Cradle to Grave Conference 2016

THINK VERY SERIOUSLY BEFORE AGREEING TO BE A TRUSTEE

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My talk today is intended (a) to inform you of the growing trend of beneficiaries to sue professional trustees for tactical advantage, and (b) to explain to you some of the financial and other consequences that trustees face when this happens.

Most of you will be trustees – either individually or as directors of a Corporate Trustee – and you will think that your risk profile is low. You think you know the person who asked you to be a trustee and that your trusteeship will be free from financial risk.

The purpose of this talk is to tell you that you face risks that you almost certainly aren't expecting.

I have acted as Counsel in many Trust disputes in recent years and have been taken aback – sometimes amazed – by the willingness of beneficiaries to turn on professional trustees and make what I regard as specious allegations against them for tactical advantage.

Their willingness to do this is partly caused by the diminished status that lawyers have in the community today. Not so long ago, most people held lawyers and accountants in relatively high regard and they weren't willing to make specious claims, or claims of little merit, against them.

When claims like this are made, there is one question which should be uppermost in your mind: "*Can I defend myself at the Trust's expense?*"

The Courts have established some rules concerning the circumstances in which trustees can use a Trust's assets to defend themselves. One of these rules is that if a trustee is engaged in what is called *"hostile"* litigation, he or she ought not to be able to use Trust moneys to defend himself/herself until the outcome of the allegations is known. The underlying principle is that the Trust's assets are the beneficiaries' assets and a trustee ought not to be able to deplete them for his or her personal financial benefit.

This means that if one of the beneficiaries of the Trust of which you are a trustee thinks there will be a tactical advantage in making a claim against you that the Courts will categorise as *"hostile"*, you will not be entitled to use Trust funds to defend yourself.

When this happens these are your main options:

(a) You can ask the settlor or other person who asked you to be a trustee, to fund the cost of your legal defence. Because the legal fees that you are likely to incur in civil litigation will commonly have six numbers, this option will not usually be successful.

(b) You can try to resign but, for reasons I will give in a moment, this may not be possible.

(c) You can spend your own money defending yourself, and probably your professional reputation, but few trustees would want to consider this.

(d) You could apply to a Court for permission to use Trust funds to defend yourself but, in the case of "hostile litigation", the prospect of a Court permitting you to do this is so low that it will almost certainly be a waste of money.

RESIGNATION

Why can't you resign?

Section 43(2)(c) of the Trustee Act 1956 provides that if a Trust had one trustee at the outset, it can continue on with one trustee. But if you are a trustee of such a Trust, your appointment as a trustee will not be discharged unless someone is appointed to replace you.

Section 43(2)(c) also provides that where two or more trustees were originally appointed, there must thereafter be not less than two trustees unless the Trust Deed (untypically) allows the Trust to continue with only one trustee. If in a two trustee Trust you wish to resign, your appointment as trustee will not be discharged unless the person who has a power to appoint trustees appoints someone to replace you.[1]

It is not uncommon for a trustee of a two trustee Trust to provide a letter of resignation to the other trustee. The trustee who wishes to resign will assume that he or she is automatically discharged as a trustee on the giving of the notice. This is likely to be a very expensive mistake because the trustee will only be discharged from accountability on the appointment of a successor trustee.

And if a trustee is resigning because beneficiaries are making claims against the trustees, there will usually be serious practical difficulties in finding a replacement trustee. You may therefore find yourself trapped in a dysfunctional Trust with no funds to defend yourself.

SOME CASE HISTORIES

I will now refer to some of the many cases in which I have been involved as Counsel in recent times to show the practical problems that professional trustees face.

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1 See *Jasmine Trustees Ltd v Wells & Hind* [2007] EW HC 38 (Ch) & *Donovan v Donovan & Others Blenheim* CIV 2006-406-293, 26 June 2009 Osbourne A-J.

(1) A son wants exclusive rights to distributions

A husband and wife settled a family Trust and transferred their house to it. They and a friend were the trustees. The beneficiaries are the husband, wife and their son.

The wife died recently. The son is about 19 at this time.

These are some of the allegations that have been made by Counsel for the son, through his solicitor. They are believed to have been ghosted by a QC.

> "While [the son] and [the father] are the only surviving discretionary beneficiaries of the Trust, [the son] is the sole final beneficiary. Consequently [the son] is in a separate, unique class. The trustees are legally obliged to recognise and take into account the entitlement conferred solely on [the son] when they make capital distributions from the Trust".
>
> "It is clear that by declining to pay the amount requested by [the son] and making the distribution to [the father] the trustees have ignored their obligation to act impartially and in accordance with their legal obligations."
>
> "The trustees' persistent and apparently entrenched view that they are entitled to treat [the son] and [the father] alike and to make equal capital distributions to each of them is irrational and wrong in law. The trustees have failed to recognise [the son's] status as the only final beneficiary..."
>
> "Your letter records two grounds that appear to have persuaded [the independent trustees] to accept that [the father] is entitled to a further capital distribution. The first is that [the father] has been unable to purchase another home to live in; the second is that [the father's] personal funds have been diminished by legal costs".
>
> "It is extremely difficult to understand how [the independent trustee] was properly able to conclude that these grounds justified any further capital distribution to [the father]. Nor can such a conclusion be squared with the statement in your letter that the trustees are aware of their legal duties and have taken legal advice..."
>
> "The trustees' justification for the recent, further capital distributions and their continued election to treat [the son] and [the father] equally, amply demonstrates why the trustees should be replaced. Preparation for the application under s. 51 of the Trustee Act 1951 is continuing, but now requires updating to reflect the recent payment and this correspondence".

(2) A selfish elderly settlor

A selfish elderly settlor had a Trust which had three trustees: himself, his lawyer and his accountant. As the years went by it suited him to manipulate the Trust to his financial benefit and he bought a significant Trust asset at an undervalue. A lawyer beneficiary disapproved of the settlor's actions and brought proceedings against the three trustees.

Both the lawyer Trustee and the accountant trustee submitted their resignations but the settlor/appointor refused to agree to them resigning and they became trapped in High Court

litigation.

What was the old man's motive? I think he thought that if he trapped both his solicitor and accountant in the conflict, they would be forced to use their skills to try to solve the conflict for his advantage, and at their expense.

So both the lawyer and accountant were facing a public trial in the High Court in which allegations would be made against them of various alleged failings, with the consequence that their reputations, and to an extent, their careers, were at risk. They were also at financial risk since the settlor refused to allow the Trust to pay any of the costs that they were incurring in their role as defendants in the litigation.

The case eventually settled following a judicial settlement conference. With the High Court's reluctance to allow such conferences at present, future trustees who are caught in a similar situation would not be so lucky.

(3) Beneficiaries who try to accelerate the breaking up of a Trust for their advantage

Trusts are supposed to enhance the lives of a settlor's children and their descendants. By the time such Trusts reach the second or third generation, it is my experience that there can be major rifts between different "families" of descendants. When this happens, a "family" with resources will often try to break the Trust and have it resettled in different parts, on the different families.

In one case, a Trust fund was primarily intended to benefit the two children of a settlor and to look after their financial wellbeing for the rest of their lives. One of the children became restless and wanted to accelerate the vesting day. An expensive campaign of what I will call legal harassment was embarked upon. The Chair of the trustees was an accountant who had known the settlor well.

Such campaigns usually start with specious allegations that are accompanied by the stipulation of demands for a response within unrealistic time limits. When a response has not been given within the stipulated time, a letter-writing campaign is embarked upon that is intended to show that the trustees are dilatory, unresponsive, and not appropriate people to be trustees. A specious complaint is soon converted into a more legitimate complaint of trustee inefficiency and mismanagement.

In this case, the lawyer for the dissatisfied beneficiary even managed to get her lawyer to attend a meeting of trustees. The lawyer then produced some "Minutes" which materially misstated what had been discussed, in his attempt to compromise the trustees.

In another case of this type in which I was involved, the "innocent" trustees incurred several hundred thousand dollars of legal fees before the case settled.

(4) The behaviour of some relationship property lawyers

In Family Court litigation there are in my experience some lawyers who appear to think nothing of making specious claims against professional trustees in an effort to "break" open a Trust. Allegations of various forms of breach of trust are typically made. The fact that some of the trustees are lawyers and accountants is no impediment to the making of these claims. In fact, it appears to be seen as an attraction, since the more status the trustees have, the more embarrassed they are likely to be by the litigation and the more they will be pressured to find a solution that will assist the complaining beneficiary.

(5) A strong-willed settlor decides to benefit his children differentially

A father with three sons decided to make differential provision for two of them and make no provision for the third. The son who was left out sued the trustees of a Trust from which he and his family had been removed as beneficiaries. The son had not made contact with his father for more than 10 years and he actively despised the father and refused to have anything to do with him. (After his father died he put out a message to everyone on the internet saying that he hoped his father would *"rot in hell"*.) A professional trustee who had agreed to remove the son and his family as beneficiaries was said to have been a "cypher" who had tamely followed the settlor's request that he should do so. Even though the Trust Deed made express provision for the removal of beneficiaries, the removal of the son and his family was said to have been a breach of trust. It was said to have been done without giving express consideration to the precise financial and other circumstances of the son, his spouse, and each of his children.

To illustrate the extent to which trustees may be exposed to novel litigation, it was alleged that by removing the son and his family as beneficiaries of the Trust, the number of beneficiaries was reduced so that the father's prospect of receiving a distribution from the Trust was enhanced and that this constituted self-dealing and infringed the self-dealing rule. This proposition was advanced even though the father was owed more than $6m by the trustees and would have taken any payments in reduction of his loan account, rather than as a distribution.

The case went to trial a couple of months ago. The professional trustee was in the fortunate position of being able to fund himself. The settlor had respected his judgment and he felt obliged to use his own resources to try to implement the settlor's intentions.

GENERALLY

These are all cases where aggressive beneficiaries were typically funded by prior distributions. The monies that were intended for their benefit went into a fighting fund to advance a materialistic and anti-family agenda.

Trustees like to think they can shelter behind the "rule" that they don't have to give reasons for their decisions. They think that if they refuse to give reasons they can't be criticised. But this isn't so. Trustees can be challenged in litigation and the rules relating to discovery may require them to disclose relevant documents.[2] If the documents don't reveal the reasons for their decisions, the trustees can be attacked on the ground that they didn't give adequate consideration to all of the factors that it is said that they should have taken into account. If they do give reasons, they will then be attacked for taking into account only the reasons that are recorded and not other reasons.

As the allegations continue to be made, evidence will often come to light of minor breaches of Trust and the dispute will typically morph into a new dimension – an application to remove the trustees. And as all of these actions are classified as "hostile", the trustees are not allowed to use Trust funds to defend themselves.

If the trustees seek legal advice to avoid criticism of partisanship, they will be criticised for spending the Trust's moneys and it will be said they are not appropriate people to act as trustees since they apparently can't act without legal assistance.

In my experience these are some of the kind of allegations that can be expected to be made against "well-meaning" trustees:

- They didn't follow a Memorandum of Wishes.
- They intend to follow a Memorandum of Wishes when they ought not to do so.
- They favoured beneficiary A over beneficiary B without adequate justification.
- They didn't make adequate enquiries about the personal circumstances of each beneficiary before deciding whom to prefer.
- They didn't invest the Trust's assets appropriately.
- They took too long to answer communications from beneficiaries.

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[2] For example, in *Tchenguiz-Immerman v Immerman* [2014] WTLR 145 a wife wanted to know the reasoning of a decision-making process of the Jersey trustee and other parties. The Jersey Royal Court recommended that the Courts of England should not require the disclosure of sensitive Trust information but the English Court ignored the Jersey Royal Court's request.

- They are "hostile" to beneficiaries.[3]

THE LAW'S REMEDY

What do the Courts do to assist innocent professional trustees who get caught in these situations?

The practical answer is "*Very little*".

Non-litigators give Papers at New Zealand conferences on this topic and they commonly say that the trustees should simply apply for a "*Beddoe* Order".

The descriptions that are typically given by these people who have no practical experience of *Beddoe* orders are to the effect that such orders are easy to obtain and they will predictably be given.

They mislead you with their inexperience.

The following quotations come from Papers that have been given at such conferences in recent times:

> "In order to protect the position of trustees, it may be prudent for the trustee to make a Beddoe application which is an application for directions as to whether a claim should be brought or defended at the expense of the Trust fund."
>
> "Where the litigation is hostile and the trustees wish to take their legal fees while the litigation progresses, rather than pay for them personally pending the Court awarding costs, then the trustees should make a Beddoe application."

The system of "justice" that one generation thinks fair is almost invariably regarded in hindsight as extraordinarily "unfair". So it is with the "*Beddoe*" regime. At a time when a trustee could make a simple application to a Court in England and say *"I am being sued as a trustee and have a letter from Counsel who says that I have reasonable prospects of defending the claim",* the Court could grant a *"Beddoe"* Order allowing the trustee to use the Trust funds to defend himself/herself. The beneficiary was not allowed to see the evidence that the trustee gave to the Court or even to know that the *Beddoe* application was being made. And the Trust fund would be depleted at the expense of the beneficiary/beneficiaries.

As time went on, it came to be regarded as unfair that a trustee could defend himself/herself at the beneficiaries' expense when the beneficiaries were not even allowed to learn of the trustee's claims and be given an opportunity to make submissions on them.

All that has now changed. If a trustee wants to use Trust funds to defend himself/herself, an

[3] This allegation is commonly made and, fortunately, not all Judges are convinced that its use should justify a trustee's removal. See Thomas J's decision on 9 March 2016 in *Frickleton v Frickleton* [2016] NZHC 389.

application must now be made to the High Court in which the trustee must list all the factors for and against the claims against him/her and say why the Trust's moneys should be made available to either pay for the trustee's defence to a claim and/or to advance a claim.[4]

A *BEDDOE* APPLICATION IN PRACTICE

I have made one *Beddoe* application. It was made in the context of substantial litigation and the *Beddoe* application itself would have cost $40,000 or more. There were hundreds (if not thousands) of documents and the trustees were obliged to give the Court a full description of all the disputes over the course of many years and of all the facts, both for and against the trustees' positions. The application becomes a trial before the trial.

The result? The High Court authorised the trustees to use the Trust's funds to proceed to a Judicial Settlement Conference but no more. If the Conference was unsuccessful, there was no certainty that the trustees could defend themselves, at the Trust's expense, from the serious allegations that were being made against them.

In the event, the Judicial Settlement Conference was partially successful but there were then months of problematic negotiations. During the course of this, the belligerent beneficiary alleged that the *Beddoe* Order did not authorise the trustees to proceed further with the settlement negotiations. This was presumably done to advantage the beneficiary, who no doubt hoped that the trustees would capitulate to the demands that were being made of them.

This is not the place to write about the technical aspects of *Beddoe* Orders. The purpose of this Paper is to let professional trustees learn of the major personal problems that they face with litigation that can technically be classified as "hostile".[5]

In a case that I had a few months ago involving a Trust with professional, legal and accounting trustees, I told the plaintiff beneficiaries that I would be applying for a *Beddoe* Order. There are two reasons why this is not attractive to a plaintiff beneficiary. The first is that in a factually complicated case it is likely that the application itself may cost scores of thousands of dollars to prepare and that it will deplete the Trust fund since the Courts are supposed to direct that the costs of a *Beddoe* application itself should be paid by the Trust. The second is the fact that there may be delays of several months in preparing the application and waiting for it to be heard and determined in the High Court. In that case, the

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4 For more information on this topic, see "Contested Beddoe Applications – who should pay the costs? *Trusts & Trustees* (2014) Vol 20, p 478. To illustrate the kind of disclosure that is necessary, in *Trustee 1 & Ors v The Attorney-General & Ors* [2014] SC (Bda) 24 Com, the Bermudian Supreme Court upheld a claim by the son of a settlor of a Bermudian trust that trustees who were applying for a *Beddoe* order should disclose the legal advice and communications between the trustees and their lawyers.

5 See also on this topic "Can innocent trustees end up personally out of pocket?" in *Trusts & Trustees* Vol 19, October 2013, p 824.

plaintiff beneficiaries agreed that the trustees could fund themselves at the Trust's expense through to a mediation.

WHAT IS THE SOLUTION?

There are two primary elements to a solution.

First, a professional trustee needs to be in a position where, in the face of a false, weak or specious claim, Trust funds will be made available to assist him or her.

The second aspect is to have an arrangement by which a professional trustee can resign whenever he/she wants to do so.

During the summer I spent a long time trying to draft a provision that would achieve these objectives. And I reached the following conclusions.

So far as the funding aspect is concerned, many settlors may be reluctant to give a trustee an automatic right to access Trust assets to initiate a claim or to respond to a claim. Settlors need, however, to be informed of the problems that professional trustees now face. If a settlor wants to have a professional trustee, the settlor needs to know that the lawyer or accountant of choice will be likely to be a trustee because the *Beddoe* regime is too uncertain, leaving the prospective trustee open to allegations of breaches of Trust with no resources with which to defend himself/herself.

A contract to access Trust funds for litigation needs to be irrevocable and it should have a provision that if Trust resources are made available to assist the professional trustee, the trustee concerned will repay the moneys to the Trust if it should be held that the trustee was not warranted in using the Trust moneys for that purpose.

THE RIGHT TO RESIGN

So far as the right to resign is concerned, I consider that a contractual provision between a settlor and professional trustee should have the following elements:

(a) The trustee's right to resign must be irrevocable.

(b) There must be a mechanism by which the Appointor will irrevocably appoint a replacement trustee. This may involve giving the professional trustee a power of attorney for that purpose.

(c) There must be a person who will agree to be a trustee on the professional trustee's resignation. In practical terms, this may need to be a Trustee Corporation since a named individual may die or be unwilling to accept

appointment, and a prospective corporate trustee may have ceased to exist.

A settlor may object to a term by which a professional trustee can force a Trustee Corporation on to the Trust as a trustee but this ought not to be a burden since the Appointor of trustees can arrange for the Trustee Corporation to be removed and replaced by another person. All that is wanted from the professional trustee's perspective is for there to be a mechanism that enables a professional trustee who wants to resign or retire to do so.

OTHER FINANCIAL RISKS THAT PROFESSIONAL TRUSTEES MAY FACE

The primary focus of this paper has been on the inability of professional trustees who become involved in hostile litigation to use Trust funds to defend themselves.

Such claims are not the only risks that trustees may face and I thought it might be helpful to tell you of some other financial claims for which you will be liable as trustees.

(1) Section HC 2(2) of the Income Tax Act 2007 stipulates that:

"The trustees of the trust are treated ... as if they were a notional single person, and are jointly and are severally liable to satisfy the income tax liability of the notional single person".[6]

If your co-trustee does not give you the true facts, you will have a personal obligation to pay the Trust's tax from your own resources.

(2) Section 57(3B) of the Goods and Services Tax Act 1985 (GST Act) provides that a trustee is deemed to continue as a trustee, and to be personally liable for any GST, even after that person has resigned as a trustee, unless the person has provided the Commissioner with a 'written notice' of their resignation. The Court of Appeal said of this provision in *CIR v Chester Services Limited*[7] that the trustees will remain liable for any GST liability until the day on which they give the IRD written notice of their resignation.

(3) In *BNZ v Rowley & Skinner*[8] two trustees resigned simultaneously before claims could be filed against them by creditors. The High Court rejected their resignations on two grounds. First, the Trust Deed did not permit such resignations, and secondly, allowing trustees to resign en masse risks the failure of a Trust for lack of validly appointed trustees. The Court appointed two accountancy practitioners as receivers and said that the trustees who had

6 In referring to this and to some other taxation provisions I acknowledge with gratitude an article by Mark Keating in the NZ Tax Planning Reports, No 5, October 2015.

7 (2002) 20 NZTC 17-925.

8 (2012) 25 NZTC 20-150.

tried to retire would retain their personal liability.

(4) In *Bhana v CIR,*[9] the IRD pursued a sole trustee into bankruptcy for unpaid income tax and GST. Although the trustee claimed that he should have no personal liability, as the tax was owed by the Trust, and it was said that the IRD should make a claim against the Trust's assets, those arguments failed. This illustrates what appears to be a resolve by the IRD to "make an example" of trustees.

(5) In *CIR v Newmarket Trustees Limited,*[10] the Court of Appeal criticised a Trustee Company for the negligent supervision of its co-trustee and held the lawyer corporate trustee liable to pay the Trust's unpaid taxes.

(6) The GST Act 1985 generally deems all actions that are undertaken by one trustee to be authorised by all trustees *"unless the contrary is proved".*[11] This is what might be called the perverse converse of the unanimity rule, by which a non-consenting trustee is liable for the actions of foolish co-trustees.

(7) Non-compliance with the requirement for trustees to act unanimously may be no defence to a passive trustee. In *Case 5/2013*[12] the Taxation Review Authority (TRA) held:

> "I am of the view that Ms X cannot plead her own ignorance of her co-trustees' intentions when she has simply maintained a passive role and permitted Mr & Mrs B to effectively run the Trust particularly knowing as she did, that Mrs B did not understand her responsibilities as a trustee and saw Ms X as simply having a rubber stamping role".[13]

(8) In *CIR v Boanas*[14] the High Court held that except where there was a breach of fiduciary duty, all of the Trustees – including those who had voted against a resolution – were personally liable.

(9) It has been said that the IRD is increasingly resorting to remedies under the Companies Act 1993 against directors of corporate trustees, for unpaid taxes.

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9 (2007) 23 NZTC 21,001.

10 (2012) 25 NZTC 20-139.

11 See, for example, s 51(7) of the GST Act.

12 (2013) 26 NZTC 2-004 para 85.

13 There is authority for contending that trustees who act in such a manner act dishonestly. Kekewich J said in *re Second East Dulwich 74th Starr-Bowkett Building Society* (1889) 68 LJ Ch 196 at 198 that *"A man who accepts such a trusteeship and does nothing, swallows wholesale what is said by his co-trustee, never asks for explanations and accepts flimsy explanations, is not honest".*

14 (2008) 23 NZTC 22,046.

In *Goatlands Limited (in liquidation) v Borrell*[15] it upheld a claim by liquidators that the *directors of a corporate trustee were liable for unpaid tax*. In this way, in *Rowmata Holdings Limited (in liquidation) v Hildred*[16] it was held that all of the trustees of a Trust, including the independent trustees, were personally liable to repay GST that had been claimed on the purchase of land by a company nominated by two mirror Trusts but which was unable to be repaid when the transaction failed.

(10) In *Powell v Powell,*[17] one trustee succeeded in obtaining an order to have the other removed. The successful trustee had incurred costs of $282,590 and he was allowed to take all those costs from the Trust. The unsuccessful trustee was allowed costs on a 2B basis. On the assumption that his costs were similar to the first trustee's costs, he would presumably have been out of pocket by say, $200,000 or so.

(11) In *Lee & The Public Trustee v Torey,*[18] two incompetent people who appointed themselves as trustees and took most of a Trust's assets were held liable to pay compound interest on the amounts that they had withdrawn from the Trust.

(12) In *Goodman v Campbell,*[19] Matthews AJ held that a defendant trustee who had been reluctant to provide information to a beneficiary had to pay the entire costs that the beneficiary incurred in seeking the information.

(13) In *New Zealand Māori Counsel & Others v Foulkes & Others,*[20] Māori trustees had incurred legal fees of $2m which the Trust had reimbursed to them. The trustees sought costs in a case which went to the Court of Appeal but the Court showed little sympathy. It held that each of the three parties was to be indemnified from the Trust *"for their costs in the sum of $2,500 plus usual disbursements"*. The trustees were presumably hugely out of pocket.

(14) In *Tozer v Tozer,*[21] trustees were ordered to pay indemnity costs for their failure to act impartially.

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15 (2007) 23 NZTC 21,107.
16 (2013) 26 NZTC 21-039.
17 (2015) NZHC 1984.
18 (2015) NZHC 2135.
19 (2015) NZHC 2780.
20 (2015) NZCA 552.
21 (2014) NZHC 1759.

(15) In *Ray v Russell,*[22] Mr Russell, a trustee, had no knowledge of transactions between the Trust and a company. It was held that the transaction should be set aside on the grounds that the company had been insolvent on the relevant date. Although Mr Russell was no longer a trustee and had no knowledge of the transactions at the relevant time, he was held liable to pay the sum of $928,937 to the liquidators because he had been a trustee at the relevant time.

(16) In *Luke v South Kensington Hotel Company,*[23] it was held that a trustee who dissents in a decision may be liable for the financial outcome of the decision of the other trustees of which the dissenting trustee disapproved.

(17) In *Thurston v Thurston,*[24] Peters J ruled that where a trustee is removed from a Trust in the course of litigation, that person may be ordered to pay all of the costs involved in the case[25] together with the costs incurred by the trustees.

(18) In *Shailer v Shailer,*[26] Mrs Shailer applied for summary judgment of a debt that was owed to her by the trustees of a family Trust, of which she, her husband and a solicitor were the trustees. The solicitor was ordered to personally pay Mrs Shailer the moneys for which she sued.

CONCLUSION

These decisions show that a laissez faire attitude to trusteeships will inevitably change. The risks of personal financial loss for professional trustees are simply too great.

Many of you will think the risks that I describe aren't as bad as I have described them.

It may, however, be a bit like Russian roulette. When the trigger is pulled there are five chances out of six that the chamber will be empty.

But if the barrel is in the sixth position, there is a good prospect you will regret that you accepted the trusteeship.

22 (2012) NZCA 536.
23 (1879) 11 Ch D 121.
24 (2013) NZHC 1896.
25 Paragraph 17.
26 (2015) NZHC 250.