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Insider Trading and Chinese Walls
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Chinese walls are recognised in New Zealand as one of five statutory defences to the prohibition of insider trading. However, limited guidance has been offered as to what arrangements would satisfy application of the defence. This article examines the rationale, efficacy and legal implications of “Chinese walls” in relation to participation in the securities market and offers some criteria as to what a successful arrangement may require.

Wake up New Zealand: Directors’ Duties Reform Responses to the Global Financial Crisis
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This article considers recent measures to criminalise serious breaches of two directors’ duties, namely s 131 of the Companies Act 1993 (the duty of act in good faith and in the best interests of the company) and s 135 of the Act (reckless/insolvent trading). The Companies Amendment Act 2014 introduces two new offences contained in ss 138A and 380(4) of the principal Act. Under s 138A(1) criminal liability will follow for a breach of the duty to act in good faith when the director acts in “bad faith”, “believing that the conduct is not in the best interests of the company” and “knowing” that the conduct will cause “serious loss to the company”. Under s 380(4) criminal liability for reckless/insolvent trading will arise
when the director “knows” that the company is insolvent or that the debt will render the
company insolvent and the failure to prevent the company incurring the debt is “dishonest”. The director will in turn face the penalties set out in s 373(4) of the Act, namely five years
imprisonment or a fine of up to $200,000. In addition, as a breach of these duties will now
constitute an offence, the automatic ban from management for five years under s 382 of the
Act will apply. Ultimately, it is submitted, that while the changes are to be applauded, they do
not go far enough. In particular it is suggested that criminal breaches should not be confined
to these two directors’ duties. The article also suggests these changes would be complemented
by the introduction of a civil penalty regime as in Australia. To date this has been rejected by
the New Zealand reform bodies. However, the author suggests reconsideration is warranted
as this would provide the Financial Markets Authority with another useful weapon in its
armoury, particularly when breaches are not serious enough to attract criminal liability.

Search Engines and the Automated Process: Is a Search Engine Provider
“a Publisher” of Defamatory Material?
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Is the search engine provider a “publisher” in defamation law if the results of an online search
include snippets of defamatory material and links to defamatory comments on a third party’s
website? Although guiding principles are emerging from international decisions in regard
to the potential liability of other internet intermediaries for publishing defamatory material,
the liability of a search engine provider remains uncertain. In essence, this is because the
search engine provider argues that its results are entirely produced by an automated process.
The article refutes this argument. It suggests that in most instances a search engine provider
that provides links to defamatory material is liable as a publisher. However, the article also
proposes that a search engine provider may have the defence of innocent dissemination
available to it, providing it can show that it has not been negligent. One way of demonstrating
this would be for the search engine provider to make use of text analysis technologies to filter
out potentially defamatory materials from its search results.