

**Day 4 – Thursday, 29 November 2007**  
**Parallel Sessions – Session 2B 9.00am-10.30am**

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Position: Barrister and former Law Commissioner, New Zealand

Presentation Title: Access to Court Records

The rules governing access to Court Records in New Zealand are various and inconsistent, depending upon the court or tribunal, the nature of the proceedings e.g. criminal or civil, and the stage that the proceeding is at, e.g. after a decision or before trial has commenced.

The current plethora of rules and gaps where no rules apply mean that it is confusing and difficult for court and tribunal officials to understand what they must release and withhold and for journalists and the public to know what they are entitled to and how to access such information. The Law Commission was asked to review the rules and make recommendations for change.

The Commission recommended to Parliament that a new comprehensive legislative regime be enacted. It would be called the 'Court Information Act'. Its underlying principle would be 'Open Justice' which is the fundamental tenet of New Zealand's justice system. It requires, as a general rule, that the courts must conduct their business publicly unless this would result in injustice.

Hence the Law Commission recommended that the overarching principle for the new Act should be one of public accessibility, i.e. that information should be generally available, unless there are good reasons for not permitting access. This approach would also bring the legislative regime into synchronicity with the Official Information Act 1982 which governs access to information held by the executive government.

The key issue for the Commission was in determining the exceptions. It recommended there be 'conclusive reasons for withholding information' and 'potential exceptions where there are 'good reasons' for withholding'. The Act would provide for specific rules of court to govern the detail of when and how the exceptions would apply.

Conclusive reasons for withholding include the prejudice to the maintenance of the law (e.g. names of informers); prejudice to the right to a fair trial (releasing evidence before it had been tested in court) and endangering the safety of any person.

Good reasons would include proceedings relating to defamation; to protect the privacy of natural persons and proceedings under certain statutes where the Act provided the hearings were held in private.

The new rules would also have specific features including:

- The stage in the life of a court record when access was sought to it. Access rules might alter depending on the time when access was requested. [There would be 4 time periods: from commencement of proceedings to the hearing; during the hearing until 28 days after the end of the proceedings; 28 days after the hearing until transfer to archives and after records have been transferred to archives.] A record might be withheld during a hearing, so as to protect the right to a fair trial, but released post disposition when the trial was over.

- A differentiation between records provided as of right and those needing the leave of the court.
- Differentiation at various stages between criminal and civil records but otherwise all courts and tribunals would be subjected to the same legislative regime
- A separate regime governing access by researchers/policy makers

Features of some of the current rules/practices which would be discontinued are:

- The requirement for a requester to have a 'genuine and proper' reason for requesting access.
- Requirements that the parties be notified and views sought before release.