

THE WINSTON CHURCHILL MEMORIAL TRUST OF AUSTRALIA

Report by JULIE GRAINGER - 2012 Churchill Fellow

“Litigants in Person in the Civil Justice System - learning from NZ, the US and the UK”

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Dated 1 November 2013

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INTRODUCTION

Individuals have a legal right to appear in Australian courts and tribunals without legal representation. Individuals who do so are known as litigants in person.

It is likely that the number of people representing themselves in Australian courts and tribunals will continue to grow as the cost of legal advice and representation increases and the availability of legal aid and other government funding decreases.

A just society requires that litigants in person be assisted by courts and tribunals to ensure a fair hearing. If litigants in person are not provided with the necessary information and assistance, they may not receive the fair hearing to which they are entitled. In addition, if courts and tribunals fail to adequately help litigants in person, this reduces the efficiency of the judicial process due to, for example, longer hearings, more adjournments and disproportionate amounts of time being spent by staff and judicial officers explaining practices and procedures and managing stressed and anxious litigants.

Since its inception in 1998, the Victorian Civil and Administrative Tribunal's (**VCAT**) purpose has been to provide Victorians with a low cost, accessible, efficient and independent Tribunal delivering high quality dispute resolution.¹ Whilst professional advocates may represent parties at VCAT in appropriate cases², the Victorian Parliament intended VCAT to operate without legal representation being the norm.³ For this reason, VCAT's practices and procedures are designed to make it as easy as possible for litigants in person to make or defend claims at VCAT.

Despite this, some litigants in person find making or defending a claim at VCAT difficult and stressful, and some litigants in person present a challenge to VCAT's capacity to ensure a fair and expeditious hearing.

As a member of VCAT, I frequently conduct hearings with litigants in person and have extensive experience in managing these issues. I have also been involved in developing and implementing strategies to address these issues, such as drafting VCAT's first Litigants in Person Management Plan.⁴ Whilst VCAT and other Australian courts and tribunals have already done much to help litigants in person, we need to develop and implement more innovative and effective strategies to meet the needs of the growing number of litigants in person in the civil justice system.

The Churchill Memorial Trust funded me to travel to New Zealand, the United States and England to study the strategies adopted in these jurisdictions for assisting litigants in person. Many of these strategies are more sophisticated and further developed than the strategies currently used by Australian courts and tribunals.

The recommendations contained in this report are aimed at enhancing an individual's ability to access justice in Australia in fair and efficient courts and tribunals, through innovative and effective strategies that meet litigants in person's diverse needs. Many of the strategies that I have identified are effective because they use technology in innovative ways. Other strategies are effective because they facilitate "self-help" by developing a litigant in person's legal knowledge and skills or because they provide individuals with the highest level of need and merit with face-to-face advice.

¹ Practice Note – PNVCAT3 (Fair Hearing Obligation); See also the Second Reading Speech (VCAT Act) [973] and the discussion of VCAT's purpose in Pizer's Annotated VCAT Act 3rd Edition, Jason Pizer, JNL Nominees Pty Ltd 2007 and 1-501, 2010 Thomson Reuters.

² See section 62 of the *Victorian Civil and Administrative Tribunal Act 1998*. See also the Second Reading Speech (VCAT Act) [974].

³ *Aussie Invest Corporation Pty Ltd v Hobsons Bay CC* (2004) 22 VAR 212 at [7].

⁴ See recommendation 1 on page 25 of this report.

The recommendations reflect the fact that litigants in person come from diverse cultural, linguistic and socio-economic backgrounds, that they need varying forms and degrees of help, and that it is not possible to implement a “one size fits all “strategy. However, the needs of the most vulnerable members of our community are at the forefront of my recommendations.

ACKNOWLEDGEMENTS

I would like to acknowledge and thank the Churchill Memorial Trust for its generosity in funding this project. I would also like to acknowledge and thank Justice Greg Garde AO RFD, the current President of the Victorian Civil and Administrative Tribunal (**VCAT**), Justice Iain Ross AO, the former President of VCAT and Deputy President Heather Lambrick, in particular, and my VCAT colleagues, in general, for their interest in, and support for this project.

Lastly, and most importantly, I would like to acknowledge and thank my family and friends for their interest and support. In particular, I would like to acknowledge and thank my partner, Vincent, for his constant encouragement and unconditional support during the application process, my fellowship travels and the report writing process, my children, Harrison and Riley, for their love and understanding whilst I was away and working on my report, and my extended family, Helen, Robert, Pauline, Reece, Charley and Trine, who have also been a great support and who have cared for my family during my Churchill journey.

Julie Grainger
1 November 2013

EXECUTIVE SUMMARY

Name: Julie Grainger
Address: 55 King Street Melbourne 3000

Occupation: Member, Victorian Civil and Administrative Tribunal
Project title: Litigants in Person in the Civil Justice System - learning from NZ, the US and the UK.

PROJECT DESCRIPTION

I travelled to New Zealand, the United States and England, where I examined many strategies that have been successfully implemented to assist litigants in persons. In particular, I examined the effectiveness of the strategies, the costs associated with their development and implementation and any potential barriers to the strategies being implemented in Australia.

HIGHLIGHTS

New Zealand

My conversation with Professor Mark Henaghan, the Dean of the Faculty of Law at the University of Otago was insightful and inspiring. Mark also put me in contact with Dame Hazel Genn, Dean of Laws, Professor of Socio-Legal Studies and co-director of the UCL Judicial Institute in the Faculty of Laws at University College London, who in turn put me in contact with Robin Knowles, QC, both invaluable contacts.

United States

My conversation with Richard Zorza, a lawyer, access to justice academic and blogger, and founder of the Self Represented Litigants Network was similarly inspiring. Richard's ideas for assisting litigants in person are innovative and well developed, and his arguments highly persuasive. Richard has extensive contacts in the access to justice field in the US and he introduced me to many of them. This led to numerous other highlights including learning all about the innovative technology used to create the interactive Do-It-Yourself (**DIY**) forms from Judge Fern Fisher, director of the New York Court's Access to Justice program and the Live Help project from Leah Margulies from Law Help NY. Richard's contacts also led me to include in my agenda a very informative interview with Avi Sickel, who previously ran the Family Court Self-Help Center in the Superior Court of the District of Columbia. My interview with Mark O'Brien, director of Pro Bono Net was also enlightening in relation to the important role that technological innovations play in improving access to justice. It was also fascinating to learn about the depth and breadth of the work being done by the National Center for State Courts from Robert Baldwin, Executive Vice President and General Counsel.

England

My conversations with Robin Knowles, QC, chairman of the Bar Pro Bono Unit and trustee of an extraordinary number of charitable trusts in the United Kingdom, which bookended my time in London were invaluable. Rebecca Scott, senior solicitor and legal advice manager and Alison Lamb, chief executive of the Royal Courts of Justice Citizens Advice Bureau spent a considerable amount of time with me and enabled me to observe their various legal assistance programs. Their CourtNav software program, which enables litigants in person to draft Family Court documents, was particularly interesting. My conversations with Justice Gary Hickinbottom and Professor Dame Hazel Genn were also fascinating and thought provoking.

MAJOR LESSONS AND CONCLUSIONS

Through my research, I have identified many innovative and effective strategies for helping litigants in person in the United States and the United Kingdom that could be, and should be, implemented in Australia.

Most of the effective strategies implemented in the United States focus on encouraging self-help. Self-help skills are developed through providing litigants in person with extensive high quality and detailed information about the law and courts' practices and procedures. The strategies also enable litigants in person to obtain legal information about their specific legal problems, rather than general legal information. The organisations I attended rarely provide any legal advice. Instead, they use well-developed triage techniques to refer litigants who are unable to represent themselves and who cannot afford to pay for legal advice or representation to pro bono legal organisations that can assist them. The focus on developing self-help skills enables organisations with limited resources to help a large number of people each year.

In the United States in particular and in the United Kingdom to a large extent, the most effective strategies rely heavily on pro bono work done by law students and lawyers. However, highly skilled lawyers or paralegals employed by the courts or community legal organisations coordinate the strategies.

Whilst some of these strategies involve providing people with legal information or advice in a one-on-one, face-to-face environment, many of the strategies used currently available innovative information technologies to provide people with the legal information and help online in an extremely efficient and effective manner.

However, best practice still requires the implementation of strategies that give litigants in person who are unable to take advantage of online self-help strategies access to face-to-face assistance.

There is also some very interesting research being done on litigants in person in New Zealand, (see page 65) which is likely to provide Australian courts and tribunal with valuable information and insights in relation to the challenges litigants in person face when representing themselves and strategies for responding to those challenges.

Whilst Australian courts and tribunals are doing much to help litigants in person, our capacity to improve access to justice in an expeditious manner will be limited unless we take a more proactive and strategic approach. We should be using currently available information technologies in a sophisticated and targeted way and thereby capitalising on an important opportunity. Australian courts and tribunals also need to implement new strategies that promote self help by increasing the legal knowledge and skills of litigants in person. Finally, Australian courts and tribunals need to develop partnerships with universities and law firms and support other initiatives that will increase the amount of pro bono legal work done in this area.

DISSEMINATION AND IMPLEMENTATION

Since completing my fellowship, I have been nominated to represent VCAT on the litigants in person steering committee for the Judicial College of Victoria, which is running a program on "Managing the Challenges" in March 2014 and on "The Law" in November 2014. I have also attended an Affordable Justice Roundtable at the Centre for Innovative Justice at RMIT.

I have submitted an abstract to speak about the innovative information technologies that I learnt about at the Australasian Institute of Judicial Administration conference (**AIIJA**) entitled "Assisting Unrepresented Litigants – A Challenge For Courts And Tribunals" in April 2014 and have been asked to speak at the Council of Australasian Tribunals (**COAT**) Victoria chapter's 2014 conference and at VCAT's 2014 members professional development day, both of which are focusing on litigants in person.

I also intend to make a submission to the Productivity Commission's inquiry into Access to Justice Arrangements and to provide a copy of my report to the head of each Australian court and tribunal.

PROGRAM

The Churchill Foundation funded me to spend one week in New Zealand, two weeks in the United States and two weeks in the United Kingdom. I also took three weeks' long service leave, which enabled me to spend some extra time in the United States and London, some of which I took as personal time and some of which I used for additional interviews. During this time I met 42 people from 21 organisations, 28 of whom I formally interviewed.

NEW ZEALAND – 23 JUNE 2013 TO 29 JUNE 2013

University of Otago, Dunedin and Auckland

- Professor Mark Henaghan, Dean of the Faculty of Law
- Bridgette Toy-Cronin, PhD student, Faculty of Law

Tenancy Tribunal, Auckland

- Rex Maidment, Principal Tenancy Adjudicator

High Court and District Court, Dunedin

- Judge Flatley, District Court, Family Law Division
- Yolanda Denharing, Family Court coordinator, District Court, Family Law Division
- Gena Anaki, Deputy Registrar, District Court, Family Law Division
- Serena Cookson, Deputy Registrar, District Court, Family Law Division and Civil Division
- Andy Flanagan, Deputy Registrar, High Court and District Court, Civil Division
- David Kennedy, Deputy Registrar, District Court, Family Law Division
- David Miller, Otago and South Canterbury Courts Service Delivery Manager

UNITED STATES – 29 JUNE 2013 TO 24 JULY 2013

Law Help NY, New York

- Leah Margulies, Project Director
- Quisquella Addison, Live Help Program Coordinator

New York State Courts Access to Justice Program, New York

- Judge Fern Fisher, Deputy Chief Administrative Judge, New York Courts and Director, New York State Courts Access to Justice Program
- Rochelle Klempner, Chief Counsel
- Sun Kim, Special Counsel
- Tracy McNeil, Special Counsel

Pro Bono Net, New York

- Mark O'Brien, Executive Director
- Adam Friedl, Pro Bono Coordinator

The Committee on Non-lawyers and the Justice Gap, New York

- Fern Schair, co-chair of the Advisory Board of the Feerick Center for Social Justice, Fordham University School of Law and co-chair of the Committee on Non-lawyers and the Justice Gap
- Roger Maldondo, partner, Balber Pickard Maldonado and co-chair of the Committee on Non-lawyers and the Justice Gap

Self Represented Litigation Network, Washington DC

- Richard Zorza, attorney, independent consultant, founder and coordinator of the Self Represented Litigation Network, www.accesstojustice.net blogger

Family Court Self-Help Center, Superior Court of the District of Columbia, Washington DC

- Avi Sickel, acting director of the Family Court Operations Division, Superior Court of the District of Columbia, former head of the Family Court Self-Help Center
- Judge Danya Dayson, Family Court Operations Division

Legal Services Corporation, Washington DC

- Glenn Rawdon, Program Counsel for Technology, Legal Services Corporation
- Jane Ribadeneyra, Program Analyst for Technology Initiative Grant Program, Legal Services Corporation

National Center for State Courts, Williamsburg

- Robert Baldwin, Executive Vice President and General Counsel

ENGLAND – 24 JULY 2013 TO 13 AUGUST 2013

Royal Courts of Justice Citizens Advice Bureau, London

- Alison Lamb, chief executive
- Rebecca Scott, senior solicitor and legal advice manager
- Jeanette Daly Mathias, manager, Islington Citizens Advice Bureau
- Rita Suglani, Duty solicitor, Family Law team
- Shabnam Kermali, Money Advice Caseworker

Bar Pro Bono Unit, London

- Robin Knowles CBE, QC, Chairman (also trustee of the Royal Courts of Justice Advice Bureau and LawWorks)
- Rebecca Wilkie, Chief Executive, Bar Pro Bono Unit

High Court of Justice of England and Wales, London

- Justice Gary Hickinbottom, High Court Judge and President of the Administrative Appeals Chamber of the Upper Tribunal

Parking and Traffic Appeals Service, London

- Caroline Hamilton, Chief Parking and Road Traffic Adjudicator

University College London

- Professor Dame Hazel Genn, DBE, QC, Dean of Laws, Professor of Socio-Legal Studies and co-director of the UCL Judicial Institute in the Faculty of Laws

Judicial College, London

- Professor Jeremy Cooper, Judge of the Upper Tribunal and of the First Tier Tribunal (Mental Health), Honorary Professor of Law, University of Kent and the Tribunals Director of Studies, Judicial College

Law For Life, London

- Theresa Harris, Information manager

Personal Support Unit, London

- David Rinaldi, PSU Coordinator, Royal Courts of Justice and Principal Registry of the Family Division
- Lizzie Iron, Head of Service

LawWorks, London

- Rebecca Hilsenrath, Chief Executive

Community Links, London

- Sharon Elliott, solicitor, Churchill Fellow

REPORT

RESEARCH METHODOLOGY

I used qualitative research methods for my project, that is, I conducted a series of in-depth, one-on-one interviews. My subjects were people I identified as having extensive knowledge, expertise and experience in the area of helping litigants in person access and navigate the legal system in New Zealand, the United States and the United Kingdom. In general, I asked open-ended questions, adopting a non-structured approach. I recorded all of my interviews and made notes along the way. My questions focused on what strategies the subjects were using to help litigants in person, why they had chosen these strategies and how they had been implemented. I interviewed subjects from a broad range of organisations including courts and tribunals, government organisations, not-for-profit organisations and academia. I also observed a number of hearings in courts and tribunals in the US and England and intake and advice sessions at various community legal organisations.

STRUCTURE OF THIS REPORT

Each of the organisations I attended has the same broad goal of improving an individual's ability to access and navigate the legal system regardless of that person's economic, cultural or social background. However, each organisation seeks to achieve its goal in different ways by focusing on different access to justice issues and using different strategies.

Broadly, the organisations I attended fall into three categories:

1. Organisations that focus on prevention and early intervention strategies designed to divert people from the legal system. See for example the work of LawWorks (page 63), Law for Life (page 60) and the Islington Citizens Advice Bureau (page 56). Much of the research undertaken by Professor Dame Hazel Genn also falls within this category (page 67).
2. Organisations that focus on providing litigants in person with quality information, advice and other tools designed to help them represent themselves in courts and tribunals. See for example the work of the New York State Courts Access to Justice Program (page 38), Law Help New York (page 47), the Family Court Self Help Centre (page 42), the National Centre for State Courts (page 53), the Royal Courts of Justice Citizens Advice Bureau (page 55) and the Judicial Working Group on Litigants in Person (page 34).
3. Organisations that focus on providing free legal advice and representation to individuals who cannot represent themselves, cannot afford to pay for it and who are unable to access legal aid. See for example the work of the Bar Pro Bono Unit (page 57) and LawWorks (page 63).

In addition, many of the individuals I interviewed have devoted much of their professional life to researching and writing about access to justice issues, developing and implementing strategies to improve access to justice and advocating for people who are unable to advocate for themselves. Each of these individuals imparted considerable knowledge and insights, and inspired me to do as much as I can to encourage everyone working in the legal profession, including court and tribunal staff, judicial officers and solicitors and barristers to do more to support litigants in person.

For this reason, I have included detailed summaries of my 28 interviews as attachments to my report so that readers can locate more information about an area that may be of particular interest. It is my hope that other people with a passion for access to justice issues will be inspired to implement a new project or improve a current one after reading about something I have learnt during my fellowship. Many of the organisations I attended also gave me written materials that I am happy to provide on request.

However, the body of my report focuses on the strategies that courts and tribunals can implement assist people to represent themselves.

MAJOR FINDINGS

A JURISDICTONAL OVERVIEW

New Zealand

Litigants in person do not appear to be as common in New Zealand courts and tribunals as they are in Australian courts and tribunals. This appears to be due to the fact that many parties are still able to access legal aid. It may also be the case that lawyers' fees are less expensive in New Zealand compared with Australia.

As a result, New Zealand courts and tribunals have not yet developed any innovative strategies for supporting and assisting litigants in person that have not already been identified and implemented in Australia. Rather, it is likely that New Zealand courts and tribunals will look to Australian courts and tribunals for inspiration on how to manage increasing numbers of litigants in person in the future.

However, there is important research into litigants in person currently being undertaken at the University of Otago that is likely to add to our understanding of the issues and challenges litigants in person face when representing themselves in courts and tribunal.

Professor Mark Henaghan, the Dean of the Faculty of Law, is currently undertaking research into satisfaction levels of litigants in person in New Zealand's tribunals.

Bridgette Toy-Cronin, a student in the Faculty of Law, is also undertaking a PhD on the experience of litigants in person conducting civil court cases in New Zealand's courts. Bridgette's PhD will investigate the barriers litigants in person face and what changes they would like to see made to the New Zealand legal system.

Given the similarities between our legal systems and our cultures generally, Mark and Bridgette's research should provide some insights into the likely experiences of Australian litigants in person. Bridgette's research should also provide some valuable information about the demographic make up of litigants in person and their reasons for representing themselves.

The United States

In contrast to New Zealand, the United States appears to have many more litigants in person appearing in its courts than in Australia. For example, there were 2.3 million litigants in person involved in civil disputes in New York State in 2012.⁵ New York's Housing Court alone deals with around 300,000 cases per year and 99% of the tenants are unrepresented.

An underfunded legal aid system, under-resourced courts and complicated forms and procedures that often vary from county to county within states exacerbate the problem. There are also very few low cost and accessible tribunals in the United States, which is in strong contrast to the extensive and expanding Tribunal system we have in Australia.

There are also many people with serious legal problems, usually in the areas of housing, debt, family law and consumer law, who are unable to access the justice system at all due a range of issues such as language barriers⁶, lack of personal resources and lack of financial resources.

As a consequence of the large unmet demand for legal advice, the high number of litigants in person involved in court cases and the considerable barriers to accessing justice faced by them, government, legal aid and community legal organisations have developed a broad range of innovative strategies to provide legal help and information to as many people as possible.

⁵ http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-2011TaskForceREPORT_web.pdf. New York State's population was 19.57 million in 2012.

⁶ One third of households in New York do not speak English at home.

Most of the strategies developed in the United States rely heavily on pro bono volunteers and there is a strong pro bono culture within the legal profession. Eleven of the fourteen law schools in New York currently require students to complete a minimum number of pro bono hours in order to graduate and from 2014, all law students and lawyers admitted in other states will need to demonstrate that they have completed 50 hours of pro bono legal work before they will be admitted to practice in the state of New York.

Many of the strategies also rely on innovative uses of technology. Courts and community legal organisations have begun developing interactive Do-It-Yourself (**DIY**) forms that are accessed by litigants in person via the internet and that enable them to complete court forms on their own. Legal information is being provided to people over the internet using Live Chat technology and projects are being developed that use smartphone⁷ technology to provide people with information and assistance.

Most of the strategies provide people with extensive information, which is designed to help people who have the capacity to do so, represent themselves at court. Pro bono legal advice and representation is reserved, as it ought to be, for those who need it the most. The legal information programs, which have been developed by courts and community legal organisations, use triage⁸ as a means of determining which people can help themselves and which people need to be referred on for pro bono legal advice and representation. They all depend on pro bono volunteers, who are usually sourced from universities, law firms or the bar. Some of the programs also train appropriately qualified non-lawyers to provide information and assistance to litigants in person.

Effective strategies have also been developed for sharing ideas, resources and information. The National Center for State Courts and SelfHelp.org are two good examples of organisations that collect and publish on the internet resources to help pro bono practitioners. The Technology Innovation Grants program also provides funding for innovative technological projects and their replication in other states.

The United Kingdom

The United Kingdom is only now beginning to experience high numbers of litigants in person due to legal aid cuts that took effect in April 2013. For this reason, in some respects, the United Kingdom is also trailing behind Australia in relation to strategies for assisting litigants in person. For example, many of the recommendations contained in the report of the Judicial Working Group on Litigants in Person⁹ (**the Working Group**) around judicial education on judge-craft and litigants in person and the provision of court materials to inform litigants in person what is required of them and what they can expect when they go to court, have already been implemented across Australia.

However, many of the other the recommendations contained in the Working Group's report have not yet been implemented in Australia, although some of them are being discussed at present. For example, we are also starting to engage in conversations about conducting proceedings by way of a more inquisitorial form of process¹⁰.

Whilst the Working Group was set up to urgently address the anticipated increase in litigants in person in courts and tribunals in the United Kingdom, the issues facing those courts and tribunals are very similar to those faced by Australian courts and tribunals. For this reason, many of the recommendations contained in the Working Group report are highly relevant and applicable to Australian courts and tribunals and, if adopted, would enable Australian courts and tribunals to

⁷ A smartphone is a mobile telephone with built-in applications and internet access.

⁸ Sorting and allocating resources on the basis of need or likely benefit.

⁹ The July 2013 report of the Judicial Working Group on Litigants in Person can be found at http://www.judiciary.gov.uk/Resources/JCO/Documents/Reports/lip_2013.pdf.

¹⁰ See for example the views of the Hon John Doyle AC, Chief Justice of South Australia, who spoke at the University of Melbourne on 9 September 2013 on reforming the adversarial commercial litigation system in Australia.

better help and manage litigants in person. The Working Group's recommendations are set out in full on page 35.

There are also many community legal organisations in the United Kingdom that have developed innovative strategies for helping litigants in person. The RCJ Citizen's Advice Bureau's CourtNav program allows litigants in person with family law problems to complete court forms over the internet and LawWorks allows community groups to obtain legal information from pro bono lawyers using a Facebook like program.

BEST PRACTICE IN AUSTRALIA

In many respects, Australia's courts and tribunals are well ahead of the courts and tribunals in New Zealand, the United States and the United Kingdom in terms of the strategies they have implemented to help litigants in person. Many Australian courts and tribunals have simplified their forms and processes and have put their forms on their websites.¹¹ Some courts and tribunals have introduced fillable forms, guides for completing forms and electronic methods for paying court fees and filing documents.¹² Most Australian courts and tribunals have produced useful printed information for litigants in person and have put relevant information and links to other legal or community organisations on their websites.¹³ Some Australian courts and tribunals have also produced audio-visual material for litigants in person.¹⁴ Duty lawyer services are available at most courts and tribunals.¹⁵ In addition, our judicial training organisations have been providing judicial officers with training on managing litigants in person for many years.¹⁶

This was highlighted to me during my travels, as people were very interested in the Australian judicial system in general, and in VCAT's extensive jurisdiction and flexible practices and procedures in particular. I provided a significant amount of material about VCAT to many of the organisations I visited, particularly copies of VCAT's Fair Hearing Obligation Practice Note¹⁷ and poster, information about its text message hearing reminders, its new fees structure in the Planning List and information about the key sections in the Victorian Civil and Administrative Tribunal Act 1998 (**VCAT Act**)¹⁸, which set out some of the Tribunal's obligations regarding the conduct of a hearing. I have also blogged about VCAT as a guest blogger on Richard Zorza's AccesstoJustice blog.¹⁹

However, there are some areas in which our strategies are deficient. Few Australian courts and tribunals have implemented strategies for helping litigants in person using modern technology beyond putting written or audio-visual information on court or tribunal websites. This is also the case for legal aid and community legal organisations. My research demonstrates that there are innovative technologies available such as the DIY court forms that can greatly assist litigants in person to represent themselves in courts and tribunals.

¹¹ See for example the High Court of Australia which has put its forms and other information on its website at <http://www.hcourt.gov.au/registry/filing> or the Supreme Court of Victoria forms which can be found at <http://www.supremecourt.vic.gov.au/find/forms/>.

¹² See for example VCAT's guardianship and administration forms and guides at <http://www.vcat.vic.gov.au/disputes/guardians-administrators/forms> or the Family Court of Australia which has forms and do-it-yourself kits on its website at <http://www.familylawcourts.gov.au/wps/wcm/connect/FLC/Home/Forms/>.

¹³ See for example the information available on VCAT's website at <http://www.vcat.vic.gov.au>, the Queensland Civil and Administrative Tribunal's website at <http://www.qcat.qld.gov.au> or the Magistrates Court of Victoria's website at <http://www.magistratescourt.vic.gov.au/faqs>.

¹⁴ See for example VCAT's "Taking it VCAT" video, which can be found on YouTube and on VCAT's website at <http://www.vcat.vic.gov.au/resources>, the NSW Consumer Trader and Tenancy Tribunal's video guides, which can be found <http://www.cttt.nsw.gov.au/Resources/Video.html> and the County Court of Victoria's recent video for litigants in person – see <http://www.youtube.com/watch?v=YDxx3K8ZYgk&feature=share&list=UUBfiyQgdw9aXrh5KSxdXtKQ>.

¹⁵ See for example Victoria Legal Aid's duty lawyer services, which are listed at <http://www.legalaid.vic.gov.au/get-legal-services-and-advice/free-legal-advice/get-help-court/find-duty-lawyer-service>.

¹⁶ For example, the Judicial College of Victoria has run programs for judicial officers on managing litigants in person for five years. It is running two programs on litigants in person in 2014.

¹⁷ <http://www.vcat.vic.gov.au/resources/document/pnvcats3-fair-hearing-obligation-effective-1-january-2013>

¹⁸ See for example sections 97, 98, 100, 101 and 102 of the VCAT Act 1998.

¹⁹ <http://accesstojustice.net/2013/08/23/guest-blog-on-australian-tribunal-that-use-administrative-agency-approach-in-many-traditionally-judicial-areas/>.

Australian courts and tribunals also appear to rely heavily on written information in order to give litigants in person information about the law and court and tribunal practices and procedures. Litigants in person receive relatively little face-to-face help from courts and tribunals because face-to-face help is very resource intensive. However, face-to-face help is the best way to provide information to many litigants in person, particularly people with poor literacy or English language skills, intellectual disabilities, mental health issues and people who are generally lacking self-help skills and confidence.

In addition, most of the strategies developed by Australian courts and tribunals that involve partnerships with community legal organisations focus on referring litigants in person to those organisations for legal advice and representation, which, again, is resource intensive.²⁰ It appears that very little work has been done to explore whether community legal organisations could work with courts and tribunals to set up programs focused on promoting self-help through providing litigants in person with, for example, detailed legal information, detailed information about the court or tribunal's practices and procedures and help with collating information and filling in forms instead of legal advice or representation. Self help centres such as the Family Court Self Help Center in Washington DC address the last two issues.

²⁰ See for example QPILCH's self representation service at QCAT described at <http://www.qcat.qld.gov.au/using-qcat/legal-advice-and-representation> or the work of Victoria's Tenant's Union, which provides tenants with legal advice, assistance and advocacy.

INNOVATIVE USES OF INFORMATION TECHNOLOGY

Many of the strategies I researched used information technology to help litigants in person in very innovative ways.

Interactive DIY court forms

Lawyers working for the New York State Courts Access to Justice Program and Law Help New York have developed many interactive DIY court forms for litigants in person to use during hearings. The DIY court forms technology enables litigants in person to produce court documents by answering questions posed in an internet program, which is known as an interview. At the end of the interview, the program collates the information provided by the litigant in person and generates a court form and instruction/information sheet. A detailed description of the DIY court forms and the technology used to create them can be found at page 38.

The benefits of the DIY forms include:

- They enable litigants in person to prepare court forms in a format acceptable to the relevant court containing all the relevant information with no or very limited input from court staff or lawyers
- The design of the interview allows potentially relevant defences to be raised with no or very limited input from court staff or lawyers
- If the A2J software is used, there is no cost for the front end software²¹
- The cost of the back end software is minimal²²
- Litigants in person do not need their own computer to access the forms because computers are located at the relevant courts and because other people in the community can be trained to help litigants in person use the program.
- Whilst the forms cannot be used for extremely complex civil litigation, they are ideal for high volume jurisdictions such as family law, tenancy disputes, bankruptcy etc.

A similar program with similar benefits is the CourtNav program that has been developed by the Royal Courts of Justice Citizen's Advice Bureau in the UK. However, this program differs to the extent that experienced family law lawyers must check the family court forms before the litigant in person can complete the form and file it with the court.

Live chat technology

Another program that uses technology in an innovative way is Law Help New York's Live Help program. Live Help uses live chat technology to enable litigants in person to email questions about a range of legal problems to Live Help volunteers. They usually get an immediate response and can ask follow up questions if necessary. The Live Help program is described in detail at page 47.

The benefits of Live Help include:

- People need only access a computer in order to obtain detailed and specific legal information about their specific legal problem – they do not need to travel anywhere and can ask their questions at a time convenient to them
- Detailed and specific legal information can be given to up to three individuals at a time without the need for time consuming face-to-face meetings
- The detailed scripts that cover the most common scenarios allow answers to be given to questions in a quick and efficient way
- The detailed scripts enable individuals without a high level of expertise in the relevant area of law to provide detailed and specific legal information

²¹ The front end program interacts with the user and collects information. It is the interface between the user and the back end software, which in this case is a document creation program, which is located on a server.

²² A2J programmers in the US use HotDocs to create the court forms.

- The availability of lawyers to provide answers to more difficult questions via instant messaging technology also allows less skilled people to provide the legal information and is an extremely efficient use of the lawyers' time
- The legal information provided will sometimes divert people from the legal system
- The people giving the advice can do it from any location with internet access that is convenient to them, at a time and day convenient to them.

The LawWorks' Free Law Direct is a similar program in the UK that uses a Facebook type application to enable charities and advice agents to obtain legal information and advice from LawWorks' network of volunteer lawyers. The program differs to the extent that the information or advice is not provided for several days or sometimes weeks and the information or advice is provided to an organisation rather than an individual.

Smartphone technology

Whilst many people I interviewed discussed the need to use mobile smartphone technology to help litigants in person, I did not come across many programs that were doing this.

The US not-for-profit organisation, Pro Bono Net, has assisted with the development of a smartphone application that people can use to access an online screening program that assesses eligibility for citizenship and to locate their nearest advice centre using the mobile's location services.²³

There are also several organisations that are looking into providing litigants in person with information about their court cases via their smartphones but I am not aware of any programs that have begun to implement such a strategy.

INNOVATIVE TECHNOLOGY FUNDING

The DIY court forms and Live Help are just two examples of innovative technological programs that were developed with funding from the Legal Services Corporation's Technology Initiative Grant Program (**TIG program**).²⁴

The TIG program is a federally funded program for technology grants aimed at improving the efficiency of legal aid programs in the US and providing resources for people who are not entitled to legal aid. The TIG program is described in detail at page 43.

The benefits of the TIG program include:

- Supporting the development of innovative technological strategies that help large numbers of litigants in person access justice through relatively small grants
- Encouraging the replication of those strategies between states and organisations through replication grants
- Ensuring high levels of quality and consistency across the United States by linking grants to established templates and technologies
- Encouraging sharing of ideas, knowledge and resources, particularly through the national annual conference²⁵, which focuses on the use of technology in the legal aid community.

²³ See citizenshipworks.org.

²⁴ For a full list of the projects funded by the TIG program, go to <http://tig.lsc.gov/grants/past-grant-awards>.

²⁵ The conference provides a unique opportunity to learn about effective uses of technology in legal aid, network with a national community of colleagues and cultivate project ideas that could lead to successful TIG applications. See <http://tig.lsc.gov/conference/upcoming-conference> for more information.

FACE-TO-FACE SELF HELP ADVICE

The Self Help Centre model developed in the United States caters for litigants in person who need face-to-face, one-on-one advice in order to access self help information. An example of this model is the Family Court Self-Help Center, which is run by, and located within, the Superior Court of the District of Columbia in Washington DC. The Family Court Self-Help Center helps around 8000 people with family law problems each year. Staff and volunteers from the DC bar provide people with legal information, information about the Family Court's procedures, information about their options and help with filling out court forms. The staff and volunteers, who are all legally qualified, do not provide any legal advice or representation but they do make referrals to organisations that do this work when appropriate. The Family Court Self-Help Center is described in detail at page 42.

The benefits of the Family Court Self-Help Center include:

- The Self-Help Center is managed by the Superior Court, which enables it to ensure that the legal and procedural information provided to litigants in person is accurate and of a high quality and that forms are accurately completed
- More people are helped under this model compared with a pro bono legal advice and representation model. This is because the staff and volunteers do not provide legal advice or represent people in hearings, which means that the information and help can be provided relatively quickly, less training and supervision of volunteers is required and less risk is involved in the provision of the service
- Paralegals can be employed to run the centre and provide the help and information because legal advice is not provided
- Appropriate referrals to pro bono legal advice and representation organisations are made if the person seeking the information is assessed as needing more help and support than the Self-Help Center staff and volunteers can provide
- Many people are diverted from the Family Court once they receive the appropriate information.

DEVELOPMENT OF PARTNERSHIPS WITHIN THE COMMUNITY

Research shows that relatively few people with legal problems approach lawyers for advice.²⁶

Instead, most people with a legal problem will approach a trusted source, such as friends or family, a general practitioner or a member of a community group that the person belongs to, for information or advice.

It is therefore important to ensure that people with legal problems can obtain information and help from a variety of people outside of the legal community who have the legal knowledge or skills to identify the source of a problem, access legal information and advice on their behalf and to refer people to appropriate legal or community organisations for additional information, help and support where necessary.

Innovative partnerships

Examples of innovative partnerships within the non-legal community include:

²⁶ See for example the findings of the 2012 Legal Australia-Wide Survey conducted by Coumarelos, C, Macourt, D, People, J, MacDonald, HM, Wei, Z, Iriana, R & Ramsey, S, Law and Justice Foundation of NSW, Sydney, which included a finding that only 16% of Victorians who had experienced legal problems sought help from a legal professional. For more information go to <http://www.legalaid.vic.gov.au/about-us/what-we-do/research-and-analysis/legal-needs-survey>.

- The New York State Courts Access to Justice Program runs a program that trains librarians, staff of public officials and members of various community groups to help people access and use the DIY court forms
- The London Muslim Centre (**LMC**) that has an unmarked room where Muslim women can obtain legal assistance in an environment where no one will question why the women are there
- The LawWorks Free Law Direct program, which is referred to at page 64.

Public legal education is also crucial because many people turn to friends or family for advice. The more the general public knows about how to identify and solve legal problems, the more likely that early intervention will take place, people will be diverted from the legal system, and that problems will not escalate and multiply.

Partnerships with health professionals

Many of the people I interviewed emphasised the need to develop partnerships with people within the health sector.

This is because research shows that people with legal problems frequently develop stress related physical or mental health problems.²⁷ In addition, many of the most vulnerable people within the community, such as the elderly and people with disabilities or physical or mental health problems are confined to their homes and might only have contact with health professionals.

It is therefore very important that health professionals are trained to identify the source of a patient's stress related health issue, provide the patients with some legal information or help, and to make an appropriate referral.²⁸

PRO BONO LEGAL WORK

As I have already noted, practically every program I researched in the United States relies heavily on volunteer law students and lawyers undertaking pro bono legal work. In addition, strategies such as the 50 hour pro bono rule (see page 39) that has been implemented by Jonathan Lippman, the Chief Judge of the State of New York and Chief Judge of the Court of Appeals, have been developed to increase the number of lawyers willing to undertake pro bono work.

Many of the people I interviewed observed that not only do law students and lawyers develop practical skills from doing pro bono legal work, most of them relish the experience.

Whilst many lawyers already undertake pro bono work in Australia, this is an area where we can and should do more to increase the number of people volunteering and the number of hours spent on pro bono legal work each year in key areas of need.

LEADERSHIP

All of the people I interviewed in the United States admired Chief Judge Lippman's commitment to improving access to justice and supported his reforms. Many remarked on the importance of strong leadership to effect change in this area.

Similarly, the appointment of Justice Hickinbottom, of the High Court of Justice in the United Kingdom, as chair of the Judicial Working Group on Litigants in Person demonstrates the importance of leadership in this area.

²⁷ See the findings of the 2012 Legal Australia-Wide Survey referred to at footnote 26.

²⁸ The importance of developing partnerships between the health sector and the legal profession has also been identified in Australia. See for example the work of the Advocacy-Health Alliance Network, which is a project housed at PILCH, formed following the Inaugural Advocacy-Health Alliance Symposium held in November 2012 in Melbourne. The Network aims to facilitate the development of the Advocacy-Health Alliance model in Australia. For more information go to <http://www.pilch.org.au/aha/>.

COLLABORATION AND RESPONSIBILITY

A strong theme from my interviews was the importance of courts, tribunals and advice organisations all taking responsibility to direct people to the appropriate place for legal information, assistance and or advice. This was emphasised in the report of the Judicial Working Group on Litigants in Person.²⁹

A similar theme was the necessity for courts and tribunals to work together to share their knowledge and experience. Several people I interviewed in the UK pointed to the fact that in addition to being a High Court judge, Justice Hickinbottom was previously a solicitor and a Tribunal member and that this was invaluable experience when considering what strategies ought to be implemented to help litigants in person.

²⁹ See footnote 9.

RECOMMENDATIONS

PREAMBLE

In his 2011 report, John Greacen, an American access to justice academic succinctly reminds us of one of the most important considerations when making recommendations as to strategies for helping litigants in person:

Self-represented litigants and their cases present an endless variety of situations, ranging from highly educated and capable persons seeking to obtain the simplest forms of court relief (such as a change of name) to persons with limited education, limited English capability, and other handicaps (ranging from hearing and sight impairment to mental illness) seeking to obtain relief in the most complex sorts of legal proceedings.... Some litigants can obtain all the assistance they need to vindicate their legal rights from court-provided forms and information. Others need limited legal advice to enable them to represent themselves. Others need full legal representation because of the complexity of the factual or legal issues involved in their cases or because of their lack of the basic skills needed to present them to a court.³⁰

In making my recommendations, I have sought to consider the needs of all litigants in person holistically whilst bearing in mind their diversity. The strategies ought to be as diverse as our litigants in person to the extent that limited resources allow. They ought to be targeted in an intelligent manner, with a focus placed on the most efficient strategies for the smallest cost and effort. Whilst I acknowledge that ideally, all people seeking to access the justice system should be able to access affordable or free legal advice and representation, this is simply not possible and my recommendations reflect the existing constraints of the financial environment. On the other hand, reasonable financial resources must be allocated to enable courts and tribunals and other government or community organisations to help litigants in person navigate our legal system.

Investing in new innovative strategies that help people conduct their own litigation will save courts and tribunals money in other areas. For example, when people move home or change business address, they do not necessarily change their mobile telephone number. Therefore, if defendants or respondents in civil matters are notified of a hearing date by text message in addition to being sent a notice of hearing, this may reduce the number of applications for a re-hearing on the grounds that the defendant/respondent did not receive the notice of hearing. Similarly, providing litigants in person with information via text message or mobile telephone application about where to obtain free legal advice prior to a hearing may reduce the number of adjournments made to enable a person to obtain legal advice.

Investing in new innovative strategies that help people conduct their own litigation is also likely to save state and federal governments money in the long run, particularly in the areas of physical and mental health, welfare benefits and social housing. Research shows a strong link between unresolved legal problems and health problems.³¹ It also shows many people have more than one legal problem because one problem triggers another and a small problem escalates into a large problem. Unresolved legal problems then often lead to family break-up, unemployment, loss of housing and stress related physical or mental health problems.

However, investing in helping people access justice is also an investment in our civil society, the importance of which cannot be overstated.

³⁰ Resources to Assist Self represented Litigants: A Fifty-State Review of "The State of the Art" by John M Greacen, JD, Greacen Associates LLC (2011).

³¹ See Hazel Genn "Paths to Justice" (1999) on the issue of the negative impact of unresolved civil justice problems on physical and mental health. See also the findings contained in the 2012 Legal Australia-Wide Survey referred to at footnote 26.

TECHNOLOGY IN AUSTRALIA

Australian research shows that:

- A very large percentage of the Australian population has access to the internet at home
- A very large percentage of the Australian population, including low income Australians, owns a mobile telephone
- A significant percentage of the Australian population has a smart phone,
- A very large percentage of low income Australians does not have access to the internet at home
- A significant percentage of low income Australians does not want access to the internet at home.

Specifically:

Mobile telephone access

- 92% of Australians over the age of 18 own a mobile telephone³²
- 87.5% of low-income Australians own a mobile telephone³³
- 45.2% of low-income Australians who own a mobile telephone use it as their only form of communication³⁴
- The majority of low-income Australians with mobile telephones considered their mobile telephone somewhat or very affordable, and essential to their lives.³⁵

Internet access at home

- 79% of Australian households have access to the internet at home³⁶
- 44% of households with access to the internet at home access it via smartphones.³⁷

The research also shows that the number of people accessing the internet at home and using smart phones is increasing every year.³⁸

However, Australian research³⁹ also shows that:

Mobile telephone access

- 11.1% of low-income Australians do not own a mobile telephone because they cannot afford it⁴⁰
- Low-income Australians from non-English speaking backgrounds or without dependant children are less like to own a mobile telephone⁴¹

³² Australian Communications and Media Authority (ACMA) Communications report 2011-2012, <http://www.acma.gov.au/theACMA/communications-report-series-presentations-2012>.

³³ See Dr Sarah Wise's September 2013 report entitled "Trying to connect" in relation to Anglicare Victoria's Hardship Survey 2013, which was funded by the Australian Communications Consumer Action Network (ACCAN). The report can be found at http://www.anglicarevic.org.au/index.php?action=filemanager&folder_id=806&form_action=list.

³⁴ See footnote 32.

³⁵ See footnote 32.

³⁶ <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/1301.0~2012~Main%20Features~Information%20and%20communication%20technology~36>.

³⁷ See footnote 33.

³⁸ For example, the percentage of Australian households with access to the internet at home as has increased from 67% in 2006-07 to 79% in June 2011 – see footnote 36.

³⁹ See footnote 32.

⁴⁰ See footnote 32.

⁴¹ See footnote 32.

- Only 3.3% of low-income Australians did not own a mobile telephone because they did not want it – 9.2% do not want one⁴²
- 57.4% of low-income Australians with mobile telephones do not have a smartphone (younger low-income Australians were more likely to have smartphones than older low-income Australians).⁴³

Internet access at home

- 21% of Australian households do not have access to the internet at home⁴⁴
- 66.6% of low-income Australians do not have access to the internet at home⁴⁵
- Home internet access (including mobile wireless access) is more common in households with higher incomes. The proportion of households in the highest income quintile⁴⁶ with internet access is 95%, compared with 55% for households in the lowest income quintile
- Home internet access is more common in households with children under 15 years of age (93%), compared with other households (74%)⁴⁷
- The proportion of households with home internet access is higher in state and territory capitals (82%) than other areas (74%)⁴⁸
- Remote indigenous households are 76% less likely to have internet access than non-indigenous metropolitan households⁴⁹
- 49.2% of low-income Australians did not have access to the internet at home because they could not afford it and 17.4% did not want home internet access⁵⁰
- Only 18.2% of low-income Australians have access to the internet on their mobile telephone⁵¹
- 56.1% of low-income Australians do not have access to the internet on their mobile telephone because they cannot afford it and 25.7% of low-income Australians do not have access to the internet on their mobile telephone because they do not want it⁵²

These statistics are important for several reasons.

Firstly, the high level of mobile telephone ownership, even in low-income households, makes this an excellent mode for communicating with, and providing information, to litigants in person.

Similarly, the high level of internet access at home and smartphone ownership makes internet and mobile websites, and innovative computer programs an excellent mode for communicating with, and providing help and information, to litigants in person.

However, the low level of internet access at home and smartphone ownership amongst low-income households means that courts and tribunals must find other effective ways of providing litigants in person with information and assistance. This is particularly important because research also shows that people from low-income households are more likely to have a legal problem⁵³ and it is likely that they are over-represented in many courts and tribunals, particularly in areas such as housing and family law. As the author of Anglicare Victoria's "Trying to Connect" report, Dr Sarah Wise said⁵⁴:

⁴² See footnote 32.

⁴³ See footnote 32.

⁴⁴ See footnote 33.

⁴⁵ See footnote 32.

⁴⁶ A quintile is any of five equal groups into which a population can be divided accordingly to the distribution of values of a particular variable, in this case, household income.

⁴⁷ See footnote 33.

⁴⁸ See footnote 33.

⁴⁹ See footnote 32.

⁵⁰ See footnote 32.

⁵¹ See footnote 32.

⁵² See footnote 32.

⁵³ See footnote 33.

⁵⁴ See Anglicare's press release in relation to its report referred to at footnote 33. See also <http://www.probonoaustralia.com.au/news/2013/10/internet-access-not-all-report#>.

Lack of access to the internet [is] related to deprivation of other basic items such as medical treatment, social contact and appropriate housing. Digital exclusion is an indicator of deep social and economic inequality.

My recommendations attempt to take into account these observations.

RECOMMENDATIONS FOR COURTS AND TRIBUNALS

The Judicial Working Group on Litigants in Person observed in its July 2013 report:

Providing access to justice for litigants in person within the constraints of a system that has been developed on the basis that most litigants will be legally represented poses considerable and unique challenges for the judiciary...[C]ases will inevitably take more time, during a period of severe pressure on judicial time. However, litigants in person are not in themselves “a problem”; the problem lies with a system which has not developed with a focus on unrepresented litigants.⁵⁵

Whilst I noted above that Australian courts and tribunals have already taken significant steps to help and efficiently manage hearings with litigants in person, there is still much more we can do and improve on. The following recommendations have been informed by my research in New Zealand, the United States and the United Kingdom. They have also been informed by my own broad experience and understanding of the issues faced by litigants in person and the issues faced by the courts and tribunals trying to meet their needs.

My recommendations for Australian courts and tribunals are as follows:

A strategic plan

1. Every court and tribunal should have a “litigants in person management plan”.⁵⁶ The litigants in person management plan should identify the needs of the court or tribunal’s litigants in person, set out how the court or tribunal is currently meeting those needs and make recommendations on how the court or tribunal should better meet those needs. It should be reviewed every year or two.

Information for litigants in person

When developing or updating the litigants in person management plan, every court and tribunal should:

2. Conduct a thorough review of the court or tribunal’s written and audiovisual materials that inform litigants in person what is required of them and what they can expect when they appear in the court or tribunal. Audiovisual materials are a particularly effective mode of providing information to litigants in person, especially when they are translated into languages other than English.
3. Conduct a thorough review of the court or tribunal’s web-based information, to ensure that litigants in person can easily access the information they need to understand and decide on the various courses of action open to them, and to prepare for, and present, their case in a court or tribunal.
4. Produce, with judicial or member involvement, new written, audio-visual and web-based materials⁵⁷ to cover any gaps identified during the review.⁵⁸

⁵⁵ See page 6 of footnote 9 above.

⁵⁶ <http://www.ajja.org.au/online/LIPREP1.pdf>.

⁵⁷ See the report by Advicenow funded by the UK Ministry of Justice identifying the key priorities for revising or producing new website content in the form of ‘action guides’ in the light of changes to legal aid and welfare benefits at <http://advicenow.org.uk/about-us/information-priorities-consultation-and-review,10341,FP.html>.

⁵⁸ See page 7 of footnote 9 above.

5. Courts and tribunals should enter into partnerships with key stakeholders and government agencies to develop one set of key documents providing accurate, high quality information about relevant areas of law, and tribunal and court practices and procedures. These should be placed on a website similar to Law for Life or SelfHelp.org with court and tribunal websites containing hyperlinks to this website.

The benefits of high quality, consistent and easily accessible legal information include:

- Empowering people to solve their own legal problems outside the court and tribunal system
- Assisting appropriately skilled people who cannot afford legal representation to represent themselves in courts and tribunals
- Ensuring that people who cannot self-help are referred to the appropriate place for affordable or free legal advice and representation.
- Developing general legal knowledge and skills within the community.

Access to the internet

6. Given that many low income Australians do not have access to the internet at home, courts and tribunals should provide internet access via computers or tablets at each metropolitan, suburban and regional court or tribunal. This would enable litigants in person to easily access the information referred to above.

Text message technology

7. Australian courts and tribunals should use existing text message technology⁵⁹ to send litigants in person text messages providing them with, for example, the following information:
 - a. A reminder of the date, time and location of the litigant in person's hearing, including a Google maps type hyperlink to the venue's location
 - b. The internet address and/or hyperlinks to the court or tribunal website and any relevant legal aid or community legal centre websites
 - c. A reminder of the date and time for complying with court or tribunal orders and the internet address/hyperlinks to any relevant court documents
 - d. Information about interpreter and other services such as Court Network Services.

To the extent that the existing text message technology needs to be modified, Australian courts and tribunals should pool their resources to develop a program that all courts and tribunals can use. This recommendation should be explored at the 2014 AIJA conference.

Smartphone technology

8. Australian courts and tribunals should develop smartphone applications or mobile websites to provide litigants in person with legal information, information about the practices and procedures of the relevant court or tribunal, and information about his or her court or tribunal case. Smartphone applications/mobile websites should be developed because of the high percentage of people who use smartphones to access the internet (normal internet websites are sometimes difficult to use on a smartphone).

The application/mobile websites should use location services to enable litigants in person to locate the closest relevant court or tribunal, legal aid or community legal centre.

Courts and tribunals should pool their resources to develop applications/mobile websites that can be easily replicated with appropriate modifications to accommodate the jurisdictional and procedural differences between the respective courts and tribunals whilst sharing a common structure and common information. Ideally, courts and tribunals should enter into a partnership with an Australia university with technology and law faculties to develop the

⁵⁹ VCAT currently sends tenants a text message reminding them of the date, time and location of their hearing, as does New Zealand's Tenancy Tribunal.

technology, as was done in the case of the A2J software, which was developed by the IIT Chicago-Kent College of Law.

Interactive DIY forms

9. Australian courts and tribunals should start developing their own DIY forms in areas of law that attract high numbers of litigants in person (housing, family, employment for example).

The benefits of the DIY forms are many. They ensure litigants in person use the correct form and provide the court or tribunal with the correct information. They reduce the need for one-on-one assistance from court or tribunal staff and the amount of court or tribunal time required to deal with incorrect forms or information being provided. People can also access the DIY forms without access to the internet at home if courts and tribunals provide access to the internet at each suburban and regional court as recommended above.

The A2J software is free and the document creation software is inexpensive. Whilst the cost of the necessary server is more significant, courts and tribunals could pool their resources to set up a dedicated server for DIY forms or jointly approach state, territory and the federal government for a specific grant for this purpose. Alternatively, a “Pro Bono Net Australia” could be considered.

The DIY forms can, and should be, developed by lawyers, in partnership with legal aid and community legal organisations.

Alternatively, courts and tribunals could consider a partnership with an Australian university with technology and law faculties to develop our own DIY form software.

Interactive web-based question and answer forum

10. Courts and tribunals should pool their resources to develop a web-based question and answer forum that would allow litigants in person to ask general, anonymous questions about the law and the court or tribunal’s practices and procedures and more specific questions about their own legal problems. The answers should be provided in a relatively short time frame, ideally using appropriately trained volunteer law students or lawyers, as the information provided should be high quality, detailed and targeted to the individual’s specific legal problem. However, the program should clearly explain that the information being provided is not legal advice. The program should be based on Law Help New York’s Live Help program.

Video conferencing technology

11. Courts and tribunals should pool their resources to develop inexpensive, efficient and secure video conferencing technology to enable litigants in person who do not live close to a relevant court or tribunal venue or who are housebound for health reasons to attend hearings via video-link and simultaneously exchange and view documents.

Self help centres

12. Whilst some courts with relatively small numbers of litigants in person have already employed a “litigants in person coordinator”⁶⁰, courts and tribunals with high numbers of litigants in person need a different strategy as one person can only meet the needs of a limited number of litigants in person.

Accordingly, Australian courts and tribunals with high numbers of litigants in person should consider establishing self help centres such as the Family Court Self-Help Centre in Washington DC. This should be done in conjunction with law schools that run clinical legal placement subjects and with solicitor and barrister pro bono organisations in order to maximize the number of people that can be helped by the centre.

⁶⁰ The Supreme Court of Victoria and the County Court of Victoria, for example.

Self help centres are essential because as noted above, not all Australian households have access to the internet at home. In addition, even if a litigant in person has access to the internet at home, this does not guarantee that he or she has the capacity to find and understand the legal information on the internet or to use self-help programs such as the DIY forms or Live Help. Low literacy levels, language barriers and lack of confidence may all contribute to this problem. Self help centres are also important because they enable litigants in person to receive targeted rather than generic legal information and help.

In addition, research shows that self help services provided to litigants in person produce economic savings for courts and for litigants. Specifically, research conducted in California showed that:

Courts that provide one-on-one support and information services to litigants are saving: at least one hearing per case, 5 to 15 minutes of hearing time for every hearing held in the case, and 1 to 1.5 hours of court staff time related to providing assistance to self-represented litigants at the front counter and to reviewing and rejecting proposed judgments. The services required to produce these court savings range from a high of \$.55 to a low of \$.36 for every \$1.00 saved. Adding the savings accruing to the litigants reduces the costs to a range of \$.33 to \$.26 for every \$1.00 of savings.⁶¹

Accordingly, courts and tribunals must develop strategies to provide litigants in person with face-to-face, one-on-one legal information to enable litigants to more easily represent themselves and to enable courts and tribunals to allocate their resources more effectively.

Community legal education

13. Courts and tribunals should engage in more community legal education programs in schools and community groups. The programs should be designed to educate people about their legal rights and where to go for help and information. The process should also be designed to instill confidence in the outcome of the relevant court or tribunal process.

A paperless tribunal

14. The many Australian tribunals could adopt the paperless tribunal model used by the Parking and Traffic Adjudicators Tribunal. It would make tribunal processes more efficient, which would enable tribunal resources to be redirected to areas of greater need such as better meeting the needs of litigants in person

RECOMMENDATIONS THAT FALL OUTSIDE THE SCOPE OF THIS REPORT

As discussed at page 11 above, the recommendations in this report focus on the strategies that courts and tribunals can implement to assist people to represent themselves.

However, there were also several innovative strategies that I identified that would assist litigants in person to represent themselves in courts and tribunals but which courts and tribunals could not themselves implement.

Nonetheless, courts and tribunals should actively support the implementation of these strategies by seeking to persuade governments that these recommendations have merit and should be implemented. This could be done through a submission to the Federal government's Productivity Commission's Inquiry into Access to Justice Arrangements.⁶²

⁶¹ See John Greacen's report set out at footnote 30.

⁶² For more information go to <http://www.pc.gov.au/projects/inquiry/access-justice>.

RECOMMENDATIONS FOR FEDERAL GOVERNMENT

Funding for an organisation similar to the LSC TIG grants project

15. The federal government should set up an organisation similar to the LSC TIG grants project to encourage and support technical innovations that constrain costs and promote access to justice and equality before the law, a focus of the Productivity Commission's Inquiry. The benefits of such a project are set out at page 43.

Funding for a national body

16. The federal government should set up a national body to undertake research and develop strategies to improve the efficiency and effectiveness of Australia's courts and tribunals, similar to the UK Civil Justice Council or the National Centre for State Courts. The body should be broadly based, with representation from key stakeholders including Australian courts and tribunals, community legal centres, academics and lawyers. The Victorian Law Reform Commission made a similar recommendation in its Civil Justice Review report.⁶³

RECOMMENDATIONS FOR STATE GOVERNMENTS

Increasing the pool of pro bono lawyers

17. Bodies responsible for the admission of lawyers in each state, such as the Council of Legal Education and the Board of Examiners in Victoria, should implement a rule similar to the rule implemented by Chief Judge Lippman in the state of New York that requires lawyers complete 50 hours' pro bono work prior to admission to the Bar. This would enhance the students' skills before they started to practise law by ensuring that they had at least 50 hours' practical legal experience before being admitted to practice and develop their understanding of ethical considerations. It would also increase the pool of pro bono lawyers available for existing and new pro bono projects and would potentially instil in the students a lifelong commitment to pro bono legal work. As many law students are already doing some form of pro bono work due to its practical benefits and the degree of enjoyment and satisfaction that such work can provide, it should not be a difficult or onerous task to make this a compulsory component of a legal degree.
18. Legal professional bodies such as the Law Institute of Victoria should also consider implementing a rule, similar to the current continuing professional development rule, that lawyers who hold a practising certificate must complete a minimum number of hours of pro bono legal work every year, or make a donation to pro bono or community legal organisations in lieu of undertaking the work. Lawyers already working within the community legal sector should be exempt from this requirement.

OTHER RECOMMENDATIONS

Sharing of learning and ideas

19. The upcoming 2014 AIJA conference entitled "Assisting Unrepresented Litigants – A Challenge For Courts And Tribunals" is a timely opportunity for courts, tribunals and other stakeholders to jointly consider how we can work together to implement strategies to help litigants in person. The Victorian chapter of COAT is also holding a conference focusing on litigants in person in 2014.

⁶³ See pages 712 to 714 of Chapter 12 of the Report, which can be found at <http://www.lawreform.vic.gov.au/projects/civil-justice/civil-justice-review-report>.

20. A future conference focusing on innovative information technologies should also be considered. All key stakeholders, including legal aid and community legal organisations, pro bono organisations, courts and tribunals and universities should be invited as a holistic approach will be more effective than each organisation attempting to develop and implement strategies on their own. Information technology experts must also be involved so that they can provide information about currently available technologies and how they might be adapted for use in a legal environment to help litigants in person.

The technology conference could consider the innovative technological strategies recommended above as well as other strategies referred to in the attachments to this report such as the Live Help NY project (see page 47) and the development of the “web portals” recommended by Richard Zorza (see page 51).

Representatives from other organisations such as local councils, public libraries and health sectors organisations should also be invited to discuss how partnerships could be developed that would give litigants in person greater access to existing and new online resources and how technology can be used to improve the capacity of non-legal professionals to identify legal problems on behalf of clients or patients and make appropriate referrals.

National resources for judicial officers conducting cases with litigants in person

21. The National Judicial College of Australia and each state judicial education organisation should work together with representatives from Australian courts and tribunals to develop a ‘litigants in person toolkit’ for judicial officers, a national set of guidelines for conducting hearings with litigants in person similar to, but more extensive than the UK Equal Treatment Benchbook⁶⁴ and the Judicial Commission of New South Wales’ Equality before the law Benchbook.⁶⁵ The document should also contain a summary of the relevant law and be available online.⁶⁶

National online referral resource

22. The judicial colleges and court and tribunal representatives should also develop a central online resource to which court and tribunal staff and judicial officers could easily refer in order to identify available national and state sources of advice and assistance for litigants in person.⁶⁷ Other key stakeholders such as legal aid and community legal organisations should also be involved the development of, and have access to the online referral resource.

Legislative reform

23. Australian state, territory and federal governments, in conjunction with the relevant courts and tribunals should consider and assess the merits of the following six proposals referred to in report of the Judicial Working Group on Litigants in Person:⁶⁸
- a. A dedicated rule that makes specific modifications to other rules where one or more of the parties to proceedings is a litigant in person.
 - b. A specific power into the rules of a court (and where relevant, tribunal) to allow the court (or tribunal) to direct that, where at least one party is a litigant in person, the proceedings should be conducted by way of a more inquisitorial form of process.
 - c. A specific general practice direction or civil procedure rule that would, without creating a fully inquisitorial form of procedure, address the needs of litigants in person to obtain access to justice while enabling courts (or tribunals) to manage cases consistently with

⁶⁴ See <http://www.judiciary.gov.uk/publications-and-reports/judicial-college/Pre+2011/equal-treatment-bench-book>.

⁶⁵ See <http://www.judcom.nsw.gov.au/publications/benchbks/equality/benchbook.pdf>.

⁶⁶ See page 8 of the report of the Judicial Working Group on Litigants in Person, footnote 9 above.

⁶⁷ See page 8 of the report of the Judicial Working Group on Litigants in Person, footnote 9 above.

⁶⁸ See pages 8 and 9 of the report of the Judicial Working Group on Litigants in Person, footnote 9 above.

the overriding objective.

- d. Rationalising the historic differences between practice in the court system and practice in tribunals, as part of a wider review of lay assistants.
- e. The possible introduction of rules governing the exercise of the right to reasonable assistance, the right to conduct litigation and the right to exercise rights of audience (as has recently been introduced in Scotland).
- f. Considering the terminology that should be used, including whether the term “McKenzie Friend” continues to be useful.

24. Australian state, territory and federal governments, in conjunction with professional legal organisations, should also continue to consider legislative and regulatory reform to enable lawyers to provide litigants with unbundled legal services.

Community legal organisations

25. Community legal organisations and pro bono legal organisations should work together to develop a national website with resources for lawyers wanting to undertake pro bono legal work, similar to SelfHelp.org (see page 51).

26. Community legal organisations and pro bono legal organisations should work together to develop a national website similar to the US website, Law Help (see page 47).

ATTACHMENTS TO THE REPORT

COURTS AND TRIBUNALS

TENANCY TRIBUNAL, AUCKLAND, NEW ZEALAND

Rex Maidment, Principal Tenancy Adjudicator

The Tenancy Tribunal was set up to be a lay person's tribunal and approximately 80% of tenants are litigants in person. However, less than 20% of landlords are litigants in person.

The Ministry of Business is responsible for public education and producing educational materials. It also handles all enquiries about tenancy disputes and the application process. It is responsible for providing parties with advice and information about tenancy disputes, helping them prepare and lodge applications and sending parties text messages to remind them about their hearing date. The material on the website is very important because it promotes an understanding of the Tribunal process before the parties get to the Tribunal. The Ministry of Business tolerates prepared applications and takes a lot of time with parties to get them right. This is both a strength and weakness of the system because it is very resource intensive.

Once the hearing date is set, the Ministry of Justice takes responsibility for the file and the conduct of the matter. Unlike VCAT, the Tenancy Tribunal does not have any role in the application process. The Ministry of Business and the Ministry of Justice both operate call centres for parties to obtain information. All parties can access on line applications but they cannot pay the application fee online.

The Tenancy Tribunal has around 50 adjudicators. Adjudicators generally hear around eight cases per day, each with its own time slot.⁶⁹

The Tenancy Tribunal faces a number of challenges. The key issue for the Tenancy Tribunal is tenants' unwillingness to engage with the Tribunal and their failure to attend hearings. The Tenancy Tribunal does not have many strategies for supporting parties disadvantaged due to poor English or mental health issues although parties are informed on the application form that they may request an interpreter and bring a support person to the hearing. Registry staff are primarily trained and supervised by the Courts rather than the Tenancy Tribunal and frequently move between jurisdictions. Overall, the greatest challenge is maintaining the current levels of assistance for litigants in person in a challenging financial environment. There is currently no financial capacity for the current levels of assistance to be increased.

Key strategies

Text message hearing reminders

The Tenancy Tribunal sends text messages to parties reminding them about their hearing time and date. The Tribunal considers this to be one of the most effective strategies for increasing tenant attendance at hearings. Whilst tenant attendance has improved since the introduction of this strategy, the Tenancy Tribunal still has low tenant attendance rates. Rex believes that increasing the community's knowledge about and confidence in the Tenancy Tribunal through greater engagement at a community level, with an emphasis on talking to communities within the community and more community education programs in schools might address this problem.

Appointment and training of adjudicators

⁶⁹ Rex was astonished when I told him VCAT members usually hear 25 to 30 residential tenancies cases a day.

The Tribunal aims to appoint adjudicators with high-level communication and personal skills, in addition to the necessary legal skills. It also trains adjudicators to conduct hearings with unrepresented litigants. The Tenancy Tribunal has developed an extremely impressive and comprehensive website of resources for its adjudicators. Rex told me that the cost of developing the website was only \$7000.



The LCD hearing board at the District Court, Auckland.

HIGH COURT AND DISTRICT COURT, DUNEDIN, NEW ZEALAND

Judge Flatley, District Court, Family Law Division

Yolanda Denharing, Family Court coordinator, District Court, Family Law Division

Gena Anaki, Deputy Registrar, District Court, Family Law Division

Serena Cookson, Deputy Registrar, District Court, Family Law Division and Civil Division

Andy Flanagan, Deputy Registrar, High Court and District Court, Civil Division

David Kennedy, Deputy Registrar, District Court, Family Law Division

David Miller, Otago and South Canterbury Courts Service Delivery Manager

Approximately 10 to 15% of family and civil matters in the District Court in Dunedin involve litigants in person. However, most of these cases settle before hearing so very few hearings involve litigants in person. Dunedin has low number of litigants in person because most people who live there come from middle socioeconomic backgrounds and most people are able to afford a lawyer. In addition, between 50 to 70% of parties in the Family Division of the District Court receive legal aid funding and legal aid lawyers are always appointed to represent children. The number of litigants in person is much higher in regions with larger low socio-economic populations and in areas with high Maori populations.

Whilst legal aid in New Zealand has traditionally been well funded, this funding is likely to reduce very soon, which is likely to increase the number of litigants in person. Community law centres are also having their funding reduced. In the family law jurisdiction, legislation is being considered that would prevent lawyers from appearing on behalf of parties. The legislation is resource driven.

The support and assistance provided to litigants in person by courts and tribunals is ad hoc and varies depending on which jurisdiction is hearing the claim. In the Disputes Tribunal (which hears civil claims up to \$15,000 or \$20,000 by agreement), parties receive significant assistance because they are not allowed legal representation. Some assistance is provided to litigants in person in the District Court, which hears civil claims up to \$200,000 but little assistance is provided in the High Court (which has an unlimited civil jurisdiction, the Court of Appeal or the Supreme Court (which hears appeals from the Court of Appeal). In most instances, court employees simply recommend litigants in person obtain legal advice or refer them to the Ministry of Justice Legal Help page on the internet, which contains only basic information. Court forms are

generally complicated and High Court, Court of Appeal and Supreme Court forms are not available on the internet. There are no computers in registry offices that litigants in person can use to fill out and print forms nor are there any examples for completed form that litigants can use for guidance. There is no duty lawyer service for civil matters.

In the Family Division of the District Court, court coordinators progress cases by liaising with the parties, lawyers and other interested parties such as counselors and mediators. They work closely with litigants in person, assisting them to lodge applications and other documents. This is extremely time consuming work. The Family Court also has a mental health jurisdiction. Litigants in person in this jurisdiction need much more assistance. Court coordinators are also involved in community education.

Vexatious litigants make up only a very small percentage of litigants in person and are therefore not generally considered a problem.

Litigants in person are not able to access much assistance from community organisations. Community law centre lawyers may be inexperienced and Citizen Advice Bureaus only provide information from law volunteers. There is only one community law centre in Dunedin.⁷⁰

Key strategies

Reform of the adversarial system

Although some judges view litigants in person as a problem, particularly in the criminal jurisdiction, Judge Flatley does not. Nonetheless Judge Flatley considers the judicial system should be reformed so that family law litigation is less adversarial and more inquisitorial. He also believes that the practice of family law should also be more of a solution based counselling process rather than an evidence based process and that parties should be required attend ADR⁷¹ unless allegations of violence have been made.

Judicial training

The Institute of Judicial Studies runs a two day course on litigants on person. Emma Smith, Selene Mize, University of Otago and “Out of Court”, an ADR organization, run the course.

Court staff training and resources

The registry staff believe court staff generally must be encouraged to provide litigants in person with more support and assistance. They also believe court staff need training in dealing with litigants in person, particularly those with special needs or challenging behaviours.

HIGH COURT OF JUSTICE OF ENGLAND AND WALES, LONDON

Justice Gary Hickinbottom, High Court Judge and President of the Administrative Appeals Chamber of the Upper Tribunal

In December 2012, the Judicial Working Group on Litigants in Person (**the Working Group**) was formed at the request of the Master of the Rolls. The Working Group was formed to consider the implications of the expected rise in the number of litigants in person after the implementation of the UK Government’s legal aid reforms in April 2013, which removed legal aid funding for civil and most family law matters. Justice Hickinbottom is the chair of the Working Group.

⁷⁰ Dunedin’s population is approximately 100,000 including university students. Between 10,000 to 20,000 people reside there permanently.

⁷¹ Alternative dispute resolution.

Justice Hickinbottom was admitted as a solicitor in the UK in 1981 and became a circuit judge in 2001. Before that he also worked as a part-time parking adjudicator at the Parking and Traffic Appeals Service and a part-time judge, or Recorder. He became Chief Social Security Commissioner and Child Support Commissioner in 2003, Chief Pension Appeal Commissioner and was the Designated Civil Judge for Wales from 2003 to 2007. In 2009, he became the fourth solicitor to be appointed a High Court judge, with his assignment to the Queen's Bench Division.⁷² He is also the first President of the new Administrative Appeals Chamber of the Upper Tribunal, where appeals from the First-tier Tribunal are heard. Justice Hickinbottom was considered the ideal person to chair the Working Group due to his diverse legal background, particularly his work as a solicitor and in tribunals.

The terms of reference for the Working Group were to:

- Define the main issues facing the judiciary as a result of the anticipated increase in litigants in person from April 2013
- Make recommendations as to whether the court rules required amendment to give judges sufficient flexibility when dealing with litigants in person and, if necessary, provide guidance for the judiciary on this subject
- Review the rules/conventions on whom a court can hear, including the Practice Guidance for McKenzie Friends, and consider whether existing Practice Directions require amendment
- Make recommendations to the Judicial College for the development of training and guidance on dealing with litigants in person
- Oversee the provision of an accessible resource for all judicial office-holders containing:
 - Information and guidance on dealing with litigants in person (general and jurisdiction-specific)
 - Information on the availability of support and advice for litigants in person (general, jurisdiction-specific and area-specific).

Key strategies

The Working Group's preliminary report was published in July 2013.⁷³ The report recommended:

- The relevant court bodies⁷⁴ produce, with judicial involvement, appropriate materials including audiovisual materials to inform litigants in person what is required of them and what they can expect when they go to court
- A thorough review of the relevant court bodies' web-based information, to ensure that litigants in person can easily access the information they need to understand and decide on the various courses of action open to them, and to prepare for, and present, their case in a court or tribunal
- The Judicial College consider the feasibility of developing a training course (or courses) on litigants in person
- The design of all future training on practice, procedure, and judge-craft should have regard to the fact that a much higher proportion of court and tribunal users will be litigants in person
- The Judicial College should develop a 'litigants in person toolkit' for judges, utilising existing draft guidance and the relevant chapter of the Equal Treatment Bench Book
- The relevant court bodies should hold discussions to establish the most appropriate way to develop a central online resource to which staff and judiciary could easily refer in order to identify nationally available sources of advice and assistance for litigants in person
- Designated civil and family judges, and, where appropriate, chamber presidents, as the most appropriate local judicial figures, should be given joint responsibility for ensuring that the judges in their respective areas are kept fully informed of locally available sources of

⁷² Justice Hickinbottom was also knighted in 2009 as a knighthood is bestowed on all High Court judges.

⁷³ The Working Group's July 2013 report is available at http://www.judiciary.gov.uk/Resources/JCO/Documents/Reports/lip_2013.pdf.

⁷⁴ The Ministry of Justice and Her Majesty's Courts & Tribunals Service.

- advice and assistance for litigants in person
- The Judicial Office should undertake further work to assess the merits of three proposals:
 - Provision of a dedicated rule that makes specific modifications to other rules where one or more of the parties to proceedings is a litigant in person
 - Introduction of a specific power into the court rules to allow the court to direct that, where at least one party is a litigant in person, the proceedings should be conducted by way of a more inquisitorial form of process
 - Introduction of a specific general Practice Direction or new Civil Procedure Rule that would, without creating a fully inquisitorial form of procedure, address the needs of litigants in person to obtain access to justice while enabling courts to manage cases consistently with the overriding objective [of remaining fair to the represented parties].
 - The Judicial Office should consider rationalising the historic differences between practice in the court system and practice in tribunals, as part of a wider review of lay assistants
 - As part of its review, the Judicial Office should consider the merits of introducing rules governing:
 - The exercise of the right to reasonable assistance
 - The right to conduct litigation
 - The right to exercise rights of audience (as has recently been introduced in Scotland)
 - The Head of Civil Justice and Heads of Division should consider the terminology that should be used, including whether the term “McKenzie Friend” continues to be useful
 - Judges should be strongly encouraged, through appropriate judicial leadership channels, to deal proactively and robustly with vexatious litigants, in particular by declaring appropriate claims and applications “totally without merit” and through the use of orders restraining individuals from issuing and pursuing claims.



The Royal Courts of Justice – London



Justice Gary Hickinbottom and Caroline Hamilton at the Reform Club, London

PARKING AND TRAFFIC APPEALS SERVICE, LONDON

Caroline Hamilton, Chief Parking and Road Traffic Adjudicator

PATAS administers the independent tribunals established to hear appeals against Penalty Charge Notices issued by the London Local Authorities and Transport for London. Caroline Hamilton is the Chief Parking and Road Traffic Adjudicator of the Parking and Traffic Adjudicators Tribunal (**the Tribunal**).

The Tribunal employs 35 legally qualified adjudicators and deals with around 55,000 parking appeals each year. Appeals are either allowed or refused. If they are refused, an adjudicator may make a recommendation to the local council to withdraw the fine if he or she believes the facts warrant this. The local council later informs the adjudicator whether or not the recommendation was followed.

Approximately 40% of appeals on the papers are allowed. A slightly higher percentage of appeals are allowed when the appellant attends the hearing. An appellant can ask for a review of an adjudicator's decision but only in very limited circumstances and only "in the interests of justice". An appellant can also appeal an adjudicator's decision to the High Court. Adjudicators must give written reasons for their decision. Lawyers are not allowed at hearings although some appellants are represented by a McKenzie's friend (a non-legally qualified person).⁷⁵

Key strategies

The Tribunal has been designed to offer a modern and efficient service to its users. The Tribunal is a "paperless" Tribunal with the appeal "file" being held electronically and the adjudicator entering the decision directly into the system. Local councils provide all relevant documents to the Tribunal in an electronic format. Appeals are conducted on the papers unless an appellant elects to attend a hearing, which very few do.

The oath has been abolished (as is the case in most tribunals in the UK) but appellants are told that they must tell the truth in accordance with their statutory duty and that they could be prosecuted if they do not.

Hearings are held between 7:30 am and 6:30 pm on weekdays and on Saturdays to assist members of the public in attending hearings.

⁷⁵ Caroline Hamilton described the McKenzie's friends appearing in the Tribunal as "unregistered and unhelpful". Caroline noted that this was in contrast to the non-lawyer representatives who appeared on behalf of parties in the Social Security and Child Support Tribunal, who tended to be very good.

GOVERNMENT ORGANISATIONS/PROGRAMS

NEW YORK STATE COURTS ACCESS TO JUSTICE PROGRAM, NEW YORK

Judge Fern Fisher, Deputy Chief Administrative Judge, New York Courts and Director, New York State Courts Access to Justice Program

Rochelle Klempner, Chief Counsel

Sun Kim, Special Counsel

Tracy McNeil, Special Counsel

The Supreme Court of New York's Access to Justice Program was set up by Jonathan Lippman, the Chief Judge of the State of New York and Chief Judge of the Court of Appeals. In March 2009, Judge Fisher was appointed director of the program.

The Access to Justice Program was set up to meet the needs of New York's 2.3 million litigants in person. Judge Fisher spends about two thirds of her time running the Access to Justice Program and the balance mostly hearing matrimonial cases. Two other attorneys work full time on the program and one staff member works part time.

The Access to Justice Program covers four main areas:

1. Self help services including Do-It-Yourself (**DIY**) forms and the CourtHelp website, which includes videos for litigants in person.
2. A volunteer lawyer program, which is run by the court and which provides unbundled (task-based) legal services to litigants in person in the areas of family law, consumer debt and landlord/tenant disputes.
3. A community outreach program.
4. Projects designed to meet the needs of particularly disadvantaged groups such as the elderly and people with mental health issues.

Key strategies

DIY court forms

The main focus of my meeting with Judge Fisher was the New York Court's DIY forms for litigants in person. In 2005, the University of Kent in Chicago developed software called A2J. This software allows courts and community legal organisations to develop their own interactive forms that enable litigants in person to complete court forms via an online "interview". At present, the Supreme Court in New York has 22 DIY forms available for litigants in person. Two of these forms are specifically designed to be used by advocates.

Lawyers within the Access to Justice Program with a range of computer programming skills develop the DIY forms. A2J programming skills can be learnt and developed with the assistance of a detailed best practice manual located on the New York Courts website⁷⁶ and online webinars⁷⁷ that are available on YouTube.

The A2J software is the interface software or the "front end" that creates the interview that the litigant in person sees on their computer screen. The program also requires "back end" document creation software to create the court document and a server to host the software. The A2J program is free and can be downloaded by anyone. In the US, most organisations use HotDocs (which costs US\$800-\$900) to produce the templates that generate the court documents and the information sheets but any equivalent software could be used. Pro Bono Net (see page 42)

⁷⁶ http://www.nycourts.gov/ip/nya2j/pdfs/BestPractices_courtsystemdocument_assemblyprograms.PDF.

⁷⁷ Where the person receiving the training hears the presentation over the telephone and sees the presentation on a computer via the internet (see for example <http://www.gotomeeting.com.au>).

provides the server that hosts the software, which, at \$40,000 per year plus the costs of a developer, is the largest cost associated with producing the forms.

The DIY form development process requires three steps:

1. Create a flowchart of questions and answers.
2. Create the interview based on the flowchart using the A2J software.
3. Create the template document using document creation software.

Programming field codes must be used to create the interview but these are also accessible online.

One of the benefits of the DIY forms is that they are predominantly question and answer based with very little “free text” opportunities. This means litigants in person are less likely to provide the incorrect information. They contain information boxes throughout the interview that explain legal terms and redirect litigants if they are using the wrong form or if their matter is too complex for the DIY form. When the program is completed, it creates the court document together with an information sheet for the litigant in person.

All New York Courts have several computers in their Self Help Centers (see page 42) that the public can use to create their court forms. Court employees are trained to help people draft the forms, which are also available on computers located in the clerk’s office. The Access to Justice Program also runs a program that trains people in the community such as librarians, the staff of public officials such as local councilors or members of community groups to help litigants in person who do not have access to a computer at home access the DIY forms on their computers. Training of people in regional areas is done via webinars.

The forms can also be found on the New York CourtHelp website, the Law Help NY website (see page 47) and the LawHelpInteractive website,⁷⁸ which is used by 28 states and provinces across the USA and Canada to access DIY court forms.⁷⁹ Some New York legal services have also developed their own interactive forms.

Whilst the DIY forms cannot yet be electronically filed, Judge Fisher believes they should form part of the court’s case management system to reduce the resources required for data entry. A program to enable this to take place is currently being designed in Minnesota.

The Legal Services Corporation, which funds state and federal legal aid services, provided the funding for the development of the DIY forms through its Technology Initiative Grant Program (see page 43).

The 50 hour pro bono rule

Judge Fisher also told me about two initiatives of Jonathan Lippman, the Chief Judge of the State of New York and Chief Judge of the Court of Appeals. The Chief Judge has introduced a new rule of the Court of Appeals requiring applicants who successfully pass the bar examination in New York State to demonstrate that they have performed 50 hours of qualifying pro bono service before applying for admission to practice.⁸⁰

The Chief Judge also introduced a new rule requiring New York lawyers to disclose on their biennial registration form how many pro bono hours they provided and the amount of financial contributions they made to pro bono programs during the previous two years. The Chief Justice’s Task Force recommended the rule changes to Expand Access to Civil Legal Services.

⁷⁸ <http://www.courts.state.ny.us/courthelp/forms.html>; <http://www.lawhelpny.org/interactiveforms>;
<http://www.lawhelpny.org/interactiveforms>.

⁷⁹ Not all states have adopted the New York model. For example, in California, only legal aid organisations have drafted DIY forms. More information about the California model can be obtained from <http://a2jclinic.classcaster.net>.

⁸⁰ For more information go to <http://www.nycourts.gov/attorneys/probono/FAQsBarAdmission.pdf>.



Judge Fern Fisher and Rochelle Klempner

THE COMMITTEE ON NON-LAWYERS AND THE JUSTICE GAP, NEW YORK

Fern Schair, co-chair of the Advisory Board of the Feerick Center for Social Justice, Fordham University School of Law and co-chair the Committee on Non-lawyers and the Justice Gap

Roger Maldondo, partner, Balber Pickard Maldonado, co-chair the Committee on Non-lawyers and the Justice Gap

Fern Schair and Roger Maldondo are the chairs of the Committee on Non-Lawyers and the Justice Gap (**the committee**) established by Jonathan Lippman, the Chief Judge of the State of New York and Chief Judge of the Court of Appeals, to investigate how non-lawyer advocates can provide more assistance to litigants in person without the need for changing any of the current New York rules or regulations.⁸¹

The idea for the committee grew out of testimony given at public hearings on civil legal services in 2010, which Chief Judge Lippman has held annually since 2010 to assess the extent and nature of New York's unmet civil legal services needs, and the recommendations of Chief Judge Lippman's Task Force to Expand Access to Civil Legal Services in New York, which are contained in its November 2012 report. The committee includes representatives from around 60 organisations including the New York Bar, the New York City Bar and the State bar.

Roger Maldondo is a partner at the New York City law firm, Balber Pickard Maldonado, whose lawyers practise mostly in the areas of civil litigation, real estate, business transactions, estate planning and administration and charitable organisations. Roger previously worked as a Legal Services Commission lawyer for eight years.

⁸¹ Whilst the committee is not specifically looking at how non-lawyer advocates can represent litigants in person in court, they were very interested in VCAT's legislation, rules and practices, particularly those that enable professional advocates (as opposed to legally qualified advocates) and non-professional advocates to represent parties at hearings.

Roger's investigations are focused on what assistance not-for-profit organisations can give litigants in person appearing in the New York City Housing Court. The New York City Housing Court deals with 300,000 cases a year and 99% of tenants who appear in the Court are litigants in person. In contrast, lawyers represent 90% of landlords.

Roger explained that whilst some not-for profit organisations can help tenants access emergency grants to pay their rent, they cannot give tenants any advice or assistance on legal issues such as how to get a landlord to repair a property because of the strict rules in New York that prevent non-lawyers from "giving legal advice". He told me that whilst tenants can access fact sheets about defences to claims and legal services, these could only help about 10% of tenants with legal problems. An additional problem is that one third of households in New York do not speak English at home. Roger referred to the forms drafted by the Californian JusticeCorp program as being an example of excellent written information for litigants in person.⁸²

Fern Schair is co-chair of the Advisory Board of the Feerick Center for Social Justice, Fordham University School of Law. Fern's investigations are focused on Consumer Law issues, particularly "credit identity theft" perpetrated against victims of domestic violence by their former partners. The legal and practical ramifications of credit identity theft are far ranging, particularly because prospective employers and landlords conduct credit checks in the US. Health debt and legal problems faced by the elderly is also a major problem in the US.

The committee will also consider what assistance can be provided to litigants appealing decisions of approximately 40 state and federal agencies, such as the Federal Social Security Administration, the New York City Housing Authority and the New York Workers' Compensation Board, which operate similarly to Australian tribunals.

Roger and Fern explained that many lawyers, including legal aid lawyers from LEAP⁸³, a coalition of ten organisations that provide civil legal services to low income New Yorkers, are concerned that non-lawyer advocates are "crossing the line" too often by giving legal advice and that allowing non-lawyer advocates to help litigants in person might lead to scams. For this reason they are also concerned about the proposed pilot program involving non-lawyer advocates.

Key strategies

Non-lawyer advocates working in self-help centres

The committee has been asked to make recommendations for an appropriate system to expand the role of non-lawyer advocates in providing legal services and to devise a pilot program to allow litigants who cannot afford a lawyer to receive low-cost guidance (but not representation) in simpler civil matters by qualified non-lawyers.

The committee is looking at organisations where lawyers work in conjunction with non-lawyers, such as Legal Information for Families Today (LIFT), a nonprofit organisation that provides unrepresented litigants with legal information and guidance so that they can successfully self-advocate in Family Court. They are also examining Law Help's Live Help program (see page 47), the New York Legal Assistance Group (NYLAG) and several court located services where non-lawyers do intake work⁸⁴ or triage⁸⁵ clients in order to consider how these services can be extended.

The committee is due to submit its preliminary recommendations for pilot projects to Chief Judge Lippman by November 2013.

⁸² For more information go to <http://www.courts.ca.gov/programs-justicecorps.htm>.

⁸³ The Legal Advocacy Partnership – see <http://www.leap-ny.org>.

⁸⁴ Interviewing the client to ascertain the nature of the problem and the relevant facts.

⁸⁵ Sorting and allocating legal services on the basis of need for or likely benefit from.

Unbundled legal services

Allowing lawyers to provide people with unbundled legal services⁸⁶ is another important strategy for addressing the legal issues that arise, particularly in the consumer law or elder law area, as the legal problems faced by clients are often too complicated for self help centres to deal with and the clients cannot afford to pay for legal comprehensive legal services. The American Bar Association is also currently advocating for rules allowing unbundled legal services.

FAMILY COURT SELF-HELP CENTER, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, WASHINGTON DC

Avi Sickel, acting director of the Family Court Operations Division, Superior Court of the District of Columbia, former head of the Family Court Self-Help Center
Judge Danya Dayson, Family Court

Avi Sickel is the acting director of the Family Court Operations Division of the Superior Court of the District of Columbia.

The jurisdiction of the Family Court includes the areas of divorce, access to children, property settlements, mental health, paternity and child support, the marriage bureau and juvenile abuse and neglect. The Family Court has many litigants in person, particularly in the areas of access to children (around 95-98% of non-custodial parents represent themselves), divorce, which include property disputes (around 75-80%) and paternity and child support (most fathers are unrepresented). Parties in mental health matters and juvenile abuse and neglect matters have a right to a lawyer so are always represented.

The number of litigants in person varies depending on the stage of the litigation. It is more common for a party to engage a lawyer in the latter stages of the litigation than to engage one in the beginning and to later end their services.

Judge Danya Dayson discussed the challenges faced by judges in conducting hearings with litigants in person. She was particularly concerned about maintaining judicial ethical standards. Judge Dayson had recently attended a “robust” two day training seminar on conducting hearings with litigants in person, which she thought was extremely useful. Judge Dayson explained that every Monday, she conducted 20-30 “initial hearings”, which she considers a very important process as it alleviates much of the parties’ stress before the full hearing. She also told me that parties are encouraged to use the services of the Multi-Door Dispute Resolution Division of the DC Superior Court, which is a free dispute resolution service for DC residents.⁸⁷

Key strategies

The Family Court Self-Help Center was established in 2002. Initially, volunteers from the DC Bar ran the Self Help Center. However, in 2005, the DC Superior Court took over the management of the Self Help Center and Avi Sickel was appointed to run the Self Help Center, which he did until 2012. Two full time paralegals were employed in addition to the volunteers from the DC Bar, who attend training and volunteer at the Self Help Center a minimum of three times per year.

The Self Help Center is located within the DC Courts building. It is open five days per week from 8:30am to 5:00pm and assists around 8000 people per year. The staff and volunteers provide litigants in person with extensive information about the law and the Family Court and help them to complete forms. They also explain what options people have. The Self Help Centre staff and

⁸⁶ A practice in which the lawyer and the client agree that the lawyer will provide some, but not all of the work involved in traditional full service representation. The client performs the remaining tasks on his or her own.

⁸⁷ http://www.dcappeals.gov/internet/superior/org_multidoor/main.jsf.

volunteers do not provide litigants with any legal advice, although they refer people to legal centers or community organisations when necessary. Litigants in person can also obtain pro bono assistance and representation from the Neighborhood Legal Services Program, a not for profit law firm that is funded through a TIG grant from the Legal Services Corporation (see page 43) and various other pro bono organisations in the District of Columbia.

Judge Danya Dayson described Family Court judges as being “incredibly reliant” on the Family Court Self Help Center to help litigants in person to represent themselves. She told me that litigants in person usually understood that the Self Help Center could only provide them with information, not legal advice, and that this did not create problems for the Family Court judges.

Self Help Centers are also located in the Landlord and Tenant and Small Claims and Conciliation branches of the Civil Division of the Superior Court and in the Probate and the Tax Divisions of the Superior Court.

Information about how to set up a self help centre is contained in Bonnie Hough’s paper entitled “Self Help – How Far Can It Go?”.⁸⁸ Bonnie Hough is the Managing Attorney for the Center for Families, Children & the Courts at the California Administrative Office of the Courts. Information on self help centers can also be found on the Californian Courts website⁸⁹ and the National Center for State Courts (see page 53) website.⁹⁰



Avi Sickel at the Family Court Self-Help Center

TECHNOLOGY INITIATIVE GRANT PROGRAM, LEGAL SERVICES CORPORATION, WASHINGTON DC

Glenn Rawdon, Program Counsel for Technology, Legal Services Corporation
Jane Ribadeneyra, Program Analyst for Technology Initiative Grant Program, Legal Services Corporation

The Legal Services Corporation is the largest funder of civil legal aid in the US. It was set up in 1974 by the then US President, Richard Nixon, and currently funds 134 independent not for profit legal aid programs in the US.

⁸⁸ See http://www.ilagnet.org/jscripts/tiny_mce/plugins/filemanager/files/The_Hague_2013/Session_Papers/8.4_-Bonnie_Hough.pdf.

⁸⁹ <http://www.courts.ca.gov/partners/documents/SHSResources.pdf>.

⁹⁰ <http://www.ncsc.org/atj>.

Following a technology summit in 1998, in 2000 Congress approved funding for technology grants to improve the efficiency of legal aid programs in the US and to provide resources for people who are not entitled to legal aid (legal aid is not available in any civil matter). Initially, Congress gave the program \$5 million. This has been reduced over time to \$3.25 million.

Many of the US projects referred to in this report were funded by technology initiative grants (**TIG grants**) from the Legal Services Commission. For example, TIG grants were used to develop initiatives such as the DIY forms used across the US and Canada, the Law Help website and its Live Help program and the Self Represented Litigation Network website.

One of the strengths of the TIG program is its ability to coordinate programs through its grants. For example, it assists each participating state to develop its own website using the Law Help templates for consistency and quality control. The Law Help website also contains a national subject matter index that uses naming conventions, which enables states to easily share resources. Similarly, all DIY forms must be created using the A2J software.

The Legal Services Corporation also runs yearly technology conferences, which are attended by the organisations that have received TIG grants (around 50 each year) and other legal aid organisations. The conference is very important because it allows people to share their knowledge, experiences and ideas.

Key strategies

Glenn and Jane consider the DIY forms (see page 38) to be the best of all the programs developed with a TIG grant.

Other initiatives include NTAP, which provides technology training to not for profit legal aid programs to improve their client services through effective and innovative use of technology and DLAW, a free software package for legal aid organisations that enables them to easily publish, manage and organise content on a website.

TIG grants are also given to organisations to enable them to reproduce a successful project undertaken in another state.

Further reading

John Greacen's 2009 report on research conducted in California that shows self help services provided to self-represented litigants produce economic savings for courts and for litigants.⁹¹

Susan Ledray's paper on virtual services.⁹² Susan is a lawyer with the Minnesota courts who developed and manages the Minnesota courts' Self Help Center, a virtual service for litigants in person.⁹³ The Minnesota courts have also partnered with nonprofit and legal aid organisations on information technology projects for litigants in person. A particular project of interest is an e-filing pilot project that is being run in conjunction with Law Help Interactive. The project uses the DIY court forms and enables litigants in person to create court documents in relation to domestic violence applications. The litigant can then send the documents and his or her metadata to the court via an "e-file" button. Once the document has been filed, the litigant in person's "account" is updated and all documents are viewable via links in the account. The project is likely to be launched for public use in late November 2013 and an evaluation on the project is likely to be published in early 2013.

Richard Zorza has also compiled a document on best practices in e-filing.⁹⁴

⁹¹ http://www.courts.ca.gov/partners/documents/Greacen_benefit_cost_final_report.pdf.

⁹² <http://jolt.law.harvard.edu/symposium/articles/Ledray-VirtualServices.pdf>.

⁹³ See <http://www.mncourts.gov/selfhelp/>.

⁹⁴ <http://tig.lsc.gov/sites/default/files/Best-Practices.pdf>.

JUDICIAL COLLEGE, LONDON

Professor Jeremy Cooper, Judge of the Upper Tribunal and of the First Tier Tribunal (Mental Health), Honorary Professor of Law, University of Kent and the Tribunals Director of Studies, Judicial College

Jeremy Cooper is a judge of the Upper Tribunal and of the First Tier Tribunal (Mental Health), and Training Adviser to Lord Justice Carnwath, Senior President on Tribunals. He is also an Honorary Professor of Law at the Kent Law School and the Tribunals Director of Studies at the UK Judicial College, which is responsible for the training of judges, magistrates and more recently, tribunal members.

Jeremy explained the background to the legal aid cuts. He told me that legal aid, which was provided directly to solicitors and barristers, had become extremely expensive and had led to situations where a barrister could earn £1 million per year doing only legal aid work. This situation was unsustainable and the UK government introduced the legal aid cuts that took effect in April 2013.

Problems have arisen since the introduction of the legal cuts because the UK legal system, the courts in particular, was dependant on lawyers representing parties and the courts were unprepared for a large increase in litigants in person. For this reason, the Judicial Working Group on Litigants in Person (see page 34) was quickly set up to make recommendations to help the judiciary better manage the influx of litigants in person.

Key strategies

Litigants in person toolkit

The Judicial College is responsible for finalising the 'litigants in person toolkit' for judges in accordance with one of the recommendations of the Working Group. The litigants in person toolkit will contain best practice guidelines for judges conducting cases with litigants in person. The final guidelines will be based on existing draft guidelines and the relevant material contained in the Equal Treatment Bench Book.

Equal Treatment Benchbook

The Equal Treatment Benchbook⁹⁵ is an invaluable resource for members of the judiciary. It is a resource that "increasingly embraces broader concepts of equality, diversity, fairness and general 'judgecraft', striving to achieve best practice in administering justice for all".⁹⁶ It is about to be republished.

Judicial training

The Judicial College is also responsible for training members of the judiciary on how to conduct cases with litigants in person. Jeremy observed that tribunal members are often more adept than judges at conducting cases with litigants in person because they have been doing it for years.

The Judicial College has started cross-jurisdictional training in court craft. It runs a 2-3 day program involving actors and detailed scenarios. Only 36 members of the judiciary attend each course. They are divided into groups of six, where one of them hears the case while the others comment. The judge hearing the case is also filmed for further feedback.

⁹⁵<http://www.judiciary.gov.uk/publications-and-reports/judicial-college/Pre+2011/equal-treatment-bench-book>.

⁹⁶ Equal Treatment Benchbook, March 2010, page i.

Judges conduct all of the training at the Judicial College. Jeremy runs a “train the trainer” program for those judges. The Judicial College is also involved in tribunal member appraisals. Court of Appeal judges who are the heads of the tribunals are also now going through the appraisal process.

NOT FOR PROFIT ORGANISATIONS

LAW HELP NY, NEW YORK

Leah Margulies, Project Director
Quisquella Addison, Live Help Program Coordinator

Law Help NY is an innovative organisation that helps litigants in person navigate the extremely complex New York legal system. Law Help NY was set up 11 years ago and is New York's first self help website. It is a collaboration of 10 not for profit organisations and is funded out of the IOLA⁹⁷ state fund.

Sourcing funding is a constant struggle for Law Help NY. IOLA has been greatly affected by the global financial crisis and its funds have been reduced from approximately \$26 million before the global financial crises to around \$6 million. As Law Help NY competes with other civil legal services for funding from IOLA, this has become a very competitive process.

Law Help NY website

The Law Help NY website has around 3.2 million hits per year and 575,000 "visitors", individuals or organisations that access the site. 300,000 of their visitors are "unique" visitors, that is, organisations whose members might access the site 10,000 times per year but who are only considered one visitor.

The information contained on the Law Help NY website is mostly sourced by Law Help employees. Law Help NY has a mirror site in Spanish. Some information is also provided in other languages if it can be provided by other organisations or funding sources. For example, Law Help NY recently developed 10 plain English information sheets for immigrants, which were translated into five other languages through funding received from Pro Bono Net (see page 49).

The Law Help NY website is hosted by Pro Bono Net. Pro Bono Net provides technical support and developed the template for the website. Law Help NY's biggest challenge is maintaining the content. Law Help NY has 17 editorial boards covering different areas of law. The editorial boards mostly consist of volunteer lawyers, who manage and maintain the website content.

The Law Help NY website contains many DIY forms (see below and page 38). It also addresses topical issues such as legal claims arising out of the damage done by Hurricane Sandy. The Hurricane Sandy recovery page has received over 60,000 hits. The website page includes an online calendar with information on free legal clinics.

Law Help NY also uses social media such as Facebook, YouTube and Twitter extensively and has blogs in English and Spanish.

Key strategies

Live Help

One of Law Help NY's most innovative programs is Live Help. Live Help is a program that allows litigants in person to obtain information about, for example, residential tenancy and family law disputes from volunteer lawyers and law students using live chat technology. Live Help has assisted around 20,000 people since it went live in 2010.

Live Help volunteers provide information to litigants in person, not advice. The process starts with a person posting questions on the Live Help website that are emailed to a Live Help volunteer. The volunteer immediately answers the questions using scripts developed in consultation with all stakeholders. The Live Help volunteer can be in "conversation" with up to three people at once

⁹⁷ Interest on lawyers' accounts, also know as ITOLA in some states.

and can work from anywhere that the volunteer has access to a computer. If the volunteer does not know the answer to a question, he or she contacts a Law Help lawyer for help via an instant messaging service. If the Live Help volunteer is already in conversation with three people, other people seeking to use the service receive a message asking them to try again at a later time. The questions are asked and answered anonymously. Information can also be provided in Spanish.

Live Help uses 125 volunteers. The Live Help volunteers are sourced from New York law schools (of which there are 14) and New York Law firms. Many of the New York Law Schools require their students to complete a minimum number of pro bono hours before they can graduate. New York law firms also provide volunteer solicitors who might be admitted in another state and want to be admitted in New York or because they are transactional lawyers who want experience in dealing with real people. The new rule requiring law graduates and interstate attorneys to complete 50 hours of pro bono work (see page 39) before being admitted to the New York State Bar will also increase the pool of volunteers available to run the Live Help program.

Live Help was developed over two years, partly with funding from a TIG grant and with the assistance of Pro Bono Net. The Live Help technology is also hosted on the Pro Bono Net server and supported by them.

DIY forms

The lawyers from Law Help NY have developed a number of DIY forms using the A2J software.⁹⁸ The DIY forms contain mostly yes and no questions with as little “free text” as possible. The DIY forms also ask questions about legal defences, which the parties may not be aware of. Parties can print the completed form and give it to the clerk at the court, who must accept it because the DIY forms are designed to be “legally sufficient”. People are also more likely to attend court if they have been able to complete a DIY form and understand more about the court process.

Some examples

Law Help NY has developed a DIY form called NYC Nonpayment Tenant Answer Program (**the Tenant Answer Program**).⁹⁹ The form is available on the Law Help NY website, the Law Help Interactive website, the Housing Court Answers website and the New York Courts website. The Tenant Answer Program form provides tenants with all the necessary information for them to be able to raise defences in the Housing Court and to negotiate rent payment plans with the landlord’s lawyer.

The Tenant Answer Program form is important because whilst 98% of tenants are unrepresented, practically all landlords are represented by lawyers in the New York Housing Court, many of whom, it is alleged, are unscrupulous. The lawyers control the negotiations with the tenants prior to a hearing and sometimes do not give tenants all of the relevant information when drafting “stipulations” (consent orders). Lawyers often include a default judgment clause in the event of non-payment for rent when this is not legally necessary (the matter can return to court if the tenant defaults on an agreed payment). Stipulations are filed with the court clerk, who provides them to the court attorney for checking. The judge makes an order based on the stipulations without hearing from the parties. Often no one informs the tenant of his or her right not to agree to a default clause. The Tenant Answer Program form addresses this issue. Law Help NY and Housing Court Answers¹⁰⁰ volunteers also staff a table in the Housing Court where volunteers assist tenants.

The Fair Hearings Part 1 and 2 forms¹⁰¹ are another example of important DIY forms, as they prepare people for a Fair Hearing, which are reviews of decisions made by government departments in relation to public benefits conducted by administrative bodies similar to tribunals. These forms were developed in conjunction with another legal service and with funding from a TIG grant.

⁹⁸ <http://www.lawhelpny.org/interactiveforms>.

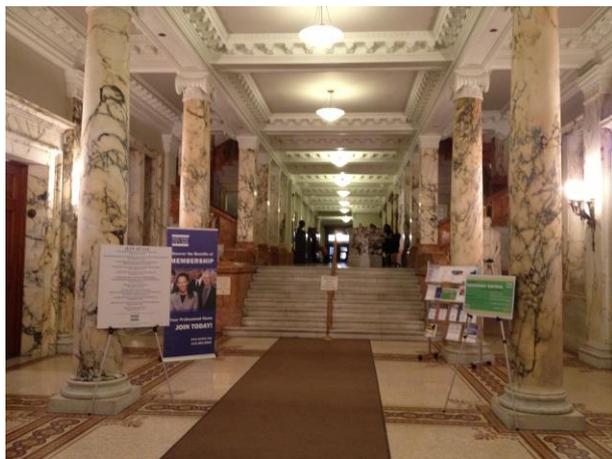
⁹⁹ https://lawhelpinteractive.org/login_form?template_id=template.2009-06-11.6300517756.

¹⁰⁰ <http://cwtfhc.org>.

¹⁰¹ <http://www.lawhelpny.org/public-benefits-interactive-forms>.

Further reading

Other states have adopted slightly different models. See for example Illinois' Legal Help online site (<http://www.illinoislegalaid.org>). Illinois is apparently much better funded through IOLA compared with New York. In Texas, the legal services work directly with the courts and Texas Law Help website¹⁰² uses its own server.



Law Help NY is located in the New York City Bar Association building

PRO BONO NET, NEW YORK

Mark O'Brien, Executive Director
Adam Friedl, Pro Bono Coordinator

Pro Bono Net is an online resource for pro bono and legal services (legal aid) lawyers in areas such as housing, family law, domestic violence and bankruptcy. It also provides resources on national practice areas such as immigration and some criminal matters such as death penalty cases.

Pro Bono Net was set up by Mark O'Brien and Michael Hertz in 2000. Mark and Michael were lawyers in private practice with a passion for increasing pro bono services. They identified that there were many unrepresented litigants in the US and many law graduates without jobs and thought Pro Bono Net might be able to connect the two.

The practice areas are hosted and maintained by organisations with expertise in the particular area of law. The information provided by the hosts includes legal information and resources, a calendar of training sessions and other events and DIY forms.

Pro Bono Net's technology is provided by in house lawyers although some DIY programming is contracted out to Mark Oritson of Capstone, a commercial organisation that does inexpensive programming work for not for profit organisations.

Pro Bono Net receives funding from public grants, foundation grants, private donations including donations from law firms and licencing fees from their programs, such as Probono Manager, which is a time keeping system that integrates with law firms' time keeping systems.

¹⁰² <http://texaslawhelp.org>.

Key strategies

Pro Bono Net's server hosts many innovative websites, such as Law Help Interactive, where litigants in person can access the DIY forms developed by various courts and legal services across the US and Canada (see page 38) and the Self Represented Litigants Network (see page 51).

Other innovative programs supported by Pro Bono Net include:

- A video conferencing program developed by the Family Court Volunteer Attorney Project (VAP) in New York City that enables pro bono lawyers to provide advice to clients on Staten Island via video chat, with remote IP printing, so that documents scanned at one location (Staten Island or the office in Manhattan) can be printed at the other¹⁰³
- An online screening program that assesses eligibility for citizenship and arranges documentation to be provided to pro bono lawyers for advice. This includes a mobile application that people can use to do their assessments online and to locate their nearest advice centre using the mobile's location services.¹⁰⁴

TIG grants

The TIG grants (see page 43) have been extremely effective for developing innovative technological solutions to access to justice problems. This is because people with a passion for access to justice are often greatly motivated by even a small amount of funding.

Smartphone technology

Mark and Adam believe that smartphone technology is under utilised, particularly because research shows that many people access the internet at home on their smartphone rather than a computer.¹⁰⁵

Pro Bono Net Australia

Mark would consider proposals from Australian pro bono or community legal organisations to host their DIY forms. There are no technical impediments to doing this, but there are a number of practical and legal issues to consider. However, Mark emphasised that, in his opinion, for an Australian project of this nature to be successful, it needed to be "the right time and place" and would require co-operation from and collaboration with a large number of key stakeholders.

Further reading

California's model for helping litigants in person is different to New York's model. For example, domestic violence DIY forms are available in the courts and police stations. For more information go to <http://lawhelpca.org>.

¹⁰³ For more information see <http://lsntap.org/blogs/innovations-technology-enabled-pro-bono-webinar>.

¹⁰⁴ See citizenshipworks.org.

¹⁰⁵ See for example the ABI research at <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/1301.0~2012~Main%20Features~Information%20and%20communication%20technology~36>.



Mark O'Brien at Pro Bono Net's New York office

SELF REPRESENTED LITIGATION NETWORK, WASHINGTON DC

Richard Zorza, attorney, independent consultant, founder and coordinator of the Self Represented Litigation Network, www.accesstojustice.net blogger

Richard Zorza is the founder and coordinator of the Self Represented Litigation Network (**the SRLN**), which is a loose association of legal bodies including the judiciary, various bar associations, the National Centre for State Courts (see page 53) and access to justice organisations for the purpose of better coordinating the work that each group does to assist litigants in person. The SRLN is also involved in judicial education, outreach programs and research, and has formed a number of working parties to address topical issues.

The State Justice Institute, the National Center for State Courts and various state courts fund the SRLN.

The SRLN has set up a website¹⁰⁶ for lawyers and court staff. It contains extensive resources with a National Subject Matter Index and naming conventions for documents to ensure that resources can be easily located and shared between states. The website is maintained by the National Centre for State Courts and hosted by Pro Bono Net (see page 49).

Key strategies

Richard believes that the following initiatives are the most effective for assisting litigants in person:

Standardised forms and DIY forms (see page 38)

The US courts have done very little to standardise and simplify their forms and procedures. In most states, each court in each county uses their own forms. This makes it harder to help litigants in person because an attorney must be familiar with the relevant forms in the relevant county. Richard believes that standardised forms are required, which court registries must be directed to accept from litigants in person, even if they are imperfect. DIY forms should also be developed to help litigants in person complete the forms correctly.

¹⁰⁶ selfhelp.org.

Self help centres (see page 42)

Court run self help centres should be located across each state, accessible by telephone, internet, webinars or by appointment. Richard believes that the directors running them must have a strong passion for access to justice. Examples of well run self help centres can be found in Alaska, Utah, Minnesota and Maryland.

Innovative uses of current information technology

Current information technology should be used to improve access to justice. This includes online chat programs such as Live Help, live phone advice and web portals for litigants in person to allow effective triaging of cases.

Web portals

Richard considers the development of web portals for people with legal problems a very important strategy. The web portals should contain a litigant in person's contact details, the history of the dispute and copies key documents. The portals should be accessible by courts, legal aid and community organisations and lawyers. The benefits of the portals include that the litigant in person only has to tell his or her story once and that when referrals are made, the new advisor can access the key information and documents quickly and efficiently.

Mobile telephone technology

Text messages should be used to give people information about the progress of their case, their hearing date and location and legal advice or information services.¹⁰⁷

Judicial education and training

Richard emphasised the importance of judicial education and training. He discussed some DVDs and training materials developed by the NSCS that show judicial officers best practice techniques for conducting hearings with litigants in person and maintaining "engaged neutrality". The DVDs may be used in Australia for judicial education.¹⁰⁸

Libraries

In 2012, Richard was involved in a Train the Trainer conference, which trained public librarians in access to justice issues.¹⁰⁹ The conference was funded by a grant from the Bill and Melinda Gates Foundation.

Leadership

Richard described the work of Chief Judge Jonathan Lippman as a "lesson in leadership" whereby the Chief Judge creates situations in which change can take place. He described the "institutional players' pushback" against the Chief Judge's reforms as "disingenuous".

¹⁰⁷ Richard was extremely interested in VCAT's hearing reminder SMS technology and wanted more information about this. He was also extremely interested in VCAT's practice and procedure generally and invited me to be a guest blogger on his website, <http://accesstojustice.net>.

¹⁰⁸ Robert Baldwin from the NCSC gave me a copy of the DVDs to be used for judicial education in Australia.

¹⁰⁹ Information about the conference is available at <http://www.selfhelpsupport.org>.

Further reading

Richard Zorza has devoted his professional life to improving access to justice and is a prolific writer on the subject. Richard has recently written articles on Live Help, web portals and triaging, to name a few. His articles and blog can be found at <http://accesstojustice.net>.

See also Wayne Moore's articles that critique legal aid programs in the US, which are available on Richard's website.



Richard Zorza

NATIONAL CENTER FOR STATE COURTS, WILLIAMSBURG

Robert Baldwin, Executive Vice President and General Counsel

The National Centre for State Courts (**the NCSC**) is an independent, not for profit court improvement organisation that was set up in 1971 following a national conference attended by many members of the judiciary, including the Chief Justice of the Supreme Court and the President of the United States.

The NCSC was set up to improve the work of state courts. It has 150 employees and had a budget of \$31.5 million in 2012. The NCSC is funded through a voluntary state court administration fee, federal grants, private donations and its consulting work including its international programs.

Its five main areas of work are:

1. Research into best practice for courts in areas such as performance standards, specialised courts and technology and best practice in the not for profit sector.
2. Education for court administrators via the Institute for Court Management.
3. Consulting in diverse areas such as organisational management, best practice court websites, alternative dispute resolution and facilities planning. This work informs its research work.
4. Acting as a clearing house for information on best practice through its own website and on self representation via the development and maintenance of selfhelp.org (see page 51).
5. International Rule of Law projects in countries such as Serbia, Guatemala Panama, Iraq and Uganda.

The NSCS has a state of the art distance learning centre where it produces training DVDs.

The NCSC also runs the Center on Court Access to Justice for All, which helps judges and courts advance access to justice. The Center is funded by the Public Welfare Foundation and works closely with the American Bar Association's Resource Center for Access to Justice Initiatives. The Center provides resources on topics such as how to set up a Self-Help Centre in a court, user friendly e-filing and developing judicial education on self-represented litigant issues.¹¹⁰

¹¹⁰ These resources can be found at <http://www.ncsc.org/atj>.

The NCSC also conducts a bi-annual Court Technology Conference (the next conference is in 2015).

Key strategies

Robert believes that the following initiatives are the most effective for assisting litigants in person:

JusticeCorp programs for self help centres (see page 42)

Setting up JusticeCorp programs such as the program in California, which assists litigants in person by providing self help centres with 300 volunteer law students per year.¹¹¹

Forms

Court-based initiatives such as plain English forms, fillable forms and simplified procedures.

Distinguishing between information and advice

Robert considers it important that court rules are changed to clarify that judges and court staff can give litigants in person legal information. Robert also believes that judges and court staff should be trained so they have the necessary confidence and skills to provide the legal information and that they should be given them enough time to allow them to do it properly.

Unbundling legal services

Lawyers ought to be allowed to provide clients with unbundled legal services (where lawyers work on a specific task or tasks in relation to a legal dispute rather than dealing with all matters from the beginning until the case is concluded).

Deregulation of lawyers

Robert believes that it is very important to consider legislative reform to allow people with appropriate legal skills and knowledge but without law degrees to provide a range of defined legal services to people with legal problems, similar to the medical model whereby nurse practitioners deliver defined medical services to patients.

Strategies to increase pro bono work by lawyers

Robert believes that New York's requirement that lawyers complete 50 hours' pro bono work prior to admission to the New York Bar should be extended to other states.

In addition, Robert told me at this year's conference of US Chief Justices, the judges will be considering a proposal to recommend to the American Bar Association (which accredits law schools) that it includes in its accreditation standards a requirement that a law student must complete a minimum number of pro bono hours in order to graduate. It is considered that this would benefit the students because it would enhance their skills before they start to practice law, particularly in the area of how to get along with clients and developing personal relationships. It would also develop students' understanding of ethical considerations and would demonstrate their commitment to the profession.

Robert also believes that lawyers should be obliged to do a minimum number of pro bono hours each year, in the same way that they are obliged to complete a minimum number of hours of continuing legal education each year.

¹¹¹ For more information go to <http://www.courts.ca.gov/programs-justicecorps.htm>.

Judicial training

Robert provided me with some DVDs and training material that the NCSC uses to train judicial officers in the area of court craft (as referred to by Richard Zorza – see page 51). This material may be used by any Australian organisation as long as it is used for the purpose of training judicial officers.



Robert Baldwin at the NCSC



The NCSC audiovisual/recording studio

ROYAL COURTS OF JUSTICE CITIZENS ADVICE BUREAU, LONDON

Alison Lamb, chief executive

Rebecca Scott, senior solicitor and legal advice manager

Jeanette Daly Mathias, manager, Islington Citizens Advice Bureau

Rita Suglani, Duty solicitor, Family

Shabnam Kermali, Money Advice Caseworker

There are 360 Citizens Advice Bureaus (**CABs**) located across England and Wales. CABs helped 2 million people in the 2012/2013 financial year and over 12 million people used their online services. They use 22,000 volunteers and have a 95% brand recognition within the community. Each CAB is an independent entity with its own board of trustees and funding providers. All CABs have the same aims and principles, the same staff training and are governed by the same rules around the standard of advice and auditing set by the National Association of Citizen Advice Bureaus.

The Royal Courts of Justice Citizens Advice Bureau (**RCJ Advice Bureau**) was established 35 years ago and is located in London's Royal Courts of Justice. The RCJ Advice Bureau is a registered charity. It runs a large number of programs across four locations, providing advice to litigants in person in areas of law such as residential tenancies, family, bankruptcy and miscarriages of justice. Advice is provided over the telephone and where necessary face to face. Much of its work is focused on prevention and early intervention.

The Civil Law team employs four full time lawyers and uses 160 volunteers. They see 12 clients per day and deal with any emergency applications such as eviction matters. The volunteers do intake work only. This includes the initial interview, the chronology and research. They do not give advice. Similarly, the bankruptcy service, which operates outside the bankruptcy court, provides clients with information from specialist advisers, not advice from lawyers.

The RCJ Advice Bureau runs a number of programs in partnership with other pro bono organisations. One program operates out of Court 37, where injunction applications are heard. This program is run in conjunction with the Bar Pro Bono Unit. The court is very accessible and

parties can often be successfully diverted from the court. The parties and the judges consider this a successful outcome.

Sourcing funding to run the RCJ Advice Bureau and its various programs is a constant challenge. Funds are sourced from a diverse range of funders including the Ministry of Justice, the state lottery fund and private law firms.

The Islington CAB

The Islington CAB has only been open for two years. It is a traditional CAB that only provides people with information, not legal advice, mostly in the areas of welfare benefits, housing and debt. Volunteers interview clients before referring them to an appropriate specialist adviser within the service. The Islington CAB also runs the RCJ Advice Bureau Gateway telephone program where volunteers triage calls and make appropriate referrals within the RCJ Advice Bureau or externally.

Unfortunately, because the Islington council primarily funds the Islington CAB, they can only provide advice to people living in the Islington Borough, one of the most deprived (but in parts, very rich) boroughs in London.

The telephone or interview triage process is designed to assess a client's need. An assessment is made as to whether the client's problem is simple or complex and how much the client can do for him or her self. The Islington CAB deals with 13,000 telephone enquiries per year. 6000 enquiries become clients and 1300 become casework clients. The case recording system is virtually paperless as all of the clients' documents are scanned and saved.

CAB at the Principal Registry of the Family Division

The CAB at the Principal Registry of the Family Division provides litigants in person with legal advice on family law issues from volunteer family law solicitors.

Key strategies

CourtNav

The RCJ Advice Bureau has just launched CourtNav¹¹², a computer program that is very similar to the A2J program used in the US (see page 38). CourtNav was developed with funding provided by a number of London law firms and the Ministry of Justice. The program is aimed at litigants who are more able to access self help resources.

CourtNav enables litigants in person to prepare their own court documents to apply for a divorce through a series of online questions and answers. The draft document is then emailed to a volunteer solicitor or CAB solicitor for checking. It can then be completed by the litigant and filed with the court.

CourtNav cost £70,000 to develop. The program is complemented by five "going to court" leaflets¹¹³ developed by Clare Shirtcliff¹¹⁴ from AdviceNow (see page 60). The RCJ Advice Bureau is currently running a pilot. Eventually CourtNav will be accessible by all CABs, a number of community legal organisations and the Personal Support Unit (see page 62).

AdvisorNet

CAB volunteers and advisers obtain most of their information from AdvisorNet, a National CAB internet site containing hundreds of fact sheets on a multitude of subject matters. AdvisorNet is a

¹¹² <http://courtnav.org.uk>.

¹¹³ <http://courtnav.org.uk/going-to-court.php>.

¹¹⁴ Clare was a 2012 UK Churchill Fellow in and her report is available at http://www.wcmt.org.uk/fellowships/fellows-reports.html?option=com_reports&task=listReps&Itemid=13&rep_search=1&year=&cat=&country=&author=Clare+Shirtcliff&phrase=Phrase.

resource that helps a large number of people for a relatively small cost. AdvisorNet is maintained by the National CAB and updated every month. Individual CABs and Community organisations can subscribe to AdvisorNet but it is not available to the public.



Rebecca Scott and Alison Lamb demonstrating CourtNav

BAR PRO BONO UNIT, LONDON

Robin Knowles CBE, QC, Chairman (also trustee of the Royal Courts of Justice Advice Bureau and LawWorks)

Rebecca Wilkie, Chief Executive, Bar Pro Bono Unit

The Bar Pro Bono Unit is a charity, which was set up in 1996. Robin Knowles QC is the chairman of the Bar Pro Bono Unit and Rebecca Wilkie is its chief executive.

The Bar Pro Bono Unit helps litigants to find pro bono legal assistance from volunteer barristers. The barristers can assist with advice, representation and help at mediation for people who cannot afford to pay and who cannot obtain legal aid.

The Bar Pro Bono Unit is staffed by 5.5 caseworkers, who are all legally qualified and three full time employees. It is funded by the members of the Bar via a £30 “opt in” donation that barristers make when renewing their insurance. Only 2000 barristers opted in last year.

3200 barristers currently volunteer with the Bar Pro Bono Unit (around one fifth of the Bar). Other members of the Bar will assist on request. One third of all UK QCs volunteer.

Rebecca Wilkie described the Bar Pro Bono Unit’s work as “match making”. No pro bono legal work is done on site. Applications for pro bono assistance are made via referrals from solicitors, barristers, members of parliament and community legal organisations. The caseworkers refer applications for assistance to a pool of 50 volunteer reviewers, who review a maximum of four cases per week. The reviewers assess the merits of the matter, the financial position of the applicant, the work involved and whether a solicitor is required as well as a barrister. Most of the reviewers are senior barristers with expertise in the relevant area of law.

If the application is accepted (and between 50-60% of referrals are accepted), the “match making” process begins. Approximately 86% of accepted applications are successfully placed. Non-placement is generally due to a lack of interest in the matter, the length of hearing time involved

and having fewer volunteers in some geographic areas in England and Wales. The process is a slow one, so three weeks' notice of a hearing is required.

The number of applications received by the Bar Pro Bono Unit has greatly increased since the legal aid cuts began in April 2013. This is because 650,000 people are now ineligible for legal aid with the largest impact being in the areas of family law and employment law.¹¹⁵

The Bar Pro Bono Unit moved to its current location, the National Pro Bono Centre (which also houses six other legal charities including LawWorks) in 2010.

Robin Knowles

Robin Knowles QC is a champion of the access to justice cause. His current responsibilities include:

- Chairman of the Bar Pro Bono Unit (and of the Bar in the Community)
- Trustee of LawWorks (the Solicitors Pro Bono Group)
- Trustee of the Royal Courts of Justice Advice Bureau
- Member of the Advisory Council of A4ID (Advocates for International Development)
- Member of the Attorney General's National Pro Bono Coordinating Committee (and of its International Committee)
- Chairman of the Working Party on the establishment of The Access to Justice Foundation
- Member of the National Pro Bono Week Coordinating Committee
- Member of the Joint National Pro Bono Conference Organising Committee
- Board director of probonoUK.net
- Chairman of University House (Legal Advice Centre)
- Chairman of Probono in the LMC (London Muslim Centre)
- Chairman of the Civil Justice Council.

Robin talked about the challenges currently facing the UK legal system in light of the recent legal aid cuts¹¹⁶ and the decrease in funding received by front line services due to the parlous state of the economy. He talked about the work being done to meet those challenges, particularly the work of Judicial Working Group on Litigants in Person (see page 34).

Key strategies

A collaborative approach within the legal system

Robin contends that each part of the legal system, that is, court and tribunal staff, the judiciary and barristers and solicitors must help people access the system. He also considers it important that members of the judiciary learn to appreciate the range and scale of circumstances of litigants in person and that members of the judiciary must commit to appropriate case management to enable the issues in dispute to be clearly defined when the applicant is a litigant in person.

Robin believes that one of the most important aspects of the Working Group's report is its encouragement of every group involved in the legal system to consider what it can do to improve access to justice. This includes the judiciary, court staff and members of the legal profession who are appearing against litigants in person.

Robin observed that the Judicial Working Group on Litigants in Person was made up of people from many different areas of the law and that the Working Group's members learnt from each other. He believes that a collective effort was necessary and worthwhile because "the sum was greater than the individual parts".

Information sharing

¹¹⁵ Rebecca had recently heard about a Judge in the Family Division of the Court of Appeal who recently only had litigants in person appear before him for a whole month.

¹¹⁶ There have been more cuts since April 2013.

Robin believes that greater sharing of knowledge, ideas and techniques within the judiciary and court staff is essential, ideally through judicial training and conferences.

Public legal education

In Robin's opinion, more public legal education is required, particularly in schools. He argues that this would lead to greater community awareness about how to avoid legal problems and how to solve them when they are unavoidable. See for example the work being done by Law For Life (see page 60).

Quality written information

Robin believes that high quality written information about legal processes that speaks to the user is essential. See for example the work being done by Advice Now, which is now a part of Law For Life (see page 60).

Healthy front line services

A healthy "front line" that is considered a safe, trusted first port of call, where effective triage work can be done is required. See for example the work being done by the RCJ Advice Bureau (see page 55) and LawWorks (see page 63).

The London Muslim Centre (**LMC**) is also an example of a healthy and innovative front line service. The workers at the LMC undertake triage work and are well trained to refer matters on when necessary. The LMC also has an unmarked room where Muslim women can obtain legal assistance in an environment where no one will question why the women are there. Non-Muslim people are also accessing the centre for legal advice.

Front line services should also be located in community centres or other places where communities gather, or in medical centres in disadvantaged areas.

The Civil Justice Council

The Civil Justice Council is an advisory public body, which was established under the Civil Procedure Act 1997 (UK) with responsibility for overseeing and co-ordinating the modernisation of the civil justice system.

Robin recommended that Australia set up an organisation similar to the UK Civil Justice Council.

Encouragement of pro bono legal work

Robin believes that pro bono legal work should come as second nature to lawyers and should be viewed by members of the legal profession as a lifetime obligation and commitment.

He also believes that the disadvantages of "conscripting" lawyers and law students to do pro bono legal work, as has been done by the Chief Judge in New York, outweigh the advantages. In particular, he is concerned that the quality of work done by the "conscripts" might be poor and that lawyers might believe that they had "done their bit" after they had completed their 50 hours of pro bono legal work.



**Artwork from the Bar Pro Bono Unit's
Annual report 2012**



**Robin Knowles QC at the London Muslim
Centre**

LAW FOR LIFE (INCORPORATING ADVICENOW), LONDON

Theresa Harris, Information manager

Law for Life is a public legal education charity that was established in 2011. Theresa Harris is the information manager.

Theresa explained that Law for Life seeks to empower people by building the knowledge, confidence and practical skills that they need to deal with legal problems in their lives. Specifically, Law For Life seeks to help people understand how the LawWorks and how to recognise legal issues, and to give them skills to deal with their legal issues and get involved in their resolution. It also conducts research so that the organisation can share knowledge about how and why legal education and information for a wider public is an important part of access to justice.

Law for Life also develops community-based education around social welfare issues such as housing, welfare benefits, consumer and employment matters, focusing on empowering people to resolve their own legal problems.

Law for Life is also exploring how to use social media as a public legal education tool. However, Theresa observed that social media only reaches a limited audience that mostly uses the internet for socialising, not information gathering.

Advice Now

In 2013, Law for Life incorporated Advicenow, an innovative legal information website that was set up in 1995 to provide high quality, clear, accurate and up-to-date advice to the public in 14 civil law areas covering 360 defined terms. The website draws together advice sourced from other websites but the information is only placed on the Advicenow website if it scores highly on a set of criteria developed through research. Advicenow has also written some of its own guides that provide practical help on how to manage and resolve problems.

The criteria used by Advicenow includes whether the information addresses emotional needs, whether it tells people when and where to get additional advice and whether it addresses barriers to taking action such as lack of confidence and poor record keeping. The advice must be of a high quality and effective.

Advicenow produces legal information documents based on research on the most effective strategies for communicating with people from a range of different backgrounds and with a range of literacy levels. Research shows the more specific the information, the more engaged the reader becomes.¹¹⁷ Research also shows people need to be told the same information again and again, and in different ways because repetition builds confidence.¹¹⁸ Case studies are a particularly effective way to repeat and reinforce the information.

Advicenow aims its information at the person with the lowest level of knowledge and experience. This does not put off a more informed reader because that reader's knowledge will be reinforced when he or she reads the document or the reader will simply scan the document. It must also be born in mind that whilst the average reading level in the UK is the reading level of a ten or eleven year old, adults with low literacy levels still have considerable life experience, which means they comprehend more than a ten or eleven year old.

Whilst Law For Life (incorporating Advicenow) is an independent organisation, it is not a neutral organisation. That is, the guides are designed to be on the side of the person with the problem. The guides cost between £4000 and £12,000 to produce including research, peer review, design and publishing.

Advicenow recently developed a step-by-step guide to help people conduct cases in the Social Security Tribunal. This was done in light of repeated research criticising first level social security decision makers. Advicenow also recently produced the "Going to Court" guide for the CourtNav project being run by the RCJ Advice Bureau (see page 55).

Law For Life has incorporated Advicenow due to cuts to its funding. At the same time, Law For Life has increased its funding, which currently comes from two private trusts.

Key strategies

Partnerships with community legal organisations

Advicenow has formed strong partnerships with community legal organisations, which have enabled them to better understand the problems people face, what information they need and in what format. This assists them to produce better guides. The guides are also piloted in the community legal organisations.

Partnerships with the media

Law for Life recently persuaded the producers of the English soap opera, Emmerdale to include a story line about defacto relationship law rights as part of a public legal education campaign on this issue, which also included radio and print media publicity.

Partnerships with other organisations

Theresa believes that partnerships with organisations that visit people in their home such as organisations within the health sector are also essential. Theresa referred to research shows that "Information prescriptions" provided by medical practitioners can reduce pain and lead to better health outcomes.¹¹⁹

¹¹⁷ See <http://www.advicenow.org.uk/about-us/evaluation-and-research/> and <http://www.advicenow.org.uk/better-information/>.

¹¹⁸ See <http://solutionfocusedchange.blogspot.co.uk/2011/10/what-does-it-take-to-make-educational.html>.

¹¹⁹ See for example http://www.formazione.eu.com/_documents/consenso/documenti/better%20information.pdf and http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_134205.pdf.

Further reading

Professor Dame Hazel Genn's book, "Paths to Justice: What People Do and Think about Going to Law" 1999.

PERSONAL SUPPORT UNIT FOR ROYAL COURTS OF JUSTICE, LONDON

David Rinaldi, PSU Coordinator, Royal Courts of Justice and Principal Registry of the Family Division
Lizzie Iron, Head of Service

The Personal Support Unit (**PSU**) was established within the Royal Courts of Justice in 2002 to provide practical and emotional support to people who are representing themselves in courts or tribunals. It has since been expanded to provide these services to litigants in person in the Principal Registry of the Family Division and in regional areas across England.

The PSU has 12 full time staff members and around 300 volunteers, many of whom have a connection to the law such as retired judges and tribunal members. The PSU for the Royal Courts of Justice has 100 volunteers, including 40 law students, each of whom attend the PSU one day a fortnight. The volunteers receive training on the difference between advice and information, confidentiality, listening skills, personal safety and signing posting/referrals. They are also trained on how to interview a client and are provided with a volunteer handbook. The volunteers are trained to end the interview with an agreed plan of action, which empowers clients to resolve their own problems. The service is popular with students because it allows them to gain valuable client experience.

The PSU model allows clients to use the service without an appointment and with no limit on the time it takes to complete an interview. PSU volunteers allow people to tell their story. They can sort through paperwork and assist clients to prepare chronologies. They can also help them locate and prepare relevant forms or court documents and liaise with courts and tribunals. PSU volunteers provide emotional support before and after court and may attend hearings with clients. However, they do not give legal advice or provide counselling or ongoing services. Where appropriate, volunteers will refer clients to other services. Volunteers take their lead from clients, as long as what they are asked to do is legitimate and safe.

The demographic of the clients varies depending on which court is being serviced. The regional PSUs see more clients with first instance disputes and the Royal Courts of Justice PSU sees more clients involved with appeals. The clients are evenly split between plaintiffs/appellants and defendants/respondents. Most clients are involved in civil matters. Many are vulnerable, disadvantaged and chaotic, with multiple issues. Many clients would be considered vexatious litigants, with the PSU being their last port of call. However, some clients come from higher socioeconomic backgrounds but do not want to talk to family or friends about their legal matter.

The PSU has a close relationship with the RCJ Advice Bureau and recently did some training with Advicenow on the difference between information and advice and their website.

The Ministry of Justice, private law firms, professional legal bodies and some private trusts fund the PSU.



The PSU is located in the Royal Courts of Justice, London

LAWWORKS, LONDON

Rebecca Hilsenrath, Chief Executive

LawWorks is a legal pro bono charity for solicitors, in-house counsel, mediators and law students. It is the largest legal charity in the UK. Its aim is to provide free legal help to individuals and community groups who cannot afford to pay for it and who are unable to access legal aid. Law Work's services include casework brokerage, email advice, free legal advice clinics and specific legal programs in areas as diverse as immigration (which is no longer funded by legal aid), children with short lives and the armed forces.

LawWorks employs 18 staff and has between 7-12 interns. The staff and interns work with just under 100 member law firms and teams of in-house counsel and have access to around 25,000 volunteer lawyers across the UK. Last year, LawWorks provided free legal advice to over 40,000 people and around 350 community groups. Community groups can access LawWorks' services by becoming members and paying an annual subscription.

LawWorks only does a small amount of casework brokerage (arranging for solicitors to do pro bono legal work in courts and tribunals) and it takes around four weeks for LawWorks to place a case. LawWorks' primary aim is to sign post people to the right place, which enables people to help themselves and diverts them from the courts.

Key strategies

Free Law Direct

One of LawWorks' most innovative programs is Free Law Direct¹²⁰, an email advice program. Free Law Direct is run through a platform similar to Facebook. It enables members of community groups and advice organisations (mostly non-legally trained volunteers) to post questions anonymously, which are answered by lawyers anonymously. As the answers generally take four to five days to arrive, the program is not set up for emergencies.

The most challenging aspect of Free Law Direct is complying with the requirements of the Solicitors Regulation Authority.

Legal advice clinics

LawWorks runs 130 free legal advice clinics in front line agencies across England and Wales. LawWorks consider this program to be one of its best, as it is a flexible and wide-ranging model, where people can make appointments or just drop in. LawWorks provides each clinic with handbooks, insurance and IT support. LawWorks is exploring using Skype in its

¹²⁰ <http://freelawdirect.org.uk>.

clinics to enable people to obtain advice without having to go to the clinic and to enable lawyers to provide advice to the students and volunteers at the clinic from their offices.



The WorkWorks and the Bar Pro Bono Unit are located in the National Pro Bono Centre

COMMUNITY LINKS, LONDON

Sharon Elliott, solicitor, Churchill Fellow

Community Links¹²¹ is an innovative east London charity located in one of the most diverse and deprived areas in the UK. Last year, Community Links gave benefits, housing and debt advice to almost 10,000 people. They also run an extensive range of programs for vulnerable children and teens, adults and families, and unemployed people.

Sharon Elliott is a solicitor who works for Community Links. Sharon Elliott is a UK Churchill Fellow who did a fellowship in 2012 entitled “The provision of free legal advice to deprived communities”.¹²²



Sharon Elliott, Community Links

¹²¹ <http://www.community-links.org>.

¹²² See http://www.wcmt.org.uk/fellowships/fellows-reports.html?option=com_reports&task=listReps&Itemid=13&rep_search=1&year=&cat=&country=&author=Sharon+Elliott&phrase=Phrase. Sharon also travelled to the United States in 2012 and met with some of the organisations I met with. It was lovely to meet Sharon and see what she had achieved since returning from her fellowship.

ACADEMICS

UNIVERSITY OF OTAGO, DUNEDIN

Bridgette Toy-Cronin, PhD student, Faculty of Law

Bridgette Toy-Cronin, is a PhD student with the law faculty at the University of Otago, who is writing her thesis on litigants in person in New Zealand. Bridgette has completed a literature review and has interviewed many New Zealand litigants in person to date. Her next task is to interview judges and court staff from the various courts in New Zealand.

Bridgette's view is that New Zealand is trailing behind Australia when it comes to supporting and assisting litigants in person. She believes that one of the reasons for this is that not much research is being done on socio-legal issues in New Zealand as the universities are more interested in research on doctrinal issues. There are also very few clinical legal subjects being taught or clinical legal programs being run at the New Zealand universities.

New Zealand's Courts and Tribunals

New Zealand has about 100 tribunals, 19 of which are first instance tribunals such as the Tenancy Tribunal and Disputes Tribunal.¹²³ No legal representation is allowed in the Disputes Tribunal. Most other Tribunals have no legal representation or discourage legal representation.

The District Court has a general jurisdiction of up to \$200,000. Its jurisdiction includes the Family Court, the Youth Court, the Environment Court and the Employment Court, which deals with appeals from the Employment Tribunal.

The High Court has a general jurisdiction of \$200,000 and above. It provides litigants in person with a brochure dealing with basic court etiquette but has no written material on procedure and its forms are not available on the internet. Similarly, no Court of Appeal or Supreme Court forms are available on the internet.

Most cases go through some form of ADR. In the civil courts, the ADR process is called "judicial resolution conference".

Legal aid is available for criminal and family cases but is rarely available for civil cases. In family law cases, legal aid is common but limited and is usually funded by way of a loan not a grant. Community Law Centres provide advice in limited areas and have limited funding. They do little or no family law. Citizens Advice Bureaus provide litigants in person with limited one on one advice from non-lawyers.

The experiences of New Zealand's litigants in person

The main problem for litigants in person in New Zealand is that the judicial system is designed for lawyers. Litigants in person are also a source of angst for some judges and court employees. Many court employees see litigants in person as a problem, are frequently hostile towards them and sometimes obstructive. This suggests there may be a cultural problem within courts and registry offices. However, some judges have a reputation for dealing well with litigants in person. The Institute of Judicial Studies also runs programs for judicial officers on conducting cases with litigants in person. Selene Mize, who teaches in the Law Faculty at the University of Otago, is one of the program organisers.

Bridgette believes research that suggests litigants in person are "satisfied" by running their own case overstates their satisfaction levels. Rather, her research suggests that litigants in person are lonely, overwhelmed and extremely stressed by having to run their own cases.

¹²³ The Disputes Tribunal hears civil claims up to \$15,000 or \$20,000 by agreement.

Many litigants engaged lawyers at the start of the case but later terminated them due to cost, delay, and/or because they lost their trust in their lawyer. Many litigants are very suspicious of the legal profession, particularly of how friendly they are with each other, which makes the litigants think the lawyers are “doing deals” behind closed doors without consulting them.

Litigants in person rarely apply for legal aid or consult community law centres. They mostly use self-help methods such as searching the internet for information and legal precedents, combined with some free advice from lawyers. Some informal unbundling of legal services is happening in New Zealand. Some litigants in person use McKenzie friends to assist them.

Specialised dispute resolution centres are developing. Non-lawyers with expertise in a particular area, for example union representatives giving employment advice, usually provide the advice and assistance. They charge fees for their advice and representation but are less expensive than lawyers. Insufficient research has been conducted to determine whether these centres provide litigants in person with high quality services and whether their services are effective.

Key strategies

Bridgette believes that one of the most effective strategies for helping litigants in person would be to set up self help centres similar to those found in the United States, where people receive face-to-face advice. She believes that the importance of face-to-face advice cannot be over-estimated.

Further reading

“Tribunals in New Zealand”, NZ Law Commission, January 2008.

(http://www.lawcom.govt.nz/sites/default/files/publications/2008/01/Publication_131_385_IP6_Tribunals_in_NZ.pdf)

“Just satisfaction? What drives public and participant satisfaction with courts and tribunals” by Richard Moorehead, Mark Sefton and Lesley Scanlan, Cardiff Law School, Cardiff University, UK Ministry of Justice, 2008 (<http://www.law.cf.ac.uk/research/pubs/repository/1854.pdf>).

This study is a “meta” study, which critiques studies on levels of satisfaction.

“Paths to Justice: What people do and think about going to law” (1999), Professor Dame Hazel Genn.

Kim Williams, UK Ministry of Justice, June 2011 literature review

(https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217374/litigants-in-person-literature-review.pdf)

“Self-Represented Litigants: Gathering Useful Information, Final Report”, June 2012, Australian Centre for Justice Innovation, Monash University, Elizabeth Richardson, Tania Sourdin and Nerida Wallace. (<http://www.civiljustice.info/cgi/viewcontent.cgi?article=1001&context=srl>)

Professor Mark Henaghan’s research into satisfaction levels with tribunals, which is not yet published.

Professor Mark Henaghan, Dean of the Faculty of Law

Professor Mark Henaghan is the Dean of the Faculty of Law at the University of Otago. Professor Henaghan told me about the work of the University’s Legal Issues Centre. He explained that the Centre was established in 2007 through a \$2 million donation from the Gama Foundation and a \$1 million donation from the University of Otago Foundation Trust.

The Gama Foundation was set up by a New Zealand couple who were involved in a civil court case in relation to damage done to their commercial property by the lessees that took five years to resolve and that cost them \$600,000. The couple won at first instance but the other party appealed to the Court of Appeal, which added to the cost and delay. Whilst they eventually won in

the Court of Appeal, the couple were appalled by the costs and delay associated with the litigation. This motivated them to set up the Gama Foundation and the Legal Issues Centre in order for research to be conducted on how the system can be made more affordable and accessible.

The Centre is currently studying completed cases in order to try to determine what factors lead to delay and increased costs. The Centre also intends to interview judges.

An offshoot of the Legal Issues Centre is the Justice Forum. The purpose of the Justice Forum is for stakeholders to share experiences and knowledge to address defects in the New Zealand legal system. Unfortunately, the head of the Legal Issues Centre left the University some time ago and has yet to be replaced, so the Centre and the Justice Forum is not as active as it was a year ago. However, a new head will be appointed very soon.

Professor Henaghan is keen to collaborate with Australian organisations that are committed to improving access to justice. Professor Henaghan will also soon be publishing some research into the satisfaction levels of parties in New Zealand's tribunals.

Further reading

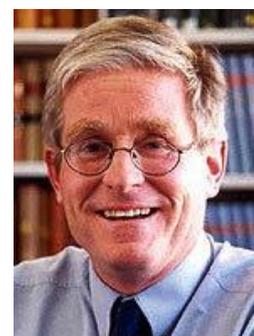
The work of Pascoe Pleasence, Professor of Empirical Legal Studies, University College London and John Flood, Professor of Law and Sociology, University of Westminster.



Bridgette Toy-Cronin



The University of Otago



Professor Mark Henaghan

UNIVERSITY COLLEGE LONDON

Professor Dame Hazel Genn, DBE, QC, Dean of Laws, Professor of Socio-Legal Studies and co-director of the UCL Judicial Institute in the Faculty of Laws

Dame Hazel Genn is Dean of Laws, Professor of Socio-Legal Studies and co-director of the UCL Judicial Institute in the Faculty of Laws at University College London, where she is also an Honorary Fellow. She is also a member of the Judicial Working Group on Litigants in Person and the UK Civil Justice Council. Dame Hazel has been described as a leading authority on civil justice and has published widely in the field.

Many of the people I interviewed referred to Dame Hazel's book, "Paths to Justice: What people do and think about going to law" (1999). In "Paths to Justice", Dame Hazel analyses the results of a wide-ranging survey into people's experiences of civil legal problems. "Paths to Justice" describes how often people experience legal problems and how they set about solving them. Dame Hazel also describes the factors that influence people's decisions about whether and where to seek advice about problems, and whether and when they consult lawyers. "Paths to Justice" explores people's experiences of courts, tribunals and alternative dispute resolution

processes and provides “important insights into public confidence in the courts and the judiciary”.¹²⁴

Dame Hazel will be a keynote speaker at the Australasian Institute of Judicial Administration conference entitled “Assisting Unrepresented Litigants – A Challenge For Courts And Tribunals” in April 2014.

Dame Hazel will soon be publishing an article entitled “Do-It-Yourself Law: Access to justice and the challenge of self-representation” which is based on her 2012 Atkin Memorial Lecture.¹²⁵

She also spoke about a recent lecture given by Roger Smith OBE, Director of JUSTICE at the Tom Sargant memorial annual lecture in 2012¹²⁶, which referred to the need to develop innovative technologies.

Roger Smith made the following points and recommendations in response to the UK government’s legal aid cuts:

1. The current model of seeing legal aid as stand-alone provision is unsustainable.
2. People within the legal system need to reconceive the objective of their justice policy as a whole. The objective and ideal should be that equal justice is delivered to all.
3. Equal justice requires an access to justice approach with legal aid reconceived as only one of a set of linked policies and provision – including reform of substantive law, methods of adjudication, the provision of non-legal assistance.
4. Such an access to justice approach builds up from the availability of information and ends with the funding of lawyers – not the other way round.
5. People within the legal system need to maximise the benefit of the information revolution through which they are currently moving and foster innovation.
6. To deliver equal justice, the UK needs one government department and one budget.

Dame Hazel also referred to the work of Richard Moorehead, who is currently the Professor of Law and Professional Ethics and Director of the Centre for Ethics and Law at University College London, particularly his 2008 paper “Just satisfaction? What drives public and participant satisfaction with courts and tribunals?” and a 2012 literature review in relation to Self-Represented Litigants undertaken by three academics from the Australian Centre for Justice Innovation at Monash University, Elizabeth Richardson, Tania Sourdin and Nerida Wallace.



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¹²⁴ http://books.google.com.au/books/about/Paths_to_Justice.html?id=rO1oCW8RPt0C&redir_esc=y

¹²⁵ See

<http://www.ucl.ac.uk/laws/academics/profiles/docs/Hazel/ATKIN%20MEMORIAL%20LECTURE%202012%20ON%20LITIGANTS%20IN%20PERSON.pdf>.

¹²⁶ See <http://www.justice.org.uk/events.php/45/justice-tom-sargant-memorial-annual-lecture-2012>.