

## **JUDICIAL PARTICIPATION IN RESEARCH PROJECTS**

The judiciary is supportive of genuine research relating to the courts and will co-operate wherever this appropriate and practicable. However, participation in research is time consuming and it will not always be possible for the judiciary (even if the proposal is otherwise supported) to comply with all the requests received.

As the judiciary receive a number of requests each year for participation in various types of research a Judicial Research Committee has been set up to consider such requests. The Committee consists of Judges from the Court of Appeal, High Court and District Court. The Committee considers all requests for judicial involvement in research involving the Supreme Court, Court of Appeal, High Court and District Court (including the Family Court and Youth Court) and makes a recommendation to the Chief Justice or Head of Bench.

If you are wishing to involve the judiciary in any research that you wish to undertake, it will be necessary for you to prepare an application that will be considered by the Committee. It is not appropriate for you to approach individual Judges to participate in research. In all cases, an application must be made through the Office of the Chief Justice.

### **HOW TO MAKE AN APPLICATION**

In order to assist the Judicial Research Committee to assess the application, the following information will generally be required;

- Copy of the research proposal or an outline of the proposed research. The proposal should have a detailed account of the methodology (including sample sizes) that will be used in conducting the research.
- Who is undertaking the research and the background and qualifications of those undertaking the research, plus copies of any previous research undertaken by them or if this is not practicable reference to such research
- Where applicable, the supervisor of the research.
- What (if any) ethical approval has been, or will be, obtained for the conduct of the research.
- How issues of privacy will be dealt with in terms of the publication of the research.
- The utility of the research.
- What involvement is required from the judiciary. If for instance it is requested that judges be interviewed as part of the research, the questions to be asked of the judges should be provided as part of the application. Similarly, if a questionnaire is to be sent to judges as part of the research then a copy of this would also be required.

- Whether any other approach has been made to the Ministry of Justice or any other person or body relating to the research proposal.

## SOME THINGS YOU SHOULD KNOW

- If the research is dependent upon funding, the Judicial Research Committee will generally only consider applications once funding is secured.
- Research requests that raise legal issues may be referred to the Solicitor-General for comment.
- Proposed jury research raises particular concerns as it has implications for the confidentiality of jury deliberation. A particularly cautious approach will consequently be taken to such proposals.
- The Committee will attempt to consider the proposal within 6 weeks but if further information or consultation is required the process may take longer. Applications should be made as early as possible.

## LIMITS ON JUDICIAL INVOLVEMENT

- Research proposals that seek judicial comment on the existing law, options for law reform or the role and function of court participants are more difficult to approve as responses from the judiciary in these areas will usually be made formally through the Chief Justice.
- The decisions (judgments) Judges make must speak for themselves. Judges cannot add reasons or provide an explanation for a decision they have made. Discussion of individual cases is consequently very difficult for Judges to participate in.
- Judges also need the ability to work freely and independently during the decision making process. As such those involved in the decision making process such as Judges Clerks and Associates, will not be permitted to breach the confidential working relationship and their contractual obligations.

## WHAT IF YOUR RESEARCH REQUEST INVOLVES ACCESSING COURT RECORDS

The Judicial Research Committee does not have authority to authorise access to court records held at courts. Any proposal that involves access to court records must comply with the relevant search rules. This will involve an application to search being made by the researcher to the court where the records are located and compliance with any conditions imposed by the court.

Researchers are entitled to approach the courts directly but researchers may find it useful to contact the Research, Evaluation and Modelling Unit, of the Ministry of Justice in the first instance. The Ministry may provide advice to the court and to the researcher about applications. In order to prevent duplication, the Ministry also tries to maintain an overview of all research involving courts.

The approval of the Chief Justice or Head of Bench to participate in the research (following Committee consideration) is likely to be a factor taken into account by the Judge in considering the application to search court records.

Where court records are held at Archives New Zealand an application needs to be made to the Minister for Courts via the Ministry of Justice under the Public Records Act 2005 to access these records.

## HOW WILL THE JUDICIAL RESEARCH COMMITTEE MAKE ITS RECOMMENDATION

The Judicial Research Committee will make its recommendation based primarily on the information you provide in your application. The more complete the application is, the more quickly the Committee is able to make its decision. From time to time the Committee may however require proposed researchers to come and discuss their proposal with Committee members. This may be a face to face meeting or depending on location, through video conferencing.

Once the Committee has decided on its recommendation this will be communicated to the Chief Justice or Head of Bench who will then either agree or not agree with the recommendation and advise the researcher directly of this decision.

## WHERE DO YOU SEND YOUR APPLICATION

All applications for judicial involvement in research should be sent to Kieron McCarron, at the Office of the Chief Justice, [kieron.mccarron@courts.govt.nz](mailto:kieron.mccarron@courts.govt.nz).

The Office of the Chief Justice will then arrange for the application to be distributed to the Judicial Research Committee.

If you have any queries regarding the application or want to talk generally about judicial participation in research, please contact Kieron McCarron at the Office of the Chief Justice on (04) 914-3690 or e-mail him at [kieron.mccarron@courts.govt.nz](mailto:kieron.mccarron@courts.govt.nz).

## INVOLVEMENT OF THE MINISTRY OF JUSTICE

Research proposals relating to the courts and the judiciary are likely to have some impact on the Ministry of Justice. As such, the Judicial Research Committee will generally consult with the Ministry of Justice on any research requests that it receives. If the research involves Ministry of Justice records or staff (for example, interviews with court staff) a separate application will need to be made to the Ministry and should be sent to the Research, Evaluation and Modelling Unit, of the Ministry of Justice.

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