

RMA Convictions Upheld

The District Court has, in a recently released decision, rejected the argument that convictions can not be entered for offences under the Resource Management Act 1991 ("RMA") due to an apparent conflict with section 78A of the Summary Proceedings Act 1957 ("SPA").

In **Environment Bay of Plenty v PF Olsen Limited** * it was argued that section 78A of the SPA precludes the entering of a conviction for offences under section 9 (land use) and 15 (discharge of contaminants) of the RMA. This was argued because breaches of these sections are defined by the RMA and its regulations as Infringement Offences to which the procedure under section 21 of the SPA would apply (see http://www.brookfields.co.nz/newsroom/localgovernment/lgnov09_1.asp).

Judge Smith rejected this argument, finding that offences under sections 9 and 15 (and others) are infringement offences only for the purposes of the infringement offence provisions of the RMA (ss343A to D). His Honour concluded:

"[39] Accordingly on a plain interpretation of the provisions I have concluded that the proceedings under s343A to D were never intended to substitute for an election by the Council to take informations under s12 of the Summary Proceedings Act relying directly on s338."

The Judge also observed that, given the seriousness of these offences and their consequences (such as the right to elect a jury trial and the potential for imprisonment), the defendant's argument would:

- "(a) be an impractical and unrealistic interpretation of the provisions of the Act;
- (b) result in an absurd or an unsustainable outcome; and
- (c) conflict with the principle of proportionate response for the offending."

This decision has, therefore, confirmed Councils' current practice of making an election between issuing an infringement notice and laying an information for the purposes of obtaining a conviction.

An election process is certainly desirable in respect of RMA offences, which involve a wide variety of factual scenarios and environmental effects.

Despite the outcome in this case, the same argument has recently been presented by appellants in proceedings before the High Court. It is always possible that the High Court, which is not bound by the findings of the District Court, may reach a different conclusion.

* DC, Rotorua, CRN:08063501462, Smith ECJ. 13 November 2009.

Our LG Law Partners & Senior Associates are:

Melinda Dickey

Partner

t: (09) 979 2210

e: dickey@brookfields.co.nz

Andrew Green

Partner

t: (09) 979 2172

e: green@brookfields.co.nz

Linda O'Reilly

Partner

t: (09) 979 2167

e: oreilly@brookfields.co.nz

Andrew Cameron

Consultant

t: (04) 499 9824

e: cameron@brookfields.co.nz

Matthew Allan

Senior Associate

t: (09) 979 2128

e: allan@brookfields.co.nz

John Young

Senior Associate

t: (09) 979 2155

e: youngj@brookfields.co.nz

John Watson

Senior Associate

t: (09) 979 2262

e: watson@brookfields.co.nz

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Auckland **Manukau** **Wellington**
t 09 379 9350 09 262 2145 04 499 9824
f 09 379 3224 09 379 3224 04 499 9822
www.brookfields.co.nz



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