THE LAW

LOWDOWN

SPRING 2026

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Welcome to the Spring 2026 edition of The Law Lowdown, where we look at issues arising across relationship property, building, employment and consumer laws.

We begin with a recent case, *Rimmer v Wilton* which concerned how a contracting-out agreement can affect an estate.

We discuss the changing rules for earthquake-prone buildings and what these changes could mean for existing lease agreements.

Employment law is also changing. We look at the proposed replacement for the Holidays Act and what the new system could mean for employee leave.

Lastly, we consider whether you can really trust a five-star review and the legal issues surrounding online reviews.

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

WHEN A CONTRACTING-OUT AGREEMENT AFFECTS AN ESTATE: *RIMMER V WILTON*

A recent Supreme Court decision has highlighted an important connection **between relationship property agreements, wills and what happens when someone dies without a will.**

In *Rimmer v Wilton* [2026] NZSC 122, the Court considered whether a surviving partner could receive the benefits provided to her under a contracting-out agreement **and then also receive additional property from her partner's estate under the intestacy rules**, which apply when somebody dies without a will.

David Rimmer and Carolyn Wilton had been in a de facto relationship since 2000. They owned their Hūnua home together as tenants in common. In 2002 they signed a contracting-out agreement under the Property (Relationships) Act 1976.

Importantly, the agreement dealt not only with what would happen if they separated, but also with **what would happen to their property if one of them died**. It preserved their respective property interests and gave the survivor a lifetime right to occupy and use the Hunua property. It also stated that the agreement was in full and final settlement of claims each might have against the other under any statute, common law or equity.

Mr Rimmer died in 2016 **without a will**. His estate included his interest in the Hūnua property, cash and investments and personal possessions.

Normally, when a spouse or partner dies, the surviving partner has a choice. Broadly, they can **ask for the couple's relationship property to be divided under the Property (Relationships) Act,** or they can **leave the relationship property regime aside and instead take whatever they are entitled to under the deceased's will or, if there is no will, under the statutory intestacy rules.**

Ms Wilton chose the second course. She argued that she was therefore entitled both to the benefits of the contracting-out agreement and to the additional benefits available to a surviving partner under the intestacy rules. The High Court and Court of Appeal accepted that position.

The Supreme Court disagreed.

It held that a contracting-out agreement can determine what property rights the survivor will have when the other partner dies and can, depending upon its wording, **exclude rights the survivor would otherwise receive under the intestacy rules**. In this case, the agreement meant Ms Wilton could not use those rules to obtain additional rights in Mr Rimmer's property contrary to what they had already agreed. In particular, her entitlement to his share of the Hūnua property was limited to the lifetime interest provided by the agreement.

The Court also made an important distinction. The agreement did not prevent Mr Rimmer from later choosing to leave Ms Wilton additional property by will. He could have done so, but he died without making one.

THE LESSON

Rimmer v Wilton is a strong reminder that relationship property and estate planning should not be treated as separate exercises. A contracting-out agreement can affect what a surviving partner receives on death, particularly where there is no will.

Couples with existing agreements should therefore check that **their contracting-out agreement and their wills work together and still reflect what they want to happen when either of them dies.** This can be particularly important for blended families, second relationships and couples with children from previous relationships.

EARTHQUAKE-PRONE BUILDING RULES ARE CHANGING - BUT WHAT DOES YOUR LEASE SAY?

New Zealand's earthquake-prone building rules are heading for a major overhaul, but commercial landlords and tenants may find that changing the legislation is only part of the story.

The Building (Earthquake-prone Buildings) Amendment Bill has passed its second reading and is currently before Parliament at the Committee of the Whole House stage. If enacted as presently proposed, most of the new regime will take effect from 1 July 2027.

MOVING AWAY FROM %NBS

A central change is that percentage of New Building Standard (%NBS) will no longer determine whether a building is earthquake-prone under the statutory system.

Instead, the proposed regime concentrates on particular higher-risk buildings in medium and high seismic zones. These include certain unreinforced masonry buildings and concrete buildings of three storeys or more. Buildings in Auckland, Northland and the Chatham Islands are to be removed from the earthquake-prone building regime because of their lower seismic risk.

Remediation will also become more targeted. Depending upon the building and its risk, requirements may range from remaining on the public register or securing a façade through to targeted or full seismic retrofit.

BUT WHAT IF YOUR LEASE STILL SAYS 67% NBS?

This is where matters become particularly interesting for commercial landlords and tenants.

Over many years, %NBS has found its way into leases, agreements to lease and seismic policies. A lease might record the landlord's representation as to the building's NBS rating, require strengthening to a specified percentage or provide rights where the rating falls below an agreed level.

Changing the Building Act regime does not automatically rewrite those contractual provisions.

The result could be that a building which is no longer classified as earthquake-prone under the legislation remains subject to an existing lease obligation expressed as, for example, 67% NBS.

Equally, clauses which refer simply to whether premises are legally "earthquake-prone" may operate differently once the new statutory regime applies.

NBS MAY NOT DISAPPEAR COMMERCIALLY

There is another important distinction. Removing %NBS as the statutory test does not necessarily mean seismic assessments will cease to matter commercially.

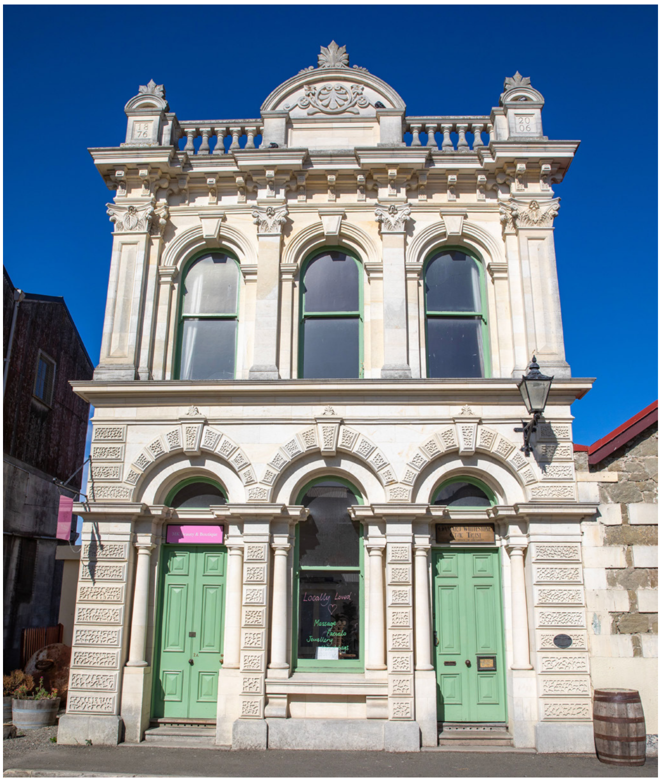
Prospective tenants, purchasers, banks and insurers may still want information about how a building is expected to perform in an earthquake. Building owners may therefore find that the market continues to demand seismic information even where legislation no longer requires a particular NBS threshold.

A GOOD TIME TO REVIEW THE LEASE

Landlords and tenants should therefore avoid assuming that the new legislation will resolve existing seismic issues automatically.

For current leases, it is worth checking exactly how any NBS or earthquake-prone building provisions are expressed. For new leases and renewals, care should be taken before continuing to use percentage-based seismic obligations simply because they have appeared in earlier documents.

The regulatory question and the contractual question may soon be quite different. Knowing what the legislation requires is important, but knowing what your lease says may be equally so.



GOODBYE HOLIDAYS ACT: A NEW SYSTEM FOR EMPLOYEE LEAVE IS COMING

For many employers, payroll staff and employees, the Holidays Act 2003 has long had a reputation for being one of New Zealand's more difficult pieces of employment legislation.

Its replacement is now on the way.

The **Employment Leave Act 2026** received Royal assent on 6 August 2026 and will replace the Holidays Act from **6 August 2028**. The two-year lead-in is intended to give employers and payroll providers time to prepare for a significant change in the way leave is calculated, recorded and paid.

Importantly, **nothing changes yet**. Employers must continue to comply with the existing Holidays Act until the new legislation comes into force and cannot simply start applying the new rules early.

WHAT WILL BE DIFFERENT?

One of the biggest changes is a move towards calculating many leave entitlements in hours.

Annual leave and sick leave will generally accrue from an employee's first day of employment, based on their standard hours. When leave is taken, an employee will use accrued leave according to the hours they would otherwise have worked.

That should also make taking part-days of leave more straightforward.

The new system distinguishes between standard hours, additional hours and casual hours. A leave compensation payment will generally apply to additional and casual hours instead of those hours generating the same leave entitlements as standard hours.

There will also be new rules for determining whether an employee would otherwise have worked on a public holiday, an area that has generated considerable complexity under the present Holidays Act.

The changes also affect sick leave, bereavement leave, family violence leave, alternative holidays and the way different forms of leave are paid.

WHAT SHOULD EMPLOYERS DO?

There is no need to change leave calculations now. The next two years should instead be used to understand what the new system will mean for payroll software, workplace policies, employment agreements and record keeping.

Employers with large workforces, collective agreements or employees working irregular or complex hours may need to begin planning earlier than others.

Employment agreements should ideally be updated by **6 August 2028**. Any changes will need to be discussed and agreed with employees rather than simply imposed.

There is, however, a transitional period. Employers who have not updated their employment agreements by August 2028 will have until **6 August 2029** to do so. During that period, where an existing agreement and the new Act provide different entitlements, the employer will generally need to provide whichever entitlement is more favourable to the employee.

That could make payroll considerably more complicated, providing a good reason to have agreements reviewed before the new regime begins.

The Government will provide further guidance during the implementation period.

For employees, the immediate message is simple: **Your current leave entitlements continue to apply until August 2028.**

That may seem some distance away, but replacing a system that has governed holiday and leave entitlements for more than 20 years will be a substantial exercise. For employers, some early planning should make the transition considerably easier.

CAN YOU TRUST A FIVE-STAR REVIEW?

Online reviews have become an important part of the way we shop. Whether we are choosing a restaurant, booking accommodation or buying a product online, a string of five-star reviews can make all the difference.

A recent case provides a timely reminder that those reviews need to be genuine.

In August 2026, Brand Developers Limited, trading as The TV Shop, was fined $1.104 million for breaches of the Fair Trading Act. (see *Commerce Commission v Brand Developers Limited* [2026} NZDC 16387). The offending covered several areas, but one of the most striking involved the way customer reviews were handled.

The Commerce Commission found that company staff had posted positive reviews without disclosing their connection with the business. In some cases, reviews were posted by people who had not even used the product concerned. Friends and family were also encouraged to post reviews.

At the same time, negative reviews were treated quite differently. One, two and three-star reviews could be withheld unless the customer responded to a follow-up email, and during one period no low-rating reviews were published at all.

The Court described the conduct surrounding the reviews as deliberate and systematic.

CONSUMER RIGHTS DO NOT STOP AT REVIEWS

The case went further. The TV Shop was also found to have misled some customers about their rights under the Consumer Guarantees Act.

Those rights exist independently of any manufacturer's warranty, money-back guarantee or "risk-free trial". Where goods do not meet the guarantees provided by law, consumers may be entitled to a repair, replacement, refund or other remedy depending on the circumstances.

The Court also considered advertising describing items as "free", "bonus" or a "special offer" when the item was in reality always supplied as part of the product.

A LESSON FOR CONSUMERS AND BUSINESSES

For consumers, the case is a useful reminder not to rely entirely on star ratings when making a purchasing decision. Look at the substance of reviews, consider reviews from more than one source and be alert to a suspiciously perfect pattern of feedback.

For businesses, the message is even clearer. Online reviews, testimonials, discounts and promotional offers are advertising. The Fair Trading Act applies to them just as it does to more traditional marketing.

Businesses should not manufacture positive feedback, conceal negative feedback in a way that creates a misleading impression, or describe something as "free" when the customer is effectively paying for it.

The growth of online shopping has changed the way products are promoted, but the underlying principle remains straightforward: Consumers are entitled to accurate information when deciding where to spend their money.

GET IN TOUCH

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