

Newsletter

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The New Property Law Act

On 1 January 2008 the Property Law Act 2007 came into force, replacing the 1952 Property Law Act and several other related Acts, including a number of old English ones going back as far as 1257.

It has been described as the largest single change to property law in the past 55 years and is the culmination of a project that took over 16 years.

When the Act was passed last year, the Associate Justice Minister, Clayton Cosgrove, noted that the aim of the Act is to create modern, more user-friendly legislation for people buying or selling property, mortgaging their property to raise finance, or entering into commercial leases of land.

Not everything in the Act is new; some parts of it repeat or codify the existing law. The following highlights some of the changes that have been introduced.

Landlord's Consent

If a tenant asks a landlord for permission to transfer or sublease premises to a third party, or to change the permitted use of the premises, the landlord must not unreasonably withhold consent. The landlord must respond in writing within a reasonable time. If consent is given subject to conditions or is withheld, the landlord must give written reasons for their decision, if asked to do so by the tenant.

A range of parties affected by the decision may claim damages from a landlord if they suffer loss as a result of the landlord unreasonably delaying or withholding the landlord's consent.

Insurance Protection for Tenants

If the premises are damaged by an insured risk (e.g. fire, flood, explosion) the landlord and their insurers may not require the tenant to pay for the repairs. This is so even if the damage was caused by the tenant's negligence.

Distraint

The Distress and Replevin Act 1908 enabled a landlord to enter the premises and seize certain chattels of the tenant, if the rent was in arrears. This self-help remedy has been abolished.

Sale and Purchase – Return of Deposit

A purchaser of land now has a statutory right to apply to a court for the return of the purchaser's deposit. The surrounding circumstances must be such that a court would not order the purchaser to perform the contract and also that the purchaser has no right to cancel the contract.

An example could be where there is a defect in the property that the purchaser was not aware of until after signing the contract and paying the deposit.

The court is also given the power to cancel the contract and declare that the purchaser has a lien on the land to secure payment of the refund.

Conclusion

The new Act affects many facets of the law relating to property. It includes leases, sales and purchases, mortgages, access to land and special powers of the court.

Chances are, if you are dealing with land in any way, the new Act will affect what you are doing. With such a major law change, it is more important than ever to obtain proper advice at the outset of any transaction.

The Disputes Tribunal



Last year Edith, an elderly widow, paid a local painting contractor \$7,000 to paint part of her house. After only 12 months the house looks terrible and needs to be painted again. The painting

contractor has refused to fix the work and Edith has found another more reputable painter who will redo the work for a further \$7,000.

Edith's lawyer has advised her that she can sue the first painter in the District Court but that the cost of doing so may make it uneconomical for her. Fortunately for Edith, she can bring a claim in the Disputes Tribunal.

What Types of Claims are Covered?

The tribunal is very versatile and can hear claims about almost anything, from car repairs to grazing stock, from a faulty new computer to hair dressing for a wedding gone terribly wrong.

There are some limitations. There must be a dispute - you can't file a claim if someone simply refuses to pay a bill, when there is no argument about whether they owe the money. The Tribunal is also limited in terms of disputes concerning employment, land sales, wills, rates, taxes, and other statutory amounts.

For most disputes the tribunal is an informal, inexpensive, quick and private way to resolve the disagreement.

If the dispute relates to something worth up to \$7,500, a claim can be filed as a matter of right. If the value is between \$7,500 and \$12,000, both sides must consent for the matter to be heard by the tribunal. The tribunal has no jurisdiction to hear a claim over \$12,000.

Procedure

The tribunal is much more flexible than a District Court. No one is allowed to be represented by a lawyer and the rules provide that the tribunal shall determine disputes "according to the substantial merits and justice of the case". In doing so it is not bound to give effect to strict legal rights or obligations. This emphasis on what is fair and just, rather than the letter of the law, allows a referee to take matters into account that a judge in a District Court may be prevented from considering.

In Edith's case, she may have signed a contract with a clause prohibiting her from claiming compensation more than 6 months after the work was completed. The referee is not bound by that provision and may award her \$7,000, if that seems to be fair and just. The referees are also not bound by the evidential rules of a court.

Preparation is the Key

Probably the single most important aspect of bringing (or defending) a claim in the tribunal is preparation. Make sure that you have copies of any important documents, such as bills, receipts, photographs or reports. Ensure that any important witnesses can attend. If they cannot do so in person they may be able to attend by telephone and support a written summary of what they saw or know. Review each step of your claim (or defence) thoroughly before the hearing so that you can anticipate any challenge that the other party might make and anticipate any concerns that the referee may have.

Conclusion

Long memories of the problems associated with the Disputes Tribunal's predecessor, the Small Claims Tribunal, mean people sometimes assume the tribunal is only suitable for the most basic disputes.

In fact, if you prepare your claim carefully and thoroughly, it can be an excellent forum to resolve a dispute of up to \$12,000.

Room with a View

Introduction

Imagine this, after considering the various housing options you decide you want an apartment in the heart of Auckland City. You want to be close to the action. It's central, a perfect base, a long term investment! The city has many beautiful views so you want to be elevated to take advantage of the opportunity for that. You spy a brochure which covers the key aspects of your search. The apartments are not built yet but the glossy publication promises classy central city living, and that view. Once you have signed up and the building has been constructed, you walk in and discover that a roof is obstructing your priceless view!

A Misrepresentation

The key question for the court in the case that followed this disappointing discovery by the purchaser was whether the misrepresentation made in the brochure meant that the agreement to purchase could be cancelled. Alternatively, would the Court require the purchaser to pay over the purchase price and buy an asset that did not live up to the initial expectations? The Court in this case said settlement must proceed.

The Agreement and Plans/Specifications

After the "tease" in the original brochure, came the actual agreement for sale and purchase with detailed plans and specifications.

These, when taken as a whole, showed the existence of the roof in front, and fully disclosed the exact situation. The agreement included the standard provision that once signed, the agreement was the binding and complete legal arrangement between the vendor and purchaser.

In other words, the brochure was not to be taken into account when finally deciding what the terms of the contract were. As the purchaser had the opportunity to take any legal or other advice available prior to signing, there was no reason, in the Court's view, why the contract should not stand. The Court ruled that the settlement must proceed.

Conclusion and Warning

In the excitement of the purchase, who would have given a thought to the roof next door, particularly as nothing was constructed at the date of signing. In hindsight, the warning is clear and the principle applies to every signed sale and purchase agreement. Before you sign, obtain all the advice you can, because prior representations will usually not be a relevant factor. In this instance, not only legal advice was required, but specific architectural advice regarding the plans and specifications was also needed.

New Zealand's Emissions Trading Scheme



Climate change is a hot topic as the mercury rises ever higher around the world. Legislatures are increasingly looking to new mechanisms to combat climate change and the New Zealand Government is now no exception.

In December 2007, the Government introduced the Climate Change (Emissions Trading and Renewal Preference) Bill which will give rise to New Zealand's first domestic emissions trading scheme.

Purpose

The Bill has two primary purposes. Firstly, to establish the New Zealand Emissions Trading Scheme (NZ ETS) and secondly, to create a preference for renewable electricity generation by implementing a 10 year moratorium on new fossil-fuelled thermal electricity generation.

Staged Entry

The government has provided for staged entry into the scheme as follows:

Stage 1 - Forestry sector, retrospectively from 1 January 2008. However, the obligation to comply with the standards does not take effect until 31 December 2009;

Stage 2 - Liquid fossil fuel sectors, from 1 January 2009. As with forestry, the obligation to comply takes effect from 31 December 2009;

Stage 3 - Stationary energy sector and industrial process (non-energy) emissions, 1 January 2010;

Stage 4 - Agriculture, including farming and horticulture, and waste, 1 January 2013.

Participants

The NZ ETS affects three types of participants.

1. Businesses that are labelled as “points of obligation”. These businesses (yet to be identified) will have specific obligations and must surrender New Zealand Units (NZUs) to cover direct emissions or emissions associated with their products. These businesses will generally be at the top end of the sector. For example, fuel companies, rather than motorists.
2. Businesses that receive freely allocated emission units for eligible afforestation.
3. Businesses that trade NZUs to take advantage of market opportunities that could arise.

Allocation of Units

The Government is yet to show exactly how it will allocate NZUs. It will do so depending on how different

sectors and participants will be affected and whether they can pass costs on to consumers. Businesses such as fossil fuel providers and electricity generators, who can pass on cost increases to consumers, will need to purchase credits to meet their obligations. However, businesses, such as forest and farm owners, that cannot pass on costs will have units allocated to them.

Societal Impact

Expect an increase in transport and energy costs and the cost of products arising from various industrial processes. Essentially the cost of business will be directly related to the extent to which a business is able to reduce or offset omissions, thereby reducing the cost of NZUs. Consumers are inevitably going to resist these costs being passed on.

Eventually everyone will be affected in some way by climate change legislation. It is necessary for the business world to turn its mind to mitigating those cost consequences now. If you are an emitter, you can plan to reduce emissions, purchase NZUs, or reduce emissions below the sector level and sell spare units to another emitter.

Whichever way you look at it, humankind is going to inevitably pay for emitting carbon and, as some might say about politics: left or right is dead; it’s all about the environment.

Education Update – Violent Students



A school principal has successfully defended a judicial review of her decision to stand down a 7 year old student with ADHD for five days after a violent incident in the classroom. The Education Act 1989 provides that a principal may stand down a student if there has been gross misconduct that is a harmful or dangerous example to others, or, the behaviour is likely to cause serious harm to the student or other students. Upon standing down a student, the principal must immediately notify the Ministry of Education and the parents, and give reasons for the decision. The High Court reviewed the circumstances surrounding the decision and found that the principal acted within the law.

Consumer Guarantees Update

A recent High Court decision has finally answered a long-standing question arising from the Consumer Guarantees Act 1993: can a consumer take it upon themselves to arrange for the repair of a defective good and then claim the full cost back from the supplier; or, must the consumer first give the supplier the opportunity to provide a remedy? The decision is unequivocally clear - the consumer must first afford the supplier the opportunity to remedy the defect. This is in line with the general policy of the Act that the suppliers of goods are liable to provide remedies as they, and not the consumers, should bear the risk of defective goods.



Govett Quilliam congratulates John Eagles on his award of The Queen's Service Medal.

"I am proud to receive the Queen's Service Medal (QSM) for services to the community and have certainly enjoyed participating in my various community activities – Pukeiti Rhododendron Gardens, New Plymouth North Rotary, New Plymouth Boys' High School, CCS, NZ School Trustees Assn, Frankley School, Govett Brewster Art Gallery, Law Society and recently Taranaki Rugby." – John Eagles.

The investiture for John will be held at Government House, Wellington, on the 1st of April 2008.

GQ Profiles

Our profiles for this newsletter are on Geoff Shearer and Julie Peterson. Geoff is the resident Partner at the Inglewood Office and Julie is his Personal Assistant.

Geoff Shearer joined his father Hamish in the practice of Deem & Shearer at Inglewood during 1979 and became a Partner in 1981. Following the merger of Deem & Shearer and Govett Quilliam on 1 January 2004, Geoff is now the resident Partner at the Inglewood Office.

Farming Law is Geoff's special interest and he has built up an extensive knowledge in the areas of farm conveyancing, company and trust structures for farm ownership and estate planning for farmers. He also has considerable experience in all other residential and commercial conveyancing areas and the formation of family trusts.

Outside of the law Geoff is very involved in golf, fishing, tennis, rugby and cricket. Along with John Eagles (our Senior Partner), he is one of the few National representatives in the firm, having represented New Zealand in the New Zealand Secondary Schools team in 1974.

Geoff gets some of his practical experience for his interest in Farming Law from his six acre farmlet property in Inglewood, where he "chases around a few sheep and steers".

Geoff is a long-term resident of Inglewood, having lived there all his life. He entered this world at Marinoto Maternity Hospital and recognises the irony of that same Hospital now being a rest home! (The circle of life Geoff??).

He considers himself a lucky man to be married to Jane, who runs a cooking school from home. Geoff and Jane have three wonderful daughters who are all presently living in Wellington. The Shearers seem to be plotting a take-over of the firm with his daughter Amy recently being admitted to the bar.



*Geoff and his
25lb snapper
caught off Okato*



Julie Peterson is one of our longest serving staff members and is Geoff's outstanding Personal Assistant. Julie has a wealth of valuable information on the firm as a result. She was initially employed by our perennial Consultant Hamish Shearer as a typist for Deem & Shearer when they occupied the now MacFarlane's building in Inglewood. Julie moved with the firm when they re-located to their current building in 1984 and remained an employee when Deem & Shearer merged with Govett Quilliam in 2004. Julie says the biggest change she's seen in her 33 years with Deem & Shearer/Govett Quilliam was the merger.

Julie, like Geoff, is a long-term resident of Inglewood. She says she likes living in a small community and doesn't feel she misses out on anything as New Plymouth is only ten minutes away. Julie has been heavily involved in the local marching scene since she was 12 years old. She started coaching when she was 16 years old for various teams around the district, with several gaining National honours.

Julie has caught the "law bug" herself and is studying to become a registered Legal Executive.

*Julie with two of the
Empire Guards*

Govett Brewster Art Gallery

MONICA BREWSTER CLUB

The Monica Brewster Club in association with Govett Quilliam the Lawyers brings an impressive array of national and international speakers to New Plymouth. Held on a monthly basis, the Monica Brewster Club offers an evening of exceptional speakers, art, food and wine.

Dedicated to the memory of the Gallery founder, Monica Brewster, the Club draws on a wide variety of speakers from throughout the local and national arts community who discuss topics ranging from art to architecture and literature to film. The Monica Brewster Club is also supported by Michael Radich Wine Merchant and Cafe Govett-Brewster.

6pm - 8pm on the last Tuesday of every month. Entry \$12, Friends of the Gallery \$8, Students (with ID) FREE

Internationally acclaimed artists create new work for Govett-Brewster

The Govett-Brewster Art Gallery's forthcoming suite of exhibitions showcases new works by internationally acclaimed artists Francis Upritchard, Jayce Salloum and Bill Culbert with photographic portraiture by Len Lye also featured. The Govett-Brewster's Artist in Residence programme is offered in partnership with Western Institute of Technology at Taranaki and with support from Creative New Zealand and is a cornerstone of its programming.

Francis Upritchard: New Zealand Artist in Residence *rainwob i* 1 March – 18 May 2008

2006 Walters Prize winner Francis Upritchard is the Govett-Brewster's current New Zealand Artist in Residence. The London-based sculptor's exhibition *rainwob i* is presented from 1 March to 18 May.

In *rainwob i* Upritchard presents a psychedelic and visionary landscape, populated by strange sculptural figures and architectural 'follies'. She also incorporates objects from charity shops and forgotten corners, giving them new lives and histories. At once primeval and futuristic the exhibition suggests an array of ideas about time, hope and evolutionary change.

Born in New Plymouth, Upritchard has exhibited extensively in Aotearoa New Zealand, Europe and America since graduating from Canterbury University's Ilam School of Fine Arts in 1997. After the Govett-Brewster residency, Upritchard will present *rainwob ii* at Artspace Sydney and at Gertrude Contemporary Art Spaces, Melbourne as part of her Artspace residency.

Jayce Salloum: International Artist in Residence *everything and nothing and other works from the ongoing project 'untitled', and recent fragments/works*: 8 March – 25 May 2008

Vancouver-based International Artist in Residence Jayce Salloum is a media artist and cultural activist who has worked in installation, photography, new media and video since 1975. His residency at the Govett-Brewster sees a continuation of his ongoing project *untitled* 1999-2008, a multi-channel video installation addressing social and political realities. His work engages with issues of globalism, imperialism and the notion of borders, documenting the lives and opinions of displaced peoples, activists and victims in places such as Lebanon and the former Yugoslavia. During his residency Salloum will develop new work exploring similar issues within a New Zealand context. Salloum has exhibited in a wide range of international venues from small storefronts to institutions such as the Museum of Modern Art, New York, Centre Pompidou, Paris and the 15th Biennale of Sydney.

Bill Culbert: *Groundworks*: 8 March – 18 May 2008

Eminent New Zealand artist Bill Culbert presents *Groundworks* from 8 March to 11 May. This significant exhibition comprises three installations not previously seen in New Zealand including two new works. Culbert's installations reenergise the discarded debris of the everyday to form landscapes of poetic imagination. Working with materials such as light bulbs, lampshades, fluorescent tubes, plastic bottles, wine glasses and suitcases he explores the dynamic interplay between luminescence, space and visual perception. Now based in London and France, Culbert travels extensively and exhibits widely in Europe, Australia and Aotearoa New Zealand. Culbert was acknowledged for his outstanding contribution to contemporary art in this country and beyond in the 2008 New Year Honours.

Len Lye: *A portrait gallery*: 8 March – 18 May 2008

The Gallery will also feature a selection of seldom seen works by celebrated New Zealand-born artist Len Lye (1901-1980) in *A portrait gallery* from 8 March to 18 May. Through Lye's intriguing photographic portraits and work in a variety of media, the exhibition sketches a 'portrait' of the artist's own reflections on the nature of the self.

For more information on exhibitions and events Phone 06 759 6060 or visit www.govettbrewster.com

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