

Improving access to justice – ACT Magistrates Court approach

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The Lord Woolf Report is still pivotal in identifying principles, the problems, and recommending reforms for ensuring access to justice for the Courts.¹ In Australia, the Law Reform Commission, in its *Access to Justice and Managing Justice Reports*², also undertook substantial research to identify the problems of the civil justice system and recommend access to justice reforms. Even the Chief Justice of the High Court of Australia identified that “the system of administering justice [was] in crisis.”³

There can be no doubt that the Courts have undergone a crisis on many levels in the last number of decades. The increase in litigation of matters, growth of awareness by citizens of their rights, and the delays in the court process, are all factors that impact on access to justice, and at the same time are interrelated.

In this Paper, I will look at one way that ACT Magistrates Court has attempted to deal with these issues to facilitate access to justice. In effect, I support the views espoused by Justice Ronald Sackville in his paper on *‘From Access to Justice to Managing Justice: The Transformation of the Judicial Role’*, where he espouses that Australian courts now not only actively manage their caseloads, but also have accepted new and expanded notions of accountability, some of which are bound up with the principle of consumer orientation.⁴

Within this framework, the ACT Magistrates Court has set-up a conferencing unit, which deals with all the conferencing work of the Court. This Paper will look at the principles that underpin the Court, why the conferencing unit was set-up, objectives of the conference, and how effective the conferences have been to better service the community and save in Magistrates court time.

Principles - civil justice system in the ACT Magistrates Court

In many ways the principles that underpin the civil justice system in the ACT Magistrate Court reflect the principles identified by Lord Woolf’s report, in that the system should aspire to:

- Be just in the results it delivers;
- Be fair in the way it treats litigants;

¹ Lord Woolf, *Access to Justice: Interim Report* (HMSO, 1995).

² *Access to Justice Report*, Law Reform Commission and *Managing Justice Report*, Law Reform Commission, 2000.

³ G Brennan, “Key Issues in Judicial Administration” (1997) 6JJA 138, 138.

⁴ Sackville Ronald J, *From Access to Justice to Managing Justice: the Transformation of the Judicial Role*, (AIJA Conference, 12-14 July 2002).

- Offer appropriate procedures at a reasonable cost;
- Deal with cases with a reasonable speed;
- Be understandable to those who use it;
- Be responsive to the needs of those who use it;
- Provide as much certainty as the nature of particular cases allows; and
- Be effective: with adequate resources and organised.⁵

The ACT Magistrates Court has been mindful of these principles in reengineering the work of the Court, streamlining practices and processes, and utilising ADR principles for conducting conferences to deal with the extra workloads.

Why a conferencing unit?

Over the last 10 years the ACT Magistrates Court had found that there had been a substantial amount of matters that had been set down for hearing in the civil justice system, which were causing delays in the court process. In particular civil matters, small claim matters, criminal injury compensation matters, and protection orders had been set down for hearing and was causing enormous delays in the court process. As a result

In November 2001, the ACT Magistrates Court set-up a conferencing unit, which conferences all protection orders – domestic, personal and workplace protection orders; care matters (for children and young persons); small claims; criminal injury compensation matters; commercial retail tenancy matters and civil case management conferences.

The unit has four senior officers that conduct all the conferencing work and undertake other work including some judicial work. Most of the senior officers are legal qualified and have accredited mediation skills.

The aim of the unit is to curb delays within the court process, provide better serve to the community and save Magistrates court time, thereby allowing Magistrates to preside in other matters.

Alternative Dispute Resolution Principles

The conferencing unit utilises the principles of alternative dispute resolution to conduct conferences. The model of alternative dispute resolution used consist of mediation, conciliation and arbitration. The definition of forms of alternative dispute resolution are as follows:

- Mediation – a facilitative process in which third parties do no make binding decisions for the parties nor advise them directly on the law, the facts or possible outcomes; instead they assist in managing and controlling the dispute resolution process and facilitating the parties own decision-making.⁶
- Conciliation – an advisory process in which third parties do not make binding decisions for the disputing parties but can advise them on the facts and law and recommend possible outcomes for their dispute. The advice or recommendations of the third party is not binding on the disputing parties, but it can become directly or indirectly binding in some circumstances.⁷

⁵ Lord Woolf report, *Id* 1.

⁶ Sourdin T, *Alternative Dispute Resolution*, Lawbook Company, Sydney, 2002.

⁷ *Id.* 201.

- Arbitration – a determinative process in which parties have the authority, through statute or contract to make decisions binding on the parties through processes which do not have all the procedures and formalities of court-based litigation.⁸

The conferencing unit utilises a hybrid of mediation and conciliation in conducting conferences. However, there is also a legislative framework which provides as to how the conferences can be conducted. Conferencing officers are mindful of that framework.

Objectives of Conference

In most matters where conferences are conducted by the conferencing unit, there is legislative requirements as to how the conferences are to be conducted. For instance in dealing with protection orders the legislative provides that the objectives of a conference are to:

- find out whether the matter may be settled by consent with the deputy registrar, before it is heard by the Magistrates Court;
- work out and limit the issues to be decided in the proceeding; and
- ensure that the parties are taking the measures necessary to allow the proceeding to be heard quickly.⁹

Additionally without limiting how the issues to be decided in the conference may be worked out and limited, the preliminary conference must try to:

- identify facts agreed on;
- identify issues not agreed on;
- identify any unusual or urgent factors that require special attention.¹⁰

It should be noted that when conferencing officers conduct conferences in protection order matters, the parties are dealt with separately. For instance the applicant and the conferencing officer attempt to deal with the matter, not in the presence of the respondent. In turn, the respondent and the conferencing officer attempt to deal with the matter, not in the presence of the applicant.

The new landscape

The conferencing unit has had a positive impact on the work of the Court. It is early days but already in relation to protection order matters, only 2% go on to hearing; while in small claim matters only 20% go on to hearing. This in effect has decreased delays with court waiting times, as Magistrates are able to deal with other matters.

⁸ *Id.* 167.

⁹ Regulation 6, Protection Orders Regulation 2002.

¹⁰ *Ibid.*

An evaluation of how effective and efficient the conferencing unit is, will be conducted shortly. Anecdotal evidence suggests that parties, during the conference stage, are able to reach an agreement, that is a more satisfactory outcome for both parties. If that is the case, then of course it would be another factor in the Court better serving the community.

It is widely acknowledged that Courts have a valuable role in improving access to justice. The new landscape provides for Courts now to undertake that fundamental task. The Courts performing alternative dispute resolution work to deal with matters is only one of the ways forward.