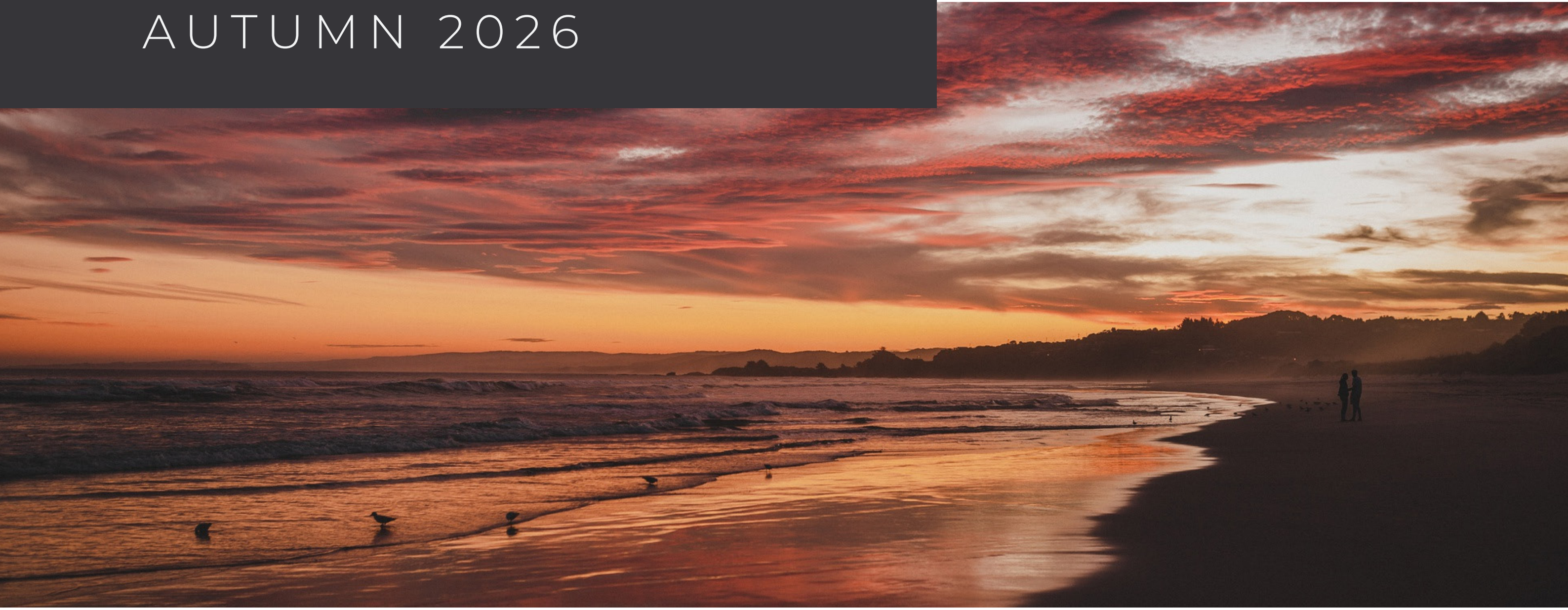
THE LAW

LOWDOWN

AUTUMN 2026



AUTUMN 2026

Welcome to the Autumn 2026 edition of Law Lowdown, where we focus on practical, real-world issues arising across property, trusts, employment, and regulatory change.

We begin with the risks of property speculation, highlighted by Smallridge v Singh, where a failed "flip" in a falling market resulted in significant financial liability for the purchaser.

We touch on the Government's review of the Dog Control Act, an area attracting increasing attention and likely to bring changes affecting both dog owners and councils.

Trustees' responsibilities are examined , including how well-intentioned decisions - such as accepting below-market rent — can lead to personal liability to beneficiaries where proper steps are not taken.

In the employment context, we explore unjustified dismissal, showing how even valid concerns can lead to claims if a fair and reasonable process is not followed.

If any of these issues are relevant to you, or if you would like to discuss your situation further, please feel free to get in touch - we are always happy to help.

Regards,
The team at Paul Gallagher Legal

TOP NEWS INSIDE

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WHEN A PROPERTY FLIP GOES WRONG: THE COST OF FAILING TO SETTLE

Property speculation, particularly short-term "flipping", became increasingly common during the rapid rise in property values seen in New Zealand between 2020 and late 2021. However, the sharp market correction that followed through 2022 and 2023 exposed the risks of this strategy.

The High Court case of **Smallridge v Singh** [2025] NZHC 242 provides a clear example of how quickly those risks can crystallise into significant financial liability.

WHAT HAPPENED?

In **Smallridge v Singh**, the purchaser entered into an agreement to buy a residential property during the period of strong market growth, with the intention of reselling it at a profit.

The transaction was part of a broader speculative approach. The purchaser was effectively relying on an onward sale — or the ability to quickly realise increased value — to complete the original purchase.

However, by the time settlement approached, the market had shifted. Property values had begun to decline following the peak of the COVID-era boom. The anticipated resale did not proceed as planned, and the purchaser was unable to complete settlement.

The vendor cancelled the agreement and later resold the property in a softer market at a lower price.

As a result, the vendor brought a claim for damages against the purchaser.

THE LEGAL CONSEQUENCES

Once an agreement for sale and purchase becomes unconditional, both parties are legally bound to settle. If a purchaser fails to do so, the vendor is entitled to cancel and seek compensation for their loss.

In cases such as **Smallridge v Singh**, those losses can be substantial and typically include:

- The difference between the original contract price and the eventual resale price;
- Holding costs such as interest, rates and insurance during the delay;
- Legal and agent costs associated with the resale; and
- Default interest under the agreement.

Where a property is resold into a falling market — as occurred following the **post-2021 correction** — that loss can be significant.

THE RISK OF MARKET TIMING

A key feature of many speculative transactions is reliance on timing. During the COVID-era surge, rising prices often masked underlying risk. Purchasers could assume that, even if plans changed, the market would support a profitable exit.

The correction that followed demonstrated the opposite. When prices fall, speculative purchasers may be exposed not only to lost profit, but to direct financial liability.

Importantly, the law does not provide relief simply because a

purchaser's intended resale fails or the market moves against them.

PRACTICAL LESSONS

For buyers considering short-term or speculative property transactions:

- **Do not rely on a resale to fund settlement** — ensure finance is secure in its own right;
- **Allow for market movement**, including the possibility of falling prices;
- **Understand that unconditional contracts must be honoured**, regardless of external circumstances; and
- **Seek legal advice early**, particularly where transactions are interdependent.

A CAUTIONARY NOTE

The property market conditions of 2020–2021 created opportunities but also encouraged risk-taking. The subsequent downturn has highlighted the legal and financial exposure that can arise when those risks are not properly managed.

Smallridge v Singh is a timely reminder that property speculation is not without consequence. When a deal fails, the cost is not just a missed opportunity — it can be a substantial and enforceable liability.

DOG CONTROL ACT UNDER REVIEW: WHAT IT COULD MEAN

The Government has announced a review of the Dog Control Act 1996, following growing concern about roaming and uncontrolled dogs and a number of widely reported attacks.

The review comes after feedback from councils and Local Government New Zealand that the current legislation is outdated and, in some cases, limits their ability to respond effectively. There is also concern that existing rules place pressure on council resources while not providing sufficiently strong tools to manage risk.

While the full scope of the review is still being developed, early indications suggest it may focus on:

- Stronger penalties for non-compliant dog owners;
- Whether desexing requirements should be expanded;
- Increased powers for dog control officers; and
- Removing practical barriers that councils currently face in enforcement.

Alongside the review, the Government has signalled an immediate focus on improving enforcement, including updated national guidance to promote more consistent decision-making by council officers.

Clearly this area has high public interest. Any changes could affect registration requirements, owner responsibilities, and the consequences of failing to properly control a dog.

At this stage, no specific legislative amendments have been proposed. However, the direction of travel suggests a shift toward stronger enforcement and greater accountability.

You can expect future updates as proposed changes to the Act are released.

CAN TRUSTEES BE PERSONALLY LIABLE TO BENEFICIARIES? A PRACTICAL EXAMPLE

Trusts are widely used in New Zealand to hold property and manage family wealth. However, a common misunderstanding is that trustees are protected from personal liability simply because they act in that role. In reality, trustees can be held personally accountable — including to the beneficiaries of the trust.

A simple example helps illustrate how this can arise.

WHAT HAPPENED?

The following example is illustrative, but reflects situations commonly seen in practice.

John and Mary were trustees of a family trust that owned a commercial property. When their long-standing tenant sought a new lease, the trustees agreed to renew it.

Wanting to maintain a stable relationship, John and Mary accepted the tenant's proposed rent without obtaining an independent market valuation or seeking advice. The rent agreed was below current market levels, but they considered this a reasonable trade-off for retaining the tenant.

Over time, the lower rental return began to affect the overall value of the property. When the trust later decided to sell, the property achieved $1.2 million, whereas comparable properties with market-level rents were selling for around $1.5 million.

The difference — approximately $300,000 — was attributed largely to the below-market lease.

Beneficiaries of the trust challenged the trustees' decision, arguing that John and Mary had failed to properly consider their duties and had not taken reasonable steps to protect the value of the trust assets.

THE LEGAL POSITION

Trustees owe duties to beneficiaries, including to:

- Act in good faith and for proper purposes;
- Exercise reasonable care and skill; and
- Preserve and protect the value of trust assets.

These duties extend not only to current beneficiaries, but also to future or contingent beneficiaries.

In this scenario, the issue was not dishonesty or bad faith. Rather, it was whether the trustees had acted as reasonable and prudent trustees would in the circumstances.

Failing to obtain a market valuation or professional advice before entering into a significant commercial arrangement was seen as a serious omission.

THE CONSEQUENCES

Where trustees breach their duties, the court may require them to personally compensate the trust for the loss suffered.

In a situation like this, that could mean John and Mary being required to contribute some or all of the $300,000 shortfall — effectively restoring the trust to the position it would have been in had proper steps been taken.

Importantly, the fact that the decision was made with good intentions does not prevent liability from arising.

A COMMON RISK AREA

This type of risk often arises where trusts hold investment properties or business assets, and trustees:

- Enter into leases or commercial arrangements without proper advice;
- Fail to test decisions against market benchmarks; or
- Prioritise convenience or relationships over objective decision-making.

PRACTICAL LESSONS

For trustees, the key points are:

- Treat trust decisions as commercial decisions, particularly where significant assets are involved;
- Obtain independent advice or valuations where appropriate;
- Document the reasoning behind decisions; and
- Act in the interests of all beneficiaries, including future ones.

THE LEARNINGS

Trusteeship carries real responsibility. While trusts remain a valuable tool for managing assets, they do not remove personal risk.

As this example shows, even well-intentioned decisions can have significant consequences. Where trustees fail to take reasonable steps, they may be required to personally make good the loss — sometimes in substantial amounts.

UNJUSTIFIED DISMISSAL: WHEN GETTING THE PROCESS WRONG CAN BE COSTLY

Unjustified dismissal claims remain one of the most common types of personal grievances in New Zealand. While many employers understand the need for a valid reason to dismiss an employee, it is often the process, rather than the reason itself, that determines whether a dismissal is lawful.

Two common scenarios help illustrate how things can go wrong.

WHAT CAN HAPPEN

The following examples are not based on specific cases but reflect situations that arise regularly in practice.

Scenario 1: Acting Too Quickly

Sarah was a retail manager who discovered discrepancies in the till records of one of her staff members. Concerned about possible misconduct, she dismissed the employee on the spot.

While Sarah believed she had a valid reason, she had not carried out a proper investigation or given the employee an opportunity to respond to the allegations.

The employee later raised a personal grievance. Despite the seriousness of the concerns, the dismissal was found to be unjustified — not because there was no issue, but because the process was unfair.

Scenario 2: No Opportunity to Improve

Mark worked for a small business and had been struggling to meet performance expectations. His employer became increasingly frustrated and eventually terminated his employment without prior warnings.

The employer believed the decision was justified, pointing to ongoing performance concerns. However, Mark had not been clearly told what was expected of him, had not received formal warnings, and had not been given a reasonable opportunity to improve.

Again, the dismissal was vulnerable to challenge — not because performance was irrelevant, but because the process fell short.

THE LEGAL POSITION

In New Zealand, a dismissal may be considered unjustified if:

- There is no valid reason for the dismissal; or
- The employer fails to follow a fair and reasonable process.

Importantly, even where there is a valid reason — such as misconduct, poor performance, or redundancy — a dismissal can still be unjustified if the process is flawed.

The key question is whether a fair and reasonable employer could have made the same decision in all the circumstances.

WHAT DOES A FAIR PROCESS LOOK LIKE?

While every situation is different, a fair process will usually include

- Clearly raising concerns with the employee;
- Carrying out an appropriate investigation;
- Giving the employee a genuine opportunity to respond; and
- Properly considering that response before making a decision.

In performance situations, this will often also involve:

- Clear expectations;
- Support and feedback; and
- A reasonable opportunity to improve.

A COMMON PITFALL

A frequent mistake is assuming that having a "good reason" is enough. As the examples above show, even where concerns are genuine, failing to follow a fair process can expose an employer to a personal grievance.

PRACTICAL LESSONS

For employers:

- Slow down and follow a fair process, even where issues appear clear;
- Document each step carefully; and
- Seek advice early, particularly in more serious situations.

For employees:

- You are entitled to understand the concerns raised and to respond before any decision is made;
- If dismissed, you may request written reasons within 60 days.

KEY TAKEAWAYS

Unjustified dismissal claims are not just about whether the outcome was right, but whether the process was fair.

Taking shortcuts can be costly. A well-handled process not only reduces legal risk, but also supports better workplace outcomes for everyone involved.

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