

**19. HIGH COURT PROCEEDINGS CHALLENGING VALIDITY OF CHRISTCHURCH CITY BROTHELS (LOCATION & SIGNAGE) BYLAW 2004**

**Officer responsible**  
Legal Services Manager

**Author**  
David Rolls, Solicitor, DDI 941-8892

**PROPOSAL/PURPOSE OF REPORT**

The purpose of this report is to inform the Council of proceedings which have been commenced in the High Court challenging the validity of the Christchurch City Brothels (Location & Signage) Bylaw 2004 and to recommend that the Council resolve to defend those proceedings.

**LEGAL CONSIDERATIONS**

On 1 July 2004 the Council made the Christchurch City Brothels (Location & Signage) Bylaw 2004. That Bylaw was made after extensive consultation with the public, both by way of a questionnaire which invited public response and later by way of the special consultative procedure set out in the Local Government Act 2002. The Bylaw came into force on 7 July 2004.

Clause 6 of the Bylaw provides that the only area within the Council's district within which brothels may be operated is that area delineated on the map in the First Schedule to the Bylaw. The Bylaw provides that it is an offence to operate a brothel in any part of the City outside that area.

On 21 October 2004 the Council was served with Notice of Proceedings which had been filed in the High Court challenging the validity of the Bylaw. The applicants to those proceedings are the 'Willowford Family Trust' and 'Terry Rex Brown'.

In their Statement of Claim the applicants allege that clause 6 of the Bylaw:

1. Is unreasonable and/or unlawful in its geographical limitation, character and extent.
2. Unreasonably and/or unlawfully interferes with the common law right to use real and personal property in pursuit of a lawful endeavour which it does not constitute a nuisance at law, namely keeping a brothel.
3. Is an unlawful discrimination on the basis of ethical belief contrary to Section 19(1) of the New Zealand Bill of Rights Act 1990.
4. Is an unreasonable or unlawful interference with the right to work as guaranteed by Article 6 of the International Covenant on Economic, Social and Cultural Rights and also by Section 28 of the New Zealand Bill of Rights Act 1990.
5. Is ultra vires the Prostitution Reform Act 2003 as it is so restrictive in its geographical ambit that it is not a lawful regulation of the location of brothels.

The applicants are seeking orders from the High Court that clause 6 of the Bylaw be quashed, or alternatively, that the clause be amended so as to render it valid.

On 11 November 2004 a telephone conference was held with the High Court during which a timetable was agreed for the filing of documentation in relation to these proceedings. In accordance with that timetable the Council filed a statement of defence in the High Court on 9 December 2004. In that statement the Council denied each of the abovementioned allegations.

A further conference has been scheduled for Monday, 14 February 2005 with a view to fixing hearing dates for the proceedings.

The Council has instructed Simpson Grierson in Wellington to act on its behalf in defending these proceedings. The reason for selecting Simpson Grierson is that that firm earlier provided extensive legal advice both to this Council and other Local Authorities in relation to the making of bylaws under the Prostitution Reform Act 2003.

## **COMPLIANCE WITH DECISION-MAKING REQUIREMENTS OF THE LOCAL GOVERNMENT ACT 2002**

It is considered that the decisions sought from the Council in relation to this report concern matters of an administrative nature only. The defence of the Bylaw challenge is consistent with the original Council decision to make the Bylaw. Consequently it is suggested that no further action need be taken in respect of the requirements of Sections 77 and 78 of the Local Government Act 2002.

### **STAFF RECOMMENDATIONS**

It is recommended that the Council resolve:

1. To defend the High Court proceedings taken by the Willowford Family Trust and Terry Rex Brown challenging the validity of the Christchurch City Brothels (Location & Signage) Bylaw 2004.
2. To ratify the appointment of Simpson Grierson to act on the Council's behalf in defending those proceedings.