

Special Edition NZJER

Labour Law

Introduction

On 3 June 2010, the New Zealand Labour Law Society was launched in Auckland by its Patron Judge Coral Shaw. The launch was sponsored by the NZWALMI (New Zealand Work and Labour Market Institute) which has continued to support the Society with administrative assistance. The Society has sought and been granted affiliation to the International Society of Labour and Social Security Law (ISLSSL) as the New Zealand member of the international society. The purpose of the Society include: promoting the study and exchange of ideas about labour law; providing a forum for debate for lawyers and others working in the field; and the holding of meetings, seminars and conferences and publication of papers and research relating to labour law.

This publication resulted from papers presented at the first Labour Law Conference held in Wellington in December 2011 in fulfilment of the objectives of the Society. The Society was substantially supported in the holding of the conference by the Victoria University of Wellington Faculty of Law. The papers cover a diverse range of topics including the keynote address by Andrew Stewart that reviews recent developments in the Australian labour law regulatory framework. Recent changes to the Australian health and safety legislation are also reviewed while another paper compares the Australian and New Zealand health and safety regimes. Two other papers also discussed aspects of health and safety including the risks associated with nanoparticles and nanotechnology. Topics covered in other papers included partial strike law, recent case law on the 90-day rule, developments in pay equity and the relationship between equality, the family and employment law. There was also a thought provoking paper on the application of the rule of law to employment law, and another on the notion of a Guaranteed Basic Income. The scope and diversity of the topics demonstrated the range of issues confronting labour lawyers.

The increasing number of challenges facing the regulation of employment relations is not surprising, given that the labour market is facing the reality of globalisation of the New Zealand economy. The challenge for New Zealand has been to adapt to the demands of globalisation without destroying the values and principles that underpin the unique character of our society. The pressure to forsake the notions of equalitarianism, a sense of fairness, and respect for others has been great in recent times. Since the 1970s, New Zealand has been locked in an ideological struggle over the regulatory framework for employment relations. This has created uncertainty and a short termism that may account at least partially for low productivity and economic growth.

New Zealand is not alone in a clash of ideologies to determine the labour market regulatory regime. Developments within the International Labour Organisation (ILO) and the European Union (EU) have also centred on how to reconcile economic and social objectives within the labour market public policy. For example, the 1998 ILO Declaration on Fundamental Principles and Rights at Work and the Decent Work programme were a response to a labour market that demanded greater flexibility. This 'soft law' approach was designed to work with countries to advance labour rights through a programme of measures that were appropriate to their conditions. There has been a vigorous debate within the academic world on whether this approach has undermined the notion of employment rights. The reality is that the labour market policy follows economic policy and when that policy embraced the notion of the unregulated or regulation-light market, the labour market had to adjust.

The Employment Relations Act was an attempt to accommodate the changing reality of the labour market while ensuring the rights of workers to organise and bargain collectively. The notion of good faith was incorporated in the legislation to inject a requirement for fairness when determining the wages and conditions that would regulate the employment of workers. The enactments of health and safety, holidays, and paid parental leave legislation were also an attempt to provide a labour standards code for New Zealand workers. This code has been amended by the National government to provide further labour market flexibility by removing from workers in the film industry employment rights such as holidays, sick leave, paid parental leave and health and safety requirement by deeming them to be contractors. The 90-day rule, the cash for holidays exchange and restricting union representatives' access to the workplace are examples of recent regulated flexibility. Further changes are foreshadowed in the National government election manifesto.

If past experience is anything to go by, the next change of government will also see a raft of statutory changes. This see-saw approach to labour market regulation creates challenges for law practitioners. Hence, the relevance of the New Zealand Labour Law Society as a forum for legal practitioners to analyse, discuss and contribute to the policy debate. It is intended to hold further conferences, seminars and workshops in the future and make available through publications such as the NZJER the productivity of these events to a wider audience. It is appropriate to acknowledge the contribution of the committee members who have contributed to the current issue including Professor Gordon Anderson, President; Pam Nuttall, Secretary; Amanda Reilly, Simon Mitchell, Stewart King, Anne-Marie McNally, Andrew Dallas, Mike French, and Margaret Wilson, Committee Members.

Margaret Wilson
Professor of Law and Public Policy
Faculty of Law
University of Waikato