

2 April 2020

The Rt. Hon. Dame Helen Winkelmann
Chief Justice of New Zealand/Te Tumu Whakawā
Supreme Court/Te Kōti Mana Nui
Wellington

By email: justice.winkelmann@courts.govt.nz

Tēnā koe Chief Justice

Re COVID 19- Level 4 – Civil work

I write on behalf of the New Zealand Bar Association. We are not sure if your Honour is the correct person to address this to or whether we should send it to the Judicial Steering Group. We would appreciate your advice in this respect.

Several members have expressed increased concern about the complete cessation of civil litigation in the courts. The NZBA appreciates that because of the Level 4 lockdown hearings cannot proceed in the usual way, and the court needs to be mindful of the care that it takes to protect the health and safety of staff and the judiciary.

However, many practitioners are complying with timetabling orders and receiving replies from the court that the matter will not be processed or considered until the end of the Level 4 lockdown. Other practitioners report attempting to have such issues as breach of timetable orders dealt with on the papers and getting a similar response.

This response encourages the defaulting party to simply flout the agreed timetables, even when necessary for proceedings set down for hearings in June/July.

Further, the cessation in even the most modest progress in a civil case is causing an almost abrupt end to all civil High Court litigation. I imagine that the District Court Civil list is impacted in the same way.

Members advise us that Judge Kelly in the Alcohol Regulatory and Licensing Authority has issued minutes directing that cases will continue to be dealt with on the papers or by phone. Counsel and their clients greatly appreciate this approach.

Is it possible for on the papers issues, including the progression of timetable orders, to continue during this time? These documents are routinely emailed to the court, and it would seem to us that it would be feasible for the Registry (even from remote locations) to send the documents to judges and associate judges to be dealt with on the papers.

The Level 4 Alert may well continue for longer than four weeks. While appreciating the need for health and safety for all, it is also important that we continue to progress a minimum level of the civil litigation to avoid an enormous backlog of interlocutory issues, as well as trials, when the courts resume normal business.

If we can do anything to assist, then we would be happy to do so, including drafting a protocol for progression of civil matters

Kind regards

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Kate Davenport'.

Kate Davenport QC

President

cc: Chief High Court Judge

cc: Chief District Court Judge

cc: Andrew Kibblewhite/Carl Crafar

cc: Jacqui Thompson