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THE EMPLOYMENT STATUS OF WORK-INTEGRATED LEARNING STUDENTS IN NEW ZEALAND

Craig Cameron , Anne Hewitt and Deanna Grant-Smith

This article examines the employment status of tertiary students participating in work-integrated learning (WIL) courses in New Zealand. WIL is an educational approach that integrates theory with student exposure to real work, professional or practice settings. As the setting generally involves WIL students undertaking work for host organisations, an important labour law issue is whether the WIL student is an employee. This issue was addressed in Association of Professionals and Executive Employees Incorporated v Secretary for Education (Govender), the first reported case in New Zealand of a WIL student, who was not paid a salary by the organisation for which they worked, to be declared an employee of their host organisation. This article analyses and evaluates the employment test under the Employment Relations Act 2000 and associated case law, including the Govender decision. It argues that if the reasoning in Govender is adopted in future cases, this may discourage host organisations from participating in WIL, jeopardising the pedagogy. The addition of a WIL placement exception to the Employment Relations Act is proposed to clarify the employment status of WIL students. The proposed exception would additionally protect students from harm, encourage financial support for WIL students, and facilitate quality WIL experiences.

COVENANTS ON LAND – THE IMPACT OF NEW ZEALAND COMPETITION LAW

John Land

The subject of anti-competitive land covenants has been an area of focus for New Zealand competition law in the last few years. Reforms to the Commerce Act 1986 have had important implications for land covenants and the New Zealand Commerce Commission has recently focused on anti-competitive land covenants to a significant degree.

Recent case law involving anti-competitive land covenants has proceeded on the basis of admissions of breach by the defendants to Commerce Commission penalty actions. As a consequence, the recent case law does not provide detailed guidance as to how s 28 of the Commerce Act 1986 dealing with anti-competitive land covenants should apply. The recent case law also has a focus on anti-competitive purpose rather than actual anti-competitive effect. This article reviews how s 28 should properly be applied to assess whether land covenants are anti-competitive and discusses the factors that should be taken into account in that assessment. It suggests an approach that focuses on the overall impact of a covenant in a market as a whole, and an objective approach to purpose that avoids the application of s 28 to land covenants that have no real likelihood of causing meaningful anticompetitive effects.

The article also suggests that recent amendments to the prohibitions on cartel conduct in the Commerce Act create a risk of deterring legitimate land covenants that do not meaningfully impact on competition in the market. The amendments do this by categorising certain land covenants that restrict the production or supply of particular goods or services as cartel conduct in breach of s 30 (and potentially as a criminal offence under s 82B) when the land on which the covenant is imposed is transferred to a competitor of the party who imposed the covenant. The article suggests that this is an overreach of competition law which should be rectified by statutory reform. The reform suggested is to ensure that land covenants that restrict the supply of goods or services only be considered unlawful where they breach s 28 and so have an impact on competition in a market as a whole.

THE CASE OF THE DISAPPEARING NDMO: THE ROLE OF NEMA IN NEW ZEALAND'S COVID-19 RESPONSE

Sulaiman Sarwary and W John Hopkins

The COVID-19 pandemic marked a pivotal moment in modern disaster management, significantly challenging New Zealand's legal and institutional disaster risk management (DRM) systems. While there are many public law lessons to be taken from the event, this article focuses on one: the role of National Disaster Management Organisations (NDMOs) during the pandemic, specifically New Zealand's National Emergency Management Agency (NEMA). The study finds that, as the pandemic unfolded, the all-of-government response, which prior to the pandemic was led by NEMA, resulted in NEMA being initially sidelined and eventually excluded when bespoke legal arrangements were introduced. Consequently, NEMA, tasked with coordination of disaster risk management and response within New Zealand's governance framework, became largely irrelevant to the country's largest-ever emergency response. This situation raises critical questions about NEMA's role and New Zealand's legal preparedness for future disasters, particularly the risk of hazard siloisation and the trend of using novel legal responses for each new event. The study concludes that, at a bare minimum, the lead and support agency roles should be clarified to avoid any confusion; ideally, NEMA's role can be leveraged to build on a solid foundation for future pandemic and disaster response without duplicating efforts or structures.

ROW, ROW, ROW YOUR BOAT: ARTISTIC CRAFTSMANSHIP IN NEW ZEALAND AFTER *WATERROWER*

Joshua Yuvaraj

This paper examines how a decision of the High Court of England and Wales on whether a rowing machine prototype is a "work of artistic craftsmanship" under the United Kingdom's Copyright, Designs and Patents Act 1988 can help judges, counsel and potential litigants in New Zealand navigating an identical provision in the Copyright Act 1994. The paper highlights the ongoing difficulties in interpreting and applying this category of work, particularly as it pertains to what gives a work "artistic" quality. It then outlines the approach taken by the Court at both a preliminary and trial level, focusing on the distilled list of principles the Court provided and used to determine the prototype was not a work of artistic craftsmanship. The paper explains how these principles usefully develop the approach taken by the New Zealand High Court on works of artistic craftsmanship and are therefore likely to be persuasive in future artistic craftsmanship disputes in New Zealand. It also highlights reasons for caution in applying these principles wholesale, as there remain ongoing, unresolved tensions in the application of the phrase that will need further judicial, or statutory, clarification.