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By email: Arthur.Shaw1@justice.govt.nz

Tēnā koe Arthur,

Feedback on proposed protocol for remote participation by criminal defence lawyers in the District Court

1. The New Zealand Law Society Te Kāhui Ture o Aotearoa welcomes the opportunity to provide feedback on the proposed judicial protocol, *Remote Participation by Criminal Defence Lawyers Appearing in Hearings in the District Court* (**Protocol**).
2. The Law Society supports the creation of a protocol to give greater certainty to criminal defence lawyers in the District Court. Increased certainty regarding remote appearances may help lawyers manage their workloads and offer better representation for their clients (by reducing the need to brief other lawyers). Greater use of remote participation, to the extent enabled by the Protocol, could also help promote efficiency and timely access to justice while minimising travel costs within practice areas (particularly between the various courts in the wider-Auckland region, as well as courts in 'outlying' areas such as Dunedin, Oamaru, Timaru and Ashburton).
3. However, we agree the implementation of this Protocol will depend on the availability of Audio Visual Link (**AVL**) equipment and an adequate internet connection. The Law Society therefore supports the proposal to implement the Protocol on a 'court by court' basis following assessments of the AVL facilities that are available, or would be needed, in each court.
4. The Law Society also supports the requirement in paragraph [12] of Appendix A, and in particular, the requirement for the Court Registry to convey reasons for declining a request for remote participation. This will help ensure consistency and transparency within the decision-making process.
5. We have, with the assistance of our Criminal Law Committee and Courthouse Committee members,¹ identified some additional matters which are not addressed in the Protocol, and would benefit from clarification. We discuss these below:

¹ More information about these committees is available on the Society's website:
www.lawsociety.org.nz/professional-practice/law-reform-and-advocacy/law-reform-committees/.

Appearances on behalf of individuals arrested for breaching bail conditions

6. The framework outlined in Appendix A of the Consultation Document does not address a common scenario where a lawyer appears remotely for a client who appears in person: where a defendant is on bail in another centre from the District Court they are facing charges, and they are arrested for an alleged breach of bail.
7. It would be preferable to clarify when remote participation may be appropriate in such circumstances, noting that:
 - a. Whether a defendant appears in person or via AVL would need to be court-specific, and take into account the particularities and resources of each individual court. Practitioners have advised that in some courts, all defendants appear in person after being arrested, and in other courts (for example, in Christchurch), they appear by AVL by default.
 - b. The timelines proposed in Appendix A would not be viable, and should not apply in such circumstances. Separate, bespoke timeframes should therefore be prescribed in the Protocol in relation to such requests
 - c. Our preference would be to clarify that the general presumption against remote participation (set out in paragraph [10] of Appendix A) should not apply in such circumstances. Where an individual is arrested for breaching a bail condition, a lawyer would not typically have adequate time to prepare for the hearing, and in many cases, it would be preferable for the lawyer who has knowledge about the case to appear rather than a duty lawyer. Remote appearance by the lawyer may enable this. Therefore, while a lawyer may still be required to request a remote appearance, the 'general observation' in paragraph [10] of Appendix A should not apply to such requests.
 - d. Alternatively, the Protocol could specify breach of bail conditions as a separate category, with requisite procedures for lawyers to request remote appearances for such hearings.

Remote appearances in list matters

8. It could be helpful for the Protocol to provide guidance on whether cameras and microphones should be turned off during lists prior to each matter being called. This would still enable the presiding judge and others participating in a list matter to immediately identify and see the lawyer who will be appearing on a particular matter (noting this could be challenging if all lawyers were to turn on their cameras prior to their matters being called).
9. It could also be helpful to clarify how lawyers are expected to notify the Registrar that they have remotely joined a hearing for a list matter (and particularly where a lawyer joins a hearing partway through another list matter).

Next steps

10. We hope this feedback is helpful. Please feel free to get in touch with me via the Law Society's Senior Law Reform & Advocacy Advisor, Nilu Ariyaratne (Nilu.Ariyaratne@lawsociety.org.nz) if further discussion would assist.

Nāku noa, nā

A handwritten signature in dark ink, appearing to read 'D Campbell'.

David Campbell
President