

KEEPING OURSELVES OCCUPIED

No, this article is not about what to do with the kids over the summer break!

Over the past few months, the news has been dominated by the worldwide occupy movements.

Auckland had its own protest in Aotea Square. And there were others in Wellington and Dunedin.

The council took criticism for failing to act quickly enough, and when one sees the damage caused to the grassed area at Aotea Square the criticism is probably warranted.

But what were the legal aspects of the protest?

Frequently we hear of the “right” to protest. There is no enshrined right to protest. But the law that contains our rights and freedoms – the New Zealand Bill of Rights Act (NZBORA) – does have similar freedoms (not rights), those of freedom of association, freedom of movement and freedom of expression.

But these freedoms are qualified.

Section 5 of the NZBORA says that the rights and freedoms are subject to limits, but only those reasonable limits prescribed by law that can be demonstrably justified in a free and democratic society. Section 6 prefers for interpretations of other statutes to be consistent with the rights and freedoms in the NZBORA, where possible.

So what are these reasonable limits on the freedoms enjoyed by the occupiers?

The first would be the right of other citizens to use the public space then occupied by the protestors. Another would be the power of the police to enter upon the land and evict them if they were held to be trespassing.

The High Court eventually ruled that the protestors were in breach of a council bylaw about using public space like they were, and the NZBORA defences (which is what they are) were not available (because the limits on those freedoms were ruled to be reasonable).

Another common example of the qualified freedom to protest is seen at the annual Auckland tennis event.

Over the years, John Minto and others have been using the event to protest over the inclusion of an Israeli player at the tournament. Minto stands outside the main court, on the street, with a megaphone, and shouts out chants. He, and his followers, apply the rights and freedoms in the NZBORA as vindication of their disruptive actions.

But they often forget the first word in the freedom of “peaceful assembly.”

Talking of occupations, Schnauer and Co has been involved in its own occupation since November 1 last year. We have occupied the offices of Andrew Stokes’ North Shore Law Practice – the two businesses have merged and an associate of Schnauer and Co, Nick Kearney, has moved into the new practice to effect the changeover.

Andrew Stokes has been running his sole practice from the same premises for nigh on thirty years, and says he is now moving out, as the others have moved in.

Andrew remains in the practice on a part-time basis to assist with the changeover, and is keen to improve his golf swing.

Andrew has served thousands of clients over the years all over the North Shore, the country and overseas.

Schnauer and Co intends to carry on the excellent tradition he has fashioned.