

# Family Maintenance Applications: The Present State of Play

Thursday, 31st March 2011

9.30 am - 1.00 pm

Since the first introduction of Family Maintenance legislation in Queensland, the law has evolved significantly. In two relatively recent decisions of the High Court (*Singer v Berghouse* (1994) 181 CLR 201 and *Vigolo v Bostin* (2005) 221 CLR 191) the court has clearly set out the principles to be applied in such matters (eg the two stage test in *Singer* and the relevance of moral issues in *Vigolo*).

The real issue to be faced, in either bringing an application or by an estate in deciding to defend an application, lies in an understanding of what the current trends are as disclosed in recent actual decisions of the courts.

The High Court authorities, and for that matter Queensland and other State authorities, are all peppered with such phrases as "... in all the relevant circumstances ...", "proper", "adequate", "moral duty" and "moral claim" - phrases and words which are inevitably subjective. It is for this reason a good understanding of current trends in dealing with applications by the courts is essential to the conduct on either side of such litigation.

Also very relevant to any such consideration are the ongoing attitudes of the courts to such issues as costs, applications in small and even moderate estates and the issue of strike-out applications.

Finally, all practitioners should be aware of the various legitimate means of taking prior steps to avoid or at least minimise the risks to an estate from a potential claim. The ethical position of a practitioner of course, is extremely relevant to these considerations.

In this seminar we will examine the present position, including the following:

1. The basic principles
2. Recent Queensland decisions

3. How would a court be likely to approach a claim in a small or even moderate estate?
4. Cost issues
5. What legitimate means are still available to protect an estate from a potential claim?
6. A practitioner's ethical position both in relation to protecting an estate and commencing and defending an application?



**Compulsory CPD Core Area:**  
Practical Legal Ethics



**Substantive Law** CPD Points - 3.25

## About the Presenter

The presenter at this seminar will be Peter Goodwin. Peter has been admitted as a barrister for 25 years in Queensland and 16 years in New South Wales. Prior to being admitted in Queensland he was a solicitor for six years. His experience in Family Maintenance matters extends over some 30 years, throughout which there has been a steady change both in the law and judicial attitudes relevant to Family Maintenance claims. Peter is also a court appointed Mediator and Case Appraiser in Queensland.

[www.cpd.com.au](http://www.cpd.com.au)

# Defamation Law in Practice

Thursday, 31st March 2011

2.00 pm - 5.30 pm

*"I want to sue! It's defamation of character isn't it?"*

Indignant clients direct variations of this demand and rhetorical question to lawyers every day. If it hasn't already happened, inevitably, it will be one of your clients. It may be that your client is alleged to be the wrongdoer.

This seminar is designed to equip solicitors to help the client with sound, competent and practical advice from the start about whether they have a claim, whether they should pursue it, and how to proceed and secure evidence.

Practical topics to be covered in this seminar will include:

1. Making an assessment of whether the case is worth running
2. Drafting a "concerns notice"
3. Gathering evidence and gathering it early with a view to maximizing the claim for damages
4. Provisions which assist securing evidence including network news footage
5. Identification of the defendant
6. Preparation for trial

Practical examples will be discussed and there will be a workshop on the drafting of "concerns notices".

Participants will be walked through the *Defamation Act 2005* and reminded of the historical context in which pre-uniform defamation law cases must be read. While walking through the Act, the various legal elements of a claim for defamation will be visited, including:

1. Defamatory meanings
2. What amounts to publication?
3. How damages are assessed, including a discussion of the statutory limit on general damages as well as exemplary and aggravated damages

4. Justification, partial justification and contextual truth
5. Absolute privilege, qualified privilege, honest opinion
6. Innocent dissemination
7. Triviality

A case review will be conducted including major significant recent defamation cases. The potential impact of the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010* upon defamation litigation in Queensland will also be discussed.

Other interesting topics which will be discussed in this seminar will include:

1. The implications of the growth of social media like Facebook and Twitter
2. Developments in the area of other intentional torts



**Compulsory CPD Core Area:**  
Professional Skills



**Substantive Law** CPD Points - 3.25

## About the Presenter

The presenter at this seminar will be Gavin Rebetzke. Gavin has been practising as a lawyer for 15 years. He practised as a solicitor - including as a principal in private practice for 7 years - before joining the Queensland bar in 2007. He practises in the areas of administrative law, criminal law, defamation law, industrial law, inquests and personal injuries.

[www.cpd.com.au](http://www.cpd.com.au)

# CPD Information

## Mandatory Continuing Education Scheme

The CPD year begins on 1 April and ends on 31 March the following year. In each year, a Queensland practitioner must complete a minimum of 10 CPD units to maintain their practising certificate. CPD units can be attained through a variety of activities. Attending a CPDS seminar, practitioners will be able to claim 1 unit per hour of attendance (refreshment breaks not included).

## Compulsory CPD Core Areas

There are three compulsory CPD core areas:



**Practical Legal Ethics**



**Practice Management and Business Skills**



**Professional Skills**

Practitioners must accumulate one CPD unit for each core area annually. Compulsory area points count towards the annual CPD Scheme unit requirement and are not an additional requirement.

Seminars that do not include a compulsory core area are usually designated by CPDS as:



**Substantive Law**

## Enquiries

For all enquiries regarding application of CPD points to individual seminars:

Continuing Professional Development Seminars  
Postal Address: PO Box 598, North Melbourne, VIC 3051  
Telephone: (03) 9328 2688  
Facsimile: (03) 9328 4688  
Email: [seminars@cpds.com.au](mailto:seminars@cpds.com.au)  
Website: [www.cpd.com.au](http://www.cpd.com.au)

Please note that the above is provided for informational purposes and is based on information supplied by the Queensland Law Society at the time of publication. Practitioners should make their own enquiries before relying on the information supplied above.

[www.cpd.com.au](http://www.cpd.com.au)



- Family Maintenance Applications
- Defamation Law in Practice
- Ethics and Good Professional Practice
- Commercial Focused Estate Planning

**CPDS Seminars March 2011**

**Brisbane**

Christie Conference Centre  
320 Adelaide Street

# Pillars of Ethics and Good Professional Practice

# Commercial Focused Estate Planning – Dealing with Structures and Superannuation

# Registration Form & Tax Invoice

Thursday, 31st March 2011

9.30 am - 1.00 pm

This is an interactive workshop about the modern business of legal practice, reconciled with practical legal ethics.

### Outcomes

The first intended outcome is a reflection on the practical application of ethical rules in legal practice, through a guided discussion of a series of workshop problems.

The second intended outcome is an enhanced awareness of the impact on legal practice and business methods of lawyers' obligations under anti-money laundering and counter-terrorism financing (AML/CTF) rules and also under Commonwealth privacy laws.

### Method

Workshop problems will be topical, based on actual legal practice. Examples will be drawn from hard cases coming before the courts and tribunals.

Discussion will be supported by papers which will show how the legal profession has dealt with practical difficulties in the following circumstances -

- Conflicts
- Client's failure to provide rational instructions
- Candour in court and with an opposing lawyer in a commercial transaction
- Billing and fees
- Advising on aggressive structures
- Confidentiality

Particularly in the context of the duties of confidentiality and to avoid conflict of interest and duty, the program then turns to consider problems that have arisen abroad and could arise in Australia, under AML/CTF Rules and under the burgeoning law of privacy.



**Compulsory CPD Core Area:**  
Practical Legal Ethics



**Compulsory CPD Core Area:**  
Practice Management & Business Skills

CPD Points - 3.25

## About the Presenter

The presenter at this seminar will be David Marks. David has been a Queensland barrister for more than 10 years, before which he practised at a top-tier firm for over 10 years in tax and revenue. He still principally practises tax and revenue law, but inevitably also appears in trust, estate, commercial and corporate litigation.

Thursday, 31st March 2011

2.00 pm - 5.30 pm

This seminar will focus on the commercial issues that arise in estate planning. This includes dealing with discretionary trusts, companies and superannuation, particularly for clients with investment structures or businesses.

Some of the issues that will be covered in this seminar include:

1. Estate planning – why just a will is not enough
  - Identifying and dealing with non-estate assets
  - Binding financial agreements – how useful are they in estate planning?
  - The importance of having an Enduring Power of Attorney
2. Dealing with assets held in discretionary trusts
  - Unpaid entitlements and loans
  - Strategies to ensure transfer of control – dealing with shares in the trustee company and the role of appointor/principal
  - Control of discretions after the controller's death
  - Creating fixed entitlements in a discretionary trust
3. Companies and business succession
  - Estate planning amendments to constitutions and entrenching these amendments
  - Put and call option agreements and transfer of business interests under these arrangements

4. Dealing with superannuation and life insurance
  - To whom can the death benefit be paid?
  - Dangers of binding nominations
  - Tax consequences
  - Life insurance proceeds

The seminar will use some case studies where the estate plan involves dealing with trusts, companies and self-managed superannuation funds.



**Substantive Law**

CPD Points - 3.25

## About the Presenter

The presenter at this seminar will be Carly Fradgley. Carly is an Associate in the commercial team at Cooper Grace Ward. Carly's practice includes estate planning, business succession planning, superannuation, trusts and general commercial advice.

Carly regularly advises accountants, financial planners and other advisors and their clients on these issues.

### Please Register me for:

- Family Maintenance Applications: The Present State of Play
- Defamation Law in Practice
- Pillars of Ethics and Good Professional Practice
- Commercial Focused Estate Planning - Dealing with Structures and Superannuation

### Registration Fees \$440 each seminar

Registration fees are inclusive of 10% GST. A tax invoice will be issued upon payment. Discounts are also available for early registration, online registration and group bookings – see below for details.

Name: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Email: \_\_\_\_\_

Method of Payment

Cheque  Visa

MasterCard  American Express

Credit Card No:

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Name on Credit Card: \_\_\_\_\_

Signature \_\_\_\_\_ Exp. Date /

**Complete this registration form with your credit card details and fax it to: (03) 9328 4688 or post with cheque attached to:**

CPDS  
PO Box 598  
North Melbourne, VIC 3051

### Venue

Morgan, Teach, Lafitte & Endeavour Rooms  
Christie Conference Centre  
320 Adelaide Street  
Brisbane

### Discounts

A discounted registration fee of \$395 is available for all fully paid registrations received at least 30 days prior to the date of the seminar. A group discount of 10% off the full registration fee is offered for bookings of three or more persons from the same firm. Please send all registrations together clearly labelled "group booking". A discounted registration fee of \$395 is also available for all online registrations. You can search and register for all CPDS seminars at [www.cpbs.com.au](http://www.cpbs.com.au). Only one discount category can be claimed for each registration.

### Cancellations

Registrations may be cancelled up to 14 days prior to the seminar or workshop and a refund will be provided but an administrative fee of \$44 will be deducted. No refunds will be available within 14 days of the seminar or workshop. Should a seminar or workshop be cancelled by CPDS for any reason, a full refund of all fees paid will be made. CPDS reserves the right to cancel or reschedule courses, and to change speakers or revise content as necessary.

### Mandatory CPD Schemes

If this particular educational activity is relevant to your immediate or long term needs in relation to your professional development and practice of the law, then you should claim one "unit" for each hour of attendance, refreshment breaks not included. Further Information is provided on the back of this brochure.

### Enquiries

For all enquiries regarding the course content or registration:  
Continuing Professional Development Seminars  
ABN 17 126 054 466  
Postal Address: PO Box 598, North Melbourne, VIC 3051  
Telephone: (03) 9328 2688  
Facsimile: (03) 9328 4688  
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Website: [www.cpbs.com.au](http://www.cpbs.com.au)