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## THROUGH THE LOOKING GLASS... PRIVACY ISSUES UNDER THE SPOTLIGHT



In the last fifteen years we have been hit by a tidal wave of technology, and it's thanks to this technology that we are able to obtain information on just about anything with a click of a mouse. We can stay in contact with family and friends the world over through email, chat rooms and websites such as Facebook and Bebo. We shop and pay our bills online, check ski conditions on Coronet Peak or the surf at St Clair all from our computers.

What most of us don't realise is that every time we use our credit card, surf the net or download photos we are creating a digital footprint. Alarmingly, a recent study by International Data Corporation (IDC) has revealed that the digital information generated about us on a daily basis (dubbed our "digital shadow"), is now greater than the total information that we actively create ourselves and it's going to continue to increase at a rapid rate.

A great deal of information about us is gathered through surveillance footage without us even realising it. Every time you walk into a department store, bank, petrol station or supermarket you are more than likely being filmed through closed circuit television (CCTV). CCTV is also used on many central city streets; Auckland's Queen Street alone has over 100 cameras operating, not to mention the cameras monitoring Auckland's motorways.

The Privacy Act 1993 requires that a person should be made aware that information is

being gathered about them and the purpose for doing so. A Hamilton City nightclub came under scrutiny last year when the use of CCTV footage revealed a patron causing damage. The cameras were located in the nightclub toilets and the patron was not aware he was being filmed as there was no signage indicating that cameras were in use.

The release of the New Zealand edition of Google Street View has also been controversial. It is created from millions of photos taken from cars equipped with cameras that travelled the country taking images of our streets. The result is that anyone with access to the internet can take a virtual walk down your street and view the surroundings. Concerns raised about identification of people and vehicles have been addressed by the blurring of faces and licence plates. There is also a facility to report a concern about a particular image. This may be of small comfort as by the time the image is discovered, the damage could have already been done.

Privacy Commissioner Marie Shroff has identified privacy and data protection as being one of the biggest issues of our time, and warned that the misuse of personal information, identity theft and fraud are all dangers that should not be ignored. In response, the Law Commission is currently undertaking a four stage investigation into privacy issues. Stages one and two were completed in 2008. These stages involved an assessment of privacy values, changes in technology, international trends and implications for New Zealand Law, and consideration of whether the law relating to public registers required systematic alteration. In stage three, the Law Commission will investigate the adequacy of current civil and criminal law in dealing with invasions of privacy. In the final stage, the Law Commission will review the Privacy Act 1993 and make suggestions on how it can be changed.

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## SUBDIVIDING?

Whether you are subdividing a 1000m<sup>2</sup> section or a 100 hectare block of land, the basic process is the same. You should become familiar at the outset with the following stages of subdivision.

### Due Diligence Phase

Initially, depending on your particular subdivision, meet with either all or some of the following: surveyor, solicitor, engineer, council planner, architect, and accountant. Usually your surveyor and solicitor can tell you who will need to be consulted. The head title and district plan will be analysed to assess whether subdivision is possible and, if so, what conditions/restrictions might apply. At this point, the decision will be made as to whether it is feasible to continue with the subdivision on the basis of your original subdivision plan.



### Preparation of Scheme Plan and Resource Consent Application

Your surveyor will prepare the scheme plan and resource consent application to submit to council. The scheme plan must show all boundaries on the existing head title and the layout and size of the new lots. It must also show the location of buildings, roads, significant natural areas, rivers or streams, reserves, easements, schedules and any other information required to assess the effect upon the environment (as required by the Resource Management Act 1991). Once completed, the surveyor will submit the resource consent application to the council.

### Grant of Resource Consent

Prior to granting a Resource Consent, a site inspection is carried out by the council planner checking that the subdivision complies with the policies, objectives and rules set out in the District Plan. The planner will in most cases carry out consultation with the Regional Council, Council Engineers and Building Inspectors to check that the subdivision meets their requirements. All going well, the council gives its approval and will grant resource consent. Most subdivisions that comply with

the plan will be processed on a non-notified basis and a decision should be made within 20 days.

### Implementation of Conditions

In most cases, Council imposes conditions such as provision of water and sewer connections to new residential lots, formation of rights-of-way and vehicle crossings. These conditions and any others imposed will need to be met before new certificates of title are issued.

### Council Approval

When conditions have been met and development levies paid (if required), the surveyor requests section 223 and 224(c) (Resource Management Act 1991) certificates. These certificates are issued when the council

is satisfied that the plan and implementation of conditions conforms to the subdivision consent. If any conditions have not been complied with, the council issues a consent notice.

### Issue of Title

The final stage involves the surveyor submitting the survey plan for approval and deposit by Land Information New Zealand (LINZ). At this stage the solicitor lodges the necessary documents for the issue of title including: order for new certificates of title, easements to grant rights of way, drainage easements, water right easements, and easements to create land covenants. The Solicitor simultaneously lodges these documents together with the section 223 and 224(c) certificates and consent notices with LINZ. The titles are usually issued 10-15 working days thereafter.

### Finally

Make a point of getting to know the above steps. You will then be able to take more control of the process while relying on the relevant experts to guide you through the finer points of that process. Call associate Katy Harrison if you have any immediate subdivision related queries.

## 90 DAY TRIAL PERIODS INTRODUCED

On 12 December 2008 the Employment Relations Amendment Bill was passed. The amendment allows employers who have fewer than 20 employees to terminate the employment of new staff within the first 90 days of employment without fear of a personal grievance for unjustified dismissal; provided the parties have agreed to a trial period in the employment agreement.

The amendments are effective from 1 March 2009. The date of determining whether the employer has fewer than 20 employees is the date the employment agreement was entered into. The legislation does not specify who is counted as an employee and so, potentially, casual and part-time employees could be counted. The following conditions apply to the trial period:

- It will only apply to employees who have not previously been employed by the employer.

- Both parties must agree to the trial period.
- The trial provision must be a written provision in the employment agreement.
- The trial period must not exceed 90 days – so it could be for a shorter period than 90 days.
- During the trial period the employer may dismiss the employee by giving notice of termination.
- The employer must give notice of termination to the employee within the trial period in order to be protected by the trial provision.
- If the employee is dismissed they are not entitled to bring a personal grievance or other legal proceedings in respect of the dismissal.

- Employees will still be able to bring personal grievance claims for unjustified disadvantage, sexual or racial harassment, discrimination or duress.

In all other respects the employee is to be treated no differently from other employees whose employment agreements do not contain a trial period. The obligation of good faith remains during the trial period with the exception that the employer is not required to consult and to provide information to the employee prior to termination.

Commentators have mixed views on the amendments. Australia and most other OECD countries allow trial periods.

The New Zealand Government has introduced this legislation in an effort to encourage employers to provide employment opportunities to people without financial risk to the employer if the employment relationship does not work out.

In an announcement on 11 December 2008 the Minister of Labour, Hon. Kate Wilkinson, stated that "By lowering the legal risks employers face, they will be more confident in giving people the opportunity to prove themselves" and that "The 90 day trial will provide real opportunities for people at the margins of the labour market".

Given that the trial period must be agreed between employer and employee, those employees who are in demand and have some bargaining power will no doubt attempt to negotiate the removal of the trial period.

Employment problems can take some time to surface so employers will need to be vigilant to ensure they act within the 90 day period. Call Ben Nevell or Janice Revie if you need assistance with this area.



## THE EARLY BIRD CATCHES THE WORM - TIME LIMITS IN CIVIL CLAIMS

Imagine that 2008 was just not your year. It began with the discovery that your home, bought four years ago, is a leaky home and needs major repairs that will cost over \$200,000.

A short time later your widowed mother died, leaving her entire estate, worth several million dollars, to your siblings because of a recent falling out with you – and that after years of living with you and your family. Then, two months ago, you lost your job because you stood up to your manager, who is a workplace bully. The final straw came when your plasma TV died last night during a test match, after having intermittent problems since you bought it 18 months ago.

You decide it is time to right some wrongs and go to see your lawyer. One of the issues that will be raised with you is limitation periods, which are time limits within which certain claims must be brought.

Some of the limitation periods that might apply in the present scenario include the following.

You believe that the real estate agent who sold you the house misled you and you would like to bring a claim under the Fair Trading Act 1986. However, your claim under that Act might be barred because applications under the Fair Trading Act must ordinarily be made within three years of the date of the event.

You then consider bringing a claim through the Weathertight Homes Resolution Service against the architect, the developer, the builder, the roofing company and the council that issued the code compliance certificate. Unfortunately, the house is 11 years old and section 393 of the Building Act 2004 prevents



claims being brought 10 years or more after the date the work was carried out.

You may have better luck bringing a claim against your mother's estate pursuant to the Family Protection Act 1955 (or on the basis of a testamentary promise, if you had been led to believe that you would inherit some of the estate). The general rule for bringing such claims is that they must be filed within 12 months of the date that administration or probate is granted. However, in certain circumstances you need to be even quicker, because the estate may be distributed after six months.

What about your case for unfair job dismissal? If you wish to bring a personal grievance pursuant to the Employment Relations Act 2000 against your employer, it must be submitted to the employer within 90 days from the date you were dismissed.

Surely the Consumer Guarantees Act 1993 won't let you down. However the Act provides that you must reject goods "within a reasonable time" and what is reasonable will depend upon the type of goods and how they were used. You might not be entitled to compensation if it turns out that the minor problems you have been having for 18 months should have been fixed and would have prevented the TV from stopping altogether.

These are only a handful of examples of the limitation periods that apply to a vast array of legal situations. While some of the limitation periods can be extended by a court, the examples highlight that it may be crucial to seek legal advice as soon as possible. Most claims must be brought within a certain time, or the opportunity to obtain a remedy will be lost. Call John Farrow or Blair Judd if you need advice in relation to a civil claim.

## SNIPPETS

### Building Act Update - Kiwi DIY Tradition Improved

Hon. Shane Jones, the Building and Construction Minister, has taken steps to cut back on DIY building regulations enacted as a result of the leaky building crisis.

The Government has realised that the response to the crisis was too extreme and has reduced the scope of work that requires building consent. Schedule 1 (Exempt Building Work) of the Building Act 2004 was amended by Order in Council on 16 October 2008. The work that does not require consent now includes such things as:

- Changing existing household plumbing
- Removing or changing non-load bearing walls
- Installing or replacing windows or exterior doors

- Making a home more accessible by widening doorways and building access ramps
- Construction of retaining walls that retain not more than 1.5 metres depth of ground
- The construction, alteration or removal of a pergola

These changes will allow Kiwis to once again take up their tools and go about what they have always done in that long standing tradition of DIY.

### Holidays Act

Although the National Government is planning to review the Holidays Act, they have promised to retain 4 weeks annual leave and to allow employees to trade the fourth week for cash.

## WEBB FARRY NEWS

- Webb Farry is pleased to announce the appointment of James Lovelock as its Managing Partner.

"James brings wide legal and management experience to this new leadership role at Webb Farry", says Webb Farry Chairman of Partners, David Ehlers. "He has previously been a commercial law partner with the firm as well as with a leading Invercargill practice. Since 2004 he has been Webb Farry's General Manager with primary responsibility for leading the firm's strategic planning and operational management. In all, James has nearly two decades of experience helping clients and firms find business and legal solutions".

Webb Farry is focused on proactively meeting the ever changing needs of its clients. James' appointment is a

critical part of our commitment to continue growing and evolving our business in a manner which keeps this focus paramount.

- Law Graduate Sheena Kirkland has joined our commercial/property team, working primarily with David Ehlers, Katy Harrison and Amy Collins. Sheena will become a solicitor with the firm when she completes her part-time professional legal studies qualification around the middle of the year.
- Webb Farry will close for the Easter break at 5.30pm on Thursday 9 April, reopening at 8.30 am on Wednesday 15 April. For urgent enquiries during this period, please refer to our after hours and cell phone listings in the Telecom white pages.

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

## WHO'S WHO? ... AT WEBB FARRY

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