

11 August 2014

The Hon Justice Rhys Harrison
Court of Appeal
PO Box 1606
Wellington 6014

Dear Justice Harrison

Fast track procedure

Thank you for the opportunity to comment on the Court of Appeal's proposed fast track procedure for urgent appeals. This submission has been prepared with the assistance of the New Zealand Law Society's Civil Litigation and Tribunals Committee.

General comments

The committee understands that the objective of the scheme is to provide the opportunity for parties to an appeal to bring the matter to an early hearing where there are special reasons justifying the appeal being dealt with on an expedited basis.

You have indicated that the Court's perspective is that the fast track procedure pilot has operated efficiently for urgent appeals. The committee would be keen to see the procedure adopted permanently in the Court of Appeal. However, a number of concerns have been expressed by practitioners.

Fast track availability

Clause 3(2) of the Practice Note states that a Judge may order that appeals of up to two days may be entered if the Court's resources permit. However, the actual practice seems to be that appeals requiring more than a day are not considered for fast tracking. If the Court's resources in general do not permit fast tracking for two day appeals, it is recommended the Practice Note is updated to reflect this.

Teleconferences

Clause 6(2) of the Practice Note refers to a teleconference being conducted with a view to determining whether the appeal should be entered on the fast track. The experience of a number of practitioners is that teleconferences are not routinely held, even where the situation is covered by clause 6(2). While the committee supports the more informal approach adopted by the Court, it recommends that the Practice Note should state explicitly when a teleconference will be required.

Non-compliance

Clause 9 of the Practice Note states that if an appellant fails to fulfil any undertaking, a Judge may remove the appeal from the fast track.

It is difficult for a respondent to ensure that the appeal is fast tracked and remains fast tracked where there is non-compliance by an appellant. The committee believes that to avoid possible injustice, the respondent

should be entitled to be heard before a Judge makes a decision under clause 9. It may also be appropriate for there to be some costs consequences where an appeal is removed from the fast track because of an appellant's non-compliance.

Other appeals

Feedback received by the committee indicates there can be a long delay in obtaining a fixture for appeals that are not on the fast track. In some cases, delays of up to 12 months between applying for and obtaining a fixture for a one day appeal have been reported. The committee would not want to see a situation develop where the fast track procedure operates so that there is an undue effect on the ordinary process for fixture allocation.

The Law Society hopes that the above comments are of assistance to the Court. If you wish to discuss any matters raised in this letter please contact the Civil Litigation and Tribunals committee convenor Andrew Beck, through the committee secretary, Rhyn Visser (phone (04) 463 2962 or email rhyn.visser@lawsociety.org.nz).

Yours sincerely

A handwritten signature in black ink that reads "E J Unsworth". The signature is written in a cursive, slightly slanted style.

John Unsworth
Vice-President