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ARTICLES

Class actions in New Zealand: The necessity for introducing a class action regime – *Chris Patterson*

New Zealand lacks any class action regime, which is an exception to most other common law jurisdictions. Between 2006 and 2008, The Rules Committee investigated the possible introduction of legislation necessary to create a functional class action regime. During November 2009, the Ministry of Justice produced a ministerial briefing paper recommending that steps be taken to obtain approval to issue formal instructions for drafting a Class Actions Bill. To date, no drafting instructions have been issued. This article suggests that representative actions can never be a substitute for class action litigation. Judicial inconsistencies associated with representative actions, while they do undermine the benefits of group litigation, do not on their own justify the introduction of class action legislation. Rather, legislation is necessary because representative actions cannot in all cases be used to achieve the objectives of aggregate litigation. This article critiques aspects of The Rules Committee's Draft Bill based on both the Canadian and Australian experience with their respective class actions regimes. 20

Security for costs for corporate plaintiffs: Is constrained judicial discretion impeding access to justice? – *Rebecca Wheeler*

This article explores whether constrained judicial discretion is impeding access to justice. It considers the rationale, origin and development of security for costs within Australia. It examines the approaches taken by judicial authorities when exercising their "discretion" to order security for costs against corporate plaintiffs. The empirical research analyses security for costs applications over the period 1991 to 2013 in the federal jurisdiction to prove that while the judiciary applies the KP Cable guidelines when determining security for costs applications, there is disproportionate weight given to the impecuniosity of the corporate plaintiff. It scrutinises how many of the cases resulted in security for costs

orders; the weight given to each of the guidelines; and whether the inclusion of s 1335 of the Corporations Act has affected the judicial approach. It concludes that the legislation should be amended to codify the guidelines and specify that they be afforded equal weight. 39

Exploring eCourt innovations in New South Wales civil courts – *Philippa Ryan* and *Maxine Evers*

Some New South Wales civil courts have recently introduced electronic filing and online pre-trial appearances. These innovations have different consequences for different users of the civil justice system. Whatever the ostensible benefit, any change to the way our justice system works must enable the purpose for which it exists: access to justice. For practitioners and self-represented litigants who would otherwise travel long distances to attend court, the time and costs savings could be significant. Of course, this intended outcome depends upon the reliability and usability of the technology, as well as the competence of the users. However, for those without these skills or those who do not have access to computers and/or the internet, this change could impede access to justice. It is too early to evaluate the success of this project, but lessons can be drawn from other jurisdictions. This article will explore potential advantages and disadvantages of these changes for self-represented litigants and legal professionals. It will conclude that as technology is disrupting all aspects of our social and commercial arrangements, it is logical that our courts will need to keep up. 65