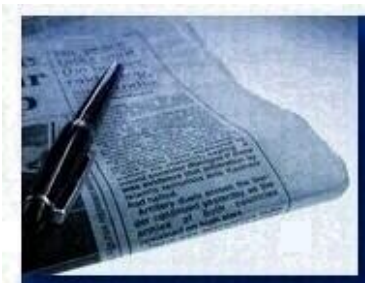

S J SCANNELL & CO

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INSIDE THIS EDITION

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Meth contaminated properties

A property that has been used to manufacture methamphetamine, or has had methamphetamine smoked inside, can be contaminated with methamphetamine residue that can be present on the surfaces inside the property.

A property used for manufacturing this illicit drug has different health implications than a property where the drug was just smoked. The manufacturing process potentially involves additional hazardous chemicals that can leave residue on surfaces. It is important to note that the most common method used in New Zealand for manufacturing methamphetamine does not involve solvents as used in other countries. Instead of the traditional glass set up, a sealed pressure vessel, which minimises the release of associated fumes and contaminants, is more commonly used.

The level of residue on walls, flooring and other surfaces, for a property to be deemed contaminated in New Zealand, was previously set at 0.5 micrograms per 100cm2. There is currently no evidence that contamination at this level has any associated health risks for people living in the contaminated property. Researchers do note that more research is needed on the topic to build more robust and concrete conclusions on what is a safe amount of residue.

A report published in May 2018 by the Prime Minister's Chief Science Adviser, advised that the threshold for initial testing should be raised to 15mcg per 100cm2. This level does incorporate a safety margin, with models used being deliberately conservative in their assumptions. Housing New Zealand adopted these new guide levels, which significantly reduced the amount of properties in New Zealand deemed to be contaminated.

Rapid tests, which is an initial screening test, can be purchased online and carried out by any homeowner. However, these tests measure methamphetamine at very low levels (0.5 to 1.5mcg per 100cm2) so serve as an initial indication only. These tests can indicate if any rooms in the property require further investigation. A composite field test combines readings from multiple swabs taken from the property and adds them together. This can result in an inaccurate reflection of the level of contamination and give

false impressions of high exposure. Professional testing can cost up to $2,500 for a three-bedroom home. These tests measure methamphetamine residue at higher levels than 15mcg per 100cm2. Levels of contamination over this threshold can indicate that the property was used for manufacturing the drug.

If you are a landlord, it is recommended that you check whether your insurance company has any policies on testing. While the implications for the insurance industry of methamphetamine contaminated properties are less certain than the health implications, following your insurers advice will limit your liability.

If a property is found to be contaminated with methamphetamine residue at high levels, remediation in the form of cleaning the property and all porous materials and items such as furnishings and carpet is warranted. Methamphetamine residue does dissipate over time so airing out the property and cleaning walls and furnishings with any standard detergent can be sufficient in some situations. The report from the Chief Science Adviser suggests that remediation of properties where low levels of residue are detected is not justified. However, detection of low levels cannot definitively rule out that the property was used for manufacturing, so it may be prudent to clean the property as a precautionary measure if there is reason to suspect it may have previously been used to manufacture methamphetamine.

There is a very low chance that your property, or a property you are interested in purchasing, has been used to manufacture methamphetamine. Out of 1,600 public sector properties suspected of being contaminated that were tested by the Institute for Environmental Science and Research (ESR), only 1% of the more than 13,000 swab samples revealed high enough levels that could indicate a property was used to manufacture methamphetamine. These 1,600 properties represented a biased sample with a higher potential for contamination. Based on these findings, testing for methamphetamine in residential properties does not need to be the default course of action.

Hague Convention

The Hague Convention ("HC") is the international law that governs the abduction of children. Abduction is defined as taking children from a country without the consent of their parents or guardians. Essentially, the HC regulates how countries interact with each other when a child has unlawfully been taken to another country. The HC's objectives include securing the prompt return of a child wrongfully taken from a country and to ensure the rights of the custody for parents or guardians. It is important to note that the HC applies to moving children from country to country, relocation domestically (within New Zealand ("NZ")) has different regulations and rules surrounding this.

The HC is only enforceable in countries that are party to it. This means that if a child was unlawfully taken to a country that was a party to the HC, the immediate return of the child/ren is required. If the country is not party to the HC, the process of returning the child becomes complicated, which in turn prolongs the process. In NZ the HC is entrenched under the Care of Children Act 2004.

In NZ the HC is most commonly used when parents separate and one parent wishes to move or has moved, to another country.

When a child is taken from NZ an application for their return must be made. The application must satisfy that:

- the other country the child was taken to is a contracting state to the HC;
- the removal breaches the applicant's rights of custody (access) to the child;
- the applicant was exercising their rights of custody at the time of the removal; and
- the child must have been habitually resident in NZ immediately before removal.

If these are met, the child will be promptly returned to NZ and the decision of, if the child will move, will be decided.

When a parent intends to take a child out of NZ permanently and the other parent does not consent, the opposing parent can apply to the family court to prevent them from leaving the country until a decision has been made. Such an application should include:

- that the child is in NZ;
- that the removal will breach the staying parents right of custody;
- that those rights of custody are being exercised at the time; and
- that the child is habitually resident in NZ.

The decision to allow a child to move to another country then falls to the family court. The family court takes a holistic approach; this means that all facts are relevant to making the decision, with its main concern being the welfare and best interests of the child. The parent who has taken/intends on taking the child, must file a defence that includes grounds on which it is in the best interest of the child to leave NZ. The parent can rely on a number of defences such as:

- the staying partner gave their consent;
- the staying partner was/is not exercising their rights of custody;
- there is a grave risk (physical and psychological) to the child if they remained in NZ;
- the child would be put in an intolerable position;
- the child objects to staying in NZ; or
- the move to another country happened one year ago or more and is now settled and socially integrated into their new environment.

The most persuasive ground that will compel the family court to allow the child to leave NZ is that the move would be for the welfare and best interests of the child.

Protection of Personal and Property Rights Act 1988 (PPPR)

The purpose of the PPPR is to protect the personal and property rights of people who are not capable of managing their own affairs. This includes, but is not limited to, someone who is mentally ill, has an intellectual disability, or a brain injury that will affect their mental capacity.

There are numerous orders that can be granted under the PPPR, but the most common are an Order for Appointment of Welfare Guardian and an Order to Administer Property.

The Order for Appointment of Welfare Guardian relates to the welfare of an incapacitated person ("subject person"). A person will apply to the Family Court and if the application is successful is referred to as a welfare guardian. The welfare guardian will make decisions for the subject person in regards to their personal care; which includes medical care and dentistry.

The Order to Administer Property relates to the property of the subject person. A person will apply to the Family Court and if the application is successful is referred to as a property administrator. The property administrator will make decisions for the subject person in regards to property; examples of property are physical property and money. If any item of property is worth more than $5,000.00 or the total income received annually is more than $20,000.00 a specific order is required to be obtained for a person to be appointed to manage that specific property.

To start the application process, the following documents must be completed:

- application for appointment of property administrator and/or application for appointment of welfare guardian;
- affidavit in support of application;
- information sheet for the Family Court;
- a report from a medical practitioner; and
- written consent from family members.

The next step is to file the above documents in the nearest Court to where the subject person lives. The Court will arrange service of the documents on relevant parties. Once all parties are served, 21 days from the date of service, any relevant party can oppose the application by filing a Notice of Intention to Appear.

As soon as the Court receives the application, a lawyer for the subject person ("lawyer") is appointed and paid by the Court. This lawyer will contact the subject person and help them understand the application to the best of their ability. The lawyer will then write a report and make recommendations to the Court; some examples of recommendations are:

- if any further medical evidence is necessary;
- should the orders be granted;
- should other family members be consulted etc.

The lawyer usually has 28 days to complete the report and the person making the application will also receive a copy.

Once the report has been completed, the matter will be put on the "Registrar's List" to monitor progress. If the application is not opposed and the lawyer agrees that orders should be granted, the Registrar can recommend to a Judge that the matter be dealt with "on the papers". This means that a hearing is not required and the orders can be made immediately. The Judge will decide if an order should be made, or whether further information is required or a pre-hearing conference is necessary.

If the application is opposed, a pre-hearing conference before a Judge will be set down to identify the issues. At this point, it is recommended to seek legal advice from a family lawyer (if you have not done so already). These hearings are set down for 15 minutes. From there the Court may set down a mediation conference with a Judge to see if the issues can be resolved by further discussion, and an agreement achieved. Upon resolution of the issues and the Judge is satisfied the order(s) should be granted, an order can be made at the mediation conference.

Sexual harassment in the workplace – what to do?

The Employment Relations Act 2000 ("ERA") and the Human Rights Act 1993 ("HRA") cover the in-depth processes, remedies and forms of general and sexual harassment in the workplace for New Zealand employees.

The Ministry of Business, Innovation and Employment has listed the conduct that is defined as "sexual harassment" in the workplace, and a number of examples of forms of sexual harassment on their website.

If you are subject to sexual harassment in the workplace then you can seek to have this resolved either formally or informally. In either case, I suggest that if you are faced with the situation where you are sexually harassed, you try to record (as soon as possible after the incident) a detailed account of times, dates, what was said and what was done.

If you wish to raise a personal grievance or complaint against your employer or colleague for sexual harassment under the ERA, you have a period of 90 days from the incident in which to raise a complaint (mitigating circumstances can sometimes be taken into consideration for any delays).

If you wish to raise a complaint under the HRA with the Human Rights Commission, you have a period of 12 months to do so from the incident.

Formal Resolution

If you wish to resolve the matter formally, some workplaces have specific processes and/or staff which are in place to deal with these situations and you should first seek out what, if any, process is used within the company.

If nothing is available within the company, you should advise your employer, manager, HR manager in writing of the incident, keeping a copy of such complaint for your records. If your employer is the subject of your complaint, then you may seek out an HR manager, supervisor, union representative or lawyer.

Your employer is legally required to investigate the allegations. If the employer finds the allegations to be true, they are required to take whatever steps will prevent it from happening again, which can be, but is not limited to, termination of employment or legal action. If the harassment takes place again, and practical steps were not taken, the employer can be held liable for their lack of action.

As part of the investigations into any potential sexual harassment, the employer must advise the harasser that suspension or termination of employment is a possibility, offering them first a chance to provide their input and side of the story prior to any decision being made.

Depending on the severity of the harassment and the input provided by the alleged harasser, victim or witnesses, the harasser may be given written notice to attend a disciplinary meeting or mediation. Such notice will set out the accusations made against them and pending any proof to disrepute the claims, the proposed punishments for their actions.

If your employer is the subject of your complaint then their actions will be investigated by a HR manager, union representative, manager or lawyer. Depending on how you would like to proceed (i.e. remain in the job or not) and the severity of the harassment you may look to seek compensation, means of future prevention and/or an apology from the employer, as forms of settlement.

If a mediation is called, it can either be face-to-face between the parties with a mediator present, or the mediator can move in between each side with their comments, which may be more appropriate if there is a power imbalance or fear. If mediation does not resolve the dispute, the employee can take the dispute to the Director of the Office of Human Rights Proceedings, Human Rights Review Tribunal or their lawyer to file legal proceedings.

Informal Resolution

If you seek to deal with the harassment informally, you could ask your supervisor or employer to assist in an informal capacity. Your manager may have suggested means of solving the matter, which may include a supervised meeting or verbal warning. Your manager would need to be aware of all the facts and have to give the alleged harasser a chance to provide their side of the story and have an input before they provide any interference.

If the harassment continues or nothing is done then formal processes should be followed.

Sexual harassment is evident in all types of work environments and can have significant effects on the victims. However, formal or informal processes can be taken to protect you or others from future incidents.

Different way titles are held – Crosslease, fee simple, stratum in freehold, leasehold

A title is a way to record the land and properties information, such as lot numbers, how big the section is, whether there are any covenants, easements or caveats registered against the title etc. There are several ways that titles can be held for land. Please note that the types of titles include, but are not limited to crosslease, fee simple, stratum in freehold, stratum in leasehold, and leasehold.

This article discusses in more depth, the titles that are known as crosslease, fee simple, stratum in freehold and lastly, leasehold.

A cross lease title is when there are several people who own an undivided share in a Lot of land, where the dwellings that the individual owners build on the Lot are then leased from the other Lot-owners. A normal term that these owners will lease the land for is approximately 999 years. Cross Lease titles can also be subject to right of ways. It is important to mention that there will also be a dominant and a servient tenement land owner, depending on where the dwelling is built. The dominant tenement will have all the benefits of the land, for example the right to the right of way, drainage, power and phone lines etc. However, repairs may be at the expense of both tenements, for example, if the right of way needs repair, both the dominant and servient tenement will need to pay for the repairs needed even if the servient tenement does not use the right of way. An example of a cross lease title is when there are two dwellings on one Lot with each flat owner typically owning a half share in the fee simple estate. In the lease documents, which are registered against their respective titles, each dwelling owner then leases from both owners of the land the exclusive right to occupy their dwelling and the immediate land surrounding the building for approximately 999 years.

A fee simple title is where the owner of the dwelling has full control and freedom of not only the dwelling but the land surrounding it. The owners can enjoy the freedom of a permanent and absolute ownership of the land. A Fee Simple title is one of the most common titles we see when dealing with transactions for conveyancing.

A stratum in freehold, also known as a unit title, can be typically seen when there are two or more apartment type developments on a Lot. This type of title is like what we see in a fee simple title, but on a

smaller scale. This means that instead of owning the dwelling and the land, the owners of a stratum in freehold will own the dwelling and possibly any immediate grassing area/courtyard that the dwelling may have. They will own the dwelling in full and can enjoy the benefits of it. It should also be noted that unit titles will usually be subject to Body Corporate rules and/or fees.

A leasehold title is where a person buys the right to occupy the land and/or dwelling. The land and/ or premises will have special conditions that the person who wants to lease the property must abide by to be able to use the land and/or premises. This type of title can be used for either residential or commercial purposes. An example here, to explain what this title is, would be when someone leases a building to run their business out of. The person will be paying the owner of the land and dwelling to occupy the premises. The business owner will have to follow the conditions that have been put in the lease agreement to be able to remain occupying the land and property. Types of residential leaseholds are flats and maisonettes, although some dwellings can be under long leases. Leaseholds will typically have lease agreements and they can be fixed term or for a limited period, they can include or exclude carparks, depending on what is in the lease agreement.

Snippets

How can you requisition a title?

Under an agreement for sale and purchase of land, a requisition of title is a request made by the purchaser to the vendor to 'make good' any defects to the title of a property before settlement. The purchaser may have a right to requisition the title where there is a serious defect or encumbrance that is not notified or included in the agreement.

The purchaser may requisition the title within 10 working days from the date of the agreement. If a requisition is not made within this period, the purchaser is deemed to have accepted the title. Once the requisition is raised, the vendor can remove the defect before settlement or if the vendor does not comply with the requisition, the purchaser can cancel the agreement or proceed regardless.

Defects to a title (in the case of a cross lease) may include alterations to the external dimensions of a leased building that is not included on the current flats plan.

I suggest obtaining legal advice when purchasing a property.

Why do we pay rates?

Rates provide income to councils around NZ to help fund services and facilities that benefit the public. Rates are collected for the overriding purpose of helping and improving local communities. Some of these services may include:

- road works, and new infrastructure
- waste collection, and water supply
- maintaining public grounds
- running community facilities such as libraries
- protection of buildings and general promotion for safer communities
- property information and advice

Councils calculate the annual rates for each property based on their respective valuations (including land and buildings) and the use of the property. Generally, these valuations are based on the current market value and are usually reviewed every three years. The use of a property generally falls into one of the three main categories being rural, commercial or residential.