



Law News

PUBLISHED WEEKLY BY THE AUCKLAND DISTRICT LAW SOCIETY

www.adls.org.nz

Continuing Legal Education

Damages serve a social purpose

By Catriona MacLennan

The steady increase in exemplary damages claims in New Zealand was an illustration of the vitality of the remedy, barrister Antonia Fisher told an ADLS seminar, *Tort Law Update*.

Ms Fisher said exemplary damages claims served a number of social purposes ancillary to compensatory damages and were an important civil remedy where a tortfeasor was guilty of truly outrageous conduct.

An exemplary damages action might be brought for a number of reasons.

It could bring the wrongdoing of the defendant to the public's attention, as in the case of *A v Bottrill*. It might also have therapeutic benefits for the plaintiff, provide a forum other than the criminal court to determine fault, and could lead to validation of the plaintiff's view of the defendant's wrongdoing.

Ms Fisher said the right to recover exemplary damages in New Zealand was defined in part by common law and also by legislation.

"There have been only a handful of cases before the courts involving domestic violence. Given its prevalence in our society, it is surprising that more claims have not been brought. Misconduct is rarely taken into account in relationship property claims, and the only civil remedy available is to sue for exemplary damages."

In 1996 the High Court approved a plaintiff's right to seek exemplary damages for domestic violence where the behaviour complained of had a degree of significance worthy of condemnation.

Ms Fisher said such claims were

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Acid paper 'time bomb' threatens NZ Statutes

By ADLS Librarian Helga Arlington

Printed volumes of the New Zealand Statutes between about 1885 and 1900 are about to shatter and be lost forever.

The paper deterioration process is a time bomb which could see this country suddenly deprived of significant statutes such as the *Land and Income Assessment Act 1891* and the *Native Land Act 1894* - a whole chunk of history, of interest to Maori and to historians, as well as to the legal profession.

It is sobering to think that archives of New Zealand as a nation are on this acidic paper and will be turned to dust a century from now if something is not done.

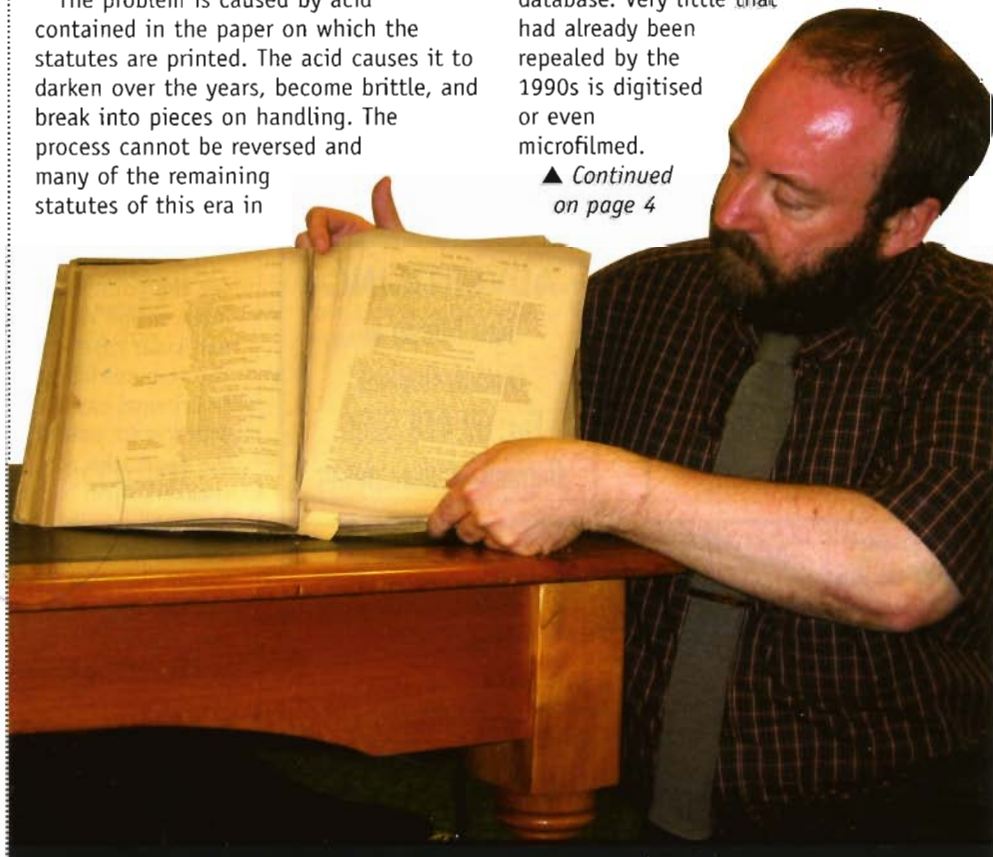
The problem is caused by acid contained in the paper on which the statutes are printed. The acid causes it to darken over the years, become brittle, and break into pieces on handling. The process cannot be reversed and many of the remaining statutes of this era in

libraries are already completely unusable.

Oddly enough, earlier books are safe because they are printed on linen and cotton-based paper. Wood-based paper was produced later due to increased demand and contained acidic chemicals to ensure the fixing of the printing ink. By the twentieth century the problem was largely resolved.

There is a widely-held belief that all of this important information is now on the internet or has been scanned. This is not so. All the statutes in force at the time were added to the commercial statutes databases in the 1990s and any repealed since are preserved in a "repealed" database. Very little that had already been repealed by the 1990s is digitised or even microfilmed.

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When Wellington District Law Society librarian Robin Anderson needed to provide a client with a copy of the 1894 *Native Land Act*, he discovered that the only available copy of the volume which contained it had shattered.

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Acid paper 'time bomb' threatens NZ Statutes

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This issue is a concern not just confined to those engaged in academic or historical research activities. Anne Paton, Phillips Fox legal information manager (NZ), points out that routine legal research in the private sector can involve the use of materials as old as these precious books and even older. On-going access to the information they contain is essential for modern-day work.

For example, she says, a law firm working for a local government client may need to research local legislation back to Acts passed in the late 19th century which have never been reprinted. The text of the original legislation is vital and may be available only in these fragile volumes. "If you turn a page too quickly and you could end up with half of it crumbling in your fingers," says Ms Paton.

Law librarians and legal publishers have for years been trying to get the old statutes scanned. Part of the problem appears to be that no single body has clear responsibility for preserving New Zealand's legal heritage. Status Publishing (now part of LexisNexis) applied to the Law Foundation for assistance for scanning and incorporation into their database as a public good activity. However, the foundation said it was unable to assist. The NZ Law Librarians' Group is now approaching the National Librarian Penny Carnaby hoping that the statutes can be scanned as a part of its mission to preserve New Zealand's documentary heritage.

Pat Northey, a former law librarian now with The Knowledge Basket, has long been warning of the impending acid paper time bomb. She believes that about one-quarter of all books in old, large research collections are in such bad condition they will crumble if touched. Ms Northey has established that the National Library has suitable scanning equipment for this specialist use and a little-used copy of the statutes preserved at the Auckland Public Library could be made available for scanning.

Ongoing access to this heritage material is essential for legal practice. Efforts to preserve it are at a critical stage. It is hoped that members of the profession will consider the consequences of losing this heritage material and voice their concerns before it is too late.

Pilot scheme to cut court waiting times

A pilot scheme aimed at reducing waiting times has started at the Wellington District Court.

"About 150,000 people nationwide attend the District Court each year to respond to charges ranging from disorderly behaviour, excess breath alcohol and murder," says Courts Minister Rick Barker

"They enter the court system through what is known as the 'criminal list' court, and the Wellington pilot will test a new way of streamlining this part of the legal process," Mr Barker said.

The pilot will involve the Court Registrar, Duty Solicitors and solicitors, Police Prosecutor, Legal Services Agency and the Community Probation Service working closer together to speed up the flow and management of defendants at their first appearance.

Matters such as receiving legal advice from a duty solicitor or solicitor, making an application for legal aid, or getting bail conditions agreed by consent; will all be taken care of 'on the spot', so defendants get the right information at the right time from the right people.

"They will then appear before a judge, with all the preliminary issues completed," Mr Barker says.

The current practice of remanding most defendants after their first appearance to appear before a judge on another day, to allow time for their issues to be dealt with, will end.

The few people unable to be dealt with on the same day will be given appointment times to attend court at a specific time on another day.

"The result will be better informed defendants, fewer multiple appearances, less time spent waiting at courthouses and better use of the judges valuable time," Mr Barker said.

The pilot will operate for one year and be evaluated over that period.

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