



The Right Honourable Dame Helen Winkelmann

CHIEF JUSTICE OF NEW ZEALAND | TE TUMU WHAKAWĀ O AOTEAROA

31 March 2021

MEMORANDUM

New Zealand Law Society
New Zealand Bar Association
Criminal Bar Association
Auckland District Law Society
Defence Lawyers' Association
Pacific Lawyers' Association
Te Hunga Rōia Māori

Seeking feedback on proposed changes to the way Supreme Court proceedings are published

The Supreme Court Judges are proposing to introduce a number of changes to the way the record of appeal hearings is accessed by the public. The proposed changes are intended to improve the timeliness and quality of case-related materials available to the public and media with a view to improving transparency and promoting understanding of the Court's work. Prior to introducing these changes, the Supreme Court bench would appreciate feedback from the profession and others with a special interest in these issues.

Case materials: current position

Currently the transcript of an appeal hearing is uploaded to the Courts of New Zealand website (courtsfnz) after the hearing. However, this occurs some weeks or even months after the hearing. Part of the reason for the delay is the process of checking which occurs. This includes providing counsel and self-represented litigants (together, "submitters") with an opportunity to check the transcript for accuracy. After that has occurred, a registry officer checks the oral recording to determine whether any matters highlighted by submitters are, in fact, errors. Copies of written submissions are not uploaded to courtsfnz, nor is the audio recording of the hearing.

The possible changes on which your feedback is sought are described below.

Transcript

The Court considers that the delay in the uploading of transcripts is undesirable. It is considering adopting an approach where the transcript is uploaded within a few days of the

hearing, with a banner recording that it is an unchecked transcript and may not therefore be completely accurate.¹ Submitters would still have an opportunity to check the transcript, but this would occur after the unchecked version had been uploaded. If necessary, a corrected version would be uploaded after the checking process with a note on the transcript recording this had happened.² The exception to this practice would be in cases where non-publication or suppression orders are in place. In such instances the Registry/clerks would check for any inadvertent breaches before the transcript was published. Where a trial or retrial will follow the appeal, the transcript will not be published until after the trial or retrial.

Audio recording

The Court is also considering uploading the audio recording of the hearing to courtsofnz. This will require some upgrading of courtsofnz, so may not be able to be implemented for some time. A similar regime for checking to reflect suppression orders would apply, but there would be no need for a check of the accuracy of the recording as there is in relation to transcripts. The audio recordings would be indexed in the same way as transcripts are.

Submissions

The Court considers that copies of the written submissions of the parties (as well as chronologies and outlines of oral argument) should be uploaded to courtsofnz. Submitters would be asked to ensure submissions are prepared with this in mind. In particular they would be asked to ensure no suppressed information appears in their submissions. The Court considers this would allow for a full record of the hearing to be available, rather than only a record of what is said at the hearing. The Court sees benefits in uploading the submissions before the hearing, so that those attending the hearing or observing it by VMR can get a better understanding of the arguments being put to the court. But we seek your views on the appropriateness of that. Even if the submissions were uploaded after the hearing, anyone reporting on or studying the case or who is otherwise interested in it would be able to get a better understanding of the parties' positions. Submitters often refer to their written submissions during their oral presentation and rely on written submissions even if they do not do so.

Livestreaming

The Court has asked the Ministry of Justice to investigate livestreaming of some or all Supreme Court appeal hearings. The cameras in the courtroom will need upgrading for this, as will courtsofnz. There is no timetable for these upgrades yet, but livestreaming is a prospect in the longer term. The Court seeks feedback on this possibility as well. There would need to be a slight delay in transmission so any inadvertent references to suppressed material could be dealt with. Some criminal appeals could not be livestreamed, where fair trial issues could arise if details of a case were accessible on the internet. The Supreme Court of the United Kingdom may provide a model for this. All its hearings are now livestreamed

¹ The banner currently appearing on transcripts says: "This transcript is not a formal record of the oral hearing. It is published without check or amendment and may contain errors in transcription". There is no proposal to change that wording.

² Where suppression orders apply the Registry would still check that suppressed information does not appear in the transcript. But the Court will seek to reduce the risk of this occurring by asking counsel not to refer to the suppressed information during the hearing.

on the Court's own website and on Sky News UK. The Supreme Court of Canada also livestreams its hearings in virtually all cases.

In the interim the Court will continue its practice of permitting media, on application, to film and record hearings using a pool camera arrangement. The Court also intends to promote the use of Virtual Meeting Room video conferencing technologies to facilitate media and other interested parties to attend hearings remotely. If counsel has any concerns or comments about this new practice, provided for in the protocols developed during the COVID 19 pandemic and available [here](#), we would appreciate hearing about these so they can be reflected in our terms and conditions for remote access.

Judgment delivery

The Court takes this opportunity to inform you about a new process for delivery of judgments having high media interest. The Court intends to use an embargo system in such cases. This has been trialled in one case and worked well. The process is that the judgment is released to counsel and to media representatives who have agreed to abide by the embargo an hour (or other defined period) before it is formally delivered in open court. The embargo ceases as soon as the formal delivery has been completed. Counsel are permitted to disclose the judgment to their clients during the embargo period, subject to the same restriction. This allows counsel to advise their clients and for counsel and clients to prepare themselves for media inquiries that will follow delivery of the judgment.

Hei konā mai i roto i aku mihi,



Helen Winkelmann
Chief Justice