

**PLEASE
READ
THIS**

Our readers will have recently received a copy of this newsletter which did not contain our Smith and Partners branding. It also contained an error in the article advising of the annual gifting fee increase in particular the quoted fee of \$300.00 plus GST should have read \$250.00 plus GST. We apologise for any inconvenience this may have caused and hope you enjoy this new corrected version.

Inside this edition

The New Property Law Act..... 1
 The Disputes Tribunal2
 Electoral Finance Act 20073
 Solicitor Profile – Natasha Maynard.....3
 Annual Gifting Fee Increase.....4
 Snippets.....4

Partner’s Corner

Smith & Partners enters its 20th year having been established in 1988, firstly in the National Bank Building in Henderson and for the last 18 years in Lincoln Road.

The firm has grown from 3 lawyers with 4 support staff to 14 lawyers/ legal executives and 16 support staff. The firm serves a very wide client base covering all sectors of the West Auckland community and specialises in looking after the business community of West Auckland and their various needs. Family is also most important to Smith & Partners and we have solicitors specialising in and looking after families and all the various transactions and problems that involve them.

Smith & Partners plays an important community role and is presently actively involved in three Rotary Clubs, the Citizens Advice Bureau and several community trusts.

Smith & Partners allocates sponsorship funding on an annual basis and distributes that through community sports groups and other organisations.

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.

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.

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.

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.

Electoral Finance Act 2007

The controversial Electoral Finance Act 2007 (The Act) came into force on 1 January 2008. It is designed to reform campaign finance and has been heavily criticised by many to be an unjust limit on freedom of speech. Its critics say that it is an assertion by the government of a new audacious right; the right to determine the amount of assistance that political parties can receive from supporters. On the other hand, the Act's supporters say that it is a just limit on the freedom of speech, as other principles such as preventing undue influence due to wealth, override the freedom of speech argument and in fact tends to level the playing field regarding the amount of money each party receives.

Purpose

The Act's purpose is to strengthen the law governing electoral financing and broadcasting in order to maintain confidence in our electoral system, while at the same time promoting public participation, preventing any undue influence on the outcome due to wealth. It is also seen as providing greater transparency and accountability on the part of candidates, parties and other persons engaging in election activities, and to ensure there are controls on the conduct of election campaigns.

The Act monitors spending by political parties and campaign groups from 1 January to polling day if the election is held in the third year of the election cycle; previously it was 3 months before polling day.

Changes to Donation Regime

Under the Act, anonymous donations can be made of up to \$1,000 and must be sent to the Electoral Commission which then makes payment to the intended party. Donations over \$1,000 cannot be made anonymously. Disclosure of identity is made to the Electoral Commission which in turn pays the donation to the party. However, it cannot disclose the identity of the donors.

If more than \$12,000 is spent, registration as a non-political third party is necessary. However the Act has placed a

limit on the amount of spending by such "third parties" of \$120,000.

Election Advertisements

Advertising must carry a statement recording who is behind it and, if it has cost more than \$12,000 to set up, then the person who is behind the advertising must also be registered with the commission as a third party. Care must be taken because advertisements do not need to mention the name of a candidate or party to qualify as an "election advertisement". The definition of "publishing" covers almost all means of sending a message to the public.

It has recently been reported that Tim Shadbolt is planning to breach the Act by advertising without the necessary written authority. He is also not going to state his full name and address or include any authorising statement. The police are intending to prosecute.

Offences

It is an offence to contravene the Act and the penalties have been increased for anyone convicted of a corrupt or illegal practice. The period in which a prosecution can be brought has also been increased. However, the Electoral Commission and the Chief Electoral Office have discretion in referring matters to the Police. Matters are not to be referred if considered "so inconsequential that there is no public interest in reporting those facts to the New Zealand Police".

Conclusion

The legislation is in its infancy and therefore it is not yet known what effect it will have. However, if money is to be spent on supporting your preferred political party, never mind how much bang you can expect for your buck, just remember to make sure you spend that buck in accordance with the new Act.

Solicitor Profile – Natasha Maynard



After graduating from Canterbury University in 2006 with an LLB/BA Natasha joined Smith & Partners in our property team. She was based at our Henderson office until November 2007 when she moved to our office at Huapai.

Natasha now undertakes a variety of work. She enjoys working in a smaller office, although finds it just as busy as our Henderson office. Her main areas of interest are domestic property e.g. residential property, property agreements, relationship property and family law.

Annual Gifting Fee Increase

Recent Matrimonial and Tax cases have highlighted the need for Trustees to take proper responsibility for their duties in terms of ensuring:

- That there is a Memorandum of Wishes in place setting out the Settlor's wishes in respect of the administration of the Trust and thus providing a blueprint for the Trustees.
- That regular meetings be held and minuted recording the decisions of the Trustees in respect of the income and property in Trust.

Most clients establishing Trusts employ both Smith & Partners and a firm of Accountants to provide the legal and accounting services required by Trusts. The accounting profession is to be commended for taking an active role in hosting meetings of Trustees and preparing Minutes recording the financial transactions of the Trust on an annual basis.

Likewise, Smith & Partners, prepare Minutes on each occasion that the Trustees are involved in the sale and purchase of Trust assets and borrowing against Trust assets. Smith &

Partners also records by way of Minutes and other documents the distribution of Trust assets.

It is most important that at least once a year those clients of Smith & Partners having a Trust call a meeting with one of the lawyers at Smith & Partners and review and document the activities of the Trust over the previous period.

Smith & Partners have not reviewed their Trust administration fee for many years and bearing in mind the responsibilities involved have decided to increase their fee for their annual review/gifting to \$250.00 plus GST and disbursements. This will be our base fee (with effect from 1 April 2008) for annual gifting documentation including a straightforward Trust review carried out at the same time.

Any documentation required to be completed over and above the gifting documents will be charged for by way of an additional fee. All of the lawyers at Smith & Partners will be happy to give estimates of our reasonable charges in respect of preparation of any documents.

Snippets

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.

Community Work

Earlier this year, two of the firm's solicitors, Taufil Omar, an Associate in the Commercial Team and Ilsaad Razak,

a Solicitor in the Litigation Team, joined the Rotary Club of Mount Roskill and Rotary Club of Henderson, respectively.

The firm has always had a strong community involvement since its inception in 1988. Senior Partner, Peter Smith has been involved with the Rotary Club of Waitakere City for over 15 years.

The firm's involvement in local service organisations gives the firm its unique community focus and identity.

All information in this newsletter is to the best of the authors' knowledge true and accurate. No liability is assumed by the authors, or publishers, for any losses suffered by any person relying directly or indirectly upon this newsletter. It is recommended that clients should consult a senior representative of the firm before acting upon this information.

If you have any questions about the newsletter items, please contact us, we're here to help

smith
AND PARTNERS

L
A
W
Y
E
R
S

HENDERSON

ADDRESS: Lincoln Manor, 293 Lincoln Road, Waitakere City
POSTAL: PO Box 104-065, Lincoln North, Auckland 8, New Zealand
DX: DX DP 92005, Lincoln Road
TELEPHONE: 09 836 0939
FACSIMILE: 09 837 2500

EMAIL: partners@smithpartners.co.nz

KUMEU / HUAPAI

ADDRESS: 20 Matua Road, Huapai, New Zealand
POSTAL: PO Box 436, Kumeu, New Zealand
DX: DX DP 90509, Kumeu
TELEPHONE: 09 412 7730
FACSIMILE: 09 412 7738