

*Seasons Greetings from the Team at Quinlaw*



### WELCOME

We welcome new Solicitor Miranda Brownrigg to our Team. Miranda joined us in June this year and has been practising as a Solicitor since 2008. Miranda has worked for legal publishing firms in Wellington and London before settling in New

Plymouth. Miranda has skills and experience in employment law, trusts, commercial law and conveyancing.

### TRUSTS

Trusts remain valuable for particular family circumstances and for creditor protection. The particular family circumstances can be to protect a vulnerable child or adult and to avoid claims against your Will.

With regard though to creditor protection, there are issues as to whether all your assets should be in the Trust and at what time that should be done. There is also an issue about gifting late in life. There are particular rules about all of the above. We have sent letters to most of our clients for whom we have been doing the gifting. We are happy to discuss this further.

In addition, in cases where disappointed creditors have sought repayment of their investments from failed Directors, such as Bridgecorp, there is legal and Court activity in an effort to set aside some of the Trusts.

Not all assets necessarily have to be in the Trust. It depends upon what you intend the Trust will achieve for you. Sometimes it is necessary to weigh both the advantages and disadvantages and then do a balancing act, to work out the best option for you. Also, at all times there must be records and resolutions recording decisions made. This way you have a better chance of recalling what happened and why and also whether a payout to someone was a distribution or a loan.

### EMPLOYMENT NEWS

We have formed an alliance with the Whitehead Group. Max Whitehead, comes originally from Taranaki, is an employment specialist who works with both employers and employees. We are very pleased to have Max and his group providing top of the line specialist services for our clients. Together with Sandy and Miranda we will be available to assist you with your employment needs/queries.

Max had an article printed in the New Zealand Herald, on 18 September 2012. (part reproduced overleaf).



### STAFFING OVER THE HOLIDAYS

We will be closing our doors on Friday 21 December and will be back fully staffed on 14 January 2013. For emergencies and conveyancing matters there will be staff available from 7 January to assist. Please leave message on answerphone or email [action@quinlaw.co.nz](mailto:action@quinlaw.co.nz) and for urgent matters before the 7 January phone 021 444 678.

# QUINLAW

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Wishing you a happy and prosperous New Year

*“New Zealand’s politically correct laws often block employers from asking job applicants relevant questions. To avoid getting into strife with government bodies, like the Human Rights Commission, Privacy Commission or the Employment Relations Authority, I recommend significant caution when interviewing potential staff.*

### **Do you have any medical conditions?**

*While you do have a right to ask the applicant if they have any physical or medical conditions that could prevent them undertaking a position (stress-related difficulties for someone hoping to join the police force, or physical constraints for a person applying to collect road-side rubbish, for example), you can’t ask them to provide all their medical details.*

*Questions should be related to the person’s ability to meet the demands of the position. If the work is physically demanding you could ask: “Are you aware of any health and safety issues that may impact on your ability to do the job?” In these circumstances, you could lawfully request they undertake a fitness test or obtain medical clearance.*

*Just don’t ask for medical information that’s not directly related to the position.*

### **Are you getting married or having children?**

*It’s illegal to discriminate on the basis of sex. This includes pregnancy, family status and marital status. You will probably say that all these factors can affect an employee’s ability to attend work and can also affect them at work. So why can’t you ask? The answer is because, 20 to 30 years ago, some politician thought it was a good idea.*

*Stick to the script and only ask directly relevant questions. There is nothing wrong in asking about an applicant’s ability to commit to the business. Talk about the hours of work or the requirement to sometimes work after hours.*

### **We already have too many women!**

*A Hamilton car dealer, who employed many women, told an applicant that he had enough women and would not be taking her application any further. The Human Rights commission was not impressed with this and the employer ended up paying compensation.*

*It is unlawful to discriminate under gender, therefore, do not advertise or tell an unsuccessful candidate that they were unsuccessful because of their sex.*

### **We will do a credit check**

*It is okay to ask for a credit check from applicants applying for roles that have financial risks (an accountant or credit controller), but don’t ask this for other positions because the Credit Reporting Privacy Code 2004 can be used against you.*

### **Do you have a criminal record?**

*Yes; even criminals are protected under our current laws! The Criminal Records (Clean Slate) Act 2004 makes it illegal to discriminate against people with a criminal record of offences that occurred seven years earlier and had no sentence of imprisonment.*

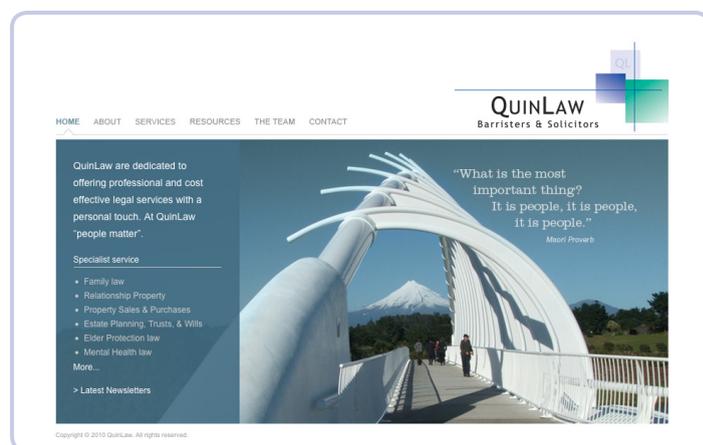
### **Conclusion**

*The information you gather from an applicant during an interview usually determines whether you’ll take their application further. What happens if they have lied to you? What happens if they have only given you selected answers and not revealed matters that will affect their ability to undertake the role?*

*There is a simple safeguard you can take - get the employee to fill in an application form that asks these relevant questions. This form will provide you with a record of their answers.*

*If an employee has provided false information then, provided the form notifies them that incorrect information will result in termination, you have grounds for dismissal.”*

**Max Whitehead** (abridged)



### **CHECK OUT OUR WEBSITE**

Our website gives an outline of the professionals available to you and their areas of expertise which include Wills & Trust, Property - Sales and Purchases, Maori Land, Family, Elder Protection, Mental Health and Estate Administration and Planning.

Under Resources we have a multitude of helpful links including carjam, school holiday dates, the time, mortgages, building, maps and local government, legal aid, depression, immigration plus many more informative sites. This is for your convenience and use this as the place to go to get information.

[www.quinlaw.co.nz](http://www.quinlaw.co.nz)