

A hand holding a stack of colorful business cards (blue, green, red) against a background of blurred books. The text is overlaid on the image.

# Review of Relationship Property Act by the Law Commission

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ESTATE & TAXATION PLANNING COUNCIL

4 SEPTEMBER 2019

Key Law  
Commission  
Recommendations

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FISA (Family Income Sharing  
Arrangement)

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Classification of family home

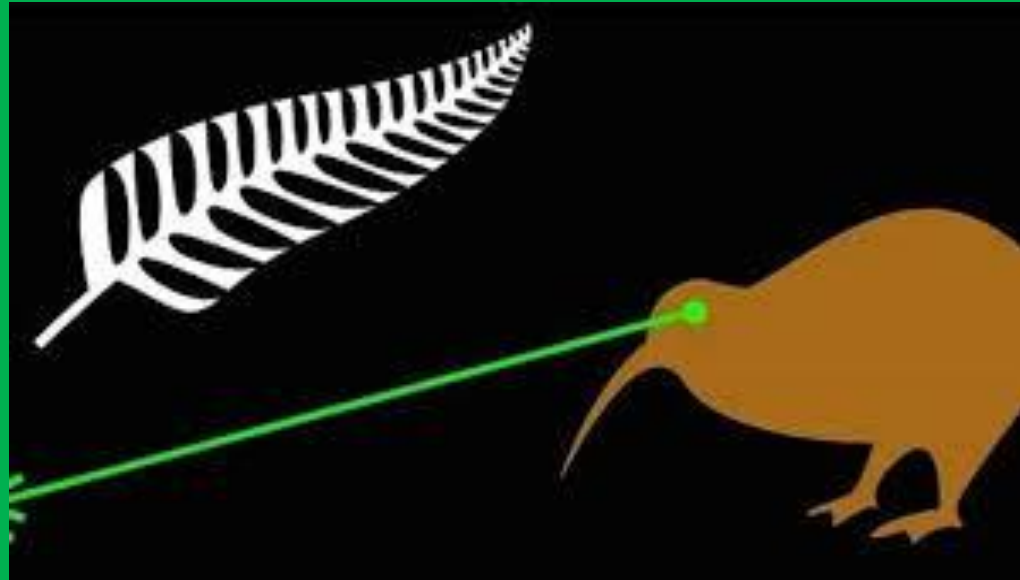
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Amendments to s44C

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Orders for benefit of children

# Evolution of Matrimonial Property Division in NZ



Pre 1963

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Women's financial contributions not recognized

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non-monetary contributions not considered.

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Contracts allowed for division of property, custody of children and payments of maintenance on separation

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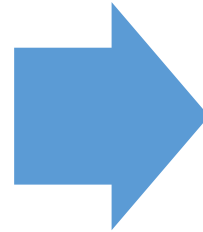
Children born outside marriage illegitimate

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Some provision maintenance made for women and children - Destitute Persons Ordinances

# Matrimonial Property Act 1963 - Women's contributions recognised

“...services, prudent management, or otherwise howsoever” considered alongside “form of money payments”.



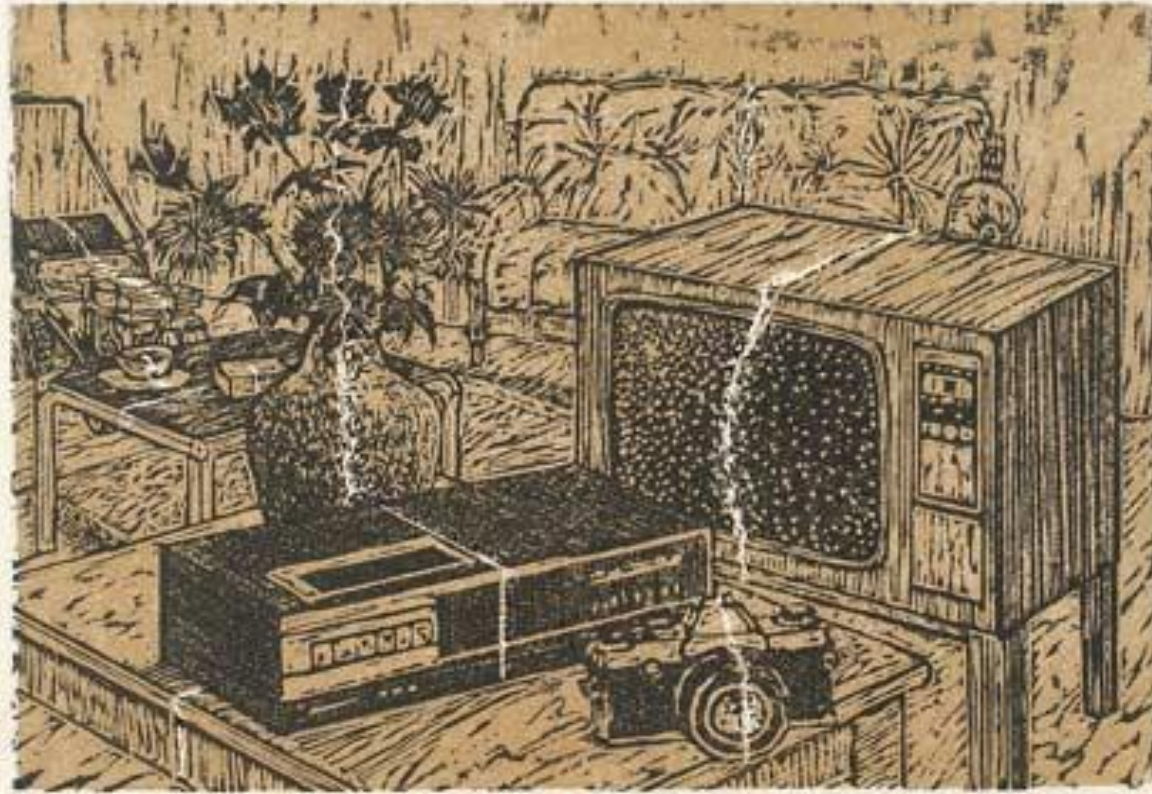
1/4 to 1/3 third of the property



# Matrimonial Property Act 1976

- Equal division of the home and family chattels
- Marriage partnership
- Just division
- Take account of needs of children of marriage
- No presumption monetary contributions of greater value than non-monetary contributions

# SPLIT DOWN THE MIDDLE



Mag. De. — American Recorder — Art. 4 —

April 1961



"Apparently I have done something to upset you."



Matrimonial  
Property Act  
1976



25 years



Property  
(Relationships) Act  
1976  
(2001)

# After 2001, the Property (Relationships) Act 1976:

Self-contained set of legal rules.

Sets out how property is divided between couples when their relationship ends, either by separation or death.

On death the surviving partner may opt to claim on the deceased partners property.

Includes married; de facto relationships or civil unions.

includes heterosexual and same sex relationships.

**Purpose:**

**Section**

**1M**

recognise the equal contribution of both spouses

a just division of relationship property between partners when their relationship ends .....”

while taking account of the interests of any children of the ... relationship”

# Principles; Section 1N

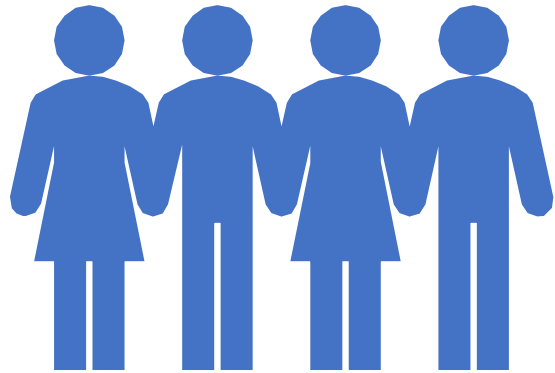
men and women have equal status; equality should be maintained and enhanced:

all forms of contribution to relationship treated as equal

a just division of relationship property

Resolved inexpensively ,simply, speedily

# 2001 PRA brought in



- Economic disparity
- Compensation for property disposed to trust (s44C)
- Threshold for setting aside agreements increased from “unjust” to “serious injustice”.

# Law Commission: Reasons for Change

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social change

perceptions of what is “just”

Trusts – lack of understanding,

Complexity of law - inaccessible

Children’s interests not given priority

# What doesn't change

- 50/50
- marriages, civil unions, de-facto of 3 years+
- Tikanga Māori – underpins Māori land and taonga
- Contracting out

Major changes  
proposed

FISA

Classification of family  
home

Amend s44C



# FISA (Family Income Sharing Arrangement)

sharing of family income for up to 5 years (more in special circumstances) applies when

child of relationship

one party has sacrificed their career to support the other or relationship lasted more than 10 years

Based on mean of previous 3 years income of both partners

# Advantages

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Formula – certainty for both parties

- Economic disparity
- Maintenance

Cuts cost of litigation for both

Classification  
of family  
home

If owned by one party, increase in value  
will be shared.

## Recommendation - S44C

single comprehensive remedy to grant relief  
when trust holds property produced,  
preserved or enhanced by the relationship.

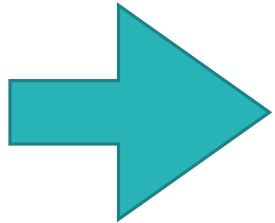
Applies in 3  
situations



1

disposition of property (RP or separate) to trust

- when qualifying relationship contemplated
- After qualifying relationship began



defeat claim/rights under PRA

2

Trust property sustained by application of RP or actions of partner/s

3

Increase in value of trust property,  
or  
any income or gains from trust property,

is attributable (directly/indirectly) to  
application of RP or actions of one or  
both partners.



Court Powers:  
recommendation

-

ordering one partner to pay  
compensation

ordering the trustees to distribute  
capital from the trust

varying terms of trust, resettling  
some/all trust property on new trust/s

remove, appoint or replace trustees.

# JUST

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Appropriate balance between protecting  
entitlements under PRA

v

Preservation of trust

# Note

Contract out

Settle

Lodge notice of claim

Repeal s182 FPA

Where claim – notice to:-

Trustees

Beneficiaries/discretionary

People with interest in  
trust property

# Third party dispositions

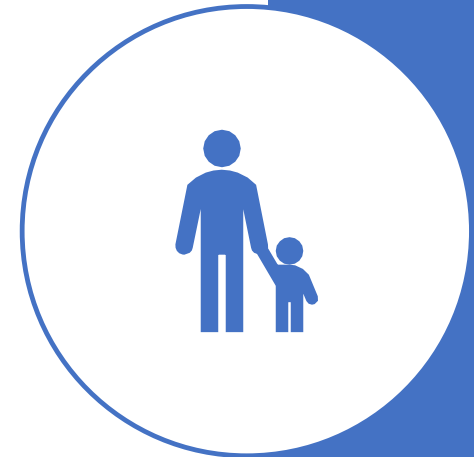
Not captured

BUT

Compensation may be  
available if  
preserved/enhanced  
by relationship

# Children's interests

- Children's best interests primary consideration – expressed through principle
- overarching obligation on courts - regard to best interests of minor/dependent children
- court power to set relationship property aside for the benefit of minor or dependent children if just.



# Clayton v Clayton

- All power to one person = sham

# Romanes v Romanes

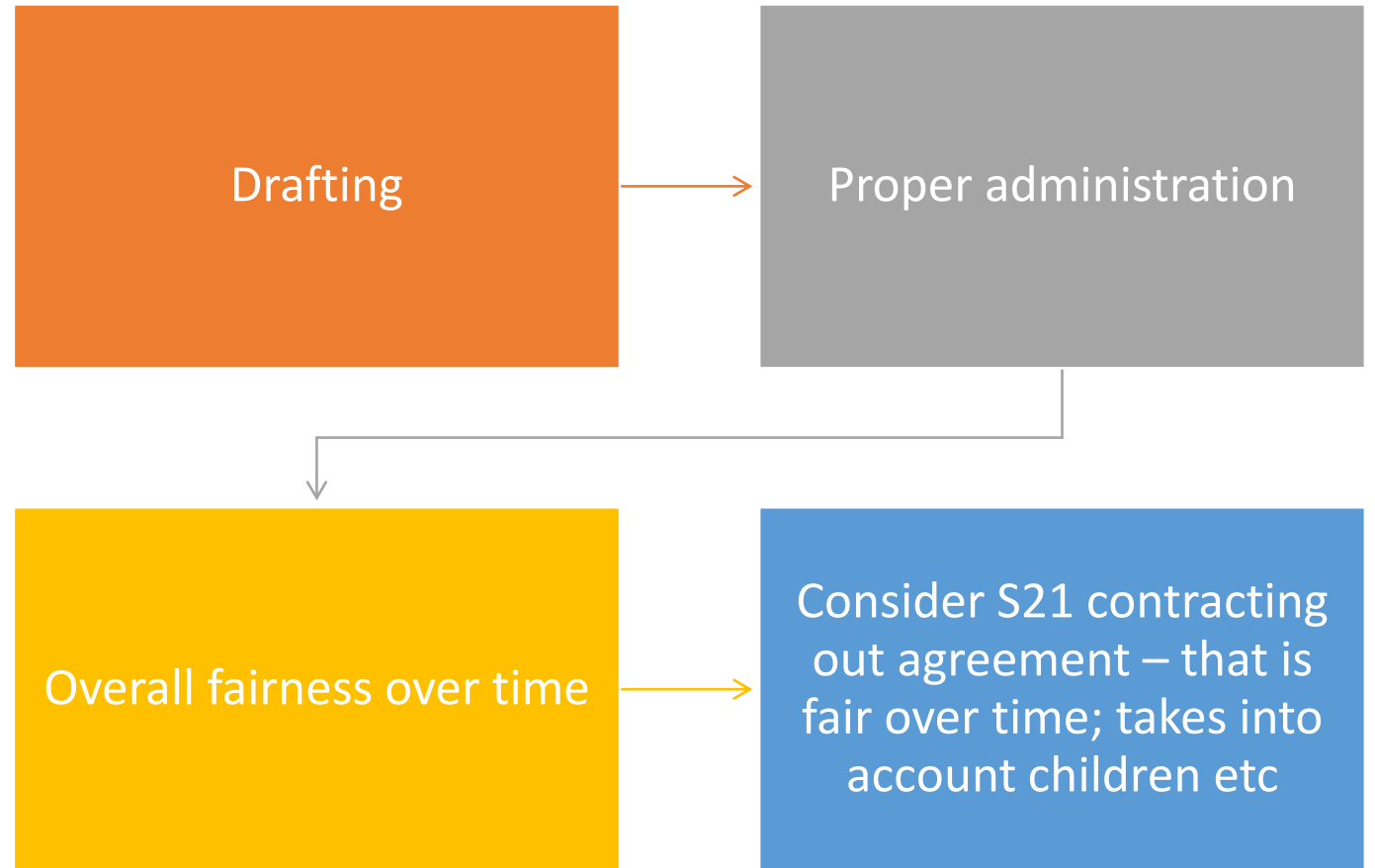
- Tenancy order granted for trust owned property
- Upheld by High Court
  
- Home owned by partnership of 2 trusts;
- parties discretionary beneficiaries
- Held – trust partnerships had given parties right to occupy therefore tenancy (Property Law Act)

# Horsfall v Potter

- Property in joint names for IRD purposes
- Spouses cannot use “trusts” for one purpose and then say for another purpose that not represent real ownership
- Therefore a sham



# What to do



## Drafting

- Real trust?
  - More than 1 trustee
  - Independent trustee
  - Prohibit self dealing by 1 trustee
  - Power of appointment not with settlor, trustee, beneficiary

# Administration

- Trust assets kept separate from settlor's assets
- Trustees to account for assets acquired
- Educate trustees – no longer property of settlor
- Keeping trust assets separate from personal assets
- Independent consideration of beneficiaries interests
- Good record keeping
- Review

# Fairness

- Review – how does it look from time to time
- Non beneficiary spouse, if contributing, give proper market consideration
- Acknowledgement that contribution does not provide a claim