

2005/7

September 2005

A suggested 'favourites' list for legal information

So – you have a quick legal question, and you're sure the situation you are investigating is a common occurrence. So - check the 'Net! You could do a 'Google' search, or 'ask jeeves'. These search engines are excellent, but please be aware that they are not fussy, and will pull up all and any information with the keywords you use – and that includes outdated information, and information sourced from overseas – even if you have specified 'New Zealand' only.

Most **government departments** have a large amount of information on their websites. They vary in their ease of use, and the amount of information provided. Some deserving of a *Special Mention* include the **Employment Relations Service** (www.ers.dol.govt.nz) has a huge amount of information on it, including draft agreements – very useful for both employers and employees. The **Companies Office** (www.companies.govt.nz) and its link to **Trusts and Societies** is a good tool for searching for legal entities and organisational structures. **The Tenancy Services** (www.dbh.govt.nz) - has good general information for tenants and landlords. And the **Inland Revenue Department** (www.ird.govt.nz) is easy to use, and has very good general information for all tax issues, including child support and family assistance.

Those websites that have *Further Room For Improvement* regarding ease of use include **Department of Work and Income** (www.workandincome.govt.nz) which also has information on it so vague as to be of little value; the **Privacy Commission** (www.privacy.org.nz), which is to be revamped shortly – although Chris Slane's cartoons are always good, and the Department of Internal Affairs (www.dia.govt.nz). The **Ministry of Justice** (www.justice.govt.nz), and **Immigration** (www.immigration.govt.nz) win the Most Difficult to Navigate Award.

If you want to look at *legislation*, either current or proposed, the **Parliamentary website** – (www.parliament.govt.nz) is a source for information on bills currently before select committees, progress of legislation, and links to legislation websites. You do have to navigate carefully though, or you will end up among the parliamentary press releases, and may never surface again. Another less fraught source of legislation information is the **Legislation website** (www.legislation.govt.nz) which contains all current statutes and regulations.

Other, **non-governmental agencies** with excellent *legal information* include the **Environmental Defence Society** (www.eds.org.nz), which is a good website for resources on resource management issues, **Youthlaw** (www.youthlaw.co.nz) has a wide range of legal information, primarily aimed at the law relating to young people, but is a good source for everyone; the **New Zealand Law Society** (www.nz-lawsoc.org.nz) has a large of general legal information arranged by subject, and the **Citizens Advice Bureau** (www.cab.org.nz) has general plain English information on a wide range of subjects. The **Consumer Online** (www.consumer.org.nz) website gives a limited amount of information, but most is reserved for subscribers.

Finally, **the link sites** – these are all good if you are not sure where to start, and include the Legal Services Agency – **Lawaccess** (www.lawaccess.lsa.govt.nz) which has numerous links to organisations with legal information resources, arranged by subject. It also contains contact details for legal aid lawyers and community law centres; or a newly-launched website with links to legal information, www.communitylaw.org.nz.

These websites contain very general information, but can be a good place to start. For further advice relating to your exact situation, please contact your local community law centre (there are 27 law centres around the country), or your local Citizens' Advice Bureau for a rostered legal advice session.

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Dunedin Community Law Centre

PARLIAMENT

Legislation Update

Summary of legislation 'left behind' when the Parliamentary term ended in August.

Government Bills

- Fourteen Bills have had a first reading, but the select committee process had not begun.
- Ten Bills are before Select Committees but the reports have not yet been completed.
- Sixteen Bills have been through select committees, reported back and await their second reading.
- Nine have had their second reading but have not been through the formality of a third reading.

Private Members' Bills

These depend on being drawn from the ballot to get any consideration. Currently one has been introduced, five have had first readings, ten are before select committees, two have been reported on and two more have had second readings.

Under new Standing Orders, when the new Parliament meets, 'the House will consider whether to reinstate business from the old Parliament'. Reinstated business will proceed from the stage it had reached in the old Parliament.

Constitutional Inquiry

The report of the Constitutional Arrangements Committee's Inquiry to review New Zealand's existing constitutional arrangements considers the New Zealand is not in crisis.

The Committee said in its report to Parliament in August that the costs and risks of attempting significant reform could outweigh those of persisting with current arrangements.

"There are no urgent problems with New Zealand's constitutional arrangements," the Committee reported. "Dissatisfaction with current constitutional arrangements is chronic rather than acute and any significant constitutional change must proceed with great care."

However the committee could see constitutional issues arising in the future, many of which would arise incidentally in the course of other reforms. "Parliament should therefore enhance its ability to recognise matters of constitutional significance and to deal with them in a principled way.

It recommended that the House of Representatives consider developing its capacity, through the select committee system, to ensure that changes with constitutional implications be specifically identified and dealt with as they arise in the course of Parliament's work.

Recommendations also focused on the need to foster more widespread understanding of the practical implications of New Zealand's current constitutional arrangements and the implications for any change, and for increased effort to improve civics and citizenship education in schools.

RESOURCES

Looking for a PAL?

The Public Access to Legislation (PAL) project which stalled two years ago is under way again. Plans are for full implementation by the first quarter of 2007.

PAL originated in 1998 when the Parliamentary Counsel Office released a discussion paper on public access and technology options. The project was picked up by the incoming Labour Government which called for tenders in May 2000, and an interim website opened in March 2003. This offered 'unofficial' electronic versions of existing Acts, and coincided with the transfer of responsibility for printing the hard copy versions of all legislation to the private company Legislation Direct.

Technical issues stalled the official PAL in mid-2003. Reviews, technical reviews and software revisions took two years (and the delay cost more than \$7 million). A commercial arrangement between the Parliamentary Counsel Office and Unisys New Zealand was announced five months ago, with a two-year timeline including a 'proof of concept review' in the next few months of this year and a 'comprehensive testing programme' in the last quarter of 2006.

In the meantime, people wanting to find e-copies of existing legislation - Acts and Statutory Regulations - can find still 'unofficial' but free versions through www.legislation.govt.nz. This gives access to the site maintained by Brookers, a private publishing company, and updated monthly. Existing legislation (Acts) can be read paragraph by paragraph, making it difficult to browse, but OK if you know the exact reference. Printing out is laborious, however, requiring saving each paragraph separately as a web page and then a protracted select/copy/paste process.

Court of Appeal judgements since 1995 are also available free from this site.

Alternatively, a trawl through the Parliamentary website - www.parliament.govt.nz - through the Select Committee section to the Publications link takes you to www.clerk.parliament.govt.nz/Publications/. A link to the Knowledge Basket site (www.knowledge-basket.co.nz) gives free access to existing legislation, and also to Bills and Supplementary Order Papers.

Bills and Supplementary Order Papers are offered in text format only, and are quite hard to read. For Acts, the format is the same as Brookers - paragraph by paragraph access. Searching for text within Acts requires registration as a user and paying a fee for each search and for each item downloaded.

And of course you can still buy hard copies of Bills and Acts from Bennett's Government bookshops and other commercial outlets.

The total cost of the project from its beginnings to completion in early 2007 is estimated to be \$14.9 million, almost trebling the original 2000 estimate of \$5.1 million.

Law Access website www.lawaccess.lsa.govt.nz

The Legal Services Agency is best known for its demanding task of reviewing, granting and recovering payments for legal aid. However, it also has a substantial law-related education section and an interactive database called *Law Access*.

Law Access lists law-related resources of all kinds – pamphlets, booklets, websites, videos etc – by topic, which makes it very helpful to browse. For instance, if you need to know who is responsible for building or maintaining a fence, a simple search for ‘fencing’ yields six options. These include two brochures, a Resource Kit, a booklet with examples of notices, and two websites, one on fencing law and one on neighbourhood disputes. A link takes you to the web document or gives you an address for further information.

Listed categories range from Agriculture and Animal Welfare through Dispute Resolution, an extensive section on Family & Personal and another big section on Health & Safety, to Housing, Older People and Wills and Bereavement Procedures. The last of these, for example, links you to a very helpful Citizens Advice Bureau website with a guide to Dealing with A Death – from reporting and registering a death to Support for Bereaved Families, all in plain language.

The *Law Access* website replaces the *Law Access Catalogue* which was issued in hard copy.

Law Society

www.lawyers.org.nz

The Law Society also runs a helpful website with useful information in its About The Law section (www.lawyers.org.nz/pubaboutlaw.asp). Links take you to PDFs of pamphlets, of which you can order copies in bulk, or to direct information in a Q&A format.

Topics include Seeing a lawyer – fees, charges and value; Buying or selling property; Living together; Powers of Attorney; Giving evidence (really informative, with 23 FAQ) and Going into Business.

Law Commission

www.lawcom.govt.nz

The Commission has just launched a new and much more friendly website with an improved search facility and more news and information on projects. You can also subscribe to email reminders when new material is placed.

The Commission is an independent, Government-funded body which advises on and reviews the law and suggests changes, including putting recommendations to Parliament. (See the story about the Infringement Review in News.)

Its objectives are to improve:

- the content of the law
- the law-making process
- the administration of the law
- access to justice
- dispute resolution between individuals
- dispute resolution between individuals and the State.

Community Net

www.community.net.nz

This site, begun by the Department of Internal Affairs in 1998, aims to link community groups to each other and provide accurate, useful information for the community sector. It’s a very interactive site inviting contributions from the sector as well as putting out its own stuff.

As well as a host of newsy things such as upcoming conferences, ‘hot topics’, case studies, classifieds, job vacancies and the like, it also offers a range of how-to guides in plain language. Recent guides include *Legal Structures* and *Risk Management*.

NEWS

System sometimes unfair

The infringements system in New Zealand requires a major overhaul, according to a recent Law Commission study paper. Following a discussion document released in mid-2004, the Law Commission has made 20 recommendations about the breadth and scope of infringement offences.

More than 2.5 million breaches of the law are dealt with each year by infringement notices – parking offences, traffic offences incurring fines, bringing prohibited items into the country, breaches of building regulations, gambling – and the list is growing.

The Law Commission says that the original one-size-fits-all approach is ‘a blunt form of justice’ which does not allow consideration to be given to the circumstances of the offence or the defendant. Originally intended for just a small group of offences, it now has to deal with a range of offences carrying substantial fines and often inconsistent in the penalty.

‘As a result, the system sometimes results in unfairness. High penalties can be imposed in circumstances where the defendant’s rights are diminished and where the penalties can have grossly different impacts on different defendants,’ the Commission says.

Key recommendations include:

- Before imposing an infringement notice, enforcement officers should always consider whether the options of warning, diversion or rectification would deal effectively with the offending.
- There should be two tiers of infringement offences. Those tiers should be dealt with differently, on the basis of the level of the penalty and gravity of the offence:
- Tier one should include offences for which the penalty is set at a level consistent with the ability of those in the lowest socio-economic group to pay. There should be no opportunity for the defendant to seek review of the fee, nor for the prosecuting authority to proceed by way of summary prosecution.
- Tier two should include offences that can still be dealt with by way of an infringement notice but where the penalty for the offending is higher than for tier one offences. For tier two offences, there must be administrative means by which the circumstances of the offender and the offence can be taken into account, and the penalty reduced if not to do so would result in undue hardship. The offender should also be able

to challenge the level of the penalty in court.

- No conviction should follow from imposition of an infringement fee.
- There should be operating guidelines to guide the exercise of discretion with regard to infringement offences.
- There should be a principled framework for the setting of infringement penalties in legislation.

The study paper is available on the Law Commission website, www.lawcom.govt.nz

Human rights complaint

The Disabled Persons Assembly is to continue with a human rights complaint against Air New Zealand, on the grounds that the airline discriminates against passengers with disabilities.

The DPA began its action last year after the airline introduced a policy of not allowing its staff to lift people between their wheelchairs and aircraft seats. Nearly a year of talks have failed to resolve the issue.

The DPA considers that the airline's offer of installing lifting devices, which will be available only at some airports, does not resolve the issue. 'The response might be useful for some,' said DPA Chief Executive Gary Williams, 'but the complaint is about human rights, not customer service.

'Lifting devices may well help in some instances, but many disabled people will still be unwitting victims of the policy.'

The Air New Zealand website indicates that people with disabilities wishing to fly to or from 17 regional centres such as Napier and Nelson will have to arrange for a support person to undertake an upper body lift to transfer them in and out of the aircraft seat. Air New Zealand staff are allowed to undertake lower body transfers only. The lifting devices are available at only seven airports and can only be used in the 737 and Airbus full-jet aircraft.

Community law services

The two newly approved community legal services in Waitakere and Bay of Plenty opened at the end of July. Both operate out of central locations: the Waitakere service in Henderson, and the Bay of Plenty Service in Tauranga and Whakatane.

Public Defence Service

The Public Defence Service offers those charged with a criminal offence a choice of representation. In New Zealand, criminal legal aid is available to fund legal services provided by approved lawyers ("listed providers"). Defendants are eligible for legal aid if they cannot afford to pay for their own lawyer and where it is "in the interests of justice" for aid to be granted.

Defendants can choose a lawyer with the appropriate experience from the list of providers if they have a preference for a particular lawyer (about two-thirds do this), and if not the Legal Services Agency assigns them an appropriate listed provider.

The Public Defence Service offers a third option, in which representation is undertaken by a staff lawyer paid direct through the Legal Services Agency.

From the opening of the pilot PDS project in the Auckland and Manukau Courts on 3 May 2004, until 19 June 2005, the PDS has undertaken a total of 2,565 cases.

This represents just over a quarter of the cases in both courts, the balance being taken up by private providers.

There were 1,355 assignments in the Auckland Court and 1,210 in the Manukau Court. Of these, 194 in the Auckland Court and 94 in the Manukau Court were PDS preferred lawyer assignments.

More from www.lsa.govt.nz

Trans-Tasman co-operation

A working group from Australia and New Zealand has released proposals for the improving the enforcement of court judgments between the two countries. The group identified a number of problems in civil proceedings and in enforcement. It proposes solutions, including enforcement of court judgements, tribunal orders, requirements for trans-Tasman subpoena, court appearance by video link, enforcing civil penalty orders and fines, and subpoenas in criminal proceedings. Submissions are called by 4 November 2005. Find the report at www.justice.govt.nz

CASE LAW

Christchurch by-law struck out

A by-law made under the Prostitution Reform Act 2003 to regulate the location of brothels in Christchurch City was struck out by the High Court in early August. The Christchurch City Brothels (Location and Signage) By-law 2004 confined brothels in the city to a defined area in the central business district.

A case brought by the Willowford Family Trust, which wanted to operate a brothel outside the defined area, sought to overturn the by-law on the grounds that the defined brothel zone was unsuitable in being too small, too industrial and too many special-sensitivity buildings (churches and schools). It also claimed that the by-law removed the right of sex workers to work in small owner-operated brothels, and that this was contrary to the Act which sought to create a framework to safeguard the human rights of sex workers.

The Court held that the location aspect of the by-law was invalid due to its effect of denying the existence of small owner-operated brothels in the city.

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The views expressed in this newsletter are those of the author's and not necessarily those of the NZFVWO.

LawScene is edited by Julia Stuart
ISSN 1172-2584

Comments or contributions are welcome.
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10 Issues per year

Subscriptions:
\$30 per annum
\$27 for voluntary organisations