

# NEWSLETTER

Issue 1  
Autumn 2008

*Welcome to the first edition of the PMC newsletter for 2008. We trust you all had an enjoyable and restful Christmas break, and have enjoyed the extended summer of the New Year. We would welcome your feedback in your newsletter. Are there any topics you would like us to focus on? Happy reading!*

## Inside this edition

The New Property Law Act .....	1
Home Detention .....	2
Room with a View .....	3
Restorative Justice .....	4
Snippets.....	4
Education Update .....	4
Consumer Guarantees Update.....	4
Did you know that.....	4

*Our aim is to provide access to excellent and affordable legal services focused on client satisfaction.*

*Next time you need legal advice, call Petrie Mayman Clark.*

**153 Stafford Street, TIMARU**

**Telephone: 03 687-9480**

**Facsimile: 03 688-9749**

**Email: [admin@pmc-law.co.nz](mailto:admin@pmc-law.co.nz)**

**Website: [www.pmc-law.co.nz](http://www.pmc-law.co.nz)**

*If you no longer wish to receive this newsletter, please let us know.*

## 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.

## Distrain

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.

# Home Detention

---

You may have considered from reading the Court news lately that more people are being sentenced to Home Detention than usual and you would be right.

On 1 October 2007, Parliament amended the Sentencing Act 2002 which hailed significant changes to the sentencing laws in New Zealand. One of these changes was to make Home Detention a sentence in its own right rather than it being an option that could be applied for (if the Judge had consented) once you were sent to prison.

The rationale behind the law change came down to the mighty dollar, with Parliament releasing the following statistics:

- In May 2007, the number of prison inmates reached the record high of 8,976, as opposed to 4,530 in 1997.
- The cost of housing a prisoner in jail is \$92,345.00 per year or \$253.00 per day.
- A person receiving a sentence of Home Detention would cost the state only \$21,640.00.

In addition, it was publicised that there were also other advantages to Home Detention. In particular, we were informed that as Home Detention is a community-based sentence, there would be more support available for the re-integration and rehabilitation of offenders. Furthermore, it is considered that there are lower re-conviction and re-imprisonment rates for recipients of Home Detention.

Studies have shown that serving a sentence of Home Detention is difficult. It is clear that the Courts have picked up on this, as Judges appear mindful of the hardships involved when considering the length of sentence.

Once sentenced to Home Detention, a person is fitted with an electronic anklet, which monitors movement. The defendant can only leave their home with prior written permission from their probation officer. The usual reasons that are permitted are for work and a couple of hours a week for shopping. There are a number of conditions imposed with the sentence and if breached, depending on the seriousness of the breach, the defendant will face further charges and can have their sentence of Home Detention cancelled and a sentence of imprisonment imposed.

In order for a sentence of Home Detention to be considered as a sentencing option for the Judge, there needs to be a Pre-Sentence Report, which is completed by the Probation Service. The Report looks at the defendant's personal circumstances, their proposed home and provides a recommendation as to whether they consider Home Detention would be appropriate.

It is clear that there are some cases in which Home Detention is not acceptable. However as both Judges and Counsel are still finding their feet with the new sentencing options imposed, it is likely that there will be interesting sentencing outcomes in the near future.

## 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 a central, perfect base, a place to let out to your friends, a long term investment! You may want to be elevated to take advantage of the city's many beautiful views. 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.

## Restorative Justice

---

Restorative justice is not new to New Zealand, having been practised in parts of the country since the 1990s. However, in recent years the practice has been incorporated into legislation. References in the Victims' Rights, Sentencing and Parole Acts mean that victims are to be encouraged to take part in restorative processes, if available, and courts must give consideration to the outcomes of such processes.

Just what is restorative justice? It can be described as a process whereby victims of crime have the opportunity to meet their offender in a secure environment to talk openly and truthfully about what has happened. Victims have the chance to tell the offender how they have been affected, the opportunity to have their questions answered and an input into how the offending should be resolved.

Offenders are encouraged to be accountable for their actions and take responsibility for putting things right. Attendance at a restorative justice conference is entirely voluntary for both parties and support people are encouraged to attend.

Here in South Canterbury, Project Turnaround has been a restorative justice provider for nearly 12 years. Cases are currently dealt with at many different levels since recent changes to the Police Diversion scheme.

'Restorative Justice within Police Diversion' gives an opportunity for primarily first-time offenders of lesser crimes to make good with their victims and avoid a conviction if agreements between the parties are reached and honoured. Restorative justice meetings at this level include the presence

of two community panel members and a police representative as well as a facilitator and victim(s) and offender.

Where charges are more serious, or there has been previous offending, a restorative process similar to that described above is held, following a guilty plea being entered before a judge. After an agreement is reached and successfully completed, the court will decide on the final outcome, which may be a discharge without conviction.

Where there has been serious offending, a restorative justice conference may be held for willing parties after conviction but before sentence. Two trained facilitators convene the conference, and a full report is provided to the sentencing judge.

Restorative processes are also able to take place prior to release from prison, recognising that those who have been harmed and those who have committed crime must have the right to choose when the time is right for them to take part.

Many studies have investigated the benefits of restorative justice over the past few years, and have generally found that victims who have taken part have been pleased they did, and that re-offending rates for participating offenders are lower than for others. The goal locally is to obtain positive results for all involved – victims, offenders and the community.

**Linda Gaskin**  
**Co-ordinator of Project Turnaround**  
**Timaru**

## 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.

### 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.

### Did you know that:

- Coca-Cola was originally green.
- It is impossible to lick your elbow.
- The only food that doesn't spoil is honey.
- The first novel ever written on a typewriter was Tom Sawyer.
- Each king in a deck of playing cards represents a great king from history:  
Spades – King David  
Hearts – Charlemagne  
Clubs – Alexander the Great  
Diamonds – Julius Caesar
- If a statue in the park of a person on a horse has both front legs in the air, the person died in battle. If the horse has one front leg in the air, the person died as a result of wounds received in battle. If the horse has all four legs on the ground, the person died of natural causes.

*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.*