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**“Legal Eagles” – the golf team of McLeods Lawyers, ongoing sponsors of the Kerikeri Golf Club’s Businesshouse competition**

### **Through the Looking Glass – Privacy Issues under the Spotlight!**

Thanks to technology, we now take for granted information being available 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 social websites. We shop and pay our bills online, check tides and the fishing calendar, or the property we are thinking of buying, all from our computers.

What many 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 we actively create ourselves. The database will continue to increase rapidly. This information has a commercial value.

A great deal of information is gathered through surveillance footage without our knowledge. Every time you walk into a department store, bank, petrol station or supermarket you are 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 be made aware 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

### **Uncertain Times**

We know many clients are looking at the remainder of the year with a sense of uncertainty and, in some cases, anxiety, about business and personal decisions. We all share the need to know where we are headed so we can plan and make appropriate and forward looking arrangements. Sometimes, it feels too hard and overwhelming to confront the situation, make an assessment and implement the changes needed to address difficult circumstances. Remember, we at McLeods have the knowledge and skills to help you through a rough patch. Whether it is just the opportunity

aware he was being filmed as there were no signs indicating 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 by cameras in cars which 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. Property owners or individuals may report concerns about a particular image. This may be of small comfort as the harm may have already occurred by the time the image is altered.

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 which 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.

to talk a situation through with an impartial advisor and confidant acting as a sounding board, or finding someone to identify the best action to take, and to support you through that process, we can do that. Sometimes the financial and personal cost of doing nothing is much greater than the cost of being proactive and taking control of the situation you find yourself in. In sharing a problem, you may find it is not as great and unmanageable as you may have thought. If this sounds like you, take the first

## 90 Day Trial Periods Introduced

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On 1 March 2009, the Employment Relations Amendment Bill came into effect. 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 if the parties have agreed to a trial period in the employment agreement.

The legislation does not specify who is counted as an employee and so casual and part time employees may be included. 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 in the employment agreement.
- The trial period must not exceed 90 days - so it may be for a shorter period.
- 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 she or he may not 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 must 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.

The Government believes this legislation will encourage employers to provide employment opportunities to people without financial risk to the employer if the employment relationship does not work out.

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 resist the inclusion of the trial period.

Employment problems can take some time to surface so employers should take care to ensure they can act within the 90 day period.

## Green Leases – The Way of the Future

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Worldwide focus on environmental sustainability has given rise to a green building movement which aims to incorporate environmentally sustainable design principles into the building process, and maintain those principles after the building has been completed.

When a building is completed, and the tenant moves in, what measures need to be put in place to ensure ongoing commitment to environmentally sustainable design principles? Addressing these issues has resulted in the introduction of the Green Lease concept.

### Green Lease Schedule

It is predicted that the concept of the green lease will become a standardised schedule to accompany commercial lease documents. A collaborative approach is required by landlords and tenants to ensure that the principles are complied with over the term of the lease.

### Contents of Schedule

A green lease may include incentives for both parties to improve environmental performance, and ongoing requirements such as:

- Obtaining Green Star NZ ratings
- Cleaning with environmentally friendly products
- Reducing energy/water use
- Recycling

- Having an environmentally friendly fit-out and building management process

The landlords may provide systems to ensure target ratings are achieved and maintained for the term of the lease. The tenant may also make a similar undertaking in relation to its fit-out and use.

### Landlord/Tenant benefits

The scheme will provide benefits for both landlords and tenants. The benefits for tenants include:

- Reduced outgoings such as water, electricity, waste disposal and air conditioning
- Provision of a more pleasant working environment
- Enhancement of reputation

Landlords will benefit as they are able to attract quality tenants and increased returns over the long term. Most new leases to government departments now have a significant focus on sustainable building systems and "green" features.

More prescriptive green leases are likely to emerge over time. What may be perceived by developers/landlords as unwelcome increased costs in the short term may eventually provide long term cost benefits associated with putting in place environmentally sustainable design principles.

### Staff News

In early January Sarah Jury gave birth to a beautiful baby girl, Aurora. Sarah is away on parental leave and will be back in the office in July.

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