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REPLACEMENT OF THE ROYAL PREROGATIVE IN NEW ZEALAND

B V HARRIS

The common law royal prerogative remains a major source of authority for government action in New Zealand. This article advances an ideal constitutional design model for the provision of executive authority founded on the importance of there being pre-action democratic approval of executive action. It is argued that review of the current prerogative against the ideal model suggests New Zealand should consider eventually replacing all currently remaining prerogative authorities for necessary government action with well-designed statutory authorities.

**DEGENERATIVE CONDITIONS: ONE OF THE DILEMMAS OF ACCIDENT
COMPENSATION COVER. IS THERE A WAY OF CLARIFYING THE CONFUSION IN
ORDER TO ACHIEVE FAIRNESS?**

DOUG TENNENT

This article considers the non-fault based Accident Compensation Scheme in New Zealand under which, it is submitted, there is a social contract between the government and the people of New Zealand. The operation of the scheme, specifically in cases where a person suffers a back, knee or neck injury and subsequently is discovered to have a degenerative condition in the relevant part of the body, is explored. An analysis of case law suggests that the interpretation of the test under which injuries caused "wholly or substantially by the ageing process" has, in such cases, resulted in unfair and questionable results. An alternative approach for the courts to employ is suggested, drawing on medical knowledge of the contribution that an injury can make to degeneration. A new approach is advocated, which would uphold the social contract between accident victims and the New Zealand government.

RECOGNITION OF OVERSEAS SAME-SEX RELATIONSHIPS IN NEW ZEALAND

KENNETH MCK NORRIE

More than thirty jurisdictions across the (Western) world have, since Denmark was the first to do so in 1989, created institutionalised means by which same-sex couples can have their personal relationships registered with the State and governed by legal rules, analogous to those applicable to opposite-sex couples through the far older institution that we call "marriage". New Zealand, a State with a strong perception of itself as an egalitarian and socially progressive country, did so with its Civil Union Act 2004, which came into force on 26 April 2005, together with a plethora of Amendment Acts bringing civil union partners within the parameters of existing legislation. These Acts are New Zealand's response to the radical but still fairly recent shift in social attitudes towards gay and lesbian people, and same-sex couples, which has accorded us the values of human dignity and equality before the law. This article suggests, however, that New Zealand law tolerates rather than celebrates this new ideal of social justice. It is argued that with LGBT (lesbian, gay, bisexual and transgender) issues, New Zealand is a country that follows rather than leads. Especially problematical is New Zealand's approach to recognition of overseas relationships.

TAX AVOIDANCE — STILL WAITING FOR GODOT?

CRAIG ELLIFFE AND MARK KEATING

*This article outlines the decisions of the Supreme Court in December 2008 in the *Ben Nevis Forestry Ventures Ltd and Ors v Commissioner of Inland Revenue* (more colloquially known as the *Trinity case*) and *Glenharrow Holdings Ltd v Commissioner of Inland Revenue* tax avoidance cases. The article examines whether the decisions extend the reach of the general anti-avoidance provisions and predicts the future direction in anti-avoidance jurisprudence charted by the Court. Finally, the paper considers the first application of the Supreme Court's reasoning in the "surgeons' case" (*Penny v Commissioner of Inland Revenue*), decided on 19 March 2009. The writers conclude that whilst our highest court has completed the swing in favour of Inland Revenue, as shown in recent tax avoidance cases involving artificial and uncommercial arrangements, it has also brought some additional focus to how the general anti-avoidance rules work in tandem with the other "black letter" or specific provisions in the Act.*