

Electronic New Zealand Case Law: the Options¹

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New Zealand case law has come a long way electronically in the last 10 years. Legal publishers, both local and international, have chosen to invest large amounts of time and money in making case law and related materials available via CD-ROM and more recently, via the Internet. We now find ourselves surrounded by a plethora of databases

The sheer volume of materials available, together with the different platforms on which it can be found, leave many of us in a quandary. Two of the most common questions I am asked by people, both in New Zealand and overseas, are:

- what is available and where is it?
- what is not available?

I want to discuss the availability of electronic case law in New Zealand, highlight some of its deficiencies and address the vexed on-going issue of free public access to case law in this age of electronic information.

WHAT IS AVAILABLE AND WHERE IS IT?

Reported case law

Butterworths provides full-text access to official New Zealand case law via the *New Zealand Law Reports*² on CD-ROM and, as a CD-ROM subscriber, you can update the CD-ROM with the latest cases via the Internet on the Butterworths Australia web site.³

Some case report series (for example, *Procedure Reports of New Zealand*, *NZ Family Law Reports*, etc) are available as part of the relevant publishers' electronic databases. These latter report series can be bought as stand-alone products, or as part of an 'electronic library' linking the report series with other products from that publisher, such as a textbook or looseleaf service

Data Services' *NZ Environmental Digest and Law Reports* database also provides full-text reports of all reported decisions, as well as a synopsis of all environmental case law since the inception of the *Resource Management Act 1991* (NZ)

BRIEFCASE, the 'unreported headnotes' database created by Law Library Management, and *LINX*, the combined holdings database of the Auckland, Wellington and Canterbury District Law Society Libraries, provide the citations to cases once they become reported. Both products are available on CD-ROM

¹ This paper was originally presented at *Challenges to Traditional Law and Knowledge for the New Millennium*, the New Zealand Law Librarians' Conference, February 1998.

² *New Zealand Law Reports* Butterworths, 1958-

³ <http://www.butterworths.com/au/nzlr>

However, these databases are not full-text. They can be purchased as stand-alone products in their own right; or they can be purchased as a bundled package with either Brooker's or Status Publishing databases to make a statutory/case law potpourri. A search in one database links you into the others, giving you headnoted cases or journal articles relevant to the section searched.

Unreported case law

Full-text unreported cases from the Privy Council, Court of Appeal, Employment Court and selected Maori Land Court decisions as supplied by Te Puni Kokiri, are available from Status Publishing on CD-ROM and from the Status Online web site⁴

Status Publishing's Court of Appeal database has full-text decisions from 1991 and the decisions can be comprehensively linked to other Status products, and to other publishers' products you may have. Earlier full-text decisions from 1981 (originally from the Kiwinet database) are also available from the Status Online-web site but these are not yet linked in the same way. Abstracts from the Court of Appeal are also provided for decisions since 1989.

Status Publishing's Employment Court database has decisions from the Employment Court beginning full-text from 1996, with previous cases presently in the process of being entered back to 1991. The selected Maori Land Court decisions are full-text from 1986 with case notes from 1958.

I am informed that full-text High Court unreported decisions will also be available later this year from Status Publishing, beginning with all decisions from January 1997.

We have relatively easy access to the decisions of the upper level courts of our land, and whilst tracking and obtaining them electronically is still in the infant stage, traditional hard copy sources are available.

WHAT IS NOT AVAILABLE?

A recent informal survey of New Zealand law report series indicated that only 17 to 21 percent of the Court of Appeal's decisions are reported in the *New Zealand Law Reports*.⁵ Even if you add the various other report series in which Court of Appeal decisions appear, you discover that only 40 percent of New Zealand Court of Appeal decisions ever get reported. This may suggest stringent editing by the New Zealand Council of Law Reporting of cases that may not warrant reporting, but it also explains why many of the legal profession and, as a consequence, law librarians, spend their time hunting for unreported decisions. The situation for cases decided in the High Court is statistically worse, with only 20 percent being reported and, of those, only 5 to 8 percent are reported in the *New Zealand Law Reports*.

This is not a reflection on Butterworths, the publishers of the *New Zealand Law Reports*, but raises interesting questions about the New Zealand Council for Law Reporting, to which I will return.

⁴ <http://www.status.co.nz>

⁵ Anderson, Robin "Editorial" *New Zealand Law Librarian* 3 1997 p 31

District Court jurisdiction

Four years ago the Chief District Court Judge told our second Law Librarians conference that:

The District Courts apart from the specialist jurisdictions such as family, planning, tax, and accident compensation have not in the past been seen by academics and lawyers as providing judgments of interest. Yet in the public arena the decisions of the District Court effect far more of the public's lives than any other courts.⁶

With the increase in dollar value of the issues now coming before both the Disputes Tribunal and the District Court there is more and more demand for copies of decisions from these judicial bodies

In the case of the District Court many new statutes, such as the *Fair Trading Act 1986* (NZ), *Health and Safety in Employment Act 1992* (NZ) and *Serious Fraud Office Act 1990* (NZ), have meant little or no judicial comment from the High Court is ever made in those fields, simply because the jurisdiction lies exclusively with the District Court.

As a result, District Court decisions are the only public record where the statute has been tested or interpreted. This is of particular concern as, so I understand, any District Court case which does not have an appeal lodged within 28 days of hearing has the court transcript tape wiped, removing all record of the hearing from all but counsels' and Judge's memory

A good example of this is the Department of Labour's *Occupational Health and Safety Service Newsletter*. This newsletter contains abstracts of decisions relating to occupational safety and health. Often when you try to obtain any of the full-text decisions described in these abstracts, you discover that no judgment in fact exists. Judicial notes will be on the file but often no substantive decision

How many of us have spent fruitless days searching for a decision that a Judge refers to orally or counsel vaguely recalls, only to discover that no hard copy decision resulted?

A New Zealand Law Librarians' Group catch cry could easily be: why it is that District Court decisions are so hard to obtain? We have been lobbying on this point since the initial NZLLG working paper on *Access to Parliamentary and State Information*.⁷ Our concerns about access to judgments then, are just as valid now

At the NZ Law Librarians conference in Auckland in 1994, the Chief District Court Judge had these very issues brought to his attention. Assurances were given as to new delivery mechanisms, greater accessibility and wider dissemination of unreported District Court decisions – however, some five years later we are still faced with the same inaccessibility issues.

⁶ Young RL "Changes in the New Zealand court structure: access to the decisions of the District Court" *New Zealand Law Librarians' Group Newsletter* 1994 p 45

⁷ *Access to Parliamentary and State Information*, New Zealand Law Librarians' Group working paper, 1993

Tribunals

Many of our tribunals now place their decisions on a number of disparate web sites thereby dispersing them and making their location that much more difficult to find. For example, the decisions of the Broadcasting Standards Authority from 1984 are available on the Legal Information Institute of NZ (LIINZ) web site,⁸ based at the University of Waikato.

The Department of Labour's *Industrial Info-Net* provides access to Employment Tribunal and Employment Court decisions as well as access to the resources of the Employment Institutions Information Centre, Industrial Relations Services, NZ Industrial Relations Foundation, Equal Employment Opportunities Fund and EEO Trust.⁹

The Refugee Status Appeals Authority has headnotes and summaries of every decision it has delivered since it was established in 1991, and the Waitangi Tribunal has its full-text decisions with extensive search engine capabilities, on the Knowledge Basket.¹⁰

Some offer their decisions full-text and free of charge; others merely headnote the case.

PUBLIC ACCESS TO THE LAW

For too long free public access to the law in New Zealand has meant a copy of the statutes, often unannotated, in some public libraries. We live, however, in a jurisdiction with a thriving common law where the statutes to which we supposedly have free public access fall to be interpreted by the courts every day.

It cannot truly be said that the public has free access to the law when the very decisions in which its law is interpreted may not be available at all and, if they are, at significant cost.

Statute law

The public has now free access to New Zealand's statute law via GP Legislation Services on the *Knowledge Basket*.¹¹ However, the government did not initiate this move, rather it was the private enterprise company that has the printing contract which decided to provide free access to the nation's legislation.

Case law

Where is free public access to the nation's case law?

Ignorance of the law is no defence. Yet unless you are an experienced legal information specialist, or member of the legal profession, obtaining free and/or easy access to New Zealand case law is denied to you.

There is systemic ad hocery in New Zealand's approach to electronic judgments.

There does not appear to be a strategic plan for the development of an electronic common law. Neither the Court of Appeal nor the Department for Courts appear to want to address

⁸ <http://www.liinz.org.nz/liinz/other/bsa/>

⁹ <http://www.nzir.dol.govt.nz>

¹⁰ <http://www.knowledge-basket.co.nz/refugee/welcome.html> and <http://www.knowledge-basket.co.nz/waitangi/welcome.html>

¹¹ <http://www.knowledge-basket.co.nz/gpprint/welcome.html>

the issue. The New Zealand Law Society, the body charged with representing the legal profession, remains silent. There is no leadership.

NZ law librarians have consistently tried for 15 years to find some one or some body who would be interested in championing this cause. The increases in the District Court jurisdiction, together with other developments, have made this cause a necessity rather than an optional extra.

Every day court and tribunal judges produce their decisions in electronic format. An easy-to-access electronic database of all New Zealand court and tribunal decisions should be available. Yet even with the technological developments now available, nothing is in place to ensure that the public has easy access to the common law.

WHERE TO FROM HERE WITH PUBLIC ACCESS?

There have been significant developments in other countries in this area. Most know of the AustLII initiatives and the strong political backing that the project has received. Canada has launched its own standards for electronic judgments and powerful lobby groups champion access to the case law.

Even the United Kingdom, a country that has not been known to be at the forefront of electronic legal information developments, manages to place the House of Lords decisions on the Internet within 2 hours of them being delivered.

The New Zealand Council for Law Reporting, the body charged with "publishing or arranging for the publication of the series of reports of legal decisions known as the New Zealand Law Reports"¹², does not appear to be interested in the issues facing access to New Zealand case law.

The *New Zealand Council for Law Reporting Act 1938* (NZ) was enacted at a time when lower courts' decisions had little precedent value. The range of New Zealand case law now in existence bears very little relation to that on offer in 1938. It is time that this statute was amended to reflect the growing information needs of the profession, and the technological advances of the 1990s.

We must ask ourselves whether or not we are prepared to keep on fighting, when even the legal profession itself does not seem to understand the issues. Why should we fight the information battles for them? Should we simply alert all players in this game and let them get on with it?

On the other hand we, as legal information professionals, know how difficult the accessibility problems are. Until these are resolved, matters such as vendor neutral citation in the New Zealand market cannot even be considered.

Are we prepared to continue working to find a mentor in the political arena who considers this issue important? It is our choice.

Until such a person or entity is found, I believe New Zealand is resigned to offering the majority of the population a level of public access to its common law that is of a third world standard.

¹² *New Zealand Council for Law Reporting Act 1938* (NZ), Long title