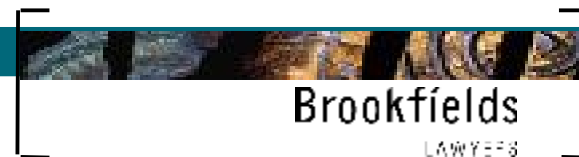


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# RESPONSIBILITIES FOR THE ACTS OF NATURE ... GOD OR THE COUNCIL?

Presented by  
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Brookfields Lawyers





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# COASTAL EROSION

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# THE PARTIES AND THE LAND

- Clifftop property, subdivision 1967
- Council owns adjoining esplanade reserve
- Eroding by natural process
- Alleged negligent subdivision
- Negligence claim
- Remedial work - \$465,000
- Boundary wall - \$40,000

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# THE LAW

- Natural right/removal of support - artificial or natural causes
- Duty to act reasonably - acts of nature
  - Goldman v Hargreave (1967)
  - Leakey v National Trust (1977)
  - French v Auckland City Council (1978)
  - Holbeck Hall v Scarborough Borough Council (2000)

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# INSURANCE ISSUES

- RiskPool policy - duty to prevent claims against Council
- Conflict

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# SETTLEMENT CONFERENCE

- Concerns about precedent
- Positions taken

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# EXTENSION OF NEGLIGENCE PRINCIPLES - POLICY ISSUES

- Planning and environmental implications
- Implications for ordinary homeowners
- Effect on Councils and ratepayers
- Economic implications



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# EXTENSION OF NEGLIGENCE PRINCIPLES - POLICY ISSUES

- Consistency with statutory regime (Falkner v GDC (1995))
- Self protection
- Prospect of indeterminate liability
- Remedies

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# FACTUAL EVIDENCE

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# POLICY EVIDENCE

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# ROBERT FISHER QC - SOLUTION AND DISCONTINUANCE

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# COSTS DECISION

- Salmon J 30 November 2004
- \$87,090
- Statements of principle

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# FLOODING AT MATATA

- Should the Council put the streams back
- Are they “drains”?

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# IMPLICATIONS OF PLAYING WITH NATURE

- Assumptions of responsibility
- Strict vs fault based liability

