

BEFORE THE RULES COMMITTEE

AND

IN the matter of a submission by Andrew Holgate of Whangārei

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| <p>SUBMISSION</p> |
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May it please the Committee:

1. I currently practice in the area of civil litigation in Whangārei. I have a real interest in access to justice, and pro bono work. I would be grateful if the committee would consider a short submission.

CORE SUBMISSION:

Concept:

2. I respectfully submit the Court Rules can be amended to improve access to justice by having a new section of Rules at the end of the current Court rules specifically labelled "Access to Justice." These new rules can prescribe that:
 - 2.1. The Registrar can maintain a register of lawyers willing to provide access to justice services/ pro-bono. (The list must be individual lawyers rather than firms because some firms will just appoint junior lawyers as their social conscience. Those junior lawyers can then be left to flounder with complex non-lucrative cases. Junior lawyers also move jobs quite often and this causes continuity issues);
 - 2.2. Most people with questions about legal proceedings that have just been served will go to see the Registrar before they go anywhere else;
 - 2.3. When they reach the Registrar, they can apply for access to justice services and the Registrar can refer them to the next available lawyer on the list;
 - 2.4. The person can then consult the allocated lawyer. If the person has an arguable case the lawyer can provide a certificate stating this;

- 2.5. From the point that the lawyer provides a certificate onwards, the person can receive legal and Court services free of charge, or for some means-tested amount;
- 2.6. Once the proceedings conclude, if the person has been successful, the Court costs can be recovered and then legal/ lawyer costs.
- 2.7. The rules can stipulate that the person is not subject to an adverse order of costs unless some egregious behaviour warrants this. This would achieve parity with legally aided litigants;
3. What I'm suggesting will be familiar because the old ***in forma pauperis*** system operated in a similar way.

Logistical issues:

4. Court Registrars are best placed to appoint lawyers because:
 - 4.1. They have the resources to maintain registers, and:
 - 4.2. Outside the main centres they are often long-serving Court staff, so there is continuity;
5. Community Law Centres are less equipped to handle this because:
 - 5.1. They may not have the plant and equipment;
 - 5.2. They also have a quite a frequent staff turnover;
 - 5.3. Outside the main centres they do not have a good network with the local lawyers and Court staff;
 - 5.4. Staffing shortages and client demand mean that clients have to wait for a slot in a clinic, and those are not held regularly in the smaller towns.

“Low bono” and pro bono legal services:

6. A significant number of lawyers provide pro bono legal services and would provide more services if the clients needing this were steered in their direction.

There is a lot of goodwill in the profession to provide assistance to litigants and the Courts.

TRIAGING CASES:

7. The committee has mentioned the possibility of triaging cases before the Court to dispose of them sooner.
8. There is merit in triaging cases before the Court, but it is respectfully submitted that except in the Family Law matters, this should be after the matter is defended. While civil litigation in Whangārei is quiet at the moment, this will change and we really need to be cautious of consuming judicial time that is needed in other areas.
9. Triaging Family Court and Family Law matters at the outset would be really useful given the staggering workload of that Court.

CONCLUSION:

Thank you for considering this submission.



Andrew Holgate

Friday, 11 September 2020