

Date: 3 April 2020 held in Courtroom LG1

Appearances: Anneke Smith – Radio New Zealand
Alice Wilkins – MediaWorks
Chelsea Daniels – NZME (via video link)
Edward Gay – Stuff (via audio link)
Kim Baker Wilson – TVNZ
Mare Haimona-Riki – Māori Television
Sam Hurley – NZME (via audio link)

Andrew Kibblewhite – Secretary for Justice (via video link)

Cate Brett – Chief Advisor, Judicial Development and Communications (via video link)

MEDIA BRIEFING BEFORE:

**CHIEF JUSTICE THE RIGHT HON DAME HELEN WINKELMANN
THE HON JUSTICE COOPER
THE HON JUSTICE MILLER
CHIEF HIGH COURT JUDGE THE HON JUSTICE VENNING
CHIEF DISTRICT COURT JUDGE TAUMAUNU**

WINKELMANN CJ:

Mōrena and welcome everybody. I start with some introductions. I'm the Chief Justice, my name is Helen Winkelmann. On my right is the Chief Judge of the High Court, Justice Geoffrey Venning, and on my left is the Chief Judge of the District Court, Judge Heemi Taumaunu. On my far left, sitting a bit out of view, is Justice Mark Cooper of the Court of Appeal. Justice Cooper is going to make some remarks later, and when he does, I'll vacate my seat. As you can see, we are set up in this way so we maintain appropriate physical distance.

10 What I'd like to do now is ask the other people who are joined into this conference to introduce themselves. I'm going to start with the Secretary for Justice Andrew Kibblewhite. He is here as the representative of the Ministry of Justice. Those of you who read the Statement of Principles that was sent to you will understand that the judiciary, which is the third branch of government,

depends upon the Ministry of Justice to support the operation of the Courts. They do this by providing buildings in which the Courts operate, by providing the technology and also by providing the Court staff who are vital to Courts being able to open on a daily basis. The Ministry of Justice provides vital
5 support to the operation of the Courts.

So with that, I'm going to start with asking the Secretary to identify himself and then the media participants.

SECRETARY FOR JUSTICE:

10 Thank you, Chief Justice. So I'm Andrew Kibblewhite, Secretary for Justice.

WINKELMANN CJ:

Perhaps we will start in the room.

MR HAIMONA-RIKI:

15 Āe. Kia ora whānau. Anei rā te mihi ki a koutou kua tae mai nei i raro i te korowai o te rangimārie o tēnei whare. A, ko Mare Haimona-Riki ahau, he kairīpoata mō Whakaata Māori, Te Ao Māori News. My name is Mare Haimona-Riki. I'm a reporter with Te Ao Māori News with Māori Television, kia ora.

MS SMITH:

20 Mōrena. My name is Anneke Smith and I'm the court reporter for Auckland at Radio New Zealand.

MS WILKINS:

Good morning, everyone. I'm Alice Wilkins. I'm a reporter with Newshub, TV3, MediaWorks. We have many names.

25 **MR BAKER WILSON:**

And good morning, I'm Kim Baker Wilson from TVNZ.

WINKELMANN CJ:

And now we also have Cate Brett who is senior advisor in the Judicial Office. We have two other people on line. Is it Chelsea?

MS DANIELS:

5 Yes, hi, I hope you can hear me. Chelsea Daniels, reporter, news director at Newstalk ZB.

WINKELMANN CJ:

10 Good morning, Chelsea. I also see I failed to introduce as a member of the judiciary Justice Forrie Miller who's joining us there from his home. Justice Miller is a Judge of the Court of Appeal and he's the chair of the Judicial Strategic Group which is charged with responding to the current COVID-19 situation.

15 As to how we're going to approach this briefing, I know that you have questions to ask. Some of those may stray into areas of legislation or government policy. The judiciary will not comment on legislation or government policy, so if that kind of question is raised, we will just say that's an area we won't comment on it. Some questions may be better directed to other government agencies such as Police, Corrections, or might be better directed to the Parole Board and again those are things that the judiciary won't comment on.

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I will begin by talking through, at a high level, what the Courts have done to respond to the current COVID-19 situation because it has brought challenges and it has necessitated change. I'm then going to ask the Secretary for Justice to talk briefly about the work the Ministry of Justice has done to support the operation of the Courts. After that, I'll ask you for your questions. After those initial questions, I'm going to hand over to Justice Mark Cooper. Justice Cooper is the chair of a newly formed committee, the Open Justice Committee. It works alongside and supplements the existing Media and Courts Committee that some of you might be aware of. The purpose of the Open Justice Committee is to ensure that notwithstanding the effects of a lockdown and notwithstanding the increasingly dislocated way the Courts are having to work with remote operation and telephone conferences, AVL hearings and video visual meeting

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room hearings, the public can see and understand the work of the Court and can hold the Courts accountable. In achieving that ideal, which is the ideal of open justice, the media play an absolutely critical role and so the Open Justice Committee proposes to work with the existing media representatives on the
5 Media and Courts Committee, but also more generally with the media community to see what we can do to ensure that the processes and systems we set up in this period of time enable the media to carry on fulfilling that fundamental role of reporting on the work of the Courts.

10 So I suggest that questions you have about how you can continue to report the Courts in this environment, those are best directed at the end after Justice Cooper has spoken.

I wanted also to thank you all for attending today and I'm sorry that our
15 technology has failed to engage some members of the media as fully as we had hoped. We know that the media is operating in an extremely difficult environment. The level 4 alert and the COVID-19 situation generally has caused a lot of disruption and stress in our communities and we know that that's not least felt by the media community. So thank you for taking the time today to
20 come in. The work that the media does to support open justice is a critical part of our system of justice and so we really appreciate your attending.

Right, so I begin with what the Courts have done to respond to the COVID-19 situation. A month ago, our court system was operating within its standard
25 model which is a paper-based model. Although Judges use electronic material in court hearings in the District Court and the High Court, our files are still principally paper. Our model of justice is one based on the courthouse as a physical meeting place. If there's to be a hearing, it's usually in person and in a courthouse. That's a model which gathers together large numbers of people,
30 court staff, security staff, defendants, witnesses, parties, jurors, counsel, the media, and the public. Over the course of the last month, the threat to public safety caused by COVID-19 has required that, for a time, we change this model and change it fast.

In the short term, this has meant scaling back the business of the Courts. We've suspended jury trials until at least late May because by their very nature, jury trials bring people into close quarters. Over the last nine days, we have prioritised certain categories of hearings – those that affect liberty, those that affect personal safety and wellbeing and finally time-sensitive matters. Prioritising these matters in this way has enabled us to carry on working but with reduced numbers of cases being called and reduced numbers attending our Courts. In the last nine days, we have also increased the number of hearings conducted remotely. Initially, this has been done by conducting hearings on the papers, on the phone, or using AVL. Judges have also used the powers that we have under section 24 of the Epidemic Preparedness Act to allow digital filing. You might wonder why we don't allow digital filing all the time. The reality is that we can only allow digital filing as a short-term solution because the Courts do not have the system necessary to support digital files.

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During this time that we've been rapidly remodelling how the courts work, the Ministry of Justice has also been working to build a more sophisticated and sustainable capability to conduct hearings remotely. Courtrooms throughout New Zealand have virtual meeting room capability, that has been rolled out as of yesterday. This enables counsel, parties, victims and the media to participate remotely in those hearings – to effectively dial in. In many or most cases, the hearing will still however take place in a courtroom. None of this is perfect, as you can see from today's experiment with multiple parties coming in remotely. The digital environment is sometimes unpredictable.

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With the support of the Ministry of Justice and the use of remote technology, we are now able to conduct more of the business of the Courts and to do so safely. We are working with the Ministry to increase the volume of the work that can be conducted in this way as we proceed over the next week, and the two weeks after that, and as we plan for the uncertainty of the future.

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So in short, in the space of a month we have, with the support of the Ministry of Justice, gone some way to transforming a paper-based, face-to-face system into one that can operate using electronic filing and remote hearings. There

are some limits. There are the technological limits that I have spoken of. There is the fact that the Court system is a large system and new practices and procedures take time to be embedded. It takes time to train staff, and we are doing all of this at speed. Remote technology also cannot be used to hear
5 matters which determine guilt or innocence in criminal matters without the defendant's consent, nor can it resolve the issues that we have with jury trials because that is one that is really a physical distancing issue. In the civil arena, more work is required to enable civil trials to take place.

10 I also wish to stress these changes that we are making, which are really quite dislocating, are temporary changes. At the end of the COVID-19 emergency, we will go back to predominantly face-to-face justice, conducted in courthouses around New Zealand. Those courthouses serve an important role as the local face of justice for their communities.

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At this point, I am now going to hand over to the Secretary for Justice, who can explain the steps that the Ministry of Justice has taken to support this technological transformation that has been necessitated by COVID-19. Mr Secretary?

20 **SECRETARY FOR JUSTICE:**

Kia ora tatou everybody. Thank you, Chief Justice, and thank you everyone for being present this morning. I will just talk relatively briefly. Obviously, over the last weeks, we have been preparing and now trying to establish new ways of operating in the COVID-19 environment. We've been guided in that process by
25 a few key things. We agreed early on with the judiciary, before we entered into levels 2, 3 or 4, that the whole system would be guided by three principles. The first one of those was to protect the health and safety of all the participants who come to court and staff. The second was to deliver essential services and to ensure that happened. The third was as much as possible to ensure that we
30 can facilitate other court business. I can talk further if people are interested on how we are doing against those principles.

The first one, health and safety, we've put a very significantly amped-up regime in place that involves, as of this week, PPE even for visitors to the Court, for lawyers and suchlike who are still coming there. Just to cover off a few of the challenges, the first one was actually working with the judiciary to identify what were the prioritised processes that we would still make sure did happen in a time of lockdown and when we are obviously under the same significant constraints that the whole country is facing at the moment. So we have worked with the judiciary on the list and the Heads of Bench have made a number of decisions about what we should be prioritising over and above others. That has enabled us then to design processes around those specific priority matters and ensure that we can do all we can to make sure they are enabled remotely and the like.

The second big issue in support of that is how we are rolling out remote technology. As the Chief Justice has indicated, we are fundamentally a paper-based system and, there's no denying, have had and do face some challenges with the IT infrastructure in the Ministry. Because we have been working on this for a few months, we have managed to increase our capacity in quite a number of respects. We have over a 200% increase on our network capacity that we put in place, we have gone from 35 virtual meetings rooms, which is the environment we are meeting in at the moment now, to over 220, allocated across 26 court locations, and we are increasing that further. We are looking to roll out more collaboration tools such as we are using at the moment and we have increased the number of virtual private network connections across the Ministry from about 500 to well over 2000 now.

We have other constraints, numbers of laptops that we are having to repurpose in order to support staff and obviously, as the Chief Justice has indicated, training and processes. To move to a remote way of operating, essentially on the industrial scale of the Courts, requires a lot of training not only of court staff but of course other participants who have to join the process.

We really appreciate the way the Judiciary have provided leadership and worked very closely and in partnership with us in the Ministry. We have worked

closely with the profession and we are staying in daily contact with the Law Society and the New Zealand Bar Association and others. We have been working constructively and positively with the PSA as we have managed through the issues that relate to our staff. It has been a pretty challenging few weeks and certainly since going to level 4 and going there at the pace we did. Overall, I think with those priority processes that do go to individuals' liberty, they go to the personal protection and the like, we are doing I think a good job of making sure that that is rolled out, that is also acknowledging that a great number of court events are not able to be progressed at this time and is a matter for ongoing work between us and the judiciary.

So Chief Justice, that is probably enough from me to get the ball rolling. Obviously very happy to take further questions down the track.

WINKELMANN CJ:

Right, well, I think we will take questions now. So, Mr Baker Wilson?

MR BAKER WILSON:

Hello there, so one of the key tenets of the legal system of course is "justice delayed is justice denied", so for all those people who can't have those jury trials at the moment for at least the next few weeks but possibly longer than that and possibly a lot longer than that, what are the thoughts there from Your Honours and what are the plans there, if any, for getting cases heard, jury trials if possible, to make sure that there aren't those delays?

WINKELMANN CJ:

Well, we are very concerned with the delays because as you have identified, it is not just a backlog, it is actually individual cases which affect individual defendants, victims, witnesses. There is a huge human cost to every aspect of delay in the justice system and that goes beyond the criminal justice system. There is also a human aspect to delay in the civil justice system. So yes, we are very concerned about it. The reality is that the situation is dictating the suspension of jury trials at the moment and we cannot plan for their resumption until there is a clearer picture in relation to COVID-19. We can however make

longer-term plans to enable us to recover from the delay that has been caused and we are working on that. Those plans will have to change as we respond to the situation as it develops.

MS SMITH:

- 5 Your Honours, given the technology issues we've had even convening this morning, how confident are you that you can still deliver justice as the fourth alert level continues, via technology, using technology?

WINKELMANN CJ:

- 10 Well, it is not how we wish to deliver justice. It's a much more complex solution and it is more fraught. I think that today's difficulty may be not representative because ultimately, you get people who are repeatedly dialling in. They have established pathways into the system, and as we go, this should become more smooth. So it is a necessary stopgap measure, and we are going to deploy the fullest extent possible so that we don't get to a situation where the backlog is
15 crippling for the justice system. We really have no choice.

MS SMITH:

- And just on that backlog, do you have any idea of the sort of logjam that this will cause? I think we had figures that 60,000 cases were being adjourned a month. Do you have any idea of quantifying the sheer impact of this, the
20 disruption it's going to cause case-wise, figures or estimates?

WINKELMANN CJ:

- No, we don't have estimates because we don't know how long it's going to run. We do know that in the District Court, 60,000 events were adjourned. We know it's going to have a substantial impact, and we know that the strategies we
25 deploy are going to have to be carefully thought through and significant, and work is underway with that.

Did you want to add anything to that, Chief Judge, from the District Court's point of view?

CHIEF JUDGE TAUMAUNU:

I'd probably say this: the word "backlog", we're actually talking about people. When we talk about "backlog", we're talking about people who were scheduled to have their cases heard, people who were expecting those cases to be heard
5 and might have been associated with those cases in different ways, and so all we can really say from the District Court point of view at the moment is that we are aware that a lot of cases have been adjourned, that we will be committed to doing our best to try and reduce the delay as much as possible to bring those cases on. So that's going to need a lot of work on our part to work with the
10 Ministry to come up with creative solutions to try and do that, but there is a real commitment on our part to address that issue because it's not really a backlog. It's about people being affected by what's occurred with COVID-19.

MR BAKER WILSON:

Sir, I suppose if things continue to be delayed as they are, what's your feeling
15 on what happens when the restrictions ease and things can pick up again? Is it just going to be a sudden influx of so many cases that you're having to get through all at the same time that have been delayed for many weeks?

CHIEF JUDGE TAUMAUNU:

It's hard to say at this stage because we are in early days of alert level 4, but
20 what I can say is that the intention is that now that we have the priority proceedings starting to settle into a rhythm about how to deal with those priority proceedings in the District Court, the next stage which is currently underway with planning and discussion with the Ministry is how to bring on board some of those cases that we may still be able to deal with, even in alert level 4, that
25 aren't necessarily within the priority proceedings at the moment. So there's still much work to be done even within alert level 4.

WINKELMANN CJ:

In all the Courts, we are working with the Ministry now to expand the Courts' capability to work in this alert level 4 lockdown situation. But it is dependent to
30 quite a considerable extent on technological solutions. Did you have anything you want to add on behalf of the...

CHIEF JUDGE VENNING:

Well, I would just like to clarify, we actually do know some figures, for instance, the High Court criminal trials, the majority of them are category 4 cases. There is no option for us under the existing legislation but they have to be dealt with
5 by jury trial hearing. We cannot conduct jury trials at the present, at least until towards the end of May – and that may be extended – and at the moment, we know, for instance, there are 59 weeks of case hearing time that the High Court cannot deal with in jury trials because of that. So there's a conflict between the situation we are working in and the legislation we work under. But we are aware
10 of the figures.

I would just like to make the point that the Court and the Judges would like to do as much work as it possibly can. Under the Epidemic Preparedness Act and the Health Act, which constrains operations and shuts buildings, the legislation
15 expressly excludes courts, judges' chambers, and registries from those buildings because they are an essential service, and so the Courts and the Judges recognise that we are an essential service and it's important we keep operating to the extent that we possibly can.

WINKELMANN CJ:

20 But we have to bear in mind health and safety as well, of course, so it's not something we can just simply reopen. We have to proceed in a careful way working with the Ministry of Justice on that point.

MS SMITH:

In regards to future focus, some lawyers RNZ has spoken to have expressed
25 that this COVID-19 alert level, and obviously the obvious need for Courts to limit proceedings and use technology, is a chance for courts to digitise some work and become more efficient and I guess the overall picture being that the wheels of justice may spin that little bit faster. Is that the thinking from Your Honours as well, or what are your thoughts on that point?

30 **WINKELMANN CJ:**

Well, it's been a long-held hope that we would digitise but it's actually a very complex thing to do. I'll ask the Secretary of Justice to speak to this in a moment. The Ministry of Justice has a plan to begin a digitisation process and that is scheduled, I think, to begin, we hope, in the medium term. So, yes, we
5 would like to do that, but it's not simply a matter of saying to people "Electronically file". You in fact need an entire file management system that sits under and supports that. The Courts are a very large organisation, when one includes the District Court, High Court, Court of Appeal, Supreme Court, and then we have all of the specialist Courts as well. So it's a large organisation
10 and not a small task.

So I'll hand over to the Secretary for Justice.

SECRETARY FOR JUSTICE:

Thank you, Chief Justice.

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Yes, we have been doing work over a couple of years to really understand all of the consequences and implications of digitising and there's quite a lot of planning underway for that. We're making sure we learn from the experiences we're having at the moment about how that process works. As the Chief Justice
20 says, the remote access is a relatively small part of the challenge. The much bigger part of the challenge is to ensure that we actually move the Court record into a digital space. If we had that, it would be much more straightforward, at a time like this, to be able to run proceedings in an entirely digital environment. But that's a project underway. It's not imminent. It's still something that would
25 need to go through normal budget processes. It's been a matter of very active discussion between the judiciary and ourselves, a lot of prep work, and it is something that Ministers are actively considering at this time.

MR GAY:

Edward Gay from Stuff. I wrote a story six or seven years ago about the eBench
30 proposal that was shelved. Is that what you're talking about? Is that something that is being revisited?

SECRETARY FOR JUSTICE:

Probably some of the same objectives, but no, we've gone back to look at a different way of doing it, so it's not a resuscitation of eBench. It's a project looking at case management in a digital environment. So, no, it's different but
5 the objectives, obviously, are similar.

WINKELMANN CJ:

Chelsea, did you have a question, because I know you're sitting on there mute at the moment?

MS DANIELS:

10 Yes, I appreciate the opportunity, but my question would just be around figures. As you said, they're not available to us at the moment.

WINKELMANN CJ:

Yes. As Justice Venning said, we have a month-by-month picture but it's just we cannot estimate the overall impact. We can, however, give you figures later.
15 I don't have them on me in terms of the District Court and the High Court covering all the impact, civil and criminal side of things, but I'm sure the Ministry of Justice will provide those to you later if you're interested.

MS DANIELS:

Yes please, that would be helpful.

SECRETARY FOR JUSTICE:

20 Yes, we can do that, thank you.

WINKELMANN CJ:

That's during this four-week lockdown. So any other questions?

MS SMITH:

25 May I just ask one more? I think it was touched on briefly earlier but I guess the adjournments of all these cases have not just the figure impact but the human impact. For instance, whānau of a victim of a crime may be waiting for

a sentencing, may be waiting to sort of close that chapter of their life and have now had to – everything's been put on pause, effectively. Are any of Your Honours able to or willing to speak about the human consideration of the human impact, the human toll that this has taken with the case adjournments?

5 **WINKELMANN CJ:**

Well, we are aware of the human toll of the adjournments. Judges deal with cases all the time, we see the extent of the emotional engagement, of the emotional cost of a court hearing and of a sentencing so we know full well that there is a real human cost to the adjournments that have taken place and if we
10 could avoid it, we would avoid it. The District Court is now taking steps to – well, it has been conducting sentencing throughout, and systems are in place to enable victims to participate in the sentencing process. As the Ministry of Justice designs more sophisticated technology solutions, those systems are being designed to ensure that the victim can engage in the usual way even if
15 remotely with what is going to be increasingly a remote sentencing process. Did you have anything you wanted to add?

CHIEF JUDGE TAUMAUNU:

Just to support what you've said, Chief Justice, that the decisions to reduce the types of work that are being done in the District Court at the moment certainly
20 do recognise the impact that those adjournments are going to have on everyone who is affected by those adjournments and as I have said before, we will be doing our best to reschedule those cases and to bring them on with as least delay as possible.

CHIEF JUDGE VENNING:

25 There are slightly different considerations for sentencing in the High Court. Often, a High Court trial is a high-profile trial and obviously, as I have said, a lot of them are homicide trials. They often engage gangs with large degree of support for the prisoner and also a large number of victims often so our
30 sentencings can have the prospect of a large number of people wanting to come physically to the Court and in the current situation, we just cannot really accommodate that because you have got large groups of people potentially in

conflict in the Court confines which is a risk to everyone. So at the present time, the decision has been made to adjourn our sentencings of those high profile matters where large groups of people would be expected to attend. We may have to review that if the matter extends but that is the present situation. So
5 the High Court is only attending to sentencing where it reasonably could expect a limited number of people would be interested in attending.

WINKELMANN CJ:

Yes. I mean, the reality is that a digital court system cannot replicate the level of public and community engagement in the processes of justice and it can't
10 really replicate the public understanding that flows from a courthouse-based system for justice so this is what we are doing as a stopgap measure and we recognise its limitations.

MR BAKER WILSON:

Is it fair, Your Honours, to say that this is just – people hate us saying this word
15 now – but an unprecedented disruption to the court system? Your Honours probably would never have thought we would get to a stage like this, I wonder.

WINKELMANN CJ:

I believe it is an unprecedented disruption. I have in mind that if I get a moment, I am going to go back and see if there is anything in the law journals about the
20 polio epidemic or the Spanish flu about the impact on the Courts but I don't believe the Courts have ever been disrupted in this way. They weren't disrupted in this way through world wars and of course, life is far more complex now than it was in the past, and the work that the Courts is both far more voluminous and more complex so this disruption really does hit hard. And we fully appreciate it
25 doesn't just hit hard on Judges, court staff and lawyers, it hits hard on those people whose cases or cases in which they're involved are delayed or adjourned. Mr Secretary, did you have anything to say about this issue?

SECRETARY FOR JUSTICE:

No, really, just to reinforce and support the comments you have been making.
30 Clearly, this is a point that's been well-made on a number of occasions. It's a

system that deals with people's lives and we need to be looking at all we can to enable the wheels of justice to keep turning.

MS DANIELS:

5 I have a question from Sam Hurley from the New Zealand Herald: ask if the judiciary are monitoring what the UK justice system and the US justice system such as New York are doing during the lockdowns, perhaps to learn from mistakes or successes overseas.

WINKELMANN CJ:

10 Yes, we are actively monitoring what is being done in Canada, Australia, America, the UK. We are interested to learn from others but each system has its own unique challenges and so while we can follow with interest what's happening in other jurisdictions, we have to make decisions that suit New Zealand's needs and New Zealand society.

15 Any other questions? I should have said, by the way, that you don't have to stand up when you speak to us because we're not in court. Well, we are in court but we're not sitting in court.

MS DANIELS:

I think this is the only time I will be wearing jeans to court.

20 **MR GAY:**

Sorry, Your Honour, I've been standing up in my garage when I've addressed you.

WINKELMANN CJ:

Is that you, Eddie?

25 **MR GAY:**

Yes, it is, Your Honour.

WINKELMANN CJ:

I'm glad to know standards are being maintained.

MR GAY:

And I even put on shoes this morning.

5 I just wanted to ask and perhaps particularly for you, Your Honour, given your
address to the Criminal Bar Association last year about putting the defendant
back in the courtroom, but some lawyers I have been speaking to who have
been conducting the first formal interviews on arrest by AVL, they expressed
concern about not being able to pick up on those physical, I guess, you know,
10 physical points, particularly talking to an alcoholic, for example, or in the
situation where mental health might be at issue, they're talking about, you know,
they're worried the reliance on AVL is going to result in them missing certain
aspects like that and I just wondered if Your Honour would care comment on
that.

15 **WINKELMANN CJ:**

Yes, I mean, as you say, I have spoken in the past on the importance of keeping
our court system based on a face-to-face in-person exchange between the
Judge and the defendant, between counsel and the defendant, and also
keeping the Courts as a place where the community comes together to support
20 not only victims but also defendants. There is a great potential in those early
stages for early interventions which can prevent re-offending and that person
re-appearing in the court system.

It is of concern to me that we are having to depend so much on AVL and I know
25 it is of concern to the profession. I don't believe an AVL engagement is as rich
in the information that can be passed between people as a face-to-face
engagement but the reality is the need to maintain safety, particularly for
prisoners at this time, and defendants who are in custody dictate a lot of these
actions. We have to accept there is a level of compromise that is going on in
30 the way that we are operating at the moment because people who are arrested
need to be seen by their lawyer and they have to be seen promptly. That is a

right preserved under the New Zealand Bill of Rights Act. So am I happy that we are having to do it? No, I'm not, but it is a necessity.

MR GAY:

Your Honour, I've also been told that the section 38 reports cannot be conducted at the moment because the mental health professionals can't access the prison, and I know that there's a – this crosses all sorts of boundaries, I'm afraid, Your Honour, but you know there's a timeframe in the legislation of 14 days and I just wondered what happens when we get to that stage.

WINKELMANN CJ:

10 I think steps are being taken to ensure that professionals can access the defendants in prison. I've seen that in the volumes of brief of materials that I've read over the last month but I'd like to come back to you on that, Eddie, because I don't know the detail. Obviously, it's important that that access can occur. Although the control of the situation is within the realms of Corrections, it is something that judiciary has an interest in because those reports are prepared to be tendered in Court.

MR GAY:

Also this one goes to Mr Kibblewhite, I guess, but I've been talking to lawyers around the country and they're talking about, well, some of them have expressed the concern about a disconnect between Wellington and the rest of the country especially when it comes to PPE. A lot of lawyers – one lawyer I spoke to she said she had to tie the hand sanitiser provider to a chair because it got stolen on the first day but lawyers around the country are saying they don't have access to masks and gloves in particular. So I'm just wondering if there's been a really late development in that.

SECRETARY FOR JUSTICE:

It's a recent development. So we ordered additional PPE some weeks ago and some of our own supplies only arrived over the weekend and were sent out to courts earlier this week so this week has seen a change in what we've been able to do on PPE. Also over the last weekend, the Ministry of Health actually

evolved its guidance and was much more specific about they expected – I think everyone will be aware that the advice from the Ministry has moved on the PPE as the science has moved and as our understanding of what COVID-19 does has changed. So we're much better placed as of this week and it was of this
5 week that we decided that we would make that PPE available for lawyers at court so that should now be the case that they can get that.

I don't think it's a disconnect between National Office and our actual locations around the country. I think it's a function of the time that it's taken for PPE to
10 arrive. It was a similar story though slightly earlier running on hand sanitiser. We did have hand sanitiser throughout our courts initially. We then ran out in some places including because, as you've identified, some of it was pinched. We've now fixed that and now have supplies of hand sanitiser in all courts at this stage and the throughput of people through the courts is enormously
15 reduced which is assisting as well, as well as, I think, connecting hand sanitiser dispensers a little more tightly to walls.

WINKELMANN CJ:

I should add also that the Judges in all Courts have given counsel permission to wear masks and gloves as they appear in court, so there's no issue with that.

20 **CHIEF JUDGE VENNING:**

And of course that extends to the media.

WINKELMANN CJ:

And of course that extends to the media. Mare is doing that. I see he's got his gloves on.

25

So any further questions?

MR GAY:

Sorry, again this was a concern raised by a number of lawyers around the country around the AVL booths but in prison. I guess that's an issue for
30 Corrections but the AVL booths in courts as well, given that they are being used

by lawyers a lot more now that the prison are closed, the way that lawyers have access to their clients in prison but also during court as well. And I just want to (inaudible 10:54:15) cleaning, they're concerned that that is a great transmission point if this virus cracks out.

5 WINKELMANN CJ:

Just before I hand over to the Secretary on that, I just would make the point, the point you've raised about the use of the AVL facilities in prison, they are limited in number and so the number of those in prison limits the courts' capacity to deal with matters too, but that's not the question you asked, Eddie. I'm just
10 making the point that there are all these constraints that operate on our system in terms of being able to do the volume of work we'd like to. So I'm just going to hand over to the Secretary of Justice to explain the cleaning processes.

SECRETARY FOR JUSTICE:

Thank you. So right throughout the court buildings, we have moved to an
15 enhanced cleaning regime that does involve both a much deeper clean overnight on all and every surfaces that come into contact but also involves an additional clean through the course of the day where again we will go back out and do clean-downs of surfaces that would include AVL facilities as well as other court facilities. I wouldn't want to create the impression it happened after
20 every single use because that is simply not possible but we have stepped it up so that it happens during the day as well as overnight now.

WINKELMANN CJ:

Although you could provide disinfectant wipes or something for counsel to wipe
25 it down themselves before they use them, which might be a good idea, just a thought.

SECRETARY FOR JUSTICE:

What we do have is we have an individual designated as health and safety supervisor, essentially, in each of those buildings and so if there's any issues that are causing particular concern to people, they should be identifiable, this
30 can be tackled and addressed.

WINKELMANN CJ:

That point is something we will take back, I think, with us and think about further because it is a very good point.

- 5 So I think at this point, we will hand over to Justice Cooper to talk about open justice. So to maintain adequate physical distance, I am going to exit stage right and hand over my chair to Justice Cooper.

COOPER J:

10 Kia ora tatou. I am going to be quite quick. As you have heard, much effort has gone into working out ways in which the Courts can, albeit at reduced level, continue to function, particularly during level 4. Like the rest of the country, we were dealing with alert level 2 and making plans and it seemed every time a plan was made, it had to be abandoned to deal with the next contingency and we went from alert level 3 to alert level 4 very quickly. But we have now got to
15 the position where we can make proper provision for some urgent work to proceed and using these virtual meeting rooms where possible, some cases will still be proceeding in court, and we are now wanting to put a real focus on how we meet what I have described as the needs to the media for access to the system so that you can continue to report what we are doing.

20

Particularly in these circumstances where members of the public are not allowed effectively to be out unless they are on essential work, the media's role, which is always to some extent to be the eyes and ears of the public, is now greatly underlined and enhanced and I suppose the message I want to get
25 across is that the judiciary is acutely aware of the needs to do what we can to proactively assist your access to what is going on in the Courts so that you can, where necessary and in a way which of course meets your objectives, reflect to the public on what is happening in the Courts.

- 30 So there are two aspects of what we are focusing on. The first really is to make sure that you get information about what is happening on a day-by-day basis. In the Senior Courts, we will of course continue to publish lists on our websites of what the Courts are going to do and if we are going to be doing it

electronically in one of these virtual meeting rooms, we will be telling you about that. That will be part of the programmed work of the day which you will be able to get by consulting the Courts of New Zealand website.

5 It is more difficult in the District Court because it is such a high-volume court and in the past, as I understand it, the media have had to really physically go to the building to work out what's happening on a daily basis. We are now going to send District Court lists to accredited members of the media and an instruction has gone out from the Ministry to all the local District Court offices to
10 actually send to the journalists who are on their lists – and being in their communities, they know who they are – a list of what the Court's business that day will be and that will be the equivalent of the list that gets published now and we have to physically go along to see what is there and that will be able to be sent to journalists and you will be able to either go to the courthouse, which you
15 are entitled to do of course as an essential service, and if the work is being conducted in the courthouse, report on it in the normal way provided normal separation distances can be maintained.

Secondly, we see the need to facilitate you getting access to these virtual
20 meeting rooms so that you can be watching from wherever you happen to be for the purposes of keeping safe and we are working on, and we will be publishing shortly, a set of instructions about how you go about getting access to these virtual meeting rooms and as you saw this morning, there may be teething problems but it's like everything else that's new, I expect we will all get
25 more familiar with it and more adept at how it works. I would say once we got over our teething problems this morning, it has worked. We have even heard from people who we cannot see and so you will be able to be there as a watching presence, not participating of course, but just as if you were attending a normal Court hearing, the in-court media guidelines will apply.

30

Orders might be made which prevent publication of certain matters or names and one of the things I would like to emphasise is that you will be getting these District Court lists in advance of the normal process that would normally apply and so you will be getting names which may then be the subject of a

suppression order made by the Judge when they reach that case. We are going to trust you with that information and we think we can do that and it's reciprocity here. We are going to give you the information, we are going to rely on you to be responsible with it, because this is information you will be getting at an earlier
5 stage in the process when it has been unaffected by a court order that might be made.

So that's I think probably all I can usefully say at this stage. As I have said, just to reiterate, we will be telling you how to access these virtual meeting rooms
10 and we will give you people you can contact for that purpose, how to do it, and we're also, I would have to say, the committee that I'm chairing will be interested in any suggestions you have about how we might do better. I say that because I hope you do not think that we are going to have a system which is perfect from the beginning because like everybody else we are in a steep learning process
15 and neither are we the experts on what it is that you might want to know, so we want to have an open process and we will give you details about how that interflow of information might occur. We are having to learn some new tricks very quickly. We hope you will bear with us but we are keen to help you to help us to do justice in a public way in the weeks ahead and we are also very
20 conscious of the strain that you must all be under just as people in the justice sector are as well and we wish you all the best. Thank you.

WINKELMANN CJ:

Did anyone have any comments or contributions on that point?

MR BAKER WILSON:

25 Sir, I've already started getting the Auckland District Court list which is very helpful so thank you for that. Is there any thought about press sheets and access to those remotely?

COOPER J:

30 Yes, as I understand it, we will be sending you the press sheets and arrangements are in hand to do that.

CHIEF JUDGE TAUMAUNU:

That is right. Did the District Court briefing come out to everyone in advance? You probably have got it in your emails. It's got it all in there about the details of what's been provided by the Ministry.

5 WINKELMANN CJ:

I think someone also asked about – you were going to say something, Eddie?

MR GAY:

No, you go Your Honour, sorry.

WINKELMANN CJ:

10 Someone asked about access to court files. As has always been the way, the Courts are prepared to accept informal applications, so email requests for access to court files can be sent in. We will have to make sure that there are systems in place at the moment. We are working with reduced court staff to be able to deal with those because they are important. So applications for access
15 to court files to the media will continue to be processed even in the lockdown situation.

MS SMITH:

Is it the Court's expectation that hearings like the weekly callover at the High Court in Auckland, that we'll be able to dial in to those and participate, or
20 sorry, observe remotely? We did make an enquiry last week. There is three of us that regularly come on a Wednesday and we were told by the registry that we were unable to connect media as it would compromise the Court's AVL telephone connection for Court. That was last Wednesday.

COOPER J:

25 Well, that's obviously a technical issue and I can't answer that. I would have said – I mean, there can be some quite important information at that callover and I think we should look at that to see if there's a technical problem, and if so, a technical fix.

WINKELMANN CJ:

Justice Venning might have been able to tell us that but he has had to leave to go to a hearing. We will take that back as a work-on.

MS SMITH:

- 5 And one question in regards to observing. For some hearings, we file in-court media applications to be considered and if it was a hearing where it would be granted, how would the media obtain video recording or sound recording? Obviously, that can't be done remotely, I don't think.

COOPER J:

- 10 No, I think you would have to have a special arrangement if it was a case where you could predict that was going to happen. It might be a big important case, there might be scope for there to be a camera in the court which was then made available on a pooled basis. We have started to do that now. I don't think there would be provision for that just in an ordinary case that was being dealt with in
15 one of these virtual meeting rooms but I see no reason why if the case was one where that would have been filmed in that way, it shouldn't be now.

WINKELMANN CJ:

- I think the standard operating procedures, say the media are granted access to the virtual meeting room on the basis they do not film the VMR. But there is no
20 reason I think, as Justice Cooper says, why you can't make an application to be permitted to film it.

COOPER J:

- Just to say, there is one thing I need to stress, I think with these virtual meeting rooms, is if you leave it till 10 o'clock, you're likely to get a bad answer. So if
25 you see something on the list and you think, "Oh, I might be interested in that and want to join", get on to it straight away – well, within reason, but well before 10 because otherwise it may not be able to be organised.

MS SMITH:

And just practically in regards to that, normally we would show up before the hearing and hand up our business card and settle at the press bench. So practically in terms of having an interest in a hearing, are we emailing the generic registry?

5 **COOPER J:**

Yes, you'll either be emailing or telephoning and we'll address that when we get these instructions out. So you'll have a name to have those practical contacts with.

WINKELMANN CJ:

10 Some of you may know that we've been moving towards a system where we have proper identification for accredited media. Accredited media have special status in our courts under the Criminal Procedure Act. They are defined in that Act and during some of the recent high-profile trials, we had difficulty with media organisations not complying with the suppression orders. One of our methods
15 of supporting both the accredited media and also supporting the enforcement of suppression orders is to make sure that we can identify accredited media. So it's a process the Ministry of Justice is supporting us going through with the media to try and make sure that there are proper means for you to identify yourselves. But that's a medium-term project which has probably been a little
20 derailed by the present situation.

MR GAY:

Sorry, Your Honours, Edward Gay again. I just had an email on March 22 to the Ministry and the Ministry communications team asking that any case where a journalist had handed up a business card in a previous hearing or a case
25 where an in-court media application has been made, or access to court file application, any case like that, is then being dealt with administratively or by AVL, I ask that we be notified and included in that AVL hearing and I've heard nothing back as a result of that and I just wondered if that had reached Your Honours?

30 **COOPER J:**

No, not until now.

WINKELMANN CJ:

So what you're suggesting is a system where if you've registered your interests as a media representative in a case, you get told about steps that are taken. I
5 might just ask actually Mr Richardson to respond to this, because the High Court has such, or you don't – you're looking confused. I think the High Court already has a system like that that's been operating for several years. But obviously Mr Richardson's not responsible for it so he's looking confused.

10 **COOPER J:**

Well I speak for the Court of Appeal, but I would expect an earlier stated interest. I mean, it'll be recorded on the file and I would've thought, you know, the purpose of that is so that there can be ongoing notice of developments. So the point may need to be made with registries but I can't see any reason why
15 that shouldn't be able to continue. I don't know if you have any insight on that from the District Court's point of view?

CHIEF JUDGE TAUMAUNU:

It might be slightly different for the District Court because of the volumes that we're talking about and the reality of keeping track of those sorts of notes on
20 the files. But the media briefing for the District Court does explain how to join the VMR that is going to be rolling out soon and it also makes it clear that the media are still able to come into the courtroom itself, because in the District Court, many Judges are still going to be operating in the courtroom with registrars. So I don't think it applies the same across the board.

25 **WINKELMANN CJ:**

So just getting back to your question, Eddie – sorry, Andrew, were you going to say something? You go ahead.

SECRETARY FOR JUSTICE:

I was just going to say if there's an email outstanding that we haven't got back to, we better track that down and then make sure we do get the response and obviously, we'll work that through with the Judges.

WINKELMANN CJ:

5 Yes, I was just going to say that. Because, Eddie, I understand your point, which is that if you are trying to follow a case as a member of the media and then it's administratively adjourned then your ability to follow that case is removed, and the point is well-made and that is something we'll follow up. The Ministry of Justice will work with the Judges on that. Thank you.

10 **COOPER J:**

Did you name the case in your email, Eddie?

MR GAY:

Yeah, it wasn't in relation to a specific case. It was asking the Court to be proactive where those cases are going to be adjourned.

15 **COOPER J:**

Who did you send it to?

MR GAY:

I sent it to the Ministry of Justice media team.

MS BRETT:

20 Eddie, can I just intervene here for a minute? I know that you were contacted by one of the District Court judicial team and I think we are absolutely aware of the issue but it's quite a complex one, as Justice Cooper has explained to you, because systems are being developed but they're not instant, and before you can get a meaningful response to that question, I think we're just having to ask
25 for patience and forbearance with everybody.

COOPER J:

So you're aware of the letter, Cate?

MS BRETT:

I'm aware of the response.

COOPER J:

Oh.

5 **WINKELMANN CJ:**

I think he said he hasn't had a response, Cate.

MS BRETT:

I think I could show it to him.

MR GAY:

10 I'd appreciate that.

WINKELMANN CJ:

All right, well, that's good. Just going back to Anneke's point about attending callover, Judge Taumaunu made the point that Courts are still taking place in real in the District Court and they are still taking place in real in this place too.

15 So you can attend the callover, it will be taking place in the courtroom, if you're able to and I think the public gallery will be empty.

COOPER J:

Is there anything else? Very good, thanks very much.

WINKELMANN CJ:

20 Well, thank you all for attending, we really do appreciate it, and please, can you feel free to feed through to Cate and Marie McNicholas any ideas you have about how we can better support the media to report on the operations of the Courts? We will take those particular points that you've raised as work-ons and something we'll come back to you on. I think it was Anneke who asked about
25 statistics about the Courts and the Secretary for Justice has undertaken to get that to you. Did you want impact of adjournment through the four-week lockdown or – is that the nature of the information?

MS SMITH:

It was, yeah. And I know it can only really be speculative beyond that. But, yeah, so I think limiting to that would be practical.

WINKELMANN CJ:

- 5 Thank you very much for attending. I'll draw this to a close now.

BRIEFING CONCLUDES