

Living Wills

With advances in medical procedures, the possibility of being kept alive by artificial means after an accident or illness is becoming more and more common. You may recall the recent case of Terri Schiavo in the United States which made headlines worldwide. Terri had suffered a heart attack and was left in a persistent vegetative state for 15 years, kept alive by artificial feeding and hydration. According to her husband, Terri had said that if she ever required life support and there was no real chance of her recovering, then she would prefer to die. However as this was not written down and her parents did not want to stop the artificial feeding and hydration, several Court applications were required before the final decision to stop medical treatment was made in March 2005. Terri died in April this year, bringing to an end several years of stress and uncertainty for all who knew her.



Krista Sim, Solicitor

The New Zealand Bill of Rights Act 1990 provides that anyone has the right to refuse to undergo any medical treatment. However, if you are on life support and in a persistent vegetative state, it will be impossible for you to communicate your instructions. The Code of Health & Disability Services Consumers' Rights provides that health and disability services consumers ("patients") can use an advance directive to communicate their consent or otherwise. An advance directive is defined as a written or oral directive by which a patient makes a choice about a possible future health care procedure and which is intended to be effective only if he or she is not mentally competent. Two types of advance directives are Living Wills and Enduring Powers of Attorney.

A Living Will is a document which you sign while you are in good health and of sound mind, giving directions as to what you would want to happen should you suffer the sort of accident or illness that leaves you on a life support system or in a seriously deteriorating state. It is merely an indication of your wishes in the event that you are unable to communicate directions as to medical procedures. A Living Will often directs that the treatment given should be sufficient to relieve pain or distress but not to prolong life. It is not a binding document but it does provide your family and the medical professionals involved in your care with an indication of your wishes. This can be very helpful to family members when they need to make decisions about continuing your medical care during a very distressing time.

An Enduring Power of Attorney in relation to personal care and welfare gives your appointed attorney the legal power to act for you in whatever way they think fit if you become mentally incapable. Therefore, if your attorney decides that it is in your best interests to keep you alive, despite there being no chance of a normal recovery, the medical profession will consider your attorney's instructions as far as possible. This may be contrary to what your wishes would have been had you foreseen the situation and such confusion can be avoided by ensuring your Enduring Power of Attorney sets out your wishes in the event of accident or illness.

While there is no statutory provision in New Zealand for Living Wills, Enduring Powers of Attorney are provided for in the Protection of Personal and Property Rights Act 1988. However, even if your Enduring Power of Attorney sets out what you would like to see happen in the event of incapacitation, it is merely an indication of your wishes. Also, it should be noted that your attorney cannot refuse consent to any standard medical treatment or procedure intended to save your life or to prevent serious damage to your health.

If you are wanting to make your wishes known in advance while you are still in good health and of sound mind, we recommend that you sign a Living Will or Enduring Power of Attorney in relation to personal care and welfare rather than copying the man recently reported in the news. He had the words "Do Not Resuscitate" tattooed on his chest to ensure that he was not resuscitated or kept on life support in the event of accident or illness. He can only hope that if anything does happen to him, that his would-be rescuer removes his shirt before administering any medical procedures.

If you wish to discuss making a Living Will or Enduring Power of Attorney in relation to personal care and welfare, please contact us.

Most clients are familiar with our partners. In this and our next newsletter we will be profiling our associates, who are senior solicitors within the firm. We hope these profiles will provide an insight into the talented people behind the names and the approach they take to their work. This edition profiles Lorne Singer, David Smillie and Gareth Foley. We will be profiling our other associates Gina Chin, Kathy Grant, Nicky Hay and Sandra Parks in the next newsletter.

Lorne Singer



Lorne joined the firm in June 2000 and has been an associate since April 2003. He is a member of our property team, specialising particularly in energy, easements, and residential conveyancing.

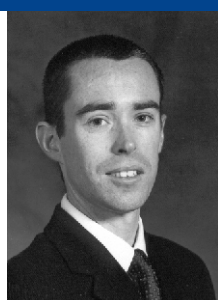
Lorne takes much pleasure from the people contact which his position involves. “I enjoy getting to know personally the people who work for the larger organisations I work for, as well as individual clients.”

It is the professional challenges that keep Lorne's job fresh and interesting. He enjoys finding solutions for problems that require thinking outside of the square. He believes he is able to find the solutions because of the support from his colleagues and his regular client contact, which ensures he knows their business well.

What does he like best about being a part of Gallaway Cook Allan? “I enjoy the down-to-earth but professional people I work with. I am proud of working for a successfully merged practice, where both firms were steeped in local history”.

Outside of the office, Lorne is a devoted family man who relishes the time he spends with wife Chrissy, 16-month-old daughter Skye and 4-month-old son Taylor. With such a young family Lorne is a busy man, but he still manages to squeeze in athletic training, “I train hard for athletics with a view to getting the best I can out of my body while I'm still able to!”

David Smillie



David started with the firm in 1997 before leaving to work as a lawyer in the UK in 1999. He returned to Gallaway Cook Allan in 2002 as an associate. He specialises in company and commercial law, which sees him involved in acquisitions, commercial leases, financing, securities, and intellectual property. He has a particular interest in intellectual property and licensing matters, which include trademarks, copyright, technology licensing, and IT projects.

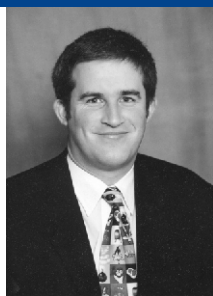
It was while studying at the University of Otago that David first became interested in commercial and intellectual property law. This interest was then developed further while working for Hitachi Data Systems in the UK. It is the challenge that keeps David focussed on this area of law, “the law is always developing so there's always something new to learn”.

David likes to help his clients achieve their business goals. “It is satisfying to work on a project or advise on a contract which does the job for the client.”

Much of David's job satisfaction comes from the work environment at Gallaway Cook Allan. “The firm is focussed on succeeding but there is still a good balance — people are relaxed, friendly, and happy to help.”

David is married to Richelle and they have two young daughters, Lucy and Ella. For balance in his personal life David tries his hand at DIY and a bit of gardening. When time permits he can be found playing golf, basketball and tennis - but as any parent of young children will appreciate, spare time is hard to find!

Gareth Foley



Gareth has specialised in property since becoming a lawyer in 1999. He is involved in all areas of property law, including agreements for sale and purchases, subdivisions, leases, mortgages, and other general property matters.

He takes pleasure in working in an area of the law that is significant for so many people and organisations.

“Property touches every part of the law. Most lawyers, even if they don't specialise in the area, will know something about property law. Property lawyers must then also know when the property matters they are dealing with require the expertise of the other areas, such as family law, litigation or commercial. One advantage of a firm such as Gallaway Cook Allan is it allows the use of wealth and breadth of experience in a cost effective manner.

Gareth believes that what makes his job so enjoyable is the people he works with — their experience and legal knowledge teamed with the friendly open-door policy of all partners and staff within the firm. It is this atmosphere that makes his client-centred problem solving approach possible.

For Gareth, being a lawyer does not always mean being the ambulance at the bottom of the hill. “Seeing a lawyer before a problem arises can be akin to insurance — you may not need the advice or assistance every time, but when you do it can save a lot of trouble during a transaction, or even prevent the problems arising. You still pay your insurance even though you haven't been burgled, had your house burnt down, or crashed the car.”

Mosgiel clients now have the benefit of Gareth's experience. Each Monday afternoon Gareth can now be found assisting clients from our Mosgiel office.

Gareth's spare time is taken up with three young energetic sons, whom he describes as “an absolute whirlwind of excitement.” He is in the process of building a new house in Waldronville with his wife Annette. Gareth also manages to find time for his passion for the sport of fencing, more in a coaching capacity these days rather than competing.

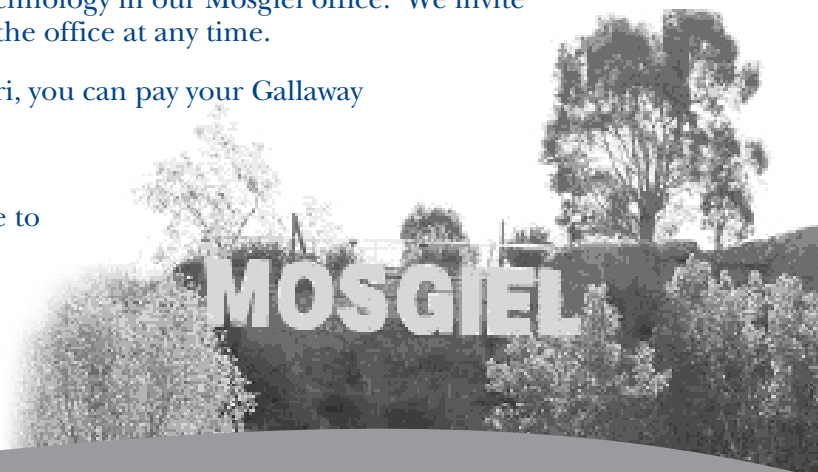
Our Mosgiel Office

Our Mosgiel office is open every afternoon from 1.30pm — 5.00pm. A solicitor or legal executive is available to meet with you during these hours by appointment. Due to the increase in demand for our services, Gareth Foley and Krista Sim have joined Helen Davidson and John Cornelissen in staffing the Mosgiel office in the afternoons.

The last few months have been very eventful for the Mosgiel office. Due to property developments on Gordon Road in Mosgiel, our office has moved next door into newly re-fitted and refurbished premises. We have used this move as an opportunity to upgrade our facilities and technology in our Mosgiel office. We invite current clients as well as prospective clients to call into the office at any time.

For the convenience of our clients who live on the Taieri, you can pay your Gallaway Cook Allan account at the Mosgiel office.

Our receptionist Annette Humphries, who has been working at the Mosgiel office for many years, is available to make an appointment for you to meet with the appropriate member of the Mosgiel team.



The Employment Relations Act has now been in force for some four and a half years. On 1 December 2004, the Act was amended to widen the duties of good faith in the employment relationship, promote collective bargaining and provide for the protection of employees if their job is affected by a restructuring of their employer's business (such as a sale, transfer or contracting in/out).



Nicky Hay, Associate

In particular, the amending Act has introduced two significant new protections to employees if their employer's business is restructured. The protection afforded to each employee depends on whether an employee comes within the definition of a "vulnerable employee", being those employees providing cleaning or food catering services in any industry, orderly or laundry services in the health sector or age-related residential care, or caretaking or laundry services in the education sector.

New employment considerations for the sale and purchase of a business

The amending Act grants all vulnerable employees the right to transfer to the employment of the Purchaser/Contractor on their current terms and conditions and with continuous service. This overrides any agreement to the contrary reached between Vendor and Purchaser. More than ever, it is essential that a Purchaser undertakes a thorough due diligence, including reviewing relevant employment agreements and personnel files, with a view to factoring in the results of the due diligence into the purchase price.

In any sale and purchase of a business involving vulnerable employees, we strongly recommend that both the Vendor and Purchaser/Contractor obtain specialist legal advice as to their obligations and liabilities under the amending Act towards vulnerable employees as well as to the other party to the agreement. We can assist with the drafting of appropriate clauses in the agreement for sale and purchase to ensure that you have met your legal liabilities and obtained any relevant indemnities and warranties.

More changes to employment agreements required

For non-vulnerable employees, the amending Act requires all employment agreements to contain an employee protection provision. This provision must be included in all new employment agreements and in existing agreements by 1 December 2005, or earlier if the agreement is amended or a restructuring is to occur.

The details of an employee protection provision are subject to negotiation between the employer and its employees, but the Act provides that the provision must include:

- (a) A process that the employer must follow in negotiating with a new employer about the restructuring to the extent that it relates to affected employees;
- (b) The matters relating to the affected employees' employment that the employer will negotiate with the new employer, including whether the affected employees will transfer to the new employer on the same terms and conditions of employment;
- (c) The process to be followed at the time of the restructuring to determine what entitlements, if any, are available for employees who do not transfer to the new employer.

While it will be possible to simply add an employee protection provision to some employment agreements, where an employment agreement already deals with redundancy, it is important that the employee protection provision is consistent with the redundancy provisions.

We have already updated a significant number of agreements. If you need to have your agreement(s) checked or updated to comply with the amending Act (or if you haven't managed to meet the 1 April 2005 deadline for updating your agreement(s) to reflect the new Holidays Act), please contact Nicky Hay or the member of the firm with whom you usually deal.