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# TRADE SECRETS

1. Information may be divided into three categories.  
The major category is:

**CONFIDENTIAL INFORMATION** which is then subdivided into:

**KNOW HOW** which relates to formulae and instructions on how to operate a machine and technical data; and

**TRADE SECRETS** which is information of a commercial and sensitive nature.

2. **INDUSTRIAL ESPIONAGE** is alive and well in New Zealand. There are ways to protect your business information and to restrict access.
3. For information to be protected as confidential it must satisfy the following conditions:
  - (i) It must be secret and must not be in the public domain;
  - (ii) It must be other than the general knowledge, skill or experience acquired at work.
4. Practical measures to protect information:
  - (i) limited access only should be allowed to confidential or sensitive information;
  - (ii) all confidential information including documentation, materials, designs, products and processes should be physically secured and regularly checked;
  - (iii) proper documentary records should be kept of all contracts of employment, contracts for services used by the organisation and details of all confidentiality agreements;

- (iv) internal records should be kept of all matters relating to research and development such as who has access, the status of that person and the state and stage of development of the product or process or service;
- (v) all standard documentation relating to a company's intellectual property rights should be reviewed regularly and updated if legislation has been amended.

5. Law of Breach of Confidential Information:

- (i) The action for breach of confidence provides a means of protecting the value of economically sensitive information such as know-how, business data, trade secrets, product and process inventions;
- (ii) For information to be deemed confidential it must be of a confidential nature; the information must have been communicated in circumstances importing an obligation of confidence and there has been an unauthorised use of the information to the detriment of the person communicating it.

6. Obligation of Confidence in the Context of an Employer/Employee Relationship:

The essence of such a relationship is a fiduciary duty as well as a contractual obligation. It is an obligation on an employee not to use or disclose his ex-employer's confidential information; such information may be a secret process or formula or commercially valuable information such as a list of customers or suppliers.

7. The remedies available for breach of confidence include an injunction, an account of profits, damages, Orders for delivery up and/or destruction; Anton Piller Orders (civil search and seizure warrants) for entry and seizure of evidence.

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