

SUNDAY UPDATE

Two weeks of reviewing the Crown

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Tracy Lynch | We Review the Crown / FARQ | NOT A LAWYER

A Tuesday Sunday Update

This Sunday Update is arriving on a Tuesday. The last two weeks have been extraordinarily busy. Rather than publish an update for the sake of meeting a date, I have concentrated on obtaining records, examining evidence, assisting people dealing with public authorities, preparing court material, and asking questions that increasingly appear to have one thing in common:

Where is the evidence?

And, just as importantly: **Who verified it, who authorised the action, and where is the contemporaneous public record showing that the legal requirements were actually met?**

Those questions have arisen repeatedly across completely different matters.

Courts, records and the problem of verification

A substantial amount of work over the past fortnight has involved court proceedings and the records sitting behind them. One recurring difficulty is that people representing themselves can be confronted with decisions, allegations or procedural steps without having ready access to the complete underlying record.

We have therefore continued concentrating on the basics: filed documents, judicial minutes, charging documents, warrants, inventories, disclosure indexes, correspondence, timestamps and the actual evidential material relied upon.

This is not about replacing a court's function or deciding disputed facts ourselves. It is about establishing what the record actually contains. If an allegation is important enough to justify prosecution, seizure of property, loss of a licence or another significant exercise of State power, there should be an identifiable evidential trail supporting it.

Get your own property records

One of the most practical things people can do is obtain the complete record relating to their own home or property. Do not rely only on the most recent letter, rates notice, mortgage statement or lawyer's summary. **Ask for the source documents.**

If a lawyer has acted for you at any time in connection with the property, ask that lawyer - including a former lawyer or previous firm - for the complete file relating to your property and any associated transaction. That request should include correspondence, file notes, settlement statements, title documents, agreements, authorities and instructions, invoices, undertakings, communications with the bank, communications with council, communications with Land Information New Zealand, and any document received or relied upon in relation to ownership, rates, mortgages, caveats, transfers, refinancing, sale or enforcement. If more than one lawyer has acted over the years, ask each of them.

Do the same with the council. Ask the council for the complete property and rating record, including the rates ledger, valuation information, notices, adjustments, penalties, remissions, correspondence, internal notes and any record relied upon to establish the amount said to be owing.

Then check the land record itself. Land Information New Zealand holds the official land-title system. In many cases, title and instrument records have to be ordered or purchased through the land-information system or through an authorised provider. Obtain the current record of title and, where relevant, the historic title and the instruments recorded against it. That may include transfers, mortgages, discharges, caveats, easements, covenants and other registered interests.

If somebody is making a serious decision about your home, obtain the documents that actually record the legal history of the property.

Do not assume that everybody involved has checked the same documents. Compare them yourself. Check the names. Check the legal description. Check the address. Check the dates. Check the instrument numbers. Check when interests were registered and when they were discharged. And keep your own complete copy.

A simple starting request:

"Please provide me with a complete copy of every document, record, correspondence, file note, authority, instruction and communication held by you relating to me, my property and any transaction, liability, security, rates, mortgage, caveat, transfer, sale or enforcement affecting that property."

That one request can expose very quickly whether everyone has actually been working from the same record.

MPI, seaweed and a fundamental evidential question

Our continuing review of an MPI/Fisheries prosecution has produced an especially important question. We have examined scientific material and Official Information Act responses concerning seaweed, alleged toxicity, species identification and the basis upon which enforcement decisions were made.

The issue is becoming increasingly narrow: What evidence establishes the particular proposition alleged? What product was tested? What quantity was involved? What species was actually identified? What laboratory or expert analysis verified the relevant proposition? What reporting threshold applied? And what evidence existed at the relevant time, rather than being assembled later?

These questions matter because product was seized or destroyed and criminal proceedings followed. Where scientific propositions form part of the foundation for enforcement action, the scientific evidence needs to be identifiable and capable of examination. That work continues.

Warrants and disclosure

We have also continued examining search-warrant and disclosure issues. Across several matters we are seeing the importance of obtaining the **original record**, rather than relying solely upon later summaries of what supposedly occurred.

That includes warrant applications, issuing documentation, execution records, property inventories, notebook entries, video, metadata and accurate timelines. Even apparently small discrepancies can become important when State powers depend upon precisely when an event occurred and what authority existed at that moment.

Our approach remains straightforward: establish the chronology first, separate verified facts from assumptions, and then identify the gaps.

Roadside drug testing and evidential integrity

Our Roadside Oral Fluid Drug Testing Project has also continued. We are separately examining questions concerning statutory approval, accreditation and the validity of testing methodology. Those are different issues and should not be blurred together.

A related case involving an evidential breath test has reinforced why raw device records matter. A printed or subsequently prepared account does not necessarily answer questions that could be resolved by original electronic data such as timestamps, GPS information, device identification, test numbers, test type and officer identifiers.

Where a machine creates evidence, preserve the machine-created record.

Receiverships, vehicles and proof of authority

Another substantial area of work has concerned receiverships and the removal of commercial vehicles. We have been examining the chain of authority behind enforcement actions, including security documentation, PPSR information, ownership records, guarantees, general security agreements and the documents relied upon when property was physically uplifted.

Police involvement in civil enforcement also raises obvious questions where ownership or authority is disputed. Again, the important question is: **What document gave the person authority to take the property at the time they took it?** That question should be capable of a documentary answer.

Rates, property and public records

Rating and property matters have generated similar issues. Where substantial sums are demanded, enforcement is threatened, or property rights are affected, the underlying ledger and statutory record matter.

We have continued seeking source records rather than accepting summaries of what a computer system or later correspondence says is owed. This has also brought the Public Records Act into our work repeatedly. Government accountability depends upon records being created, retained and capable of being retrieved.

Firearms administration

Firearms matters remain another significant part of our workload. We are reviewing several cases involving suspension, revocation, surrender, searches and the consequences that can follow administrative decisions.

These matters are being treated individually because the facts differ. The common investigative question, however, remains whether the administrative and evidential records support the action actually taken. We are particularly interested in maintaining a clear distinction between an allegation,

an intelligence entry, an administrative assessment and evidence capable of proving a fact.

Official Information Act work

The Official Information Act continues to be one of our most important research tools. During this reporting period we have pursued information across a range of agencies and subjects, including policing, prosecution and enforcement practices, public funding, health administration, scientific evidence and decision-making processes.

Our approach is increasingly to ask smaller and more precise questions: identify the decision, identify the decision-maker, identify the statutory authority, identify the record and request the evidence showing that any statutory preconditions were satisfied.

The objective is not simply to accumulate thousands of pages. **It is to locate the document that answers the question.**

LRAD and policing technology

We have also been investigating the reported use of LRAD technology in connection with policing activity in Wellington. Requests have been directed toward establishing what equipment was available, who authorised its use, what operating policies applied, and what records exist concerning deployment.

As with roadside testing technology, the important issue is accountability surrounding the use of technology by the State. Technology does not reduce the need for a record. **It increases it.**

Access to justice

Another recurring concern during the fortnight has been the practical experience of people attempting to navigate courts without lawyers. Procedural rules matter. Properly formatted documents matter. Filing requirements matter.

But access to justice also requires that people can determine what has happened in their own proceedings, obtain the relevant record and understand what they are required to do next. We will continue documenting situations where administrative process appears to become an unnecessary barrier to obtaining the substantive record.

The question we keep coming back to

After two weeks covering completely different agencies and completely different disputes, one theme has become impossible to ignore.

It is not: **"Do you believe the Government?"** Nor is it: **"Do you believe the person challenging the Government?"**

The proper question is: **What does the evidence establish?**

Who made the decision? Under what enactment or delegated authority? What statutory preconditions had to exist? What evidence established those preconditions? Who verified that evidence? And where is the contemporaneous record?

Those questions are neither radical nor complicated. They are basic accountability.

What comes next

Over the next reporting period we will continue reducing large files into evidence-based chronologies, pursuing targeted OIA requests, examining original records and separating what has actually been established from what has merely been asserted.

There are several substantial investigations now developing, and some cannot yet responsibly be reported publicly. We will publish those when the underlying records allow us to do so.

The purpose of **We Review the Crown** remains exactly what its name says. We review. We ask for the record. We compare what was said with what the documents show. And where the two do not match, we ask why.

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This report concerns public-interest research, records and accountability. References to ongoing matters should not be read as findings of liability or guilt. Allegations remain allegations unless established by admissible evidence or determined by a court.