ENVOY

LEGAL EXECUTIVES NEW ZEALAND
RĀNGAI HĀPAI TURE O AOTEAROA

AUTUMN 2025

Manawatū RLEs

He tāngata, he tāngata, he tāngata

It is people, it is people, it is people



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Legal Executives New Zealand
RĀNGAI HĀPAI TURE O AOTEAROA

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FROM THE PRESIDENT



Tēnā kotou katoa

2025 is shaping up to be a busy year for LENZ. We have our biennial conference and our 50th anniversary; both to be celebrated in early September.

Christchurch conference on 1-2 September

I am excited to chair this year's biennial NZLS CLE Legal Executives Conference to be held in Christchurch on Monday-Tuesday, 1-2 September. I look forward to seeing as many members as possible in the Garden City. Attendance in person will enhance your learning experiences, and provide opportunities to meet and network with your fellow legal executives.

Five decades

It is hard to believe we are 50 years young! LENZ has had dedicated presidents, both at branch and national level, who have taken this organisation from strength to strength over many years. I believe we are well respected by our peers, and that we are in a position to continue to grow, and to provide greater services and support to our members.

Plans are underway to hold a celebratory dinner on the Monday of conference (1 September). This will be open to *all* members, not just those attending conference. Look out for further announcements to follow on both the conference and anniversary dinner.

National Council

The Council held its first meeting for 2025 on 1 March; there was a very full agenda for the year ahead. It was great to see councillors come together to report on their branch activities and to plan, from a national perspective, the next 12 months .

Branch committees' training day

Our annual branch committees' training day was held in late March at the LENZ office in Howick, Auckland. This was a great success and, once again, provided the opportunity for participants to meet committee members from other branches, enabling collaboration on branch and LENZ matters.

I look forward to seeing you soon.

Titiro whakamuri, kōrkiri whakamua
Look back and reflect so you can move forward



Carmen Franich



Hokianga Harbour

Northland

Greetings from Northland Branch. I hope everyone had a lovely Christmas/holiday period and you enjoyed the beautiful summer weather. We are lucky here in the north where our summer seems to last a little bit longer; I have my fingers crossed that it stays lovely and warm until at least early April.

For many in Northland, the property market has been a bit slower than usual for this time of year; however, I believe the market is picking up again. It appears bank backlogs are being cleared and things are in better shape than they were at the end of 2024.

Education
The branch is planning an informative seminar on subdivisions for branch members in June with some well-known and very experienced presenters.

We hold regular Brain Box meetings in Whangārei, and try to do these in different locations to suit a variety of branch members. The meetings provide an informative and safe space to have a chat about any hurdles/topics/questions you may have relating to our areas of work. These meetings are a great opportunity for brainstorming and learning from each other.

Social events
Our last social event was a cocktail evening at Loco in Whangārei; this was a great success. It was lovely to see so many members there, all catching up and getting to know each other.

We plan to hold many more social events this year to keep up that branch collegiality. I'm keen to see as many of you as possible at these events; it's always great to put faces to names.

Contact us
Please feel free to contact us at northland@legalexecutives.org.nz



Jennette Overton
Northland Branch President

Auckland Waikato

Greetings from Auckland Waikato Branch.

Enjoying the holiday season
We hope you had a wonderful Christmas and New Year, filled with relaxation, quality time with family and friends, and perhaps even a well-deserved holiday break. The festive season is a great opportunity to unwind and reflect on the past year, while looking ahead to new opportunities in 2025. I spent time on the Wairarapa Coast with my family, which was beautiful but, unfortunately, we had only a few sunny days.

The year ahead
Now that we're well into 2025, the branch committee is actively engaged in meetings, planning and events for our members. With daylight saving in full swing until early April, we hope everyone made the most of the extra daylight hours.

Social events
In February, the branch held its annual Old Committee/New Committee Members' lunch at Bracu Estate in Bombay, Auckland. The venue, in a stunning olive grove, provided the perfect setting for an enjoyable afternoon. The event was a fantastic opportunity for both outgoing and incoming committee members to connect, share experiences and discuss our plans for the year ahead. The annual lunch is a great way to get everyone together and sets a positive tone for the year to come.

At lunch, we presented Michelle Way with flowers and a high tea voucher in appreciation for her years of dedication to the committee and her service as the 2021-23 Branch President. Thank you Michelle for your service to the branch.

General updates
The branch held a webinar on tax and estates on 18 February; it was presented by Morgan Williams from Chung Associates. The webinar was a great success, with an impressive attendance of 125 participants. This session provided valuable insights into tax implications and estate planning, and we received excellent feedback from attendees.

We appreciate the engagement of our members and encourage you to share any feedback or suggestions for future events and seminars.

If you have any questions or ideas, please contact us at aucklandwaikato@legalexecutives.org.nz



Sarah Blaney
Auckland Waikato Branch President



Westhaven Marina, Auckland

Bay of Plenty Gisborne



Kuirau Park, Rotorua
Credit: Cathy Punter

Happy New Year – although it feels like such a long time since our Christmas break. I hope you all had a lovely refreshing holiday, and returned to the office recharged and ready for another busy year. Summer in the Central North Island was hotter and muggier this year, which can be very draining.

As we ushered in the New Year, it brought a renewed sense of hope and opportunity. Reflecting on 2024 it is apparent that our sector has been bustling with activity, particularly in conveyancing. Despite various challenges, the demand for property transactions remains strong in some areas, demonstrating the resilience of the market.

Looking at the bigger picture

One of the most notable trends has been the falling interest rates, which have played a crucial role in reigniting the property market. With the announcement in February of a further drop of 50 basis points in the Official Cash Rate (OCR), the banks responded with a sharp drop in their interest rates. Indications are that the OCR could reach its lowest level by the end of 2026. This prediction has spurred both buyers and sellers to seize the opportunity, leading to an increase in the number of property sales and refinancing activities.

Conveyancing matters are seeing an upswing, with no signs of slowing down. This surge can be attributed to the more favourable borrowing conditions, encouraging people to invest in property or refinance their existing mortgages. As we continue to monitor the economic landscape, it is expected that these trends will persist, driving further growth in the property market.

Earlier this year the government signalled changes to the Overseas Investment Act that it hopes will attract more foreign business investment. Whether this will have a flow-on effect to overseas investors being allowed to enter the property market is unknown at this stage. It will be interesting to monitor developments.

Branch planning meeting

As we do every year, the branch held its annual committee planning meeting in mid-February, at the offices of Holland Beckett in Whakatāne. We use this time to plan the year ahead; it doesn't mean, however, that we won't take suggestions from you if there is an event you would like us to arrange. This could be a different idea for a social event or a webinar topic – we are always keen to hear your thoughts and suggestions.

Biennial conference

This year is conference year and planning for the biennial NZLS CLE Legal Executives Conference is underway. In February, you would have received a survey about potential topics, which I hope you answered. The survey is a useful tool for conference planning to ensure that the topics are relevant to you. If you have any further suggestions or would just like a quiet chat about the conference, please feel free to contact me at bopgisborne@legalexecutives.org.nz

Now that it is officially autumn, the days are getting noticeably shorter and cooler. It is important for all of us to remember to take some time for ourselves.



Cathy Punter
Bay of Plenty Gisborne
Branch President

Wellington Central Districts

We've had such a great run of weather here in Whanganui, although possibly not appreciated as much by the farmers who, I'm sure, would welcome some rain. I hope you've enjoyed a fantastic summer getting out and about in this beautiful country with your family and friends.

As I write, the sun is shining again, which is a stark contrast to the dark and cold that is London during January, where I spent time visiting family and friends. It snowed one day just before the school run, turning a five-minute trip into a 45-minute slip and slide - such fun! The weather was irrelevant, however, as catching up with important people in my life was amazing. Then I arrived back in the office at the beginning of February and the holiday quickly disappeared into distant memories.

Branch AGM
We held our branch AGM in December. It probably wasn't great timing given everyone's workload at that time of year and, unfortunately, the attendance was low. We will try to have the meeting earlier this year as we really do want to hear from you to know what you expect or would like to see from your branch. We could also do with some new members on the committee to help spread the word across the region.

If you missed the AGM, you can still be co-opted onto the committee to help. Please contact me in the first instance if you would like to assist the members in your area.

Social
The branch committee will soon start looking to organise mid-winter events in the different areas. If you have suggestions for events, restaurants you'd like to go to and people you'd like to meet, please let us know at wellingtonandcentral@legalexecutives.org.nz

It is so important for us to connect with our colleagues to share work stories (because who else would understand?) and pick brains. Someone is likely to have encountered the situation before and may be willing to share their solution. The Estates Networking Group, which was formed as a result of a networking opportunity at the 2023 Legal Executives Conference, is a fantastic example of this.

Newsletter
We will shortly have the branch newsletter up and running again. We welcome your input with photos of events in your area, or ideas for what you'd like to see in the newsletter.

2024-25 branch committee
A reminder of branch committee members:

- President : Stephanie Bishop
- Vice President: Hayley Furneaux
- Treasurer: Ashleigh Kilpatrick
- Secretary/Newsletter; Angelene Stephens
- Committee members: Jo Reweti, Maureen Haslett and Kelly Henderson



Stephanie Bishop
Wellington Central Districts Branch President



Tora Coastal Walk



Te Mahia Bay in the foreground, Kenepuru Sound in the background

Nelson Marlborough

Greetings from Nelson Marlborough.

Happy New Year - I hope you all enjoyed your Christmas/New Year break, had a bit of a rest, didn't get too down about the hopeless weather, and got out and about on the good days.

Committee news
Our first branch committee meeting of the year was held on 13 February. The committee for this year is:

- President: Rachael Cooke
- Natalie Bell, Diane Bennett, Jo Bruning, Nicola Calder, Jennie Cox, Sophie Ennor, Jackie Faulkner, Jenna French, Jane Quinton, and Robert Cant (support).

This is our biggest branch committee for a while; this is encouraging to see.

Education
It is conference year, with our biennial event being held on 1-2 September in Christchurch. Conference is always a great opportunity both to network (if you attend in person) and for professional development - I encourage as many of you as possible to attend. Details of this year's conference will follow in the months to come.

Our CPD/Education Convenor, Diane Bennett, is looking to arrange a seminar locally on advance care planning – details to follow.

Social events
I hope you enjoyed our branch breakfast in early March (our first social event for 2025). It's always great to catch up in person and to get to know some new faces. Thank you to our wonderful Social Convenor, Jane Quinton, for organising this.

LENZ has a significant anniversary this year (50 years) and there will be details to follow about the celebrations to mark the occasion.

We are always keen to have ideas for social events. Please approach any one of us personally or email us at nelsonmarlborough@legalexecutives.org.nz



Rachael Cooke
Nelson Marlborough Branch President

Canterbury Southern Districts

Autumn has rolled around far too quickly for my liking; I'm not quite ready to say goodbye to summer and the long daylight hours. I enjoyed being able to go home from work and have a walk in the lovely light summer evenings. I certainly can't complain about the great summer weather we had down south. At the time I'm writing this report, I can hardly remember the last time we had rain!

I hope everyone enjoyed a fun and relaxing Christmas break. I appreciated having the time to spend with family and friends after a hectic few months, and just being able to catch my breath. After a busy start to 2025, however, the Christmas holidays feel like a distant memory – although we are now talking about plans for the Easter break.

New committee
At the 2024 branch AGM we farewelled Nicola Thyne. Thank you Nicola for your many years of service to the branch. We welcome Atlanta Stewart to the committee as our Queenstown representative, and thank Diana de Koning for her long-standing commitment in that role.

I was re-elected as Branch President, with Penny Green re-elected as Vice President and Secretary, and Nikki Riach re-elected as Treasurer.

Events for 2025
Planning is underway for seminars during the year; more details on these will follow.

Christchurch wine evenings will continue this year. I am sure Christchurch members enjoyed the latest 'Bridget Jones' instalment at the branch movie night in March.

Our regional representatives will continue to organise social events for members to enjoy a catch-up; I hope you can support an event in your area.

Biennial conference in September
I am enjoying being on the planning committee for the NZLS CLE Legal Executives Conference on 1-2 September. I hope you will be excited about the topics we are lining up for the conference programme.

Please feel free to get in touch if you have any queries/concerns/suggestions for branch seminar topics or social events, or if you need any assistance. On behalf of the branch committee, thank you for your ongoing support.



Andrea Murchland
Canterbury Southern Districts Branch President



Otira River in Arthur's Pass National Park

PROPERTY AND CONVEYANCING UPDATE



Modernising Landonline work to continue in 2025

The first phase of Landonline's modernisation is expected to be completed by mid-2025. By that time, Toitū Te Whenua Land Information New Zealand said it expected that all external customers would have migrated to New Landonline. The gradual release of features into New Landonline has meant that customers can seamlessly migrate between Legacy and New Landonline, as the two systems are fully compatible.

Users have been able to become familiar with the new application before the legacy system is switched off. Legacy Landonline - Dealings has already been switched off. Legacy Landonline - Survey will be switched off by June.

LINZ said that a massive milestone had been reached in 2024, when the first pieces of e-dealings functionality were turned off in Legacy Landonline. Since September 2024, all dealings' customers have been using New Landonline exclusively to complete settlement day activities such as certifying and signing, releasing and submitting.

The agency said that a New Landonline benefits survey carried out in October found that customers were experiencing 30-50% productivity improvements in New Landonline.

New functionality releases in New Landonline - Dealings included preparation of caveats in any mode, the ability to prepare Notices of Claim in New Landonline, a 'transaction log' tab which displays key changes made to a dealing and its instruments during the preparation phase, and the ability to change or correct names in any mode.

New overseas investment agency to be established

A new agency called Invest New Zealand is to be established to position New Zealand as a premier destination for foreign direct investment, said Trade and Investment Minister, the Hon Todd McClay.

The minister said that the organisation will streamline the investment process and provide tailored support to foreign investors to increase capital investment across critical infrastructure, foster innovation in key sectors and attract world-class talent to New Zealand.

The new agency is to be modelled on Irish and Singaporean best practice and will focus on:

- Attracting foreign direct investment into high-potential sectors to boost productivity and innovation

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- Streamlining processes to significantly increase the capital available to invest in new and existing projects and enterprises including banking, fintec, critical infrastructure, manufacturing and private sector growth
- Increasing research and development investment in New Zealand by multinational companies, and
- Encouraging skilled professionals to enhance domestic capabilities and global connections.

Updates of Registrar-General of Land guidelines

The Registrar-General of Land has updated the Unit Titles Act 2010 Guideline 2024 and the Identity Requirements for Paper Instruments Guideline 2018.

Clauses 10.1.1 and 10.1.3 of the unit titles guideline have been altered in relation to existing easements and covenants.

The identity requirements guideline has been changed to align it with the Authority and Identity Requirements for E-Dealing Standard 2024 and the Authority and Identity Requirements for E-Dealing Guideline 2024.

Details of both updates are available on the LINZ website.

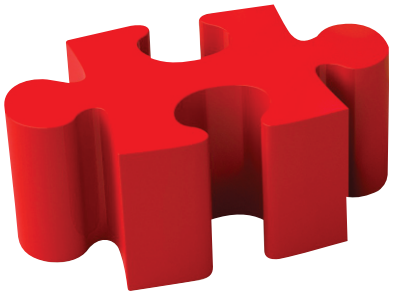
Web search

LINZ said that significant milestones have been achieved in relation to Web Search, with the release of a large suite of functionality, including a Map Control Toolbar to give users more control over the map.

Users can now tailor their map views with more than 40 layers, including parcels, vectors, marks and street addresses. Search functionalities have also been expanded to include parcel search by appellation/legal description and supporting documents search.

TA Certification

The Territorial Authority Certifications application has been released to all users. It is used by TA planners to prepare, certify and sign their 2023/2024 subdivisional certificates under the Resource Management Act 1991. ■



Legal Executives New Zealand
RĀNGAI HĀPAI TURE O AOTEAROA

Kaiārahi service



The term *kaiārahi* means 'someone who guides; leader, mentor, counsellor.'

LENZ has long acknowledged the importance of providing a support network for its members in both professional and personal capacities. We are pleased to have a national Kaiārahi service to supplement the ongoing informal support offered through our branches via their networking events and seminars.

Whilst our members can access the professional counselling service provided by the New Zealand Law Society, we also saw a need for LENZ to provide members with direct and personal support on every level.

We have senior members who are approachable and empathetic, and members who have specific technical knowledge that they are prepared to share.

If you would like to talk with a kaiārahi, please look at the contact list in the members' section of our website, or contact the National Office.



He tāngata, he tāngata, he tāngata

It is people, it is people, it is people

Palmerston North, Clock Tower

In the seventh of our occasional series on LENZ members working in the regions, in late summer we asked four Registered Legal Executives (RLEs) about their lives in the Manawatū (and over the hill in Pahiatua – technically Tararua), their current roles and careers.

In February, *Envoy* talked with Palmerston North RLEs Nicole Mangin (LENZ Fellow, LLB, Wellington Central Districts Branch President 2020-23, Cochrane Law), Rachel Quartley (LENZ Associate, Innes Dean Lawyers, Palmerston North), Karen Stow (LENZ Associate, Moore Law) and, from over the Tararuas, Amber Smith (LENZ Associate, Innes Dean Lawyers, Pahiatua).

All four RLEs' roles focus on conveyancing – residential as well as rural transactions, although nearly all do some work on trusts and wills, estates and commercial financing. Amber and Karen also work on subdivisions; Rachel Quartley assists with contracting out agreements; and Nicole works with clients in asset planning.

He tāngata

It is people was the resounding theme when we talked with the four RLES. All were united in saying the best thing about their jobs is the contact with their clients.

Nicole says she loves achieving great results for people who are simply overwhelmed by the conveyancing process. "I never thought what it was like to be a client until I was one myself. Being on the other side was a real eye opener, and the experience made me a better RLE."

Amber agrees. "I enjoy helping people through what can be a very stressful process, particularly when buying and selling properties at the same time. I know how full-on the process can be. Making it easier for our clients is very rewarding."

"I am client focused and enjoy helping our clients with their legal needs, be it buying or selling properties, or other legal requirements," Rachel concurs. "Buying and selling properties can be very stressful and I see myself as a guide to assist our clients through this process."

"I love conveyancing, and I like the pressure and deadline focus," Karen admits. "I give our clients reassurance during the entire process. It's such an unfamiliar thing for clients to be involved with and they can sometimes feel out of their depth. I find that being responsive and communicating well is the key to a good experience – for our clients and for us as a firm."

What is there not to love as an RLE?

AML is one of the areas that most RLEs do not relish. Amber says that AML compliance has become a huge part of an RLE's role.

Rachel concurs, "Focusing on AML and all the added extras, rather than the actual conveyancing matter, can be frustrating."

Karen says there is a hugely increased workload these days with compliance. "I like pressure, but – particularly before Christmas – the workload becomes very demanding. And occasionally our clients can be a tad rude – probably because they are under pressure too! I admit to more than my share of sleepless nights in times of feeling like there are too many things to do in too short a period of time."

"What really drives me mad, is that people can ruin a perfect good matter that is humming along," says Nicole. "There are some difficult and irrational people out there. One of our most irritating matters was an estate situation where one sibling was deliberately acting in a way to spite another sibling. It made the estate experience awful for everyone – although perhaps it made the badly-behaved sibling feel better!"

Continued on page 12...

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Starting a career as an RLE

The road to a legal executive career often starts with a different role in a law office, such as a receptionist or secretary, and being drawn into the legal side.

Karen says she had taken on some conveyancing in her legal secretary role. “I'm already doing it, so why don't I get a formal qualification?” Karen asked herself. She says it was a seamless transition to a legal executive role. “The best thing is, I'm always learning. I love New Landonline. However, I don't love AI, although I try to use it a bit. It's a challenge and we all want to keep up with technology.”

Nicole's career is ever-evolving. With her first job out of school waiting on tables, Nicole moved into the legal sector as a receptionist at what is now Cochrane Law – she has been with them all her career. “They really pushed me to get my legal executive qualification; the firm is very ambitious for its staff and very much supports career development.

“I'd always had the thought of a law degree in the back of my mind, but there was little, or no, law degree extramural opportunities in those days. Covid, however, changed the scene and universities cranked up their remote learning. I did my 100-level papers and simply kept going, each progressive level becoming more challenging. But I have now graduated with my LLB and will be admitted to the bar in June. However, right now, I'm technically still an RLE!

“Cochrane Law has been very accommodating with exam and study time, and most supportive of me. Most of all, however, my husband has been my rock. He pushed me to study for an LLB, and he'll be celebrating with me in June.”

As a child, Amber always wanted to be a lawyer. “I was very good at arguing my point and possibly always had to be right. My family can attest to that!” After years in the hospitality sector, Amber started work at a Waipukurau law firm. She was very happy to be working 'regular' hours. It was in Waipukurau that Amber began studying for her legal executive papers. A move to the Kāpiti Coast and not working in law for some years, however, put study on hold. After moving to Pahiatua and joining Innes Dean Lawyers, Amber finished her remaining papers and became qualified. After almost 13 years with the firm, Amber still very much enjoys her role and working with the team.

Rachel started work as a receptionist in a Hamilton law firm and progressed to secretarial roles, eventually deciding to gain the legal executive qualification. “I've moved around a bit, but my biggest move was from Te Puke to Palmerston North to be with my now husband. It was then that I first started working for Innes Dean Lawyers. After a move back to Hamilton and then, quite a few years later, we relocated to Palmerston North and I'm back at Innes Dean Lawyers.



Nicole Mangin



Karen Stow



Rachel Quartley



Amber Smith

“I take great satisfaction from my job and I have the privilege of working alongside an excellent team with supportive management and directors.”

Working in the Manawatū

This has a big tick from all four RLEs. Palmerston North is easy to get around (no peak hour gridlocks), and finding a car park is not difficult. They know nearly all the RLEs on the other side of transactions (“It's a tight-knit group,” says Amber), and many of the lawyers in the firms.

An enjoyment of a smaller firm atmosphere, compared with a big-city firm, was a theme that was consistent with all four women. A feeling of not having to have one's hand held, and trusted to get the work done was rated highly.

For Karen, her 'home' law firm is based in Whanganui and her office is 75 km southeast in Palmerston North. It's a similar story for Amber. Innes Dean Lawyers' main office is in Palmerston North, but she is based in its Pahiatua office, 40 km east over the Tararua Ranges.

Both say it's no big deal being away from home base. Karen sometimes does a day trip to Whanganui or Whanganui colleagues visit Palmerston North, and “there's always the phone!” Amber agrees and says she loves living and working in Pahiatua – despite the wind that “drives me nuts.”

Working in a smaller centre certainly has its advantages, and a few disadvantages. The consensus, however, was that the upside of living in a smaller centre is that you know almost everyone, but it's also a downside! ■

Some reminders . . .

Who can witness statutory declarations?

- LENZ Fellows who are in the employment of a lawyer with a current practising certificate may witness statutory declarations pursuant to the Oaths and Declarations Amendment Act 2001. See the relevant section of the Act below.
- Fellows who are not employed in law firms cannot witness statutory declarations.
- Affiliates, Associates and Support members do *not* have the authority to witness statutory declarations.
- Eligible Fellows should have stamps made to affix to declarations that clearly show that they are Fellows and duly authorised. All eligible Fellows are advised of LENZ's recommended wording for their stamp when their Fellow status is approved. It is not sufficient to use a stamp that includes only your name, city and 'Registered Legal Executive'. If you are a Fellow and you need to have a new stamp made, please contact us for the preferred wording.
- LENZ members do not have statutory authority to witness affidavits.

9 Declarations made in New Zealand

(1) A declaration made in New Zealand must be in the form in Schedule 1, and must be made before —

(a) a person enrolled as a barrister and solicitor of the High Court; or

(b) a Justice of the Peace; or

(c) a notary public; or

(ca) the Registrar or a Deputy Registrar of the Supreme Court; or

(d) the Registrar or a Deputy Registrar of the Court of Appeal; or

(e) a Registrar or Deputy Registrar of the High Court or the District Court; or

(f) some other person authorised by law to administer an oath; or

(g) a member of Parliament; or

(h) a person who—

(i) is a fellow of the body (incorporated under the Incorporated Societies Act 1908) that, immediately before the commencement of the Oaths and Declarations Amendment Act 2001, was called the New Zealand Institute of Legal Executives; and

(ii) is acting in the employment of the holder of a practising certificate as a barrister and solicitor of the High Court; or

(i) an employee of the New Zealand Transport Agency, authorised for that purpose (by name, or as the holder for the time being of a specified office or title) by the Minister of Justice by notice in the *Gazette*; or

(ia) an employee of Public Trust constituted under the Public Trust Act 2001, authorised for that purpose (by name, or as the holder for the time being of a specified office or title) by the Minister of Justice by notice in the *Gazette*; or

(j) an officer in the service of the Crown, or of a local authority within the meaning of the Local Government Act 2002, authorised for that purpose (by name, or as the holder for the time being of a specified office or title) by the Minister of Justice by notice in the *Gazette*.

Can I witness enduring powers of attorney?

Registered Legal Executives, being Fellows, Associates, and Affiliates who have at least 12 months' experience as legal executives, may witness enduring powers of attorney pursuant to the Protection of Personal and Property Rights Amendment Act 2007.

Support members are not Registered Legal Executives and may not witness enduring powers of attorney.

Parental leave

If you are a Registered Legal Executive (Affiliate, Associate or Fellow) and planning to take parental leave, please contact the National Office for a copy of our parental leave policy and to discuss changes to your membership while you are on leave. Email: enquiries@legalexecutives.org.nz

Have you changed employment?

If so, you need to let us know!

If you are a Registered Legal Executive, your registration is dependent on continuing to meet qualifying employment (QE) criteria and your new supervising lawyer needs to confirm this. Additionally, we need to update the searchable list of Registered Legal Executives on our website, update our database, and advise your LENZ branch so that you continue to receive LENZ communications.

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Supreme Court declines to extend trust-busting in relationship property cases



A Supreme Court decision has placed a roadblock in the way of attempts to extract assets from trusts as part of relationship property settlements.

The recently-released judgment in *Cooper v Pinney* [2024] NZSC 181 places limits on the same court's earlier landmark decision in *Clayton v Clayton [Vaughan Road Property Trust]* [2016] NZSC 29, which held that rights and powers in relation to a family trust could be considered 'property' for the purposes of the Property (Relationships) Act 1976.

Referring back to *Clayton*

The Supreme Court said that, in the earlier case, Mr Clayton had untramelled power to be the sole trustee of the trust, to appoint himself the sole beneficiary and to distribute the trust fund to himself. However, in *Cooper v Pinney*, Marcus Pinney did not have full control over the trust, meaning that the rights were not tantamount to ownership and, accordingly, did not comprise property for the purposes of the Act.

Raewyn Cooper and Mr Pinney began their de facto relationship in 2004 and had two children; they separated in 2014. Throughout the relationship, Ms Cooper worked alongside Mr Pinney on a farm held in a family trust, the MRW Pinney Family Trust (MRWT). The MRWT deed was executed in 2006 and $1.6 million was settled into it. Mr Pinney was one of a number of discretionary beneficiaries of the MRWT and also held a power of appointment of trustees.

Ms Cooper said that, until 2011, she believed that she had a half share of the business. She said that, in addition to raising the children, she worked on the farm, and in the hunting and farmstay businesses, and never received a salary. Mr Pinney said that Ms Cooper always knew that she had no interest in the land and that the MRWT trustees owned 98% of the company.

The Supreme Court held that the combination of rights and powers available to Mr Pinney under the MRWT deed did not come within the definition of 'property' in section 2 of the Act. His powers were required to be exercised for proper purposes and consistent with fiduciary obligations.

The situation was accordingly distinguishable from that in *Clayton v Clayton*.

Trust deeds were different

"The power to appoint and remove trustees does not allow Mr Pinney to take sole control of the trust – a fact which suffices alone to distinguish the MRWT deed from the VRPT deed in *Clayton*. But even if unilateral control were possible ... the dispositive powers remain fiduciary in nature, and constrained."

More specifically, the Supreme Court identified four significant differences between the two trust deeds.

Firstly, while both deeds conferred powers to appoint and remove

trustees on individuals, the MRWT deed made this subject to a requirement that at least two trustees hold office at any given time.

Secondly, the MRWT deed required that all powers and discretions vested in the trustees be exercised unanimously.

Thirdly, both deeds contained general clauses purporting to allow trustees to make decisions in their 'absolute and uncontrolled discretion,' but the VRPT deed made detailed provision for the exercise of unconstrained discretion in respect of decision-making affecting the interests of beneficiaries.

Finally, the VRPT deed allowed Mr Clayton to remove or add any person as a discretionary beneficiary of the trust, meaning that he could remove all discretionary beneficiaries other than himself and strip the trust before its vesting date.

The Supreme Court concluded that the combination of powers reserved to Mr Pinney under the MRWT deed differed significantly from those reserved to Mr Clayton under the VRPT deed.

"A power analogous to a general power of appointment is not created. Rather, the core power in cl 15 to appoint and remove trustees remains limited by the proper purpose rule and bound by the fiduciary obligations that it be exercised in good faith and in the interests of the beneficiaries. So too are the dispositive powers in cls 4, 6 and 7 – powers which are moreover constrained by the two-trustee requirement and the requirement of unanimity. The general discretion provision in cl 13 does not alter this analysis, and nor does the limited variation power in cl 12. The distinctions between the VRPT deed in *Clayton* and the MRWT deed are therefore sufficiently material to warrant different classification in terms of the PRA definition of 'property.' The two cases are not alike."

The court held that Mr Pinney did not enjoy a personal property right in respect of the bundle of powers vested in him by the MRWT deed. The appeal by Ms Cooper from the Court of Appeal decision was dismissed. ■

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CHANGING THE CULTURE OF A PROFESSION

Financial obligations of parents to adult children



It is well understood that parents have a duty to care for and provide for dependent children. However, the extent of parents' obligations to adult children is less clear.

Two cases have discussed what provision should be made for adult children from parents' estates, and what factors should be taken into account in making such determinations.

Abusive father drains estate to place assets in a trust

In *A, B and C v D and E Ltd as Trustees of the Z Trust* [2024] NZSC 161 (known as the Alphabet case) Alice, Barry and Cliff were abused in the most shocking way by their father, Robert, when they were children. [2] Alice was emotionally and sexually abused by her father, and Barry and Cliff were physically and emotionally abused by him. The children left home when they were teenagers and subsequently had almost no contact with their father.

While Robert's earlier wills made some provision for the children, his final will did not. Some 30 years after contact between Robert and the children ceased, Robert gifted to the Z Trust his home and some shares. Those assets were worth about $700,000 at the time of the High Court proceedings in the case. The children were not beneficiaries of the trust. The primary beneficiaries were the adult children of a long-term friend of Robert.

Robert died in 2016 and the children made a claim against their father's estate under the Family Protection Act 1955 (FPA). However, that claim would be meaningless unless the assets gifted to the trust reverted back to the estate. Without those assets, the estate was worth only about $47,000.

The FPA claim was placed on hold while the courts dealt with proceedings seeking to unwind the transfer of the assets to the trust. The children claimed they were owed fiduciary duties and that these were breached when Robert gifted the assets to the trust to prevent a FPA claim. The children submitted that the surviving trustees held the gifted assets as constructive trustees for the executors of their father's estate.

The children's claim succeeded in the High Court, but that decision was reversed by the Court of Appeal. The children appealed to the Supreme Court.

[2] All names are fictitious.

The Supreme Court said it was not possible to overstate the adverse impact of Robert's abuse on his children, both during their childhood and in their adult lives. Alice was repeatedly raped and sexually abused by Robert between the ages of seven and 13 years, as well as being emotionally abused by him during her childhood and her teenage years. Robert abused his sons physically and emotionally until they left home at the age of 16. He also physically and emotionally abused the children's mother.

Robert's lawyers were asked to prepare seven wills between 2001 and 2015. Initially, bequests were made to the children, but they were excluded from later wills. In 2014, Robert advised his lawyer that he wanted to set up a trust to protect his assets if he became ill and to prevent any of his family from 'chasing' his assets.

The Supreme Court discussed in detail the issue of when a fiduciary relationship would be recognised. Their Honours said that fiduciary duties flowed out of, and reflected, the nature of relationships. They noted that in *Lac Minerals Ltd v International Corona Resources Ltd* [1989] 2 SCR 574, Justice La Foret had dismissed as unprincipled an approach whereby a fiduciary relationship was found to exist simply to provide a basis for relief when any other principled basis was lacking.

The Supreme Court said that the Supreme Court of Canada had recognised that vulnerability was not sufficient on its own to support a fiduciary claim. However, their Honours went on to state that it was not helpful to spell out – and in that way potentially confine – the situations in which a fiduciary relationship could be found to exist in a specific category of cases.

The court said that the law in relation to the coincidence of fiduciary and family relationships was not settled in New Zealand. A fiduciary relationship existed between a parent and a minor child while that child was in the parent's care.

"We leave open the possibility of the fiduciary relationship continuing in certain circumstances beyond the child's minority: for example, the situation referred to by Collins J of an adult child with disabilities. However, we do not consider that the relationship between parent and adult child, absent some ongoing caregiving or decision-making responsibility on the part of the parent, does give rise to a fiduciary relationship. The simple point is that, at least as a general rule, the parent no longer has caregiving responsibility nor exercises control over or makes decisions for their child once they reach adulthood."

Their Honours went on to state that there were considerations weighing against a broad formulation of the duties to be imposed on parents. It was important that the law not intrude unnecessarily on a relationship which was primarily based on natural love and affection, and which was so multifaceted.

The key issue in the case was whether Robert owed the children fiduciary obligations at the time he disposed of his assets, and, if he did, whether there was an equitable remedy available in relation to the asset transfer.

The Supreme Court held that there was no fiduciary relationship between Robert and the children at the time of the transfer of the assets, and neither was there any fiduciary relationship which bore in any way upon that transfer. The fiduciary relationship between Robert and the children ended when he ceased to have caregiving responsibilities for the children. The court also rejected the argument that, because of Robert's childhood abuse of them, the children remained vulnerable to him throughout their adulthood and he had abused that vulnerability and breached his fiduciary duties when he transferred his assets to the trust.

The imposition of fiduciary duties based on peculiar vulnerability alone would be inconsistent with a relationship-based analysis, said the court.

The appeal was dismissed.

Adult child in poor health wins award from father's will

The case of *Emeny v Mattsen* [2023] NZFC 7477 involved a claim by an adult child in poor health for further provision from his father's estate under section 4 of the Family Protection Act 1955.

Phillip Emeny died in 2012, having been predeceased by his wife. He was survived by three children, Murray, Jeanette and Dianne, and seven grandchildren. The testator's last will appointed Jeanette as his sole trustee and executor. He left her specific bequests worth $153,000, with the residue of his estate being divided 50% to Jeanette; 15% each to Murray and Dianne; and 20% to be shared equally between the grandchildren.

The total value of the estate at the time of Mr Emeny's death was $1 million. Murray contended that there had been a breach of the moral duty owed by his father to him. Judge Russell noted that it was accepted at the outset that Mr Emeny owed a moral duty to his children. The relationship between Mr Emeny and Murray and Dianne was poor for the last 15 or 20 years of the testator's life, while his relationship with Jeanette was good.

Murray was aged 67 at the time of the proceedings, received national superannuation and lived in a Kāinga Ora house. He was an adult student but had not

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completed his studies due to ill health. Murray suffered from chronic fatigue, which had first been diagnosed in 1984, and also from reflux and pneumonia. He contended that this made it impossible for him to live and work a normal life and for the latter part of his life he had been in receipt of a benefit.

Judge Russell noted that, to succeed in his claim, Murray needed to show that his father owed him a moral duty to make proper provision for his maintenance and support, and that this duty had been breached in the provision made for Murray. His Honour also stated that, where a breach of moral duty had occurred, the court must do not more than was required to remedy the breach.

The lawyers for the estate, and for Jeanette, had conceded that the testator owed Murray a moral duty to provide for his maintenance and support. Judge Russell said that Murray was living within his means in a 'no-frills' lifestyle. He did not appear to have any immediate or pressing financial needs.

However, the fact of Murray's poor health meant there was a moral duty to provide for his maintenance. The evidence clearly showed that Murray had had, and would continue to have, a number of health issues.

"I have reached the view that the testator has breached his moral duty to Murray to make provision for his future maintenance to the extent that provision could and should have been made to address any future health needs that Murray may have. For example, if urgent medical or surgical treatment is required, which is not able to be immediately addressed in the public health system, or if urgent respite care is required, then I consider a wise and just testator would make provision for Murray to be able to access and fund medical help and assistance and support to the extent this is required."

The court held that $50,000 was an appropriate specific bequest to address the breach of moral duty. That would mean that Murray would receive 17% of the value of the estate, rather than the 15% of the residue provided for in the will.

This judgment was subsequently appealed[3] and that appeal was dismissed. ■

[3] *Emeny v Mattsen* [2024] NZHC 291.

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Court of Appeal clarifies landowner compensation entitlements under Public Works Act 1981



Two recent Court of Appeal decisions have examined the fine detail of the compensation entitlements of landowners when their land is acquired for public works, and considered the correct method by which negotiations for acquisition and compensation should be conducted.

In the first case, a landowner argued that the compensation payable under the Public Works Act 1981 included damages for proposed land developments planned by the landowner and stymied by the public projects.

Clarifying the 'shadow' period

Casata Ltd v Minister for Land Information [2024] NZCA 592 considered the proper approach to the assessment of 'full compensation' or 'compensation for any disturbance to' the owner's land under sections 60(1) and 66 of the Act when land is acquired for a public work.

The main issue in the case was whether a landowner could claim compensation for loss attributable to the inhibiting effect of a proposed acquisition of land prior to the commencement of the taking of the land. That period is known at the 'shadow period' – the time between the announcement of the proposed public work for which the land is to be acquired, and the completion of the acquisition.

Casata Ltd was a commercial property investment company, with a focus on owning land subject to long-term ground leases and deriving income from rental returns and capital gains. In a meeting in 2014, Waka Kotahi New Zealand Transport Agency advised one of Casata's directors of a proposed roading project between the Hutt Valley and Tawa/Porirua – the Petone-Link Road. Waka Kotahi said that Casata's properties had been identified as potentially being directly affected by the proposed options for the route. Although planning was in the early stages, the agency said it hoped there would be firm land requirements by mid-2015 which would enable confirmation of the impact on Casata's properties.

Casata advised the agency that the buildings on one of its properties were earthquake-prone and unstable, and the company planned to construct a new commercial building on the site with a potential value of $22 million. The company advised that it would be claiming compensation for the redevelopment plans being placed in jeopardy.

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Two days later, the roading project was publicly announced and public consultation began. Three years later, Casata's properties were acquired under the Act for the project. The parties agreed on the land value of each property, but were unable to agree on Casata's claim for additional compensation relating to the effects of the 'shadow.'

Casata contended that the shadow cast by the announcement of the roading project cost it the opportunity to sell or redevelop its properties. It claimed additional compensation of $4.2 million for that alleged loss. The Land Valuation Tribunal rejected the claim, holding that there was no evidence the shadow had impaired Casata's property rights. Nor was there evidence to support the application of a hypothetical investment model advanced by an expert for Casata.

Casata appealed to the High Court, which also dismissed its claim. Justice Edwards considered that a claim for loss sustained in the shadow could in principle be advanced, but such a claim would necessarily be for actual damage sustained. However, Casata had not proved that the shadow had caused it to suffer tangible loss.

Casata was subsequently granted leave to appeal to the Court of Appeal under section 18A of the Land Valuation Proceedings Act 1948. The Court of Appeal dismissed the appeal, stating that Casata's claim had been made under a provision directed to compensating damage to land, and not business loss. In such a case, compensation was limited to the value of the land, which included its value as a commodity which might have been developed and/or sold but for the announcement of the proposed public work.

The Court of Appeal said that it was clear from the drafting of section 60(1) of the Public Works Act that the compensation referred to was compensation for the value of the land acquired, or for injurious effects to other land retained by the owner, or for physical damage to land arising from the exercise of statutory powers. That last of those came within section 62's reference to 'otherwise.'

"We do not consider the word creates a free-ranging basis for compensation: it is about the assessment of the amount of compensation for entitlements to compensation already set out in s 60(1)(c)."

Their Honours said that the natural and ordinary meaning of the words 'any damage' in the section was physical damage or something that affected the land itself. The court was not persuaded that the words extended to the kind of inhibition that Casata contended affected its rights to sell and reinvest the proceeds and/or retain and develop the land.

The court said that coming within the ambit of section 60(1)(c) required physical interference with the land. Earlier authority made it plain that compensation related to the land, not to the owner or the owner's business model. There was no suggestion that the 1981 Act had intended to change the long-standing approach that the damage must be physical interference with the land.

The Court of Appeal said there had been no damage of the type spelled out by the Act in the present case. The land had not been damaged physically, so the effect of the roading project's announcement must be an economic one.

"But it would still have to be brought within the right to compensation set out in s 60(1)(c). Section 62(1) clearly provides that the assessment of compensation must not be affected where the value of the land taken for any public work has been reduced by the prospect of the work."

The court also held that Casata's claim for loss under section 66 failed. The appeal was dismissed.

Couple refused to negotiate with authorised representative

The second case discussed how the Crown must carry out discussions and negotiations for acquiring interests in land and agreeing on the amount of compensation payable to landowners.

In *Pascoe v Minister for Land Information* [2024] NZCA 557 Debbie and Tony Pascoe owned a farm in the Mangapēpeke Valley. The Crown sought to acquire interests in the Pascoes' land for the Te Ara o Te Ata: Mt Messenger Bypass Project involving the construction of a 5.2 kilometre bypass route east of State Highway 3 between Taranaki and the Waikato.

Discussions between the Crown and the Pascoes had taken place since 2016. The Crown wished to acquire approximately 11 hectares of the Pascoes' land, together with a leasehold interest in a further 12.7 hectares for temporary occupation during construction of the road.

Waka Kotahi New Zealand Transport Agency was responsible for carrying out the project. It contracted The Property Group Ltd to engage in discussions with the affected landowners with a view to reaching agreements for access to and, if necessary, the acquisition of land.

However, difficulties were encountered at the negotiation stage of the process. Section 18(1)(d) of the Act provides that the Minister for Land Information must 'make every endeavour to negotiate in good faith with the owner in an attempt to reach an agreement for the acquisition of the land.'

The Pascoes considered that the negotiations must be conducted by

the Minister personally, or by a LINZ official with a formal delegation from the Minister to carry out the negotiations. They did not consider that negotiations could lawfully be conducted by The Property Group.

The Pascoes were not willing to negotiate with The Property Group; the Minister and LINZ declined to negotiate directly with the Pascoes, leading to an impasse in relation to conducting negotiations under section 18(1)(d). Waka Kotahi accordingly took steps to invoke the compulsory acquisition process under the Public Works Act, serving the Pascoes in 2020 with a notice of desire to acquire land under section 18 of the Act. The issue of the notice was approved by a Toitū Te Whenua Land Information New Zealand official with delegated authority to do so.

The Pascoes brought judicial review proceedings challenging the section 23 notice.

The High Court held that the Minister was not required to carry out operational tasks personally but was entitled to satsify himself that these had been undertaken by staff or contractors in compliance with section 18(1)(d) for the purposes of exercising powers under the Act to enter into an agreement to acquire or take land.

The Pascoes appealed to the Court of Appeal. Its decision was delivered by Justice Goddard. The Court of Appeal concluded that negotiations under section 18(1)(d) could be conducted on a day-to-day basis by the Minister, a delegate of the Minister or an authorised representative of the Crown such as The Property Group. The person who carried out the negotations on a day-to-day basis did not require any formal delegation of authority to do so, as they were not exercising any statutory power or making any statutory decision of a kind requiring delegated authority.

"In order for the Minister (or their delegate) to be satisfied that every endeavour has been made to negotiate in good faith with the owner in an attempt to reach an agreement for the acquisition of the land, there must be systems in place to ensure sufficient oversight by the Minister (or delegate) of the negotiations, and to ensure the Minister (or delegate) receives sufficient information about the negotiation process to support that conclusion. Depending on the course the negotiations take, reference back to the Minister (or delegate) may be required during the negotiations."

However, the court said that the Pascoes had declined to negotiate with The Property Group. They had insisted that the Minister or his delegate negotiate with them, but the Act did not require the Minister to negotiate directly in that manner. It was consistent with the Act for the Minister or delegate to rely on The Property Group to carry out the detailed negotiations, provided that the Minister (or delegate) retained the ultimate responsibility for seeking to reach an agreement.

The appeal was accordingly dismissed.

Public Works Act 1981 to be overhauled

The government is currently overhauling the Public Works Act.

Land Information Minister, the Hon Chris Penk, said last year that the legislation was a fundamental law allowing the government to acquire land for critical public infrastructure. However, it had not been substantially amended since 1988 and was no longer fit for purpose.

An expert advisory panel was established to identify aspects of the legislation requiring reform and,



in February 2025, Mr Penk said that the review had highlighted significant issues with how governments had acquired land for public projects.

"Sweeping reforms are coming to modernise this nearly 50-year-old legislation, and we are starting by acknowledging injustices of the past – and taking concrete steps to prevent them from happening again."

The Minister said that the historic confiscation of Māori land remained a deep source of pain for many New Zealanders. The current legislation had added injury by undervaluing Māori freehold land compared with other land.

The government was accordingly confirming that acquiring Māori land for public works would remain a last resort. It would also be made law that Māori freehold land must be valued equally with other land, ensuring that landowners finally received fair compensation.

Further, in recognition of the communal nature of Māori land ownership, compensation would no longer be provided as as single lump sum, but would instead be extended separately to all separately-owned dwellings on land.

Where compulsory land acquisition was unavoidable, the process would now require the joint approval of both the Minister for Land Information and the minister responsible for the relevant Māori portfolio. ■

CASES UPDATE



Estates

Correction and validation of testamentary documents granted

The case of *Estate of Davies* [2024] NZHC 3213 involved an application under section 31 of the Wills Act 2007 to correct the will of Aaron Paul Davies. Mr Davies died in April 2024 after a short illness. His mother, Patricia Alderson, submitted that he had intended his two testamentary documents to be read together, and that validation and correction were required to give effect to his wishes.

Mr Davies had completed a template will form in 2013. It complied with the requirements for the validity of wills under section 11 of the Act. However, it contained a clerical error requiring correction under section 31(1)(a).

The correction Ms Alderson sought was the insertion of the words 'Patricia Ann Alderson' in the space after the words 'appoint as executor.' The testator had left the space blank, but a handwritten reference to his mother earlier in the document suggested that he had intended her to be his executor and trustee. Ms Alderson's evidence, moreover, was that her son had told her he wanted her to be the executor of his estate. Justice McHerron said that, based on that evidence, he was satisfied that it was appropriate to correct the document.

Mr Davies had also left a 2024 'last wishes' document containing detailed instructions. The document was apparently prepared on 31 March 2024 and set out Mr Davies' estimated wealth, his preferred funeral arrangements and how he wanted his residuary assets to be divided after his death.

Justice McHerron noted that there were three different dates on the document. It had been signed and dated 31 March 2024, but there was a separate signed, handwritten declaration dated 10 April 2024 and stating that Mr Davies was of sound mind and body. Ms Alderson gave evidence that this date was incorrect and that she and her husband had been present at Mr Davies' bedside when he had signed the declaration on 15 April. Two other teacher colleagues of Mr Davies had signed the 'last wishes' document and dated it 15 April 2024.

Justice McHerron observed that Ms Alderson's application sought a declaration under section 14 of the Act that the 'last wishes' document was valid. However, His Honour said that he did not consider that such a declaration was necessary. The document complied with the section 11 requirements for a will and the only matter requiring correction was the date of the declaration as to Mr Davies' soundness of mind, which would be corrected to 15 April.

The court was satisfied that the 'last wishes' document expressed Mr Davies' testamentary intentions. It was evident that the will-maker had intended both documents to be read together. Orders would be made correcting the 2013 will to make it clear that Ms Alderson was appointed as the executor and trustee, correcting the date on the 'last wishes' document, and declaring that the 'last wishes' document was a valid codicil to the 2013 will.

High Court makes orders relating to estate

Glenn Bowler died on 8 April 2023, leaving three children. In *Estate of Bowler* [2024] NZHC 3192, one of the children, Anastasia Bowler, applied for recall of the grant of probate of Mr Bowler's will on the ground that he had lacked testamentary capacity to make his final will. However, the parties entered into negotiations and settled the mattter by way of a deed of settlement.

Ms Bowler also brought an application under section 21 of the Administration Act 1969 for the removal of the administrator of Mr Bowler's estate, Alan Deane, and his replacement by Perpetual Trust Ltd, and for an order that Perpetual Trust's reasonable costs and expenses be paid from the estate.

Before the matter came to hearing, Mr Deane decided that he wished to be discharged as administrator. The three children and Mr Deane all agreed that Perpetual Trust should be appointed.

The High Court ordered by consent that Mr Deane be discharged as administator, that Perpetual Trust be appointed, and that all reasonable costs and expenses incurred by Perpetual Trust should be paid out of the estate.

Property

Extinguishment of easement granted by High Court

Three Angels Holdings (2010) Ltd v Quiatchon [2024] NZHC 3397 involved an easement, registered in 2013, granting rights of way and utility services to a single, then-undeveloped title – the dominant land – in Christchurch. The dominant land was subdivided in 2015 and the easement subsequently benefited 10 residential properties.

Three Angels Holdings (2010) Ltd (Three Angels) wanted to subdivide the burdened land and an adjoining property into 19 residential units. Resource consent for the development had been granted but was conditional on the easement being removed.

Three Angels said that the easement no longer served any practical purpose as the benefited properties could be reached by other means, and services to those properties were also provided by way of an alternative route.

The owners of the 10 benefited properties were served with the proceedings, with only two of them taking any steps. One provided written consent to the extinguishment while the other initially indicated a desire to retain the rights under the easement, but later agreed not to oppose the application.

In the High Court, Justice Boldt noted that section 317 of the Property Law Act 2007 provided for a court to modify or extinguish an easement. The court had to be satisfied that this should be done because of a change since creation of the easement in the nature or extent of the use being made of the benefited or the burdened land; the character of the neighbourhood; or any other relevant circumstances. Modification or extinguishment could also be granted if the continuation of the easement would impede the reasonable use of the burdened land in a different way from that which could reasonably have been foreseen at the outset, or the proposed extinguishment would not substantially injure any entitled person.

His Honour said that there had been a significant change in the use of the benefited properties since the easement was created. The properties were now fully-serviced residential homes which could be accessed by an alternative route which had not existed when the easement was created. There was no ongoing need for access of any kind across the burdened land. It was also clear that the proposed extinguishment would not substantially injure the respondents. Both sections 317(1)(a) and (d) were accordingly satisfied.

The easement was extinguished.

Peaceable re-entry by lessor when rent and rates unpaid

The question of when a property can be peaceably re-entered by a lessor has been considered by the High Court.

In *James Ward Trustee Company Ltd v Lee* [2024] NZHC 3033 James Ward Trustee Company became the registered owner of the superior leasehold title for Scene Three apartment complex in Auckland. It also took over as lessor for the lease of the property.

Eunji Lee was the lessee of an apartment in the complex. The lease obliged her to pay quarterly ground rent and Auckland Council rates.

James Ward filed an application in the High Court in December 2023 seeking an order for possession of the land and orders for Ms Lee to pay the sums owing under the lease, interest and recovery costs.

The applicant alleged that Ms Lee had breached the lease agreement by failing to pay the quarterly ground rent. It advised her of its intention to cancel the lease. Ms Lee responded that she wanted to pay the debt but could only make partial payment and wished to sell the property.

Ms Lee did not make any payments and the property was not sold. A default notice expired in May 2023 without remedy and no response was received to a further notice, following which James Ward commenced the proceedings.

On 19 January 2024, after Ms Lee had vacated the property, James Ward's manager and property manager had gone to the apartment and affixed to the front door a notice of intention to re-take the property.

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There were difficulties with effecting service on Ms Lee and, in August 2024, the High Court made orders dispensing with the requirement for personal service.

The applicant said in affidavit evidence that, believing that Ms Lee would not pay, the property had been peaceably re-entered to limit Ms Lee's liability under the lease and to mitigate the lessor's losses.

The lease was cancelled by peaceable re-entry on 13 March 2024 when James Ward entered into a tenancy agreement directly with new tenants and gave them physical access to the property.

Justice Gordon noted that the application had been brought pursuant to sections 244-251 of the Property Law Act, with section 244(1)(b) providing for peaceable re-entry to land. Her Honour observed that a lessee could only exercise the section 244(1) right to cancel a lease if a valid default notice had been served under section 245, and the defaults had not been remedied within the prescribed time.

Justice Gordon said she was satisfied the default notice complied with the requirements of section 245(3) and had been served on Ms Lee by email and she continued to be in default of her obligations under the lease.

The application would accordingly be granted and Ms Lee was ordered to pay $49,600 plus interest.

Dispute over whether containers included in property sale and purchase agreement

In *Papoyan v B Property Group Ltd* [2024] NZHC 3040, Lev Papoyan was the owner of two substantial sections in Queenstown. He entered into an agreement for sale of the two lots to B Property Group Ltd, with settlement on 30 June 2022. On 24 June, B Property nominated Haven Point Ltd to take title to Lot 8 and Andrew McIntosh to take title to Lot 9.

Mr McIntosh was the sole director of, and owned an 83% share in, Haven Point. He was also the sole director of B Property and owned a 50% interest in the company. All negotiations were conducted by Mr McIntosh.

Mr Papoyan had been intending to build a home on the lots and, while planning and site investigation work were undertaken, he had a container home constructed from two containers placed on Lot 8. He said that the container home was excluded from the sale and that he had an agreement to remove it and sell it to a third party. However, following settlement, Haven Point refused to allow the container home to be removed and the sale to the third party was lost.

Mr Papoyan filed proceedings seeking orders for the return of the container home, damages representing the loss of interest on the frustrated sale, general damages and indemnity costs.

Associate Judge Lester said that he had no doubt that Mr Papoyan was entitled to the orders sought, and that Haven Point's position in respect of the containers was wholly without merit. Email exchanges demonstrated that Mr McIntosh knew that the containers were not included in the sale, and had agreed that they were not part of his purchase. He understood that the sale was for bare land plus consents, but excluding the containers. Mr Papoyan's real estate agent had at one point advised that the container home and decking could be purchased for $250,000 and Mr McIntosh had replied that he was 'happy to let the containers go.'

His Honour noted that Mr Papoyan's application had proceeeded on the basis that the container home was a fixture, but it was apparent that it was always intended to be removed from the land. The agreement for sale and purchase did not refer to the container home, but it was clear that Mr McIntosh had agreed that the contract was for bare land.

Associate Judge Lester said the starting position was that the ownership of fixtures transferred with the sale and purchase of land. For chattels to be included in a land sale, they needed to be expressly included.

"Had the containers been chattels, there would have been no need to agree they were excluded because, as I have said, chattels are by default excluded.

"Accordingly, the fact that it was expressly agreed that the containers were excluded from the sale was recognition that the containers were fixtures, or at least arguably so and needed to be specifically dealt with."

His Honour said there was no tenable basis for Mr McIntosh to assert that he had not agreed to exclude the containers from the sale, whether they were fixtures or not. Orders were granted entitling Mr Papoyan to access the Haven Point property to remove the container home. The plaintiff was also granted interest on the sale price of the container home, plus exempary damages of $5,000 and indemnity costs. ■




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Legal rights of modular home buyers clarified by Court of Appeal

Alternative types of housing such as tiny homes and modular homes have become increasingly popular as high land and construction costs place homes out of the reach of many people. As a result, families may seek to provide space for their parents to live in self-contained units on their properties.

Tiny homes can be moved to different locations and the space available in these homes can be extended by buying a small additional structure to be placed against a tiny house and connected through a door. Such structures can be used as offices, bedrooms, living rooms and playrooms for children. Basic additions have no internal walls or doors; more sophisticated versions may incorporate wardrobes hidden behind sliding doors, full-height picture windows or two-pane sliding doors.

Modular homes are constructed at a factory and then transported to their permanent locations. Contracts for the purchase of modular homes typically include suppliers agreeing to carry out earthworks, construct foundations and install the modular home.

But what legal rights do purchasers have if a company goes under before the home is supplied and installed?

Recent case serves as example

The Court of Appeal considered that issue late last year in the case of *Benjamin Brian Frances and Simon Dalton as Liquidators of Podular Housing Systems Ltd (In Liquidation) v Ilan Gross* [2024] NZCA 528.

Podular Housing Systems Ltd carried on business constructing and installing modular residential buildings, called pods. The pods were constructed at Podular's facilities in Hamilton and Christchurch, and then trucked to the customer's property. Podular contracted to carry out earthworks at the purchaser's property, to construct foundations and to install the pod on those foundations.

Podular was placed in liquidation in December 2022; at the time there were 15 partly-completed pods at the Hamilton facility and three at the Christchurch facility. The purchasers of the pods had paid deposits and instalments towards the purchase price. A further 20 purchasers had paid deposits but construction of their pods had not begun. They claimed in the liquidation as unsecured creditors.

The liquidators applied to the High Court for directions as to the nature and priority of the purchasers' claims to the partly-completed pods, and the liquidators' entitlement to recover the costs of identifying, preserving and selling the pods from the sale proceeds of those pods.

In the High Court, Justice Jagose held that legal title to the partly-completed pods remained with Podular. The purchasers were not the legal owners of the incomplete pods. However, His Honour held that each purchaser for whom a pod had been partly-constructed had an equitable lien over that pod to the extent of the purchase monies – including deposits – paid by them.

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Justice Jagose said that the liquidators' costs and disbursements could not be deducted from the sale proceeeds of the pods before any balance was remitted to the purchasers.

Liquidators appealed High Court decision

The liquidators appealed to the Court of Appeal, arguing that the purchasers did not have equitable liens over partly-completed pods. Alternatively, if the purchasers did have equitable liens, the liquidators submitted that the liens did not entitle the purchasers to be repaid in priority to preferential creditors, or to creditors with Personal Property Securities Act 1999 security interests in the pods.

The Court of Appeal granted the appeal, concluding that the purchasers did not have equitable liens over their incomplete pods. Delivering the Court of Appeal's judgment, Justice Goddard said that the main consequence of recognising an equitable lien in such circumstances would be to alter priorities as between purchasers of partly-completed pods who had made payments towards the costs of those pods, and unsecured creditors, including purchasers of pods who had paid deposits but whose pods had not been commenced at the time of the liquidation.


Stock photo

"There is no principled reason to do so. The implications of recognising a lien in this context are potentially wide: such a lien could come into existence in the context of agreements to construct and install many different kinds of items designed to meet a particular purchaser's specifications, including modular sections of buildings, plant and machinery or joinery."

Equitable liens over personal property not supported by court

Justice Goddard observed that there was no appellate authority in New Zealand that supported the recognition of a purchaser's equitable lien over personal property in this context. Parliament had legislated to provide priority for buyers of goods on the insolvency of the seller in the specific context of consumer layby sales, with a cap of $30,000 on the purchase price of those goods.

"We do not think the courts should substantially extend this carefully circumscribed protection: any proposal to do so would in our view be a matter for Parliament."

The Court of Appeal went on to state that recognition of an equitable lien in this context would give rise to difficulties in applying the relevant statutory priority regimes in the context of an insolvency. Her Honour said that the courts should not develop the law in a manner giving rise to such difficulties.

"This reinforces the point that any adjustment of priorities in cases such as the present is a matter best left to Parliament, which could legislate to address all the priority issues that would arise."

Justice Goddard said that the security interests that attached to the pods under the Personal Property Securities Act were legal interests. If those interests were acquired in good faith for value, without notice of the circumstances giving rise to the equitable liens, those interests would have priority over purchasers' equitable lines.

"A purchaser's equitable lien over property entitles the purchasers to have the property sold, and the net proceeds applied to meet their claim for repayment of the purchase price. It follows from the inherent nature of this right that if there were equitable liens over the pods, the liquidators would be entitled to deduct the costs they incurred in identifying, preserving and selling the pods. The net proceeds after meeting those costs would then be available to meet claims by the purchasers."

However, the court said this would cause difficulties in relation to the relative priorities of the equitable liens and claims by preferential creditors under Schedule 7 to the Companies Act 1993.

"These difficulties support the conclusion that equitable liens of the kind contended for in the present case should not be recognised under New Zealand law: the law should not be developed by the courts in a manner that is not compatible with relevant statutory schemes."

The Court of Appeal held that purchasers of partly-completed pods were not entitled to equitable liens over the pods to secure repayment of the amounts they had paid towards the purchase price. They were not entitled to take possession of the pods. They ranked as unsecured creditors of Podular, unless they held valid and enforceable security interests in the pod or other collateral. ■

Cindy Thom presented with Excellence in Foster Care Award at Government House

It was a special day for Blenheim Registered Legal Executive, Cindy Thom, who was presented with an Excellence in Foster Care Award at Wellington's Government House on 7 March. Cindy was one of 10 recipients of the award this year.



The Government-General, Dame Cindy Kiro; Cindy Thom; and the Minister for Children, the Hon Karen Chhour at Cindy's presentation ceremony. Credit: Government House

As *Envoy* readers will already know from the Winter 2023 edition[4], Cindy has been an Oranga Tamariki foster mum for five years. "I lost my newborn son when I was 24 years old. Unable to have any more children, I knew I had lots more love and warmth to give, and the young people I look after certainly need plenty of that. They have experienced such trauma, I feel privileged to be able to help by welcoming these children into my home. It's mostly overnight, but sometimes these children stay longer. Already this year I've looked after five young people, aged 11 to 16 years old."

Cindy said it was surreal meeting the Governor-General, Her Excellency the Rt Hon Dame Cindy Kiro, at Government House and having a delicious afternoon tea in the Blundell Room. "Dame Cindy is such a caring person and although I know she hosts many events and presentations each year, she made us all feel so special."

As well as a framed certificate, the award recipients were presented with a goodie bag of perfume and beauty products. Cindy, typically, gave her young nieces some of the products, although she admits to keeping the perfume and skincare package for herself!

Accompanied to Government House by her partner, Don Mackay, Cindy said it was perfect to have him accompany her. "Don is a man of few words, but I could see in his eyes that he was very proud. As well, my employer Lundons Law is extremely supportive. Although I don't need much time off to foster these young people as Oranga Tamariki fits into my schedule, the firm is very forgiving if I need to leave early. Thank you all for your support."

Our best congratulations to you, Cindy. We are so proud of your achievements. ■

[4]Envoy, Winter 2023, pp 20-22

Switching off Legacy Landonline

Major milestone for the Modernising Landonline project in March

After six years of developing New Landonline, we have now fully migrated all eSearch and eDealings users to the new system.

Legacy Landonline is now truly becoming a wonderful legacy. This is a major milestone for our Modernising Landonline programme and a key step towards entirely decommissioning Legacy. But the work won't end when Legacy retires. With continued in-house software development expertise, Landonline will remain a world-leading platform.

"Over the next few months, the team's primary focus will shift to migrating our database and the internal functions our staff use to process dealings and generate new titles," says Andrea. "But we will continue to release improvements and new functionality to enhance the New Landonline workflow over the coming years, to ensure the platform continues to meet the needs of an always changing property and technology environment.

The great migration

"The Legacy Landonline - Dealings was completed in stages in early March. Staggering the switch-off across four tranches meant we could quickly identify and resolve any issues, although very few were ultimately flagged to us. If users need support, our contact centre is the best place to start and our staff are always willing to help."



Andrea Watson, Consulting Solicitor, Toitū Te Whenua Land Information New Zealand

Voluntary uptake of New Landonline ahead of the transition was already high, with over 80% of dealings already being created and submitted in New Landonline. "This is testament to the effort much of the profession made to be early adopters of New Landonline," Andrea says. "Over the last few years we've seen a high level of engagement through our webinars, support articles, videos, desk guides and updates via industry bodies. This all helped the decommissioning process to be as smooth as possible."

Andrea says the ongoing support and feedback from Landonline's legal customers has been pivotal to the programme. "From the beginning, we've sought to consult directly with our customers and design the features with their needs in mind.

"Meeting regularly with the NZLS Property Law Section's Land Titles Subcommittee was crucial in testing our ideas and making them fit for purpose. We've also had excellent feedback via our in-app form, our contact centre, pilot groups and a legal executive network we established for the programme. I'm so grateful for the thought and effort these volunteers put in to provide such good intel, as this was able to inform and steer our build. This is a major government IT infrastructure programme that was delivered on time and on budget. I think our legal customers should be proud of the work they've done to get us here."

Reverting to the name Landonline

Throughout the build phase we have referred to the original Landonline as Legacy Landonline and the modernised platform as New Landonline.

At the completion of the final switch off, the official name by which we will refer to our current platform will simply be Landonline. ■

Legacy Landonline - Dealings has now been switched off. Legacy Landonline - Survey will be switched off by June.

What is a CPDPR?

All Registered Legal Executives are required to maintain a CPD Plan and Record (CPDPR).

To prepare your CPDPR you need to:

1. **Identify your areas of practice.** They may include, for example:
   - Residential conveyancing
   - Estate administration
   - Trusts
   - Retirement villages.
2. **Reflect on what you do well and what could be improved,** in terms of:
   - Your knowledge, eg: the areas of law that you work in
   - Your skills, eg: drafting documents, letter writing
   - Professionalism, eg: awareness of changes to legislation, and the rules and regulations relating to legal practice
   - 'Practice management', eg: time recording, file management
   - Professional conduct and personal wellness, eg: awareness of issues of conduct and professional responsibilities, self-care.
3. **Review your needs** against the needs of the firm in consultation with your supervising lawyer, and identify your two or three most important learning needs for the coming year.
4. **Identify learning outcomes that will meet your learning needs.** These outcomes will be actions, for example:
   - "To understand and be able to apply new legislation relating to . . . "
   - "To implement a system and develop habits that will improve my time . . . recording".
5. **Choose three or four learning outcomes to focus on** for the coming year.
6. **Identify CPD activities that will help to achieve those learning outcomes,** for example:
   - "Attend webinar on changes to the XY Act"
   - "Attend in-house seminar on effective use of time-recording software".

CPDPR format

We recommend that you use the same format for your CPD plan as the lawyers and any other Registered Legal Executives in your firm.

Alternatively, there is a template in the members' only section of our website and both NZLS and ADLS have online CPDPRs for their registered users.

Your plan should include space to reflect on each CPD activity:

- Did the activity expand your knowledge and/or skills?
- What did you learn, and what will you do differently from here?
- How can you implement the new knowledge or skills in your work?
- Did the activity help you meet your learning outcomes? How did it do that?
- Has the activity identified further learning needs?

Eligible CPD activities

Your CPD activities need to:

- Be planned and structured, with a stated purpose and outcomes
- Be related to the learning needs that you have identified for the year
- Be verifiable, with supporting documentation
- Provide for interaction and feedback
- Not be part of your daily work.

Essentially, if an activity is something that a lawyer can count towards their CPD, then so can you.

Seminars (both in-house and external), conferences, study groups, webinars and interactive 'on demand' CPD such as that offered online by NZLS CLE Ltd and ADLS may all be eligible activities.

Please note that not all online learning activities are eligible — you need to check when registering. For example, if you are unable to attend a webinar 'live' and watch it later by yourself, it may not meet the criteria. (However, if you watch with colleagues, discuss it, make notes, and have your attendance verified, it may be able to be included.)

At least 80% of the CPD activities that you include in your CPDPR should address your areas of legal practice. Up to 20% of your annual CPD must focus on wellness and professional conduct.

Verification of attendance

Verification of your attendance at an event or successful completion of an on demand CPD activity must be attached to your CPDPR if you wish to include it in your CPDPR.

CPD audit

If you are randomly selected for a CPD compliance audit, you need to provide your CPDPR for the selected period, by the date given. Your attendance verifications must be included.

Queries?

For any queries about your CPDPR, please contact jo.buckton@legalexecutives.org.nz

Inheritance as a de facto partner

Implications if de facto partners don't live together

Andrew Johnstone of APEARS, Sydney, Australia



In a 2024 Supreme Court of New South Wales case, the court examined whether Margaret Payne was in a de facto relationship with the deceased, David Hooper, for a continuous period of at least two years prior to his death. Establishing such a relationship would entitle Margaret to inherit David's estate under section 111 of the Succession Act 2006 (NSW).

Background

David Hooper died intestate in 2024 and without issue. Margaret Payne sought recognition as his de facto partner to claim a share of his estate. Their relationship was characterised by daily visits, predominantly by David to Margaret's home. Despite their closeness, they maintained separate residences throughout their relationship.

Legal framework

Under section 21C of the Interpretation Act 1987 (NSW), a 'de facto relationship' is defined as a relationship between two adults living together *in the same household* [our italics] on a genuine domestic basis. The Act provides that certain factors, including the duration of the relationship, the nature and extent of common residence, and the degree of financial dependence, amongst other things, should be considered in determining the existence of a de facto relationship.

Court's analysis

The court acknowledged the deep emotional bond between David and Margaret, highlighting their unusually close and lasting relationship. The maintenance of separate homes posed a challenge in applying section 21C of the Interpretation Act. The court had to determine whether David and Margaret's living arrangements, characterised by daily visits and a lack of shared residence, met the criteria set out in the legislation for a de facto relationship.

Decision

After considering the evidence, the court concluded that David and Margaret's relationship did not satisfy the statutory definition of a de facto relationship. The absence of a shared household was a significant factor in this determination. Consequently, Margaret was not entitled to inherit under section 111 of the Succession Act 2006 (NSW).

Implications

This case underscores the importance of cohabitation in establishing a de facto relationship under New South Wales' law.

It clarifies that maintaining separate residences, even with a close and enduring emotional bond, may preclude

recognition as a de facto partner for inheritance purposes. Individuals in long-term, non-cohabiting relationships should be aware of this legal requirement when planning their estates or asserting inheritance claims. ■

Regards from Australia,
Andrew Johnstone
APEARS

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To contact Andrew, please email him at andrew@apears.com.au
His full contact details are on page 9.

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