

Book Review

BURROWS AND CARTER STATUTE LAW IN NEW ZEALAND, by Ross Carter, LexisNexis NZ Limited, 2015

This book was first published 23 years ago in 1992. Prior to the most recent publication, there was a six year hiatus.

As stated in the Preface, Professor John Burrows ONZM, QC was the sole author of this book's first three editions. He was also co-author, along with Ross Carter, of the fourth edition. The fifth edition is the first edition of the book without Professor Burrow's contribution as an author.

This book was originally published primarily as a student text for the academic study of statutory interpretation but has been equally important in providing judicial assistance in this area. Although, strictly speaking, it is a secondary source, its value is obvious in the way in which various judgments have and continue to reference it.

Mr Carter's comment that he sees "no need to depart from a well written script..." is displayed in the table of contents which does not contain any major departures from previous editions.

This edition of the book rightly acknowledges the huge contribution made by Professor Burrows to this area of law during his professional career. That being said, the pedigree of the current editor, Ross Carter, is impeccable.

The book provides a helpful blurb in this regard:

Ross Carter joined the Parliamentary Counsel Office in 1998 and has considerable experience drafting Government Bills and statutory regulations. Previously a legal researcher at the NZ Law Commission, he has also been an adjunct lecturer in Legislation at Victoria University and Private Secretary (Attorney-General). Ross is a member of the Commonwealth Association of Legislative Counsel and has written articles and presented conference papers on legislative drafting and statutory interpretation.

This new edition has already been quoted in more recent judgments.

One such recent example is the Court of Appeal decision of *Civil Aviation Authority of New Zealand v Witschke-Rudd* [2015] 3 NZLR 749 which refers to this 5th edition @ footnotes 16 & 33 of the judgment with regard to "context" as covered in Chapter 9 of this edition.

Regarding "purpose", also covered in Chapter 9, see *Jetstar Airways Limited v Richard Greenslade* [2015] NZCA 432 @ footnote 15.

By way of example of historical judicial reference to this book, Chapter 18 covers retrospective legislation which has a starting point, under s.7 of the Interpretation Act 1999, of the presumption against restropectivity. The case law referred to in that chapter includes *R v Hallett* [2013] 3 NZLR 407 (HC) – a case which refers extensively to the 4th edition of this book at paragraphs [42] & [43] on the subject of the fundamental rights and entitlements placed on the interpretation of legislation.

There is, as stated in the preface, additions to incorporate “new developments, or developments of existing principles (which require) new analysis”.

By way of two examples:

1. Developments in current legislative drafting practice, such as new amending styles, transitional, savings and related provisions in special schedules, and legislation containing terms or ideas, or even being enacted in full, in te reo Māori

Chapter 4 looks at Māori concepts and language in legislation. It is observed, at page 148, that “(i)ncreasingly, legislation drafted and enacted in English also contains terms or provisions in Māori”.

One example referred to is the Mokomoko (Restoration of Character, Mana, and Reputation) Act 2013/Te Ture mō Mokomoko (Hei Whakahoki i te Ihi, te Mana, me te Rangatiratanga) 2013.

The chapter incorporates the suggestion from Tai Ahu *Te Reo Māori as a Language of New Zealand Law* (VUW, LLM Dissertation, 2012) that “the Interpretation Act 1999 should be amended to insert a provision to the effect that provisions incorporating the Māori language, if enacted, are presumed to be interpreted according to tikanga Māori.”(page 153).

It adds a note that academics and practitioners in this area are only too aware of, which is “Legislation may well need to pin down the intended meaning of a Māori term, especially if the term has many different meanings, or there are tribal differences in usage.” @ page 153 citing the dissenting judgment of FB Adams J in *Re the Bed of the Wanganui River* [1955] NZLR 419 (CA) at 444.

To date, the Interpretation Act has not been amended but given that we now have authoritative text on the matter, this area of statutory interpretation should gain momentum and attract the attention of our legislators. Carter refers to Benton, Frame and Meredith *Te Mātāpunenga: A Compendium of References to the Concepts and Institutions of Māori Customary Law* (Victoria University Press, Wellington, 2013). I look forward to further development in this regard in the next edition.

2. Official electronic versions of New Zealand legislation under the Legislation Act 2012

One major change since the last edition is the official recognition of New Zealand legislation online. From January 2014 official electronic versions of legislation, under s 17 of the Legislation Act 2012, made the New Zealand Legislation website (*legislation.govt.nz*) a source of official legislation. This is covered in Chapter 5 of the book “Access to Legislation” (p.155) which provides a brief analysis of access to legislation in New Zealand compared with the UK and identifies areas still capable of improvements, for example, the provision of a comprehensive, state-produced official subject index to New Zealand Acts (p.169).

Other areas include:

- Triennial programmes of statute revision under the Legislation Act 2012, the aim of which is to make statutes more accessible without changing their substance
- The proposal to re-enact the Interpretation Act 1999, with minor updating, in the Legislation Act 2012, via the Legislation Amendments Bill 2014

- Contemporary approaches to purposive interpretation, the limits of correction by interpretation of obvious drafting errors, reading legislation consistently with international obligations, and appeals against the exercise of statutory discretions
- Cases on when a person is able to waive a right conferred by an Act of Parliament, on retrospective legislation and declaratory provisions, and on the effects of repeal.

It is an impossible task to provide a short review of a book of such size and influence without an element of superficiality which is exactly what this type of book has to, and does, avoid.

As with any type of legal publication, updating the law is a time-consuming and difficult task. It is the most important aspect of a law text, particularly given the reliance on it in law schools and courtrooms. In this regard it remains an authoritative text on all matters pertaining to statutory interpretation.

Cheryl Green