

NZLS CLE Webinar 17 April 2020

Replacement of missing audio – Family Court jurisdiction

This following is a transcript of the Family Court jurisdiction part of the NZLS CLE webinar with Heads of Bench, with the missing sections of audio replaced. This document is for personal use only and is not to be copied or distributed without permission.

MS EPATI:

... We'll now move to Family Court jurisdiction, Principal Family Court Judge Moran. I can now invite you make some introductory remarks about your particular Court jurisdiction.

JUDGE MORAN:

Tēnā koutou. In contemplation of the restrictions by Alert Level 4, the Family Court identified the priority work to be undertaken, and given the nature of the work we do, that was extensive. It related to proceedings concerning safety and welfare of people, particularly children and the most vulnerable. It also covered proceedings that were time-limited. They have all been dealt with and they've been on the eDuty platform. We also anticipated that there would be an increase in the number of applications for parenting orders and variations of parenting orders, particularly with the level of concern that was evident both immediately before and going into lockdown about the operation of shared parenting arrangements.

MS EPATI:

I think the sound quality is – you've muted yourself. That's it, that's better.

JUDGE MORAN:

Is that better, will I carry on now and see how you hear it? Okay. So we had anticipated an increase in protection order applications, we had anticipated an increase in parenting order applications, because of the concerns expressed by the community about what was going to happen within the bubble and the

like. This not only didn't eventuate but in fact we have experienced the opposite. By way of example, there were 47 per cent fewer applications for protection orders, 60 per cent fewer applications for parenting orders and 86 per cent fewer applications for variations on Wednesday of this week compared to Wednesday of the week immediately preceding Alert Level 2.

The only exception to this has been in the area of mental health. The Ministry of Health reports that trouble within the bubbles themselves is a very strong emerging theme. It's reflected in the applications for community and inpatient treatment orders that judges are dealing with. As we move out of the current alert level and down, it is anticipated that these specific trends will in fact be reversed and the Family Court needs to be ready for this. I have been working closely with my Family Court liaison judges and my Advisory Board members to determine how this will look at the various alert levels. The Court will still focus on urgent matters prioritising children's welfare and decisions affecting the vulnerable, particularly for older people whose care needs to be determined. Mental health hearings will continue to be undertaken remotely.

As the Family Court is very strongly paper-based, it has been harshly impacted by the issues for registry staffing and the technological challenges. As the registry staff come back on strength and, as Justice Miller has outlined, greater remote access will be available, then we can move forward with our work. Certainly, we can expand what's being done. Family Court judges are anxious to progress work to the extent possible. It is likely that in the immediate future, most conferences scheduled will proceed by remote participation, as will non-witness hearings. Conferencing and in-person fixtures will be possible, but the limitations will be the courtroom size and the ability to comply with the social distancing and the ability of the Registry to support the judges.

MS EPATI:

I'll move directly to question 35 then because you've answered a lot of the first two questions I was going to ask you and whether the Family Court will give priority on matters with time pressure in the relationship property sphere.

JUDGE MORAN:

All Family Court matters that were adjourned during Alert Level 4 will be reviewed by way of a triage process so that will include for any Property (Relationships) Act matters. If they are time-pressured, then they will be prioritised along with all others as will the likes of interim spousal maintenance and that type of proceeding but it's important to remember that the without notice process through eDuty is available for all urgent proceedings.

MS EPATI:

Okay, we're just going to switch to a photograph of Judge Moran to see if we can improve the sound quality. So, can I just then ask so to what – I mean, you've already partly answered that, but to what extent will we get maybe more case management of files by judges and measures to really resolve some of the work that may have been adjourned but also the influx of work? So, you mentioned that the Family Court workload had reduced quite a lot during the lockdown period. Part of that could be because family lawyers may not be able to operate in the same way in their bubble, so obviously there will be an expectation as we come out of lockdown and lawyers are able to go to their offices, we might have an influx of work, so I just wanted to ask you about case management-type controls and measures that might be brought in.

JUDGE MORAN:

Prior to going into lockdown, the Family Court already had a huge number of cases that needed to be dealt with. We had just had the appointment of 12 new judges and were optimistic going forward. However, we still have a backlog of cases and we anticipate that the people who have not been able to access justice for a number of reasons during this lockdown period may apply for Court orders.

To ensure that we address this effectively, there will be direct judge management of those cases. I anticipate that in many regions, particularly in metropolitan Courts, judges will triage matters that were adjourned during the lockdown period (often without prior triaging at that point); those files that were in the eDuty process during lockdown; the expected post-COVID surge of work;

and that which is identified as urgent from any triaged [*box work*]. Once that is undertaken, it is likely that proceedings will then be allocated a call-through so that we can reprioritise. That is a process which will also involve lawyers because that will assist us considerably if they indicate where files are at, namely the outstanding issues, what directions are sought, whether a fixture is still required, estimated time of hearing, number of witnesses, and so on.

It is however important to note that how cases are dealt with will differ regionally as some Courts were able to adjourn all matters to a fixed date while other Courts were not. The triaging process will be more visible in the metropolitan courts.

MS EPATI:

We've lost you, Judge Moran. Might just see – if we get the Principal Family Court Judge back, I'll ask – I only had one more question

QUESTION 37:

China has reported a spike in separations following the end of lockdown. What preparations are being made for dealing with the likely spike we will face, which will coincide with the non-urgent work that has been adjourned becoming active again?

ANSWER:

A spike in separations will translate into an increase in urgent applications, particularly in the area of family harm/care and contact arrangements for children. These applications will primarily be filed by way of eDuty and that can be managed by increasing the numbers of judges who are rostered for eDuty, if need be.

We have in the past dealt with a significant increase in applications, for example immediately before the 2014 Care of Children Act reforms where there was a huge spike, but 80 per cent of the cases were resolved within a year and 92 per cent within two years. While there may be a spike in new applications, that does not necessarily equate to an increase in long-term work.

QUESTION 38:

eDuty seems to be working well but none of the other functions of the Court are running. Is there a reason box work and CMRs cannot be done remotely like eDuty? I am worried about the backlog caused by not progressing any filed for two months since everything (including CMRs and box work) has been adjourned to the end of May.

ANSWER:

The way eDuty has been rostered has been changed to ensure that all urgent cases are dealt with immediately by the Family Court Judge in each court rather than nationally. That is to ensure immediate follow-up work, if required, can be case-managed and progressed by that Judge as necessary. This work is being done: for example, urgent directions conferences, submissions-only hearings, Pickwick hearings are taking place. Also, all mental health work continues in every court.

Other work could be progressed without additional registry staff being available. For example, box work particularly requires files to be made available to Judges, and then electronic minutes processed. Until now, this has not been possible due to unavailability of registry staff to support this work. However, it is expected that this will begin to change very soon and the work we can undertake will expand accordingly.