

New Zealand Relationship Property Survey 2017

October 2017



Contents

Section	Page
Message from the Family Law Section	5
Message from Grant Thornton New Zealand	6
Some key findings	7
Survey overview	8
Who we advise	9
How we practise	13
What we'd like to see	23
Using forensic accountants	26
The award of costs	29
Survey responses by region	30
About the Family Law Section	38
About Grant Thornton	39



Message from the Family Law Section

When Jay Shaw of Grant Thornton New Zealand proposed a survey of relationship property practitioners in conjunction with the New Zealand Law Society's Family Law Section, the executive was excited by the idea.



It has been great to see the positive response from practitioners, which means we have been able to make highly meaningful observations.

Those responses are representative across the country – the results matched, fairly accurately, the number of relationship property practitioners in the various regions. With the review of relationship property law looming, the survey provides some interesting initial insights into current legal and practice issues that are of concern to family lawyers.

The results also highlight areas of family lawyers' practise worthy of further discussion, including matters such as the level of advice we give on contracting out agreements.

The Family Law Section thanks Grant Thornton for its instigation of, and involvement in, this inaugural survey, and looks forward to building on this snapshot of relationship property law practise in two years' time, when we hope to repeat the exercise.

Kirsty Swadling
Family Law Section Chair

Message from Grant Thornton New Zealand

Grant Thornton New Zealand is delighted to be involved with the Family Law Section in this inaugural New Zealand Relationship Property Survey. The response to this first survey by family law practitioners has been fantastic, with around a quarter of those regularly involved in family law practise completing the survey.



This would not have been possible without the active involvement of the Family Law Section, including in helping to design the survey questions, actively encouraging practitioners to take part, and helping to write this report.

Thank you to both family law practitioners and the Family Law Section for your contribution. A special thanks also to Kirsty Swadling, Kath Moran and Jeremy Daley of the Family Law Section, who all gave considerable time and effort to this survey.

The survey has produced findings which should be of much interest to family law practitioners, the judiciary, policy makers and the general public. The findings highlight the complexity of the issues family lawyers are regularly asked to address, and the significant financial sums these often relate to.

They also demonstrate the deep levels of experience and expertise many family lawyers can draw on to address these issues and advise their clients.

Over time it will be interesting to see if current issues facing family lawyers persist, and/or new ones emerge. We look forward to working with the Family Law Section and practitioners on the next survey edition.

Jay Shaw

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Some key findings



Relationship property lawyers may undertake the most significant legal work for many New Zealanders in relation to their assets.

Most commonly, practitioners work with relationship property valued in the range \$500,000 to \$1 million, and often higher.



Many practitioners are concerned about systemic delays in the Family Court.

Speedier resolution in the Family Court, and specialist relationship property judges and relationship property tracks, were viewed as potential solutions.



Many family lawyers offer significant experience and related expertise.

One half of survey respondents indicated they offer more than 15 years' family law experience, with a third having more than 25 years' experience.



Many practitioners see the current interface between relationship property law and trust law as problematic.

They may regard reforms in either area as unsuccessful if they do not have appropriate regard to the overlay between the two.



Perhaps due to the complexity of the issues involved, family lawyers tend to specialise.

A quarter said they practised only in family law. For around two thirds of practitioners, family law comprises at least half the work they do. More specialised family lawyers tend to undertake proportionately more relationship property work.



Children's interests in relationship property cases may not currently be adequately addressed.

Few practitioners indicated the consideration of children's interests were of significant importance in relationship property matters and most felt they were rarely a focus of relationship property proceedings.



Relationship property work has increased, and many practitioners expect it to further increase over the next two years.

This is despite most practitioners having taken no active steps to grow their practices, indicating increases are market led.



The 'midlife crisis' appears alive and well.

A broad profile of the 'typical divorcee' advised by family lawyers has emerged. It indicates someone who has grown apart/fallen out of love, been in a relationship between 10 and 20 years, is between 40 and 49 years old, and is to share in a net relationship property pool of between \$500,000 and \$1 million.



The most problematic issue relationship property lawyers face is the non-disclosure of information.

Many practitioners viewed the use of stronger penalties and enforcement for parties' failure to disclose information as a possible solution to this problem.



'Silver splitters' are on the rise.

The majority of lawyers observed a trend in separations among people aged 50 and over, and a corresponding increase in section 21 contracting out agreements (the 'pre-nup') for that age group. An aging population suggests this trend is likely to continue.

Survey overview

The 2017 New Zealand Relationship Property Survey asked family lawyers about issues and trends impacting both their practise of relationship property law and the people they advise. The high response rate by family law practitioners means readers can have much confidence in the survey findings.

The survey was open to all lawyers in New Zealand. But given the survey topic, it is likely only Family Law Section members (around 700 members who indicate they practise in relationship property) and other lawyers who undertake at least 25% of family law work (around 1,000 lawyers) comprise the survey population.

Ipsos, an independent market research organisation, conducted the fieldwork for the survey.

A total of 369 practitioners completed the survey, a fantastic response rate which resulted in findings that are highly representative¹:

- Survey respondents were 66% female and 33%² male, the same proportion as the current Family Law Section membership
- In each geographic region the percentage of respondents closely matched the percentage of both New Zealand's population and Family Law Section members

Figure 1: Region allocations by survey responses, FLS members and NZ population

Region	% of survey respondents	% of FLS members	% of NZ population
Northland	3	3	4
Auckland	30	32	34
Waikato	8	10	9
Bay of Plenty	7	7	6
Central North Island, Taranaki & Whanganui	4	4	5
Gisborne & Hawke's Bay	4	5	4
Manawatu, Wairarapa & Horowhenua	4	3	4
Wellington	10	13	11
West Coast & Nelson	6	3	3
Marlborough	3	1	1
Canterbury	14	11	13
Otago	4	6	4
Southland	3	2	2
% of respondents	100	100	100

A detailed breakdown of responses to each survey question by region can be found on p30.

¹ The survey response rate resulted in an estimated margin of error of $\pm 4.61\%$. The margin of error tells us the amount of variation we expect to see in the results of sampling based on the population size, sample size and pre-determined confidence interval. This means that based on a sample of 369 responses from a conservative population estimate of 2,000 lawyers with 95% confidence, we expect a 4.61% variation in the sampling results either side of what was reported. In other words, the survey findings appear highly representative. Please note tables may contain minor rounding differences.

² 1% preferred not to say.

Who we advise

We asked family lawyers about the people they advise in relationship property matters. Three key findings emerged.

Relationship property lawyers may undertake the most significant legal work for many New Zealanders in relation to their assets.

This is something often overlooked by those not practising in family law. Most commonly, practitioners work with relationship property valued in the range of \$500,000 to \$1 million, and often of higher value.

The 'midlife crisis' appears alive and well

A broad profile of the 'typical divorcee' advised by family lawyers has emerged. It indicates a person who has grown apart/fallen out of love, has been in a relationship between 10 and 20 years, is between 40 and 49 years old, and is to share in relationship property with a value of between \$500,000 and \$1 million.

'Silver splitters' are on the rise

The majority of lawyers observed an increase in separations among people aged 50 and over, sometimes colloquially referred to as 'grey divorce' or 'silver splitters'. An aging population indicates this trend is likely to continue. This means that increasing challenges might be on the horizon for family law practitioners, including dealing with issues of capacity, and juggling the input of adult children from the respective relationships.

Growing apart/falling out of love is the most common reason for separation

We asked family lawyers to name the three most common reasons seen in the last two years for the breakdown of relationships.

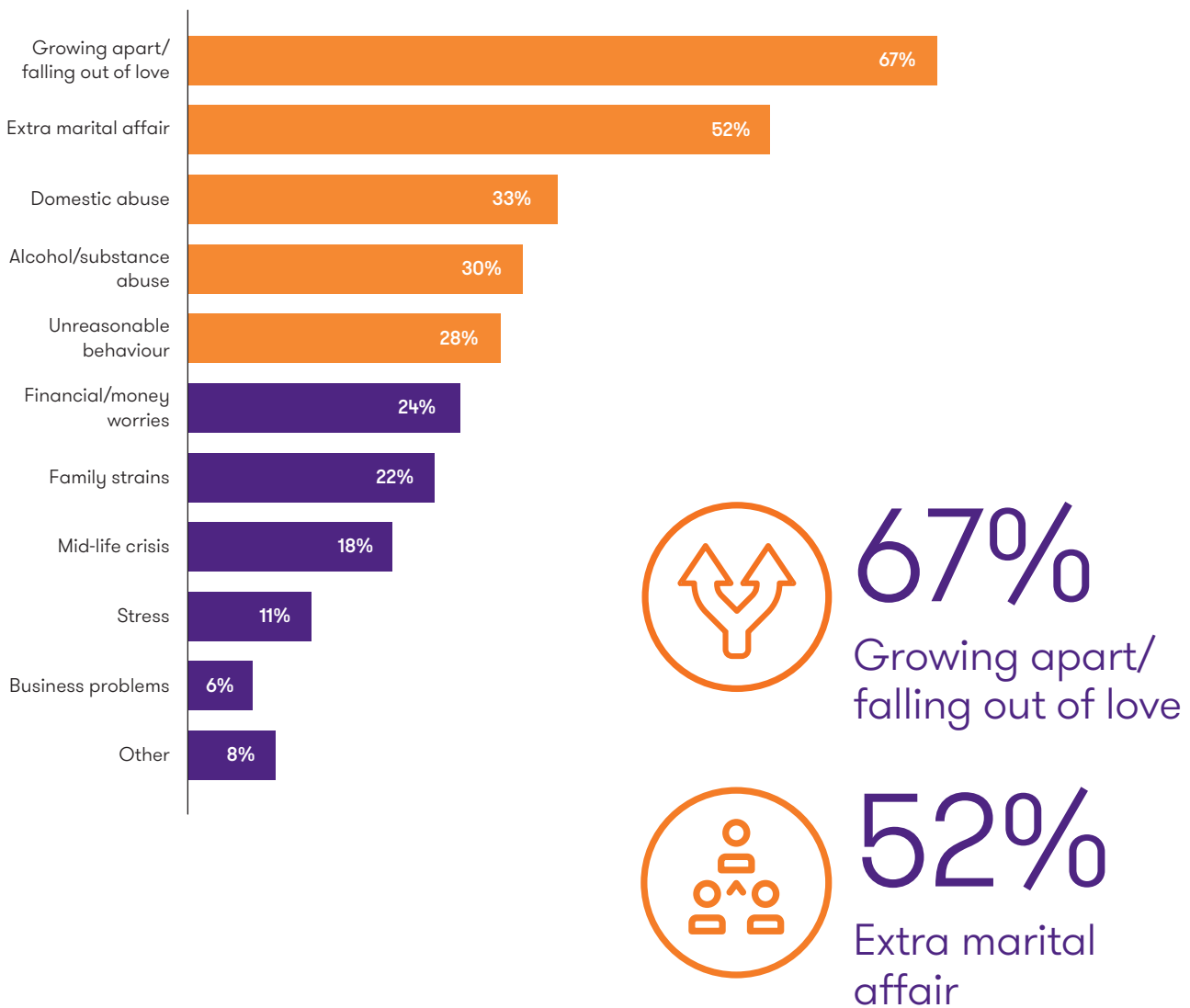
Some felt this question was irrelevant, which is reasonable given the 'no fault principle' in our legislation. However, having some understanding of the reasons for separation can be informative and give the family lawyer a much better understanding of the dispute dynamics.

By some margin, *growing apart or falling out of love* (67%) was the most common reason for separation, followed by an *extra marital affair* (52%).

Domestic abuse (33%) and *alcohol/substance abuse* (30%) were the next most common reasons for relationship breakdowns, providing further indication of how significant these issues continue to be in our country. These two issues might also be responsible for more breakdowns in relationships of less than 10 years.

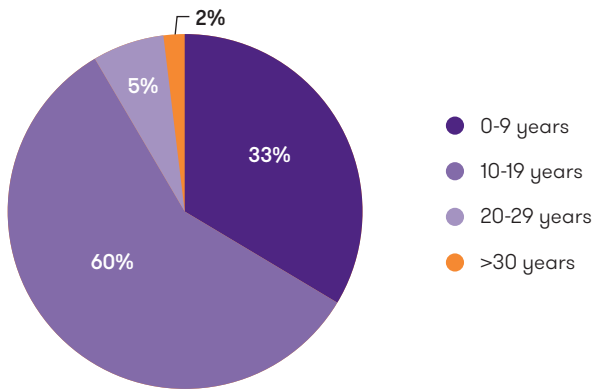
Other reasons (8%) seen for separation included 'empty nest syndrome', pornography, and mental health issues. This category also includes the small proportion of respondents who considered this question to be irrelevant.

Figure 2: Most common reasons seen for separation in the last two years



Most of the relationships practitioners advise on lasted less than twenty years

Figure 3: Most frequent relationship length advised on in the last two years



We asked family lawyers about the length of the relationships on which they have advised in the last two years. Results were relatively consistent by region, with a majority (60%) saying that relationships of 10 to 19 years, and a third indicating relationships of less than 10 years, were most frequent. At only 7% of responses, separations after twenty years were uncommon.

The reasons for separation tend to vary depending on the length of the relationship

Other than for reasons of extra marital affairs, alcohol/substance abuse, domestic abuse, and mid-life crises, Figure 4 shows the reasons given for the breakdown in relationships appear relatively consistent.

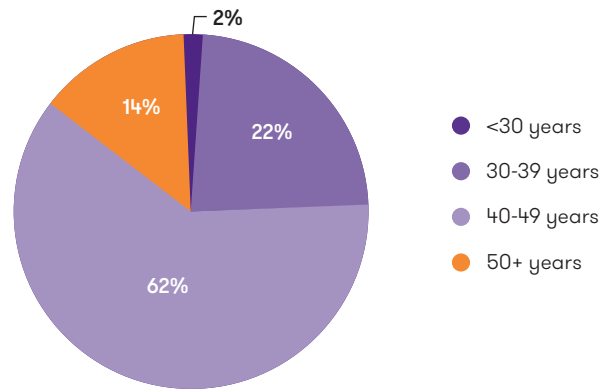
Figure 4: Length of relationship

Most common reasons seen for separation	Total	0 - 9 yrs	10-19 yrs	20-29 yrs	30+ yrs*
		%	%	%	%
Growing apart/out of love	67	68	66	74	71
Extra marital affair	52	51	53	42	43
Domestic abuse	33	33	34	26	14
Alcohol/substance abuse	30	33	30	21	14
Unreasonable behaviour	28	26	29	26	29
Financial/money worries	24	21	25	26	29
Family strains	22	28	19	26	14
Mid-life crisis	18	15	19	32	29
Stress	11	12	10	11	14
Business problems	6	6	6	5	14
Other	8	7	8	10	28
% of respondents	100	33	60	5	2

* Due to low population, results are indicative only

Separating parties are most often aged between 40 and 49 years old

Figure 5: Most frequent age range of parties acted for



When asked about the most common age of people they have acted for in the last two years, almost all respondents (98%) said their clients were at least thirty years old, but most commonly between 40 and 49 years (62%). A relatively small proportion of those separating - around 14% - were aged 50 and over. Very few (1%) were over 60 years old.

When asked if they had seen a change in the age of people getting separated, the majority of lawyers (66%) across all regions indicated that the age of separation had stayed about the same, but around a quarter (24%) had seen an increase in the age of people they act for.

The rise of the 'silver splitter'

The majority of lawyers (60%) said they had seen an increase in separations among people aged 50 or over, sometimes referred to colloquially as a 'grey divorce' or 'silver splitters'.

New Zealand's aging population means that if this trend continues, family lawyers will need to be ready to address issues of capacity, and to have a familiarity with powers of attorney. They can expect to be dealing with potentially significant assets, both before and after death and testamentary promises. Life interests are also likely to feature. At the same time, family lawyers will be juggling the input of adult children from the respective relationships, including those with beneficial rights to relationship property.

Consistent with the apparent increase in silver splitter separations, the majority of lawyers (66%) also observed an increase in the number of people aged over 50 seeking advice in relation to section 21 contracting out agreements (the 'prenup').

The reasons for separation vary depending on the ages of the separating parties

We explored the relationship between separating parties' ages and their reasons for separation. The results indicate that extra marital affairs and mid-life crises tend to be more prevalent amongst older separating parties. Other reasons for separation appear relatively consistent regardless of age.

Figure 6: Age of separating parties

Most common reasons seen for separation	Total	<30*	30 - 39	40 - 49	50 +
	%	%	%	%	%
Growing apart/out of love	67	71	71	65	71
Extra marital affair	52	29	46	56	48
Domestic abuse	33	29	30	37	19
Alcohol/substance abuse	30	43	29	30	29
Unreasonable behaviour	28	43	25	29	25
Financial/money worries	24	29	29	22	25
Family strains	22	14	27	20	29
Mid-life crisis	18	-	12	20	23
Stress	11	29	13	9	15
Business problems	6	-	6	7	6
Other	8	14	12	6	10
% of respondents	100	2	22	62	14

* Due to low population, results are indicative only

The most common net relationship property pool has a value of between \$500,000 and \$1 million

Practitioners were asked about the value of the net relationship property pools (including related trusts) they have advised on in the past two years, and the most common pool value they encounter.

In the last two years, the majority of respondents have provided advice to separating parties with combined assets worth under \$1 million. A sizeable proportion (67%) provided advice on pools of \$1 million to \$2.5 million. Some 20% had advised on pools of \$5 million to \$10 million, and 14% on pools over \$10 million.

A total of 71% of practitioners said that the net relationship property pools they most frequently advised on were valued at up to \$1 million, with pools of between \$500,000 and \$1 million (41%) being the most common of all.

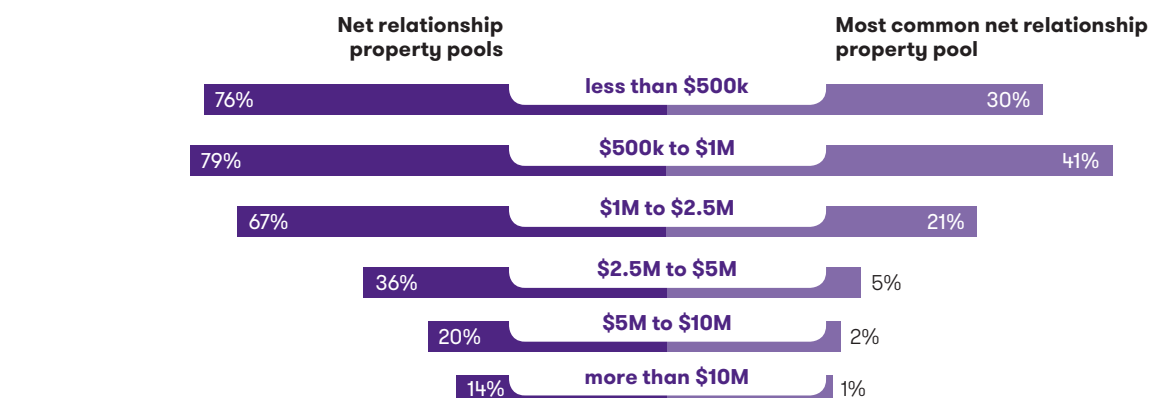
Of particular note was that:

- a large proportion of the lawyers who advised on high value relationship property pools were based in Auckland, perhaps due to the high price of real estate in that region
- barristers sole were significantly more likely to be advising parties with higher value relationship property pools (in excess of \$5 million)
- consistent with people building wealth over their lifetimes, the value of the property pool tends to increase with the relationship length and the age of the separating parties.

The considerable value of many net relationship property pools demonstrates that family lawyers undertake the most significant legal work for many New Zealanders in relation to their assets.

This is in counterpoint to the civil jurisdiction of the District Court, which levels out at \$350,000 and highlights that family lawyers frequently deal with matters of significant value (and legal complexity) – something often overlooked by those not practising in the family law field.

Figure 7: Value of relationship property advised on in the last two years



How we practise

Many family lawyers offer significant experience and related expertise. Over one half of survey respondents said they have more than 15 years' family law experience, with a third having more than 25 years' experience.

Family lawyers operate within a range of practice types, but mainly in private practice with others as a partner or director, or employed as a barrister and solicitor. Except for barristers sole, most practitioners work on similar size engagements by property value.

Perhaps due to the complexity of the issues involved, family lawyers tend to specialise. A quarter of respondents practise only in family law and for around two thirds of practitioners, family law comprises at least half the work they do. Specialised family law practitioners tend to undertake proportionately more relationship property work.

The majority of practitioners have experienced increased relationship property work over the last two years. This is despite less than a third having taken active steps to grow their practice, suggesting increases may be market led.

Many practitioners expect further increases in relationship property work over the next two years. However, a significant number of practitioners consider this will lead to less work undertaken in other areas, including those relating to the care of children.

Practitioners consider quality of advice to be the most important aspect in managing relationship property cases. Practitioners also strongly value both the need to *manage client expectations* and *achieve a timely resolution* of relationship property.

Children's rights under relationship property proceedings, both property rights and other rights, may not be adequately addressed in current practice. Few practitioners indicated that consideration of children's interests were of significant importance in cases and most felt children were rarely a focus of proceedings.

Negotiation and litigation are the methods most commonly used by practitioners in relationship property matters. Mediation is also popular, but practitioners have yet to embrace collaborative law or arbitration.

Practitioners favour the use of time and cost without cap as a basis for fees, consistent with established practice by law firms and other professional services. The use of *time and cost and premium* is also popular, particularly for higher value property pools. As might be expected, legal aid and fixed pricing tend to be used for lower value property pools.

Fees for the majority of section 21 contracting out agreements (the 'pre-nup') are at the lower end of the spectrum. Reasons for this include practitioners' potentially undervaluing the work done, or exposing themselves to risks on the work undertaken, or discounting.

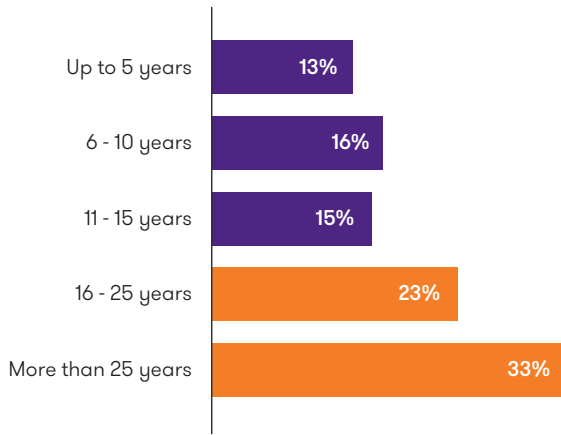


The majority of family lawyers indicated they give advice on the implications of the Property (Relationships) Act to clients making a will.



Children's property and other rights under relationship property proceedings may not be adequately addressed in current practice.

Figure 8: Number of years practising as a family lawyer



Many family lawyers offer significant experience and related expertise

When asked how many years they had practised as a family lawyer, over half (56%) said more than 15 years and a third more than 25 years. This clearly indicates the deep levels of experience and related expertise many practitioners can offer to their clients.

Female practitioners far outnumber their male counterparts, except those with more than 25 years' experience

Overall, survey respondents were around two thirds female and one third male, reflecting the Family Law Section's current membership. However, as Figure 9 indicates, the gender ratio is not the same at different experience levels. Most practitioners (around 70-80%) with up to 25 years' experience are female, but there are more male (54%) than female practitioners with more than 25 years' experience.

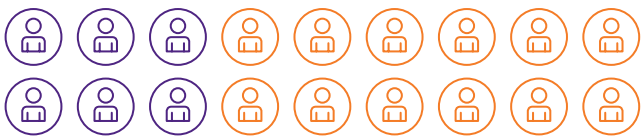
Given the high proportion of female practitioners in the 16 to 25 years' experience bracket, and as senior male practitioners retire, we expect that the proportion of females with more than 25 years' experience will increase over time. It will be interesting to observe any changes in this area in the next survey.

Figure 9: Years of family law experience

Gender	Total	Up to 5 years	6 - 10 years	11 to 15 years	16 to 25 years	25+ years
	%	%	%	%	%	%
Female	66	69	78	81	78	43
Male	33	31	22	19	21	54
Prefer not to say	1	-	-	-	1	3
% of respondents	100	13	16	15	23	33

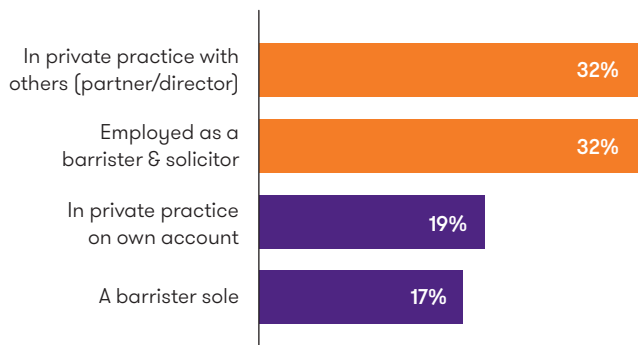


56%
More than 15 years' experience



33%
More than 25 years' experience

Figure 10: Practice type



Family lawyers operate within a range of practice types

Most practitioners told us that they either work in private practice with others as a partner or director (32%), or are employed as a barrister and solicitor (32%). Those practising as a barrister sole comprised 17% of total respondents, similar to those in private practice on their own account as a barrister and solicitor (19%).

As shown in Figure 11, for practitioners other than barristers sole, the size of engagements by most common net property value appear relatively similar.

In contrast, a barrister sole is much less likely to be working on lower value assignments (less than \$1 million net relationship property) and much more likely to be working on higher value assignments.

Figure 11: Practice type by net relationship property pool

Most common net relationship property pool	Total	In private practice with others (partner/director)	Employed as a barrister and solicitor	In private practice on own account	A barrister sole
	%	%	%	%	%
\$500k	30	30	40	23	19
\$500k - \$1m	41	47	40	51	16
\$1m - \$2.5m	21	17	13	22	41
\$2.5m - \$5m	5	3	3	4	16
\$5m - \$10m	2	3	2	-	5
More than \$10m	1	-	2	-	3
% of respondents	100	32	32	19	17



Family lawyers tend to specialise, perhaps due to the complexity of the issues involved

We asked practitioners to indicate how much family law work they undertake relative to other legal work, and the proportion of that work which is of a relationship property nature.

Highlighting the specialist nature of family law work, a quarter of respondents said they practised only in that area; for two thirds of practitioners, it comprised at least half of their work. The percentage of relationship property work undertaken by family law practitioners varied considerably, but nearly half (44%) said this constituted between 26% to 75% of their total family law workload.

As indicated in Figure 13, there appears to be a generally positive correlation between the percentage of family law work undertaken and the proportion of that work which is relationship property work. In other words, the more a practitioner’s legal practice consists of family law work, the greater the percentage of that work that is relationship property work.

Figure 12: Family law and relationship property work undertaken by practitioners

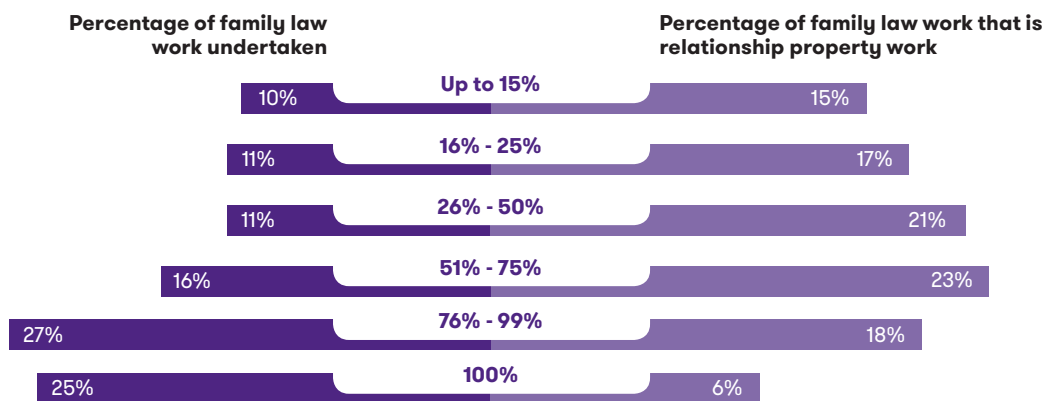


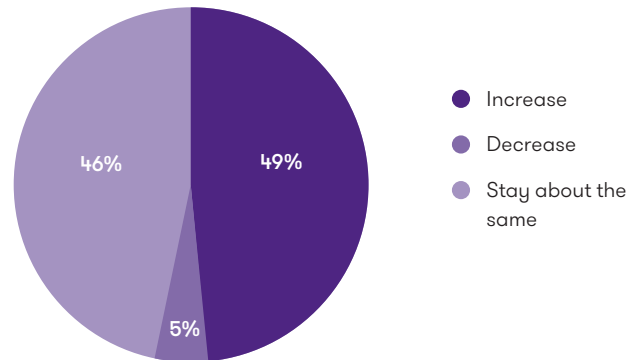
Figure 13: Relationship between family law work and relationship property work

Percentage of family law work undertaken	Percentage of family law work that is relationship property work						
	Total	Up to 15%	16 - 25%	26 - 50%	51 - 75%	76 - 99%	100%
	%	%	%	%	%	%	%
Up to 15%	10	38	3	1	2	6	36
16 - 25%	11	16	21	5	1	10	27
26 - 50%	11	9	10	14	10	10	14
51 - 75%	16	5	18	24	18	12	18
76 - 99%	27	16	23	29	31	41	-
100%	25	16	25	27	38	21	5
% of respondents	100	15	17	21	23	18	6

Relationship property lawyers have become busier in the last two years

Around half (49%) of relationship property practitioners said their workloads had increased over the last two years. When considered in conjunction with only 5% who reported a decrease in work undertaken, the current demand for relationship property work appears strong.

Figure 14: Changes in relationship property work volumes over the last two years

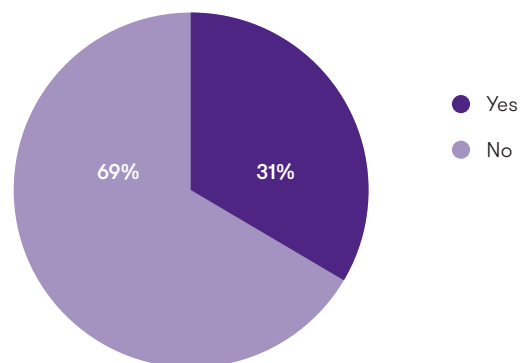


Increased work volumes appear to be market-led, as few practitioners have taken recent active steps to grow their practice

Somewhat surprisingly, 69% of those practitioners who had seen an increase in relationship property work over the past two years said they had taken no active steps to increase work volumes. This suggests that increased workloads over the last two years were likely to have been market led.

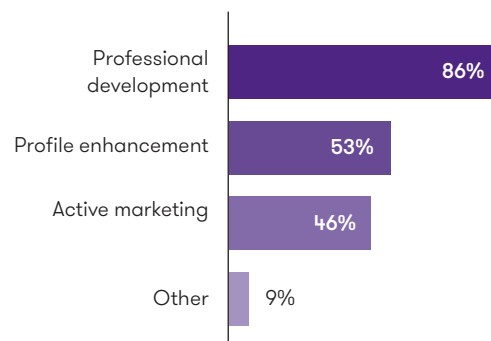
Of those lawyers who had taken active steps, professional development was the preferred approach, followed by profile enhancement and active marketing. This finding is consistent with one discussed later in this report (p19), that family lawyers consider quality of advice to be the most important area in managing relationship property cases. It also suggests practitioners may be more comfortable growing their practices via their own professional development, rather than more market-facing initiatives.

Figure 15: Have steps been taken to increase volume of relationship property work?



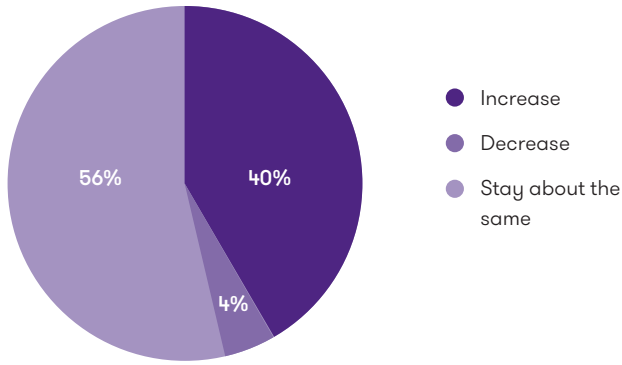
 **69%**
of practitioners had taken no active steps to increase work volumes

Figure 16: What active steps have been taken to increase volumes of relationship property work?

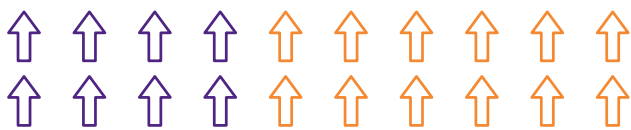


Many relationship property lawyers expect to become even busier over the next two years

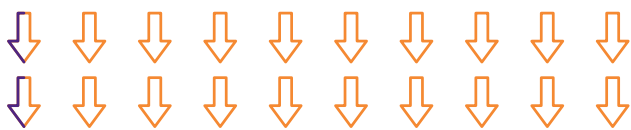
Figure 17: Expected changes in relationship property work volumes in the next two years



40% of family law practitioners consider future volumes of relationship property work will increase over the next two years, and only 4% predict a decrease.



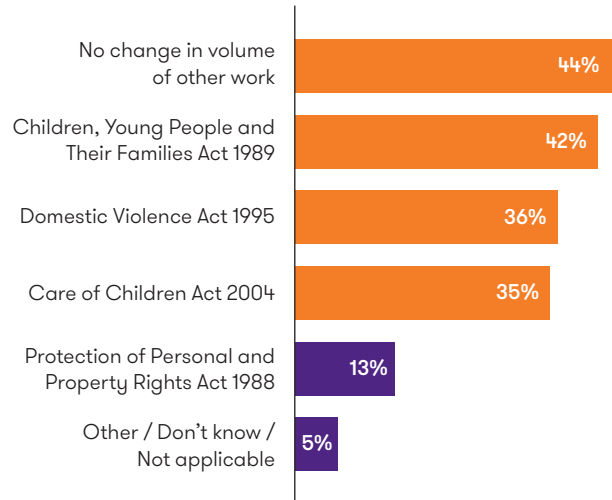
40%
Expect an increase



4%
Predict a decrease

The expected increase in relationship property work means some practitioners think they will need to reduce work volumes in other family law areas

Figure 18: Likely impact on other work as a result of an expected increase in relationship property work



Slightly less than half of those (44%) who expected relationship property work to increase over the next two years did not think this would lead to any changes in the volume of other work they would undertake. This suggests they have current existing capacity, or may hire further people.

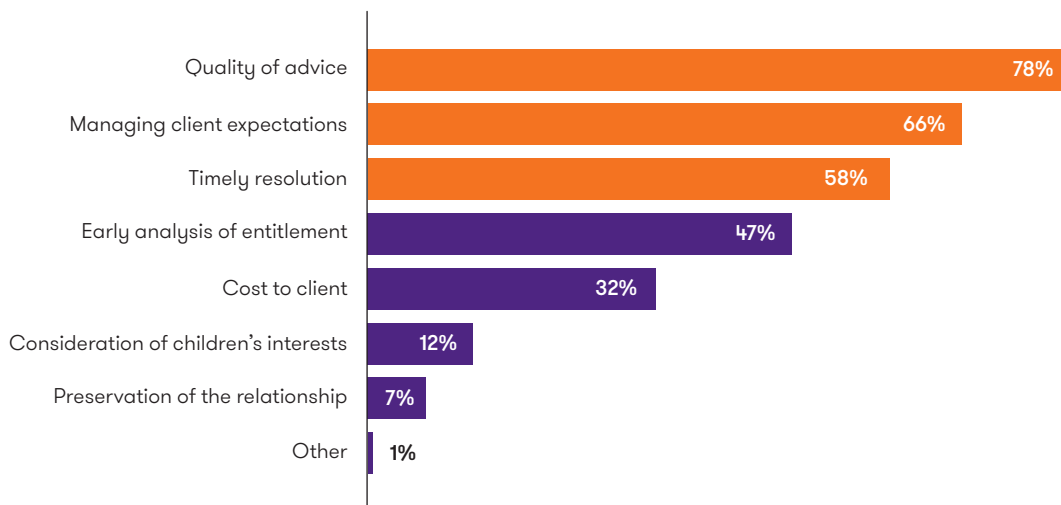
However, just over half (51% if 'other' is also excluded) consider the anticipated increase in relationship property work would impact on their volumes of other work, especially the work they currently undertake in relation to the *Children, Young Persons and Their Families Act 1989* (42%), *Domestic Violence Act 1995* (36%) and *Care of Children Act 2004* (35%).

Quality of advice is considered the most important aspect of managing relationship property cases

Overall, respondents told us that the area they considered most important in managing a relationship property case was *quality of advice* (78%). Understanding the requirement to *manage client expectations* (66%) and achieving a *timely resolution* (58%) also rated highly. Many practitioners also considered *early analysis of entitlement* (47%) to be an important aspect.

Practitioners’ regard for high quality advice is consistent with a finding discussed earlier (p17) – that successful practitioners consider *professional development* to be the most important step to growing their practice. The focus on this area is perhaps unsurprising, given the complex and wide-ranging nature of the expertise that is necessary to best advise clients.

Figure 19: Areas practitioners consider most important in managing relationship property cases



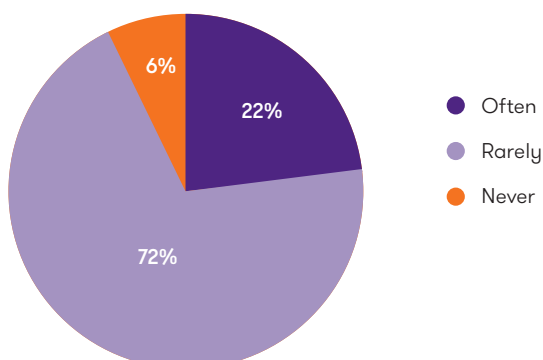
Children’s rights under relationship property proceedings may not be adequately addressed in current practice

It was noticeable that few practitioners (12%) said that consideration of children’s interests were of significant importance in managing relationship property cases. This is consistent with another survey finding, that practitioners felt children were rarely (72%) or never (6%) a focus of proceedings – a result which was generally consistent across New Zealand.

Practitioners’ views on the rights of any children of the relationship might be seen as surprising, given that the Property (Relationships) Act explicitly directs the courts to consider the interests of any children of the relationship.

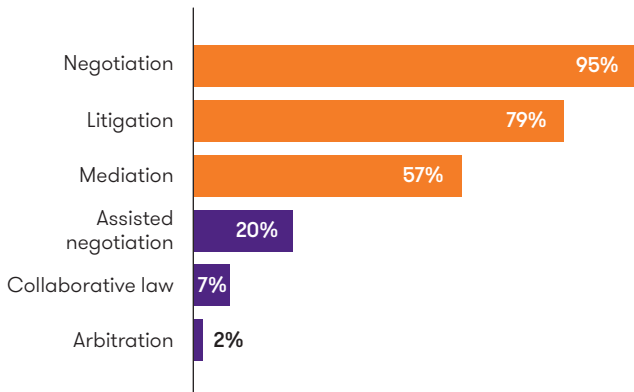
It suggests children’s rights under relationship property proceedings, both property rights (including any beneficial interests) and other rights, may not be adequately addressed in current practice.

Figure 20: In your experience, to what extent are children a focus of relationship property proceedings?



Negotiation and litigation are the methods most commonly used by relationship property practitioners

Figure 21: Settlement methods practitioners use most often in relationship property cases



Despite media commentary suggesting 95% of relationship property matters settle before a court hearing³, litigation remains a very common mechanism to resolve disputes; it has been used by 79% of practitioners in the last two years. This finding indicates that despite widely shared concerns over delays in the Family Court and the courts' use of non-specialist judges as discussed later in this report (p23), following a period of negotiation, practitioners still appear to prefer litigation over other methods such as mediation and arbitration.

The use of mediation is also common; 57% of respondents have used that method, and many practitioners would like to see a formal procedural code for the use of compulsory mediation (akin to Family Dispute Resolution available in Care of Children Act proceedings) and private mediations (see p23).

Practitioners do not yet appear to have embraced collaborative law (7%) or arbitration (2%). Perhaps due to their limited use, neither does there appear to be any appetite for reform in either area – only 7% indicated a desire for a formal procedural code for either method.

Practitioners favour the use of time and cost without cap as a basis for fees

We asked family lawyers about the various approaches they had used as a basis for fees for relationship property matters over the last two years, and which method they used most often.

Most practitioners' preferred approach is *time and cost without cap*, with 78% using that approach and 66% saying it was their preferred method. This finding aligns with practices in law firms generally and in other professional services such as accounting.

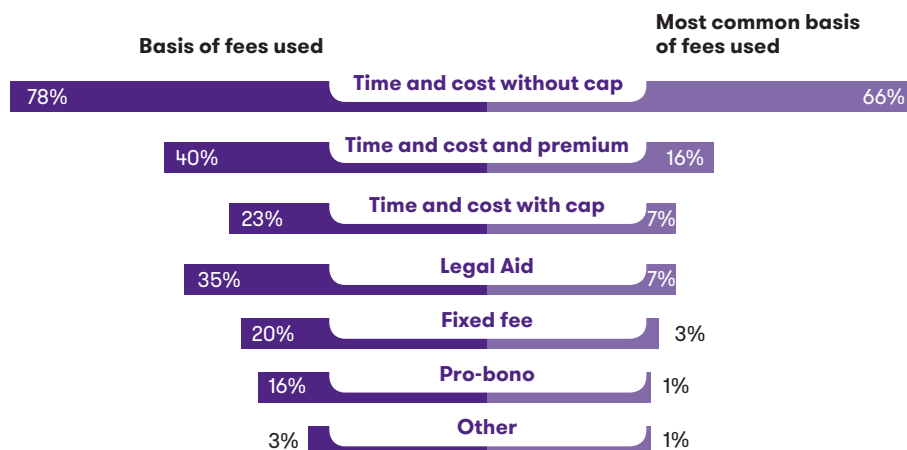
Practitioners also like the *time and cost and premium* method, with 40% having used that approach in the last two years, and 16% using that as their preferred approach.

Some 35% undertook legally aided relationship property work in the last two years. However, those using legal aid funding indicated they did so rarely (62%), a finding generally similar between regions. Only 7% indicated that legally aided work was their most common basis of fees.

Around one in six practitioners provided pro-bono services, with those operating in private practice on their own account being most likely to do so.

The use of contingent fees (included in *other*) does not appear prevalent, with only 2% of practitioners having billed on a contingent basis, and the majority (78%) doing so rarely.

Figure 22: Basis of fees used in relationship property matters



³ www.stuff.co.nz/life-style/home-property/88837125/Do-our-relationship-property-sharing-laws-need-a-radical-shake-up

As shown in Figure 23, lawyers who most frequently work with relationship property pools valued at more than \$5 million appear significantly more likely to use time and cost and premium as a basis for fees.

Legally aided work was most prevalent for practitioners that typically work on property pools valued at \$500,000 or less. Similarly, fixed pricing, used by one fifth of practitioners over

the past two years (see Figure 22), was used mainly for lower value relationship property pools.

Fixed pricing at that level may reflect client budget constraints, but we note that fixed-fee pricing was also commonly used by practitioners advising on property pools valued between \$2.5 million and \$5 million.

Figure 23: Most common billing method relative to most common size of net relationship property pool

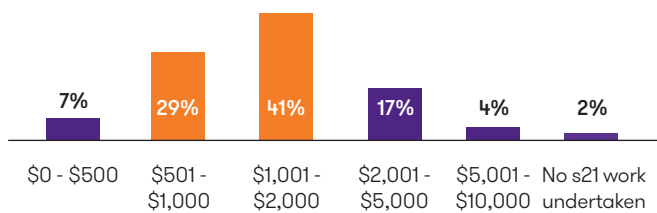
Most common billing method	Total	\$500k	\$500k - \$1 million	\$1m - \$2.5 million	\$2.5m - \$5 million	\$5m - \$10 million	More than \$10 million
	%	%	%	%	%	%	%
Time and cost without cap	66	59	66	74	68	56	75
Time and cost and premium	16	12	19	15	21	33	25
Time and cost with cap	7	6	7	8	-	11	-
Legal aid	7	17	3	1	-	-	-
Fixed fee	3	4	3	1	11	-	-
Pro-bono	1	2	1	1	-	-	-
Other	1	-	1	-	-	-	-
% of respondents	100	30	41	21	5	2	1



Fees for the majority of section 21 contracting out agreements ('the pre-nup') are at the lower end of the spectrum.

We asked family lawyers to indicate the average level of fees they typically render for legal advice on a section 21 contracting out agreement.

Figure 24: Average level of fees rendered for legal advice on a section 21 contracting out agreement



The most common level of fees charged was between \$1,001 and \$2,000 (41%), while nearly a third (29%) charged between \$501 and \$1,000. Around 7% of fees rendered were for less than \$500.

There have been several seminars on the minimum level of advice required for section 21 agreements. To appropriately advise on a section 21 agreement, family lawyers would need to set up a file, forward terms of engagement, meet the client and undertake some level of analysis and information-gathering prior to giving advice.

There would then be reporting to the client, in most cases forwarding the signed and certified agreement to the other lawyer and providing a reporting letter to the client.

This finding suggests there could be practitioners who may be undervaluing the work performed, or exposing themselves to risk in terms of the work undertaken, or that there may be significant discounting taking place. In any subsequent contest (litigation) as to the extent of the section 21 advice, a low fee may well indicate insufficient time was devoted to the exercise, which may have consequences for both client and practitioner.

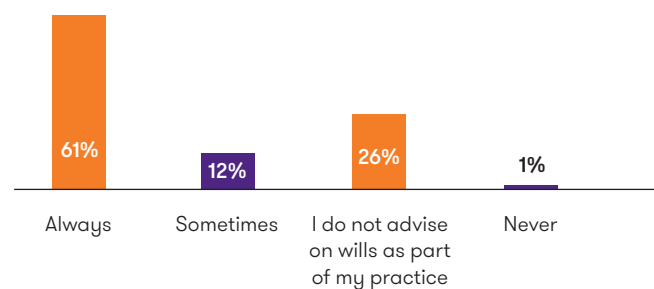
It may be that clients' expectations need to be managed in terms of the work involved in advising on section 21 agreements. People generally pay large sums in annual insurance premiums to protect their assets. A section 21 agreement is, in effect, an insurance policy to protect major assets in the event of a relationship breakdown.

The most common level of fees charged was between \$1,001 and \$2,000 (41%), while nearly a third (29%) charged between \$501 and \$1,000. Around 7% of fees rendered were for less than \$500.

When asked about the frequency with which advice is given on the implications of the Property (Relationships) Act to clients making a will, the majority of family lawyers (61%) responded that they always provided such advice.

Just over a quarter (26%) indicated that they do not advise on wills as part of their practice. This result was generally consistent across New Zealand.

Figure 25: Frequency of relationship property advice given to clients making a will



What we'd like to see

Current problem areas and suggested reform

We asked family lawyers to tell us the three most problematic issues they commonly encounter in their relationship property cases, and to indicate the three reforms they would consider most beneficial in achieving more effective resolution of relationship property matters.

Figure 26: Most problematic areas encountered in relationship property cases

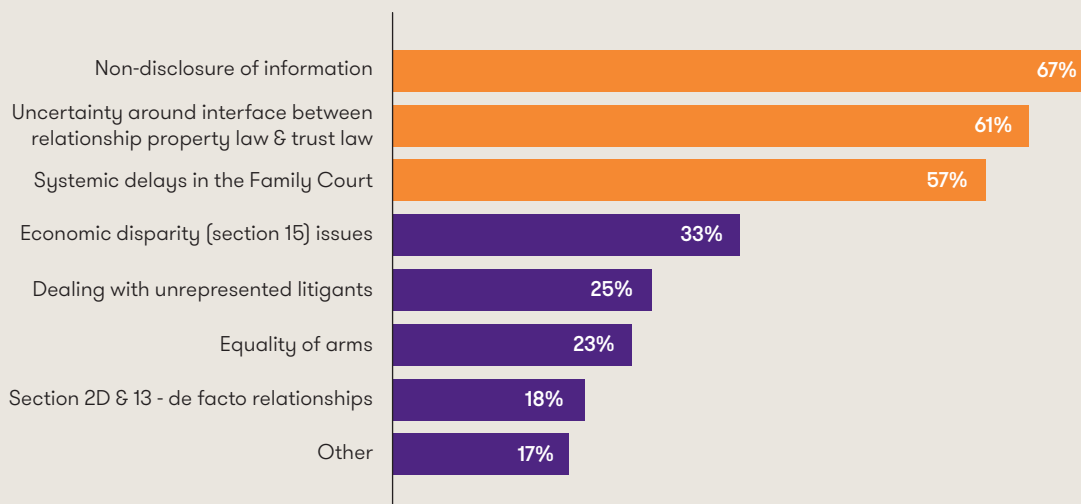
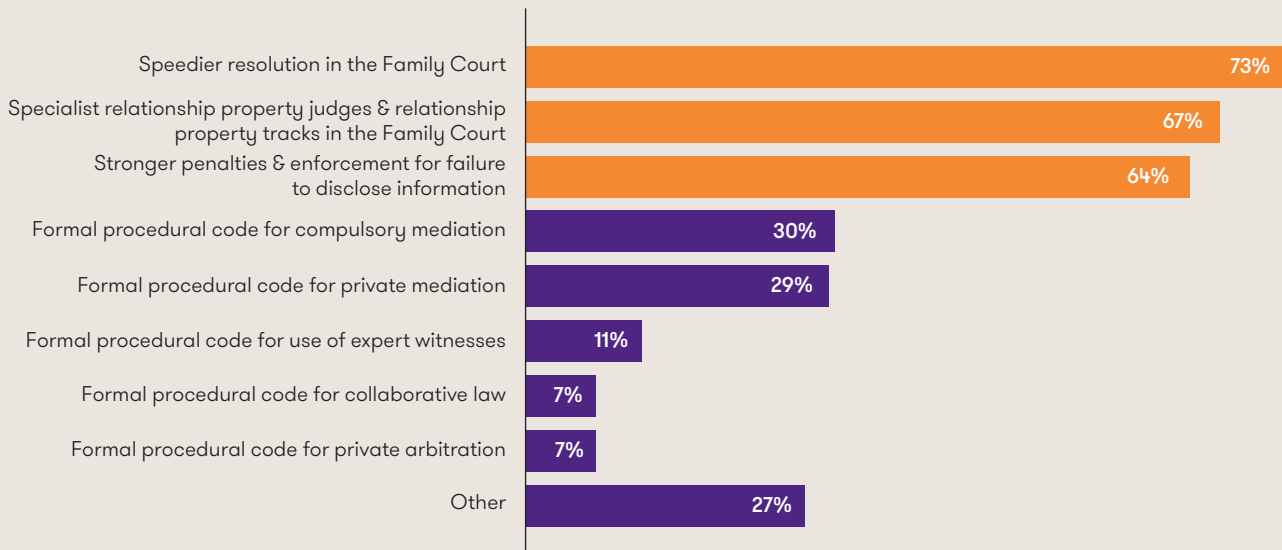


Figure 27: Most beneficial areas of relationship property reform





67%

Non-disclosure of information



61%

Uncertainty around interface between relationship property law and trust law

Practitioners' responses to these questions show that they are most interested in seeing:

- improved information disclosure by the parties
- more efficient resolution of relationship property matters
- greater formality around the use of mediation
- greater certainty around the interface between relationship property law and trust law.

Improved information disclosure by the parties

Practitioners see non-disclosure of information by the parties as the most problematic area (67%) – and see stronger penalties and enforcement for failure to disclose information as the third most beneficial area of relationship property reform.

That contrasts with only two in five participants saying they had made application for disclosure under rules 140 to 141 of the Family Court Rules 2002. This result leads to a question about whether the best use is being made of the tools available, including:

- Rules 140 and 141
- the additional inquiry available in section 38 of the Property (Relationships) Act 1976
- Rules 137 to 139 in relation to getting more information and admissions including interrogatories.

The penalty for refusal to swear an affidavit as directed (which would include affidavits of documents in terms of sections 140, 141 and 143) are detailed at rule 157, and at first glance the consequences as outlined at rule 157 are fairly wide-ranging – from requiring attendance at examination, to costs and contempt in certain circumstances.

The survey responses show there may be real benefit in further education for family lawyers about the various tools and consequences for failure to comply with requests for disclosure. They also suggest that practitioners may be seeking additional tools with more severe and enforced outcomes for parties who fail to disclose information.

More efficient resolution of relationship property matters

Practitioners' responses clearly indicated a desire for more efficient resolution of relationship property matters. They ranked systemic delay in the Family Court as the third most problematic area, and speedier resolution in the Family Court, along with specialist relationship property judges and relationship property tracks in the Family Court, as the most important areas for reform.

The desire to see specialist relationship property judges and relationship property tracks contrasts with the recent trend of the Ministry of Justice to move away from specialisation in the Family Court registry. One such example is the recent move from court staff who specialised in one area of law, and who would deal with all matters in that jurisdiction, to staff dealing with matters for all jurisdictions.

Greater formality around the use of mediation

A finding discussed earlier in this report (p20) was that practitioners commonly use mediation to resolve relationship property matters. However, it appears many may prefer greater formality around the mediation process, with formal procedural codes for both compulsory mediation (akin to Family Dispute Resolution available in Care of Children Act proceedings) and private mediations seen as the fourth and fifth most important areas of reform.

Greater certainty around the interface between relationship property law and trust law

Practitioners find uncertainty around the interface between relationship property law and trust law to be the second most problematic area in practice. Since it is not strictly a relationship property issue, trust law reform was not included on the explicit list of reforms in the questionnaire – but a significant proportion commented on this area in their response. We suspect that had trust law reform been included on the explicit list, it would have scored highly as a preferred area of reform.

In particular, the comments provided indicate that relationship property lawyers may consider any trust law reforms as unsuccessful if they do not have sufficient regard to the interface or overlay with relationship property law.

Other suggested reforms

The survey gave respondents an opportunity to offer their own suggestions for proposed reform. Many elaborated further on some of the reforms explicitly listed, but other potential reforms emerging were:

- consideration of whether equal sharing is the correct starting point in the legislation
- closer alignment of relationship property law to care of children arrangements

- a mechanism to deal with low value disputes (such as a Disputes Tribunal equivalent)
- upskilling and introduction of minimum competence standards for relationship property lawyers
- improvement to the affidavit of assets and liabilities
- a uniform procedural code for section 21 agreements (including process and information disclosure).



Using forensic accountants

We asked family lawyers to tell us how they use forensic accountants in resolving relationship property matters – including frequency of use, the form of appointment, topics on which they are commonly instructed, and the important attributes required of a forensic accountant.

Figure 28: Instructed a forensic accountant in the last two years?

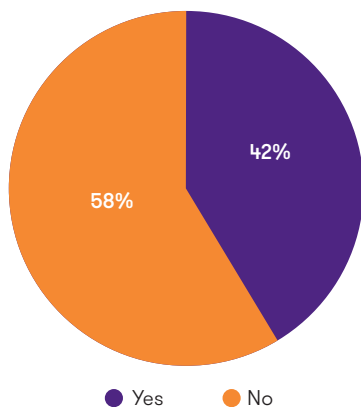
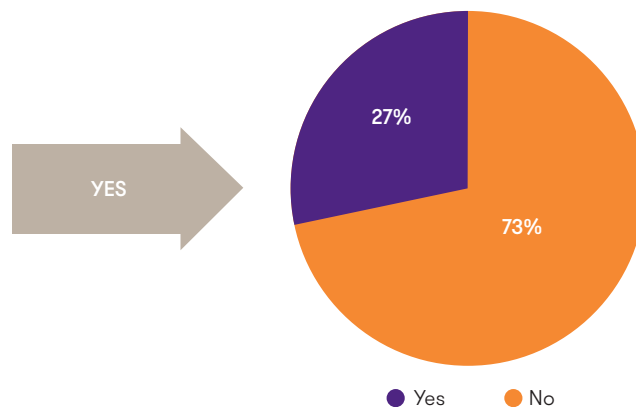


Figure 29: Single joint expert instructed for both parties?



The use of forensic accountants in relationship property is common

In the last two years, 42% of practitioners have instructed a forensic accountant. Those most likely to have appointed a forensic accountant are those providing advice on property pools in excess of \$2.5 million (at least 60% of the time).

Practitioners' use of forensic accountants also tends to increase as their relationship property experience grows. 33% of those with up to 10 years' experience, but 51% of those with more than 25 years' experience, have appointed a forensic accountant in the last two years. This may be explained, in part, by the higher value relationship property pools more experienced lawyers tend to advise on. It may also be due to lawyers, over time, becoming more comfortable with working closely with forensic accountants.

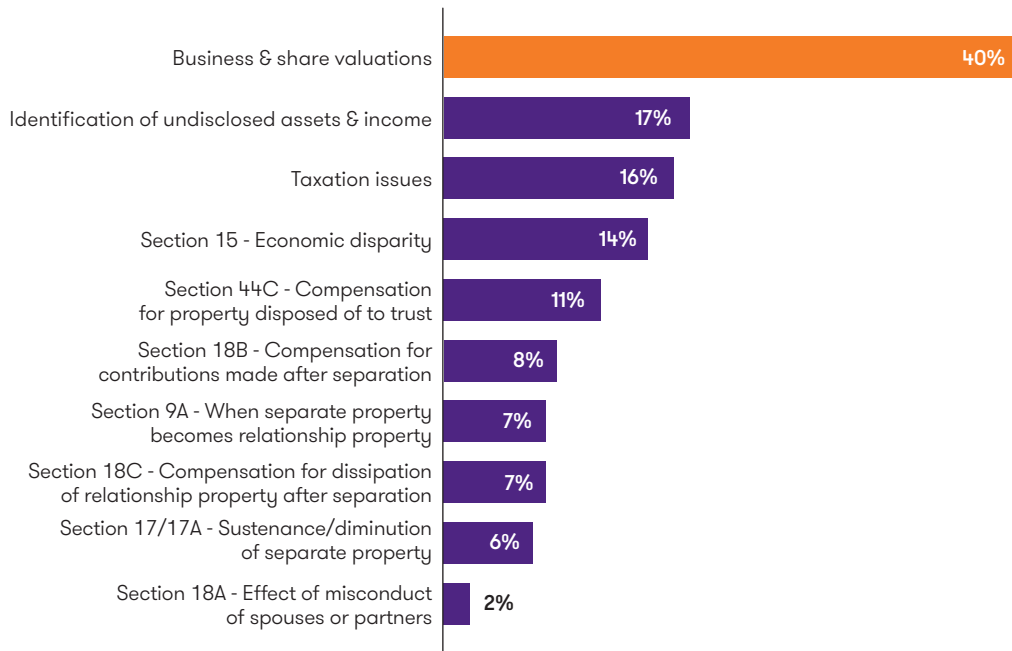
Practitioners usually appoint an expert on behalf of their own client rather than jointly

Of those who had instructed a forensic accountant, most (73%) followed the traditional form of each party appointing their own expert. However, 27% had jointly appointed an expert accountant on behalf of both parties, ie, a Single Joint Expert (SJE).

Practitioners showed little appetite for a formal procedural code for the use of expert witnesses, possibly suggesting existing High Court Rules and the regulatory standards of professional organisations such as Chartered Accountants Australia and New Zealand are sufficient. Those wanting to appoint a SJE might instead look to the United Kingdom for guidance, where Family Procedure Rules 2010 set out a broad procedural framework relating to SJE appointment.

The most common instruction to forensic accountants is for share and business valuations

Figure 30: Most common instructions to forensic accountants



We asked relationship property lawyers to indicate their most common instructions to forensic accountants over the last two years.

New Zealand’s economy is characterised by many small to medium-sized owner-operated businesses, so it is unsurprising that *business and share valuations* were easily the most common instruction to forensic accountants (40%).

The *identification of undisclosed assets and income* (17%) was also a common instruction. If recent experiences in the United Kingdom (UK) are anything to go by, the basis for these instructions may be justified. In their 2014 matrimonial property survey, Grant Thornton UK reported that 94% of UK family lawyers have had cases in the last five years where significant

concealed or missing assets were discovered. 55% said such assets were revealed in one in 10 cases, and 25% said that one in five of their cases uncovered significant concealed assets.

Practitioners in New Zealand said they use forensic accountants far less frequently in relation to the Act’s compensatory sections, including sections 9(a), 44(c), 17, 18, and 15. Given the complex nature of the financial exercise often required to prove an amount under those sections, this finding may indicate these sections are not being used as much as may have been initially intended by policy makers. It may be helpful to include a question about practitioners’ use of these sections in the next survey edition.

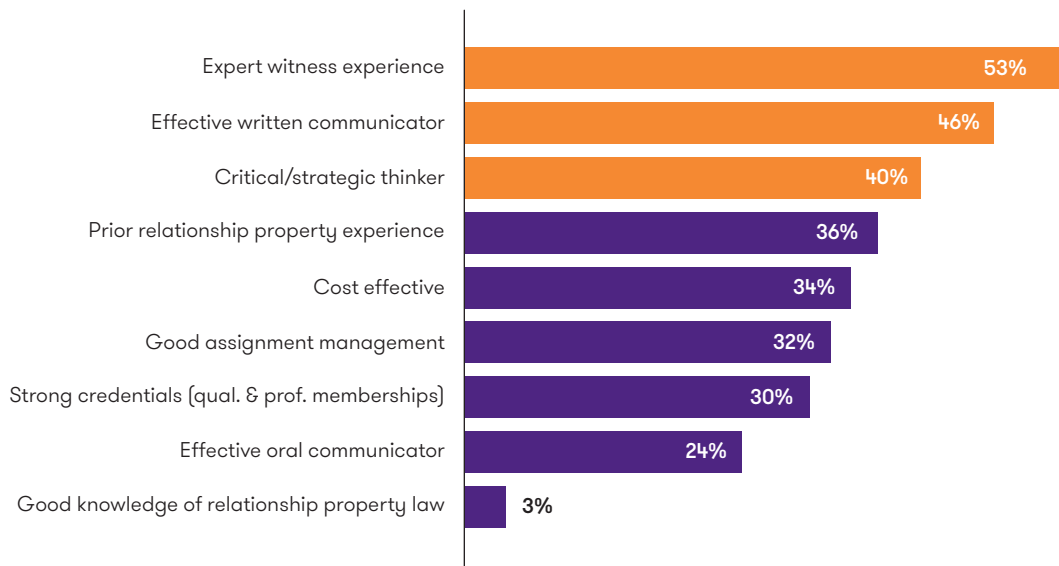


40%
Business and share valuations

Relationship property lawyers like forensic accountants to have expert witness experience

We asked practitioners to rank the most important attributes of a forensic accountant in relationship property matters:

Figure 31: Important attributes possessed by a forensic accountant



Practitioners consider a strong forensic accountant to be one who is able to apply critical thinking (40%) in preparing effective written reports and evidence (46%) but who, above all, has experience of defending their report as an expert witness in court (53%). Or as one respondent said: “...they need to know their stuff - get the valuation right and stand up for it”.

As almost all relationship property proceedings settle before a formal hearing, an ongoing challenge for forensic accountants is gaining the expert witness experience that practitioners prefer. However, the implication is clear – if the case should end up in court, practitioners like experts who are comfortable with a detailed examination of their work, and will not buckle under the first challenge made to it.

Relationship property lawyers prefer their forensic accountant to have prior relationship property experience (36%) but do

“...they need to know their stuff - get the valuation right and stand up for it”.

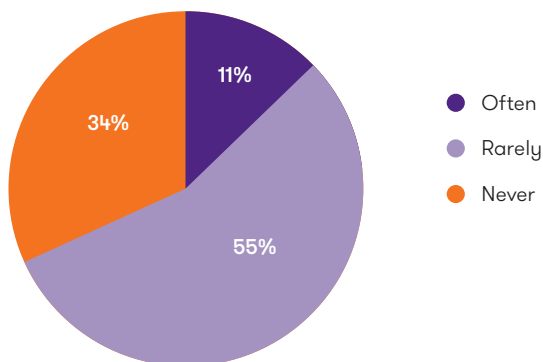
not require the expert to have a good knowledge of relationship property law (3%). This is interesting, as family lawyers will be aware that some instructions, such as section 15 calculations, cannot be undertaken without a good understanding of the relevant law and precedent.

What relationship property lawyers are possibly suggesting here is, as one practitioner succinctly put it, that the forensic accountant needs to “be an accountant not a lawyer”.

The award of costs

Lawyers were asked how often they obtained costs at the conclusion of a hearing in the Family Court.

Figure 32: Frequency costs are obtained at the conclusion of a hearing



Over half (55%) indicated they rarely obtained costs, with a further 34% saying they had never obtained costs at the conclusion of a Family Court hearing.

Of those practitioners who have *often* or *rarely* obtained costs at the conclusion of a hearing (66% of practitioners):

- a majority (56%) indicated *scale* costs were ordered, with the remainder (44%) indicating that costs awarded were at the court's *discretion*
- a majority (58%) indicated that if an offer was made (such as a Calderbank Offer – i.e. an offer without prejudice save as to costs), that had no impact on costs obtained.



55%

rarely obtained costs



34%

never obtained costs

Survey responses by region

(Note: Tables may contain minor rounding differences)	Total	Northland	Auckland	Waikato	Bay of Plenty	Central North Is. Taranaki & Whanganui	Gisborne & Hawkes Bay	Manawatu, Wairarapa, Horowhenua	Wellington	West Coast & Nelson	Marlborough	Canterbury	Otago	Southland
Total respondents	369	10	110	32	26	14	15	14	37	21	10	53	17	10
	%	%	%	%	%	%	%	%	%	%	%	%	%	%
Q1 What gender do you identify with?														
Male	33	20	42	38	23	7	27	29	22	33	30	42	18	30
Female	66	80	56	59	77	93	73	64	78	67	60	59	82	70
Prefer not to say	1	-	2	3	-	-	-	7	-	-	10	-	-	-
Q4 Are you...?														
In private practice on own account as barrister & solicitor	19	40	21	16	27	14	13	36	11	38	20	11	12	10
In private practice with others [partner/director]	32	20	24	34	39	64	47	21	30	33	40	32	29	60
Employed as barrister/solicitor	32	20	27	28	27	21	27	36	41	29	40	43	35	30
A barrister sole	17	20	28	22	8	-	13	7	19	-	-	13	24	-
Q5 How many years have you been practising as a family lawyer?														
Up to 5 years	13	10	13	19	15	7	-	7	8	10	30	21	12	10
6 to 10 years	16	30	14	22	19	21	7	14	22	10	10	13	18	30
11 to 15 years	15	20	16	9	23	14	13	36	24	-	-	6	24	10
16 to 25 years	23	10	22	19	19	29	33	29	19	43	30	21	18	30
More than 25 years	33	30	36	31	23	29	47	14	27	38	30	40	29	20
Q6 What percentage of your own current work consists of family law work?														
Up to 15%	10	20	11	-	8	-	13	21	11	5	20	15	12	-
16 to 25%	11	-	12	9	15	7	-	7	11	14	30	8	6	30
26 to 50%	11	-	8	13	4	14	7	21	3	10	10	23	18	10
51 to 75%	16	20	13	25	15	21	40	7	11	29	20	6	12	50
76 to 99%	27	20	24	47	46	57	20	21	24	19	20	23	18	10
100%	25	40	33	6	12	-	20	21	41	24	-	26	35	-
Q7 What percentage of your family law work is relationship property work?														
Up to 15%	15	40	11	9	19	7	27	29	14	24	10	15	12	10
16 to 25%	17	20	12	22	15	14	47	36	24	10	20	11	12	-
26 to 50%	21	10	22	16	23	43	27	14	22	24	20	17	18	40
51 to 75%	23	10	26	28	19	29	-	7	24	19	10	26	35	20
76 to 99%	18	10	22	25	15	7	-	7	11	19	20	26	24	10
100%	6	10	8	-	8	-	-	7	5	5	20	4	-	20

(Note: Tables may contain minor rounding differences)	Total	Northland	Auckland	Waikato	Bay of Plenty	Central North Is. Taranaki & Whanganui	Gisborne & Hawkes Bay	Manawatu, Wairarapa, Horowhenua	Wellington	West Coast & Nelson	Marlborough	Canterbury	Otago	Southland
Total respondents	369	10	110	32	26	14	15	14	37	21	10	53	17	10
	%	%	%	%	%	%	%	%	%	%	%	%	%	%
Q8 In the last 2 years, has your volume of relationship property work...														
Increased	49	40	53	56	42	50	40	36	54	52	30	55	29	40
Decreased	5	10	4	13	8	-	-	14	3	-	10	2	12	-
Stayed about the same	46	50	44	31	50	50	60	50	43	48	60	43	59	60
Q9 In the next 2 years, do you anticipate the volume of your existing relationship property work will...														
Increase	40	40	45	47	50	43	27	29	30	38	10	38	29	90
Decrease	4	10	2	3	-	-	7	21	5	-	10	4	6	-
Stay about the same	56	50	54	50	50	57	67	50	65	62	80	59	65	10
Q10 As a result of the increased volume, what work do you intend to do less of? Please select all that apply.														
No change in volume of other work	44	25	41	53	31	50	50	75	27	38	-	35	80	89
Children Young Persons and Their Families Act 1989	42	50	41	40	39	17	25	25	64	63	100	55	20	11
Domestic Violence Act 1995	36	25	33	33	39	50	50	25	46	75	100	40	20	-
Care of Children Act 2004	35	25	37	20	46	33	50	-	73	50	100	35	-	-
Protection of Personal and Property Rights Act 1988	13	25	20	7	8	-	-	-	9	25	100	15	-	-
Other	5	25	6	-	-	-	-	-	-	13	100	-	-	11
Q11 (In the last 2 years, have you taken steps to increase the volume of your relationship property work?)+Q12 (What steps did you take? Please select all that apply.)														
Have not taken steps	69	70	69	69	58	86	87	71	62	86	90	70	41	50
Professional development	27	30	25	28	35	14	13	29	32	14	10	25	59	40
Profile enhancement	17	20	16	13	15	7	-	21	22	-	10	19	35	40
Active marketing	14	-	16	19	15	7	-	7	16	5	-	17	35	20
Other	3	-	3	-	8	-	7	-	5	10	-	4	-	-
Q13 Which of the following methods have you used in relationship property matters in the last 2 years? Please select all that apply.														
Negotiation	95	90	93	100	100	86	100	93	97	100	100	94	94	90
Litigation	79	70	85	84	81	79	67	64	78	91	90	76	77	50
Mediation	57	50	65	63	58	79	33	71	62	33	60	49	29	60
Assisted negotiation	20	40	21	13	31	43	13	29	11	24	-	21	6	30
Collaborative law	7	10	13	3	8	-	7	7	5	-	-	2	6	10
Arbitration	2	-	4	6	-	-	-	-	-	-	-	-	-	-

(Note: Tables may contain minor rounding differences)	Total	Northland	Auckland	Waikato	Bay of Plenty	Central North Is. Taranaki & Whanganui	Gisborne & Hawkes Bay	Manawatu, Wairarapa, Horowhenua	Wellington	West Coast & Nelson	Marlborough	Canterbury	Otago	Southland
Total respondents	369	10	110	32	26	14	15	14	37	21	10	53	17	10
	%	%	%	%	%	%	%	%	%	%	%	%	%	%
Q14 In the last 2 years, which of the following have you used to bill relationship property clients? Please select all that apply.														
Time and cost without cap	78	70	79	78	77	50	73	79	78	81	80	83	82	60
Time and cost and premium	40	30	34	31	50	50	40	50	30	29	60	49	53	60
Time and cost with cap	23	10	16	25	19	29	20	14	27	19	30	26	29	70
Legal aid	35	10	18	53	58	71	60	36	27	48	30	38	29	50
Fixed fee	20	20	18	22	12	50	13	21	19	14	10	23	24	30
Pro-bono	16	10	12	25	19	21	20	14	24	5	10	13	18	20
Other	3	-	5	6	-	7	7	-	8	-	-	-	6	-
Q15 And which one do you most commonly use?														
Time and cost without cap	66	70	70	69	54	43	53	64	70	67	80	66	65	50
Time and cost and premium	16	10	17	19	23	21	20	7	11	10	10	17	18	20
Time and cost with cap	7	10	6	6	8	7	-	7	5	5	10	8	12	10
Legal aid	7	-	3	6	12	21	13	14	5	10	-	9	6	-
Fixed fee	3	-	3	-	-	7	7	7	3	10	-	-	-	20
Pro-bono	1	10	1	-	4	-	-	-	3	-	-	-	-	-
Other	1	-	-	-	-	-	7	-	3	-	-	-	-	-
Q14+Q16 (Where you have charged fees for relationship property on a contingency basis, have you undertaken that...)														
Often	1	-	1	-	-	7	-	-	-	-	-	-	-	-
Rarely	2	-	3	6	-	-	-	-	5	-	-	-	-	-
Have not used past 2 years	97	100	96	94	100	93	100	100	95	100	100	100	100	100
Q14+Q17 (Where you have charged fees for relationship property on a legal aid basis, have you undertaken that...)														
Often	13	-	8	25	19	36	20	14	5	14	10	15	-	30
Rarely	21	10	9	28	39	29	40	21	22	33	20	23	29	20
Have not used past 2 years	66	90	83	47	42	36	40	64	73	52	70	62	71	50

(Note: Tables may contain minor rounding differences)	Total	Northland	Auckland	Waikato	Bay of Plenty	Central North Is. Taranaki & Whanganui	Gisborne & Hawkes Bay	Manawatu, Wairarapa, Horowhenua	Wellington	West Coast & Nelson	Marlborough	Canterbury	Otago	Southland
Total respondents	369	10	110	32	26	14	15	14	37	21	10	53	17	10
	%	%	%	%	%	%	%	%	%	%	%	%	%	%
Q18 What average level of fees do you typically render for legal advice on a section 21 contracting out agreement (exclusive of GST and disbursements)?														
\$0 to \$500	7	10	2	3	4	7	13	7	5	19	10	9	6	20
\$501 to \$1,000	29	10	20	25	31	21	53	36	19	33	40	47	41	20
\$1,001 to \$2,000	41	60	43	41	50	50	20	50	46	43	40	36	24	30
\$2,001 to \$5,000	17	-	26	19	15	7	13	7	27	-	10	8	24	30
\$5,001 to \$10,000	4	10	7	13	-	-	-	-	-	5	-	-	6	-
No section 21 work undertaken	2	10	3	-	-	14	-	-	3	-	-	-	-	-
Q19 Please select the three most common reasons you have seen for separation in the last 2 years.														
Growing apart/out of love	67	30	62	78	65	64	73	57	84	52	70	66	88	80
Extra marital affair	52	30	55	50	31	57	53	36	54	67	50	57	53	50
Domestic abuse	33	70	26	28	50	43	47	36	24	57	40	25	29	20
Alcohol/substance abuse	30	60	31	31	35	29	33	36	24	33	30	23	24	30
Unreasonable behaviour	28	30	32	31	23	7	13	36	32	24	20	28	29	10
Financial/money worries	24	50	23	25	27	36	33	36	14	14	40	23	18	20
Family strains	22	-	20	28	31	21	20	7	27	29	-	23	24	50
Mid-life crisis	18	10	23	9	15	14	0	29	16	10	10	25	24	20
Stress	11	20	13	9	12	14	13	14	5	5	10	13	6	10
Business problems	6	-	7	3	4	14	13	-	3	5	10	8	6	10
Other	8	-	9	6	8	-	-	14	16	5	20	11	-	-
Q20 And what is the most frequent duration of marriage / relationship you have experienced in relationship property matters over the last 2 years?														
0 to 9 years	33	10	33	25	27	14	40	36	38	24	40	43	41	50
10 to 19 years	60	80	59	69	62	71	53	57	60	76	60	51	53	30
20 to 29 years	5	10	6	3	8	14	7	7	3	-	-	4	6	10
More than 30 years	2	-	3	3	4	-	-	-	-	-	-	2	-	10
Q21 What is the age range you have most frequently acted for in relationship property matters over the last two years?														
Less than 30	2	10	1	-	-	-	-	-	5	-	-	2	6	10
30 to 39	22	20	16	34	15	14	27	36	22	33	30	25	12	40
40 to 49	62	60	67	56	54	86	53	57	65	52	70	59	71	20
More than 50	14	10	15	9	31	-	20	7	8	14	-	15	12	30

(Note: Tables may contain minor rounding differences)	Total	Northland	Auckland	Waikato	Bay of Plenty	Central North Is. Taranaki & Whanganui	Gisborne & Hawkes Bay	Manawatu, Wairarapa, Horowhenua	Wellington	West Coast & Nelson	Marlborough	Canterbury	Otago	Southland
Total respondents	369	10	110	32	26	14	15	14	37	21	10	53	17	10
	%	%	%	%	%	%	%	%	%	%	%	%	%	%
Q22 Have you seen a change in the age of people you act for getting separated?														
Yes, it has increased	24	20	26	22	27	21	20	14	27	24	30	21	18	20
Yes, it has decreased	11	10	11	19	0	7	7	-	11	10	10	13	6	30
No, it has stayed about the same	66	70	63	59	73	71	73	86	62	67	60	66	77	50
Q23 Are you seeing an increase in people aged 50+ separating?														
Yes	60	60	59	69	85	71	53	57	46	62	70	60	41	60
No	40	40	41	31	15	29	47	43	54	38	30	40	59	40
Q24 Are you seeing an increase in people aged 50+ seeking advice in relation to section 21 contracting out agreements?														
Yes	66	60	60	78	89	71	80	57	65	67	70	60	47	80
No	34	40	40	22	12	29	20	43	35	33	30	40	53	20
Q25 Please select which of the following bands for net relationship property pool (including related trusts) you have provided advice on in the past 2 years. Please select all that apply.														
\$500k	76	80	56	88	92	93	93	71	78	95	100	81	77	80
\$500k to \$1 million	79	80	72	81	81	79	73	71	84	86	90	91	77	70
\$1m to \$2.5 million	67	40	78	66	73	86	53	43	60	62	70	70	53	50
\$2.5m to \$5 million	36	20	48	34	35	29	40	14	24	43	10	28	47	20
\$5m to \$10 million	20	20	28	28	15	7	7	-	11	14	10	19	24	20
More than \$10 million	14	10	21	16	12	7	-	-	11	5	-	13	29	20
Q26 And which is the most common net relationship property pool band you have provided advice on?														
\$500k	30	40	6	28	31	43	67	50	35	33	60	43	29	60
\$500k to \$1 million	41	50	35	47	50	43	33	43	51	62	40	34	35	20
\$1m to \$2.5 million	21	-	42	16	19	14	-	7	8	5	-	19	18	10
\$2.5m to \$5 million	5	10	11	3	-	-	-	-	3	-	-	2	12	10
\$5m to \$10 million	2	-	5	3	-	-	-	-	3	-	-	2	6	-
More than \$10 million	1	-	3	3	-	-	-	-	-	-	-	-	-	-
Q27 Have you obtained costs at the conclusion of a hearing in the Family Court?														
Often	11	20	16	28	4	7	-	-	14	5	10	6	-	-
Rarely	55	40	59	53	54	64	60	29	54	57	30	55	65	60
Never	34	40	26	19	42	29	40	71	32	38	60	40	35	40

(Note: Tables may contain minor rounding differences)	Total	Northland	Auckland	Waikato	Bay of Plenty	Central North Is. Taranaki & Whanganui	Gisborne & Hawkes Bay	Manawatu, Wairarapa, Horowhenua	Wellington	West Coast & Nelson	Marlborough	Canterbury	Otago	Southland
Total respondents	369	10	110	32	26	14	15	14	37	21	10	53	17	10
	%	%	%	%	%	%	%	%	%	%	%	%	%	%
Q27+Q28 (And what costs are most frequently ordered?)														
Scale costs	37	30	41	56	15	43	20	7	54	33	30	28	41	30
Court's discretion	29	30	33	25	42	29	40	21	14	29	10	32	24	30
Other	0	-	1	-	-	-	-	-	-	-	-	-	-	-
Never	34	40	26	19	42	29	40	71	32	38	60	40	35	40
Q27+Q29 (If an offer was made (such as a Calderbank Offer – i.e. an offer without prejudice save as to costs) did that have any impact on costs obtained?)														
Yes	28	40	26	31	23	36	-	7	41	33	10	34	24	30
No	38	20	49	50	35	36	60	21	27	29	30	26	41	30
Never	34	40	26	19	42	29	40	71	32	38	60	40	35	40
Q30 In the last 2 years, have you instructed a forensic accountant?														
Yes	42	30	57	56	31	29	13	14	38	29	70	38	47	10
No	58	70	43	44	69	71	87	86	62	71	30	62	53	90
Q30+Q31 (Please select the areas in which you have instructed a forensic accountant over the last 2 years.)														
Business and share valuations	40	20	55	56	27	29	13	14	38	29	70	34	47	10
Undisclosed assets and income	17	10	23	19	12	29	13	7	5	19	10	13	29	10
Taxation issues	16	-	19	22	19	14	-	-	11	10	40	19	24	10
Section 15	14	10	26	25	4	7	-	-	14	5	20	8	12	-
Section 44C	11	-	15	19	15	14	7	-	5	-	-	9	18	10
Section 18B	8	-	9	19	8	-	-	-	5	10	-	11	12	-
Section 9A	7	-	11	13	8	-	-	-	5	5	-	4	18	10
Section 18C	7	-	13	9	8	7	-	-	3	10	-	6	6	-
Section 17/17A	6	-	10	13	8	-	-	-	3	-	-	6	12	-
Section 18A	2	-	3	6	-	-	-	-	3	-	-	2	6	-
Q30+Q32 (In the last 2 years, have you been involved in any engagements where a single forensic accountant was instructed on behalf of both parties (as opposed to each party appointing their own expert)?)														
Instructed for both parties	11	-	13	25	12	14	-	7	11	19	10	4	18	-
Instructed for one party	31	30	45	31	19	14	13	7	27	10	60	34	29	10
Did not instruct	58	70	43	44	69	71	87	86	62	71	30	62	53	90

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Total respondents	369	10	110	32	26	14	15	14	37	21	10	53	17	10
	%	%	%	%	%	%	%	%	%	%	%	%	%	%
Q33 Please indicate the three most important attributes that a forensic accountant needs to possess in relationship property matters.														
Expert witness experience	53	60	53	59	65	57	73	57	49	33	60	42	71	40
Effective written communicator	46	20	44	47	42	36	20	36	54	57	30	62	41	40
Critical/strategic thinker	40	30	45	25	58	50	27	64	14	43	80	42	24	40
Prior RP experience	36	30	42	44	12	29	20	36	49	33	40	32	47	20
Cost effective	34	30	26	44	39	29	40	36	32	52	40	26	41	80
Good assignment management	32	50	27	34	42	36	40	29	30	29	20	38	29	30
Strong credentials	30	10	26	25	31	29	60	29	49	33	20	32	18	20
Effective oral communicator	24	50	31	19	12	29	7	14	19	14	10	26	29	30
Good knowledge of RP law	3	10	6	3	-	7	7	-	-	5	-	-	-	-
Other	2	10	2	-	-	-	7	-	5	-	-	-	-	-
Q34 What are the top three areas that you consider important in managing a relationship property case?														
Quality of advice	78	60	76	81	77	71	53	93	95	86	100	72	71	80
Managing client expectations	66	40	70	78	73	79	67	79	54	48	40	72	59	60
Timely resolution	58	50	57	47	42	57	73	57	68	52	80	64	59	50
Early analysis of entitlement	47	50	49	50	54	43	53	14	35	52	40	49	53	40
Cost to client	32	50	33	34	27	29	20	43	30	33	30	30	35	30
Children's interests	12	40	10	9	15	14	13	7	14	19	-	6	18	20
Preservation of the relationship	7	10	6	-	12	7	20	-	3	10	10	8	6	10
Other	1	-	-	-	-	-	-	7	3	-	-	-	-	10
Q35 Please select the top three problematic issues that you most commonly encounter in your relationship property cases.														
Non-disclosure of information	67	50	72	78	77	36	73	50	65	67	60	57	77	80
Uncertainty around interface between RP and trust law	61	50	65	75	54	57	53	64	51	67	90	51	59	70
Systemic delay in Family Court	57	80	68	66	50	79	53	36	46	52	20	49	59	50
Economic disparity issues	33	60	34	28	39	21	47	21	57	29	10	25	18	10
Unrepresented litigants	25	30	21	9	27	43	40	29	24	19	10	40	18	30
Equality of arms	23	10	16	19	31	29	-	50	27	19	60	30	35	10
Sections 2D and 13	18	10	12	16	12	29	7	29	16	33	30	26	12	40
Other	17	10	14	9	12	7	27	28	19	14	30	23	24	10

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Total respondents	369	10	110	32	26	14	15	14	37	21	10	53	17	10
	%	%	%	%	%	%	%	%	%	%	%	%	%	%
Q36 Of the following, please select three of the following reforms that you consider would be most beneficial in achieving effective resolution of relationship property matters (compared to current practice).														
Speedier resolution in Family Court	73	90	76	78	69	64	47	86	78	67	80	70	82	60
Specialist RP judges/RP tracks in Family Court	67	70	76	72	65	71	33	57	54	52	70	68	77	60
Stronger penalties and enforcement for non-disclosure	64	70	74	53	73	64	53	50	70	57	50	53	53	70
Formal procedural code for private mediation	29	30	19	31	31	14	40	36	30	29	40	42	18	60
Formal procedural code for compulsory mediation	30	20	18	34	31	29	73	50	19	48	30	38	29	20
Formal procedural code for use of expert witnesses	11	-	7	9	15	29	20	7	22	14	-	9	6	10
Formal procedural code for collaborative law	7	10	13	-	-	14	7	14	3	10	-	4	-	10
Formal procedural code for private arbitration	7	-	7	13	-	7	13	-	8	14	10	2	-	10
Other	27	20	23	19	31	14	27	-	32	19	40	30	71	-
Q37 In your experience, to what extent are children a focus of relationship property proceedings?														
Often	22	20	29	22	12	21	7	7	16	24	40	23	24	30
Rarely	72	50	66	75	89	71	87	71	78	67	60	74	71	70
Never	6	30	5	3	-	7	7	21	5	10	-	4	6	-
Q38 Do you advise clients when making a will on the implications of the Property (Relationships) Act 1976?														
Always	61	80	58	53	73	64	80	50	65	52	90	53	53	90
Sometimes	12	10	7	13	8	29	7	21	8	19	-	21	18	10
Never	1	-	1	3	-	-	-	-	-	-	-	-	-	-
I do not advise on wills	26	10	34	31	19	7	13	29	27	29	10	26	29	-
Q39 In the last 2 years, have you made application under rules 140 -141 of the Family Court Rules 2002 for the purpose of obtaining disclosure of information?														
Yes	41	50	56	56	35	71	27	7	32	29	20	30	29	20
No	59	50	45	44	65	29	73	93	68	71	80	70	71	80



About the Family Law Section

The Family Law Section of the New Zealand Law Society has responsibility in all areas of family law. It has a strong, active voice in relation to such issues as Family Courts management, the independence of the Family Court, the practise of lawyer for child and other court-appointed counsel and education for family lawyers. It prepares all submissions on behalf of the Law Society in respect of the family law jurisdiction.

The Law Society established a family law committee in 1987 to advise it on matters relating to family law and the Family Court. In 1996, the committee put a proposal to the Law Society that a Family Law Section be formed to raise the profile of family law within the profession and to recognise the advancements for family lawyers.

The Law Society saw the establishment of the Family Law Section as an important development that would provide an opportunity for a greater flow of information about family law issues among members who could be directly involved in Family Law Section activities.

Currently, the Family Law Section represents the interests of approximately 1,000 members comprising family law practitioners, Family Court Judges, retired members of the judiciary and academics whose primary area of interest and expertise is family law.

From its membership, the Family Law Section has an executive committee, an advisory panel, 30 regional representatives throughout the country, a national friends panel and an immediate responses team all of which support its membership.

More information about the Family Law Section and how to join as a member can be found at www.familylaw.org.nz



Grant Thornton relationship property services

This 2017 survey of New Zealand relationship property lawyers was carried out by Grant Thornton New Zealand in conjunction with the Family Law Section of the New Zealand Law Society.

Grant Thornton is regularly called on to provide advisory or expert witness services to assist lawyers, their clients and the court in investigating and understanding the financial aspects of relationship property matters. Our advice ranges from considering an individual financial issue, to all financial aspects of a complex settlement. Our services include share and business valuations, financial investigations, taxation and personal financial planning, and section 15 assessments. Our clients are located throughout New Zealand and often hold assets and liabilities both here and overseas.

We frequently act as either sole-party appointed experts, single joint experts, or 'shadow experts' advising one party. We advise on a full range of resolution methods, including traditional litigation and alternative dispute resolution methods such as mediation. We have the experience to provide relevant and cost-effective advice to lawyers and lay clients.

We welcome the opportunity of a confidential, no obligation discussion on how we might assist on any relationship property assignments on which you are retained.

Please contact Jay Shaw: +64 9 922 1204 or jay.shaw@nz.gt.com.



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insight with an approachable 'client first' mind-set and a broad commercial perspective.

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