The Bookshelf

BOOK OF THE MONTH

Relocation Disputes: Law and Practice in England and New Zealand
By Rob George
Oxford University Fellow and barrister Rob George looks at the different ways in which the legal systems of England and New Zealand currently deal with relocation cases, where one parent proposes to move to a new geographic location with their child and the other parent objects. The book draws on case law, literature and the views of lawyers and judges in both New Zealand and England. Dr George considers the practical differences between the two jurisdictions and analyses their good and bad points.

Butterworths Introduction to Commercial Law, 4th Edition
EDITED BY CYNTHIA HAWES
The material is extracted from the online and looseleaf publication Commercial Law in New Zealand. It is written by a team of eight authors, seven of whom are academics at the University of Canterbury. The law is stated as at 1 October 2013.

NewLaw New Rules: A conversation about the future of the legal services industry
CURATED BY GEORGE BEATON
Described as a new genre of “thread book”, this brings together contributions from 35 authors from six countries (including English-based New Zealander Richard Burcher). The conversation began as a post on Dr Beaton’s blog on 7 October 2013 about new ways of delivering legal services. This developed into a multinational discussion on current and anticipated developments and how “NewLaw firms” are moving from the traditional business models.

New Zealand Law for Marketers, 2nd Edition
BY RICHARD J VAREY (EDITOR), ANDREA BATHER, SUSAN CORBETT, FABRICE DESMARais, JACDEEP KAUR SINGH-LADHAR, BRAM VAN MELLE
The authors have backgrounds in commercial law, marketing and advertising. The book begins with an overview of legal issues encountered in marketing. It then looks at the sequence of the marketing process, from marketing intelligence through product concept, launch and marketplace activity. The use and place of social media is thoroughly examined. The target market is students, marketers and business owners.

Tyree’s Banking Law in New Zealand, 3rd Edition
BY ALAN TYREE, KELLEE CLARK, ANDRU ISAC, SIMON JENSEN, CHARLES RICKETT, BERNARD ROBERTSON, DUNCAN WEBB
This looks at the legislative foundation for the banking industry, the role and duties of bankers and the law relating to banking instruments, lending and securities. The analysis includes new legislation covering electronic transactions, money laundering and terrorism. The law is stated as at 30 June 2013.

Information on books in The Bookshelf

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Electoral Law in New Zealand: Practice and Policy, 2nd edition
by Andrew Geddis

Reviewed by Jason McHerron

New Zealand's seventh general election under MMP will take place later this year. At least until then, electoral law will be "squarely in the spotlight", where Professor Geddis seeks to drag it. It is therefore timely that a second edition of his superb book is available.

Recent polling highlights the relevance of certain minor parties, perhaps even those that do not yet formally exist. Kim Dotcom has orchestrated the electoral non-event of the year so far, cancelling his "Party Party" after the Electoral Commission advised it risked breaching s217 of the Electoral Act 1993. This provision declares the offence of "treating" to be a corrupt practice. To avoid its uncertain reach, Professor Geddis concludes that "candidates ... should stick to sandwiches, cakes and hot beverages at any public, election-related proceedings and especially avoid providing alcoholic beverages".

In an impressive piece of after-sales service in his blog on Pundit, the analysis is updated to include dance parties. A "penumbra of deep uncertainty" exists, which Mr Dotcom could only have dispelled by seeking a declaratory judgment before hitting the turntables. That is hardly satisfactory; indeed the law on treating seems moribund. The leading case dates from 1923, the Eden Election Petition. It serves to warn parties that heaving stands of neenish tarts and overflowing urns of Choya may be a risky vote-buying tactic: "A lavish supply, or a frequent supply, even of tea and cakes might, according to the circumstances, warrant the inference of corruption, but here the provision was on quite a modest scale and the instance was isolated".

Current arrangements for the enforcement of electoral rules such as those on treating are inadequate, Professor Geddis thinks, not because of any failing by the Electoral Commission, but because of the legislative decision to leave ultimate responsibility for enforcement to the Police, who are reluctant to prosecute electoral offences. This leads to a lack of effective consequences for electoral law breaches, and a lack of jurisprudence providing authoritative guidance on what the law means in practice. The Government proposes to examine this issue if re-elected, and the book suggests possible improvements.

Professor Geddis writes energetically and entertainingly, mastering the material with a clear and logical structure. The book elucidates a fascinating intersection of history, law and democratic principle.

A "feedback loop" arises because democracy legitimates our legal system, yet New Zealand's real world democratic processes depend on the prior existence of particular legal rules. So, Dr Cullen's provocative gloat "Eat that! You lost, we won..." works because electoral law underpins processes that encourage losers, not just winners, to abide by and respect electoral outcomes. Electoral law thereby represents an integral part of our attempt to establish a legitimate means of settling disputes within our society over who should have public decision-making power. Much work has gone into updating the book since its first edition in 2007. Professor Geddis is scathing about the Government's rejection of all the Electoral Commission's 2012 recommendations to improve MMP, including to abolish the one seat threshold for allocation of list seats and to reduce the party vote threshold from 5% to 4%. A Member's Bill drawn from the ballot late last year aims to implement these changes anyway. Professor Geddis argues in his blog that this Bill should be amended to include the Commission's companion recommendation: the removal of provision for "overhang" seats where a party wins an electorate but fails to meet the party vote threshold.

The reintroduction of across the board prisoner disenfranchisement in 2010 (recently considered by the United Kingdom Supreme Court in Chester) is also criticised. The fraught issue of electoral finance is carefully dissected both in terms of principle and technical detail. And the Electoral Amendment Bill 2013 is discussed. If enacted, online enrolment will be permitted, but voting itself will remain paper based. Implementing the select committee's recommendation to amend the Bill would mean ribbons, streamers and rosettes in party colours will continue to brighten poll day. As one would expect from New Zealand's leading academic on the topic, in a book on policy and practice, Professor Geddis makes numerous reform recommendations. These include that selecting election dates should be less open to prime-ministerial discretion, that partisan members should not be included on the Representation Commission, and that the law relating to election broadcasting should be overhauled.

The book is thoroughly referenced to relevant legislation, case law, and academic articles, including many of its author's own.

The suggestion to prohibit parliamentary urgency in relation to any bill seeking to amend the Electoral Act goes too far, in my view. It seems to be based on the common fallacy that urgency always precludes public comment and scrutiny through the select committee process. But this is only true if urgency is accorded during the first and second readings of a bill, something the Geiringer, Higbee and McLeay study (What's the Hurry? Urgency in the New Zealand Legislative process 1987-2010, Victoria University Press, 2011) found was relatively uncommon. Moreover, the 2011 Review of Standing Orders stressed that urgency should not be used to bypass select committee consideration of bills.

This book is essential reading for anyone involved in national elections. More generally, it should also appeal to anyone with an interest in democratic processes in New Zealand. Written by an accomplished communicator, it is as careful and authoritative as any excellent legal text must be, making it readily accessible and useful for lawyers and non-lawyers alike.


Jason McHerron is a Wellington barrister who specialises in civil litigation and advice on matters involving statutory interpretation.