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By email: Joanne.O'Connor@courts.govt.nz

Tēnā koe

Feedback on proposed changes to the way Supreme Court proceedings are published

Thank you for the opportunity to provide feedback on proposed changes to the way Supreme Court proceedings are published. The ADLS Criminal Law Committee has considered the proposed changes and would like to provide the following feedback.

Transcripts

We have concerns about the provision of transcripts being provided before the parties have the opportunity to check them for accuracy. If the hearings are to be live streamed, this may not even be necessary.

Submissions

We are most concerned however about the suggestion of releasing submissions to the general public. Firstly, it may not be clearly understood by persons not familiar with court processes that submissions are merely that – a submission. There are often scenarios where one side or the other, or indeed both, can be saying quite different and opposing things. Writing them down does not make them true or even accurate. Submissions frequently contain very personal information and are currently the best method of conveying certain sensitive information to the court. This might cease if there was a risk of publication, or lead to two sets of submissions being required.

Currently the Court monitors who accesses information on the court file, which is made by application on a case-by-case basis. Each case can be considered on its own merits however a blanket approach would be different and of grave concern.

For example, it would be a shame if certain lawyers also used the potential publication of submissions to make wider points, which may or may not be relevant to the court proceedings. All Counsel may

feel under pressure to include more information than might otherwise be the case, with a view that families and supporters (or opponents) of the defendants may read them.

Counsel also do not appreciate the thought of other counsel being able to freely access their submissions. At present, Counsel can control which of their colleagues see their written work, outside a court hearing. Were they to be published online, there would be no control over who might be able to access them. There is an element of “copyright” or intellectual property which counsel may feel entitled to possess over their own work.

Audio recording

We do not have an issue with audio recording of hearings.

Livestreaming

We do not have an issue with live streaming of hearings. This is part of open justice and access to justice. We would seek however that thought is given potentially to prisoners also being able to access live streaming, especially of their own cases. Some prisons still do not have AVL facilities to allow prisoners to access court hearings.

Judgment delivery

ADLS would very much like judgements to be delivered with a 24 hour embargo, to allow the prisoners and victims time to process and discuss with relevant lawyers, before the press reporting begins. Counsel have had experience of prisoners finding out via media reports of the outcome of their hearings and this is far from ideal. Sometimes counsel are in court or for other reasons cannot speak to clients immediately upon release of the judgement, and so the time embargo would be welcomed in all cases.

Should you have any questions about this feedback I am available to engage in further discussion.

Ngā mihi

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ADLS President and Convenor of the Criminal Law Committee

