious but did not justify removal; concluded Alan had breached moral duty to AKT, who had long hoped for reconciliation and was excluded from Alan's substantial lifetime gifting and barely recognised in his will; found Alan's estate consisted of \$208,661.33 in cash plus unforgiven \$200,000 loan; AKT entitled to 15 per cent of Alan's estate, recognising his place in the family and emotional harm arising from Alan's failure to provide for him; orders accordingly. ■

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## RELOCATION

*Online*

**1 CPD hour**

*When:* 24 March

*Presenter:* Inger Blackford

## RELATIONSHIP PROPERTY CONFERENCE

*In-person*

*Online*

**6.5 CPD hours**

*When:* 26 March

*Chair:* Yoonha Park

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