

LAW 2 DAY

GALBRAITHS
LAWYERS

MAY 2005 ISSUE 2

AN UPDATE FROM THE TEAM @ GALBRAITHS

Galbraiths are enjoying a buoyant start to 2005. It has been pleasing to see the practice grow to the extent that we are offering specialised legal assistance, normally only found in the central city law firms. We continue to strive to set the standards in legal practice in the eastern suburbs, by recruiting quality legal staff to provide you with the highest possible level of service.



The property market appears to be slightly up on the same time last year, with a steady stream of agreements for sale and purchase of homes coming into our office for our staff to attend to.

KeyTrack® continues to expand; it seems quite hard to believe that only a year ago Galbraiths was the only law firm in New Zealand using this web-based legal software, which has streamlined the way we communicate our conveyancing matters, to both our clients and real estate agents alike. This is achieved by using Email and SMS Text Messaging. Now there are 35 leading firms, throughout the country, licensed to use it. The benefit to our clients and others using KeyTrack® will only increase from here on in.

Our property team Michael Taylor LLB, David Galbraith LLB, Ross Sly LLB, Delwyn Barnett NZILE and Glennis Watson NZILE are available to assist you, whether you are buying, selling or leasing residential or commercial property, utilising the KeyTrack® system where appropriate.

Stephen Munro LLB, our Court Lawyer, has settled into the practice well since his arrival a year ago, attracting a more commercially orientated clientele, whilst still providing all of the traditional services to the many thousands of private clients that Galbraiths represents. Stephen can assist you with any disputes or contractual issues that you may have, as well as represent you in Court should the need arise.

We hope that 2005 is going well for you and we trust you will find some of the articles in this issue of Law2Day of particular interest to you. The team at Galbraiths looks forward to hearing from you if we can be of any assistance.

Regards

Why?

The intention behind the section is to recognise that one partner may be economically disadvantaged as a result of a relationship ending because of the division of functions during the relationship. That disadvantage will not be overcome by an equal division of relationship property.

Reported decisions on the section are now accumulating and the limits of the section are being tested.

When Will It Apply?

The section will apply where there is a real and significant difference between the respective income and living standards of each partner. The disparity must arise from the division of functions in the relationship and not, for example, from a difference in earning capacities which existed before the relationship began.

The most typical circumstance will be where one party compromises a career to look after children and/or to assist a high


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ECONOMIC DISPARITY – WHAT DOES THIS MEAN FOR YOU?

Section 15 of the Property Relationships Act 1976 was introduced to address issues of inequality between partners following a breakdown of their relationship.

The section empowers the Court, following a division of relationship property, to compensate a spouse/partner if his or her living standards and income will be significantly less than the other party because of the division of functions in the relationship.


RICHARD GALBRAITH LLB
Managing Solicitor

flying partner to increase his or her earning capacity.

Finally for an award to be made there must be circumstances which convince the Judge that it is just to compensate the disadvantaged party. In considering whether it is just to make an award, a Judge will usually consider factors such as:

- The length of the relationship;
- The length of the career break;
- The length of time required to rectify the break in career path;
- The position of the children now and in the future;
- The career possibilities available to the disadvantaged person; and
- The amount of property available for division.

While this section has not and will not produce a flood of claims, it is important that the circumstances of each possible claimant are considered at the point of separation. A departing partner who treats the other partner of lesser means with consideration and kindness following the separation may well be limiting the chance of a successful claim being made against him or her. Ongoing support following a separation through assistance with housing or voluntary maintenance payments will certainly influence the Court in the exercise of its discretion. In reality, the partner providing the assistance is already recognising the economic disadvantages which have flowed from the separation.

BE AWARE

A successful award of compensation can result in a significant payment. One recent court decision, in recognising the economic disparity, made an adjustment to the division of assets of \$75,000.00.

SMOKEFREE LAW

The recent amendments to the Smokefree Environments Act 1990 have generated a lot of interest in the media over the past few months. Although the impression sometimes conveyed by the media is that a new law has come into effect, the amendments to the 1990 Act were actually passed at the end of 2003 and provided for progressive changes over a two-year period.

THE MOST SIGNIFICANT ARE AS FOLLOWS:

- Imposition of a ban on access to smoking products for those aged under 18 years of age effective from 10 December 2003.
- Buildings and grounds of schools and early childhood centres became smokefree with effect from 1 January 2004.
- Licensed premises (including bars, restaurants, cafes, sports clubs and casinos) became smokefree indoors from 10 December 2004.
- All other work places became smokefree indoors from 10 December 2004.
- Restrictions on the display of tobacco products in retail outlets apply from 10 December 2004.

RETAILERS

There are a number of restrictions on retailers who sell tobacco products. These include:

- A prohibition on the promotion of the sale of tobacco products with other products.
- A prohibition on promotional schemes for the sale of tobacco products.
- Restrictions as to the manner in which tobacco products can be displayed.
- Appropriate signage warning of the dangers of tobacco use which must be displayed where tobacco products are sold within 200 metres of the point of sale.

- Strict marketing directives aimed at enforcing the prohibition on the sale of tobacco or herbal products to persons under the age of 18 years.

SPORTS CLUBS

All clubs or sporting organisations which are licensed for the sale of alcohol must comply with the new smokefree law. In particular, such organisations should be aware of the following:

- The fact that the premises are not open to the general public does not mean that compliance with the Act is not required.
- A club must take "reasonably practical steps" to ensure that it complies with the Act. Failure to do so could result in a fine.

Although the Act does not define what "reasonably practical steps" are, the Ministry of Health has issued guidelines which include the formulation of smokefree policies, displaying appropriate signage and prohibiting the sale of tobacco products on the club's premises. Further information can be obtained from the Ministry of Health.

The underlying objective in making these changes is to protect the public from the harmful effects of smoking and to further promote a smokefree lifestyle as the norm.

The changes to the law have not been welcomed by everybody, particularly some hotels and bars where employers and customers have voiced resentment at what they perceive as undue Government interference.

There are significant penalties whereby failure to comply can result in fines of up to \$4,000 in respect of each offence for companies and up to \$400 for each offence in respect of individuals. As some licensees of licensed premises (particularly hotels) have stated their intention to flout the law by continuing to allow smoking on their premises, presumably it will not be long until we have an indication as to the penalties likely to be imposed by the Courts in practice.

KEY AMENDMENTS TO THE EMPLOYMENT RELATIONS ACT

On 1 December 2004 amendments to the Employment Relations Act came into force. The amendments aim to better support the key objectives of collective bargaining and good faith and provide effective processes for resolving relationship problems. It also protects employees, by including a requirement for an employee protection provision, if their job is affected by the sale or transfer of their employer's business or if their work is contracted out. The four main areas are summarised below:

1. Collective bargaining is actively promoted rather than simply permitted. Parties negotiating for a collective agreement must now conclude one, unless there is a genuine reason, based on reasonable grounds, not to. The Employment Authority can now facilitate collective bargaining in specified circumstances. Bargaining fee clauses are deemed to apply unless the employee notifies the employer in writing that the employee does not agree to pay it. Bargaining fees are to be deducted from wages and paid to the union concerned.
2. The duty of good faith – the meaning has been widened and there is now a legislative requirement for good faith behaviour. There are now penalties for

failure to comply. Employers and employees need to be active and constructive in establishing and maintaining a productive employment relationship. This includes being responsive and communicative. There is a statutory requirement on an employer to consider any issues that employees (and prospective employees) raise in relation to bargaining for an individual agreement or any variation of one, and to respond to them.

3. The processes for resolving employment relationship problems now include:
 - a) Providing dispute resolution services through the Department of Labour to independent contract situations.
 - b) Procedures that allow mediators to address any party to a matter without any representative of that party being present and to express their views to one or other party with or without their representative being present, on the substance and process of the matter.
 - c) Allowing employers to pay by way of installment, if financial circumstances require it.
 - d) Ensuring that any payment goes straight to the other party and not to their representative, unless their representative is a solicitor.
4. Providing protection to employees in situations where business undertakings are sold, transferred or contracted out.

From 1 December 2004 all new employment agreements must contain an 'employee protection provision' which meets the requirements of the Act.

For existing agreements these new provisions need to be included at the earliest of:

- 12 months after 1 December 2004;
- When the agreement is next amended;
- If the employer's business is restructured, before that restructuring occurs.

This clause is not required if the employees fall within the definition of 'vulnerable employees', namely those providing cleaning, food catering, caretaking or laundry services in specified sectors (i.e. school, hospitals or residential care sectors, airports, public service). These types of employees have special protections set out in the Act in the event of a restructuring.

Your solicitor will be able to provide you with further information on the amendments to the Employment Relations Act and how they may affect you.



WILLS, POWERS OF ATTORNEY & FAMILY TRUSTS

Michael Taylor *LLB* and Delwyn Barnett *NZIE* at Galbraiths are experts in advising how to protect your assets for you and your future generations, by discussing the use of Wills, Powers of Attorney and Family Trusts.

They look forward to hearing from you.



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THE FORESHORE DEBATE

The issue of ownership of the Foreshore and Seabed entered the public arena in June 2003 when the Court of Appeal ruled that the Maori Land Court had jurisdiction to investigate customary title to the foreshore and seabed.

Proposed legislation to govern ownership of New Zealand's foreshore and seabed was controversial, and a source of much debate. However, on 24 November 2004, the Foreshore and Seabed Act 2004 ("FSA") was passed, together with amendments to the Resource Management Act 1991 ("RMA") to reflect the new legislation.

PURPOSE

The FSA vests the full legal and beneficial ownership of all public foreshore and seabed in the Crown, and aims to maintain public rights of access while ensuring protection of the association of whanau, hapu and iwi with areas of public foreshore and seabed.

KEY OBJECTIVES OF THE FSA ARE:

- Recognising and protecting ongoing customary rights to undertake and engage in activities, uses or practices in areas of the public foreshore and seabed;

- Recognising territorial customary rights (where there has been exclusive use and occupation of an area of foreshore (to the exclusion of persons not belonging to the group) by group members without substantial interruption from 1840 onwards, and where the group has had continuous title to the land above the foreshore).

- Enabling applications to be made to the High Court to investigate common law rights;

- Enabling successful applicant groups to participate in the administration of a foreshore and seabed reserve, or enter into formal discussions on redress; and

- Providing for general rights of public access, recreation and navigation in, on, over and across the public foreshore and seabed.

WHAT IS THE FORESHORE?

Under the FSA, the foreshore and seabed is deemed to be the area between the line of the mean high water springs, and the outer limits of the territorial sea. It includes the air space and water space above that area, and the subsoil and bedrock below.

WHAT ABOUT MY PLACE?

Some New Zealanders have been concerned that their coastal properties will be affected. The FSA only applies to public foreshore and seabed. Any land (including reclaimed land) that is subject to a specified freehold interest (and owned by a person other than the Crown or a local authority) and where a certificate of title for that land has been issued is excluded. However, the RMA now provides that where a section of land that includes foreshore and seabed is subdivided, the foreshore and seabed portion of that land will vest in the Crown.

Land that is reclaimed after commencement of the FSA, or which was not subject to a specified freehold interest, vests in the Crown. And (other than for limited exceptions) the Minister of Conservation will not transfer freehold title over reclaimed land, but may provide an applicant with a lesser right or interest in the land.

ACCESS

The Act protects and secures the rights of access for members of the public in or on the public foreshore and seabed, and the right to remain in that area and engage in recreational activities in or on the public foreshore and seabed, but subject to any territorial customary rights or prohibitions or restrictions on access imposed under the FSA.

HAVE YOUR CONTACT DETAILS CHANGED?

Contact the Galbraiths Team at:

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You can log on to:

<http://www.galbraiths.co.nz/client.html>

to update your details, or contact us on 09 535 4190

This newsletter is produced by Galbraiths. It is intended to provide general information in summary form on legal topics current at the time of printing. The contents do not constitute legal advice and should not be relied on as such. Specialist legal advice should be sought in particular matters.



AVAILABLE TO CLIENTS OF GALBRAITHS

Richard Galbraith's Company Online Conveyancing Limited that created the KeyTrack® system has recently had a name change and is now known as:

KEYTRACK NEW ZEALAND LIMITED

The web-based KeyTrack® software has now been licensed to 35 law firms throughout New Zealand, with more coming on board regularly.

Recently, KeyTrack® New Zealand Limited was named "Smart Company of the Month" by Manukau City Council's online

publication, Smart Manukau EZine. To find out more, check out the article at:

www.manukau.govt.nz/smartmanukau/stories/key-track.htm

The system provides real time communication of property transactions to Clients, Real Estate Agents, Mortgage Brokers and any other (approved) Interested Parties involved simultaneously by sending out Email and/or SMS Text Messages as various milestones, such as when the agreement is first received by Galbraiths, when the deal goes unconditional and when the sale or purchase settles. In addition, the Transaction Status Report (TSR) can be viewed

(via login details that are provided to each interested party) online 24 hours a day.

We are receiving an excellent response from the people on the receiving end of KeyTrack's communications. They are impressed at being kept up-to-date so efficiently, even if they are overseas, at work, or just out and about.

The next time you buy or sell a property through one of our law firms such as Galbraiths Lawyers in Howick, you too will enjoy the KeyTrack® advantage.

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www.KeyTrack.co.nz