NZ LAW
Annual General Meeting

10 - 11 October 2025
Millennium Hotel, Queenstown






Featuring presentations from:

- Sam Coupland, FMRC
- Robert Davies, Norris Ward McKinnon
- Sir Ian Taylor, Keynote Speaker
- Our Special Interest Group Panels

NZ LAW Platinum Sponsors

NZ LAW Annual General Meeting

Day One: Friday 10 October 2025 — Eligible for up to 9.5 CPD

10.00am — ***Registration & Morning Tea***

10.30am

NZ LAW Annual General Meeting

1. Minutes of Previous General Meeting, Dubai, 14 June 2024 *(circulated 10 July 2025)*
2. Matters Arising
3. Chair Update, Shehan de Silva
4. Financials & Auditor
5. NZ LAW Board Elections
6. NZ LAW Board Portfolio Updates
7. Future Meetings
   - 7.1 Senior Solicitors Conference, Wellington — 5 - 6 March 2026
   - 7.2 General Meeting, Wellington — 6 - 7 March 2026
   - 7.3 Junior Solicitors Conference, Wellington — 16 - 17 April 2026
   - 7.4 Combined Offshore Conference, Japan — 7 - 15 July 2026
8. General Business

11.00am
1 CPD Hr

Share, Learn, Grow: Leveraging Data to Improve Profitability

Building on our recent focus on firm profitability, this session uses insights from the latest Profit Improvement Survey to share key findings, learn from both high-performing firms and those navigating challenging conditions, and grow your bottom line.

We're pleased to be joined by **Sam Coupland, Director at FMRC Pty Ltd** — a leading Australasian advisory firm specialising in legal practice management (www.fmrc.com.au). Sam will lead two sessions:

- The first will explore the key findings and profitability insights from the survey.
- The second will provide a data-driven analysis of trends in **succession planning** and **firm valuations.**

Sam brings extensive expertise and a practical understanding of the legal landscape across New Zealand and Australia. We're delighted to welcome him to this year's conference.

12.00pm — ***Lunch***

1.00pm
1 CPD Hr

Succession Planning and Firm Valuations

Continuation from the morning session.

Sam Coupland, FMRC Pty Ltd

2.00pm
1 CPD Hr

The RMA Reboot: What You Need to Know

Robert will present an overview of the proposed changes to the RMA, providing a high-level summary of the journey to date, what's changing (and when), and the potential implications for applicants and submitters/objectors — which is where most of our clients are likely to sit. His session will focus on key concepts and offer a concise, whistle-stop tour of the evolving landscape.

Robert Davies, Norris Ward McKinnon

3.00pm — ***Afternoon Tea***

3.15pm
1 CPD Hr

Bugger the boxing, pour the concrete anyway

Ian Taylor's journey is a remarkable reflection of New Zealand's technological and cultural evolution.

Ian was brought up in a small East Coast village on the North Island of New Zealand. He was seven when electricity arrived at his home. It was 1957. The telephone arrived a couple of years later. He didn't know it at the time but three years after he got electricity at his house, New Zealand got its first computer.

Ian's story mirrors New Zealand's growth from its days as an agriculture-based economy. He laboured in the freezing works during the school holidays. Through the swinging 60s and 70s he was a singer in a rock and roll band, before being called up in the army. By 1980, he had completed a law degree and started an entirely new career in television, where he was part of an industry that went from black-and-white film to colour video and on into the digital age.

Sir Ian Taylor

4.15pm — **Day One Concludes**

6.00pm

Buses will depart the hotel foyer

Conference Dinner - Brew Hall, Cargo Collective

We invite you to come together for an evening of great food, meaningful conversation, and celebration at the Brew Hall, located at the picturesque Arthurs Point of Queenstown. This exclusive dinner offers conference attendees a chance to unwind and engage in a warm, welcoming atmosphere, enriched by the rustic elegance and modern charm of Cargo Collective. Enjoy live entertainment from Queenstown's very own supergroup, *Radiosonic.*

Semi formal attire.

Day Two: Saturday 11 October 2025

8.45am	***Arrival Tea and Coffee***
Depart the hotel foyer at 10.30am *Returning at* 2.30pm	**Accompanying partner programme - Appellation Wine Tours** Enjoy a curated journey through the heart of Central Otago's renowned wine region. Begin with a guided tasting at **Gibbston Valley,** where you'll explore award-winning varietals in the atmospheric setting of the region's largest wine cave - a truly immersive experience. Continue to **Kinross Winery,** where a relaxed vineyard ambiance sets the stage for sampling a selection of boutique wines. The experience concludes at **Mt Rosa Wines**, where you'll enjoy a tasting complemented by a regional cheeseboard, paired to showcase the bold and expressive character of their wines. ***Cost $200 pp (based on minimum numbers of 11)***
9.00am **1.5 CPD Hr**	**Property Special Interest Group meeting** Jane Fletcher, Kristine King and Micheal Hoffman-Body present on current issues in property law and aim to leave some time at the end of the session for general queries arising. Jane will talk about recent experiences with Councils and unexpected issues arising from Councils' approach to property development. Michael will discuss Utilising the Disputes Tribunal to Resolve Post Settlement Issues, make it their problem, not ours! Kristine will discuss the new climate report recommendations, the proposal to abolish buy-backs and the problems this will cause for property lawyers. **Panel: Jane Fletcher (Downie Stewart), Michael Hoffman-Body, (Gillespie Watson Young), and Kristine King (DK Law)**
10.30am	***Morning Tea***
11.00am **1 CPD Hr**	**Innovation & Technology Special Interest Group meeting** Join **Sam Coupland** as he returns to share his latest insights into the key trends shaping the legal profession. He'll explore both current developments and emerging shifts, with a focus on innovative practices and the technologies driving them. What are the leading firms doing to stay ahead - and pull further away from the rest? And what warning signs should you be watching to ensure your firm isn't left behind? **Sam Coupland, FMRC Pty Ltd**
12.00pm	***Lunch***
1.00pm **1.5 CPD Hr**	**Elder Law Special Interest Group meeting** Following on from the previous conference in New Plymouth, this session will facilitate further discussion between members. The panel will explore: • Best practice when a person close to the donor raises concerns about an attorney's conduct. • Approaches taken by member firms when a donor wishes to appoint the lawyer as an attorney or name the lawyer in the consultation of provision of information sections of the EPOA. • Best advice or practice, in both the estate planning and estate administration contexts, where a will-making client has made family loans (both documented and undocumented) including navigating situations where an executor named in a will has received loans during the testator's lifetime, and considering whether there is a potential for conflict such that they should renounce (jump before they are pushed!). • If time allows, the panel will explore complications where a child occupies a parent's home on death. **Facilitated by Angela Stafford (Wain & Naysmith), Amanda Crehan (Atkinson Crehan) and Melissa Bourke (Innes Dean).**
2.30pm	***Afternoon Tea***
3.00pm **1.5 CPD Hr**	**Trust Special Interest Group meeting** ***(a detailed agenda will be circulated nearer the time)*** This meeting of the Trust SIG will discuss: • Settlor control – too much of it is not always a good thing, and the appearance of too much is often just as bad. What practical strategies does the group use or recommend to make sure a trust appears robust, well run, and will stand up in the face of examination for relationship property or creditor protection purposes? • Settlor control – is the position different in the blended family context, or where the trust is solely established for tax reasons • Conflicted executors and trustees—when is a conflict-of-interest disqualifying, and how can you address it? **Panel: Greg Kelly (Greg Kelly Law), Geoff Mirkin (Wilkinson Rodgers) and Kimberly Lawrence (Greg Kelly Law)**
4.30pm	**Conference Concludes**
6.00pm *Buses will depart the hotel foyer*	**Conference Social Gathering, The Grill by Eichardt's** This evening we are hosting our post-conference gathering at **The Grille by Eichardt's**, one of Queenstown's premier dining destinations. Located on the lakefront with floor-to-ceiling windows, The Grille offers uninterrupted views of the stunning Lake Wakatipu and surrounding mountains. Set within a modern and stylish space that blends sophistication with warmth, guests will enjoy a selection of beverages and canapés while taking in the vibrant atmosphere and exceptional hospitality. ***Semi formal attire.***

Booking Information

Superior rooms have been secured at the Millennium Hotel at a rate of $345.00 per night, including breakfast for one, if you require a family room or interconnecting, please contact the hotel direct to secure your requirements. Bookings will be made according to the details provided in your online registration form. Accommodation costs are to be settled directly with the hotel. Any additional expenses, such as dinners, will be invoiced to individual firms after the event. The conference will take place at the Millennium Hotel. Minutes, presentations, and handouts will be made available on the NZ LAW website after the meeting.

Millennium Hotel, Corner Frankton Road and Stanley Street, Queenstown | www.millenniumhotels.com

Director Responsible for the Programme
Sam Walker, GYW
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Conference Manager
Heather Menzies, NZ LAW Limited
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Annual General Meeting Queenstown

Presenters Profile | 10 - 11 October 2025

Sam Coupland, Director at FMRC Pty Ltd

Sam joined FMRC in January 2000 and became a Director in July 2006. His client facing roles span direct consulting and management training.

Sam's consulting work is predominantly providing advice to smaller partnerships. These firms are facing increasing demographic and economic pressures which they feel ill equipped to face on their own. In any one year he would be engaged by 50+ firms to assist with strategic planning, partner compensation, equity valuation and succession related issues.

Sam is considered the foremost authority on law firm valuations and would value more law firms than anyone else in Australia. He has developed a robust valuation methodology which calculates an accurate capitalisation rate that assesses the risk profile, cash flow and profitability of the firm.

From a training perspective, Sam is involved in presenting at conferences as well as developing and presenting FMRC programs.

Robert Davies, Partner, Norris Ward McKinnon

Robert is experienced in employment (including workplace investigations and health and safety), resource management (including alcohol licensing), and public/local government (including privacy and official information), and is a Team Leader.

He has appeared before the High Court, Environment Court, Employment Relations Authority, district licensing committees and local council committees, and the Alcohol Regulatory and Licensing Authority. Robert has a particular interest in alternative dispute resolution, including mediation.

He is a member of the Arbitrators' and Mediators' Institute of New Zealand, the Association of Workplace Investigators, the Resource Management Law Association. He also sits on the employment law committee of the Waikato/Bay of Plenty District Law Society.

LLB - University of Waikato; AWI-CH - Association of Workplace Investigators (USA).

Sir Ian Taylor

Ian Taylor's life story reflects New Zealand's technological and cultural progress, from rural beginnings to global innovation in technology and media. His journey highlights the evolution of technology and his contributions to broadcasting, business, and community.

Early life and career shifts, raised in a small village, Ian witnessed early technological advances like electricity and telephones, worked diverse jobs, served in the army, and earned a law degree before moving into television and technology.

Founding Animation Research Ltd, in 1990, Ian established ARL, which pioneered technology for major sports events and other industries, showcasing New Zealand's inventive problem-solving spirit despite limited resources.

Recognition and legacy, Ian launched the Land of Voyagers project to honour Polynesian heritage and received numerous honours, including a knighthood in 2021, while remaining modest about his achievements and crediting his team's ingenuity.

					Day 1	Dinner: Brewhall	Wine Tour	Property SIG	IT SIG	ElderLaw SIG	Trust SIG	Sat: The Grill
Hamish	Mabey	ANZ		Christchurch	1	1		1	1		1	1
Nic	Raines	ANZ		Invercargill	1							
Josh	Broughton	ANZ			1	1						
Marten	Reitsma	ANZ			1							
James	Brewer	ANZ			1	2						
Lesley	Runciman	Aon New Zealand		Auckland		1						1
Genna	Barr	Apogee Legal		Whakatane	1	1		1	1	1	1	1
Carolyn	Cooper	Apogee Legal	Glenn Cooper	Whakatane	1	2	1	1	1	1	1	2
Tim	Burtenshaw	Argyle Welsh Finnigan		Ashburton	1	1		1	1	1	1	1
Henry	McManus	Argyle Welsh Finnigan		Ashburton	1	1		1	1	1	1	1
Janice	Hughes	Aspiring Law		Wanaka	1			1	1	1	1	
James	Lovelock	Aspiring Law		Wanaka	1	1						
Jacintha	Atkinson-Manson	Atkinson Crehan Law		Nelson	1	1		1		1	1	1
Amanda	Crehan	Atkinson Crehan Law	Michael Crehan	Richmond	1	2			1	1	1	2
Helen	Clarke	Berry & Co		Queenstown	1	1		1	1	1	1	1
Matthew	Edwards	Berry & Co		Queenstown	1	1		1	1	1	1	
Nicky	Elliot	Berry & Co		Oamaru	1	1		1	1	1	1	1
Holly	Waddingham	Berry & Co		Invercargill	1	1		1	1	1	1	1
Michael	de Buyzer	Berry & Co.	Nicki de Buyzer	Oamaru	1	2		1	1	1	1	2
Mark	Kennedy	BMC Lawyers		Porirua	1	1			1			
Greg	McCardle	BMC Lawyers		Kapiti	1	1		1		1	1	
Greg	France	Boyle Mathieson		Auckland	1	1		1		1	1	1
Brian	Stewart	Brian Stewart Barrister		Auckland	1			1	1	1	1	
Hannah	McMullan	Client Legal Solutions		Nelson	1	1		1	1	1	1	1
Gerard	Praat	Client Legal Solutions	Megan Praat	Nelson	1	2		1	1	1	1	2
Tim	Coleman	Connect Legal		New Plymouth	1			1		1	1	1
Ciaran	King	Connect Legal		New Plymouth	1			1		1	1	1
Ari	Barrow	Corcoran French	Ruby Jones	Christchurch	1	2	1	1	1	1	1	2
shehan	de Silva	Corcoran French	Kate de Silva	Christchurch	1	2	1	1	1			2
Richard	Hearn	Corcoran French		Christchurch	1	1		1	1	1	1	1
Keith	Brown	Cruickshank Pryde		Invercargill	1	1		1	1	1	1	
Hilary	Copland	Cruickshank Pryde		Gore	1	1			1	1	1	
Riley	Boyle	CS Law	Zachary Harrison Scott	Levin	1			1	1	1	1	
Hannah	Wood	CS Law		Levin	1			1	1	1	1	
Lucy	Gould	Daniel Overton and Goulding		Auckland	1	1		1	1	1	1	1
Bronwyn	Hantz	Daniel Overton and Goulding		Auckland	1	1		1	1	1	1	1
Maria	West	Daniel Overton and Goulding		Auckland	1	1		1	1	1	1	1
Kelly	McCullough	DG Law	Annalise Barrett	Auckland	1	2	1	1	1	1	1	2
Helen	Robinson	DG Law	Simon Ro	Auckland	1	2	1	1		1	1	2
Rita	Williamson	DG Law		Auckland	1	1		1	1	1	1	1
Kristine	King	DK Law		Auckland								
Kristine	King	DK Law	Greg Bunkall	Auckland	1	2		1	1	1	1	2
Sarah	Heald	Dorrington Poole		Dannevirke	1	1		1	1	1	1	1
Robert	van Duin	Dorrington Poole		Dannevirke	1	1		1	1	1	1	1
Paul	Buckner	Downie Stewart	Joan Buckner	Dunedin	1	2		1		1	1	2
Gerard	DeCourcy	Downie Stewart	Jan DeCourcy	Dunedin	1	2		1	1	1	1	2
Jane	Fletcher	Downie Stewart		Dunedin	1	1		1	1	1	1	1
Ella	Gaffney	Downie Stewart		Dunedin	1	1		1	1	1	1	1
Matthew	Haggart	Downie Stewart		Dunedin	1	1		1		1	1	1
Paul	Hubbard	Downie Stewart	Diane Hubbard	Dunedin	1	2		1		1	1	2
Liam	Johnston	Downie Stewart	April Lily-Sule	Dunedin	1	2	1					2
Rachael	Beattie	Edmonds Judd		Waikato	1	1		1		1	1	
Lucy	Sim	Edmonds Judd		Te Awamutu	1	1		1		1	1	
John	Freebairn	Freebairn & Hehir	Callum Freebairn	Palmerston North	1	2		1	1	1	1	2
Ray	Pan	Freebairn & Hehir		Palmerston North	1	1		1	1	1	1	1
Kylie	Moore	Gawith Burridge	Hannah Moore	Masterton	1	0				1	1	2
Georgia	Osmond	Gawith Burridge		Masterton	1	1		1	1		1	1

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Angela	Davis	Gifford Devine		Hastings	1	1		1	1	1	1	1
Kezia	Taylor	Gifford Devine		Hastings	1	1		1	1	1	1	1
Sharee	Cavanaugh	Greg Kelly Trust Law		Wellington	1	1		1		1	1	1
Greg	Kelly	Greg Kelly Trust Law	Ann Rice	Wellington				1		1	1	2
Kevin	Zhu	Greg Kelly Trust Law		Wellington	1	1		1	1	1	1	1
Kimberly	Lawrence	Greg Kelly Trust Law Ltd		Wellington	1	1		1	1	1	1	1
Michael	Hofmann-Body	GYW		Lower Hutt	1	1		1	1	1	1	1
Samuel	Walker	GYW	Lorraine Hercus	Lower Hutt	1	1		1	1			2
Jai	Stephens	Horsley Christie		Whanganui	1	1		1	1	1	1	1
Melissa	Bourke	Innes Dean Lawyers	2 kids	Palmerston North	1	3		1	1	1	1	3
Clancy	Lyon	Innes Dean Lawyers		Palmerston North	1	1		1	1	1	1	1
Mike	Dorset	Jackson Reeves		Tauranga	1	1		1			1	1
Alexia	Mayer	James & Wells		Christchurch	1	1			1			1
Anna	Ferguson	Kaimai Law Bethlehem & Omokoroa		Tauranga	1	1		1	1	1	1	1
Gemma	Keystone	Kaimai Law Bethlehem & Omokoroa		Tauranga	1	1			1	1	1	1
Tina	McLennan	Kaimai Law Bethlehem and Omokoroa		Tauranga	1	1		1		1	1	1
Katie	Clayton-Greene	Lamb Bain Laubscher	Wess Clayton-Greene	Te Kuiti	1			1		1	1	
Laurel	Simm	Law North		Kerikeri	1	1		1	1	1	1	1
Louise	Foley	Le Pine & Co	Bevan Maclachlan	Taupo	1	2			1	1	1	2
Dave	Brooker	LexisNexis		Auckland	1	1			1			
Eudora	Chew	LexisNexis		Auckland	1				1			
Drew	Laidlaw	LexisNexis		Auckland	1	1						1
Aya	Riola	LexisNexis		Auckland		1						1
Alastair	Fernandes	LexisNexis		Auckland	1				1			1
Karl	Stolberger	Lowndes Jordan		Auckland	1	1		1	1	1	1	1
Dasha	Kovalenko-Gormack	Lowndes Jordan		Auckland	1	1		1	1	1	1	1
Howard	Alloo	Mactodd Lawyers		Cromwell	1							
Annabelle	Alloo	Mactodd Lawyers		Queenstown	1			1		1	1	
Emma	Campbell	Mactodd Lawyers		Queenstown	1							
Scott	Donaldson	Mactodd Lawyers		Queenstown	1	1						1
Caitlin	Dykes	Mactodd Lawyers		Queenstown/Cromwell	1			1		1		
Anna	Gillooly	Mactodd Lawyers	Geoff Small	Queenstown/Cromwell	1	2						
Madeline	Patterson	Mactodd Lawyers		Queenstown	1							
Pip	Allan	Malley & Co		Christchurch	1	1		1	1	1	1	
Ashley	Kelland	Malley & Co		Christchurch	1	1		1	1	1	1	1
Chantal	Morkel	Malley & Co		Christchurch	1	1		1	1	1	1	
Sarah	Martin	Martin and Parker Law		Silverdale, Auckland	1			1	1	1	1	1
Patricia	Parker	Martin and Parker Law		Silverdale, Auckland	1				1	1	1	1
Greg	Woodd	Martin and Parker Law	Amanda James	Silverdale, Auckland				1		1	1	
Jane	Signal	McIntosh & Signal		Feilding	1	1		1	1	1	1	
Dale	Thomas	McCaw Lewis		Hamilton	1			1			1	1
Michael	Lucas	Mike Lucas Law	Lyn Lucas	Manurewa	1	2		1	1	1	1	2
Jamie	Blackburn	Norris Ward McKinnon		Hamilton	1	1		1	1	1	1	1
Dan	Moore	Norris Ward McKinnon	Sue Moore	Hamilton	1	2	1	1	1			2
Emma	O'Keeffe	Norris Ward McKinnon		Hamilton	1	1		1	1	1	1	1
Rebekah	Revell	Norris Ward McKinnon	Sam Revell	Hamilton	1	2	1	1	1	1	1	2
Chris	Steenstra	Norris Ward McKinnon		Hamilton	1	1		1	1	1	1	1
Heather	Menzies	NZ LAW Ltd		Napier	1	1						1
Darrin	Rogers	NZ LAW Ltd		Napier	1	1		1	1	1	1	1
Yang	Su	Parry Field Lawyers		Christchurch	1	1		1	1			
Peter	Magee	Peter J Magee		Whanagrei	1	1						
Clinton	Baker	Price Baker Berridge	Sarah Sumankant	Auckland	1	2	1					
Cameron	Berridge	Price Baker Berridge		Auckland	1	1		1	1	1	1	1
Brenda	Flay	Purnell Lawyers	Stuart McDonald	Thames	1	2		1	1	1	1	2
Hayley	Green	Purnell Lawyers	Stu Green	Thames	1	2		1	1	1	1	2
Shaun	Cousins	Rainey Collins Lawyers	Bex Cousins	Wellington	1	2		1	1	1	1	2
Pat	Stuart	Rejthar Stuart Law	Cathy Stuart	Tauranga	1							

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John	Cox	Rennie Cox	Kim Tatton	Auckland	1	2		1	1	1	1	
Sarah	Round	Rennie Cox		Auckland	0						1	
Jonathan	Norman	Sainsbury Logan Williams	Tricia Norman	Napier	1	2			1		1	
Brendan	Wall	Sandford Wall	Katherine Wall	Rotorua	1	2	1	1	1	1	1	2
Karen	Menlove	Sheddan Pritchard Law Ltd.		Gore	1	1		1		1	1	
John	Sheddan	Sheddan Pritchard Law Ltd.	Karen Menlove	Gore	1	1		1	1	1	1	2
Robert	Clark	Simpson Western		Takapuna				1	1	1	1	1
Peter	Hall	Simpson Western		Takapuna	1	1		1	1	1	1	1
Mark	Deacon	Sumpter Moore		Balclutha	1	1		1			1	1
Shona	Squires	Sumpter Moore		Milton	1	1		1	1	1	1	1
Jared	St Clair-Newman	Sumpter Moore	Celia Lie	Balclutha	1	2		1	1	1	1	2
Nicola	Cody	Thomson Reuters		Christchurch	1	1		1	1	1	1	
Michael	Badham	Thomson Wilson	Debbie Welsh	Whangarei	1	2	1	1	1	1	1	2
Laura	Currie	Thomson Wilson		Whangarei	1	1		1	1		1	1
Graeme	Mathias	Thomson Wilson		Whangarei	1			1	1	1	1	
Angela	Stafford	Wain & Naysmith		Blenheim	1	1		1	1	1	1	1
Melanie	Timms	Wain & Naysmith		Blenheim		1		1	1	1	1	1
Janice	Forsyth	Welsh McCarthy Parker	CJ Mahony	Hawera	1		1	1	1	1	1	2
Crichton	Parker	Welsh McCarthy Parker	Lauren Nottingham	Hawera	1		1	1	1	1	1	2
Geoffrey	Mirkin	Wilkinson Rodgers	Wendy Mirkin	Dunedin	1	2		1	1	1	1	2
Ben	Taylor	Wilkinson Rodgers	Bridey Taylor	Dunedin	1			1	1		1	1
Ellie	FitzGerald	Woodward Chrisp		Gisborne	1	1		1	1	1	1	1
Adam	Simperingham	Woodward Chrisp	Deanne Nicoloso	Gisborne	1	2						
Brandt	Auld	Woodward Chrisp		Gisborne	1			1	1	1	1	
Piers	Blomfield	Woodward Chrisp		Gisborne	1				1	1	1	0
Natalie	Milne	YRW Limited	Matt Swindlehurst	Tauranga	1	2						
Sam Coupland						1						
					132	**143**	**13**	**105**	**95**	**101**	**109**	**129**

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Millennium Hotel, Queenstown

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1	Genna	Barr	Apogee Legal		Whakatane	genna@apogeelegal.nz
2	Carolyn	Cooper	Apogee Legal	Glenn Cooper	Whakatane	carolyn@apogeelegal.nz
3	Tim	Burtenshaw	Argyle Welsh Finnigan		Ashburton	tim.burtenshaw@awlegal.co.nz
4	Henry	McManus	Argyle Welsh Finnigan		Ashburton	henry.mcmanus@awlegal.co.nz
5	Janice	Hughes	Aspiring Law		Wanaka	janice@aspiringlaw.co.nz
6	James	Lovelock	Aspiring Law		Wanaka	james.lovelock@aspiringlaw.co.nz
7	Jacintha	Atkinson-Manson	Atkinson Crehan Law		Nelson	jacintha@atkinsoncrehan.co.nz
8	Amanda	Crehan	Atkinson Crehan Law	Michael Crehan	Richmond	amanda@atkinsoncrehan.co.nz
9	Helen	Clarke	Berry & Co		Queenstown	hclarke@berryco.co.nz
10	Matthew	Edwards	Berry & Co		Queenstown	medwards@berryco.co.nz
11	Nicky	Elliot	Berry & Co		Oamaru	nelliot@berryco.co.nz
12	Holly	Waddingham	Berry & Co		Invercargill	hwaddingham@berryco.co.nz
13	Michael	de Buyzer	Berry & Co	Nicki de Buyzer	Oamaru	mdebuyzer@berryco.co.nz
15	Mark	Kennedy	BMC Lawyers		Porirua	mark@bmc-law.co.nz
16	Greg	McCardle	BMC Lawyers		Kapiti	greg@bmc-law.co.nz
18	Greg	France	Boyle Mathieson		Auckland	gfrance@bmlaw.co.nz
19	Brian	Stewart	Brian Stewart Barrister		Auckland	brian@brianstewart.co.nz
20	Hannah	McMullan	Client Legal Solutions		Nelson	h.mcmullan@clientlegal.co.nz
21	Gerard	Praat	Client Legal Solutions	Megan Praat	Nelson	g.praat@clientlegal.co.nz
22	Tim	Coleman	Connect Legal		New Plymouth	timc@connectlegal.co.nz
23	Ciaran	King	Connect Legal		New Plymouth	ciarank@connectlegal.co.nz
24	Ari	Barrow	Corcoran French	Ruby Jones	Christchurch	ari@cflaw.co.nz
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Apologies:

Allen Needham, Barden & Co, Edmonds Marshall, Paul Hunter & RSM Law

NZ LAW Property Special Interest Group Meeting
Saturday 11 October, commencing at 9.00am

AGENDA

Jane Fletcher, Kristine King and Micheal Hoffman-Body present on current issues in property law and aim to leave some time at the end of the session for general queries arising.

Jane will talk about recent experiences with Councils and unexpected issues arising from Councils' approach to property development. Michael will discuss Utilising the Disputes Tribunal to Resolve Post Settlement Issues, make it their problem, not ours! Kristine will discuss the new climate report recommendations, the proposal to abolish buy-backs and the problems this will cause for property lawyers.

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NZ LAW Innovation & Tech Special Interest Group Meeting

Saturday 11 October, commencing at 11.00am

AGENDA

Join Sam Coupland as he returns to share his latest insights into the key trends shaping the legal profession. He'll explore both current developments and emerging shifts, with a focus on innovative practices and the technologies driving them.

What are the leading firms doing to stay ahead - and pull further away from the rest? And what warning signs should you be watching to ensure your firm isn't left behind?

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NZ LAW Elder Law Special Interest Group Meeting

Saturday 11 October, commencing at 1.00pm

AGENDA

Following on from the previous conference in New Plymouth, this session will facilitate further discussion between members.

The panel will explore:
- Best practice when a person close to the donor raises concerns about an attorney's conduct.

- Approaches taken by member firms when a donor wishes to appoint the lawyer as an attorney or name the lawyer in the consultation of provision of information sections of the EPOA.

- Best advice or practice, in both the estate planning and estate administration contexts, where a will-making client has made family loans (both documented and undocumented) including navigating situations where an executor named in a will has received loans during the testator's lifetime, and considering whether there is a potential for conflict such that they should renounce (jump before they are pushed!).

- If time allows, the panel will explore complications where a child occupies a parent's home on death.

Facilitated by Angela Stafford (Wain & Naysmith), Amanda Crehan (Atkinson Crehan) and Melissa Bourke (Innes Dean).

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NZ LAW Trust Special Interest Group Meeting
Saturday 11 October, commencing at 3.00pm

AGENDA

Rimmer v Wilton [2025] NZCA 374: the Court of Appeal has decided that contracting out agreements under the Property (Relationships) Act 1976 are the starting point for ALL estate administration; including when Option B is chosen rather than Option A. This has seismic implications for estate planning, will drafting, estate administration, executor obligations, and even property transactions. An old and forgotten contracting out agreement could undermine decades of careful planning.

This topic will be our main focus, and it will look at:
- The decision itself;
- What this means for estate administration and executors;
- Working backwards, what this means for estate planning, will drafting, and property transactions; and
- How we as lawyers can protect against this risk; and
- What clients need to do if they want to 'get rid of' an old contracting out agreement.

Please read the decision in advance!

Settlor control – too much of it is not always a good thing, and the appearance of too much is often just as bad. What practical strategies does the group use or recommend to make sure a trust appears robust, well run, and will stand up in the face of examination for relationship property or creditor protection purposes? Is the position different when a trust is settled for different purposes?

Conflicted executors and trustees—when is a conflict-of-interest disqualifying, and how can you address it?

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IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA351/2023
[2025] NZCA 374

BETWEEN	NIGEL DAVID RIMMER AND NICOLA RIMMER Appellants
AND	CAROLYN MARY WILTON AS ADMINISTRATOR OF THE ESTATE OF DAVID RIMMER Respondent

Hearing:	29 October 2024
Court:	Mallon, Thomas and Collins JJ
Counsel:	V T M Bruton KC and L S B Acland for Appellants S P H Elliott for Respondent
Judgment:	30 July 2025 at 3.30 pm

JUDGMENT OF THE COURT

A The appellants' application to amend the grounds of appeal is granted in part.

B The appeal is dismissed.

C The respondent is entitled to costs for a standard appeal on a band A basis together with usual disbursements.

REASONS OF THE COURT

(Given by Mallon J)

Table of contents

Introduction

[1] David Rimmer died on 18 March 2016. He left no will. Carolyn Wilton (the respondent in this appeal) was his surviving de facto partner. Ms Wilton was appointed administrator of Mr Rimmer's estate. She has made distributions of the estate to herself that are challenged by Mr Rimmer's (now adult) children, Nigel and Nicola Rimmer (the appellants).

[2] The issue between Ms Wilton and the appellants concerns the effect of an agreement dated 6 June 2002 between Mr Rimmer and Ms Wilton (the Agreement) contracting out of the Property (Relationships) Act 1976 (the PRA) on Ms Wilton's entitlements under the intestacy provisions of the Administration Act 1969.

[3] The appellants say the effect of the Agreement was that Ms Wilton could not make any claim on Mr Rimmer's property (his share of the relationship property and his separate property) in the event of separation or death. They say this meant Ms Wilton could not claim any entitlements under the intestacy provisions on Mr Rimmer's estate (the new argument). Alternatively, they say that Ms Wilton, having elected Option B under s 61 of the PRA, receives her entitlements under the

intestacy provisions but cannot rely on her entitlements under the Agreement (the High Court argument).

[4] The High Court argument was unsuccessful in the High Court.[1] The new argument is raised for the first time on the appeal. Ms Wilton initially opposed the grant of leave for this new argument to be considered on the appeal. Without conceding that leave be granted, at the appeal hearing Ms Wilton was content for the new argument to be determined subject to the Court being satisfied there was no unfair prejudice. We proceed on this basis because it is in the interests of justice to resolve the dispute and we are satisfied we can do so without unfairly prejudicing either party.[2]

Facts

[5] The parties proceeded in the High Court on the basis of an agreed statement of facts. They have provided this Court with a chronology together with relevant documents from the High Court hearing. From these sources, the facts that follow are not in dispute.

[6] Mr Rimmer and Ms Wilton commenced living together in a de facto relationship in September 2000. They purchased a property at Hunua on 18 January 2002 as tenants in common in equal shares (the Hunua property). They entered into the Agreement on 6 June 2002.[3]

[7] The key terms of that Agreement are set out in the Schedule to this judgment. The Agreement specified certain property to be, respectively, the separate property of Ms Wilton and the separate property of Mr Rimmer. It also specified the Hunua property to be relationship property. It contained provisions concerning the division of property if they "should separate or cease to live together as parties to a de facto

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1 *Rimmer v Wilton* [2023] NZHC 1372 [judgment under appeal].

2 *Wylie v Wylie* [2021] NZCA 521 at [39]–[42]. We have not, however, determined the new issue at [64] which was not the subject of full argument in this Court and was not considered in the High Court.

3 We note that this Agreement was entered into approximately four months after the Property (Relationships) Amendment Act 2001 came into force. This amended the Property (Relationships) Act 1976 [the PRA] so that it applied to the division of property when a married couple died and extended the PRA division regime so that it applied to the division of relationship property between de facto partners when they separated or one of them died.

relationship". It also provided the surviving partner a life occupancy in the Hunua property in the event of the death of one of them.

[8] Mr Rimmer died on 18 March 2016. At this time, Mr Rimmer and Ms Wilton were still living together in a de facto relationship. Mr Rimmer's two children survived him. Mr Rimmer did not leave a will.

[9] At the time of Mr Rimmer's death his estate comprised: $107,786.08 cash in a BNZ account; $40,070.00 bonus bonds; $400.07 interest; personal chattels; and his interest in the Hunua property.

[10] On 28 April 2016 Ms Wilton elected Option B under s 61 of the PRA (that is, to elect not to make an application under the PRA and to instead receive her entitlement on the intestacy of Mr Rimmer).[4] She filed a notice of that choice in the High Court on 3 May 2016.[5] The notice recorded that:

> Under section 61 of the Property (Relationships) Act 1976, I choose —
>
> > to elect not to make an application under that Act for a division of the relationship property; and
> >
> > to receive any beneficial interest to which I am entitled on his intestacy or partial intestacy.

[11] On 13 May 2016 Ms Wilton applied without notice for letters of administration on intestacy. The High Court form for an affidavit in support of an application for letters of administration asks an applicant who is a spouse or de facto partner of the deceased to select "Statement A" (the statement for a surviving spouse or civil union partner) or "Statement B" (the statement for a surviving de facto partner). In accordance with that form, Ms Wilton's affidavit in support of application for letters of administration selected Statement B which was as follows:

> I am the surviving de facto partner of the Deceased. I am entitled to succeed on the intestacy. My beneficial interest in the estate is not affected by the

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4 See below at [26] for the full text of s 61 of the PRA.

5 Pursuant to ss 62 and 68 of the PRA, if a choice has not been made within six months of the later of the death of the deceased or the grant of administration of the estate (depending on the size of the estate), the surviving spouse is treated as having chosen Option B. For reasons of which we are not aware, the agreed facts stated that Ms Wilton did not choose Option A under s 61 of the PRA and that by default Option B applied. In fact, the documents show that Option B applied by election rather than by default.

> choice I have made between Option A and Option B, under section 61 of the Property (Relationships) Act 1976, because I have chosen Option B and I lodged a Notice of Choice of Option in accordance with section 65(2)(c) of that Act in this Court on 3rd day of May 2016. A copy is **attached** and marked "A".
>
> …

[12] On 25 May 2016 Ms Wilton was granted letters of administration appointing her administrator of Mr Rimmer's estate. Following that grant, Ms Wilton:

(a) distributed all of Mr Rimmer's personal chattels to herself;

(b) transferred Mr Rimmer's half share in the Hunua property to herself as administrator on 17 June 2006;

(c) lived at the property rent free and personally paid all outgoings and maintenance while she occupied the property, until the property was sold on 31 May 2021 for $1.2 million;

(d) on 5 December 2016 paid $4,936.20 for legal fees for administration of Mr Rimmer's estate, $10,618.82 for funeral costs and $130,132.58 as part payment of the prescribed amount of $155,000 under s 77 of the Administration Act;[6] and

(e) on 25 January 2017 paid herself $8,099.48.

[13] Ms Wilton has not made any distribution of the estate to the appellants.

[14] The steps Ms Wilton took as administrator reflect her position that the relationship property is to be divided in accordance with the Agreement. This meant that Mr Rimmer's estate comprised his half share of the Hunua property, which is subject to the life occupancy under the Agreement, and his separate property. Ms Wilton considers she was entitled to elect Option B under the PRA as she was not seeking a division of the relationship property under the PRA (having contracted out of division under the PRA). This meant that, had Mr Rimmer left Ms Wilton any gifts

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6 Administration (Prescribed Amounts) Regulations 2009, reg 5.

under a will, she would have been entitled to receive those gifts. It also meant that, Mr Rimmer not having made a will, she was entitled to the intestacy entitlements for a spouse or partner under s 77 of the Administration Act.[7]

High Court argument

Pleading

[15] On 23 August 2022 the appellants brought a claim against Ms Wilton. They alleged a breach of fiduciary duty. It appears that the appellants were unaware of the Agreement at this time as the pleading relied on Ms Wilton's and the appellants' respective entitlements under the intestacy and they were seeking an inventory. They were also seeking an account of profits and equitable compensation, apparently understanding that Ms Wilton had distributed all of the estate to herself.

Submission

[16] By the time of the hearing before van Bohemen J in the High Court, the appellants were aware of the terms of the Agreement. They argued that, because Option B under the PRA applied,[8] Ms Wilton was precluded from relying on the Agreement. They contended that, as the Agreement was made pursuant to s 21 of the PRA,[9] if Ms Wilton wished to rely on her entitlements under the Agreement, it was necessary to select Option A under the PRA (pursuant to which an application is made under the PRA for a division of the relationship property). They further contended that, if Ms Wilton selected Option B, she could not take her entitlements under the Agreement because that was prohibited by s 76 of the PRA and inconsistent with s 95 of the PRA.[10]

High Court decision

[17] The Judge rejected this submission. He noted that Option A was an election for the division of relationship property under the PRA, whereas the whole purpose of a s 21 agreement is to provide for a division of relationship property other than under

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7 See below at [46]–[47] for those entitlements.
8 Still understanding that it applied by default rather than because she had elected it (see above n 5).
9 We have set out s 21 of the PRA at [24].
10 We have set out s 76 at [29] and s 95 at [33].

the PRA. The Judge considered this was evident from the words of s 21 which provides for an agreement "for the purpose of contracting out of the provisions of this Act". He considered this was also clear from the structure and content of ss 21A to 21O that agreements are separate from and not subject to the PRA.[11]

[18] The Judge further considered that, if a surviving spouse or partner wished to receive property that is subject to an agreement made under s 21, the proper election under s 61 of the PRA would usually be Option B. In this event s 76 of the Act, which (relevantly) provides that the "surviving spouse or partner has no entitlement under Part 3 of the Administration Act 1969", did not apply because that section applies when Option A is selected.[12] The Judge added that this conclusion was supported by s 95 of the PRA, which (relevantly) provides that, if Option B is chosen, the PRA does not apply to the distribution of property under pt 3 of the Administration Act.[13]

[19] The Judge concluded:

> [60] For these reasons, I am satisfied that the position advanced by the [appellants]; namely, that, because Ms Wilton had elected option B, she was precluded from taking relationship property under the Agreement, is wrong as a matter of law.
>
> [61] Under option B, a surviving partner of a deceased intestate partner elects not to make an application under the PRA for a division of the relationship property but, if entitled to a beneficial interest in the intestacy, receives that intestacy.
>
> [62] That intestacy is distributed under pt 3 of the Administration Act. How the intestacy is distributed depends on the nature of the property in the deceased partner's estate.
>
> [63] In the present case, Mr Rimmer's estate, as that term is defined in s 2 of the Administration Act, includes Mr Rimmer's rights in relation to the Hunua Property. Those rights comprise rights under the title to the property and rights under the Agreement. It follows, therefore, that any distribution of Mr Rimmer's estate under pt 3 is subject to the terms of the Agreement.

[20] The Judge concluded that Ms Wilton had not breached her fiduciary duty as alleged by the appellants.[14]

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11 Judgment under appeal, above n 1, at [53]–[57].
12 At [58]. Pursuant to s 75 of the PRA, s 76 applies only where Option A has been selected.
13 At [59].
14 At [64].

[21] The Judge went on to note that "there may be unaddressed issues over how the Agreement has been implemented" but they were not the subject of argument before him.[15] The Judge had earlier noted that there appeared to be scope for argument over: whether the adjustment of shares in the Hunua property provided for in cl 4.2 of the Agreement applied where one of the parties died; and whether the lifetime right to occupy the Hunua property included a right to rent-free occupancy and a lifetime use of the proceeds of the sale of the property.[16] However, the appellants had not advanced submissions on these matters and counsel for Ms Wilton "assured" the Judge that "these questions [were] not at issue in this proceeding".[17]

Discussion

[22] We start our discussion of the appeal issues with an overview of the relevant legislative framework.

[23] One of the purposes of the PRA is to provide for a "just division of the relationship property between the spouses or partners when their relationship ends by separation or death".[18] Consistent with this purpose, the PRA provides for "the division of relationship property" when spouses or partners are alive and they separate,[19] and when they have not separated but one of them dies.[20] Under the PRA, and subject to other provisions of the Act, relationship property is divided equally.[21]

[24] Section 21 enables spouses or partners to contract out of the PRA. It provides:

> **21 Spouses or partners may contract out of this Act**
>
> (1) Spouses, civil union partners, or de facto partners, or any 2 persons in contemplation of entering into a marriage, civil union, or de facto 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).

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15 At [65].
16 At [25].
17 At [26].
18 PRA, s 1M(c).
19 Sections 10A and 25(2)(a) or (b).
20 Section 10D.
21 Section 11.

(2) 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.

…

[25] We will return to the effect of a s 21 agreement on the PRA provisions in the event of death. But first we set out how the PRA operates in the event of death when there is no such agreement.

[26] Part 8 of the PRA is concerned with the division of property when a spouse or partner dies.[22] Part 8 includes s 61 which provides:

61 Surviving spouse or partner may choose option

(1) If one of the spouses or partners has died (except in a situation described in section 10D(1)), the surviving spouse or partner may choose option A or option B.

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

(3) 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.

[27] A choice under s 61 must be made within six months after administration of the estate is granted.[23] There are requirements for how the choice is made, including that it be in the prescribed form and lodged with the administrator of the deceased spouse or partner.[24] If no choice has been made within this period, then the surviving

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22 Section 55.

23 Section 62(1)(b). Pursuant to ss 67 and 69, the choice is irrevocable subject to the court's power to set it aside in certain circumstances.

24 Section 65.

spouse or partner is treated as having chosen Option B.[25] The administrator or trustee of the estate of the deceased spouse or partner must not distribute the estate before the expiry of six months after the grant of administration or the choice made under s 61, whichever happens first.[26]

[28] Part 8 also includes provisions that follow from the choice that is made (or is treated as having been made). Section 63 provides that a surviving spouse or partner cannot "apply … for a division of the relationship property" unless they have first chosen Option A. Section 75 provides that, if a surviving spouse or partner chooses Option A, "sections 76 to 78 apply to the proceedings" and "sections 2 to 53A apply to the proceedings, but some of the sections are modified or affected by sections 79 to 94".

[29] Section 76 provides for the effect of selecting Option A on the surviving spouse or partner's entitlements under the will or intestacy as follows:

> **76 Effect on will or intestacy of choice of division under this Act**
>
> (1) Unless the will (if any) of the deceased spouse or partner expresses a contrary intention,—
>
> (a) every gift to the surviving spouse or partner in the will of the deceased spouse or partner (if any) is to be treated (for all purposes) as having been revoked; and
>
> (b) the will of the deceased spouse or partner (if any) is to be interpreted as if the surviving spouse or partner had died before the deceased spouse or partner; and
>
> (c) the estate of the deceased spouse or partner must be distributed accordingly.
>
> (2) The reference in subsection (1)(a) to gifts to the surviving spouse or partner in the will of the deceased spouse or partner includes the whole of the interest of the surviving spouse or partner as a beneficiary in any real or personal property to which the surviving spouse or partner would otherwise be entitled under the will of the deceased spouse or partner.
>
> (3) The surviving spouse or partner has no entitlement under Part 3 of the Administration Act 1969.
>
> (4) This section is subject to section 77.

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25 Section 68.
26 Section 71(1).

[30] In other words, if Option A is elected, the surviving spouse does not receive anything under the deceased's will if there is one, nor receive what would otherwise be their entitlements on an intestacy under the Administration Act if there is no will. This is subject to the court's power under s 77 to make an order that the surviving spouse or partner may receive some or all of the gifts made to them under the deceased's will or part or all of their entitlements on an intestacy.

[31] We note that if Option A is elected, s 21 is amongst the provisions that continue to apply, of which some are modified or affected by ss 79 to 94. These sections set out such matters as how property that passes to a spouse or partner on survivorship is treated, the presumption that property acquired by the estate is relationship property, that separate property acquired by the surviving spouse or partner after the death of the deceased is separate property subject to the court determining otherwise, and who can apply for an order under s 25 (for the division of relationship property).

[32] These provisions also include s 87 which modifies s 21 by permitting a surviving partner to challenge an agreement made under s 21 as follows:

> **87 Surviving spouse or partner may challenge agreement**
>
> (1) This section applies if—
>
> (a) the spouses or partners make an agreement under section 21 defining the share of the relationship property or any part of it that each is entitled to on the death of one of them; and
>
> (b) one of them dies.
>
> (2) If this section applies,—
>
> (a) the surviving spouse or partner may apply to the court—
>
> (i) to have the agreement declared void for non-compliance with a requirement of section 21F:
>
> (ii) to have the agreement set aside under section 21J; and
>
> (b) the surviving spouse or partner may make the application either before or after exercising the option in section 61.
>
> (3) In deciding, under section 21J, whether giving effect to an agreement to which this section applies would cause serious injustice, the court must have regard, in addition to all other relevant circumstances, to whether the estate of the deceased spouse or partner has been wholly or partly distributed.

(4) This section is subject to section 47.

[33] In relation to Option B, s 95 provides:

> **95 Effect on application of Act of choice of will or intestacy**
>
> (1) If the surviving spouse or partner chooses option B, nothing in this Act (other than sections 20 to 20F or sections 58 and 59) applies to the distribution of property under the will of the deceased spouse or partner or under Part 3 of the Administration Act 1969.
>
> (2) To avoid any doubt, the fact that a surviving spouse or partner chooses, or is treated as having chosen, option B does not prevent that person from disclaiming any interest as a beneficiary in any real or personal property to which he or she is entitled under the will of the deceased spouse or partner or under Part 3 of the Administration Act 1969.

[34] Sections 20 to 20F are concerned with the rights of creditors, a spouse or partner's protected interest in the family home, payment of the protected interest in a bankruptcy, and other matters relating to debts. And ss 58 and 59 are concerned with the preservation of the rights of creditors and the payment of the protected interest in the family home when an estate is insolvent.

[35] For Option B, there is no equivalent provision to s 75 pursuant to which s 21 continues to apply.

[36] We return now to the effect of these provisions if the parties have entered into a s 21 agreement. We first note that a s 21 agreement may cover all relationship property, or some of it, and it may be intended to apply on separation or death or in both situations.

[37] We start with the position where the s 21 agreement covers the division of all of the couple's relationship property in the event of separation or death, and it is a valid and enforceable one.[27] In this situation the parties to the s 21 agreement have contracted out of the PRA and it does not apply. This follows from the words of s 21, which enables an agreement to be made "for the purpose of contracting out of the

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[27] If a s 21 agreement does not comply with the requirements that are set out in s 21F, it is void but subject to the court's power under s 21H to give effect to it if no party is materially prejudiced. Additionally, pursuant to s 21J, a court may set aside a s 21 agreement if it is satisfied that giving effect to the agreement would cause serious injustice.

provisions of this Act". This is reinforced by s 21O, which provides that relationship property is subject to the PRA if there is not an agreement under s 21.

[38] However, it does not necessarily follow that the pt 8 provisions of the PRA will have no application. Section 87 is premised on the basis that there is a s 21 agreement and an election has been, or can be, made. Further, s 71 provides that the administrator or trustee of an estate of a deceased spouse cannot distribute the estate before the earlier of the expiry of six months after administration is granted or the choice made under s 61. And, when a spouse or partner seeks a grant of letters of administration, the High Court form requires a choice to have been made.

[39] The pt 8 provisions are, however, structured to ensure that a s 21 agreement will be given effect (unless challenged) on the death of spouse or partner. It does that because:

(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).[28] 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

[28] We acknowledge that this is different from the position expressed in Law Commission *Dividing relationship property — time for change? | Te mātatoha rawa tokorau — Kua eke te wā?* (NZLC IP 41, 2017) at [34.45]. However, the Law Commission cites no authority for the view that Option A should be selected if a party wishes to rely on a s 21 agreement. As the respondent submits, there are several High Court cases in which a surviving partner has selected Option B to receive their entitlements under a s 21 agreement and also under a will: for example, *Chambers v Chambers* [2016] NZHC 583 at [59]; *Dymond v Upritchard* [2020] NZHC 3274 at [7], [16] and [78]; and *Thurston v Thurston* [2014] NZHC 2267 at [73]–[74].

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.

[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 the couple do not wish to make provision for each other in their estate, they need to make a will gifting their property to beneficiaries other than their spouse or partner.

[41] The same position applies if the s 21 agreement does not provide for the division of all relationship property in the event of death, or does so incompletely:

(a) If the division of the relationship property that is not covered by the s 21 agreement is greater than what they would receive under a will or intestacy, the surviving spouse or partner would likely elect Option A. They will be bound by the s 21 agreement (unless they challenge it under s 86) but they can also apply for division of the relationship property under the PRA for the property not covered by the s 21 agreement. If Option A is elected, they will not receive any gift under a will, nor be entitled to claim on an intestacy.

(b) If, however, the division of the relationship property that is covered by the s 21 agreement is less than what they would receive under a will or intestacy, the surviving spouse or partner would likely elect Option B. In this event, the surviving spouse or partner would take their share of the relationship property that is covered by the s 21 agreement pursuant to its terms, they would not apply for a division of the balance of the relationship property, and they would receive their gifts under the will if there is one, or under the intestacy if there is not.

[42] The practical effect of the way the PRA operates in the event of death reflects that its purpose is the just division of relationship property and it provides for that division when the parties separate or die. The PRA is not about what the parties may choose to do with their respective share of relationship property and their separate property that together form part of their respective estates, except in so far as it enables a choice to be made by the surviving partner whether to apply for a division of the property under the PRA (if there is no s 21 agreement or it is successfully challenged), or to receive under the will or the statutory intestacy provisions if there is no will.

Conclusion

[43] We therefore agree with the conclusion reached by van Bohemen J on the High Court argument. That is, we disagree with the submission for the appellants that Option A must be selected if there is a s 21 agreement. Option A is to elect to "make an application … for a division of the relationship property". Such an application is only relevant (and of practical value to the surviving spouse or partner) if the surviving spouse wishes to apply for a division of the relationship property in accordance with the PRA provisions because they have not, or to the extent they have not, contracted out of the PRA provisions.

New argument

Submissions

[44] The appellants submit that, properly interpreted, the Agreement applied to the status of property both during the parties' lives and in the event of death. They say that this meant the choice of Option A or B under s 61 of the PRA did not apply. They further say that, by the Agreement, Mr Rimmer and Ms Wilton had contracted out of a claim for intestacy entitlements under s 77 of the Administration Act. They say this meant that Ms Wilton had no entitlement to Mr Rimmer's estate except to the extent provided in the Agreement, namely the lifetime interest in the Hunua property. This in turn meant that, when that right of occupancy ended with the sale of that property, Ms Wilton was entitled to her 50 per cent share under the Agreement and was not entitled to share in Mr Rimmer's 50 per cent share that formed part of Mr Rimmer's estate.

[45] Ms Wilton submits that to contract out of s 77 of the Administration Act other than by way of a will, it would have been necessary for she and Mr Rimmer to have entered into a settlement agreement under ss 21A or 21B of the PRA, and any such agreement would need to have included clear words that were intended to exclude any entitlements on intestacy. She says the correct interpretation of the Agreement is that: it defined what was relationship property and what was separate property at a point in time; and it did not purport to settle what each party could do with their property as defined in the event of death except in so far as it provided the surviving partner with a right to occupy the relationship property. She says this meant that each party was free to dispose of their estate under a will as they wished, including by gifting some or all of their property to the surviving partner. In the absence of a will, the intestacy provisions applied.

Administration Act

[46] As to the intestacy provisions, s 77 of the Administration Act provides:

> **77 Succession to real and personal estate on intestacy**
>
> If a person (the ***intestate***) dies intestate as to any real or personal estate and leaves the other person or people referred to in column 1 of the following table, that estate must be distributed in the manner or held on the trusts set out in column 2 of that table opposite the reference to the other person or people:
>
> …

[47] The language is mandatory. It says that the estate "must" be distributed in the manner of the table. Under this table the surviving partner receives the deceased's personal chattels as defined in the Administration Act, the prescribed amount (which is $155,000)[29] plus interest, and a one-third share of the residue of the deceased's estate. The surviving children of the deceased receive two thirds of the residue.

[29] Administration (Prescribed Amounts) Regulations, reg 5.

[48] The entitlements can, however, be disclaimed under and in accordance with the requirements of s 81:

> **81 Right of successor on intestacy to disclaim**
>
> (1) Subject to the provisions of this section, where a successor has become entitled under this Act to an interest as a beneficiary in the whole or any part of the real and personal property which passes on the intestacy of any person,—
>
> (a) the successor may, by deed delivered to the intestate person's administrator, disclaim that interest if at the date of the disclaimer he or she has attained full age and is of sound mind:
>
> (b) the court may, by order, disclaim the interest on behalf of the successor or authorise the disclaimer of the interest by or on behalf of the successor if at the date of the disclaimer the successor has not attained full age or is not of sound mind.
>
> (2) No disclaimer under this section shall be valid unless—
>
> (a) the disclaimer is made by the successor in his or her lifetime; and
>
> (b) the disclaimer relates to the whole of the successor's interest as a beneficiary under this Act in the real and personal property which passes on the intestacy of the person, including property which any other person has disclaimed under this section; and
>
> (c) the disclaimer is made within 1 year after the date of the first grant in New Zealand of administration in respect of the estate or will of the intestate person (whether that grant was made before or after the commencement of this Act) or within such extended period as may be allowed by the court.
>
> (3) No disclaimer under this section shall be valid if—
>
> (a) the successor has entered into enjoyment of the whole or any part of the interest to which he or she has become entitled as aforesaid; or
>
> (b) the successor has transferred, assigned, mortgaged, settled, or otherwise disposed of that interest or of any part thereof or of any property which would include that interest or any part thereof if it were not disclaimed, or has covenanted or agreed to do any such thing; or
>
> (c) there is any valuable consideration for the disclaimer; or
>
> (d) the disclaimer provides for any assignment of the disclaimed interest or in any manner provides who is to be entitled to that interest; or

(e) the successor is bankrupt when the disclaimer is made.

…

(6) Nothing in this section shall affect any right which any successor may have to disclaim any property apart from this section.

(7) Every disclaimer under this section shall be deemed to be made at the first point of time when everything has been done in respect of the disclaimer which is necessary to comply with the requirements of this section and of any order of the court which relates to the disclaimer and is made under this section.

[49] There is no deed of disclaimer in the present case.

Discussion

[50] We now turn to consider what Mr Rimmer and Ms Wilton agreed to under the Agreement.

[51] The Background section of the Agreement sets out its purpose. That purpose aligns with the words of s 21. It is described as being a contracting out agreement under s 21 "with respect to the status, ownership, and division of their property (including future property)". It is to:

(a) define what is separate property and what is relationship property;

(b) provide the share of their relationship property that they are each entitled to when the "relationship ends";

(c) define the respective share of the relationship property as between the surviving partner and the estate of the deceased partner "on the death" of either of them;

(d) provide for the calculation of "those shares"; and

(e) prescribe the method by which the relationship property is to be divided.

[52] We note that none of those stated purposes relate to what each party may do with their respective separate property or their share of the relationship property in the event of their death. Nor did Mr Rimmer enter into a will when he entered into the Agreement stating how he intended to dispose of his separate property and his share of the relationship property in the event of his death.

[53] Clause 2 of the Agreement meets the purpose of defining what is separate property. It does so by setting out in schs A and B what is the respective separate property of Ms Wilton and Mr Rimmer. In Mr Rimmer's case, the property that is specified as his separate property is "[a]ll personal possessions of whatsoever nature and kind" as are in his "possession" or are "owned" by him "in his own name absolutely". Clause 2 further provides that the Agreement is not exhaustive because each has further property they own at the date of the Agreement that is not included in the schedule. It also lists other types of property that will qualify as separate property.

[54] Clause 4.1 of the Agreement meets the purpose of defining what is relationship property. It does this by setting out in sch C what is relationship property (namely the Hunua property, "together with all plant and equipment used in relationship to the property and all stock depastured thereon"), and by including in cl 4.2 "all other property which may hereafter be acquired by the parties jointly or as tenants in common" (and similarly in cl 4.3(i) providing that relationship property is "deemed to include all other property acquired by the parties jointly as tenants in common").

[55] It is clear from the comprehensive manner in which the parties sought to define their separate and relationship property that they intended the Agreement to be comprehensive in defining what was to be separate and what was to be relationship property.

[56] Clauses 4.2 and 4.3 meet the purpose of determining how the relationship property is to be shared in the event of separation. Each party had the option of purchasing the relationship property, but otherwise such property was to be sold and paid to each other in the agreed proportions, being the value that each of their capital contributions bore to the total value of that property. Together with the intention to comprehensively define separate property, this method of division indicates an

intention between the parties that each would receive what they contributed to the property (before or during the relationship) if they separated.

[57] Clause 4.4 is the only clause specifically directed at meeting the purpose of determining their respective share of the relationship property in the event of the death of one of them. It provided that in the event of the death of one of them, the other had the right to "lifetime occupancy and use of all relationship property". It did not purport to place any other limit on what each of the parties could do with their estate.

[58] The appellants' contention that the Agreement did limit what a surviving spouse could receive from the other's estate relies on a combination of cls 2.1, 5.1 and 6.1. They rely on the agreement in cl 2.1 that "the other party shall make no demand on that separate property". They also rely on the agreement in cl 5.1 that each of the parties agrees that the Agreement is "in full and final settlement of all claims" against the other "under any statute whatsoever or at common law or at equity". Clause 6.1 provides that the Agreement will bind the executors, administrators and personal representatives.

[59] We are not persuaded that cl 2.1 assists. In the first place it relates only to making a "demand" on the parties' separate property. If cl 2.1 was intended to prevent a surviving partner from receiving a gift under the will or their statutory entitlements on an intestacy, it would apply only to Mr Rimmer's separate property and not to his share of the relationship property. Moreover, we consider that "demand" is an inapt description of gifts made under a will or the intestacy entitlements, both of which an administrator or trustee would be required to give effect to unless cl 6.1 was intended to override any will or the statutory intestacy provisions.

[60] We are also not persuaded that cl 5.1 has the meaning the appellants contend. Once again we consider that "claim" is an inapt description of gifts made under a will or the intestacy entitlements, both of which an administrator or trustee would be required to give effect to unless cl 6.1 was intended to override any will or the statutory intestacy provisions. The Agreement does not expressly provide for what each party may receive under a will of the other, beyond the life occupancy and interest in the relationship property, nor does it otherwise seek to limit this. Nor does it contain any

agreement that each is required to disclaim entitlements on an intestacy. Rather, we consider that cl 5.1 was intended to address the potential for the common law and equity to apply, for example if the de facto relationship lasted less than three years.[30]

[61] Lastly, we consider cl 6.1, pursuant to which the parties agreed that the Agreement binds the executors, administrators and personal representatives of each of them, was necessary both for determining the property that comprised the estate, and because the parties intended that the surviving party would have the lifetime occupancy and use of the Hunua property. But clear words would have been necessary if it were intended to override the power each of them would have to gift their estate as they wished, or to override the otherwise mandatory terms of s 77 of the Administration Act and the detailed requirements in s 81 of that Act for disclaiming the s 77 entitlements.

[62] The Agreement therefore left open the possibility that their respective wills could provide what share (if any) of the relationship property they were gifting to their surviving spouse, as well as what share (if any) of their separate property they wished to give. Each party was free to leave the other none, some or all of their share of the relationship property or their separate property, but subject to the provision they had each made in the Agreement to grant the other a lifetime occupancy and use of the Hunua property. The Agreement also did not exclude entitlements on an intestacy.

[63] It follows, in our view, that the Agreement did not preclude Ms Wilton electing Option B. The effect of doing so was that she received her separate property and her share of the relationship property in accordance with the Agreement. She was also entitled to her entitlements under the intestacy provisions in relation to Mr Rimmer's separate property and his share of the relationship property. Under the Agreement she was also entitled to the lifetime occupancy and use of the Hunua property.

[64] The appellants sought to include on this appeal the issue between the parties as to the effect of this once the Hunua property was sold. We did not receive full submissions about this from the appellants nor any submissions on the point from Ms Wilton. We decline to determine the issue because of this. However, like

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[30] PRA, ss 2E, 4(5) and 14A.

van Bohemen J, we agree there may be issues about the position Ms Wilton has taken.[31]

Result

[65] The appellants' application to amend the grounds of appeal is granted in part.

[66] The appeal is dismissed.

[67] The respondent is entitled to costs for a standard appeal on a band A basis together with usual disbursements, to be paid from the estate.

Solicitors:
Rout Milner Fitchett, Nelson for Appellants
Insight Legal Ltd, Warkworth for Respondent

[31] We were asked to order that the costs be paid out of the appellants' share of the estate. We assume that is also what is sought in relation to the High Court. This seems sensible and should be capable of agreement and we do not think it is necessary to make an order to this effect.

Schedule: Key terms of the Agreement

[68] The Agreement set out the background to the Agreement:

> **BACKGROUND**
>
> **A.** Caroline and David have been living in a de facto relationship as defined by section 2D of the Property (Relationships) Act 1976 ("the Act") since September 2000 ("the relationship").
>
> **B.** Caroline's property is set out in Schedule A.
>
> **C.** David's property is set out in Schedule B.
>
> **D.** Relationship property is set out in Schedule C.
>
> **E.** Caroline and David wish to enter into a contracting out agreement pursuant to Section 21 of the Act, with respect to the status, ownership, and division of their property (including future property), which is to provide for the following:
>
> (a) Provide that any property, or any class of property, is to be relationship property or is to be separate property.
>
> (b) Define the share of their relationship property, or any part of the relationship property, that Caroline and David are to be entitled to if the relationship ends;
>
> (c) Define the share of the relationship property, or any part of the relationship property, that the survivor of Caroline or David and the estate of the deceased partner is to be entitled to on the death of either of the parties;
>
> (d) Provide for the calculation of those shares;
>
> (e) Prescribe the method by which the relationship property, or any part of the relationship property, is to be divided.

[69] Clause 2 of the Agreement provided:

> **2. SEPARATE PROPERTY**
>
> **2.1** Subject to clause 3 of this agreement, the parties do hereby agree and declare that the following property shall at all times in the future be the absolute and separate property of the party recorded as the owner, registered proprietor or person entitled to ownership at law or in equity (as the case may be), together with all increases in value thereof and the other party shall make no demand on that separate property including any increase in value thereof:
>
> **2.1.1** All that property owned by Caroline as set out in Schedule A to this agreement, and all that property owned by David as set out in Schedule B to this agreement, it nevertheless being

expressly agreed by and between the parties that neither Schedule A nor Schedule B to this agreement is intended to be exhaustive, each of the parties having further property owned by them at the date of this agreement and which has not been included in the Schedules; and

2.1.2 Property acquired (whether before or after the date of this agreement) from a third party by way of gift, succession or survivorship or as a beneficiary under or pursuant to any trusts; and

2.1.3 Property acquired for an inadequate consideration from third party relatives to the extent of the inadequacy of consideration; and

2.1.4 Property acquired by incurring a liability subsequently forgiven by way of gift to the extent of that gift; and

2.1.5 Any form of property into which the foregoing property referred to above or the proceeds derived from the sale of the property may subsequently pass and any increase in value thereof

AND SUBJECT TO Clause 3 of this agreement the status of the foregoing property referred to above as separate property shall not be affected by the use to which the property is put or by which party receives the benefit or by any amalgamation with other property in co-ownership or by any statutory classification of the property which for the time being represents the property.

[70] Clause 4 of the Agreement provided:

4. RELATIONSHIP PROPERTY

4.1 The parties do **HEREBY AGREE AND DECLARE** that the property owned by them jointly or as tenants in common as set out in Schedule C of the agreement shall be relationship property.

4.2 That in case the parties should separate or cease to live together as parties to a de facto relationship, all relationship property as set out in Schedule C and all other property which may hereafter be acquired by the parties jointly or as tenants in common shall, after the removal of those items of separate property referred to in Schedules A and B hereto including any increase in value thereof at the time of division, together with any other items deemed to be separate property pursuant to Clause 2 of this agreement, be divided between the parties in the same proportions as the value of each of their capital contributions to such property bears to the total value of such property.

4.3 (i) That in case the parties should separate or cease to live together as parties to a de facto relationship, either party may give written notice to the other of the desire of that party to terminate their sharing in any relationship property (which shall be deemed to

include all other property acquired by the parties jointly as tenants in common) …

…

(v) If neither party exercises his or her option to purchase or both parties waive their respective options to purchase then the relationship property shall immediately be placed on the market for sale at a price agreed upon by the parties and sold and the net proceeds of sale … shall be paid to the parties in the proportions set forth in paragraph 4.2. …

4.4 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.

…

4.6 If either party shall with the consent of the other borrow additional money ("additional money") on the security of the charge over any relationship property which additional money is not expended on such property but is used for the purposes of that party alone, the party borrowing such money shall protect the other's share in the relationship property and shall keep indemnified the other party, his/her estate administrators, executors and assigns from and against all actions, costs, claims, damages and expenses arising out of such borrowings and the party borrowing the money shall be solely responsible for meeting all payments of interest and principal in connection with the additional money.

[71] Clause 5 of the Agreement provided:

5. LEGAL EFFECT

5.1 That subject to the provisions of this agreement the parties agree that this agreement shall be in full and final settlement of all claims which each of them may have against the other under any statute whatsoever or at common law or at equity.

…

5.3 In this agreement the terms "separation" shall include any occasion upon which the parties cease to live together in a de facto relationship as defined by the Act and whether or not by virtue of any oral or written agreement between them or pursuant to a separation order made by any Court or competent jurisdiction.

[72] Clause 6 of the Agreement provided:

6. ACKNOWLEDGEMENT

6.1 This agreement shall bind the executors, administrators and personal representatives of both Caroline and David given the parties acknowledge that they have had independent legal advice before signing this agreement and the effects and implications of this agreement have been explained to them by their respective solicitors. They further acknowledge that they have received a draft of this agreement for consideration and approval prior to executing it.

…