

# IN BRIEF FROM RAINEY COLLINS

SPRING 2004

## Welcome

*to the Spring edition  
of our Rainey Collins  
newsletter In Brief.*

*This edition covers  
trustees' duties, wills,  
employment disputes,  
relationship property and buying  
property. These articles are also  
available on our website  
[www.raineycollins.co.nz](http://www.raineycollins.co.nz) if you want  
to download or send them to  
anyone.*

*After 19 years on Woodward St, we  
have moved across the road to  
Level 23 of Mobil on the Park,  
157 Lambton Quay.*

*We look forward to seeing you at  
our new offices when you get the  
chance to visit.*

**James Johnston**

Chairman of Partners



## When Buying Property don't get stuck with a Lemon...

Recently a client entered into an unconditional contract to purchase a property that we subsequently discovered had internal alterations with no building consent. Further work to make them compliant with the building code was going to be very expensive.

It is vital that checks are made before you sign up or that suitable conditions are put in the agreement to allow appropriate checks to be made.

The most important enquiry we recommend a purchaser make is to check the building consent records at the local Council. The purpose of this is:

1. To match the building plans held at the Council with what is on the property; and
2. To check whether any work carried out has a certificate of compliance.

A failure to get a building consent may have a negative impact on the value of the property and could also affect the ability to finance and insure it. The leaky building saga has made lenders wary of buildings that do not comply with the code.

For more information on obtaining pre-purchase information you can download a more detailed version of this article dealing with Land Information Memorandums and Property Reports free from our website [www.raineycollins.co.nz](http://www.raineycollins.co.nz)

**Jane Stevenson**



## Employers may be Taxed for Airpoints

If employers have staff that travel for business and the employer reimburses the employees for the cost of the travel, the employer could be liable for tax on the reimbursement.

- Only individuals are eligible for Airpoints Dollar Membership as Air New Zealand does not have a Corporate Travel Programme and Airpoints are not transferable;
- If the employer allows the employee to keep these Airpoints Dollars, the employer may be liable for fringe benefit tax, usually at 49% or 64%;
- The tax becomes payable when the Airpoints Dollars are redeemed;
- To avoid such taxation an employer may insist that no employee receive Airpoints Dollars

**Update: The position has changed.  
See our website for the latest developments.**

from travel and that employees must not quote their membership number at the time of booking;

- However, if the employer wishes the employee to retain the Airpoints Dollars, an agreement could be made between the employer and employee for the employee to incur some or all of the taxation costs;
- The Inland Revenue Department are currently developing a policy on the matter and we will keep you advised of further developments.

**Kiri Skipwith**



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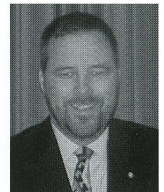
# Employers' Guide to the Disciplinary Process

Set out below are the steps that an employer must follow when undertaking any disciplinary process regarding an employee. In addition the specific requirements of any employment agreement also need to be followed by the employer.

- If there is an issue about an employee's behaviour then you should speak with the employee about that behaviour.
- Point out to the employee what is unacceptable. You should tell the employee what is expected.
- Advise them that such behaviour will not be tolerated and if there is any allegation of inappropriate behaviour then formal disciplinary proceedings may be instituted.
- If the employee has already had a prior verbal rebuke then they should be given written notice that they are required to attend a formal disciplinary meeting at a set time and place.
- The notice should set out what it is alleged that they have done.
- Also advise in the notice that the employee is entitled to have a support person present at the meeting.
- Also set out in the notice the consequences if the allegation is proved.
- It is important that in any notice it is stated that the matters are only an allegation and do not indicate that any conclusions have been reached about the behaviour at this stage.
- At the formal disciplinary meeting you should explain that it is a formal disciplinary meeting to investigate the allegations and state what they are.
- Ask the employee whether they wish to give any explanation or whether they accept or deny the allegations, and give them an opportunity to do so.
- Once you have heard their explanation, denial or acceptance, advise them that you will consider that before deciding on whether the allegation is correct and if it is what action may be taken.
- Tell the employee that you will notify them of the decision.
- At this point you should conclude their involvement in the meeting.
- You can then consider whether you are satisfied with any explanation that has been given.
- Also decide whether you need to make further enquiries if matters have been raised which mean you should check into those first.
- After you have investigated any other matters and considered the explanation raised by the employee you should decide whether the allegations are correct i.e. what actually happened.
- If you come to the conclusion that the allegations are correct then you need to decide on what course of action to take.
- If you are satisfied with their explanation then you should notify them of that. If you are not satisfied with their explanation you should then decide what action to take.
- The decision you make must be confirmed in writing to the employee and a copy put on the file.

For a more comprehensive checklist see our website [www.raineycollins.co.nz](http://www.raineycollins.co.nz).

Alan Knowsley



## Nine Really Important Things Trustees Need to Know...

*If trustees don't perform their duties to the required high levels, they can face anxious times dealing with criticism from beneficiaries and in the worst case scenario may be personally liable to the beneficiaries.*

Here are some tips to help ensure that you, as a trustee, comply with your obligations:

- 1. Act in accordance with the trust deed**  
Trustees must take time to read and understand the terms of the trust deed.
- 2. Keep a record of the beneficiaries of the trust**  
Trustees must keep a record of who can benefit from the trust including any changes to the beneficiaries through death, marriage or birth.
- 3. Meet with the other trustees**  
Trustees must formally meet with each other at least once a year.
- 4. Keep accurate records**  
Trustees must keep accurate and up to date records, ensuring that all decisions of trustees are recorded in the minutes.
- 5. Keep accurate accounts**  
Trustees must keep separate and up to date accounts for the trust.
- 6. Comply with the Trustee Act 1956**  
The Act sets out specific duties that a trustee has when investing, including a duty to invest prudently and to "exercise the care, diligence, and skill that a prudent person of business would exercise in managing the affairs of others".
- 7. Comply with tax obligations**  
Trustees must ensure the trust's tax obligations are complied with and should seek specialist accounting advice where appropriate.
- 8. Act without personal profit**  
Trustees must not benefit personally from being a trustee.
- 9. Seek professional advice**  
If in doubt seek professional advice.

Clare Maihi



### *Dismissals, discipline and performance reviews*

#### **How to get them right**

We are holding free seminars on these topics in your area in October and November. Register your interest now so we can arrange a seminar to suit you.

Contact Maureen Harris on 4736 850 or [mharris@raineycollins.co.nz](mailto:mharris@raineycollins.co.nz)



# Can You Leave Someone Out Of Your Will?

When you make a Will you want to know that your property will go to the people you want it to. You may leave a close family member out of a Will or give unequal shares if there are good reasons but the Will could be challenged for a breach of your duty to provide for those family members.

There are four main restrictions on doing what you want in your Will.

1. There is a moral duty on the Will-maker to adequately provide for the proper maintenance and support of people entitled to provision from their estate.

Those people are:

- i) The wife or husband
- ii) The children
- iii) Dependent step-children
- iv) Grandchildren; and
- v) Parents (in special circumstances)

The duty to provide is not limited to those who need financial assistance. Many well-off claimants have received substantial payments from the estate for non-financial reasons, such as an acknowledgement of their place of belonging in the family. The amount of payment will vary in all the circumstances of the particular case.

2. The law allows a person who has performed some service or work for the deceased in return for a promise of reward in the Will to

claim from the estate. The work provided and the promise to reward the worker in the Will must be related to each other. The amount awarded will be confined to reasonable compensation for the work actually done for the deceased.

3. The partner of a deceased person can now claim an equal share of his or her estate instead of receiving whatever they were left in the Will. The law about equal sharing at the end of a relationship did not previously extend to when people died. If the survivor of the relationship is not bound by a property sharing agreement and is not adequately provided for in the Will then a claim for equal sharing can be made.

4. The Will-maker must be of sound mind when making the Will and they must not have been unduly influenced or fooled into making certain provisions in the Will.

If you want to leave your property in a way that differs from normal it is important to tell your lawyer why and to provide good evidence to back up those reasons. This will enable the Court to take those reasons into account and help ensure your property goes to those you want it to.

**Conrad Bace**



## I have been in a De Facto Relationship for less than three years - my assets are safe, right?

If you have been in a de facto relationship for less than 3 years and you have a child together the property sharing laws apply.

Alex had already been married and separated once when he started a casual relationship with Jill.

Alex had just received a significant inheritance from a great-aunt which allowed him to buy his own home mortgage free.

After the casual relationship had been going for only a short time Jill became pregnant. Jill had significant debts from her last relationship and after giving it some thought Alex invited her to move in with him so that she could pay off her debts before the baby was born. Alex paid for all of Jill's living expenses which allowed her to put all of her income into paying off her debts. Their baby boy was born and they continued to live together.

The relationship had begun on a shaky footing and Alex knew he wanted to protect his assets. He asked a lawyer to prepare a pre-nuptial

agreement which would record that the house was his property only. Jill refused to sign so Alex made the difficult decision to separate before they had been together for three years. He thought he and his assets were safe.

Because Alex and Jill had a child they were covered by the property sharing law even though they had not been together for three years. Alex is now involved in expensive litigation. If he had known the consequences of inviting Jill to move in with him he would have insisted that she sign a pre-nuptial agreement before the baby was born.

If you are in a de facto relationship and you have a child before you have been together for three years the property sharing laws apply. If you want to protect your assets you need to do it before a child of the relationship is born.

**Shelley Stevenson**



## If You Don't Make A Will Everything Could Go To The Government

*If you die without a Will the law sets out how your Estate will be divided, regardless of what you or your family might want. This is what happens....*

- If you have a spouse or partner but no children or parents, the whole Estate goes to the spouse or partner.
- If there is a spouse or partner and children, your spouse or partner receives all personal chattels plus the first \$121,500.00, plus one third of the remainder. The children share two thirds of the remainder.
- If there are children but no spouse or partner, the whole Estate goes equally to the children.
- If there are parents but no spouse, partner or children, the whole Estate goes to the parents.
- If there is a spouse or partner and parents, but no children, the spouse or partner receives all personal chattels, the first \$121,500.00 and two thirds of the remainder, and the parents receive one third of the remainder.
- If there is no spouse, partner, children or parents then the whole Estate passes to certain blood relatives i.e. brothers, sisters, grandparents or aunts and uncles.
- **If there are no blood relatives as above then the whole Estate goes to the Government.**

*There are other disadvantages if you don't leave a Will.*

- The process of having an Administrator appointed is more complicated and takes much longer. For example, it is a requirement that a search be made for any illegitimate children, and that extensive enquiries are undertaken to try to find a Will. This greatly increases administration costs.
- Where there isn't a Will, the High Court must appoint a single Administrator. If there is more than one person with a right to apply, eg several siblings, they must agree on who the Administrator should be. In a divided family, agreement might be very difficult and this can cause long delays and further expense.

All these disadvantages can be very simply avoided by making a Will. Weighed against the peace of mind obtained, the relatively small amount you need to invest in getting a Will done is great value.

**Nick Miles**





# Workplace Bullying - *How to deal with it*

Bullying in the workplace is a serious problem. Failure to deal with workplace bullying can be very costly for an employer, and cause a great deal of stress for employees. A large number of the cases we deal with involve bullying by co-workers, managers and bosses.

Bullying can include:

- physical contact such as pushing,
- verbal abuse such as swearing; or
- psychological abuse such as work being constantly undermined by management.

Bullying can range from a minor irritation to a deliberate attempt to drive the employee out of the job.

Bullying affects everyone involved. The employee being bullied may suffer psychological and physical problems such as high stress levels, anxiety and sleep disturbances. This in turn can result in reduced output and performance, mistakes and increased sick leave - all costly for the employer.

## Employees

What can you do if you feel you are being bullied at work?

- Keep a record of the bullying - dates, times, and what happened. If there are witnesses, get them to record what occurred.
- If you are suffering from stress, sleeplessness, low self esteem or are generally depressed about what is happening - seek medical assistance, and make sure any symptoms are well documented.

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## I have just Separated - Do I need a New Will?

If you have recently separated it is very important to get a new Will prepared. If you do not have a new Will, your old Will is still valid and could mean your ex-partner ends up with all your assets if you die.

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## MOVING HOUSE CHECKLIST

*A guide to helping you remember all the things you need to do when shifting.*

- Available to download free at [www.raineycollins.co.nz](http://www.raineycollins.co.nz)

- Tell your employer about what is happening to you. Your employer should have procedures for dealing with your complaint, and should follow them.

If nothing is working and the bullying has become unbearable, you could initiate a personal grievance against your employer for failing to ensure a safe workplace in allowing it to be excessively stressful.

You may have been constructively dismissed if you have resigned in the belief that there were no other options available to you. This may also be grounds for a personal grievance.

A personal grievance must be submitted to the employer within 90 days of the incident.

## Employers

What can you do to prevent bullying in the workplace?

- Establish a code of conduct that sets out appropriate behaviour for your organisation. Make it clear that bullying will not be accepted.
- Set up procedures so that staff can report the situation, confident that the complaint will be taken seriously.
- Educate staff as to how to tell you about bullying.
- Ensure that procedures include, if necessary, counselling for the victim.
- Advise the alleged bully that you are investigating the claim and ask them for their response. Consider their response and then decide (on the basis of all the evidence) what happened and the appropriate action to take. The appropriate action will depend on the findings you make following the investigation and should match the level of seriousness of the incident. This may include advising the complainant on the outcome of the investigation, warning the bully, arranging training on management techniques or even dismissal.

Bullying is unacceptable in the workplace, and workers have the right to be protected from unreasonable conduct that may ultimately have serious consequences for their future employment and health.

Jodi Ongley



## RAINEY COLLINS LAWYERS

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