

26 October 2017

Chief Judge Inglis
Chief Judges' Chambers
Employment Court
DX SX 10008
Auckland 1010

By email: judge.inglis@justice.govt.nz

Dear Chief Judge Inglis

Employment Court: Costs Guidelines – feedback

Thank you for your letter of 30 August 2017 seeking the New Zealand Law Society's feedback on the Costs Guidelines (guidelines) that were introduced as a pilot in the Employment Court in January 2016.

Your letter indicates that from the Judges' perspective the guidelines have worked well, and the Court would be interested in feedback from the profession on the extent to which the guidelines are meeting their objectives and how they are operating in practice.

The Law Society sought input on this matter from the profession via its weekly e-bulletin *LawPoints* and from its national Employment Law Committee and Branches. As noted below, feedback received indicates that the guidelines have proven to be useful.

General comments

The guidelines introduced in 2016 are intended to provide greater consistency and predictability in terms of likely outcome; achieve time and costs savings in reducing the need for costs applications to be advanced; and to assist parties in assessing their options while balancing access to justice issues and the need to do justice in individual cases.

The feedback from practitioners is that the guidelines are a useful tool in achieving those objectives in Employment Court proceedings. The guidelines provide guidance to parties considering whether to commence proceedings – being able to refer to the scale to determine likely costs awards provides some certainty for parties as to the risks of proceeding. They are also a useful reference point later on, in relation to the parties' conduct in the proceedings.

It can be expected that when the pilot concludes and the guidelines are made permanent, practitioners will continue to become accustomed to using and applying the guidelines.

Specific comments

One practitioner commented that it would assist the parties if the Court could signal at the outset of the proceeding, where appropriate, which band is likely to apply, as well as the category. We note however that this has already been addressed by the Court: in its letter of 28 October 2015 to the Law Society, the Court said that "Judges conducting directions conferences with parties' representatives after 1 January 2016 will discuss with those representatives where on the scale the

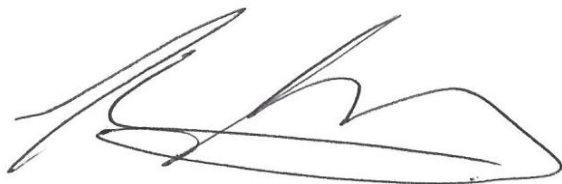
case is likely to fall and will give an indication of this preliminary assessment (which may be subject to later revision) at an early stage of proceedings”, and this is reflected in the practice direction.¹

Consideration might also be given to more closely aligning the time allocations to those of the High Court scale, where appropriate, for key steps such as commencement of a proceeding or defence, preparation for hearing and witness briefing across Bands A, B and C. For example, the guidelines provide that the time allocated for commencing a proceeding by way of a challenge by the plaintiff, in a Band B case, is two days, whereas for the same step in the High Court Rules scale, the time allocated is three days. A closer alignment to the High Court rules in this step would more closely reflect the time it takes to prepare a statement of claim or defence, review any Authority determinations, have discussions with the client and undertake applicable case research for example.

Conclusion

We hope these brief comments are helpful to the Court. If you have any questions, please do not hesitate to contact the Law Society’s Employment Law Committee convenor, Maria Dew, through the Committee Secretary, Amanda Frank (amanda.frank@lawsociety.org.nz / 04 463 2962).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kathryn Beck', with a large, stylized flourish at the end.

Kathryn Beck
President

¹ See <https://www.employmentcourt.govt.nz/assets/Documents/Publications/Employment-Court-Practice-Directions.pdf> at 16(2), page 18: “A Judge will determine the appropriate categorisation of the proceeding, which will apply to all subsequent determinations of costs in the proceeding unless there are special reasons to the contrary. In practice, a Judge is likely to assign an appropriate categorisation at the preliminary directions conference although this may be reviewed at a later stage of the proceeding.”